

**Constitution of the New Zealand Law Students' Association Incorporated (NZLSA)**

**Schedule 1**



**NZLSA National and Regional Law Students' Competitions Rules**

**as amended by the NZLSA Council on 31 August 2016  
and in force from 5 September 2016**

## Historical notes

### *2016 Rules Review amendments*

This version of these Rules was ratified by the NZLSA Council on 31 August 2016 and remains in force until amended, altered, or revoked by that body. This version of the Rules substantially modifies a version originally ratified by the NZLSA Council on 30 July 2011.

This current version arose out of a review process undertaken throughout 2016. A summary of that process and the amendments made in this version can be found in a separate document which collates explanatory notes and feedback summaries generated during the review.

The NZLSA Council made two amendments to the final draft proposed by the Rules Committee. The amendments were made at the suggestion of the reviewers who led the 2016 review process. These were as follows:

- The first was to insert into the Rules a standard form draw for the National Championships.
- The second was to insert an additional restriction on Junior Mooting eligibility after all. This is rule 4.8.2. This is targeted at the situation where an otherwise eligible competitor has found a measure of success in a Regional Competition held earlier in the year. The need to add this was brought to the reviewers' attention when such an issue arose in a regional junior competition after the Rules Committee had already recommended the final draft to the NZLSA Council.

The original Junior Mooting eligibility criteria were first inserted into the Rules in 2013. The explanatory note and the NZLSA Council minutes surrounding the 2013 process are silent on this topic, and the 2016 reviewer who was involved in 2013 was unaware of any particular reason an additional restriction of this kind was not included.

The NZLSA Council settled on the wording of the additional criterion believing it struck the right balance between disallowing overly experienced competitors to compete, encouraging participation in the competition and achieving consistency with the benefits sought by the existing sponsor. Further input from stakeholders represented on the Rules Committee was not considered necessary.

### *Earlier history*

Amendments to the earlier version of the Rules were previously ratified by the NZLSA Council on 27 July 2013. On that date, the Junior Mooting eligibility criterion was added as rule 2.3 of the then-separate New Zealand Law Students' Association National Junior Mooting Championship Rules. This is now carried over as rule 4.8 of the Mooting Rules.

On 4 May 2013, amendments were made to what were then rules 5 and 6 of each competition and also to what were then rules 1–3 of the NZLSA National Junior Mooting Championship Rules. What were then rules 4–6 had earlier been amended and ratified by Council on 23 August 2012. The 2012 changes accommodated an experiment to expand the competition by inviting a small contingent of Australian competitors to participate in the New Zealand National Championship. Some of the 2013 amendments reversed those changes when the experiment failed.

In the earlier version of the Rules, and at those times, rules 1–3 were the rules covering “the competition”, interpretation and application and governance and responsibilities. Rule 4 pertained

to teams, including aspects of eligibility. Rule 5 set out the competition structure. And rule 6 contained the old break system.

### **Commencement**

These Rules come into force on 5 September 2016.

# NZLSA National Mooting Championship Rules

## Part 1 General

### 1. THE COMPETITION

- 1.1. The competition will be known as the “New Zealand Law Students' Association National Mooting Championship”.
- 1.2. The name of the competition may be amended or added to by the New Zealand Law Students' Association (NZLSA) Competitions Vice President to reflect sponsorship, funding and support arrangements from year to year.
- 1.3. The competition will be held once in every calendar year.
- 1.4. The competition comprises:
  - 1.4.1. the Regional Competitions held at each University at which the Law Students' Society is a Council Member of NZLSA as defined in clause 6.1 of the NZLSA Constitution;
  - 1.4.2. the National Championship held during the course of the NZLSA Annual Conference, conducted between the winners of, or teams otherwise eligible from, the Regional Competitions; and
  - 1.4.3. the Junior Mooting Competitions held at each University at which the Law Students' Society is a Council Member of NZLSA as defined in clause 6.1 of the NZLSA Constitution. For the avoidance of doubt, references in these Rules to “Regional Competitions” are separate and distinct from, and to the deliberate exclusion of, Junior Mooting Competitions.

### 2. INTERPRETATION AND APPLICATION

- 2.1. Except as stated otherwise or the context requires, these Rules apply to all aspects of the competition as specified in rule 1.4, namely:
  - 2.1.1. the Regional Competitions held at each University;
  - 2.1.2. the National Championship; and
  - 2.1.3. except as stated otherwise, the Junior Mooting Competitions held at each University.
- 2.2. For the avoidance of doubt, rule 2.1 is not limited by the organisation of these Rules into Parts. Except as otherwise stated, the Parts of these Rules are for organisational purposes only and have no interpretive value.
- 2.3. References in these Rules to “the competition” means either the Regional Competition or the National Championship or the Junior Mooting Competition or both as the context requires.

- 2.4. These Rules apply in preference to any rules prescribed by the sponsor. Any inconsistency between these Rules and the rules prescribed by the sponsor will be resolved in favour of these Rules.
- 2.5. Any question of interpretation of these Rules is to be determined in the first instance by the Competition Convenor. The decision of the Competition Convenor on a question of interpretation is subject to any decision or direction made as a result of the exercise of any applicable appeal rights.

### **3. GOVERNANCE AND RESPONSIBILITIES**

3.1. The governing body for the competition is the NZLSA Council.

3.2. There will be 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 any rules prescribed by the sponsor.

3.2.2. There may be one or two Competition Convenors. If there are two Competition Convenors, they must act by consensus between themselves. Singular references in these Rules to the Competition Convenor include the plural.

3.2.3. References in these Rules to “the Competition Convenor” means either the Competition Convenor of the Regional Competition or the Competition Convenor of the National Championship as the context requires.

3.3. The officer of each Law Students’ Society responsible for competitions will be the Competition Convenor of the Regional Competition and the Junior Mooting Competition at their University.

3.3.1. The relevant Law Students’ Society and the NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.4. The regional Law Students’ Society that is hosting the NZLSA Annual Conference will, in consultation with the NZLSA Conference Convenor, appoint a Competition Convenor for the National Championship that year.

3.4.1. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.5. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules prescribed by the sponsor, with the following exceptions:

3.5.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules prescribed by the sponsor.

3.5.2. The Competition Convenor must act in accordance with any decision he or she has made about a question of interpretation of these Rules or the rules prescribed by the sponsor during the course of one competition, subject to any decision or direction made under rules 3.5.3 and/or 3.5.4 and/or as a result of the exercise of

any applicable appeal rights.

- 3.5.3. Each Competition Convenor of a Regional Competition and/or a Junior Mooting Competition must act in accordance with any directions received from his or her Law Students' Society President or Executive, subject to any decision or directions made under rule 3.5.4 and/or any decision or directions made as a result of the exercise of any applicable appeal rights.
- 3.5.4. The Competition Convenor must act in accordance with any 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 sponsor, subject to any decision or direction made as a result of the exercise of any applicable appeal rights.
  - 3.5.4.1. Notwithstanding this sub-rule, a Competition Convenor of a Regional Competition and/or a Junior Mooting Competition is not required to comply with a direction of the NZLSA Competitions Vice-President if the Competition Convenor asserts that the matter is one properly within his or her discretion pursuant to rule 5 and the NZLSA Competitions Vice-President agrees.
  - 3.5.4.2. If the NZLSA Competitions Vice-President does not agree about a particular direction in terms of rule 3.5.4.1, the relevant Law Students' Society President may raise the matter with the NZLSA President, who must finally determine the matter.
- 3.5.5. The Competition Convenor must act in accordance with any decision or direction made as a result of the exercise of any applicable appeal rights.
- 3.5.6. For the avoidance of doubt, and notwithstanding anything contained in this rule, competitors may only challenge a decision or direction of the Competition Convenor by exercising any applicable appeal rights. Competitors may not initiate any other process for this purpose.

#### **4. TEAMS AND ELIGIBILITY**

- 4.1. Each team must consist of two competitors.
  - 4.1.1. In each Regional Competition and Junior Mooting Competition, for the purposes of advancement and placing in the competition, competitors may compete in teams or individually at the discretion of the Competition Convenor in consultation with any relevant person or entity, including but not limited to the Law Students' Society at the Competition Convenor's University, the Competition Convenor's University Law School/Faculty, the sponsor and the NZLSA Competitions Vice-President.
  - 4.1.2. In the National Championship, competitors compete in teams for the purposes of advancement and placing in the competition.
- 4.2. A competitor will not be eligible to enter a Regional Competition (and therefore the National Championship) in the following circumstances:

- 4.2.1. If he or she has completed the requirements for an undergraduate law degree in any jurisdiction as at the start of the Regional Competition.
  - 4.2.2. If he or she is unable or unwilling to certify that he or she is able to comply with the other eligibility requirements.
- 4.3. Intending competitors in each Regional Competition must enter the competition by completing the prescribed NZLSA Competition Entry Form, which is an appendix to these Rules.
  - 4.3.1. As part of the entry process, each entrant must certify that he or she is able to comply with the eligibility requirements in rule 4.2.
- 4.4. Each University from which the Law Students' Society is a Council Member of NZLSA may be represented by one team to compete in the National Championship.
- 4.5. The representation for each University at the National Championship and at the ALSA Conference is to be determined by the University's Law Faculty. This decision must be made with the consultation of the Law Students' Society.
  - 4.5.1. In deciding who attends the National Championship and the ALSA Conference, the Law Faculty has a presumption in favour of the winning team from the Regional Competition. This presumption should only be overridden where:
    - 4.5.1.1. The winner is unable to attend;
    - 4.5.1.2. The winner has won multiple competitions; or
    - 4.5.1.3. The Faculty wish to replace the winner with a competitor who was unable to compete in the Regional Competition and the Faculty believe them to be a stronger competitor.
- 4.6. The top ranking team in the competition must represent New Zealand at any international competition, for which this competition is a qualifier. In the event the winning team cannot attend the international competition for unforeseen reasons such as illness, the next highest ranked team from the National Championship that is able to attend must represent New Zealand at the international competition. For the purposes of this rule, a winning team "cannot attend the international competition" if only one of the team's members is able to attend but the other is not.
- 4.7. No Competition Convenor or President of a Council Member is eligible to compete in the competition.
- 4.8. A student is eligible to compete in a Junior Mooting Competition only if:
  - 4.8.1. he or she is in his or her first year of substantive legal study; and
  - 4.8.2. he or she has not previously progressed beyond the preliminary rounds of the Regional Competition; and

4.8.3. he or she has not completed the requirements for an undergraduate law degree in any jurisdiction as at the start date of the Junior Mooting Competition.

## **5. STRUCTURE OF THE REGIONAL COMPETITIONS**

- 5.1. Subject to these Rules (in particular rule 3.5) and the rules prescribed by the sponsor, the Regional Competition and Junior Mooting Competition at each University may be structured in a manner determined by the Competition Convenor in consultation with any relevant person or entity, including but not limited to the Law Students' Society at the Competition Convenor's University, the Competition Convenor's University Law School/Faculty, the sponsor and the NZLSA Competitions Vice-President.
- 5.2. Matters of structure of the Regional Competition and Junior Mooting Competition that may be determined by the Competition Convenor in accordance with rule 5.1 include, but are not limited to,:
  - 5.2.1. the maximum number of competitors able to enter;
  - 5.2.2. whether competitors compete individually or as teams;
  - 5.2.3. the draw and break system;
  - 5.2.4. the extent to which judges must determine rounds strictly on the basis of the assessment criteria set out in these Rules, or whether judges may decide rounds, for example, principally on a win/loss basis, except that in all cases the assessment criteria must be provided to the judges by the Competition Convenor and must be used to inform the judging process;
  - 5.2.5. whether the same or different problems will be used throughout the competition;
  - 5.2.6. the timings for release of the problem or problems, subject to the requirement to give competitors a reasonable time to prepare for each round of the competition;
  - 5.2.7. whether and how the Junior Mooting Competition is included in the Regional Competition or if it is held entirely separately;
  - 5.2.8. the structure of a complaints and appeals process.
- 5.3. There must be a complaints and appeals process. If the Competition Convenor does not specify any complaints and appeals process prior to the start of the competition, then the complaints and appeals process set out in these Rules in respect of the National Championship applies, except that the functions of the Appellate Body are to be carried out by the President of the Law Students' Society at the applicable University.
- 5.4. The structure of the Regional Competition should be made clear to competitors prior to entry.
- 5.5. Competitors must be sent a copy of these Rules and any other applicable rules as soon as is practicable after their entries are confirmed.
- 5.6. The structure of the Regional Competition at each University should be kept as consistent as possible from year to year.



## **6. STRUCTURE OF THE NATIONAL CHAMPIONSHIP**

- 6.1. The competition will consist of five preliminary rounds, followed by a final.
- 6.2. Over the course of the preliminary rounds, each team must meet every other team.
- 6.3. Teams must not meet each other more than once during the preliminary rounds.
- 6.4. The preliminary rounds of the National Championship must be conducted in accordance with the draw set out as an appendix to these Rules. The Competition Convenor must randomly allocate to each team a letter in the draw. At least 24 hours before the first preliminary round, the Competition Convenor must release to each team individually a copy of the draw and that team's allocated letter. In each round, the team listed first in the draw is the appellant and the team listed second in the draw is the respondent.
- 6.5. There will be one problem throughout the course of the competition, including the final round.
  - 6.5.1. The problem must be released at least two weeks before the first preliminary round.
- 6.6. Competitors must be sent a copy of these Rules at the same time the problem is released, or sooner.

## **7. COMPETITION PROBLEMS AND REQUESTS FOR CLARIFICATION**

- 7.1. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every problem used in the competition.
- 7.2. As a general rule, problems should not be re-used, recycled or repeated from previous competitions.
- 7.3. In the National Championship:
  - 7.3.1. the problem must not be one re-used, recycled or repeated from previous years; and
  - 7.3.2. the problem must not be one that has been used in any Regional Competition in the same year.
- 7.4. Requests for clarification of a problem must be directed to the Competition Convenor.
- 7.5. The Competition Convenor will determine whether or not to issue a clarification, and what form the clarification will take.
- 7.6. 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.
  - 7.6.1. 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.

## **8. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS**

- 8.1. 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.
- 8.2. Without limiting this general rule, the Competition Convenor must:
  - 8.2.1. ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors; and
  - 8.2.2. ensure to the greatest extent possible that all competitors receive communications at the same time.

## **9. DIRECTIONS, PENALTIES AND DISQUALIFICATION**

- 9.1. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, issue any directions or make any decision of any kind relating to the competition at any time. For example, the Competition Convenor may issue a direction that any competitor, team or person perform any action or refrain from performing any action. This rule is subject to anything specifically provided for in these Rules, the rules prescribed by the sponsor and to rule 3.5.
- 9.2. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties in accordance with rules 9.3 and 9.4 for any failure to comply.
- 9.3. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, impose any penalty on any team that:
  - 9.3.1. is late in submitting written submissions or attending rounds; or
  - 9.3.2. in any other way breaches the rules of the competition as set out in these Rules; or
  - 9.3.3. acts in any other way that, in the opinion of the Competition Convenor, is contrary to the spirit of these Rules and the competition.
- 9.4. The penalties that may be imposed by the Competition Convenor under rule 9.3 include, but are not limited to:
  - 9.4.1. disqualification; or
  - 9.4.2. a reduction in score; or
  - 9.4.3. any other penalty or combination of penalties the Competition Convenor sees fit.
- 9.5. Any decision or direction of the Competition Convenor made under this rule is subject to any applicable appeal rights under rules 5.3 or 23.

## **10. JUDGES**

- 10.1. The Competition Convenor must appoint Judges to adjudicate the competition.
- 10.2. Judges must be members of the judiciary, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.

- 10.3. Judges must adjudicate the competition in accordance with these Rules and the rules prescribed by the sponsor.
- 10.4. The Competition Convenor must, before the Judges commence judging any rounds of the competition,:
  - 10.4.1. provide to the Judges any available comprehensive marking guide and/or guide about acceptable score ranges for different qualities of competitor or team (for example that an “excellent” performance will score over 85 in a competition marked out of 100, “very good” will score 75–84 and “good” will score 65–74), provided that:
    - (a) the guide or guides have also been provided to competitors at the time the problem was released;
    - (b) the competitors have been informed that the guide or guides would be provided to the Judges; and
    - (c) only one of each type of guide may be provided to the Judges;
  - 10.4.2. explain to the Judges the break system or selection criteria that will be utilised to determine advancement in the competition; and
  - 10.4.3. encourage Judges to confer to achieve consistent marking, except that Judges must be instructed to do this only in a general way and that they must form their own views about the merits of each competitor or team.
- 10.5. 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.
- 10.6. In the National Championship the following further provisions apply:
  - 10.6.1. There should usually be a panel of at least two judges for each preliminary round and the Competition Convenor must use his or her best endeavours to attempt to achieve this.
  - 10.6.2. Judges should not usually hear the same team more than once throughout the preliminary rounds and the Competition Convenor must use his or her best endeavours to attempt to achieve this.
  - 10.6.3. There must be a panel of at least three judges for the final.
  - 10.6.4. Legal academics must not judge a team from their own law school.
  - 10.6.5. Legal practitioners must not judge a team that includes a competitor(s) with whom they have worked, for example in the context of summer clerking.

## **11. SPECTATORS AND SCOUTING**

- 11.1. All rounds should be open to the public.
- 11.2. Team members or persons affiliated with any team may only attend preliminary rounds in which their team is competing.
- 11.3. Spectators may not communicate with team members during the progress of each

round, nor may they disclose confidential information (for example, details of a scenario) to that team, or any other team, for the duration of the competition.

## **12. OUTSIDE ASSISTANCE**

- 12.1. Teams may not enlist the assistance of any other person in the research or preparation of arguments for the problem in any round of any competition, including the final.
- 12.2. For the avoidance of doubt, this rule does not prohibit teams from receiving assistance on matters of technique from any person.

## **Part 2 Rules particular to Mooting**

## **13. WRITTEN SUBMISSIONS AND LISTS OF AUTHORITIES**

- 13.1. The deadline for filing written submissions and the manner in which submissions must be filed will be determined by the Competition Convenor and must be notified to the competitors on the day the problem is released.
- 13.2. The Competition Convenor must provide to each team the written submissions of that team's opponent in a given round as soon as is practicable after both teams' written submissions are received or at any other time appointed by the Competition Convenor and notified to competitors on the day the problem is released.
- 13.3. Teams may not amend or in any way alter their written submissions subsequent to submission.
- 13.4. Teams participating in successive rounds of a Regional Competition or Junior Mooting Competition (for example semi-finals or the final) will be required to file new submissions for each successive round. These may be modified from previous rounds as each team sees fit, including not at all.
- 13.5. Teams participating in the National Championship will be required to file one set of submissions for each side of the case (i.e. appellant and respondent).
- 13.6. Teams participating in the final round of the National Championship will be required to file new submissions for the final. These may be modified from previous rounds as each team sees fit, including not at all.
- 13.7. Written submissions must conform to the style of the model synopsis appended to these Rules.
- 13.8. Without limiting the scope of rule 13.7, written submissions must also:
  - 13.8.1. be in 12 point font (Times New Roman or Arial) and must be on A4 paper with 2.5 cm margins;
  - 13.8.2. be no more than four (4) pages in total length, including cover page and list of authorities; and
  - 13.8.3. briefly contain:

- 13.8.3.1. an outline of the structure of the team's submissions;
  - 13.8.3.2. the major arguments raised; and
  - 13.8.3.3. allocations of speaking time between counsel.
- 13.9. Teams must include a list of the authorities cited in their written submissions as the last page of their written submissions.
- 13.10. All moots must be closed authority, notwithstanding anything to the contrary in the problem. Teams are strictly limited to the authorities cited in the problem. Teams may refer to authorities referred to within those authorities but only to the extent they are referred to in the permitted authorities.

#### **14. CONDUCT OF THE MOOTS**

- 14.1. Unless the Competition Convenor specifies in advance that this is not required, teams must bring to each moot and hand to the registrar three hard copies of their written submissions.
- 14.2. Counsel must not robe, but formal attire (i.e. suits/business attire) is required.
- 14.3. After formal introduction to the Bench, each team will have 40 minutes to present their case.
- 14.4. Speaking time may be divided between senior and junior counsel 20/20, or 25/15, or 15/25. The division of time must be specified in the written submissions.
- 14.5. A warning will be issued with 2 minutes to go and when the allocated time for each team member is up.
- 14.6. There will be no extensions of time.
- 14.7. There will be no right of reply.
- 14.8. Teams will be expected to abide by their written submissions wherever possible. However, departure from written submissions is permitted.

#### **15. MATTERS NOT TO BE RAISED IN WRITTEN OR ORAL SUBMISSIONS**

- 15.1. Teams must assume that any facts stated in the problem are correct.
- 15.2. Jurisdiction of the Court to hear the case must be assumed.
- 15.3. Teams must argue only the specified grounds of appeal. Teams may not seek leave to amend the grounds of appeal or similar.
- 15.4. Teams must assume the law is as stated at the date specified in the problem or, if no date is specified, at the date the problem is released.

#### **16. ASSESSMENT**

- 16.1. Judges must fill in a mark sheet for each counsel and award each counsel a mark out of 100. These marks will be allocated as follows:
- Written submissions – up to 15 marks
  - Development of the arguments in oral submissions – up to 30 marks

- Responding to questions from the Bench – up to 30 marks
  - Speaking ability and delivery – up to 25 marks
- 16.2. Judges must not award a tie on score as between two teams in a moot. In this rule and elsewhere in these Mooting Rules, “**score**” means the aggregate marks of each counsel in one team. In the event of a tie between both teams in one moot on score, the Judges must decide on a winner and adjust the counsel marks and scores in accordance with their renewed views of the merits. In any Regional Competition or Junior Mooting Competition where, for the purposes of advancement and placing in the competition, competitors are competing individually, the Competition Convenor must specify to the Judges in advance whether it is permissible for more than one competitor in one moot to receive the same score.
- 16.3. 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.
- 16.4. Judges must provide any further information requested by the Competition Convenor in order to permit the Competition Convenor to operate the applicable draw or break system.
- 16.5. Scores and any other information must be submitted by the Judges to the Competition Convenor at the conclusion of each moot.
- 16.6. Scores must not be announced to competitors at the conclusion of a moot.
- 16.7. Scores and score sheets should be made available to the teams but only after the participants in the next round have been announced or, in the case of the final, the winning team is announced.

### **Part 3**

#### **Rules particular to the National Championship**

#### **17. RULES ONLY APPLY TO THE NATIONAL CHAMPIONSHIP**

Unless stated otherwise in these Rules or expressly adopted for a Regional Competition and/or a Junior Mooting Competition by a Competition Convenor in accordance with rule 4.8 (which a Competition Convenor may do), the following rules (rules 18–23) apply only to the National Championship.

#### **18. ANONYMITY**

- 18.1. The Competition Convenor must take all practicable steps to ensure that Judges are unaware of which law school competitors are from until after the conclusion of each Judge’s involvement with the competition.
- 18.2. In order to facilitate anonymity, on all documents made available to competitors or Judges, or otherwise made publicly available, teams must be identified by arbitrarily assigned numbers or letters.
- 18.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to a Judge which law school they are from.

## 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:
  - 19.2.1. to have scored in that round a score equal to the average of its scores in all the preliminary rounds in which it faced an opponent, both prior and subsequent; and
  - 19.2.2. to have won in that round by a win margin equal to the average of its win margins in all the preliminary rounds in which it faced an opponent and won, both prior and subsequent. In this rule the term “win margin” has the same meaning as defined in rule 20.4.3.1(a). If a default win is a team’s only win in the preliminary rounds then its win margin is a score of 1.

## 20. BREAK SYSTEM

- 20.1. There will be two teams in the final.
- 20.2. The two teams with more wins from the preliminary rounds than the remaining teams will be the finalists.
- 20.3. If one or both of the finalists cannot be determined by the operation of rule 20.2, the break system rules set out in rule 20.4 must be applied by the Competition Convenor in accordance with the following:
  - 20.3.1. The break system rules apply to the teams that are not already finalists under the operation of rule 20.2 and that are tied on the highest number of wins or, if one finalist has already been determined, the next highest number of wins after that finalist. All other teams are eliminated.
  - 20.3.2. The remaining tied teams will be progressively eliminated through the sequential operation of the break system rules until two finalists remain. If, after the application of a given break system rule, more teams remain tied than the number of positions available in the final, the next break system rule applies.
  - 20.3.3. The break system rules apply in the order listed in rule 20.4.
  - 20.3.4. Each time more than two teams are tied and a given break system rule (**break system rule A**) eliminates one or more of the teams, but more teams remain tied than the number of positions available in the final, break system rule 20.4.1 must be reapplied among the remaining teams. If, after the reapplication of rule 20.4.1, more teams remain tied than the number of positions available in the final, the break system calculation carries on from the next break system rule in the sequence after break system rule A.
  - 20.3.5. **Status of explanatory notes:** Some of the break system rules are accompanied by notes. A note is only explanatory of the break system rule

to which it relates. It does not limit the rule. If a note and a rule to which it relates are inconsistent, the rule prevails.

20.4. The break system rules are, in this order,:

20.4.1. **Win-loss records among only the tied teams:** Recalculate the number of preliminary round wins of each tied team, counting only the matches against the other team(s) in the tie. The team(s) with fewer wins than the other team(s) is eliminated.

**NOTE:** This rule is essentially a reincarnation of the overarching principle that, in a round robin tournament, the teams that performed the strongest relative to everyone else deserve to be in the final.

If there are only two teams, the team that beat the other team will progress.

If there are more than two teams, the team(s) that performed the weakest amongst that group will be eliminated. This also incorporates draw strength. Among teams that have the same number of wins overall in the competition, any teams with more wins than the others within that group have done better.

The rationale for reapplying this rule in more complex ties each time a team(s) is eliminated further down the chain of rules is that a potential circular elimination earlier on may by then have been resolved. This rule is still the most in keeping with the overarching principle in a round robin tournament, and so it should apply to find the finalist(s) in preference to the other rules if it can.

20.4.2. **Win-loss record as against the first finalist (if there is one):** This break system rule only applies if there is already one finalist ("the first finalist") and the break system is being used to determine the other. Determine whether any of the tied teams beat the first finalist. If any team(s) did beat the first finalist, any team(s) that did not beat the first finalist is eliminated.

**NOTE:** This rule recognises draw strength, which is the next available method most consistent with the overarching principle of a round robin tournament. This rule rewards any team(s) that beat the team that ultimately emerged as the strongest in the tournament.

20.4.3. **Ratio of win to loss margins:**

20.4.3.1. Separately for each remaining tied team, and by reference to the preliminary round scores,:

- (a) Calculate the difference between the remaining tied team's score and the score of the team it faced for each round where the remaining tied team won. These are the win margins. Sum the win margins. This is the total win margin.
- (b) Calculate the difference between the remaining tied team's score and the score of the team it faced for each round where the remaining tied team lost. These are the loss margins. Sum the loss margins. This is the total loss margin.
- (c) Divide the total win margin by the total loss margin.



This is the win-to-loss margin ratio.

20.4.3.2. The team(s) with the lower win-to-loss margin ratio(s) than the other team(s) is eliminated.

**NOTE:** It is recognised that relying on scores is less reliable because they rest on the subjective decisions of judges in individual rounds about how many points each team or competitor has earned. The effect of subjectivity can be reduced by methods such as comprehensive marking guides and guides about acceptable score ranges for different qualities of competitor provided for in rule 10.4. However, the potential effect of subjectivity remains.

That is why this rule, and the rule that follows it (score totals) are relegated to the bottom end of the break system.

This rule attempts to limit the influence of subjectivity as compared to raw score totals by focussing on the closeness of each team's rounds. Importantly this also remains linked to the principle of wins versus losses as being determinative. The rule attempts to expose the strength of teams' wins and the weakness of teams' losses.

The rule is designed to favour teams that consistently won convincingly and/or only lost by small margins across their rounds. By contrast, teams that consistently lost by a long way and/or only just won their rounds should more likely be eliminated. Teams in the first category have done better than teams in the second category in a way that sheer number of wins does not reveal.

Using scores from all preliminary rounds will ideally detect overall trends in performances. There is some risk that the effect of "blowouts" could be exaggerated but these are comparatively rare in law competitions.

This rule also has the benefit of making it mathematically unlikely teams will remain tied after it is applied.

20.4.4. **Score totals:** Separately sum the scores from the preliminary rounds of each remaining tied team. The team(s) with the lower score(s) than the other team(s) is eliminated.

20.4.5. **Coin toss:** If, after the operation of all of the other break system rules, there are still teams tied for one or both positions in the final, the tie must be decided by a coin toss conducted by the Competition Convenor.

## 21. SCRUTINY AND ANNOUNCEMENT OF BREAK

21.1. The NZLSA Competitions Vice-President must scrutinise the conduct of the break by the Competition Convenor to ensure that it is performed in accordance with these Rules.

21.2. No competitor, team, Law Student Society, Law School/Faculty, Judge or any other party with a potential interest in the outcome of the calculation of the break is permitted to scrutinise, or appoint any person to scrutinise, the calculation of the break.

21.3. The Competition Convenor must publicly announce the finalists at the conclusion of the preliminary rounds.

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

- 21.3.2. 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, which must be identified, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.
- 21.3.3. When announcing the break, the Competition Convenor must 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 must 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.

## 22. COMPLAINTS

- 22.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 22.2. Complaints must be lodged in writing by completing and handing or emailing to the Competition Convenor the prescribed **NZLSA Complaints Form**, which is an appendix to these Rules.
- 22.3. Complaints must be lodged by 5 pm on the day of the conduct giving rise to the complaint or, if the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Competition Convenor may, at his or her discretion, extend time to lodge a complaint if he or she considers it appropriate in the circumstances.
- 22.4. The Competition Convenor will hear the complainant and, if possible, the respondent and any other relevant person, and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsor.
- 22.5. The Competition Convenor may do any or all of the following:
  - 22.5.1. Issue any direction or make any decision in accordance with rule 9.1.
  - 22.5.2. Impose any penalty on any competitor or team in accordance with rules 9.3 and 9.4, including disqualification.
  - 22.5.3. Dismiss the complaint.
  - 22.5.4. Take no further action.
- 22.6. Instead of hearing the relevant parties under rule 22.4 and/or taking any action under rule 22.5, the Competition Convenor may refer the matter directly to the Appellate Body constituted under rule 23, but only where the Competition Convenor considers the matter is sufficiently serious to warrant such a course.
- 22.7. For the avoidance of doubt, a team may not complain about the decision of a Judge on the substantive merits of a round.

## 23. APPEALS

- 23.1. There will be an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Competitions Vice-President and President.
- 23.2. Any team may appeal any decision or direction of the Competition Convenor made either in the context of a complaint or under rules 3.5 and/or 9.
- 23.3. Any team may make any other complaint about the conduct of the Competition Convenor directly to the Appellate Body. Further references to “appeals” in this rule include such complaints.
- 23.4. Appeals must be lodged in writing by completing and handing or emailing to the Competitions Vice-President the prescribed **NZLSA Appeals Form**, which is an appendix to these Rules.
- 23.5. Appeals must be lodged at the earliest possible opportunity. Appeals must be lodged by 5 pm on the day of the decision or conduct giving rise to the appeal or, if the decision was made or the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Appellate Body may, at its discretion, extend time to lodge an appeal if it considers it appropriate in the circumstances.
- 23.6. Appeals lodged or referred to it will be heard by the Appellate Body. The Appellate Body may hear from the same people as the Competition Convenor did or could have under rule 22.4 and/or the Competition Convenor him or herself.
- 23.7. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and/or may substitute its own decision.
- 23.8. In substituting its decision for that of the Competition Convenor or rendering any decision on an appeal, the Appellate Body possesses the same powers as the Competition Convenor under rule 22.5.
- 23.9. For the avoidance of doubt, a team may not appeal against the decision of a Judge on the substantive merits of a round.
- 23.10. Any decision of the Appellate Body is final.

# NZLSA National Witness Examination Championship Rules

## Part 1 General

### 1. THE COMPETITION

- 1.1. The competition will be known as the “New Zealand Law Students' Association National Witness Examination Championship”.
- 1.2. The name of the competition may be amended or added to by the New Zealand Law Students' Association (NZLSA) Competitions Vice President to reflect sponsorship, funding and support arrangements from year to year.
- 1.3. The competition will be held once in every calendar year.
- 1.4. The competition comprises:
  - 1.4.1. the Regional Competitions held at each University at which the Law Students' Society is a Council Member of NZLSA as defined in clause 6.1 of the NZLSA Constitution; and
  - 1.4.2. the National Championship held during the course of the NZLSA Annual Conference, conducted between the winners of, or teams otherwise eligible from, the Regional Competitions.

### 2. INTERPRETATION AND APPLICATION

- 2.1. Except as stated otherwise or the context requires, these Rules apply to all aspects of the competition as specified in rule 1.4, namely:
  - 2.1.1. the Regional Competitions held at each University; and
  - 2.1.2. the National Championship.
- 2.2. For the avoidance of doubt, rule 2.1 is not limited by the organisation of these Rules into Parts. Except as otherwise stated, the Parts of these Rules are for organisational purposes only and have no interpretive value.
- 2.3. References in these Rules to “the competition” means either the Regional Competition or the National Championship or both as the context requires.
- 2.4. These Rules apply in preference to any rules prescribed by the sponsor. Any inconsistency between these Rules and the rules prescribed by the sponsor will be resolved in favour of these Rules.
- 2.5. Any question of interpretation of these Rules is to be determined in the first instance by the Competition Convenor. The decision of the Competition Convenor on a question of interpretation is subject to any decision or direction made as a result of the exercise of any applicable appeal rights.

### **3. GOVERNANCE AND RESPONSIBILITIES**

3.1. The governing body for the competition is the NZLSA Council.

3.2. There will be 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 any rules prescribed by the sponsor.

3.2.2. There may be one or two Competition Convenors. If there are two Competition Convenors, they must act by consensus between themselves. Singular references in these Rules to the Competition Convenor include the plural.

3.2.3. References in these Rules to “the Competition Convenor” means either the Competition Convenor of the Regional Competition or the Competition Convenor of the National Championship as the context requires.

3.3. The officer of each Law Students’ Society responsible for competitions will be the Competition Convenor of the Regional Competition at their University.

3.3.1. The relevant Law Students’ Society and the NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.4. The regional Law Students’ Society that is hosting the NZLSA Annual Conference will, in consultation with the NZLSA Conference Convenor, appoint a Competition Convenor for the National Championship that year.

3.4.1. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.5. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules prescribed by the sponsor, with the following exceptions:

3.5.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules prescribed by the sponsor.

3.5.2. The Competition Convenor must act in accordance with any decision he or she has made about a question of interpretation of these Rules or the rules prescribed by the sponsor during the course of one competition, subject to any decision or direction made under rules 3.5.3 and/or 3.5.4 and/or as a result of the exercise of any applicable appeal rights.

3.5.3. Each Regional Competition Convenor must act in accordance with any directions received from his or her Law Students’ Society President or Executive, subject to any decision or directions made under rule 3.5.4 and/or any decision or directions made as a result of the exercise of any applicable appeal rights.

3.5.4. The Competition Convenor must act in accordance with any 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 sponsor,

subject to any decision or direction made as a result of the exercise of any applicable appeal rights.

3.5.4.1. Notwithstanding this sub-rule, the Competition Convenor does not have to comply with a decision or direction of the NZLSA Competitions Vice-President if the Competition Convenor asserts that the matter is one properly within his or her discretion pursuant to rule 5 and the NZLSA Competitions Vice-President agrees.

3.5.4.2. If the NZLSA Competitions Vice-President does not agree about a particular direction in terms of rule 3.5.4.1, the relevant Law Students' Society President may raise the matter with the NZLSA President, who must finally determine the matter.

3.5.5. The Competition Convenor must act in accordance with any decision or direction made as a result of the exercise of any applicable appeal rights.

3.5.6. For the avoidance of doubt, and notwithstanding anything contained in this rule, competitors may only challenge a decision or direction of the Competition Convenor by exercising any applicable appeal rights. Competitors may not initiate any other process for this purpose.

#### **4. TEAMS AND ELIGIBILITY**

4.1. Each team will consist of one competitor.

4.2. A competitor will not be eligible to enter the competition in the following circumstances:

4.2.1. If he or she has completed the requirements for an undergraduate law degree in any jurisdiction as at the start date of the Regional Competition.

4.2.2. If he or she is ineligible, unable or unwilling to represent his or her University at the National Championship and/or the Australian Law Students' Association (ALSA) Conference. This criterion does not operate to exclude a person if the only reason he or she not able to comply with it is because he or she is already required to compete in the National Championship and at the ALSA Conference of another competition by the operation of these Rules.

4.2.3. If he or she is ineligible, unable or unwilling to represent New Zealand at the international competition, in respect of which this competition is used to select a team to compete.

4.2.4. If he or she is unable or unwilling to certify that he or she is able to comply with the other eligibility requirements.

4.3. For the avoidance of doubt, the eligibility requirements in rule 4.2 apply to all aspects of the competition as specified in rule 1.4, and in particular apply to all entries in each Regional Competition.

4.4. Intending competitors in each Regional Competition must enter the competition by completing the prescribed **NZLSA Competition Entry Form**, which is an appendix to these Rules.

- 4.4.1. The Competition Convenor must bring the relevant dates of the commitments listed in rule 4.2 to the attention of intending competitors at the time entries open. This must include specifying the dates on and/or attaching the dates to the NZLSA Competition Entry Form.
  - 4.4.2. As part of the entry process, each entrant must certify that he or she is able to comply with the eligibility requirements in rule 4.2.
- 4.5. Each University from which the Law Students' Society is a Council Member of NZLSA may be represented by one team to compete in the National Championship.
- 4.6. Subject to rule 4.7, the winning team from each Regional Competition must represent their University at the National Championship and at the ALSA Conference.
- 4.7. If any person (**Person A**) wins more than one Regional Competition at their University in one particular year (that is out of Mooting, Witness Examination, Negotiation and Client Interviewing) the following applies:
  - 4.7.1. Person A may only represent their University at the ALSA Conference and at the National Championship in one competition.
  - 4.7.2. Person A must represent their University in the competition for which they won the Regional Competition first in time.
  - 4.7.3. In the competition(s) Person A won second or subsequent in time, Person A's place must be taken by the next highest ranked competitor from the Regional Competition.
- 4.8. Rule 4.7 applies in like fashion to any other competitor(s) who would otherwise be required to compete in the National Championship of the competition and at the ALSA Conference by the operation of rule 4.7, but who is also already required to compete at the ALSA Conference and in the National Championship of another competition, until the eligible competitor(s) is determined. For these purposes, a competitor must represent their University in the competition in which they attained the place in the Regional Competition by virtue of which they are required to compete by the operation of rule 4.7 first in time.
- 4.9. The method set out in rule 4.7.3 applies in like fashion where a person who would otherwise be required to compete in the National Championship of the competition and at the ALSA Conference by the operation of these Rules is, for unforeseen reasons such as illness, unable to attend the National Championship and/or the ALSA Conference. However, this rule does not apply to a competitor who is otherwise already required by these Rules to compete in another competition, and instead the next compellable competitor must be determined using the same method in like fashion, if any of the following circumstances apply:
  - (a) In respect of either the ALSA Conference or the National Championship, if the unforeseen circumstance which means a replacement is required arises within two weeks of the first preliminary round.
  - (b) In respect of the National Championship, if the operation of this rule would result in altering in any way a team that had already competed in another competition at the ALSA Conference that year.

- (c) If the affected competitor applies in writing to the NZLSA Competitions Vice-President to agree that for any reason it would be unfair or inappropriate for this rule to operate in respect of him or her and the NZLSA Competitions Vice-President agrees in writing. The decision of the NZLSA Competitions Vice-President under this rule is final, although in the course of making it, the NZLSA Competitions Vice-President may consult with any person(s) he or she sees fit.

4.10. The top ranking team in the competition must represent New Zealand at any international competition, for which this competition is a qualifier. In the event the winning team cannot attend the international competition for unforeseen reasons such as illness, the next highest ranked team from the National Championship that is able to attend must represent New Zealand at the international competition.

4.11. If at the time of entering the Regional Competition a competitor was not in fact eligible in accordance with rule 4.2, or if at any time between entering a Regional Competition and the conclusion of the National Championship a competitor becomes unable to comply with the requirements of rule 4.2, then the following provisions apply:

4.11.1. The competitor must immediately inform the Competition Convenor of the Regional Competition at his or her University, who must immediately inform the NZLSA Competitions Vice-President if at that time the Regional Competition has concluded.

4.11.2. The competitor is prohibited from advancing any further in the competition. This includes, but is not limited to, advancing between rounds (for example between a preliminary round and a semi-final round), attending the ALSA Conference and attending the National Championship. This rule applies regardless of whether the competitor has already been notified that he or she is advancing in the competition.

4.11.3. The competitor is banned from entering any Regional Competition at his or her University (that is out of Mooting, Witness Examination, Negotiation and Client Interviewing) for the remainder of the year and in the following year unless the competitor can satisfy the Competition Convenor of the Regional Competition at his or her University or, if the Regional Competition had concluded by the time notice was given under rule 4.11.1, the NZLSA Competitions Vice-President that:

4.11.3.1. he or she informed the Competition Convenor of his or her ineligibility as soon as practicable after becoming aware of it; and

4.11.3.2. he or she did not know that he or she was unable to comply with the requirements of rule 4.2 at the time of entering the competition; or

4.11.3.3. his or her circumstances changed after entering the competition.

4.12. Rule 4.11 does not apply to any competitor who has already been eliminated from the competition.

4.13. No Competition Convenor or President of a Council Member is eligible to compete in the competition.



## **5. STRUCTURE OF THE REGIONAL COMPETITIONS**

- 5.1. Subject to these Rules (in particular rule 3.5) and the rules prescribed by the sponsor, the Regional Competition at each University may be structured in a manner determined by the Competition Convenor in consultation with any relevant person or entity, including but not limited to the Law Students' Society at the Competition Convenor's University, the Competition Convenor's University Law School/Faculty, the sponsor and the NZLSA Competitions Vice-President.
- 5.2. Matters of structure of the Regional Competition that may be determined by the Competition Convenor in accordance with rule 5.1 include, but are not limited to,:
  - 5.2.1. the maximum number of competitors able to enter;
  - 5.2.2. the draw and break system;
  - 5.2.3. the extent to which judges must determine rounds strictly on the basis of the assessment criteria set out in these Rules, or whether judges may decide rounds, for example, principally on a win/loss basis, except that in all cases the assessment criteria must be provided to the judges by the Competition Convenor and must be used to inform the judging process;
  - 5.2.4. the structure of a complaints and appeals process.
- 5.3. There must be a complaints and appeals process. If the Competition Convenor does not specify any complaints and appeals process prior to the start of the competition, then the complaints and appeals process set out in these Rules in respect of the National Championship applies, except that the functions of the Appellate Body are to be carried out by the President of the Law Students' Society at the applicable University.
- 5.4. The structure of the Regional Competition should be made clear to competitors prior to entry.
- 5.5. Competitors should be sent a copy of these Rules and any other applicable rules as soon as is practicable after their entries are confirmed.
- 5.6. The structure of the Regional Competition at each University should be kept as consistent as possible from year to year.

## **6. STRUCTURE OF THE NATIONAL CHAMPIONSHIP**

- 6.1. The competition will consist of five preliminary rounds, followed by a final.
- 6.2. Over the course of the preliminary rounds, each team must meet every other team.
- 6.3. Teams must not meet each other more than once during the preliminary rounds.
- 6.4. The preliminary rounds of the National Championship must be conducted in accordance with the draw set out as an appendix to these Rules. The Competition Convenor must randomly allocate to each team a letter in the draw. At least 24 hours before the first preliminary round, the Competition Convenor must release to each team individually a copy of the draw and that team's allocated letter. In each round, the team listed first in the draw is the plaintiff/prosecution and the team listed second in the draw is the

defendant.

6.5. Competitors must be sent a copy of these Rules at least two weeks before the first preliminary round.

## **7. COMPETITION PROBLEMS AND REQUESTS FOR CLARIFICATION**

7.1. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every problem used in the competition.

7.2. As a general rule, problems should not be re-used, recycled or repeated from previous competitions.

7.3. In the National Championship:

7.3.1. the problems must not be ones re-used, recycled or repeated from previous years;  
and

7.3.2. the problems must not be ones that have been used in any Regional Competition in the same year.

7.4. Requests for clarification of a problem must be directed to the Competition Convenor.

7.5. The Competition Convenor will determine whether or not to issue a clarification, and what form the clarification will take.

7.6. 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.

7.6.1. 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.

7.6.2. The Competition Convenor must not spend more than 10 minutes attempting to satisfy the requirement of this rule.

## **8. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS**

8.1. 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.

8.2. Without limiting this general rule, the Competition Convenor must:

8.2.1. ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors; and

8.2.2. ensure to the greatest extent possible that all competitors receive communications at the same time.

## **9. DIRECTIONS, PENALTIES AND DISQUALIFICATION**

- 9.1. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, issue any directions or make any decision of any kind relating to the competition at any time. For example, the Competition Convenor may issue a direction that any competitor, team or person perform any action or refrain from performing any action. This rule is subject to anything specifically provided for in these Rules, the rules prescribed by the sponsor and to rule 3.5.
- 9.2. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties in accordance with rules 9.3 and 9.4 for any failure to comply.
- 9.3. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, impose any penalty on any team that:
  - 9.3.1. is late in submitting written submissions or attending rounds; or
  - 9.3.2. in any other way breaches the rules of the competition as set out in these Rules; or
  - 9.3.3. acts in any other way that, in the opinion of the Competition Convenor, is contrary to the spirit of these Rules and the competition.
- 9.4. The penalties that may be imposed by the Competition Convenor under rule 9.3 include, but are not limited to:
  - 9.4.1. disqualification; or
  - 9.4.2. a reduction in score; or
  - 9.4.3. any other penalty or combination of penalties the Competition Convenor sees fit.
- 9.5. Any decision or direction of the Competition Convenor made under this rule is subject to any applicable appeal rights under rules 5.3 or 23.

## **10. JUDGES**

- 10.1. The Competition Convenor must appoint Judges to adjudicate the competition.
- 10.2. Judges must be members of the judiciary, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.
- 10.3. Judges must adjudicate the competition in accordance with these Rules and the rules prescribed by the sponsor.
- 10.4. The Competition Convenor must, before the Judges commence judging any rounds of the competition,;
  - 10.4.1. provide to the Judges any available comprehensive marking guide and/or guide about acceptable score ranges for different qualities of competitor or team (for example that an “excellent” performance will score over 85 in a competition marked out of 100, “very good” will score 75–84 and “good” will score 65–74), provided that:
    - (a) the guide or guides have also been provided to competitors at the

- time the problem was released;
  - (b) the competitors have been informed that the guide or guides would be provided to the Judges; and
  - (c) only one of each type of guide may be provided to the Judges;
- 10.4.2. explain to the Judges the break system or selection criteria that will be utilised to determine advancement in the competition; and
- 10.4.3. encourage Judges to confer to achieve consistent marking, except that Judges must be instructed to do this only in a general way and that they must form their own views about the merits of each competitor or team.
- 10.5. 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.
- 10.6. In the National Championship the following further provisions apply:
- 10.6.1. There should usually be a panel of at least two judges for each preliminary round and the Competition Convenor must use his or her best endeavours to attempt to achieve this.
  - 10.6.2. Judges should not usually hear the same team more than once throughout the preliminary rounds and the Competition Convenor must use his or her best endeavours to attempt to achieve this.
  - 10.6.3. There must be a panel of at least three judges for the final.
  - 10.6.4. Legal academics must not judge a team from their own law school.
  - 10.6.5. Legal practitioners must not judge a team that includes a competitor(s) with whom they have worked, for example in the context of summer clerking.

## **11. SPECTATORS AND SCOUTING**

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

## **12. OUTSIDE ASSISTANCE**

- 12.1. Teams may not enlist the assistance of any other person in the research or preparation of arguments for the problem in any round of any competition, including the final.
- 12.2. For the avoidance of doubt, this rule does not prohibit teams from receiving assistance on matters of technique from any person.

**Part 2**  
**Rules particular to Witness Examination**

**13. STRUCTURE OF EACH ROUND**

- 13.1. In each round, one team will be counsel for the prosecution/plaintiff and one team will be counsel for the defence. Each team will call one witness per round.
- 13.2. Competitors must receive the fact pattern 90 minutes prior to the commencement of a round.
  - 13.2.1. 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.
  - 13.2.2. All applicable law must also be supplied to competitors at this time.
- 13.3. Witnesses must receive their briefs together with witness instructions one hour prior to the commencement of the round.
- 13.4. Competitors meet with their witness 30 minutes before the commencement of the round.
- 13.5. Competitors are prohibited from discussing the contents of the hearing with any persons other than their witness.
- 13.6. Electronic devices must not be used during the preparation time.
- 13.7. All the usual formalities are to be observed when commencing and concluding the round and when addressing the Bench, and normal courtroom etiquette is to be adopted by counsel.
- 13.8. Counsel must not robe, but formal attire (i.e. suits/business attire) is required.

- 13.9. After introductions to the bench, the conduct of the hearing must be as follows, with the times specified being the maximum time permitted for each item:
- |  |            |
|--|------------|
| 13.9.1. opening by prosecution/plaintiff   | 2 minutes  |
| 13.9.2. examination in chief by prosecution/plaintiff of prosecution/plaintiff witness | 10 minutes |
| 13.9.3. cross-examination by defence of prosecution/plaintiff witness                  | 15 minutes |
| 13.9.4. opening by defence   | 2 minutes  |
| 13.9.5. examination in chief by defence of defence witness                             | 10 minutes |
| 13.9.6. cross-examination by prosecution/plaintiff of defence witness                  | 15 minutes |
| 13.9.7. closing by prosecution/plaintiff   | 3 minutes  |
| 13.9.8. closing by defence   | 3 minutes  |
- 13.10. Witnesses must be sworn in or affirmed by the Judges or any timekeeper or Registrar present.
- 13.11. Time must be stopped during any objections.
- 13.12. There will be no re-examination of witnesses.
- 13.13. Judges must keep time during rounds and provide warnings at the appropriate times, being:
- 13.13.1. for examination in chief and cross-examination, a warning when 2 minutes remain; and
- 13.13.2. for opening and closing, a warning when 30 seconds remain.
- 13.14. The time limits must be enforced strictly in the preliminary rounds of the National Championship, in any semi-finals and in any final. Three marks must be deducted for every minute exceeding the time limit.
- 13.15. In the preliminary rounds of the Regional Competition, Judges may enforce time in any manner they see fit, including by granting extensions upon request or in the manner provided for in rule 13.14. Judges must inform the teams at the start of the round the manner in which they intend to enforce time and the Competition Convenor must draw this requirement to the Judges' attention.

#### **14. WITNESSES**

- 14.1. Witnesses must not be law students.

- 14.2. During a round, witnesses must not embellish their evidence beyond that in their witness briefs. If cross-examined on a point not covered in a brief, a witness should give an answer likely to be consistent with the role being played.
- 14.3. The Competition Convenor must explain rule 14.2 to the witnesses prior to them receiving their briefs.

## 15. SUBSTANTIVE RULES GOVERNING THE CONDUCT OF WITNESS EXAMINATION

- 15.1. The rules of evidence applicable in the New Zealand courts apply. However, because emphasis is on examination and cross-examination of witnesses, the following provisions apply:
  - 15.1.1. Counsel are not permitted to refer to an opponent's witness brief in cross-examination (e.g. for the purpose of prior inconsistent statement).
  - 15.1.2. Exhibits and contemporaneous notes may not be admitted in evidence.
  - 15.1.3. Witnesses will not be expert witnesses.
  - 15.1.4. The following assumptions are made:
    - 15.1.4.1. Any potential police obligations under the New Zealand Bill of Rights Act have been complied with.
    - 15.1.4.2. While the legal framework is expected to be discussed in opening and closing submissions, matters of law are not at issue.
- 15.2. During any examination in chief or cross-examination, the Judge may disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand (pursuant to s 85 Evidence Act 2006).
- 15.3. Fact patterns used for the competition may be in either the criminal or civil jurisdiction.

## 16. ASSESSMENT

- 16.1. Each competitor must be allocated a mark out of 100. This mark must be assessed in accordance with the **table** overleaf by allocating for each criterion a number of marks from zero up to the maximum available for each criterion.
- 16.2. Judges must not award a tie on score as between two teams in a round. In the event of a tie between both teams in one round on score, the Judges must decide on a winner and adjust the scores in accordance with their renewed views of the merits.
- 16.3. 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.
- 16.4. Judges must provide any further information requested by the Competition Convenor in order to permit the Competition Convenor to operate the applicable draw or break

system.

- 16.5. Scores and any other information must be submitted by the Judges to the Competition Convenor at the conclusion of each round.
- 16.6. Scores must not be announced to competitors at the conclusion of a round.
- 16.7. Scores and score sheets should be made available to the teams but only after the participants in the next round have been announced or, in the case of the final, the winning team is announced.



**Witness examination assessment criteria (rule 16.1)**

<b>Criteria</b>	<b>Marks</b>
<b>Examination in chief</b>	<b>30</b>
Established credibility	____/5
Drew out relevant information	____/10
Witness control	____/5
Style/demeanour/eye contact with witness	____/5
No leading questions	____/5
<i>Sub-total</i>	____/30
<b>Cross-examination</b>	<b>30</b>
Short questions	____/5
Leading/closed questions	____/5
Addressed important issues	____/5
Witness control	____/5
Style/demeanour/eye contact with witness	____/5
Effective cross-examination to obtain concessions	____/5
<i>Sub-total</i>	____/30
<b>Submissions</b>	<b>20</b>
Clear theory of the case present from opening of case	____/5
Closed case appropriately utilising evidence led during hearing	____/5
Utilised information obtained during cross-examination in closing	____/5
Observed rules of evidence during examination of witnesses	____/5
<i>Sub-total</i>	____/20
Advocacy and manner	20
Style/demeanour/eye contact with Judge	____/5
Manner of delivery	____/5
Appropriately raised/responded to objections	____/5
Response to questions from Judge	____/5
<i>Sub-total</i>	____/20
<b>TOTAL</b>	<b>____/100</b>

## **Part 3**

### **Rules particular to the National Championship**

#### **17. RULES ONLY APPLY TO THE NATIONAL CHAMPIONSHIP**

Unless stated otherwise in these Rules or expressly adopted for a Regional Competition by a Competition Convenor in accordance with rule 5 (which a Competition Convenor may do), the following rules (rules 18–23) apply only to the National Championship.

#### **18. ANONYMITY**

- 18.1. The Competition Convenor must take all practicable steps to ensure that Judges are unaware of which law school competitors are from until after the conclusion of each Judge's involvement with the competition.
- 18.2. In order to facilitate anonymity, on all documents made available to competitors or Judges, or otherwise made publicly available, teams must be identified by arbitrarily assigned numbers or letters.
- 18.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to a Judge which law school they are from.

#### **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:
  - 19.2.1. to have scored in that round a score equal to the average of its scores in all the preliminary rounds in which it faced an opponent, both prior and subsequent; and
  - 19.2.2. to have won in that round by a win margin equal to the average of its win margins in all the preliminary rounds in which it faced an opponent and won, both prior and subsequent. In this rule the term "win margin" has the same meaning as defined in rule 20.4.3.1(a). If a default win is a team's only win in the preliminary rounds then its win margin is a score of 1.

#### **20. BREAK SYSTEM**

- 20.1. There will be two teams in the final.
- 20.2. The two teams with more wins from the preliminary rounds than the remaining teams will be the finalists.
- 20.3. If one or both of the finalists cannot be determined by the operation of rule 20.2, the break system rules set out in rule 20.4 must applied by the Competition Convenor in accordance with the following:
  - 20.3.1. The break system rules apply to the teams that are not already finalists

under the operation of rule 20.2 and that are tied on the highest number of wins or, if one finalist has already been determined, the next highest number of wins after that finalist. All other teams are eliminated.

- 20.3.2. The remaining tied teams will be progressively eliminated through the sequential operation of the break system rules until two finalists remain. If, after the application of a given break system rule, more teams remain tied than the number of positions available in the final, the next break system rule applies.
- 20.3.3. The break system rules apply in the order listed in rule 20.4.
- 20.3.4. Each time more than two teams are tied and a given break system rule (**break system rule A**) eliminates one or more of the teams, but more teams remain tied than the number of positions available in the final, break system rule 20.4.1 must be reapplied among the remaining teams. If, after the reapplication of rule 20.4.1, more teams remain tied than the number of positions available in the final, the break system calculation carries on from the next break system rule in the sequence after break system rule A.
- 20.3.5. **Status of explanatory notes:** Some of the break system rules are accompanied by notes. A note is only explanatory of the break system rule to which it relates. It does not limit the rule. If a note and a rule to which it relates are inconsistent, the rule prevails.

20.4. The break system rules are, in this order,:

- 20.4.1. **Win-loss records among only the tied teams:** Recalculate the number of preliminary round wins of each tied team, counting only the matches against the other team(s) in the tie. The team(s) with fewer wins than the other team(s) is eliminated.

**NOTE:** This rule is essentially a reincarnation of the overarching principle that, in a round robin tournament, the teams that performed the strongest relative to everyone else deserve to be in the final.

If there are only two teams, the team that beat the other team will progress.

If there are more than two teams, the team(s) that performed the weakest amongst that group will be eliminated. This also incorporates draw strength. Among teams that have the same number of wins overall in the competition, any teams with more wins than the others within that group have done better.

The rationale for reapplying this rule in more complex ties each time a team(s) is eliminated further down the chain of rules is that a potential circular elimination earlier on may by then have been resolved. This rule is still the most in keeping with the overarching principle in a round robin tournament, and so it should apply to find the finalist(s) in preference to the other rules if it can.

- 20.4.2. **Win-loss record as against the first finalist (if there is one):** This break system rule only applies if there is already one finalist (“the first finalist”) and the break system is being used to determine the other. Determine whether any of the tied teams beat the first finalist. If any team(s) did beat the first finalist, any team(s) that did not beat the first finalist is eliminated.

**NOTE:** This rule recognises draw strength, which is the next available method most consistent with the overarching principle of a round robin tournament. This rule rewards any team(s) that beat the team that ultimately emerged as the strongest in the tournament.

**20.4.3. Ratio of win to loss margins:**

20.4.3.1. Separately for each remaining tied team, and by reference to the preliminary round scores,:

- (a) Calculate the difference between the remaining tied team's score and the score of the team it faced for each round where the remaining tied team won. These are the win margins. Sum the win margins. This is the total win margin.
- (b) Calculate the difference between the remaining tied team's score and the score of the team it faced for each round where the remaining tied team lost. These are the loss margins. Sum the loss margins. This is the total loss margin.
- (c) Divide the total win margin by the total loss margin. This is the win-to-loss margin ratio.

20.4.3.2. The team(s) with the lower win-to-loss margin ratio(s) than the other team(s) is eliminated.

**NOTE:** It is recognised that relying on scores is less reliable because they rest on the subjective decisions of judges in individual rounds about how many points each team or competitor has earned. The effect of subjectivity can be reduced by methods such as comprehensive marking guides and guides about acceptable score ranges for different qualities of competitor provided for in rule 10.4. However, the potential effect of subjectivity remains.

That is why this rule, and the rule that follows it (score totals) are relegated to the bottom end of the break system.

This rule attempts to limit the influence of subjectivity as compared to raw score totals by focussing on the closeness of each team's rounds. Importantly this also remains linked to the principle of wins versus losses as being determinative. The rule attempts to expose the strength of teams' wins and the weakness of teams' losses.

The rule is designed to favour teams that consistently won convincingly and/or only lost by small margins across their rounds. By contrast, teams that consistently lost by a long way and/or only just won their rounds should more likely be eliminated. Teams in the first category have done better than teams in the second category in a way that sheer number of wins does not reveal.

Using scores from all preliminary rounds will ideally detect overall trends in performances. There is some risk that the effect of "blowouts" could be exaggerated but these are comparatively rare in law competitions.

This rule also has the benefit of making it mathematically unlikely teams will remain tied after it is applied.

**20.4.4. Score totals:** Separately sum the scores from the preliminary rounds of

each remaining tied team. The team(s) with the lower score(s) than the other team(s) is eliminated.

- 20.4.5. **Coin toss:** If, after the operation of all of the other break system rules, there are still teams tied for one or both positions in the final, the tie must be decided by a coin toss conducted by the Competition Convenor.

## 21. SCRUTINY AND ANNOUNCEMENT OF BREAK

- 21.1. The NZLSA Competitions Vice-President must scrutinise the conduct of the break by the Competition Convenor to ensure that it is performed in accordance with these Rules.
- 21.2. No competitor, team, Law Student Society, Law School/Faculty, Judge or any other party with a potential interest in the outcome of the calculation of the break is permitted to scrutinise, or appoint any person to scrutinise, the calculation of the break.
- 21.3. The Competition Convenor must publicly announce the finalists at the conclusion of the preliminary rounds.
- 21.3.1. In the course of announcing the finalists, the Competition Convenor must explain the process by which the finalists were determined.
- 21.3.2. 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, which must be identified, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.
- 21.3.3. When announcing the break, the Competition Convenor must 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 must 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.

## 22. COMPLAINTS

- 22.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 22.2. Complaints must be lodged in writing by completing and handing or emailing to the Competition Convenor the prescribed **NZLSA Complaints Form**, which is an appendix to these Rules.
- 22.3. Complaints must be lodged by 5 pm on the day of the conduct giving rise to the complaint or, if the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Competition Convenor may, at his or her discretion, extend time to lodge a complaint if he or she considers it appropriate in the circumstances.

- 22.4. The Competition Convenor will hear the complainant and, if possible, the respondent and any other relevant person, and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsor.
- 22.5. The Competition Convenor may do any or all of the following:
- 22.5.1. Issue any direction or make any decision in accordance with rule 9.1.
  - 22.5.2. Impose any penalty on any competitor or team in accordance with rules 9.3 and 9.4, including disqualification.
  - 22.5.3. Dismiss the complaint.
  - 22.5.4. Take no further action.
- 22.6. Instead of hearing the relevant parties under rule 22.4 and/or taking any action under rule 22.5, the Competition Convenor may refer the matter directly to the Appellate Body constituted under rule 23, but only where the Competition Convenor considers the matter is sufficiently serious to warrant such a course.
- 22.7. For the avoidance of doubt, a team may not complain about the decision of a Judge on the substantive merits of a round.

## 23. APPEALS

- 23.1. There will be an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Competitions Vice-President and President.
- 23.2. Any team may appeal any decision or direction of the Competition Convenor made either in the context of a complaint or under rules 3.5 and/or 9.
- 23.3. Any team may make any other complaint about the conduct of the Competition Convenor directly to the Appellate Body. Further references to “appeals” in this rule include such complaints.
- 23.4. Appeals must be lodged in writing by completing and handing or emailing to the Competitions Vice-President the prescribed **NZLSA Appeals Form**, which is an appendix to these Rules.
- 23.5. Appeals must be lodged at the earliest possible opportunity. Appeals must be lodged by 5 pm on the day of the decision or conduct giving rise to the appeal or, if the decision was made or the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Appellate Body may, at its discretion, extend time to lodge an appeal if it considers it appropriate in the circumstances.
- 23.6. Appeals lodged or referred to it will be heard by the Appellate Body. The Appellate Body may hear from the same people as the Competition Convenor did or could have under rule 22.4 and/or the Competition Convenor him or herself.

- 23.7. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and/or may substitute its own decision.
- 23.8. In substituting its decision for that of the Competition Convenor or rendering any decision on an appeal, the Appellate Body possesses the same powers as the Competition Convenor under rule 22.5.
- 23.9. For the avoidance of doubt, a team may not appeal against the decision of a Judge on the substantive merits of a round.
- 23.10. Any decision of the Appellate Body is final.

# **NZLSA National Negotiation Championship Rules**

## **Part 1 General**

### **1. THE COMPETITION**

- 1.1. The competition will be known as the “New Zealand Law Students' Association National Negotiation Championship”.
- 1.2. The name of the competition may be amended or added to by the New Zealand Law Students' Association (NZLSA) Competitions Vice President to reflect sponsorship, funding and support arrangements from year to year.
- 1.3. The competition will be held once in every calendar year.
- 1.4. The competition comprises:
  - 1.4.1. the Regional Competitions held at each University at which the Law Students' Society is a Council Member of NZLSA as defined in clause 6.1 of the NZLSA Constitution; and
  - 1.4.2. the National Championship held during the course of the NZLSA Annual Conference, conducted between the winners of, or teams otherwise eligible from, the Regional Competitions.

### **2. INTERPRETATION AND APPLICATION**

- 2.1. Except as stated otherwise or the context requires, these Rules apply to all aspects of the competition as specified in rule 1.4, namely:
  - 2.1.1. the Regional Competitions held at each University; and
  - 2.1.2. the National Championship.
- 2.2. For the avoidance of doubt, rule 2.1 is not limited by the organisation of these Rules into Parts. Except as otherwise stated, the Parts of these Rules are for organisational purposes only and have no interpretive value.
- 2.3. References in these Rules to “the competition” means either the Regional Competition or the National Championship or both as the context requires.
- 2.4. These Rules apply in preference to any rules prescribed by the sponsor. Any inconsistency between these Rules and the rules prescribed by the sponsor will be resolved in favour of these Rules.
- 2.5. Any question of interpretation of these Rules is to be determined in the first instance by the Competition Convenor. The decision of the Competition Convenor on a question of interpretation is subject to any decision or direction made as a result of the exercise of any applicable appeal rights.



### **3. GOVERNANCE AND RESPONSIBILITIES**

3.1. The governing body for the competition is the NZLSA Council.

3.2. There will be 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 any rules prescribed by the sponsor.

3.2.2. There may be one or two Competition Convenors. If there are two Competition Convenors, they must act by consensus between themselves. Singular references in these Rules to the Competition Convenor include the plural.

3.2.3. References in these Rules to “the Competition Convenor” means either the Competition Convenor of the Regional Competition or the Competition Convenor of the National Championship as the context requires.

3.3. The officer of each Law Students’ Society responsible for competitions will be the Competition Convenor of the Regional Competition at their University.

3.3.1. The relevant Law Students’ Society and the NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.4. The regional Law Students’ Society that is hosting the NZLSA Annual Conference will, in consultation with the NZLSA Conference Convenor, appoint a Competition Convenor for the National Championship that year.

3.4.1. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.5. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules prescribed by the sponsor, with the following exceptions:

3.5.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules prescribed by the sponsor.

3.5.2. The Competition Convenor must act in accordance with any decision he or she has made about a question of interpretation of these Rules or the rules prescribed by the sponsor during the course of one competition, subject to any decision or direction made under rules 3.5.3 and/or 3.5.4 and/or as a result of the exercise of any applicable appeal rights.

3.5.3. Each Regional Competition Convenor must act in accordance with any directions received from his or her Law Students’ Society President or Executive, subject to any decision or directions made under rule 3.5.4 and/or any decision or directions made as a result of the exercise of any applicable appeal rights.

3.5.4. The Competition Convenor must act in accordance with any 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 sponsor,

subject to any decision or direction made as a result of the exercise of any applicable appeal rights.

3.5.4.1. Notwithstanding this sub-rule, the Competition Convenor does not have to comply with a decision or direction of the NZLSA Competitions Vice-President if the Competition Convenor asserts that the matter is one properly within his or her discretion pursuant to rule 5 and the NZLSA Competitions Vice-President agrees.

3.5.4.2. If the NZLSA Competitions Vice-President does not agree about a particular direction in terms of rule 3.5.4.1, the relevant Law Students' Society President may raise the matter with the NZLSA President, who must finally determine the matter.

3.5.5. The Competition Convenor must act in accordance with any decision or direction made as a result of the exercise of any applicable appeal rights.

3.5.6. For the avoidance of doubt, and notwithstanding anything contained in this rule, competitors may only challenge a decision or direction of the Competition Convenor by exercising any applicable appeal rights. Competitors may not initiate any other process for this purpose.

#### **4. TEAMS AND ELIGIBILITY**

4.1. Each team will consist of two competitors.

4.2. A competitor will not be eligible to enter the competition in the following circumstances:

4.2.1. If he or she has completed the requirements for an undergraduate law degree in any jurisdiction as at the start date of the Regional Competition.

4.2.2. If he or she is ineligible, unable or unwilling to represent his or her University at the National Championship and/or the Australian Law Students' Association (ALSA) Conference. This criterion does not operate to exclude a person if the only reason he or she not able to comply with it is because he or she is already required to compete in the National Championship and at the ALSA Conference of another competition by the operation of these Rules.

4.2.3. If he or she is ineligible, unable or unwilling to represent New Zealand at the international competition, in respect of which this competition is used to select a team to compete.

4.2.4. If he or she is unable or unwilling to certify that he or she is able to comply with the other eligibility requirements.

4.3. For the avoidance of doubt, the eligibility requirements in rule 4.2 apply to all aspects of the competition as specified in rule 1.4, and in particular apply to all entries in each Regional Competition.

4.4. Intending competitors in each Regional Competition must enter the competition by completing the prescribed **NZLSA Competition Entry Form**, which is an appendix to these Rules.

- 4.4.1. The Competition Convenor must bring the relevant dates of the commitments listed in rule 4.2 to the attention of intending competitors at the time entries open. This must include specifying the dates on and/or attaching the dates to the NZLSA Competition Entry Form.
  - 4.4.2. As part of the entry process, each entrant must certify that he or she is able to comply with the eligibility requirements in rule 4.2.
- 4.5. Each University from which the Law Students' Society is a Council Member of NZLSA may be represented by one team to compete in the National Championship.
- 4.6. Subject to rule 4.7, the winning team from each Regional Competition must represent their University at the National Championship and at the ALSA Conference.
- 4.7. If any person (**Person A**) wins more than one Regional Competition at their University in one particular year (that is out of Mooting, Witness Examination, Negotiation and Client Interviewing) the following applies:
  - 4.7.1. Person A may only represent their University at the ALSA Conference and at the National Championship of one competition.
  - 4.7.2. Person A must represent their University in the competition for which they won the Regional Competition first in time.
  - 4.7.3. In the competition(s) Person A won second or subsequent in time, Person A's place must be taken in the team representing the University at the National Championship and at the ALSA Conference by the next highest ranked competitor from the Regional Competition.
    - 4.7.3.1. In accordance with this rule, the University must be represented at the National Championship by a team comprised of either:
      - (a) Person A's remaining team member and a member of the next highest ranked team as decided between the affected competitors or, if they are not willing or able to decide, the Competition Convenor; or
      - (b) the next highest ranked team from the Regional Competition if Person A's remaining team member decides he or she does not wish to compete in the National Championship and/or at the ALSA Conference.
- 4.8. Rule 4.7 applies in like fashion to any other competitor(s) who would otherwise be required to compete in the National Championship of the competition and at the ALSA Conference by the operation of rule 4.7, but who is also already required to compete at the ALSA Conference and in the National Championship of another competition, until the eligible competitor(s) is determined. For these purposes, a competitor must represent their University in the competition in which they attained the place in the Regional Competition by virtue of which they are required to compete by the operation of rule 4.7 first in time.
- 4.9. The method set out in rule 4.7.3 applies in like fashion where a person who would otherwise be required to compete in the National Championship of the competition and at

the ALSA Conference by the operation of these Rules is, for unforeseen reasons such as illness, unable to attend the National Championship and/or the ALSA Conference. However, this rule does not apply to a competitor who is otherwise already required by these Rules to compete in another competition, and instead the next compellable competitor must be determined using the same method in like fashion, if any of the following circumstances apply:

- (a) In respect of either the ALSA Conference or the National Championship, if the unforeseen circumstance which means a replacement is required arises within two weeks of the first preliminary round.
- (b) In respect of the National Championship, if the operation of this rule would result in altering in any way a team that had already competed in another competition at the ALSA Conference that year.
- (c) If the affected competitor applies in writing to the NZLSA Competitions Vice-President to agree that for any reason it would be unfair or inappropriate for this rule to operate in respect of him or her and the NZLSA Competitions Vice-President agrees in writing. The decision of the NZLSA Competitions Vice-President under this rule is final, although in the course of making it, the NZLSA Competitions Vice-President may consult with any person(s) he or she sees fit.

4.10. The top ranking team in the competition must represent New Zealand at any international competition, for which this competition is a qualifier. In the event the winning team cannot attend the international competition for unforeseen reasons such as illness, the next highest ranked team from the National Championship that is able to attend must represent New Zealand at the international competition. For the purposes of this rule, a winning team "cannot attend the international competition" if only one of the team's members is able to attend but the other is not.

4.11. If at the time of entering the Regional Competition a competitor was not in fact eligible in accordance with rule 4.2, or if at any time between entering a Regional Competition and the conclusion of the National Championship a competitor becomes unable to comply with the requirements of rule 4.2, then the following provisions apply:

- 4.11.1. The competitor must immediately inform the Competition Convenor of the Regional Competition at his or her University, who must immediately inform the NZLSA Competitions Vice-President if at that time the Regional Competition has concluded.
- 4.11.2. The competitor is prohibited from advancing any further in the competition. This includes, but is not limited to, advancing between rounds (for example between a preliminary round and a semi-final round), attending the ALSA Conference and attending the National Championship. This rule applies regardless of whether the competitor has already been notified that he or she is advancing in the competition.
- 4.11.3. The competitor is banned from entering any Regional Competition at his or her University (that is out of Mooting, Witness Examination, Negotiation and Client Interviewing) for the remainder of the year and in the following year unless the competitor can satisfy the Competition Convenor of the Regional Competition

at his or her University or, if the Regional Competition had concluded by the time notice was given under rule 4.11.1, the NZLSA Competitions Vice-President that:

4.11.3.1. he or she informed the Competition Convenor of his or her ineligibility as soon as practicable after becoming aware of it; and

4.11.3.2. he or she did not know that he or she was unable to comply with the requirements of rule 4.2 at the time of entering the competition; or

4.11.3.3. his or her circumstances changed after entering the competition.

4.12. Rule 4.11 does not apply to any competitor who has already been eliminated from the competition.

4.13. No Competition Convenor or President of a Council Member is eligible to compete in the competition.

## **5. STRUCTURE OF THE REGIONAL COMPETITIONS**

5.1. Subject to these Rules (in particular rule 3.5) and the rules prescribed by the sponsor, the Regional Competition at each University may be structured in a manner determined by the Competition Convenor in consultation with any relevant person or entity, including but not limited to the Law Students' Society at the Competition Convenor's University, the Competition Convenor's University Law School/Faculty, the sponsor and the NZLSA Competitions Vice-President.

5.2. Matters of structure of the Regional Competition that may be determined by the Competition Convenor in accordance with rule 5.1 include, but are not limited to,:

5.2.1. the maximum number of competitors able to enter;

5.2.2. the draw and break system;

5.2.3. the extent to which judges must determine rounds strictly on the basis of the assessment criteria set out in these Rules, or whether judges may decide rounds, for example, principally on a win/loss basis, except that in all cases the assessment criteria must be provided to the judges by the Competition Convenor and must be used to inform the judging process;

5.2.4. the timings for release of the problem or problems, subject to the requirement to give competitors a reasonable time to prepare for each round of the competition;

5.2.5. the structure of a complaints and appeals process.

5.3. There must be a complaints and appeals process. If the Competition Convenor does not specify any complaints and appeals process prior to the start of the competition, then the complaints and appeals process set out in these Rules in respect of the National Championship applies, except that the functions of the Appellate Body are to be carried out by the President of the Law Students' Society at the applicable University.

5.4. The structure of the Regional Competition should be made clear to competitors prior to entry.

- 5.5. Competitors should be sent a copy of these Rules and any other applicable rules as soon as is practicable after their entries are confirmed.
- 5.6. The structure of the Regional Competition at each University should be kept as consistent as possible from year to year.

## **6. STRUCTURE OF THE NATIONAL CHAMPIONSHIP**

- 6.1. The competition will consist of five preliminary rounds, followed by a final.
- 6.2. Over the course of the preliminary rounds, each team must meet every other team.
- 6.3. Teams must not meet each other more than once during the preliminary rounds.
- 6.4. The preliminary rounds of the National Championship must be conducted in accordance with the draw set out as an appendix to these Rules. The Competition Convenor must randomly allocate to each team a letter in the draw. At least 24 hours before the first preliminary round, the Competition Convenor must release to each team individually a copy of the draw and that team's allocated letter.
- 6.5. The problems for the preliminary rounds must be released at least two weeks before the first preliminary round.
- 6.6. The problem for the final must be released as soon as is practicable after the finalists are announced.
- 6.7. Competitors must be sent a copy of these Rules at the same time the problems are released, or sooner.

## **7. COMPETITION PROBLEMS AND REQUESTS FOR CLARIFICATION**

- 7.1. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every problem used in the competition.
- 7.2. As a general rule, problems should not be re-used, recycled or repeated from previous competitions.
- 7.3. In the National Championship:
  - 7.3.1. the problems must not be ones re-used, recycled or repeated from previous years;  
and
  - 7.3.2. the problems must not be ones that have been used in any Regional Competition in the same year.
- 7.4. Requests for clarification of a problem must be directed to the Competition Convenor.
- 7.5. The Competition Convenor will determine whether or not to issue a clarification, and what form the clarification will take.
- 7.6. 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.

7.6.1. 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.

## **8. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS**

8.1. 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.

8.2. Without limiting this general rule, the Competition Convenor must:

8.2.1. ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors; and

8.2.2. ensure to the greatest extent possible that all competitors receive communications at the same time.

## **9. DIRECTIONS, PENALTIES AND DISQUALIFICATION**

9.1. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, issue any directions or make any decision of any kind relating to the competition at any time. For example, the Competition Convenor may issue a direction that any competitor, team or person perform any action or refrain from performing any action. This rule is subject to anything specifically provided for in these Rules, the rules prescribed by the sponsor and to rule 3.5.

9.2. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties in accordance with rules 9.3 and 9.4 for any failure to comply.

9.3. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, impose any penalty on any team that:

9.3.1. is late in submitting written submissions or attending rounds; or

9.3.2. in any other way breaches the rules of the competition as set out in these Rules; or

9.3.3. acts in any other way that, in the opinion of the Competition Convenor, is contrary to the spirit of these Rules and the competition.

9.4. The penalties that may be imposed by the Competition Convenor under rule 9.3 include, but are not limited to:

9.4.1. disqualification; or

9.4.2. a reduction in score; or

9.4.3. any other penalty or combination of penalties the Competition Convenor sees fit.

9.5. Any decision or direction of the Competition Convenor made under this rule is subject to any applicable appeal rights under rules 5.3 or 21.

## **10. JUDGES**

- 10.1. The Competition Convenor must appoint Judges to adjudicate the competition.
- 10.2. Judges must be members of the judiciary, legal practitioners, legal academics or others with a demonstrated experience in judging the competition.
- 10.3. Judges must adjudicate the competition in accordance with these Rules and the rules prescribed by the sponsor.
- 10.4. The Competition Convenor must, before the Judges commence judging any rounds of the competition,:
  - 10.4.1. provide to the Judges any available comprehensive marking guide and/or guide about acceptable score ranges for different qualities of competitor or team (for example that an “excellent” performance will score over 85 in a competition marked out of 100, “very good” will score 75–84 and “good” will score 65–74), provided that:
    - (a) the guide or guides have also been provided to competitors at the time the problem was released;
    - (b) the competitors have been informed that the guide or guides would be provided to the Judges; and
    - (c) only one of each type of guide may be provided to the Judges;
  - 10.4.2. explain to the Judges the break system or selection criteria that will be utilised to determine advancement in the competition; and
  - 10.4.3. encourage Judges to confer to achieve consistent marking, except that Judges must be instructed to do this only in a general way and that they must form their own views about the merits of each competitor or team.
- 10.5. 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.
- 10.6. In the National Championship the following further provisions apply:
  - 10.6.1. There should usually be a panel of at least two judges for each preliminary round and the Competition Convenor must use his or her best endeavours to attempt to achieve this.
  - 10.6.2. Judges should not usually hear the same team more than once throughout the preliminary rounds and the Competition Convenor must use his or her best endeavours to attempt to achieve this.
  - 10.6.3. There must be a panel of at least three judges for the final.
  - 10.6.4. Legal academics must not judge a team from their own law school.
  - 10.6.5. Legal practitioners must not judge a team that includes a competitor(s) with whom they have worked, for example in the context of summer clerking.

## **11. SPECTATORS AND SCOUTING**

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



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

## **12. OUTSIDE ASSISTANCE**

- 12.1. Teams may not enlist the assistance of any other person in the research or preparation of arguments for the problem in any round of any competition, including the final.
- 12.2. For the avoidance of doubt, this rule does not prohibit teams from receiving assistance on matters of technique from any person.

## **Part 2 Rules particular to Negotiation**

## **13. CONDUCT OF THE NEGOTIATION COMPETITION**

- 13.1. Each round consists of a negotiation between two teams.
- 13.2. Prior to the competition, each team must receive a common set of facts and a confidential information sheet that is only for the team representing each particular side.
  - 13.2.1. The confidential information sheet must be kept confidential and must not be shown to anyone else until the competition has been completed. For the purposes of confidential information sheets obtained during Regional Competitions, this includes until such time as the Regional Competitions at all Universities have been completed.
- 13.3. Each round will consist of a 50 minute negotiation session during which each team may take one break of no more than 5 minutes. The 50 minute period will continue to run during any such break.
  - 13.3.1. If the team calling the break specifically so requests, both teams must leave the room during the break
- 13.4. At the end of the 50 minute period each team will have a 10 minute period to prepare for their self-analysis.
- 13.5. Each team will then analyse their performance for a maximum of 10 minutes in the presence of the Judges and any observers.
  - 13.5.1. The order of the teams' self-analyses must be chosen randomly.
  - 13.5.2. The self-analysis will consist of each team analysing their own performance in the negotiation for the Judges. Students must begin this 10-minute period by answering, in the presence of the Judges, the following questions:

- In reflecting on the entire negotiation, if you were to be faced with a similar situation tomorrow, what would you do the same and what would you do differently?
  - How well did your strategy work in relation to the outcome?
- 13.5.3. Each team's self-analysis must take place outside the presence of the opposing team.
- 13.5.4. Judges may ask questions concerning the team's performance.
- 13.5.5. Anything said during this session may be taken into consideration by the Judges for scoring purposes.
- 13.6. Responsibility for timing allotted periods and breaks rests with teams. Timekeepers and/or timekeeping devices may be provided by the Competition Convenor. No individual identified with a competitor may act as a timekeeper in a negotiation involving that competitor. Any failure to adhere to allotted periods may be factored into scoring by the Judges as they see fit.
- 13.7. The Judges keep time and must not grant any extensions of time. The decisions of the Judges as to time elapsed are final.
- 13.8. No new facts may be added to the scenario.
- 13.9. Any additional material (including, but not limited to, any literature, research, case law, etc) that relates to the existing facts of the simulation must be submitted to the Judges before the negotiation begins.
- 13.9.1. Additional material does not include a team's plans, notes, or similar made for their own use, or relating to negotiation tactics.
- 13.9.2. The Judges may exclude any material that they consider does not comply with these rules.
- 13.10. Scenarios for any semi-final round and the final round must be distributed after the advancing teams are announced, including, where relevant, confidential facts from the earlier round(s) if the scenarios develop one from the other, either involving the same parties and/or the same issues.
- 13.10.1. The Competition Convenor must release the scenarios in such a way that the teams have an equal amount of time to prepare for the applicable round.
- 13.10.2. Where the negotiation for the final round is a scenario involving the same parties as in a previous round and it becomes necessary for any team to switch sides upon entering the final round, the determination of the sides represented by all teams must be assigned randomly.

## **14. ASSESSMENT**

- 14.1. Judges must award each team a score out of 56 by:

- 14.1.1. awarding each team a mark out of 7 for each of the criteria listed in rule 14.2, where 7 is the best mark and 1 is the poorest mark for each criterion; and
- 14.1.2. summing the marks for each criterion to reach the total score.
- 14.2. The criteria upon which the Judges must assess each team are as follows:

Criteria	Scoring
<p><b>NEGOTIATION PLANNING</b></p> <p>Judging from its performance and its apparent strategy, how well prepared did this team appear to be?</p>	<ol style="list-style-type: none"> <li>1. Very Unprepared</li> <li>2. Unprepared</li> <li>3. Somewhat Unprepared</li> <li>4. Neutral</li> <li>5. Somewhat Prepared</li> <li>6. Prepared</li> <li>7. Highly Prepared</li> </ol>
<p><b>FLEXIBILITY IN DEVIATING FROM PLANS OR ADAPTING STRATEGY</b></p> <p>How flexible did this team appear to be in adapting its strategy to developing the negotiation, e.g. to new information or to unforeseen moves by the opposing team?</p>	<ol style="list-style-type: none"> <li>1. Very Inflexible</li> <li>2. Inflexible</li> <li>3. Somewhat Inflexible</li> <li>4. Neutral</li> <li>5. Somewhat Flexible</li> <li>6. Flexible</li> <li>7. Highly Flexible</li> </ol>
<p><b>TEAM WORK</b></p> <p>How effective were the negotiators in working together as a team, in sharing responsibility, and providing mutual backup?</p>	<ol style="list-style-type: none"> <li>1. Very Ineffective</li> <li>2. Ineffective</li> <li>3. Somewhat Ineffective</li> <li>4. Neutral</li> <li>5. Somewhat Effective</li> <li>6. Effective</li> <li>7. Highly Effective</li> </ol>
<p><b>RELATIONSHIP BETWEEN THE NEGOTIATING TEAMS</b></p> <p>Did the way this team managed its relationship with the other team contribute to or detract from achieving its client's best interests?</p>	<ol style="list-style-type: none"> <li>1. Strongly Detracted</li> <li>2. Detracted</li> <li>3. Detracted Somewhat</li> <li>4. Neutral</li> <li>5. Contributed Somewhat</li> <li>6. Contributed</li> <li>7. Strongly Contributed</li> </ol>

Criteria	Scoring
<p><b>NEGOTIATING ETHICS</b></p> <p>To what extent did the negotiating team observe or violate the ethical requirements of a professional relationship?</p>	<ol style="list-style-type: none"> <li>1. Strongly Violated</li> <li>2. Violated</li> <li>3. Violated Somewhat</li> <li>4. Neutral</li> <li>5. Observed Somewhat</li> <li>6. Observed</li> <li>7. Observed Strongly</li> </ol> <p>If a Judge(s) marks a team 1, he or she must indicate in writing to the Competition Convenor whether, in his or her opinion, the ethical violation was so severe that the team should be disqualified from the competition. If the Judge(s) indicate that the violation was so severe, he or she must also provide written reasons to the Competition Convenor and the Competition Convenor must act as if a complaint had been lodged under the applicable complaints and appeals process.</p>
<p><b>CREATIVITY IN CRAFTING OPTIONS FOR MUTUAL GAIN</b></p> <p>To what extent did this team think creatively and actively seek out win-win options of benefit to both parties in the negotiation?</p>	<ol style="list-style-type: none"> <li>1. Very Uncreative</li> <li>2. Uncreative</li> <li>3. Somewhat Lacking in Creativity</li> <li>4. Neutral</li> <li>5. Somewhat Creative</li> <li>6. Creative</li> <li>7. Highly Creative</li> </ol>
<p><b>OUTCOME OF SESSION</b></p> <p>Based on what you observed in the negotiation and the self-analysis, to what extent did the outcome of the session, regardless of whether agreement was reached, serve the client's goals?</p>	<ol style="list-style-type: none"> <li>1. Very Poorly Served</li> <li>2. Poorly Served</li> <li>3. Somewhat Poorly Served</li> <li>4. Neutral</li> <li>5. Somewhat Served</li> <li>6. Served</li> <li>7. Fully Served</li> </ol>
<p><b>SELF-ANALYSIS (MAXIMUM OF 10 MINUTES PER TEAM)</b></p> <p>Each team should begin by answering the following questions:</p> <ul style="list-style-type: none"> <li>• In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?</li> <li>• How well did your strategy work in relation to the outcome?</li> </ul> <p>Based on the team's self-analysis during the review session, how adequately has it learned from today's negotiation?</p>	<ol style="list-style-type: none"> <li>1. Very Inadequately</li> <li>2. Inadequately</li> <li>3. Somewhat Inadequately</li> <li>4. Neutral</li> <li>5. Somewhat Adequately</li> <li>6. Adequately</li> <li>7. Very Adequately</li> </ol>

- 14.3. Judges must not award a tie on score as between two teams in a round. In the event of a tie between both teams in one round on score, the Judges must decide on a winner and adjust the scores in accordance with their renewed views of the merits.
- 14.4. 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.
- 14.5. Judges must provide any further information requested by the Competition Convenor in order to permit the Competition Convenor to operate the applicable draw or break system.
- 14.6. Scores and any other information must be submitted by the Judges to the Competition Convenor at the conclusion of each round.
- 14.7. Scores must not be announced to competitors at the conclusion of a round.
- 14.8. Scores and score sheets should be made available to the teams but only after the participants in the next round have been announced or, in the case of the final, the winning team is announced.

### **Part 3**

#### **Rules particular to the National Championship**

##### **15. RULES ONLY APPLY TO THE NATIONAL CHAMPIONSHIP**

Unless stated otherwise in these Rules or expressly adopted for a Regional Competition by a Competition Convenor in accordance with rule 5 (which a Competition Convenor may do), the following rules (rules 16–21) apply only to the National Championship.

##### **16. ANONYMITY**

- 16.1. The Competition Convenor must take all practicable steps to ensure that Judges are unaware of which law school competitors are from until after the conclusion of each Judge's involvement with the competition.
- 16.2. In order to facilitate anonymity, on all documents made available to competitors or Judges, or otherwise made publicly available, teams must be identified by arbitrarily assigned numbers or letters.
- 16.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to a Judge which law school they are from.

##### **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:
  - 17.2.1. to have scored in that round a score equal to the average of its scores in all the preliminary rounds in which it faced an opponent, both prior and

subsequent; and

- 17.2.2. to have won in that round by a win margin equal to the average of its win margins in all the preliminary rounds in which it faced an opponent and won, both prior and subsequent. In this rule the term “win margin” has the same meaning as defined in rule 18.4.3.1(a). If a default win is a team’s only win in the preliminary rounds then its win margin is a score of 1.

## 18. BREAK SYSTEM

- 18.1. There will be two teams in the final.
- 18.2. The two teams with more wins from the preliminary rounds than the remaining teams will be the finalists.
- 18.3. If one or both of the finalists cannot be determined by the operation of rule 18.2, the break system rules set out in rule 18.4 must be applied by the Competition Convenor in accordance with the following:
- 18.3.1. The break system rules apply to the teams that are not already finalists under the operation of rule 18.2 and that are tied on the highest number of wins or, if one finalist has already been determined, the next highest number of wins after that finalist. All other teams are eliminated.
- 18.3.2. The remaining tied teams will be progressively eliminated through the sequential operation of the break system rules until two finalists remain. If, after the application of a given break system rule, more teams remain tied than the number of positions available in the final, the next break system rule applies.
- 18.3.3. The break system rules apply in the order listed in rule 18.4.
- 18.3.4. Each time more than two teams are tied and a given break system rule (**break system rule A**) eliminates one or more of the teams, but more teams remain tied than the number of positions available in the final, break system rule 18.4.1 must be reapplied among the remaining teams. If, after the reapplication of rule 18.4.1, more teams remain tied than the number of positions available in the final, the break system calculation carries on from the next break system rule in the sequence after break system rule A.
- 18.3.5. **Status of explanatory notes:** Some of the break system rules are accompanied by notes. A note is only explanatory of the break system rule to which it relates. It does not limit the rule. If a note and a rule to which it relates are inconsistent, the rule prevails.
- 18.4. The break system rules are, in this order,:
- 18.4.1. **Win-loss records among only the tied teams:** Recalculate the number of preliminary round wins of each tied team, counting only the matches against the other team(s) in the tie. The team(s) with fewer wins than the other team(s) is eliminated.

**NOTE:** This rule is essentially a reincarnation of the overarching principle that, in a round robin tournament, the teams that performed the strongest relative to everyone else deserve to be in the final.

If there are only two teams, the team that beat the other team will progress.

If there are more than two teams, the team(s) that performed the weakest amongst that group will be eliminated. This also incorporates draw strength. Among teams that have the same number of wins overall in the competition, any teams with more wins than the others within that group have done better.

The rationale for reapplying this rule in more complex ties each time a team(s) is eliminated further down the chain of rules is that a potential circular elimination earlier on may by then have been resolved. This rule is still the most in keeping with the overarching principle in a round robin tournament, and so it should apply to find the finalist(s) in preference to the other rules if it can.

18.4.2. **Win-loss record as against the first finalist (if there is one):** This break system rule only applies if there is already one finalist (“the first finalist”) and the break system is being used to determine the other. Determine whether any of the tied teams beat the first finalist. If any team(s) did beat the first finalist, any team(s) that did not beat the first finalist is eliminated.

**NOTE:** This rule recognises draw strength, which is the next available method most consistent with the overarching principle of a round robin tournament. This rule rewards any team(s) that beat the team that ultimately emerged as the strongest in the tournament.

18.4.3. **Ratio of win to loss margins:**

18.4.3.1. Separately for each remaining tied team, and by reference to the preliminary round scores,:

- (a) Calculate the difference between the remaining tied team’s score and the score of the team it faced for each round where the remaining tied team won. These are the win margins. Sum the win margins. This is the total win margin.
- (b) Calculate the difference between the remaining tied team’s score and the score of the team it faced for each round where the remaining tied team lost. These are the loss margins. Sum the loss margins. This is the total loss margin.
- (c) Divide the total win margin by the total loss margin. This is the win-to-loss margin ratio.

18.4.3.2. The team(s) with the lower win-to-loss margin ratio(s) than the other team(s) is eliminated.

**NOTE:** It is recognised that relying on scores is less reliable because they rest on the subjective decisions of judges in individual rounds about how many points each team or competitor has earned. The effect of subjectivity can be reduced by methods such as comprehensive marking guides and guides about acceptable score ranges for different qualities of competitor provided for in rule 10.4. However, the potential effect of

subjectivity remains.

That is why this rule, and the rule that follows it (score totals) are relegated to the bottom end of the break system.

This rule attempts to limit the influence of subjectivity as compared to raw score totals by focussing on the closeness of each team's rounds. Importantly this also remains linked to the principle of wins versus losses as being determinative. The rule attempts to expose the strength of teams' wins and the weakness of teams' losses.

The rule is designed to favour teams that consistently won convincingly and/or only lost by small margins across their rounds. By contrast, teams that consistently lost by a long way and/or only just won their rounds should more likely be eliminated. Teams in the first category have done better than teams in the second category in a way that sheer number of wins does not reveal.

Using scores from all preliminary rounds will ideally detect overall trends in performances. There is some risk that the effect of "blowouts" could be exaggerated but these are comparatively rare in law competitions.

This rule also has the benefit of making it mathematically unlikely teams will remain tied after it is applied.

- 18.4.4. **Score totals:** Separately sum the scores from the preliminary rounds of each remaining tied team. The team(s) with the lower score(s) than the other team(s) is eliminated.
- 18.4.5. **Coin toss:** If, after the operation of all of the other break system rules, there are still teams tied for one or both positions in the final, the tie must be decided by a coin toss conducted by the Competition Convenor.

## 19. SCRUTINY AND ANNOUNCEMENT OF BREAK

- 19.1. The NZLSA Competitions Vice-President must scrutinise the conduct of the break by the Competition Convenor to ensure that it is performed in accordance with these Rules.
- 19.2. No competitor, team, Law Student Society, Law School/Faculty, Judge or any other party with a potential interest in the outcome of the calculation of the break is permitted to scrutinise, or appoint any person to scrutinise, the calculation of the break.
- 19.3. The Competition Convenor must publicly announce the finalists at the conclusion of the preliminary rounds.
  - 19.3.1. In the course of announcing the finalists, the Competition Convenor must explain the process by which the finalists were determined.
  - 19.3.2. 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, which must be identified, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.
  - 19.3.3. When announcing the break, the Competition Convenor must 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 must 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.

## **20. COMPLAINTS**

- 20.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 20.2. Complaints must be lodged in writing by completing and handing or emailing to the Competition Convenor the prescribed **NZLSA Complaints Form**, which is an appendix to these Rules.
- 20.3. Complaints must be lodged by 5 pm on the day of the conduct giving rise to the complaint or, if the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Competition Convenor may, at his or her discretion, extend time to lodge a complaint if he or she considers it appropriate in the circumstances.
- 20.4. The Competition Convenor will hear the complainant and, if possible, the respondent and any other relevant person, and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsor.
- 20.5. The Competition Convenor may do any or all of the following:
  - 20.5.1. Issue any direction or make any decision in accordance with rule 9.1.
  - 20.5.2. Impose any penalty on any competitor or team in accordance with rules 9.3 and 9.4, including disqualification.
  - 20.5.3. Dismiss the complaint.
  - 20.5.4. Take no further action.
- 20.6. Instead of hearing the relevant parties under rule 20.4 and/or taking any action under rule 20.5, the Competition Convenor may refer the matter directly to the Appellate Body constituted under rule 21, but only where the Competition Convenor considers the matter is sufficiently serious to warrant such a course.
- 20.7. For the avoidance of doubt, a team may not complain about the decision of a Judge on the substantive merits of a round.

## **21. APPEALS**

- 21.1. There will be an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Competitions Vice-President and President.
- 21.2. Any team may appeal any decision or direction of the Competition Convenor made either in the context of a complaint or under rules 3.5 and/or 9.

- 21.3. Any team may make any other complaint about the conduct of the Competition Convenor directly to the Appellate Body. Further references to “appeals” in this rule include such complaints.
- 21.4. Appeals must be lodged in writing by completing and handing or emailing to the Competitions Vice-President the prescribed **NZLSA Appeals Form**, which is an appendix to these Rules.
- 21.5. Appeals must be lodged at the earliest possible opportunity. Appeals must be lodged by 5 pm on the day of the decision or conduct giving rise to the appeal or, if the decision was made or the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Appellate Body may, at its discretion, extend time to lodge an appeal if it considers it appropriate in the circumstances.
- 21.6. Appeals lodged or referred to it will be heard by the Appellate Body. The Appellate Body may hear from the same people as the Competition Convenor did or could have under rule 20.4 and/or the Competition Convenor him or herself.
- 21.7. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and/or may substitute its own decision.
- 21.8. In substituting its decision for that of the Competition Convenor or rendering any decision on an appeal, the Appellate Body possesses the same powers as the Competition Convenor under rule 20.5.
- 21.9. For the avoidance of doubt, a team may not appeal against the decision of a Judge on the substantive merits of a round.
- 21.10. Any decision of the Appellate Body is final.

# **NZLSA National Client Interviewing Championship Rules**

## **Part 1 General**

### **1. THE COMPETITION**

- 1.1. The competition will be known as the “New Zealand Law Students' Association National Client Interviewing Championship”.
- 1.2. The name of the competition may be amended or added to by the New Zealand Law Students' Association (NZLSA) Competitions Vice President to reflect sponsorship, funding and support arrangements from year to year.
- 1.3. The competition will be held once in every calendar year.
- 1.4. The competition comprises:
  - 1.4.1. the Regional Competitions held at each University at which the Law Students' Society is a Council Member of NZLSA as defined in clause 6.1 of the NZLSA Constitution; and
  - 1.4.2. the National Championship held during the course of the NZLSA Annual Conference, conducted between the winners of, or teams otherwise eligible from, the Regional Competitions.

### **2. INTERPRETATION AND APPLICATION**

- 2.1. Except as stated otherwise or the context requires, these Rules apply to all aspects of the competition as specified in rule 1.4, namely:
  - 2.1.1. the Regional Competitions held at each University; and
  - 2.1.2. the National Championship.
- 2.2. For the avoidance of doubt, rule 2.1 is not limited by the organisation of these Rules into Parts. Except as otherwise stated, the Parts of these Rules are for organisational purposes only and have no interpretive value.
- 2.3. References in these Rules to “the competition” means either the Regional Competition or the National Championship or both as the context requires.
- 2.4. These Rules apply in preference to any rules prescribed by the sponsor. Any inconsistency between these Rules and the rules prescribed by the sponsor will be resolved in favour of these Rules.
- 2.5. Any question of interpretation of these Rules is to be determined in the first instance by the Competition Convenor. The decision of the Competition Convenor on a question of interpretation is subject to any decision or direction made as a result of the exercise of any applicable appeal rights.

### **3. GOVERNANCE AND RESPONSIBILITIES**

3.1. The governing body for the competition is the NZLSA Council.

3.2. There will be 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 any rules prescribed by the sponsor.

3.2.2. There may be one or two Competition Convenors. If there are two Competition Convenors, they must act by consensus between themselves. Singular references in these Rules to the Competition Convenor include the plural.

3.2.3. References in these Rules to “the Competition Convenor” means either the Competition Convenor of the Regional Competition or the Competition Convenor of the National Championship as the context requires.

3.3. The officer of each Law Students’ Society responsible for competitions will be the Competition Convenor of the Regional Competition at their University.

3.3.1. The relevant Law Students’ Society and the NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.4. The regional Law Students’ Society that is hosting the NZLSA Annual Conference will, in consultation with the NZLSA Conference Convenor, appoint a Competition Convenor for the National Championship that year.

3.4.1. The NZLSA Competitions Vice-President will oversee the activities of the Competition Convenor on behalf of the NZLSA Council.

3.5. The Competition Convenor may act as he or she sees fit in matters not provided for in these Rules or the rules prescribed by the sponsor, with the following exceptions:

3.5.1. The Competition Convenor must act in accordance with the letter and spirit of these Rules and the rules prescribed by the sponsor.

3.5.2. The Competition Convenor must act in accordance with any decision he or she has made about a question of interpretation of these Rules or the rules prescribed by the sponsor during the course of one competition, subject to any decision or direction made under rules 3.5.3 and/or 3.5.4 and/or as a result of the exercise of any applicable appeal rights.

3.5.3. Each Regional Competition Convenor must act in accordance with any directions received from his or her Law Students’ Society President or Executive, subject to any decision or directions made under rule 3.5.4 and/or any decision or directions made as a result of the exercise of any applicable appeal rights.

3.5.4. The Competition Convenor must act in accordance with any 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 sponsor,

subject to any decision or direction made as a result of the exercise of any applicable appeal rights.

3.5.4.1. Notwithstanding this sub-rule, the Competition Convenor does not have to comply with a decision or direction of the NZLSA Competitions Vice-President if the Competition Convenor asserts that the matter is one properly within his or her discretion pursuant to rule 5 and the NZLSA Competitions Vice-President agrees.

3.5.4.2. If the NZLSA Competitions Vice-President does not agree about a particular direction in terms of rule 3.5.4.1, the relevant Law Students' Society President may raise the matter with the NZLSA President, who must finally determine the matter.

3.5.5. The Competition Convenor must act in accordance with any decision or direction made as a result of the exercise of any applicable appeal rights.

3.5.6. For the avoidance of doubt, and notwithstanding anything contained in this rule, competitors may only challenge a decision or direction of the Competition Convenor by exercising any applicable appeal rights. Competitors may not initiate any other process for this purpose.

#### **4. TEAMS AND ELIGIBILITY**

4.1. Each team will consist of two competitors.

4.2. A competitor will not be eligible to enter the competition in the following circumstances:

4.2.1. If he or she has completed the requirements for an undergraduate law degree in any jurisdiction as at the start date of the Regional Competition.

4.2.2. If he or she is ineligible, unable or unwilling to represent his or her University at the National Championship and/or the Australian Law Students' Association (ALSA) Conference. This criterion does not operate to exclude a person if the only reason he or she not able to comply with it is because he or she is already required to compete in the National Championship and at the ALSA Conference of another competition by the operation of these Rules.

4.2.3. If he or she is ineligible, unable or unwilling to represent New Zealand at the international competition, in respect of which this competition is used to select a team to compete.

4.2.4. If he or she is unable or unwilling to certify that he or she is able to comply with the other eligibility requirements.

4.3. For the avoidance of doubt, the eligibility requirements in rule 4.2 apply to all aspects of the competition as specified in rule 1.4, and in particular apply to all entries in each Regional Competition.

4.4. Intending competitors in each Regional Competition must enter the competition by completing the prescribed **NZLSA Competition Entry Form**, which is an appendix to these Rules.

- 4.4.1. The Competition Convenor must bring the relevant dates of the commitments listed in rule 4.2 to the attention of intending competitors at the time entries open. This must include specifying the dates on and/or attaching the dates to the NZLSA Competition Entry Form.
  - 4.4.2. As part of the entry process, each entrant must certify that he or she is able to comply with the eligibility requirements in rule 4.2.
- 4.5. Each University from which the Law Students' Society is a Council Member of NZLSA may be represented by one team to compete in the National Championship.
- 4.6. Subject to rule 4.7, the winning team from each Regional Competition must represent their University at the National Championship and at the ALSA Conference.
  - 4.6.1. In a Regional Competition where competitors competed in teams, "winning team" means the team that won the Regional Competition.
  - 4.6.2. In a Regional Competition where competitors competed individually, "winning team" means the competitors who placed first and second in the Regional Competition.
- 4.7. If any person (**Person A**) wins more than one Regional Competition at their University in one particular year (that is out of Mooting, Witness Examination, Negotiation and Client Interviewing) the following applies:
  - 4.7.1. Person A may only represent their University at the ALSA Conference and at the National Championship of one competition.
  - 4.7.2. Person A must represent their University in the competition for which they won the Regional Competition first in time.
  - 4.7.3. In the competition(s) Person A won second or subsequent in time, Person A's place must be taken in the team representing the University at the National Championship and at the ALSA Conference by the next highest ranked competitor from the Regional Competition.
    - 4.7.3.1. In accordance with this rule, the University must be represented at the National Championship by a team comprised of either:
      - (a) Person A's remaining team member and a member of the next highest ranked team as decided between the affected competitors or, if they are not willing or able to decide, the Competition Convenor; or
      - (b) the next highest ranked team from the Regional Competition if Person A's remaining team member decides he or she does not wish to compete in the National Championship and/or at the ALSA Conference.
- 4.8. Rule 4.7 applies in like fashion to any other competitor(s) who would otherwise be required to compete in the National Championship of the competition and at the ALSA Conference by the operation of rule 4.7, but who is also already required to compete at the ALSA

Conference and in the National Championship of another competition, until the eligible competitor(s) is determined. For these purposes, a competitor must represent their University in the competition in which they attained the place in the Regional Competition by virtue of which they are required to compete by the operation of rule 4.7 first in time.

4.9. The method set out in rule 4.7.3 applies in like fashion where a person who would otherwise be required to compete in the National Championship of the competition and at the ALSA Conference by the operation of these Rules is, for unforeseen reasons such as illness, unable to attend the National Championship and/or the ALSA Conference. However, this rule does not apply to a competitor who is otherwise already required by these Rules to compete in another competition, and instead the next compellable competitor must be determined using the same method in like fashion, if any of the following circumstances apply:

- (a) In respect of either the ALSA Conference or the National Championship, if the unforeseen circumstance which means a replacement is required arises within two weeks of the first preliminary round.
- (b) In respect of the National Championship, if the operation of this rule would result in altering in any way a team that had already competed in another competition at the ALSA Conference that year.
- (c) If the affected competitor applies in writing to the NZLSA Competitions Vice-President to agree that for any reason it would be unfair or inappropriate for this rule to operate in respect of him or her and the NZLSA Competitions Vice-President agrees in writing. The decision of the NZLSA Competitions Vice-President under this rule is final, although in the course of making it, the NZLSA Competitions Vice-President may consult with any person(s) he or she sees fit.

4.10. The top ranking team in the competition must represent New Zealand at any international competition, for which this competition is a qualifier. In the event the winning team cannot attend the international competition for unforeseen reasons such as illness, the next highest ranked team from the National Championship that is able to attend must represent New Zealand at the international competition. For the purposes of this rule, a winning team “cannot attend the international competition” if only one of the team’s members is able to attend but the other is not.

4.11. If at the time of entering the Regional Competition a competitor was not in fact eligible in accordance with rule 4.2, or if at any time between entering a Regional Competition and the conclusion of the National Championship a competitor becomes unable to comply with the requirements of rule 4.2, then the following provisions apply:

- 4.11.1. The competitor must immediately inform the Competition Convenor of the Regional Competition at his or her University, who must immediately inform the NZLSA Competitions Vice-President if at that time the Regional Competition has concluded.
- 4.11.2. The competitor is prohibited from advancing any further in the competition. This includes, but is not limited to, advancing between rounds (for example between a preliminary round and a semi-final round), attending the ALSA Conference and attending the National Championship. This rule applies

regardless of whether the competitor has already been notified that he or she is advancing in the competition.

- 4.11.3. The competitor is banned from entering any Regional Competition at his or her University (that is out of Mooting, Witness Examination, Negotiation and Client Interviewing) for the remainder of the year and in the following year unless the competitor can satisfy the Competition Convenor of the Regional Competition at his or her University or, if the Regional Competition had concluded by the time notice was given under rule 4.11.1, the NZLSA Competitions Vice-President that:
  - 4.11.3.1. he or she informed the Competition Convenor of his or her ineligibility as soon as practicable after becoming aware of it; and
  - 4.11.3.2. he or she did not know that he or she was unable to comply with the requirements of rule 4.2 at the time of entering the competition; or
  - 4.11.3.3. his or her circumstances changed after entering the competition.
- 4.12. Rule 4.11 does not apply to any competitor who has already been eliminated from the competition.
- 4.13. No Competition Convenor or President of a Council Member is eligible to compete in the competition.

## **5. STRUCTURE OF THE REGIONAL COMPETITIONS**

- 5.1. Subject to these Rules (in particular rule 3.5) and the rules prescribed by the sponsor, the Regional Competition at each University may be structured in a manner determined by the Competition Convenor in consultation with any relevant person or entity, including but not limited to the Law Students' Society at the Competition Convenor's University, the Competition Convenor's University Law School/Faculty, the sponsor and the NZLSA Competitions Vice-President.
- 5.2. Matters of structure of the Regional Competition that may be determined by the Competition Convenor in accordance with rule 5.1 include, but are not limited to,:
  - 5.2.1. the maximum number of competitors able to enter;
  - 5.2.2. the draw and break system;
  - 5.2.3. the extent to which judges must determine rounds strictly on the basis of the assessment criteria set out in these Rules, or whether judges may decide rounds, for example, principally on a win/loss basis, except that in all cases the assessment criteria must be provided to the judges by the Competition Convenor and must be used to inform the judging process;
  - 5.2.4. the timings for release of the problem or problems, subject to the requirement to give competitors a reasonable time to prepare for each round of the competition;
  - 5.2.5. the structure of a complaints and appeals process.



- 5.3. There must be a complaints and appeals process. If the Competition Convenor does not specify any complaints and appeals process prior to the start of the competition, then the complaints and appeals process set out in these Rules in respect of the National Championship applies, except that the functions of the Appellate Body are to be carried out by the President of the Law Students' Society at the applicable University.
- 5.4. The structure of the Regional Competition should be made clear to competitors prior to entry.
- 5.5. Competitors should be sent a copy of these Rules and any other applicable rules as soon as is practicable after their entries are confirmed.
- 5.6. The structure of the Regional Competition at each University should be kept as consistent as possible from year to year.

## **6. STRUCTURE OF THE NATIONAL CHAMPIONSHIP**

- 6.1. The competition will consist of five preliminary rounds, followed by a final.
- 6.2. Over the course of the preliminary rounds, each team must meet every other team.
- 6.3. Teams must not meet each other more than once during the preliminary rounds.
- 6.4. The preliminary rounds of the National Championship must be conducted in accordance with the draw set out as an appendix to these Rules. The Competition Convenor must randomly allocate to each team a letter in the draw. At least 24 hours before the first preliminary round, the Competition Convenor must release to each team individually a copy of the draw and that team's allocated letter. In each round, the team listed first in the draw competes first and the team listed second in the draw competes second.
- 6.5. The problems for the preliminary rounds must be released at least two weeks before the first preliminary round.
- 6.6. The problem for the final must be released as soon as is practicable after the finalists are announced.
- 6.7. Competitors must be sent a copy of these Rules at the same time the problems are released, or sooner.

## **7. COMPETITION PROBLEMS AND REQUESTS FOR CLARIFICATION**

- 7.1. The NZLSA Competitions Vice-President is responsible for ensuring the quality of every problem used in the competition.
- 7.2. As a general rule, problems should not be re-used, recycled or repeated from previous competitions.
- 7.3. In the National Championship:
  - 7.3.1. the problems must not be ones re-used, recycled or repeated from previous years;  
and
  - 7.3.2. the problems must not be ones that have been used in any Regional Competition

in the same year.

7.4. Requests for clarification of a problem must be directed to the Competition Convenor.

7.5. The Competition Convenor will determine whether or not to issue a clarification, and what form the clarification will take.

7.6. 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.

7.6.1. 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.

## **8. COMMUNICATIONS BETWEEN COMPETITION CONVENOR AND COMPETITORS**

8.1. 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.

8.2. Without limiting this general rule, the Competition Convenor must:

8.2.1. ensure that any communication to a competitor that is relevant to other competitors is communicated to all competitors; and

8.2.2. ensure to the greatest extent possible that all competitors receive communications at the same time.

## **9. DIRECTIONS, PENALTIES AND DISQUALIFICATION**

9.1. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, issue any directions or make any decision of any kind relating to the competition at any time. For example, the Competition Convenor may issue a direction that any competitor, team or person perform any action or refrain from performing any action. This rule is subject to anything specifically provided for in these Rules, the rules prescribed by the sponsor and to rule 3.5.

9.2. Teams must act at all times in accordance with the directions of the Competition Convenor, who may impose penalties in accordance with rules 9.3 and 9.4 for any failure to comply.

9.3. The Competition Convenor may, at his or her discretion, and either on his or her own motion or otherwise, impose any penalty on any team that:

9.3.1. is late in submitting written submissions or attending rounds; or

9.3.2. in any other way breaches the rules of the competition as set out in these Rules; or

9.3.3. acts in any other way that, in the opinion of the Competition Convenor, is contrary to the spirit of these Rules and the competition.

9.4. The penalties that may be imposed by the Competition Convenor under rule 9.3

include, but are not limited to:

- 9.4.1. disqualification; or
- 9.4.2. a reduction in score; or
- 9.4.3. any other penalty or combination of penalties the Competition Convenor sees fit.

9.5. Any decision or direction of the Competition Convenor made under this rule is subject to any applicable appeal rights under rules 5.3 or 22.

## **10. JUDGES**

- 10.1. The Competition Convenor must appoint Judges to adjudicate the competition.
- 10.2. Judges must be members of the judiciary, legal practitioners, legal academics, persons with a strong background in the counselling professions (e.g. a psychologist, a minister, an HR practitioner) or others with a demonstrated experience in judging the competition.
- 10.3. Judges must adjudicate the competition in accordance with these Rules and the rules prescribed by the sponsor.
- 10.4. The Competition Convenor must, before the Judges commence judging any rounds of the competition,:
  - 10.4.1. provide to the Judges any available comprehensive marking guide and/or guide about acceptable score ranges for different qualities of competitor or team (for example that an “excellent” performance will score over 85 in a competition marked out of 100, “very good” will score 75–84 and “good” will score 65–74), provided that:
    - (a) the guide or guides have also been provided to competitors at the time the problem was released;
    - (b) the competitors have been informed that the guide or guides would be provided to the Judges; and
    - (c) only one of each type of guide may be provided to the Judges;
  - 10.4.2. explain to the Judges the break system or selection criteria that will be utilised to determine advancement in the competition; and
  - 10.4.3. encourage Judges to confer to achieve consistent marking, except that Judges must be instructed to do this only in a general way and that they must form their own views about the merits of each competitor or team.
- 10.5. 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.
- 10.6. In the National Championship the following further provisions apply:
  - 10.6.1. There should usually be a panel of at least two judges for each preliminary round and the Competition Convenor must use his or her best endeavours to attempt to achieve this.

10.6.2. Judges should not usually hear the same team more than once throughout the preliminary rounds and the Competition Convenor must use his or her best endeavours to attempt to achieve this.

10.6.3. There must be a panel of at least three judges for the final.

10.6.4. Legal academics must not judge a team from their own law school.

10.6.5. Legal practitioners must not judge a team that includes a competitor(s) with whom they have worked, for example in the context of summer clerking.

## **11. SPECTATORS AND SCOUTING**

11.1. All rounds should be open to the public.

11.2. Team members or persons affiliated with any team may only attend preliminary rounds in which their team is competing.

11.3. Spectators may not communicate with team members during the progress of each round, nor may they disclose confidential information (for example, details of a scenario) to that team, or any other team, for the duration of the competition.

## **12. OUTSIDE ASSISTANCE**

12.1. Teams may not enlist the assistance of any other person in the research or preparation of arguments for the problem in any round of any competition, including the final.

12.2. For the avoidance of doubt, this rule does not prohibit teams from receiving assistance on matters of technique from any person.

## **Part 2**

### **Rules particular to Client Interviewing**

## **13. CONDUCT OF THE CLIENT INTERVIEWING COMPETITION**

13.1. Each round consists of two (or, if required) three teams in turn interviewing a client, played by an actor appointed in accordance with rule 14.

13.2. Prior to each round, each team will receive a problem in the form of an office memo containing information similar to that which a law office secretary might give to interviewing lawyers when a client has called to make an appointment.

13.3. The order of the teams in the each round will be determined by a coin toss.

13.4. The interview consists of the following elements:

13.4.1. **Consultation with client:** a 25 minute consultation with the client during which teams are expected to elicit the relevant information, outline the problem, and propose a solution or other means of resolving the problem.

13.4.2. **Post-consultation period:** a 10 minute period where the client is not present. During this time competitors review together the interview and discuss any follow up procedures. The competitors should talk to each

other loud enough to be overheard by the judges. The post-consultation period should replicate the type of post-interview discussion that real lawyers would have. This may include consideration of the client's legal and other issues, planning for the future including stating issues to be researched or actions to be taken on the client's behalf, and discussing any sensitive or ethical issues arising from the representation. Explanation of the position or attitude taken by the students may be useful.

- 13.5. An opposing team(s) must not be present during any stage of the interview.
- 13.6. From the start of the consultation with the client to the conclusion of the post-consultation period, competitors will have 35 minutes, at which point the Judges must ask them to stop regardless of where competitors are in the interview or post-consultation process.
  - 13.6.1. Teams are responsible for keeping time and moving between elements of the interview.
  - 13.6.2. Under no circumstances will the 35 minutes be extended for competitors to complete both tasks.
  - 13.6.3. Judges must keep the time and the Judges' decisions about elapsed time are final.
- 13.7. Team members are free to decide how they will divide their work, but both competitors must interview the client as a team and should be aware that their plan is subject to judging. The competitors may explain to the Judges why they worked together in the way that they did during their post-consultation discussion.
- 13.8. During the interview and post-consultation discussion, teams may use books, notes and other materials. Teams may also use office props if they wish.
- 13.9. Competitors may refer to the office memo during the consultation phase of the interview.
- 13.10. Competitors and observers must not to discuss the details of the consultation situation with other competitors who have not yet completed their interviews.
- 13.11. In the Regional Competition, there should be two teams competing in the final round. This number may be extended to three where the format of the competition means there has been three semi-finals.

## **14. ACTORS**

- 14.1. Actors must not be law students.
- 14.2. The Competition Convenor must use reasonable endeavours to ensure that actors have acting experience appropriate to the needs of the competition.
- 14.3. All 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 any team from obtaining an unfair advantage.

## 15. ASSESSMENT

- 15.1. Judges must award each team a score out of 50 by:
  - 15.1.1. awarding each team a mark out of 5 for each of the criteria listed in rule 15.2, where for each criterion 1 mark = ineffective, 2 marks = somewhat ineffective, 3 marks = somewhat effective, 4 marks = effective, and 5 marks = highly effective; and
  - 15.1.2. summing the marks for each criterion to reach the total score.
- 15.2. The criteria upon which the Judges must assess each team are as follows:
  1. WORKING ATMOSPHERE: Established effective relationship with the client
  2. DESCRIPTION OF THE PROBLEM: Learned how the client views his or her problem
  3. CLIENT'S GOALS AND EXPECTATIONS: Learned the client's initial goals and expectations
  4. PROBLEM ANALYSIS: Analysed the client's problem
  5. MORAL AND ETHICAL ISSUES Recognised and dealt with moral and ethical issues
  6. ALTERNATIVE COURSES OF ACTION: Developed alternative solutions
  7. CLIENT'S INFORMED CHOICE: Assisted client in understanding and making informed choices among possible courses of action
  8. EFFECTIVE CONCLUSION: Effectively concluded the interview
  9. TEAMWORK: Worked together as a team, balance of participation
  10. POST-INTERVIEW REFLECTION: Learned from their experience
- 15.3. Judges may, and are encouraged to, consult with the client during their deliberations.
- 15.4. Judges must not award a tie on score as between two teams in a round. In the event of a tie between both teams in one round on score, the Judges must decide on a winner and adjust the scores in accordance with their renewed views of the merits.
- 15.5. 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.
- 15.6. Judges must provide any further information requested by the Competition Convenor in order to permit the Competition Convenor to operate the applicable draw or break system.
- 15.7. Scores and any other information must be submitted by the Judges to the Competition Convenor at the conclusion of each round.

- 15.8. Scores must not be announced to competitors at the conclusion of a round.
- 15.9. Scores and score sheets should be made available to the teams but only after the participants in the next round have been announced or, in the case of the final, the winning team is announced.

### **Part 3**

#### **Rules particular to the National Championship**

#### **16. RULES ONLY APPLY TO THE NATIONAL CHAMPIONSHIP**

Unless stated otherwise in these Rules or expressly adopted for a Regional Competition by a Competition Convenor in accordance with rule 5 (which a Competition Convenor may do), the following rules (rules 17–22) apply only to the National Championship.

#### **17. ANONYMITY**

- 17.1. The Competition Convenor must take all practicable steps to ensure that Judges are unaware of which law school competitors are from until after the conclusion of each Judge's involvement with the competition.
- 17.2. In order to facilitate anonymity, on all documents made available to competitors or Judges, or otherwise made publicly available, teams must be identified by arbitrarily assigned numbers or letters.
- 17.3. Competitors are forbidden from doing or saying anything that has the effect of indicating to a Judge which law school they are from.

#### **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:
  - 18.2.1. to have scored in that round a score equal to the average of its scores in all the preliminary rounds in which it faced an opponent, both prior and subsequent; and
  - 18.2.2. to have won in that round by a win margin equal to the average of its win margins in all the preliminary rounds in which it faced an opponent and won, both prior and subsequent. In this rule the term "win margin" has the same meaning as defined in rule 19.4.3.1(a). If a default win is a team's only win in the preliminary rounds then its win margin is a score of 1.

#### **19. BREAK SYSTEM**

- 19.1. There will be two teams in the final.
- 19.2. The two teams with more wins from the preliminary rounds than the remaining teams will be the finalists.

19.3. If one or both of the finalists cannot be determined by the operation of rule 19.2, the break system rules set out in rule 19.4 must be applied by the Competition Convenor in accordance with the following:

19.3.1. The break system rules apply to the teams that are not already finalists under the operation of rule 19.2 and that are tied on the highest number of wins or, if one finalist has already been determined, the next highest number of wins after that finalist. All other teams are eliminated.

19.3.2. The remaining tied teams will be progressively eliminated through the sequential operation of the break system rules until two finalists remain. If, after the application of a given break system rule, more teams remain tied than the number of positions available in the final, the next break system rule applies.

19.3.3. The break system rules apply in the order listed in rule 19.4.

19.3.4. Each time more than two teams are tied and a given break system rule (**break system rule A**) eliminates one or more of the teams, but more teams remain tied than the number of positions available in the final, break system rule 19.4.1 must be reapplied among the remaining teams. If, after the reapplication of rule 19.4.1, more teams remain tied than the number of positions available in the final, the break system calculation carries on from the next break system rule in the sequence after break system rule A.

19.3.5. **Status of explanatory notes:** Some of the break system rules are accompanied by notes. A note is only explanatory of the break system rule to which it relates. It does not limit the rule. If a note and a rule to which it relates are inconsistent, the rule prevails.

19.4. The break system rules are, in this order,:

19.4.1. **Win-loss records among only the tied teams:** Recalculate the number of preliminary round wins of each tied team, counting only the matches against the other team(s) in the tie. The team(s) with fewer wins than the other team(s) is eliminated.

**NOTE:** This rule is essentially a reincarnation of the overarching principle that, in a round robin tournament, the teams that performed the strongest relative to everyone else deserve to be in the final.

If there are only two teams, the team that beat the other team will progress.

If there are more than two teams, the team(s) that performed the weakest amongst that group will be eliminated. This also incorporates draw strength. Among teams that have the same number of wins overall in the competition, any teams with more wins than the others within that group have done better.

The rationale for reapplying this rule in more complex ties each time a team(s) is eliminated further down the chain of rules is that a potential circular elimination earlier on may by then have been resolved. This rule is still the most in keeping with the overarching principle in a round robin tournament, and so it should apply to find the finalist(s) in preference to the other rules if it can.



19.4.2. **Win-loss record as against the first finalist (if there is one):** This break system rule only applies if there is already one finalist (“the first finalist”) and the break system is being used to determine the other. Determine whether any of the tied teams beat the first finalist. If any team(s) did beat the first finalist, any team(s) that did not beat the first finalist is eliminated.

**NOTE:** This rule recognises draw strength, which is the next available method most consistent with the overarching principle of a round robin tournament. This rule rewards any team(s) that beat the team that ultimately emerged as the strongest in the tournament.

19.4.3. **Ratio of win to loss margins:**

19.4.3.1. Separately for each remaining tied team, and by reference to the preliminary round scores,:

(a) Calculate the difference between the remaining tied team’s score and the score of the team it faced for each round where the remaining tied team won. These are the win margins. Sum the win margins. This is the total win margin.

(b) Calculate the difference between the remaining tied team’s score and the score of the team it faced for each round where the remaining tied team lost. These are the loss margins. Sum the loss margins. This is the total loss margin.

(c) Divide the total win margin by the total loss margin. This is the win-to-loss margin ratio.

19.4.3.2. The team(s) with the lower win-to-loss margin ratio(s) than the other team(s) is eliminated.

**NOTE:** It is recognised that relying on scores is less reliable because they rest on the subjective decisions of judges in individual rounds about how many points each team or competitor has earned. The effect of subjectivity can be reduced by methods such as comprehensive marking guides and guides about acceptable score ranges for different qualities of competitor provided for in rule 10.4. However, the potential effect of subjectivity remains.

That is why this rule, and the rule that follows it (score totals) are relegated to the bottom end of the break system.

This rule attempts to limit the influence of subjectivity as compared to raw score totals by focussing on the closeness of each team’s rounds. Importantly this also remains linked to the principle of wins versus losses as being determinative. The rule attempts to expose the strength of teams’ wins and the weakness of teams’ losses.

The rule is designed to favour teams that consistently won convincingly and/or only lost by small margins across their rounds. By contrast, teams that consistently lost by a long way and/or only just won their rounds should more likely be eliminated. Teams in the first category have done better than teams in the second category in a way that sheer number of wins does not reveal.

Using scores from all preliminary rounds will ideally detect overall trends in

performances. There is some risk that the effect of “blowouts” could be exaggerated but these are comparatively rare in law competitions.

This rule also has the benefit of making it mathematically unlikely teams will remain tied after it is applied.

- 19.4.4. **Score totals:** Separately sum the scores from the preliminary rounds of each remaining tied team. The team(s) with the lower score(s) than the other team(s) is eliminated.
- 19.4.5. **Coin toss:** If, after the operation of all of the other break system rules, there are still teams tied for one or both positions in the final, the tie must be decided by a coin toss conducted by the Competition Convenor.

## 20. SCRUTINY AND ANNOUNCEMENT OF BREAK

- 20.1. The NZLSA Competitions Vice-President must scrutinise the conduct of the break by the Competition Convenor to ensure that it is performed in accordance with these Rules.
- 20.2. No competitor, team, Law Student Society, Law School/Faculty, Judge or any other party with a potential interest in the outcome of the calculation of the break is permitted to scrutinise, or appoint any person to scrutinise, the calculation of the break.
- 20.3. The Competition Convenor must publicly announce the finalists at the conclusion of the preliminary rounds.
  - 20.3.1. In the course of announcing the finalists, the Competition Convenor must explain the process by which the finalists were determined.
  - 20.3.2. 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, which must be identified, and a statement indicating how teams that were tied for a position in the final were eliminated through the operation of the break system.
  - 20.3.3. When announcing the break, the Competition Convenor must 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 must 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.

## 21. COMPLAINTS

- 21.1. Complaints about the conduct of any competitor, team or person, other than the Competition Convenor, must be lodged with the Competition Convenor.
- 21.2. Complaints must be lodged in writing by completing and handing or emailing to the Competition Convenor the prescribed **NZLSA Complaints Form**, which is an appendix to these Rules.
- 21.3. Complaints must be lodged by 5 pm on the day of the conduct giving rise to the

complaint or, if the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Competition Convenor may, at his or her discretion, extend time to lodge a complaint if he or she considers it appropriate in the circumstances.

- 21.4. The Competition Convenor will hear the complainant and, if possible, the respondent and any other relevant person, and determine the appropriate course of action in his or her discretion and in accordance with these Rules and the rules established by the sponsor.
- 21.5. The Competition Convenor may do any or all of the following:
  - 21.5.1. Issue any direction or make any decision in accordance with rule 9.1.
  - 21.5.2. Impose any penalty on any competitor or team in accordance with rules 9.3 and 9.4, including disqualification.
  - 21.5.3. Dismiss the complaint.
  - 21.5.4. Take no further action.
- 21.6. Instead of hearing the relevant parties under rule 21.4 and/or taking any action under rule 21.5, the Competition Convenor may refer the matter directly to the Appellate Body constituted under rule 22, but only where the Competition Convenor considers the matter is sufficiently serious to warrant such a course.
- 21.7. For the avoidance of doubt, a team may not complain about the decision of a Judge on the substantive merits of a round.

## **22. APPEALS**

- 22.1. There will be an Appellate Body composed of the NZLSA Competitions Vice-President, the NZLSA President, and one other person appointed by agreement of the Competitions Vice-President and President.
- 22.2. Any team may appeal any decision or direction of the Competition Convenor made either in the context of a complaint or under rules 3.5 and/or 9.
- 22.3. Any team may make any other complaint about the conduct of the Competition Convenor directly to the Appellate Body. Further references to “appeals” in this rule include such complaints.
- 22.4. Appeals must be lodged in writing by completing and handing or emailing to the Competitions Vice-President the prescribed **NZLSA Appeals Form**, which is an appendix to these Rules.
- 22.5. Appeals must be lodged at the earliest possible opportunity. Appeals must be lodged by 5 pm on the day of the decision or conduct giving rise to the appeal or, if the decision was made or the conduct occurred after 5 pm on a given day, by noon the following day, but no later than the announcement of the break in any case. Notwithstanding anything contained in this rule, the Appellate Body may, at its

discretion, extend time to lodge an appeal if it considers it appropriate in the circumstances.

- 22.6. Appeals lodged or referred to it will be heard by the Appellate Body. The Appellate Body may hear from the same people as the Competition Convenor did or could have under rule 21.4 and/or the Competition Convenor him or herself.
- 22.7. The Appellate Body may confirm or overturn the decision of the Competition Convenor in whole or in part and/or may substitute its own decision.
- 22.8. In substituting its decision for that of the Competition Convenor or rendering any decision on an appeal, the Appellate Body possesses the same powers as the Competition Convenor under rule 21.5.
- 22.9. For the avoidance of doubt, a team may not appeal against the decision of a Judge on the substantive merits of a round.
- 22.10. Any decision of the Appellate Body is final.

## Appendix 1: NZLSA Competition Entry Form



### NZLSA Competition Entry Form

**You must complete this entry form to enter any law competition, in addition to providing any further information required by your Law Students' Society Competition Convenor**

Name(s): \_\_\_\_\_  
(Where relevant, both members of one team must complete and sign one form)

Student ID number(s): \_\_\_\_\_

Year level(s) at University: \_\_\_\_\_

Which competition are you entering?: (Circle one. You must complete a different form for each competition)

**MOOTING    JUNIOR MOOTING    WIT EX    CLIENT INTERVIEWING    NEGOTIATION**

Have you competed in this competition before? (Circle one)      **NO**      **YES**

If yes, in which year(s)?: \_\_\_\_\_

To be eligible for the competition, you must:

1. not have completed the requirements for an undergraduate law degree in any jurisdiction; and
2. be willing and able to represent your University at the Australian Law Students' Association Conference and the New Zealand Law Students' Association Conference and Worlds if you win the competition or place high enough that you are required to do so. You must consult the dates of each of these events, which will be provided to you by your Law Students' Society Competition Convenor; and
3. certify that you comply with requirements 1 and 2.

If you enter the competition knowing you cannot satisfy these requirements, you will be disqualified from the competition and may be banned from entering any competition for a year.

By signing this form below, you are certifying that you are familiar with and understand these requirements and that you comply with them.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

**Appendix 2: NZLSA Complaints Form**

**NZLSA Complaints Form**



**This form must be lodged in accordance with the applicable NZLSA Competition Rules to which it is attached**

Competition: \_\_\_\_\_

University and competitor names: \_\_\_\_\_

**Details of subject matter of complaint**

Round, if applicable: \_\_\_\_\_ Time: \_\_\_\_\_

NZLSA Competition Rule(s) infringed, if known: \_\_\_\_\_

Incident details (use the reverse if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Time lodged: \_\_\_\_\_ Signature(s) of person(s) lodging: \_\_\_\_\_

Names of person(s) lodging: \_\_\_\_\_

**NZLSA USE ONLY**

Time, by the Competition Convenor, of:—

receiving this form: \_\_\_\_\_

notifying the lodger that the form has been received: \_\_\_\_\_

Decision of Competition Convenor:      **ALLOWED**      **DISMISSED**      **REFERRED TO APPELLATE BODY**  
(Circle one)

Orders (if any): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Reasons (required, but may be brief; continue on additional paper if required): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Time decision notified:—

to team(s) involved: \_\_\_\_\_; and to NZLSA Competitions VP: \_\_\_\_\_

**Appendix 3: NZLSA Appeals Form**

**NZLSA Appeals Form**



**This form must be lodged in accordance with the applicable NZLSA Competition Rules to which it is attached**

Competition: \_\_\_\_\_

University and competitor names: \_\_\_\_\_

**Details of subject matter of appeal**

*Attach any relevant complaint form and decision made, where available.*

Time notified of decision under appeal: \_\_\_\_\_

NZLSA Competition Rule(s) infringed, if known: \_\_\_\_\_

Decision appealed against and reasons for appeal (use the reverse if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Time lodged: \_\_\_\_\_ Signature(s) of person(s) lodging: \_\_\_\_\_

Names of person(s) lodging: \_\_\_\_\_

**NZLSA USE ONLY**

Time, by the NZLSA Competitions Vice-President, of:—

receiving this form: \_\_\_\_\_

notifying the lodger that the form has been received: \_\_\_\_\_

Decision of Appellate Body:  
(Circle one)

**ALLOWED**

**DISMISSED**

Orders (if any): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Reasons (required, but may be brief; continue on additional paper if required): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Appendix 4: Model Submissions for NZLSA National Mooting Championships**

**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



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* CA232104 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 WC.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.

**LIST OF AUTHORITIES OF COUNSEL FOR THE APPELLANT**

BETWEEN

RICHARD WILBERFORCE  
Appellant

AND

JAMES ATKIN  
Respondent

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 WC.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 I Mr Denning  
Counsel for the Appellant

**Appendix 5: Draw to be used for the National Championships**

Round 1	Round 2	Round 3	Round 4	Round 5
B v A	F v D	C v D	D v A	E v F
C v F	B v C	F v A	E v C	A v C
D v E	A v E	B v E	F v B	D v B