CANBERRA LAW CLSS STUDENTS' SOCIETY

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COMPETITIONS HANDBOOK 2022

An electronic copy of the CLSS Competitions Workbook can be found on our Website:
www.canberralss.com.au

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INTRODUCTION

Welcome to the Canberra Law Students' Society Competitions Handbook.

The CLSS has prepared this Handbook as an introduction to Mooting, Negotiation and Witness Examination. This handbook is provided as a one stop guide to the rules and procedures for CLSS competitions. Within these pages, you will also find hints and tips to assist you in competing in the CLSS competitions.

WHY PARTICIPATE IN COMPETITIONS?

Competitions are an integral aspect of the law school experience and can be of extensive benefit for students both on a social and academic level.

Participating in Competitions will help student's better equip themselves for further study, and for a career after University. They are a rewarding experience for all involved and a great opportunity for networking with other student's, academics and legal professionals. Competitions also provide a great tool for academic advancement. Through participation, students can build on their problem solving and communication and critical thinking skills, and their ability to resolve legal disputes.

Early this year, the Honourable Chief Justice McCallum presented a Mooting Masterclass to UC students at the ACT Supreme Court. Students were fortunate to hear from her Honour about the importance of mooting, and how to prepare for competitions.

Her Honour highlighted that mooting is a very important skill because:

1. There is no better way to learn the law;
2. Mooting helps you work out whether you want to be an advocate
3. It looks good on the CV;
4. It offers students a safe learning environment to make your first legal errors in a moot, rather than in Court; and
5. Even if you don't want to be an advocate, students learn important life skills including how to develop an argument, persuade, and communicate in a coherent way.

CLSS COMPETITIONS UPDATE 2022

In semester one of 2022, the CLSS ran their internal mooting and negotiations competitions. Following these competitions, six students that competed in the internal competitions were selected to represent the University of Canberra at the Australian Law Students Association (ALSA) conference held in conjunction with the national competition. We were able to send two teams to the conference this year, with one team competing in the ALSA Red Cross International Humanitarian Law moot, and the other in the ALSA negotiations this year.

Jonathan Pears was a competor is our in our internal mooting competion this year, as well as competor in the Macqauire University Enviormental Moot. He was also member of the University of Canberra International Humanitarian Law moot team. Here is what he had to say about the ALSA conference this year:

"Competing in the IHL moot at the ALSA conference has been a particular highlight of my degree so far. I feel like the experience has given me insight into what a career in law could look like, particularly in advocating for a client (in our case a war criminal). It has given me confidence drafting and presenting legal arguments, and with public speaking.
But I think the best part of competing is how much fun it is. It's a great opportunity to meet other folk from UC and other universitys, and to have a go at being a lawyer! For people who are wondering if mooting is for you, I would say give it a go! It's not always easy, but looking back it is not something you will regret. I don't think many people are born good lawyers or good advocates - it's something that takes practice, and mooting is a great way to practice while you're still at univeristy".

- Jonathon Pears, Competitior in ALSA International Humanitatian Moot.

FREQUENTLY ASKED QUESTIONS

WHAT DO I WEAR?

Competitions allow students to experience and prepare for that it may be like if the practice law; Competitors are recommended to wear business' attire. Be sure to dress neatly and presentably.

WHEN AND HOW WILL I GET MY QUESTION

Release of question's is subjects to the rules of each individual Competition. All Competition questions will be released via email, if your have not received your question, it is your responsibility to contact the Competitions Officer(s) in charge of your Competition.

WHEN DO I GET THERE AND WHERE DO I GO?

Email confirmation will be sent prior to the Competition and will outline when and where your Competition will occur. You should arrive at least 15 minutes prior to the commencement of your Competition.

CAN I BRING PEOPLE TO WATCH?

Competitors are welcome to bring people into the room, provided there is enough space and that spectators remain quiet during proceedings. If you are competing in the competition you cannot watch any other team unless you have already knocked out of the competition.

HOW WILL I KNOW WHEN MY TIME IS UP?

In all Competitions, there will be a timekeeper and you will be warned when your time is coming to an end, through either a bell or a knock on the desk. However, it is the competitors job at the beginning of the around to agree with the judge how time will be kept and what warnings will be given.

CAN I COMPETE IN MORE THAN ONE COMPETITION?

You can only compete in one Competition. While our policy outlines you make seek an exemption from the CLSS, it is strongly recommended you only compete in one Competition.

MOOTING

1. TEAMS

1.1. Each team must consist of either two or three members.

1.2. In a team of three members there are two counsel and one solicitor. Team members may rotate positions between senior counsel, junior counsel and solicitor throughout the teams time in the Competition, but not within rounds.

1.3. In a team of to members there are two counsel. Team members may rotate positions between senior counsel and junior counsel throughout the teams time in the Competition, but not within rounds.

1.4. The two or three nominated members of the moot team shall remain the same for the duration of the Competition, unless exceptional circumstances apply, as determined by the a member of the CLSS committee.

2. PENALTIES

2.1 The following penalties apply:

2.1.1. Continuation of oral submissions beyond the time limit without the judges express permission; 2 marks for every minute or part thereof.

2.2.3 Late submission of written memoradum of argument; two marks for every 10 minutes late or part thereof.

2.2 Judges do not have direction to dispense with these penalties.

1.3 Judges shall not be notified of the application of any of these penalties at any time.

1.4 Where a penalty is imposed on a team, the penalty will be divided equally amongst counsel for that team.

3. WRITTEN SUBMISSIONS

3.1. The procedure for handing in written submissions will be determined by the Competitions Officer(s) at the beginning of the Competition.

3.2. In each round teams must submit three copies of Outline of Submissions (Submissions).

3.3. Copies of said Submissions must be submitted to the Competitions Officer(s) or their appointee to (2) hours prior to the deadline

MOOTING CONT...

3.4. Penalties apply if Submissions are submitted late, in accordance with 2.1.2.

3.5. The Outline of Submissions must contain:

3.5.1. An outline of the structure of the teams submissions.
3.5.2. Major arguments to be raised.
3.5.3. Allocations of speaking time.
3.5.4. A list of the authories which counsel relies.

3.6 Outline of Submission must not exceed four (4) pages in length, plus a fifth page for a list of authorities.

4. THE MOOTS

4.1. After a formal introduction to the bench each team will have 40 minutes to present their case.

4.1.1. This time may be subject to change and if so, will advised upon the release of the question.

4.2. The time may be divided between senior and junior counsel 20/20, 15/20 or 25/15. The division of time must be specified in the written submissions.

4.2.1. If Counsel intend to reserve the right to rebuttal, Senior Counsel must specify to the bench when giving appearances.

4.2.2. At the conclusion of each parties submissions the Judge(s) may elect to refuse the right to rebuttal.

4.2.3. The maximum time for rebuttal is 2 minutes.

4.3. Penalties apply if counsel exceed their allocated or extended time, in accordance with 2.1.1.1

4.4. Judges may grant an extension of time of up to five minutes per team.1.5. Nothing may be handed up to the bench.

NEGOTIATIONS

5. TEAMS

5.1 Teams must consist of two members.

5.2. Once registered as a team, team members shall not change unless exceptional circumstances apply as determined by the Competitions Officer(s).

5.3. The question will involve two sets of information: first, a common set of facts known by all participants and second, additional confidential information known only to the teams representing a particular side in the Negotiation.

6. PREPARATION

6.1. If a team mistakenly receives material meant for another team, they must report the occurrence immediately to the Competitions Officer(s), who shall decide on an equitable course of action.

6.2. Subject to 6.1, the mere act of communication or receipt of information proscribed by this rule constitutes a breach of the rules, regardless of the substance-thereof and regardless of whether initiated by a participant or by any other person.

6.3. Breach of 6.1 or 6.2 will result in disqualification.

6.4. Innocent mistake is not a defence to a complaint based on breach of this rule; even casual exchanges unrelated to the substance of the Negotiation are enough to breach 6.1 or 6.2.

7. PENALTIES

7.1. Continuation of negotiation or self-analysis beyond the time limit: two marks for every minute or part thereof.

7.2. Judge(s) do not have the discretion to dispense with this penalty.

7.3. Judge(s) shall not be notified of the application of any of these penalties at any time.

8. THE NEGOTIATIONS

8.1. Each round consists of a 50-minute Negotiation session.

8.1.2. This time may be subject to change and if so, will be advised upon the release of the question.

8.2. As part of the session each team may take one break of no more than five minutes for the team to discuss strategy privately.

8.3. The 50-minute period continues to run during any such break.

8.4. If the team calling the break specifically requests, both teams must leave the room during the break

8.5. During the break, teams may not confer with any other person.

8.6. At the end of the 50-minute period, each team has a 10-minute private reflection to analyse their performance.

NEGOTIATIONS CONT...

8.7. After the private reflection, each team, in the absence of the opposing team, conducts a 10-minute self-analysis in the presence of the Judge(s). The team should analyse its performance in the Negotiation by answering the following questions:

8.7.1. In reflecting on the entire Negotiation, if you were faced with a similar situation tomorrow, what would you do the same and what would you do differently?

8.7.2. How well did your strategy work in relation to the outcome?

8.8. The Judge(s) will conduct a coin toss to determine which team will go first in the self-analysis, at the end of the 10-minute private reflection period.

8.9 Teams should also be prepared to respond to questions from the Judge(s)concerning the team's performance. In addition, the team may use this as an opportunity to explain why it chose a particular approach or even a specific tactic. The Judge(s) may take into consideration for scoring purposes anything said during this session.

8.10 Responsibility rests with the student participants for timekeeping and for adherence to allotted time periods and breaks. However, if resources and volunteers are available, timekeepers or timekeeping devices may be provided.

8.11 The preliminary rounds may be observed, however Competitors may not observe until they have competed in that round.

8.12 Observation of the final rounds is encouraged, however potential for disruption must be minimised. Observers should not enter or leave the room during the negotiation session or the self-analysis period.

8.13 The Judge(s) may, if they wish, request that observers leave the room while they confer. Apart from that discretion, observers may watch all segments of the round.

8.14 Competitors are not permitted to use mobile phones during the preparation or judging period. Mobile phones carried by Competitors must be switched off during this time.

8.15 No observer shall attempt to communicate in any way with any team member from the beginning of the Negotiation session to the conclusion of the last self-analysis. Any communication breaches this rule and may result in disqualification.

NEGOTIATIONS CONT...

9. JUDGING

9.1. The judging standards recognise that there is no one 'correct' approach to conducting a Negotiation. Instead the strategies and techniques used will vary according to the nature of the problem, the personalities involved and other circumstances. However, the effectiveness of a Negotiation can be judged, at least in part by its outcome.

9.2. Any marking criteria should not be read as requiring that the parties reach an agreement. In some situations, the best outcome might be no agreement at all. Thus, the judging standards (below) focus on planning and the negotiation process itself, allowing a team to achieve a high score even if no agreement was reached.

9.3. Each panel of Judges ranks the teams who they observe according to their effectiveness in the Negotiation session. To assist the process of ranking, Judges also score each team against the following standards:

9.3.1. NEGOTIATION PLANNING: Judging from its performance and its apparent strategy, how well prepared did this team appear to be?

9.3.2. FLEXIBILITY IN DEVIATING FROM PLANS OR ADAPTING STRATEGY: How flexible did this team appear to be in adapting its strategy to the developing negotiation, for example to new information or to unforeseen moves by the opposing team?

9.3.3. TEAMWORK: How effective were the Negotiators in working together as a team, in sharing responsibility, and providing mutual backup?

9.3.4. RELATIONSHIP BETWEEN THE NEGOTIATING TEAMS: Did the way this team managed its relationship with the other team contribute to or detract from achieving their client's best interests?

9.3.5. NEGOTIATING ETHICS: To what extent did the negotiating team observe or violate the ethical requirements of a professional relationship?

9.3.6. OUTCOME OF SESSION: Based on what you observed in the Negotiation and the self-analysis, to what extent did the outcome of the session, regardless of whether agreement was reached, serve the client's goals?

9.3.7. SELF-ANALYSIS: Refer to 8.7.

WITNESS EXAMINATION

10. RELEASE OF QUESTIONS

10.1. Competitors will receive their materials 5 days before the commencement of the competition. At the time of the competion, cometitors will have 30 minutes to interview the witness

10.2. Materials given to the Competitors will consist of:

The statement to their Witness
The statement of the opponent's Witness The relevant sections of any Act/s

10.3. All questions, regardless of whether in a preliminary or final round, may be based on either criminal law or civil law trials.

11. PREPARATION OF ARGUMENTS

11.1.Competitors must not discuss the contents of the trial with any person other than their Witness

11.1.1. Competitors and Witnesses are not permitted to use mobile phones during the preparation or the judging of the round

11.3. Any infringement of 10.1 or 10.2 will result in automatic disqualification.

11.3.1. In the event that a mistrial is caused in the matter, the opposing Competitor will be permitted to continue the round for the purpose of points allocation.

11.4. The applicable law for the Competition (including the rules of evidence) is that of the Australia Capital Territory.

12. JUDGING

12.1.All rounds will be heard by a Judge.

12.2.Judges will be judges, magistrates, legal practitioners, legalacademics or others with demonstrated experience in judging witness examination Competitions and preferablywith experience in court room advocacy.

12.3.Judges will be briefed on the issues inthe problem question andthe rules of the Competition.

12.4. Marks are allocated according to the marking sheet annexed.

WITNESS EXAMINATION CONT...

12.5. At the completion of each round the Judge must not disclose the results to the Competitors. Marking sheets are tobe handed directly to the Competition coordinator or the appropriately appointed person.

13. PENALTIES

13.1. The following penalties apply:

13.1.1. Exceeding time limits without Judge's permission: one mark for every 20 seconds (or part thereof).

13.2. Judges do not have the discretion to dispense with these penalties.

13.3. Judges have the discretion to let Competitors go up to three minutes overtime without penalty provided the Competitor seeks permission.

13.4. A Competitor must stop speaking when asked to do so by the Judge.

13.5. Judges shall not be notified of the application of any of these penalties at any time.

14. APPEALS

14.1.Appeals must be made within 2 hours of the conclusionof the relevant round.

14.2.Appeals will be made to the Competitions Officer(s).

14.3.Appeals must be emailed to the Competitions Officer(s).

14.4. A decisionof the Competitions Officer(s) may be appealed to the President.

1.4.1.Appeals to the Presidentmust be made within 1 hour of the Competitions Officer(s)' decision.

1.4.2.The decisionof the President will be final.

15. WITNESSES

15.1. Each Competitor must provide a Witness for the Competitions, unless prior arrangements have been made with the Competitions Officer(s).

15.2. Each client is supplied with a packet containing the rules and the statement for the Witness they are playing. Should "client" be changed to "witness", "participant", etc.?

16. THE WITNESS EXAMINATION

16.1. There is one prosecutor or counsel for the plaintiff and one counsel for the accused or defendant.

6.2. Competitors are randomly allocated sides.

16.3. The Witness Examination will proceed as follows:

16.4. The times for both examination in chief and cross- examination are monitored by a timekeeper or the presiding Judge and there will be a notification at one minute before the end of the relevant period.

WITNESS EXAMINATION CONT...

16.5. At the end of the summation by the prosecution, counsel for the defence may seek permission from the Judge to draw attention to contravention of the rule in Browne v Dunn or misstatements of evidence or law in the summation of the prosecution. If granted, counsel for the defence may speak for only one minute, unless extension pursuant to rule 12.3 is granted. Counsel for defence may only respond to the summation by the prosecution.

16.6. Counsel must give appearances.

16.7. The swearing of the oath for Witnesses is dispensed with.

6.8. Counsel may object and must state the grounds for objection. The clock will be stopped during the objections. The Judge should ordinarily invite opposing counsel to respond to the objection.

16.9. No re-examination will be allowed.

16.10. Counsel will not robe.

16.11 The Order of presentation shall be as follows:

Opening by the Prosecution	2 minutes
Examination in Chief by the Prosecution	10 minutes
Cross examination by the Defence	15 minutes
Opening by the Defence	2 minutes
Examination in Chief by the Defence	10 minutes
Cross examination by the Prosecution	15 minutes
5 minute break to prepare for closing statements	
Summation by the Defence	3 minutes
Summation by the Prosecution	3 minutes

16.12. The Competitions Officer(s) may amend this timing at their discretion

17. FORFEITURE

17.1. Any Competitor who forfeits a Witness Examination will be deemed to have lost that round and will receive a mark of zero.

17.2. Any Competitor whose opponent forfeits a round will be deemed to have won that round. The Competitor who wins will be deemed to have scored in that round the average mark scored by that Competitor in other rounds in which they compete.

17.3. Any Competitor who forfeits a round is excluded from competing in the semi- or grand finals.

18. MODIFICATION TO THE RULES

18.1 The Competitions Officer(s) may at any time with prior approval of the President, determine such amendments or additions to these rules or other measures may be necessary or convenient for the efficient organisation, administration or conduct of the Competition.

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THE MOOTING GUIDE

1 PREPARATION

Competitors should begin by reading about the general area of law that the moot problem concerns. Utilise the textbooks available on the UC Online Library and search for scholarly commentary to gain a general understanding of the relevant cases, statutory law and articles

Have a look at the unit outline for the area of law your moot is based on (contracts, torts etc). You may be able to borrow the prescribed textbook for the library.

Identify legal principles, which support and oppose your main arguments. Remember that your main arguments should be based on principle and not on example.

Examples of legal principles can include:

- The 'eggshell skull' rule
- Elements of a contract
- Duty of care

Identify relevant case law. Often moot problems may be based on existing cases. Do not waste too much of your time looking for the case that the moot problem might be based on. Balance your research time. If you find a case that you think your moot problem is based on, but the decision is not in your favour, do not panic. Scrutinise the arguments and use them to get ideas for your matter.

Just because the case the decision isn't made in your favour, doesn't mean it cannot be used. Remember to think:

- How did their Honour come to the decision?
- How is this distinguished from your moot question?
- How may my opponent use this, and how can I show that application is incorrect?

The UC library website is a great for legal research. Avoid websites where other students have summarised the cases, while this can be helpful to wrap your head around complex topics, you can not guarantee their analysis is correct.

Some of these sites may be useful for your research:

- ICLR – Great for English Cases (particularly appeal cases)
- Westlaw – Great for summaries and first point
- Casebase FirstPoint Austlii
- CCH IntelliConnect
- LexisNexis - Great case database Jadebar

THE MOOTING GUIDE

2 WRITTEN SUBMISSIONS

Before presenting your oral argument, you will need to submit a written submission.The purpose of written submissions is to provide the Judge with a guide while the competitor is talking. It should not contain a written argument but be a succinct outline of the points to be made in the oral submission.

Sometimes it is necessary to run several levels of argument that have their own merit. For example, if your first submission is that there is not a duty of care, your second submission could be that "even if" the court finds a duty of care, it has not been breached. You should have at least two arguments as it is dangerous to rely on one argument alone.

Compeitiors must also reserve time for speaking on the first page of there submission. The division of time must be specified in the written submissions. Junior counsel cannot be allocated more time than senior counsel. The plaintiff will present first with the defendant presenting next.

There is no "right" way of forming your arguments, however the obvious thing is to formulate your arguments in a clear, concise and logical way. Below, is an example forumaution of written submissions that can be used to guide your own.

Submission One: The learned Magistrate erred in finding that the Heads of Agreement constituted a binding and enforceable contract between the Respondent and Appellant.

Intention to Create Legal Relations

6. There was no intention to create legal relations between the appellant and the respondent, with this requirement of intention going to the very essence of contract.[2]

   a. The Respondent has taken notes and titled the transcribed discussion between himself and the Appellant 'Heads of Agreement'. This cannot be taken to indicate any objective intention to be bound.[3]
   b. Even if the Heads of Agreement was taken to be reflective of an agreement between the appellant and the respondent, in the trichotomy description of contracts in *Masters v Cameron*,[4] the intention of the parties was to create legal relations only at the execution of the written contract.
   c. The wording in Clause 6 that the appellant and respondent agree to "*get a lawyer to draw up a formal partnership agreement*" is analogous to 'subject to the preparation of a formal contract' and therefore does not itself constitute a binding contract.[5]

[1] *Liquor Act* 2010 (ACT).
[2] Au*stralian Woollen Mills v Commonwealth* (1954) 92 CLR 424, 457.
[3] *Ermongenous v Greek Orthodox Community* [2002] HCA 8, [25].
[4] [1954] HCA 72, [9].
[5] Ibid, [13].

What is the overall point of your submission?

Is there multiple levels of your argument? For example, what elements need to be satisifed to find a valid contact?

All your arguments need to be backed up with legislation or case law, make sure you are using AGLC4 referencing.

THE MOOTING GUIDE

3 ORAL SUBMISSIONS

This is where Competitors (counsel) present their arguments verbally to the judge. Generally, senior counsel will present the first argument/s and junior counsel present the remaining argument/s. This is explained in greater detail below.

At the start of a moot there is a formal introduction by a mooter to the judges. Usually senior counsel will present each of the Mooters to the Judge/s by saying "May it please the Court my name is ..... and I am acting on behalf of the appellant/respondent and with me is ....acting as junior counsel and (if in a team of three) ..... acting as the instructing solicitor".

To provide a strong argument it is best to organize your oral argument in a logical and coherent manner to ensure that the judge can properly follow your argument. For specific help in this regard see the skills you would have learnt in Foundations of Law and Justice regarding advocacy.

Some general tips when presenting oral submissions are:

- Make sure to speak slowly, clearly and audibly and maintain eye contact with the bench (the Judge/s) as much as possible. Speaking too fast is a common problem in mooting; slow down and pause between important points.
- It is okay to have a script, however, try not to be too attached to written submissions or to a set speech. It is much more important to be flexible andbe able to maintain a conversational dialogue with the bench.
- Most Judges will be proactive in asking questions and moving speakers from one point to another. The ability to think quickly answer questions is a crucial skill for mooters.
- Try not to over-complicate questins from the bench, answer as directly as possible. While it may feel like they are trying to trick you, they are usally only looking for a straighfoward answer.
- If the answer to a question is unknown, it is best to say, "I am sorry, I am unable to help Your Honour on that point". Never lie or "bluff" your way through an answer, as this can be very dangerous particularly if the Judge already knows the answer to the question.

THE MOOTING GUIDE

4 COURT-ROOM ETIQUETTE

Remember that the moot court is a mock court room and therefore necessary formalities should be adhered to. While it is important to keep a conversational tone with the judge, you should ensure that you adhere to all formatis that are listed in the table below.

PHRASE	HOW TO USE IT	INCORRECT
"May it please the court"	At the beginning or end of submission, or in between submissions, as a polite introductory phrase	Um, Ladies & Gentlemen, Good Afternoon etc
"You Honor"	To address a Judge	To address a Judge
"My learned friend"	To address the opposing counsel	My opponent, the opposition, him/her, my colleague
"My learned junior/senior"	To refer to your co-counsel	My colleague etc
"We submit"	To introduce any submission or opinion to the court	Counsel submits, I think, i feel, I believe, it is my opinion, I would argue
"Take your Honor to"	To take the court to any document, such as a case, statute, submission	May I draw the Honour's attention to
"May I dispense with formalcitation?"	When asking to use theshort title of a case	Do not just do this without first asking
"I cannot assist the court on that matter"	Where you do not know the answer to a question	I don't know, Um...
"I will now turn to my first/next submission"	To introduce a new submission	My first point is...
"With respect your Honour"	To correct the bench or if disagreeing with them	I disagree, You're wrong
"If I could be hear for a moment longer"	When the Judge is pressing you to move on but you are not ready to do so	I need to finish my point

THE MOOTING GUIDE

PHRASE	HOW TO USE IT	INCORRECT
If your Honour is content to accept that without further submission	Where the Judge had indicated that he or she agrees with you and does not need to hear your submission and you wish to move on	Okay if your Honour is happy with that then
"I withdraw that"	To retract an incorrect statement	Oops, Sorry that's wrong, Can I take that back etc
"That case is distinguishable"	Where you agree that a case is valid in law but say that it does not apply	That case is different...
"Might I move on in the interests of time" or "I note the time, your Honour, may I move on to my next submission?"	When you are running out of time and need to move on	I'm running out of time
"I see my time has expired, may I have a short extension to conclude/answer your Honour's question(s)"	When the time has runout but you are halfway through saying something	Do not just keep talking once time is up
"Those are our submissions"	To conclude your submissions	I rest my case, Thank you your Honour

THE MOOTING GUIDE

5 QUESTIONING FROM JUDGES

During oral presentation, the Judge/s may ask questions on a point of law being discussed or ask for discussion of the facts in more detail or apply them specifically to the argument. These questions are not there to trick you but to see if you can handle their questions while still arguing your position.

There are three things to remember when being questioned by the Judge/s: flexibility, simplicity and answering directly.

Flexibility

When the Judge asks you a question they are trying to move you away from the structure you planned on delivering your speech. Therefore, it is essential that you are flexible with your speech and can move to where the Judge wants to go and then seamlessly move back to your planned content.

Simplicity

The easiest way to keep the Moot moving smoothly is to make everything simple for the Judge. Remember not to over complicate what you are trying to say and make sure you have your speech clearly set out.

Answering Directly

When a Judge asks you a question you can pause and take a quick breath before providing an answer that clearly answers the question. Below is a table of useful phrases which may assist you when presenting your oral argument:

THE NEGOTIATIONS GUIDE

In this Competition, two teams of two meet at a negotiation table to achieve the best outcome for their respective clients.

Legal negotiation is a fundamental skill in the legal profession, as the majority of disputes are settled outside of court.

There is no single correct approach to conducting a Negotiation, there are many negotiation styles and strategies. Whichever path you choose to take, whether a positional or a collaborative approach, bear in mind that you must conduct the negotiations in the best interests of your client.

Ultimately the main objectives of the Negotiation are to:

- Arrive at a compromise in settling a dispute in a way which is most beneficial to the client.
- Achieve the best possible outcome for the client without needing to resort to litigation.
- Obtain enough information from the other party to reach a potential solution.

1. PREPARATION

Each party is provided with a common set of facts and a set of exclusive facts and information known only to them about their client. The outcome of the Negotiation is dependent on how teams utilise this information. Good preparation is essential to an effective negotiation.

It is very important to familiarise yourself with the given facts and gain a firm grasp and an understanding of your client's objectives and interests.

It is very important that you know the strengths and weaknesses of your case, and to consider what it is exactly that your client seeks out of the Negotiation. For instance, are they seeking monetary compensation, or for the situation to be made right? Do they have a required timescale for the negotiation?

Prior to the Negotiation, you may choose to devise a negotiation plan, which could include:

- A timeline of what you will do and when
- A list of issues you need to raise
- Preferred order in which to raise issues
- Best and worst case scenario for each issue
- A list of possible options available

2. DURING THE NEGOTIATIONS

During the negotiation you may face speed bumps and attempts by your opposition to change the focus of what is being discussed. Therefore, it is important you stick to your strategy but do this with flexibility and showing the ability to compromise where necessary and push hard on other issues.

THE NEGOTIATIONS GUIDE

Although the best way to display strategy is to take control of the discussions it never hurts to let the other team lead what is happening. This may allow you to see and hear exactly what they are proposing and amend your game plan accordingly to succeed in your client's favour.

At the beginning of the Negotiation it is sometimes helpful for each team to outline exactly what they are after (but never reveal your client's instructions – it will give away your whole case!) and for each team to have the chance to ask the other team any questions they see relevant. A common problem in Negotiation is teams moving too quickly so make sure you know and understand what each side is asking for first.

The actual negotiating part is never easy and there are several ways to conduct a Negotiation. Consider thinking outside the square. Remember, the quality of what you achieve will only be possible through the atmosphere you create with your opposition so try to not have a shouting match and if things are getting out of control take advantage of your allowed break time.

At no stage do you want to damage your client's interest because of a soured relationship with your opposition. If you cannot reach an outcome during the time allocated, consider discussing an option for either future negotiations or to go to court. After the Negotiation each team will have time to privately evaluate their performance and following this individually as a team discuss these evaluations with the Judge.

Some areas that you might want to consider for reflection and evaluation are:

- Strengths and weaknesses of your negotiation, strategy, teamwork etc. meet the client's objectives?
- Do you think you obtained all relevant information?
- Were you effective as a team? Did you follow your strategy if you had one? What was the atmosphere like?
- Did you reach a decision between the parties that was mutually agreeable? Does the result match what your client wanted from the negotiations?
- Anything else you think is relevant

The Judge may also during this time or after provide Competitors with feedback. These are things that the Judge objectively thinks you can improve on or tips of other ways to conduct a negotiation. This feedback is meant to be constructive so do not take it to heart and remember the judge is just trying to help you progress in your learning.

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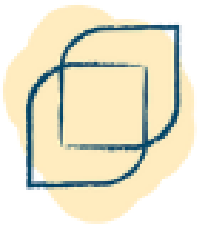

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THE WITNESS EXAMINATION GUIDE

Witness Examination is a great opportunity for law students to develop courtroom advocacy skills. Many law students will one day stand up in court to examine a witness and what better way to prepare than at law school.

Witness Examination teaches students to think on their feet and allows them to familiarise themselves with courtroom protocol and etiquette. his Competition is the most rewarding for those who like putting theory into action and would one day like to go to the bar.

During examination-in-chief (by the prosecution) you will present your case to the Judge by extracting evidence from order the Witness in chronological and natural manner.

The first question should relate to the name of the Witness and their address/occupation and will then proceed as counsel wishes. Leading questions are prohibited for prosecution. Open-ended questions such as “what happened next” should be used instead.

1. PREPARATION

No previous experience is required, however, it is strongly advised that students review the rules of evidence or at the very least familiarise themselves with the grounds for objection listed below.

During the examination
The Witness Examination Competition begins when the Judge commences the proceedings with a statement such as, "I will now take appearances." The counsel for the prosecution/plaintiff will then rise and address the bench with "May it please the court, my name is [X]. I appear on behalf of the Director of Public Prosecutions/Crown/Plaintiff." The defence counsel then follows in the same manner.

Next, both parties make their opening statements, starting with the prosecution. This is your opportunity to present your side of the case to the Judge. The statement should be short, clear, confident and concise, with speech logically structured. You must outline your proposed series of facts and identify all the major issues you wish to cover. be used instead.

Defence will then cross-examine the Witness. Counsel should attempt to highlight inconsistencies with the Witness' evidence. Counsel is permitted to use questions such as "I put it to you that you were not at the pub on Thursday night but instead were at the victim's house." The aim is to scrutinise the Witness' previous evidence but remember that unlike television, this does not mean make the Witness cry.

This process will then be repeated with defence conducting examination- in-chief and prosecution cross- examining.

Finally, counsel for the prosecution and defence will make a short closing statement during which they will bring together all the evidence to support a verdict in their favour. They should try to rebut the opposing counsel's allegations from the opening statement and cross-examination.

2. TIPS FOR CONDUCTING A GOOD WITNESS EXAMINATION

Counsel is expected to make objections throughout the other Competitor's Witness Examination.

The most common grounds for objection are listed below:

Relevance

Relevant evidence is defined as evidence that could rationally affect the assessment of the probability of the existence of a fact in issue in the proceeding. If the evidence is not relevant, it is not admissible. Therefore, if a barrister (competitor) asks something that has no relevance to whether or not somebody had committed a crime, the opposing barrister may object by standing up and saying "objection, relevance."

Opinion

An essential principle of evidence is that Witnesses are to testify only as their direct observations and not to any inference that may be drawn from them. Generally, Witnesses are not allowed to give opinions about an event, other than lay opinions (e.g. hot weather, angry temperament). An example would be that a witness cannot say "Jane was drunk." Instead, the Witness would have to say "I saw Jane drinking five beers, staggering out of the pub and slurring her words", leaving the inference that Jane was drunk to the court to decide.

Leading Questions

During examination-in-chief, a barrister cannot suggest the answer desired, e.g. "did you run after seeing Jane killing John?" This ensures that Witnesses are not being led and are given genuine testimony.

Hearsay

You cannot use evidence of representations made out-of-court to prove those representations are true. For example, if a Witness said: "David's wife told me that she saw Ken punching Tim" it is generally inadmissible to use such evidence to prove that Ken did punch Tim. (However, note that the evidence can be used to prove that Bob's wife said those words).

Prejudice

If the probative value of the piece of evidence is less than its prejudicial effect (i.e. the possibility that the jury will use it against the defendant in some unjustified way), the court should exclude the evidence. For example, if there is evidence to suggest that John was having many affairs before he allegedly killed his wife, the court must consider whether the affairs are relevant and, if so, whether the evidence is too prejudicial to be admitted (i.e. a hypothetical jury may dislike John because he cheated on his wife and rely on this weak evidence to conclude that he murdered his wife).

CONTACT

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