

MOOTING



Melbourne University

Law Students' Society

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WELCOME

Welcome to the 2018 Law Students' Society ('LSS') Mooting Competition!

This guidebook is your key point of reference for you and your team as you progress through the Mooting competition. Included in this guidebook is important information on the competition itself, rules and procedures and helpful advice. It is important that you and your team members read through the rules to know what is expected of teams during the competition.

This competition is a fun way to learn skills transferable to both your studies and work, and to engage and apply your legal skills outside of the classroom. If you have any questions, please do not hesitate to contact us through [*<melbunilssmooting@gmail.com>*](mailto:melbunilssmooting@gmail.com).

We hope you make the most of this competition and have fun! Good luck!

Nick Bernardo and Lily Wright

2018 Mooting Officers

WHAT IS MOOTING?

A moot is basically a mock courtroom scenario, with judges, barristers and instructing solicitors conducting an imaginary appeal. In each round, two teams compete against each other in front of a judge. Every team is provided with a hypothetical problem with a set of facts, which sets up the legal points at issue. Teams take turns to provide an oral submission to the judge. Prior to the moot, each team is required to submit a written submission to the court and to the opposing team.

Each team consists of a Senior and Junior Counsel (the barristers), and an optional Instructing Solicitor if you want to have three in a team. The barristers each make a 10-minute oral submission to the court, addressing different legal issues. The Instructing Solicitor (optional in a team of three) assists in legal research and the preparation and writing of the written submission. The Instructing Solicitor does not speak during the moot, but may attend to provide support, time keeping etc. If you are in a group of three, the decision of which team member has what role is completely at your discretion. However, team members are encouraged to rotate positions during the course of the competition so that each member gets an opportunity to both present and assist.

APPROACHING THE PROBLEM

Reading the Problem:

All competitors will receive the problem at **1:00PM two days before your scheduled moot.**

- In other words, students competing at 6:30PM **and** 7:30PM on Wednesday will receive their problem at *1:00PM Monday*.
- Students competing at 6:30PM **and** 7:30PM on Thursday will receive their problem at *1:00PM Tuesday*.

During this period, it is important to set aside some time to read the moot problem several times and familiarise yourself with the facts and relevant legal issues. We recommend meeting with your team members at least once during this time to delegate tasks and ensure all team members are on the same page.

Researching the Problem:

Strong research skills are essential in mooting. Research is important in preparing your written submissions and the drafting of your oral submissions. You should aim to locate the relevant principles of the law including key case authorities and or statutes. You should spend most of your time researching and understanding the law as well as how it applies to your case.

We recommend setting up a shared Google Drive with your teammates to ensure all your research and ideas are accessible. 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 your textbooks or class notes to familiarise yourself with the legal issues.
 - Legal research databases such as Halsbury's Laws of Australia provide a good overview of areas of law and can also be used as a starting base.
 - Generally, the information provided in textbooks will allow you to thoroughly argue the problem, while leading 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. High quality moots will engage deeply with the actual case law instead of relying on secondary material.

WRITTEN SUBMISSIONS

A written submission is a brief and clear summary of all legal arguments, including references to relevant cases and or statutes. The submission is sent to the judge and to opposing team members.

Once you have finished your research and developed your arguments, it is time to start drafting your written submission. It is important to note that the written submission is not just a formality. In past competitions, many competitors make the mistake of focusing less time and effort into the written submission. Your written submissions represent the first and last impression that the judge has of your team. A well-drafted written submission allows the judge to follow your argument before and during your presentation. Remember, many moots can be lost or won with small margins. The written submission can be the deciding factor between winning or losing!

You can refer to the sample on the MULSS website: <http://mulss.com/competitions/mooting>.

Formatting

Formatting of your written submissions is significant, and teams should:

- Keep the written submission between 2–3 pages long;
- Use a style and font which is easy to read (we recommend Times New Roman 12 pt.);
- 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 clearly, and in the following order:

- First case: most relevant, highest authority (i.e. the High Court or Intermediate appellate if the case has not been heard at the High Court)
- Second: most relevant, lower authority
- Followed by: less relevant authority

ORAL PRESENTATION

Structuring Your Presentation

A moot is not a one-way speech read of a piece of paper in front of a judge. Rather than preparing a written speech, it is advisable to have a **bullet list of points** and an **understanding of what points you want to convey**. The judge will regularly interrupt your presentation to question you. By having a general outline of your presentation, you will be in a better place to return to your argument following interjections and questions. This will also give you the flexibility to adjust your argument as needed. This is why it is important to research thoroughly and understand the law and how it applies to your case.

Remember, both mooters in your team will be presenting on a different legal point, for 10 minutes each. With two grounds of appeal, you should *not* both present on those two grounds.

The general structure of your presentation should be as follows.

- **Introduction:**

- Introduce your argument and sign post what you are going to say. Signal clearly what you are arguing 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.
- You should signpost each new point in your submission, so the judge can easily follow your argument.

- Rather than attempting to summarise everything, it is best to focus on the key points of contention and your strongest arguments. If the judge requires clarification or wants you to expand on a point, they will ask. Remember to keep your presentation clear, concise and easy to follow.
- Follow basic IRAC structure for each major point.
- Conclusion:
 - Reiterate what you have submitted to the judge.
 - If the moot has gone well a conclusion should be close to a mirror image of your introduction, even if the issues were not discussed in the same order.

Presentation Tips

- Be clear and 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. Do not feel the urge to speak quickly, maintain a pace that is easy to listen to (remember you are discussing complex issues so give the judge time to digest your arguments).
- **Cases:** do not 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. But do try and make proper use of authorities.
- **Questions:** questions provide the opportunity to clarify and strengthen your argument. If you are asked a question which takes you off topic, answer and return to your submissions, even if the question is addressed later in your submission. We recommend taking a few seconds to gather your thoughts before answering. The judge is not attacking your position, and a question does not necessarily mean they disagree with you. Keep answers short and concise.

- **Formality and politeness:** mooting, like real court appearances, requires you to be formal and polite at all times, regardless of whether you agree with the judge's question/interpretation or not.
- **Time management:** if you notice you are exceeding the time limit of 10 minutes, you may request an extension of time from the judge. This is at the discretion of the judge and may be one to two minutes, or no extension.

Courtroom Etiquette

There are rules of courtroom etiquette, which must be followed.

A. 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'.

B. Citations

For the first case you cite, the full citation should be recited. You must 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. Once the judge allows you to dispense with formal citations, you would then refer to the case simply by 'Lynch', or in most cases, the better-known party name.

When the Senior Counsel asks the judge to dispense with formal citations, this will apply to the Junior Counsel too; there is no need for the Junior Counsel to ask to dispense with formal citations again. (Note: Senior Counsel for the Respondent, who speaks after submissions from the Appellant, must also ask the judge to dispense with formal citations.)

C. Formal Language

Wherever possible, colloquialism should be avoided, and formal language used. Respectful terms must be used. When making assertions you should say 'I submit' rather than 'I believe' or 'I think'. As a barrister you are presenting views which may not necessarily be your personal opinions.

When a judge makes a request, e.g. 'can you please tell me the facts of that case', there is no need to reply 'yes' or 'of course'. Simply answer the judge's request and return to your submission.

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. If a judge decides decisively on an issue, indicating they no longer wish to discuss it, do not continue to push the point, move on.

You should end your submission with a formal conclusion. Typically, you would say 'if there are no further questions (**pausing to actually allow for said questions**) that concludes my submission'.

D. Respectful Behaviour

If there is an instructing solicitor present at the moot, they are to sit facing their team members (facing away from the judge). As barrister you control whether the solicitor is communicating with you, not vice versa. If you want assistance from your solicitor ask the judge something to the effect of 'may I consult with my learned colleague for a moment?'. **IF** you are granted permission you can lean down and quickly, and quietly whisper to address your concern.

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 'May it 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 one or two-minute extension. However, these are granted at the discretion of the judge/s and may be denied. Plan to fit your entire speech within the 10-minute timeframe. Remember to account for judge(s)' questions in this 10-minute when preparing your oral submissions.
5. At the conclusion of submissions (both appellants and respondents), 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 and the result.

RULES

1. Problems will be sent to **one** member of each team (the nominated contact of the team) at **1:00PM two days before your scheduled moot**. It is the nominated contact member's responsibility to ensure all members gain access to the problem.
 - Students competing at 6:30PM **and** 7:30PM on Wednesday will receive their problem at **1:00PM Monday**.
 - Students competing at 6:30PM **and** 7:30PM on Thursday will receive their problem at **1:00PM Tuesday**.

2. All teams are required to submit a copy of their written submission to the Moot Officers <melbunilssmooting@gmail.com> and their competitors via email no less than **24 hours prior to their scheduled moot**.
 - For instance, students competing at 6:30PM on Wednesday will have to submit their written submissions **no later than** 6:30PM on Tuesday.
 - Alternatively, students competing at 7:30PM on Thursday will have to submit their written submissions **no later than** 7:30PM on Wednesday.'Please put, as the subject title of the email in the format '[**Team Name**] – Written Submissions'. Include, in the email, a copy of your written submissions with your team name as the document title.

3. Failure submit your team's written submissions on time will incur a penalty as follows:
 - 3.1 Two points 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
 - 3.2 Two further points 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

- 3.3 Two points will be deducted from the team's written submission score for every subsequent hour or part thereof that the written submission is late.
- 3.4 When presenting the result, the judge should inform both parties of any relevant penalties which have been accounted for in the final scoring.
4. All teams are to present at the LSS office on level 2 of the Law School, 15 minutes prior to their scheduled moot to check-in with the co-opts.
5. All team members are required to wear formal business attire. Women are required to wear a blazer, with matching skirt or pants, or a business appropriate dress. Men are required to wear a suit and tie.
6. If a team wishes to swap time slots, it is their responsibility to find another team willing to swap. The schedule for each round will be emailed and posted ahead of time to assist with this. Once confirmed, an email must be sent to the mooting officers <melbunilssmooting@gmail.com> **at least 72 hours** before the scheduled moot time (whichever time slot is earliest) 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.
7. 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.
8. 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.

9. At the conclusion of the moot, all teams will receive oral feedback and the result from the judge(s). Judges will **not** disclose personal scores. All teams will be emailed an electronic copy of their scoresheets accompanied with judge(s) qualitative feedback, without the numerical scores, within five days after the moot.
10. The decision of the judge and the outcome of the round is **final** and *cannot* be appealed. The only exception to this rule is where the appeal relates to the enforcement of penalties relating to late written submissions.
11. Teams are **not allowed** to contact the judge(s) following a moot under any circumstances. All queries should be directed to the Co-Opts <melbunilssmooting@gmail.com>.
12. 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>. Teams may forfeit after the problem is released **only in exceptional circumstances, having spoken to both the Competition Officers and Directors**. Teams who forfeit without regard for the rules or their opponents may be blacklisted from competing in future competitions.
13. 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.

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

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