

BELL GULLY



Mooting Manual

A GENERAL GUIDE TO UNIVERSITY MOOTING IN NEW ZEALAND

Mooting Manual

Competitors' Packs

Mooting Manual

Information for Competitors

Bell Gully Mooting Competition

Information for Competitors

Congratulations on your decision to enter the Bell Gully Mooting Competition. For a number of years Bell Gully has been a proud sponsor of New Zealand University Mooting. Every year it sponsors undergraduate law students from all five New Zealand law schools to the Australasian Law Students Association Conference Mooting Competition, the New Zealand Law Students' Association National Mooting Competition, and the Philip C Jessup International Mooting Competition.

Bell Gully has put together this mooring guide to help competitors prepare for their local law school competitions and for national and international mooring competitions.

Please find attached copies of:

- The Moot Problem
- The Mooting Competition Rules
- The Competition Conventions
- Mooting Tips
- Evaluation and marking regime for Moot Judges
- A Mooting Schedule showing due dates for submissions and the date and venue of your moot.

Enjoy your moot and good luck!

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Mooting Competition Rules

General

- Each team will consist of two members, both of whom must be currently enrolled in an undergraduate law degree.
- The number of preliminary rounds in the competition will be at the discretion of the competition's coordinator.

The Moots

- After formal introduction to the bench each team will have 40 minutes to present their case. The time may be divided between senior and junior counsel 20/20, or 25/15, or 15/25. The division of time must be specified before you begin your oral submissions.
- A warning will be issued with 2 minutes to go and when the allocated time for each team member is up. There will be no extensions of time.
- There will be no right of reply.
- Each team must submit a written outline of their submissions. These will briefly contain:
 - An outline of the team's submissions.
 - Major argument(s) to be raised.
 - Allocations of speaking time.
- The written outline of submissions should conform to the High Court Rules in terms of format. Refer to the Practice Note at [1987] 1 NZLR 483 for further guidance.
- Teams will be expected to abide by these submissions wherever possible, however departure from written submissions is permitted.
- Three copies of the written outline of submissions must be submitted to the Competitions Coordinator at a time specified by them prior to the commencement of the moot. A deduction of 10 points may be made by the judges if submissions are not received on time.
- Teams must exchange copies of submissions at a time specified by the Competitions Coordinator prior to the commencement of the moot.
- Counsel are not required to provide copies of cases cited in their submissions to either judges or the opposing team.
- All research and preparation for the moots will be conducted solely by the members of teams. Any team using outside assistance may be disqualified from the competition.

- Counsel will not robe, but formal attire (i.e., suits) is appropriate.

Judges and Assessment

- All moots will be heard as if before the Court of Appeal of New Zealand. The jurisdiction to hear the case will be assumed.
- Judges will award each counsel a mark out of 100. These marks will be allocated as follows:
 - Organisation of the presentation (15 marks).
 - Development of the arguments (30 marks).
 - Questions from the bench (30 marks).
 - Speaking ability and delivery (25 marks).
- Scores will be submitted to the Competition Co-ordinator. They will not be made available to the team.
- At the end of each qualifying round, scores will be totalled.
- Those with the highest overall scores will be the finalists.
- In the event of a tie, the judge's decision shall be final and conclusive.

Moot Problems

- Where issues relating to legislation are to be argued, this will be specifically referred to in the mooting problem. Otherwise argument is limited to common law.
- The three highest scoring mooters in the final round of competition shall be expected to compete at the Australasian Law Students' Association Mooting Competition.
- The two winning mooters in the final round of competition shall be expected to compete at the New Zealand Law Students' Association Bell Gully Mooting Competition.

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Conventions

- Counsel stand when the judge enters the room, bow to the judge and then sit down when the judge sits down.
- Once the judge appears ready, senior and junior counsel for the appellant stand. Senior counsel for the appellant announces that he or she appears for the party concerned by stating: *"May it please Your Honour my name is [Surname] and I appear for the appellant with my learned junior Mr/Mrs/Ms [Surname]"*. After this both counsel for the appellants sit.
- Both counsel for the respondents stand and senior counsel introduces him/herself and his/her junior as above.
- Senior and junior counsel for the appellant speak first, followed by senior and junior for the respondent.
- When the Judge addresses you, you should stand. If the Judge addresses other counsel while you are standing (e.g. during your speech) you should sit while counsel stands to reply.
- Judges of all courts are addressed in court as "Your Honour" or "Sir/M'am".
- When referring to a High Court or Court of Appeal judge in oral submissions they should be referred to as *"Justice [Surname]"* and not *"[Surname] J."*. District Court judges should be referred to as *"Judge [Surname]"*.
- It is usual to describe other counsel as *"My learned friend"*. Male counsel should use only their surname. Female counsel should preface their surname with Ms/Miss/Mrs. The first names of counsel (both male and female) should never be used.
- When arguing points of law it is permitted to say "I submit that ... " or "It is my contention ...".
- The correct formula for citing cases when speaking is "Brown and Jones" - **not** "Brown v Jones" or "Brown versus Jones".
- Upon closing argument junior counsel should advise the Court that the case has concluded in the following or similar words:

"If the Court pleases, that is the case for the Appellant/Respondent".

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Mooting Tips

This section of the Bell Gully Mooting Manual is intended to assist you in preparing for and surviving your moot. For further assistance you should consult any guides put out by your own University.

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Approaches to Mooting

Students usually adopt one of two approaches to mooting. The first approach could be described as the "**consistent approach**". As its description suggests, this approach involves the student putting in a consistent effort in preparing for the moot right up until the actual event. The second approach can quite simply be described as the "**panic approach**". This approach usually involves students doing very little in the first week of preparation, spending 24 hours in pre-synopsis panic, most of the second week recovering from the pre-synopsis panic and then the final 24 hours hurriedly trying to put together some sort of a speech.

A "**hybrid approach**" which covers a middle ground between these 2 approaches is probably best. A consistent, well-researched synopsis is always the key to a good moot. However, there is no point putting all your effort into preparing a superb synopsis if your preparation for the actual moot is not up to scratch. 30% of your marks in the moot are derived from your ability to answer the Judge's questions well. The only way to answer questions well is to practice and prepare. Therefore, the emphasis or focus of your preparation should always be the second week. It is during this week that your arguments really begin to come together and you develop a good understanding of the overall dynamics of your case.

It is vital that students know the limits of their arguments. To do this adequately, a student must have a clear overall picture of his or her own case and their co-counsel's case. One of the important, but often forgotten, aspects of mooting is team work. Mooting is a process of partnership at all stages. As senior or junior counsel you are only able to present part of your client's case. If you are unfamiliar with the other part of your client's case or the case for the other side you risk contradicting and weakening your client's position. It is foolish not to involve your partner in every stage of your preparation. This is not to say that effort need be duplicated. It is sufficient, for example, to simply brief your partner on where your research on legal issues has taken you. The key point to remember is that no-one ever wins a moot by themselves.

Preparation

Undoubtedly the key to any moot is preparation. It is the one part of the mooting process which you have complete control over. For those of you who have not mooted before, good preparation goes a long way towards giving you that much needed confidence during the actual moot.

Initial Preparation

Ideally preparation should start as soon as you pick up the moot problem. Below is a brief step by step guide to the kind of initial preparation you should think about doing:

- Read through the moot problem.
- Allow about 10 minutes for the initial wave of panic to pass (as you suddenly realise that you are completely unfamiliar with the area of the law on which the moot problem is based!)
- Ask yourself what is your initial reaction to the problem. Where does the justice appear to lie?
- Arrange a time to meet with your mooting partner and brainstorm the topic. This should be done before you even start to think about research. The two of you should sit down, having both read the problem, and try and work out what you think the potential legal issues are and identify any obvious policy arguments. Be careful not to confine your brainstorming session just to your client's case. The idea is to identify issues that the problem raises in general.
- Next, do some general research on the main issues. This involves finding out what the key legal principles are and how they work.
- At this stage of your preparation you should avoid dividing up the issues between you and your mooting partner. At the end of the day, it is human nature to want to focus more on what you are going to have to stand up and talk about but it may not yet be clear how the issues work together, or in what order they should be presented, so the later you split the moot between you, the better.
- After your general research has been completed, you should meet with your mooting partner to discuss strategy. If you are acting for the appellant, then this is the time you need to identify your points of appeal. The Mooting Problem may have already identified these for you. Work out the most obvious key arguments in your case. At this stage you should be looking at the big picture. The detailed research can be done later. In many moots the problem will disclose two, three, or four main arguments. These will probably turn into your main submissions. Remember you only have 40 minutes to address the Court on your client's case. Concentrate on the main points rather than trying to cover a host of minor details.
- Once you have identified your main arguments, the next step is to research each submission. There is no point in both you and your partner researching each submission together, especially where preparation time is limited. Each person should research a different aspect of the moot. More often than not you will become most familiar with the topics which you research and will therefore prefer to present oral submissions on these topics. More experienced mooters, however, often divide the moot up after the research has been done because they have a developed mooting style and can identify the types of arguments they are best at making submissions on.

Research

The most important thing to remember when researching is that you may not find the answer. What you should be looking for are arguments. Below is a brief guide to researching a mooting topic.

- Identify legal principles which support and oppose your main arguments. Remember that your main arguments should be based on principle and not on example.
- Identify relevant case law. Often mooting problems may be based on existing cases. Don't waste too much of your valuable research time looking for the case that your mooting problem may or may not be based on. Balance your research time. If you find a case that you think your mooting problem is based on, but the decision is not in your favour, don't panic. Scrutinise the arguments and use them to get ideas for your own case. In many national and international competitions the moot problem sets out the case law students are required to refer to. Where you are not given a fixed case list you should limit the cases you cite. Twelve is usually more than enough. Remember you only have a limited time to present your case.
- Prioritise your case law in order of relevance. This means you should read your cases carefully and work out how you are going to use them to support your arguments. For example, are you citing a particular case as authority for a legal principle that supports your argument? Or are you citing it for a more limited purpose, for instance, to illustrate how the Courts have tended to approach a particular issue.
- Once you have researched the applicable law you can then look at the policy arguments you identified during your initial preparation. Often secondary material such as journals and articles are helpful in identifying policy arguments that have been considered before. The important thing with policy arguments is not to overuse them. They are persuasive but you must be aware of their limited authority. Rarely will a good policy argument override a legal argument.

Once you have finished researching your main arguments you should meet with your mooting partner to brief them on what you found. This way you are both familiar with where all of your arguments stand without duplicating research.

Drafting your Synopsis

The key to a good synopsis is to state your arguments succinctly, logically and clearly. There is nothing worse from a Judge's point of view than to read a very comprehensive but confusing synopsis. A synopsis is not an opinion. Arguments are at their most persuasive when they are put simply and succinctly. Below are a few guidelines for drafting a synopsis:

- State your main submission or argument. For example:

"4. The defendant was 'detained' within the meaning of s23(1)(b) of the New Zealand Bill of Rights Act."
- Set out the relevant principle of law (if there is one). For example:

"4.7 The meaning of 'detained' was considered in *R v X*

"...quote from *R v X*..."

cf *R v Y* (cite contrary authority where appropriate)

- Where possible break the relevant legal principle down into smaller points. Clearly set out what you need to establish in order for your argument to succeed. For example:

"4.2 A person can be "detained" if there is:

- (a) Actual detention, or
- (b) Reasonable subjective belief of detention."

- Once you have separated out the points you need to establish, the next step is to apply the law to the facts and map out your argument for the Judge. For example:

"4.3 In the present case there was an actual detention:

Fact 1
Fact 2
Fact 3."

- Be as logical and as simplistic as possible without leaving out any important details. A simple argument does not mean an argument devoid of detail. Even a complex argument can be expressed simply if the appropriate law is identified, the key points you need to establish are set out, and the law is applied to the facts.
- Once you and your mooting partner have drafted the submissions (either together or separately) the next step is to review the whole synopsis. Make sure that the layout and format is consistent. Identify whether individual submissions are additional, alternative or reliant on your other arguments. When you frame submissions in the alternative you should clearly identify this for the Judge. A submission should be in the alternative if it gives the Judge another opportunity to decide in your favour where they have rejected your primary submission. For example, your primary submission in the above example was that there was an actual detention, your next submission may therefore read as follows:

"5. In the *alternative*, there was a clear subjective belief of detention."

The submission is framed in the alternative because the Judge is entitled to find that the defendant was "detained" if there was actual detention or subjective belief of detention. In this example, your next submission would have to be that the subjective belief was reasonable.

- If you rely on any statutory provisions or quotations it is important to set those out in full in the synopsis for the Judge.
- When it comes to exchanging synopses with the other side, check with the Competitions Coordinator as to when and where the exchange should take place. There may be arguments in your opponent's synopsis that you haven't countered or addressed in your own. During the moot you are entitled to refer to your opponent's synopsis and address the points raised in it.

Oral Submissions

There are two main approaches to preparing oral submissions. Some people prefer to have their speech written out in full. Others prefer to prepare their speech notes in point form, delivering their submissions in a more 'off-the-cuff' fashion. There is no right way or wrong way to prepare oral submissions. The most important thing is that you feel comfortable with the preparation you have done. If you have not mooted before, the best thing is to practise both approaches on just one of your submissions and decide which approach you feel most comfortable with. Don't be embarrassed about writing out your oral submissions in full, many legal counsel do. The key point to remember is that a moot is a process of communication. You are trying to persuade the Judge of the merits of your case. No Judge will be persuaded by a person who stands up and reads their submissions. There needs to be eye contact, voice modulation and, where appropriate, hand gestures.

A written speech

- The danger with preparing written oral submissions is that you may lack the flexibility to answer questions. When a Judge asks you a question in the middle of the moot, you must be able to respond and then move smoothly back into your submissions without being repetitive. If you adopt this form of preparing oral submissions, do not "read" your speech. You need to communicate with the Judge in order to persuade him or her of the merits of your case. Constantly looking down while you read your submissions will not achieve this. If you write out your oral submissions in full, make sure you practice numerous times before the moot. Be so familiar with your speech that it is there as a back-up more than anything else.

Oral submissions in point form

- This approach to preparing oral submissions requires quite a bit of preparation. You must practice going through your oral submissions numerous times before the actual moot. Identifying what aspects you need to make a note of so as to prompt yourself at the appropriate moment, and what details you need to say but are not going to include in your points. You also need to be familiar enough with your submissions to be able to respond to questions which are slightly irrelevant, or which direct you to different arguments.
- Work out what points you need to establish in order for your propositions to succeed. Then work out the arguments that support your various points.
- At all times you must be completely familiar with exactly what you are asking the Judge to hold. For example, if you are citing a case you must know the limit of its authority. If it is a case from another jurisdiction then its authority might be limited by virtue of the fact that the case is based in part on a statute that New Zealand does not have, or a social situation that is not apparent in New Zealand. All of these distinguishing factors can be minimised but it is very important to be aware of them when you are using the case as an authority for your argument.

Another good hint to preparing oral submissions, regardless of which approach you adopt, is to have one sheet of paper which sets out in the points that you must establish in order for your argument to succeed. These are the points that you cannot concede. On the bottom half of this sheet of paper it is often a good idea to jot down the parts of your argument that aren't so critical. These are the points that you can concede if put under pressure by the Judge, or if it becomes apparent that you are pursuing an unreasonable line of argument.

Work through the cases that you are going to be referring to. One of the easiest questions for a Judge to ask counsel is "What are the facts of this case you are citing?" A good idea, particularly if this is your first moot, is to write on a separate sheet of paper a brief outline of the facts of each case you are citing, which Court it was in, and the Judge who gave the decision. Then, if asked, you can pull out the sheet and have the details at hand.

Know the overall structure of your case and how your submissions fit together. If your structure is logical your arguments will be more persuasive. Often mooters become so involved in the moot problem they lose sight of the "big picture". At this stage of your preparation you have probably identified the good arguments already. Now is the time to focus on structure. Identify your main propositions.

Questions

Your ability to answer questions from the bench counts for 30% of your final mark. Expect to be questioned. Before the moot go through your oral submissions and get someone to question you. Get used to being interrupted. Know which of your arguments are likely to draw questions from the bench. Below are a few tips on being questioned:

- Before the moot think of the kinds of questions a Judge could ask you. (Ideally you should spend at least the day of the moot doing only this). Prepare answers to those questions, being careful to think of how your answer affects the "big picture" of your case.
- By now you should know the strengths and weaknesses of your case. Remember that the Judge's questions will almost always concentrate on your weaknesses. During your preparation time think of a response to obvious questions.
- If you are placed in a situation where you cannot think of any effective reply, you don't need to concede the point if you don't want to. It is enough if you say:

"I'm sorry your Honour, but I can't take this point any further."

- Don't be afraid of being questioned. They help identify the aspects of your argument the Judge doesn't understand. It shows that the Judge is considering what you are saying.
- Take your time-if you have not already prepared an answer be careful not to respond too quickly. Often counsel risk contradicting another aspect of their case if they do not take a moment to consider the repercussions of their answer.
- Speak slowly and clearly.
- Use questions to advance your case. Where possible incorporate your arguments or submissions in your response.
- Answer the question - do not avoid it or answer a different question.
- Listen carefully to the question. If you do not understand it ask the Judge to clarify or repeat it. This gives you more time to think of a response.
- After you've responded to the Judge's question it is often a good idea to ask if the Judge would like you to elaborate further or if your answer was sufficient.
- You should treat a Judge's suggestion on the law with respect but you are not obliged to accept that they are correct. If you disagree you might respond by saying:

"I am obliged to your Honour for drawing my attention to that case, but, with respect, I would submit that it is distinguishable on several bases..."

- Have confidence in the arguments you have developed and researched.

Sarah Armstrong

1995 Stout Shield - Winner/Best Speaker

1995 Best Individual Mooter - Australasian Law Students Association Mooting Competition