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# GUIDE TO MOOTING<sup>1</sup>

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## Before it begins

Be early for your moot. There is nothing that will get a judge offside more quickly than forcing them to wait for a student.

Instead, play it safe side and aim to be 5-10 minutes early. This has two distinct advantages. First, if you are late you'll be flustered and it will be difficult to calm down and focus. Second, if you are early it gives you a chance to check out the room, scope out the opposition, get all of your papers in order and generally relax.

## Dress

A dark suit (jacket and tie/jacket and skirt) is the optimal mooting uniform. Of course, it is important to look neat and professional but you can achieve that without breaking the bank.

You should be seated at your place when the judge enters. Always stand up when judge enters the room – they will generally give you a nod or an indication to sit. Sit quietly until the judge asks, "Can I have your appearances please?"

## Appearances

The first speaker for the claimant will remain seated and state (for example): "*Good Morning/Afternoon Mr/Madam President, (and) members of the Tribunal, my name is Ryan Smith and I appear with my learned co-counsel Shannon Jones for the Claimant.*"

Some judges may prefer a more formal style – it is a personal preference and competitors should learn both styles. Here is an example of a more formal introduction:

*"If it pleases the Tribunal, my name is Smith initial R and I appear with my learned co-counsel Jones initial S for the Claimant."*

The first speaker for the respondent will then repeat that, substituting their own information. Both teams should now be seated back in their places, and quietly waiting for the presiding arbitrator to speak. The arbitrator will then look to the claimant and say something along the lines of "I will hear from you now".

## Order of speaking

First speaker Claimant, Second speaker Claimant, First speaker Respondent, then Second speaker Respondent.

Then, if the Tribunal allows, there may be a right to rebuttal from the Claimant and surrebuttal from the Respondent. Please keep in mind that the judge has the right to change any procedure he/she wishes, so it is their prerogative to vary the order of speaking and ask to hear the Respondents first. So be calm and be flexible.

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## Roadmap

This is the introduction to your submissions completed by the first speaker for either side. Introductions are the most important minute of your speech. They are also surprisingly easy. They follow a simple format every single time:

### 1. Opening sentence – something catchy that goes to the heart of the matter.

Eg. First Speaker Claimant *“Your Honour, this case involves the protection of vulnerable people from harsh contractual terms. The law should afford protection to those who may be taken advantage of.”*

Eg. First Speaker Respondent *“Your Honour, it is a fundamental rule of contract law that people should be held to their contractual obligations. A person cannot enjoy the benefits of a contract and then attempt to avoid the responsibilities.”*

### 2. Then move on to a road map

Eg. *“The Claimant presents three main submissions. These are A, B, and C. I will be dealing with the first these submissions, A, and my and my learned co-counsel will present B & C. I will now move to our first submission A.”*

If you are the second speaker for either side, your introductions are less important. You should smoothly continue from where the first speaker left off.

## Body of the submissions

This will be the main bulk of your arguments. Know exactly what you need to say and how long it should take to say it. Keep an eye on the time and structure your submissions accordingly. Prioritise your arguments. Distil the essential arguments and make sure you cover all of them.

**Don't be afraid to let a point go.** If you are really being hammered on a particular point of law and you don't know how to answer it, then it's okay to say *“I'm sorry Mr Arbitrator but I don't think I can help you further on that point”* and then move on to a different submission. Knowing when you are beaten is an impressive skill and it means you do not waste further time on an unwinnable issue.

**NEVER** have your speech written out longhand word for word in front of you. You will be dependent on it, you won't make eye contact with the bench and you will get messed up the moment the judge asks a question. Instead, just have a brief outline in front of you that you can glance down at for structure.

Try having a sheet of paper in front of you that has a few words of summary about each case you mention. That way if a judge asks what the facts of the case are, you can just glance down and your memory will be refreshed. You **MUST** know the facts of every case you bring up.

## Conclusion

If you are the first speaker, your conclusion will simply be to sum up your submissions and introduce your co-counsel who will present B and C.

If you are the second speaker, your conclusion needs to be more substantial. These are the last words the judge will hear from you, so it is essential that they are clear, precise and persuasive. You must sum up ALL of the submissions, both from the first speaker and yourself and end with a sentence not unlike the first speaker's opening sentence.

## Presentation

**SPEAK SLOWLY** - Speak clearly and slowly. Usually we all speed up when we are nervous, so make a conscious effort to speak slower than usual.

Always flag where you are going. When moving from one submission to another, actually say "And now I will move on to my second submission which is that B."

Be flexible – the judge might not want to hear you on one or two points and may move you around to areas of law they think are important. Keep an open mind and be prepared to be shuffled around. Be ready for questions from the bench – that's what they're there for.

When you come to your first case, give the full citation and then ask "*Would you mind if I dispense with full citations?*" Usually, the arbitrator will tell you that's fine and then you can just refer to cases as "Wilton and Farnworth, a 1948 case from the High Court of Australia".

You should also give an indication of the way the judges fell on the issue – (majority judgement etc). But never just recite the case name as it appears eg. "*Brown vee Smith* 1979 112 CLR 334".

## Answering Questions

Don't fear the questions from the bench, it allows the judge to let you know what they think is important and exactly what they want to hear. You want to engage the bench in conversation. It gives you an opportunity to get away from your rehearsed speech and speak candidly.

**NEVER** speak over the judge – when their mouth opens, your mouth closes. Most important – if questions can be answered with a simple YES or NO, then do so. The ideal answer says yes or no first and then clarifies in a succinct, easy to understand way.

Eg.

Judge: "*But that case X is from the 1950's – haven't there been some more recent cases that have decided on point?*"

You: "*Yes there has. There have been three cases since then – A, B and C – all of which have approved the original. Indeed in B, the court held that "X was a watershed case of it's time."* Then transition back into your speech ... "*So given its importance in this case, we submit that my client should not be forced to ...*"

# LIST OF ALWAYS AND NEVER

## ALWAYS

- Practice your submissions out loud before presenting to the judge.
- Shine your shoes and brush your hair. Neat and professional are the key words.
- Sway on the side of boring – anything that distracts from your submissions is a bad idea.
- Be 5-10 minutes early. Go in and take your seat – get organised and relax.
- Speak clearly and slowly. Usually we all speed up when we are nervous, so make a conscious effort to speak slower than usual.
- Write and memorise an excellent introduction and conclusion. They are the only two sections of your submissions that you can learn word for word and recite.
- Give them a roadmap in your introduction and flag where you are going next.
- Answer questions with a YES or a NO if you can.
- Make a conscious effort to sustain eye contact with the bench. Even if a judge isn't asking many questions, still include them in your eye contact.
- Prioritise between essential and non-essential points. Concede unwinnable arguments. Don't waste time when your argument is weak.

## NEVER

- Never write out your whole speech. Only ever have a structural outline on the lectern in front of you.
- Never avoid a judge's question.
- Never say "Well Your Honour I was going to deal with that question later, so I'll get to that soon." If they have asked you, they want you to answer NOW – do not fob them off.
- Don't ask if the judge has any questions. If they have questions, it is their prerogative to interrupt you whenever they want.
- When asked a question, never say "With respect your Honour ... the answer is this." Just don't do it – its rude. You would only ever say it when disagreeing with something the judge said.
- Never EVER speak over a judge. The moment they open their mouth, you close yours.
- Never speak with your partner while the other side is presenting. This is just common sense – be courteous and respectful. Win or lose, go over and shake their hands afterwards (if applicable).