

*The 5<sup>th</sup> Michael Kirby Contract Law Moot  
Melbourne, Australia*

28 September – 1 October 2015

**THE RULES**

Organised by:  
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## 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.vukirbymoot.com](http://www.vukirbymoot.com).
2. A later date for registration may be negotiated with the moot coordinator if, in the opinion of the moot coordinator, there remains sufficient time for a team to adequately prepare for the moot.
3. **Registration fee.** The registration fee for the moot is **\$600 (GST Inclusive) per team**.
4. **Awards Dinner.** There will be a cost of **\$65 per person (GST Inclusive)** for attending the Awards Dinner. This applies to both students and coaches.
5. **Payment.** Payment is to be made using **Credit Card. Detailed instructions can be found at [www.vukirbymoot.com](http://www.vukirbymoot.com).**
6. **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.
7. **Functions.** Registration includes an invitation for all four (4) team members and accompanying coaches to an opening briefing on **Monday, 28<sup>th</sup> September 2015**.
8. **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.

9. **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

15. **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.
16. 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.
17. **Clarifications.** Requests for clarification of the Problem may be sent to the moot coordinator by **Friday, 17<sup>th</sup> July 2015, 11:55pm (AEST)**. Requests should be limited to matters which 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.
18. Any clarifications issued by the Arbitral Tribunal (moot coordinator) will become part of the Problem and will be posted online.

## III. Memoranda

19. **Submission.** Each team must submit a memorandum in support of the legal position of the claimant and the respondent.
20. **Submission date.** The *Claimant* memorandum must be submitted via the memorial upload function **on the Kirby Moot website**. The document must be in PDF format and uploaded by **Friday, 14<sup>th</sup> August 2015, 11:55pm (AEST)**. Successful submission will be acknowledged. The *Respondent* memorandum must be uploaded in the same fashion by **Friday, 4<sup>th</sup> September 2015, 11:55pm (AEST)**.
21. **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.
22. **Distribution of memoranda.** The moot coordinator will make the memoranda available for each team.
23. **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 a proper citation constitutes plagiarism. Any memorandum which violates these aspects of the rule will automatically not be considered for any prize or honourable mention.

24. **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, 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 be easily read without opening the memorandum.**
  - g. All components of the memorandum, including the cover page and contents pages are to be part of the **one PDF document**.
25. **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.
26. **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 24.
27. **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. The only *exception* is for the Final Round where an exchange of summary of arguments has to take place according to the direction of the moot coordinator.
28. **Copyright.** Once submitted, all memoranda shall be the property of the Moot Organiser and may be copyrighted accordingly.
29. **Exchange of memoranda.** Teams may exchange memoranda after the date for submission of both memoranda but not prior to that date.

#### IV. Teams

30. **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 a limit of **four (4) students** who may be members of a team. There is also a limit of **three (3) teams** from the same school/institution. Universities sending three teams are expected to send an accompanying coach to Melbourne with the teams.
31. **Eligibility.** Students who have completed their studies (officially graduated) as at the eligibility date (28<sup>th</sup> September 2015) are unable to be part of a team. No student who has been licensed to practise law is eligible to participate.
32. **Participation.** Only members of the team may participate in preparation of the memoranda for claimant and respondent.
33. **Former participants.** Teams may include former participants.
34. **List of team members.** Where possible, the list of team members must be submitted when the team is registering. Later notification can be accepted as long as it is before the closing of the registration. Certificates of participation for participating team members will be prepared based on the list submitted. 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 and promptly communicated to the moot coordinator.
35. **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). 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 are therefore highly encouraged to communicate in writing. **Other members of the team must 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 prizes and honourable mention for best individual oralist (both in the general and final rounds), a participant must have argued at least once for the claimant and once for the respondent in each of the rounds.

#### V. Oral Hearings

36. **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.
37. **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 teams as well as online and via social media.
38. **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.
39. **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.
  40. **Electronic equipment.** Speakers are not allowed to use laptops, tablets or any other device that can access the Internet.
  41. **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.
  42. **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.
  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. When presenting their arguments, **the speakers must be seated.**
  44. **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.
  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 (or anything similar to a Bench Brief) 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 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.
  47. **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.

48. **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 **25 to 50**. The winner of each moot will be determined by a unanimous decision. Where this is not possible, it will be determined by a majority decision of the arbitral tribunal.
49. **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.

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

## **VI. Assistance**

51. **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.
52. **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.
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 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.**

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 to not disturb the hearings.

## **VII. Awards**

56. 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
57. Honourable mentions will be made for:
- a. The Highest Scored Team in the General Rounds
  - b. The Highest Scored Oralist in the General Rounds
  - c. The Highest Scored Oralist in the Final Rounds
  - d. Best Written Memorandum for Claimant
  - e. Best Written Memorandum for Respondent
58. Certificates will be sent up to two months after the close of the moot to the relevant team's contact person.

## **VIII. The Moot Organiser**

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