

Lawctopus Moot COURSE (& Competition)

Module 1: Introduction

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Introduction

The fact that you have signed up for this course on mooting (which is a great decision btw) signifies that you are already interested in the art and want to learn more about it.

While this may also mean that most of you already have a basic idea of what mooting is and what it entails, it's never a bad thing to spend some time on the building blocks, for it is this foundation that would ensure that you stand tall and mighty in your mooting journey ahead!

This foundational learning involves:

- a. Understanding the concept of a moot court and mock trial,
- b. Structure of a moot court competition,
- c. How Mooting differs from any other co-curricular activity that you might have done previously,
- d. And the reasons, considerations, and motivations to take up mooting.

We will further discuss the process of **choosing your moot team** for a competition and also the factors that play a role in selecting an appropriate moot court competition to compete and be a part of.

Understanding Mooting: A Brief Overview

To an outsider, mooting might only seem to be an act of presenting/arguing your case before the judge. In reality, however, oral arguments are just the tip of the iceberg. A majority of work relating to research, drafting, and preparation of memorials is done way before the oral rounds take place.

Keeping this in light, a moot court can be defined as an activity in which the participants are given a hypothetical case upon which they are required to:

- a. analyze the facts,
- b. cull out the legal issues involved in it,
- c. conduct research on the issues identified,
- d. draft a memorial, and
- e. finally argue the case on behalf of the client.

To sum up, mooting involves researching, drafting, and arguing on a hypothetical case in a real courtroom-like environment. A moot court is an imitation of an actual court proceeding, which essentially means that you will have to abide by the well-established principles of research, drafting, court mannerisms, and etiquettes while you present your case.

All these also form an important part of your advocacy skills. Moot courts are thus often described as the nearest courtroom experience that a student can have.

The nature of the mooting as a co-curricular activity is such that it enhances a participant's research, drafting, and speaking skills- all of them at the same time, and which if combined can make a highly successful lawyer.

Trial Advocacy vs. Mock trial

Before delving deeper into the finer aspects of mooting, it is crucial that you understand the **difference between a moot court and a trial advocacy competition.**

In a moot court competition, the facts of the case as contained in the problem/factsheet are taken to be final and undisputed, and the arguments are to be made based on these facts. There is no examination of witnesses in a moot court and, in real life, the proceedings therein can be compared to a final arguments stage at an appellate court.

On the other hand, **in a trial advocacy competition**, the participants are expected to conduct a “trial” i.e. establish the facts given in the problem first by conducting the examination-in-chief and cross-examination of the witnesses.

The facts given in the trial problem can even be disputed by a tactful use of examination in chief and cross-examination by the counsels. Only once this stage of examination concludes, the counsel is required to make oral arguments on the basis of the facts proved/disproved in the earlier stage. A Mock trial bears resemblance to the proceedings undertaken at a trial court.

Note: The key difference between a moot court and a trial advocacy competition is that; in a moot court we have to argue on questions of law, whereas in a trial advocacy competition, we have to argue on questions of fact.

How is mooting different from other co-curricular activities

Let's get it straight: Mooting is unlike any other activity that you may have done previously. In your academic life till now, you might have come across various co-curricular activities like debates, MUN's, elocution, research paper, essay writing etc. However, mooting stands in an altogether different league due to its unique and all encompassing nature.

Research Oriented: Research forms the backbone of Mooting. Every argument that you make before the court has to be backed by some basis in law. This basis may be found in precedents, statutes or commentaries. To find these appropriate authorities, a participant is required to carry out a thorough research. Other co-curricular activities like debates, elocution, MUN's may not require any research at all or may only require only preliminary research on a topic.

Oratory skills vs Advocacy skills: Whereas some curricular activities like essays or research paper writing may not involve any aspect of speaking skills, others like debating, MUNs focus largely on the oratory skills of the participant which mostly weigh in factors like the ability of the participant to make an impassioned, fluent speech coupled with use of rhetoric. A moot court, on the other hand, is all about making the most compelling arguments in the most persuasive and gentle manner. The participants are expected to follow the **courtroom etiquettes and mannerisms** while presenting their arguments. The style of advancing your arguments has to be different than in a debate, elocution.

Law centric activity: Mooting as an activity has everything to do with law. Moot courts are organized exclusively by law schools, and for the exclusive participation of the law schools. Mooting focuses on issues of law and expects legal arguments from the participants. On the other hand, other co-curricular activities like debates, MUN's,

extempore, elocution are generic in nature and students from any discipline can participate in them.

Structure of a Moot Court Competition

Team Composition: Typically a team for a moot court competition would consist of 3 members, of whom two members are the speakers and the remaining one member is the researcher. Additionally, there are competitions which allow the presence of additional members as a researcher or speaker in the team. In such cases, reference is to be made to the rules of the competition which would clearly state the maximum no. of people allowed to make up a team.

Competition Rules – While rules of moot court competitions are mostly standard, they need to be once read thoroughly. Careful consideration must be given to rules relating to the number of members allowed in the team, formatting of the memorial, page limit for the memorial, no. of rounds in the competition, the deadlines for the competition and penalties on late submission of the memorials etc. A sample of Moot court Competition rule can be accessed [here](#).

Memo Qualification round – While this is not the norm, there may be a memo qualifier round in some competitions in which the teams are shortlisted on the basis of their memorials. In other words, the memorials become a criterion whether a team would even get a chance to compete in the oral rounds or not. This is done to ensure that only serious, committed teams with sound research on the problem get an opportunity to compete in the oral rounds.

Preliminary rounds – Except for some moot competitions which have a memorial qualification rounds as detailed above, most moot court competitions have a direct preliminary oral round in which the teams compete with each other for the quarter-final berth. In this very first round of the competition, every team gets an

opportunity to argue from both the petitioner's/plaintiff's/appellant's side as well as the respondent's/defendant's side.

Subsequent Rounds – In accordance with the rules of a moot court competition, after the conclusion of the prelims round, the successful teams may progress to the best of 16 rounds or a quarter-finals round, as the case may be. Teams shortlisted in this round progress to the semifinals and then consequently to the final rounds of the competition.

In all these rounds, a team gets to argue from any one side only i.e. they represent either the plaintiff/appellant or the respondent/defendant.

The decision of which side a team would represent is generally taken by a draw of lots.

What are you judged on - For evaluation of the memorial - the Application and Appreciation of Facts, Identification of Issues, Structuring and Presentation of Issues, Application of Legal Principles, Authorities and Precedents, Ingenuity and Logical Reasoning, Lucidity and Writing Skills, Proper Footnoting and Formatting.

You'll be learning all about this in the future modules. For now, we are just laying out the basics.

For Evaluation of oral round - Structure, Articulation & Clarity, Application of Legal Principles and Use of Authorities, Knowledge and Marshalling of Facts, Persuasiveness, Ingenuity & Response to Questions, Court Etiquette, Presentation Style and Time Management.

Why moot: 8 Reasons

Since mooting as an activity requires a lot of time, hard work and efforts from all the team members, it is only fair that you have sound reasons to take up mooting. Of course, everybody has a different motivation to moot, but understanding the most common reasons as to why people take up mooting can provide succor to your own belief to take up mooting.

1. Critical and analytical skills –The inherent nature of Mooting is such that it involves analysis of facts, sifting of the material facts from immaterial ones, carving out the contentious issues, and conducting research on them. This whole process helps a participant achieve the analytical skills as he/she learns to raise perplexing questions and seeks to find an answer to them, all by her own efforts.

2. Appreciate diverse perspectives – Mooting teaches you to have a holistic view of a problem in hand and evaluate both the strengths and weaknesses of a case. Since a moot court requires preparation from both sides to be made, it requires interpretation and re-interpretation of the same provisions of law to suit both sides in a case.

3. Enhances public speaking –In a profession like law, public speaking is a good to have skill. Mooting provides a participant with an excellent platform to polish one's speaking skills before they enter into the profession. (Note: Advocacy skills are more than just being a good public speaker. Introverts, rejoice!).

4. Learning beyond the classroom – Let's face it, the real practice of law cannot be served only by bare provisions of law and the plethora of case laws that are taught in the confines of the classroom. (Note: The Bare Act and the Case Law still are crucial readings for both the law student and the lawyer). A diligent student must take part in activities that bridge the gap between classroom learning and real-world application. Mooting helps in bridging this gap by introducing the participants to an application-based learning of law.

5. Industry knowledge - Irrespective of the outcome of a moot competition, a participant can be assured that the mooting experience will help him in gaining a vast knowledge of subject matter of the moot. The experience will broaden his knowledge of subject matter involved in the moot and help him in getting an edge over other peers in that particular area of law.

6. CV Building –Since skills like research, drafting and advocacy are indispensable for any practice of law, a good track record in mooting sort of ticks all the boxes that lawyers/law firms look out for in a prospective candidate.

A prior mooting history further reflects a participant's inclination towards academic pursuits and demonstrates that he has spent his time fruitfully in the college. Further, a student can build a great CV by strategically choosing moots\competitions in the area of law she wishes to work in future. The choice of his moot court competitions will provide a fillip to his professional endeavours in the field.

7. Litigation experience - Mooting is the closest real-world courtroom experience that you can have as a student. It equips you with crucial advocacy skills which can help you not just in your endeavors in a competition, but also in your lawyering life. Research, drafting, and speaking skills, if diligently worked upon, can make you a great mooter. Carry these skills into your professional life and you could end up being an equally great litigator!

Imagine the opportunity to argue your case before a bench comprising sitting and retired judges of the High courts and Supreme courts. And all of this when you have not even graduated from your college!

While litigation internships may allow you to research, or even draft a real ongoing case as a student, they can never give you an experience and thrill of arguing your own case. With the help of mooting, you can also evaluate if you want to be a litigator, and if arguing a case is something that you enjoy truly.

8. Networking and Internship Opportunities- Many moot court competitions are organized by law firms, or have good litigators, judges, corporate lawyers as their judges. If you do well in a moot court competitions, your performance can translate into internship offers. Go up to a judge, introduce yourself formally, and get into an intelligent conversation.

Many students tend to think “*Why would a senior lawyer talk to me*”? There could be many reasons for that. Many lawyers love to give back to the young generation.

Helping others is an immensely satisfying experience and they get that satisfaction by helping you. Just like senior lawyers bring experience and gravitas to a conversation, young people like yourself bring fun and enthusiasm into a talk. It can be energising and uplifting for any senior professional to talk to a smart young law student!

Types of Moot Court Competitions: Domestic and International moots

Depending on the area of law involved, Moot Court Competitions may broadly be divided into two categories:

- i. Domestic moots, and
- ii. International moots

Domestic or National moots, as the name suggests, are competitions where the issues involved pertain to the Municipal laws of a particular country. For. Eg. A Moot Competition having issues of Constitutional law, Contract law, Criminal law, insolvency and bankruptcy law etc. fall within the category of a domestic moot.

B.R. Sawhney National moot Court competition organised by NALSAR, Hyderabad, NLS's KK Luthra National moot court competitions, NUJS Herbert Smith Corporate Law Moot, Inter-University Moot Court Competition organised by the Bar Council of India are some prominent examples in this field.

International moots, on the other hand, are competitions which focus on international law. They generally involve facts that transcend the national boundaries and involve issues pertaining to Public International Law, Maritime Law, Space Law, International Environmental Law, International Commercial Arbitration etc.

Some international moot court competitions, for e.g Stetson and Oxford Price media, FDI etc. shortlist the teams by conducting a National or regional rounds first and teams qualified thus get an opportunity to participate in the main international rounds.

While most of the renowned international moot competitions are held out of India, a sizable number of international competitions are now also conducted in India. For example, GLC Mumbai, NLS, NUALS Kochi, NLIU Bhopal etc. conduct their own international moot court Competitions.

So, if you're someone who's interested in international law, its application and the issues surrounding it, international moot courts are the way to go forward.

Apart from the subject matter involved, the time taken to prepare and participate in a domestic moot and international moot differs substantially. Whereas a Domestic Moot Court Competition requires a preparation of 1-2 months, most international moots require an extended period of preparation which may range from 3-6 months.

Choosing a Moot: 4 Ways to Think About This

Now that you have decided to take a plunge and enter into the world of mooting, the first step would involve some brainstorming about which moot to compete in. The ever growing mooting scene in India and the large no. of moot courts being organized these days can leave you perplexed as to which moot you should participate in. Here, it is to be noted that there are certain the factors that should be considered before signing up for any moot court competition.

1. Initial mooting journey – In the initial stage of your mooting journey, the focus must be on imbibing the art of mooting and making the most of your mooting experience. Generally, students in the initial couple of years at the law school may not have a well-defined interest or inclination towards any specific subjects of law. They may also be not adequately exposed to any niche areas of law at this stage of their education. In such cases, it is advisable that a student starts his mooting journey with subjects in which he has some basic knowledge. Contracts, Constitution, Torts or Criminal law moot competitions serve as a good starting point for mooting. Make sure that you don't sign up for the first moot on a subject completely alien to you. Just imagine the plight of a first year law student thrown upon a barrage of questions on securities law!

Of course, once you have some sort of mooting experience, you can always try out new and different areas of law. Infact, as you spend time with any particular area or issue of law, you begin to develop an interest in that subject matter.

2. Mooting based on Interests – As you gradually progress in your law school journey, you tend to identify areas of law which interest you. You also realize that there are certain subjects that you absolutely dislike. This “liking” and “dislike” for particular subjects is what we generally categorize as “interest”. If there's an area of law which you feel passionate about or are curious to know more about, it makes all the sense to opt for moots on that particular subject matter.

3. Aligning your moots with your future endeavors- Your choices of moots can work to your advantage as they can reflect prior experience in a particular field of law. If you desire to build a career in any specific area of law, you must opt for moots conducted on that particular subject matter. For eg. For a person who is interested in say, Insolvency and Bankruptcy Law, would do well to participate in related moots. This can turn out to be favorable for their professional advancement.

4. Checking with the availability of resources: The research for a moot largely depends on the availability of resources. Resources in this context would mean the relevant database, books, access to online research engines etc. In law school, the libraries are sufficiently equipped to provide you with the relevant resources. It is only on the basis of these available resources that we can conduct our research for the moot.

For example, if there is a moot on constitutional law, we should check with our library for the availability of books. Further, we even tend to find publicly accessible resources on subjects of municipal law. However, for some students who are willing to take part in a moot court competition on International Air Law, they should first check for the availability of the relevant resources on International Air Law.

Checking for the availability of resources does not only mean to check with the law school library, but it also means to connect with the people who have already participated in such a moot court competition. After all, people are generally willing to help (*Mooters Unite!*) and offer substantial assistance in procurement of resource material. Therefore, the availability of resources is an important consideration while students decide to participate in a moot court competition.

A 4-step preliminary checklist for for mooting

Before we proceed towards the subsequent modules explaining the meat of the mooting process i.e. researching, drafting, speaking before a judge etc., it is important that we go through a small pre-moot checklist.

A. Choosing a team:

Mooting is a team activity. It takes a collective effort of all the teammates to achieve success in your mooting endeavors. Finding the “right” team members, therefore, is the first task that a participant has to undertake in order to compete in a moot court competition. The importance of a right team cannot be stressed enough. Your teammates can make or break the efforts that you have put in for the past few months. Here are a few pointers that can help you build a great mooting team:

Qualities to look for in a potential teammate - Make sure you choose team members who are motivated, hardworking, sincere and committed to the purpose. Even a single member having a casual or carefree attitude towards the moot can demotivate the whole team.

Pro-tip – Team up with a person who has an analytical bent of mind, has good communication and research skills, and is competitive. Learn to trust your hunch. Also learn to inspect and test your hunch.

Friends as teammates - A lot of people, without considering the dynamics of a moot court competition, team up with their close friends for their mooting activities and end up severely underperforming in the competitions. This common tendency to consider our “buddies” as our natural mooting allies may go extremely wrong if your friend is someone who’s not interested in mooting (or process involved in it) and yet just takes it up for the sake of friendship or having a good time.

It is to be remembered here that Mooting involves significant time and effort and friendship is barely a reason for you to spoil your chances in a moot. Therefore, it is advisable that you don't take "friendship" as a sole criterion for someone to be your moot partner. Of course, if you have friends who are equally inclined and passionate about mooting as you are, then having your friends as your mooting partners may actually be a greatly rewarding experience.

B. Dividing the responsibilities – Once you're done with forming your team for the competition, the next immediate step would be to divide the roles of each team member viz. a viz the speakers and the researcher. Identify the members who will assume the role of the speaker and the one who will be the researcher of the team.

The decision must be taken mutually after taking into account the personal preferences of each of the team members. Factors such as communication skills, research skills and previous experience of the members may also be relevant aspects that may be considered before arriving at any decision.

C. Dividing the research - Once the members choose their roles as a speaker or researcher, the next logical step would be to divide the issues and assign the research to each of the members of the team. While the members would carry out such specific research on their issues, it must also be highlighted that each member of the team must prepare and research for the case holistically and not disregard the other issues involved in the case.

D. Set deadlines – Though some of us may absolutely hate them, the truth is that deadlines can make you disciplined. Just Imagine about all your college projects and fate they would face if there was no submission deadline for them! Most of them would forever remain a "work in progress", never to be completed.

Therefore, while mooting, it is important that you set deadlines by which you would complete the task in hand. Whether it be a research on some issue or drafting of the memorial, a deadline is a must for all the tasks. Setting up the

deadline and actually abiding by it would make you disciplined and also leave you with enough time to get the task reviewed by the team members.

Role of Team work

As stated earlier, it takes a combined, concerted effort from the whole team to be successful at mooting. Your achievement or a failure in a competition does not belong to you individually, but to the whole team which has grappled along you for an elongated period of time. The quest must be to work with team spirit and not focus much on individual glory.

1. Discuss, debate, deliberate – always be open to discussions on every aspect of the mooting process. Whether it be a question on a difficult research question/proposition or something as easy as deciding the mode of travel to the competition venue, every issue that arises in the team must be communicated and possibly sorted by mutual discussion. Coordination is paramount for any team activity.

2. Supports your team members- The long process that it is, Mooting may sometimes seem to get on your nerves and test your patience. Everybody goes through a day where you may feel too dull and unmotivated to do anything. In such cases, it really helps if you have supporting teammates to stand by you and understand you.

3. Avoid conflicts - As far as possible, avoid conflicts with your team members. If there's a difference of opinion amongst the team members which cannot be reconciled, respect the personal opinion of the member and move on.

Important: you can disagree, and commit! There must not be any clash of egos amongst the team members. Further, no blame games are to be played within the team for any failure that might occur in a moot. **Important:** the non-emotional response is usually the best. If tensions rise, sleep over it. Actually discuss it the next day. Failures

are a part and parcel of the mooting process and must be taken so. Remember, it's all about enjoying the process and learning as much as we can.

4. Re-check each other's work – A great example of playing by team spirit would be to periodically check the progress of each other's assigned role and see if the deadlines set by team are being followed. **Important:** have a daily, bi-weekly meeting at a fixed time at a fixed slot can help in this.

Role of the researcher in a moot competition

It is a common misconception amongst the students that a researcher's role is only to conduct research on the issues. Nothing can be farther from the truth. A researcher, in reality, is a **backbone** of a successful mooting team and is as important part of the team as the speakers, if not more. Apart from the research and drafting process, a researcher can be an extremely useful resource in preparing the **probable questions** that could be asked by the judges in the oral rounds.

Further, there cannot be a person more appropriate than a researcher to **practice your oral rounds** since the researcher has seen the moot problem from closest quarters and has spent considerable time dealing with the same issues. He's also someone who knows all the strengths and weaknesses of the case and, also the precedents on the point.

Therefore, to undermine the role of a researcher would be the biggest folly that the participants can commit in the moot. The researcher is a wonderful resource for the team and must be utilized accordingly.