



NZLSA National Competition Championships

Rules

These rules were ratified by the NZLSA Council on the 27th April 2007 and remain in force until amended, altered, or revoked by that body.

Bell Gully New Zealand Law Students' Association National Mooting Championship Rules

1. THE COMPETITION

- 1.1. The competition will be known as the "Bell Gully New Zealand Law Students' Association National Mooting Championship".
- 1.2. The competition will be held once in every calendar year during the course of the New Zealand Law Students' Association (NZLSA) Annual Conference.

2. INTERPRETATION AND APPLICATION

- 2.1. These Rules are supplementary to the rules established by the sponsoring law firm for the conduct of the competition.
- 2.2. Any inconsistency between these Rules and the rules established by the sponsoring law firm will be resolved in favour of these Rules.

3. GOVERNANCE AND RESPONSIBILITIES

- 3.1. The governing body for the competition is the NZLSA Council.
- 3.2. The regional Law Students' Society (LSS) that is hosting the competition will appoint a Competition Convenor for the competition.
 - 3.2.1. The Competition Convenor is primarily responsible for organising and conducting the competition in accordance with these Rules and the rules established by the sponsoring law firm.
- 3.3. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.
- 3.4. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules established by the sponsoring law firm, with the following exceptions:
 - 3.4.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules established by the sponsoring law firm.

- 3.4.2. The Competition Convenor must act in accordance with directions received from the NZLSA Competitions Vice-President, including directions in respect of the proper interpretation of these Rules and the rules established by the sponsoring law firm.

4. TEAMS

- 4.1. Each LSS in New Zealand may nominate one team to compete in the competition.
- 4.2. Each team will consist of two competitors.
- 4.3. A competitor will not be eligible to compete in the following circumstances:
 - 4.3.1. If he or she has completed the requirements for a law degree in any jurisdiction as of the start date of the LSS qualifying competition.
 - 4.3.2. If he or she is competing in another competition taking place during the course of the NZLSA Annual Conference.
 - 4.3.3. In circumstances where this competition is used to select a team to compete at an international competition, if he or she is ineligible, unable or unwilling to represent New Zealand at the international competition if selected to do so.

5. COMPETITION STRUCTURE

- 5.1. The competition will consist of four preliminary rounds, followed by a final.
- 5.2. Over the course of the competition, each team shall meet every other team.
- 5.3. Each team will compete as appellant twice and as respondent twice in the preliminary rounds.
- 5.4. Each team will have a bye for one round.
- 5.5. Teams may not play each other more than once during the preliminary rounds.
- 5.6. The finalists will be randomly assigned as appellant or respondent.

6. BREAK SYSTEM

- 6.1. There will be two teams in the final.
- 6.2. The two teams with the highest number of wins will progress to the final.
- 6.3. If, after considering wins, there are not two clear finalists, teams tied on wins will be progressively eliminated through the operation of the following mechanisms until two finalists remain:
- 6.4. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.4.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
- 6.5. **Win points:** if any team that is tied for a position in the final has lower win points than a team with which it is tied, then the team with lower win points will be eliminated.
 - 6.5.1. A team's win points are equal to the number of wins achieved by the teams faced by that team in the preliminary rounds.
- 6.6. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.6.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
 - 6.6.2. For the avoidance of doubt, who-beat-who is repeated at Rule 6.6 in order to account for the possibility that a deadlock at Rule 6.4 has been resolved by the elimination of one or more teams at Rule 6.5.
- 6.7. **Competitor points:** if any team that is tied for a position in the final has lower competitor points than a team with which it is tied, then the team with lower competitor points will be eliminated.

- 6.7.1. A team's competitor points are equal to the total value of points awarded to both members of that team during the preliminary rounds.
- 6.8. If, after the operation of the mechanisms described in Rules 6.4 to 6.7, there are still teams tied for a position in the final then the tie will be decided by a coin toss conducted by the Competition Convenor.

7. SCRUTINY AND ANNOUNCEMENT OF BREAK

- 7.1. The NZLSA Competitions Vice-President will scrutinise the calculation of the break to ensure that it is performed in accordance with these Rules.
- 7.2. The Competition Convenor will publicly announce the finalists at the conclusion of the preliminary rounds.
 - 7.2.1. In the course of announcing the finalists, the Competition Convenor will explain the process by which the finalists were determined.
 - 7.2.2. The explanation must include a brief explanation of the break system, a statement of the number of wins achieved by the finalist teams and any teams that were tied for a position in the final, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.
 - 7.2.3. When announcing the break, the Competition Convenor should bear in mind that the objective of the announcement is to ensure confidence in the transparency and accountability of the break calculation. The Competition Convenor should provide detail sufficient, including the release of all score sheets, to enable competitors familiar with the break system to assess the accuracy of the break calculation.

8. RELEASE OF PROBLEMS AND DRAW

- 8.1. There will be one problem for the preliminary rounds and a separate problem for the final.
 - 8.1.1. The problem for the preliminary rounds will be released at least two weeks before the first preliminary round.
 - 8.1.2. The problem for the final will be released at least two weeks before the first preliminary round.

- 8.2. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every problem used in the competition.
- 8.3. As a general rule, problems shall not be re-used, recycled or repeated from the regional competitions or from previous NZLSA championship competitions.
- 8.4. The draw will be released at least 24 hours before the first preliminary round.

9. REQUESTS FOR CLARIFICATION OF PROBLEM

- 9.1. Requests for clarification of a problem must be directed to the Competition Convenor.
- 9.2. The Competition Convenor will determine whether or not to issue a clarification, and what form the clarification will take.
- 9.3. In determining whether or not to issue a clarification, and the form of any clarification, the Competition Convenor shall attempt to enlist the advice and approval of the person responsible for drafting the problem.
 - 9.3.1. As a general rule, the Competition Convenor should not issue a clarification without the advice and approval of the person responsible for drafting the problem.

10. SYNOPSES AND LISTS OF AUTHORITIES

- 10.1. The date for submission of written synopses will be determined by the Competition Convenor and notified to the competitors on the day the problem is released.
- 10.2. Synopses will conform to the style and length of the model synopsis appended to these Rules.
- 10.3. Without limiting the scope of r 10.2., synopses must also:
 - 10.3.1. Be in 12 point font (Times New Roman or Arial) and must be on A4 paper with 2.5cm margins.
 - 10.3.2. Be no more than four (4) pages in total length, including cover page and list of authorities.

- 10.4. Teams may not amend or in any way alter their synopses subsequent to submission.

11. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS

- 11.1. In all communications between the Competition Convenor and any competitor or competitors, including release of the problems and draw and requests for clarification, the Competition Convenor must be aware of the need to ensure no team obtains an unfair advantage.
- 11.2. Without limiting this general rule, the Competition Convenor will:
 - 11.2.1. Ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors;
 - 11.2.2. Ensure to the greatest extent possible that all competitors receive communications at the same time.

12. JUDGES

- 12.1. There will be one or more judges per round in the preliminary rounds and a panel of three judges for the final.
- 12.2. At the conclusion of each round, judges must fill in a mark sheet recording the competitor points of each competitor and the result of the round.
- 12.3. Where a panel of judges disagrees over the result, the decision of the majority of the judges will prevail. If the panel consists of an even number of judges, they must reach consensus on the result.
- 12.4. Judges will be Judges, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.
- 12.5. Legal academics from the host law school must not be allowed to judge a team from their own law school.
- 12.6. Judges must not announce the result at the conclusion of the round, but are encouraged to provide constructive feedback to the competitors as they determine appropriate.

13. ANONYMITY

- 13.1. The Competition Convenor will ensure that judges are unaware of which law school competitors are from until after the conclusion of each judge's involvement with the competition.
- 13.2. In order to facilitate anonymity, on all documents made available to competitors or judges, or otherwise made publicly available, teams will be identified by arbitrarily assigned numbers or letters.
- 13.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to the Judge which law school they are from.

14. SPECTATORS AND SCOUTING

- 14.1. All rounds should be open to the public.
- 14.2. Team members or persons affiliated with any team may only attend preliminary rounds in which their team is competing.
- 14.3. Spectators may not communicate with team members during the progress of each round, nor shall they disclose confidential information (for example, details of a scenario) to that team, or any other team, for the duration of the competition.

15. OUTSIDE ASSISTANCE

- 15.1. Teams may not enlist the assistance of any other person in the research or preparation of arguments for the mooted problem, in either the preliminary rounds or the final.

16. DIRECTIONS, PENALTIES AND DISQUALIFICATION

- 16.1. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties, including disqualification, for any failure to comply.
- 16.2. Teams that are late in submitting synopses or attending rounds, or in any other way breach the rules of the competition as set out in these rules and the rules established by the sponsoring law firm, may be subject to a penalty, including disqualification, on the initiative of the Competition Convenor and at his or her discretion.

17.COMPLAINTS

- 17.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 17.2. The Competition Convenor will hear the complainant and, if possible, the respondent and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsoring law firm.
- 17.3. The Competition Convenor may do any or all of the following:
 - 17.3.1. Direct any competitor, team or person to perform any action or refrain from performing any action;
 - 17.3.2. Impose any penalty on any competitor or team, including disqualification.

18.APPEALS

- 18.1. A team may appeal a decision of the Competition Convenor made either in the context of a complaint or pursuant to Rule 16.
 - 18.1.1. Appeals will be heard by an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Vice President and President.
 - 18.1.2. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and may substitute its own decision.
 - 18.1.3. In substituting its decision for that of the Competition Convenor, the Appellate Body possesses the same powers as the Competition Convenor under Rule 17.3.
 - 18.1.4. The decision of the Appellate Body will be final.
- 18.2. Any other complaint about the conduct of the Competition Convenor will be heard by the Appellate Body, which will render a final decision.

- 18.3. Complaints and appeals must be lodged at the earliest possible opportunity.
- 18.4. For the avoidance of doubt, a team may not appeal against the decision of a judge on the substantive merits of a round.

19. DEFAULT WINS

- 19.1. Any team whose opponent is disqualified or otherwise forfeits a round prior to that round taking place, such that that team has no opponent to face, is deemed to have won that round by default.
- 19.2. A team that is awarded a default win will be deemed to have scored in that round competitor points equal to the average of its points in all the preliminary rounds, both prior and subsequent, in which it faced an opponent.

Russell McVeagh New Zealand Law Students' Association National Client Interviewing Championship Rules

1. THE COMPETITION

- 1.1. The competition will be known as the "Russell McVeagh New Zealand Law Students' Association National Client Interviewing Championship".
- 1.2. The competition will be held once in every calendar year during the course of the New Zealand Law Students' Association (NZLSA) Annual Conference.

2. INTERPRETATION AND APPLICATION

- 2.1. These Rules are supplementary to the rules established by the sponsoring law firm for the conduct of the competition.
- 2.2. Any inconsistency between these Rules and the rules established by the sponsoring law firm will be resolved in favour of these Rules.

3. GOVERNANCE AND RESPONSIBILITIES

- 3.1. The governing body for the competition is the NZLSA Council.
- 3.2. The regional Law Students' Society (LSS) that is hosting the competition will appoint a Competition Convenor for the competition.
 - 3.2.1. The Competition Convenor is primarily responsible for organising and conducting the competition in accordance with these Rules and the rules established by the sponsoring law firm.
- 3.3. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.
- 3.4. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules established by the sponsoring law firm, with the following exceptions:
 - 3.4.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules established by the sponsoring law firm.

- 3.4.2. The Competition Convenor must act in accordance with directions received from the NZLSA Competitions Vice-President, including directions in respect of the proper interpretation of these Rules and the rules established by the sponsoring law firm.

4. TEAMS

- 4.1. Each LSS in New Zealand may nominate one team to compete in the competition.
- 4.2. Each team will consist of two competitors.
- 4.3. A competitor will not be eligible to compete in the following circumstances:
 - 4.3.1. If he or she has completed the requirements for a law degree in any jurisdiction as of the start date of the LSS qualifying competition.
 - 4.3.2. If he or she is competing in another competition taking place during the course of the NZLSA Annual Conference.
 - 4.3.3. In circumstances where this competition is used to select a team to compete at an international competition, if he or she is ineligible, unable or unwilling to represent New Zealand at the international competition if selected to do so.

5. COMPETITION STRUCTURE

- 5.1. The competition will consist of four preliminary rounds, followed by a final.
- 5.2. Over the course of the competition, each team shall meet every other team.
- 5.3. Each team will compete as the first team twice and as the second team twice in the preliminary rounds.
- 5.4. Each team will have a bye for one round.
- 5.5. Teams may not play each other more than once during the preliminary rounds.
- 5.6. The competing order of the finalists will be randomly assigned.

6. BREAK SYSTEM

- 6.1. There will be two or three teams in the final.
- 6.2. If there are two teams with more wins than the remaining teams, they will be the finalists.
- 6.3. If there are three teams tied in first place at the conclusion of the preliminary rounds, or two teams are tied in second place at the conclusion of the preliminary rounds, and the tie cannot be broken through the operation of rule 6.5., then there will be three teams in the final.
- 6.4. If the finalists cannot be decided by the operation of rules 6.2. or 6.3., then there will be two teams in the final, and teams tied on wins will be progressively eliminated through the operation of the following mechanisms until two finalists remain:
 - 6.5. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.5.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
 - 6.6. **Win points:** if any team that is tied for a position in the final has lower win points than a team with which it is tied, then the team with lower win points will be eliminated.
 - 6.6.1. A team's win points are equal to the number of wins achieved by the teams faced by that team in the preliminary rounds.
 - 6.7. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.7.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
 - 6.7.2. For the avoidance of doubt, who-beat-who is repeated at Rule 6.7 in order to account for the possibility that a deadlock at Rule 6.5

has been resolved by the elimination of one or more teams at Rule 6.6.

6.8. **Competitor points:** if any team that is tied for a position in the final has lower competitor points than a team with which it is tied, then the team with lower competitor points will be eliminated.

6.8.1. A team's competitor points are equal to the total value of points awarded to both members of that team during the preliminary rounds.

6.9. If, after the operation of the mechanisms described in Rules 6.5 to 6.8, there are still teams tied for a position in the final then the tie will be decided by a coin toss conducted by the competitions convenor.

7. SCRUTINY AND ANNOUNCEMENT OF BREAK

7.1. The NZLSA Competitions Vice-President will scrutinise the calculation of the break to ensure that it is performed in accordance with these Rules.

7.2. The Competition Convenor will publicly announce the finalists at the conclusion of the preliminary rounds.

7.2.1. In the course of announcing the finalists, the Competition Convenor will explain the process by which the finalists were determined.

7.2.2. The explanation must include a brief explanation of the break system, a statement of the number of wins achieved by the finalist teams and any teams that were tied for a position in the final, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.

7.2.3. When announcing the break, the Competition Convenor should bear in mind that the objective of the announcement is to ensure confidence in the transparency and accountability of the break calculation. The Competition Convenor should provide detail sufficient, including the release of all score sheets, to enable competitors familiar with the break system to assess the accuracy of the break calculation.

8. BRIEFS

- 8.1. The interviewing briefs for the preliminary rounds will be released at least one week before the first preliminary round.
- 8.2. As a general rule, each year there will be one “topic” area for all of the briefs.
- 8.3. The interviewing brief for the final will be released at the conclusion of the preliminary rounds.
- 8.4. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every interviewing scenario used in the competition.
- 8.5. As a general rule, problems shall not be re-used, recycled or repeated from the regional competitions or from previous NZLSA championship competitions.

9. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS

- 9.1. In all communications between the Competition Convenor and any competitor or competitors, including release of the briefs, the Competition Convenor must be aware of the need to ensure no team obtains an unfair advantage.
- 9.2. Without limiting this general rule, the Competition Convenor will:
 - 9.2.1. Ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors;
 - 9.2.2. Ensure to the greatest extent possible that all competitors receive communications at the same time.

10. JUDGES

- 10.1. There will be one or more judges per round in the preliminary rounds and a panel of three judges for the final.
- 10.2. At the conclusion of each round, judges must fill in a mark sheet recording the competitor points of each competitor and the result of the round.

- 10.3. Where a panel of judges disagrees over the result, the decision of the majority of the judges will prevail. If the panel consists of an even number of judges, they must reach consensus on the result.
- 10.4. Judges will be Judges, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.
- 10.5. Legal academics from the host law school must not be allowed to judge a team from their own law school.
- 10.6. Judges must not announce the result at the conclusion of the round, but are encouraged to provide constructive feedback to the competitors as they determine appropriate.

11. ACTORS

- 11.1. Actors must not be law students.
- 11.2. The Competition Convenor will use his or her best efforts to ensure that actors have acting experience appropriate to the needs of the competition.
- 11.3. Both teams in a given round must be presented with the same actor, who must endeavour to behave in a similar fashion in order to prevent either team from obtaining an unfair advantage.

12. ANONYMITY

- 12.1. The Competition Convenor will ensure that judges are unaware of which law school competitors are from until after the conclusion of each judge's involvement with the competition.
- 12.2. In order to facilitate anonymity, on all documents made available to competitors or judges, or otherwise made publicly available, teams will be identified by arbitrarily assigned numbers or letters.
- 12.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to the Judge which law school they are from.

13. SPECTATORS AND SCOUTING

- 13.1. All rounds should be open to the public.

- 13.2. Team members or persons affiliated with any team may only attend preliminary rounds in which their team is competing.
- 13.3. Spectators may not communicate with team members during the progress of each round, nor shall they disclose confidential information (for example, details of a scenario) to that team, or any other team, for the duration of the competition.

14. DIRECTIONS, PENALTIES AND DISQUALIFICATION

- 14.1. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties, including disqualification, for any failure to comply.
- 14.2. Teams that are late in attending rounds, or in any other way breach the rules of the competition as set out in these rules and the rules established by the sponsoring law firm, may be subject to a penalty, including disqualification, on the initiative of the Competition Convenor and at his or her discretion.

15. COMPLAINTS

- 15.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 15.2. The Competition Convenor will hear the complainant and, if possible, the respondent and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsoring law firm.
- 15.3. The Competition Convenor may do any or all of the following:
 - 15.3.1. Direct any competitor, team or person to perform any action or refrain from performing any action;
 - 15.3.2. Impose any penalty on any competitor or team, including disqualification.

16. APPEALS

- 16.1. A team may appeal a decision of the Competition Convenor made either in the context of a complaint or pursuant to Rule 14.
 - 16.1.1. Appeals will be heard by an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Vice President and President.
 - 16.1.2. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and may substitute its own decision.
 - 16.1.3. In substituting its decision for that of the Competition Convenor, the Appellate Body possesses the same powers as the Competition Convenor under Rule 15.3.
 - 16.1.4. The decision of the Appellate Body will be final.
- 16.2. Any other complaint about the conduct of the Competition Convenor will be heard by the Appellate Body, which will render a final decision.
- 16.3. Complaints and appeals must be lodged at the earliest possible opportunity.
- 16.4. For the avoidance of doubt, a team may not appeal against the decision of a judge on the substantive merits of a round.

17. DEFAULT WINS

- 17.1. Any team whose opponent is disqualified or otherwise forfeits a round prior to that round taking place, such that that team has no opponent to face, is deemed to have won that round by default.
- 17.2. A team that is awarded a default win will be deemed to have scored in that round competitor points equal to the average of its points in all the preliminary rounds, both prior and subsequent, in which it faced an opponent.

Buddle Findlay New Zealand Law Students' Association National Negotiation Championship Rules

1. THE COMPETITION

- 1.1. The competition will be known as the "Buddle Findlay New Zealand Law Students' Association National Negotiation Championship".
- 1.2. The competition will be held once in every calendar year during the course of the New Zealand Law Students' Association (NZLSA) Annual Conference.

2. INTERPRETATION AND APPLICATION

- 2.1. These Rules are supplementary to the rules established by the sponsoring law firm for the conduct of the competition.
- 2.2. Any inconsistency between these Rules and the rules established by the sponsoring law firm will be resolved in favour of these Rules.

3. GOVERNANCE AND RESPONSIBILITIES

- 3.1. The governing body for the competition is the NZLSA Council.
- 3.2. The regional Law Students' Society (LSS) that is hosting the competition will appoint a Competition Convenor for the competition.
 - 3.2.1. The Competition Convenor is primarily responsible for organising and conducting the competition in accordance with these Rules and the rules established by the sponsoring law firm.
- 3.3. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.
- 3.4. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules established by the sponsoring law firm, with the following exceptions:
 - 3.4.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules established by the sponsoring law firm.

- 3.4.2. The Competition Convenor must act in accordance with directions received from the NZLSA Competitions Vice-President, including directions in respect of the proper interpretation of these Rules and the rules established by the sponsoring law firm.

4. TEAMS

- 4.1. Each LSS in New Zealand may nominate one team to compete in the competition.
- 4.2. Each team will consist of two competitors.
- 4.3. A competitor will not be eligible to compete in the following circumstances:
 - 4.3.1. If he or she has completed the requirements for a law degree in any jurisdiction as of the start date of the LSS qualifying competition.
 - 4.3.2. If he or she is competing in another competition taking place during the course of the NZLSA Annual Conference.
 - 4.3.3. In circumstances where this competition is used to select a team to compete at an international competition, if he or she is ineligible, unable or unwilling to represent New Zealand at the international competition if selected to do so.

5. COMPETITION STRUCTURE

- 5.1. The competition will consist of four preliminary rounds, followed by a final.
- 5.2. Over the course of the competition, each team shall meet every other team.
- 5.3. Each team will have a bye for one round.
- 5.4. Teams may not play each other more than once during the preliminary rounds.

6. BREAK SYSTEM

- 6.1. There will be two teams in the final.

- 6.2. The two teams with the highest number of wins will progress to the final.
- 6.3. If, after considering wins, there are not two clear finalists, teams tied on wins will be progressively eliminated through the operation of the following mechanisms until two finalists remain:
 - 6.4. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.4.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
 - 6.5. **Win points:** if any team that is tied for a position in the final has lower win points than a team with which it is tied, then the team with lower win points will be eliminated.
 - 6.5.1. A team's win points are equal to the number of wins achieved by the teams faced by that team in the preliminary rounds.
 - 6.6. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.6.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
 - 6.6.2. For the avoidance of doubt, who-beat-who is repeated at Rule 6.6 in order to account for the possibility that a deadlock at Rule 6.4 has been resolved by the elimination of one or more teams at Rule 6.5.
 - 6.7. **Competitor points:** if any team that is tied for a position in the final has lower competitor points than a team with which it is tied, then the team with lower competitor points will be eliminated.
 - 6.7.1. A team's competitor points are equal to the total value of points awarded to both members of that team during the preliminary rounds.

- 6.8. If, after the operation of the mechanisms described in Rules 6.4 to 6.7, there are still teams tied for a position in the final then the tie will be decided by a coin toss conducted by the competitions convenor.

7. SCRUTINY AND ANNOUNCEMENT OF BREAK

- 7.1. The NZLSA Competitions Vice-President will scrutinise the calculation of the break to ensure that it is performed in accordance with these Rules.
- 7.2. The Competition Convenor will publicly announce the finalists at the conclusion of the preliminary rounds.
 - 7.2.1. In the course of announcing the finalists, the Competition Convenor will explain the process by which the finalists were determined.
 - 7.2.2. The explanation must include a brief explanation of the break system, a statement of the number of wins achieved by the finalist teams and any teams that were tied for a position in the final, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.
 - 7.2.3. When announcing the break, the Competition Convenor should bear in mind that the objective of the announcement is to ensure confidence in the transparency and accountability of the break calculation. The Competition Convenor should provide detail sufficient, including the release of all score sheets, to enable competitors familiar with the break system to assess the accuracy of the break calculation.

8. RELEASE OF PROBLEMS AND DRAW

- 8.1. The problems for the preliminary rounds will be released at least one week before the first preliminary round.
- 8.2. The problem for the final will be released at the conclusion of the preliminary rounds.
- 8.3. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every problem used in the competition.
- 8.4. As a general rule, problems shall not be re-used, recycled or repeated from the regional competitions or from previous NZLSA championship competitions.

- 8.5. The draw will be released at least 24 hours before the first preliminary round.

9. REQUESTS FOR CLARIFICATION OF PROBLEM

- 9.1. Requests for clarification of a problem must be directed to the Competition Convenor.
- 9.2. The Competition Convenor will determine whether or not to issue a clarification, and what form the clarification will take.
- 9.3. In determining whether or not to issue a clarification, and the form of any clarification, the Competition Convenor shall attempt to enlist the advice and approval of the person responsible for drafting the problem.
 - 9.3.1. As a general rule, the Competition Convenor should not issue a clarification without the advice and approval of the person responsible for drafting the problem.

10. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS

- 10.1. In all communications between the Competition Convenor and any competitor or competitors, including release of the problems and draw and requests for clarification, the Competition Convenor must be aware of the need to ensure no team obtains an unfair advantage.
- 10.2. Without limiting this general rule, the Competition Convenor will:
 - 10.2.1. Ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors;
 - 10.2.2. Ensure to the greatest extent possible that all competitors receive communications at the same time.

11. JUDGES

- 11.1. There will be one or more judges per round in the preliminary rounds and a panel of three judges for the final.

- 11.2. At the conclusion of each round, judges must fill in a mark sheet recording the competitor points of each competitor and the result of the round.
- 11.3. Where a panel of judges disagrees over the result, the decision of the majority of the judges will prevail. If the panel consists of an even number of judges, they must reach consensus on the result.
- 11.4. Judges will be Judges, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.
- 11.5. Legal academics from the host law school must not be allowed to judge a team from their own law school.
- 11.6. Judges must not announce the result at the conclusion of the round, but are encouraged to provide constructive feedback to the competitors as they determine appropriate.

12. ANONYMITY

- 12.1. The Competition Convenor will ensure that judges are unaware of which law school competitors are from until after the conclusion of each judge's involvement with the competition.
- 12.2. In order to facilitate anonymity, on all documents made available to competitors or judges, or otherwise made publicly available, teams will be identified by arbitrarily assigned numbers or letters.
- 12.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to the Judge which law school they are from.

13. SPECTATORS AND SCOUTING

- 13.1. All rounds should be open to the public.
- 13.2. Team members or persons affiliated with any team may only attend preliminary rounds in which their team is competing.
- 13.3. Spectators may not communicate with team members during the progress of each round, nor shall they disclose confidential information (for example, details of a scenario) to that team, or any other team, for the duration of the competition.

14. OUTSIDE ASSISTANCE AND COMMUNICATIONS

- 14.1. Teams may not divulge or discuss their confidential facts with any other person prior to or during the course of the round to which those facts relate.

15. DIRECTIONS, PENALTIES AND DISQUALIFICATION

- 15.1. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties, including disqualification, for any failure to comply.
- 15.2. Teams that are late in attending rounds, or in any other way breach the rules of the competition as set out in these rules and the rules established by the sponsoring law firm, may be subject to a penalty, including disqualification, on the initiative of the Competition Convenor and at his or her discretion.

16. COMPLAINTS

- 16.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 16.2. The Competition Convenor will hear the complainant and, if possible, the respondent and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsoring law firm.
- 16.3. The Competition Convenor may do any or all of the following:
 - 16.3.1. Direct any competitor, team or person to perform any action or refrain from performing any action;
 - 16.3.2. Impose any penalty on any competitor or team, including disqualification.

17. APPEALS

- 17.1. A team may appeal a decision of the Competition Convenor made either in the context of a complaint or pursuant to Rule 15.

- 17.1.1. Appeals will be heard by an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Vice President and President.
- 17.1.2. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and may substitute its own decision.
- 17.1.3. In substituting its decision for that of the Competition Convenor, the Appellate Body possesses the same powers as the Competition Convenor under Rule 16.3.
- 17.1.4. The decision of the Appellate Body will be final.
- 17.2. Any other complaint about the conduct of the Competition Convenor will be heard by the Appellate Body, which will render a final decision.
- 17.3. Complaints and appeals must be lodged at the earliest possible opportunity.
- 17.4. For the avoidance of doubt, a team may not appeal against the decision of a judge on the substantive merits of a round.

18. DEFAULT WINS

- 18.1. Any team whose opponent is disqualified or otherwise forfeits a round prior to that round taking place, such that that team has no opponent to face, is deemed to have won that round by default.
- 18.2. A team that is awarded a default win will be deemed to have scored in that round competitor points equal to the average of its points in all the preliminary rounds, both prior and subsequent, in which it faced an opponent.

Minter Ellison Rudd Watts New Zealand Law Students' Association National Witness Examination Championship Rules

1. THE COMPETITION

- 1.1. The competition will be known as the "Minter Ellison Rudd Watts New Zealand Law Students' Association National Witness Examination Championship".
- 1.2. The competition will be held once in every calendar year during the course of the New Zealand Law Students' Association (NZLSA) Annual Conference.

2. INTERPRETATION AND APPLICATION

- 2.1. These Rules are supplementary to the rules established by the sponsoring law firm for the conduct of the competition.
- 2.2. Any inconsistency between these Rules and the rules established by the sponsoring law firm will be resolved in favour of these Rules.

3. GOVERNANCE AND RESPONSIBILITIES

- 3.1. The governing body for the competition is the NZLSA Council.
- 3.2. The regional Law Students' Society (LSS) that is hosting the competition will appoint a Competition Convenor for the competition.
 - 3.2.1. The Competition Convenor is primarily responsible for organising and conducting the competition in accordance with these Rules and the rules established by the sponsoring law firm.
- 3.3. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.
- 3.4. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules established by the sponsoring law firm, with the following exceptions:
 - 3.4.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules established by the sponsoring law firm.

- 3.4.2. The Competition Convenor must act in accordance with directions received from the NZLSA Competitions Vice-President, including directions in respect of the proper interpretation of these Rules and the rules established by the sponsoring law firm.

4. TEAMS

- 4.1. Each LSS in New Zealand may nominate one team to compete in the competition.
- 4.2. Each team will consist of one competitor.
- 4.3. A competitor will not be eligible to compete in the following circumstances:
 - 4.3.1. If he or she has completed the requirements for a law degree in any jurisdiction as of the start date of the LSS qualifying competition.
 - 4.3.2. If he or she is competing in another competition taking place during the course of the NZLSA Annual Conference.
 - 4.3.3. In circumstances where this competition is used to select a team to compete at an international competition, if he or she is ineligible, unable or unwilling to represent New Zealand at the international competition if selected to do so.

5. COMPETITION STRUCTURE

- 5.1. The competition will consist of four preliminary rounds, followed by a final.
- 5.2. Over the course of the competition, each team shall meet every other team.
- 5.3. Each team will compete as plaintiff/Crown twice and as defendant twice in the preliminary rounds.
- 5.4. Each team will have a bye for one round.
- 5.5. Teams may not play each other more than once during the preliminary rounds.
- 5.6. The finalists will be randomly assigned as plaintiff/Crown or defendant.

6. BREAK SYSTEM

- 6.1. There will be two teams in the final.
- 6.2. The two teams with the highest number of wins will progress to the final.
- 6.3. If, after considering wins, there are not two clear finalists, teams tied on wins will be progressively eliminated through the operation of the following mechanisms until two finalists remain:
- 6.4. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.4.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
- 6.5. **Win points:** if any team that is tied for a position in the final has lower win points than a team with which it is tied, then the team with lower win points will be eliminated.
 - 6.5.1. A team's win points are equal to the number of wins achieved by the teams faced by that team in the preliminary rounds.
- 6.6. **Who-beat-who:** if any team that is tied for a position in the final has played a team with which it is tied in the preliminary rounds, then the team that lost that round will be eliminated.
 - 6.6.1. Where there are more than two teams tied for a position in the final, and those teams have faced each other in the preliminary rounds such that the operation of who-beat-who would eliminate all the tied teams, then no teams will be eliminated.
 - 6.6.2. For the avoidance of doubt, who-beat-who is repeated at Rule 6.6 in order to account for the possibility that a deadlock at Rule 6.4 has been resolved by the elimination of one or more teams at Rule 6.5.
- 6.7. **Competitor points:** if any team that is tied for a position in the final has lower competitor points than a team with which it is tied, then the team with lower competitor points will be eliminated.

- 6.7.1. A team's competitor points are equal to the total value of points awarded to both members of that team during the preliminary rounds.
- 6.8. If, after the operation of the mechanisms described in Rules 6.4 to 6.7, there are still teams tied for a position in the final then the tie will be decided by a coin toss conducted by the competitions convenor.

7. FACT PATTERNS

- 7.1. As a general rule, fact patterns shall not be re-used, recycled or repeated from the regional competitions or from previous NZLSA championship competitions.
- 7.2. Competitors receive the fact pattern ninety (90) minutes prior to the commencement of a hearing. The fact pattern will consist of counsel instructions, a witness brief, and a copy of the opponent's witness brief. (The opponent's witness brief is provided to assist in preparation for cross-examination.)
- 7.3. Witnesses receive their briefs and witness instructions one hour prior to the commencement of the hearing.
- 7.4. Competitors meet with their witness half an hour before the hearing.

8. SCRUTINY AND ANNOUNCEMENT OF BREAK

- 8.1. The NZLSA Competitions Vice-President will scrutinise the calculation of the break to ensure that it is performed in accordance with these Rules.
- 8.2. The Competition Convenor will publicly announce the finalists at the conclusion of the preliminary rounds.
 - 8.2.1. In the course of announcing the finalists, the Competition Convenor will explain the process by which the finalists were determined.
 - 8.2.2. The explanation must include a brief explanation of the break system, a statement of the number of wins achieved by the finalist teams and any teams that were tied for a position in the final, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.

8.2.3. When announcing the break, the Competition Convenor should bear in mind that the objective of the announcement is to ensure confidence in the transparency and accountability of the break calculation. The Competition Convenor should provide detail sufficient, including the release of all score sheets, to enable competitors familiar with the break system to assess the accuracy of the break calculation.

9. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS

9.1. In all communications between the Competition Convenor and any competitor or competitors the Competition Convenor must be aware of the need to ensure no team obtains an unfair advantage.

9.2. Without limiting this general rule, the Competition Convenor will:

9.2.1. Ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors;

9.2.2. Ensure to the greatest extent possible that all competitors receive communications at the same time.

10. JUDGES

10.1. There will be one or more judges per round in the preliminary rounds and a panel of three judges for the final.

10.2. At the conclusion of each round, judges must fill in a mark sheet recording the competitor points of each competitor and the result of the round.

10.3. Where a panel of judges disagrees over the result, the decision of the majority of the judges will prevail. If the panel consists of an even number of judges, they must reach consensus on the result.

10.4. Judges will be Judges, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.

10.5. Legal academics from the host law school must not be allowed to judge a team from their own law school.

- 10.6. Judges must not announce the result at the conclusion of the round, but are encouraged to provide constructive feedback to the competitors as they determine appropriate.

11. ANONYMITY

- 11.1. The Competition Convenor will ensure that judges are unaware of which law school competitors are from until after the conclusion of each judge's involvement with the competition.
- 11.2. In order to facilitate anonymity, on all documents made available to competitors or judges, or otherwise made publicly available, teams will be identified by arbitrarily assigned numbers or letters.
- 11.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to the Judge which law school they are from.

12. SPECTATORS AND SCOUTING

- 12.1. All rounds should be open to the public.
- 12.2. Team members or persons affiliated with any team may only attend preliminary rounds in which their team is competing.
- 12.3. Spectators may not communicate with team members during the progress of each round, nor shall they disclose confidential information (for example, details of a scenario) to that team, or any other team, for the duration of the competition.

13. OUTSIDE ASSISTANCE

- 13.1. Teams may not communicate with anyone other than their witness or the convenor once their preparation time has begun.

14. DIRECTIONS, PENALTIES AND DISQUALIFICATION

- 14.1. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties, including disqualification, for any failure to comply.
- 14.2. Teams that are late in attending rounds, or in any other way breach the rules of the competition as set out in these rules and the rules

established by the sponsoring law firm, may be subject to a penalty, including disqualification, on the initiative of the Competition Convenor and at his or her discretion.

15. COMPLAINTS

- 15.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 15.2. The Competition Convenor will hear the complainant and, if possible, the respondent and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsoring law firm.
- 15.3. The Competition Convenor may do any or all of the following:
 - 15.3.1. Direct any competitor, team or person to perform any action or refrain from performing any action;
 - 15.3.2. Impose any penalty on any competitor or team, including disqualification.

16. APPEALS

- 16.1. A team may appeal a decision of the Competition Convenor made either in the context of a complaint or pursuant to Rule 14.
 - 16.1.1. Appeals will be heard by an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Vice President and President.
 - 16.1.2. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and may substitute its own decision.
 - 16.1.3. In substituting its decision for that of the Competition Convenor, the Appellate Body possesses the same powers as the Competition Convenor under Rule 15.3.
 - 16.1.4. The decision of the Appellate Body will be final.

- 16.2. Any other complaint about the conduct of the Competition Convenor will be heard by the Appellate Body, which will render a final decision.
- 16.3. Complaints and appeals must be lodged at the earliest possible opportunity.
- 16.4. For the avoidance of doubt, a team may not appeal against the decision of a judge on the substantive merits of a round.

17. DEFAULT WINS

- 17.1. Any team whose opponent is disqualified or otherwise forfeits a round prior to that round taking place, such that that team has no opponent to face, is deemed to have won that round by default.
- 17.2. A team that is awarded a default win will be deemed to have scored in that round competitor points equal to the average of its points in all the preliminary rounds, both prior and subsequent, in which it faced an opponent.

IN THE MOOT COURT OF APPEAL OF NEW ZEALAND

CA123/04

BETWEEN

RICHARD WILBERFORCE
Appellant

AND

JAMES ATKIN
Respondent

SYNOPSIS OF SUBMISSIONS OF COUNSEL FOR THE APPELLANT

Alfred Denning / Kenneth Diplock
DENNING DIPLOCK
WELLINGTON

MAY IT PLEASE THE COURT, the Appellant respectfully submits:

1. The proposed modification of Gary's Brewery Ltd ("Gary's") constitution is ineffective.
2. By resolving to issue the shares to Telecom Networks Ltd ("TNL") the directors of Gary's are acting in breach of their statutory and general law duty to act for the proper purposes of Gary's.

The above submissions are supported as follows:

1. THAT THE PROPOSED MODIFICATION OF GARY'S CONSTITUTION IS INEFFECTIVE (Senior Counsel, 20 mins)

- 1.1. The law governing the modification of company constitutions in such circumstances as this case is to be found in *Guinness Peat Group International Insurance Ltd v Tower Corporation* [1999] 1 NZLR 153 (CA).
- 1.2. The touchstone for this Court's analysis is to consider whether the modification of the company's constitution to expropriate shares of the minority shareholder is in the *bona fides* best interests of the company as a whole: *Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656 at 671 per Lindley MR (CA).
- 1.3. A modification will only be valid if (a) it is exercisable for a proper purpose and (b) its exercise will not operate oppressively in relation to minority shareholders: *Amaltal Corporation Ltd v Maruha Corporation* CA232/04 1 June 2006 at [47] per Hammond J.
- 1.4. The advancement of the company as a commercial entity, in and of itself, is not justification to expropriate shares: *Burns v ANZ National Bank of New Zealand* [2007] NZSC 20 at [7].
- 1.5. Expropriation without consent conflicts with the fundamental legal principle that a person who owns a right, may deal with that right as he or she pleases. Without sound justification, the majority is acting unfairly and oppressively in relation to the minority: *In Re Bugle Press Ltd* [1961] Ch 270 at 285 per Lord Evershed MR (CA).
- 1.6. This Court should take a restrictive approach in allowing expropriation because the minority is acting in its own interests, rather than the interests of the company as a whole: *Bradford Trust Ltd v Paul Edward Roebeck Ltd* HC AK CIV-2006-404-7111 7 December 2006 at [13] per Venning J.
- 1.7. Acquisition to suit the majority's interests can allow an abuse of power. Therefore, this Court should only allow expropriation where it is done to alleviate some detriment facing the company: *Gambotto and Anor v W.C.P. Ltd* (1995) 182 CLR 432 per McHugh J at 456.

2. THAT BY RESOLVING TO ISSUE THE SHARES TO TNL, THE DIRECTORS OF GARY'S ARE ACTING IN BREACH OF THEIR STATUTORY AND GENERAL LAW DUTY TO ACT FOR THE PROPER PURPOSES OF GARY'S (Junior Counsel, 20 minutes)

- 2.1. Garys' Board of Directors must comply with a statutory duty under s 131 of the *Companies Act 1993* to act in the best interests of the company.
- 2.2. The statute codifies a common law duty which is at the core of directors' obligations: *Foss v Harbottle* (1843) 2 Hare 461; 67 ER 189.
- 2.3. The Board has breached its duty in this case by acting for an improper purpose. Academic commentary is clear that avoidance of tax liability will not generally be a "proper purpose": *Brookers Companies and Securities Law* (looseleaf ed.), at [CA131.02].
- 2.4. The Board should be restrained from passing the resolution because it is oppressive or unfair to minority shareholders. Further, the majority were primarily motivated by personal advantage in issuing the shares: *Whitehouse v Carlton Hotels* (1986) 70 ALR 251 per Mason, Deane and Dawson JJ at 261 (HCA).
- 2.5. The issue of shares must be done for the best interests of the company as a whole. Normally the issue of shares will be permissible where it is done to raise capital. In the absence of such a purpose, this court has considered the act to be conducted with an improper purpose: *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] All ER 1126 per Lord Wilberforce at 1133 (PC).
- 2.6. Where the issue of shares is done to manipulate the voting proportions of the shareholders, it will be deemed to be an improper purpose: *Mills v Mills* (1938) 60 CLR 150 per Latham CJ at 164.

Accordingly, the Appellant respectfully submits that the appeal should be allowed and that this Court should, as it sees fit:

- (a) **Make an order prohibiting the amendment of the constitution of Gary's Brewery Ltd;**
- (b) **Make an order or orders prohibiting the issue of shares to the Telecom Networks Ltd.**

IN THE MOOT COURT OF APPEAL OF NEW ZEALAND

CA123/04

BETWEEN

RICHARD WILBERFORCE
Appellant

AND

JAMES ATKIN
Respondent

LIST OF AUTHORITIES OF COUNSEL FOR THE APPELLANT

1. *Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656
2. *Ashburton Oil v Alpha Minerals* (1971) 123 CLR 614
3. *Bamford v Bamford* [1970] 1 Ch 212
4. *Foss v Harbottle* (1843) 2 Hare 461; (1843) 67 ER 189
5. *Gambotto and Anor v W.C.P. Ltd* (1995) 182 CLR 432
6. *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] All ER 1126
7. *In Re Bugle Press Ltd* [1961] Ch 270
8. *Re Dalkeith Investments Pty Ltd* (1985) 3 ACLC 74
9. *Residues Treatment and Trading Co Ltd v Southern Resources Ltd* (1989)
51 SASR 177
10. *Whitehouse v Carlton Hotels* (1986) 70 ALR 251
11. *Winthrop Investments Ltd v Winns* [1975] 2 NSWLR 666

Submitted on behalf of Counsel for the Appellant.

DATED this **5th** day of **July 2006**

[SIGNED]

Mr Diplock / Mr Denning
Counsel for the Appellant

Explanation of the Break System

Simon Peart
May 2007

[This document explains the operation of the break system in r 6. It is intended as an explanatory guide and is not part of the rules. Where there is an inconsistency between the words of the rules and this guide, the rules shall prevail.]

The break system determines which teams are eligible to compete in the final. It comprises a hierarchy of mechanisms that are used to progressively eliminate teams until only two remain (or, in the case of Client Interviewing, two or three teams).

Rule 6.2 – Wins

Where there are two teams that clearly have more wins than the other teams at the conclusion of the preliminary rounds, those teams will progress directly to the final.

Rule 6.3 – Ties

Notwithstanding the round-robin nature of the competition, it is possible that teams will be tied for positions in the final. For example, if there is one team on four wins (ie it won all its matches) and two or more teams on three wins: the team on four wins automatically progresses to the final and the teams on three wins are tied for the remaining position in the final. Alternatively, it might be that no one team won all of its rounds, and there are three or more teams, each with three wins and tied for the two positions in the final.

Where there is such a tie, the tied teams must be eliminated until only enough teams remain to fill the required positions in the final. The mechanisms set out in rules 6.4 to 6.7 are used to progressively eliminate teams. As soon as the required number of teams is eliminated, the process is complete. So, if there are three teams competing for one position in the final and two can be eliminated through the operation of rule 6.4, then there is no need to consider the remaining mechanisms. (Again, this will be different for client interviewing, for which r 6.3. provides that “Who-beat-who” will not operate where there are two teams tied in second place – instead there will be three teams in the final).

Rule 6.4 – Who-beat-who

Where two teams are tied on wins, and those teams met each other in the preliminary rounds, then the team that lost in the preliminary round is eliminated. This mechanism reflects the fact that, in direct comparison during the preliminary round, one of these teams was found to be better than the other.

This rule also applies in more complicated situations. In the following examples, imagine the following match-ups occurred in the preliminary rounds between teams that are now all tied for one position in the final:

A bt. B
B bt. C
C bt. D (B), (C) and (D) are eliminated. (A) progresses to the final.

A bt. C
B bt. D (C) and (D) are eliminated. (A) and (B) remain tied.

A bt. B
B bt. C
C bt. A
D bt. C (A), (B) and (C) are eliminated. (D) progresses to the final.

Rule 6.4.1 – Circular elimination

This rule provides for the situation where all the teams that are tied have all eliminated each other in a circular fashion. For example:

A bt. B
B bt. C
C bt. D
D bt. A No teams eliminated.

Where this is the case, no teams are eliminated.

Rule 6.5 – Win points:

After wins and who-beat-who, the next best mechanism for determining the teams that progress to the final is win points. A team's win points (as set out in rule 6.5.1) are equal to the number of wins achieved by the teams that team played in the preliminary rounds. For example, the following table gives the win points for team (A):

Round	Opposition	Wins
1	B	2
2	C	1
3	D	2
4	E	1

Win points = 6

Team (A) played teams (B), (C), (D) and (E) who scored, collectively, 6 wins across the four rounds. Hence, team (A) gets 6 win points.

A team's win points represent the ability of the opposition that that team faced during the preliminary rounds. In other words, it is a test of how difficult a team's draw was. If two teams have both scored the same number of wins, but one team has higher win points, the team with higher win points has done better to score the same number of wins in a harder draw.

Rule 6.6 – Who-beat-who

The rationale for returning to who-beat-who at this stage is that a potential circular elimination earlier on may now have been resolved by eliminating teams with lower win points. The following example shows the operation of rules 6.4, 6.5 and 6.6, assuming four teams on equal wins competing for one position in the final:

Rule 6.4:

A bt. B
 B bt. C
 C bt. D
 D bt. A No teams eliminated.

Rule 6.5:

Team	Win Points
A	3
B	4
C	4
D	4

(A) is eliminated. (B), (C) and (D) are tied.

Rule 6.6:

B bt. C
 C bt. D (B) progresses to the final. (C) and (D) are eliminated.

Rule 6.7 – Competitor points

If the above mechanisms fail to yield two clear finalists then the next best mechanism is competitor points. A team's competitor points (as set out in rule 6.7.1) represent the total value of points that both competitors were awarded during the preliminary rounds. It therefore reflects the opinion of the judges in those rounds as to the merit of the competitor as compared to the other competitors in that round.

It is recognised that competitor points are not an ideal system as they rely on the subjective decision of the judges in each round as to how many points each competitor deserves. The effect of subjectivity can be ameliorated by providing judges with a clear marking schedule and a guide as to the acceptable range of points that may be awarded to each competitor.

Rule 6.8 – Coin toss

If none of the mechanisms described above produce two clear finalists then the only option is to have a coin toss. However, it is extremely unlikely that a tie would remain unbroken to this point.

Complete Example Draw:

Round	Appellant	Respondent	Winner
1	A	B	A
	C	D	D
	E	F	E
2	A	F	F
	B	C	B
	D	E	D
3	C	A	C
	F	D	F
	B	E	B
4	E	A	A
	F	C	C
	D	B	D

Rule 6.2 – Wins:

Team	Wins
A	2
B	2
C	2
D	3
E	1
F	2

(D) progresses to the final. (A), (B), (C) and (F) are tied.

Rule 6.4 – Who-beat-who:

A bt. B	
F bt. A	
B bt. C	
C bt. A	
C bt. F	No eliminations.

Rule 6.5 – Win points:

Team	Win Points
A	7
B	8
C	9
F	8

(A), (B) and (F) are eliminated. (C) progresses to the final.