

**Inaugural
Hon. Michael Kirby Contract Law Moot**

Melbourne, Australia

28-30 September 2011

THE RULES

**Organised by:
Victoria Law School
Victoria University**

INTRODUCTION

I. The Hon. Michael Kirby Contract Law Moot

1. The Hon. Michael Kirby Contract Law Moot is an annual competition of teams representing law schools in Australia with the inaugural moot in September 2011.
2. The moot is intended to simulate a dispute resolution proceeding for parties in a contractual law dispute. Students are encouraged to develop and improve their practical legal skills as well as their comprehension and retention of the substantive contract law throughout the mooting period.
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 for claimant, a memorandum for respondent and ultimately oral hearings.
5. The oral hearings will be held in Melbourne, Victoria, at the Victoria Law School and other relevant venues.

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II. Registration and Important Dates

6. Registration in the moot is a two-step process consisting of completion and submission of the registration form and submission of the memorandum for claimant.
7. Registrations will be accepted until midnight **9th September 2011**.
8. **Registration fee.** The registration fee for the moot is \$300 per team. The fee must be paid by midnight **9th September 2011** in order to compete in the moot, unless the moot administration agreed to a later date.
9. The memorandum for claimant is to be submitted by midnight **9th September 2011**.
10. The memorandum for respondent is to be submitted by midnight **14th September 2011**.
11. Receipt of the registration form and payment of the registration fee as well as receipt of the memorandum for claimant and for respondent will be acknowledged to the team contact person(s).
12. If a team decides to withdraw from the competition prior to **9th September 2011**, that is the day of the memorandum for claimant is due, the team's registration fee will be refunded in full.
13. **Oral Hearings.** The General Rounds will be on **28th - 29th September 2011**. The Semi Finals and Final Round will be on the **30th September 2011**.

14. **Registration form.** The registration form includes space for the name and address of the contact person. 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 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 Victoria Law School moot administration, amanda.bain@vu.edu.au.

III. The Problem

15. **Distribution.** The problem is available online at <http://www.vu.edu.au/higher-ed-and-tafe/business-and-law/victoria-law-school>.
16. **Facts.** The facts in the dispute that is the subject matter of the moot 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.
17. Statements of facts alleged by a team that do not qualify under paragraph 16 are not true. Therefore, basing an argument on any such alleged facts will be considered to be in breach of the rules of the moot.
18. **Clarifications.** Requests for clarification of the Problem may be sent to the moot administration prior to midnight Friday, 2nd September 2011. Requests should be limited to matters which would appear to 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.
19. Any clarifications issued by the Arbitral Tribunal will become part of the Problem and will be posted at <http://www.vu.edu.au/higher-ed-and-tafe/business-and-law/victoria-law-school>.

IV. Teams

20. **Composition.** Teams may come either from a law school or from another university or post-university level institution that includes law as part of its program of study. There is no limit on the number of students who may be members of the team. No student who has been licensed to practise law is eligible to participate.
21. Teams may include former participants.
22. **List of team members.** The list of team members must be submitted at the time the memorandum for claimant is submitted. The names must be submitted on the form that will be made available. Certificates of participation for participating team members will be prepared from the lists submitted to the moot administration. The list may also include team coaches who wish to receive a certificate of participation. Changes in the composition of the team must be specifically communicated to the moot administration.
23. **Participation.** All members of the team may participate in preparation of the memorandum for claimant and respondent.

24. In each of the oral hearings, two members of the team will present the argument. Other members of the team may not aid them during the argument in any way. Different members of the team may participate in the different hearings. However, to be eligible for an honourable mention for best individual oralist, a participant must have argued at least once for the claimant and once for the respondent.

V. Written Memorandum

25. **Memorandum.** Each team must submit a memorandum in support of the claimant's position to the moot administration by email by the stipulated date. The memorandum will then be made available to one of the other teams through email as soon as possible after the submission date. Submission of the memorandum for claimant is an integral part of the registration procedure. Therefore, teams that fail to submit the memorandum by the stipulated date will be considered not to have completed the registration process for the moot and will not be able to compete.
26. The moot administration will determine which team's memorandum for claimant will be made available to which other team.
27. Each team will prepare a memorandum in support of the respondent's position in response to the memorandum in support of the claimant's position which has been made available to it. The memorandum for respondent must be submitted by the stipulated time. Teams that fail to submit the memorandum for respondent by that time will be considered to have withdrawn from the moot at that time.
28. The memorandum for respondent must be responsive to the arguments made in the memorandum for claimant. Nevertheless, if the team preparing the memorandum for respondent believes that the team preparing the memorandum for claimant has not disclosed all their arguments, then the former may deal with those issues. This is normally not allowed in a real arbitration, however it may be appropriate in the moot. Care should be taken to present a coherent argument for the respondent and not simply a series of disjointed responses to the claimant's argument.
29. **Plagiarism.** Any memorandum that includes text from any source must set out that text in quotation marks and provide citation to the source. Failure to give a proper citation constitutes plagiarism. Any memorandum which violates this rule will automatically not be considered for any award or honourable mention.
30. **Formatting requirements.** The following formatting provisions are required to be followed. Memorandum which violates these provisions will not be considered for any award or honourable mention.
- a. Paragraphs must be numbered. References to statements in either one's own memorandum or, to statements in the opponent's memorandum for claimant must be to the paragraph number.
 - b. The memorandums 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 memorandum should be limited to those that advance the argument being made. Citations must be in footnotes and must be compliant with the Australian Guide to Legal Citation.
 - d. Memorandum may be no longer than fifteen (15) A4 typed pages, including any statement of facts, argument or discussion and any conclusion and excluding the cover page and the table of content.

- e. No type style smaller than 12 points may be used. The memorandum 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 can easily be read without opening the memorandum.
31. **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 to verify the text to be submitted.
32. **Scoring of Memorandum.** A jury will score the memorandum on the basis of the quality of the analysis, persuasiveness of argument, thoroughness of research, clarity of the writing and adherence to the elements of style as stated in paragraph 29. The jury will take into account whether arguments are based on facts not found in the Problem or clarifications (if any) and that are not logical and necessary extension of the given facts. When judging the memorandum for respondent, the jury will consider whether it is responsive to the arguments raised by the claimant.
33. The memorandum must be submitted in PDF as a single computer file to the moot administration.
34. Successful submission of the memorandum will be acknowledged.
35. Teams that enter the elimination rounds will not be furnished with the memorandums of the teams against which they are to argue in those rounds.
36. **Copyright.** Once submitted, all memorandums shall be the property of the moot organiser and may be copyrighted accordingly.
37. **Exchange of memorandum.** Teams may exchange memorandums after the memorandums for respondent have been submitted, but not prior to that time.

VI. Oral Hearings

38. **Venues.** The oral hearings will be held primarily at the Victoria Law School, City Queen campus buildings, located at 295 Queen Street, Melbourne, Victoria. Students will be advised of the location of the final hearing closer to the date.
39. **Schedule of rounds.** The final scheduling of the different rounds will be published closer to the oral hearings.
40. **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.
41. **Arguments.** In their first hearing, claimants and respondents should expect to rely on the arguments given in their written memorandums 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.

42. **Questions by 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 or even aggressive questioning. Other arbitrators, or arbitral tribunals, may listen to an entire argument without asking any questions. Therefore, teams should be prepared for both styles.
43. **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.
44. **Rebuttal.** The arbitrators will decide whether rebuttal arguments will be permitted. Whether or not rebuttal will be allowed can be expected to change from one argument to the next.
45. **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 are in agreement. For technical reasons, the exhibits may not consist of overhead or PowerPoint projections or require the use of a stand.
46. **Scoring.** Each arbitrator will score each of the orators on a scale of 25 to 50. The scores of the two orators will be added to constitute the team score for that argument. Therefore, each team could score a maximum of 100 points per arbitrator per argument. 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.
47. **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.
48. 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.
49. **Winning team.** The winning team of the oral phase of the moot is the team that wins the final round.

VII. Assistance

50. **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.
51. **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.
52. In each oral hearing, two members of the team will present the argument. No communication with other members of the team who may be present at the hearing is permitted.
53. 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 argue at a later time 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.
54. **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 not to disturb the hearings.

VIII. Awards

55. The awards given in the moot are:
 - a. Award for Best Written Memorandum for Claimant
 - b. Award for Best Written Memorandum for Respondent
 - c. Award for Best Individual Oralist (To be eligible for this award, a participant must have argued at least once for the claimant and once for the respondent)
 - d. Award for Best Team Orals this award will be made to the winning team in the final round of the oral hearings
56. Certificates will be prepared for all members of teams that win an award or honourable mention in one of the three team categories as well as for those who receive an award of the best individual oralist. The certificates will be sent up to two months after the close of the moot to the person whose postal address was given on the registration form.

IX. The Moot Administration

57. For interpretation of these rules and other enquiries relating to the moot, an email should be sent to the moot administration:

Contact officer: Amanda Bain
amanda.bain@vu.edu.au
Phone: 03 9919 1844