



2022 Mooting Handbook



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INTRODUCTION

Welcome to the UNSW Law Society Inc Mooting Handbook! The Law Society Mooting portfolio has prepared this guide as an introduction to mooting, and to help competitors at all levels of experience in improving their mooting technique. It is originally the work of Guy Baldwin, James King and Emily Burke, and is revised each year by the Mooting Training Directors.

Why Moot?

Mooting is an excellent way to develop legal research, analysis, oral and written presentation, and knowledge of core areas of law – crucial attributes for legal practice. It's also a lot of fun, and a chance to form lasting friendships. Mooting at UNSW trains participants to represent UNSW at national and international competitions.

Competitions Offered by LawSoc

LawSoc offers Beginners Mooting (torts), Intermediate Mooting (contracts and criminal law) and Senior Mooting (various areas including equity and trusts, administrative, corporations, land and constitutional law). Students need not have taken these courses beforehand. The eligibility for competitions depends on the student's current year of studying law at UNSW.

	Beginners	Intermediate	Senior
First year undergraduate	✓		
Second year undergraduate		✓	
Third year undergraduates and above			✓
Transfer student in first year of law	✓		
Transfer student in second year of law		✓	
Transfer student in third year of law and above			✓
First year JD	✓		
First year JD, commenced in S2 of the previous year	✓		
Second year JD		✓	
Third year JD and above			✓

Note that these divisions are tailored to **different stages of progression through the law program**, rather than the degree of prior experience at mooting.

First-time competitors should not be dissuaded by the names of the competitions from participating in Intermediate and Senior if they are not eligible for Beginners. Newcomers have been very successful in both competitions in the past.

In Term 2, LawSoc will also offer a non-competitive **Open Moot**. Every UNSW Law student can and should sign up. The Moot will be streamed so that competitors at similar stages of their degree will moot together.

THE BASICS

What is Mooting?

A moot is a simulated court hearing. Competitors receive the facts of a fictitious legal dispute and are assigned a side to argue. As barristers, they research the facts and prepare legal arguments for their party. Competitors first put their arguments in written form ('written submissions') and then present them orally before judges during the moot itself ('oral submissions'),

The scenario involves an appellate hearing, that is, an appeal from the finding of a lower court. Hence, the two sides in the moot will be the 'appellant', who will argue for the decision on appeal to be overturned, and the 'respondent', who will argue for it to be upheld.

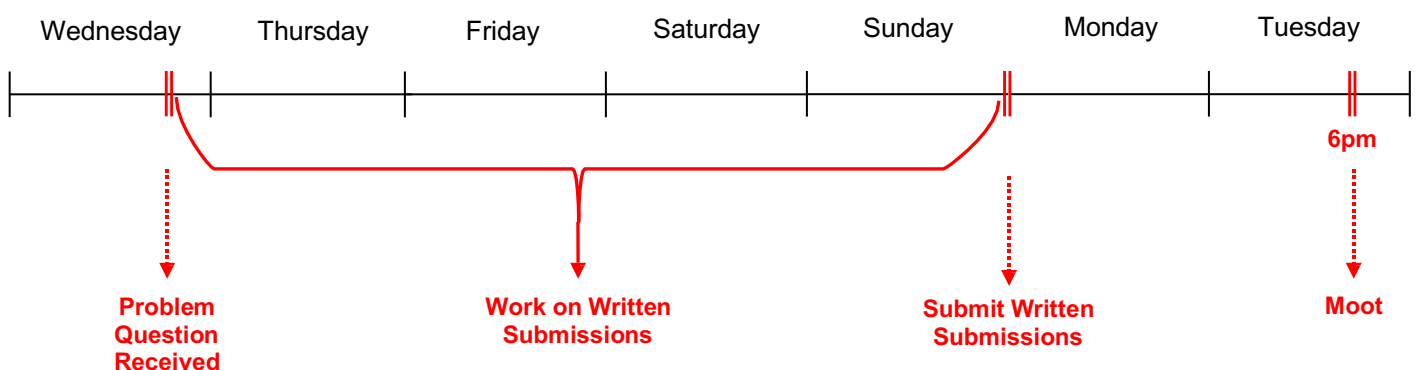
A moot differs from a debate or a speech. It involves a **dialogue** between competitors and judges, in which the bench may interrupt and ask questions of counsel throughout. It is better thought of as a **formal conversation**. Ultimately, judges will select a winner for the moot on the basis of which speaker argued more persuasively, taking into account scores for both written and oral submissions.

The exact format of the moot will depend on the rules of the mooting competition. At UNSW, students work in teams of two. Each team speaks for 40 minutes, dividing this time between the two team members, who are called 'Senior Counsel' and 'Junior Counsel' respectively. In external mooting competitions, the speaking time may be lengthier and larger teams permitted. At UNSW, each member of the team is judged and ranked separately and progress through the competition as individuals.

Timeline for UNSW Moots

For preliminary rounds, a problem scenario will be issued via email at 6pm (for the Beginners Competition) or 9pm (for the Intermediate and Senior Competitions) on a given day. Competitors then research the problem and prepare their written submissions. Two days before the moot, the written submissions will be due at 9pm (for the Beginners Competition) or 11:59pm (for the Intermediate and Senior Competitions). The moot will be on the sixth day at 6pm. Please see the diagram below for an example.

For the quarter final and semi final rounds, problem questions will be distributed at 6pm (for the Beginners Competition) or 9pm (for the Intermediate and Senior Competitions), 7 days prior to the moot. For the grand final, problem questions will be distributed at 6pm, 10 days prior to the moot. Written submissions for the grand final will be due at 9:00pm (for the Beginners Competition) or 11:59pm (for the Intermediate and Senior Competitions) three days before the moot.



THE PROBLEM QUESTION

Dividing the Issues with Your Partner

The first step you'll take is to divide the grounds of appeal with your partner, so that you can begin research on your half of the problem. Do this as soon as possible.

How to Analyse the Problem

When you first receive the problem:

1. Read the facts through once, attempting to identify legal issues;
2. Read the grounds of appeal carefully;
3. Read the facts again and highlight key facts relating to the grounds of appeal;
4. As you research and prepare, continue reading the facts and note which are relevant to your argument;
5. By the time you are ready to moot, you should understand the significance of all the facts in the problem.

The Grounds of Appeal

At the end of the problem the 'grounds of appeal' will be specified. These are the points in dispute between the parties in the moot. **You are restricted to making arguments to prove or disprove these grounds.**

Additional arguments, even if open on the facts, cannot be introduced. For instance, if the availability of a specific defence for a criminal offence is not in the grounds of appeal, it is not possible to make submissions on it.

This is because the scope of an appeal is confined to correcting an error of law or fact, or the miscarriage of a discretion. It is considered an abuse of process to introduce new arguments during an appeal which could have been advanced at trial but were not.

Therefore, read the grounds of appeal very carefully. Whichever side you are arguing, the grounds of appeal define the conclusions that you have to reach.

Knowing the Facts

Read the fact scenario carefully. A moot is based on facts. Particular factual details can open up entire lines of argument and potentially decide the outcome.

Read the facts at least three times. Having a thorough knowledge of the facts will save you time as you prepare your written submissions, and also equips you to answer questions.

Pre-empting Opposing Arguments

Anticipating opposing arguments is crucial to developing your own. Try and think of arguments that both sides of the moot can make. For example:

- In a contracts moot, the question is whether there has been a failure to form a contract, and an obvious argument for party A is uncertainty.
- Even if you are arguing (for party B) that a contract was formed, you should address the issue of uncertainty in your submission.

HANDY TIP

Understanding Appeal Procedure

As mooting scenarios typically involve an appellate hearing, it is important to have a basic understanding of how an appeal arises. Judges may be interested in the basis of the appeal and the procedural history. This is also typically provided to you in the problem question.

Internal moots at UNSW are usually set in the NSW Court of Appeal, NSW Court of Criminal Appeal or the High Court of Australia.

The right to appeal to the NSW Court of Appeal is defined by legislation as follows:

- Decisions of the Supreme Court - see ss 101-104 of the *Supreme Court Act 1970*(NSW)
- Decisions of the District Court - see ss 127, 142N of the *District Court Act 1973*(NSW)

Appeals of decisions of the Local Court are to the Supreme Court or District Court – see ss 39-40 of the *Local Court Act 2007* (NSW).

Appeals against conviction or sentence or both in indictable matters heard before a single judge or jury in the District Court or Supreme Court are made to the Court of Criminal Appeal under provisions of the *Criminal Appeal Act 1912* (NSW). Particularly handy provisions are ss 5-6.

To appeal to the High Court of Australia from a decision of the Court of Appeal, Court of Criminal Appeal or Federal Court, special leave must be granted by the High Court. The High Court's appellate jurisdiction is defined under s 73 of the Constitution and s 35 of the *Judiciary Act 1903* (Cth).

RESEARCH

When mooting, all your submissions must be supported by authority. Research is essential to adducing the best and most relevant authority.

What Is an Authority?

- It is strongly recommended that any source other than case law or legislation is *not* directly cited in a moot (see Competition Rules rr 59 and 70). In Beginners Mooting, competitors must not cite secondary sources.
- You can use encyclopaedias, textbooks etc when researching. However, when preparing written submissions, you should cite the cases (or statutes) to which these sources refer.

Authority	Not an Authority
• Case law • Legislation (where necessary)	• Dictionaries • Encyclopaedias • Scholarly articles • Textbooks • Newspapers • Websites

The Stages of Research When Mooting

There are two general stages of research after receipt of a mooting problem:

i. General familiarisation with the area of law

This involves acquiring an understanding of the area of law that the grounds of appeal deal with. This allows you to identify the issues in the moot and the possible arguments that may be run.

Useful resources: law textbooks and encyclopaedias (such as Lexis Advance's *Halsbury's Laws of Australia*, or Westlaw AU's *The Laws of Australia*).

ii. Research into specific legal issues.

After familiarising yourself with the area of law, you should return to the problem and attempt to list the issues in contention and the arguments that may be made. At that point, more detailed research to address these particular issues and arguments will be possible.

This research will primarily involve case law, unless the problem question specifies that a particular statute is relevant. Textbooks, encyclopaedias and scholarly articles help you identify the relevant cases to find.

What is the law?

What are the key cases?

Most relevant cases?

Understand the area of law

Learn the specific law

Apply the law

- Look up textbooks
- *Halsbury's*

- Find key cases
- Binding or appellate level

- Find cases with analogous facts

Example:

If your moot is about negligence, and one of the grounds of appeal you selected is breach of duty, you can approach your research as follows:

1. Tort law/negligence
 - a. What is tort law?
 - b. What are the areas of negligence?
2. Breach of duty
 - a. What is breach of duty?
 - b. What is the relationship between breach of duty and other areas of law?
3. Leading cases
 - a. Which case/statute contains the broad **legal test** for breach of duty?
 - b. Which cases explain/refine the elements of the test?
4. Specific cases
 - a. Which cases cover particular situations which arise in the moot problem?
 - b. Are there any cases with very similar overall facts?

How and Where Do I Research?

The table below explains the tools available to help you find relevant cases and legislation.

NOTE:

When researching cases, **search by citation, not by case name**. For example, in Westlaw AU, to access the reported version of *Wyang Shire Council v Shirt* (1980) 146 CLR 40, search by citation, and enter into the search bar: '(1980) 146 CLR 40'.

RESOURCE	WHEN DO I USE IT?
Textbooks	It is often useful to start with leading textbooks in the relevant field of law.
Halsbury's Laws of Australia	This legal encyclopedia is a useful starting point that provides a succinct, clear overview of the law and what the leading cases are. Remember to check when each entry was 'last updated', as it can sometimes be outdated. Access it by searching through the UNSW Library Website (search 'Halsbury's Laws of Australia'). It can also be accessed through Lexis Advance (under 'commentary').
Lawcite	This searches all the cases in Austlii. It will <i>not</i> provide direct access to reports, but is useful for finding out which law report series (generally CLR/NSWLR or ALR) the case is in, allowing you to decide whether to use Westlaw AU or Lexis Advance. Access it at: https://www.austlii.edu.au/lawcite/
Westlaw AU (formerly Firstpoint)	Generally the most useful resource for cases as it has Commonwealth Law Reports (CLR), NSW Law Reports (NSWLR) and Federal Court Reports (FCR). Access it through the UNSW Library website (search 'Westlaw AU' or 'Firstpoint').
Lexis Advance (formerly LexisNexis AU/Casebase)	Particularly relevant for the Australian Law Reports (ALR) and certain English cases. Note that the ALRs are less authoritative than CLRs and should not be used if a CLR version is available (see below). Access it through the UNSW Library website (search 'Lexis Advance').
Westlaw International	Westlaw International is a good source for English and other international cases, particularly if they are old and cannot be found on other websites. Access it through the UNSW Library website (search 'Westlaw International').
Austlii	Austlii is a good source for legislation and unreported decisions. It shouldn't be used when a reported decision is available from one of the above sources. Access it at http://www.austlii.edu.au.
Jade	Jade is a useful, easy-to-read online database, featuring: • On the right hand side of each case, the paragraphs of that case that have been cited in other cases • A detailed citation report at the end of the case (although this is available in other databases as well) Access it at https://jade.io/

How to Use Cases

Generally speaking, there are two types of useful cases for a moot:

1. Leading cases that offer definitive statements of relevant principles.
 - a. These will be widely cited, and usually decided at appellate/High Court level.
 - b. They should be used to support broad statements of rules.
 - c. For example, *Wyong Shire Council v Shirt* (1980) 146 CLR 40 is a leading case for breach of duty of care in the law of negligence, and can be cited for such propositions as the reasonable person test.
2. Cases with facts similar to the problem question, allowing analogies to be drawn or distinguished.
 - a. You will argue that the present case is substantially the same as the case cited and therefore the result is that the present case should follow (or '**apply**') the cited decision.
 - b. Conversely, if you are trying to avoid the application of a factually similar decision, you will draw a distinction with (or '**distinguish**') it to show why it should not be applied.

There is a third type of useful case, containing general principles of appellate procedure and evidence. These cases can be used in any moot, usually in oral submissions in response to questions from the bench. These useful cases can be found in **Appendix A**.

Look at **all relevant cases**, including those that are detrimental to your side. If a case is detrimental and relevant, you should address it and distinguish it from the facts in the problem, rather than simply ignoring it. Failing to address a case will leave a hole in your argument if the opposing side uses it.

Whether Cases Are 'Binding'

When researching cases, it will be important to notice whether a case is 'binding' on the court hearing the moot. If it is binding, then the court will have no choice but to apply it if the facts are on all fours (the same) or the *ratio* (rule) of the case is applicable. The court in which the moot is being held will be specified in the fact scenario.

Generally, a decision of a superior court will be binding on all inferior ones in the same hierarchy. For example, from highest to lowest:

- High Court
- NSW Court of Appeal
- Supreme Court of NSW (single judge)
- District Court
- Local Court

If a case is not binding (eg, is from a lower court, or is an international case), it is '**merely persuasive**'. It is still worth citing if you lack binding authority, but generally it will be necessary to argue why the authority should be followed.

A further rule is that decisions of intermediate appellate courts (such as the NSW Court of Appeal) are binding on *other* intermediate appellate courts (such as the Victorian Court of Appeal) unless found to be 'plainly wrong': see *Farah Constructions v Say-Dee* (2007) 230 CLR 89, 151–2 [135]. Furthermore, the High Court will generally not depart from its own previous decisions, although it has the power to do so: see *Wurridjal v Commonwealth* (2009) 237 CLR 309.

Whether Cases Are 'Good Law'

It is important to notice whether a case has been approved or disapproved in later cases.

- A case that has been overturned will no longer be 'good law' and cannot be cited to support a legal proposition.
- A case that has not been overturned but which has been questioned in later decisions may not constitute strong authority.

Check the treatment of a decision using the 'citor document' for the case in Lexis Advance, Westlaw or Jade. This tells you:

1. What cases the case referenced
2. What cases have referenced the case
3. Whether your case has been cited (ie, referred to), followed or overturned by other cases.

Legislation

Legislation is only relevant when a particular statute or provision is referred to in the problem question or the grounds of appeal. Competitors should *only* research and refer to legislation which has been referred to in the problem question as being part of the procedural history or the grounds of appeal.

This generally accords with the approach taken in practice. If a party has not relied on a relevant statute at the trial of an action, then they generally will not be allowed to raise it on the appeal.

The exceptions to this rule are the *Acts Interpretation Act 1901* (Cth) and the *Interpretation Act 1987* (NSW). Where other legislation is relevant, these Acts may be referred to as needed to assist in the interpretation of the other legislation. Of course, if no other legislation is relevant, these two Acts will not be either.

Finding Legislation

It is usually much easier to find legislation than it is to find cases! In UNSW mooting, only Commonwealth (federal) legislation or New South Wales (state) legislation will be relevant since the fact scenarios will usually take place in New South Wales.

The website hosting the authorised versions for Commonwealth legislation is the online Federal Register of Legislation, hosted at <https://www.legislation.gov.au>.

The website hosting the authorised versions for New South Wales legislation is 'NSW Legislation', which is hosted at <http://www.legislation.nsw.gov.au/>.

For either website, you will either have the option to browse in-force legislation in alphabetical order or search for the legislation. Since all problems will refer to relevant legislation by its proper short title, searching will be the faster option. If you have spare time, you can enjoy the thrill of scrolling through an alphabetical list of the laws which govern our lives to get to the relevant legislation.

After you have found the correct statute, you must then verify that you have the correct version of the statute. The relevant version of the statute will be the version in force when the events in the problem question occurred. The historical versions of a statute may be found by selecting 'View Series' for the Federal Register, and 'Historical Versions' on NSW Legislation. Usually, this will not affect the outcome of the problem question, but it is a good practice to get into.

Preparing Case Briefs

Judges may question competitors on any cases they cite (this is one reason not to cite excessively large numbers of cases).

Hence, it will often be helpful to fill out a simple table with crucial facts for each major case cited, and bring it to the moot – although this may not be necessary if the material can be remembered. Include in your case brief the following, with the aim of answering three questions:

What were the details of the case?

- Case name and full citation.
- Court heard in and whether this decision is binding on the present court.
- Brief summary of facts.
- Procedural history.
- Outcome (eg, 3:2, appellant won).
- Ratio (the key principle or principles the case is known for).
- Judge(s) who sat on the decision (learn both the names and gender(s) of judge(s) – it looks particularly bad to refer to a female judge as His Honour).

What were the judgments in the case?

- Majority judgment(s) and reasoning.
- Minority judgment(s) and reasoning.
- Dissenting judgment and reasoning.
- It's important to know if and why the judges had differing opinions.

Is the case good law?

- When this case has been applied, cited, referred to recently – ie, year, name of case applying your case, and court which applied/referred to your case.
- If case has been questioned/overturned – ie, year, name of case applying your case, and court which applied/referred to your case.

Particularly when the case is not clearly binding, any policy arguments competitors think of in support of or against the case being applied should be included in a case brief. However, in some circumstances, judges may inquire as to policy issues even if the case is binding.

WRITTEN SUBMISSIONS

Written submissions are an explanation of a team's arguments, which notify opponents and judges what arguments will be made.

They should be set out systematically, as a series of arguments addressing the appeal grounds, and be as detailed as possible while remaining succinct.

Written submissions for either side should, as a general rule, be as succinct as possible. The exact page count necessary will vary depending upon the level of the competition and the current round, as the problems vary in complexity.

The following page ranges are a general guide for competitors, inclusive of the title page and the list of references:

- Beginners Mooting: 5–7 pages
- Intermediate Mooting: 6–8 pages
- Senior Mooting: 7–10 pages

However, in every case, competitors should be guided by the problem question. The most important point for competitors to remember is that all issues should be addressed as succinctly as possible while still giving sufficient depth of explanation.

What Do Written Submissions Look Like?

Components of Written Submissions

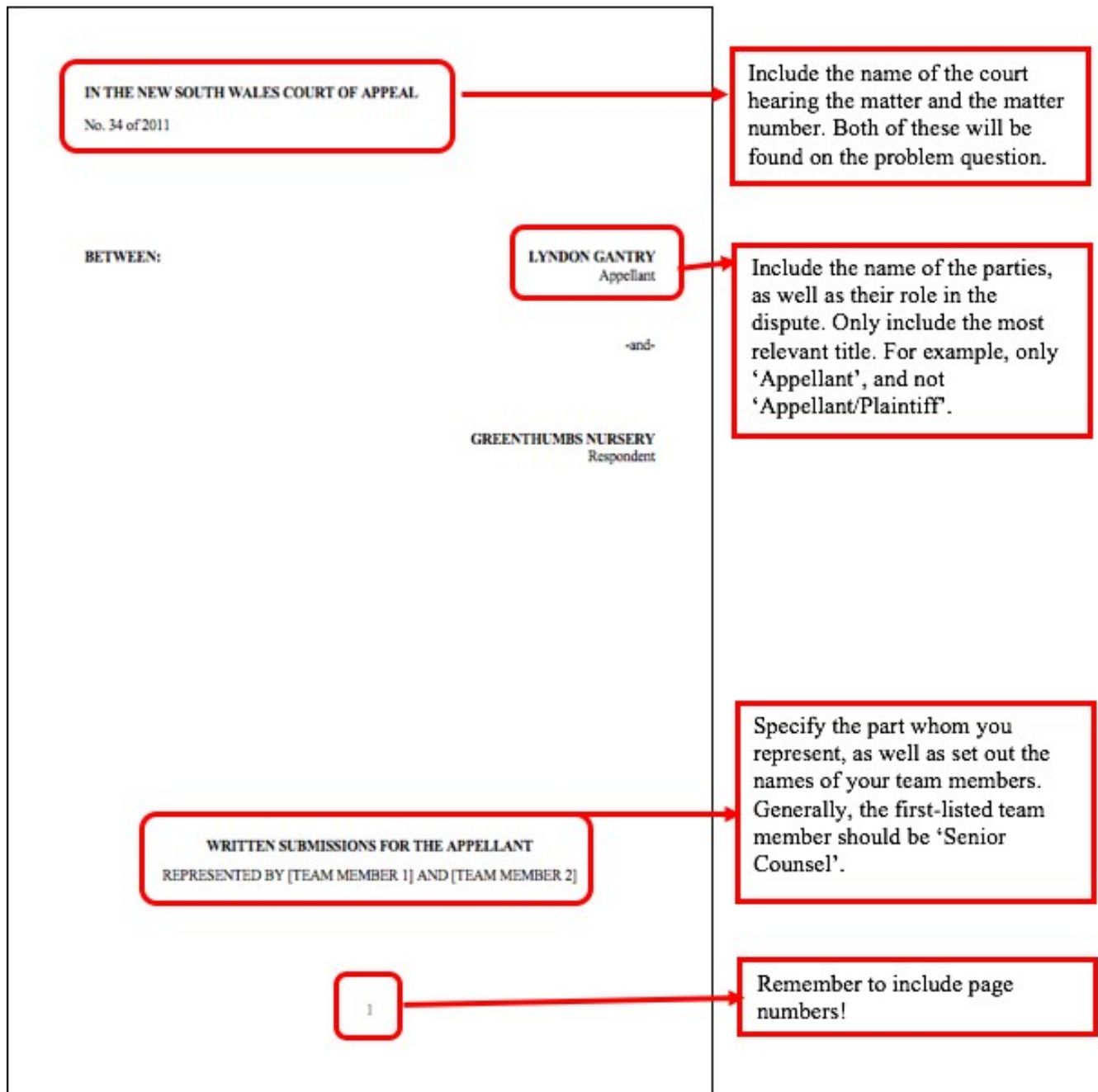
1. Title page
2. Issues for Determination
3. Numbered submission points
4. Orders sought
5. List of references

The sample pages below provide an example of what written submissions should look like. However, they are simplified submission and should only be used as a **guide to structure and style only**. Your submissions should include more depth and discussion, Not all pages have been extracted in this handbook. The competition coordinators will email a full copy of these submissions in Word Document form to all registered competitors. This emailed copy will have further annotations which cover more specific aspects of writing your submissions.

Title Page

Contains:

- Name of matter
- Number (provided in the problem question)
- Court the matter is held in
- Names of parties, labelled appellant and respondent
- Names of counsel (team members), senior counsel followed by junior



Issues for Determination:

Briefly list each submission in a sentence. It should begin with 'whether' and should *very closely* match the grounds of appeal.

Numbered Submission Points:

Setting out the team's arguments in detail. They should be consistent with the grounds of appeal – eg four grounds of appeal = four issues for determination = four submissions. Each appeal point should therefore be addressed under a separate heading.

The diagram illustrates the structure of a legal submission, with a central text box and several annotations pointing to specific parts.

ISSUES FOR DETERMINATION

- 1 Whether the respondent owed the appellant a duty of care on the principle of occupiers' liability.
- 2 Whether, if a duty of care is owed, the respondent breached its duty to the appellant on the basis of its failure to erect a sign.

SUBMISSIONS

I The respondent owed the appellant a duty of care on the principle of occupiers' liability.

- 3 The principle of occupiers' liability is that an occupier of land will owe a duty to any entrant upon his land.¹ The appellant was on the respondent's land, walking through its nursery, at the time of his fall.² The respondent therefore owed the appellant a duty of care.

II The respondent breached its duty of care to the appellant.

- 4 The test for breach of a duty of care has two elements:³
 - (a) The first is that a reasonable person in the respondent's position would have foreseen that his or her conduct involved a risk of injury, which was not 'far-fetched or fanciful',⁴ to the appellant or to a class of persons including the appellant.
 - (b) The second is that the response of the defendant to the risk of injury fell below what would be expected of a reasonable person in the defendant's position.

A *A reasonable person would have foreseen the risk.*
- 5 The relevant risk was that a visitor to the respondent's premises might suffer injury as a result of slipping on a wet patch of tiles. This risk is neither far-fetched or fanciful as wet tiles are by their nature slippery and the tiles were near the rose display, an area accessible to customers.⁵ It was therefore foreseeable that a visitor would slip on the tiles.

B *A reasonable person would have taken precautions.*

- 6 Whether a reasonable person would have taken precautions is determined with reference to the calculus of negligence, consisting of three sub-elements: first, the likely seriousness of the harm; second, the probability that the harm would occur; and third, the burden of taking precautions.⁶ When applied to the case, the calculus indicates that a reasonable person in the respondent's position would have taken precautions, and thus that a breach of duty is established:
 - (a) The seriousness of any potential harm was high. Tiles, when wet, become slippery. Entrants to the nursery could easily slip on the tiles and fall. The more likely scenario would be that the resulting injury would be of a serious nature, since tiles are hard surfaces.

Annotations:

- The 'Issues for Determination' may almost be copied verbatim from the problem question: they are almost identical to the grounds of appeal.
- The 'Submissions' are the body of your written submissions. Each of the 'Issues for Determination' will be set out under a separate heading.
- When using the 'Issues for Determination' as headings, rewrite them to show the conclusion which your side wants the court to draw. The first issue is your first submission.
- It is almost always a good idea to include sub-headings in your written submissions which assist the reader in understanding what point you are dealing with.
- Footnotes are critical! It is very important that you footnote all quotations, statutory provision, and statements of authority. Using footnotes allows the text to become more readable while still allowing you to support your argument. All footnotes should follow the Australian Guide to Legal Citation ('AGLC')

Footnotes:

- ¹ *Australian Safeway Stores v Zaluzna* (1987) 162 CLR 479, 488 (Mason, Wilson, Deane and Dawson JJ).
- ² Facts, [para number].
- ³ *Wyong Shire Council v Shirt* (1980) 146 CLR 60, 47 (Mason J).
- ⁴ *Ibid*; *Overseas Tankship (UK) Ltd v The Miller Steamship Co Pty 'The Wagon Mound' (No 2)* (1966) 2 All ER 709, 719 (Lord Reid).
- ⁵ Facts, [para number].
- ⁶ *Ibid* 47-8.

Orders sought:

The result which the party seeks to achieve: usually that the appeal be dismissed with costs (respondent), or that it be allowed with costs (appellant). For the appellant, there may also be an additional order depending upon the type of matter. However, this is only likely to be relevant in Intermediate and Senior Mooting.

A list of authorities:

At the end of your submissions you should create an alphabetised list of all the cases your team has used.

The diagram illustrates the structure of a legal submission, with red boxes highlighting key sections and red arrows pointing to explanatory text on the right.

ORDERS

(b) The probability of the risk eventuating was high. A large number of people would be expected to pass through a nursery on any given day. It is possible that those with experience in nurseries might be expected to have looked out for water on the tiles, but those without such experience would not have expected it. The appellant falls into the latter category.⁷

(c) The burden of taking precautions was negligible. The respondent could easily have placed a sign or signs reading 'Danger: Wet Floor' (or something similar). Such a precaution would not have been burdensome, either in practicality or in costs.

7 The appeal be allowed with costs.

8 The orders made by the trial judge be set aside and, in their place, a finding in favour of the appellant with costs be substituted.

LIST OF REFERENCES

A Cases

Australian Safeway Stores v Zaluzna (1987) 162 CLR 479

Overseas Tankship (UK) Ltd v The Miller Steamship Co Pty 'The Wagon Mound' (No 2) (1966) 2 All ER 709

Wyong Shire Council v Shirt (1980) 146 CLR 40

⁷ Facts, [para number].

3

The 'Orders' section contains the orders which you are asking the court to make in a matter. They can vary considerably depending upon the type of matter.

This list should contain all things which have been cited in your submissions

Cases should be listed first. There is no rule about how many cases to cite. You should cite as many as you need but remember that the judges may question you on any of them, so only select the most important!

Legislation should be listed second. There will usually only be one or two relevant statutes. If there is none, as in this case, the section should be omitted.

Structure of Written Submission Points

Each submission must be set out as follows (examples are on the right):

1	The proposition to be proved	John owed Michael a duty of care on the basis of occupier's liability.
2	A statement of the law with authority	An occupier of land will owe an entrant a duty of care. ¹ ¹ <i>Australian Safeway Stores v Zaluzna</i> (1987) 162 CLR 479.
3	The application of the law to the facts	John is the owner of an IGA supermarket where Michael was shopping when he was injured.
4	A conclusion	Therefore, John owed Michael a duty of care.

In step 3 it may also be relevant to draw factual analogies with an existing case. For example:

'In the case cited an apportionment for contributory negligence of 60% was found on the sole basis of the plaintiff's consumption of 10 beers prior to driving. It therefore follows that in the present case, where the plaintiff had consumed an equal amount of alcohol, and was low on sleep, that at least as high an apportionment is appropriate'.

The length of each of these elements will depend on the argument. For instance, it may be necessary to set out the law in more than one paragraph, if it is complex.

Should my submissions be consistent with my other team member's?

Yes. The team's combined submissions should be consistent, even though different people have prepared each half. In particular, a substantive inconsistency – a contradiction in arguments, understanding of the facts or statement of the law – between the two halves of submissions should be avoided by communicating with your partner as you both prepare.

It's important to ensure the formatting and submission numbering match. It will also be helpful to try to harmonise the writing styles between the two halves of the submissions as much as possible so that the transition between writers is not jarring.

How many cases should I cite?

It is generally not necessary to cite a large number of cases. For most **preliminary round moots**, each counsel should cite no more than three or four cases for their submissions depending upon the problem (a maximum of six to eight cases for the team).

Some problems, especially in the **finals rounds**, may require more than this and others less. Avoid redundancy by citing only the best (most senior or commonly cited) authority for a proposition, rather than multiple cases for the same point.

Please note that we have provided these numbers as a guide - depending on the nature of the problem question, and the level of competition you are competing in (Beginners, Intermediate, Senior), this number may be more.

CITATIONS

The Importance of Citation – AGLC

Citations are extremely important. They improve the legitimacy of your submissions by showing that authority supports each proposition you make. Citations must comply with the Australian Guide to Legal Citation ('AGLC'):

https://law.unimelb.edu.au/_data/assets/pdf_file/0005/3181325/AGLC4-with-Bookmarks-1.pdf

Pinpoint Referencing

You must use a pinpoint reference when citing a case (ie, to refer to the page, paragraph (if applicable) and name of judge). Please see the examples below.

Use Footnotes

Use footnotes, following AGLC 1.1. See also the sample written submissions above, and emailed to you by your competition directors.

Authorised, Unauthorised and Unreported Citations

It is important when citing cases to use an authorised report series in preference to an unauthorised or a medium neutral citation, if an authorised report of the case exists.

Authorised Report Series

An authorised report series has been approved by the court in question prior to publication, unlike reports published by a third party. An example of an authorised report series is the Commonwealth Law Reports.

Example	<i>Australian Safeway Stores v Zaluzna</i>	(1987)	162	CLR	479	, 480	(Mason, Wilson, Deane and Dawson JJ)
Element	Case Name	Year	Volume	Report Series	Start Page	Pinpoint	Judicial Officer/s

Australian **federal** authorised report series are as follows:

- Commonwealth Law Reports (CLR) - High Court of Australia decisions
- Federal Court Reports (FCR) - Federal Court of Australia
- Administrative Law Decisions (ALD) - Administrative Appeals Tribunal
- Commonwealth Arbitration Reports (CAR) - Australian Industrial Relations Commission
- Repatriation Pension Decisions (RPD) - Veterans' Review Board

Australian **state or territory** authorised report series are as follows:

- Australian Capital Territory Reports (ACTR) - Australian Capital Territory Supreme Court
- New South Wales Law Reports (NSWLR) - New South Wales Supreme Court since 1970
- The State Reports, New South Wales (SR NSW) - New South Wales Supreme Court 1901-1970
- Northern Territory Law Reports (NTLR) - Northern Territory Supreme Court
- Queensland Reports (Qd R) - Queensland Supreme Court
- South Australian State Reports (SASR) - South Australian Supreme Court
- Tasmanian Reports (Tas R) - Tasmanian Supreme Court
- Victorian Reports (VR) - Victorian Supreme Court
- Western Australia Reports (WAR) - Western Australia Supreme Court

See the AGLC for other jurisdictions, including New Zealand and the UK.

Unauthorised Report Series (AGLC 2.3)

You should cite an unauthorised series when there is no authorised series available. For example, the Australian Law Reports for certain cases: *Momentum Productions Pty Ltd v Lewarne* (2009) 254 ALR 223.

It will be possible to determine what reports are available by looking up the case on Lawcite, Jade or

Example	<i>R v De Gruchy</i>	[2006]	VSCA	10	(9 February 2006)	[4]–[5]	(Vincent JA)
Element	Case Name	Year	Court Identifier	Judgment Number	Full Date	Pinpoint	Judicial Officer/s

in a database like Westlaw AU, which will list all citations.

Medium Neutral Citations (AGLC 2.3.1)

A medium neutral citation is appropriate only when the case is unreported, that is, it does not appear in either an authorised or unauthorised series.

PREPARING FOR YOUR MOOT

Preparing for Your Oral Submissions

The main difference between writtens and orals is that orals are less dense. In oral submissions you should be aiming to be as clear and persuasive as possible.

With too many details, your judge could become overwhelmed and lose sight of the bigger picture. However, the judge may want to question you on a certain point, and it is then that you will have to go into further detail, drawing from your written submissions, or going beyond them.

Therefore, it is recommended that you write out a set of oral submissions to use in the moot as distinct from your written submissions. These are normally in point form, but the approach can vary: some competitors will bring long written arguments and prepared answers just in case they get stuck. Figure out what works best for you.

HANDY TIPS

Punctuality

On the night of the moot, aim to arrive at the room about 15 minutes early to have time to settle any nerves. It's unprofessional to be late for a moot in the same way that it is for a real court appearance.

Formal Clothing

If possible, you should wear formal business wear to a moot. This generally means a suit or similar work attire. Failure to wear business wear will not result in any loss of points.

Printing Out Cases

Whilst there are no marks won or lost for this, it is good practice to print out the relevant pages of the cases cited in your written submissions and provide them to your judges.

At the very least, you should print out pages of unusual or unheard of cases. These are cases that are not a leading authority, for example, cases with facts similar to the moot problem that have been decided in a lower court. This will allow your judges to ascertain the legal principles you are drawing from the case and applying to the moot problem.

You are not expected to print out entire cases. Rather, you should only print:

1. the headnote which contains the name, citation, facts, and summary of the legal issues considered by the case. This will be the first one or two pages of the case;
2. the pages you are relying on in argument; and
3. one or two pages before and after the pages you are relying on. This will provide context for the judges.

You may also print out sections of relevant legislation if you wish.

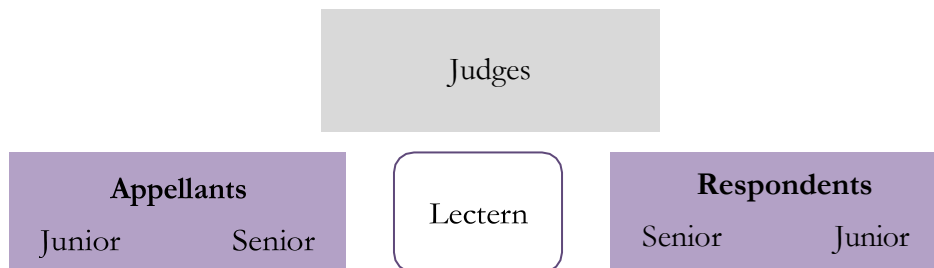
Typically, a set of printed cases is called a 'Bundle of Authorities' or a 'Bench Book'. They should be presented with tabs separating each case and an index on the front cover detailing what is contained in the Bench Book. The index should resemble the following:

APPELLANT JUNIOR COUNSEL – AUTHORITIES

Tab	Authority	Pages Included
1	<i>Australian Constitution</i>	Ch II ss 81, 83
2	<i>Victoria v Commonwealth</i> (1975) 134 CLR 338 (' <i>Australian Assistance Plan Case</i> ')	362–4 391–8
3	<i>Re Bolton; Ex parte Beane</i> (1987) 162 CLR 514	528–9
4	<i>Chu Kheng Lim v Minister for Immigration Local Government & Ethnic Affairs</i> (1992) 176 CLR 1	19–20 27–8
5	<i>Community and Public Sector Union v Woodward</i> (1997) 76 FCR 551	561

Seating

Make sure the appellant team is sitting on the left, and the respondent team is sitting on the right (from the perspective of the advocates). There will be a lectern between the bar tables. Where a moot is held in a classroom, competitors may need to assist judges in arranging tables for the moot.



Structure of a Moot

The procedure for a moot reflects what happens in normal court proceedings. The moot will take place in the following sequence:

1. Judges' entrance
2. Appearances
3. Senior counsel for the **appellant's** oral submissions
4. Junior counsel for the appellant's oral submissions
5. Senior counsel for the **respondent's** oral submissions
6. Junior counsel for the respondent's oral submissions
7. Judges' decision and feedback

ORAL SUBMISSIONS – SUBSTANCE

Oral submissions are your chance to persuade the judges of your arguments in person, and to allow them to ask any questions they may have about your arguments. In UNSW Moots, each speaker will present for **20 minutes**.

Appearances

If you are senior counsel, you must take appearances when the judges ask. They have a **standard form**:

‘May it please the court, my name is Mary Smith and I appear with my learned junior, James Flitwick, for the appellant, Elma Gantry, in this matter.’

Orders

If you are junior counsel, state the orders at the end of your submission, for example:

‘We ask that this appeal be allowed, the orders made by the trial judge be set aside and, in their place, a finding in favour of the appellant with costs be substituted.’

If you are out of time, it is acceptable to say:

‘We rely on our written submissions for the orders sought.’

Structure of Oral Submissions

Senior and Junior Counsel say things in a slightly different order. The form of each counsel’s submissions is summarised below:

Senior Counsel	Junior Counsel
1. Gives the appearances before the moot. 2. Begins with ‘May it please the court’. 3. Gives a brief introduction of 2–3 sentences, stating the pertinent facts of the case (45 seconds). 4. Lists both senior and junior counsel’s submissions in a sentence per submission (45 seconds). ‘Your Honours, we will make four submissions. First, [X]. Second, [Y]. ...’ etc. 5. Oral argument (roughly 18 minutes). 6. Concludes with ‘May it please the court, those are my submissions’.	1. Begins with ‘May it please the court’. 2. Lists their own submissions in a sentence per submission (45 seconds) 3. Oral argument (roughly 18 minutes) 4. At the end, states what orders their side is seeking (45 seconds). This will be either that ‘the appeal be allowed’ or that the ‘appeal be dismissed’, with the consequence of this result. 5. Concludes with ‘May it please the court, those are our submissions’.

Oral Citation

The **first time** you cite a case, you should provide the name of both parties, as well as the year and Court the case was decided in. For example, for *Perre v Apand*, you would say:

'I rely upon the case of Perre and Apand, decided in 1999 in the High Court...'

Alternatively, if the moot were set in the High Court, you would say something like:

'I rely upon the case of Perre and Apand, decided in 1999 in this Court...'

This should be repeated every time you cite a case for the first time in your oral submissions. For subsequent citations of the same case, it is sufficient to refer to the case name only, eg, '*Perre v Apand*'

Remember that civil cases are cited as 'Bryan **and** Maloney', not 'Bryan vs Maloney'; and criminal cases: 'The Crown **against** Bryan', not 'The Crown vs Bryan'.

Formal Citation

You may be asked by a judge to provide the full or formal citation for a case. For example, for *Kavanagh v Akhtar* (1998) 45 NSWLR 588, you would say:

'I rely upon the case of Kavanagh and Akhtar, reported in 1998 in volume 45 of the New South Wales Law Reports at page 588...'

Only formally cite if you have been asked for the full citation details of a case. Once you have made the full citation, make sure you simply refer to the case name only, eg, '*Kavanagh v Akhtar*'.

Taking the Judges to Quotations from Cases

When taking the judges to a particular quotation, say something on the lines of 'May I take your Honours to the case of Imbree and McNeilly on page 514 where Chief Justice Gleeson wrote ...'

If you have decided to print out a Bench Book, you should hand this up to the judges at the start of the moot before appearances are taken. When you want to use the Bench Book, you may then say something such as, 'May I take your Honours to the case of Imbree and McNeilly **at tab 2 of the bench book**, on page 514 where Chief Justice Gleeson wrote ...'

It is also often useful to tell the judge where on a page a particular quotation is, for instance: 'at paragraph 4'; 'halfway down the page'; 'at letter g'.

It is generally unnecessary to take the judges to a quotation unless the judge asks specifically, the case is not well-known, or the point you are making is unorthodox and it is necessary to justify your interpretation of a case. Of course, it pays to be prepared to take a judge to a quotation should they ask.

Signposting

Signposting means to give an indication of where your argument is headed before you make it. It's important to do this throughout the moot so your submissions are as clear as possible.

Signpost at the beginning of your submissions

Make sure to signpost at the very start of your oral submissions by outlining your main submission points. For example, you could say:

'Your Honours, I will be making three submissions. First, that the appellant owed the respondent a duty of care; secondly, that the appellant breached that duty; and finally that the harm to the respondent was caused by the appellant's breach.'

Use an introductory sentence whenever you are making a new submission.

Signpost when there are multiple elements

You should also signpost if there are multiple elements to a specific legal principle you are referring to.

An example of signposting at the start of a breach of duty submission is the following:

‘I turn now to my second submission, that the appellant breached his duty of care to the respondent. We submit there were two breaches of care: the failure to erect a sign, and the failure to use mats on the floor...’

It is helpful to refer your judges to the corresponding paragraph number of your written submission when you are starting a new submission or area of argument: ‘Your Honours, I now turn to my third submission, which begins at paragraph 15 of our written submissions.’

No Surprise Submissions

Stick to your written submissions! You will be penalised for raising ‘secret’ or ‘surprise’ cases or arguments that you have not included in your written submissions.

It is not permissible to make legal arguments in oral submissions that are absent from written submissions. The order in which issues are addressed in oral submissions should also usually reflect the written submissions, although this is not a strict rule.

ORAL SUBMISSIONS – STYLE

Formality (See Appendix B)

A moot is a mock court hearing and thus formal language is used. It is important to avoid colloquialisms: do not say anything like 'yeah', 'I dunno' or 'kinda'. Don't swear under your breath either – judges can hear it!

Expression	Use it...
'May it please the court'	At the very the beginning and end of moots. You can use 'if it pleases the Court' elsewhere in the moot (eg, 'If it pleases the Court, I'll now turn to my next submission').
'We submit'	When making an argument. 'I think', 'I feel', 'We're arguing', 'We believe' are not acceptable. Note that it isn't necessary to say 'we submit' when making an uncontested statement about the facts or law: it is used only when highlighting the contestable elements of your argument.
'My learned friends'	To refer to your opponents. You can also refer to your opponent as 'the appellant/respondent'.
'My learned junior / senior'.	To refer to your partner.
'Your Honour' or 'Your Honours'	Depending on how many judges are in your moot.

A full list of court formalities may be found in **Appendix B**.

MANNER

Reading and Eye Contact

Avoid reading too much from your oral submissions. This will make it difficult for you to hold much eye contact, and you won't know when the judges are about to ask you a question, or are confused. It will also cost you marks for presentation. Your judge will interrupt you to ask questions, and this will trip you up if you are relying too much on a script.

The best way to avoid excessive reading is to become familiar with your submissions. A good way of determining how familiar you are is to try and sum up each submission point in 30 seconds. If you can do this from memory, then you will be able to find your way around the oral submission effectively.

Competitors should endeavour to maintain as much eye contact with judges, particularly during appearances and your introduction, when an initial impression is formed. Perhaps memorise your introduction so that you can give it without checking your papers.

Voice

There are three relevant issues with an advocate's voice:

1. *Tone*: Maintain a confident voice and don't disclose your nervousness. Avoid adopting an aggressive or defensive tone, even when your judges are grilling you with questions. If the judges feel as though you are being antagonistic, they are much less likely to be persuaded by your argument.
2. *Modulation*: Modulate your voice. This will enable you to emphasise important points and provide some variety in your speech.
3. *Pace*: **Slow down!** Speak slowly and clearly so that judges have time to process the arguments you're making. It is much more persuasive to speak at a calm and measured pace than to adopt a machine gun pace that overwhelms the bench. In general, you should be speaking at a slower pace than in your normal speech.

Body Language

As mooting is formal, it is important not to gesture significantly as this may prove distracting. In general, only small gestures with one hand are permissible.

It is also important to maintain good posture so as to appear confident in your submissions. Try to stand firmly behind the lectern or table you are mooting from. You can rest your hands on the edge of the lectern, or keep your hands by your side at a table. Remember to look directly at your judges when mooting, and not at your opponents, your co-counsel or other parts of the room.

Time Management

If you are going to speak for 20 minutes, figure out a way to present your oral submissions within 12–13 minutes. It's highly likely the rest of the time will be spent answering questions.

When giving your actual submissions, keep an eye on the time so you know how long you have left. Bring a watch or use the stopwatch on your phone. Make sure that you know how to skim through and also flesh out certain submissions depending on the time you have.

If you notice that your time is almost up (ie, you have less than one to two minutes remaining), bring this to the judges' attention. The onus is on you to be time aware.

Depending on the situation, you can use a phrase such as:

'Your Honours, I note that my time is about to expire. May I request a one minute extension to answer your question/conclude my submissions?'

Generally, extensions should only last for one or two minutes. However, it is important that you are able to judge how much time you will really need to finish the submissions. It is a bad look to ask for an extension and once again go over the new time limit. Judges are more inclined to grant a longer extension if you have been questioned extensively. The UNSW competition rules do not permit extensions of five minutes or longer.

QUESTIONS FROM THE BENCH

Responding to questions from the bench is probably the most challenging part of mooting because judges can interrupt you at any time to ask questions. However, questions offer an opportunity for the judge to engage with concerns he or she has about your argument. You can use your answers to help judges better understand your submissions and clarify any confusion.

Taking Your Time

It is worthwhile to take your time and think your answer through before speaking. You can take up to 10 seconds to think about the judge's question and what you might want to say in response.

Additionally, if you didn't understand the question or hear your judge clearly you can ask them to rephrase the question. If you're really stuck and you think your co-counsel would be able to help, you can ask the judges to confer with them: 'May I confer with my learned junior/senior for a moment?'

Answering Questions Directly and Signposting

Perhaps the most important aspect of responding to questions from the bench is to answer directly and concisely. Many questions can be answered with a simple 'Yes' or 'No' and then explained further. For example:

Question	Mooter's Answer
'Does the parole evidence rule apply in this case?'	'No, your Honour. It is our submission that the rule does not apply in this case for two reasons ...'
'Is it your submission that there were two breaches of duty?'	'Yes, your Honour. We submit that there were two breaches of duty. First ... Secondly ...'

Notice that in the examples above, the mooters signposted their explanations. Signposting will give judges a clear sense of where you are going with your answer, and you can then take the judges in detail through each of those points.

Never tell a judge 'I'll get to that later' or 'I'll address that later in my submissions'. Think of the judge's question as an itch that must be scratched. If you delay answering a judge's question, you run the risk of losing their concentration altogether until you have answered the question they have asked.

Finally, don't waffle. Not only does this come across poorly to judges, it will take up valuable time that you should be using to complete your submissions.

If You Cannot Answer

You can avoid being stumped by a judge's question early on in your oral submission by preparing thoroughly. Go through the answers to all the obvious questions about your submissions in advance, in your preparation for the moot.

If you cannot answer a question, it is better not to try to evade it. This is always apparent to judges and will lose you marks. It is preferable to indicate politely that you are not able to answer the question. Some relevant phrases include:

Phrase	How to Use it?
'I am unable to assist the court'	If you cannot answer the question at all, or if there is a question in relation to a case and you do not have the necessary details of that particular case. This is a last resort.
'That's the highest I can put it'	If you are in a standoff, where a judge is resistant to one of your submissions but you need to move on, or you cannot add anything substantive to what you have said. This is a last resort.

When using one of the phrases above, you should still try to show to your judge that you can address legitimate problems with your argument. Think about the overarching issue the judge is having difficulty with, and provide a response that clarifies the issue and further supports your submission. For example, you can follow with a phrase like this:

‘Unfortunately, I am unable to assist the Court in that matter. However, the key question here is still whether or not ...’

Flexibility and Departing From Your Submissions

When a judge asks you a question they may move you away from the structure by which you planned to deliver your submissions. It is important to be flexible about your speech and go where the judge wishes to go. As mentioned above – even if you plan to deal with the issue the judge is raising at a later point in your oral submissions, you should briefly answer the question immediately, rather than indicating that you will do so later.

At the same time, remember that you have determined the particular points that you need to deliver. Answer the judge’s question concisely and then try to move smoothly back to your own submissions. For example, you could use a phrase like: ‘And this brings me to my next submission that...’

There is something of a balance to strike here. Be careful not to make it seem like you’ve been interrupted rudely by the judge and are eager to get back to the order of points you have set out. Equally, you don’t want to convey the idea that you now cannot find your place in your submissions because of the interruption. To prevent the latter, it is important to understand the structure of your submissions well.

Deference to Judges

Always defer to the judges, and never interrupt them. However, you are free to disagree with propositions judges put to you (sometimes they are deliberately faulty to test your understanding). Always be polite in doing so.

Do not be defensive when answering questions from the bench. Instead, treat questions as an invitation to persuade! Not all judges’ questions are directed at the weaknesses of your argument. Be mindful that some questions are designed to assist you, by taking you to a relevant argument, or to a key point that adds strength to your argument.

Remember that if you find a judge’s questions is unclear or difficult to understand, you should feel free to ask for clarification.

Checklist

- Give yourself 10 seconds to think through the best response to the judge’s question;
- Answer directly with a ‘Yes’ or ‘No’ where possible;
- Signpost the reasoning of your answer;
- Then take the judge through each of your points in detail.

FAQs

When do I receive the problem? How long do I have to prepare for my moot?

Please see the timeline on page 5, under 'The Basics'.

How do I submit my written submissions and when?

You must email your submissions by 9:00pm (for the Beginners Competition) or 11:59pm (for the Intermediate and Senior Competitions) two nights before the moot to all your judges, the opposing team, and the coordinators of the competition (eg, beginners.mooting@unswlawsoc.org).

Failure to send written submissions on time will incur penalties and possibly constitute forfeiture. Be careful to send your submissions to the correct people and the Directors, especially if the Directors have notified you that your judges or opponents have been changed.

How do I amend written submissions after they have been submitted?

Avoid amending written submissions after the submission deadline as it looks unprofessional. Minor issues, like typos, should be overlooked as the detriment in amending would be greater than the advantage. Judges' permission is required for any amendment, and it is unlikely to be granted if competitors make any significant change that subverts the submission deadline.

A competitor may not make substantive changes to their written submissions (eg, to introduce new arguments or to change important aspects of existing arguments).

However, if you do wish to make a minor change to your team's written submissions without penalty, the procedure has three steps:

- i. Email an amended version of your written submissions as soon as possible (to your judges, the opposing team, and the competition coordinators).
- ii. Bring hardcopies of the amended submissions for the judges and opposing team to the moot.
- iii. At the beginning of the moot, seek leave from the bench to amend your submissions. Wait until appearances are complete, and then say:

'Your Honours, with the court's leave we seek to amend our written submissions. We have [number] amendments: first, at the [bottom/middle/top] of page [number], it should read [substitution] ... Are your Honours prepared to allow these amendments?'

What happens if my partner (or the other team) withdraws from the moot?

In most cases, the moot will continue exactly as planned.

You do *not* have to argue all four grounds of appeal. Instead, you can argue the half of the moot problem that you would like to moot – either as Senior Counsel or Junior Counsel. Note that you should make appearances no matter which counsel you select.

Similarly, moots can continue even if the other team has withdrawn. Judges will simply listen to your side and the moot will end early.

APPENDICES

Appendix A: List of Useful Cases

Topic	What is the case?	What is it for?
Judicial Notice	<i>Australian Communist Party v Commonwealth</i> (1951) 83 CLR 1, 163 (Latham CJ).	'Notorious' facts which are so clear that no evidence is required to establish to them. What is 'notoriousness' may change depending on where you are.
Binding or not?	<i>Farah Constructions v Say-Dee</i> (2007) 230 CLR 89, 151 [135] (The Court)	Interstate intermediate appellate courts should be followed (on questions of common law, federal legislation and uniform national legislation) unless 'plainly wrong'.
Challenging findings of fact by the court below	<i>Fox v Percy</i> (2003) 214 CLR 118, 126 (Gleeson CJ, Gummow and Kirby JJ)	Be particularly cautious if the trial judge has made the finding based on their assessment of a witness' credibility.
Challenging an exercise of discretion by the court below	<i>House v The King</i> (1936) 55 CLR 499, 505 (Dixon, Evatt and McTiernan JJ)	In the absence of an identifiable error of law, use <i>House</i> to demonstrate that the court below has erred in exercising their discretion → unreasonable.
Inferences – NOT 'Jones v Dunkel inferences'	<i>Jones v Dunkel</i> (1959) 101 CLR 298, 305 (Dixon CJ).	Drawing factual inferences from <i>undisputed</i> agreed facts. Be very wary of taking liberties with the facts. 'The more probable inference in the course of common experience...'

Appendix B: List of Mooting Expressions

<u>Mooting Phrase</u>	<u>How to Use It</u>	<u>Incorrect Form</u>
May it please the court	At the beginning or end of submissions, or in between submissions, as a polite introductory phrase.	'Um', 'ladies and gentlemen', 'good afternoon', etc.
Your Honour / Your Honours	To address a judge.	'You', 'Sir', 'Madam'.
My learned friend	To address the opposing counsel: eg, 'my learned friend suggested that there was no breach, we submit ...'	'My opponent', 'the opposition', 'him/her', 'she/he', 'my colleague'.
My (learned) junior/senior	To refer to your co-counsel, eg, 'my learned junior will deal with that point.'	'My colleague', etc.
We submit	To introduce any submission or opinion to the court, eg, 'we submit that Dr Steinberg breached his duty of care'. Note: Do not say "counsel submits".	'I think'; 'I feel'; 'I believe'; 'it is my opinion', 'I would argue'.
Take your Honour to...	To take the court to any document, such as a case, a statute, submissions, etc. Eg, 'may I take your Honour to <i>Rogers v Whitaker</i> at page...'	'May I draw your Honour's attention to...'
May I dispense with formal citation?	Where the judge clearly does not have or is not referring to the authorities. Do not use as a matter of course, but only where appropriate.	
That is the highest I can put it	Where the court refuses to accept a submission or an answer to a question, and you cannot afford to concede that point, but must move on because of time, eg, 'Your Honour, the highest I can put it is that handing Ms Rodriguez a brochure was not enough and he ought to have done more'. Note: Use sparingly, if at all.	'Your Honour, I don't know what else to say, I have already told you my submission.'
Nothing turns on that	Where you wish to indicate that something is not relevant, eg, 'that was a case about eye surgery rather than cosmetic surgery, but nothing turns on that.'	'That doesn't matter.'
I cannot assist the court on that matter	Where you do not know the answer to a question. Note: it is your job to assist the court, so avoid using this if you possibly can, by being prepared.	'I don't know'; 'Um.....'
I will now turn to my first/next submission	To introduce a new submission.	'My first point is...'; 'the first/next thing I wish to say is...'

With respect your Honour	To correct the bench or disagree with them eg, 'with respect your Honour that is not correct/not our submission.'	'I disagree'; 'You're wrong.'
If I could be heard for a moment longer...	Where the judge is pressing you to move on but you are not ready to do so (eg, if you have not finished your submission), eg, 'your Honour, if I could be heard for a moment longer on the point of breach of duty, we submit ...'	'I need to finish my point.'
If your Honour is content to accept that without further submission	Where the judge has indicated that he or she agrees with you and does not need to hear your submission, and you wish to move on, eg, 'If your Honour is content to accept without further submission that there was a breach of duty, I would move to my submission on causation...'	'Okay, if your Honour is happy with that, then...'
I withdraw that	To retract an incorrect statement, eg, 'your Honour, in that case the High Court held – I withdraw that – the Court of Appeal held...'	'Oops...'; 'Sorry, that's wrong'; 'Can I take that back?' etc.
I don't press that point	A graceful way of abandoning an argument or making a concession, eg, after a question revealing how weak your argument is: 'your Honour, I don't press that, but I would move to my alternative submission which is ...' NOTE: Be sure to check that you can afford to concede the argument. If it is essential to your case, then you cannot concede it, not matter how gracefully.	'Oh well, don't worry about that point, your Honour.'
I embrace/adopt that	Where you agree with a comment the judge has just made, eg, Q: 'It seems to me that she fails on a "but for" analysis'; A: 'I adopt what your Honour says and this is why we submit the 'normative' test should be rejected.'	'I agree'; 'That's right, your Honour.'
On all fours	Where a case is factually identical to another one and raises the same issues in the same way, eg, 'your Honour, <i>Rogers v Whitaker</i> is on all fours with the present case because...'	'That case is the same as this one.'
The authorities are all one way	Where all cases say the same thing on a particular point, eg, 'your Honour, the authorities on causation are all one way, in that they all state...'	'All the cases say the same thing.'
The authority for that proposition is/I rely upon	Where you are citing a case to support a submission, eg, 'all doctors owe a duty of care to their patients to warn of material risks, the authority for that proposition being <i>Rogers v Whitaker</i> ' or 'I rely on <i>Rogers v Whitaker</i> ...'	'I cite', 'Can I draw your Honour's attention to', 'it's in <i>Rogers v Whitaker</i> ...'

That case is distinguishable	Where you agree that a case is valid law but say that it does not apply, eg, ' <i>Chappel v Hart</i> is distinguishable, your Honour, because...'	'That case is different...'
Might I move on in the interests of time/I note the time, your Honour, may I move to my next submission?	When you are running out of time and need to move on.	'I'm running out of time...'
I see my time has expired, may I have a short extension to conclude this submission/answer your Honour's question	Where the time has run out but you are half-way through saying something. Note: only ask for enough time to complete the thought you are on, and do not ask for an extension of time as a matter of course.	
Those are our submissions	To conclude your submissions.	'I rest my case', 'thank you, your Honour'.