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The Elementary Guide to 'Moot Court'

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THE ELEMENTARY GUIDE TO ‘MOOT COURT’

“A Handbook for a Lawyer in the Making”

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Abstract

Moot Court is an extracurricular activity that allows law students to take part in simulated court proceedings. Participants focus their arguments on a hypothetical case based on international law or municipal law depending on the nature of the case itself and the court in which it is submitted.

Participation in moot court has proven to be an exceptionally rewarding educational experience, which provides law students with the opportunity to think critically about important issues and speak confidently in front of panels of judges, but it further creates in them better understanding in the laws they theoretically study in class sessions by practically researching, writing and orally arguing on them.

This guide is primarily intended for law students in Tanzania who are or will be exposed to mooting at any level during their course of study. The Information presented includes practical tips on how a student may go about in preparing oral and written arguments and what to expect on the day of the competition.
INTRODUCTION

Moot Court is a pedagogical exercise designed to focus law students on certain elements of bringing a case before a hypothetical court.¹ The term ‘moot’ meaning ‘hypothetical’, is used because the activity is based on fictitious case. Moot Court provides law students with the opportunity to practice their advocacy skills by writing legal briefs and any other relevant document and later presenting oral arguments before a panel of judges.

‘Moot Court’ differs from ‘Mock Trial’ in that it is solely based on a simulated ‘adjudicatory body’ not involving the questioning of witnesses or the presentation of evidence, that is why in some jurisdictions moot court only involves cases based on ‘appellate practice’ or ‘arbitral case’. A case in a mock trial usually refers to a ‘bench trial’ or ‘jury trial’ (in some jurisdictions such as the USA).

The initial process for any moot court is that students receive a ‘hypothetical case’ which is often referred to as a ‘problem’, but may also be referred to as a ‘compromis’ if the case is before the International Court of Justice² or otherwise depending on the nature of the moot competition at hand.

Students use the facts presented in the problem, along with additional research, to develop legal arguments for one or more sides of the issues that arise. Whereas domestic moot court competitions tend to focus on municipal law, regional and international moots tend to focus on International Law. These legal arguments are then refined and presented during the Moot Court in two forms. First, students prepare a written submission, often called a brief, which is submitted to the competition judges to be read and graded. Students then prepare and present arguments before a panel of judges who consider both the quality of the written document and the oral presentation in grading the presenting sides.

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² Ibid
BRIEF HISTORY OF MOOT COURT

Moot Court has been a tool for training students for the legal profession for hundreds of years. The term was derived from the Anglo Saxon times, when moot (gmot or emot) was a gathering of prominent men in a locality to discuss matters of local importance.

The first recorded reference to a moot court appears in the 997 in England. Moots were common at the English Inns of Court and Chancery in the fourteenth century, in the eighteenth century these Inns provided students with a forum for learning not only law but also history, scriptures, music, and dancing. Several historians put the Inns of Court, for the study of law, on the same footing as universities. When formal legal education began in the United States in the late eighteenth and early nineteenth centuries, the practice followed were similar to those of the Inns of Court, with lectures by professors followed by moot court exercises.

This modified English system continued until the ‘case method’ was introduced at Harvard Law School in 1870 under Dean Christopher Columbus Langdell, carrying on this tradition in the 1870’s professor Thayer who attended Harvard in the 1850’s, advised his students to attend moot courts “most faithfully” because “they give you the opportunity to apply your knowledge and try your hand at actual work of the Profession”.

International Moot Court competition began in 1959 with the Phillip C. Jessup International Moot Court Competitions. This prestigious annual international competition involves students from law schools throughout the world. To date, moot court has expanded from competitions within a university to competitions at national level, competitions between states and even countries.

6 Held each year on spring in Washington D.C.; Currently the largest Moot Court Competition in the World involving over 150 law schools and more than 80 countries each year
PREPARATION FOR A MOOT

As I prior stated the initial process for any moot court is that students receive a ‘hypothetical case’ which is often referred to as a ‘problem’. It’s from this stage that this guide will take you through to as far as the oral presentation is concerned.

Let’s now presume that you have just received the ‘hypothetical problem’ on your hands…

Don't panic!

Okay. So you've got your first mooting problem. Aaaagh! Where to begin? Well, first, let’s make a few assumptions.

1. you're a law student
2. you know the law both municipal and international
3. you know how to find law cases, books and other sources in the library, and how citations work

If any of the above isn’t true, then you will need to read a book on the basics of law before you start mooting, such as the excellent *Learning Legal Rules*⁷ or Glanville Williams' *Learning the Law*.⁸ *How to use a Law Library* by Jean Dane and Philip A Thomas is also useful to refer to.

Before you get started it is fundamental to be aware as to what court or adjudicatory body the case is to be presented and submitted. This will give you the clear picture as to what law is applicable, who are the parties, what is the nature of the case and various other important information.

It is usually best to work initially in a pair on the moot problem until you can identify the issues and split up the work fairly. The first thing to do is to look carefully at the problem, try to

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summarize it, and work out what area, or areas, of law the problem deals with. e.g. crime / tort / property / contract / employment law/ International Law.

**Analyzing the ‘moot court problem’**

A ‘moot Court problem’ is mainly the ‘hypothetical case’ that has been kept at your disposal, often referred to as a ‘problem’. It is from this ‘problem’ that any action concerning the moot must be carried out.

The initial process here is to clearly analyze the ‘facts’ of the case, which is mainly aimed at two main things; first, knowing the story and second, capturing any important event which form an integral part of your case.

In doing so several things must be derived from the problem, these include: important Arial facts (if location description is given), dates, names of persons whether natural or artificial, and any other facts which in one way or the other complete the story.

However in carrying out the analysis a note must be taken in the fact that although some facts may seem to be more crucial than the rest thus well noted at this early stage, all facts are indeed important and should be taken into consideration during your research.

The best way to analyze the moot problem is summarizing or making key notes of each paragraph in the problem. This helps the mooter in that it simply simplifies the bunch of words in a paragraph in to simpler statements which may be easily remembered during research, writing of briefs and presentation.
Getting started...

When factual analysis is done, the next step is the intense research, this is the most crucial part of the moot preparation, and in doing your research there are usually two places to start:

1. You can look the area of law up in a law textbook, read the chapter or section on it, and find out the names of some relevant cases, as well as getting a picture of what the case is about and what are the real issues to be argued. There are a number of general textbooks on legal subject areas which are useful to get you started. Lawyers will probably have come across them during their studies. Examples include:
   - Tort: *Textbook on Torts*, Michael A Jones
   - Contract: *Contract: cases and materials*, H G Beale, W D Bishop, M P Furmston
   - Criminal: *Criminal Law*, Smith & Hogan
   - Cases and Materials on International Law by D. J. Harris
   - Property: *Elements of Land Law*, Kevin J Gray, Susan F Gray

   It is vital that you use the most up to date version of any textbook. Information from a textbook more than five years out of date should be double checked to see whether any more recent cases have affected the legal position.

2. If the moot problem mentions the names of cases - and most do - you can look these up directly, and reading through them may give you a clearer idea of the likely problems to be encountered in the moot. Some judges realise the importance of their judgments to law students, and will go out of their way to clearly summarize the legal position in the relevant area of law. Lord Denning judgments and Mwalusanya J. can often be a blessing (unless he is talking about proprietary estoppels or legitimacy of a child born out of wedlock respectively!)

   The judgment in a case will refer to other cases, which may also be worth looking up.

   Where the case is in the Court of Appeal or below, you should check that there has not been a subsequent appeal and different decision. Some well kept sets of law reports will tell you this
via stickers in the margin. Electronic searches where available (e.g. the electronic Tanzanian Law Reports published by JUTA) are a useful method of checking whether a case contains the most up to date statement of the law - type in the case number as a search string and this should produce a list of subsequent judgments which have mentioned the case concerned.

On-line search tools such as Lawtel, Hein online, or Lexis Nexis can be useful for checking for up to date cases and legal publications, if your institution subscribes to the service. There are also free sources of recent legal information on the internet which can be easily accessed however high precaution must be taken as to the trustworthy of the information published.

**Working out your main issues**

Okay, after a quick look at the cases or textbook, you should be beginning to get an idea of what the case is about. The next step is to work out exactly what you are supposed to argue on. These are the main issues which may either be pointed out at the end of Problem as questions presented by parties before the court, or you may either need to extract them from the problem.

After knowing and writing down the issues relevant to your case, positions or contentions must be ascertained, that is to say each counsel on both sides of the case must determine what his position or contention is in regard to all issues of the problem.

Eg: if the first issue is ‘as to whether the statement by the respondent amounted to defamation’

Then the applicant’s contention should be ‘it is the applicant’s contention that the statement by the respondent is indeed defamatory’

It’s from these contentions that arguments are raised, that is to say the reasons supporting your contention are the arguments you are to argue for both in your written submissions and oral submissions.
Arguments supporting each position are what should be prepared next so that you can begin to identify and find authority for the points in your favor. Unfortunately, this is not easy, and is a point where many first time mooters can become very confused.

You should have been informed at the time of receiving the moot problem whether you are the applicants or respondents, appellants or respondents, and whether your case is in the Court of Appeal, High Court, or any other court or tribunal. If you are not sure, ask.

- **Appellants, Court of Appeal case**

  You are appealing against the decision made in the High Court. The High Court judgment is often stated in the problem, and you must argue against the reasons given in that judgment. You are usually helped by a statement of the grounds of appeal. These are the points which you must argue.

  What often wins the case is sound reasoning, and disguised policy arguments. The Court of Appeal is in theory bound by its own previous decisions, but can depart from them if the earlier cases are carefully distinguished on their facts.

- **Appellants, High Court case**

  You are appealing against the decision of the judge at first instance, i.e. the original court where the case is tried. This is generally a District Court or a Resident Magistrates Court judge, depending on the type of case. Your must argue against the reasoning of the first instance judge, and support the grounds of appeal.

  A High Court case is often won by careful use of the Court of Appeal authorities, which are binding on the High Court, if they can be shown to be appropriate. The High Court will also generally follow its own previous decisions.

- **Respondents, Court of Appeal case**
You must respond to the grounds of appeal put forward by the appellants, as your aim is to have the High Court judgment reaffirmed. It is usually necessary to argue the opposite of that stated in the grounds of appeal.

If any High Court judgment is given in the moot problem, you must find authority to support the arguments made by the High Court judge.

- Respondents, High Court case

You must respond to the grounds of appeal put forward by the appellants, as your aim is to have the decision of the original court reaffirmed. You must argue the opposite of that stated in the grounds of appeal.

Any decisions in the Court of Appeal which supports the first instance decision are likely to be binding on the High Court, and respondents should carefully argue why such authorities should be applied in this case.

- Applicant, International Law case

International Law cases are a little different here and more complex, in that counsels must search for the arguments afresh, but the key point is that all arguments must be based upon relevant principles of International law and their relevance must be derived from the ‘facts’ or the ‘problem’ at hand.

- Respondent, International Law Case

Essentially the Respondent’s work is to respond to the submissions by the Applicant’s, and therefore noting the fact that this is not a case on appeal, any argument by the applicant will clearly be obtained from the ‘facts’ to as far as their pleadings are concerned.

Respondent’s case is usually won by disqualifying the application of certain principles which do not support the respondent side, in exchange for principles supporting the respondent’s side.
Eg If the applicant will argue that ‘the respondent violated the international law principle against use of force’

The Respondent should then disqualify the application of such principle by justifying his actions under ‘self defence’ or ‘necessity’.

NOTE: Appellants/ Respondents/ Claimants/ Defendants

Some confusion will inevitably arise over terminology at this point. The claimants (referred to in other cases as the plaintiffs) are the party which initiated the original action, but are not necessarily the appellants. Here is an example.

1. Juma sues Halima over negligent work.
   - Juma = claimant
   - Halima = defendant

2. Bakari wins. Hamadi appeals against the decision of the High Court
   - Bakari = claimant and respondent
   - Hamadi = defendant and appellant

3. John wins. Simika appeals to the Court of Appeal.
   - Simika = claimant and appellant
   - John = defendant and respondent

4. Ardenia (a state) sues Rigalia (another state) over violation of its contractual obligation
   - Ardenia = Applicant
   - Rigalia = Respondent

5. The prosecutor of an International Court e.g. ICTY/ ICTR/ ICC sues Joseph Kony for crimes against Humanity
   - The Prosecutor (usually regarded only as a prosecutor)
   - Joseph Kony = Defendant

This shows why it is essential to tell the judge whether the appellant is the claimant or defendant.

It is often useful to write down exactly what you are arguing in each particular issue.
E.g. If a ground of appeal is ‘The weapon did not constitute an 'offensive weapon' under s.1(4) of the Prevention of Crime Act 1953’.

and you are the respondents, your argument will be ‘The weapon did not constitute an 'offensive weapon' under s.1(4) of the Act.’

**Splitting the work**

Once you have identified the arguments to be made, it is possible to split the work between the two advocates, and work alone. It is, however, very beneficial to work together, and have a working knowledge of each others’ arguments for when it comes to the moot.

Usually, a problem will have several grounds of appeal or issues. If there are more than two, you will have to decide how to split them. At this point you will have to decide who will be lead, and who will be the junior advocate for the moot. The junior generally has less speaking time, but, in the case of the respondents, gets the final word.

It is sensible for the junior to take the ground which appears to be the least work, or to take only one out of three grounds. If, after sharing the load, it appears that the problem has been unfairly split, it is important to rectify this, or you may find that later, insufficient speech time will be devoted to a particular point in the moot.

**Supporting an Argument**

There are a number of ways to support a legal argument:

1. Authority
2. Reason and logic
3. Policy arguments

By far the most important of these is the first. Indeed, reason and logic as well as policy arguments should be used so subtly that the judge is not aware of their existence. Any legal argument should be firmly founded on authority.
The novice should concentrate solely on use of authority. Authorities before a local court can be (in approximate order of importance)

1. Constitution
2. Legislations
3. Case law
4. Received Law ie Statutes of General Application, common Law and Doctrines of Equity
5. Islamic and Customary Laws (on some specific issues)
6. International Law

(NB English law is often applicable as persuasive in Tanzanian courts as regards the points which are to be argued, but it is important to check that English authorities used are indeed appropriate.)

If the case is before an International Court, the authorities before the court can be (in approximate order of importance) ie reference can be made to Article 38 (1) of the ICJ Statute.

1. International conventions (whether general or particular)
2. International Custom (as evidence of general practice)
3. General Principles of law
4. Judicial Decisions and Teachings of highly qualified publicists (as subsidiary sources)
5. Ex Aequo et bono (equity and good conscience)

Care needs to be selected in the choice of authority, as the effect will depend on the court in which the case is heard and also the judge's own preference.

Mooters should always refer to case law carefully - there are embarrassing mistakes to be made!

Some judges will reject all cases, or even everything except the first three. Thus ask you 'Does that case have any bearing on this court?'; the best rule on this is to stick as much as possible to the first two sources of authority, but if a particularly good authority is found elsewhere, then try it and play it by ear.
If one of the main Higher Court cases appears to be based on an overseas authority then it is probably acceptable to refer to it. It may be prudent to introduce the case by saying 'although not binding to this Court it may be of assistance to examine the judgment in...'

A note must be made on the use of textbooks and articles. Use textbooks rarely. A textbook may only be used if it is a leading authority on the subject, as defined by practicing lawyers, not lecturers. Your course textbooks (if you are a lawyer) will almost certainly not be considered good authority. Practitioner texts which could be considered can often be identified because they usually have the author's name as part of the title! Examples include:

- *Snell's Equity*
- *Chitty on Contract*
- *Emmet on Title*
- *Megarry's Manual of the Law of Real Property*
- *Clerk and Linsell on Torts*
- *McGregor on Damages*

The way around this is to find out which case the textbook writer is using to support their own arguments (there generally is a case) and quote from that.

Parliamentary debates and the debates of standing committees can only be used in very specific circumstances where a statute or statutory instrument is ambiguous, obscure or absurd. See *Pepper v. Hart* [1993] 3 WLR 1032, which is the first case where the debates were allowed to be considered in English Courts.

Everything you put to the judge in a speech should be supported by some sort of legal authority. The judge is liable to ask, quite rightly, 'What is your authority for that counsel?' You cannot make up arguments out of thin air. The only possible exceptions to this are a simple logical statement arising from the facts stated, or a comment on policy.
The facts of the case are not in dispute

No matter how little you dislike the fact that Halima X was found to be dishonest, if it states this in the facts of the case, and it is not disputed in the points of appeal, you cannot argue against it. The appellate court does not have access to the evidence which was in front of the original court, and so cannot dispute the findings it made on the basis of that evidence.

The moot argument is on the law, not on the validity of any factual evidence.

What to Call Members of the Court

A simple problem, but one which a surprisingly large number of mooters get wrong! A single male judge, in both the Court of Appeal and the High Court is to be referred to as 'My Lord' where you would usually use a name, and 'Your Lordship' where you would usually say 'you'.

A male or mixed panel of judges are 'My Lords' or 'Your Lordships'.

A single female judge can technically be referred to as 'My Lady' or 'Your Ladyship', although some female judges may prefer to be Lords - it may be wise to check the judge's preference before the moot starts. In Tanzania it is rather more appropriate to use ‘Madame Judge’ for a female judge, since the use of ‘My Lady’ can be referred as disrespect to the judge in the ‘mare sense of the word’. A female panel may also be Lordships. The current absence of an all female panel of judges in the Court of Appeal means we can only speculate on how they should be referred to!

All references in this 'Elementary guide to Moot Court’ to My Lord, or Your Lordship, should therefore be taken to include Madame Judge, or Your Lordships where appropriate.

'Your honour' is not suitable for addressing the judge in an appellate court, no matter how many times you hear it from other lawyers!
Judges in an International Court such as the International Court of Justice or International criminal Court should rather be referred as ‘your excellence’ or ‘your excellencies’ if more than one.

However where a judge presides over in a panel of judges, he is rather referred to as ‘Mr. President’ if a male, while on the other hand he is regarded as ‘Madame president’.

Thus greeting such a panel before an international court or tribunal will be simply: ‘Mr. President, Your excellencies!’ or ‘Madame President, Your excellencies!’(With a bow)

The two opposing mooters should never be called 'the opposition' and certainly not 'the enemy' or 'them over there'. (You would be surprised what terms are used!)

The correct manner of referring to other counsel is as 'My Learned Friend(s)' or 'My Learned Friends Opposite'. Also appropriate is 'Lead/junior counsel for the appellants/respondents', or 'Mr Salim counsel for the appellants'. (In practice advocates are only 'My Friend(s)', and whether or not they are 'learned' is a matter of much debate at the Bar!)

Examples:
'I am grateful to your Lordship'

'My Learned Friends opposite/ The Counsel for the Applicant have cited a number of interesting cases'

COURT ETIQUETTE

The language of a courtroom is different from that used in everyday speech, and you should try and formulate phrases as you might expect an Advocate or judge to say them.

Colloquial phrases, such as 'Okay' and 'All right' are not acceptable. If a judge corrects your mistaken interpretation of a case, the correct response would be something like 'I am grateful for
your Lordship's/ your excellencies assistance' rather than 'OK.' Speaking slowly often allows you to think of what might be appropriate to say, rather than how you might ordinarily respond.

Thanking people is always a good idea, even if you would rather throttle them! It is also professional to ask the judges permission at various stages of the speech: 'With your Lordship's/Excellency's permission I would like now to...'

Another point to remember is that your role is to assist the judges in their decision making. What you say and do is for the judges' benefit, so keep a careful watch on them to see if they are following your argument. Allow them time to find a citation, unless they indicate you should go on. Interact with the judge. Talk to them, not at them.

As an advocate, you are giving arguments based on legal authorities to aid the judge. You are at no stage giving your own opinion, merely restating the opinion of others. The opinion of the Advocate is irrelevant for the court to make its decision. As such, you should never tell the judge what you think, suppose or suggest. You must merely submit humbly that the judge should adopt your interpretation of the authorities given.

Therefore the phrase 'My Lord/your Excellency, we/ the applicants or respondents submit that' should occur fairly frequently in a good moot speech.

The speech should also give the full citation of a case as soon as it is mentioned, and the advocate should always refer to the reasoning, decision, or factual similarity on the latter case or to the facts if the judge would like a summary of the facts of the case.

e.g. 'A further authority which supports this is the case of Mwajuma versus Mwanahamisi which can be found in the 2003 Tanzania Law Reports at page 132. Upon which............'

**Putting Together the Presentation**

The starting point of your case should be the points of issues as stated. As stated before, it’s upon these issues that each counsel will portray his position (contention) and give out reasons (arguments) to support that position.
The appellants must prove those points of appeal to be correct using legal authority, and the respondents must respond to the appellants' arguments in each issue. Select around four cases per point (or as many as are necessary / permitted by the mooting rules) and then base your argument around these.

- **The Lead Appellant**

  It is usually the job of the lead counsel for the appellants to introduce the advocates to the court, and to summarize the case. Make sure you prepare a summary - don't just read from the moot problem.

  Introducing the advocates could go as follows:

  'My Lord, My name is Juma Kibati, and this is Hamisi Hassan. We are counsels for the appellant, Mr X / X Co., who is the claimant in this case.

  Or

  'Mr. President, Your excellencies! My name is Asma Hassan the first counsel for the applicant, mr. Y/ Y & Co./ the state of Ardenia, together with my co-counsel Ismail Juma in this case concerning ...........

  (Always refer to R as 'The Republic'. The case name R v. Smith should be read in a moot as 'The Republic versus Smith'.)

  'Would your Lordship like a brief summary of the facts of this case?'

  The judge will often reply 'No Agent please proceed', but in case he replies in the alternative the following should be your reply:

  'In this case, X plc...(give a brief summary of the facts stated or including details of the decision at first instance, and the grounds of appeal if the case is on appeal.)'
The lead appellant will then generally state which ground he/she will be dealing with, and commences the argument.

Eg ‘your lordship, for the next 20 minutes I will be presenting on the first and second issues concerning……………. My Co-counsel will then proceed to address the last two issues concerning………….., we hereby reserve 3 minutes for rebuttal’

The speech can then take a number of different forms, and it is important that advocates are encouraged to develop their own style. It is often useful to take the judge through the relevant law first, before proceeding to the main supporting case.

Do not mention any arguments against the respondent’s case, since the judge might start asking questions immediately and therefore destructing your introduction.

• The Junior Appellant

The junior counsel should generally have his/her own issues or ground of appeal to deal with, and should not attempt to embellish arguments made by the lead counsel. No introduction is needed, save possibly:

‘My Lord, I am John Mgaya, junior counsel for the appellants in this matter concerning…………. I shall be dealing with ground two of this appeal, which states that…’

Or

‘Your excellencies as the first counsel stated my name is Ismail Juma the second counsel for the applicants in this case, I shall be dealing with the third and fourth issues concerning…. ’

The presentation can then progress in a similar way to both lead counsel and junior counsel.

Eg ‘Starting with the first issue which states as to whether ……..’

‘It is the Applicants Contention that ……….’
‘The arguments to support this position are: first….., second….., etc

‘To begin with the first argument that …… ‘

• The Lead Respondent

The role of the respondent is a slightly different one. Although the respondents can, and usually will, cite their own arguments, their main role is to respond to the arguments put forward by the appellants. The respondents' speeches should therefore be fluid, and adapted to answer the points made during the appellants' speeches.

Eg ‘My lord, the applicant has errored in law by stating that …… the respondents rather submit before this honorable court that ……

• The Junior Respondent

Junior counsel will follow on from the lead, but will usually deal with a different point of appeal or issues. The junior respondent will be the last person to speak for the respondents and the speech may therefore end with a brief summary of junior and lead counsel submissions, although some judges are very unsympathetic to any repetition.

Eg ‘My Lord or Your Excellencies the Respondent hereby requests this court to adjudge and declare that ……..’

• The Appellants 'Right to Reply' (Rebuttal)

In most moot competitions the lead appellant or applicant is then given some extra time to respond to the respondents’ arguments. This time should be used to rebut the respondent’s arguments, and not merely to restate the case made earlier.

There should not be more than three points of rebuttal, the fewer the better. Points presented must be those points which will not attract any contradiction from the judges, thus should be direct and strongly founded on an undisputable law.
Discrediting a Legal Argument

There are a number of possible ways to do this

1. Distinguishing the case - this means that you argue that the case cited is in some way dissimilar to the current one so that the judgment made in the case is irrelevant. This can be done either by showing material (i.e. relevant) differences in the facts of the two cases, or by showing that the case cited was based on a different set of laws or regulations.

2. Errors in citation - you may be lucky enough to spot an error in the citation. Possibilities include:
   - citing a High Court judgment where the case went to the Court of Appeal who found differently - the Court of Appeal decision effectively overrules the High Court decision
   - Citing a dissenting judgment - this is the judgment of a judge who was in the minority, and has no legal authority. Mooters should take care to avoid this embarrassing mistake - check that the conclusion of the judge is the same as the final verdict - usually printed at the end of the case report
   - Quoting from the headnote or arguments of counsel - the 'headnote' is the section providing a summary at the start of a case report. Some reports also give extensive coverage to the submissions of counsel. Whilst these may be of assistance in preparing the moot, they should never be used in a moot speech as they carry no legal authority

3. Finding a later/more superior case which disagrees. This is concerned with the rules of precedent. A later judgment or one in a higher court will supersede the earlier/lower one.

4. Logical/legal flaw - careful reading of the case or statute may suggest an error in a line of argument, or that it does not flow logically from other authorities cited.

5. Finding a Customary International law and it’s evidences which directly overrides any treaty law or case law decided, if the case is before an international court.
MOOT COURT DAY

Don't panic!

Okay. It's the day of the moot. Your stomach is full of butterflies. But don't panic!

You should have prepared and rehearsed your presentation, and discussed what each of you will say with your mooting partner, to prevent any overlap of arguments. If there is time, it is a good idea to practice the presentation in front of each other.

If you have never been to the room where the moot is being held, it is helpful to pay it a visit in advance, to familiarize yourself with the layout. Familiar territory is less intimidating.

What to wear

You may have been given guidance on what to wear by your mooting officer, or in your mooting rules. Some friendly moots are more relaxed as regards dress code, others have stricter standards.

It generally adds to the atmosphere of the moot if the advocates are smartly dressed in business-like attire. Some universities will also provide black gowns for mooters - most lecturers and professors will own one, which they may be willing to loan for a moot. These are often hard to fasten, and tend to get in the way, but do create a court like feeling for the proceedings.

Cards or sheets?

One of the great dilemmas for the novice mooter is how to make notes for the presentation. Many first time mooters will write their presentation out in full on A4 sheets of paper. This is not recommended, for a number of reasons. If the whole speech is written out, it is too tempting to simply read it to the judge, with your head buried in the paper, often speaking far too fast. It is also hard to locate specific information on the sheets if the judge asks a question in the middle of the speech. Interruptions from the judge can result in mooters loosing their place on the page, causing an uncomfortable silence whilst the mooter tries to find it again.
My recommended method is to learn your speech and use bullet points on a small number of cue cards (small, 1/4 of A4 sized cards). This may, however, prove quite difficult for the novice or beginner.

It is advisable to try and summarize your speech as much as you can when you make a note of it, and always to use cards rather than paper. You can put fact summaries for cases on individual cards, and each point of argument on a separate card. This means that you will avoid paper shuffling.

Some modern mooters use 'mind maps' which consist of circular blobs all on one sheet of paper, each with one point of argument written in them. It's all a bit 'new age', but if these work well for you, then use them, but make sure the writing is large enough so that you can use the sheet without reading from it all the time.

**Giving the speech**

Being a mooter is a bit like being an actor, in that to be really successful, you must throw yourself into the role of an advocate. Certain speech and behavior is not acceptable in a courtroom, and equally should be avoided when mooting.

Remember the formalities of court etiquette discussed above, and when giving your speech you should particularly take care to avoid the following:

- colloquial speech - such as 'yeah', 'okay', 'cheers', 'mate'
- Sit whilst either of the judges talk to you, and stand up when you talk to the judge. Moots before International courts may be a little different depending on its relevant rules.
- Talking over the judge - never argue or talk over the judge. Wait until the judge has finished before putting forward your own points

Mooters should also note how to address others in the courtroom, which is dealt with in the previous sections.

As for any public speaking, speak slower than you think you need to, louder than you think is required, and clearly. Always keep up eye contact with the judge, and watch for signals from him.
or her. Does the judge understand? Does the judge need you to pause? If unsure, ask: *'My Lord, may I continue?'*

Don't forget to keep an eye on the Bailiff for purposes of time management. Depending on the rules of your moot time may be strictly limited, or going over the time may result in the judge being asked to take the excess into account when making his decision. Either way, it pays to keep to time. The following *may* be excluded from the timing of the speech in some variations on the mooting rules:

- answers to judicial questions
- summarizing the facts of the case (if the lead appellant's or applicant is directed to do so by the judge)

It is always sensible (but not always realistic!) to rehearse and time your speech in full before the moot.

**Judicial Questions**

You should always try to answer questions from the judge as and when they are asked. Do not tell the judge that you will get to it later - this will usually annoy the judge. Depending on the mooting rules that apply, answering questions may sometimes be included in the speech timing, giving you limited chance to give the judge a full answer and at the same time using it to make your case.

If the judge has defeated your argument, then admit it. You could say something like: *'Yes. I am grateful to your Lordship.'* However, if you feel the judge has misunderstood the point, then it is often worth persisting, by referring the judge again to the relevant authorities and restating your point. Some judges like to test whether the mooters can stick to their guns under pressure.

If you cannot answer a question, say so. A response such as: *'My Lord, I am unable to assist on that point, since I have not read the relevant authority'* will often be sufficient, but be prepared for a judicial rebuke!
**Responding and the appellants' ‘right to reply’**

One thing that is often forgotten about the respondents is that it is their job to *respond* to the arguments of the appellants or applicants. This means that the respondents' arguments cannot be fully pre-prepared. The respondents should listen carefully to the points which the appellants are making, and then try to respond to each in turn.

The respondents should spend the appellants' speeches hastily scribbling down the points they will make in response. Much can be pre-prepared by anticipating the arguments of the appellants, but a good mooter will still listen to the appellants for anything new.

Again, in the appellants' right to reply (rebuttal), the appellants should not repeat their earlier arguments, but should restrict themselves to dealing with the points raised by the respondents.

**CONCLUSION**

To this extent, It’s my great hope that this article will assist many law students who in one way or the other will be glad to extend the competence of their law degree through mooting. Moot Court competitions provide valuable educational and life experience for the Law student participating. Participation in moot court enhances student’s research, writing, oral and analytical skills. It teaches them to communicate more effectively and to think quickly on their own feet. Moot court often provides law students with the invaluable experience of arguing in front of real judges, justices, and seasoned practitioners. Summarizingly it teaches law students to go beyond the course syllabi and be integrated in the real legal world where among other things the only business is to ‘win cases’.