**BUAD 209**

**MOOT INSTRUCTIONS**

You have spent the early weeks of this course listening to your instructor drone on about legal minutiae. Now you will have an opportunity to demonstrate your oratorical skills to an adoring crowd of your fellow students, as you do battle with two of your class-mates in the OC Moot Appeal Court.

Your instructions are as follows:

1. You and your team-mate will be arguing an appeal in the OC Moot Appeal Court. Your instructor will designate which team will represent the appellant and the respondent.

2. You and your team-mate will receive your case summary from your instructor. The summary will outline the facts of the case you will be arguing, and the result in the court below. Assume that your case occurs in the Province of British Columbia. Please note that if you are representing the "Appellant" it means that you are acting for the person who lost in the court below – that is why the person is appealing. If you are representing the "Respondent" it means that your client won in the court below – and so that person is now responding to the appellant's appeal. Make sure you understand who you are representing on the appeal. If in doubt, ask your instructor.

3. At least three days prior to your oral presentation day you and your team-mate ***MUST*** submit one copy of your case brief to your opponents, and to the judges hearing your case. On the same day you will also upload a copy as a Turnitin assignment through Moodle to your instructor, in Word format. ***FAILURE TO DO SO WILL RESULT IN A MARK OF "0" FOR THIS PART OF THE MOOT PROJECT***. ***THERE WILL BE NO EXCEPTIONS OR EXTENSIONS***

***ALLOWED***. It may be delivered electronically to counsel opposite, and to your judges. Please keep a copy of the email to which your submission is attached as you may be required to prove when you provided your material to your opponents and to your judges. You will also submit a hard copy original of your case brief, duly signed by you and your team-mate, to your instructor on your moot day, just prior to commencing your moot presentation. You must not make any changes to your case brief after receiving and reviewing the case brief from your opponents.

4. Your case brief should be 8-12 pages in length, in 12 point type, 1.5 line spacing. Please do not use a report cover. Your case brief must contain the following:

   a) a title page containing a style of cause, as follows:

IN THE MOOT APPEAL COURT

Between:

Joe Blotz

Appellant

And:

Jane Doe

Respondent

CASE BRIEF of Appellant (or Respondent if that's who you represent)

Counsel for the Appellant: (list names)

Counsel for the Respondent: (list names)

   b) a heading "Facts" and a statement of the relevant facts, from the point of view of the particular party, in numbered paragraphs. This is not merely a recitation of the facts as they are written in the case summary you have received from your instructor. It is a summary of the most important facts from the point of view of you and your team-mate, acting for the appellant or the respondent, as the case may be. ***YOU MUST NOT INVENT***

***FACTS THAT DO NOT APPEAR IN YOUR CASE SUMMARY. IF YOU DO YOU WILL BE SUBJECT TO A SEVERE REDUCTION IN YOUR MARK FOR THE CASE BRIEF PORTION OF YOUR MARK FOR THE MOOT PROJECT.***

c) a heading "Issues" and a statement of the issues you intend to put before the court, in numbered paragraphs carrying on in sequence from the last number in your statement of facts. Your statement of issues should be very brief, and couched in the form of questions directed to the specific ***legal*** (not factual) issues that the court will need to decide in order to determine the appeal. Less is more. Ask only the ***legal*** questions you know the judges will have to answer in your favour in order for your client(s) to win your case. Save your arguments for the arguments portion of your case brief, as outlined below.

An example of a statement of issues incorporating the ***legal*** issues which need to be addressed in a case where individual A threatens individual B with a baseball bat and individual B shoots individual A would be:

1. Did A assault B?

2. Is the defence of self-defence available to B because he used no more force than was reasonable in order to defend himself against the assault of A?

It is the ***legal*** principle which is important when stating the issues. In the example above, the ***legal*** principles at play are assault and self-defence. A statement of issues in the above example which would ***not*** be appropriate might read something like this:

1. Did A threaten B with a baseball bat?

2. Did B shoot A?

The reason these statements are unhelpful as statements of issues is that they ask questions of ***fact*,** when they should ask questions of ***law***.

d) a heading "Rules of Law" in which you will set out the legal principles on which you will be relying in your brief, and give a definition for each of them, in numbered paragraphs carrying on in sequence from the last number in your statement of issues. Do not include rules of law that are irrelevant or unimportant to the argument you will be making later in your brief. In the example in (c), above, you would include statements setting out the legal elements of the tort of assault, and the fact that the use of reasonable force is permissible when an individual is assaulted, in order that he may defend himself.

e) a heading "Argument" followed by your legal argument as it relates to the facts and issues, in numbered paragraphs carrying on in sequence from the last number in your statement of rules of law. Your argument will set out how the rules of law you have identified relate to the facts of your case, and the issues you have indicated you will address. The purpose of your argument is to persuade your judges that your client's position is the correct one in law, and to explain why the judges should decide the case in your client's favour. Legal authorities should be cited in your argument. Your argument will not be persuasive unless you state the legal principles that are applicable in your case, and explain how the facts of your case meet the applicable legal test(s) in a way that achieves the outcome you desire for your client(s).

f) a heading "Order Sought" in which you will indicate the result you wish the court to reach, after which you will type your names as counsel

submitting the brief. You will then ***sign*** the brief ***under your typed names***. I will then know who is submitting it.

g) an appendix setting out the statutes and/or case law you have relied upon in your argument

## INSTRUCTIONS FOR MOOT DAY

An important part of any court is the dignity with which it conducts its hearings. As a result, counsel will be expected to present their case in business attire. For men this means dress shirt and tie, at least, and preferably a suit. For women this means either a skirt or business slacks.

At the commencement of the hearing the lead counsel for the appellant will rise and introduce himself and the other counsel to the judicial panel. The judges are addressed as "My Lord" or "My Lady" and collectively as "Your Lordships". Counsel refer to each other as "my learned friend". As a result, the introduction should go something like this:

> Your Lordships, my name is X and my learned friend's name is Y. We represent the appellant Joe Blotz. The respondent Jane Doe is represented by Z and ZZ. May I proceed?

The desired answer from the Chief Judge is "yes."

Counsel for the appellant will then have 4 minutes to present their case as clearly, concisely and persuasively as they can. Counsel for the respondent will then have 6 minutes to rebut the case put forward on behalf of the appellant and to present the respondent's case. Counsel for the appellant will then have an additional 2 minutes to rebut the argument put forward by counsel for the respondent.

Counsel for each party will have to determine between them who will be making the various arguments and submissions within the time allotted to that party. As you will be marked individually on your oral presentation, it would be wise for you to divide up your time allotted so that each counsel has a roughly equal time to speak.

In my experience, it is better if counsel split their time so that each counsel only stands at the lecturn once during each segment. It's generally distracting when both counsel are popping up and down, making points consecutively in short bursts. In addition, only one counsel should be at the podium at any given time, while his or her co-counsel remains seated.

The time allotted is brief. You should not use it to read, or go over, your written brief, as your judges will already have read it. If you simply parrot your brief in a boring monotone it will, at best, add nothing, and may actually harm your chances of success. Your oral presentation is your opportunity to emphasize your client's strongest points, and to point out the weaknesses in your opponents' arguments, in a way that will engage the judges directly, and persuade them that the cause of your client(s) is just. So look at the judges when you're on your feet, and grab the opportunity to convince them. Show some passion for your client's cause.

The hallmarks of a good oral presentation include the following:

- Counsel makes good eye contact with the judges – avoids reading notes or brief
- Dress and appearance are under-stated and professional
- Argument is conversational, not scripted
- Voice is clear and firm; pace is measured
- Pauses, and changes in tone, are employed for emphasis
- Counsel uses correct grammar, and talks in complete, audible sentences
- Counsel maintains respectful demeanour, and is prepared
- Counsel listens carefully to questions and gives answers clearly and directly

- Counsel avoids distracting physical mannerisms (fidgeting, rocking, shuffling, waving hands, playing with a pen, playing with jewelry, looking at the ceiling)
- Counsel avoids distracting vocal mannerisms ("um," "ah," "you know," "like")

After both sides have finished presenting, the panel of judges will have the opportunity to ask questions. All of the judges are entitled to ask questions of counsel. Your instructor is in the habit of asking questions as well.

You will be marked on the clarity and persuasiveness of your oral argument and also in how you respond to any questions you might be asked. If your presentation exceeds the time limit 5 marks will be deducted from each member of your team. If the judicial panel allows a presentation to exceed the allotted time then 3 marks will be deducted from the mark for the judgment.

## INSTRUCTIONS FOR JUDGES

Each judicial panel must pick a "Chief Judge". It will be this judge's duty to keep order, keep counsel within the time limits set out in the moot instructions, keep the questions and discussions organized and see that counsel are restricted to the issues set out in the written case briefs for the case.

All the judges are entitled to ask questions of each counsel at the end of their argument. Remember, the purpose of questions is to clarify what has been argued before you, so that you will be in a better position to render a reasoned judgment, not to embarrass counsel or show them you are smarter than they are.

You must hand in a hard copy of your written judgment to your instructor in class one week after hearing the case. ***FAILURE TO HAND IN THE JUDGMENT ON TIME WILL RESULT IN A MARK OF "0" FOR THE ENTIRE MOOT PROJECT.***

***THERE WILL BE NO EXCEPTIONS OR EXTENSIONS ALLOWED.*** The panel as a whole is responsible for writing the judgment. You are to hand in only one judgment ***signed by all of you***. You must also upload a copy of your judgment in the course Moodle shell as a Turnitin assignment, in Word format, on the same day.

The judgment must be word processed, and must contain consecutively numbered paragraphs. Typically the judgment is approximately 3 pages in length, with 12 point type, 1.5 line spacing. The Chief Judge must verbally deliver a brief two minute version of the judgment before the class on the day it is handed in. The purpose of your delivering the judgment is not to read it to the class. Your instructor wants you to summarize the judgment in your own words, and explain why you reached the conclusions you did, having regard to the relevant ***legal*** principles engaged in the case.

Your instructor may have questions of the Chief Judge on this occasion, and the other members of the judicial panel will be expected to participate in defending the judgment should it become necessary. You are to provide a copy of the judgment to each side that argued before you after the oral presentation is concluded. Do not inform the counsel for the parties of your judgment before the Chief Judge has delivered his/her oral summary in class.

The judgment is to follow the same style of cause as set out in the moot and then, after the style of cause, is to be entitled JUDGMENT AND REASONS, i.e.:

IN THE MOOT APPEAL COURT

Between:

Joe Blotz

Appellant

And:

Jane Doe

Respondent

JUDGMENT AND REASONS

The judgment must contain a definitive decision regarding the case, e.g. "We find for the appellant (or the respondent, as the case may be). The appeal is allowed (or dismissed). This court orders that...(whatever consequential relief you feel is necessary)." It must also contain reasons for the judgment and deal with each and every argument raised by the two sides in their written and verbal presentations to you. You should give ***legal*** reasons why you do or do not accept a certain argument. In so doing, you will of necessity have to refer to the rules of law cited by counsel for the parties in their case briefs, and explain how they either do, or do not, apply to the facts of the case. If they do, then you will need to explain why they lead to the legal result you have selected. If they do not, you will need to explain why they do not.

You are not required to do original research when preparing your judgment, but you may wish to review the authorities on which counsel for the parties have relied in making their submissions to you.

Finally, you will be marked on the structure of your written presentation, the thoroughness of your analysis of the various arguments made by counsel, and the validity of the reasoning you have employed to reach your conclusion. A good judgment will persuade counsel for both sides, including the losing side, that the judgment is correct. Spelling and grammar errors will be penalized.

## EVALUATION

The moot project will be marked as follows:

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| Written case brief including research | 60% |
| Individual oral presentation | 25% |
| Written judgment | 10% |
| Win/lose | 5% |