

Introduction to Legal Studies

Moot court brief for tutors

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PART 1 – FOREWORD, GOAL OF THE MOOT COURT, RULES AND PROCEEDINGS

- **Foreword**

The Internal Moot Court for first year students is set to run from Monday 4 September 2017 until Friday 29 September 2017. There are sessions on each weekday (except from Monday 11 September 2017 to Friday 15 September 2017 (Mid-semester Vacation)) in the morning and afternoon, where students can appear and present their moot court to the presiding officers in that particular session.

Sessions usually run for 1 hour 30 minutes, leaving 30 minutes for the presiding officers to allocate marks and give feedback to students.

The presiding officers will consist of Introduction to Legal Studies tutors in the faculty of law.

- **Goal of the Moot Court**

The goal of the Moot Court is to orientate students to the preparation and discipline involved in preparing a case for court and the ways in which they present a case in court. The overall objective is to ensure that students will enjoy their moot court assessments at university and thereafter take part in moot court competitions outside university.

- **Proceedings in the Moot Court**

- 1) **Preliminary administration before the session begins.**

There will usually be at least one senior presiding officer and one senior presiding officer (as designated by the mentor) or tutor on the bench at any given time. It is up to the senior presiding officer to lead the moot court sessions and monitor that proceedings run accordingly. All questions and queries from presiding officers can be directed to the senior presiding officer for guidance.

At the beginning of a session, the students who are presenting in the session at hand must collect the robes from inside the Moot Court (or one of the presiding officers can give the robes to them) and the students must robe outside.

Once the presiding officers are ready, they can invite the students into the Moot Court and direct them to their seats if necessary. The senior presiding officer must then inform the students that they can sit in the meantime and prepare their respective presentations, usually by saying: **“Counsel for both parties, you may sit in the meantime and prepare to present your arguments while the bench does the same to hear your arguments.”** or something like this.

Once the presiding officers themselves are ready, and the students have indicated they are ready, then proceedings can begin.

What follows is the procedure for where there are two teams presenting, but it may also happen that only one team presents unopposed. The presiding officers follow the same procedure with one team, and in that case, only that team presents and proceedings here would usually be much shorter than if two teams were presenting.

2) The start of proceedings

The senior presiding officer usually opens proceedings in the following manner:

“Counsel for the Plaintiff, may we have appearances please?”

After this, the first speaker should greet the bench properly, introduce themselves and ask for their heads of argument to be handed up to the bench, at which point the senior presiding officer can invite the speaker to hand up their party’s heads. Thereafter, counsel for plaintiff takes their seat.

Next, the senior presiding officer will ask same of counsel for the defendant:

“Counsel for the defendant, may we have appearances please?”

Hereafter, the first speaker for the Respondent will do the same as counsel for the Applicant and hand up their heads to the bench.

Once the heads of argument have been handed up to the bench and the bench has made a note of who is appearing on both sides, it is advisable that the senior presiding officer lays down certain conditions related to the presentation of the arguments. This is solely at the discretion of the senior presiding officer and other presiding officers on the bench. An example of a condition could relate to the court taking note of the facts as follows:

“Counsel for both parties, the court is familiar with the facts in this matter so, when presenting your arguments, the court wishes to hear about the law you wish to use and how you apply it to the facts in this matter. However, if you need to commence your argument with reference to the facts in the beginning of your argument, the court requests that you keep it brief.”

Thereafter, the senior presiding officer can give counsel for the Applicant permission to begin proceedings by stating: **“Counsel for the Applicant, you may begin when you are ready.”**

Thereafter, counsel for the Applicant should open proceedings.

3) The Actual proceedings

During the actual proceedings, the presiding officers monitor not only each student’s presentation but also time constraints of each speaker and that what the students are saying is relevant and important in terms of their arguments.

At least one presiding officer should be assessing the students on the prescribed assessment forms, writing comments about the student’s presentation. All the presiding officers can do this, but at least one should do it and other presiding officers on the sheet after the session is complete.

At least one presiding officer should be going through the heads of argument for both teams and following each speaker’s argument in the heads. The students have been instructed to have at least two sets of heads for each presiding officer but at least one presiding officer must go through the heads during the argument and mark them for structure, language and grammar as well as, to a certain degree, content.

The presiding officers can also ask questions at any time about the facts and the law the students have researched. The presiding officers do not necessarily have to ask questions but if a presiding officer has a relevant question, then it can be asked.

During proceedings, counsel for plaintiff will present and then counsel for defendant will present. Once counsel for defendant has presented, then, depending on time, time can be given to counsel for plaintiff to rebut the defendant's argument.

4) **The end of proceedings**

Once both teams have presented and the plaintiff is done with rebuttal, the senior presiding officer should bring a close to proceedings by saying the following:

“Counsel for both parties, the court will now take a brief recess to consider your arguments. You may leave the court for a short while and we will call you to enter court to discuss your arguments and marks. Court is adjourned.”

At this time, the students should leave the court room, and the presiding officers must ensure that spectators leave the court room as well at this time.

5) **Deliberation on marks**

Once the students and spectators (if any) have exited the court room, the presiding officers must deliberate on the quality of each speaker's presentation, the heads of argument and certain other factors which appear for consideration on the prescribed assessment sheet. The presiding officers must also sum up their comments on the respective assessment forms and allocate a mark on a scale out of 10 for each aspect on the assessment sheet. Deliberation cannot take long as the presiding officers must still give feedback to the students. Once the marks have been determined, the presiding officers **MUST ENTER THE MARK ON THE MOOT COURT MARK LIST** and thereafter, if the presiding officers are ready to give feedback, they can call the students back into court. It is recommended at this point that only the students, and not spectators, are allowed in the court at this time.

6) **Student feedback**

This is the relaxing part of a moot court session so the presiding officers can tell the students to sit and relax – formal proceedings are over – and the presiding officers can deliver their feedback.

Thereafter, the senior presiding officer can elect to give the feedback and ask the other presiding officers to do same when he or she is done, or the senior presiding officer can ask his/ her co-presiding officers to give the feedback and then the senior presiding officer can end off with his/her feedback.

Also, the presiding officers can ask if the students enjoyed their session and if they learnt something from it. Once the presiding officers are done with their feedback, and time depending, they can invite the students to ask any questions or give their own comments. Once feedback has been given, the presiding officers can ask the students to come collect their marks, and if there is another session, the presiding officers can ask the students to hand their robes to the teams outside and exit the court with their marks.

PART 2 – CERTAIN ADMINISTRATIVE ISSUES RELATED TO MOOT COURT PROCEEDINGS

There are certain administrative issues related to Moot Court proceedings that the presiding officers need to bear in mind at all times in and outside their respective sessions.

1) Time constraints for each speaker

There is 1 hour for the speakers to deliver argument to the court, and 30 minutes for deliberation and feedback from the presiding officers.

The size of the teams is the determining factor for apportioning speaking time to the teams. The following guidelines on how much time each speaker has in accordance with the size of the times is recommended, bearing in mind time for Applicant's rebuttal:

- a) *6 speakers (3 Plaintiff/ 3 Defendant) = + - 10 minutes per speaker.*
- b) *5 speakers (for example, 2 Plaintiff/ 3 Defendant) = + - 10 minutes per speaker.*
- c) *4 speakers (2 Plaintiff 2 Defendant) = + - 12 minutes per speaker.*
- d) *2 speakers (for example, 2 Plaintiff/ none for Defendant) = the presiding officers have a discretion as to time allocation for each speaker, but to be fair to other students, it is recommended that 12 minutes per speaker will suffice. This will also help in keeping sessions on time on a particular day.*

It is up to the presiding officers to keep track of time for each speaker and where they see that a speaker is speaking for too long, the senior presiding officer can say:

“Counsel, the court takes note of the rest of your argument in your heads of argument. Due to time constraints, the court now requests that you hand over to your co-counsel to continue argument” or if it is the last speaker on a team **“... you can proceed to give the court your prayers.”**

2) **Questions that can be asked to students during moot court proceedings (Examples)**

At any time during proceedings, presiding officers may ask students questions. Such questions can take the following format (with no specific reference to the current moot facts):

a) On court etiquette

- i. Counsel, what type of court is the UJ Moot Court and how do you address the presiding officers in this court? (if a student addresses the bench incorrectly).
- ii. Counsel, where in your heads of argument are delivering your argument from? (where a student has not referred the court to pages or paragraphs in the heads of argument).

b) On the facts

- i. How are old are the children in this matter at present, counsel?
- ii. What is the relationship like between the plaintiff and defendant?
- iii. Counsel, tell the court about the destructive behaviours that the plaintiff/defendant has engaged in in the past?
- iv. The court understands the plaintiff/defendant was engaged in destructive behaviours in the past counsel. What were these behaviours?
- v. What was the altercation like between the plaintiff and the defendant?

c) On the law

- i. What is the name of this court today where this case was heard? (where a student refers to a case and the court as it was before the new court names were released).
- ii. Is this case binding on the court counsel? (where the student refers to a foreign law case).
- iii. Is international law applicable to this situation regarding the child? (where the student has not referred to international law).
- iv. Counsel, what were the facts in this case and are they similar to the facts *in casu*? (where a student refers to a case as authority).
- v. Counsel, do you have any authority for the argument that you are making? (where a student makes an argument without referring to any authority).

3) **The prescribed assessment form**

There is a prescribed assessment form that the presiding officers need to fill out for each individual speaker on each team during moot court proceedings. The form takes the shape of 5

aspects of moot court that need to be evaluated, with a scale out of 10 for each and space under each aspect to write comments throughout proceedings. The 5 aspects are as follows:

- 1) Legal analysis and argument;
- 2) Organisation and style of heads of argument;
- 3) Research and attention to detail;
- 4) Oral advocacy and presentation; and
- 5) Court etiquette.

The presiding officers can decide amongst themselves how they want to evaluate the students based on these forms. For example, the senior presiding officer can evaluate each student on an assessment form while the other makes notes on a notepad, and then in deliberation, the senior presiding officer can transfer the other presiding officer's comments onto the form. Alternatively, one presiding officer can evaluate one team and the other presiding officer the other team and they can exchange views and observations during deliberation. Either way, each student must get an assessment form at the end of their session with feedback and their mark. The assessment form cannot be bypassed for any reason.

When evaluating students based on the form, it is suggested that the presiding officer starts evaluating oral advocacy and court etiquette, as these are usually easiest to evaluate immediately. Then the presiding officer can evaluate the student's legal analysis and argument once the student is delivering their argument in full. Thereafter, and once the presiding officer has looked at the heads of argument, the presiding officer can give feedback on the organization of the heads of argument and the research and attention to detail. The presiding officers can elect to look at these aspects in any order they please but this is the suggested and most convenient method to evaluate the students.

With regard to evaluating these students based on these 5 aspects, it must be said that the presiding officers must evaluate the students as **INDIVIDUALS** for **oral advocacy and court etiquette**, as these points relate more to a student's individual presentation. Therefore, the students can get different marks from one another based on these 2 aspects. However, for **organization of the heads of argument, legal analysis, and research**, the students should be evaluated on these as a **TEAM** because working on the heads and doing the research is deemed to be a team effort. Therefore, the students as a team should get the same marks for these 3 aspects on the assessment form.

4) Spectators

It does happen that for some sessions, students invite family members, friends and fellow law students to come watch them in their session. There is usually no problem with this provided such spectators do not disturb proceedings. It may also happen that members of UJ staff (law or otherwise) may also sit in on proceedings as spectators. There are some constraints on spectators that the senior presiding officer must enforce:

Firstly, all spectators must turn their cellphones off or put them on silent and they may not talk at all during proceedings.

Secondly,

- a) **Family members of the speakers:** may sit in in the actual session but may not be in court during deliberation on marks and giving feedback. Also with family members, no young children or babies are allowed in the moot court.
- b) **Members of staff (law):** may sit in actual proceedings, deliberation and giving of feedback. To some degree, non-law members of staff who have been permitted to watch moot court proceedings by invitation or otherwise may also sit in in this regard.
- c) **Non – law students who are friends of the speakers:** may sit in actual proceedings but may not sit in for deliberation and feedback.
- d) **First year law students:** may only sit in if they have done their moot court session already or they are international studies/PPE students. Otherwise, they may not sit in at all. If first year law students want to sit in as spectators, the senior presiding officer must enquire of them if they have done their moot court session before and check for a mark next to their names on the class list. If no such mark appears or if the students have not done their moot court, the senior presiding officer must ask these students to leave. If first year law students have done their moot court, they may be spectators for the actual session, but must leave the court when deliberation and feedback take place.
- e) **Senior law students:** usually do not sit in but if you know a senior law student who would like to sit in, they must see the Mentor for permission first, unless they are friendly with or family to any of the speakers in the given session.
- f) **“Randoms”:** this is a term used for students or people passing by the moot court and they “just want to see what it is all about” or “they have never seen how moot court works but they have heard so much about it”. Please tell them to see the Mentor if they want to see a session. Only spectators with some link to the speakers in that particular session and the other persons listed above will be admitted into the moot court based on certain conditions. People passing by with no link to the speakers cannot be permitted as it may make them very nervous.

Of course, law tutors may sit in actual sessions as assessors or as spectators but I would advise only 1 or 2 tutors at a time so as not to make the students nervous.

Presiding officers must remember to handle and speak to spectators with the utmost respect and professionalism. However, if there is any spectator who disrupts proceedings in any way, the senior presiding officer has authority to ask that spectator to leave. If any such problems escalate, the presiding officer must contact the Mentor immediately and such a matter must be directed to the Mentor for resolution.

5) Problems that may arise during proceedings

It may happen on a particular day and in a particular session that some member(s) of a team may fall ill or end up in a situation that prevents them from getting to the moot court. Usually if this happens, it would mean that the members of a particular team may not be able to present if they are missing a team member. This does not mean that the senior presiding officer must cancel a whole session though. If there is an opposing team that can present, they will present in that session unopposed, while the team with a sick/indisposed team member must see the Mentor. In this case, the senior presiding officer must advise the team members present of the following procedures:

- a) *Where a member of a team is sick:* the team member **must take a doctor's note to the Mentor in the Mentor's first available consultation hours.** The other team members must also see the Mentor. If the doctor's note is accepted, the Mentor can ask that team to present on a day and time so determined by the Mentor.
- b) *Where a member of a team is in a situation causing his or her absence:* the team member **must take an AFFIDAVIT stating the nature of the situation to the Mentor in the Mentor's first available consultation hours.** The other team members must also see the Mentor. If the affidavit is accepted, the Mentor can ask that team to present on a day and time so determined by the Mentor. An example of this kind of situation would be a car accident on the way to the university or a bereavement (for the latter, the student can also bring a death certificate).

The Mentor will not defer sessions for students unless the above requirements are met. The Mentor will also not make more sessions for students in the following circumstances:

- a) *Late coming for sessions*

Where students are late for their sessions, they will take a hefty mark deduction and the senior presiding officer must issue a severe reprimand to such students if they are late. The session must still proceed as planned if another team is present and they must present as if the other party is not present (to some degree, unopposed). When late students arrive and a reprimand has been issued by the senior presiding officer, the senior presiding officer has a discretion to deduct as many marks as would justify the amount of time the students lost for being late. It is recommended though that if students arrive 25 or more minutes late for their session, they get zero for their moot court, as this would technically have been the amount of time for them to present in their session. Any cases of late-coming can also be referred to the Mentor for a final decision.

b) Printing problems and complications

If students arrive at their session saying they could not print their heads of argument in time for session because of printing problems or complications, and they want to defer their session, they get zero for their presentation. Printing problems and complications **will not be accepted** as an excuse for deferring their session. This would mean that any team the “disqualified” team was to present against would then present their moot court in that session unopposed.

There is nothing wrong if say for example, a team could not print enough heads for the bench but they have their own heads of argument printed and are ready to present. Then the students can present in their session, but if they cannot give the bench a set of heads to follow, the senior presiding officer has a discretion to deduct marks in this regard.

If students still want to address this problem, they can also be directed to the Mentor.