**23-24**

**Advanced Mock Trial**

***For the competitor***

***Welcome to the Advanced Mock Trial competition!***

Thank you for competing with us. The following materials are meant to help guide you in your competition but remember that they’re only a guide. If you want to do something different or if your coach recommends a different route, you are more than welcome to pursue that.

If you elected to use a coach, reach out to them with any questions you may have. They have valuable experience that can help you. Keep in mind that your coach may not help you on substantive issues. For Mock Trial, that means they can’t help you with what objections to raise to certain exhibits or anything else related to the content of the problem. Ask your coach questions relating to the format of the competition, style, or feedback on performance. Your coach will watch at least one of your preliminary rounds. Speak with them after! That is where many people get their most valuable feedback.

***What does the Mock Trial competition look like?***

 Mock Trial starts with the preliminary rounds (“prelims”). The preliminary rounds are the first three rounds you participate in. After each round, the judge of that round will fill out a ballot, determining which side won that round. These ballots become available for you to access after the preliminary rounds are concluded and the next rounds for those who advanced (“broke”) are announced. You are strongly encouraged to look at those ballots. They can offer incredibly valuable insight.

 Everyone who competes in the Mock Trial prelims will receive 10 BoB points. Those who do not break will receive 1 additional point for each prelim round they won. Those who do break will receive an additional 5 points for each round they advance to.

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| --- | --- | --- |
| ***How far they advanced*** | ***Competitor*** | ***Points*** |
| Didn’t break but won one prelim round | Khusbu Shah | 11 |
| Broke to octafinals but didn’t win | Cassidy Monska | 15 |

 If you have questions about points, contact the Vice Chair of Competitors, Khusbu Shah. Her email is khusshah@ttu.edu.

***What does a Mock Trial round look like?***

Before each Mock Trial round, you will receive the problem. Unlike Negotiations, everyone receives the same document. This document contains transcripts of depositions from each of your witnesses and exhibits. You should read through the document at least once. Remember that familiarity with the problem will result in a better performance. Prior to your actual Mock Trial round, you should divide roles with your partner. Each one of you will need to do a direct examination of your side’s own witness, a cross examination of the opposing side’s witness, and an argument. One will need to do an opening statement and the other will need to do a closing argument.

Opening statements are, essentially, 5 to 7 minute long speeches that lay out the parties, the facts and the law for the fact-finder. Opening statements should not be argumentative in nature, but skillful advocates should find a way to present their side in a favorable way. Opening statements should address the burden the plaintiff carries, regardless of which side you’re on. If you’re the defense, you should present the burden as almost impossible to achieve. If you’re the plaintiff, you should present the burden as easily achievable. Opening statements should focus on what the fact-finder will see. Couch these statements with phrases like “we expect you will see…” or “you should see…”. Focus on the exhibits and facts that are admissible rather than those whose admissibility is questionable.

A direct examination is a series of open-ended, non-leading questions. Non-leading questions are those that do not suggest and answer. These questions should rely on the information provided in the witness’s deposition. Following your direct examination, you should stand and say, “Pass the witness.” This leads to a cross examination.

A cross examination is a series of leading questions. These questions should also rely on information presented in the witness’s deposition or information that is intentionally omitted. Cross examination should be quicker than direct and more confrontational, while still respectful. Once finished, you should stand and say, “Pass the witness.” This leads into redirect.

Redirect is an opportunity for you to ask more non-leading questions, if you also did the direct examination of that witness. Redirect should only aim to fix what was most damaging on cross and remind the fact-finders of the core purpose of this witness’s testimony. An ideal redirect is around 3 questions. Once redirect has concluded, you should stand and say, “Your Honor, we are finished with this witness. May they be excused?”

A closing argument is a 10 minute long speech that focuses on the information presented in the round, arguing that it proves your case survives the burden and the fact-finder should find for your client. It should be, as the name suggests, argumentative. The closing argument should still utilize the theme presented in opening statement.

***Preparation***

Prior to your Mock Trial round, you should prepare a direct examination, a cross examination, and either an opening or closing statement. At some point, you will need to prepare for being both plaintiff and defense. It would be to your benefit to prepare these prior to the prelim rounds beginning. Your opening and closing argument should be as close to memorized as possible so you should work on memorizing it prior to prelims.

You should show up to your Mock Trial round in business professional dress and 15 minutes early. This gives you time to find your room and prepare your materials. You may bring a copy of the problem, an extra copy of exhibits for the witnesses, your direct and cross examination, and your opening and closing argument. You may not bring a script for witnesses to bring to the witness chair.

If you are plaintiff for the round, it is your duty to supply the bailiff for the round. Typically, the bailiff is another law student who is not participating in the competition. Inform your bailiff that their job is to keep time for the round. The bailiff should begin keeping time when the first opening statement begins. The bailiff does not need to be in business professional dress. Bring a pen or pencil for the bailiff and a time sheet for them to write on. If you cannot secure a bailiff on your own, contact the Vice Chair of Competitors, Khusbu Shah, at least 24 hours prior to the round so she may help provide one for you.

***Procedure***

Prior to your judge arriving, you should discuss motions and stipulations with your opposing side. Motions are issues that will be addressed before the judge prior to the round beginning. Unlike 1L Mock Trial, you now have the opportunity to do motions in Limine. Motions in Limine are evidentiary issues you address to the judge prior to the round beginning. Remember that now the entire Rules of Evidence are available to you – use them. When addressing your motions in Limine, be explicit in what evidence you want to keep out and for what evidentiary reason. Be prepared to respond to any motions in Limine from the opposing side. Stipulations are exhibits that both sides agree to admit. Stipulations save time on objections.

Once your judge arrives, each side presents their motions before the judge and receives the ruling. You will inform the judge of the agreed upon stipulations. Then, each side will announce present and ready, following the judge’s question. Be respectful while speaking to the judge.

Each side will have 50 minutes to put on their case. The bailiff will begin counting time once the plaintiff’s opening statement begins. The defense’s opening statement will follow. Remember that opening statements and closing arguments should be delivered while standing.

After both opening statements, the plaintiff’s case-in-chief will begin, which will consist of two direct examinations with each being done by a different competitor from the plaintiff’s side and two cross examinations with each being done by a different competitor on the defense’s side. Once both witnesses have been excused, the plaintiff will announce that they conclude their case-in-chief. All examinations are done while sitting at your designated desk. If you need to give an exhibit to a witness, you should stand and ask the judge for permission to approach prior to walking to the witness.

Prior to the defense’s case-in-chief beginning, the defense will ask that the “jury” be removed. The defense will make a Motion for a Directed Verdict which will be denied. The motion should be delivered while standing. A 5 minute break will follow.

After the break has concluded, the defense will put on their two witnesses. The defense will now do the witness’s direct examination and the plaintiff will do the cross.

Once the defense’s case-in-chief has concluded, another 5 minute break will follow, allowing each side to prepare for closing arguments. After the 5 minute break has concluded, the plaintiff will put on their closing argument, which is done by the competitor who did not do the opening statement. The defense will then put on their closing argument. The same competitor who did the plaintiff’s closing argument will have an opportunity for rebuttal.

Rebuttal is 3 minutes to address the defense’s closing argument. It should be limited to the most damaging arguments addressed by the defense and reassert the strongest elements of the plaintiff’s case. Once rebuttal is finished, the round concludes.

***Timing***

The plaintiff/prosecution will be required to provide a bailiff to serve as the timer for the round. It is important to note that **time must stop** from the moment an individual stands up to and makes an objection up until the judge makes a ruling on that objection. Along with this, housekeeping matters and stipulations addressed during pre-trial matters will not count against your total time.

***Resources***

*Housekeeping Motions*

1. “Permission to roam the well?”

**NOTE:** This should only be requested if you want to walk in the space between your desk and the judge while delivering your opening or closing statement.

1. “Permission to address the judge as both judge and jury?”

**NOTE:** This should only be requested if there is only a judge in the courtroom. If there is a jury, do not request this.

1. “Permission to use exhibits during closing arguments?”

**NOTE:** This should only be requested if you plan on using exhibits in closing arguments.

1. “Permission to reserve 3 minutes for rebuttal?”

**NOTE:** This should be requested by the plaintiff. If you are defense, do not request this.

*Announcement*

“Your Honor, my name is [your name] and my co-counsel is [partner’s name]. Today, we proudly represent the [plaintiff/defendant] in this case, [client’s name]. Present and ready, Your Honor.”

**NOTE:** This should be delivered while both members of the team are standing to show respect to the judge.

*Calling a Witness*

“Your Honor, at this time [plaintiff/defense] calls [witness’s name] to the stand.”

*Excusing a Witness*

“Your Honor, we are finished with this witness. May they be excused?”

*Laying the Foundation of an Exhibit*

1. “Permission to approach the witness?”
2. “I am handing [witness’s name] a copy of Exhibit [number].”
3. “Do you recognize Exhibit [number]?”
4. “What is it?”
5. “How do you recognize it?”
6. “Is it an original or a copy?”
7. If it is an original: Is it in the same or substantially the same condition as when you last saw it?

If it is a copy: Is it a true and correct copy of the original?

1. “Your Honor, at this time [plaintiff/defense] moves for Exhibit [number]’s admission.”

*Objections*

**NOTE:** The entire Rules of Evidence are now available to you. You are not limited to the objections listed below.

1. “Objection, Your Honor. Leading.”

**NOTE:** You use this objection when opposing counsel is doing a direct examination of their witness and are asking leading questions to get the answer they want. Before making the objection, ask yourself if the question being asked suggests an answer. If it does, stand and make the objection.

1. “Objection, Your Honor. Relevance.”

**NOTE:** You use this objection when opposing counsel is asking a question that is not relevant to the case at hand. Before making the objection, ask yourself if the question goes to the cause of action, tells the story of the case, or the credibility of the witness. If it doesn’t, stand and make the objection. When arguing relevance, you should utilize Federal Rules of Evidence 401 and 403.

1. “Objection, Your Honor. Asked and answered.”

**NOTE:** You can use this objection when opposing counsel is asking the same question as they asked previously to get the answer they want. Before making the objection, ask yourself if the question is the same as before. If it is, stand and make the objection.

1. “Objection, Your Honor. Argumentative.”

**NOTE:** You can use this objection during the opposing counsel’s opening statement if they are being argumentative or when opposing counsel is asking questions if they are making an argument through their questioning. You should use this objection on a very limited basis. Prior to objecting, make sure that the argumentative speech is overtly argumentative, rather than subtlety so.

1. “Objection, Your Honor. Narrative.”

**NOTE:** You can use this objection when a witness begins rambling during an answer. Do not use this objection just because a witness is giving an answer you do not like. It is only applicable when the witness goes beyond the call of the question.

1. “Objection, Your Honor. Hearsay.”

**NOTE:** Look to Federal Rules of Evidence 801 to 807 for what hearsay is and exceptions to the hearsay rule.

1. Objection, Your Honor. Character evidence.”

**NOTE:** Look to Federal Rules of Evidence 404 to 415 for what character evidence is and exceptions that allow for its admission.

*Resting*

“Your Honor, [plaintiff/defense] rests our case-in-chief.”

*Directed Verdict*

“Your Honor, at this time, Defense moves for a Directed Verdict, subsequent to Rule 50(a). The fact-finder must view the evidence in the light most favorable to the non-movant.” At this point, you must address the information presented by the plaintiff and argue that it is insufficient so that no fact-finder could find for them. Remember that no matter how good your motion is, it will be denied.