

GENERAL GUIDELINES

1 Preparatory Work – Before the Moot

In advance of the moot, you should:

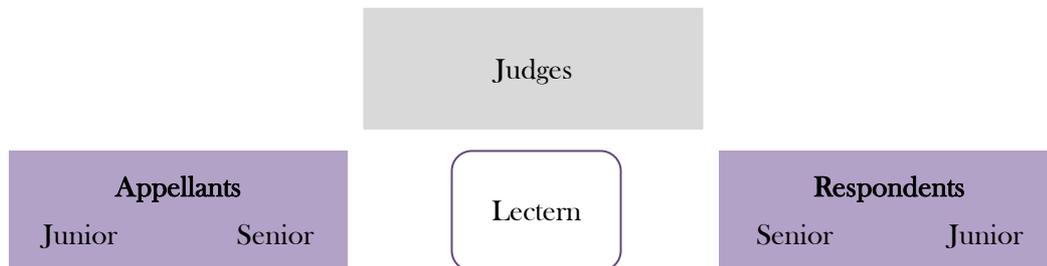
- Print both sets of submissions;
- Download the score sheet;
- Read and mark the submissions, note any problems, and note areas of potential questioning;
- Read the judging guide for the specific moot problem; and
- Wear formal business attire to the moot (if possible).

2 Start of the Moot

Arranging the Room

Before the start of the moot (say, at 5.45pm), arrange the room into a court as per the diagram below. You should rearrange the room back to its original position after the moot has finished.

It is recommended that a table be placed between the two teams, in front of the judge, at which the competitors will speak during their submissions.



Opening Address

For first time mooters, you should introduce a small element of formality, in which you and your fellow judges exit the room. Then, knock on the door, and the mooters will stand up while you take your places at the bench. Then, bow slightly to them (and they will bow in response), and be seated. Then say:

'In the matter of [case name], the [specific court, per the fact scenario] is now in session. The court will now take appearances ...'

After appearances, the order of speaking is: Appellant Senior Counsel, Appellant Junior Counsel, Respondent Senior Counsel, Respondent Junior Counsel.

3 During the Moot

General Demeanour

Appear confident and knowledgeable. Mooters should think you know more than them and they should respect your authority in court. Do not tell them that you are unprepared, as they have put a lot of work into their submissions.

Be polite and pleasant, though you can be rigorous in the questions you ask. We'd much rather that competitors come away with the feeling that their judges were quite **friendly and nice**, but that they knew the law and that the moot was reasonably challenging.

Do not 'overdo it' with negative reactions if a mooter is struggling (i.e. shaking your head excessively in response to one of their answers). While expressions are useful to the mooter to indicate whether you agree with their responses, as a Judge your role is to guide them to the correct reasoning, not to sit there in disapproval.

Questioning

i. Keep the level of questioning relevant to the moot and to the individual mooter.

If the mooters are clearly struggling with the question and cannot offer a satisfactory answer despite being prodded continuously, it is probably best to move on.

At advanced stages, if the mooter is fairly good, you may enter into the subtleties of the case. There is no need to be unduly easy on mooters, especially good mooters. Remember that we do want to test how good each speaker is. No one should have a perfectly smooth ride, but no one should struggle to such an extent that they never want to moot again.

Most moots have more than one judges. Avoid overwhelming mooters, and don't ask questions that abruptly take the mooter in an entirely new direction. In particular, if the moot you are judging has three judges, be wary of asking too many questions.

ii. Guide mooters through their submissions if need be.

If a mooter is clearly lost or struggling, try and get them back on track. Be polite in questioning.

You should appear as though you actually have a question rather than just grilling the mooter for the sake of it. All questions should have a relevant purpose in either clarifying their argument, or guiding them. Moot judging is not an opportunity for a power trip.

iii. Be aware of the time limit.

Do not labour one point for five minutes unless absolutely crucial. If the mooters are unable to satisfactorily address the point and a lot of time has passed, simply move on. However, if you do press a point, it is the mooter's responsibility to address your question as best as they can and to then manage the remainder of their time flexibly, without rushing.

Types of Questions

You may ask a mix of fact-based, law-based, hypothetical and policy questions, and any others as appropriate. Judges' questions might include:

- Whether an objective or subjective test is being applied, and the elements of any test
- Questions about the cases cited: facts, ratio/judgment, similarity/distinction to problem scenario
- Where there is a case that is clearly analogous to the facts, there can be a more extensive line of questioning.

However, it generally wastes time to ask the mooter to provide 'the facts of that case', unless the mooter is struggling and needs a relatively simple question.

- Testing the mooter's understanding of whether the case they cited is binding or persuasive.

NB: intermediate appellate court decisions are binding on other intermediate appellate courts unless 'plainly wrong' or based on specific legislation: see *Farah Constructions v Say-Dee* (2007) 230 CLR 89.

- Questions about what appellate courts can overturn (findings of fact/law), and criteria for overturning findings of a trial judge
 - Note that:
 - the agreed facts in the mooted scenario cannot be impugned.
 - Mooters must stick within the grounds of appeal and the judges' questions should never be outside those grounds or asking why those grounds were picked.
- Hypothetical scenarios that test the limitations of the mooter's argument and the matrix of facts within which the argument can be maintained
- Questions directed towards the weakness(es) of the mooter's case

Timing

Mooters are expected to keep track of the time as they present their arguments. As a judge, you have **discretion** as to:

- Whether you say 'counsel, your time has expired' and stop them there.
- Whether you say 'counsel, your time has expired' and ask them if they would like a 1 minute extension.
- Whether you say nothing at all and let them continue.

- **HOWEVER**, especially for first-time mooters, you are encouraged to inform mooters that their time has expired, or even remind them that their time is almost about to expire. This saves some time and is in keeping with the general principle that judges should be nice to mooters.

Always remind competitors during feedback that they should be time-aware, and can use their phone timers or stopwatches for this purpose in the moot.

i. What is good timing?

- Ideally, the speaker should indicate that they are aware their time is about to expire at the 19 minute mark (or shortly after). For example, they could say: ‘Your Honours, I note that my time is about to expire ...’
- Whether they then choose to ask for an extension depends on what they have left to say.
- Whether you choose to grant any such extension is entirely up to you.

FEEDBACK AND SCORING [Please Read]

1 Giving Feedback to Mooters

After the moot, politely ask the mooters to leave for a period of time (usually 15–20 minutes) for the judges to deliberate. Once you have made your decision, invite them back into the room, then indicate that the formalities are over. You can now start being colloquial with the mooters.

First, provide general feedback on how everyone did, including positive features and common mistakes across the board. Then, provide specific feedback on each mooter. Generally, do not be overly strict or harsh – especially in the first round – on matters of formality (they will pick that up as time passes). You can use the scoring guide in this document to provide a general framework for feedback.

Include Positive Feedback!

It is all too easy to only make note of points for improvement. Mooters may feel quite dismayed if the feedback they receive is negative.

Be as encouraging as you can. Say things like: ‘That was really good for your first moot!’ and ‘I know that felt like a struggle, but most people really do a lot worse their first time!’

Be Accessible

The mooters should feel like they can ask you for advice or clarifications at any time during feedback. Explain any legal mistakes they made, to the extent that the mooters are interested in legal points.

What to Focus on

- i. Focus on argument structure and clarity.**

For the early rounds, this is the most important part of mooting. Stress conceptual clarity (eg, keeping reasonable foreseeability in duty of care and breach of duty separate) and signposting of arguments.

Do *not* just say things like ‘your structure could have been improved’. **Point out *where the mooters’ submissions were unstructured, and how it could have been better.*** Attempt to illustrate your points with examples so that mooters receive tips on how to actually ‘improve structure’.

ii. Then, explain any mistakes in etiquette.

While you should make all the corrections you can, it is important not to appear unduly harsh or pedantic here. Always remind the mooters that this is the easiest part of mooting: it’s often merely a matter of learning to say the right phrases. The real challenge is in the quality and clarity of arguments.

iii. Give basic public speaking advice (how to avoid reading, how to make more eye contact, etc) End on a Positive Note

We’d really like mooters not to be discouraged by their first moot. Feel free to ask them if they enjoyed it. Announce a single winner, but **do not reveal the scores.**

2 Scoring Guide

Score totals have these meanings (scores are out of 50):

0-20	Poor
20-29	Average
30-39	Excellent
40+	Outstanding

Feedback on the Score Sheet Comments Section

All judges **must include comments** on the score sheet, rather than just filling in the columns of scores. As UNSW competitions operate using individual progression, judges should feel free to differentiate between more and less talented mooters within a team in the score sheet comments. **See below, Appendix A, for an example score sheet comments section.**

Make sure you comment *at the very least*, for each speaker:

- Argument and structure (separately for each submission where necessary);
- Questions and Answers;
- Presentation and Speaking; and
- Written Submissions.

Scoring rebuttals/sur-rebuttals

DO NOT allocate marks to rebuttals, or take away any marks for bad rebuttals, in the scoresheet columns. Your scoring of formalities, style and all the categories on the scoresheet should not be affected in any way by the performance of mooters during rebuttals. This is in order to encourage mooters to attempt rebuttals and learn how they work. With a rebuttal system in place, mooters are less likely to ‘shut off’ after they have spoken, and will listen to what the other side is actually saying.

HOWEVER, you should make brief comments about rebuttals, including which side(s) opted to make them, and whether they were effective.

AREAS IN WHICH JUDICIAL CONSISTENCY IS IMPORTANT

Often mooters complain that they have been offered inconsistent feedback on key areas of mooting. The following list notes areas in which inconsistent feedback has been given in the past, and describes the general rule.

<p>1. Which of the mooters should provide a summary of the facts at the beginning of their submissions?</p> <p>How long should their summary be?</p>	<p>Generally, the senior counsel for the Appellant and Respondent should provide a <i>very</i> brief summary or introduction of the important facts and key issues (no more than 30 seconds). The summary may be gently skewed in favour of that motooter’s side of the argument.</p> <p>The junior counsel for both sides <i>may</i> provide a summary of the facts and issues relevant to their submissions, but this is <i>not necessary</i>.</p>
<p>2. What do mooters say if they do not know something (eg, the facts of a case they have cited, whether a test is objective or subjective etc)?</p>	<p>In this situation, mooters should be encouraged to say ‘I cannot assist the court in that matter’, instead of trying to feign knowledge.</p> <p>If a motooter says that they cannot assist the court further, then the judge should not continue to ask them about that issue; they may choose to ask fewer questions if the motooter is obviously struggling, or they may direct their questions elsewhere.</p>
<p>3. When should mooters concede to the bench and submit ‘That is the highest I can put it’?</p>	<p>There is no universal rule, but the accepted view is that saying ‘That is the highest I can put it’ is a last resort. The motooter should have attempted to put forward their submission as strongly as they can, and only then should they use the phrase.</p>
<p>4. Should mooters never say ‘That is the highest I can put it’?</p>	<p>A motooter should not be penalised heavily if they use this phrase after several minutes of grilling on the point, where it is clear that they have no alternative ways to frame the argument <i>and</i> where a good motooter would have difficulty thinking of any other ways to advance the point.</p> <p>Note: mooters should be free to concede <i>non-essential issues</i>, especially if those issues are difficult to argue. For example, in a case concerning the tort of negligence, it may be wise for a defendant to concede that a duty existed in the case (especially if it is difficult to argue otherwise) so that they can focus their time and attention on more contentious and interesting points of fact or law.</p>

<p>5. How long should written submissions be?</p>	<p>Generally speaking, 5–7 pages (including cover page and references) is sufficient.</p>
<p>6. Do mooters need to cover all of their written submissions in their oral submissions?</p>	<p>A mooter should cover all of their main submissions (ie, the submissions that revolve around the grounds of appeal). If they run out of time to cover a minor point they should have made in their written submissions, they should not be penalised.</p> <p>If they are running out of time, they should cover the pertinent points of their remaining submissions rather than rushing through the entire point. Judges should take the length and difficulty of their questioning into account here.</p>
<p>7. Should mooters be penalised if they raise material in oral submissions that were not in their written submissions?</p>	<p>Yes. The number of marks deducted is dependent on how significant the omission was. Correcting an obvious error, however, should not attract any penalty – mooters may do this either before the moot after their appearance (or during submissions if they only notice it then).</p> <p>Substantial new points must not be raised. Judges should be free to either ignore such new points or to make it clear to the mooter that they should abandon them. In any event, it should attract a penalty and the other side should not need to deal with it. New points may, however, be raised in response to questioning.</p>
<p>8. To what extent can mooters be ‘dramatic’ or ‘emotive’ in the way they present their case?</p>	<p>Mooting is supposed to be dispassionate. Nevertheless, mooters are allowed to vary their voice and tone to emphasise certain points. However, this does not extend to being melodramatic and emotional when delivering submissions. Naturally, a criminal law or tort law moot may attract more emotion than a commercial law moot, but moots should <i>never</i> resemble debates.</p>
<p>9. How aggressive can mooters be towards their opponents?</p>	<p>Mooting should be free to make respectful references to weaknesses in the submissions of their opponents. However, this should not be personal (instead, it should be prefaced by a phrase such as ‘with respect to our learned friends’) and <i>not so frequent as to detract from the flow of submissions</i>.</p> <p>Ideally mooters should incorporate such points into their submissions, and they should not have a section of their 20 minute submission reserved for ‘rebuttal’ or attack.</p>
<p>10. When should the right of reply be offered?</p>	<p>Always offer the appellants the opportunity to make rebuttals at the conclusion of the respondent junior counsel’s submissions. If the appellant takes the opportunity, then always offer the respondents the opportunity to make a sur-rebuttal afterwards. There is no official time limit for rebuttals and no time extensions are to be granted. No marks are awarded.</p>
<p>11. For how long may extensions be given?</p>	<p>Extensions may last a maximum of 5 minutes. Ideally, however, they should not last longer than 2 minutes.</p> <p>Further, if you give an extension to one speaker, you should not feel at all compelled to give an extension to any other speaker unless you have questioned them similarly.</p>

A very short guide to combatting unconscious bias in mooting

What is unconscious bias?

- Our brains make categorisations or 'shortcuts' for identifying, assessing, evaluating and thinking about other individuals at the unconscious level based on daily interactions with others and external forces such as media. Categorisations are useful to the brain as we use these visual clues to make assessments of others.
- The problem becomes that we take these random categories and we start to make positive or negative correlations based on our relationships with others. If someone looks and sounds like me, if we have a similar background, I am much more likely to give a positive attribution to them. If someone is different, I am much less likely to do so.
- This exists prolifically in the workplace and professional context, and has been consistently demonstrated within mooting at UNSW.

What bias actually exists?

Quantitative data

- **Drop out rates**
 - In 2015 beginners mooting, only 15% of men who participated in Round 1 did not continue to Round 2; whereas 43% of women dropped out after round 1.
 - In 2016 beginners mooting, the dropout rate increased for women (to 65%) but additionally for men (to 56%)
 - This data shows a large problem associated with mooting is that women who compete in round one are significantly less likely to return for round two than men are.
- **Top ten speakers**
 - In 2015 beginners mooting, in round 1 6/10 of the top ten speakers were women, whereas in round 2, only 1/10 were women.
 - In 2016 beginners mooting, in round 1 7/10 of the top ten speakers were women, whereas in round 2, only 2/10 were women.
- **Final rounds representation rates**
 - In 2015, 47% of the beginners mooting quarterfinal were women, 50% of the semifinal, and 25% of the grand final.
 - However, it is important to note that in that year, women formed up 59% of the beginners mooting contingent in round 1, which still amounts to undervaluing of women's performances, particularly for the grand final.

Qualitative data

- **Sexist/biased feedback**
 - Feedback given by judges varies significantly depending on the competitors gender. From comments received in round 1 2016:
 - Women were half as likely to be perceived as "confident" by their judges (5% of women, v 10% of men)
 - Women are twice as likely to be perceived as "nervous" (6% of women, v 3% of men)
 - Certain terms such as "(too) aggressive" and "(too) emotive" were only used against women.

- Certain comments that expressed dissatisfaction with the tone and pitch of the speaker's voice were *only* noted against women competitors.
- One possibly explanation for the attrition rates above which is supported by anecdotal experiences is that these detractions make women competitors feel disillusioned with mootng.

How as a judge do you combat this bias?

1. Recognise your biases and common biases others have.

- Common biases are those regarding deeper voices as more persuasive or confident, and higher voices as less persuasive or confident.
- Ignore traits in vocalisations that are more common in women that sound 'unprofessional' such as vocal fry, or 'uptalk' (ending sentences with higher intonations)
- Interrogate yourself when you hear certain speakers speak, and question why certain actions make you feel uncomfortable or look down upon speakers.

2. Interrogate your actions

- When you are going to deduct marks, always ask yourself — "Would I be willing to deduct marks for this action for every single competitor? Or is there something about this competitor that I do not like?" — this can be a good way to remove bias even on other grounds besides gender, including race, or whether you have a personal relationship with the competitor.

3. Be consistent

- Biases can affect your expectations of candidates from different groups, such as **evaluating men and women by different standards**. Create evaluative criteria, or ensure that if you deduct or give marks to certain competitors, to *consider* doing the same for other competitors.
- If you have a panel of judges, ensure that you quiz other judges on why certain individuals were marked down.
- If you mark down individuals from a particular gender or ethnic minority, question the reasons why you have done so and see if you can justify those marks to yourself based on the content and presentation they have, not just on stereotypes.

4. Track your personal results

- There's no immediate way to tell if your mitigation strategies have been successful; over time you can create data on the outcomes you give to see what's working and what isn't. Consider creating a note on your phone or computer, and track average scores you have given to male and female participants over the rounds you judge. Are some scores consistently lower/higher?

5. Be very wary of words often used only against certain individuals

- Language is contextual, and many words are almost exclusively used against women, or those from racial minorities.
- **Interrogate yourself when you use words such as:** bossy, ditzy, nervous, dressed unprofessionally, emotional, hysterical.
- **Interrogate yourself when you hold back from saying these words to women:** confident, assertive, in control, sophisticated, commanding, prepared, stoic, dominant.

