

KING&WOOD  
MALLESONS



# **2017 KING & WOOD MALLESONS**

# **MULSS MOOTING COMPETITION GUIDEBOOK**

# WELCOME

Welcome to the 2017 King & Wood Mallesons LSS Mooting Competition!

This guidebook should be a key point of reference for your team as you progress through the 2017 King & Wood Mallesons mooted competition. It includes important information on the competition itself, as well as the competition rules and procedures. It is important that you read through these rules to know what is expected of you and your team during the competition.

Mooting is a fun way to learn, engage with and apply your legal skills outside of the classroom. We have worked hard to set a range of challenging (and interesting) problems, which may require you to investigate areas of law that you are not yet familiar with. Remember to make the most of the opportunities as they present themselves in this competition and have fun with it.

If you have any questions, please do not hesitate to contact us through [lss-mooting@unimelb.edu.au](mailto:lss-mooting@unimelb.edu.au) or through the mooted Facebook group.

We hope that you enjoy the competition this year! Good Luck!

Luisa Borg and Lizzi Chow  
**2017 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. Each team is provided with a problem scenario which sets up the legal matters at issue. Each team is required to submit a written submission to the court and make an oral submission to the judge.

Teams consist of a Senior and Junior Counsel, who each make a 10-minute oral submission to the court – with the judge asking questions. Each team may also have an Instructing Solicitor to assist in the legal research and writing of the written submission. The Instructing Solicitor does not speak during the oral submission and so is optional. In the event that one member of team cannot make it to a particular moot the Instructing Solicitor is able to step in so as to avoid disqualification.

Team members may and are encouraged to rotate positions during the course of the competition so that everyone gets an opportunity to make oral submissions.

# APPROACHING THE PROBLEM

## Reading the Problem:

You will receive the problem 48 hours before your scheduled moot. In this time it is important to set some time aside to read the moot problem several times and familiarize yourself with all of the facts and relevant legal issues. If you are familiar with the area of law you can get stuck into research straight away. However, if you are not familiar with the topic, it may be a good idea to do some general research before allocating research tasks amongst your team.

## Researching the Problem:

Strong research skills are imperative in mooting. Not only is research important in preparing your written submissions, it is also important in the drafting of your oral submissions. You should aim to locate the relevant principles of the law including key case authorities and statutes.

It is a good idea to set up a shared Google drive with your teammates to keep all of your research in one easy to access place.

The Melbourne University Law Library website includes a number of useful research guides: <http://law.unimelb.edu.au/law-library/research-tools/research-guides>.

As a general guide, research should take place in the following order:

- **General research:** start with textbooks on subject areas (such as Contracts or Torts) and legal research databases (such as Halsbury's Laws of Australia). These sources are good to provide you with an overview on the area of law as well as including references to significant cases. Generally, the information provided in textbooks will allow you to thoroughly argue the problem, while recent cases assist in the application of rules.
- **Specific research:** once you have gained a basic understanding of the problem, you should start doing more specific research on the legal issues. At this point it may be useful to look at Law Journals to provide you with further commentary and debates on the law.
- **Cases and legislation:** secondary sources such as textbooks and journal articles will likely contain references to important legislation and cases. Remember to look at cases that are detrimental to your side and try to distinguish these cases to strengthen your argument.

## **Written Submissions:**

Once you have finished your research and developed your arguments, it is time to start writing your written submissions. Many competitors make the mistake of thinking that written submissions are nothing more than a formality. However, this could not be further from the truth. Your written submissions represent the first and last impression that the judge/s has of your team. A well-drafted written submission allows the judge/s to follow your argument before you have even spoken.

Your written submissions should be a brief and clear summary of your legal argument, and should include references to relevant cases and statutes. Your written submission should be between two to three pages long. You can refer to the sample on the MULSS website: <http://mulss.com/competitions/mooting>.

Formatting of your written submissions is significant and teams should:

- Use a style and font which is easy to read;
- Employ consistent and uniform paragraph numbering;
- Ensure that cases are indented with one case per line;
- Use clear and informative headings and subheadings with the most relevant heading in bold;
- Ensure that your referencing is AGLC3 compliant; and
- Wherever possible, use pinpoint referencing.

Case citations should be formatted as below:

- Most relevant highest authority (e.g, The High Court or Intermediate appellate if the case has not been heard at the High Court)
- Most relevant lower authority
- Followed by; less relevant highest to lowest authority

# ORAL PRESENTATION

When all of the research and preparation is over you get to the fun part of mooting; presenting your arguments in front of a judge. You will need to remember to adhere to formal court procedures throughout your moot.

## Structuring Your Presentation:

Rather than preparing a written speech, it is advisable to have a **bullet list of points**. This will assist you to return to your argument following judicial interjections and questions, and gives you the flexibility to adjust your argument as needed. The general structure of your presentation should be as follows:

- **Introduction:** introduce your argument and explain where you are going next. Signpost clearly to ensure the judge can follow your reasoning. The Senior Counsel should take the opportunity to briefly summarise the legal issues to be resolved and state which points will be addressed by themselves and which will be addressed by the Junior Counsel.
- **Argument:** your argument should be based on your written submissions. Rather than attempting to summarise everything, it is best to focus on the key points of contention and your strongest arguments. Remember to keep your presentation clear, concise and easy to follow.
- **Conclusion:** take the opportunity to summarise your key points and reinforce your argument. As the Junior Counsel will speak last for your team they may wish to summarise the arguments made by both speakers.

## Presentation Tips:

- **Be confident:** limit 'ums' and 'ahs' and use understated body language. You can use your hands and arms to illustrate a point but refrain from pacing or using your whole body to make an argument. Maintain eye contact with the judge/s as much as possible.
- **Cases:** don't refer to cases unless you know the facts and reasoning. Be prepared for the judge to ask you anything about any of the cases to which you refer.

- **Questions:** questions provide the opportunity to clarify and strengthen your argument and are not an assault on your position. If you are asked a question which takes you off topic, answer and return to your submissions. You may also wish to take a few seconds to gather your thoughts before you answer a question.
- **Formality and politeness:** mooting requires you to be formal and polite at all times, regardless of whether you agree with the judge's question/interpretation or not.

### **Courtroom Etiquette:**

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

#### **Modes of Address**

A judge should be addressed as 'Your Honour' and your team member as 'my learned colleague'. The other team is referred to as 'my learned friends' rather than 'the opposition'.

#### **Citations**

For the first case you cite, the full citation should be recited. You should then ask the judge, 'if I may dispense with formal citations'. For example, the full citation for *Lynch v Lynch* (1991) 25 NSWLR 411 would be stated as Lynch and Lynch (note 'and' rather than 'versus'), reported in the New South Wales Law Report volume 25, beginning at page 411.

#### **Formal Language**

Wherever possible, colloquialism should be avoided and formal language used. Respectful terms should be used. When making assertions you should say 'I submit' instead of 'I believe' or 'I think'.

When a judge asks a question which implies they disagree with you, you are encouraged to begin your response by saying 'with respect, Your Honour'. This is because you are essentially contradicting the judge and must ensure that you are doing so respectfully.

You should end your submission with a formal conclusion. You may choose to say 'may it please the court' and making eye contact with the judge before sitting to ensure there are no further questions. Alternately, you may say 'if there are no further questions, that concludes my submission'.

### **Order of the Presentation:**

- 1.** When the judge enters the courtroom, both teams should be standing. Teams may take their seats when the judge does so. Copies of each team's written submission should be offered to the judge/s.
- 2.** The judge will read the name of the case and ask for appearances. The Senior Counsel for the appellant should stand and say 'If it may please the Court, my name is [name] and I appear as Senior Counsel for the appellant. My learned colleague, [name], will appear as Junior Counsel and my learned colleague, [name] will act as Instructing Solicitor (if present)' before sitting down. The Senior Counsel for the respondent then does the same.
- 3.** The judge will then indicate that participants may begin. Senior Counsel for the appellant speaks first, followed by the Junior Counsel for the appellant. The Senior Counsel for the respondent speaks next, followed by the Junior Counsel for the respondent.
- 4.** Each speaker has a 10-minute time limit in which to present their argument and respond to questions. Speakers may ask the judge/s for a 1 or 2-minute extension, however, these are granted at the discretion of the judge/s and may be denied.
- 5.** At the conclusion of submissions, teams will be asked to leave the courtroom so the judge/s can reach a decision and score participants. Teams will then be invited back into the courtroom for feedback.



# RULES FOR PARTICIPANTS

1. Problems will be sent to **one** member of each team 48 hours prior to their scheduled moot. It is the team's responsibility to ensure all members gain access to the problem.

2. All teams are required to submit a copy of their written submission to **both** the KWM Moot Officers ([melbunilssmooting@gmail.com](mailto:melbunilssmooting@gmail.com)) and their competitors no less than 24 hours prior to their scheduled moot. Failure to do so will incur a penalty as follows:

- a) 1 point will be deducted from the team's written submission score for the first half hour or part thereof that the written submission is late; and
- b) 1 point will be deducted from the team's written submission score for the second half hour or part thereof that the written submission is late; and
- c) 1 point will be deducted from the team's written submission score for every subsequent hour or part thereof that the written submission is late.

3. All teams are to present at the LSS office on level 2 15 minutes prior to their scheduled moot.

4. All team members are required to wear formal business attire. Men are required to wear a suit and tie while women are required to wear a blazer, with matching skirt or slacks, or a business appropriate dress.

5. If a team wishes to swap time slots, they must do so personally via the Mooting Facebook page. Once confirmed, an email must be sent to the mooting officers [melbunilssmooting@gmail.com](mailto:melbunilssmooting@gmail.com) at least 72 hours before with the following template attached:

- Your team name;
- Current time allocation;
- Name of the team you are switching with;
- Time slot you are switching into.

6. Each speaker has 10 minutes of time in which to speak. This time is inclusive of any questions or interjections made by the judge/s. An extension of time may be granted at the discretion of the judge/s.

7. The order of speakers is to be as follows: Senior Counsel for the Appellant, Junior Counsel for the Appellant, Senior Counsel for the Respondent, Junior Counsel for the Respondent.

**8.** At the conclusion of the moot, all teams will receive oral feedback from the judge/s. Judges will **not** disclose scores. Teams are able to email the KWM Moot Officers ([melbunilssmooting@gmail.com](mailto:melbunilssmooting@gmail.com)) to request a copy of their scoresheet which will contain written feedback and qualitative scores. Any requests should be made within three days of competing. Raw scores will not be released.

**9.** Teams are **not allowed** to contact the judge/s following a moot under any circumstances. All queries should be directed to the KWM Moot Officers ([melbunilssmooting@gmail.com](mailto:melbunilssmooting@gmail.com)).

**10.** Forfeiting is strongly discouraged. Teams are reminded that only two team members are required to speak and as such the unavailability of a third team member does **not** provide valid grounds for forfeiting. If your team chooses to forfeit, you must do so before the problem is released by notifying the competition officers at [melbunilssmooting@gmail.com](mailto:melbunilssmooting@gmail.com). Teams may forfeit after the problem is released **only in extraneous circumstances**, having spoken to both the competition officers and directors at [lss-competitions@lists.unimelb.edu.au](mailto:lss-competitions@lists.unimelb.edu.au). Teams who forfeit without regard for the rules or their opponents may be blacklisted from competing in future competitions.

**11.** Where one team forfeits, their opponents will be notified. The remaining team is strongly encouraged to prepare and compete in front of the judge/s. This allows you to gain feedback for your own development and receive a score which contributes to seeding and the quality of the competition.

**12.** Competitors should remain mindful of the formal nature of the KWM Moot Competition at all times. It is expected that all team members behave in a manner appropriate for court.

**13.** At the discretion of the KWM Moot Officers, failure to comply with these rules may result in a penalty.

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