



# WitEx Competition 2018

Judges' Manual

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MinterEllisonRuddWatts

# Judges' Manual

Thank you for volunteering to act as a judge in the WitEx Competition in 2018.

The 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 in the competition. However, the 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 set out below. You will 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, which competitors have in their materials, is included at the end of this document for your reference.

If you are judging a preliminary round, please keep an eye on time taken by counsel at each stage (allowing for objections) and advise them if they have exceeded the relevant allocated time.

If you are judging a semi-final or final, please enforce time limits (allowing for objections) by deducting three marks for each minute exceeding a time limit. There will be a time keeper at the finals who will advise when a time limit has been exceeded.

Hearings can be judged by either one judge sitting alone, or a panel of up to three judges. Usually, preliminary rounds are heard by a single judge, with finals being heard by a panel. For finals, competition organisers will endeavour to obtain the services of a sitting District Court Judge (or more senior member of the judiciary).

## Marking

All rounds will be marked by you to a set format (a copy of the marking schedule is attached to the Competition Rules). A sufficient number of copies of the marking schedule should be distributed to you by the competition organiser.

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

Please make comments on the performance of counsel at the conclusion of the hearing. Do not, however, disclose the actual marks awarded to the competitors. If you are judging the final, it would be at this stage that you would then announce the competition winner.

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 should generally be selected as being the top four competitors across the preliminary rounds.

We are grateful that you are able to act as a judge in this competition. Should you have any questions, please do not hesitate to contact the student competition organiser or the MinterEllisonRuddWatts coordinator [Hannah Jaques](#).

## 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.

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:

- 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 ...”*

- 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:

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

Further, several assumptions are made:

- any potential police obligations under the New Zealand Bill of Rights Act have been complied with;
- 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 but should not be referred to in 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:

- (c) for examination in chief/cross-examination : a warning when 2 minutes remain
- (d) 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.

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

(e)	examination in chief	30
(f)	cross-examination	30
(g)	submissions	20
(h)	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.

Counsel have been informed that 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 (as under section 85 Evidence Act 2006).





## Criteria and Marks

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### 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

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### Total

\_\_\_\_\_ / 100

## Questions Asked / Notes

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