



Alfred Deakin International  
Commercial Arbitration  
Moot 2019  
Competition Rules

# TABLE OF CONTENTS

PART ONE – TEAMS.....	3
1 Team Composition .....	3
2 Number of Teams .....	3
3 Coaching.....	3
PART TWO – WRITTEN SUBMISSIONS.....	4
Part 2 Preamble .....	4
4 Filling of Submissions .....	4
5 Form of Submissions.....	4
6 Requests for Clarification.....	5
PART THREE – ORAL SUBMISSIONS.....	6
7 Rounds .....	6
8 Procedure.....	6
9 Bench Books.....	7
10 Timing.....	7
PART FOUR – JUDGING AND SCORING .....	9
11 Judges.....	9
12 Scoring .....	9
PART FIVE – AWARDS.....	10
13 Best Written Submission.....	10
14 Best Speaker – Preliminary Rounds .....	10
15 Best Speaker – Grand Final .....	10
PART SIX – PENALTIES & APPEALS .....	11
16 Penalties.....	11
17 Appeals.....	11
18 Amendment of Rules .....	12
PART SEVEN – COMPETITION DOCUMENTS .....	12
ANNEXURE A – Score Sheet .....	13
ANNEXURE B – JUDGE’S ADDITIONAL GUIDELINES .....	14
ANNEXURE C – MARKING GUIDELINES .....	15

## PART ONE – TEAMS

### 1 Team Composition

- (1) Each team in the Alfred Deakin International Commercial Arbitration Moot ('the Competition') will be composed of either two or three students – that is, no fewer than two, or no more than three, students. If a team is comprised of three students, only two members may speak in any heat, with the third member acting as instructing solicitor.
- (2) Teams comprised of three students may rotate speaking roles between heats.
- (3) Team members must be currently enrolled as full-time or part-time LLB or JD students at the date of the grand final of the Competition.

### 2 Number of Teams

- (1) Each university may register two teams in the Competition.
- (2) At the sole discretion of the Competition convenors, universities may be permitted to register more than one team.
- (3) At the sole discretion of the Competition convenors, the total number of competing teams may be limited.

### 3 Coaching

- (1) A team may have one coach.
- (2) A coach may provide general advice and feedback regarding advocacy and high-level argument structure, but must not conduct research or devise written or oral arguments, which must be the sole work of the team.
- (3) A person, other than a coach, may not provide any assistance whatsoever to a team before and after the deadline for written submissions.
- (4) Neither coaches nor competitors may view moots other than those in which their team is competing.
  - a. This rule does not apply to the semi-finals if a team is no longer competing in the Competition.
  - b. This rule does not apply to the grand final.

## PART TWO – WRITTEN SUBMISSIONS

### Part 2 Preamble

- A. Teams will prepare written submissions for both the Claimant and the Respondent.
- B. The written submissions will provide an outline of arguments and a list of cases relied upon.
- C. Except where otherwise noted, the law applicable to the problem question is that in force on the day of the moot.
  - I. This is unusual and retrospective in practice. The applicable law is usually that in force at the time of the event or facts. Here we may include a further clause:
  - II. Should the law alter between the date of the written submissions, and the date of the moot, teams must notify the Competition convenor by email detailing the nature and effect of the changes.
  - III. The Competition convenor will at their absolute discretion determine what course of action will be taken including whether:
    - a. amended submissions will be required, and, if so, whether extensions of time will be granted
    - b. to proceed as if the law had not altered
    - c. to proceed on any other basis or at all
- D. Teams shall be provided their opposition's, to the aforementioned brief, written outline prior to their heats via email.

### 4 Filing of Submissions

- (1) Written submissions are to be filed electronically by attaching the documents in PDF format to an email to [deakin-ica-moot@deakin.edu.au](mailto:deakin-ica-moot@deakin.edu.au)
- (2) The deadline for receipt of written submissions for both the Claimant and the Respondent is:
  - a. Monday, 26 August 2018, at 6PM AEST.
  - b. An acknowledgement of receipt will be sent to teams as soon as possible after receipt.

### 5 Form of Submissions

- (1) Written submissions must be clearly labelled with the team's number (as assigned by the Competition convenors) but must not contain the name of the university

that the team is representing, or the names of the team members.

- (2) The written submissions for the claimant and the respondent must each be a maximum of two A4 pages (excluding bibliography). The submissions must be typed in no less than 11 pt Times New Roman, with line spacing of no less than 1.5 lines and with margins of no less than 2cm. Footnotes must be typed in no less than 10 pt Times New roman, and may be single spaced.
- (3) Full citations (in conformity with the 3rd edition of the Australian Guide to Legal Citation) must be given in footnotes. For the avoidance of doubt, teams may refer to legislation.
- (4) Teams may include a cover page with their written submissions. A cover page will not count towards the two-page limit if it includes only text that serves to identify the submissions (such as the team number, and a “Claimant” or “Respondent” title).

## 6 Requests for Clarification

Teams may submit requests for clarification to the Competition convenors within 7 days after the release of the question. No guarantee is made that such requests will be responded to, but any responses will be communicated to all teams.

## PART THREE – ORAL SUBMISSIONS

### 7 Rounds

- (1) There will be two preliminary rounds that shall determine the composition of the semi- finals. The draw shall allow for each team to moot for both sides of the argument at least once and an equal number of times (to the extent that is reasonably possible).
- (2) Teams must avoid revealing their university to judges during the rounds. A breach of this rule, however, shall not constitute a ground of appeal.
- (3) If a team consists of three members, one team member only may act as ‘solicitor’ during each moot. The two counsel and the solicitor may communicate with one another during the moot. No use of electronic communication is permitted between the counsel or the solicitor, or any other persons during the moot.
- (4) Teams are not bound by the arguments in their written submissions when making oral submissions.
- (5) The tribunal shall base its determination on the presentation at the arbitration.
- (6) The format of the Competition is arbitration. The speakers therefore shall be seated in all circumstances and refer to a tribunal member as Mr/Ms Arbitrator and collectively as Members of the Tribunal.
- (7) The claimant shall be seated on the right hand side from the tribunal’s perspective.

### 8 Procedure

- (1) Teams will receive the written submissions of their opponents by email in advance of the moot:
  - a. For the preliminary rounds: By 5PM Tuesday 27 August 2018.
  - b. For the semi-finals: By 1.30 PM on the day of the semi-final rounda.
  - c. For the grand final, by 5.00 pm on the day of the grand final.
- (2) For the purposes of Rule 8(1), should a team wish to amend their submissions, it shall be filled in the same manner in Rule 4(1).
- (3) The email by which opponent’s written submissions were sent shall be proof of receipt and of the date of receipt and notice of those submissions.
- (4) In each moot, each team’s oral submissions will be presented by two counsels. The order of speaking will be decided by the consents of both teams, or in the absence of such consents, the judges. Generally, the team who submitted a claim or claims should speak first, followed by the team who responds to the claim(s).
  - a. Appearances by: each senior counsel
  - b. Submission delivered by: Senior counsel for the claimant

- c. Submission delivered by: Junior counsel for the claimant
  - d. Submission delivered by: Senior counsel for the respondent
  - e. Submission delivered by: Junior counsel for the respondent
  - f. Rebuttal delivered by: either counsel for the claimant)
  - g. Sur-rebuttal delivered by: either counsel for the respondent)
- (5) For the purposes of Rule 8(4), teams are not in breach of any rules if the speaking order is not strictly followed.
- (6) The team who submitted a claim may decline to present a rebuttal, and the team responding to a claim may decline to present a sur-rebuttal. If no rebuttal is presented, no sur-rebuttal may be presented. No new arguments may be presented in the rebuttal or sur-rebuttal unless in reply to an argument raised in the respondent's submissions or in the claimant's rebuttal, respectively.
- (7) The presentation of a summary of the facts in oral submission is not compulsory and whether or not a summary of facts is provided in oral submissions is a matter for competitors and judges.

## 9 Bench Books

- (1) A team is permitted to use 'bench books' or 'bundles of authority':
- a. Relevant sections of cases are preferred to whole cases.
  - b. Teams must place the bench books on the bench before the commencement of the moot. If this is not done, at the conclusion of both teams' appearances, competitors must request permission from the judges to hand up their bench books. Competitors may only hand them up if permission is granted.
  - c. Teams using bench books must provide at least two copies of the bench book to the bench.
  - d. It is recommended, but not necessary, that teams provide their opponents with a copy of their bench book
  - e. Judges shall not penalise or disadvantage a team that does not use bench books.

## 10 Timing

- (1) Each team will have 30 minutes to make submissions, to be allocated between the two speakers as they see fit. Rebuttal and sur-rebuttal should be included within the 30 minutes for each team. However, each speaker must speak for a minimum of 10 minutes.
- (2) When giving appearances, each senior counsel should state the name of that team's speakers, the division of appeal points, the division of time for principal submissions and the reservation of time (if any) for rebuttal or sur-rebuttal.
- (3) Judges are to extend time if they ask questions. More questions should result in

more leniency with time.

- (4) Judges, at their discretion, may grant an extension of time of up to two minutes to each speaker. As far as possible, judges will seek to ensure that any extensions are granted equally between the teams.



## PART FOUR – JUDGING AND SCORING

### 11 Judges

- (1) For the purposes of these Rules, anything that which is not considered by these rules, the:
  - a. judges shall have full discretion if it is in relation to a moot round;
  - b. Competition convenors shall have full discretion.
- (2) All moots will be judged by at least two judges. The semi-finals and grand final will be judged by at least three judges
- (3) Moot judges will be any one or more of:
  - a. Judges currently serving of an Australian Court
  - b. Retired judges of an Australian Court
  - c. Barristers or solicitors, or other legal practitioners
  - d. Legal academics
  - e. Other law graduates with significant experience in judging mooting competitions

### 12 Scoring

The guidelines for scoring shall be found in **Annexure C**.



## PART FIVE – AWARDS

Aside from the awards for the Competition Winners, there shall be the following awards:

### 13 Best Written Submission

- (1) There will be an award for the best claimant and best respondent written submissions.
- (2) These awards will be based on the Raw Scores for the written submissions, judged prior to the commencement of the oral rounds.

### 14 Best Speaker – Preliminary Rounds

- (1) There will be an award for the best speaker in the preliminary rounds.
- (2) Candidates for this award must have acted as counsel at least twice in the preliminary rounds.
- (3) The award will be given to the competitor with the highest number of 1st place speaker rankings (see marking guidelines) from each round.
- (4) If two or more speakers receive the equal highest number of 1st place rankings, the award will be given to the competition with the highest average speaker score for their best two moots.
- (5) In the result of an unresolvable tie, two or more competitors will share the prize.
- (6) At the discretion of the Competition convenors, an award of runner-up may be given.

### 15 Best Speaker – Grand Final

- (1) There will be an award for the best speaker in the grand final, as judged by the grand final judges.
- (2) In the event of a tie, the competitor with the highest average score for all their rounds shall receive the award.

## PART SIX – PENALTIES & APPEALS

### 16 Penalties

- (1) Written submissions for the preliminary rounds that are submitted up to 6 hours late will incur a 5% reduction in their Written Submissions Raw Score.
- (2) Written submissions for the preliminary rounds that are submitted between 6 and 24 hours late will incur a 10% reduction in their Written Submissions Raw Score.
- (3) Written submissions for the preliminary rounds that are submitted over 24 hours late will incur at least a 10% reduction in their Written Submissions Raw Score and may receive a greater reduction as deemed appropriate by the Competition convenors in either Written Submission Raw Score, or Oral Submission scores.
- (4) Written submissions that contain a reference to the name of the university that the team is representing or the names of any competitors who form part of the team will incur a 5% reduction in their Written Submissions Raw Score.
- (5) For each heat, each of the semi-finals and the Grand Final, a team member shall arrive and be ready to compete at the scheduled time for that round.
- (6) A team member arriving late shall forfeit their seat at the table and be precluded:
  - a. If counsel, from making oral submissions or responding to questions
  - b. If an instructing solicitor, from any form of participation.

If a team has an insufficient number of counsels due to the operation of this provision in a hearing, it shall be decided as losing the hearing unless otherwise decided by the convenors.

- (7) Illness: in the case of illness supported by evidence or by an undertaking to supply evidence and communicated to the Competition convenor as soon as possible prior to the heat, semi-final or Grand Final, teams may substitute another person for the sick team member, and, with leave of the judging panel, reorganise roles within the team.

### 17 Appeals

- (1) Competitors may inform the Competition convenors of any suspected breaches of these rules.
- (2) The Competition convenors may, after investigating the matter and allowing the team complained about to offer an explanation, apply a penalty in the form of a reduction in Raw Scores for a breach of these rules, or, where the breach is sufficiently serious, disqualification, at their discretion.
- (3) Competition convenors may suo moto notice, act upon and determine breaches of the competition rules.
- (4) Judges may refer suspected breaches of the competition rules to the Competition convenors.

- (5) At the discretion of the Competition convenors, a breach of these rules may be classified as de minimis and thus not attract a penalty.
- (6) Any dispute in relation to a breach or alleged breach of these rules will be finally and conclusively resolved by the Competition convenors, at their discretion, acting unanimously. All disputes should be described in detail by the teams raising the dispute and emailed to the convenors at [deakin-ica-moot@deakin.edu.au](mailto:deakin-ica-moot@deakin.edu.au)

### 18 Amendment of Rules

- (1) The Competition convenors may amend these rules unilaterally at any point before the commencement of the Competition.
- (2) Amended rules will be communicated to the teams.

## PART SEVEN – COMPETITION DOCUMENTS

All Competition documents received by competitors, including the problem question, must not be distributed, reused or adapted after the competition. The copyright in the problem question remains with its authors. The copyright in all other documents is in the Deakin Law School.

## ANNEXURE A – Score Sheet

Each judge is expected to make an individual decision as to the score to be awarded. Nevertheless, a widely divergent score, whether higher or lower than the others, raises questions as to the criteria used by the judge in question. As such judges are encouraged to confer with a view to having scores that are within the same band (50 – 59 = needs improvement); (60 -74 = good); (75 - 90 = very good); (91 - 100 = excellent) or otherwise generally within 10 marks.

Five marks may be awarded for teamwork in each heat, with all five points adding onto the total score for the team that, in the heat, has shown more teamwork.

Team No. (      ) Claimant/Respondent

<u>Element</u>	<u>Counsel 1 Score</u>	<u>Counsel 2 Score</u>
Clarity of the structure of presentation and adherence to time. (25)		
Speaking abilities (variation of tone, pauses etc); Advocacy and persuasion abilities, adherence formal professional etiquette (25)		
 Use of facts and depth of legal argument (25)		
Capacity to answer questions / rebut or pre-empt the other side's arguments (25)		
Total mark		

Counsel 1	Counsel 2	Teamwork	Total Team Mark
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## ANNEXURE B – JUDGE’S ADDITIONAL GUIDELINES

- (1) The format of the competition is arbitration. The speakers therefore shall be seated in all circumstances and refer to a tribunal member as Mr/Ms Arbitrator and collectively as Members of the Tribunal.
  - a. The claimant shall be seated on the right hand side from the tribunal’s perspective.
- (2) A team may consist of either 2 or 3 members. Only 2 members may speak in a heat, with the third member acting as instructing solicitor.
- (3) A team will have 30 minutes to make submissions, and the time is to be allocated between the two speakers as the team sees fit, including the time reserved for rebuttal or sur-rebuttal. However, each speaker must speak for a minimum of 10 minutes.
- (4) Time limits should be adhered to; however, the judges are to extend time if they ask questions. The more questions, the more time leniency should be given, and less, if any penalty should be given for overtime in this circumstance.
- (5) Teams have been allocated a team number. Participants are not to reveal which University they are from, and judges are not to ask which University a team is representing.
- (6) Teams have drafted written outlines of arguments and a list of cases which they are relying upon. These outlines have been provided to other teams and to judges. This outline IS NOT to be marked for the purposes of Oral Submissions.
- (7) No draws are to be awarded, there must always be one team that wins.
- (8) For the purpose of the preliminary rounds, judges are not to reveal which team has won their heat. Judges may reveal which team has won for Semi-Finals.
- (9) Judges may give feedback at the end of the heat, so long as it does not indicate which team had won that heat.
- (10) For the purpose of this competition, anything that which is not considered by these rules, the judges shall have full discretion in relation to a moot round.

## ANNEXURE C – MARKING GUIDELINES

### **Organization and Preparation**

Considerations to include (without restriction): Does counsel:

- introduce himself or herself and co-counsel,
- state whom he or she is representing,
- introduce the issues and relevant facts clearly,
- have a strong opening,
- present the arguments in an effective sequence, and
- present a persuasive and generalized

conclusion? Is counsel:

- clearly prepared and familiar with the authorities on which his or her arguments

rely? If rebuttal is used,

- is it used effectively?

### **Knowledge of the facts and the law**

Does counsel:

- know the facts and the relevant law thoroughly? Is counsel
- able to relate the facts to the law so as to make a strong case for his or her client?

## **Presentation**

Is counsel's presentation:

- appropriately paced, free of poor mannerisms and,
- loud enough?

Does counsel:

- use inflection to avoid monotone delivery,
- make eye contact with the arbitrators and



balance due deference with a forceful and professional

argument? Is counsel

- poised and tactful under

pressure? Most importantly, is counsel's

presentation

- convincing and persuasive, regardless of the merits of the case?

## **Handling Questions**

Does counsel:

- answer questions directly
- use the opportunity to turn the question to his or her client's advantage?