

AULSS

COMPETITIONS HANDBOOK

3RD EDITION



The Adelaide University Law Students' Society ('AULSS') acknowledge the Traditional Owners of the land on which our organisation is located and where we conduct our business as the land of the Kurna people. We recognise their continued connection to land, water and culture and our pay respects to Elders, past and present and emerging.



ACKNOWLEDGEMENTS

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Sources

- The Australian Law Students' Association Competition Bank
- Monash University Resources for Legal Research and Writing
- Queensland University of Technology Mooting Manual
- Macquarie University Law Society Mooting Manual-
- University of Adelaide Law Library Staff-
- Bond University YouTube Mooting Videos

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WELCOME

Hello and welcome to the third edition of the AULSS Competitions Handbook! Each year the AULSS runs a variety of legal competitions that give students an opportunity to gain practical skills in a fun and competitive environment.

Generally, in Semester 1 the AULSS Competitions Team runs the Open Moot, Witness Examination, Negotiations and Client Interview Competitions. In Semester 2 the First Year Moot and Novice Moot are also run.

The winning team or individual in each of the Semester 1 Competitions has the opportunity to represent the University of Adelaide at the Australian Law Students' Association Conference ("ALSA") in July.

These students compete against students from other Australian universities and the winning teams at ALSA are often afforded the opportunity to compete at an international level.

Even if your career plans do not involve advocacy in a formal setting, participation in competitions develops **key skills** such as:

- targeted legal research
- framing of legal arguments with precision and clarity
- oral communication skills

These skills are all transferable to your studies and even future careers.

Competitions are a great way to gain legal research, writing and advocacy skills outside of the classroom

If you would like to be involved in our competitions but you are still unsure of your skill level, there are opportunities to volunteer be a client, a witness or a bailiff/time keeper in one of the competitions. This is a fantastic way to gain experience by observing other competitors.

We hope that this handbook gives you a guide to what competitions you might want to compete in and how to prepare for them.

If you have any questions, please get in touch with the Competitions Director or one of the Competitions Representatives. <https://www.aulss.org/who-we-are/meet-the-team/>

*Please note the running of any competition is at the discretion of the Competitions Director and extenuating circumstances may alter what competitions the AULSS offers each semester

FAQ

Do I need to find myself a team?

You can register individually or with a team. If you do not register with a team, our team will place you with another competitor.

What do I wear?

Neat business attire is expected to be worn and is a must for Grand Final rounds.

How much time do I need to dedicate to a competition?

Each competition requires different levels of preparation and this should be considered before registering your interest to compete. See the below guides to determine how much preparation you will need.

How do I prepare for a competition?

Each competition requires a different type of preparation. See the guides below for more information. Generally, ensure you have read all correspondence from the Competition Coordinator, meet with your team before the night and practise!

What happens on the night?

Again each competition works a little differently. Once you have met with your team you should sign in and see the Competition Coordinator who will be able to direct you further, alert you if there are any issues or address any concerns you may have. Please attempt to arrive at least 10 minutes early to ensure the smooth and efficient running of our competitions.

Who will judge me?

The AULSS reaches out to past students, members of the profession and even current and former Judges to help us judge our competitions. All of our judges are highly qualified; however, as a general rule the more advanced the competition round, the more esteemed the judge.

What if I have a problem or cannot make a round night?

If any problems arise or you cannot make a round night, contact your Competition Coordinator as soon as possible. If you are uncomfortable contacting your Coordinator, you can also get in touch with the Competitions Director.

RESEARCHING FOR COMPS

Different competitions will require different research and different sources, here is a quick guide of the types of sources available and how to use them

Primary Sources

Legislation:

If your case involves the interpretation of legislation then the first place to start is the source itself. Your statutory interpretation skills may come in handy here.

Make you you are reading the most recent copy of a piece of legislation ("in force").

Most useful for: Mooting, Witness Examination

Case Law

Case law is perfect for drawing analogies or distinguishing cases. Remember cases in higher courts in the same hierarchy are binding precedent. The decisions of intermediate appellate courts in different states, are highly persuasive and should only be departed from if plainly wrong.

Most useful for: Mooting, Witness Examination

Secondary Sources

Note that secondary sources are not binding and carrying little weight in legal arguments except for exceptional circumstances.

Textbooks:

For general background level research, as a starting point to more nitty gritty arguments or to have a holistic understanding of a core topic, textbooks are a great starting point. Check out the Course Guides for a relevant subject and they should be able to point you in the right direction.

Most useful for: Client Interview, Negotiations

Journal Articles

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

They may also provide alternative interpretations than what was decided, which may help you make your case.

Useful for: Mooting, Witness Examination

MOOTING

THE BASICS

Year Level Recommendation: 1 - 5 (see across for more information about the different competitions)

Preparation time: Substantial

Teams: 2 - 3 people (see across)

Key Skills:

- legal research
- legal writing
- oral advocacy skills.

The AULSS moot questions involve appealing the decisions of a lower court. You are presented with the agreed facts of a case and the grounds of appeal. You must use your knowledge, creativity and research to put a compelling case in front of a judge. Having experience in advocacy and litigation skills is a fantastic addition to your CV. Besides this, getting involved is a terrific way to add to your higher education experience.

External Resources:

ALSA 2019 Grand Final:

<https://youtu.be/GPLkCr0jrtE>

WHICH MOOT?

Each year the AULSS runs the Open Moot, First Year Moot and Novice Moot.

Semester 1

Open Moot: The Open Moot is open to all law students and is the most difficult moot the AULSS offers. You can compete in teams of two or three (only two students can present oral arguments per round) and you are scored as a team on both your written and oral submissions.

Semester 2

First Year Moot: This First Year Moot is open to law students in their first year of their LLB and is the perfect introduction to the world of mooting. This is a great way to engage in problem questions, learn basic court etiquette and build friendships with other students in your year. Teams of two compete, with the written submissions being awarded a team score; however, your oral submissions are scored individually.

Novice Moot: The Novice Moot is open to law students who have not previously competed in an or reached the inter-varsity moot or reached the final rounds of moots offered by the AULSS or Adelaide University.* The Novice Moot is another great opportunity to build on your advocacy skills and knowledge in a range of law. Teams of two compete, with the written submissions being awarded a team score; however, your oral submissions are scored individually.

*If you have a question regarding your eligibility for the Novice Moot please contact the Competitions Director.

PREPARATION

Moot Materials

Once you have successfully registered for a competition you will receive a copy of:

- the rules
- a scoresheet

Familiarise yourself with these documents before the competition so that you know how you will be scored and any penalties that will apply if you do not follow the rules.

The Moot Problem

When presented with the moot problem it is often an overwhelming feeling as to where to begin. You will be allocated to represent either the appellant (the party bringing the appeal) or the respondent (the party responding to the appeal). The problem question will outline the facts of the case and then give grounds of appeal that are a starting point to your submissions. Once you have familiarised yourself with the facts, you will need to divide the labour between your teammates and split the submissions to the court into two parts. Often there may be a small overlap, however dividing and delegating the research is absolutely crucial so that you can save time and also thoroughly understand the relevant law and cases.



Researching and Developing Arguments

Researching and developing your arguments can often be very time-consuming and lead you in different directions. The easiest way to manage your time effectively is by using the University's online researching systems; particularly Westlaw and LexisNexis. Check the previous sections advice on General Skills for more information.

Case law is your bread and butter for justifying your position to a judge. It is crucial to establish the Ratio Decidendi and Obiter Dictum of each case and decide whether they are relevant or useful to your argument.

Ratio Decidendi: the reasons for the judgement, that is the considerations which make the decision indispensable and is binding on lower courts.

Obiter Dictum: a remark in passing and is not binding on courts and is merely persuasive. In lieu of relevant Ratio, Obiter may be your best friend in convincing your interpretation of the law to a judge.

You will want to find cases that have previously decided on the applicable law. You then need to examine the facts and use this to **convince the judge why the law does or does not apply** in the case before them. There are some rare instances where instead of distinguishing a case to find the law does not apply, you can argue that it is no longer in the interest of the public policy that a previous piece of case law applies - this is known as the 'public policy argument.' You must prove to the court that the decision in the previous case was made in reliance upon a different social standard than is in practice today.

SUBMISSIONS

Written Submissions

Once you have completed your research, it is now time to write up your submissions and create the arguments that you will present to the judge. The written submissions make up a portion of your overall mark and are submitted before the oral rounds.

They should give a brief outline of your line of argument for the moot. The written submissions are to help give the judge an idea of what you will be saying and are often used to guide them in your oral submissions.

Although this will be the first thing the other side sees, there should be no omissions or deception

To [organise your submissions](#), teams often use a number system, with the overarching submission numbers as 1, and the relevant submissions consequently as 1.1, 1.2, 1.2.1 etc. Once you have completed your first line of argument, the next submission is marked as 2 and so forth until you have covered all your submissions and grounds of appeal.

The written submissions do not need to use the biggest words or be confusing in nature. They are an outline of argument that is your first basis for persuading and convincing the judge to your side of the argument. The arguments you present in your submissions should rely on the cases you have read in the research phase.

An example of this can be found at the Appendix.

Oral Submissions

Finally, after a week of preparing your heart out, it all comes to the day of oral submissions. After getting to university in your most formal attire, you will be directed to a room where you will set up and prepare for the judge. Splitting 30 minutes between you and your co-counsel may sound like a long time, however with potential questions from the judge the time will fly past.

Following the direction of your written submissions, you will present your case to the judge. There is no shouting of “Objection!” or any rebuttal by your opponents, however you can address their points through the analysis of their written submissions.

The best mooters present their oral proceedings like a conversation with the judge, not overusing formalities or using technical words to sound more knowledgeable. It is far easier to follow and be compelled by an argument if it is put simply and explained clearly.

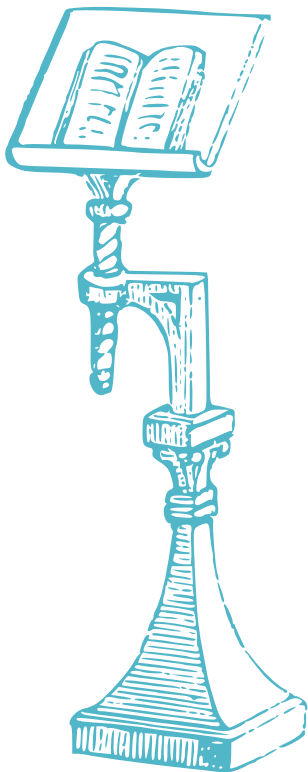
Finally, after both counsels have presented their submissions, the judges will think of and present invaluable feedback to take on for future moots. The judges will mark you on the scoresheet located in the annex, and they will be subsequently dispersed in the following days.

The next page outlines in more detail how the moot will run.

THE MOOT

Speaking Order:

1. Senior counsel for each side give their appearances;
2. Senior counsel for the appellant will begin their submissions;
3. Junior counsel for the appellant will make their submissions;
4. Senior counsel for the respondent will give their submissions;
5. Junior counsel for the respondent will give their submissions;
6. Appellant will deliver rebuttal (if permitted by rules);
7. Respondent will deliver surrebuttal (if permitted by rules).



Useful Terms

"May it please the court"

A polite introductory phrase used at the beginning and conclusion of submissions

Your Honour

Addressing an individual judge

My learned friend

Use to refer to the opposing counsel

"My learned friend" "My learned senior/ junior" or "My learned Co-Counsel"

Referring to your co-counsel

"We submit"

Introducing any submission, point or argument

"I cannot assist the court on that matter"

Where you do not know the answer to a question

"I do not press that point"

A graceful way of making a concession after the judge has revealed a weakness in your argument

"With respect your honour"

A polite way to disagree with or correct the bench

THE MOOT

Beginning the Moot

At the commencement of a Moot, the bailiff will call on you to rise before the judges enter the room. The bailiff will then call the case, stating the party names.

The sitting judges will then call for appearances to be given, firstly by the senior counsel of the appellant, and then by the senior counsel for the respondent.

**Please note, that not all mooting rounds will have a formal bailiff and that the judge may go straight to appearances.*

Appearances

Appearances must be delivered whilst **standing**, and although this constitutes only a small part of the moot, first impressions are always important. Practice delivering your appearances fluently and **maintain eye contact** with the bench during this time. The format of appearances is generally as follows:

“May it please the Court. My name is LAST NAME, INITIAL and I appear with my co-counsel, LAST NAME, INITIAL, for the APPELLANT/RESPONDENT in this matter, STATE PARTY NAME. I will speak for 15 minutes and my Co-counsel will speak for a further 15 minutes.”

If rebuttal (for the appellant) and surrebuttal (for the respondent) are permitted by the moot rules, you must also state your intention to use this. For example

“We reserve a further 2 minutes for rebuttal.”

Note that under the current rules, none of our AULSS competitions allow rebuttal or surrebuttal.

Beginning your Submissions

It is always a good idea to begin by providing the bench with a map as to how your submissions will run. For example:

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

During your oral submissions you are essentially leading the judges along a path of your creation. By providing an outline at the very beginning of your submissions, you are making very clear to the bench what your position will be on the case, making the substantive content of your submissions easier to follow.

Concluding your Submissions

Having a simple conclusion ties together your submissions and signals the end of your speaking time. Senior counsel should end their submissions with a short sentence such as;

“Unless I can be of any further assistance, that concludes the APPELLANT’S/RESPONDENT’S submissions for issues [A] and [B].”

Likewise, junior counsel should finish by stating the conclusion of all the submissions and if time allows, remind the court of what the submissions were and what remedy you seek for your client. For example:

“Your Honours, the APPELLANT/RESPONDENT has submitted firstly [A], secondly [B], thirdly [C] and fourthly [D]. We ask that you [...remedy...]. Unless I can be of any further assistance, that concludes the APPELLANT’S/RESPONDENT’S submissions.”

THE MOOT

Citations

It is common to ask the bench either at the start of your submissions, or at the end of your first formal citation if you may dispense with full citations, for example;

“Your Honours, may the APPELLANT/RESPONDENT request leave to dispense with formal citations?”

This request may not always be granted, so ensure that you have all your authorities written down in full.

Written citation

Strong v Woolworths Ltd (2012) 246 CLR 182

Formal citation

Strong and Woolworths Limited, a 2012 case reported in volume 246 of the Commonwealth Law Reports beginning at page 182

Shortened citation

Strong and Woolworths Limited

Answering Questions

The manner in which you respond to questions constitutes a large portion of your marks. For those who are new to mooting, questions from the bench can be perceived as intimidating and something to avoid; however, they are quite the opposite.

Being questioned shows that the judge is interested in what you are saying and gives you the opportunity to address any concerns they may have, as well as demonstrate your knowledge and preparation

Some general tips:

- Listen carefully. If you did not understand the question, you may be able to ask the judge for a rephrasing of the question. Another alternative may be to re-confirm what the judge is asking.
- Breathe. It is more than okay to pause before answering a question. This shows the judge that you have considered their question carefully.
- Be flexible. A judge may wish to take you out of your submissions or to an issue you intend to address later.
- Never interrupt. Do not talk over the judge. It is a matter of courtesy that as soon as they begin to talk, you stop.
- Never make up an answer. It is unforgivable to mislead the court. An acceptable response is to say:

“I cannot assist the court on that matter.”

Whilst overusing this phrase may indicate a lack of preparation on your part, it is always preferable to guessing or lying.

TOP TIPS

Speak Slowly

You will sound more confident and it will be easier for the bench to follow your submissions

Address your opponent's submissions

Be familiar with the written submissions of your opponent before oral submissions begin. Prepare to counter their submissions and respond to questions of the judges that assert your own opinion.

It is okay if you don't get to say everything you planned

This is common when judges are asking you multiple questions on the same issue. Engage with the judge and answer their questions fully. Although time management is important, you can always refer to your written submissions for things you do not have time to address in your oral submissions.

Be conversational

The most effective oral submissions are presented as a conversation with the bench, rather than sounding as though you are following a script. This manner is more engaging and persuasive, but remember to still show respect for the bench.

WITNESS EXAMINATION

THE BASICS

Year Level Recommendation: 2 and up

Teams: No

Preparation Time: 90 Minutes

Key Skills:

- trial advocacy
- critical thinking
- adaptability

In the preliminary rounds, competitors will work in pairs (but be marked individually) with one person doing the opening statement and examination-in-chief, and the other doing the cross-examination and closing statement. In the final rounds competitors will be allocated to run the case for either the prosecution/plaintiff or the defence.

External Sources:

ALSA 2019 Grand Final:

<https://youtu.be/7ZTiQbMMEQQ>

There are opportunities to volunteer as a witness, see page 17 for further information

STRUCTURE

The Witness Examination Competition ('WitEx') is a simulated trial where competitors run a case from opening statements, to examination-in-chief, cross-examination and finishing with the closing address. The objective of WitEx is to develop a case theory based on witness testimony and present it to the judge.

Competitors will be given witness statements for both their client and opposing counsel's client and the relevant legislation 90 minutes prior to their round. Competitors are able to meet with their witness 30 minutes before the round begins.

Competition Structure:

Appearances (1 min)·

Prosecution Opening Address (2 mins)

Prosecution Witness - Examination-in-Chief (10 mins)·

Cross-Examination by Defence Counsel (15 mins)·

Defence Opening Address (2 mins)·

Defence Witness - Examination-in-Chief (10 mins)

Cross-Examination by Prosecution Counsel (15 mins)

Closing Address by Defence (3 mins)

Closing Address by Prosecution (3 mins)

Judgment and Feedback (up to 30 minutes)

PREPARATION

Wit-Ex Materials

Once you have successfully registered for a competition you will receive a copy of:

- the rules
- a scoresheet

Familiarise yourself with these documents before the competition so that you know how you will be scored and any penalties that will apply if you do not follow the rules.

The witness statements and legislation will be sent to you 90 minutes before the commencement of your round.

See the Appendix for an example question and score sheet.

Before the Competition

Understanding some basic rules of evidence will help you throughout the competition. These rules govern who can ask what types of questions, grounds for objections and even exceptions to those grounds.

Find time to practice your questioning techniques and how to address a judge in your opening and closing address.

The Problem

You will be allocated to represent either the prosecution/plaintiff or the defence. You will need to familiarise yourself with both witness statements so that you are prepared for both the examination in chief and the cross examination.

**Note in the preliminary rounds you will only be required to examine one witness.*

You will want to develop an overall case theory and then think of questions you can ask to help establish this. Things to look out for are:

- inconsistencies between the statements
- the credibility of your witness

Identify elements in the relevant legislation and know the standard of proof for the relevant area of law.

You have the opportunity to meet with your witness 30 minutes before the commencement of your round. You are permitted to outline to the witness how you intend to deal with the case, lines of questioning you will be pursuing and what evidence you will be addressing but you cannot tell the witnesses specific answers to the questions you intend to ask.

THE TRIAL

Appearances

When the judge asks for appearances, competitors should respond:

“May it please the court, my name is [SURNAME] and I appear for the CROWN/PLAINTIFF OR DEFENDENT.”

In the preliminary rounds, only one competitor per team will make appearances.

To acknowledge your team member you should follow with:

“...with my learned (pronounced learn-ed) colleague [SURNAME].”

Opening Address

The opening address is where you outline the facts of the case, define the issues to be tried, inform the court of the material evidence and present your case theory.

At the end of your address, you should assert that the relevant standard of proof is/is not satisfied. The opening address is best delivered in a narrative format. Outline the case considering the point-of-view and chronology of your witness.

At the end of your opening statement, the judge will request counsel to call their witness.

Counsel must say: “I call [WITNESS NAME] to the stand.”

EXAMINING THE WITNESSES

Volunteers

Volunteering as a witness is a great way to learn about advocacy and the WitEx competition without the stress of competing.

Volunteer witnesses will be given a witness statement prior to the round. While it is best to memorize as much of the statement as possible, volunteers will be allowed to have their statements on them during the examinations.

Volunteers are expected to testify according to the written statement. This said, it is sometimes necessary to improvise, and volunteers are permitted to do this within reason.

Examination in Chief

The first step in the taking of evidence is called examination-in-chief. The aim is to get the witness to tell their story and to bring out all the relevant evidence from that witness.

You want to make your witness seem credible and use your line of questioning to show the judge the merits of your case.

A question that suggests the answer to the witness is called 'leading the witness' and is not allowed. These questions, are generally ones that can only be answered with a yes or no. If a leading question is asked in examination-in-chief, the opposing counsel is entitled to object.

A way to get the witness to tell their story without leading them is to start your questions with words such as who, what, when, where and how.

Cross Examination

During the cross-examination, you should attempt to highlight the inconsistencies of the witness' statement. Unlike in examination-in-chief, leading questions are permitted and generally encouraged. Try to ensure that the witness can only answer 'yes' or 'no'.

The goal of your examination should be to trap the witness with their own statements. To be effective, you should have a purpose for each question, rather than wasting time asking irrelevant questions.

Throughout your examination do not argue with the judge or witness, attempt to bully them or ask them more than one question at once. Use a steady tone of voice and remain calm throughout the examination.

Checklist for the cross-examination:

The competence of the witness to give the evidence.

- Lack of perception to give evidence of what was seen, such as capacity to see, opportunity to see, or the quality
- Lack of accurate recall
- Lack of narrative ability

The credibility of the witness

- Bias, interest, prejudice
- Prior convictions
- Moral character
- Previous inconsistent statements

After your witness has been cross-examined, stand and say:

"Your Honour, that is the case for the prosecution/defence."

THE TRIAL

Objections

To make an objection, simply stand up and wait until the judge calls on you.

**Note, if your opponent is objecting to something you have said, sit down.*

An objection may be made at any point during the examination of witnesses; however, you should object sparingly and only when your opponent has said something which breaches the rules of evidence.

You may object on the basis that:

- The question pertains to an irrelevant matter
- The question invites hearsay.
e.g. The witness did not perceive the events themselves
- The witness is in no better position than the jury to draw inferences
- The question is general or vague, calling for a long narrative response.
- The question is unintelligible or confusing.
- The question is duplicitous:
that is, it is two or more questions disguised as one.
- The question is leading (i.e. suggests the answer desired).
- The question is argumentative, oppressive, erroneous, speculative, or assumes a fact or facts not in evidence before the Court.
- The question invites an expression of opinion.
- The evidence produced may result in a prejudicial effect that outweighs its probative value.
- The rule in *Browne v Dunne* [1894] 6 R 67 HL is being contravened.

Please note that are exceptions to these objections and you should take some time to investigate this before you compete.

Challenging Objections

If you believe an objection to your question has been made wrongly, you can challenge the objection. Try to answer as succinctly as possible to why your question or line of questioning should be allowed. You do not want to detract from the proceedings.

Closing Address

The aim of the closing address is to summarise your case. To do this, bring out all evidence that came out during the examination of witnesses, highlight favourable evidence, why you disagree with opposing counsel's assertions and make submissions as to the principles of law which would affect the case.

The focus of your closing address should be to establish whether the relevant standard of proof is satisfied and why/ why not.

TOP TIPS

Develop a case theory

Your opening statement should outline to the judge why your case and witness should be listened to over your opponents

Open or closed?

Closed/leading questions cannot be asked in the Examination in Chief, but are encouraged in Cross

No fishing

Know why you are asking each question. What information are you trying to extract from the witness!

Proof

Discharge your burden of proof and meet the requisite standard when you are the plaintiff/prosecution. If you are the defence, explain how this has not been met

NEGOTIATIONS

THE BASICS

Year Level Recommendation: From First Year

Teams: 2 per team

Prep Time: Moderate

Key Skills

- communication
- adaptability
- formulating solutions to a problem with a variety of stakeholders in mind

You are scored on your ability to secure an outcome for your client, rather than hard legal knowledge.

The outcomes are, ideally, mutually beneficial. A positive result for your client should not be seen as exploitative or unfair on the other side. Often the issues are interlocking and a compromise must be made.

External Sources:

2019 ALSA Negotiation Grand Final:

<https://youtu.be/LFhMmQExDtI>

STRUCTURE

The teams will have 50 minutes to negotiate.

You can decide to split this time however you choose but common steps that are followed are:

1. Formalities
 2. Setting an agenda
 3. Discussion of a key outcome
 4. Summarise what has been agreed
- Steps 3 and 4 are repeated for each key issue identified on the agenda.

After the negotiation there is time for self-reflection before teams complete a 10 minute self evaluation with the judge. Teams are able to critique their own performance and analyse their approach with the judge during this time.

One tactical break (up to five minutes) per team may be taken at any time during the negotiation. No penalties are imposed for utilising this break.

PREPARATION

Negotiations Materials

Once you have successfully registered for a competition you will receive a copy of:

- the rules
- a scoresheet

Familiarise yourself with these documents before the competition so that you know how you will be scored and any penalties that will apply if you do not follow the rules.

Teams will receive a set of common facts as well as a set of secret, team-specific facts before the negotiation. The common facts provide context to the issues and the secret facts detail concessions, non-negotiables, motivations and vulnerabilities of each client.

See the Appendix for an example question and score sheet.

Identifying Interests

In order to effectively negotiate you will need to identify the interests of both parties. Some of this may be done in the preparation phase; however it might not be until you are at the negotiating table that you get a proper insight into the interests of the other party.

Interests can be categories in the following ways

Mutual: Each party has the same interest

Complementary: The parties have different interests but these can be satisfied by the same transaction

Neutral: This interest will have no effect on the other party

Competing: The more this interest is fulfilled for one party, the less it is fulfilled for the other.

Preparation

You will need to be fully across the facts of the situation and the interests of your client. Incorrect references to shared facts and flawed arithmetic in calculation of costs and are all indicators of poor preparation and time spent clarifying these can distract from the key issues of the negotiations.

Teams may conduct extrinsic research on the issues beforehand, with lateral thinking and creativity of solutions rewarded.

Key questions to ask yourself:

- What is most important to your client?
- What is least or not important to your client?
- What concessions is your client willing to make?
- What are the best and worst case scenarios?
- What are your client's options if you cannot reach an agreement?

You should also ask these questions for the interests of the other party and make your best guess based on the common facts.

It may also be helpful to have an emergency strategy should the negotiations prove to be going towards the opposition, as well as to consider what to do if no agreement appears likely to materialise.

You want to try and present low cost, creative solutions that will benefit both parties and be conducive to a continuing relationship.

THE NEGOTIATION

Beginning the Negotiation

To begin you should greet the other party and establish the goals to conduct negotiations in good faith and to reach an agreement that is beneficial to all parties. Remember to affirm that the discussions are confidential.

It is helpful to bring in an agenda of how you wish to tackle the issues and keep track of the negotiation. A few minutes should be spent merging your agendas. Issues can then be easily ticked off as they are discussed or flagged as needing to be revisited should peripheral issues need to be resolved.

Negotiation Strategies

When negotiating it is always best practice to never give something away without receiving something in exchange. You can categorise different outcomes as things your client wants and things your client is willing to offer. Assigning each item at least notional value, monetary or otherwise, during your preparation can be an effective way of keeping track of the value of an exchange. Ideally you can exchange a low value item for a high value outcome.

In the event of a deadlock it is often helpful to explore the underlying issues that are not resolved by what is being offered. If this does not alleviate the impasse then it may be best to rotate to an issue on which some agreement can be reached or utilise the tactical break to discuss a change in strategy.

You can utilise your tactical break to halt the momentum of the other team or to discuss a change in tactics at a strategic moment, such as if an impasse is reached.

Competitors should also remain mindful of what the client's specific instructions are as well as the strict legal position at the outset. Teams may be able to make certain logical inferences from the facts and then offer solutions in the 'spirit' of the instructions. These may fall outside what has been explicitly instructed but still be in line with a client's interests. Creative solutions are encouraged but care should be taken to ensure nothing illegal or contrary to public policy is suggested, nor any agreements expressly contravening client instructions be made.

Concluding the Negotiation

You should try to leave some time to summarise what has been agreed to in the final minutes of the negotiation. While you may do this as you move through each agenda item, it is a good idea to go over everything at the end so that both parties know what has been agreed to.

THE NEGOTIATION

Self Analysis

During the self-analysis the judge will almost always ask the following two questions:

1. In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?
2. How well did your strategy work in relation to the outcome?

The judge will likely also ask about varying aspects of your performance such as your overall strategy, choice in positions taken and team roles in evaluating your performance.

It is up to you to explain the reasoning behind all decisions made, though you can offer up your own insights without prompting. This analysis is part of the marking process and may be the deciding factor in a close negotiation if you can convince the judge of the effectiveness of your strategy.

The judge will want to know what you have learned from the negotiation and your own performance so both the strengths and weaknesses of your approach should be explored. Over-selling your performance may not be beneficial as it can communicate arrogance and that you have learnt little from the experience.

Manner and Conduct

You should always be aware of your outward demeanour and ensure you present as collected and calm.

Attempts at being hostile, demanding or intimidating will be looked upon poorly by a judge, as will being too casual or informal. Negotiations can get quite heated especially when the issues are contentious. It is best to remove yourself emotionally from the dispute, nothing is to be gained from getting into a shouting match. Do not respond to opposition attempts to intimidate or provoke a reaction and keep the discussions objective, logic and issue based as much as possible.

Divulging unauthorised information will also be severely penalised as this would constitute a breach of trust. At no point is any team permitted to mislead or lie to the opposition, nor misrepresent facts and behave unethically.

Make sure both team members are seen to be actively contributing towards negotiations by the judge. One team member may take up a note taker role in keeping track of discussions which the other will then communicate or members may alternate between roles for different issues.

TOP TIPS

You won't know everything (and that's okay!)

There are times that your opponents will suggest something out of the blue that you do not have instructions on. In this case, it is okay to say that you will need to consider it and take the offer back to your client

Be Nice

You are not trying to be cutthroat and take everything the other side has. You need to work with your opponents to find a solution that benefits both clients

Give and Take

Every time you give something to your opponent, you should get something in return

Know your client

Be sure you know what is important to your client and what is not. There is no point arguing over something that your client does not have an interest in. Trade things that your client does not care about for things that they do

CLIENT INTERVIEWING

THE BASICS

Year Level Recommendation: From first year *

Teams: 2 per team

Prep Time: Minimal

The Client Interview competition is a simulated interview between a team of two students acting as lawyers, and a client seeking an initial legal consultation.

The competition focuses more on the interviewing skills, as such, is the perfect competition for students in lower year levels. Please note that competitors are still expected to have a basic grasp of the law.

The minimal preparation is a further incentive to time poor students.

External Sources

ALSA 2019 Grand Final

<https://youtu.be/oWkWRr4wBIE>

*While this Competition is simpler than our other competitions and open to first years, we recommend that first years volunteer to gain a better understanding of the legal system and competitions.

STRUCTURE

Each round lasts for 45 minutes.

This 45 minutes is split as follows:

- Consultation with client: 30 minutes
You need to split this time between extracting information from the client and giving them advice and solutions to move forward.
- Self-evaluation with partner: 5 minutes (during which the judge consults with the client)
- Self-evaluation with judge: 10 minutes

There are opportunities to volunteer as a client, see page 28 for further information

PREPARATION

Client Interview Materials

Once you have successfully registered for a competition you will receive a copy of:

- the rules
- a scoresheet

Familiarise yourself with these documents before the competition so that you know how you will be scored and any penalties that will apply if you do not follow the rules.

Teams will also receive a small memorandum that contains the general area of law that the dispute relates to.

See the Appendix for an example memorandum and score sheet.



Preparation

Once you have received your memorandum you should complete some general research into the broad area of law that is indicated on the memorandum. Competitors should be aware that sometimes multiple issues need to be addressed within the interview that may not be specifically outlined in the initial memorandum.

The competition tests the competitors' ability to identify the nature of the client's problem by asking them the right questions then suggesting an appropriate course of action for the client. Brainstorm a few questions that you can ask to start the interview.

Competitors may bring their research into the round, however it is recommended that this not be too substantial so as to clutter the table. Scripts should also be avoided, as they will prevent flexibility.

Remember to practice. It can be difficult to practice for something like Client Interviewing but try having one team member pretend to be a client whilst the other acts as the lawyer. You can also practice your post consultation strategy to determine who addresses which part.

THE INTERVIEW

Beginning the Interview

Use your voice and body language to make the client feel welcome, especially if they seem emotional. Introduce yourself and your partner (your 'colleague') to the client and establish how the client would like to be addressed, e.g. as 'Mr. Smith' or simply as 'John'.

After this, ensure you address the following:

- Fees: the Competition rules will stipulate the costs of the initial and subsequent consultations
- Conflicts: check who the other party in the dispute is, as you cannot represent both parties
- Confidentiality: explain to the client that your conversations are confidential and stress the importance of full disclosure from the client, in order to assist them to the best of your ability
- Expectations: explain to the client what you will cover in the interview
- Questions: reinforce that the client is encouraged to ask questions if they need clarification.

Interviewing the Client

You should practice your interviewing technique before the competition. Some general tips are:

- Use open-ended questions that allow the client to tell their story
- Avoid interrupting the client, unless they seem to be going off-topic
- Focus on relevant information and ask more specific questions if necessary
- Write down names of key people, places and dates relevant to the client's problem and ask for further details if necessary
- Be aware of red herrings and false information.
- Clients are provided with secret information that they can only reveal to competitors if asked a specific question. Being able to extract this information is a part of the judging criteria.

Giving Advice:

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

Suggest possible options for resolving your client's situation (litigation, ADR, non-legal avenues, etc.) and explain each option's relative advantages and disadvantages. Remember that the client is unlikely to have expert legal knowledge, so try to avoid using legal jargon and keep the information easy to understand.

Ask your client to choose or think about these options and clarify if they are after a particular outcome. It is important to consider the client's sensitivities while leading them towards a viable solution.

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

THE INTERVIEW

After

On the conclusion of the interview, competitors must leave the room and have five minutes to evaluate their performance.

Questions the competitors may want to ask themselves include:

- Was the client satisfied with the interview and its outcome?
- How did the interview go overall?
- What worked well and what did not work well?
- What could be done differently next time?

During this time, the judge will consult with the client in order to determine how they felt about the interview.

Competitors will then have 10 minutes to evaluate their performance with the judge. A general starting point could be:

- Summarising the interview
- Discussing how you approached the interview and your team work
- Indicating the scope of the legal work to be undertaken
- Stating the legal issues to be researched.

Following this the judge will provide competitors with feedback. This is a great opportunity to ask questions of the judge to help you improve over the competition.

Volunteers

Volunteering is a great way of getting a feel of the competition and gaining some experience and confidence before you too compete in subsequent years. The Competitions Portfolio really appreciate you giving up your time to help us run Client Interviewing smoothly!

Clients are provided with a confidential memorandum, which they are expected to memorise prior to the competition and expected to understand the nature of the memorandum, including the role of important facts. Clients must not disclose any information they are provided with to any other individuals before the competition.

[Below are a few pointers to ensure that you and the competitors get the most out of the competition.](#)

- Arrive 5-10 minutes before your round begins
- Memorise as many of the facts as you can, but feel free to bring the memorandum into the room, we would rather you have more information than none at all
- Know the difference between the normal and secret facts and when to release them
- Get into character as much as possible, as it will make the experience more enjoyable and keep the competitors on their toes

TOP TIPS

See the problem from the client's perspective

Recount the facts:

this can buy you time, clarify certain points, spark a new line of questioning or trigger secret facts

Take notes:

This helps you to remember details and organise your thoughts. Be sure to maintain eye contact with the client though

If you don't agree with your team member, pose your viewpoint as an alternative the client may wish to consider, rather than disregarding your team member's position

APPENDICIES

Open Moot Materials

Witness Examination Materials

Negotiations Materials

Client Interview Materials





OPEN MOOT

TEAM NO:

WINNER:

JUDGE	
CASE	
DATE & COURT	
COUNSEL for Appellant/Respondent (circle one)	Senior Counsel:
	Junior Counsel:

MARGIN BETWEEN TEAMS: e.g. + 2

CRITERIA OF KEY DIFFERENCE BETWEEN TEAMS:

Organisation of Presentation	/10	/10
Development of Argument	/25	/25
Questions from the Bench	/30	/30
Manner and Expression	/25	/25
Written Submissions	/10	/10
Speaker total	/100	/100
TEAM TOTAL	/200	

Please mark all criteria and remember the emphasis is on the *difference in points*.

Ineffective	Somewhat ineffective	Standard	Effective	Highly effective
0-2	2-4	4-6	6-8	8-10

ORGANISATION OF PRESENTATION

Has counsel shown a logical organisation and structure to their verbal presentation? Is counsel concise, have they given an overview of submissions? Is attention and weight given to some arguments over others? Is there a conclusion?

Senior Counsel	/10
Junior Counsel	/10

DEVELOPMENT OF ARGUMENT

Has counsel shown an understanding of the law and issues? Has counsel used pinpoint citation of authorities or used appropriate policy arguments? Has counsel addressed opposing arguments in advance or in response?

Senior Counsel /25

Junior Counsel /25

QUESTIONS FROM THE BENCH

Has counsel prepared for questions that can be anticipated? Are responses clear, concise and direct? Strong responses will show engagement with the court’s views whilst maintaining composure and courtesy despite challenges to arguments. Counsel should be prepared to deal with difficult, irrelevant, or obscure questions.

Senior Counsel /30

Junior Counsel /30

MANNER AND EXPRESSION

Has counsel engaged with the court by: projecting their voice, maintaining eye contact, displaying confidence without arrogance and using consistent and appropriate courtroom formality? Has counsel articulated submissions with eloquence, and clear and simple language?

Senior Counsel /25

Junior Counsel /25

WRITTEN SUBMISSIONS

Are the submissions comprehensive? Are submissions well structured, clear, concise and supported by authorities with pinpoint citations? Submissions should be free from spelling or grammatical errors and be consistent with oral submissions.

Senior Counsel /10

Junior Counsel /10

EXAMPLE MEMORANDUM: WRITTEN MEMORANDUM OF APPELLANT

IN THE SUPREME COURT OF SOUTH AUSTRALIA - COURT OF CRIMINAL APPEAL

R

-APPELLANT-

AND

SMITH

-RESPONDENT-

APPELLANT'S OUTLINE OF SUBMISSIONS

Speaking time: Senior Counsel: 15 minutes)

Junior Counsel: (15 minutes)

APPELLANT'S SUBMISSIONS

1. The learned trial judge erred in law, as there was ample evidence for the charge to go to the jury.
2. Smith's conduct was clearly capable of amounting in law to an 'attempt'.
3. The case of *R v Geddes* should not have been applied to this case.

THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:

Submission One

Dalpont J erred in finding that there was not ample evidence for the charge to go to the jury, and should not have directed the jury to return a not guilty verdict.

1. There was ample admissible evidence presented to the court for the jury to '*lawfully conclude that the accused [is] guilty of that offence*'.
DPP v Iliopoulos & Ors [2016] VSC 133, [36]-[37], citing *May v O'Sullivan* (1955) 92 CLR 654, 658.
R v T, D [2016] SADC 75, [51], [55].
2. As the following evidence is admissible, a conviction of an attempt can lawfully be determined and thus the no case submission was incorrect.
Attorney-General's Reference No 1 [1983] 2 VR 410, 417.

Evidence is as follows.

- 2.1. The rucksack and the contents, including a large kitchen knife, rope and packing tape, were the property of Smith.
- 2.2. Smith had no lawful right to be on the school premises, had entered the boys' toilets and was intercepted before escaping the school grounds.
- 2.3. Smith had a propensity to commit offences relating to male teenagers.

Submission Two

That Dalpont J erred in finding that the conduct of Smith was not capable of amounting in law to an ‘attempt’.

1. The last act test is not the only relevant test to consider regarding criminal attempts.
DPP v Iliopolous [2016] VSC 132, [39].
R v Williams (1965) Qd R 86, 100-101.
R v De Silva [2007] QCA 301, [20], [23].
2. The equivocality test, as outlined in *R v De Silva* [2007] QCA 301 [20], should be considered and was satisfied here.
 - 2.1. The test is satisfied ‘if the (defendant) does an act which is a step towards the commission of the specific crime, and that act cannot reasonably be regarded as having any other purpose than the commission of that specific crime’.
 - 2.2. This is the preferred test in Australia.
R v De Silva [2007] QCA 301, [27], [29].
Farah Constructions Pty Ltd v Say-Dee Pty (2007) 230 CLR 89, 151-152.
3. Through the evidence provided, Smith was involved in a series of acts intended to result in false imprisonment, which could not be interpreted as being for any purpose other than the commission of false imprisonment.
R v De Silva [2007] QCA 301, [20], [22].
4. Beyond a reasonable doubt, Smith had the intention and relevant state of mind to falsely imprison, if the chance arose.
5. Alternatively, by applying the proximity test, Smith still attempted to falsely imprison boys at the school, as his intention to do so was clear.
Britten v Alpogut [1987] VR 929, 932, 938.
R v Finnigan [No 2] [2015] SADC 55, [46].
6. Other ‘tests’ which have been considered in Australia are also relevant. Smith’s actions show that he embarked upon the commission of the offence, moving from a preparatory to an executory stage.
R v Hera-Singh [2017] SADC 43, [52]-[53].
R v T, D [2016] SADC 75, [44].

Submission Three

***R v Geddes* [1996] Crim LR 894 should not have been applied in this instance.**

1. *R v Geddes* can be distinguished from this case as intention can be established.
 - 1.1. Criminal intention is a necessary requirement of an attempt. Innocuous acts may become attempts if intention is present.
Britten v Alpigut [1987] VR 929, 932, 935.
 - 1.2. Contrary to *Geddes*, the criminal history of the defendant in this case indicates intent.
Evidence of bad character is admissible if it is of probative value.
Pfenning v The Queen (1995) 182 CLR 461, 476, 478 [51].
Hoch v R (1988) 165 CLR 292, 294-295.
Perry v The Queen (1982) 150 CLR 580, 609 [4].
 - 1.3. The criminal history of the defendant shows a pattern of behaviour which makes explanations other than a criminal intent highly improbable.
Hoch v R (1988) 165 CLR 292, 294-295.
Perry v R (1982) 150 CLR 580, 585.
Melbourne v The Queen (1999) 198 CLR 1, 17-18.
 - 1.4. The criminal intention of the defendant can also be ascertained on the facts through the defendant's method of entry and exit of the school grounds, and the infeasibility of his reasons for being in the bathroom.
2. *Geddes* is not good law.
 - 2.1. The interpretation of 'attempt' in *Geddes* is too narrow. This has been acknowledged in both the UK and in Australian common law.
The Law Commission, *Conspiracy and Attempts*, Consultation Paper No 183 (2007) 19 [1.75]-[1.76].
Weggors v State of Western Australia (2014) 240 A Crim R 205, 232-233.
 - 2.2. The reasoning in *Geddes* has been questioned by Australian and foreign courts.
Weggors v State of Western Australia (2014) 240 A Crim R 205, 232.
Johnston v R [2013] 2 NZLR 19, [27].
R v Harpur [2010] NZCA 319, [25].
3. Alternatively, *Geddes* relies upon a foreign statute. Therefore this case cannot be relevant to an Australian common law offence. The Australian common law tests must instead be applied.

For these reasons, the Appellant respectfully requests that the appeal be allowed. Dated this 8th day of May 2018.

[INSERT YOUR NAMES] Counsel for the Appellant.

List of Authorities

Cases:

Attorney-General (NI) v Gallagher [1963] AC 349.
Attorney-General's Reference No 1 [1983] 2 VR 410
Britten v Alpogut [1987] VR 929.
DPP v Iliopolous [2016] VSC 132.
Farah Constructions v Say-Dee (2007) 230 CLR 89.
Hoch v R (1988) 165 CLR 292.
Johnston v The Queen [2013] 2 NZLR 19.
May v O'Sullivan (1955) 92 CLR 654
Melbourne v The Queen (1999) 198 CLR 1.
Perry v The Queen (1982) 150 CLR 580.
Pfenning v The Queen (1995) 182 CLR 461.
R v Busuttil [2006] SASC 47.
R v De Silva [2007] QCA 301.
R v Eagleton (1855) Dears 515.
R v Finnigan [No 2] [2015] SADC 55.
R v Finnigan [No 3] [2015] SADC 166.
R v Folbigg [2003] NSWCCA 17.
R v Geddes [1996] Crim LR 894.
R v Harpur [2010] NZCA 319.
R v Hera-Singh [2017] SADC 43.
R v T, D [2016] SADC 75.
R v Williams (1965) Qd R 86.
Weggors v State of Western Australia (2014) 240 A Crim R 205.

Report:

The Law Commission, *Conspiracy and Attempts*, Consultation Paper No 183 (2007).



WITNESS EXAMINATION

CASE	
JUDGE	
DATE & ROOM	
COUNSEL For Prosecution/Defence (circle one)	

WINNER:

MARGIN BETWEEN COMPETITORS: e.g. + 2

CRITERIA OF KEY DIFFERENCE BETWEEN COMPETITORS:

Opening Address or Closing Address	(please circle)	/10
Examination in Chief or Cross Examination	(please circle)	/25
Manner and Expression		/20
Case Theory		/10
COMPETITOR TOTAL		/65

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

Please ensure that low-quality case theory and arguments are reflected in the resulting scores.

Ineffective	Somewhat ineffective	Standard	Effective	Highly effective
0-20%	20 - 40%	40 – 60%	60 – 80%	80 – 100%

OPENING ADDRESS

Factors: clear expression; clarity; confidence; brevity; identification of issues and their significance; encapsulates case theory; draws on oral evidence to further case theory and arguments.

/10

CLOSING ADDRESS

Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; encapsulates case theory; draws on oral evidence to further case theory and arguments.

/10

EXAMINATION-IN- CHIEF

Factors: clear, succinct questions; advances own case; highlights character and attitude of witness; engages with witness and witness' answers; shows understanding of the elements of the charge

/25

CROSS-EXAMINATION

Factors: clear, succinct, leading questions; advances own case; probes character and attitude of witness; engages with witness and witness' answers (including from examination-in-chief); avoids objectionable questions

/25

CASE THEORY

Factors: appropriateness of case theory to the facts; potential to improve case theory; effectiveness in eliciting evidence to support case theory; simplicity and logic of case theory.

/10

MANNER AND EXPRESSION

Factors: engages with the court; projects voice; articulates submissions with eloquence; consistent style and manner; deals with interventions with ease and concision; objects where appropriate; uses inference where appropriate; demonstrates sophisticated understanding of Evidence law (statute and common law).

/20



**AUSTRALIAN
LAW STUDENTS'
ASSOCIATION**

WITNESS EXAMINATION

R v Derom

SUPREME COURT OF VICTORIA

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Contact: competitions@alsa.net.au

Supreme Court of Victoria

Agreed Facts

Charge:

In the Supreme Court of Victoria Brief to Prosecution Counsel at Melbourne.

R v. Derom

Dennis Derom was remanded after an incident that occurred at Monaco's Delicatessen in Camberwell on 15 January 2018. After an initial investigation, Mr Derom was charged with the murder of Ken Moreton. Murder is a common law offence.

The Prosecution bears the onus of proving beyond reasonable doubt the following elements of the offence of murder:

- (a) The accused caused the death of another person by an intended act or omission
- (b) The defendant must have had the intention to cause death or grievous bodily harm (GBH) or was reckless as to death or GBH

Section 322K – Crimes Act 1958 (Vic)

Self-defence

- (1) A person is not guilty of an offence if the person carries out the conduct constituting the offence in self-defence
- (2) A person carries out conduct in self-defence if –
 - a) the person believes that the conduct is necessary in self-defence; and
 - b) the conduct is a reasonable response in the circumstances as the person perceives them.
- (3) This section only applies in the case of murder if the person believes that the conduct is necessary to defend the person or another from the infliction of death or really serious injury.

Notes

1. See section 322M as to belief in circumstance where family violence is alleged.
2. The circumstances in which a person may carry out conduct in self-defence include –
 - the defence of the person or another person;
 - the prevention or termination of the unlawful deprivation of the liberty of the person or another person;
 - the protection of property.

Witness Statement of Jackson Forte (Prosecution)

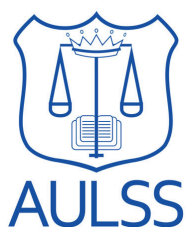
1. My name is Jackson Forte. I am 25 years old and work part time as a barista at Monaco's Delicatessen Camberwell. I reside at 45 Logan Street Canterbury. I am enrolled in a Bachelor of Textiles at RMIT University.
2. The morning of 15 January 2018 was very busy as usual, being a Saturday. The afternoon however quietened down considerably from 2pm onwards.
3. During the quieter part of the afternoon, I would look forward to seeing a regular customer of Monaco's Deli, Ken Moreton, every Saturday around 3pm. He would order the usual piccolo latte and would sit in the back corner and read the newspaper. Dennis was a friendly character and always up for a chat.
4. He also seemed like a pretty hardworking man given he was a lawyer at a 'top tier commercial law firm' in Melbourne, what-ever that means.
5. Despite this, he rarely ever spoke about his wife or children. Money can't buy all the happiness in the world, eh?
6. On the 15 January 2018 around 3pm when Ken came in for his regular afternoon coffee, he seemed very off and not like his usual chirpy self. I asked him how his day had been and he replied, 'shit house.' He said something about an agreement that didn't go well at work on Friday. His precise words were 'we didn't get to close the deal.' I don't know, sounded like lawyer argle-bargle to me, but he was definitely unhappy about something.
7. He sat alone for maybe 15 minutes before another man joined him, which was pretty unusual as Dennis had never had company in the 5 years that he frequented the Deli. Dennis Derom was the second guy and looked to be in a cheery mood.
8. When he came up to order at the counter, we had a cracker of a conversation. Loved his footy that fella did, although he was a Collingwood supporter. He mentioned something about his friend being upset with him because he messed up an agreement at work. I think it was the same thing that Ken was talking when he told me he couldn't close a deal.
9. Over the period which the two men sat and had a discussion, I kept checking up on them. Both times I saw Ken trying to calm Dennis, and heard Ken say 'you've ruined me' at one stage. It sounded really dramatic to me.
10. At around 4pm (by this point, Ken definitely had overstayed his usual afternoon coffee) I was in the back room doing some dishes and prepared to clean up the store for close. From the back room, I heard a heated verbal exchange between both men.
11. As I was about to come back out to the main part of the store to collect the tills, I heard Ken yell out 'calm down' and the sound of glass smashing. the sound of glass shattering. I entered the main part of the store and saw a

smashed glass water bottle, Ken fall to the ground and blood pouring out of his head.

12. I instantly grabbed a phone and called 000 for the ambulance and police. Dennis just stood over Ken's body and looked to be red in colour, let out a large yelp with a look of fierceness in his eyes.

Witness Statement of Dennis Derom (Defence)

1. My name is Dennis Derom. I am a solicitor employed at Hobbit Smithers Freibergs (Freibergs). I reside at 30 Greenway Street, Hawthorn East. I have known Ken Moreton for nearly 20 years. I would consider him as a close friend. He was my best man at my wedding and I am the god-father of his son.
2. This is embarrassing to admit, but for a year now I have been having an affair with Marie; Ken's wife.
3. On 15 January 2018, I received a phone call from Dennis asking whether I would like to join him for a coffee at Monaco's, as he 'needed to discuss some things' with me. I felt this was rather unusual as we never let work related matters get between us.
4. I arrived at Monaco's Delicatessen in Camberwell at around 3:15pm. As I walked inside, I spotted Ken who seemed very distressed and unlike his usual self.
5. I asked him if anything was wrong and he replied 'you know exactly what is wrong.' I was stunned. I had no idea he had knowledge of the affair. I told him we can talk about it in a civil manner tomorrow as he [Ken] was way too angry and not in any position to have a rational conversation.
6. As I got up to leave, Ken grabbed me by the arm and said 'you're just going to walk away from this?' I believe he called me a coward as well. I told him to let go because he was going to do something stupid.
7. He then punched me forcefully across the cheek and grabbed my neck. He yelled 'why did you do it' over and over while he had me in a choke hold, with my head rested on the table.
8. I was losing my breath very quickly. In a panic, I grabbed the nearest glass bottle and swung it hard at Ken's head. He let go of my neck instantly and when I turned to face him, his head was on the booth table and blood was pouring out the side of his head. I had only meant to hit him so he'd let go, I didn't mean to kill him.



NEGOTIATIONS

JUDGE	
PARTY REPRESENTED	
DATE & ROOM	
TEAM MEMBERS	

WINNER:

MARGIN BETWEEN TEAMS: e.g. + 2

CRITERIA OF KEY DIFFERENCE BETWEEN TEAMS:

Negotiation Planning	/10
Adaptability	/10
Session Outcome	/10
Relationship between teams	/10
Exploration of Interests	/10
Creativity of Options	/10
Teamwork	/10
Negotiation Ethics	/10
Communication	/10
Self-Analysis	/10
TEAM TOTAL	/100

Please mark all criteria and remember the emphasis is on the *difference in points*.
 Please identify any key differences between the teams performance in the box identified.
 Please return the score sheets directly to the coordinators. A draw is not possible.

Ineffective	Somewhat ineffective	Standard	Effective	Highly effective
0-2	2-4	4-6	6-8	8-10

<p>NEGOTIATION PLANNING How prepared did the team appear, based on their performance and apparent strategy?</p>	<p>ADAPTABILITY Was the team adaptable, and flexible during the negotiation? How did they respond to new information?</p>
/10	/10

<p>SESSION OUTCOME How did the session serve the goals of both clients? Regardless of whether agreement was reached – did the team raise all major issues?</p>	<p>RELATIONSHIP BETWEEN TEAMS How did the teams manage their relationship with the opposing team? Did it detract from achieving the interests of both clients?</p>
/10	/10
<p>EXPLORATION OF INTERESTS How well did each team identify the key interests of their client?</p>	<p>CREATIVITY OF OPTIONS How well did the team demonstrate initiative, creativity and problem solving when comparing interests?</p>
/10	/10
<p>TEAMWORK How effective were the negotiators in working together as a team? Was responsibility shared between partners?</p>	<p>NEGOTIATION ETHICS To what extent did the team observe or violate ethical requirements? Was the team trying to find an outcome that would satisfy both parties ?</p>
/10	/10
<p>COMMUNICATION Did the team articulate their position clearly? How well did they produce information?</p>	<p>SELF ANALYSIS Identified strengths and weaknesses? Learned from their experience?</p>
/10	/10



**AUSTRALIAN
LAW STUDENTS'
ASSOCIATION**

NEGOTIATION

Johnny Flash v Crafty Caravans Pty Ltd

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Contact: competitions@alsa.net.au

Johnny Flash v Crafty Caravans Pty Ltd

Common Facts for Both Parties

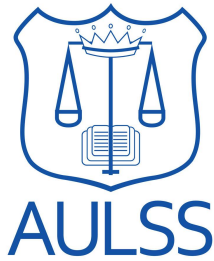
1. Johnny Flash is a retired school teacher turned up-and-coming star on the Australian country music scene. Flash is well known as the 'Caravanning Country Music Star', and his debut album, *Grey Nomad*, received critical success leading to great interest and ticket sales for tours, particularly in regional Australia.
2. Flash is currently preparing for his round-the-country tour 'Flash's Country Caravan Gate-Crash'. The tour, which begins in 6 weeks, will see Flash travel and perform with his wife across regional Australia leading to the finale at the Taminda Country Music Festival running from 6-15 December, 2017.
3. Crafty Caravans, an Australian company of more than 10 employees, are a well-known boutique caravan hire and purchase company specialising in high quality, luxury caravans. Crafty Caravans markets itself to retirees looking to enjoy their twilight years cruising the highways of Australia in luxury.
4. Crafty are worried that recent changes to Negative Gearing will mean that this core group of patrons will be less likely to purchase caravans, putting Crafty on knife edge.
5. In 2014 Flash purchased a Wayfarer model caravan from Crafty Caravans for \$200,000.00 with a 12-month warranty. In late 2016, the laminated wood walls of the Wayfarer caravan started to bubble and separate.
6. In January 2017, Flash, being worried that the Wayfarer would not be weather-tight for the upcoming tour, contacted Crafty with the view to having the Wayfarer replaced or repaired. Crafty informed Flash that because warranty was expired, they would not replace the caravan, but would offer him the option of purchasing another model of caravan at a discounted rate if he trades the Wayfarer in.
7. Crafty has offered Flash the Aviator (retail \$150,000.00) for \$75,000.00 and the Clubmaster (retail \$175,000.00) for \$85,000.00, as the models which it will offer discounted trade-in prices.
8. Alternatively, Crafty offered that they could repair the damage to the laminated walls, but noted that the caravan would not be ready in time for the beginning of Flash's planned tour.
9. Both Flash and Crafty have retained solicitors with a view to resolving the dispute and coming to a mutually beneficial agreement

Confidential Information for Solicitors representing Johnny Flash

1. You have been appointed to represent Johnny Flash in his negotiations with Crafty Caravans. He has given you full authority to settle the matter, provided that you can reach an agreement that is in line with the spirit of his instructions.
2. Flash is upset at the turn of events, and had hoped that the Wayfarer would be his last caravan. Flash has informed you that he would not like to purchase a caravan by a different maker, and that he would prefer to keep the Wayfarer over the Aviator or Clubmaster models because the Wayfarer has substantially higher quality fittings.
3. Flash has investigated the cost of repairing the Wayfarer's laminated walls, and the going rate is \$30,000.00. Flash is only willing to pay for the repairs to the Wayfarer if Crafty offers a minimum of 12-month warranty on the repaired work.
4. Flash has informed you that, while the money from touring is sufficient to continue touring and caravanning, there is little left over. For this reason, Flash has asked you to prioritise saving money where possible.
5. Flash informs you that, from conversations he has had with other caravan enthusiasts, Crafty Caravans has been aware of the problem he has experienced with the laminated walls. However, Flash does not want to see Crafty Caravans fail and warns that he is very reluctant, and would be very sad to, attack the company publically because it is an important Australian institution and the company which inspired him to begin caravanning in the first place.
6. Flash has informed you that he will need a caravan for his tour, particularly for the Taminda Country Music Festival. Flash's inquiries have revealed that all accommodation in the Taminda area is full on the dates between 6-15 December, 2017.
7. Flash informs you that he has consulted with another local lawyer, who informed him that he has little prospects of legal recourse under contract or consumer law, and that his best chances at reaching a satisfactory resolution are in coming to a negotiated agreement with Crafty

Confidential Information for Solicitors representing Crafty Caravans Pty Ltd

1. You have been appointed to represent Crafty Caravans in its negotiations with Johnny Flash. The company has given you full authority to settle the matter, provided that you can reach an agreement that is in line with the spirit of the instructions you have received.
2. Crafty have informed you that their market research identified two interrelated areas of concern. First, recent changes to Negative Gearing mean that their core market are less likely to purchase luxury caravans. Second, their customers tend to be passionate country music fans, and, as such, may be highly influenced by negative publicity from Johnny Flash. Together these two factors put the company in a precarious position. For this reason, Crafty advises that the avoidance of negative publicity is their highest priority.
3. Crafty have informed you that the cost to repair the damage to the walls would be \$10,000 (typical repair fee \$30k), but that their preferred option would be to sell Flash either the Aviator or Clubmaster caravan at a discounted rate in exchange for Flash Trading in the Wayfarer. Crafty predict that they could refurbish the Wayfarer and sell it for \$150,000.00.
4. Crafty have informed you that they have the facilities to fitout the Aviator and Clubmaster models with Wayfarer fittings at a cost of \$50,000.00.
5. Crafty have informed you that they are willing to hire a caravan to Flash at a discounted rate while they repair his Wayfarer. The ordinary rate for the period which Flash will need the hire-van to tour while his van is being repaired is \$20,000.00. The discounted rate is \$10,000.00.



CLIENT INTERVIEWING

CLIENT		Working Atmosphere	/10
JUDGE		Description of the problem	/10
DATE & ROOM		Client's Goals and Expectation	/10
TEAM		Problem Analysis	/10
WINNER: MARGIN BETWEEN TEAMS: e.g. + 2 CRITERIA OF KEY DIFFERENCE BETWEEN TEAMS:		Moral and Ethical Issues	/10
		Alternative courses of Action	/10
		Client's Informed Choice	/10
		Effective Conclusion	/10
		Teamwork	/10
		Self-Analysis	/10
		TEAM TOTAL	/100

Please mark all criteria, rank teams and remember to emphasise the *difference in points*.
 Please identify any key differences between the teams performance in the box provided.
 Please return the score sheets directly to the coordinators. A draw is not possible.

Ineffective	Somewhat ineffective	Standard	Effective	Highly effective
0-2	2-4	4-6	6-8	8-10

WORKING ATMOSPHERE Established effective relationship with client? Effective communication techniques?	DESCRIPTION OF THE PROBLEM Learned how the client interprets his/her situation? Effectively communicates with the client?
/10	/10

<p>CLIENT'S GOALS AND EXPECTATIONS Learned the client's initial goals and expectations?</p> <p style="text-align: right;">/10</p>	<p>PROBLEM ANALYSIS Analysed the clients' problems?</p> <p style="text-align: right;">/10</p>
<p>MORAL or ETHICAL ISSUES If present the team has recognised and dealt with moral and ethical issues?</p> <p style="text-align: right;">/10</p>	<p>ALTERNATIVE COURSES of ACTION Developed alternative solutions? Is the team flexible?</p> <p style="text-align: right;">/10</p>
<p>CLIENT'S INFORMED CHOICE Assisted Client in understanding and making informed choices among possible courses of action?</p> <p style="text-align: right;">/10</p>	<p>EFFECTIVE CONCLUSION Effectively concluded the interview at an appropriate time</p> <p style="text-align: right;">/10</p>
<p>TEAMWORK Balance of participation?</p> <p style="text-align: right;">/10</p>	<p>SELF ANALYSIS Identified strengths and weaknesses? Learned from their experience?</p> <p style="text-align: right;">/10</p>



**AUSTRALIAN
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Client Interviewing

Lynda Lisa

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Contact: competitions@alsa.net.au

Solicitor's Memo

To: Solicitor
From: Secretary
Name: Lynda Lisa
Re:
Date: xxx

We received a call from Ms Lisa, who advised that she needed some advice in relation to a theft from her house.

Kind Regards,
Secretary

Client Facts

Note for clients: You should only disclose Facts when prompted by your solicitors.

You may extrapolate on a set of facts, as long as it stays within your client's character and doesn't ruin the integrity of the question. In addition, you may only reveal any Secret Facts if you are questioned directly about the content of each Secret Fact by your solicitors.

Background:

Name: Lynda Lisa

Address: 22 Waratah Parade, Sydney.

Age: 67

You are a retired widow who is moderately wealthy and lives close to the Sydney CBD. You have two children (a daughter and a son), whom you dote on. Family is very important to you, and you have always tried to see the best in your children. While you are becoming less mobile, you are still very passionate about charitable causes and are part of an organisation which is involved in donating clothing to the needy.

Due to your age, you have some difficulty recalling details, and you should give vague replies unless solicitors specifically ask for the facts. You are also prone to rambling a little, or going off-topic.

In addition, you should act confused if solicitors use any legal terms or more difficult words (e.g. 'trust agreement', 'confidentiality') as you have not had any formal education past primary school.

Since you haven't had any experience with the legal system prior, you believe that the lawyers are a magical fix-all solution that can instantly resolve your problems- and so you are not afraid to push them to promise that they will take care of everything.

You are very distressed about the loss of your jewellery due to the sentimental value that they hold and because the theft has damaged the relationships between you and your two children.

You should act in a friendly manner to the solicitors, as you are grateful that they are taking the time out to help you. Although you are normally quite meek, family is highly important to you and you should be offended if the solicitors speak poorly of your son or approach the topic of the theft with insensitivity. You are feeling very betrayed and disappointed in the thief, whomever it might be.

Facts

Your name is Lynda Lisa and you live in inner Sydney, within 5 minutes' walk of Town Hall station. You have lived here ever since your husband (Ralph) passed away in 2001. Today, you have come to see solicitors about the theft of some valuable jewellery from your house last Thursday at Melissa's (your daughter's) request. **She hopes that the solicitors will be able to 'talk some sense' into you. You are quite nervous, as you have never been in such a situation before and you do not know what to expect.**

You are devoted to charitable causes and are part of a group which hand-knits various items of clothing and donates it to charities. **You were introduced to this group by a long-time friend, Rita, but you have only been part of this group for two months.**

Last Thursday, you held a fundraising knitting session at your house. **You have home insurance, but you do not know the details of the insurance or have any paperwork with you. This is the first time you have held such a session. The session ran from noon to 4:30pm.** You remember the date as it is your birthday, and both your son (Bart) and daughter visited. You turned 67. **Your son has actually been staying with you since Tuesday, when he visited to ask for a loan of roughly \$3,500. This is not the first time that he has approached you for money. You refused the loan, as you feel he is too dependent on you and you want him to "make his own way" in the world. Additionally, you have some concerns about your financial situation, due to inflation. However, you allowed him to stay with you. The original plan involved your son staying from Tuesday to Sunday.** You remember there were about seven (7) people at your house, two of which you had never met before. **You can provide their contact details if the solicitors ask.**

During afternoon tea, you started talking about your late husband to the members. As part of this conversation, you left the room to get some of the jewellery pieces that your husband gifted you to reminisce about the "old times". You had these pieces out for about 15 minutes in total. You passed these around to the people and then collected them back into your jewellery box. You lost track of the time and collected the pieces back in a hurry, as you had dinner plans with your children. Around this time, Bart turned up and you had him show the others out while you left to change clothes. **You did not count how many pieces were returned, trusting that they had all been returned to you. You did not take the jewellery box back with you, it was left in the living room. Bart has seen the jewellery box before and knows the value of its contents. You did not return the jewellery box to your room until Friday.**

You locked the doors and Bart drove you to the restaurant. Dinner proceeded smoothly for the most part and your daughter drove you back to your house. **Your son did not drive you as he left early. Your son left early as you quarrelled with him (if asked, try to brush this off). While you do not remember the exact contents of the argument, you do recall that your son saying it is "unfair" that you refused to give him a loan of money.** You did not notice anything unusual when you returned home— the doors were locked and nothing seemed to be out of place. **Bart was not yet asleep at this time (the lights were on in his room), but he did not come out to greet you. You assumed that he was still angry and did not bother him or enter the room.**

You only noticed that items were missing on Friday afternoon, when you returned the box to your room. Previous to this, you had not noticed anything strange. When you noticed, you immediately starting looking around the living room, in case some items had been dropped. This was quite difficult for you as you find it difficult to bend your knees, but your son had left that morning and your daughter had left on a business trip so there was no-one around to help you. **Your son was meant to leave on Sunday morning, but he said that “something had come up with work” and he had to go immediately. You think that this is merely bad luck, as you do not want to suspect Bart of theft.** You were particularly distraught as one of the missing items was your wedding ring, and so you searched very thoroughly and are confident in saying that nothing was dropped. In addition, a number of valuable items were stolen, including large pearl earrings set with gold (an engagement gift) and a white gold bracelet embedded with diamonds (a wedding present from your in-laws). **Your in-laws have now passed away, Altogether, the value of the stolen jewellery is about \$2500.**

You were appalled and immediately contacted both of your children to ask them what you should do. **Bart did not pick up your call. Neither you nor Melissa has been in contact with Bart.** Your daughter recommended that you get advice/referred you to the solicitor’s firm. **You have not been to the police yet. Neither have you contacted your insurance agency.**

Tensions between you and your children have been strained ever since the incident, as the items stolen were very precious to everyone. You are concerned that your daughter in particular blames you for their loss. **Tensions are actually strained because your daughter believes that your son stole the jewellery, but you refuse to accept this.**

Bart has largely not enjoyed success in his life. When his latest start up failed, he came to you seeking a loan. He has never had any trouble with the law, and you know that this is something he is very proud of, as he has never engaged in shady dealings before this. If he did steal your jewellery, you think all he needs is a warning.

Secretly, you suspect that your son has stolen from you, although you are reluctant to admit that “your baby boy” could have ever done such a thing and quite determined to believe otherwise. You are quite embarrassed by the notion that your son might have robbed you, as you feel it is quite a personal matter. If solicitors persist, reluctantly accept that it “may be possible” that your son stole from you.

Your main goals are to preserve your relationships with your children and to recover the stolen jewellery, particularly your wedding ring. While your financial position is largely stable, you have some concerns as “everything is getting so expensive”. As such, you do not want to lose any money either, and cannot afford expensive legal actions. Although it is more important to you to recover the jewellery, you would be open to receiving compensation if the jewellery cannot be recovered. You are not interested in the thief being charged with a criminal offence, but you are not averse to reporting it to the police (as you still suspect that the members of the charity group stole from you). **If you have revealed your suspicion that your son committed the crime and the solicitors have convinced you that there is a possibility that**

your son may have been involved in the theft, insist that you do not want him to have a criminal record and ask the solicitors to help you to “sit down and talk with your son”. You would be satisfied if the thief confessed the theft and returned the jewellery. Constantly ask the solicitors if they will “make everything okay”, as you are seeking reassurance. Try to get them to promise you that everything will be okay.

Notes for Judges:

Summary of key facts:

1. The client (Lynda Lisa) is an elderly lady who has had little formal education. She has two children; a son Bart and a daughter Melissa.
2. Her son, Bart, is currently staying with her and asked for a loan of roughly \$3,500. Lynda refused the loan.
3. During the Thursday prior to the interview, Lynda held a knitting session at her house with members of a charity group, two of which she did not know
4. During this session, Lynda took out valuable jewellery (worth approximately \$2,500) and passed it around
5. Towards the end of the session, Bart arrived and she retrieved the jewellery (but did not count the pieces) and went out to dinner with her son
6. During dinner, she quarrelled with her son, leading to him returning early
7. When Lynda returned, her son was still awake, but she did not talk to him
8. Lynda's son, who had originally planned to stay from Tuesday to Sunday, left early Friday morning
9. Lynda discovered the jewellery was missing on Friday afternoon
10. Neither Lynda nor Melissa have been able to contact Bart since.
11. Lynda has not approached the police with this matter, nor alerted her insurance company.
12. Lynda's goals are to maintain her relationships with her family and to recover the lost jewellery (or money to the value of it)

Key issues:

- Client has not had very much education. Competitors should be able to pick up on this after being asked to clarify difficult or legal terminology and use simple terms
- In this case, there is a strong indication that the client's son has stolen from her. Competitors should be careful to approach this tactfully so as not to alienate the client
- The client's goals are to:
 1. Maintain family relationships, and
 2. Retrieve the lost jewellery (or insurance money to the value of the lost jewellery)
 - The first goal is more important than the second
 - The client is not aiming to cause legal problems (e.g. by reporting the theft to the police) for individuals if it is possible to achieve her goals doing so
 - The client does not want to go to court due to the cost
- There are several ethical issues in this problem:
 - Competitors must first ensure that the client has an understanding of the duty of confidentiality
 - Secondly, competitors will be pushed by the client to promise that they will deliver a certain result (i.e. 'fix everything'). Competitors must ensure that they do not do so.
 - Thirdly, competitors should be aware of the client's conflicting interests and alert the client of the potential legal repercussions that may result from certain actions
 - e.g. if the solicitors are aware that her son may have committed the crime, they should flag that he may end up with a charge against him if the client reports the crime to the police

- Competitors should be mindful of the fact that they must follow the client's wishes.
 - This can be told to the client this in order to assuage the client's concerns.
- Competitors should be careful they do not take on the role of investigators when recommending legal courses of action.
 - Some courses of action include:
 - Reporting the incident to the police
 - Informing the insurance company
- Particular care should be given to explaining the client's options when helping the client come to an informed decision, as the client may not understand.

