



DEAKIN
LAW STUDENTS' SOCIETY
2018 Mooting Guide

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Introduction

Foreword

Welcome to the 2018 Deakin Law Students' Society (DLSS) Mooting Handbook! The Competitions portfolio has prepared this handbook in aim of providing Deakin law students with a succinct guide on how to successfully moot. Throughout the academic year, the DLSS runs a number of competitions, with mootng being not only one of the most engaging and challenging, but also one of the most rewarding experiences. Mooting provides participants with hands on litigation experience in a simulated court room environment, an experience surely not to be passed up!

The 2018 DLSS Mooting Handbook should act as your key point of reference and your quick-reference mootng bible when coming time to prepare for your moot. Not only does this guide provide key rules and guidelines surrounding moot competitions, it further enhances your knowledge with a plethora of handy tips and tricks to set you on your path to being a mootng master!

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Why Should I Moot?

Mooting is one of the fantastic ways students are able to build upon their legal skills within a practical environment. Participation in a moot competition requires legal research, written submissions, oration and legal advocacy - all essential skills needed to succeed in the legal profession.

Being in law school doesn't mean you are ready to become a lawyer the day you graduate. Participating in mootng competitions provides you with a head start to your legal career, having experience in advocacy and litigation is a very favourable trait to posses (and potential employers will love seeing this on your CV!).

Aside from the professional development and growth, mootng offers you a chance to make the most out of your time at university. Getting involved is a great way to maximise your tertiary experience, and a fantastic way to build strong connections and friendships with your cohort, after all, these are the people you will be working with in the future!

The DLSS strives to create these opportunities for students to strengthen our faculties university experience, making competitions such as mootng creative, challenging and fun! After reading our guide and participating in your first moot, the question shouldn't be "Why should I moot?", rather, "Why SHOULDN'T I moot?".

Mooting

Introduction to Mooting

So, you've signed up to your moot and are ready to go but, there is one big question, where do I begin and how does a moot competition actually work? Well, you've certainly chosen the right guide because we are about to provide you with the run down of exactly how a moot operates, from receiving your case scenario to addressing your closing submissions.

The A to Z of Mooting

Step 1: Receiving your brief/case

After signing up to our mooting competition with your team member, the DLSS Competition will email participants with their moot scenario. The scenario will contain the facts surrounding the mooting issue, and will provide participants with a clear indication of what all named parties are seeking as a result of your brilliant litigation in the coming weeks.

But wait a minute, how will I know who I am representing?

No stress at all! We will email you with not only the case scenario but also whether you will be representing the '**Applicant**' (the party who is bringing the matter to the court, the plaintiff) or the '**Respondent**' (the party who is defending the matter, the defendant).

Now you have your partner, the moot problem and your assigned position, you are ready to initiate step 2 of your mooting journey!

Step 2: Analysing the Case and Researching

Research and analysis of the moot problem is necessary as it begins to shape and create the basis of your submissions (generally three). Based on the party you are representing, you will shape and mould your submissions according to their desired outcome.

So, where do I start?

Great question! Start by reading through the moot problem two or three times. Use various colours to highlight key points, and begin to colour code your submissions, this makes it a lot easier later on when you re formulating your arguments and forgot where that really good piece of information was before!

Where do I go for legal research?

Another great question, and another reason why mooting is so beneficial, as lawyers are tasked to use all available resources within their day-to-day practice. A great place to start researching is your textbooks. Identify your issue, find your textbook, identify the relevant chapter and there you have it, a wealth of knowledge and a great collection of cases. However, this is sometimes not enough and further research will be needed. Great places to search for case law include resources such as LexisNexus or Westlaw AU, all accessible through the Deakin Library website via your student login credentials. Furthermore, if it is legislation you are after, austlii.com.au provides a database with all relevant acts.

So, you've read through your case, identified the issues and are now researching to see how you are going to best represent your clients interests - perfect. It's a great idea at this stage to start

making a comprehensive list of notes and compiling them into categories based on which submission they provide value to.

MOOTING TIP #1

It's a great idea to also conduct research into what your opposition will find useful, and find some cases that they may use to give your submissions a competitive advantage and a winning edge (predicting what they may say in support of their case).

You've conducted your research, found some great cases and highlighted any contentious legislation that may be of significance for your case. It's now time to draft your submissions and start rehearsing!

Step 3: Draft your Submissions...and Rehearse!

Drafting your submissions is one of the most important steps of the mooting process, like the saying goes, ***failing to prepare is preparing to fail***. Having your submissions set out in a logical, clear and succinct format will allow you greater prepare for your presentation to the moot court.

"So where do I start?" Great question! If you adhere to the following steps, and structure in a similar format, the drafting of submissions will become second nature, and you will create an easy guide to follow come mooting day!

List your 'Issues for Determination'

It's always a great idea to first list, at the top of your submission document, the contentious issues you bring to the court for determination. An example of this could be the following, but this is entirely based on the issues faced by your party in the moot scenario:

1. "Whether [insert party name here] has grounds to [take such action] pursuant to [a particular legislation]"
2. "If there is standing for [insert party name] to have [insert action] based on [insert the contentious actions faced]"

These issues for determination will be clearly identifiable based on the grounds of your party's situation, outlined in the mooting scenario.

Your Submissions

Your submissions will echo your issues for determination. In other words, your submission is your contention of the issue at hand. For example:

If the issue for determination is whether or not your party has standing to complete a specific act based on a fundamental piece of legislation, one of your submissions will more than likely be that your party does in fact have standing to complete that specific act, based on the stated legislation.

Your submissions will also have sub-headings beneath them, filled with the reasons why (and relevant authority) the issues your party faces should be dealt with in your favour. This is where you show off your research and provide the judge/panel of judges with all your hard work and effort!

Step 4: Prior to the Moot

So, you're now ready to go and it's the day of the moot. Some basic things you should do is:

- Make sure you have your submissions printed and ready to go
- Make sure you're dressed in proper formal attire, this means suits! Rock your favourite Harvey Specter or Rachel Zane as you prepare to show off all your hard work!
- Make sure to arrive at the moot court with your mooting partner with plenty of time to spare, this will ensure you have time to re-group and discuss the moot, however, this depends on what works for you best!

One essential element of moot preparation is deciding who will be **senior counsel** and who will be **junior counsel**, as both, whilst very similar, adopt different positions during the mooting regime.

Junior v Senior, I don't know what to do!

First of all, don't stress - one role doesn't have more to say than the other, ultimately the role will dictate who talks first!

Another essential element to understand prior to your moot is mooting language, legal jargon. Check out our **Mooting Vocabulary** below to get all the information you need!

MOOTING TIP #2

Whilst some of the information may seem common knowledge when preparing for a moot (for some) it is essential that this becomes second nature. Etiquette, language and appearance are just as important in the eyes of the judge(s) when it comes to scoring the teams.

Step 5: Time to Moot!

The day has arrived, all your hard work will be showcased. Hair slick, submissions ready and counter-arguments ready to deploy at any second. When coming time to moot, walk into the moot court calmly and with purpose (this will show the judge(s) you are ready and able to commence).

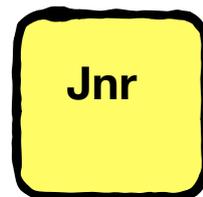
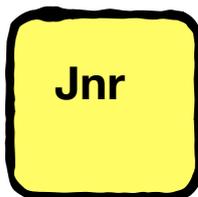
However, one question remains, what do I actually do in the moot court room? Great question! In the proceeding pages we will outline where to sit, when to stand, when to speak and what to do.

Tick off the boxes once you have read each section, once you have completed and understood all, CONGRATULATIONS aspiring moot team - you are well on your way to becoming a very successful mooting team!

Moot Court Layout

The below diagram provides the moot court room layout. Your assigned role within the moot competition will dictate where you sit in the room, as shown below.

If you ever forget where to sit in a moot scenario, just remember:
Respondents, Right, Senior, Centre.



Mooting Etiquette

Mooting is formal in nature, and the behaviour and presentation of competitors should reflect this.

Dress Code

All moot competitors should dress in corporate attire, and look well-presented.

Formal Language

Formal language should be used in the moot court room. When making arguments, competitors should say 'I submit' instead of 'I think/believe'.

It is especially essential to use respectful language when addressing the judge/s. If you are disagreeing with a judge, always start 'With respect, Your Honour'.

When ending your submission, use a formal conclusion. Make eye contact with the judge before sitting to ensure that they have no further questions for you. Ways you might conclude your submissions are 'If there are no further questions, that concludes my submission'; 'May it please the court' and; 'If it pleases the court, I close my argument'.

Be confident when speaking! Try to avoid 'ums' and 'ahs' and make sure you are projecting your voice.

Make sure that when the other team is speaking you are respectful and pay attention to their arguments too. Not only is this polite, it also helps you if you need to address any points they have made.

Modes of Address

- Judges should always be addressed as 'Your Honour'.
- Teammates should be referred to as 'my learned colleague'.
- The other team should be referred to as 'my learned friends'.

Citations

When first citing a case, you should recite the full citation. Then you may ask the judge 'If I may dispense with formal citations'. If the judge accepts, you may refer to the case as shorthand. Note that when referring to a case, 'and' should be used rather than 'versus'. For example, if the parties were *Waterson v Baxter*, this should be spoken 'Waterson *and* Baxter'.

When citing cases aloud, you should refer to them as "Justice X". The names of judges will be written as Kirby J or as Gleeson CJ. This is how they should be cited in your written submission, unless the sentence begins with the judge's name. In that case, you would write, "Justice Gleeson stated at . . ." instead of "Gleeson J stated at . . .".

FAQ's

How do I receive feedback from my moot?

Feedback is usually given immediately after the moot by the moot judge. The feedback from your moot judge is extremely valuable because it is usually coming from a senior member of the law faculty

Who will be my judge?

Judges are usually senior members of the law faculty or in some cases a senior law student.

What should I do if I can't find a partner?

Contact us at the DLSS and we will do our best to match you up with someone else who has yet to find a partner.

What if I don't understand what the judge is asking me?

Do not hesitate to ask the judge to repeat or rephrase a question if you are struggling to understand what is being asked. You would rather sacrifice a little bit of your pride and ask again rather than answer a question incorrectly.

What do I do if the judge asks me something completely off point?

Acknowledge the judge's question but at the same time you need to ensure that you don't allow the judge to drag you off your intended point. By saying something along the lines of "I hadn't intended to deal with that point your honour as it is not one of the grounds of appeal, rather..."

How long should I be talking for?

When you receive your scenario, there will be information regarding how long each party will be able to speak, this time should then be split equally between you and your partner.

What order do my partner and I speak?

The partner who is designated senior counsel speaks first and junior counsel second, however as stated above, there is no real difference between the two and you will both speak for equal amounts of time.

What should I wear?

Formal business wear, if you would be comfortable wearing it to an interview at a law firm then it is perfect for your moot.

How much do I need to know about each case I reference?

Know the cases you intend on referencing well. In particular know where the facts are similar to those of your scenario and where they differ

What am I being judged on?

You will be judged primarily on your argument. Judges want to see a coherent, logically structured argument which is supported with persuasive legal authority. Secondly, you will be judged on your counter arguments - how you rebut the arguments put forth by the opposing counsel - and finally on your court etiquette. How do I cite cases and legislation?

How do I formally cite cases and legislation?

Below are examples of how you would recite full case citation in a moot scenario:

Example 1

How it's written:

- *Balfour v Balfour* [1919] 2 KB 571

How it's spoken:

- "Balfour and Balfour, nineteen nineteen, volume two, King's Bench division page five hundred and seventy one"

Example 2

How it's written:

- *R v Macleod* (2001) 52 NSWLR 398

How it's spoken:

- "The Crown and Macleod two thousand and one, volume fifty two New South Wales Law Reports page three hundred and eighty nine"

Example 3

How it's written:

- Evidence (Miscellaneous Provisions) Act 1958 (Vic)

How it's spoken:

- The Victorian Evidence Miscellaneous Provisions Act nineteen fifty eight

Mooting Vocabulary

Below are some useful phrases to use in the moot court room.

The table will provide a listing of the phrase, a description of when the phrase would most commonly be used and finally, an example of the phrase being implemented into an oratory example.

Phrase	When to Use It	Example
"If it pleases the court..."	Use this phrase before starting any discussion with the court.	"If it pleases the court, your honour, I would like to begin with our first submission..."
"Your honour"	When addressing the judge/panel of judges	"...certainly, your honour..."
"Learned friend"	When referring to members of the opposing team	"In response to the argument of my learned friend..."
"Learned colleague"	When referring to your teammate	"... which my learned colleague will address in their submissions"
"We/I submit"	When presenting an argument or answering a question from the bench	**Note** You should not say, "I think" when answering a question/making a submission, but rather, "I submit"
"Respectfully"	When addressing the bench/the opposing team	"Respectfully, Your Honour, I disagree that..."
"I will now turn to my first/second/etc submission"	When beginning a new argument	"I will now turn to my first submission"; "My second submission is..."
"I will now turn to my first/second/etc submission"	When beginning a new argument	"I will now turn to my first submission"; "My second submission is..."
"If there are no further questions"	When concluding your oral submissions	"If there are not further questions, that concludes my submissions"

Mooting Dictionary

Term	Definition
Applicant	The party bringing the appeal
Respondent	The party responding to the appeal
Senior Counsel	The first speaker for your team, who will outline the submissions to come
Junior Counsel	The second speaker for your team
Appearances	The moot starts with the judge calling for appearances. Senior counsel for each team will stand and introduce themselves and their junior counsel, and state which party they are appearing on behalf of.
Submissions	The term submissions is synonymous with arguments – instead of saying “Our first argument is...”, you should say “Our first submission is....”.