RMIT Law Student Society
Mooting Guide
Contents

Introduction .................................................................................................................................................. 3
  So what is a moot? ...................................................................................................................................... 3
  What’s the process? .................................................................................................................................... 3
  Who’s the judge? ....................................................................................................................................... 3
Preparation .................................................................................................................................................. 4
  Understand the Problem .......................................................................................................................... 4
  Legal Research .......................................................................................................................................... 4
  Structuring your Argument ....................................................................................................................... 4
Written Submissions .................................................................................................................................. 6
  Read the rules of submissions .................................................................................................................. 6
  Structure of Written Submissions – Part One: Title Page ..................................................................... 6
  Structure of Written Submissions – Part Two: Summary of Facts ....................................................... 7
  Structure of Written Submissions – Part Three: Your main arguments ............................................... 7
  Structure of Written Submissions – Part Four: References .................................................................... 7
  Written Submissions Tips & Tricks ......................................................................................................... 8
Oral presentations ........................................................................................................................................ 9
  Preparing of Oral presentations ............................................................................................................. 9
    The Appellant ....................................................................................................................................... 9
    The Respondent ................................................................................................................................... 10
Appearances ............................................................................................................................................. 10
  Forms of address in the Court Room ...................................................................................................... 10
Verbal citations .......................................................................................................................................... 11
  How to handle questions for judges ..................................................................................................... 11
  Oral Presentation Tips & Tricks ............................................................................................................. 11
Online Resources ....................................................................................................................................... 12
Introduction

Advocacy work is integral to working as a lawyer and mooting is the greatest opportunity for students to practice these skills whilst still at University. Mooting is not debating; it is not public speaking; it is about advocating for your client. I have found mooting to be one of the most rewarding and enjoyable activities through my time studying law and encourage you to get involved in any capacity. You will meet lots of new people and get a far greater understanding of the substantive law once you see it in action through participation in a moot.

So what is a moot?

A moot is a mock proceeding in a mock court. It is usually an appeal from a lower court where the evidentiary matters have been settled and the focus. There are varying levels of formality and procedural correctness depending on the moot, the internal competitions are less formal then intervarsity competitions.

What’s the process?

Initially you will be given a problem or scenario which usually includes the specific area of law which is being contested, something like ‘Party A appeals the judgement of the lower court as the trial judge erred as a matter of law by failing to consider X and Y’.

Problem is released ➔ Written Submissions Due ➔ Oral arguments

Written submissions will usually be due a couple of days prior to the moot and you will usually have an opportunity to review your opponent’s submissions prior to the day. Oral arguments are made in person in front of judge - they usually go for between 15-20 minutes.

Who’s the judge?

It all depends on the moot. You may appear in front of;
- Student Judges
- PHD or Masters Students
- Lecturers from your university or another university
- Members of the profession; both Solicitors or Barristers
- Real judges or members of the forum you are appearing in.

Often at the finals of a large moot you may appear in front of the Chief Justice of the Supreme Court or a High Court Justice.
Preparation

Preparation is key to your success in a moot, usually the team who is best prepared will win. Even if you are new to mooting if you prepare well and understand the scenario, the law, and your objective you will have a real chance of knocking out a well-seasoned team who is less well prepared.

Understand the Problem

Understanding the problem is more than simply reading it. You need to understand the facts that you have been given and the legal issue at hand but most importantly what does your client want. If, for example, it is a commercial dispute consider; if you were the party you are representing, what is your objective? Do you want money? Do you want the other party to do or cease doing something? Or are you merely defending yourself? Once you understand your party’s objective you need to put a logical flow of the law around it. For example, if there is a case of negligence where ‘Party A’ has won a judgement from ‘Party B’ and there are multiple grounds of appeal, you need to assess how many of those grounds you need to win in order to overturn the judgement. It may be that you only need to win on one of those grounds to get the desired result, or you may have a series of arguments that build and you need to win all of them in order to overturn the original judgement. It is often simpler if you are the respondent, especially if you do not have a counteraction, as your objective is usually to counter the appellant’s submissions. Still as a respondent though consider how the appellant’s case is built, if they have multiple grounds do you need to defeat each one? Or do you only need to defeat a central pillar?

Legal Research

One of the great things about a moot is that there is always more than one of you. Legal research, especially if it is a complex scenario with multiple grounds of appeal, can be split up between you. It is imperative that all of you have a good understanding of the basic law of the moot but the specifics of each area can be research by one member of the team who can come back with a briefing note on the major cases and issues at hand. Make sure that you review all sources of law, legislation, case law (both foreign and domestic) and journal articles. I often like to start with my text books or a journal article for a cursory overview and then move to cases and legislation as my understanding of the law grows.

Structuring your Argument

The structuring your argument and understanding the logical connection between your overall contention or position, i.e. why your client ought win the case with the assertions you will rely upon to demonstrate this, is important. Further these assertions must be supported by law and fact.
### Objective: why you should win

<table>
<thead>
<tr>
<th>Assertion 1</th>
<th>Assertion 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>Law</td>
</tr>
<tr>
<td>Facts</td>
<td>Facts</td>
</tr>
</tbody>
</table>
Written Submissions

Written submissions form the basis of your oral arguments and serve multiple purposes;

- You must submit them and they will be reviewed by the other side
- The judge will review them, usually prior to the moot
- They can be used to guide your oral arguments
- Serve as a basis for structuring your case

Read the rules of submissions

Each moot will have its own specific rules as to what form your submissions must take, when they are due and how long your opponents will have to review your submissions. If you are required to prepare both sides of the argument it is usually advantageous to prepare the appellant’s side first.

Structure of Written Submissions – Part One: Title Page

1. The procedural history of the case and the court that you are appearing in
2. The title of the parties
3. The title of the document
4. Your names and speaking times
5. A brief summary your main arguments, these will form headings in the document
Structure of Written Submissions – Part Two: Summary of Facts

Following the title page of your written submissions you should include a short summary of the main facts of the case, this needs to be accurate and fair but it is important to ensure that you mention all of the facts that you are later to rely upon. So whilst the facts need to be summarised objectively and you ought not subjectively characterise these facts you can highlight the importance of facts that are important to your case.

Structure of Written Submissions – Part Three: Your main arguments

I usually like to take each of the arguments that I have in my summary and use them as headings for the body of the submission. It is also helpful to have the same numbering in your main arguments as in the summary.

Graphic 2: Example of a main argument in a submission

The title of the argument is the assertion upon which you rely to prove your case. This is usually built upon a series of lesser assertions that prove it to be legal correct. Each of these minor assertions must be supported by both law and fact.

Depending on the amount of space that you have to detail your submissions you may have a short main argument (as in the case of the example) or it may be multiple pages long.

It is important to ensure that you list all the case upon which you seek to rely and any other cases that are relevant or may be relevant and how you will distinguish those cases from your own.

Structure of Written Submissions – Part Four: References

A summary of the sources you have included in your submission or which may be relevant to your submission (i.e. the ones that you have reviewed). This is consistent with a bibliography in an essay. Sometimes the rules of the moot will require a specific method of referencing but I find that in text referencing where the specific case or section of legislation is called out directly after the argument upon which it is relied is more easily understood than footnotes. Other than that slight change you should use the Australian Guide to Legal Citation (Melbourne University Law Review Association, 3rd ed, 2010).
Written Submissions Tips & Tricks

- Submissions must be concise and to the point
- Ideally all law upon which you are to rely needs to be included
- If you are the applicant think about how the respondent is likely to counter your arguments
- Try to distinguish cases that do not support your argument
- If you are the respondent tailor your submission to your opponents
- Unless required to by the rules, you do not need to be too detailed in case you wish to hold something in reserve for your oral submissions
Oral presentations

You’ve done all your preparation, prepared your written submissions read up and the law. Now let’s get to the fun bit!

Preparing of Oral presentations

If you have never mooted before go to the RMIT LSS Website and check out the videos to get a feel for it.

Once you have submitted your written submissions you should receive your opponents submissions. First steps is to ensure that the two of you, first and second speaker have a roughly equal amount of content to cover each. Whilst in an actual hearing the individual scores would be entirely irrelevant, moots are usually judged based on the efforts of each individual speaker so it is important to ensure that both of you have roughly equal time and content to maximise your team score.

Here is where the different roles in the moot diverge, depending on your position you should prepare slightly differently.

The Appellant

When you are the appellant you have the advantage of being able to prepare your position in full prior to the oral presentations. Especially if you are the first speaker you should be able to be practice your oral submission almost to the point where it is verbatim. As discussed below you should always be aware of tailoring your submission to the individual judge and respond to questions as they are asked of you.

The first speaker for the appellant needs to

- prepare appearances (see below) it is best to write these down and read them the first couple of times you do the;
- prepare a summary of the facts, this should go for no more than 5% of your total team’s time

The first and second speakers, once they have prepared their individual arguments, should discuss the strategy for the handover. That is when the first speaker has finished and the second speaker is going to start. It looks very organised and like the pair of you are working well together if the first speaker speaks almost exactly to time and passes over to the second speaker seamlessly. The first speaker should therefore be across the first few arguments of the second speaker and the second speaker read to come in at any point passed about half way for the first speaker.
The Respondent

You are responding, you are responding, remember that you are responding. There is no need to rebut what has not been raised. You are responding to what the appellant has submitted, do not respond to arguments that the appellant has not raised! With the one exception that if the appellant is especially poor have you have a limited amount of time to respond to then you can restate the reasons why the original decision was correct. Your response needs to be tailored to the specific arguments that this appellant has submitted. Usually the first speaker for the respondent will address the first speaker for the appellant, and the second speaker will address the second speaker for the appellant, but don’t feel overly bound by this.

If you are going to dispute the summary of facts, do so using no more than 5% of your total team’s time and make sure it is the very first thing that the first speaker does.

Appearances

This is the most formal part of the proceedings. If the proceedings are in a court then you;

Stand, bow, and go to the place where you will present your submissions

‘Your honour, [your full name] appearing on behalf of [your client, the appellant/respondent], I appear with my learned co-counsel [their name] I shall speak for 15 minutes and my co-council shall speak for 13 minutes save 2 minutes rebuttal, if it please the court’

Bow, and sit back down in your chair.

If you are appearing in a different forum, i.e. a tribunal then you may or may not stand, check the rules of the moot and if they are silent then check the rules of the forum.

Forms of address in the Court Room

Your teammate - “my learned senior/junior” or “my learned colleague”

Your opponent - “my learned friend” or “counsel for the appellant/respondent”

The moot judge - “Your honour”, “members of the tribunal/panel” if in an alternate jurisdiction

Supreme Court Judge or High Court Judge - “Justice Kirby” (never Kirby Jay); “His Honour, Justice Kirby”; “Chief Justice French”

If you want to disagree - “With respect”; “With the utmost respect” if they are exceptionally wrong
Verbal citations

The first time that you mention a case, you should give the full citation, then politely ask: “Your Honour, may I dispense with full citation?” and be guided by the judge’s response. Aside from the copy of your submission, ensure that you have a list of your case authorities handy, and the correct titles of any legislation to which you refer. The judge may ask you about which court, which judges, procedural history, dissenting judgments, facts of the case or where else the case may have been reported.

_Carlil v Carbolic Smoke Ball Co_ [1893] 1 QB 256 is said as ‘Carlil and Carbolic Smoke Ball Company eighteen ninety-three, volume one Queens’ bench division page two-hundred and fifty-six’.


_Social Security (Administration) Act 1999 (Cth) s 123TE_ is said as ‘The Commonwealth Social Security Administration Act nineteen ninety-nine, section one-hundred and twenty-three “T” “E”’.

Make sure you understand that difference between sections, parts, sub-sections, chapters, clauses and paragraphs. Personally I find the formers eminently unclear but ask one of your lecturer if you are experiencing difficulties and refer to the Australian Guide to Legal Citation for a list of abbreviations.

How to handle questions for judges

Some judges ask lots of questions, some ask none at all, sometimes lots of questions are good and sometimes lots of questions are bad. Each judge will have their own style and unless you have the opportunity to appear in front of the same judge on a few occasions you are really not going to know what their style is until you get there.

When a judge asks you a questions you;

- stop talking until the judge has finished asking or saying what he/she wants to
- answer the questions then and there
- answer the question concisely
- once you have answered the questions, check with the judge if you may move on

Questions can be difficult especially where you do not know the answer. If you are in trouble you can ask to confer with your colleague, which is a good tactic to get 15 seconds to collect your thoughts.

Oral Presentation Tips & Tricks

- try to ascertain the judges style as early as possible
- always be polite
- only use Latin if you know what it means after all _qui non videt quid dicit stultus_
- never verbalise the ‘v’ as ‘versus’ but rather ‘and’ unless you are quoting an American court
- make sure to know the gender of judge you are quoting, Kiefel, Bell and Gordon JJ are the current obvious ones but always check
- Sign post where you are and where you are going in your oral submissions so that the moot judge knows where you are going
Online Resources

RMIT LSS Mooting Home page, including videos [http://www.rmitlss.com/competitions.html](http://www.rmitlss.com/competitions.html)


What is mooting video (Bond University) [https://www.youtube.com/watch?v=NQapfCZ1O_o](https://www.youtube.com/watch?v=NQapfCZ1O_o)

RMIT Mootcourt Blackboard Page