

UNIVERSITY OF EAST LONDON

SCHOOL OF LAW

MOOTING SOCIETY



TUTORIAL GUIDE TO MOOTING

MOOTING TUTORIAL



WHAT IS A MOOT?

A moot is a legal argument on a point or points of law. These points of law are presented so as to closely resemble the experience of undertaking an appeal case in a real court of law.

The aim of the moot is to persuade the judge to accept your legal argument, on the basis of authorities¹ applied to the facts, not unlike a problem question. However, although a team might win the legal aspect of the moot, they may not necessarily win the moot itself. This is because it is the skill of advocacy² that is essentially being assessed. So how you present and argue your case are the deciding factors in winning the moot.

¹ Established rules or decided case, judgment, textbook of repute or statutory enactment that is cited as a statement of the law.

² The ability to plead a case in court.

WHY DO A MOOT?



Mooting is critical for anyone who wants to become a barrister. It is also good training for those intending to become solicitors or solicitor advocates as well, because it develops the skills of public speaking and presenting legal argument. What's more, it gives you professional confidence and improves your social skills.

More importantly, getting involved with moots looks excellent on your CV, especially if you are looking to get a post-graduate place at law school, obtain pupillage³ or a training contract⁴. It is also a requirement where School of Law Reference Development Points are concerned, as it carries a high value in terms of future references given by your personal tutor or nominated referee.

Above all, though, mooting is fun! You should try and do a moot if the chance arises.

³ This is the 12 month period of training required in order to become a barrister.

⁴ This is the 24 month period of training required in order to become a solicitor.

MOOTING RULES



For UEL School of Law Moots

Remember: a moot concerns argument about the correct interpretation of the law and not argument about facts. Therefore, moots are really appeals to higher courts, such as the Court of Appeal or the House of Lords, and not a re-trial of the lower court case.

For each moot⁵ there will be four speakers or ‘advocates’. In other words, there will be one team of two speakers (the Appellants) against another team of two speakers (the Respondents):

The Appellants are the people who lost in the lower trial court and want to reverse the judgment. The Respondents are the people who won in the lower trial court and want the judgment to be upheld.

Each team has a Senior or Lead counsel (who speaks first) and a Junior counsel (who speaks second).

The first person to speak will be the lead appellant. He or she must introduce the four advocates in the following manner:

⁵ There can be several moots on any one particular Moot Night.

‘May it please your Lordship(s), in this matter I appear on behalf of the appellant Mr/s X with my learned friend Mr/Miss Pal. The respondent, Mr/s Y is represented by my learned friends Mr/s Rival and Mr/s Challenger.

Next, the lead appellant must give a very brief summary of the facts of the case. Remember the facts of the moot are as set out in the problem and are not subject to any dispute.

The moot may be judged by a single judge or a panel. Where a panel is used, the judgement shall be that of a majority.

TIMING

(a) The speakers will usually proceed in the following order, with maximum length as follows:

- First speaker: Lead appellant -15 minutes
- Second speaker: Lead respondent - 15 minutes
- Third speaker: Junior appellant - 10 minutes
- Fourth speaker: Junior respondent - 10 minutes
- Last: Lead appellant’s right to reply – 2 minutes

(b) Any advocate exceeding the time for their speech may have this counted against them by the judge or panel when deciding the winner of the moot

(c) The speech time shall include

- (i) The time it takes to answer the judge or panel’s question, but not;
- (ii) The time taken for the lead appellant to introduce counsel and to summarise the facts of the case.

AUTHORITIES

(a) Each team (i.e. pair of mooters) shall be entitled to refer to a maximum of four (4) case law authorities during the course of their arguments. This does not include any statutes, texts or articles.

(b) Authorities have to be disclosed to the moot organisers (i.e. members of the School of Law's Mooting Society) 72 – 48 hours before the moot so that they can ensure that the judge(s) have a copy of each authority.

JUDGEMENT

(a) At the end of the speeches, the judge shall declare which team are:

(i) The winners of the legal case and;

(ii) The winners of the moot, who will not necessarily be the team for whom judgement is given on the law.

(b) The team which is declared the winner of the moot shall be the speakers (advocates) who have presented their case with the greater oratory (speech-making) skills and legal clarity. This team will proceed to the next round or be the actual winners of the competition. The judge may also score each individual speaker as well, but will certainly give feedback on each speaker's advocacy skills.

HOW TO PREPARE A MOOT!



For UEL School of Law Moots

Below is a basic (and hopefully easy to understand) guide on how to prepare for a moot.

First: read the moot problem:

About a week or so before the moot, you will receive the moot problem. It will probably be set out much like the one below. Make sure you read it carefully.

Denning v Hoffmann (In the Court of Appeal)

Mrs Denning saw an advertisement in the shop run by Mrs Hoffmann which read: "Magical cure for snoring: take one of these pills before going to bed and you shall not snore. If these pills fail you, we will offer you a full refund plus a bottle of whisky." Mrs Denning purchased a packet of pills but was informed after by her husband that her snoring had not abated in any way. Mrs Denning rushes to the store but is told by Mrs Hoffmann that the advertisement should not have been taken seriously; it was only marketing talk to spice up trade in this medicine. Mrs Denning brings an action against Mrs Hoffmann claiming that she is entitled to a refund and to the bottle of whisky on the basis that the advertisement constituted an offer, which she had accepted.

At first instance⁶, Justice Salmond held that the advertisements did not constitute an offer but were an invitation to treat, based upon the judgment of *Partridge v Crittenden* [1968] 1 WLR 1204

Mrs Denning appeals against this decision on the basis that the judge misapplied the law: Advertisements can constitute offers as demonstrated by the decision in *Carlill v Carbolic Smoke Ball* [1893] 1 QB 256.

Second: prepare your arguments

This checklist should guide you through the process of preparing your arguments.

(1) Who am I?

- a) **Appellant:** e.g. this is Mrs Denning – unhappy with decision, wishes for Court of Appeal to overturn Salmond J’s decision
- b) **Respondent:** e.g. this is Mrs Hoffmann – happy with Salmond J’s decision, wants to support the ruling.

(2) What do I argue?

Appellant:

An advertisement can constitute an offer, which Mrs Denning read and accepted. Her acceptance is the purchase of the pills.

- How to support this argument? What authorities allow me to reach this conclusion?
- How did the first instance trial judge come to the opposite conclusion? How do I show that his\her reasoning is wrong?

⁶ The lower trial court e.g. County Court or Crown Court

Respondent:

The first instance trial judge has ignored *Carlill* and has preferred a more traditional approach.

- How can I justify his conclusion in the light of the *Carlill* case?
- Is it better for the law to restrict the application of *Carlill*? (a policy argument)

(3) How do I support my argument?**Precedent:**

(1) Duty to cite relevant precedent⁷ and explain it, even if it is against position being advanced;

(2) Overruled cases and dissenting opinions – beware!

(3) Foreign law – persuasive, not binding.

Apply precedent to the appeal – e.g. “The case of *Boots v. Laces*, albeit on a very different set of facts, sets out a general rule that A=B.”

Policy:

The law would be more just if the rule of law were the following, because... (But remember that if a Court is bound by precedent, policy arguments are pointless!)

(4) What can I not argue about?

- Points of law not raised in the grounds of appeal (RSC Order 59 rule 3(3))
- The facts of the case – it is accepted that the version of events in the moot is correct. The facts were determined at first instance and not up for review.

NB: Counsel owe a duty not to mislead the court and a duty to the client to put the case in the best possible way.

⁷ A judgment or decision of a court of law cited as an authority for deciding a similar set of facts.

(5) What structure?

A useful structure to follow is:

- a) Introduction “my submissions are that $A=B$; $B=C$ and that therefore $A=C$.”
- b) Main body “proof, using authorities, that $A=B$ and that $B=C$ and the $A=C$ ”
- c) Conclusion – the law is that $A=C$.

Note: order; limited number of submissions.

(6) Does it matter what opposing counsel says?

- If they speak first, listen and see if they make any errors; if they raise any point that needs a response
- If you speak first: anticipate possible lines of argument and refute.

(7) Who wins?

You win if you are the better team, judged on the basis of (roughly) the following criteria:

- (a) **Content**: presentation and clarity of argument;
- (b) **Strategy**: competent use of authorities (i.e. case law, statute etc.);
- (c) **Ability to Respond**: to answer questions put, and;
- (d) **Style**: courtroom manner.

Third: Skeleton Arguments

Once you have prepared your arguments you should be able to boil them down into two succinct points for your skeleton arguments. The skeleton arguments are exchanged between the appellants and the respondents so that each side has an idea of their opponent's arguments and cases before the moot. This should occur 72 – 48 hours in advance. Members of the Mooting Society should ensure this.

Skeleton arguments for the above moot problem would appear as follows:

Appellant:

1. *Carlill v Carbolic Smoke Ball* [1893] 1 QB 256 is the governing authority which the judge should have applied. On this authority advertisements may constitute unilateral offers.
2. The advertisement, by offering a £100 reward indicated an intention to create legal relations between the seller and the buyer should the pills be purchased. (*Carlill v Carbolic Smoke Ball* [1893] 1 QB 256; *Bowerman v Association of British Travel Agents Ltd* [1996] CLC 451).

Respondent:

1. The judge was correct that advertisements constitute an invitation to treat. *Carlill* is an exceptional decision restricted to its special facts.
2. The advertisement could not be considered an offer because the reasonable reader would have realised that it was a mere marketing technique to attract purchasers. Its maker had no intention to enter into contractual relations on the terms of the advertisement – it was a mere puff. Statements become contractual terms when they are important and set out formally, not when set out jokingly as here. (See *Couchman v Hill* [1947] KB 554)

Fourth: Courtroom language

Once you are in the courtroom, it is important to observe the following formalities of courtroom language.

Each speaker always starts by saying:

“If it pleases the Court...” plus appropriate introduction of who you are.

The first speaker says something like this:

“If it pleases the Court, I - Miss Josephine Bloggs, and my junior, Mr Frank Opinion appear on behalf of the appellants, Mr Bramble.

My learned friends - Ms. Jacqui Onassis and Ms. Francesca Nardini appear for the respondent, Mr. Sterling. I will address the first ground of appeal, and Mr Opinion, the second ground of appeal. Would your Lordship/Ladyship wish to be reminded of the facts of this case?”

If the judge says s\he need not be reminded of the facts of the case, you say “I am obliged, my Lord” and continue.

Ways to begin certain points:

“My Lord...”; “It is my client’s contention...”; “It is submitted that...”: “My Lord, it is submitted that...”; “Contrary to my learned friend’s submission...” (Of course not all sentences need to start like this!)

What to say if the judge says something to you:

In reply to a question: politely answer; remember to address him/her as My Lord/Lady or your lordship/ladyship

If the judge makes a suggestion, or tells you to continue, then “I am obliged, my Lord/Lady” and then continue.



Beware: “errrr” or “ummmm” etc., – is not part of courtroom vocabulary! However, silence and pauses are or can be!

At the end of your submission say:

“Unless I can assist the court further, that concludes my submissions”

DELIVERY & POSTURE

To all intents and purposes you are in a court situation, albeit a simulated one, therefore you should aim to present your case clearly and concisely. Ensure that you stand up straight when speaking to the court (i.e. judge or panel) and do not slouch. Do make eye contact with the judge or panel, speak audibly (plainly), slowly and deliberately. Do not rush or read your speech, if you can, although allowances will be made for nerves. It is recognised that mooting is new to most people, but as with anything practice makes perfect. Following the above guidelines and rules should help you get there.

DOS & DON'TS



For UEL School of Law Moots



Do:

Do cite authority slowly, giving the judge time to read the passage and make notes if necessary. When you are finished with each point, say “If I may move on.....”.

Cases and authorities should be cited in the following manner: Donoghue v. Stevenson is pronounced ‘Donoghue and Stevenson’. R v Smith is pronounced ‘The Crown against Smith’

If you cannot answer the question put to you by the judge (or panel) you may “ask for leave to confer (consult) with your colleague. If neither of you know it is best to be honest and say so.

When referring to dictum⁸ in your argument, make sure you cite the portion on which you rely and not the whole tract of the judge’s speech. Also, allocate ample time to prepare your case. You are unlikely to grasp all the nuances of the moot question at first sight. It is usually helpful to take a step back and return to your initial response later. Work together with your team mate or friends. **NB:** Do be prepared to think on your feet!

⁸ Judicial comment, which is not binding but can be persuasive – the complete term is ‘obiter dictum’.

**Don't**

Never present your case as your opinion, as if it is the presentation of opposing ideas. For instance: 'I think' or 'In my opinion' are wrong. You should say: 'It is my submission that'.

Do not interrupt the judge when he/she is speaking. Allow them to interrupt you. When responding to the judge, be deferential but firm, you always speak 'with respect' to the judge, whether agreeing or disagreeing.

Do not assume that the judge is familiar with the facts of the problem; be prepared to give a short summary or to read the statement (i.e. the moot problem). Lead Appellant Counsel should inquire as to the judge's knowledge of the facts at the start of the moot. Normally, though, the validity (truthfulness) of the facts can be taken as read.

Don't ignore the weaknesses in your case, and do formulate a strategy for dealing with the opposition argument (i.e. don't simply hope the other side won't spot the problem. They will).

Do not rehearse the same argument. Be clear in your team as to who is going to say what.

Remember: If a criminal case e.g. *R v. Smith* = "The Crown against Smith" **Never say 'versus' or 'v/vee'**

JUDGES AND LAW REPORTS: WHAT DO THE LETTERS MEAN?

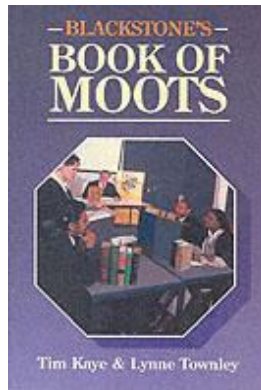
Page J = Mr Justice Page, Page LJ = Lord Justice Page, Lord Justice Denning, as he then was, Lord Denning MR = Lord Denning Master of the Rolls.

Boots v. Laces [1989] 1 WLR 1 = “Boots and Laces, reported in the first volume of the 1989 Weekly Law reports, on page 1. Need I remind your lordship of the facts of this case?”

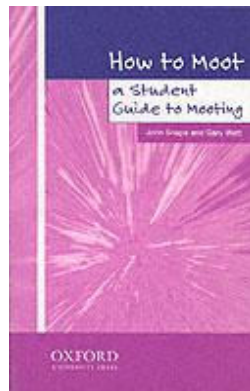
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USEFUL REFERENCES & WEB LINKS



Blackstone Book of Moots
Kaye, Tim (Lecturer in Law, University of Birmingham); Townley, Lynne



How to Moot: A Student Guide to Mooting
Snape, John; Watt, Gary

Web Links:

An Introduction to Mooting: http://www.lawbore.net/articles/ben_vicky_final.pdf

Essex Court Chambers Guide: <http://www.essexcourt.net/mooting/page.asp?p=178>

Mooting.Net Guide: <http://www.firstlight.demon.co.uk/law/mooting/>

