



**AUSTRALIAN
LAW STUDENTS'
ASSOCIATION**

MOOTING CHAMPIONSHIP RULES

ALSA CONFERENCE

1. TEAMS

- 1.1 Each law school in Australia whose Law Student Society is affiliated with ALSA may nominate one team to compete in the Championship.
- 1.2 Any international law school may at ALSA's invitation nominate a team to compete in the Championship.
- 1.3 Each team may consist of either 2 or 3 members.
 - 1.3.1 In a team of three members there are two counsel and one solicitor. Team members may rotate positions between senior counsel, junior counsel and solicitor.
 - 1.3.2 In a team of two members there are two counsel. Team members may rotate positions between senior counsel and junior counsel.
 - 1.3.3 The two or three nominated members of the mooting team shall remain the same for the duration of the ALSA Conference.
- 1.4 Team members must not have completed a law degree or equivalent qualification for legal practice in any jurisdiction.
- 1.5 Teams must register by the registration date as set by the Conference Convenor and the ALSA President. Penalties may apply for late registration.

2. COMPETITION STRUCTURE

- 2.1 The Championship consists of three preliminary rounds, quarter finals, semi finals and a grand final.
- 2.2 Preliminary Round Procedures
 - 2.2.1 If an even number of teams enter the Championship, all teams compete in all the preliminary rounds.
 - 2.2.2 If an odd number of teams enter the Championship, one bye per round is declared. The bye is allocated randomly. A team with a bye will be awarded the average mark scored by that team in the other rounds for the bye.
 - 2.2.3 Eight teams with the highest win-loss ratios will progress to the quarter-finals.
 - 2.2.4 If two teams only have tied win-loss ratios, and the two teams have faced each other in the preliminary rounds, then the winner of that round shall proceed to the quarter-finals.
 - 2.2.5 If the two teams referred to in 2.2.4 have not faced each other, or there are more than two teams with tied win-loss ratios, the team or teams will progress to the quarter-finals on the basis of the highest average winning margin as a proportion of the highest score. A team's 'average winning margin as a proportion of the highest score' is to be calculated by, for each moot, dividing the margin (positive for winning margin, negative for losing margin) by the highest team score in that moot, and multiplying by 100.

2.2.6 If the teams remain tied, the teams will progress to the quarter-finals based a coin toss conducted by the Competitions Director.

2.3 Finals Procedures

2.3.1 The teams proceeding to the quarter finals will be announced after the conclusion of the preliminary rounds.

2.3.2 The draw for the quarter finals is as follows (where Team One is the highest placed team and Team Eight is the lowest placed team):

Round	Team	v	Team
A	One		Eight
B	Two		Seven
C	Three		Six
D	Four		Five

Teams will be allocated to sides by random draw.

2.3.3 The winners of each quarter final round progress to the semi finals.

2.3.4 The draw in the semi finals is:

- The winner of Round A versus the winner of Round D.
- The winner of Round B versus the winner of Round C.

Teams will be allocated to sides by random draw.

2.3.5 The winning team from each semi final proceeds to the grand final.

2.3.6 The grand-finalists will be allocated to appellant or respondent positions by random draw.

2.4 The winners of the grand final are announced at the closing dinner.

3. RELEASE OF QUESTIONS

3.1 Release of Preliminary Round Questions

3.1.1 Each preliminary round has a separate question.

3.1.2 Questions for the preliminary rounds are released on the ALSA or Conference website three weeks before the Championship begins.

3.1.3 Questions for the preliminary rounds are e-mailed to the nominated LSS Representative under Conference registration procedure on the day they are released on the Internet.

3.1.4 Preliminary round questions may be faxed to ALSA Representatives upon prior request to the Conference Convenor.

3.1.5 The preliminary draw is released on the Internet and emailed to the nominated LSS Representative under Conference registration procedure three weeks before the Championship begins, informing teams which side of the argument they will be arguing.

3.2 Release of finals questions

3.2.1 Semi and grand finalists are notified on the day that the previous round takes place.

3.2.2 The questions for the final rounds will be released after the conclusion of the preliminary rounds.

3.2.3 Any relevant materials for the final round questions will be released three weeks prior to the commencement of the Conference.

3.3 The questions will be based on the following areas of law only:

3.3.1 Administrative law;

3.3.2 Commercial law;

3.3.3 Commonwealth Constitutional law;

3.3.4 Contract law;

3.3.5 Corporations law;

3.3.6 Criminal law;

3.3.7 Equity;

3.3.8 Property/Land law (Common Law land and Torrens land);

3.3.9 Tort law; and

3.3.10 The Trade Practices Act;

3.4 Questions written specifically for the ALSA Conference must be used.

4. PREPARATION AND RESEARCH

4.1 All research and preparation for the moots will be conducted solely by the team members.

4.2 The ALSA Conference Review Board may disqualify from the Championship any team receiving outside assistance.

4.3 Unless otherwise stated, all moots will be heard as if before the Supreme Court of State or Territory in which the Conference is held. The jurisdiction to hear the case will be assumed.

4.3.1 Procedural submissions must not be made during the moot.

4.4 Lists of materials may be issued with any preliminary round question and are intended as a guide only. Mooters may use additional cases at their discretion.

- 4.5 Lists of materials are issued in the Quarter-Finals, Semi-Finals and the Grand Final and are mandatory. Mooters may not introduce additional cases into their submissions.
- 4.6 Penalties apply if counsel make extensive reference to authorities other than those included in a mandatory case list.
- 4.7 Where issues of legislation are to be argued, this will be specifically referred to in the moot problem or list of materials. Otherwise, argument is limited to the common law.

5. JUDGING

- 5.1 Every effort shall be made by the Competition organisers and competitors to ensure that Judges are unaware of which University competitors are from until after they have judged that particular competition.
- 5.2 Number of Judges
 - 5.2.1 The preliminary rounds are heard by one judge.
 - 5.2.2 The quarter finals may be heard by one or three judges, depending on availability.
 - 5.2.3 The semi finals are heard by three judges.
 - 5.2.4 The grand final may be heard by three or five judges, depending on availability.
- 5.3 Qualification and Selection of Judges
 - 5.3.1 Judges will be judges, magistrates, legal practitioners, legal academics or others with a demonstrated experience in judging mooting competitions.
- 5.4 Judges shall be provided with a one page summary of the issues in the question. A marking schedule will also be provided to all judges in marking individual competitors. Teams are strongly advised to have regard to it in preparation of the moots.
- 5.5 Each judge will award each team a mark out of 100. These marks will be allocated as follows:

Organisation of Presentation	10 Marks
Written Submissions	10 Marks
Development of Argument	25 Marks
Questions from the Bench	30 Marks
Speaking ability and delivery	25 Marks
Total	100 Marks

5.6 Return & Revelation of Scores

- 5.6.1 Each team's score will be submitted to the Competitions Director or the Mooting Championship co-ordinator or a person nominated by them.
- 5.6.2 At the conclusion of the Championship the Competitions Director or their representative will release a ranking of all teams in the Championship to the ALSA Council.
- 5.6.3 No scores or rankings will be released until the completion of the Championship.

5.7 Determining the winner where multiple judges

- 5.7.1 If there is a panel of judges judging the round, the winning team is the team which was the superior team in the opinion of the majority of judges, irrespective of the result derived from the aggregate of the teams' scores.

Example	Team A score	Team B score	Winner in judge's opinion
Judge 1	50	48	Team A
Judge 2	50	48	Team A
Judge 3	45	50	Team B

Winner determined under this rule

TOTAL	145	146	Team A
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The winner of the example round is Team A.

6. PENALTIES

- 6.1 The following penalties apply:
 - 6.1.1 Late registration for the Championship: 2% reduction of total marks for each day late in each round of the Championship.
 - 6.1.2 Continuation of oral submissions beyond the time limit without the judge's express permission: 2 marks for every minute or part thereof.
 - 6.1.3 Late submission of written Memorandum of Argument: 2 marks for every 10 minutes late or part thereof.
- 6.2 Judges do not have the discretion to dispense with these penalties.
- 6.3 Judges shall not be notified of the application of any of these penalties at any time.
- 6.4 Where a penalty is levied against a team, the penalty will be divided equally amongst counsel for that team.

7. APPEALS

7.1 Appeals will be dealt with accordingly as prescribed in the Appeal Procedure bylaw.

8. WRITTEN SUBMISSIONS

8.1 In each round teams must submit the number of copies of Memoranda of Argument specified by the Conference Convenors.

8.2 Those copies must be submitted to the organiser of the competition or their appointee two hours prior to the commencement of each moot.

8.3 Penalties apply if Memoranda are submitted late.

8.4 The Memorandum of Argument must contain:

8.4.1 An outline of the structure of the team's submission.

8.4.2 Major arguments to be raised.

8.4.3 Allocations of speaking time.

8.4.4 A list of the authorities on which counsel rely.

8.5 Each team must format their Memoranda of Argument in accordance with the standard submission in these rules.

8.6 Memoranda of Argument must not exceed three pages in length, plus a fourth page for a list of authorities.

9. THE MOOTS

9.1 After a formal introduction to the bench each team will have 40 minutes to present their case.

9.2 The time may be divided between senior and junior counsel 20/20, 15/20 or 25/15. The division of time must be specified in the written submissions.

9.3 Penalties apply if counsel exceed their allocated or extended time.

9.4 Judges may grant an extension of time of up to 5 minutes per team.

9.5 There will be no right of reply.

9.6 Nothing may be handed up to the judge(s).

10. FORFEITURE

10.1 Any team which forfeits a moot will be deemed to have lost that moot. Counsel for the forfeiting team will be deemed to have a mark of zero for that moot.

- 10.2 Any team whose opponent forfeits a moot will be deemed to have won that moot. Counsel for the winning team will be deemed to have scored in that round the average mark scored by that team in the other rounds in which it competes.
- 10.3 Any team which forfeits a moot is excluded from competing in the Quarter, Semi or Grand Finals.
- 10.4 No member of a forfeiting team is eligible to be awarded Best Oralist.

11. BEST ORALIST AWARD

- 11.1 The best oralist is also announced at the closing dinner.
- 11.2 The best oralist is determined as follows:
 - 11.2.1 Candidates for best oralist must have competed in at least two of the three preliminary rounds.
 - 11.2.2 Only performances in the preliminary rounds are considered.
 - 11.2.3 For each moot, every competitor is ranked by score as either first, second, third or fourth. This ranking will be given according to the competitor's score relative to the other three competitors in that moot.
 - 11.2.4 Of the competitors achieving all first rankings, the mooter with the highest average score for their two best moots will be declared Best Oralist.
 - 11.2.5 If no competitor achieves all first rankings, the competitors with the most first rankings are considered.
 - 11.2.6 In the event of a tie, the competitors will share the prize.

12. STANDARD FORM OF MEMORANDUM OF ARGUMENT AND LIST OF AUTHORITIES

IN THE FULL COURT OF THE SUPREME COURT OF WESTERN AUSTRALIA

MOOT 1 of 2005

BETWEEN

PKS DISTRIBUTORS (AUSTRALIA) PTY LTD

Appellant

and

LARCH ORIGINAL OCCUPATIONAL TECHNOLOGY LIMITED

Respondent

APPELLANT'S OUTLINE OF SUBMISSIONS

(A) SUMMARY OF THE FACTS

1. The Respondent manufactured a hand-held computerised diary called the Delphic organiser in the United States and the Appellant began negotiations to distribute the product in Australia and New Zealand.
2. In June 2000 the Respondent represented to the Appellant that "US Manufacture was the "bedrock" of the company's success with the Delphic organiser" and that the Respondent "happily replaced any defective Delphic organiser returned to it".
3. In August 2000, the parties concluded an agreement under which the Appellant undertook to distribute the Delphic organiser in Australia and New Zealand.
4. However, in early 2002 the Respondent contracted with a New Zealand company to manufacture the product under license and supply the Appellant a New Zealand made product.
5. The New Zealand product was significantly less reliable than the original product and the Appellant demanded that the Respondent supply only the US-manufactured product and give credit for the organisers returned within warranty.
6. The Respondent subsequently terminated the agreement under Clause 17.
7. The Appellant brought an action in the Supreme Court of Western Australia alleging terms should be implied into the contract, but the action was dismissed by Dunlop J and is now appealed to the Full Court.

(B) APPELLANT'S SUBMISSIONS

1. Parol evidence of the June 2000 pre-contractual discussions is admissible for the purposes of illuminating the surrounding circumstances of the contract.
2. A term should be implied into the contract that the product supplied under the distribution agreement would be US-manufactured.
3. A term should be implied into the contract that the Appellant could return any product found to be defective within warranty to the Respondent for full credit.

THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:

SUBMISSION ONE

1. Parol evidence of the June 2000 pre-contractual discussions is admissible for the purposes of illuminating the surrounding circumstances of the contract.

- 1.1 Extrinsic evidence of pre-contractual discussions is admissible for the purposes of illuminating the objective background or surrounding circumstances in which the contract came into existence.

Codelfa Construction Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337 at 352 per Mason J.
Spunwill Pty Ltd v BAB Pty Ltd (1994) 36 NSWLR 290 at 299.

- 1.2 Thus, evidence that the parties have contracted on the basis of a common assumption but have not included a provision to the same effect is admissible.

Codelfa Construction Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337 at 354 per Mason J.

- 1.3 In the instant case, evidence that the parties contracted on the basis of a common assumption that the product referred to in the agreement was the US-manufactured product is admissible.

- 1.4 Further, evidence that the parties contracted on the basis of a common assumption that the Respondent would replace defective products within warranty is also admissible.

SUBMISSION TWO

2. A term should be implied into the contract that the product supplied under the distribution agreement would be the US-manufactured product.

- 2.1 The implication of terms *ad hoc* into a written agreement must meet the five requirements laid down in *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266:

2.1.1 It must be reasonable and equitable.

2.1.2 It must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it.

2.1.3 It must be so obvious that it goes without saying.

2.1.4 It must be capable of clear expression.

2.1.5 It must not contradict any express term.

BP Refinery (Westernport) Pty Ltd v Hastings Shire Council (1977) CLR 266 at 283 per Lord Simon of Glaisdale.

Codelfa Constructions Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337 at 347 per Mason J.

- 2.2 A term requiring that the product supplied under the distribution agreement be manufactured in the United States meets these requirements.

2.2.1 The term operates reasonably and equitably between the parties as they had entered the contract on the basis that the Appellant would distribute the US-manufactured product.

2.2.2 The term is necessary to make the agreement effective in a business sense and prevent the Respondent from acting to undermine the understanding of the parties by exploiting a gap in the contract.

Renard Constructions (ME) Pty Ltd v Minister for Public Works (1992) 26 NSWLR 234 at 257-258 per Priestly JA.

2.2.3 The term is so obvious it goes without saying. Had the "officious bystander" suggested the parties include such a term they would have dismissed it as obvious that the product referred to in the agreement was the US product since this was the only product in existence at that time.

- 2.2.4 The term is capable of clear expression.
- 2.2.5 The term does not contradict any express terms in the written agreement, and, in particular, is consistent with Clause 15.
- 2.3 A term should be implied into the contract that the product supplied under the distribution agreement would be manufactured in the United States.

SUBMISSION THREE

3. A term should be implied into the contract that the Appellant could return any product found to be defective within warranty to the Respondent for full credit.
- 3.1 This term must also satisfy the *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266 test for the implication of terms *ad hoc* into a written agreement.
- 3.2 The purported term meets the five requirements enunciated in *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266.
- 3.2.1 The term operates reasonably and equitably between the parties as they had entered the contract on the basis that the Respondent took full responsibility for the replacement of defective products.
- 3.2.2 The term is necessary to make the agreement effective in a business sense.
- Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234 at 257-258 per Priestly JA.
- 3.2.3 The term is so obvious it goes without saying and it was simply assumed by the parties that the Respondent would replace defective products within warranty.
- 3.2.4 The term is capable of clear expression.
- 3.2.5 The term does not contradict any express terms in the written agreement as there is no term in the written agreement that purports to deal with the question.
- 3.3 Thus, a term should be implied into the contract that defective products found to be defective within warranty could be returned by the Appellant to the Respondent for a full credit.

On the basis of the above submissions, counsel for the Appellant respectfully requests an Order of the Court upholding the first ground of appeal, and reversing the order of the trial judge.

DATED this **21st** day of **May 2005**

CORNELIA ROWENA TRUMPTON III

Senior Counsel for the Appellant

IN THE FULL COURT OF THE SUPREME COURT OF WESTERN AUSTRALIA

MOOT 1 of 2005

BETWEEN

PKS DISTRIBUTORS (AUSTRALIA) PTY LTD

Appellant

and

LARCH ORIGINAL OCCUPATIONAL TECHNOLOGY LIMITED

Respondent

APPELLANT'S LIST OF AUTHORITIES

1. *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266; (1977) 16 ALR 363.
2. *Codelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337; (1982) 41 ALR 367.
3. *Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234; (1992) 9 BCL 40.
4. *Spunwill Pty Ltd v BAB Pty Ltd* (1994) 36 NSWLR 290; (1995) Aust Contract R 90-053.

SUBMITTED ON BEHALF OF SENIOR COUNSEL FOR THE APPELLANT.

DATED this **20th** day of **May 2005**

CORNELIA ROWENA TRUMPTON III

Senior Counsel for the Appellant

Speaking ability and delivery	<ul style="list-style-type: none"> <input type="checkbox"/> lacks proper courtesy <input type="checkbox"/> lacks clarity of language and expression <input type="checkbox"/> fails to observe correct etiquette and terminology <input type="checkbox"/> over-reliance on notes 	<ul style="list-style-type: none"> <input type="checkbox"/> courteous and clear <input type="checkbox"/> lacks variation of tone, pace and expression <input type="checkbox"/> poor eye-contact <input type="checkbox"/> good knowledge of court etiquette and terminology 	<ul style="list-style-type: none"> <input type="checkbox"/> courteous and clear <input type="checkbox"/> good use of language, gesture and expression <input type="checkbox"/> comfortable with interventions <input type="checkbox"/> conveys confidence 	<ul style="list-style-type: none"> <input type="checkbox"/> conveys ideas and deals with interventions with ease, skill and confidence <input type="checkbox"/> engages well with court <input type="checkbox"/> conveys impression of conviction and sincerity 	<div style="border: 1px solid black; width: 100%; height: 100%;"></div>
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