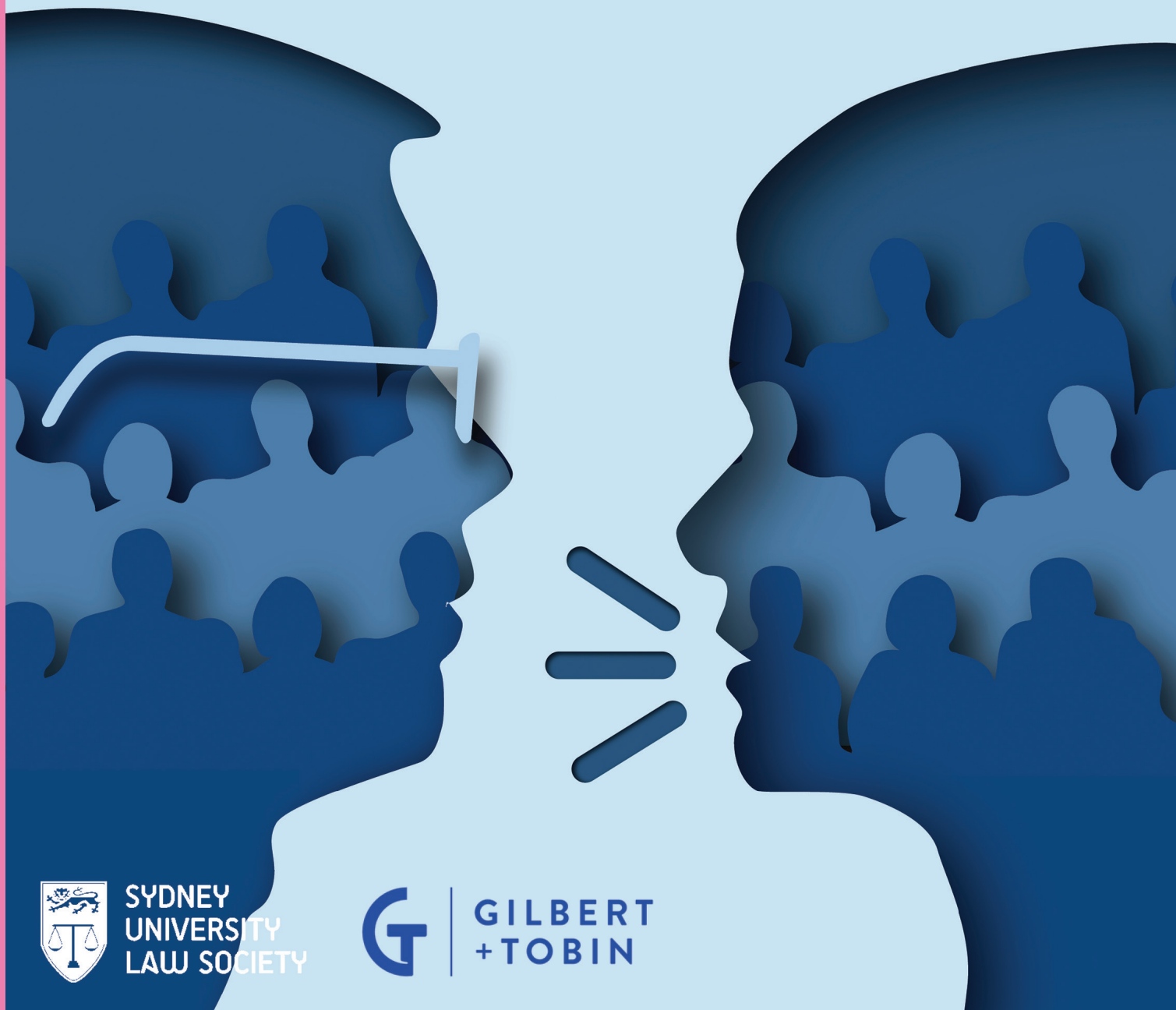
SYDNEY UNIVERSITY LAW SOCIETY 2021

GILBERT + TOBIN

COMPETITIONS HANDBOOK



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Acknowledgements

We acknowledge the traditional owners of the land that the University of Sydney is built upon, the Gadigal People of the Eora Nation. We acknowledge that this was and always will be Aboriginal Land and are proud to be on the lands of one of the oldest surviving cultures in existence. We respect the knowledge that traditional elders and Aboriginal people hold and pass on from generation to generation, and acknowledge the continuous fight for constitutional reform and treaty recognition to this day. We regret that white supremacy has been used to justify Indigenous dispossession, colonial rule and violence in the past, and in particular, a legal and political system that still to this date doesn't provide Aboriginal people with justice.

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SULS Witness Examination Manual
SULS Competitions 2012 O-Week Handbook
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Thanks to Gilbert + Tobin for sponsoring this guide.

caroline xu & felix wood

2021 competitions directors

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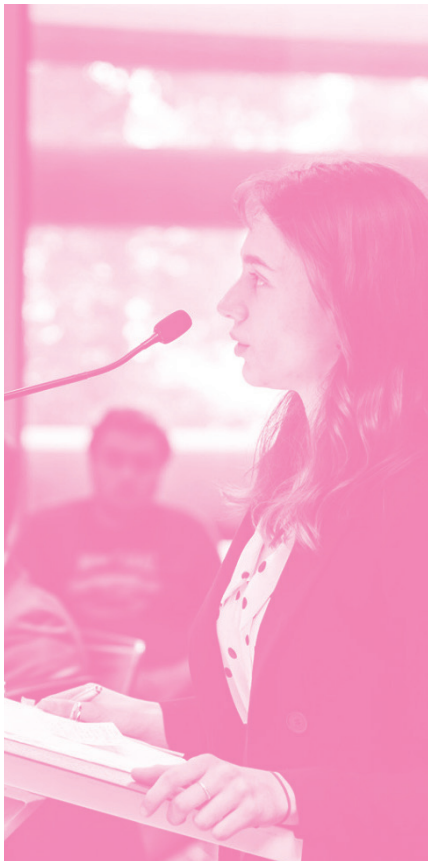
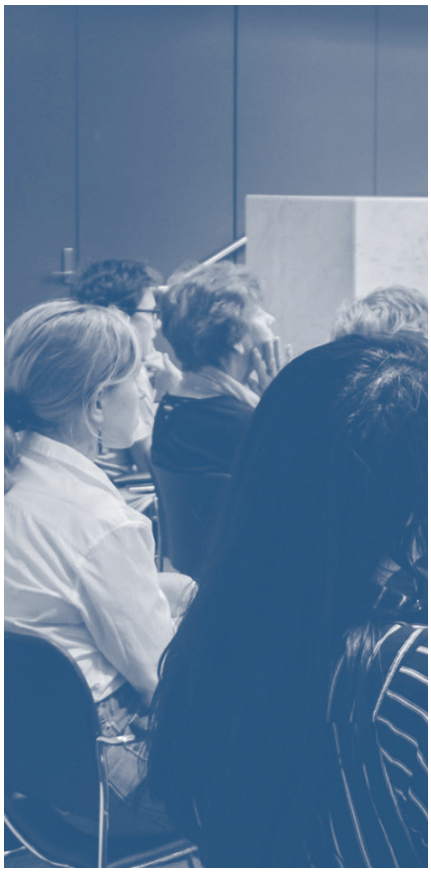
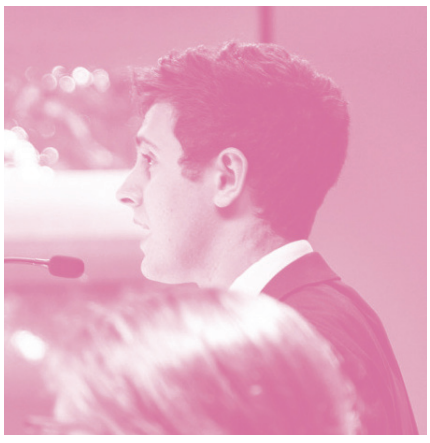






introduction

Competitions offer students an opportunity to develop skills that are crucial for legal practice. Whether it be developing advocacy skills, interviewing a potential client, perfecting the art of negotiation or cross-examining a witness, students are immersed in challenging situations that exercise legal reasoning and problem solving skills. As such, involvement in Competitions is a unique way to translate one's legal knowledge into practical skills.

Each year, the Sydney University Law Society (SULS) facilitates a number of internal and intervarsity mooting and skills competitions. Through this program, Competitions has built up over the years into a community that extends beyond the student body to include alumni, members of the faculty, and members of the bar and the judiciary, who generously contribute to the portfolio. Participating in competitions provides students with an invaluable opportunity to discover insights into the legal profession from distinguished members of the bar and eminent judges, including current and former Justices and Chief Justices of the Supreme Court of NSW and the High Court of Australia.

president's foreword

Wendy Hu
President, Sydney University Law Society

Welcome to the SULS Competitions community!

It's a phrase you'll hear a lot from participating students - and rightly so. Like numerous others, the way I initially got involved with SULS, and the Sydney Law School more broadly, was through doing the First Year Moot. Competing in front of peers, academics or practitioners is undoubtedly an intimidating experience. The nerves persist to this day. What I also discovered, however, is that the Competitions portfolio fosters the most wonderful sense of community. I've lost count of the number of times I've seen older students go out of their way to help out a fresh-faced competitor.

The Competitions portfolio has witnessed immense growth over the years. The Competitions Handbook will help you traverse its many contours. Internally, SULS offers 6 subject-based moots and 3 skills competitions spanning negotiations, client interviewing and witness examination. Externally, SULS participates in numerous bilateral, multilateral and international competitions. Additionally, SULS runs educational programs such as the Introductory Mooting Program and Negotiations Crash Course. It also collaborates with the International portfolio to run the ESL Moot, Queer portfolio to run the Rainbow Moot and Women's portfolio to run the Women's Mooting program.

There is no "right" time to start getting involved with competitions. No matter what stage of your degree, public speaking ability or level of time commitment, there is an opportunity for you. Having competed in, judged, convened, written problem questions for and led the portfolio - I can safely say that competitions has been one of the most enriching experiences of my law degree. Don't be a stranger! Feel free to contact anyone in the Competitions community if you have any further questions or want general advice.

New and Continuing in 2021

2021 is set to be a big year for SULS Competitions. As a committee, we aim to tackle the changes posed by the hybrid learning environment that will characterize this year, doing our best to take advantage of the online format as much as possible. Core to this vision is the desire to see all law students have a chance to be involved in competitions; be it as a competitor, convenor, coach, or spectator.

Expanded Educational Offerings

The past few years have seen the growth of the Competitions Portfolio's educational programs; our Boot Camps and Introductory Mooting Programs have rapidly become some of the most common avenues of entry into SULS. This year, we aim to expand the overall programs effectiveness by tying these disparate initiatives together more clearly; be that through embracing the potential of Boot Camps and new Drop-In Coaching Sessions to enhance what students learn from the IMP, or simply incorporating a Negotiations Crash Course into the Introductory Mooting Program. Bootcamps will be run in the second week of each semester, and Drop-In Coaching Sessions will be conducted frequently after the conclusion of the Introductory Mooting Program.

Winter Break Competitions

The unexpected shift to online Competitions last year brought some unexpected benefits to the portfolio; students who had previously been alienated from competing due to packed schedules were given the opportunity to get involved. This year, we plan to take the lessons learned from that to heart, and in the winter break will be running;

- A Winter Negotiations Competition
- A Juris Doctor Torts Moot

Intervarsity Guidelines

Representing SULS at the Intervarsity level is one of the high points of many competitors' times at SULS. This year, to make getting involved as easy as possible, the Competitions Portfolio will be simplifying the application process and providing more clear guidelines to students as to how to get involved in specific competitions.

2021 is set to be a big year for SULS Competitions.

contributing to SULS competitions

The key reason why SULS is able to offer such a wide range of competitions is because of the generous involvement of students who contribute their time to help organise and facilitate them.

Becoming a part of the Competitions' committee, comprised of Internal Competitions Convenors, Intervarsity Officers and Judging Coordinators, or becoming a student judge is a great way to get involved with SULS and meet people within the Competitions community.

Applications will be invited during Weeks 1-2 of Semester 1 via the SULS Weekly and the SULS website. Applications for the Internal Competitions Convenor positions for Semester 2 will be invited during Weeks 1-2 of Semester 2.

Internal Competition Convenors

Convening an internal moot or skills competition is a great way to get involved in SULS, find out more about Competitions, and get to know students from all years of the Law School!

Each internal competition is convened by two students, a more experienced or older student often being paired with a younger student. Convenors are appointed for the duration of one competition, which runs from Week 3 or 4 until Week 10 or 11 of semester. The main duties of an Internal Competition Convenor include creating draws, liaising with competitors and members of the Faculty, facilitating the day-to-day running of the competition, and organising the Semi-Final and Grand-Final. You do not need to be an experienced competitor or even have competed before to apply – above all, we are looking for people who are keen and organised.

Intervarsity Officers

There are two Intervarsity Officers who hold the position for the whole year. Given the success that Sydney University Law students have had in intervarsity competitions, and the diversity of competitions on offer, this is an exciting area to be involved in. The main duties of the Intervarsity Officers are organising registration for intervarsity competitors and liaising with competitors, other law student societies, and members of the Faculty. We have already filled these positions for 2021.

Judging Coordinators

There are two Judging Coordinators who hold the position for the whole year. The main duty of the Judging Coordinators is to find and allocate student judges for preliminary rounds of the internal moots and skills competitions and is thus ideal for those eager to engage with the Competitions community.

Education Coordinator

New to the committee in 2021 is the role of Education Coordinator, a year long position introduced to ensure the expanded education program runs as effectively as possible. The role of Education Coordinator will be focused on heightening the interconnectedness of our various offerings, liaising between conveners of the individual programs and bringing them together into one cohesive whole.

Student Judges

Judging is an excellent way for experienced competitors to appreciate the other side of competitions, understand the perspective of the bench and give back to the Competitions community. For more details on judging, see page 66.

competitions in 2021

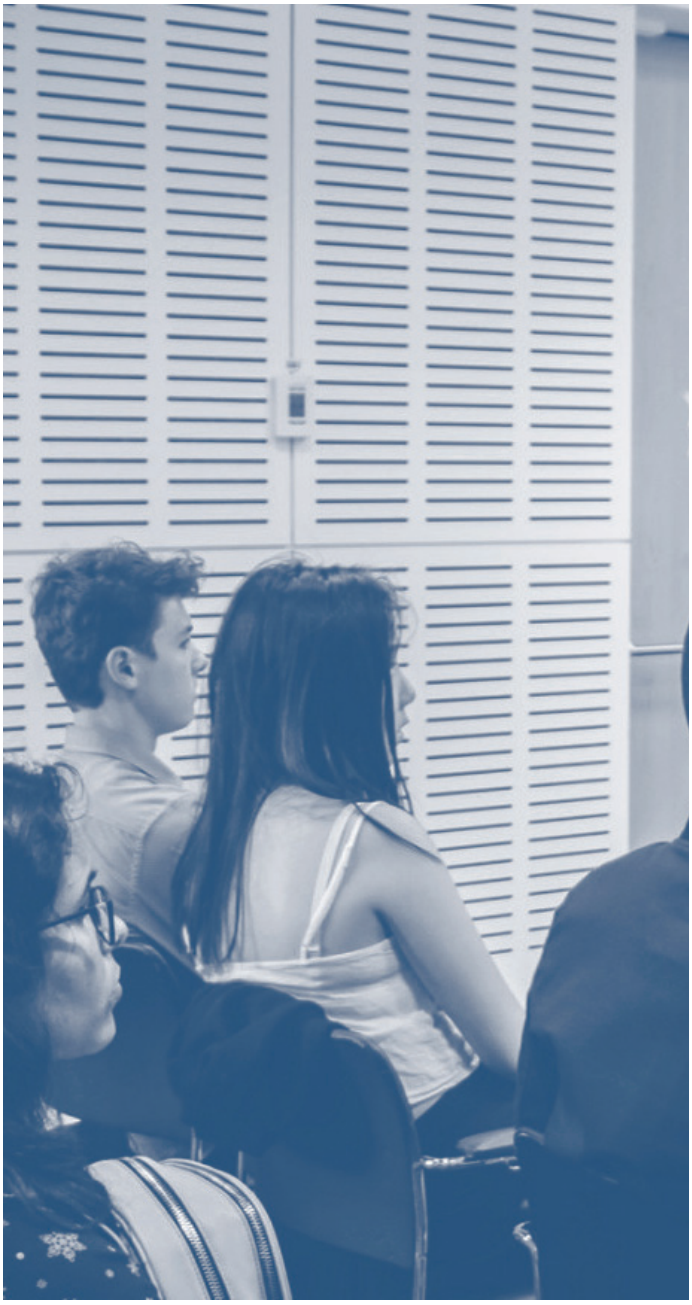
Semester 1, 2021

Week 1	Registration opens for Semester 1 Internal Competitions Registration opens for Semester 1 Student Judging Registration opens for Semester 1 Competitions Bootcamp Registration opens for Semester 1 Competitions Committee
Week 2	Intro to Comps Week Semester 1 Competitions Bootcamp Registration closes for Semester 1 Internal Competitions Registration closes for Semester 1 Student Judging Registration closes for Semester 1 Competitions Committee Registration closes for Introductory Mooting Program
Week 3	Internal Competitions Preliminary Rounds Problem Questions released Week 1 of Gilbert + Tobin Introductory Mooting Program
Week 4	Preliminary Round 1 for all Internal Competitions Week 2 of Gilbert + Tobin Introductory Mooting Program
Week 5	Preliminary Round 2 for all Internal Competitions Week 3 of Gilbert + Tobin Introductory Mooting Program
Mid-Semester Break	Quarter Final Rounds Draw Announced. Deadline for registering for Gilbert + Tobin Introductory Mooting Program Final Moot
Week 6	Week 4 of Introductory Mooting Program Quarter Final Round for the King & Wood Mallesons Torts Moot Quarter Final Round for the Johnson Winter & Slattery Negotiations Competition
Week 7	Quarter Final Round for the Public International Law Moot Quarter Final Round for the Federal Constitutional Law Moot Quarter Final Round for the Witness Examination Competition Semi Final Rounds Problem Questions released Final Moot for Introductory Mooting Program SULS v MULS Client Interviewing Competition
Week 8	Semi Final Round for the King & Wood Mallesons Torts Moot Semi Final Round for the Johnson Winter & Slattery Negotiations Competition
Week 9	Semi Final Round for the Public International Law Moot Semi Final Round for the Federal Constitutional Law Moot Semi Final Round for the Witness Examination Competition
Week 10	Grand Final Round for the King & Wood Mallesons Torts Moot Grand Final Round for the Johnson Winter & Slattery Negotiations Competition Sir John Peden Contract Law Moot Competition
Week 11	Grand Final Round for the Public International Law Moot Grand Final Round for the Federal Constitutional Law Moot Grand Final Round for the Witness Examination Competition Registration Opens for Winter Break Competitions
Week 13	UNSW Allen and Overy Private Law Moot IMLAM Send Off Moot UTS Negotiations Competition
Winter Break	QUT Torts Moot ALSA Conference Winter Break Negotiations Competition Winter Break Juris Doctor Torts Moot

Semester 2, 2021

Registration opens for Semester 2 Internal Competitions Registration opens for Semester 2 Student Judging Registration opens for Semester 2 Competitions Bootcamp Registration opens for Semester 2 Competitions Committee Administrative Appeals Tribunal Moot (TBA)	Week 1
Intro to Comps Week Competitions Drinks Semester 2 Competitions Bootcamp Registration closes for Semester 2 Internal Competitions Registration closes for Semester 2 Student Judging Registration closes for Semester 2 Competitions Committee ANULSS v SULS Commercial Law Moot Moot of Origin	Week 2
Internal Competitions Preliminary Rounds Problem Questions released Herbert Smith Freehills-NLU Delhi Negotiations Competition (TBA)	Week 3
Preliminary Round 1 for all Internal Competitions UNSW Skills IV Competition (TBA)	Week 4
Preliminary Round 2 for all Internal Competitions Castan Centre Human Rights Law Moot (TBA)	Week 5
Preliminary Round 3 for the Corrs Chambers Westgarth First Year Torts Moot	Week 6
Quarter Final Rounds for the Herbert Smith Freehills Contracts Moot Quarter Final Rounds for the Johnson Winter & Slattery Negotiations Competition	Week 7
Quarter Final Rounds Draw Announced. Baker McKenzie National Intervarsity Women's Moot (TBA) Sir Harry Gibbs Constitutional Law Moot Competition (TBA)	Mid-Semester Break
Quarter Final Rounds for the Corrs Chambers Westgarth First Year Moot Quarter Final Rounds for the Streeton Lawyers Criminal Law Moot Quarter Final Rounds for the Client Interviewing Competition Justice William Gummow Cup Equity Moot Competition (TBA)	Week 8
Semi Final Round for the Corrs Chambers Westgarth First Year Moot Semi Final Round for the Streeton Lawyers Criminal Law Moot Semi Final Round for the Negotiations Competition Semi Final Round for the Client Interviewing Competition Sir Nicholas Cowdery Criminal Law Moot Competition (TBA)	Week 9
Semi Final Round for the Herbert Smith Freehils Contract Law Moot	Week 10
Grand Final Round for the Corrs Chambers Westgarth First Year Moot Grand Final Round for the Streeton Lawyers Criminal Law Moot Grand Final Round for the Johnson Winter & Slattery Negotiations Competition Grand Final Round for the Client Interviewing Competition	Week 11
Grand Final Round for the Herbert Smith Freehils Contracts Moot	Week 12
Competitions Dinner	Week 13

introductory seminars



SULS will be continuing the success of the 'Intro to Comps Week' in launching the 2021 Competitions Program in Week 2 of Semester 1 on Monday 8th March, and Week 2 of Semester 2 on Monday 16th August. This will be an opportunity to watch demonstration moots and skills competitions by previous Grand Finalists and discover the multitude of competitions opportunities on offer at the University of Sydney.

In 2021, SULS will again run its popular Bootcamps in Semester 1 and 2. The Bootcamps will offer seminars by experienced competitors, and a chance to put newly-developed skills and knowledge into practice. The Bootcamps are also an opportunity for more experienced competitors to get involved and help develop the skills of the next cohort. They are also an opportunity for student judges to learn the key skills they need before judging internal moots. The Semester 1 Boot Camp will be held on Saturday 13th March. The Semester 2 Boot Camp will be held on Saturday 21th August.

After a successful inaugural year, SULS will continue the 'Introductory Mooting Program' in Semester 1, a four week program designed to teach the necessary skills to moot. The four 1.5 hour seminars will teach any novice mooter how to get up and running. The program will culminate with a final moot, where mentees get to put their newfound skills to practice. This year, the program will also feature a Negotiations Crash Course and Drop-In Sessions throughout the semester.

It is highly recommended that anyone who is interested in a competition attend the Intro to Comps Week Bootcamp, and sign up for the Introductory Mooting Program.

Women's Mooting Program

The Women's Mooting Program aims to foster an enjoyable, collaborative atmosphere and supportive relationships between female and non-binary identifying law students of different levels of degree progression and experience. We hope to inspire participants to be confident and courageous in seeking out and taking up opportunities for written and oral advocacy both during their time at the Sydney Law School and afterwards.

The Women's Mooting Program offers small-group mooting workshops which are facilitated by a team of experienced mooters. The Program aims to cater to all levels of mooting experience. It is suited to those who have never mooted before, have done a few moots without getting the hang of it, or to those who are seeking to sharpen their advocacy skills.

The 2021 Program will run in the first half of Semester 2. Alongside the workshops, the Program will include social events, a demonstration moot and a round-robin final competition where students have the opportunity to test out the skills they have developed in the workshops.

More information will be provided towards the end of Semester 1. If you have any questions in the meantime, please get in touch with the Program Directors, Alyssa Glass and Joy Chen, by emailing womensmootingprogram@suls.org.au.

internal competitions

semseter one

King & Wood Mallesons Torts Moot

This novice moot is only open to students who have not reached any finals round in a SULS competition and offers the chance for students to receive valuable guidance from SULS' best student judges. The preliminary question is constructed with first-time mooters in mind and will usually contain useful tips. This competition typically attracts students from LLB II and JD I.

Public International Law Moot

This moot is one of SULS' most prestigious internal moots, as the winner of the Grand Final often becomes part of the Philip C Jessup International Law Moot team. The competition is 'niche' in that it draws fewer competitors than other internal competitions, but produces a high standard of mooting. This competition typically attracts students from LLB III/ IV and JD II.

Federal Constitutional Law Moot

This moot is the most senior of SULS' internal moots and is well respected by students and faculty alike, often drawing the largest Grand Final audience due to the high profile constitution of the bench. In recent years the moot was judged by former Chief Justice of the High Court of Australia, Sir Anthony Mason. This competition typically attracts students from LLB IV, JD II, and higher.

Johnson Winter & Slattery Negotiations Competition

This competition offers the chance to develop essential skills not on offer within the LLB or JD course and is thus ideal for students interested in practicing in corporate law. The negotiation involves teams of two students representing different parties that are involved in a legal dispute with the aim of reaching an agreement and avoiding litigation. This competition attracts students from every year of the LLB and JD.

Witness Examination Competition

This competition simulates the courtroom experience of Examination-in-Chief and Cross-Examination. It requires an understanding of evidence, the ability to structure a case, flexibility and quick thinking. This competition typically attracts students from LLB IV and JD II, however it is not uncommon for students from all years of the LLB and JD to compete.

winter break

Johnson Winter & Slattery Negotiations Competition

This competition will be held again in the Winter Break due to popular demand. This competition attracts students from every year of the LLB and JD.

JD Torts Moot

New this year, this competition will be open to all Juris Doctor students. The competition will be focused on Tort Law, and will have its schedule tailored to suit the already jam packed JD experience. Taking advantage of the winter break, this competition will have rounds more spaced out than other internal competitions.

semseter two

Corrs Chambers Westgarth First Year Moot

Inaugurated in 2014, the First Year Moot has become an increasingly popular competition. This moot focuses on preliminary areas of tort law and offers the opportunity to students who are in the early stages of their degrees to compete in teams and develop their advocacy skills in a friendly environment. Unlike other Internal Competitions, the First Year Moot guarantees every student a chance to compete 3 times in a round-robin style tournament. This competition is open to LLB I, LLB I/II transfer and JD I students who have not previously been involved in mooting.

Herbert Smith Freehills Contract Law Moot

This moot offers students the chance to engage with real world commercial law problems and is ideal for students interested in corporate law and commercial litigation. This competition typically attracts students from LLB II and JD I/II.

Streeton Lawyers Criminal Law Moot

This moot addresses controversial areas of criminal law and engages with interesting and at times confronting factual scenarios. This competition typically attracts students from LLB III and JD I/II.

Johnson Winter & Slattery Negotiations Competition

This competition will be held again in Semester 2 due to popular demand. This competition attracts students from every year of the LLB and JD.

Client Interviewing Competition

This competition provides students with a practical opportunity to develop skills necessary for general practice. The interview is a simulation of the first time a potential client visits a firm, with students competing in teams of two. It does not require competitors to have studied any particular area of law. This competition attracts students from every year of the LLB and JD.

intervarsity competitions

Bilateral Intervarsity Competitions

The Sir John Peden Contract Law Moot

This moot between SULS and Macquarie University features a question of contract law. The moot has attracted a number of eminent judges in the past, including The Honourable Chief Justice French of the High Court of Australia and The Honourable JD Heydon AC QC. In 2021, it is anticipated that the moot will be held in Semester 1.

SULS v MULS Intervarsity Skills Competition

This competition is in the format of a rotating skills competitions against Macquarie University. In 2017 and 2018, it was a Client Interviewing Competition. In 2019, it was a Witness Examination Competition. In 2020, it was again a Client Interviewing competition. In 2021 it is anticipated to be a Witness Examination Competition. This competition will be held in Semester 1.

Moot of Origin

This moot is a bilateral moot against the University of Queensland and features a question on torts and contracts. It is an opportunity for our novice mooters to better their skills. This competition will be held at the beginning of Semester 2.

Nicholas Cowdery AM QC Criminal Law Moot

This moot between SULS and UTS features a question of criminal law. A number of eminent judges have featured on the bench in the past, including The Honourable Justice Bell of the High Court of Australia, The Honourable Justice Fullerton of the NSW Supreme Court, and Nicholas Cowdery AM QC, former NSW Director of Public Prosecutions. In 2021, it is anticipated that the moot will be held in Semester 2.

Justice William Gummow Cup Equity Moot

This moot features a question of equity and, in 2013, was held between SULS and the University of Wollongong, inaugurating the Justice William Gummow Cup. In 2016 and 2017, the moot was against the University of New South Wales. The moot is presided over by The Honourable Professor William Gummow AC QC, former Justice of the High Court. In 2021, it is anticipated that the moot will be held in Semester 2.

SULS v UTSLSS Witness Examination Competition

This is a newly introduced witness examination question that will be running in Semester 2. This competition gives our witness examination competitors an opportunity to compete at an intervarsity level.

SULS v ANULSS Commercial Moot

This is a new opportunity for senior mooters to compete against ANU mooters on a question of commercial law. Applicants will be invited during Semester 2.

MULS Clayton Utz Environmental Law Moot

The competition will run for the second time in 2021 and aims to fill a gap in intervarsity competitions in New South Wales. The question will focus on any of the following topics: trade and environment, water law and governance, pollution and environmental regulation, Indigenous peoples, customary law and natural resource management, or climate change. Applicants are invited early in Semester 1.

National Competitions

QUT Torts Moot (formerly the Shine Lawyers National Torts Moot)

This moot features a question of tort law and attracts teams from over 15 Australian universities. The moot is treated as a novice intervarsity moot to which SULS sends it newest, up-and-coming mooters. The moot is hosted by the Queensland University of Technology during Semester 2. Applications will be invited at the end of Semester 1.

UTS Negotiations Competition

This competition provides an opportunity for students to develop their Skills competition experience with various other NSW universities. Applications will be invited during semester 1.

UNSW Skills IV Competition

This is an annual intervarsity skills competition hosted by UNSW. It allows students to compete in Client Interviewing and Negotiation competitions. It is anticipated that this competition will be held in Semester 2.

Allen & Overy Private Law Moot

This moot features a question on private law and is hosted in Sydney by the University of New South Wales. This moot attracts competitors from across the Asia Pacific region. It is anticipated that this competition will be held in Semester 1.

Sir Harry Gibbs Constitutional Law Moot

Held in Melbourne, this moot is run by the Melbourne University Law Students' Society in collaboration with the Australian Association of Constitutional Law and the Australian Government Solicitor. It is anticipated that this competition will be held in Semester 2.

Castan Centre Human Rights Moot

This moot involves a question on the Victorian Human Rights Charter and takes place at Monash University. It is anticipated that this competition will be held in Semester 2.

Administrative Appeals Tribunals Moot

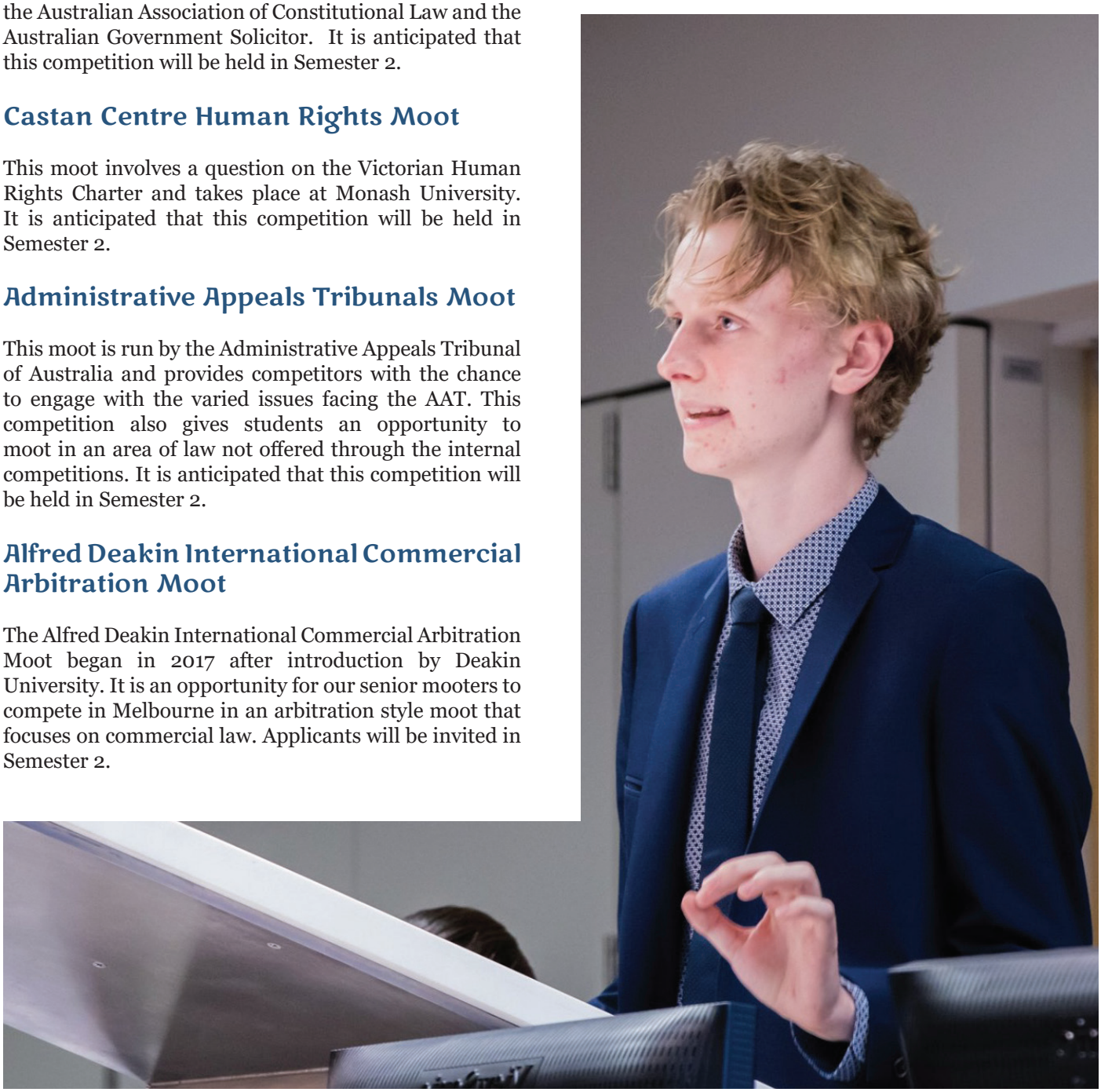
This moot is run by the Administrative Appeals Tribunal of Australia and provides competitors with the chance to engage with the varied issues facing the AAT. This competition also gives students an opportunity to moot in an area of law not offered through the internal competitions. It is anticipated that this competition will be held in Semester 2.

Alfred Deakin International Commercial Arbitration Moot

The Alfred Deakin International Commercial Arbitration Moot began in 2017 after introduction by Deakin University. It is an opportunity for our senior mooters to compete in Melbourne in an arbitration style moot that focuses on commercial law. Applicants will be invited in Semester 2.

Baker McKenzie National Intervarsity Women's Moot

The National Intervarsity Women's Mooting Tournament was first introduced in 2011 by the Sydney University Law Society ("SULS") in conjunction with the NSW Young Lawyers Special Committee of Law Students' Societies ("SCLSS"). It is aimed at addressing the equity issues facing women at the bar and is the only national moot in which all competitors must be female. It is the only national moot in which all competitors must be female. It attracts universities from around Australia and provides an opportunity for female law students to gain advocacy experience and network with female practitioners. The moot is hosted by SULS during the Semester 2 mid-semester break. Applications for team members, convenors and the sub-committee will be invited at the beginning of Semester 2.



international competitions

The Faculty of Law offers the opportunity for students to participate in the Philip C. Jessup International Law Moot Court Competition, the Willem C. Vis International Commercial Arbitration Moot, and the Intercollegiate Negotiations Competition (Tokyo). Course credit is also offered for participation in these three competitions. SULS also offers students the opportunity to participate in the HSF-NLU Delhi Negotiations Competition.

Philip C. Jessup International Law Moot Court Competition

This moot is widely recognised as the most prestigious international mooting competition. It provides students with an opportunity to work closely in a team to represent fictional States in a hypothetical case before the International Court of Justice on topical areas of international law. Teams compete against other Australian teams at the National Rounds, held in early 2018. The two finalist teams will then travel to Washington to compete in the International Rounds against teams from around the world. In 2011, 2015, 2017 and 2018, the Sydney University Jessup teams were World Champions. The Faculty invites applications in Semester 2.

Willem C. Vis International Commercial Arbitration Moot

This moot has quickly become one of the most prestigious international mooting competitions in the world. It provides students with an opportunity to engage with international commercial arbitration and the resolution of international business disputes. Each year, teams from over 250 universities worldwide compete in Vienna. The Faculty invites applications in Semester 2.

Intercollegiate Negotiations Competition (Tokyo) (INC)

The INC is Japan's peak international mooting competition, attracting teams from Japan's top law schools as well as teams from China, Hong Kong, Korea, Mongolia, Singapore and Thailand. Students from Sydney Law School are invited to participate in a national team alongside students from other leading universities from around Australia. The competition consists of two rounds; an arbitration moot using the UNCITRAL Arbitration Rules (Round A) and a negotiation of a cross-border joint venture (Round B). Applications open in April and the competition is held in Tokyo, Japan in November. Team Australia has achieved considerable success in recent years and were winners in 2016 and 2018 and Runners-up in 2017, 2019 and 2020.

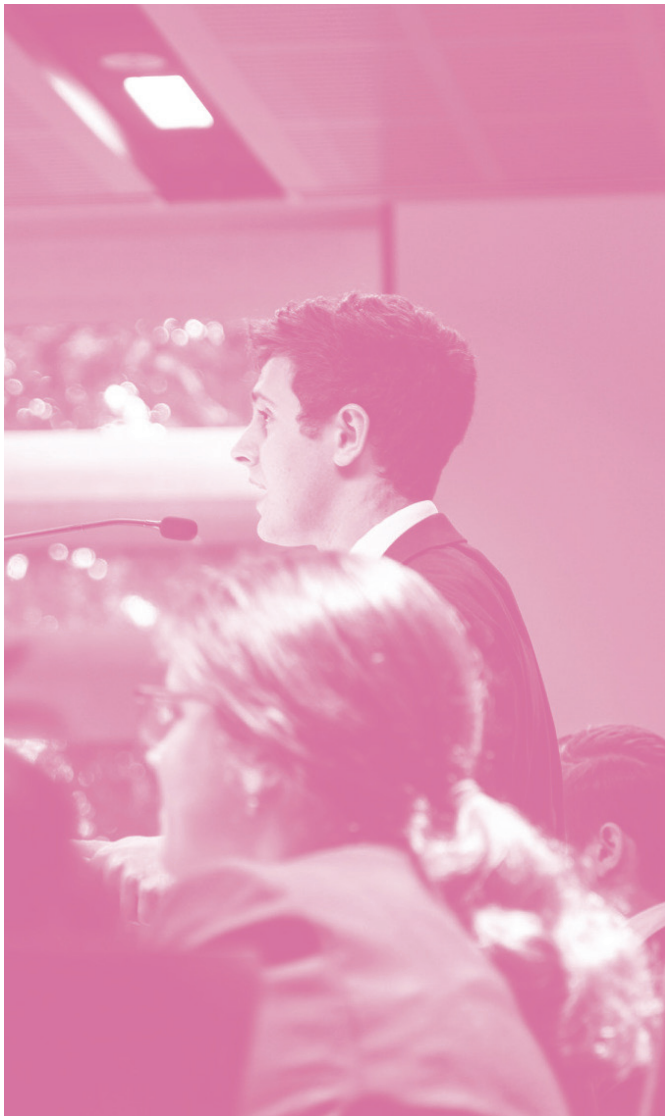
HSF-NLU Delhi Negotiations Competition

The HSF-NLU Dehli International Negotiations Competition is an invite-only competition in India, bringing together students from top law universities across the globe to compete in a team-based negotiation. The HSF-NLU Dehli competition is the only international negotiations competition that SULS sends a team to. Applicants will be invited in Semester 2.

Competitions Online

2021 and the ongoing COVID restrictions present unique challenges to the Competitions Portfolio. As much as is possible, the portfolio will aim to bring students the in person competitions that have always characterised how SULS runs its program. However, student safety must always come first, and the portfolio must adapt to the new situation. In Semester 1, preliminary rounds for internal competitions will be held over the platform Zoom, and while it will be our utmost priority to have the finals rounds in person, preparations will also be made for those to be held online if necessary. When competitions are held online, SULS will aim to make the transition as seamless as possible, doing our best to mimic the experience of being in person. We are conscious that competing in person can already be daunting, and our competitions team will give their all to making the online experience accessible to all.

However, not all effects of the online competitions are negative. Students with stricter travel schedules should benefit from the increased flexibility in where you need to physically be for the event, and the introduction of breakout rooms can massively increase the efficacy of our Client Interviewing and Witness Examination competitions. Finally, having competitions hosted online allows SULS to bring in judges from locations outside of Sydney. Last year's semester two Contracts Law Moot saw USyd alumnus His Honour Justice Graham Hiley call in directly from the Appeals Court of the Supreme Court of the Northern Territory, and SULS is committed to taking advantage of the online format to bring in more exciting judging opportunities.



Competitions Feedback

We're committed to running the best possible competitions for you, and we value your opinions on how to do so. At the conclusion of each competition, we will send out a feedback form for you to share any thoughts you have, positive or negative.

We put student wellbeing and safety above all else - if a judge or any other participant makes you feel uncomfortable at any point, please contact Felix and Caroline at competitions@suls.org.au.

MOOTING

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MOOTING

Introduction

What is a moot?

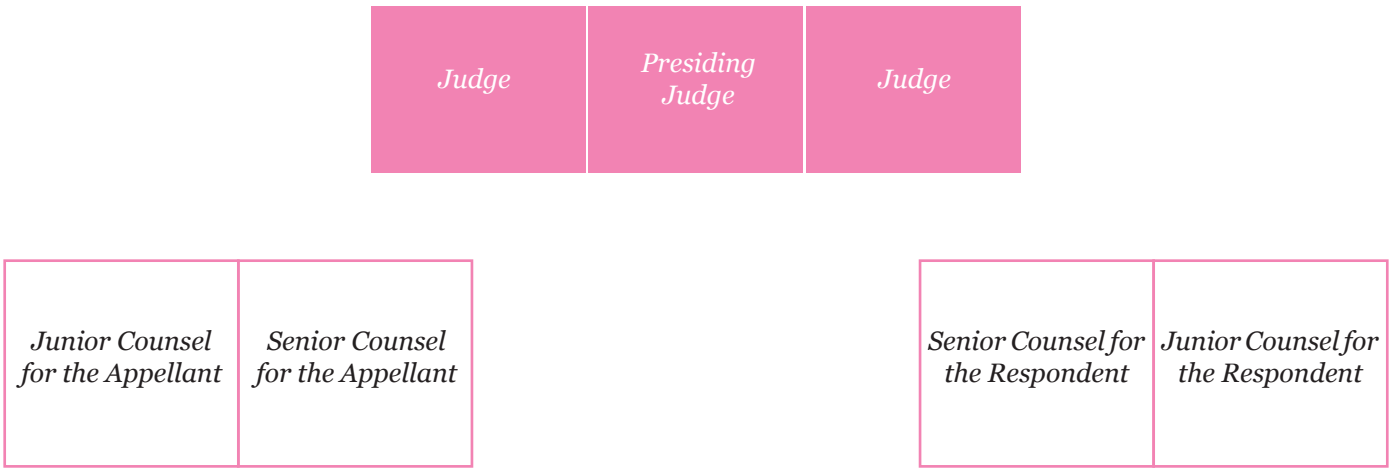
A moot is a simulated hearing modelled on an appeal from the findings of a lower court. Based on a given set of facts, counsel make submissions before a bench of one or more judges on the way in which the law has been applied to the facts, much like a legal problem question. The 'appellant' will seek for the decision of the trial judge to be overturned and the 'respondent' will seek for it to be upheld.

Structure of a moot

1. Senior Counsel for the Appellant gives appearances
2. Senior Counsel for the Respondent gives appearances
3. Senior Counsel for the Appellant presents submissions
4. Junior Counsel for the Appellant presents submissions
5. Senior Counsel for the Respondent presents submissions
6. Junior Counsel for the Respondent presents submissions

Judges may change this order at their discretion.

Structure of the Room



Why moot?

Mooting is an excellent way to learn and develop skills that are crucial for legal practice, including legal research, analysis, presentation – both written and oral – and an in-depth knowledge of core areas of law. Through the process of reading cases – in such a way that you not only understand its meaning, but also appreciate its significance and quality – analysing legal arguments, developing a logical case and presenting your conclusions in a coherent and effective manner, you will learn to think and analyse the law in the style of an advocate. Mooting will also improve your oral communication skills and provide a chance to learn advocacy techniques. It will exercise your ability to think on your feet, both in response to your learned friend's submissions and questions from the bench.

As such, mooting can significantly aid your legal studies; in particular, it is ideal preparation for problem question assessments and exams as it will improve your legal reasoning skills, as well as contributing to the development of legal research and organisational skills. Indeed, employers also look upon it favourably as enhancing these essential skills.

Preparation

Know the Facts
The first step in preparing for a moot requires you to familiarise yourself with the factual scenario, and is thus not unlike approaching a problem question in any law subject you have studied. Identify the facts that are relevant and those that are not, and the facts that aid your case and those that do not.

Identify the Issues
Once you have an understanding of the facts, you need to ascertain the legal issues that arise on those facts. It is important that you take care to identify which of the issues are your responsibility, depending upon which grounds of appeal have been allocated to you, and which issues are the responsibility of your co-counsel.

Moot problems are often designed to engage with controversial or unresolved areas in the law, particularly in the later stages of a competition, thus making it possible to make persuasive arguments supporting both sides.

Know the Grounds of Appeal
The moot question will specify 'grounds of appeal', that is, the points in dispute between the parties. The submissions that you make are limited to these grounds of appeal. Thus, even if additional arguments are open on the facts, they cannot be introduced.

Further, new evidence cannot be introduced at appeal. At issue is the application of the law to the facts, not the facts themselves. Thus, you are strictly limited to the facts that have been provided and should be cautious even when making inferences.

Research the Question
With a firm understanding of the facts and legal issues, you should begin your research. The question should guide your research, as there will often be references to case law or statutes in the question itself. Internal moot questions may also provide a list of suggested helpful cases and statutes.

A good starting point for your research is a relevant textbook, as this will contain commentary on the law and references to key cases and statutes. Commentary is particularly useful in the later stages of a competition as it will often address controversial areas of law.

Ensure to follow up any references or footnotes to cases or statutes in the textbook, in journal articles, or in other cases; it is important that you read the original cases and statutes for yourself and not rely on someone else's assessment or summary of them.

Think holistically about the case and appreciate all the angles of the legal issues you have been allocated when conducting your research; this will strengthen your submissions.

When researching, aim to find the most recent and influential decisions to support your case.

Using case law
When researching, aim to find the most recent and influential decisions to support your case. Where a case appears to be relevant, you should take into account:

- Whether the facts are similar
- Whether the case is binding or persuasive
- The *ratio decidendi* – this will dictate whether the case is applicable or whether it can be distinguished because the reasoning does not encompass the factual situation in the present case

There are two types of cases which are particularly useful for a moot:

1. Leading cases

Leading cases offer definitive statements of relevant principles.

2. Cases with similar fact patterns

Cases with similar facts to the moot question allow you to draw analogies. You will argue that since the present case is analogous to the case cited, the result should follow the decision in the case cited.

On the other hand, if you are aiming to avoid the application of a factually similar decision, it will be necessary for your case to draw distinctions from the case cited, and thus show why the case cited should not be applied.

To this end, you should research all relevant cases, including those that may be damaging to your case. If a case is relevant but detracts from your case, it is often necessary and more effective to address it and distinguish it from the facts in the moot problem, rather than ignoring it.

Written Submissions

Coherent legal arguments that indicate the proposition to be proved and are supported by logical reasoning and authority allow you to persuade the Court to your point of view. Good submissions are comprehensive and address alternatives to your case whilst ensuring that there is no overlap or redundancy.

Structure

Well-structured written submissions are essential in enabling the Court to clearly understand your argument. Your submissions should be ordered in the most persuasive way; in general, you should lead with your strongest submissions.

A submission is a 'because sentence'. As such, within each submission, the following should be included:

1. The proposition to be proved
2. A statement of law with authority
3. An application of the law to the facts
4. A conclusion

For an example of written submissions, see Appendix I.

Using Authorities

Each of your propositions should be supported by authorities; that is, case law and legislation. Whilst textbooks, journal articles and research papers are useful in your research, you cannot use these as authority for a proposition.

When deciding which cases to cite and how many to cite, aim to avoid redundancy by choosing the most senior authority, the most commonly cited authority or the most relevant authority for a proposition, rather than multiple cases for the same proposition.

Precedent

It is important to note the court that you will be appearing before in order to determine which cases are binding and which are merely persuasive.

A case has binding authority if:

a) It was a decision of a court that is higher in the same court hierarchy (e.g. decisions of the High Court of Australia bind the Supreme Court of NSW), and

b) The decision was on the same issue of law, and

c) The decision is a clear principle supported by at least a majority of that court.

Good submissions are comprehensive and address alternatives to your case whilst ensuring that there is no overlap or redundancy.

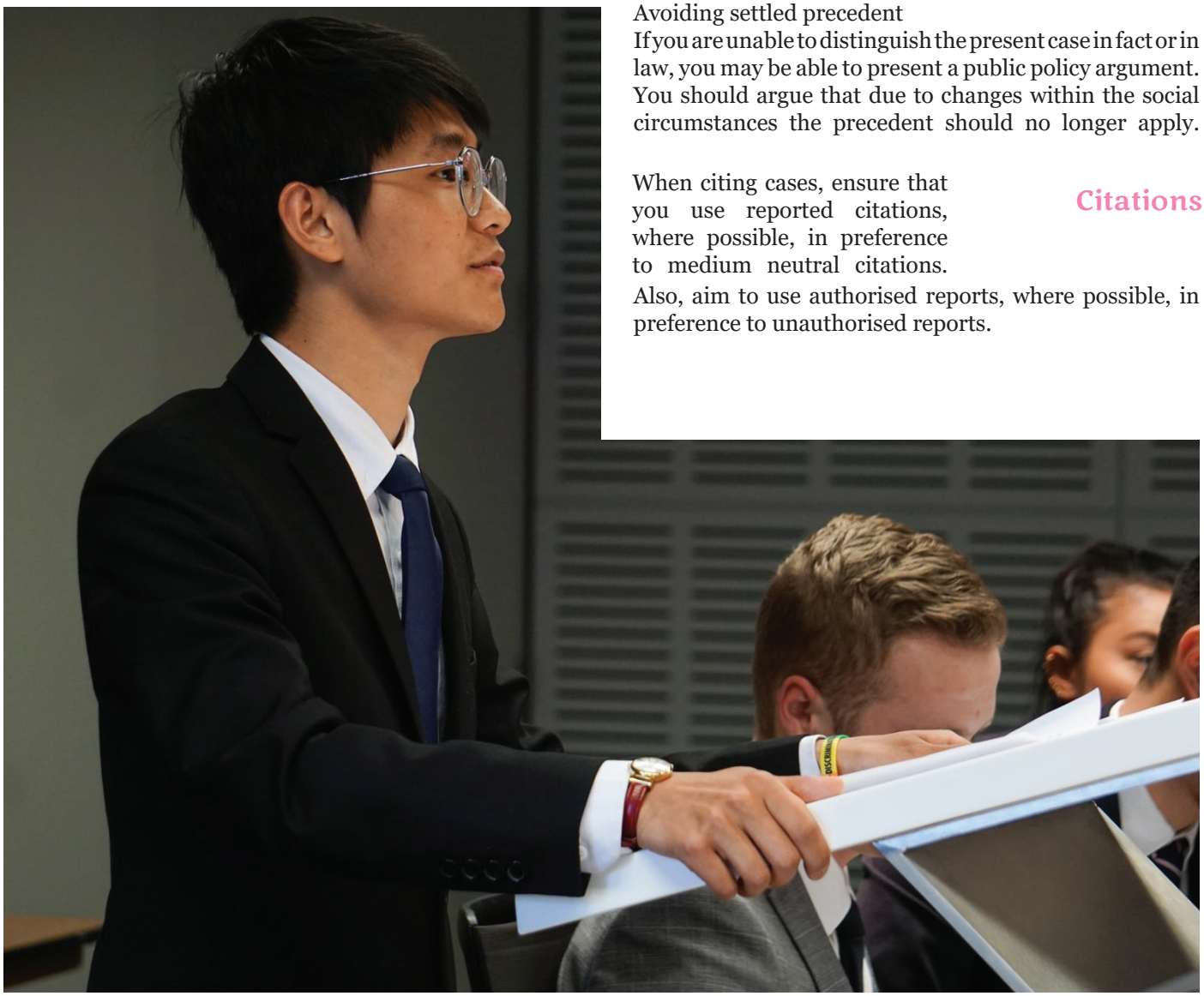
A case has persuasive authority if:
a) It is a previous decision of that same court
b) It is a decision of a court of similar standing in another jurisdiction (e.g. the Supreme Court of Victoria and the Supreme Court of NSW)
c) It is a decision of a court of sufficient standing applying the same rules of law or statute (e.g. UK Court of Appeal decisions on principles of evidence may have persuasive authority in the Supreme Court of NSW)
d) It has more persuasive authority if it is a unanimous decision

'Good law'
It is important to note whether a case has been approved or disapproved in later cases. A case that has been overturned will no longer be 'good law' and cannot be cited in support of a legal proposition. A case that has not been overturned but which has been questioned in later decisions may not constitute strong authority.

Avoiding settled precedent
If you are unable to distinguish the present case in fact or in law, you may be able to present a public policy argument. You should argue that due to changes within the social circumstances the precedent should no longer apply.

Citations

When citing cases, ensure that you use reported citations, where possible, in preference to medium neutral citations. Also, aim to use authorised reports, where possible, in preference to unauthorised reports.



oral submissions

Role of Counsel

Senior Counsel
Senior Counsel gives appearances, provides a brief introduction to the case, outlines their submissions and, very briefly (i.e. one sentence), the submissions of their learned junior, presents their own submissions and concludes their own submissions, before handing over to their learned junior.

Senior Appellant should pre-empt the submissions of the Senior Respondent based on the Senior Respondent's written submissions. Senior Respondent must be responsive to the oral submissions of the Senior Appellant.

Junior Counsel
Junior Counsel outlines their submissions, presents their own submissions and concludes the case for the Appellant. In closing, they also need to deal with relief sought.

Like Senior Counsel, Junior Appellant should address the written submissions of the Junior Respondent, whilst Junior Respondent should respond to the oral submissions of the Junior Appellant.

Appearances

At the beginning of a moot, the judge will call for appearances. The Senior Appellant, followed by the Senior Respondent, will introduce themselves and their learned junior to the Court.

Appearances have three components:
1. Names of Counsel
2. Name of the party that Counsel is representing
3. Time allocated to each speaker

> **For example:** *'May it please the Court, my name is Ms X and I am joined by Mr Y on behalf of the Appellant in this matter, Mr Z. I will be speaking for 15 minutes and Mr Y for a further 15 minutes.'*

Introduction

Senior Counsel should provide a brief thematic overview of the case at the start of their oral submissions.

> **For example:** *'This case concerns the conflict between a state's right to protect itself against violent attacks and its obligations towards others on the international plane.'*

Signposting

It is crucial that you provide the judges with a 'road map' of your submissions so that they are aware of the direction of your case. Thus, you should outline your arguments at the beginning of your submissions and immediately before you proceed to make them.

> **For example:** *In relation to the first ground of appeal, we make three submissions. First... Second... Third... I now turn to my first submission... I now turn to my second submission...'.*

You may also reference your written submissions as a means of signposting. For example, when moving through your submissions, you could say: *'Turning now to address submission 1.1.4 of our written submissions...'.*

Argument

To make effective arguments, you need to be comprehensive and break down each of your propositions into the constituent steps that you need to achieve in order to prove it. Each step of analysis should lead seamlessly into the next, leaving no gaps in your argument. This is where you need to exercise your legal reasoning skills.

In general, each proposition should begin with the relevant law followed by an application of the law to the facts and should be supported by authority. However, it is not necessary to re-state a legal test already stated by your opposing counsel if both the Appellant and Respondent agree on the law; if it is only the application of the law to the facts that is in dispute, you should state this.

> **For example:** *'Your Honour, my learned friend has already stated the legal test found in case X with which we agree. The difference between the parties in this case is the application of that test to these facts.'*

Your analysis and use of case law and statutes is vital in your argument. An example of effective analysis is:

> *'Your Honour, the authorities are divided on this issue. If we look to the case of X we see that... By contrast, the reasoning in Y... We submit that the approach of Justice Z in case X is to be preferred because...'.*

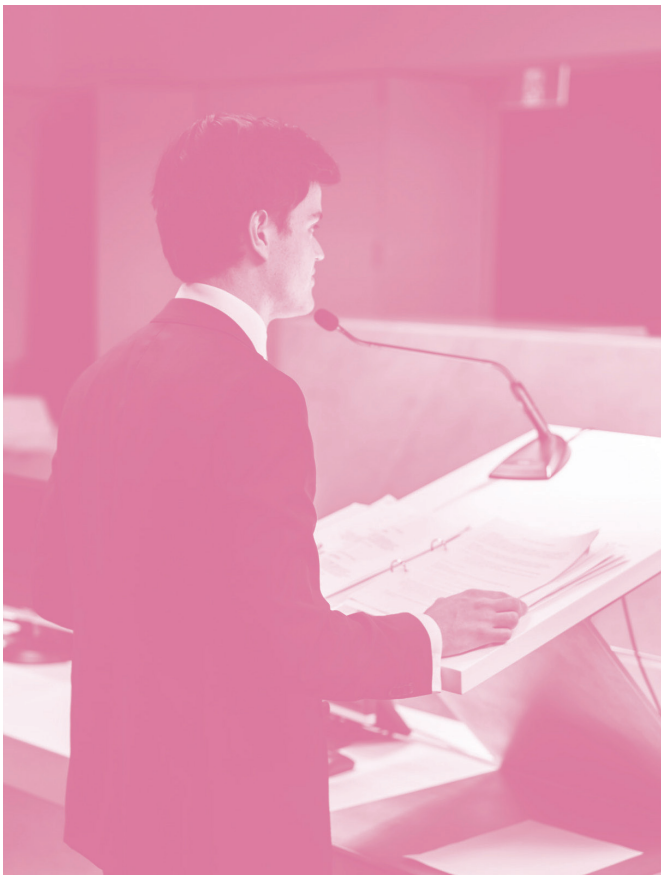
Responding to Opposing Counsel's Submissions

Responding to opposing counsel's submissions exercises your ability to alter your submissions and think on your feet.

As counsel for the Appellant, you need to take account of and address the arguments of the Respondent contained in their written submissions. Similarly, as counsel for the Respondent, you must be responsive to the arguments made by the Appellant in their oral submissions.

> **For example:** *'Contrary to what the Appellant has submitted...' or 'We differ from the Appellant in one crucial aspect...'.*

It is important that you challenge the arguments made by opposing counsel, particularly any good arguments put against your case, rather than ignoring them. Identifying the flaws of the argument and putting the best case you can against it will be much more effective than leaving it unchallenged.



Closing

In your closing, you should briefly restate your submissions and provide why the court should find in favour of your client.

Following this, if you are Senior Counsel, you should hand over to your learned junior.

> **For example:** *'If there are no further questions, your Honour, that concludes my submissions. My learned junior will now continue the case for the Appellant.'*

If you are Junior Counsel, you should state the relief you seek and conclude the case for the Appellant or Respondent

> **For example:** *'May it please the Court, if there are no further questions, those are the submissions of the Appellant.'*

Quoting

When using an authority, you may quote a judge. However, don't quote for the sake of quoting; that is, ensure that the quote is strictly relevant to your submissions and refer the quote directly to your argument and the facts of the present case. Avoid using a series of quotes without analysis as this reduces the effect of the quotes and your argument.

Citations

It is important that you know how to read citations. In criminal cases, 'v' is stated as 'against', whilst in civil cases, 'v' is stated as 'and'. 'R' is read as either 'The Queen'/'The King' (as appropriate to the reigning monarch at the time of the case) or as 'The Crown'.

> **For example:**
> *R v Crabbe* (1991) 156 CLR 464
> Initial citation: The Queen against Crabbe, reported in 1991 at volume 156 of the Commonwealth Law Reports at page 464
> Subsequent citation: The Queen against Crabbe, or, Crabbe
>
> *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387, 404
> Initial citation: Waltons Stores Interstate Limited and Maher, reported in 1988 at volume 164 of the Commonwealth Law Reports at page 404
> Subsequent citation: Waltons Stores and Maher

The first case cited by the Senior Appellant must be read out in full. Following the first citation, Senior Appellant may ask the judge to dispense with full citations. If the judge permits, you only need to state the parties, year and court. It would be wise to have the full citations and pinpoint references handy in the event that a judge does not give permission to dispense with full citations.

Time Management

Time management is crucial in ensuring that you make all your key submissions. When rehearsing submissions, you need to factor in time for questions from the bench. Thus, if you are going to speak for 15 minutes, you should aim to present your oral submissions within 7-9 minutes.

When you reach the end of your allotted time, you must stop speaking immediately. If your time expires during your submissions, you may ask the judge for a brief extension of time, usually one minute. To ask for an extension of time, you should state something along the lines of:

> *'Your Honour, I note my time is expiring. May I request a one minute extension to conclude my submissions?'*

Most judges will grant you extra time, however your request may be denied. If you are granted extra time, only use the length of time granted; thus, use the time to complete your thought, state the action you wish the court to take and do not introduce new submissions. If your time expires during a judge's question, you make ask for an extension to answer the judge's question. If granted, you should only answer the question, close and then retire.

If you have exhausted a submission you have been making or are running out of time and want to move the Court onto a new submission, you may direct the Court to your next submission.

> **For example:** *'If there are no further questions, your Honour, I shall turn to my next submission...' or 'Your Honour, I note the time. If I may briefly turn to my final submission...'.*

Questions from the Bench

Questions from the bench are one of the most important aspects of mooting. They test the strength of your argument and your familiarity with the facts and with the law. Engaging in a dialogue with the bench is essential in mooting; as such, questions are to be welcomed, not regarded as impediments or interruptions. An important skill to develop is the ability to be flexible and adapt to questions whilst maintaining control of your submissions and ensuring that you make all your necessary submissions.

When a judge asks you a question, you must stop speaking immediately, even if you are mid-sentence. When the judge finishes their question, you should respond to their question directly – ideally, you should respond with a 'yes' or a 'no', followed by your argument. If 'yes' or 'no' is not suitable, you may respond with 'it depends' and explain your argument.

Engaging in a dialogue with the bench is essential in mooting; as such, questions are to be welcomed, not regarded as impediments or interruptions.

Types of Questions

- Clarifications about the facts, your submissions or the law
- Questions testing your knowledge of the authorities on which you rely (e.g. the facts of the case cited; the ratio of the case cited; whether the case cited is binding or persuasive)
- Questions intended to aid you _and your submissions
- Questions that posit an alternative argument
- Questions designed to lead you down the garden path. If this occurs, the first step is to realise that it is happening – it is easy to get caught up in the moment. Then look to stop the progression by distinguishing the tangent from what you identify to be the important issue, and bring the court back to the key issue. For example: 'Your Honour, although that issue is related, it is not decisive. What is decisive is the issue I submitted earlier...' or 'My submission is mainly, however, concerned with X which is decisive because...'.
- Questions that take you out of sequence. If a judge asks you a question that is relevant to a different submission to the one you are presently making, you should answer the question briefly, indicate that you intend to deal with the issue fully in your later submission and ask the court whether it would like the matter explained in more detail at that point. Alternatively, you may deal with the matter fully, then and there.

Principles of Advocacy

The key to making good submissions is persuasion; your task is to bring the judge to your point of view.

Know the facts

A good advocate will argue persuasively both on the law and on the facts and will posit arguments as to why those laws and those facts support their argument. In addition to knowing the relevant law, it is crucial that you apply it to the facts. This is where having a firm grasp of the facts is essential. When making oral submissions, you should be able to direct the Court to the specific page and paragraph where a fact is mentioned in the moot question.

Tactical concessions

It is important that you know what you need to prove in order to win your case. There will be some submissions that you must defend irrespective of the strength of the arguments against it. However, you should be aware of the limits of your argument and make concessions when necessary. Ensure that you know the implications of such findings against you and your learned co-counsel.

Treatment of opposing counsel

When referring to your opposing counsel or their submissions, you must never be condescending, sarcastic or suggest any negative emotion. Remember that it is the parties to the dispute who are in disagreement, not counsel.

It is often useful to acknowledge the strengths of the other side and characterise your opponent's case before undermining or challenging it. Your assessment in this should always be fair, as this will make it more persuasive when you identify where they have erred

> **For example:** *'The Appellant's case, at its highest is X. It is our case that Y.'*

This can be very useful in an introduction to let the Court know what the main issue in contention is.

De-personalising arguments

Put bluntly, the Court is not concerned with your opinions or beliefs. Rather, what will persuade the Court is sound legal argument and reasoning.

Humanising submissions

You should direct your submissions to the Court by using phrases such as, 'Your Honour(s)'. This will attract the Court's attention to the argument you are making and strengthen its force.

Beware of humour

Humour may be misunderstood as familiarity, or a lack of respect, and thus should be used rarely, if at all.

Ethics

As an advocate, you must be honest. You must never knowingly mis-state, or fail to disclose, the law or facts. If a case works against you, you must recognise and accept this, and instead distinguish the present case from the case cited.

Etiquette

Dress code
The dress code for moots is strictly corporate, although in the preliminary rounds of internal moots you will not have marks deducted for failing to conform to the dress code. In the eventuality a moot is hosted online, the dress code will be the same as in person.

Language

Purpose	Phrase	Incorrect Form
Introductory phrase	May it please the Court	Um; Ladies and Gentlemen; Good evening; If the Court pleases; If it pleases the Court
Addressing a judge	Your Honour Before the ICJ: Your Excellency; Mr/ Madam President (the judge in the middle of a three-judge panel)	Sir; Madam; You
Refer to opposing counsel	My learned friend OR Mr X/Ms X	Opponent; Opposition; Other side; Him/Her; S/he
Refer to your co-counsel	My learned Senior/Junior OR My learned co-counsel OR Mr X/Ms X Before the ICJ: co-agent	My colleague; Him/Her; S/he
Make a submission	We submit	We would submit; We think; We feel; We believe; We would argue; We say
You don't know an answer to a question (NB: use sparingly, if at all)	I cannot assist the court on that matter	I don't know; I'm not sure
The Court does not accept a submission and you cannot concede it, but must move on in the interest of time (NB: use sparingly, if at all)	That is the highest I can put it	I don't know what else to say, I have already told you my submission
Correct the bench or disagree with them	With respect, your Honour	You're wrong; I disagree
Retract an incorrect statement	I withdraw that	Sorry; Oops

top tips

Harry Stratton

Winner, Jessup Moot International Rounds, Jessup Moot Australian Rounds 2017; Winner, International Maritime Law Arbitration Moot 2016; Winner, ACICA Young Lawyers Arbitration Moot 2015; Winner, Herbert Smith Freehills Contracts Moot 2015; Winner, SULS Criminal Law Moot 2015.

1. Do your research, but do it efficiently. Written submissions are deeply impressive if they cite on point decisions in full AGLC style (eg X v Y (2017) 1 CLR 57, 58 (Smartt J)). But writing them doesn't mean hunting through CaseBase all night. Use an authoritative commentary like Halsbury's Laws of Australia (available online, just Google 'Sydney Law Databases') to find the principle and the case that sets it out, then pop it into a case citator like JustCite to find where it's been affirmed by authoritative Australian courts like the HCA or a state court of appeal.
2. Facts are sexier than law. Wherever possible, identify points of agreement on the law with your opponent (eg we agree that the test for whether a contract has been frustrated is X) and make your case about why the facts do or do not meet that test. This saves you time setting out legal principles; prevents mean judges from asking you tricky questions about slightly divergent authorities; and makes your bench much less likely to fall asleep.
3. Appellate procedure is boring but wins moots. Here are some freebies:
   - In civil proceedings, proof of each element is on the balance of probabilities: *Evidence Act 1995* (NSW), s 140(1). However, an appellate court should only overturn a trial judge's finding on a question of fact (eg that a duty of care was breached) if it is 'glaringly improbable' or 'contrary to compelling inferences': *Fox v Percy* (2003) 214 CLR 118 [29] (Gleeson CJ, Gummow and Kirby JJ).
   - In criminal proceedings, the onus of proof is (almost) always on the prosecution, beyond reasonable doubt: *Evidence Act 1995* (NSW), s 141(1). If the trial judge makes an error of law like misstating the elements of the offence, appellate courts can still dismiss the appeal if satisfied the accused is guilty beyond reasonable doubt: *Criminal Appeal Act 1912* (NSW), s 6(1); Weiss v The Queen (2005) 225 CLR 300, 317 (Gleeson CJ, Gummow, Kirby, Hayne, Callinan and Heydon JJ).
   - Intermediate appellate courts like the NSWCA are bound by seriously considered obiter dicta of the High Court. Also, intermediate appellate courts are bound by other intermediate appellate courts' decisions unless they are 'plainly wrong': Farah Constructions v Say-Dee (2007) 230 CLR 89 [134]-[135] (Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ). Decisions of English Courts like the House of Lords or EWCA are only persuasive, not binding.
4. Some judges are deliberately rude or demanding. Take the wind out of their sails by staying calm, remaining polite, and remembering not to speak over them. If you really don't know the answer, wave the white flag by saying 'I cannot assist the Court on that point'.
5. If at first you don't succeed, don't give up. Mooting is demanding and can be embarrassing when you don't know something you should, but literally every moot you do teaches you something new and makes you better at it.

May Yang

Runners-up, International Maritime Law Arbitration Moot 2019; USYD Representative, Herbert Smith Freehills and National Law University Delhi International Negotiations Competition 2018; USYD Representative, Gummow Equity Moot 2018; Winner, Intercollegiate Negotiations Competition 2018; Winner, UNSW Intervarsity Negotiation Competition 2017; Semi Finals, Sir Harry Gibbs Constitutional Law Moot Semi 2017; Winner, Nicholas Cowdery QC Criminal Law Moot 2017; Semi Finals, UTS Clayton Utz Intervarsity Negotiations Competition 2017; Semi Finals, SULS Federal Constitutional Law Moot 2017

1. Be prepared to take on criticism. Not all judges are kind in the way they deliver advice, but it is very important to take their constructive criticism on board.
2. Signpost. Where possible, signpost!! It makes it infinitely easier to follow submissions if counsels outline their submissions and indicate which submission they're currently making. Judges will not thank you enough for being clear and concise.
3. Jurisdiction, standing, and remedies. Technically this is mostly part of administrative law and won't be taught until fourth year but it is important to acknowledge which court you are in, what remedies you seek, and what orders can the court can give. It demonstrates that you know the limitations of your submission (and the law) if you have a general idea what orders the presiding judge can actually give. If you're stuck, try the following:
   - *Supreme Court Act 1970* (NSW) ss 23, 65, 69
   - *Criminal Appeal Act 1912* (NSW) s 6
   - *Administrative Decision (Judicial Review Act) 1977* (Cth) s 8
   - *Judiciary Act 1903* (Cth) s 39B(1)
   - *Australian Constitution* ss 73, 75
4. Use questions to your advantage. Some judges ask questions to clarify specific points of your submission or are simply curious about your submission. Use this as an opportunity to engage with the bench and try to weave your submission into the answer.
5. Don't be afraid to stand up for your submissions. Some judges, unlike the ones mentioned above, like to lead counsels down the rabbit hole. They do so by asking a question they know to be untrue in hopes that you will panic and simply agree with them. If this happens, they will lead you down the garden path and onto some point of law that is interesting but irrelevant to your submissions. When this happens, do not panic! Take a deep breath, maintain composure and court etiquette, correct yourself, and pray that the judge will let you move on.

William Khun

International & Australian Champion, Philip C Jessup International Law Moot 2017; Winner, Justice William Gummow Equity Cup 2017; Runner-Up, SULS Public International Law Moot 2016; Quarter-Finalist, Herbert Smith Freehills Contracts Moot 2014; Quarter-Finalist, Allens Torts Moot 2014.

1. Be conversational! Mooting is an intellectual conversation between equals in pursuit of the truth – not a debate or polemic. Present the law and facts to the bench, outline the areas in dispute, and walk the bench through your reasoning such that your desired conclusion appears self-evident.
2. Have a roadmap. Any argument is fundamentally an attempt to prove that a conclusion logically flows from a series of premises. You should always have a mental map of where you need to get to (your conclusion/remedy sought), and what are the essential steps you need to show to get there. This is invaluable if you need to jettison arguments when you are (inevitably) short on time, or if the bench drags you off track and you need to return to your submissions.
3. Answer the core of questions. Questions are the only way the judge can engage in conversation with counsel, and they are not always attempts to trap an unwary mooter. Listen carefully to the questions asked to work out what it is precisely that the judge is asking, and deal with that directly and succinctly. Provide an answer first (if possible), followed by an explanation: "Yes your Honour, because..." is an excellent example.
4. Understand qualitative vs quantitative issues. Some issues in a moot are 'qualitative' in the sense that either you are right, or your opposing counsel is right (e.g. "was there a contract"). They are comparatively easy. 'Quantitative' issues, or issues of degree, pose an additional difficulty, because they require you to persuade the judge to draw a line between principally similar but factually different circumstances. Common examples include whether behaviour was unconscionable or negligent. The difficulty arises because both sides can agree on the test for whether something is negligent, but characterise that standard differently. Try and find a logical way to draw a threshold that is principally consistent with your case. Reasoning through counterfactuals (e.g. by establishing the bare minimum which would not be negligent, you establish what is negligent) is often a useful heuristic when preparing.
5. Be a real human. Contrary to popular opinion moot judges are real people too. They can see when people are being authentic in their delivery. Don't copy verbatim another mooter's style; work out what works for them and why it works for them, and incorporate it into your own natural style. Every mooter is different, and different styles of advocacy suit different facts and judges differently. Work out what works for you, and leverage it in your advocacy.
6. Have fun! Mooting is not as scary as it sounds, and it is one of the most personally and professionally rewarding things you can do in law school. Moot early, moot often.

Alyssa Glass

Team member, Philip C Jessup Moot Court Competition 2017 International Rounds: World Championship; Stephen M Schwebel Award for Best Oralist in the World Championship Round; 7th Best Oralist in Preliminary Round; Team member, Philip C Jessup Moot Court Competition 2017 Australian National Rounds: National Champions; Best Respondent Memorial; Best Overall Memorial; 8th Best Oralist in Preliminary Rounds; Coach, University of Sydney Baker McKenzie Women's Moot Team 2017 Coach, University of Sydney QUT National Torts Moot Team 2017 (semi-finalists); Team member, University of Sydney QUT National Torts Moot Team 2016: Runners-up; Best Speaker in the National Final

1. Enjoy the experience. If you've never done a moot before, it can seem like a terrifying ordeal to squeeze into a tiny library room late at night after a long day at uni, with three other (probably equally terrified) people and an imposing more senior student. Even if you've mooted before and maybe you're now doing a semi-final, or an intervarsity moot, or something bigger still, it's easy to forget why you're doing this and to become obsessed with winning, or over-awed by the occasion, and let nerves take hold. But the most persuasive and most effective mooters are the ones who actually look like they are there to enjoy themselves (and, ideally, really do enjoy it!). Sure, it's scary – but what's the worst that can happen? You get a question you can't answer, you say you can't assist the Court on that point, and you move on. Don't do a moot because you want to win, or you feel like you have to have it on your CV – do it for what you will learn, and just try to relax and enjoy the opportunity to have a conversation with the judge or judges about the problem and the points of law.
2. That brings me to my next point. You're not trying to beat the other side. You're trying to win the bench. The way to do that is to relate to them as humans, to have a genuine conversation, to actually listen to their questions and answer them as directly as possible. Keep your language simple, and direct. Speak slowly. Engage with the judges and be constantly aware of reading the bench, what they are thinking, and where their real interest lies. Treat questions as fantastic opportunities to interact with the Bench, which demonstrate that the Bench is actually engaging with your submissions.
3. Finally, prepare. Cover your bases, do your research, and read the problem more than once. Don't think you have to run every argument – work out where you can make reasonable concessions and run the stronger arguments. Brush up on appellate procedure and know the rules of the court or tribunal you are appearing in. Once you have your arguments, try to reduce each argument to one or two sentences that capture the crux of the submission. Have those sentences ready because you'll need them if you run short on time.

Overall Tips

1. Have a positive mindset. In mooting, every issue can go either way, so be optimistic when approaching your argument and have confidence in yourself and the preparation you have undertaken, when you get up to speak.
2. Read the question carefully! Looking for small facts and details that you can reference in your argument is essential to persuading a judge.
3. Understand that mooting is different from debating and mock trial. Mooting is not theatrical, and those who are able to clearly and calmly present a legal and logical argument will perform best.
4. Know your appellate procedure. The principles from cases such as Fox v Percy and Farah Constructions v Say-Dee, together with the various procedural legislation, will give you that extra edge.
5. Keep mooting! Practice is essential to being a successful mooter, and even if you don't perform as well as you would've hoped in your first competition, don't let that deter you from future moots.

Giacomo Rotolo-Ross

Winner and 4th Best Oralist, Philip C. Jessup International Law Moot 2020; Winner, Sir John Peden Contracts Moot 2019; Coach, Semi-Finalists, Sir Harry Gibbs Constitutional Law Moot 2020 Quarter-Finalist, Sir Harry Gibbs Constitutional Law Moot 2019; Winner, Castan Human Rights Moot 2018; Winner, SULS Criminal Law Moot 2018; Winner, SULS Torts Moot 2017; Runner Up, QUT Torts Moot 2018; Semi-Finalist, SULS Contracts Moot 2017

Written Submission Tips

1. Have a cover page! This doesn't count towards your total page limit, and it makes your submissions much more visually appealing, while giving you a bit of extra room as well.
2. Find recent cases to include within each submission. Even if you don't reference these in detail, they will show your judge that you have taken that extra step in your preparation to ensure that you are on top of the law.
3. Always explain the legal principle before applying it to the facts.
4. Find the right balance in terms of the length of your submissions. Too long and the judge will be deterred from reading them, and too short and the judge will think you haven't put in the effort. Generally, 3-5 lines per paragraph is a good rule to follow.
5. Be extremely careful with your citations. Check, double check, triple check and quadruple check them, all with reference to AGLC4.

Oral Submission Tips

1. A conversational tone is essential. Judges want to be guided through your argument, not talked at, and it is critical to engage with their questions and concerns while respectfully explaining your submissions. The aim of mooting is not simply to plow through your arguments, because they are already all outlined in your written submissions. Focus on engaging with the judge(s) and addressing the more complex aspects of the case in your orals, as if you were simply having a conversation.
2. When answering questions, start off (where possible) with either 'Yes, 'No' or 'Not quite' - this immediately gives the judge an answer, and then you can take the time to justify yourself, having already set yourself up to avoid rambling.
3. If you have multiple judges, share your eye contact as much as possible. This can be tricky, but it is essential that each judge feels equally engaged and comfortable with asking you questions.
4. Practice practice practice! Eye contact and the ability to speak naturally, not off a script, are perhaps the most crucial factors in being convincing as a mooter, and these only come from practicing your submissions and knowing your case inside out.
5. Have an introduction and conclusion. Your introduction should set out the facts very briefly (if you are Senior) and should outline your arguments (and your Junior's, if you are Senior) and the relief you seek. The judge then immediately knows how you will progress through your submissions. A very short summary in your conclusion, perhaps with a witty ending, can also be very effective, and shows that you have structured your arguments well and managed your time effectively.

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Isabella Fahmy

Winner, Baker McKenzie Women's Moot 2019, Winner, Sir John Peden Contracts Moot 2019, Winner, Herbert Smith Freehills Contract Law Moot 2018, Semi-finals, Torts Law Moot 2018.

Overall Tips

1. At the start of the year attend the Jessup and Vis exhibition moots, these are the university's best mooters who have been preparing for months, you will learn more watching them than you ever could from reading a mooting textbook.
2. Don't let yourself get too stressed or overwhelmed, remember mooting doesn't count towards your grades. Do it because you enjoy it or want to challenge yourself. Public speaking is inherently stressful for most people but the more you relax and enjoy yourself the better your argument will come across. Have fun with it!
3. If you know people who have mooted before talk to them about it, or if you don't, try one of the boot camps or mentoring programs. Judges will also give you feedback at the end of a moot, make notes so you can improve for next time.
4. Try explaining your argument to someone who doesn't do law (e.g. your mum), if you can do that in simple terms it means you truly understand your argument and will be able to make it effectively.
5. Look at the score sheet allocation, for preliminary rounds you gain most of your points from presentation, so practicing your oral submission is important. This somewhat changes for the semi-final and final when you are judged by barristers and academics, with a deeper understanding of the finer points of law being more essential.
6. While it is less necessary for the preliminary rounds, reading a case in full is far better than just reading case summaries as it allows you to have a nuanced understanding of the law and how particular facts are pivotal to a particular outcome.
7. Have a case bank and make it as you are doing your research to save yourself time later, these are extremely helpful when answering questions. Include the full citation and judge, a sentence outlining the facts and the ratio. Have an understanding of how that case is applicable and distinguishable from the facts you are mooting.

Oral Submission Tips

1. If you are senior counsel have appearances memorised, speak slowly and share your eye contact among the judges, if there is more than one. For either position try to have your first two sentences of your oral sub memorised, it looks really impressive if you can hold eye contact right at the beginning as this is when you are likely to have all the judges looking directly at you.
2. Have an introduction and conclusion. This is essential to the Judges being able to follow your argument; you want to tell them upfront the key issues in dispute and what your answer to those issues is. The main body of your oral submission is for the analysis supporting your argument and then have a conclusion that you are able to cut to one sentence should you run out of time (when you have 20 seconds left, finish whatever you were saying and jump to you concluding sentence).
3. Don't just read your written submission, the judge has already read it (or at least they should have), your oral argument needs to still follow the same structure but build on your written sub. One of the best tips I received from a judge was that there are four things you need to answer in your oral submissions:
    - Who am I? – Who are you representing
    - What do I want? – What relief are you asking the court for
    - How can I have it? – What law you rely on (legislation first, cases second)
    - Why should you have it? – The merits of your argument
4. If you are going to use quotes, don't use more than two and at most they should only be a sentence, it is far better to paraphrase a point of law and apply it to your own facts.
5. If allowed by the competition use a timer! Most people use their phone. It will allow you to know when you need to move on to your next submission, abridge your later submissions or move to conclude. Judges often don't care about the time but you have to as time management contributes to your score. Some judges will ask lots of questions and others ask barely any. Put parts of your speech that are not essential in a different font colour, so if you are running low on time you can skip over them to the more important sections. These sections can also be helpful when answering questions.

Juliette van Ratingen

Quarter Finals, Gibbs Moot 2019; Semi Finals, ALSA Championship Moot 2019; Semi Finals, Criminal Law Moot 2018; Runner Up, Baker McKenzie National Women's Moot 2018; Runner Up, QUT Torts Law Moot 2018; Runner Up, Torts Moot 2018; Winner, First Year Moot 2017.

1. Fake it till you make it. No one, but you, knows how you truly feel, unless you let them. Be the most confident and calm version of yourself and have fun!
2. Aim to educate the bench. Acknowledge the problem is hard, but try and simplify and guide them through it.
3. Know the facts of the scenario like the back of your hand. Know the cases you reference as well as you can. To prep for speaking, write down the summary of your submission in the most simple form - how do you get from A to B in one sentence? That's your aim during the moot, and questions are just fillers.
4. For written submissions, drill down. Lay down the case law and statute then apply to the facts at hand. Reference the facts of your problem the best you can!
5. For oral submissions, you're having a formal conversation with a judge. Lead them through it, and let them digest your hours and days of thought. Keep it simple but acknowledge the difficulties and complications. Stay calm, take a moment to think, and always invite questions.

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client interviewing

Introduction

A client interview is a mock consultation conducted by a team of two competitors acting as lawyers, who interview a volunteer client. The aim of the competition is to ascertain the facts and legal issues relevant to the client's situation and offer preliminary solutions whilst maintaining a professional working relationship.

Competitors will be exposed to what practicing lawyers undertake on a day-to-day basis and gain valuable skills in interacting with a variety of clients. Competitors are expected to have a thorough understanding of ethical and professional responsibility requirements required of practicing legal practitioners, such as responsibilities in relation to professional privilege or conflict of interest.

Below is an outline of the structure of a standard Client Interviewing round. Additional commentary has been provided by Harry Stratton and Tiffany Wu, the winners of the 2016 Client Interviewing Competition, and Sarah Purvis and Harry Ly, winners of the 2020 SULS v MULS Client Interviewing Competition and UNSW Skills Intervarsity Client Interviewing Competition.

Structure of an interview

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Preparation

Create a strict structure

To succeed in Client Interviewing, it is essential that teams prepare a very detailed structure for how they plan the interview will run, and ensure that this is followed. Having a detailed game plan for the interview, and allocating which partner is in charge of each section (for example, who will be responsible for taking notes), ensures that the competitors are in charge of the interview and are able to get the most out of the client. Teams should endeavor to practice this interview structure in advance, and be prepared to be flexible.

Sarah and Harry: *Keeping an eye on the time is a must. You need to make sure you cover your introduction, housekeeping, discovery of client issues and providing legal solutions, then wrapping up. We've practiced so that we know exactly how long our introduction and housekeeping will take, so from there we divide up the rest of our time depending on how many issues that the client seems to have. For example, if the client has 2 issues, we will spend out time like this:*

Introduction + Housekeeping	2.5 minutes
Problem 1 Discovery	8 minutes
Problem 2 Discovery	8 minutes
Providing legal solutions (1 and 2)	9 minutes
Conclusion	2.5 minutes

Of course, if one problem seems meatier than the other, then change the time allocation accordingly. Just remember that you absolutely have to move on to the solutions phase when you are 19 minutes in, otherwise you do nott have enough time to finish. Having a template of how to wrap up is also important so you can easily conclude the interview when you feel you have said everything that you can.

Tiffany: *The time involved in the interview may seem long, but when there is a lot of information and the client is particularly elusive with his or her answers, a strict structure will help you stay on track and keep your goals in mind. This structure should be discussed and settled with your partner before the interview. It should be easily referable, so that when there are 5 minutes left, you both know it's time to wrap up.*

Research legal and non-legal options

While Client Interviewing does not require any in-depth legal knowledge, and thus may be successfully entered by students of all levels, some preliminary research of various legal and non-legal courses of action is useful. Competitors should be aware, for example, of when various dispute resolution methods may be appropriate, as well as preparing a number of non-legal options to offer clients, for example rehabilitation, or seeking counselling or financial advice.

Being aware of various courses of action in advance is helpful in effectively tailoring options to suit the client at hand.

Sarah and Harry: *While the most common solutions are negotiation and mediation, make sure that you explain every possible solution that the client could have (whether that be writing a letter of demand to their employer, or HR, or filing a police report) and make sure to explain why these solutions would best suit them. If a client mentions that they don't have a lot of money, or that they are a student and you can infer that they are worried about money, tell them that negotiation may be a good fit because it is less expensive than going to*

court, and they can represent themselves in the negotiation. Referring your client to a community legal centre is also another viable solution. Adding the 'why' a solution may be a good fit will help the client feel more at ease and trust you with their issues.

***Tiffany:** Harry and I found that sometimes the best strategy was to use common sense. This often meant using astute relationship management and personal negotiation, and perhaps not getting the law involved at all.*

Prepare Props

Competitors often like to bring certain props along to the interview, as this can be helpful in making the interview feel more realistic. It is up to individual teams which props they bring into the interview. Having business cards, the retainer, fee structure information sheets and client information sheets are always helpful in giving the interview a more polished feel, while providing water and tissues may make the client feel more at ease.

In the preliminary stages, teams may improvise with props (e.g. using a bus ticket in place of a business card and miming providing the client with a glass of water, rather than actually providing water). However, in the Semi and Grand Final stages, competitors must use real props.

***Sarah and Harry:** Props are an essential part of the process to make your client feel like you are taking them seriously. While in person you would typically have the jug of water, glasses and tissues, over Zoom you won't have those props. Instead, you can simulate this by sending through your retainer and business contact details through the Zoom chat function, so that the client can receive those details. Make sure that if you are going to send that over chat, you send it to everyone so that the judge has an opportunity to look at it as well, and mark you on it. If you don't have something like this prepared, you can always say to the client that your secretary will send through the retainer and your contact details via email after the meeting.*

***Tiffany:** Props were definitely very fun (especially the tissues in cases where there needed to be crying!) and helped the simulation be more authentic so that we could really get into the solicitor/advisor mindset. However, make sure that there aren't too many props around to the point where it becomes distracting!*

The Interview

Aims

1. Establish effective rapport with the client
2. Elicit information on the issues at hand
3. Provide effective preliminary advice or courses of action

The benchmark of a good interview is simple: the client will feel they have consulted a lawyer who is a caring human being.

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Sarah and Harry: *It's really important to build rapport with the client by empathising with their problems. At the end of the day, you are a pair that is helping someone with something that has happened to them, and it is your job to help them get back on their feet. However, don't confuse this with giving them life advice - this can come off as overbearing, so make sure to stick to the scope of the problems that you have in front of you, and don't hesitate to recommend them to other services that may help them, for example, a counselor with any traumatic experiences, or a doctor if they have been injured.*

Tiffany: *While providing legal advice is obviously a serious task, it's not necessary to be very solemn and grave the whole time. When greeting and talking to the client, remember to build rapport like any real professional would.*

Preliminaries

Welcome the client into the room, and refer to them by their second name, while introducing yourselves by your first name. Pull out the client's chair, break the ice through casual conversation, and perhaps offer the client a glass of water. The aim is to make the client feel comfortable and establish a welcoming atmosphere.

Explain to the client how the interview will run and how long it will take, and what they can expect to happen.

Sarah and Harry: *Over Zoom, you don't get the same luxury of greeting the client at the door. To make up for that, have a question or two prepared to engage the client at the beginning to simulate that small talk - for example, 'Ms Smith, so glad to see you made it to our consultation today. It's a little bit different over Zoom but we'll try to keep everything as similar to in person as we can, so pour yourself a glass of water and get comfortable.' Don't forget to also introduce yourself and your partner, before diving into the housekeeping, covering the three Cs.*

Don't forget to look directly into the camera as well, rather than on your screen when the client is. You want to simulate looking into them, not distracted at something on your screen.

Harry: *Then, in about a sentence each, tick off the three Cs.*

- *Confidentiality - everything the client says to you in this room stays in this room.*
- *Conflicts - if you represent another party who's involved in the case, you'll say so.*
- *Costs - this session is free. If they do decide to engage you, you can discuss costs then.*

Eliciting Information

Begin by asking the client why they have come to see a lawyer; let them talk as much as possible without interruption, as it is essential to elicit as much information from the client as possible. Ask open-ended questions that begin with 'who, what, when, where, why, how', and follow up with narrower and narrower questions to isolate the key issues the client has not initially revealed.

Competitors should aim to find out as much as possible from the client and then "tie it up" – re-state the information or issues back to the client to provide structure. It is useful to then preliminarily identify the issues and analyse the problem, for example 'This looks like a contractual problem'.

Sarah and Harry: *It's always important to keep the overarching structure of what has happened in your mind. As a general rule, it is often easier to start with broad open questions before narrowing the facts with closed-ended questions. When the client has told you what has happened to them, keep a chronological order of events, and go back to question each part of the narrative to make sure that you have elicited all of the facts in each section. For example, if a client mentions that they were injured, ask what happened, when it happened, if they saw a doctor, what the doctor said/prescribed, and if they had any help at home to take care of them. These kinds of questions will help you ferret out important information and secret facts. However, it is also useful to know when to stop asking irrelevant questions. If the client cannot provide an answer to your line of questioning, it may be better use of your time to move onto the next issue because the client may genuinely not know the answer. Having the chronological structure will also make it easier for you to pivot to the solutions phase, as you can recap each problem in a sentence and ask the client if there are any final problems they wished to discuss before you turn to solutions. This demonstrates that you have been actively listening and it provides a nice turning phase for you to talk about each of those issues and how you could solve them. Remember that you don't have to have all the answers - you merely have to address them, and you can always acknowledge that you aren't an expert in that specific area of law, but you can write a letter of advice following the session and provide them with more details in an email follow up.*

Harry: *Give this discussion some structure by saying you want to ask about X first, and you'll come to Y later.*

As you talk, write down keywords - the names of characters mentioned, or phrases that sound unusual or are given particular emphasis (eg "special brownies" - why are they special)? Ask about each in turn, checking them off as you go.

If a client rambles on about irrelevant things, don't be afraid to quietly interrupt them and lead them back onto the right path.

Tiffany: *I definitely agree with Harry. While it may seem rude to interrupt, remember that they want the best advice from you in a small time frame and that will often involve you guiding the client to realise what is important and what is not.*

Understand the client's desired outcomes

It is important to ascertain exactly what the client wishes to achieve by taking legal action, or more generally by seeking legal advice. This is achieved through careful probing of the client's agenda, and the discovery of 'secret' facts by asking gradually narrower questions.

Harry: *For each discrete problem, ask about what the client wants, and why. This is not always obvious. Law school teaches us to think in terms of damages, but clients might be happier with a simple apology.*

Courses of action

When offering courses of action, competitors are not providing legal advice, but merely potential preliminary options. It is necessary to understand what the client wants out of the situation, and tailor solutions to the client on the spot, in order to suggest the best course of action. The client should be provided with enough information on available legal and non-legal courses of action, and offered multiple potential options, in order to be able to make an informed choice. The client should be able to leave the interview feeling that there is a potential solution to their problem.

Harry: *Clarify how much money the client has and how much they're willing to devote to this dispute. This is especially important in shaping the options you offer them*

For each discrete problem, as you're asking questions, write down two or three options the client could adopt and their pros and cons. The obvious one is litigation, but it's also the most expensive. Low cost or free options include: if you're being sued, simply waiting until the limitation period runs out; offering to write a letter to or meet with the other side on your client's behalf; and finding someone both sides respect like a community leader to mediate between them. (Arbitration - especially between human beings in an everyday neighbourhood dispute - is NOT a low cost option.)

Talk the client through each option, with their pros and cons, and ask whether the client has any clear preferences. Decide on which option to explore together.

Conclusion

It is essential to conclude firmly and establish what each party will do in moving forward. An effective structure is to summarise the issues discussed and potential solutions offered, and allocate the steps each party will then take.

Sarah and Harry: *When you are listing potential solutions, make sure to tell the client what you would need from them as well as what you would provide. At the end, we typically wrap up by listing everything that we will provide, and what we require from the client to progress with our work. This would sound something like:*

'Thank you for taking the time to meet with us Ms Smith. Before we finish, we just wanted to reiterate the items that we want you to provide to us, and what we will send you. First, on the employment issue, we require a copy of your employment contract and your latest payslip. Second, on the issue of the robbery, we want to see a copy of the police report that you filed. When we have received that information, Harry and I will write a letter of demand to HR on your behalf. We will also write a letter of advice for you, outlining everything we have spoken of in this session. We'll also include the list that we've just asked you to provide, so you don't have to keep a mental note of what we need. Our secretary will send that email, along with our retainer and details to you shortly. Thanks again for coming to our consultation Ms Smith, and we hope to see you soon.'

Harry: *End the interview with "homework" for each side. For you, it might be doing more legal research on the merits of the client's case, or writing that letter to the other side. For your client, it might be gathering more information (eg photos of their damaged property) or instructions about what they should do if the other party approaches them ("don't talk to the police").*

It is necessary to remind the client that no action may be taken until they retain the firm, and provide the client with a copy of the retainer. Ensure that the client has the lawyers' contact details, and that the client themselves can be contacted.

Let the client be the one to stand up first, shake their hand, open the door for them, and politely show them out of the interview room.

Fees

While it is up to the team's discretion as to when to mention the matter of fees, it is usually preferable to do this when concluding the interview.

Unless the memo you are provided states otherwise, your interview with the client is an initial consultation. The firm's practice with regards to costs is that the initial consultation is free of charge, however should the client seek your services in the future, the charge rate is $200 per billable hour.

Teamwork

Participation should be balanced between team members. Competitors should break up the different parts of the interview and allocate who is responsible for what, to ensure that team members do not talk over each other or at cross-purposes. The most effective way to ensure teamwork is to practice the interview structure before the competition begins.

Sarah and Harry: *Teamwork can be more difficult over Zoom especially if you aren't in the same room, but the more practice that you have, and the greater familiarity you have with each other, the easier it becomes to read your partner and make the transitions between the two of you speaking seamless. Sharing a google document with your partner and taking turns note-taking as your partner asks a question will ensure seamless and cohesive teamwork. Additionally, given the nature of the online consultation, it is perfectly normal that your team may interrupt each other from time to time. In that instance, your team can still remain courteous and professional by simply apologising before quickly deciding who should speak first.*

Reflection

It is advisable to prepare a list of questions to discuss and a structure for the reflection in advance. Competitors should be honest and present a critical self-reflection that demonstrates awareness of weaknesses and necessary improvements. If certain issues may have been missed, mentioning these concerns in the reflection may make up for any deficiencies during the interview itself.

Harry: *An easy way to win teamwork points is for each of you to take turns introducing the different criteria and to discuss your strengths and weaknesses together, rather than simply talking at the judge.*

Be open and honest about where you think you could improve. You can't make the judge forget about problems by not mentioning them, but when a good team explains why they did something or how they could do it better, points will shower down on them.

Tiffany: *A great way to allocate parts of the interview and to score teamwork points is for each member of the team to focus on what they are good at and allocate participation that way - I was better at asking questions when things smelt amiss and guiding the client to a different path when they went off on a tangent and Harry was often better at synthesising lots of information and coming up with innovative solutions. However, make sure that both are also flexible and can step in and alternate when needed as time in the interview is short.*

top tips

Harry Ly and Sarah Purvis

Winners, SULS v MULS Client Interviewing Competition 2020; Winners, UNSW Skills Intervarsity Client Interviewing Competition 2020; Semi-Finalists, ALSA National Client Interviewing Competition 2020; Semi-Finalists, SULS Client Interviewing Competition 2019; Semi-Finalists, Clayton Utz Senior Negotiations Competition 2020; Problem Question Writers for SULS Client Interviewing Competition 2020, SULS Multilateral Client Interviewing Competition 2020; Judges for SULS Client Interviewing Competition 2020, SULS Multilateral Client Interviewing Competition 2020. Harry: Coach for SULS Multilateral Client Interviewing Competition 2020 Sarah: Team Member, Philip C. Jessup International Law Moot Court Competition 2021; Elimination Rounds, 5th Best Oralist, Alfred Deakin International Commercial Arbitration Moot 2020; Runner Up, Best Speaker; UTS Legal Technology Moot 2020; Semi-Finalist, King & Wood Mallesons Witness Examination Competition 2020; Semi-Finalist, Baker McKenzie National Womens Moot 2019; USYD v UQ 'Moot of Origin' 2019; Semi-Finalist, SULS Torts Moot 2019.

1. Client Interviewing is the competition with the least amount of preparation required. You can turn up with only having read the memo, and get started. However, if you do want to do well, we would recommend having a couple of items ready:
   - Your introductory script (including housekeeping). It is important you clearly explain the retainer, confidentiality and conflict of interest housekeeping because such issues may arise in your client's factual scenario. For example, if your client is hesitant to disclose sensitive information, it is helpful to remind them that all notes taken are privileged and protected.
   - A note taking structure.
   - Your retainer (there are plenty of examples online for you to adapt).

2. Time is your enemy in client interviewing. You need to make sure that you are always aware of your time, and don't let the client ramble if they aren't saying things that are related to the problem. There is a fine line between letting the client talk enough so they are comfortable to tell you secret facts, and cutting them off because the ramble is irrelevant, and practice helps you find that right balance.

3. Make sure that you are balanced with your partner. We are very familiar with what each of us are good at - Sarah asks broad questions, and keeps an overview on the high level problems, which means that she typically leads the transition from discovery to solutions, whereas Harry is great at empathising with the client and pulling out small details that could be secret facts and that are necessary to us finding better solutions for them. Make sure that you are comfortable with your partner so that you can jump in when they are struggling, and take over when they don't have anything to say.

4. Have a couple of general questions up your sleeve to ask the client. If you don't have anything specific about their story, it is always a good idea to ask 'What kind of solutions are you looking for today?' and 'what are your goals and expectations'. These questions are broad and it helps you get an idea of what the client really wants at the end of the interview, which will help you find better solutions for them. These general questions also help put you back on track, especially because clients will tell you at this stage if you are missing any big pieces of information that is crucial to you coming up with good solutions.

5. Watch the resources that are on the SULS YouTube. There are examples of client interviews, with practice questions and memos available on Facebook for you to test and see how you would respond to a memo.

Natalie Leung and Elise Anderson

Winners of SULS Client Interviewing 2020

Client interviewing is the competition that relies the most on empathy, humanity and connecting well with your client. It is less about offering perfect solutions (although they obviously can't be too left of field) and more about ascertaining as many facts about the client's issue as possible in the alloted time. It is often the case that lawyers stress about providing as many solutions as possible however ultimately, it is not possible to make relevant recommendations without considering all of the information carefully!

Teamwork with your partner will be invaluable as it has the potential to foster a comfortable but effective environment for your client to share as many facts as possible and for you to come up with the best course of action. It is important for the team to be balanced (i.e. one person is not speaking substantially more than the other) as well as ensuring that you are both actively listening to not only the client, but also one another and prevent questions being asked about content that has already been covered. When building a strong rapport, it is also useful to have at least one person making eye contact with the client at all times and avoid situations where you are both looking away. This will allow the client to feel heard and ultimately, create a stronger environment for effective client interviewing.

A major component of Client Interviewing is fact finding and we found that the most effective method involved asking open-ended questions at the beginning and gradually funnelling them into more closed questions. After every material fact is disclosed, it is also a good idea to ask follow up questions. However, if you find that you have reached a dead end in questioning, it is always a good idea to return to open ended questions. The technique of looping was invaluable for us. Looping is where you begin by repeating a material fact to demonstrate that you have heard the client and then following up with an open ended question that explains the reasoning behind your line of questioning. This serves as an effective means to interview the client more thoroughly on a fact they may not wish to divulge initially and also helps to build empathy with your client because it makes them feel more connected to the interview process.

In terms of preparation before your round, the most important thing for us was preparing a bank of general questions which related to the memo provided. The memo will often be quite vague and general background research into the areas of law can provide a sense of confidence. However ultimately, the process of interviewing will require flexibility and adapting to the facts on hand. It can be a stab in the dark trying to guess what the issues will be and it can bias your questioning if you walk into the interview with too many preconceptions. As such, keep an open mind!

Ultimately, our tip is to have fun, be genuine and be yourself!

Given that the competition was online in 2020, we ensured the smooth running of our interview by checking the electronic format of our retainer document and double checking oru internet connections. It is particularly crucial in an online format that both team members understand which element of the interview they are leading to provide a more seamless and professional impression to your client. It may help to have a plan for the structure of your interview open on another tab on your screen to ensure that both you and your partner are following your scaffold and staying on the right track. It will also help with time management and coordinating the designated speaking times. However, don't be too rigid and factor in spontaneity or else the client might feel like they are speaking to a robot!

Ultimately, our tip is to have fun, be genuine and be yourself! The facts can be unpredictable at times and it's great to keep an open mind as a lot of rapport can be built by thinking on your feet and bouncing off what the client is sharing with you. When you are comfortable, it will show. Trust yourself, you got this.

1. First, sign up and give it a go. I recommend client interviewing for students at any stage in their law journey as there is much less preparation time than other competitions - you can just rock up on the night and perform your best! I'd advise that you sign up with a good friend, someone you trust and work well with together - someone with whom you are on the same wavelength. 100% teamwork is required at all times. Any faults or friction and things can unravel pretty quickly! Be prepared for anything and have an open mind. Expect the unexpected - the first client interview I ever competed in involved drugs, prostitution, murder, and Russian spies.
2. The beauty of client interviewing is that when you've got assessments looming or a moot to prepare for the next day, you can afford to do very little - even no - preparation and still perform excellently, so long as you are well and truly on the ball during the interview itself. Thus one of the best ways to prepare is to get a good night's sleep and perhaps some coffee/chocolate before the interview. Missing out or misunderstanding a small detail - and they are often very easy to overlook - will cost you dearly.
3. For committed teams who are aiming high, the first thing to do is to prepare your props - this will go towards fulfilling atmosphere criteria and help gain some extra points. Good props include a box of tissues (especially if the brief suggests the client or topic may be emotional), glasses of water, and plenty of pens & paper of course. Consider preparing some key documents you might like to use - for example, a client retainer agreement which - if you can get the client to sign right before the end of the interview - will impress the judges. Some teams like to prepare lists throughout or towards the end of the interview, eg 'documents to gather/tasks to complete' for the client, which can be efficient during your conclusion - you may consider creating some blank templates for easy use during the interview. Feel free to prepare & use any documents that you think may enhance your performance. Finally, make sure you are dressed to please, especially as you progress through the rounds.
4. For the most committed teams, it is worthwhile carefully reading the brief when you receive it, and considering whether it might give some clues about the relevant areas of law to be covered. For example, if the brief says "Mary would like an appointment, she says she's been pushed too far and is now leaving her husband" - a quick glance at some family law summaries could be a very productive use of your time. It will be extremely impressive to judges if you are able to give some explicit details about the law & relevant legal processes to the client. Remember, you are of course able to print out relevant material and have it with you in the interview (just don't get too distracted/spend time reading it whilst ignoring the client). Also, if you do conduct some prior research, make sure you don't get too inflexible - the brief often does not reveal the main issue at hand, and you don't want to get distracted or bogged down in forcing your square research into a round hole.

Callum Vittali-Smith

Finalist, Henry Davis York Client Interviewing Competition 2017; Finalist, UNSW Intervarsity Client Interviewing Competition 2017; Problem Question Writer 2018, 2019; Judge 2018, 2019.

Ishaa Sandhu & Cameron Sivwright

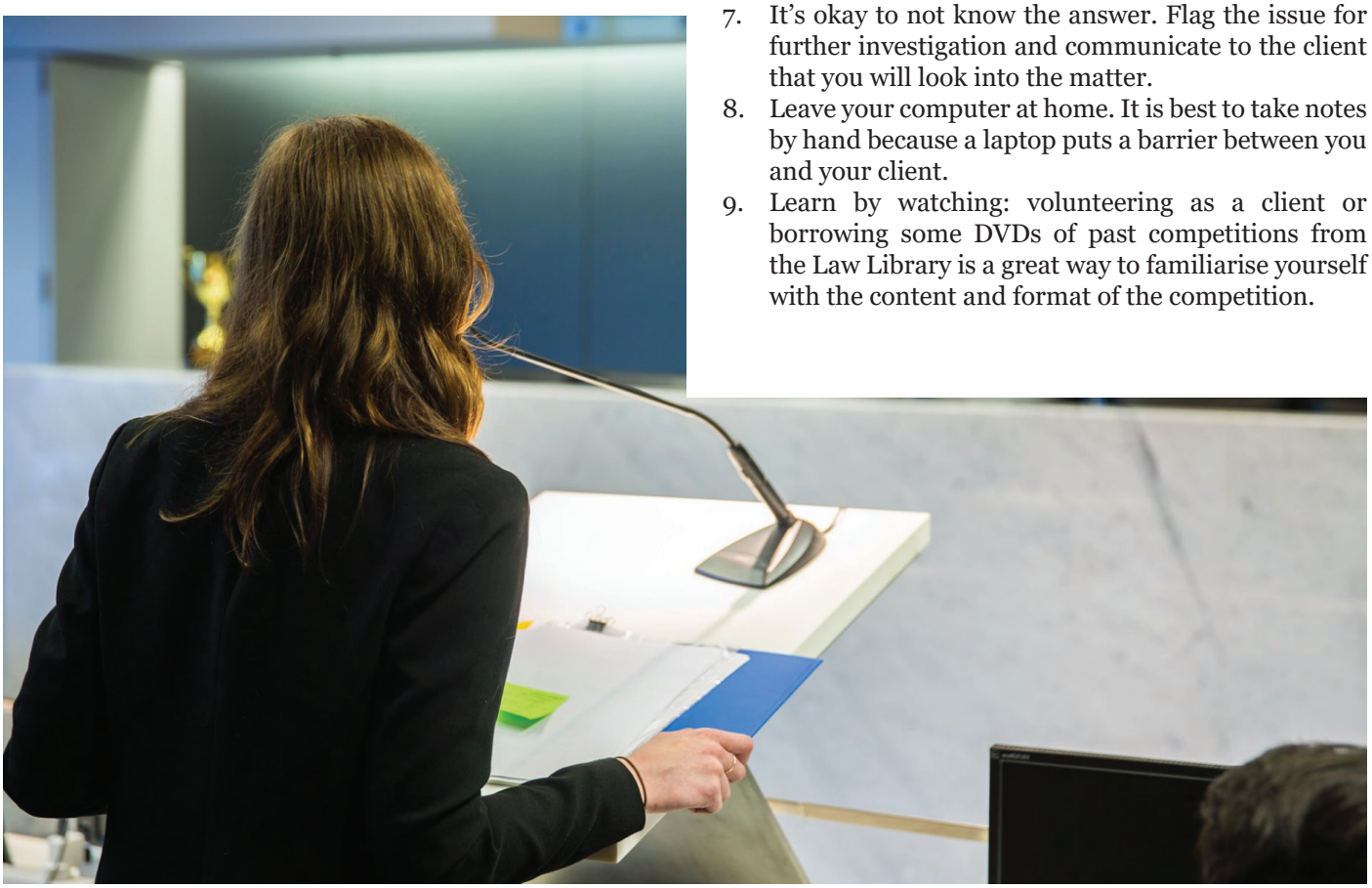
Winner, Henry Davis York Client Interviewing Competition 2017; Quarter-finalists, Clayton Utz Negotiation Competition 2017.

1. The aim of the interview is to extract as much pertinent information as possible from the client, so you can be in the best position to give informed preliminary advice that highlights the legal (and non-legal) implications of the client's circumstances. It's ok not to know the answer or the correct area of law that applies, but don't just say you're not sure and will look it up after the interview. Remember that you're being paid for your legal advice, not to google the answer after the session (something which the client can do too) – so frame your response accordingly.
2. Try to be creative in your solutions. When providing your advice, think beyond the pure legal issues – there might be financial issues that your client should take to an accountant, or PR disasters that need to be handled before they can get to the legal solutions.
3. Decide beforehand which questions each team member will ask. Naturally, there tends to be a more vocal member, so really try and get points for teamwork by balancing this and ensuring that the other team member focuses on great note-taking and asks questions. Make sure you can see your team member, so that you know when the other has something to say!
4. Be comfortable with interjecting your client – after all there's so much information and you need to extract it to the best of your best ability in 30 minutes. Come up with a few versions of an 'interjecting statement' which politely allows you to steer the conversation in the direction you want it to go.

Lucy Zhang

2015 Henry Davis York Client Interviewing Competition; Winner, 2014 Allens Torts Moot; Quarter-finalist

1. Create an interview timeline and stick to it. Allocate time restrictions for the introductory part of the interview, a period of questioning, clarification then consolidation of potential remedies and further courses of action. If the client seems to go off on a tangent, bring them back with an open ended question.
2. Integrate the 3 Cs into your structure: Cost, Confidentiality and Conflict of interest. Confidentiality should be established before the client discloses any information, conflict of interest should be introduced at the beginning and reiterated at the end if other parties involved are being represented by your firm; prepare a "retainer" which provides a cost structure for future services you provide. These services will be discussed in your recommended courses of action at the end of the interview so it makes sense to talk about Costs at the same time.
3. Ask open-ended questions and listen for clues. Is there an unexplained gap in the narrative? Are there inconsistencies in their story?
4. Cover the 5 Ws: Who, What, When, Where and Why. The amount of information you glean from a client should be sufficient to fill a statement of claim. It follows that the strength of their case can then be ascertained.
5. Start with small talk. Establish yourselves as approachable by building rapport with your client. It doesn't have to be for long; a minute or two will do. Empathising with their emotion is encouraged, so long as you keep on track.
6. Structure your notes. It is helpful to have a table which contains one issue per column and the relevant facts, issues, legal principles and tentative conclusions in separate rows.
7. It's okay to not know the answer. Flag the issue for further investigation and communicate to the client that you will look into the matter.
8. Leave your computer at home. It is best to take notes by hand because a laptop puts a barrier between you and your client.
9. Learn by watching: volunteering as a client or borrowing some DVDs of past competitions from the Law Library is a great way to familiarise yourself with the content and format of the competition.



negotiations

What is a negotiation?

A negotiation involves two teams of two competitors representing clients involved in a legal dispute. The main aim is to reach an agreement, either tentative or binding. The agreement should be clear, realistic, and satisfy the client's instructions. Teams must also showcase their negotiation and team skills – maintaining an effective working relationship, bargaining, and strategising.

Why negotiate?

Negotiation skills are invaluable in legal practice. Negotiations are key to making agreements and resolving disputes, often offering cheap and quick solutions to very complex problems. Learning how to negotiate will help you put a variety of options on the table, work out what is feasible or not, and make an agreement without "giving in". Pre-trial negotiations and mediations are now recommended and even compulsory in many jurisdictions, and are a central part of any lawyer's skill set.

How do you "win" a negotiation?

The ultimate aim of the negotiation is to form an agreement in the best interests of your client.

- Negotiations ARE NOT a contest between adversaries: Don't have a strategy that involves bullying the other team into submission. This will usually make the other side harder to deal with, and encourage the other side to also bully you. Also, it isn't very ethical.
- Negotiations ARE NOT a conversation between friends: On the other hand, being friendly and making too many concessions will not lead to optimal outcomes for your client. It will leave you open to be taken advantage of.
- Negotiations ARE a game of problem solving. Identify what the parties want (their "positions"), why they are an issue ("interests") and what can be done to solve them with the resources you have ("solutions").

There is no such thing as "winning" a negotiation. However, in this artificial setting, competitors will score points for certain aspects of the negotiation. The team with the higher number of points goes through to the next round. Teams score points for communicating effectively, showing teamwork, generating options, managing time constraints, and ending up with an agreement that satisfies their client's interests comparatively better than the other team.

The Key Rule: "Don't bargain over positions"

When going into a negotiation, have an open mind and keep flexible. You will not know the confidential facts of the other team, and will need to work around issues as they pop up. Don't always expect that interests, positions and solutions line up perfectly – often, they do not! Let's illustrate this with an example.

Let's say there is a dispute between two neighbors, where Neighbor A noisily plays the drums during the day, disturbing Neighbor B.

- Neighbor A's *interests* are to keep playing his drums, and his *position* is for Neighbor B to pay for expensive soundproofing.
- Neighbor B's *interests* are to sleep during the day because he does night shifts, and her *position* is that Neighbor A pays for the soundproofing.

A solution could be that Neighbor A agrees to play his drums after Neighbor B leaves for her night shift at 5pm. This would avoid the need to pay for expensive soundproofing and keep both parties happy.

However, if both teams were to go into a negotiation and simply argue about who should pay for the soundproofing or how they would share the cost, they would have completely ignored this viable solution. This is why it is an essential rule that you: don't bargain over positions – focus on interests instead. In a practical sense, this means:

- Ask questions: Why does the other team want something?
- Have a range of solutions available: What can you offer?
- Generate options with the other team: What can they offer?

Structure of the competition

- Both teams will be provided "common facts": These facts are known by both teams, and broadly outline the main aspects of the dispute
- Both teams are also given a set of "confidential facts": These facts are known by only one team, and include specific instructions from the client regarding what they want.
- Teams prepare for a week before the negotiation: From the materials given, teams work out what they have to achieve, and form a strategy for how to achieve it. Teams should come to the negotiation across their facts, with a draft agenda, draft agreement clauses and other materials (if appropriate).
- The negotiation will run for 50 minutes (inclusive of breaks): Each team may call for one five-minute break at any time during the negotiation. The time limit is purposely short and is strict – if you haven't made an agreement by the 50 minute mark, bad luck!
- The negotiation should start with preliminaries: Teams should introduce themselves to each other and shake hands before beginning. Agreements should be made that discussions be conducted in good faith and, if the negotiation is taking place in the face of litigation, without prejudice. Confidentiality agreements may be entered into at this stage.
- The negotiation should end with a signed agreement: Parties should have a suitably detailed agreement that is signed by the parties. In any event, parties should shake hands after the 50 minutes is up.
- After the negotiation, there will be 10 minutes for each team to give reflections (from Quarter-finals onwards): These reflections are given to the judge without the other team present. Teams reflect on their strategy: what worked and what they would have done differently.

Here is a suggested structure for how teams might allocate their time:

Preliminaries	2 minutes
Agenda Setting	3 minutes
Exploration of interests	10 minutes
1st Break	5 minutes
Brainstorm options	10 minutes
2nd Break	5 minutes
Find Solutions	10 minutes
Make written agreement	3 minutes
Signing and Handshake	2 minutes
TOTAL	50 minutes

How to prepare for a negotiation

- Work out your objectives: What is non-negotiable and what is negotiable? What is most important for your client, and what is less important? What must you achieve by the end of the negotiation (essential interests)? Where can you make concessions?
- Find your BATNA: A BATNA (short for "Best Alternative to a Negotiated Agreement") is your fallback strategy if the negotiation fails. For example, in a negotiation between a company and their employee regarding a contract dispute, the BATNA for the company may be to go to court. This will have advantages (e.g. finality of result) but disadvantages (e.g. uncertainty of result, legal costs). It is important to keep your BATNA in mind as you negotiate and plan. Never agree to something in a negotiation if it is worse than your BATNA or just for the sake of "agreeing".
- Develop a strategy: What are your strong points and weak points? What are the other team's strong points and weak points? How are you going to target them? What kinds of questions can you use to pry out their confidential facts? What solutions will work for you? And what can you offer the other team to resolve their problems?
- Make a draft agenda that suits your strategy: Some negotiators like to start off with easy things that can be agreed upon (e.g. mutual interests) and then work towards more difficult problems. Others like to reserve these easy things as bargaining chips to be used while discussing the more difficult problems. Either way, have an agenda that keeps the negotiation on schedule, so that all issues are well ventilated and discussed before time is up.

Negotiations Skills

There are many styles of negotiating, and there is no "right" or "wrong" way. Some negotiators prefer to be more aggressive and assertive, while others prefer to be more passive and contemplative. But overarching these styles, there are some key skills that need to be demonstrated:

- Show teamwork: Team members should be on the same page and work together seamlessly. They should be supportive, not talk over one another, or contradict each other. Preparing for the negotiation in high detail will facilitate this.
- Manage time: Teams should have come to some agreements, either tentative or binding, by the end of the 50 minutes. Do not spend too much time on a single issue – move on if you reach an impasse.
- Generate solutions: Teams should be creative, flexible and original. However, the solutions should be feasible and practical within the constraints of the factual matrix of the scenario.
- Be professional and ethical: As lawyers, teams should be honest and not have to resort to dirty tactics. This does not mean that you have to reveal your secret facts – there is nothing wrong with simply saying, "My instructions are not to answer that question". On the other hand, lying, cheating and misconstruing facts to benefit your client will earn you negative points.
- (For self-analysis) Show critical thinking: Self-analysis should be a discussion of tactics – what worked, and what didn't. Teams should show they were able to recognise weaknesses in the other team, but more importantly, show they were able to recognise weaknesses in their own team. They should be able to demonstrate what skills they have learnt for the next negotiation.

top tips

Emily Knoblanche

Grand Champion, SULS Negotiations Competition 2018;5th place, UNSW Intervarsity Negotiations Competition 2018; Best Plan Merit, HSF-NLU Delhi International Negotiation Competition 2019; Intervarsity Judge 2020.

1. Prepare prepare prepare! Excellent team preparation is valuable and evident. A good starting point is to read the facts a couple of times and engage with all the facts and the issues: Who are the parties and stakeholders? What are their interests, needs, objectives, and alternatives? What are the important concerns and threshold questions?
2. Expect and accept that things never go to plan. Develop and organise a strategy including generating all the options for all parties. Consider persuasion tools, documents, and precedent to legitimise your points i.e. facts, legislation, and other external sources such as standards of practice.
3. Remain aware of your client goals with reasonable commitment options. Remember to stay engaged and listen to what your opponents are asking.
4. Form integrative relationships with trust and affiliation. Plan your negs time with the opposition and demonstrate collaboration. Consider conflicts and emotions that may arise and potential responses.
5. Have an effective communication plan: remain open-minded, empathetic, and maintain good manners. Be polite and smile (do not be aggressive and never lie!).

Dylan Sherman and Luckme Vimalarajah

Runner-up, SULS Clayton Utz Negotiations Competition 2017; Semi-Finalist, UNSW Intervarsity Negotiations Competition 2018; SULS Representative, UTS Intervarsity Negotiations Competition 2018; Grand Finalist, SULS Clayton Utz Negotiations Competition 2017. Dylan; Captain, Overall Champions, Highest Scoring English Language Team (Squire Patton Boggs Award), International Intercollegiate Negotiation/Arbitration Competition (Tokyo).

1. Have a clear understanding of what the client needs. It is always important to prioritise the list of outcomes you aim to achieve at the end of negotiation with first being the most important to negotiate.
2. Formulate creative solutions to each outcome. A better solution will benefit both parties.
3. Try to also make solutions that make practical sense, not just theoretical sense. This may involve considering the pragmatic implications of an idea, including required resources, timing and expenditure, as well as whether something makes legal and business sense. Try to provide an explanation as to why your solutions benefits both sides and if possible provide examples of where such solutions have been used in the real world.
4. Contrary to negotiating in practice, competitive negotiation does not depend on the outcome. Majority of the marks are in fact assigned to how you negotiate. With this comfort in mind, focus your time on finding the interests not positions of the other party.
5. We also recommend forming a positive and collegiate relationship with the other party as this will inevitably lead to solutions that work for both parties' interests and a far more enjoyable experience!

6. Don't fight abrupt, curt or unprofessional negotiation with similar behaviour. This is not in the spirit of open negotiation and often hinders success. Remain polite and respectful.
7. You shouldn't be afraid to let the other party know what you want! While there may be small pieces of strategic information that you choose to keep confidential, it is often better to state your interests and outcomes early on, so a negotiation can be organised and efficient. Be careful how you formulate these interests, however, so that you negotiate with a comfort level between what you state you want and what your client demands. In saying that, there are rare times when strategy might warrant delaying information to ensure a swift decision!
8. Prepare yourself with fact scenarios that the opposition might reveal during the negotiation and how you may deal with it. Try roleplaying the opposite teams position with your team. Not only does this help you practice, but also step into the mind of the opposition.
9. Be flexible - remember you often need to give something to get something!
10. Make sure you write down exactly what you agreed to as you go through the negotiation and sign the agreement at the end. This makes it easier at the end to avoid rushing memorandum of understanding. It is not necessary that you finalise all the outcomes but it is essential that you have at least resolved the most important outcomes.
11. Teamwork. Make sure your team does not contradict. Make sure you both are in agreeance on the factual scenario, the elements of the scenario, how your solutions work, and your plan of attack!
12. Have fun - if you are enjoying the negotiation and the opportunity to problem solve, so will the examiners!

Lan Wei

2013 ALSA Negotiations Competition; Winner, 2013 Federal Constitutional Law Moot; Semi-Finalist, 2013 Gibbs Federal Constitutional Law Moot; 2012 Inter-American Human Rights Moot Court Competition; Semi-Finalist, 2012 ALSA Championship Moot.

1. If you do only one thing in preparation for your comp, let it be this: make a prioritised list of goals, as well as a 'bottom line' - that is, a list of what you want, and a list of the absolute minimum to which you will agree. There is no point in entering into a negotiation without a 100% clear idea of what you want to get for your client and which of the goals you can sacrifice for another, more important, goal. There's nothing wrong with not achieving all of the goals you set out - what's important is to have a good idea of which goals are most crucial, and why, and communicate that understanding throughout the round.
2. 2. Related to this, have an agenda sheet ready. This agenda should not reveal any private information or give too much a hint of your priorities (remember - keeping your priorities secret could well be a part of your strategy!) but it should be geared towards having a well-structured negotiation. Without an agenda, a negotiation could quickly go off-topic. Even worse, if your opponent prepares an agenda and you do not, you cede control of the negotiation to them and also look underprepared.
3. 3. Don't moot. The temptation with a negotiations question is always to figure out whether you're right in the eyes of the law and try to lawyer the other party. Do not do this. You get no points for legal arguments, it antagonises the other party and most likely the judge, and it is generally an obnoxious thing to do.
4. 4. Remember to move on. Sometimes it's easy to get caught up in the first few agenda items because obviously the parties come from different perspectives and want different things. It's important to know when to move on from this because you may soon find yourself talking in circles and wasting time. Furthermore, you never know what secret facts and surprising twists might come later in the agenda, so it's a good idea to at least turn a few stones before getting bogged down!
5. 5. Have an outcome. I cannot stress this more. It is very likely that the outcome you reach will not be 100% what you hoped for in the beginning. It should at least, however, be better than your bottom line. If you are truly unable to agree, you should still strive for an outcomes list that details what further action must be taken to reach agreement. Otherwise the whole negotiation is a waste of time.

Stephen Ke

Winner, 2016 Intercollegiate Negotiations Competition (Tokyo); Squire Patton Boggs Award for Highest Negotiation Score, 2016 Intercollegiate Negotiation Competition (Tokyo); Member of Team Australia 2015, Intercollegiate Negotiations Competition (Tokyo); Runner-up, 2015 UNSW Intervarsity Negotiations Competition; Semi-Finalist, 2015 UTS Intervarsity Negotiations Competition; 2015 SULS Judging Coordinator.

1. Display active listening: Showing the other team that you understand them can help progress a negotiation. It can be simply done by repeating back exactly what the other team has just said.
2. Set ground rules: Establishing what is, and is not, allowed at the negotiation table is an effective way of creating a professional working relationship with the other team. At best, ground rules can be strategically designed to circumvent tricky areas.
3. Test Boundaries: Pushing the other team to their boundaries allows you to achieve the best outcome for your client. A team playing it "too safe" can mean they leave opportunities untouched.
4. Make tactical concessions: Making concessions at strategic points during the negotiation will allow you to achieve better outcomes for your client by pushing the other side a little further along a path they are less keen on conceding on.
5. Move on: Sticking to a single issue, and failing to ventilate others, will stagnate option generating and make it harder to achieve a final agreement. Sometimes, making a concession on secondary issue will break up an impasse on the primary issue. Have an eye on the time and stick to the agenda.

Alex De Araujo and Sofia Mendes

Winners, Clayton Utz Negotiations Competition Senior Division 2020; Grand-finalist, AULLS v SULS Negotiations Competition 2020; Representatives, UNSW Skills Intervarsity 2020; Semi-finalist, Clayton Utz Negotiations Competition Junior Division 2020. Alex: Grand-finalist, First Year Moot 2019. Sofia: Quarter-finalist, Herbert Smith Freehills Contract Moot 2020.

1. Persuasion: Remember that your ultimate goal is to convince the other party to fulfil your client's interests. Use some storytelling to explain why they owe it to you to help you out, and what they would gain from helping you.
2. Questioning: When reading through the script, think about what information you want from the other team and prioritise important questions, asking follow-ups if something seems shady. Finding the other party is at fault, or has benefitted unfairly, is a great way to increase your bargaining power!
3. Ethics: You must remember to be ethical when negotiating. If you have a secret to keep, don't bring it up unless asked about it, in which case you may deflect questions about it (being extremely careful about your language so as to not actually lie). If explicitly asked, either come clean or state that your client is unwilling to disclose that information.
4. Relationship between teams: Make sure to thank the other team for concessions and empathise with their client. Be courteous and respond to aggression by pointing out that the parties agreed to negotiate in good faith. Not only does this earn you marks, but it soothes the opposition into being more conciliatory.
5. Teamwork: Roughly divide speaking time equally between both speakers, and try to signal to your partner if you feel you're speaking too much. Don't pre-allocate specific roles (ie. one person questions and the other explains), but feel free to naturally fall into these roles based on how the negotiation progresses. Bounce ideas off each other, and never contradict.
6. Concessions: Make sure that every concession you make is in exchange for a comparable concession from the other team, or used to increase your bargaining power.

witness examination

Introduction

The Witness Examination Competition is a fun and dynamic competition which bears a strong resemblance to legal dramas and high school Mock Trial competitions. It simulates a criminal trial and involves a shortened version of all the main components of a real trial: opening statements, examination in chief, cross-examination, and closing arguments.

Two competing students represent counsel for the defence and prosecution. The aim is to present a case based on the available evidence that is consistent, plausible, and fits with the facts. The role of Counsel is a balancing exercise between establishing and maintaining the credibility of one's own witness through examination in chief, whilst simultaneously attempting to extract further beneficial evidence and destroy the credibility of the opposing witness during cross-examination.

Competitors are bound by the rules of evidence and must act within those parameters. It is advised that competitors revise the basic laws of evidence, a brief summary of which may be found on PAGE X of this Handbook.

Structure of the Competition

Unlike most other competitions, Witness Examination requires no prolonged formal preparation, as competitors do not receive the materials until 24 hours prior to the competition. Competitors will be given each witness' statement and relevant legislation. Time should be used to review each statement, prepare questions for both their witness and the opposing witness, develop a case theory, and draft an opening statement. Research can also extend to case law surrounding the legislation if it is not fictitious.

Order of Proceedings	Preliminary Rounds	Quarter/Semi/ Grand Finals
Opening by Prosecution Counsel	2 minutes	2 minutes
Examination in Chief by Prosecution	10 minutes	15 minutes
Cross-Examination by Defence	15 minutes	25 minutes
Opening by Defence Counsel	2 minutes	2 minutes
Examination in Chief by Defence	10 minutes	15 minutes
Cross-Examination by Prosecution	15 minutes	25 minutes
Preparation of Summation	2 minutes	3 minutes
Summation by Prosecution	3 minutes	3 minutes
Summation by Defence	3 minutes	3 minutes

The time will be stopped during all objections. Slow your pacing during objections and use it to formulate succinct and clear arguments.

Preparation

Initial preparation

While it is not necessary for students to have completed the Evidence unit of study (LAWS2016/LAWS5013), it is an advantage. Revise the rules of evidence thoroughly, or at the very least review the summary provided in this guide. If the opposing Counsel breaches a rule there will only be a split-second to make an objection before the witness starts to answer. You can still object after the witness answers, but the impact of such an objection will largely be lost and judges will often note this in assessing the objection. Mark out in your opponent's witness statement objectionable evidence, and prepare any arguments in advance. Judges look quite favourably upon citing the rule of evidence with specificity. At the same time, also look through your own witness statement and prepare to defend objectionable evidence that you wish to be included.

24 hours before trial

24 hours before the examination begins competitors will receive both their own and the opposing witness's statements, as well as the charges and any relevant legislation.

Competitors should use this time to do the following:

1. Understand the charges that have been laid against the defendant.
2. Thoroughly review each statement and identify what facts are likely to be disputed.
3. Use this to develop your case theory (see below).
4. Prepare the questions you intend to ask to prove that case theory.
5. Draft the key ideas for your opening and closing statements.

Developing a strong case theory is the most essential aspect of preparation. Your case theory is what you say happened, reduced to a couple of lines. It needs to be persuasive and believable to the finder of fact (here the trial judge). While your case theory may develop subtly in response to the evidence given by the witnesses, deviation should be minimal. Some competitors like to have the case theory written and visible throughout the entire examination as a guideline to their questions. Your opponent will seek to attack your case theory by extracting answers suggesting it is unlikely or otherwise unbelievable. Bear that in mind during your preparations.

Your opponent will also develop their own case theory. It won't be difficult to identify the broad strokes that your opponent is likely to take, so also use your preparation time to identify where their narrative is at its weakest and develop questions accordingly. Your goal should be to demonstrate why their case theory is unlikely to have occurred, and any of its internal inconsistencies.

The extent to which questions for cross-examination should be prepared in advance is a matter for the trial advocate. It's important not to be rigid in the questions that you ask, but also to extract all of the evidence that you need. Try to strike a balance between these two goals. The time limit will pass much quicker than you think!

The witness statements will have been written in a manner that deliberately raises important rules of evidence. It's a good idea to identify which aspects of the statements do not assist your case theory and then determine whether a rule of evidence will allow you to exclude it during oral testimony. The same is true for evidence that supports your case theory and how you might protect it. If it's necessary to exclude a representation on the basis that it is hearsay, prepare your argument as to why. If it is crucial evidence, chances are your friend will fight to have it admitted. Note that excluded evidence cannot be relied on by either counsel during cross-examination or closing statements, so there is merit to being strategic.

Preparation of witness

This 24 hour period should be used to prepare the witness on what will be asked during examination-in-chief. It may also be useful to advise the witness what the other side is likely to ask, so they may be prepared for cross-examination, but, critically, cannot involve telling the witness how to react to cross-examination.

More broadly, competitors should be careful not to 'coach' their witness. This is highly unethical and likely to be picked up by the judge. Examples of prohibited coaching include providing the witness with the opposing witness's statement of facts, instructing the witness on how to react to cross-examination, providing exact wording for how witnesses should respond to examination in chief, or encouraging the witness to make up or change the facts.

Competitors should be careful not to 'coach' their witness. This is highly unethical and likely to be picked up by the judge.

Witness statements may sometimes be incomplete, and witnesses are able to make up basic facts (such as their address) but not facts that are inconsistent with their statement. Anything that is elaborated on must be in accordance with the witness statement.

At trial
At the commencement of the trial, both witnesses remain outside the court-room while preliminary matters are dispensed with.

Appearances

At the commencement of trial, the Judge will ask for appearances.
Counsel for the Crown/Plaintiff stands and states: *'May it please the Court. My name is Smith and I appear on behalf of the Crown.'*

Counsel for the Defendant follows in a similar fashion.

In criminal trials, the Judge will arraign the Accused, reading the charge and asking how they plead.

Opening Statements

Opening statements should include a brief summary of the facts which Counsel will attempt to prove either establish or negate the liability/guilt of the defendant/accused. An opening statement should introduce the charge (prosecution), outline what needs to be proven (relevant elements of the offence) and the evidence that will be adduced in order to prove this. The opening should make express reference to the burden that must be discharged and why it is or is not met. For the defendant, the opening statement should focus on what are the agreed upon elements, and where the distinction between the parties lies.

A brief outline of the law relevant to the case should also be included – this is designed to give the Judge an idea of the direction the argument will take, with respect to what factual matters do and don't need to be established. For example, most critically, is there a mens rea element and what is the standard required?

You don't have much time to make your opening statement, so be succinct!

Upon completion of each opening statement, the Judge will ask Counsel to call their witness. To summon the witness, Counsel should take to the podium and simply state 'I call [witness name]'.

The goal of examination-in-chief is to have the witness state in their own words, and of their own volition, their version of the events that occurred, in order to establish the case. For the opposing counsel, the aim is to raise doubts on the evidence currently being adduced..

The role of Counsel is to facilitate the witness's story, and the witness should do the majority of the talking. Counsel should bring to light all the facts from the witnesses through the use of open-ended questions that enable the witness to present their evidence in a chronological order. Counsel must also control the witness to prevent them from rambling or avoiding questions. Counsel should avoid asking short questions that enable the witness to speak for solid lengths of time.

Examination-in-chief

The most effective technique is the adoption of a natural conversational style that makes the witness feel at ease. Though the court may hear the same information through repeatedly asking the witness "And then?", this will negatively impact a competitor's score. To avoid this, and to increase a witness's credibility, important details should be reinforced by repeating them back to the witness in the next question, but be careful as this can lead to objections based on repetitive questioning.

Cross-Examination

Cross-examination is where the opposing counsel questions their opposing witness. The objective is for Counsel to find inconsistencies in the witness's testimony, identify why the witness's testimony should not be believed, and attempt to show that the witness is not credible.

All questions during cross-examination should be put in leading form. Counsel should not ask questions the answer to which they do not already know, unless Counsel has considered that either possible answer will assist their case. A useful technique is called 'closing the gate'. This involves asking a series of questions, non-contentious to begin with, that require only yes/no answers. Counsel should build up the questions until the point trying to be made seems inevitable, and then avoid asking the final question in order to prevent the witness from having the chance to provide an explanation.

Counsel should attempt to discredit both the evidence that is damaging to the case and the witness themselves, in that order of priority. This latter objective may involve demonstrating that the witness is biased, lying, giving inconsistent evidence, a careless observer, or has a blurred recollection or inconsistent memory.

Switching Over

Once the witness for Prosecution has been examined by both Counsel, the witness will be thanked by the Judge and excused from the courtroom.

The Counsel for Defence is then invited to make their case. Similar to the above, the Defence makes the opening statement and conducts examination-in-chief of the Defence witness, who is then cross-examined by the Prosecution.

Closing

Counsel for Prosecution closes first.

The purpose of the closing address is to summarise the entire case, utilising the information extracted from both witnesses, ideally relying heavily on cross-examination. Counsel must show what has been proven and what the other side has failed to prove. The closing address should anticipate or rebut the closing argument of opposing counsel.

Counsel should be clear, structured and succinct, highlighting the strongest points of the case, as established in cross-examination. The best closings will retrospectively make a cross-examination seem better in drawing out the relevance of the points ceded.

Objections

Objections are an exciting element of Witness Examination. Objections highlight the opposing Counsel's breach of the rules of evidence and can act as a strategy to put off the opposing Counsel, within reason.

Objections can only be made during examination-in-chief or cross-examination, and are best done before the witness provides an answer to the question being asked.

To make an objection, counsel stands and says something to the effect of: '*Your Honour, I object. (wait for judge to acknowledge the objection) Counsel is … (reason and reference to the relevant legal objection)'*. The judge will either question the maker of the objection or give the opposing Counsel an opportunity to respond.

Objections are argued with the judge, not the opposing counsel. To cease arguing an objection, something like the following should be said: *'If I may rephrase the question, Your Honour'*, or *'I will abandon that line of questioning'*.

In the midst of an objection, it is crucial that Counsel who is not speaking to the Judge **immediately** secede the lectern to their friend. This is a matter of Court etiquette, and allows the Judge to resolve the issue efficiently. This may be an issue if the competition is being conducted online. There is no issue in repeating your objection if either your learned friend or the judge has not heard you. Ensure that you object with sufficient volume.

Examples of possible grounds for objection are set out in the following section 'Basic Rules of Evidence'.

Basic rules of evidence
The rules governing the evidence that can be submitted to the court are extensive. A brief summary governing the rules of evidence is provided here, however this should by no means be considered exhaustive.

The rule in Browne v Dunn

A complex rule of procedural fairness. On a fundamental level, if Counsel intends to lead evidence from their own witness that challenges the truth/reliability of their opponent's witness, then they must provide an opportunity for their opponent's witness to respond to that inconsistency during cross-examination. In preparation, note the inconsistencies between witness statements, and ensure that they are all addressed in the defence's cross-examination.

An example:

1. The prosecution leads evidence wherein A testifies to witnessing B having an argument with C, and then on a later date witnessing B shoot C with a pistol.
2. Defence Counsel cross-examines A, but only challenges A's representation that B shot C with a pistol. Defence Counsel does not challenge A's representation that he witnesses the argument.
3. Defence Counsel leads evidence from B, wherein B testifies to never having had an argument with C and to never shooting C with a pistol.

Here Defence Counsel has breached the rule in *Browne v Dunn*. As B has given evidence that the argument with C never occurred, it was necessary for Defence Counsel to put that proposition to A. The rule has not been breached in respect of the disputed fact that B shot C with a pistol.

To protect themselves from breaching the rule it is not uncommon to see Counsel merely putting questions to their opponent's witness and having that witness repeatedly say no. This leaves no room for doubt that all relevant propositions have been tested.

Relevance - Evidence Act s 55, 56

All questions asked of a witness must be directly or indirectly relevant to a fact in issue. This involves the balancing of the probative value of evidence being adduced with its potential to confuse or prejudice the jury. If challenged on relevance, Counsel must argue the facts and rationale behind the evidence in question to demonstrate why it should be admitted as relevant.

Hearsay Evidence - Evidence Act s 59

A witness cannot give evidence of what a third party represented on a particular occasion for the purpose of proving the truth of that particular representation in Court. Note, there are an array of exceptions that will allow hearsay representations to be admitted into evidence.

The main exception is when the evidence is used to prove something other than the fact asserted by the representation itself. Testimony of threats made by a third party cannot be used to prove the threat was made, but may be admitted if the purpose is to establish that the recipient was under duress (See Subramaniam). Exceptions are found in ss 60, 62, 65, 66, 70, 71 and 73 of the Evidence Act 1995 (NSW). This is a difficult objection and more reading is recommended on this point; some questions are designed to test your knowledge of niche exceptions to the hearsay rule

An example:

> ***Crown:*** *So you heard a loud bang and then John returned to the living room with Sally. What was the next thing you recall happened?*
>
> ***Witness:*** *So I heard the bang, they came back into the room and Sally said: "John's killed Alec. He's just shot him".*

The representation "John's killed Alec. He's just shot him", is inadmissible to prove that John murdered Alec. Depending on the circumstances it may meet one of the hearsay exceptions however.

Opinion evidence – Evidence Act ss 76, 78, 79

Evidence of an opinion is inadmissible if it is used to prove a fact about which the opinion was expressed. However, there are broad exceptions, and competitors should consult the Evidence Act 1995 (NSW) closely to identify them. A major exception is if the opinion is based on what the witness saw, heard or perceived, and it is necessary to gain an adequate account or understanding of the witness' perception of the matter.

An example:

> **Witness:** *He seemed terrified. As soon as John pointed the gun at Alec he started to shake.*

This is an opinion of Alec's state of mind. Prima facie it is inadmissible, however a thoughtful prosecution might seek to challenge its exclusion on the basis that it is a lay opinion, which is an exception to the rule (s 78).

Character – Evidence Act ss 109, 110, 111 and 112

Character evidence is evidence about the inherent moral qualities or disposition of a person. Character evidence is not identical to credibility evidence, though there may be overlaps between the definitions of the two.

Questions on the admissibility of character evidence only apply to criminal proceedings. A principal rule is that the Crown must not cross-examine the Defendant on matters of character without the Court's leave. Generally, the Crown must not lead evidence of bad character when the Defendant's character has not been put in issue by Defence Counsel.

Character evidence led by Defence Counsel is not burdened by the hearsay, opinion or tendency rules of evidence. However, if Defence Counsel chooses to lead evidence showing the Defendant is of good character, then the Crown may equally lead evidence that the Defendant is of bad character without being burdened by the rules of hearsay, opinion and tendency evidence.

Leading the witness (in examination-in-chief only) – Evidence Act s 37

A leading question is one that suggests the answer to be given or attempts to put words into the witness's mouth. In order to protect the integrity of the evidence, Counsel is prevented from asking leading questions that suggest a desired answer in evidence-in-chief. However leading questions may (and should) be asked during cross-examination.

Evidence that has been illegally or improperly obtained – Evidence Act ss 137-9

Evidence that has been illegally or improperly obtained requires a balancing exercise of whether the desirability of admitting the evidence outweighs the undesirability. Section 138 contains a non-exhaustive list of factors to be taken into account in conducting this balancing exercise.

Badgering the Witness

'Badgering the witness' refers to when Counsel is unnecessarily hostile to or harasses a witness. This can involve asking several questions at once or repeating the same question multiple times, not allowing a witness to answer a question, making unnecessary or irrelevant comments, or otherwise arguing with or provoking a witness. This falls under improper questioning - s 41.

Further examples of possible grounds for objection

- General, vague or non-specific questions
- Unintelligible or confusing questions
- Duplicitous questions
- Questions that assume facts not in evidence
- Questions that are argumentative, oppressive or irrelevant.

top tips

Robert Deppeler

Winner, SULS v MULS Witness Examination Competition 2019; Judge and Question Writer, King & Wood Mallesons Witness Examination Competition 2019; Demonstrator, 2019; Winner, King & Wood Mallesons Witness Examination Competition 2018.

1. If you are going to object, be sure to know what section of the Evidence Act or what case supports your objection.
2. The most important element of any witness examination is your case theory. A case theory is in essence a one or two line statement of what you believe has happened in the case you are arguing. It doesn't need to be complicated, and indeed the better case theories are often the simplest but it will help you to ensure three things;
   - That you comply with the rule in *Browne v Dunn*;
   - That your Judge can understand what you are arguing;
   - That you don't become confused in cross examination.
3. At the end of the day witness examination is about telling a story. The more believable your story, the better your case will be. Always remember to try and predict what your opponent's case theory will be as well.
4. As you will only have 24 hours to prepare your case, it is necessary to work quickly and methodically. In addressing what questions to ask in examination in chief, always keep in mind what you want/need your witness to say to support your case theory. In cross-examination, always ask yourself what you want the witness to admit. Writing the expected answers to your questions can be a good way of keeping you on the right track, but remember to be flexible. Even the best witness can sometimes give you a completely unexpected answer.
5. Never underestimate how important the rules of evidence are at trial. Well timed objections can completely devastate your opponent's case. But

the same is true of yours. If you intend on leading objectionable evidence remember to come prepared with a defence.

6. In cross examination the best skill a competitor can have is to know when not to ask certain questions. If a witness has accepted a proposition put to them do not give them the chance to explain their answer. You should rarely if ever ask questions you do not know the answer to unless it is unavoidable. Always listen to the witness, and never take an answer for granted. Finally, always make sure that you cross reference your questions with your case theory to ensure that you do not breach the rule in Browne v Dunn.

Thomas Oskar Poberezny-Lynch

Winner, King & Wood Mallesons Witness Examination Competition 2017; Winner, SULS Federal Constitutional Law Moot 2017.

1. If you are going to object, be sure to know what section of the Evidence Act or what case supports your objection. You will appear far more persuasive (and impressive) if you can inform the judge of the basis of your objection rather than having to be asked by the judge and fumbling through your notes or the Evidence Act to find the relevant section or case.
2. It might seem obvious, but when you are questioning a witness, listen to the witness's answers. Too often, competitors, rather than listening to what the witness is saying, are busy reading their own notes and worrying about what question to ask next. Not only is this unattractive advocacy, but since your attention will be directed towards your own papers and not the witness, it also means that you may overlook answer given by the witness that help your case; for example, during cross-examination the opponent's witness contradicting something they said earlier or a part of their own written statement.
3. Listening to the witness relates to a similar point. During cross-examination, try not to ask all your questions by reading directly from a prepared set of questions. Of course, during your preparation period it is wise to plan some of the questions you may ask during cross-examination, but putting questions to the witness like you a reading from a prepared speech should be avoided. Reading all your questions directly from your notes is, again, unattractive and unpersuasive advocacy. By looking directly at the witness and not reading verbatim from your notes, you will appear more confident and persuasive. This method also has the advantage of allowing you to remain flexible and respond to the witness's answers. A flexible and confident manner is key to keeping in control of the cross-examination and, ultimately, to adducing evidence that supports your case and weakens the opponent's.

Jessica Fang

Winner, King & Wood Mallesons Witness Examination Competition 2017; Winner, SULS Federal Constitutional Law Moot 2017.

1. Take control of what evidence is introduced. You are not required to utilise all the facts that are given to you. Be smart in selecting which ones you wish to highlight and explore more through your witnesses. In the event that certain facts are admitted into court that are not favorable to you (by the other side or even accidentally by you), it is unnecessary to dwell on this. Use all the time you can to strengthen your own case.

2. Try to be familiar with as many rules of evidence and court procedures as you can. Small things such as engaging in appropriate court mannerisms will demonstrate a matured level of understanding to the judges. In addition, recognizing different rules of evidence and any applicable exceptions will impress the judges. Do not be afraid to object to relevant statements and show the judges that you are familiar with the law!
3. Please take on board all the feedback that the judges give you after each round of the competition. From Round 1 to the Grand Finals, I was able to completely transform my approach to Witness Examination Competitions through implementing the feedback I received. Please do not be deterred from entering if you do not have experience in these types of competitions! I entered only with high school experience (and a very minimal understanding of the Evidence Act), and found that the first few rounds are very nurturing, where the judges are more than happy to provide advice and watch you grow as a competitor. Do not be afraid to discuss and seek further clarification for any feedback you are given and remember that everyone has a unique way of presenting!

Penelope Smith

Winner, Nicholas Cowdery Criminal Law Moot 2019; Runner Up, Witness Examination Competition 2019; Quarter Finals, Contract Law Moot 2019.

1. Just have a go! There's no need to do evidence law, you will get better with practice. Know the facts inside and out. Prepare questions, and group them into themes, so you aren't just asking questions all over the place. But be ready to depart from your questions. When the witness is answering (especially in cross examination) do not start thinking about your next question. Listen to them, and see if there's any question that might arise from their answer. If not, then turn back to your prepared questions.
2. Keep it simple, write a concise opening statement, don't ask a question that is a paragraph long. Also, as a cross-examiner, you don't have to be mean - just be professional and protect your client's interests.

Casper Lu

Winner, King & Wood Mallesons Witness Examination Competition 2020; Semi Finals, Client Interviewing 2020, Quarter Finals, Client Interviewing 2019.

1. Structure and succinctness are very important. Both student and practitioner judges are smart enough to wade through a convoluted argument, but being verbose and/or putting forward a disorganised argument ultimately reflects in scoring you as a competitor and an advocate.
2. A handy trick in cross-examination in trying to establish a motive for your case theory is to ask the witness whether they stood to gain a benefit (the benefit will differ with each problem question) if they had committed the crime. Eg. "Would it be correct to say that you stood to gain financially if you had counterfeited the bank notes."
3. Structure your questions in cross-examination so that your most important points are made first; after all, there's no point in attacking the general credibility of a witness first when it is much more beneficial to your case to establish the key elements of your case theory. Since you do not have complete control over how much the opposing witness will circumlocute, you do not want to run the risk of your time expiring whilst fundamental points are yet to be made.
4. When writing your questions for cross-examination, make sure you know what the answer you want is. If witnesses provide unexpected answers to key questions, fight to discredit their response.

JUDGING

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judging

Introduction

Student judges are an integral part of competitions at the Sydney Law School. Judging offers experienced mooters and skills competitors a unique view from the bench and the opportunity to pass on their invaluable knowledge to fellow students. It is also a great way to contribute to the Competitions community – SULS' student judging system is a key reason why the internal competitions program produces such talented mooters and skills competitors.

Eligibility

Mooting

To be eligible to judge a particular moot, a student must:

- Have reached the quarter finals of any internal moot, and;
- Have studied the area of law that the moot is concerned with.

OR

- Have reached the quarter finals of the moot they are applying to judge for. (E.g. A student who reached the 2019 quarter finals of the Criminal Law moot could judge the 2020 Criminal Law Moot, even if he or she has yet to study Criminal Law.)

Skills Competitions

To be eligible to judge a particular skills competition, a student must:

- Have reached quarter finals of the skills competition they are applying to judge for.

Intervarsity Qualification

With great competitions success comes great responsibility. It is vital that those who do well in SULS' internal moots, and particularly those who are chosen to represent the Sydney Law School at intervarsity and international competitions, give back to the Competitions community. By passing on the skills and knowledge gained in high-level competitions, students who are just beginning their competitions careers are able to benefit from the experience of SULS' most eminent mooters.

Applicants for intervarsity competitions must have judged at least two preliminary rounds of a current SULS competition in the semester in which they are applying in order to be considered for an intervarsity competition. Where application deadlines fall between semesters (as is the case, for example, with the QUT Torts Moot), successful applicants must pledge to judge a minimum of two preliminary rounds of an upcoming SULS competition as soon as is reasonably practical.

This policy ensures that Sydney Law School's status as an eminent mooting and skills university may be maintained, and that the legacy of our great successes in national and international competitions will continue. Moreover, this policy aims to solve the recurring problem of strained judging resources in preliminary and quarter-finals rounds.

guidelines

Mooting

TOTAL SCORE	/100
Poor	50-64
Average	65-74
Good	75-84
Outstanding (Grand Final quality)	85+

Organisation of Presentation & Timing /14

Organisation and timings should be appropriate to the competition.

Poor (7)
Insufficient or no outline of submissions. If in a senior position, does not outline the Senior/Junior division of issues. Lacks structure and direction. Confuses submissions or does not move easily between them. Does not cover all the material. Uses time on irrelevant or minor submissions and leaves out critical issues.

Average (8-9)
Mooter gives an overview of submissions. Arguments logically ordered. Presentation has direction, although may lack focus - discussion may be too lengthy or brief in parts. May have too many submissions. Covers all main issues. As a guide, for a 15 minute moot, unless questioning is heavy, mooters should be halfway through by 9 minutes. May rush towards the end.

Good (10-11)
Concise, effective overview of submissions. Presentation is easy to follow. Mooter is flexible and can move between submissions. Understands relationship between arguments and relative significance of arguments. Covers all main issues and divides time appropriately, focusing on critical issues. When the mooter is aware that time is running short, they adjust their remaining material accordingly, making brief points on key issues in order to cover material.

Outstanding (12-14)
Mooter very clearly presents and follows a logical roadmap, spending sufficient time on each principal issue. Very flexible and can move between submissions. Manages time extremely well; when aware that time is running short, may adjust their remaining material accordingly, making brief points on key issues in order to cover material.

Development of Legal Argument /26

In assessing legal reasoning, you should account for the parameters of the competition.

Average (16-19)
Broadly discusses the key points of law, but includes irrelevant arguments or fails to address pertinent issues. Inadequate understanding of the law. Arguments illogical or contradictory. Does not use authorities or uses them inappropriately. Insufficient application of the law to the facts.

Good (20-22)
Correctly identifies the legal issues. Uses authorities well and is aware of their relative persuasiveness. Distinguishes between authorities, particularly those that are contrary to his/her submission. Applies law to the facts. May give some arguments inappropriate weight. Some reference to policy arguments where appropriate. Addresses opposing arguments.

Outstanding (23-26)
Persuasive. Excellent understanding of legal issues and their interrelationship. Goes straight to the critical issues. Good command of authorities and effective use of policy arguments where appropriate. Recognises relative strength of arguments and deals with weaker points of argument. Where respondent, integrates rebuttal of appellant's arguments with own submissions. Intimate knowledge of facts and excellent application of law to facts. Appropriate use of policy arguments. Aware of legal remedy sought.

Questions /26

For each question the mooter should answer it directly, explain their answer, justifying it succinctly and then relate the answer back to their submissions, showing how it advances or affects their client's case. Mooters should also be judged on their ability to maintain their style while answering questions.

Poor (13-15)
Evades answering, does not address the issue put to him/her. Fails to perceive the object of the question, gives irrelevant answers. Poor composure during questioning. Distracted by questioning from direction of presentation.

Average (16-19)
Responds to the question, although may at times lack clarity or directness. Is generally concise, although may be too lengthy or too brief. Accurately perceives the object of the question, however may fail to relate answers to submissions. Remains composed although may become slightly defensive.

Good (20-22)
Prepared for most questions that can be anticipated. Responses are clear and mooter effectively maintains composure and courtesy despite challenges to arguments by the court. May struggle with some difficult questions.

Outstanding (23-26)
Gives clear, direct answers to questions. Deals with the issues raised by the bench. Makes concessions where appropriate. Integrates responses effectively with argument. Handles irrelevant questions well. Excellent composure during questioning.

Manner & Expression /20

Average (12-14)
Fails to observe proper courtroom etiquette. Speaks too quickly or not clearly. No modulation of tone. No pauses. Inappropriate posture. Poor eye-contact. Hesitant, unpersuasive manner.

Good (15-17)
Courteous and speaks clearly, although may speak too quickly. Sufficient eye contact. Good posture indicating calm and control. May not use hand gestures effectively. Varies rhythm and tone of voice to emphasise key points. Generally confident and persuasive. Shows some deference to the bench. Manner may deteriorate during question answering.

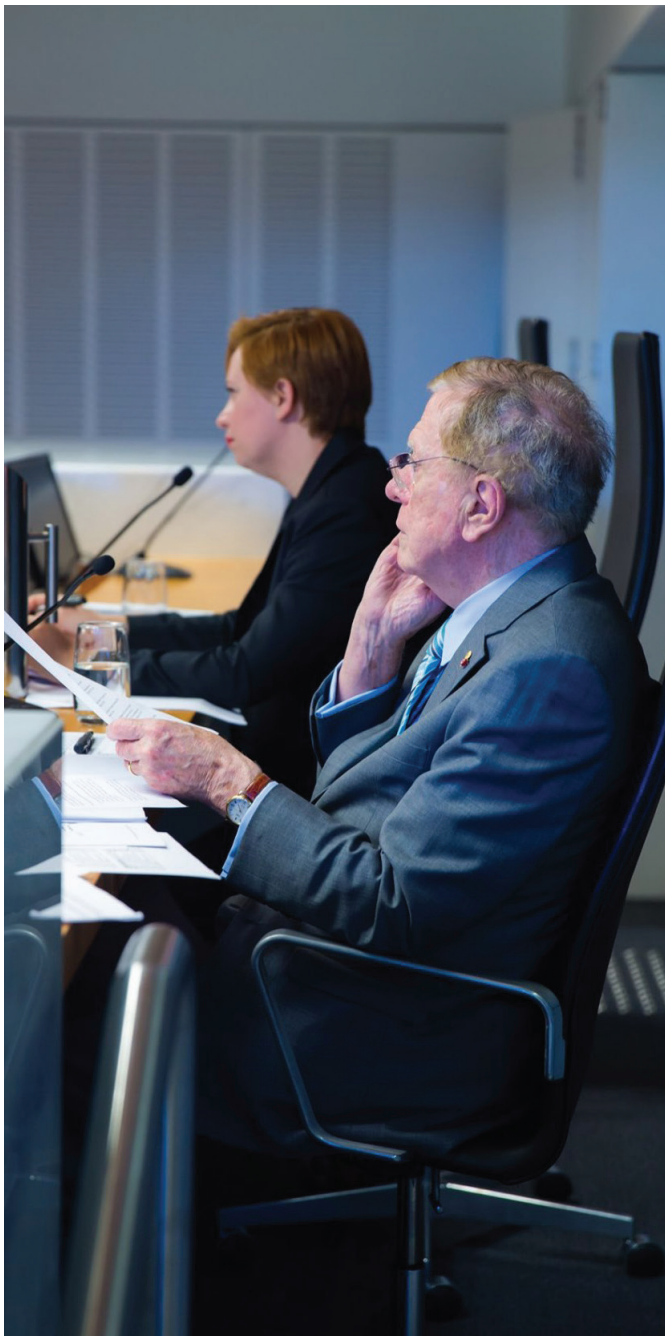
Outstanding (18-20)
Conveys ideas with ease, skill and confidence. Speaks slowly and clearly, pausing appropriately. Controlled use of hand gestures for emphasis. Well-modulated, polished style, maintained throughout question answering. Excellent eye contact with the bench, very little reliance on notes. Appropriately deferential. Observes court room etiquette and formalities.

Written Submissions /14

Poor (7-9)
Submissions poorly set out or grossly inadequate in detail. Citations incorrect or lacking. Spelling or grammatical errors. Does not identify the relief sought.

Good (10-11)
Submissions clearly set out and comprehensive although level of detail may be inappropriate or may vary overly between submissions. Logical reasoning evident in progression of submissions. Reflects general argument of oral submissions. Identified generally the relief sought. May contain one or two errors in spelling, grammar or citations.

Excellent (12-14)
Submissions concisely and fluently expressed, clearly set out with consistently appropriate detail and supporting pinpoint citations. Consistent with oral submissions. Identifies the specific and appropriate relief sought. Free from errors.



client interviewing

TOTAL SCORE /100

Working Atmosphere: Established effective relationship with the client?

1	2	3	4	5	6	7	8	9	10
very poor		poor		somewhat effective		effective		very effective	

Description of the Problem: Learned how client views his or her situation and problems

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent	

Client's Goals and Expectations: Learned the client's initial goals and expectations?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent	

Problem Analysis: Analysed the Client's problems?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent	

Moral and Ethical Issues: Recognised and dealt with moral and ethical issues?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent	

Alternative Courses of Action: Developed alternative solutions?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent and creative	

Client's Informed Choice: Assisted client in understanding and making informed choices among possible courses of action?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent	

Effective Conclusion: Effectively concluded the interview?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent	

Teamwork: Worked together as a team? Balance of participation?

1	2	3	4	5	6	7	8	9	10
very ineffective		ineffective		somewhat effective		effective		excellent	

Post-Interview Reflection: Identified strengths and weaknesses? Learned from their experience?

1	2	3	4	5	6	7	8	9	10
very poorly		poorly		identified and learned somewhat		identified and learned		identified and learned well	

negotiations

TOTAL SCORE /100

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

1	2	3	4	5	6	7	8	9	10
very unprepared		somewhat unprepared		somewhat prepared		prepared		very prepared	

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

1	2	3	4	5	6	7	8	9	10
very inflexible		somewhat inflexible		somewhat flexible		flexible		very flexible	

Session Outcome: To what extent did the outcome of the session serve the client's goals, regardless of whether agreement was reached?

1	2	3	4	5	6	7	8	9	10
very poorly served		poorly served		somewhat served		served		fully served	

Relationship Between Teams: How did the team manage the relationship with the other team? Did it contribute to or detract from achieving the client's best interests?

1	2	3	4	5	6	7	8	9	10
strongly detracted		detracted		somewhat contributed		contributed		contributed strongly	

Exploration Of Interests: How well did the team identify the key interests in the negotiation? Did they demonstrate sophistication in the analysis of the interests?

1	2	3	4	5	6	7	8	9	10
very poorly identified		poorly identified		somewhat identified		identified		identified with sophistication	

Creativity Of Options: How well did the team demonstrate initiative, creativity and problem solving in their analysis of the interests?

1	2	3	4	5	6	7	8	9	10
very poor		poor		average		good		excellent and creative	

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

1	2	3	4	5	6	7	8	9	10
very ineffective		ineffective		somewhat effective		effective		excellent	

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

1	2	3	4	5	6	7	8	9	10
strongly violated*		violated*		violated some*		observed		strongly observed	

*Is the violation so severe that further action should be taken? Please indicate in comments.

Communication: Did the team articulate their position clearly and eloquently? How well did they elicit information where appropriate?

1	2	3	4	5	6	7	8	9	10
very poorly		poorly		somewhat effective		effective, elicited information		very effectively, cleverly elicited	

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

1	2	3	4	5	6	7	8	9	10
very poorly		poorly		identified and learned somewhat		identified and learned		identified well and learned well	

witness examination

TOTAL SCORE /100

Opening Address /10

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

Examination-in-chief /25

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

Cross Examination /25

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

Closing Address /10

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

Manners & Expressions /20

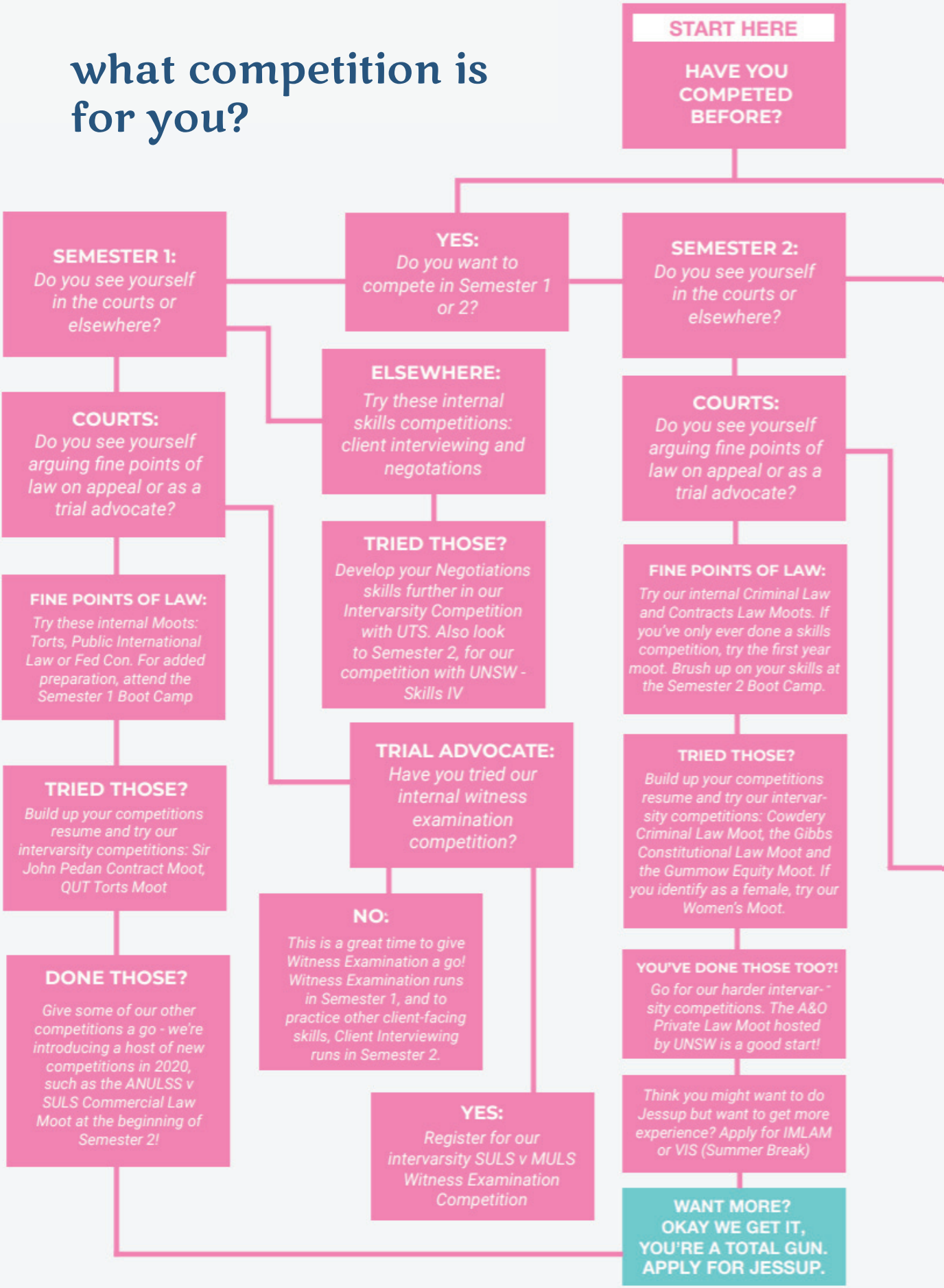
Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; outlines case theory; paints a picture of the fact scenario.

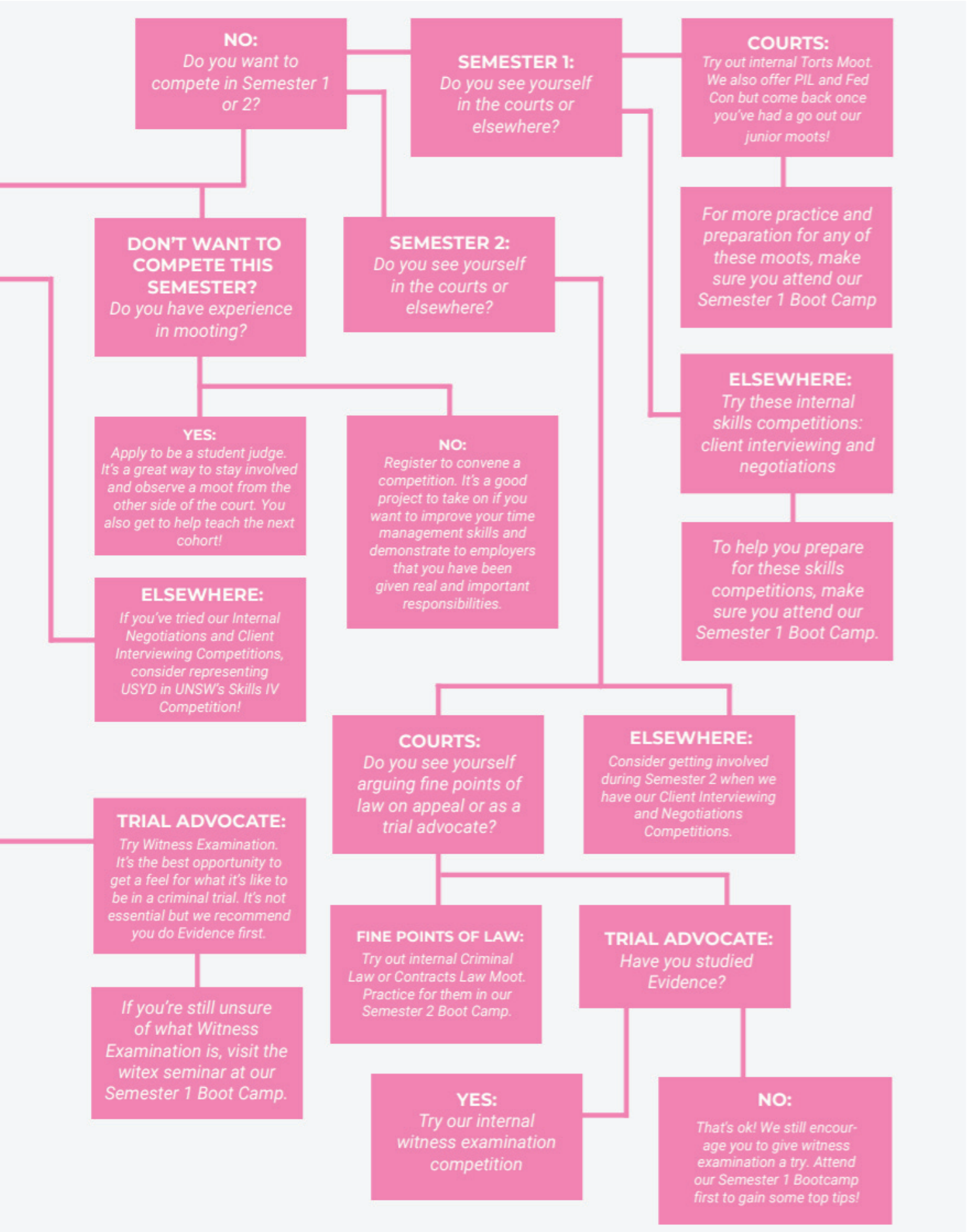
Case Theory /10

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

APPENDIX

what competition is for you?




NO:
Do you want to compete in Semester 1 or 2?
SEMESTER 1:
Do you see yourself in the courts or elsewhere?
COURTS:
Try out internal Torts Moot. We also offer PIL and Fed Con but come back once you've had a go out our junior moots!
For more practice and preparation for any of these moots, make sure you attend our Semester 1 Boot Camp
DON'T WANT TO COMPETE THIS SEMESTER?
Do you have experience in mooting?
SEMESTER 2:
Do you see yourself in the courts or elsewhere?
ELSEWHERE:
Try these internal skills competitions: client interviewing and negotiations
To help you prepare for these skills competitions, make sure you attend our Semester 1 Boot Camp.
YES:
Apply to be a student judge. It's a great way to stay involved and observe a moot from the other side of the court. You also get to help teach the next cohort!
NO:
Register to convene a competition. It's a good project to take on if you want to improve your time management skills and demonstrate to employers that you have been given real and important responsibilities.
ELSEWHERE:
If you've tried our Internal Negotiations and Client Interviewing Competitions, consider representing USYD in UNSW's Skills IV Competition!
COURTS:
Do you see yourself arguing fine points of law on appeal or as a trial advocate?
ELSEWHERE:
Consider getting involved during Semester 2 when we have our Client Interviewing and Negotiations Competitions.
TRIAL ADVOCATE:
Try Witness Examination. It's the best opportunity to get a feel for what it's like to be in a criminal trial. It's not essential but we recommend you do Evidence first.
FINE POINTS OF LAW:
Try out internal Criminal Law or Contracts Law Moot. Practice for them in our Semester 2 Boot Camp.
TRIAL ADVOCATE:
Have you studied Evidence?
If you're still unsure of what Witness Examination is, visit the witex seminar at our Semester 1 Boot Camp.
YES:
Try our internal witness examination competition
NO:
That's ok! We still encourage you to give witness examination a try. Attend our Semester 1 Bootcamp first to gain some top tips!

NEW SOUTH WALES SUPREME COURT OF APPEAL (Moot Division)

BETWEEN

Edward Smith
First Appellant
Dale Flannery
Third Respondent

AND

Roger McNamara
First Respondent/Second Appellant
State of New South Wales
Second Respondent/Third Appellant

OUTLINE OF SUBMISSIONS OF THE SENIOR RESPONDENT
Represented by Ms Juliette van Ratingen

Submission 1: The Honourable Justice Stern was correct in finding that Mr McNamara's words did not amount to assault, as the necessary elements were not made out: *ACN (formerly Connex Trains Melbourne) v Chetcuti* (2008) 21 VR 559, 565.

1.1. Given the colloquial usage of similar phrases, Mr McNamara's words could not hold any subjective intention to create an apprehension of a threat in Mr Smith's mind: *Rixon v Star City Pty Ltd* (2001) 53 NSWLR 98 114, 115.

1.1.1. The syntax of the words indicate that Mr McNamara was vocalising a conditional threat, which could not be carried through, thus there would not be any reason to apprehend unlawful violence or harm: *Tuberville v Savage* (1669) 86 ER 684; *Police v Greaves* [1964] NZLR 295, 298.

1.1.2. Even when not a conditional threat, an appreciation of Justice Stern's further understanding of the facts draws a conclusion that there was no intention to create apprehension within Mr Smith's mind, nor would it be an objective apprehension: *Fox v Percy* (2003) 214 CLR 118, 125-127.

1.2. Mr McNamara's words could not be expected to objectively cause an apprehension of harm or violence in Mr Smith's mind.

1.2.1. The objective element requires there to be an assessment through the information available to Mr Smith at the time, as such, there was no credible ability for Mr McNamara to cause harm, given his gun was not present: *Rixon v Star City Pty Ltd* (2001) 53 NSWLR 98, 114.

1.2.2. Mr Smith's actions were inconsistent with there being a threat, as he moved forward after the threat was given. Although fear is an unnecessary element to assault, it can indicate whether there would be a reasonable apprehension given the context: *Ryan v Kuhl* [1979] VR 315 (31 October 1979).

1.3. Even where an assault had been made out, the language used was reasonably necessary given the circumstances: *In Re F* [1990] 2 AC 1, 55.

1.3.1. Mr McNamara and Mr Smith had encountered each other several times and would be aware of the language necessary in their relationship to convey meaning. The combined context and necessity of language provide a reasonable defence to assault.

Submission 2: The Honourable Trial Judge erred in finding that a negligent assault had occurred.

2.1. The tort of negligent assault cannot be considered possible under Australian law, as the requirement of foreseeable harm is irrelevant in assault: *Croucher v Cachia* (2016) 95 NSWLR 117, 135 ('*Croucher*')

2.1.1. The judgment in *Croucher* should be construed narrowly, and only applicable to battery, where the safety of the plaintiff can be recklessly disregarded.

2.2. Even where a negligent assault can exist under Australian law, Mr McNamara's actions cannot fulfil the necessary elements required to satisfy this tort.

2.2.1. Fundamentally, the Honourable Justice Stern erred in stating that a negligent assault is actionable per se. Damage is the gist of the action in negligent torts and must be satisfied to establish such a tort: *Harriton v Stephens* (2006) 226 CLR 52, 126.

2.2.2. It is unreasonable for one to apprehend imminent violence or harm after merely witnessing a sheathed gun. Coupled with the fact that Mr McNamara was not aware of him, and directed elsewhere, no case for an objective apprehension can be made out.

2.2.3. Furthermore, it would be unreasonable to hold Mr McNamara as to being negligent if he did not consider the safety of Mr Flannery, as this duty does not capture a class of persons: in *Hill v Chief Constable of Yorkshire* [1989] AC 53, 62.

2.3. In order for Mr McNamara to be liable for his actions, he must be found to have fault. However, it cannot be said that he was negligent or intentional with inflicting assault onto Mr Flannery: *Croucher,* 123 (Leeming JA).

2.3.1. It is reasonably expected for a detective to carry a firearm in NSW, however, it is not reasonable to suspect one considers that to invoke an apprehension of imminent harm: *ACN (formerly Connex Trains Melbourne) v Chetcuti* (2008) 21 VR 559, 565.

2.3.2. Had Mr Flannery not been present, there would not have been an assault, as Mr McNamara was bound to carry a firearm: *Holmes v Mather* (1875) LR 10 Ex 261, 268 per Bramwell B.

Relief sought: Appeal dismissed, cross-appeal upheld. Costs awarded accordingly.

thank you to all our competition sponsors

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KING&WOOD MALLESONS

HERBERT SMITH FREEHILLS

CORRS CHAMBERS WESTGARTH lawyers

STREETON LAWYERS

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