

Courtroom Etiquette

What is a moot?

Mooting is an ancient means of education in the common law tradition. A typical moot involves the selection of a judicial decision that raises legal points that are still arguable on both sides – ‘moot points’. It differs from trial advocacy in that it is limited to legal argument only. There are usually no witnesses. There is also usually no tendering of evidence.

Moot problems can be self-contained, in that the relevant law to be applied to the facts is also provided to each mooter in a set of cases that can be argued as precedents, or it can be open, in that mooters are free to use any relevant cases they can find as precedents and authorities.

The purpose of mooting is to give students the opportunity to develop practical legal skills and to experience how the law is applied in a court room setting. Participants will be required to prepare and practise their submissions and will develop the skills of legal advocacy. Mooters must explain the relevant legal principles, apply these principles to the given set of facts and explain why the correct application of these facts will result in a decision in favour of their client. Extra facts may not be added, mooters are limited to the facts that are given in the instructions.

Each moot will be argued by counsel representing a hypothetical appellant and counsel representing a hypothetical respondent. The bench – a moot judge or judges – is usually comprised of experienced legal academics or practitioners. In many moot competitions, the bench may comprise of real judges or magistrates. The moot judges decide the winner of the moot on the basis of the best performance in terms of advocacy skills and displayed legal knowledge.

Where to sit: Counsel for the appellant must sit on the right hand side of the bar table as you face the judge. Counsel for the respondent must sit on the left hand side. Instructing solicitors may also sit at the bar table next to their barristers.

When to stand: When the judge enters and leaves the court everyone must stand. Do not sit until the judge has sat or has left the room. Counsel must also stand whenever they are speaking. This includes any time at which counsel is making submissions and any time when counsel is asked a question by the judge. If the judge starts to talk to another barrister while you are standing, you should sit down until it is your turn to talk again. This avoids the chance of more than one lawyer interacting with the judge at the same time.

How to address the Court: Counsel must always refer to the judge as ‘Your Honour’. If there is more than one judge you may say ‘Your Honours’. On occasions it is also acceptable to address ‘the Court’ rather than the judge, e.g., when making your entry of appearance (see below) you may say either ‘if the Court pleases’ or ‘if it pleases Your Honour’.

How to address your opponents: If you find it necessary to refer to counsel appearing for the other side you should say ‘my friend’ or ‘my learned friend’.

How to refer to decided cases: When referring to cases the full reference should be used. This full reference is called the 'case citation'. Referring to the case citation is called 'citing' the case. The judge may give permission to dispense with full citations once the case has been referred to for the first time. The judge may allow the use of abbreviated citations. Unless and until the judge gives permission to use abbreviated citations, the full citation should be used. For example, the full citation for the case *State of Queensland v Kelly* [2014] QCA 27 should be stated as follows: 'State of Queensland and Kelly, 2014, Queensland Court of Appeal, number 27.' An abbreviated citation would be 'State of Queensland and Kelly'. Note that the 'v' in the case name in a civil case is always referred to as 'and', never as 'versus'. In a criminal case, the 'v' is referred to as 'against' – never 'versus'. E.g., *R v Jones* is cited as 'The Queen against Jones'. If *R v Jones* was decided when the monarch was a king, it is still cited as 'The King against Jones.'

When referring to Judges from the cases always use their full title, e.g. 'Justice Brennan'. Never use just their surname, e.g., 'Brennan'.

What to wear: Lawyers are required to dress appropriately when appearing in court. Students should also try to dress appropriately when appearing in moots for assessment in this course, however there is no need to buy clothes especially for that purpose.

How to behave: Courts are formal places where behaviour is always tightly controlled. Remember, the moot is a type of role play and you must stay in character for the duration of the moot. It is important to act as if you are a real barrister appearing in a real court.

You must be prepared to answer questions from the judge who may often interrupt you. In answering questions from the judge, always be respectful – even if the questions seem annoying or silly. If you find it necessary to disagree with a point made by the judge, then you should always preface your comment appropriately, for example: 'with respect Your Honour'. Remember, the judge will decide your case so it is always worthwhile to agree with the Judge if possible. Equally, a moot judge may be testing your legal knowledge, so if you are confident that the judge is wrong then reply 'with respect' and make your different submission.

Speak clearly and slowly and always maintain as much eye contact with the judge as you can. Try not to read your submissions as this will decrease their effectiveness. Good preparation and practice is the key to effective submissions. You should practise your presentation as many times as possible, preferably with someone acting as the judge and asking you questions as you go. Remember, your allocated time limit includes any time taken up by answering questions, so you will have to cut your submissions down if you lose time answering these questions.

Do not use personal statements such as 'In my opinion'. Unfortunately in court your opinion is irrelevant. Instead say, 'It is the appellant's submission, Your Honour, that ...'

Court proceedings

- All mooters should arrive early and be in the Moot Court ready to go at least 10 minutes before

the designated start time.

- When the judge is ready to enter the clerk of the court will announce: “All rise” and the judge will enter – all present should stand.
- The judge will walk to the bench and will bow. All should bow back. The judge will then sit down and everyone should also then sit.
- The clerk will then announce the case to be heard, e.g., ‘The Queen against Smith’.
- Senior Counsel will then introduce themselves and their teammate if they have one (moot teams must decide who will act as senior and who will be junior for the moot). This is called ‘announcing your appearance’ and is very important.
 - The judge may say something like ‘I will hear appearances please’ or they may just sit there and say nothing. In any event, Senior Counsel for the appellant will stand and state their appearance as follows:

If it pleases the Court, my name is Naismith, initial M, and I appear with my friend Brown, initial T, for the appellant.

- Senior Counsel for the appellant then sits down and Senior Counsel for the respondent stands up and makes their appearance:

*If it pleases the Court, my name isetc.
etc.*

- Senior Counsel for the respondent then sits down.

- The judge may say something like, ‘Thank you, I will hear from the appellant’ or ‘I will hear Ms Naismith’ or they may say nothing. In any event Senior Counsel for the appellant then stands up again and proceeds with their submissions. They keep going until either the judge interrupts them with a question, which they will immediately answer, or until they have completed their submissions.
- When Senior Counsel for the appellant has concluded they sit down and Junior Counsel for the appellant stands and makes their submissions. There should be some statement made in respect of the handover between Senior and Junior Counsel, e.g. ‘Your Honour, that concludes my submissions and if you have no further questions I will now hand over to my friend, Mr Brown, who will continue on behalf of the appellant’.
- Junior Counsel for the appellant then stands and makes their submissions. They may begin with

something like. 'Thank you, Your Honour, my first submission concerns ...'. When Junior Counsel for the appellant has finished they will indicate that to the judge, e.g. 'Thank you, Your Honour; that concludes our submissions on behalf of the appellant unless Your Honour has any further questions?'

- Junior Counsel for the appellant then sits.
- Senior Counsel for the respondent will then stand and commence their submissions. Junior Counsel for the respondent is last.
- At the conclusion of submissions the judge may 'retire' (leave the court) to consider the matter. This will involve completing the Moot Marking Sheets and allocating scores. Remember, the moot continues until its conclusion is announced by the clerk, so always stay in character until it is completely over. When the judge leaves, the court will be adjourned and the clerk will announce: 'All stand while the Judge leaves'.
- When the judge is ready to return the clerk will again announce 'All rise'. The judge will return, all stand and bow.
- The judge will deliver a judgment and announce the winner. The judge will also make comments from the bench in respect of each mooter's performance.
- When the judge has finished the clerk will announce for a final time: 'The Court is now adjourned' and the moot will be over.