

Mock Mediation Manual 2023

2023 Mock Mediation Manual



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1. Competition Conditions of Entry

1. The 2023 mock mediation competition ('the Competition') is a game of skill
2. The promoter is The Law Society of New South Wales, 170 Phillip Street, Sydney NSW 2000 ACN 000 000 699, ph. (02) 9926 0333 ("Promoter").
3. By applying to enter the Competition, all applicants will be deemed to have accepted and agreed to be bound by these conditions of entry.

4. Who may apply to enter?

- a. The Competition is open to students in years 9 and 10.
- b. Each school may enter only one team of six students. The performance of each of the six students will contribute to the total score of the team, and for this reason it is suggested that teams prepare three reserves so that last minute stand-ins are available.

5. Application process. To participate in the Competition, applicants must:

- a. complete the nominated registration form by Monday, 27 February 2023; and
- b. pay the registration fee noted on the registration form for the Competition by Monday, 27 February 2023.

Whilst all efforts will be made to allow eligible applicants to participate in the Competition, the Promoter reserves the right to reject any entry for the Competition. Unsuccessful applicants will be refunded the registration fee.

The Promoter reserves the right to permit additional teams to participate in the Competition past the deadline of Monday 27 February 2023 in its sole discretion.

6. Disqualification. The promoter reserves the right to disqualify any applicant from participating in the Competition:

- a. if an applicant is in breach of these conditions of entry or for breaches of the rules (as stipulated in the Competition Manual) where disqualification is stipulated as a potential penalty;
- b. on reasonable grounds as determined in the Promoter's sole discretion; and/or
- c. if the promoter forms the reasonable opinion that an applicant is putting the integrity of the Competition at risk.

Whilst every effort will be made to ensure that during a trial there is no cheating, the responsibility for preventing its occurrence rests with the schools, and not the Mock Law Coordinator or the adjudicators.

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'Cheating' in this context refers to participants reading unauthorised notes from a laptop/phone, students reading from their scenarios/confidential facts rather than giving their performance from memory, or coaches, teachers or other persons present at a mock mediation giving direction or advice to the participants during the course of the Competition.

If a school is found to have cheated, the Mock Law Coordinator can take action in their sole discretion to deduct points or to disqualify the team from further participation in the Competition for that year.

7. Logistics:

- a. Schools will bear all costs of participating in the Competition, including travel and accommodation expenses.
- b. Mock mediations will be held virtually except for the grand final which will be held in person subject to any restrictions due to government regulations.
- c. If a school is unable to comply with these conditions of entry and wishes to withdraw from the Competition, it must do so within a week of registering to receive a full refund.
- d. Materials for the Competition are password protected and accessible on the [Competition website](#). All schools must provide an email address to receive this information. If a school has not provided an email address or has provided an incorrect email address, the promoter will not be responsible for that school missing out on updates and changes to scenario etc.
- e. Each round must be completed by the date nominated by the Promoter and the results forwarded to the Mock Law Coordinator on or before that date. Any team which does not complete a round by the due date, without prior permission from the Mock Law Coordinator will be disqualified.
- f. The Adjudicator's score is final and no correspondence will be entered into by the Law Society.
- g. During a virtual mediation, students must give their performance from memory and coaches, teachers, and other persons present at a mock mediation must not give advice, direction or assistance to any of the participants. Mobile telephones, laptops and/or tablets must not be used by students under any circumstance except to connect online in order to participate in a virtual mediation.
- h. Any disputes between participants, which are unable to be resolved, will be determined by the promoter. The promoter's decision will be final.
- i. The Law Society may arrange for the mock mediation to be video or audio recorded and will own the recording in perpetuity for use in all formats and media.

8. **Privacy:** The promoter respects the privacy and confidentiality of personal information applicants provide. How the promoter handles applicants' personal information is explained in its privacy

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policy at <https://www.lawsociety.com.au/privacy-policy> and its personal information collection notice at <https://www.lawsociety.com.au/privacy-policy/personal-information-collection-notice>.

9. **Force majeure:** If for any reason the Competition is not capable of running as planned, including by reason of epidemic, pandemic, computer virus, bugs, tampering, unauthorised intervention, fraud, technical failures or any other causes beyond the control of the promoter, the promoter reserves the right in its sole discretion to cancel, terminate, modify, postpone or suspend the Competition.
10. **Amendment and variation:** The promoter:
 - a. reserves the right to amend these conditions of entry from time to time; and
 - b. reserves the right to vary any element of the Competition at any point if deemed necessary and/or in the best interests of the Competition.This includes varying the Competition timetable. If any changes are made, schools will be notified by email.
11. **Limitation of liability:** To the extent permitted by law neither the promoter, its employees, agents, contractors or sub-contractors will be liable to any school or applicant for any loss or damage (including any consequential loss) arising out of their participation in the Competition including but not limited to:
 - a. late, lost or misdirected emails or mail;
 - b. inaccurate or incorrect transcription of entry information;
 - c. non-receipt of entries for any reason;
 - d. problems or technical failures of any kind;
 - e. unavailability or inaccessibility of any service or website;
 - f. unauthorised human intervention in any part of the Competition;
 - g. electronic or human error; or
 - h. any damage or loss (direct or indirect) suffered by reason of any act or omission of the promoter, its employees or contractors in relation to entry into the Competition.
12. **Exclusion:** To the extent permitted by the law, the promoter excludes all conditions or warranties unless they are expressly set out in these conditions of entry.
13. **Indemnity:** Each applicant indemnifies and holds harmless the promoter, its employees, agents, contractors and subcontractors from any claim, cost, demand, liability or damage (including legal costs, professional costs and other expenses on a full indemnity basis) incurred by the Promoter, its employees, agents, contractors and sub-contractors arising out of or in connection with (but not limited to):

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- a. any breach of these conditions of entry by the applicant;
- b. the applicant's entry into the Competition;
- c. any injury or damage sustained due to any act or omission by the applicant; or
- d. any damage the applicant causes to the promoter.

14. **Governing law:** These conditions of entry are governed by the laws of New South Wales. The promoter and the applicants irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state and courts entitled to hear appeals from those courts.

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2. About the Competition

The Mock Mediation Competition provides students with an opportunity to experience first-hand the benefits of alternative dispute resolution and gain the relevant skills to resolve conflicts in a non-adversarial way such as active listening, self awareness, questioning, analysing, empathising, speaking clearly and logically and creative thinking. The problem-solving process is designed to encourage the parties to identify the issue in dispute, consider options and work towards an agreement that will meet the needs of all parties.

With the assistance of volunteers from the legal profession, the competition aims to teach students important values such as respect for self and others, accepting difference, personal integrity and a belief that conflict, if handled properly, can result in a change for the better.

The objectives of the competition are:

Students

- Create an awareness of their responsibilities when dealing with others
- Acknowledge the increasing use of mediation by courts and the community, and equip students with the skills necessary to participate in a mediation process
- Further personal development and self-improvement
- Increase self-esteem
- Learn to manage conflict in a productive way
- Learn and enhance communication skills

Schools

- Reduce conflict and tension in the school environment
- Modify aggressive behaviour
- Maximise the opportunity for learning for all students
- Increase recognition of diversity and tolerance

Community

- Reduce aggressive behaviour resulting from poor conflict management skills
- Promote open communication to resolve contentious issues
- Maximise the benefits of cooperative problem-solving
- Acknowledge the increasing use of mediation by the courts and the community and encourage mediation and negotiation as an alternative to litigation
- Develop relevant occupational skills

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3. Competition structure

The competition is open to students enrolled in Years 9 and 10 and each participating school may enter a team of six students consisting of two mediators and four participants (parties A1, A2, B1 and B2). Schools are also permitted to have up to three reserves.

The competition consists of six rounds. Each competing school will participate in the first three rounds. Teams are scored each round and these scores are added together to determine the top eight schools who move forward to compete in the final rounds on a knock out basis.

At the start of each round, the Mock Law Coordinator will email all schools to notify them of their Adjudicator allocations. These are non-negotiable and schools are not permitted to arrange their own Adjudicator without prior permission from the Law Society. Once confirmed, it is the school's responsibility to reach out to their Adjudicator to arrange a time and date for the mediation to take place. This can be during or outside of school hours. Schools must be flexible as to mediation dates and times; volunteer lawyers have very busy schedules and students have many school commitments. Flexibility is the key in identifying convenient times.

The scenario for the round will be posted on the ['Mock Law Competition Updates' webpage](#) on the first day of each round. Corresponding Confidential Facts will be provided by the Adjudicator at the start of each mediation. Adjudicators can send this to the teacher via email at the start of the mediation. Parties will then have ten minutes reading time before commencing the mediation.

Schools must complete the round and return the scoresheet to the Mock Law Coordinator by the date specified in the competition timetable available on the [Mock Mediation Competition homepage](#). Any team that has not submitted their scoresheet by this date will forfeit.

The decision of the adjudicators in each round is final and no appeals will be entertained.

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4. Roles and Responsibilities

4.1 Schools

One member of the school's staff must remain with the team at all times during the mediation including any private meetings and any discussions had by the Adjudicator with the students. This can be any member of the school's staff and does not have to be the staff member in charge of the school's Mock Mediation team.

Prior to commencement of the mediation, teachers have the opportunity to raise any issues with the Adjudicator.

Teams must not access the confidential facts prior to the mediation. This action may lead to disqualification.

Once the mediation has commenced, students may not be assisted by anyone outside the team including teachers, coaches and parents. This includes verbal and non-verbal prompting.

Any breach of the competition rules may lead to the school's disqualification from the competition.

Disputes or arguments with Adjudicator are not permitted at any time.

4.1.1 Mediators

The role of the mediators is a neutral one. They must not take sides or give their opinion and they are not responsible for making any decisions. In keeping with the facilitative model of mediation, the mediators facilitate the process by acknowledging emotions, creating clear communication channels, using careful questioning to get all the hidden facts on the table, helping the parties to generate options, work towards agreements and then check that any agreement is workable. The role of the mediator is a shared role. They should cooperate with each other, so one mediator might be asking questions of the parties while the other mediator might be noting the issues raised or the options generated.

Care should be taken to ensure both mediators contribute to all sections of the mediation so they can achieve maximum scores. At the same time, one of the core concepts of mediation which needs to be observed is that the parties talk directly to each other. At all times throughout the mediation process the mediators need to encourage the parties to have the courage to take responsibility for the form of the resolution reached.

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4.1.2 Parties

Two students will act as Party A (A1 and A2) and two play Party B (B1 and B2).

Each team member should make an opening statement. The two students in Party A should form a cohesive unit, as should the two students in Party B. However, individual team members often have different interests that need to be identified and met. Maximum scores are obtained when all four students contribute equally to the mediation. The contribution needs to be in keeping with the character of the party.

The parties should restrict themselves to the fact situation prepared. They will score points for their characterisation and authenticity. Too much rehearsal will make it difficult for the parties to incorporate their confidential facts. They should display any emotions called for by the role-play such as confusion, anger, grief, bitterness, disbelief or reluctance to speak.

The mediators should be given the opportunity to display skills and intervene to acknowledge the emotion and encourage the party to participate positively. The interplay between the parties and the mediators should not give an impression that the preparation and team work has been scripted.

The parties need to display their communication, option-generating, problem-solving, negotiation and assertiveness skills. These skills may be shown to evolve with the encouragement and facilitation of the mediators. It is often difficult to find the fine line between being too compliant, offering no resistance and being too stubborn which prevents the other students from engaging in productive discussion. Students can remain authentic to their character by participating in the various stages of the mediation process and clearly showing changes they experience as the mediation progresses.

4.2 Adjudicators

Adjudicators are required to review the manual before each mediation.

Adjudicators will be allocated to schools in the rounds that they have indicated they are available. The Mock Law Coordinator will send allocated Adjudicators a roster before the start of each round to confirm their availability for that round.

As mediations will be taking place virtually, other than the Grand Final, schools will be paired with a variety of Adjudicators from across New South Wales and not necessarily from the schools' own regional area.

Once confirmed, the Adjudicator will be sent the round scenario and confidential facts and the scoresheet. Adjudicators are only to send the school the confidential facts at the start of the

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mediation. These can be sent via email to the teacher. Once received by the students, they commence ten minutes of reading time before starting the mediation.

The Adjudicator's details will be passed onto the school. It is the school's responsibility to organise the date and time for the mediation.

Schools must be flexible as to mediation dates and times to accommodate Adjudicators' schedules. Mediations can be held before, during or after school hours.

Adjudicators are required to score each mediation and send the completed scoresheet to the Mock Law Coordinator at the conclusion of the mediation and prior to the end of the round as specified in the competition timetable, available on the [competition homepage](#).

Adjudicators are reminded that competition is intended to be educational and that any feedback they provide is to help build the students' confidence and to assist them to improve their performance in subsequent rounds.

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5. Preparing for the Competition

5.1 Practical arrangements and preparation

Each round should take about 100 minutes. The mediation itself will take 80 minutes with 10 minutes time for the parties to read the confidential facts. 20 minutes should be allowed afterwards for the adjudicators to talk with the students about their performance and answer any questions they have. Students cannot be coached or assisted in any way during the mediation.

Before the mediation, the mediators should discuss where they would like each party to sit and how the room should be set up. If they wish to make notes during the mediation e.g. with a whiteboard, chalkboard or butchers' paper, this should be set up before the start of the mediation. These notes are an important consideration for the Adjudicator when making an assessment towards the final score.

5.2 Virtual Mediations

This year, each round of the competition is to be held virtually other than the Grand Final.

Schools should ensure that they have conducted a test mediation. This is to ensure that all students can be seen and heard by the Adjudicators and that you are not likely to encounter any technical issues during your mediation.

Please ensure that you have shared the online details with your Adjudicator in advance of the mediation and agreed on the procedure for sharing the confidential facts. It is recommended that these are emailed by the Adjudicator to the teacher of the school at the start of the mediation for printing and distributing to the students. This must be done on camera and in front of the Adjudicator.

It is preferred that the team appears via one online connection with the camera capturing all of the students rather than each individual team member joining separately where possible.

5.3 Fact situation

The Law Society prepares the scenario and confidential facts for each round. These are the copyright of the Law Society and must not be amended unless instructed by the Law Society. The scenario for each round is published on the '[Mock Law Competition Updates](#)' webpage at the beginning of each round. The scenario will allow the mediators and both parties to become familiar with the dispute. The mediator who starts the opening statement should not read out the scenario.

At the start of each round, each team will be provided with separate confidential facts for Party A and Party B and will have ten minutes to read them before the start of the mediation. Once these

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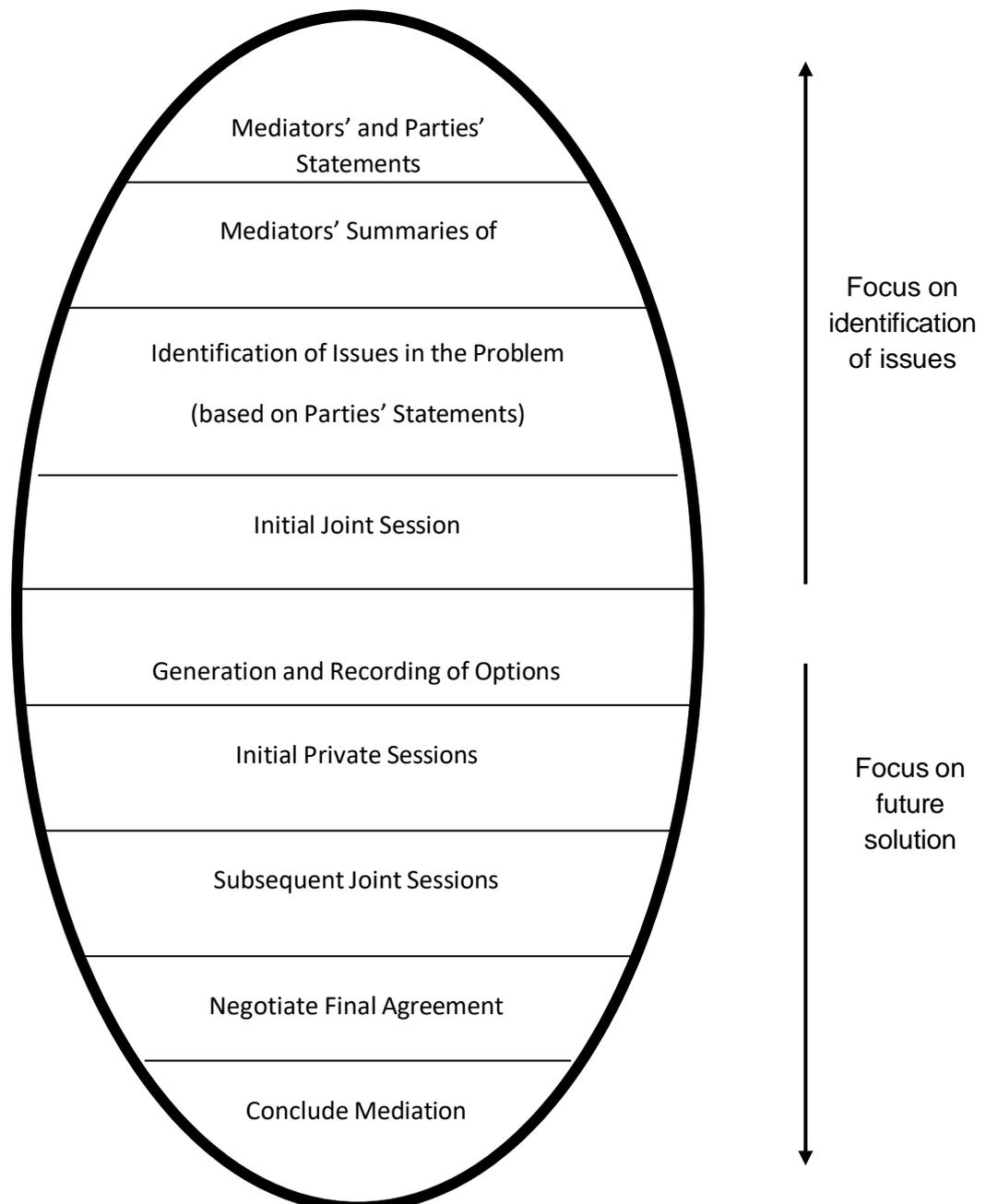
facts have been distributed, Party A and Party B must be kept separate. The mediators should not speak with either party until the mediation commences. Party A1 and A2 can exchange their confidential facts if they choose to, but they must not disclose them to Party B. Similarly, Party B1 and B2 may share their confidential facts but not disclose them to Party A.

The confidential facts are designed to give the parties an opportunity to play their role in a realistic way and will allow the mediators to display their listening and questioning skills. While both parties can disclose all their confidential facts immediately should they choose, this would minimise the total number of points that can be scored by the team because it will mask the level of conflict that usually arises in the mediation. The confidential facts will allow options that were not obvious from the scenario to be generated. For this reason preparation should focus on the skills and processes of the team, rather than the substance of the dispute.

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6. Mediation processes

There are many mediation models, and schools are encouraged to find out more about them. For the purposes of this competition, students will be scored on their demonstration of the facilitative model of mediation. This model provides that mediators encourage the parties to reach their own voluntary solution rather than making recommendations or providing a decision.



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6.1 Time Management

The mediation is limited by time. Teams can score well by exhibiting good skills in the early part of the process. Total agreement is not essential, however, some scores are allocated to a partial or complete agreement and the mediators will only be given scores for this section if this stage of the process is reached.

6.2 Private Sessions

Private Sessions are held to consider any new information, discuss options raised, explore future options and think about whether a potential agreement would work (i.e. reality testing). These can be held with parties individually, or as Party A collectively, and Party B collectively. Schools should consider their timing when making this decision.

6.3 Mediation Conclusion

- Writing up the agreement, for the conclusion of the mediation, if an agreement is reached. Alternatively, writing up the agreement to reflect the stage reached at the mediation session.
- Bringing the mediation or session to a close.

6.4 After the Mediation

It is important when the mediation is completed that the students are given an opportunity to talk amongst themselves, guided by their teacher, to identify what they did well during the mediation and what they could have done differently. One way to do this is for the teacher to ask each student to introduce themselves to each other by their real names and to say something they personally think about the dispute, which is different from what their characters would have said.

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7. Hints

7.1 Parties

Parties should stay in character as much as possible, but should do so in a balanced way. They need to provide challenges to mediators, but as the session progresses should not make it so difficult that the mediators spend all their time controlling parties rather than being given opportunities to display skills/strategies. It may be within the role for the party to remain quiet and subdued. Adjudicators should be aware that if this is the case the party should not be penalised when being scored.

7.2 Private Sessions

Party A and Party B should each have a private session of equal time. Mediators should be responsive to the needs of individual parties when proposing to move to private sessions. The mediators must stay together when speaking with each party.

7.3 Agenda Setting

Issues/concerns/discussion topics should be identified by mediators from the parties' opening statements and should be written up as promptly as possible. Time can be lost by over-consultation on what was or was not an issue, promoting arguments on what should be listed. The idea is to identify and list the issues (with appropriate consultation) and then clarify and explore the issues during the following stages.

7.4 Issue Exploration

Parties should be encouraged by the mediators to clarify and discuss their issues for example by asking each other questions. Both mediators should facilitate the discussion of the issues and share the conduct of the mediation.

7.5 Involvement of all Parties

Mediators should try to ensure, as much as possible, that all parties are involved in the conversations. If one party, or a person from a particular side, is tending to dominate (as they play out their particular character), it is valid to encourage some input from the quieter participants. The scoring system is designed to reward the demonstration of communication skills and an understanding of conflict, rather than reaching an agreement at all costs. This means if all six students are working well but do not reach an agreement, they may score better than a team which

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quickly arrives at an agreement and fails to really demonstrate dispute resolution skills. Naturally, most teams will want to reach an agreement, yet it is the journey as much as the destination that makes up an excellent mock mediation.

The agreement is a way of concluding the mediation session. It may be an agreement dealing with all issues in dispute and demonstrate a final resolution or it may be an agreement which shows the stage achieved at the mediation session and recognises that further discussion is required.

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8. Guidelines for Adjudicators

8.1 Materials

A score sheet, a copy of the scenario and a set of confidential facts for the role-players will be forwarded to you before the round. You should not release the copies of the confidential facts until the start of the mediation. These should be given to the role-players ten minutes before the mediation is to start. Once the confidential facts have been distributed, Party A and Party B should be kept separate to ensure that the confidential facts are not simply handed over to the other side. Party A1 and A2 can exchange their confidential facts if they choose to, but they must not disclose them to Party B. Similarly, Party B1 and B2 may share their confidential facts but not disclose them to Party A. There is no additional information for the mediators. The way each team deals with the confidential facts and the communication skills of the mediators will be taken into account when assessing their performance.

8.2 Scoring

The scoresheet provides for marks to be awarded according to different stages of the mediation. Adjudicators are able to indicate whether or not elements were demonstrated by mediators and then decide upon a score which will then add up to an overall team score.

When scoring, Adjudicators should refer to their experience with national mediator accreditation; if the students are acting in a way that is likely to pass these standards, they should be awarded at least 50% of the total marks for that section.

Adjudicators should return the feedback sheet with the total scores to the Law Society before the end of the round. Please tell the school its score as well as any feedback you have for the students.

8.3 Feedback

At the end of the mediation, please take some time to talk to the students about their performance. Students are always extremely keen to obtain your feedback. You might ask them how they felt about the problem, what went well and what they could do differently. You could identify three things you thought they did well and should continue to incorporate in their mediations. Try to use the words used by the students, or find specific instances of good work. You might comment on three new things they might like to try or improve. These should be specific suggestions which can be easily adopted by the students. The experience for the students should, wherever possible, be a positive learning experience. Obviously, there is a limit to the amount of feedback (positive or negative) that a person can absorb, and many

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students will learn through experience rather than being told by others. Your feedback should be tailored to the criteria on the assessment sheet.