

# Price Media Law Moot Court Programme

## Participant's Guide - *Preparing for the Oral Rounds*

### I. Preparing for Oral Pleadings

In general it is highly recommended that teams do not begin working on their oral pleadings until after finalizing the Memorials. After submitting the Memorials, teams should then begin to adequately prepare their oral pleadings. To perform well in Moot Court Competitions even the most skilled and poised public speaker will need ample and adequate time to prepare. As administrators of numerous Moot Court Competitions, it is strongly encouraged that participating teams stage as many practice and “dress rehearsals” prior to the actual competition. The more proper practice that teams can devote, the greater self-reward and likely success teams will have in advancing in the competition.

Prior to investing copious amounts of time preparing for the oral pleadings, participating teams should be well aware of the order of the pleadings and the limitations set out in the rules. Normally during Moot Courts two team members represent the Applicant and the other two team members argue on behalf of the Respondent. Rarely during Moot Court competitions does a team member argue as an oralist for both the Applicant and Respondent sides.

In most Moot Court competitions a participating team will argue four times during the competition; presenting twice as an Applicant and twice as a Respondent. The order of the pleadings in each oral round at all levels of the competition is: Applicant 1 presents for a

maximum of 20 minutes; Applicant 2 presents for a maximum of 20 minutes; then from the opposing team Respondent 1 presents for a maximum of 20 minutes; then Respondent 2 presents for a maximum 20 minutes; Applicant 1 or Applicant 2 will deliver a rebuttal for a maximum of 5 minutes; and finally Respondent 1 or Respondent 2 from the opposing team will deliver a Sur-rebuttal for a maximum of 5 minutes.

The maximum time allotted for a team's oral pleadings, including answering questions from the Moot Court judges and rebuttals may not exceed forty five (45) minutes. In other words, each team member's oral pleadings, not including the time allocated for rebuttals, cannot exceed twenty (20) minutes and a team may not allocate more than twenty five (25) minutes, including rebuttal or Sur-rebuttal, to either oralist. While preparing for the oral pleadings, teams must remember that all judges need not be the same – some judges are extremely active and ask a lot of questions, while other judges prefer to let the speakers carry on with their arguments. The teams must think about employing different strategies to engage with different kinds of judges. Also, it is important that teams anticipate questions and prepare responses for the judges.

If teams take care in preparing their Memorials, then the Memorial should be utilized as a framework to construct and develop the proper foundation for the oral pleadings. While no changes or amendments can be made after the

submission of Memorials, the arguments raised during the oral rounds are not limited to the scope of a team's Memorial. After having prepared an Applicant Memorial and a Respondent Memorial, Moot Court teams should be able to prepare and adequately present both oral pleadings for the Applicant and Respondent side of the case. One strategy that Moot Court teams utilize for developing the oral pleadings, is actually deciding during the drafting of the Memorials which team member will represent the Applicant side and which team member will represent the Respondent side. Since teams are preparing both the Applicant and Respondent side of the case, participants should be able to take into consideration rebuttals from the opposing side, and have the capacity to anticipate their opponent's responses.

There are typically four claims made in the 'Submissions' section of the Memorial, which are equally divided amongst team members during an oral round. Most judges expect the team's first oralist to deliver the first two submissions addressed in the Memorial, while the second oralist normally delivers the third and fourth submissions developed in the Memorial. However, both oralists must have sufficient knowledge of all the issues because it is very likely that judges may ask questions that require the oralists to draw upon certain aspects of the other oralist's arguments.

Each oralist can be awarded a maximum of one hundred (100) points per oral pleading based on the following criteria: 1) Correct legal analysis and its application to facts; 2) Relevant treaties, relevant customs, relevant law, regional judgments, legal scholars; 3) Recognition of problems, clarity and logic of argument; 4) Complete

and correct recognition and weighting of problems; 5) Correct primary and alternative submissions; 6) Evidence of original thought; 7) Overall presentation; 8) Ability to communicate with judges, persuasiveness and fluency.

## **II. Opponent's Memorials**

Participating teams will receive their opponent's Memorials normally a couple of days before the start of the Competition, but no sooner. Before traveling to the Competition, teams are required to bring 6 hard copies of their Respondent Memorial and 6 hard copies of their Applicant Memorial, which are then exchanged at the registration period. Reading your opponent's Memorials is a good learning experience. This exercise may shed new light on the facts presented in the case, as well as inform your team's strategy and approach for the oral pleadings. After reading an opponent's Memorial, teams should have a better sense of their opponent's strengths and weaknesses. Teams should not forget to take into consideration that arguments raised during the oral rounds are not limited to the scope of a team's Memorial.

## **III. Bailiff**

In a Moot Court competition the bailiff, also commonly referred to as the clerk, acts as the administrator for the oral round. All questions or concerns prior to the start of the oral round should be made to the bailiff's attention. Before the proceedings begin, the bailiff will normally approach the teams to collect the correct spelling of the names of the oralists and the amount of time that teams intend to allot for their arguments. During the oral round, the bailiff will announce the entry

of the judges into the courtroom (at which time everyone present should rise); announce the case being presented before the court; and when the Sur-rebuttal is concluded, the bailiff will announce that the court is adjourned while the judges deliberate. During the oral pleadings, the bailiff will also inform the oralist of their time by displaying a card when there is fifteen, ten, five, three, and one minute remaining. When time has expired, the bailiff will hold a card that says ‘STOP.’ As per the rules of the competition, it is up to the sole discretion of the judge to grant the participant extra time.

#### **IV. Counsel Table**

During the oral rounds, members of the participating team are seated at the counsel table, and shall avoid all unnecessary and inappropriate behavior that distracts and disrupts from the oral pleading in progress. The coach is not permitted to sit at the counsel table, and no more than three team members can be of counsel. The counsel consists of two current oralists presenting the same position, and the third team member who argued the opposite position may also assist and serve as counsel. Communication whether verbal or in writing between the oralist in progress of presenting a team’s submissions and the respective team’s counsel table is prohibited. The members seated at the counsel table should display professionalism at all times, and communication at the counsel table may only be in writing. Moreover, team participants may not have at the counsel table or podium electronic devices, including laptop computers, mobile phones, PDAs, or digital watches.

#### **V. Respondent**

In an oral round, the role of the two Respondents differ from the two Applicants in the sense that Respondents are mainly defending against and addressing the legal arguments forwarded by the Applicant. Respondents are encouraged to respectfully challenge and demonstrate legal flaws in the Applicant’s submissions; illustrate how their case differs from the Applicant’s case; and even attempt to preempt the Applicant’s rebuttal.

#### **VI. Delivering Oral Pleadings**

The etiquette and court procedure is largely informed by the International Court of Justice (ICJ). Judges can be addressed collectively as “Your Excellencies” or individually as “Your Excellency,” and the head judge, commonly referred to as the president, should be addressed as “Madam President” or “Mister President.” When addressing the opposing counsel, oralists should address them with courtesy and respect, such as “My learned friends,” “My Honorable friends,” “Agents for Applicant,” or “Agents for Respondent.”

When speaking please remember to establish eye contact with the judges, speak slowly and clearly, avoiding a rushed or mumbled manner, avoid colloquial speech, and most importantly, do not read directly off of a script. If needed participants can prepare an outline or utilize cue cards to assist them with the major points of their argument during the oral pleadings. While speaking, it is good practice to guide the judges through your Memorials as a way of keeping them engaged through your arguments. Oralists can request that the judges refer to specific

page numbers in their Memorial while making arguments. Though it is not advisable to do this for every point you make, Oralists should strategize about achieving a balance in this regard.

The first oralist normally begins by saying, “Good Morning, Your Excellencies. If it please the Court, my name is [state name], and I appear in this matter on behalf of the [appellant], together with my learned friends [participant’s names].” The lead counsel should also state which issues he/she will address, and which issues his/her co-Agent will address. Then the first oralist should inquire if the judge is aware of the facts, and whether the court would like the oralist to read a statement of the facts or to provide a summary of the case and the grounds of appeal before commencing. For example, “Are your Excellencies familiar with the facts of this appeal, or may I assist the Court with a brief summary of the facts?” Some judges, though very rarely, ask for detailed facts while others may only ask for a very brief statement of facts. Either way, oralists must be ready to provide a detailed or brief version of the facts if requested. The first oralist whether for the Applicant or Respondent should also inform the judge how much time will be allotted for each oralist as well as for the rebuttal.

In structuring your submissions during the oral argument, you should verbally map to the judge at the onset the manner in which you will proceed. A highly skilled Mooter will be comfortable moving between submissions and different levels of analysis, while incorporating the language of the authorities in a clear, succinct manner. As mentioned, each oralist will typically present two submissions during the oral pleading. When rehearsing for the

competition, oralists should practice addressing their two submissions and transitioning between these two issues as well. A skilled Mooter will also be able to incorporate a conclusion within the time limit. Since the oralist does not have the foresight to gauge the length of questioning by the judges, it is recommended that Mooters prepare a short conclusion as well as a long conclusion. For example, if a Mooter is about to run out of time – possibly due to numerous inquiries from the panel of judges – then the Mooter would likely apply the shorter conclusion. On the other hand, if the Mooter has approximately one minute remaining then the Mooter would likely deliver the longer conclusion. Additionally, teams should make available for the judge a tabbed bundle of authorities, and refer the judge to the relevant tab when citing authorities.

Be prepared for judges to interrupt oralists during their submissions as a means of seeking clarification of their legal arguments, as well as testing the caliber, quality and justification for their argument. Always remember that judges can and do ask questions that are meant to support your arguments. You must develop the skill to differentiate between the questions that are meant to challenge your arguments and those that are meant to support it. Judges are encouraged to play an active role and test the response of the participants on facets of the problem that the judge considers to be important.

Mooters should try not to be visibly scared or intimidated by the judge, or perceive the judges’ questioning as a weakness or flaw in their argument. In fact a common tactic employed by many judges is to utilize questioning as a means to further

test the depth of your knowledge. Moot Court administrators encourage this interaction from judges, and when the judge engages the participants with questions, it results in a far more rewarding experience for the Mooters.

While you should never interrupt or talk while the judge is talking, Mooters should remain confident and composed. Mooters should also not be afraid to engage the judge as if it were a dialogue and even disagree with the judge, particularly if you can support your argument with legal authority. It is important, however, to always answer the judges' questions in a direct manner to demonstrate that you understand the question (i.e. "with regard to Your Excellency's question..."). If disagreeing with the judge, do so politely by stating, "I see the point your Excellencies are making, but in my respectful submission..."

Questions are usually of two kinds: first, those that require you to give your legal opinion, interpretation, etc. of an issue being argued, and second, questions that are factual and do not involve opinions of any kind. Examples of the second type of questions would include 'How many countries are parties to the First Optional Protocol of the ICCPR?' or 'Who was the ad-hoc Judge in *Nicaragua v. US*?' While you must certainly avoid pleading ignorance in the first category of questions, in the second category of questions if you do not know the answer, you should readily admit it.

While you are presenting your oral pleadings always be aware of the time. If the bailiff holds up the 'Stop' sign while you are speaking it is appropriate to verbally acknowledge that your time has expired. If you have finished summarizing

your submissions, you should conclude by stating something along the lines of, "My Excellency, I note that my time has expired, unless I may be of further assistance to the court that concludes the submissions for the appellant." If, when the 'Stop' sign is displayed, you need more time to briefly answer a question or conclude, you can say, "My Excellencies, I note that my time has expired. Might I have a moment to respond to Madam President's question [might I take a further thirty seconds to conclude my final point]?" If the judge has refused to let the oralist continue, then the oralist should not ask for a time extension, and simply thank the Excellencies and return to the respective counsel table. If granted an extension, the oralist should go no further than responding to the question.

## **VII. Rebuttal and Sur-Rebuttal**

As exhibited in the official rules, following the second Respondent, the Applicant has the right to submit rebuttal or waive that right. If the Applicant waives that right then the match is concluded. If the Applicant chooses to submit a rebuttal, then in presenting the rebuttal the oralist must not submit new arguments and limit its response to the Respondent's pleadings. Following the Applicant's rebuttal, the Respondent can then choose to waive the right to Sur-rebuttal. Waiving the right to Sur-rebuttal is sometimes a wise strategy for the Respondent, particularly if the Applicant delivered a poor rebuttal. If the Respondent delivers a Sur-rebuttal it must however be limited to responding to the Applicant's rebuttal, and cannot refer to points made during the pleadings by either the Applicant or Respondent. Regarding either the rebuttal or Sur-rebuttal, the designated team member should not exceed five minutes, as

well as be cognizant that judges are still permitted to ask questions during this stage of the oral round.

## **VIII. Conclusion**

This guide was intended to serve as a resource and provide insight and information as Moot Court teams prepare for the oral rounds of their Moot Court Competition. Once again, we are excited and honored to have you participate in our Moot Court and hope you are looking forward to and will enjoy this exciting experience.