

Managing Unfavourable or Hostile Witnesses in NSW Courts

Legal Guide for Practitioners



Hostile witnesses provide evidence that is adverse to the party that called them and are reluctant to cooperate.



Unfavourable witnesses may give inconsistent testimony, be unwilling to support the calling party, or appear dishonest.



Section 38 of the Evidence Act 1995 (NSW) allows a party to cross-examine a hostile witness with the court's permission.



Section 43 outlines the procedure for dealing with prior inconsistent statements made by witnesses during cross-examination.



Effective cross-examination techniques include clear questioning, handling evasive responses, and maintaining control.

Limitations on cross-examination ensure fairness and prevent abuse while adhering to legal boundaries.

A witness may be declared hostile if they provide unfavourable evidence, are unwilling to tell the truth, or give inconsistent statements.



The application process to declare a witness hostile involves providing evidence and the court's review.



Prior inconsistent statements can be used to challenge a hostile witness's credibility if they are relevant, proven, and admissible.

Strategies for presenting inconsistent statements include highlighting discrepancies, using documented evidence, and methodical questioning.



Managing The Courts

Julia Schneider



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