



Paris Arbitration Week 2021

Eight disagreements over how to enhance the value of witness evidence

Overview

Opening remarks

José Astigarraga, Reed Smith

Witness evidence issues – memory and the power of suggestion

Dr. Kimberly Wade

Speakers to debate the following eight propositions:

Proposition 1: Save in rare situations, documents should be accorded more probative value than witness testimony.

Proposition 2: Arbitrators would enhance the value of witness evidence if they were to instruct the parties **early in the proceedings** as to what are the fact issues as to which the arbitrators wish to receive witness evidence and which ones not.

Proposition 3: Generally speaking, witness evidence relating to “context” should be excluded – witness evidence should be strictly limited to the specific facts in dispute.

Proposition 4: To avoid having counsel try to bring undisputed evidence to the tribunal’s attention through the testimony of witnesses, arbitrators should permit counsel to explain the undisputed evidence, such as documents, directly to the tribunal.

Proposition 5: Generally speaking, arbitrators’ ability to evaluate witness evidence is not affected by cognitive biases, such as confirmation bias, anchoring, cultural bias, gender bias, language, etc.

Proposition 6: Cross examination does not enhance the value of witness evidence.

Proposition 7: Tribunal led questioning (before counsel questions) enhances the value of witness evidence.

Proposition 8: Fact witness conferencing enhances the value of witness evidence.

Closing remarks

Peter Rosher, Reed Smith

[reedsmith.com](https://www.reedsmith.com)

Tuesday 21 September

14:30 – 16:30 CEST

Moderators:

José Astigarraga – Global Chair, International Arbitration, Reed Smith

Peter Rosher – Partner, Reed Smith

Guest speakers:

Yves Derains – Founding Partner, Derains & Gharavi

Kohe Hasan – Partner, Reed Smith

Professor Doug Jones AO – Independent Arbitrator

Wendy Miles QC – Twenty Essex Chambers

Michelle Nelson – Partner, Reed Smith

Eun Young Park – Co-chair, International Arbitration & Cross-Border Litigation, Kim & Chang

Stephanie Smatt Pinelli – General Counsel, Litigation, ORANO

Steve Ryan – Vice President, Global Litigation, TechnipFMC

Dr. Kimberly Wade – Cognitive Psychologist, University of Warwick

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