



International Chamber of Commerce

The world business organization

Dispute Resolution Services - ADR

7th ICC
INTERNATIONAL
COMMERCIAL | **Mediation**
Competition

COMPETITION RULES

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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 a Party’s best case scenario would be if the Parties fail to reach an agreement.
- “Break” means a 3 minute period of time that is granted only once per Competing Team per Mediation Session (other members of the Team, the Coach and other persons are not permitted to participate in the Break) and during which the overall time of the Mediation Session continues to run.
- “Brief Biography” means each Team member’s written biography 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, 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 2012 ICC International Commercial Mediation Competition.
- “Counsel” and “Client” refer to the roles taken 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 meeting between the Mediator and both Counsel or a meeting between the Mediator and both Clients of the Competing Teams.
- “Drafting Working Group” refers to the group in charge of drafting the Competition Problems.
- “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 3.1.
- “Mediation Session” means the timeframe of 135 minute as described in Rule 2.1.
- “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 the Mediation.
- “Organizing Committee” means the official ICC group in charge of organizing and managing the Competition. Its members are mostly part of ICC ADR Secretariat.
- “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 prior to the Final Rounds.
- “Problem” means an official international commercial dispute case study distributed by the Organizing Committee, as supplemented or corrected by any Problem Clarifications, that Teams will deal with the help of the Mediator during the Mediation Sessions.
- “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 discern each other’s interests, brainstorm options and create a solution that meets their interests and needs better than their BATNA.
- “Requesting Party” and “Responding Party” mean the Competing Team which argues on behalf of the party requesting mediation or the party responding to the request for mediation respectively at any given point in the Competition. They are also referred to as “Party”. Together they are referred to as “Parties”.

- “Rules” means these Competition Rules.
- “Score Sheet” means the document in accordance with the sample set out in Annex I.A.
- “Team” means a group of 2 to 4 Eligible Students accepted by the Organizing Committee to participate in the Competition.
- “Timekeeper” means a person appointed by the Organizing Committee to keep time during a Mediation Session.
- “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

The International Chamber of Commerce 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 case 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. Further, Article 5 of the ICC ADR Rules also 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 client representation to progress towards a settlement. It is ICC’s hope that the Competition will encourage the teaching and learning of 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 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 Session, 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.

2.1.1 **Timing**

Each Mediation Session will run for a total of one hundred thirty-five minutes, eighty-five minutes of which will be the actual mediation and twenty minutes of which will be the Judges' feedback of the Teams (ten minutes per Team). The remaining Mediation Session time will include five minutes for all participants to settle in and ten minutes for the Judges to read 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:

Total time for Mediation Session	= 135 min (2 hrs and 15 min)
Time for all participants to settle in	= 5 min (2 hrs and 10 min remaining)
Time for Judges to read Mediation Plans	= 10 min (2 hrs remaining)
Mediation	= 85 min (35 min remaining)
Scoring	= 15 min (20 min remaining)
Feedback	= 20 min (0 min remaining)

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 timekeeper must leave the room during the Break, but the Coach and the other members of the Team not participating orally in the Mediation Session 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, 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 Timekeeper 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 Uses of Caucuses

Competing Teams should call for a Caucus when 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. Shares 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 how best to present it within the Mediation.

Rule 2.1.5 Scoring

If either Competing Team calls for a Caucus which in the opinion of the Judges is unnecessary or is used inappropriately, they may be penalised by the deduction of up to three (3) points from the Team's total score for the Mediation Session.

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

Rule 2.2 Judging Criteria

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

No extra points will be gained by reaching a settlement during the Mediation.

Rather, the Competing Teams are required to be explicit about their claims and to defend their interests strongly.

Rule 2.3 Mediators and Judges

In each Mediation Session, an experienced professional mediator will serve as the facilitative Mediator. Also experienced professional mediators will serve as 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.

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

Rule 2.4 Timekeeping

Responsibility for timekeeping rests with the Timekeepers during the Mediation Sessions.

The Timekeeper's decision on timekeeping is final.

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

Abuse of time limits shall result in a penalty, as stated in Rule 8.1.

Rule 2.5 *Governing Law*

Although the Problems may refer to non-fictional places, 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 Session. 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 Session. Competing Teams are prohibited from using 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 Session each Competing Team can bring their own notes and can, if need be, make their 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 one, 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 of the Team concerned. Harmless error will not be a defence 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 the future of the Preliminary Rounds.
- (d) Teams and Coaches may not attend a Mediation Session during which a Competition Problem is discussed 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**

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. The Timekeeper 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 Session.

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.

The Mediator may also provide feedback during the feedback session, after the Judges' feedback if there is remaining time available, which must also be consistent with the Judges' Feedback Guidelines in Annex IV.C.

Rule 2.12 **Winning the Preliminary Rounds**

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

Rule 2.13 **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 overall points achieved during the Preliminary Rounds;
2. total number of Score Sheets designating a "Win";
3. lowest total of the differentials between the number of points scored in each Mediation Session.

Rule 2.14 **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 30 universities after the Preliminary Rounds.

RULE 3.0 **Mediation Plan**

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

The Mediation Plan must clearly indicate the name of the University and of 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 apo@iccwbo.org at the latest on **15 January 2012**. Mediation Plans for the Preliminary Rounds will not be accepted after this date.

Teams will not be permitted to modify such 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 in the Mediation Session**

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

During the Competition, the Organizing Committee cannot 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 a team of Judges. The score received for a Mediation Plan will count for 5% of that Team’s overall score in the specific Mediation Session. The Mediation Plans will be scored on the basis of the Mediation Plan Score Sheet as provided in Annex I.

RULE 4.0 Competition Problems

Rule 4.1 Problems

Each Problem will consist of General Information for all participants 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 the Final Rounds will be provided 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 competing 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 **1 December 2011** a maximum of one written question for clarification or interpretation per Problem by the Drafting Working Group.

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

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

Rule 4.3 Staying Within the Record

Teams may draw reasonable inferences from the facts provided.

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 determine the exact number of Teams participating in the Competition.

The Organizing Committee will select Teams based on the following criteria:

- preference will be given to universities who have previously participated in the Competition;
- 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 random selection by flipping a coin.

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.

Rule 5.3 Eligible Students

(a) The Competition is open to all full and part-time university students (to the exclusion of post-graduate doctorate students) registered at 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 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 2 and a maximum of 4 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 one member of the Team only breaches Article 5.3(a) or 5.3(e), it is in the discretion of the Organizing Committee to only disqualify 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 at www.iccmediationcompetition.org on or before 21 October 2011.

The Organizing Committee will inform Teams of their acceptance or non-acceptance in late August 2011 or late October 2011 in line with the schedule published on www.iccmediationcompetition.org.

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. 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 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 or her neutrality, impartiality and independence to judge or mediate any of the Teams in the Competition and disclosing any relationships with any Team's university, a Team 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 an affiliation with a Team member and/or any Team's university or Coach which threatens neutrality, impartiality or 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.

Teams and Coaches may not directly or indirectly disclose any Confidential Information to any other person, save that Competing Teams may disclose their Confidential Information in the course of the Mediation. Failure to comply with this Rule will result in immediate disqualification from the Competition in accordance with Rule 8.1.

RULE 8.0 **Penalties and Disqualifications**

Rule 8.1 **Application of Penalties and Disqualifications**

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 can also 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 Skills
- Best Relationship Building With The Other Team
- Best Team Work
- Best Oralists
- Best Opening Statement
- Best Creative Solution Generation
- Best Interaction With The Mediator
- Best Team from a university, identified by the Organizing Committee in its list of participants as participating in the Competition for the first time

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

ANNEX I

SAMPLE'S OF JUDGES' SCORE SHEETS *

ANNEX I.A GENERAL SCORE SHEET FOR JUDGES

Mark	Initial presentation of Party's perspective	Information gathering	Interacting with the Mediator
4	Exemplary and accurate presentation of law, facts and issues with clear structure, without error. Excellently conveyed a willingness to collaborate. Cogently presented realistic and carefully planned options capable of implementation to create a settlement.	Convincing, effective & appropriate open questions delivered with clarity and precision relevant to the Client's stated objectives. Demonstrated excellent collaborative manner which encouraged the other side to share information. Demonstrated excellent achievement at testing assumptions and collected necessary information at appropriate times.	Excellently clear and effective responses to the Mediator and full use of the Mediator's interventions to help to move towards resolution.
3	Good and mostly accurate presentation of law, facts and issues with clear structure, and no material errors. Good attempt to convey a willingness to collaborate. Good presentation of realistic and carefully planned options capable of implementation to create a settlement.	Good and generally effective and appropriate open questions delivered with sufficient clarity relevant to the Client's stated objectives. Demonstrated a good collaborative manner which encouraged the other side to share information. Demonstrated a good attempt at testing assumptions and collected necessary information generally at appropriate times.	Good responses to the Mediator and significant use of the Mediator's interventions to help to move towards resolution.
2	Satisfactory presentation of law, facts and issues with some structure and occasional errors. Satisfactory attempt to convey a willingness to collaborate. Satisfactory presentation of realistic and adequately planned options capable of implementation to create a settlement.	Adequate attempt to use mostly open questions delivered with reasonable clarity relevant to the Client's stated objectives. Satisfactory demonstration of a collaborative manner which mostly encouraged the other side to share information. Demonstrated an adequate attempt at testing assumptions and occasionally collected necessary information at appropriate times.	Satisfactory responses to the Mediator and some use of the Mediator's interventions to help to move towards resolution.
1	Poor presentation of law, facts and issues with weak structure and several errors. Little attempt to convey a willingness to collaborate. Limited presentation of some options capable of implementation to create a settlement.	Little use of open questions delivered with limited clarity not particularly relevant to the Client's stated objectives. Poor evidence of a collaborative manner with little attempt to encourage the other side to share information. Limited or no attempt at testing assumptions and failed to collect necessary information.	Superficial responses to the Mediator and little or no use of the Mediator's interventions to help to move towards resolution.
0	Not displayed	Not displayed	Not displayed

* the layout of the Score Sheets are subject to change

Mark	Responding to the other Party	Active Listening	Responding to the other Competing Team
4	Excellent clear and effective responses to developments in the Mediation to help to move towards resolution. For example (1) the impact of new information upon the Party's strategy and approach to the other side; (2) recognises the other side's interests.	Exemplary active listening throughout the Mediation to the other Party and the Mediator. No instances of talking over the Mediator or the other Party.	Exemplary evidence during the Mediation of invention and encouragement of the generation of fresh options with the other Party, evaluating each of them, formulating and encouraging receipt of offers. Taking every initiative to build a problem-solving relationship with the other Party.
3	Good responses to developments in the Mediation to help to move towards resolution. For example (1) the impact of new information upon the Party's strategy and approach to the other Party; (2) recognises the other side's interests.	Good active listening throughout the Mediation to the other Party and the Mediator. No material instances of talking over the Mediator or the other Party.	Good evidence during the Mediation of invention and encouragement of the generation of fresh options with the other Party, evaluating each of them, formulating and encouraging receipt of offers. Taking most initiatives to build a problem-solving relationship with the other Party.
2	Satisfactory responses to developments in the Mediation to help to move towards resolution. For example (1) the impact of new information upon the Party's strategy and approach to the other side; (2) recognises the other side's interests.	Satisfactory active listening during the Mediation to the other Party and the Mediator. Some instances of talking over the Mediator or the other Party.	Some evidence during the Mediation of invention and encouragement of the generation of fresh options with the other Party, evaluating each of them, formulating and encouraging receipt of offers. Taking some initiatives to build a problem-solving relationship with the other Party.
1	Superficial or no responses to developments in the Mediation to help to move towards resolution. For example (1) the impact of new information upon the Party's strategy and approach to the other Party; (2) recognises the other side's interests.	Little or no instances of active listening in the Mediation to the other side and the Mediator. Several instances of talking over the Mediator or the other Party. Little or no evidence during the Mediation of invention and encouragement of the generation of fresh options with the other Party.	Little or no evidence of evaluating each of them, limited evidence of formulating and encouraging receipt of offers. Few or no initiatives to build a problem-solving relationship with the other Party.
0	Not displayed	Not displayed	Not displayed

Mark	Creative solution generation	Team work: Counsel & Client	Advocating Client's interest
4	Consistently and effectively generated a range of workable options using objective criteria which clearly met the Party's own and the other Party's interests. Took every opportunity to move the Mediation along by avoiding or overcoming potential or actual impasses. Adopted practical and realistic solutions to problems.	Exemplary division of responsibilities. Consistently effective communication with each other. Counsel consistently ensured that Client could make informed decisions about settlement proposals from the other Party.	Excellent interpretation of knowledge. Demonstrates a perfect understanding of and excellent ability to advance Client's legal and commercial positions and interests throughout the Mediation. Never sacrificed Client's interests.
3	Good generation of a range of workable options using objective criteria which attempted to meet the Party's own and other Party's interests. Took many opportunities to move the Mediation along by avoiding or overcoming potential or actual impasses. Good attempt to adopt practical and realistic solutions to problems.	Good evidence of division of responsibilities. Many instances of effective communication with each other. Frequent instances of Counsel ensuring that Client could make informed decisions about settlement proposals from the other Party.	Good interpretation of knowledge. Demonstrates a good understanding of and a good attempt to advance Client's legal and commercial positions and interests throughout the Mediation. No material sacrifice of Client's interests.
2	Adequate attempt to generate a range of workable options using objective criteria which attempted to meet the Party's own and other Party's interests. Took some opportunities to move the Mediation along by avoiding or overcoming potential or actual impasses. Adequate attempt to adopt practical and realistic solutions to problems.	Demonstrates competence in the division of responsibilities. Occasional instances of effective communication with each other. Some instances of Counsel ensuring that Client could make informed decisions about settlement proposals from the other Party.	Some evidence of knowledge. Demonstrates some competence in advancing Client's legal and commercial positions and interests during the Mediation. Some sacrifice of Client's interests.
1	Little or few instances taken to generate workable options using objective criteria which attempted to meet the Party's own and other Party's interests. Took limited opportunities to move the Mediation along by avoiding or overcoming potential or actual impasses. Little attempt to adopt practical and realistic solutions to problems.	Minimal evidence of competence in the division of responsibilities. Few instances of effective communication with each other. Infrequent instances of Counsel ensuring that Client could make informed decisions about settlement proposals from the other Party.	Insufficient evidence of knowledge. Inadequate in advancing Client's legal and commercial positions and interests during the Mediation. Significant sacrifice of Client's interests.
0	Not displayed	Not displayed	Not displayed

GENERAL SCORING SHEET N° 1

Please use legible handwriting.

Your full name: _____

University represented by the team: _____

Please cross the appropriate round:

		Morning	Afternoon
PRELIMINARY ROUNDS	Saturday, 4 February 2012		
	Sunday, 5 February 2012		
	Monday, 6 February 2012		
EIGHTH FINAL	Tuesday, 7 February 2012		
QUARTER FINAL	Tuesday, 7 February 2012		
SEMI FINAL	Wednesday, 8 February 2012		
FINAL	Wednesday, 8 February 2012		

GENERAL SCORING SHEET N° 2

PLEASE DOUBLE CHECK YOUR CALCULATION CAREFULLY!

PLEASE NOW INDICATE WHETHER THIS TEAM WON OR LOST:

this Team has: WON Total points reached: _____ /36 Penalties points: _____ FINAL SCORE: _____

this Team has: LOST Total points reached: _____ /36 Penalties points: _____ FINAL SCORE: _____

The Competing Team with the higher amount of points given by you must win. The Competing Team with the lower amount of points must lose.

There must at least be a difference of 1 point between the two Competing Teams. Accordingly, you cannot give the same amount of points to both Competing Teams

Date: _____

Signature: _____

ANNEX I.B

SPECIAL AWARD SCORE SHEET

You can nominate each team for a maximum of **three** Special Awards per round.

Only the preliminary rounds are taken into consideration for the award of Special Awards.

Please cross a maximum of three boxes according to the Special Award and the number of points you wish to award.

	Best Mediation Plan	Best Mediation Advocacy Skills	Best Relationship Building with other Team	Best Team Work	Best Oralist	Best Opening Statement	Best Creative Solution Generation	Best Interaction with the Mediator	Best Team from a university, identified by the Organizing Committee in its list of participants as participating in the Competition for the first time.
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									

ANNEX I.C MEDIATION PLAN SCORE SHEET

Please check one box for each criterion

	Excellent presentation and analysis	Good or satisfactory presentation and analysis	Poor or no presentation and analysis
The Team's BATNA			
The Team's WATNA			
"Responsibility Sharing" – explain <i>how</i> the Team plans to share responsibilities between the Counsel and the Client in the Mediation Session			
"Allocation Strategy" – explain <i>why</i> the Team chose the particular responsibility sharing			
"Your Side's Interests" – describe the interests that the Party plans to advance in the Mediation Session			
"Other Party's Interests" - describe the likely interests of the other Party			
"Other Party's BATNA" – describe the likely BATNA of the other Party			
"Mediation Strategy" – the mediation strategy in light of the preceding factors			

FINAL RESULT

(please count the above criteria and then tick the appropriate box below)

Mostly Excellent		2 Points
Mostly Good or satisfactory		1 Point
Mostly Poor or None		0 Point

ANNEX II

INSTRUCTIONS FOR PARTICIPANTS

A. Rules

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

B. Mediator

Please remember that the Competition is a mediation 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 15 January 2012 copies of its finalized Mediation Plans for the Preliminary Rounds (with copy of 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 can be no more than 2 pages in 12-point, Times new roman, 1.5 spacing.

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

Accordingly, students should plan to have at least three copies of each Mediation Plan (with copy of 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;
- (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;
- (6) "Other Party's Interests" – describe the likely interests of the other Party;
- (7) "Other Party's BATNA" – describe the likely BATNA of the other Party
and
- (8) "Mediation Strategy" – the mediation strategy in light of the preceding factors.

Teams should hand their Mediation Plans to the Judges and the Timekeeper in the beginning of the Mediation Session.

Before the Mediation Session begins, the Judges must read each Team's Mediation Plan.

The Mediator shall not read the Mediation Plans.

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.

In order to avoid disturbances, Coaches and Teams must remain in the room throughout the feedback sessions for both Teams.

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, including you as Mediator.

As Mediator in this Competition you perform the valuable role in 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.** 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.
- 3.** Please prepare well so that you understand what is required of you.
- 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 shall 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 questions in dispute but to progress towards acceptable and realistic solutions.
- 9.** As set out in B below, you are requested to adapt 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. 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.

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 by the Competing Team is not appropriate, please allow the Competing Team to take a Caucus when requested and call for one when you consider it appropriate in accordance with Rules 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 business mediation model underlying the Competition. For that reason, one can either focus on the chronological dynamic, the so-called phase model (1.), or the individual roles (2.) connected with the Mediator. Against that background, the collection of possible interventions presented in section A. 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 stage 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 stage, 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. The 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 this 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 collection.

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 provide 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 formulating 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 actors 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. It can also be his or her task to suggest ways of creating bargaining space, such as possible issue linkages. The Mediator actively engages the Parties in discussions about what assets they have respectively 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

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

Impasse Breaking

The Mediators deal with deadlocks and impasses in an active and transparent fashion, actively encouraging Parties to talk about the respective backgrounds. If necessary, he or she also uses 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 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 outside the Mediation
- testing their positions or expectations

Try these:

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

Practice 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. SUMMARISING

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...
- shame
- trivialise differences / emphasise differences / bring risks to the surface
- create doubt by testing facts / law / expectations / logic / delay / costs / stress / inconvenience / reputation / credibility...
- threaten

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 motivational pattern 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 the 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. 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.
5. All Judges must read each Competing Team's Mediation Plan (and attached Brief Biographies) before the Mediation Session begins.
6. 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.
7. **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.**
8. 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:
 - 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.

ii) To consider how, within the Mediation Session, 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.

9. **Do not penalize any Competing Teams for failing to reach resolution. Do not reward any Competing Teams for reaching settlement. Full settlement is not the point of the Competition due to the tight timeframe. Do reward Competing Teams for strategies which facilitate progression to settlement.**
10. **Do not reward good acting skills but do reward realism in the role play.**
11. 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.
12. The Judges do not have to award the same amount of number or agree on which Competing Team should be awarded more points.
13. You must indicate on your Score Sheet which Competing Team won and which Competing Team lost.
14. Accordingly, you cannot award the exact same amount of numbers to both Competing Teams. There must be a difference of at least one point.
15. You must complete a Score Sheet for each Competing Team before providing feedback.
16. Your Score Sheets will be collected by the Timekeeper after each Mediation Session.
17. 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 below after the Mediation. In order to avoid disturbances, Coaches 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 a Competing Team showing that it is capable of moving towards a collaborative outcome. Judges should consider what the Competing Team did reasonable in the production of a settled outcome.

It is collaboration that is being marked because collaboration is a true reflection of commercial or business mediation. It involves co-operation but accepts that the Competing Teams may have competing business interests. 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.

2. Consistency

In order to achieve consistency, Judges are required to award marks in line with the General Score Sheet for Judges (Annex I.A). This will enable the Judges to quickly and easily establish the standard at which the Competing Teams are performing. Marks should be awarded in line with the narrative description in the Score Sheet that most closely describes the performance of each Competing Team.

The Score Sheet must be used as the score sheet and 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.

3. The General Score Sheet for Judges

The scoring guide consists of a Score Sheet of the 9 skills and behaviours in mediation that are to be marked, shown in columns. The marks to be awarded are shown next to each narrative description of the level of skills and behaviours that must be shown by the Competing Team members. The marks to be awarded will be 1-4, with 4 as the highest. The total marks are out of 36. Judges may award 0 if the Competing Team fails to reach the standard necessary to earn 1 mark.

C. Judges' Feedback Guidelines

1. Feedback

The Score Sheet will also form the basis of the Judges' oral feedback to the Competing Teams at the end of the Mediation Session. Time for feedback is limited and so Judges should discuss only what they consider to be the one or two most important points that the Competing Team should focus upon for their next Mediation. Use of the Score Sheet will help to ensure that

Competing Teams receive consistent feedback.

Please give **measured, balanced and constructive feedback to the Competing Teams** in a manner calculated to empower them and increase their learning from this experience. Please comment **only** upon the Competing Teams' performance and **not on the personal appearances of the Competing Team. You are role models to the students** and they will take what you have to say seriously. **You should see yourself as a mentor who carefully chooses words** when evaluating the Competing Teams' work and keep in mind that the Teams have invested significant extra-curricular time and money to participate in the Competition. They are in a vulnerable state when receiving feedback from you under the conditions of the Competition. Therefore, your approach to giving feedback must be tied to the judging Score Sheet as opposed to your "real world" experience. **You are not allowed to share with them your scoring results.**

The Organizing Committee wants each student to feel that his/her experience was worth the effort of his/her participation and journey to Paris. The Organizing 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. Each Judge should choose two headings only from the Score Sheet upon which to give feedback to each Competing Team. Ideally, each Judge should choose different headings.
- b. The method for delivery of the feedback to the Competing Teams must, without fail, in every instance follow the structure set out below:
 - **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:** Why it did not work. Make this short, clear and credible
 - **Prescription:** Why not try... Make sure you choose something that you can fix. You will be critiquing a skill so think about giving a demonstration.

This is a method of feedback devised by the USA-based National Institute for Trial Advocacy (NITA®) and is widely used in advocacy training. It also ensures consistent feedback that is direct but not confrontational.

- Be robust, but not destructive;
- No "buts" or inappropriate compliments;
- No war stories, but illuminate where possible with experience;
- Critique at the student's level, not yours.

3. Example of Feedback Using the NITA® Method

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. 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 on this observation may look like this:

Headline

"I want to talk to you about... your initial presentation of your perspective"

(take the headline from the Score Sheet)

Playback

"In your presentation you dealt with the law, facts and issues; however, it was without any clear structure which made it very difficult to follow. For example, on three occasions, you set out your client's commercial needs and interests in this dispute as rights and duties under the law. It was therefore difficult for the other side to establish your position and 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 an initial misunderstanding in the initial crucial stages of the Mediation which cost you the opportunity to build rapport quickly and move the Mediation along. It also created an immediate barrier to the other side's receptiveness to your options for settlement."

Prescription

"When structuring your initial presentation, consider the other side's likely initial reaction to it and temper your approach accordingly. That is not to say you should "water down" your position on the issues and your approach to their resolution but merely to consider the most effective, empathetic and co-operative way in which you may make your points which will facilitate moving forward in the Mediation."

"In order to avoid confusion, 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."