Mooting Manual
Contents

Introduction.......................................................................................... 2
Approaching a Moot Problem .............................................................. 2
Researching the Problem .................................................................... 3
Written Submissions............................................................................ 4
The Oral Element of the Moot.............................................................. 5
Presentation of the Moot ..................................................................... 6
Structuring the Case............................................................................ 7
Principles of Advocacy......................................................................... 9
Questioning from Judges - Advanced Advocacy ................................. 10
Conclusion........................................................................................... 11
Sample Submission: .......................................................... 12
(JENKINS CONSTRUCTIONS PTY LTD -v- IMP SOCIETY)
University of Queensland Mooting Manual

Introduction

The Moot Court Bench has prepared this guide with the simple aim of answering some of the basic questions most people have when they first try their hands at mooting, and attempting to give some guidance as to how mooters can improve.

The most obvious question of course, is what is a moot? Unfortunately, this isn’t the easiest question to answer because the style of a moot tends to vary. However, what is probably common to all moots, is that a mooter appears before a judge and argues a case. While almost everything else tends to be dependent upon decisions made by the organisers of a moot, advocacy before a judge is the one constant.

Therefore, this guide has been prepared with its primary focus upon helping students to develop their advocacy techniques, and is based around the simplest and most common moot style that students at the T.C. Beirne School of Law are likely to participate in. This is also the style of the University of Queensland Law Society’s mooting competition.

This style involves three basic ideas:

- Students compete in teams of two with both students presenting oral arguments. One student will nominally be the Senior Counsel and one the Junior Counsel, though this is meaningless for the moot except that the Senior Counsel speaks first.
- Each team is presented with a problem to prepare which may be based on either a hypothetical factual scenario, or an appeal from a previously decided case.
- Before the oral arguments, each side will need to prepare short written submissions.

The rest of this guide is focussed upon developing techniques for mooting in this style. These techniques should help students achieve the fundamental aim of any advocacy exercise, which is to put together a convincing argument for the judge.

Approaching a Moot Problem

A moot problem is always based in facts. The aim of a moot is not merely to present a legal dissertation to the judge, but to explain what the result should be when the law is applied to the facts of a particular case. Therefore, it’s important to be aware of exactly what the facts of your moot problem are. Rechecking the facts often will be an important part of any preparation, but to begin with, you will almost certainly be reading the facts to identify the applicable law and the likely legal issues.

If you’re preparing an appeal from a previously decided case, then your job in this regard will be made much easier, because you’ll hopefully be able to discern from the lower court’s decision what the legal issues are. However, if you’re preparing a
hypothetical problem, then it may be that the applicable law is not made explicitly clear, and so, in reading the facts, you’ll be asking the question, what law it is that I’m dealing with – will this be about Contract law, or Tort law or Constitutional law?

Given that you’ll be working as part of a team of two, it will also be necessary to divide the material at some stage between yourself and your partner. As there may only be a short amount of time to prepare for each moot, it may be easier if the decision to split the material is made sooner rather than later, so that there is more time to focus on the particular section that you’ll be dealing with. If you already know what the broad areas of law are, then you might like to determine from the beginning who will be dealing with each area. Alternatively, if you’re unsure of what exactly the legal issues are, you might prefer to do some general reading first.

**Reseaching the Problem**

Having garnered a basic understanding of the topic, your next task will be to do some preliminary research to hone your knowledge of the relevant law. This can be a difficult process, particularly where it is not clear exactly what the legal issues are, but persistence and analysis are all that are needed to overcome this first hurdle.

1. General reading

Where the legal issues are not immediately obvious, you may have to do some further general reading in the particular area of law. Try textbooks or one of the numerous electronic databases offered by the university library (such as Halsbury’s Laws of Australia or Butterworths On-line). Both these services offer a commentary on the area of law, and refer to the most important cases. Even if you’ve already determined the applicable legal issues, such general sources will be very valuable in giving you a broad overview, and helping you to narrow your field of research.

Beyond general reading, your next points of departure will be scholarly commentary and of course, case law.

2. Scholarly Commentary on the Area of Law

It is always useful to read some commentary on the law, so that you are aware of the current debates surrounding that area. Commentary can point you in the direction of the latest research and case law. Law Journals are useful for this – for Australian law, try the Attorney General’s Information Service available on the library’s database service; for overseas law (and particularly American law), Lexis.com is invaluable.

3. Relevant cases

Finally, your most important port of call will be reading the relevant cases. Sometimes a list of relevant cases will be provided, other times you may have to look for case law on your own. A way to find cases with similar principles to your question is to enter some of the facts of your scenario into the search engine of one of the available databases or websites. *Casebase, Butterworths Online* and *Scaleplus* are particularly useful – and are available through the Law Library’s websites page:
You will also find that any general reading or legal commentary will probably have produced a number of important cases for you to follow-up.

In your research, you will be looking for all the cases that will be applicable to your particular area of law, regardless of whether they support or detract from your case. It’s very important to keep in mind that even if a case appears to be very detrimental for you, that you will almost certainly need to distinguish it from the facts in your problem, rather than attempting to pretend that the case doesn’t exist.

In particular, you will be looking for cases that have very similar facts to your own, or cases which have been very important in laying down the law in a particular area, which you will attempt to extend to your own case.

Useful resources on-line:

- **LBC on-line.** This is useful, particularly because it references the page numbers of the Commonwealth Law Reports decisions. It is especially useful for searching for sections of judgements relevant to your problem scenario. It can be accessed through the law-school’s Useful Legal Resources web page [http://www.library.uq.edu.au/law/lawsites.html](http://www.library.uq.edu.au/law/lawsites.html)

- **Austlii** and **Scaleplus** are useful for finding both Commonwealth and State legislation and cases. Remember, if using cases from other jurisdictions (other than Queensland and the Commonwealth), the decisions are only persuasive and not binding authority.

- **Butterworths online** is useful for finding unreported decisions. Many moot problems are based on unreported decisions, so by entering your facts, you may find a similar decision.

**Summary**

By this stage you should have located the relevant principles of law that apply to your factual scenario. It is on the basis of this research that you will construct your arguments and write your submissions.

**Written Submissions**

At some stage prior to the oral hearing, counsel for both parties should hand in written submissions. The length of the written submissions will vary according to the moot – but will all take roughly the same structure and should include the name of the case, your names (including who will be Senior and Junior Counsel) and the name of the party you will be representing.

Written submissions, depending on the specified length, should be a brief summary of what your party will be submitting to the Court in oral argument. Essentially, they will be a short statement of each argument that you will be making (unless the moot covers a wide variety of issues, not all of which are important – in such a case you may be summarising arguments that you won’t necessarily be making in oral arguments or at least don’t intend to). They should include reference to any cases you
seek to rely on together with a summary of the point you are arguing as it applies to the factual scenario. Appendix A contains examples of submissions from the UQLS Mooting Competition several years ago.

The Oral Element of the Moot

The oral part of the moot is what most people associate with the concept of mooting. Therefore, it is important to be well prepared and confident, not only about what you will be arguing, but also about Court etiquette.

Court Etiquette

The moot is a formal appearance, which is intended to replicate a courtroom experience.

(a) Dress

Counsel should dress formally for appearances in a courtroom. For a moot, students generally tend to wear suits – though this does not mean that you should buy something special for the moot!

(b) Punctuality

Arriving to your moot early is important to give you the opportunity to settle any nerves and allow for any last minute alterations before the moot commences. It is unprofessional to be late for a moot in the same way that it is for a real trial. You don’t want to upset an impatient judge before the moot even begins!

(c) Modes of Address

The mode of address used will depend upon the jurisdiction of the Court in which the problem is to be argued. The judge should be referred to as ‘Your Honour’, if a case would be heard in the District, Supreme or High Court. A magistrate will be referred to as ‘Your Worship’. For other tribunals it is important that you determine beforehand the correct way to address the tribunal for your moot.

Counsel in the moot should be addressed or referred to as ‘My learned “counsel”, “colleague”, or “friend”’.

(d) Citations

Cases should be cited in full, unless the Court invites you to dispense with citations or to use abbreviated citations. If you will be referring to a case a number of times throughout your submissions, it may be helpful to ask the Court if you can refer to that case by an abbreviated name, following its complete citation the first time it is mentioned.
Example:


(e) The Bar Table

The plaintiff/appellant should sit at the bar table on the judge’s left. The defendant/respondent will be seated on the judge’s right.

(f) Correct forms of speech

In a moot situation you are not putting forward your own beliefs or opinions on the case at hand. Rather, you should be submitting to the court the interpretation of the law and its application to the facts of your case, based on precedent. Counsel should never use phrases such as ‘think’, ‘believe’, or ‘suggest’ when presenting their argument. Examples of the correct way of presenting arguments are ‘Counsel for the applicant will submit’, ‘It is our submission’ or even just ‘I submit’. Also, when you refer to a judge, always remember to say “Justice” Kirby, not Kirby “Jay” (for example). The latter will almost certainly elicit a raise eyebrow from the bench!

(g) Good manners

During the moot, when your opponents present their argument, you should sit and listen in respectful silence. You should also pay attention to them while they are speaking, to ensure you can comment to the bench on the points that they raise. You should not make any loud noise or comments while your opposition is speaking, including ruffling through papers and talking to your partner. You should also refrain from using any suggestive gestures, such as rolling your eyes or screwing up your face, in response to the things being said by your opposition.

Presentation of the Moot

1. Formal introduction

At the beginning of the moot, the Judge will enter the Court, and both teams should rise. When the judge sits down, counsel and others in the Courtroom may also do so. The name of the case will then be read. Following this the judge will ask for appearances from counsel.

2. Appearances

Senior Counsel for the plaintiff/appellant will rise first, introducing him- or herself, and then their Junior Counsel. Counsel for the defendant/respondent will then give their appearances.
Example:

Judge: Can I please have appearances? Senior Counsel for the Appellant: *(stands)* If it please the Court, my name is Smith, and I appear with my learned colleague, Mr Brown, for the appellant, Backyard Pty Ltd, in this matter *(resumes seat)*.

*The Judge will respond in some form.*

Senior Counsel for the Respondent: *(stands)* Your Honour, my name is Andrew White, and I appear with my learned colleague Ms Paula Green, for the respondent, Clothesline Inc.

Following this the Bench will then indicate to Senior Counsel for the Appellant to begin their oral submissions.

3. **Stages of the moot**

(a) The plaintiff/appellant will speak first, with Senior Counsel followed by Junior Counsel.
(b) The defendant/respondent then presents their argument, again with Senior Counsel followed by Junior Counsel.
(c) The plaintiff/applicant may or may not have a right of reply.

**Structuring the Case**

One of the most important parts of your oral argument is actually the structure, including the internal structure of your arguments and the external structure of your speech. A standard speech can be neatly divided into three parts: Introduction, Arguments and Conclusion.

(a) **Introduction**

The purpose of your opening is to set the agenda for your speech. Furthermore, if you’re the Senior Counsel for either side, you will also need to use your opening to highlight briefly what your Junior Counsel will be addressing. Let the Court know what the essential questions and controversies are in the moot, and then tell them how you will address and argue those issues.

Some Senior Counsel for the Applicant/Claimant ask the Bench if they would like a summary of the facts. This is a matter of personal choice. If you do not offer a summary of the facts and the Bench would like to hear one, they will normally ask. However, as a matter of standard practice, the alternative, simply including a summary of the facts in your speech without making it dependent upon what the Bench wants is probably unwise, for the very simple reason that even brief summaries will consume valuable amounts of your time that could otherwise be directed at furthering your arguments.

Fundamentally, your introduction should be brief and to the point, setting the scene for your own arguments, and, if you are Senior Counsel, for your team’s arguments.
(b) Arguments

The main body of your argument should reflect the summary given during your opening.

Your arguments should focus upon the contentious issues in the area that you are addressing. You are trying to address to the Bench’s satisfaction the questions that they are most interested in – which will almost always be the difficult areas of the law – and to structure this in such a way so that it is clear to the Bench.

There are many ways to approach the basic structure of your arguments, but the most obvious one is to:

(a) Determine the particular arguments that you’ll be trying to make under your area of law.
(b) Breakdown each of these arguments into the constituent steps that you need to achieve in order to prove this argument.

A simple example is one involving the s52 of the *Trade Practices Act*. s52 deals with misleading and deceptive conduct. So, to take the problem used in Appendix A: A makes a representation in a letter to B that B knows is incorrect; the letter states that this is only to be used for B’s own purposes; B passes this on to C; C sues A for misleading and deceptive conduct under s52. If you were representing A and dealing with s52, you might divide your area into two major arguments:

(a) A representation from A to B is not a representation from A to C for the purposes of s52.
(b) Even if this was a representation, it was not misleading or deceptive under s52.

Then you might break argument (a) up into the two very basic constituent steps:

(a) The law indicates that in certain circumstances, where a party has indicated that a representation is only to be used for a particular party’s purposes, it cannot be relied on by a third party to establish misleading and deceptive conduct.
(b) On these facts, the particular circumstances are met.

This basic two-step process is simply a case of saying this is the law, these are facts to which the law applies. In practice though, the construction of your arguments will be more complex than this, but as a general guide this will be effective.

(c) Closing

During your conclusion you should sum up what you have said, reinforcing the major points that you have submitted to the court. You should be aiming to highlight the essential issues that are raised by the case and the way that you think they should be resolved. The closing statement should be strong and concise; it should not attempt to restate any argument in detail. If you are submitting alternative arguments to the
Court then remind the Court that they could side with any one of these alternatives. Essentially, your task is to sum up the reasons why the Court should accept your submissions and find in favour of your client.

Generally, Senior Counsel will finish by indicating that their Junior Counsel will now continue their side’s case. Junior Counsel’s conclusion may also, like Senior Counsel’s introduction, summarise briefly the arguments that have been made by both speakers.

**Principles of Advocacy**

While there is no doubt that without the preparation, structure and professionalism described in the previous sections are without a doubt the fundamentals upon which any moot will be based, it is the advocacy itself that is most often conjured up in people’s minds when they think of mooting. This last section will endeavour to describe some of the basic principles of advocacy, and to highlight the important points to concentrate on when mooting.

**The Basics**

The three most basic elements of your presentation will be your voice, your eye contact and your body language.

**Eye Contact**

In every moot, you should be endeavouring to make as much eye contact with the members of the Bench as is possible. For this reason, it is a good idea to be familiar with your speech and arguments, so that you don’t need to rely upon script. Eye contact is one of the things that almost every judge will take note of.

Some people find it very difficult when they start mooting to maintain eye contact, even though they know their material well. If you find that this is a problem, you might like to try speaking without a script so as to convince yourself that you’re able to do this. Other speakers do not need to rely upon their written notes, but have a tendency to stare at the wall or above the judge’s head. If you find this is a problem for you it will simply be a matter of concentrating on keeping your eyes on the Bench itself.

It is also a good idea to know both your introduction and your conclusion from memory. This way, you are able to start strong and maintain constant eye contact for a minute or more, and conclude strongly without having to refer to your notes.

**Voice**

Voice can often be one of the most difficult parts of advocacy to get right. You’re aiming for two things: first, to maintain a confident voice and not disclose your nervousness or discomfort; second, to modulate your voice so as to emphasise important points and provide some variety in your speech.
Body Language

Body language can also be difficult to perfect, particularly since it tends to involve subconscious actions. This is often simply a matter of hearing from judges as to whether or not there is anything you do that is particularly distracting.

Questioning from Judges – Advanced Advocacy

Where two teams are equally well-prepared and have speakers of generally the same quality, the moot will most often come down to which team is best able to answer questions. In fact, even a team with weak preparation but capable of answering questions effectively and confidently will often perform well against a team with strong preparation. Almost certainly, answering questions is the crux of mooting.

There are three basic ideas to keep in mind: flexibility, simplicity and answering directly.

Flexibility

When a judge asks you a question they almost certainly be moving you away from the precise structure by which you planned to deliver your speech. It is vitally important to be flexible about your speech and go to where the judge wishes to go. Even if you plan to deal with the issue the judge is raising at a later point in your speech, you should still answer the question as briefly as possible rather than indicating that you will do so later. The ability to be flexible is one of the most obvious points that a judge will look for. At the same time, remember that you have determined the particular points that you need to deliver, and so, while acceding to the judge’s wishes, also endeavour to keep the moot on track and deliver the submissions you planned to make.

Simplicity

One of the easiest ways to keep a moot moving smoothly is to make everything simple for the judge to understand. Remember that while an argument or a submission may make perfect sense to you, this will not always be the case from the judge’s point of view. Therefore, be mindful of the judge’s concerns and attempt to address them so as to make clear what the issues are and why the judge should find in your favour. In and of itself simplicity is a good idea because judges tend to respond favourably to this. However on top of this, keeping explanations simple helps a mooter to keep control of his or her speech, because they will not get bogged down in the same questions or line of thought over and over again.

Answering Directly

This is one of the most difficult skills to answer. All mooters have at one stage or another given in to the temptation to give a rambling answer that does not clearly explain the issues or analysis. When a judge asks you a question, there is no reason not to take a very brief pause to straighten out your thoughts, as opposed to leaping straight into an answer that may or may not make sense. In particular, when a judge
asks you a ‘yes’ or ‘no’ question – such as “does the parole evidence rule apply in this case?” – give a ‘yes’ or ‘no’ answer immediately and then explain further. At least this makes clear to the judge the direction in which you are heading, and helps to convey simplicity.

**Responding to the opposition**

If you are the respondent or the claimant exercising your right of reply, remember to respond to the arguments that have been made by your opposition. You are not there to merely make arguments that merely go towards your own theoretical case, but rather to, if you are the respondent, disprove the claims made by the claimant, and if you are the claimant giving a reply, disprove the respondent’s arguments against your own. Judges generally prefer you to concentrate on addressing the other party’s arguments rather than working straight from your prepared script, and this will demonstrate flexibility.

**Conclusion**

A moot is not won on the merits of the law, but rather on the persuasiveness of Counsel. You are attempting to demonstrate a better understanding of the law and facts, and to show strong advocacy. You will find that with practice it will be easy to stand behind a lectern and deliver your submissions confidently with poise and skill.

**Still Need More Information?**

IN THE QUEENSLAND COURT OF APPEAL

BETWEEN

JENKINS CONSTRUCTION PTY LTD
(Appellant)

AND

IMP SOCIETY
(Respondent)

SYNOPSIS OF SUBMISSIONS OF THE APPELLANT

MAY IT PLEASE YOUR HONOUR

(1) Speedy J erred in law by finding that Jenkins Constructions Pty Ltd had engaged in misleading and deceptive conduct under s 52 of the Trade Practices Act.
(2) Jenkins Constructions Pty Ltd owed no duty to IMP Society as subsequent purchasers of a commercial building.

THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:

Submission 1

1.1 The actions (i.e. conduct) during the contract negotiations between Kimbob Pty Ltd and IMP involving the letter of 4 June amounted to a representation by Kimbob to IMP. Since there was no representation to IMP by Jenkins, there could be no conduct which amounts to a breach of s 52:

Gates v City Mutual Life Assurance Society Ltd (1986) 160 CLR 1
Benlist Pty Ltd v Olivetti Australia Pty Ltd (1990) ATPR paragraph 41-043
Robt Jones (363 Adelaide Street) Pty Ltd v First Abbott Corp Pty Ltd (1997) 14 BCL 282
T J Larkins & Sons v Chelmer Holdings Pty Ltd [1965] Qd R 68

1.2 In the alternative, any representation made by Jenkins to IMP was made under duress and, accordingly, liability for any aspect thereof which may be regarded as misleading or deceptive should not fall on it.

1.3 In the third alternative, any representation by Jenkins to Kimbob was not misleading or deceptive, and furthermore was not the cause of its loss:

Yorke v Lucas (1985) 158 CLR 661
Fraser v NRMA Holdings Ltd (1995) 55 FCR 452
Myers v Transpacific Pastoral Co Pty Ltd (1986) ATPR paragraph 40-673
Elder’s Trustee & Executor Co Ltd v E G Reeves Pty Ltd (1987) 78 ALR 193
Parkview (Keppell) Pty Ltd v Mytarc Pty Ltd (1984) 3 FCR 186

Submission 2

2.1 No liability will arise for the builder of a commercial building, with regard to a subsequent purchaser.
Bryan v Maloney (1995) 182 CLR 609
Fangrove Pty Ltd v Tod Group Holdings Pty Ltd [1999] 2 Qd R 236

2.2 The High Court expressly stated that the nature of the property involved, that being that it was a house, was an important consideration in concluding that the relevant relationship of proximity existed between the builder and the subsequent owner.

Bryan v Maloney (1995) 182 CLR 609
Fangrove Pty Ltd v Tod Group Holdings Pty Ltd [1999] 2 Qd R 236

2.3 If a defect was or should have been discovered by the subsequent purchaser, the subsequent purchaser will have no claim against the builder. Any reliance on the adequacy of design and construction must be reasonable.

Bryan v Maloney (1995) 182 CLR 609

On the basis of the above submission, counsel for the appellant respectfully requests that the decision of Speedy J below be overturned, plus costs.

DATED This 13th day of June 2001

______________________________
Jessica Jones
Senior Counsel for the Appellant

______________________________
Bruce Banner
Junior Counsel for the Appellant