

KING & WOOD
MALLESONS



**2016 KING
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MALLESONS
MULSS MOOTING
COMPETITION
GUIDEBOOK**

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WELCOME

Welcome to Melbourne Law School's 2016 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!

Anne Serrurier and Julia Korolkova
2016 MULSS Mooting Officers

WHAT IS MOOTING?

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 arguing 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. 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.

COMPETITION PROCEDURES

Order of the Moot Procedures:

1. The problem will be released at 12pm at least 48 hours before your moot – it will be sent to your first team member's email account.
2. A written memorandum must be prepared and then emailed to lss-mooting@unimelb.edu.au and your opponent team at least 24 hours prior to the start of your moot (i.e. if you are scheduled for 6:30pm, your written memorandum will be due at 6:30pm the day before the moot). Penalties for lateness will apply. Please include your team name in the file name.
3. On the day of your moot please arrive at the level 2 LSS office at least 15 minutes prior to the start of your moot. Bring a copy of your written submissions for the judge. You must be dressed in business attire.

Approaching the Problem

Reading the Problem:

Read the moot problem several times and familiarise yourself with all the facts. You should discuss and attempt to identify the legal issues with your team mates. If you are familiar with the area of law you can allocate the research straight away. However, if you are not familiar with the topic, you might prefer to do general research before you distribute the sections amongst the team members.

Researching the Problem:

Researching is a very important step which will help you prepare for your written submissions. You should aim to locate the relevant principles of the law including any statutes or cases.

It is a good idea to set up a shared drive so you can share your research with your team mates.

Melbourne University Law Library includes a number of research guides that will help you with your research <http://law.unimelb.edu.au/law-library/research-tools/research-guides>.

- **General Research:** start with textbooks on subject areas (such as Contracts or Torts) and legal research databases, especially legal encyclopedias such as [Halsbury's Laws of Australia](#). These sources provide an overview on the area of law and include references to significant cases.
- **Specific Research:** once you have gained basic understanding of the problem, it is time to do more specific research on the legal issues. Law journals may be helpful in providing you with further commentary and current debates on the law.
- **Cases and legislation:** secondary sources such as textbooks and journals articles should include references to legislation and cases which you should read to see if they are relevant to your fact scenario. Remember you have to look at cases even if they are detrimental to your side. However, you should try and distinguish such cases to strengthen your argument.

Written Submissions:

Once you have finished your research and developed your arguments, it is time to write your written submissions. Your written submissions should be a brief summary of your argument, and should include reference to any cases and statutes that are relevant. The summary should be between 1-2 pages long. You can refer to the written submissions sample included on the MULSS website <http://mulss.com/competitions/mooting>.

Oral Presentation

This is the fun part where you get to present your arguments in front of the judge. You will need to remember to adhere to the formal court procedures.

Order of the Oral Presentation:

1. Both teams should be standing when the judge enters the courtroom. The teams may sit when the judge sits down.
2. The judge will read the name of the case and then ask for appearances. The Senior Counsel for the appellant stands up and 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. 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.
4. There is a 10 minute time limit for each speaker. 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.

Courtroom etiquette:

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

Modes of Address

You should address the judge as 'Your Honour' and 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'.

Citation

You should recite the full citation of the first case you mention, and then ask the judge, 'if I may dispense with formal citations.' In order to give full citation for the case *Lynch v Lynch* (1991) 25 NSWLR 411, you would say Lynch and Lynch (not versus), reported in the NSW Law Report volume 25, beginning at page 411.

Formal Language

Use formal language wherever possible and avoid colloquialism. Use lots of respectful terms. You should 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, 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.

You should end your submission with a formal conclusion e.g. 'may it please the court' and give the judge eye contact before sitting down to make sure there are no further questions or you can say 'if there are no further questions, that concludes my submission'.

Structuring the Oral Argument:

It is advisable to have a **bullet list of points rather than a written speech**. This will better enable you to return to your argument when you are asked questions, and allow you to adjust your argument if necessary. You may also like to use a template for oral argument included on the MULSS website <http://mulss.com/competitions/mooting>.

Introduction

Introduce your argument and explain where you are going next to ensure that the judge doesn't get lost – signposting is key. The Senior Counsel should use the introduction to briefly summarise the legal issues and highlight which points will be addressed by Senior and Junior Counsel.

Argument

Make your presentation clear and concise. Your argument should be based on your written submissions, but probably should not try to summarise everything. Instead, focus on the key points in contention and the strongest arguments to make sure your presentation is easy to follow.

Conclusion

You should take the conclusion as an opportunity to summarise your key points and reinforce your argument. Junior Counsel will be the last person to speak on the team, therefore, he/she may wish to summarise the arguments made by both speakers.

Tips:

- 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. Also try to maintain eye contact with the judge as much as possible.
- 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.
- In general, think of answering questions as an opportunity to clarify and strengthen your argument, not as an assault on your position that requires defence and counter-attack. If you get asked a question that takes you off topic, answer and return to your submissions. Also, it is ok to take a few seconds to gather your thoughts before answering a question.
- Formality and politeness are required at all times, whether you agree with the judge's question/interpretation, or not

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