GUIDE TO MOOTING
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Essex Court Chambers
INTRODUCTION

FOREWORD

Mooting is fun, and it can give you a taste of what it is like to argue cases in court. It is essentially practice court room advocacy on a disputed point of law. Advocacy is widely misunderstood: it is not public speaking; it is not debating; and it is not acting. Some people who dislike all of those things enjoy – and excel at - advocacy and mooting. Despite all that, few people are likely to be drawn to mooting by watching; it is rarely a great spectator sport. You are only likely to find out if you like court room advocacy if you try mooting.

This very useful guide will help you do just that. It covers the basics which you need to take on board to do your first moot; and it has useful information for the more experienced mooter. Read it; re-read it; and try to put it into practice.

Edmund King,
Essex Court Chambers.

WHAT IS MOOTING?

Mooting is where students present oral arguments on a point of law in mock court proceedings. The aim is to present a legal argument on a hypothetical set of facts in a persuasive and succinct way. You win on your advocacy skills, the quality of your argument and your legal research – and not by being correct on the law. A moot consists of four counsel (one junior and one senior for each side). Each mooter has a set time to present his/her legal arguments and answer questions asked by the judge(s). Whilst advocates are in two teams (appellants and respondents), in all but the team mooting competitions it is the best individual or individuals who win.

An example: Mr A and Mr B are roped together on a mountain when Mr B falls over the cliff; the only way for Mr A to survive is to cut Mr B free and let him fall to a certain death, otherwise both Mr A and Mr B will die. Mr A has been convicted of murder because the trial judge decided that there is no defence of necessity to murder known to the law. One advocate (the appellant) would be required to argue that the trial judge was wrong, and demonstrate that there is a defence of necessity in law, rendering the conviction unsafe. The other advocate (the respondent) would aim to support the trial judge’s finding and rebut the appellant’s arguments to the contrary.
Mooting is a great way to try your hand at advocacy (and see if you might enjoy it as a career), improve your legal research and receive feedback and advice from barristers. Often, mooters find that they acquire highly useful information for their academic subjects. Mooting experience is a valuable addition to an aspiring solicitor’s CV, and is indispensable for an aspiring barrister. Mooting is also a great intellectual challenge and can be scary at first; fortunately, however, most people find a moot to be an enjoyable experience. It is certainly not something just for public speakers or debaters: it is an entirely different form of speaking that requires different skills. Nor is it restricted only to law students; there are dedicated events for non-law students as well.

In this guide, you will find the rules of mooting at Cambridge, advice and details of internal and external mooting competitions. If, having read the guide, you still have questions answered, then do ask us. For questions concerning internal competitions, send your questions the members of the sub-committee who run that competition. Other questions, if unanswered in this guide, can come to us. All of our email addresses are below and on the website.

We wish you the very best.

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1. Read the problem

This might sound rather obvious, but is where many people go wrong.

First, make sure you know which point you are arguing (there are almost always two) and whether you are appealing (attempting to reverse the decision of the lower court) or responding (attempting to uphold that decision). A moot normally involves two legal disputes: the first dispute is argued by the seniors, the second by the juniors. The terms senior and junior are not intended to reflect the abilities of the advocates or the difficulty of the respective disputes! Thus, the senior appellant argues that the lower court was wrong and should be reversed on the first dispute, whereas the junior respondent would argue that the lower court was correct on the second dispute.

Next, make sure you understand the facts of the problem, what the lower courts decided on the law and – most importantly – what you are trying to persuade the court. It can help to write, in your own words, a summary of the finding you want the judge to make, for example ‘There is a defence of necessity to murder’.

Then, ensure you note carefully which court your moot is set in. This is important for two reasons: (i) precedent of cases (if your case in set in the Court of Appeal, then authorities of the House of Lords, Supreme Court and Court of Appeal authorities will usually be binding, whereas in the Supreme Court, any case can be overruled and so you may wish to argue that another case was wrongly decided) and (ii) the type of arguments that can be advanced (discussed later).

2. Legal Research

A moot is invariably set on a piece of law that is uncertain. Whilst there is unlikely to be a case directly on point, reading around the area of law is essential as you will probably wish to argue that there is relevant authority which contains a principle or rule of law that can (or must) be applied.

You should normally start by reading the relevant textbook from your Tripos course to understand the area of law. If there are cases cited in the problem, it is essential to read the cases (and not just the headnote!). Footnotes in your textbook should lead to articles or cases that will be more detailed and might be relevant to the problem you are seeking to argue.

Another good source will be the practitioner’s textbook for the relevant area of law:

- **Criminal Law**
  - Archbold

- **The Law of Tort**
  - Clerk and Linsell

- **Contract Law**
  - Chitty

- **Land Law**
  - McGarry and Wade
If you find cases that support a favourable view on the law, you will wish to argue that these are relevant to the facts in hand or can be applied by analogy (because a similar principle underlies both). If the cases are unfavourable, you will still need to consider how to ‘distinguish’ these cases (demonstrate that the rule does not apply in this instance) so that your opponent cannot rely on them, or invite the court to overrule them (subject to the rules of precedent).

Be careful to ensure that you are not relying on an authority that has been reversed on appeal or overruled in another case; Westlaw provides useful information in this regard. Similarly, check that the judgment you are relying on is not one of a dissenting judge (unless you intend to argue that their judgment was correct and the actual decision in the case should be overruled).

Finally, remember that each mooter is limited to using five authorities (plus those in the problem and those relied upon by others in the moot). This means that you cannot run too many arguments.

You are also entitled to rely upon academic articles and textbooks, in addition to your five cases. The latter are rarely appreciated by the court (although practitioners’ textbooks are normally acceptable). Articles can be useful to support an argument you wish to make; ensure you know who wrote the article as a judge is likely to want to know who the author is and what reputation he/she has as an academic.

It is worth remembering that authority is not the only way of arguing in a moot. Especially in the House of Lords or Supreme Court, where there is freedom to change the direction of the law, it is important to provide some argument on principle and public policy. Why should the law develop in a particular direction? Would a defence of necessity undermine the purpose of having a law on murder; would it be too open to abuse?

Once you have considered the relevant material and the arguments which your opponent might raise (and you will need to rebut), construct your argument. Remember that you have very limited time to present your argument, so concentrate on developing a convincing argument rather than lots of weak arguments. Observe the wise words of Glanville Williams: ‘do not overload your argument with cases… it is unlikely there are many good points to be made for your side… do not run the risk of alienating the judge’s affections by producing obviously bad ones’.

How you structure your argument is up to you. However, you will need to engage with the cases you intend to cite, working with the detail of the facts and judgments. For your most important cases, it is likely that you will need to spend time demonstrating why the rule ought to be applied on these facts and exactly what legal rule was established. Do not fall into the common trap of thinking that a case is decisive; there would be no moot if this were the case.
3. **Skeleton Argument**

The rules (annexed below) require you to submit a skeleton argument to the judge and all other parties in advance. The deadline will be specified by the co-ordinators for each competition. This ensures everyone is on the same hymn sheet when arguing in front of the judge; it avoids the embarrassing situation of a respondent replying to the argument they had expected the appellants to make! The skeleton argument provides a brief summary of your arguments, not the text of your speech; an example is given below. You must also list all your authorities (remembering the limit!) and any textbooks, articles or other material you intend to use.

4. **Bundle**

You must also prepare a bundle to bring to the moot. The bundle is simply a folder containing photocopies of the headnote and relevant parts of your authorities and a copy of your skeleton argument.

It is helpful to number the pages for ease of reference, and possibly to have dividers to separate each case. You need only to photocopy the headnote and the pages of cases containing the sections of any judgments you intend to quote from. Either photocopies of law reports, or the scanned pdf copies of law reports on Westlaw, Lexis or Justis, should be used. It is helpful to highlight or sideline the passages you wish to quote, so that you can guide the judges to the appropriate part quickly. You should have an identical copy of the bundle for your use during the moot.
1. **Arriving and Dress Code**

You should arrive at your moot in good time, dressed smartly in a suit and gown.

2. **Speeches**

It is normal for the order to be: senior appellant, senior respondent, junior appellant, junior respondent so that the arguments and counter-arguments regarding each dispute are heard sequentially. Speeches are limited to 15 minutes. The senior appellant has the right to reply after all other speeches, if he/she so wishes, and this is limited to 2 minutes. It is usually a good idea to take this time, since – if the other side’s arguments were good – you need to reply to them so that the judge is not persuaded and – if they were bad – you should ensure that the judge is aware of the flaws! Be aware that some of your 15 minutes will be taken up in responding to judicial questions. Respondents should also factor in time to respond to arguments raised by the appellants when planning their speech. It is really important to listen to the other side’s speeches, to ensure (as a respondent) that you deal effectively in your speech with the arguments that they have made and (as an appellant) to prepare material for your right of reply (should you choose to use it).

3. **Etiquette**

You should always be standing when speaking. Male judges are referred to as ‘My Lord(s)’, female judges ‘My Lady(-ies)’. Use the male form of address for a mixed bench (‘My Lords’) but ‘My Lady’ is still used when addressing a female member of such a bench individually. The phrases ‘you’ and ‘your’ are replaced by ‘Your Lordship(s) /Ladyship(s)’. For instance, one could say ‘Would your lordship appreciate a summary of the facts?’, ‘Is that to your lordship’s satisfaction?’, or ‘My Lord, I wonder if I might have a minute to consider that argument’. Other barristers are ‘my learned friend(s)’.

The court is not interested in your opinion so you do not ‘think’ or ‘believe’ but merely ‘submit’ an interpretation for the judge to consider. A phrase you should often be saying is ‘My Lord, I submit that…’.
4. Introducing Yourself

The moot is usually started by the judge inviting the Senior Appellant to speak, who should introduce everybody as follows:

‘If it may please your lordship, I am Bob Smith and I appear for XYZ Ltd. as appellant in this action. My learned junior is Tim Jones. My learned friends for the respondent are Mrs White and Miss Scarlet, who appear for the respondents / ABC Ltd / the Crown’.

The first mooter should then offer the judge a summary of the facts of the case before presenting his argument.

Other mooters need only introduce themselves briefly: ‘May it please your lordship, I am Tim Jones and I continue the case for the appellant’.

A moot speech is usually ended by saying ‘Unless I can provide further assistance to your lordship, those are the arguments for the appellant / that concludes my submissions’.

5. Introducing Cases

Case names should be given in full. The ‘v’ should be read as ‘and’. The ‘R’ in criminal cases is read as ‘The Crown’.

The citation should also be read out in words.

Thus, Williams v Roffey Bros. [1991] 1 QB 1 is read as ‘the case of Williams and Roffey Brothers, as reported in the 1st volume of the Queen’s Bench Division Reports for 1991 at page 1’.

If you intend to quote from the case, you should also direct the judge to the appropriate place in your bundle. Offer the judge a summary of the facts of the case (‘would your lordship wish to hear a summary of the facts / is your lordship familiar with the facts of this case?’). When referring to a judge, ensure you give his/her full title, for example

- ‘Mr Justice Smith’
- ‘Lord Cozens-Hardy, the Master of the Rolls’
- ‘Lord Lane, the Chief Justice’
- ‘Lord Cranworth, the Lord Chancellor’

Presentation: presentation is key to winning a moot.

- You should never attempt to write your speech and learn it.
- You need to be flexible in order to respond to the judge when he asks questions and respond to arguments made by the other side.
- Having some notes is a good idea in order to ensure you deal with all your points and as a back-up in case you get lost.
- Try to keep eye contact with the judge.
- Watch the judge’s pen: if he is noting down your argument or trying to find a case, pause to allow him to finish that so that he can concentrate on your next argument.
The biggest problem for mooters is speaking too quickly. Slow down. This will make your speech clearer, your arguments easier to follow and will give you time to think.

It is also perfectly acceptable for there to be pauses while you consider your next argument.

You should also try to vary the tone of your voice to keep the judge’s interest.

Try to avoid nervous habits or fidgeting as these can be very distracting for the judge.

Judicial interventions; whilst probably the hardest part of mooting, you should expect questions from the judge. If you know your arguments, the facts and are not reliant on your notes, you should be able to deal with anything the judge throws at you.

Remember that you are trying to win over the judge, so if the judge is unhappy about something and needs to ask a question, you need to deal with that issue. It is usually better to deal with something immediately than say it is later in your speech (as it shows an ability to adapt). If you do not know the answer, it is better to admit this than waste time trying to make one up. Similarly, it is acceptable to ask for a moment to consider the question before replying.

If the judge has defeated one of your arguments, remain gracious and move on:

‘I am most grateful for that, my lord. With your lordship’s permission, I will move on to my alternative argument’. However, if you think the judge is pushing you in the wrong direction or has misunderstood your point, you should gently attempt to re-focus the argument.

However, never interrupt the judge.

6. Conclusion

At the end of a moot, the judge will give a judgment on the law and on the mooting. The latter is a good opportunity to receive feedback on your mooting. You can also speak to the judge individually after a moot for further constructive criticism:

Nobody would pretend that these rules will make you a good mooter. They are a framework on which you can build. Although they probably seem a little intimidating, they are easily picked up.

The challenging and exciting elements of mooting cannot be taught in this booklet: constructing an argument, finding a way around an awkward precedent, coming up with a clever answer for a judge on the fly, or turning a hopeless case around are skills you will develop. That is where the fun of mooting lies – in having the chance to do battle with your wits. The only way to improve is to practice so – using this guide to ease you in – give it a go!
1. The Competition:
The competitions shall run on a knock-out basis. In the event of the number of competitors rendering a simple knock-out format impossible, the Master and Mistress of Moors shall have absolute discretion to determine how to conduct the competition. For the team competition, the winning team for any moot shall progress to the next round. For all other competitions, one or two (to be decided by the Master and Mistress of Moors) individual mooters from each moot shall progress to the next round, and it shall not matter whether they are from the same or opposing sides of a particular moot.

2. Administrative arrangements:
Each competitor must turn up at the place and time arranged. If a competitor fails to provide five days’ notice that they will be unable to attend the moot the Master and Mistress of Moors have the discretion to forfeit their law society membership. Competitors must understand that they are undertaking to moot for the duration of the competition. It is unacceptable to drop out due to clashing commitments or academic commitments. It is unfair and inconvenient to both organisers and other competitors.

3. Skeleton arguments:
Each competitor shall provide, by the specified deadline:
(i) a list of authorities and other academic literature (if any) on which they intend to rely;
and
(ii) a summary of their argument in typed form, and not exceeding one page of A4 (‘the skeleton argument’).
No mooter shall rely on any authority or other legal literature that has not been cited in accordance with this rule excepting that a competitor shall be entitled to rely on any authorities and other legal literature cited by other competitors. For the team competition, each member of the team shall be treated as an individual for the purpose of rules 3 and 4. Skeleton arguments should be sent, by email, to the relevant competition coordinator.
Skeletons must be received by the time and date specified. Judges will be informed of all late skeletons, and be instructed to mark competitors down accordingly.

4. Authorities:
No competitor shall be entitled to use more than five authorities, excepting that an authority cited in the problem shall not be counted (but should be cited as appropriate) and the citing of the same case decided in different courts (for instance, the Court of Appeal and House of Lords/Supreme Court) shall count as only one authority. Other legal literature (including academic literature, reports and statutes) are not authorities for the purpose of this rule, but shall be cited in accordance with rule 3.
5. Bundles:
Each mooter shall provide the judge with a bundle containing the headnote and relevant extracts from every authority on which he intends to rely. Tabbed folders are preferred. Highlighting or underlining is acceptable but not necessary.

6. Speeches:
Senior and junior counsel shall each have 15 minutes, which continue to run during any judicial interventions. The order shall be determined by the judge, but shall normally be:
   (i) senior counsel for the appellant, senior counsel for the respondent, junior counsel for the appellant, junior counsel for the respondent, with senior counsel for the appellant having the right to a 2 minute right of reply; or
   (ii) where there is a cross-appeal: senior counsel for the appellant, senior counsel for the respondent, with senior counsel for the appellant having the right to a 2 minute right of reply, junior counsel for the respondent (i.e. the cross-appellant), junior counsel for the appellant (i.e. the cross-respondent), with the cross-appellant having the right to a 2 minute right of reply.

7. Dress: Mooters should dress smartly and wear a gown.

8. Judging:
The judge shall announce a decision on the law and a decision on which individuals or team shall progress to the next round. In coming to a decision on the latter, the judge shall pay particular attention to the guidelines issued to him by the Master and Mistress of Moots. However, the judge shall have absolute discretion to select the winning mooters according to his personal opinion; there shall be no appeal against such decision.

9. Appeals:
There shall be no appeals against the decision of the judge, excepting that a complaint alleging a breach of these rules may be heard by the Master and Mistress of Moots where complaint is made to him/her within 72 hours of the result of the moot being announced. The procedure adopted by the Master and Mistress of Moots to determine the complaint and the decision reached by them shall be final and shall not be open to challenge in any way. The Master and Mistress of Moots shall have absolute discretion to resolve any question concerning the interpretation of these rules.

10. Guidance for Judges:
The Master and Mistress of Moots suggest that competitors consult the 2012-2013 Guide to Judging for further information on how moots will be judged. It can be found on the CULS website; www.camlawsoc.com
In The House of Lords
Yupi Ltd v Drax plc

Drax plc, a development company and a member of the Association of Property Developers, owned a large seagoing motor yacht, the Satanita, which was sometimes used for corporate entertaining and sometimes for private use by senior executives. In 1999 Drax plc, having purchased an even larger craft, the Valkyrie, sold the Satanita for £3,500, to Yupi Ltd, who purchased her as a retirement gift for its founder. A term of the contract of sale warranted that the Satanita complied with the Control of Marine Pollution Regulations 1998.

The Satanita was delivered to Yupi Ltd on 1 September 1999. The next day the Satanita was taken to sea. Within hours she was boarded by the Marine Pollution Inspectorate and inspected. The inspection showed that she did not comply with the Regulations and a prohibition of use order was served under the Regulations. Yupi Ltd incurred considerable expense in having the Satanita brought into compliance with the Regulations.

Drax plc refused to pay any compensation to Yupi Ltd. Consequently, Yupi Ltd brought an action for damages for breach of an express term that the Satanita complied with the Regulations. By way of defence, Drax plc argued that it was protected by an exemption clause set out in a set of standard terms and conditions published by the Association of Property Developers, which had expressly been incorporated in its contract with Yupi Ltd, just as those terms and conditions had been incorporated in the other contracts of sale of goods on those rare occasions (four in all) over the last three years when Drax plc had disposed of surplus goods. Drax plc argued that that clause was effective against Yupi Ltd, notwithstanding s. 3 of the Unfair Contract Terms Act 1977, because Yupi Ltd had not dealt as consumer or on Drax plc's standard written terms of business.

High J held that the clause had been incorporated in the contract of sale and that on its true construction it applied to the liability in question. She also held that the clause was an unreasonable one. However, she held that Drax plc were protected by the clause since s. 3 of the 1977 Act did not apply because:
1. Yupi Ltd had not dealt with Drax plc as a consumer because the sale of the yacht by Drax plc did not satisfy the requirements laid down by the Court of Appeal in R & B Customs Brokers Co Ltd v United Dominions Trust Ltd [1988] 1 All ER 847 CA; and
2. Yupi Ltd had not dealt with Drax plc on its standard written terms of business (British Fermentation Products Ltd v Compare Reavell Ltd [1999] 2 All ER (Comm) 389 applied).

Yupi Ltd appealed unsuccessfully to the Court of Appeal. The Court agreed with the judgement of High J. Yupi Ltd now appeals to the House of Lords on the grounds that the Court of Appeal erred in holding that the above two elements of High J’s decision were correct.

IN THE HOUSE OF LORDS
BETWEEN:
SKELETON ARGUMENT

YUPI LTD.                  Appellant

- and -                  Respondent

DRAX PLC.

Background
1. Drax Plc. ("the respondent") sold a yacht to Yupi Ltd. ("the appellant") in breach of an express warranty in the contract. The contract of sale was a model contract published by the Association of Property Developers. The respondent relies on an exclusion clause in the contract of sale as a defence to the action.

2. High J held that the clause was an unreasonable one within the meaning of s. 3 of the Unfair Contract Terms Act 1977, but also held that the Act was not applicable because the appellant had dealt with the respondent neither as a consumer nor on Drax’s standard written terms of business. The Court of Appeal upheld these findings.

Grounds of Appeal:
3. It is submitted that the contract was made on Drax’s standard written terms of business.

4. It is submitted that High J and the Court of Appeal erred in applying British Fermentation Products Ltd. v Compair Reavell Ltd. [1999] 2 All ER (Comm) 389:
   i. British Fermentation does not lay down a general exclusionary rule.
   ii. The test in British Fermentation should be read in light of Chester Grosvenor v Alfred McAlpine (56) BLR 115.
   iii. The above reading would better correspond with the purpose of the Act.
   iv. The contract in issue would satisfy the test when correctly understood.

5. Alternatively, if the argument above on the authorities is incorrect, is submitted that the House should not follow British Fermentation as:
   i. A significant lacuna would exist if model contracts (from third parties, eg trade bodies) were better insulated from the 1977 Act compared to other contracts.
   ii. It would be inconsistent with the aims and purpose of the statute, Exemption Clauses Second Report (Law Com no 69).

6. It is submitted that the appeal should be allowed, and that – given that all the other requirements of s. 3 of the 1977 Act are satisfied – the exemption clause should be ruled ineffective.

Authorities
British Fermentation Products Ltd. v Compair Reavell Ltd [1999] 2 All ER (Comm) 389
McCrone v Boots Farm Sales Ltd. (1981) SLT 103
The Salvage Association v CAP Financial Services Ltd. [1995] FSR 654
The Chester Grosvenor Hotel Co Ltd. v Alfred McAlpine Management Ltd. & ors. 56 BLR 115
‘Exemption Clauses Second Report’ (Law Com Report no. 69)
Mooting Committee

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