

Melbourne University Law Students' Society

Herbert Smith Freehills First Year Mooting Competition



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**HERBERT
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Judge Guidebook

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WELCOME

We would like to thank you again for joining us as a judge for First Year Mooting in 2024. Your involvement is crucial to the continuing success of this competition. We hope you enjoy your experience, and we are sure your advice will be invaluable to the teams.

This document is a guide to provide guidance for first-time judges and to assist consistency across different judges.

In this guide we aim to cover:

1. Procedural and administration information about the running of the moot week;
2. How to deliver a decision;
3. What constitutes good mooted; and
4. How to judge professionally and inclusively.

Thank you once again!

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PROCEDURAL/ADMINISTRATIVE INFORMATION

Before the moot

Problem Release

On the **Sunday** before the moot, we will still send out the **problem, bench notes and fixtures** to you via **email**.

The day before the moot

The night before the moot, we will send you the **written submissions** of the teams you will be judging.

The day of the moot

Judges should arrive at the **MULSS Office on level 2 at least 15 minutes** before the commencement of their moot. Here, they will be provided a room allocation from the relevant competition co-opts.

The dress code for the moot is business attire.

During the moot

Commencing proceedings

1. Introduce yourself and ask a representative of each team to **introduce their team**, and make sure you have the right competitors.
2. Make the teams feel comfortable before formally commencing proceedings.
3. *Follow this script:*
 - a. Judge 1: *Knock on table 3 times*. 'Silence all Stand'.
 - b. Both: Stand and bow to the competitors (Competitors should bow back).
 - c. Judge 1: 'The Moot Court is now in session, be seated please'.
 - d. Judge 2: 'Calling the matter [appellant name] and [respondent name]. May I take appearances please'.

Taking appearances

Take appearances first from Senior Counsel of the Appellant, followed by Senior Counsel of the Respondent.

The bench notes: These will include information about the key issues in each problem, relevant cases, and possible arguments either team could be making.

Questions: One focus this year is to ensure consistency of question difficulty, and to ensure that questions increase in difficulty as teams progress through the rounds.

- We will provide some guidance in the bench notes as to the types of questions you might want to ask for each moot.
- It is important to consider how you, in your capacity as a judge, can ensure you are being **consistent** in terms of question difficulty, and are challenging the competitors to improve their responding ability.

Timing: Please try to keep to the time constraints. Competitors may speak for **10 minutes** each, not including any time extensions. Any time extensions are at your discretion, but if a competitor is approaching the **12 minute** mark, please encourage them to wrap it up.

- It is mooting etiquette that where one team asks for an extension and it is granted, an extension should also be granted to the other team if requested.
- **If you are judging two moots**, please try and wrap up your first moot by **7:35pm**. That means you will have approximately **1 hour and 20 minutes to wrap up the first moot**.
- It is important to try and stick as close to this timeline as possible, as the second moot will likely be in the same room. If you foresee you will be delayed, **please message us AS EARLY AS POSSIBLE**. We will try to inform the relevant competitors that the start of their moot has been delayed. However, please try to finish on time ensuring there remains enough time for in person feedback.

Etiquette: for more on preferred mooting etiquette, please see the competition **guidebook**.

After the moot

Please **email** your marked-up scoresheets and written submissions back to firstyearmoot@mulss.com **at the end of the night**. Please title the scoresheets in the following format "[Team Name] Round [Round Number] Scoresheet".

We will send the participants feedback forms on the judges following the moots, and we will discuss any common feedback with you. Please do not contact competitors regarding the moot. If a competitor contacts you with an inappropriate request please let us know.

HOW TO DELIVER A DECISION

The following is a guide for the order in which to deliver a decision:

1. Provide feedback
2. Deliver the decision
3. Provide reasons for the decision

Providing feedback

It is often best practice to provide feedback before you announce the winning team. **Feedback is the most critical part** of the mooting process and teams will often listen more closely when they are still anticipating a result.

Good feedback has several attributes:

1. It is *transferable to future moots*, and not unique to the actual legal analysis provided in the moot in question (i.e. saying “this is what I would have argued...” is interesting, but not the most helpful way to give feedback to a team).
2. It is *broad and covers all elements of the moot*. Giving feedback on structure, style, technical analysis, and written submissions is important. Try not to just focus on one issue at the expense of everything else unless there genuinely is nothing else that can be improved.
3. Feedback is *honest, but not disheartening*. Giving exclusively positive feedback is probably only appropriate when a team is clearly very unconfident and is finding the simple public speaking nature of mooting difficult. In this case encouraging teams to participate and giving them that confidence is the most important thing. In most other scenarios, it’s important to give constructive feedback in addition to positive reinforcement. Teams need to know how they can improve, which involves discussing their weak points.

Delivering the result

The second thing to do is to deliver the result. The team with the highest score as marked using the scoresheet wins the moot.

DO NOT award a draw, and **DO NOT** award a win to teams when both teams have equal points. Find some way to distinguish the teams. For example, you could re-examine both written submissions and consider if one is easy to follow, cleaner or more well-researched.

Providing Reasons

Finally, provide the reasons for your decision.

We believe that judges' decisions ought to be transparent, accountable, and fair. To do so it's both easier for a judge to reach their own decision if they have to present a reasoning for this and it is important for teams who will struggle to improve if they cannot understand the difference between their performance and the winning team's performance. In doing so, you also further clarify the criteria on which a team is assessed. A good strategy is to mark everything strictly on the feedback without counting the overall score. Then when conducting a final count, assess whether or not you believe the result is accurate or fair. This ensures the important criteria are adequately weighted without letting any personal feelings of who won taint the results.

Consider mentioning to the teams that in coming to your decision, the winning team **might not be the one who would win a legal argument in Court**. Teams are not being judged on which legal argument would succeed in court. Instead, they are being judged on their ability to advocate for a particular position. That ability of advocacy determines who wins the moot. A question may be extremely hard (or flat out impossible) for one team to argue, i.e. when the law is not in their favour. This does not necessarily mean that they will lose the moot. Teams are judged on their presentation, clarity, and their ability to form the most convincing argument possible within the constraints of existing law. Therefore, the moot does not turn on the merits of the law as it would in a Court, but rather which team worked the most effectively with the facts they had been given. A team will still need to produce good legal arguments, but what constitutes a good argument will depend on the context of what ground they must argue. Explaining this difference is critical to first year teams in particular, who may not yet properly appreciate the impact of a question on the outcome of a moot.

TIPS FOR JUDGING

The attributes judges should be looking for are set out in the Scoresheets found at Appendix 2. In addition to the information provided on these scoresheets, below are some additional tips on how to judge effectively.

Evaluating Advocacy

A common criticism of moot judging is that feedback and results sometimes appear contradictory. Given the subjectivity of moots this will, to a certain extent, be inevitable. However, many of these issues can be mitigated by judges understanding that there is **no one particular mooting style**. Whilst certain judges may have a stylistic preference for a particular style, we recommend that judges keep an open mind to what makes good advocacy. To assist in doing this, below are some features universal to good advocacy.

Question Answering: The strongest advocates will answer questions succinctly and in such a way that they both address the judge's concern and are able to continue to advance their submissions.

Clarity: The strongest advocates are those who can make their arguments most clearly. Weaker advocates may overburden or overcomplicate their arguments with legal principle or may be very vague or uncertain in articulating precisely what principle or application they are propounding. By contrast, strong advocates will distill complex law into simple legal principles which they then apply to the specific facts of the problem.

Time Management: This is a question of how effectively the advocate has allocated their time to the core issues of the moot. The strongest advocates will move quickly through uncontentious material to spend time on the most contentious issues. They will also be willing to allocate more time to areas of submissions judges seem particularly interested or concerned about, whilst spending less time on areas the judges seem more convinced on. Successful advocates must still allocate sufficient time on each necessary element of the problem (eg. if the ground of appeal raises a question of both duty and breach, the mooter must speak about both in their 10 minutes). Advocates with strong time management skills will be able to move judges between alternative arguments rather than spending lots of time on an unconvincing point.

Crafting Legal Arguments: The strongest advocates will craft reasonable legal arguments. These mooters will be willing to make strategic concessions and will not develop arguments any further than necessary to win a particular point. This may mean narrowly focusing their submissions on one part of a legal test most favourable to their client. This approach avoids advocates making unreasonable arguments which would lose them credibility with the judge. This is often a mistake made among weaker mooters who feel they must rebut every point in a moot which would otherwise favour the opposing side.

Asking Questions

As a judge, it is important to understand the role your questions hold in the moot. Importantly, judges should recognise that their **questions are tools to allow them to evaluate an advocate**. Questions are asked to allow the advocate to demonstrate their skill. This can be through testing the advocate's knowledge on a particular point of law, allowing the advocate to address a concern of the judge, or simply to move the moot to aspects of the problem that are more interesting or difficult.

Questions are not used as a tool to embarrass, stump, or demonstrate superiority over mooters. Judges should use questions to extend a mooter and test their knowledge and ability. Where it becomes clear that a mooter does not know an answer, a judge should stop the line of questioning. Moots are **NOT** real courtrooms, where the correctness of the legal point is essential.

Scoring

Judges should keep their own scoresheet and feedback during the moot. This will help in creating the final combined scoresheet and feedback at the end of the moot.

JUDGING PROFESSIONALLY AND INCLUSIVELY

Mooting draws a wide range of participants from a variety of backgrounds. To ensure everyone feels included, and to create a professional environment we have two comments on best practice.

First, please conduct yourself **professionally** (as if you were in fact a judge in the Supreme Court) during the moot. That being said, moments of light-heartedness are often appropriate, and questions to Counsel will often have elements of humour.

Second, mooting should be conducted **without making presumptions as to a person's marital status or gender**. Language that is neutral to gender and marital status includes referring to barristers as "counsel" or when referring to a non-speaker the phrase "your learned friend". This also avoids challenges with the pronunciations of names that you may find unfamiliar or difficult. Being misgendered, incorrectly assigned a marital status or having your name mispronounced may be unpleasant for participants and should be avoided. Use of terms like "counsel" or "learned junior" is professional and avoids unnecessary discomfort during the moot. Naturally, before and after the moot we encourage use of more familiar language to relax the participants.

MULSS Internal Competitions Code of Conduct:

Please see the following documents outlining the MULSS Internal Competitions Code of Conduct:

- [MULSS INTERNAL COMPETITIONS CODE OF CONDUCT](#)
- [Escalation Pathway & Penalty System](#)
- [NON-EXHAUSTIVE LIST OF EXAMPLES DISCRIMINATORY OR DEROGATORY CONDUCT](#)

CONCLUDING REMARKS

Thank you again for taking the time to read this guide and helping to provide a consistent quality and style of judging.

We truly can't emphasise enough how much we appreciate you giving your time to assist the development of mooters at Melbourne Law School.

If you have any questions, please don't hesitate to get in touch with us.

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APPENDICES

Appendix 1: Online Mooting

In the case of an extenuating circumstance, you might be asked to judge a moot online.

Accessing Zoom

Judges participating in Zoom moots will need to make a Zoom for their moots. This should be the responsibility of the first judge listed for that moot. It is **highly important** that you use your **University of Melbourne account** for this purpose, so that the meeting does not end after 40 minutes!

- Once you have downloaded Zoom, when you launch the app it will ask you to log in. Click on the button on the right side that says 'Log in with SSO', and then click the link 'I know the company domain'.
- The domain for University of Melbourne is <unimelb.zoom.us>. The link will redirect you to the university authorisation page, enter your usual student details.
- You should do a test run on Zoom to make sure your internet and microphone work.

You should then post the Zoom details to the fixture.

Zoom Audio

During the moot the only person/s that should continuously have audio enabled should be the judge. Competitors should switch on audio when they are making appearances or giving submissions. Other competitors should have audio switched off. It is at your discretion whether you would like to mute yourself when you are not asking questions, or if you would like to leave your audio on the whole time. It is also at your discretion whether you ask competitors to leave their video on even when not speaking.

Check in

We will send a 'check in' Google Form with the fixtures. To check in, highlight your name in **green** when you are ready to go. Make sure to **join the Zoom call before you check in**.

Once you have checked in, we may **join the call briefly** to touch base and pass on any necessary additional information. If you have any questions/concerns on the night, please feel free to contact us.

Competitors have been told to check in **5–10 minutes prior to the moot**, on the same **Google Form** as you (so you will be able to monitor when your teams have checked in, if you like). Once they have checked in, they will **join the Zoom call**.

We also recommend enabling the Zoom waiting room feature so that you can control when participants join the moot. This is mainly a precautionary measure, if you are judging two moots in a night there is a risk that competitors from the later moot enter the zoom room while the first moot is still proceeding.

Please be conscious that your background will be visible to students and, if possible, try to minimise any background activity that may distract competitors.

Appendix 2: Moot Scoresheet

(see page 14)

First Year Mooting Competitor Scoresheet – note that competitors will not receive their score, just the scoring brackets

(1) Written Submissions (20 points)		1–2	3–4	5–6	7–8	9–10	Score
<i>How well did the team demonstrate in-depth legal research?</i>		Not well	Moderately	Well	Very well	Extremely well	10
<i>How well did the team create a submission that was clear, logical, and easy to follow?</i>		Not well	Moderately	Well	Very well	Extremely well	5
<i>How well did the team adhere to correct spelling, grammar and punctuation and formatting?</i>		Not well	Moderately	Well	Very well	Extremely well	5
(2) Oral Submissions (40 points x 2 speakers)		1–2	3–4	5–6	7–8	9–10	Score
<i>How well did the speaker advocate for their client, understand the legal issues, and develop persuasive arguments regarding these issues?</i>	Senior	Not well	Moderately	Well	Very well	Extremely well	10
	Junior	Not well	Moderately	Well	Very well	Extremely well	10
<i>How well did the speaker apply the law to the facts, and use authoritative and relevant legal authorities to support their argument?</i>	Senior	Not well	Moderately	Well	Very well	Extremely well	10
	Junior	Not well	Moderately	Well	Very well	Extremely well	10
<i>How well did the speaker understand questions from the Bench? How well was the speaker able to make clear, measured and relevant responses?</i>	Senior	Not well	Moderately	Well	Very well	Extremely well	10
	Junior	Not well	Moderately	Well	Very well	Extremely well	10
<i>How well did the speaker engage the court in a conversational style? How well did the speaker demonstrate appropriate body language and court etiquette?</i>	Senior	Not well	Moderately	Well	Very well	Extremely well	10
	Junior	Not well	Moderately	Well	Very well	Extremely well	10
(3) Penalties					Comments		Score
<ul style="list-style-type: none"> • Have there been points deducted for incorrect AGLC4 compliance? (<i>max. 5 points</i>) • Have there been points deducted for late submissions? • Were there any other penalties applied? 							

First Year Mooting Competitor Scoresheet – note that competitors will not receive their score, just the scoring brackets

Total (out of 100)										100
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