



WitEx Competition 2018

Competitors' Manual

MinterEllisonRuddWatts

Competitor Materials

Congratulations on your decision to enter the WitEx Competition in 2018. We hope you will find the experience rewarding, educational and, most importantly, fun!

These materials introduce you to the format of the WitEx Competition. Separate materials that introduce you to the substance of the WitEx Competition – i.e. the skills and knowledge required – will be distributed by your university competition organiser.

We recommend that you go over all the materials again in your own time. We hope that you will then complete the entry form, which can be found at the end of these materials, by the required date.

Please note that you will need to organise a person to act as your witness for the preliminary rounds.

Overview of the WitEx Competition

The WitEx Competition involves university law students acting as counsel in a mock court hearing before a judge in a preliminary and finals format. Each hearing comprises two counsel: one for the prosecution/plaintiff and one for the defence. Each counsel calls one witness each: they are then required to conduct examination-in-chief of their witness, and cross-examination of the opponent's witness. There is no re-examination of witnesses.

The rules of evidence, as applicable in the New Zealand courts, apply. However, the WitEx Competition focuses on rules of evidence as they apply to examination and cross-examination of witnesses, rather than rules of evidence related to procedure.

Competition Rules

The competition Rules are **attached** to these materials. Please note that the conduct of the session is as follows:

opening by prosecution/plaintiff	2 minutes
examination in chief by prosecution/plaintiff of prosecution/plaintiff witness	10 minutes
cross-examination by defence of prosecution/plaintiff witness	15 minutes
opening by defence	2 minutes
examination in chief by defence of defence witness	10 minutes
cross-examination by prosecution/plaintiff of defence witness	15 minutes
summation by defence	3 minutes
summation by prosecution/plaintiff	3 minutes

The recommended conduct of the case is also **attached** to these materials

The WitEx Competition: on the day

The timetable for each hearing follows the following format:

- (a) competitors receive the fact pattern one and a half hours prior to the commencement of the hearing;
- (b) witnesses receive their statements and the witness materials one hour prior to the commencement of the hearing:

- (c) competitors meet with their witnesses half an hour before the start.

Please ensure that you know in advance where to collect the fact patterns for your hearing and where your hearing is to take place.

All rooms used for the hearings will have a table or podium for the use of competitors, a table for the judge's use, and a suitable chair/position for witnesses to give evidence.

It goes without saying that the judges, who most often will be senior practitioners giving their time voluntarily, should be treated with respect and courtesy at all times. While you are not required to robe, please dress appropriately for the occasion.

Marking

All rounds will be marked to a set format (a copy of the marking schedule is attached to the Competition Rules).

Each competitor is given a mark out of 100 which is assessed as follows:

(a)	examination in chief	30
(b)	cross-examination	30
(c)	submissions	20
(d)	advocacy and manner	20

Comments on the performance of counsel will be given by the judge at the conclusion of the hearing. Actual marks awarded to the competitors will not, however, be disclosed to competitors.

At the end of a preliminary or semi-final round, judges will meet to discuss the marks awarded to each competitor and, where applicable, select the competitors to continue into the next round. Generally, the marking schedules will be used as a guide to selecting the semi-finalists and finalists: semi-finalists will generally be selected as being the top four competitors across the preliminary rounds.

Should you have any questions, please do not hesitate to contact your university competition organiser.

Recommended Conduct of the Case

Each counsel stands as the judge enters the hearing room, bows to the judge, and then sits after the judge sits.

The respective counsel introduce themselves to the Judge by stating:

"May it please the Court, counsel's name is X, and I appear for the plaintiff/prosecution/defendant."

Counsel for the prosecution/plaintiff will then open the case by stating the nature and elements of the case and briefly explain the version of events asserted by the prosecution/plaintiff.

The Judge will then request that the first witness be called.

- Counsel for the prosecution/plaintiff will call the first witness, saying:

"I call ..."

- The Judge – or, where appropriate, the timekeeper/judge's assistant – will call the name of the witness, ask him or her to sit in the witness box, and swear him or her in, saying:

"It is your duty to assist the court in these proceedings by faithfully answering questions put to you. Do you understand?"

Counsel for the prosecution/plaintiff will then examine the witness.

Counsel for the defence will cross-examine the prosecution/plaintiff witness. At the end of cross-examination, counsel for the prosecution/plaintiff will finish by saying:

"Your Honour, that is the case for the prosecution/plaintiff."

Counsel for the defence will then open his/her case, and then follow the same procedure for calling the witness and leading evidence in chief. Accordingly, counsel for the prosecution/plaintiff will then cross-examine the defence witness.

Once both counsel have led their evidence in chief, and each have cross examined the respective witnesses, counsel for the defence will give his/her closing address.

Following the closing address of the counsel for the defence, counsel for the prosecution/plaintiff will then give his/her closing address.

Additional procedure in finals (where appropriate)

In most instances, there will be a timekeeper/judge’s assistant in the semi-finals and the final. In these instances, the following additional procedure should be followed:

- (a) At the start of the hearing, the timekeeper/judge’s assistant will stand and announce the case, when the Judge is ready, saying:
“All rise! Court is now in session, for the case of ...”
- (b) Once all presentations have been completed in the hearing, the timekeeper/judge’s assistant will close the Court, saying:
“All stand! This Court is now adjourned.”

Competition Rules

The competitor must be enrolled in an undergraduate law degree at the university holding the competition.

Fact patterns used for the competition may be in either the criminal or civil jurisdiction.

The rules of evidence as applicable in the New Zealand courts shall apply. However, emphasis is on examination and cross-examination of witnesses. Accordingly:

- (a) counsel are not permitted to refer to an opponent’s witness brief in cross-examination (e.g. for the purpose of prior inconsistent statement);
- (b) exhibits and contemporaneous notes will not be entered into evidence;
- (c) witnesses will not be expert witnesses.

Further, several assumptions are made:

- (a) any potential police obligations under the New Zealand Bill of Rights Act have been complied with;
- (b) while the legal framework is expected to be discussed in opening and closing submissions, matters of law are not at issue.

Competitors will receive the background competition materials from the university law students’ society competitions coordinator in the weeks prior to the competition.

There will be one counsel for the prosecution/plaintiff and one counsel for the defence.

Competitors receive the fact pattern 90 minutes prior to the commencement of a hearing. The fact pattern will consist of counsel instructions, a witness brief, and a copy of the opponent’s witness brief.

NB: the opponent’s witness brief is provided to assist in preparation for cross-examination.

Witnesses receive their briefs together with witness instructions one hour prior to the commencement of the session, and competitors meet with their witness half an hour before the hearing.

Competitors will not discuss the contents of the hearing with any persons other than their witness.

After introductions to the bench, the conduct of the hearing shall be as follows:

opening by prosecution/plaintiff	2 minutes
examination in chief by prosecution/plaintiff of prosecution/plaintiff witness	10 minutes
cross-examination by defence of prosecution/plaintiff witness	15 minutes

opening by defence	2 minutes
examination in chief by defence of defence witness	10 minutes
cross-examination by prosecution/plaintiff of defence witness	15 minutes
summation by defence	3 minutes
summation by prosecution/plaintiff	3 minutes

Witnesses should not embellish their evidence beyond that in their witness briefs. If cross-examined on a point not covered in a brief, a witness should give an answer likely to be consistent with the role being played.

Judges will keep time during preliminary rounds and provide warnings at the appropriate times being:

- (a) for examination in chief/cross-examination : a warning when 2 minutes remain
- (b) for opening/summation : a warning when 30 seconds remain

The time limits will be enforced in the semi-finals and final. Three marks will be deducted for every minute exceeding the time limit. Note: the clock will be stopped during any objections.

All rounds will be marked by a single judge to a set format (attached to these rules). At the end of the case the judge may make comments as to the style and presentation of the individual counsel.

Each competitor shall be allocated a mark out of 100 (which will be kept confidential). This mark is assessed as follows:

- | | | |
|-----|----------------------|----|
| (a) | examination in chief | 30 |
| (b) | cross-examination | 30 |
| (c) | submissions | 20 |
| (d) | advocacy and manner | 20 |

There will be no re-examination of witnesses.

All the usual formalities are to be observed when addressing the Bench and normal courtroom etiquette is to be adopted by counsel. Although counsel are not required to robe, counsel's personal appearance and dress should conform to the expectations of the courts.

The Judge may disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand (section 85 Evidence Act 2006).

Fact Patterns

Fact patterns are re-used in the competitions. Students must not share other fact patterns from previous competitions as this may give them an unfair advantage. Competitors who receive or give away prior years' fact patterns may be subject to disciplinary action, including disqualification from the competition.

An example of a fact pattern, together with witness examination demonstrations are available on the MinterEllisonRuddWatts website.



Criteria and Marks

Submissions

Clear theory of the case present from opening of case	_____ / 5
Closed case appropriately utilising evidence led during hearing	_____ / 5
Utilised information obtained during cross-examination in closing	_____ / 5
Observed rules of evidence during examination of witnesses	_____ / 5
Subtotal	_____ / 20

Advocacy and manner

Style/demeanour/eye contact with Judge	_____ / 5
Manner of delivery	_____ / 5
Appropriately raised/responded to objections	_____ / 5
Response to questions from Judge	_____ / 5
Subtotal	_____ / 20

Total

_____ / 100

Questions Asked / Notes
