Acknowledgement

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We also need to thank Chol Pager for his efforts and motivation in compiling this guide last year. He was the driving force behind this project and without him; this guide would likely never have seen the light of day. Huge thank you to Airlie Waterman (Competitions Director, 2017) the rest of the 2017 Competitions Team, Sam Beer, Angas van Balen and Diandra Ciacciarelli for their effort in writing their respective competition Manual Guides.

The Australian Law Students Association Mooti
Monash University resources for legal research and writing
Queensland University of Technology Mooting Manual
Macquarie University Law Society Mooting Manual
The University of Adelaide Law Library Staff
Bond University Mooting Clip on Youtube

Kindest regards,

Samuel Leeson
AULSS Competitions Director
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WELCOME

Every year the Adelaide University Law Students' Society (AULSS) runs legal competitions, in order to give all students of any year level and experience the chance to learn new, and practical legal skills in an environment that is approachable, competitive and fun. Competitions are great ways to start applying the knowledge you have gained from your time at law school, to learn skills not necessarily taught academically, and to have a great time!

The AULSS offers competitions that target a range of skills, some which require more complex preparation such as Mooting, and Witness Examination, but also other everyday skills like Client Interviewing and Negotiation. Gaining experience with any of these skills is more than just a line on your CV. Competing will help you gain confidence, and will allow you to meet fellow law students, and improve your skills through working with peers. The competitions team seeks to give competitors the best possible experience by organising members of the broader legal community, often academics, senior practitioners, and members of the judiciary, to come and share their knowledge with the competitors as judges on round nights. Although presenting arguments, negotiating business deals, dealing with clients and examining witnesses may seem daunting at first, the prospect of gaining personal insight, and picking up valuable titbits’ of wisdom from members of the legal community is a truly invaluable opportunity.

Competing in the AULSS competitions also offers students the opportunity to travel to represent the AULSS at the prestigious Australian Law Students’ Association Conference (ALSA) where representatives of dozens of Australian universities come together for a week of fierce competition during the mid-year break. ALSA is an unparalleled opportunity to meet students from other universities, socialise and compete with the very best. It is a rare student who does not leave ALSA with many fond memories.

This handbook is produced each year to assist students in deciding which competitions you might be interested in and in giving you a guide to the best ways to prepare for competitions. There are many different publications available which are aimed at assisting competitors. We recommend you consult this guideline first before turning to other sources. While the rules and expectations are largely the same across other universities, there are some differences. Please remember that the instructions contained in this handbook, and the rules and regulations circulated to each competitor when they sign-up to compete, will prevail.
The AULSS strongly encourages participation in the competition program operating within the Law School as a means of developing important legal skills in a friendly but competitive environment. The AULSS runs a variety of different competitions every year. Examples of range of competitions available include:

- Open Moot (Semester 1)
- First-Year Moot (Semester 2)
- Novice Moot (Semester 2)
- Client Interviewing (Semester 1)
- Negotiations (Semester 1)
- Witness Examination (Semester 1)
- Paper Presentation (Semester 1)

The winning team or individual in each of the Semester 1 competitions represents the University of Adelaide at the Australian Law Students’ Association Conference (“ALSA”) in July. These students compete against students from other Australian universities. The winning teams at ALSA are often afforded the opportunity to compete at an international level.

If you would like to be involved in the competitions but you are not yet confident enough to compete then you can volunteer to be a client, a witness or a bailiff/time keeper in one of the competitions. Volunteering is a fantastic way to gain experience by observing other competitors. In addition, if you volunteer more than three times in a semester you will receive an Award for Service to the AULSS.

If you are in your first year and would like to moot, we recommend you participate in the First Year Moot. If you are not in your first year, but you have never mooted before, or if you have mooted but have never made the semi or grand finale of a moot, then you are eligible for the Novice Moot.

Why Compete?

There are many reasons to become involved in competitions. Even if your career plans do not involve advocacy in a formal setting, participation in the competitive environment of local, or national competitions develop skills such as targeted legal research, precision and clarity in the framing of legal arguments and the ability to articulate arguments in a wide range of forums. Such skills are of broad application across a wide range of roles taken by legal practitioners outside, as well as inside, the courtroom. Competitions are excellent learning tools in that they give you an opportunity to start applying what you have learnt in law school to practical legal problems. We, the AULSS competitions team strongly suggest that you seriously consider participating during your legal studies.
FAQs

How do I find a team?
You can find a team yourself, or you can enter a competition and have a team assigned to you. Different competitions have different numbers of people in the teams:

- Mooting - teams of 2-3
- Negotiations - teams of 2
- Client Interviewing - teams of 2
- Witness Examination – team of 2

Remember that because many of these activities are team based, if you don’t turn up to compete on the night you’ll be letting your team (and your opposition) down. If you’re unsure about how much of a commitment a competition is, email the competitions team for more information.

What do I wear?
Neat business attire is expected from competitors. Grand Finalist MUST wear business attire.

What should I do to be prepared?
Attend the competitions information session, read the competition Rules and Marking Guide as well as this Competitions Handbook. When you receive the question, meet with your team and work out the speaking positions or roles, start researching. If you are mooting prepare your submissions etc. and practise!

What should I do on the night?
All of the information regarding times and locations will be circulated before the day of competitions. Make sure you check what time you are competing and what venue your competition is taking place. Upon arrival, find the relevant competitions Coordinator who is overseeing the night. They will be able to direct you to the correct room, and will be able to deal with any questions or concerns that you might have.

Who will judge me?
Judges, practitioners, academics and senior students with experience in the relevant competition will judge you. The further you progress in the competition, the more likely you are to have the opportunity to compete in front of judges or senior members of the profession. For example, Justices of the Supreme Court may judge the Open Moot Grand Final.
What sort of feedback will I get?
You can expect to receive constructive criticism from your judge. Judges will tend to draw attention to both the strengths and weaknesses in your performance. If you want more feedback, feel free to approach the judge after the competition to ask for additional pointers.

Do not be disheartened by criticism you receive. Competitions are a learning process, and the judges are there to help you develop your skills.

Will the rooms be set up?
You will have to set the room up yourself and unpack at the end (see below for diagram)

How will I be contacted?
We will email you, so please check your student emails constantly. If you receive correspondence, please inform your teammates. We will send you the draw for the round, and it will tell you your location, round time and date, and opposing side.

What if I cannot attend a round?
Please ensure you attend each round on time. If you are more than half an hour late, you will be deemed to have forfeited, if you cannot attend, please notify the competitions coordinator as soon as possible (so as not to risk being banned from further competitions). If there is an emergency, please let us know so we can contact opposing team and the judge(s).

What do I do if I have a problem?
If you have a problem, query or concern then the first port of call should be the Competitions Coordinator for the particular competitions. If you do not feel comfortable approaching the coordinator then you should contact the Competitions Director.

We are always happy to hear feedback from students about the administration of the competitions.
CONTACT

If you have any questions or queries at all about any of the competitions feel free to contact the Competitions Team for 2018:

<table>
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Where to find us

The AULSS office is located on the ground floor of Lidgerwood Building, Room 1.06.
Mooting before Michael Kirby was the highlight of my time at law school.

It would never have happened had I not taken the first step of participating in the first year moot. I would recommend mooting to any law student. It eclipses every other extracurricular activity in both the skills it builds and the opportunities it offers.

John Eldridge, National Kirby Moot grand finalist 2012
INTRODUCTION

This mooting manual has been prepared to provide a basic guide to those students preparing for, or considering entering, one of the AULSS internal mooting competitions. It takes you through each step of the mooting process – the release of the problem, conducting research and forming argument, writing submissions and the moot itself. It may also be useful for students selected to represent the AULSS at ALSA competitions.

It is important to remember that this manual is intended as a guide only. It is a resource to answer the basic and the most frequently asked questions about mooting.

Ultimately, advocacy is a personal experience and you need to develop a style that works best for you. Advocacy is often based on personal preferences; some judges might like certain techniques while others might be unable to stand them. As far as it is possible, this guide tries to stay away from those areas or at least provide fair warning of the difference preferences you might encounter.

It is impossible to provide a definitive guide. Ultimately, practise and experience will serve you well. If there is one message that you take away from this guide, it should be this – prepare thoroughly, to the point of being over-prepared. Every other aspect of advocacy becomes easier, and your performance will improve remarkably, if you are properly prepared. Even the best advocates crumble with inadequate preparation.

Good luck with your mooting endeavours!
A moot is a simulated appeal case to a superior court, based on a fictitious fact pattern and judgment of a lower court. Students appear as barristers before a mock judge or a mock panel of judges, to argue the law. As the moot is an appeal, the focus is not on adducing evidence, but on the law. There are no witnesses in a moot, as the facts have already been decided. The issue within the moot is instead whether the law was interpreted and applied correctly in the judgment from the lower court. Mooting tests many different practical legal skills and is one most prestigious competition that AULSS has to offer. Finalists are lucky enough to present in front of actual members of the Judiciary and legal practitioners!

AULSS internal mooting competitions will usually involve an appeal to the South Australian Court of Appeal from a decision of the Supreme Court or District Court. Within a moot, there are two teams pitted against each other. One team acts for the appellant (the party bringing the appeal) and the other acts for the respondent (the party responding to the appeal). Each team consists of two barristers: A Senior Counsel and a Junior Counsel. Teams participating in Open Moot are also allowed to have a solicitor, who acts as research. Teams are supplied with a set of undisputed facts, from which a range of appeal issues will arise. There will be instructions at the end of the problem informing you who are appealing against what part of the judgment.

Once the problem is released, students will research and prepare written submissions that present their arguments to the judge or the judging panel, who then decide what team won in regards to the law and what team mooted the problem the best. A key feature of moots is the questioning you will receive from the bench/judge. Mooting is one of the most challenging law competitions. Mooters need to have a strong grasp of the law and be ready to respond to questions from the judge. Preparation is the key to a successful moot. Although judges endeavour to be both friendly and fair, you can expect to be rigorously questioned.

As you cannot choose which side you represent, and because mooting is a test of advocacy, the winner of the case does not determine the winner of the moot. The moot is won on the strength of the advocacy. This entails an assessment of your legal arguments, analysis, research, preparation and skills in persuasive writing and speaking.

For more information click on the YouTube link below!

Bond University – What is Mooting
WHY MOOT?

Mooting is a fantastic way for students to develop a variety of practical legal skills that are not only essential to a law student’s education but to all legal practitioners, as well as other professionals. These skills not only include legal research skills and oral advocacy skills, responding to and rebutting the submissions raised by the opposing side, but most important of all, the ability to formulate a persuasive legal argument.

Students do not only gain many great skills and graduate capabilities, but also gain valuable legal knowledge that will definitely prove to be advantageous come exam time! As many exam questions will be hypothetically based, a moot is in essence a practice exam question in an array of different subject areas.

Excluding all of these practical examples of the benefits of mooting, it is also just a really good way to get involved in your university, make new friends (or potentially create some friendly rivalries!) and to have fun!

WHAT ARE YOUR OPTIONS?

We run three different moots over the course of the year. These are: Open Moot, First year Moot and Novice Moot.

In Semester One the AULSS Competition team runs the Open moot. This is open to all law students and covers a diverse range of areas of law (See Open Moot Competitions Rule). The International Humanitarian Law Moot focuses on the law of the use of armed force. The winning team from each of these moots represents the University of Adelaide at ALSA. Both the IHL Moot and the Open Moot run in Semester One.

In Semester Two, we run the First Year Moot and the Novice Moot. These are targeted at mooters who are not experienced. If you are a first year, or have never mooted before, we strongly recommend you compete in the First Year Moot or the Novice Moot. Introductory sessions to mooting and mooting clinics will be held in second semester to assist those who are new to mooting.
PREPARING FOR MOOTING

Despite the fact that the moot is a mock appeal, it is extremely formal in structure and competitors must adhere to the same etiquette as they would if they were presenting in a real courtroom. Although many of the preliminary rounds are heard in front of student judges or people within the Law School, finalists will be presenting in front of prominent legal professionals, including members of the judiciary. It is therefore important to establish good habits from the beginning, as it may not seem important to remember the formalities when presenting in front of a peer; however, prominent members of the judiciary and members of the legal community expect and deserve respect the same level of respect that they would receive from barristers presenting before them in reality.

The purpose of this part is to guide you through your preparation for one of the mooting competitions organised by the AULSS. There are seven steps to the mooting process which are considered:

1. The moot Material
2. The Moot Problem
3. Division of Work
4. Research
5. Reading case materials
6. Written Submission
7. Oral Submission
8. Layout of the Moot Court

The following video links will guide you through Mooting:

WHAT IS A MOOT?
STRUCTURE OF A MOOT
PREPARING TO PRESENT YOUR MOOT
RESEARCHING YOUR MOOT
MOOTING TIPS
MOOTING DEMONSTRATION UNSW
STEP ONE: MOOT MATERIALS

Once you have registered for a competition there is not much you can do until you received the moot materials, which will be emailed to you by the AULSS competitions Coordinator or director. This will typically include the moot problem, rules, criteria sheet and draw. While it is always tempting to jump straight to the problem, it is vital that you read each of these documents carefully. Each document is discussed in more detail below.

The Moot Problem
So important that it has its own section. See Step Two: The Moot Problem below

The Rules
The rules will generally be the same across the various mooting competitions. However, there will be some important differences so make sure you give them a proper read. Some of the main rules you should always seek to identify are:

- How long your written submission are allowed to be
- When your written submissions are due
- When you will receive the opposing side’s written submissions
- How long your team is allocated to present its case in oral arguments
- How the time can be divided between the two speakers
- Open or closed authority list

The Criteria Sheet
You will be familiar with criteria sheets and, as with all university assessment, it is important to review these prior to competing so you are aware of how you will be judged. In particular, note the large percentage of marks allocated to your presentation style, response to questions and substantive arguments.

Even though written submissions are only worth a small percentage of your marks, they are far more valuable than that. They are the first impression a judge will have of your advocacy skills (written advocacy is as important as oral advocacy), the quality of your research and arguments, and the amount of preparation you have done. It is also your first opportunity to persuade a judge of why your side should succeed in its case. The judges will have been given your written submissions prior to arriving at the moot (although there is no guarantee they will have read them!)

The Draw
Review the draw. Find out where your room is and what time you are competing. Find out who your judge is and if possible also sent them a copy of your submissions. Double-check these details.
STEP TWO: THE MOOT PROBLEM

The most important element of any moot is the moot problem. These are the set of facts you are bound to follow. No new facts may be introduced.

Read the problem carefully and often. You will be expected to know the problem back to front, just as a barrister is expected to know her or his brief. When you are giving oral submissions the bench will expect you to be able to direct them to page, paragraph and line references for the facts.

When you read the problem the first time try to keep an open mind about the problem. Fight the urge to view it from the perspective of either the appellant or respondent.

The Ground of Appeal
Most moot problems will end with grounds of appeal and cross-appeal, which will guide your research and submissions. They are essentially instructions to you as to what are the “live” issues on appeal. Grounds of appeal are discussed in more detail below in Step Three—Division of the Work.

Inferences
You are bound by the facts provided in the moot problem but you are also normally allowed to make those inferences, which are a necessary and logical extension of the given facts. Inevitably there will be gaps that have been (intentionally or unintentionally) left by the problem writer, which you may attempt to fill. However, it is vital that you understand what inferences can be drawn. An inference is a fact which is not expressly contained in the Moot problem but which may be deducted from the given facts. Consider the following example from 2016 Novice Moot Competition:

Donald Tromb owned an award-winning Mango which has numerous branches overhanging the property of Donald’s neighbour, Hillary Klinter. One day Hillary removed a particularly obnoxious branch and stuck it up upright. This mango grew. Donald became concern about the unique genetics of the mango spreading. He demanded that Hillary get rid of it, or give it back. Hillary refused. Donald immediately called his lawyer, Ms Kimberly Cardashia, to draft a letter demanding the tree and any womangoes grown from it be returned. The next day Hillary received a letter of demand which read:

We are instructed by our client to demand that you immediately return the mango tree you have grown from a clipping of his tree.

Suppose Donald brings an action against Hillary in detinue. An element of detinue is a valid demand made by the plaintiff to the defendant. While it is obvious that Hillary has received the letter from Donald’s lawyers, the
demand made fails to provide a place for return of the tree as per Lloyd (1899) 20 LR (NSW) 190, 194. Therefore, it would be necessary for the counsel of the plaintiff to draw an inference that a reasonable person in the position of the Respondent would have construed the demand to include all relevant information.

However, you must be careful about what inferences can be drawn. Generally, an inference will only be allowed if it is the only logical or rational conclusion to be drawn. Use case law to support your inferences.

**STEP THREE: DIVISION OF THE PROBLEM**

**Why should we divide the work?**

Once you have read the problem it is time to begin the process of research, development of arguments and preparing written and oral submissions. As you will be working in teams it is both efficient and necessary to divide the work. It is efficient because you will be able to cover more research in the limited time available to you and necessary because both team members are required to address the court during oral submissions.

**How should we divide the work?**

As mentioned above, most moot problems will provide grounds of appeal at the end, which should guide your research. These grounds of appeal should also guide your division of the work.

It is important to understand that a moot problem is usually drafted with the following factors in mind, that allow for a logical division of the work:

1. There should be a roughly equitable split available, such that each person has an equal amount of research, writing and speaking to do.
2. The legal issues are often capable of being grouped into similar themes or areas.

These are the factors that should determine how you divide the work amongst yourselves. Below are some examples of grounds of appeal from previous moot problems, with guidance on how the work would be divided.

**Example – odd grounds of appeals**

Taken from 2016 Novice Moot problem

Harvey appealed the decision of Caterson J to this court on the action in false imprisonment, and Lewis subsequently cross-appealed on the action in negligence.

The issues on appeal are:

a. Was Caterson J correct in finding that there were no reasonable means of escape in the action in false imprisonment?

b. Accordingly, is Mr Skyfall liable for false imprisonment?
c. Was Caterson J correct in finding that Mr Skyfall did not owe Mr Pitt a duty of care not to cause psychiatric harm?

In this case, the first two grounds are closely related. It would make sense for one person to deal with them together. The other person would then deal with the second ground (c). Once you undertake your research, you will also appreciate that each area has a roughly equal amount of work involved.

**Be familiar with the entire problem**
Obviously the time constraints will likely prevent you each from researching in detail each other other’s issues. However, you should know what the broad issues are and be familiar with your co-counsel’s submissions.

## STEP FOUR: RESEARCH AND DEVELOPING ARGUMENTS

### Introduction
Once you have divided the problem, you are ready to begin your research. This section begins by examining the research process and provides some tips on how you might go about researching a moot problem. It then continues to discuss the process of developing arguments.

With respect to your grounds of appeal you will research the area, come up with some arguments, write your written submissions and then present your oral submissions. However, there is overlap between these stages. Therefore, this section is aimed not just at the research you conduct but also the more general techniques for preparation you will engage in (for example, questioning each other on your arguments to test their strength and consider what a judge might ask). Therefore, while steps three, four and five are separated you should consider them as all part of the same process, which forms the majority of the work you do in preparing for a moot.

### The Research Process
Research is a process you will undoubtedly be familiar with from your studies. This guide is not intended to go through the basics of research; you have enough opportunities to learn about that during your degree. This section focuses on research in the context of a moot. It is important to remember research is an ongoing process throughout the preparation of your written submissions and oral submissions. Usually the process is ongoing because even after you have completed your initial research, developed your arguments and begun preparing your written and oral submissions, you will still find holes in your arguments, which need to be addressed. Further, as you think more about the problem and what your arguments are, you will find that they change and require more research.

It is important when researching a moot to start with an open mind and to work from the more general to the more specific. Remember to try and use all the facilities that are available to you, including textbooks, legislation, scholarly articles, case law and online materials. Have a
look around on https://www.adelaide.edu.au/library/about/libraries/law/ to have a better understanding of the resources available at Adelaide Law School

**Secondary Sources**
Secondary sources can be an excellent starting point for your research. Begin by reading a legal encyclopaedia or textbook on the area of law. Using your old notes is also a starting point. These will provide you with broad summaries of the area of the law and key principles. This is particularly useful if the subject matter of your moot touches upon an area of law with which you are unfamiliar or you have forgotten.

When reading textbooks, it is important to find the most recent text for this, as older texts may have become obsolete. This will help you understand the general principles of the law, and point you in the direction of the seminal cases and legislation in this area. Also remember that you do not have to read the entire textbook but simply the relevant section.

Although textbooks are useful, they can only ever be used as a starting point, and are not binding upon the court and cannot (except in very exceptional circumstances) be used as an authority. It is essential to recognise the limitations of secondary sources. The most important source that you have instead will be the cases that the textbooks direct you to.

To find textbooks, use the library catalogue, which is accessible from the library homepage or otherwise just ask the Library staff.

**Journal Articles**
Moots problems are often based on contentious and questionable areas of law, and therefore topical legal issues. Journal articles are a valuable resource for commentary on recent cases and topical issues. Journal articles based around particular cases (case notes) can be a helpful way to introduce you to the cases before you read it, which can aid in the reading process. However, note that Journal article will generally not cover the entire area of law and you will have to read the whole case to get a better idea.

**Primary Sources – Cases**
Primary sources provide the authorities that are binding or persuasive to the bench and as such these are the materials that you must be prepared to rely upon and discuss in considerable detail.

**Closed Authority**
Most moots will often provide you with a list of primary sources. The significance of these sources depends on the type of moot. If the moot has a closed authority/case list, then you will only be allowed to refer to those cases and legislation that are contained on the list. If you attempt to rely on an authority not provided on this list substantial penalties will apply and you most likely not succeed in both your written and oral submissions. In any event, it is both unfair and dishonest to your opponents to go outside the list.

*Do not ask the mooting coordinator whether you can go outside these authorities.*

**Open Authority**
If you have an open authority list then there are no such restrictions. You are free to refer to any authorities, and do not even need to rely upon
those provided. The list is merely provided as a starting point.

The importance of reading and critically thinking about the cases you read (in full) cannot be stressed enough. It is not sufficient to simply rely upon what the textbook says a case stands for. You must read the case and have the pinpoint reference to the part of the case that supports your submission of what the law is

Further, you will often be required to engage in detailed and critical analysis of primary materials during oral submissions (in addition to the discussion about your arguments). This will not be possible unless you read and have a proper understanding of the materials, having engaged with it at a critical level.

You might be able to get away with not reading cases for your university subjects but if you want to be a good mooter and advocate then you must read cases.

Using Databases to Find Cases

The Library subscribes to a number of legal databases, which can be accessed through the Library homepage. These are a few of the useful database:

- Austlii. (Can also be accessed at www.austlii.edu.au) – This is one of the most useful research tools as it contains full text copies of all Australian legislation, all High Court and Federal Court decisions as well as many decisions from State Supreme Courts.
- LexisNexis AU and CaseBase
- Firstpoint
- Legal Online
- Westlaw International
- Hein Online
- Jade On Line

Not all of these will be helpful for every moot. They are all useful research tools however they also contain much of the same information. Which one you decide to use is really a matter of personal preference. It is advisable that you have a quick glance at each of them to decide which one works best for you.

The most useful database that you will use will be CaseBase when researching a moot. CaseBase allows you to search for materials using various categories. You can search with key words or legal concepts but there is also a facility to allow you to search using a specific case name. This allows you to see if there are subsequent decisions relating to that case and if there are any relevant journal articles, which may be useful to help you understand the decision in the case.

Forming submissions and arguments

When you conduct research your goal is to create arguments that support your submissions and advance your client’s case to the result ultimately being sought. As mentioned above, you do not want to be researching to find the “answer”. Therefore, you are researching to create arguments.

In order to illustrate this process, the 2016 Novice Moot problem (attached at Appendix 1)
is used as an example. In that problem, the submissions for the appellant might be as follows:

- The learned trial judge erred in finding that the detinue action by the Appellant would not succeed.
- The learned trial judge did not err in dismissing the Respondent’s action in trespass because there was a broad implied licence for the Appellant to deal with the tree as he wished while on the Respondent’s land.

The submission for the respondent might be as follows:

- The learned trial judge erred in finding that an action for detinue can be founded upon the facts presented in these circumstances.
- The learned trial judge, if correct in his finding that detinue can be establish on the facts, was correct in finding that the limitation period applies, with the Mango being part of the tree, not constituting a separate good and not re-enlivening the limitation period, distinguishing from the case of Grant v YYH Holdings.
- The learned trial judge was incorrect in his finding that an action for trespass will fail on grounds of broad implied licence.

**Broad Submission**

Note that the submissions are broad and address particular findings of the trial judge, which are said to be errors. In appellate advocacy it is important for the appellant to identify these errors, as that is the only way that the appeal will be allowed. By contrast, the respondent is seeking to argue that there were no errors and the appeal should be dismissed.

You are then creating arguments that will support these submissions. As an example, the appellant may make the following arguments in support of its first submissions:

1. The Appellant had necessary standing to sue and made a specific demand from the Respondent for the return of the FLOTUS fruit, which was unreasonably refused by the Respondent.
   1.1. The Appellant had title to sue in the form of an immediate right to possession over the fruit of the FLOTUS tree.
   1.2. The fruit of the FLOTUS tree and the FLOTUS tree itself are separate items of property.
   1.3. The Appellant made a valid demand for the return of the FLOTUS tree fruit. A reasonable person in the position of the Respondent would have construed the demand to include all relevant information.
1.4. The Respondent unreasonably refused this demand. Consistently, a formal, explicit refusal was not necessary in the circumstances.

The appellant may also make the following arguments in support of its second submissions.

2. There existed a broad implied licence for the Appellant to deal with the tree however he wished while on the Respondent's land.

2.1. The Appellant did not enter the Respondent's premises as a trespasser as his entry is justified by right or authority.

2.2. The Appellant's actions were within the scope of his justification for being thereon.

2.3. Whether an authority to enter the land of another is limited is a question of fact.

Note that each of these submissions and arguments is supported by case law. The main focus of the oral submissions is to thoroughly discuss the cases in detail and how they support your side submissions.

STEP FIVE: READING CASE MATERIALS

Once you have found relevant cases, you often find that the report of the case is divided into sections. At the beginning there will generally be a “head note” that briefly outlines the key facts and the decision. Following this will be the written judgments, either joint or individual judgments, from the judges that heard the case. It is important to distinguish whether it was a unanimous decision, or whether there were any dissenting opinions. Although the majority decision is the decision of the court, dissenting judgments can be used as persuasive material before the court. It is important to realise that although there may be a majority decision, they may have come to that decision with different reasoning within their individual judgments. This is important to realise when using the case in your moot.

Having said all that, the best way to read a case is to read it thoroughly from beginning to end. This way you shall be able to see the common thread that will join different individual judgments into one majority decision. Also, you will often find some sections will be more relevant than others; however, sometimes these sections require a second reading, just in case they are relevant!

A warning to all mooters: do not take shortcuts when reading cases! A secondary source, such as a textbook, will never be as good as reading the case thoroughly and carefully yourself. This
is especially important for seminal cases, where the judges will know when you do not fully comprehend something.

**Important Terms**

**Ratio decidendi** – means the reasons for the decision. The ratio is therefore anything that is said by the judge within a judgment that is indispensable to the reasoning for the decision. This reasoning is what is binding on subsequent courts. In a case where there are multiple judgments, which follow different reasoning to reach the final decision there may not be a clear ratio.

**Obiter dictum** – means a remark in passing. This is any statement that is not used within the reasoning for the final decision. Unlike ratio, obiter statements are not binding on subsequent courts, but they can be used as persuasive material. Obiter statements are often made on issues not directly relevant to the decision. They often begin with phrases such as “although consideration of this question is not necessary” or they may be presented as a hypothetical. Using Cases with Similar Fact Patterns

When reading different cases, it can be useful to attempt to find cases that have a similar fact pattern to your mooting questions. Sometimes mooting questions will be written with a specific case in mind, and therefore will have a similar fact pattern to a real case. The best way to use these cases is to show that way the judges applied that law to that case is still relevant to the mooting problem at hand. It is important to ensure that you are using the application of the law, and not simply saying that it is has similar

facts, as the judges are interested in the application of the law.

**Distinguishing Cases**

Although you can use cases with similar fact patterns, generally one should not dwell too much on differences between the fact scenario between the moot question and the authorities you find. Many judgments will consider how the law applies generally, as opposed to a specific factual scenario. General statements of the law by judges are what may be the most useful within a moot, as they are not specific to a set of facts.

However, cases that can be distinguished in law or in fact can still be used. To do so, you must show the court that the previous case was so different to the current factual scenario that the case is of no relevance to the current matter. Another way is to say that although there are similar facts, the law that was applied within the previous case is not applicable to the facts of the case at hand. This is an extremely useful tool for a mooter to use to avoid a precedent that may be harmful to your case. Remember though that the court may not accept your attempts to distinguish the case, so always have a backup plan!

**Other ways to avoid settled precedents – public policy argument**

You may not be able to distinguish the case in fact or in law, but you may be able to argue that due to changes within the social circumstances the precedent no longer should apply. This is what is referred to as the public policy argument. To make this argument, you must prove to the court that the decision in the
previous case was made in reliance upon a different social standard than is in practice today. Although this is a good argument in certain cases, it will definitely not always apply, but situations in which it will apply will be clear. Perhaps the most famous example was the decision in *Mabo v Queensland* (1992) 175 CLR 1 where Brennan J stated at page 42:

> “Whatever the justification advanced in earlier days for refusing to recognise the rights and interests in land of the indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted.”

**The use of precedents in mooting grey areas of law**

It is important to realise when researching a moot that, more often than not there will not be any binding precedent to directly support your argument. This is generally because moot questions are based on grey areas of law, and therefore there are no direct precedents for you to rely on, only persuasive materials. It is important to remember that your role as an advocate is to convince the court that the authorities you rely on are the most relevant and that they, as opposed to the authorities of your opponents, should be applied to the facts.

**STEP SIX: WRITTEN SUBMISSIONS**

**What is a written submission?**

Within a moot, students are required to submit short written memorandums to the judge and the opposing team, which outline the structure of the arguments and the cases or authorities that their arguments will be relying on. Written submissions allow for a skeleton argument for students to outline the direction of their argument. This is done to allow the judges and your opposition to have time to consider and examine the general arguments you will be making before you have been presented them to the court. You are expected to follow your written submission as closely as possible when making your presentation to the Court. Competitors must send their written submissions in soft copy to the organising Moot Competition Coordinator and the opposing team by the specified time in the relevant mooting competitions rules. Failure to adhere to these rules may results in penalties.

It is difficult to provide any specific instructions or how-to guide on how exactly you translate your research and arguments into persuasive written submissions. The best ways to learn are to practise and learn from others by viewing examples of outstanding written submissions.

It is important to reiterate your role as an advocate. You are attempting to communicate your arguments in persuasive and concise written submissions.
What is in the written submissions?

Written submissions should include:

- The title of the case and the side you are appearing for,
- Names of Counsel – Senior and Junior Barristers and the time for which each will be speaking. You should also include the name of the instructing solicitor.
- A brief statement of facts – no longer than half a page
- The questions presented. Outline the major questions that must be resolved by the court – usually only 2 or 3 questions are at issue in any moot

Again using the 2016 Novice Moot problem as an example, it is necessary to provide some basic guidance as to the law relating to liability for negligently inflicting psychiatric injury.

However, this does not mean discussing every aspect of it, just those parts that are directly relevant to making your submissions. For examples, consider s 33(1) of the Civil Liability Act 1936 (SA):

A person (the "defendant") does not owe a duty to another person (the "plaintiff") to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.

This is section of the legislation is a law which is directly relevant to the moot problem and can be applied to the submission by arguing, The Appellant owed the Respondent a duty of care to not inflict mental harm on him. Pursuant to s 33 (1) of the Civil Liability Act 1936 (SA), a reasonable person in the Appellant’s position would have foreseen that a person of normal fortitude in the Respondent’s position may suffer a mental illness after witnessing their pet being harmed.

Secondly, you should remember and try to replicate the IRAC method you would have learnt in your first semester of law. This should form the basis of how you present your submissions, with some modifications. First instead of stating the issue which is consistent with an approach where you do not know the answer and are trying to find out), you should state the issue as your argument (which is consistent with an approach of asserting what the answer is).

In the 2016 Novice Moot problem, the third issue which is directly relevant to s 33 of the CLA is whether the learned trial judge erred in finding that the Appellant did not owe the Respondent a duty of care to not occasion mental harm from witnessing harm to his property (cat). For the respondent, this would be translated into the following heading:

The learned trial judge erred in finding that the Appellant did not owe the Respondent a duty of care to not occasion mental harm from witnessing harm to his property.

Consider the following argument being made by the respondent as to why the appellant owed a duty of care to the respondent under the IRAC approach: Issue, Rule, and Apply Conclusion.
**Issue:** whether the appellant owed the respondent a duty of care to not cause mental harm.

**Rule:** The respondent in a civil claim of negligence will only be liable to the applicant/plaintiff by way of damages if the following elements are established on the balance of probabilities:

1. That a duty of care was owed by the respondent to the plaintiff in the relevant situation;
2. That the respondent breached that duty of care owed to the plaintiff; and
3. That the plaintiff has suffered some injury or damage as a result of that breach.

**Apply:** The Appellant owed the Respondent a duty of care to not inflict mental harm on him. Pursuant to s 33 (1) CLA, a reasonable person in the Appellant’s position would have foreseen that a person of normal fortitude in the Respondent’s position may suffer a mental illness after witnessing their pet being harmed.

The parties’ pre-existing relationship establishes that it was reasonably foreseeable to the Appellant that suddenly harming the Respondent’s cat could cause him mental harm: s 32 (2) (a) CLA, Tame v New South Wales; Annetts v Australian Stations (2002) 211 CLR 317, 237.

The pre-existing close and loving relationship between the Respondent and the victim further establishes that such mental harm was reasonably foreseeable to the Appellant.

**Conclusion:** The appellant should be liable in tort for psychiatric injury to the respondent.

**Structure of the Argument**

Make it as clear as possible – space it out to make for easy reading, you want the judge to be able to understand exactly what you will be attempting to prove. Clearly state the point you are submitting to the Court and then list the authorities that you will be using to support this submission. The format of individual submissions may differ, however, it is best to use a simple formula, stating each submission point by point, starting with your strongest argument. By way of examples your submissions should be structures like this:

1. It is submitted that the judge was incorrect in his direction on the issue of... or the learned trial judge erred in finding xyz
2. It the learned trial judge erred in to correctly or sufficiently apply the test of causation...

Under each of these points you may have sub-points that pertain to that particular argument. Following this you must list the relevant authorities supporting this argument. See Appendix 1 for a full example of a submission.
STEP SEVEN: ORAL SUBMISSIONS

Oral submissions: the principles
Once you have completed your written submissions, you will be required to give oral submissions. As with written submissions, this section outlines a basic guide as to how you should approach your oral submissions, including some guide for preparation. It also addresses some other aspects of oral submissions, such as language/terminology, drawing inferences, citations, dealing with questions from the bench and appearances, which together should provide you with a solid foundation in preparation for your first moot. They may also be a refresher for those senior students who are experience at mooting.

Terminology
It is appropriate to begin with some of the terminology that is common to courts, which you should become familiar with:
<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning &amp; How to use it</th>
<th>Use instead of</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>May it please the court</strong></td>
<td>A polite introductory phrase used at the beginning of submissions, in between submissions and at the conclusion of the oral submissions.</td>
<td>Um; Ladies and Gentlemen; “Good Afternoon”</td>
</tr>
<tr>
<td><strong>Your Honour</strong></td>
<td>The way to address an individual judge.</td>
<td>“Sir”; “Madam”; “you”</td>
</tr>
<tr>
<td><strong>Your Honours</strong></td>
<td>The way to address the bench, or multiple judges.</td>
<td>“ “</td>
</tr>
<tr>
<td><strong>“My learned friend”</strong></td>
<td>To refer to the opposing counsel, e.g. “My learned friend suggested that there was no duty of care. However, we submit . . .”</td>
<td>“My opponent”; “The opposition”; “him/her”; “he/she”; “my colleague”; “John/Jenny”</td>
</tr>
<tr>
<td><strong>“My learned senior/junior” or</strong></td>
<td>To refer to your co-counsel.</td>
<td>“My colleague”; “John/Jenny” etc.</td>
</tr>
<tr>
<td><strong>“My learned Co-Counsel”</strong></td>
<td><strong>“My learned senior/junior” or “My learned Co-Counsel”</strong></td>
<td></td>
</tr>
<tr>
<td><strong>“We submit”</strong></td>
<td>To introduce any submission, point or argument, e.g. “We submit that Mr. Smith breached his duty of care.” N.B. Do not say “counsel submits.”</td>
<td>“I/We think”; “I/We feel”; “I/We believe”; “I/We would argue.”</td>
</tr>
<tr>
<td><strong>“I cannot assist the court on that matter”</strong></td>
<td>Where you do not know an answer to a question. N.B. Use sparingly if at all, it is your role to be prepared to answer the court’s questions!</td>
<td>“I don’t know”; “I’m not sure”; “um….”</td>
</tr>
<tr>
<td><strong>“I will now turn to my first/next submission”</strong></td>
<td>To introduce a new submission</td>
<td>“My first point is . . .”; “the first/next thing I wish to say is . . .”</td>
</tr>
<tr>
<td><strong>“With respect your Honour”</strong></td>
<td>To correct the bench or disagree with them, e.g. “with respect your Honour, that is not correct/not our submission.”</td>
<td>“I disagree”; “You’re wrong.”</td>
</tr>
<tr>
<td><strong>“If I could be heard for a moment longer...”</strong></td>
<td>Where the judge is pressing you to move on but you are not ready to do so or you have not finished your submission), e.g. “your Honour, if I could be heard for a moment longer on the point of breach of duty, we submit...”</td>
<td>“I need to finish my point”; “I have not finished”</td>
</tr>
<tr>
<td><strong>“If your Honour is content to accept that without further submission”</strong></td>
<td>Where a judge agrees with the submission and does not need to hear more, e.g. “If your Honour is content to accept without further submission that there was a breach of duty, then I will now turn to my submission on causation.”</td>
<td>“Okay, if your Honour is happy with that, then...”; “Um, ok then.”</td>
</tr>
<tr>
<td><strong>“I withdraw that”</strong></td>
<td>To retract an incorrect statement, e.g. “your Honour, in that case the High Court held – I withdraw that – the Court of Appeal held...”</td>
<td>“Oops...”; “Sorry”; “Can I take that back”; any swear words etc.</td>
</tr>
<tr>
<td><strong>“I don’t press that point”</strong></td>
<td>A graceful way of making a concession, after the judge has revealed weaknesses in your argument, e.g. “your Honour, I don’t press that, but I would move to my alternative submission which is...” N.B. If the point is essential to your case, you cannot concede this point!</td>
<td>“Oh well, when you put it that way . . .”; “Don’t worry about that point, your Honour.”</td>
</tr>
<tr>
<td><strong>“I embrace/adopt that”</strong></td>
<td>Where you agree with a comment the judge has just</td>
<td>“I agree”; “That’s right, your Honour”.</td>
</tr>
</tbody>
</table>
Appearances

The moot begins when the bailiff says “Silence. All rises” and the judges enter the room. The bailiff will then call the case, for example: “The matter of ABC Pty Ltd v Smith for appeal”. The judges will then call for appearances. If the judges are already in the room, then they might simply call for appearances to begin the moot. When the judges call for appearances, the senior counsel for the appellant should stand up and deliver the appearance for themselves and their co-counsel. Usually, the appearance will take the following form:

“May it please the Court, my name is Smith initials AB and I appear with Ms Jones, initials CD for the appellant ABC Pty Ltd. I will speak for 15 minutes; Ms Jones will speak for 15 minutes.”

The senior counsel for the respondent should then stand up and deliver the appearance for their side, using the same form. While it is a minor part of the moot, and attracts very few marks (if any), appearances are the first impression each judge will have of you. As such, it is important to deliver it fluently and from memory, maintaining eye contact with the bench.

Who should speak when and on what?

As mentioned earlier, division of the work is important because it is that division you will follow to determine who speaks on what during the oral submissions. It is also important that the division has been made evenly. This does more than ensure efficient work. It also ensures you are mooting in accordance with Adelaide University Law Student Society Mooting Rules.

Therefore, if you are given 20 minutes to present your case orally, each speaker will usually have to speak for a minimum of eight minutes and will not be permitted to speak for more than 12 minutes. You do not want to being a situation where one person has time to spare while the other cannot get through his/her submissions.

The order of proceedings

1. Senior counsel for each side give their appearances
2. Senior counsel for the appellant will begin her/his submissions and start the appellants case
3. Junior counsel for the appellant will make her/his submissions
4. Senior counsel for the respondent will make her/his submissions
5. Junior counsel for the respondent will make his/her submissions
6. Appellant will deliver rebuttal, if this is permitted by the moot rules
7. Respondent will deliver surrebuttal, if this is permitted by the moot rules

**How do I begin?**

A conventional method of commencing is to outline what submissions you will be making. A conventional opening might begin as follows:

“Your Honours, the appellant/respondent will make four submissions this evening. First, [STATE SUBMISSION]. Second, [STATE SUBMISSION]. Third, [STATE SUBMISSION]. Fourth, [STATE SUBMISSION]. I will be addressing submissions one and two and my learned junior will be addressing submissions three and four.”

This has the advantage of making the submissions (and issues) very clear to the bench, which makes your subsequent submissions easy to follow. It also lets the bench know who will be speaking and on what issues. This is helpful because it reduces the risk of being asked something about your partner’s submissions. See below for further points about this.

(Note that a judge might sometimes ask you about your partner’s case to test your knowledge. Consequently, you need to know basically what your partner will say to ensure you (1) don’t contradict one another; and (2) can answer such questions if you get them.)

**Questions**

A large percentage of your marks are justifiably attributed to how you answer and deal with questions. Interrupting advocates during their oral submissions to ask questions is central to appellate advocacy in common law countries and serves several purposes, outlined below.

You should welcome questions as they provide you with the opportunity to address any concerns of the bench, give you an insight into what they think of your arguments, the opportunity to address their concerns and doubts and a chance to demonstrate your knowledge and preparation.

Some general tips on answering questions are below:

- Listen very carefully to the question. If necessary, write down a couple of notes while it is being asked (but maintain eye contact with the bench).
- Answer the question that is being asked and not the one that you think is being asked, or that you would have liked to be asked.
- Never interrupt or talk over a judge. As soon as they open their mouth, you must stop talking. This is a matter of courtesy. If you fail to do this, you will often anger judges. But there is also a practical benefit. If you are talking over the top of the judge, then you will miss their question (or at least the start) placing you in the uncomfortable position of asking them to repeat what they have said.
Think about what is being asked. Don’t be afraid to take a couple of seconds to think about your answer. The pause won’t be as long as you feel it is and will show that you are giving the question reasonable consideration.

If you do not know the answer, do not simply make it up. It is unforgivable to mislead the court. An acceptable response is to say “I cannot assist the bench on that matter/with that.” While using this phrase too many times will indicate lack of preparation on your part, it is always preferable to guessing or lying.

The purpose of asking questions

There are several reasons why a judge will ask a question, some of which are unique to mooting. It is important to understand why a judge is asking a particular question, as it will alter your answer.

To understand your argument

A judge might be seeking to better understand your argument. This may be done by their summarising your argument, and then asking whether it represents what you are saying (for example, “Is your argument that …?”).

Genuine interest in the answer

Judge’s may not know or be clear about the law or the facts, and want you to assist them. You will (hopefully) have spent a considerable amount of time in preparing for the moot and it is likely that you will have prepared more than your judges. Therefore, there are occasions when you will be most familiar with the topic and the problem. You should not proceed on the assumption that the judge is trying to trip you up.

To test your arguments

While they understand your arguments, the bench may also seek to test them by seeing how strong they are. This is sometimes done by these of a hypothetical scenario, to see how your argument would apply to those facts and whether it would produce a logical result.

To test your knowledge in contrast to when a judge is unsure about something, some judges may be sure about the law or facts, but be seeking to determine whether you know the law and facts.

To be mean

Some judges use the opportunity of acting as afoot judge to inflict torture upon law students by being overly aggressive, mean and belligerent.

They will batter you with questions, intent on trying to break you. It is important that you remain calm and respectful when confronted with such a judge. Never lose your temper. It is also important that you never let such inexperience break your will and make you stop mooting. If you talk to more experienced mooters they will all recount such horror stories, as will most barristers. However, they will also tell you that if they had let such an
experience defeat them, they would not be where they are now.

To stroke their ego
Some judges have an overgrown ego, which is not helped by sitting on the bench. They will ask questions to try and assert their dominance and superiority over you, or perhaps to impress the other judges on the bench. As with the aggressive judge, you must stay calm and respectful in such a situation and not let it defeat you.

Style
Advocacy is a personal exercise. You should strive to develop your own style instead of copying that of another person. Whatever style you adopt, you should aim to be conversational in your manner. This means a style that follows the format of a conversation between yourself and the bench. It can be contrasted with formalised style that is more appropriate to public speaking. However, a conversational style does not mean being informal; it simply is a means of conceptualising and practising a manner that is more engaging and persuasive than reading a speech. The following are some tips on developing a conversational style:

- Avoid giving a public speech, or the style associated with public speaking.
- Try to deliver your submissions as if you are explaining them to the bench.
- Do not use a speech or even prepare a speech – if you do then you will be tempted to simply read from it.
- If you are apprehensive about not knowing what to say without the security of a speech there are two strategies – (1) use bullet points to highlight the main points you want to make and (2) practise your submissions constantly.

Another feature of an excellent advocate is making the complicated simple. Enabling judges to understand your submissions is to your advantage. While you can shake your head and take the position of “Well, the judge wasn’t clever enough to appreciate my argument” thesis ultimately to your detriment – if the judge can’t understand your argument they are unlikely to engage with you and appreciate your level of preparation, understanding and advocacy skills.

Further, your duty as an advocate is to assist the court. An overly complicated and incomprehensible presentation of oral submissions provides no assistance.

Finally, if the judge does not understand your argument, they are less likely to find in your favour, which is an unfavourable result for your client.

Opponent’s submissions
You will receive your opponent’s written submissions usually, at least, a few hours in advance of the oral submissions. You should familiarise yourself with their submissions and begin thinking of ways to counter their arguments. This can be particularly helpful as an appellant, as you can pre-empt what the respondent will say and counter it before they even have the chance to speak. You should
also ensure that you are familiar with every authority cited by your opponents. If there is a case, you do not recognise then get a copy and read the case. If time constraints prevent you from reading the full case, then try to find summary of the case in a journal article or case note so you at least understand the main point it makes (or more importantly, the point for which your opponent relies upon it) and have a copy of the case.

How to address your opponent’s submissions
You will receive your opponent’s written submissions prior to the hearing? You should study them and think about how to anticipate their arguments. Familiarise yourself with all the cases they rely upon. It is important to address your opponent’s arguments in your oral submissions. You should not normally seek to lead or begin with rebutting your opponent’s submissions. Make your submissions as you would ordinarily and then weave the responses into your submissions. This is very important for the respondent - an excellent respondent must respond to what was said by the appellant. However, it is equally important for the appellant to respond to those arguments contained in the written submissions of the respondent.

Giving oral citations
The general rule is that when you are relying on any authority while speaking you must give the full name and citation of that authority. The table below sets out some common citations and how you would actually say them when delivering oral submissions.

The only exception to this rule is when you have been given leave by the bench to dispense with full citations. As it is time consuming to provide full citations, you should always seek to dispense with citations. This can be done in a number of ways.

One option is to request to dispense with citations before you give your submissions, in the following way:

“Your Honours before I begin, could I please have leave to dispense with formal citations”?

Another option is to wait until you provide your first formal citation, and then ask to dispense with citations:

“Your honours, could I please have leave to dispense with formal citations?”

You may also ask to dispense with citations for yourself and your co-counsel, in the following ways:

“Your Honours, could I and my co-counsel please have leave to dispense with formal citations?”

“Your Honours, could the appellant/respondent please have leave to dispense with formal citations?”

On occasions your request with formal citations might be refused. To prepare for this possibility you should never assume you will receive leave and always have all your citation in full be prepared to provide them.

Example:
<table>
<thead>
<tr>
<th>WRITTEN CITATION</th>
<th>ORAL CITATION</th>
</tr>
</thead>
</table>

**Finishing submission/rebuttal**

This is always awkward for junior mooters. It is, however, vital to ensure you properly conclude your case.

A good conclusion should include an accurate summary of your case, a statement of the relief sought by your client, and a gentle invitation to the bench to ask any final questions. By gentle, Aim suggesting that, rather than baldly state: Instead, you should say something like: The former will likely attract further questions while the latter will not.

“Do your Honours have any other questions?”

Instead, you should say something like:

“Unless I can be of any further assistance, that concludes the appellant’s/respondent’s submissions.”

The former will likely attract further questions while the latter will not.
Physical Layout of a Moot Court

Although some moot courts may be arranged slightly differently, generally the layout will be as below, as it is in the Moot Court in Law School. The appellant must always sit on the Judge’s left and the respondent must always sit on the Judge’s right. In preliminary rounds, the judge may be the one timing the moot, and therefore there may always not be a timekeeper. There can also be different configurations of the lectern from which the competitors will speak. Here is a diagram from the mooter's perspective of the courtroom:

![Diagram of Moot Court Layout]
1. The Bailiff stands and states: “Silence. All stand.”

2. The judge or judging panel will enter the room.

3. The Bailiff will then announce: “The court is now in session. The Honourable Judge X presiding in the case of A v B.”

4. The judge bows before sitting and all those in the courtroom (including spectators) must bow and then sit. Some judges may specifically inform you of when to sit down, but in the absence of such a statement the general rule is to bow then sit, making sure that you do not sit down before the judge.

5. The Judge will then ask for “Appearances.” This is where the Senior Counsel for both sides will introduce themselves and their Junior Counsel. The Senior Counsel for the Appellant will stand first and say: “May it please the Court, my name is X and I appear on behalf of the Appellant in this matter with my learned Junior Y.”

6. The Senior Counsel for the Respondent then stands and says: “May it please the Court; my name is _____ and I appear on behalf of the Respondent in this matter with my learned Junior ________."

7. The way in which you state your name is up to you, i.e. “May it please the court my name is Smith/Mr Smith/Jane Smith etc”. You may also choose whether to refer to your teammate as your “Junior Counsel” or “Co-Counsel”.

8. After the Appearance, the judge will call on the Senior Counsel for the Appellant to present their oral submission. The Counsel for the Appellant then has 30 minutes between both Senior and Junior Barristers to present their team’s submissions. This time can be divided between the two barristers in any way the teams choose, as long as each barrister speaks for at least 10 minutes and they write these time divisions in their written submissions. However, generally teams will divide the time evenly, allowing each team member to speak for 15 minutes each. During the submissions only the judge is allowed to interrupt Counsel to ask questions. No comments or objections by the other side are permitted in an appeal case.
9. If Counsel exceeds the given time limit, an extension of time may be granted if it is requested when their time has expired. Even if counsel is in mid-sentence he/she should stop and request an extension of time. Counsel should simply state: “Your Honour, I see that I am out of time; might I have a few moments to finish this submission.” Generally the judge will allow the extension and may indicate a time, e.g. one minute. Counsel should complete their submission as quickly as possible once an extension of time has been granted.

10. Following the Senior Counsel for the Appellant’s submissions the judge will ask for the submissions of the Senior Counsel for the Respondent and the same process as in 6 and 7 will be repeated.

11. Following the submission of the Senior Council for the Respondent, the judge will ask the junior Counsel for the appellant give their submissions. This is than followed by the junior counsel for the Respondent. Again process 6 to 7 is followed.

12. Following submissions, the Counsels will leave the room and leaving the judge or the panel to deliberate. Formally this process is revered and it is the judges or the panels that leaves the Court.

13. Once the judge has made their decision, the judge will call the Counsels into the court and deliver the court’s decision and the winner of the moot. Once the judge has delivered their decision and adjudication, the moot is finished!
EXAMPLE MEMORANDUM

SOUTH AUSTRALIAN SUPREME COURT (FULL COURT)          Matter X of 2016

HARVEY SKYFALL
Appellant

- and -

LEWIS PITT
Respondent

RESPONDENT’S OUTLINE OF SUBMISSIONS

Speaking Time:       Senior Counsel: XXX (15 Minutes)
                     Junior Counsel: ZZZZ (15 Minutes)

(A) SUMMARY OF THE AGREED FACTS:

1. The Appellant and Respondent are partners at the law firm Peerson Skyfall. The Respondent commonly brings his pet cat Mikado to work, who is his closest companion after the death of his wife.

2. On January 15th 2016, the Respondent’s cat Mikado ruined a basketball of the Appellant. Seeking revenge, the Appellant lied to the Respondent about a meeting in the Print Room, and locked him in this room from 6:30pm.

3. The Respondent only became aware of his imprisonment at 6:50pm. As a diabetic, he would begin to suffer the effect of hypoglycaemia at around 7:20pm.

4. There were two possible means of escape. The first was to activate the fire alarm and unlock the doors. However, this would have caused thousands of dollars in damage to electronics and paperwork, and the Respondent could not deactivate the sprinklers. Secondly, there was a vent in the ceiling. However, the Respondent was not aware of the vent, and climbing through it would have ruined his $10,000 suit.

5. Whilst the Respondent was imprisoned, the Appellant intended to shave the Respondent’s cat, and chased it around the office before Mikado jumped on his desk, slipped on a puddle of the Appellant’s whiskey, and flew through a broken window which was signed “Broken, do not open” but had been opened by Harvey regardless. Lewis could hear his cat screeching and howling as he was locked in the print room.

6. The Appellant’s secretary, Donna Pawlson, found and released Lewis at 7:10pm, at which point he witnessed Mikado falling out the window, down 28 storeys, and hitting the pavement below and suffering a gruesome death.
7. The Respondent has since suffered chronic PTSD. His doctor attributes this to hearing his cat being pursued by the Appellant and witnessing Mikado’s death firsthand.

8. The Respondent sued the Appellant in the Supreme Court of South Australia for False imprisonment and Negligence occasioning psychiatric harm. The Trial Judge Caterson ruled the False imprisonment claim to be successful, but dismissed the claim in Negligence. Lewis is cross-appealing the Negligence ruling.

(B) RESPONDENT’S SUBMISSIONS:

1. The learned trial judge Caterson J was correct in finding that there were no reasonable means of escape, and that the false imprisonment action was successful.
2. The learned trial judge Caterson J erred in finding that a duty of care cannot exist between employees.
3. The learned trial judge Caterson J erred in finding that a duty of care did not exist between the Appellant and Respondent.

(C) THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:

Submission One

An action in the intentional tort of false imprisonment requires three elements:

1. Mr Skyfall’s act of locking Mr Pitt in the print room satisfies the requirement of an intentional, voluntary act. (First Element)

2. Whether Mr Pitt is imprisoned is a question of fact.

3. Mr Pitt had no reasonable means of escape from the print room. (Second Element)
   3.1. R v Macquarie (1875) 13 SCR (NSW) L 264.
   3.2. Distinguish from Bird v Jones (1845) 7 QB 742.

4. Mr Pitt being initially unaware of the false imprisonment does not impact upon his ability to claim.

5. The restraint, although not physically invading Mr Pitt’s person, is a direct restraint

6. Mr Skyfall had no lawful justification for imprisoning Mr Pitt. (Third Element)

7. Mr Pitt is entitled to aggravated damages.
Submission Two
The learned trial judge respectfully erred in finding that a duty of care not to occasion psychiatric harm cannot exist between employees.

2.1 Whilst there is no established category for a duty of care between employees, a duty of care may still arise on the facts of the present case, as determined by ss 33 and 53 of the Civil Liability Act 1936 (SA) and the test of reasonable foreseeability.


2.2 Alternatively, even if a duty of care can never be owed between employees, the Appellant was not acting in the scope of his employment. As such, a duty of care may still arise.

Submission Three
The learned trial judge respectfully erred in finding that the Appellant did not owe the Respondent a duty of care to not occasion mental harm from witnessing harm to his property.

3.1 The Respondent witnessed the incident first-hand and suffered a recognised psychiatric illness as a result, satisfying the requirements of the Civil Liability Act 1936 (SA) s 53.

3.2 The Appellant owed the Respondent a duty of care to not inflict mental harm on him. Pursuant to s 33 (1) of the Civil Liability Act 1936 (SA), a reasonable person in the Appellant’s position would have foreseen that a person of normal fortitude in the Respondent’s position may suffer a mental illness after witnessing their pet being harmed.

3.3 The parties’ pre-existing relationship establishes that it was reasonably foreseeable to the Appellant that suddenly harming the Respondent’s cat could cause him mental harm.

Civil Liability Act 1936 (SA) s 32 (2) (a).


3.4 The pre-existing close and loving relationship between the Respondent and the victim further establishes that such mental harm was reasonably foreseeable to the Appellant.


3.5 It can be reasonably foreseeable for a person to suffer mental harm from seeing their property destroyed, as found in Attia v British Gas [1988] QB 304, 320 A-C.


3.6 The Respondent’s PTSD is not a ‘fanciful’ reaction to the incident, as distinct from the facts in Tame v New South Wales; Annetts v Australian Stations (2002) 211 CLR 317, 397.

For these reasons the Respondent respectfully requests that the appeal be dismissed.

DATED this 16th day of August 2016.

ZZZZ and XXX, Counsel for the Respondent.
(D) LIST OF AUTHORITIES

- Bird v Jones (1845) 7 QB 742.
- Civil Liability Act 1936 (SA).
- Meering v Grahame-White Aviation Co Ltd (1919) 122 LT 44.
- R v Macquarie (1875) 13 SCR (NSW) L 264.
- Wicks v State Rail Authority of New South Wales (2010) 241 CLR 60.
### Score Sheet

#### Judges

<table>
<thead>
<tr>
<th>Case</th>
<th>Names</th>
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<tr>
<td>V</td>
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</table>

#### Date & Court

**Counsel for the**

**Appellant / Respondent**

(circle one)

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

#### Team Score

<table>
<thead>
<tr>
<th>Organisation of Presentation</th>
<th>10</th>
<th>10</th>
</tr>
</thead>
<tbody>
<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>

**Speaker Total**: 100 100

**Team Total**: 200

---

**WINNER**: e.g. Appellant

**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.

#### ORGANISATION OF PRESENTATION

Factors:
- Logical organisation and structure, concise overview of submissions and conclusions;
- Appropriate attention and weight given to some arguments over others;
- Flexibility despite being taken off topic.

#### DEVELOPMENT OF ARGUMENT

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

<table>
<thead>
<tr>
<th>Poor (0-20%)</th>
<th>Unsatisfactory (21-40%)</th>
<th>Standard (41-60%)</th>
<th>Excellent (61-80%)</th>
<th>Outstanding (81-100%)</th>
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</thead>
<tbody>
<tr>
<td>Senior Counsel</td>
<td>10</td>
<td></td>
<td></td>
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<tr>
<td>Junior Counsel</td>
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</tr>
</tbody>
</table>

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Score Sheet

**COMETITIONS HANDBOOK  Adelaide University Law Students’ Society**

Page 45
## Questions from the Bench

Factors: prepared for questions that can be anticipated; clear, concise and direct responses, engagement with the court’s views, compromise and courtesy despite challenges to arguments; effective integration of responses with arguments; adapt treatment of irrelevant questions; ability to deal with difficult and obscure questions.

| Senior Counsel | 60 |
| Junior Counsel | 50 |

## 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 citations; appropriate use of courtroom formalities; considerate 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 |
Lady Justice by Hadieh Abiyat
2016 Winner of Image of Justice Photographic Competition
“Blind Justice”
Client interviewing is one of the most important skills a solicitor must possess. Participation in the competition allowed me to develop and receive feedback on my own interviewing skills. The competition carried a challenging edge, given all competitors have limited knowledge of the legal issue at hand. It requires the least amount of preparation, so it’s a great opportunity to get involved whilst pursuing your law studies.

Ellen Beattie, Client Interviewing Winner 2012
INTRODUCTION

Welcome to the Client Interview competition.

Client interview focuses on a client-centred form of legal service. The notion of a competition was borrowed from conventional mooting, which for many years has been common in law schools. While moots are primarily designed to focus on appellate advocacy, Client Interviewing is concerned with developing the skills that most practising lawyers implement on a day to day basis. The competition is designed to provide a forum for the development of interviewing and counselling models, which can be carried into practice.

Interviewing clients is an essential skill that lawyers (and other professionals) need to master to succeed. The first interview with a client is particularly crucial for developing a good relationship, and often requires teamwork, good communication and the ability to quickly think on your feet. Despite the importance of these skills at your future workplace, the occasion for honing them is rarely provided by formal education systems. This competition gives you the valuable opportunity to develop these necessary skills in a simulated professional setting. The Client Interview competition is particularly ideal for those who have great demands on their time as minimal preparation is needed.

The competition also does not require you to have any specific legal knowledge, and thus, those who have just started law school have as much chance of doing well in it as others who are further along in their degrees. Join this great competition and give yourself the chance to learn a great deal and enjoy yourself while at it!

We warmly invite you to join this great and unique competition. It is one of our popular competitions of all the fixtures*, we encourage you to gain practical experience and make longstanding friendships and connections along the way.
WHAT IS CLIENT INTERVIEWING?

Client Interviewing is a simulated interview between a team of two lawyers and a client seeking an initial legal consult. Students are required to identify the nature of the client's problem by asking appropriate questions. Once students have a grasp of the problem, they are then required to suggest an appropriate solution.

The focus of the competition is the students’ ability to understand the client's problem and to suggest an appropriate course of action. Large amounts of research into substantive areas of the law are not required; however, some basic knowledge of the law is necessary.

Students will receive a set of instructions from the Client Interviewing Coordinator one week prior to any given round. The instructions consist of a short memorandum, which a lawyer usually expects to receive from his/her secretary after a client makes an appointment. The memorandum contains a very brief and vague description of the client’s problem will assist students in identifying the possible area of law. This should take no longer than an hour. Any research conducted may be brought into the interview, however, ensure you are not distracted by your notes and try to avoid clutter. It is also recommended students develop a broad strategic plan with their partners, to identify general interview skills and a general structure of the interview. For example, how will you make the client feel welcome? It is also suggested that competitors practice their interview to avoid partners over-talking each other and to delegate specific questions. It is recommended that competitors create a checklist of what they wish to discuss with the client, rather than following a script.

WHY PARTICIPATE IN CLIENT INTERVIEW?

Small time commitment:
Unlike other law school competitions

Short problem released 24 hours before your time slot, requiring minimal preparation (a 15-20 minute chat with your partner about the problem)

Not adversarial:
Client interview is a great place to begin competing as it can build confidence before competing in an adversarial competition like mooting

The other team that you are “against” is not in the room when you compete – only the client and the judge are, so although you must act in a professional manner, there is not a competitive atmosphere within the competition

No legal knowledge required:
Client Interview does not test your legal knowledge, but rather your ability to interact and engage with a client on an issue that he/she has come to see you about
No need for knowledge of cases or legislation as you will not be required to give your client legal advice. Therefore, novice participants are not at a disadvantage when competing against second or third year teams.

**Essential skills building:**
Whether you want to practice law or not, everyone will need to know how to interact with clients for their future profession!

Client Interview will help you to develop the essential skills of building relationships with clients from your first meeting, including: structuring an efficient interview, strong communication and interpersonal skills and of course the ability to use your initiative and think quickly on your feet.

**Practical experience:**
Potential employers value these professional and practical skills. It is therefore an advantage to be able to reference your participation in the Client Interview competition in your resume.

**STRUCTURE OF THE COMPETITION**

1. Each team shall consist of two law students.
2. The competition is run in a knock out fashion (however, the first two rounds are a round-robin) with two teams randomly allocated to compete against each other. Where possible, the teams competing against each other will have the same judge and client for their round.
3. Judges will be provided with a score sheet and the client’s confidential memorandum, which shows the legal problems to be identified in the interview.
4. Clients are provided with a confidential memorandum, which they are to memorise prior to the competition. Clients are volunteers and sourced by the LSS Competitions Officers for competition rounds. Clients must not reveal any information provided to them to any other person prior to the competition.

Each team will interview their client for 20 minutes followed by a 10 minute (approx.) briefing with the judge, who will ask them questions regarding the case of the client and analyse their performance.

The winning team is the team with the highest score compared to the other team in their round for that evening.

**Potential topics that may arise in problems include (non-exhaustive list):**

- Torts: Negligence; Defamation; Nuisance
- Contracts: Offer/Acceptance/Consideration/Intention; Terms; Performance; Termination and Breach
- Workplace disputes.

**The Interview Structure**
Time management is critical in an interview; the following time limits should be strictly adhered to and self-monitored. The judge can extend the time allowed if they deem it appropriate.

- Consultation with Client: 30 minutes
- Self-evaluation with partner: 5 minutes (whilst judge consults with client)
- Self-evaluation with judge: 10 minutes

**Beginning the interview**
Initially it is important to make the client feel welcome and not intimidated through your voice or body language.

- Introduce yourself and partner (your ‘colleague’) to the client.
Establish how the client would like to be addressed, e.g. as ‘Mr. Smith’ or simply as ‘John’

Pleasantries

Explain fees: the first consultation is free, but any subsequent consultations will be charged at $200 per hour.

Explain confidentiality and stress the importance of full disclosure from the client.

Explain to the client how they can expect the interview to proceed

Reinforce that the client is encouraged to ask questions if they need clarification

Do not spend too long on the above because the bulk of the interview will be consumed by eliciting the relevant facts from the client.

Interviewing techniques

Use open-ended questions that allow the client to tell their story

Avoid interrupting the client, although you may wish to avoid the client getting off-topic

Hone in on relevant information and ask more specific questions if necessary

Write down names of key people, places and dates relevant to the client’s problem and ask for further details if necessary

Be aware of red herrings and false information

Be aware that clients are provided with secret information that they can only reveal to competitors if asked a specific question. Extracting this information is vital in order to score highly

Concluding the interview

Briefly summarise the facts of the problem to your client and ask whether you have an accurate record

Suggest possible options for resolving your client’s situation (litigation, ADR, non-legal avenues, etc.) and each option’s relative merits or detriments

Ask your client to choose or think about these options

It is important to be sensitive to the client’s personality and behaviour but also lead them towards a viable solution.

For example, a client may be ‘distant’ or determined to get a big cash settlement

Agree on whether further work or communications will occur, and if so, make sure you have all necessary contact details

After the Interview

Preparation for self-evaluation

Competitors have 5 minutes to evaluate their performance in private and are required to leave the room during this period. Competitors may want to ask themselves:

Was the client satisfied with the interview and its outcome?

How did the interview go overall?

What worked well?

What didn’t work well?

What could be done differently next time?

Judge’s consult with client

At the same time that competitors prepare for their self-evaluation, the judge privately consults with the client. This allows the judge to more effectively gauge the interview and get
feedback from clients. This consultation will be 5 minutes in length.

**Self-evaluation before the judge**
This presentation is no longer than 10 minutes, and can be shorter. Judges may ask questions and offer suggestions during this time. The presentation should:

- Summarise the interview;
- Indicate the scope of legal work to be undertaken; and
- State the legal issues to be researched.

An explanation of the position or attitude taken as well as an explanation of why your team worked together in the way they did will also be useful.

**Critique and scoring**
Finally, judges will provide a brief critique of the interview based on the scoring criteria on the mark sheet. They may also answer any questions and give some feedback to competitors. You should take this feedback seriously as it is very useful for improving your client interviewing technique.

**Tips and Tricks**

- Make the client feel welcome
- Remember the details the client provides you and avoid asking the same or similar questions (marks will be deducted)
  - Take notes as you go
- See the problem from the client’s perspective
- Appear professional and understanding and avoid portraying arrogance
- Try to reveal the client’s secret information
- Avoid contradicting your team member; this undermines the confidence of the client
NEW CLIENT APPOINTMENT

To: Lawyers
From: Secretary
Date: / / 

RE: NEW CLIENT – CHRIS JOHNS

Chris Johns has made an appointment to see you regarding a recent issue involving the purchase of a second hand car. He/she said that they want the matter resolved quickly.

I have booked a meeting room for 30 minutes.

Regards,

Sam Clark
Secretary
MEMO

EXAMPLE CLIENT BRIEF

Client Interview – information for client

This problem is used with the generous permission of the UTS LSS.

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. 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 about 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 associated with fixing it. You noticed that upon completing his inspection of the car, there were some car parts left over.
<table>
<thead>
<tr>
<th>Client’s Goals and Expectations</th>
<th>Problem Analysis</th>
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</thead>
<tbody>
<tr>
<td>Learned the client’s initial goals and expectations?</td>
<td>Analyzed the clients’ problems?</td>
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<table>
<thead>
<tr>
<th>Moral and Ethical Issues</th>
<th>Alternative Courses of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recognised and dealt with moral and ethical issues?</td>
<td>Developed alternative solutions?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Client’s Informed Choice</th>
<th>Effective Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assisted Client in understanding and making informed choices among possible courses of action?</td>
<td>Effectively concluded the interview?</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Teamwork</th>
<th>Self-Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked together as a team? Balance of participation?</td>
<td>Identified strengths and weaknesses? Learned from their experiences?</td>
</tr>
</tbody>
</table>
When I was at law school I was always confused as to why more people didn’t participate in witness examination. At the time, it seemed like the closest thing to lawyering that the AULSS offered! But, in all seriousness, I would really encourage everyone to compete in witness examination—apart from being a lot of fun, it is a great way to get some insight into the rules of evidence before your final year. It is also a great way to meet other people and develop your public speaking and

James Gould, University of Adelaide graduate
**What is Witness Examination?**

The Witness Examination competition is a simulated criminal trial. The trial is run from the opening statements, through the examination of witnesses and their cross-examination, to the closing addresses. The objective in the Witness Examination competition is to persuade the judge, through the evidence you extract from your witness and the opposing counsel’s witness, that your client’s factual contentions comprise the more likely scenario.

Of course, the competition can only hope to capture the flavour of a real trial; it is not intended to be a perfect simulation. For logistical reasons, a number of shortcuts have been built into the design of the competition.

For example, in the preliminary rounds, competitors will be paired. However, competitors are still marked individually and will progress to the final rounds individually. Each pair will either be the prosecution or defence. Individual competitors in each pair will be allocated either the opening address and the examination-in-chief, or the cross-examination and the closing address. Pairs need to work together when consulting the witness and developing a case theory and divide their communications with the witness equally within the 30 minute timeslot.

For those participating as a witness, you must memorise the facts of the case prior to trial and must testify in accordance with those facts.

For a more detailed introduction, see the link below:

**UTS LSS Witness Examination Tutorial -**

http://www.youtube.com/watch?v=ZbFib5UXwQM
FORMAT OF WITNESS EXAMINATION
The format of the competition is as follows:

- Commencement/Appearance (1 min)
- Prosecution Opening Address (2 mins)
- Prosecution Witness – Examination-in-Chief (10 mins)
- Cross-Examination by Defence Counsel (15 mins)
- Defence Opening Address (2 mins)
- Defence Witness – Examination-in-Chief (10 mins)
- Cross-Examination by Prosecution Counsel (15 mins)
- Closing Address by the Defence (3 mins)
- Closing Address by the Prosecution (3 mins)
- Judgment (up to 30 minutes)

STEP ONE: APPEARANCE
⇒ All persons in the room stand as the judge enters
⇒ The judge enters, all bow and sit after the judge does so
⇒ The judge states that the court is now sitting and calls the case
⇒ The judge then asks for appearances from both sides, such as that below:

"May it please the court, my name is X and I appear for the Crown [or defendant]"

⇒ The judge reads the charge against the accused

STEP TWO: PROSECUTION OPENING ADDRESS
Prosecution Witness – Examination-in-Chief (10 mins)
- Cross-Examination by Defence Counsel (15 mins)

⇒ After the witness has been cross-examined, counsel should stand and say, “Your Honour, that is the case for the prosecution”

- Defence Opening Address (2 mins)
- Defence Witness – Examination-in-Chief (10 mins)
- Cross-Examination by Prosecution Counsel (15 mins)

⇒ After the witness has been cross-examined, counsel should stand and say, “Your Honour, that is the case for the defence”

- Closing Address by the Defence (3 mins)
- Closing Address by the Prosecution (3 mins)
- Judgment (up to 30 minutes)

Competitors are given their witness statements, the opposing counsel’s witness statement and the relevant section(s) of any Act(s) 90 minutes prior to the trial via their provided email.
address. Counsel is allowed access to their witness 30 minutes prior to the commencement of the trial (hereafter the 30 minute period) to brief them.

STEP THREE: PREPARATION

A. Preparation prior to receiving the witness statements
Prior to the release of the witness statements, competitors should familiarise themselves with the law of evidence. There are many useful texts, some of which are listed at the end of this section, of which at least one should be consulted. Know what type of objections can be made and when. You should also know the exceptions to the grounds for objections.

Competitors should practise their questioning techniques and opening and closing statement techniques on friends or family to become comfortable with the different styles of questioning.

B. Preparation after receiving the witness statements
Read and note or highlight the witness statements. Take note of any inconsistencies between the two statements, as you will need to draw upon these to convince the judge that your witness’s statement should be treated as the most credible.

Try and figure out the overall picture and develop your case theory (an example of this may be that you put forward that it was a case of mistaken identity). Identify elements in the relevant legislation and know the standard of proof for the relevant area of law.

Prepare the questions and then think about what possible questions the other counsel may ask and how you can pre-empt these. Write your opening and closing statements.

C. In the 30 minute time period to brief your witness
On the night of the competition, you can meet your witness 30 minutes prior to the trial to brief them. It is advisable that you do the following:

- Outline to the witness how you intend to deal with the case;
- Explain how the evidence will be adduced;
- Discuss how it is intended that the evidence will be put forward to the witness;
- Discuss with the witness what emphasis will be placed on various aspects of it; and
- Make sure your witness is familiar and comfortable with their statement.

D. The Trial

STEP FOUR: OPENING ADDRESS
An opening address is used to explain the issues to the judge. Counsel should not assume that the trial Judge has read the materials or, if he or she has read them, that he or she has absorbed them or appreciated the issues that arise out of them.

As such, counsel must outline the facts, define the issues, and inform the court of the evidence and the theory of the case. Try not to open too ambitiously by suggesting that you will prove something more than you need to prove (for example, do not assert to
prove innocence when the establishment of reasonable doubt will suffice). The judge will request counsel to call their witness. Counsel must say ‘I call [witness name].’

**STEP FIVE: EXAMINATION-IN-CHIEF**
The first step in taking of evidence is called examination-in-chief. The aim is to get the witness to tell their story and to bring out all the evidence from that witness without appearing to be telling the witness what to say. A question that suggests the answer to the witness is called ‘leading the witness’ and is not allowed. If a leading question is asked in examination-in-chief, the opposing counsel is entitled to object. A way to get the witness to tell their story without leading them is to start your questions with words such as who, what, when, where and how.

**STEP SIX: CROSS-EXAMINATION**
After a witness has been examined-in-chief, the opposing counsel then cross-examines this witness. The aim is to test the accuracy of the evidence first given or to establish facts which support their own case. Counsel in cross-examination must put their own case, that is, the main elements of what his/her witness will say to the other witness in cross-examination.

In cross-examination, counsel can also test the credibility of the witness by asking questions of a specific nature about their recollection or view of the events, any potential bias or reputation. In cross-examination, leading questions may and, in fact, should be asked. Try to use a steady tone of voice so as not to alert the witness to changes in tactics.

To be a successful cross-examiner, counsel must have an objective. He or she must know why particular questions are asked. Merely going on a fishing expedition is time wasting and dangerous. The cross-examiner attacks two areas of the witness’ evidence. A quick checklist for the cross-examination is:

i. The competence of the witness to give the evidence, which can be divided into the following areas:
   a. Lack of perception to give evidence of what was seen, such as capacity to see, opportunity to see, or the quality
   b. Lack of accurate recall
   c. Lack of narrative ability

ii. The credibility of the witness, which can be divided into the following areas:
   a. Bias, interest, prejudice
   b. Prior convictions
   c. Moral character
   d. Previous inconsistent statements

It is not easy to get a witness to admit to lying or being mistaken. A deduction that the witness’ statement is not so damaging comes from leading him or her to this conclusion by a step-by-step process. You should not quarrel with the
witness, attempt to bully them, ask them more than one question at once or argue with the judge. Remember, accusing a witness of lying, or acting fraudulently, is a serious accusation, and one that you cannot make without good evidence.

**STEP SEVEN: CLOSING ADDRESS**

The aim is to summarise your case, highlight your strong point and why you disagree with opposing counsel's assertions, as well as make submissions as to the principles of law which would affect the case.

A systematic way to do this is:

1. Identify the issues –
   a. A prosecutor will limit the issues to the bare minimum to be proved and then show how the evidence has been led that proves this
   b. A defence counsel might take the opposite approach and create as many issues as possible and therefore cast doubt as to whether the prosecution has proved them
   c. If there is conflicting evidence on a particular point from both sides and the conflict cannot be reconciled, counsel should attempt to show why his/her witness should be believed

2. Make submissions as to the law –
   a. Highlight prior decisions which favour you case
   b. Discuss the submissions on the law which you think your opponent will make and distinguish facts in the precedent which favour your opponent from the facts in the particular case

**General Etiquette**

There are some general principles of etiquette which should be borne in mind by all competitors.

- Whenever counsel is speaking to the judge, he/she must stand. Whenever opposing counsel is speaking to the judge, the other must sit.
- Only one counsel should be standing at any one time.
- If opposing counsel stands to object, the other counsel should sit down.
- Address the judge as ‘Your Honour.’
- Counsel must remain behind the bar table and not wander around the court.
- Should counsel wish to approach the witness in the witness box, permission should be asked of the judge to do so. This should only be done where counsel wishes the witness to identify a particular part of a document or other exhibit.
- Counsel should not argue with the judge. He/she is allowed to make submissions forcefully but courteously. A common
phrase used is ‘with respect ….. I submit’

- Counsel must accept the judge’s ruling even though they might disagree with it. If a reply is called for it is usual to say ‘If Your Honour pleases’

- Counsel are required to assist the judge honestly and must not mislead him/her by presenting evidence which is known to be positively untrue.

- If you are quoting reports in cases, quote the citation in full, do not use abbreviations.

**STEP EIGHT: OBJECTIONS**

Objections are to be made only by the counsel who will cross-examine that witness, or the counsel who has examined that witness. By all means, object to opposing counsel’s questions if it clearly breaches the main rules of evidence but make sure you can substantiate your objection on solid legal grounds. Too many frivolous, pedantic or unsubstantiated objections will attract point penalties. Don’t be reluctant though, if the question is objectionable, object.

When making an objection you should stand and say “objection, my friend is …. Eg leading”. Remember, when your opponent makes an objection you should sit down: only one person should be standing at a time!

You may make objections on the following grounds. The resources listed at the end of this section will provide you with a more comprehensive overview of how to substantiate each of these grounds. *It is vital that you consult these sources as this overview will not provide you with sufficient information to object effectively during your competition.* You may object on the basis that:

- The question pertains to an irrelevant matter.
- The question invites hearsay.
- The question is general or vague, calling for a long narrative response.
- The question is unintelligible or confusing.
- The question is duplicitous – that is, it is two or more questions disguised as one.
- The question is leading (i.e. suggests the answer desired).
- The question is argumentative, oppressive, erroneous, speculative, or assumes a fact or facts not in evidence before the Court.
- The question invites an expression of opinion.
- The evidence produced may result in a prejudicial effect that outweighs its probative value.
- The rule in *Browne v Dunne* [1894] 6 R 67 HL is being contravened.
EXAMPLE STATEMENT

Statement for the Defence

1. My name is Sarah Hanson. I am 32 years old.
2. On Wednesday 5 March I visited Myer to shop for a birthday present for my friend Rachel.
3. I had selected several small items and was looking at various bottles of expensive perfume when I received a phone call. I had my hands full so in order to answer the phone I placed a bottle of the new ‘Floral Peace’ perfume on top of my handbag.
4. The phone call was from my husband, Billy. Billy was in a real panic. He said that our daughter Fiona has fallen off the swings in the playground at school and been taken to hospital. The phone call cut out because I was in the department store and the reception was poor. I didn’t know whether Fiona was all right or not.
5. I immediately dropped all the things I was carrying and rushed for the exit. I was desperate to find out whether or not Fiona was all right.
6. I set the security gate off as I went through. I had completely forgotten about the perfume in my panic. A security guard yelled after me and I stopped. He grabbed me by the arm and accused me of trying to steal something.
7. I said that I needed to make a phone call and that he should let go of me. I still hadn’t remembered the perfume. I couldn’t think about anything other than my baby girl in the hospital. I was completely frantic. I said I hadn’t tried to take anything.
8. The security guard restrained me and insisted he had to search my bag. By this time I was very upset. I was crying and I can’t remember what I said to the security guard. I just wanted to speak to Billy and find out whether or not Fiona was all right.
9. The security guard pulled the bottle of perfume out of my bag and held it up to me. He called me a thief. I explained that I had put the perfume down on my bag to take a phone call and tried to
tell him about Fiona. He ignored me and said he was going to call the police.

10. I didn’t deliberately take the perfume. I had no idea that it was in my bag until the security guard pulled it out. I was in such a panic about Fiona I couldn’t think about anything else.

Signed

Caroline Wilson

March 2017

Statement for the Prosecution

1. My name is Bruce Bailey. I am 45 years old. I work as a security guard at Myer. I’ve been working there for nearly 10 years now.

2. On Wednesday 5 March I was working a shift at the security gates. I was standing by the gates and I could see a woman in the perfume section. She was holding several small items and was looking at a bottle of perfume. She kept looking around. I thought she looked a bit suspicious. We’ve had problems with thieves before and I know what to look for. She seemed to be avoiding the staff and she kept looking at the security cameras.

3. I heard her phone ring and watched as she knelt down to take it out of her bag. She put the perfume into the bag, which she’d put on the ground in order to get the phone out. I used my radio to contact Rachel, the security person for that department, and told her what was going on.

4. Rachel left her station and started walking towards the woman. The woman looked up and spotted her. The woman suddenly dropped the things she was carrying, grabbed her bag and made a run for the exit.

5. Rachel pursued her and I stopped her as she went through the security gate. She started yelling and screaming at me. I couldn’t understand what she was saying. She kept talking about a hospital and somebody called Fiona. I said I’d need to search her bag.

6. She tried to prevent me from searching the bag and kept yelling. Then she started to cry. I took the perfume out of the bag and showed it to her.

7. She said she had completely forgotten about the perfume because she had gotten a phone call from her husband about Fiona, who she said was their daughter. I called the Manager and got him to come down and take over.

8. She was definitely behaving suspiciously. I had a bad feeling about her right from the word go.
LEGISLATION

Sarah Hanson has been charged with theft under s 134 of the Criminal Law Consolidation Act 1935 (SA)

Extracts from the Criminal Law Consolidation Act 1935 (SA)

134—Theft (and receiving)
(1) A person is guilty of theft if the person deals with property— (a) dishonestly; and
(b) without the owner’s consent; and
(c) intending—
(i) to deprive the owner permanently of the property; or
(ii) to make a serious encroachment on the owner’s proprietary rights. Maximum penalty:
(a) for a basic offence—imprisonment for 10 years;
(b) for an aggravated offence—imprisonment for 15 years.

(2) A person intends to make a serious encroachment on an owner’s proprietary rights if the person intends—
(a) to treat the property as his or her own to dispose of regardless of the owner’s rights; or
(b) to deal with the property in a way that creates a substantial risk (of which the person is aware)—
(i) that the owner will not get it back; or
(ii) that, when the owner gets it back, its value will be substantially impaired.

131—Dishonesty
(1) A person’s conduct is dishonest if the person acts dishonestly according to the standards of ordinary people and knows that he or she is so acting.

(2) The question whether a defendant’s conduct was dishonest according to the standards of ordinary people is a question of fact to be decided
according to the jury’s own knowledge and experience and not on the basis of evidence of those standards.

(3) A defendant’s willingness to pay for property involved in an alleged offence of dishonesty does not necessarily preclude a finding of dishonesty.

(4) A person does not act dishonestly if
the person— (a) finds property; and
(b) keeps or otherwise deals with it in the belief that the identity or whereabouts of the owner cannot be discovered by taking reasonable steps; and
(c) is not under a legal or equitable obligation with which the retention of the

SCORE SHEET

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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.

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OPENING ADDRESS
Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; outlines case theory; paints a picture of the fact scenario.
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The LSS negotiations competition is a good exercise in communication. It is by no means the most onerous of the competitions, but to do well you must be acutely aware of your strengths and weaknesses, and then work as a team to emphasise and mitigate those characteristics. At a national level the experience was a lot of fun, and the opportunity to attend ALSA as part of the competitions team cannot be overstated. I would recommend this competition to you all.

Charlie Bruce, Negotiations winner 2012
WHAT IS NEGOTIATIONS?

The vast majority of legal disputes today are settled before trial through negotiation. Negotiations can avoid the costly and often lengthy process of litigation and allows the parties more flexibility to reach a mutually optimal outcome in contrast to a ‘correct’ court decision.

Thus, for solicitors, effective negotiation skills are a must. This competition will test:

- Your creativity in formulating mutually beneficial arrangements;
- Your adaptability; and
- Your communication skills.

Negotiations can become heated and strained at times, so your diplomacy skills will also be put under the microscope. The outcome you secure for your client is only a part of the final equation; you will be assessed primarily on your technique and skill.

As the problem scenarios are generally based on an ongoing business relationship, it is not simply a matter of gouging the other team for all you can extract for them, irrespective of how they may be representing their client, but thinking critically about long-term options.

Negotiators compete in teams of two and remain in the same team for the entirety of the competition.
FORMAT OF NEGOTIATION

Both teams receive a set of common facts, mostly consisting of general background information. Each team also receives confidential facts, which will usually include their client’s motivations and hierarchy of priorities, non-negotiable desires, permissible concessions, financial or sentimental vulnerabilities to be kept secret and strengths to be exploited, and sometimes, hints as to potential vulnerabilities of the other party.

You will need to try and reach a solution that is as mutually beneficial as possible, and ideally, as beneficial as possible to your client without crossing the boundaries of unfairness or exploitation.

It is vital to brainstorm creative, low-cost arrangements that will result in better outcomes for both parties. While some of this will need to be done within the actual meeting following revelations from the other team, much can be pre-prepared by doing extrinsic research on things mentioned in your facts, and anticipating what might be in the other side’s secret facts. The problems are designed to provide an even playing field, so the parties’ vulnerabilities and strengths are usually interlocked. The general possibilities can thus often be guessed, and a skeleton contingency plan put in place.

The teams have 50 minutes to negotiate and each team is entitled to call a five-minute tactical break, at which time the team calling the break will leave the room to confer among themselves. The clock continues to run. The team calling the break can elect to finish the break early by returning to the room. This is typically used to adjust tactics if something unexpected occurs, or to stall the momentum of the other team, or if proceedings appear intractably deadlocked. There is no judging penalty for using the tactical break.

At the end of the Negotiation there is a ten-minute self-analysis session conducted with the judge in the absence of the other team. This gives competitors the opportunity to evaluate their performance and discuss what they did well and what they could have done better.

Preparation

Thorough preparation is vital to success. You need to be well-versed in the facts of the situation, your client’s aims and your operating parameters. Recourse to the problem sheet when questioned regarding facts or possible deals, incorrect arithmetic on costs, or unauthorised revelations are clear signs of poor preparation.

To begin with, it is necessary to consider the following fundamental things about your client before you can brainstorm your ideas and develop strategy:

- What is most important to them?
- What is least important to them?
- What concessions are they prepared to make?
- What are your best and worst case scenarios?
- What are your client’s options if no negotiated settlement can be reached?
You will also need to contemplate what the other solicitors may be looking to achieve and how they may answer the above questions. You can make relatively educated guesses given that the problems are designed with interlocking strengths and weaknesses intended to force the parties to work together. At an even higher level you can consider what the other side may be guessing about what your interests and aims are. Subsequently you can plan what bargaining chips are available and how they might be used most effectively in trading off your low-priority items for your client’s most pressing needs.

While you will need to know the strict legal position as a starting point, the objective is to reach a creative arrangement that maximises the needs and desires of both parties, subject of course, to constraints such as contracts that are illegal or contrary to public policy, and obviously, your client’s instructions.

The search for creative solutions means that you will need to think beyond monetary lines, and cannot pretend you are either Kerry Packer or Roman Abramovich and try to buy everything and bully everybody who is reluctant to sell!

As part of this analysis, you will need to determine whether the interests of the respective parties are mutual, complementary, neutral, competing or a mixture of both.

In short

- **Neutral**: This interest will have no effect on the other party
- **Competing**: The more this interest is fulfilled for one party, the less it is fulfilled for the other.

One basic strategy where competing interests are in play is to offer a “concession” that is actually beneficial or neutral to your client in return for a concession that benefits your side and which may be to the detriment of the other party. The other side does not have access to your confidential facts, so your neutral or beneficial “concession” may be perceived as an actual sacrifice. This might provide leverage for a concession from the other side. However, you cannot act unethically.

You are rewarded for what you contribute to the negotiation, so if you can think of arrangements that benefit both parties and figuratively makes the pie bigger, then all the better for your score, especially if you think of ideas beneficial to both you and your opponents that they did not think of themselves.

**STARTING THE NEGOTIATION**

Teams will be seated around a table facing one another. The judge will be positioned so that they can observe both teams.

At the start of the session, the teams should greet and introduce each other, exchange and merge agendas, and give the usual aspirational talk, for example:

- That you are coming in good faith with the relevant degree of authority from their client
That you are optimistic that past difficulties and animosities will not recur;
That the discussions are confidential
That the negotiations are the start of a long-term, mutually beneficial relationship
That you are here to try and optimise the long-term outcome for everyone etc.

The issues in the agenda are often overlapping or dependent on one another, so teams will have to work out how to allocate their time to the more important issues. It will usually be necessary to cycle through the issues several times as they are often interlinked, so do not be afraid to switch issues, although switching too often will likely lead to incoherence, and inefficiency and is an indicator of a lack of confidence and/or sloppiness. The agenda also helps to prevent teams from trying to dictate the proceedings.

**Making Concessions**
A fundamental rule of negotiations is to never give away anything without getting something in return. A clever negotiator will give something away that is not important to them in return for a concession from the other side that is critical to them.

You should always know the value (monetary and non-monetary) of what you are offering and what you receive in return. This is where preparation is critical.

While ideally there should usually be a sensible compromise, this does not always materialise, so do not simply capitulate in the face of an impasse. Often, this stems from a lack of options, which can in turn derive from a lack of knowledge about the parties' respective interests. Further discussion and questioning with a view to better understanding can assist in many cases, and if not, it may be advisable to either rotate to the next issue, or take the tactical break to devise ideas in private in an attempt to reinvigorate stalled proceedings.

**Reaching Agreement**
There are two basic means of reaching an agreement. The first is called ‘layering’. This approach treats the issues in the negotiation discretely, resolving them sequentially. This method's advantage is that it can achieve a partial outcome even if a complete agreement does not eventuate.

Where issues are interrelated, it may be appropriate not to commit on any issue until the issues are resolved in parallel. This is called ‘conditional linked bargaining.’ It allows the negotiation to progress beyond intractable issues so that critical points will not hold up the process, but the risk is that no binding outcome results.

Towards the end, the teams need to summarise and confirm what they have agreed (absolute or conditional), what remains outstanding, and what needs to be further discussed with the client with regard to the need for more flexible instructions before a further meeting, and so on, before ending with the usual niceties and well-wishes about an optimistic outlook for the future.
**Conduct throughout the Negotiation**

Competitors need to maintain a balance between being conversational and relaxed on the one hand while maintaining professionalism on the other hand, and therefore, avoiding colloquial language or an overly colourful or blasé manner. Of course, students are advised to maintain a demeanour that they are comfortable with.

A very common misconception among competitors is that hostility, intimidation or emotional manipulation is an effective or acceptable tactic. Such behaviour reflects very poorly on the team in question.

Many teams also err by becoming emotionally involved in disputes; you are there to achieve the aim of your client, not become personally affronted by the opposing solicitors’ antics, which may be deliberate baiting to distract you from the task at hand. It is usually best to note that such tactics have been noticed and will not garner a reaction, and move on. Do not become angry or retaliate. Ideally, bring the discussion back to objective standards in order to ensure it is not about combat, exploitation or intimidation, but logic and fairness.

You are not permitted to lie to the other team, nor mislead nor misrepresent facts. As the point of a negotiation is to reach an agreement in good faith, deception is considered unethical and will be penalised.

Making agreements or revealing information that are expressly against your client’s instructions or the spirit of the instructions constitute a breach of trust. These will attract substantial penalties. An understanding of the “spirit” of the instructions allows for actions that are not expressly authorised in the briefing, but for which there is some implicit basis in the text. For example, a client may express dissatisfaction with several things with a common factor, which allows for the deduction of an underlying interest, which means they might be amenable to something the other party has that would address that implicit interest, but was not explicitly mentioned in the instructions, possibly because its existence was not known.

**The Self-Analysis Period**

There will be a 10-minute review session with the judge after the negotiation in the absence of the other team. The judge will always ask these two 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?

The judge may however, ask questions probing specific aspects of your performance, such as your general strategy, reasoning on certain issues and positions taken, division of team roles, ethics of various actions and any other
questions they believe will help them evaluate your performance with respect to the marking criteria. You can of course explain the rationale for certain manoeuvres without the judge’s prompting.

Apart from the marks allotted to the debriefing specifically, it can also affect judgment on the other criteria. If a negotiation is close, the discussion is very important in determining the overall outcome. One purpose of the discussion is to probe the extent to which teams have learnt from their experience and performance. As such, it is vital that you highlight both the positives and negatives that of your display.
EXAMPLE PROBLEM

General Information for Both Parties
(This information will be distributed to all competitors)

Bruce Battler, 60, is the owner and operator of the Leaping Frog Eco Restaurant located in the leafy riverside suburb of Peppercorn Grove.

Bruce, a committed environmentalist, opened the Leaping Frog nearly 40 years ago when Peppercorn Grove was an outlying orchard area. It has always been renowned for its unique inhabitants, the Blue Speckled Frog, which thrives in the surrounding muddy marshes.

Bruce has always loved frogs. He has been committed to saving the Blue Speckled Frog from what he perceives to be certain extinction in the name of progress. About 25 years ago, Bruce constructed frog friendly nature sanctuary at the rear of the restaurant to preserve the local frog population.

In the intervening years, the population of the Blue Speckled Frog has dwindled at an alarming rate, as the city's central business district has expanded. Peppercorn Grove is now the hub of the CBD and the Leaping Frog Restaurant is surrounded by the giants of the corporate and commercial world. In fact, Bruce Butler's one-story red brick building - a scruffy leftover of the original orchard dwellings - is now dwarfed by fifty-storey glass and concrete skyscrapers on all sides.

This Leaping Frog sanctuary has become a popular venue for school excursions, eco-education forums, community meetings and functions. The Leaping Frog has been heralded by the local press as "the heart of the community". Generations of Peppercorn Grove residents have feasted on sumptuous meals whilst enjoying the tranquil surrounds of the frog sanctuary.

Recently, a multi-national corporation, Mite Huge Pty Ltd, has unveiled plans to construct a monorail which will replace the aging rail network which services the thriving business district of Peppercorn Grove. The monorail will be the city's first ever privately owned and operated rail system and will provide an efficient means of transporting commuters to and from the CBD. The business community support the project as the old rail system is totally inadequate.

Mitey Huge plan for the monorail to run by the river and need to acquire certain land, including the land on which the Leaping Frog is built. They have approached Bruce about buying the Leaping Frog site.
The local, frog loving, community is outraged by the proposal which will destroy the habitat of the Blue Speckled Frog. A petition against the project has been signed by 12,000 residents. Hundreds crowded into planning meetings to make their voices heard and the local press is having a field day.

Mitey Huge has instructed Slash and Byrnes & Associates to negotiate an agreement with Bruce Battler. Bruce has instructed Castle & Castle to negotiate on his behalf.

Confidential Instructions for Castle & Castle

(This information will be distributed to one team only)

Bruce has been a workaholic all his life, but has recently suffered a very serious heart attack and must change his lifestyle. He incurred huge medical expenses due to his heart attack. The restaurant has never made any money. It has only ever broken even because Bruce wanted the entire community to be able to afford the Leaping Frog experience. Bruce therefore has no superannuation and is worried about how he will cope living on a pension. The opportunity to sell up and retire with sufficient funds to pay his medical bills and be financially independent is very appealing to Bruce.

Independent valuers have told Bruce that the land and building are worth over $4 million. Appealing as this is, Bruce is more concerned about preserving the Blue Speckled Frogs and the community’s response to the possible loss of the frogs’ habitat weighs heavily on his mind.

He has instructed you to seek some kind of arrangement that will best preserve the blue-speckled frogs that will provide an alternative ‘heart’ to the community and will enable him to explain his position to the community. If he is happy that a desirable solution has been found for the frogs then he will happily speak out to the community.

Bruce does not believe the land can be developed without causing any harm to the Blue Speckled Frogs. He is willing to listen to any options proposed but this to him is not a viable solution. Even if harm does not occur to the frogs in the present he believes it will sometime down the track.

Relocating the frogs is a more viable solution. Bruce estimates the costs of relocating the Frogs will be $1 million plus the value of the new site for the frogs. The land must be muddy and an optimum Frog habitat. Bruce is aware that this type land of is present nearby. However, in Bruce’s’ experience a relocation of frogs would require a significant amount of land. He estimates about 40 – 50 hectares would be essential. If Mitey Huge is willing to purchase or provide a suitable habitat as well as fund the frogs’ relocation then Bruce would consider lowering the purchase price of his property (Leaping Frogs site).

As well as the preservation of the frogs Bruce has many debts and wishes to obtain an adequate source of funds for his retirement. Bruce’s bills and
debts add up to about $250,000. He also is looking at a retirement fund of about $2 million so he is comfortable for the rest of his life. However, this amount is moderately negotiable. Bruce would be willing to look at a lump sum payment and then future annual payments. This is a last resort option, as he is aware that this project is quite a risky development.

Bruce has given you full authority to negotiate this deal.

Confidential Instructions for Slash and Byrnes & Associates

(This information will be distributed to one team only)

Mitey Huge is undertaking an enormous risk with this project. Transport infrastructure is a diversification from its core business activities. They had great difficulties convincing investors to finance the project, and prolonged delays coupled with the adverse publicity are making the investors nervous. Bruce represents a significant blight in the implementation of this ambitious project for Mitey Huge.

Mitey Huge has engaged an independent valuer to value the property. Valuations Pty Ltd valued the property at $3.5 million. Mitey Huge has instructed you that it would prefer not to pay more than the land is worth and obviously would prefer to pay less.

However, Mitey Huge does understand that the issue of the Blue Speckled Frogs has emotive significance for Bruce, the local community and environmentalists. A fact which the local press is exploiting fully. They are, therefore, prepared to spend up to $4.5 million to secure the land and to accommodate the Blue Speckled Frogs and Bruce.

Mitey Huge is looking to secure a deal where the land is acquired and a satisfactory solution for the Blue Speckled Frogs is obtained. Mitey Huge is willing to work with Bruce to find a way to either relocate the frogs or to build an eco-friendly monorail on the Leaping Frog site. One option Mitey Huge is willing to propose is that they acquire the land for around $3.5 million (or more if required) and with Bruce’s input build the monorail on the land with minimal disruption to the frogs. Mitey Huge have undertaken environmental studies and construction studies which indicate this is possible.

If this is unacceptable to Bruce, then Mitey Huge are able to propose another option. Mitey Huge own 50 hectares of muddy marshland in the foothills of the city, an ideal habitat for Blue Speckled Frogs. This land has been valued at $2 million and has been earmarked for another significant development Project. While they are reticent to compromise on this project, they are prepared to apportion up to
50% of this land for frog relocation, with a significant reduction in the purchase price of the Leaping Frogs site, in order to secure a commercial settlement.

It is also essential for Mitey Huge to engage Bruce to publicise the monorail development. They are hoping Bruce will market the final solution to the media and the public to repair the adverse publicity that this project has aroused. If Bruce will endorse whatever solution is proposed for the safety and preservation of the Blue Speckled Frog Mitey Huge are hopeful that the project will progress swiftly with no further protest.

Mitey Huge has given you full authority to negotiate this deal.

**SCORE SHEET**

<table>
<thead>
<tr>
<th>TEAM MEMBERS</th>
<th>NAMES</th>
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<tbody>
<tr>
<td>Negotiation Planning</td>
<td>10</td>
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<tr>
<td>Adaptability</td>
<td>10</td>
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<tr>
<td>Session Outcome</td>
<td>10</td>
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<tr>
<td>Relationship Between Teams</td>
<td>10</td>
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<tr>
<td>Exploration of Interests</td>
<td>10</td>
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<tr>
<td>Creativity of Options</td>
<td>10</td>
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<td>Teamwork</td>
<td>10</td>
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<td>Negotiation Ethics</td>
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<tr>
<td>Communication</td>
<td>10</td>
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<tr>
<td>Self-Analysis</td>
<td>10</td>
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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>SESSION OUTCOME</th>
<th>RELATIONSHIP BETWEEN TEAMS</th>
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<tbody>
<tr>
<td>To what extent did the outcome of the session</td>
<td>How did the team manage the relationship with the</td>
<td>10</td>
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<td>serve the client’s goals, regardless of whether</td>
<td>other team? Did it contribute to or detract from</td>
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<td>agreement was reached?</td>
<td>achieving the client’s best interests?</td>
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<th>Ineffective</th>
<th>Somewhat ineffective</th>
<th>Standard</th>
<th>Effective</th>
<th>Highly effective</th>
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<td>2-4</td>
<td>4-6</td>
<td>6-8</td>
<td>8-10</td>
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**Negotiation Planning**
Judging performance and apparent strategy, how prepared did the team appear?

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

**Teamwork**
How effective were the negotiators in working together as a team, in sharing responsibility, and providing mutual backup?

**Negotiation Ethics**
To what extent did the negotiating team observe or violate the ethical requirements of a professional relationship?

**Communication**
Did the team articulate their positions clearly and eloquently? How well did they handle information appropriately?

**Self-Analysis**
Identified strengths and weaknesses? Learned from their experience?