

## MOOTING ETIQUETTE

Mooting is an acquired skill which improves with practice and you should expect your performance to improve throughout the competition. Nevertheless, for those with little or no mooting practice, there are still a number of helpful tips which will help you get started and ensure that your first attempt is consistent with what the judges will expect from the advocates before them.

### **1. Role allocation**

During the preparation of the written observations, individual team members will almost invariably have concentrated on working on particular moot questions. It makes some sense for the same team members to address the court during the oral round on those same questions, but you should not assume that this should automatically be the case – take some time to think about how you can present your case most effectively as a team while adhering to the rules.

For example, many teams will find that some of their members are rather ‘stronger’ mooters than others; try to give those team members more prominent roles (the rules provide that every team member has to speak at some point, but not that they should all be speaking for the same amount of time – while you should not relegate your ‘weakest’ team members to merely introducing themselves, it is perfectly natural to allocate ‘easier’ and ‘shorter’ questions to them). Beware, however, that the ‘strongest’ mooter is not necessarily the one who speaks the best English or who shouts loudest – mooting is very different from the sort of jury advocacy we all know from American television series and some of the best mooters have a rather understated and academic style.

Another important choice to make in your role allocation is whether in the first round of the competition all team members should plead on both sides, or whether it is better to have some team members represent the applicants and others the respondents. The latter option will give each team member more time to develop their submissions on and tends to be less disruptive to building an argument than four five-minute speeches. As a downside, it requires individual team members to get completely on top of a larger portion of the moot case.

While there is not strict rule concerning how many team members may speak during the five-minute reply or rejoinder, it is usual for only one, or at most two, team members to make all the points in reply or rejoinder on behalf of the whole team. This of course requires that particular team member to be completely familiar with the team’s position on all the moot questions. However, ideally, all team members should in any event have an idea about all of the moot questions.

### **2. Opening remarks**

The very first few sentences to be said in a moot court are often the most daunting to students new to mooting. They are however also the easiest to prepare for, particularly on the side of the applicant, as you are free to set the tone.

Your very first words will almost invariably be directed at the judges sitting in front of you. The formal rule concerning how to address the Court of Justice of the European Union is that advocates should address the ECJ in the same way as they would address their highest national court. In English, this means using the form “My Lords/Ladies, ...”

Your submissions are directed at the court, not the opposing team, the time keepers or the audience – so there is no need to address them (though, as a matter of courtesy, you will probably have wanted to introduce yourself informally at least to your opponents before the judges arrive). It is also not usual to preface your submissions with saying “Hello” or “Good morning” to the judges!

While it is common in many moots for the first speaker to introduce not only himself/herself, but also his fellow team mates and the advocates for the respondent to the court, this is not required in the context

of the CEEMC, as the judges will have a sheet with your names in front of them. It may nevertheless be useful for the first speaker to introduce himself and say which team (i.e. which university) he or she represents.

Similarly, while many moots require the submissions to be started with a summary of the facts, this is not required in the CEEMC as you will be able to assume that the judges have read the moot case. It may however be convenient for you to summarise in one or two sentences what the dispute is about and how it should in your submission be resolved (i.e. how the questions referred by the national court should be answered).

Before launching into your main submissions, it is important that you tell the court how you have, as a team, divided the case between yourself and your team mates, and who will be addressing the court on which point. (There is however no need to announce how much time each team member will take for their part.)

## **2. Developing your arguments**

It is usually useful to begin by telling the judges which points of law you will be arguing and what propositions of law you support. You cannot hope to convince the court of your answer unless they know which point you are addressing and what your main arguments will be before you begin discussing them in detail.

Your submissions should be logically structured and presented confidently and clearly. Although time is limited, it is better to take your arguments slowly to ensure the court understands them, rather than rushing them and having to deal with the resulting questions which the court asks to clarify your position. You should try to avoid reading a prepared speech, since the court will almost inevitably ask you questions which draw you away from your text and it will then be very difficult to rejoin your speech after such questioning. It is a better compromise to use 'headline' or 'bullet points' which you refer to occasionally to remind you of all the points you wished to make.

Time is very short for your oral submissions and you cannot hope to address all the points you have made in writing. So identify your best points, and the most important ones to make, and concentrate on those in submissions. If you are speaking for the applicants, try to anticipate what sort of arguments the respondents will raise, and neutralise the best of them in advance ("My learned friends for the respondents may seek in due course to persuade your Lordships that X ... In my submission, however, the opposite is true..."). Similarly, if you are speaking for the respondents, try to prepare responses to the applicant's most obvious arguments and engage with them directly when your turn comes ("Mr Smith just argued for the applicants that fact Y is very important in the context of the present case. That argument is in my submission misconceived because..."). Engaging with an opponent's arguments is possibly the most important skill of any good advocate: don't only tell the court why you are right, tell them why your opponent is wrong.

You should ensure, wherever possible, that you use legal authority to back-up your arguments. Be prepared to fully cite the details of the case (name, year etc.) and to provide the court with a brief summary of the facts if the judges so request. Where such authority is not available, you should indicate why, for policy reasons, your proposed solution is to be preferred to alternative solutions. Remember that the only authorities that are to be cited before the court are those contained in this bundle: all others will be ignored by the judges. If an authority is particularly central to your argument, ask the judges to turn to it in the bundle (each judge will have a copy in front of him/her), indicating clearly the page and paragraph number, and giving them time to turn to the right page before developing your point. Such references should in the main be to legislation and case law. It is unusual to cite academic authority in front of the ECJ – don't use the mere fact that a particular professor favours a particular position in order to bolster your case, but do use the actual arguments developed in the literature.

Conclude your submissions (if you have the time) by reiterating the main points and asking the court

whether you may be of any further assistance. If not, sit down and pass over to your team mate or to the advocates for the opposition. If passing over to a team mate, it may be useful to introduce them briefly ("This concludes my submissions and, unless I can be of any further assistance to your Lordships, I will now hand over to Miss Jones, who will be addressing the court on Question 2..."). If you are the last speaker of the team, it is similarly helpful to indicate this ("This concludes the submissions on behalf of the applicants/respondents."). Much like your first few opening sentences, it should be possible to prepare this closing in some detail.

### **3. Questions**

As mentioned earlier, you can expect to face questions from the judges. Listen carefully and make sure you have properly understood the question before attempting to give an answer: it is far better to ask for clarification than to begin answering a question which the court has not actually raised.

The advocate to whom the question is addressed should ideally attempt to answer it but may, if necessary, consult with other members of the team before responding. Alternatively, another team member may address the court in response to a question.

Watch for 'leads' from the questions asked by the court: they can sometimes help you to assess the court's willingness to accept your proposals and allow you to alter your arguments accordingly or use questions asked of your opponents to criticise their submissions.

Try to anticipate questions, in particularly ones going to the weakest points of your case, and prepare answers. It may be useful to have several "lines of defence" prepared, and make concessions gradually if pressed on a point. While you should obviously seek the best possible outcome to your client, there is no point in arguing the absolutely unarguable. Hopefully the moot questions will be balanced on the whole so that you always find something to say in response to a question. If you are ever completely out of ideas on a point, you may have to stick to your guns and say that you cannot be of any further assistance to the court on a particular point.

### **4. Reply/Rejoinder**

The secret of success of a good advocate is, as already mentioned, to be able to respond to the issues raised by his or her opponents, not simply to repeat the pre-prepared arguments in favour of his or her client whilst ignoring arguments raised by the opposition. Although it is only the respondents who have the opportunity to address many of these issues in their main speech, both teams have the 5 minute reply/rejoinder to comment directly on the arguments of the opposition. You should not avoid issues raised by the opposition, since this gives the court the impression that you are unable to deal with them and this will clearly weaken the strength of your case.

Your reply/rejoinder should aim to avoid simply repeating arguments that you have put before the court and should instead be used as an opportunity to clarify any points of confusion which may have been left after your main speech and the questions posed to you by the court. You should also use the reply/rejoinder to highlight problems with the submissions made by the opposition and crystallise the issues in dispute as you see them.

### **5. Addressing the Court**

Court language is radically different from the everyday language used by students, and particularly in a foreign language will take a while for you to get used to.

Both towards the judges and towards your opponents, the basic rule is to act with the utmost courtesy, even when you violently disagree with what they have to say. In order to address the court, it is usual to stand, even if it is in response to a short question only.

Listen carefully to the questions and directions of the judges and try to ensure you follow their statements, not only when addressed to you, but also when speaking to your opponents. Answer the questions they put and not those you wish they had asked or those to which you know the answer. Do not argue with the judge and never talk while a judge is speaking. The same point could always be put politely and just as effectively. (e.g. "With respect, my Lord, I would submit that a different point is rather more important in this context than the one your Lordship is addressing at the moment...")

Always address your arguments to the court rather than to the opposition: this is a moot not a debate. Also remember that, as the advocate, it is your role to answer questions posed by the judges, not to ask questions to the judges or the opponents. It is English courtroom custom for barristers to refer to each other as "my learned friend", whether they are on the same or opposing side of a case. In order to distinguish which 'learned friend' you are talking about, it may be useful to identify them more precisely ("My learned friend, Miss Jones, will be addressing this point in more detail in the context of her submissions..." or "Mr Smith just argued on behalf of the applicants that... My learned friend however omitted to mention that..."). For these purposes, it is useful to make a note of your opponents' names before the beginning of the moot!

In the ECJ, time limits are ferociously enforced. Always try to stick to time limits and do not automatically assume that the court will give you additional time to complete your submissions. Be prepared to adapt them and summarise some issues if you appear to be running out of time. If time runs out while you are speaking, you should finish your sentence and then either end your submissions with a brief final remark ("My Lords, my time has run out, but I hope Your Lordships have my central point, which is X. Unless I can be of any further assistance, this concludes the submissions on behalf of the applicants/respondents.") or ask for more time ("My Lords, unfortunately my time has run out, but I wonder whether I might be allowed an extension of a few minutes as there is one further crucial point which I would have liked to address Your Lordships on...")

## **6. Organisation and Preparation**

Although much of the skill in mooting lies in responding 'on your feet' to judges' questions or the arguments of your opponents, even the best advocates do not rely solely on their quick wits and instincts to deal with such problems. The presentation of the case in court is the culmination of many hours of careful preparation, rehearsal of the arguments to be made, study of the legal authorities and policy arguments behind your submissions and anticipation of the arguments of your opponents. The more time you spend in organising and preparing your case the easier it will be to act 'on your feet' and yet it will look more impressive.

One particularly useful exercise in preparation is to ask yourself how you would decide the case if you had to judge it, and then work out which are, in the context of each of the moot questions, your strongest and weakest points. Then brainstorm with other team members how best to put across the strong points, and how best to meet the weak ones.

## **7. Conclusion**

Although, this is a competition, we also want you to have fun. Preparing for a moot takes a lot of time and effort and you should try your best to enjoy the opportunity to show the judges how much law you have managed to learn during this preparation. Also, the more relaxed you are, the likelier it is that you will be able to provide a confident presentation style to the judges.

Good luck to all and we look forward to welcoming you in Sofia!