



8th ICC INTERNATIONAL COMMERCIAL MEDIATION COMPETITION

COMPETITION RULES

8 February 2013 - 13 February 2013

38 cours Albert 1^{er}

75008 Paris

France



International Chamber of Commerce

The world business organization

International Centre for ADR

TABLE OF CONTENTS

COMPETITION RULES	6
Rule 0.0 Definitions.....	6
Rule 1.0 Organization of the Competition	9
Rule 1.1 Introduction.....	9
Rule 1.2 Language	10
Rule 1.3 Format.....	10
Rule 2.0 Mediation Session Procedures	10
Rule 2.1 General Procedures	10
Rule 2.1.1 Timing	11
Rule 2.1.2 Breaks	11
Rule 2.1.3 Caucuses	11
Rule 2.1.4 Appropriate use of Caucuses	12
Rule 2.2 Judging Criteria	13
Rule 2.3 Mediators and Judges	13
Rule 2.4 Timekeeping.....	13
Rule 2.5 Governing Law	13
Rule 2.6 Exhibits and Props	14
Rule 2.7 Permissible Assistance to Teams.....	14
Rule 2.8 Prohibited Assistance.....	14
Rule 2.9 Observers.....	14
Rule 2.10 Judges' Scoring.....	15
Rule 2.11 Feedback.....	16
Rule 2.12 Communication between Participants	16
Rule 2.13 Winning the Preliminary Rounds	16
Rule 2.14 Ranking of Teams	17
Rule 2.15 Scores and Ranking provided to the Teams.....	17

Rule 3.0	Mediation Plan.....	17
Rule 3.1	Submission of Mediation Plans for Scoring	17
Rule 3.2	Submission of Mediation Plans for the Judges.....	18
Rule 3.3	Scoring of the Mediation Plans.....	18
Rule 4.0	Competition Problems	18
Rule 4.1	Problems	18
Rule 4.2	Clarifications and Interpretation of the Problems.....	19
Rule 4.3	Staying within the Record.....	19
Rule 5.0	Participation and Eligibility	19
Rule 5.1	Selection Criteria	19
Rule 5.2	Attendance	20
Rule 5.3	Eligible Students.....	21
Rule 6.0	Team Application and Registration.....	21
Rule 6.1	Application online	21
Rule 6.2	Registration Fee	22
Rule 6.3	Team Contact.....	22
Rule 7.0	Judges and Mediators	22
Rule 7.1	Statement of Independence	22
Rule 7.2	Coaches	23
Rule 7.3	Confidential Information	23
Rule 8.0	Penalties and Disqualification.....	23
Rule 8.1	Application of Penalties and Disqualification	23
Rule 9.0	Awards.....	23
Rule 10.0	ICC Organizing Committee.....	24
Rule 10.1	Power to take Additional Measures	24
Rule 10.2	Interpretation of Rules	24

ANNEXES

ANNEX I	SCORE SHEETS.....	25
	A. Mediation Score Sheet.....	25
	B. Special Award Score Sheet.....	28
	C. Mediation Plan Score Sheet.....	29
ANNEX II	INSTRUCTIONS FOR PARTICIPANTS	30
	A. Rules.....	30
	B. Mediator	30
	C. Mediation Plan	30
	D. Feedback Session	31
ANNEX III	INSTRUCTIONS FOR MEDIATORS.....	32
	A. General Information	32
	B. Picture of Mediator's Role.....	33
	1. Phase Model of Interest-Based, Facilitative Mediation	34
	2. Resulting Mediator Roles.....	35
	C. Flowchart of Mediation Process.....	37
	D. Mediator's Intervention Crib Sheet.....	37
	1. Reframing	37
	2. Questioning.....	38
	2.1 In Mediation	38
	2.2 In Caucus.....	38
	2.3 'Deeply Honest Questions'	39
	2.4 'What If' Questions.....	39
	3. Summarizing.....	39
	4. Activating Parties' Creativity	40
	5. Reality Testing	40
	6. Promoting Empathy	40

7. Collaboratively Re-Formulating Positions into Interests.....	40
8. Offering Space for Visualizing the Conflict.....	41
ANNEX IV INSTRUCTIONS FOR JUDGES.....	42
A. General Information	42
B. Judges' Scoring Guidelines.....	44
1. What is being marked?	44
2. Consistency.....	44
C. Judges' Feedback Guidelines	45
1. Feedback	45
2. Method for Delivery of Oral Feedback to Each Competing Team Following the Mediation.....	46
3. Examples of Feedback Using this Method	47
D. Judges' Feedback Aide Mémoire	50

COMPETITION RULES

RULE 0.0 DEFINITIONS

The following terms have the corresponding meanings:

- “ADR” means Amicable Dispute Resolution, as provided by ICC.
- “ADR Rules” means the ICC ADR Rules.
- “BATNA” means Best Alternative to a Negotiated Agreement, and refers to what is the best thing a Party can do, without the consent of the other Party, if the Parties fail to reach an agreement.
- “Break” means a 3 minute period of time that can be requested once by each Competing Team in each Mediation Session and during which the overall time of the Mediation Session continues to run.
- “Brief Biography” means each Team member’s written biography also indicating his/her nationality, native language and including a picture. The Brief Biography can have a maximum of 100 words.
- “Caucus” means a separate meeting between the Mediator and a Competing Team.
- “Coach” means the one person selected by a Team or the Team's university to act as that Team's coach who is permitted to accompany the Team to the Competition.
- “Confidential Information” means the background factual information of the Problem for the exclusive use of a Party and the Judges but not the Mediator.
- “Competing Team” means the two students from one Team competing in one specific Mediation Session in the role of Counsel and Client.
- “Competition” means the 2013 ICC International Commercial Mediation Competition.

- “Counsel” and “Client” refer to the roles taken respectively by two members of a Team during each Mediation Session; together they are referred to as the Competing Team or as the Party.
- “Cross-Caucus” means a separate meeting between the Mediator and both Counsels or a separate meeting between the Mediator and both Clients of the Competing Teams.
- “Drafting Working Group” refers to the group, selected by the Organizing Committee, in charge of drafting the Problems for the Competition.
- “Eligible Student” means a person who meets the criteria defined in Rule 5.3.
- “Final Rounds” means the Eighth-Finals, Quarter-Finals, Semi-Finals and the Final.
- “General Information” means the background factual information of the Problem for the use by each Party, the Judges and the Mediator.
- “ICC” means the International Chamber of Commerce headquartered in Paris.
- “Judge” means a professional mediator selected by the Organizing Committee who evaluates and scores the students’ performance during a Mediation Session in accordance with the Judges scoring guidelines, as provided in Annex IV.B.
- “Judging Criteria” means the criteria set out in the Score Sheet.
- “Law Student” means an Eligible Student studying law.
- “Mediation Plan” means each Team’s written case analysis referred to in Rule 3.0.
- “Mediation Plan Score Sheet” means the document in accordance with the sample set out in Annex I.C.
- “Mediation Session” means the timeframe of 150 minutes as described in Rule 2.1.
- “Mediation Session Supervisor” means a person appointed by the Organizing Committee to keep time during a Mediation Session.

- “Mediation” means the timeframe of 85 minutes for the actual mediation between the two Competing Teams as described in Rule 2.1.
- “Mediator” means a professional mediator selected by the Organizing Committee to take the role of mediator during a Mediation.
- “Organizing Committee” means the official ICC group in charge of organizing and managing the Competition. Its members are mostly part of the ICC International Centre for ADR.
- “Penalties” means points deducted for any Rule violation pursuant to Rule 8.1.
- “Prohibited Assistance” means advice, instructions, or other communication to a Team that is not in compliance with Rule 2.8.
- “Preliminary Rounds” means the eliminatory phase of the Competition prior to the Final Rounds.
- “Problem” means an official international commercial dispute case distributed by the Organizing Committee, as supplemented or corrected by any Problem Clarifications, which Teams will endeavor to resolve with the help of the Mediator during the Mediations.
- “Problem Clarifications” means the official clarifications or corrections of the Competition Problems, as published pursuant to Rule 4.2.
- “Problem-Solving Approach” means an approach to mediation in which participants ascertain each other’s interests, brainstorm options and seek to create a solution that meets their interests and needs better than their BATNA.
- “Professional” means a volunteer mediator who is selected by the Organizing Committee to act as Mediator or Judge in the Competition.
- “Requesting Party” and “Responding Party” mean respectively the Competing Team which argues on behalf of the party requesting mediation and the party responding to the request for mediation respectively at any given point in the Competition (each a Party).
- “Rules” mean these Competition Rules.

- “Score Sheet” means the document in accordance with the sample set out in Annex I.A.
- “Special Award Score Sheet” means the document in accordance with the sample set out in Annex I.B.
- “Team” means a group of 2 to 4 Eligible Students accepted by the Organizing Committee to participate in the Competition.
- “WATNA” means Worst Alternative to a Negotiated Agreement, and refers to what a Party’s worst case scenario would be if the Parties fail to reach an agreement.

RULE 1.0 ORGANIZATION OF THE COMPETITION

Rule 1.1 Introduction

ICC has over 90 years experience in devising rules to govern and facilitate the conduct of international business. These rules include those designed to resolve the conflicts that inevitably arise in business relations. ICC offers a wide range of dispute resolution rules for business disputes, including the ICC Rules of Arbitration, the ICC ADR Rules, the ICC Rules for Expertise and the ICC Dispute Board Rules. Details of the dispute resolution services offered by ICC are to be found on its website www.iccadr.org.

The ICC ADR Rules govern the proceedings in cases where the parties wish to settle their dispute amicably. Pursuant to the ICC ADR Rules, the parties are free to choose the amicable settlement technique most suited for their dispute. In practice, most parties to proceedings under the ICC ADR Rules opt for mediation as their chosen settlement technique. Furthermore, Article 5 of the ICC ADR Rules provides for mediation as settlement technique should the parties not agree otherwise.

The Competition assumes that the Parties did not agree on another amicable settlement technique under the ICC ADR Rules and chose mediation.

The focus of the Competition is the effective combination of the use of the Mediator, collaborative problem-solving skills and presentation of the Parties' interests to progress towards a settlement. It is ICC’s hope that the Competition will encourage the teaching and learning of an effective use of mediation so that tomorrow’s business people and legal practitioners can better meet the dispute resolution needs of an increasingly cross-cultural global market.

Rule 1.2 *Language*

The official and only language of the Competition is English.

Rule 1.3 *Format*

The Competition consists of four Preliminary Rounds on the first three days of the Competition and the Final Rounds on the last two days of the Competition.

During the Preliminary Rounds, each Team will, in principle, compete at least once per day. Save for exceptional circumstances, every Team will compete on every Problem only once. Depending on the Competition schedule, a Team may participate in two Mediation Sessions, each with a different Problem, in one day.

As to the Final Rounds, the Teams will compete on the four Problems assigned, respectively, to the Eighth-Finals in the morning of the fourth day, the Quarter-Finals in the afternoon of the fourth day, the Semi-Finals in the morning of the fifth day, and the Final in the afternoon of the fifth day.

A Mediation Session will consist of two Competing Teams, with two Team members (Client and Counsel) on each side representing the Requesting Party and the Responding Party respectively, as well as the Mediator and two Judges in the Preliminary Rounds and three Judges in the Final Rounds.

Each university may nominate two to four students to participate in a Team. Each Team can be accompanied by one Coach.

Due to logistical restraints, no Team is permitted to invite observers other than its own Coach to attend the Competition or the Mediation Sessions, save as arranged with the Organizing Committee.

RULE 2.0 *MEDIATION SESSION PROCEDURES*

Rule 2.1 *General Procedures*

In advance of the Competition, the Organizing Committee will randomly assign Teams for the Preliminary Rounds (as Requesting Party or Responding Party). Every attempt will be made so that no two Teams will compete against each other more than once during the Preliminary Rounds.

In every Mediation, each Team will be represented by two students, with one (who must be a Law Student) taking the role of Counsel and the other taking the role of

Client. These two students form the Competing Team for that Mediation Session. The students in each Team are to determine amongst themselves who will take which role and they may switch roles from one Mediation Session to the next. The role of Counsel must, however, always be taken by a Law Student.

Rule 2.1.1 Timing

Each Mediation Session will run for a total of one hundred fifty minutes, eighty-five minutes of which will be the actual Mediation and thirty minutes of which will be the Judges' and Mediator's feedback to the Teams. The remaining Mediation Session time will include five minutes for all participants to settle in, ten minutes for the Judges to read the Teams' Mediation Plans, five minutes for the Judges to score the Teams' Mediation Plans and fifteen minutes for Judges to work on the score sheets after the Mediation. The timing of each session is illustrated below:

<u>Total time for Mediation Session</u>	<u>= 150 min (2 hrs and 30 min)</u>
Time to settle in the room	= 5 min (2 hrs 25 min remaining)
Time for Judges to read and score Mediation Plans	= 15 min (2 hrs 10 min remaining)
Mediation	= 85 min (45 min remaining)
Scoring	= 15 min (30 min remaining)
*Feedback	= 30 min (0 min remaining)

*Feedback: Twenty minutes feedback for the Judges and ten minutes for the Mediator.

The overall time allowance of 85 minutes for the Mediation continues to run during any Caucus or Break.

Rule 2.1.2 Breaks

Each Competing Team may take one Break of no more than three minutes during the Mediation Session. If a Competing Team calls for a Break, both Competing Teams together with the Mediation Session Supervisor must leave the room during such Break. Coaches and the other members of the Teams not participating orally in the Mediation Session and all other persons must remain inside the room.

Rule 2.1.3 Caucuses

Caucuses (also known as "private meetings") between the mediator and the parties and/or their advisors can be helpful in mediation.

During each Mediation Session the Mediator and the Competing Teams may call for Caucuses in accordance with the following provisions:

- Each Caucus may last no longer than five minutes;
- During any Caucus the Mediation Session Supervisor and the Competing Team or the members of the Competing Teams not part of the Caucus shall leave the room, the Judges, Coaches, other Team members and all observers will remain in the room;
- Caucuses can take place between the Mediator and both members of a Competing Team (a Caucus);
- Caucuses can also take place between the Mediator and *either* the Counsel from both Competing Teams *or* the Clients from both Competing Teams (a Cross-Caucus);
- Each Competing Team may call for one Caucus with the Mediator during a Mediation;
- The Mediator may call for one Caucus with each of the Competing Teams during a Mediation;
- The Mediator *only* may call for one Cross-Caucus with the Counsel from each Competing Team and one Cross-Caucus with the Clients from each Competing Team during a Mediation.

Rule 2.1.4 Appropriate use of Caucuses

Competing Teams should call for a Caucus when they consider they need input from the Mediator to progress the Mediation.

A Caucus should not be used to seek clarification of the Competition Rules or any procedural matter. Examples of the appropriate use of a Caucus are when a Competing Team:

- a. Wishes to clarify an issue or issues within the dispute or otherwise seek advice or guidance from the Mediator;
- b. Wishes to share with the Mediator facts or information that are or might be relevant to the progress of the mediation to determine how and when it might be best to present such fact or information to the other Competing Team;
- c. Wants to explore or make an offer or proposal and/or explore with the Mediator how best to present it within the Mediation.

Rule 2.2 *Judging Criteria*

The Judging Criteria are applied to the performance of both the Counsel and Client in the Competing Team.

The Competing Teams are encouraged to be realistic and required to be explicit about their claims and to defend their interests strongly. Teams are not required to reach a settlement during the Mediation Session, and no extra points will be gained from that.

Rule 2.3 *Mediators and Judges*

In each Mediation Session, a Professional will serve as the facilitative Mediator and experienced professional mediators will serve as the Judges. The Judges will evaluate and score the performance of the Teams according to the Judging Criteria. Every attempt will be made for the Teams to face a different Mediator and different Judges in each round; however, due to limited availabilities this might not always be possible.

The Organizing Committee is responsible for selecting the Mediators and Judges and for allocating them to Mediation Sessions in each round of the Competition.

The Organizing Committee will use its best efforts to ensure that the Mediators and Judges are neutral, independent and impartial from the Teams they are judging.

Rule 2.4 *Timekeeping*

Responsibility for timekeeping rests with the Mediation Session Supervisor during the Mediation Sessions. The Mediation Session Supervisor's decision on timekeeping is final.

If no Mediation Session Supervisor is available for a Mediation Session, the Judges are in charge of timekeeping.

Failure to adhere to time limits shall result in a penalty, as stated in Rule 8.1.

Rule 2.5 *Governing Law*

The Problems may refer to real or fictional places. However, and unless a Problem explicitly indicates otherwise, for purposes of the Competition it is assumed that there is no governing law and that the jurisdiction applies general principles of uniform international commercial law.

Rule 2.6 Exhibits and Props

Teams may prepare in advance only **one** exhibit, limited to one page with type-written print in 12-point font for each Mediation. Such page may include diagrams and/or graphic representations. Copies of this page shall be handed to the Mediator and the Judges when first produced by a Competing Team. Competing Teams are permitted to write on this exhibit during the course of the Mediation. Competing Teams are prohibited from using for general presentation or presentation to the Mediator any other exhibits or papers prepared in advance including video, computers, or other technology and displays, and failure to observe this Rule shall result in a penalty. However, during the Mediation each Competing Team can bring its own prepared notes for its own use and can, if need be, make its own notes on separate pieces of paper. Each Competing Team can also bring a calculator if it wishes to do so.

Rule 2.7 Permissible Assistance to Teams

The Coach may advise and assist the Team in its planning and preparation for the Competition, including in advance of the Final Rounds.

Rule 2.8 Prohibited Assistance

No **person associated with a competing team**, including the Coach, may give advice, assistance or instructions to, or communicate or attempt to communicate with any of the participants, and in particular not to the two students forming the Competing Team, in any way, during the Mediation Session. Violation of this Rule, regardless of the substance thereof, and regardless of whether initiated by a participant or by any other person, will result in disqualification from the Competition of the whole Team **with which the person is associated**. Harmless error will not be a defense to a complaint based on violation of this rule.

Rule 2.9 Observers

(a) Any person who is not a Team member, Coach, Mediator or Judge will not be permitted to attend the Competition including Mediation Sessions, unless invited by the Organizing Committee.

(b) If space allows, Teams and Coaches may attend all Mediation Sessions during the Competition, unless otherwise prohibited by the Organizing Committee (which will organize access to the Mediation Sessions).

- (c) Teams and Coaches may not attend the Mediation Session of a Team against which the Organizing Committee has assigned their Team to compete in future Preliminary Rounds.
- (d) Teams and Coaches may not attend a Mediation Session during which a Competition Problem is dealt with that has not yet been dealt with by that Team in a Mediation Session (save where the Team has not qualified for the Round in question).
- (e) Observers will not be allowed to leave the room whilst the Mediation Session is in progress.
- (f) Failure to comply with this rule will result in a disqualification as defined under Rule 8.1.

Rule 2.10 Judges' Scoring

At the beginning of the Mediation Session, the Judges will be granted fifteen minutes to read and score the Competing Teams' Mediation Plans by using the Mediation Plan Score Sheet.

Only the other Judge(s), the Mediator and the Mediation Session Supervisor are allowed to stay in the room while the Judges perform the scoring: everyone else must leave the room.

Following the Mediation, the Mediator, the Teams, Coaches and observers shall leave the room and the Judges will score the performance of each Competing Team in accordance with the instructions set out in Annex IV and by using the Mediation Score Sheet.

During the Preliminary Rounds, Judges shall also decide whether to nominate the Competing Teams for one or more Special Awards by completing the Special Award Score Sheet. The Mediation Session Supervisor shall remain in the room with the Judges.

Thereafter, the Mediator, the Teams, Coaches, and observers will be invited to re-enter the room.

Rule 2.11 *Feedback*

Each of the Judges will then provide feedback to each Competing Team, for no more than 10 minutes each. Feedback will be based on each Competing Team's performance in the Mediation.

The Judge's feedback must be consistent with the Judges' feedback guidelines in Annex IV.C.

Judges must not reveal to any Team the results of their individual determinations, the Teams' scores or the contents of the Confidential Information.

After the Judges' feedback, the Mediator has 10 minutes to provide feedback to each Competing Team, which must also be consistent with the Judges' feedback guidelines in Annex IV.C.

Rule 2.12 *Communication between Participants*

The Competition is an educational event that seeks to encourage the open exchange of ideas, experience and know-how between students and Professionals from different cultures, generations and backgrounds.

Accordingly, exchange and dialogue between Judges and Mediators with Teams outside the Mediation Session is permitted and indeed encouraged, subject always to the third paragraph of this Rule 2.11 and to respecting the principles of impartiality and neutrality.

Professionals are invited to share their insights with students about a particular Mediation Session or their practice in general.

Nevertheless, Professionals are under a duty of confidentiality and must not reveal to any Team its or any other Teams' scores for a particular Mediation Session or the content of any Confidential Information.

Rule 2.13 *Winning the Preliminary Rounds*

The Team with the greatest number of points will be the winner of that round in the Preliminary Rounds.

Rule 2.14 *Ranking of Teams*

Teams will be ranked and selected for the Final Rounds on the following criteria, in decreasing order of importance:

1. total number of Score Sheets designating a “Win”;
2. total number of overall points;
3. lowest total of the differentials between the number of points scored in each Mediation Session.

Rule 2.15 *Scores and Ranking provided to the Teams*

After the end of the Competition, each team shall receive its Score Sheets and the ranking of the top 33 Teams after the Preliminary Rounds.

RULE 3.0 *MEDIATION PLAN*

Each Team shall provide a Mediation Plan for each Mediation Session in which it competes according to the Instructions for Participants in Annex II.C.

The Mediation Plan must clearly indicate the names of the university and each of the members of the Team. The Brief Biographies of each Team member must be attached to the Mediation Plan.

Mediation Plans should contain a case analysis evaluating the strategic strong points and weak points of the Requesting Party and the Responding Party respectively, their respective needs and interests, their respective BATNAs, WATNAs and their respective objectives and goals during the Mediation.

Rule 3.1 *Submission of Mediation Plans for Scoring*

The Mediation Plans for all Preliminary Rounds Problems must be submitted to the Organizing Committee by email to iccmediationcompetition@iccwbo.org at the latest on **20 January 2013**. Mediation Plans for the Preliminary Rounds will not be accepted after this date.

Teams will not be permitted to modify their Mediation Plans after submission to the Organizing Committee.

Teams proceeding to the Final Rounds must prepare their Mediation Plans in advance of each Final Round and hand them to the Organizing Committee prior to each respective Mediation Session during the Final Rounds.

Rule 3.2 *Submission of Mediation Plans for the Judges*

Each Competing Team must hand a copy of its Mediation Plan to the Mediation Session Supervisor at the beginning of each Mediation Session. The Mediation Session Supervisor is in charge of handing the Mediation Plans to the Judges.

During the Competition, the Organizing Committee does not provide printing or copying facilities, except for the Final Rounds.

For further guidance, please see “Instructions for Participants” (Annex II).

Rule 3.3 *Scoring of the Mediation Plans*

The Mediation Plans will be scored by the Judges at the beginning of the Mediation Session. The completed Mediation Plan Score Sheet for each Team shall be handed to the Mediation Session Supervisor before the Mediation commences. The score received for a Mediation Plan will count towards that Team’s overall score in the specific Mediation Session for a maximum of two points. The Mediation Plans will be scored on the basis of the Mediation Plan Score Sheet as provided in Annex I.C.

RULE 4.0 COMPETITION PROBLEMS

Rule 4.1 *Problems*

Each Problem will consist of General Information for all the Parties and Confidential Information for each Requesting Party and for each Responding Party.

Judges shall receive copies of the General Information and the Confidential Information for each Party. Mediators shall receive the General Information only.

Eight Problems will be sent to all Teams before the start of the Competition. All Teams will receive General Information and Confidential Information for the four Preliminary Rounds in advance. General information for the Eighth-Final, Quarter-Final, Semi-Final and Final will also be sent in advance. However, Confidential Information and assignment of roles for each of the Final Rounds will be provided respectively at the end of the Preliminary Rounds, Eighth-Finals, Quarter-Finals and Semi-Finals.

Teams, Coaches, Judges and Mediators may not directly or indirectly disclose any Confidential Information to any other person, save that disclosure by Teams during a Mediation Session is permitted.

Non-compliance with this Rule, will lead to disqualification in accordance with Rule 8.1.

Rule 4.2 Clarifications and Interpretation of the Problems

Every effort will be made to ensure that Problems are clear. Each Team may submit to the Organizing Committee on or before **2 December 2012** a maximum of one written question for clarification or interpretation per Problem by the Drafting Working Group to iccmediationcompetition@iccwbo.org.

These questions shall relate only to the Problems: the Drafting Working Group will have complete discretion in answering them; however, no new facts will be added to the Problems.

Rule 4.3 Staying within the Record

While Teams may not make up new facts, the facts of the Problems are subject to reasonable interpretation and Teams may draw reasonable conclusions from them. Whether a Team's interpretation is reasonable is a matter entirely within the discretion of the Judges.

Failure to stay within the record may result in a penalty in accordance with Rule 8.1.

RULE 5.0 PARTICIPATION AND ELIGIBILITY

Rule 5.1 Selection Criteria

The Organizing Committee will decide in its discretion which Teams are accepted to participate in the Competition.

For the 2013 Competition the Organizing Committee will accept a maximum of 66 Teams.

The Organizing Committee will initiate two application periods.

The first application period will run from around end-July 2012 until late August 2012. The second application period will run from early September 2012 until around mid-

October 2012. The exact dates of each application period will be published on www.iccmediationcompetition.org

During each application period, the Organizing Committee will accept a maximum of 33 Teams.

In the each application period 15 places are reserved for universities that have not yet participated in the Competition and 18 places are reserved for universities who have previously participated in the Competition.

Should places for one category not be filled at the end of the application periods, remaining places will be offered to applicants from the other category.

Universities that have not participated during the two last Competitions, will be considered as not having previously participated in the Competition.

Within the two above categories the Organizing Committee will select Teams based on the following criteria:

- preference will be given to universities who have an ADR curriculum;
- representation of cultural and regional diversity amongst the selected universities.

In the event that the above-selection criteria are insufficient to make a selection between two Teams, the Organizing Committee will make a selection in its absolute discretion.

Rule 5.2 Attendance

Each Team may be accompanied at the Competition by only one Coach. Additional persons and students who are not members of a Team may NOT accompany a Team to attend the Competition.

It is in the discretion of the Organizing Committee to disqualify the whole Team, should Rule 5.2 not be followed.

Rule 5.3 *Eligible Students*

(a) The Competition is open to all full and part-time university students (excluding of post-graduate doctorate students) registered in the university during the academic period during which the Competition is held.

Persons who are entitled to practice law in any jurisdiction, by having passed a bar exam or otherwise, are NOT Eligible Students. However, students who have gained their qualification to practice law **automatically** with the completion of their **undergraduate** law studies (i.e. without a further bar exam or similar) and who certify that they have not yet practiced as a lawyer (i.e. provided legal advice to clients) are Eligible Students provided they are currently registered in a law school.

(b) Only students studying law may take the role of Counsel. Accordingly, at least one member of each Team must be a Law Student.

(c) Team members do not have to be of the same nationality as that of their universities.

(d) Each university may nominate only one Team, consisting of a minimum of two and a maximum of four students.

(e) In order to enable as many Eligible Students as possible to participate in the Competition over the years, **each student is entitled to participate in the Competition only once.**

Any Team that breaches this Rule 5.3 will be disqualified from the Competition. If only one member of the Team breaches Article 5.3(a) or 5.3(e), it is in the discretion of the Organizing Committee to disqualify the whole Team or only that member. If the Team is subsequently left with less than two students, the whole Team will be disqualified.

RULE 6.0 TEAM APPLICATION AND REGISTRATION

Rule 6.1 *Application online*

Each Team wishing to participate must apply online within one of the two application periods described below.

The Organizing Committee will inform Teams of their acceptance or non-acceptance in late August 2012 (first application period) or late October 2012 (second application period) in line with the schedule published online.

Subsequently, each Team must provide the Organizing Committee (within the time limit as indicated by the latter) with the names, contact details and Brief Biography of each Team member. A template will be made available by the Organizing Committee.

When applying, each Team must declare that the Rules have been read and understood by each of its members. When submitting the details of the Team members, each Team must declare that all Team members are eligible under Rule 5.3.

Rule 6.2 Registration Fee

Upon acceptance of the Team by the Organizing Committee, each Team must pay the registration fee within the time limit as indicated by the Organizing Committee.

Non-payment of the Registration Fee within such time limit can lead to disqualification in accordance with Rule 8.1.

Rule 6.3 Team Contact

Each Team must designate to the Organizing Committee a Team Contact. Notice to the Team Contact constitutes notice to all Team members.

RULE 7.0 JUDGES AND MEDIATORS

Rule 7.1 Statement of Independence

All Judges and Mediators shall provide to the Organizing Committee a Statement of Independence declaring his/her neutrality, impartiality and independence to judge and/or mediate any of the Teams in the Competition and disclosing any relationships with any Team's university, a Team member, a Coach or a person affiliated with a Team.

The Organizing Committee can disqualify a Judge from judging or a Mediator from mediating a round if the Organizing Committee considers that she or he has a relationship with a Team member and/or any Team's university, a Coach or a person affiliated with a Team which threatens neutrality, impartiality and independence.

Rule 7.2 Coaches

Coaches may not act as Judges or Mediators in any Mediation Session.

Judges and Mediators may not act as Coaches at any time in relation to the Competition.

Rule 7.3 Confidential Information

Judges and Mediators must keep the contents of the Confidential Information strictly secret from Teams.

RULE 8.0 PENALTIES AND DISQUALIFICATION

Rule 8.1 Application of Penalties and Disqualification

If a violation of the Rules is considered to have been committed by a Team or one of its members, the Organizing Committee can impose a penalty or disqualify a member of a Team or a whole Team.

A maximum three point reduction will be applicable if Rules 2.1, 2.4, 2.6, or 4.3 have been violated.

Disqualification from the Competition will result from a violation of Rules 2.8, 2.9, 4.1, 5.3 and 7.3.

Disqualification may result from violation of Rule 6.2.

RULE 9.0 AWARDS

The Organizing Committee shall make arrangements for appropriate recognition of Teams that achieve 1st Place, 2nd Place and for Runners-up in the Competition and shall also award the following Special Awards for the Preliminary Rounds:

- Best Mediation Plan
- Best Mediation Advocacy Skill
- Best Relationship Building with the Other Team
- Best Team Work
- Best Public Speaker
- Best Opening Statement
- Best Creative Solution Generation

- Best Interaction with the Mediator
- Best Team from a university identified by the Organizing Committee as participating in the Competition for the first time (for list see Competition leaflet)

Furthermore, after the Competition, the Organizing Committee will issue a formal Certificate of Participation in the Competition (save in the case of disqualification) to all Team members.

RULE 10.0 ICC ORGANIZING COMMITTEE

Rule 10.1 Power to take Additional Measures

The Organizing Committee may take such other measures as are required for the orderly conduct of the Competition.

Rule 10.2 Interpretation of Rules

The Organizing Committee's interpretation as to the implementation of the Rules is final and conclusive.

ANNEX I. A**Mediation Score Sheet**

Your full name _____

Name of Competing Team _____

*Mark the appropriate round by checking the box with X***Preliminary Rounds**Saturday, 9 February ☐ Morning ☐ AfternoonSunday, 10 February ☐ Morning ☐ AfternoonMonday, 11 February ☐ Morning ☐ Afternoon**Eighth Finals**Tuesday, 12 February ☐ Morning**Quarter Finals**Tuesday, 12 February ☐ Afternoon**Semi Finals**Wednesday, 13 February ☐ Morning**Final**Wednesday, 13 February ☐ Afternoon**Total Points***Please make sure to mark all three sections:*

1. Mediation Plan

2. Mediation Session

3. Special Award
(for Preliminary Rounds only)*Please double check your calculation*

Total Mediation Plan	/ 2
Total Mediation Session	/ 38
Penalty points	
FINAL SCORE	/ 40

Please now indicate whether this Competing Team won or lost:☐ **Won** ☐ **Lost**

If the Competing Team on this Score Sheet has the higher number of points, this Competing Team has **won**. If the Competing Team on this Score Sheet has the lower number of points, this Competing Team has **lost**. There must be a difference of at least 1 point between the two Competing Teams. Accordingly, you cannot give the same number of points to both Competing Teams.

Signature _____

Mediation Score Sheet

Please tick one box for each criterion

The Mediation Session: <u>Your Interests</u>	Excellent	Good	Satisfactory	Poor	Not shown
Opening Statement of Your Perspective and Interests Presentation of events giving rise to the dispute, relevant legal considerations. Conveying your interests. Showing willingness to collaborate.	<input type="checkbox"/> 4 points	<input type="checkbox"/> 3 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
Advancing Your Interests Commercial realism. Ability to advance your interests throughout the mediation, while recognizing those of the other party. Never sacrificing your interests. Flexibility in adapting to new information or disclosures by the other Party, while still advancing your interests. Awareness and assertion of your BATNA where necessary. Ability to weigh up options realistically in line with your own interests.	<input type="checkbox"/> 8 points	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 point	<input type="checkbox"/> 0 points
Team Work: Counsel & Client Working together as a team, effectively communicating with each other, sharing responsibility clearly and sensibly and providing mutual backup.	<input type="checkbox"/> 4 points	<input type="checkbox"/> 3 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points

Sub – total _____/16

Mediation Score Sheet

Please tick one box for each criterion

The Mediation Session: <u>Working with the other Party</u>	Excellent	Good	Satisfactory	Poor	Not shown
Information Gathering and Ascertaining the Other Party's Interests Wanting to know what the other Party needs and how they see the issues. Open questions designed to gain relevant information and to ascertain the other Party's interests, and active listening.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
Seeking to Collaborate with the Other Party Taking of initiatives to build a problem-solving relationship with the other Party.	<input type="checkbox"/> 4 points	<input type="checkbox"/> 3 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
Working Together to Develop Realistic Options Generation of a range of realistic options which clearly meet your own and the other Party's interests, without premature evaluation.	<input type="checkbox"/> 4 points	<input type="checkbox"/> 3 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points

The Mediation Session: <u>Working with the Mediator</u>	Excellent	Good	Satisfactory	Poor	Not shown
Making Good Use of the Mediator Realistic, timely and effective invocation of the Mediator's assistance, listening and responding to the mediator and use of the Mediator's interventions to move towards resolution.	<input type="checkbox"/> 8 points	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 point	<input type="checkbox"/> 0 points

Sub – total _____/22

ANNEX I. B**Special Award Score Sheet**

You can nominate each team for a maximum of three Special Awards per Mediation Session. Teams can only qualify during the Preliminary Rounds for Special Awards. Please tick a maximum of three boxes according to the Special Award and the number of points you wish to award.

Your full name

Name of Competing Team

	3 points This Team showed excellent skills in this area.	2 points This Team showed very good skills in this area.	1 point This Team showed above average skills in this area.
Best Mediation Plan			
Best Mediation Advocacy Skill			
Best Relationship Building with the Other Team			
Best Team Work			
Best Public Speaker			
Best Opening Statement			
Best Creative Solution Generation			
Best Interaction with the Mediator			
Best Team from a university identified by the Organizing Committee as participating in the Competition for the first time (for list see Competition Leaflet)			

ANNEX I. C**Mediation Plan Score Sheet**

Your full name

Name of Competing Team

Date and time

Please tick one box for each criterion

The mediation plan describes a team's:	Excellent 0,5 points	Satisfactory 0,25 points	Poor 0 points
mediation strategy			
The mediation plan defines:	Excellent 0,25 points	Satisfactory 0,125 points	Poor 0 points
how and why responsibilities will be divided between client and counsel			
the team's interests			
the team's BATNA			
the team's WATNA			
the other Party's likely interests			
the other Party's likely BATNA			
Total:			

Total: /2 points

© ICC International Centre for ADR, 2012. All rights reserved. No part of this work may be reproduced or copied in any form or by any means, or translated, without the prior permission in writing of the ICC International Centre for ADR.

ANNEX II

INSTRUCTIONS FOR PARTICIPANTS

A. RULES

Please review carefully the Rules including all Annexes: please prepare well so that you fully understand what is required of you.

B. MEDIATOR

Please do remember that the Competition is a mediation one, not a negotiation one, so do use the Mediator.

C. MEDIATION PLAN

Pursuant to Rule 3 of the Rules, each Team must provide the Organizing Committee on or before 20 January 2013 with copies of its finalized Mediation Plans for the Preliminary Rounds (with a copy of the Brief Biographies attached). Upon submission to the Organizing Committee, Teams will not be permitted to modify their Mediation Plans.

The Mediation Plan for each Mediation Session must be no more than 2 pages in 12-point, time new roman, 1.5 spacing.

A copy of the Mediation Plan (with a copy of the Brief Biographies attached) must be provided by the Teams to the Mediation Session Supervisor at the start of the Mediation Session.

Accordingly, students should plan to have at least three copies of each Mediation Plan (with a copy of the Brief Biographies attached) available at the start of each round including two (three in the Final Rounds) for the Judges.

The Mediation Plan should contain a case analysis consisting of a brief evaluation under each of the following headings:

- (1) The Team's BATNA
- (2) The Team's WATNA

- (3) “Responsibility Sharing” – explain *how* the Team plans to share responsibilities between the Counsel and the Client in the Mediation Session;
- (4) “Allocation Strategy” – explain *why* the Team chose the particular responsibility sharing;
- (5) “Your Side’s Interests” – describe the interests that the Party plans to advance in the Mediation Session;
- (6) “Other Party’s Interests” – describe the likely interests of the other Party;
- (7) “Other Party’s likely BATNA” – describe the likely BATNA of the other Party;
and
- (8) “Mediation Strategy” – the mediation strategy in light of the preceding factors.

For the Final Rounds (Eighth, Quarter, Semi, and Final) where there may be limited time to prepare for the Mediation Session, the Mediation Plan may be in the form of a hand-written or typed outline. For such rounds, a computer and printer will be made available by the Organizing Committee for all Teams who wish to print their Mediation Plans.

D. FEEDBACK SESSION

Once Teams and Coaches have returned to the room after the Judges have completed their Score Sheets, the feedback session is a time for the Judges and Mediator to exchange with the Teams their reactions, views and positive criticism on their Mediation. Judges should give their feedback in accordance with the Judges’ feedback guidelines in Annex IV.C. Under no circumstances should this time be used by a Team to denigrate or criticize the opposing Team.

ANNEX III

INSTRUCTIONS FOR MEDIATORS

A. GENERAL INFORMATION

This is a mediation competition, not a negotiation competition. The aim is to demonstrate today's best practice in international commercial mediation, on the part of all Competing Teams in the Mediation, as well as you as Mediator.

As Mediator in this Competition you perform the valuable role of facilitating the Teams to demonstrate their mediation skills. It is essential that the Mediators participating in the Competition adopt a consistent and uniform approach to the Mediation. With this in mind, please conduct each Mediation using the following guidelines:

- 1. How you approach your role as Mediator in the Mediation determines the quality of the learning experience that each student will have during the Competition.** Your primary goal as a Mediator is to inspire the greatest quality of Team performance during the Competition.
2. Please prepare well so that you fully understand what is required of you.
3. You must read in advance of the Competition the Rules including all Annexes and the General Information (but not the Confidential Information) for each Problem.
4. Your Mediator's opening statement should be less than five minutes in duration. For the purpose and content of your opening statement please refer to B below.
5. You must not read the Competing Teams' Mediation Plans before the Mediation.
6. You should encourage each Competing Team to adopt practical and realistic solutions to Problems, and to take account of financial considerations.
7. You should encourage Competing Teams to address all important issues during the Mediation and you should discourage them from postponing "difficult" ones to imaginary future sessions.
8. Please note, however, that it is not the aim of a Mediation to settle all issues in dispute but to progress towards acceptable and realistic solutions.

9. As set out in B below, you are requested to adopt a facilitative style during the Mediation, independent of your personal style in real life. Accordingly, you should not:

- suggest options for settlement;
- express a view as to who is right and who is wrong;
- be directive.

10. Please remember that the Mediation is short and lasts only 85 minutes. During these 85 minutes the Competing Teams should be encouraged by you to exercise their skills whilst you exercise yours' as Mediator as set out more particularly in B and C below.

11. Caucusing is explained in Rules 2.1.3.

Caucusing is optional for the Teams, and it is important to let the Teams decide upon a Caucus.

Even if you use a no-Caucus model of mediation in your practice or you think that the time chosen to take a Caucus by a Competing Team is not appropriate, please allow each Competing Team to take a Caucus when requested and call for one when you consider it appropriate in accordance with Rule 2.1. Each Caucus should last no more than five minutes.

12. You should leave the room while the Judges score the Competing Teams' performance.

13. You may also provide comments to the students after the Judges' feedback session, based on the criteria contained in the Judges' feedback guidelines.

B. PICTURE OF MEDIATOR'S ROLE

The expectation is that Mediators will – despite personal preferences and styles – have a shared understanding of the commercial mediation model underlying the Competition. For that reason, one can focus on the chronological dynamic, the so-called phase model of mediation (I.) and the individual Mediator roles and connected techniques (II.). Against that background, the collection of possible interventions presented in section D will become better understandable.

1. Phase Model of Interest-Based, Facilitative Mediation

[Please note that due to the time constraints, the final phases might not be reached in all sessions]

Phase 1: Establishing Working Atmosphere

The Mediation usually begins with a short opening stage during which all participants are introduced and the Mediator gives an introduction of the character and elements of the process and presents the agenda. In this phase, the Mediator has four principal goals: establishing contact with the participants as well as an overall atmosphere of trust; explaining the process; clarifying Parties' intentions and ability to mediate; and proposing ground rules for the communication between all participants.

Phase 2: Fact-Finding/Information Gathering.

The goal of the Mediation at this next phase is to set out all information necessary to identify the particular issues needing resolution, and the dimensions of those issues. This means identifying all relevant facts, including economic, political, emotional, and other factors involved in each Party's view of the various issues. In the opening statements, each Party is afforded a limited time to present its case and the main facts and legal arguments on which it is based. The Mediator will usually ask clarifying questions.

Phase 3: Working Through Conflict.

The third phase constitutes the heart of the process of interest-based mediation. The essential task is to explore and elicit the interests underlying the positions and information shared by the Parties so far. During this phase, often starting from strongly divergent viewpoints, the Mediator needs to actively support the Parties to recognize and appreciate their own as well as the other Party's perception of the issues.

Phase 4: Developing and Evaluating Options.

Once the Parties have ascertained the necessary information and identified their concrete positions and underlying interests, the Mediator can help them to develop options. In doing so, it can prove vital to explore the full range of possibilities. The Mediator needs to counteract the tendency of any party to seize upon his or her proposal as the only solution.

Often, the Parties discard valuable options simply because they begin to evaluate in their minds and conclude that an option would ultimately prove unacceptable.

To counter this, it is best if the Parties first collect multiple options without evaluating them.

Phase 5: Agreement and Closure

When the negotiations have come to an end, through an agreement or otherwise, the mediation has to be wrapped up by the Mediator. A failure to reach an agreement should not necessarily be viewed as a failure of the process. In the Competition, the goal is not to reach a full settlement of the dispute.

2. Resulting Mediator Roles

With the above phases as reference, the following Mediator roles and connected techniques prove relevant. Because the spectrum of suitable Mediator techniques and intervention depends on the personal strategy and character of the Mediator, the following assembly of aspects must be understood as a non-definitive selection.

Process Controller

Within the interest-based, facilitative mediation model, the Mediator has full process but no outcome control. He or she establishes the protocol, suggests procedures, controls the timing and structures the agenda.

Communication Facilitator

In the role as facilitator of communication, the Mediator identifies issues and gathers information, helps to clarify facts, to obtain missing information and thereby helps to determine whether or not available bargaining space exists. He or she can also be supportive in separating negotiable from non-negotiable issues. By developing a framework for exchange and understanding, the Mediator facilitates the elaboration of underlying interests with Parties. Overall, he or she fosters meaningful communication that is conducive to reaching agreement.

Formulator of Interests

Given the high relevance of interests in mediation, both eliciting and actively reframing these interests is one of the essential and challenging functions a Mediator has.

Facilitator of Cognitive Change

In the context of cognitive misperception, with the ability of reframing issues, the Mediator can serve as a veritable agent of reality. This role is most important in situations where stalemate is caused more by different or wrong perceptions of the same issues or other psychological factors, rather than by conflicts of interests. A Mediator can help to dissolve psychological distancing, such as stereotyping, scapegoating and partisan perceptions, and ensure that all participants have a more rational perception of the threat or value potential of a given scenario.

Provider of Creative, Problem-Solving Atmosphere

Another essential role of the Mediator is that of supporting Parties in generating options as well as providing a basis for selection when it comes to finding an appropriate solution. The application of brainstorming methods, the creation of an atmosphere where it is possible to throw out ideas for solving the problem without committing to them, is a role genuinely attributed to the Mediator. Mediators can actively encourage settlement in many ways including verbal, non-verbal, procedural and environmental methods and styles – all without taking control or decision making away from the parties.

The Mediator actively engages the Parties in discussions as to assets they have that could be of interest to the other Party – even if they have nothing to do with the case at hand – in order to create value and enrich the resolution process.

Agent of Reality

It is a key function of the Mediator to test the (sometimes overconfident) assessments and expectations of the Parties.

Impasse Breaking

The Mediator deals with deadlocks and impasses in an active and transparent fashion, actively encouraging Parties to talk about the respective backgrounds. If necessary, they also use more provocative techniques in order to overcome deadlocks.

C. FLOWCHART MEDIATION PROCESS

COMPETITION	FLOWCHART MEDIATION PROCESS
Mediation Plan	Preparation & Case Management
Mediation	1. Opening of the proceeding // Establishing Working Atmosphere
	2. Fact-Finding // Compilation of Information and Issues
	3. Working Through Conflict // Interest Profiling
	4. Developing and Evaluating Options
	5. Conclusion of the proceeding // Agreement and Closure
Not part of the Competition	Implementation & Follow-up

D. MEDIATOR'S INTERVENTION CRIB SHEET

The expectation is that Mediators will allow the Competing Teams to play the decisive part in the Mediation, but will nevertheless actively support them in doing so – just like a Mediator in real life would actually do. We therefore recommend that each Mediator carries out his or her role and aims to intervene in a meaningful and recognisable way about 5 times per session – here are some reminders:

1. Reframing

For facilitating communication where the listener 'detoxifies' and/or depersonalises a statement so that:

- The message can be heard; and
- The issue can be discussed and dialogue can continue

Try this:

Listen to feelings and needs *then* ignore/remove toxic language *then* restate what has been said using phrases like: “*Okay, what is important to discuss is ...*” or “*There seems to be a concern about ...*” or;

Person to Problem / Past to Future/ Offer to Options & Ideas /Cash to Kind

2. Questioning

2.1. In Mediation

Open Q's - to assist the Parties [and the Mediator] to:

- understand why they are in dispute
- focus on agenda items rather than the global dispute and clarify needs and expectations
- facilitate the exchange of information which is relevant to the resolution of the dispute

Try these:

What has brought you to mediation today?

Is there anything else? [Open door]

Can you tell us more about how you see this? [Open door]

Help us understand your perspective. [Why]

Before we move on, is there anything else to say at this stage about (agenda item)? [Focus]

2.2. In Caucus

Reality testing Q's - assist the Parties by:

- probing their understanding of the situation
- exploring their options inside and alternatives outside the Mediation
- testing their positions or expectations

Try these:

What is the most important aspect of this for you ... for the others?

Practise on me – how will you approach that new issue in a constructive way?

Why is that important to you? How will it help you?

Bad option?

Earlier you said (X) now you are saying (Y), how do they fit together?

Where would that lead ...?

2.3. 'Deeply Honest Questions'

Personal Q's - by demonstrating empathy, move a party from a place of anger or blame to a new openness

Try these:

What did he do that you dislike?

What should he have done?

What should he do now/how should he start/ what should he say/ how would you respond if he did?

What would it take for you to give up that behaviour?

2.4. 'What If' Questions

Hypothetical Q's - to open up the dialogue, reality test and refocus on (or project them into) the future

Try these:

How would you feel if the judge said...

What if they were to offer a \$50,000 settlement package? How would you react to such an offer?

What if you were to receive the offer that you are proposing to them?

What if, and I have no idea whether they would, they did (X)? What if, and I have no idea whether you would, you were to do (Y)?

3. Summarizing

Summarise to:

- give the Mediator a chance to get the message right
- give the Parties a chance to correct the message
- keep the conversation from becoming an inquisition ... so as to give the other party a chance to absorb the message

Try these:

So, you want them to know that (X) isn't a risk in your view?

So, the most important factor in your thinking is ... ?

It sounds like you are saying...

4. Activating Parties' Creativity

"For the sake of thinking outside the box, what might be options you had never even thought about before coming here today?"

5. Reality Testing

In order to:

- explore BATNA, WATNA etc...
- allow underlying concerns (if any) to surface
- test party positions or expectations
- probe party understanding of the situation and their choices within and without the mediation
- create doubt by testing facts/law/expectations/logic/delays/costs/stress/inconvenient/reputation/credibility

6. Promoting Empathy

Encourage Party to demonstrate empathy for the other's perspective.

For example, try role reversal: *"If you take a step back and imagine you are [the other party]: What would your thoughts be on... What would be important to you..."*

7. Collaboratively Re-Formulating Positions into Interests

"So Mary, we are looking for an outcome that enables you to spend less time at the office but helps you, Bob, to achieve an earlier repayment of your loan"... "It sounds like you both have an interest in relocating within a certain period. Let's look at the options for achieving this"

"May I ask you to become less specific for a moment and rather talk about the motivation behind what you are actually demanding – what difference would the amount of money make to you?"

8. Offering Space for Visualizing the Conflict

“Visualize the quality of the cooperation between your companies in the last 14 years on this flipchart.”

Open Q's – to assist the Parties [and the Mediator] to:

- Understand why they are in dispute
- Focus on agenda items rather than global dispute and clarify needs and expectations
- Facilitate the exchange of information which is relevant to the resolution of the dispute

ANNEX IV

INSTRUCTIONS FOR JUDGES

A. GENERAL INFORMATION

1. As Judges in this Competition, you perform two extremely important functions. First, you evaluate and score the quality of performance by the Competing Teams in accordance with B below. Secondly, you are invited to **give measured, balanced and constructive feedback in accordance with the feedback guidelines in C below**, in a manner calculated to empower the students and increase their learning from this experience.
2. **All Judges must read the Rules before the Competition including all Annexes, the Problems and the Confidential Information. Please prepare well so that you understand what is required of you.**
3. Actual and apparent neutrality, impartiality and independence of each Judge are of the utmost importance. Accordingly, please try in advance of the Competition to identify any biases you may have and take a conscious decision to discard them. Regularly ask yourself whether you are being fair and take particular care to score each Competing Team in accordance with the Judges' scoring guidelines in B below.
4. All Judges must read each Competing Team's Mediation Plan (and attached Brief Biographies) before the Mediation Session begins.
5. The Mediation Plans will be scored separately in accordance with Rule 3.0. accordingly you shall not take them into account when scoring the Competing Teams' performance in the mediation.
6. **For the sake of ensuring fairness and equality, you must use the judging criteria, as set out in B and C below, to evaluate and score the Competing Teams, even if such criteria do not conform to your concept of best practice.**
7. Although the language of the competition is English, its international character means that it draws Teams from many different cultures. There are some obvious differences, such as between the native and non-native English speakers, and there are more subtle differences such as between the members of English

speaking Teams who come from different countries. Judges are encouraged to do two things:

- i) To read the Team Brief Biographies prior to judging. This will help them to identify:

Please note that experience has shown that the range of expression/emotionality could be less for non-native English speaking students who could be using more energy to get the words right.

- what cultural issues may emerge during the Mediation;
- to challenge assumptions about who are native English speakers and who are not.

Teams may contain students whose cultural and linguistic backgrounds are not immediately apparent. Judges should bear this in mind.

- ii) To consider how, within the Mediation, Competing Teams demonstrate a sensitivity to and respect for potential cultural and linguistic differences in a way that allows them to be 'soft on the people and hard on the problem' as the proponents of principled negotiation recommend.

8. **Do not penalize any Competing Teams for failing to reach resolution. Do not reward any Competing Teams for reaching settlement. Due to the tight timeframe, full settlement is not the point of the Competition. Do reward Competing Teams for strategies which facilitate progression to settlement.**
9. **Do not reward good acting skills but do reward realism, in particular commercial realism, in the role play.**
10. Each **Judge** must first independently score each Competing Team. **The Judges may then confer with each other prior to finalizing their Score Sheets.** If need be, the Judges can subsequently adapt their individual scores.
11. The Judges do not have to award the same amount of number or agree on which Competing Team should be awarded more points.
12. You must indicate on your Score Sheet which Competing Team won and which Competing Team lost.

13. Accordingly, you cannot award the exact same amount of points to both Competing Teams. There must be a difference of at least one point.
14. You must complete a Score Sheet for each Competing Team before providing feedback.
15. Your Score Sheets will be collected by the Mediation Session Supervisor after each Mediation Session.
16. Once Competing Teams and Coaches have returned to the room after the Judges have completed their Score Sheets, you should provide feedback to each Competing Team in accordance with C. In order to avoid disturbances, Coaches and Observers for both Competing Teams must remain in the room through the entire feedback session.

B. JUDGES' SCORING GUIDELINES

1. What is being marked?

Judges are asked to mark on the basis that they are looking for the most effective deal makers who make best use of the mediation process. This will involve evidence of skills such as flexibility, listening and empathy, and of a Competing Team's showing that it is capable of moving towards a collaborative outcome.

It is collaboration that is being marked because collaboration is a true reflection of commercial mediation. It involves co-operation but accepts that the Competing Teams may have competing business interests which they should defend. The skill is therefore demonstrated in the ability of the Competing Teams to understand these differences and find a way through such differences to establish a means of resolution whilst protecting their own commercial interests.

2. Consistency

In order to achieve consistency, Judges are required to award points in line with the Score Sheet (Annex I.A.). This will enable the Judges to quickly, easily and consistently establish the standard at which the Competing Teams are performing. The Score Sheet will be sent to the Teams following the Competition and will therefore provide additional feedback.

Should Judges wish to provide additional comments to the Competing Teams, they are invited to include them directly on the Score Sheet or on an extra sheet of paper which they attach to the Score Sheet.

C. JUDGES' FEEDBACK GUIDELINES

1. *Feedback*

Feedback to the Competing Teams at the end of each Mediation Session is an essential part of the Competition. This enables the students taking part to learn and to develop their skills. Students have expressed concern in the past that feedback appears inconsistent and sometimes to lack relevance.

Time for feedback is limited and so it is vital that Judges give feedback that is:

- clear
- carefully focused
- balanced (fair)
- constructive (portable)

Judges should be aware that in giving feedback the students perceive you as mentors and consequently will take what you have to say very seriously.

To ensure that this is achieved consistently, feedback must be given in the format set out below. It is based on the style developed by the National Institute of Trial Advocacy (NITA®) because:

1. Research has shown that in the time available students can only assimilate a limited number of learning points, generally not more two or three. A review of the Mediation Session and a critique of all the areas covered by the Score Sheet will not be of benefit.
2. The approach is non-judgmental, objective and proven to be successful. It is clear and direct without being harsh and avoids diluted or mixed messages.
3. Students must receive feedback that they can use in the next Mediation Sessions to enable them to develop their abilities. Consistency is very important and this method, used properly by Judges, should ensure consistency.

The Organising Committee wants each student to feel that his/her experience was worth the effort of his/her participation and journey to the Competition venue. The Organising Committee thanks you for the extra effort you give to make the feedback session a positive, constructive experience for each of the students.

2. Method for Delivery of Oral Feedback to Each Competing Team Following the Mediation

- a. During the Mediation Session each Judge should identify about **two or three** examples of behaviours and conduct by each Competing Team (ideally one for each Team member) that **either**:
- **were effective** on the other team, or produced a positive impact on the mediation (i.e. something the team should develop and use again) **or**
 - **would benefit from improvement** (i.e. something the team should think about not doing again or doing differently).

Ideally, each Judge should choose different behaviours or conduct upon which to provide feedback.

The examples should be chosen based on the actual reaction of the other Competing Team (i.e. Judges should avoid expressing their own reactions or speculating of what 'might' have been the effect on the other Competing Team).

- b. For each example feedback should be structured under four headings:
- **Headline:** What I want to comment upon: "I want to talk to you about..."
 - **Playback:** What you said or did (it must be accurate and specific). It is the most important part of the feedback because it establishes credibility.
 - **Rationale:** What was useful/What was *not* useful. Make this short, clear and credible.
 - **Prescription:** Why not try... Make sure you choose something that you can fix or improve further. You will be critiquing a skill so think about giving a demonstration.

To ensure consistent, helpful feedback Judges are asked to:

- Be direct, but not destructive;

- Avoid confusing the student by adding “buts” or inappropriate compliments;
- Avoid war stories, but to illustrate, where possible, with experience;
- Critique at the student’s level, not yours.

3. Examples of Feedback using this method

Example A:

In the Mediation that you were judging, you observed that the initial presentation by the Requesting Party was satisfactory in its content; however, you considered that the structure of the presentation was poor. You observed that this poor structure created an immediate positional reaction in the Responding Party which led to an unfavourable misunderstanding of the Requesting Party’s position and hampered the building of rapport necessary to create a collaborative environment and move the Mediation forward.

Feedback to the student acting as counsel for the Requesting Party may look like this:

Headline

“I want to talk to you about ... the structure of your opening remarks”

Playback

“In your presentation you covered all the points of relevance to your client in this dispute; however, there wasn’t a clear structure which made it very difficult to follow.

For example, you moved into a presentation of options prematurely when, ideally, they ought to be presented later, after ascertaining the other side’s interests and explaining yours. I observed, and you might have also seen, that this led to an immediately hostile reaction from the Responding Party.”

Rationale

“Lack of structure made it difficult for the other Party to respond and led to a misunderstanding in the initial crucial stages of the Mediation which cost you the opportunity to build rapport quickly and move the Mediation forward. It also created a barrier to the other side’s receptiveness to your options for settlement.”

Prescription

“When structuring your initial presentation, have in mind an ‘agenda’ of the areas you need to cover and distinguish between your client’s legal rights and interests. Try and put yourself in the other side’s position and think what their initial reaction may be to what you are about to say.”

“In order to avoid confusion, you could break down your points numerically to ensure maximum attention and understanding from the other side as to what is important to your client for the future.”

Example B:

In the Mediation that you were judging, you observed that the initial presentation by the Requesting Party was satisfactory in its content and that it was well structured. You observed that this led to a positive response from the Responding Party who adopted a similar structure which helped the building of rapport and the agreement of an agenda to move the Mediation forward.

Feedback to the student acting as counsel for the Requesting Party may look like this:

Headline

“I want to talk to you about ... the structure of your opening remarks”

Playback

“In your presentation you covered all the points of relevance to your client in this dispute; it had a very clear structure which made it easy to follow. I observed, and you might have also seen, that this led to an immediately helpful reaction from the Responding Party who embraced your structure and you were able to agree an agenda with them.”

Rationale

“This structure made it easy for the other Party to understand your perspective and your concerns. The clear presentation gave you an opportunity to build rapport quickly and move the Mediation along by agreeing an agenda.”

Prescription

“This is a good approach to take. Be mindful to adopt a structure that’s relevant to a particular problem and that you don’t fall into the trap of using the same structure all

the time. Be flexible so that you can respond to the other Party and have in mind an ‘agenda’ of the areas you need to cover. Try and put yourself in the other side’s position and think what their reaction may be and what they would like to cover.”

D. Judge's Feedback Aide Memoire Team:

Judge:

Headline: What I want to comment upon: "I want to talk to you about..."

Playback: What you said or did (it must be accurate and specific). It is the most important part of the feedback because it establishes credibility.

Rationale: What was useful/What was not so useful. Make this short, clear and credible

Prescription: “Why not try...” Make sure you choose something that you can fix or can improve further. You will be critiquing a skill so think about giving a demonstration.