

Cross-Examination in International Arbitration: A Word of Caution to the Young Court Lawyer

You have honed your cross-examination in the courtroom: the control, the rhythm, the kill question saved for last. Then you walk into your first international arbitration hearing, and the rules you thought were universal quietly stop applying. Here are seven (7) deadly sins every young court lawyer should know before rising to cross-examine before a tribunal.

You are no longer before one judge

In a typical arbitration, three tribunal members sit across from you, not a single trial judge. Three sets of eyes, three sets of instincts, and crucially, three legal traditions that may not be your own.

Demography matters

Some tribunal members are not common law trained, and they may not share your appreciation of the nuances and importance of cross-examination. The devastating concession you have spent weeks engineering may land very differently with an arbitrator who regards witness testimony as secondary to the documents.

Do not assume shared rules

A civil law arbitrator, raised in the inquisitorial system where question-and-answer exchanges are routine, may see nothing wrong with leading questions in re-examination. The prohibition you treat as sacred is, to them, an unfamiliar peculiarity. Be ready to explain your objection, politely and briefly, and be ready for it to be waved away.

The choreography is looser

I have seen tribunals permit more than one counsel from the same team to cross-examine the same witness in the same session, unthinkable in most courtrooms, unremarkable in arbitration. Plan your team's examination accordingly, and do not be thrown away when your opponent splits the task.

Browne v Dunn is not gospel here

The rule that you must put your case to the witness is not strictly observed in international arbitration. Tribunals rarely exclude submissions because it was never squarely put. That said, the careful advocate still puts the essential points; credibility is built on fairness, whatever the forum.

Tone is strategy

Most cross-examination in international arbitration resembles a firm discussion rather than an adversarial assault. This is not softness; it is self-preservation. An aggressive, courtroom-style attack risks creating the perception that the witness was denied a fair hearing, and a tribunal anxious about due process challenges to its award will instinctively protect the witness. The advocate who bullies often persuades the tribunal of precisely the opposite of what was intended.

The tribunal will have the last word, but you need not

Expect arbitrators to question the witness themselves after your cross-examination, to clear their own doubts. Listen carefully. Those questions reveal what is troubling the tribunal. If the answers open a door, or undo your good work, do not sit on your hands: ask for further cross-examination on the points arising. Most tribunals will allow it, and it may be the most valuable five minutes of your hearing.

The skills of the courtroom remain your foundation. But in arbitration, the sharpest weapon is not aggression, but adaptability.

Read your tribunal, adjust your style, and remember: you are not performing for a judge. You are persuading three. Good luck!



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