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1987

PHILIP C. JESSUP

INTERNATIONAL LAW MOOT COURT COMPETITION

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OFFICIAL RULES FOR THE

INTERNATIONAL DIVISION

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1987 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

I. ORGANIZATION

The Philip C. Jessup International Law Moot Court Competition is sponsored annually by the Association of Student International Law Societies (ASILS) and the American Society of International Law (ASIL) for students enrolled in ASILS member schools and other invited law schools. The Competition, administered by the Executive Secretary of the ASILS, consists of three levels of argument: Regional, Semifinal and Final. Domestic regionals are held in designated geographic areas of the United States. Regionals in other countries shall be held at the option of the Executive Secretary and the organizer in that country. Semifinal and Final Rounds shall be held in Boston, Massachusetts.

II. FACT PROBLEM

The hypothetical fact problem upon which the Competition is based is written each year by a scholar of international law, or a panel of such scholars, chosen by the Executive Secretary of the ASILS, and concerns a subject of timely interest.

III. APPLICATION PROCEDURES

A. School Eligibility

Eligible to participate in the International Division are those teams selected in countries outside the United States as a result of regional competitions, or in such other manner as deemed appropriate by the Executive Secretary and the organizer in the given country.

B. Team Member Eligibility

All team members shall be studying for the equivalent of the United States' Juris Doctor degree in order to qualify for the Competition. A team member must be a full or part-time student at only one institution during the academic year of the Competition. However, the Executive Secretary, upon written request, may permit the participation of students studying for an advanced graduate-level law degree or a graduate level degree in another discipline. Only students who have not completed studies sufficient to enable them to practice law will be allowed to participate.

C. Outside Assistance

Outside assistance rendered to a team in the preparation of its case, including that from faculty members, shall be limited to a general discussion of issues, suggestions as to research sources, and decision-making in intramural eliminations. Outside assistance which would interfere with the final work product being the exclusive work of the team members is prohibited.

D. Team Selection

A team shall be composed of from two to five student members from a single law school. Team members may be chosen by any method approved by the responsible authority, including intramural competition utilizing the Jessup Problem, but so as not to conflict with the provisions of Article III(C).

E. Application

All schools participating in the International Division should submit an application fee of U.S. \$45 before November 15, 1986. A non-OECD member country may request waiver of the application fee for extenuating circumstances. As soon as the application has been received and approved by the Executive Secretary, participants will be officially entered.

IV. TEAM IDENTIFICATION

Each team in the Competition will be assigned a number at random by the Executive Secretary, which must be used on memorials and by others during the competition. The school name must not appear on the memorial, nor may it be used to identify a team or member in any way (as by name tag) during the competition.

V. INTERNATIONAL DIVISION SEMIFINAL COMPETITION

The International Division Semifinal Competition will be held in conjunction with the Annual Meeting of the American Society of International Law in Boston, Massachusetts, April 6-11, 1987. Orientation will begin on April 5.

Initial pairings shall be final, except as modified by the Executive Secretary because of deletion or addition of a team or teams.

VI. ORAL ARGUMENT

A. Procedure

The Semifinal Competition shall consist of four rounds of oral arguments, plus a championship run-off round between the two highest ranking teams. In the Semifinals there will be one run-off round in each Division, National and International. Team rank shall be determined pursuant to Rule X(B). In the initial four rounds, each team shall argue twice as applicant and twice as respondent. No team shall meet any other team more than once, except in the case of the semifinal run-off rounds.

Any team member may act as an oralist during any round. However, to be eligible for any oralist award a competitor must have argued twice during the Regional or Semifinal Competition. Only two oralists may argue during any single round. No single oralist shall argue longer than 25 minutes of the 45 minutes given to each team for each round, except as per Rule VI(G). Included in the 45 minutes given to each team is rebuttal or surrebuttal time. Teams need not reserve time to rebut; if they do so, no more than 10 minutes may be reserved. If the judges in their discretion extend total team time beyond 45 minutes (and they may do so for no more than 10 minutes), then and only then may an oralist argue for longer than 25 minutes.

B. Of Counsel

During each round, one other team member may sit at the counsel table with the two oralists as counsel. The person acting as counsel must be one of the five team members. However, the person acting of counsel need not be the same person in each round. Only the judges, the two oralists, and the person designated of counsel may communicate during the argument. There shall be no communication between the counsel table and any other individual during the round.

C. Scope of Argument

The scope of a participant's oral argument is not limited to the scope of his or her written argument (submitted memorial). The scope of applicant's rebuttal is limited to the scope of respondent's argument proper, and the scope of respondent's surrebuttal is limited to the scope of applicant's rebuttal. Oral argument judges will penalize participants for failure to keep within these limitations.

D. Scouting

No team member or persons affiliated with that team may attend a round in which a prospective opponent team is participating. Any team member or affiliated person who wishes to attend any other round must obtain advance permission from the two arguing teams. This does not, however, prevent students who have no affiliation with a team from observing the rounds in which their law school's team participates. No taping of argument will be allowed except in the Jessup Cup Round, without the advance permission of the Regional Administrator or Executive Secretary and the two participating teams. The American Society of International Law and the ASILS reserve all rights to the taping of the Jessup Cup Round, and all Jessup Cup Round teams will be deemed to have waived their consent to such taping.

E. Exhibits

The use of exhibits, other than documents or handouts, is permitted. If a team will be using exhibits, actual notice of such intended use shall be conveyed to the Executive Secretary and the opposing teams no later than two days prior to the beginning date of the semifinal competition. Prior to the start of the semifinals, all exhibits shall be viewed by the Executive Secretary, and any exhibits which are not fair and reasonable interpretations of the facts or clearly labeled as alternative theories will be excluded. Teams requiring special equipment in connection with an exhibit to be used during an oral argument (such as black-board, holder for charts, pointers, lights, etc) shall so inform the Executive Secretary no later than two days prior to the beginning of the semifinals of what equipment will be required. Failure to comply may eliminate the possibility of having materials available. However, no written material shall be passed to the judges before, during or after the argument.

F. Oral Communication

No oral or written communication may take place between counsel table and an oralist while the oralist is presenting his or her argument. This does not, however, preclude an oralist from taking a treaty or similar document from the counsel table when the oralist has been questioned about such document.

No oral or written communication may take place between counsel table and any spectator or team member not at the counsel table during a round.

G. Interpreters

Teams wishing to present their oral arguments in a language other than English may arrange for interpreters to translate their arguments during the rounds. Expenses incurred in hiring interpreters are to be borne by the team utilizing the interpreter's services. A team wishing to use interpreters shall so inform the Executive Secretary no later than two days prior to the oral argument during which the interpreter will be used. Such teams may request permission from the Executive Secretary to extend total team time beyond the 45 minutes normally allotted for oral argument.

A team member may serve as interpreter for his teammates if:

1. He does not act as an oralist in the same round in which he is an interpreter;
2. He does not sit at the counsel table during a round in which he is an interpreter; and
3. He does not communicate with his team members in any way during the round except to translate their arguments and responses to questions from the judging panel.

H. Written Communication

No written materials may be submitted to judges other than team memorials via competition administrators. No materials may be handed to judges during oral arguments.

VII. INTERPRETATION OF RULES

If any question arises during the Competition concerning interpretation of the Rules, such questions must go to the Regional Administrator or Executive Secretary. Bailiffs (timekeepers), administrative assistants and judges have no power to interpret the Rules; they may only be used as witnesses to infractions. Any detrimental reliance by a team on an interpretation made by a bailiff, administrative assistant or judge will not prevent a penalty from being imposed if the Regional Administrator or Executive Secretary's interpretation differs from that of the bailiff, administrative assistant or judge in a situation which raises the possibility of an imposition of a penalty. Decisions of a Regional Administrator may be appealed to the Executive Secretary. All decisions of the Executive Secretary concerning questions of rules interpretation are final and dispositive.

Either the Executive Secretary or a Regional Administrator, with the Executive Secretary's approval, may interpret the Official Rules, and may promulgate such other measures as may be deemed advisable for the orderly conduct of the Competition, provided that these measures do not conflict with any of the Official Rules.

VIII. MEMORIALS

A. Required Memorials

Each team in the Competition shall prepare an applicant's memorial and a respondent's memorial. Memorials must be prepared in English by the team representing their country in the semifinals.

B. Length

The body of the memorial shall be no more than 25 pages in length. The 25-page limitation shall include the Argument and any conclusion, signature page, annexes, appendices, and footnotes. The Table of Contents, Index of Authorities, Jurisdiction, Statement of Facts, Questions Presented, Summary of Argument, title page and back cover are excluded from the 25-page limitation. No issue or argument not discussed within the body of the memorial shall be included in any other section of the memorial.

C. Spacing

The Argument section of the memorial must be double-spaced. Footnotes and titles more than one line in length may be single-spaced. Quotes of 50 words or more may be single-spaced. All portions of the memorial other than the Argument section may be single-spaced.

D. Form

Memorials must be typewritten and reproduced by mimeograph, photocopying or offset. No part of the memorial including the cover, shall be otherwise printed or press-typed. Memorials must be fastened by staples, no other type of fastening (such as ring binding or tape) is permitted. Two to three staples along the left side of the memorial is the preferred method of fastening.

Applicant and respondent memorials must be differentiated by different colored covers. White paper is to be used in the memorials.

E. Type

Any type style is permissible, except that no type smaller than standard elite (12 spaces to the inch or 2.6 cm.) shall be used.

F. Citations and Footnotes

Footnotes may be placed either at the bottom of the page, within the body of the argument, or at the end of the memorial. Footnotes may not include substantive arguments except insofar as they are purely illustrative of arguments presented in the Argument proper. Footnotes are to be used primarily to cite authority.

Memorial judges will penalize participants for failure to keep within these limitations.

G. Submission of Memorials

Each team shall mail 17 copies of its applicant memorial and 17 copies of its respondent memorial to the Executive Secretary for use by the judges. Deadline for submission of memorials is indicated in the International Division Timetable. Mailing must be done by AIR MAIL.

H. Revision of Memorials

No team may revise, substitute, add, delete, or in any other manner alter its memorials after the deadline for their submission. However, if a revision is made in a non-substantive part of the memorial (substantive part of the memorial is the argument section) or if pages are inadvertently left out in the collating process either in the substantive or non-substantive section of the memorial, for example, then a discretionary penalty may be imposed by the Executive Secretary in assessing the facts. Retyping the argument section to correct footnote numbers, typographical errors, or change footnote format (e.g.— put them at the end rather than in the body) is

subject to the revision penalty. Revising a memorial and taking the subsequent penalty may not be used as a method of avoiding a greater penalty assessment for another infraction. The greater penalty in such a case will be the one assessed. (e.g. a team with a 10 point length penalty may not revise the memorial to conform to the length requirements and take the lesser 6 point revision penalty).

I. Statement of Facts

Each memorial shall include a full Statement of Facts, and not a mere stipulation of the Facts. The Statement of Facts shall be limited to the facts and necessary inferences. The facts should not include unsupported fact, distortions of stated facts, or legal conclusions.

J. Summary of Argument

Each memorial shall include a Summary of Argument. The Summary of Argument shall consist of a substantive summary of the arguments presented in the memorial, rather than simply a repetition of argument headings.

K. Clarifications to the Problem

Participants may submit written requests for clarifications on points that are manifestly unclear in the Problem and that must be clarified in order to design a proper set of arguments, or on points of typographical error. Requests for clarifications must be received by the date indicated on the International Division Timetable. Receipt of requests for clarifications will not be acknowledged, and requests for clarifications will be answered selectively, at the discretion of the Executive Secretary, the author of the Jessup Problem, and the Jessup Problem Advisory Panel. Note that submission of ill-conceived requests for clarifications to the Problem, illustrating either a lack of understanding of the legal issues presented by the Problem, or of the clearly stated conditions under which the Competition is conducted, may subject a team to a discretionary penalty as provided in Rule IX(C)(2)(c).

IX. PENALTIES

A. Procedure

The following is an exclusive list of penalties which may be imposed on a team. It is extremely important that each team has thorough understanding of the contents of this section. The issue of penalties arises when the Executive Secretary as a result of his or her own motion or as a result of a complaint must ascertain the facts of a situation in order to determine if an infraction has occurred. The accused team shall be allowed to reply to the accusation. Replies must be sent in a timely fashion to the same parties as are complaints. Upon receipt of a complaint and reply, the Executive Secretary shall make a prompt decision as to whether a penalty is warranted. Each team shall be notified of penalties assessed by the Executive Secretary as a result of his or her own motion so as to allow the penalized team a chance to reply. Complaints pertaining specifically to oral arguments must be submitted to the Executive Secretary within an hour of the completion of the round in which the alleged violation occurred. Memorial penalty points will be assessed against the memorial score given by each of the memorial judges; oral argument penalty points will be assessed against the oral argument score given by each of the oral argument judges in the particular

round in question. The power of the Executive Secretary to assess penalties is divided into two categories: nondiscretionary and discretionary.

B. Nondiscretionary Penalties

For the following, the Executive Secretary acting on his or her own motion, or as a result of a complaint, will determine the facts of the situation as they apply to the alleged infraction. If he or she determines that the facts constitute a violation then the penalty will be assessed mechanically with the Executive Secretary having no discretion in the matter. This means that there can be no ameliorative attempt, equitable remedies, or waiver of the rules by the Executive Secretary nor by the competitors except as per Rule IX(D).

1. Memorial Rules

<u>Violation</u>	<u>Penalty</u>
a. Tardiness in submitting memorials to the Executive Secretary, (for memorials postmarked March 3, 1987)	6 points
b. Extreme tardiness in submitting any memorials (for memorials postmarked March 4-13, 1987)	2 additional points per day
c. Unacceptable tardiness in submitting any memorial (for memorials postmarked after March 13, 1987)	Elimination from Competition, or a score of 25 if remaining in competition would not be prejudicial to the Competition
d. Excessive memorial length	2 points per page over 25 pages
e. Failure to include a Statement of Facts or a Summary of Argument	2 points
f. Failure to differentiate memorial cover by color	2 points
g. Failure to include names of team members on cover of memorial	2 points

2. Oral Argument Rules

<u>Violation</u>	<u>Penalty</u>
a. Communication between counsel table and any person (other than judges) during the argument	4 points
b. Submission of any additional written materials to oral judges, whether prior to, during, or after argument	4 points
c. Scouting	Loss of the individual round. (Scouted team to receive all 6 points for the round but only those memorial points it would have received as a result of judges' scoring.)
d. Identification of team by school name	10 points

C. Discretionary Penalties

1. Memorial Rules

The Regional Administrator or Executive Secretary may assess 2,4,6 or 10 point penalties against memorials for:

- a. De minimus violations as to revision of memorials.

2. Unsportsmanlike Behavior

The Executive Secretary may impose 2,4,6 or 10 point penalties against a team for behavior which substantially prejudices the conduct of the competition, including:

- a. Engaging in poor sportsmanship.
- b. Submitting petty and verbose complaints against opponent teams.
- c. Submitting substantively ill-conceived requests for clarifications to the Problem, illustrating either a lack of understanding of the legal issues presented by the problem or of the clearly stated conditions under which the competition is conducted.

X. SCORING

In determining the winner of each individual Round, penalties must be accounted for. A penalty assessed against a memorial is subtracted from each judge's score before determining which team is awarded the memorial points (for example, if the applicant memorial of Team X is assessed 2 points, each of the applicant scores given by the memorial judge to Team X will be reduced by 2 before comparing it to opponent Team Y's memorial). A penalty assessed

against oral argument will be subtracted from the total speaker's points for the Round given by each judge before determining the winner selected by each judge. A score sheet and scoring instructions shall be given to each memorial and oral judge. (Participants are referred to Annex A, Judges' Oral Argument Scoring Instructions, and Annex B, Judges' Memorial Scoring Instructions).

A. Winner of a Round

There are 9 possible judges' points for each Round. Points are awarded as follows:

Memorial Points - 3 Total

One point is given for each time that a team's memorial is scored higher than its opponent's memorial.

Oral Points - 6 Total

Two points are given for each oral judge that scores a team higher than its opponent in oral argument.

In extraordinary circumstances and with the special permission of the Executive Secretary, two-member judging panels may be used for memorials or oral argument. For memorials, a hypothetical third judge's score will be created by awarding the memorial the average of the other two scores.

Where a two-judge panel is used for oral arguments a hypothetical third score is not created. Three points are given each time one of the judges scores a team higher than its opponents.

B. Winner of a Competition

Teams shall be ranked highest to lowest at the close of the four rounds of oral arguments. The two highest ranking teams in each division of the semifinals will participate in the divisional run-off rounds, the winning teams of which will advance to the Jessup Cup Round.

Ranking: Teams will be ranked according to:

1. win/loss record. A 4-0 team (4 wins, 0 losses) is automatically ranked higher than a 3-1 team (3 wins, 1 loss) which is ranked higher than 2-2 team (2 wins, 2 losses), etc.

2. total raw score. If two or more teams are tied in win/loss record (e.g. two or more teams are 4-0 or otherwise have the same win/loss record) the team with the highest raw score will be ranked highest. Total raw score includes total scores for both the memorials (240 possible points) and oral arguments (960 possible points). This rule applies regardless of whether two teams which are tied with the same win/loss record had met each other in a previous round.

3. judges' points. If two or more teams remain tied after comparing win/loss record and total raw scores, the team with the greatest number of judges' points shall be ranked highest. (There are 36 possible judges' points for each regional competition: 9 points per Round times 4 Rounds.)

4. If teams are still tied after comparison of win/loss record, total raw scores, and judges' points, a determination of rank of the teams in question will be made by the Executive Secretary.

C. Run-off Rounds

The side which each team shall argue in the Semifinal divisional run-off rounds will be determined by choice of the highest ranking of the two teams participating in the run-off round.

In the Semifinal divisional run-off rounds and the Jessup Cup Round, relative merit of memorials is to be taken into account by the Semifinal divisional run-off round judges and the Jessup Cup round judges only to the extent that these judges deem appropriate. These judges will not be bound by numerical scores previously assigned to memorials in the memorials competition.

D. Best Memorial Winner

The winner of the Best Memorial Award in the Semifinal Competitions shall be based on the cumulative total of 40-point based scores of the three memorial judges. The highest possible score is 240 (120 for applicant plus 120 for respondent). The team with the greatest number of points is the winner. However, penalty points are deducted from each appropriate memorial score before computing a team's total points (e.g., if Team A's applicant memorial only is assessed a 2-point penalty, each judge's score for the applicant is reduced by 2 before computing the final total).

E. Best Oralist

The winner of the Best Oralist Award shall be that person with the highest average individual oral scores, computed as follows: For each oralist, total all individual scores received and divide by the number of oral judges scoring that oralist. An oralist must argue at least 2 rounds to be considered for an Oralist Award. If an oralist argues more than 2 rounds, he or she shall indicate, prior to the start of the rounds, which two arguments should be used for the Best Oralist calculations. In no event shall the score from more than two rounds be used to calculate Best Oralist results.

XI. SEMIFINAL AND FINAL ROUNDS

The Semifinal Rounds of the International Division Competition will be held concurrently with the Semifinal Rounds of the National Division. The winner of the International Division Competition shall meet and participate in the Jessup Cup Round, the winner of which shall be deemed the winner of the Philip C. Jessup International Law Moot Court Competition. The Official Rules, except for the appropriate dates which are included in the Official Timetable, shall apply to the Semifinal Competition. These rules will be utilized in the Semifinal and Final Rounds, unless the Executive Secretary decides to the contrary. Note the provision in Rule X(C) for scoring semifinal division run-off and Jessup Cup Rounds.

XII. ANNUAL REPORT

After the Jessup Cup Round, the Executive Secretary shall send a report to all teams that participated in the Competition. This report shall, at a minimum, indicate the winners, the best memorials, and best oralists in the Regional Rounds; the winner, best memorial and oralist awards in both Semifinal divisions; and the winner of the Final Round.

ANNEX A

JUDGES' ORAL ARGUMENT SCORING INSTRUCTIONS
(Please Review Prior To Oral Arguments)

Each team is given 45 minutes to argue, of which no more than 10 minutes may be reserved for rebuttal or surrebuttal. No single oralist shall argue longer than 25 minutes. Extensions of team time beyond 45 minutes, which in no case shall exceed 10 minutes beyond the total time allocated for presentation, shall be within the discretion of the judges. Strict anonymity of school identities shall be ensured as far as is possible. Teams shall be identified throughout the rounds only by number, not by names of schools.

During the argument, each oral judge should tentatively score each oralist at the conclusion of his or her presentation. Following the argument, the judges shall retire to deliberate. They shall then individually mark their scoring summaries without comparisons to the scoring summaries of their fellow judges.

Team scores shall be the total of the two individual oralist scores. The team with the greatest total wins that judge's ballot.

Please evaluate each advocate independently rather than in comparison to the other advocates in the round (or other rounds you may have judged). A score between 25 and 40, inclusive, should be assigned to each advocate. An average score for the Jessup Competition is 33. You should try to score all advocates that you judge such that the average of all the scores which you assign - i.e. your personal scoring average - is 33 or very close to 33. Upon completion of all scoring, the Competition organizers should be able to average all scores given by all judges to reach a score of 33 or very close to 33, the targeted average score for this competition.

Factors to be considered in assessing points without regard to order of importance include, but are not limited to:

- | | |
|--|--|
| 1) Correct and articulate analysis of the issues | 6) Ingenuity |
| 2) Familiarity with international authorities | 7) Organization |
| 3) Response to questions | 8) Persuasiveness |
| 4) General knowledge of the substance and process of international law | 9) Ability to argue by analogy from related aspects of international law |
| 5) Clarity | 10) Knowledge of the facts |
| | 11) Knowledge of legal principles directly applicable to the facts. |

Judges should be familiar with the Problem, the law, and the teams' memorials before judging. The judges' Bench Memo outlines most of the issues in the case and should be read carefully. However, the Bench Memo is not the only solution to the problem and should not be regarded as such.

Judges should penalize participants for failure to keep within the scope of argument. That is, applicant's rebuttal should be limited to the scope of

respondent's argument proper, and respondent's surebuttal should be limited to the scope of the applicant's rebuttal.

Since a team has no choice as to which side of the dispute it must argue in a given Round, scoring should not reflect the merits of the case but only the advocacy skills and legal analysis of the participants.

Judges should feel free to question oralists at any point in the argument, but should also bear in mind the importance of affording oralists the opportunity to "make their case."

ANNEX B

INTERNATIONAL DIVISION MEMORIAL SCORING INSTRUCTIONS

Memorials shall be scored individually by each Memorial Judge independently of his colleagues, by assigning a grade between 25 and 40, inclusive. An average memorial score for the Jessup Competition is 33. You should try to score all memorials such that the average of all the scores that you assign - i.e. your personal scoring average - is 33 or very close to 33. Upon completion of all scoring, the Competition organizers should be able to average all memorial scores given by all memorial judges and arrive at a figure of 33, or very close to 33, the targeted average score for this competition.

To avoid a tie between memorial scores, all scores for applicants shall be even numbered, and all scores for respondents shall be odd numbered. These scoring requirements shall not be construed to discourage a comparison of applicant's memorial with respondent's memorial. The scoring factors to be considered (without regard to their order of importance) include, but are not limited to:

1. Knowledge of the facts and the legal principles directly applicable to the facts
2. Proper and articulate analysis of the issues involved
3. Use of authorities and extent of research
4. Logic and reasoning
5. Ingenuity (ability to argue by analogy from related aspects of international law)
6. Clarity and organization
7. Persuasiveness
8. Correctness of format and citations
9. Thoroughness
10. Grammar, style

Judges should be familiar with the Problem before reading the memorials. The judges' Bench Memo outlines most of the issues in the case and should be read carefully. However, the Bench Memo does not represent an airtight resolution of the case and a sound presentation of creative ideas should be viewed favorably.

The substantive merits of the case shall not be considered in judging the memorials.

Memorials are to be judged on the type of criteria enumerated above, and not upon their appearance. Memorials are not to be penalized for being of less pleasing physical appearance unless this results from the infraction of a specific rule of the contest (i.e. form), or from a general carelessness of presentation. However, judges must penalize for the usage of argumentative footnotes, and for a Statement of Facts which materially distorts the applicable fact pattern.

Scores shall be tendered to the Executive Secretary prior to the first oral argument of the semifinals.

ANNEX C

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Carey, Self-Determination in the Post-
Colonial Era: The Case of Quebec, 1 ASILS Int'l
L.J. 47 (1977). 21

NOTE: This form is only an example, and may be altered as
teams see fit. Citations should, however, conform to the
latest edition of A Uniform System of Citation to the greatest
degree practicable.