



Fact Witness Examination: Effective Techniques and Tools in Physical and Virtual Hearings

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Types of Examination

- Direct examination
 - Often only warm-up questions due to written witness statements
 - Questions shall not be unreasonably leading
- Cross-examination
 - The «heart» of witness examination
- Re-direct examination
 - Principle: only subjects raised in cross-examination
 - Questions shall not be unreasonably leading
- Re-cross examination?
- Witness conferencing

Cross-Examination Objectives

Possible objectives of cross-examination

- **Educate:**
Educate the arbitral tribunal about your case theory, i.e. testify through the witness
- **Credibility:**
Show doubt about the witness' credibility, reliability, recollection and / or relevance
- **Marginalize:**
Reduce the relevance of evidence

Cross-Examination

Determining whether to Cross-Examine a Witness

Factors to be taken into account

- Consequences if a particular witness is not cross-examined
- Time available
- «Overlapping» witnesses?
- Relevance of the particular witness to your or the other side's case theory
- Do you want to give the witness / issue «airtime» in front of the arbitral tribunal?

Cross-Examination Preparation

Important steps for the preparation

- Identify the points you need / want to score in the cross-examination
 - Focus on key issues for each witness relevant to your / the other side's case theory
 - Identify inconsistencies within and between statements, documents and pleadings
- Consider the order in which you want to address these issues
- Prepare a «roadmap», i.e. a document with questions, subquestions (depending on answers) and references to documents
- Prepare documents for cross-examination
- Know the facts and the file inside out

Cross-Examination Approach and Style

Some «Golden Rules»

- Ask mostly leading questions, but open questions can have their uses
- Keep questions short
- Limit yourself on few points to make on cross-examination
- Begin and end a cross-examination with the strongest two points
- Know when to stop / avoid the one question too many
- Keep in mind that the ultimate audience is the arbitral tribunal
- Keep calm and do not argue with the witness

Virtual hearings: differences in approach and style?

Thank you for your attention

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