

Mock Trial 2017

SCHOOLS' GUIDE



The materials included have been adapted from the materials issued by the Citizenship Foundation & are being distributed for information only.

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Introduction

Dear all,

Please find included in this document information to help you prepare for the Mock Trial. The materials were produced by the Citizenship Foundation and I have merely selected materials that I would have found helpful the first year I was involved in the competition. I hope the information will enable you to effectively prepare for the competition, should there be any uncertainties or queries please get in touch.

I look forward to seeing you at the competition,

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Competition Format, Rules and Key Information

a) Format.

How the competition works

The competition is divided into three rounds of heats where the schools will perform the cases in a live format against other schools over three rounds. The two highest scoring schools then proceed to the final.

Schools must present the prosecution and defence for case one and the prosecution or defence for case two. Schools should prepare the prosecution and defence for both cases as the draw is subject to change and in case they succeed in proceeding to the final.

Schools must ensure that they have enough participants to fulfil all the roles required.

Age of students

Students should be in Years S3 to S6, but this is of course at the discretion of the teacher involved and dependent on participants. Younger pupils have performed well in previous years!

Independent learning

Students are expected to work independently and those who do benefit from the competition a lot more. Teachers should only be there to give them tips and should not prepare anything for the students.

b) Key rules during the trial

Students should not read excessively from notes or speak from memorised scripts

It is much easier to perform well if you can act spontaneously and judges will give more marks for this. Reading rigidly from notes or speaking from a memorised script may make your performance not true to life. You therefore need to learn your statement and be prepared to answer questions relating to it, as if you really were that character.

Students must keep within the time limits set

The judge is aware of the time limits and if students go over, they can only receive a maximum of four marks.

Students should not introduce new evidence (that is not contained in the witness statements)

It is not fair to expect either a student playing a witness or a student playing an advocate to ask or be asked about things outside the scope of the witness statement. Students who introduce new evidence will gain a maximum of four marks. You cannot therefore make something up which is not in the statement BUT you should have an awareness of what is likely to be known or common for your character eg if you are playing a hoodie wearing teenager it is not unreasonable to be asked if lots of teenagers wear hoodies – it might not be in your statement but you would know it, and as such is not 'new evidence'. You cannot however say that you don't have a green hoodie; only red ones if that is not in your statement.

The judge's decision on the day of the heat is always final

Unlike in real life, there is no appeal system after decisions have been made. It is impossible to change the scores after the event.

c) Key information

Organising a court visit

Visiting a local court is an excellent way for students and teachers to gain an insight into the layout of a court building and the workings of a trial. This will help participants to feel more relaxed on the day of the heat.

Feedback from previous participants shows that many schools found a visit very useful.

Most courts will be more than happy to show you around and give your students playing the court clerk and macer some pointers. For information about courts near you please visit www.scotcourts.gov.uk.

Advocate Volunteers

Receiving a visit from an advocate/ solicitor is a valuable exercise and a good way of introducing the work of advocates to your team. Historically there have been advocates/ solicitors who have worked with each school team, anecdotally, their generosity has been invaluable and we would strongly suggest that you make use of this resource.

Your advocate is there to advise you on the law and court procedure, not to coach the team. They can help with any procedural questions you may have and advise you on language and court etiquette.

The volunteer advocate will attend the heat if possible to support the team on the day. Please speak to your advocate about whether they are able to supply you with two sets of wigs and gowns. If there are not enough sets for both teams neither side will wear them. Please let us know as soon as possible if your volunteer is unable to supply any or enough wigs and gowns.

Withdrawing

If you are no longer able to participate in the competition, please inform Lynda Swanson as soon as possible. Withdrawing from the heats has serious implications on the other schools in your heat.

New Schools

We recognise that for schools new to the competition, getting to grips with the cases and procedure can be a daunting task. Don't worry – help is available! We will be happy to put you in touch with teachers who have experience in preparing for the competition and we are always on hand to answer any questions or queries you might have.

Court Reporter Competition

Schools can also enter the court reporter competition.

The court reporter competition involves watching a case in the first round and writing a 300 word article in the style of a court report. This must be handed in before the final in the afternoon.

An example of a winning school report is below:

'poor girl' cleared of Drug Dealing Charge.

An 18 year old student was cleared of drug dealing charges at Manchester Crown Courts today. The defendant, Alexandra Myers, was arrested ~~by~~ on 2nd April 2009 at Hillside School for possession of cannabis and was later charged with possession of controlled drug, with intent to supply.

Alexandra Myers was found with two 'spliffs' and four eighths of an ounce of cannabis. PC Mayell told the court this amount was 'beyond doubt, in excess of an ordinary cannabis user'. Alex, the self proclaimed 'heavy user', was able to convince the court all the cannabis was for personal use.

PC Mayell had visited the school on the day of the arrest to present a talk on dangers of cannabis. His trained police dog had sensed the cannabis and indicated to the officer that Alex had cannabis on her possession. The court heard how the constable of Hillside Police Station had been taken off mainstream duties because of an injury to his left ear. The defence team, led by Adam Wood-thomas used ~~to~~ this last doubt on the reliability of the witness's testimony.

Chris Jones, at the victim of Alex Myers's ~~herbal~~ bullying also failed to convince ~~jury~~ the jury members that Alex was at the ~~lake~~ shed at the morning of the arrest to try and sell her cannabis. She told the court she now held a 'neutral relationship' with the defendant and had no reason to lie about what she had seen.

Connor MacAdam QC, told the court that Alex Myers had been 'a poor girl who was at the wrong place at the wrong time'.

~~After her release when the jury came back with one verdict~~

Alexandra Myers seemed to be very relieved when the verdict was given and punched the air as she heard jury members say 'Not Guilty'. She told reporters, after her release, she was happy to be back with her family and ^{concentrate on} ~~devote~~ her studies and hopefully follow on to university.

Selecting Your Team

Only the advocates, witnesses, court clerk and macer are speaking roles. You can have a minimum of twelve students on your team and a maximum of sixteen. **You must make sure that all twelve roles in each round are covered.** Students can swap roles if you wish, e.g. a student playing a prosecution advocate can act as a jury member when you defend.

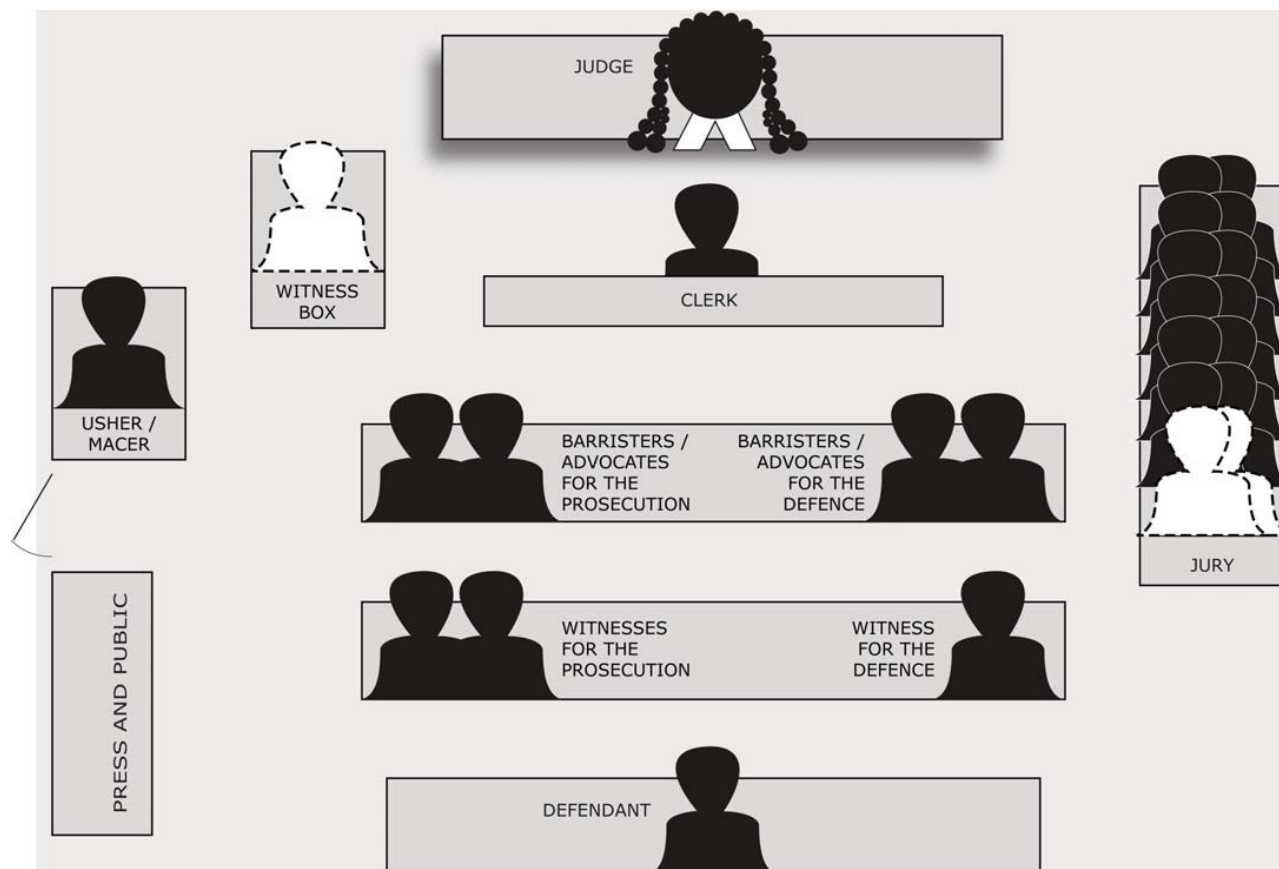
The Roles

Role (Number required)	Side required for	What they do
Prosecution advocate (2)	Prosecuting	Give closing speech Question witnesses – exam in chief and cross examination
Defence advocate (2)	Defending	Give closing speech Question witnesses – exam in chief and cross examination
Prosecution witness (2)	Prosecuting	Give evidence in court.
Defence witness (2)	Defending	Give evidence in court.
Court clerk (1)	Prosecuting	Reads the indictment Reads the agreed statement(s) Swears in the jury Escorts them to the jury room.
Macer (1)	Defending	Brings in the judge Make sure the case runs smoothly
Juror (7)	Prosecuting & defending	Decide the verdict Select a foreperson to read out the verdict
Court reporter (1 optional)	N/A	Write a court report.

NB: advocates have to show different skills in each round. Both advocates in the team will carry out an examination in chief of one of their own witnesses, and a cross examination of a witness from the other team. Whichever advocate questions Prosecution and Defence witness 1 should also do the closing speech.

Court Layout

The diagram below gives an indication of how the court may be laid out, although all courtrooms vary.



Order of procedure

Please note that whenever you are required to speak you should stand up.

Role	Event	Timing
Court Clerk	Fill in the team identification slip and put it one the judge's bench.	n/a
Macer	Go and collect the judge from his/her chambers. Lead the judge into the courtroom and as you enter say 'Court. All rise please'.	n/a
All	Stand up. Sit after the judge has sat down.	n/a
Court Clerk	Ask the judge 'My Lord/Lady shall I call the diet?'	n/a
Judge	'Yes'.	n/a
Court Clerk	Ask the accused to stand. Identify them by asking 'Call the diet of Her Majesty's Advocate against _____. Are you _____?' (insert name of accused).	n/a
Accused	'Yes'.	n/a
Court Clerk	Ask the accused to sit down.	n/a
Defence Advocate 1 (DA 1)	'My Lord/Lady, I appear on behalf of (the accused). S/he adheres to his/her plea of not guilty'.	n/a
Court Clerk	'Shall I read the indictment, My Lord/Lady?'	n/a
Judge	'Yes'.	n/a
Court Clerk	'Ladies and Gentlemen of the jury the charge against the accused _____ is that _____. (insert name of accused and indictment). 'Ladies and Gentlemen of the jury, please stand, and raise your hands and take the following oath: Do you swear that you will well and truly try the accused and return a true verdict according to the evidence?'	n/a
Jurors	'I do'.	n/a
Court Clerk (To the jury)	'Please be seated'.	n/a
Judge	'Yes – Mr/Madam Depute who is your first witness?'	n/a
Prosecution Advocate 1 (PA 1)	'My Lord/Lady, my first witness is _____' (insert name of first prosecution witness)	n/a
Macer	Lead the first prosecution witness to the stand.	n/a
Judge	Swears in the witness, asking them to repeat the following affirmation: 'I promise to tell the truth, the whole truth and nothing but the truth'.	n/a
PA 1	Examination in chief of first prosecution witness.	5
DA 1	Cross examination of first prosecution witness.	5

Macer	Lead the witness back to his/her seat.	n/a
PA 2	'My Lord/Lady, my second witness is _____' (insert name of second prosecution witness).	n/a
Macer	Lead the second prosecution witness to the stand.	n/a
Judge	Swears in the witness, asking them to repeat the following affirmation: 'I promise to tell the truth, the whole truth and nothing but the truth'.	n/a
PA 2	Examination in chief of second prosecution witness.	5
DA 2	Cross examination of second prosecution witness.	5
Macer	Lead the witness back to his/her seat.	n/a
PA 2	Ask the court's permission for the court clerk to read the agreed statement(s).	n/a
Court Clerk	Read the agreed statement(s)	n/a
PA 2	'My Lord/Lady I close the Crown Case'.	n/a
DA 1	'My Lord/Lady, my witness is the accused, _____' (insert name of accused).	n/a
Macer	Lead the accused to the stand.	n/a
Judge	Swears in the witness, asking them to repeat the following affirmation: 'I promise to tell the truth, the whole truth and nothing but the truth'.	n/a
DA 1	Examination in chief of accused.	5
PA 1	Cross examination of accused.	5
Macer	Lead the accused back to the dock.	n/a
DA 2	'My Lord/Lady, my second witness is _____' (insert name of second defence witness).	n/a
Macer	Lead the second defence witness to the stand.	n/a
Judge	Swears in the witness, asking them to repeat the following affirmation: 'I promise to tell the truth, the whole truth and nothing but the truth'.	n/a
DA 2	Examination in chief of second defence witness.	5
PA 2	Cross examination of second defence witness.	5
Macer	Lead the witness back to his/her seat.	n/a
DA 2	'That is the case for the defence'.	n/a
PA 1	Make closing speech.	5
DA 1	Make closing speech.	5
Judge	Summing up	5

Court Clerk	Lead the jury to their retiring room. Wait outside and give them a maximum of five minutes to make their decision.	5
Macer	After the jury and court clerk have left, say: 'Court rise' and lead the judge out of the courtroom to his/her chambers.	n/a
Court Clerk	Once the jury have reached their verdict, lead them back into the courtroom.	n/a
Macer	Go and collect the judge from his/her chambers. Lead the judge back into the courtroom and as you enter say 'Court rise'.	n/a
Court Clerk	Ask the accused to stand. Ask the foreman of the jury to stand and says 'What is your verdict on the charge against the accused?'	n/a
Jury Foreman	'We find the accused guilty/not guilty'.	n/a
Judge	Comment on the performance of advocates, witnesses and court staff. Announce the winning team. Put score sheet in an envelope.	n/a
Court Clerk	Collect the score sheet in a sealed envelope from the judge and hand it in To _____	n/a

Role Guides.

a) Advocates

In any trial, **two students** from your team will have to play the role of prosecution or defence advocates. The questioning of witnesses must be shared equally (i.e. one examination in chief and one cross examination), and one advocate should deliver a closing speech.

Role of the Prosecution

You represent the Crown and present the case on their behalf. It is your job to ensure that the correct verdict is reached, not just a guilty one.

Role of the Defence

You represent the accused and must stick to their version of events. Your job is to undermine the prosecution's case and create reasonable doubt in the minds of the jury as to the accused's guilt.

Brief Legal Theory

Burden of Proof

It is for the prosecution to prove the accused's guilt to the jury. The accused does not have to prove his/her innocence.

Satisfied so that you are sure

This is the standard of proof required by the prosecution and it is a very high one. The prosecution must prove to the jury the accused's guilt so that they cannot reach any verdict other than guilty. If they are not completely sure, they must acquit.

Court Etiquette

The following information is taken from 'Advocacy in Court, A Beginner's Guide' by Keith Evans.

Dress

- Wear dark colours
- Hair must be neat and tidy
- Keep jewellery to a minimum
- Wigs, if worn, should cover hair to the forehead.

Posture

- Stand up straight when you address the court
- Never put your hands in your pockets
- Try not to fiddle with your pen or notes
- Never interrupt during an oath taking.

Language

- Always refer to the judge as 'My Lord/Lady, e.g. 'My Lord, I don't know if My Lord has been given a copy of the sketch of the road at the time of the incident?'
- The term 'learned' (pronounced 'learn-ed') is a courteous way to address other lawyers, it just means qualified as a lawyer.

Preparing your speeches and questions

Full guidance on how to prepare your speeches and questions can be found on the student worksheets.

Rules for the competition

- No objections can be made
- There are no re-examinations of witnesses
- Never give your opinion
- **Do not read from scripts or speak from a memorised script**
- Stick within the time limits
- Do not introduce new evidence

b) Witnesses

Each team has two witnesses in each case. The jury base their verdict on the evidence you give, so it is important that you know your version of events fully.

Before the trial

- Learn the content of your statement
- Practice being questioned by the advocates.
- Be careful not to over-rehearse your examination in chief with them, so that it does not become a memorised script. You should look and sound like you are hearing the question for the first time, be spontaneous.

During the trial

- In a real trial, witnesses sit outside of the courtroom.
- For the purposes of the competition
- You should sit inside the court for the whole trial
- You will be called to the stand by the advocate
- The macer will lead you to the witness box and the judge will swear you in
- Your team's advocate will ask you questions (examination in chief)
- One of the opposing team's advocate will ask you questions (cross examination)
- The macer will take you back to your seat.

Important rules for witnesses

- Do not introduce new evidence
- If an advocate asks you something that is not in your statement say, 'That is new evidence, it is not in my statement'
- Sit in the courtroom for the whole trial
- You cannot take your statement to the stand.

Do

Dress as your character would

Speak loudly and clearly

Give short answers

Put the statement into your own words.

Don't

Give long answers, repeating your statement word for word

Speak from a memorised script

Overact.

c) Court Clerk & Macer

Court Clerk

The court clerk is taken from the team playing the prosecution. Your role is to help with the administration of the court. For the purposes of the competition the court clerk has been given some additional roles to help balance their part with that of the macer.

Before the trial

- Practice reading your parts in the order of procedure
- Complete the 'Team Identification Slip' and place it on the judge's bench
- Find out where the jury retiring room will be

During the trial

- Identify the accused and read out the indictment
- Swear in the jury
- Read out the agreed statement when the prosecution request it, make sure you include the details of the witness (name, occupation etc) and not just the statement itself
- Take the jury to their retiring room to decide their verdict and then bring them back into court.

After the trial

- Get the score sheet from the judge, which should be in a sealed envelope.
- If it is not, give it back to the judge and asks them to put it in one
- Take the sealed score sheet to the -----

Macer

The macer is taken from the team playing the defence. Your role is to help with the administration of the court. For the purposes of the competition the macer's role has been slightly altered to balance their part with that of the court clerk.

Before the trial

- Learn the order of procedure
- Make sure you know where all of the witnesses and accused as sat and where the witness box is
- Once everyone is ready, go and collect the judge.

During the trial

- Escort the witnesses and accused to and from the witness box
- If anyone disturbs the trial, for example if they are talking, their mobile phone rings or they are taking picture, politely ask them to leave.

d) Juror

The jury is made up of six students from two schools and do not watch their own school perform, except where this cannot be helped. Your role is to decide the verdict of the case based on the evidence you have heard in court on the day. Although your role is not scored, it is a vital part of the competition and should be taken seriously.

Unless you are playing other roles, it is not a good idea for you to sit in rehearsals. This way, the cases are fresh to you on the day. It would be a good idea to complete practice jury exercises, so that you have had a go at deciding a verdict.

In reality, the jury consists of twelve people from the local area.

During the trial

- Stand up and repeat the affirmation when asked by the court clerk
- Listen to the case and take notes (you can use the verdict worksheet if you wish)
- Go to the retiring room after the judge's summing up (the court clerk will take you)
- Select a foreperson, who will give the verdict to the court
- Decide your verdict. Preferably you should all agree, if that is not possible a majority will suffice. You only have five minutes to do this.

Judging Criteria

Advocates

Marks	Closing Speech	Examination in Chief	Cross Examination
1-2	Lasts over five minutes	Lasts over five minutes	Lasts over five minutes
	Read completely from a script	Read completely from a script	Read completely from a script
	New evidence introduced	New evidence introduced	New evidence introduced
	Unclear or inaccurate	Excessive leading questions	Questions too long and complex
	Lacks confidence	Questions too long and complex	Questions don't take account of answers
3-4	Lasts over five minutes	Lasts over five minutes	Lasts over five minutes
	Mainly read from a script	Mainly read from a script	Mainly read from a script
	Some new evidence introduced	Some new evidence introduced	Some new evidence introduced
	Unclear or inaccurate in places	Asks some leading questions	Some questions too long and complex
	Lacks confidence	Some questions too long and complex	Questions often don't take account of answers
5-6	Lasts five minutes or less	Lasts five minutes or less	Lasts five minutes or less
	Some reliance on a script	Some reliance on a script	Some reliance on a script
	No new evidence introduced	No new evidence introduced	No new evidence introduced
	Mainly clear and accurate	Very few leading questions	Most questions clear and concise
	Has some confidence	Most questions clear and concise	Some questions take account of answers
7-8	Lasts five minutes or less	Lasts five minutes or less	Lasts five minutes or less
	Little reliance on a script	Little reliance on a script	Little reliance on a script
	No new evidence introduced	No new evidence introduced	No new evidence introduced
	Information virtually all accurate	Almost no unnecessary leading questions	Nearly all questions clear and concise
	Mainly confident presentation	Nearly all questions clear and concise	Most questions take account of answers
9-10	Lasts five minutes or less	Lasts five minutes or less	Lasts five minutes or less
	Virtually no reliance on a script	Virtually no reliance on a script	Virtually no reliance on a script
	No new evidence introduced	No new evidence introduced	No new evidence introduced
	Information completely accurate	No unnecessary leading questions	All questions clear and concise
	Confident presentation	All questions clear and concise	Nearly all questions take account of answers

Other roles

Marks	Witnesses	Macer	Court Clerk
1-2	Responses not spontaneous	Frequently does not follow procedure	Frequently does not follow procedure
	New evidence introduced	Frequently does not deal with disruptions	Inaccurate reading of agreed statement(s)
	Not convincing		
	Lacks confidence		
3-4	Responses often not spontaneous	Often does not follow procedure	Often does not follow procedure
	Some new evidence introduced	Often does not deal with disruptions	Inaccurate reading of agreed statement(s)
	Often not convincing		
	Lacks confidence		
5-6	Responses sometimes spontaneous	Sometimes does not follow procedure	Sometimes does not follow procedure
	No new evidence introduced	Sometimes does not deal with disruptions	Some inaccuracies in reading of agreed statement(s)
	Often convincing		
	Has some confidence		
7-8	Responses often spontaneous	Usually follows procedure	Usually follows procedure
	No new evidence introduced	Usually deals with disruptions	Reading of agreed statement(s) mainly accurate
	Usually convincing		
	Mainly confident presentation		
9-10	All responses spontaneous	Always follows procedure	Always follows procedure
	No new evidence introduced	Always deals with disruptions	Reading of agreed statement(s) accurate
	Always convincing		
	Confident presentation		

Overall Team Performance

Marks	Overall Team Performance
1-4	Do not work as a team, impression that the students don't understand what they are doing.
5-8	Often do not work as a team, impression that the students often don't understand what they are doing.
9-12	Sometimes do not work as a team, impression that the students sometimes don't understand what they are doing.
13-16	Usually work as a team, impression that the students usually understand what they are doing.
17-20	Always work as a team, impression that the students completely understand what they are doing.

Important Note:

- All criteria must be met to reach each level of marks.
- For example, if an advocate fulfils all the criteria for 5-6 marks in their examination in chief, except that they go over five minutes, they can only gain a maximum of four marks.

Example Judging Sheet

Judge's Name

Court No.

Prosecuting team

Defending team

Final verdict (circle)

Guilty

Not guilty

Winning team

Stage in the trial	Time	Prosecution	Max	Defence	Max
Examination in chief of first prosecution witness	5		10		
Cross examination of first prosecution witness	5				10
First prosecution witness	n/a		10		
Examination in chief of second prosecution witness	5		10		
Cross examination of second prosecution witness	5				10
Second prosecution witness	n/a		10		
Examination in chief of accused	5				10
Cross examination of accused	5		10		
Accused	n/a				10
Examination in chief of second defence witness	5				10
Cross examination of second defence witness	5		10		
Second defence witness	n/a				10
Prosecution closing speech	5		10		
Defence closing speech	5				10
Court clerk (overall performance)	n/a		10		
Macer (overall performance)	n/a				10
Overall team performance (out of 20)	n/a		20		20
Total	n/a		100		100

- All criteria must be met to reach each level of marks
- No half marks
- One team must win (no draws).

Scoring

It is the scores, not the verdict that determines the winner of the trial. As there will be variation between the way judges award marks, **it is points difference, not raw scores that are used for scoring.** Schools are placed into leagues of four teams and the top two league winners will go through to the final on the day.

If a team wins a trial, they will gain one trial win. The points difference between the teams is calculated. This is added to the trial win mark to give a total points difference. The winner of each league is calculated firstly by number of trial wins. If this is the same for two schools then the winner is the school with the highest total points difference.

Student Resources

a) Guidance for Statement Analysis

When you are reading the statements:

- Underline any important points.
- Annotate the strengths, weaknesses and contradictions (where people's stories don't match).
- Write down the key points in the table below.
- You may wish to add to the table as you analyse the statements in the case should you come across additional contradictions.
- Remember you can only refer to contradictions in statements when you have heard from both witnesses.

For example if there is a contradiction between prosecution witness 1 and the defendant you can only address the defendant on this after you have heard from the other witness

[illegible]

b) How to write an Examination in Chief

Aims

- To help your witness explain to the jury what they saw, heard or did.
- To persuade the jury to find the verdict you want.

Structuring your Examination in Chief

- Start by asking the witness their name and occupation.
- Write notes instead of writing your questions out in full
- Work together with the witnesses you will be questioning.

Important Information

Leading Questions

- You must not ask leading questions during examination in chief.
- These put words into the witness's mouth and are usually yes/no questions.
- To avoid leading questions, ask questions that start:
- What, Why, When, How, Where and Who'

Witnesses

- Witnesses must talk to the jury when they answer your questions, not you.
- Remind them if they forget to do this.

Example:

Lawyer	Could you state your name and occupation for the court?
Gerald	Gerald Toogood, I'm a customer assistant at the Woolifax Building Society.
Lawyer	Where were you on 20 th December?
Gerald	I was at work.
Lawyer	Is there anything in particular that you remember about that day?
Gerald	Yes, it was the day the Building Society got robbed.
Lawyer	What time did this happen?
Gerald	About 3.30pm.
Lawyer	What is the first thing you remember?
Gerald	A customer wearing a bulky overcoat come up to the counter.
Lawyer	What did this customer do?
Gerald	Got a gun out and pointed it at me.
Lawyer	How did you feel at this point?
Gerald	Petrified, I couldn't move or do anything. I just stared at the gun.
Lawyer	Can you describe the gun for me?
Gerald	Yes, it was large and black. It said Bruni on it, I guess that was the make.
Lawyer	Did the person say anything?
Gerald	Someone said "Hand over the money if you don't want to get hurt."
Lawyer	What happened next?
Gerald	A different man jumped over the counter to my cash drawer. He took money out of it and then went back to the customer side.
Lawyer	What did you do?
Gerald	I definitely pressed the alarm at some point. That brings up a security screen to stop anyone from getting over the counter. By the time it went up the man was already back on the customer side though.
Lawyer	Given that the security screen was now up, did you see anything else?
Gerald	Yes, although I didn't see anything else in the building society, I went to the manager's office and looked out of the window. I saw 3 men running out to a car which had its engine running.
Lawyer	What can you tell us about these men?

Gerald I don't think the one who pointed the gun at me had it anymore. The other two were wearing baseball caps.

Lawyer What did the men do when they got to the car?

Gerald I think the driver opened the front door for one of them. They jumped in and the car sped away.

Lawyer How clear was your view of all of this?

Gerald Not bad, the window I was looking out of was lightly frosted but I could make out what was going on.

Lawyer How much was stolen?

Gerald About £3000.

Lawyer Thank you Mr Toogood, I have no more questions.

c) How to write a Cross Examination

Aims

- To point out the problems and inconsistencies in the opposition's case.
- To put your case to the opponent's witness.

Structuring your Cross Examination

- Write notes instead of writing your questions out in full
- Be prepared for the unexpected! You will be questioning someone from the other team and you don't know what they will say!
- A flow chart is a good way to write your questions so you can prepare for the unexpected.

Important information

- You can ask leading questions in cross examination.
- You can bring up inconsistencies with other witnesses that have given evidence.
- Be polite instead of aggressive so the witness will help you!
- Make sure you get the witnesses' gender right! Check this before the trial starts.

Example:

Lawyer	Mr Toogood, could you just remind the court of your initial reaction when the gun was pointed at you?
Gerald	Fear, I just froze really.
Lawyer	To the extent that it took you long enough for the robber to get to your till, take money and get back over before you pressed the alarm?
Gerald	Yes
Lawyer	Yet you can still vividly describe the gun to the court?
Gerald	I guess I was fixated on it. It was pointing at me after all.
Lawyer	Who shouted "Hand over the money if you don't want to get hurt"?
Gerald	I'm not sure.
Lawyer	How many robbers were there Mr Digweed?
Gerald	Two that I saw in the building society.
Lawyer	And you have no idea which one shouted that out?
Gerald	No.
Lawyer	Even though they were both standing in front of you?
Gerald	No.
Lawyer	Let's move on to when you had finally pressed the alarm. The security screen had gone up hadn't it?
Gerald	Yes.
Lawyer	So you went to the manager's window which looks out onto the street.
Gerald	Yes.
Lawyer	How many men did you see leave the building society?
Gerald	Three.
Lawyer	Although you had only seen two inside?
Gerald	Yes.
Lawyer	What had happened to the gun?
Gerald	I don't know. The man didn't have it anymore.
Lawyer	Are you certain of this?
Gerald	Pretty much.
Lawyer	But it is possible that the man still had the gun and you just couldn't see it?
Gerald	I suppose so.
Lawyer	You said the men ran straight to the car?
Gerald	Yes.

Lawyer Do you know that this was because it was the getaway car?
Gerald No.
Lawyer So it is possible that the robbers were lucky enough to see a car outside with its engine running when they left and decided to use it to get away?
Gerald It's not very likely really.
Lawyer But it is possible?
Gerald I suppose so.
Lawyer What did you say the driver did when the robbers were running to the car?
Gerald Opened the door.
Lawyer Are you absolutely certain that this is what you saw?
Gerald Not completely.
Lawyer So you could be wrong?
Gerald Yes.
Lawyer Was there anything that stopped you from getting a good view of outside?
Gerald Like I said, the window was lightly frosted.
Lawyer So you couldn't see everything completely clearly then?
Gerald No.
Lawyer And you might have been mistaken in what you saw?
Gerald I saw what I saw.
Lawyer You have already told the court that you could have been wrong about the gun and whether the driver opened the door. Surely this uncertainty is backed up by the fact your view was partially obstructed by frosted glass.
Gerald Maybe.
Lawyer So you are saying that your view was perfect and you're definite about what you saw?
Gerald No.
Lawyer So the frosted glass could mean that you were mistaken?
Gerald Yes.
Lawyer Thank you Mr Toogood. No further questions.

d) How to write a Closing Speech

Aims

- To persuade the jury to find in favour of your verdict.
- To remind the jury of the burden of proof.

What to include

- A brief outline of the law in the case.
- A summary of the evidence that has been heard in court that proves the defence case.
- A short reminder of the burden of proof.

Structuring your Closing Speech

- You must only rely on the evidence heard in court. You cannot include things that were not talked about in questioning, even if they are in the witness statements.
- Write your speech as notes not as a script. You could write it in full and then turn it into notes if this is easier. In your notes, include all of the possible things that you might say but ensure you do not say them unless mentioned in court.
- Use large text, bullet points and sub-headings in your notes.
- During the trial, you can tick any points of evidence that are mentioned by witnesses and cross out any that are not. You can also add any new points.
- Make sure you get the gender of the witnesses right! Check this before the trial starts.
- When preparing to give your speech you should produce a checklist such as the one below. Check off the items when they become relevant. Remember you cannot refer to evidence unless it has been stated by the witness.
- Sometimes using a checklist like the one below is also useful.

a) Offence Common law offence of robbery

b) Witness 1 Saw defendant get into car
Did not have a clear view

c) Defendant Was waiting for mother
Engine running
Held at gunpoint
Forced to drive

d) Burden of proof

The burden of proof is the duty of one party in a legal case to convince the decision-maker (judge and/or jury) that their version of the facts is true.

e) Standard of proof

This means that the jury must be satisfied of the defendant's guilt beyond a reasonable doubt

Example:

My Lord, you have now heard all of the evidence in this case which I would like to take this opportunity to remind you of. My client, Terry Digweed, is accused of robbery contrary to the common law which states that 'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.'

The first witness you heard from today was the cashier at the Woolifax, Gerald Toogood who witnessed the armed robbery by the three men, and then saw them get into a car just outside the building. This witness admitted to the court that the window through which he was looking was slightly frosted, and therefore could not have provided a clear view of the car or what happened once they had got in. He also admitted that he only 'thought' the driver, Digweed, opened the door for one of the men. Therefore how can we be sure that Digweed was a member of the gang, and not just an unfortunate, and innocent bystander.

The defendant provided us with explanations for all of the incidents that took place on the 20th December. He was waiting for his mother to come out of a shop, which is why he was parked outside of the Woolifax, with

his engine still running. Furthermore, we know that one of the men involved was carrying a gun. It is not surprising then that he drove off from the scene, frightened and held at gun point by three men.

The burden of proof lies with the prosecution. If they have convinced you so that you are absolutely sure that the defendant is guilty then you must convict. However, if there is any doubt in your mind as to whether my client committed this act of criminal damage after hearing the evidence in court today, you must find him not guilty.

Sources of Extra Resources

You may find some of these additional resources helpful.

Books

The Legal System of Scotland, Derek Manson-Smith (2008), HMSO, £3.95.

Criminal Law (Scottish Law 4th Edition), Jones and Christie (2008), Greens, £36.00

Advocacy in Court (2nd Edition), Keith Evans (1995), Blackstone Press, £11.95.

To Kill a Mockingbird, Harper Lee (2001), Arrow Books, £6.99

Websites

Citizenship Foundation www.citizenshipfoundation.org.uk

Faculty of Advocates www.advocates.org.uk

Law Society of Scotland www.lawscot.org.uk

BBC www.bbc.co.uk

Scottish Law Online www.scottishlaw.org.uk

Centre for Crime and Justice Studies www.crimeandjustice.org.uk

Mini Trials Project www.minitrial.org.uk