

Queries & Clarifications:

We have recently received queries from teams, who have sought a clarification on the Moot Problem as under:

Q1. We want to seek clarification relating to representation of parties in the moot. As it is mentioned in the problem, there are two different cases with similar facts which have been appealed to court of Appeal of Alfonso. Court has consolidated both the issues and held that both will be heard together. We want to know whether we have to represent both appellant i.e. Diego and Olifant Ltd. separately in the memorial or we have to make common issues for both appellant?

A1. Kindly see note 1 at the end of the problem, which states - "*Teams are to argue either for the Appellants (namely Diego Olifant, as also Olifant Ltd.) or the Respondent (The State).*"

Those arguing for the Appellants are, therefore, expected to represent both Diego Olifant and Olifant Ltd. They can arrange issues as per their choice and in the manner they feel is the most effective and logically coherent, given that the memorial will be common for both cases.

Q2. 1. Does the Provisional Penal Code of Alfonso contain a chapter on General Exceptions similar to the Indian Penal Code or does it otherwise contain general defences in any other form?

2. Does there exist any act, provisional or otherwise, in Alfonso which is similar to the Indian Evidence Act?

A2. The problem is clear in respect of law to be applied.

Q3. The trial period for the laws of Alfonso is till 2007. Is it to be assumed that the criminal proceedings are being held in the year 2007? Would this mean that we are not allowed to use cases and statutes beyond the year 2007?

A3. You may assume that that the final hearing of this appeal is taking place subsequent to 2007, given the judicial delays which have afflicted the court system in Alfonso.

You may also note that Alfonso's laws are periodically amended, and this case will be critical to the development of criminal jurisprudence in Alfonso regardless of whether or not the statutes of Alfonso have been enacted in their final form, as planned. In any event, the finalized penal statutes cannot and will not be applied retrospectively to the facts of this case. It may be assumed, therefore, that the statutory rules relevant to the facts have already been brought to your attention.

It may be assumed, in addition, that no statute/amendment has been enacted subsequent to 2007 which benefits the Accused/Appellants. Specifically, it may be mentioned that no statute/amendment has been brought into effect which would give the Appellants the benefit of Article 35(3)(n) of the Constitution of Alfonso.

Also, teams are free to use relevant judgments pronounced after 2007 as precedent.

Q4. Note 1, as mentioned on Page 6 of the Moot Problem, states that:

"Teams are to argue either for the Appellants (namely Diego Olifant, as also Olifant Ltd.) or the Respondent (The State)."

This is in contradiction to the Rules 4 and 5 of the Moot Problem which read as:

Rule 4. During the Preliminary Rounds, each team shall have to argue once for the Petitioner and once for the Respondent.

Rule 5. The Rules shall be strictly adhered to. The organizers reserve the right to disqualify teams for deviating from the Rules.

We would like you to kindly clarify as the correct stand of the Competition?

A4. Note 1 is only meant to clarify that the Appellant's memorial must address arguments for Diego Olifant as also for Olifant Ltd., while the Respondent's memorial is to contain the State's arguments against both parties. It does not make a reference to the manner in which the Preliminary round is to be conducted, as mentioned in Rule 4. Reading Note 1 and Rule 4 together, you will, in the preliminary rounds, be arguing once for the Appellants and once for the Respondent.

Q5. Can we compare statutory laws from various common law jurisdictions to the code annexed to the moot problem or should we restrict our research to the provisions of the code only supporting it with precedents from the common law jurisdiction?

A5. Kindly adopt whichever approach you feel would make for a cogent and convincing argument.

Q6. Are the two cases mentioned in the problem i.e. murder and corporate manslaughter to be included in the same memo or they supposed to two different memos for each side?

A6. Both cases are to be dealt with in the same memorial.

- Q7. Whether Alfonso has ratified all existing international conventions and treaties?
- A7. The problem is clear on sources of law to be applied.
- Q8. Which law we have to apply...Indian, international or only that law which is given as annexure in the proposition and can we cite Indian cases also?
- A8. Kindly read the problem, which clearly addresses the question of the law to be applied.
- Q9. Is the Right to Information Act of Alfonso pari materia to that of India?
- A9. Yes. Kindly see Note No. 5 at the end of the problem.
- Q10. Is the first issue raised in the *Olifant Ltd. v. The State* i.e. "that the company did not have the requisite mens rea for manslaughter" supposed to be the way it is?
- A10. The issue is formulated correctly. Also, your query seems to have misquoted the issue framed.
- Q11. In the appellate proceedings can the prosecution argue for the charges on which acquittal was recorded by the Trial Court or is the appeal limited to charges for conviction?
Is the prosecution allowed to argue for the charge of manslaughter in the first appeal?
- A11. The contents of the problem are adequate for you to come to your own conclusion in this respect. You are free to make inferences which reasonably flow from the facts provided in the problem.
- Q12. The footnote font and size have been specified, but the footnote spacing has not. Are we free to use 1.0 spacing?

Also, the formatting style has not been given, so do we use the Harvard blue book method or any other particular form?
- A12. It is clarified that you are free to use 1.0 spacing in the footnote.
As regard the formatting style, uniform mode of citation is required to be followed
- Q13. The date for clarifications regarding the problem and if so whom should they be addressed to.
- A13. The last date for clarifications is 24th of December, 2011. The address on which the clarifications can be sent is info@kkluthramoot.org.

- Q14. The word/page limit for the pleadings specifically. (Though a page limit has been set for the memorial, we would like it specifically for the pleadings.)
- A14. The rules clarify that the Memorial, as a whole, should not exceed 25 pages. Please refer the same.
- Q15. Whether the compendium has to be mailed along with the memorials and if so, the number of required copies.
- A15. Please refer to Rule 9. The Rules are clear that the compendium has to be submitted along with the memorials and reliance on articles/materials/case laws which are not appended to the memorials may not be relied upon at the time of oral argument, and such reliance shall lead to disqualification. You are required to submit three copies of the compendium and you may carry extra copy with yourself.
- Q16. Are we required to submit cases as they originally appear (ie the England Report) or may we submit cases in Westlaw/Lesxis-Nexis format, so long as any mention of name and school is blacked out?
- A16. The format of the case law (if any) is left to the discretion of the participants, as long as the same do not violate existing rules. So case law in the Westlaw/Lexis Nexis format would be fine, as long as the school/institution name is blanked out.
- Q17. Since the appeals in Diego Olifant v. The State and Olifant Ltd. v. The State have been consolidated, and are to be heard together, we would like to know if submissions made on behalf of one accused party (i.e. Diego Olifant or Olifant Ltd.) can prejudice the case of the other accused party? And also, would such submission -
- a) Be permitted before the court of law.
- b) Be to the disadvantage of the participating team since the two counsels (assuming Counsel-1 is defending the accused in the appeal of Diego Olifant v. The State and Counsel-2 is defending the accused in the appeal of Olifant Ltd. v. The State) will be arguing contradictory to each other.
- A17. All submissions will be permitted. You are, however, advised to reflect on the optimal strategy in defending your clients.
- Q18. Whether we shall sent the hard copy of memorials or the soft copy of memorials by 24th December? Is it sufficient that we sent soft copy by 24th and sent the hard copies lather?
- A18. The hard copy of memorials should reach on or before 24th December, 2011.

- Q19. The rules have stated that teams are not permitted to refer to any case/material/article in the oral rounds, that are not there in the compendium. Would this also extend to text books and encyclopedias?
- A19. The teams are not permitted to refer to any case/material/article in the oral rounds, that are not there in the compendium. This would also extend to text books and encyclopedias.
- Q20. The rules state that teams are required to submit a supplementary volume of all relevant cases/articles/materials cited during oral presentations. Will this also extend to text books and encyclopedias referred to?
- A20. The teams are required to submit a supplementary volume of all relevant cases/articles/materials cited during oral presentations. This will also extend to text books and encyclopedias referred to.
- Q21. No details have been provided as to whether Diego Oliphant testified at his trial. Since this is an important factor in determining the admissibility of his statements while in police custody?
- A21. The problem provides all requisite details. You are requested to make reasonable inferences flowing from the facts provided.
- Q22. Is the government also a shareholder in the remaining shares that are held by the public after the fresh issue?
- A22. The problem provides all relevant facts. Kindly interpret the problem as it stands. Reasonable inferences flowing from the facts provided will be permissible. In addition, teams are requested to confine queries to clarifying ambiguities in the problem. Fresh facts should not be sought through queries.
- Q23. Indian Laws like- Indian Penal Code, Indian Evidence Act, Crp. etc. are applicable in the given problem, or we have to apply the statutes and law of Alfonso only?
- A23. The problem is clear in respect of law to be applied.
- Q24. This is regarding the clarification sent about the compendiums. It would not be possible to provide all material referred to, as doing so will be a violation of copyright laws, since most textbooks specifically prohibit any form of reproduction of the original text. This extends to treatises like Wigmore on evidence. Kindly clarify this at the earliest.
- A24. Quite obviously, we do not expect you to xerox materials in a manner which would violate copyright law, and the organizers discourage reproduction amounting to infringement. We assume, however, that you do not wish to refer to treatises in their entirety. Therefore, logically, providing the relevant sub-sections within chapters would suffice. Our understanding is that

reproduction of sub-chapters (as opposed to xeroxing books in entirety) for a moot court competition organized by a University, which has an educational, non-commercial purpose, would fall within fair use exceptions. We assure you that we will not use these compendia after the competition in any manner which would constitute a violation of law, as we will either destroy the same or donate it to a library.

If, however, you are apprehensive about copyright violations, the norm is that propositions within treatises depend on law laid down in judicial pronouncements. You would be aware that there is no copyright in the text of judgments. Therefore, you could easily utilize the judgment in questions for the proposition you wish to rely on, instead of relying on the textbooks themselves. We would, in fact, encourage you to adopt this approach.

In addition, you will note that the compendium is relevant to the stage of arguments. Compendia are not evaluated and marked. The rule regarding submission of compendia are for the convenience of teams, and for judges, who would be handicapped in evaluating the applicability of precedent and authority which, in the case of this problem, could be drawn from a variety of common law jurisdictions. In the limited time provided for presenting arguments, we would expect you to restrict yourself to the most relevant authorities.

I trust this clarifies.

Q25. Page 4 of the fact sheet states that Diego Olifant was charged with murder of Ricardo, as well as MURDER and manslaughter in respect of the 33 factory workers. However, page 5 states that he was convicted of murder of Ricardo and acquitted of manslaughter in connection with the factory workers. There is no mention of a conviction or an acquittal of the charge of murder of 33 workers. We would like to know whether there was a misprint with regard to the murder charge of 33 workers on page 4.

A25. Kindly interpret the problem in light of the information provided.

Q.26 Whether we need to make 2 separate memorials for both appellants?

If one than whether we require to mention:

- 1) Diego v state and olifant v state or
- 2) Diego and olifant v state

A26. 1. Only one memorial is to be submitted.
2. The cause title be inferred from the facts.