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I. WHAT IS MOOTING?

What is mooting?

By now, you’ve probably heard a lot about mooting. But what exactly is it? Mooting is essentially a practice court proceeding. Competitors get the chance to develop their researching, drafting and advocacy skills and test themselves by presenting their case before a judge.

Mooters are presented with a fictional fact scenario and must prepare a case for their client. After researching the law, mooters must put together written submissions to present to the judge and then stand up and deliver their case in order to persuade the judge to decide in their favour.

Benefits of Mooting

Mooting is undoubtedly one of the best experiences you can get at law school. It looks great on your resume, will help you feel more confident with your legal skills and is super fun as well.

Mooting at Murdoch

Murdoch Law School prides itself on its mooting program and offers a number of different moots which range from internal moots to national moots to international moots. Mooting can take you around the world. The aim of this guide is to provide a general overview to mooting and help you prepare for your first moot!

Good luck!
II. RESEARCHING FOR A MOOT

Before you start

The first step is always to read the rules of the competition and the mooting question. Mooting can take a variety of forms (from court moots to arbitration) so each competition will have different rules and different requirements.

After you’ve read the rules and are familiar with what is expected of you, read the mooting question thoroughly. When you have read the question thoroughly, read it again! Moot questions are often complex and involve a long account of the facts. Your job is to use these facts to your advantage in a way that is simple and easy to follow. To do this you must know the facts in detail.

Sometimes it may be useful to draw up a chronology or timeline. This will help you ensure that you have all your facts straight in your mind before you start tackling the research.

It is important to read the question carefully so you know what ground you are addressing. Often you will only be asked to address one ground of action. The question will also tell you what jurisdiction the moot takes place in. For most local mooting competitions, this will be in the Supreme Court of West Australia.

Starting your Research

The most important thing to remember as you start researching is to be thorough! Your performance in court will often be influenced by how good your research is, so it is worth putting in the time to make sure you are familiar with the relevant law.

The question may provide you with a clear starting point for your research. Some questions will list relevant legislation or cases. If it does, read these first and see how they apply. Cases in particular will form the basis of your legal argument and are excellent sources of authority. For each case be familiar with the jurisdiction, the facts, the decision of the majority and any dissenting decisions. In the moot, your judge may ask you about any of these things! Pay special attention to cases with similar facts to your own – analogy is a great tool in any argument!

A common mistake for first time mooters is to overlook the weaknesses in their argument. Think about the question from the point of view of your opponent and be familiar with the cases and law they are likely to discuss. Showing that you are familiar with the weaknesses in your case will go in your favour and understanding your opponent’s authorities will help you counter their argument.

Look for facts which are vague or in contention. If the facts are not 100% clear on a point, then you (or your opponent) will have some room to work in your favourable interpretation!
**The Databases**

The key databases to be familiar with when you prepare for a moot are:

- Lexis Nexus AU & Casebase
- Westlaw AU & Firstpoint
- Justis & JustCite (particularly useful for those difficult to find English decisions!)

It is also important that you are familiar with legal commentary like *Halsbury’s Laws of Australia Online* (which can be accessed through LexisNexis AU) and *Laws of Australia* (which can be accessed through Westlaw AU).

**Example: Summary of Research Steps for a Torts Question**

1. Start with the information given in the question – are there any statutes or cases mentioned?
2. Look at textbooks – they give a good overview of the law
3. Look at legal commentary like Halsbury’s Laws of Australia. These will often refer you on to relevant cases.
4. Hit the databases and search for relevant cases.

**Time Management**

It is important to remember that researching is only the first step in preparing for a moot. Make sure you leave enough time to actually prepare your written submissions and your oral argument!
III. WRITTEN SUBMISSIONS

What is a Written Submission?

A written submission is a document the mooter presents to the Court outlining the key elements of the mooter’s argument. It identifies the precedents and legislation the mooter will rely on in oral argument.

The most important thing is that the written submissions are clear and easy to follow. This will not only greatly assist the judge in following your argument, but it will also help you structure your argument in a logical manner.

But please remember that the written submission is not a complete account of everything the mooter will say to the Court. It is a brief outline of the main points that the judges can follow during your presentation.

You should also be aware that you will usually be required to present your written submissions in advance of the moot, generally on the day that the moot takes place. You will usually have to provide a copy of your submissions to your opponent as well.

Elements of the Written Submission

The Header sets out the title of the matter before the court and will state the Court the matter is heard in, the number of the matter and the year, the names of the parties involved, which party is making the submissions and the name of the counsel making the submission.

It should look something like this:

<table>
<thead>
<tr>
<th>IN THE SUPREME COURT OF WESTERN AUSTRALIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>No 102 of 2012</td>
</tr>
<tr>
<td>BETWEEN</td>
</tr>
<tr>
<td>FRENCHIE’S SALON</td>
</tr>
<tr>
<td>Appellant</td>
</tr>
<tr>
<td>AND</td>
</tr>
<tr>
<td>HAIR APPARENT</td>
</tr>
<tr>
<td>Respondent</td>
</tr>
<tr>
<td>----------------------------------------</td>
</tr>
<tr>
<td>RESPONDENT’S SUBMISSIONS (Senior Counsel – John Doe)</td>
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</table>
Senior Counsel’s submissions should also include a basic **Summary of the Facts**. This should be a few basic statements of the relevant facts from the scenario, and should provide the bare outline of what the court needs to know. Be careful to state the facts in an unbiased manner, preferably quoting parts of the facts directly from the question. For example:

(A) **SUMMARY OF THE FACTS**

1. The Appellant enquired to purchase three new hair washing chairs from the Respondent.

2. The Appellant and Respondent entered into a standard form contract for the sale of the chairs.

3. Clause E provided that payment be made at the time of installation and Clause F stated that in the event of the chairs being defective in any way they would be rectified accordingly.

4. After installation it was discovered two of the chairs did not work properly. The massage did not work on one and the hot water did not work properly on the other. The Appellant further complained that the chairs were uncomfortable.

5. The Appellant demanded a full refund for all three chairs and did not pay the balance of the purchasing price.

6. At first instance the Appellant’s case was dismissed and is now appealed to the Supreme Court of Western Australia.

Your **Submissions** are the skeleton of your argument. Break your argument down into main points and present each one as succinctly and effectively as possible. Follow the IRAC method (Issues, Rules, Application, Conclusion). The three essential elements of a submission are (1) a statement of the law, including the authority it relies on; (2) a brief explanation of why it applies to the particular facts; and; (3) the conclusion you are asking the court to draw.

An example is:

1. **The Respondent did not voluntarily assume risk as he did not know of the circumstances creating the risk.**

   1.1. The defence of Voluntary Assumption of Risk requires that the Respondent knew about the circumstances creating the risk – *Insurance Commissioner v Joyce* (1948) 77 CLR 39, 47 (Latham CJ).

   1.2. The Respondent checked before catching the wave and did not see an obstruction. Also he believed he was a distance from the pipes. The Respondent did not know of the circumstances creating the risk.
Your **Conclusion and sign-off** should be a sentence after your submissions which tells the court what outcome you wish to achieve. Add the date and sign off. For example:

On the basis of the above submissions, Senior Counsel for the Respondent respectfully requests an Order of the Court upholding the appeal and reversing the order of the trial judge.

**DATED** this 13th day of September 2012

**JOHN DOE**  
Senior Counsel for the Respondent

Finally, you must include your **List of Authorities** as the last page of your submissions. Start with the header and give the full citation of the cases and legislation you are referring to in alphabetical order, like this:

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Cases</th>
</tr>
</thead>
</table>
IV. PREPARING FOR THE MOOT

**Oral Submissions**

Once you’ve completed your research and written submissions, it is time to start preparing your oral argument. Hopefully by this point you have a clear idea of exactly what you want to say. The important thing to remember at all times is *what are you trying to establish?* Everything you say should relate back to this key point.

Although your written submission should form the basis of your argument, you don’t need to follow them exactly. You will only have a limited time to actually present your argument to the Court and this may be shortened if the judge asks a lot of questions. It is important that you are flexible and prepare both longer and shorter submissions in order to make your time limit.

Try and have a fall-back position for every argument. This way if your judge disagrees with one of your points you have an alternative prepared.

**What to Take to the Moot**

You should prepare all your supporting materials in advance of the moot. These should include:

- unmarked copies of the cases and sections of legislation you will refer to. These will be handed to the judge before the moot commences (if your question relies heavily on a specific piece of legislation it may be helpful to have a full copy with you)

- highlighted or annotated copies of the same documents for yourself

- a copy of your written submissions for yourself

- a copy of the question

- any notes you will need for your oral presentation

Keep your material in a tabbed file. This not only looks neater (and is easier to take to the lectern when you speak) but will also help you refer to your materials quickly if you are asked a question in the moot.

When you receive your opponent’s written submissions, take a look through them. Are there any cases or legislation they have referred to that you are not familiar with? Is there anything that you can easily counter in your argument or something which destroys your own submissions? Reading through them beforehand will hopefully help avoid any nasty surprises during the moot.
THE MOOT

Attire

Formal attire must be worn to a moot. If you have a suit, wear it (and guys, this includes a tie). Conservative is best. If you have long hair, tie it back from your face. Wear minimal jewellery as this can be distracting. Think about what you would wear if you were actually appearing in court. The aim is to project a professional image.

Timing

Aim to arrive at least ten minutes early. This will give you a chance to find the room and calm your nerves before you actually go into the moot. Mooting is an incredibly nerve wracking experience and there is nothing worse than running late!

Seating

Measured from the viewpoint of the judge the convention is that the plaintiff or appellant sits on the judge’s left while the defendant or respondent sits to the judge’s right. If you are unsure, ask!

Language

The language used during a moot is highly formal in order to simulate a legal environment. You should only ever address the Judge, never opposing counsel or your own side. Refer to the judge as “Your Honour”. A mooter will usually use the title frequently, particularly in beginning a statement to the court, or replying to interjections from the bench.

Procedure

The moot will start with the Judge entering the court. The judge’s associate (if there is one) will announce that the judge is about to enter. Everyone should stand. The judge will then enter and take their seat. You should remain standing until the judge indicates that you should sit.

The judge will then ask for appearances. Appearances are simply where the mooters introduce themselves and state who they are acting for. Only senior counsel for each party gives appearances and they must introduce both themselves and their junior.
Senior Counsel for the Appellant appears first. They stand up and say something like:

“If it pleases the Court my name is Marie Jones and I appear with my learned junior Alex Smith for the appellant, Baltic Shipping.”

The Appellant may then sit down. Senior Counsel for the Respondent then stands and repeats the procedure.

**Speaking Order**

After appearances, the mooters will be called upon to give their submissions. Although the order of speaking varies between different moots, speakers usually appear in the following order:

```
Senior Appellant

Senior Respondent

Junior Appellant

Junior Respondent
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**Oral Presentation – Introduction**

The oral presentation is your chance to convince the Judge of the strengths of your case. Start with a case theory – that is, a brief statement that is catchy, concise and reflects the central idea of your argument. This draws the Court’s attention to what your case is about from your client’s position. Everything you say later should relate back to your case theory. If it doesn’t help advance your case, then it isn’t relevant!

For example:

“Your Honour, without telling my client, this Doctor had another, less skilful surgeon perform surgery which ruined my client’s chance of a lucrative media career.”

You can also use your introduction to put the issues in a broader context. Discussing policy issues is a good way to give your introduction a hint of drama that may make your argument more effective.
For example:

“It is crucial to the foundations of our medical system that a patient be fully informed about their surgery and be able to trust their doctor and surgeon as they put their life in their doctor’s hands”

Finish your introduction by briefly outlining what each of your submissions will be.

**The First Speaker**

The first speaker has an important role, different to that of the other speakers. The first speaker has the task of presenting the facts to the Judge and dispensing with formal citations.

Before continuing with their first submission, the first speaker should say:

“Before I proceed with my submissions would your Honour like a brief summary of the facts?”

The facts must be those agreed on by both parties and should be presented in a simple, efficient and unbiased manner.

Then, after the first speaker has given their first case (with complete citation), the speaker should say something like “I ask that we dispense with full case citations”.

**Submissions**

Introduce each submission by saying something like “I will now move on to my first submission”.

Each individual submission should start with a pithy sentence explaining the submission in a nutshell. When you’ve finished each submission, summarise it in an equally succinct way.

Proceed through your submissions in the same order as they appear in your written submission. Refer to your written submission as you go along. This helps the Bench keep up with you.

**Interjections**

Your judge will interject with questions during the presentation of your submissions. Don’t be afraid of this. It is important to remember that you are there to help the judge understand your case and come to the correct conclusion.

Answering the judge’s questions is your chance to shine and show the judge just how thoroughly you know your case and the law. Mooting competitions nearly always come down to who best handles questions from the Bench.

You must be able to suspend your presentation in order to answer questions and then be able to move seamlessly back into your submissions. If you can incorporate
your answer to the question into your submissions and use this to help you move on, then that is even better!

A simple and direct answer is always the best. A judge will ask a question to seek clarity or to gauge your grasp on the law. Sometimes a simple “yes” or “no” answer is all that is needed.

If you are unable to answer a judge’s question (or answer it to their satisfaction) it is important that you return to your submissions and move on. If this occurs, say something like “I am unable to assist the Court further on this point...”

Do not be afraid to disagree with the judge so long as you can justify your reasons, but never be argumentative or dismissive. Never speak over the judge. When their mouth opens, yours shuts!

Be flexible with your submissions and prepared to address them in a different order if that is what the judge wants. If the judge has asked you a question that is dealt with later in your submissions, say something like “Your Honour that point is dealt with more substantially in my third submission. If Your Honour would like, I can turn to that submission now?” or “Your Honour that point is dealt with in my third submissions but briefly the Appellant’s position is...”

Be prepared to give exact page and paragraph numbers for the cases you have referred to as a judge may ask for these. If you do refer a judge to a particular point in a case, pause for a moment to allow them to flip to the page and read it before you continue with your submissions.

**Frequently Asked Questions**

Some questions which judges frequently ask are:

- What case/judge held that? Is this case binding?
- What paragraph/page number is that from?
- What jurisdiction/year is that case?
- Are there any other cases which support your submission?
- Was that a majority/minority judgment?
- What policy factors should this Court take into account?
- If we decide in your favour, what impact would that have on...?
- If, hypothetically, we reject this proposition, where does your argument stand?
**Closing**

A good closing should sum up what has been said, highlighting the essential issues and how they should be resolved. Refer to your strongest arguments without stating them in excessive detail. Also, make reference to your case theory which you raised in your introduction as a way of tying everything together.

It is a good idea to have two conclusions – a long one that covers all the issues and a shorter punchier one in case you run out of time.

**Final Comment**

You always need to conclude your argument. First you should summarise the main points of your submissions and then say therefore that the Court should find in your favour by dis/allowing the appeal and varying/upholding the findings of the learned trial judge at first instance. After this you should say something along the lines of “Unless Your Honour has any further questions that concludes the submissions for the Appellant/Respondent on the 1st/2nd ground of the appeal”. End by saying “May it please the Court” and then return to your seat.

**Terminology**

- The judge is ALWAYS referred to as “Your Honour”

- Judges that you are quoting in your argument are referred to as “Justice (name)”

- The other person on your side is referred to as “my colleague” or “my learned colleague”

- Opposing counsel is referred to as “my friend” or “my learned friend”

- Rather than “I think” say “I submit” or “it is my submission that”

**Signposting**

One of the important aspects of your oral presentation is what is known as “signposting”. This is the art of flagging each section of your argument so that the judge always knows where you are up to. Generally you will have about three submissions to get through so it is important that you let the judge know which submission you are making at any given time.

Don’t wait for the bench to tell you to proceed. If you are turning to another point within a submission say, “Unless your Honour has any further questions, I will move on to the next point of my submission”. As you move from Submission 1 to Submission 2, you can say “turning now to my second submission...”
**Timing**

Each speaker will only have a limited amount of time in which to present their argument. Within this time frame you have to fit in whatever submissions you want to make, but you also have to factor in questions from the Bench. For this reason it is important that you be flexible in your presentation – move to various points as the Bench wants to hear them, and cut or add to your submissions depending on how much time you have left.

If you are running out of time, you can ask for a time extension to quickly summarise your remaining submissions and conclude. Although most Benches will be likely to grant these extensions, don’t rely on it – it is completely at their discretion! If you wish to ask for an extension, say something like “Your Honour, as I see my time is about to expire may I seek a short extension to summarise/conclude my submissions?”

Remember if the judge says no, that’s it – your argument has finished. It’s time to thank the Court and sit down!

**Rebuttals**

In some moots, you may have a right of rebuttal. The appellant, who speaks first, will have the right of rebuttal in order to answer anything the respondent has raised. Occasionally the respondent will also have a right of surrebuttal to address whatever the appellant has raised in their rebuttal, but few moots allow this.

The most important thing to remember in rebuttal is to only exercise that right if you have something important to say that will help your case. Rebutting when you have nothing to add will only weaken your argument.

Often you will need to reserve time for rebuttal up front, so you will need to factor this into the timing of your submissions. Depending on the overall time for the moot, rebuttals are usually between a minute to two minutes long. In this time, don’t address any more than two points. The snappier your rebuttal is, the better the impression you leave in the Bench’s mind.

**General Pointers**

- Be prepared!! This can’t be stressed enough.
- Be confident – stand up straight, face the Bench, speak slowly and maintain eye contact
- Avoid reading from your notes
- Have fun!
Mooting Opportunities At Murdoch

Murdoch offers a number of mooting opportunities internally and at both a national and international level. Information on all of these can be found at the Moot Court Bench’s website (http://www.law.murdoch.edu.au/mcb/). Although these moots may run over a number of months, they do help develop your skills and look fantastic on a resume! Plus you may get to travel and network with lawyers and law students from around the world.

Some of the international competitions that Murdoch runs are:

- The Philip C Jessup Moot Court Competition – the largest, oldest and one of the most prestigious moot in the world, Jessup deals with public international law. It can take you to Canberra and (potentially) to Washington DC.

- The Vis Moot – one of the most prestigious moots in the world, it is held in Vienna and deals with international commercial law.

- The International Maritime Law Arbitration Moot – which deals with issues of international commercial law and admiralty law.

- The ADR moot – which deals with alternative dispute resolution.

Equally if your first mooting experience didn’t go that well, don’t give up! Mooting is a skill which it takes time to develop. Like all skills, practice makes perfect!

You’ll also find that when you go back in to do a second moot, you’ll be a lot better at it. You’ll know what to expect and how to prepare and in time, you will develop your own style which will make the whole process much easier!

If you keep at it you will find that you will improve rapidly. The judge’s feedback will help you prepare for your next moot. With each moot your skills in researching, drafting and advocacy, as well as your confidence on your feet and ability to think quickly will come along leaps and bounds.

So good luck! I hope this guide has helped you prepare for your first moot. If you have any questions don’t hesitate to get in touch with the Moot Court Bench through its website http://www.law.murdoch.edu.au/mcb/