

## **2017 Mockingbird Challenge Rules of the Competition**

1. The four corners of the fact pattern should give teams plenty of material to make their case. Nevertheless, teams may make reasonable and necessary inferences for non-material facts but may not elicit inferential facts which are not reasonable and necessary. A reasonable and necessary inference is an inference that must be true. For example, a reasonable and necessary inference would be that if a person is a doctor, they graduated from medical school. However, it would not be reasonable and necessary to say that the doctor graduated with honors or attended school on a full scholarship. A fact is non-material if it makes absolutely no difference to the case.

(a) If a team makes an inference on direct examination that is not reasonable and necessary of a material fact, then the opposing team must in their cross-examination impeach by omission or else they waive the right to complain about the inference. If a witness is impeached by omission, they must admit, without hesitation, that the inference is not in their prior statements and that today is the first time they have stated the inferred fact.

(b) The impeached witness shall not try to justify, in any way, why they believe the inference to be reasonable and necessary or non-material. If the impeached witness, either in response to the impeachment during cross-examination or on re-direct examination, attempts to justify the reasonableness of the inference, that team shall be penalized one point for the direct examination for each attempt at justification.

(c) If a team impeaches by omission for a fact that is in fact reasonable and necessary or is not material, then the impeaching team shall be penalized one point for the cross-examination for each improper impeachment by omission.

(d) The bailiff will inform the tournament director immediately of any possible penalty situation as referenced in sections (b) and (c) above. The tournament director's determination of the legitimacy of any inference shall be final. The deduction of the scores will be made by the tournament director after the score sheets are turned in. If the deduction results in a tie ballot, then the ballot will go to the non-offending team and the point differential of that ballot will be zero.

(e) If during cross-examination the question requires the witness to answer outside of the four corners of the fact pattern, then the witness may answer outside the four corners of the fact pattern and shall not be impeached by omission. If the cross-examiner tries to impeach by omission for a fact they requested pursuant to section (e) of this rule, then they shall be penalized under the same criteria found under section (c) of this rule.

2. The order of the trial will be as follows: Pretrial motions, if any; Opening statements (state first, then defense); State's case-in-chief (Re-direct examinations are allowed but there will not be any re-cross unless new material information was raised for the first time in re-direct examination. Re-cross will be at the discretion of the bench judge.); Defense case-in-chief; (There will be no rebuttal witnesses or rebuttal case); Closing argument (State first, then Defense, State will get a rebuttal argument if requested). (There will be no rebuttal witnesses or rebuttal case.)

3. Each side will have 70 minutes to try the case. The clock will be stopped for prolonged arguments on Objections. The clock will start once Opening statements begin. Pretrial activities are not counted in the 70 minutes.

4. Each team will consist of precisely four (4) members. Four (4) members will participate in each trial, two as counsel and two as witnesses. One team member must make an opening statement and the other the closing argument. Each team member must conduct one direct examination and one cross-examination. The team member conducting a direct examination will make objections to that witness's cross-examination and the member who cross-examines a witness will make objections to the direct examination of that witness. Each team has the discretion to decide whether to switch the roles of the four members throughout the competition. Thus, a student member need not be designated as either a witness or an advocate for the entire competition.

5. Each team will be given two (2) Faulkner witnesses. They will keep the same witnesses for the duration of the competition. Approximately 30 minutes before each round we will disclose which role the Faulkner witness will be playing in that trial. A Faulkner witness may play all four roles at some time during the competition. Teams should be prepared to play all four witness roles at some point during the competition. In each trial there will be exactly one Faulkner witness per trial per team.

6. Each team will represent the State side twice and the Defense side twice during the preliminary rounds. No teams will face each other twice in the preliminary rounds. If, in the advance rounds, teams that have faced each other meet again, they will automatically try the case in the opposite sides as their first meeting. If teams in the advance rounds have not faced each other sides will be determined by the toss of a coin. Preliminary round pairings will be as follows: Round One – Challenge Ceremony; Round two – preset order based upon results of the Challenge Ceremony; Round three – power-matched, power protected for the undefeated and single loss teams; Round four – power matched to the extent it is practical. Sides for the third and fourth rounds will be predetermined. Each team will go the opposite side for Round two as they did for Round one.

7. Challenge Ceremony: When teams check-in on September 27 the teams will draw numbers. The lowest number will then choose its first round opponent. The opponent chosen will have the privilege of choosing which side of the case they wish to represent. The process is repeated until all teams are paired. For the last two teams remaining the lowest numbered team chooses the side

8. Scoring will be on a 100 point scale as follows:

15 points for Opening Statement

15 points for Direct #1

15 points for Direct #2

15 points for Cross #1

15 points for Cross #2

15 points for Closing Argument

10 points for Objections and Professionalism (5 points per advocate)

9. The Federal Rules of Evidence and the Federal Rules of Criminal Procedure will control unless stated in the problem or otherwise modified by these rules. No outside case law may be cited to the judges during the trials, except what may be found in the Rules' committee notes.

10. All documents, witness statements, grand jury testimony, photographs, and other material included in the problem will be treated as originals and authentic. All handwriting and signatures are to be considered authentic. All documents that appear to have been sent to, or by, a witness are to be considered as having been sent or received by that witness. Any witness, who has stated that he/she has recognized an exhibit during his /her pretrial statements, must recognize the exhibit at the time of trial.

11. Counsel may use only those exhibits, jury instructions and verdict form provided in the problem. Counsel may enlarge only those exhibits provided in the problem. No significant modifications may be made to the exhibits. It is permissible to enlarge portions of the testimony or exhibits so long as it accurately portrays the portion enlarged. No audiovisual aids, e.g. PowerPoint, document cameras, etc., will be allowed in any round. No exhibits should be larger than 24 x 36 inches. No pre-made original exhibits shall be permitted (This is different from 2016).

12. Other than what is contained in the four corners of the fact pattern, teams may NOT create original exhibits for trial before trial. Teams may make demonstrative exhibits during examinations and speeches. All exhibits made during trial should be made in front of the jury. In other words, teams may not, while sitting at counsel table or on a break construct an exhibit to use during trial.

13. Any questions about the problem must be submitted by September 11, 2017. Questions will be answered by September 14, 2017.

14. Teams will be ranked according to:

- Win-loss record, then
- Total number of ballots won, and then
- Average point differentials

After the Fourth Round the top four teams ranked according to the priorities listed above will advance to the Semi-final Rounds. The winners of the Semi-final trials will advance to the Finals.

15. From the moment teams engage in substantive discussions with each other during pretrial until the last word of the closing argument is uttered, no one other than the four members of the team plus the Faulkner witnesses may communicate with the four members of the team. Coaches may not have any contact with their team during the round. A round is deemed to have begun once teams engage in substantive case specific discussions even if that occurs before the judge or jurors enter the room. For example, if teams exchange proposed motions in limine or show each other exhibits before the trial, then the teams are precluded from talking to their coach about the motions in limine or any matter until the round is over.

16. Any of the four team members may confer with each other at anytime during the trial, including the Faulkner witnesses.

17. The Defendant in this case must be referred to as a female. If available, a person on the team may sit at defense counsel table as the defendant. This includes the non-testifying witnesses.

18. The State will call Bennie Arnold and Dr. Alex Shunnarah as its two witnesses. The Defense will call Casey Cantrell and Dr. An Hu as its two witnesses. The Defendant will not testify.

19. All protests, if any, will be handled by the Tournament Director.

(a) Teams may seek counsel from the tournament director if they are concerned about a possible rules violation. However, the decision to file a formal protest will be at the sole discretion of the teams. The tournament director will neither encourage nor discourage the filing of the protest.

(b) If the tournament director determines that the protest is valid, the offending team shall be penalized anywhere from three to six points, per ballot, depending on the severity of the violation. If the tournament director determines that a formal protest was inappropriate, then the protesting team will be penalized two points, per ballot. The Tournament Director's decision shall be final.