



**ANU** LAW  
STUDENTS'  
SOCIETY

# **Mooting Competition Rules 2010**

## **TEAMS**

- 1.1 Each team may consist of either 2 or 3 members. A team of 3 members is highly recommended.
  - 1.1.1 In a team of three members there are two counsel and one solicitor. Team members may rotate positions between senior counsel, junior counsel and solicitor.
  - 1.1.2 In a team of two members there are two counsel. Team members may rotate positions between senior counsel and junior counsel.
- 1.2 All team members must be enrolled in a law degree at the Australian National University.
- 1.3 Team members must not have completed a law degree or equivalent qualification in any jurisdiction.
- 1.4 Teams must register by the registration date as set by the competition convenor.
- 1.5 The order of competition will be set randomly by the competition convenor.

## **2. COMPETITION STRUCTURE**

- 2.1 The competition consists of preliminary rounds, semi finals and a grand final.
- 2.2 Preliminary Rounds:
  - 2.2.1 In the event that an even number of competitors enter the competition, all competitors will compete in all preliminary rounds.
  - 2.2.2 In the event that an odd number of competitors enter the competition, one bye per round will be declared. The bye will be allocated *randomly*. A competitor with a bye will be awarded the average mark scored by that competitor in all other rounds of the competition.
  - 2.2.3 Preliminary round pairings will be determined randomly.
  - 2.2.4 Where possible, competitors will not be paired against the same opponent in more than one preliminary round.
- 2.3 Finals Procedures:
  - 2.3.1 Semi-finalists will be announced after the conclusion of the preliminary rounds.
  - 2.3.2 Semi-finalist pairings will be determined randomly.

2.3.3 The winning team from each semi final will proceed to the grand final.

#### 2.4 Finals Procedures

2.4.1 The teams proceeding to the semi-finals will be announced after the conclusion of the preliminary rounds.

2.4.2 Teams will be allocated to sides by random draw.

2.4.3 The winning team from each semi final proceeds to the grand final.

2.4.4 The grand-finalists will be allocated to appellant or respondent positions by random draw.

### 3. RELEASE OF QUESTIONS

#### 3.1 Release of Preliminary Round Questions

3.1.1 Each preliminary round has a separate question.

3.1.2 Questions for the preliminary rounds are released 1 week in advance, by email.

#### 3.2 Release of finals questions

3.2.1 Semi and grand finalists are notified as soon as results are available from the previous rounds.

3.2.2 The questions for the final rounds will be released after the conclusion of the preliminary rounds.

3.2.3 The question for the grand final will be released a week in advance.

#### 3.3 The questions may be based on any of the following areas of law:

3.3.1 Administrative law;

3.3.2 Commercial law;

3.3.3 Commonwealth Constitutional law;

3.3.4 Contract law;

3.3.5 Corporations law;

3.3.6 Criminal law;

3.3.7 Equity;

3.3.8 International Law;

3.3.9 Property/Land law (Common Law land and Torrens land);

3.3.10 Tort law; and

3.3.11 The Trade Practices Act

### 4. PREPARATION AND RESEARCH

4.1 All research and preparation for the moots will be conducted solely by the team members.

4.2 The Director of Competitions may disqualify from the competition any team receiving outside assistance.

- 4.2.1 The decision of the Director of Competitions may be appealed to the LSS President.
- 4.2.2 The decision of the LSS President will be final.
- 4.3 Unless otherwise stated, all moots will be heard as if before the Supreme Court of the ACT. The jurisdiction to hear the case will be assumed.
  - 4.3.1 Procedural submissions must not be made during the moot.
- 4.4 Lists of materials may be issued in any of the rounds and are intended as a guide only. Mooters may use additional cases at their discretion.
- 4.5 Unless legislation is referred to in the moot problem, it should not be used as authority in the moot. Your primary authorities will therefore be cases.
  - 4.5.1 It is useful to keep in mind the hierarchy of courts and the difference between binding and persuasive authority.

## 5. JUDGING

- 5.1 Number of Judges
  - 5.1.1 The preliminary rounds are heard by one judge.
  - 5.1.2 The semi-finals may be heard by one or three judges, depending on availability.
  - 5.1.3 The grand final may be heard by one, three or five judges, depending on availability.
- 5.2 Qualification and Selection of Judges
  - 5.2.1 Judges will be judges, magistrates, legal practitioners, legal academics, students with a demonstrated experience in mooting or others with a demonstrated experience in judging mooting competitions.
- 5.3 A marking schedule will be provided to all judges in marking individual competitors. Teams are strongly advised to have regard to it in preparation of the moots.
- 5.5 Each judge will award each team a mark out of 100. These marks will be allocated as follows:
 

Organisation of Presentation	10 Marks
Written Submissions	10 Marks
Development of Argument	25 Marks
Responses to questions	
from the Bench	30 Marks
Speaking ability and delivery	25 Marks
<b>Total 100 Marks</b>	
- 5.6 Judges must award each team with a different total score; no draws are possible.

- 5.6 Return & Revelation of Scores
- 5.6.1 Each team's score will be submitted to the Director of Competitions or the Mooting Competition co-ordinator or a person nominated by them.
- 5.6.2 At the conclusion of the competition the Director of Competition or chosen representative will release a ranking of all teams in the competition.
- 5.7 Determining the winner where multiple judges
- 5.7.1 If there is a plurality of judges judging the round, the winning team is the team which was the superior team in the opinion of the majority of judges, irrespective of the result derived from the aggregate of the teams' scores.

Example

	Team A score	Team B score	Winner in judge's opinion
Judge 1	50	48	Team A
Judge 2	50	48	Team A
Judge 3	45	50	Team B
<b>TOTAL</b>	<b>145</b>	<b>146</b>	<b>Team A</b>

The winner of the example round is Team A.

## 6. PENALTIES

- 6.1 The following penalties apply:
- 6.1.1 Continuation of oral submissions beyond the time limit without the Bench's express permission: 1 mark for every minute or part thereof.
- 6.1.2 Late submission of written Memorandum of Argument: 1 mark for every hour late.
- 6.1.3 Failure to remain consistent with the Memorandum of Argument, both in substance and structure, will incur a maximum penalty of ten marks, determined at the discretion of the Bench.
- 6.1.4 Introduction of substantially new material not present in the Memorandum of Argument, excluding material referred to when directly responding to questions from the bench, will incur a maximum penalty of ten marks, determined at the discretion of the Bench.
- 6.1.5 Incomplete or insufficient Memorandum of Arguments will incur a maximum penalty of five marks, determined at the discretion of the Bench.
- 6.1.6 Where a penalty is levied against a team, the penalty will be divided equally amongst counsel for that team.
- 6.2 Judges may have the discretion to dispense with these penalties.

## **7. APPEALS**

- 7.1 Appeals will be addressed by the Director of Competitions.
- 7.2 A decision of the Director of Competitions may be appealed to the LSS President.
  - 7.2.1 A decision of the LSS President will be final.
- 7.3 An appeal must be in writing and must be the unanimous decision of the team.

## **8. WRITTEN SUBMISSIONS**

- 8.1 In each round each team must submit a Memorandum of Argument to the Director of Competitions or their appointee, usually by email.
- 8.2 The Memorandum must be submitted to the Director of Competitions or their appointee 24 hours prior to the commencement of each moot or at any other time specified.
- 8.3 Penalties apply if Memoranda are submitted late or are incomplete or insufficient.
- 8.4 The Memorandum of Argument must contain:
  - 8.4.1 An outline of the structure of the team's submission.
  - 8.4.2 Major arguments to be raised.
  - 8.4.3 Allocations of speaking time.
  - 8.4.4 A list of the authorities on which counsel rely.
- 8.5 Each team must format their Memoranda of Argument in accordance with the standard submission in these rules.

## **9. THE MOOTS**

- 9.1 After a formal introduction to the bench each team will have 30 minutes to present their case.
- 9.2 The time may be divided between senior and junior counsel 20/10 or 15/15. The division of time must be specified in the written submissions.
- 9.3 Penalties apply if counsel exceed their allocated or extended time.
- 9.4 The Bench may grant an extension of time of up to 5 minutes per team.
- 9.5 There will be no right of reply or rebuttal.
- 9.6 Nothing may be handed up to the Bench.

## **10. FORFEITURE**

- 10.1 Any team which forfeits a moot will be deemed to have lost that moot. Counsel for the forfeiting team will be deemed to have a mark of zero for that moot.
- 10.2 Any team whose opponent forfeits a moot will be deemed to have won that moot. Counsel for the winning team will be deemed to have scored in that round the average mark scored by that team in the other rounds in which it competes.

## **11. SELECTION OF SEMI-FINALISTS**

- 11.1 Selection will be determined firstly on win-loss ratio.
- 11.2 If win-loss ratio is the same, then regard may be had to whether the two teams with same ratio have competed directly with one another.
- 11.3 If win-loss ratio is the same, considering whether the two teams have competed directly, the decision shall be determined by the total points accrued by the competing teams.

## **11. COURT ETIQUETTE**

- 11.1 Counsel shall rise when the Bench enters the room.
- 11.2 Counsel shall then be seated after the Bench is seated.
- 11.3 The Bench shall ask for appearances.
- 11.4 Senior Counsel for the appellant shall rise and introduce themselves and their Junior Counsel as follows:
  - 11.4.1 *If it please the Court, my name is Jane Doe and I appear as Senior Counsel for the appellant. My learned colleague, Joe Blow will appear as Junior Counsel.*
- 11.5 Senior Counsel shall then sit down.
- 11.6 The Bench shall motion to Senior Counsel for the respondent to do the same. The Senior Counsel for the respondent shall then resume their seat.
- 11.7 The Bench shall then motion to the Senior Counsel for the appellant to begin their submission. The Senior Counsel for the appellant shall rise and begin their submission as follows:
  - 11.7.1 *If it please the court, I begin my submission ...*

- 11.8 When facing questions from the Bench, Counsel shall show to the court the utmost respect by beginning their responses as follows:  
*11.8.1 With respect Your Honour/Worship ...*
- 11.9 Unless and until the Bench dispenses with citations, Counsel must cite cases in full.  
11.9.1 For example, (1987) 121 CLR 468, shall be referred to as:  
*11.9.1.1 Decided in 1987, volume 121 of the Commonwealth Law Reports at page 468.*
- 11.9.2 Counsel shall refer to civil cases with *and* as in *Donoghue and Stevenson*.  
11.9.3 Counsel shall refer to criminal cases with *against* as in *Roe against Wade*.
- 11.10 Each submission shall conclude as follows:  
*11.10.1 If it please the court and there are no further questions I conclude my submission.*

## **Appendix 1: STANDARD FORM MEMORANDUM OF ARGUMENT AND LIST OF AUTHORITIES**

IN THE FULL COURT OF THE SUPREME COURT OF WESTERN AUSTRALIA

MOOT 1 of 2005

BETWEEN

**PKS DISTRIBUTORS (AUSTRALIA) PTY LTD**

Appellant

and

**LARCH ORIGINAL OCCUPATIONAL TECHNOLOGY LIMITED**

Respondent

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### **APPELLANT'S OUTLINE OF SUBMISSIONS**

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**Speaking Time:** Senior Counsel – 15 minutes, Junior Counsel – 15 minutes

#### **(A) SUMMARY OF THE FACTS**

1. The Respondent manufactured a hand-held computerised diary called the Delphic organiser in the United States and the Appellant began negotiations to distribute the product in Australia and New Zealand.
2. In June 2000 the Respondent represented to the Appellant that “US Manufacture was the “bedrock” of the company’s success with the Delphic organiser” and that the Respondent “happily replaced any defective Delphic organiser returned to it”.
3. In August 2000, the parties concluded an agreement under which the Appellant undertook to distribute the Delphic organiser in Australia and New Zealand.
4. However, in early 2002 the Respondent contracted with a New Zealand company to manufacture the product under license and supply the Appellant a New Zealand made product.
5. The New Zealand product was significantly less reliable than the original product and the Appellant demanded that the Respondent supply only the US-manufactured product and give credit for the organisers returned within warranty.
6. The Respondent subsequently terminated the agreement under Clause 17.
7. The Appellant brought an action in the Supreme Court of Western Australia alleging terms should be implied into the contract, but the action was dismissed by Dunlop J and is now appealed to the Full Court.

#### **(B) APPELLANT'S SUBMISSIONS**

1. Parol evidence of the June 2000 pre-contractual discussions is admissible for the purposes of illuminating the surrounding circumstances of the contract.
2. A term should be implied into the contract that the product supplied under the distribution agreement would be US-manufactured.
3. A term should be implied into the contract that the Appellant could return any product found to be defective within warranty to the Respondent for full credit.

## THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:

### Submission One

1. Parol evidence of the June 2000 pre-contractual discussions is admissible for the purposes of illuminating the surrounding circumstances of the contract.
  - 1.1 Extrinsic evidence of pre-contractual discussions is admissible for the purposes of illuminating the objective background or surrounding circumstances in which the contract came into existence.

*Codelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 at 352 per Mason J.  
*Spunwill Pty Ltd v BAB Pty Ltd* (1994) 36 NSWLR 290 at 299.
  - 1.2 Thus, evidence that the parties have contracted on the basis of a common assumption but have not included a provision to the same effect is admissible.

*Codelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 at 354 per Mason J.
  - 1.3 In the instant case, evidence that the parties contracted on the basis of a common assumption that the product referred to in the agreement was the US-manufactured product is admissible.
  - 1.4 Further, evidence that the parties contracted on the basis of a common assumption that the Respondent would replace defective products within warranty is also admissible.

### Submission Two

2. A term should be implied into the contract that the product supplied under the distribution agreement would be the US-manufactured product.
  - 2.1 The implication of terms *ad hoc* into a written agreement must meet the five requirements laid down in *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266:
    - 2.1.1 It must be reasonable and equitable.
    - 2.1.2 It must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it.
    - 2.1.3 It must be so obvious that it goes without saying.
    - 2.1.4 It must be capable of clear expression.
    - 2.1.5 It must not contradict any express term.

*BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) CLR 266 at 283 per Lord Simon of Glaisdale.

*Codelfa Constructions Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 at 347 per Mason J.
  - 2.2 A term requiring that the product supplied under the distribution agreement be manufactured in the United States meets these requirements.
    - 2.2.1 The term operates reasonably and equitably between the parties as they had entered the contract on the basis that the Appellant would distribute the US-manufactured product.
    - 2.2.2 The term is necessary to make the agreement effective in a business sense and prevent the Respondent from acting to undermine the understanding of the parties by exploiting a gap in the contract.

*Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234 at 257-258 per Priestly JA.

2.2.3 The term is so obvious it goes without saying. Had the “officious bystander” suggested the parties include such a term they would have dismissed it as obvious that the product referred to in the agreement was the US product since this was the only product in existence at that time.

2.2.4 The term is capable of clear expression.

2.2.5 The term does not contradict any express terms in the written agreement, and, in particular, is consistent with Clause 15.

2.3 A term should be implied into the contract that the product supplied under the distribution agreement would be manufactured in the United States.

### **Submission Three**

3. A term should be implied into the contract that the Appellant could return any product found to be defective within warranty to the Respondent for full credit.

3.1 This term must also satisfy the *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266 test for the implication of terms *ad hoc* into a written agreement.

3.2 The purported term meets the five requirements enunciated in *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266.

3.2.1 The term operates reasonably and equitably between the parties as they had entered the contract on the basis that the Respondent took full responsibility for the replacement of defective products.

3.2.2 The term is necessary to make the agreement effective in a business sense.

*Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234 at 257-258 per Priestly JA.

3.2.3 The term is so obvious it goes without saying and it was simply assumed by the parties that the Respondent would replace defective products within warranty.

3.2.4 The term is capable of clear expression.

3.2.5 The term does not contradict any express terms in the written agreement as there is no term in the written agreement that purports to deal with the question.

3.3 Thus, a term should be implied into the contract that defective products found to be defective within warranty could be returned by the Appellant to the Respondent for a full credit.

On the basis of the above submissions, counsel for the Appellant respectfully requests an Order of the Court upholding the first ground of appeal, and reversing the order of the trial judge.

**DATED** this **21<sup>st</sup>** day of **May 2005**

**Senior Counsel and Junior Counsel**  
Counsel for the Appellant

IN THE FULL COURT OF THE SUPREME COURT OF WESTERN AUSTRALIA

MOOT 1 of 2005  
BETWEEN

**PKS DISTRIBUTORS (AUSTRALIA) PTY LTD**

Appellant

and

**LARCH ORIGINAL OCCUPATIONAL TECHNOLOGY LIMITED**

Respondent

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**APPELLANT'S LIST OF AUTHORITIES**

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1. *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266; (1977) 16 ALR 363.
2. *Codelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337; (1982) 41 ALR 367.
3. *Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234; (1992) 9 BCL 40.
4. *Spunwill Pty Ltd v BAB Pty Ltd* (1994) 36 NSWLR 290; (1995) Aust Contract R 90-053.

**Submitted on behalf of Counsel for the Appellant.**

**DATED** this **20<sup>th</sup>** day of **May 2005**

**Senior Counsel and Junior Counsel**  
Counsel for the Appellant

## Appendix 2: MARKING SHEET

Competitor: \_\_\_\_\_ Judge: \_\_\_\_\_ Round: \_\_\_\_\_ Score: \_\_\_\_/100

Content	Overall score range: descriptive criteria (please tick as appropriate)				Comments and Score (additional space over page)
	50-60	61-70	71-85	86-100	
Organisation of presentation	<input type="checkbox"/> insufficient overview of submissions or conclusion <input type="checkbox"/> organisation poor: lacks structure or direction; poor time management	<input type="checkbox"/> adequate overview of submissions and conclusion <input type="checkbox"/> argument may have been better structured; too lengthy or too brief in parts	<input type="checkbox"/> clear focus, concise overview and conclusion <input type="checkbox"/> arguments clearly and logically structured	<input type="checkbox"/> effective overview and conclusion, noting relative significance of arguments <input type="checkbox"/> flexible and engaging	<b>/ 10</b>
Development of argument	<input type="checkbox"/> understanding of legal issues inadequate <input type="checkbox"/> use of authorities inadequate or inappropriate <input type="checkbox"/> fails to address key legal or factual issues	<input type="checkbox"/> good approach but lacks clarity or directness <input type="checkbox"/> addresses all key issues; though some arguments given inappropriate weight <input type="checkbox"/> poor application of law to the facts	<input type="checkbox"/> good understanding of all legal issues; good use of authorities <input type="checkbox"/> effective application of law to the facts <input type="checkbox"/> generally logical and persuasive	<input type="checkbox"/> excellent understanding of legal issues and their interrelationship, policy arguments and authorities <input type="checkbox"/> addresses and rebuts opposing arguments <input type="checkbox"/> logical and persuasive	<b>/ 25</b>
Questions from the bench	<input type="checkbox"/> unprepared for questions reasonably to be expected <input type="checkbox"/> evades answering <input type="checkbox"/> poor composure <input type="checkbox"/> inflexible or concedes too readily	<input type="checkbox"/> fails to perceive the object of questioning <input type="checkbox"/> responses sometime too lengthy or too brief <input type="checkbox"/> responses lack clarity or directness	<input type="checkbox"/> accurately perceives the object of questioning <input type="checkbox"/> responds to questions directly and concisely <input type="checkbox"/> handles irrelevant questions well	<input type="checkbox"/> accurately perceives the object of questioning <input type="checkbox"/> clear responses; engages with the court's views <input type="checkbox"/> effectively integrates responses and argument	<b>/ 30</b>

Speaking ability and delivery	<input type="checkbox"/> lacks proper courtesy <input type="checkbox"/> lacks clarity of language and expression <input type="checkbox"/> fails to observe correct etiquette and terminology <input type="checkbox"/> over-reliance on notes	<input type="checkbox"/> courteous and clear <input type="checkbox"/> lacks variation of tone, pace and expression <input type="checkbox"/> poor eye-contact <input type="checkbox"/> good knowledge of court etiquette and terminology	<input type="checkbox"/> courteous and clear <input type="checkbox"/> good use of language, gesture and expression <input type="checkbox"/> comfortable with interventions <input type="checkbox"/> conveys confidence	<input type="checkbox"/> conveys ideas and deals with interventions with ease, skill and confidence <input type="checkbox"/> engages well with court <input type="checkbox"/> conveys impression of conviction and sincerity	<b>/ 25</b>
Written Submissions	<input type="checkbox"/> written submissions are inadequate or incomplete <input type="checkbox"/> written submissions contain spelling and grammatical errors	<input type="checkbox"/> written submissions lack clarity or directness <input type="checkbox"/> written submissions contain one or two spelling or grammatical errors.	<input type="checkbox"/> written submissions clear, concise and citations correct <input type="checkbox"/> written submissions are free from errors.	<input type="checkbox"/> written submissions clear, concise; citations correct; logical reasoning <input type="checkbox"/> written submissions are free from errors. High standard of expression and flawless grammar.	<b>/ 10</b>