

Appellate Moot Court: Notes and Materials

**Melkamu B. Moges
Bahir Dar University**

**Sponsored by Justice and Legal System Research Institute
Addis Ababa, Ethiopia**

June 2009

JUSTICE AND LEGAL SYSTEM RESEARCH INSTITUTE

Appellate Moot Court:

Notes and Materials

Melkamu B. Moges
Bahir Dar University, Institute of Land Administration

This Volume is Part II of the teaching material for the course titled Appellate advocacy and Appellate Moot Court. It includes four chapters where the first chapter deals with the conceptual foundation for Appellate Moot Court and the others deal with the various principles, advices and rules that lead to a successful moot court practice of any kind.

<u>ACKNOWLEDGMENT</u>	<u>VI</u>
<u>INTRODUCTION TO PART TWO: APPELLATE MOOT COURT</u>	<u>VII</u>
<u>CHAPTER ONE: MEANING AND MAIN QUESTIONS OF MOOTING</u>	<u>1</u>
1.1 MEANING OF A MOOT	2
1.2 THE ORIGIN OF MOOTING.....	4
1.3 COMPARISON OF A MOOT WITH RELATED ACTIVITIES	8
1.3.1 MOOTING VS. A MOCK TRIAL.....	9
1.3.2 A MOOT COURT VS. A REAL COURT	9
1.4 WHY SHOULD LAW STUDENTS MOOT TODAY?.....	11
1.4.1 DEVELOP LEGAL SKILLS	11
1.4.2 JOB OPPORTUNITIES.....	12
1.4.3 TEAM WORK	13
1.4.4 INTENSIVE TRAINING.....	13
1.4.5 INTERNATIONAL TRAVEL.....	14
1.4.6 NEW PERSPECTIVES	14
1.5 THE ROLE OF KNOWLEDGE OF LAW IN A MOOT	14
1.6 COURTS IN WHICH MOOTS ARE SET.....	16
1.7 PARTICIPANTS IN A MOOT AND DIVISION OF FUNCTIONS	17
1.7.1. THE COURT CLERK (OR CLERK OF THE COURT)	17
1.7.2. THE AMICUS CURIAE	18
1.7.3. THE MASTER OF MOOTS.....	18
1.8 STRUCTURE OF A MOOT	19
1.9 APPELLANT’S RIGHT TO REPLY	21
1.10 DIVISION OF THE ROLES BETWEEN APPELLANTS AND RESPONDENTS.....	21
1.11 BALANCING THE NEED TO MAKE A CASE AND TO CHALLENGE THE APPELLANT’S POINTS BY THE RESPONDENT	22
1.12 LIAISING WITH COLLEAGUES AND KNOWING THEIR ARGUMENTS.....	22
1.13 RULES OF FAIR PLAY TO BE OBSERVED IN MOOTING.....	24
1.14 ‘EXCHANGE OF AUTHORITIES’ AND RELYING ON OPPONENTS’ AUTHORITIES.....	25
REVIEW EXERCISES	27
<u>CHAPTER TWO: PREPARATION, PRACTICE AND SUBMISSION IN A MOOT.....</u>	<u>28</u>
2.1 PREPARATION FOR A MOOT: BUILDING AN ARGUMENT	29
2.2. PRACTICE MOOTS.....	31
2.2.1 WHEN TO START DOING PRACTICE MOOTS	32
2.2.2 WHO CAN BE A PRACTICE MOOT MASTER?	32
2.2.3 MAKING THE MOST OF PRACTICE MOOTS	34
2.3 SUBMISSION/PRESENTATION OF A MOOT CASE.....	35
<u>REVIEW EXERCISES.....</u>	<u>35</u>

CHAPTER THREE: WRITTEN SUBMISSION..... 36

3.1 THE TIPS AND TRICKS OF WRITING..... 38

- 3.1.1 KNOWING YOUR PURPOSE AND YOUR AUDIENCE..... 38
- 3.1.2. SETTING UP YOUR DOCUMENT 39
- 3.1.3. USING STYLES 39
- 3.1.4 PAGE NUMBERING 40
- 3.1.5 CROSS-REFERENCES 40
- 3.1.6 TABLE OF CONTENTS 40
- 3.1.7 AVOIDING COMMON PROBLEMS 41
- 3.1.8 REFERENCING..... 41
- 3.1.9 BEING ORGANIZED 42
- 3.1.10 USING BIBLIOGRAPHIC PROGRAMS 42
- 3.1.11 USING A PROFORMA REFERENCE SHEET 43

3.2 WRITING STYLE..... 44

- 3.2.1 UNIFORMITY..... 44
- 3.2.2. PRESENTING INFORMATION TO THE TEAM WRITERS 45
- 3.2.3 STRUCTURING YOUR DOCUMENT 45
- 3.2.4 HEADINGS AND PARAGRAPHS 46
- 3.2.5 AVOIDING CONTRADICTORY ARGUMENTS 47

3.3 BASIC RULES OF WRITING 48

- 3.3.1 SENTENCE CONSTRUCTION..... 49
- 3.3.2 USING WORDS APPROPRIATELY 49
- 3.3.3 AVOID GENDER-SPECIFIC LANGUAGE..... 50
- 3.3.4 KEEP THE TENSE CONSISTENT 51
- 3.3.5 EDITING 51

3.4 THE SECOND DOCUMENT 52

- 3.4.1 PREPARING A GENUINE RESPONSE 53
- 3.4.2 RESPONDING TO A ‘WEAK’ MEMORANDUM 53
- 3.4.3 DO YOU RESPOND TO ISSUES THAT YOUR OPPONENT MISSED? 54
- 3.4.4 HOW DO YOU RESPOND TACTFULLY?..... 54

3.5 THE OUTLINE OF SUBMISSIONS 55

3.6 THE CASEBOOK 56

REVIEW EXERCISES..... 57

CHAPTER FOUR: ORAL SUBMISSION/PRESENTATION..... 58

4.1 STRUCTURING AN ORAL SUBMISSION..... 60

- 4.1.1 MAKING A START 60
- 4.1.2 DEALING WITH THE EXPECTATIONS OF MOOT JUDGES 60
- 4.1.3 CREATING A PERSUASIVE CASE..... 61
- 4.1.4 HANDLING QUESTIONS 65

4.2 RESPONDING TO A SUBMISSION 70

4.3 PRESENTING AN ORAL SUBMISSION 72

- 4.3.1 PREPARATION 72
- 4.3.2 PHYSICAL APPEARANCE (DEMEANOR) 73
- 4.3.3 TIME KEEPING 74
- 4.3.4 OPENING FORMALITIES 74

4.3.5. USING AUTHORITIES	76
4.3.6. VOICE AND DELIVERY	78
4.3.7. BODY LANGUAGE	79
4.3.8. SPEAKING FROM NOTES	81
4.3.9 BUILDING RAPPORT WITH THE MOOT MASTER	83
4.3.10. KNOW HOW THE MOOT IS TO BE RUN	85
4.3.11. DEALING WITH MISTAKES	86
4.4 CONTINUE THE TEAM WORK.....	87
<u>REVIEW EXERCISES.....</u>	<u>88</u>
<u>BIBLIOGRAPHY</u>	<u>89</u>

Acknowledgment

My enormous and special thanks go to Ato Filipos Aynalem for his simple and wise comments on the first draft of the material. I have really benefited from them as they helped me improve the structure of the material.

Introduction to Part Two: Appellate Moot Court

This part of the course “Appellate Advocacy and Appellate Moot Court” deals with Moot Court to be covered from the 8th to the 15th weeks of the semester. Especially, Appellate Moot Court is discussed here though the many rules and principles discussed here are equally applicable to moot courts at other levels. In this part, there are four chapters. The first chapter deals with the very meaning, nature and scope of moot court. As appellate moot court is a recently emerging and developing subject in Ethiopia, this discussion is very useful and sets a good base for the subsequent chapters. We shall, thus, discuss the history of moot court at national and wider perspective. The chapter shall also investigate and state the distinction between moot court and other comparable practices, namely, mock trial and real court.

The second chapter discusses about the ways of building a moot argument, preparation and practice of moots. The chapter deals with principles applicable especially in the context of mooting. The mechanism by which a moot participant may develop and deliver a compelling and convincing argument to support ones case are fairly discussed. The chapter is in turn divided into three major parts or sections, i.e. preparation, practice and presentation as discussed in the first, second, and third sections respectively.

The third chapter deals especially with a written submission. Written submission is one of the few components of a moot especially moot court competitions. Most competitions require each team to submit a written document although the form of documentation required can vary significantly. In some competitions, you are asked to provide a lengthy memorandum of submissions, sometimes called a memorial. Although each of these different styles of written document serves a different function, they all have a similar purpose, that is, they force you to identify and deal with the relevant issues. In some competitions, the written memorandum or memorial will form part of a document competition. Producing the document is usually the first task. Inevitably, putting it together will involve considerable frustration, and immense pride once the task is completed. Just as your team must decide on your commitment to the moot in terms of time and level of preparation, you must also decide how much effort you wish to put into the written documents. In view of these considerations, this chapter deals with the various rules or advices required to succeed in producing and submitting a moot argument in written form.

The fourth and the last chapter deals with oral submission in a moot court. All moots require oral hearings. The style and rules of the competitions vary greatly. It is very important that you have researched the rules governing how your moot is to be

conducted. You need to feel comfortable in the moot environment. The less stressed you feel the better your performance will be. Familiarizing yourself with the process, thereby reducing the possibility of surprises, is an important step in reducing stress. In view of this, this chapter deals with basic steps and requirements of preparing and presenting an oral argument in a moot.

General Objectives

Upon reading this part of the course, students will be able to:

- appreciate and define appellate mooting and related key terms;
- differentiate moot court from other related activities;
- mention the participants in a moot court and their respective functions;
- point out and elaborate the different steps useful for developing or building an argument;
- elaborate the ways of practicing a moot;
- define submission of memoranda/memorials;
- identify and list down the major tips of writing a memorial;
- identify and explain the major components of a good memorial writing style;
- distinguish the various rules of memorial writing and apply them in practice;
- define an oral submission;
- elaborate the structure of an oral submission; and
- identify the major rules of an oral submission and apply them in a moot;

CHAPTER ONE: MEANING AND MAIN QUESTIONS OF MOOTING¹

Introduction

Dear learner, appellate moot court is a recently emerging and developing subject in Ethiopia though our country has a significant historical record of participation in moot court competitions, especially in the Phillip C Jessup International Law moot court competition. Hence, in this chapter, we shall try to discuss about the meaning and nature of appellate moot court and its origin. We shall investigate and state the distinction between moot court and other comparable practices, namely, mock trial and real court. Also, many other issues that help you properly understand the term moot court will be considered. These are the relevance of knowledge of the law in a successful moot court, the types of courts that handle moot court competitions, structure of moot court, the participants in a moot court, division of functions and responsibilities among the different participants in a moot court, and some rules and guidelines to be considered in a moot court competition.

Objectives

Upon completion of reading this chapter, students will be able to:

- define a moot, mooting, and mooter,
- distinguish between moot court, on the one hand, and mock trial and real court, on the other hand,
- distinguish between ‘the law’ and ‘the moot’,
- identify the different types of courts in which moots are set,
- mention the participants in a moot court and their respective functions, and
- describe certain rules that should be followed during a moot court in order to meet fairness.

¹ This chapter is basically adapted from the source: Snape, J and Watt, G(2000) The Cavendish Guide to Mooting, 2nd Ed.

1.1 MEANING OF A MOOT

Appellate moot court involves a number of technical words and terms. This section will attempt to identify such various words and terms so as to help you understand the whole subject. Such terms include a moot, mooter, ground of appeal, and so on.

Dear learner, have you ever heard of a moot? It is very important to know the meaning of mooting before any other detailed discussion. To do so, we need, first of all, to define it.

The word moot may be used either as a verb or a noun. As a noun, a moot is the argument of the legal issues raised by a hypothetical case which takes place in the imaginary setting of a court of law. The moot argument follows the conventions of argument used in a real court as closely as possible. There are usually five participants in the moot. Two of the participants represent one party to the hypothetical case. Two more of them represent the other party to the case. The fifth participant acts as the moot judge. The two participants representing one party to the case are, together, one moot team, whilst the two participants representing the other party to the case are the other moot team. Each of the four participants representing the parties is usually a law student like you, while the fifth, the moot judge, is usually a more experienced lawyer, such as a member of staff at your law school where the moot is being held, a postgraduate law student, a legal practitioner or, very occasionally, a real judge.

The parties to the case are usually, although not always, referred to as Appellant and Respondent, respectively. Since the parties are fictional characters, being represented by each of the two moot teams, two of the four members of the teams are styled Appellants, and the other two Respondents. As we shall see in a moment, one of the Appellants is called the Lead Appellant, whilst the other is called the Junior Appellant. In the same way, one of the Respondents is styled as the Lead Respondent and the other the Junior Respondent. Naturally, where a real judge occasionally sits as a moot judge, he or she is acting in the capacity of a moot judge, rather than as a judge of the court to which he or she belongs.

These, then, are the five participants usually involved in a moot. There may, occasionally, be one or more of three others also, as will be discussed in section 1.7.

During the moot, the five participants argue the legal issues raised by the hypothetical case in a way which, as we have said, reflects the form and substance of the legal arguments in a real court as closely as possible. We refer to the contribution of each member of the two moot teams as his or her moot presentation or moot performance.

The hypothetical case which raises the legal issues argued by the five participants is devised in order to highlight particular issues of doubt in the law, i.e. questions of law not

clearly put by the legislator. These issues of doubt may arise from case law or statute and, where the moot is set in an appellate court, are referred to as grounds of appeal.

Dear learner, we shall make frequent references to the term 'grounds of appeal' throughout this material. Most moot problems contain two grounds of appeal. Each member of each team argues one side of each ground of appeal. In doing so, they are described as making submissions on the relevant ground of appeal. Thus, the Lead Appellant and the Lead Respondent make submissions on opposing sides of the first ground of appeal, whilst the Junior Appellant and the Junior Respondent make submissions on opposing sides of the second ground of appeal.

The hypothetical case, which raises the issues argued by the participants is called a moot problem. The moot problem may require the participants to imagine, for example, a combination of facts which are subtly different from the leading case or precedent in the relevant area of law. The five participants will, therefore, be required, by the grounds of appeal, to argue whether the legal rule applicable to the facts of the moot problem is different from, or the same as, the rule which was applied by the judges in that leading case.

To take a second example, doubt may have been expressed by legal commentators as to whether the provisions of a particular statute might apply to a particular set of facts.

The selection of the grounds of appeal in the moot problem will be the task of the author of the moot problem. This individual, who is not usually a participant in the moot, is often anonymous, although he or she may be identified by name where the moot problem is taken from a published collection of moot problems. In certain cases, the author of the moot problem may even be the moot judge although he or she may not make the other four participants in the moot aware of this fact!

However, in other cases, the author of the moot problem may be prohibited from also being a participant in the moot. Once the arguments have been completed, say after about an hour, the moot judge will usually give a short judgment, in which he or she will not only reach a conclusion as to the legal issues of doubt raised by the grounds of appeal, but will also decide which of the teams of participants has mooted better than the other. Thus, as a member of each moot team, you will need to have given careful attention, not only to the law, but also to the presentational and interpersonal skills involved, as we shall see, in persuading the moot judge of the correctness of the submissions made by you.

Moots may be conducted for different purposes. Hence, some moots are held on a competitive basis, according to competition rules. Others are held for fun, merely to air the arguments on particular issues of doubt in the law. With increasing frequency, however, others are assessed as part of a course of legal study, usually a law degree.

Dear learner, what do you think are the very important concerns of a moot that forms part of your law degree? Well, you may find that certain features of the moot described above

are modified. For example, greater weight may be given in the assessment to the law in your submissions, than to your presentational and interpersonal skills. Again, you might not be mooting as a member of a moot team, but as an individual. In other words, because the moot is taking the place of a coursework assessment, your moot presentation will be assessed as an individual. Again, in this context, no judgment is likely to be given by the moot judge, an assessment being made afterwards by the moot instructor as to whether you have given a satisfactory moot presentation.

It follows from the meaning of the noun moot that the verb to moot denotes what a participant in a moot is doing during the moot. Although, strictly perhaps, it denotes only what an individual does in the course of his or her moot presentation, it seems fair to use it as a verb to describe everything that an individual does, throughout the whole process of preparing and performing his or her presentation.

It should also be apparent, from everything we have discussed so far, that the verbal noun mooting is a word used to describe the whole process of participating in a moot, either as Appellant, Respondent or as the moot judge. As a verb, mooting is a present participle, meaning ‘taking part in a moot’.

Naturally enough, the word mooter is, therefore, used to describe each of the participants in the two moot teams, i.e. the Appellant and Respondent. Surprisingly, perhaps, it is not often used to describe the moot judge. The word ‘moot’ even appears as an adjective in some contexts. Thus, it has been said that ‘a case is moot when the issues presented are no longer “live” or the parties lack a legally cognisable interest in the outcome’.

1.2 THE ORIGIN OF MOOTING

Dear learner, how old do you think is mooting? The words moot, mooting and mooter are very old.

Mooting, today, continues a tradition which probably began in England about five centuries ago, in a relatively small geographical area of London. We say probably because recent research by Professor Baker indicates that, depending on how many types of legal discussion qualify as moots, mooting may be even older than this.

Be that as it may, mooting was a fundamental component in the system of education at the Inns of Court and the Inns of Chancery, at a time when printed materials were non-existent, or at least fairly scarce, and when the oral opinions of eminent lawyers outside court were just as important as those spoken by the judges in court. However, over the centuries, legal texts became more easily available and practical legal education came to be valued less, as the essence of legal science came to be seen as the digesting of written authorities rather than as the shared oral learning of the barristers. Consequently, mooting

lost its preeminent place in legal education. Indeed, it is only in very modern times that law schools have given mootings at least some of the importance that it once enjoyed in the Inns of Court.

The heart of the system of education for aspiring barristers, which evolved in the Inns of Court and the Inns of Chancery between about 1400 and 1500, was a combination of lectures and verbal argument, rather than private study and written work. The system was, as Sir William Holdsworth said, 'a constant rehearsal and preparation for the life of the advocate and judge'. Lincoln's Inn, Gray's Inn, the Middle Temple and the Inner Temple, the four Inns of Court which we know today, were already prestigious schools for barristers by 1400. On the other hand, the Inns of Chancery, the buildings of only two of which survive today (those of Staple Inn and Barnard's Inn), were where younger law students were taught basic legal procedure, before they moved on to one of the Inns of Court. In all, there were nine Inns of Chancery by 1500, at about which time they came under the supervision of the four Inns of Court.

Moots took place in both the Inns of Court and in the Inns of Chancery. The division between lectures (which were called 'readings') and oral argument in the Inns seems to have been similar in concept to the division between lectures, on the one hand, and seminars, tutorials and moots on the other, which is used by law schools today. Obviously, before the 1470s, when printing presses began to operate in England, readings and verbal argument, including moots, were central to the education of barristers at the Inns, because of the total absence of printed texts. Professor Baker estimates that, even by 1600, more than a century after the advent of printing in England, there were only about 100 law books in print!

In the heyday of mootings at the Inns of Court, between the late 15th century and about 1550, moots would be held in the great halls of the Inns, with the Benchers of the Inn or, depending on the time of year, Utter Barristers, acting as the judges, and with two Inner Barristers and two Utter Barristers acting as counsel. These terms, as used in this period, require explanation. An Inner Barrister was one who was still engaged in his seven years training, attending readings and keeping commons with his fellows, prior to being called to the bar. Inner Barristers were so called because they sat within the bar at moots.

Utter (that is, 'Outer') Barristers were ones who had already been called to the bar, having completed this period of training. These stood outside the bar. Benchers were barristers of at least 10 years' standing who had previously been Readers, but became Benchers subsequent to giving a series of readings on a statute. The main task of the Benchers was to sit on the bench and take the part of moot judges. Because of the relative seniority of the Benchers and the Utter Barristers, and because of the importance of oral opinions in the tradition of the bar before about 1550, it was not unknown for opinions given in moots actually to be cited in the courts in Westminster Hall.

Having reached its heyday between about 1500 and 1550, mootings began to decline in the Inns of Court in the latter half of the 16th century. Holdsworth attributed this decline both to the growing availability of printed texts and to a growing indifference to legal

education in the Inns of Court, whilst there was money to be made by the would-be educators in Westminster Hall. Selfishness on the part of the educators and laziness on the part of the students, in other words. Holdsworth illustrated this point by reference to two sets of judges' orders, one from 1557 and one from 1591. The former, which indicates a flourishing moot culture in the Inns of Court, was obviously issued by the judges in response to excessive enthusiasm in moot on the part of the Readers and Benchers. The orders basically said that no moot judges were to argue more than two points (presumably so as to give the student barristers a chance) and that moot problems were to contain no more than two arguable points.

By contrast, the second set of judges' orders, those from 1591, expressed concern that moots, which were 'very profitable for study' were being cut short because the readings which preceded them were finishing too early in the legal terms. Growing indifference on the part of the students was shown by the fact that, in Lincoln's Inn at least, a system of deputising had grown up, which was countered at least once in 1615 by the Benchers threatening to record the deputies' names, rather than those of their principals in the record book of moot exercises.

That mooting had not died out completely by the early part of the 17th century is shown in the reminiscences of the antiquary, Sir Simonds D'Ewes (1602–50), of the Middle Temple, who recorded his experiences of mooting, both as a student and as an Utter Barrister, in the early decades of the 17th century:

I had ... twice mooted myself in law-French before I was called to the bar, and several times after I was made an Utter Barrister in our open hall ... And then also, being an utter barrister, I had twice argued our Middle Temple readers' case at the cupboard ... and sat nine times in our Temple Hall at the bench, and argued such cases in English as had been before argued by young gentlemen or utter barristers themselves ... For which latter exercises I had but usually a day and a half's study at the most, everpenning my arguments before I uttered them, and seldom speaking less than half an hour in the pronouncing of them.

By the end of the 17th century, however, mooting was all but dead as part of any organised educational system of the Inns of Court. Although it is a generalisation, it seems that, from the latter half of the 17th century, right up to the middle of the 19th century, students were generally left to their own resources in educational terms, and this included mooting.

There were exceptions, of course, where mooting was done on a voluntary basis, rather than as part of the formal training of a barrister. Lord Mansfield (1705–93), the Chief Justice of the King's Bench for 32 years from 1756, for example, organised a moot club while still a student, and it was recorded that, 'they prepared their arguments with great care ... [Lord Mansfield] afterwards [finding] ... many of them useful to him, not

only at the bar, but upon the bench'. Sir Samuel Romilly (1757–1818), Solicitor General from 1806–07, also briefly organised a moot club as a student, with three friends. The four of them divided up the roles of judges and counsel unusually, by modern standards, but presumably this was done in order to take account of there being only four participants in all.

One argued on each side as counsel, the other two acted the part of judges, and were obliged to give at length the reasons of their decisions. These seem to have been very much the exceptions, however. In the late 19th century, Sir William Holdsworth, who had spent so much time researching the educational systems of the Inns of Court when mooting was in its heyday, deplored the fact that not enough attention was paid in his own time in university law schools to practical exercises such as mooting.

The sacrifice of the old system destroyed to a large extent that organised discussion which prepared the students for actual practice. In our modern system, it does not take the place which it once took, unless, as at Oxford and at one or two other places, the pupils are wiser than their teachers, and set up for themselves a moot club, which reproduces some of the advantages of that old system which the Benchers of this period were too selfish to maintain.

The picture in the Inns of Court was slightly different by the late 19th century. In 1875, Gray's Inn formed a 'moot society', its moots being attended by members of the other Inns of Court and formal moots began to be held in the hall of the Inner Temple in 1926. Nowadays, when mooting sometimes forms part of a course of legal study in many university law schools, we can see that the importance attached to mooting has, in one sense, resumed its rightful place.

In Ethiopia², no study seems to have been made regarding when and how moot court started. However, we have reports of Ethiopia's participation in the Philip J. International Law Moot Court Competition. Ethiopia was the first African nation to participate in the Jessup Competition. It was also the first non-US team to advance to the Final Round, earning the distinction of "Runner-Up". In 1971, Eight years after the foundation of the Faculty of Law at Addis Ababa University (then referred to as Haile Sillassie I University), Ethiopia was represented in the Jessup Competition by a team of three students: Yewondwesson Mekbib, Hagos Haile, and Bezawork Shimellash.

The following year, Ethiopia was represented in the international rounds by a team comprised of Goshu Wolde, Abdulwassie Yusuf and Assefa Chabo. The team advanced out of the preliminary rounds and went on to compete against the University of Miami in the Final Round of the competition. The Final Round bench declared the University of Miami winner and awarded the trophies for best memorial and best oralist to the

² This account about Ethiopia is taken from the source: 50th Anniversary Jessup Reporter, Anniversary Volume Commemorating Fifty Years of the Philip C. Jessup International Law Moot Court Competition, International Law Students Association, March 2009

Ethiopian team. It was this year that Ethiopia set a record in becoming the first non-US team ever to earn the rank of the Runner-Up in the history of the Jessup Competition.

In 1973, a team consisting of Elias Nour (writer of the first part of this course), Assefa Chabo and Birhane Jila represented Ethiopia. Then, in 1974, the Ethiopian team returned to the Jessup stage with Elias Nour, Mesfin Dessie and Musa Hussien, again advancing to the Final Round. That year, Ethiopia won in the oral match, but ultimately lost to the University of Texas on the basis of the teams' memorial scores. However, the Ethiopian team was declared the winner of the International Division and Runner Up in the over all competition.

After a long period absence from the Jessup tradition, 2005 saw the return of the Ethiopian teams to the Jessup stage. In 2005, a team from Bahar Dar University comprised of Zelalem Yibrah and Mekdes Assefa represented Ethiopia. In 2006, 2007, and 2008 Ethiopia has been represented by teams from Addis Ababa University: Awol Allo and Meron Kassa; Blen Asemrie and Gedion Timotheos, and Michael Sehlu and Timker Teklehaimanot respectfully. In almost all these years, other Universities such as Bahir Dar, Jimma, and Haromaya have gone to Washington. DC for preliminary selections.

One of the country's greatest milestone's to date, 2009 marks the first year Ethiopia ever held National Rounds. Five public universities competed, a truly impressive level of participation for an inaugural national competition. The team from Addis Ababa University, comprised of Elias Biniam, Yishak Mebratu, and Misgana Kifle won the 2009 National Rounds and advanced to Washington, DC to represent Ethiopia in the 50th Anniversary Shearman and Sterling International Rounds. The team from Bahir Dar University to which I was a part as advisor, on the other hand, became the "runner up" and best oralist winner as a result of which it was invited to the place to attend the exhibition round competitions.

Nowadays, moot court is becoming a culture in the law schools in Ethiopia and we are participating actively in national, regional and international moot court competitions of different subject matter.

1.3 COMPARISON OF A MOOT WITH RELATED ACTIVITIES

Overview

Dear learner, so far we have tried to see the meaning of a moot and associated key terms. It is our strong belief that you are by now well aware of the matter called mooting. Following, let us take few minutes to compare and contrast a moot with two related activities, namely mocking and real court practice. Have a good time!

1.3.1 Mooting vs. a Mock Trial

Dear learner, what is a moot? We hope now you can tell what it is and what it is not. If you have any doubts on this, please immediately turn the previous pages before you proceed further.

A moot can be contrasted with a mock trial. But what is a mock trial, dear learner. Well, a mock trial is an adversarial exercise intended to test the evidence in a hypothetical case set in a hypothetical court. In other words, a mock trial is designed to establish the facts of the case. The skills which you need as a mooter are, to some extent, similar to those which you would need as a participant in a mock trial. There is, however, a fundamental difference between a moot and a mock trial.

By contrast, with a mock trial, the participants in a moot have to assume that the evidence has already been tested, and that the facts of the case have been determined, as set out in the moot problem. Rather than being designed to test the participant's ability to argue a question of law, as in a moot, a mock trial is designed to test the participant's skills of handling and presenting evidence, and examining, cross-examining and re-examining witnesses.

We do not discuss the meaning of these terms in detail in this material. If you need further on these terms, please find your lecture notes on the Law of Civil Procedure where you would find a basic discussion. However, a brief explanation may be appropriate, since it may serve to clarify how different the skills employed in a moot are from those employed in a mock trial. Examination – examination-in-chief, as it is also known – is the questioning of a witness on oath by the advocate who has called that witness. Cross examination is the questioning of the same witness by the advocate on the other side in order to reduce the impact of the witness's evidence; and reexamination, which is confined to points arising out of the cross-examination, means questioning by the advocate originally calling the witness in order to explain any apparent inconsistencies shown up by the cross-examination.

One way of getting to understand the difference between a moot and a mocktrial is to note that moots are almost invariably set in appellate courts, where the judges are asked to dispose of an appeal on a question of law. Mock trials, on the other hand, are set in a court of first instance, where a judge or jury is asked to make findings of fact on the evidence and to apply established law to those facts, in order to produce the verdict in the case. You can, thus, think of a mock trial as being, in one sense, the reverse of a moot. In a moot, the emphasis is on the legal argument and, in a mock trial, the emphasis is on the factual argument.

1.3.2 A Moot Court VS. a Real Court

Dear learner, by now we are sure that you have a good knowledge of a moot and a mock trial. Also, surely, you have heard of a real court such as the Federal High Court or the Federal Supreme Court or the Tigray National Regional State's Supreme Court and so on.

All these are real courts. Just take two minutes and think of what possibly any of these real courts and the doings of participants in these courts are? What do you think is the difference between such real courts and a moot court?

Judge Kozinski writes:

In real court, the advocate's focus is on winning the case for the client. The client's and lawyer's interests almost always dovetail, so the lawyer isn't happy unless the client wins ...

Moot court is much different: the advocate has no interest in the outcome of the case; his interest is entirely personal – winning praise for his performance ...

Experienced lawyers do, of course, use their wit and charm to win the trust of the judge and jury. But, this is not an end in itself; it is a means for winning the case for the client. Personal charm, the ability to give good answers to questions, the subtle art of intimidating judges with veiled warnings that they will look foolish or unprincipled if they reach a particular result – these are merely some of the tools in the advocate's arsenal of persuasion. But, persuasion is an art quite distinct from any of the techniques used to persuade; ... What this means is that we can almost never tell how persuasive an advocate is, unless we actually let him try to persuade us. But this is precisely what moot court judges are told not to do: Judge not the merits of the case, they are told, but the effectiveness of the advocates. (check book to see the scope of the quotation)

Quite apart from the differences between American and English law degrees, even in a moot in an English law school, the importance attached to non-legal skills in that moot may vary, depending on the reason why the moot is being held. More importance may be attached, in a competitive moot, to non-legal skills than in a moot which forms part of a course of legal study. Mooting is essentially to be seen as a game, which is saved from pretentiousness by the fictitious nature of the grounds of appeal. In addition, as the passage above makes clear, the moot judge and the mooters have different objectives from real advocates and real judges. Moot judges are expected to pronounce on a different type of issue from those on which real judges pronounce. As Judge Kozinski states, moot judges usually pronounce on the moot rather than on the law.

So much for differences of objective between a real court and a moot court. In terms of physical appearance, the moot court can hardly be expected to match the real courts. Occasionally, it can be witnessed that moot judges and mooters attempt to lift, momentarily, the veil between the hypothetical moot court and the reality of legal practice. On one occasion in England, for instance, a moot judge asked one moot team why the case in the moot problem had been initiated in the High Court of Justice, when the damages claimed were so small that the action ought to have been brought in the county court. On other occasions, students have tried to avoid tough questioning by asking the moot judge's permission to take their 'client's further instructions'. All such incursions into practical reality add interest to the moot and may lighten the proceedings, but they, typically, serve no useful purpose and, ideally, are to be avoided.

1.4 WHY SHOULD LAW STUDENTS MOOT TODAY?

Dear learner, as a student, the question of why you should moot at all will have some prominence in your mind. This will be not only because you have no choice at all as to whether to moot or not, the moot forming part of your course of legal study, but also the moot will be worth the considerable effort it will certainly involve. Indeed, it is increasingly common to see mooting employed, not only to teach students, but to assess them as part of a degree course. The following is a brief account of some of the purposes of mooting.

1.4.1 Develop Legal Skills

Dear learner, what legal skills do you have come across in your previous stay at the law school? Hope quite a few. Assertively, most lawyers would acknowledge the presence of a certain nebulosity at the heart of their skills as lawyers. This indefinable quality is what enables the specialist, a business tax lawyer, for example – not you might think an advocate at all – to be able to explain, clearly and persuasively, the practical effect of an enormously complex piece of tax legislation to a client or to another non-specialist lawyer. Mooting nurtures this indescribable ability to explain what may be very complex legal material simply and clearly. The background preparation to the explanation of the law by the business tax lawyer, say, can be the most minute trawl through the relevant statutory provisions or case law. By itself, the ability to carry out this minute trawl is only one part of the job of any lawyer, however. Being able to put your conclusions into a clear written form is, again, only part of the job, for it goes without saying that you must be able to explain your conclusions.

Fundamental, though, is that mercurial quality of being able, orally, to explain, concisely and persuasively, the meaning of complexities understood only by specialists such as yourself, eliminating all irrelevant material. This ability to interpret and present complex legal material is a skill which can be acquired by practice. It is a skill which all lawyers – not just advocates – will require. The advocate specialising in land law requires it no less than the business tax lawyer. This is because being a lawyer, in its very essentials, involves being able to justify and explain any course of action that you propose to take on behalf of your client.

This task of explanation and justification also involves the ability to withstand interruptions from the individual or individuals to whom you are speaking. In WS Gilbert's play, *Patience*, one of the characters exclaims that 'life is made up of interruptions!'. This may be true in ways which we can scarcely even imagine, especially perhaps in the professional life of the lawyer. Moots, being dialogues, albeit highly formal ones, between the mooter and the moot judge, involve the ability to deal with interruptions and challenges. Such interruptions and challenges, not necessarily ill natured, however politely and good humouredly put by a first class moot judge, will seem threatening enough to you, and will require you to respond effectively to them. Like the skills required for research and presentation, these skills can be acquired by the mooter, with practice. The great advantage of making a presentation before a moot judge – or a

real judge – over discussions conducted in other environments in which you may have to explain and justify your conclusions, is that the environment in which you work is regulated by courtroom etiquette.

So, mooting can give you skills of interpretation and presentation, along with the ability to counter interruption and to work in teams as we shall see soon. As a mooter, you learn to disguise the most detailed examination of the most technical of material in the most persuasive way. Skills of research and presentation are absolutely interdependent. You may argue that people made very good livings as lawyers, in times gone by, without the experience of the moot court as students. Well, this is true up to a point, but do not be fooled. Nineteenth century barristers were known to take lessons from famous stage actors of the day on voice projection and in the cultivation of the ability to work on the emotions of a jury. What they couldn't get in law school, they got elsewhere! Even earlier, as we mentioned before, mooting was a compulsory element in the educational system of the Inns of Court and Inns of Chancery.

No doubt, these are the reasons, also, why prospective solicitor employers in England, no less than potential pupil masters, are usually impressed by the fact that a would-be trainee or pupil has mooted as a student. In a 1991 academic survey, half of the respondents to the survey felt that mooting should be at least an optional part of a law degree. Again, practitioner respondents to the 1996 survey conducted by final year students at the University of Warwick were unanimous in the view that mooting is beneficial to potential solicitors, particularly in the interviewing process.

Therefore, dear learner even if you have no desire to practise law, the many skills which we have considered here, including skills of research, reasoning, persuasion, interpretation and presentation, all skills which mooting develops, will be important to you whatever your chosen career.

1.4.2 Job opportunities

Dear learner, mooting can play a positive role in providing or enhancing your job opportunities. This is particularly true of mooting for an international competition such as the Philip J. International Moot Court Competition to which our country has an impressive historical start.

Participation in an international mooting competition can increase your job opportunities in a variety of ways. Experience in international mooting is a very impressive addition to your curriculum vitae/resume. Although there are increasing numbers of students participating in mooting competitions, it will remain a fairly exclusive club for many years to come, and will give you an edge over others applying for the same job. For all the reasons we will discuss in this material, your participation will not only make you a better candidate, but will also better prepare you to go about the task of actually getting the job, for example, by helping you perform well in interviews.

International moot competitions are great networking opportunities. If you are an impressive candidate you will always do well, but having good contacts will be an added bonus. You will meet new friends and new business contacts – often the very people you have just spent six months reading about.

1.4.3 Team work

Until now, whenever you have worked in a team as a student, you have probably had a say in who the team members were. In many cases, your team members will have been your friends. It is fun to work with your friends, but when you are practising in the field of law, you are more likely to find yourself in a team of people you do not know well, some of whom you may even dislike.

You need to learn how to work as part of a team that you did not choose. Often participation in an international moot team will be the first time you experience this situation. It is not always easy, but it will prepare you well for your working career. Employers value this kind of experience. They are looking for people who know how to function in a team.

Teamwork is also an essential skill of the lawyer. As a leader, say, on one side of the argument in a moot, you will discuss the issues raised by the moot problem with your junior. As a junior, you will inevitably do the same, but with your leader. In so doing, you will tend to get to the essence of the issues with which you have to deal. No stone will be left unturned. Both Appellants and Respondents will wish to persuade the moot judge of the correctness of their submissions. Karl Llewellyn, the American jurist, was thinking of this in his emotive description:

Moot court work will bring you into quick contact with a group. And, in groups of students lies your hope of education ... In group work lies the deepening of thought. In group work lie ideas, cross-lights; dispute, and practice in dispute; co-operative thinking and practice in consultation; spur for the weary, pleasure for the strong. A threefold cord is not quickly broken: in group work lies salvation.

Dear learner, it is not necessary to try to improve on this exhortation. After reading it, you should be able to moot till you drop.

1.4.4 Intensive Training

When you go to a moot competition, you are representing your university, your country and most importantly yourself. For those reasons alone, you will want to perform well. To perform well, you will need to undergo intensive training. How much training you do is up to you. Some teams will do several practice moots a week for weeks on end to improve their skills. Others will have spent hours and hours ensconced in a library researching particular points of law and learning the subject matter backwards just as Mr.

Sebastian Machado from Universidad de los Andes (Colombia), in the champion team and best oralist winner of the 50th Philip J. International Law Moot Court Competition once interviewed said “I have been preparing for this moot court for about two years in a hard way; so this success is the result of such hard work.” You will gain knowledge and valuable skills by the time you complete this process, and the intensive training you undertake along the way will help you to deal with many other aspects of your life beyond the law.

1.4.5 International Travel

Although the various international moot competitions are structured in different ways, all of them have the prospect of international travel. For those more fortunate students whose universities are well funded, it is likely that this travel will be heavily subsidised. But, even if your university is not in a position to assist you, a moot competition gives you a very compelling excuse to catch that travel bug and go overseas. Having made the investment to travel to a moot, many students take advantage of their location and have a holiday following the end of competition. This can be one of the best experiences of your life.

For many of you it may be your first venture outside the country, and the experience will be life-changing. You may not appreciate it when you first meet your team, but you will be grateful to be traveling with people you know.

1.4.6 New Perspectives

In many ways, this reason is the product of all the reasons listed before. You will be introduced to many new experiences through involvement in an international moot. Each new experience will force you to challenge your existing perspectives, an invaluable lesson that will serve you well as you enter the legal profession.

Of course, most of the benefits of mooting referred to in this answer have been highly instrumental and it should not be forgotten that the attraction of mooting for most students is the simple fun of taking part!

1.5 THE ROLE OF KNOWLEDGE OF LAW IN A MOOT

Dear learner, how do you think does knowledge of the substantive law influence a successful moot? The answer to this question depends on who is assessing your moot presentation and whether the moot is a competitive one, forms part of a course of legal study or is held merely for fun. A moot judge does not simply adjudicate on matters of law. He or she also adjudicates on the range of presentational and interpersonal skills which a mooter must display in order to moot successfully.

After the submissions of the two moot teams have been completed, the moot judge will usually give a short judgment. In the judgment, unlike in a real court, the moot judge will not only reach a conclusion as to the legal issues of doubt raised by the grounds of appeal. He or she will also decide which of the teams of participants has mooted the best. However, although this is usually how a moot is structured, where a moot forms part of a course of legal study, it may be the case that no judgment is given by the moot judge, an assessment being made by him or her after the moot, as to whether the participants have demonstrated the legal skills necessary in order to moot satisfactorily. Whichever of these possibilities applies to the moot in which you are taking part, the question of how the judge's assessment is divided between the moot and the law is equally important.

The performance evaluation criteria used quite often in a moot include:(1) 'Content'; (2) 'Strategy'; (3) 'Style' or 'Courtroom Manner', (4) 'Presentation and Clarity of Argument'; (5) 'Use of Authorities'; and(6) 'Ability to Answer Questions.'

To be sure of the correct type of performance criteria in a moot, in which you are a participant, therefore, you should always seek to obtain a copy of the assessment sheet (if available), showing how the performance criteria are weighted in the particular moot in which you are taking part.

Dear learner, above, we have described the importance of knowledge of the laws for a successful mooting. But do you think that it is possible to lose on the law and win on the moot? Such questions also frequently arise in relation to the several Ethiopian national moot courts prepared in different ways. For example, in the First Bahir Dar University National Moot Court Competition held in 2008 in the university campus, the finalists were the teams from Gondar University and Jimma University. The former team performed very well as far as the skills of presentation and persuasiveness are concerned whilst the latter team performed very well regarding raising of various authorities. The audience was very eager to hear the result whatever the result actually was.

Well, the answer to that question is a definite 'yes'. The fact is that the legal authorities on both sides of a moot problem should be of roughly equal strength, so whichever decision the moot judge reaches on the law will not necessarily reflect the judge's view as to the skills of the mooters who presented those authorities. In fact, the opposite is often true. The judge of a competitive moot between two law schools will, not infrequently, judge in favour of one law school on the issues of law as a way of softening the blow before he or she then awards the moot to the other law school.

This practice is apparently so common that mooters are sometimes heard to whisper, as they await the judgment, 'I hope we lose this case'. The practice of law is different, of course. There, we assume that the judge awards no prize to the most persuasive advocate, and that victory in a case before an appellate court follows the law! It follows, from the above, discussion that you should not be too downhearted if you are ever presented with an apparently unarguable ground of appeal. The weight of legal authority may well be stacked against you, but you can still win the moot if you are skilful and persuasive

enough in the way you develop what little authority (legal sources), persuasive or binding, is on your side. The judge may not agree with your arguments as to the law, but he or she is well aware that you did not choose to argue the particular ground of appeal and will give you special credit for making the most of a difficult legal argument.

1.6 COURTS IN WHICH MOOTS ARE SET

Dear learner, the imaginary courts in which moots are set depend on the types of moot courts. There are generally three types of moot court competitions, namely, national moot court, regional moot court, and international moot court competitions. The examples are the national moot court competitions organized by Bahir Dar University and APAP at national level annually, the All African Human Rights Moot Court Competition at the regional level, and the Philip Jessup International Law Moot Court Competition at an international level.

With regard to national moots, we strongly hold that the moots in which you are most likely to take part should be based on Ethiopian law. That being the case, the courts in which the moot is set will usually be the High Courts or Supreme Courts. Generally, a moot must take place in an appellate court because the mooters will be arguing points of law rather than questions of fact. Indeed, the facts are imagined to have been decided by the trial court, as appropriate, and those findings of fact will not be in dispute. Authors of moot problems should set their moots in the Appellate courts because it forces you, the mooter, to be very disciplined in your legal methodology. Generally, unless you can distinguish apparently binding statutes and cases which have been cited against you, you will lose the legal argument.

Despite all that has already been said, the High Courts and the Supreme Courts of Ethiopia are not the only appellate courts for Ethiopia. Other courts in which moots are frequently set, include the International Court of Justice and the African Court on Human and Peoples' Rights. The former will be the setting for a public international law moot, and the latter for an AU law moot.

The International Court of Justice does not actually hear appeals, and so this is one of the rare occasions when a moot is not set in an appellate court. However, in such moots, the moot proceeds on a hypothetical compromise between the parties, in other words, there is an agreement about the factual basis of the legal dispute, so allowing the mooters to concentrate on the legal issues which appear from those agreed facts. The same may be true, depending on the procedure which is imagined to have been followed, for a moot set in the African Court on Human and Peoples' Rights Court.

1.7 PARTICIPANTS IN A MOOT AND DIVISION OF FUNCTIONS

Dear learner, who are the participants in a moot court? For an effective moot, we have mentioned before, you must have at least one mooter on each side and a neutral moot judge. Usually, there are five players in a moot. These are: Lead and Junior Appellant, Lead and Junior Respondent, and the moot judge. A moot heard in an appellate court, for example, the High Court or the Supreme Court, will ideally have more than one judge presiding, but this is a luxury usually reserved for a few of the international moot competitions.

Moot judges will usually be legal academics or legal practitioners and it is best to know which type you will be appearing before. If we can indulge ourselves in a little stereotyping, we should say that they each display certain general characteristics. Practitioners have often spent so long locked up in that ivory tower they call the real world that they sometimes take an altogether too realistic approach to mooting. We have even heard practitioner moot judges complain to a mooter, on account of the lowly sums involved in the moot problem, that the case in the moot problem was started in the High Court instead of the First Instance Court. Academics, on the other hand, might occasionally see a moot as an opportunity to trap the mooters with obtuse points, or to test their own pet theories or the, as yet untried, theses of their colleagues on the mooters.

Neither approach is particularly helpful to the nervous and inexperienced mooter or student. However, the more experienced, competitive mooter can have no cause to complain at either approach. A good mooter must take the moot judges as he or she finds them. Very occasionally, a moot judge will deliberately put a mooter to the sword – to this there can be no objection provided the judge also remembers to employ the scales of justice!

Dear learner, Judges, Appellants and Respondents are not the only persons who take part in a moot. There are three others who may have significant roles to play: the court clerk, the amicus curiae and the master/mistress of moots.

1.7.1. The court clerk (or clerk of the court)

He or she should sit at a separate table in front of the moot judge and, like the judge, should face the mooters. The court clerk has many functions to perform which are all designed to facilitate the smooth and proper execution of the moot. First, and perhaps foremost, the clerk is ultimately responsible for ensuring that the judge will have ready access to originals (or photocopies as a last resort) of every authority intended to be relied upon by the mooters. The clerk's desk should be as near as possible to that of the judge because, during the moot, the clerk will hand each authority to the judge at the moment that it is first referred to by the mooter relying on it. It is sensible for the court clerk to have inserted a bookmark at the relevant part of the authority, for example, at the first page of a law report or at a particular section of a statute. Secondly, the clerk should announce the imminent arrival of the judge with the shout, 'court rise!', at which point

everybody in the moot court who is able to do so, audience included, should stand up. Thirdly, another of the clerk's functions is to act as timekeeper; so, if you are the clerk, don't forget to bring a watch with a seconds hand.

1.7.2. The amicus curiae

This person is the 'friend of the court', to give the literal translation of the Latin. His or her role is to assist the court on specialist questions of law, or to alert the court as to the public policy implications of the possible outcomes in a case. The amicus curiae does not represent the adversarial interests of either party. It is not often that amici curiae are used in moots. If they are, it is usual to restrict their speeches from the floor to a maximum of five minutes. They are most unlikely to need more time than that, as what they have to say is not a matter for dispute.

1.7.3. The master³ of moots

Dear learner, in the present context, the master refers to the staff or student member responsible for organising the moot and present at the moot to ensure that it runs smoothly. The tasks of the master or mistress of moots before, during and after the moot are as follows:

a. Well in advance of the moot

- In the case of a national or international competitive moot, pay any fee. Where required by the rules, select a workable moot problem. (In fact, this is often a requirement of competitive moots.)
- Choose your mooters, appoint a date and time for the moot, invite a moot judge (the judge will appreciate it if the moot problem is in an area of his or her expertise) and book a venue for the moot.
- Exchange authorities with the other side.
- Make arrangements for providing refreshments for the moot judge and the mooters.
- Book a venue for taking refreshments.

b. Just before the moot

- Photocopy the moot problem for distribution to the audience.
- Set out the moot court, complete with lecterns.
- Provide drinking water for the mooters and the moot judge.
- Provide the mooters with gowns, if appropriate.
- Provide the moot judge with any guidelines and a moot assessment sheet, for judging the moot.
- Place a Moot In Progress notice on the door to the moot court.

³ Note that the word 'master' is used in different contexts in this material; so please try to understand it in line with its context.

c. During the moot

- Introduce the moot and welcome the moot judge and the audience.
- Deal with any emergencies, for example, obtrusive noise outside the moot court.

d. After the moot

- In a national or international competition, inform the organiser of the result of the moot as soon as possible.
- Put up a notice in the law school thanking the mooters, and any other participants in the moot, and congratulating or commiserating with the mooters over the result.
- Thank the moot judge by letter. This will be appreciated by him or her far more than you may realise.

1.8 STRUCTURE OF A MOOT

Dear learner, how do you think is a moot structured? Structure of a moot concerns two points. The first is that of the moot problem itself. It is almost universally the case that this is divided up into two entirely self-contained grounds of appeal, from the judgment of an imaginary judge at first instance, the intention being that one person on each side will argue each one. As mentioned before, the grounds of appeal always raise questions of law, rather than questions of fact.

The second level is that of the proceedings in the moot court. The most basic division in moot proceedings is between the presentations of the mooters and the judgment of the moot judge or judges, once those presentations have been made. So far as the judgment is concerned, you may find that this is dispensed with, where the moot is forming part of a course of legal study. The presentations of the mooters fall in a particular order, which may vary slightly, according to the rules of the moot in which you are taking part.

The order of the proceedings usually is as follows. (The conventions of standing and bowing, and so on, are obviously inapplicable where any of the participants, judges or mooters, are prevented from doing so through disability.)

Before the moot presentations take place, the moot judge will have come into the moot court, bowed and sat down. (This bow is no more than a nod.) Bowing in return, the mooters sit down, until the first to speak, as noted below, is called upon to do so by the judge.

- (1) **Lead Appellant:** The Lead Appellant is to be taken to refer to leading counsel for the Appellants. Once standing up, the Lead Appellant makes his or her submissions on his or her ground of appeal and, having done so, will sit down again at the judge's invitation, in order for the judge to invite the Junior Appellant to make his or her presentation.

-
- (2) **Junior Appellant:** As above, this is in fact the junior counsel for the Appellants. Again, he or she will sit down at the end of his or her presentation, in order for the judge to invite the Lead Respondent to make his or her presentation.
- (3) **Lead Respondent:** As above, this is in fact the leading counsel for the Respondents. As above, after having made his or her presentation, the Lead Respondent will sit down, in order for the judge to invite the Junior Respondent to make his or her presentation.
- (4) **Junior Respondent:** Again, this is the junior counsel for the Respondents. After having made his or her presentation, the Junior Respondent will sit down, to allow the judge to do one of the following:
- (a) in some moots only, to invite the Appellants to reply to the Respondents' submissions; or
 - (b) to allow the judge to deliver a judgment immediately; or
 - (c) to allow the judge to announce that he or she will adjourn the moot for a few moments to compose a judgment; or
 - (d) as mentioned above, simply to bring the proceedings to a close, where the moot is taking the place of a coursework assessment.

We would make a number of points regarding each of these. First, the timing of the presentations of each of the mooters can vary, again according to the rules of the moot. In principle, the timings should not include the time that the judge takes in asking, and the relevant mooter takes in answering, questions. However, there are special considerations in these areas in certain competition moots. Secondly, the rules of the moot may provide for the order of presentations to be varied. It could be, for example, in the order of, Lead Appellant, Lead Respondent, Junior Appellant, Junior Respondent. Or again, Lead Appellant, Lead Respondent, Junior Respondent, Junior Appellant. Thirdly, especially when the moot is forming part of a course of legal study, there might not be a full complement of four mooters. This is only practicable if each ground of appeal is entirely self contained.

Fourthly, while you are actually making your presentation, the moot judge may call upon another of the mooters appearing before him or her and ask him or her for their opinion on the point which you have just made. If this happens, sit down immediately. Equally, if you are the other mooter asked to comment in this way, make sure that you do so standing up. The golden rule is that, if you can physically do so, you stand to address the moot court.

Bearing these points in mind, our final point would be this. Avoid interrupting another mooter's presentation at all costs. If, however, it is absolutely necessary, for example, because of illness, make sure that you stand up to do so, bringing all your powers of charm to bear and observing the rules of etiquette to a fault.

In some moots, where there is no element of competition or assessment, certain further variations to the above may be permitted. There might be an audience, for example, in which case the judge might invite comments from the audience regarding the law. This is fairly rare.

1.9 APPELLANT'S RIGHT TO REPLY

The answer to the question of whether the appellant has the right to reply depends entirely upon the rules of the competition or assessment. If, as an Appellant, you have a right of reply to the Respondents' arguments, it goes without saying that, when the Respondents are making their own presentations, you should annotate the points to which you may wish to make reply.

However, do not feel obliged to exercise your right to reply if you are content that there is nothing in the Respondents' presentation to cast doubt upon your main submissions. If the moot judge offers you the opportunity to reply (which he or she generally will where the rules allow), it can leave a positive impression to reply 'My Lord/Lady, I am content to rest on my earlier submissions', or words to that effect. On the other hand, if you suspect that the judge would prefer it, the wisest course may be to use your right of reply and thereby ensure for yourself the last word on the matter. Even if the Respondent has made no strong points to which you feel compelled to reply, exercising your right of reply gives you an opportunity to point out the weaknesses in the Respondents' case and/or to reiterate the strengths of your own.

1.10 DIVISION OF THE ROLES BETWEEN APPELLANTS AND RESPONDENTS

Dear learner, in the above sections we have seen that one of the participants in a moot court are the appellants and respondents. These participants have different roles to play in the moot court. These roles may either be allocated by the rules of the competition or by the rules of the assessment. If there is no element of competition or assessment in the moot, some procedure neutral to the moot teams must be adopted, such as the drawing of straws for roles.

It is contended that mooting shares many features in common with a team game. Mooting is, therefore, subject to certain rules of fair play. Where you are participating in a moot which is taking the place of a coursework assessment, the master or mistress of moots, in other words, the member of staff responsible for the moot course at your law school, will allocate the roles among the participators. In that situation, the question of fair play in the selection of the participants and the roles they play does not arise. However, where the moot is being held for fun, or as part of a competition, it does arise and is a matter which is likely to be covered in the rules of the competition. If the moot problem is distributed centrally, under the rules of the competition, then the mooters' roles should be allocated centrally.

In the absence of a specific rule, fair play demands that, if one team, or one law school, chooses the moot problem, then they, or it, should offer the opposing team or law school, as the case may be, the choice as to which side of the argument to take.

1.11 BALANCING THE NEED TO MAKE A CASE AND TO CHALLENGE THE APPELLANTS' POINTS BY THE RESPONDENT

Dear learner, we have already mentioned that one participant in a moot court is Appellant. As respondent, you have to strike a balance between presenting your own pre-set points and giving reply to the specific arguments of the contending party, i.e. the Appellant.

Owing to the limited amount of time available for argument, it is not generally advisable for you to spend time at the beginning of your presentation replying, in debating style, to the submissions put forward by the Appellants. Instead, your submissions should be made, and brief responses to the points raised by the Appellants should be incorporated into your submissions as your presentation progresses.

If you were to act for the respondent on a real appeal in a real court, there would, in theory at least, be no need to make out a positive case of your own, as such. The appeal brought by the other side would be dismissed, were you able successfully to discredit every one of the points on which the appeal had been brought. However, in practice, submissions are unlikely to persuade the court unless they go beyond the somewhat negative process of merely gainsaying every one of the Appellants' arguments. A real appellate judge, and a moot appellate judge, no less, will be far more likely to be persuaded by your submissions and to dismiss the appeal if there are positive reasons for preferring the Respondents' arguments. In other words, the hearing of an appeal gives the Respondents another opportunity to put forward the strengths of their case and should not be viewed restrictively as a mere technical exercise in reacting to the Appellants' arguments.

1.12 LIAISING WITH COLLEAGUES AND KNOWING THEIR ARGUMENTS

Dear learner, as we said, on each side of the moot court team, there are two parties, namely, the Senior Appellant and Junior Appellant on the one hand, and the Senior Respondent and Junior Respondent, on the other hand. So, what type of cooperation should exist between the teammates of each side?

As a member of each moot team, you need to be acquainted with the submissions that your colleague is going to make, particularly if they are controversial. It is certainly not

unusual for the moot judge to discuss, for example, the submissions of the Junior Appellant with the Lead Appellant. An illustration of this is the exchange between Scales LJ and Felicity Fowler Lead Appellant: My Lord, my learned junior will be contending that the issue has been before the courts on a number of occasions. Indeed, he will also be arguing that the existence of such a tort is consistent with principle.

Scales LJ: I am always open to persuasion. In practice, I very much doubt that such an argument would be advanced very often but I realise that you are bound by the moot problem. But, anyway, please continue.

This is almost at the beginning of the moot. We think you would agree that it would have been a very bad start to Felicity Fowler's presentation for her to have had to admit that she had no idea what her colleague's submissions were going to be. In fact, she coped well by showing that she knew that Neil Wright was going to rely on cases which supported the existence of a tort of procuring a breach of trust. She was, therefore, able, very diplomatically, to correct the moot judge's assertion that the issue in Neil Wright's ground of appeal had never previously been before a court, and to suggest that the argument was not as novel and unorthodox as the judge appeared to believe it was.

Nevertheless, it would have been very unusual, and no doubt unfair, for the moot judge to have asked her to develop her colleague's submissions on the second ground of appeal any further.

Having said that, in a number of mooting competitions, such as the Philip C Jessup International Law Moot Court Competition and the Telders International Law Moot Court Competition, there is no rule to prevent the moot judge from doing precisely that. Many mooters in these competitions have, thus, found themselves having to deal with points that their colleagues have researched and prepared, but of which they knew very little. Obviously, it is not going to be possible to know your colleague's submissions as well as your own, but you should know at least the substance of their submissions. You would be extremely unfortunate were the moot judge or judges to insist that you dealt with these submissions in detail. The chances are that your colleague, who is probably sitting there wondering what on earth he or she is going to say if you are forced to cover all of his or her arguments, can then breathe a sigh of relief.

Even in a competition or assessment where you only have to assume responsibility for the submissions on one ground of appeal, it is still, of course, important to liaise with your colleague, so that you do not say anything which conflicts with their submissions. There are few things worse, in the context of a moot presentation, than to be half way through your submissions and to hear the moot judge say, 'Mr. Alemu, isn't this submission inconsistent with the ones just made by your Leader?'. The moral is to give your presentation a trial run with your colleague, in order to discover whether either of you are arguing inconsistently on any point. Obviously, if you are, then one of you is going to have to alter his or her submissions.

1.13 RULES OF FAIR PLAY TO BE OBSERVED IN MOOTING

Dear learner, one of the important differences between mooting and litigation in a real court, on one level at least, is that mooting is to be seen as a game. Since the characters in a moot problem are entirely fictional, no liberty will be lost or lives ruined as a consequence of the quality of a moot presentation.

It follows from this proposition that there are certain rules of fair play, which is, perhaps, especially important to observe when you are participating in a moot held in a competitive context. It goes without saying that any game must be conducted by the players in as generous a spirit as possible and with dignity. If your participation is not in this spirit then, although you may not suffer tangible consequences, you may incur the censure of your friends and neighbors. Sportsmanship, not gamesmanship, is the watchword.

Dear learner, we are here trying to address forms of behaviour which, although perhaps within the letter of the rules of the competition or assessment, are nonetheless not within its spirit. Since this is the case, it is not possible for us to describe every form which unacceptable behaviour could take.

There is, no doubt, a fine line between acceptable cunning and conduct which most people, perhaps, would categorise as underhandedness. A little cunning never goes amiss in any forensic setting, but in the moot court you must never cross the fine line between cunning and deviousness. By way of illustration, we shall look at two practices which fall into the latter category.

First, imagine you are a participant in a moot. You have devised an argument of astonishing simplicity. Nonetheless, you are convinced that it has a touch of brilliance about it. Indeed, so brilliant is this argument that it requires either the citation of no authority or, at the most, one short case only. You are confident that the opposing team in the moot will have no idea of what it is that you are going to argue. Just to make sure of this, however, you decide to throw them off the scent completely and to waste their time by exchanging a list of lengthy authorities with them which is roughly in point but upon which, at the time you exchange the authorities, you have not the slightest intention of relying.

There may be nothing in the rules of the competition or of the assessment to prevent you doing this. Nonetheless, we would submit that to do this is to ignore the spirit of the exercise. It is, of course, quite unacceptable to disclose an authority which runs to over 100 pages, which is entirely off the point and upon which you have no intention of relying. If you attempt this, in the context of a mooting competition, you should not be surprised to receive, at the very least, an irate telephone call from the opposing team!

Secondly, think about a number of permutations of the following. Imagine now that you are about to participate in a competitive moot. The argument in the moot presentation

which you have prepared is mundane, to say the least. You realise that, if you cite your authorities in the order in which you intend to refer to them, the banal simplicity of your argument will be plain for all to see.

You have a bright idea, which is designed to get the opposing team worried. You jumble the authorities up on exchange. It is a low bowl by you, but desperate measures are called for. Again, we submit that to do this is to ignore the spirit of the exercise. This is why, in our contention, it is good practice to agree to exchange authorities with the opposing team alphabetically, provided, as ever, that this is not prohibited by the rules. This will avoid any suggestion that you have acted outside the spirit of the moot competition in which you are taking part.

Dear learner, an important aspect of the sportsmanship of mooting is to accept the moot judge's conclusion graciously, whether you win or lose. It may be difficult to do this if you are fighting back tears of rage and disappointment! Nevertheless, to complain or, still worse, to appeal to the national organiser, can only serve to add embarrassment to your defeat. Ironically, perhaps, in relation to a moot, even where the moot judge has fallen into some error of law, it is still inappropriate to appeal or protest, not least because the award of the moot need not necessarily follow the law.

What if you suspect the judge of bias? This is a most serious accusation and should not even be raised unless you have evidence with which you can clearly demonstrate that your suspicions are well founded. Cases of bias are likely to be extremely rare.

Nevertheless, it is good practice to choose as objectively neutral a moot judge as possible. If your choice of judge might raise the merest suspicion of bias (for example, the choice of a judge who is a former student of your law school), disclose that fact and give the other side the opportunity to object to your choice in advance of the moot. Another method by which fairness can be fostered is to offer your opponents the option to be Appellants rather than Respondents in any situation where you have selected the moot problem. Remember, you want your mooting to be a positive experience for you. If you win and have played foul, then your victory will be a hollow one indeed. Equally, if you lose and have played foul, then to the pangs of defeat will be added the odium of disgrace.

1.14 'EXCHANGE OF AUTHORITIES' AND RELYING ON OPPONENTS' AUTHORITIES

Dear learner, do you know the basic features of a Common Law legal system? Hopefully, you remember that precedent is a primary basis of a Common Law court's decision.

Therefore, in the English-Speaking Union Moot, as for most moots, only cases count as authorities. However, statutes, textbooks, or other legal literature on which one moot team intends to rely, must also be disclosed to the other side and to the moot judge. To 'exchange authorities' simply means to give the list of cases and other legal literature on which you intend to rely to the moot judge and to your opponents. One of the crucial things to remember about mooting is that it is your responsibility to give a list of your authorities to the judge and to your opponents at the time specified in the rules of the competition or assessment. (Don't forget to ensure that your name appears on your list of authorities.)

The rationale behind the exchange of authorities is that, in the interests of a fair debate, neither side is permitted to take the other totally by surprise. Each side must have the opportunity to read the other side's authorities in order to be able to prepare arguments to rebut them. The exchange of authorities also enables the judge to refresh his or her memory (or to read the cases for the first time) and to prepare testing questions on them.

Failure to exchange lists by the stated time is a serious breach of the rules of competitive mooting and could well be punished by disqualification. In moots which take place within your law school, especially if they form part of your course, such a breach is virtually certain to attract severe marking penalties.

Every competition, apart from those which require full skeleton arguments (formerly written pleadings), imposes a maximum number of authorities which may be exchanged. For example, the English-Speaking Union Moot restricts the number to eight cases per moot team. If you are taking part in a moot, possibly as part of your course within your own law school, there will also be a maximum number imposed by the rules of the assessment and you must find out what it is.

You are not restricted to using a minimum number of cases. Do not think that your submissions will fail if you do not cite all your permitted number of authorities. It is always better to base your argument on principle and policy, rather than to cite authorities which are clearly distinguishable. Generally, cases cited in the moot problem do not count towards your permitted number of authorities.

Dear learner, how far do you think are the citing of cases as authorities important in moots set at the National Courts in Ethiopia such as the High Court and Supreme Court? Well, it is important to remember in this regard the fact that the Ethiopian courts base their decisions completely based on the statutory laws especially the domestic ones. Past decisions may, in fact, be raised for persuasiveness. Exceptionally, decisions of the Federal Supreme Court Cassation Division can since recently be cited as precedents. Thus, you should always respect the national legal applications and norms while mooting set at any one of the national courts.

Review Exercises

I. Choose the answer that best suits each question

1. The Appellant and the Respondent are best described by the word: a. Mooter b. Mooting c. Moot court d. representation e. none of the above
2. The verb to moot does not denote:
 - a. presenting an oral argument before the moot judge
 - b. Asking clarification question to the moot judge
 - c. preparing a written argument for a moot
 - d. all of the above
 - e. none of the above
3. Normally, a moot cannot be made for:
 - a. fun b. competition c. business profit d. legal study e. none of the above
4. A ground of appeal is not/does not:
 - a. the legal issues argued by the moot
 - b. highlight particular issues of doubt in the law
 - c. set in a trial court,
 - d. involve a real/actual case.
5. One of the following is not always a participant in a moot:
 - a. amicus curae b. judge c. lead appellant d. respondent e. none
6. National Moot court competitions are to be set at: a. African Court on Human and Peoples' Rights b. High Court c. The International Court of Justice d. All of the above.

II. True/false Questions

1. The International Court of Justice looks at moot courts at strictly appellate level. a. true b. false
2. The respondent must present only its own prepared arguments instead of discrediting some of the arguments of the Appellant. A. true b. false
3. In general, it is not prohibited to state the arguments /issues of your colleagues in a moot court team. A. true b. false
4. Given that you are a competing team, giving your legal sources to the opponent is not allowed as it may put you in a losing position. a. true b. false
5. Moot court and mock trial are basically the same. a. true b. false

III. Essay Type Questions

1. Where and when did mooting start?
2. Mention three differences between a moot and a mock trial with a brief discussion added.
3. Mention at least three differences between a moot court and real court.
4. What skills does mooting promote and how? Discuss it in detail.
5. Do you think that a moot court team which raises greater number of legal sources than the opposing team can always win? Why/why not?

6. What major elements does a structure of a moot constitute? Explain briefly.

CHAPTER TWO: PREPARATION, PRACTICE AND SUBMISSION IN A MOOT⁴

Introduction

Dear learner, welcome to the second chapter of this part of the course! As you just recall, the last chapter has furnished you with the knowledge of the meaning, nature, history, structure and some rules to be followed by you while mooting. That chapter is a very good background for the present and subsequent chapters.

The chapter at hand deals with principles applicable not only in the context of mooting, but equally in legal practice and advocacy. As an advocate in a moot or in professional practice, you need to develop and deliver a compelling and convincing argument to support your case. This involves two major steps, namely, preparation and practice for a moot and presentation or submission in a moot. For convenience, this chapter is divided into three major parts, i.e. preparation, practice and presentation. The first sub section deals with preparation by way of building an argument; the second sub- section deals with practice in moot and the third deals with submission in brief.

Also the value of participating in practice moots cannot be underestimated. The more familiar you become with the experience of standing before an audience presenting a submission, the more relaxed you will be when it comes to appearing in the moot competition. As we shall also see in the subsequent chapters, relaxation, preparation and practice are the keys to performing at your best. When establishing your program of practice moots, you should do so in a manner that exposes you to the greatest diversity of circumstances that might occur in the actual moot. So, let us wish you all the best to enrich your knowledge of the moot by reading these advices.

Objectives

Upon completion of reading this chapter, you will be able to:

- explain the meaning of developing an argument;
- point out and elaborate the different steps useful for developing or building an argument;
- elaborate the ways of practicing a moot;
- analyze the usefulness of practice masters;
- indicate the good qualities of a useful practice master;
- mention the ways of making the most of practice moots; and
- define submission of memoranda/memorials.

⁴ This chapter is mainly adapted from the source: Christopher Kee(2006) The Art of Argument: A Guide to Mooting.

2.1 PREPARATION FOR A MOOT: BUILDING AN ARGUMENT

Dear learner, a successful mooting principally depends on putting forward strong and persuasive arguments. This means, you, the mooter, should develop arguments to the degree and number required by the moot problem.

So, how do you build an argument? There are a variety of approaches you might take. The method suggested below is only one option. However, a feature of most successful approaches is a defined structure.

Dear learner, before you start to build an argument, think about how you are going to develop the structure of your argument, and most importantly think about how you are going to test it. In order to do so, you should follow the following basic steps.

Step 1 – Read the facts and decide instinctively who should win.

Whenever you encounter a set of facts, you will instinctively form an opinion of who should win. This is human nature. Your opinion will be influenced by many factors, from the way the problem is presented to the personal experiences that have shaped your beliefs and values. For example, we each have our own notions of what is fair and just, and of what is right and wrong. These are emotive and subjective responses. For most people, their emotive and subjective responses will be the instinctive ones. As an advocate you will need to either exploit or overcome these emotive and subjective responses, depending on which side you are representing. Your own instinctive response will be influenced by your training. A legal education trains you to have a response that goes beyond subjective prejudice. Lawyers are taught to think objectively. We do our best to remove emotion from a conflict and to apply the law “without fear or favour”. Legal philosophers may debate whether ultimately this is a good or bad thing, but as a general rule it is what judges and arbitrators are called upon to do. Once you have identified instinctively who should win, influenced by your legal knowledge and training, you have the base from which you can build your arguments. Bear in mind that well written moot problems will tend not to be designed so that one side is clearly favored, so irrespective of who you are representing, there will be prejudices that work for and against your arguments.

Step 2 – Identify who you are representing

At first this may seem a little obvious. Naturally, you need to identify which party you are acting for! But, the question goes deeper than that. You need to remember that you are representing the client’s case – not yours. Make sure that you stay sufficiently objective so that you can identify weaknesses in your own case. This is reasonably easy to do in a moot case, but it can be much more difficult in real cases when you are dealing with a flesh-and-blood client whose future may depend on the outcome.

Over the time you spend building your arguments, you will have made a considerable emotional investment in your case. You will feel some ownership of your arguments and may tend to become protective of them. While it is very important to be willing to defend

all your arguments, it must be a “defense” and not simply a dismissal of the criticism. In moot competitions, this issue tends to display itself within the team, particularly if any of the team members are battling insecurities. One member of the team will come up with an argument that they think is compelling, and another member of the team will disagree – and the battle ensues. This process should be seen to be constructive rather than obstructive. Ideally, every argument by every team member should be criticised, as criticism will either confirm the validity of the argument or lead to its improvement.

Step 3 – Compile a list of arguments

Now, you are confident and comfortable that you are representing a party and not simply your own pet arguments, begin compiling a list of reasons why your side should win. These need to be reasoned and supported arguments. The untrained and instinctive responses we talked about above are examples of unreasoned and unsupported arguments, which need to be developed. For example, “just because it is right” is not a reasoned argument. You need to explain why it is right.

You need to immerse yourself in research. This is when you begin to learn the complexities of the subject matter. Your arguments must be supported by primary sources, such as the law itself, and secondary sources, such as commentaries. What amounts to a primary or secondary source will depend on the area of law you are dealing with.

You should be very careful to avoid false reasoning. In simple examples, it can be easy to identify an error of logic in an argument. For example: all dogs have four legs; this cat has four legs; this cat is a dog. However, when the propositions in an argument are much more complex, it can be difficult to spot problems with the reasoning.

It is very important to write or record your arguments as you develop them. During later stages of the process, you will need to be able to review every stage of the argument’s development. In a nutshell, then, your task is to prepare the longest list of reasoned and supported arguments you possibly can to persuade any moot master that your client should win. Structure the list so that your most convincing points are at the top and the really weak arguments are at the bottom. Set yourself a time limit to complete this task, bearing in mind the overall time pressures that you face.

Step 4 – Imagine you represent the other side

This step is harder than step 3 as it involves more work. You now have two tasks. You need to develop a response to every one of the arguments in the list you have prepared, thus simultaneously develop an equally reasoned and supported list of arguments why the opposing side should now win.

Why do we do this? Some advocates argue that the way to build the strongest case for your client is to first build the case for the other side. In doing so, you effectively identify the weaknesses in your case and the challenges you will need to meet. Being aware of all the weak points in your case allows you to build stronger arguments. Sometimes, criticizing your earlier arguments can be an easy task, if you have already come across authorities that support an opposing view during your initial research. If you made a note of these authorities, you can now go back to them and use them to support your new arguments. On other occasions, it will not be easy, and the process will take some time.

Make sure that at every stage you are recording the development of each of your arguments.

Step 5 – Repeat steps 3 and 4 at least five times

At first, you might think that repeating steps 3 and 4 at least five times seems tedious and unnecessary. But, do not take an ordinary approach to answering your moot problem. Most people will work on an argument until they reach the first obvious “clear win” for one side. However, to use a card game analogy, there are never any trumps in mooting. If you believe you have arrived at the perfect argument for your client, you do so at your own peril. It is dangerous simply because you have stopped developing the argument. What happens when, while sitting in the final of a moot competition, your opponent delivers an effective response to your brilliant argument? You are unlikely to be able to reply, which means that your opponent gets the last word and most importantly makes the final positive impression on the moot master. While no one can ever guarantee that you will win a competition, if you follow this process you will be certainly be among the best prepared in the moot. Be better than ordinary. Find the answer that beats the initially best argument, then have the reply that beats that, and so on. You must always strive to beat your own best argument.

There is a flip side to this point that you need to think about. Just as people tend to stop at what they presume to be an obvious answer, they will ignore arguments they assume to be bad or weak ones. If you take the time to develop these arguments you will catch your opponents unawares. They will be left speechless and unprepared. It would not be unusual if your first really weak argument ultimately becomes your most effective! A very significant advantage of undertaking step 5 is that it forces you to come up with innovative arguments. To beat seemingly impregnable arguments you need to investigate every single possible line of inquiry. This will often take you beyond the specific subject matter of the moot problem and into general areas of the field of law you are studying. This process increases your peripheral knowledge. Demonstrating this knowledge in answer to a moot master’s question can often win you a moot.

This is only one possible approach you might take to develop your arguments. However, it is a very practical and very efficient method of tackling moot problems. Remember that most international competitions will require you to act for both sides at different stages of the moot. For example, in your first moot you may be representing the party bringing the claim, and in your second moot the party defending the claim. Dear learner, the suggested five-step approach effectively allows you to prepare the arguments for both sides simultaneously.

2.2. PRACTICE MOOTS

As we mentioned during the introduction, practice of moot is very useful. As you practice your moot for whatever purpose it is, you will develop a sense of win ship and profound strength. That will inevitably lead you to a success in the moot. It is also good to remember that the need for practice is important in all types of moots although obviously the extent and the depth in which you do so may vary depending on the purpose of the

moot. For example, high level of practice may be more rewarding for competition moots than other moots. We shall, in this section, elaborate some tips regarding how to practice moots. Have a good reading!

2.2.1 When to Start Doing Practice Moots

Dear learner, you should begin practice moots as early as possible in the process of preparing for the competition. This is particularly important if you have little or no previous mooting experience. If you begin to articulate your arguments in the face of questioning, this will help you develop those arguments during the written stage as well. However, depending on the deadline for submission of the written document, and the time commitment required to produce it, opportunities to conduct practice moots may be limited. Once the document stage of the competition is completed, you should focus intensely on practice moots.

It is a sensible idea to allocate the responsibility for scheduling practice moots to one person within the team. This person will need to ensure that everyone participates in an equal number of practice moots. The same person should be responsible for coordinating moot masters.

We discuss the different types of practice moot masters you should look for below; suffice to say you should aim for as many different ones as possible. As ideally you will have a large number of moot masters, one point of coordination is essential.

2.2.2 Who Can be a Practice Moot Master?

Dear learner, there are absolutely no qualifications necessary to be a practice moot master. This means that not only do practice moot masters not need to be experts in a particular area of law, they need not know anything about the law at all! There is no reason why parents and friends should not hear practice moots. You will, of course, need expert moot masters as well, but having moot masters with different skills and backgrounds can be extremely useful.

The purpose of practice moots is twofold. The more often you actually say your submission aloud, the more comfortable you will become. Secondly, practice moots should expose you to the different twists and turns that you may experience in the actual moot. The moot master will be the source of these twists and turns.

a. Variety is key

Moot masters, along with your opponent's submission, are the principal and most unpredictable variable in a moot. Everything else about the moot is a constant. You know how long you will have to deliver your submission. You know the content of the problem. Because these aspects are completely predictable, they are very easy to incorporate into your preparation.

Different moot masters will need to be handled in different ways, as you attempt to steer them towards asking the questions you wish them to ask. You learn this skill by

experiencing as many different moot masters as possible. Moot masters must be handled in different ways because they have different personalities. People will naturally react differently to particular submissions; some may not immediately grasp the argument, while others understand it instantly. Some moot masters will have prepared, and others will not have even read the first page of the materials. There will be those who are genuinely interested in your innovative approach, and others too beset by preconceived ideas to listen to an argument they had not previously considered. This is why you should engage as many different practice moot masters as possible.

However, do not worry if you only have a limited number of practice moot masters to call upon. Ask them to adopt different persons each time they moot. For example, sometimes they could be very interventionist, and on other occasions almost mute. During some moots, they should concentrate on the substantive content of your submissions, and in other moots simply critique your presentation.

b. Using experienced moot masters

Although anyone can be a moot master, there are moot masters with particular experience that will be most helpful to you: previous participants of the competition; students with experience of other moots; your lecturers; and eminent and professionally intimidating legal practitioners.

Previous participants, the alumni of the competition, are particularly valuable as moot masters because they have direct experience of your competition environment. They will be able to replicate the conduct of real competition moot masters. They are also likely to have been through a similar training process to the one you are currently embarking upon. Although the currency of their knowledge of the subject matter may wane over time, their critique of your substantive arguments will be invaluable.

Similarly, they will be able to provide advice on your presentation skills. Students who have experience of other moots and your lecturers will be able to provide you with criticism of the logical coherence of your substantive arguments and general advice on presentation. Professionally intimidating legal practitioners can add an extra dimension to your practice moot preparation. Typically, they will be renowned experts in the relevant field of law, such as judges or eminent academics. Many of these people will be more than happy to hear a practice moot for you. But, it is likely to be only one moot, so you should schedule the moot when it will be of most benefit.

To ensure that you are not wasting their time or yours, it is best to schedule moots with these moot masters in the final stages of your preparation. Moot masters of this kind will be most like the real moot masters that you will encounter at the competition, as they will generally come from the same echelon of the legal profession. In the competition itself, you will be appearing before very senior judges and other prominent and leading members of the international legal community. As a consequence, these particular practice moots can be very valuable. Because of the eminence of the moot master, these practice moots take on a greater importance. This means you will experience more tension, more apprehension and a heightened state of nervousness – all the things you

will need to deal with in the actual competition. It is often in these moots that you will begin to learn how to deal with any fear you may have.

2.2.3 Making the Most of Practice Moots

Simply, doing a practice moot will benefit any participant. It is how you utilize the practice moot experience that will distinguish your preparation from others in the competition. Make a list of all the questions you have been asked during your practice moots. As a team, compile a group list and then discuss the best answer to each question. Remember that appropriate answers may vary depending on the context in which the question is asked, but the basis of the answer will probably always be the same. In this way, the team as a whole will get the benefit of collective knowledge and experience. Everyone in your team should be regularly reading this list and using it to improve their individual submissions.

a. Record the moot

If you have the resources available, it is a good idea to record your practice moots. A video recording is a very useful tool for a post moot analysis. If everyone is aware the moot is being recorded, it will curb their inclination to interrupt the moot to offer comment or criticism. Afterwards, you can simply review the videotape, pause it appropriately and discuss how a particular question was answered. When you are preparing to videotape a moot, you should ideally position the camera in such a way that you can see all advocates at once. This will allow people to review their body language when they are not actively participating. It can be surprising how often advocates are certain that they were paying attention throughout the moot, but the video footage suggests otherwise.

b. Inter-university practice moots

In some competitions, there may be an opportunity to conduct practice moots with other university teams before the competition itself. Sometimes referred to as “pre-moots”, these are often amongst the most valuable practice moots your team will do if they are conducted in the right manner.

A pre-moot provides an opportunity for you to test yourself against an unfamiliar opposition. Mooting against your own teammates occurs in a false environment, because you are already intimately acquainted not only with their arguments but with how they will run those arguments. As a consequence, your response, even if you are genuinely responding, will always have an element of premeditation.

In a pre-moot, you will be familiar with most of the arguments that will be raised by your opposition, but how they are actually presented will be unpredictable. Thus, it is an opportunity to really work on your ability to respond. Pre-moots inevitably raise concerns that you will be revealing your arguments to your opposition in advance of the competition itself. While this is an understandable concern, it is not one of any real consequence. You should never conduct a pre-moot against a team you know with certainty you will be facing in the competition.

However, you may well find that you do meet some of your pre-moot partners in the finals. This may at first seem a little unfortunate but may not be avoidable. There are two principal reasons why it should not be of great concern. First, it is very unlikely another team will be able to implement, overnight, an argument you have been developing for months. Second, if you have followed the advice given earlier in this book, you will already have an argument that overcomes that point.

Despite this advice, participants will undoubtedly still struggle with the decision about whether or not to run all their arguments. The best place to seek an answer to that question is with the moot master. If the moot master is someone whom you know will be subsequently judging in the actual competition, it is probably a sound idea to run any of your more controversial arguments. Gauge the response: was it summarily dismissed or did it create interest? Forget that the other team is listening and make the most of your opportunity. If you happen to benefit another team, be proud that your argument was considered worthy. Make no mistake, it will be painful if you see a team you met in a pre-moot using your arguments in a final, but the benefits of these moots do generally outweigh that risk.

2.3 SUBMISSION/PRESENTATION OF A MOOT CASE

Dear learner, in the previous sections we have seen the basic steps of developing and practicing an argument in an appellate moot court. The development of arguments, on the other hand, culminates in the presentation or submission of these arguments before the moot judge/s.

Submission or presentation simply means the way of handing over of the well prepared and developed written arguments to the judge and presentation of these arguments orally before the judge. The written arguments are commonly referred to as memorials and the oral ones are called oral submissions. Dear learner, let us stop here for a while and let us take up a detailed discussion of the written submission and oral submission in separate subsequent chapters.

Review Exercises

1. What are the basic steps in developing a moot argument? Discuss each step thoroughly!
2. How do you practice moots? And, how useful is it to do so?
3. What does presentation/submission mean? Discuss in detail.
4. What is the similarity and difference between “identifying who you are representing” and “to imagine you represent the other side”? What does each mean?
5. Mention two ways of getting the utmost benefit from the practice of moots.

CHAPTER THREE: WRITTEN SUBMISSION⁵

Introduction

Dear learner, in the last chapter, we have tried to discuss about the various steps of structuring a moot argument and the advantage of practicing moots. We have also mentioned that there are two types of submissions, namely, written submission and oral submission. This chapter will turn to a written submission.

Written submission is one of the few components of a moots especially moot court competitions. Most competitions require each team to submit a written document, although the form of documentation required can vary significantly. In some competitions, you are asked to provide a lengthy memorandum of submissions, sometimes called a memorial. On other occasions, you need only to submit a short outline of submissions, or you might be asked to prepare a case file.

Although each of these different styles of written document serves a different function, they all have a similar purpose, that is, they force you to identify and deal with the relevant issues. Competitions that require documents of this kind will usually expect you to submit two documents, one for each side. The process of preparing the written documents doubles as an important step in the preparation of your oral presentations, hence it is worth preparing a written submission even where it is not required by the rules of the competition.

In some competitions, the written memorandum or memorial will form part of a document competition. Producing the document is usually the first task. Inevitably, putting it together will involve considerable frustration, and immense pride once the task is completed. Just as your team must decide on your commitment to the moot in terms of time and level of preparation, you must also decide how much effort you wish to put into the written documents. Obviously, the more effort you put in, the better the documents you produce will be.

Documents from past years will usually be available on the competition website, and it is a sensible idea to obtain copies so that you can judge the standard. The standard will be very high, but you need not feel disheartened. Remember that this is a team activity and collectively your team will have the necessary skills. Let us immediately move on to the discussion of the advices relating to the preparation of a written argument which could be applied to all forms of moots with some contextualization!

Objectives

Upon careful reading of the present chapter, the moot student should be able to:

- identify and list down the major tips of writing a memorial;
- show the application of the advices of writing a memorial to your colleagues;

⁵ This chapter is mainly adapted from the source: Christopher Kee. (2006). *The Art of Argument: A Guide to Mooting*

-
- identify and explain the major components of a good memorial writing style;
 - distinguish the various rule of memorial writing and apply them in practice;
 - define a “second document” and elaborate on the matters to be considered while dealing with the document;
 - define outline of written submission, and
 - explain the meaning of a case book, especially in the Ethiopian context.

3.1 THE TIPS AND TRICKS OF WRITING

Overview

Dear learner, the task of producing the written documents for the moot task can be highly rewarding. It can also be difficult and frustrating, but with some thought and preparation your team can sail through this immensely satisfying aspect of the competition. This section examines some of the tips and tricks associated with memorandum writing.

3.1.1 Knowing your purpose and your audience

The first thing you need to do is to identify your purpose. Remember that you are not writing a scholarly dissertation. Although there are many similarities between a memorandum and a dissertation, and your research may be equivalent to that done by Masters students, your purpose is very different. Research dissertations seek to contribute or further scholarship, whereas you are simply arguing a case. Rather than analyzing the law, you are applying the law. You are not being asked to discover a new legal doctrine, but to explain an existing one. Always reduce your task to its primary purpose.

Keeping this in mind will help you produce a much better document. If your purpose is not clear, and your document is beginning to resemble a dissertation, this will often be indicated by excessive referencing. Referencing is extremely important. However, it is possible to put too many references in a memorandum. Excessive referencing detracts from the document. It will not suggest that the weight of authority is on your side. It is more likely to be interpreted as “showing off” by those assessing the document.

The purpose of your written submission is to argue a fictional case before a panel of judges. These judges will be assessing only how well your document is written; they will not be determining whether your client wins or loses on the strength of your submission. In a moot competition, you do not need to win the case to win a prize. This point is particularly important, and we return to it later in the context of oral submissions.

Dear learner, you need to be pragmatic. Arguably, in a real case you are often under a duty to run every possible argument to advance your client’s cause – although this too must be tempered. There is no such duty in a moot competition. The ideal document, which everyone should strive to create, will be one that also wins the case. But, in a well written moot problem, it is virtually impossible to create an ideal document. Moot problems are deliberately written to ensure that both sides have an arguable case. Furthermore, the problem will usually confine the issues to be discussed. Work within the parameters of the problem and to the expectations of your audience. This is what the judges will be looking for when they assess your document.

It is sometimes suggested that moot participants should not waste their time on weak arguments. For the reasons noted in step 5 of “Building an argument” under Chapter two, the effective presentation of weak arguments can often be a key to success. However, the advice is not entirely without merit. Your audience will have particular expectations. The readers of your document will expect to see certain arguments advanced and authorities

cited. These are some of the prejudices any advocate faces when presenting a case. The safe path is not to disappoint your audience and to ensure you deal with the expected material. As you are likely to have a word or page limit, this may mean you are unable to cover all the arguments you have been developing in your document.

A good document will present the expected arguments, along with at least one or two unique arguments. These unique arguments are what will set your document apart. They must be developed carefully, and it is often easier to do this in a document rather than in an oral submission. Although ideally they should not need to, readers can flip backwards and forwards through your submission if necessary. This is not a luxury you have in an oral submission.

3.1.2. Setting up your document

Dear learner, in the case of moot court competition, there are competition rules governing the length and presentation of the written memorandum. For example, you may be required to have a maximum of 35 pages with minimum right and left margins of 2.5 cm. Make sure you read these rules very carefully. If the page margin is defined in the rules, set the correct margins in your document even before you start writing.

As technology progresses, this otherwise time-consuming task is made easier and easier. Most students will have access to powerful word-processing programs. Learning how to fully utilise these programs will be of great benefit to you in your immediate task – that is, composing the written document – but also when completing research assignments and as you head out into the workforce. This section covers some of the important tools in your word-processing program that you will need to know how to use in order to compose your written document.

3.1.3. Using styles

There are a number of functions in standard word-processing programs that you should learn before writing a single word. For example, you need to know how to “style” a document. This involves applying “style tags” to every paragraph and heading in your document.

The style you apply to a paragraph will determine its font type and size, the margins, the line spacing and many other formatting features. This function allows you to have a consistent look to paragraphs and headings, without needing to go through every line and manually change the font or check margins. You can use the basic styles set-up in your word-processing program for a standard document, or you can create your own style names and give them the attributes you wish them to have. Before beginning to compose your document, work out what styles you will need. Typically, you will need a standard paragraph style (probably numbered), and a different style for each level of heading in

your document. This is very important for compiling a table of contents. You may also need a style for long quotes that are set separately from the running text.

The easiest way to create a new style is by adapting an existing one. If you do this, be very careful not to change the “Normal” style in your program. “Normal” is the name given to the base style in Microsoft Word. Other programs will have a similarly named style that performs the same function. It is the root of all other styles and should not be altered.

3.1.4 Page numbering

Dear learner, a second function you should familiarize yourself with is page numbering. In some programs, it is simply a matter of selecting this option; in others you will need to insert a running foot. Both are straightforward processes. However, do you know how to change the page numbering style in the middle of the document? Or, can you start numbering on page 5 of the electronic document? It is likely that you will need to do both.

There may be page limits placed on your document. It is also likely that according to the rules certain pages need not be included in that limit, for example, the table of contents or reference list. If this is the case, those pages should be numbered in a different way. You may decide to number pages that are not included in the page limit using Roman numerals (i, ii, iii...). How this is done will vary from program to program, so you will need to investigate the process yourself. Typically, it will involve dividing the document into sections.

3.1.5 Cross-references

One of the most important and time-saving word-processing skills a Lawyer will ever learn is how to automatically insert cross-references within a document. Lawyers are frequently called upon to draw up a contract and then, as negotiations progress, amend that contract several times. This may involve adding or removing paragraphs, and consequently the clause numbers will change. Each time this happens, your document should be set to automatically amend any cross-references in other clauses. It is very poor risk management not to set up your document in this way, as it is easy for human editors to overlook the occasional cross-reference. While the consequences of cross-referencing mistakes in a moot document are certainly not as dire as in professional practice, it will detract from the overall impression of your document.

3.1.6 Table of contents

Most word-processing programs have the capacity to create an automatically generated table of contents. This is another important use of the application of styles within your

document. The automated table of contents function works very simply. It tells the computer to look for every paragraph styled as heading A, B and C, for example, and to list them along with their page number. The table of contents is generally the last thing you should create in your document.

3.1.7 Avoiding common problems

There are some potential pitfalls in word-processing that you need to be aware of. A document that has been set up on one computer may look completely different on another computer. This is usually because a font you have chosen for one or more of the styles in your document may not be loaded on the other computer. As a result, the computer selects a replacement font for any missing fonts. This will affect the appearance of the text and the pagination. This problem is relatively easy to correct. You can load the fonts you need on the other computer, or use the original computer to print your document or check pagination. It is best to select commonly used fonts, such as Times New Roman and Palatino, to avoid this problem.

If the problem is more complex, it may be harder to identify and correct. For example, your styles may be based on a particular style, the “Normal” style, for instance. You may have inadvertently and unknowingly set your style to automatically reflect any changes made to the “Normal” style. If the “Normal” style on computer 2 is different to that on computer 1, your document may look very different and may no longer comply with the rules. For example, it may now be 36 pages, rather than 35. This is a situation where team work is important. A good solution is to nominate one person to be the final writer on a designated computer.

A similar effect can occur when you cut and paste text from another document into your document. You may unintentionally import a new style into a document when you cut and paste. You can avoid this by pasting “Text only”, without any formatting. For example, in Microsoft Word, all the formatting features of a paragraph are contained in the hard return symbol “¶”. If you highlight the text you wish to copy and paste, but do NOT highlight the paragraph symbol, you will be able to paste the text into your document without the unwanted formatting.

If you do need to print your document from computers other than the one on which it was created, you can avoid printing problems by saving it in PDF format. This should ensure that it will print from any computer.

3.1.8 Referencing

Dear learner, have you produced research essays before in any course? If so, you will be aware of the importance of proper referencing. It is especially important in the context of an international moot competition. There is a real possibility that one of the commentaries you refer to in your document has been delivered by one of the judges who

is assessing your document. If you misquote, or worse plagiarize, the consequences will be dire.

There may be rules particular to your moot competition about the form of referencing to be used. For example, you may not be allowed to use footnotes. It is vital that you know the referencing requirements before you begin your research. Using a referencing style involves not only knowing the correct form of citation, it also involves knowing how to compose your sentences in such a way that you can follow the referencing style correctly.

Those who commonly use footnotes or endnotes (often referred to as the Oxford style of referencing) may have some difficulty coming to terms with the Harvard system. If the referencing style is incorrectly applied, you could be referencing the application of a legal doctrine, rather than the legal doctrine itself. The consequence is that various authorities appear to be making a statement about the actual problem rather than about the law that applies to the problem.

3.1.9 Being organized

In the course of preparing your arguments, you are likely to read and consider more than 200 different articles or texts. It is impossible to remember the details of the relevant material from each of these texts. You need to write down the bibliographic details of any resource you read at the time you actually read the resource, not at the time you write the submission. Trying to pinpoint references for quotes in your document the night before it is due is not the best way to write a submission. Unless you take a proactive approach to referencing, you will need to devote considerable time once you have completed the rest of the document to correcting the referencing alone. No matter how well you prepare, you will always need to check the references in the final draft. This is an important task that should not be overlooked.

However, there is a very big difference between checking references and correcting incomplete and inadequately prepared references. Make sure that you take an organised approach from the very beginning.

References are such a significant element in your final document, it may be worthwhile nominating one person in your team to be responsible for collecting references from other team members and maintaining a collective bibliography.

3.1.10 Using bibliographic programs

Those of you who have had some experience with larger research projects may be familiar with bibliographic programs. These are programs specifically designed to help you manage your bibliographic references. They are essentially just databases. If you are unable to get access to one of the commercial products, it would be possible to achieve the same result from any standard database.

Databases operate by classifying information into specific fields or example, for bibliographic references, the fields will include type of resource (book, journal article, internet, etc.), author's name, the title, and so on. By entering information in this way you are then able to determine how the information should be reproduced, and change it if needed. For example, you may need to present your references alphabetically listed by the name of the author, or you may wish to list them in date order.

Having this option is important because different referencing styles call for different methods of listing the information. The professional programs will have hundreds of different referencing options available for you to choose from. Select the one that complies with the rules of your competition and much of the hard work disappears, as your program will automatically set out your references in the required style.

3.1.11 Using a proforma reference sheet

Irrespective of whether you are using a professional bibliographic program, a database you have created yourself, or just a list, it is very important that you give consideration to how you collect bibliographic information. Whoever is responsible for collating the references within the team will find it much easier to manage that information if it is presented in a standardized fashion.

The easiest way to achieve this is to develop a proforma reference sheet. This sheet will identify the required information, such as author, title, type of resource and year of publication. Every team member should complete a new sheet for each reference that they read. Although its primary function is for referencing purposes, with very minor amendments the reference sheet can be a valuable tool in other ways. For example, the person completing the sheet may be asked to rate the resource out of five, provide a summary or identify key words. This information will be very useful to other team members if you decide to rotate research areas.

Key words can be used by those writing the document to quickly identify resources that are relevant to the section they are currently working on. If you are keeping any kind of electronic record of these reference sheets, running a key word search will be very easy. Here is an example of a referencing sheet that you can copy or adapt to your team's needs.

Title:

(Article title / chapter title / case name)

Publication name:

(Journal title / book title)

Web address:

First author:

(First name / SURNAME)

Second author:

(First name / SURNAME)

Any other authors should be noted in bold in ‘General comments’ below

Date viewed:

Date (year) published:

Publisher:

ISSN / ISBN:

Citation: (Official journal citation / Case citations – all available in proper hierarchy)

Pages:

Rating (1 poor – 5 excellent):

Countries referred to:

Select appropriate key words: (Determine a list of key words relevant to your topic.)

Other: (key words not in list)

General comments: (This should include a brief summary of main arguments / points raised. Attach more paper if required.)

NAME:(It is important to know who completed the sheet.)

3.2 WRITING STYLE

Overview

Dear learner, have you learned before how far your way of writing in your exams affects your grades? If you write neatly, then you will get better marks, and the vice versa. Similarly, the documents produced by your team for a moot court competition need to be written in a clear, consistent, flowing style. This will assist readers of your document to follow the logic of your arguments and understand your case. Let us see some advices on how to write memorials properly.

3.2.1 Uniformity

We each have our own distinctive writing style. There may be simple phrases that we tend to repeat, and particular ways we construct a paragraph. It is very easy to recognize when different passages in one document have been written by different people. In order to achieve consistency and fluency in your team’s work, it is important that your document has a uniform style or “one voice”. There are several ways this can be achieved while still ensuring that each member of the team contributes.

The simplest method is to delegate writing to particular team members. This may be one or several people. If several people are chosen, then those people should write together. This means that as far as possible they should all be sitting in front of the same keyboard as the document is produced. Other team members will be responsible for bringing the research and arguments to be transformed into the written document. In this way, the writers are the scribes whose job is to translate the ideas of the whole group into one document.

Delegating the writing to a group of several people can lead to problems. Give some thought to the difficulties that may arise when several team members are acting as scribes and identify ways to avoid them.

Writing with one voice will not only improve your document but it is also a very important exercise in learning how to work together as a team. Those members of the team who do the research for the writers will sometimes face the difficult task of seeing their arguments written in different ways. If you are in this position, there may be times when you find your arguments so transformed that they are barely recognizable. How you respond to this situation will have a considerable effect on both the unity and smooth functioning of the whole team.

Whatever role you are in, you are handing over some of the responsibility for the outcome to others, which requires you to have faith in your team-mates. The writers must remember that they are being entrusted to prepare a group document, and should not let their own personal ideas overpower ideas from the rest of the team.

3.2.2. Presenting information to the team writers

The team needs to think about how the researchers should present information to the writers in order to minimize potential difficulties. The information can be presented orally or in writing.

Set rules about how written information should be presented. For example, you might want to list key or fundamental points that must be reflected in the document at the top of the page. Underneath these, you could provide an explanation of these points for the benefit of the writers. Unless they are confident that the explanation fits the voice of the document as a whole, the writers should resist the temptation to simply cut and paste these explanations into the document.

Quotes and references should also be clearly identified. Determining a standard approach that everyone understands will avoid pitfalls such as the writers omitting a key point. If the research is presented in a standardized way, with the key points clearly identified, then those points cannot be overlooked.

3.2.3 Structuring your document

Dear learner, one of the secrets of a good document, and for that matter an argument generally, is to ensure that it flows logically from point to point. It is not possible to simply sit down and write a flawless document – considerable planning is required. Just as you might follow a map in order to go somewhere new, you need to map out a framework for your document.

One way to do this is to put your ideas on a whiteboard or some other similar thing. An advantage of using a whiteboard is that it is very easy to change the structure of your ideas until you find the best approach. Another method is to use a large piece of paper, or put each of your ideas on an ordinary sheet of paper and spread them out over the floor or attach them to a board. It can be very helpful to use a digital camera during this process. Taking a photo of your framework is a simple way of recording your work.

Planning your approach is not unique to moot competitions. It is extremely important in other aspects of your studies, such as in examinations. A good examination tip is to spend a few moments drawing a quick map of your anticipated answer before you begin. Not only does this help you stay focused when you are writing the answer, but also serves to guide the examiner through your answer. If you run out of time in an exam, the concept map you have drawn should demonstrate that you know how to answer the question, and often examiners will take that into account when awarding marks.

3.2.4 Headings and paragraphs

Dear learner, we are providing various tips of writing a good memorial. Are you following the discussion? Well, within your document you will need to guide the reader through your submissions. This is commonly done through the use of headings, where each distinct section of your material is presented with its own heading. Some competitions outline specific headings that must be used, whereas others allow you to determine your own. Ineffective headings will detract from the document as a whole, and obscure the underlying structure of your argument. As a consequence, you need to take great care when composing your headings.

A heading must clearly express the theme of the paragraphs that follow. It should be from your client's perspective, and ideally it will be short and concise. Different level headings must be used in a consistent manner. You must not only ensure that headings of the same level are formatted in the same way, but that their relative significance and importance are consistent within your heading hierarchy.

Well-constructed paragraphs also play an important role. Paragraphs delineate issues for a reader. They also break up information into consumable parts. While there is no set length for a paragraph, it should not be particularly long. Each paragraph should contain a topic sentence. This is usually but not necessarily the first sentence. The topic sentence briefly introduces the point of the paragraph. There should only be one main point per paragraph. The middle sentences of a paragraph develop and provide evidence for the point being made. It is important that the final sentence is not simply a repeat of the topic sentence, as this will give your reader the feeling that the paragraph is going round in circles. The final sentence should reiterate the point by drawing on the evidence provided by the middle sentences.

3.2.5 Avoiding contradictory arguments

Dear learner, a well-structured document will take a reader step by step to the conclusion you want them to reach. Frequently, you will do this by presenting a series of alternative routes if the reader does not accept your first argument, then you have another argument to follow that supports your case.

A common trap is to present contradictory arguments rather than alternative ones. Contradictory arguments suggest that there may be a flaw in your case, whereas numerous alternative arguments will lead the reader to conclude that the outcome you are proposing is indeed the correct one. How your document is structured will often affect whether an argument appears to be contradictory or a positive alternative. This typically occurs where you have mutually exclusive arguments.

Mutually exclusive arguments are ones that cannot co-exist – that is, they are contradictory. In other words, if your reader accepts proposition A, they must by definition reject proposition B. Often situations like these will be immediately apparent, while in other situations the conflict may be initially obscured by the different levels of argument presented.

This can be demonstrated by reference to a relatively simple example. The example that follows relates to arbitration law, but the principles apply to any area of law and in any dispute forum. In this example, the parties involved have agreed to have their dispute resolved by arbitration. The arbitration is to take place in Australia. The law governing the contract was not expressly stated and is now in issue. The New Zealand based Respondent wants to argue that English law governs the contract. New Zealand's conflict of law rules point to the application of English law.

As Australia is the place of the arbitration, we must first look at Australian law. Australia has adopted the UNCITRAL Model Law. Article 28 of the UNCITRAL Model Law reads as follows:

Rules applicable to the substance of the dispute:

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

The Respondent believes it can make two submissions. It can argue that pursuant to the New Zealand conflict of law rules, English law will apply; or it can argue that there was an implied agreement between the parties that English law would apply. The order in which these two arguments are presented will affect whether they are contradictory or simply put in the alternative.

The Respondent presented the arguments as follows:

The Respondent submits that this Tribunal should apply the conflict of laws rules of New Zealand under Article 28(2) of the UNCITRAL Model Law to find that English law governs this contract. It makes this submission because . . . Alternatively, this Tribunal should find that the parties have chosen the laws of England to apply under Article 28(1) of the UNCITRAL Model Law.

The arguments may have been placed in this order because the Respondent believed the implied argument was the weaker one. There is a presumption that you should lead with your best argument, but despite the fact that both arguments arrive at the same conclusion, presented in this fashion they are contradictory. The reason the arguments are contradictory when presented this way is because Article 28 UNCITRAL Model Law requires the Tribunal to first look to the parties' agreement, and then to apply conflict of laws rules only if the parties have not made any agreement.

By first arguing that the Tribunal should apply the conflict of laws rules of New Zealand, the Respondent is in essence accepting that the parties have not made a choice of law. The Respondent contradicts itself by then arguing the parties chose the laws of England to apply. If, however, the order of the submissions were reversed the Respondent would have two logically coherent alternative arguments. The Respondent should first ask the Tribunal to find an implied agreement. It is only in the event that the Tribunal does not accept the submission that it needs to even consider the second. We can call these "cascading alternatives".

3.3 BASIC RULES OF WRITING

Overview

Dear learner, knowing the basic rules of writing is of high importance when speaking about written submissions in a moot court. Knowing and applying the basic rules of writing may help especially when you are taking part in moot courts as a non-native speaker of English language. In fact, it is evident that the non native speakers of the English language take an advantage by carefully applying the rules. Upon returning home from international mooting competitions, some native English-speaking participants have remarked with some embarrassment on the fact that the non-native speakers spoke better English than they did.

The same is true of the memoranda. For example, a quick review of the document awards for a moot competition called VisMoot reveals that only twice in the history of the competition has a native English-speaking team won first prize for a document. All other first-prize winners have been nonnative speakers. No doubt there are many reasons for this, however complacency is probably one of the biggest factors. People from any country can become lazy when conversing in their native tongue, and are more likely to lapse into slang and colloquial expressions such as using the word "g'day" for "good day". All said, there are a number of rules that are particularly pertinent to written advocacy. Let us take up some of these one by one.

3.3.1 Sentence construction

Writing that is intended to be argumentative and assertive should be written in the “active voice.” Sentences should follow the sequence: subject, verb, object. If you place the subject at the beginning of the sentence, you give it emphasis. You should then place the verb directly after the subject without any intervening words if possible. The object should then closely follow the verb. Sentences written in the active voice tend to be short and direct, which is perfect for your task. E.g. the Respondent breached its duty.

There may be occasions where you deliberately want to understate something, for example, when presenting a weak argument. In these situations, it might be appropriate for you to use the “passive voice.” The passive voice reverses the position of the subject and object in the sentence: object, verb, subject. These sentences tend to be longer than active voice sentences. E.g. the duty was breached by the Respondent.

Whether you are using the active or passive voice, it is important to construct your sentences so that the order of the words does not create ambiguity. You need to take particular care with the placement of any modifiers in the sentence. A modifier is a word or phrase that gives extra information about another word or phrase. Consider the following example.

The food aid was ruined on the date it was received by the Parthian refugee agency. In this sentence, the modifier is the phrase “by the Parthian refugee agency.” It is not clear whether the agency is doing the receiving, or the ruining, or both, therefore, the sentence should be recast to remove the ambiguity. In complex sentences where there are multiple subjects and verbs, it is wise to present verbs in the same form to avoid confusion. For example, in the following sentence, inserting the second ‘is’ helps the reader to understand the sentence easily. The Respondent is responsible for the maintenance of the satellite and is liable for the damage it caused.

3.3.2 Using words appropriately

Dear learner, another advice is related to the use of words. Your ability to select the appropriate words is naturally limited to the extent of your vocabulary, or in the case of your team your collective vocabulary. Native speakers of a language often have a natural advantage in this regard as they tend to have a larger vocabulary than non-native speakers of a language.

However, both native and non-native English speakers can fall into the trap of mismatching words. A common mistake is using an inappropriate verb with a noun. A mismatch of this sort leads to subjects doing things they cannot actually do. For example, a court may “find” or “rule” or “determine”, but it cannot “submit”. The following example is incorrect:

In the shipping case the Poseidon, the Court submitted . . .

The correct form would be:

In the shipping case *The Poseidon*, the Court found . . .

The subject and verb in a sentence must always agree in number. This means that a singular subject needs a singular verb, and similarly a plural subject requires a plural verb. It can be easy to spot cases where subjects and verbs disagree in number, but it becomes more difficult in sentences where a phrase has been inserted between the subject and verb, particularly if the phrase includes a noun that differs in number from the subject of the sentence. The rule is that the verb must agree with the subject, not with any intervening noun. The Applicant's submission, although purportedly supported by all those authorities, is misconceived.

If your sentence has two nouns joined by the word "and", you should use a plural verb. You would use a singular verb if the sentence contained two singular nouns that are joined by "or". If there are both singular and plural nouns joined by "or", the verb should agree with the nearest noun.

The following constructions are correct.

The Applicant and the Respondent are responsible.

The Applicant or the Respondent is responsible.

The Applicant or the Respondents are responsible.

The Applicants or the Respondent is responsible.

3.3.3 Avoid gender-specific language

As a consequence of now antiquated social norms, the use of masculine pronouns has been developed as the default form of expression when giving general examples. This has been rightly criticized, and many official legal documents such as statutes must be written in

gender-neutral language. Indeed, it is also a rule of most moot competitions. A common difficulty arises when you need to use a singular pronoun in a general example. For example, "Each member of counsel must present his (or her) documents." The pronouns "his" and "her" are obviously gender specific and should be avoided unless you are referring to a particular person. In some cases, it is possible to use "its" although this can sometimes seem clumsy. A way of circumventing this problem is by using a plural pronoun such as "their", which is gender neutral. Technically, this is grammatically incorrect if the noun referred to by the pronoun is singular, however, it does seem to be used with increasing regularity.

If possible, it is better to rephrase the sentence to avoid the problem altogether. You can either recast the sentence so that a pronoun is not needed, or you make both the original noun and pronoun plural. Thus, the example above would become: "Members of counsel must present their documents."

3.3.4 Keep the tense consistent

The tense used in a sentence provides a timeframe for the action that is being described. There are twelve main tenses in the English language. If you write in the active voice, as described above, you are very unlikely to encounter more than a few different tenses. The “simple” tenses, as they are referred to, are the most commonly used and easiest to understand. The simple tenses are past, present and future.

The Applicant submitted . . . (past tense)

The Applicant submits . . . (present tense)

The Applicant will submit . . . (future tense)

Two other common tenses are the “past perfect” and “present perfect”. You use the past perfect tense to refer to something that happened before the action you are now describing. E.g. The Applicant had submitted . . . (past perfect tense)

The present perfect tense is used when an action is continuing, that is, it began in the past but is ongoing, or where the action occurred at an indefinite time in the past. E.g. The Applicant has submitted . . . (present perfect tense).

As the above examples demonstrate, the “past” and “present perfect” tenses can be used to convey a similar meaning. The most important rule about tenses is not to change tense in the middle of a sentence. The tense you use should remain consistent throughout your document. The need for consistency applies to many different aspects of the preparation and presentation of your document.

3.3.5 Editing

Dear learner, editing is an invaluable part of the preparation of any document. It is inevitable that you will make errors while writing the first draft of your submission. When you consider the complexity of the writing process, this is not surprising. When you write, you are not simply thinking about the next word that is about to appear, you are thinking about the whole sentence. You are also thinking about the point you are making in the paragraph as a whole, so you are thinking about the sentences that are to come as well as those you have already written. You might have external distractions as well, such as the presence of other team members. With all of this going on, it is little wonder that sometimes the ideas you have in your head are not conveyed perfectly by the words you write on the page.

Editing allows you to compensate for these distractions. Once you have written your first draft, print it out and read it carefully and as objectively as you can. Although some people feel comfortable reading documents on a computer screen, there is a risk associated with editing in this way. Authors of documents have a tendency to read what they intended to write, not necessarily what has actually been written. There is likely to be a greater risk of doing this if you read the document on the screen.

When learning to study, students are often encouraged to have a dedicated space where all they do is study. We train ourselves that if we are sitting in that seat, we are there to work. A psychological association is formed. The same can occur when writing submissions, whether as part of a moot competition or for a real case. For this reason, when you begin the editing process, it is a good idea to find a place to work in that is different from where the document was written. This can help you clear your mind for the task ahead.

The aim when editing is to be as objective as possible. Try to read the document as if you were reading it for the first time. Apart from correcting spelling and grammatical errors, you should also ensure that each sentence serves a purpose and makes sense. One way of doing this is to read the document aloud. Sometimes, hearing your ideas out loud will prompt you to notice something you missed when reading it silently to yourself.

Be brutally honest with yourself. Sometimes thoughts do not translate well into sentences and paragraphs. The idea might be good, but the expression of it in your document may not be clear or logically set out. If you identify a passage like this, simply rewrite it so that it better conveys your idea. This is exactly why we go through the editing process. Regardless of how hard you try to be objective when editing your own work, it will be impossible for you to be totally objective. It is essential to have someone else also edit the document. You can ask another member of your team, and you can also ask a family member or a friend. Another member of your team who has not been involved in the writing process will have a greater level of objectivity, as well as an understanding of the substantive content of the document. This person can advise on matters of expression as well as the content.

Having a family member or friend look at your document, one who has no idea about what you are writing, can offer you different benefits. First, this person will be even more objective than your team-mates. Like you, other team members will have a tendency to read words that are not there because they are familiar with the material. Second, and perhaps most importantly, if this person can understand your argument, then you know you have expressed it clearly and logically. If your submission appeals to both those who know about the law and those who do not, then it is likely to do well.

3.4 THE SECOND DOCUMENT

Overview

Dear learner, in most competitions you are expected to submit written submissions for both sides, that is, the party bringing the claim and the party defending the claim. Some competitions, such as the Jessup Moot, require these documents to be submitted on the same date. Other competitions, such as the VisMoot, call for the second document at a later stage. In the latter situation, you will probably receive another competitor's document to which you must respond. From a participant's perspective, there is relatively little substantive difference between the two approaches. The method for developing and

constructing your arguments will work equally well. Time and task allocation will be the most significant practical considerations.

However, it is likely that this will be your first chance to see what other teams have been doing. Ideally, the document they have produced will be along the same lines as yours, but it is possible that it will be quite different. If it is, sit back and critically evaluate your own work in comparison the document you have received. Be as objective as you can about which document has adopted the better approach. If you decide the other document is better, do not spend time worrying about the document you have already completed. Most competitions expect that the arguments advanced by students in the oral stages of the competition will have developed significantly since the submission of the written documents. Learn from what you have received, and work hard on producing a really good second document. In this regard, please follow the following tips.

3.4.1 Preparing a genuine response

It is important to remember that you must provide a response to your opponent's submission. Your preparation may lead you to the false presumption that you can write the responding document without even looking at the submissions of your opponent. This is simply not true and would be tactically very unwise.

Read and consider your opponent's arguments carefully. They may be subtly different from your own. Demonstrate to the reader that you have done this by referring specifically to passages in your opponent's document. Examine the way they have interpreted authorities. Can you challenge these interpretations? Take great care to address all the specific submissions raised.

3.4.2 Responding to a 'weak' memorandum

Dear learner, there are three sorts of documents you are likely to receive. The first is a weak document. The second is one that you believe is roughly on par with the document you submitted. The third is a document that you believe is even stronger than yours.

Do you think that it is advantageous to respond to a weak memorandum? You might instinctively think that it is advantageous to receive a weak document. You would be wrong! Do not misunderstand the nature of the competition. A responding document will not win a prize simply because it is better than the first document. Just like the first document, it is being judged principally on content. The second document has the added complexity of needing to respond to the first document, and naturally this plays a very important role in a document's ultimate success or failure. However, it is rarely, if ever, a determining factor.

It follows then that the best type of document to receive is a really strong one. A strong document is more likely to challenge you to produce a strong reply. If the arguments it

raises are new to you, you will now be aware of them and will be forced to respond. Responding will be easier, as the points will be presented in a logical way, which in turn will allow you to respond in a similar way. Documents that are of a similar standard are generally more comforting than helpful. Replying to a document of this kind is probably the least intensive, and requires less work than responding to strong or weak documents.

Responding to a weak document is the most difficult. A weak document is generally one that has very little substance, or the argument is very hard to understand. This can be due to language difficulties or just simply poor construction. Whatever the cause of the weakness in the document, you now face problems. In the first situation, do you respond to issues that are not there but you believe should be? In the second situation, how do you respond tactfully? Let us now take up these issues immediately.

3.4.3 Do you respond to issues that your opponent missed?

The competition rules and other information provided by the competition organizers will generally provide guidance on this issue. In the absence of such advice, it is best to assume that you should respond to issues that your opponent has missed. The challenge is to tactfully yet clearly distinguish where you respond to the actual arguments raised by your opponent from your response to the arguments you believe they should have raised.

It is important that you do not lose your focus. Always act positively in strengthening your case. Attempt to discredit your opponent's case, never your opponent personally. One way to do this is to address concerns that you believe your reader may have. For example, you might say, "This Honourable Court may be concerned that the letter of 12May 2001 was not a valid notice of avoidance."

This approach can be very convincing because it demonstrates that you have thought very carefully about your case. It shows that you have identified areas that might be perceived as weaknesses and have addressed them. However, most importantly, you are making your point with a measured degree of subtlety. There is no attempt to embarrass your opponent; instead you are buttressing your client's position.

3.4.4 How do you respond tactfully?

Dear learner, do not be distracted by any weakness you might perceive in counsel for the other side. Always, treat them with the highest respect. As the saying goes, play the ball and not the person. If you play the person, it will not advance your document in any way and is very likely to be considered a violation of the spirit of the competition, potentially resulting in penalties.

The key is to focus on presenting a positive case on behalf of your client. Adopting this approach also guards against complacency. Although you write your response believing that it is the best effort your opponent could muster, you should immediately adopt the

opposite opinion as soon as the document is submitted.

Competitions that have a two-stage document program generally make the documents a precondition of participation. In other words, if you fail to submit the first document, you are out of the competition. Some teams will face difficult timing issues, and may have very little time to submit the first document. In these cases, rather than drop out of the competition, teams will not concern themselves with the first document competition and simply submit whatever they have at the due date. As a consequence, you should draw no conclusions about a team's ability to perform in the oral stages of the competition from the quality of their document. It is commonplace that you will face the team you are responding to in the oral stages. Do not be lulled into a false sense of security or make assumptions about the quality of your opponents' advocacy.

3.5 THE OUTLINE OF SUBMISSIONS

Dear learner, this section is intended to include all documents that summarize the submissions. Depending on the competition, it may be referred to as an "outline of submissions", a "summary of argument" or even just "submissions." Although there are likely to be subtle differences between them regarding presentation, they are all relatively short documents.

In contrast to memorials and memoranda, referred to above, an outline of submissions is typically only a few pages long. The underlying purpose of the document, to provide a structure and explanation of your case, remains the same, but the level of detail is different.

An outline of submissions needs to identify all the authorities on which you intend to rely. You would usually state the proposition you intend to make and then simply list the cases in support. As a consequence, there is generally only a couple of sentences per paragraph.

Many of the strategies for writing a memorandum or memorial apply equally to writing an outline of submissions. In particular, you should implement the strategies discussed in the section entitled "Structuring your document."

As in a memorial or memorandum, you must ensure that your alternative arguments are genuine alternatives. You should write in the active voice. You should edit your outline of submissions. These are all very important steps in the process. Even though you may not be entering a document competition, the moot masters or judges will read your written work. Indeed, they are likely to see your outline of submissions quite some time before they see you, which means that your outline of submissions will create the first impression. Make sure their first impression is a good one.

3.6 THE CASEBOOK

Dear learner, what do you think of a casebook? The casebook, sometimes referred to as an “appeal book”, “case file” or “trial notebook”, is a mini reference library. Every authority, whether it be a case, or a commentary, that you intend to refer to during your submission should be reproduced in the casebook.

In a real case, the parties are often directed to jointly agree on and prepare the contents of the casebook. This cooperation is unlikely to occur in a moot competition, purely because of the time constraints involved.

International moot competitions do not commonly require that casebooks to be compiled and submitted; however, having one can be a considerable advantage. Frequently, you will want to cite a particular passage from a judgment or commentary. If you are in a position to quote that passage for the moot master, it will demonstrate your level of preparedness. It is particularly impressive when you are able to quote an authority in response to an argument raised by your opponent, especially, if you can demonstrate that your opponent is misconstruing the authority.

How the casebook is composed requires thought. It must be functional. If it takes you longer than three seconds to find a particular document in your casebook, it is not functional. There must be a logical and immediately apparent system to the ordering of your authorities. It must be immediately apparent because others may also be using the casebook. If the competition specifically requires a casebook, you should be prepared to provide one to both the moot masters and your opponents. Always, have a couple of copies of your casebook to hand in case you are asked to provide them, but unless asked you do not need to volunteer a copy.

There are a number of logical sequences that you might consider. You may collate the authorities alphabetically. Although this is logical, it is not ideal. There are too many variables. For example, if you are including a commentary, should it be listed under the title or the author’s name? A better approach is to order the references in the sequence you intend to refer to them. Separate each reference with a divider and tab, then number each tab. This is a very straightforward and effective method.

However, it is not enough though to set the order once and then just blindly follow it thereafter. You need to develop an awareness of where all your references are in the casebook. You need to know which decision of the International Court of Justice is under tab number 3, for example. Without this knowledge, you may get into difficulty if the moot masters take you away from your intended structure. The way to learn these skills is discussed in the section headed “Using Authorities” in the chapter below.

Dear learner, do you think that relying on a case book is important for Ethiopian national moot court competitions? Obviously, the Ethiopian legal system does not count on cases or court decisions as binding sources of authority with one exception which we mentioned before. Therefore, it is not really meaningful to prepare a case book for

national moot court competitions in Ethiopia as the moot court system can not destroy the larger legal system. However, it is very important here to emphasize that case book may not be altogether discarded. It can well be applied for international Moot Court Competitions such as the All African Human Rights Moot Court Competition and the Philip c. Jessup International Law Moot Court competition in which our students participate. Moreover, a similar material to a case book can, in the opinion of writers of this material, be prepared regarding the statutory authorities (legislations) and the exceptional cases where precedent is permitted, i.e. in the case of decisions of the Cassation Division of the Federal Supreme Court.

Review Exercises

1. Why is responding to a weak memorial of the opponent not always good?
2. Should you respond to issues that your opponent missed? Why? Or Why not?
3. What is an outline of submission? And, how is it different from other written submissions?
4. Is case book relevant for moot court competitions at national level? Why?/ Why not? Argue convincingly.
5. What is a proforma reference sheet? Why is it useful?
6. What is a memorial writing style? Mention two main elements of a writing style and elaborate them.
7. Mention any two rules of writing a memorial and explain each briefly.
8. What is a second document? Is it required in all moot court competitions?

CHAPTER FOUR: ORAL SUBMISSION/PRESENTATION⁶

Introduction

Dear learner, in the preceding chapter, we have seen the different rules and advices related to written submission. In the present chapter, we shall try to discuss about the rules of an oral submission.

While only some moots have a document competition, all moots have oral hearings. The style and rules of the competitions vary greatly. For example, in most moots you stand to make your submissions, but in an arbitration moot, you usually make your presentation sitting down. It is very important that you have researched the rules governing how your moot is to be conducted. You need to feel comfortable in the moot environment. The less stressed you feel, the better your performance will be. Familiarizing yourself with the process, thereby reducing the possibility of surprises, is an important step in reducing stress.

As you read this chapter on producing oral submissions, consider how many of the techniques discussed can be traced back to one fundamental task – thinking about thinking. How often do you think about how you actually think through a problem and understand concepts and arguments? For example, do you think in pictures or in words? Some people find understanding a concept much easier if they can see the concept represented a diagram. Others tend to think in words. Everyone is unique although the differences may only be a matter of degree.

When you by an argument, you need to recognize that your audience may have different ways of understanding the presentation of your argument. No one in your audience will think in exactly the same way as you. As a consequence, your carefully constructed plan that makes perfect sense to you may not make sense to someone else.

Whatever the context in which the communication of ideas is taking place –whether you are presenting a submission in a moot court, delivering a speech or making a point in a tutorial – you need to make sure that your points will be effectively and efficiently understood by your audience. The responsibility for this is born both by you and your audience, and will depend on the occasion and the nature of the communication. If you are presenting to a large group, such as a class, then the class members have to individually assimilate the information in a manner that is most effective and efficient for them.

However, you as the presenter should arm them with the ability to do this by briefly explaining the basis of your thinking on the topic. When you are acting as an advocate in the smaller environment of a moot competition or courtroom, you must bear more of the responsibility and adapt to the needs of the audience.

⁶ This chapter is mainly adapted from the source: Christopher Kee. (2006)The Art of Argument: A Guide to Mooting

Objectives

after carefully going through this chapter, you should be able to:

- elaborate the structure of an oral submission;
- identify the major rules of an oral submission and apply them in a moot court to which you take part such as for this course;
- analyze some ways of handling questions from the moot judges;
- indicate some good ways of responding to an opponent's oral presentation; and
- point out some rules to be followed while presenting an oral submission.

4.1 STRUCTURING AN ORAL SUBMISSION

Overview

Dear learner, what do you think of structure of an oral submission? The ideal oral submission is one in which you are always in complete control. You take your moot masters on a step-by-step journey to the conclusion you want them to reach. You control how the issues are framed. You control what and when questions are asked. Sound impossible? It is difficult and a challenge, but it is by no means impossible. The keys to success are preparation and practice. It certainly helps if you have a charismatic presence, but good preparation will always beat charisma alone. Please follow the following steps or tips.

4.1.1 Making a start

Dear learner, do you remember what we said in relation to the section entitled “Building an argument”? If not, please once go back and have a brief look at it. If you have built an argument in the context mentioned there, you will already have done substantial preparation. That is to say you will have already done the work necessary to ensure you are in command of the subject matter of the moot. This section discusses how to put all that work into a convincing oral submission.

The first step is to be aware of the environment in which you are making your submission. The second step is to identify your aim and purpose, which will help you determine the overall structure of your submission. The principles that apply to preparing an oral submission for a moot competition will also apply to preparation for a real court or arbitration hearing.

Find out how much time has been allocated for you to make your presentation. While fixed-time presentations are most commonly found in moots, they are certainly not uncommon in arbitrations, and are becoming increasingly seen in courts. Be aware of any time limits and ensure that you work within them. Finally, remember that it is not necessary to win the case to win the moot.

4.1.2 Dealing with the expectations of moot judges⁷

A moot problem is a limited dispute with expectations. It is a limited dispute partly to ensure that participants focus on a particular area of law or issue, and partly to ensure that everyone is ultimately arguing the same point. In those competitions where you do not have any contact with other competitors until the oral hearings, it is particularly important that everyone is dealing with the same issues. Everyone who reads the moot problem

⁷ The terms moot judge and master are used interchangeably in this chapter, but, they mean the same.

should be aware of the boundaries within which competitors are expected to argue, and this includes your moot masters or judges.

The area of law at the centre of the moot problem arouses expectations in the minds of those who will be judging you in the competition. These expectations were referred to earlier as prejudices or bias on the part of the moot masters because they have preconceived ideas about the arguments that should be run. Moot masters are more likely to think that there is something wrong with your submission if the arguments they expect to hear are not covered. This is particularly true of those competitions that direct you to particular cases and resources in the official documentation. Do not let this prevent you from coming up with innovative arguments. On the contrary, simply be aware of the hurdles you face – any prejudice can be overcome.

You need to know who the moot masters are and bear this in mind when preparing your submission. This, too, will vary significantly from competition to competition. The moot masters may be eminent judges, experienced practitioners in the relevant field, legal academics, or coaches of other teams.

If you are appearing before a panel, you may encounter masters from a range of legal traditions. Your challenge is to develop a submission that will appeal and impress every type of moot master, although of course you can only predict what these expectations might be. We will return to this topic in the context of practice moots.

4.1.3 Creating a persuasive case

a. Express your case in the simplest possible terms

Although the arguments and points of law upon which you want to rely may be quite complex, it is important that you express them as simply as possible. The simple case will appeal to the majority of people. To begin the simple case, start with a short and concise statement of the crux of your submission. Here is an example. The Appellant has suffered loss because of the Respondent's wrongful avoidance of the contract. This is a strong opening that leaves the audience in no doubt about the direction of your submissions.

b. Use 'signposting'

You should then break down the assertion into its constituent parts. On behalf of the Appellant, I will be addressing the wrongful avoidance of the contract, and my co-counsel will address the entitlement to damages. The Appellant's submissions on wrongful avoidance are made in three parts. One, there has not been a fundamental breach by the Appellant that would allow avoidance. Two, even if the breach was fundamental, the Appellant had validly exercised its right to cure thereby preventing avoidance. Three, in any event the Respondent has failed to give the obligatory notice. Each of these arguments is made in the alternative. This Honourable Court need only

accept one of these submissions to find that the Respondent wrongfully avoided the contract.

This paragraph demonstrates the use of several techniques that should be utilised throughout the entire submission. First, each separate part the advocate intends to address is clearly identified and listed. The numerical references are important. Numbers, particularly small numbers, are understood by everyone. By associating each aspect of the submission with a number, the advocate makes it easier for the Court to follow the submission. It is a technique that is often referred to as “signposting.” Signposting is very important in an oral presentation. In essence, signposting is simply providing an outline of your arguments.

This technique has a number of advantages. First, a written submission, a reader can look back through earlier pages if necessary. However, during an oral submission, your audience will need to rely on their memory (or note-taking ability) to recall what was said in the earlier parts of your submission. As a consequence, you want your audience to be thinking forwards not backwards. Describing where you intend to take your audience naturally shifts their attention forwards towards that destination.

Second, by giving your audience the broad structure of your submission at the beginning, you will make it much easier for them to follow the progression of your arguments. You enable your audience to immediately satisfy themselves that there is a prima facie logic to your argument. Their focus then shifts from your overall argument to the detail of your argument. They will now simply be considering whether each successive point follows.

Finally, and this follows on from the second point, you take the guesswork out of your submission, leaving your audience free to concentrate on what you are saying. You are in control of how the issue will progress. Your audience is not distracted by wondering which way your argument will go. The audience knows exactly what you are going to do and how you intend to do it.

c. Offer alternative arguments

The example above showed the technique of offering alternatives. This is an example of the “cascading alternatives.” They are genuinely alternative (not contradictory) arguments, and each successive argument need only be considered if the earlier ones are rejected. It is not necessary to explain their cascading nature at this stage of the presentation as it is often a useful segue between alternatives.

In any form of advocacy, your intention is to persuade your audience to reach a particular conclusion. One way of doing this is to make it easy for your audience to reach that conclusion. Presenting a variety of alternative arguments makes both your task and the audience’s task a lot easier. As the saying goes, all roads lead to Rome, and this is what you are telling your audience: it does not matter which path you take, you will end up at your conclusion.

d. Address alternative submissions

After outlining the three alternative submissions, the advocate then addresses each one. Beginning with the Applicant's first and primary submission, there has not been a fundamental breach. To establish fundamental breach, the Respondent must prove: one, that there was a breach; two, that the breach caused such detriment to the Respondent as to substantially deprive it of what it was entitled to expect. The Applicant will not be making any submissions on the issue of mere breach, rather it will be focusing on the lack of substantial detriment. It is important to note that the burden of proof lies with the Respondent. It is not up to the Applicant to convince the Court of either of the points; that responsibility lies with the Respondent. If the Respondent fails to satisfactorily prove to this Honourable Court either of these two elements, it naturally follows that there was not a fundamental breach and consequently wrongful avoidance. Turning to the issue of substantial detriment . . . This example demonstrates further techniques that can be very Compelling when you are responding to or defending a claim: setting the hurdles for the opposition, outlining where the opposition bears the burden of proof, and selecting your argument.

It stands to reason that if you are trying to make it easy for your audience to agree with you, you also want to make it hard for the audience to agree with your opponent. This can be done by singling out and emphasizing each element of your opponent's case.

It is very important that you show that these elements are not alternatives. Explain to the audience that for the opposition's case to succeed, they must prove every single element. By doing this, you are placing a number of hurdles in front of your opposition. You also have the tactical advantage of establishing the battleground. Some issues will naturally favour your client and they should be exploited.

Once you have set out as many elements as possible, you should emphasise where the other side bears the burden of proof. This is particularly useful because it defines both your task and that of your opponent. If your opponent has the burden of proof, then they must satisfy the moot masters to the requisite standard (for example, on the balance of probabilities, or beyond reasonable doubt). Your submissions are not measured by the same standard. In a strict sense, even if you did not make any submissions, your opponent could fail to meet their burden. However, normally you would make submissions but these need only create sufficient doubt. Without overdoing it, you can gain an advantage by reminding your audience of this repeatedly throughout your submission.

Although you would normally make submissions where your opponent bears the burden of proof, it can be a good idea not to make submissions on extremely weak points. In the example above, the advocate preferred not to make submissions on whether or not there was a breach, instead choosing to focus on the presence or otherwise of substantial detriment.

Choosing not to make submissions on a point is not the same as admitting that point. The

other side will still bear the burden of proving it. This approach is often referred to as putting the other side to their proof, and is particularly useful where you have limited time. It allows you to spend more time concentrating on and explaining the arguments that are advantageous to your case, rather than wasting time on weak or futile ones. However, those points will still occupy time in your opponent's submissions. If your opponent has simply been put to their proof, they will still need to deal with the point sufficiently to convince the moot masters, whereas if a point is admitted they need not address it at all. Be aware that there will be occasions where it is appropriate to admit an issue, particularly in professional practice. In each case it will be a matter of judgment.

e. Address weaknesses in your case

Rarely, if ever, will an advocate have a case completely devoid of weaknesses. It is very unlikely to happen in a moot problem. If you believe your case is impenetrable, you are almost certainly missing something fundamental and run the risk of being taken by surprise in the actual moot.

f. Do not be afraid to deal with weaknesses in your case

Indeed, doing so is likely to advance your position. Acknowledging a difficulty with your argument can have a number of consequences. First, you can lessen the impact of your opponent's submission. By identifying and quietly discussing the issue, you can downplay the significance of any weakness.

Your Excellencies, this point is contentious. The Applicant acknowledges that first impressions may not be favourable to its case. There are authorities that do not support the interpretation submitted by the Applicant. The Respondent will undoubtedly refer this Honourable Court to many of those authorities and in particular the case of *Southmark v Deacon Hills* 222 VLR 45. But, the Applicant strongly urges the Court not to be drawn into an overly simplistic analogy with that case. Every case must be determined on its own merits. The circumstances of the present case are different – so different in fact as to warrant a different conclusion. The differences are . . .

g. Do not be strident and forceful; be demure and calm

The physical delivery of a submission of this kind is critical. Identify the authorities that appear to be against you. Acknowledge that there is a certain appeal to the opposing argument, but dismiss it by implication. In the above example, the analogy is described as "overly simplistic". The demure and calm presentation will suggest a considered approach. The audience will appreciate that you have recognized and investigated the point, and are not overly concerned by it. In contrast, a strident and forceful submission will suggest that you are defensive about the point. Displaying defensiveness will create the impression that you are worried, and if you are worried your moot masters will be too.

4.1.4 Handling questions

Although the prospect of dealing with questions may seem daunting, developing an ability to handle questions properly will distinguish you from other competitors in the moot. Well-answered questions can win both moots and real cases. Dialogue with your moot masters will allow you to identify the issues that are troubling them, and then to specifically address their concerns.

Preparing to answer questions is an integral part of structuring your oral argument. How can you predict the questions you are going to be asked? With a well-structured oral submission you will go beyond merely predicting questions to being in control of what is asked and when it is asked. Your ability to do this will be a product of your experience in many practice moots.

a. Preparing for questions

When you first set about preparing your submission, you will probably have little or no idea about the questions you are likely to be asked. During a practice moot, you will have an opportunity to test the effectiveness of your oral submission. Keep the time limits in mind, but do not worry if you exceed them during early stages of preparation. It is far better to run arguments and later remove them, than to never try them at all.

Every practice moot you do will tell you a little more about your submission. Take note of every question you are asked during a practice moot and subsequently analyse each question. Why was it asked? What was its purpose? How did you answer it? How should you have answered it?

This analysis will provide you with very important information about your oral submission – information that you should test by presenting your submission to as many different practice moot masters as you possibly can. It is this knowledge that will allow you to control the questions that are asked.

Over time you will find that some questions occur repeatedly at the same point in your submission. This suggests that whatever you are saying at that stage is prompting the question. Think about why it is being asked. Is it because the moot master has lost the flow of your argument? If so, then significant restructuring may be required. Is it because you have just contradicted an earlier submission? If so, then you may need to reorder your arguments. Is it because your argument is something new that intrigues the moot master? If so, then use the question as a springboard to show off your expertise in the subject matter. Do not underestimate the power of this knowledge.

b. Incorporating questions into your structure

If you develop an appreciation for why a question is being asked, there are two ways of exploiting this knowledge. First, you can build the answer into your submission so that just as the question forms in the moot master's head you deliver the answer. This can leave a very positive impression because it demonstrates you have carefully thought

through the issue. Alternatively, you can wait until the question is asked and use it to develop your submission or to show off your expertise. A word of warning, though this can be tricky and can easily backfire if the question is not asked, or a different question is asked from the one you were expecting.

A common reason that questions are asked is because the moot master is seeking further explanation or clarification. Occasionally, the moot master will rephrase the essence of your case as a question. This is only likely to happen in two situations. Perhaps, you are presenting so well that the moot master is already making the conclusions you need. It can be a very satisfactory feeling if the moot master begins stating your case for you and suggests it is well structured. However, you are more likely to receive a question of this kind if the moot master wants to throw you a lifeline. You may have been floundering under a particular line of questions and the moot master wants to give you a way out. If so, you need to pay close attention to the question that is asked. If you did not hear it clearly, ask for it to be repeated.

Another common reason that moot masters ask questions is to test your knowledge. Some competitions give directions to the judges that questions should not be asked solely for this purpose, but it is almost inevitable that this will occur. Do not worry about this possibility, as you will be prepared to answer all of the questions of this kind. One indication that the question may be designed to test your knowledge is if it is a leading question. Leading questions are those where the answer is implicit in the actual question, and as such they generally only require a yes or no answer.

If you are asked a leading question, it is possible that the moot master is trying to set a trap to expose what they see as a logical flaw in your submission. The challenge is to see the trap and avoid it. Again, this will not be difficult if you have prepared thoroughly. You will begin to recognize lines of thinking and know how to respond. A particularly skilful answer will demonstrate not only that you can see what the moot master is doing, but that you have an answer to it as well. Yes, Your Excellency, that is correct. Is Your Excellency concerned that this position may be inconsistent with the Applicant's earlier submission that . . .

Another way that moot masters may seek to test your arguments is through the use of a hypothetical. Avoid these at all costs. While the moot itself is technically a hypothetical, it contains a lot of information. The hypotheticals you are likely to be asked during a moot by a moot master will be very general and will be constructed to conflict with your argument in some way. One way to avoid a hypothetical is to bring the moot master back to the main issues. It is possibly the only type of question you should dodge answering. The hypothetical Your Excellency suggests would certainly be a difficult one, and it is fortunate that this Honourable Court does not need to resolve it. What this Court must determine is whether on the facts available to it the Respondent wrongfully terminated the contract. The relevant question here is not if a valid notice had been sent, but was a valid notice sent. In the Applicant's submission it was not.

c. Dealing with unpredicted questions

The structure of your submission will play an important role in assisting you to deal with unpredicted questions, particularly difficult ones. Despite all this planning, there will be occasions when moot masters become fixated on a particular point and will simply not stop asking questions about it. You need to be conscious of the limited time you have available and the time taken up by these questions. There will be a stage at which it becomes more important to deliver the remainder of your submission rather than continuing to try to satisfy the moot master on the particular point. In other words, sometimes you have to “cut and run”, and the structure of your submission will often dictate how effectively this can be done.

Knowing when and how to cut and run is something you will learn with practice. It is a judgment call that you will need to make on the spot. By the time you reach the actual moot competition, you will be acutely aware of how long your submission runs, and therefore, have a good appreciation of how long you can spend discussing a particular point with the moot master. By this stage, much of your thinking will occur subconsciously.

One factor that will play a part in your decision includes your assessment of how important the point is to your entire submission. This directly relates to the structure of the submission. Be prepared to abandon nearly every point you make. But, if you abandon a point you need to have a backup reason why your client should win. You need an alternative argument.

Another factor that will influence your decision is the recognition that you should try to directly answer all questions put to you by the moot master. Always be prepared to make at least a reasonable attempt to satisfy the moot master. Responding to between two and four questions is a guide to what is reasonable. However, it cannot be stressed enough that you need to make a judgment call in each case. There is no hard and fast rule that applies to all situations. You will make the decision based on the unique situation that you find yourself in. Do not be daunted by this. Believe in your own ability and back it up with good preparation.

Give some thought to prepared phrases you can employ to effectively guillotine discussion on a point and move on. It is usually important to downplay the significance of the point in your overall submission. For instance, if it is one alternative of many, emphasize that fact and ask the moot master’s permission to discuss one of the other alternatives instead.

Your Honour, the point we have been discussing is only one alternative in the Applicant’s case and I do not believe the submission can be made any differently. I am conscious of the time I have remaining, and with your permission I will turn to my next submission.

Where the argument does not have an alternative or is indeed the last of your alternatives, it is necessary to tell the moot master that you have nothing more to say. This should be done with some tact. Your Honour, this is the highest I can state about my client's case and with your permission I will move on.

At this point it is pertinent to note the use of the first person in this example. Different forums (and indeed different moot masters) will have different conventions governing personal attribution in submissions, and it can be a matter of controversy. It is your client's case, but they are your submissions on behalf of your client. As a general rule, it is probably best to avoid presenting your submissions in the first person. What you personally think or believe is not relevant. Remember that you are representing a client's case, not your own. However, circumstances in which you need to cut and run may be an exception to that general rule. If you can cut short the moot master's questioning using the third person you should probably do so. But, in essence you are making a personal plea to the moot master to let you get on with your submission, and so using the first person is often appropriate.

There may be some unpredicted questions that at first you do not know how to answer. Despite your thorough preparation and anticipation of possible questions, it would be foolhardy to think that there will never be such a question. You may well be asked a question you have never even contemplated before. A question like this can be particularly difficult to answer because you are unlikely to have done any preparatory work on that issue. In a real case, you would normally ask permission to take the question on notice (that is, answer it later) and immediately research the issue. You do not have that luxury in a moot competition, and indeed it will not necessarily be afforded to you in real proceedings either. Rely on the techniques you employed when developing your structure to help you through.

d. Do not panic

The second most important thing is not to look as though you are panicking. Pause, take a breath, and take a sip of water. While you are doing this, analyze the question in your mind in the same way you analyzed questions during practice moots. Why was it asked? What did I say that prompted the question? Think about what stage you are at in your submission. This should provide a strong clue to the answer. Sometimes, it is as simple as recognizing that different people often ask essentially the same question in different ways. The number of questions you have analyzed during preparation will probably have a direct correlation with your ability to analyze this difficult question on the spot. If the language of the moot is not your native tongue, this task may be additionally complicated. Do not be afraid to ask for the question to be restated. This has two benefits. First, you may recognize the restated question as one you already know the answer to, and second, it gives you more time.

If after the question has been restated, a second time you are still no closer to understanding the question, engage with the moot master and try to draw them into

providing an explanation of their question. I apologize, Your Honour. So that I may respond directly to your concern, could you elaborate further?

As always, the method of delivery of questions like this will influence the response you receive. Be conscious not to imply by your manner that you think it is a silly question that does not make sense. Appear genuinely interested and concerned to answer the question properly. Positive body language can assist; gently nodding your head while the further explanation is being provided will give the impression you understand. The use of the first person is not controversial because you are not offering an opinion or belief.

Hopefully, by this stage you will now understand the question or at least be sufficiently confident to respond. In the event you still have absolutely no idea what you are being asked, bluff and fall back onto your structure.

It is very important that you never lie or make up an authority you think will get you out of the situation. To do so would be unethical and is undoubtedly against the spirit of the moot. Furthermore, it is very unlikely to advance your situation in any way. There is a high probability that you will be exposed, either by the moot master or by your opponent. It is far better to move around the question. Politely dismiss the moot master's concern as not necessary in your client's submission, restate the signposts relevant to that stage, and then make it clear that you are moving on. (After nodding gently) Yes, Your Honour, in the Applicant's submission, it is not necessary for this Honourable Court to be concerned with that point. Nothing would turn on it. Irrespective of whether the Court accepted or rejected any submissions the Applicant might make on the point, the Applicant's fundamental case would still stand. To establish liability, the Respondent would need to demonstrate that there was a duty of care, and that it was breached. And, in the Applicant's submission, the Respondent cannot meet that burden. With your permission, I will turn to the Applicant's alternative submission that . . . if the moot master tries to keep you on the point you should make use of your "cut and run" phrase. When doing so, it may be wise to mention a concern about the remaining time. Getting help from your team-mates.

Remember that advocacy is more often than not a team activity. In a moot, there is usually at least one other person up there with you and frequently more. The same is true in professional practice. Your co-counsel may well know the answer to the question you are struggling to understand. Provided it is permitted under the rules of the competition, do not be afraid to utilize your collective knowledge. There are professional and amateurish ways of doing this.

If faced with a question you do not know the answer to, it is perfectly acceptable to ask for a moment to confer with your co counsel. But, doing so immediately creates an impression that you do not know the answer, or more detrimentally that you cannot answer. Instead, develop signals you can send to your co-counsel that you need help. These signals should be completely invisible to the audience. One way is to assign particular meaning to phrases you would use generally in the course of your answer. For example, it might be agreed that if you say, "I am sorry, Your Honour, could you please

repeat the question?”, you think you know the answer and are just buying some time to formulate the reply. Whereas if you say, “I am sorry, Your Honour, could you please restate the question?”, this could be a signal to your colleague that you have no idea. All that has changed is one word. To the audience, it would mean nothing, but to your team members, who know the signal, it will mean a lot.

How your colleagues come to your assistance will vary. They may not know the answer either, in which case you will have to implement the procedure to overcome unanswerable questions outlined above. If your colleagues do know the answer, they may be able to quickly slide a note to you with the answer on it, or identify a passage you should cite from an authority. Alternatively, they may answer the question. In a number of competitions, this will be allowed, but again there is a good and a bad way of doing it. Co-counsel should not simply jump in; rather you should refer the moot master to them.

Your Honour, that is something my co-counsel has considered in detail, and with your indulgence, I ask that she be allowed to respond to the question. Be careful when utilizing co-counsel in this way. It should be done sparingly, particularly if each advocate (as opposed to the team as a whole) is being graded by the moot master. Indeed, the rules of some competitions, such as Jessup, may preclude you from having any discussions with co-counsel, or passing notes.

e. Varying the order in your submission

A good structure to your oral submission will allow you, the advocate, to easily jump to different points in the submission and address them out of order if necessary. Naturally, changing the order of your arguments in the middle of your submission is not likely to be a decision you have voluntarily made. Rather, it will have been forced upon you by questions from the moot master.

There are two situations in which you encounter questions that do not coincide with where you are in your submission. In the first situation, you are taken backwards, and the second takes you forwards in your submission. Be ready for a moot master who allows you to complete your entire submission and then asks a question about the first or second point you made. Alternatively, if a moot master asks you a question that relates to a matter further on in your submission, go to it immediately. Never provide answers such as “I’m coming to that” or “I will be addressing that shortly”. While it is not a cardinal sin, it is generally frowned upon both in moots and in real practice. The question will identify an issue that is of particular concern to the moot master. Part of your role as an advocate is to allay any concerns the moot master may have, therefore, it is best to address the question immediately.

4.2 RESPONDING TO A SUBMISSION

Dear learner, what do you understand by responding to an oral submission? Although a moot is not a debate, it is very important that you respond to the submissions made by

your opponent. This is often variable that you will have little ability to anticipate, so you need to prepare for and make use of those areas that are within your control.

One such area is the flexibility of your submission. The relative importance of different arguments within your submission will be affected by the submissions made by your opponent. For example, if your opponent concedes a particular issue, it is not necessary for you to make significant submissions on it. This may give you an opportunity to include another argument that you had previously discarded because of time constraints. You cannot know this will happen until it actually occurs in the moot, and so you need to be able to adjust your structure at a moment's notice.

A much more difficult situation occurs when your opponent focuses on a point you had previously thought to be weak. This should not represent a substantive or content-based problem because your preparation will ensure that you are familiar with the point. However, it will impact on the structure of your submission. The emphasis of your submission must change. Be ready to pick up alternative arguments that you had previously discarded, and be prepared to drop other arguments that you wanted to make.

So, particularly in the context of responding, the architecture of your submission must be sound. You then simply add or remove content as appropriate. What content you should add or remove is principally governed by the submissions made by your opponents. It is very important, therefore, that you pay close attention while those submissions are being made.

You must also listen carefully and closely to the questions the moot master is asking your opponents. We have already discussed how questions tended to identify concerns or logical flaws in a submission. Whereas during the preparation stage you analyzed these questions to improve your own case, now analyze them to help you critique the submissions made by your opponent. This can be done in two complementary ways. First, the substance of the questions to your opponents will suggest areas worthy of emphasis in your submission. Second, you can take the opportunity to involve the moot masters by referring back to their questions during your submission.

When doing this, be careful not to imply that the moot master was actually making a point. Do not use expressions such as, "Your Honour was correct to question . . ." or "Your Honour made the point . . .". Moot masters may react negatively to phrases such as this because they are not allowed to make a point at this stage of the moot. You are in effect implying that the moot masters have prejudged the merits of the case, albeit in your favour. Instead, repeat the question, note its importance to your client, and respond.

During opposing counsel's submission, Madame President asked the question . . . We respectfully submit that this question does draw attention to what the Respondent says is a fatal flaw in the Applicant's case. In answering Madame President's question, the Counsel for the Applicant suggested . . . The evidence simply cannot sustain such an argument.

Short passages like this are very easy to incorporate into a well structured argument because they do not change the underlying architecture of the submission at all. Responding in this way will earn the respect of the moot masters because it demonstrates that you know your case, you were listening to the opposition, and you are keen to engage with the moot masters on matters that are important to them.

4.3 PRESENTING AN ORAL SUBMISSION

Dear learner, up until now we have been looking at different rules of structuring an oral submission and the manner of responding to opponent's submissions. In the section at hand, we shall try to bring to light some rules of presenting a submission orally.

Not surprisingly, there are considerable similarities between the advice offered for presentation of oral submissions and the advice offered for composing written documents. One very important common piece of advice is the value of developing an awareness of your environment. Just as different competitions call for different styles of written document, there will be stylistic differences in the oral presentation. For example, in courts you are expected to stand, whereas in arbitrations you would normally sit. In a court you refer to the judges with phrases such as "Your Honour" and "Your Worship", whereas in an arbitration you might address "Madam Arbitrator".

The peculiarities of each competition should be investigated very early in your preparation. You do not want to get into the habit of referring to your moot master in an incorrect manner. This book cannot list the stylistic requirements of every competition – there are simply too many differences in too many competitions. The task will be easy for you because you can research the requirements of the particular competition you are participating in!

Instead, we will be focusing on presentation issues that will be relevant to any form of oral advocacy. Indeed, much of the advice provided will be relevant to public speaking of any kind.

We have already discussed the importance of meeting audience expectations in the context of argument selection, but it is equally relevant to presentation. From the very moment you arrive at a moot, the moot judge will have expectations as to how you should conduct yourself. Those expectations can probably be summed up in one word: "professional". To ensure that you appear as professional as possible, think about what it means to be professional in all aspects of your moot appearance. Many of the topics discussed below have an impact on how professional you appear.

4.3 1 Preparation

We have discussed the importance of preparation here before. Whether you are competing in a prestigious international moot competition, or a small moot competition

run by your law students' society, you should always be prepared to the best of your ability. Moot masters, whoever they may be, will always be influenced by how important the moot competition is to you. If you turn up unprepared, it suggests you are not really concerned with the outcome, and this will reflect unfavorably upon you in any moot master's eyes.

4.3.2 Physical appearance (demeanor)

Dear learner, how should you look before the panel of moot judges and the moot court environment in general? How you dress can affect your presentation and the impression you leave upon the audience. Although in some parts of the world we are starting to see a relaxation in dress codes, there is still an almost universal presumption that professionals will wear suits.

Furthermore, what might be acceptable in some cultures may not be acceptable in others. It is always better to err on the side of caution and adopt the more conservative approach. By way of demonstration, consider the following events that occurred in a real moot. It was an unseasonably warm day, and as the moot was being conducted during a university break, the pre-programmed air-conditioning was not working. Because the door was closed, the room became stuffy and quite uncomfortable for everyone inside it, particularly the advocates. There were three moot masters: two from civil law jurisdictions and one from a common law jurisdiction. The common law moot master invited the advocates to take off their suit jackets. One team did; the other did not. The team that had taken off their jackets became increasingly disheveled over the course of the moot: ties were loosened slightly, top buttons were undone, shirts revealed dark patches of sweat. They looked as though they were really struggling. In contrast, the team that kept their jackets on maintained a very professional image, notwithstanding the fact that, they too, were really struggling. At the end of the moot, the contrast in physical appearance between the two teams was so extraordinary that one of the civil law moot masters was moved to comment on it. After explaining that it would not affect his scoring on this occasion, the moot master went on to say that in his view removing suit jackets was tactically wrong and even disrespectful, notwithstanding the invitation from one of the moot masters to do so.

How you dress can also have a more subtle effect on your performance. Do not underestimate the influence of your dress on your psychological approach to the moot. We naturally distinguish the importance of an occasion by the clothes we wear. Just as other people will draw conclusions from your appearance, so will you. If you have gone to the trouble of having a haircut, wearing a nicely ironed shirt, putting on make-up or doing whatever it is you do to look good, you will feel good as well. If you feel good you will be confident, and confidence is a very appealing attribute.

4.3.3 Time keeping

One of the strongest indications that advocates are in control is when they are acutely aware of the time their submission is taking. Time keeping is essential. If the rules permit, this may be done by your co-counsel. For example, you may have a small piece of paper with various time intervals noted on it. When you only have 10 minutes, left your co counsel very quietly and inconspicuously crosses off the number 10. It is necessary to emphasise that this should be done without attracting any attention; kicking your colleague under the table is not advisable!

In competitions where counsel are not permitted to communicate with each other during a submission, the task is a little harder because you will need to do it yourself. In these circumstances, it is important you have your own timing device; do not assume there will be a clock visible somewhere in the moot court. Be careful though that your timing device is not going to make any noise. For example, a countdown timer sounding at the end of 20 minutes is going to look very unprofessional, and will draw the attention of your moot masters to the fact that you are out of time.

Time keeping is a virtue that can lead to a vice: people often start to speak more quickly when they think they are running short of time. Resist this temptation. Instead, if necessary, make time in your submission by dropping one or two of your weaker alternative arguments. All of this can be pre-planned.

If you have 20 minutes in which to make your submission and you are expecting questions, do not plan to deliver a 20-minute submission. From your practice moots, you will have a reasonable idea of how much time questions occupy. It is probably reasonable to assume that your uninterrupted submission would only last between 11 and 13 minutes. This is not very long, and therefore, argument selection is very important. It is also another reason why there needs to be flexibility in the structure of your submission.

Just as you may need to discard an alternative argument, you may wish to add one if you find that time is available. Well before you even enter the moot court, you should have decided that if you have not reached a particular point in your submission by the 10-minute mark, you will drop alternative C, for example. Preparing for situations like this will ensure that you remain in control. You are less likely to rush or to become overly stressed or worried, all of which would be reflected outwardly in your presentation. Rather, you will know what to do for every eventuality and how to do it.

4.3.4 Opening formalities

The opening formalities begin with the announcement of your appearance, and encompass everything you do (or should do) from the moment the moot officially begins to the point when you actually begin your submission.

The very first formality you should be aware of is whether you should stand when the moot master enters the room. This may well depend on the type of moot you are participating in, and you should find out in advance what is required for your particular moot. However, as a general rule it is always polite to stand when you are being introduced to someone. It demonstrates respect. Following the arrival of the moot master, there will usually be a request for appearances. The procedure for this may also differ depending on the forum. Some forums will have appearance slips that advocates will complete prior to the arrival of the moot master.

In these competitions, the moot master may well refer to each advocate by name and ask them to confirm that they appear for a particular side. On other occasions you will be expected to verbally announce your appearance. There will be particular customs you should adopt, depending on the forum. May it please the Court, my name is Smith, initial J, and I appear for the Applicant in this matter. Alternatively, it might be appropriate to say:

Thank you, Mr President. My name is John Smith and I appear on behalf of the Applicant. You will need to research what is appropriate for your particular competition. You need to know who will be announcing appearances. If there are two of you, does the first speaker introduce both, or do you take turns? It may be a personal decision rather than one that needs to comply with any particular custom. Either way, make sure you and your partner know what is going to happen. You will not make a good start if you and another team member inadvertently speak at the same time.

There are several arguments in favor of each speaker introducing themselves. First, there will not be any concern about mispronouncing a name; and second it cannot be seen as being politically incorrect. The latter of these concerns rarely surfaces, but it is better to avoid even the slim possibility. Somewhat surprisingly, it is not uncommon to see counsel stumble over the pronunciation of a colleague's name.

All appearances should be announced at the beginning of the moot. This is important in a real dispute because it serves to identify the advocates appearing. In the absence of an announcement, anyone might be sitting at the Bar table. Moot masters need to know who is who, and in what order they will be appearing. In competitions where moot masters allocate scores to individuals, identifying each person is a necessity. To assist in this identification process (and in the absence of appearance slips), some advocates will present the moot master with business cards, or have small name plates at the front of their desk. These can certainly be of great benefit to the moot master, but you need to decide whether they are appropriate for your competition.

Following appearances, the first speaker will normally address the moot master. Irrespective of who the first speaker is, it is usually appropriate to ask the moot masters whether they would like a brief summary of the facts. In the event this offer is accepted, you should have prepared a very concise and non-biased summary. This is not the time to use emotive language or to denigrate your opponent's case. Simply, state the important facts leading up to the dispute and identify the issues for determination. Be aware that the statement of facts will be consuming your submission time so make sure you are brief.

The final opening formality you may or may not address before your submission is to ask whether full citations are required. Some advocates prefer to give the first full citation and then ask if they may be subsequently dispensed with. There is no ideal way of doing this, and the approach you choose will vary according to your impressions of the moot masters. It is important though, if you are the opposition counsel, not to assume the same courtesy will be automatically extended.

You should clarify at the beginning of your submission whether the citations are required. Citations are often not required when they appear elsewhere, for example, in your written submissions. If this is the first reference ever, you should always offer the full citation. Most moot masters will accede to a request to dispense with citations because they appreciate that it is simply time-consuming in the context of a moot. Asking the question always indicates to the moot master that you are prepared to provide the citation if required. This is probably not a situation in which you want to call the moot master's bluff as it may reflect very poorly on your preparation.

4.3.5. Using Authorities

Your familiarity with the facts and materials of the case, and the degree to which you utilize them, will provide a strong indication of your control of your oral submission. The facts of the problem play a very significant role in your submission. The first thing most audiences want to know is what happened. There is a certain logic to this. It would seem odd to look at the consequences of an action without first identifying the action itself. This means that you should state any relevant facts first, then the law, then the consequences of applying the law to the facts. It should be a familiar sequence to you as it is a frequently recommended method employed in legal exams.

To be able to do this well you need to develop an instantaneous recollection of the facts of the problem. Some people have what is commonly called a photographic memory. For those lucky few, remembering small details comes quickly and easily. If you are not one of those people, there are techniques you can employ to improve your abilities.

a. Employing flash cards

One of the simplest ways to become familiar with case materials is to use flash cards. Flash cards are small palm-sized cards that have information on both sides. They can be used as a learning aid for many different tasks such as learning foreign languages and mathematical tables. In preparing for a moot, you might put a date on one side of a flash card and then anything significant about that date on the reverse side. Once you have a complete set of dates, you can ask anyone to test your knowledge. This will probably be a team member but it could just be easily as a friend or family member. Indeed, it is not even necessary to have someone else test you; you can do it yourself.

If a friend is willing to help, have your friend randomly pick up a card and say the date. You need to list everything significant about that date as quickly as possible. The

exercise can be reversed as well. Your friend says a significant event and you need to state the date. The more often you work with the flash cards, the quicker you will become. Eventually, you will reach the stage where the response instantly comes to you.

With a couple of minor additions, you can use these flash cards to improve your familiarity with the case materials as well. Include information such as page references, exhibit numbers or clarification numbers. The effort you put into familiarizing yourself carefully with the material will be justified the moment the moot judge asks you, “And where do we find that?” Imagine how impressive it will look and how good you will feel if you can respond without pausing or breaking eye contact, “That is on page 6 of the *Compromis, Your Honour*.” An intimate knowledge of the facts and materials also allows you to spot and politely expose any inaccuracies in your opponent’s case. Learning the case closely may take some time but it is well worth the effort.

b. Using a casebook

Case materials encompass not only the official documentation provided by the competition, but any documentation used in the moot. Any written documentation you have supplied, such as an outline of submissions or casebook, is part of the case materials. It is very important that you also familiarize yourself with these documents and practice working with them effectively. The most significant of these is the casebook.

A casebook, as we have already noted, is a collection of all of the cases and authorities you intend to rely upon in your submissions. Frequently, it will be necessary and appropriate to refer the moot masters to a particular passage in a judgment, or to particular remarks made by a legal commentator. When you do this, have the exact reference ready to offer the moot master. Make it very easy for the moot master to find what you are looking at. Once you have identified the reference, wait a moment and make sure that the moot master has found the spot before proceeding with your submission.

There is no need to wait until you receive an indication from the moot master to proceed, although this will usually be forthcoming as soon as the master has found the appropriate passage. It is sufficient to pause for a few seconds and then keep going. Keep watching the moot master as you are speaking to ascertain whether the master is in fact listening to your submission or is fidgeting with the materials. If that appears to be the case, it is not inappropriate to ask whether the moot master has found the passage.

If you are competing in a moot competition that does not require a casebook, do not assume that this advice is irrelevant to you. Simply, because you are not providing a copy of the actual material in the moot does not mean that you should not give specific references. Whenever you cite any authority, have a page or paragraph reference at the ready. It is less likely that you need to include this as part of your submission, but if asked by the moot master for the reference, you need to have it.

c. Using materials appropriately

The final issue regarding case materials is how to use them appropriately. It is not necessary to refer to the materials every time you state a fact or make a point. The purpose of authority is to buttress your submission, and to highlight the relevance of what you are saying. When you do quote a passage from a case, a statute or commentary, make sure that you are not quoting it out of context. For example, an article in a convention may have multiple sub-articles, and you might be tempted to only read the sub-article that appears to support your case. That sub-article considered on its own might leave a very different impression than it would if discussed in its wider context. Moot masters are likely to notice this, and if they do not, you can be almost certain your opposition will.

Once discovered, this will reflect badly on your submissions, as at one level it suggests an intention to mislead the moot master. It is perfectly acceptable for you to draw the moot master's attention to an important phrase or sub-article, but do this through emphasis. Use your voice to emphasize a passage, but keep the correct context.

4.3.6. Voice and delivery

Your voice is one of the most extraordinary and powerful tools at your disposal. All of our voices are different. Some are naturally melodic and calming, others demand attention, a few have an undefinable yet distinct quality, and some are a bit thin or scratchy. Irrespective of how your voice might be described, we all have an ability to use our voices. You can be demure or forceful, inquisitive or authoritative, caring or dispassionate. You can convey all this simply by saying the same words in different ways. It would be a terrible shame to waste this tool – but waste it many do. Often those judging your practice moots will be able to tell you whether or not you are taking full advantage of your voice.

However, you can work on this by yourself as well. Get a recording device and record yourself. If you have never heard a recording of yourself before, be prepared for a shock. Your voice will sound very different, possibly even unrecognizable! When you listen to a recording of yourself, you are hearing your voice the way everyone else does. The physiological reasons why we hear ourselves differently are not important, but it is worthwhile being aware of the phenomenon.

a. Moderate your tone, pitch and accent

Once you have recovered from the shock, listen critically to your performance. In particular, focus on your intonation – the tone and pitch of your voice. Speaking in a monotone should be avoided. Eventhough the subject matter may be extremely interesting, if the presentation is delivered in a monotonous fashion, it will almost invariably be labeled by the audience as boring. Make sure you vary your tone appropriately throughout your submission. It is possible to vary tone inappropriately, and this will simply serve to confuse your audience. Your audience needs to understand

the significance of the various tones you adopt. To be able to do this, there needs to be a consistency in your use of tone, and each change must have a particular implication. There are common conventions about what changes of tone mean in every language; they are not arbitrarily decided upon by an individual speaker. For example, in English we naturally tend to finish questions on a higher pitch.

Different languages use pitch and tones in different ways. This is evident simply from the fact that we have different accents. Accents are an important consideration, particularly for native speakers of the language. The fact that you can speak English perfectly will be of little value if your accent prevents you from being understood. Ideally, you should aim to have your accent sound as neutral as possible. This can, in part, be achieved by simply making sure that you enunciate every word and round your vowels.

The issue of accent is not something that should alarm or concern non-native speakers. Indeed, we should have nothing but support, praise and admiration for participants who can moot in a second language. However, to completely ignore the fact that there will be some language difficulties for non-native speakers would be silly. In most moot competitions, judges will be specifically instructed not to allow their scoring to be influenced by difficulties of this kind. The easiest way to avoid any kind of language difficulty is to keep your sentences short and simple. This is a good advice that applies to everyone.

b. Speak slowly

Concentrate on speaking slowly. It is almost impossible to speak too slowly. This will have two natural consequences. First, you will automatically begin to fully pronounce each word, which will help you speak clearly. Second, it will give your audience an opportunity to hear and comprehend each word. If you speak too quickly, your audience will hear a string of meaningless sounds. Learning to do this is not as easy as it may seem, and will require practice. You have to battle against the normal impulse to rush in circumstances where you have a lot to say and very little time to say it in.

c. Moderate the volume

You should also be very conscious of whether you are speaking loudly or quietly. Just as people find it difficult to believe they are speaking too quickly, many people seem surprised by the suggestion that they naturally speak too softly. Your voice should fill the room to ensure that everyone, especially the moot masters, can hear you easily. Be careful not to yell, but err on the side of being slightly louder than you think you need to be, and this will ensure that your voice will carry to everyone in the room.

4.3.7. Body language

The way you use your body as you deliver your submission can speak volumes to your audience. Often, subconsciously our body language can reveal our true feelings.

Sometimes, we can control these reactions and on other occasions we cannot. For example, some people blush when they are nervous. Then when they sense that they are blushing they get even more nervous and embarrassed. The cure is to try to be less nervous and certainly not be embarrassed if you start to blush. Admittedly, this is much easier said than done, but it is true that solid preparation and earned self-confidence do wonders, to combat nervousness.

a. Never fidget

Nervousness can cause some people to fidget during their presentations, for example, clicking pens or tapping their fingers or feet. A habit of this kind has several disadvantages. It undermines the confident appearance you are trying to present, and it distracts the attention of your moot masters from what you are saying. Precisely, how you cure fidgeting will depend on your environment.

If you are standing at a lectern, you may be able to discreetly hold the lectern, to stop yourself tapping your fingers. If possible, this should not be seen by the moot master. Instead, all the moot master should see is an advocate standing upright and paying attention to the task. Your hands are firmly holding the lectern so as to not reveal your state of anxiety.

Alternatively, if you are sitting at a table, sit at the front of your seat, join your hands together and place them on the edge of the table. Concentrate on feeling the table just below the base of your little fingers. Sitting in this fashion allows you to push against the table as firmly as you like and it will not be noticed by the moot master. Furthermore, exerting pressure on that part of your hand will make it harder to wiggle your fingers.

b. Make use of gestures and posture

Once you have mastered your body language sufficiently so that it will not detract from your submission, begin experimenting with ways of using it to your advantage. Hand movements can be very effective when adding emphasis, as can taking off glasses. Give some thought to how you use your body. What hand movements do you use subconsciously at the moment? How can you utilise them to improve your delivery? Get feedback from your coach and team members about your gestures. Your gestures should add emphasis to what you are saying and create a favourable impression. They should never be distracting or overdone.

Hands are only one part of our body though, and how we carry ourselves is also very important. You need to have good posture. Make sure you are standing upright and are not stooped over. If you are sitting down, do not relax back into the chair. Put both feet firmly on the ground and sit up straight. This is most easily achieved by sitting at the front of your chair.

c. Pay attention

It stands to reason that if body language is a form of communication, then we are in fact communicating all the time. Just because you are not actually saying anything to the moot masters at a particular moment, you will still be conveying a message to them. The

lesson here is that you must pay attention during the whole moot. Do not start looking out the window or back over your shoulder to the audience when your co-counsel is speaking. This can have a very negative impact on the impression created by your co-counsel's submission. If you do not think it is worth listening to, why should the moot master or the judge?

When the opposition are delivering their submission, you must also pay attention. The message you send by not paying attention during your opponent's submission is not that the submission is not important, but rather that you are rude. Maintaining a proper posture will in fact help you pay attention. This can be very important if a moot master turns around and asks you an unexpected question.

4.3.8. Speaking from notes

The use of notes during a presentation is a hotly debated topic. Should you script your presentation and rote learn it? Should you have a complete copy in front of you when presenting, or should you just have a list of key points? The best advice is to do what suits you.

a. Using a complete script

Many people will tell you not to script your presentation and certainly not to have it written word for word in front of you. This advice is misguided to the extent that it will force some people well outside their comfort zone, which will be detrimental to their overall performance. Remember, maintaining a relaxed, measured and confident approach is the most important goal. If having a complete script works for you then do it. The question then becomes how do you know if it is working?

The two most common criticisms of the use of scripts are that people tend to read and that they then lack flexibility. In a moot, it is very important not to read. You need to be looking up at the moot masters and talking directly to them. It is virtually impossible to engage with someone if you are not looking at them. Reading also tends to impact on your tone. It is much easier to slip into a monotone if you are reading. It will also affect your volume. Our mouths point in the same direction as our eyes, therefore when reading out aloud, we are quite literally speaking down to the paper, and not projecting our voices. In short, reading will detract from your submission and should be avoided as much as possible. People who read will also tend to stick to their script. This affects their ability to answer questions. The need for flexibility was briefly discussed under the heading "Varying the order in your submission", and it is an equally relevant consideration at this stage.

Moot masters will move you around your presentation, possibly at the most inconvenient stages. If you are relying on reading your submission, you will need to be able to sort through your notes instantaneously. This can be difficult for you and distracting for the moot master.

You need to establish what is right for you during your practice moots. Try different approaches and see how they work. Think about the environment you will be in when delivering your submission. If you are sitting or standing at a chest-high lectern, the actual act of turning a page will occur very close to your face and certainly within the field of vision of the moot master. Any movement like this can be distracting, particularly if it is accompanied by the creaking of an exercise book. Instead, you could try using sheets of paper that are not bound, as they can be slid from one side of the lectern to the other in a very subtle movement. The danger is, of course, that your pages may end up in the wrong order, therefore, it is important to use clearly visible page numbers. It would also be sensible to check that all your pages are present and in the right order just before beginning your presentation.

For those of you who feel most comfortable with a complete script in front of you, develop techniques that will minimize the negative impression that can be created by reading. You need to be able to move very easily between your notes and the moot master. As a consequence, you cannot be wasting time trying to find the passage you were up to on the page just before you looked away. Keep your pages clear and uncluttered. Make sure your submission is printed in a large, easy-to-read font with a double space between each line. This document needs to be functional and versatile; it does not need to win design awards!

b. Using summarized notes

If you decide that you are going to use notes, practice using them and think about how they should be designed for maximum effectiveness. For example, it may be advisable not to bind your notes in any way. This means, you should not use an exercise book, or staple your notes together. This will allow you greater flexibility to vary the order of your presentation in response to questions from the moot master, as we have already discussed. Notes can be a very effective and useful tool when used well. You need to give some thought to how your notes can best be designed to suit your requirements. It was suggested earlier that rather than speed up when you are running out of time it is far better to discard arguments.

To be in a position to do this, you need to have prioritized your arguments. Which arguments are essential, which are desirable and which are dispensable, but would still be included in an ideal presentation? How you have designed your notes can greatly assist you in this process. Divide a single sheet of paper into three columns. In the first column list all of the essential arguments. These are the arguments you believe you must present in your submission. In the second column list all the arguments that you consider would be desirable to include. Finally, in the last column list the less important arguments that you would still like to include in an ideal presentation. During your presentation, work your way through these lists. Be aware though that the priority of some arguments may change based on your opponent's submissions. As your opponents make the corresponding argument, tick it off your list. Now if you face any time pressures during your submission, you will know which arguments you must raise, and which ones you can abandon.

When designing your notes, you need to consider whether you intend to write extra notes during the moot. If so, you will need to make sure there is room for you to do this in your notes, whether it is simply in the margin or in a designated place. Because you will be familiar with the arguments for both sides, you may have developed a list of common rebuttal points, and you may want to add to the list as the moot progresses if new arguments occur to you. If you do develop such a list, be sure to use it wisely and not inadvertently misuse the rebuttal procedure. Rebuttal is discussed in detail later on.

c. Using notes well

When using notes, whether it is a full script or dot points, the key is to know how to use those notes. Notes should never contain substantive issues to be researched on the spot. They are really only there as a security blanket, to reassure you. The same is true of open book law exams. You do not have the time to research in the middle of the exam, and neither do you in a moot. Never assume you will find the answer to a question in your notes. The notes may point you in the right direction, but the answer always comes from what you already know.

If the rules of your moot permit, you can also use notes to communicate with your teammates. Typically, these are used for time management or when responding, whether as an advocate for the party defending the claim or for the party bringing the claim in rebuttal.

4.3.9 Building rapport with the moot master

People who are naturally charismatic and charming seem to effortlessly command attention when they walk into a room. They have vibrant personalities and can socialize easily. They have a presence, and always seem to impress an audience. These people can be extremely intimidating to those who do not see the same characteristics in themselves.

It is often the case that how we see ourselves is very different from the way others see us. Many of us tend to assume the worst. This is particularly true of people in stressful situations. Imagine you walk into a moot court and glance at the moot master. At that precise moment, the moot master or judge appears to sneer at you. What do you think? Do you assume you are already off to a bad start and basically give up without having said a word?

The real reason for the moot master's apparent sneer might have nothing to do with you whatsoever. It may have been the onset of a sneeze, for instance. The attractive and endearing people you may feel intimidated by are the ones who have learnt to overcome their negative assumptions about how others perceive them. These people are generally very comfortable with who they are, and their charisma comes from confidence and self-belief. Everyone can develop self-confidence, and you can too. Confidence in your abilities will be invaluable in helping you build a good rapport with the moot master. To develop rapport with someone, you must engage with them.

The tips on presentation that we have discussed so far play an important role in that engagement. Knowing that you are prepared will give you confidence. Your physical appearance, voice and body language will all show respect. Good time keeping demonstrates that you are in control of your presentation. Finally, and arguably most importantly, your use of the case materials and your notes will involve the moot master. You should aim to create a dialogue with the moot master, during which you maintain eye contact. Eye contact is important because it subconsciously suggests you are both honest and earnest.

An oral submission, like a job interview, is best when it is a dialogue. How that dialogue progresses will, to a large extent, depend on your attitude. Be yourself and let your own personality shine through your submission, just as you would in a job interview. Some people try to act their way through as if they were performers on a theatrical stage. Acting invariably involves pretending that you are someone you are not. It can be quite difficult to build rapport if you are acting. There is nothing to endear you to the moot master since by its very nature acting implies something false. When we watch actors on the stage or screen, we suspend our disbelief because we already know and understand that it is a contrived scenario. There is no such understanding in a moot competition. It is certainly a contrived set of facts, but your performance should be a genuine one. If you are yourself and sincerely want to engage with the moot master, you will succeed. The shy and timid but very well prepared advocate will ultimately be much more engaging than a loud, brash, character actor.

Multiple moot masters. Convincing one person can be relatively easy. If you have three moot masters, you may think that your task will be three times harder. This is not necessarily the case, although there is no doubt that it is harder to some degree. Fortunately, it is possible to overcome many of these difficulties with practice.

The most difficult aspect of appearing before multiple moot masters is establishing a rapport with all of them simultaneously. It is physically impossible to make eye contact with more than one person at a time, so you will need to divide your attention between each of the moot masters. This can be particularly difficult when one of the moot masters does not appear to be making any attempt to engage with you. For example, where only two of the three moot masters are asking questions, it is very easy to ignore the third. But, you would do so at your peril. This moot master needs to receive an equal share of your attention because each moot master has the same capacity to award points and is therefore equally important to you. If your competition has multiple moot masters, your practice moots should have the same number. Get used to shifting your attention between each moot master, especially those who do not seem to be paying attention. It is an unfortunate and unfair reality that the moot master who does not pay attention will be the one who complains that you have failed to engage them.

If you find that you are having some difficulty attracting the attention of a moot master simply by looking at them, there are a number of techniques you can use to politely demand their attention. First, as we have already discussed, you need to make the most of your voice and body language. If this is not enough, you can incorporate a direct

reference to the moot master into your presentation by referring to them by their title or name.

Referring directly to a moot master must be done with care. The easiest method is to refer to a question that the moot master asked earlier in the moot. A more contentious method is to use information about the moot master that you know from outside the confines of the hearing that you are presently participating in. For example, you may know that the moot master comes from a civil or common law background. Or you may somehow draw upon a journal article or case decision that the particular moot master has written. If you are able to research your moot masters, you should do so. You may never use the information you find, but it is there in your arsenal if necessary.

The other information you should seek is the personal style of each of the moot masters. Are they the kind who will pester you with questions? Are they the kind who will want to hear more about the facts or the law? Are they likely to focus on one particular issue? Having all of this information will help you prepare for your presentation. At the very least, it will give you an idea of what to expect, which is particularly important if you are appearing before a moot master with an aggressive style.

4.3.10. Know how the moot is to be run

There are many procedural matters that you need to be familiar with so that there are no unpleasant surprises during the moot. Some of these may change from moot to moot, and even within the same competition, so it is important to practice for all eventualities. We have already discussed time keeping, but there are many other aspects to consider.

a. Order of submissions

Advocates are frequently taken by surprise when the moot master changes the order of submissions. For example, the Respondent may have challenged the jurisdiction of the court. In this situation, it would not be unreasonable if the Respondent was asked to make its submission on that issue first. Suddenly, the Respondent is not responding any more but presenting an affirmative case. It is also important to remember that the first speaker should always offer a summary of the facts, and this means it may be the Respondent who has to present this summary.

b. Rebuttal

The availability of rebuttal will vary from moot to moot. If you are representing the party bringing the case, always request a right of rebuttal. This is not to say you will always exercise that right, but have it up your sleeve if it is granted. If possible, confer with your opposition before the moot begins and agree on how you would jointly like the moot to be run. The moot masters may ask whether there has been any agreement on these issues, or they may simply begin the moot. In either case, the first advocate, whichever side the advocate represents, should clarify the procedure with the moot master – in particular the time available to each advocate, the order of arguments and the right of rebuttal (and occasionally surrebuttal). This can be done very politely by indicating that there were

discussions between counsel before proceedings began and that you are jointly proposing a particular procedure to the moot master. The moot master may acquiesce or allow some matters like rebuttal. Ultimately, it remains in the moot masters' hands and you can only ask.

Even if you have the right of rebuttal, you may not always wish to exercise it. Knowing when to rebut and when not to will come from an understanding of the purpose of rebuttal. Rebuttal does not exist so that you get the last chance to restate your case. On the contrary, rebuttal should not involve a restatement of the case at all. Rebuttal should be used sparingly and pointedly only to address new points raised by your opposition in the course of their submission. This is why it is particularly important for parties bringing a case to reserve the right.

Imagine, you are the Applicant. Having run short of time you decided not to present one of your alternatives. During the Respondent's submission, the alternative was raised with apparent acceptance by the moot master. This is when you use your rebuttal. But, do not launch into your entire presentation on the point. Simply, single out the fatal flaw without going further. It is the perfect example of when less is more. Sadly, misuse and even abuse of the right of rebuttal has become the norm. The positive consequence is that the proper use of rebuttal is striking and usually rewarded. When asked if you have any rebuttal, do not be afraid to say that you do not. No, the Applicant believes it has already answered all of the Respondent's submissions. If you do have rebuttal, state the number of rebuttal points you will be making. Thank you, the Applicant has four points to make in rebuttal. Limit yourself to the four, or at the very most five, strongest points. Doing so will suggest you appreciate that a rebuttal must be focused. You are likely to have five minutes at most, and at one issue per minute you may already be speaking too quickly.

There is one final point to make about rebuttal. Advocates who have not paid attention to their opponent's submission will not be able to rebut effectively. If, after your submission, you were completely preoccupied with what you were going to have for lunch, do not even try a rebuttal. You may have gleaned the general theme of your opponent's submission, but you will have no appreciation of the specificities, and it is the specificities that you should rebut on. So, in addition to looking like you are paying attention, make sure that you actually do.

4.3.11. Dealing with mistakes

Good preparation is preparation that prepares you for every contingency. However unlikely you may wish it to be, it is possible that you will make a mistake. In a moot, and often in real life, the fact that you have made a mistake is not as relevant as how you deal with it.

Sadly, ignoring a mistake will not make it go away. If you have made a mistake, do not be frightened to correct it. It is far better to acknowledge that you "spoke in error" and to correct any misunderstanding that the moot master may have, than to simply push on.

However, do not be too quick to assume that it is you who has indeed made an error, particularly if the moot master has suggested that one of your well-researched arguments is wrong. Remember that you will know much more about the problem than your moot master because of your extensive and detailed research on the topic.

Have confidence in yourself and your submissions. Restate your proposition and clarify with the moot master precisely why they believe there is an error. If it is there, acknowledge it, downplay its significance to your overall submission and move on. If the moot master is wrong, take a moment to re-explain your point, specifically identifying why you are not in error and move on. When doing so, you should not attribute the confusion to anyone.

Your Worship, perhaps I could rephrase this point . . . Irrespective of who is actually in error, the crucial point is to proceed with your submission. Battle on. Do not lose confidence or be too embarrassed to proceed. Standing dumbstruck, not knowing what to do next, will have a much greater impact on the moot master than merely acknowledging a mistake.

4.4 CONTINUE THE TEAM WORK

The importance of teamwork has already been repeatedly emphasized in this material. Although a team may only comprise two people, it is still a team. Often, you will find you most need your team-mates during your moot and immediately afterwards. If the rules permit, your teammates can assist you when you are actually presenting. They can find references for you, pass your documents, keep time, and perhaps even assist with the answer to a question. All of these things have been canvassed in other sections of the book. However, something we have not yet discussed is how team-mates can assist after a presentation.

Watching a team-mate (or a student if you are the coach) presenting a submission can be extremely difficult. Because you have gone through the same or similar preparation, you will naturally think of answers to the questions being asked. Often, you will think these answers are better than the ones your team-mate ultimately gives. You will be sitting in the audience thinking, “You know this . . . no, no, that’s not right!” The problem is often exacerbated if there has and you should only do what is right for the team. There is no certainty that if you had been speaking, you would have answered the question any differently. The answer that pops into your head been competition for the advocate’s position. Irrespective of your personal feelings, you must remember that you are part of a team, while sitting in the audience occurs to you in entirely different circumstances. You are not under the same pressure as your teammate who is presenting and is the focus of everyone’s attention. It is impossible to know how you would respond if you faced the same question under similar pressure and attention.

Accordingly, you should never criticize your team-mate’s performance. Attacking your team-mates or denigrating their effort in any way, whether directly to them or to other

team-mates, will only serve to lessen everyone's performance. Instead, work with your teammates in a positive fashion. Make sure that any feedback you have is constructive, and expressed in such a way that does not suggest fault. Confidence is king, and negative comments from team-mates can often be very damaging.

Review Exercises

1. How does a team work assist an oral presentation?
2. What are the main rules during structuring an oral submission in a moot? Mention two items and elaborate them.
3. Mention at least three rules to be followed during an oral submission with a brief description.
4. What is the order of an oral submission? State briefly.
5. How should you respond to argument of the opposing team? Discuss briefly.
6. What advices are to be considered while using authorities during oral submission?
7. Mention and state briefly three tips relating to your voice during oral submission.
8. What is a body language? Is it useful for oral arguments? Why/why not?
9. What is the best advice regarding the use of notes for oral submission?

Bibliography

1. Snape, J. and Watt, G. (2000). *The Cavendish Guide to Mooting, 2nd Ed.*
2. *50th Anniversary of Jessup Reporter*, Anniversary Volume Commemorating Fifty Years of the Philip C. Jessup International Law Moot Court Competition, International Law Students Association, March 2009.
3. Christopher Kee. (2006). *The Art of Argument: A Guide to Mooting.*
4. David Ross QC (2005) *Advocacy.*
5. Boon, Andy. (1999). *Advocacy*, 2nd Ed., (Cavendish Legal Skills series).
6. Boyle, F. Capps, D., Plowden, P. and Sanford, C. (2003). *A Practical Guide to Lawyering Skills, 2nd ed.,*