

Panellist Marking Guidelines for the EMC² Oral Pleadings 2009-2010

The first two days of each Regional Round and the Final Oral Round will consist of the Preliminary Rounds where all Registered Teams will be paired and appear before a Panel twice – pleading once as Complainant and once as Respondent.

The four highest ranked teams of the Preliminary Rounds will then proceed to the Semi-Finals, which will be held on the third day. In the Semi-Finals, the teams will be paired and each pair will appear before a Panel only once. Therefore, a team will only plead once - either as Complainant or Respondent – during this round.

The two winning teams will then compete against each other in the Grand Final, which shall follow a similar procedure as the Semi-Finals. At Regional Rounds the Grand Final and Semi-Finals may be held on the same day. At the FOR these events will be held on separate days.

One team will be declared Winner of each ELSA and non-ELSA Regional Round and will proceed to the Final Oral Round. In some circumstances the ELSA International has deemed that the Runner-up and/or the Semi Finalist will also proceed to the Final Oral Round.

Teams shall proceed to the Final Oral Round through the ELSA Regional Rounds held in Leuven (Belgium) and Helsinki (Finland) and the non-ELSA Regional Rounds held in Adelaide (Australia), Taipei (Taiwan), Sao Paulo (Brazil) and Ottawa (Canada) and the International Written Round. All teams competing in the Final Oral Round, to be held in Santo Domingo, Dominican Republic, will follow the same mooting procedure as per the Regional Rounds.

Procedure for the EMC² Oral Pleading Sessions

“Panellist”: Individual Panellists are designated by ELSA International or the Academic Supervisors to judge particular Oral Pleading Rounds. ELSA International or the Academic Supervisors will also select which Panellist will act as the Panel Chairperson and this will be announced at each Panellist Briefing Session, to be held just prior to a specific Oral Pleading Round.

“Participants”: Panellist are advised that the Participants in the EMC² range from first year undergraduate law students to masters students – they are not WTO experts and none have experience arguing legal cases in front of a tribunal, therefore Panellist should be mindful that questions reflect this level of experience.

“Process of presenting oral arguments”: *Rules 7.9.1, 7.9.2.1 and 7.9.3.1* provides that each team has, at first instance, a total of forty (40) minutes in which to present their arguments - this includes a maximum of thirty-five (35) minutes for “main” oral pleadings and maximum five (5) minutes for rebuttal/sur-rebuttal stage.

However, please note that the Panel has the sole discretion under *Rule 7.9.4.3* to extend a team’s ‘main’ oral pleadings time and/or rebuttal/sur-rebuttal time. Competitors should not expect they will receive additional time, but should be prepared if requested by the Panel.

The Panel Chairperson will ask each Team Captain to introduce the members of his/her team. The introduction, referred to as *Team Appearance*, does not form part of the 35 minutes allocated per *Rule 7.9.2.1* to present main arguments.

After the introduction the Panel Chairperson will check with the Timekeepers if there are any anomalies in the names of the registered oralists. Once confirmed the Panel Chairperson will request the Complainant team to present legal arguments. It is recommended that the first oralist give a brief “road map” to the Panel as to the issues to be presented by each team member and in what particular order.

Once the Complainant has presented their arguments the Panel Chairperson will thank the delegation, ask both fellow Panellist and Timekeepers if they have concluded the ‘administrative’ component for the Complainant and ascertain if both entities are ready to commence hearing oral arguments from the Respondents.

After both sides have completed their “main” oral arguments, the Panel Chairperson will invite the Complainant to present its Rebuttal. On the conclusion of the Rebuttal the Panel Chairperson will ask the Respondent’s to present Sur-rebuttal. Pursuant to *Rule 7.9.3.2* only one (1) of the oralists nominated in the *Team Appearance* to present the main oral pleadings may present rebuttal or sur-rebuttal.

Furthermore, under *Rule 7.9.3.3* only the nominated oralist presenting the rebuttal or sur-rebuttal is permitted to answer questions from the Panel during his part of the oral pleading session.

“Questions from the Panel”: ELSA International encourages Panellist to question teams during the presentation of their arguments. However it should be noted that the clock is not stopped whilst a team is answering questions.

During the Preliminary Rounds (of both the Regional Rounds and the FOR) Panellist are requested to focus their questions on the issues and arguments presented. However, during the Elimination Rounds questions of a more general “trade policy” or “public international law” nature should also be asked.

Therefore the important points to recall are:

- **Rule 7.9.2.1** provides that each team shall be given a total of 35 minutes to present its ‘main’ oral pleadings.
- **Rule 7.9.2.2** provides that each team member who has been nominated as an orator in the **Team Appearance**, shall speak for a minimum of ten (10) minutes in one session. .
- **Rule 7.9.3.1** provides that each team shall have 5 minutes to present rebuttal or sur-rebuttal.

The following are some specific suggestions for questioning:

- Panellists are asked to avoid asking rhetorical questions or making statements. The interaction between Participants and the Panel should be in question and answer format. Panellist must not engage in lengthy debates with the Participants.
- It is recommended that Panellists frequently utilize questions, which call for a "yes" or "no" answer. They test a Participant’s ability to answer a question directly, and the questions themselves tend to be shorter and more concise.
- Since time is limited it is important for a Panel to focus inquiries on areas that will allow you to distinguish the Participants’ qualities.
- It is recommended that Panellists try, as much as possible, to interject their questions evenly throughout the round. The questioning should not be focused on one Participant or Team – remember the moot is part of ELSA’s commitment to the advancement of ‘clinical legal education’.
- Panellists are recommended to avoid detailed questioning about a co-speaker’s argument. Each competitor should outline at the beginning of his/her presentation the points he/she will cover. Although it is sometimes difficult to avoid questioning on a co-speaker’s argument, such questioning should be general in nature when necessary.
- Panellists are asked to avoid extensive questioning after time has expired.
- Panellists are requested to only question about the facts in the Case and not resort to questioning about emerging theories. Hypotheticals must be avoided.
- Panellists are encouraged to interrupt speakers at any time where clarification of the legal argument being presented is required; interruptions also test the Participants’ ability to respond as an advocate. However, Panellist should recall that the clock is not stopped during questions -therefore, Panellist should treat all Participants’ equitably.
- Panellist should pose one question at a time so that Participants are able to complete the points raised in their skeleton arguments.

“Team Identification and Anonymity”: Please note in order to avoid any claim of bias, as per **Rule 6.3.4** Participants will only introduce themselves by their allocated Team Number and if representing the “Country of Freeland” or the “Country of Ipland”. They may also state that in the particular session they are either the “Complainant” or “Respondent” in the matter.

“Timekeeping”: Although in each round one or two persons will be appointed by either ELSA International or the Regional Round Organiser to keep track of the time, **Rule 7.9.4** provides that the Panel is responsible for time keeping. The Panel, through the Panel Chairperson, has the discretion to extend the time allocated to a team. Extensions should be granted to allow a team to finish its arguments, especially if the Panel has asked extensive questions.

If a Panel grants the Complainant an extension, it should grant the same extensions to the Respondent. If however the Respondent requests additional time and the Complaint completed its arguments within the allocated 35 minutes for ‘main’ oral pleadings, such a request should be denied. Furthermore, if a team does not utilise its time during ‘main’ oral pleadings, the remaining time is not carried over to the rebuttal/sur-rebuttal.

“Feedback”: At the conclusion of the oral pleading session the Panel Chairperson will thank the delegations for their oral arguments and ask all individuals to leave the room so deliberation may take place. The Panel Chairperson will then instruct the Timekeeper to call the teams for Feedback. The Panel should provide competitors with constructive feedback comments on their performance. The focus should be on the presentation skills, as well as structural aspects.

Under no circumstances should a Panellist make comments on substance or make such comments that an individual believes he/she is being personally villified. This is a difficult issue as some competitors are naturally sensitive, but at all times Panellist must remember the individuals are students and in some cases are undergraduate law students in their first year of law school.

Finally, for time management purposes, we suggest that no more than 10 minutes should be utilized for feed-back for each oral pleading session.

Explanation of the EMC² Oral Pleadings Score Sheet

“Oral Pleading Score-Sheet”: For each oral pleading round, Panellist will be provided by the Timekeepers with one Oral Pleading Score-Sheet per Team. The Timekeeper will have completed the basic information including the: Team Code (ELSA designated Team Number); Round Location (e.g Santo Domingo Preliminary Round No. 1); Date; Session Time and by ticking (✓) the appropriate Team Role box (i.e. Complainant or Respondent).

There are two sections on the Oral Pleading Score-Sheet which require Panellist to complete with different marks: firstly, provision is made for a Team Score and secondly provision is made for each Individual team member’s oral presentation.

“Oral Pleading Team Role”: Please indicate whether the Oral Pleading Team Role is being assessed is a Complainant’s or Respondent’s document.

“Team Code”: Each team is designated a number by ELSA International in the course of Team Registration. This number is the official Team Code and shall be placed in the top right corner of the cover of each Written Submission. Please indicate the number designated to the Team by ELSA International in the section titled “Team Code”.

”Scoring the Team and Orator Oral Pleading”: Team Panellists who constitute “the Panel” and should feel free to consult each other throughout the session. However, it is strongly recommended that Panellist complete the Oral Pleading Score-Sheets independently. ELSA International and the Academic Supervisors are responsible for the organisation and management of the Oral Pleading Score-Sheets. They will collect the Score-Sheets after each Panellist has completed their sheets, perform the calculations and announce the teams progressing to the Elimination Round at respective points throughout the competition.

“Team Score”: Provision is made for a Team Score and each Panellist should firstly, evaluate the overall performance of the Team and subsequently, indicate points awarded to the Team for the oral arguments presented during a particular round. A Panellist should not base the Team Score on the average of the speakers’ Scores.

Rather a Panellist is required to base the Team Score on the overall impression projected by the entire Team. A Panellist *must* award points for each criterion between 0 to 100.

Per **Rule 7.4.3.2** in the Preliminary Rounds only of either a Regional Round or the Final Oral Round, the Oral Pleading Session accounts for 70% of the mark which is utilised to rank the teams in order to progress to the Semi Final Rounds. The remaining 30% per **Rules 6.9.10, 6.9.12, 7.4.2.2 and 7.4.3.2** will come from the Overall Written Submission scores.

“Individual Score”: Panellist are asked to score each individual speaker’s performance however short (or long) his/her presentation is, keeping in mind **Rule 7.9.2.2** that each speaker must present for longer than 10 minutes in the ‘main oral’ pleadings and that only one person may present during rebuttal or sur-rebuttal. A Panellist should not base an Individual Score on the average of the speakers’ Scores. Rather a Panellist is required to base the Team Score on the overall impression projected by the individual oralist.

A Panellist *must* award from 0 to 100 points for each criterion.

”Criteria for Scoring the Oral Pleadings”: The main part of the Oral Pleading Session Score-sheet features four (4) criteria to be used in assessing the documents:

- (i) Command of the Issues – 25% weighting;
- (ii) Argumentation – 25% weighting;
- (iii) Legal Analysis – 25% weighting; and
- (iv) Style - 25% weighting

The content of each of the criterion is explained below and summarised on the Oral Pleading “Team & Orator” Score Sheet. An example Oral Pleading Score Sheet is attached.

Criteria for Scoring the EMC² Oral Pleadings

All Oral Pleadings are to be assessed and evaluated pursuant to *Rules 7.8.2 and 7.8.3* and a Panel shall be guided by factors such as:

- competence;
- inclusion of all relevant facts;
- structure and logic of the pleadings;
- soundness of the pleadings presented;
- response to questions by the Panel; and
- time management

“Criteria for Scoring Oral Pleadings”: These following elements have been designed and arranged by an Educational Assessment Methodologist to ensure that competitors receive the maximum learning experience from their participation in the event:

1) COMMAND OF THE ISSUES (25% WEIGHTING)

- Recognition of legal issues;
- Display of general knowledge related to the legal issues; and
- Proper analysis and weighting of the legal issues.

2) ARGUMENTATION (25% WEIGHTING)

- Logic of arguments;
- Reasoning of arguments;
- Ingenuity of arguments;
- Ability to analogise with legal or general scenarios;
- Persuasiveness of arguments; and
- Rebuttal or Sur-rebuttal is correctly utilised.

3) LEGAL ANALYSIS (25% WEIGHTING)

- Identification of the applicable treaties/law;
- Identification of the applicable jurisprudence;
- Knowledge and understand of law; and
- Analysis of the applicable treaties law to the facts.

4) STYLE (25% WEIGHTING)

- Levels of organisation and structure of the arguments;
- Manipulation of relevant authorities;
- Responses to Panellist questions;
- Eloquence and clarity of presentation;
- Teamwork; and
- Time Management.

Grades to be allocated when Scoring the EMC² Oral Pleadings

”Grades for Scoring Written Submission”: the grade must fall within the range provided in the following “Scale” (0–100) under each of the aforesaid indicators (0 – 49 being Poor; 50 – 64 being Average; 65 – 84 being Good; 85 - 100 being Excellent).

<p>Poor Up to 50</p>	<ul style="list-style-type: none"> • Superficial knowledge of the law and facts; • No organization, confusing, illogical; • Extremely evasive, fails to address questions, does not cite authority; • Conveyed no real belief in the position argued, read monotonously from notes; and • Very nervous or overly casual, ignores rule of decorum and is generally inarticulate.
<p>Average 50 – 64</p>	<ul style="list-style-type: none"> • Adequate understanding of the law and the facts but seems hesitant; • Organised but unable to follow outline or to present points; • Attempts to address questions and ultimately gives some answer; • Adequately persuasive but overly argumentative or conversational; and • Shows some sign(s) of nervousness e.g. poor eye contact.
<p>Good 65 – 84</p>	<ul style="list-style-type: none"> • Good understanding of law and facts but misses fine distinctions; • Coherent and cohesive outline and presentation of points; • Gives appropriate answer and possibly cites authority effectively, and makes a smooth transition back into argument; • Persuasive, but fails to display a true sense of conviction; and • Good eye contact, observant of decorum, confident, calm, respectful.
<p>Excellent 85 – 100</p>	<ul style="list-style-type: none"> • Full understanding of law and facts including fine distinctions and subtleties; • Concise and logical, cohesive outline with smooth presentation of points; • Clear and concise answers, used authority effectively, and make a smooth transition back into argument; • Extremely persuasive and conveys a sincere belief in the position argued; and • Confident, smooth, exceptional eye contact, extremely respectful.