Simplified Rules of Evidence for Use in Mock Trial Hearings – MTC 2026

Introduction

To ensure the focus of the Mock Trial Competition (MTC) is on the advocacy skills of the students (and not their substantive legal knowledge), it is expected that all hearings conducted in the Mock Trial Competition will be conducted having regard to the following simplified rules of evidence and any specific directions given to students and/or mock trial judges within the Case Materials in a particular round.

Please note that the Simplified Rules of Evidence for the mock trial competition will be updated for the 2027 Competition to reflect the commencement of the Uniform Law Evidence Act. Any teachers or volunteers wishing to provide feedback for that draft please email mocktrial@lawsocietywa.asn.au.

Grounds for Objections

In MTC hearings, the grounds for objecting to evidence should be confined to:

1. Relevance
2. Opinion
3. Hearsay

Objections may also be made to the form of the question (rather than the evidence to which the question relates). Examples of this are leading or harassing questions etc. Further information about the grounds is below.

The Rule in Browne and Dunn

There is a common law rule referred to as the rule in Browne and Dunn which is relevant for the cross-examination of witnesses. Essentially, the rule is one of fairness and requires counsel to put to an opponent's witness in cross-examination the nature of the case upon which it is proposed to rely in contradiction of their evidence. In other words, if a barrister wishes to submit to the court that the judge should draw a conclusion or inference about the evidence of a witness in their closing submissions, it is only fair that that barrister puts that proposition to the relevant witness during cross-examination.

Onus and Standard of Proof

In criminal proceedings, the Prosecution will only be successful if they prove 'beyond on a reasonable doubt'' each element of the offence. The onus is on the Prosecution to establish this on the evidence during the trial.

In civil proceedings, the relevant standard of proof is 'on the balance of probabilities'. The onus is on the Plaintiff to lead evidence to establish this during trial. The Briginshaw principle applies in civil proceedings and, in essence, means that allegations of a more serious nature will require more convincing evidence. In other words, the standard of proof is still 'on the balance of probabilities' but the mock trial judge should feel actual persuasion that the evidence establishes the allegation.

Admissibility vs Weight

Students should bear in mind that just because evidence is admissible does not mean the judge will (or should) place much (or any) weight on that evidence. The extent to which a judge should place weight on admissible evidence is a matter for the students to address in their closing submissions. Whether a team objects to the actual admissibility of evidence (rather than submissions as to its weight) is a strategic decision.

Ground 1 - Relevance

Only relevant evidence is admissible.

'Relevant' means the evidence must prove or tend to prove a fact that is in dispute (i.e. as opposed to a fact that both sides agree). In the MTC, if a particular fact has been agreed this will be made clear in the Case Materials and phrased as an assumption students and mock trial judges are directed to make.

Evidence is not admissible just because it is relevant. If such evidence meets any of the other grounds for objection it may still be inadmissible. Evidence that is led for the purpose of establishing background may be relevant for that purpose. It may be a question of the extent to which such evidence assists the judge bearing in mind the principles of case management.

Example 1

In a case in which the question is negligence, evidence of previous criminal behaviour (e.g. violent assaults or speeding) is generally irrelevant as it would not go to whether or not there was negligence. In contrast, if the negligence in issue is in relation to a car crash, whether the defendant was speeding immediately before the crash or on previous occasions is relevant to (although not conclusive of) whether they were driving with due care at the time of the incident in question.

It might be that a question, particularly in cross-examination, does not immediately appear to be relevant. It is acceptable, assuming that the question is leading to matters of relevance, to respond to an objection based on evidence by saying "The line of questioning goes to the issue of credibility/negligence/damage or other matters in issue". Ultimately, it may be necessary to spell out how the question is relevant to proving or disproving the fact in issue.

It will, however, not usually be necessary to go to the same level of detail in responding to an objection as it may be in closing (for example, in closing, counsel might say that the prosecution has proved that there was negligence by demonstrating that the defendant was speeding, and in turn, speeding was proved by the evidence of [witness 1] and cross-examination of the defendant).

In responding to an objection, it might be sufficient to say that the question going to speeding is directed to whether the defendant was negligent in his/her driving.

Ground 2 - Opinion Evidence

Evidence of an opinion is not admissible to prove the existence of a fact (about which the opinion was expressed). Evidence of an opinion may be admissible if its relevance is the expression of the opinion itself.

Conclusions, speculations or views formed by witnesses based on facts they have observed are not admissible evidence. The underlying facts may be given in evidence, but the opinion about those facts will generally be inadmissible.

An exception to the opinion rule is where opinion evidence is given by a witness who is an expert in the field to which the opinion relates. 'Expert' in this context means someone who has specialised

knowledge in a field, whether from qualifications, experience or formal training in that field. Before the opinion can be given in evidence, previous evidence given by that witness must 'qualify' them as an expert in the field to which the opinion relates. This is done by leading evidence from them of qualifications, expertise, etc.

Another exception is if the opinion evidence comes from the witness' everyday experience. For example, if someone had been a qualified driver for several years, they may be able to give opinion evidence that someone else was driving over 70km per hour on a road.

If a witness is not an expert witness in that field, they are referred to as a lay witness.

If a witness is established as an expert witness, then the statements they make that are opinions relating to their field of expertise will be admissible. Opinions they may give which fall outside their area of expertise remain objectionable. It is not a precondition for the admissibility of expert opinion evidence that the opinion is correct.

Example 1

The observation by a lay witness that a person was red in the face and shaking his fists may be admissible, but the 'conclusion' or 'opinion' that the person was therefore angry would not be admissible.

Expert evidence could be led by a psychologist that it is common or likely for a person to present as red in the face and/or shake their fists to express anger.

Alternatively, if evidence that the person was in fact angry is desired then that evidence should be led directly from the person as to how they felt at that time.

Example 2

The observation that a person smelt of alcohol, was slurring their words and/or was unsteady on their feet may be admissible, but the conclusion or opinion that the person was therefore drunk or intoxicated would not be admissible.

Ground 3 - Hearsay

Hearsay evidence is when a witness gives evidence of something they heard another person say as evidence as to the truth of that statement. Hearsay evidence is not admissible for the purpose of establishing the truth of the underlying statement.

The purpose of the hearsay rule is to ensure that, to the extent possible, only the best evidence is available to the court. The best evidence rule essentially means that evidence in court proceedings should be given by the person most qualified to give it.

Hearsay evidence is secondhand evidence, easy to concoct and therefore not as reliable as evidence given directly by a witness who saw or heard something themselves who then tells the court about what they saw or heard their own words (and while under oath or affirmation when their testimony can be tested through the process of cross-examination etc.)

While there are various exceptions to the hearsay rule, the ones to be employed for the purpose of the MTC hearings are:

1. When a statement is relevant for non-hearsay purposes (e.g. when the statement is being repeated in court as evidence that the statement was said, not to establish that the statement was true); and

2. When a statement is contained in or suggested by business records (for example in MTC hearings it is common for the Case Materials to include a document to be tendered by consent that may

contain hearsay statements, but which is admissible nonetheless under the business record exception).

Example 1

"Mrs Smith told me she saw Mr Simpson driving the car" is not admissible to prove that Mr Simpson was in fact driving the car. The statement might be admissible if the reason for relying on the statement was to establish why a person acted or did not act a certain way (if that was itself relevant).

Example 2

"The ambulance driver that attended the scene told me that he noticed the windows at the house were broken" is not evidence that windows were broken. To prove that fact, you would need to lead evidence from the ambulance driver that they saw windows were broken when they were in attendance at the scene.

Example 3

If person A is alleged to have made a threat to kill person B, person C may give evidence that they heard person A make the threat. This is because person C heard the threat and can give evidence to that effect.

The hearsay statement is admissible in this situation as the purpose of the evidence is to establish that a threat was made, not whether the statement was true.

Objections to the Form of the Question

Objections may be taken to the form of the question, rather than the evidence to which the question is directed. For example, a question that is leading, harassing or otherwise inappropriate.

Leading Questions

A leading question is one where the form of the question suggests the answer.

Leading questions are not allowed during examination-in-chief and in re-examination, unless the judge has given leave, or the questions relate to a matter that is introductory to their evidence or that is not in dispute.

Leading questions are allowed during cross-examination.

Barristers who intend to make an objection to a question on the basis that it is leading should be mindful of case management principles to ensure their objection is proportionate and appropriate. For example, if a question is asked of a witness during examination-in-chief that is intended to draw out an uncontroversial fact, it may be inappropriate for a barrister to object even if the question was leading as doing so will delay the proceedings.

Leading questions may be asked about matters not in dispute, enabling the witness to be taken quickly to the real matters in dispute. The mock trial judges will usually give indications throughout the hearing as to their view on these matters and students should adapt their advocacy presentation to meet the mock trial judge's expectations (which may differ between individual judges in the competition, as is also the case in real life). Students need to be agile and adapt to changing circumstances at all times through a mock trial hearing.

When determining whether an objection may be appropriate, students should bear in mind the role of the judge to manage the conduct of the proceedings to not only afford justice and a fair process in the individual case but also have regard to broader case management principles (avoiding cost and delay, etc) with have effects on the justice system more broadly.

Example 1

“Was the car blue?” suggests that the car was indeed blue. A more appropriate form of the question is “'What colour was the car? or 'Can you tell me what colour the car was?

Example 2

“Did you see the defendant’s car?” suggests the car was owned or in the possession of the defendant. Such a question could be asked if the ownership of the car by the defendant was uncontroversial. If that fact was an issue in dispute, then that would be an objectionable question.

A witness can be asked whether they saw a physical object (such as a car) but identifying the car in the question as belonging to someone or being stolen, assumes a fact that might need to be separately proved.

Leading questions are allowed in cross-examination and are often the best form of question to use when cross-examining a witness as it allows the Barristers greater control over the witness’s evidence. When used effectively, leading questions reduce the witness’s responses to “Yes” or “No.” The real power of leading questions is that they allow the barrister to control the witness using short, single fact “questions” (statements, actually) to demonstrate how the facts support your client’s story (their case theory).

General Questions

A general question is one that calls for a long narrative response or is asked at too general a level. There is a broad judicial discretion to disallow such questions as they do not clearly direct the witness’s mind to an issue and so create unfairness to the witness. The barrister who asked such a question will usually be expected to (and can proactively) reframe their question to be more specific. Any question is objectionable as to form if it is not expressed with clarity. Any question that is on its face confusing, misleading, vague or ambiguous is objectionable on that ground.

Duplicitous or Compound Questions

A question that asks two or more questions disguised as one is objectionable. It is objectionable for the very reason that a simple yes/no answer from the witness will be unclear, inaccurate and potentially misleading as it is not clear to which part of the question the answer is directed.

Erroneous Questions

A question is objectionable if it contains a misstatement or distortion of the evidence. In this manner, bringing the matter to the judge’s attention by way of an objection is part of the barrister discharging their duty to the court by not allowing a judge to be misled.

Harassing Questions

Questions that are harassing or arguing with a witness are objectionable. For example…“do you really expect us to believe your story?” or repeatedly putting the same substantive question to a witness even though they have already answered it.