A Guide to the Willem C. Vis International Commercial Arbitration Moot

Prepared by the Center for International Legal Education at the University of Pittsburgh School of Law

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FOREWORD

From the fall of 2007 through the spring of 2013, the Center for International Legal Education (CILE) at the University of Pittsburgh School of Law, through the support of the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce, assisted law schools in the Middle East in selecting and preparing student teams to participate in the Willem C. Vis International Commercial Arbitration Moot competition which is held each spring in Vienna, Austria. The teams, and their years of participation to date are:

- Qatar University: 2011, 2012
- Baghdad University: 2012, 2013
- University of Jordan: 2012, 2013

Each year, third-year law J.D. students from the University of Pittsburgh traveled with Professor Ronald A. Brand, Director of the Center for International Legal Education to provide initial team-selection, research, and writing instruction in the fall and oral argument training in the spring to help teams prepare for the Moot. This manual is largely a result of the work of those students. They include:

- 2007-08: Kate Drabecki, Katerina Ossenova
- 2008-09: Kate Drabecki, Katerina Ossenova, Esther Mosimann
- 2009-10: Marc Coda, Richard Grubb, Kerry Ann Stare
- 2010-11: Richard Kyle, Kristine Long, and Amelia Mathias
- 2011-12: Sarah Miley, Kimberly Stains, and Kaitlin Young
- 2012-13: Amelia Brett, Eryn Correa, Brian Fraile

This Manual was completed by Professor Brand and the 2012-13 students, with the benefit of materials prepared by the students from previous years. It also borrows from the chapter 3, “The Road to Vindabona,” in The Vis Book (JurisNet, 2008) written by Professor Brand and Professor Pilar Perales Viscasillas of University Carols III Madrid.

All of us at CILE have appreciated the support of everyone at CLDP, as well as work of the students, professors, and administration at each of the partner Middle East law schools, in making this project a success. We have benefited from the support of the Bahrain Chamber for Dispute Resolution in hosting the Middle East Vis International Commercial Arbitration Pre-Moot in 2011, 2012, and 2013. We look forward to continuing to work with all of these partners.

Center for International Legal Education
University of Pittsburgh School of Law
May 2013
INTRODUCTION

This manual is intended to help you start a Vis Moot tradition at your law school by taking you from selecting a Vis Moot team through competing at the oral hearings in Vienna, Austria – in other words, from beginning to end.

To help you with this process, we have broken the process down into nine chapters. Chapter 1 will get you started with initial considerations to think about before starting down the path of the Vis Moot, including financial and time considerations. Chapter 2 provides examples of how to go about selecting a team. Chapter 3 provides guidance on how to do preliminary research and how to become familiar with the substantive law that is used in the Vis Moot problem. Chapter 4 takes you through the steps of applying that research to the Vis Moot problem and using it to form compelling and convincing arguments. Chapters 5 and 6 are dedicated to the Claimant’s and Respondent’s memoranda respectively, discussing the necessary substantive and structural elements for each written submission. Chapter 7 focuses on the structure of the oral argument, providing important tips for gaining points at the oral hearings in Vienna. Chapter 8 discusses how to prepare for the oral hearings. Chapter 9 gives you a taste of what to expect in Vienna.

Although we have designed the manual to take you step-by-step through the Vis Moot, the chapters should also work independently. If, for example, you are simply looking for some advice on the Claimant’s memorandum or what to expect in Vienna, these chapters may be consulted without looking at the preceding chapters.

We also provide Appendices, some of which are referred to in the text and relate to specific chapters, and some of which provide PowerPoint slides that are available in accompanying electronic files.

Some material in this Guide is developed from The Road to Vindabona: Preparing for the Moot, which is chapter 3 in The Vis Book: A Participant’s Guide to the Willem C. Vis International Commercial Arbitration Moot (Janet Walker ed., Juris Publishing 2008, Huntington, New York, www.jurispub.com). That chapter was prepared by Professor Ronald A. Brand of the University of Pittsburgh and Professor Pilar Perales Viscasillas of University Carlos III of Madrid. The material from that chapter is used here with the permission of Juris Publishing, Inc., the copyright holder, and the permission of Professors Brand and Perales. The Vis Book is an excellent companion to this Guide, and we recommend that the two publications be used together when starting a new Vis Moot team.
CHAPTER 1
BEFORE FORMING A TEAM

Before Forming a Team: Beginning Advice

So, you want to be a Vis mootie\(^1\) – congratulations! Admitting this is the first step into one of the most comprehensive learning and/or teaching experiences you will have during your legal education or career. Participating in Willem C. Vis International Commercial Arbitration Moot (the “Vis”) will allow you to develop new legal research techniques, flex your legal writing muscles, hone your oral advocacy skills, and travel internationally to connect with a global network of mooties just like you! Before getting started on the details of this adventure, let’s pause and discuss a few primary considerations.

Basic Structure

The Vis Moot is an educational experience built around a competition and is designed to teach students about international commercial arbitration. Each year, the Vis problem focuses on an aspect (or two or three!) of an international trade dispute that is subject to the United Nations Convention on Contracts for the International Sale of Goods (“CISG”) and submitted to arbitration. This problem aids in teaching students the intricacies of both international trade law and international arbitration through an engaging hands-on learning experience.

The Vis Moot competition itself consists of two phases: (1) the written submissions and (2) the oral arguments. The Vis Moot problem is released the first week of October and teams have two months to submit the first written submission: a 35-page memorandum written on behalf of the Claimant in the dispute. Following this submission, teams then have one month to submit the second 35-page memorandum, this time written on behalf of the Respondent in the dispute. Each team must submit both a Claimant’s and a Respondent’s memorandum. Roughly two months following the submission of the Respondent’s memorandum, teams will meet in Vienna, Austria, to compete in the oral argument phase of the Vis Moot (generally the week between Palm Sunday and Easter on the Christian calendar).

The oral arguments in Vienna last between four and six days. The first four days of the competition are dedicated to general rounds. During these general rounds, each team’s oralists will compete four times – twice as Claimant and twice as Respondent. After the four days of general rounds, the teams with the 64 highest scores will proceed to the advanced rounds, which last the final two days of the competition. The advanced

\(^1\) http://www.law.pitt.edu/academics/cile/jdprogram/moots/mottieblues.
rounds are knock-out rounds, meaning that each team is only guaranteed to argue once; the winning team from each round (as determined by the arbitrators) will be the only team to advance further.

**Goals of the Vis Moot**

According to the Rules of Competition, the goals of the Vis Moot are clear:

The Moot is intended to stimulate the study of international commercial law, especially the legal texts prepared by the United Nations Commission on International Trade Law (UNCITRAL), and the use of international commercial arbitration to resolve international commercial disputes. The international nature of the Moot is intended to lead participants to interpret the texts of international commercial law in the light of different legal systems and to develop an expertise in advocating a position before an arbitral panel composed of arbitrators from different legal systems. An active social program at the time of the oral hearings in Vienna is organized by the Moot Alumni Association with the aim of promoting friendships that can last long after the Moot itself is over.  

That said, what you get from the Vis Moot experience will depend on what you want to get from the experience. Some teams are there to try to win, while others – especially those participating for the first time – are in Vienna to experience the competition and prepare for future teams. However, no matter what your ultimate goal in participating in the Vis Moot, you will get the chance to take part in a competition that will help you develop legal knowledge and presentation skills through the preparation and presentation of a case involving substantive issues governed by the CISG and procedural issues governed by the New York Convention, the UNCITRAL Model Arbitration Law and specific sets of arbitration rules and relevant treaties. In addition, for non-Anglophone teams, you will improve your legal vocabulary and your written skills in English. In the end, the Vis Moot is a wonderful learning experience for both students and advisors and an exciting way to enhance one’s legal education.

**Faculty and Other Advisors**

The Rules of the Moot do not require faculty or advisor involvement, but it is strongly recommended for each team, as it is a huge benefit to students who wish to

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3 The Rules of the Moot may change annually. For all material for the current year of the Moot, see http://www.cisg.law.pace.edu/vis.html.
participate. Advisors with a background in private international law, international arbitration, and international commercial law will often be in the best position to give guidance on the substantive issues the students will face in writing the memoranda and making oral arguments. However, any faculty or advisor involvement is an invaluable resource. These advisors do not have to come from within a university. Moot alumni and practitioners often serve as advisors to teams and can provide first-hand insight into what it is like to compete in the Moot.

The Rules of the Moot are generally liberal about faculty involvement in the students’ preparation for the final competition. With the written submissions, faculty or advisors can aid students in identifying the issues, can comment on the persuasiveness of arguments in drafts, and can suggest better or different arguments. All final submissions, however, must be the exclusive work of the student members of the team. Faculty advisors have almost no restrictions on their involvement with the preparation of oral arguments.

**Time Considerations for Faculty and Students**

Being involved in the moot as a student or coach is a time consuming activity! Before taking on the coaching or advising responsibilities, it is wise to take a hard look at your schedule to ensure you can be available to discuss the evolution of the memoranda, check the progress of the student participants, and answer questions as they arise. Additionally, you should be able to take the necessary time in March or April to travel to Vienna. As a student, you should treat the Vis Moot like another course in your schedule – do you have the time to prepare for and be engaged in another course with your already-scheduled classes-and to take a week in the spring to travel to Vienna?

**Financial Considerations**

Participation in the Moot costs money. The following chart provides a breakdown of the costs that can be expected.

<table>
<thead>
<tr>
<th>Registration Fee</th>
<th>€ 700(^4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austrian Visa Application Fee</td>
<td>See <a href="http://www.austria.org/going-to-austria/entry-a-residence-permits/entry-permits-visa#Application">http://www.austria.org/going-to-austria/entry-a-residence-permits/entry-permits-visa#Application</a> for a list of countries exempted from visa obligations and application procedure.</td>
</tr>
</tbody>
</table>

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\(^4\) This was the amount of the 2013 registration fee. It is subject to change in future years.
<table>
<thead>
<tr>
<th><strong>Registration Fee</strong></th>
<th>€ 700¹</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Travel to/from Vienna</strong></td>
<td>Varies by country. Inquire with local travel agents or travel websites for relevant fares and fees.</td>
</tr>
<tr>
<td><strong>Food, Lodging and Transportation in Vienna</strong></td>
<td>See <a href="http://www.wien.info/en">http://www.wien.info/en</a> for a list of hotels and other useful tourism information.</td>
</tr>
<tr>
<td><strong>Travel to pre-moot competitions (not required)</strong></td>
<td>The Middle East Pre-Moot will be the closest on in terms of travel. There are many pre-moot competitions that take place at various times before the final competition in Vienna. Consult the Pace website for listings of pre-moot competitions.</td>
</tr>
</tbody>
</table>
CHAPTER 2
PRE-TEAM MEETING AND TEAM SELECTION

Choosing a Team – The Basics

You have reviewed the initial considerations and decided to start a team at your university. Now it is time to put a full team together.

The team members may be selected in a number of different ways. Some law schools structure specific courses around the Vis Moot, teaching students about the CISG, the UNICTRAL Model Law, and other arbitration laws as a way of preparing every student in the class to be a member of the team. Other schools select a team through an internal competition that may include writing a memorandum, presenting an oral argument, or submitting a résumé and participating in an interview. The method of team selection should fit both your resources and your purposes for being involved in the Moot.

The Vis Moot Rules require participation by at least two students registered at your law school, but there is no maximum limit on how many students may participate from each school. Only two team members may speak in any single oral argument during the competition (although different students compete in each separate argument). Some teams are composed of up to 30 members, all engaged in researching and preparing oralists for the final arguments. In addition, if your school plans to participate in both the Hong Kong and Vienna moots, keep in mind that a student may be a member of both teams, but no student may argue orally in both the Hong Kong and the Vienna Moots in the same year. After taking into consideration the limitations regarding faculty involvement and costs, it is up to you to decide how many students will participate from your school and which ones will travel to the competition.

Logistics for the Pre-Team Meeting

Each law school must determine its own method of selecting a team. At the University of Pittsburgh, we have an initial meeting at the start of the fall term to discuss the Vis Moot and determine student interest. We try to let students know that although

5 26. Composition. Teams may come either from a law school or from another university or post-university level institution that includes law as part of its program of study. Each participating law school or other institution may enter one team. A team is composed of two or more students registered at the institution. Students may be registered either for a first degree or for an advanced degree and need not be from the country in which the institution is located. There is no maximum limit on the number of students who may be members of the team. No student who has been licensed to practice law is eligible to participate except with permission of the Director of the Moot. The Rules of the Moot, supra note 3.
participating is an amazing experience, it requires a good deal of time, effort, and commitment. At the pre-team meeting, it is a good idea to distribute a timeline of events, including deadlines for submission of memoranda and travel dates so the students can assess whether they are able to make the necessary time commitment. See Appendix A, below, for a sample time schedule.

After the initial informational meeting at the University of Pittsburgh, have an internal competition for selection to the team. We have made a conscious decision (based largely on financial considerations) to limit our team to four students. Thus we use a short problem, for which each student writes a five-page memorandum and presents an eight minute oral argument. From those submissions, the faculty coaches select the team members. See Appendix B, below, for a sample problem that has been used at Pitt.

It is advisable to have the entire team picked at least two weeks before the Vis problem is released. The Vis problem is generally released the first week in October, making it desirable to select the team in mid-September. This allows students to begin doing preliminary research on international arbitration and the CISG as a way to become more familiar with the law that is important to the Moot. The following chart provides a sample schedule:

Sample Pre-Problem Schedule

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Meeting</td>
<td>Last week of August</td>
</tr>
<tr>
<td>Try-Out Memorandum Due</td>
<td>Monday of the second week in September</td>
</tr>
<tr>
<td>Try-Out Oral Arguments</td>
<td>Friday of the second week in September</td>
</tr>
<tr>
<td>Team Selections</td>
<td>Monday of third week in September</td>
</tr>
<tr>
<td>First Team Meeting</td>
<td>Third week in September</td>
</tr>
<tr>
<td>Preliminary Research Begins</td>
<td>Third week in September through release of the problem</td>
</tr>
</tbody>
</table>

Picking a Team

If you do decide to hold try-outs, the process for picking a team should have two phases, similar to the competition itself: a written memorandum phase and an oral argument phase.

**The Memorandum**

First, all applicants should be required to complete a short memorandum based on a sample problem which focuses on the CISG. See Appendix B, below, for a sample problem. This memorandum will help coaches evaluate potential team members, and will
help students begin to grasp the different aspects of the CISG and how to research international commercial law.

The try-out memorandum should be short, for example five pages long. This will provide enough space for students to form a strong argument, but will be a manageable length given the time constraints. The memorandum should also include a citation requirement, much like that required for the Claimant’s and Respondent’s memoranda where students must provide sufficient authority to support their arguments. This will encourage students to broaden their research and get a good idea of how they will have to research the memorandum for the Moot. An example try-out memorandum for the Appendix B problem can be found in Appendix C, below.

**Oral Arguments**

The second phase of the try-outs should be an oral argument. This will enable students to get a feel for how an arbitration proceeding is conducted, as opposed to a traditional court hearing or oral argument.

The try-out oral arguments should be conducted in a manner similar to those at the Moot, and thus be both timed and well-structured. In order for this phase of the try-outs to be effective, it is advisable to have more than one arbitrator present and prepared to ask questions. This format will help the students get a picture of how the competition will be conducted and will allow the arbitrator/coaches to make informed decisions about whom to select for the team.6

**Examples of Team Selection Methods**

The following are three examples of methods for team selection, as described in *The Vis Book.*7

**Example A: The University of Pittsburgh**

As noted above, at the University of Pittsburgh, the selection process begins a general informational meeting in late August or early September. A problem written by the University of Pittsburgh Vis coach is distributed, and each interested student prepares a five page memorandum and presents an eight minute oral argument. Four students are then selected to be the team from the University of Pittsburgh. The team is later divided so that, for purposes of

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6 For additional information on how students may want to prepare for their try-out oral arguments see the discussion in Section regarding oral arguments.

oral argument, two students will represent the Claimant and two will represent the Respondent. This also means, however, that two students deal primarily with the issues of arbitration procedure (one for Claimant and one for Respondent) and two students deal primarily with substantive issues based on the CISG. As a result, each team member must coordinate his or her research with both the student that is arguing the opposing side and the student who will represent the other half (either substantive or procedural) of the same argument.

**Example B: University Carlos III, Madrid**

An example of a different schedule for the competition preparation is that of the University Carlos III in Madrid, where the selection of team members begins immediately after completion of the prior year’s oral rounds in Vienna. The selection process is advertised in advance in order to inform the students about the Moot – an experience that is uncommon at universities in Spain – and to let students know what will be required of them if they choose to participate. Each interested student submits a copy of his or her CV to the coach. This is followed by a personal interview in English in May to choose the students who are the best motivated, most available to work on a flexible schedule (students doing a demanding job while studying are usually discouraged), and most fluent in English. These requirements are not so much focused on the results in the competition, as they are on enhancing the student's ability to benefit from the experience. The members of the University Carlos III team are then chosen at the beginning of June. They are immediately assigned readings on the CISG and arbitration for the months of July through September, and they are required to prepare written work on those readings.

**Example C: A Vis Seminar**

A third example is that of schools who offer a seminar in which students research and argue the issues in the case week upon week, with the team being selected nearer to the deadline for submission of the Claimant’s Memorandum. In this model, seminar participants learn about international commercial law and arbitration procedure, and the selection process for the team is based on the coaches’ analysis throughout the term of each student’s ability to analyze the issues, to develop and present the arguments, and to work well with other team members.

Many schools provide academic credit amounting to approximately 10% of the annual credits. In the case of the University Carlos III, the students get six
credits, which is equivalent to a mandatory subject in the law school curriculum. This helps to ensure that there is adequate accommodation in the law school curriculum for the kind of active learning that occurs in collaborative preparation of the memorandum and the demanding schedule of practice rounds. A detailed study was conducted in 2006 of the educational opportunity presented by participation in the Vis and how law schools around the world have taken it up.
CHAPTER 3
DEVELOPING AN UNDERSTANDING OF THE LAW

Researching the Case – Generally

Whether your team is composed of two persons or a much larger number of members, the research process is key to doing well. While it is possible to divide the research obligations among team members for purposes of finding sources and discussing approaches, there is no substitute for a complete and comprehensive understanding on the part of each team member of all of the issues and positions that might be taken. A useful guide to *Researching the CISG*, prepared by Professor Harry Flechtner, is provided in Appendix J, below.

Conducting the research necessary to craft a strong and convincing argument for your case will be by far the most time consuming aspect of participating in the Moot. The Vis problem is intentionally drafted to contain some contentious issues that will have support going both ways. In order to make your written memoranda and oral arguments the strongest they can possibly be, you will want to consider the following general guidelines.

*Start Broad*

Not everyone is familiar with the fields of law and conventions that comprise the law that governs the dispute. Each year the problem changes and can touch on fields of law that are largely unrelated to the sales of goods. In order to best understand the topics and potential issues of the problem, it is best to start researching at a very broad level. For each issue that you have picked out from the problem you want to find a general source, usually a commentary, that will contain a great deal of general information about each topic. If you have an issue regarding an article of the CISG, it is always helpful to start with one the well-known commentaries such as those by Schlechtriem & Schwener, Honnold & Flechtner, or Huber & Mullis. These books are all broken down by article to explain the effect of the article and identify any issues of conflicting interpretations. This will provide you with a better understanding of the legal landscape of each particular article and provide you with a better idea of the narrow topics you will need to research in depth.

*Narrow your scope*

Once you understand the issues of your case, you will want to narrow your search down to find specific passages or commentaries that support your side of the argument. You should search for commentaries that seem to support an interpretation of your side of the argument. Once you feel that you have found such a passage or article from a respected source, look at the sources that he or she cited to arrive at that understanding of the rule. By searching through the footnotes of relevant and respected legal
authorities, you can quickly gather a list of strong sources and cases that are likely to contain information that will help your case. After following these footnotes to other cases or articles, continue the same process. Find the conclusions and interpretations that support your arguments and see what each of those sources cite to support their conclusions. Pay attention to arguments that would counter yours and research the arguments and their sources in search of weaknesses in the argument or facts that differentiate the present dispute from the harmful precedent. By following these chains of citations you will often get a broad and varying set of sources that help bolster your understanding of the topic and provide you with enough information to help you draft a well-informed and persuasive memorandum.

Supplement your research

Once you have mined the well-known commentaries and books for their citations to other helpful sources, you will want to go back and search for more information that might help your case. Searching citations can be helpful, but it is also important to remember that a source can only contain information that was available at the date of publication. Many of these well-known sources might not have been updated recently or might not contain the most up-to-date citations. In order to ensure that you understand the law as it is presently applied, you will want to look beyond just the citations and cases contained in texts and look instead to more up-to-date resources such as online databases.

Developing a General Understanding of the Law

The process for developing a general understanding of the law will vary depending on which argument you have been assigned by your team. Although the same general principles apply, the means by which you will conduct research on substantive law will differ from the process for conducting research on the procedural issues of the problem. The following sections contain some basic guidelines for conducting research in the substantive law and then address the methods used for conducting procedural law research.

Understanding the CISG

In preparing your substantive law argument, the best foundation for your research is a comprehensive understanding of the CISG, the basic text for the issues in the moot. Difficult points may turn on a careful reading of one or more Articles of the CISG, and so a good starting point for each student is simply to read the Convention. While each year’s problem focuses on specific provisions of the CISG, you must understand how those provisions relate to the rest of the Articles of the Convention, as well as the importance of the basic rules of interpretation of the Convention found in Article 7, the basic rules of interpretation for party conduct and writings found in Article 8, and the additional rules regarding usage and practices found in Article 9. The CISG must be read and applied in a
manner that is consistent throughout its terms, and your understanding must reflect this approach. Every participant should be familiar with the CISG text, in order to be able to identify the legal problems embodied in the case, to determine the relationship between those problems and the rules of the CISG, and to ascertain those elements of the problem that are affected by more than one CISG provision.

Once you have a basic understanding of the CISG from reading its text, you are ready to delve further into its nuances and the manner in which it has been applied in past disputes. This involves a combination of civil law and common law approaches. A good starting point is with basic treatises,\(^8\) which contain an article-by-article analysis of the CISG. Once you have read the entire Convention and then read the problem carefully to determine the principal CISG articles involved in the dispute, you may dig deeper through the discussion of those articles in the treatises. It is also worthwhile to research other secondary literature, such as law review articles, to seek out written material addressing the specific issues raised in the Moot problem.

Any argument on the substantive issues in the Moot will require reference to (1) the text of the relevant Articles of the CISG, (2) the decisions of courts and arbitral tribunals which have interpreted and applied those Articles, and (3) the discussion of scholarly commentators on the relevant Articles of the CISG. If the text of the article is clear, that will be the end of the matter. But any good Vis problem will be built on questions that are not clearly answered from the text alone. Thus, cases and commentary will be important. As with any good research process, you will want next to consider the secondary literature. This will involve finding other books and articles that have dealt with the issues raised in the problem. It will also involve careful reading and rereading of the facts in the problem in order to make certain that you have considered every possible argument for each side in the dispute. While you may not ultimately use every possible argument (and should focus only on the strong ones), you should be aware of them in order to respond to any and all questions that may be presented to you in the competition. Early reading of the principal sources relating to the CISG will help each team member retain useful terms (e.g. avoidance, conformity of the goods, loss of profit, \textit{Nachfrist} etc.) that will in turn help guide the search for more specific literature.

Reading the secondary literature found in treatises, books, and law reviews is very helpful in dealing with legal concepts, but it is also important to return to primary source material and to the Convention text itself. This requires consideration of the cases from all courts and arbitral tribunals that have interpreted or applied the CISG articles relevant to the problem. There are two very important and useful resources for this purpose. The easiest to use is the outstanding website created by the Pace University School of Law Institute of International Commercial Law.9

When you find cases that deal with your issues, you will want to know how best to use them. At this point, particularly if you are not from a common law legal system, a good exercise is to return to the “arbitration moot” link on the Pace website and review some of the winning memoranda from past competitions to see how they have used cases in their arguments. The process requires being able to distinguish the facts of the existing cases from (or analogize the facts of the existing cases to) the facts of the current problem. If you want the tribunal to apply the outcome in the prior case, you must explain how the facts of the current dispute are similar for all relevant purposes to those of the prior case. If you want the tribunal not to apply the outcome or rule in the prior case, you must do just the opposite and explain how the facts of the current dispute are dissimilar to those of the prior case in a manner that makes application of the holding and rationale in that case inappropriate in the current dispute. Ultimately, it will be important for you to know and understand every important case that may be considered as a potential precedent for a decision in the current dispute, and be able to demonstrate both your knowledge of the facts of that case and why the rule of law applied in that case should or should not be applied in the current dispute. Some teams produce charts of all the relevant cases and the key holdings for easy reference when they are making their final preparations for going to the Oral Rounds.

For further overview and instruction on the CISG see Appendix C, below.

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9 The website was created and maintained by the late Professor Albert Kritzer and now is maintained by the Institute of International Commercial Law at Pace Law School. You will find it at www.cisg.law.pace.edu. This website will be important for several purposes. First, in the lower right portion of the home page you will find the link to “arbitration moot,” at which you will find the Vis problem, Rules, Schedule, and other important information. Second, the website is the most comprehensive single source anywhere for CISG research. Most importantly for your research, it allows you to consider the cases that have interpreted and applied the CISG in the past. The link to “Cases on the CISG” will be your starting point for finding cases applying the articles pertinent to your research, as well as to the very useful UNCITRAL Digest of Case Law on the United Nations Convention on the International Sale of Goods. In addition, the Pace website contains much other useful information, including the travaux preparatoires, as well as a very extensive bibliography, and links to the text of many articles about the Convention.
Understanding the Law of Arbitration

The process for developing the procedural arguments is very similar. Thus, you will want to begin with the UNCITRAL Model Law, the New York Convention, and the set of arbitration rules under which the proceedings will occur. The applicable arbitration rules differ each year and will be clearly indicated in the Problem. Again, there is no substitute for simply reading and understanding the rules. It will be helpful also to consult some of the excellent general treatises on arbitration which are available, particularly when you have defined the specific issues of arbitration procedure that are the focus of dispute in the Vis Problem, as well as journal articles on these issues.

In addition, as there is the Pace website for CISG related case law and information, the UNCITRAL website provides an excellent source of arbitration related research. The site has a case law database, as well an UNCITRAL Digest on the Model Law and other secondary source material.

For further materials on arbitration and procedural matters see Appendices D and E, below.

Research Strategies: Putting It Together

Any research process must begin with a clear understanding of the basic issues of law being considered and move toward a comprehensive, nuanced understanding of all possible arguments. This parallels the process of writing the memorandum for the Vis competition and preparing the oral argument. The research stage, however, is the point at which team members should consider all possible angles to the problem, pursue each

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angle to its logical conclusion, preserve the matters that are important, and set aside those matters that prove to be unhelpful.

There is no perfect research strategy that fits every person but the importance of thorough research cannot be overemphasized. Teams often find brainstorming sessions to be particularly useful in the beginning, when the work is focused on identifying all possible perspectives from which the case may be analyzed. Once you develop a simple outline of the problem and the potential issues, it is then time to pursue the different threads of analysis to develop a clearer understanding of the law. As you progress in your research, it is important to return to your outline regularly so that you remain organized as you encounter greater and greater detail.
CHAPTER 4

THE RELEASE OF THE PROBLEM

The Release of the Problem – Issue Spotting

The Vis Problem is released the first week of October. It is a 50+ page record that constitutes all the facts and documents of the problem. Each team may submit one request for further clarification of the facts prior to the deadline set each year by the Moot. This deadline is generally about three weeks after the initial problem is released, but you should always be careful to double check the relevant dates on the Vis Website. After the clarification requests are answered, no additional facts may be introduced unless they are a logical and necessary extension or are common knowledge.\footnote{Facts that can logically be concluded are those facts that must be true based on the nature of the item or the business. An example given in the Moot rules is that if a contract governs the sale of “Men’s Suits” you can assume that those suits would be made of cloth but assuming them the be made of 100% cotton would not be an appropriate inference. It is often tempting to twist facts in such a way that they will benefit your case but this practice should be avoided as it will most assuredly be noticed by opposing counsel which will take away from the merits of your argument.}

The first thing for all members of the team is to read through the whole problem. It is essential that all elements of the problem are read, reviewed and understood. It will be necessary to read the whole record more than once. A helpful practice when first reading the problem is to print out a hard copy of the problem and annotate your initial thoughts and questions that may arise in your initial reading. This helps you to identify which issues and facts will be important as you work on the problem and isolates areas that may be of particular importance in conducting your initial research.

Once all of the students have had the opportunity to pull out as many issue as possible, students should do preliminary broad research based on these issues to determine which of the issues should be addressed in the memoranda. During this initial issue spotting and research most of the focus will be on the Claimant’s memorandum, but students should keep in mind issues and research which may relate to the Respondent’s memorandum and keep a document with this information which can be referenced when it comes time to draft the Respondent’s memorandum.

Organizing the Team

*Substantive versus Procedural*

All Vis Moot problems will have two parts: (1) a substantive law portion; and (2) an arbitral procedural portion. It is advisable to break the team into two groups and have each half focus exclusively on either the substantive or procedural portion of the research.
By dividing the team in this way, each side can more fully understand the issues in the problem and focus their research on developing solutions to each portion. This enables your team to make efficient use of its time, develop the strongest and most persuasive arguments it can and provide the necessary authority to support these arguments. Some teams decide to keep these groups in place through the entire moot including oral arguments, while others choose to realign the groups at some point. It is up to your group to decide which method is appropriate for you, but the more students are permitted to specialize in one of the two areas the greater their understanding of the issues and arguments will be. See below for a more detailed breakdown of what each part will entail.

The substantive portion of the problem is generally the heart of the dispute between the Claimant and the Respondent and focuses on a specific aspect or aspects of international trade law. Examples of past disputes include:

- Late delivery of goods due to an inappropriate contractual modification
- Late delivery of goods due to a fire in a supplier’s warehouse
- Delivery of non-conforming goods

These disputes are generally governed by the CISG meaning that students who plan to undertake the substantive portion of the problem will focus their research primarily on the CISG, the relevant treatises [see Appendices C & J] and the relevant case law. Approximately half of each Vis memorandum and the oral arguments will be focused on substantive issues.

Procedural law, on the other hand, is the set of rules followed by the arbitral tribunal in conducting the arbitral proceedings. The procedural law of the competition varies from year to year therefore students who choose this portion of the problem will have to understand the generalities of arbitration procedural law as well as the specifics of that year’s chosen law. Examples of past procedural issues include:

- Admission of a written witness statement
- Ability to cross-examine a witness
- Dismissal of legal counsel who has a conflict of interest with an arbitrator
- Dismissal of an arbitrator
- Proper formation of the arbitral tribunal

In this way, the procedural law will govern what will happen and what will not happen during the arbitration proceedings themselves [See Appendices D and E, below, for resources for further procedural research], while the substantive law will determine the nature and extent of any award or judgment that may be granted by the tribunal.

**Claimant versus Respondent**

Upon deciding which team members will argue the substantive issues and which will argue the procedural issues, you should begin to consider which members will argue
for Claimant or Respondent. This division will only become necessary for the oral argument phase of the Moot, as both substantive and both procedural team members will work on both Claimant and Respondent’s memoranda. Nonetheless, teams should keep this division in mind moving forward. [This topic will be discussed in greater detail in the Oral Argument section in Chapter 7].

Requests for Clarifications: Using the Rules to Your Advantage

Requesting clarifications

An important element of the Moot process is that teams are provided the opportunity to submit requests for clarifications. The Vis Moot encourages early, thorough research by setting an early deadline to request clarifications of the facts in the released problem or Record. Roughly three weeks after the problem is released, students may submit questions on anything in the record to the organizers of the Vis Moot. While it is not guaranteed that all requests for clarification will be answered, this does provide students with the opportunity to closely read the problem and pick out any potential conflicts. The exact date by which clarification must be submitted can be found on the schedule for the Moot on the Vis website. After this date, no further clarifications may be submitted so it is important to take advantage of this opportunity by the deadline.

Key points in oral argument often hinge on nuanced facts contained in response to clarification questions and these can play a major role in the application of case law or commentary. Thus, it is important to develop a list of questions regarding the important or confusing facts early enough to present them by the deadline for requests for clarifications established in the rules. At this stage, even a question that seems silly could trigger an answer that might make a difference. Teams are not judged on their requests for clarification so there should be little concern that a request does not touch on an issue that may not be of critical importance in the final argument.

Distribution of clarifications

A few weeks after the deadline for clarification, the organizers of the Moot will post the answers to the clarification questions to the problem in the form of a procedural order appended to the Vis Problem. These answers should be reviewed carefully and, if pertinent, incorporated into the analysis of the problem. The answers to the clarification questions are considered to be additional and binding facts of the problem and can and should be incorporated into both the memoranda and the oral arguments.
CHAPTER 5
DRAFTING THE MEMORANDA

When first considering participating in the Moot, it is easy to get the impression that the oral argument is everything in the competition. Indeed, the oral rounds do provide an excellent forum to test a student’s ability to thoughtfully and effectively convey an argument to a captive audience, but a more telling sign or advocacy is the ability to effectively convey your argument coherently in the written form, where questions and clarifications cannot be used to bolster a soft spot in the logical structure of the case for your client. The need to present the argument from its broadest point to its most nuanced distinctions while fully supporting your interpretation makes the drafting of the memorandum one of the more time consuming and frustrating aspects of preparing for the Moot. It is of critical importance to present your argument as clearly as you possibly can in your memoranda to prepare the tribunal with a strong foundational understanding upon which you can elaborate during the oral advocacy phase of the Moot.

In drafting the written memorandum for the Vis Moot you want to remember that this may be the only place where your full argument is presented. In the oral argument you are attempting to argue as persuasively as possible in a limited period of time, requiring some arguments or explanations of facts to be omitted. As such, you will want to ensure that your memoranda are clean and thorough representations of all facts and arguments that would allow your party to emerge victorious in a real dispute. You will also continue to rely on both the Claimant’s and Respondent’s memoranda throughout the entire Moot, so it is imperative that your memoranda represent most thorough research and the best possible effort that your team can put forth.

Basic Structure of the Memoranda

The first place to consult when looking for the format and structure of the memorandum is the official Vis Rules available on the Moot’s website.13 This will provide you with the rules that you will need to follow in order for your memorandum to be considered for an award. In addition to providing the rules that govern the structure of the memoranda and the process of submitting them, the Vis website provides examples of award-winning memoranda from past moots.14 Looking through these excellent examples of memoranda will provide your team with a more detailed idea of how the memoranda should be structured.

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14 Link to award winning memoranda on Vis website: http://www.cisg.law.pace.edu/cisg/moot/mootlist.html#top.
Each memo will consist of the same core components: Cover Page, Table of Contents, Table of Authorities, Table of Abbreviations, Statement of Facts, Summary of Argument, Argument on Jurisdiction, Argument on the Merits, and the Request for Relief. To give you a better idea about what each of these components must entail, each one will be addressed in turn.15

Cover Page

After spending months researching, drafting, and revising your memoranda, you are going to want people to be able to recognize you for all of the hard work you have done. In order for this to happen you need to provide the reader with your information on the cover page. The Vis rules state that the team name and the party being represented “must appear prominently on the outside cover page so that it can easily be read without opening the memorandum.” These are just the bare minimum requirements; many teams include more information than just that which is required by the rules. It is common for the cover page to include the school’s name and logo, a title identifying the party on whose behalf the memo is being submitted, the address and roles (claimant or respondent) of both parties, and the names of the team members who helped draft the memorandum. To get a better idea of what teams have done in the past, it is always helpful to refer back to the examples available on the Vis website. Although these are just examples, and deviation from them is entirely appropriate, the winning memoranda all provide samples of a clean and informative cover page that introduces the team, the students, and the party being represented.

Table of Contents

Just as with many of the books and treatises you have been poring over in your research, the memoranda will be long and difficult to navigate. In order to help the reader find specific sections or arguments within your memorandum, you will need to include a table of contents immediately after the cover page of your memo. The table of contents will include entries for each of the sections of the memo and will list the page number on which these sections begin. You will also include an entry for every heading and subheading that you have included in your Argument on Jurisdiction and the Argument on the Merits.

Table of Authorities

The table of authorities is a comprehensive list of all the resources you have relied on and cited within your memorandum. The body of memorandum will not contain full

15 For PowerPoint slides providing further detail on the components and structure of the memoranda see Appendix F.
citations for each source, but will instead use a shortened in-line citation that will contain only a brief description of the source, such as the authors name or short title of the work, as well as the citation to the specific page in the work where the relevant reference is made. Based on the shortened in-line citation the reader can then refer to the table of authorities to obtain the detailed bibliographical information about each and every source referenced in the body of the memo. This method allows you to save space within your memo by only including a short-form in-line citation to a resource. Because the opening pages, which include the table of authorities, don’t count towards the 35 page total, you can help keep citation space to a minimum with the 35 pages that you have to work with.

It is important when forming your short citations that you keep the source description short enough that you are not wasting unnecessary space within your memo but you are still providing enough information to differentiate each of the sources you are citing. If you aren’t citing more than one work from any given author, the author’s last name might be enough to accomplish this feat, but where more than one work by a given author is cited, you may need to include more information. For example, where you need to cite the Schlectriem & Schwenzer Commentary on the International Sale of Goods you could use the following short and long form citation:

**Short Form:** Schlechtriem & Schwenzer [page number]


However, if you were to need to cite both the third edition and the second edition of this text, or you needed to cite another work by the same two authors your short form citation would not be descriptive enough to differentiate the two sources and would thus need to be more informative.

**Short Form 1:** Schlechtriem & Schwenzer 2d Ed. [page number]

**Short Form 2:** Schlechtriem & Schwenzer 3d Ed. [page number]

Or

**Short Form 1:** Schlechtriem & Schwenzer Commentary [page number]

**Short Form 2:** Schlechtriem & Schwenzer Article [page number]

The bottom line is that citations do not need to be fully explained within the body of the text but do need to contain enough specific information to differentiate your source from all of the other sources that are referenced in your memorandum. By the end of your revisions, you should be sure that your short form citations accomplish this goal without containing extraneous words or descriptions that waste valuable space within the body of your memo.
Once you have all of the sources cited in both short form and long form, you need to organize your table of authorities in a way that helps explain the value of the sources you are using. In crafting your memo, you will likely rely on commentaries by noted scholars, journal articles, books, arbitral awards, and cases and judgments from national courts. In order to make it easier for the reader to analyze the sources cited, it is helpful to organize your table of authorities into groups containing all of your citations to commentary, another group for your citations to arbitral awards and lastly, a group containing all of the citations to national court cases and judgments. The sections containing arbitral awards and cases from national court should be further broken down in order to identify the arbitral body or country under whose rules or laws the case was tried.

**Table of Abbreviations**

Similar to the Table of Authorities, the Table of Abbreviations makes sense of the information contained in the body of the memo. While drafting your memoranda, you will certainly notice that there are a lot of long and repetitive words or phrases that keep coming up and taking space within your memo. Instead of typing something in full every time you use it, you can abbreviate that word or title in such a way that will help add clarity to your argument while saving your space.

For example, you will have to make repeated reference to the 1980 United Nations Convention on Contracts for International Sale of Goods. This is one of the core sources for substantive law that will relate to the problem and will consequently be a source of discussion in the memoranda. If you were to try to type out the full title of this convention every time you needed to make reference to it, you would use an entire line of your memo for every single reference which, when looked at cumulatively, would add a great deal of length to the body of the memo. In order to save this valuable space, the moot rules allow you to use abbreviations, but you must be sure to define that abbreviation. In order to save yourself space, you can choose to utilize the common abbreviation for this convention: CISG. Rather than typing out 75 characters every time you reference the CISG you can use the simple four-letter abbreviation that has been accepted in common use. Despite this being a common abbreviation, you need to define the abbreviation in the Table of Abbreviations. This prevents any possibility that someone could read the abbreviated form within the body of the memo and not know the entire meaning.

The abbreviations you utilize in your memo do not, however, need to be common abbreviations. There will be times where a lengthy name or phrase is used in your memoranda that does not have a common abbreviation but your paper could benefit from the using an abbreviated for of the name or phrase. In these cases you can choose a fitting abbreviation for the lengthy form and include it in your table of abbreviations. For instance, most of the moot problems have some convoluted names for the parties within the dispute. Compounding this problem is that the party names often include the name of
a one of the jurisdictions in which the dispute arises. One party in the 2013 problem was known as Mediterraneo Exquisite Supply Company. If you had to type that whole name out every time you mentioned the party you would waste important space in your memo and (not to mention) drive yourself crazy doing it. Rather than dealing with this irritating repetition, you can make your own abbreviation for the name and include this information in the Table of Abbreviations. In order to do this without affecting clarity, you will need to spend some time thinking of an abbreviation that is as short as can be without using an existing word or abbreviation that would harm the clarity of your memo. For example, in order to shorten “Mediterraneo Exquisite Supply Company,” many teams in the 20th moot used “Exquisite” or “MESCo” in its place. You would not, however, want to use “Mediterraneo” as the abbreviation because it is the name of a country that will have relevance to the dispute, which could cause the reader to conflate the two meanings and miss important points of your memo. Similarly, you would not want to simply choose the word “supplier” as an abbreviation because there are other suppliers in the dispute, which could cause the reader to confuse a general supplier with the one involved in the primary dispute.

Once you have settled on an appropriate abbreviated form, you simply need to include the abbreviated and full forms of the name or phrase in the Table of Abbreviations in your opening sections. It is also helpful when making up an abbreviation, rather than using a standard one, to remind the reader of this abbreviation the first time it is used in your memorandum.

For Example: “Mediterraneo Exquisite Supply Company (“Exquisite”) is a clothing supplier located in Mediterraneo that has a history supplying clothing the various Oceania Plus chains including the Doma Cirun Clothing Store.”

It is also important to remember to include even the most common abbreviations in your Table of Abbreviations. Although you may have been raised in, or taught English in, an area where everyone would know what a specific abbreviation means, that abbreviation may not be entirely universal. Rather than risking a reader misconstruing the meaning of an abbreviation that you consider to commonplace, you will want to include each and every abbreviation in the Table no matter how common you think the usage is. For example, some common abbreviations that are used in company names in the U.S. might not be so common elsewhere. Instead of simply typing “LLC” or “Inc.” and expecting your reader to understand its meaning as might be done in a less formal writing style, you need to be sure to accommodate a broad global audience with differing familiarities to the abbreviations that you may deem simple or common. Once you have all of the abbreviations defined you should organize your table of abbreviations into two columns,
one with the abbreviated form and one with the full form. The table should be organized such that the left-hand column containing the abbreviated forms is in alphabetical order.

**Statement of Facts**

*Understanding the Facts*

The first step in forming the memoranda is to have a solid understanding of the facts of the case. Although this seems almost too simplistic to mention, many teams underestimate the size and complexity of the problem. At more than 40 pages of filings, correspondence, and other exhibits, the Vis Moot problem contains a highly specific factual scenario that will often take extensive study to understand. In order to get a better feel for relevant facts it is helpful to organize them into a more understandable form. Depending on the problem it might be easier to form a timeline of relevant events (Appendix I), a chart of the parties’ relationships (Appendix H), or any other helpful visual format. Although this seems like a time-consuming exercise, the value of this enhanced understanding of the facts cannot be overstated. Having a solid grasp on the facts of the case will make both your written memoranda and your oral arguments more persuasive, giving your team a better chance of coming home with an award.

*Presenting the Facts*

The first step to writing either the claimant or respondent’s memorandum will be to draft the statement of facts. This will be a brief (approx. 2 pages) description of the events that give rise to your client’s legal position. This is your opportunity to present the facts in the way that is most favorable to your legal position. This does not mean you have the liberty of altering or distorting the facts so that they are more favorable to your client than they appear in the problem, but rather that you should word your statement of facts in a way that is most persuasive to your point. Use strong words to emphasize the failures of the other party while using softer diction to describe the failures of your client. You will also want to use words that are lifted directly from the text of the relevant law in order to reinforce the relevance of your legal argument to the facts of the case.

Consider these examples of a description of facts surrounding the CISG Art. 79 issue of the 2012 Vis problem: (1) “Respondent delivered the central control system after the date parties had agreed upon. This delay in delivery was not caused by any circumstances that he could have corrected.” (2) “Respondent breached the contract by failing to deliver the goods on or before the contract deadline. This breach was the result of a supplier’s failure to take into consideration and adequately prepare for the known risks in the contract.”

Both examples tell the same story; they represent the same facts pulled out of the problem prompt. The latter example, however, frames the facts in such a way that helps persuade the reader that the argument that claimant will present in the body of the
memorandum is correct. The latter example is superior to the former in two key respects: (a) it has more persuasive word choice, or diction, and (b) it is straightforward, preventing the reader from having to make any inferences from the description of events.

By selecting the most forceful and persuasive words for your description of the facts you can start off your paper in a way that sets you up for success in the body of the memorandum. In the 2012 problem, the claimant was seeking direct and consequential damages that resulted from a later delivery of goods; the entirety of the Respondent’s argument turned on whether or not the (a) Respondent breached the contract and (b) whether Respondent was exempt from liability for that breach. The second example uses strong word choice to emphasize the liability of the client that is lacking in the first. The first example uses strong words and phrases such as “failing to deliver;” “Failure ... to adequately prepare for;” and “breach.” These words and phrases emphasize that what respondent did was not right, that it has agreed to do something and then failed to perform. By emphasizing the shortcomings of the Respondent within the statement of facts you are able to create the initial impression that the respondent was wrong before you even begin presenting your argument. With such a critical advantage to be gained from the careful attention to word choice you can gain a strong advantage in the persuasive portion of you memorandum.

The first example uses words either pulled straight from, or in direct reference to the specific conventions and articles that Claimant intends to use to support its argument. Compare, for example, “failure to deliver” from the example to “failure to perform any of his obligations” from Art. 79 of the CISG, and “known risks” to “he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract” also contained in CISG Art. 79. By alluding to the text of the articles upon which the Claimant will rely to discredit the Respondent’s argument, Claimant can begin to chip away at the respondent’s argument before he even gets a chance to present it.

**Forming the Core of the Argument**

After the statement of facts, you will move on to presenting the core of your party’s argument. In order to do this you will need to gather all of the research you have collected and start to form the headings that will serve as the backbone of the argument. These headings will be short, conclusory statements that help formulate your argument and obtain the relief that your party seeks. You will then take these headings and fill out each section to include the full argument which includes the legal rule that supports your argument, an explanation of that rule and an application of that rule to the facts of the case at bar.
**Headings**

The headings of your memoranda will provide a simple breakdown of your argument that will help the reader navigate the main points of your client’s position. Each Major issue should be addressed with one core heading that will contain further subheadings that help support that point. In order to better explain this process I will use the headings from the University of Pittsburgh’s 2012 Claimant’s Memorandum. There were three main arguments that the claimant needed to present during the moot: (1) The Tribunal lacked the jurisdiction to hear a challenge to Claimant’s choice of counsel, (2) Even if the Tribunal did have such jurisdiction, Respondent has failed to provide sufficient grounds for the Tribunal to remove Claimant’s counsel, (3) Respondent was not exempt from liability for failure to deliver the goods, and (4) Respondent was liable for damages as a result of its breach.

The choice to break this argument into four main headings is not an easy one, cases could be made for the argument that only three main headings were needed, but in the end you need to break your entire argument down into the sections that you feel best present your argument and get your client the relief they desire. Once you have these main arguments set you will delve deeper into each core topic to determine what else needs to be demonstrated in order to win the argument as it relates to that main issue. If we were to look specifically at the third argument from Pitt’s 2012 memo: Respondent is not exempt from liability for damages resulting from its failure to deliver the control system by the contractual deadline. In order to show that the respondent is not exempt, we would need to further show that (1) Respondent bears the burden of proving that it meets the requirements for exemption because it is the party seeking the benefit of this rule, (2) Respondent is not entitled to exemption because it did not meet the requirements of CISG Art. 79, and (3) Respondent is not entitled to exemption because the third parties it engaged to perform the contract do not meet the requirements for exemption. You would then look at each sub-heading and determine if it too needs to be further broken down to help demonstrate the merits of your argument.

These headings will be in a constant state of flux the entire time you are working on your memo. What seems right one day will seem wrong the next, and every new source you read will change the way you feel about your arguments and the best way to present them. This is not a big deal, and is a process that everyone writing a memo will go through. It is better to get a set of headings that you feel comfortable with and then move on to fleshing out the argument rather than spending all of your time trying to make your headings perfect. Perfection is not something that will come on the first attempt and will instead need to be arrived at through weeks of trial and error.
Summary of the Argument

The summary of the argument is the next section that will appear in your memo, but this does not mean that it should be, or even could be, completed until the main argument sections are completed. In order to maintain clarity, I will address this section now, but you should be sure to hold off on writing this section of your memo until your argument is finalized and your memo is all but finalized.

The summary of the argument will briefly summarize each of the main arguments you will make in the body of your memo. Instead of attempting to summarize what you will be writing later, it is best to do this after the argument is written and you can more succinctly state what will be argued in that section. This brief summary allows the reader to have some idea of where you are headed before he or she delves into the in-depth technical argument that supports your client’s position.

When writing this section, brevity is again of critical importance. This is the first section that counts towards your 35 page limit and will thus need to be as short as possible while still accomplishing this goal. The easiest way to accomplish this is to take all of the headings and subheadings from your argument and rewrite them into a paragraph that touches on the same core points. For example, compare the topic headings and argument summary for the third argument in the University of Pittsburgh’s Claimant’s Memorandum for the 19th moot in 2012.

Topic Headings

III. RESPONDENT IS NOT EXEMPT FROM LIABILITY FOR DAMAGES RESULTING FROM ITS FAILURE TO DELIVER THE CONTROL SYSTEM BY THE CONTRACTUAL DEADLINE

A. RESPONDENT Bears the Burden to Prove that it Met All Requirements of Art. 79

B. RESPONDENT is Not Exempt Under Art. 79(1) Because the Lack of Available D-28 Chips Was a Foreseeable Impediment to Performance

C. The Third Parties Engaged by RESPONDENT in Performance of the Contract Prevent RESPONDENT From Qualifying for Exemption
   i. The Third Parties Engaged by RESPONDENT Are Within its “Sphere of Control,” Preventing RESPONDENT From Being Exempt From Liability for Damages Under Art. 79(1)
   ii. RESPONDENT is Not Exempt Under Art. 79(2) Because the Third Parties Engaged to Perform All or Part of the Contract Do Not Meet the Requirements of Art. 79(1)
1. Article 79(2) Mandates that the Manufacturers of the Components of the Control System Satisfy the Requirements of Art. 79(1) for RESPONDENT to Qualify for Exemption From Liability

2. Specialty Devices Would Not Be Exempt Under Art. 79(1) Because it Could Have Overcome the Impediment to Performance

3. Article 79(2) Would Not Satisfy its Intended Purpose if the Liability for Third Parties Did Not Extend to Those Parties Indirectly Engaged to Perform the Whole or a Part of the Contract

4. High Performance Would Not Be Exempt Under Art. 79(1) Because it Could Have Overcome the Impediment to Performance

Summary of Argument

III. RESPONDENT IS NOT EXEMPT FROM LIABILITY FOR DAMAGES RESULTING FROM ITS FAILURE TO DELIVER THE CONTROL SYSTEM BY THE CONTRACTUAL DEADLINE

RESPONDENT does not meet the strict requirements of Art. 79 to qualify for exemption. RESPONDENT is in control of its supply chain and cannot rely on breaches by its suppliers to qualify for exemption under Art. 79(1). Further, RESPONDENT is not exempt under Art. 79(2) based on its suppliers’ failure to perform and cannot rely on the troubles faced by Specialty Devices and because these parties were engaged to perform a part of the Contract and they do not individually satisfy the requirements of Art. 79(1).

The summary doesn't need to reference every single nuance of the argument you will make. It simply need to explain the broad strokes of the argument to the reader so that when he or she arrives at the technical and lengthy argument on that topic they know exactly what is arguments are coming. When the reader has this background knowledge of the argument it makes it easier for him or her to follow the laws and cases the provide support for that argument.

In total, the summary of the argument should not utilize more than two pages of your 35 page limit, leaving ample space for you to fully explain these points in the main argument session.
Body Arguments

The body arguments will constitute the majority of your 35 numbered pages in the memoranda and will completely explain the laws, their interpretation, and application to the facts that will show the tribunal that your client is entitled to the relief it expects. This will be the longest section of your memo and will help define every other portion of your memo. If you have done a good job keeping the statement of facts and summary of the argument short, you should have at the very least 31 full pages to make your argument. This should be enough space, but you will still need to be careful that you are being efficient with your wording every step of the way. Chunky wording may not only take valuable space away from other sections, but will also make it difficult for the reader to follow your points. Every sentence of your memo should be drafted as tightly as possible to eliminate extraneous words and maximize clarity.

The easiest way to being the timely undertaking of drafting your core argument sections is to being with the headings that you drafted earlier. As you've continued researching, you should have gained resources and cases explaining or relating to each issue. When drafting your body arguments you will want to supplement the main points from your headings with these supporting resources in order to fully explain your argument to the reader.

For each heading you wrote earlier, you need to have at least one body paragraph that explains the meaning of or justification for that heading. If a heading you are working on has subheadings beneath it, you will also need to introduce these sub-arguments under the parent heading. To get a better idea of how your research and citations will be used to elaborate upon your headings see Appendix G, below, for an example argument paragraph.

CREAC

In order to make your argument as strong as possible, it is often helpful to think of each heading as an individual argument and then break that argument down into components based on the CREAC method. This method states that each argument should be broken down into five parts. These five parts are distinct in content but are not separated by any heading or delineation. Instead, these five parts simply follow one another to comprise one paragraph or more of body text.

Conclusion

You will start drafting your argument by stating your conclusion. This might seem backwards, but as we've previously discussed, giving the reader an idea of what you will be arguing helps help him or her to follow along with your argument and understand how it relates to the main arguments of the case. This portion will be a conclusory statement explaining exactly what the point of your argument is.
**Rule**

Following the introductory conclusion statement, you will want to introduce the rule that supports your argument. Explain the source of the rule and why it applies and include the substantive provisions of the rule.

**Explanation**

After all of the supporting statutes, laws, or conventions have been introduced, you need to explain the effect of this rule. For instance the rule section of an argument might provide: “Article 79(1) of the CISG states that a party is exempt from liability to pay damages for a failure to perform his obligations where the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.” This section provides the reader with the rule, but there are still a lot of questions. What is a circumstance beyond his control? What does it mean to “reasonably be expected to have taken the impediment into account?”

These are the sorts of questions that you will need to answer in your explanation section. Your explanation of a rule will explain to the reader how relevant courts and tribunals have interpreted this rule or what the preeminent experts in the field think of the provision. While drafting this section your research will have a real and tangible impact. The more you have researched the topic, the more likely it is that you will have found a source that interprets or applies a rule in the manner that will get your client the relief they are hoping for. Many rules of law, especially the rules that are related to the Vis problems, tend to have multiple ways of interpreting them. You will want to be sure that you have reliable resources that support an interpretation of the rule that supports your cause. Once you have found these source you will use them to explain the rule to the reader in such a way that they will agree with the argument that you are putting forward for your client.

**Application**

After you have explained the rule in such a way that will help your cause, you will need to apply that understanding of the rule to the facts of the case. Show that the facts of your case are similar to those cases that have used your proposed interpretation of the rule. In short, this section should show that the facts of the case support the argument you are putting forth based on the rules that you have explained.
Conclusion

After you have adequately introduced, explained, and applied the rules of law that support your argument you will need to once again state the conclusion that you have drawn from the application of the rules to the fact.

By following this method for each and every argument and sub-argument you intend to make throughout your memo you will ensure that you have followed the necessary steps to convince a reader that your argument and interpretation of the rules is the proper one to utilize in deciding the outcome of your case.

Request for Relief

The request for relief is the final section of your memorandum that will explain to the reader or tribunal what it is that you are hoping to receive for your client. List the determinations of law and fact that you would like the tribunal to make after reading your argument. The Request for Relief is generally one brief sentence with bulleted point followed by the signatures of the team members. For such a brief section, an example from the University of Pittsburgh Claimant’s Memorandum from 2012 might be illustrative of the point.

V. REQUEST FOR RELIEF

In light of the submissions made above, CLAIMANT respectfully requests the Tribunal to:

(1) Dismiss RESPONDENT's request for disqualification of Dr. Mercado for lack of jurisdiction.

(2) Alternatively, decide that CLAIMANT may retain Dr. Mercado as their counsel of choice.

(3) Decide that RESPONDENT is not exempt from liability for damages under Art. 79.

(4) Decide that RESPONDENT shall pay CLAIMANT USD 670, 600 in damages to compensate for losses suffered in consequence of RESPONDENT's breach.

Each main topic heading in the body of your argument should be represented by a request for relief in the concluding section. This request should ask the tribunal to reach the determination that you reached after careful explanation and application of the rules in the body of the memorandum.
CHAPTER 6
RESPONDING TO THE CLAIMANT'S MEMORANDUM

Receiving Claimant’s Memo from Opposing Teams

Congratulations – you have conquered the hardest part of the Vis moot by writing and submitting your Claimant’s memorandum! After you have submitted your Claimant’s memorandum, your coach will receive access to opposing teams’ Claimant memoranda. The memorandum you will receive is from one of the teams you will be competing against in the preliminary rounds of the oral arguments in Vienna. This memorandum will give you a good idea of some, but likely not all, of the argument that you will need to counter in your Respondent’s memorandum. Your Respondent’s will want to be responsive to the Claimant’s memorandum you receive, but you might also take the opportunity to raise further issues that were not brought up by your opponent. As the Moot approaches and the oral argument schedule is finalized, you will be given access to three additional memoranda presenting the arguments of the remaining teams you will face in the opening rounds.

Writing the Respondent’s Memo

Once you have received the opponent’s memorandum and completed further research on the issues, you will need to start drafting your Respondent’s memorandum. Although you will have less time to complete this memo (only one month as compared to two months for the Claimant’s memorandum), it should be a bit easier because you are already familiar with the facts of the record and the substantive elements that need to be discussed.

At its core, the Respondent’s memorandum contains the same eight substantive elements of the Claimant’s memorandum: cover page, citations, table of authorities, table of abbreviations, the statement of the facts, summary of the argument, the core argument with introductory headings and sub-headings, and a request for relief. That said, the arguments that you make in the Respondent’s memorandum are the opposite of those you made in the Claimant’s memorandum and should be structured accordingly. You do not need to follow the same structure that was most persuasive for the Claimant. Instead, it might be helpful to slightly alter this structure in order to present the issues in a way that is most beneficial to the Respondent’s case.

There are two resources that may be helpful to get you started with the Respondent’s memorandum. First, you should read, and have a thorough understanding of the arguments presented in, the Claimant’s memorandum that you were provided. However, a better resource is your own Claimant’s memo that you turned in during December. Although your opponents may give you some good ideas, it is possible that they missed something! Go through your own Claimant’s memorandum and write down
counterarguments to the arguments you already made. Think to yourself which questions you wouldn't want to have to answer as a Claimant in the Oral arguments and research these. As an adversarial exercise, weaknesses in one argument in the Moot will almost always be strengths in the argument of the opposing party. By thinking of the questions you had difficulty addressing as a Claimant you will gain strong points for the Respondent and vice versa.

The best way to write the Respondent’s memo is to put yourself in the position of the lawyer for the Respondent and ask yourself: if the Respondent were your client, what would be the best arguments you could make in representing your client’s interests? To write this memorandum, you may reference some resources you used for the Claimant’s submission, but it may be necessary to do new research to help better argue your ‘new’ client’s side. Although the same depth of research as you did for the Claimant’s memorandum may not be necessary because you will already be familiar with the CISG and applicable arbitration law, it is helpful to follow the same research steps outlined above.

Division of the Work

The division of the work on the Respondent’s memorandum will vary depending on the size of your team. It is often helpful to divide research differently among the members of your team during the drafting of the Respondent’s memoranda than was done during the drafting of the Claimant’s memorandum so that when the team moves on to the oral arguments each team member has a clear and thorough understanding of all of the arguments. For example, if there were two procedural issues in the Claimant’s memorandum, Issue A and Issue B, and Student One handled issue A and Student Two handled issue B, it may be useful to switch so that Student One focuses on Issue B and Student Two focuses on Issue A. This way, the team members can be familiar with the whole procedural argument, rather than just one issue. On the other hand, if your team has already decided who will present each issue at oral arguments, it may be helpful to have the same students research the same issues but this time from the Respondent’s perspective. This will help each student to understand the argument from both the Claimant and Respondent perspectives. In this case, it is best to talk to the team members and understand what would be best to help with their understanding of the problem.

Final Steps

The Respondent’s memorandum is generally due in mid-January, a mere 6 weeks after the Claimant’s memorandum. When compared to the 10 weeks between the release of the problem and the due date for the Claimant’s memo this seems overly ambitious, however teams often find that the research done and lessons learned in drafting the
Claimant’s memoranda make the deadline for the Respondent’s memo the less stressful of the two. Once the Respondent’s memorandum is submitted, the written phase of the Vis Moot is over and it is time to start preparing for oral arguments!
CHAPTER 7

ORAL ARGUMENTS

The final oral argument hearings will be held primarily at the Juridicum of the University of Vienna Faculty of Law, Schottenbastel 10-16, A-1010 Vienna, with additional hearings at the offices of nearby law firms. The general rounds will be scheduled so that, in principle, each team will argue once per day, Saturday through Tuesday. If it is not possible to schedule in this manner, a team may be scheduled to argue twice on the same day with no argument on one of the three other days of the general rounds. As the Vis Rules explain and as mentioned above, in the four days of general rounds, each team argues twice as Claimant and twice as Respondent. In the first hearing, the teams are expected to present “the arguments given in their written memoranda” or to justify why they are advancing different arguments. Subsequently, it is understood that their appreciation of the issues will have improved and teams are free to advance arguments other than those in their memoranda. In the months following the submission of the Respondent’s memoranda, the arguments will change considerably – do not be alarmed if the arguments you advance at the oral hearings are significantly different than those put forth in your written submissions!

Format of the Arguments

Each team will have two team members and be judged by a panel of three arbitrators. The students will sit at tables facing another with a “head” table of the arbitrators. Each team will have thirty (30) minutes to present their argument, including questions from the panel, but this time may be extended to up to 45 minutes as permitted by the tribunal.

No exhibits are permitted during oral arguments other than those found in the Problem, but “[e]xhibits that are designed to clarify time sequences or other such matters” may be used with the consent of the panel and the opposing team.

Each arbitrator will score each of the oralists on a scale of 25 to 50. The scores of the two oralists will be added to constitute the team score for that argument. Therefore, each team could score a maximum of 100 points per arbitrator per argument, or a theoretical maximum of 1200 points for the four arguments. Arbitrators will score the oral arguments without knowledge of the results of earlier arguments. Some arbitrators will have participated in evaluating the memoranda of teams whose oral arguments they later hear. Although they will be aware of their own evaluation of the memoranda, they will be without knowledge of the evaluations given by other arbitrators thus each hearing is a new opportunity to achieve a high score.
Preparing for Oral Arguments

The first step in preparing for the oral arguments is to decide which student will argue each portion of the argument. There are four portions: (1) Claimant procedural; (2) Claimant substantive; (3) Respondent procedural; and (4) Respondent substantive. Assigning arguments to team members can be done in one of two main ways. First, teams may decide to have four students argue – one for each portion of the argument. On the other hand, some teams may decide to only have two oralists – one for the procedural part of the argument and one for the substantive. If a team only has two oralists, these oralists will argue both the Claimant and the Respondent’s positions. Pursuant to the Vis Rules if a student only argues one side they are not eligible for an individual oralist award in the competition.¹⁶ Eligibility for individual awards should not however be the sole, or even primary, means of deciding how you will structure your argument. Having a student argue both sides of the case might be individually satisfying but often sacrifices the overall efficacy of your team’s arguments. Learning both arguments well enough to be able to spontaneously explain and justify their merits is not a task that should be taken lightly and will often result in significant confusion when answering the arbitrators’ questions during the tribunal.

Making the Best Argument

Like other Vis Rules, the rules for oral argument provide for a good deal of flexibility, primarily for the arbitral tribunal. Because there is no fixed order of presentation and no requirement that the arbitrators ask questions at certain times, or even at all, panels will vary from hearing to hearing. Furthermore, arbitration as a form of dispute resolution is not accompanied by the strict formalities of courtroom advocacy thus the Tribunal itself may develop the rules as the argument proceeds. This brings with it a certain degree of unpredictability not only in the hearing but also in how to best prepare for the oral argument.

¹⁶ Rule 30. In each of the oral hearings two members of the team will present the argument. Other members of the team may not aid them during the argument in any way. Different members of the team may participate in the different hearings. Therefore, between two and eight members may participate in the oral hearings. However, to be eligible for the Martin Domke Award for best individual oralist, a participant must have argued at least once for the claimant and once for the respondent. The average score per argument will be calculated and the award will be determined on that basis. The Rules of the Moot, supra note 3.
Important Considerations for Oral Arguments

Each oralist should become comfortable with his or her own style of advocacy as there is no single right way to make every argument. That said, there are some very basic rules that can help make every participant a better oralist.

**Be well-organized**

It is important for your argument to be clear and well-organized. Having a clear structure will allow the Tribunal to follow your argument and make it easier for them to award you points!

It is strongly recommended (and common practice) for each team to prepare a binder containing the Record (the Vis Moot problem) and all other important texts for use during the oral argument. If you rely upon a specific authority (paragraph of the record, treatise, case, etc.), you should include this in the binder and mark it so you are able to turn to it quickly and read it for the Tribunal. If you are quoting language from the Record, be certain to identify (1) the page; and (2) the paragraph number. Whenever you quote a page from the Record be sure to allow the Tribunal to turn to that page of their copy of the Record with you.

This binder will serve as your backup during your oral arguments so it important that you take seriously the process of creating and organizing your supplemental materials. When questioned by the panel, you want to be able to quickly and seamlessly refer to or quote a relevant source of law or interpretation. This process will require a great deal of chemistry between teammates, a topic that will be discussed in greater detail later in this chapter.

**Simple before complex**

At the most basic level, your job is to convince the Tribunal that your argument is the correct way to interpret the dispute. However, if you are unable to convey the simple aspects of your argument, you will not be able to convey the complex aspects. Start simple – think about how you would explain this argument to your friend who is not in law school and has never studied arbitration. If you can convince that person of the merits and reasoning of your argument, then you will able to convince the Tribunal of the same.

**Time allocation**

Each team will have thirty (30) minutes to present their argument. The team will need to split this time between the two arguments; procedural and substantive. The amount of time that should be allocated to each argument depends on the problem and each teams preference. The basic allocation would be to allow each team member fifteen (15) minutes. However, depending on the problem, less or more time may be needed for one of the arguments. In that case, the team must decide which team member will have
what amount of time, for example thirteen (13) for the procedural part and seventeen (17) minutes for the substantive part.

In addition to deciding the time split, each team member should reserve one or two minutes for rebuttal and surrebuttal. A rebuttal is a short response to the opposing team’s argument. Once the responding side has spoken for their allotted time, you are able to make one more point in response. This is *not* an opportunity to raise new or different points; instead it should contain only points or arguments that are responsive to opposing argument that the tribunal has just heard. [For more information, see section on Rebuttals and Surrebuttals below].

In addition to being responsive, a rebuttal should be short and to the point. With this in mind, it is best to allocate at most two minutes for rebuttal and no more than one minute for surrebuttal. The surrebuttals should be shorter because it will only address the point raised by the opposing party in its rebuttal. Regardless of your allocation, you should always attempt to keep your rebuttals as short as possible. Failing to use the allocated time during rebuttal will not harm your teams score, and if done properly, will demonstrate the relative strength of your argument in contrast to the shortcomings of the opposing arguments.

*Meeting the Other Team*

Before the start of any oral argument, either in a pre-moot or in the real competition in Vienna, it is important for each team to introduce themselves to the other team. During this introduction you should discuss the order of arguments, time allocations and rebuttals. Once the Tribunal enters the room, be sure to introduce yourself to the arbitrators as well. It is recommended that each team member carry business cards to hand to the panel so the arbitrators may keep track of names.

*Presenting a Strong Oral Argument*

*General Contents of the Oral Argument*

Not everything from your memoranda is going to be included in the argument – an important step in planning your oral arguments is to determine which issues will be critical to bring up and which ancillary issues should be left out of your presentation.

**FACTS**

The facts of the Record are the facts you have to deal with for better or for worse. Be sure to highlight the facts that are favorable to your client while selectively downplaying the unfavorable facts.

When referring to a fact, you should know where it comes from in the Record and be able to point the arbitral tribunal to the page and paragraph number relatively quickly.
without wasting you allocated argument time. In addition, you should understand the relevance of each fact that you raise. Does your fact justify the application of a certain rule? Does it present a common thread with established precedent? Or does it counter an argument that will be presented by your opponent. Knowing, and adequately communicating, the relevance of a fact to your argument is what separates a strong oral argument from a simple dictation of relevant law and conclusory statements that support your cause.

**Sources**

Much like with your written memoranda, you will also want to cite sources in support of your oral arguments. The team member arguing the substantive issue of the problem will often be asked to name and summarize case law that supports their argument. If you used these cases in your memoranda make sure you are familiar with them and can recite the facts and holdings for the Tribunal. Know the jurisdiction and precedential effect, if any, of these decisions. Again, being able to fully explain how any why a fact or case supports your argument is what will stand out in the minds of the arbitrators when it comes time to assign a score to your presentation. The better you understand all of the material points of your argument the more likely you are to move on to the elimination rounds of the moot.

**Structure of Outline**

In addition to your argument binder, it is helpful for each team member to prepare an outline that can be used as an aid when presenting your oral argument. Your outline should include brief words or sentences that will help you remember your argument, but should not be a script. The outline is not something that you will be reading during every step of your argument, but will instead be something you can refer to in order to keep to your planned structure and guide you back to your place if you should become lost. With brief points arranged into an outline you can briefly glance down and remember what you should be presenting whereas a script will tempt you to read the entirety of your argument rather than relying on the solid understanding that you have established through extensive research and practice. Even where a student has a solid understanding of the argument and can present it without any aid whatsoever, the presence of a script will be too tempting to ignore and will detract from the oral presentation.

The outline should be a maximum of two pages of bullet point items rather than a comprehensive reference to every point that should be mentioned. It may be helpful to annotate each point with a brief citation to relevant fact or law contained in the binder, but the outline should fall short of providing full explanations of arguments. As you begin creating an oral argument outline it may start out 3 or 4 pages long, but as you practice your goal should be to shorten the outline to one or two pages such that the outline can be set out in front of you before an argument begins and left untouched until the end of the
presentation. Unnecessarily long outlines result in behaviors such as flipping through pages or searching for your place, which may temper the effect of your arguments and explanations. After each practice you should reconsider the points in your outline and determine whether each is necessary or can be omitted in order to maximize the clarity and ease of use of your outline.

It is essential that you are able to communicate a clear sense of organization. To do this, you must have a clear point-by-point outline of your argument and be able to follow it simply and clearly. If the tribunal doesn’t understand the simple foundation upon which you will build your argument, they won’t understand the detailed analysis that supports it.

**Introduction to Argument**

In order to set up your argument before the tribunal, you will want to have an opening statement that is explains who you are, why you are before the tribunal, and what you hope to argue during your allotted time. This statement will prepare the panel with a basic understanding of the relevance of every argument you will present in your pleadings. This argument outline is important, however, before you begin the substance of your pleadings, there are two important preliminary statements which must be made to the arbitrators so that they can better understand who you are and which party you will be representing:

(1) Greet the tribunal with “Good Morning” or “Good Afternoon” and introduce yourself, your co-counsel and your client clearly and slowly. E.g.: “Good morning, members of the arbitral tribunal. My name is Sam Watterson and along with my co-counsel C.J. Cregg, I represent the Claimant, Equatoriana Control Systems.”

(2) State the time you will take for your argument and any time you will want to reserve for rebuttal. Generally, your time allocation will be accepted by the arbitrators but it is important to ask the tribunal for the amount of time you wish to take. E.g.: “May I please reserve fourteen minutes for my argument and one minute for rebuttal?”

Put together, the beginning of a proper introduction may go as follows:

*Good [morning/afternoon/evening] members of the arbitral tribunal, my name is [state name] and I represent [Claimant/Respondent] [State full name of client]. I will be addressing the procedural issues of the dispute and my co-counsel [state your teammates name] will address the substantive issues.*
** Note the first speaker for your team should introduce their co-counsel, but the second speaker does not need to do so, and should only state his or her name.

**Framing the Problem**

Immediately after the introduction, you want to frame your argument in one or two sentences and tell the arbitrators why you are here and what this argument is about. Much like writing the facts section of your memorandum, you want to choose words that will immediately convince the arbitrators that your side of the argument is the correct side and thus they should rule in your favor. Not only should this sentence be convincing, it should also establish a theme that you intend to use throughout the entire argument. This theme should be used in both the procedural and substantive portions of the argument.

Examples:

(1) “We are here before you today because Respondent has failed to perform his contractual duties.”

(2) “We are here before you today because Claimant is attempting to rewrite the law in his favor. We respectfully ask the Tribunal not to allow Claimant to avoid responsibility for his illegal actions.”

A good introductory sentence will both lay the blame on the opposing party while making strong use of the facts. Be prepared for this sentence to change frequently – although it is short it is one of the most important aspects of the oral argument because it is your first chance to make an impression on the judges.

**Road map**

After framing the problem, it is important to create a roadmap or and outline the structure of your argument for the arbitrators. This roadmap should briefly identify each of the arguments you plan to make to support your side of the case and help the arbitrators understand where you are going with your argument. Each oral argument should have three (3), but no more than four (4) points or arguments. The roadmap should state each one of these arguments in one sentence each. Including your introduction and your framing sentence, the roadmap should not take more than 90 seconds of allotted argument time.

Example: “We are here before you today because Claimant is attempting to rewrite the law in his favor. We respectfully ask the Tribunal prevent Claimant from avoiding responsibility for his illegal actions.”
“My argument will proceed in three points. First, Claimant is bound by the law the parties agreed to in their contract. Two, Claimant improperly refused acceptance of conforming goods and as a result, my third point is that Claimant is not entitled to damages under Article 48 of the CISG.”

The roadmap will vary depending on the facts and applicable law in your Vis Moot problem. The important part is to be brief and use a persuasive mix of facts and law. As with the framing sentence, you must be as persuasive as possible in laying out your argument.

When you are presenting your introduction and roadmap it is important to speak clearly and slowly. Arbitrators will often down your roadmap so that they have an outline of your argument. It is important to be looking at the arbitrators during your roadmap and be sure not to move on to your next point until they have completed writing down each argument.

Once you have laid out the roadmap – be sure to follow it exactly! Arbitrators that take the time to write down the roadmap or outline of your argument will assign points based on whether or not you have addressed all of your arguments. Use the roadmap as your guide and lead the arbitrators through your argument point by point. Even if you do not make it to your third point or a conclusion of your third point during your argument, the arbitrators will know what you were going to argue and why they should rule for your client.

**Order of Arguments**

While a team may want to argue everything they included in their memorandum this is not possible within the strict time allocations. As such, it is advisable to pick the three strongest arguments and make only these points during the oral hearing.

The order of the arguments should be as follows: Always start with your strongest argument. This is the argument that will be presented when you have the full attention of the arbitrators. Remember, many arbitrators sit through up to 4 arguments a day and their attention tends to wane! Start strong and let the arbitrators know that they should be paying attention. Your second argument should be the weakest of your three arguments because it is during the middle that most arbitrators tend to lose interest. Your third argument should be the second strongest argument, leaving the arbitrators with a forceful and clear impression.

**Main Argument**

**Substance**

The main argument should provide substantive support for the statements you made in the roadmap. The structure should be as follows:
(1) Repeat the main argument from your roadmap. This allows the arbitrators to situate themselves within the structure of your argument.

(2) Support this statement with case law, scholarly commentary and/or applicable law and rules. It is important that you have legal support for each proposition that you make. Hopefully this will not require too much further research as you will already have much of this support from your written memoranda.

(3) Clarify how this case law and commentary relates to the facts of the Record.

(4) Raise and dismiss any counterarguments.

(5) Remember – as you have already made the arguments and supported your claims in the memorandums, the oral arguments provide you with the opportunity to advocate your position!

**Transitions**

Transitioning smoothly from point to point will help you show the arbitral tribunal that you are in control of your argument and are helping to guide them through it. This is a simple process but helpful to continue to establish your credibility.

The transition to your first main point is simple. Upon completing your roadmap you can simply state: “and now turning to my first point” and then restate the first point from your roadmap.

Transitioning to your second argument can be a bit more difficult. First, it is possible to structure your first argument to lead directly to your second. If you can do this successfully, all you will need to do to transition into your second argument is state: “and that brings be to my second point” and state your second argument as it was stated in the roadmap. However, unless you have a ‘cold’ panel, one that does not interject with questions for clarification, it may not be easy to smoothly transition from one point to the second when arbitrators are asking questions.

The best way to progress in a situation where the arbitrators are asking a lot of questions is to use a question from an arbitrator to transition to the next point. This happens if, for example, an arbitrator asks you a question that would best fit within the second argument rather than the argument you are currently addressing. If this is the case, you can simply explain when taking the question that the question leads you to your second point, restate the second point from the roadmap and answer the question. Upon answering the question, you can then move smoothly into your second argument.
Transitions into your third argument will follow the same process as the moving from your first to your second argument.

**Conclusion**

Upon completing all three of your arguments, you should have a short conclusion that helps to tie all of your arguments together and tells the tribunal how they should rule on the issues. The conclusion will restate all of your arguments in one or two sentences, and end with something like the following: “and therefore, the Tribunal must find that the Respondent breached its contract with the Claimant, and is liable in the amount of $X.” You should have a carefully constructed conclusion that presents a new way of saying (and emphasizing) the core elements of your argument. Make certain that the tribunal is left with a clear understand of the judgment you are requesting.

**Responding**

Two oralists will always be directly responding to their opponent’s argument. It will not necessarily always be the Respondent responding to the Claimant as the order of argument is decided based on the agreement of the teams or the whims of the panel at the beginning of every argument. Regardless of which party is Respondent, it is very important that the second person to argue on any given issue is directly responsive to the preceding argument. This often makes the responding argument more difficult because it is impossible to know exactly what the other side is going to present. Therefore, whichever student will be responding must remain flexible and have a broad understanding of all possible arguments that may be raised and addressed by the other side. This also means that the responding oralist must have a flexible roadmap and outline of arguments. If you are in this position it is particularly helpful to start each argument with a clean outline that can be annotated to emphasize what points have been addressed by your opposing counsel and need to be countered in your pleadings.

**Rebuttals and Surrebuttals**

The arbitrators will decide whether rebuttal arguments will be permitted. Whether or not rebuttals will be allowed can be expected to change from one argument to the next. However, most often arbitrators will permit rebuttals if the teams wish to include them.

Consider at the beginning how you will structure any rebuttal that is available. Although there is no universal rule regarding rebuttal, it usually is advisable that any rebuttal be short, well structured, and insightful. You should try in rebuttal to deal with only one or two (never more than two) points raised by the other party in its oral pleadings. *Never* raise a new argument on rebuttal. If possible, keep the rebuttal focused on your strongest argument.
A surrebuttal will be even shorter than a rebuttal as it must only respond to what was stated in the rebuttal. It should only include one point, and must respond directly to a point made during the rebuttal. *Never* bring up a new point or non-responsive argument in a surrebuttal.

**Non-Substantive Elements of an Oral Argument**

While the arguments are very important, an effective presentation of the arguments is almost equally as important. Therefore, it is not only necessary to have strong arguments; it is equally important to present the arguments in a convincing manner that conveys the oralist’s well-founded belief in his or her client’s position. The following are important non-substantive elements that each team must master in presenting their arguments.

*Order of the Presentation*

The order of presentation is the order in which the arguments will be presented by each of the opposing teams. As stated above, it is advisable to arrive at your oral hearing at least 10 minutes (if not more) before your scheduled argument to give you time to meet the opposing team and establish an order of the presentation. The order of presentation is ultimately a decision for the arbitrators however if the teams have agreed on an order of arguments before the hearing the Tribunal generally will accept this order.

Normally, the party who raised a particular issue should be the one to argue that issue first. In practice, this means that the Claimant often will present first because this is the side that has brought the dispute before the Tribunal. However, if the Respondent has raised an objection to the jurisdiction of the Arbitral Tribunal or other such defense, the panel may ask Respondent to present its arguments on that issue and have the Claimant respond.

Sometimes, is not clear which team should present first for each issue but the argument order might present unique strategic advantages to either team. If the teams cannot decide on an order of argument before the start of the hearings, you may pose this question to the Tribunal to answer determine before the proceedings begin. This means that you must stay flexible in your argument structure and be prepared to either argue first or respond. Because of this uncertainty, it is important to practice multiple argument orders and argument structures in the weeks leading up to the Moot, even if you think a given order is most likely, so that you are comfortable with any surprises that may be thrown at you in the oral arguments at the Moot.

*Time management*

It is extremely important to limit to your argument to the time that you have allocated to each section. Because of the varying time constraints caused by a “hot”
“cold” panel it is important that you practice your arguments before a variety of tribunals while paying close attention to time constraints. Often a team member will present a very good first argument, but will spend two-thirds of his or her time on that argument and will not have enough time to present a clear and effective second and third argument. This will not only prevent the tribunal from hearing your whole argument, but it will also cost your team points. Mastering the ability to shape your argument to the tribunal’s level of questioning while still presenting the necessary points will require a great deal of practice and a reliance on your argument partner to keep you apprised of the remaining allotted time during your pleadings.

**Timekeeping, Teamwork and Note Cards**

Teamwork is especially important when it comes to time management as having a good handle on your time makes you seem like you are in control of your argument and thus are a credible source of information. During the competition there is no official timekeeper thus it is the responsibility of each team to keep its own time. While your teammate is arguing, it is the non-speaking teammate’s responsibility to keep their time and inform him/her of the time remaining. Many teams keep a stopwatch on the table between them and the teammate who is not presenting will watch the clock and keep the speaking teammate within the allotted timeframe by carefully and subtly alerting him/her of the time remaining. The best process for this is to create a set of note cards on which you write the amount of time remaining with “5 minutes,” “3 minutes” and “1 minute” and “Time” (for when time is up) written on them to show the presenting teammate when he or she is running low on time.

**Asking for More Time**

While it should be the objective of all team members to complete their arguments in their allocated time, it is not uncommon to run out of time when presenting. Arbitrators will often ask many questions that will push you outside of your structured argument and make it difficult to stay within your time allocation. The moment you run out of time, you must stop your argument and ask the arbitrators for an extension of 1-2 minutes – not more. Say, “Excuse me, I see that I have run out of time, may I please have a 2 minute extension?” or “I see that I am almost out of time, may I briefly conclude?” Most arbitrators will grant a time extension.

If the arbitrator does grant the extension, do not use this time to make a whole new argument. This time should be used to finish up the argument you were making and briefly conclude. You should never take a Tribunal's allowance for more time as a right to continue your argument for a number of minutes. Asking for more time should be used as a way to get one or two extra minutes to tie up your final argument and present your
conclusion. If, on the other hand, the arbitrator does not grant the extension, conclude your argument and thank them for their attention.

Be sure to ask for more time before you run out of time, otherwise, if an arbitrator is paying close attention, they will see that you exceeded your time limit and may penalize you for doing so.

**Body language**

The way you hold yourself before the tribunal is very important to how the Tribunal will view you and also your argument. It is important that you sit up straight in your chair, and have your hands above the table. Note that this is not just important for the team member who is arguing, but also for both team members that are sitting at the table. It is important to remember that even though you may not be speaking you are in clear view of the Tribunal and thus can influence how the Tribunal interprets your teammate’s argument. It is important to be attentive to your teammate as your body language may be interpreted by the Tribunal as representative of your interest in your teammates argument and your support for your client’s argument. On the other hand, if you look bored or uninterested, the Tribunal may take that as a sign not to pay attention either!

The question of whether or not you should gesture during your argument is a question that must be answered by each team individually. There is no right or wrong answer to this question. Some arbitrators approve of hand gestures, as it shows that you are enthusiastic about your argument and that you are strongly advocating for your client. However, other arbitrators prefer fewer hand gestures, and prefer that during arguments, the speaker keep his or her hands at rest in front of them on the table. As a rule of thumb, try to keep your gestures to a minimum and only use them to emphasize a particular point.

**Voice**

An oralist’s actual speech during the arguments is very important. There are three main areas of speech that all team members must address and be sure to work on during the practice oral arguments: volume, tone variation, and speed.

*Volume*: It is important that you speak with a strong voice. It is not necessary that you are “loud” but you must speak strongly and loudly enough that the opposing side and all of the arbitrators can clearly hear you without straining to hear your argument. It is important to make it as easy as possible for the tribunal to hear and understand your argument.

*Tone Variation*: Tone variation is important because it makes your argument sound more interesting, as well as makes it sound more conversational. It is important that your
argument does not sound like a pre-written speech that you memorized and are reciting. You must talk conversationally and vary your tone throughout the argument. Use your inflection to emphasize points that are of particular importance to your argument. Properly adjusting your intonation during the argument will help strengthen your argument and demonstrate a passionate belief in the merits of your argument.

**Speed:** Speak slowly. Your argument will not be judged on how much you are able to say, or even on what you say. It will be judged on what the Tribunal hears and understands. You must have a good argument but you must also communicate it effectively. When oralists get nervous, it is not uncommon to speed up—even without realizing it. Practice talking slowly—even more slowly than you think is necessary—to ensure that the Tribunal not only hears but effectively understands each part of your argument. Even if you feel that you are speaking unnaturally slow, your pace will help the arbitrators, some with varying proficiencies in English, understand your argument.

**Addressing the Tribunal**

Do not read any portion of your argument. It should appear that you are speaking wholly “off the cuff” no matter how well prepared you are. It is important to make it appear and feel like you are simply having a conversation with the arbitrators, not reciting a prepared speech. This type of a flexible approach will also improve your ability to accept and answer questions from the arbitrators, as well as demonstrate how well you know the problem.

Keep your eyes on the panel, not on your papers. Eye contact is one of the most important parts of oral presentation and advocacy. While your colleague or the other team is arguing, you should demonstrate by your eye contact and body language that you are fully engaged in the discussion of the case. When an arbitrator asks a question, address your answer to the entire Tribunal by looking each member in the eye. This also ensures that the panel continues to listen to you and shows that you want to engage each member. If you see that a certain member of the panel has stopped paying attention, focus your eye contact on him/her until you get a response. The more engaged each member of the panel is in your argument, the more they will hear and the more points they can give you for being a strong oralist.

It may also be advantageous to obtain the names of the members of the panel prior to the argument and address each member of the panel by his or her last name. If it is not possible to use a panel member’s name, if for example they are difficult to pronounce, a neutral expression such as “Mr. Arbitrator” or Madam Chairperson” should be used.

While you should always treat each arbitrator with respect, there is no need to be scared by the panel. If necessary, you should be ready to politely and professionally disagree or to ask procedural questions in order to be sure you understand the questions
being asked or points being taken made by an arbitrator. For example, if the panel does not mention rebuttal time at the outset, be sure to ask for it.

Never interrupt a member of the Tribunal. Even if you think you know the answer to an arbitrator’s question never interrupt to answer the question before the arbitrator has completed the question. It is inappropriate, and you may not hear or understand the full question and therefore you will answer the wrong question and lose points.

Teamwork

Working as a team is a key part of the competition. It is very important that during the arguments the arbitrators can see that you are working as a team because teamwork is part of the overall scoring of the Vis Moot. One of the most important parts of teamwork is simply showing that you are listening to your teammate’s argument. If you look disinterested or are looking at something else, this signals to the tribunal that you are not interested in your own teammates argument. If your teammates argument can’t even capture the attention of his co-counsel, why should the tribunal be any more interested? For this reason, a non-speaking team member’s body language and attentiveness is important in showing teamwork.

Another way to show teamwork is to help your teammate with the binder during their argument. This is done by first understanding all of the details of your partner’s argument, and the parts of the record or legal documents to which they will cite in their argument. Therefore, when your teammate states that in the record, page 9, you should be turning to that part of the record for him/her. The speaker should never be the one turning the pages in the binder; this is the responsibility of the non-speaking team member.

The person not speaking should always be attentive and ready to provide helpful notes, but only when such notes are important to the argument. A teammate should never distract his or her colleague without a clear need – let your co-counsel present his or her argument while you do everything you can to support his or her efforts.

Teamwork is also demonstrated through timekeeping, which as previously discussed in Time Management Section.

The Arbitral Tribunal

Questions by the Tribunal

The arbitrators are requested to act during the oral hearings as they would in a real arbitration. There are significant differences in style dependent both on individual personalities and on perceptions of the role of an arbitrator in oral argument. Some arbitrators, or arbitral tribunals, may interrupt a presentation with persistent or even aggressive questioning. Other arbitrators, or arbitral tribunals, may listen to an entire
argument without asking any questions. Still others will listen to the entire presentation from both sides and then pose questions at the very end. As a result, teams should be prepared for all styles of oral presentation. Most panels of three arbitrators will include arbitrators from different stylistic backgrounds and so these differences in approach may be seen within panels as well as between them. Some panels may wish to hear the entire presentation of one side followed by that of the other, while other panels may wish to hear each issue addressed by both sides before moving on to the next.

“Hot” and “Cold” Arbitration Panels

The amount of questions will depend on whether or not there is a “hot” or “cold” panel of arbitrators. A “hot” panel is a panel of arbitrators that asks a lot of questions. This type of panel can be a challenge, because you may not have enough time to complete your arguments, and because the questions may be difficult to answer and disrupt your argument. However, a “hot” panel is beneficial because it often means that the Tribunal is engaged and interested in your argument, and it also enables the oralist to engage with the arbitrators and better advocate his or her position.

A “cold” panel is a panel of arbitrators that ask very few questions, and simply lets the oralist present his or her argument. This type of panel is quite common at the Vis. A “cold” panel should not be interpreted to mean that the panel is not interested an oralist’s argument, as often the arbitrators are simply listening to your argument and have no questions (or often, have not read the record and are learning from you). In the case of a “cold” panel, it is important for the oralist to speak slowly, but also stay interested in his or her own argument and make sure that they convey to the arbitrators the oralist’s belief in the argument.

Arbitrators Memorandum

Prior to the competition, arbitrators will all receive the arbitrators’ “bench memo.” This is a shortened analysis of the problem that is distributed a few weeks before the oral hearings. While this is supposed to be a simple analysis and overview of the problem, often the memo that the arbitrators receive structures their understanding and questioning. The arbitrators will often expect that your argument will be structured according to this analysis as it may be their only exposure to the problem. The “bench memo” however, is not part of the record and should not be cited by students in the competition. You must rely on the problem and the clarifications alone. That said, it is useful to look through the “bench memo” so that you have an idea of what arbitrators may be expecting.

All students and coaches should note the following disclaimer for the “bench memo”:
This analysis of the Problem is for the use of arbitrators. Arbitrators who may be associated with a team in the Moot are strongly urged not to communicate any of the ideas contained in it to their teams before the preparation of the Memorandum for Respondent. The analysis will be sent to all teams after all Memoranda for Respondent have been submitted. Many of the team coaches/professors participate as arbitrator at the Moot and therefore receive this analysis and it only seems fair that all teams should have it for the oral arguments. If it contains ideas they had not thought of before, it will still be necessary to construct the arguments to support the position they are taking.

All arbitrators should be aware that the legal analysis contained herein is probably not the only way the Problem can be analyzed. It may not even be the best way that one or more of the issues can be analyzed. That is particularly true this year. Full credit should be given to those teams that present different, though fully appropriate, arguments.

Therefore, while all teams and coaches should be aware of the “bench memo” it should only be used as a tool later in the process in preparation for the oral arguments in Vienna.
Oral Argument Practices

It is very important to have at least two or three practice arguments per week from the time of completion of the Memorandum for the Respondent until the competition in either Vienna. Find as many different practice arbitrators as you can so that the experience will generate different comments and different questions. The key is to use the practice arguments to develop a precise understanding of the problem, the law applicable to the problem, and the various ways in which a given outcome can be justified in light of the applicable law. While having a tight argument is important, it is even more important to be able to adjust to any question and any approach suggested by an arbitrator.

It is often said that a team cannot be over-prepared for the oral argument portion of the competition. Many teams have come away wishing they had practiced more, but few (if any) have ever finished the competition wishing they had practiced less. Some moot alumni say that the experience they gain in responding to different panels in the practice rounds is one of the most useful phases of the competition for their subsequent careers. The more practice arguments you have – before different panels of arbitrators – the more you are likely to encounter a variety of questions, styles, and personalities that will create the ability to respond to the variety of questions and formats that can arise at the competition in Vienna. Some teams take notes of the questions that are asked in the practice rounds and discuss them together after the round to develop their arguments further.

Pre-Moots and Team-Cooperation – Opportunities for Cooperation in Preparing for the Oral Rounds

The flexibility and informality of the Vis Competition Rules contribute to opportunities to prepare for the competition in ways that add significant value to the experience. Unlike other moot competition rules that discourage collaboration or cross-fertilization, the Vis rules allow teams to prepare through collaboration and pre-moot practice rounds.

The Rules makes this explicit that there is no restriction on the amount of coaching that a team may receive in preparation for the oral hearings. It is expected and encouraged that teams will have practice arguments, whether against other members of the team or against other teams that will participate in the Moot. The only restriction is that no team should have a practice argument against a team it is scheduled to meet in Vienna.
This rule makes possible (and implicitly encourages) the number of well-established pre-moots. One example is that of the pre-moot at the International Chamber of Commerce in Paris which takes place a few days before the beginning of the oral rounds in Vienna and where more than 16 teams meet to improve their arguments. However, pre-moots are being established in many places. Some are relatively small, with only 5-7 teams, such as the “friendly regional round” held for the past six years in Canada for the Canadian teams and their near neighbors to the south. Others are far more extensive, such as the Fordham Law School pre-moot held for the first time in 2007 with more than two-dozen teams. The range of locations is extensive, including Riga, Leuven, Chicago, Munich, San Diego, Zagreb, and Basel, to mention a few. And many more friendly rounds occur on an even more informal basis, such as those between teams arriving a day or two in Vienna before the Oral Rounds begin. A detailed study of the pedagogical value of these pre-moots was conducted in 2006.

This history of collaboration contributes not only to improving the teams’ performance, but to enhancing the comparative cultural experience as well. One particularly interesting example of collaboration is the consortium of teams established by the University of Pittsburgh through partnerships with law faculties in Ukraine and South Eastern Europe. Each year, the teams from Donetsk National University (Ukraine), Kyiv National Taras Shevchenko University (Ukraine), the University of Belgrade (Serbia), and the University of Prishtina (Kosovo), share ideas through the University of Pittsburgh on methods for preparing for the competition. They also arrive a day early in Vienna and have a pre-moot at which each team argues twice (once for Claimant and once for Respondent), in order to sharpen their presentations for the beginning of the competition on the next day. Not only does this process enhance each team’s preparation, but it creates an ongoing positive relationship among faculty advisers and helps build other possibilities for collaboration among the law faculties and relationships among the students involved. Such experiences demonstrate the significant “spin-off” value of the Vis competition to the creation of educational opportunities that reach far beyond one week in Vienna.
CHAPTER 9

THE MOOT IN VIENNA

So you’ve done all the research, writing, and practice in preparation for your trip, now you’re ready for the fun part. The Moot in Vienna is a truly global event with participating teams from around the world. The 20th iteration of the moot in 2013 welcomed 290 teams from 67 different countries. With such a large event, the venues for different aspects of the programming have become spread throughout the city. This section aims to give a better understanding of the setup of the moot and provides some helpful pointers that might allow your team to have a smoother experience while in Vienna.

Venues

Figure 1 Transportation Map of Vienna
Juridicum – University of Vienna Faculty of Law (Marker 1 in Figure 1)

The primary venue for the moot is the Juridicum at the University of Vienna Faculty of Law. The Dachgeschoss of the Juridicum hosts the initial registration, vendor tables, and refreshments and acts as the center of operations for the moot. In order to make your time in Vienna easiest, you will want to choose a hotel that provides quick and easy access to the Juridicum. The Juridicum sits just outside of the “Schottentor” metro stop on the U2 line, but can also be accessed via a more scenic walk from the “Stephensplatz” stop on the U1 line.

Wiener Konzerthaus (Marker 2 in Figure 1)

After your team has checked in at the Dochgeschoss, you are ready for the official beginning of the moot. The festivities are kicked off with an official welcome ceremony and reception in the Wiener Konzerthaus on the Friday before the opening round of arguments. During this reception several speakers will discuss topics related to the moot as well as some last minute logistics and, if you’re lucky, you might witness a performance from the Moot’s celebrated legal musician, Professor Harry Flechtner. The Konzerthaus is most easily accessed by taxi but is also accessible via a short walk from the Karlsplatz stop on metro lines U1 and U2. Upon exiting the metro you will want to walk around the Schottenring towards Parkstadt and the Konzerthaus will be on the left.

Moot Club – Ost Klub (Marker 3 in Figure 1)

One of the more collegial locations throughout the moot is the official hangout of mooties, the Ost Klub. Ost Klub is a small nightclub located near the Konzerthaus that serves as a place for the participants to unwind after a long day participating in, or watching, the moot. Even if nightclubs aren’t a place you would usually find yourself, it is worth a trip to the Ost Klub to meet and relax with participants from other teams and cultures on the dance floor or in the lounge. One of the most rewarding experiences of the moot is connecting with students from around the world and finding common ground with students and coaches from other cultures. Although it is often difficult to put aside the competitive nature of the moot and the desire to have perfect arguments, taking a few hours out of your hard work to have some fun will do a great deal to calm your nerves throughout your week and take your mind off the stresses of the competition.

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17 The top floor. If you walk into either side of the Juridicum you can use the elevator banks and press “DG” to hail an elevator that will take you to the top floor.
**Opening Rounds**

With almost 300 teams competing the need for more argument rooms has caused the opening rounds to spread from the Juridicum to local law firms. Each year several law firms around Vienna volunteer their space to host arguments in their offices. This provides a unique opportunity to see the offices of some of the more prestigious law firms in Vienna but also complicates the process of finding and arriving to your arguments on time. Approximately one third of the opening round arguments will take place in law firms located within a few blocks of the Juridicum. When you receive your team’s final schedule at registration the venue of each argument will be listed. If you happen to be assigned to an argument venue outside of the Juridicum it would be wise to locate the particular law firm well ahead of your scheduled argument. Each of the participating law firm’s locations will be marked on a map posted in the Dachgeschoss.

The morning of day of opening round arguments an arbitrator schedule will be posted on the windows on both ends of the Dachgeschoss. If your team is interested in viewing the arbitrators that are assigned to hear their arguments that day this is a helpful place to look. It would be wise, however, to take the information posted on the arbitrator schedule with a grain of salt as it is a virtual certainty that at some point throughout your moot experience a scheduled arbitrator will not arrive to an argument on time and will need to be replaced at the last minute.

**Elimination Rounds**

On Tuesday night after all teams have had the opportunity to argue both the Claimant’s and the Respondent’s position twice each, the scores of each team will be averaged out to determine the top 64 teams from the opening rounds. During a ceremony Tuesday evening at the Vienna International Center (VIC, not pictured in Figure 1 but accessible from the Kaisermühlen VIC metro stop on line U1), the organizers will announce the top 64 teams as well as the schedule for the first elimination round of the arguments. This is a good time to you remind you that only 64 out of nearly 300 intelligent, hard-working, and well-prepared teams will make the elimination rounds. If your team should be selected to advance it is certainly a high honor, but failing to advance to the round of 64 should in no way be looked at as a failure.

The first half of the round of 64 will begin Tuesday night through the Juridicum and the second half will be held the next morning. Unlike the opening round arguments, the elimination rounds are not scored. The arbitrators listen to both arguments and retire to deliberate in private, often without providing any feedback. The teams will report to the Dachgeschoss and as soon as the arbitrators have reached a verdict they will announce the winner of the round in front of all of the teams congregating in the Dachgeschoss. If your team is selected as the winning team, you will be assigned a room for the next round
of arguments that begin shortly after the culmination of the preceding round. This process continues until only two teams remain by late Wednesday morning.

**Closing Banquet and Awards**

The final round of the moot, pitting the two teams that have survived five elimination rounds against each other, is held on the final Thursday of the moot at the Reed Messe Wien Congress Center. The venue can be reached on the U2 metro line by exiting at the Messe Prater stop. The final argument will be held in the venue first and then everyone will be asked to wait outside while the venue is prepared for the awards banquet.

The banquet is a nice close to the moot that consists of a multi-course meal, speeches by several organizers and supporters of the moot and, the part all of the competitors are looking forward to, the announcement of individual and team awards. Awards are presented for teams and individuals the presented some of the best claimant’s memoranda, respondent’s memoranda and oral arguments. It is important to note, however, that only those individuals that have argued both claimant’s and respondent’s positions in the opening rounds are eligible to receive individual honors.

In all, the banquet provides a nice evening to relax and spend time with your teammates and the new friends you’ve made throughout the moot. The banquet is the last time all of the teams gather and is something that you really shouldn’t miss. Tickets are included in the registration packet for teammates and a coach but additional tickets are available for purchase if your team would like additional guests.

**Non-Moot Activities**

In addition to everything moot related, Vienna has a lot to see and do in order to take your mind of the moot and enjoy yourself during your off-time. Vienna is home to many cultural sights and exhibits including the Belvedere Museum which houses famous works by Vienna’s own Gustav Klimt, the residence of Wolfgang Amadeus Mozart and the Schönbrunn palace where, at six years old, he played for Empress Maria Theresa, and the Hofburg palace. While the moot is your main reason for travelling Vienna, there is no reason that you should miss all of the wonderful sights that Vienna has to offer. Take some time after an argument to put aside the problem and have fun in one of the world’s most beautiful and cultured cities.

If museums and sightseeing aren’t for you, Vienna also has myriad options for shopping and dining that can provide a nice break from practicing oral presentations and refining argument. Vienna is famous for its Schnitzel and Goulash but there is much more up for offer in the markets and stands that dot Vienna’s cityscape. Of particular interest for mooties is the Oostermarkt, a seasonal market that sits in a square a few blocks from the Juridicum. The market hosts stands for local arts and crafts as well as raw and
prepared foods from around the region. If time is not on your side, a brief walk away from the Juridicum can provide you with fresh air and delicious food at a reasonable price.

**Selecting a hotel**

With all there is to see and do in Vienna, choosing a hotel because a key issue. You want to be somewhere that has ease of access to the moot venues but price might drive you away from the city center. If you are planning on staying out of the more expensive city center hotels, you will want to have easy access to the metro lines that run through the city center. The University of Pittsburgh team has chosen to stay at the same hotel on Praterstrasse for all 17 years that it has participated because of the convenient access to both the U1 and U2 metro lines (denoted by Marker 4 in Figure 1). Whichever hotel you choose, make sure everyone on your team knows how to get from the hotel and back and how long this trip takes before the opening rounds begin so you never have to worry about being late for an argument.

**Summary of the Experience**

Vis team members tend to develop a very strong attachment to the competition, finding that the moot has a significant impact upon both their personal and professional futures. The moot is a cultural and emotional experience as well as an intellectual experience. Like the best educational experiences, it combines an intense educational challenge with a very enjoyable time spent in a wonderful location. The intensity of the experience tends to heighten its impact on everyone involved. The extent of that impact, however, depends in large part on the level of preparation beginning early in the fall of the prior year. As is true with many educational experiences, the better the preparation (yes, this means the more you put in the work when you should do so), the better the result – educationally, personally, and professionally.
APPENDIX A

2012-2013 Vis Competition Schedule – 20th Annual Vis Competition

Note: Dates listed in bold have been set by the Competition organizers. Dates listed in plain text have been set by Professor Flechtner. All deadlines must be adhered to.

30 August (Thurs.): Noon, Introductory Meeting; selection round problem distributed
17 September (Mon.): Selection round memos due by email by noon
20 September (Thurs.): Selection round oral argument schedule emailed to candidates
24 September (Mon.): 4:30 p.m. – 6:00 p.m., selection round oral arguments
25 September (Tues.): Team members announced in the evening
25 September – 5 October: Background reading on CISG and arbitration
5 October (Fri.): Distribution of 2012-13 Vis Problem (Pace website)
8 October (Mon.): Team organization meeting (time and place to be arranged)
15 October (Mon.): Outline of issues and responsible team members, initial bibliography

25 October (Thurs.): Requests for Clarification Due
9 November (Fri.): First draft of Claimant’s memorandum
19 November (Mon.): Second draft of Claimant’s memorandum
26-27 November: Practice arguments

6 December (Thurs.): Memorandum for Claimant Due by e-mail
7 January 2012 (Mon.): First draft of Respondent’s memorandum
11 January (Fri.): Second draft of Respondent’s memorandum
14-15 January: Practice arguments

17 January (Thurs.): Memorandum for Respondent Due by e-mail
18 January – 18 March: Practice arguments
21-22 March (Thurs. – Fri.): Arrival in Vienna

22 March (Fri. evening) – Official Welcome and Reception in Vienna
23 – 26 March (Sat. – Tues.) – General Rounds of Oral Arguments
28 March (Thurs.): Awards Banquet
29 March (Fri.): Depart Vienna
APPENDIX B

Vis Competition Selection Round Problem

CUSTOM TAPESTRIES v. WEAVERS INC.

INSTRUCTIONS: You are the attorney for the Claimant (CUSTOM TAPESTRIES INC.) in this dispute. Claimant’s position is that 1) the United Nations Convention on Contracts for the International Sale of Goods (CISG) is applicable to the present dispute, and 2) assuming the CISG is applicable, that Respondent (WEAVERS INC.) is liable to Claimant. Write a brief (which in arbitration practice is called a “Memorandum”) that makes the strongest arguments for Claimant (CUSTOM TAPESTRIES INC.) in support of these two positions, anticipating counter-arguments likely to be made by the Respondent. The Memorandum should be addressed to the arbitration panel hearing the dispute described below, should include a statement of the facts, and should be no longer that five double-spaced pages (not counting your cover page). A summary of the argument, bibliography and like preliminary matters are not necessary for this exercise, but your Memorandum should employ argument headings. Provide citations for authorities that you use in the text of the Memorandum (no footnotes). All work must be your own.

CUSTOM TAPESTRIES INC. (“CUSTAP”), a manufacturer of hand-woven tapestries with its only facility in St. Louis, Missouri, sent its Vice President for Purchasing, David Strand, to the country of Kyrgyzstan to solicit the manufacture of 1000 square meters of Raw Tapestry Material (RTM). Both the United States and Kyrgyzstan are parties (“Contracting States”) to the CISG. RTM consists of natural or synthetic fibers of a single color, usually off-white, that have been woven by hand into a backing. The weaving process is delicate and highly labor intensive and is usually done only by skilled artisans. CUSTAP's plan was to acquire the RTM and ship it back to the United States where it would be processed to meet the needs of its customers – luxury hotel chains.

While in Kyrgyzstan, David Strand met Mr. Billek, the owner of WEAVERS INC., a company that employs local weavers. All of WEAVERS’ operations and facilities are located in Kyrgyzstan, and it has been in business for approximately one year. Strand discussed his needs with Mr. Billek and the two came to an agreement on product and price. The relevant terms of the agreement were that WEAVERS would produce the required 1000 square meters of RTM at a price of US $20.00 per square meter. Because WEAVERS had as yet no adequate supplies of the necessary backing material, CUSTAP would provide it. WEAVERS would provide the labor and the fibers that would be woven into the backing. Payment was due when the RTM was available for shipment. A written
contract including these terms was drafted. Although the contract contained no choice of law clause, it provided that any disputes would be submitted to arbitration.

Five days after the initial agreement Mr. Strand provided WEAVERS with backing material that had been shipped by air from the U.S. When the order was finished, Mr. Strand paid for the RTM and it was shipped to the United States. When the RTM arrived in the U.S. CUSTAP quickly discovered that the fibers Weavers had woven into the backing were a synthetic material that did not meet U.S. standards for fire-retardant properties. As a result, the use of the synthetic material was not permitted in the U.S. (or in the European Union, for that matter), although it was sometimes used in Asia. CUSTAP immediately complained to Weavers about the material and demanded its money back. When it received no response, CUSTAP initiated arbitration proceedings as provided in the contract.
APPENDIX C

Example of a memorandum submitted in response to the sample tryout problem

STATEMENT OF THE FACTS

1. CLAIMANT, Custom Tapestries, Inc. is a manufacturer of hand-woven tapestries in St. Louis, Missouri. RESPONDENT, Weavers, Inc. employs local weavers in Kyrgyzstan. CLAIMANT’s vice president traveled to Kyrgyzstan to discuss his need with RESPONDENT for Raw Tapestry Material (“RTM”) that would be shipped back to the United States and processed to meet the needs of luxury hotel chains. RTM consists of fibers that have been woven by hand by skilled artisans into a backing.

2. CLAIMANT contracted with RESPONDENT to buy 1000 square meters of RTM at US $20.00 per square meter. CLAIMANT provided the backing onto which the fibers, supplied by RESPONDENT, would be woven by RESPONDENT’s employees. Payment was due when the RTM was available for shipment. These provisions were drafted into a contract that specified that all disputes would be submitted to arbitration.

3. CLAIMANT paid for the RTM and it was shipped to the United States. Upon delivery, CLAIMANT discovered that the RTM was made of synthetic fiber that did not meet US standards for fire-retardant properties and as a result could not be used in the United States or the European Union. The synthetic fibers are sometimes used in Asia. CLAIMANT immediately notified RESPONDENT of his dissatisfaction.

ARGUMENT

I. THE CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) GOVERNS THE MERITS OF THIS DISPUTE

4. Art. 1 CISG applies to contracts for the sale of goods between parties whose places of business are in different contracting states [Art. 1 CISG]. The present dispute is between parties whose places of business are in the United States and Kyrgyzstan, both of whom are Contracting States, thus the internationality requirement of the CISG is fulfilled and the Tribunal should apply the CISG to the merits of the dispute.

5. Under Art. 3(1) CISG, contracts for the supply of goods to be manufactured or produced are considered sales unless the party who orders the goods supplies a substantial part of the materials necessary for such manufacture [Art. 3 CISG]. The CISG Advisory Council in its opinion on Article 3 specifies that the supply of labor and other services required to produce the goods are inherent in the words “manufactured or produced” A ‘substantial’ part of the ‘materials necessary’ is a factual determination made according to an ‘economic value’ criterion; if a buyer supplies materials that are greater in value than those supplied by the seller, then the CISG is excluded. If an economic value...
analysis is inappropriate, then an essential criterion is applied based on the quality or functionality of the materials provided by each party.

6. The contract between CLAIMANT and RESPONDENT is for the production of 1000 square meters of RTM at the price of US $20.00 per square meter and therefore falls under Art. 3(1) CISG as a contract for goods to be ‘produced’. Although CLAIMANT provided the necessary backing material, this does not constitute a substantial part of the materials necessary under the economic value criterion when compared to the fibers and labor provided by RESPONDENT in the manufacture of the RTM. In an analogous case, the Arbitration Court of the Chamber of Commerce and Industry of Budapest found the CISG to apply when the materials supplied by the buyer amounted to 10% of the total value of the entire product [Waste Container Case].

7. Should the Tribunal find that the backing was greater in value then the combined value of the labor and fibers, Art. 3(1) CISG will nonetheless be satisfied as the importance of the backing does not outweigh the essentiality of the services and materials provided by RESPONDENT. In a similar case, the French Cour d’appel de Grenoble found the CISG to apply when the buyer had supplied the soles of designer shoes because the seller had supplied all other objects necessary for manufacture [Pierre Cardin Case].

II. THE RESPONDENT DELIVERED RTM THAT FAILED TO CONFORM TO THE REQUIREMENTS OF THE CLAIMANT

8. The RTM did not conform to the quality required by the CLAIMANT [A]. Because the CLAIMANT reasonably relied on RESPONDENT’s skill and judgment [B], RESPONDENT’s failure to deliver conforming goods constitutes a fundamental breach [C].

A. The RTM did not conform to the quality required by CLAIMANT

9. Art. 35(1) CISG requires a seller to deliver goods that conform to the quality required by the contract [Art. 35 CISG]. It is agreed that a seller is not required to deliver goods that conform to specific regulations of the buyer’s jurisdiction [New Zealand Mussels Case]. However, neither does the particular purpose of the goods does not have to be contractually agreed upon such that if a buyer simply makes a seller aware of the State of use for the goods, then the seller is responsible for the fitness of the goods with respect to the actual conditions of use and observance of public law standards [Schlectriem 2010, p. 581]. During his discussion, CLAIMANT made RESPONDENT aware that the RTM would be shipped back to the United States to be processed. Thus, RESPONDENT was on notice to comply with United States fire-safety regulations because RTM that did not meet these regulations could not be processed in United States factories as CLAIMANT made known was the goal.
B. CLAIMANT reasonably relied on RESPONDENT’s skill and judgment
10. Reliance on a party’s skill and judgment is justified if the party is a specialist or expert [Schlectriem 2010, p. 581]. RESPONDENT is the owner of a company that employs weavers and entered into a contract to make RTM, a good that requires extensive labor by skilled artisans. RESPONDENT’s willingness to enter into a contract to supply this good designates him as a specialist such that CLAIMANT is justified in his reliance on RESPONDENT’s skill and judgment.

C. RESPONDENT’s failure to deliver conforming RTM constitutes a fundamental breach
11. Art. 25 CISG defines a breach of contract as fundamental if it results to substantially deprive one party of what he was entitled to under the contract and the result of breach was foreseeable [Art. 25 CISG]. The RTM delivered was improper for CLAIMANT’s purposes of processing and resale. RESPONDENT could have reasonably foreseen the detrimental effects of this breach as RTM that does not meet United States fire-safety standards cannot be processed in the United States as per the CLAIMANT’s desire. Furthermore, although CLAIMANT is a wholesaler with broader access to markets, his target group of customers is luxury hotel chains throughout the world, not only in Asia where the RTM delivered could be legally accepted. The failure to produce conforming tapestries for the CLAIMANT’s customers would result in harm to the CLAIMANT’s reputation such that CLAIMANT cannot be expected accept the goods and resell them at a lower price.

III. CLAIMANT IS ENTITLED TO AVOID THE CONTRACT AND RECEIVE FULL RESTITUTION OF THE PURCHASE PRICE
12. CLAIMANT is entitled to avoid the contract [A]. Because CLAIMANT has satisfied his obligations of examination and notice [B], he is entitled to full restitution of the purchase price [C].

A. CLAIMANT is entitled to avoid the contract
13. The ability to avoid a contract is based on the seriousness of the breach, which is conditioned upon the importance of the interest laid down in the contract [Schlectriem 2010, p. 409]. The use of fibers that that conformed to United States fire-safety standards is of utmost importance to CLAIMANT, such that the failure to use the appropriate fibers constituted a fundamental breach in the contract and CLAIMANT is entitled to avoid it. Although CLAIMANT has performed the contract wholly, this does not preclude his ability to claim restitution of the purchase price for the non-conforming goods he received [Art. 81(2) CISG].
B. **CLAIMANT has satisfied obligations of examination and notice**

14. Art. 38(1) CISG requires a buyer to examine goods within as short a period as practicable under the circumstances [Art. 38(1) CISG]. CLAIMANT examined the RTM upon delivery and made its complaint to RESPONDENT known immediately thereafter, thus satisfying obligations of examination and notice.

C. **CLAIMANT is entitled to full restitution of the purchase price**

15. Art. 74 CISG entitles a party to damages equal to the loss of profit suffered by the other party as a consequence of the breach so long as the party in breach could have foreseen the consequences of breach [Art. 74 CISG]. Art. 81 CISG provides that avoidance of the contract does not preclude a party’s ability to receive damages [Art. 81 CISG]. CLAIMANT’s inability to process the RTM or resell it to the desired markets was foreseeable at the time of the conclusion of the contract therefore RESPONDENT is liable.
APPENDIX D

Researching the CISG

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("CISG"): SOURCES (as of August 2012)

By Harry M. Flechtner, Professor, University of Pittsburgh School of Law

I. SOURCES FOR INFORMATION IN ENGLISH ON DECISIONS APPLYING THE CISG, INCLUDING ENGLISH SUMMARIES AND/OR TRANSLATIONS OF NON-ENGLISH DECISIONS

Case Law on UNCITRAL Texts ("CLOUT") is a project of the United Nations Commission on International Trade Law (UNCITRAL), which sponsored the CISG. The purpose of the CLOUT project is to collect decisions construing the CISG and other UNCITRAL initiatives, and to make available information concerning those decisions in the official U.N. languages. Decisions applying the CISG are identified, abstracted, and submitted by national representatives of the countries in which the decisions were rendered. The selection of decisions included in CLOUT, and the quality of the abstracts, depends on the efforts of the various national representatives. Hundreds of English-language CLOUT abstracts of decisions (most of which involved the CISG), organized by CLOUT number, are available online through the home page of UNCITRAL (http://www.uncitral.org/ – click on the English language version of the page, then on the link on the left side for “Case Law (CLOUT),” then on the link for “Abstracts”).

The CISG database maintained by the Institute of International Commercial Law at Pace University School of Law, http://www.cisg.law.pace.edu is the most comprehensive and useful tool for obtaining information in English on foreign CISG decisions. The website currently has entries for around 3500 CISG-related cases from more than 40 countries, a number of standing arbitration tribunals, and several international courts. The great majority of the entries include either English summaries or, in many cases, full translations of the decisions. Cases can be searched by the CISG article(s) to which they refer, by the country in which the decision was rendered, or by terms appearing in the full text of the website’s treatment of the case. If a decision is the subject of a CLOUT abstract, the abstract is reprinted in the website’s case treatment. Each case treatment also includes much other information, including bibliographic information on commentaries that have discussed the decision (often with links to the text of those commentaries) and information on other English summaries or translations of the decisions (including links to UNILEX entries for the decision – see below for information on UNILEX). The website also has a wealth of other resources concerning the CISG, including the text of the CISG, information and links to the drafting history ("travaux préparatoires"), and a vast bibliography covering CISG commentary.
UNILEX, a project sponsored by the Centre for Comparative and Foreign Law Studies in Rome, is a database (available at http://www.unilex.info) containing information on the CISG. In addition to the text of the CISG, information on ratification of the Convention, and bibliographies covering the CISG, UNILEX includes information on a large number of decisions from many different countries that have applied the CISG. In most cases, both the original text of the decision and an English summary are included in UNILEX. UNILEX is also the most comprehensive online resource for information on the UNIDROIT Principles of International Commercial Contracts and decisions that have applied those Principles.


II. CISG COMMENTARY, DRAFTING HISTORY AND RATIFICATION INFORMATION

The leading U.S. commentary on the CISG is JOHN O. HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION, now in its 4th edition, edited and updated by Professor Harry Flechtner. Professor Honnold was Secretary of UNCITRAL for much of the period in which the CISG was being drafted. He was also a representative of the United States at the 1980 Vienna diplomatic conference at which the final text of the CISG was adopted. Professor Honnold also edited the most comprehensive and convenient hard-copy collection of documents detailing the drafting history of the convention – the DOCUMENTARY HISTORY OF THE UNIFORM LAW FOR INTERNATIONAL SALES (1989). Much of this drafting history is also available on the CISG database maintained by the Institute of International Commercial Law at Pace University School of Law, described previously.

The leading European commentary on the CISG is the German commentary originally edited by the late Professor Peter Schlechtriem, and now edited by Professor Ingeborg Schwenzer. An English translation of that commentary is available from the Oxford University Press as SCHLECHTRIEM & SCHWENZER, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) (Ingeborg Schwenzer, ed.) (3rd ed. 2010)
There are, of course, a number of other comprehensive English-language commentaries on the CISG.

An extremely comprehensive bibliography of the truly vast international secondary literature on the CISG is found in the CISG database maintained by the Institute of International Commercial Law at Pace University School of Law at http://www.cisg.law.pace.edu. This bibliography frequently includes links to the full text of the cited commentary.

APPENDIX E

CISG Overview PowerPoint Slides

MONDAY, OCTOBER 4, 2010

General Overview of the CISG

Brief History

The CISG was developed by UNCITRAL and signed in Vienna in 1980.

The CISG replaced the less successful ULIS.

There are currently 78 Signatory Nations.

San Marino will be the 79th when the CISG becomes effective there on January 3rd, 2013.

Major Holdouts: India, Brazil, England

Structure of the CISG

I. General Overview of the CISG

II. Formation of the Contract

III. General Provisions

IV. Passing of Risk

V. Provisions Common to Obligations of the Seller and of the Buyer

VI. Final Provisions

APPENDIX E

CISG Overview PowerPoint Slides

5/2/13&

ARTICLES 1-6 answer the basic question of when the CISG applies to a transaction

Art. 1 – Basic Applicability

Art. 2 – Sales excluded from the CISG

Art. 3 – Transactions excluded from the CISG

Arts. 4-5 – What does the CISG govern?

Art. 6 – Ability to derogate from the CISG

ARTICLES 7-13 explain how to interpret various facts, evidence, and the text of the convention

Art. 7 – Interpreting the text of the convention

Art. 8 – Interpreting statements of the parties

Art. 9 – Trade Usage

Art. 11 – No Writing Requirement*

ARTICLES 14-24 answer whether there is a contract and what it contains

Arts. 14-15 – definition of an offer and when it becomes effective

Art. 16 – Revocation of an offer

Art. 17 – Effect of rejection

Art. 19 – NonMatching acceptance

Material alterations = Rejection and counter offer

Immaterial alteration = Acceptance without immediate rejection

Art. 25 – What breaches are fundamental?

Art. 26 – Avoidance (where available) is only effective through notice to the other party

Art. 27 – No liability for errors in transmission of communications

Art. 29 – Modification of contracts

ARTICLES 25 – What breaches are fundamental?

Art. 26 – Avoidance (where available) is only effective through notice to the other party

Art. 27 – No liability for errors in transmission of communications

Art. 29 – Modification of contracts
Appendix E

Structure of the CISG

I. Scope of Application
II. General Provisions
III. Formation of the Contract
IV. Obligations of the Seller
V. Obligations of the Buyer
VI. Passing of Risk
VII. Provisions Concerning Adjustment of the Seller and of the Buyer
VIII. Final Provisions

Section I. Delivery of the Goods and Handing Over of Documents
- Art. 35-38

Section II. Conformity of the Goods and Third Party Claims
- Art. 39-44

Section III. Remedies for Breach of Contract by the Seller
- Art. 45-52

Section I. Payment of the Price
- Art. 53-59

Section II. Taking Delivery
- Art. 60

Section III. Remedies for Breach of Contract by the Buyer
- Art. 61-65

Structure of the CISG

I. Scope of Application
II. General Provisions
III. Formation of the Contract
IV. Obligations of the Seller
V. Obligations of the Buyer
VI. Passing of Risk
VII. Provisions Concerning Adjustment of the Seller and of the Buyer
VIII. Final Provisions

Section I. Anticipatory Breach and Installment Contracts
- Art. 71-73

Section II. Damages
- Art. 74-77

Section III. Interest
Section IV. Exemptions
- Art. 79-80

Section V. Effects of Avoidance
- Art. 81-83

Section VI. Preservation of the Goods
- Art. 85-88

Guidelines for Analysis

- Does the CISG apply? (Article 1)
- Is there a contract? Offer (Article 14) Acceptance (Article 18)
- What did the parties intend to do? (Article 8)
- Was there any trade usage or course of dealings? (Article 9)
- What are the seller’s obligations? (Article 36)
- What is the standard for non-conformity? (Article 35)
- Did the buyer properly inspect the goods? (Article 38)
- Was there proper notice of the non-conformity? (Article 39)
How to Research CISG issues

Online Resources:
- Electronic Library on International Commercial Law and the CISG (Pace University)
- Database of CISG decisions sorted by Year, by Issue, and by Forum
- Thesaurus of issues
- CISG Full Text
- 2012 UNCITRAL Digest on Case Law

Print Resources:
- Schlechtriem & Schwemer Commentary on the CISG
- Honnold & Flechtner Uniform Law of International Sales Under the CISG
APPENDIX F

Arbitration Overview PowerPoint Slides

5/2/13

Vis International Commercial Arbitration Moot

Center for International Legal Education
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

Why Arbitrate?

<table>
<thead>
<tr>
<th>Reasons for Choosing Arbitration</th>
<th>Reasons for Not Choosing Arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neutrality</td>
<td>Inability to join additional parties or claims</td>
</tr>
<tr>
<td>Enforceability – NY Convention</td>
<td>Lack of predictability/transparency</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Lack of right to appeal</td>
</tr>
<tr>
<td>Choice of Arbitrators (expertise of arbitrators)</td>
<td>Cost?</td>
</tr>
<tr>
<td>Choice of procedure (speed and flexibility)</td>
<td>Cost?</td>
</tr>
</tbody>
</table>

What is Arbitration?

- **The Agreement**
  - Arbitration is a contractually agreed upon method of dispute resolution
  - The power to arbitrate originates from the agreement of the parties
  - This agreement can be reached before or after the dispute arises
  - Parties can agree upon both
    - Procedural rules [CEAC]
    - Substantive law [CISG]

What is Arbitration?

- **The Process**
  - Institutional vs. Ad hoc
  - Arbitration Rules
  - The Award
  - New York Convention
  - Enforcement

Issues that Arise in Arbitration: Arbitration Agreements

- **Interpretation**
  - Exclusivity of Arbitration
  - Scope of the Agreement
  - Choice of Law Applicable to the Agreement

- **Enforceability**
  - Institutional vs. Ad Hoc
  - UNCITRAL Model Law & Nat’l Arbitration Legislation
  - Separability Issues
  - Non-Arbitrability Doctrine

Issues that Arise in Arbitration: During Arbitration

- **Who Chooses the Arbitrators**
  - Parties themselves?
  - Appointing Authority?
- **Number of Arbitrators**
  - Challenge and Replacement of Arbitrators
    - Institutional Rules
    - National Courts
- **Provisional Measures**
  - Arbitrators - Institutional Rules
  - Arbitrators - National Law
  - National Courts
Issues that Arise in Arbitration: Recognition and Enforcement of an Award

- New York Convention
  - Presumption of Validity
  - (7) Ways to Overcome that Presumption

- Lex Arbitri
  - Selection
  - Set Aside Action

CEAC Rules

- CEAC Rules
  - Preamble
  - Section I. Introductory Rules
    - Article 1 – Scope
      - Subsection 3 – Incorporation UNCITRAL Arbitration Rules
    - Section II – Composition of the Arbitral Tribunal
    - Section III – Arbitral Proceedings
      - Article 23 – Jurisdiction of the tribunal
      - Article 27 – Evidence
        - 1. Burden of Proof
        - 2. Witnesses
        - 4. admissibility, relevance of evidence
      - Section IV – The Award

UNCITRAL Arbitration Rules

- Section I – Introductory Rules
- Section II – Composition of the arbitral tribunal
- Section III – Arbitral proceedings
  - Article 23 - Jurisdiction of the Arbitral Tribunal
  - Article 27 - Burden of Proof and Witnesses
- Section IV – The Award

New York Convention

- Article II – Recognition of agreements
- Article III – Recognition of Awards
- Article VI – Exceptions to Enforcement
  - (1)(a) Invalid agreement
  - (1)(b) Lack of proper notice
  - (1)(c) Award deals with issues beyond the scope of arbitration
  - (1)(d) Composition of arbitration authority, or the procedure was not in accordance with the agreement of the parties.
  - (2)(a) Subject matter is not capable of settlement by arbitration under the law of the country of enforcement.
  - (2)(b) Public policy

Persuasive Authority

- What is persuasive authority?
- Examples of persuasive authority:
  - IBA Guidelines
  - Article 8 – Bodenheimer hearings
  - Article 9 – Admissibility and Assessment of Evidence
  - Other International Arbitral Institutions
  - ICC
  - AAA
  - LCIA
  - Arbitral cases
    - From CIAC
    - From other international arbitral institutions
  - Authors

Research Process

- Rule
  - Supporting evidence and evidence which explains your position
  - Cases
  - Persuasive authority
  - Policy supporting your position
Helpful Resources

- Websites
  - CEAC
  - UNCITRAL RULES
  - History/drafting

Helpful Resources

- Books
  - Procedural Law in International Arbitration, by Petroschlos Georgios (2006)
ISSUE

1. A. The CEAC Rules and Danubian Arbitration Law Give the Tribunal Authority to Exclude Mr. Short’s Witness Statement and Require That the Tribunal Exclude that Statement From Its Consideration

In exercising this authority, the law of Danubia requires that the tribunal treat the parties equally.

INDEX SEARCH

Following Citation in Index

Go to the page or the paragraph cited in the index.

Recommended Index Searched

Consider
- What are key words that describe the issues?
- Example Searched
  - Witnesses
  - Admissibility
  - Evidence
  - Unequal Treatment
  - Non-enforcement
  - Annulment
  - Recognition
  - Enforcement

APPENDIX G

How to Research Arbitration PowerPoint Slides
UNCITRAL Arbitration Digest

- UNCITRAL.org
- "Case Law"
- "Digests"
  - Select Digest for International Arbitration
- Follow Table of Contents to Find the Applicable Article.
  - Example - Article 18 - Equal Treatment of the Parties

UNCITRAL Case Law

- Start
  - http://www.unctdal.org/
- "Case Law" on the left
- "Search CLOUT Cases"
- Enter "Legislative Text" — Example:
  - Model Law of Commercial Arbitration
  - Search Article of Interest

Example CLOUT Case - 658

- In Pensions of Revenue Forest Trusts, Attorney General, F. J. stated that the detailed manner in which, national justice requirements apply to particular situations would seem to support the particular arbitration.
- The Court of Appeal of England, 1974, in its decision in the case of Pensions of Revenue Forest Trusts, stated that the national justice requirements for a fair hearing were not only summarized by Mustill & Balfour in "The Law and Practice of Commercial Arbitration in England" (2nd ed., 1974) at p. 392 as follows:

  1. Each party must have a reasonable opportunity to be present at the hearing, subject to the powers and rules of the Tribunal.
  2. Each party must have the opportunity to be heard through the hearing.
  3. Each party must have a reasonable opportunity to present evidence and argument in support of its case.
  4. Each party must have a reasonable opportunity to meet the opposition case by bringing evidence, presenting rebuttal evidence and addressing any argument.

IBA Guidelines

- Background IBA Guidelines
  - IBA "Guideline" on Taking Evidence in International Arbitration
  - Commentary on Rules

- Index Search
  - Witnesses
  - IBA (the policy and reason to justify the application of the IBA guidelines)

Applying Research to the Memorandum

1. The Witness Statement of Mr. Short is Not Admissible and Should Not Be Considered By the Tribunal Because To Do So Would Not Result in The Equal Treatment of the Parties Due to the Unavailability of Mr. Short To Answer Questions About His Testimony
  - A. The Controller Rules and Damages Arbitration Law Give the Tribunal Authority to Exclude Mr. Short’s Witness Statement and Require That the Tribunal Exclude That Statement From Its Consideration
  - B. CASE RULE 17 and Model Law Article 18 require the tribunal to treat the parties equally when making evidentiary determinations.

Citations

- Index of Authorities
  - Abbreviations and Full Citations
  - Pages or paragraphs
APPENDIX H
Structure of Memoranda and Oral Arguments PowerPoint Slides

5/2/13

General Structure
- Cover page
- Table of Contents
  - all sections, headings and page numbers
- Index of Abbreviations
  - Ex. CISG, UNCITRAL, ICC
- Index of Authorities
  - Scholarly works, articles and legal sources
- Index of Cases
  - Court cases, arbitral awards
- Statement of Facts
- Summary of Argument
- Argument
- Conclusion

Argument
- Part One: procedural issues of arbitration
  - Heading 1
  - Subheading 1
  - Subheading 2
  - Subheading 3
  - Heading 2
  - Subheading 1
  - Subheading 2
  - Subheading 3
- Part Two: substantive issues of the contract for the sale of goods under the CISG
  - Heading 1
  - Subheading 1
  - Subheading 2
  - Subheading 3
  - Heading 2
  - Subheading 1
  - Subheading 2
  - Subheading 3
  - Heading 3
  - Subheading 1
  - Subheading 2
  - Subheading 3

General Remarks
- Topic sentences, conclusion sentences
- Do not be conclusory! Use the facts of the case. Use cases to support or distinguish.
- Persuasive writing! Advocate for your client.
- Include opposing arguments and respond.
- No additional facts may be introduced unless they are logical and a necessary extension of existing facts.
- Technical requirements in the Rules: length, margins, font, etc.
- Review previous memoranda on Vis website for guidance.

Sample Memos
The Willem C. Vis Moot Court website provides past award-winning memos

These serve as an excellent guide for formatting and structuring your memo for submission
Structure of Arguments at the Moot

- Three arbitrators will hear arguments from two parties each with two representatives
  - Claimant:
    - Procedural Issues
    - Substantive Issues
  - Respondent:
    - Procedural Issues
    - Substantive Issues
- The parties will decide on an order and allocations of time amongst themselves and present this agreement to the tribunal

Oral Arguments

- Time: 30 minutes divided between Procedural and Substantive issue
  - The team member that is not arguing should keep time and provide warnings while the other team member is making oral arguments
- Addressing the Tribunal, introducing yourself and your client
  - "My name is ____ and I represent the Claimant/Respondent ____"

Oral Arguments

- Introduction and outline of issues
  - Provide a "roadmap" of the important issues and how the tribunal should resolve them
- Argument: cite relevant provisions and authority
  - When asserting a claim provide some background – either an author’s name or the name of a case
- Consulting your notes/outline
  - Use your notes as little as possible. You would like it to appear as though you are having a conversation rather than reading a script
- Questions by the Arbitrator
  - Provide clear answers when asked
- Concluding the argument
APPENDIX I

Example Paragraph – Research and Argument Structure

I. The Witness Statement of Mr. Short is Not Admissible and Should Not Be Considered By the Tribunal Because To Do So Would Not Result In the Equal Treatment of the Parties Due to the Unavailability of Mr. Short To Answer Questions About His Testimony

A. The CEAC Rules and Danubian Arbitration Law Give the Tribunal Authority to Exclude Mr. Short’s Witness Statement and Require That the Tribunal Exclude that Statement From Its Consideration

   ii. CEAC Rule 17 and Model Law Article 18 require the tribunal to treat the parties equally when making evidentiary determinations

The tribunal’s power to make evidentiary determinations is expressly limited by the tribunal’s obligation to provide equal treatment to the parties. [Redfern/Hunter paras. 6.11-12]. Article 17.1 of the CEAC Rules provides that “the tribunal may conduct the arbitration in such a manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. “ [CEAC Art. 17.1]. Article 18 of the UNCITRAL Model Law states that “the parties shall be treated with equality and each party shall be given a full opportunity to present its case.” [UNCITRAL Model Law Art. 18]. Therefore, the tribunal must treat the parties equally and apply similar standards to both parties, and may not grant one party the right to be heard while limiting the other party’s right to be heard. [Redfern/Hunter. para. 6.13; UNCITRAL Arbitration Digest p. 97]. This obligation to provide equal treatment to the parties is a mandatory rule from which neither the parties, nor the tribunal, may derogate. [Redfern/Hunter, para. 6.12; Born p. 1771]. The principle of equal treatment extends to both evidence and submissions of facts and on the law. [UNCITRAL Arbitration Digest p. 97]. In evidentiary determinations, this principle is met when “each party is afforded a reasonable opportunity to fully state its case, [and where] each party is given an opportunity to understand, test and rebut its opponent’s case.” [UNCITRAL Arbitration Digest p. 97; Auckland Trustees of Rotoaria Forest Trust v. Attorney-General, CLOUT No. 658]. Respondent’s witness, Mr. Short, is unavailable to attend the oral hearing, which prevents both the Claimant and the Tribunal from evaluating the validity and truthfulness of his written statements, and therefore must be excluded based on the principle of equal treatment. [P.O. p. 48, paras. 4 & 5]. As the Tribunal will be unable to test the validity and truthfulness of the written statement, the Claimant would be disadvantaged by the admission of evidence that neither it, nor the tribunal, can fully understand, test, and rebut. Furthermore, Claimant’s witness, Mr. Long, will attend the
arbitral proceedings and face cross-examination and questioning by the Tribunal. Again the Claimant will be deprived its right to equal treatment in the taking of evidence as its witness would be subject to examination, while that of the Respondent would not.
APPENDIX J

20th Moot Party Chart
APPENDIX K

20th Moot Timeline of Facts

• April 2008 – the last sales contract between Exquisite and Equitoriana Clothing (R. p. 6 St. Cl. ¶ 8)
  o Relevant because it provide prior course of dealing (CISG Art. 9(1)) and evidence of subjective knowledge of Exquisite’s ethical standards (CISG Art. 8)

• 2 January 2011 – Doma Cirun learned of bankruptcy of initial supplier (R. p. 6 St. Cl. ¶ 7)
  o Soon thereafter Doma Cirun contacted Exquisite to find a replacement supplier

• 5 January 2011 – Exquisite signed a contract with Equitoriana Clothing Manufacturing to supply the Yes Casual polo shirts to Doma Cirun (R. p. 6 St. Cl. ¶ 9; R. pp. 12-13 Contract Excerpts; R. p. 35 St. Def. ¶ 4)

• 7 January 2012 – Exquisite signed a contract with Doma Cirun to supply the Yes Casual shirts (R. p. 6 St. Cl. ¶ 9)

• 9 February 2011 – Russell Long (Exquisite Procurement Specialist) received notice from Tomas Short (Equitoriana Clothing Contracting Officer) that Equitoriana Clothing would not be able to meet the initial shipment date and would be five days later (R. p. 7 St. Cl. ¶ 12; R. p. 14 Cl. Ex. #2 ¶ 4th)

• 10 February 2011 – Date of the letter from Doma Cirun to Mr. Long confirming prior telephone conversation regarding notice to Exquisite of belief of no modification of contract delivery requirements

• 19 February 2011 – Initial contract deadline for delivery of shirts to carrier in Oceanside (R. p. 7 St. Cl. ¶ 10; R. p. 12 Contact Excerpts ¶ 3)

• 24 February 2011 – shirts actually delivered to carrier in Oceanside (R. p. 7 St. Cl. ¶ 12)

• 28 February 2011 – Expected arrival of shirts in Port City based on initial contract terms and initial expected shipping times (R. p. 7 St. Cl. ¶ 10)

• 5 March 2011 – Actual arrival of shirts in Port City (R. p. 7 St. Cl. ¶ 16)

• 11 March 2011 – Shirts cleared customs and arrived to Doma Cirun’s warehouse (R. p. 8 St. Cl. ¶ 16)

• 15 March 2011 – Beginning of Doma Cirun’s summer selling season

• 20 March 2011 – Delivery of shirts to Doma Cirun’s retail stores (R. p. 8 St. Cl. ¶ 16)
• 5 April 2011 – Broadcast of Channel 12 documentary regarding child labor in Equitoriana Clothing’s factory (R. p. 8 ¶ 17)

• 6 April 2011 – Sales at Doma Cirun stores are 30% under prior year sales (R. p. 8 St. Cl. ¶ 19)

• 8 April 2011 – Publication of Oceania Times article regarding the use of child labor in the supply chains of leading clothing manufacturers including Equitoriana Clothing

• 8 April 2011 – Doma Cirun notified Exquisite of its intent to avoid the contract, Exquisite refused to recognize breach and refused to collect shirts (R. p. 8 St. Cl. ¶ 19)

• 10 April 2011 – Mr. Short claims to have received official notification from Exquisite of avoidance (R. p. 20 Cl. Ex. #5; R. p. 37 ¶ 6th)

• 20 April 2011 – Exquisite sold the 99,000 Yes Casual shirts for USD 470,000 (R. p. 9 St. Cl. ¶ 23)

• 30 April 2011 (46 days into Summer Selling Season) – Polo Shirts manufactured by Gold Clothing arrived for sale at Doma Cirun stores

• 15 August 2011 – Witness statement by Mr. Russell Long (R. p. 15 Cl. Ex. #2)

• 18 August 2011 – Witness statement by Mr. Tomas Short (R. pp. 37-38 Resp. Ex. #1)

• 15 September 2011 – Doma Cirun began arbitration against Exquisite with claims for USD 1,825,000 in damages

• 14 January 2012 – Doma Cirun and Exquisite settled the claims for USD 850,000

• 15 February 2012 – Oceania Plus brought suit against exquisite to recover USD 700,000 it had paid to settle a lawsuit by the Children Protection Fund

• 25 June 2012 – Exquisite settled the claim by Oceania Plus for the full sum of requested damages USD 700,000