

Herbert Smith Freehills First Year Mooting Competition 2024

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COMPETITOR WORKSHOP & INFORMATION
SESSION



Presented by MULSS First Year Mooting Co-Opts
Grace Staton and Bridget Connelly

Email: firstyearmoot@mulss.com

Acknowledgement of Country

The Melbourne University Law Students' Society acknowledges the Wurundjeri People of the Kulin Nation as the Traditional Owners of the Land on which the University stands and respectfully recognizes Elders past, present and emerging.

Session Overview

1. Introduction to Mooting
2. Competition Structure
3. Registration and Logistics
4. Demonstration Moot
5. Walking through a Moot
6. Questions?

1.

Introduction to *Mooting*

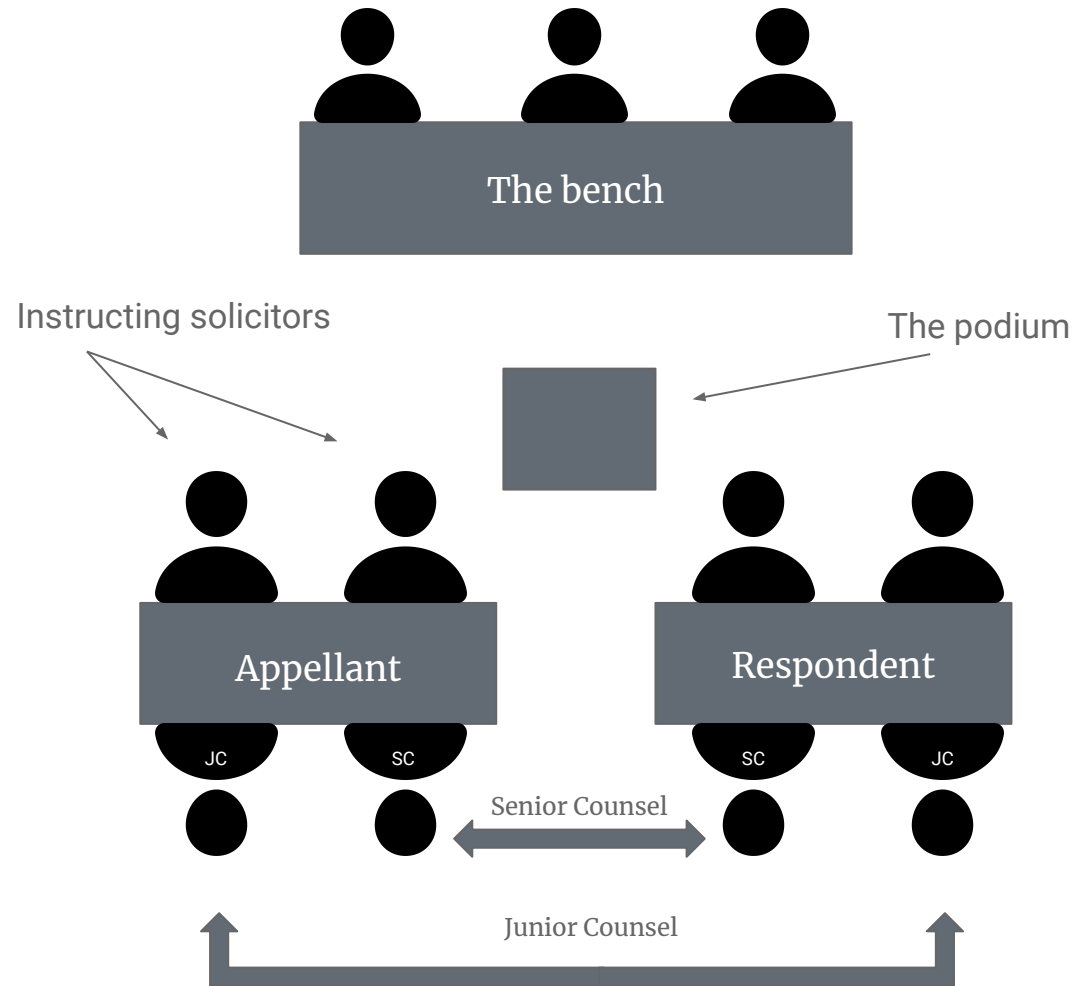


What is Mooting?

- Essentially, mooting involves the simulation of an appellate court
 - Why an appellate court? No haggling over the facts
- Mooting has two elements:
 1. Written submissions (due *24hrs* before the moot)
 2. Oral submissions (given *during* the moot)
- Teams are presented with a factual scenario and an outline of the key legal issues at play
- Teams then craft arguments to convince the bench why their interpretation of the facts and application of the law should be accepted

What is the set up of Moot Court?

- Most rounds do not take place in the 'Moot Court' but in classrooms
- We strive to achieve this setup but we cannot guarantee it!
- R1 - R3 have 2 student judges



What do written submissions look like?

➤ Written submissions require?

- Research
- Formatting
- Time compliance
- AGLC4 compliance

and most importantly ...
TEAMWORK!

Note. This example is not perfect!
Unredacted example given later!

IN THE COURT OF APPEAL
OF THE SUPREME COURT OF VICTORIA

No. [REDACTED] of 2023

BETWEEN

[REDACTED] (APPELLANT)

and [REDACTED]

[REDACTED] (RESPONDENT)

APPELLANT'S OUTLINE OF SUBMISSIONS

SENIOR COUNSEL Grace Staton
JUNIOR COUNSEL Rory [REDACTED]
INSTRUCTING SOLICITOR Bridget Connelly

Summary of Submissions

- 1 Subject to [REDACTED] at the risk of the respondent.
- 2 [REDACTED] was not subject to a contractual obligation [REDACTED]

1. Subject to [REDACTED] at the risk of the respondent.
- 1.1 By [REDACTED] relieve [REDACTED] responsibility for [REDACTED].
 - 1.1.1 It was the responsibility of [REDACTED] conditions provided in the contract.
 - [REDACTED]
 - [REDACTED]
 - 1.1.2 [REDACTED], the reasonable person would think [REDACTED] would not accept any responsibility [REDACTED].
 - *Toll (FGCT) Pty v Alphapharm Pty Ltd* (2004) 218 CLR 165, [45].
 - *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197, [288] (Brennan J).
 - 1.1.3 [REDACTED] is not set out to conceal the [REDACTED] and not encourage [REDACTED].
 - *Toll (FGCT) Pty v Alphapharm Pty Ltd* (2004) 218 CLR 165, [29].
- 1.2 If [REDACTED] unsatisfactory, they did not have to [REDACTED].
 - 1.2.1 As a [REDACTED] was required to either [REDACTED] or [REDACTED] in which they were presented.
 - *Competition and Consumer Act 2010* (Cth) s [REDACTED]
 - *Australian Securities and Investments Commission Act 2001* (Cth) [REDACTED]
- 1.3 [REDACTED] does not satisfy the [REDACTED] test for an [REDACTED].

2

What makes *good* mooting?

- Who really knows?! There is no single 'perfect' way to moot
- Beyond a few basic stylistic tips, do what works for you
- At the end of the day, the team that wins the moot may not be the team who has the law on their side. It is the team who **advocates** best for their client.

What are the time commitments?

- There is a reason why we limit the amount of time you have to work on the submissions for each round!
- Some teams will go more 'in-depth' in their research than others - it is entirely up to your team
- You will be competing in teams of **4**, meaning the workload should be manageable around class / work / social lives
- That being said, this is a competition: what you put in is what you get out of it

2.

Competition Structure



Rounds

- **Preliminary Rounds** (Rounds 1-3)
 - Round 1 will cover a ★new★ factual scenario based in Torts
 - Round 2 will cover a factual scenario based in Obligations
 - Round 3 will cover a factual scenario based in Torts
- **Finals Rounds** (QF, SF, GF)
 - Knock-out elimination
 - Different problems each week

Overview of Competition Structure

- There are two speakers each week, with optional instructing solicitors (non-speaking) so you can share the load across your team
- Each team is guaranteed **THREE** rounds
 - The 8 *top-scoring* teams will move to the Quarter-Finals
 - Each subsequent round will be knockout
 - First three rounds are in Semester One and finals are in Semester Two
- The competition will run *WEDNESDAY and THURSDAY nights and rounds are FORTNIGHTLY (Weeks 4, 6, 8)
 - *Please note that round 3 (week 8), the competition will take place on Tuesday/Wednesday because of ANZAC day

Team Structure

- Teams will consist of 4 students.
- Problems will be about either Torts or Obligations, although final rounds may cover new content...
- As such it is advised that **at least one** (preferably two) members of your team will be:
 - Taking Torts in semester 1
 - Taking Obligations in semester 1

In-Person vs Zoom 'E-Moots'

- Mooting rounds will be held in-person this year
- Students who are unable to attend campus due to *illness, studying off-campus, medical conditions or a disability* may be permitted to participate in mooting via zoom
 - You must notify us as soon as possible if this happens
 - Approval of these requests are subject to the Co-opts' discretion
 - In these cases we may need to ask in-person teams to moot online

Problem Release

- Teams will receive the moot problem (facts and grounds of appeal) before their scheduled moot.
- Written submissions are due to us and the other team 24 HOURS before the scheduled moot
 - We will send them on to your judges

Note. Penalties will be enforced for late submissions!

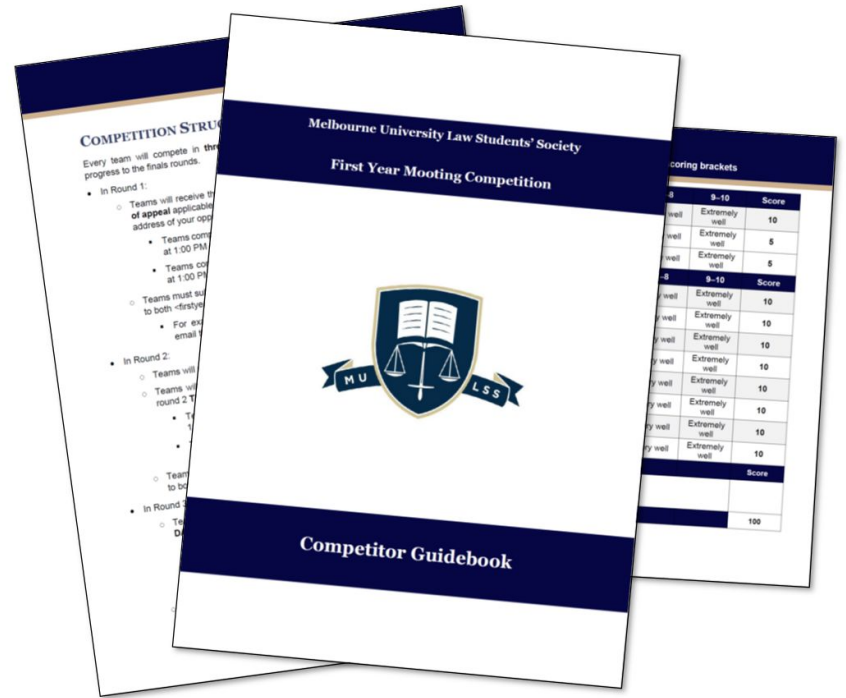
3.

Registration and Logistics



Resources

- MULSS website
 - **2024 First Year Mooting Competitor Guidebook**
 - Example written submissions
- Facebook
 - MULSS Competitions 2024
 - First Year Mooting 2024
- Internal Competitions Accommodation Form



Signing-Up

- **Individual sign-ups** will open at the end of this session **26th of March 2pm**
- **Team sign-ups** will open at **5PM Friday 1 March**
- The links to sign up will be posted on the **MULSS Website** and in the **MULSS Competitions 2024 Facebook group**
- Teams will be given a spot on a first come, first serve basis.
 - If you are unsuccessful in gaining a spot you will be placed onto a waiting list.
- We will notify teams by 9pm Monday whether they have been successful in applying

Missing Team Members?

- If you are struggling to find a team of 4 please fill out the '**Pair/Individual Sign-up: Partner Matching form**'
 - We will release this form on the MULSS Competitions Facebook page and the MULSS Website following this info session.
 - This form will close **Friday 12pm**
 - Please note that this form **will not guarantee you a place in the competition**. Someone in the team will still have to fill out the team sign-ups at **5PM Friday 1 March**.

Accessibility

- Accessibility of competitions is a priority for MULSS
- Please fill out the Internal Competitions Accommodation Form to inform us of any accommodations that we can make for you.
 - If you have any questions or concerns around accessibility, please get in touch with us or our lovely Disability Representative, Moira Negline at disability@mulss.com

Code of Conduct

- The [MULSS Internal Competitions Code of Conduct](#) ('The Code') are the guidelines by which everyone participating in activities run by this portfolio must adhere to, including all committee members running the activities.
- The [Escalation Pathway and Penalty System](#), is the system by which will follow up complaints and penalise anybody in contravention of The Code.
 - This also includes a **non-exhaustive list of examples of derogatory and discriminatory behaviour**. As we get more responses from the other portfolios, we will update this document accordingly. This will aid judges in identifying behaviours that are in contravention to the Code.
- The [Complaint & Feedback Form](#), is the mechanism by which all competitors, student judges or co-opts can file complaints or provide feedback.

4.

Demonstration Moot



Demonstration Moot

Jacinta Speer appearing for the Appellant

In *Bahl v TryHard*

Before His Honour, Justice James Cafferky

The Problem

- [1] Pavan 'Perfect' Bahl is a 16 year-old model, renowned for his flawless good looks. He is highly strung and neurotic about them. Pavan was recently diagnosed with skin cancer, for which there are a number of available treatments.
- [2] The first is chemotherapy. The success for treating skin cancer by chemotherapy is 90%. Dr TryHard tells Pavan that some people experience severe nausea, which often lasts for several days after treatment.
- [3] The second is surgery. The success rate for treating skin cancer by surgery is 95%. Dr TryHard states there is a slight chance (1-2%) that surgery would leave a permanent scar on Pavan's cheek. Pavan is anxious about the possibility of scarring and the six month healing period.
- [4] Finally, immunotherapy is a new and experimental treatment. It has a reported success rate of 85% and no known side-effects. Dr TryHard does not tell Pavan about immunotherapy.
- [5] Dr TryHard notices that Pavan is beginning to show symptoms of mild anxiety and is worried that he will not consent to any treatment. She refrains from telling Pavan about a certain side effect from chemotherapy (a 10-15% risk a patient could suffer complete hair loss).
- [6] Pavan decides to begin chemotherapy. His skin cancer is successfully treated but his hair begins to fall out. Two months later, he is completely bald. Pavan's agent drops him because of his baldness.

Appeal: That Dr TryHard breached her duty of care by her failure to warn Pavan regarding the risks of chemotherapy.

5.

Walking through a moot



The four stages of mooting

1

Problem Release

2

Research

3

**Written
Submissions**

4

Oral Submissions

Problem Release

- You will receive the problem several days *depending on the round* before your moot
- As an individual, and then as a team, read through the problem
- Identify the legal issues at play, and the key facts that weigh into them
- Consider how you and your team will work together in this round: who is stronger on the legal issues? Who knows the case law best? Whose turn is it to speak? etc.

Researching and Structuring Arguments

- Having identified the legal issues begin to work out how you will argue your side of the case
- This involves researching relevant case law or statute and structuring your arguments in a persuasive and logical manner
- At this stage - take down everything, including page numbers, the judge's name and other citation content!

Researching and Structuring Arguments (*cont.*)

- **Research:** particularly in earlier rounds, your textbook and subject materials should be your starting point
- The MLS Law Library Website has many good resources for conducting further research:
 - Lexis Advance
 - Halsbury's Laws of Australia
 - Westlaw
 - AustLII
 - Legify

Researching and Structuring Arguments (*cont.*)

- When researching cases, what should I look out for?
 - Commonly cited cases from intermediate appellate courts and HCA
 - Cases referenced in the footnotes of significant cases
- Read as much of the cases you use as you can – it is important not to take them out of context!
 - Judges will often ask you for the facts of cases to test you on this
- Make sure you know cases that hurt your argument and distinguish from them (some judges will ask you about them particularly in later rounds)
- HINT: do any agreed facts remind you of cases you have studied in class?

Researching and Structuring Arguments (*cont.*)

- **Structuring arguments:** the grounds of appeal should be your starting point
 - Is there a 'test' that you can use to structure your argument?
 - Look at cases studied in class & legislation to identify such tests
- Make good use of the statement of agreed of facts to either analogise to cases that support your argument or distinguish from those that weaken it
 - Did the decision turn on a particular event or state of affairs?
 - Was the Court (or members of the Court) particularly reluctant to extend the principle?

Written Submissions

- Your written submissions are a brief and clear summary of all your legal arguments, including references to relevant cases and/or statutes.
 - They also form the basis for structuring your oral submissions.
- Don't make the mistake of underestimating their importance!
 - Your written submissions are the judge's first and last impression of your team and contribute 20% of your score.

Formatting of Written Submissions

- **Formatting:** see generally the guidelines in the *Guidebook*.
 - Limit submissions to 2-3 pages
 - Easy to read and well-formatted (Times New Roman, 12 pt font)
 - Uniform, consistent paragraph numbering
- **Citations:** AGLC4 compliance
 - Maximum 5 point deduction for non-compliance
 - You should include a bibliography (does not count to 2-3 page guidance)
 - If you need [extra guidance](#) ('MULR Crash Course on using AGLC')

Structuring your Written Submissions

- Each ground of appeal should be a new argument
- State your argument clearly and concisely, relying on sources to support propositions, ordered by relevance and authority
- You should **not and will not** include everything you want to say: expand on it during oral submissions
- Make sure your use of heading levels capture the logical flow of your argument

1. The original contract was lawfully varied and then later repudiated by the appellant.

- 1.1 The original contract was varied and the appellant was under contract to buy the remaining heating units for \$40,000.
 - 1.1.1 The parties agreed to the variation.
 - *Empirnall Holdings Pty Ltd v Machon Paull Partners Pty Ltd* (1988) 14 NSWLR 527, 534.
 - 1.1.2 The variation was supported by consideration.
 - 1.1.2.1 The respondent provided fresh consideration for the variation by importing different and higher quality units than those stipulated in the original contract.
 - *Wigan v Edwards* (1973) 1 ALR 497, 512.
 - 1.1.2.2 In the alternative, the appellant received a practical benefit from the variation.
 - *Musumeci v Winadell Pty Ltd* (1994) 34 NSWLR 723, 746-747.
 - *Ajax Cooke Pty Ltd v Nugent* (Unreported, Supreme Court of Victoria, Phillips J, 29 November 1993) [12-13].
 - *Silver v Dome Resources* (2007) 62 ACSR 539, [131-134].

Submitting your Written Submissions

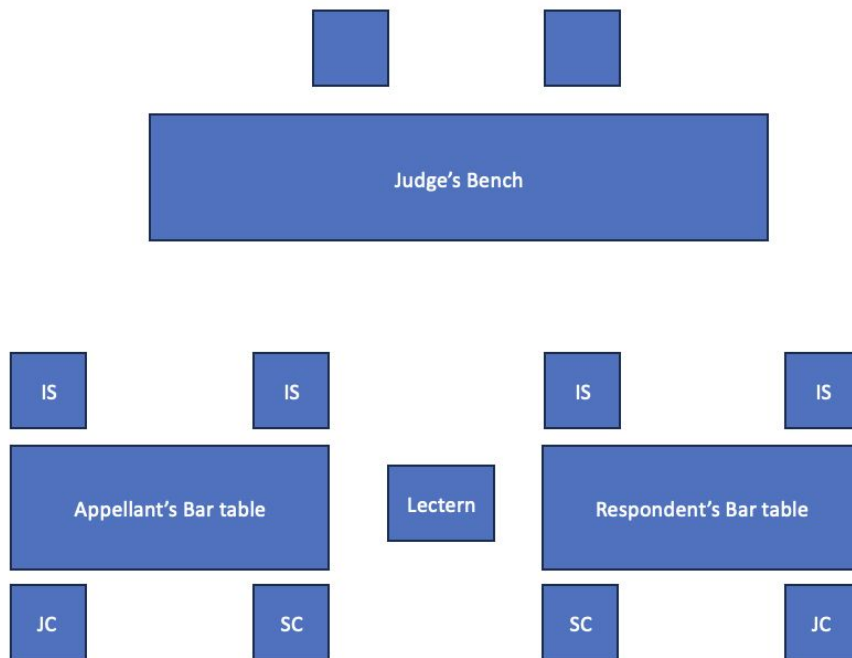
- You must submit your written submissions to both firstyearmoot@mulss.com and your opposing team contact person 24 hours before the moot
- Penalties will be imposed for late submission (upon co-opts discretion)
- Please send your submissions in **WORD** format

Note. Penalties will be enforced for not being in WORD format.

Oral Submissions

- Your oral submissions will be your opportunity to advocate for the written arguments you have previously prepared and for the judge to ask you questions.
- Each side will have two speakers. The first speaker is called the Senior Counsel and the second is called the Junior Counsel. Each has **10 minutes** for submissions.
- There are 40 points available per speaker in oral submissions allocated to substantive arguments, engagement with the judge and style.

Oral Submissions: Formalities



Oral Submissions: Commencing Proceedings

- When you first walk in, we want you to feel comfortable. The judges will introduce themselves and check they have the correct teams in the room.
- Formal procedure
 - The judges will say “silence all stand”.
 - The judges will bow to you and you will bow back.
 - The judges will say: “the moot court is now in session, be seated please”

Oral Submissions: Appearances

Order of proceedings:

- Once all parties are ready, the judge will request appearances. The Senior Counsel for the appellant stands and provides appearances followed by the Senior Counsel for the respondent.
- The judge will then indicate the Senior Counsel for the appellant can begin. Both appellant counsels will speak followed by both respondent counsels.
- On the first case you cite, use the full citation and then ask to dispense with formal citations.
- Each speaker has 10 minutes.
- The judge will then deliberate before providing feedback and result.

Oral Submissions: Argument Structure

- *Introduction*: If Senior, signpost what ground you and Junior will be addressing. Then flag if you are going to make any alternative/weird arguments.
- *Body*: These are based on written submissions. Follow the logical structure of the arguments but spend the most time on the points that are **contentious** or **strongest**. Be willing to **adjust** your submissions based on the questions asked by the judge.
- *Conclusion*: Briefly summarise and reinforce your key arguments. Junior Counsel, if time permits, may wish to briefly summarise both arguments.

Oral Submissions: General Advice

- **Questions:** Pause *take a breath*, Formulate, Answer; Keep Succinct
- **Clarity and Simplicity:** Simple legal principles; Focus on factual application
- **Reasonableness:** Make concessions; Focus on strongest arguments
- **Time Management:** Address all necessary issues; Focus on contentious points.
- See *2024 Competitor Guidebook* for more!

What if I DON'T know how to answer a question?

You are not alone! Consider following these steps...

Step 1: Breathe, take time to consider whether you actually do not know the question or are just stressed/nervous

Step 2: Can you try to answer the question? Remember a big part of mooting is advocacy not necessarily knowing the law.

Step 3: Consider asking the judges to repeat or rephrase the question politely. 'Your honour would you mind rephrasing that question, I am not sure I quite understand?'

Step 4: Ask for the judges permission to consult your teammates.

'Your Honour/s may I consult my learned colleague/s for a moment?'

Oral Submissions: Concluding proceedings

- **When the final speaker concludes their submissions,**
 - The judges will say: All stand, this court is now adjourned.
 - The judges will bow and you should bow back.
 - You will exit the room so the judges can deliberate.
 - This ends the formalities!

Scoring

(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 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? (max. 5 points) • Have there been points deducted for late submissions? • Were there any other penalties applied? 							
Total (out of 100)							100

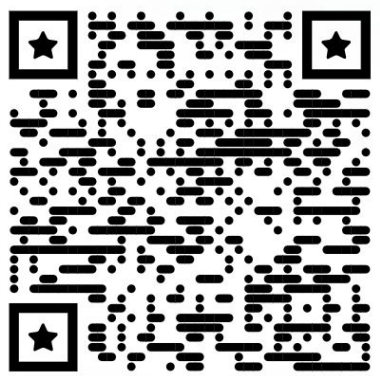
Final Word of Advice

- It's easy to get caught up in the stress and formalities of mooting.
 - We have designed the competition to ease you into the experience.
 - Try to focus less on winning rounds and more so on doing your best and enjoying the mooting fun!
- Please talk to us if you need support.

Questions?

Please reach out to us at firstyearmoot@mulss.com if you have any further queries.

Scan QR code for 2024 FYM competitor fb page



Thank you!
Grace Staton and Bridget Connelly

Want to join in on the fun?

Feel free to email us FYM memes for a chance to be appear on the FYM FB page!