

Open Mooting

2024 Competitor Guidebook



**Melbourne University
Law Students' Society**

**KING & WOOD
MALLESONS
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Welcome!

Welcome to the 2024 MULSS Open Mooting Competition!

This guidebook contains reference information for competitors and teams as they compete in the 2024 Open Mooting competition. It includes important information on the competition itself, as well as the competition rules and procedures. Please read through these rules so you know what is expected of you and your team throughout 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 problems based on core subjects, 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 mooting@mulss.com.

Good luck with the competition!

Ivy Chen and Amelia Liu

2024 MULSS Open Moot Co-Opts

What is mooting?

A moot is a mock courtroom competition where judges, barristers and instructing solicitors conduct an imaginary appeal. As such, there are two teams each round - an appellant and a respondent. Every team is given a hypothetical problem with a set of facts which sets up the legal issues to be argued in the moot, with each team making oral submissions to the judges. Prior to the actual moot, each team must deliver written submissions to the court and the opposing team.

Each team consists of at least two members — Senior and Junior Counsel (the barristers), and an optional Instructing Solicitor if you want to have three in a team. Counsel make oral submissions to the Court for up to 15 minutes each, each addressing a different legal issue. The Instructing Solicitor assists in legal research, preparation, and writing submissions. While the Instructing Solicitor does not speak during the moot, they may provide support, such as keeping time for a barrister or quickly researching a difficult question posed by the judges. If you enter the competition as a team of three, it is at your discretion which member has what role for each moot; however, we do encourage rotating roles to ensure each member gets the opportunity to present and assist.

Approaching the Problem

Receiving & Reading

All competitors receive the problem at 10:00am two days before your scheduled moot.

- Teams competing on Wednesday will receive their problem at 10:00am on Monday.
- Teams competing on Thursday will receive their problem at 10:00am on Tuesday.

It is important to set time aside during this period to familiarise yourself with the facts and relevant legal issues.

Pro Tip: make sure you are **constantly** re-reading the problem. What you will find is that, as you research the law more, you will draw connections and see links between facts that you did not before. It may be useful to set a 1-hour timer on repeat, and re-read the problem whenever it expires.

Legal Research

Researching is a critical part of advocacy and mooting — it is essential in preparing your written submissions which form the basis of any great oral submission. It is also essential in properly understanding the importance of facts. You should aim to locate the relevant principles of law, including both key case authorities and statutes.

Research Resources

- WestLaw AU — <https://cat.lib.unimelb.edu.au/record=e1002185~S31>

- Lexis Advance (good for reported versions of Victorian judgments, which are usually not on WestLaw) — <https://cat.lib.unimelb.edu.au/record=e1000353~S31>
- ICLR (for UK authorities) — <https://cat2.lib.unimelb.edu.au/record=e1000982~S30>
- ProQuest Ebook Central (contains heaps of eBooks, including leading textbooks on areas of law) — <https://cat.lib.unimelb.edu.au/record=e1001503~S30>

The Law Library also has a number of useful research guides; however, learning to research yourself, and finding what works for you, is equally as important and useful:

<http://law.unimelb.edu.au/law-library/research-tools/research-guides>

It is a very good idea, and very useful, to have a shared document that all team members can edit — whether it is through a shared Google drive, or by saving a Word Document to the University's OneDrive, and then sharing it with team members. As you research, keep track of it there and the citations of cases you have read through or looked at — this way, teammates do not double-up and waste time.

Researching the Problem

General research

The best starting point is textbooks on subject areas, that you own, find on an eBook Library, or can locate in an actual library. These sources provide good overviews of the areas of law and have 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

After gaining a basic understanding of the problem, you should begin more specific research on the legal issues. Look up the cases in textbooks on databases such as WestLaw AU and Lexis Advance and cases that cite those cases. Law Journals can also provide you with commentary on recent cases.

Also, remember to look at cases which are detrimental to your argument 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 hold the misconception that written submissions are simply a mere formality. However, written submissions represent the first and last impression a judge has of your team. A well-drafted written submission allows the judge to follow your argument before you have even spoken, and may be the difference between winning and losing a moot.

Word Limit: **1,000** (Code 1).

- This only includes content directly relevant to the argument in each ground (e.g., if you have Ground 1 and Ground 2 headings, in those sections).
- Excludes non-substantive text in footnotes and the usual first-page summary.

HOT TIP!

In approx. 90% of moots, the team that scores higher on the written submission ends up winning! This is not merely due to scoring, but an indication that better written submissions result in better preparation. It makes it much easier to handle the bench when you have a clear, coherent written argument, and demonstrate good research.

Your written submissions should be a brief and clear summary of your legal argument. In addition, it should include pinpoint references to relevant cases and statutes.

After completing the written submission, you should send it to the open mooting co-opt email address: mooting@mulss.com as well as your opponent team (you will be able to access their contact email through a shared file).

Writing Approach and Style

Although it is at your discretion as to how to present your written submissions, we recommend the following:

- 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 sub-headings;
- Ensure that your referencing is AGLC4 compliant; and
- Wherever possible, use pinpoint referencing.

Citing Cases

It is always best to rely on High Court authority, but a lot of the time the High Court will only have higher level principles with a reasonably narrow factual application. Look to intermediate appellate courts that flesh it out. Also understand whether or not a particular case is binding on the particular court the moot is before.

Oral Submissions

After all your research and preparation, you get to the fun part — presenting your arguments in front of the judges.

As each barrister speaks for up to 15 minutes with a recommended time of 10–12 minutes, we recommend preparing a speech which lasts, at a maximum, eight minutes. This allows you to take time to answer questions throughout the moot without being concerned that you will run into time problems. Further, we recommend that you bullet list your points rather than write out a full speech so that you can return to your argument following questions from the judges and to adjust your argument as needed.

Please note, you will need to remember to adhere to formal court procedures throughout your moot.

General Structure

Introduction

Introduce your argument and explain where you are going next. Make sure you 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.

 **HOT TIP!** 

It is not necessary for Senior Counsel to summarise what their Junior Counsel is going to argue — the Junior should do this at the start of their Submissions. The Senior should merely indicate what ground of appeal the Junior will argue, to save time.

Argument

Your argument should be based on your written submissions. In the interest of time, rather than attempting to summarise everything, it is best to focus on the key points of contention and your strongest arguments.

 **HOT TIP!** 

If your opponents have conceded or not argued a particular point, it is worth bringing this to the judges' attention. For example, 'Your Honours, I note this point is uncontested and, so, subject to Your Honours' convenience, I intend to move on to the next'. The judges may pull you up on it — but they may not.

Conclusion

Take the opportunity to summarise your key points and reinforce your argument.

Presentation Tips

Be confident: try limit your 'ums' and 'ahs' if possible. You can use your hands to illustrate a point, but refrain from pacing or using your whole body to make an argument. Maintain eye contact with the judges as much as you can.

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. Try to answer questions as succinctly as possible, often beginning with a 'yes' or a 'no' where possible. But,

please do not take this as an absolute rule — it is rare, in practice, for Counsel to give simple answers, largely because Judges' questions do not lend themselves to such answers. 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 [Senior/Junior]'. The other team is referred to as 'my learned friends' rather than 'the opposition'.

Citations: For the first case you cite as Senior Counsel, the full citation should be recited. You should then ask the judge, 'may my Junior and I dispense with formal citations?', after which they will allow shortened case names. For example, the full citation for *Lynch v Lynch* (1991) 25 NSWLR 411 would be stated as 'Lynch and Lynch, 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'.

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

Order of the Presentation

1. If the moot is in person, when the judge enters the courtroom, both teams should be standing. Teams may take their seats when the judge does so. Generally, though, this does not occur and the judges will be waiting in the room and ask the competitors if they are ready to begin.
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 in this matter. I appear with my learned Junior [name], and we are instructed by our colleague [name].

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 15-minute time limit in which to present their argument and respond to questions. We recommend aiming to only speak for 10–12 minutes.
5. If held in person, 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 Competitors

1. Problems will be sent to **one** member of each team two days before their scheduled moot at **10:00am**. It is the team's responsibility to ensure all members gain access to the problem.
2. Teams are **not allowed** to consult with MLS Academics throughout their preparation. Staff have been notified not to assist nor consult students that approach them either in class or via email.
3. Unless directed otherwise, competitors must adhere to the following requirements for written submissions:
 - a. Submissions must be separated into short, consecutive numbered paragraphs;
 - b. All points of law should be cited;
 - c. Word Code 1 (**1,000** words) applies. This only includes text relevant to the argument of both grounds (and thus excludes a short first-page summary), and excludes non-substantive text in footnotes; substantive text in footnotes will count towards the word limit
 - d. Written submissions must be AGLC4 compliant.
4. All teams are required to submit a copy of their written submission to **both** the Open Moot Co-opts (mooting@mulss.com) and their opposing team **no later than 6:00pm** the day before their 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.
 - d. failure to submit written submissions, as expected, results in a submission score of **0**.
- 5. When a moot is held in-person, all teams are required to present to the LSS Office on Level 2 **15 minutes** prior to the scheduled start time.
- 6. If it were necessary to hold Open Moot online, teams would be notified of arrangements as far as possible in advance.
- 7. All team members are required to wear formal business attire.
- 8. If a team wishes to swap time slots, they must find another team willing to swap. Once confirmed, an email must be sent to the Open Mooting Co-opts (mooting@mulss.com) at least 72 hours before with the following template attached:
 - a. Your team name;
 - b. Current time allocation;
 - c. Name of the team you are switching with;
 - d. Time slot you are switching into.
- 9. Each speaker has up to **15 minutes** of time in which to speak. This time is inclusive of any questions or interjections made by the judge/s. Please note that this amount of time should be regarded as an **upper-limit** and counsel should aim for **10–12 minutes**.
- 10. 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.
- 11. At the conclusion of the moot, all teams will receive oral feedback from the judge/s. Scores will not be disclosed.
- 12. Written feedback will be sent out shortly after the moot.
- 13. All scores are **final**. Teams must not dispute their score with the judge or after the moot.
- 14. Teams are **not allowed** to contact the judge/s following a moot under any circumstances. Any team found to have contacted a judge directly will be

disqualified from the competition. All queries should be directed to the Open Moot Co-Opts (mooting@mulss.com).

15. 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 co-opts at mooting@mulss.com. Teams may forfeit after the problem is released **only in extraneous circumstances**, having spoken to both the competition co-opts and directors at competitions@mulss.com. Teams who forfeit without regard for the rules or their opponents may be blacklisted from competing in future competitions.
16. 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 feedback.
17. Competitors should remain mindful of the formal nature of the Open Moot Competition at all times. It is expected that all team members behave in a manner appropriate for court.
18. At the discretion of the Open Moot Co-Opts, failure to comply with these rules may result in a penalty.
19. The Open Moot Co-Opts have discretion to make reasonable changes to these rules if they consider it in the interests of the competition. Any changes must be communicated, as soon as possible, to competitors.