

HERBERT SMITH FREEHILLS FIRST YEAR MOOTING COMPETITION (E- MOOT VERSION)



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Table of Contents

WELCOME.....	2
WHAT IS MOOTING?.....	3
APPROACHING THE PROBLEM.....	4
WRITTEN SUBMISSIONS.....	6
ORAL PRESENTATION	8
RULES	13
APPENDIX: ADVICE AND TIPS	17
CONCLUDING NOTE	21

—QUICK REFERENCE GUIDE—

- On **submitting written submissions, naming conventions and late submission penalties**: 13–14
- On how to give **appearances**: 8
- On **formal citations**: 11
- On **conferring with teammates**: 12

WELCOME!

Welcome to the 2020 First Year Mooting Competition!

This guidebook is the key point of reference for you and your team as you progress through the First Year 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 you 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. We have selected problems based on your developing knowledge of Obligations and Contract and Tort Law. As you progress, you may be required to read further ahead to topics with which you are not yet familiar. You may also be required to supplement your knowledge of law and cases from class with external research.

If you have any questions, please do not hesitate to contact us via email: firstyearmoot@mulss.com.

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

Good luck!

Annie Jiang and Tina Yao
2020 First Year Mooting Co-Opts

WHAT IS MOOTING?

A moot is basically a mock courtroom scenario, with judges, barristers and instructing solicitors conducting an appeal. In each round, two teams compete against each other before a judge or panel of judges. Teams are provided with a hypothetical problem with a set of facts and two grounds of appeal, which set out the issues in dispute. Prior to the moot, each team is required to submit a written submission to the court and to the opposing team. Teams then take turns to provide an oral submission to the bench, during which the bench will ask questions.

Each team consists of a Senior and Junior Counsel (the barristers) and an optional Instructing Solicitor if you have a team of three. The barristers each make a 10-minute oral submission to the Court. The Instructing Solicitor (optional in a team of three) assists with legal research and the preparation of the written submission. The Instructing Solicitor does not speak during the moot but is advised to attend to provide support. 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.**

- Students competing on Wednesday will receive the problem at 1.00PM on Monday
- Students competing on Thursday will receive their problem at 1:00PM on 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 working collaboratively with your teammates to prepare both your written and oral submissions.

As the problems are Obligations, Torts or Contracts based, you may be familiar with the legal issues. If not, it will be necessary to undertake research perhaps using your assigned Obligations or Torts textbook as a starting point.

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 statutes. You should spend most of your time researching and understanding the law as well as how it applies to the facts.

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

It may be helpful to do your research in the following order:

- **General research:**
 - Start with your assigned Obligations or Torts textbook and 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 point.

- **Specific research:**
 - Once you have gained a basic understanding of the problem, you should start doing more specific research on the legal issues.
 - During your general research you will likely come across specific principles, cases and legislation that will require more narrow research.
 - 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(s) and to opposing team members.

It is important to note that the written submission is NOT just a formality. 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(s) 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/first-year-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 AGLC4 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

Order of the Presentation

1. The judge will read the name of the case and ask for **appearances**. The Senior Counsel for the **appellant** should stand and say ‘If the Court pleases, my name is [Name of the Senior Counsel]. I appear for the appellant with [Name of the Junior Counsel], instructed by [Name of the Instructing Solicitor] (*if present*)’, before sitting down. The Senior Counsel for the **respondent** then does the same.
2. 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.
3. 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 in less than 10 minutes to allow for questions.
4. At the conclusion of submissions, both 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.

Structuring Your Presentation

A moot is not a recital of a pre-prepared written speech: it is a conversation between the bench and Counsel. The judge(s) will regularly interrupt your presentation to question you. By having a general outline of your presentation rather than a word-for-

word speech, you will be in a better position to return to your argument following interjections and questions. This is why it is important to research thoroughly and understand the law and how it applies to your case.

Remember, both barristers in your team will be presenting on a different ground of appeal, for 10 minutes each. With two grounds of appeal, each barrister should address only one point of appeal.

The general structure of your presentation should be as follows.

- **Introduction:**

- Introduce your argument and signpost what you are going to say. Signal clearly what you are arguing and the general structure of your argument to ensure the judge(s) 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(s) 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 the basic IRAC structure for each major point.

- **Conclusion:**

- Junior Counsel should provide a summary of your entire team's argument, mirroring the Senior Counsel's introduction
- It is usually not necessary to summarise your submissions, given the limited time. If you do have time and really want to, you may:
 - Reiterate what you have submitted to the judge(s).
 - A conclusion should be close to a mirror image of your introduction, even if the issues were not discussed in the same order.

- If you ran out of time and did not get time to address some of your points, you may very quickly refer the judge(s) to your written submission in your conclusion.

Presentation Tips

- **Don't read and be clear and confident:** remember you are engaging in a conversation with the bench, rather than making a speech. 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. Note that in Zoom, judges can often tell if you are reading your submissions directly off the screen. Maintain a pace that is easy to listen to (remember you are discussing complex issues so give the judge(s) time to digest your arguments).
- **Cases:** be prepared for the judge(s) to ask you anything about any of the cases to which you refer.
- **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. Be patient when responding to questions. Respond to the questions directly. 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.
- **Time management:** if you notice you are exceeding the time limit of 10 minutes, you may request an extension of time from the judge(s). This is at the discretion of the judge(s) and may be one to two minutes, or no extension.

Courtroom Etiquette

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

Modes of Address

A judge should be addressed as ‘Your Honour’ and members of the other team are referred to as your ‘learned friends’. Members of your own team may also be referred to as your ‘learned friends’, or to avoid confusion, your ‘learned junior/senior’.

Citations

For the **first** case you cite, the full citation should be given. 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, 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.

If the first authority you cite is a statute, the full citation should also be given. For example, the full citation for *Wrongs Act 1958* (Vic) s 1 would be stated as: section 1 of the Wrongs Act, enacted by the Parliament of Victoria in 1958.

When the Senior Counsel asks the judge(s) 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.)

Formal Language

Wherever possible, colloquialism should be avoided, and formal language used. Respectful terms must be used. When making assertions you should say ‘we 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 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’.

Respectful Behaviour

If you want assistance from your solicitor, ask the judge something to the effect of ‘may I consult with my learned friends for a moment?’. **IF** you are granted permission you can message the solicitor and quickly, and quietly get instructions.

Counsels should **not** be messaging their teammates while giving submissions unless they have received permission. Competitors who are not speaking should also keep interactions to a minimum to show respect to the speaker and judge.

RULES

1. Problems will be sent to one member of each team (the nominated contact person) 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. Teams will also receive the fixtures and the Zoom meeting code for your specific moot together with the problem.
 - Students competing on Wednesday will receive the problem at 1.00PM on Monday
 - Students competing on Thursday will receive their problem at 1:00PM on Tuesday.

2. All teams are required to submit a copy of their written submission in the form of a **WORD document** to the First Year Moot Co-Opts at firstyearmoot@mulss.com and their competitors via email at least **24 HOURS** prior to their scheduled moot.
 - For instance, students competing at 6:15PM on Wednesday will have to submit their written submissions **no later than** 6:15PM on Tuesday.
 - Similarly, students competing at 7:45PM on Thursday will have to submit their written submissions **no later than** 7:45PM 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 **named** in the following format: '[Team Name] [Round Number]'.

3. Failure to submit your team's written submissions on time and/or in the correct form will incur a penalty as follows:
 - a. 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

- b. 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
 - c. 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.
 - d. When presenting the result, the judge will inform both parties of any relevant penalties which have been accounted for in the final scoring.
 - e. You are not supposed to make any alterations to your written submission once you have submitted it. However, if you do wish to resubmit your submission after the deadline is passed, it is counted as late submission and will attract penalties.
4. Each team's contact person will receive a passcode to your team's Zoom meeting on the day of your moot.
 5. All teams need to check in online at least 5-10 minutes prior to your scheduled moot. We will send you a Google Form with the fixtures, and you need to highlight your team's name in **green** once every single person in your team has set up their devices and is ready to do.
 6. All competitors are required to wear formal business attire, if possible. This includes a blazer and matching pants, skirt or dress.
 7. 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 Co-Opts at firstyearmoot@mulss.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.

8. 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.

9. Anyone who is not speaking should mute themselves during the moot. Your judge will give specific instructions as to whether you need to turn your video off or not.
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. If you are not sure about how to respond to the judge's questions, **DO NOT** just google the answers. This destroys the purpose of mooting and really hinders your credibility as counsel. It will most likely attract penalties to your oral presentation.
12. 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.
13. The decision of the judge(s) 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.
14. Teams are **not allowed** to contact the judge(s) regarding their moot, either before or afterwards, under any circumstances. All queries should be directed to the Co-Opts at firstyearmoot@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 officers at firstyearmoot@mulss.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 organised by the MULSS.
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 receive a score which contributes to seeding and the quality of the competition.

17. Competitors should remain mindful of the formal nature of the First Year 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 First Year Moot Co-Opts, failure to comply with these rules may result in a penalty.

APPENDIX: ADVICE AND TIPS

Accessing Zoom.us

- You need to download Zoom.us for the moot as it is the platform we are going to use. You can download it through this link <https://zoom.us/support/download>.
- Please log onto Zoom via **your student email**, as the University gives all of us full subscription, which would allow your meeting to last for more than 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 with your teammates to make sure your internet and microphone works.

Some general tips on written submissions

An important thing to always bear in mind is that your written submission is a tool that leads both the judge and your opponents through your legal arguments. Having a good written submission makes your oral submission so much more efficient. Remember the Australian courtroom culture is very collegial and collaborative, and both teams are presenting to explore complex legal issues. Do not try to trick your opponents or otherwise hide your arguments secret from them by making your written submission obscure and vague.

- Legal citations:
 - Always include pinpoints in your written submissions, as that tells the judge which part of the judgment you're using to support your case. If you simply cite a case, you might be referring to the dissenting judgment.

- Familiarise yourselves with the AGLC4 book, especially Part I and II. We understand that you guys haven't done your Torts essay yet while preparing for the moot. However, when it comes to legal citation, there is very little we can help with – it's really a case of practice makes perfect. Everything you need to know is contained in the AGLC 4 book, which I believe you all have a physical copy of. Otherwise, you can download it from here <<https://law.unimelb.edu.au/mulr/aglc/australian-guide-to-legal-citation-v4.pdf>>.
- Legal research
 - In terms of conducting legal research outside your course, we have reached a consensus with the judges that you should all start with your course material, as recommended in the Guidebook. Your reading guide contains the most authoritative cases on different legal issues. So make sure you understand them well. Be careful with citing lots of cases outside your course material as you may risk citing a case you don't fully comprehend. However, if you are able to utilise a case not covered in the subject material well, please feel free to do it by all means.
- Guidance on how written submissions are marked:
 - There was some confusion as to how detailed your written submission should be. Firstly, as we have mentioned before, the fact that your written submission is worth more does not change the way you structure it and the content of your written submission. More points are now rewarded for AGLC4 compliance, grammar and clear structure.
 - In terms of how detailed your written submission is, think about the IRAC method you've learnt in class. Try to frame your legal arguments following the steps of the legal test for different legal issues.
 - Think about the purpose of having a written submission. It is supposed to guide the judge through your arguments. It should be able to stand by itself and anyone reading it should be able to comprehend your overall legal arguments. Try to incorporate the specific factual scenario into the legal rules and flash out your arguments. Do not simply list all the legal rules there, as the judge knows the law. If you are uncertain about this particular point, it would be a good idea to look at some written submissions on the High Court website, which can be found here <<https://www.hcourt.gov.au/cases/cases-heard>>. However, please do not duplicate this style.
 - Your written submission should also be simple and concise. So do not put a slab of text in your written submission to substantively elaborate your arguments, that should be included in your oral submission.

Some general tips on oral submissions

- Courtroom etiquette:
 - Apart from this Guidebook, another great source to improve your courtroom etiquettes is the High Court website. You can watch hearings online and learn something from the QCs and SCs.

- If you are not sure about how to make appearances, please refer to the Guidebook (page 8). You can also watch the court hearing on the High Court website to see how barristers make appearances. The link is here <<https://www.hcourt.gov.au/cases/recent-av-recordings>>.
- Please also see the following links from High Court transcripts – read the first couple paragraphs where counsels are giving their appearances:
 - <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/2019/44.html?context=1;query=spence%20v%20queensland;mask_path=>>.
 - <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/2019/240.html?context=1;query=love%20v%20commonwealth%20;mask_path=>>.
- An issue mentioned by all the judges is that most of the counsels were just reading off the screen instead of having a conversation with the bench. Generally, the judge can tell when you are just reading your script as you sound so different when you respond to a question. Having a physical copy of your notes when making oral submissions, like in a real court, is preferred. However, we understand that not everyone has access to a printer at home, therefore it is not compulsory. But while the competition progresses, you should get more comfortable with just talking to the judge about the most contentious legal issues in your case instead of making a speech.
- Questions from the judges:
 - Please be expected that the judges will interrupt you and ask questions at any point during the moot. We have talked to the judges to make sure that the difficulty and intensity of questions increases gradually as the competition goes. However, the essence of a moot is a conversation between the Counsel and the bench. Most of the time, the judge poses a question because he/she is genuinely interested in knowing your thoughts about certain issues.
 - As time lag often occurs when the judge is asking a question, please pause and listen to the judge when the judge says ‘Counsel’, that is the indication that the judge wants to ask you a question.
 - After you finish responding to the judge’s question, please just continue with your submission unless the judge asks you further questions. There is generally no need to ask if you are able to continue with your presentation.
- Other useful tips:
 - Don’t look at your notes when making appearances, you know your teammates.
 - Remember the first 30 seconds of your speech will really help you build a rapport with the bench.
 - Do not talk over or interrupt the judge, apologise to the judge if you accidentally did it.
 - Be patient when the judge questions/interrupts you.
 - Do not read to the judge, even if you have a written-up speech in front of you. Try to talk to the judge.

- Don't speed up when responding to a question.
- Pause before you respond to a question.
- Try to start your response with 'Yes', 'No' or 'To an extent'. It makes it much easier to follow your arguments later.
- Try to incorporate legal authorities in your response to a question, it can be a changemaker, but be concise at the same time.
- Try to structure your response when it involves a slightly complex issue. You might say something like 'Yes Your Honour, there are two parts to my response. Firstly ... Secondly ...'
- Don't be afraid to ask for clarification from the judge if you don't understand the question. You could say something like 'If I understood correctly, is Your Honour referring to ...?'. It gives you more time to digest the question too.

CONCLUDING NOTE

We look forward to seeing you all participate and learn in this competition. Please keep in mind that while we encourage you to do your best, this is an excellent opportunity for you to develop your research, teamwork and speaking skills. We hope that you have an enjoyable experience, learn about courtroom practice and return for more Mooting later on!

Annie Jiang & Tina Yao

First Year Mooting Co-Opts 2020