An Introduction

to

Mooting

Incorporating

Mooting's Most

Frequently Asked Questions

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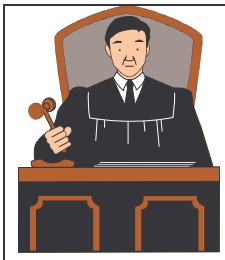
Please e-mail us (Feedback@Moot-Point.co.uk) if you have a question that isn't answered here or in the guide. We'll try to answer as many questions as possible and will add them to this list as we answer them.

Similarly, please get in touch (Feedback@Moot-Point.co.uk) if you have any comments or suggestions on this guide. We are constantly trying to improve it and rely on your feedback to make it more useful to mooters old and new.

This edition was last updated on 27 September 2004.

INTRODUCTION

A moot is a competition in which participants pretend to be advocates arguing an appeal. Two teams take part, one acting for the appellants and one for the respondents, and on each team there is a senior and a junior counsel, each of whom covers a separate ground of appeal. The case is usually set in the Court of Appeal or the House of Lords. The organisers of the competition will arrange for a judge or a panel of judges to preside over the moot. These may be experienced mooters, academics or practising lawyers.



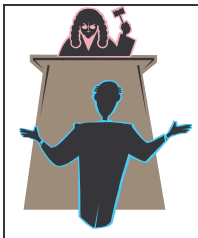
If you intend to go to the bar you should get involved in mooting as soon as you can. When you apply for pupillage you will be expected to demonstrate some advocacy experience, and most pupillage application forms, including the OLPAS form, have an 'Advocacy' section. Besides, you've chosen a career as an advocate, which hopefully means that you enjoy doing this kind of thing! Of course everyone finds it a bit scary – even the most senior barristers feel the adrenalin start to flow before they go into court – but if you really feel that you can't face taking part in a moot, then you need to think very hard about whether the bar is the right profession for you. After all, you will have to start doing advocacy exercises in front of a video camera from the very beginning of the BVC.

If you intend to become a solicitor, there are still many benefits to mooting. Advocacy is now an element of the LPC too, so it is useful to start to build up your confidence. Mooting also forces you to research legal issues in much greater depth than there is usually time for on a law course (particularly the CPE). Come exam time, you may be very grateful for all that extra research you did on Theft or Misrepresentation!

BEFORE THE MOOT

Some time before the moot each participant will be given a copy of the mooting problem and told whom they are to represent. The problem will set out the facts of the case, the decision of the judges at the original trial and any prior appeals, and the grounds of appeal for the moot. The participants then prepare to argue for or against their ground of appeal. To do this they must show that the judges in the lower courts have applied the law rightly or wrongly. The two teams will be arguing for different views about what the law says or how it should be applied to the relevant facts, and each team must find cases and other authorities to support their own view.

Even before you get the mooting problem, it's worth finding out the rules of the competition and getting hold of a mark scheme. You might also like to go and watch a moot before you take part.



The best way to prepare is to watch real barristers in action. If you see good advocacy then you have something on which to model yourself, and you'll start to absorb the sorts of language and behaviour that are appropriate in court. Sometimes, however, what you see won't be good advocacy: boring, inaudible, and even inarticulate members of the bar do exist, although they are the exception rather than the rule, and even good advocates have their flaws. Don't be overawed: exercise your own judgment about what you find persuasive. Get into the habit of analysing the weak points of any speech and stealing anything good!

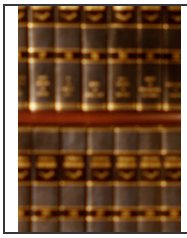
Legal Research

The first thing you need to do is identify the areas of law covered by your ground of appeal and do some research. You may already know something about the area of law, but frequently it will be a topic that you haven't yet covered, or even a subject like evidence, family law or company law which may not be covered on your course.

Most people start off with their favourite textbook, to get a flavour of the subject and to start to work out the state of the law. That should give you an idea of the most important cases that might be relevant. It is often helpful to skim read the judgments at quite an early stage in your research, partly to see how the points have been argued and partly to lead you to the other cases on the subject, both for and against your point.

You will also want to look at the practitioner textbook on the subject, which will go into much more detail than student textbooks and includes fairly comprehensive footnotes citing all the relevant decisions.

Don't forget to make sure that your law is up-to-date. Case law changes fast: it has even been known for the law on an issue to change after the problem is set but before the moot! You really need to consult up to date textbooks and check the supplements or look online for new developments – unfortunately some of the practitioner textbooks in university libraries are several years old.



A personal view: Once I think that I'm getting on top of the most important cases, I go to the practitioner textbooks for the subject, generally reading all the indexed references to the cases that I have identified as helpful. Incidentally, I occasionally find that references outside the key chapter spark interesting ideas, not for the main submissions but for alternative arguments that I might try.

Formulating Arguments

Once you have carried out your initial research you should be in a position to start formulating promising lines of argument. You should probably expect to develop more than one argument in your speech but there is no set number. Personally, I tend to put three or four lines of argument into a skeleton for a speech between ten and twenty minutes long. One of these might be a bit leftfield but, if so, I won't be afraid to drop it when it comes to oral submissions.

You need to strike a balance between covering all the bases and making the best use of your time on your feet. A common tactical error is to spend the bulk of your speech dealing with your weakest arguments, because they are the ones that are least persuasive. Once you have identified the possible lines of argument, it is important to step back and consider which ones are worth spending most time on, and which you can afford to leave out.

Although you do need to give some thought to what your opponents might say, don't worry about it too much until you have exchanged skeleton arguments. It's very easy to get bogged down in potential difficulties that your opponents may not even spot. Remember that you can always wander off your skeleton in order to rebut your opponent.

Moots are rarely 'fair'. One side usually starts with a better chance of winning on the law than the other, and sometimes there is a clear case which disposes of the problem so that a real court would not even want to hear argument. Don't panic if there is a weight of authority against you. This can provide the best platform for you to shine as an advocate, since you will have to argue creatively and demonstrate a good grasp of the law. It is much harder to impress when expounding legal truisms! Experienced mooters tend to keep their fingers crossed that the problem posed will mark them as almost certain losers on the law.

Keep an open mind as you carry out your research and beware of thinking too early on that you have found 'the answer'. If there is a case which seems to decide your ground of appeal, consider it carefully. First, the authority may be that of a lower court, and thus no more than persuasive. If this is the case, then one side is bound to contend that the judgment is ripe for disapproval, so the other will have to justify it rather than merely relying on it.

Second, a close inspection will probably reveal differences between the facts of the case and those of the moot for which one is preparing. These can always be seized on by those on the 'losing' side, so they should be scrutinised carefully.

Third, the judgment may have been subjected to fierce criticism, either in academic circles or in later cases. Although the judgment may not explicitly have been overruled, citation of it may attract sharp intakes of breath (*Junior Books v. Veitchi* is a good case in point). Similarly, there may be a dissenting judgment or speech which has been better received than those of the majority. In these circumstances it is important to make it clear to the moot judge that you appreciate this, whether it is in your favour or not. *Never* try to deceive the judge about the state of the law.

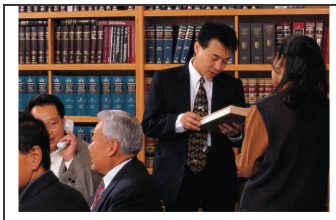
If, when you have considered these factors, the case is clearly against you, you can still look through losing counsel's submission, which will give you ideas for argument which might still have some strength. If it is on your side, make sure you can explain why it was rightly decided: it may help to imagine how you would argue if the case did not exist.

Selecting Authorities

By the time you have decided what your lines of argument are going to be, you will probably have found dozens of possible cases and other materials to cite. Your next task is to decide which you will rely on in court. In many moots the number of authorities is limited, but in any case you will only have time to cite a very small number. Gauging the time it will take to run an argument is something that can only be learnt through experience, but as a rule of thumb the three or four cases permitted by the rules of most competitions, together with a couple of other materials such as a statute, a Commonwealth authority, a textbook or an article, give you about the right amount of material. You may also want to rank the authorities in your mind, so that if you are running out of time you can leave out the ones which are not so important to your case.

It is obviously crucial that you select those three or four cases carefully and that together they are sufficient to support the propositions you wish to make. The following tips may be useful:

- Be clear in your own mind about exactly which passage you want to cite from each judgment. This makes the comparison much easier.
- Obviously all other things being equal you should go for the most authoritative judgment, e.g. House of Lords over Court of Appeal, and particularly cite cases which are binding on the court in preference to those which are not. It may also be helpful to consider whether the judges in any of the cases are particularly well respected: for instance a Court of Appeal which includes the Master of the Rolls or the Lord Chief Justice may have greater weight.
- Be sensitive to the esteem in which particular judges and particular judgments are held. Lord Denning, for instance, occupies an odd position in the affections of the judicial community. Although much admired as a champion of the little man (or perhaps, more accurately, little old lady), he is held responsible for creating a mess of the law in certain areas and for ignoring precedent and constitution in order to dispense his unique brand of justice. The effect is that while some of his judgments remain binding and well respected, others are not followed. It is important to know which you are dealing with!
- Think also about the number of dissentients in a case – a House of Lords decision by a majority of 3:2 may not be so persuasive to future members of the House, particularly if the dissentients are well respected or have greater expertise in the relevant area than those in the majority. In the Court of Appeal, of course, it is still binding.
- Avoid older cases where possible. Sometimes there are simply no newer cases where the point established has become settled law, so it is always possible to argue that an ancient authority has extra weight because it has stood the test of time! However, before relying on that seventeenth century case, check to see when it's been cited or applied in later cases. If so, consider whether or not it'd be better to cite the more recent judgment, adding that it's all the more powerful because it applies ye goode authoritie of Aye v. Bee.
- Even if they only apply established law, newer cases are often helpful because they summarise the current state of the law and comment on previous cases. If you can't decide which of two seminal authorities to cite, you may find that a more recent case quotes the passages you want from both.
- If there is a lot of law that is not in issue but needs to be understood before the contentious point can be explained, then you may be able to cite a passage in a practitioner text summarising this. It is perfectly acceptable to explain to the judge that you are relying on the textbook to save time and in view of the fact that you are permitted limited authorities. However, make sure that the textbook is a respected one and that the passage you take from it is supported by authority (i.e. plenty of footnotes!).



There is nothing wrong with making use of authorities which are not binding, such as dissenting judgments, judgments which have been overruled, and judgments of other jurisdictions. Sometimes the court may be persuaded by these, particularly if they have been received well academically, if they have been followed in a number of Commonwealth countries, or if they contain a good explanation of why the governing English authority was wrongly decided.

However it is *absolutely crucial* that you make it clear to the court that the authority is not binding, and explain why it is nonetheless persuasive. If you take the judge to a passage in a judgment without saying this, he may be misled into thinking that he is bound by it. Not only will your opponents inevitably point out that the speech is in the minority, or has been overruled, etc, but it is serious professional misconduct to mislead the court. The same applies to taking passages in judgments out of context, which read in context do not support your contention. In short, if you're worried about getting 'found out', and have no legitimate explanation for the judge, then that should be your cue to find another quotation.

Skeleton Arguments

Usually each team will be expected to provide the judge and the other side with a skeleton argument a few days before the moot. This will summarise their arguments and list the authorities they will be relying on. The rules of many mooting competitions limit the length of skeleton arguments to one page. The number of cases which can be relied on is also frequently limited to three or four per speaker.

Your skeleton argument forms the basis of your submissions. If you are going to begin your speech by telling the judge that you will be dealing with three points then your skeleton argument should enumerate those points, preferably written down in the order in which you intend to deal with them. In the moot, you should make a point only if it is mentioned in your skeleton or it arises directly from the submissions or skeleton of your opponent: if you try to introduce something completely new the judge may well tell you that she intends to ignore that submission and your time will have ebbed away.

However, that does not mean that your skeleton argument needs to expound each point at length or mention every nuance that you will seek to bring out when you are on your feet. It is quite enough for it to indicate the general theme and you should certainly aim to flesh out your skeleton argument considerably in your oral submissions.

There are often rules governing the use of extra materials that you have not listed in your skeleton argument, and these should be strictly observed. At least one competition states that any material may be used to respond to a judicial intervention or question. Thus, if you have an article or case that you are very keen to use, but haven't included it on your submitted list, you can try to goad the judge into asking a question which permits the 'here's one I made earlier' response! Try to avoid making this too obvious, though, as the judge is probably wise to this sort of sophistry.

Generally, skeletons have to be exchanged a few days before the moot takes place (they often have to be sent to the judge – or his clerk – too). This can be a double-edged sword, particularly if you're busy with other things while preparing for the moot. You find yourself throwing together a fairly witty but rather thin skeleton, based on a couple of helpful authorities and an article or textbook, safe (so you think) in the knowledge that you'll be able to tidy everything up and do the 'proper' research in the day or two before the actual moot.

This may work if you're lucky, but you might equally find that the other side have argued completely differently (prompting you to realise that you might have missed the point), that your authorities aren't as helpful as they first appeared (so you cannot find any passages that you'd actually like to cite) and that your

killer argument is just round the corner, but not on your skeleton. It's a very frustrating position to be in. You shouldn't consider your skeleton ready to exchange until you're thoroughly satisfied that you've covered all the arguments (whether or not they end up on the printed page) and that there's no possibility of nasty surprises from any quarter.

Bear in mind that it is extremely frowned upon to change your skeleton once exchanged. If you do have to do it, you should ask your opponents if they mind, and you should only consider asking if it's a very minor change (e.g., correcting a reference or typographical error). I once mooted against an opponent who substantially re-worked the skeleton between exchange and the day of the moot, didn't give me a copy of the new version (so I couldn't really follow it) and then denied that it had changed; it backfired, as I had no need to undermine my opponent's arguments: all credibility had gone by the time I rose to my feet.

In some competitions the length of the skeleton arguments is determined in the rules: typically one side of A4. This has the advantage of forcing mooters to be succinct and stops people wasting too much time writing a lengthy skeleton. Each line of argument is expressed as a terse proposition of law, with the authorities that are said to establish that proposition cited underneath. Sometimes this is so brief that it is nearly impossible to tell what the arguments are actually going to be.

Skeleton arguments in real life are very different, and often run to dozens of pages. In the wake of the Woolf reforms there is an increased emphasis on written advocacy and advance preparation. If your moot judge is a practising lawyer, he will therefore be used to skeleton arguments that set out all the arguments in detail and make no attempt to conceal arguments so that they can be 'sprung' on the other side at the last minute.

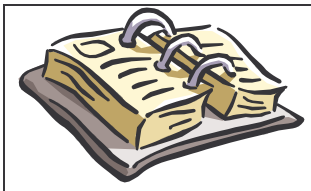
If the competition rules do not set a maximum length, there is therefore a balance to be struck. Moots are intended primarily to test your oral advocacy, not your drafting skills, so you don't want to spend too much time on polishing the skeleton. It is also quite likely that your opponents will provide brief skeletons which may not reveal what their arguments will be, so if you are much more open you will hand them the advantage. On the other hand if the judge is a practitioner he will expect a reasonably explicit skeleton. There may also be marks for the skeleton argument in the competition rules. Exercise your judgment in the context of everything you know about the judge and your opponents.

Whatever you decide, make sure that you and your partner come up with skeletons of a similar length and in a similar format. The judge is looking for teamwork – but surprisingly many mooting teams produce two skeleton arguments that look completely different or even contradict each other!

Bundles

Each team should also prepare a bundle for the judge. Typically, a good bundle will be collated in a ring binder or lever arch file. Some mooters even go to the trouble of having their bundles bound, but this is really not necessary and it is more important to be able to open the bundle out flat. It should be as easy as possible for the judge to find her way around: provide an index, tabbed dividers, coloured or numbered flags for the pages being quoted and highlighting for the relevant passages.

It is worth producing a good bundle for a number of reasons. First, it creates a positive impression on the judge; second – and perhaps more importantly – it will give you confidence as you turn up the references and will give you more time to speak, if both you and the judge are able easily to find the right passages.



It is a good idea to arrange to exchange bundles with your opponents if your budget, or that of your department, will stretch this far, even if the rules of the competition do not provide for this. It is, after all, what happens in court, and demonstrates an extra level of professionalism. Having mooted without my opponent's bundle in front of me, I can tell you that it is very frustrating to hear the judge told to turn to the highlighted section behind tab two, while I'm left flicking through my sheaf of pages trying in vain to spot the relevant passage. There's no real need to exchange them in advance, but any bundle that is provided should be a facsimile of that given to the judge, or it may appear underhand.

When you have cited an authority, it is standard practice to include the complete case (or statute, or whatever it happens to be), unless there is a very good reason for not doing so. Such legitimate reasons might include the citation of no more than a couple of famous lines from a 300 page shipping case to illustrate a contract law point; or the obvious reference to a single section of an enormous Act (such as the Companies Act). In some competitions the rules explicitly permit the use of extracts; otherwise, if you want to extract something (whether on grounds of cost or otherwise), make sure that you gain the consent of your opponent (and possibly the judge or her clerk) in advance of the moot. As a matter of good form, I suggest that one should always copy, at minimum, the catchwords, headnote and summary of a case; the chapter index of an Act; and the relevant chapter or section of any textbook cited. In general you should aim to provide all parts of the judgment, legislation or textbook that could have any bearing on the point at issue.

If the moot is competitive, a good bundle is all the more important. In this case, it is preferable to provide copies from the actual law reports, rather than downloaded versions from a database. Do remember, too, the Practice Direction (*Supreme Court Practice Direction* [2001] 1 WLR 194) which states that the official law reports should be used wherever possible (i.e., AC, QBD, Ch, Cr. App. R. and then WLR [note that only 1 WLR stands as a volume in its own right: all others are destined for incorporation in the main law reports] before anything else).

AT THE MOOT

The judge takes charge of proceedings, as in a real court. Each participant speaks for a pre-determined time, usually between ten and twenty minutes. The judge can be expected to intervene with questions during this time. (In some competitions the clock is stopped during the question and answer.) The usual order of speeches is Senior Appellant, Junior Appellant, Senior Respondent, Junior Respondent. In some competitions one of the appellant counsel makes a short submission in reply after the respondents have finished.

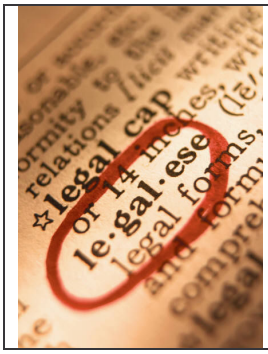
At the end of the moot the judge or judges may retire to consider their verdict, after which there will be two judgements: first of all, which side is right on the law and why, and secondly, which side has won the moot. Mark schemes vary, but there are usually marks for both content (i.e. quality of the legal argument) and style (i.e. the way the argument is delivered, including confidence, audibility and persuasiveness). There may also be marks for strategy or teamwork, good etiquette, use of authorities, the bundle and the skeleton argument.

What To Say

Give some thought to the differences between oral and written advocacy. Because the judge can't look ahead in the speech, or revisit difficult passages, it is much harder for him to follow. Anything difficult will need to be repeated several times – it is often helpful to have a key phrase which can be repeated at the beginning and end of the submission. The listener also lacks the paragraphing and chapter headings which assist the reader, so you will need to take extra care to orient the judge in your speech: explain the structure of your argument at the beginning; continually tell him where you are in your structure as you move from point to point; go over it one last time in your conclusion.

Explaining your structure to the judge is not just about the order in which you make the points. You need to tell the judge how all your different arguments interrelate with one another and with those of your partner: do you need to convince the judge of all of them? Are they alternatives? If the judge accepts one submission, does that make a second more persuasive? Similarly, in criminal law moots, what would be the practical effect of a judgment one way or the other: is there a man whose liberty depends on it? Equally, would judgment in your favour result in a substituted verdict (e.g. replacing a murder conviction with one for manslaughter)? Is there a further right of appeal?

All mooters should indicate to the judge at the beginning of their speeches what arguments they will be making and where these arguments may be found on their skeleton arguments. The judge will sometimes say at this point that he does not wish to hear one or more of the points argued, and if this is the case, it is much better to know as soon as possible so as to make the best use of the time. It may also be helpful to tell the judge how your arguments interrelate with those of your partner. Then each argument can be dealt with in turn, and each authority cited as it arises. Don't forget to ask if the judge wants to hear a summary of the facts of any cases. If he accepts, make sure you give them accurately. Remember that you cannot argue with any of the findings of fact at trial, even if they seem implausible.



Summaries can be a pitfall. Particularly at the start of the speech, when you're still warming up, it's easy to go off into a rambling exposition of the facts which ends up longer than the printed summary, wasting valuable time that could otherwise be spent impressing the judge with your legal skills. Aim to be punchy and minimalist: recount just the one or two facts which give the essence of the case. Lord Denning produced some good summaries in his judgments, and these are worth looking at for inspiration (e.g., *British Crane Hire v. Ipswich Plant Hire* [1975] QB 303).

You may wish to spend some time in your speech dealing with your opponent's arguments. As a novice mooter, you will probably be excused if you decide to avoid tackling your opponent's arguments, so that you can focus on your own submissions. Nevertheless, it is in the nature of the respondent's role, in particular, to respond to the arguments of the appellant. The respondent aims to maintain the status quo (i.e., the judgment of the court below is not disturbed) and will therefore have done his job if he demonstrates that the appellant's arguments are without sufficient merit.

A good mooter (whether appellant or respondent) should divide his time between his own prepared submissions, helpful and thorough responses to the judge's interventions and a demonstration of the major flaws in the opponent's arguments. The precise allocation will vary from problem to problem and from moot to moot, and will almost certainly change on the day. As a rule of thumb, try to ensure that your own arguments (with judicial interventions) form the backbone of your submissions, so that you avoid appearing as though you've nothing of your own to say.

How To Say It

Although there are various assessment criteria, it's most often the way the speeches are delivered that makes the difference between the winning and losing teams in a moot. To begin with, of course, it's absolutely crucial that the judge can hear your submissions: you will need to project your voice beyond your normal conversational volume. As a rule of thumb, aim to be about 20% louder than you think you need to be.

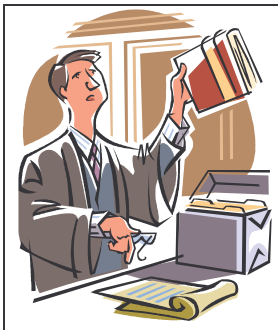
There are three golden rules of delivery that everyone from the complete novice to the competition winner needs to have constantly in mind: keep it slow; keep it clear; and keep it interesting.

Slowing down sounds easy, yet it is the first things to go out of the window when most mooters get to their feet. I speak from bitter personal experience and now have the words SLOW DOWN written in block capitals across the top of every page of my notes! You should also bear in mind that the judge may be reading documents and trying to write notes at the same time as listening to you. A moot judge has the double burden of trying to write down what you are saying and also how well you are saying it! Watch her pen, and if in doubt, you can always pause and ask if the judge is ready for you to proceed.

Clarity is not so straightforward. It is all too easy to get bogged down in a mass of legal detail which you may understand, but which sounds hopelessly complicated when you try to explain it to the judge. In fact, you shouldn't consider yourself ready to go into a moot until you can explain each of your points to a lay person in a couple of sentences. It is often helpful to think of 'headline' phrases and memorable examples or analogies which bring the point to life.

If you do find yourself getting into a tangle when you're on your feet, never be afraid to stop and start explaining the point again from the beginning. It may seem a little embarrassing but it is far more courteous to begin again than to make the judge listen to a confused or incomprehensible submission. Most judges will intervene eventually if they don't understand, but you will gain some credit by acknowledging your difficulty before the judge has to point it out.

Making a speech interesting is the hardest part of all. The audience at moots always looks half-asleep, particularly if it contains non-lawyers. When you explain what you were talking about in the pub afterwards, however, the same people often find the issues quite interesting. If you fail to look up from your notes or your shoes or if you put no expression into your voice, you will become boring no matter what you are saying. At the very least, you should use both tone and eye contact to break up your submission. Although you're not atop a soapbox at Speakers' Corner, you do want to aim for a level of enthusiasm and animation. Whether or not you actually believe what you're saying, you stand no chance whatsoever of persuading the judge if you don't sound convinced. You can also make judicious use of gesture and body language to win the judge's attention and favour. Most people react to nerves by clamming up. Very few people become so histrionic that they are embarrassing, so you should push yourself to be as animated as possible: you will be told during your rehearsals if you need to tone it down.



Experienced advocates use a range of subtle visual and verbal devices to enhance the plain words. For example, speaking at half volume can be an effective means of holding attention; maintaining good eye contact during a particularly crucial point can add weight and conviction; smiling as you criticise the opposing arguments can turn a straightforward rebuttal into an incredulous dismissal. Techniques such as these come with a health warning: a slight imperfection could leave you whispering as you sneer unblinkingly at the judge! Just as if you were learning to ride a skateboard, you should practise your tricks until you have built up a repertoire that works for you – but expect to graze your knees occasionally.

Most mooters are firmly attached to several pages of detailed notes. Barristers in practice, by contrast, rarely speak from more than the skeleton argument that they have exchanged with the other side.

A novice mooter will probably benefit from fairly full notes, as the nerves and novelty of the situation may have a deleterious effect on improvisation. I'd recommend, at least, writing an opening phrase, a few key points that you want to get across and a good closing line, so that the lasting impression on the judge is of a mooter under control. However it is very important that you have enough flexibility to be able to chop and change the order as you go along, to handle the judge's capricious interventions. In no circumstances should you have a 'speech' written out in full. As a worst case scenario, moot judges have been known to ask counsel to hand their notes up to the bench and continue without them – you need to know that you could carry on if that happened!

Although this should not necessarily dissuade you, it may be worth noting that advocates never use cue cards in court.

Etiquette

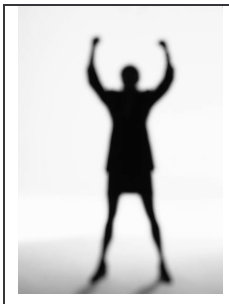
There are conventions which should be observed in moots, as they are in court. Not only are you likely to feel more at home if you get your etiquette right but you will also appear more experienced and will pick up points for style. Perversely, moots can often be more formal than genuine courtroom proceedings, since participants are seeking to score easy points by demonstrating their grasp of the procedure and judges are looking out for errors; in the real world judges are sometimes happy to waive unnecessary niceties. It goes without saying that even in a moot you shouldn't plough on with a formality after the judge has indicated that you should dispense with it.

- Stand for the judge when she comes in.
- Stand up whenever you're speaking to the judge or being addressed by her.
- Be ready to begin unprompted. The judge may or may not invite you to begin your submissions.
- Senior counsel for the appellant should introduce all counsel by name (a formula along the lines of "My learned friends Miss Simon and Mr Garfunkel appear for the respondent" will be fine).
- He should also offer a (brief) review of the facts of the case to the judge, who – nine times out of ten – will decline.
- Begin with a set piece (e.g., "May it please your Ladyship, I appear for the Respondent in this matter and intend to deal with the second ground of appeal, namely that…"; the mooter should also state her name, unless the judge has called on her by name).
- At the outset, check that the judge has a copy of your skeleton argument and bundle and whether or not they've had an opportunity to read your skeleton argument.
- Never (yes, never) interrupt the judge.

- If you are dressed formally, keep the outfit throughout the moot (as if you were in court where, for example, barristers would be expected not to remove their jackets).
- Always cite authority in full (the first time it is mentioned in the moot). Thus a reference to *R v. Woollin* [1999] 1 AC 82 at 90 might be introduced as "The Crown against Woollin, to be found in the first volume of the Appeal Cases for 1999, starting at page 82. On page 90…".
- Always offer the judge a summary of the facts of an authority the first time it is cited in the moot – and be prepared to give one.
- Use the appropriate forms of address and reference (see below).
- Avoid saying "I think". The court isn't interested in your private opinion, but only in the case you are putting forward, so the convention is to say, "in my submission" or "I respectfully submit" instead.
- If you have to correct the judge or disagree with her, preface your reply with the words: "with respect".
- If the judge assists you in any way, or makes any legal point whether helpful or otherwise, thank her: "I'm grateful" or "I'm obliged to your ladyship".
- Finish with a standard formula (e.g., "Unless I may be of further assistance to your Ladyship, that completes my submissions").
- Once on your feet, you should not sit down again unless given leave to do so by the judge (whether expressly or implicitly) or if another mooter is addressing the court.

The usual forms of address or references for people are as follows:

Your colleague	-	"My learned leader/junior" or "My learned friend, Miss Smith"
Your opponent	-	"My learned friend opposite" or "My learned friend, Mr Jones" or "Counsel for the appellant/respondent" – *never* "the other side", "the opposition", or even "them over there"!
The moot judge(s)	-	(Assuming that your case is being heard in the Court of Appeal or House of Lords) "My Lord/Lady" (where you would ordinarily say "Mr Brown") or "Your Lordship/Ladyship" (where you would ordinarily say "you"); note that a female judge may wish to be addressed either as "My Lord" or as "My Lady", and there is nothing to lose by asking at the outset, provided that you then follow her advice. Additionally, a mixed tribunal of men and women (by analogy with Judicial Committees including Baroness Hale) will probably be their Lordships; we have yet to encounter an all female tribunal in the appellate courts, so you will have to exercise your discretion if you face one in a moot. Whatever form of address you choose, adopt it consistently.
Crown Court judge	-	"His Honour Judge Khan" or "The learned judge [at first instance]"
High Court judge	-	"The honourable Mr Justice Brown" or "The learned judge"



"So can I jump up and shout, 'Objection!'?"
No: we English lawyers leave that sort of thing to our American friends and our television heroes. The only time you should even consider intervening is if your opponent materially incorrectly states the facts (whether of the moot or of an authority). By material, I mean that it must be so serious that it would radically alter the nature of the case, and the judge risks error if he continues under the misapprehension. If you have yet to speak, do remember that you can always tidy up your opponent's errors during your own submissions. If you really feel that intervention is necessary, get to your feet and look at the judge: do nothing else. The judge will invite your comments if he wants to hear them.

Nerves

Different people are affected by nerves in different ways. A bit of adrenalin will probably improve your performance, but too much may prevent you from concentrating on your submissions and giving a polished display of your abilities.

Nerves are the body's way of preparing for the unexpected. Logically, therefore, the best way to minimise nerves is to minimise the possibility of encountering the unexpected. Thus, the better your research and preparation, the more in control you will feel and the less fearful you should be of nasty surprises. Of course, there are always going to be certain things that cannot be predicted, such as the judge's attitude, her questions and the oral submissions of your opponent. However, if you've done your homework, you should be in an excellent position to deal with what's round the corner, and you should relish the opportunity to demonstrate your skill in dealing with unscripted questions.

If your nerves manifest themselves physiologically, you should do what you can to minimise their outward appearance and internal effects. Dryness in the mouth calls for a handy glass of water. Shaking hands or knees will benefit from a prop, such as a lectern, and a fairly static posture. A verbal tic (such as an 'um' at the end of every phrase), on the other hand, needs to be drilled out of the system, and will require a bit of practice while you make a conscious effort to catch yourself just before the 'um' creeps out. Although a pause lasting a few seconds may feel like a lifetime, it gives the outward impression of someone thoroughly in control: avoid the "filler" noises and use the power of the pause!

If you are concerned that you might dry up or lose your thread during your submissions, then you may benefit from fairly detailed notes. Don't be tempted to write a word-by-word script, however, as this will cause you difficulties if you are asked a question that's not in the script or if you lose your place and have to scramble through your notes to pick up where you left off.

Finally, try to keep a sense of proportion. Nobody expects a polished performance from a novice mooter; the point of mooting is to make your mistakes early while it doesn't matter. Expectations are therefore very low: the judge will probably be pleasantly surprised if you speak from notes rather than a script, or if you raise a few relevant legal points. Just reading through parts of this guide and giving some thought the points it raises will put you ahead of much of the competition.

Remember also that the other side, however confident they appear, are almost certainly just as nervous as you.

Know your judge!

The judge is the most important unknown quantity in any moot. Find out as much about him as you can before the day. Is he a lecturer, a postgraduate student, a practising barrister or solicitor, or a real judge?

When the moot starts, see how the judge interacts with the mooters. Is he asking questions? Does he know the area of law well? Is he giving any clues about which of your opponents' arguments he thinks have most merit?

Ideally, you should be able to adapt your speech to suit the judge. Spend extra time explaining the basic legal principles if the judge doesn't seem familiar with them or if you know that the mooting problem is not in his area of expertise. On the other hand, only cover them briefly if it has become clear from judicial interventions in earlier speeches that he knows this part of the law well. You should also try to spend more time dealing with arguments which he thinks are particularly strong, whether for or against you.

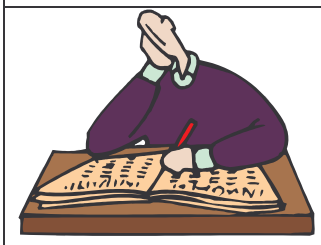
Judges vary enormously and it is much harder to do a good moot before a bad judge. Below are some strategies you can adopt with difficult judges.

The Quiet Judge

Seems to be paying attention but asks no questions, or may ask each mooter a single question at the end of their speech.

This sort of judge is often welcomed by beginners who have written out their speech longhand and would prefer to read it out and sit down as quickly as possible. However, experienced mooters will hope for frequent judicial interventions during their speeches. It is much easier to argue your point effectively if you can pick up clues from questions about what the judge is thinking. Moreover, mooters of every standard tend to speak more naturally and effectively when answering questions than in their prepared speeches.

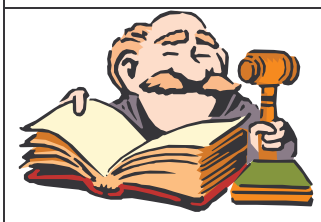
Try to encourage the judge to intervene. You can involve him in your speech by asking him quite detailed questions: "Is your lordship familiar with the dissenting judgement in this case?"; "Would your lordship like to see authority for this point?"; "Would your lordship like to hear [further] argument on this question?" Even if the judge does not take the hint and ask you more questions in return - and some judges don't think it's fair to interrupt one mooter more than the others – you have showed that you are prepared to adapt your speech to his answers.



The Bored Judge

Asks no questions; doesn't look at the speaker; doesn't seem to be writing very much down. Snores occasionally.

Sometimes, a judge has simply had a hard day in court herself and is tired and finding it hard to concentrate. In this case the aim is to get the judge to sit up and start enjoying herself again, preferably before you launch into any complicated legal arguments. The most boring speeches to listen to are the ones where the speaker himself doesn't seem interested, so try to sound like you're having fun, even if you're not. Smile, make lots of eye contact, and vary your pace and tone; make your points as entertaining as you can. As with the quiet judge, try to encourage interventions. With any luck she will start to wake up if you ask him a few questions.



The Bemused Judge

Asks very few questions, which don't seem to be on point. Writes frantically and seems to be flicking through your bundle at random.

The judge is lost. He may be finding the arguments difficult to follow, particularly if he doesn't know the law very well. While most judges will just ask for clarification in this situation, some get embarrassed and try to hide their ignorance. If a point comes up that they are familiar with, they will probably take the opportunity to ask about it even if it's not relevant. This sort of judge intervenes only when he's comfortable with the material you're covering so the way to encourage relevant questions is to cover the basics thoroughly.

If you suspect that the judge isn't following your arguments, slow right down and pause frequently to let things sink in. Remember that listening to legal submissions is harder than reading them and bear in mind that the judge may trying to skim-read the headnotes to the cases at the same time as listening to your speech. You may have to give the really important points at close to dictation speed. Pay particular attention to explaining your structure and signposting your arguments

	and be clear about which point on your skeleton argument is being covered by your speech. Even if the judge says he is familiar with a case, try to make it obvious from your speech what the important points it makes are, if you can do so without sounding condescending. If you are asked about something irrelevant, give a brief answer if you can, and say briefly why it isn't relevant ("with respect") but move on quickly. Although this sort of judge is somewhat disappointing from a mooter's perspective, it can work to your advantage. If the judge understands your arguments but doesn't understand the other side, you're much more likely to win!
	***The Mean Judge*** Interrupts frequently with stinging criticisms of your case. Does a better job of rubbishing your arguments than the other side do. Scolds you at length if you make a mistake. Comes across as rude. This sort of judge wants to see if he can put you off, either with his manner or with a barrage of counter-arguments. Don't take any of his criticisms personally, and don't assume you're doing badly: in fact, the better you're doing, the nastier this judge will be. Stay calm and refute his points as politely as you can. You may have to alter the order of your speech to do this: one thing the judge is looking for is flexibility. On the other hand, don't let yourself get too sidetracked by dealing with his interventions: you need to demonstrate that you are still in control of your submissions. Remember that you're trying to show off your mooting ability, not to win on the law. Don't fall into the trap of spending too much time on your weakest points. If you've covered something fully and the judge indicates that he is still unpersuaded, thank him and move on to the next point. Since you may have quite heated exchanges with this sort of judge, be particularly careful with your etiquette. Remember to stop speaking as soon as the judge interrupts, and make sure that when you contradict him or refute his points – as you certainly should – it is "with the greatest respect". You will also have to careful not to express a personal opinion: stick to "in my submission". Equally, remember that the judge's observations are not submissions or suggestions – they are rulings! Aggressive judges normally undergo a complete personality change as soon as the moot finishes, and turn out to be quite friendly. They often give particularly good feedback.
	***The Leading Questioner*** Often spends more time talking during your speech than you do. Asks rambling questions which seem to be designed to encourage you to make particular points, but which it is often impossible to make sense of. This judge has already decided what arguments he thinks you should make. Sometimes, of course, he is right, and you have really missed an important point. Sometimes it will be an argument that you were intending to make later in your speech. On other occasions, it will seem to be obscure and off the point. It may even be based on a misunderstanding of the law. If you don't understand the question, ask for clarification. If you still don't understand, reformulate what you think the question might be and ask if you've got it right. There is no point trying to go on until you and the judge understand each

	other. You do need to deal with the questions asked; the question is how long you should spend doing so. If you had anticipated the point but intended to make later it is acceptable to say so and go on as planned; if it is brief or you are at a convenient point to make it then it can be dealt with straight away. If you had not anticipated the point, then you will have to exercise your judgement. If the judge thinks that a particular argument is crucial to the case (whether it really is or not) then you will lose marks by failing to make it. On the other hand, your best material is bound to be your prepared material and you do not want to spend too much of your time covering unfamiliar ground. It may not even be a very good point – but conceding a point which the judge thinks goes your way unlikely to win you many marks even so! If you decide not to try to make the argument, tell the judge so. You may be able to point out that it is inconsistent with some of your other arguments or that the other side have not addressed the issue either.
	***Multiple Judges*** Addressing more than one judge presents its own problems. Very often, you will find that one judge takes the lead in asking questions and it is very easy to find yourself addressing most of your speech to just one judge. It is worth making an effort to make eye contact with each judge separately during your speech and trying to get them all involved.

APPENDICES

Practitioner Texts

The textbooks listed below are all reliable textbooks on general areas of the law, which you can cite confidently in court. This is by no means an exhaustive list. There are myriad specialist textbooks, which are worth consulting if undertaking research on a more rarefied moot problem. A good rule of thumb for textbooks is to check whether or not they've been used in court and what the reaction has been (use the text search function of one of the databases).

Subject	**Textbook(s)**
Contract	Chitty on Contracts
Crime	Archbold or Blackstone's
Human Rights	Ashworth
Judicial Review	Fordham's Handbook of Judicial Review
Tort	Clerk and Lindsell on Tort
Trusts	Lewin on Trusts

Mooting Competitions

Most mooters cut their teeth on relatively informal internal moots, which are often organised by a student mooting committee. These have short time limits and the judges are usually quite kind. There are also internal competitions, in which mooters usually participate as individuals rather than as part of a team.

Each higher education institution can also enter a team in national competitions. Perhaps invidiously, this does mean that there can only be two or three mooters selected for each competition out all of the undergraduate and postgraduate law students. The "CV points" of getting onto the team should not be underestimated.

If you take part in an external competition you may get the opportunity to progress through several rounds, building up confidence as you go – although you should be aware that you are potentially committing yourself to taking part in every round, and that each moot will entail a considerable amount of work. You will often find that the organisers of external competitions are able to arrange for barristers or practising judges to judge the moot. This is worth experiencing: mooting before a real judge can be very different to mooting before one of your lecturers.

Some national competitions to watch out for:

OUP National Mooting Competition
Run by Oxford University Press
48 teams; begins in January
First prize: £1,500

ESU - Essex Court Chambers National Mooting Competition
Run by Essex Court Chambers and the English Speaking Union
64 teams; begins in December
First prize: £1,000 each, silver mace, mini-pupillage at Essex Court Chambers

The Weekly Law Reports Mooting Competition
Run by the Incorporated Council of Law Reporting; prizes donated by Cavendish
32 teams; begins in November
First prize: Shield; subscriptions to Law Reports

MOOTING'S MOST FREQUENTLY ASKED QUESTIONS (A GROWING LIST…)

Please e-mail (Feedback@Moot-Point.co.uk) us if the answer to your question isn't here or in the guide: we'll try to answer as many questions as possible, and will add them to this list as we answer them.

Does it matter which court am I in?

Although your approach should be the same wherever the moot is set, there are certain obvious considerations that need to be borne in mind. For example, which authorities are binding on your judge and which are merely persuasive? Remember, too, that policy arguments tend to work best before the House of Lords, who can overrule any authority if they are sufficiently persuaded of the reasons for so doing.

What do I do if the facts in the moot problem are incomplete or otherwise unsatisfactory?

It would be very unusual to find a moot problem that contained as comprehensive a summary of the facts as a real case. Although it can be very tempting to speculate on missing facts when formulating your submissions, you should avoid doing this at all costs. On the other hand, it is perfectly acceptable to say something along the lines of "It is submitted that *R v. Y* is analogous to the instant case, although it is not clear from our facts whether the respondent actually knew that the gun was loaded".

Similarly, you should *never* dispute the facts of the problem or the first instance findings. The moot will be set in an appellate court, which (save in exceptional circumstances) does not undertake a re-examination of the facts: it decides contested points of law. To say something like "Green J found at first instance that the appellant did know about the crack in the wall, but this is impossible since…" would be to commit one of mooting's deadly sins!

What policy arguments support me?

This one's tricky, and depends primarily on which court is the setting for the moot (see above). One thing that's certainly true is that you should never argue solely on policy grounds – or even base your primary submission on a policy argument.

Beware the fallback of the 'floodgates' argument: I once heard a (real) judge saying that he groans inwardly whenever counsel argues that he should rule one way or another in order to avoid opening the floodgates: he is strongly of the opinion that this is just about the weakest argument that can be put, and should be saved for the bottom of the barrel. Having said that, moots aren't in the real world, and you're trying as much to impress the judge with the breadth of your expertise and research as you are with the acuity of your argument.

When may I turn to Hansard?

Hansard, the Official Report of Parliamentary proceedings, can be very useful in a moot that has legislation at its heart and requires some statutory interpretation.

In order to be able to refer to Hansard, you need to demonstrate to the judge that the plain meaning of the words of the statute (the black letter) is ambiguous: this is usually a formality, but one that's worth mentioning in order to show that you're on top of constitutional niceties. The only people whose words carry any weight, however, are those of the promoter of the Bill and the relevant Ministers: you'll get into hot water if you start quoting the (apparently helpful and decisive) words of the Opposition spokesman or a Government backbencher.

I'd recommend that you use Hansard sparingly. If you do refer to it in your submissions you must – in theory, at least – provide a complete copy to the judge, and probably, in fairness, to the other side. That could be tricky (and vastly expensive). You're probably best off finding a textbook that collects the most

important bits of Hansard (there is a very good one on the Human Rights Act 1998, for example) in one place, apologising to the court for taking the easy way out and giving the actual Hansard references of the passages that you're using, to show that you're not making it up.

What should I take along to the moot?

Make a checklist before you set off, particularly if you're travelling to an 'away' moot. Two hours into your train journey is a bad time to realise that your notes are on the bedside table.

Almost certainly your checklist will include the following:

- a copy of the moot problem
- several copies of your skeleton argument
- your opponent's skeleton argument
- your bundle (as many copies as are required)
- the rules of the moot
- any notes that you might use
- a good textbook, in case you get a last minute urge to look something up
- stationery supplies (highlighters, ring binders, document flags, pens, notepad, etc.)
- gowns (if required)

What if the opposition has missed the point?

Hopefully, your opponents will give you a run for your money and will therefore enable you to perform at your best and to score an honest victory. Unfortunately, there are some occasions when your opponent appears completely to have missed the moot point. The first question, of course, is whether it really is your opponent who has missed the point!

If the answer is yes, then your best bet is to focus on your own submissions: it is extremely unlikely that the judge will tell you not to trouble yourself! Indeed, it's worth remembering that your job is to win on the strength of your advocacy, not on the point of law.

What is the best way to organise notes?

This is a question that can only be answered by an individual for himself. For example, I moot with two skeleton arguments in front of me (mine and that of my opponent), while one of my mooting partners usually has several pages of A4 typed notes with her.

Whatever you choose to use, you need to be confident that you will be able to jump easily between sections, that dropping the pile wouldn't be the end of the world and that the notes are not going to distract you or the judge.

If you have the chance, experiment with different styles of notes, so that you can work out which is most effective for you. One to try, and which might make you appear most barrister-like, is the list of subject headings (possibly with a note or two) on a couple of pages. This way, you can cross them out as you cover each of the points, can keep the submissions in a preferred order unless interventions do not allow it and run no risk of repeating yourself, since there'll be a big black line through any points that you have made out of sequence.

May I depart from my skeleton argument in my speech?

You should certainly aim to flesh out your skeleton argument in your oral submissions, and to go beyond the written words. After all, it would be pretty tedious for everyone if you merely declaimed your skeleton argument for the whole ten minutes (or whatever time it happens to be).

Additionally, it is perfectly acceptable – and good practice – to depart from the thread of your skeleton in order to deal with your opponent's submissions. In other words, consider an argument fair game if it's raised either in your skeleton argument or in the submissions (whether oral or written) of your opponent.

There are often rules governing the use of extra materials that you have not listed in your skeleton argument, and these should be strictly observed. At least one competition states that any material may be used to respond to a judicial intervention or question. Thus, if you have an article or case that you are very keen to use, but haven't included it on your submitted list, you can try to goad the judge into asking a question which permits the 'here's one I made earlier' response! Try to avoid making this too obvious, though, as the judge is probably wise to this sort of sophistry.

It is not advisable to start introducing new lines of argument that bear no relation to your skeleton argument and do not arise directly from your opponent's submissions: the judge is likely to shut you down when she realises what's going on, will tell you that she intends to ignore that submission and your time will have ebbed away.

What do I say if the judge asks me something that's completely off point?

There are two possible reasons for this sort of intervention: either the judge is trying to test your abilities, or he does not know the law. Either way, you need to bring him gently but efficiently back to the point. Try something like "I'm grateful for your assistance, my Lord, and I apologise for not having expressed myself clearly…" or "I hadn't intended to deal with that point, my Lord, as it is not one of the grounds of appeal. However, I am more than happy to go away and research the point, if your Lordship so desires".

You don't want to allow the judge to drag you off the point (whether deliberately or inadvertently), as it will show that you are not in control of the situation, that you cannot recognise a red herring when it is thrown at you and you will waste precious time.

What if I don't understand the judge?

The ideal moot submission will appear to be a fluid dialogue between mooter and judge, the former expertly, clearly and thoroughly informing the latter, so that a favourable outcome is assured. Sometimes, however, the judge will ask a question and it is impossible to be sure whether this or that response is helpful to you or otherwise.

You may think that you appear foolish by asking the judge kindly to repeat his question, but you will look considerably more foolish if you appear to reflect sagely for a few moments (while a flurry of confused thoughts flies through your mind) and then pronounce authoritatively that the answer is "yes", thereby fatally undermining your submission. Don't be afraid to ask the judge to repeat himself if his question is worthy of the Times cryptic crossword, or even if you simply didn't hear it properly.

What if the judge says something that's wrong?

If the judge errs in law during his judgment, it is probably most diplomatic simply to ignore it and to rest assured that you will make a better lawyer than him. If, on the other hand, he makes a mistake during your submissions, and it is at all material, you should endeavour to correct him. I find that a quotation is often the most painless and face-saving way out of this situation, since the judge really shouldn't feel too put out if he is put right by the words of his noble and learned friend, Lord Brown. A mooter should definitely be sensitive to the judge's ego, as he will be much more likely to award points to the side that has established the best rapport with him.