

NOTES FOR MOOTERS

A moot is an argument on points of law, devised, presented and judged so as to simulate so far as is possible, an authentic court hearing before a judge. It is not a debate, a tutorial, or an abstract jurisprudential discussion; it is a forensic contest in which each side tries to persuade the judge to accept its argument on the basis of legal authority and reasoning applied to the facts.

Before the moot, thoroughly acquaint yourself with the facts of the problem and its grounds of appeal; how will your arguments, as well as those of your leader/junior, be applied to them? Consider carefully the strengths of the opposing side and try to anticipate how you will be able to counter their arguments. There is nothing wrong in seeking assistance from tutors etc. who may be able to act as coaches to your team.

Remember that different courts have different powers and jurisdictions, so do not ask a judge to do something that the judge cannot, *e.g.* asking a judge in a moot set in the Court of Appeal to overrule a decision of the House of Lords.

Speakers should dress soberly as if in a court. Gowns should also be worn but only if all four speakers are able to do so. Try not to deflect attention away from what you are saying by fiddling with coins in pockets, shuffling about, walking up and down, leaning on the desk and so on.

The first speaker in the moot must introduce all four speakers and should say, "May it please your lordship, in this matter I appear on behalf of the [appellant], together with my learned friend [Miss Webb], and the [respondent] is represented by my learned friends [Mr Postgate] and [Miss White]." Always end your submission by asking the judge if there are any questions to be asked by saying, "Unless I can help you lordship any further...", wait to see if you can, then thank the judge and sit down.

Address the judge directly as "My Lord" and indirectly as "Your Lordship". Refer to other speakers as "My learned friend" or "My learned junior/leader".

In court an advocate will never say "I think..." or "In my opinion..." in the presentation of their arguments; the correct form is that which connotes the advancement of opposing ideas, such as "I submit..." or "It is my submission that..." or even "I suggest...".

Do not interrupt the judge when you are being asked questions. If the judge interrupts you, let him. When responding to the judge's questions or interruptions, be deferential but firm; whether agreeing or disagreeing, always do so "with respect...". If the judge directs you to address a particular point, say, "If your Lordship pleases".

Do not assume the judge is aware of the facts of the problem. Opening counsel should inquire about this and be prepared either to read the statement of facts to the judge or provide an accurate and balanced summary. The facts of a moot problem are never in dispute and should not be argued over. In the rare event that the problem may appear to be ambiguous, the National Adjudicator should be contacted as soon as possible to clarify the matter or set a new problem.

'Hot air' and oratory do not win moots, but the style in which an argument is presented is nevertheless important. As the object of the moot is to persuade the judge to find for your side, you must first make sure that the judge can hear and see you; so speak deliberately and audibly and try to establish eye contact. Whatever else you do, do not speak in a rushed or mumbled manner. You must certainly never read your speech or write it out word for word. Detailed notes are fine, but be prepared at any stage to be told by the judge that you may be wanted to move on. A rigid script will limit your flexibility to do so. Speeches that are read are given in a dull monotone and eye-contact can never be achieved.

The structure and development of your argument should also be presented slowly and concisely - your judge will certainly be taking notes and may know little of the area of law to which you refer. In particular, cite any authority slowly, giving the judge time to find and read the passage. Indicate when you are finished with one point by saying, "If I may move on...".

Watch out for 'leads' from the bench and be ready to make immediate use of them, even if it means re-arranging or amending your argument. In particular, if the judge has indicated he is with you on a point, or does not wish to hear further argument upon it, move on to the next one.

If the judge asks you a question which you cannot answer on the spur of the moment, you may ask for leave to confer with your colleague. If you still cannot answer, it is best to be honest about it rather than provide a hopeless response or promise to come to the point later in your argument and then fail to do so.

Try to ensure that, so far as is possible, your argument can stand by itself and has no excessive dependency upon authority, which should really be used in a moot to support possible weaknesses and not merely to reinforce accepted principles. However, always be prepared to support any point in your argument with authority if called upon to do so, which authority should be contained in your list. If you refer to dictum in passing you should cite the portion of it on which you rely. Do not cite a case without offering to tell the judge, however briefly, of the facts and the decision.

Always ensure the clerk to the court has all the cases you have listed present in court for the use of the judge. As there are often omissions, it is wise to prepare an unmarked copy that can be handed to the judge. When citing cases, the full reference should always be given e.g. [1966] 1 W.L.R. 1234 is: "reported in the 1966 first volume of the Weekly Law Reports at page 1234". Cases should be cited as e.g. "Hills and Duhig" or "The Crown against Dixon." Do not say "versus" or "v." Do not refer to judges in a case by their abbreviated titles, but rather as "Mr Justice Kirk" or "Lord Justice Sheridan".

Do be concise; the timing of a moot is very limited, so ensure you do not waste your or the court's time by reading out unnecessarily long passages from authorities. The effective use of your time is rewarded by judges. Do not exceed the time allotted to you or you may be risk being told to sit down by the judge.

A speaker must never mislead the court. The most likely occasion for this is to cite a case without referring to other relevant but opposing authorities. Tactically, it is better for you to bring them to the attention of the judge than for your opponent to do so.

Good luck!