

*The 4th Michael Kirby Contract Law Moot
Melbourne, Australia*

29 September – 2 October 2014

**THE PROBLEM (1-34), CLARIFICATIONS
(35-41) AND RULES (42-50)**

Organised by:
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Table of Contents

Arbitration Information	Page 3
Statement of Facts	4-6
Exhibit 1 – Diary Note	7
Exhibit 2 – Diary Note	8
Exhibit 3 – Diary Note	9
Exhibit 4 – Email 7/01/14 (13:53pm)	10
Exhibit 5 – Email 7/01/14 (14:35pm)	11
Exhibit 6 – Graffiti Removal Agreement	12-14
Exhibit 7 – Email 7/01/14 (20:21pm)	15
Exhibit 8 – Email 8/01/14 (9.01am)	16
Exhibit 9 – Email 8/01/14 (9.30am)	17
Exhibit 10 – Email 9/01/14 (10:21am)	18
Exhibit 11 – Email 9/01/14 (11:41am)	19
Exhibit 12 – Email 17/01/14 (9.47am)	20
Exhibit 13 – Letter 29/01/14	21-22
Exhibit 14 – Letter 30/01/14	23-24
Exhibit 15 – Letter 14/03/14	25-27
Exhibit 16 – Letter 17/03/14	28
With enclosed Statutory Declaration	29-30
Exhibit 17 – Letter 20/03/14	31
With enclosed Statutory Declaration	32-33
Exhibit 18 – Letter 21 March 2014	34

Arbitration Information

Arbitration Forum: Institute of Arbitrators and Mediators Australia

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Telephone: (03) 8648 6578
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Arbitrators: Arbitrator 1
Arbitrator 2
Arbitrator 3

Claimant: Social Conscience Pty Ltd
Level 1, 634 McKillop Street, Melbourne, Vic, 3000
Telephone: (03) 9321 0001
Facsimile: (03) 9321 0002
Email: enquiry@SocialCon.com.au

Respondent: Industry First Pty Ltd
100 Armidale Street, Dandenong, Vic, 3047
Telephone: (03) 8341 0001
Facsimile: (03) 8341 0002
Email: reception@indfirst.com.au

**Claimant's
Representatives: Students 1 & 2**
Brown, Black & White, Lawyers
576 Bourke Street, Melbourne, Vic, 3000
Telephone: (03) 8888 7777
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Email: brownblackwhite@bbwlaw.com.au

**Respondent's
Representatives: Students 1 & 2**
Gold, Silver & Diamond, Lawyers
872 Collins Street, Melbourne, Vic, 3000
Telephone: (03) 9988 4777
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STATEMENT OF FACTS

1. At all relevant times, each of the Claimant (“**SocialCon**”) and the Respondent (“**Industry**”) were and are companies incorporated in Victoria under the *Corporations Act 2001* and have power to sue and be sued.
2. Mr. Arnold Pye and his wife, Crystal, of Balwyn, Victoria, are the sole directors and shareholders of SocialCon.
3. Industry is a wholly-owned subsidiary of Conglomerate Limited, a registered (unlisted) public company in Australia. The Board of Directors of Industry comprises 7 persons variously sourced from the accounting and medical professions.
4. Industry has successfully conducted a variety of businesses via outlets throughout Victoria, New South Wales and Queensland under various business names, some being “Industry Rubbish Be Gone”, “Industry Graffiti Removal”, and “Industry Cleaning Services”.
5. SocialCon has carried on business in Victoria, South Australia and Tasmania as an environmental adviser focusing primarily on greenhouse emissions pertaining to forest conservation and clean waterways.
6. Each year SocialCon has arranged and promoted a national conference on environmental issues in Melbourne featuring pre-eminent keynote speakers from Australia, USA, the United Kingdom and Scandinavia.
7. In 2014, the Melbourne national conference was to occur over 5 days in January deliberately timed in conjunction with the Australian Tennis Open and during the summer tourist season. SocialCon had previously found that January in Melbourne was popular with conference guests which usually numbered in the vicinity of 500.
8. The 2014 conference was to be held at majestic Silver Conference Centre at Melbourne with guests gathering each day for lunch and dinner at a nearby large outdoor marquee erected by SocialCon on the banks of the Yarra River adjacent to Princes Bridge and Flinders Street Station. The marquee location was carefully chosen by Ms. Crystal Pye to benefit from vast promotional banners and signage designed to reflect the importance and significance of the national conference and its environmental issues.
9. Early on the morning of the second day of the conference (7 January 2014), Arnold Pye discovered to his horror that the marquee and its banners and signage had been attacked overnight by graffiti vandals. Words and expressions belittling SocialCon and its environmental principles had been daubed in black paint with several boastful references to the then unknown GROW-Up (“Get Real or Wake Up”) protest group of wood-chipping and mining supporters.

10. Arnold immediately contacted his office staff to arrange for urgent graffiti removal and, by lunchtime, a contract had urgently been signed between SocialCon and Industry (trading as "Industry Graffiti Removal"). Copies of the relevant Contract excerpts and prior emails are exhibited hereto together with some later emails and correspondence.
11. In view of urgency, Industry was unable to send one of its usual teams of graffiti removalists to the marquee site and, after some hours, procured through a competitor, "Graffiti Gangbusters" of Berwick, a removal team of 10 persons to race to the site.
12. At the time of arrival of the "Graffiti Gangbusters" team, the marquee area was ready to receive the conference guests for a sumptuous summer evening dinner, but was also inundated with television and journalist news crews who had been alerted to the gross vandalism by members of the public.
13. To the surprise of Arnold Pye, the "Graffiti Gangbusters" team comprised a male adult "team leader" and nine children of about 14 years of age of different nationalities who immediately commenced cleaning the graffiti with buckets of harsh chemicals. Indeed, some were later filmed disposing of the chemicals in the Yarra River. In two instances, children of the team suffered chemical burns and were filmed crying in pain as conference guests arrived for the dinner.
14. The above events were featured on a headline basis in the evening television news, and newspapers ran the story with photos of the 2 crying children for the next 3 days. One child was released from hospital on the third day with suggestions (unproven) that the child was from a refugee family.
15. As a result of the events, the balance of the national conference was cancelled on the morning of the third day, especially as many of the guests had thereafter refused to attend. Some news editorials had suggested unfairly that some of the guests did not care about the children, whilst others had been filmed or photographed in a compromising manner, albeit without any actual fault .
16. As an adverse consequence, SocialCon also had to cancel its Tasmania and South Australian state conferences scheduled to occur respectively in March and April, whilst several of its environmentally concerned staff members soon resigned. One month later, Crystal Pye suffered a nervous breakdown and her hospital and medical expenses, paid by SocialCon, eventually reached \$27,000. SocialCon also had to destroy its marquee, banners and signage which it claimed had been damaged by the harsh chemicals.
17. SocialCon refused to pay for Industry's cleaning services per the parties' Graffiti Removal Contract and was threatened with legal action by Industry for the contracted amount of \$60,000 comprising the base Price plus an "urgency premium" of \$10,000.

18. By 1 May 2014, SocialCon had paid a further \$120,000 by way of settlements to various overseas conference guests who had threatened to sue for their wasted air fares and accommodation costs as a result of the graffiti debacle.

19. SocialCon also lost \$85,000 in cancelled subscriptions to its monthly environmental publication and updates. Consequently, SocialCon had to cancel its three publishing contracts with print houses in Victoria, Tasmania and South Australia and suffered administrative "break costs" of \$10,000 per print house.

20. In summary, SocialCon has claimed from Industry:

Destroyed marquee (at original cost in Jan 1998):	\$ 80,000
Destroyed banners and signage (cost in Dec 2013):	\$ 15,000
Guests' wasted airfares and accommodation costs:	\$120,000
Cancelled monthly subscriptions:	\$ 85,000
Printing "break costs":	\$ 30,000
Lost Net Profit on cancelled Tasmanian conference:	\$ 98,000 (est)
Lost Net profit on cancelled SA conference:	\$ 74,000 (est)
Director's hospital and medical expenses:	<u>\$ 27,000</u>
	\$529,000

With interest and costs.

21. Conversely, Industry has claimed from SocialCon:

Graffiti removal costs (per Contract):	\$ 60,000
With interest and costs, and denial of liability for SocialCon's claim.	

22. SocialCon and Industry will each rely on the whole of the content of the material exhibited hereto.

23. The parties have since agreed to resolve the dispute by arbitration in Melbourne, Victoria in accordance with the IAMA Rules before 3 arbitrators as appointed by the parties and the President of the Institute of Arbitrators.

Exhibit 1

[Conformed copy of handwritten diary note made by SocialCon's receptionist]

7/1/2014

Phone call in from Arnold.

8:30am

Arnold wants urgent graffiti removal re marquee & banners, etc.

Can we track down someone to clean urgently.

I not sure who to get. He suggests google Yellow pages.

I'll try. Will ring him re progress.

Julie.

Exhibit 2

[Conformed copy of handwritten diary note made by SocialCon's receptionist]

7/1/2014

Phone call out to Industry First.

8:40am

Spoke to John (someone??) - Industry Graffiti – can his company do urgent graffiti removal re marquee etc.

Told him where.

They need 3 hours to get team there.

They will fax contract – price will be \$50,000 fixed - with urgency premium \$10,000 & GST incl.

Told him to send, but I to check with Arnold first.

Gave John our fax no.

He to get onto it.

Julie.

Exhibit 3

[Conformed copy of handwritten diary note made by SocialCon's receptionist]

7/1/2014

Phone call out to Arnold.

8:49am

Told him I spoke to John somebody .. (forgot to ask his name) - Industry Graffiti – they can do urgent graffiti removal re marquee etc.

John says will need 3 hours to get team there.

They will fax contract to here – will be \$50,000 fixed.

Arnold ok with price – just do it ! Very embarrassing at Yarra – defamatory slogans etc. Need to clean marquee urgently.

Asked if I can sign contract? Arnold says Crystal to do pref, if she's around.

I said Crystal left office half hour ago to get manicure. Not sure when she's back.

A. told me to phone C. on her mobile "... forget the (something !?!) manicure !!".

Julie.

Exhibit 4

From: john.nerdle@indfirst.com.au
Sent: Tuesday, January 7, 2014 13:53pm
To: julie.pratz@socialcom.com.au
Subject: Graffiti contract for marquee today
Attachments: graffiti contract.docx

Dear Julie,

As discussed by phone today, I attach Industry First's standard Graffiti Removal Agreement, although I have made some self-explanatory handwritten amendments which I'm sure you'll find acceptable, as we discussed.

As soon as it is signed and returned, we can urgently deploy a 10-person team today to commence graffiti removal.

We are glad to be of service to your company.

(PS. Glad to have a chat about your quilting classes).

Regards
John W. Nerdle
Graffiti Co-ordinator
Victorian Division,
Dandenong 3175

Exhibit 5

From: julie.pratz@socialcom.com.au
Sent: Tuesday, January 7, 2014 14:35pm
To: john.nerdle@indfirst.com.au
Subject: Graffiti contract for marquee today
Attachments: graffiti contract.docx

Dear John

Thank you for your email.

I now attach the signed Graffiti Removal Agreement.

Please send the 10-person team today to the Yarra Bank site near Southbank to commence graffiti removal from the marquee and banners.

One of Social Conscience's directors, Mr. Arnold Pye, will be there to explain. In case it's crowded with our VIP guests, just ask someone in the marquee for Arnold. He is tall-ish with grey-brown hair and wears a suit.

Regards
Julie Pratz
Conscience Advisor
Melbourne Sector

Exhibit 6

This Graffiti Removal Agreement is made on the 7th January 2014

BETWEEN:

INDUSTRY FIRST PTY LTD (A.C.N. 012 345 678) of 100 Armidale Street, Dandenong, Victoria ("Industry") trading as "Industry Graffiti Removal"

-and-

Social Conscience Pty Ltd (A.C.N. 234 567 899) of Level 1, 634 McKillop Street, Melbourne, 3000 ("Customer")

RECITALS:

A. Industry carries on business in the removal of graffiti and provides cleaning services to its customers, as requested.

B. The Customer has requested graffiti removal at a Marquee on Yarra bank near Princes bridge Melbourne on the terms herein for the Price, as defined.

AGREEMENT:

1. In this Agreement:

"Building" means the building and/or construction on the property located at Recital B above;

"Items" includes any fixtures and chattels on or at the Building, including fences and like structures;

"Price" is \$50,000 incl GST plus an urgency premium of \$10,000;

"Solvents" includes a mixture of acetone, creosote, lacquer thinners, and like chemicals whether or not mixed with water available and packaged under Industry's brand name "Graffiti Gobbler";

"Team" means any team of persons deployed by Industry to remove graffiti;

"Terms" means Industry's additional standard terms for graffiti contracts at its Website, a copy of which, for convenience, is attached hereto;

“Website” means www.industryfirst@conglomerate.com

2. Industry agrees to remove all graffiti from the Building and any Items as requested by the Customer ~~within 48 hours~~ urgently, preferably today if Team available.
3. Industry warrants that its Solvents:
 - (a) will remove graffiti from brickwork, glass, carbonates, non-porous plastics and common building materials within 48 hours after hosing with cold water;
 - (b) will not damage brickwork, concrete, wood, steel, glass, carbonates, and most plastics;
 - (c) is harmless to skin provided that skin is thoroughly rinsed with clean water within 15 minutes of contact.
4. The Customer shall be responsible for the obtaining of all necessary licences and consents to enable Industry to use Solvents at the Building and to access the Building – Customer says none required.
5. Industry reserves the right to source and deploy teams of its any cleaners and/or removalists at any time and at its discretion.
6. Industry shall not be responsible or liable for any damage to the Building and/or Items caused by graffiti removal, whether caused by vehicles, use of equipment and ladders, or the application of Solvents.
7. Industry shall not be obliged to perform its obligations under this Agreement if it deems it unsafe to conduct any removal of graffiti.
8. The Customer will pay the Price to Industry without any deduction whatsoever within ~~30~~ 14 days after invoice date. Invoices will be sent to Customer when Industry deems graffiti has been fully removed.
9. If the Price remains unpaid for more than 7 days after due payment date, then Industry may charge interest on any unpaid portion of the Price at ~~6%~~ 12% per annum.
10. The term of this Agreement shall commence on the date hereof and shall operate until termination pursuant to clauses 11 or 12.
11. Industry shall have the right to terminate this Agreement at any time by giving the Customer 48 hours prior written notice (whether or not any breach has occurred), or if a deemed unsafe event occurs under clause 7.

12. The Customer may terminate this Agreement if Industry is in material breach thereof and such breach has not been remedied within 30 days after the Customer has given Industry written notice and full details of the material breach.

13. Any dispute shall be referred to arbitration in Melbourne by the parties hereto pursuant to the *Commercial Arbitration Act 2011* (Vic).

14. This Agreement shall be governed by the laws of ~~New South Wales~~ *Victoria*.

SIGNED by:

Ron Alstergren (Executive Director – Industry First Pty Ltd)

Crystal Pye – Director of Social Conscience Pty Ltd

Exhibit 7

From: a.pye@socialcom.com.au
Sent: Tuesday, January 7, 2014 20:21 pm
To: john.nerdle@indfirst.com.au
Subject: Graffiti contract for marquee today

John

I've been trying to telephone you for the last 2 hours after I had experienced extraordinary embarrassment caused by your (so-called) "graffiti removal team" of "10 persons" who, at best, resembled a primary school excursion group armed with unknown liquids with the attributes of sulphuric acid.

Did you check the team? Surely they're not employed by or at Industry!

Forgive me for being sarcastic, but your brilliant 10-person team arrived at about 5.30pm near Melbourne's Southbank precinct to commence graffiti removal at a time when our national and international conference guests were arriving in the midst of TV crews from every major TV station. Apparently the TV crews had been informed beforehand about the malicious graffiti comments painted on our marquee, banners and signs.

Then I discovered that the person described as "Team Leader" could not speak English - although he did manage by sign language to query if some of our guests' meals were available for his team.

You may care to view the late news footage tonight to see some of the "team" being carted off to hospital with chemical burns. How old were they? Where was their protective clothing? I dread to imagine tomorrow's newspaper reports.

I'm going to have my lawyers look at Industry's contract - not to see if we can avoid paying the Price, but to see whether we can sue Industry off the face of the earth.

Never again.

Arnold Pye
Managing Director
Social Conscience Pty Ltd
Melbourne Division.

Exhibit 8

From: gordon.gorman@indfirst.com.au
Sent: Wednesday, January 8, 2014 9:01am
To: a.pye@socialcom.com.au
Subject: Graffiti contract for marquee

Dear Arnold,

Our Graffiti Co-ordinator, Mr. John Nerdle, has passed on your important email of yesterday to me.

Reading between the lines, I understand that the removal Team succeeded in removing the graffiti from your company's marquee and banners. Industry is pleased to be of service to its Customers who are valued at all times.

You will of course appreciate and accept that the arrival time of the team yesterday was dictated by our need to source, urgently, a 10-person team with appropriate skills. This we did with solid objective, and I also proudly note that there has not been one iota of complaint about the effectiveness of the removal of all the graffiti. Hence, I am pleased that you have indirectly vouched for that aspect.

In all of the circumstances, Industry First will soon forward a Tax Invoice for the sum of \$60,000 which, beneficially to your company, generously included (rather than added) GST.

Thank you for your endorsement and let us know if we can be of any further assistance.

Regards

Gordon Gorman, MA, MBA, MBBS, DipEd.

Managing Director

Industry First Pty Ltd

A wholly-owned subsidiary of Conglomerate Limited

Exhibit 9

From: john.nerdle@indfirst.com.au
Sent: Wednesday, January 8, 2014 9:30am
To: julie.pratz@socialcom.com.au
Subject: Graffiti contract – Tax Invoice
Attachments: Tax Invoice.docx

Dear Julie,

I have been provided with a copy of my Managing Director's email to Mr. Pye this morning and assume all's well.

I am also pleased there were no complaints about any unremoved graffiti.

A Tax Invoice in the sum of \$60,000 is now attached for prompt payment.

Regards
John W. Nerdle
Graffiti Co-ordinator
Victorian Division,
Dandenong 3175

Attached:

Tax Invoice No. SOC-001

Date: 8 January 2014

To: Social Conscience Pty Ltd
1/ 634 McKillop Street
MELBOURNE 3000

Item Code:

GR634 Graffiti removal of marquee, banners and signage
At Yarra banks Melbourne Base Price \$50,000

UP012 Urgency Premium \$10,000

Payment due by 15 January 2014: \$60,000
(GST inclusive).

Industry First Pty Ltd
All payments may be made by cash or EFT (see website for EFT details)

Exhibit 10

From: a.pye@socialcom.com.au
Sent: Thursday, January 9, 2014 10:21 am
To: gordon.gorman@indfirst.com.au
Cc: john.nerdle@indfirst.com.au
Subject: Graffiti Contract & Tax Invoice

Gordon

Thank you for your email yesterday which in NO WAY reflects my views.

Under no circumstances have I, or will I ever endorse Industry's graffiti removal abilities (assuming they actually exist).

If I might say so, with some degree of calmness, my company had to:

- (a) cancel the balance of its national conference yesterday;
- (b) be the subject of complaints from many of our overseas guests;
- (c) dispose of the entire marquee and all the latex banners & signage which disintegrated upon removal, folding and attempted packing (also there appeared to be slimy coating on the marquee); and
- (d) send three employees to a doctor to check for skin irritations.

Since 9:00am this morning, I have already had 18 subscribers cancel their monthly subscriptions to our publications. I'm sure more will follow.

I fear we may need to cancel or postpone our state conferences scheduled in March and April 2014.

I am not going to bother writing again. From now on all correspondence will come from our lawyers.

Arnold Pye
Managing Director
Social Conscience Pty Ltd
Melbourne Division.

Exhibit 11

From: gordon.gorman@indfirst.com.au
Sent: Thursday, January 9, 2014 11:41am
To: a.pye@socialcom.com.au
Subject: Graffiti contract for marquee

Dear Arnold,

Thank you for your important email this morning which, again, reading between the lines, has endorsed the effective removal of graffiti from your company's marquee and banners. Industry is pleased to be of service to your company.

Industry First's Tax Invoice for the sum of \$60,000 is payable soon.

Thank you for your endorsements and let us know if we can be of any further assistance.

Regards

Gordon Gorman, MA, MBA, MBBS, DipEd.

Managing Director

Industry First Pty Ltd

A wholly-owned subsidiary of Conglomerate Limited

Exhibit 12

From: gordon.gorman@indfirst.com.au
Sent: Friday, January 17, 2014 9:47am
To: a.pye@socialcom.com.au
Subject: Graffiti contract for marquee

Dear Arnold,

This is a polite reminder that Industry First's Tax Invoice for the sum of \$60,000 is overdue with interest accruing at the rate of 12% per annum.

Let me know if Industry First can be of any further assistance.

Regards

Gordon Gorman, MA, MBA, MBBS, DipEd.

Managing Director

Industry First Pty Ltd

A wholly-owned subsidiary of Conglomerate Limited

Exhibit 13

BROWN, BLACK & WHITE, LAWYERS

576 Bourke Street, Melbourne, Vic, 3000

Telephone: (03) 8888 7777

Facsimile: (03) 8888 7778

Email: brownblackwhite@bbwlaw.com.au

29 January 2014

Mr. G. Gorman
Managing Director
Industry First Pty Ltd
100 Armidale Street
DANDENONG 3047

Dear Sir

Graffiti Agreement with Social Conscience Pty Ltd

We act for Social Conscience Pty Ltd (“client”) which is a well-known, national provider of seminar conferences within the Australian environment industry.

As you may recall our client entered into a Graffiti Removal Agreement with your company dated 7 January 2014 of which we have a copy (**GR Agreement**). We note that a hard copy of the further terms and conditions on your company’s website were not annexed or enclosed with the GR Agreement.

We are instructed that on 7 January 2014 your company arranged for a team of persons to remove graffiti from our client’s marquee (including banners and signage) located at or adjacent to the Southbank precinct in Melbourne.

As you are aware, the marquee was being used to host our client’s annual, one-week, national conference attended by approximately 500 guests – many dignitaries attending from overseas for this important environmental event.

Unfortunately, as you know, the event was marred by a graffiti attack during or about the early hours of 7 January 2014 or thereabouts.

As bad as the attack may have been, we are instructed that worse was yet to come; namely, that your company dispatched a graffiti removal team of 10 persons (purportedly pursuant to the GR Agreement) which comprised children, save for one adult male who, to all intents and purposes, was apparently illiterate.

We are further instructed that during or following the removal of the graffiti:

(a) chemicals or solvents used by the “team” were emptied into the Yarra River;

(b) our client’s teflon-coated marquee made of high-intensity stretch yarn, was damaged or destroyed to the point of necessary disposal;

(c) our client’s latex banners and signage were similarly damaged or destroyed by the chemicals or solvents.

We are awaiting further instructions from our client as to the quantum of its loss and damage suffered to date, and details of any further loss and damage it may have suffered. Hence we put your company on notice that no payment will be made towards your Invoice No. SOC-001 for \$60,000.

Indeed, we are further instructed that your Graffiti Co-ordinator represented to our client that the Price for removal was \$50,000 including GST and the urgency premium.

In any event, we expect to receive further instructions in the next few days to set out our client’s prospective full claim.

Yours sincerely

Rod Brown

.....

Partner, Brown, Black & White, Lawyers

Exhibit 14

GOLD, SILVER & DIAMOND, LAWYERS

872 Collins Street, Melbourne, Vic, 3000

Telephone: (03) 9988 4777

Facsimile: (03) 9988 4778

Email: GSD@lawyers.com.au

Mr. R. Brown

Partner

Brown Black & White Lawyers

576 Bourke Street,

Melbourne 3000

30 January 2014

Dear Sir,

Graffiti Removal Agreement between Industry First Pty Ltd and Social Conscience Pty Ltd;

We act for Industry First Pty Ltd and have been provided with a copy of your letter of yesterday.

We have also been provided with copies of emails sent to or received by our respective clients dated 7, 8, 9 & 17 January 2014.

We have carefully considered the content of the Graffiti Removal Agreement and also the content of the abovementioned emails,

In short, our client denies the allegations put by your client. In particular, our client:

- (a) denies it is responsible for the conduct or composition of the graffiti removal team;
- (b) denies it is liable or responsible for any damage to the marquee, banners and signage;
- (c) denies it is liable to recompense your client for any loss and damage whatsoever; and
- (d) instructs that all and any additional terms and conditions were readily available from and legible at its website (per the Website address in the GR Agreement). In other words, a hard copy was not required.

We note (for your convenience) that:

- Sub-clause 24(b) of the Website's *"Additional Terms and Conditions applicable to Graffiti Removal"*, which clearly pertains to the GR Agreement, relevantly *"... limits any liability however arising to \$20,000 including interest and costs"*; and
- Sub-paragraph 26(4)(p)(ii) of the Additional Terms continues to require the contractual application of the *Trade Practices Act 1974* (Cth) in all respects notwithstanding the current operation of the *Australian Consumer Law*.

In any event, your client has never disputed the effective removal of the graffiti. Hence, our client expects payment of its Invoice No. SOC-001 in the sum of \$60,000 with accruing interest of 12% p.a. (i.e. accruing at the rate of \$19.73 per day).

Accordingly, we demand prompt payment of the Invoice and interest within 7 days failing which we have instructions to take such necessary court action to obtain orders for payment without further notice.

Yours sincerely
Stirling Silver

.....
Partner

Exhibit 15

BROWN, BLACK & WHITE, LAWYERS

576 Bourke Street, Melbourne, Vic, 3000

Telephone: (03) 8888 7777

Facsimile: (03) 8888 7778

Email: brownblackwhite@bbwlaw.com.au

14 March 2014

Mr. S. Silver
Partner
Gold, Silver & Diamond, Lawyers
872 Collins Street
MELBOURNE 3000

Dear Stirling

**Graffiti Removal Agreement with Social Conscience Pty Ltd
Arbitration: Notice of Dispute**

We refer to our letter of 29 January 2014 (which we reiterate here, despite the content of your letter of 30 January 2014) and have now received further instructions from our client.

In addition to the loss and damage set out in our earlier letter, we are now instructed that our client has had to cancel its State conferences scheduled to occur in Tasmania and South Australia respectively on 28 March 2014 and 15 April 2014 as a result of the conduct of your company's graffiti removal team and the extreme adverse negative publicity flowing therefrom.

Furthermore our client has suffered loss from the sudden and dramatic cancellation of subscriptions to its (formerly) popular monthly, publication "*Environs and the Environment - Yesterday, Today & Tomorrow*". Indeed, it has also cancelled its publishing contracts with printing houses in Melbourne, Hobart and Adelaide.

Sadly, one of our client's directors, Ms. Crystal Pye succumbed to consequential business pressures and suffered a breakdown 2 weeks ago. She was admitted to the Dandenong South Nerve Management Hospital and, fortunately, was discharged yesterday.

In summary, our client's claim for loss and damage flowing from your client's breach of the Graffiti Removal Agreement comprises:

Destroyed marquee (at original cost in Jan 1998):	\$ 80,000
Destroyed banners and signage (cost in Dec 2013):	\$ 15,000
Guests' wasted airfares and accommodation costs:	\$120,000
Cancelled monthly subscriptions:	\$ 85,000

Printing “break costs” (3 print houses):	\$ 30,000
Lost Net Profit on cancelled Tasmanian conference:	\$ 98,000 (est)
Lost Net profit on cancelled SA conference:	\$ 74,000 (est)
Director’s hospital and medical expenses:	<u>\$ 27,000</u>
	\$529,000

And with interest and costs.

We note that the GR Agreement requires that disputes and claims be resolved by arbitration in Melbourne.

Accordingly, please hereby treat this letter as a formal **Notice of Dispute** which is now provided to your client by way of service pursuant to Rule 6 of the *Institute of Arbitrators and Mediators of Australia Arbitration Rules* (IAMA).

For the purposes of arbitration, our client seeks damages in the amount of \$529,000 plus interest and costs on the following grounds:

1. That on 7 January 2014, Industry First Pty Ltd (the Respondent) entered into a binding written agreement (the GR Agreement) with Social Conscience Pty Ltd (the Claimant).
2. The Respondent has breached clauses 3(b) & 3(c) of the GR Agreement.
3. The GR Agreement did not include the Website “*Additional Terms and Conditions applicable to Graffiti Removal*”.
4. Further and alternatively to item 3 above, the *Australian Consumer Law* at all times applied to the construction and operation of the GR Agreement.
5. The GR Agreement contained implied terms to the effect that any person removing graffiti would be:
 - of adult age;
 - capable of speaking English to a reasonable level required of a commercial graffiti removalist;
 - properly trained in the application, use and disposal of Solvents;
 - properly trained in recognising and/or identifying any materials or fabrics likely to be adversely affected or damaged by the application and use of Solvents;
 - provided with and required to wear protective clothing;
 - capable of removing graffiti without undue shouting or abuse in a foreign language
6. The respondent has breached the express and implied terms such that the Claimant was contractually entitled to seek its loss and damage (as claimed) and also to refuse payment of the respondent’s Invoice No. SOC-001 (which amount is also disputed).

A copy of this letter has also been provided to IAMA together with all attached Exhibits Nos. 1 to 14.

Yours sincerely

Rod Brown

.....

Partner, Brown, Black & White, Lawyers

Cc: IAMA with enclosed Exhibits Nos. 1 to 14.

Exhibit 16

GOLD, SILVER & DIAMOND, LAWYERS

872 Collins Street, Melbourne, Vic, 3000

Telephone: (03) 9988 4777

Facsimile: (03) 9988 4778

Email: GSD@lawyers.com.au

Mr. R. Brown

Partner

Brown Black & White Lawyers

576 Bourke Street,

Melbourne 3000

17 March 2014

Dear Sir,

**Graffiti Removal Agreement between Industry First Pty Ltd and Social Conscience Pty Ltd;
Acceptance of Notice of Dispute**

We refer to your letter of 14 March 2014 which we have been instructed to accept as a Request for Arbitration and a Notice of Dispute from your client as Claimant.

The Respondent has no objection of a procedural nature, but resolutely denies all claims made by the Claimant in its Notice of Dispute (including in any exhibit thereto).

Further, for the purposes of arbitration, the respondent hereby counterclaims as an action on account and/or in debt for the amount of \$60,000 per its Invoice No. SOC-001 and all interest thereon at the rate of 12% per annum from Invoice date 15/01/2014 to the date of the arbitration.

However, just prior to receipt of your letter of 14 March 2014, we were provided with a Statutory Declaration of Mr. John Nerdle for the Respondent made on 12 March 2014. It is enclosed for your consideration and we will seek its admission for the purposes of the arbitration.

We confirm that a copy of this letter as Acceptance of Notice of Dispute has been forwarded to IAMA with Mr. Nerdle's Statutory Declaration.

Yours sincerely

Stirling Silver

.....

Partner

CC: IAMA with enclosed Statutory Declaration of Mr. J.M.A. Nerdle made 14/03/2014.

STATUTORY DECLARATION

I, **JOHNATHAN MARK ANTONY NERDLE**, Manager, of 1947 Mount Acheron Way, Kallista, in the State of Victoria do SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am employed by Industry First Pty Ltd of 100 Armidale Street, Dandenong.
2. On 7 January 2014 at about 8.45am, I received a telephone call at work from a person who identified herself to me as "Julie" from Social Conscience Pty Ltd.
3. Julie explained to me that her company's marquee, banners and signage has been subjected to a graffiti attack and required urgent graffiti removal and cleaning. She said the marquee was on the banks of the Yarra River at or near Southbank or Flinders Street Station and was being used for a function extending over that week.
4. I explained to Julie that we (i.e. Industry First) could arrange get a team there urgently for a fixed price of \$50,000 incl GST plus a \$10,000 premium for urgency. I told her the team could be there in about 3 hours once our standard graffiti removal contract was signed and returned because we had many other urgent demands elsewhere. We operate on a "first-in, best-dressed" contract return basis. I faxed the contract with some alterations to Julie at about 9.45am that day.
5. On 7 January 2014, I received the signed contract at about 2.00pm whereupon I immediately telephoned Joe Vasilopoulos at "Graffiti Gangbusters" of Berwick, Victoria who told me he would send his graffiti removal team to the marquee site. All our teams were busy elsewhere. We have a reciprocal private arrangement with "Graffiti Gangbusters" if and when our respective teams are occupied elsewhere.
6. So far as I am aware, Joe told me the next day that his team did a good job removing all the graffiti and there were no complaints about any left-over smudging which often occurs.
7. I did receive an email from a Mr. Arnold Pye the night before which appeared to be complaining about something, but it did not make sense to me as all the graffiti had been removed. In fact, I thought it was prank email from Joe pretending to be Pye (Joe often does that sort of thing).
8. On 8 January 2014 I sent out Invoice No, SOC-001 for \$60,000 to Social Conscience Pty Ltd for payment. It remains unpaid. I am surprised about the non-payment because Julie sounded polite on the phone and we discussed her interests in quilting for some time.

9. I also received a copy of an email from Mr. Pye on 9 January 2014 and, by that time, I knew it was not one of Joe's pranks. My boss, Mr. Gordon Gorman, attended to the email so far as I am aware.

10. I understand that someone at Social Conscience has since alleged that the urgency premium of \$10,000 was included in the total fee of \$50,000. That is not correct. I told Julie the Price would be \$50,000 including GST and **then** the premium, or words to that effect (i.e. not including GST and the premium).

DECLARED at Dandenong)
Victoria this 12th day of March)
2014) *John Nerdle*

Before Me

Cleo Pat Raah
Justice of the Peace
Dandenong

Exhibit 17

BROWN, BLACK & WHITE, LAWYERS

576 Bourke Street, Melbourne, Vic, 3000

Telephone: (03) 8888 7777

Facsimile: (03) 8888 7778

Email: brownblackwhite@bbwlaw.com.au

20 March 2014

Mr. S. Silver
Partner
Gold, Silver & Diamond, Lawyers
872 Collins Street
MELBOURNE 3000

Dear Stirling

**Graffiti Removal Agreement with Social Conscience Pty Ltd
Arbitration: Notice of Dispute & Acceptance**

We refer to your letter of 17 March 2014 and the enclosed Statutory Declaration of Mr. Nerdle.

We are instructed to not make any objection to the admission of the abovementioned Statutory Declaration provided our client has a fair opportunity to respond. In that regard we enclose a Statutory Declaration made by Ms. Crystal Pye yesterday.

Please confirm acceptance for arbitration purposes in due course.

Yours sincerely

Rod Brown

.....

Partner, Brown, Black & White, Lawyers

Cc: IAMA with enclosed Statutory Declaration of Ms. C. Pye.

STATUTORY DECLARATION

I, **CRYSTAL PEACHES PYE** , Company Director, of 47 Overwrought Avenue, Balwyn, in the State of Victoria do SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am a Director and shareholder of Social Conscience Pty Ltd together with my husband Arnold Pye.
2. On 7 January 2014 at about 8.55am, I received a telephone call from our company's receptionist, Julie Pratz, who told me that our company's large marquee erected near Southbank for an annual function had been the subject of a vast graffiti attack. Julie was vague on detail as my husband Arnold had apparently urgently phoned her, but he suffers a stutter when emotional.
3. Julie explained to me that the company's marquee, banners and signage required extremely urgent graffiti removal and cleaning. She said she had received a contract from Industry First Pty Ltd by fax, and that it contained all the details apparently discussed by her (in consultation with my husband) with a person I now know to be John Nerdle, and for me to return from my manicurist to the office to sign it immediately.
4. I then tried to speak with my husband by mobile but he was incapable of explaining anything to me.
5. Julie told me to sign the contract and I did so as I assumed she had discussed all contractual terms with my husband. I did not read the contract or look at Industry's website. I simply relied on Julie's assurances and then returned to my manicurist because some long false nails had split.
6. From about 10pm on 7 January 2014 to date our business has literally collapsed because, as I now know, Industry First apparently sent a team of children to remove the graffiti. All relevant details can be found in the local newspapers thereafter, including the confirmation that all of the removalists, except for the leader, were in fact underage.
7. I have spent countless hours trying to hold the business together, but our clients simply keep cancelling and/or withdrawing from events, conferences, and even our monthly publications. Social Conscience is close to insolvency and my husband and I have previously guaranteed all its debts in various ways.
8. Apparently on 1 March 2014, I was arrested for wandering around the Melbourne Zoo in my dressing gown, but I cannot recall anything. I have been told by medical staff at the Dandenong South Nerve Management Hospital that I had a break down. My medical costs were about \$27,000 which were paid by the company, subject to any hospital benefit refunds.

9. I confirm that I did not read or understand the Graffiti Removal Contract. I do not recall signing it. I do everything my husband tells me to do.

10. Julie Pratz resigned from Social Conscience shortly afterwards and moved to Nepal.

11. My husband still resides with me, but we hardly speak to each other as he spend most of his time fishing or sleeping. He will not discuss this matter with me at all.

DECLARED at Balwyn Victoria)
this 19th day of March 2014) *C.P. Pye*

Before Me

Donald Donaldson
Justice of the Peace
Dandenong

Exhibit 18

GOLD, SILVER & DIAMOND, LAWYERS

872 Collins Street, Melbourne, Vic, 3000

Telephone: (03) 9988 4777

Facsimile: (03) 9988 4778

Email: GSD@lawyers.com.au

Mr. R. Brown

Partner

Brown, Black & White Lawyers

576 Bourke Street,

Melbourne 3000

21 March 2014

Dear Sir,

**Graffiti Removal Agreement between Industry First Pty Ltd and Social Conscience Pty Ltd;
Acceptance of Notice of Dispute**

We refer to your letter of 20 March 2014 and will not object to the inclusion of the Statutory Declaration of Ms. Pye made on 19 March 2014 for arbitration purposes.

Yours sincerely

Stirling Silver

.....

Partner

CC: IAMA

CLARIFICATIONS

Please note the following:

1. The clarification immediately below Clarification 29 is to be referred to as Clarification 29a.
2. The clarification immediately below Clarification 37 is to be referred to as Clarification 37a.
3. Further clarification on Clarification 12: The inclusion of "@" was a typographical error. The reference to the website address in the actual contract was correct, that is, it does not include "@".
4. Further clarification on Clarifications 2 and 21: Industry's Graffiti Gobbler products come in different strengths.

No	Question	Clarification
1	Exhibit 6, Clause 3: in what order should the procedures be performed? Is the cold water to be applied 48 hours before the solvents are applied?	Water is to be applied after the application of the solvents.
2	Additionally, the contract states that the "solvents" include 'chemicals... packaged under Industry's brand name "Graffiti Gobbler"', are we to assume that the chemicals used by Graffiti Gangbusters (the sub-contractor) were packaged in Industry's "Graffiti Gobbler" brand name, such that those chemicals used were Industry's solvents?	The chemicals used by Graffiti Gangbusters were Industry's supplied chemicals packaged under Industry's brand name.
3	Under the damages claimed by the Claimant, how are the figures of "Lost Net Profits from Cancelled Tasmanian conference" and the "Lost Net Profits from Cancelled SA conference" determined?	Those profit estimates were based on historical profit figures from previous like conferences in those States.
4	What was the value of the net profits lost by the cancellation of the Melbourne	They were negligible and the Claimant decided not to claim them.

	conference, and is there a reason this is not included in the damages claimed by the Claimant?	
5	How readily available are the additional terms on Industry's website? How difficult are they to find? Are they prominent on the main page of Industry's website?	The hyperlink to the additional terms could be found at the bottom right on the main website page.
6	Are we to assume that the Statement of Facts is an agreed statement of facts between the parties?	Yes.
7	Was MS Crystal Pye suffering a nervous breakdown at the time of signing of the contract?	No.
8	Did either the children and/or the three injured workers from Social Conscience thoroughly wash their skin with clean water within 15 minutes of coming into contact with the Solvents?	Yes.
9	What were the exact ages of the children?	They were all 14 years of age.
10	Exhibit 14: How was the interest amount calculated?	The interest accrued daily. Refer to the contract for the interest rate.
11	Can the claimant introduce tortious claims against the respondent?	Only where the Tribunal allows it. The justification needs to be given and the permission needs to be sought before each hearing. The tribunal ultimately will wish to hear claims which could have an impact on the relevant contractual claims.
12	Is the '@' symbol on the website address a typographical error?	Yes
13	Is sub-clause 24(b) provided in Exhibit 14	

	the full wording of the clause?	<p>“24(a) Clause 24 of these Additional Terms and Conditions shall apply to any agreement in writing relating to, or pertaining to graffiti removal entered into by or for Industry First Pty Ltd.</p> <p>(b) In relation to any such agreement, where there is or may be any prospective liability to be borne or suffered by or on the part of Industry First Pty Ltd, then this clause limits any liability howsoever arising to \$20,000 including interest and costs.”</p>
14	Is the word “however” in Sub-clause 24(b) a typographical error? Should it be howsoever?	Yes. The word should read “howsoever”.
15	What is the full wording of sub-paragraph 26(4)(p)(ii)?	<p>The subparagraph reads:</p> <p>“(ii) Notwithstanding anything contained in the Australian Consumer Law, the provisions of the <i>Trade Practices Act 1974</i> (Cth) shall apply to any agreement in writing relating to, or pertaining to graffiti removal entered into by Industry First Pty Ltd.”</p>
16	‘Terms’ is defined as meaning additional terms. Is this a typographical error?	<p>In the Agreement, the defined expression “Terms” means only the Additional Terms and Conditions on the website.</p> <p>The undefined expression “terms” in Recital B means all and any terms and conditions of the Agreement generally.</p>
17	Clause 10 of the agreement refers to ‘The term’. Was this a typographical error?	No. This commonly used word, in context, means “duration”.
18	Exhibit 10 states ‘my company had to (d) send three employees to a doctor to check for skin irritation’. In Exhibit 7, Arnold references the events displayed on the news, stating members of the team were carried away. Were the employees	Exhibit 10 refers to the employees of Social Conscience while Exhibit 7 refers to Graffiti Gangbusters’ team.

	that were taken to hospital employees of Social Conscience, Graffiti Gangbusters or of both?	
19	Are the marquee and banners property of Social Conscience?	Yes.
20	Is the latex and Teflon porous or non-porous?	They were porous.
21	What were the exact chemicals used on the marquees, banners and signage? Exhibit 7 demonstrates that the Claimant believed them to be “unknown liquids with the attributes of sulphuric acid”	Although the team brought a combination of different graffiti removal products into the site, they decided to use the strongest product which in their experience has fully removed graffiti in the shortest amount of time. This product contains a mixture of hydrofluoric acid, low odour solvents, caustics additives and emulsifying detergents.
22	Was the latex that was used in the Social Conscience’s signage and banners synthetic or natural latex?	Synthetic.
23	Does Crystal/ Arnold have a history of mental illness or psychiatric injury?	No.
24	Did the children and the supervisor provided by Graffiti Gangbusters hold Australian Citizenships?	Yes.
25	After the application of the solvents, were the marquees hosed down with water?	Yes.
26	Did Graffiti Gangbusters manufacture this by combining individual chemicals and solutions and was this sold under a trade name?	See item 21 above. A product of Industry First Pty Ltd which is and was also used by Graffiti Gangbusters for its own business.

27	Did the graffiti removalists wear any protective equipment?	Yes, work boots and Graffiti Gangbusters cotton/polyester “hoodies” with embossed “Graffiti-Gang” company logos, over normal day-to-day clothing.
28	What was the nature of the reciprocal arrangement between Industry and Graffiti Gangbusters?	As and when required (if teams are available). No formal arrangements or agreements.
29	How many times has the reciprocal arrangement between Industry and Graffiti Gangbusters been utilised?	The arrangement was entered into in 2012 and since then Graffiti Gangbusters has been utilised four times. In one of those times, there was a minor incident involving one of Graffiti Gangbusters’ workers who received some burns on his hands. The incident was investigated by Graffiti Gangbuster and it was found that the protective clothing was not of a good quality and had failed to protect the worker from possible exposure to chemicals. The worker decided to quit soon after.
29a	If the arrangement had been utilised before, was the same team deployed by Graffiti Gangbuster to fulfil any removal requests?	No. Team members vary from time to time.
30	Does Industry First provide services to households or solely commercial entities?	Industry First caters for both markets.
31	Was security employed by Social Conscience to guard the marquee or the conference, including at night?	No.
32	Did Social Conscience insure the marquee?	No.
33	How many TV News crews and Newspaper journalists were present at the conference location at 5.30pm?	Many.

34	How many news crews and journalists were present prior to the cleanup crew arriving?	Many.
35	How many were present after it became known that Graffiti Gangbusters were employing children?	Many.
36	Had the future conferences been paid for in any way?	No. Invitations and advertisements had been sent out only a few days beforehand.
37	Is John Nerdle's current position Graffiti Co-ordinator or is he manager as indicated in his statutory declaration?	He was promoted to Manager on or about 1 March 2014.
37a	Were permits issued for the children to work?	Yes.
38	Was the damage to the Teflon a result of the chemicals or is this an error in the question?	Chemical (solvents) damage.
39	Has the whole marquee been destroyed or is it only the "high intensity stretch yarn" that has been destroyed rather than whole marquee including its frame?	All damaged and disposed of in the turmoil of events.
40	Please clarify the composition of the high intensity stretch yarn material used to construct the marquee.	A blended 80/20% mixture of continuous textile filaments and thermoplastic filaments, lightly twisted and heat set for durability purposes.
41	Does the issue of quantum need to be addressed when determining remedies?	No. Submissions on this will be heard at a later date.
42	Were the graffiti removalists properly trained?	Industry First enters into reciprocal agreements with a handful of

		<p>subcontractors who are fully licensed to provide all the relevant services associated with the removal of graffiti.</p> <p>Industry First also carries a random audit on its sub-contractors to ensure compliance with Industry First's stringent OH&S training requirements.</p> <p>No audit was however been undertaken on Graffiti Gangbusters because it was not a subcontractor of Industry First. Industry First simply invoiced Social Conscience per its Agreement and, in turn Graffiti Gangbusters would subsequently send an invoice (at its own rates) to Industry First Pty Ltd.</p> <p>Industry First soon expects an invoice from Graffiti Gangbusters in the range of \$37,000 to \$40,000 per previous reciprocal experiences.</p>
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*The 4th Michael Kirby Contract Law
Moot
Melbourne, Australia*

29 September – 2 October 2014

THE RULES

Organised by:
College of Law and Justice, Victoria University

Moot Co-ordinator
Vivi.Tan@vu.edu.au
Ph: (03) 9919 1872



INTRODUCTION

1. The Hon. Michael Kirby Contract Law Moot is an annual competition for teams representing law schools in Australia. The inaugural moot was held in September 2011 with the Hon. Michael Kirby as the Chair Arbitrator presiding in the final round. He has presided in all competitions ever since.
2. This year, the moot is intended to simulate arbitration for parties in a contractual law dispute. Students are encouraged to develop and improve their practical legal skills as well as their comprehension of contract law.
3. The moot is designed to be an educational program with many facets in the form of a competition.
4. The moot consists of the preparation of a written memorandum by the claimant, a memorandum by the respondent and oral hearings.
5. The oral hearings will be held in Melbourne, Victoria, at the College of Law and Justice and other designated venues, which may include court rooms.
6. The panel of arbitrators consists of legal practitioners including current and past judges, barristers, arbitrators, mediators as well as academics.

RULES

I. Registration

1. **Registration.** Participants must register by completing the registration form available on the Kirby Moot website, www.vukirbymoot.com or, as advised by the moot co-ordinator, any other website/ page set up for this event **before Friday midnight, 29th August 2014.**
2. A later date for registration may be negotiated with the moot co-ordinator if, in the opinion of the moot co-ordinator, there remains sufficient time for a team to adequately prepare for the moot.
3. **Registration fee.** The registration fee for the moot is **\$550 (GST Inclusive) per team.**
4. **Awards Dinner.** There will be a cost of **\$55 per person (GST Inclusive)** for attending the Awards Dinner. This applies to both students and coaches.
5. **Payment.** Once the registration form and the authorization form are submitted and

processed, a receipt will be sent to the Team Contact person. Payment is to be made using **Credit Card**.

6. **Withdrawing from competition.** If a team decides to withdraw from the competition prior to **Friday midnight, 29th August 2014**, the team's registration fee will be refunded in full.
7. **Functions.** Registration includes an invitation for all four (4) team members and accompanying coaches to an opening briefing on **Monday, 29th September 2014**.
8. **Registration form.** The registration form includes space for the name and address of the Team Contact Person. The Team Contact Person can be the Team Coach or a member of the team itself. All communications concerning the moot will automatically be sent by e-mail to that person. It is that person's responsibility to distribute all relevant material to the team. The postal address given for the Team Contact Person must be one that will be valid for any certificates or other material to be sent to the team after the moot. Any changes in the data on the registration form should be sent by e-mail to the moot co-ordinator.
9. **The Team Contact Person.** The Team Contact Person is expected to have an email and internet access, to check the moot website and email frequently, especially as the oral rounds approaches. Communication between the team and the moot co-ordinator through anyone other than the Team Contact Person is at the risk of the team.

II. The Problem

15. **Facts.** The facts relevant to the dispute are given in the Problem. No additional facts may be introduced into the moot unless they are a logical and necessary extension of the given facts or are publicly available true facts or are a part of any given clarifications.
16. Statements of facts alleged by a team that do not qualify under paragraph 15 are not permitted. Therefore, basing an argument on any such alleged facts will be considered to be in breach of the rules of the moot.
17. **Clarifications.** Requests for clarification of the Problem may be sent to the moot co-ordinator prior to **Friday midnight, 15th August 2014**. Requests should be limited to matters which would appear to have legal significance in the context of the Problem. A request must also be accompanied with a short explanation of the expected significance of the clarification. Any request that does not contain such an explanation may be ignored.
18. Any clarifications issued by the Arbitral Tribunal (moot co-ordinator) will become part of the Problem and will be posted online.

III. Memoranda

19. **Submission.** Each team must submit a memorandum in support of the legal position of the claimant and the respondent.
20. **Submission date.** The *Claimant* memorandum must be submitted via the memorial upload function on the Kirby Moot website. The document must be in PDF format and be uploaded before **Friday midnight, 5th September 2014**. Successful submission will be acknowledged. The *Respondent* memorandum must be submitted in the same fashion before **Friday midnight, 12th September 2014**.
21. **Only memoranda received by the deadline will be considered for the memoranda prize or honourable mention.** Teams who submit their memoranda up to 48 hours late will still be permitted to compete in the oral rounds.
22. **Distribution of memoranda.** The moot co-ordinator will make the memoranda available for each team.
23. **Plagiarism.** Any memorandum that includes text from any source must set out that text in quotation marks and provide citation to the source. In addition, care is to be taken when working with other teams within the same institution to avoid collusion of work. Failure to give a proper citation constitutes plagiarism. Any memorandum which violates these aspects of the rule will automatically not be considered for any prize or honourable mention.
24. **Formatting requirements.** The following formatting requirements are to be complied with. Memorandum which violates these requirements will not be considered for any prize or honourable mention.
 - a. Paragraphs must be numbered.
 - b. The memoranda are intended to be of practical use to the arbitrators in deciding the dispute. They are not intended to be scholarly dissertations on the relevant law.
 - c. Citations in the memoranda should be limited to those that advance the argument being made. Citations must be in footnotes (**not endnotes**) and must be compliant with the Australian Guide to Legal Citation.
 - d. Memoranda must not be longer than fifteen (15) A4 typed pages, including any statement of facts, argument or discussion and any conclusion and **excluding** the cover page and the table of content.
 - e. No type style smaller than 12 points may be used. The memorandum should be

typed at 1.5 line-spacing.

- f. The name of the team and whether the memorandum is for the claimant or for the respondent must appear prominently on the outside cover page so that it can be easily read without opening the memorandum.
 - g. All components of the memorandum, including the cover page and contents pages are to be part of the one PDF document.
25. **Memorandum revision.** A memorandum may not be revised once it has been submitted, including for missing pages, typographical or grammatical errors or for problems caused by faulty computer software. Sufficient time should be left prior to submission to verify the text to be submitted.
26. **Scoring of memoranda.** A designated assessor will assess and score (out of 50) each memorandum on the basis of the quality of the analysis, persuasiveness of arguments, thoroughness of research, clarity of the writing and adherence to the elements of style as stated in paragraph 24.
27. **Elimination rounds.** Teams which progress to the elimination rounds will not be provided with their opponents' memoranda. By this stage, it is expected that teams would have fully developed their arguments for each side of the case. The only *exception* is for the Final Round where an exchange of summary of arguments has to take place according to the direction of the moot co-ordinator.
28. **Copyright.** Once submitted, all memoranda shall be the property of the Moot Organiser and may be copyrighted accordingly.
29. **Exchange of memoranda.** Teams may exchange memoranda after the date for submission of both memoranda but not prior to that date.

IV. Teams

30. **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. There is a limit of **four (4) students** who may be members of a team. There is also a limit of **three (3) teams** from the same school/institution. Universities sending three teams are expected to send an accompanying coach to Melbourne with the teams.
31. **Eligibility.** Students who have completed their studies (officially graduated) as at the eligibility date (29th September 2014) are unable to be part of a team. No student who has been licensed to practise law is eligible to participate.
32. **Participation.** Only members of the team may participate in preparation of the

memoranda for claimant and respondent.

33. **Former participants.** Teams may include former participants.
34. **List of team members.** Where possible, the list of team members must be submitted when the team is registering. Later notification can be accepted as long as it is before the closing of the registration. Certificates of participation for participating team members will be prepared based on the list submitted. The list may also include team coaches who wish to receive a certificate of participation. Changes in the composition of the team must be specifically and promptly communicated to the moot co-ordinator.
35. **Oral hearings.** In each of the oral hearings, two members of the team will present the argument. **Other members of the team must not aid them during the argument in any way.** Different members of the team may participate in the different hearings. However, to be eligible for prizes and honourable mention for best individual oralist (both in the general and final rounds), a participant must have argued at least once for the claimant and once for the respondent in each of the round.

V. Oral Hearings

36. **Venues.** The oral hearings will be held primarily at the Victoria University, College of Law and Justice, City Queen campus building, located at 295 Queen Street, Melbourne, Victoria. Students will be advised of the location of the final hearing closer to the date.
37. **Schedule of rounds.** The final scheduling of the General Round will be published via the Kirby Moot website closer to the oral hearings. Further announcements relating to each subsequent oral round will be made through email(s) to the relevant teams as well as online and via social media.
38. **Duration of oral presentation.** The oral presentation of each team is, in principle, thirty (30) minutes. The team should allocate equitably the time available to the two individual speakers. However, the arbitral tribunal may extend the time limit so long as neither team is allowed more than forty-five (45) minutes to present its argument, including the time necessary to answer the questions of the tribunal. It will be the responsibility of the tribunal to ensure that the teams are treated fairly.
39. **Arguments.** In their first hearing, claimants and respondents should expect to rely on the arguments given in their written memoranda or to be prepared to justify why those arguments have been abandoned. However, speakers are encouraged, in subsequent hearings, to improve their arguments and the arbitrators will take this into account.
40. **Electronic equipment.** Speakers are not allowed to use laptops and tablets.
41. **Arbitrators.** Arbitrators will be drawn from legal practitioners including current and past

judges, barristers, arbitrators, mediators as well as academics. However if need be, and at the sole discretion of the moot co-ordinator, team coaches maybe asked to judge. If this occurs in the general rounds, the team coach will not be permitted to arbitrate a team that will be competing against their university in the general rounds.

42. **Questions from arbitrators.** The arbitrators are requested to act during the oral hearings the way 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 (or judge) 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. Therefore, teams should be prepared for both styles.
43. **Order of presentation.** Normally, the claimant will argue its claims before the respondent is permitted to argue. Some panels of arbitrators will ask one team to present its argument on all of the issues before the other team is permitted to present its arguments. Other panels of arbitrators will ask both teams to argue each of the issues separately. When presenting their arguments, **the speakers must be seated.**
44. **Rebuttal.** The arbitrators will decide whether rebuttal arguments will be permitted. You must notify the arbitral tribunal of any designated time for rebuttal.
45. **Exhibits. No exhibits may be used during the oral arguments that do not come directly from the Problem.** Exhibits that are designed to clarify time sequences (or anything similar to a Bench Brief) may be used, **but only if the arbitrators and the opposing team are in agreement.** For technical reasons, the exhibits may not consist of overhead or PowerPoint projections or require the use of a stand.
46. **Scoring.** Each arbitrator will score each of the speakers on a scale of **30 to 50.** The scores of the two speakers will be added to form the team score for that argument. Therefore, each team could score a maximum of 100 points per arbitrator per argument. 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 subsequently hear. Although they will be aware of their own evaluation of the memorandum, they will be without knowledge of the evaluations given by other arbitrators.
47. **Power Pairing.** The top 16 teams with the highest score in the general rounds will progress to the elimination rounds based on a power pairing system. The teams will be paired so that the first and sixteenth, second and fifteenth, etc. will argue against one another. Using this system and based on the ranking of each team, it may be inevitable that a team from a particular school/institution faces another team from the same school/institution. The same arrangement will continue to be used in all the subsequent final rounds. Moreover, team ranking from the general rounds will continue through all

remaining elimination rounds. The ranking of a team in the General Rounds will not be divulged until after the close of the Moot and then only to the team concerned. In other words, only the *total speaking scores* will be released to the individual teams after the General Rounds.

48. **Elimination Rounds.** In the elimination rounds (and in all the subsequent final rounds), each arbitrator will continue to score each of the speakers on a scale of **25 to 50**. The winner of each moot will be determined by a unanimous decision (based on scores) or by a majority decision of the arbitral tribunal.
49. **Determination of sides.** If the two teams in any of the elimination rounds, including the final round, argued against one another in the general rounds, they will argue for the opposite party in the elimination round. If they did not argue against one another in the general rounds, the determination as to which team will be claimant and which will be respondent in the first elimination round will be determined by lot.

In the following rounds, when one of the two teams in the preceding round was claimant and the other was respondent, they will argue for the opposite party for which they argued in that preceding round. If both teams argued for the claimant or both argued for the respondent in the preceding round, the decision as to the side will be determined by lot.

49. **Winning team.** The winning team of the oral phase of the moot is the team that wins the final round.

VI. Assistance

51. **Written memorandum.** Although the students should do all the research and writing of the memorandum themselves- without assistance from anyone who is not a student member of the team- faculty advisors, coaches and others may help identify the issues, comment on the persuasiveness of the arguments the students have made in drafts and, when necessary, suggest other arguments the students might consider employing. However, the final submitted memorandum must be that of the students and not their advisors.
52. **Oral hearings.** 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. Teams are however not permitted to have practice moots with their opponents in the General Rounds.

53. One purpose of the moot is to develop students' advocacy skills. Observance of the performance of other participants is therefore encouraged. However, no team, or friend or relatives of members of a team are permitted to attend arguments of other teams against which it is scheduled to meet in the general rounds. **Violation of this rule will disqualify a team from participation in the elimination rounds. This rule will be applied even if attendance at an argument was inadvertent. The only inevitable exception to this rule is for volunteers who are Victoria University students.**
54. **Filming or recording of arguments.** Filming of arguments is permitted if done with the agreement of the other team and the arbitrators. Filming must be done in such a way as to not disturb the hearings.

VII. Awards

56. The awards given in the moot are:
- a. Award for the Winning Team in the Final Rounds
 - b. Award for the Runner Up Team in the Final Rounds
 - c. Award for the Best Individual Oralist in the General Rounds
 - d. Award for the Best Individual Oralist in the Final Rounds
 - e. Award for Best Written Memorandum for Claimant
 - f. Award for Best Written Memorandum for Respondent
57. Honourable mentions will be made for:
- a. The Highest Scored Team in the General Rounds
 - b. The Highest Scored Oralist in the General Rounds
 - c. The Highest Scored Oralist in the Final Rounds
 - d. Best Written Memorandum for Claimant
 - e. Best Written Memorandum for Respondent
58. Certificates will be sent up to two months after the close of the moot to the relevant team's contact person.

VIII. The Moot Organiser

59. For interpretation of these rules and other enquiries relating to the moot, an email should be sent to the moot co-ordinator.