

Taking of Evidence in International Arbitration

11 December 2025

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What Is “Cross-Examination”?



“Magic Grits” – undermining a witness’s testimony

<https://youtu.be/T24IHnB7N8> (My Cousin Vinny, 1992)

**Direct
Examination**

**Cross-
Examination**

**Re-Direct
Examination**



What Is “Cross-Examination”?

- Cross-examination is meant to assist the Tribunal in assessing the witness’s **truthfulness, credibility, and the accuracy of his or her evidence**.
- Cross-examination of a witness should also aim to:
 - provide a more complete story than the edited one presented in the witness statement,
 - explore weakness in the logic of the opponent's case, and
 - gain concessions about facts.
- Cross-examination is thus an important evidentiary resource in common law court proceedings as well as in international arbitration.

What Is “Cross-Examination”?

The concept of cross-examination does not exist/does not exist nearly as prominently in civil law jurisdictions.



Witness Examination

What “rules” apply to the form of questions?

Often assumed, rarely discussed

Witness Examination

- Art 8(3) of the IBA Rules allows the tribunal to limit or exclude any question to, answer by, or appearance of a witness if:
 - Irrelevant, immaterial, unreasonably burdensome, duplicative or otherwise covered by an Art 9 objection (e.g., confidentiality, privilege, etc.)
 - “**Questions** to a witness **during direct and re-direct** examination ***may not be unreasonably leading.***”

IBA Rules on the
Taking of Evidence
in International
Arbitration

Adopted by a resolution of
the IBA Council
27 December 2003
International Bar Association



Direct Examination

- Common practice in international arbitration for the written witness statement to stand as “case-in-chief”
- The purpose of any witness examination is to elicit information. On direct examination:
 - introduction of witness
 - confirmation (correction) of witness statement
 - address new facts not covered in witness statement but raised by other side
 - advance favorable factual theories
 - warm-up / familiarize / calm witness before cross-examination

Direct Examination

- Questions should be short, simple and easy to understand.
- No “leading” questions on direct examination
 - clear, short questions -- one fact per question
 - questions with facts, not conclusions
 - open questions – “who, what, when, where, why, how” or “describe”, “explain”
- Objections permitted, but limited by lack of strict evidentiary rules (and patience / style of tribunal)

- Use of documents with witnesses
- Generally no requirement of authentication, and much less formal requirements to introduce and refer to exhibits than in court proceedings
- Can new materials be introduced / asked about on direct examination?
- Can “impeachment” materials be used?
- If so, do those materials need to be identified beforehand?

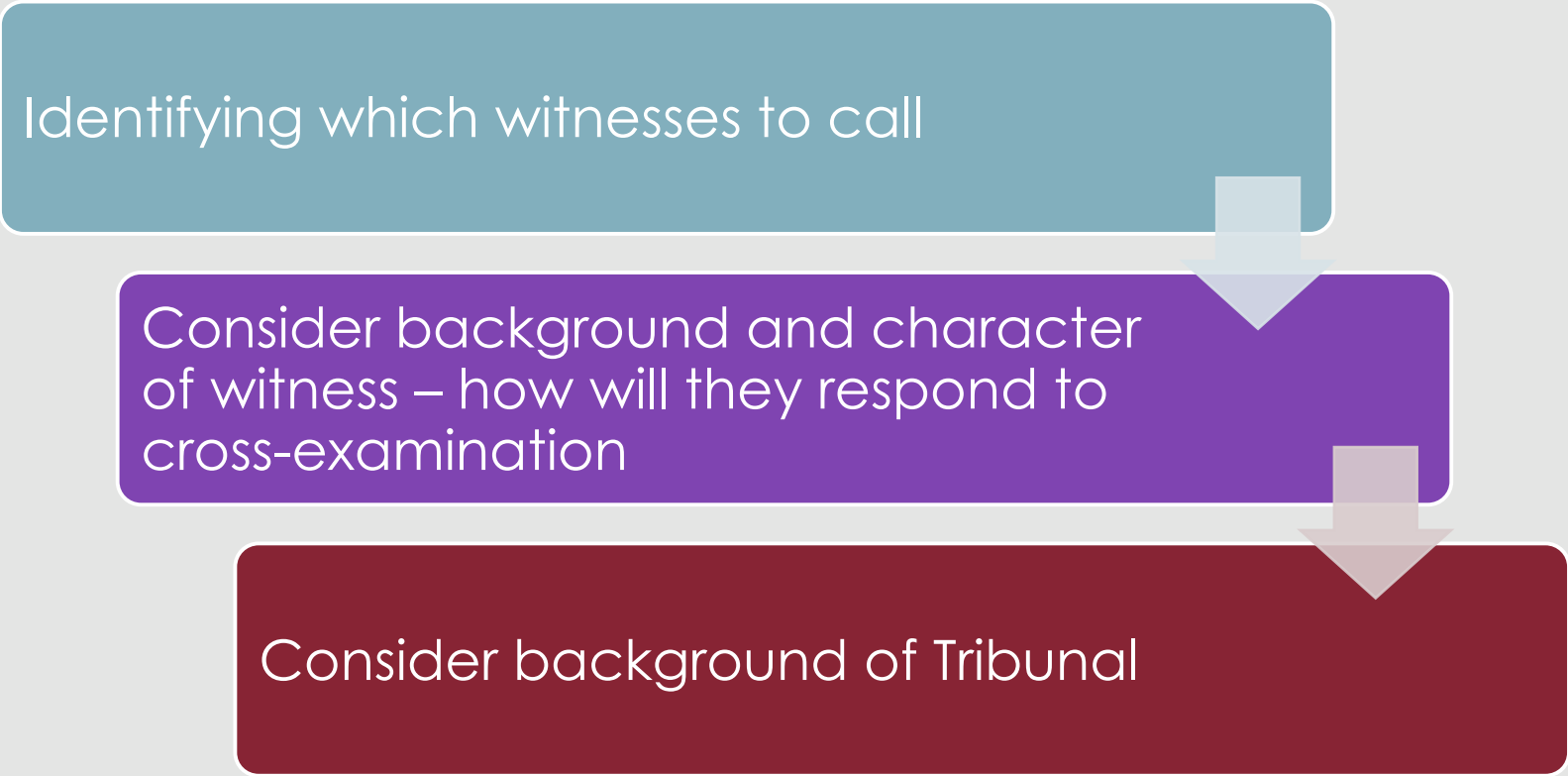
Examination and Use of Documents

Cross-examination

- “Leading” or “closed” questions
- Lead the witness to a yes/no answer

Cross-Examination Preparation

Identifying which witnesses to call



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graph TD; A[Identifying which witnesses to call] --> B[Consider background and character of witness – how will they respond to cross-examination]; B --> C[Consider background of Tribunal];
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Consider background and character of witness – how will they respond to cross-examination

Consider background of Tribunal

Cross-Examination Is NOT Like a Hollywood Movie

- The measure of your success in cross-examination in international arbitration will be modest.
- A successful cross-examination will:
 - Elicit evidence that you can cite in your closing argument or written post-hearing brief
 - Make the witness appear not credible
 - Limit the amount of evidence they were able to put in the record which damages your case
 - For your witness – a successful cross-examination means the reverse

- ***Before drafting a long list of questions:***
 - Review the witness statements/expert reports of the witness
 - Determine which are the main topics addressed by the witness and how they fit into the case
 - Create an initial outline document that identifies these topics. For each topic:
 - set out a brief recap of what the witness's testimony is/is meant to establish, and
 - how it is relevant to your theory of the case or how that testimony is used or relied on by the other side
 - Talk to your team about the objectives before drafting lines of questions
 - Consider how much hearing time will likely be allocated to this cross examination, and prepare accordingly.

Preparing Your Cross- Examination

Prepare a cross-examination outline

Control Document	Question
I. Introduction – Goal here is just to show that he was a last-minute add-on, and, if possible, point out to the tribunal that none of this has anything to do with the counterclaims.	
[EXCERPT FROM WITNESS STATEMENT]	• Good morning Mr. [---]. My name is Michelle Bock, and I am counsel for Respondent. I will be asking you a few questions today about your report – thank you for your time today. • You have submitted only one report in this arbitration, right? • It accompanied Claimant’s Rejoinder to Counterclaim submission dated 12 October 2024? • When were you engaged by Claimant? • [So you provided your advice to Claimant as of the date of your engagement, correct?] • [And you are aware, aren’t you, that Claimant filed for arbitration in 2023?] • [But you did not provide any expert report prior to 12 October 2024, right?]

Preparing Your Cross-Examination

- This outline document, once it has been discussed with the examiner, can be used to draft simple proposed lines of questions.
- Draft in modules, with each section focused on one topic or objective.
- Color-code topics to highlight importance.
- Include the ultimate question (in brackets is ok).
- Every question needs a reference to the record.
- Any characterizations made in the questions need to be 100% accurate. For the first draft, use quotes from the documents.
- Try to come up with more questions than the time allocated.

Cross-Examination

- Closed / leading questions – designed to elicit a “yes/no” answer (or make the answer immaterial)
- To advance your own case (e.g., eliciting favorable testimony)
- To undermine your opponent's case
 - Limiting testimony
 - Discrediting testimony
 - Discrediting witness



Cross-Examination



Legally Blonde (2001)

<https://www.youtube.com/watch?v=T4CrofrMO-s>

Cross-Examination: **the art of controlling another person**

- Effective cross-examination allows counsel to keep control of the examination.
- Instead of letting the witness steer the examination to more favorable testimony, form your questions in a way to “**lead**” the witness to the testimony you wish to discuss:

“You would agree, wouldn’t you, that”

- The basic questioning technique is to ask “leading” questions to which an answer would be “yes” or “no”

Cross-Examination

Witness statement of Mr. Maarten Klomparens:

6. I also served on UCS's Finance Committee from 2014 until 2019. As the Netherlands Finance-appointed member to the UCS Finance Committee, I generally attended Finance Committee meetings once a month and participated in weekly calls between meetings. The role of the committee was to ensure sufficient liquidity for UCS, to assist UCS in obtaining external funding, to manage foreign currency issues including with respect to foreign currency hedging, and to deal with cash management issues.

Cross-Examination

- The basic questioning technique is to ask “leading” questions to which an answer would be “yes” or “no”
 - Example: Mr. Klomparens, you served on UCS’s Finance Committee from 2014 until 2019, correct?
(yes → WS, at para. 6)
 - As the Respondent-appointed member to that committee, you generally attended the meetings of that committee, correct?
(yes → WS, at para. 6)
 - But you did not attend all the committee meetings, did you?
(no → WS, at para. 6, says he “generally” attended meetings)

Cross-Examination



Always think about who the audience is



What is the tribunal interested in? What can it understand?



Are the answers you want to elicit for now or later?



Who is actually testifying?

Cross-Examination



Clarity



Short, simple sentences – avoid extra words where not needed



Simple language



Facts, not conclusions



One fact per question

Cross-Examination

Witness statement of Mr. Maarten Klomparens:

5. I am currently Vice President of Finance & Treasury for Nederlands Finance. In this position, I am responsible for the execution of daily cash management, cash flow planning and reporting, securitization of funding, hedge management, and bank relationship management. In this capacity, I also serve as a point of contact at Nederlands Finance for UCS financial matters generally and specifically for the UCS Budget Administrator, who is appointed by Nederlands Finance. I am in weekly, and often more frequent, contact with the UCS Budget Administrator to discuss issues related to UCS's cash management, liquidity, foreign currency hedging, external financing, and other topics.

6. I also served on UCS's Finance Committee from 2020 until 2024. As the Nederlands Finance-appointed member to the UCS Finance Committee, I generally attended Finance Committee meetings once a month and participated in weekly calls between meetings. The role of the committee was to ensure sufficient liquidity for UCS, to assist UCS in obtaining external funding, to manage foreign currency issues including with respect to foreign currency hedging, and to deal with cash management issues.

Cross-Examination: the art of controlling the witness

- One fact per question (no “compound questions”)
 - Example: Mr. Klomparens, currently you are Vice President of Finance & Treasury for the Respondent, correct? (yes → WS, at para. 6) You also served on UCS's Finance Committee from 2020 until 2024, correct? (yes → WS, at para. 5)
 - Not: Mr. Klomparens, you served on UCS's Finance Committee for quite a long time after 2020 and also changed position at the Respondent in your career, correct? (question is imprecise and actually contains two questions)
- Short, targeted questions can also help lead the witness into a “yes, yes, no, yes, yes” rhythm.

Cross-Examination



Listen to all answers

Did the witness give the answer you expected?

Was the answer clear?



Listen for the unexpected – ***plan for it***

Prepare a roadmap



Usually avoid interruptions

Cross-Examination

Witness statement of Mr. Maarten Klomparens

13. At the time, UCS had a \$700,000,000 syndicated credit facility for which UBS was the head of the syndicate. A payment under the facility was due on 28 January 2024. Although UCS had more than enough money in its UBS account to pay the amount due, UBS would not accept the payment authorization without the approval of the Spanish International Management Board members. This was particularly problematic because UBS was threatening that if UCS could not make its scheduled payment, UCS would default on the credit facility, bringing the entire balance of the credit facility due.

14. On 2 February 2024, UBS finally allowed full repayment of the amounts outstanding under the credit facility (although it required that the payment be made out of funds in UCS's account at Citibank rather than out of UCS's UBS account). In the evening of 2 February, after UBS received the funds from Citibank, UBS finally distributed the payment to the other banks in the syndicate. This payment was made within the 1-week grace period stipulated in the credit facility, and UCS avoided default under the credit facility, notwithstanding Spanish International's actions.

Cross-Examination

- **Rule:** Don't ask a question to which you do not already know the answer **unless** you are able to deal with the possible answers/they may help your case/you do not care what the answer is (the question itself makes the point).
- Example:
 - Q: Mr. Klomparens, in early 2024, UCS had a \$ 700 million credit facility for which Deutsche Bank was the head of the syndicate, correct? (yes → WS, at para. 13)
 - Q: It is further correct, isn't it, that on 2 February 2024, Deutsche Bank allowed full repayment of the amounts outstanding under the credit facility? (yes → WS, at para. 14)
 - Q: Who at Deutsche Bank allowed the full repayment, do you remember? (**Answer not known** → WS, at para. 14, just says "Deutsche Bank" → No real downside in Mr. Klomparens giving an answer compared to upside that Mr. Klomparens shows bad memory of details)

Cross-Examination



- A rule of English court procedure – you must challenge all material evidence which your own client does not accept
- No such rule in international arbitration
- But consider whether it will damage your case not to do so – depends on a number of things, including tribunal expectations / patience and approach to available time

Cross-Examination

- Tone and style of cross examination may vary though some general rules apply:
 - Maintain eye contact with the witness; try to establish a relationship or rapport with the witness;
 - Avoid overly confrontational cross examination; always stay professional;
 - Do not argue with the witness;
 - Remember that your audience is the Tribunal;
 - Use silence.

Cross-Examination: Impeachment

Show inconsistencies between the witness's statement and other documents in the record.

- First step: Lay the foundation – point the witness to a particular issue that you want to address (often something in the WS) and have the witness reconfirm that prior statement.
- Second step: Confront the witness – show the witness the contradictory evidence. Ask the witness to validate the evidence (authorship, date, signature etc.) before you ask questions about the conflicting content. This also helps make a clearer record in the transcript.
 - Example of 2nd step: Mr. Klomparens, may I ask you now to turn to exhibit C-1, Tab 7, in the folder in front of you. ... These are the minutes of UCS's Finance Committee meeting on 13 February 2024, correct? You attended the meeting, didn't you? There on page 3, this is your signature, correct? Now please have a look at the first paragraph on page 2 where it reads ... [Information conflicting with the statement reconfirmed in step 1]

Cross-Examination: **Impeachment**

- If a CV has been provided for the witness, review it carefully to see if it can be used as the basis for impeachment.
- Talk to your client – they are an invaluable resource.
- Search for contradictions in the record and the written witness evidence.



Cross-Examination

- Show that the witness's evidence is lacking any basis or that the witness made a particular statement without having personal knowledge or other solid foundation for his or her testimony.
- Show where something is improbable or implausible.

Cross-Examination

Witness statement of Mr. Maarten Klomparens

7. In this witness statement, I describe, on the basis of my personal knowledge, various steps taken by Spanish International to threaten UCS and its financial functioning, which I have witnessed in the roles I have played with respect to UCS financial matters. As I describe below, in 2023 and 2024, Spanish International took a number of deliberate and aggressive steps which exposed UCS to severe risks, including the risk of having its funds frozen, being unable to pay taxes, defaulting on its credit facility, being unable to meet its day-to-day operating expenses and even subjecting its board members to personal liability.

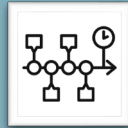
11. Immediately following the registration of Uruguay Technology and the new UCS boards, Spanish International and its former UCS Management Board appointees took a number of actions that were designed to obstruct UCS's operations, including its financial operations. In particular, in February 2024, Spanish International contacted UCS's banks and persuaded or coerced them into believing that the new Management Board members could not validly authorize payments on behalf of UCS.

Cross-Examination

Show where something is improbable or implausible

- Example (again using C-1, the meeting minutes): Mr. Klomprens, in your witness statement you state at paragraph 11 that Claimant and its former UCS Management appointees in February 2024 took a number of actions that were designed to obstruct UCS's operations, correct?
- Can you please show me where the minutes of 13 February refer to these alleged actions?
- [Assuming that there is no such information → either stop here, or continue with:] But, you would expect, wouldn't you, that something that exposed UCS to severe risks (WS, at para. 7) would have been discussed in the Finance Committee at the time?

Cross-Examination Structure



Chronological



By topics



Mix of both

Cross-Examination Structure

- Consider the use of introductory sentences to help guide the Tribunal:

“Now I would like to move on to discuss the meeting of 14 January”

- Need to balance coherence versus control
- Cross-examination is not examination crossly
- The best way to be in control is to know the materials better than the witness
- Vary tone and pace
- Silence can be a very effective question

Cross-Examination: Things to consider

- Consider your own age and situation as against the age and seniority of the witness you are examining
- Consider what an examination between two so-situated people will look like to the Tribunal
- Know when to stop.
- Often better to leave conclusions for your closing

Cross- Examination

BE PREPARED

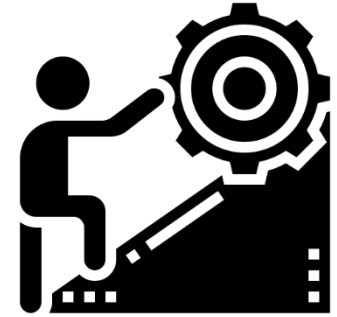
- If the testimony in the witness statement is already helpful to your client's case, don't give the witness the opportunity to "correct" that testimony.
- If you can do no good, do no harm.
- An effective cross-examination requires:
 - Knowing the witness statement backwards and forward
 - Knowing the overall evidence in the case and where to find it
 - Knowing the other facts of the case better than the witness does

Cross- Examination

BE PREPARED

- Preparation includes creating a detailed outline or “script”
- The cross script has the questions you want to ask, and the citation to the evidence that supports the question
- It also has follow-up scenarios in the event the witness answers in one of two ways
- Knowing the record and the witness statement allows for you to stay flexible and depart from the script as needed

Cross-Examination: **Common Challenges**



- the witness rambles and/or makes speeches (i.e. you have lost control over the witness)
- the witness starts every answer with “it depends” or “I don’t know what you mean by”
- the witness will not accept the most simple proposition
- the tribunal is getting impatient with a line of questions that goes to an important point and you have not established it yet
- you want to use a witness on cross to educate the tribunal about what is in the documents
- determining when to seek help from the Tribunal
- determining when to make objections
- determining which topics to forego in the event that there is insufficient time left

Cross-Examination: **Staying in Control**

- Keep questions simple. Why?
- Ask about facts and not opinions or conclusions. Why?



Cross-Examination: **Interpreters**

- Witness is often a non-native speaker and may testify through an interpreter
- This can slow the rhythm and give the witness a chance to break your stride and/or obstruct through the interpreter
- Critical to ask simple, clear questions
- One fact per question
 - Be particularly aware of tone if you are a native English speaker – you do not want to appear patronizing, and especially so if the witness is of significantly more senior than you are
- If you speak the witness's language, do not be distracted by the double answer/remember the Tribunal is still waiting for the translation (wait until the translation is done before moving on)



Listen to the Answers!



- After being incredibly prepared, the second most important thing is to actually listen to the answers.
- The examination is only as good as the transcript, unless the witness makes a terrible impression when testifying live.
- Look at the witness' response on the live transcript and confirm you have the answer you want. If not, ask the question again to clean up the transcript.

Cross-Examination of **Experts**

- Experts are called experts for a reason.
- The more technical the subject matter, the more difficult it is to engage with the expert on the substance.
- Experts can use their knowledge to drive the examination into a side topic spiral.
- This risks them running down the clock and losing the Tribunal's attention.
- Even where you score points on smaller issues, they may be so technical and “down in the weeds” that the Tribunal doesn't know what the point of the examination is.
- Always keep in mind why the answers to these particular questions matter to the case.

Cross- Examination of Experts

Consider general topics:

- Does the expert have the relevant experience to give evidence on the particular subject for which his or her testimony is being used?
- Does the expert's published work contradict the position now taken in the arbitration?
- Is the expert's analysis based on wrong assumptions?
- What were the expert's specific instructions?
- What information did the expert receive from counsel or the party?
- If the expert's assumptions or instructions had been different, would a different conclusion be drawn?

Cross-Examination of **Experts**

Rely on the same rules which apply during fact witness examination:

- Determine a small number of the expert's weakest points.
- Focus on specific topics during the examination – you do not have to cover everything.
- Maintain eye contact with the witness.
- Remember that your audience is the Tribunal.
- Set a rhythm if you can and use silence where available.
- Know when to stop.
- Be prepared.

Re-Examination

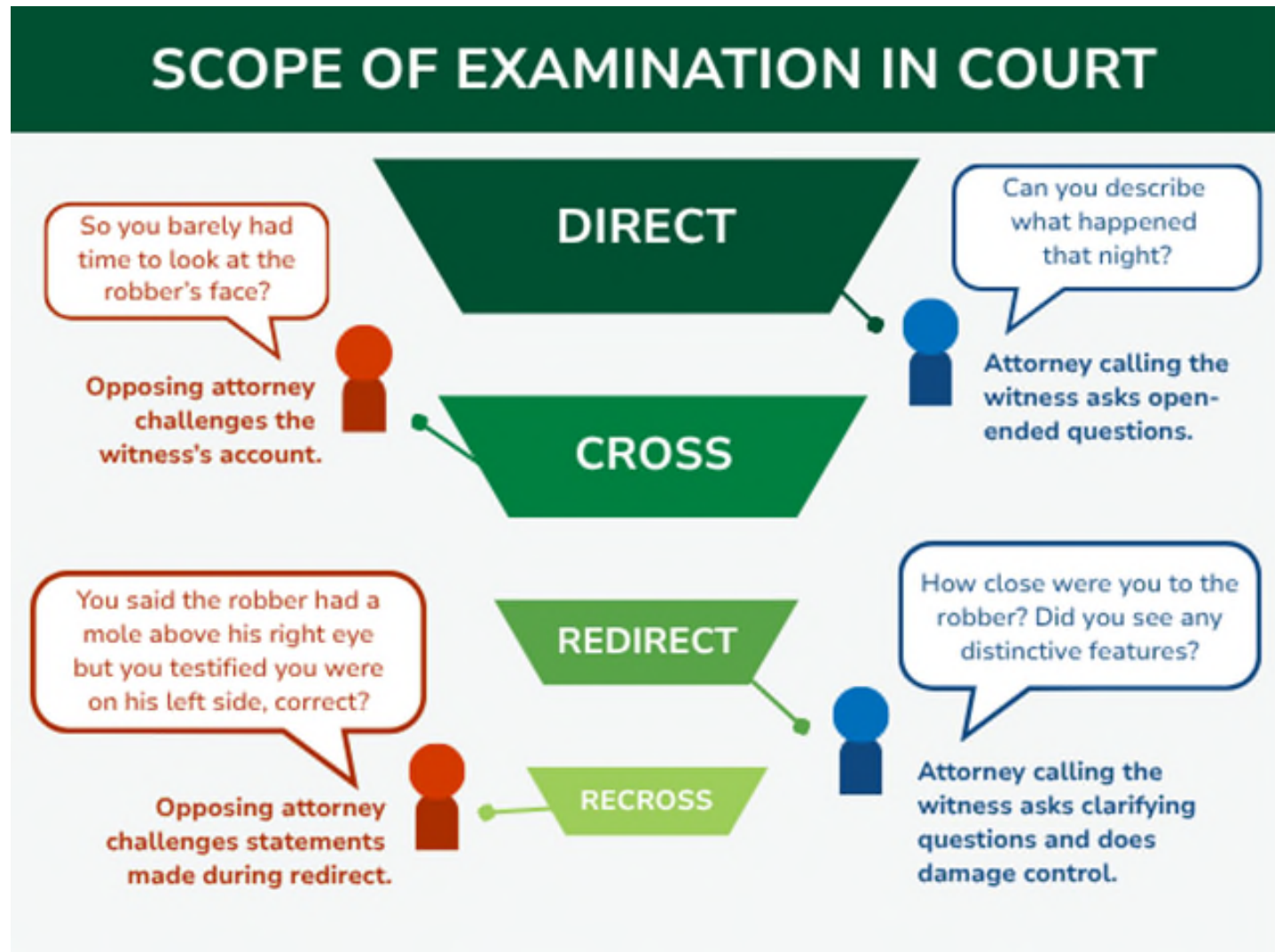
Can have re-direct examination and re-cross examination; usually very limited



“On re-examination, the goal should be to let the witness **explain, clarify**, put the principal facts in context, thereby **rehabilitating both the main case facts and the witness.**”

FIAA-Foundation for International Arbitration Advocacy: Questioning of Fact Witnesses in International Arbitration

Scope of examination narrows from
direct → cross → redirect → recross



Re- Examination

Re-examination should

be within the
scope of the
cross

be non-leading
questions

not repeat the
examination-in-
chief

Only re-examine if:

cross made a
damaging point; and

witness can make it better
with an explanation,
clarification, or denial

Rationale is to rehabilitate a case
theme, fact and/or witnesses'
credibility

Re-examination is the last
impression – can be difficult and
damaging if not careful

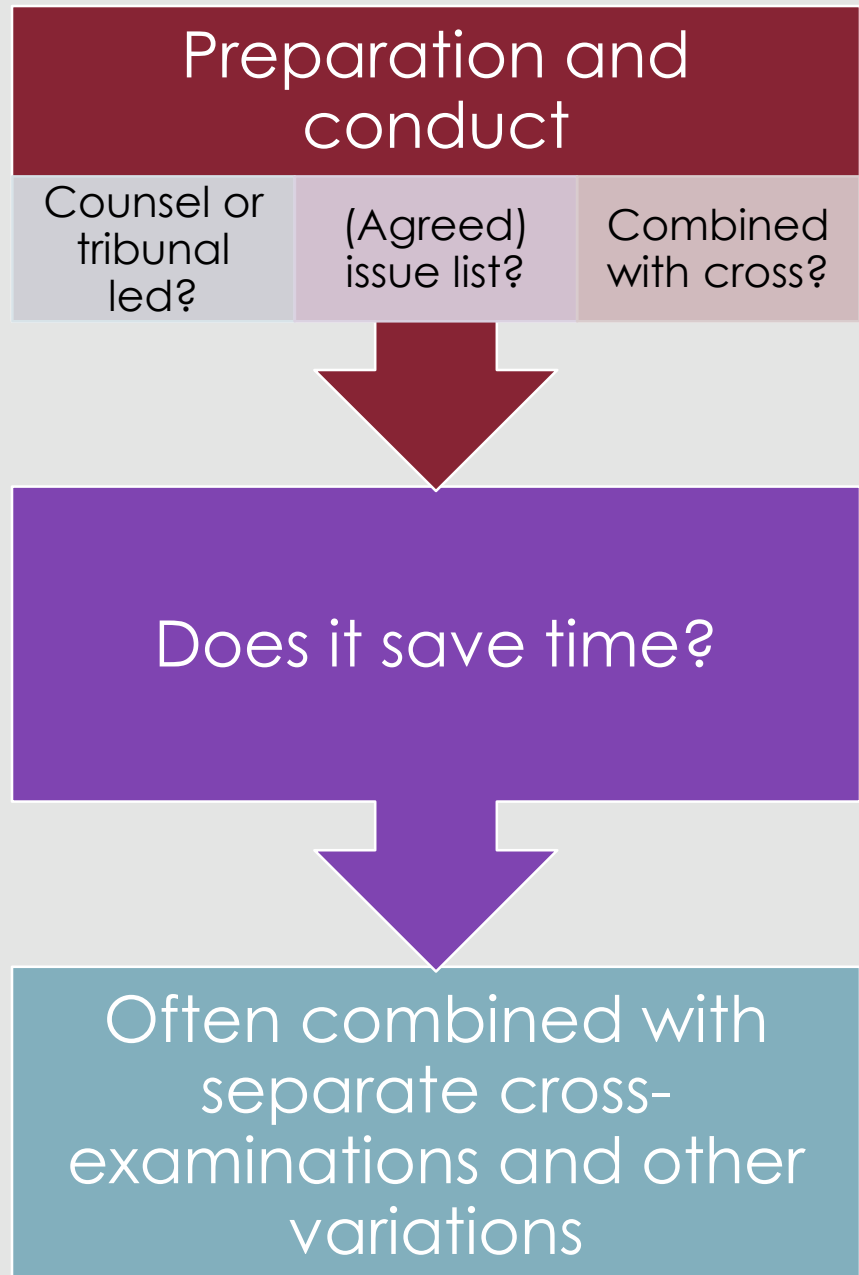
Witness Conferencing: “Hot Tubbing”

Witnesses/experts testify together

Purpose

- Confront two or more witnesses simultaneously on issues or events in relation to which there is contradictory evidence
- Identify areas of agreement, force concessions, evaluate credibility
- Particularly useful in arbitrations structured by “issue”

Witness Conferencing “Hot Tubbing”



Preparing Witnesses for Examination

Knowing how to do a cross-examination is valuable when preparing a witness and vice versa.

Meeting with a witness to discuss examination is typical practice in international arbitration. (See IBA Guidelines on Party Representation in Int'l Arbitration 2013, at Guidelines 20-24)

Re-familiarize witness with all statements that the witness has submitted and all relevant documents. Help the witness understand how his or her testimony fits within the broader case.

In-Person Hearing



In an in-person arbitration hearing, three conference-type tables are generally set up in a “U-shape” formation



The Tribunal sits at one table at the front in the middle, and each party sits at the tables on the Tribunal's left and right side. The testifying witness will sit at the table in the middle, facing the Tribunal.

Virtual Hearing

- Typically, we arrange with a platform provider to have the hearing take place on one screen, and we have our document management system integrated into the platform.
- All pleadings, exhibits, witness statements, expert reports, etc. are loaded into the electronic document management system.
- The hearing takes place onscreen in one window, and a document operator brings up the relevant documents as they are referred to in another window.
- When making opening presentations or expert presentations, these can be shared with the tribunal and other hearing attendees through screen sharing.
- These platforms have dedicated channels for simultaneous/consecutive interpretation.



Virtual Hearing

- Typically in a virtual hearing, the tribunal will be onscreen the whole time, along with whichever counsel and witness is speaking at that time – they will usually ask other participants to turn off their camera/video to reduce the number of people on screen.



Preparing Witnesses for Examination

IBA Guidelines
on Party
Representation in
International
Arbitration

Adopted by a resolution of
the IBA Council
25 May 2013
International Bar Association



From the IBA Guidelines on Party Representation in Int'l Arbitration 2013, at Guidelines 20-24:

- 20. A Party Representative may assist Witnesses in the preparation of Witness Statements and Experts in the preparation of Expert Reports.*
- 21. A Party Representative should seek to ensure that a Witness Statement reflects the Witness's own account of relevant facts, events and circumstances.*
- 22. A Party Representative should seek to ensure that an Expert Report reflects the Expert's own analysis and opinion.*

Preparing Witnesses for Examination

From the IBA Guidelines on Party Representation in Int'l Arbitration 2013, at Guidelines 20-24:

23. *A Party Representative should not invite or encourage a Witness to give false evidence.*
24. *A Party Representative may, consistent with the principle that the evidence given should reflect the Witness's own account of relevant facts, events or circumstances, or the Expert's own analysis or opinion, meet or interact with Witnesses and Experts in order to discuss and prepare their prospective testimony.*

IBA Guidelines
on Party
Representation in
International
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Adopted by a resolution of
the IBA Council
25 May 2013
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Preparing Witnesses for Examination



Things for the witness to keep in mind during cross-examination:

- Tell the truth.
- The Tribunal is your audience – they are also a good place to look.
- Listen carefully to questions and ask for clarifications if required.
- Know your role – do not speculate on questions outside your scope of expertise/knowledge/experience.
- Do not let opposing counsel rush you.
- Do not be afraid of silence, it is the other party's clock running.
- Do not feel the need to fill the silence.
- Keep in mind that most of the other side's aggressive behavior, if any, is theatrics for the Tribunal.

Preparing Witnesses for Examination (cont.)



- If you are shown documents, read them carefully, including context.
- Keep your answers concise and short.
- Answer the question asked.
- You do not need an answer for everything if you do not know the answer.
- Do not try to out-strategize your questioner.
- Stay calm and relaxed outwardly.
- Do not get confrontational.
- Watch out for questions posing hypotheticals and push back.
- If your counsel objects to a question, there is a reason – listen very carefully to the wording of the objection.

Taking of Evidence in International Arbitration

11 December 2025

Michelle Glassman Bock