

KING & WOOD  
MALLESONS



**2015 KING & WOOD  
MALLESONS  
MULSS MOOTING  
COMPETITION  
GUIDEBOOK**

# **WELCOME**

Welcome to Melbourne Law School's 2015 King & Wood Mallesons LSS Mooting Competition!

This guidebook will hopefully be a key point of reference for your team as you progress through the competition. We have included some information on what mooting actually is, along with practical information such as the competition procedures and courtroom etiquette that should be followed.

More than anything, make sure that you and your team have fun. We have set a range of challenging (and interesting!) problems which may require you to investigate areas of law that you are not familiar with. Make the most of the opportunities as they present themselves in this competition.

If you have any questions, please do not hesitate to contact us through ***lss-mooting@unimelb.edu.au*** or through the mooting Facebook group.

Best of luck for the competition!

*Jessica Cao and Stephanie Mercuri*  
2015 MULSS Mooting Officers

# **WHAT IS MOOTING?**

## **What does it involve?**

Mooting entails a 'mock' courtroom type scenario. In each round, two teams compete against each other in the context of a mock submission. As such, the facts have already been agreed upon, and the two sides will be debating issues of law. Each team is required to submit a written submission to the court, as well as make an oral submission to the judge.

Teams consist of a Senior and Junior Counsel, who will each make a 10-minute oral submission to the court – with the judge asking questions – over the applicable points of law (not facts). Each team may also have an Instructing Solicitor, who assists in the legal research and writing of the written submission, but does not speak during the oral submission. The Solicitor is optional and has been introduced to add flexibility to the competition so that if one teammate cannot make it to a particular mooting round, this will not disqualify the team from the competition.

Team members may rotate positions during the course of the competition so that everyone gets a chance to make oral submissions.

## **Why Moot?**

In Law School, case readings and the writing of hypotheticals often seem to overwhelm any chance to demonstrate practical application of the law you have been learning. This is the perfect opportunity to change this! The skills of advocacy learnt in mooting are among the most important you will develop during your time at MLS.

Mooting is highly recommended not only for aspiring barristers, but for anyone who wishes to develop their public speaking and presentation skills and begin to practically apply what they have been learning in class. You will also improve your research skills, as moots are sometimes on topics of law that you will not have covered in any of your classes.

# **COMPETITION PROCEDURES**

## **Prior to the moot:**

1. The problem will be released at 12pm 48 hours before your moot – it will be sent to your nominated email account.
2. A written memorandum must be prepared and then emailed to [lss-mooting@unimelb.edu.au](mailto:lss-mooting@unimelb.edu.au) 24 hours prior to the start of your moot. Penalties for lateness will apply.
3. Your opposing team's written memorandum will be emailed to you at 12pm on the day of your moot. You may use this to try and rebut some of your opposition's points but your case should not change substantially from what is in your own written memorandum.
4. Please arrive at the level 2 LSS office 15 minutes prior to the start of your moot. You should be dressed in business attire.

## **Below is a summary of the mooting process:**

1. Both sides submit a memorandum of arguments and list of authorities to the judge. The arguments should flow logically and the presentation should be clear and concise.
2. The judge will ask for appearances. This means that the Senior Counsel for the appellant stands up, says 'If it please the Court, my name is [x] and I appear as Senior Counsel for the appellant. My learned colleague, [y], will appear as Junior Counsel' and sits down. The Senior Counsel for the respondent then does the same.
3. The judge will then indicate that the participants may begin.
4. Senior Counsel for the appellant will speak first, followed by the Junior Counsel of the appellant. Then Senior Counsel for the Respondent will speak, followed by their junior counsel.
5. There is a 10 minute time limit for speeches. The judge will also be asking you questions during the 10 minutes so remember to factor that in. You can ask the judge for a 1 or 2 minute extension but this is completely up to the judge and you may find your request denied.
6. Unlike debating, there is no formal 'rebuttal'. You may briefly refer to the opposition's arguments, but marks are only rewarded for the strength of one's own arguments, not attacking the flaws and inconsistencies in the other side's.

## Courtroom etiquette

There are some basic rules of courtroom etiquette. Below are the more common ones that you will encounter:

- You should begin your submission with a formal introduction eg. ‘If it pleases the court, I begin my submission’.
- You should end your submission with a formal conclusion eg. ‘May it please the court, and if there are no further questions, that concludes my submission’.
- It is much better to say ‘I submit’ rather than ‘I believe’ or ‘I think’ when making assertions in your presentation.
- When answering questions from the judge and the question implies that the judge is thinking in a different way to you (e.g. ‘wouldn’t the interpretation of [case x] be [y]?’), it is strongly encouraged to respond first by saying ‘with respect, Your Honour...’. This is because you are effectively contradicting the judge, so you must ensure that you are respectful at all times.
- When referring to judges in other courts, the full title should always be given (e.g. ‘Chief Justice Dixon stated...’, not ‘Dixon CJ’ or just ‘Dixon’). When constantly referring to the same judge, ‘his Honour’ or ‘her Honour’ should be used, not ‘he’ or ‘she’. The judge in the competition is always ‘Your Honour’.
- Your partner is referred to as ‘my learned colleague’. The other side is referred to as ‘my learned friends’, not ‘the opposition’ or ‘the affirmative/negative’.
- When referring to a case—for example, Smith v Jones—the ‘v’ should be pronounced ‘and’, not ‘versus’.
- In the list of authorities in your written memorandum, the full citation of a case should be given. However, in presenting to the court, full citations (i.e. ‘[X] v [Y], reported in the Commonwealth Law Report volume [Z], beginning at page [W]’) are unnecessary provided you acquire the judge’s permission. Typically you should recite the full citation of the first case you mention, and then ask the judge, ‘if I may dispense with formal citations.’ The judge will always let you dispense with the citations.
- Common sense should prevail. Use formal language wherever possible and avoid colloquialism. Use lots of respectful terms (e.g. ‘with all due respect to Justice [x] in [case y], I submit that her Honour erred...’), but obviously avoid going over the top.

- As tempting as it may be, you cannot object and you should not rebut. You should instead emphasise the strength of your own case and the judge will consider both cases during her or his deliberation.
- Be confident (limit the ‘ums’ and ‘ahs’) and use understated body language. For example, use your hands and arms to illustrate a point, but do not pace or use your whole body to make an argument.

## **TIPS!**

- Do as much research as you can – read textbooks, cases, journal articles, and your class notes (if applicable). The more research you do, the more you know about the topic, and the more likely you will be able to answer questions from the judge
- Structure your oral submissions – signposting is key. It is a lot easier for the judge to understand what you are saying if you signpost where you are going. Introduce your arguments at the start, number your points, explain where you are going next (e.g. ‘it is our first submission that...’, ‘as per paragraph 1.2 of our written submissions’ and ‘moving on to my second submission’), to ensure that the judge doesn’t get lost.
- Engage the judge – it’s fine to have your speech written down, but don’t read it all the time (this means you need to practise it beforehand). Try to make eye contact as much as possible.
- Judges often ask questions to see whether they can throw you from your game – try to always know where you’re up to with your submissions, and be able to flow straight back into your arguments after answering a question.
- Don’t refer to cases unless you know what happened in them – be prepared for the judge to ask you about what happened (fact-wise, or law-wise), in any case to which you refer.
- Be confident, but not overly confident. You don’t want to look like you don’t believe in what you’re saying, but you also don’t want to look like you’ve decided you’ve won before you started.
- Formality and politeness are a must at all times, whether you agree with the judge’s question/interpretation, or not.

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