

Kluwer Arbitration Blog

Inaugural Edition of the Cross-Examination Moot: A New Challenge for the Next Generation of Arbitration Practitioners

Danielle González Reyes · Sunday, April 10th, 2022

Long before modern litigation or arbitration, Socrates famously cross-examined one of his accusers and, through systematic lines of questioning, undermined their claims. Though it did not save him Socrates looms large in the imagination of modern lawyers as one of the best cross-examiners of all time. Cross-examination is a complex, yet exciting discipline that requires, in the words of Francis L. Wellman, “the greatest ingenuity; a habit of logical thought; clearness of perception in general; infinite patience and self-control; power to read men’s minds intuitively, to judge of their characters by their faces, to appreciate their motives; ability to act with force and precision; a masterful knowledge of the subject-matter itself; an extreme caution; and, above all, the instinct to discover the weak point in the witness under examination.”

In late November of 2021, students from around the world connected to the first-ever **Cross-Examination Moot** via Zoom. Two years into the Covid-19 Pandemic, many moots have moved online. The Cross-Examination Moot is unique in that it celebrated its inaugural edition virtually. In this way, the Cross-Examination moot imitates life, as many practitioners begrudgingly accepted that they would need to conduct their cross-examinations through a screen. But the competition is also unique in another important way: of the many moots available to students, it is the first to judge them on their prowess at cross-examining fact and expert witnesses in international arbitration.

Though international arbitral practice blends the features of both common law and civil law systems, the influence of the common law is strongest in the proliferation of cross-examination, even in arbitrations in which both parties are from civil law jurisdictions.¹⁾ Thus, no matter where they are from, “virtually every international arbitration practitioner will be called on to cross-examine witnesses at some time [...]”²⁾

Yet, despite the importance of effective cross-examination skills to a lawyer in international arbitration, most students are not given much opportunity to develop them. This gap in legal training is exactly why Executive Directors Francisco Amallo and Ezequiel H. Vetulli, both arbitration practitioners with a background in academia, decided to found the Cross-Examination Moot.

Challenges of Preparing Students for Cross-Examination in International Arbitration

Though legal education in certain places may devote more time to learning cross-examination, it is

a skill that can only truly be developed through consistent practice. For most young lawyers in international arbitration, the only opportunities to practice will come many years into their careers in real cases when there is no room for error.

An added barrier is that cross-examination in international arbitration differs significantly from the type of cross-examination performed in national courts. Thus, even in common-law countries where students may have participated in mock trials, they will be unfamiliar with the particularities of the type of cross-examination practiced in international arbitration proceedings, which answer to different needs and exist in a parallel procedural universe.

Cross-Examination in International Arbitration

Some of the hallmarks of traditional cross-examination are not desirable, or indeed, not possible in international arbitration proceedings. For instance, some tribunals may have a distaste for the aggressive approach to cross-examination typical in common-law jurisdictions, and it is important for examiners to adapt based on the tribunal's preferences. The tightly-worded leading questions typical of a common-law litigator³⁾ may not be acceptable to a tribunal, which may favor a more open style of examination that allows a witness to give substantive answers. This means that, especially due to the lack of witness depositions and extensive discovery in general, examiners will often be required to ask questions to which they do not know the answer.⁴⁾ Any well-seasoned common-law practitioner would be very uncomfortable with the very idea. Even the rules of evidence taught in most countries will not apply in international arbitration.

Instead, international arbitration style cross-examination has developed other features, which come with their own set of challenges. One of the most difficult is the adherence to the strict time limits allotted for the parties to conduct their examinations.⁵⁾ It is common for a party to be allotted a finite number of hours to examine (meaning direct, redirect and cross-examine) all the witnesses, forcing counsel to make tough choices about how to best utilize that time and adapt the time budget when everything does not go to plan. The time issue is exacerbated in cases where the need for translation slows down the entire process.

The multilingual nature of international arbitration proceedings and the use of interpreters is an added complication to an examiner for several reasons. One such reason is that the flow of the cross-examination may be stifled. The dialogue must be broken down into fragments so that interpreters have time to translate, and it is frustratingly common for counsel and witnesses to talk over each other. Another possible issue is that witnesses who understand the language of the proceedings well enough will often ask for an interpreter anyway. One cannot blame a witness who feels more comfortable hearing and answering questions in their native language, but this may allow the witness additional time to think of the answers to tough questions. Thus, a strategic question may lose some of its bite.

Another feature of arbitral proceedings that may disrupt the flow of cross-examination is the questioning of the witness by the tribunal itself. This practice is common in civil law countries, but a common-law lawyer may find it difficult to deal with the tribunal's interjections in their carefully prepared lines of questioning or to be interrupted while conducting the cross-examination. Though this may be jarring, it can also have the advantage of giving counsel insight into which way the tribunal may be leaning on a certain issue or what is unclear to it, and thus adjust the cross-examination accordingly.

The Moot's Inaugural Edition

The arbitration community agreed that there was a need for this type of moot, as evidenced by the cadre of top practitioners, institutions, and organizations involved in the event. During this past Paris Arbitration Week, the Cross-Examination Moot won Best Development at the GAR 2022 Awards.

The Cross-Examination Moot helps students develop a variety of skills beyond just witness preparation and examination. These include meticulous fact-finding, knowledge of complex quantum issues, the practice of procedural objections, and even how to interact with a tribunal effectively and appropriately. The organizers hope the novel Cross-Examination Moot will join the long-standing tradition of moots that have prepared young lawyers in essential advocacy skills. Given the success of the first edition, that goal is on track.

Forty teams composed of over 200 students and coaches from around the globe participated in the week-long competition. Over the course of 70 hearings, participants cross-examined witnesses and real quantum experts based on a mock case concerning a commercial dispute arising out of a contract for the construction of a wind farm.

Students were given less time to prepare than is typical with moot competitions since no written submission was necessary. Nevertheless, the case file was extremely challenging, comprised of nearly 250 pages, including eight witness statements, four expert reports on quantum, and more than 50 factual exhibits. Mastery of the facts and attention to detail was essential to success. The preliminary rounds focused on the examination of fact witnesses and discussed issues of delays in the construction of the wind farm and its generation efficiency. Eight teams made it to the elimination rounds, which focused on the examination of quantum experts and discussed various aspects of the discounted cash flow (DCF) methodology for damages calculations.

The winners of the semi-finals—the Jus Mundi Match—earned a subscription to Jus Mundi. The Yaroslav Mudryi National Law University emerged as the winner of the competition, and the National Law School of India won second place in the final round, judged by Sophie Nappert, Franco Ferrari and Loukas Mistelis. The former was awarded a prize equivalent to USD 3,000, and the latter was awarded a prize equivalent to USD 2,000, both jointly sponsored by Maxwell Chambers and the Center for Arbitration and Mediation of the Chamber of Commerce Brazil and Canada (CAM-CCBC). The best cross-examiner of the competition, Charlotte Lee Parker of The Hague University of Applied Sciences, was granted an internship with Compass Lexecon. A special distinction was awarded to Rinreda Sakiyalak of Chulalongkorn University and Maite Aguirre Quiñonero of BPP University Law School for their performance. Despite not being able to meet in person, share a coffee, or exchange business cards, the moot week was still full of adrenaline, camaraderie, and fun for all those who were up to the challenge. After a triumphant inaugural edition, the organizing committee is eager to build on its momentum. Preparations for the second edition are well underway, and the organizers aim to impress.

For more information, please visit www.crossmoot.com


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- ?3 Iain Morley, “The Devil’s Advocate”, Chapter XIII, 2015, p. 158.
- ?4 Rachel Kent, p. 5.
- ?5 Rachel Kent, p. 7.

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