Competitions Handbook 2013

Megan Formanek
competitions@tuls.com.au
CONTRIBUTORS

Introduction, FAQ, Competitions Events: Cameron Ritchie, Megan Formanek
(based on original material by Jessica Brewer, 2011)

Client Interview: Emily Hume and Jessica Brewer

IHL Moot: Bridget Dunne and Jesse Murphy

National Moot: Madelaine Holt, David Tan and Daniel Teoh

Negotiations: Bunewat Keo and Aaron Cullen

Paper Presentation: Indi Hodgson-Johnston

Witness Examination: Hannah Phillips

EDITORS

2011: Jessica Brewer, Bunewat Keo, Hannah Phillips, Cameron Ritchie, Katrina Perndt
and Jesse Murphy

2013: Cameron Ritchie, Megan Formanek
## Table of Contents

- Introduction ..................................................3
- Frequently Asked Questions .................................4
- Competitions Events ...........................................7
- National Moot Competition ................................10
- IHL Moot Competition ........................................16
- Witness Examination ..........................................28
- Client Interview Competition ..............................35
- Negotiation Competition ....................................41
- Paper Presentation Competition ..........................49
- Appendix 1 – Judging Sheets ...............................50
INTRODUCTION

Welcome to the TULS Competitions Handbook! This handbook was written by UTAS Law students and alumni, and we hope that it assists you in feeling confident when participating in Law School competitions at UTAS.

Competitions are a rewarding experience for all involved, regardless of whether you’re taking part in a competition, helping to organise it, or simply spectating.

Competitions are an important part of law student life at UTAS. Competitions provide students with the opportunity to develop and practice their advocacy and legal problem solving skills, employ their knowledge from their studies in exciting competitions, compete with and against their friends, and meet heaps of new people. Some competitions even offer students the chance to represent UTAS at national championships and conferences.

Throughout Semesters One and Two, TULS organises several competitions events for both senior and junior students. TULS Competitions are organised by the Competitions Officer, who is usually a senior student elected in the previous year’s TULS election. The Competitions Officer usually enlists the help of other students to assist with organising the competitions.

Each year, the number of events changes, and the dates of each event are dependent on the University schedule.

However, the events feature some or all of six different kinds of competition, which are:

- The “National” Moot Competition
- The International Humanitarian Law Moot Competition (IHL Moot)
- The Witness Examination Competition
- The Negotiation Competition
- The Client Interview Competition
- The Paper Presentation Competition

This guide is designed to give you an insight into each of these competitions, so that you can feel confident in participating in these competitions when they are offered. This guide also provides a general overview of TULS Competitions events, and a section of frequently asked questions.

Please read this guide through – it has the answers to a lot of burning questions. If you have any questions remaining after reading this guide, please contact the TULS Competitions Officer by email, at competitions@tuls.com.au. The Competitions Officer is a student as well – as such, they may not be able to reply to your emails immediately.

Finally, TULS Competitions would not be possible without the gracious assistance of Law School staff and local legal practitioners as judges and mentors, and the help of students who have participated in these competitions in years past.

Competitions are an incredibly valuable part of Law School – take part, have fun, and build your skills!

Cameron Ritchie
Competitions Officer 2012

Megan Formanek
Competitions Officer 2013
FREQUENTLY ASKED QUESTIONS

The following questions are (needless to say) some of the most frequently asked, or most important, questions about competitions procedure. They generally apply to all competitions organised by UTAS. Any competitions not organised by UTAS (i.e. national competitions) will be likely to have their own rule sets and information packs that are applicable.

How do I find out about competitions and when they're on?

Check out www.tuls.com.au, under the Competitions tab. There you will find all the information you need about the upcoming year's Competitions schedule, details on the Competitions events, Competitions educational resources and links, and more!

Also, all TULS information, including some Competitions information, is released through various media: via email to UTAS student addresses, the TULS Noticeboard opposite the Tas Law Reform Institute, posters in prominent areas of the Law School, and TULS social media pages. You should check these regularly for general University updates and news also.

What do I wear?

All competitors **must** wear business attire or a suit. Business attire is acceptable for most competitions, especially the Client Interview and Negotiation competitions. The Moot and Witness Examination competitions however are usually held in the Moot Court – as such, standard court dress requires both men and women wear a suit jacket. If you are in doubt, refer to the specific instructions of the competition you are competing in.

How do I sign up?

Competitions events are run at different times throughout the year, and sign-up procedure may change. Look out for TULS emails and posters, as they will most likely have instructions as to how and when to sign up. Usually, signups are open for between one and two weeks, on a sign-up sheet pinned to the TULS Noticeboard. You only have to supply your name, email address and phone number, and any other information requested at sign-up. You never have to give your student number.

Can I do more than one competition?

You can try out for as many competitions as you like, but it is important that you do not over commit yourself. It is recommended that if you have a large load of study or other commitments, do not commit to more than two competitions.

When and how will I get the competition question?

This is dependent on the competition, the event, and other time constraints, but it will be made clear in competitions information emails. Generally, questions are released 2-3 days before the competitions are scheduled to run, although a more difficult competition (such as the IHL Moot) will be released earlier. You will generally receive your question via the email you gave at signup. If you have not received your question or any other correspondence by the expected time, it is your responsibility to contact the Competitions Officer.

How do I prepare?

Please refer to the relevant sections in this handbook that outline what you will need and what you will need to prepare for your respective competition.

How long do I need to prepare for my competition?

It is not expected that the preparation will take more than a few days, or interfere too greatly with your study. Preparation for a competition is an individual experience – it will depend on your own familiarity with the question, and how much time you are able to spend on the
preparation. It is your responsibility to sign up for as many competitions as you feel comfortable with preparing for, and to make sure your study is up to date before the competition.

*What happens if I can’t compete anymore, or I don’t want to anymore? Can I withdraw or pull out?*

Pulling out may disrupt the competition schedule. As such, it is greatly appreciated by all organisers if you only sign up to as many competitions as you are comfortable with doing, and inform the Competitions Officer as soon as you know you will not be competing anymore. If you have to pull out within 48 hours of your competition, you may be expected to find a replacement competitor.

*When do I arrive at my competition, and where do I go?*

Competition venues vary, but usually the Moot Court and tutorial rooms are used. Usually you should arrive approximately 15 minutes before your competition to ensure the competition organisers know you are still competing.

*Can I bring people to watch?*

You are welcome to have people watch if you are competing, providing that there is adequate space in the room, and your opponents consent to spectators. However, spectators are not encouraged in Client Interview and Negotiation competitions, as those competitions replicate private meetings. Spectators are expected to be courteous and respect court rules, which are outlined below. If you are a competitor, you may not watch any other competitors’ rounds.

*What court rules must I adhere to if I’m watching or competing?*

All competitors and spectators must adhere to court and competitions etiquette. This includes:

- No filming or recording the competition without permission from your judge
- All mobile phones must be turned off
- Obey any directions from the judges or the competitions organisers
- No eating
- Spectators must not talk or make any noise during the competition
- If you must leave the room, be quiet and bow to the judge on the way in and out of the room

If you do not follow the etiquette you may be asked to leave the competition room.

*How much time do the competitions go for? How do I know when it’s over?*

Each competition runs for a different length of time – refer to the individual competition sections for a general idea on specific competitions. A timekeeper will facilitate each competition; the timekeeper will indicate to competitors when their allocated speaking time is about to elapse. Usually, this is indicated by a knock on a table, a ringing of a bell, or a sign being shown. For example, the timekeeper may knock once when a competitor has 2 minutes remaining, and knock twice when the time has elapsed. Once time has elapsed, the judge has the discretion to stop the speaker.

*What does it mean if I win?*

It depends on the competitions event. See the Competitions Events section of this guide for more information.

*What are the rules of my competition?*

TULS competitions use the standard ALSA rules for each competition. The rules for the competitions are updated annually and appear on the ALSA website. Please go to the ALSA website (www.alsa.net.au) and follow the links through to the Competitions page. Information on
the relevant competitions and rules can be found there. The Competitions Officer will provide the relevant rules when competitions information is provided, however. It is your responsibility to know and adhere to the relevant rules.

What is my faculty moot requirement? What competitions can I do to satisfy the requirement?

Each student must complete a Moot in order to complete their Law degree. Usually students enrol in the Mooting unit (LAW407) in their final year. However, if you are selected to represent UTAS at a national competition or other approved competitions, you may apply to the Faculty Moot Co-ordinator to have your national participation counted as fulfilling the faculty moot unit.

Who do I contact with queries or for further information?

The Competitions Officer is responsible for organising all TULS Competitions. For the most up to date email address, please refer to the contacts page on the TULS website. Currently, it is competitions@tuls.com.au. The Competitions Officer is an elected student representative and as such may not reply immediately. If you do not receive a timely reply, however, contact your year representative, or another member of TULS.

Alternatively, if you want to read even more guides about competitions, visit the websites of other Law Student Societies around Australia and search for their competitions handbooks.
COMPETITIONS EVENTS

At UTAS, three main events are usually held. The number of events that may occur each calendar year depends on various factors. Further, UTAS always sends a team to the Australian Law Students’ Association National Championships.

The Competitions Officer may release a schedule of proposed events at the start of Semester 1 – follow TULS news and social media for more information.

Senior Competitions

This is the TULS Competitions premier event. Each year, the TULS Senior Competitions pit senior law students against each other in a variety of challenging competitions. Guaranteed to further your advocacy skills, participating in these competitions at least once, before you graduate, is a must. Most importantly, this competitions event serves as a try-out for a spot on the 11-person UTAS delegation to the ALSA National Championships.

When is it held? Semester 1, each year, usually between weeks 2 and 4.

Who can participate? All UTAS Law students in their third to final years. Students in their first and second years may participate, though it is not recommended.

Which competitions are run in this event? Mooting, Witness Examination, Client Interview, Negotiation, IHL Moot, Paper Presentation.

What is the format? Within each competition, there is usually only one round, and the participants are ranked by score.

What area of law is usually covered? IHL Moot: various international law. Mooting: anything studied within the first four years of the Law degree. Witness Examination: Criminal Law. Negotiation and Client Interview: anything studied within the first four years of the Law degree.

What does the winner receive? The top placed participants or teams will be invited to attend the ALSA Conference as a member of the UTAS delegation.

ALSA Conference

This is often described as the most fun event any law student can attend during their degree.

ALSA stands for ‘Australian Law Student’s Association,’ and is a national association comprising all Law Student Societies and Law Student Associations. Each year, ALSA organises a national conference that attracts in excess of 500 law students. Each year, the conference is in a different Australian city, and across 7 days treats law students to seminars, speaker forums, careers fairs, sports days, organised (and paid for) dinners and drinks most nights, and of course, numerous parties. The highlight of the conference, however, is the ALSA National Championships, where Australia’s best competitors battle for law student glory across the six competitions.

When is it held? Mid July, annually – often between July 9 and 16.

Who can participate? To participate in the Championships, you must be invited by TULS (as the winner of a Senior Competition). Any student may attend ALSA at their own expense, however. For more information, see www.alsaconference.com.au.
How much does it cost? If you are invited to compete in the championship, TULS will usually cover all of the attendance costs (flights and conference attendance fee only). If the TULS Committee determines, however, a small contribution may be required by invited students. If you are attending ALSA at your own expense, conference fees are usually $850, and flights are usually booked separately. All attendees, invited or otherwise, must pay for local transport, airport transfers, some food and drink, and other incidental expenses.

Which competitions are run in this event? Mooting, Witness Examination, Client Interview, Negotiation, IHL Moot, Paper Presentation.

What is the format? Within each competition, three preliminary rounds are run. The top eight teams in each competition are then announced part-way through the week, and a Quarter, Semi, and Grand Final are held during the remainder of the week.

What area of law is usually covered? IHL Moot: various international law. Mooting: anything studied within the first four years of the Law degree. Witness Examination: Criminal Law. Negotiation and Client Interview: anything studied within the first four years of the Law degree.

What does the winner receive? The winning teams are often invited to attend international conferences on behalf of Australia.

Junior Competitions

Students in their first two-three years of their Law degree are given an opportunity to have fun, learn skills and take on their fellow students in the TULS Junior Competitions. Competition problems and questions used in the Junior Competitions focus on law that students have learned or will learn in the first two years of their degree, and aren’t designed to require a lot of study. This competition is just for fun – and is a great way to discover the world of competitions.

When is it held? Semester 2, each year, usually in mid to late September.

Who can participate? All UTAS Law students in their first and second years can participate. Students in their third year that have never participated in TULS Competitions before may be eligible to participate, at the Competitions Officer’s discretion.

Which competitions are run in this event? Mooting, Witness Examination, Client Interview, Negotiation.

What is the format? Within each competition, there is usually only one round, and the top three teams are ranked by score and announced.

What area of law is usually covered? Contracts, Torts, limited Criminal Law.

What does the winner receive? The top three teams will receive certificates, feedback from judges, and a mention in UTAS Law School publications.
**UTAS Law Moot Competition**

Introduced in 2011, the UTAS Law Moot Competition is growing to be a prestigious annual moot tournament open to all UTAS Law students. In its first two years, this Competition has attracted legal practitioners and real judges to judge students, the final rounds have been held in the Supreme Court, and has attracted considerable interest from the public and other law students. This challenges students to moot complex legal questions against each other in teams of two.

*When is it held?* Semester 2, each year, usually in late September or early October.

*Who can participate?* All UTAS Law students can participate. There are two separate divisions: a Junior Division (for students who have not yet completed Criminal Law) and a Senior Division (for students who have completed Criminal Law).

*What competitions are run in this event?* Mooting.

*What is the format?* Within each division, all competitors compete in a preliminary round. The top two teams, ranked by score, will face each other in a Grand Final.

*What area of law is usually covered?* The Junior Division question focuses on Negligence/Personal Injury/other torts, and the Senior Division focuses on Criminal Law.

*What does the winner receive?* The winner will receive a certificate, personal constructive feedback from a senior academic or judge, and their name will be placed on an Honour Board. The members of the winning team from the Senior Division also entitled to apply for exemption from the Faculty Moot.

**Other events**

TULS is always looking for new opportunities to participate in national competitions. Students from UTAS regularly impress their national counterparts, with impressive results and places in the finals rounds of many events.

In previous years, TULS has sent students to the Victorial Council of Law Students’ Societies Championships, the LexisNexis Constitutional Moot in Canberra, and the Sydney University Law Society National Women’s Moot in Sydney.

Most of the other events UTAS sends students to are in the second half of the year, after the ALSA Conference, and are usually only open to more senior students (3rd to 5th year). Selection processes depend on the time available to the Competitions Officer – follow TULS news and social media to find out more about other opportunities.
**NATIONAL MOOT COMPETITION**

*Madeleine Holt, David Tan and Daniel Teoh*

**General Background**

Mooting is a simulation of appellate court arguments based on a mock factual scenario and judgment from a lower court. The ALSA National Moot can encompass any topic or subject in Australian law (e.g. Contracts, Torts, Constitutional Law etc). The team is comprised of three members - senior counsel, Junior counsel and a Solicitor. Senior and Junior counsels will present oral submissions to the bench and judges are able to question them on their submissions. Team members can opt to switch between roles.

The scenario will usually list out all the facts that were found by the trial judge and will also list out the specific points of appeal. Teams should follow these points of appeal and not stray too far from them. Relevant case law will also be provided.

**Note:** As with the IHL moots, there can be no outside help on the substantive legal submissions. Also do check the rules with ALSA as they might change from year to year and the information provided here may be outdated.

**Quick Overview**

<table>
<thead>
<tr>
<th>Students per team</th>
<th>Participants</th>
<th>How long does the competition run for?</th>
<th>When do I get the question?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 (maximum 3 at national level)</td>
<td>2 x teams of students</td>
<td>10-20 minutes per speaker</td>
<td>5 to 7 days prior</td>
</tr>
</tbody>
</table>

**Likely venue**

Moot Court

**Are spectators allowed?**

Yes, encouraged

**What topics of law are common?**

Anything

**What skill-set is most important?**

Legal reasoning and oral argument

**Approaching the Question**

Make sure that you spot all key issues and facts early on so as to not be led down the wrong track. Also try to split up the issues among your group members and start specialising on your specific topic as soon as possible.

Additionally, make sure that you read all cases through and through when researching. This includes dissenting judgments and any obiter dicta. Your research should in the very least be detailed enough so that you can pinpoint page/paragraph numbers and judges' names when quoting cases during oral submissions. Also do extra research beyond the cases and legislation provided as they might not always be comprehensive.

Remember that preparation is of the utmost importance in mooting. How well you answer questions and present your submissions will often depend on how well you have prepared and researched.

**Sources**

Generally the only authority for legal principles in a court of law is common law or legislation. Second reading speeches and explanatory memoranda may be used only to interpret statutes (for this look at the *Acts Interpretation Act 1901* (Cth) or the acts interpretation act which is relevant for your specific legislation).

Do not use anything other than the aforementioned. Among the things you cannot use are: journal articles, text books, academic books, research papers, newspapers etc.
Written Submissions

You will have to prepare brief written submissions to accompany your oral submissions. The length of the written submissions depends on the length required in the guidebook. Your written submissions should include a brief summary of the facts, your key submissions and the corresponding authorities you are relying on. In relation to the summary of facts, do not be afraid to give it a “spin” (usually by using more assertive terms or language) which will ultimately help you present a more convincing case. This of course should not come at the expense of the truth and brevity of your summary.

In terms of structuring your submissions, you must follow the template provided in the competition guidelines (if there is one). But as a general guide, a good template to follow would be to set it out like so:-

1. Main proposition/submission
   - Rule(s)
   - Exceptions (if any) to that rule
   - Application to the facts (again, try encapsulating the facts in a narrative that works for your side)

2. Alternative/Additional submission
   - NOTE: it is important to have alternative and/or additional submission(s). Sometimes the Court will not be too impressed with your main submission and you must be prepared to put forward an alternative or additional submission. Also, it is really important that you know the difference between an ‘alternative’ and an ‘additional’ submission and how that applies to your case.

A small portion of your points for each moot will be allocated based on the strength of your written submissions. So these should be well-constructed, carefully-phrased and clearly reflect your arguments. A well written submission will stand you in good stead.

In citing your authorities, use the full citation from the Australian Guide to Legal Citation and provide specific page and paragraph pinpoint references. You might also be required to give a list of authorities at the end.

Mooting

There are different aspects and styles to presenting an effective moot. A good mooter, in our opinion, is someone who is confident, convincing and coherent. This of course comes with practice – and lots of it. You can do that by presenting your written submissions numerous times, and responding to a range of questions from different moot judges. Having practice moots with judges who know about the area of law you are mooting on would be invaluable, but it is also helpful to moot before people who have little to no idea about that particular area of law. To always think “Can Joe Bloggs off the streets follow my argument?” could be a good gauge of your performance.

Formalities:

- As a general rule, do not stand to give appearances or present your submissions until the judges have indicated that you should.
- Address the judge(s) as ‘Your Honour(s)’.
- At the beginning of the Moot, both the Appellant and Respondent Senior Counsels will be called on to give appearances – that is introducing themselves and their Junior to the court. For example:

  'May it please the court, my name is Ms ----, and I appear as Senior Counsel for the Appellant. I appear alongside my learned Junior, Mr ----`

- When referring to the Counsel for the opposing side, it is polite to refer to them as ‘my learned friend’. For example:
'My learned friends for the Appellant submit that -----, however I submit ------'

- In any moot, only ever ‘submit’ your argument to the court. Mooters don’t argue, think, feel – they only ‘submit’.
- It is courteous to ask the court if you can dispense with full citations. Do this after citing your first authority. It would be wise to have the full citations and pinpoint references handy just in case.
- If you appear as Senior Counsel for the Appellant, offer to give the Judges a brief summary of the facts (have one ready), but be prepared to go straight into your submissions if they do not wish to hear the summary.

**Time allocation**

Check and double check the competition rules/guidelines on this point. Generally, each side is given 40 minutes to present their case. Teams can split their time between Senior and Junior in two ways: either 20 minutes each or 25 minutes and 15 minutes. The first option is usually better as the Counts/Issues are usually evenly-weighted.

The Senior Counsels from both sides will be responsible for stating this when giving their respective appearances.

**Style tips for presentation**

1. Always address the Bench as 'Your Honour' or 'Your Honours'.
2. Know whether the Justice you’re quoting is female or male.
3. Try not to use too many notes. Eye contact with the bench is essential and having notes may make it more difficult for you to be flexible with your argument and where the judge wants to take it.
4. Use the lectern. Hold on to it if you get nervous or move away from it when you want to make an important point. Small movements like this make your argument style more engaging for the judge.
5. Avoid distracting mannerisms. Anything from twirling a pen or shifting your weight can be very distracting and the judge will concentrate on this rather than your argument.
6. Structure your argument clearly. Explain your overarching proposition then set out how you will make your argument. For example; “I will be making two submissions. First, ............ Second.......” Briefly summarise your argument at the end of each submission and then summarise at the end of all your submissions.

**Questions from the Bench**

Questions from the Bench will usually comprise most of your final mark. It is the most important part of the moot. Therefore, it is important to have a good knowledge of the law and how it applies to the facts. Beyond this, there are some tips to keep in mind when answering questions:

1. Stop speaking as soon as the Judge asks you a question, even if you are mid-sentence. Do not start speaking again until the Judge finishes their question.
2. Feel free to pause and take a breath when asked a question. It is not necessary that you answer straight away.
3. If you are unsure of the question, you may say something along the lines of ‘Your Honour, could you please rephrase your question?’
4. It is important to remember that although the Judge may be grilling you, questioning is a fantastic way to show your knowledge of the law. Don’t get intimidated by the judges, they are asking you questions to give you an opportunity to show your knowledge.
5. If you don’t know the answer to a question, do not pretend you do. Simply say ‘Your Honour, I have no submissions on that point’ or ‘I cannot help Your Honour further on that point’ and move on.

6. If the Judge asks you a question that you would be coming to in a later submission, answer the question straight away. It is important to be flexible in your submission so you can help the Judge with their questions right away.
IN THE MAGISTRATES COURT OF TASMANIA

HOBART REGISTRY

BERYL GULLIBLE Plaintiff

AND

SKINNY DRINK COMPANY PTY LTD Defendant

t/a SKINNY DRINK CO

STATEMENT OF AGREED FACTS

1. The defendant is the manufacturer of a product named Skinny Drink. It is a meal replacement designed for overweight people who are trying to lose weight. The drink was first marketed in 2004 and has had a reasonably high rate of sales.

2. The company predominantly advertises on late night infomercials shown on commercial television. It airs a 15 minute infomercial each night on Channel 9/WIN TV between 2am and 3am.

3. In August 2007 the company launched a new advertising campaign, named the Skinny Drink Challenge. The 15 minute infomercial featured several statements to the effect that Skinny Drink Co guaranteed any overweight person who drank Skinny Drink (in accordance with the directions on the packaging) three times a day in substitution of meals for 14 days would lose 5% of their body weight. The ad stated the company would pay $3,000 to any person who took the Skinny Drink Challenge and failed to lose 5% of their body weight after 14 days.

4. The infomercial was shown every night between 2am and 3am on Channel 9/WIN TV from 1 August, 2007. Due to a change in marketing strategy, the Skinny Drink Challenge was subsequently scrapped and the ad was withdrawn from television on 9 September, 2007.

5. From 9 September 2007, Skinny Drink Co reverted to showing its previous infomercial (the ad shown prior to the Skinny Drink Challenge). For a week, the infomercial also featured a voiceover stating, 'The Skinny Drink Challenge is now over, but your new life can begin today!'

6. The plaintiff is 48 years of age and lives alone. She is overweight. The plaintiff has difficulty sleeping, and watches late night infomercials on the television each night until 3am, at which time she goes to bed.

7. The plaintiff saw the Skinny Drink Challenge infomercial every night from the time it first aired on 1 August 2007. The plaintiff had been on lots of fad diets, none of which had been successful, so she was not tempted to take up the Skinny Drink Challenge.

8. This changed on 25 August, 2007, when the plaintiff was subjected to an unfortunate incident where a group of school children called her hurtful names in relation to her weight. This made the plaintiff feel depressed about her weight. While she was watching television late that night, she again saw the Skinny Drink Challenge and decided to take up the challenge. She telephoned the number on the screen and ordered
Skinny Drink for the introductory offer of $96 for 14 days supply (plus postage and handling).

9. The 14 day supply of Skinny Drink arrived at the plaintiff’s house on 1 September, 2007. She consumed Skinny Drink in accordance with the directions from 2 September - 15 September, 2007.

10. As the plaintiff was consuming Skinny Drink in substitution for food, she began to feel very tired in the evenings. During the Skinny Drink Challenge, the plaintiff went to bed at 11pm, instead of 3am which had been her usual habit. As a consequence, the plaintiff was not aware the Skinny Drink Challenge had ended and the ad taken off air on 9 September 2007.

11. At the start of the Skinny Drink Challenge, the plaintiff weighed 120kg. At the end of the 14 days, the plaintiff weighed 118kg.

12. Even more depressed than ever, the plaintiff's spirits were lifted when she remembered the promise made by Skinny Drink Co to pay $3,000 to anyone who did not lose 5% of their body weight. The plaintiff planned to use the money for lap band surgery.

13. The plaintiff telephoned Skinny Drink Co on 16 September, 2007, only to be told by a representative of Skinny Drink that the ad campaign had been scrapped and, in any event, the offer of money was not serious and merely part of a sales drive.

SUBMISSIONS FOR THE PLAINTIFF

The plaintiff is extremely angry with Skinny Drink Co. She alleges she had a binding contract with the defendant and is demanding payment of the promised $3000.

The plaintiff submits the offer was not validly revoked because the revocation was not communicated to her and, in any event, she accepted the challenge before the revocation and must have been given time to perform the contract.

SUBMISSIONS FOR THE DEFENDANT

The defendant regrets the misunderstanding, but says it never entered into a contract with the plaintiff. The defendant submits the Skinny Drink Challenge was a mere sales puff and was not intended to be taken seriously. It submits such advertising techniques are common in the weight-loss market.

In the alternative, if the court finds that the Skinny Drink Challenge did constitute an offer which was capable of acceptance, the offer was revoked before the plaintiff performed the contract, and the defendant is under no obligation to pay the money.

As counsel for the plaintiff or defendant, please prepare oral submissions in support of your client. Your submissions should take 7 minutes, which includes questions from the bench. Please confine your argument to the common law (ignore statute and equitable arguments such as estoppel).

Suggested reading:

*Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256

*Mobil Oil Australia Ltd v Lyndel Nominees Pty Ltd* (1998) 81 FCR 475
INTERNATIONAL HUMANITARIAN LAW MOOT COMPETITION

Bridget Dunne and Jesse Murphy

The International Humanitarian Law (IHL) Moot is a competition that requires teams made up of two students to research and present arguments on IHL. The competition is based around a problem question, which is usually 10 or so pages in length, and which presents a hypothetical IHL situation, usually involving a conflict between invented countries. As part of the hypothetical (generally), a Special International Criminal Court will be established to hear alleged breaches of IHL that occurred during the pretend conflict.

The problem question will set out who the accused persons are, and what specific breaches they have been charged with. It will probably also provide some specific detail on the statute establishing the Special Court. There are usually two Counts specified - Senior Counsel delivers submissions on Count 1, and Junior Counsel delivers submissions on Count 2.

Note: the rules usually stipulate that the team cannot have any outside help in preparing their arguments. That doesn’t extend to tips on mooting style. However, if you do have practice moots, make sure the judges don’t give substantive advice on the law – it’s not worth the hassle if other teams find out and appeal.

Quick Overview

<table>
<thead>
<tr>
<th>Students per team</th>
<th>Participants</th>
<th>How long does the competition run for?</th>
<th>When do I get the question?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2 x teams of students, up to three judges</td>
<td>30 minutes per team at national level</td>
<td>Between 5 and 7 days prior at UTAS level</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Likely venue</th>
<th>Are spectators allowed?</th>
<th>What topics of law are common?</th>
<th>What skill-set is most important?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moot Court</td>
<td>Yes, encouraged</td>
<td>IHL – International conflict scenario</td>
<td>Legal argument and oral presentation</td>
</tr>
</tbody>
</table>

Approaching the Question

Read the question a couple of times to get a handle on the events and characters that you have to base your arguments on.

It can be useful to make a half page dot point summary of the facts early on so that you can quickly refer to the key events.

Return to the facts when finalising your arguments and again when polishing your oral submissions – facility with the facts (i.e. ‘If I could direct the court to paragraph 14 of the facts’) is really impressive, and makes your argument much more convincing.

Key aspects of IHL to be aware of

Be sure to check in the problem whether you are dealing with an International Armed Conflict or a Non-International Armed Conflict. The jurisdiction of the Court may vary depending on the type of conflict, and so may the types of sources of law which will apply. Even if the type of armed conflict in the problem is quite clear, it is an advantage to be able to state clearly what the differences are, and why the conflict in the question is what it is.

Following on from that, make sure to establish the basis of the Court’s jurisdiction over the specific breaches of IHL. Even if in the end you don’t directly address jurisdiction in your oral submissions, you will either get asked about it by a judge or challenged on it by the other team.
Beyond the specific breaches of IHL outlined in the problem, it is a good idea to have knowledge of the general principles of IHL which are: distinction, proportionality and necessity. Any general IHL text will be able to give you an overview – these principles will inform how you approach your arguments, and how the judges assess the issues in the case.

Whilst you will want to be aware of these general principles, remember that you must confine yourself to addressing the crimes specified in the indictment when constructing your submissions. It is no use arguing for the Prosecution that the accused has breached the proportionality principle if they are charged with some unrelated offense on the same facts.

Regardless of the specific breach that you are asked to argue, the principles of individual criminal responsibility and command responsibility will be relevant. Again, whilst general knowledge of these principles are helpful make sure you confine yourself to addressing the specific form or forms of criminal responsibility identified in the Court's Statute and in the indictment when making your arguments.

*Sources of IHL*

The problem question will indicate which treaties the fake countries are parties to, and should also provide an indicative case list. These will provide you with a place to start your research.

With any source that you use, be sure to have a clear answer on why that source is relevant to the issue, and why the Court should take it into account. Check the problem question to see if the Special Court has any particular precedent structure (i.e. decisions of the ICTY will be authoritative) – if so, look to those sources first. If not, be clear on how authoritative/persuasive sources are. Generally, treaty law and customary international law rules will be highly persuasive as will the decisions of international tribunals. It will be harder to convince the Court to be persuaded by national court decisions, or textbooks or articles by eminent IHL scholars.

Beyond that, the following might be useful:

**Treaty Law:**

The primary sources of IHL are the four Geneva Conventions, and the two Additional Protocols to the Geneva Conventions. As well as the treaties themselves, there are detailed commentaries to all of the Conventions produced by the International Committee of the Red Cross (ICRC), which are really useful for interpreting the treaties.

There are also other treaties which may apply, particularly if particular types of weapons have been used in the problem scenario – see for example, The Hague Conventions, and Conventions which ban or regulate certain weapons.

**Case Law:**

There are a range of international courts and tribunals which interpret and apply the rules of IHL. The most prominent are the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Both tribunals have a large amount of case law that might be helpful. Do not be intimidated by the length of cases. They are well organised so look for a ‘Relevant Law’ section near the start in the table of contents. The Court websites also have useful summaries for a starting point.

The ICTY and the ICTR also have foundational statutes that are likely to be similar if not identical to the statute of the imaginary Special Court in the problem question. The interpretation of those statutes by the tribunals will be useful for addressing issues of jurisdiction, and criminal responsibility.
The International Criminal Court (ICC) at the time of writing had not yet heard its first case. However, it also has an important foundational statute, and has also set out the elements of a variety of crimes in IHL.

**General information about IHL:**

In the initial phases of research, general information about IHL, its central principles, and the major issues likely to arise in the problem question can be found in texts on IHL in the Library.

Journal articles can also be useful for setting out possible arguments, clarifying issues and suggesting other sources, but be mindful that they are unlikely to be persuasive legal sources on which to base your submissions.

**Mooting**

There are lots of different aspects to presenting an effective moot – a large proportion of which have to do with confidence and practice. Nothing helps more than practice presenting your written submissions a lot, and responding to a range of questions from different judges. Some practice moots with judges who know about IHL will be invaluable, but it is also helpful to moot to people who have no idea about the law. If people who have no knowledge of the law can follow your argument, then it is clear and convincing.

**Formalities:**

As this is an international court, albeit a fake one, it is appropriate to address the judge as 'Your Excellency' or 'Your Excellencies' if there is more than one judge. The presiding judge (if there are three judges, this will be the one seated in the middle) should be referred to as Mister/Madame President.

Don’t be put off if other teams use the wrong forms of address, such as 'Your Honour' – they're wrong!

The presenters for the Prosecution and Defence are referred to as Senior and Junior Counsel.

At the beginning of the Moot, both the Prosecution and Defence Senior Counsels will be called on to give appearances – that is introducing themselves and their Junior to the court. For example: 
'Madame President, your Excellencies, my name is Ms ----, and I appear as Senior Counsel for the Prosecution. I appear alongside my learned Junior, Mr ----'  
Other forms will also be acceptable, provided they clearly identify which speaker is which.

When referring to the Counsel for the opposing side, it is polite to refer to them as 'my learned friend'. For example: 
‘In light of the submission made by my learned friend for the Prosecution on -----, I submit ------’

As a general rule, don't stand to give appearances or present your submissions until the judges have indicated that you should.

In any moot, only ever ‘submit’ your argument to the court. Mooters don’t argue, think, feel – they only ‘submit’.

It is courteous to ask the court if you can dispense with full citations. Do this after citing your first authority.

If you appear as Senior Counsel for the Prosecution, offer to give the Judges a brief summary of the facts (have one ready), but be prepared to go straight into your submissions if they don’t want to hear the summary.
**Time allocation**

Double check the rules released at the same time as your question, but generally each side (Prosecution or Defence) is given 30 minutes to present their case.

Teams can split their time between Senior and Junior in two ways: either 15 minutes each, or 20 minutes and 10 minutes. The first option is usually better as the Counts are usually fairly evenly waited.

There is no right of reply or rebuttal.

**Style tips for presentation**

Beyond having a good knowledge of the law and the facts, and of your argument, the biggest advantage in mooting comes from clarity. Set out your argument as simply as possible, and signpost every step that you take, so that the judges can follow exactly where you’re going. For example:

'I will be making two submissions. 1 That 2 To my first submission. This submission has two parts. 1 , 2 '

At the end of your first submission, provide a very brief summary and then say that you are moving to your second submission.

At the end of your last submission, provide a brief summary of all submissions on that point.

Try not to read – eye contact with the judges is important and something that they will be looking for. Very few notes, or even no notes, is preferable to shuffling a lot of papers, which also has the risk that you will get lost in the paper and loose the momentum of your argument.

Don’t do anything at the lectern that would distract the judges from the strength of your argument. Hand gestures, shuffling and swaying will generally detract from your presentation.

If you are the Prosecution, you are proving a case to the court. Be assertive – ‘The Prosecution will prove ‘ and in summary ‘The Prosecution has proved ‘

If you are the Defence, you don’t have to prove anything, you just have to undermine the Prosecution case. ‘The Prosecution has failed to prove beyond a reasonable doubt ‘

It is often useful to acknowledge the strengths of the other side and characterise your opponent’s case so you can undermine it. Always be fair in this assessment, as this will make it more persuasive when you point out why they are wrong. For example: ‘The Prosecution's case, at its highest is that X. It is our case that Y.’ This can be very useful in an introduction to let the court know what the main issue in contention is.

**Answering Questions**

Answer as clearly and directly as you can – it’s preferable to not dismiss the question by saying ‘I will address that in my second submission’ or similar. Address the question quickly, and return back to your substantive submissions. If the question was a complicated one, signpost which part of your argument you are returning to – ‘I am now returning to the second part of my first submission, that ‘

If you don’t understand the question, it’s okay to ask the judge to clarify or rephrase.

**Getting out of tricky situations:**

If a judge poses a question with which you disagree, it’s respectful to start your response with: ‘With respect Your Excellency, I disagree with your characterisation of the facts on this issue’ or something similar.
If you get asked a question that you can’t answer, it’s okay to say ‘I’m sorry Your Excellency, I cannot assist the court on that issue.’

If you are getting continually questioned on one particular issue and you have said all that you have to say, or exhausted your knowledge on that area, it is best to say ‘Your Excellency, I have stated our submission on this issue as high as I can, and with permission I would like to move on to our next submission.’

**Written submissions**

You will have to prepare brief written submissions to accompany your oral submissions. These should include a very brief summary of the facts, summaries of your key submissions and which authorities you are relying on to support those arguments. A small portion of your points for each moot will be allocated based on the strength of your written submissions, so these should be well constructed, carefully phrased and clearly reflect your arguments.

Remember to follow the template provided in the rules for how to set out your submissions. In addition, try and provide a clear statement of the rules you are relying on. Try and apply these rules to the facts by encapsulating the facts in a narrative that works for your side.

In citing your authorities, use the full citation from the Australian Guide to Legal Citation and provide specific page and paragraph pinpoint references.
[1] Lamina and Almenia share a long, mostly mountainous border. Lamina was originally a colony of Illonia, but has been independent since the early 1940s. Lamina consists of two ethnically distinct groups, the Illans and the Minals. Since independence Lamina has experienced two major civil wars between these groups, which has left much of its infrastructure damaged and much of its population in relative poverty. The majority of Almenia’s population are Illans, although since the civil war in Lamina, there is a growing minority of Minals, particularly in the border region.

[2] The eastern border Lamina shares with Almenia mainly consists of Lam Cape, a rugged, mountainous area, which has a largely impenetrable gorge serving to isolate Lam Cape from the rest of Lamina. Lam Cape is predominantly populated by the Minals, and regards itself as a semi-autonomous region of Lamina.

[3] In 2002 Lamina experienced a drought lasting several years, which resulted in chronic food insecurity throughout the country. As a result, the International Federation of Red Cross launched an emergency appeal and stated that food insecurity in Lamina had resulted in over 2 million people in need of emergency assistance. The appeal was particularly targeted at eastern Lamina which became virtually dependent on food aid. Most of the food aid destined for Lam Cape and its surroundings was transported from the Almenian capital of Almos, given its close proximity to the mountain villages in the east of Lamina. The journey from the Almenian capital of Lam to the eastern mountain villages in Lamina involves a long, dangerous journey, and requires specialised all-terrain heavy vehicles – generally modified ex-Soviet UAZ-469s – as much of the road is in bad condition.

[4] In early 2003, the Free Lam Cape Coalition (FLCC) was formed in Lam Cape. The organisation, run mainly by Minals, was voted into power in the state elections later that year. The FLCC undertook government activities, but also had several other purposes, including charitable objectives. The Illan population on Lam Cape appealed to the Laminan authorities to interfere in the arrangement, stating that they felt they were being unfairly discriminated against by FLCC policy and law. There were widespread reports of prominent or vocal Illans ‘disappearing’ or being arbitrarily detained.

[5] In 2006 Media sources reported that a substantial illegal arms and narcotics trade had developed in the impoverished eastern region of Lamina, in particular in Lam Cape. The reports alleged that Lamina was turning a blind eye to the problem, and that several senior FLCC figures were heavily involved in the trade.

[6] In October 2007 in response to increasing illegal activity in the border region, the Almenian government implemented border controls on all roads crossing the border. The new measures required all vehicles wishing to cross the border to obtain a permit at least 24 hours in advance and submit to mandatory vehicle checks before entering or leaving Almenia. Border surveillance planes intermittently patrolled the border region gathering information for the Department of Border Security and Immigration.

[7] In early 2008, Almenian intelligence reports and surveillance footage indicated that the drug and weapons trade and corresponding violent crime had significantly increased in Lam Cape and was beginning to spill over into Almenian territory. The border control measures had had little effect on limiting illegal trade as alternative routes were being used.

[8] On 21 February 2008, an Almenian border surveillance plane was shot down over Lam Cape by a surface-to-air missile. One pilot was killed, while the other was taken hostage. Although no specific group claimed responsibility for the attack, the FLCC acted unsuccessfully as an ‘intermediary’ in ongoing negotiations between the hostage-takers and the Almenian Government.

[9] As a result of the attack, the Almenian Government called an emergency meeting in early March 2008. At that meeting Commander Jala Jones, head of the armed forces, suggested that members of the armed forces station the checkpoints. He also called for the
replacement of manned aircraft with unmanned aerial vehicles (UAVs), or 'drones' which would be able to patrol the Lam Cape border region without the threat of Almenian casualties. He stated that the Almenian armed forces had been conducting trials of UAVs designed by a private company, Skynet Inc. Commander Jones stated that the drones are cheaper, more efficient and more suited to the surveillance task than manned vehicles. Skynet drones are virtually silent, can stay aloft for up to 24 hours and have 32 high powered cameras which instantaneously relay video data back to an operations control unit in Almenia via satellite. The drones are semi-autonomous, and once they are programmed with general flight plans, they operate without the need for direct human control, unless a human operator overrides the auto-pilot. The meeting agreed with these recommendations.

[10] The Almenian Government contracted Frank Mane, an Almenian software engineer who was instrumental in developing Skynet's UAVs, as an expert consultant for UAV operations. Mr Mane was employed by the Department of Border Security and Immigration to oversee the use of UAVs for border surveillance, reporting directly to Commander Jones and the Minister for Border Security and Immigration.

[11] Initial UAV footage revealed significant movement over the border from Lam Cape to Almenia, most of which occurred at night. It also revealed substantial transportation of weapons into what were suspected bases in the Almenian mountains. During surveillance operations several drones were targeted by ground-to-air missiles, but given their early warning systems, human controllers in Almenia were able to order the drones to take evasive action in time to avoid attack.

[12] Given the escalating violent crime and drug and weapons trade in Almenian villages in the mountainous border region, and in response to mounting public pressure, in early April 2008 the Almenian government adopted a policy of 'zero tolerance'. Legislation was introduced subjecting anyone found possessing weapons or drugs of any sort to immediate detention without bail. A curfew was imposed in the border region of both countries and anyone found travelling in the region without prior permission from Almenian authorities would be detained for questioning in Almenia.

[13] At a subsequent government meeting in April 2008, Commander Jones put forward a report recommending that part of the fleet of UAVs be armed with multi-target AGM-114 'Hellfire' missiles. Commander Jones reported that these unmanned combat aerial vehicles (UCAVs) would offer a definite advantage over traditional law enforcement or armed forces attacks in the difficult terrain of the mountain region. The Almenian Government agreed and a UCAV operations centre was set up under the guidance of Frank Mane. Mr Mane was appointed Head of UCAV Operations. He was authorised to use lethal force in two circumstances: either under the direction of Commander Jones or the Minister for Border Security and Immigration; or in direct response to an attack on a drone.

[14] On 5 May 2008, the Almenian government issued a press release stating: ‘Almenia will not be a refuge for criminals. We are hereby warning that within the next month, the Almenian armed forces will be taking decisive action in the region that may involve the use of armed force.’

[15] The announcement was widely published in both the Almenian and Laminan media. Posters were put up in public locations in the region, and notices were distributed to all vehicles attempting to cross the border through checkpoints.

[16] During May, UCAVs were used to destroy three weapons bases, and one guarded drug manufacturing plant in the Almenian mountains.

[17] On June 1 2008, Commander Jones announced that he had reliable intelligence of a weapons cache in Lam Cape, close to the Almenian border and requested permission to destroy it. The Almenian government informed the Laminan authorities of the attack, stating ‘it is considered necessary to preserve national security’. The attack was successful in
destroying the cache, and was again carried out by the UCAV Operations centre, under the direction of Frank Mane.

[18] Following the attack, there was a media outcry in Lam Cape with allegations that the attack had also killed a number of goat-herders who happened to be in the vicinity. The Laminan government issued a statement condemning the attack as an illegal use of force on its territory.

[19] In the following weeks another seven targets, associated with weapons storage or drug manufacturing, were destroyed in Lam Cape. Each target was approved by Commander Jones and the Minister for Border Security, and the details given to UCAV operators, who, under the supervision of Frank Mane, carried out the attack. Drones responded to perceived threats from individuals firing ground-to-air missiles, mostly ‘successfully eliminating’ such threats.

[20] On 14 June, Righting the World, a non-for-profit human rights group, published a report alleging that several of these ‘responses’ to ‘perceived threats’ were carried out against civilians, or resulted in disproportionate casualties.

[21] On 25 June a car-bomb exploded in the Almenian village of Halme killing 23 civilians and injuring many more. A video circulated on the internet showed a shadowy figure saying ‘unless Almenia leaves Lam Cape and stops interfering in Laminan affairs, similar attacks can be expected in the future.’

[22] On 26 June, Commander Jones called an emergency meeting with the Department of Border Security and Immigration. He stated that UAV footage had revealed that border movement had significantly increased at night. He also reported that he had intelligence that ‘terrorists’ and smugglers in the region were disguising their all-terrain UAZ-469s to resemble aid vehicles, making it hard, if not impossible, to distinguish between legitimate and non-legitimate convoys, especially at night. The next day, the Department of Border Security and Immigration authorised ‘Operation Border Protection’ using UCAVs to patrol the border region after curfew. Five more UCAVs were ordered from Skynet Inc. to be added to the fleet and the UCAV Operations centre was expanded.

[23] On 3 August, an Aiding Peace convoy was targeted by an UCAV while travelling from Almos to Lam Cape after curfew. Four employees were killed and three seriously wounded. Aiding Peace claimed that they had given the details of their trip to Almenian authorities, but had taken an alternate route after a landslide made the road impassable. As a result, they were unable to get to their destination within the ‘very tight gauntlet’ of daylight hours. They also claimed that ‘unnecessary delays’ at each border check-point from Almos to Lam Cape had placed them severely behind schedule.

[24] The President of Almenia issued a formal apology to Aiding Peace and offered to replace the vehicles, but refused to stop the UCAV targeting of suspected smuggling convoys as it was ‘the only successful way to limit terrorist activities in the region’.

[25] On 11 August another road-side bomb exploded in the Almenian city of Almos killing 48 civilians and injuring many more. Commander Jones informed the President and the Minister for Border Security and Immigration that he had intelligence linking a wing of the Free Lam Cape Coalition (FLCC) to the terrorist attacks on Almenian villages and Almenian armed forces personnel in Lam Cape. He stated, ‘unless we act decisively to stop these attacks, more innocent Almenians will die’. Commander Jones suggested deeper incursions into Lamania to ‘give the terrorists nowhere to hide’. He provided a report by Frank Mane stating that discrete and accurate targeting of individuals could be undertaken by UCAVs in populated areas with minimal peripheral casualties. The President authorised the use of lethal force against such targets, specifying that all necessary measures should be taken to avoid unnecessary deaths.

[26] On 12 August, following weeks of negotiations with Illonia, Almenia agreed to enter into peace talks with the Laminan authorities and the FLCC. All parties agreed to work towards a peaceful solution to the conflict.
[27] On 23 August Commander Jones was provided with intelligence data indicating that Katherine Potter, the Mayor of Lam Cape and an influential member of the Minal community in Lam Cape had been heavily involved in the bombing of Almos. The source also alleged that the FLCC had a ‘terrorist wing’ and that Potter used her farmhouse residence as headquarters when planning the attack. Border security footage also showed Katherine Potter crossing the border from Almenia to Lam Cape hours before the bomb explosion in Almos. As a result, Commander Jones ordered undercover ground operatives to monitor her farmhouse.

[28] On 26 August, Commander Jones provided Frank Mayne with the intelligence on Potter, and stated ‘for the safety of the people of Almenia, Katherine Potter needs to be eliminated, although she is proving tricky to track down.’ Ground intelligence operatives were ordered to provide the UCAV Operations Group with any information on Katherine Potter’s whereabouts.

[29] On 3 September at 7:00pm intelligence indicated that Katherine Potter had entered her farmhouse together with several other senior FLCC figures. Two UCAVs were deployed to the area. At 7.28pm the two UCAVs took up positions within targeting distance of the house and placed it under surveillance. Thermal imaging from the UCAVs indicated that eighteen people were present in the house along with an extremely high amount of metallic substance. Frank Mane determined that this indicated weapons of some sort. At 7:48pm a UCAV controller confirmed that night-vision footage of a person next to an open window was a positive match for Katherine Potter. Frank Mane attempted to contact Commander Jones seven times between 7:50pm and 8:50pm, for a final decision on whether to target the farmhouse, but Commander Jones was unreachable. At 8:54pm several people began leaving the house to vehicles outside. Although none of these were identified as Katherine Potter, Frank Mane concluded that the meeting was breaking up and visual contact with Katherine Potter – who had proved elusive until then – would be lost. As a result he ordered two missiles to be fired from opposing positions into the room of the farmhouse where the meeting had been taking place.

[30] The next day, intelligence confirmed that the living room of the farmhouse had been destroyed and that seventeen people had been killed in the attack, including Potter. Three of the people killed were children who had been present in the house, but hadn’t shown up on the thermal imaging. Intelligence suggested that the people were leaving the house to attend a wedding reception a few kilometres away, and that there were no weapons in the house at the time – a fact that most soldiers would have picked up. The metal in the room was revealed to be milk purifying equipment that had been modified to act as a distillery for the festivities.

[31] On 7 September, Commander Jones told Frank Mane that he would be appointing Lieutenant Woe, to work with Mane within the UCAV Operations centre, to ‘take care of the military aspects of your work’.

[32] On 15 September, a report by a not-for-profit human rights group, Righting the World stated that thousands in Lam Cape were close to starving and that over 60% of the population were entirely reliant on food aid. It also alleged that Almenian forces were only allowing limited aid supplies over the border, and that most commercial food supplies had been prevented from entering the region at the Almenian border, or had stopped delivering to Lam Cape due to the conflict. The report called on the Almenian government to respect its obligations under international humanitarian and human rights law and ensure the population of Lam Cape has access to adequate food and other essentials.

[33] Following the release of the report, and pressure from the Almenian Foreign Ministry to abide by IHL and avoid negative publicity, Commander Jones instructed his forces to ‘go easy’ on aid vehicles trying to cross the border into Lam Cape. He also issued a press release, stating that the Almenian armed forces intended to ensure that the population of Lam Cape was provided with adequate food, and that they would do everything in their power to facilitate the entry of aid groups into Lam Cape.
On 30 October, Frank Mane announced that the UCAV systems had been upgraded and that he had been hit by a ground-to-air missile, and that its signals had been jammed before it had been hit. Although the drone had detected an attack its primary mission was to pursue the convoy, and its programming dictated it could not withdraw from that mission unless a human operator provided an override veto. The drone had failed to alter its course which was the likely cause of it being hit by the missile.

After discussions between Frank Mane, Commander Jones and the Minister for Border Security and Immigration, it was decided on the 4 October that given the new threat of drone-jamming devices, UCAV and UAV programming would be ‘upgraded’ to allow for fully autonomous operations where satellite control had been lost. Both UAVs and UCAVs would be permitted to deviate from their primary mission to avoid attack in such circumstances. UCAVs would additionally be able to fire upon any threats, and once that threat was removed, continue on their primary mission until completed, regardless of whether satellite communications were re-established. Skynet programmers were contracted to work with Frank Mane to expedite the new programming protocols and update the drone fleet.

On 7 October, a bomb exploded in Halme, killing 23 people. The explosion came from an Aiding Peace truck that had been parked outside a shopping centre. Aiding Peace reported that the truck had been stolen from outside an Aiding Peace warehouse in Lam Cape and driven over the border. Commander Jones ordered an investigation of the incident, which revealed that the truck had been briefly checked at the border, although Aiding Peace had not requested permission to cross the border, as per usual practice. Intelligence suggested that the explosion was perpetrated by members of the terrorist wing of FLCC.

On 30 October, Frank Mane announced that the UCAV systems had been upgraded and that he was satisfied with the results of testing that they were ready for use.

On 12 November a Laminan Red Crystal convoy was destroyed by an UCAV whilst in the Lam Cape border region at 8:00pm. The convoy had left Almos early that morning but had been detained at a border checkpoint for almost two hours. After taking an alternate route to avoid a landslide one of the convoy vehicles broke an axle. Local villagers had come to provide assistance and were working on the vehicle with the aid workers when the drone struck – killing 3 aid workers and 5 villagers.

The UCAV Operations centre reported that the drone had been patrolling the area, approximately 50 kilometres outside of Halme, when it had been jammed possibly by a mobile jamming unit in the local village – causing it to lose communication with host controllers and turn fully autonomous. The drone’s onboard artificial intelligence had assumed that the convoy must be the source of the jamming signal. When the drone detected flashes from the convoy through the dark and severe mountain fog it took these to be muzzle flashes and fired on the detected threat. The flashes were, in fact, villagers welding the damaged aid vehicle.

Following the attack, the ICRC issued a statement calling on both parties to respect their obligations under international humanitarian law, and allow the safe passage of aid into Lam Cape. The Almenian government again formally apologised for the incident, but blamed ‘terrorists using equipment in the knowledge it causes aircraft to malfunction, resulting in this regrettable incident.’

By December 2008 the conflict in Lam Cape was attracting significant international attention. The seemingly intractable situation appeared to have reached a stalemate and allegations of war crimes committed by both sides abounded.

Following intense pressure, including the threat of UN Security Council sanctions, Almenia and Lamina (with the acquiescence of the FLCC) agreed to the deployment of an
UN peace-keeping force in Lam Cape. At the threat of multilateral military intervention, they also agreed to the establishment of an international tribunal to investigate allegations of war crimes committed by both sides to the conflict. On 3 January 2009, the UN Security Council adopted Resolution 3471 establishing the International Tribunal for Lam Cape (ITLC)
Statute of the International Tribunal for Lam Cape

Article 1
Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territories of Lamina and Almenia since January 2007 in accordance with the provisions of the present Statute.

Article 3
Violations of the laws or customs of war

1. The International Tribunal shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purposes of this statute, 'war crimes' means:
   b. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law. Such violations shall include, but not be limited to any of the following acts:
      i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
      ii. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
      iii. Launching an indiscriminate attack in the knowledge that such attack may be expected to cause incidental loss of civilian life or injury to civilians, which would be excessive in relation to the concrete and direct military advantage anticipated.

Article 7
Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility, if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.
Charges

Count 1

On 26 August 2008, Commander Jala Jones, as head of the Almenian Armed Forces ordered an unlawful attack against civilians in Lam Cape, which was undertaken on 3 September 2008.

**COUNT 1: Violations of the Laws or Customs of War** (intentionally directing attacks against civilians contrary to Article 51(2) of Additional Protocol 1 of the Geneva Conventions) punishable under Articles 3(2)(b)(i) and 7(1) and 7(3) of the Statute of the International Tribunal.

Count 2

On 4 October 2008, Frank Mane as head of the UCAV Operations Centre instigated an indiscriminate attack, which occurred on 12 November 2008 resulting in civilian deaths.

**COUNT 2: Violations of the Laws or Customs of War** (launching an indiscriminate attack in the knowledge that such attack may be expected to cause incidental loss of civilian life or injury to civilians, which would be excessive in relation to the concrete and direct military advantage anticipated contrary to Article 57(2)(a)(iii) of Additional Protocol I of the Geneva Conventions) punishable under Articles 3(2)(b)(iii), 7(1) of the Statute of the International Tribunal.

YOUR BRIEF

You have been nominated to act as either the prosecution or defence team for Commander Jones or Frank Mane in relation to the charges listed above.

In preparing your arguments assume that:

- Both States involved in the conflict have signed and ratified the Geneva Conventions and their Additional Protocols I & II
- Issues of evidence and procedure are not relevant to your argument
- Only the offences with which Commander Jones is actually charged with are to be taken into account

INDICATIVE CASE LIST

*Prosecutor v Martic* (Trial Chamber) 12 June 2007
*Prosecutor v Blaskic* (Appeals Chamber) 29 July 2004
*Prosecutor v Galic* (Trial Chamber) 5 December 2003
*Prosecutor v Milutinović* (Trial Chamber) 26 February 2009
*Prosecutor v Mrksic* (Trial Chamber) 27 September 2007
*Prosecutor v Tadic* (Appeals Chamber) 15 July 1999


WITNESS EXAMINATION COMPETITION

Hannah Phillips

Overview:

The Witness Examination competition (sometimes called WitEx, for short) is a simulated civil or criminal trial. You will be either the prosecution or defence and will be required to open your case, examine your witness, cross-examine the other witness and close your case. There will generally be 5 people as part of the process: you, your opposing counsel, the two witnesses and a judge. In order to present your case you will be provided with three things: the relevant legislation, the prosecution witness statement and the defence witness statement. This is generally given to you an hour and a half before the competition at ALSA level, and half an hour of this is to be spent with your witness to prepare them.

Quick Overview

<table>
<thead>
<tr>
<th>Students per team</th>
<th>Participants</th>
<th>How long does the competition run for?</th>
<th>When do I get the question?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2 x students, 2 x volunteer witnesses</td>
<td>60 minutes</td>
<td>5-7 days prior</td>
</tr>
</tbody>
</table>

Likely venue: Moot Court

Are spectators allowed? Yes, encouraged

What topics of law are common? See footnote 1

What skill-set is most important? Questioning, quick thinking

Overview of the format

<table>
<thead>
<tr>
<th>Preliminary Rounds</th>
<th>Finals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening by prosecution</td>
<td>2 mins</td>
</tr>
<tr>
<td>Examination in chief by the prosecution</td>
<td>10 mins</td>
</tr>
<tr>
<td>Cross-examination by the defence</td>
<td>15 mins</td>
</tr>
<tr>
<td>Opening by the defence</td>
<td>2 mins</td>
</tr>
<tr>
<td>Examination in chief by the defence</td>
<td>10 mins</td>
</tr>
<tr>
<td>Cross-examination by the prosecution</td>
<td>15 mins</td>
</tr>
<tr>
<td>Summation by the defence</td>
<td>3 mins</td>
</tr>
<tr>
<td>Summation by the prosecution</td>
<td>3 mins</td>
</tr>
</tbody>
</table>

How to compete – pre-trial steps

Step One - when you get the question:

1. Read the question a couple of times, to ensure you know the facts back to front. Make sure you highlight the agreed facts and the disputed facts.
2. Work out your case theory. This is the first thing you need to do and involves putting your clients case in a couple of lines. It is important to have this written out, in sight, throughout the whole competition to remember what you need to prove. In a murder case this might look like:
   a. A woman was killed (her friend)
   b. Unlawfully (hit with an axe)
   c. Defendant is innocent (circumstantial that she was there).

---

1 Criminal may include: rape, murder, sexual assault, trespass, stealing and many more. A civil case may be a negligence action.
**Witness Examination Competition - Overview**

3. You need to work out what is best for you. An example of what you might like to prepare before entering the courtroom is the following:
   a. A fully completed opening
   b. The relevant questions for cross examination
   c. The beginning of your closing (as you should be referring to evidence obtained during the competition). You will be given 3 minutes to write your closing before they begin.
   d. A full page with your case theory in big writing

*Step Two - prepare your witness*

At the UTAS level, you are not allowed to talk to the witness before the competition has begun.

At the ALSA level, you will be given half an hour to prepare your witness before the competition. You must NOT coach your witness. This would involve telling the witness what to say to questions, and this is not allowed and you will be penalised.

In this time you should be explaining to your witness what you will ask them. Run through your examination in chief with them so they know what to expect. You also might like to advise your client what the other side is likely to ask them so they are prepared.

You should also give them a little ‘pep talk’ about things such as: to be as clear and concise as possible to enhance their credibility. You also might like to advise them that if they need to buy time with a question to think about what they are going to say, you can always tell them to ask the counsel to rephrase the question. You may also like to advise them that you may object to your learned friends’ questions and until this is finalised they need not answer the question put to them. All this preliminary preparation puts them in good stead to be an excellent witness. Never tell them what to say or what you think would be best to say.

*Note that the statements will be sometimes incomplete, and witnesses can make up basic facts (such as their address) but not facts that are inconsistent with their statement (as an example if you are an eye witness you cannot stand up and say you are blind).

**How to compete – steps at trial**

*Appearances*

When you are in the room, the judge will ask for appearances. Generally the Prosecution should go first and say – ‘If it please the court my name is ____ and I am counsel for the Prosecution’. You must always stand when you are addressing the judge. It is assumed that all cases are in the Supreme Court and you should address the judge always as ‘your Honour’.

Note: If you have a hard name, spell it for the court after you say it: ‘my name is Ms VIBEK, V I B E K and I appear for…’

*Your opening*

This should be clear and concise and is your first opportunity to present your side of the case. It is always best to do this without notes as much as possible to appear confident. An opening statement should introduce the charge (prosecution), outline what needs to be proven (relevant elements of the offence) and what evidence you have that is going to prove this. You can explain what evidence will be obtained in the following way: ‘you will hear from the victims neighbour that she heard screams’, ‘you will hear how she heard the defendant tell the victim she would only let her leave the house in a coffin’. You should close the opening by saying what you want- ‘we therefore ask that your Honour find the defendant not guilty.’

*Examination in Chief:*

The purpose of this is for the court to hear your witness’s explanation of events, it is an opportunity for them to tell their story. It is important to get as much of their statement out as possible and as chronologically as possible. You cannot ask leading questions in examination in
In examination in chief you should first paint the picture, then put the people in the picture and then put the actions in. When you are painting the picture the more information the better! It is always good to ask where things were in relation to the courtroom; this paints a good picture and will stick in their head. Another tip is get the witness to show you as much as possible, for example: ‘can you show the court how he hit you’. You then must explain what actions the witness did for the transcript (although there is no transcript in the competition it looks good!)

To increase a witness’s credibility you can reinforce important details by repeating it back to them in the next question. ‘So you said you saw him hit the car, what happened next?’ Credibility can also be enhanced by attention to detail, ask the specific questions. Do not let the witness carry on and ramble, you need to control them and you will be judged on this.

Remember:

1. Paint the picture
2. Put the people in
3. Put the actions

Cross Examination

The purpose of cross-examination is to show the holes in the other side’s case. Highlight as many inconsistencies as possible. You should also use this to draw attention to issues of credibility. Have they previously made an inconsistent statement? Are they contradicting themselves? Are they saying something that just does not make logical sense? You must obtain the relevant facts and concessions needed to present your closing argument. You must put all questions to the witness in a leading form. You should never ask the question you do not know the answer to. You need to control the witness to the fullest extent. If the witness attempts to give more than you want you can say ‘a yes or no will be fine’. Identify where the facts, which are not good for your case, can possibly help you, ‘you say that you saw her face but yet you were 50 metres away and it was dark?’ ‘You didn’t really see her did you, you just made it up because you don’t like her’.

Closing Address:

You will have 3 minutes after all the other parts are finished to write your closing which should tie up your case. It should bring all the evidence together and show the judge why they should find in your clients favour. You should show what you have proven and what the other side has failed to prove. If you are the defence you can say that the prosecution has only made out certain elements but not all, which they have to. You should try and make it as strong as possible and do it without notes to send the message home. Always remember your case theory!

You must have an idea of what your closing might look like before you do your examination in chief and cross examination so you know what evidence you must adduce during trial.

Don’t be rude or offensive or use bad language. You should hold your cards close to your chest and remain professional. You can have lots of fun with cross-examination, especially if they are saying inconsistent things on the stand.
Additional techniques and tips

Objections

Any counsel at may make objections anytime during examination in chief and cross examination. Objections show that you know the rules of evidence, it can also act as a strategy to offset your opposing counsel. It is also nice for your witness to know that you are protecting them.

You must always stand when you have an objection and say ‘Your Honour, may it please I have an objection.’ When you are objected to, sit down, there should only be one person standing at once. You must pay particular attention to this, it sometimes feels like you are bopping up and down but it is the way you have to do it. If you are talking stand up, if you are not talking, sit down! You argue the objection with the judge, not the opposing counsel, if you do not wish to argue it, you can say something like, ‘if I may rephrase the question your honour,’ or ‘I will abandon that line of questioning.’

Some example objections:

- Relevance
- Hearsay
- Tendency/coincidence
- Is it about prior convictions?
- Opinion?
- Ambiguous question
- Many more!!!

The rule in Browne v Dunne

You must always remember this rule, which exists for fairness. The rule essentially is:

*It is not fair for you to bring up something in examination in chief or your closing if you have not given them a chance to defend themselves.*

For example, you cannot claim that the accused threw the first punch in your closing address if you have not put it to the accused. A lot of the time, if the case is merely one word against the other you will find yourself just putting questions to the accused and having them say no. It can be disheartening but you just have to do it to satisfy the rule in Brown v Dunne.

Conclusion

This guide is only touching the surface, there is so much to know about witness examination that you will learn only through doing. Many of these tips are opinions and are certainly not the only way to do things. There are many witness examination techniques, and you must bear this in mind. Make sure before you do any witness examination you are familiar with the basic rules of evidence, especially relevance.
WITNESS EXAMINATION SAMPLE QUESTION

R v Dell

CHARGE:

Darren Dell has been charged pursuant to s 117 of the Crimes Act 1900 (NSW) for the offence of attempted larceny. The charge is:

That at 12:15pm on 1st November 2005, at Darlinghurst in the state of NSW, Darren Dell did attempt to steal certain property, namely one thousand dollars cash and a bank book, the property of Caroline Call.

WITNESSES:

The only witness for the Prosecution is the alleged victim, Caroline CALL.

The only witness for the Defence is the accused, Darren DELL.

LEGISLATION:

*Crimes Act 1990 (NSW)*

117 Punishment for larceny

Whosoever commits larceny, or any indictable offence by this Act made punishable like larceny, shall, except in the cases hereinafter otherwise provided for, be liable to imprisonment for five years.

344A Attempts

(1) Subject to this Act, any person who attempts to commit any offence for which a penalty is provided under this Act shall be liable to that penalty.
(2) Where a person is convicted of an attempt to commit an offence and the offence concerned is a serious indictable offence the person shall be deemed to have been convicted of a serious indictable offence.

ELEMENTS OF LARCENY:

Actus Reus:

The offence of larceny requires that:

(1) The property must be in possession of someone other than the accused, and
(2) That the property be taken and carried away, and
(3) That the taking was done without the consent of the possessor.

Mens Rea:

The accused must at the time of the taking:

(1) Have the intention to permanently deprive the possessor of the property, and
(2) The property must be taken without claim of right (not necessary to prove this element if not raise by the Defence), and
(3) The property must be taken dishonestly.

ADDITIONAL EVIDENCE:

Road Traffic Authority records show that from 25th June 2001 to 30 October 2004, a vehicle with number plate ZXC098 was registered to Darren Dell, with address 1 Daisy Way, Surry Hills. From 31 October 2004 to 11th September 2006, the vehicle was registered to Darlene Dell, with address 1 Daisy Street, Surry Hills.
Prosecution Witness Statement: Coraline CALL

Dated 11th May 2010

1. My name is Coraline Call. I am 93 years old.

2. At around 12:15 on 1st November 2005, I arrived home from shopping in a taxi. I had withdrawn $1,000 from the bank.

3. As I got out of the taxi, a male approached me from behind. The man said ‘It’s David I use to live around the corner.’

4. I am absolutely sure I had never seen this man before in my life. He asked if he could help me bring my shopping inside. I said ‘No.’

5. He reached down to my shopping bag, which had a main compartment and a smaller compartment at the front of the bag, both of which had a zipper. The man opened the zipper for the front compartment, which contained my bank book and cash. It was as if he knew where I keep my money.

6. When I saw that the man was holding the bank book with the money, I called out for help. I put my arms around the man and he dropped the bank book and money. I noticed he was the same height as me; I am 175cm tall now. He ran to the street and got into a green car. I saw a female in the front passenger seat of the car.

7. Two tradesmen were working on the house next to mine. The tradesmen saw some of what had occurred. One of them, Jim Smith, heard me calling out for help and came down. He told me that he saw a male get into a Ford Falcon. A female was in the passenger seat, and a red P-plate was on the car. He told me that he recorded the number plate as ZXC-098. A few weeks later he fell of his ladder and he’s been in a coma ever since.

8. On 11th May 2010, police came to my house. They told me the man involved in my offence had committed a number of other offences as well and they wanted to know more about what had happened to me. I was shown a series of photos and I selected the man I saw from a picture identification procedure as the male who I saw on 1st November 2005.

**Note for the purpose of this junior competition the evidence from the tradesmen can be used, however, when you do evidence you will realise that there are surrounding the use of this evidence.

**Note, however, that you will need to control your witness in relation to her ‘referring to the man committing other offences’ as this would not be allowed as it is tendency evidence. You will learn more about this in evidence- but for the purpose of this competition it cannot be used in your witness examination.
Defence Witness Statement: Darren Dell

Dated 14th May 2010

1. My name is Darren Dell and I am 21 years old.

2. At 12:15pm on 1st November 2005, I was visiting an old friend, Coraline Call. She is quite old; probably over 100. I knew her because my (dead) cousin Francis Frank used to live up the road from her.

3. When I arrived, I said, ‘Hello!’

4. She seemed quite confused and I said, ‘It's Darren, my cousin Francis Frank used to live around the corner.’

5. Coraline still seemed confused. She looked like she needed help carrying the bags so I said 'would you like me to help you carry the bags?'

6. She didn’t say anything, but nodded. I picked up the bag. Then she went crazy. She started screaming out, ‘Help!’

7. Some tradesmen were working next door. One of them called out, ‘Don’t worry about her, mate- she’s just a bit loopy.’

8. I put down the bag. I thought I should go off and get help for Coraline, so I walked off. That's all I can remember about the incident.

9. I don't know anything about a bank book. Surely, if I had touched it, my fingerprints would’ve been on it?

10. I am 180cm tall. I accept that Coraline selected a picture of me from a line up, but there are other reasons she might've recognised me.
CLIENT INTERVIEW COMPETITION

Emily Hume and Jessica Brewer

A client interview is a mock interview conducted by a team of two competitors, who will act as lawyers. The two competitors are tasked with interviewing a volunteer client. The aim of the competition is to ascertain the facts and legal issues relevant to the client's situation whilst maintaining a professional working relationship, and to give a balance of practical and legal advice before the time elapses.

Prior to the competition clients will be given a set of facts relating to their legal issue, which may be divulged by the client at any relevant point during the interview. The client may also have secret facts which may not be divulged unless a competitor specifically asks about it.

Quick Overview

<table>
<thead>
<tr>
<th>Students per team</th>
<th>Participants</th>
<th>How long does the competition run for?</th>
<th>When do I get the question?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1 x team of students, 1 x volunteer client</td>
<td>20-30 minutes</td>
<td>1 to 3 days prior</td>
</tr>
</tbody>
</table>

Likely venue

Are spectators allowed?

What topics of law are common?

What skill-set is most important?

Small room

Not usually

Personal injury, negligence, nuisance, criminal law

Interpersonal relationship skills

The format of the competition

1. Teams will receive a memo question days prior to the competition, and must prepare to interview the client about their issue. The memo usually consists of one sentence.

2. Teams will initially have between 20 and 30 minutes in which to conduct the interview, depending on the level of competition.

3. Teams will then have a further 5 minutes to reflect on their performance with each other. During this time, the judge will confer with the volunteer client to ascertain their assessment of the performance of the interview.

4. Teams will finally have 10 minutes to conduct an interactive self-evaluation with the judge.

How to participate in the Client Interview

Step One - when you get the question:

The question typically only contains one or two lines of information, indicating the main reason for the client's appointment.

Competitors should not confine their research and preparation to those issues specifically defined in the memo. Rather, it will be necessary to brainstorm any possible issues that may arise in the particular situation.

While general knowledge of the law and specific legal principles will be necessary, the focus of the interview will be on obtaining the full facts and issues pertaining to the client’s situation.
Step Two - the interview:

At the outset competitors may arrange the interview room as they please. It is important to make the client feel comfortable. Competitors should then welcome the client into the room, ensuring they are comfortable.

Important things to address during the interview include:

- Obtaining the client’s basic details
- Addressing confidentiality and costs agreements
- The role of the lawyer and the client in the process
- The client’s objectives

Competitors should then seek to ascertain the facts and legal issues relevant to the client’s situation whilst maintaining a professional working relationship. Once competitors feel as though they have obtained all the relevant information from the client, competitors should seek to provide some general advice or proposed solutions to the client’s situation. This should ideally include legal advice, practical solutions and alternative courses of action where possible.

While the ability to give comprehensive legal advice will be beneficial, competitors are not expected to give definitive or conclusive advice. The ability to provide the client with a ‘pathway’ to a solution can also be beneficial in this initial interview.

Finally, competitors should conclude the interview, ensuring that the client is satisfied that their issues and concerns have been addressed and they are clear as to the future direction of their situation.

Step Three - self-evaluation:

After the interview has concluded competitors will have 5 minutes to discuss with each other their performance during the interview. This self-evaluation may include a discussion of the following points:

- What were the strengths and weaknesses of the performance? How did the strengths benefit the interview? How could the weaknesses be improved?
- Have the client’s objectives been met?
- Was all the relevant information obtained? If not, what information should have been obtained or followed up on?
- Was the team effective? Did the team have a strategy? If yes, was the strategy followed and was it effective? What could have been improved?
- Was the working atmosphere professional and productive? Did the client feel comfortable? Did all parties maintain a professional working relationship?
- Was the advice accurate? Was the advice provided realistic and practical?
- Any other comments?
Step Four - evaluation presentation:

After competitors have discussed their performance between themselves, they will then have the opportunity to discuss their assessment with the judge. This can be done simply as a conversation between the competitors with the judge merely as a passive observer. Alternatively, competitors may wish to present to the judge and involve them in the discussion. The method of self-evaluation will either be at the discretion of competitors or the judge. The judge may then provide feedback on competitors’ performance. The detail or feedback, if any, will be at the discretion of the judge.

Tips and tricks

General tips and tricks to conducting the interview

The following are some simple tips and tricks to conducting an effective client interview. Competitors should be aware that there are many different ways to conduct an interview and should aim to develop their own style and structure.

- In order to make the client feel at ease the competitors may provide some water, tissues or snacks
- Providing an outline of the terms of retainer should the client wish to retain the competitors services is useful
- It is also useful to provide clients with an outline of the appropriate costs of services
- Dividing the work evenly between both members of the team is an effective way to demonstrate sound team work
- Having one team member take notes while the other maintains engagement and eye contact with the client is an effective means of ensuring that all relevant details divulged by the client are accurately recorded while ensuring the client remains engaged and involved in the interview
- Competitors should not be afraid to clarify any issues raised by the client if they are unsure about some of the information the client has provided

Ethical Issues

The ability to extract and identify any potential ethical issues arising from the client’s situation is an important element of the interview. If competitors identify an ethical issue, this should be noted and addressed with the client immediately. Competitors should always keep this mind when conducting the interview, particularly as the identification of an ethical issue may alter the advice or proposed solution given to the client.

Confidential information

It is important to note that clients will also be given some confidential information, which they are instructed not to divulge unless specifically asked about or raised by the competitors. A key element of the competition is for competitors to strive to obtain such confidential or restricted information from the client. Knowledge of the confidential information will be very important and crucial to competitors fully understanding the client’s situation and legal position.
Getting started, and keeping control

It is important to start and finish the interview in a way that makes the client feel comfortable. It is also important to keep control of the interview, and avoid situations where the client refuses to answer a question satisfactorily, or talks endlessly.

• Tips to get the interview underway include:
  o Asking the client why they have come to see a lawyer
  o Clearly obtaining the objectives and concerns of the client
  o Asking who, what, when, where, why, how questions

• Some tips to try and elicit answers from stubborn clients include:
  o Informing the client of their own interest in being open and honest
  o Asking open ended questions
  o Reassuring them that their information is useful
  o Reiterating that everything divulged in the interview will remain confidential
  o Using silences appropriately

• Some tips to keep rambling clients on track include:
  o Gently interrupting and steering them in the appropriate direction
  o Asking very specific questions
CLIENT INTERVIEW SAMPLE QUESTION

All competitors will receive this part of the question.

New Lawyer Appointment

To: Lawyers
From: Secretary
Re: New Client – Chris Johns

Chris Johns has made an appointment to see you regarding some legal action against him. He sounded distressed and concerned on the phone.

Regards
Secretary

Only clients will receive this part of the question.

It is confidential and must not be disclosed to competitors until the competition begins. If it is found that cheating has occurred, volunteer clients and/or competitors will be reported and it may result in academic misconduct.

Client Interview Information

Your name is Chris Johns.

You have purchased a second hand maroon Nissan Pulsar from a close friend Trevor Perry. You have known Trevor for more than 15 years, having met him while you were both still at school. Trevor is going on an extended holiday to Europe within the next 2 or 3 weeks and was trying to sell his car as soon as possible. You bought the car for $7,000 and thought this was a fantastic price considering that the car was a 1989 model, and had been used largely in the country for milk deliveries by his mother.

Within the first week of owning the car, and being the car enthusiast that you are, you took the car to Beefy Bass Sound Installations and paid for a $2000 in-car DVD entertainment system. This required substantial changes to the interior of the car.

In the second week, you noticed that the car would not start on cold mornings. You took the car to a motor mechanic who told you that it would cost around $1,500 to repair. The mechanic mentioned that it was most likely an existing fault that the previous owner would have been aware of. You don't have that kind of money, and were extremely distressed since you bought the car off a close friend.

You rang Trevor to speak to him, however he had not returned your numerous phone calls. You then contacted your bank and much to your surprise found that the cheque which you used to pay Trevor had not been presented. In the circumstances you decided that it was appropriate to stop payment of the cheque and organised this with your bank. In addition, there were some small scratches on the car which you didn't notice upon purchasing the car, but these did not really concern you.

The following day, you received a call from Trevor and you explained to him what had happened. Trevor was furious about the stop on the cheque. You explained to him that $1,500 was needed to fix an existing fault with the car. You also explained to him that you had installed a $2,000 sound system in the car. On this basis, you explained to him that you wanted to keep the car on the condition that you pay the original purchase price less $1,500. Trevor told you to get stuffed and demanded that you pay the original purchase price or return the car in its original condition.
Trevor said, he could not believe you could do this to a close friend especially after all you had been through.

This made you feel really uncomfortable. You feel that it is fair for you to keep the car at a $1,500 discount. Because of the modifications associated with the installation of the sound system, it will require some expense to return the car to its original condition. If the sound system is removed, the car will be left with many large holes and gaps. You are extremely distressed and do not know what to do. Whilst you are a good friend of Trevor’s, you do not believe that it is fair for you to pay the full price. Alternatively, if you are required to return the car, you feel that Trevor should contribute towards the cost of returning the vehicle to its original condition.

Trevor has threatened to commence legal proceedings against you and you are apprehensive towards the prospect of going to court. Be receptive to suggestions regarding negotiations but also ask questions regarding how much this legal advice will cost you. When the lawyers tell you the first appointment is complimentary, ask them how many more interviews and how much more work is required. Also ask for an estimate of the total cost.

**Information to be disclosed only if asked:**

Before you took the car to your motor mechanic, your brother who is studying to be a mechanic at TAFE looked at the car for you. You feel that he may have contributed to the problem and the $1,500 cost associated with fixing it. You noticed that upon completing his inspection of the car, there were a few car parts left over.
NEGOTIATION COMPETITION

Aaron Cullen and Bunewat Keo

The word negotiation derives from the Latin word *negotiatus*, which means, “to carry on business”. In a sense, this is what a negotiation is about: the ability to resolve issues, so that parties are able to carry on with their business. A negotiation is a meeting of parties to settle a dispute, and the end result of a negotiation is to resolve points of difference, develop a sound course of action, and ideally maintain or develop relationships.

In competitions the negotiation is conducted between two firms representing clients engaged in a dispute. The judge plays no active role in the competition and merely observes. The negotiation is only based on the performance of yourself and the other team, and the outcome achieved.

It should be emphasised that the actual outcome is not the sole criteria. For example, a team who gets a substantially better outcome for their client by unethical means may not score as highly as a team who gets a lesser outcome but preserves the relationship between the clients.

**Quick Overview**

<table>
<thead>
<tr>
<th>Students per team</th>
<th>Participants</th>
<th>How long does the competition run for?</th>
<th>When do I get the question?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2 x teams of students</td>
<td>30 minutes at UTAS level, 60 at national</td>
<td>3-5 days prior</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Likely venue</th>
<th>Are spectators allowed?</th>
<th>What topics of law are common?</th>
<th>What skill-set is most important?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small room</td>
<td>Not usually</td>
<td>Anything involving a deal to be made</td>
<td>Ethical yet effective deal-making skills</td>
</tr>
</tbody>
</table>

**Format of the competition**

The total time for a negotiation is usually 100 minutes, but this can change depending on where the competition is being held (at UTAS compared to the ALSA conference, for example). This is broken down in three parts: the negotiation, the self-reflection and the critique. The first 50 minutes is the actual negotiation itself. Within this time limit, each team is entitled to take a 5 minute break in which they may do as they wish. During your break time teams are not allowed to have any discussions with any other person. A 1-minute warning will be given to both teams before the negotiation is to end. There is no avenue for request for extension.

After the negotiation is complete, teams will engage in private self-reflection, self-reflection with the judge, and critique with the judge. First, both teams will have 10 minutes to have a private reflection of how the negotiation went. Then, teams will return to the judge, who will flip a coin to decide which team will be first to take a 10-minute self-reflection with the judge. Once self-reflections are complete for each team, teams once again swap for a 10-minute critique with the judge. Both the self-reflection and critique are all one-on-one discussions with the judge.

**Preparing for the competition**

Knowing the law is very important. It is important to note, however, that although knowing the law is important, you are there to negotiate and not to moot. Sometimes the best solutions are not those that a court would grant but what you as negotiators can generate with your flexibility.

A good understanding of your legally entitled position will give you a good starting point from which to develop and work with the other team to create options. It will often be the case that the disputes will relate to aspects of the law in which there is no clear-cut solution or an area of law that is unsettled, so flexibility is a must.
Further, you must understand the interests of your client completely; understand what they are hoping to achieve and what they are willing to concede. At the same time, giving thought to the interests of the other party can often aid in generating realistic and workable solutions that will help meet the goals of both your clients.

The previous points must all come together in your strategy. One of the criteria on which you are graded in the competition is how well your strategy worked. It is important to note here in the preparation phase that a strategy is what you plan to achieve from the negotiation and how you plan to achieve it. This should be contrasted with negotiating tactics, such as ‘good cop bad cop’ routines or styles of negotiating. Tactics are obviously important, but they are the methods you use to achieve your overall plan - your strategy. During the reflection with the judge, when you are asked ‘what was your strategy?’ the correct answer would be the means by which you planned to achieve your goal, not who was going to be the nice guy in the competition.

**Method & manner - some tips**

A negotiation is like a road trip. You know where you want to go to and when, but it is the journey in which you undertake which the judges will take note. Sticking to your game plan, and demonstrating your strategy and flexibility, is what will win the competition for you. Although maintaining control over the proceedings is one way of demonstrating a strong strategy, there is no harm in allowing the other party to lead the discussion. Ultimately the competition will come down to who has the better understanding of their client’s interests and who is able to make the best use of the assets they have.

To start with, coming prepared with a written agenda outlining the interests of your client and the foreseen interests of the other team may be useful. This is one way of demonstrating your strategy and giving some structure to the negotiation. However, an agenda is not always appropriate and can be inappropriate depending on the factual scenario. An example of when an agenda would be appropriate is when the issues to be resolved are clear and easily identifiable. The corollary of this is when the factual scenario is complicated or the issues are unclear. In this case, having a written agenda is not helpful, and could potentially be a cause for conflict at the outset if you assume the other party’s interests incorrectly.

At the beginning of the negotiation it is important to make sure you spend some time asking questions of the other team. As mentioned above, you will have by this time made a number of assumptions about the interests of the other team and prepared your strategy accordingly. It is always prudent therefore to test your assumptions and find out as much information as possible as early as possible before transitioning into the next phase of the negotiation. A common problem that negotiating teams have is moving too quickly into the option generating stage without adequately testing the boundaries of the other team. Doing this can lead to your client settling for something far less than they could get otherwise, or completely missing a problem that the other team have that can be utilised to your advantage. For example, by asking the right questions you can learn that the other client has actually got no money and cannot afford to threaten you, and is completely dependent on your client to provide an option. This is an asset to you because you now know that you have the stronger bargaining position.

The next phase of the negotiation is option generating. Once both teams know the interests of both clients, generating workable solutions becomes the next challenge. Naturally there is no advice that will cover all scenarios and the option-generating phase is completely dependent on the factual scenario. An important tip though with this phase is to come prepared with a wide range of possible solutions, including options that are ‘outside of the square’. As an example: your opponent may be interested in advertising, and your team is representing an insurance company. Instead of simply refusing to pay out the insured, offering to bring the insured into an advertising campaign in exchange for a limited insurance payment may be an option. In this sense, a win-win situation may be achieved; the insured will receive the money they were hoping for, and your clients will receive advertising at a substantially reduced cost.

As suggested before, there are a number of ways to conduct the negotiation; these are your tactics. It is important to remember that the atmosphere between the parties is directly related to the quality of the solutions generated and accepted, and it is especially important in factual
scenarios where the two parties are to have an ongoing relationship. Your choice of tactics is therefore very important. One of the better-known tactics is ‘good cop bad cop’, whereby one member of the team will dig their heels in and not give ground and the other will compensate and be overly nice. Be wary of this tactic when using it, because unless executed carefully it can be a cause of conflict and can detract from the atmosphere of the negotiation. As your client’s lawyer, you do not want to poison the relationship with the other party simply because it is a useful negotiating tactic.

**The judging criteria – an overview**

- **Negotiation Planning**
  - This question reflects the preparation and apparent strategy you bring to the negotiation.
  - To get a good score for this criterion it is important to spend time learning what the law is in the area, but also importantly the surrounding factual matrix, in order to develop strategies that will achieve an outcome for both your own clients, and your opponents’ clients.

- **Flexibility**
  - This question asks the judge to consider whether the team were able to adapt their strategy to the negotiation or their ability to react appropriately to unforeseen moves by the other team.
  - It is important for this criterion to achieve a balance between maintaining your goals and not submitting to pressure from the other team, and working flexibly to achieve outcomes that may not have been apparent at the beginning of the negotiation.

- **Outcome**
  - Naturally the outcome of the negotiation is important, and this question reflects how satisfied the client would feel with the achieved solution.
  - It is important to note, however, that although the outcome is important, the competition is focussed more on the process and how the teams get to the final solution rather than simply the solution itself.

- **Teamwork**
  - How effective the negotiators work together as a team is tested by this question. This encompasses sharing responsibility and providing mutual support.
  - There are many different ways team members can work together, and what works for one team may not work for another. However, it is important to demonstrate to the judges that you can work with your teammate, and allow them ample opportunity to speak as well.

- **Relationship between teams**
  - As mentioned above, a good working relationship with the other team can provide fertile ground for the development of good and workable solutions. This question reflects how well rapport was established and maintained between the parties.

- **Ethics**
  - This question goes to how ethically the team behaved. There are sometimes confidential facts that must be disclosed to the other party and lying about them will reflect badly on this criteria.
  - It is important to understand the balance between what you can legally say and what you should or should not disclose. Failing to disclose information that would be materially relevant to the outcome will not only result in a bad score for this criterion, but could result in professional disciplinary action if it were to happen in a real life situation.

- **Self-analysis**
  - This question allows the judge to see what insights the party have gained from the experience and how they would change anything if they had the chance to try again. It also gives the judge the opportunity to find out what the strategy of the party was, and allows insight to how well the strategy worked.
In April 2001, at the age of 24, Juliette Royd was fairly content with her life. She was studying her third year of Medicine at Adelaide University and was looking forward to the day she would become a doctor. She lived in a small flat, which she shared with her best friend and worked part-time at a local bakery. However, all that started to change when Juliette’s love of music led her and some friends forming a small band. Juliette was the lead singer. They devoted many hours each week to practice and soon began performing publically.

In June 2001, Anthony Eyemann, the sole director of Eye Music Pty Ltd, approached Juliette after a performance. Eye Music is a medium-sized company which both records and distributes music. Anthony had inherited the company from his uncle in May 2001, before which he had never had any experience in the music industry. He told Juliette that her skill was impressive and that she could be successful as a solo artist. He suggested that she visit Eye Music’s office to discuss the possibility of recording a solo album. Naturally, Juliette jumped at the chance.

The first meeting occurred on 14 June 2001. Normally Eye Music’s Artist Relations Officer, the experienced Bob Anderson, would have conducted the meeting, but he was on holidays in Vanuatu. Neither Anthony nor Juliette had ever had such a meeting before, but after a quick discussion they reached a verbal agreement to “test the water”. The conversation ended with Anthony saying, “Well, that’s settled then. You come back in two weeks, we’ll record a few songs and make it into an album, then I’ll distribute it to a few local stores and see what the reaction is.” Juliette agreed and left. Probably owing to both parties’ lack of experience, no discussion of rights or payments occurred.

Two weeks later Juliette returned to Eye Music and recorded four songs, which she had written herself. She named the album “Orange Midnight”. Juliette meant to ask about getting paid, but forgot all about it in the excitement of the moment. As agreed, Eye Music’s staff created CDs of “Orange Midnight” and sold them to retail music stores in the Adelaide city centre. Specifically, Eye Music sold 500 CDs at $10 each to the music stores, which retailed them for $15, but these figures were not mentioned to Juliette at the time.

“Orange Midnight” was a great success, with the CDs selling out rapidly and Eye Music receiving large orders for more, both from local music stores and national chains. Anthony called Juliette on 14 July 2001 to tell her the good news. “We can make 5,000 more CDs and start shipping them out straight away. We’ll pay you in November, when they should have sold out – because you’re such a hit I’ll pay you 20% of the price!” he told her. Juliette was overjoyed and agreed, adding, “Go for it; do whatever's best” but also asked whether or not there should be any form of written contract. Anthony advised her that he thought it would be a good idea and promised to discuss it with Bob when he returned from his extended holiday.

Over the course of the next few months Eye Music sold another 5,000 CDs at $15 each to music stores, which retailed them for $20 each. While Juliette’s fame grew throughout the music community, she continued to study medicine and work at a bakery, happy to let Eye Music distribute the CD in the certainty that she’d be paid for it in November. In October the CDs sold out and Eye Music quickly made another 1,500 to satisfy demand, although Juliette only discovered this in November. Again, these CD’s had a wholesale price of $15 and a retail price of $20.

November 2001 arrived and Anthony asked Juliette in to discuss her future. He told her, quite correctly, that there was strong demand for more of her work and asked if she’d like to record a lengthier album with Eye Music. She agreed. However, Bob Anderson had finally returned from his holiday and was ready at the meeting with a written contract. Before signing the contract...
Anthony told Juliette, "it contains all our normal terms for a recording contract". Juliette signed without reading the contract in any great detail. The contract contained the following clause:

5.3. The company will pay the artist 10% of the price of each CD sold.

5.4. The first payment is to be made six months after the recording date, and from then every three months until all the CDs have been sold.

5.5. The artist agrees to transfer all rights over all songs on the CD to the company.

5.6. The company agrees to protect the interests of the artist in producing the CD as far as is reasonably possible.

These are indeed normal terms of Eye Music's recording contracts.

At the same meeting Juliette raised the issue of payment for "Orange Midnight" and was told that a cheque was being processed and would be sent within a fortnight.

Juliette recorded the second album, named "Scarlet Morning" on 20 November 2001. It consists of 11 songs she wrote during the preceding months. Anticipating good sales, Eye Music produced 5,000 CDs, which it sold to music stores at $20 each, to be retailed at $25 each. These have all now sold to consumers.

In early December 2001 Juliette received a cheque from Eye Music for $7,500 as payment for "Orange Midnight". Given that she had expected a cheque for $27,500, she was somewhat surprised and contacted Anthony. Anthony only laughed, telling her that she was dreaming. The conversation became quite heated and soon the pair was also arguing over the regularity of payment for "Scarlet Morning" and the rights to use the songs in it.

Additionally, to Juliette's horror, she found that "Scarlet Morning" had been released with two songs by other performers on it. Anthony told her that this is common way of promoting new artists, but Juliette is devastated that she has been used to advertise people she considers to be her competitors.

Since then Anthony and Juliette have not been able to discuss the matter reasonably and have both sought legal advice. They have agreed to a negotiation session between their lawyers in the hope of finding a resolution to their disputes and possibly restoring the chance of continuing their business relationship.
PROBLEM SCENARIO: JULIETTE ROYD & ANTHONY EYEMANN

CONFIDENTIAL INFORMATION FOR JULIETTE’S LAWYERS

Note: only the team representing Juliette Royd, and the judges, will receive these facts.

Juliette Royd first came to your firm in tears claiming that she was a singer being pushed around by a nasty record label. She is a shy but friendly person who, unfortunately, has been somewhat naïve in her dealings with Eye Music Pty Ltd and its director, Anthony Eyemann.

Her first complaint is the amount she has been paid for “Orange Midnight”. She believes that she is entitled to $27,500, based on the following calculations:

- June 2001: 500 CDs @ $15 each: $7,500
- July 2001: 5000 CDs @ $20 each: $100,000
- October 2001: 1500 CDs @ $20 each: $30,000

Total sales: $137,500

20% as agreed: $27,500

She is completely outraged at Anthony’s cheque for $7,500 and does not understand how he can arrive at such a figure based on their agreement. She firmly believes that she is owed another $20,000 for “Orange Midnight” and doesn’t want to accept anything less than $18,000.

Juliette’s second issue is the payment for “Scarlet Morning”. She understands that she has been foolish by signing a contract she had not completely read, but still feels that she has been misled in that she thought that Eye Music’s normal payment to artists was 20%, based on her conversation with Anthony in July 2001. Ideally, she would like $50,000 for her second album, but recognises she may have to accept $25,000.

Juliette has also been deeply hurt by the inclusion of other artists on her album and feels she should be compensated in some way. She isn’t really sure what options might be open to her, and leaves it to your discretion to get the best deal for her based on her interests below.

Unknown to anyone else but you, Juliette has chosen to devote all her time to her musical career. She has withdrawn from her course at university and resigned from her job. In expectation of these payments she has run up a lot of debt and has little cash, having already spent the $7,500 she’s received so far for “Orange Midnight”. She certainly cannot afford to go to court.

Accordingly, Juliette’s highest priority is to get as much cash as she can from Eye Music as quickly as possible. She is willing to sacrifice up to $5,000 if she can get the second payment earlier than 20 May 2002 – the sooner the better. Additionally, Juliette is willing to drop all arguments regarding the rights over the songs on the second album in the pursuit of funds, although she has mentioned that while she did write all of them, some of her friends from her old band have “done a lot of editing to them to get them right”. She would like to retain the rights to her first album if possible but can sacrifice them if necessary.

Lastly, Juliette is still in high demand in the music industry and has received quiet, informal approaches from other record companies interested in signing her up for a third album. She would be willing to consider signing on for a third album with Eye Music Pty Ltd if it meant she could get extra funds now.
PROBLEM SCENARIO: JULIETTE ROYD & ANTHONY EYEMANN

CONFIDENTIAL INFORMATION FOR ANTHONY’S LAWYERS

Note: only the team representing Anthony Eyemann, and the judges, will receive these facts.

Anthony Eyemann inherited Eye Music Pty Ltd from his uncle only a month before he first met Juliette. He came to you seeking advice on what he describes as "some record deals which have come back to bite me".

With regard to "Orange Midnight", Anthony considers that the cheque for $7,500, which he believes Juliette has cashed, was payment in full. He calculates this as follows:

- July 2001: 5000 CDs @ $15 each: $75,000
- Normal payments terms of 10%: $7,500

He states that he was simply being encouraging and jocular when he made the comment about paying Juliette 20% and always believed she’d understand that his company’s terms are the industry standard of 10%. He does not believe that Juliette is entitled to be paid for the first 500 CDs, as he was doing Juliette a favour by seeing if there was any demand for her music, and she never mentioned being paid for them. However, he does recognise that while Juliette never had an agreement to be paid for the last batch of 1,500, she may be entitled to payment anyway and is reluctantly prepared to pay up to $2,250, calculated as follows:

- 1500 CDs @ $15 each: $22,500
- Normal payment terms of 10%: $2,250

In total he does not wish to pay more than $15,000 (including the $7,500 already paid) for the first album.

Anthony now regrets adding the other artists to "Scarlet Morning" but feels that he must stand by his actions, for to admit a mistake in the music industry is suicide. He is prepared to make it up to Juliette somehow so long as it doesn’t cost him more than $10,000 and it’s kept very quiet. Ideally, he’d like the compensation to be something other than a simple cash payment.

Anthony is also aware that artists are regularly “head-hunted” for contracts in the music industry. He regards Juliette as having great potential and does not want to lose her to a competing firm, so he would be interested in paying a little extra to secure at least another two albums.

Under no circumstances is Anthony prepared to negotiate with regard to the rights over use of the songs on the second album. Eye Music Pty Ltd must hold them at all costs. If possible, Anthony is interested in seeing whether there is any way in which he can assert ownership of the rights to the first album, or alternatively, obtain those rights.

Other than the rights of use, Anthony's priorities in this negotiation are seeing that he does not incur too many extra expenses. While Eye Music Pty Ltd has the financial resources to go to court, Adelaide is a small city and stories of companies fighting artists in court constitute very damaging publicity. Therefore Anthony would prefer to avoid court if possible, but is willing to litigate if Juliette is highly unreasonable.
**PROBLEM SCENARIO:** JULIETTE ROYD & ANTHONY EYEMANN

**ISSUE SUMMARY FOR JUDGES ONLY**

This is a fairly simple problem to start the competition and give the competitors, many of whom are in their first year of law studies, a chance to find their feet. It involves a contractual dispute between a singer, Juliette Royd, and Anthony Eyemann, director of Eye Music Pty Ltd, which has released two of Juliette’s albums. The parties are disputing how much Juliette is entitled to be paid for the two albums.

The most obvious issues that will probably arise during the negotiation are:

- whether the artist’s percentage is calculated from the wholesale price or the retail price of the album – the parties only ever referred to “the price”;
- whether the artist should be paid 10% or 20% of “the price” for the first album;
- whether Juliette is entitled to be paid for the first batch of CDs from the first album, which was done to “test the water”, i.e. see if there was demand for the product;
- whether Juliette is entitled to be paid for the third batch of CDs from the first album, which was made without any input from her;
- when Juliette is to be paid;
- who holds the intellectual property over the songs on the albums;
- whether Juliette will re-sign for further albums with Eye Music Pty Ltd.

Additionally a remedy for a possible contractual breach has been left very open to encourage some creativity in finding resolutions.

Please note that in the scenario Anthony seems to be more at fault than Juliette. Naturally the competitors should not be judged on this but on how they respond to their client's goals given their position.

Some of these should not be hard to resolve. Anthony is insisting on keeping the intellectual property and Juliette is willing to give it up. Both parties are interested in using re-signing as a bargaining chip to their advantage.

Other matters will require more discussion. The total payment amounts for the two albums differ considerably between the two sides and their desired limits of payment don’t overlap (e.g., Anthony doesn’t want to pay more than $15,000 for the first album, but Juliette doesn’t want to settle for less than $18,000).

Due to time constraints it may not be possible for competitors to reach agreement on all issues. In this event they should be judged on the basis of the way they proceeded, and the issues which they did address.
PAPER PRESENTATION COMPETITION

Indi Hodgson-Johnston

Paper Presentation is for people who are budding academics, law reformers or passionate about a particular area of the legal system. It has been known to attract people who sit alone in the library, who wear tweed jackets with leather elbow patches, who smoke pipes and who hate group work. It's for people who enjoy talking about their passion and being smug when the judges look at you strangely and ask, "would that actually work?" to which you say “yes”.

**Paper Presentation is a competition held at the ALSA National Championships each July, and one student only will usually be taken. For information on how to apply, contact the Competitions Officer directly at competitions@tuls.com.au.**

If you are selected to represent UTAS, while at the ALSA conference you must give a 15 minute presentation about it in front of 3 or more judges, followed by 10 minutes of questioning.

**Overview**

People usually submit an essay they've already written, but this isn’t always the best way to go, because usually university essays are boring and dull and no one, especially not a judge, wants to hear you talk about it for 15 minutes.

For those who have written a supervised research paper, these are great, though you may have problems getting it down to the 5000 word requirement.

But if you do choose to use a faculty issued essay, then make sure it’s something you can talk about comfortably and add extra information into during the 10 minute questioning from the judges. You must be sure your referencing is accurate and in line with the AGLC.

The presentation itself has few rules. You can do PowerPoint, dress up as a character, sing, dance or simply chat about it. You won’t get interrupted during this part, the questions come at the end.

**Tips**

- Don’t drink too much the night before, judges don’t like the smell.
- When cutting down or increasing the volume of a pre-written paper, be careful to make sure the work still reads well and makes the argument coherently.
- Develop a thick skin, other competitors will bag you out for ‘having it easy’. Just be comforted by the fact you are superior.
- Judges are usually Constitutional Law lecturers (because they’re nerdy), so maybe throw in “it's the vibe” a few times so you can connect with them.
APPENDIX 1: Sample Judging Sheets

The following are samples of judging sheets that may be used in competitions at any level.

These are included to provide a glance at the criteria judges will be considering whilst they assess the performance of competitors.

They appear in the following order:

- National Moot Competition
- International Humanitarian Law Moot Competition
- Witness Examination Competition
- Client Interview Competition
- Negotiation Competition
- Paper Presentation Competition
Please mark all criteria and remember the emphasis is on the difference in points. A draw is not possible. Do not announce the scores or the results. Please return the score sheets directly to the coordinators.

<table>
<thead>
<tr>
<th></th>
<th>Senior Counsel</th>
<th>Junior Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation of Presentation</td>
<td>🟢 10</td>
<td>🟢 10</td>
</tr>
<tr>
<td>Development of Argument</td>
<td>🟢 25</td>
<td>🟢 25</td>
</tr>
<tr>
<td>Questions from the Bench</td>
<td>🟢 30</td>
<td>🟢 30</td>
</tr>
<tr>
<td>Manner and Expression</td>
<td>🟢 25</td>
<td>🟢 25</td>
</tr>
<tr>
<td>Written Submissions</td>
<td>🟢 10</td>
<td>🟢 10</td>
</tr>
</tbody>
</table>

**Team Score (Total 200)**

**Winner:**

- e.g. Appellants

**Margin:**

- e.g. +2 (for the winner)

---

**Organisation of Presentation**

Factors: logical organisation and structure; concise overview of submissions and conclusion; appropriate attention and weight given to some arguments over others; flexibility despite being taken off topic.

<table>
<thead>
<tr>
<th>Poor</th>
<th>Unsatisfactory</th>
<th>Standard</th>
<th>Excellent</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-20%</td>
<td>21-40%</td>
<td>41-60%</td>
<td>61-80%</td>
<td>81-100%</td>
</tr>
</tbody>
</table>

**Development of Argument**

Factors: understanding of the law and issues; logical, persuasive arguments; pinpoint citation of authorities; appropriate use of policy arguments; addresses opposing arguments in advance (appellant) or consequentially (respondent).

<table>
<thead>
<tr>
<th>Poor</th>
<th>Unsatisfactory</th>
<th>Standard</th>
<th>Excellent</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-20%</td>
<td>21-40%</td>
<td>41-60%</td>
<td>61-80%</td>
<td>81-100%</td>
</tr>
</tbody>
</table>
**QUESTIONS FROM THE BENCH**
Factors: prepared for questions that can be anticipated; clear, concise and direct responses; engagement with the court’s views; composure and courtesy despite challenges to arguments; effective integration of responses with arguments; adept treatment of irrelevant questions; ability to deal with difficult and obscure questions.

| Senior Counsel | 30 | Junior Counsel | 30 |

**MANNER AND EXPRESSION**
Factors: engages with the court; projects voice; articulates submissions with eloquence; use of clear and simple language; displays confidence without arrogance; eye-contact with all members of the bench; courteous and formal; correct citation; appropriate use of courtroom formalities; consistent style and manner.

| Senior Counsel | 25 | Junior Counsel | 25 |

**WRITTEN SUBMISSIONS**
Factors: coverage of all issues raised in the case; well structured; clear, concise and reasoned expression; supported by authorities with pinpoint citations; free from grammatical, spelling or punctuation errors; consistent with oral submissions.

| Senior Counsel | 10 | Junior Counsel | 10 |
# International Humanitarian Law Moot Championship

**JUDGES**

**COUNSEL FOR THE PROSECUTION / DEFENCE**

<table>
<thead>
<tr>
<th>JUDGES</th>
<th>NAMES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASE</strong></td>
<td>V</td>
</tr>
<tr>
<td><strong>DATE &amp; COURT</strong></td>
<td></td>
</tr>
<tr>
<td><strong>COUNSEL FOR THE PROSECUTION / DEFENCE</strong></td>
<td></td>
</tr>
<tr>
<td>Senior Counsel</td>
<td>Junior Counsel</td>
</tr>
</tbody>
</table>

**TEAM SCORE**

<table>
<thead>
<tr>
<th>Factor</th>
<th>Senior Counsel</th>
<th>Junior Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation of Presentation</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Development of Argument</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Questions from the Bench</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Manner and Expression</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Written Submissions</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

**WINNER:**

*e.g.* Prosecution

**MARGIN:**

*e.g. + 2* (for the winner)

**SPEAKER TOTAL**

<table>
<thead>
<tr>
<th></th>
<th>100</th>
<th>100</th>
</tr>
</thead>
</table>

**TEAM TOTAL**

<table>
<thead>
<tr>
<th></th>
<th>200</th>
</tr>
</thead>
</table>

Please mark all criteria and remember the emphasis is on the *difference in points*. A draw is not possible.

Do not announce the scores or the results. Please return the score sheets directly to the coordinators.

<table>
<thead>
<tr>
<th>Poor</th>
<th>Unsatisfactory</th>
<th>Standard</th>
<th>Excellent</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-20%</td>
<td>21-40%</td>
<td>41-60%</td>
<td>61-80%</td>
<td>81-100%</td>
</tr>
</tbody>
</table>

### ORGANISATION OF PRESENTATION

Factors: logical organisation and structure; concise overview of submissions and conclusion; appropriate attention and weight given to some arguments over others; flexibility despite being taken off topic.

**Senior Counsel**

10

**Junior Counsel**

10

### DEVELOPMENT OF ARGUMENT

Factors: understanding of the law and issues; logical, persuasive arguments; pinpoint citation of authorities; appropriate use of policy arguments; addresses opposing arguments in advance (appellant) or consequentially (respondent).

**Senior Counsel**

25

**Junior Counsel**

25
### QUESTIONS FROM THE BENCH
Factors: prepared for questions that can be anticipated; clear, concise and direct responses; engagement with the court’s views; composure and courtesy despite challenges to arguments; effective integration of responses with arguments; adept treatment of irrelevant questions; ability to deal with difficult and obscure questions.

<table>
<thead>
<tr>
<th>Senior Counsel</th>
<th>30</th>
<th>Junior Counsel</th>
<th>30</th>
</tr>
</thead>
</table>

### MANNER AND EXPRESSION
Factors: engages with the court; projects voice; articulates submissions with eloquence; use of clear and simple language; displays confidence without arrogance; eye-contact with all members of the bench; courteous and formal; correct citation; appropriate use of courtroom formalities; consistent style and manner.

<table>
<thead>
<tr>
<th>Senior Counsel</th>
<th>25</th>
<th>Junior Counsel</th>
<th>25</th>
</tr>
</thead>
</table>

### WRITTEN SUBMISSIONS
Factors: coverage of all issues raised in the case; well structured; clear, concise and reasoned expression; supported by authorities with pinpoint citations; free from grammatical, spelling or punctuation errors; consistent with oral submissions.

| Senior Counsel | 10 | Junior Counsel | 10 |
**WITNESS EXAMINATION CHAMPIONSHIP**

**JUDGES**

<table>
<thead>
<tr>
<th>CASE</th>
<th>R v</th>
</tr>
</thead>
</table>

**DATE & ROOM**

<table>
<thead>
<tr>
<th>COUNSEL FOR THE</th>
<th>PROSECUTION / DEFENCE</th>
<th>NAME</th>
</tr>
</thead>
</table>

**COMPETITOR SCORE**

- Opening Address: 10
- Examination-in-Chief: 25
- Cross-Examination: 25
- Closing Address: 10
- Manner and Expression: 20
- Case Theory: 10

**WINNER:** e.g. John Locke & Hilary Clinton

**MARGIN:** e.g. +2 (for the winner)

**COMPETITOR TOTAL** 100

---

Please mark all criteria and remember the emphasis is on the *difference in points*. A draw is not possible. Do not announce the scores or the results. Please return the score sheets directly to the coordinators.

<table>
<thead>
<tr>
<th>Poor</th>
<th>Unsatisfactory</th>
<th>Standard</th>
<th>Excellent</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-20%</td>
<td>21-40%</td>
<td>41-60%</td>
<td>61-80%</td>
<td>81-100%</td>
</tr>
</tbody>
</table>

**OPENING ADDRESS**

2 MINUTES

Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; outlines case theory; paints a picture of the fact scenario.

**EXAMINATION-IN-CHIEF**

10 MINUTES (PRELIMS) | 15 MINUTES (FINALS)

Factors: short, clear, non-leading questions; leads where appropriate; facts elicited efficiently and effectively; engages with witness and witness’ answers; avoids objectionable questions; argues objections according to principles of Evidence law (statute and common law).
**Witness Examination Score Sheet**

<table>
<thead>
<tr>
<th><strong>CROSS-EXAMINATION</strong></th>
<th>15 MINUTES (PRELIMS)</th>
<th>25 MINUTES (FINALS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factors: clear, succinct, leading questions; advances own case; probes character and attitude of witness; engages with witness and witness’ answers (including from examination-in-chief); avoids objectionable questions; argues objections according to principles of Evidence law (statute and common law).</td>
<td>25</td>
<td></td>
</tr>
</tbody>
</table>

**BREAK BEFORE SUMMATION**

<table>
<thead>
<tr>
<th><strong>CLOSING ADDRESS</strong></th>
<th>3 MINUTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; encapsulates case theory; draws on oral evidence to further case theory and arguments.</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>MANNER AND EXPRESSION</strong></th>
<th>20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factors: engages with the court; projects voice; articulates submissions with eloquence; consistent style and manner; deals with interventions with ease and concision; objects where appropriate; uses inference where appropriate; demonstrates sophisticated understanding of Evidence law (statute and common law).</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CASE THEORY</strong></th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factors: appropriateness of case theory to the facts; potential to improve case theory; effectiveness in eliciting evidence to support case theory; simplicity and logic of case theory.</td>
<td>10</td>
</tr>
</tbody>
</table>
# Client Interview Score Sheet

<table>
<thead>
<tr>
<th>JUDGES</th>
<th>NAMES</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLIENT</td>
<td>NAMES</td>
</tr>
<tr>
<td>DATE &amp; ROOM</td>
<td></td>
</tr>
<tr>
<td>TEAM ONE / TEAM TWO</td>
<td>(CIRCLE ONE)</td>
</tr>
</tbody>
</table>

## Teams Score
- Working Atmosphere: 10
- Description of the Problem: 10
- Client’s Goals & Expectations: 10
- Problem Analysis: 10
- Moral and Ethical Issues: 10
- Alternative Courses of Action: 10
- Client’s Informed Choice: 10
- Effective Conclusion: 10
- Teamwork: 10
- Self-Analysis: 10

## Team Total: 100

### Winner:
- e.g. John Locke & Hillary Clinton (Team One)

### Margin:
- e.g. +2 (for the winner)

Please mark all criteria and remember the emphasis is on the **difference in points**. A draw is not possible. Do not announce the scores or the results. Please return the score sheets directly to the coordinators.

<table>
<thead>
<tr>
<th>Ineffective</th>
<th>Somewhat ineffective</th>
<th>Standard</th>
<th>Effective</th>
<th>Highly effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2</td>
<td>2-4</td>
<td>4-6</td>
<td>6-8</td>
<td>8-10</td>
</tr>
</tbody>
</table>

### Working Atmosphere
Established effective relationship with client?

### Description of the Problem
Learned how client views his or her situation and problems?
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client’s Goals and Expectations</td>
<td>Learned the client’s initial goals and expectations?</td>
<td>10</td>
</tr>
<tr>
<td>Problem Analysis</td>
<td>Analysed the clients’ problems?</td>
<td>10</td>
</tr>
<tr>
<td>Moral and Ethical Issues</td>
<td>Recognised and dealt with moral and ethical issues?</td>
<td>10</td>
</tr>
<tr>
<td>Alternative Courses of Action</td>
<td>Developed alternative solutions?</td>
<td>10</td>
</tr>
<tr>
<td>Client’s Informed Choice</td>
<td>Assisted Client in understanding and making informed choices among possible courses of action?</td>
<td>10</td>
</tr>
<tr>
<td>Effective Conclusion</td>
<td>Effectively concluded the interview?</td>
<td>10</td>
</tr>
<tr>
<td>Teamwork</td>
<td>Worked together as a team? Balance of participation?</td>
<td>10</td>
</tr>
<tr>
<td>Self-Analysis</td>
<td>Identified strengths and weaknesses? Learned from their experience?</td>
<td>10</td>
</tr>
</tbody>
</table>
Please mark all criteria and remember the emphasis is on the difference in points. A draw is not possible. Do not announce the scores or the results. Please return the score sheets directly to the coordinators.

The teams should begin the **10-minute self-analysis** by answering the following questions:
1. In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?
2. How well did your strategy work in relation to the outcome?

<table>
<thead>
<tr>
<th>Ineffective</th>
<th>Somewhat ineffective</th>
<th>Standard</th>
<th>Effective</th>
<th>Highly effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–2</td>
<td>2–4</td>
<td>4–6</td>
<td>6–8</td>
<td>8–10</td>
</tr>
</tbody>
</table>

**Negotiation Planning**
Judging performance and apparent strategy, how prepared did the team appear? **10**

**Adaptability**
Was the team adaptable and flexible during the negotiation (e.g. to new information or unforeseen moves by the opposition)? **10**

---

**Negotiation Score Sheet**

<table>
<thead>
<tr>
<th>JUDGES</th>
<th>NAMES</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTY REPRESENTED</td>
<td></td>
</tr>
<tr>
<td>DATE &amp; ROOM</td>
<td></td>
</tr>
</tbody>
</table>

**Negotiation Championship**

<table>
<thead>
<tr>
<th>TEAM MEMBERS</th>
<th>NAMES</th>
</tr>
</thead>
</table>

**Team Score**

<table>
<thead>
<tr>
<th>Negotiation Planning</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adaptability</td>
<td>10</td>
</tr>
<tr>
<td>Session Outcome</td>
<td>10</td>
</tr>
<tr>
<td>Relationship Between Teams</td>
<td>10</td>
</tr>
<tr>
<td>Exploration of Interests</td>
<td>10</td>
</tr>
<tr>
<td>Creativity of Options</td>
<td>10</td>
</tr>
</tbody>
</table>

**Winner:**

- e.g. John Locke & Hilary Clinton

**Margin:**

- e.g. + 2 (for the winner)

**Team Total** **100**
<table>
<thead>
<tr>
<th>Session Outcome</th>
<th>Relationship Between Teams</th>
</tr>
</thead>
<tbody>
<tr>
<td>To what extent did the outcome of the session serve the client’s goals, regardless of whether agreement was reached?</td>
<td>How did the team manage the relationship with the other team? Did it contribute to or detract from achieving the client’s best interests?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exploration of Interests</th>
<th>Creativity of Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>How well did the team identify the key interests in the negotiation? Did they demonstrate sophistication in the analysis of the interests?</td>
<td>How well did the team demonstrate initiative, creativity and problem solving in their analysis of the interests?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Teamwork</th>
<th>Negotiation Ethics</th>
</tr>
</thead>
<tbody>
<tr>
<td>How effective were the negotiators in working together as a team, in sharing responsibility, and providing mutual backup?</td>
<td>To what extent did the negotiating team observe or violate the ethical requirements of a professional relationship?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Communication</th>
<th>Self-Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the team articulate their position clearly and eloquently? How well did the illicit information where appropriate?</td>
<td>Identified strengths and weaknesses? Learned from their experience?</td>
</tr>
</tbody>
</table>
### Written Paper

Factors:
- challenging or difficult subject of interest or importance
- clear definition and logical structure of ideas
- analysis defines and engages with a sound conceptual, analytical and theoretical framework
- argument is focussed and well-developed throughout
- independent, original and insightful treatment of all aspects of topic
- identifies and engages with all relevant aspects of topic and includes appropriate comparative references and insight
- critical evaluation of primary and secondary sources
- argument is reasoned, persuasive and supported by appropriate evidence
- expression, style and presentation are excellent
- consistent referencing, adhering to the Australian Guide to Legal Citation
- correct grammar, spelling and punctuation throughout
## PAPER PRESENTATION: Oral Presentation Score Sheet

<table>
<thead>
<tr>
<th>Judge</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topic</td>
<td></td>
</tr>
<tr>
<td>Date &amp; Room</td>
<td></td>
</tr>
<tr>
<td>Competitor</td>
<td>Name</td>
</tr>
<tr>
<td>Competitor’s Rank</td>
<td></td>
</tr>
<tr>
<td>Competitor’s Oral Presentation Score</td>
<td>60</td>
</tr>
</tbody>
</table>

Please do not announce the scores or the results. Please return score sheets directly to the coordinators.

## ORAL PRESENTATION
Factors:
- clear, concise, confident, articulate, elegant expression
- clear structure and organisation, logical progression and flow
- communicates ideas naturally and easily
- excellent variation in tone, pace and volume
- effective and intelligent use of visual aids
- appropriate use of stance, expression, gesture and humour
- engages with audience through excellent manner and style of presentation
- conveys sincerity and enthusiasm, stimulating the audience’s interest
- mastery of subject matter
- insightful appreciation of legal and policy aspects
- detailed understanding of issues and scholarship
- direct and focused response to questions