

### Scoring Criteria for Oral Arguments

Scoring Criteria	Maximum Points	Explanation / Guidance
Introduction		<ul style="list-style-type: none"> <li>Judges enter room, all counsel rise and remain standing until told to sit by Judges</li> <li>first-named counsel for the appellant rises, states the names of both appellants' counsel, spells each of their last names and indicates that they represent the appellant</li> <li>first-named counsel for the appellant sits</li> <li>first-named counsel for the respondents rises, states the name of both respondents' counsel, spells each of their last names, and indicates that they represent the respondent</li> <li>respondent's counsel sits</li> <li>counsel for appellant rises and proceed to present arguments</li> </ul>
facts, issues		<ul style="list-style-type: none"> <li>brief outline of facts; effective outline should include pertinent facts to their argument, and omit extraneous detail</li> <li>issues on appeal and counsel's position should be clearly stated</li> </ul>
Legal Arguments		<ul style="list-style-type: none"> <li>counsel should provide overview of each main section of their argument</li> <li>substantive law is correctly interpreted and accurately stated</li> <li>substantive law is effectively applied to the facts</li> <li>arguments have a logical flow and are properly developed</li> <li>arguments are persuasive and creative</li> </ul>
Order Sought and Conclusion		<ul style="list-style-type: none"> <li>arguments logically lead to the order sought</li> </ul>
General Presentation		<ul style="list-style-type: none"> <li>Logical structure</li> <li>Clear and articulate speech with appropriate command of volume and pace</li> <li>Respectful tone towards counsel and Judges and effective answer of questions</li> <li>Adheres to rules including timing limitations</li> </ul>
<b>Total: 100</b>		

### General Tips for Advocacy (from 1L Moot Rules)

1. Preparation is essential. The object of an appeal is to persuade the Moot Court that a judgment should be rendered in your client's favour. Do your research and analysis, subject to any limitations

imposed by these Rules or your professor as to the scope of case law and other materials on which you are permitted to rely, and organize your argument accordingly.

2. Give careful thought to the arguments of the other side, but fight the battle on your own ground. As counsel for the appellant, your case should stand on its own feet. As counsel for the respondent, you must try to fully counter the appellant's argument, but you may also attempt to improve upon the judgment that you seek to uphold.
3. Anticipate difficulties with your argument and questions that the Moot Court judges may have. Prepare answers to those questions in advance. Judges will traditionally ask about weaknesses in your argument alleged by the opposing party, the broader implications of position you take, and whether the cases you rely upon are distinguishable from the circumstances of your case.
4. Use your factum strategically during oral arguments: inform the judges where you are in your factum so that they can follow your argument more easily, but avoid pure recitation of your factum. Oral advocacy is not a chance to new arguments, but rather, an opportunity to expand upon the arguments set out in your factum and address the judges' questions about your factum submissions.
5. The essence of advocacy is persuasion; your task is to influence the Moot Court judges. The following points should be observed:
  - (a) The argument should be a logical sequence of acceptable propositions buttressed by authority. If your argument has some particular challenges, set those challenges out during your argument and then argue why in this particular case you can meet those challenges.
  - (b) Use your strongest authority first. If the Moot Court is persuaded, proceed to the next point. Do not bore the Moot Court with needless repetition of authority. In other words, pay close attention to the judges' reactions to your arguments and adjust accordingly.
  - (c) State your propositions clearly so that the Moot Court judges can follow the steps of your argument.
  - (d) Although you must respond to the judges' questions, do not permit yourself to be side-tracked. Figure out a way to get back to where you were before the question.
6. Observe some simple yet fundamental rules of courtroom decorum:
  - (a) While the rules vary between different courts, the Moot Court will follow the practice presently adopted in the BC Court of Appeal.
    - a. The only exception is that counsel addressing the Moot Court judges should use "**Justice**", when addressing a judge individually, or "**Justices**" when addressing more than one judge at a time. When addressing the entire bench, counsel may also use "This Court". When quoting another judge, use that judge's appropriate title, e.g.: "Justice Doe" or "Justice Smith" for justices of provincial superior courts and courts of appeal, "Judge Doe" for judges of the provincial courts, and Chief Justice Doe for chief justices. Do NOT use "Doe J." You may also refer directly to the court, e.g., "The Court in *Smith* held that the test for intent is subjective."
  - (b) Do not interrupt the judges while they are speaking, and always remain composed in your response. If they are asking a question, let them complete it first.
  - (c) Use plain language. Think before you speak.

- (d) Address opposing counsel as your “**friend**”.
- (e) Dress in a professional manner – wear “court appropriate” attire such as dress pants and a dress shirt. Although a suit is not required, jeans or other casual attire will not be allowed in the Moot Court.
- (f) Pause and take time when responding to judges’ questions. Think before answering. If the question from the Judge takes you to a different part of your submissions, it is preferable to address that issue at the time of the question rather than tell the Judge that “you deal with that issue later”.
- (g) Remember that you are an officer of the Moot Court and, as such, enjoy the confidence of the judges. In return for this professional privilege, you are expected to instruct the Moot Court fairly and honestly.

### **Additional Oral Advocacy Resources**

A list of additional resources on oral advocacy is provided below. Please note that these resources provide *general* guidance, and are not meant to be a substitute to any specific rules or court procedures that may apply (e.g. the 1L Moot at Allard Law).

- [Bowman Tax Moot: Tips for Virtual Oral Advocacy](#)
- [BCCA: Appearing Before the Court Practice Direction November 2021](#)
- [CBABC: Counsel Introduction Scripts \(2020\)](#)
- [Harvard Law School: Ames Moot Court Competition \(Virtual, 2020\) \(video\)](#)
- [Ontario Justice Education Network: Charter Challenge Resource: Presenting your Case at the Court of Appeal](#)
- [The Supreme Court Advocacy Institute: Appellate Advocacy: Presenting the oral Argument \(2002\)](#)
- [The Supreme Court of Canada: Webcast of AGBC v. Council of Canadians with Disabilities \(2022\)](#)
- [Thompson Reuters: Tips for Moot Court Tryouts: 7 Steps of Preparation \(2019\)](#)
- [Thompson Reuters: Tips for Moot Court Tryouts: Oral Arguments Dos and Dents \(2019\)](#)

### **Critical Advocacy Issues for Mooters**

#### **1. Introducing Yourself**

- basic order and rules for introducing yourself as counsel
- how to begin submissions

#### **2. Introducing Your Submissions**

- providing a brief overview of the submissions you will be making

### **3. Language of Submissions**

- avoiding submissions phrased as personal opinions
- balancing respectful and forceful submissions

### **4. Dealing with Questions:**

- basic best practices for general procedures for answering questions
- how to deal with questions which take you to different parts of your submissions
- answering hypothetical questions
- answering policy questions
- answering distinguishing questions
- dealing with questions that fall in your team partner's submission

### **5. Timing**

- ensuring that you are delivering your submissions at a reasonable pace
- how to deal with running out of time and having outstanding submissions
- requesting brief further time when at time limit

### **6. Conclusions**

- providing a brief conclusion to your submissions
- when and how to use right of reply
- "Only use the Optional Reply to address new points raised by the Respondent which have not already been addressed by the Appellant's submissions"

### **Sample Questions for Appellant Mooters**

1. Did not the trial court make some findings of fact that are contrary to your submissions, and should we not defer to those findings of fact?
2. Should not we presume that the trial judge knows the law and applied the correct law?
3. Are not some of the facts of the cases you rely upon very different from the facts of this case?
4. Could you please tell the Court exactly where you are in your Factum at this point?
5. What does the opposing counsel say about this submission, and why are they not correct?
6. As you are aware, we are not bound by any precedents. Could you please tell the Court why we should follow the law in the main authorities that you rely on?
7. What are the policy implications of your submissions, and would they take the law in this area in a positive direction? Are there not some risks of interpreting the law in this manner?
8. What are the implications of your submissions on the goal of keeping our legal rules as simple and predictable as possible?
9. Were the errors you argue significant enough to justify the remedy you are seeking? In other words, would the result at trial necessarily have been different if those errors did not occur?

### **Sample Questions for Respondent Mooters**

1. Did not some of the evidence at trial support the positions of the Appellant on the issues before this Court?
2. Is it not the main role of this Court to look for any possible error from the trial below in order to protect against a wrongful conviction?
3. Are not some of the facts of the cases you rely upon very different from the facts of this case?
4. Would you agree that the trial judge did not articulate the legal tests as clearly as they could have?
5. Is there at least a possibility that the trial judge used legal tests inconsistent with those set out in the authorities, and if there is any uncertainty on this issue, should we not err on the side of ordering a new trial?
6. Could you please tell the Court exactly where you are in your Factum at this point?
7. What does the opposing counsel say about this submission, and why are they not correct?
8. As you are aware, we are not bound by any precedents. Could you please tell the Court why we should follow the law in the main authorities that you rely upon?
9. Your friend also argues that the evidence did not support the findings the trial judge made. Should we be able to reconsider the evidence in this case and conclude that different findings should have been made?
10. Would you agree that if we find that the trial judge made any errors that there will have to be a new trial ordered?