Communication, Advocacy and Teamwork

A Package of Student Learning Resources

This package of learning resources is designed as a supplement to the DVD More Than Words and aims to support students as they progress through the Law Faculty’s Skills Development Program at the University of Tasmania.

The Project Team
Julia Davis, Ken Mackie, Deb Bowring and Frances Wayman hope that you will find these resources useful during your time at Law School and wish you good luck in your future employment.
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One of the most common student concerns is the well-known fear of public speaking, yet, despite their fears, an overwhelming majority of law students want to learn how to communicate more effectively and how to cope with nerves. Another challenge arises from the fact that students must learn to use the law’s technical terminology and jargon, but at the same time, they need to be able to communicate:

- clearly,
- precisely, and
- without over-indulging in jargon and technical words.

At first students may feel uncomfortable when they have to use unfamiliar legal language and conform to the rather artificial rules of legal etiquette – and this can add to the anxiety that they encounter when doing legal presentations and moots. This anxiety can be exacerbated under pressure when a lecturer or a moot judge interrupts a presentation to ask questions or debate the law with the student. Performance anxiety is common, however, and is experienced not only by students doing class presentations, but by practising professionals as well. The secret is to learn how to control your performance despite the sensation of anxiety – not in hoping and waiting for the anxiety to disappear. By learning to accept your nerves and focus instead on controlling what you do instead of trying to control how you feel you can improve your performance each time you have to do a presentation. These Learning Resources will explain how you can continue to communicate effectively even though (like many others in the profession) you may experience performance anxiety.

**What is advocacy?**

Advocacy is a special kind of communication. It is the art of persuasion – or convincing listeners to accept and adopt a particular position, belief, attitude or point of view. Advocates may seek to persuade their audience of the correctness of:

- their version of the facts of a particular case, and / or
- their view of the proper response to the facts of a particular case.

Richard Crawford defines persuasion in The Persuasion Edge (Professional Education System, Wisconsin, 1989) as the process of seeking ‘to induce co-operation from others through the use of symbols’ and he explains at 1 that:

Persuasion is the fuel which powers the engines of commerce and industry, government, religion, education, the justice system and all other human institutions. Persuasion is a part of the daily lives of teachers, shopkeepers, parents, social workers, entertainers, journalists, politicians, and all others who interact in personal or professional ways with people.

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3 A recent survey of over 350 law students at the University of Tasmania shows that whilst 96% believe that oral communication exercises are a worthwhile part of their degree studies (even if they also report that they have a fear of public speaking).
module 1

Three Essential Skills: Communication, Advocacy and Teamwork
Why do we teach communication, advocacy and teamwork skills?

There are three reasons why universities focus on skills training and why law schools in particular focus on communication, advocacy and teamwork:

- Employers demand graduates with these three skills.
- Students need good communication and advocacy skills to perform well in job interviews and enter the workplace.
- Communication is an essential life skill and is the foundation of successful advocacy and teamwork.

Your future employers want graduates with skills

Lawyers and good advocates need to be able to communicate clearly, effectively and collaboratively with a wide range of people, for example:

- employers
- supervisors and co-workers
- clients
- representatives of other firms and organisations, eg, other lawyers
- judges
- juries
- witnesses
- court officers
- police

Even if students do not plan to enter the legal profession, all graduates will need these skills in the workplace, as Module 2: Career Planning explains.

Job interviews require communication and advocacy skills

Communication and advocacy skills will help you not only to be successful in your job itself, but also to be successful in the interview that will help you to get the job you want. You need to learn how to be an effective advocate in your own cause and how to persuade your potential employer that you are the best person for the position. This process of skills acquisition begins at university long before you have to participate in the interview and it is important to realise that you will have both the time and the support that you need to develop your skills and your confidence.
What is communication?

**Communication** is the conveying or interchange of thoughts, opinions, knowledge, information or meanings by speech, writing, signs or conduct. The process of communication requires at least two parties and a message:

- the sender of the message, and
- the receiver of the message.

**Successful oral communication depends on:**

- Understanding yourself and finding the best communication style to match your personality, your strengths and your weaknesses.
- Realising that communication occurs at both the verbal and non-verbal levels.
- Learning how to prepare and construct a clear and effective message.
- Knowing how to engage with your audience.
- Learning how to manage nerves and performance anxiety.

**Communication is an essential professional skill**

Law graduates, like all graduates, need good communication skills in the workplace, whether they intend to practise law or whether they seek employment in other fields like the public service or the private sector. Oral communication skills are required in almost every form of employment. Interestingly, one of the most common complaints about lawyers is not that they do not know the law, but that they do not know how to communicate, either with their clients, with judges, or with other lawyers.¹ Studies have identified two main areas of dissatisfaction, including: problems interacting with clients, and problems interacting with other professionals.

**Communication is an essential life skill**

You need communication skills not only in the workplace and in job interviews, but also in everyday life. Bruce Elder points out that communication skills are central to human life because of the huge impact that they have on ‘a person’s happiness, success and sense of personal worth’ and he reminds us never to underestimate their importance:²

The unemployment queues are full of people whose services are no longer required, not because of incompetence, but because of misunderstandings in the workplace which led to major communications breakdowns and unpleasant conflicts. And the courts, particularly the divorce courts, are full of people telling each other that they couldn’t communicate their emotions and feelings to each other.

These resources will help students learn how to become successful communicators who can manage their fears, construct effective presentations and deliver them in a range of different settings.

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² Bruce Elder, Communication Skills (MacMillan, 1994) at 2.
You can learn how to manage your nerves

One of the most common student concerns is the well-known fear of public speaking, yet, despite their fears, an overwhelming majority of law students want to learn how to communicate more effectively and how to cope with nerves. Another challenge arises from the fact that students must learn to use the law’s technical terminology and jargon, but at the same time, they need to be able to communicate:

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Richard Crawford defines persuasion in *The Persuasion Edge* (Professional Education System, Wisconsin, 1989) as the process of seeking ‘to induce co-operation from others through the use of symbols’ and he explains at 1 that:

> Tuition is the fuel which powers the engines of commerce and industry, government, religion, education, the justice system and all other human institutions. Persuasion is a part of the daily lives of teachers, shopkeepers, parents, social workers, entertainers, journalists, politicians, and all others who interact in personal or professional ways with people.

Crawford emphasises that the essential component of *persuasion* is *communication* through ‘language, verbal and nonverbal behaviour and all other visual, sensory and auditory means which exist for the allowing people to transmit thoughts, ideas, or feelings.’

**Successful legal advocacy requires:**

- Successful *communication*, including understanding yourself (your strengths and weaknesses), understanding your message, and understanding your audience;
- Preparation and hard work;
- Knowledge of the subject matter and the decision-making process;
- Integrity, respect, courtesy and a sense of duty;
- Imagination coupled with common sense; and
- Courage, confidence and patience.

These resources will introduce students to the art of advocacy and provide advice on how to prepare for mooting, which is a compulsory task that involves both advocacy and team work. They also provide useful assistance for the research based aspect of the mooting exercise and a guide to advanced legal argument.
What is teamwork?

Teamwork is the co-operative effort by the members of a group to achieve a common goal.

Successful teamwork requires:

- Successful communication, including understanding yourself (your strengths and weaknesses), understanding your message, and understanding your audience (i.e., your fellow team members);
- A shared commitment to the group and to the project and a willingness to subordinate personal achievement to group achievement;
- Tolerance, respect, co-operation and patience; and
- The ability to make decisions, deal with problems and achieve consensus.

Many of the skills exercises at Law School require successful teamwork. Many students find group work to be a difficult challenge, but role plays and moots are essentially group activities, and given the frequency with which all graduates have to work as members of work teams once they find employment, these skills are well worth mastering. As a recent recruitment advertisement for one of Australia’s leading law firms, Hunt & Hunt, makes clear:

*We are looking for ambitious, bright and enthusiastic people who are team players and who enjoy working collaboratively to create real solutions and achieve common goals.*

The resources in this workbook will introduce students to the challenges of working together in groups and explain some solutions to the difficulties commonly encountered in group work.

Communication is an essential component of good advocacy and good teamwork

Communication is a foundational skill. Successful advocacy and successful teamwork both depend on successful communication. Everyone has different strengths and weaknesses and it is important to realize that there is no one set style of communication – or advocacy – that you have to model yourself upon. There is no ‘single perfect ideal’. As you will see in Module 2, law firms understand that effective interpersonal skills exist both in extroverts and in quiet, strong personalities.

The Faculty of Law has developed an integrated program that aims to develop the communications skills of all law students. This program requires students to take a series of graduated steps that lead from a straightforward five minute oral tutorial presentation in their first year in Torts classes through to a full-scale 30 minute advocacy exercise conducted in the Supreme Court of Tasmania in the final year. At each step in the program students will be provided with practical exercises and feedback to assist them to:
• Become aware of the essential components of oral communication, advocacy and teamwork;
• Practise the skills in incremental steps over a 3-4 year period;
• Defuse the tension associated with public speaking and skills acquisition;
• Prepare themselves for the workplace; and
• Become reflective life long learners who can build upon their experiences and improve their skills.
The Skills Map: all students follow the same progression

1. Torts: First year – five minute case analysis
   - Focuses on the basics and the core skills (5 minutes);
   - A straightforward reporting task – no critical analysis or questions;
   - No handouts;
   - No visual aids;
   - Given to a small familiar audience in tutorials.

2. Property Law: the middle year – ten minute interactive exercise
   - Expands from the basics to include questions (10 minutes);
   - Critical analysis required;
   - Handouts encouraged, use of whiteboard OK, but no Powerpoint, etc;
   - Part of the marks allocated for handling questions;
   - Given before a small familiar audience in tutorials.

3. Criminal and Civil Procedure: final year – fifteen minute case report
   - Students work in pairs – teamwork, preparation and consultation is essential;
   - Presentation involves an oral report and questioning by the lecturer;
   - Written report is required;
   - Given to a larger audience in a lecture or seminar.

4. Culminates with the Moot Court in final year
   - A full scale mock advocacy event in the Supreme Court of Tasmania;
   - 20-30 minutes before a bench of judges;
   - Full analysis, legal argument and debate required.

In the final two years students may do more presentations and role plays in the electives, so check the unit outlines for details. One of the skills modules in the film More Than Words shows the advocacy exercise conducted in the Sentencing Law elective unit where groups of students participate in a role play based on the sentencing process.
How to use the Student Learning Resources Pack

These resources contain advice on the four main skills that you will need to participate in the skills program at Law School, namely:

- oral communication,
- advocacy,
- teamwork, and
- the legal research skills necessary to support the skills tasks.

A Reminder about Legal Research Training

All students are given extensive training in legal research in the compulsory subjects of the law degree, and consequently the focus of the Student Learning Resources Pack is on providing useful help sheets covering the basics of legal research that will serve as a reminder or refresher of those research skills. You are urged to retain the more detailed training materials on Legal Research given out in each of the compulsory subjects and refer to them as required. The shorter Help Sheets available at the end of this Pack are:

1. Finding Law Reports
2. Finding Unreported Judgments
3. Finding Sentencing Decisions
4. Using Case Citators
5. Finding Cases on a Topic
6. Finding Cases that consider a Word or Phrase
7. Finding Journal Articles

More Than Words

Each module contains advice on how to prepare for the skills exercises depicted in the DVD More Than Words. They will assist you to monitor your own skills development and to engage in a process of reflection that will provide evidence of your achievements and your awareness of the importance of these essential skills. The students appearing in this DVD were all students who have passed through and benefited from the same skills program that you are about to enter. We encourage you to use these resources to plan for your future and to begin collecting evidence of your success from the start of your first year at Law School.

The Student Learning Resources Pack contains the following modules:

Module 1 Three Essential Skills: Communication, Advocacy and Teamwork
Module 2 Career Planning
Module 3 The Torts Presentation
Module 4 The Property Presentation
Module 5 The Sentencing Role Play
Module 6 Mooting
Module 7 Employment Strategies: Portfolios, Applications and Interviews
How to improve your skills and monitor your own development

Do not worry if you do not yet possess these skills: they can all be learned with practice. We know that employers look for graduates who want to develop their expertise, who can learn on the job, and who constantly seek to improve their skills throughout their working lives. The following quote from Blake Dawson Waldron’s website explains that they are:

*Looking for people who will thrive in our high performance culture, who share our values and who want to grow and develop professionally. A willingness to learn is important because we encourage our people to value learning as a lifelong activity.*

Consequently, each of these modules closes with a reflective exercise so that you can monitor your own skills development, plan for the future and demonstrate to potential employers that you are a reflective learner who has already put a self-development project into practice. Each of these exercises for the four skills tasks takes the same format, which is outlined below and developed in greater depth in the pages that follow. The first stage emphasises preparation, planning and practice before you have to go and perform your skills exercise. The second stage does not end with the performance itself: it should always involve building regular review and reflection into your personal skills development.
A: Prepare, Plan and Practise – before your skills presentation

**Prepare** by identifying the issues, setting goals and doing the research.
**Plan** by constructing a clear, logical and effective message.
**Practise** by seeking feedback on your content and delivery.

B: Perform, Review and Improve – after your skills presentation

**Perform** by managing nerves and connecting effectively with the audience.
**Review** by assessing your preparation, planning, content, and delivery.
**Improve** by actively seeking out solutions to any problems.

This template can be expanded upon and adapted to suit most kinds of skills tasks.

A: Prepare, Plan and Practise – for your skills presentation

**Prepare**

Identify your aim, purpose or goal.
Identify the issues that you must deal with to achieve that goal.
Do the research to master the relevant content.
Put together a task list and timetable (either on your own or with your team).

**Plan**

Construct your message:
Is it clear?
Is it logically structured?
Is it purposeful?
Is it effective?
Does it flow from: the beginning – to the middle – to the end?
Does it engage the receiver's attention?

**Practise**

Do a trial run.
Seek help and feedback on the content of your message and your delivery.
Improve either the content or the delivery after feedback.
(Note: once you become more confident you may not need this phase.)
B: Perform, Review and Improve – after your skills presentation

Perform

Learn to live with your nerves and anxiety – rather than fight them.
Focus on controlling what you do, rather than trying to control how you feel.
There are four keys to a controlled performance:
a) control your breathing,
b) control your speed, volume and tone of voice,
c) control your eye contact with the group, and
d) control your body language.

Reach out to connect with the audience.
Respond to the audience by becoming part of the circle of communication.

Review

Soon after the performance, conduct a personal review and appraisal of the event and make a list of what worked and what needs to be improved. How could you improve your:
Preparation?
Planning?
Content?
Performance?

Improve: make a new plan to develop your skills and to document your progress.

One useful way to review your own performance or to assist in reviewing the performance of others in communications exercises is to do a SAP review, which focuses on Style, Attitude and Preparation. Bear in mind as you watch the presentations of your classmates (and your lecturers or performers on television), that you can always learn something from every presentation, no matter how brilliant or how bad the presentation is.

So, if you are enjoying a presentation – ask yourself what it is about that presentation that makes it so effective – and steal the trick from them. If a presentation is not working, do not tune out – ask yourself what feature is destroying the presentation – and learn how to avoid it in your own presentations. If you adopt an analytical and inquiring approach not only to your own presentations, but to the presentations of others you will improve your own understanding and performance.

A final tip

At the beginning, do not compare yourself to professional communicators like TV presenters, film actors or experienced barristers. Start by watching the DVD More Than Words, which was acted by real students. Compare yourself to other students who have gone through the program before you and remind yourself that everyone starts as a beginner and gets better with effort, analysis and practice. Read everything you can about communication and advocacy, go and watch experienced performers in public lectures, courtrooms, comedy clubs, etc. Have faith in yourself and you will learn how to become a successful communicator.
Do a SAP Review: Style, Attitude, Preparation

Style

Voice: too fast, too soft, too many ‘ums’ and ‘ers’
Consider the cause: too excited and eager? too nervous? did not realise or even notice?
Eye Contact: looking up – or looking down at your notes too much?
Body Language: fidgety or still? hunched or open? too many/ few gestures?

Attitude

Were you yourself?
Were you: scared, unconfident, combative, aggressive? too flashy, over-acting, over-dramatic, playing for laughs? confident, calm, controlled, engaging, knowledgeable, polite, respectful?

Preparation

Did your notes help or hinder?

Reflect

What did you learn from watching yourself?
What did you learn from watching others? (steal from them!)
Start your skills portfolio now

We suggest that you purchase a large two ring binder which can be used to store:

- The seven Modules contained in the Student Learning Resources Pack, which will be available for download on your unit’s web-based homepage.
- The Legal Research materials that you will receive in the compulsory core unit training sessions.
- The feedback sheets containing your lecturer’s comments on each of your skills exercises.
- The review and planning exercises that are contained in each of the Modules and which will assist you to improve your skills and plan for the future.

The first two items will help you to participate in the skills development program over the next few years. The final two items can be used as sources of evidence of your achievements in your applications for employment and as sources of anecdotes and stories to talk about in your interviews.
What kind of job do you want?

You should start to think about the kind of job that you want right from the beginning of your first year at Law School. This is because most employers have a strong picture of the kind of employee that they want – and it is your task as an applicant for any job to show your potential employer how you fit into their picture. However, you may not currently possess all of the skills and attributes that you need, so it is important to give yourself time to plan for success.

Law students may seek employment in many different kinds of jobs in either the private or the public sector, including: small local law firms, large national law firms, small or large business organisations, or perhaps the public service.

• In the public sector, you will usually find that there is a defined and precise set of selection criteria laid down for each job. You have to address each criterion and provide evidence that you can satisfy each standard.

• In the private sector, you will usually find that the requirements are often less specific, but each employer will still want an employee that will fit into the culture of the firm, and it is your task is to find out what your preferred firm is looking for and to show them that you will fit well into that culture.

You will find a much longer list of some of the occupations that law students commonly enter in Module 7: Employment Strategies.

Skills are in high demand

Many of the jobs that law graduates most frequently apply for require objective evidence of a range of different attributes, including oral communication skills, interpersonal skills, legal research and organisational skills, for example:

• Effective oral communication skills;
• Self assurance and confidence in a range of situations;
• Awareness and sensitivity to the needs of others;
• Ability to work effectively as a member of a team and to develop productive working relationships with others;
• Demonstrated ability to present clear and persuasive legal arguments to a range of different stakeholders, including lawyers, judges, clients, public service authorities and members of the public;
• Adaptability, flexibility and the ability to deal with challenging situations;
• Ability to be responsive to feedback;
• Organisational skills; and
• Ability to carry out legal research tasks in a timely and effective manner.
You need to start planning now: what skills and attributes do you need?

Take a look at the sample job specifications contained in this Module. They come from both the public and the private sectors. Test your current state of skills development by printing out the sheet at the end and making a list. If you do not yet have all of the attributes or skills that you need, then you need to make a plan to attain those skills in your remaining years at Law School. Once you have worked out a list of possible jobs, you need to list the skills and attributes that those jobs require – and then you need to begin putting together an employment portfolio that records not only the skills that you have developed, but also contains sources of objective evidence showing that you have acquired them.

Before you can start to plan for your career, you need to answer these four questions:

• What jobs do I like?
• What skills and attributes do I need to get those jobs?
• How can I develop these skills?
• What evidence can I use to prove that I have them?

Start your career portfolio as soon as possible

A career portfolio is a collection of materials documenting your

• employment history
• professional development
• achievements
• employability skills
• career plans
• job applications and related information.

One of the purposes of starting and maintaining a career portfolio is to organise your own thoughts about your career development. Compiling a career portfolio is a process which will enable you to develop a greater awareness of your life, and your learning and work competencies. The process of compiling a career portfolio involves both reflection and analysis. It gives you a place to store information about yourself, which will help you to look at career options, helps you identify your skills, and make decisions and plans.

Some of the items you include in your portfolio will need to be tailored for each individual application:

• your résumé (focusing on the particular skills required for the job)
• cover letters (usually no more than one page, referring to the job application and giving a brief summary as to why you would be suitable)
• selection criteria (in your responses you must demonstrate the capacity to which you have knowledge of and experience in each criterion)

Other things suitable for your portfolio might include certificates, reference letters and referee lists, educational records, awards, previous applications, personal and career plans, and job descriptions. More specific items can be added, depending on your particular field of interest. Your career portfolio will change as your life changes. Even when you are working, try to keep your portfolio current. Anything you save and organise now will help you prepare for a future job search or career transition.

You should start to put together a portfolio of all of your oral presentations to use as evidence when you apply for jobs. As you go through the Law School you will be doing different kinds of presentations and role plays and you will be working alone as well as in groups. Record these events in your portfolio so that when you apply for a job, you can use these experiences as evidence of how you have developed these essential skills. Keep your feedback sheets in the portfolio as well, and you will be able to include quotes from your lecturers and tutors in your applications as evidence of their objective assessment of your achievements. If you carry out the review exercises and file them along with the feedback sheets from your lecturers, you will be able to cite them as evidence of your commitment to self-improvement, personal development and lifelong learning.

‘We encourage our people to value learning as a lifelong activity.’

*Blake Dawson Waldron*

‘We look for people who are people first and lawyers second – people with imagination, enquiring minds, energy and a desire to learn.’

*Allens Arthur Robinson*

**Planning Exercise**

Print out the sheet at the end of this module entitled ‘My Profile’. Then look through the attributes listed in the table below, making notes on:

1. The attributes and skills that you have already developed, and link them with your sources of evidence.

2. The attributes and skills that you need to develop, and link them with your plan for developing them.
The Skills Challenge

Read through the job descriptions and employment attributes in this Module:

• What kind of jobs might you want to apply for?
• What skills and attributes do you need to get that job?
Employment Attributes in the Public Sector

**Australian Public Service: graduate employment**

1. Problem solving skills and sound judgement
2. Ability to achieve results
3. Ability to develop productive working relationships
4. Demonstrated personal drive and integrity
5. Ability to communicate effectively

**Australian Youth Ambassadors for Development Program**

1. Cultural awareness and sensitivity to the needs of others and how this will assist with meeting assignment objectives.
2. Self-assurance and confidence in a range of situations.
3. Good communication and interpersonal skills that enable you to work well with other people.
4. An ability to solve problems using limited resources and facilities.
5. A desire to learn and assist others to learn.
6. Adaptability and flexibility enabling you to deal with challenging situations as they arise.
7. A demonstrated motivation to live and work in a developing country and undertake the particular assignment for which they are applying.

**Crown Counsel: Department of Justice**

1. Demonstrated knowledge of the common law and legislation relating to issues facing the Crown and its instrumentalities.
2. Demonstrated ability to undertake high level research.
3. Demonstrated knowledge of the principles of statutory interpretation and an ability to apply them in complex situations.
4. High level communication skills enabling provision of clear concise written and verbal advice to specialists and non-specialists, and the ability to engage in effective and positive interactions with a broad cross-section of State Servants and legal professionals; and to deliver legal education seminars.
5. Computer literacy skills appropriate to the independent performance of tasks required of the position.
6. Demonstrated organisational skills which enable the co-ordination and management of a variety of tasks at the same time, and the planning and completion of work activities within predetermined timeframes and to specified performance standards.
7. Demonstrated capacity to work effectively and co-operatively within a small team environment.
Judge’s Associate in Tasmania

1. Ability to carry out legal research tasks in a timely, accurate and effective manner.
2. A broad understanding of or experience in court administration including a knowledge of legal terminology, and an awareness of established practices and procedures, or the capacity to quickly acquire such knowledge and skills.
3. Well developed communication and interpersonal skills with an emphasis on the ability to communicate clearly, accurately and diplomatically at all levels.
4. Demonstrated clerical and organisational skills together with effective skills in using current office technology to deliver services; particularly database and word processing skills.
5. Effective self-management and time management skills, with the capacity to adapt and participate in organisational change and team based problem solving and to deal with multiple tasks simultaneously.
6. Ability to work either individually or as part of a team in the efficient and timely delivery of professional client services.

Associate to a Judge of the District Court (NSW)

Knowledge & Experience
1. Completion of secondary schooling.
2. 2 years full-time or four years part-time technical, administrative, legal or commercial training or studies, and/or equivalent knowledge and skills gained through relevant experience (eg, 4-5 years working experience in these type of fields).
3. Proven keyboard skills and experience in word processing are essential. A knowledge of or experience in computer operation is required. Practical experience with standard office equipment, eg. fax, photocopier, etc, is also required
4. An understanding of, or a demonstrated ability to quickly comprehend, the Court’s operations and procedures.

Interpersonal Skills
5. As Associates are in regular contact with the Court’s clients and stakeholders, often on sensitive issues, they must possess tact and diplomacy in order to provide and obtain information, or to convince clients to recognise a particular situation.

Job Environment
6. Incumbents must be capable of discretion and able to develop/modify operational methods or specific operations (as distinct from organisation-wide), policies and practices to suit a Judge.
7. Work situations are governed by precedent, rules, guidelines, procedures and/or instructions that must be understood, and incumbents must be able to discriminate between alternative courses of action.
8. Associates may be required to travel extensively throughout the State and incumbents must be willing to undertake this travel, which can include absences from Sydney for up to five weeks.
Service/Support
9. Incumbents must be capable of providing timely and accurate information and/or services that are critical and necessary for others to make decisions affecting the court system and trial processes, or for use by others in accordance with pre-determined routines and practices.
10. Incumbents will possess the qualities to fill a position that is highly influential and has a model role in the Court’s operational functions.

Legal Officer Grade 1 Commonwealth DPP

1. An interest or aptitude for the practise of Commonwealth Criminal Law including a knowledge of the environment within which Commonwealth prosecutions are conducted.
2. Demonstrated ability to conduct legal research efficiently and, dependent on experience, provide advice on legal and policy issues.
3. Good interpersonal skills and demonstrated ability to work as a member of a team.
4. High level of self-motivation and demonstrated ability to organise work and set priorities.
5. Well developed oral and written communication skills and a demonstrated ability to provide oral and written advice.
6. Ability to liaise with client agencies and other organisations.

Higher Level Australian Public Service: working in human rights

1. Highly motivated;
2. Strong analytical, communication and coordination skills and able to liaise on a range of multilateral and bilateral human rights issues;
3. Able to:
   provide high quality inputs into delegation briefings and advise on human rights issues before the UN Human Rights Council and the UNGA Third Committee;
4. assist with human rights dialogue processes and monitor associated developments;
5. advise on policy issues including women’s rights, children’s rights, disability rights and the right to development;
6. prepare briefings on these issues and draft human rights assessments of defence exports and reply to Ministerial correspondence;
7. organise consultations with NGOs on human rights issues and liaise with Amnesty International Parliamentary Group;
8. administer DFAT’s human rights training courses.
Complaints Officer, Clerk, Grade 3/4 NSW Ombudsman

Role: Handle a caseload of less complex investigation matters and unsuccessful informal dispute resolution matters. Handle telephone inquiries. Provide administrative support to the police team, including assistance with research projects, audits and intelligence gathering as required.

1. Research and analytical skills.
2. Capacity to work in a high volume team environment.
3. Conflict resolution and negotiation skills.
4. Good written and oral communication skills.
5. Word processing skills.
6. Possession of generic selection criteria, that is, understanding of and commitment to ethical practices, equal employment opportunity, cultural diversity and occupational health and safety.

Internship Vacancies in the Federal Court of Australia, International Programs

1. Demonstrated motivation and interest in international development, particularly in the law and justice sector.
2. Strong interpersonal and communication (oral and written) skills, including the ability to establish and maintain effective working relations with persons of different national and cultural backgrounds.
3. Demonstrated planning and organisational skills, and ability to work to deadlines and handle concurrent projects.
4. Strong analytical skills and ability to conduct comprehensive research on a range of legal issues.
5. Fully proficient computer skills and ability to use relevant software applications, in particular, information databases, internet, Microsoft Office applications, internet and library resources.
6. In-depth knowledge of the Australian legal system and awareness of Court processes. Knowledge of other legal systems and processes is a distinct advantage.
7. Demonstrated professionalism and ability to collaborate with others to achieve results.
Employment Attributes in the Private Sector

What Graduate Attributes do Law Firms Look For?

Law firms want graduates who will fit well into the culture of the firm. Many of the leading law firms have defined and explained the kind of attributes that they are looking for in their graduate recruits. Check with the firm’s website for the latest version. If you wish to apply to smaller firms, you will need to do some research to find out what kind of firm they are and what they are looking for in an applicant.

Allens Arthur Robinson

Imagination, Interests, Intelligence.

We are looking for interesting people with strong academic results who are motivated, show initiative, have strong interpersonal skills and lead balanced lives.

Allens doesn’t have one ‘ideal graduate’ profile. Our clients value individuals with energy, intelligence and creativity. We look for people who are people first and lawyers second – people with imagination, enquiring minds, energy and a desire to learn.

Arnold Bloch Leibler

Confidence, proactive, creative, imaginative, lateral thinking, time-management, academic excellence, enthusiasm and willingness to learn, extra-curricular activities, sense of humour.

We look for candidates with the ability to adapt and work within ABL’s culture, to learn and develop skills and practice innovative commercial law. We also seek the right attitude towards work, colleagues and an ability to contribute to the ABL environment.

Baker & McKenzie

We always seek out candidates with outstanding people skills, commerciality and a sound legal mind. We are most interested in the total contribution a candidate can make to our firm. We value diverse backgrounds and experience, intellectual curiosity, emotional maturity, stamina and loyalty, in addition to a solid academic record, imagination and entrepreneurial instincts.

We have always stressed individual responsibility and to be successful at our firm, a lawyer must be comfortable working in an informal environment and have the initiative and imagination to deal with novel legal issues. We look for:
• Sound university results.
• People who have participated actively in university-based student bodies, or activities such as mooting.
• People who have active interests outside of university - sporting, community involvement, previous work experience, languages and travel.
• Graduates with a passion for strengthening trends towards globalization

**Blake Dawson Waldron**

We are looking for people who will thrive in our high performance culture, who share our values and who want to grow and develop professionally. We seek people who will be able to contribute to our future growth in the challenging and competitive markets in which we operate. Your academic results are important in our decision-making, so too are your personal qualities and characteristics. During our interview discussions we will be looking for your team focused approach, and your likely aptitude to apply your knowledge and experience for the benefit of our clients. We recognise it is equally important at this stage to assess whether Blake Dawson Waldron is the right firm for you.

• Ability to build rapport with a range of people;
• Ability to work in a team based environment;
• Academic ability;
• Demonstrated interest in a commercial legal environment;
• Resilience and motivation;
• A commitment to excellence in work and client service;
• A willingness to learn is important because we encourage our people to value learning as a lifelong activity.

**Clayton Utz**

Solid academic results are a must but we also look for individuals who are well-rounded as evidenced by a broad range of experiences and certain behavioural skills such as time management, initiative, goal setting, team work, an understanding of client service and motivation. However, most importantly they need to be the right cultural fit.

Initiative, creativity, teamwork and motivation. Talented & intelligent who expect the best from themselves and can work together to create real solutions and achieve common goals.

There is no ‘ideal’ and there is not one single ‘mould’ into which we try to make people fit. We value client relationships highly, so our graduates need to be personable, practical, commercially savvy and flexible. They also need to be intelligent, motivated, not afraid of a challenge; well-rounded people with a balanced life and interested in contributing to the community.
Corrs Chambers Westgarth

Corrs seeks well-rounded individuals, with a proven academic record and a commitment to legal excellence. We are particularly interested in students who have gained broad experience and challenged themselves—e.g., community work, leadership programs, travel, sports, and artistic pursuits. Displaying a passion for business and the law, e.g., by participating in mooting and prior legal or commercial work experience. Common sense, dedication to client service and the ability to explain complex issues in simple terms. Able to appreciate that a team approach is required to deliver outstanding results for clients.

We are looking for candidates who have a sound academic record, who want to work hard and demonstrate their ability and initiative, and someone who has good interpersonal skills.

Intelligent people, common sense, an instinctive mind for business, outstanding communicators, mature, willing to go the extra mile.

Deacons

Our values: united, performing, focused and innovative. You will be achievement orientated, collaborators, and creatively motivated. Life experience is highly regarded and you need strong interpersonal skills. Keep in mind that strong interpersonal skills exist in extroverts as much as they do in quiet yet strong personalities and at Deacons this range of personalities is important.

We focus on providing commercially switched on advice to our clients. We seek individuals who are intelligent, innovative and like to work within a team to achieve results.

Academic results, extra-curricular, teamwork, initiative, enthusiasm, energy, oral and written communication skills, commitment to excellence; a genuine passion for law, being part of a great team working with clients and colleagues.

Ebsworth & Ebsworth

Our ideal graduate is keen to learn. They need to pick up concepts quickly, think on their feet and show good problem solving skills when challenges arise. Our ideal graduate is organized, able to meet deadlines, shows excellent time-management skills, has achieved reasonable grades at university, and takes responsibility for their career.

They need:
• Work experience, but not necessarily in law;
• Good listening skills, great communication skills,
• A focus on client service;
• The ability to draw legally correct solutions from facts; and research and convert them into the commercial context;
• Involvement in activities outside work; and
• A sense of humour when the pressure is on.
Freehills

Freehills doesn’t like to put people into boxes. Instead, we focus on attracting students who have the ability, the ambition, and the passion to excel in a commercial environment. We look to identify these qualities by assessing things like academic results, extracurricular interests, and life experience outside study. Students should look to demonstrate how they can work effectively as a team member, and that they have a practical, problem-solving approach to their work. We are looking for people who are comfortable working with others and who possess the interpersonal skills to interact with our clients effectively.

Extra-curricular interests, academic results, life experiences. Time management skills, insightful, intelligent people with ambition, energy and enthusiasm.

Gadens Lawyers

Personality, enthusiasm and an understanding that a Gadens lawyer is in the business of providing commercial legal solutions.

Motivated, ambitious, creative and commercial people who can use their skills and intelligence to solve problems, exploit opportunities and grow with us. We aim to lead through innovation.

Gilbert + Tobin

The ideal Gilbert + Tobin graduate is bright, ambitious, self-motivated with an entrepreneurial approach – someone who likes a fast pace, doesn’t mind rolling up their sleeves and can push themselves to achieve in a challenging environment.

We want:
• Forward thinking, commercially and socially progressive people who look to the future and like to be challenged;
• People who are willing to speak their mind – we encourage independent thinking and open communication.
• People who want to make a name for themselves and who have a determination to succeed, be noticed and to make a difference.

Herbert Geer & Rundle

Strong communication skills (written and verbal), ability to liaise and develop relationships with a range of different people.

We need people who are talented, intelligent and enthusiastic and committed to a career in law and the broader business world who show initiative and determination.
Holding Redlich

We seek out a cultural fit, a demonstrated interest in social justice or community issues, a sound academic record and general interests that indicate a well rounded individual.

Whilst black letter legal skills are essential, we believe that a broader view of life is also necessary to provide our clients with the best possible service. So we strive to develop our lawyers, not only as professionals, but also as individuals. Our strength is the ability of our lawyers to understand our clients’ businesses and the social and economic context in which they operate.

Hunt & Hunt

At Hunt & Hunt, we value diversity and deliberately recruit across a range of skills, abilities and backgrounds. We are looking for talented people who have a commitment to upholding our firm’s values; this is fundamental to the way we work as it shapes the culture of our workplace. We are looking for ambitious, bright and enthusiastic people who are team players and who enjoy working collaboratively to create real solutions and achieve common goals.

Lander & Rogers

We invest a great amount of time and energy in finding the right people to join our team. We’re looking for smart, energetic people who are keen to learn and who aspire to achieve. Our clients come from a broad range of industries, so it’s important that our people are flexible, approachable, able to relate and communicate with confidence.

High level of professionalism and commitment, ability to develop relationships.

Maddocks

We like people who take their work seriously but don’t take themselves too seriously, who are hard working and smart.

People who want to be the best at what they do. Commitment to technical excellence, innovation, develop strong relationships.

Maclesons Stephen Jaques

Commitment, passion and ability to think laterally; superior legal knowledge and excellence in the application of that legal knowledge; we are also interested in your life experiences, your interests outside work and the issues you’re passionate about.

Mallesons looks for people with strong communication skills, team players and those who strive for excellence across all their academic and personal interests.
Maurice Blackburn Cashman

MBC has a unique culture and has always stood for the principles of equal opportunity, diversity and social justice. We also understand that a firm is only as good as the people it employs and we pride ourselves on hiring talented individuals from diverse backgrounds.

We are looking for people who demonstrate:

- A genuine interest in plaintiff law, including a knowledge of our areas of practice
- An understanding of our history, and an appreciation of our philosophy and core values
- Sound robust academic achievements in law
- Superior communication skills
- A demonstrated ability to interact effectively with people at all levels
- An empathy for diversity and social justice and a demonstrated dedication to the right so of working people and the defence of underprivileged groups.
- A genuine aspiration to make a positive difference to Australian society

Middletons

We look to recruit well-rounded, multi-skilled individuals who don’t just fit the mould. We seek graduates who aspire to be exceptional.

Our people are a diverse range of passionate professionals who are committed to practising commercial law for some of the nation’s leading organisations. We look to recruit well-rounded, talented people, then provide the opportunities and support for them to achieve their best.

Informality, friendliness and approachability are key aspects of our culture, yet our commitment to professionalism, ethical conduct and dedication to providing the best imaginable client service experience is absolute and non-negotiable. We are looking for:

- Solid academic results: demonstrated talent and skill on a variety of areas.
- Enthusiasm, adaptability and a passion for delivering exceptional service are essential.
- The ability to give good legal advice, which goes hand in hand with sound communication skills and the courage to act decisively.
- Commitment to getting the small things right as well as the big picture; logic and attention to detail are critical skills that enable a young lawyer to take a complex business problem, break it down for a client and deliver a sound commercial solution.
- Brilliant legal minds and the ability to think commercially.
Minter Ellison

Minter Ellison looks for people who fit with our firm values. Cultural fit is very important. So we look for people who share our values: integrity and trust. Enduring relationships, balance, and excellence. We also look for individuals who strive for excellence and demonstrate a commitment and passion for pursuing a legal career. Other important qualities include solid academic results, experience of leadership at university, school or work and teamwork through sporting teams, committees and participation in moots.

Academic record, extra curricular activities, work experience, volunteer work, travel, sporting and cultural interests. Capacity to develop a strong commercial acumen and understand the value of building productive enduring relationships with colleagues and clients. Insightful, intelligent, energy, enthusiasm, confident, skillful, work in a team.

DLA Phillips Fox

At DLA Phillips Fox, our success and individuality as a law firm has been built on our people and culture. Our goal through the recruitment process is to ascertain whether we would enjoy working with you but, most importantly, will you thrive and enjoy working with us and our clients.

So, what do we look for when we’re recruiting?

- Intellectual ability: academic excellence, creative innovative thinking.
- Commitment: to provide excellent client service.
- Ambition: hard work and the desire to go places.
- International Awareness: see the world from different perspectives.
- Commercial and client awareness: a desire to learn.
- Team skills and leadership potential: confidence.
- Communication skills: building relationships with clients and the wider community
- A sense of fun: celebrate important milestones with your colleagues
- Experience outside academic life: well rounded individuals.

Russell Kennedy

At Russell Kennedy, we are very proud of our culture and we work hard to recruit graduates that will suit our relaxed, friendly and sociable atmosphere.

Naturally, a sound academic record is an important starting point, but we also look at other attributes, like your extra curricular interests and life experiences outside your studies. These may be previous work experience, volunteer work, travel and sporting and cultural interests.

We look for personable, insightful, intelligent people with energy and enthusiasm. You need to be confident, skillful and enjoy working as part of a team.

We look for students with drive, ambition and a thirst for knowledge.

‘Exceptional communication and presentation skills’

Slater and Gordon Lawyers

We look for the following attributes and qualities in our staff:

- Knowledge and interest in the practice areas within the firm.
- A demonstrated ability to work as part of a team.
- Exceptional communication and presentation skills.
- Consistent and excellent academic achievements in law, law/medicine, law/social sciences.
- Previous work experience which demonstrates maturity, leadership and initiative.

‘You need to be confident, skillful and enjoy working as part of a team.’

‘Exceptional communication and presentation skills’

Further information can be found at:

http://www.lawyersweekly.com.au
This site has useful links to most major Australian law firms.
# My Profile

1. **My current skills:**

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   **My evidence:**

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2. **The attributes that I need:**

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   **My development plan:**

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module 3

The Torts Oral Presentation

The Torts Module contains five components:

- Preparing for the Torts Oral Case Presentation
- Introduction to Legal Reasoning: reading and understanding cases
- Handling Nerves and Performance Anxiety
- Presentation Tips and Strategies
- Review and Reflection Exercise

Communication, Advocacy and Teamwork
A Package of Student Learning Resources
Contents

This Module contains advice for students who are preparing for their Torts Oral Case Presentation. It builds upon the basic material on communication and advocacy covered in Module 1. The Torts Presentation requires students to dissect an argument found in a legal case and to explain that argument to other students in the tutorial as clearly as possible. It requires students to become familiar with using legal terminology and talking about the law – but it does not involve any critical analysis, any questions from the tutor, or any debate over the issues. The exercise is designed to introduce students to legal argument and to encourage students to focus on developing basic communication skills. Students should try to speak as naturally as possible, while at the same time, making sure that they observe correct legal etiquette when using case names and referring to judges by their proper titles.

The Torts Module contains five components:

- Preparing for the Torts Oral Case Presentation
- Introduction to Legal Reasoning: reading and understanding cases
- Handling Nerves and Performance Anxiety
- Presentation Tips and Strategies
- Review and Reflection Exercise

Look ahead to some of the later Modules

Because the Torts Module has been designed to prepare you for future skills exercises within a much wider program, you will find it helpful to look ahead and read the advice contained in later parts of the Student Learning Resources Pack. The most relevant parts will be found in Module 5 and Module 6:

- Introduction to Advocacy (Module 5)
- Mooting (Module 6)

Students may also wish to refresh their legal research skills by consulting the Legal Research Help Sheet on Finding Law Reports, contained in the Appendix.

More Than Words

You can see some sample Torts presentations in the DVD More Than Words, available from the Law Library. The first episode tells the story of Babs, a student who managed to do her presentation despite her nerves. After you read through this Module, watch the DVD and see how she used careful preparation, constructive feedback and the techniques for dealing with performance anxiety to succeed in her presentation. If you watch the film to the end you will see how Babs became an accomplished mooter by the end of her degree. This character was based on a real student’s story.
Preparing for the Torts Oral Case Presentation

What does the Torts Presentation involve?

The task takes place in tutorials and requires students to come to the front of the class, where they may either sit or stand while they explain their assigned case. This involves:

1. Identifying the issues in the designated case, and
2. Explaining the reasoning that was used by the judges to resolve those issues.

Some students will have to present the whole of a short case, while others will be asked to focus on a single judgment in a more complicated case. Students must come to the front of the class, so that they can get used to being in the spotlight.

In addition to the spoken presentation, each student will be required to hand up a one page summary of their presentation to their tutor before they give the presentation to the class. This written summary will not be assessed, but it will be used as a record of what has been said. We need it so that we can concentrate on the performance, rather than the details of the content, when we are assessing the presentation.

One of the aims of the oral presentation is to encourage you to focus on the basic aspects of oral communication, which are contained in the ten assessment criteria. The first seven criteria assess the personal performance aspects of the presentation. The final three criteria assess the content and structure of your message.

Guide to the Assessment Criteria

A: Personal Presentation Skills (criteria 1-7)

1. **Does not rely on reading out a prepared text.**
   Reading a prepared word for word text is one of the greatest sins! Reading puts people to sleep.
   When reading you tend to adopt an artificial ‘reading voice’ that is not natural.
   If you are nervous and you are reading a full text, you tend to read much too fast.
   Reading (and looking down) stops you engaging with the audience.
   There is a difference between reading out a text – and knowing your material and using written dot-points to trigger that knowledge.
   Use clear setting out including headings, dot-points and key phrases to slow yourself down and to reveal the structure of your presentation. That way, if you glance down, you can easily see where you are – and how much you have left to cover. It is too easy to lose both your place and your audience if you are relying on reading out a long written text.
2. Makes eye contact with the group and engages effectively with the audience.
Make sure that you look at the group, and not at your notes all the time. You cannot engage with others unless you are looking at them.

3. Uses voice well: good speed, audible volume, smooth and expressive delivery.
Do not let nerves make you rush or gabble. Speak at a speed and at a volume that allows the class to hear you and follow what you are saying.

4. Knows the material well and projects a confident and persuasive attitude
You need to demonstrate that you understand and know the material, but beyond that, lawyers need to communicate belief in their arguments in order to convince others to agree with them (eg, judges, jurors, other lawyers, clients), so you need to learn how to develop a persuasive, confident attitude. See further advice on this aspect of oral advocacy in Module 4 and Module 5.

5. Uses clear and appropriate language and observes legal etiquette.
You have to learn how to talk about legal issues in a way that helps others to follow you. So do not overdo the legalese, but use clear uncluttered language that includes technical terms where necessary. Do not be too casual: pretend that you are explaining the case to another lawyer in a semi-formal setting.

Give judges their correct titles: ‘Justice Gaudron said’ not ‘Gaudron said’.
Give cases their correct titles: do not say ‘versus’ (See below ‘Citing cases’.)
Do not use slang expressions.

6. Uses appropriate ‘body language’.
No chewing gum, no fidgeting, fiddling, hand or foot tapping, no hands in pockets.
Watch the pens, the grooming habits, scratching, etc.
Do not wear a cap with a brim that obscures your face.
Hold your body well, with a confident, open stance – not hunched or defensive.

7. Uses time well (not too long, not too short).
You will be penalised if you are more than 30 seconds over time. You will be penalised if you do not use up all of your time (and you will probably lose marks for content as well if you are significantly under time.)
You should practise your presentation so that you can adjust your timing.
B: Content and Structure of the Presentation (criteria 8-10)

8. Identifies the issues.
This has to be clear and precise.

9. Explains the reasoning used by the judge to resolve the issues.
Go through the judgment and work out the steps in the reasoning and the
techniques that the judges used to resolve those issues, for example:
Did the judge rely on other cases? How did the judge use those cases?
Did the judge declare that an earlier case was wrongly decided?
Did the judge distinguish an earlier case?
Did the judge make new law or interpret the law in a new way?
Did the judge reason by analogy?
Did the judge appeal to principle, policy, or the underlying purpose of the
tort?
(Check the notes on legal reasoning, later in this Module.)

10. Constructs a balanced presentation with a clear introduction and
conclusion.

Reminders

You may not read from a prepared script

Students who read the whole of their presentation will be heavily penalised.
You may, however, use headings or dot points to jog your memory, and you
may read out a short critical quote if necessary.

Advice on content

Focus on the most important parts of the legal reasoning and the argument in
your case. Refer to the facts only so far as is necessary to illuminate the legal
issues. You are not being asked to be original or critical, but instead to be
clear, precise and accurate in your reporting and explanation of the issues.

The presentation should take no longer than 5 minutes.

You do not need to outline everything the judge has said.
You may use your discretion to omit minor issues so that you can cover the
main issues properly. Do try to use up all of the available time.
Students who are significantly over or under time will be penalised.
If you go too long over time, you will be asked to bring your presentation to an end.

Remember: you cannot use any extra aids except your notes (on
paper) and the case itself:

No computers
No handouts
No use of the whiteboard
No overheads or powerpoints
You are not expected to achieve the standard of a practising barrister.

We are looking for high quality student presentations. Please note that your use of language and legal etiquette should conform to mooting standards. If you are in any doubt, you can look ahead to future Modules in the Learning Resources Package and consult the books below.

### Citing cases

Civil cases: *Davis v Nielsen*

is read out as: Davis and Nielsen.

Criminal cases: *R v Davis*

is read out as: The Crown against Davis.

Never pronounce ‘v’ as ‘vee’.
Never pronounce ‘R’ as ‘Aar’.
Never pronounce ‘R v’ as ‘Aar-vee’.

### Some common abbreviations

- **J:** Justice – ‘Justice Gaudron’
- **CJ:** Chief Justice – ‘The Chief Justice, Sir Garfield Barwick’
  ‘The Chief Justice, His Honour, Justice Gleeson’
- **JA:** Judge of Appeal, Justice of Appeal
- **P:** President
- **LC:** Lord Chancellor – ‘Lord Hailsham, Lord Chancellor’
- **VC:** Vice Chancellor – ‘Sir Robert Megarry, Vice Chancellor’
- **B:** Baron
- **CB:** Chief Baron
- **LJ:** Lord Justice – ‘Lord Justice Lawton’
- **MR:** Master of the Rolls – ‘Lord Denning, Master of the Rolls’
  ‘The Master of the Rolls, Sir Baziol Brett’

### A guide to further reading

Case Analysis

Why read cases?

To learn from the experts. Remember, law is a culture of argument, not just a set of rules.

a) Cases contain the law and explanations of the law, so reading them will improve your knowledge and understanding of the law.

b) Every case tells the story of how a practical legal problem was solved by the application (and sometimes the creation) of a legal rule, so reading them will improve your legal problem solving skills.

c) The judges give reasons for their decisions, so you will learn how to argue like a lawyer by identifying issues and following the steps in the legal reasoning used by the judges to resolve those issues.

Before you read a case

Before you read a case you should remind yourself why you are reading it. Check your lecture notes to see what the lecturer emphasised about the case, and glance over the textbook to find out why it is considered to be an important case. Is it because the case:

• changed the law by making a new rule – or by changing or abolishing an old one,
• established a new principle, or
• used policy as a justification for the law, or
• represents an example of how the law applied to a particular set of facts?

When you read these cases where the law was changed or developed, you need to know what the old law was, and why it was changed to the new rule:

• how did the judge define the issues, and
• how did the judge resolve the issues?

Dissenting judgments

You also need to be aware that some cases contain dissenting judgments. In these cases, you have access to a helpful set of arguments and counter-arguments that consider both sides of a legal issue. In the Torts tutorials, pairs of students will sometimes be presenting both sides of a legal issue: one will represent the majority judgment and the other will present the dissent.
Introduction to Legal Argument

How to analyse legal argument: rules, principles and policy

In many cases that you will read, the judges refer to ‘principles’ and ‘policy’ as they go through the process of making and applying legal rules. Judges (and academics) are not always consistent in their use of these three terms, but some guidance can be found in the following definitions.

Definitions: Rules, Principles and Policies

Rule

A rule is a categorical and precise precept specifying that a distinct legal effect or consequence must follow upon the existence of prescribed facts. For example:

A defendant, who is utterly without fault, will escape liability for trespass (National Coal Board v Evans [1951] 2 KB 861).

Principle

A principle is a broad formulation of reasons or generalisations, often moral in nature, which underlie and justify particular rules. For example: the famous neighbour principle in Donoghue v Stevenson [1932] AC 562 gave rise to a rule about manufacturers’ liability.

The ‘Neighbour Principle’ (at 580): You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

The Rule (at 599): A manufacturer of products, which he sells in such form as to show that he intends them to reach their ultimate destination in the form in which they left him … and with knowledge that the absence of reasonable care … will result in an injury to the consumer’s life or property, owes a duty to the consumer to take that reasonable care.

Policy

Policy is one of the most difficult terms to define because judges and academics use it in inconsistent ways to refer to different things. When judges make use of the term policy they can be referring to any of three different things.

a) A ‘policy’ is sometimes based on a moral precept (and is more properly called a ‘principle’).

b) The term ‘policy’ is sometimes used as a shorthand term for a generally accepted approach to a particular issue that has long been established in previous legislative or judicially made rules (the ‘policy of the law’ or ‘legal policy’); and
c) ‘Policy’ also describes goal based arguments of a non-ethical kind that seek to justify a rule on the basis that it will achieve a socially or economically desirable consequence or state of affairs that will benefit society at large (usually known as ‘public policy’). Policy looks to the social or economic effects of a decision, for example, by:

Suggesting that a proposed rule might lead to too many cases coming before the courts thereby creating delay and inefficiency (the ‘floodgates’ argument).

What lies behind a rule?

A rule is only as good as the argument that justifies its existence and the quality of the reasoning used in that argument. Legal arguments over rules can be based on: logic, first principles, or an analogy with an existing body of legal principles, and can sometimes refer to desirable policy goals. Furthermore, rules may not even exist to cover cases that raise a novel issue that has not been dealt with by any court before. In these cases we must look behind the existing set of rules and consider the role of the more confusing notions of principles, policies and values. As Justice Kirby pointed out in Cattanach v Melchior [2003] HCA 38, (2003) 215 CLR 1 at 42:

There being no binding authority and the general principle being of limited guidance, it is necessary to have resort to the usual sources of the common law invoked by the courts in such circumstances. These sources are:

(1) the state of any legal authority that may be developed and applied by analogy to new circumstances;
(2) any applicable considerations of relevant legal principle; and
(3) any considerations of legal policy.

To this list we might add another classical legal technique: the idea of looking for the over-arching purpose behind a rule or a particular body of law, in order to help us to refine or develop the rules within that body of law. This method of legal argument is rather like the ‘purpose rule’ of statutory interpretation. So for example, the majority in the House of Lords in Hunter’s case [1997] 2 All ER 426 used the general purpose behind the tort of private nuisance to justify restricting the standing rules for bringing an action in nuisance.

The relationship between rules and principles

Legal rules are necessary because they can give us the precise guidance in specific situations that our moral intuitions or ethical principles cannot do on their own. There are two reasons for our need to develop rules. The first is because principles are usually pitched at a higher level of abstraction than a rule – they are necessarily more vague. The second and more important reason is because our ethical principles often conflict. Where our principles point in different directions we have to make a choice between them and settle upon a rule to guide our conduct in those tricky situations.
A consistent set of choices

One of the guiding tenets of legal discourse is that the choices made by our courts and legislatures should be made rationally and in a consistent fashion. If one principle is favoured over another in one set of legal rules, this pattern should also be followed in another situation unless it can be distinguished in some morally relevant way. The consistent application of principle is aimed at doing justice by treating like cases alike and at ensuring that our body of legal rules forms a rational and coherent whole.

The idea of ‘fit’

Cases tend to form clusters of authority on any given issue. So, any case authority specifying a particular formulation of a rule can be described as contrary to principle if it does not fit with the wider cluster of authoritative cases in that area. An awareness of the role played by principle and the need for a series of consistent choices between principles will strengthen your understanding of how the law develops and how legal arguments are constructed.

Policy is a confusing term

Policy based arguments are generally contrasted with arguments based on principle and are used as a last resort when the arguments based on principle do not seem able to resolve a difficult legal question. In some cases, however, judges and commentators use the terms policy and principle interchangeably. Judges sometimes refer to the ‘policy of the law’ or ‘legal policy’, when they are making an argument based on principled grounds. However, arguments of ‘public policy’ are most often used to refer to arguments of the third kind, ie, those that are strictly political or economic in nature. This type of argument is seen as properly belonging to the role of legislators rather than judges, whereas the first two kinds of ‘policy’ are clearly relevant to the judicial role.

Remember why we want you to read cases: it is the reasoning that counts

Because of the difficulties associated with the various meanings given to these terms, lawyers, judges and commentators are sometimes tempted to avoid the problem and use different terminology. So, as well as rules, principles and policy, you may also find the following terms being used: legal concerns, legal standards, legal arguments, legal or moral norms, moral standards, moral values, aims. When reading cases you need to make some effort to classify what you find into the categories of rules, principles and policies, but if you become confused, remember that you are reading cases primarily because they are sources of convincing legal arguments that you can put to use when you are:

- identifying legal issues,
- stating the current state of the law,
- applying the law to the facts of a new problem, and
- formulating a critical discussion of the law.
So, as you go through your cases and prepare notes either for your revision or for your oral tutorial presentation, ask yourself how the judges have justified their decisions:

Did the judges rely on other cases? How did they use those cases?
Did the judge declare that an earlier case was wrongly decided, or is now out of date?
Did the judge distinguish an earlier case?
Did the judge make new law or interpret the law in a new way?
Did the judge reason by analogy?
Did the judge appeal to principle (or policy)?

**A note on the terms ‘ratio decidendi’ and ‘stare decisis’**

The term ‘ratio decidendi’ is also difficult to define (and it is not one that I use very often). The ratio is sometimes said to be ‘the reason or ground of a judicial decision that makes a decision a precedent’ and is contrasted with the term ‘obiter dictum’ which is ‘a saying by the way’ or observation by a judge in a case that does not form part of the binding precedent laid down in that case (*Osborn’s Concise Law Dictionary*). In *Legal Technique* Enright explains at 235 that the doctrine of ‘stare decisis’ requires a later court to follow a precedent established in an earlier case. He highlights the three aspects:

(1) Courts normally follow their own previous decisions, although they are not bound to do so;
(2) Courts must follow the decisions of higher courts within a hierarchy. Higher courts can over-rule decisions of lower courts; and
(3) Where a court is not bound to follow a decision of another court it may still consider it as persuasive.
Further reading

- Enright C, Legal Technique (Federation Press, Sydney, 2002).
Handling Nerves and Performance Anxiety

The signs of performance anxiety

Many people claim that they are more afraid of public speaking than they are of dying, and indeed, the nature of the classic symptoms of performance anxiety suggests that it is triggered by the same ‘fight or flight response’ that fills the body with adrenaline when we are confronted by a perceived attack or threat to our survival. The sense of panic and unease and the chemical release can cause the nervous speaker to experience a number of symptoms:

- the heart races – beats very fast – palpitations;
- hands, knees and legs may shake;
- underarms and palms may perspire, face may blush and feel burning hot;
- the throat and mouth may dry out – or the voice may quiver;
- the speaker may sense an urgent need to go to the toilet;
- the speaker may experience the sensation of ‘butterflies’ in the stomach or abdomen, or feel sick;
- some experience a sensation of light-headedness or ‘heart in the mouth’;
- the speaker’s mind may go blank and they ‘freeze’.

There are many different strategies that you can learn which will help you to cope with performance anxiety. Careful and thorough preparation is one of the most effective solutions that will fill you with confidence, but remember that most advocates and performers have learned how to live with their nerves. You can do it too. Over the next few years at Law School you can improve your skills – if you start learning the techniques now and practise applying them.

Accept your nerves: performance anxiety may not go away

- Do not wait until the nerves go away: for most of us they never do – we just learn to do it with the nerves. The secret is to accept that your nerves exist and focus instead on controlling what you do instead of trying to control how you feel. You will do well – and no one may ever be able to tell that you felt anxious – if you simply focus on four crucial aspects:
  - controlling your breathing,
  - controlling the speed, volume and tone of your voice,
  - maintaining a positive and open body posture, and
  - maintaining eye contact with your audience.

- Admit your fear and accept your nerves: they indicate that this is important – and it is. Do not try to fight them or wait until they go away. Meditators have a technique for dealing with unwanted thoughts and you can adapt it to deal with unwanted nerves: simply allow yourself to notice the nerves but then return to the task without castigating yourself for being nervous.
(You can talk and perspire at the same time!) Say to yourself ‘Oh, there are my old companions.’ And then just keep going.

- **Most important**: do not let the fact that you get nervous become an excuse for not speaking up or not going on. Promise yourself that you will do what thousands of students have done before you: use the time at Law School to learn how to do it even though you are nervous.

- See nervousness as a source of energy. Use the adrenaline to get yourself up.

**Try some self-help therapy**

- **Visualisation Techniques**: imagine yourself giving the presentation in a positive way and imagine yourself speaking in a loud clear assured voice. Get into the habit of projecting this image onto the screen in your inner mind. Once you see it often enough, the reality will begin to match the image.

- **Systematic Desensitisation**: If you are very fearful: make a point of speaking up in tutorials every time to de-sensitise yourself and get used to it. Your tutorial is your therapy group and represents a chance to get some practice in speaking in public – where it does not count for marks. Start by making a promise to yourself to say two things in every tutorial, then build up to becoming an active participant. Make a deal with a friend in your class that you will both do this and then go out and celebrate afterwards. Reward yourselves and turn it into a fun activity – or at least a shared challenge. Learn how to consciously relax the tension in your body while you are speaking in classes. (Practise this relaxation when you are doing the visualisation exercises as well so that you associate conscious relaxation with speaking in public.)

- Replace negative thoughts with positive thoughts or affirmations: do not allow the bad thoughts to dominate. Consciously replace them with positive thoughts, just as Babs did in the film *More Than Words*.

<table>
<thead>
<tr>
<th>Negative Thought</th>
<th>Positive Thought</th>
</tr>
</thead>
<tbody>
<tr>
<td>I can’t do this.</td>
<td>I can do this. This is no big deal.</td>
</tr>
<tr>
<td>I hate this.</td>
<td>This is easier than I thought.</td>
</tr>
<tr>
<td>I’ll go blank</td>
<td>I have prepared good notes.</td>
</tr>
<tr>
<td>I don’t understand it.</td>
<td>I have prepared this well.</td>
</tr>
<tr>
<td>This is hard.</td>
<td>This is not so difficult. I can enjoy it.</td>
</tr>
<tr>
<td>I don’t have the gift.</td>
<td>This skill can be learned with practice.</td>
</tr>
<tr>
<td>I’ll sound stupid.</td>
<td>They don’t know as much as I do.</td>
</tr>
<tr>
<td>I’ll look stupid.</td>
<td>No-one can tell how I feel inside.</td>
</tr>
<tr>
<td>Everyone is watching me.</td>
<td>I’ll be able to explain it to them.</td>
</tr>
<tr>
<td>No-one will understand me.</td>
<td>I’ll slow down: it helps.</td>
</tr>
<tr>
<td>I’ll never be able to do it.</td>
<td>This is my chance to learn.</td>
</tr>
</tbody>
</table>

You can adapt these methods to use in a range of settings where you experience performance anxiety, for example: to prepare for exams, or to prepare for job interviews. Can you think of any other occasions where these techniques might be helpful?
Presentation Tips and Strategies

On the day

• Concentrate on how the audience is going: the key issue is not how you feel, but whether the group is getting the message. Many people feel bad inside but no-one else knows how you are feeling. (They cannot look into your secret heart!) Realise that your fear does not have to show – and take comfort from the fact that only you will ever know how you really felt.

• Share your message – not your symptoms! Learn how to ‘float’ by dissociating yourself just a little from your nerves and from the whole event. Try to monitor yourself as you present – as if you were an outside observer.

• Breathe deeply (from your diaphragm). Relax your body, ease neck tension and warm up your voice in the morning.

• Drink water in the hour before the presentation so that your throat does not dry out – this often happens with nerves. Take a bottle of water with you. Avoid coffee and alcohol on the day of the presentation as they can both dry out the throat.

• If your voice is jittery, consciously try to smooth out your delivery and caress the audience with your voice: this helps to eliminate the kinks and wobbles – love your audience – and try to absorb energy from them.

• Slow down so that the audience (who may never have heard this material before) can follow your words. Do not let the nerves make you speed up. Learn to pause – as well as slow down: This comes with conscious practice. Have a friend in the class who can let you know if you are going too fast. A measured and controlled performance is a convincing performance.

• Visualise your voice floating out to the middle of the room and you will automatically speak at the right volume. Don’t focus on your throat: focus on where you want it to go, not where it is coming from.

• Remember that your audience and your lecturers want you to succeed. We are on your side – we are not trying to trick you.

Adopt the habits of confident presenters

Adopt the habits of confident presenters – whether you feel confident or not! Fake it: if you act as if you are confident then your confidence will follow. You may not be able to control your feelings, but you can learn to control what you do.

• Make frequent eye contact: it makes you look confident: do not seek refuge in looking down and reading your notes – that does make you look less confident as well as being much less engaging.

• Smile: it relaxes you (and your throat) and inspires confidence.
• Look at the audience and consciously talk to them. Project your voice but do not try to push it out (or you might strain it). Scan slowly around the room as you speak and try to include all parts of the room.

• Try to ‘read’ your audience as you go through: their responses will tell you whether they are following you. Communication is a continuous loop and you are just one part of the circle.

• Hold your body well and maintain a positive stance: do not slouch – keep the body open, not hunched or closed. Use gestures well: face, hands and shoulders (Do not overdo it – or you’ll look like you are conducting an orchestra!) Avoid fidgeting or displaying irritating or distracting body language.

• Make the most of your own personality: diversity is important. There is no single way to be successful as a presenter. Judges like thoughtful, calm and respectful presentations much better than the big flashy over-dramatic performance. Do not try to be something that you are not: the audience can usually sense if you are being fake. Try to find your own style, based on your strengths and personality.

• Look professional and wear nice clothes – this will increase your confidence. Dress with care and you will feel careful: dress like a professional and you will feel like a professional. (Do not be too casual in your dress or you might be too casual in your manner.)

• Vary the pitch, tone and speed of your presentation: raise your voice to emphasise the important issues, and use the pause. (It gives you time to think, to breathe and to relax a little – it also keeps the audience awake.)

• Avoid cue cards: learn to do it from the papers – lawyers in court do not use cue cards and lawyers talking to clients do not use them. You cannot see where you are going or where you have come from if you have a set of cards. Later on when you are participating in a moot, the judges will often try to move you around in your presentation and cue cards can make that impossible.

• Most people should also avoid memorising the whole word-for-word script. It is artificial, nerve-wracking and nearly as bad as reading a word-for-word script.

• Sign-post as you go: make it clear when you are making transitions and moving through the presentation, for example:

  This is a case about ...
  There were three key issues in this case: they were ...
  The first issue arose because ...
  There are three reasons why this is important: ...
  The most important issue in this case was ...
  Turning to the second problem ...
  In summary, ...
  The significance of this case is ...
  The judge dealt with this issue by ...
  In conclusion, ...
Further reading and viewing

- University of Toronto Student Services ‘Overcoming Performance Anxiety’:
  http://www.studentservices.utoronto.ca/resources/performance_anxiety.aspx

- Dr. James C. McCroskey is a communications researcher at the Department of Communication Studies, University of Alabama-Birmingham, and his site has links to many communications anxiety self-testing instruments and many articles on how to overcome communication anxiety:
  http://www.jamescmccroskey.com
  An excellent article in pdf format that is full of many useful tips on both the causes of communication apprehension and tips on how to overcome that apprehension is on this site:

- The Allyn & Bacon Public Speaking Website
  http://wps.ablongman.com/ab_public_speaking_2

- Morton Orman, ‘How To Conquer Public Speaking Fear’ at:
  http://www.stresscure.com/jobstress/speak.html

- This YouTube site has links to many useful, instructive and amusing video clips. http://www.youtube.com/user/Toastmasters

If you need more practice

The comedian Jerry Seinfeld once said that most people attending a funeral would rather be in the casket than standing up the front giving the eulogy. If you feel this way and think that you may benefit from some extra practice and advice, you might consider joining a Rostrum group or Toastmasters International. These groups will help you to develop skills in public speaking, chairmanship of meetings and leadership.

Prepare, Plan and Practise for the Torts Presentation – then perform and review

Prepare

Do the research. Know your material. Identify the key issues. Familiarise yourself with the assessment criteria before you plan your presentation.

Plan

Plan out your presentation and write up notes in advance but avoid the temptation to write down every single word. Make sure it has a clear beginning – middle – and end.
Reduce your longer version to a set of headings, key sentences and dot-points (the skeleton outline). Use setting out, numbering, headings, dot-points and highlighters to emphasise the structure of your presentation and your argument. When you are doing the presentation, it helps to have a clearly visible layout with headings and numbered points so that you can see quickly where you are. A continuous stream of words on a page does not help at all – too easy to lose your place!

Practise

Use the long version once or twice to practise the presentation, with the aim of:

• getting the timing right and
• familiarising yourself with the material.

Then let go of the long version and practise with the shorter version once or twice. (Confident, experienced presenters can go straight to the skeleton version.) Once you feel comfortable with the shorter version, practise giving the presentation with some sympathetic friends or family members as your test audience. Ask for feedback and be prepared to accept criticism and use it to improve your performance.

Perform

On the day use the shorter version, but if you are really prone to nerves, take the longer version just in case of disaster – BUT reach for the security blanket only in dire emergencies! If you have prepared well enough and run through it a couple of times, you should have the confidence to do it with the shorter set of notes.
The Torts Presentation: how much preparation?

Experts say that we should speak at a rate of between 100-120 words per minute, so try to divide your presentation up as follows:

Introduction: about 50 – 100 words
**Body:** 400 – 500 words
Conclusion: about 50 – 100 words

Test yourself against the clock and modify your outline accordingly.

**After your presentation: Review the event, document your feelings and make a plan for future improvement.**
Review your performance after the Torts Presentation

1. Describe in factual terms how you prepared for the Torts presentation.

2. How long did you spend on your preparation?

3. What kind of notes did you make? Were they useful on the day?

4. How did you feel before, during and after the exercise? (What was good and what was not so good?)

5. What (if anything) will you do differently next time?

I will

I will not

Note: you should file this sheet in your employment portfolio – you may be able to use this experience in an interview as an example showing how you are a ‘reflective learner’.
module 4

The Property Presentation

This Property Law module contains three components:

• Preparing for the Property Presentation
• Coping with Questions
• Review Exercise
Contents

The Property Law Oral Presentation is part of the Law School’s wider Skills Program and it introduces students to the process of answering questions for the first time – at least as far as formal assessment is concerned. As will be seen, the question and answer process is an important part of overall advocacy skills and is tested and used in later units, particularly in mooting. The Property Law Presentation lasts for about ten minutes and is conducted during tutorials. It builds on the work done in Torts, and adds an extra component requiring students to answer questions posed by the tutor.

Looking ahead

Being able to answer questions is also important when you go to a job interview, so this aspect of the presentation will prepare you not only for mooting in your final year, but will also give you some extra practice for participating successfully in the process that takes you from Law School into the job market.

This module contains three components:

• Preparing for the Property Presentation
• Coping with Questions
• Review Exercise

The Property Module builds upon the aspects of oral communication covered in the previous modules and is designed to prepare students for their moot. You may wish to revise the following components in the Torts Module and look forward by reading some of the advice given in Module 6: Mooting and Module 7: Employment Strategies, for example:

• Handling Nerves and Performance Anxiety (Module 3)
• Presentation Tips and Strategies (Module 3)
• Advanced Legal Reasoning (Module 6)
• Listening Skills (Module 7)

Students may also wish to refresh their research skills by consulting the Legal Research Help Sheets, contained in the Appendix.

• Finding Cases on a Topic
• Finding Journal Articles

More Than Words

You can see some sample Property Law presentations in the DVD More Than Words, available from the Law Library. The second episode tells the story of Graham, a confident public speaker who learns that good performance skills are not enough to guarantee a successful presentation. After you read through this Module, watch the DVD and see how important it is to prepare thoroughly for your presentation. The inspiration for this character came from a real story of a very confident student who did not check the time for his presentation and who had to try and bluff his way through his assignment on the day.
Preparing for the Property Presentation

What does the Property Presentation involve?

The task takes place in tutorials and requires students to come to the front of the class, where they may either sit or stand while they:

1. Discuss an assigned topic, and
2. Answer questions posed by the tutor – and sometimes by other class members.

In addition to the spoken presentation, each student will be required to hand up a one page summary of their presentation to their tutor before they give the presentation to the class. This written summary will not be assessed, but it will be used as a record of what you have said. We need it so that we can concentrate on the performance, rather than the details of the content, when we are assessing the presentation. Students are encouraged to provide the class with a handout. Class participation in the questioning process is also encouraged.

One of the aims of the Property Law oral presentation is to help students to expand upon the basic aspects of oral communication, and gain experience in answering questions. The nine criteria assess the personal aspects of the presentation, the quality of the legal reasoning contained in the of the presentation, and the student’s ability to answer questions during the presentation.

Guide to the Assessment Criteria

**Personal Presentation Skills (criteria 1-5)**

1. Does not rely on reading out a prepared text.
2. Makes eye contact with the group.
3. Uses voice well: audible and expressive.
4. Uses clear and appropriate language and observes legal etiquette.
5. Uses time well.

**Legal Reasoning (criteria 6-7)**

6. Has identified the issues.
7. Has explained the reasoning that resolves the issue/s.

**Coping with Questions (criteria 8-9)**

8. Preparation – was adequately prepared to answer all questions which s/he could reasonably assume would be posed.
9. Effectiveness – was able to respond to, defend and/or further explain the arguments raised.
Illustrative examples of Property Presentation topics

Whilst the focus of the skills program in Property Law is to develop and assess oral presentation skills, it should not be forgotten that the other essential element of the exercise is to develop more critical – and therefore more advanced – skills in legal analysis.

This aspect requires the presenter to undertake sufficient legal research to comprehensively understand a particular (and usually quite discrete) legal area and to explain the complexity of that area in the presentation. The topics which are chosen are specifically designed to enable students to deal with the fundamentals of that area (given the time limits for preparation and presentation) and to enable the tutor to assess the quality of the legal analysis presented. To this end, a number of different techniques are employed, some of which are outlined below:

**Discussing a major Australian case**

The topic may require an examination of a major decision on Australian Property Law, which may have radically altered previous law or at least cleared up confusion as to the correct legal position. A typical example is the following:

Critically consider the effect of the decision in *Mabo* (No. 2) (1992) 175 CLR 1.

Now, obviously, the legal skills necessary here require the presenter to encapsulate the disparate and lengthy judgments of a major High Court decision which had a fundamental effect on our perceptions of the law of tenure, estates and native title in Australia, and to offer some critical analysis. This requires well-developed analytical skills, an ability to get quickly to the core of the reasoning of the Court and to explain that reasoning in a lucid and well-structured manner. The implications of the decision also need critical analysis, and all of this is tested by the presentation and questioning process. (It may seem daunting – but these are essential skills necessary for effective advocacy.)

**Discussing conflicting case authorities**

The topic may require an examination of conflicting judgments/authorities on a particular area which has not yet been authoritatively resolved by higher authority. A typical example follows:

Compare and contrast the decisions in *Rasmussen v Rasmussen* [1995] 1 VR 615 and *Conlan v Registrar of Titles* [2001] WASC 201.

Both decisions take a very different view as to whether a volunteer may obtain indefeasibility upon registration under the Torrens System, notwithstanding that the statutory provisions do not vary remarkably in the different jurisdictions.

Again, critical legal analysis skills are required here to illustrate the fundamental differences in reasoning undertaken by the judges in both decisions and a critical appreciation of the different results. The implications of following either position need explanation, as well as some considered, and reasoned, views.
as to which approach is preferable. In other words, the presenter, both in the presentation and in the questioning process, is required to consider the ‘wider implications and consequences’. Not just legal analysis, but critical legal analysis, is required.

**Discussing a provocative or controversial issue**

The topic may be provocative or controversial. Here is an easement example:

> ‘There is some authority in English law for the view that a mere right of recreation and amusement can never qualify as an easement … There can, in short, be no easement merely to have fun.’ (Gray and Gray, *Elements of Land Law* (4th ed at [8.44])) Critically discuss.

The legal skills required here are to research the traditional requirements for characteristics of an easement in a general way, and then to identify which of those support or do not support the quotation. Further skills are then required to identify whether those characteristics can be extended (or indeed, need to be extended) in modern law to further the rights identified. Policy/principle analysis is essential here.

**Discussing an apparently straightforward, but misconceived, view of the law**

The assigned topic may look straightforward, but is essentially wrong/misconceived. Here is a lease example:

> Whether, when one man is allowed to enter the land of another pursuant to a contract, he does so as a licensee or as a tenant must, it has been said ‘be in the last resort a question of intention’: per Lord Greene MR in *Booker v Palmer* [1942] 2 All ER 674 at 676. Critically discuss.

Now, this does not correctly state the current law, but the presenter is required to identify that fact and to correctly identify why it is no longer current and to correctly state and explain the modern position, using authorities and statute law to justify their view.

Again, this is tested and assessed in both the legal analysis and the questioning stages of the presentation. Strong legal research skills and legal analytical skills are thus both required (as well as the presentation skills).

In short, these are just some of the possible types of topics which are dealt with in the Property Law oral presentation program. Remember that the program is primarily designed to assist you in the development of your oral presentation skills, but also encompasses development of your critical legal analysis skills. Both also depend upon excellent legal research skills. All are interlinked within the general skills program and all are demonstrable to prospective employers.
**Coping with Questions**

**Why do we ask questions?**

The reasons are various, but insofar as the Property Law presentations are concerned there are four main reasons for asking questions, each of which directly reflects the reasons why judges in moots and judges in appeal cases also ask questions of an advocate:

**a. To clear up confusion**

The questions are designed to give the questioner and the class better particulars of the arguments that are presented.

**b. To elucidate the arguments**

Questions give the presenter an opportunity to further elucidate their arguments and to reveal the structure of their arguments more precisely.

**c. To test the presenter’s knowledge and understanding of their arguments**

Questions can be used to test the presenter’s knowledge and understanding by directing the presenter to consider the implications of the argument, eg by use of analogy, other counter-arguments, authorities not mentioned in the presentation, etc.

**d. To elicit an opinion or to commit the presenter to a position**

Questions can be used to encourage the student to present an opinion or an overall critical assessment of the issues raised by the topic. This prepares students for their moot, where judges often press a mooter to formally commit to a precise position. The technique of formally requiring students to commit to a position is not often used in the Property presentations, however, it is an important part of advocacy and students should be prepared to make a stand on the issues raised by their topic.
Types of questions

These follow from the reasons for questioning presenters, as set out above. In the Property Law Oral Presentations, the questions are of three main types: factual, legal and ‘big picture’ questions.

a. Factual questions

These are simple and, whilst requiring more than a yes/no answer, are used mainly in situations (a) and (b) above. These questions are designed to clear up any confusion that may have crept into the presentation, to bring the presentation of the argument back on track if it has strayed, and to help the student and the class to reveal and understand the arguments that are being made.

b. Legal questions

These questions are more critical, and they are used in situations (c) and (d) above. They are specifically designed to test the arguments on the critical legal issues involved in the presentation topic.

c. ‘Big picture’ questions

These questions are also used in situations (c) and (d) above. They are specifically devised to assess the student’s comprehensive knowledge of the area, and their ability to bring a critical analysis to that area. They are also used to test the presenter’s overall picture of the issues arising out of the topic. It is important when mooting or when presenting a case to a judge or jury, for the advocate to develop a strong ‘case picture’ which encapsulates the key view of the issues and the reasons why a matter should be determined in a particular way. These ‘big picture’ or ‘overview’ questions are designed to bring out that aspect of oral advocacy, so it is important that students focus not only on the finer details of their topic, but also be able to see the wider issues and context of their case and be able to explain its significance.

How to prepare for questions

Remember that, in the whole oral presentation exercise, the overall object is to assess your knowledge of the legal area selected and your ability to concisely but comprehensively explain the issues that have arisen from that topic in a lucid and critical manner. Questioning is as much a part of the process as the presentation and the legal reasoning skills, and should not be regarded simply as an ‘add-on’ at the end – it is an integral part of the exercise. So, as a result:

- Thorough preparation and consequent familiarity with the subject matter is very important.
- You should consider in advance the likely questions which the tutor will ask. Remember that in a ten minute presentation the questioning will not be extensive, so think of likely areas of contention in the subject matter that should be addressed.
- Think also of the overall ‘big picture’ questions and be prepared to have an opinion which offers a critical perspective on the issues.
• Prepare an ‘argument map’ which lists and correlates any points / arguments that may arise from the topic with the counter-points and counter-arguments. This extra overview document prepared in advance (one page is preferable) can sit next to you on the table and can contain any key phrases and dot points that will trigger your answers to any of the likely questions.

Overall, however, thorough and detailed preparation is the key – and there are two ways to prepare yourself for answering questions. The first is to become the master of your topic, to anticipate the likely questions and to prepare answers in advance. The second is to get some practice answering questions so that you become accustomed to being put on the spot. If you feel nervous about answering questions, you should make a point of participating more actively in tutorials in all of your subjects and you should go through your presentation with a friend who can fire a few questions at you to help you practise this skill.

What to do on the day of the presentation: coping with questions

Listen

Effective listening skills can be affected by nerves, so re-read the advice on Handling Nerves in the Torts Module. However, it cannot be emphasised highly enough that listening skills are all important in the questioning process. Careful listening should enable the presenter to know precisely what is required and shows respect for the question and the questioner. Respectful listening is a crucial skill in mooting (and in job interviews), so once the tutor begins to speak, you should immediately stop speaking and listen carefully. Do not rush into an answer or speak over the tutor – wait until the tutor has finished asking the question and then think before you respond. You can find further advice on Listening Skills in the Employment Strategies Module.

Ask for help if you do not hear the question

Following on from the advice above, if you do not properly understand the question asked by your tutor (or moot judge or interviewer) say so and ask them to repeat the question. Do not guess – simply ask the tutor to repeat the question. He or she will not be offended at all by this – after all it is the proper answer that we are interested in above all and that can be given only if you have heard the question.

‘I’m sorry Ken, but I did not quite catch that question. Would you be able to repeat it for me please?’

In a moot, you would say:

‘I apologise, your Honour, but I did not quite catch that question. Would your Honour be able to repeat it for me please?’
Ask again if you do not understand the question

If you have listened carefully and have properly heard the question, but still you do not understand the question – say so! The tutor will provide help here and will re-state the question in a different way or offer some other clarification. This should give you the opportunity to respond effectively. If, after you have made an attempt to answer the question, you are not sure that you know the answer, you may have to admit that you are not sure whether you can assist the tutor (or moot judge) any further. If you reach this position, then a candid admission is appropriate.

‘I’m sorry Ken, but I am not sure that I understand that question fully. Would you be able to repeat it for me please?’
‘I’m not sure whether that answers your question – is there any other issue that arises from this matter that you would like me to address before I move on?’
‘I’m not sure that I can answer that question any more fully Ken.’

In a moot, you would say:

‘I apologise, your Honour, but I am not sure that I follow that question fully. So that I may respond directly to your concern, could your Honour elaborate further?’
‘I’m not sure whether that answers your question your Honour – is there any other issue that arises from this matter that your Honour would like me to address before I move on?’
‘I’m not sure that I can answer that question any more fully your Honour.’
‘Your Honour, this is the highest that I can state my client’s case, and with your permission, I will move on.’

Take your time

There is no need to rush into an answer straight away. A controlled pause makes you look thoughtful and respectful and can be used as you take your time to consider the implications of the question. However, do not be tempted to fill the pause with nervous body language or nervous ‘ums’ or ‘ers’. Do not be afraid of the silence. Simply pause, think and then give your answer. If you need more time, take a sip of water as well.

Do not prevaricate

Do not prevaricate or try to put off answering the question. Answer it immediately, even if it interrupts the flow of your prepared argument. Do not say ‘I will deal with that later’ or you will look combative, unhelpful and disrespectful. In the Property Law presentation the tutor may use a question to bring you back to the most important issues if you have strayed from the topic, so follow the lead and give the answer straight away. In a moot, a judge may use a question to see if you are flexible enough to jump around in your submissions, so you need to display that skill with grace and good humour. Furthermore, it is important when mooting or in an interview to allow the questioner to control the direction of the conversation – after all, you are trying to persuade them of your case, so you need to let them direct you to any areas that they may need your help with so that you can dispel their doubts and assist them to see things your way.
The moral of the story is that you should be flexible enough in your arguments to address any issue immediately when asked, even if you had intended to address that very issue later in your presentation. This is where the argument map comes in handy – just look down, see what you have prepared in advance, and say it.

**Do not fake answers or avoid answering**

Do not pretend to answer the question (e.g., by a simple “Yes”) and immediately move on. This may work for politicians trying to avoid a tricky question in a TV interview, but in advocacy where you must persuade the judge of the rightness of your cause, you have to respect the question and give a complete and convincing answer. If you avoid answering a question in court, you risk losing your case, so each question must be dealt with fully and completely.

This means that you must prepare for questions and even welcome them (or act as if you welcome them) because they give you the opportunity to advance your case by dealing with any doubts in the mind of your judge. The Property presentation gives you the opportunity to practise this skill before you proceed to your moot.

**Do not judge the question (or take the question personally)**

Be careful not to judge the questions, or to display any negative attitudes to the questions or to the person asking those questions. They may appear to you to be silly, obvious or irrelevant, but that will not usually be the point of view of the questioner who bothered to ask them. Diplomacy and a proper demeanour is required at all times.

You have to act as if you welcome the question and offer to assist the questioner at all times. The art of persuasion must be accompanied by a helpful and respectful attitude. You do not want to get the judge offside or alienate the person that you wish to persuade. Be positive, polite, friendly and respectful. Smile, and respond, no matter what you think of the question. You are a sales-person and the customer is always right to ask a question.

**Concluding comments**

Overall, think of the questioning process as an opportunity. If handled successfully it enhances the arguments and makes them much more persuasive. Alas, the converse is also true! View the questions as a necessary, even if somewhat challenging, part of your overall presentation.

Be positive in your interpretation of the process and positive in your responses. Answering a question is a real opportunity to further your argument and to demonstrate your mastery of the subject matter.
A guide to further reading

There is a considerable amount of literature on advocacy and oral communication skills in the legal context, most of which has been very helpful and given real guidance in putting these materials together. We have particularly relied on the following texts, and recommend them to students requiring further direction and assistance:

Prepare, Plan and Practise for the Property Presentation – then perform and review

Prepare

Do the research. Know your material. Identify the key issues. Become the expert. If you are going to be questioned in a presentation, make sure that you consider the arguments and the counter-arguments and put them into a logical order so that you will be well prepared for questions. Familiarise yourself with the assessment criteria before you plan your presentation.

Plan

Plan out your presentation and write it up in advance but avoid the temptation to write down every single word in a script.

Reduce your longer version to a set of headings, key sentences and dot-points (the skeleton outline). Use setting out, numbering, headings, dot-points and highlighters to emphasise the structure of your presentation and your argument. A visible layout with headings and numbered points helps you to see quickly where you are up to when you are doing the presentation. A continuous stream of words on a page does not help at all – it’s too easy to lose your place! Prepare an overview document or argument map that lists the arguments and possible counter-arguments that could be raised on the issues.

Practise

Use the long version once or twice to practise the presentation, with the aim of:

- getting the timing right and
- familiarising yourself with the material.

Then let go of the long version and practise with the shorter version once or twice. (Confident, experienced presenters can go straight to the skeleton version.) Once you feel comfortable with the shorter version, practise giving the presentation with some sympathetic friends or family members as your test audience. Make sure that they ask you some questions, so that you can practise giving answers. Ask for feedback and be prepared to accept criticism.

On the day

Use the shorter version, but if you are really prone to nerves, take the longer version just in case of nerves – BUT reach for the security blanket only in dire
emergencies! If you have prepared well enough and run through it a couple of times, you should have the confidence to do it with the shorter set of notes.

The Property Presentation: how much preparation?

Experts say that we use about 100 – 120 words per minute when presenting, so prepare about 7 minutes worth of material and this will allow some time for questions.

Introduction:  about 50 – 100 words  
**Body:**  500 – 600 words  
Conclusion:  about 50 – 100 words

(Test out your presentation and see if the 100 – 120 word/minute plan works for you.)

*After every presentation, review your performance and your preparation.*
Review your performance after the Property Presentation

1. Describe in factual terms how you prepared for the event.

2. How long did you spend on your preparation?

3. What kind of notes did you make? Were they useful on the day?

4. How did you feel before, during and after the exercise? (What was good and what was not so good?)

5. What (if anything) will you do differently next time?
   I will

   I will not

Note: you should file this sheet in your employment portfolio – you may be able to use this experience in an interview as an example showing how you are a ‘reflective learner’.
module 5

The Sentencing Role Play

The Sentencing Role Play Module contains eight components:

• Understanding the Sentencing Role Play
• Introduction to Advocacy
• Advocacy: The Plea in Mitigation
• Introduction to Courtroom Etiquette
• Introduction to Teamwork
• Constructive Criticism
• Preparing a Plea in Mitigation
• Review Exercises
The Sentencing Role Play builds upon the previous oral presentations and takes students from the classroom into the courtroom. Students work as a group to prepare for a mock courtroom advocacy exercise based on the sentencing process. The Role Play introduces students to basic advocacy skills and extends the requirement of observing courtroom etiquette to include interacting with a judge and arguing persuasively for a desired outcome in the plea in mitigation.

This module contains eight components:

- Understanding the Sentencing Role Play
- Introduction to Advocacy
- Advocacy: The Plea in Mitigation
- Introduction to Courtroom Etiquette
- Introduction to Teamwork
- Constructive Criticism
- Preparing a Plea in Mitigation
- Review Exercises

Students may also wish to refresh their research skills by consulting the Legal Research Help Sheets, contained in the Appendix.

- Finding Sentencing Decisions
- Finding Unreported Judgments

You may wish to revise the following components from earlier Modules:

- Handling Nerves and Performance Anxiety (Module 3)
- Presentation Strategies and Tips (Module 3)
- Coping with Questions (Module 4).

More Than Words

You can see a sample Sentencing Law presentation in the DVD More Than Words, available from the Law Library. Episode Three of the film tells the story of Lois, a hard working high achiever who wants the top mark each time – and who learns the value of keeping it all in perspective and finding other sources of satisfaction. Many students find group work to be a difficult challenge, but role plays and moots are essentially group activities, and given the frequency with which graduates have to participate effectively as members of work teams once they find employment, these skills are well worth mastering. There are very few jobs that do not require teamwork – and so whether you enjoy these assessment tasks or not, you need to approach them with a positive attitude and realise that you will gain valuable experience from these tasks that will be very useful in the future. They will prepare you for the job market and they will give you experiences that you can use as concrete examples in job interviews.
Understanding the Sentencing Role Play

What does the Sentencing Presentation involve?

The role play task takes place in seminars and requires students to take one of three different roles:

1. Prosecuting Counsel, who makes submissions on sentence,
2. Defence Counsel, who makes a plea in mitigation, or
3. The Judge, who asks questions and makes the decision.

Each student will be required to speak for approximately 10 minutes.

The Sentencing Scenarios are designed to develop skills in the analysis of sentencing problems and development of a case concept and to assist in gaining confidence in the presentation of oral legal argument. Students are permitted (as a group) to elaborate upon the assigned factual scenario. Each student will be required to hand up a one page summary of their presentation.

The student taking the role of the Crown Prosecutor must:

- Identify the relevant facts about the offence, including: the manner of the offender’s apprehension, the offender’s explanation of the events to police (if any), the offender’s prior convictions and the aftermath of the crime (eg, victim impact) and any aggravating facts the Crown intends to rely on.
- Assist the judge to understand the Crown’s view of the seriousness of the crime and the relevant sentencing factors that should be taken into account.
- Comment in general terms on the appropriateness of the kinds of sentence that are available and recommend the imposition of a particular kind of sentence.
- Challenge any facts that are asserted by the defence that do not accord with the facts of the offence, and/or challenge any implausible account of the offender’s belief or state of mind.

The student taking the role of the Defence Counsel must:

- Attempt to obtain the least punitive sentencing disposition available.
- Identify the relevant facts about the offence, the offender’s explanation of the events (if any), and the offender’s response to the offence (if any) and challenge any aggravating facts raised by the Crown that are contested.
- Urge a particular sentencing disposition upon the judge and provide the judge with a reasoned argument based on the purposes of sentencing and the relevant factors which justifies that disposition.
The student taking the role of the Judge must:

- Ask appropriate questions of Counsel to clarify any uncertainty in the facts or the law.
- Rule upon any contested issues.
- Sentence the offender and give reasons for their decision.

Teamwork is essential in a role play

It is strongly suggested that the three students work as a team to discuss the case, elaborate upon the facts by agreement, identify the issues and to develop and test the possible arguments.

The following pages contain an overview of the role of the defence counsel in a plea in mitigation. Much of the advice has been taken from the notes on advocacy that follow.

Guide to the Assessment Criteria

Personal Presentation Skills (criteria 1-7)

1. Ability to speak without relying on a prepared word-for-word text.
2. Uses eye contact with the judge / counsel / court.
3. Uses voice well: audible, expressive and persuasive.
4. Uses clear and appropriate language.
5. Use of time.
6. Engaging with Counsel / Bench.
7. Case concept.

Legal Issues (criteria 8-10)

8. Has identified the main issues.
9. Has applied the law appropriately.
10. Demonstrated understanding of the issues.

Database Access (criterion 11)

11. Use of the sentencing database (where relevant)
Introduction to Advocacy

Over the next few pages you will find some helpful notes on advocacy taken from some of the leading texts on the topic. Some of the common themes to look out for when you are reading these notes and searching through the textbooks for advice about advocacy are:

- The importance of thorough preparation.
- The importance of developing a clear case concept or theme to give structure and purpose to your presentation.
- The importance of considering both sides of any issue so that you can be prepared to deal with them in your submissions and arguments.
- The importance of honesty, integrity and courage.
- The importance of structure in any presentation: start with a strong opening line, and make sure you have a clear introduction, middle and conclusion.
- Everyone gets nervous.
- Good advocacy depends on making good communication choices.

These notes begin with some basic advice about advocacy and conclude with specialist advice on preparing a plea in mitigation.


Advocacy and fear [at 34]

Advocacy is the sharp end of the law: it’s where the real action is. As an advocate you’ve got to know how to handle fright – fear that rarely goes away completely – and handle it so on one would ever guess. To be a real advocate you’ve got to be an actor and you’ve got to be a brave one.

This needs to be said, you know. It needs to be faced. It’s the basic, rock-bottom truth of what real advocacy is all about. It takes courage, it takes imagination, and it takes the ability to get up and keep going when your mouth goes dry and you want to burst into tears. And all without showing it – all incidentally, without letting it break you heart and break your spirit.

Shape your story or argument

Think: beginning, middle and end to give shape to what you do. Try to focus on how you intend to end whatever it is you are doing. This ensures almost automatically that you will always know where you are going. [adapted from 39]

See also in this book: Chapter Four: Advocacy as Theatre.
Richard Crawford: *The Persuasion Edge*  
(Professional Education Systems, 1989)

At the moment you meet clients or are otherwise introduced to a case, you begin a long persuasion campaign which usually ends in victory or defeat months before a prospective jury list has even been prepared. ... In some ways the art of persuasion is a complex phenomenon, but in other ways the art is just as simple as that – making good communication choices.

**Some important communication choices [at 2-8]**

1. Arrangement or sequence choices:
   - Lead with strength – put your best idea, strongest data, or best argument first.
   - Close with strength – return to your strongest point at the end.
   - Decide when to make your points in multiple speaker settings.
   - Control the time and order in which negative factors are introduced.

2. Select and edit all of your data:
   - Narrow your points in accordance with your goals.

3. Make careful delivery transmission choices:
   - Consider everything which can be seen, heard or touched.
   - Pay attention to how you dress, where you stand or sit, how you move, your tone of voice, etc.


5. Match your appeal focus to the receiver.

Lee Stuesser: *An Introduction to Advocacy*  
(Law Book Co, 1993)

**A theory of the case [at 3-10]**

Before the trial begins you must know where you are going with your case. You need a theory of the case, You need a trial strategy. You need to know what your objectives are and you need to plan how you are going to achieve those objectives. .... In essence, you work back from your conclusion...

Another analogy is that of the advocate as storyteller. Your task is to condense weeks, months, or years of work on a case into an easily comprehended trial story. Persuade through sincerity, plausibility and simplicity. Your theory of the case must be understandable and accord with – not offend – the common sense of the judge or jury.

Developing a theory of the case involves four parts:
  a) garnering the facts
  b) researching the applicable law
  c) considering how to get the necessary facts into evidence; and
  d) assessing the opponent’s theory of the case.

See p 8-10 for a research strategy.
The objective of advocacy is persuasion

You are seeking to persuade the court that the penalty you are suggesting is appropriate; that your client has complied with all the procedural requirements of the law; and that the interests of justice demand the outcome that you are seeking. As with techniques of persuasion in other contexts, you need a subtle blend of positive facts, persuasive language and appropriate options to offer the decision-maker. In order to achieve this blend, you need to successfully manage the two fundamental tasks of advocacy: preparation and presentation. [122]

Preparation aids presentation and performance

Thorough preparation is the key to successful advocacy. ... The benefit of thorough preparation is that you will have confidence in yourself and in your case, and this in turn will enable you to relax, to give your client confidence in you as their advocate, to pay attention to your client’s nervousness, and, ultimately to present the case more proficiently than you would if you were secretly anxious about all those questions to which you do not know the answers. [122-123]

Hugh Selby: Winning in Court: An Introduction to Advocacy  (OUP, 2000)

You need a game plan comprising: a case theory, a motif and a tactical plan Contests, including court contests, are about winning and losing. Just as a game, be it a sport or cards or chess, requires skill and preparation (along with an element of luck), so the outcome of any court case reflects the quality of the preparation and the quality of performance in court. It is a team effort too – the combined effort of performances by all the witnesses and advocates on one side weighted against those on the other. Hence all litigation should be seen as requiring a game plan and the skill to carry out the agreed tactics.

Consider what the other side will argue

Naturally that preparation and performance must not be blinkered by only looking at your own case. That would be as dangerous preparing for a competitive match with no information about your opponent, the weather or the playing surface. Court contests, at least quality contests, are a battle of wits in which each side has a plan that anticipates and rebuts the likely moves of the other side.
Tell an interesting story

Getting a satisfactory outcome is more likely if you can offer something more than a good technical performance. Your case is important to you but it is likely that the court has heard variations of your story many times ... It is not a pleasure to hear yet another one. However, you can create real interest in the court and be persuasive by setting out to deliver an interesting story. Your tools are visual aids such as diagrams and photos and the use of a catchy headline that captures the essence of your case. We call that headline a motif. (xii-xiii)

Anticipating your anxiety

Anticipation has a couple of meanings for an advocate. First there is that sense of anticipation felt before the hearing starts. This is akin to the mixture of excitement and tension felt by many performers in the arts and in sporting competitions shortly before the curtain rises or the whistle sounds. Performance anxiety is the label for those anticipatory feelings that can propel you to an exciting, confident opening or thwart all your preparation. Among Australian advocates the most common ‘pre-performance' expression of anxiety are butterflies, changes to sleep patterns, irritability with family and friends, changes to appetite, and palpitations. One hundred and twenty-five advocates from around Australia responded to a survey in 1999 that sought information about their anxiety before and during court cases both at the start of their career and when they were experienced. Common experiences of anxiety in the lead up to cases early in an advocate's career range from 36 per cent who often experienced palpitations to 70 per cent who often had butterflies. Almost 80 per cent were irritable with family members and friends at least once, while 90 per cent had sleep problems before at least one case. There is nothing unusual about performance anxiety. [26-27]

You need to anticipate how the game will develop and develop a plan to deal with it. Proper anticipation and preparation for what will develop in the case helps to alleviate performance anxiety. [adapted from 27]
You need a case theory

This is a succinct assessment of the key fact and law issues raised by the contest. This embraces the perspectives of all parties. A common mistake is to describe a case from just one side. ... It must include an appreciation of the range of outcomes in the case from complete victory to defeat with the possible range of midway ‘compromises’ identified.

You need a motif or catch phrase

The second, essential element of the game plan is a short phrase that captures the essence of your case in a catchy, persuasive manner. This phrase – a motif or headline – will be introduced in your opening remarks. It will be heard repeatedly, but subtly, during questioning. It is the connecting strand between opening and closing address.

You need a tactical plan

Third there must be a tactical plan within the game plan that dictates issues of witness preparation, agreement with the other side to narrow down the issues, emphases within both your opening and closing statements, the order in which witnesses are to be called, the order in which topics will be raised with each witness, your use of visual aids, and the tone of your questioning both in chief and in cross examination. [32-33]

Sample game plans appear in Chapter Three.

Michael Hyam: *Advocacy Skills* (OUP, 1999)

**On speaking without notes** [at 1-2]

Everyone at the start of a speaking career would like to be able to speak fluently, preferably without notes; but few beginners would trust themselves to try. Most feel the need to write out what they are going to say in its entirety. … But this method of preparation should be avoided.

You should aim at creating a picture of your argument in your head; its form, its logical structure and the connections between one idea and another. [at 4]

**On style**

Speak in your everyday vocabulary so that you can speak naturally and convincingly in your own style. Avoid an artificial style, and avoid waffle. [6]

Get the facts right first: ‘style is the accurate expression of clear thought which should be achieved by the use of simple and harmonious words.’ [7]

Style:
1. clarity
2. a rich vocabulary,
3. avoid verbiage [7]

Learn how to be comfortable with the legal terms [7].

Good advocacy depends on good preparation [11]

Be concise [26].


This is an excellent short book on advocacy – students should make a point of reading the following chapters:

**Chapter One: What makes a good advocate?**

- Understanding the advocacy process
- Understanding the decision-making process
- A knowledge of the audience
- An ability to change palaces with the audience
- Self-knowledge
- Integrity
- Respect and courtesy
- Communicate clearly
- Imagination and common sense
- Patience
- A sense of duty
- Courage
- The confidence to be yourself
- Knowledge of the facts and the law
- Preparation and hard work
Chapter Two: Case Presentation

This chapter emphasises:
- The importance of developing and testing your case theory.
- The need to be concise, logical and prepared.
- The drama of advocacy.
- The need to deal with weak points in your case.

Chapter Four: Oral Advocacy

This chapter emphasises:
- The importance of preparation.
- Handling nerves.
- The important aspects of oral communication.

Chapter Five: Questions

This chapter emphasises:
- The importance of listening.
- The different kinds of questions and how to deal with them.
- How to develop a conversation with the judges.
- How to link your answers to your argument.

Chapter Eleven: Appeals

This chapter emphasises:
- The importance of persuasion.
- The structure of written submissions.
- The need to develop a theme and link your arguments to that theme.
- The problems commonly occurring in oral submissions.
5

Hyams, Campbell and Evans: *Practical Legal Skills* (OUP 2007)

**Court etiquette**

Bow (briefly) to the court when you enter and leave.

Address the judge as ‘Your Honour’.

Stand when addressing the judge and when they are addressing you. If you watch experienced advocates, you will notice that they half rise to their feet even to say ‘Yes, Your Honour’.

Sit down immediately if the opposing lawyer or prosecutor is speaking even if they have interrupted you in full flight to make an objection. There should never be more than one advocate standing at a time.

When you are addressing the court, resist the temptation to put your hands in your pocket or a foot on the chair to demonstrate how relaxed and confident you are.

If you need information from your client while you are addressing the court, do not turn around with your back to the judge without asking permission: say ‘May I have a moment Your Honour?’
Michael Hyam: *Advocacy Skills* (OUP, 1999)

**On the Plea in Mitigation**

A good plea in mitigation should make the judge feel intellectually uncomfortable if he rejects the advocate’s argument. [44]

This definition of a good plea is intended to draw attention to two particular points. The first is that you should take care to base your submissions on a realistic appraisal of the sentencing options; and secondly, that you must address a cogent argument to the judge, and not a series of assertions unsupported by reasons. [44]

It is the same with a speech in mitigation as it is with any other type of speech in court: you are seeking to advance a compelling argument on which you intend the judge to act. Once you have the facts of the case clearly in mind, together with the relevant principles of sentencing, you are ready to formulate your argument. [45]

Be prepared for any questions that the judge might wish to raise.

**Should you divide your plea in mitigation into set compartments?**

See discussion and examples at [48-53] advising students not to adopt a rigid formula, but to construct an argument based on the range, the factors and the principles.

**The routine format approach:**

1. Antecedents (ie, background).
2. The facts of the case.
3. What ought to be done. [see example and critique at 48-50]

**The principled argument approach**

1. The usual range and its relevant factors
   Identify the usual range for the offence and work out the factors that make it relatively more or less serious. Compare your case with the range in the light of the factors, to suggest where in the range the offender may best be fitted. Give reasons based on facts to back this argument up.

2. Any other relevant factors
   Then look at other relevant principles and, again, using the facts about the case and your client, to construct an argument suggesting leniency is warranted.

3. Consider any weak parts of your case and try to counter them.
4. Construct an argument that takes into account these relevant factors. [see 50-53]
Suggested process for a guilty plea: 125-132 (two case studies are presented)

1. Select facts
Information about the case tends to fall under three headings:
   - What happened
   - Why it won’t happen again
   - The offender’s personal circumstances
   - The offender’s financial circumstances

2. Select language
Look for colourful, phrases that will paint the picture that you want to put into the judge’s mind.

3. Choose an opening line
The opening line is crucial. Your aim is to catch the magistrate or judge’s attention and to provide a convenient ‘tag’ that distinguishes this case from all the others of the same type. However, this may not be possible in run of the mill cases, and you must always be careful not to resort to flamboyant or over-dramatic language.

4. Organise the facts
Put the key information first and the less important facts later. Try to make the facts flow from your opening line.
It may often be sensible to begin by acknowledging the seriousness of the offence as this will make sure that the judge or magistrate does not think that the offender does not take the law or the court seriously.

5. Deal with any weaknesses in the case
Do not try to ignore the fact of previous convictions, for example. Try to find a way to deal with them – were they quite some time ago, has the offender’s life changed since then? Can the current offence be distinguished in some way? Has the offender taken steps to deal with the problem? Has the offender made restitution or tried to make amends?

6. Select a penalty
Do not ignore this aspect. Suggest an appropriate penalty. Be realistic and give reasons to support the suggested penalty.

7. Prepare notes for the hearing
Do not prepare a full script. Put together a logical set of notes comprising headings, key words and phrases.
On the role of counsel

Prosecutors have the responsibility to ensure that all relevant information is placed before the court and that the court does not sentence on a basis that is wrong in law or principle. Although sentencing decisions are within the scope of the adversary system, it is not the role of the prosecutor to contend for a higher sentence. The role of the plea-maker is different ... [it] is to obtain the best possible result for the client. It is a most important function because it is one in which good advocacy is most effective in producing a different and a more favourable result for the client.

A mere presentation to the court of background information and some mitigatory factors about the offender and the offence followed by a request for leniency does not make a good plea. It is unhelpful and amounts to an abrogation of the advocate’s role, which is to persuade. An effective plea must be thoroughly prepared and presented as a constructive argument directed to achieve a specific result. It must be persuasive, balanced and courageous.

The plea must be persuasive

In this context, to persuade is to influence the decision by formulating or changing the sentencer’s perception and approach. To achieve this the advocate must strive to communicate with the person who must make the decision – not merely to speak at them and provide information. Communication involves getting through to that person, catering to their needs and involving them. This also means that the advocate must create an atmosphere consistent with the plea. It is helpful to find out as much as possible about the background and personality of the sentencer; about his or her attitudes, idiosyncrasies and previous decisions in similar cases. A good plea will always take into account the fact that the sentencing process involves the emotions as well as the intellect of the decision-maker.

The plea must be balanced

To be balanced, the plea should take account of its weaknesses. These may need to be stated and dealt with in a positive way and not left to the prosecutor or the sentencer to be used to undermine the argument for a particular result. Balance should also be achieved in dealing with the various and often competing sentencing considerations to which the court must give effect.

The plea must be courageous

It is the advocate’s role in the interests of his or her client to enhance the sentencer’s understanding and acceptance of new learning from other disciplines and of changing social conditions and attitudes. To be creative and courageous does not mean to be outrageous, unrealistic of controversial for its own sake. What I think is welcome in most courts is a novel and approach which is well and persistently presented – providing it is reasoned and backed
up with evidence. Thus the advocate can achieve results by persuading the court to look again and develop past the previously accepted limits.

See also George Hampel ‘Plea Making’ (1978) 52 Law Institute Journal 101, for a list of useful ideas to use in the plea.

The Inns of Court: Advocacy (OUP, 2005)

This very useful book gives some sample phrases for sentencing submissions. Practise using these phrases with your co-presenters.

The body of the introduction (after your ‘opening sentence’)

‘The substance of my plea in mitigation is …’
‘I shall seek to persuade Your Honour that …’

On the sentencing range

‘Your Honour, the defendant accepts that this was a serious offence and has fully admitted his part in it, I do not propose to address Your Honour on the circumstances of the offence, but will seek to persuade Your Honour that …’

‘In my submission, as Your Honour will appreciate, the authorities state that sentences at the higher end of the scale are reserved for offences where …’

‘I hope that Your Honour will accept that on the prosecution’s case, the defendant can be dissociated from any aggravating features and that as a matter of principle, a sentence at the lower end of the scale is appropriate.’

On the mitigating factors

‘It is my submission that when all of these factors are borne in mind, a sentence at the lower end of the scale is justified.’

In conclusion

‘In conclusion Your Honour, in my submission, both as a matter of principle and on account of the particular facts of this case, a financial penalty would be appropriate, which can justifiably be put at the lower end of the scale.’

‘Your Honour, the defendant appreciates that a custodial sentence is justified in this case and I do not propose to seek to persuade Your Honour otherwise. However, this is a case where, in my submission, there are some mitigating factors which could enable Your Honour to take a lenient view and:

... impose a short period of imprisonment …
... suspend any sentence of imprisonment …

‘If it please the Court, those are my submissions.’
Introduction to Courtroom Etiquette

Basic Rules

Bow (briefly) to the court when you enter and leave.
Stand up when you speak to a judge.
Never interrupt a judge or speak over the judge: the minute the judge begins to speak, you must stop talking and remain silent until the judge finishes.

When making your appearances or when moving from one part of your submissions to another part, you may say:

‘May it please the Court’
‘If it please the Court’
‘If Your Honour pleases’
‘If it please the Court, I am Ms Jones and I appear with my learned friend Mr Smith for the Appellant / Respondent / Defendant / Plaintiff / Crown in this matter.’
‘May it please the Court, my name is Jane Jones and I appear with my learned friend Mr Tom Smith for the Appellant / Respondent / Defendant / Plaintiff / Crown.’

Never say ‘I think’ or ‘I feel’ – say ‘I submit’ or ‘I suggest’.

If you disagree with the judge, say: ‘With respect, Your Honour…’ or ‘With great respect….’

Never say ‘I believe’ unless you are reporting on the actual state of your belief or knowledge – for example if the judge asks whether there were any other witnesses, you can answer ‘I believe that there were no other witnesses available, Your Honour.’

Addressing the judge

Address the judge as ‘Your Honour’ – or collectively as ‘Your Honours’.

Refer to other judges as:
‘His Honour, Justice X’
‘Her Honour, Justice Y’ or
‘Their Honours, Justices X, Y and Z.’
Citing cases

**Civil cases:**
*Davis v Nielsen* is read out as: *Davis and Nielsen.*

**Criminal cases:**
*R v Davis* is read out as: *The Crown against Davis.*

Never pronounce ‘v’ as ‘vee’.
Never pronounce ‘R’ as ‘Aar’.
Never pronounce ‘R v’ as ‘Aar-vee’.

How to refer to judges from the House of Lords:

‘His Lordship’
‘Her Ladyship’
‘Lord Fraser of Tullybelton’

Some commonly found abbreviations are:

- **CJ:** Chief Justice – ‘The Chief Justice, Sir Garfield Barwick…’
  ‘The Chief Justice, His Honour, Justice Gleeson …’
- **JA:** Judge of Appeal, Justice of Appeal
- **P:** President
- **LC:** Lord Chancellor – ‘Lord Hailsham, Lord Chancellor…’
- **VC:** Vice Chancellor – ‘Sir Robert Megarry, Vice Chancellor …’
- **B:** Baron
- **CB:** Chief Baron
- **LJ:** Lord Justice – ‘Lord Justice Lawton’
- **MR:** Master of the Rolls – ‘Lord Denning, Master of the Rolls…’
  ‘The Master of the Rolls, Sir Bariol Brett…’

Referring to other counsel

Refer to other counsel as 'my learned friend' – never as ‘my colleague’ or ‘my opponent’.

You may also refer to ‘My learned leader’ or ‘My learned junior’ or ‘Learned counsel for the appellant/ respondent…..’
A guide to further reading

There is a considerable amount of literature on advocacy and oral communication skills in the legal context, most of which has been very helpful and given real guidance in putting these materials together. We have particularly relied on the following texts, and recommend them to students requiring further direction and assistance:

- L Stuesser, *An Introduction to Advocacy*, (Law Book Co, 1993)
- Hyams, Campbell & Evans, *Practical Legal Skills*, (OUP 2007)
- The Inns of Court, *Advocacy*, (OUP, 2005)
- G Hampel, ‘Sentencing and the Plea in Mitigation’ (1990) 64 LIJ 853
- G Hampel, ‘Plea Making’ (19978) 52 LIJ 101
Communication, Advocacy and Teamwork

Introduction to Teamwork

A team is a group of people working together to complete a task within a set timeframe. Working as part of an effective team may be one of the most challenging tasks you will face at university and in the workplace. In an effective team, members will fulfil various roles to ensure the successful completion of tasks and the smooth operation of team processes. Teamwork is a rewarding and often essential component of employment and many other aspects of daily life.

Employers value teamwork skills

In 2001, the Business Council of Australia and the Australian Chamber of Commerce and Industry conducted research into the employability skills needs of industry in Australia. One of the eight key skills identified as valuable by small, medium and large enterprises was teamwork.

The study found that employers have an expectation that teamwork includes the following elements:

- working with people of different ages, gender, race, religion or political persuasion;
- working as an individual and as a member of a team;
- knowing how to define a role as part of a team;
- applying teamwork to a range of situations - e.g., futures planning, crisis problem solving;
- identifying the strengths of team members; and
- coaching, mentoring and giving feedback.

The results of the research indicated that all types of enterprise (small, medium and large) considered teamwork skills (along with communication) critical to their performance. Almost all of the employers participating in the research indicated that there was almost no demand for ‘solo’ employees, and had an expectation that all employees would work in a variety of teams over time.

Roles in teams

In order for a team to work together to complete a task within a set timeframe, each member will contribute according to their personality, abilities and experience. Team members usually take on one or more typical roles, which either help the group achieve its aims and goals, or to remain focused and harmonious. You may recognise in this list the roles that you tend to naturally adopt when working in teams.

- A member who initiates action by suggesting goals and tasks
- A member who plans how to approach the task
- A member who suggests ideas and information relevant to the task
- A member who asks for relevant information and suggestions
- A member who observes the ‘mood’ within the group and uses strategies to improve it (such as suggesting breaks, making jokes)
• A member who **summarises** the contributions that have been made
• A member who **co-ordinates** the group’s efforts
• A member who **encourages** the group with positive words and active listening
• A member who **assesses** the group’s ideas and their validity
• A member who **resolves** conflict and promotes harmony
• A member who **monitors** the group’s progress in reaching its goal

Write down some of the roles you naturally fill when working in a group.

________________________
________________________
________________________
________________________
________________________

Which skills do you need to develop to be a more effective contributor to a group?

________________________
________________________
________________________
________________________
________________________

Constructive Criticism: Using the Sandwich Technique

Most people feel uncomfortable when they receive criticism and many people feel equally uncomfortable when giving negative feedback to others. When you are helping each other to prepare for a role play or moot, you need to comment on each other’s performance and offer constructive criticism, ie, criticism and feedback that will assist the other person to improve their performance. So, you need to be able to point out to others the things that they are doing well, as well as the things that they are doing which may be hindering effective communication.

In many cases, when you are working with friends that you know and trust, you may all feel quite comfortable coming straight out with negative feedback. However, if you do not feel so comfortable giving criticism - or if you sense that your partner is not coping with your criticism, you might try the ‘Sandwich’ or ‘Hamburger’ technique.

One Easy Way to give More Effective Criticism

This section has been sourced from the following website: The Positivity Blog at <http://www.positivityblog.com/index.php/2007/07/18/one-easy-way-to-give-more-effective-criticism/>

1. You start by listing the positive things about the essay, project etc.

2. Then move on to giving the negative criticism. Remember to make it constructive criticism and that you keep the critique directed as much as possible towards the task rather than the person. Unconstructive criticism and personal attacks are pointless and a waste of everyone’s time. So here you list the negative aspects of the paper, speech etc. and what specific things you think could be done to improve these weak points. Be clear about it or people might leave not knowing what to improve. Rather than seeing this section as a place to where you can pour out the negativity see it as a section where you recommend and in specific way explain what could be improved and provide suggestions on how to go about doing that.

3. End on a positive and encouraging note. Highlight what’s good about the speech or project and positive points about the people who made it. Be honest though, just praise what you liked. A sandwich made of Insincerity + Negative Criticism + Insincerity is worse than just giving your negative criticism straight up and people can smell it from miles away.

This technique is not only useful when you are doing some heavy and deep criticism for hours on end. You can use it in your day to day life too to convey a small complaint or something you think could be improved.
How to Give Constructive Criticism

Another version of the ‘Sandwich Technique’ and tips on how best to use it can be found at: <http://www.wikihow.com/Give-Constructive-Criticism>

1 Use the ‘sandwich technique’

When you use the sandwich technique, you sandwich one bad point between two good points. Start off with a good characteristic of the person, or special gift they have. Then, put in the ‘but’. Then always end it with another good point. Example: ‘You are so good at making those grilled cheese sandwiches. They taste so good. But I really wish that you would clean up the kitchen area after you do it. It would help me out a lot. You are so good about helping me out around the house.’

Variations include:

What I liked most was… One way you could improve this is… One of your greatest strengths is…

The first thing I observed was that you did ……… right. Well done. Now if we can tweak this one thing ……… it’ll be even better. There, you got it. You did great.

One really good thing about you is………. I would really appreciate it if, instead of doing ………., that you do ………. That would make me very happy. By the way, in case I haven’t mentioned it lately, I just want to say that one thing I really admire about you is………

You make a valid point. One thing I like about how you think is ………. Let me counter your argument by saying… Like I said, you made a good point. One thing that always impresses me about you is…

The purpose of using this technique is:

• To relax the other person and help create a situation or a state-of-mind where they will be more open to receiving the criticism or advice.
• To reduce the possibility that the other person will get angry with you for pointing out their faults.
• To let the other person know that you are ‘on their side’. Rather than being antagonistic, you are showing that you recognize their good points, too.
• By closing with a positive statement, you remind the person of their strengths, their worth and their value. They are more likely to be motivated to accept the negative if they are reminded that they are ‘not all bad’.
Preparing a Plea in Mitigation

A: Prepare

1 Familiarise yourself with the Facts

Familiarise yourself with all the facts and then select the relevant facts to use. Look for:
- facts about the offence,
- facts about the offender,
- facts about the aftermath of the offence, including the victim.

2 Find the Penalties and the Law

Look through the Sentencing Law texts and consult Hampel's article on constructing a plea in mitigation. Collect all the relevant material on the offence range, the purposes of sentencing, and the relevant sentencing factors.

The offence range
Find out the usual range for the offence and identify the factors which make it relatively more or less serious. Compare your case with the range in the light of the factors, to see where in the range the offender may best be fitted. Give reasons based on facts to back this argument up.

Identify any other relevant factors and principles
Look at other relevant sentencing principles and, using the facts about the case and your client, construct an argument suggesting why leniency is warranted.

3 Identify any weaknesses in the case and work out how to deal with them

If you are representing an offender in a serious case do not be tempted to pretend that the offence is not serious. In these cases you still have to find something to argue.

Do not try to avoid or ignore the weaknesses in your case – for example, the fact of previous convictions. Try to find a way to deal with them:
- Were they quite some time ago?
- Has the offender’s life changed since then?
- Can the current offence be distinguished in some way?
- Has the offender taken steps to deal with the problem?
- Has the offender made restitution or tried to make amends?
B: Plan

1 Construct a case picture and select language

In the light of the relevant facts and the relevant law, work out your case picture or story. Make sure that the story has structure and leads from:

- a strong beginning,
- through a central argument based on the sentencing purposes and principles,
- to the desired end.

Select the story and the language

Decide what kind of story you want to tell the judge about this case. Look for strong, colourful phrases that will help to paint the case picture that you want to put into the judge’s mind. A warning: do not use flamboyant, over-emotive or over-dramatic language. Feelings are important – but let the feelings emerge in your audience from the way that you tell the facts of your story, not from over-dramatising the language.

The opening line

The opening line is crucial. Your aim is to catch the magistrate or judge’s attention and start the story by providing a convenient ‘tag’ that distinguishes this case from all the others and stays in the mind.

The central argument: based on purposes and principles

Construct an argument that identifies the crucial principles and uses the selected facts to show how the application of the principles to the facts point towards a particular outcome. [Remember: It may often be sensible to acknowledge the seriousness of the offence as this will ensure that the judge or magistrate will not think that the offender does not take the law or the court seriously.]

The end of the story: select a penalty

Work out where you want your story to end. What penalty do you want to suggest to the judge? Do not ignore this aspect. Suggest an appropriate penalty. Be realistic and document the reasons to support the suggested penalty. Make sure that your opening line, your story and the end of your story fit together and finish strongly.
C: Practise

1 Prepare notes

Do not prepare a full script. Put together a logical set of notes comprising headings, key words and phrases.
In the body of your presentation, put the key information first and the less important material later so that you start strongly and positively. Try to make the material flow from your opening line.

2 Practise the presentation

Get some friends to ask you questions during your practice so that you will be prepared when the judge interrupts you.

D. Review your Performance after the Presentation

How could you improve your:
Preparation?
Planning?
Content?
Performance?
Review your performance after the Sentencing Presentation

1. Describe in factual terms how you prepared for the event.

2. How long did you spend on your preparation?

3. What kind of notes did you make? Were they useful on the day?

4. How did you feel before, during and after the exercise? (What was good and what was not so good?)

5. What (if anything) will you do differently next time?

I will

I will not

Note: you should file this sheet in your employment portfolio – you may be able to use this experience in an interview as an example showing how you are a ‘reflective learner’.
Do a SAP Review:  
Style, Attitude, Preparation

Style

Voice: too fast, too soft, too many ‘ums’ and ‘ers’
Consider the cause: too excited and eager? too nervous? did not realise or even notice?
Eye Contact: looking up – or looking down at your notes too much?
Body Language: fidgety or still? hunched or open? too many/ few gestures?

Attitude

Were you yourself?
Were you: scared, unconfident, combative, aggressive? too flashy, over-acting, over-dramatic, playing for laughs? confident, calm, controlled, engaging, knowledgeable, polite, respectful?

Preparation

Did your notes help or hinder?

Reflect

What did you learn from watching yourself?
What did you learn from watching others? (steal from them!)
module 6

Mooting

The Mooting Module contains five components:

• Preparing for the Faculty Moot
• Courtroom Etiquette and Sample Mooting Phrases
• Notes on Mooting and Sample Submissions
• Advanced Legal Reasoning: how to argue the law
• Review Exercises
Contents

A moot is a hypothetical appeal case argued by law students before a bench of judges. The Mooting Exercise is the culmination of the oral communication and advocacy training program. It allows students to show off the skills that they have acquired over their years at Law School. Many law firms place a high value on participation in moots. This is because successful participation in moots is an indication that graduates have developed the ability to:

- Think on their feet,
- Work to set deadlines under pressure,
- Work as a member of a team,
- Research the law in a timely and effective manner, and
- Construct written and oral legal arguments and defend them under questioning.

Every student must participate in a Faculty moot, usually in their final year of study. Students are given a moot problem to argue and are divided into groups of four: two students will appear for the Appellant and two will appear for the Respondent. The Faculty moot is unlike the competition moots, where the two sides are competing for victory. Rather, in the Faculty moot, the four students must work co-operatively together to identify the issues and the arguments. They are given a limited time to prepare their written submissions, which they must present to a panel of judges (usually one academic member and one member of the legal profession) who will test the arguments by asking questions and engaging in a legal argument with the mooters. This means that students must be familiar with both the substantive law governing the case and the formalities used in oral legal argument.

There are many other mooting competitions in which students can participate if they wish to gain experience, including:

- The ALSA moot
- The Philip C Jessup International Law moot
- The family law moot
- The constitutional law moot
- The international humanitarian law moot.

This module contains five components:

- Preparing for the Faculty Moot
- Courtroom Etiquette and Sample Mooting Phrases
- Notes on Mooting and Sample Submissions
- Advanced Legal Reasoning: how to argue the law
- Review Exercises

It builds upon the aspects of oral communication covered in the previous modules. You may wish to revise the following components in the *Torts Module* and the *Property Module*:

- Handling Nerves and Preparing your Presentation
- Coping with Questions
• Introduction to Legal Reasoning

Students may also wish to refresh their research skills by consulting the Legal Research Help Sheets, contained in the Appendix.

• Finding Cases on a Topic
• Finding Journal Articles

More Than Words

You can see a sample moot presentation in the DVD More Than Words, available from the Law Library. The final episode tells the fictional story of four students from the University of Tasmania who participated in the Jessup Moot competition, which is a prestigious international law mooting competition organised by the International Law Students Association that attracts entries from law schools around the world. The film features four students who were part of the Law School’s 2005 team, and who won the Australian prize for the Best Applicant’s Memorial. This film shows that there is no one standard kind of mooter: each of the different personalities find a different style, yet at the same time, each is able to construct and present a persuasive and effective set of legal arguments. Lois and Graham are extroverts, Stephen and Babs are more quiet and introverted – and all are highly effective mooters.
Preparing for the Faculty Moot

Before the moot

The task takes place at the Supreme Court of Tasmania or in the Andrew Inglis Clark Moot Court at the Law School. Students may collect their moot problem on the designated day at the Law School Reception Desk. They will be informed of the deadline for lodging their written submissions and of the date, time and place of their moot. Over the following days, the mooters will work together to identify the issues and arguments, research the relevant law and write their submissions. In addition to lodging their submissions at the Reception Desk on the designated day, each pair of mooters should exchange their written submissions with the other pair. Once the written submissions have been lodged, the mooters should prepare their oral arguments and practise presenting their arguments and answering questions with their partner – or even their opposition partner.

On the night of the moot

On the night of the moot, the mooters should sit at the bar table in the following order, starting from the judges’ right:

Senior Counsel for the Appellant
Junior Counsel for the Appellant
Senior Counsel for the Respondent
Junior Counsel for the Respondent

Counsel will speak in the same order as they sit. If there is a portable lectern, the mooters will pass it down the line as they take their turn.

During the moot

When the judges enter the court all mooters should rise and bow to the judges. Once the judges have seated themselves, the mooters may also sit down. The presiding judge will then ask for the appearances, whereupon the Senior Counsel for the Appellant will rise and give one of the variations on the usual formula:

‘If it please the Court, I am Ms Jane Jones and I appear with my learned friend Mr Simon Smith for the Appellant in this matter.’

The Senior Counsel for the Respondent follows:

‘May it please the Court, my name is Dick Darcy and I appear with my learned friend Mr Tom Jones on behalf of the Respondent.’

The judge will then turn to the Senior Counsel for the Appellant and invite them to open the case. This involves giving a brief outline of the case that will be presented by explaining:
• The nature of the case (‘Your Honours, this is a case of breach of contract.’)
• The facts giving rise to the dispute (be brief),
• The decision in the court below and the grounds for appeal, and
• A brief outline of the arguments and who will be making them.
  (‘I will deal with the first two submissions on breach of contract and my
  learned junior will cover the final two arguments on the issue of damages.’)

Then, having outlined the case, the Senior Counsel will begin with their
submissions and the other counsel will continue.

After the moot

At the end of the moot, the judges may give their decision, or more often than
not, will reserve their decision. Usually the judges will then give the mooters
some feedback on their performance and will prepare their marks to be
distributed to the mooters later on in the week from the Reception Desk.

Guide to the Assessment Criteria

**Organisation and Structure of the Presentation (15%)**

- Introduction
- Clarity of organisation
- Conciseness
- Comprehensiveness
- Flexibility
- Conclusion

**Development of Arguments (30%)**

- Supported by authorities and policy arguments
- Applied the law to the facts of the problem question
- Persuasiveness (maximises strong points, minimise weaknesses)
- Allocation of time

**Coping with Questions from the Bench (30%)**

- Preparation: was the speaker adequately prepared to answer all
  questions which could reasonably be anticipated?
- Responsiveness and Conciseness
- Composure
- Perception
- Focus: did the speaker lead the discussion back to the point, yield
  when appropriate, adopt a flexible position when necessary?

**Speaking Ability and Delivery (25%)**

- Persuasiveness of the advocate’s delivery
- Affirmative posture
- Visual presentation (including eye contact)
- Speaking technique (tone, modulation, inflection, volume)
- Use of prepared materials
Courtroom Etiquette and Sample Mooting Phrases

Basic Rules

Bow (briefly) to the court when you enter and leave.
Stand up when you speak to a judge.
Never interrupt a judge or speak over the judge: the minute the judge begins to speak, you must stop talking and remain silent until the judge finishes.

When making your appearances or when moving from one part of your submissions to another part, you may say:

‘May it please the Court’
‘If it please the Court’
‘If your Honour pleases’

Never say ‘I think’ or ‘I feel’ – say ‘I submit’ or ‘I suggest’ or ‘I would argue’.
If you disagree with the judge, say: ‘With respect, your Honour…’ or ‘With great respect…’

Never say ‘I believe’ unless you are reporting on the actual state of your belief or knowledge – for example if the judge asks whether there were any other witnesses, you can answer ‘I believe that there were no other witnesses available, your Honour.’

Citing cases

Civil cases: Davis v Nielsen is read out as: Davis and Nielsen.
Criminal cases: R v Davis is read out as: The Crown against Davis.
Never pronounce ‘v’ as ‘vee’.
Never pronounce ‘R’ as ‘Aar’.
Never pronounce ‘R v’ as ‘Aar-vee’.

Addressing the judge and referring to judges

Address the judge as ‘Your Honour’ – or collectively as ‘Your Honours’.
Refer to other judges as:
‘His Honour, Justice X’
‘Her Honour, Justice Y’ or
‘Their Honours, Justices X, Y and Z.’

If referring to judges from the House of Lords:
‘His Lordship’
‘Her Ladyship’
‘Lord Fraser of Tullybelton…’
Some commonly found abbreviations are:

CJ: Chief Justice – ‘The Chief Justice, Sir Garfield Barwick…’
   ‘The Chief Justice, His Honour, Justice Gleeson…’
JA: Judge of Appeal, Justice of Appeal
P: President
LC: Lord Chancellor – ‘Lord Hailsham, Lord Chancellor…’
VC: Vice Chancellor – ‘Sir Robert Megarry, Vice Chancellor…’
B: Baron
CB: Chief Baron
LJ: Lord Justice – ‘Lord Justice Lawton’
MR: Master of the Rolls – ‘Lord Denning, Master of the Rolls…’
   ‘The Master of the Rolls, Sir Baliol Brett…’

Referring to other counsel

Refer to other counsel as ‘my learned friend’ – never as ‘my colleague’ or ‘my opponent’.

You may also refer to ‘My learned leader’ or ‘My learned junior’ or ‘Learned counsel for the appellant/respondent….’

Practise the following useful phrases

If it please the Court, I will begin my first submission.

I apologise, your Honour, but I did not quite catch that question. Would your Honour be able to repeat it for me please?

I apologise, your Honour, but I am not sure that I follow that question fully. So that I may respond directly to your concern, could your Honour elaborate further?

I’m not sure whether that answers your question your Honour – is there any other issue that arises from this matter that your Honour would like me to address before I move on?

Your Honour, that is something that my learned junior will be addressing, and I would respectfully ask that she be allowed to respond to that question.

I’m not sure that I can answer that question any more fully your Honour.

I’m not sure I can take the matter any further, your Honour.

Your Honour, this is the highest that I can state my client’s case, and with your permission, I will move on.

With respect your Honour, I would submit that … (Used when disagreeing with the judge.)
With the greatest respect your Honour, that cannot be so ... (used when you strongly disagree with the judge.)

That concludes my submissions, your Honour.
If it please(s) the court, that concludes my submissions.

Further guidance on style


You can also find transcripts of the submissions made by counsel in cases argued before the High Court of Australia at the AUSTLII website: http://www.austlii.edu.au
These transcripts contain many excellent examples of oral legal advocacy by many of Australia’s top barristers.
Notes on Mooting: More than Words

Read the following notes, and watch the DVD More Than Words.

Speed

- Notice how clearly and relatively slowly all the mooters and the judges speak.
- Do not rush through your submissions.
- When you are making complicated legal arguments you need to slow your speech down a bit so that others can follow you. Nerves often make you gabble, so learn to slow down and use the pause. It also makes you look more thoughtful and your arguments sound more authoritative and considered.

Style

- Notice the way that the mooters spoke in as normal a style as possible, but without being casual.
- Do not attempt an over-blown, artificial or fancy theatrical style: we are not looking for Rumpole of the Bailey.
- Be expressive and natural, but also controlled, composed, helpful and respectful.
- Be persuasive (ie, communicate belief in your arguments) but guard against being too aggressive or combative. We want to see calm, thoughtful, human communication: a willing and measured exchange of ideas and arguments. So, theatrics and over-emotional displays suggest that you are trying to ‘con’ the judges, rather than communicate the real strengths of your arguments to them.
- Note also how the mooters have worked to eliminate irritating fillers like ‘um’ and ‘er’ from their speech.

Etiquette and Self Control

- Never speak when the judge is speaking or interrupt the judge. (See Graham’s respectful responses when the judge asks a long double barreled question.) In the contest between judge and advocate, the judge wins. Show your respect for the judge by listening intently to their question, and then pause, think, and respond.
- Control your natural urge to jump in too soon and speak over the top of the judge. A moot should develop into a conversation – BUT it is a stylised and rather artificial kind of formal conversation: keep yourself under control and observe the etiquette.
- Learn the rules for addressing judges, referring to other mooters, citing cases, etc. Notice the way that the mooters avoided saying ‘I think’ or ‘I feel’. Use the correct style: I argue ... I would argue ...
I submit ... It is our /my submission that ...
I suggest ... I would suggest ...
My response to that issue is ...

Body Language and Eye Contact

• All four of the mooters kept not only their language, but also their bodies under control. You can suggest concentration, respect and engagement with the judges by the way you hold yourself and make good eye contact with the bench. Focus on the whole bench so that you can ‘read’ their responses to your arguments. (There are some useful notes on body language in Module 7.)
• Do not slouch, slump or look down to your notes all the time. Avoid reading at all costs – unless you are quoting a key passage from a case.
• Be very careful of fiddling with spectacles or pens: they are the mooter’s enemy – especially the click-top type of pens. Put the pen down before you start.

Be willing to jump around in your submissions: you have to be flexible.

• In the film Stephen was not allowed to start his submissions before the Chief Justice asked him a question. This ‘hijacking’ technique is quite common. Pay attention to the arguments made during the other presentations so that you can be ready with your own counter-arguments when necessary. Being responsive to the judge will make the moot go better – but this requires good preparation. You need well written notes and skeleton outlines of the arguments (and counter arguments) that are clear and easy to manage. You need to know your material well and have a clear understanding of the strengths and the weakness in your arguments.
• Do not resist the judge, show resentment, or whinge and say ‘But I was going to come to that later.’ Simply turn to that part of your submissions, answer the judge’s question and then turn the moot back to the most important point that you want to make. You will score points for being responsive.
• Be aware that sometimes the judges will not want to hear one of your submissions. They may want to focus on only one part of your argument. You can try, respectfully, to convince the judge that the point is an important one – but if the judge does not want to hear it you simply have to accept the fact and move to the part of the argument that the judge wants to focus on. If you feel that the point is important you can assert yourself to some degree, but sometimes all you can do is try to make your point – or repeat your views in the conclusion of your case.

What to do if you are pinned down by the judge:

• Part of being a good moooter is the ability to cope with a direct question on the weakest parts of your case. Most moots build in at least one weak area for each side. You need to be aware of those weaker parts of your argument and you need to have prepared something to say in advance for the moment when the judge finally decides to press you on those parts. One suggestion is to follow this pattern: respond, confirm and respond again, yield (if necessary) to end the onslaught, and lead away from the issue as soon as you appear to have said all that can be said, eg:
1. If there is anything to say, turn to your prepared argument and say it, briefly.

2. If the judge presses you, try going into more depth (if you can).

3. If you are completely backed into a corner and feel that the judge is out to nail you, then it might be time to be frank and end it. Admit that ‘Perhaps this is not the strongest part of your case’ and then find a way to lead the judge to the stronger parts of the submissions, eg by saying: ‘Thank you, your Honour, but I would submit that regardless of how your Honours find on this particular point, the Appellant’s overall argument is not fatally weakened because the most important issue is ... (here try to get back to the part where you feel most comfortable!)

4. Note: the judges will not let you avoid the issue completely, so the ‘lead back’ technique works only once you have appeared to have honestly tried to deal with the arguments on their merits.

5. Remember, a faculty moot is a co-operative exercise – if you establish a friendly relationship with your ‘opponent’ you will both be able to help each other identify the strengths and weaknesses of your opposing arguments and therefore you will both be better prepared to deal with the common adversary – the judges!

**Team work is important in a Faculty Moot.**

- Unlike a competition moot, it is NOT a contest between the two sides. You have to co-operate and help each other understand the arguments and the counter-arguments. Try to work with your counter-part on the other side so that you can anticipate the questions that the judges will put to you. This part of your preparation will serve you well on the night.
- Remind yourself that this is not a real case that you have to win, it is simply an opportunity for you to show off a particular set of skills. So, familiarise yourself with the assessment criteria and work on showing off the skills that you have learnt.
- Be respectful and polite to the people that you are working with. Try to understand their position and, if you do not agree with them, let them know (calmly) that while you accept the way they feel, you have other concerns.


Keith Evans gives a helpful example of how to cover a gap in concentration and what to do when you lose your continuity during an oral legal argument.

**How to maintain your continuity [39-40]**

When you have a pause, when indeed a pause is forced upon you because your mind goes blank – as happens to all of us – try to make even that pause part of the entertainment. It can be done and it’s not difficult. ... We all know the fright of having out minds go blank on us. For the inexperienced advocate it’s a real fear. But it needn’t be. What the technique involves is this, and it works in three stages.
When you suddenly realise, with alarm, that your mind has gone blank:

**Step one** is to send a message to your stomach and command it to relax. This actually does control the flow of adrenalin and with it, the dry mouth and the raised heartbeat.

**Step two** is to pick up any piece of paper with writing, type or printing on it, look intently at a blank margin, and silently count to three.

**Step three** is to glance up at your judge and say ‘If your Lordship would give me a moment’, and then look straight back at the piece of paper.

You can have 10 seconds at this point, 20 seconds of total silence, if you need them to gather your thoughts. Nobody is going to mind, Nobody is going to feel that you have interrupted the continuity or that you have had a breakdown on transmission. This is because you have invested that pause with an apparent significance of its own. You won’t need 20 seconds, Your mind will clear much quicker than that, and on you go.

**If you lose your way**

If you lose your way in your presentation or if your sentences get longer and longer – do not get flustered or keep blundering on. The secret if you lose your way is to ‘stop dead in your tracks’. Say something like ‘I’m not putting this clearly. Let me start again.’ Nobody minds. If you’ve got lost you can be sure they have, and they’ll be grateful to you for taking the load off them as well as yourself. [62]

**Keep it simple.**

Know your audibility.
Vary your pace and tone.
Be aware of timing and use the power of the pause.
Allow silence to work for you, and don’t ignore the dramatic impact that a pause can create.

**Some helpful webpages**

MootingNet, a web resource for mooters in England and Wales.
http://www.mootingnet.org.uk/

The University of Cambridge Guide to Mooting can be found here:
http://www.cambridgemooting.co.uk/

Video Guide to mooting can be found at

There are many mooting manuals and guides to be found at the web pages of other law schools.
A guide to further reading

There is a considerable amount of literature on moot advocacy and oral communication skills, most of which has been very helpful and given real guidance in putting these materials together. We have particularly relied on the following texts, and recommend them to students requiring further direction and assistance:

- HA Finlay, *Moot Lectures*, (E-Reserve document, UTAS Library)
- L Stuesser, *An Introduction to Advocacy*, (Law Book Co, 1993)
- Hyams, Campbell & Evans, *Practical Legal Skills*, (OUP 2007)
- The Inns of Court, *Advocacy*, (OUP, 2005)

Sample submissions can be found on the following three pages.

Note: these are samples only and should not be slavishly copied: consult with your academic moot judge to check whether they have any particular preferences on the layout and content of the submissions.
SUBMISSIONS FOR THE APPELLANT (SENIOR/JUNIOR) insert name

Background
• The first paragraph should summarise the nature of the dispute.
  In four or five lines explain the essence of the dispute between the parties.

  The second paragraph should give a brief history of the dispute.
  In four or five lines explain how the case reached this court. Decision at first instance and Court of Appeal (as relevant)

Grounds of Appeal
• State your grounds of appeal and succinctly explain your reasons. If you have a complicated argument, then list and explain the steps and sub-steps in your reasoning Beneath each ground, list your case authorities. You may also wish to argue in the alternative. See examples of the submissions below.

1. The contract was made on the terms of Julia Davis Construction’s standard contract. Stern J and the Court of Appeal erred in applying Nicol v Gogarty [2003] UKHL 53, [2003] 4 All ER 969:
   1.1 Nicol does not lay down a general exclusionary rule.
   1.2 The test in Nicol should be read in light of Chalmers v Blackwood [2002] 1 QdR 474.
   1.3 The contract in issue would satisfy the test when correctly understood.

2. Alternatively, if the argument above on the authorities is incorrect, it is submitted that the Court should not follow Nicol as:
   2.1 As explained by Warner v Henning [2003] QDC 151 (16 June 2003), a significant lacuna would exist if model contracts were better insulated from the 1977 Act.
   2.2 It would be inconsistent with the aims and purposes of the statute Exemption Clauses Act (Tas).

AUTHORITIES
Nicol v Gogarty [2003] UKHL 53, [2003] 4 All ER 969
Chalmers v Blackwood [2002] 1 QdR 474
IN THE QUEENSLAND COURT OF APPEAL

BETWEEN

Jenkins Construction Pty Ltd (Appellant)

AND

IMP Society (Respondent)

SYNOPSIS OF SUBMISSIONS OF THE APPELLANT

(1) Speedy J erred in law by finding that Jenkins Constructions Pty Ltd had engaged in misleading and deceptive conduct under s 52 of the Trade Practices Act.

(2) Jenkins Constructions Pty Ltd owed no duty to IMP Society as subsequent purchasers of a commercial building.

THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:

Submission 1

1.1 The actions (i.e. conduct) during the contract negotiations between Kimbob Pty Ltd and IMP involving the letter of 4 June amounted to a representation by Kimbob to IMP. Since there was no representation to IMP by Jenkins, there could be no conduct which amounts to a breach of s 52:

Gates v City Mutual Life Assurance Society Ltd (1986) 160 CLR 1
Benlist Pty Ltd v Olivetti Australia Pty Ltd (1990) ATPR paragraph 41-043
Robt Jones (363 Adelaide Street) Pty Ltd v First Abbott Corp Pty Ltd (1997) 14 BCL 282
T J Larkins & Sons v Chelmer Holdings Pty Ltd [1965] Qd R 68

1.2 In the alternative, any representation made by Jenkins to IMP was made under duress and, accordingly, liability for any aspect thereof which may be regarded as misleading or deceptive should not fall on it.

1.3 In the third alternative, any representation by Jenkins to Kimbob was not misleading or deceptive, and furthermore was not the cause of its loss:

Yorke v Lucas (1985) 158 CLR 661
Fraser v NRMA Holdings Ltd (1995) 55 FCR 452
Myers v Transpacific Pastoral Co Pty Ltd (1986) ATPR paragraph 40-673
Elder's Trustee & Executor Co Ltd v E G Reeves Pty Ltd (1987) 78 ALR 193
Parkview (Keppell) Pty Ltd v Mytarc Pty Ltd (1984) 3 FCR 186
Submission 2

2.1 No liability will arise for the builder of a commercial building, with regard to a subsequent purchaser.

*Bryan v Maloney* (1995) 182 CLR 609
*Fangrove Pty Ltd v Tod Group Holdings Pty Ltd* [1999] 2 Qd R 236

2.2 The High Court expressly stated that the nature of the property involved, that being that it was a house, was an important consideration in concluding that the relevant relationship of proximity existed between the builder and the subsequent owner.

*Bryan v Maloney* (1995) 182 CLR 609
*Fangrove Pty Ltd v Tod Group Holdings Pty Ltd* [1999] 2 Qd R 236

2.3 If a defect was or should have been discovered by the subsequent purchaser, the subsequent purchaser will have no claim against the builder. Any reliance on the adequacy of design and construction must be reasonable.

*Bryan v Maloney* (1995) 182 CLR 609

On the basis of the above submission, counsel for the appellant respectfully requests that the decision of Speedy J below be overturned, plus costs.

DATED This 13th day of June 2001

Jessica Jones
Senior Counsel for the Appellant

Bruce Banner
Junior Counsel for the Appellant

This sample submission was taken from the University of Queensland Moot Court bench Mooting Manual, found at:
Advanced Legal Argument

Common Patterns of Legal Argument

There are many different kinds of arguments and patterns of legal reasoning, each of which tends to serve different goals.

1. Arguments based on precedent promote stability and certainty in the law.
2. Arguments based on principle allow the law to pursue sound moral goals and to achieve justice.
3. Arguments based on policy analysis allow the law to adjust to changing conditions and to achieve useful and desirable social, economic or political ends.
4. Arguments based on legal texts (eg the Constitution, statutes) promote objectivity.
5. Arguments based on the intention of those who created the texts promote respect for the will of the people’s democratically elected representatives, ie parliamentary sovereignty.
6. Arguments based on custom, tradition or longstanding practice accord with community expectations and promote social cohesiveness.

These values, aims, principles and policies often point in different directions, and when this occurs, judges must weigh them in the balance and choose one over the other. Your job as an advocate is to:

1. Identify the range of possible arguments;
2. Develop the argument that best advances your client’s position; and
3. Anticipate and attempt to destroy the counter-arguments that will be put forward by the other side.

Common conflicts between different types of legal reasoning

Text vs intention
Precedent vs principle
Precedent vs policy
Text vs policy or principle
Text vs precedent

An explanation of the different kinds of arguments and the different methods of countering those arguments follows.

1. Arguments based on Precedent

The nature of these arguments

These arguments are based on drawing on an analogy between the precedent case and the current dispute by identifying relevant similarities between them, and suggesting that the rule from the previous precedent case should be
applied to the current case in the interests of consistency. An argument based on precedent involves a three step process:
1. Identify the relevant similarities between the cases.
2. Identify the relevant rule from the precedent case.
3. Apply the rule to the facts of the current case.

Arguments based on precedent promote the value of consistency, stability and certainty in decision-making. They are based on the maxim that we should treat like cases alike and different cases differently (unless there is some morally relevant difference between the cases).

These arguments can be attacked by:

- Disputing the grounds of similarity between the cases:
  The case may be distinguishable on the facts.
  The case may be distinguishable at a deeper level, eg on the basis of a different set of goals, purposes or policies of the law.
  If the precedent case is based on a statutory rule, the case may be distinguished on the grounds that the wording of the statutes are significantly different.
- Disputing the rule’s application to the facts of the current case.
- Disputing the relevance of the rule extracted from the precedent because:
  The legal proposition was obiter, and not ratio.
  The legal proposition was stated too widely and should be restricted to its facts.
  The authority has been over-ruled by a later case.
  There is another, competing, and preferable line of authority (give reasons* why it is preferable).
  There was a strong dissent, which should be preferred (give reasons*).
  The rule is not binding on the court (eg, is from another jurisdiction).
  The case was decided per incuriam (ie, without the court’s attention having been drawn to the relevant authorities).
  The case was wrongly decided and should be overruled (give reasons*).
  *These reasons will usually be based on principles and policy, see below.

2. Arguments based on Principle

The nature of these arguments

Arguments based on principle allow the law to pursue sound moral goals and to achieve justice. A principle is a broad formulation of reasons or generalisations, often moral in nature, which underlie and justify particular rules. The famous neighbour principle in Donoghue v Stevenson [1932] AC 562 gave rise to a rule about manufacturers liability.

The ‘Neighbour Principle’ (at 580):
You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.
The Rule (at 599):
A manufacturer of products, which he sells in such form as to show that he intends them to reach their ultimate destination in the form in which they left him … and with knowledge that the absence of reasonable care … will result in an injury to the consumer’s life or property, owes a duty to the consumer to take that reasonable care.

Arguments based on principle seek out the underlying moral purpose or principled foundation of a particular area of law from the cases and use the general principle to suggest the proper formulation of the relevant rule. These kinds of arguments promote the moral values of the community.

They can be countered by:

- Identifying a conflicting principle and arguing that it should be given greater weight (remember, just like rules of statutory interpretation, principles often come in competing pairs).
- Agreeing that the general principle holds good, but arguing that an exception should be made in the current case for other reasons, eg policy, see below.

3. Arguments based on Policy Analysis

The nature of these arguments

Arguments based on policy point towards the future beneficial social, economic or political consequences or good state of affairs that the proposed version of the law would secure for the community. The label of ‘public policy’ is most often used to refer to arguments that point to strictly political or economic consequences, however, the general term ‘policy’ is a confusing one that can also refer to the beneficial social consequences of a particular formulation of a legal rule. An example of an economically based policy argument is the classic floodgates argument claiming that the courts might be engulfed in a flood of costly litigation if a particular rule is adopted. The distinction between arguments based on principle and policy can sometimes become very blurred. A policy based argument contains two steps:

1. Identify the factual claim: what consequences will flow from the proposed rule?
2. Identify the value based aspect of the claim by explaining why this consequence is a good one: what beneficial social or economic purpose does the proposed rule secure?

Arguments based on policy allow the law to adjust to changing conditions and to achieve useful and desirable social, economic or political ends.

These arguments can be countered by:

- Attacking the accuracy of the other side’s factual claim by presenting a different set of facts.
• Suggesting that the factual claim is so uncertain that the court does not have the resources to investigate it and that such a complicated matter as this one is better left to parliament.

• Arguing that the proposed rule would not serve the particular purpose.

• Arguing that there is a competing principle or policy that should be given more weight.

• Arguing that the case law in the area suggests that the courts have consistently given little weight to the particular policy factor.

• Suggesting that the policy is an impermissible and illegitimate intrusion into the role of parliament.

4. Arguments based on a Text

The nature of these arguments

Arguments based on the actual words of legal texts (eg, the Constitution, statutes, regulations, wills, contracts, etc) may focus on:

• The plain meaning of the words in the relevant part of the text.

• The methods of statutory interpretation.

• Using one part of the text to help you to interpret another part (eg, looking for similar or dissimilar terms in other parts of the document).

These kinds of arguments promote the value of objectivity.

Arguments based on the words of a text can be countered by:

• Identifying some ambiguity in the wording of the text.

• Suggesting that the meaning put forward by the other side is wrong – and arguing that the words have a different meaning.

• Suggesting that the rule of statutory interpretation put forward by the other side either does not apply (perhaps because the threshold test is not met) or is contradicted by a different rule of statutory interpretation (they tend to come in contradictory pairs).

5. Arguments based on Intent

The nature of these arguments

Arguments based on the intentions of those who created a legal text (eg, the Constitution, statutes, regulations, wills, contracts, etc) may focus on:

• The preamble to the statute, its long title, or any parts of the document that spell out the intention, object or purpose of the statute.

• Previous versions of the statute – or, if the statute was passed to remedy some perceived defect in the law, the state of the pre-existing common law.

• The history of the text, including committee reports, the second reading speech, etc.
These kinds of arguments on the intent behind a statute promote respect for parliamentary sovereignty. In the cases of contracts or wills, they promote freedom of choice and the value of personal autonomy.

**Arguments based on intent can be attacked on two grounds:**

- There is not enough evidence of the intent of the original framers.
- The framers of the law or Constitution did not anticipate current conditions.

### 6. Arguments based on Custom

**The nature of these arguments**

Arguments based on custom, tradition or longstanding practice promote social cohesiveness and conform to the expectations of community members.

**They can be countered by arguing that:**

- There is no such tradition.
- There was previously a conflicting tradition that should also be recognised.
- Tradition is a living thing and the old tradition has changed in recent times.

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**Further Reading on Legal Argument**

Prepare, Plan and Practise – then perform and review

**Prepare**

Do the research. Know your material. Identify the key issues. Become the expert. If you are going to be questioned in a presentation, make sure that you consider the *arguments* and the *counter-arguments* and put them into a logical order so that you will be well prepared for questions. Familiarise yourself with the assessment criteria before you plan your presentation.

**Plan**

Plan out your presentation and write it up in advance but avoid the temptation to write down every single word in a script.

Reduce your longer version to a set of headings, key sentences and dot-points (the skeleton outline). Use setting out, numbering, headings, dot-points and highlighters to emphasise the structure of your presentation and your argument. A visible layout with headings and numbered points helps you to see quickly where you are up to when you are doing the presentation. A continuous stream of words on a page does not help at all – it’s too easy to lose your place! Prepare an overview document or argument map that lists the arguments and possible counter-arguments that could be raised on the issues.

**Practise**

Use the long version once or twice to practise the presentation, with the aim of:

- getting the timing right
- familiarising yourself with the material.

Then let go of the long version and practise with the shorter version once or twice. (Confident, experienced presenters can go straight to the skeleton version.) Once you feel comfortable with the shorter version, practise giving the presentation with some sympathetic friends or family members as your test audience. Make sure that they ask you some questions, so that you can practise giving answers. Ask for feedback and be prepared to accept criticism.

**On the day**

Use the shorter version, but if you are really prone to nerves, take the longer version just in case of nerves – BUT reach for the security blanket only in dire emergencies! If you have prepared well enough and run through it a couple of times, you should have the confidence to do it with the shorter set of notes.
The Moot: how much preparation?

Experts say that we use about 100-120 words per minute when presenting, so prepare about 15 minutes worth of material and this will allow some time for questions.

Introduction: 100-200 words

**Body:** about 1400 words

Conclusion: 100-200 words

(Test out your presentation and see if the 100-120 word/minute plan works for you.)

*After every presentation, review your performance and your preparation.*
**Make an Argument Map using the FIRO layout**

**Facts Issue Reasoning Outcome**

‘FIRO’ is a good way to summarise your basic ‘case picture’ and to prepare your arguments on a useful look-up sheet. If you work together with your opponent in the lead-up to the faculty moot, you can both prepare the arguments and counter-arguments that you need – and you can also work out in advance how to cope with questions that the judges may ask. When you are using an argument map to prepare for a moot, you should also include the ‘core strength’ aspect under each issue so that whenever you are asked a question you can give your prepared response and then turn to the best part of your argument and end on a positive note. Use short phrases and key words that you can easily find under pressure.

### Case Name:

<table>
<thead>
<tr>
<th>Facts Giving Rise To This Dispute:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Hint 1: Include A Brief Outline Of The Facts)</td>
</tr>
<tr>
<td>(Hint 2: Include Brief History Of The Litigation)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant:</th>
<th>Respondent:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issue 1:</strong></td>
<td><strong>Issue 1:</strong></td>
</tr>
<tr>
<td><strong>Reasoning</strong></td>
<td><strong>Reasoning</strong></td>
</tr>
<tr>
<td>• Argument 1</td>
<td>• Counter-argument 1</td>
</tr>
<tr>
<td>• Argument 2</td>
<td>• Counter-argument 2</td>
</tr>
<tr>
<td>• Etc</td>
<td>•</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Core Strength:</strong></td>
<td><strong>Core Strength:</strong></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Issue 2:</strong></td>
<td><strong>Issue 2:</strong></td>
</tr>
<tr>
<td><strong>Reasoning</strong></td>
<td><strong>Reasoning</strong></td>
</tr>
<tr>
<td>• Argument 1</td>
<td>• Counter-argument 1</td>
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<tr>
<td>• Argument 2</td>
<td>• Counter-argument 2</td>
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<td>• Etc</td>
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<tr>
<td><strong>Core Strength:</strong></td>
<td><strong>Core Strength:</strong></td>
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</tbody>
</table>

**Outcome Desired:**
Review your performance after your moot

1. Describe in factual terms how you prepared for the event.

2. How long did you spend on your preparation?

3. What kind of notes did you make? Were they useful on the day?

4. How did you feel before, during and after the exercise? (What was good and what was not so good?)

5. What (if anything) will you do differently next time?

   I will

   I will not

Note: you should file this sheet in your employment portfolio – you may be able to use this experience in an interview as an example showing how you are a 'reflective learner'.
Do a SAP Review:
Style, Attitude, Preparation

Style

**Voice:** too fast, too soft, too many ‘ums’ and ‘ers’
Consider the cause: too excited and eager? too nervous? did not realise or even notice?
**Eye Contact:** looking up at the group or looking down at your notes too much?
**Body Language:** fidgety or still? hunched or open? too many/ few gestures?

- Try slowing down, using a pause, using the formalities, to give you some distance.
- Visualise your voice floating out to the middle of the room, don’t focus on your throat: ie, focus on where you want it to go, not where it is coming from.
- Become a little more self aware – watch yourself as you perform.
- You may not be able to control your feelings, but you can learn to control what you do.

Attitude

Were you yourself?

**Were you:** scared, unconfident, combative, aggressive? too flashy, over-acting, over-dramatic, playing for laughs? confident, calm, controlled, engaging, knowledgeable, polite, respectful?

- Try to find your own style, based on your strengths and personality.
- Do not draw attention to the fact that you felt nervous – chances are we didn’t notice until you told us.
- Fake it: act as if you are confident and your confidence will follow.
  Hold your body up (don’t hunch into yourself) and let the voice out.
  Slow down your speed and tone: it makes you look controlled and thoughtful.
  In a moot, let the formalities and the legal language protect you:
  They make you look and sound respectful.
  They give you some time to think.
  They remind you that your own personal views are not the issue.
  They remind you that it is not personally directed at you.
  “Thank you your Honour, in relation to that issue, I would submit that …”

Preparation

**Did your notes help or hinder?**

- Have a clear ‘case picture’ that identifies your key arguments and strongest position – and learn how to maintain your focus on that vision, even under questioning.
- Have an overview ‘argument map’ with keywords and key arguments outlined simply and clearly, so that you can find your points / arguments under pressure.
  Arrange it by issues with arguments and counter-arguments – all cross-referenced:
  (On issue one, if I am asked about X, I will say Y.)

Reflect

What did you learn from watching yourself?
What did you learn from watching others? (steal from them!)
module 7

Employment Strategies

The Employment Strategies Module contains ten components:

1. Possible occupations
2. About ME!
3. A career portfolio
4. Writing a resume
5. Writing an application letter
6. Addressing selection criteria
7. Preparing for the interview
8. Listening skills
9. Body language and non-verbal communication
10. Review Exercises

Communication, Advocacy and Teamwork
A Package of Student Learning Resources
Contents

Most of the materials in this Module have been prepared for law students by the Career Development and Employment Service at the University of Tasmania. The Law School thanks Frances Wayman for her generous assistance in preparing this Module. You can find out more from the Career Development and Employment Service website at:

http://www.studentservices.utas.edu.au/careers

You will find that much of the advice on the communications skills and skills on advocacy and persuasion given in earlier Modules will be echoed in the notes on employment strategies. Work out how you can put your knowledge of communications and advocacy skills to work on securing your ideal job.

The Employment Strategies Module contains ten components:

1. Possible occupations
2. About ME!
3. A career portfolio
4. Writing a resume
5. Writing an application letter
6. Addressing selection criteria
7. Preparing for the interview
8. Listening skills
9. Body language and non-verbal communication
10. Review Exercises

The Employment Strategies Module builds upon the aspects of oral communication covered in the previous module. You may wish to revise the following components in previous Modules:

- Handling Nerves and Performance Anxiety
- Coping with Questions
1. Possible Occupations

Legal
Barrister
Solicitor
Lawyer
Policy Officer
Law Reform
Government Lawyers (including Community Law)
Corporate Solicitors
Solicitors in private practice
Graduate Administrative Assistant - Australian Public Service
Judge’s Associate
Freedom of Information Officer
Mediator
Legal Officer
Business Analyst
Graduate Taxation Officer
Duty Solicitor
Outreach Solicitor
Defence Service Lawyer

Jobs related to Law (may require further study)
Law Libraries
Law Research
Law Publishing/Editing
Journalism
Patent Work
Management Consulting
Service Industries
Legal Recruitment Consultant
Criminologist
Academic

Other areas
Advertising
Community Advocacy
Education
Environmental Work
Film Industry
Banking/Finance Industry
Government
Human Resources
Industrial Relations
Management
Marketing
Police Forces
2. About Me!

Self-reflection is an essential component of career planning. Knowing who you are will help you decide what you want to do, and what you will be good at. There are four key areas you will need to reflect on when considering what makes you ‘you’:

- your **skills** and **abilities**, eg. leadership, problem solving
- your **interests**, eg. politics, the arts, sport
- your **values**, eg. helping others, honesty, success, freedom
- your **personality**, eg. easygoing, reliable, friendly

To begin the self-reflection process, spend some time jotting down answers to the following questions:

**What do I enjoy doing? What are my hobbies?**

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

**What were my favourite subjects at school, what are my favourite subjects at university?**

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________
If my friends were asked to describe me, what words might they use?


What is most important to me (eg. spending time with friends, being spontaneous, doing a good job, recognition, making a difference)?


What am I good at? Think about all aspects of your life (study, work, friends, family). Write down everything you can think of - even things like talking!
What don’t you like? What are you not so good at (eg. being alone, doing the same thing repeatedly, being spontaneous)?

Write a paragraph summarising you, using your answers above as a starting point. Can you see any common themes?
Want to know more?

Find out which types of work you might enjoy

The Australian Government’s JobSearch website has an online checklist that you can complete to help you discover which types of work you like most. Find it at:


The Australian MyFuture website also has an online work interest quiz also designed to help you find out which type of work you would most enjoy. Find it at


Take a personality test

There are a number of theories about personality types – Wikipedia.org is a good place to start for a general overview. To find out more about your basic personality type, take the free tests online at:

www.oneishy.com
http://www.humanmetrics.com/cgi-win/JTypes2.asp

Find out more about your personality type at:

http://www.personalitypage.com/portraits.html – then click on your code.

Find out about personal growth, strengths and weaknesses and how to understand yourself:

http://www.personalitypage.com/personal.html
The material on this site will help you to answer the ‘strengths and weaknesses’ questions in the interview.
3. A Career Portfolio

A career portfolio is a collection of materials documenting your

- employment history
- professional development
- achievements
- employability skills
- career plans
- job applications and related information.

One of the purposes of starting and maintaining a career portfolio is to organise your own thoughts about your career development. Compiling a career portfolio is a process which will enable you to develop a greater awareness of your life, and your learning and work competencies.

Contents

The process of compiling a career portfolio involves both reflection and analysis. It gives you a place to store information about yourself, which will help you to look at career options, helps you identify your skills, and make decisions and plans.

Some of the items you include in your portfolio will need to be tailored for each individual application:

- your résumé (tailor depending on the particular skills required for the job)
- cover letters (usually no more than one page, referring to the job application and giving a brief summary as to why you would be suitable)
- selection criteria (in your responses you must demonstrate the capacity to which you have knowledge of and experience in each criterion)

Other things suitable for your portfolio might include certificates, reference letters and referee lists, educational records, awards, previous applications, personal and career plans, and job descriptions. More specific items can be added, depending on your particular field of interest. Your career portfolio will change as your life changes. Even when you are working, try to keep your portfolio current. Anything you save and organise now will help you prepare for a future job search or career transition.

The material in this section was sourced from the Department of Education, Science and Training (2005). Your career portfolio, Job Guide 2006. Retrieved 31 January 2007 from:

4. Writing a Résumé

Create your résumé

Employers often receive several hundred résumés and someone inevitably has the task of reading them all. It is highly likely that someone reading your résumé will have developed an impression of you within the first sixty seconds. Therefore, getting their attention and creating an effective first impression is very important.

You can help an employer to choose your résumé by making it concise (no more than four pages) and directly relating it to your skills and ability to do the job.

Be prepared to spend several hours drafting and refining your details so that the final results clearly demonstrate and market your skills and suitability for a position. By preparing your résumé with care and making it stand out from the crowd, you can make a great first impression with a prospective employer.

The résumé writing process:

• gather information on yourself
• select the occupational and industry target
• decide what is relevant
• select section headings
• draft the content of the résumé
• allow an ‘incubation’ period (to create and review your work)
• revise the draft
• review it again with others … revise again!
• ensure your presentation is first class

Résumé formats

All résumé formats include information about personal details, education, work experience and relevant skills/achievements; as well as information about interests (hobbies, sports, community service etc.) Typical formats for résumés are listed below:

• **Chronological format** – emphasises your previous work experience and is written in order of the positions beginning with the most recent job and working backwards.
• **Functional format** – describes functions or areas of skill with a lesser emphasis on positions previously held.
• **Combination format** – emphasises the strengths of both the chronological and functional.
• **Targeted format** – aims at a specific job or work opportunity and organises the information in terms of what is needed for the job rather than what you have done in the past.
Decide who the résumé is for

A key when writing your résumé is to design it for a particular audience. If you are not applying for a specific position at the time of preparing your résumé, think of the type of job you would most like to apply for and construct the résumé to suit that field / organisation. Some students want to create the ultimate résumé that they can send off to any prospective employer. However, graduates generally have a range of potential areas that they could pursue and therefore the emphasis they need to place on particular skills and experiences will vary from employer to employer. Once you have produced a quality résumé, customising for a particular employer is straightforward.

Planning your résumé format

Once you have selected an appropriate résumé, you can make some decisions about the information you will include and how to present it clearly.

First of all, select the information that you think the particular employer will be interested in, then decide how to group the information under headings. There are no set headings that you have to use. For example, to describe contributions you have made in the community, you might choose one of these headings: Community Service, Voluntary Work or Community Involvement. Select the headings that will portray the information in the most powerful way possible.

Examples of résumé headings

- Accomplishments / Key Achievements
- Awards/Prizes
- Career Objective
- Community Service
- Computer Skills
- Educational Background
- Language Skills
- Membership of Groups/Societies
- Part-time Work
- Qualifications
- Recreational Interests
- Relevant Skills/Experience
- Sporting Achievements
- Tertiary Education
- Vacation Work
- Voluntary Work
- Work Experience

For example, if you have represented the state in sport, you would not list this under ‘Extra-curricular Activities’. Instead, choose something which does justice to this involvement such as ‘Sporting Achievements’ or ‘State Representation’ depending on what other similar activities you could group together under that heading (as you would normally have at least two entries under each heading). In this case, if you had only represented the state on one occasion, it might be better to use the more general heading ‘Sporting Achievements’.

The most impressive information under each heading should appear first. This may seem contradictory given that it should also be in reverse chronological order. To achieve both aims it may be necessary to create sub-headings. For
example, if a Law student was a member of the University Abseiling Club, the OHA Hockey Club, the Australasian Law Students’ Association, the Tasmanian University Law Society and Startrekers, they could have an overall heading entitled ‘Memberships’ and then three subheadings – the first being ‘Professional’ or ‘Legal’ listing ALSA and TULS, then ‘Sporting’ covering abseiling and hockey and finally ‘Recreational’ for Startrekers.
5. Writing an Application Letter

Your application letter is a very important component of your communication with potential employers. It is the first document they read about you and, as you probably know, first impressions are vital when forming opinions. In the past, application letters were used just as a covering page for the rest of the documents and may have been very brief and uninformative about the candidate. For example, the letter may have read something like this:

Dear Sir

I wish to apply for the position you advertised in last Saturday's Mercury.

I have attached a resume for your perusal.

I look forward to hearing from you.

Yours sincerely

Jane Citizen

In today’s competitive employment environment you should use every opportunity to market your skills professionally. An application letter should highlight your interest in the position and your strengths – this will help you stand out as an impressive candidate.

Your application letter should give the employer a ‘snapshot’ of all the reasons why they should employ you. It should introduce you in a clear and focused way and encourage the employer to read the rest of your application with interest.

Given that your application letter is designed to summarise the highlights of your resume and statement addressing selection criteria (if required), it should not be written until you have completed these documents. That is, even though the application letter appears first in the list of documents that you submit, it should be the final document that is written.

What should an application letter focus on?

Application letters should focus on:

- the position you are applying for;
- why you are applying to the organisation;
- what you have to offer;
- what action you want from the organisation;

and remember, no negative statements such as “Although I haven’t …”.
Formatting your application letter

Date

Name of Contact
Position Title
Address

Dear (Ms, Mr etc.) Surname

**Paragraph 1**

If replying to an advertisement, state the position you are applying for (if it’s a Government position then include the Position Classification and Number); and where you found out about it.

OR

If cold canvassing, state the reason for writing and describe the type of work you are seeking, then why you are interested in working for the organisation. This sentence/s should combine your knowledge of the organisation with your experience and skills and your goals for the future.

**Paragraph 2**

Your qualifications for the position – academic and any other relevant facts and figures.

**Paragraphs 3-5**

Choose your three main selling points relevant to the Selection Criteria (if there are any) or advertised job description, or general skills if you have no leads about what is required for the position. Dedicate a paragraph to each skill as follows:

- what the skill is;
- how you have demonstrated it; and
- how it would be useful to the organisation.

**Paragraph 6**

List the documents you have included in your application package. State the action you require – an opportunity to discuss your application in more detail, when you’re available for interview and how you can be contacted.

Yours sincerely

Signature

Type name
6. Addressing Selection Criteria

Working with selection criteria

Selection criteria are the key competencies required for a position; they include the skills, knowledge, experience, values and personal attributes required.

When selection criteria are provided

Government departments throughout Australia have a system whereby all the details of a position are available for applicants to help them prepare their application. This includes a position description and the skills and knowledge required (often referred to as the Selection Criteria or Knowledge and Skills Required). Some non-government and industry employers also produce formal selection criteria for applicants. For some samples see Module 2: Career Planning.

There are two types of criterion; essential and desirable. As an applicant you must address each criterion.

When selection criteria are not provided

If the organisation does not have any formal selection criteria for you to address, you must still tailor your application to their needs. You can do this by using some of the key words in the advertisement and attaching a supporting statement which is prepared in the same way as formal selection criteria.

When minimal information is provided

In very rare circumstances you will be provided with little or no information about the knowledge and skills that are required. In this case all you can do is prepare a very strong covering letter setting out your particular claims to the position.

Basic guidelines for addressing selection criteria

The basic guidelines for addressing selection criteria are as follows:

• collect the information you need
• get the position description;
• find out the knowledge and skills required;
• ask further questions to clarify issues by contacting personnel (indicated in the advertisement or position description); and
• don't assume any details without checking.

Identify each criterion

Write each criterion on a separate page and break it up into distinct, workable parts. For example, if one of the criterion statements reads “must have strong written and oral communication skills, the ability to work well in a team as well
as high level negotiation and liaison skills”, you need to divide the statement up as follows:

- strong written and oral communication skills;
- the ability to work well in a team;
- high-level negotiation skills; and
- high-level liaison skills.

**Brainstorm your examples**

You must address each of these parts, giving fairly equal attention to each. For each part, brainstorm as many examples as possible of your background in this area. Don’t be too selective at this stage about what to include.

**Revise and refine**

When you have completed the brainstorm for each criterion, go back and select the examples that you think best address each one. You'll find you’ll do a bit of ‘cutting and pasting’ before you end up with the most appropriate and powerful examples under each heading. Make sure that you use a variety of experiences throughout your statement. Be careful not to use your involvement in a particular activity (no matter how significant) as evidence for every criterion.

**Writing up the selection criteria**

When addressing selection criteria, it is useful to apply the STAR model. Placing examples of how you have demonstrated your skills into the STAR model is critical for developing an effective statement.

**The STAR acronym stands for:**

- **S** ituation (briefly describe the context)
- **T** ask (what were your responsibilities or initiatives?)
- **A** ction (what did you do?)
- **R** esult (what were the outcomes?)

**For each criterion:**

- write the name of each criterion;
- start with a positive claim;
- give a specific example;
- describe how you acted; and
- describe the result.

**Other tips to keep in mind when addressing selection criteria**

- Dot point form and/or concise sentences make your application easier to read.
- Use examples to back up every statement you make (use examples that can be visualised).
• Don’t just feed their words back to them – make every sentence count by focusing on what you have to offer.
• For a listing of words you can use in your statements, see the list of buzz words at the end of this fact sheet.
• Each criterion should be approximately one third to one half of a page.
• When each criterion is given a weighting of importance you should dedicate a proportionate amount of detail to each part.
• When a statement asks for qualifications or some other information that is finite, the length can be shorter.

Editing checklist

Before submitting your application you should check your selection criteria against the following checklist:

• professional, active and fits the role
• logical and consistent
• checked for errors and edited for order and focus
• check tense
• reduce complex sentences
• check over-writing
• avoid abbreviations
• avoid weakening qualifiers
• most important information first

A final note

Once you have addressed the selection criteria you will be well prepared for the next stage of the job search process – the interview. This is because selection criteria usually form the basis of interview questions.

At interviews candidates are usually asked questions that are directly related to the selection criteria. This allows you to prepare responses that are an extension of what you have written in your Statement Addressing Selection Criteria.
## Buzz Words for job applications

**A**
- accelerated
- accomplished
- accounted for
- achieved
- acquired
- acted
- adapted
- addressed
- administered
- adopted
- advanced
- advised
- aided
- allocated
- allowed
- analysed
- applied
- appointed
- appraised
- approved
- arranged
- assembled
- assessed
- assigned
- assisted
- assured
- attained
- attuned to
- audited
- authored
- automated
- avoided
- awarded

**B**
- balanced
- began
- believed
- broadened
- brought in/about
- budgeted

**C**
- calculated
- catalogued
- characterised
- clarified
- classified
- collaborated
- competent with
- compiled
- concentrated
- conceptualised
- conducted
- configured
- consolidated
- constructed
- consulted
- contacted
- contained
- contemplated
- continued
- contracted
- contributed
- coordinated
- critiqued
- curtailed

**D**
- delegated
- demonstrated
- designed
- despatched
- determined
- developed
- devised
- diagnosed
- differentiated
- directed
- disseminated
- distinguished
- diversified
- diverted
- documented

**E**
- edited
- eliminated
- employed
- empowered
- enabled
- enacted
- encouraged
- engaged
- engineered
- enhanced
- enlisted
- enrolled
- ensured
- equated
- established
- evaluated
- examined
- executed
- exhibited
- expedited
- experienced
- experimented
- experimented
- extracted

**F**
- facilitated
- familiarised
- fashioned
- finned
- fine-tuned
- focused
- forecast
- formulated
- founded

**G**
- gained
- generated
- grouped
- guided

**H**
- handled
- harmonised
- headed
- held
- hosted
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</tr>
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<td>joined, judged, kept, launched, lectured, led, liaised, lowered</td>
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<td>made, maintained, managed, manipulated, manufactured, marketed, master-minded, measured, mediated, mentored, modelled, moderated, modified, monitored, motivated</td>
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</tr>
<tr>
<td>O</td>
<td>obtained, opened, operated, organised, originated, overcame, overhauled, oversaw</td>
</tr>
<tr>
<td>P</td>
<td>packaged, participated, perfected, performed, permitted, persuaded, pioneered, planned, presided over, processed, produced, programmed, projected, promoted, proposed, provided, publicised, published, purchased</td>
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<tr>
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<td>qualified, quantified</td>
</tr>
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</tr>
<tr>
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</tr>
<tr>
<td>T</td>
<td>tabulated, taken part, theorised, trained, transcribed, translated, trimmed, turned around</td>
</tr>
<tr>
<td>UVW</td>
<td>undertook, unified, upgraded, used, utilised, validated, verified, versus, viable, voted, widened, won, wrote</td>
</tr>
<tr>
<td></td>
<td>surpassed, surveyed, systemized</td>
</tr>
</tbody>
</table>
7. Interview Preparation

The job interview is undoubtedly the most important aspect of the selection process. Your aim is to convince the interviewers that you are the best person for the job. If you have been successful in gaining an interview then you should take pride in the fact that your application has been competitive.

Why is an interview important?

- The interview is your opportunity to sell yourself.
- An interview should be looked at from two perspectives, yours and theirs!

The employer will be trying to assess what you can offer the organisation. Once this has been determined, most employers will then consider how you will fit into the organisation.

Interview skills

Below are some skills that are very useful in an interview. As you read through each one, consider whether you would feel confident/comfortable in using it at present.

Active listening

High-level listening in which your entire attention is focused on the person speaking.

Control of the content

Let the interviewer control the questions/process while you control the content.

Let others speak for you

Let others build you up by saying something like, “My boss felt some of my most valuable attributes were that I could always be counted on to get a project done on schedule and that the details had all been taken care of.”

Research the organisation

Demonstrate that you have read annual reports, recruiting brochures and other relevant material.

Master the art of story-telling

Using stories to sell your skills is a highly successful interview technique. In less than three minutes you can tell a story that will make interviewers remember you favourably. Employers believe that the best predictor of future success is past success, so tell stories that vividly describe your successes. Don’t be concerned if your stories are not highly impressive, as long as the experience demonstrates your effective use of a particular skill.
Research before an interview

The more thorough your preparation for the interview, the more control you will have over the situation. You will feel less nervous if you are well-prepared. There are four ways that you should prepare for an interview.

The position

Make sure you understand what the position is about. Ask for a copy of the Position Description from the employer and make sure you understand all the information it contains. If you have any questions about the Position Description ask the employer for clarification.

The organisation

Understand the employer’s needs and the business culture. Research about the organisation could include talking to other employees, competitors, perusal of an annual report or just an enthusiastic phone call to a secretary requesting more information. Also, many organisations have their information on the internet. More specific research prior to an interview may include gathering information about the interviewers and the expected style and content of the interview.

Your application’s strengths and weaknesses

Always review your application, as you may need to refer to it during the interview. Be prepared to talk about your application in terms of the key selection criteria.

Yourself

Be prepared mentally for the interview. Ensure you are well-groomed and well-dressed.

Your presentation at an interview

First impressions

Creating a good first impression is vital. Employers only have a short time to gather as much information about you as they can, so the way you look and act will be a key factor in the information they gather. You should look and sound professional and feel comfortable. Avoid extremes of fashion and style unless research into the dress code of the organisation indicates that it would be suitable.

Make a positive start

Be prepared to firmly shake the hand of your interviewer/s regardless of gender. If this situation does not occur, take time to make direct eye contact with everybody in the room greeting them with a friendly smile. This introductory body language will sometimes be enough for some interviewers to make their minds up.
Be aware of your body language

During the interview maintain eye contact with the entire selection panel and not just the person at the head of the table. Adopt an enthusiastic posture by sitting up straight and slightly forward. Avoid crossing your arms or covering up your smile. A good place for your hands is in your lap. If you have thoroughly prepared for the interview (see earlier points) then it is likely that your body language will work for you and not against you. Your body language will reflect a confident and enthusiastic applicant.

Don’t forget your personality!

An interview is an interpersonal exchange, but some candidates go into an interview and leave their personalities at the door. Engaging the panel is an important part of the process – remember they’re looking to see who is going to ‘fit in’ best in the organisation. One of the main qualities being assessed at an interview is your communication skills. Smiling, seeking clarification of questions, using low-key appropriate humour and generally being an active rather than passive participant in the process, enables you to display these skills to the panel.

What will I be assessed on?

In an interview a candidate will be assessed on their:

- ability to provide comprehensive answers that include real-life examples;
- dress and grooming;
- confidence and ability;
- ability to speak clearly and listen well;
- understanding of the job; and
- motivation and enthusiasm.

Interview questions

The best way to make sure that you will answer questions well is to prepare some possible answers beforehand. Of course you cannot predict the exact wording of questions, but basically interviewers are always looking for similar information. There is no hidden agenda about what they want to find out. Interviewers try to formulate questions that enable them to build up a picture of how you are likely to operate in the workplace. Knowing this, you are then able to reflect on the experiences you’ve had and prepare responses that demonstrate your skills and experiences.

Link to your selection criteria responses

If the organisation has listed key selection criteria, you can be sure that there will be a number of questions that directly relate to them. Be prepared to give verbal answers that don’t conflict with the written responses you have already tabled. Avoid the temptation to say “The information has been given in the written application” – this will make you appear arrogant and inflexible. It is worth remembering that it is possible that some interviewers have not had the opportunity to read your application.
Seek clarification

Never begin to answer a question that you don’t fully understand; instead, ask for clarification. It is also OK to think about an answer for a short time. This is preferable to launching into a vague and unclear response.

Effective answering techniques

Questions should be answered with enthusiasm and so one-word answers are never sufficient. Even the simplest of questions can be answered in a way that shows something of your creative personality. As a guide, your response to each question should take approximately 1-2 minutes. After explaining, as concisely as possible, how the key examples you have presented address the question, you should then check with the panel to see if they require any further detail or clarification. Use the body language of the panel to help you judge if you are connecting with the panel members. Be wary of ‘raving on’ and boring them, as well as being too brief and thereby making it difficult for the panel to gain adequate insight into your skills.

Your questions

At some point in the interview you may be given the opportunity to ask questions. You should use this opportunity to clarify any points that are unclear in relation to the position you are applying for. Be careful to choose relevant questions. Time wasting will score very badly.

Ideally your questions should reflect your research into the position and/or the organisation – this is likely to impress the panel in two ways:

- it is another opportunity to show them that you have put a lot of work into your interview preparation (organised, enthusiastic); and
- it makes you seem very familiar to them, one of the team.

Examples of interview questions

Interviewee’s Questions

- Are there established career paths?
- What is the organisation’s attitude to further study?
- A question about the changes happening at industry level is good practice. It shows that you are aware of and interested in the ‘big-picture’.

Interviewer’s Questions

- Why are you interested in joining this organisation?
- What do you believe you can contribute to this company?
- Why did you select … as a career?
- Can you give us an example of your use of initiative – either in starting a new venture or doing more than was required in a particular activity?
- What are your major strengths?
- What would you describe as your weaknesses?
• What do you regard as your most important accomplishment?
• What does teamwork mean to you?
• What are the biggest obstacles you have had to overcome and how did you overcome them?
• If you were going to evaluate your own performance, what factors would you consider the most important?
8. Listening Skills

Material for this component has been provided by the Careers Advisory Unit and has been sourced from Bill Keefe, (2003), Be a great listener!, CampusBlues.com. Retrieved 26 January 2007 from http://www.campusblues.com/studentoflife_5.asp

Being a good listener involves more than just hearing what someone is saying. It is important to focus on the other person and to listen actively. Reflect on some of the things that normally go through your mind as you hear someone else speaking. Thinking about what you are going to have for dinner, or your plans for the weekend, or what you are going to say next are only a few of the many distractions that might pop into your head while you ‘listen’ to someone else speak. Like any good skill, it takes practice to become a good listener. It may take some time to develop these new ‘habits’, but the benefit to both your professional and personal life will be well worth the effort.

Some general tips on how to become a better listener follow. See also Module 4: The Property Presentation for more specific advice on listening skills.

Concentrate

Try to be aware of your thoughts, so that you can consciously stop yourself when your mind starts to wander. Make an effort to actively focus on the speaker and so to resist distraction. Ensure you are in a quiet space, with few people around, so that it is easier to give the speaker your full attention.

Avoid prejudice

Try to avoid ‘tuning out’ when the speaker says something you don’t agree with or that doesn’t interest you. Bear in mind that another person’s opinion may be just as valid as your own, even if you don’t agree with it. Hang in there – you may find that you gain a new perspective on an issue.

Don’t dominate the conversation

The primary obstacle to listening is TALKING! If you interrupt, ramble on, or monopolise a conversation you will disrupt any chance of really knowing what is on someone’s mind. It doesn’t take long for a person to lose interest if they aren’t allowed to express themselves.

Use questions

Often, people find it difficult to share information clearly, leaving gaps in the story in their haste to get the information across. Use questions to help you fill in these gaps, and also to demonstrate that you have understood what they are saying.
Be a reflective listener

When the speaker finishes what they are saying, respond by giving them a summary of what you thought were the important points. This will serve two purposes. Firstly, it will encourage the speaker by showing that you took an interest in their story and thought it worthwhile remembering. Secondly, by restating the key points, you can ensure that you understood what the speaker was saying, and give them the opportunity to correct any mistakes.

Take note of body language

Monitor the speaker’s posture and facial expressions. If these are inconsistent with the words being spoken, there may be something wrong. Body language can help you ascertain the real, underlying tone of the conversation.
9. Body Language and Non-Verbal Communication

Being sensitive to non-verbal communication is an important and useful skill, and it pays to be aware not only of your own body language, but also that of others. These skills can be helpful not only in the workplace and in court, but also in the job interview. Strive to maintain positive, open and confident gestures and body stance. These notes have been sourced from Inns of Court School of Law, Advocacy (OUP, 2002), Appendix F.

**Eye contact**

Is the *other person* avoiding or seeking eye contact?  
Are you seeking or avoiding eye contact?

Eye contact can build rapport, but staring at another person can seem rude.

**Head movements**

Holding the head square, straight and upright indicates confidence.

Holding the head slightly to one side can indicate interest.

Holding the head down suggests a negative attitude.

**Body posture**

An upright position, an open body and holding the head up indicates confidence – slouching, fidgeting and looking down suggests the opposite.

Facing another and leaning forward slightly suggests interest – leaning back can suggest a lack of interest – whereas leaning back in your chair and putting your hands behind your head can suggest an attitude of superiority.

**Arm movements**

Folded arms can be a barrier or indicate defensiveness, hostility or lack of confidence. When the overall situation is amicable, it can mean that a person is thinking deeply about what is being discussed. If you are trying to communicate with another who maintains a folded arm stance and you are not sure of their response, stop talking and try asking them if they have anything to say or any questions to ask.

Folded arms with clenched fists can indicate hostility.

Look for signs of:  
- relaxation vs tension  
- confidence vs lack of confidence  
- nervousness
Hand gestures

Hands on hips or waving a pointed finger may indicate aggression.

Open palms may indicate honesty.

Resting the head in the hand can indicate boredom.

Stroking the cheek with an index finger while resting the head on the thumb can indicate interest.

Leg movements

Crossed legs may be a barrier.

Frequent leg movements may indicate nervousness.

Personal space

Getting too close can be a barrier to communication.

Handshaking

Be aware that your handshake is a form of communication and can be interpreted as either an over dominating (palm down over the other person) or over submissive (open palm). Aim for an upright 90 degrees. Facing the person is polite; facing away during the shake indicates a lack of interest and discourtesy.

Consider also:
- Firm vs yielding
- Wet vs dry

Do not hesitate and be decisive: either shake or devise a strategy for avoiding shaking hands altogether.
10. Prepare and Review

A: Prepare, Plan and Practise for your first job application and interview - the perform and review

**Prepare**

Identify your aim, purpose or goal: what job do you want?
Do the research to find out as much as you can about the position and the employer.
Make a task list if you need to acquire extra skills or competencies to qualify for your dream job.

**Plan**

Construct your portfolio, your CV and your application. Assess the application:
- Is it clear?
- Is it logical?
- Is it purposeful?
- Is it effective?
Does it flow from beginning – to middle – to end?
Does it engage the receiver’s attention?

**Practise**

Find out what the commonly asked questions in interviews are and begin to put together answers in dot-point form. There are many sample questions in *Module 7*, and there are many further reference books that contain interview questions and answers.

Do a practice interview with some friends.

Seek help and feedback to improve the content of your application and your answers.
B: Perform, Review and Improve – after your first interview

Perform

Learn to live with your anxiety rather than fight it. Use the coping methods outlined in Module 3.

Connect with the interview panel. Read your audience and respond to them. Become part of the circle of communication.

Review

Soon after the interview, conduct a review and appraisal of the event and make a list of what worked and what needs to be improved. How could you improve your:

Preparation

Planning

Content

Performance

Improve: make a plan to develop your job skills and to document your progress.
module 8

Supplementary Material: Legal Research Help Sheets

The Supplementary Material contains seven components:

- Finding Law Reports
- Finding Unreported Judgments
- Finding Sentencing Decisions
- Using Case Citators
- Finding Cases on a Topic
- Finding Cases that consider a Word or Phrase
- Finding Journal Articles
Library Research: a Quick Guide

The Law Librarian, Ms Deb Bowring, has kindly provided seven Help Sheets for the Student Learning Resources Pack to get students started with their legal research. The Help Sheets cover the most commonly needed research tasks, however, if you need a more detailed guide, please consult the Law Library Webpage at:


Contents

1. Finding Law Reports
2. Finding Unreported Judgments
3. Finding Sentencing Decisions
4. Using Case Citators
5. Finding Cases on a Topic
6. Finding Cases that consider a Word or Phrase
7. Finding Journal Articles

Additional Help

Library staff can always assist you with your queries. The reference service is available Monday – Friday 9.00 am to 5.00 pm.
1. Finding Law Reports

Law Reports

Decisions that are made by the superior courts, or that raise significant points of law, are selected for publication in a law report series. Law report series can be authorised or unauthorised.

**Authorised law reports** are authorised by a court or a ‘council of law reporting’ for that jurisdiction. Within each jurisdiction there is only one authorised report.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Series</th>
<th>Abbreviation</th>
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<tbody>
<tr>
<td>Administrative Appeals Tribunal</td>
<td>Administrative Law Decisions 1976+</td>
<td>ALD</td>
</tr>
<tr>
<td>Federal Court</td>
<td>Federal Court Reports 1984+</td>
<td>FCR</td>
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<tr>
<td>High Court of Australia</td>
<td>Commonwealth Law Reports 1903+</td>
<td>CLR</td>
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<tr>
<td>New South Wales</td>
<td>New South Wales Law Reports 1825-1900</td>
<td>NSWLR</td>
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<td>State Reports NSW 1901-1970</td>
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<td></td>
<td>New South Wales Law Reports 1970+</td>
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<tr>
<td>Northern Territory</td>
<td>Northern Territory Law Reports 1991+</td>
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<td>Queensland</td>
<td>Queensland State Reports 1902-1957</td>
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<td>Queensland Reports 1958+</td>
<td>QdR</td>
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<tr>
<td>South Australia</td>
<td>South Australian Law Reports 1865-1920</td>
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<td>State Reports. South Australia 1921-1971</td>
<td>SRSA</td>
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<td></td>
<td>South Australian State Reports 1971+</td>
<td>SASR</td>
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<tr>
<td>Tasmania</td>
<td>Tasmanian Law Reports 1897-1940</td>
<td>TLR</td>
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<td></td>
<td>State Reports Tasmania 1941-1978</td>
<td>TasSR</td>
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<td></td>
<td>Tasmanian Reports 1979+</td>
<td>TasR</td>
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</table>
Unauthorised law reports cover either a range of courts or specialist subject areas. For example, the Australian Law Reports (ALR) report decisions of the High Court, state Supreme Courts exercising federal jurisdiction, and other federal courts and tribunals.

Law Report Citations

The standard citation for a reported case includes
- Names of the principal parties
- Year the case is reported, recorded in either round ( ) or square [ ] brackets
- Volume number
- Standard abbreviation for the law report series
- First page number for the case.
- Example: Chapman v Hearse (1961) 106 CLR 112

Finding Law Reports

- Decipher your abbreviation using a dictionary of legal abbreviations or an online site such as Cardiff Index to Legal Abbreviations (Link available on law library web page).
- Example: CLR = Commonwealth Law Reports
- To find printed Law Reports in the library, search the catalogue using title keywords option to locate the call number. All the law reports are located on level 1 of the Law Library.
- Example: Type in Commonwealth Law Reports NOT the abbreviation CLR
- To find an online copy of a law report, use the help sheet Law Reports Available Online (available from the Law Library web page for selected jurisdictions).
- Use the database help sheets for assistance with searching techniques (available from the Law Library web page)

Additional Help

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2. Finding Unreported Judgments

Unreported Judgments

An unreported judgment is the decision of a court, released by the court soon after the judgment is handed down and before any formal law reporting takes place.

Unreported judgments are usually produced in electronic form. They are called unreported to differentiate them from the formally published law report. Unreported judgments are usually selected by a judge or judicial editorial board to be reported in an authorised series, or by publishers for reporting in an unauthorised series.

Not all unreported judgments will be reported, but they may still be cited as an authority.

Medium Neutral Citations

In recent years (1999 +) medium neutral citations have been adopted by Australian courts and tribunals as the preferred form of citation for unreported judgments. The citations contain the same elements and do not distinguish between electronic or print format. The citation consists of the parties’ names, year of publication (year handed down), court abbreviation and judgment number.

- Example: Smith v Brown [1999] TASSC 1

Each judgment has consecutively numbered paragraphs and is referred to by paragraph numbers. The use of square brackets enclosing the paragraph number is a convenient method of distinguishing references to paragraphs from page references.


In many jurisdictions, once a judgment has been published in an authorised or unauthorised series of law reports, the Courts will insist that any citations referred to, should be cited from the Law Report series rather than the unreported medium neutral citation. A Practice Direction will usually be issued by the Court, stating the preferred method of citation.
Table of Australian Court Abbreviations

The following table contains selected courts only. For a more comprehensive table please refer to the help sheet *Medium Neutral Court Citations: Australia* available on the Law Library web page.

<table>
<thead>
<tr>
<th>High Court of Australia</th>
<th>HCA</th>
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<tbody>
<tr>
<td>Federal Court of Australia</td>
<td>FCA</td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>FamCA</td>
</tr>
<tr>
<td>Family Court of Western Australia</td>
<td>FamCWA</td>
</tr>
<tr>
<td>Supreme Court of the ACT</td>
<td>ACTSC</td>
</tr>
<tr>
<td>Supreme Court of New South Wales</td>
<td>NSWSC</td>
</tr>
<tr>
<td>Supreme Court of the Northern Territory</td>
<td>NTSC</td>
</tr>
<tr>
<td>Supreme Court of Queensland</td>
<td>QSC</td>
</tr>
<tr>
<td>Supreme Court of South Australia</td>
<td>SASC</td>
</tr>
<tr>
<td>Supreme Court of Tasmania</td>
<td>TASSC</td>
</tr>
<tr>
<td>Supreme Court of Victoria</td>
<td>VSC</td>
</tr>
<tr>
<td>Supreme Court of Western Australia</td>
<td>WASC</td>
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</tbody>
</table>

Finding Unreported Judgments

- Decipher your medium neutral court citation

- **Example: HCA – High Court of Australia**

- Most unreported judgments are available online. Australian judgments may be accessed from the following sources:
  - LexisNexis Australia – Unreported Judgments.
  - Lawbook Databases – Unreported Judgments. Both of these databases are commercial databases that the Library subscribes to.
  - Court sites – Many Courts provide access to judgments on their web site.

Additional Help

Library staff can always assist you with your queries. The reference service is available Monday – Friday 9.00 am to 5.00 pm.
3. Finding Sentencing Decisions

What is a Sentencing Decision?

Offenders may be found guilty by a jury in a criminal trial or may plead guilty without the need for a trial. In both cases, the judges who sentence the offenders make ‘Comments on Passing Sentence’ that explain the facts of the case and the reasons behind the sentence. Access to these comments is available from two sources:

1. **Supreme Court of Tasmania**


   Sentencing comments are available on the Supreme Court website for approximately 1 month only. Sentences can be found by using an alphabetical listing (by offender’s surname) or by date. Initials may be used instead of a surname if the offender is under 18, or if there is a privacy issue.

2. **Tasmanian Sentencing Database (TasInLaw)**

   The sentencing database contains sentencing records from the Supreme Court of Tasmania from 1989 onwards.

   The key features of the database are as follows:

   - The database is designed to promote consistency in sentencing.
   - The catchwords contain key elements in sentencing process.
   - Lists main crime – important with respect to multiple counts.
   - Allows searching by keyword, crime, or sentence type.

   The sentencing database is located within the TasInLaw databases. Access to TasInLaw is via the Law Library computers only.

**Citing Sentencing Decisions**

There is no standard way of citing sentencing comments, but the following example is an acceptable citation:

*The State of Tasmania v. Davis*, Bowring J, 27 August 2007, (Sentence)

**Additional Help**

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4. Using Case Citators

Using case citators to check a citation and follow the judicial history of a case

The fastest way to find a case is to use the case citation to take you straight to a printed law report series or case law database.

However, you may have an incomplete or incorrect citation:

- you may only know the party names
- you may have been given a partial or incorrect citation
- the law report you want may not be held in the library or may be out on loan, and you need to find an alternative citation.

You will need to find the full citation before you can locate the case. To do this, you use a case citator.

Citators index cases for a specific jurisdiction, providing the authorised and alternative citations for a case. Use a case citator to:

- locate the correct citation for a case
- establish if the case has been reported in more than one series of reports
- trace the history of the case through the courts
- see how judges in subsequent cases have considered the case.

Finding the judicial history of a case – also known as ‘updating’ or ‘noting up’ – is essential to your legal research. It is the process where you examine how subsequent courts have viewed your case, and ensure that a principle of law has not been subsequently overruled by a superior court.

The following are a selection of citators by jurisdiction:

**Australia**
- Australian and New Zealand Citator to UK Reports (print)
- CaseBase
- Firstpoint
- KeyCite (Westlaw)

**Canada**
- KeyCite (Westlaw)

**United Kingdom**
- CaseSearch
- Current Law Case Citator

**United States**
- KeyCite (Westlaw)
- Shepard’s (LexisNexis International)

**Additional Help**

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5. Finding Cases on a Topic

You may need to find cases on a particular topic or area of law. To do this you can either search in

- Subject indexes to cases, such as citators and digests, or
- Full text case law databases.

**Subject Indexes to Cases**

**Case Citators/Annotators**

A case citator is a listing of cases with a reference to where they are reported. Citators usually include alternative citations for cases if available, and the abstract may be searched by typing in keywords.

Case citators trace the judicial history of a case through the courts and show how judges in subsequent cases have considered the case.

Case citators do not contain the full text of a judgment.

**Digests**

A digest indexes and summarises reported cases by subject or topic. Digests provide case indexes which will direct you to a summary of the case. Digests index case law for a particular jurisdiction, include a brief summary of the key elements of the case, and list the catchwords covered in the case. Digests do not contain the full text of a judgment.

The following are a selection of digests by jurisdiction:

**Australia**
- Australian Current Law
- Firstpoint

**Canada**
- Canadian Abridgment (Westlaw)
- Canadian Digests (LexisNexis International)

**New Zealand**
- Butterworths Current Law (LexisNexis International)

**United Kingdom**
- Current Law
- Digest : Annotated British, Commonwealth and European Cases (print only)

**United States**
- Martindale-Hubbell Law Digests (LexisNexis International)
Full Text Case Law Databases

To find cases on a topic, there are several search options:

- Some databases allow you to search by Catchword. These are the major subject (or digest) headings assigned to the case by the court and/or editor.
- All databases and web sites allow you to search by keyword. This searches across the full text of the judgment, so you will retrieve more hits than when you search by catchword.
- Most databases allow you to conduct a Boolean or Terms & Connectors search. These allow for more sophisticated searching.

Some databases allow you to limit your search to a particular jurisdiction, court, judge, or date. This is useful when you are searching on a common surname, or on a topic that retrieves a large number of cases.

Additional Help

Library staff can always assist you with your queries. The reference service is available Monday – Friday 9.00 am to 5.00 pm.
6. Finding Cases that consider a Word or Phrase

You may need to examine the legal meaning of a word or phrase for your research. Where it is not defined in legislation, the meaning of words and phrases may be defined in

- a legal dictionary
- the decision of a judge or judges.

Legal Dictionaries

The Law Library holds many different types of legal dictionaries. For definitions of words and phrases as defined in Australian law, you can use one of the following:

- **Australian Legal Words and Phrases** lists over 100,000 words and phrases that have been considered by the Australian courts, and provides the case citations for the relevant cases. To view the definition, you need to locate and read the case itself.

- **Butterworths Australian Legal Dictionary** contains over 20,000 legal definitions.

- **Words and Phrases Legally Defined** contains the citations of Australian cases that have discussed the listed word or phrase. To view the definition, you need to locate and read the case itself.

Additional Help

Library staff can always assist you with your queries. The reference service is available Monday – Friday 9.00 am to 5.00 pm.
7. Finding Journal Articles

Journal Articles

A journal article is a well researched academic discussion, found in a publication known as a journal or serial. Journals are usually divided into volumes (or years) and these are further divided into issues or parts.

Journal articles are secondary sources of law – that is, they are discussions of the law rather than the original sources of written law. They provide:

- Important discussions about primary sources of law such as cases and legislation
- In-depth and subject specific research that might never be published in a book
- Current information on a topic
- Footnotes and bibliographies that can often lead to further resources on a topic
- A forum for researchers to first report their findings and ideas.

Finding journal articles using indexes

Journal indexes provide the citation to a journal article and sometimes an abstract (short summary) of the article. They do not provide the full text of the article. Citations in journal indexes usually include:

- Title of the article
- Author of the article
- Source or name of the journal in which the article is published
- The publication date of the journal
- The page numbers of the article
- Key words that describe the main subjects of the article
- Cases and legislation related to the article.

The following are a selection of law journal indexes:

- AGIS
- APAIS
- Index to Legal Periodicals (LexisNexis International)
- Legal Journals Index (Westlaw)

Locating journal articles in the library

If you have searched a law journal index for articles on a topic or a case, your search will retrieve a list of citations for relevant journal articles.

In order to locate these articles, you will first need to ascertain whether the journal title is held by the library in print or online. This can be done by:
Searching the library catalogue using the journal title (not the article title) to see if the library holds a print or electronic copy of the journal for the volume/year you need.

- Search or browse the E-journals web page using the journal title (not the article title) to see if the library holds an electronic copy of the journal for the volume/year you need. Remember that this list does not include the law journals contained in LexisNexis International or Westlaw.
- Search LexisNexis or Westlaw to find Journal title/article

Finding journal articles using full-text databases

When an entire document is reproduced in a database, we call this a ‘full-text’ database. This is the electronic equivalent of locating a complete article in a printed journal. When searching for a specific article in a full-text journal database, you generally have two options:

- Browse an alphabetic list for the journal title, and then browse for the volume and issue that contains the article you require.
- Search the database using the article title, author, or key words that describe the article.

If you are looking for articles on a topic, rather than a specific journal article, you can search the database using key words that describe your topic. The following are a selection of full text databases:

- AGIS Plus Text
- APAIS-FT (Australian Public Affairs - Full Text)
- AustLII Journals
- Cambridge Journals Online
- Lawbook Databases Online Journals
- LexisNexis International
- Oxford Journals Online
- Westlaw

There are also journals with legal content in multi-discipline databases, the following are a selection you may wish to search:

- Business Source Premier
- Informaworld
- Ingenta connect (abstracts & some full text)
- JSTOR
- Proquest
- Scopus (index & abstract only)
- Synergy

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