

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

Part 1

Making the most of a moot

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

Chapter 1

Introduction

WHAT IS MOOTING?

The adjective moot is originally a legal term going back to the mid-16th century. It derives from the noun moot, in its sense of a hypothetical case argued as an exercise by law students. Consequently, a moot question is one that is arguable or open to debate. But in the mid-19th century people also began to look at the hypothetical side of moot as its essential meaning, and they started to use the word to mean “of no significance or relevance”. Thus, a moot point, however debatable, is one that has no practical value. . . . When using moot one should be sure that the context makes clear which sense is meant.

The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company

The way in which the word *moot* is used has evolved over time, as the introductory quote indicates. However, for our purposes we need to stick with the original mid 16th century meaning. When you participate in an international mooting competition, you will be part of a group of law students engaging in the exercise of arguing a hypothetical case. This definition remains true whether you are presented with an extremely detailed set of facts or a very brief two-page problem; whether you are arguing your case before an arbitral tribunal or before a court of law. In any case, there are two very important aspects of law you will need to be familiar with: the law governing the substance of the case, usually simply called the substantive law; and the law governing the procedure used to determine the dispute, usually called the procedural law.

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

4 The Art of Argument

WHY JOIN A MOOT TEAM?

There are so many reasons why someone might want to be part of a moot team that it is difficult to limit the list. Here are five important reasons.

Job opportunities

Participation in an international mooting competition can increase your job opportunities in a variety of ways. The section of the book called “Make the most of your opportunities” explains them in much more detail (see pages 106–7).

Experience in international mooting is a very impressive addition to your resume. Although there are increasing numbers of students participating in mooting competitions, it will remain a fairly exclusive club for many years to come, and will give you an edge over others applying for the same job. For all the reasons we will discuss in this book, your participation will not only make you a better candidate, but will also better prepare you to go about the task of actually getting the job, for example, by helping you perform well in interviews.

International mooting competitions are great networking opportunities. If you are an impressive candidate you will always do well, but having good contacts will be an added bonus. You will meet new friends and new business contacts – often the very people you have just spent six months reading about.

Team work

Until now, whenever you have worked in a team as a student, you have probably had a say in who the team members were. In many cases your team members will have been your friends. It is fun to work with your friends, but when you are practising in the field of law you are more likely to find yourself in a team of people you do not know well, some of whom you may even dislike.

You need to learn how to work as part of a team that you did not choose. Often participation in an international mooting team will be the first time you experience this situation. It is not always easy, but it will prepare you well for your working career. Employers value

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

this kind of experience. They are looking for people who know how to function in a team.

Intensive training

When you go to a moot competition you are representing your university, your country and most importantly yourself. For those reasons alone you will want to perform well. To perform well you will need to undergo intensive training. How much training you do is up to you. Some teams will do several practice moots a week for weeks on end to improve their skills. Others will have spent hours and hours ensconced in a library researching particular points of law and learning the subject matter backwards. You will gain knowledge and valuable skills by the time you complete this process, and the intensive training you undertake along the way will help you to deal with many other aspects of your life beyond the law.

International travel

Although the various international moot competitions are structured in different ways, all of them have the prospect of international travel. For those more fortunate students whose universities are well funded, it is likely that this travel will be heavily subsidised. But even if your university is not in a position to assist you, a moot competition gives you a very compelling excuse to catch that travel bug and go overseas. Having made the investment to travel to a moot, many students take advantage of their location and have a holiday following the end of competition. This can be one of the best experiences of your life.

For many of you it may be your first venture outside the country, and the experience will be life-changing. You may not appreciate it when you first meet your team, but you will be grateful to be travelling with people you know.

New perspectives

In many ways this reason is the product of all the reasons listed. You will be introduced to many new experiences through your

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

6 The Art of Argument

involvement in an international moot. Each new experience will force you to challenge your existing perspectives, an invaluable lesson that will serve you well as you enter the legal profession.

HOW TO USE THIS BOOK

This book is designed to be used in a variety of ways. Start by reading Part 1 from beginning to end. This should not take a lot of time. Then you can refer back to the book as the need arises. Each chapter deals either with a discrete point in the process of the competition, or a general issue that could arise at any time. For example, when you are practising your presentations, you might want to refer to the presentation tips and look over the strategies for working in a team when someone is really annoying you. A consequence of this structure is that the chapter lengths vary considerably. While each topic is important, chapters 4, 5, 6 and 7 contain what might be described as the substantive aspects of the book.

Now you know why you should want to be part of a moot team and how to use this book. Good luck in making the team!

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

Chapter 2

You've made the team – what next?

BEFORE YOU BEGIN

Good preparation is the key to success in mooting competitions. This book aims to give you an insight into issues you are likely to encounter throughout the process. This means that you can begin preparing for all aspects now, rather than have problems descend on you at a time when your efforts are better spent refining your oral presentations.

Timing and commitment

We have already noted that participation in a moot competition involves intensive training. With intensive training comes commitment. A team will set its own level of commitment, but if you want your team to perform at its best, every member needs to be highly committed to ensure the team's success.

Participating in an international mooting competition involves an extraordinary amount of time. It takes time to prepare. It takes time to travel overseas and participate. All of this needs planning. In particular, you need to think about what impact it will have on other commitments you may have, such as paid employment, other studies, and family relationships. Paid employment is potentially the most difficult to accommodate.

The time of year when the moot actually takes place needs careful consideration when you are deciding whether or not to participate. For example, a moot that takes place in the early part of the year will require most students in the southern hemisphere to work solidly throughout their summer break. There are advantages and disadvantages to this. First, you will not need to divert your attention

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

8 The Art of Argument

from other subjects that also demand and deserve your attention. However, equally, you will not be able to pursue recreational activities and relaxation during your holiday time. Days spent at the beach are likely to be replaced by days spent in the library. Perhaps more significantly, the full-time work you had hoped to do over summer may not be possible.

A moot held during the year may conflict with important academic events such as exams and due dates for assignments. If this occurs you will need to consult your tutors and lecturers to see if alternative arrangements can be made.

What about money?

For some fortunate students, money will not be an issue, but for many it is a very big concern. Unfortunately, participating in an international moot competition does cost money, whether that is simply the entrance fee, or includes the costs of flights and accommodation while you are overseas.

Think about where the money is going to come from at this early stage. You do not want to find yourself distracted by this issue while you are trying to devote all your attention to preparing and practising your arguments.

Because the situation for every team is different, it is important that all members sit down together and discuss this issue. There are several options you could consider and you need to work out what will best suit your team.

Everyone pays for themselves

The most obvious option is that everyone pays for themselves. However, this can be riddled with difficulties. Not everyone in your team is likely to have the same capacity to fund their trip. Since you are participating as a team, you should travel together and stay in the same accommodation to really make it a team experience. But some people simply will not be able to afford to stay in some hotels or to travel on particular airlines. This can lead to difficult decisions that need to be made as a team. It also means that financial status becomes a discriminating factor. There will be those who simply cannot compete if they are required to fund their own participation.

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)**You've made the team – what next? 9**

This is a great shame, as every student could benefit greatly from this experience.

Sponsorship

The alternative (or in addition) to everyone personally contributing is for your team to obtain sponsorship. Sponsorship can come from a range of sources. Your law school is the most obvious potential source. Depending on how your particular educational institution is structured you may be able to get sponsorship from different parts of the university as well. Other potential sources of funding are law firms and private benefactors. The advantage of sponsorship is that it creates a pool of money that every member of the team can benefit from equally.

As a team you may choose to nominate someone or a couple of people who, in return for some lighter research duties, spend some time on raising sponsorship. There are definite advantages in directing your sponsorship efforts in this way. Primarily it ensures that you have a coordinated approach. Potential sponsors will get frustrated if five different people from the same team individually approach them to ask for sponsorship. It is also more efficient for team members to focus on particular areas, rather than every member attempting to spend some time on all the team tasks. Some team members can concentrate on detailed research while others can focus on raising money.

If your team decides to nominate one or two people to seek sponsorship, it is very important that you choose the right people within your group to take on the task. Within any team there will be mix of personalities. It is important that you recognise that each of you has different strengths. In order to learn to operate well as a team, you need to work out how to fully utilise everyone's individual strengths. Fundraising generally requires a very outgoing personality. You will only be successful if you willingly take on the task, bearing in mind that it is a big job. Some of the challenges involved may only become apparent once you begin. For example, you may need to coordinate your fundraising efforts with those of other groups within your law school that are also seeking sponsorship, such as other moot teams and the law students' society.

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)

10 The Art of Argument

The task of fundraising carries with it significant responsibility, and therefore can place real pressure on the relationships in the team. As a team you should ensure that you set realistic fundraising targets. It is much better to underestimate what you think you can raise. If for whatever reason your team ultimately fails to reach the intended target, make sure you pause and think of the best interests of the team before you rush to blame your designated fundraiser.

THE MOOT PROBLEM

Read the problem

There is a great deal of excitement when you first receive the moot problem. Everyone is different and approaches the first reading their own way. Some people read every word of every line very carefully; others just glance over it and think the answers are obvious! As you would expect, these people are in for a surprise and will very quickly learn that first impressions rarely reflect final ones.

The best approach is probably somewhere in the middle. Sit down and read the problem carefully. There is no need to be too meticulous the first time you look at it; instead you want to absorb the basic information and facts, so you can begin to plan how you might tackle the problem. Read it over once, maybe twice if you want to, and then put it aside and just think about it for a day or so. Sleep on it!

Many students, when reading their moot problem for the first time, think, “I have absolutely no idea what this is about!” By their very nature, international moot competitions deal with complex international legal questions, and therefore the subject matter tends to be outside the ordinary curriculum. Do not be alarmed by the subject matter. All it means is that you are about to face a very steep learning curve. Over the next few weeks you are going to absorb lots and lots of new information. Far from being a bad thing, this is a wonderful challenge that should excite you.

Read the rules of the competition

A crucial task is to familiarise yourself with the rules of the competition. Each competition will have its own set of rules, and you

Cambridge University Press

978-0-521-68513-9 - The Art of Argument: A Guide to Mooting

Christopher Kee

Excerpt

[More information](#)**You've made the team – what next? 11**

need to know exactly how the rules affect how you should prepare, before you begin to solve the moot problem. Imagine you had done months and months of research and handed in your written submissions, and were then told that you would have won an award but unfortunately you had used the wrong citation method. Or you attended the oral hearings and got perfect scores for all of them, but because you only argued the applicant's case in each moot, you were not eligible for the best oralist award.

The rules of the competition will influence the way you prepare, so it is very important that you are familiar with them right from the beginning. For example, there may be rules about how you can use the evidence provided in the moot problem. It would be a waste of valuable time to practise using the evidence in a different way.

Be aware that the rules of a particular competition may conflict with some of the recommendations in this book. This book is written as generally as possible and aims to develop themes that are consistent with most if not all advocacy, whether in international or domestic moots, or in professional practice. However, there may be occasions where particular rules prohibit the use of some of the techniques discussed. In particular, you should be aware of the extent to which the rules of the competition allow you to utilise external assistance. If the rules do conflict with a technique outlined here, think about the purpose of the technique suggested and find a way to achieve the same outcome within the rules.

ASKING FOR HELP

You need to find a quick way of gaining a rudimentary understanding of the subject matter. Once you have the basics then you can develop your ideas and start to come to grips with the complexities of the issues. It would be a good idea to do a “crash course” in the area. Usually this is something that your coach will coordinate for you. But you can be proactive and take steps as a team to begin the learning process.

There are many people you can turn to for help. Your coach will be your first port of call, and within your law school there will be lecturers with specialities in all sorts of disciplines, who will be a great resource for you.