HOW TO MOOT GUIDE

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A moot is a simulated court hearing. Mooters receive the facts of a fictitious legal dispute and are assigned a side to argue. Most often, a moot will involve two teams of two.

The scenario almost always involves an appellate hearing; that is, an appeal from the finding of a lower court. Hence, each team will represent either the “appellant” (who will argue for the decision on appeal to be overturned), or the “respondent” (who will argue for it to be upheld).

Within each team, one member will be “senior counsel” and the other will be “junior counsel”. Both team members are equals: these titles simply determine which issue each mooter will take on, and accordingly what their speaking order will be. Senior counsel takes on the first issue in the facts and speaks first, while junior counsel takes the second and speaks second. For junior moots, the two issues will usually be made very clear at the bottom of the problem.

Mooters then research the relevant case law to formulate their arguments. Research is often the most time-consuming part of the moot. Most junior-level moots are “closed authority”, which means you will be given a list of cases along with the problem question. In crafting your arguments, you are not allowed to refer to any material outside of these cases. This is helpful as it limits your research and levels the playing field between your team and the opposing team - you do not have to worry about the opposing team raising obscure material that you have not come across.

Mooters then present the arguments before judges, first putting them in written form (“written submissions”), and then orally in the moot itself (“oral submissions”).
WHAT IS A MOOT

First up is preparing “written submissions”. These are generally 3-5 pages long for junior moots and involve an outline of what your key arguments will be in oral submissions. These are usually due a couple of days before “oral submissions” take place.

Then come oral submissions. Guided by your written submissions, you will elaborate on your arguments, as well as answer any questions the judges may ask. You may also wish to make counter arguments based on your opposing team’s arguments. A moot differs from a debate or a speech in that it involves a dialogue between competitors and judges. Judges may interrupt and ask questions of counsel throughout. A moot is best described as a formal conversation. For a junior-level moot, you will usually have up to 10 minutes per person to present your oral submissions.

Ultimately, judges will select a winner for the moot on the basis of which speakers argued more persuasively. They will take into account scores for both written and oral submissions.

Mooting is an invaluable skill that aids your legal research, presentation and communication abilities. It gives you an opportunity to truly engage and interact with the law.
APPROACHING THE PROBLEM/RESEARCH

Preparation is the one part of a moot you have complete control over, so it pays to put in the work at this stage. By the end of your preparation you should not only know your argument thoroughly, but know its limits as well. Also, don’t forget that you moot in pairs. While you and your partner may deal with different issues, you still want to avoid contradicting each other. Even if you research separately, it is useful to brief your partner on your arguments beforehand.

APPROACHING THE PROBLEM

Your first step should be to read through the moot problem. Give yourself a couple of minutes for the initial wave of panic to pass. Brainstorm the legal issues and obvious policy arguments. Avoid confining yourself to just your client’s case - the idea is to identify issues raised generally. Research any basic legal areas you might be unsure about. After generally thinking about the problem, the next step is strategy. The problem has likely already identified the issues on appeal. There is no point in you and your partner researching both, so divide these between you evenly.

RESEARCH

The most important thing to remember is that you may not find a clear answer through researching. Instead, you are looking for arguments. When researching:
- Identify the legal principles which support and oppose your main arguments. Your main argument needs to be based on principle - not one specific example.
- Identify what case law is relevant. In closed authority moots, even if you are given a case that is not in your favour, don’t panic. Scrutinise the judgment to discover what arguments you could make if questioned on it. If the moot doesn’t have a fixed case list, limit the cases you cite. Twelve is usually more than enough, as you will have a limited amount of time in which to present your case.
- Prioritise your case law in order of relevance by considering how it fits into your argument. Are you citing a case as authority for a legal principle that supports your argument? Or do you want to use it for a more limited purpose?
- Once you have identified and considered the applicable law, make sure to look at policy arguments you identified during your initial preparation. Secondary material such as journals can be helpful in identifying issues you hadn’t considered. However, remember not to overuse policy. Policy’s authority remains limited - rarely will a good policy argument override a legal argument.
WRITTEN SUBMISSIONS

A good set of written submissions (or “synopsis”) will present its arguments clearly and succinctly. When drafting your synopsis, remember that it is not an essay – it’s just a summary of your key arguments. The point of a synopsis is so that the judge (and opposing counsel) know in advance what your arguments will be. Resist the temptation to explain every little detail of your argument here – you’ll have the chance to elaborate during your oral submissions!

Below are a few guidelines for drafting a synopsis:

1) State your main submission or argument. For example: “4. The defendant was ‘detained’ within the meaning of s 23 (1) (b) of the New Zealand Bill of Rights Act.”

2) Provide the relevant legal principle, and back it up with case law (if relevant). For example: “4.1 The meaning of ‘detained’ was considered in R v X, where the court said... [insert quote from R v X].

3) Where possible, you should try and break the legal principle down into smaller chunks or elements. For example: “4.2 A person can be ‘detained’ if there is:
(a) Actual detention, or
(b) Reasonable subjective belief of detention.”

4) Next, you will need to apply the law to the facts in a way that suits your argument. For example: “4.3 In the present case there was an actual detention:
Fact 1’
Fact 2
Fact 3”

This step is arguably the most important. Avoid long, waffly statements of the law; instead, focus on how the law applies to your facts.

When drafting your synopsis, you should be logical and simple. However, be sure not to leave out important details. While your oral submissions definitely shouldn’t be a recitation of your synopsis, it’s not a great idea to bring in wildly new or different arguments that weren’t introduced in your synopsis. In both moots and in real life, it’s considered bad practice to mention cases in your oral submissions that weren’t included in your written submissions. If you realize – after sending in your synopsis – that you’ve made a glaring mistake, the best course of action is to take leave from the Judge to correct that mistake before you launch into your oral submissions.

Once you have drafted your submissions, the next step is to review the entire thing. This is particularly important if you and your partner have drafted the submissions for each issue independently. Check that the layout and format is consistent!
When you frame submissions in the alternative, you should clearly indicate that you are doing so. A submission is said to be “in the alternative” if it gives the Judge another opportunity to decide in your favour where they have rejected your first submission. For instance, assume your primary submission was that there was an actual detention. The second submission might be framed as follows:

“5. In the alternative, there was a clear subjective belief of detention.”

If you are relying on any statues or quotations, it is a good idea to set these out in full in your written submissions.

Written submissions are typically exchanged with the opposite side before the moot takes place. You should read the other side’s submissions in advance, and make sure to note any arguments that you haven’t addressed in your own synopsis. This is a good idea because, quite often, the Judge will point out a strong argument from the opposite side when questioning you during the moot. Reading the opposite side’s synopsis educates you on the holes in your own argument, and prepares you for questions from the bench.

During the moot, you are entitled to refer to your opponents’ synopsis, and to address any points raised in it. This is a good idea especially if you are going first, as you won’t have had a chance to hear your opponents’ oral submissions.
ORAL SUBMISSIONS

You’ve done your research and crafted your written submissions. Now, it’s time to present your oral argument. The key thing to remember when preparing is that your oral submissions will only be as strong as your research. This means you need to read all of the listed authorities, and quite possibly re-read them. You want to have a solid grasp of the legal proposition each case stands for, as well as the facts of that case. You will likely be asked a question on how an area of law relates to, or can be distinguished from, one of these authorities. You also need to understand your argument, including its strengths and weaknesses. You will need to be able to articulate these to the judge when they ask a question. Judges can interrupt you to ask a question at any time, so be prepared for some quick thinking! At the end of the day, you can only do this if your preparation is solid.

With that out of the way, here are some top tips to make your oral submissions do justice to the effort you’ve put in.

WHEN PREPARING
Practice! You want to be well rehearsed. You will be nervous, so you want to feel as confident as possible. You can only do this if you know your oral submissions well. You can only know your oral submissions well if you practice!
Time yourself. You will always be given a time limit. You want to aim to come in a few minutes under the time limit. It is always a good idea to save a few minutes so you can answer questions. While it pays to structure your oral submissions off of your written submissions, you don’t want to recite your written submissions verbatim. Use them as a structure, but be willing to depart from that structure when a judge asks a question.

DURING THE MOOT
You want to have your printed written submissions in front of you. You may forget something, or need to draw on a specific paragraph to answer a question. However, you should also have a brief outline of your oral submissions to refer to first. This is a bit like having cue cards - a simple A4 sheet with bullet points outlining your main structure which you can glance down at to jog your memory. If you are going first (i.e. Senior Counsel for the appellant) you want to ask the judge ‘Would your honour like a brief summary of the facts?’ If the judge says yes (usually they won’t!) briefly explain all the material facts. All mooters should start with a brief introduction. Explain what points you will be making, and in what order. When speaking, deliberately slow yourself down. Stylistically, mooters should be done slowly and clearly. This is so the judge can follow your argument. Welcome questions! Any high quality moot will have a nice dialogue between the judge and counsel. The sooner you can shift your perception of a moot away from a debate - or some TV drama - the better. In New Zealand, oral submissions are made in a conservative and helpful manner. This means welcoming and answering questions about the law in a helpful and open way. When you have finished, or if your time is up, a good way to end is by saying ‘May it please your honour, that is the case for the appellant/respondent on the issue of XYZ’.
RESPONDING TO QUESTIONS

Questions are a great way for you to engage with the bench. They are an opportunity for you to have a conversation with the judge and clarify any pertinent points. Expect to be questioned, and get used to being interrupted. Below are a few tips on dealing with questions:

Before the moot, think of the kinds of questions a judge could ask you. Prepare answers to those questions, being careful to think of how your answer affects the "big picture" of your case.

The judge's questions will almost always concentrate on your weaknesses. During your preparation time, think of responses to obvious questions.

If you find yourself in a situation where you cannot think of an 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. Questions help identify aspects of your argument the judge doesn't understand, and shows they are considering what you are saying. Use this as an opportunity to guide the judge towards any relevant points.

Take your time: it is better to give a well thought out answer compared to an off the cuff one. 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 into your response.

Answer the question. Do not avoid it, say you will get back to 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. However, 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!
FORMALITIES/STYLISTIC ASPECTS

A moot simulates most aspects of court proceedings. This includes the formalities and mannerisms expected of lawyers, especially when interacting with the judge(s).

Prior to oral submissions:
Stand when the judge enters the room, bow to the judge, and sit when they do. When the judge appears ready (or indicates that they are), counsel for the appellant will stand. Senior counsel will introduce both themselves and their client: “May it please Your Honour, my name is Mr/Ms [surname] and I appear for the appellant with my learned junior Mr/Ms [surname]. Counsel sit after this introduction. (A variation of the above introduction is acceptable). Counsel for the respondents introduce themselves in the same manner.

Oral submissions:
Order of speaking is as follows: Senior counsel for A, Junior counsel for A, Senior counsel for R, Junior counsel for R. Do not start your submissions unless the judge appears ready and/or invites you to begin. The judge should always be referred to as ‘Your Honour’ or ‘Sir/Ma’am’. Judges should be referred to as Justice/Judge [Surname], not [Surname] J. Similarly, cases are cited orally as Hosking AND Ruting, not versus or “vee”. The ‘R’ that appears in case names stands for “the Queen” - don’t say ‘R’! Refer to other counsel as “my learned friend”, or by their last name. First names are not used. Use generally formal language. Avoid the use of words like ‘yeah’, ‘cause’, and ‘dunno’. Close your argument with something along the lines of: ‘if Your Honour has no further questions, that is the case for the appellant/respondent’.

Physical appearance:
The dress code is always business attire/formal (suit + tie, skirt/trousers + blouse). Clothes should be neutral colours such as black, white and navy. Minimise distractions, whether it be by styling your hair in a certain manner, or removing dangling jewellery. This will help both you and the judge focus. Physical presentation can affect your confidence and therefore the rest of your performance - so make sure that you are comfortable in what you are wearing.

Miscellaneous tips:
Have a physical copy of your oral submission/bullet points to take up to the lectern with you. It appears more professional, and will be easier to read from than your phone. Use your phone as a timer at the lectern - this allows you to see how much time you have left to speak. If you are running short on time, you may choose to leave out less important parts of your oral submission. Conversely, you may focus more on a submission if you have ample time. Keep hand gestures to a minimum. Though it may feel like a speech, a moot is closer to a conversation with the judge; you’re trying to convince them that your interpretation of the law is correct. You are engaging with them through questions, not simply talking at them.