

***The 8th Annual Michael Kirby Contract Law Moot
Melbourne, Australia***

24 - 27 September 2018

THE RULES

Organised by:
College of Law and Justice, Victoria University

Moot Coordinator
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**VICTORIA
UNIVERSITY**

MELBOURNE AUSTRALIA

INTRODUCTION

1. The Hon. Michael Kirby Contract Law Moot is an annual competition for teams representing law schools in Australia. The inaugural moot was held in September 2011 with the Hon. Michael Kirby as the Chair Arbitrator presiding in the final round.
2. This year, the moot is intended to simulate arbitration for parties in a contractual law dispute. Students are encouraged to develop and improve their practical legal skills as well as their comprehension of contract law.
3. The moot is designed to be an educational program with many facets in the form of a competition.
4. The moot consists of the preparation of a written memorandum by the claimant, a memorandum by the respondent and oral hearings.
5. The oral hearings will be held in Melbourne, Victoria, at the College of Law and Justice and other designated venues, which may include court rooms.
6. The panel of arbitrators consists of legal practitioners including current and past judges, barristers, arbitrators, mediators as well as academics.

RULES

I. Registration

1. **Registration.** Participants must register online at www.vu.edu.au/kirby-moot
2. **Registration fee.** The registration fee for the moot is **\$685 (Inclusive of GST) per team.**
3. **Payment.** Payment is to be made using **Credit Card. Detailed instructions can be found at www.vu.edu.au/kirby-moot**
4. **Withdrawing from competition.** If a team decides to withdraw from the competition prior to **close of registration**, the team's registration fee will be refunded in full.
5. **Functions.** Registration includes an invitation for all four (4) team members and accompanying coaches to an opening briefing and breakfast on **Monday, 24th September 2017.**
6. **Registration details.** The online registration form includes space for the name and address of the Team Contact Person. The Team Contact Person can be the Team Coach or a member of the team itself. All communications concerning the moot will automatically be sent by e-mail to that person. It is that person's responsibility to distribute all relevant material to the team. The postal address given for the Team Contact Person must be one that will be valid for any certificates or other material to be sent to the team after the moot. Any changes in the data on the registration form should be sent by e-mail to the moot coordinator.
7. **The Team Contact Person.** The Team Contact Person is expected to have an email and internet access, to check the moot website and email frequently, especially as the oral rounds approaches. Communication between the team and the moot coordinator through anyone other than the Team Contact Person is at the risk of the team.

II. The Problem

8. **Facts.** The facts relevant to the dispute are given in the Problem. No additional facts may be introduced into the moot unless they are a logical and necessary extension of the given facts or are publicly available true facts or are a part of any given clarifications.
9. Statements of facts alleged by a team that do not qualify under paragraph 15 are not permitted. Therefore, basing an argument on any such alleged facts will be considered to be in breach of the rules of the moot.
10. **Clarifications.** Requests for clarification of the Problem may be sent to the moot coordinator by **Wednesday, 25th July 2018, 11:55pm (AEST)**. Requests should be limited to matters which have legal significance in the context of the Problem. A request must also be accompanied with a short explanation of the expected significance of the clarification. Any request that does not contain such an explanation may be ignored. **Only 5 clarification questions per team are allowed. Each question can have a maximum of one related sub-question.**
11. Any clarifications issued by the Arbitral Tribunal (moot coordinator) will become part of the Problem and will be posted online and emailed to all team contacts.

III. Memoranda

12. **Submission.** Each team must submit a memorandum in support of the legal position of the claimant and the respondent.
13. **Submission date.** The *Claimant* memorandum must be uploaded using the link available on www.vu.edu.au/kirby-moot. The document must be in WORD format and submitted by **Friday, 17th August 2018, 11:55pm (AEST)**. Successful submission will be acknowledged. The *Respondent* memorandum **must be uploaded** in the same fashion by **Monday, 3rd September 2018, 11:55pm (AEST)**.
14. **Only memoranda received by the deadline will be considered for the memoranda prize or honourable mention.** Teams who submit their memoranda up to **48 hours late** will still be permitted to compete in the oral rounds.
15. **Distribution of memoranda.** The moot coordinator will make the memoranda available for each team by Friday, **10th September 2018**.
16. **Plagiarism.** Any memorandum that includes text from any source must set out that text in quotation marks and provide citation to the source. **In addition, care is to be taken when working with other teams within the same institution to avoid collusion of work.** Failure to give proper citation or acknowledgement of others' works constitutes plagiarism. Any memorandum which violates these aspects of the rule will automatically not be considered for any prize or honourable mention.
17. **Formatting requirements.** The following formatting requirements are to be complied with. Memorandum which violates these requirements will not be considered for any prize or honourable mention.
 - a. Paragraphs must be numbered.
 - b. The memoranda are intended to be of practical use to the arbitrators in deciding the dispute.

They are not intended to be scholarly dissertations on the relevant law.

- c. Citations in the memoranda should be limited to those that advance the argument being made. Citations must be in footnotes (**not endnotes**) and must be compliant with the Australian Guide to Legal Citation.
 - d. Memoranda must not be longer than fifteen (15) A4 typed pages, including any statement of facts, summary of arguments, arguments or discussions and any conclusion and **excluding** the cover page and the table of cases and resources.
 - e. No type style smaller than 12 Arial points may be used. The memoranda should be typed at 1.5 line-spacing.
 - f. **The name of the team and whether the memorandum is for the claimant or for the respondent must appear prominently on the outside cover page so that it is visible without opening the memorandum.**
 - g. All components of the memorandum, including the cover page and contents pages are to be part of the **one WORD document**.
18. **Memorandum revision.** A memorandum may not be revised once it has been submitted, including for missing pages, typographical or grammatical errors or for problems caused by faulty computer software. Sufficient time should be left prior to submission.
19. **Scoring of memoranda.** A designated assessor will assess and score (out of 50) each memorandum on the basis of the quality of the analysis, persuasiveness of arguments, thoroughness of research, clarity of the writing and adherence to the elements of style as stated in paragraph 17.
20. **Elimination rounds.** Teams which progress to the elimination rounds will not be provided with their opponents' memoranda. By this stage, it is expected that teams would have fully developed their arguments for each side of the case.
21. **Copyright.** Once submitted, all memoranda shall be the property of the Moot Organiser and may be copyrighted accordingly.
22. **Exchange of memoranda.** Teams may exchange memoranda after the date for submission of both memoranda but not prior to that date. This applies to teams within the same institution.

IV. Teams

23. **Composition.** Teams may come either from a law school or from another university or post-university level institution that includes the LLB or JD as part of its program of study. There is a limit of **four (4) students** who may be members of a team. There is also a limit of **two (2) teams** from the same school/institution. Universities sending two teams are expected to send an accompanying coach to Melbourne with the teams.
24. **Eligibility.** Students who have completed their studies (officially graduated) as at the eligibility date (24th September 2018) are unable to be part of a team. No student who has been licensed to practise law is eligible to participate.

25. **Participation.** Only members of the team may participate in preparation and writing of the memoranda for claimant and respondent.
26. **Former participants.** Teams may include former participants.
27. **List of team members.** Team member registration must be done online on www.vu.edu.au/kirby-moot. Changes in the composition of the team must be specifically and promptly communicated to the moot coordinator.
28. **Oral hearings.** In each of the oral hearings, **two members** of the team will present the argument. A **third member** is allowed to sit at the table and assume a solicitor role (his or her performance will not be scored).
- (a) All communications between the three students in the team must be done in a manner that is courteous to the tribunal and the opposing party. **They must therefore communicate in writing.** *The judging panel has the discretion to deduct a maximum 2 marks from the overall team score for non-compliance with this requirement.* Any potential non-compliance will have to be brought to the attention of the judging panel as soon as practicable during the hearing or, as soon as practicable after the hearing to the moot coordinator. The moot coordinator will investigate the claim. The allegedly non-compliant team will be afforded the opportunity to defend or explain their actions.
- (b) **Other members of the team must not aid them during the argument in any way.** *The judging panel has the discretion to deduct a maximum 2 marks from the overall team score for non-compliance with this requirement.* Any potential non-compliance will have to be brought to the attention of the judging panel as soon as practicable during the hearing or, as soon as practicable after the hearing to the moot coordinator. The moot coordinator will investigate the claim. The allegedly non-compliant team will be afforded the opportunity to defend or explain their actions.
- (c) Different members of the team may participate in the different hearings. However, to be eligible for prizes and honourable mention for best individual oralist (both in the general and final rounds), a mooter must have argued at least once for the claimant and once for the respondent in each of the rounds.

V. Oral Hearings

29. **Venues.** The oral hearings will be held primarily at the Victoria University, College of Law and Justice, City Queen campus building, located at 295 Queen Street, Melbourne, Victoria. Students will be advised of the location of the final hearing closer to the date.
30. **Schedule of rounds.** The final scheduling of the General Round will be published via the Kirby Moot website closer to the oral hearings. Further announcements relating to each subsequent oral round will be made through email(s) to the relevant team contacts.
31. **Duration of oral presentation.** The oral presentation of each team is, in principle, thirty (30) minutes. The team should allocate equitably the time available to the two individual speakers. However, the arbitral tribunal may extend the time limit so long as neither team is allowed more than forty-five (45) minutes to present its argument, including the time necessary to answer the questions of the tribunal. It will be the responsibility of the tribunal to ensure that the teams are treated fairly.

32. **Arguments.** In their first hearing, claimants and respondents should expect to rely on the arguments given in their written memoranda or to be prepared to justify why those arguments have been abandoned. However, speakers are encouraged, in subsequent hearings, to improve their arguments and the arbitrators will take this into account. This rule is to be read in conjunction with Rule 33.
33. **Exchange of Summary of Arguments.** Teams are required to exchange a summary of their arguments before each round. The document must comply with the following requirements:
- (a) It must be a true and complete reflection of all the team's arguments for that round, except for rebuttal and sur-rebuttal points;
 - (b) Teams must refrain from including in their summary a blanket reservation of right to submit arguments outside the four-corner of their summary;
 - (c) There must be a high level of conformity to the summary in the oral hearings;
 - (d) Maximum double-sided, one A4 paper and in PDF format;
 - (e) Must be submitted in the manner prescribed in the table on Page 7;
 - (f) Title of the document, heading on the document and subject of the email (where relevant) should read: **[Team Name, Claimant Outline of Arguments or Respondent Outline of Arguments, Moot No]**;
 - (g) Except for the first round, each team must make 5 copies of their summary to be given to the other team and the judges (see the table on Page 7);
 - (h) The summary will not be assessed and the judges will be reminded of this.
34. *The judging panel has the discretion to deduct a maximum of 2 marks from the overall team score for non-compliance with the requirements in Para 33 (a), (b) and (c). Any potential non-compliance will have to be brought to the attention of the judging panel as soon as practicable during the hearing or, as soon as practicable after the hearing to the moot coordinator. The moot coordinator will investigate the claim. The allegedly non-compliant team will be afforded the opportunity to defend or explain their actions.*
35. *The moot coordinator has the discretion to deduct a maximum of 1 mark from the overall team score for excessive and unreasonable delay in the submission/ delivery of each of the summary of arguments.*

Rounds	Claimant Summary of Arguments	Respondent Summary of Arguments
Monday General Rounds	Monday 17 September 2018, before 5pm (AEST) <i>Email: vumooting@gmail.com</i>	Any time after the receipt of the relevant Claimant Summary of Arguments and before 11pm (AEST), Wednesday 17 September 2018 <i>Email: TBA</i>
Tuesday General Rounds	Monday, 24 September 2018, by 1.30 pm <i>Bring five copies to the Moot Administration Centre</i>	Monday 24 September 2018, by 4.30 pm <i>Bring five copies to the Moot Administration Centre</i>
Wednesday General Rounds	Tuesday, 25 September 2018, by 9 am <i>Bring five copies to the Moot Administration Centre</i>	Tuesday, 25 September 2018, by 3.30 pm <i>Bring five copies to the Moot Administration Centre</i>
Elimination Round 3.30pm round	Wednesday, 26 September 2018, by 12.30 pm <i>Bring five copies to the Moot Administration Centre</i>	Wednesday, 26 September 2018, by 2 pm <i>Bring five copies to the Moot Administration Centre</i>
Elimination Round 5.30pm round	Wednesday, 26 September 2018, by 2.30 pm <i>Bring five copies to the Moot Administration Centre</i>	Wednesday, 26 September 2018, by 4 pm <i>Bring five copies to the Moot Administration Centre</i>
Quarter-finals 9.00am round	Wednesday, 26 September 2018, by 8.30 pm <i>Email: TBA</i> Thursday, 27 September 2018, by 8am <i>Bring three copies to the Moot Administration Centre</i>	Wednesday, 26 September 2018, by 10 pm <i>Email: TBA</i> Thursday, 27 September 2018, by 8am <i>Bring three copies to the Moot Administration Centre</i>
Semi-finals 12.30pm round	Thursday, 27 September 2018, by 11.30 am <i>Bring five copies to the Moot Administration Centre</i>	Thursday, 27 September 2018, by 12 pm <i>Bring five copies to the Moot Administration Centre</i>
Grand final round	Thursday, 27 September 2018, by 2.30 pm <i>Bring five copies to the Moot Administration Centre</i>	Thursday, 28 September 2018, by 3.30 pm <i>Bring five copies to the Moot Administration Centre</i>

Note: Title of the document, heading on the document and subject of the email (where relevant) should read: [Moot No, Team Name, Claimant Outline of Arguments or Respondent Outline of Arguments]

36. **Electronic equipment.** Speakers are not allowed to use laptops, tablets or any other device that can access the Internet.
37. **Arbitrators.** Arbitrators will be drawn from legal practitioners including current and past judges, barristers, arbitrators, mediators as well as academics. However if need be, and at the sole discretion of the moot coordinator, team coaches maybe asked to judge. If this occurs in the general rounds, the team coach will not be permitted to arbitrate a team that will be competing against their university in the general rounds. Note: as the Top 16 rankings are not set until after the general rounds, there may be circumstances during the elimination rounds where a team coach has previously judged his or her team's opponent in the general rounds.
38. **Questions from arbitrators.** The arbitrators are requested to act during the oral hearings the way they would in a real arbitration. There are significant differences in style dependent both on individual personalities and on perceptions of the role of an arbitrator (or judge) in oral argument. Some arbitrators, or arbitral tribunals, may interrupt a presentation with persistent questioning. Other arbitrators, or arbitral tribunals, may listen to an entire argument without asking any questions. Therefore, teams should be prepared for both styles.
39. **Order of presentation.** Normally, the claimant will argue its claims before the respondent is permitted to argue. Some panels of arbitrators will ask one team to present its argument on all of the issues before the other team is permitted to present its arguments. Other panels of arbitrators will ask both teams to argue each of the issues separately. When presenting their arguments, **the speakers must be seated.**
40. **Rebuttal.** The arbitrators will decide whether rebuttal arguments will be permitted. You must notify the arbitral tribunal of any designated time for rebuttal at the outset of the moot.
41. **Exhibits. No exhibits may be used during the oral arguments that do not come directly from the Problem.** Exhibits that are designed to clarify time sequences may be used, **but only if the arbitrators and the opposing team agrees.** For technical reasons, the exhibits may not consist of overhead or PowerPoint projections or require the use of a stand.
42. **Scoring.** Each arbitrator will score each of the speakers on a scale of **30 to 50.** The scores of the two speakers will be added to form the team score for that argument. Therefore, each team could score a maximum of 100 points per arbitrator per round. Arbitrators will score the oral arguments without knowledge of the results of earlier arguments. Some arbitrators will have participated in evaluating the memoranda of teams whose oral arguments they subsequently hear. Although they will be aware of their own evaluation of the memorandum, they will be without knowledge of the evaluations given by other arbitrators.
43. **Power Pairing.** The top 16 teams with the highest score in the general rounds will progress to the elimination rounds based on a power pairing system. The teams will be paired so that the first and sixteenth, second and fifteenth, etc. will argue against one another. Using this system and based on the ranking of each team, it may be inevitable that a team from a particular school/institution faces another team from the same school/institution. The same arrangement will continue to be used in all the subsequent final rounds. Moreover, team ranking from the general rounds will continue through all remaining elimination rounds. The ranking of a team in the General Rounds will not be divulged until after the close of the Moot and then only to the team concerned. In other words, only the *total speaking scores* will be released to the individual teams after the General Rounds.
44. **Elimination Rounds.** In the elimination rounds (and in all the subsequent final rounds), each arbitrator

will continue to score each of the speakers on a scale of **30 to 50**. The winner of each moot will be determined by a majority decision of the arbitral tribunal.

45. **Determination of sides.** If the two teams in any of the elimination rounds, including the final round, argued against one another in the general rounds, they will argue for the opposite party in the elimination round. If they did not argue against one another in the general rounds, the determination as to which team will be claimant and which will be respondent in the first elimination round will be determined by lot.

In the following rounds, when one of the two teams in the preceding round was claimant and the other was respondent, they will argue for the opposite party for which they argued in that preceding round. If both teams argued for the claimant or both argued for the respondent in the preceding round, the decision as to the side will be determined by lot.

46. **Winning team.** The winning team of the oral phase of the moot is the team that wins the final round.

VI. Assistance

47. **Written memorandum.** Although the students should do all the research and writing of the memorandum themselves- without assistance from anyone who is not a student member of the team- faculty advisors, coaches and others may help identify the issues, comment on the persuasiveness of the arguments the students have made in drafts and, when necessary, suggest other arguments the students might consider employing. However, the final submitted memorandum must be that of the students and not their advisors.

48. **Oral hearings.** There is no restriction on the amount of coaching that a team may receive in preparation for the oral hearings. It is expected and encouraged that teams will have practice arguments, whether against other members of the team or against other teams that will participate in the moot. Teams are however not permitted to have practice moots with their opponents in the General Rounds.

49. One purpose of the moot is to develop students' advocacy skills. Observance of the performance of other participants is therefore encouraged. However, no team, or friend or relatives of members of a team are permitted to attend arguments of other teams against which it is scheduled to meet in the general rounds. **Violation of this rule will disqualify a team from participation in the elimination rounds. This rule will be applied even if attendance at an argument was inadvertent. The only inevitable exception to this rule is for volunteers who are Victoria University students.**

50. **Filming or recording of arguments.** Filming of arguments is permitted if done with the agreement of the other team and the arbitrators. Filming must be done in such a way as to not disturb the hearings.

VII. Awards

51. The awards given in the moot are:
- a. Award for the Winning Team in the Final Rounds
 - b. Award for the Runner Up Team in the Final Rounds
 - c. Award for the Best Individual Oralist in the General Rounds
 - d. Award for the Best Individual Oralist in the Final Rounds

- e. Award for the Best Individual Oralist in the Grand Final
- f. Award for Best Written Memorandum for Claimant
- g. Award for Best Written Memorandum for Respondent
- h. Award for the Best Newcomer Team

52. Honourable mentions will be made for:

- i. The Highest Scored Team in the General Rounds
- j. The Highest Scored Oralist in the General Rounds
- k. The Highest Scored Oralist in the Final Rounds
- l. Best Written Memorandum for Claimant
- m. Best Written Memorandum for Respondent

VIII. Interpretation

53. For interpretation of these rules and other enquiries relating to the moot, an email should be sent to the moot coordinator.