

CASTAN CENTRE *CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES* ACT MOOT

– Guidelines for Participants –

INTRODUCTION

Welcome to the inaugural **Castan Centre Charter of Human Rights and Responsibilities Act Moot**. The moot will involve teams from Deakin, La Trobe, Melbourne, Monash and Victoria Universities.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (“the Charter”) provides a legislative framework for the protection and promotion of human rights within Victoria. The Charter protects civil and political rights, primarily drawn from the *International Covenant on Civil and Political Rights 1966*. It does this by obliging Parliament to consider human rights in developing new legislation, by requiring public authorities to act in a way compatible with the human rights in the Charter, and by requiring courts and tribunals to interpret Victorian law consistently with human rights as far as possible. In a country without a national Bill of Rights or Human Rights Act, the Charter represents a significant step in the advancement of human rights. It will thus be an important piece of legislation for Victorian lawyers.

The Moot gives students the opportunity to learn more about the nature of the rights covered in the Charter, the protection offered by the Charter, and how the Charter can be used in litigation. The Castan Centre hopes to raise the profile of the Charter among law students, who in the future will have the capacity to incorporate the Charter into their legal practice and to further human rights in Victoria.

The Castan Centre for Human Rights Law, located at Monash University, uses research and public education to promote and protect human rights. The Centre aims to foster the understanding and implementation of domestic and international human rights law. The Castan Centre would like to thank Clayton Utz for its generous sponsorship and support of the Moot. We also wish to thank our counterparts at the four partner universities who have contributed to making this moot a success.

These Guidelines for Participants provide all the details of the Moot as well as some general pointers and background information on mooting. Good luck to all competitors.

MOOTING – THE BASICS

Physical Layout of the Court

The moot room will be set up to reproduce the layout of a Court. The judge will sit behind a table at the front of the room. Counsel will sit facing the judge, with Senior Counsel sitting

closest to the middle of the room. Counsel for the Plaintiff will sit to the judge's right, and Counsel for the Defendant will sit to the judge's left.

Dress Code

All competitors should wear appropriate business attire.

Breakdown of a Moot

1. *Appearances*: Senior Counsel for the Plaintiff and then Senior Counsel for the Defendant will introduce their teams to the bench – i.e. “If it pleases the Court, my name is and I appear as Senior Counsel for the Plaintiff/Defendant, with my Junior Counsel”.
2. *Plaintiff's submissions*:
 - Senior Counsel will address the Court (≈ 20 mins)
 - Junior Counsel will address the Court (≈ 20 mins)
3. *Defendant's submissions*:
 - Senior Counsel will address the Court (≈ 20 mins)
 - Junior Counsel will address the Court (≈ 20 mins)
4. *Right of reply*: either party may request a right of reply from the presiding judge. The judge will have full discretion to decide whether or not to grant a right of reply.
5. *Judge's deliberation*: competitors leave the room to allow the judge time to score the moot.
6. *Judge's decision*: the judge will declare which team has won. He or she may also give general comments on the teams' performances

NB: At the beginning of his/her submission, the Senior Counsel should briefly outline the points to be covered by the Senior and Junior Counsel respectively. This can be done by simply highlighting the main submissions in the written Memorandum of Argument. At the conclusion of his/her submissions, the Junior Counsel should summarise the Plaintiff/Defendant's overall case.

Formalities

Moots are conducted in an atmosphere of formality to reflect that of a real court. Here are some court formalities to keep in mind:

- “*My learned friend, Mr/Ms _____*” = the opposition
- “*My learned leader*” = Junior Counsel referring to Senior Counsel
- “*If your Honour pleases*” = OK / thank you, or acknowledging a rebuke or decision from the Bench
- “*The learned Justice _____*” = Justice _____
- “*With respect your Honour*” or “*With great respect your Honour*” = when disagreeing with the judge (use with caution!)

Judges' Titles in the Supreme Court

The court, for the purposes of this moot, is acting as the Supreme Court of Victoria. Accordingly, you should use the following formalities:

- Address an individual judge as “Your Honour”
- If there is more than one judge on the bench and you wish to address them all, address them as “Your Honours”

- When mentioning a decision, refer to judges by name as “Justice _____”, and subsequently as “His/Her Honour”
- Refer to several judges by name as “Justices _____ and _____.”
- Use “Justice _____, as he then was” to refer to a judge who was later promoted (not to refer to a judge who retired from that office)

Citations

Correctly citing cases is vital in a moot and will earn you marks, but citing incorrectly is glaringly obvious.

WRITTEN: Italicise the names of the parties. The year of the decision appears in round brackets “()”. Use the square brackets “[]” if the report is identified by volume number. Always use authorised reports such as CLR, AC or VR where possible. Do not use ALR or ALJR.

ORAL: The way citations are read is quite different to the way they are written. Senior Counsel should seek leave of the Court to dispense with formal citations. He/she should do this immediately after having fully cited the first case referred to in his/her oral submission. If permission is granted to dispense with full citations, counsel should cite only the names of the parties (eg *New South Wales v Fahy*). When giving a full citation:

- Always say the names of the parties in the case in full.
- “R” is read as “*The Crown*”
- The “v” is read:
 - “*and*”: civil cases
 - “*against*”: criminal cases
- Round Brackets: (1987) 162 CLR 431 is read: “*Decided in 1987 and reported in Volume 162 of the Commonwealth Law Reports at page 431*”.
- Square Brackets: [1950] 2 All ER 1099 is read: “*Reported in 1950 in Volume 2 of the All England Reports at page 1099*”.

TEAMS

1. Each university may enter two teams.
2. Each university’s nominated coordinator will be responsible for choosing or accrediting the teams which will represent the university.
3. Each team must consist of three members, being two barristers and one instructing solicitor. Team members may rotate between Senior Counsel, Junior Counsel and Solicitor as they see fit.
4. Competitors must be in the equivalent of at least third year of a combined law degree. It is preferable that competitors have completed some studies in human rights law.
5. No team member may have completed a law degree in any jurisdiction.
6. Teams must be registered with the Castan Centre Project Manager by no later than **Wednesday, 1 August 2007**.

COMPETITION STRUCTURE

1. The Competition will run over two weeks during which there will be two Preliminary Rounds, one Semi Final and the Grand Final as follows:

Round 1: Wednesday 22 August 2007

Round 2: Friday 24 August 2007

Semi Final: Tuesday 28 August 2007

Grand Final: Friday 31 August 2007

2. All moots will be held in the evenings at Clayton Utz, Level 18, 333 Collins Street, Melbourne.

DRAW AND RELEASE OF QUESTIONS

1. All moot problems will be based on questions of law arising from the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.
2. The same problem will be mooted in both Preliminary rounds. This problem will be released at 9:00am on Monday 20 August 2007 on the Castan Centre website (<http://www.law.monash.edu.au/castancentre/>). The draw will also be displayed on the Castan Centre website at this time. As far as possible, the draw will be constructed so that two teams from the same university do not moot against each other.
3. In Round 1, teams 1 to 5 will represent the Plaintiff and teams 6 – 10 will represent the Defendant.
4. In Round 2, roles will swap over so that teams 1 to 5 will represent the Defendant and teams 6 – 10 will represent the Plaintiff.
5. Immediately following the conclusion of Round 2, the top four teams and the draw for the Semi Final will be announced. The new problem for the Semi Final will also be released at this time. The Semi Final draw will be constructed randomly, but where possible efforts will be made to ensure that two teams from the same university do not moot against each other.
6. Calculation of the top four teams will be based primarily on each team's win/loss ratio.
 - If two teams have the same win/loss ratio and have faced off against each other in either preliminary round, the winner of that moot will be ranked higher.
 - If two teams have the same win/loss ratio and did not face off against each other in either preliminary round, their rankings will be determined based on which team scored cumulatively more points in both preliminary rounds.
 - The Semi Finalists will be allocated to Plaintiff or Defendant by random draw.
7. The winning team from each Semi Final proceeds to the Grand Final. The Grand Finalists and the Grand Final draw will be announced at the conclusion of the Semi Final. The Grand Final problem will also be released at this time. The Grand Finalists will be allocated to Plaintiff or Defendant by random draw.

8. The winners of the Grand Final will be announced immediately following the Grand Final moot.

PREPARATION AND RESEARCH

1. Research and preparation for the moots must be conducted solely by the team members. Outside assistance, whether it be from academics or practitioners, is prohibited and may result in penalties or disqualification from the moot. The role of each university's co-ordinator is to assist teams in clarifying the rules of the moot, but not to offer assistance with respect to substantive content.
2. Unless otherwise stated, all moots will be heard as if before the Supreme Court of Victoria.
3. Procedural submissions may not be made during the moot.

WRITTEN SUBMISSIONS

1. For each moot, each team shall submit a written Memorandum of Argument.
2. The Memorandum will be due by 12:00pm on the day of the moot. Penalties apply for late submission.
3. Memoranda are to be submitted as an attachment to an email to castan.centre@law.monash.edu.au
4. The Memorandum must be double spaced and be no longer than three pages in length and should contain:
 - the names of the team members and their roles;
 - allocation of speaking time;
 - an outline of the team's arguments; and
 - a list of all cases, treaties, and other authorities/jurisprudence on which the team will rely.

THE MOOTS – ON THE NIGHT

1. Teams are required to arrive at Clayton Utz's offices by 5:15pm on the evening of each moot.
 - For the two Preliminary Rounds, there will be a Welcome and drinks at 5:30pm and the moots themselves will commence at 6:15pm.
 - The Semi Final and Grand Final will commence at 5:30pm, with drinks at 7:00pm following the moots.
2. Each team will be allocated 40 minutes of speaking time, to be divided between Senior and Junior Counsel as they see fit. Note that this division should be stated in the team's Memorandum of Argument.
3. Judges may grant extra time for a speaker if they feel this is appropriate or necessary. This is at the sole discretion of the judge(s). Penalties will apply for exceeding the allocated length of time without the permission of the judge(s).
4. There is no right of reply.

JUDGING

1. Judges in the Preliminary Rounds will be solicitors from Clayton Utz. There will be one judge presiding over each of these moots.
2. Judges in the Semi Finals will be Clayton Utz Partners. There will be three judges for each of the Semi Final moots.
3. There will be three judges presiding over the Grand Final. These judges will be prominent members of the legal profession/judiciary.
4. Judges will be provided with a marking schedule which they will complete for each advocate in the moot. Teams are strongly advised to read this marking schedule and to keep the marking criteria in mind when preparing for each moot.
5. Each judge will award each advocate a mark out of 100. These marks will be allocated as follows:

| | |
|----------------------------------|------------------|
| Organisation of the presentation | 20 Marks |
| Development of arguments | 25 Marks |
| Questions from the bench | 25 Marks |
| Speaking ability and delivery | 25 Marks |
| Written submissions | 5 Marks |
| Total | 100 Marks |

The scores out of 100 for the Senior and Junior Counsel will be added and then divided by two in order to calculate a final score out of 100 for the team.

6. Judges will submit their completed scoring sheets to the Competition Convenor or a person nominated by him/her at the conclusion of each moot.
7. Judges may give feedback to participants at the conclusion of each moot.
8. Scores from both Preliminary Rounds will be released to teams following the second Preliminary Round. Scores from the Semi Final will be released at the conclusion of the Semi Final once the Grand Finalists have been announced.

PENALTIES

1. The following penalties apply:
 - *Late submission of Memorandum of Argument.* loss of two marks per 15 minute period after noon on the day of the moot during which the Memorandum of Argument is late.
 - *Incomplete Memorandum of Argument.* loss of one mark for not including in the team's Memorandum of Argument the name of a case, statute or other authority cited by the team in their oral submissions.

- *Continuation of oral submissions beyond the time limit without the express permission of the judge/bench: loss of two marks for every minute or part thereof.*
2. Judges do not have the discretion to dispense with these penalties.
 3. Where a penalty is levied against a team, the penalty will be divided equally amongst counsel for that team.

FORFEITURE

1. Any team that 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.
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 same mark scored by that team in the other Preliminary Round in which it competes.
3. Any team which forfeits a moot is excluded from competing in the Semi Final or Grand Final.

PRIZES

The prizes for Moot are:

- Winning team \$3,000
- Runner Up team \$1,000

GOOD LUCK!

**Paula Gerber
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Castan Centre for Human Rights Law**