

PART 1

INTRODUCTION

The purpose of this handbook

This Handbook has been developed to provide information for those interested in the annual Te Piringa - Faculty of Law Secondary Schools' Mooting Competition.

Most of the Handbook is aimed at students who would like to be involved with the Competition. The Handbook contains materials that will introduce new mooters to the legal concepts and information about mooting that will be required for successful participation. The format and rules to be used in the competition are also essential reading.

Secondary school staff members will find this introductory material a useful summary of what is expected from the competition. There are also contact details for people who can assist with questions and the development of internal competitions. These details are on the **back cover** of the Handbook.

Please contact the Law Faculty if you have questions at any time. We appreciate your interest in this event, and are sure that you will gain a great deal from your participation.

The final

The final of the moot, and presentation of the trophy, will take place in June in the High Court, Hamilton before the judiciary, members of the legal profession, school principals, senior teachers, fellow mooters, family and friends.

Each member of the winning team will be offered a scholarship of \$3,000 to assist towards tuition fees for the first year of study at Te Piringa - Faculty of Law. Admission to the law programme is subject to the managed entry requirements as listed in the University of Waikato Calendar. There will also be an award of \$500 cash for the Best Individual Mooter, for which each mooter from throughout the rounds will be eligible.

Some information about the Law Faculty

The establishment of Te Piringa - Faculty of Law in 1990 provided a unique opportunity to initiate a fresh approach to legal education in New Zealand. Evidence of a new direction is contained in the Faculty's three key goals: professionalism, biculturalism, and law in context. The Law Faculty aims to produce highly employable graduates capable of making a real contribution to the legal profession in New Zealand and further afield.

Students in the Law Faculty are part of a unique learning environment. The Law Faculty takes pride in the successes of its students and offers numerous support networks and facilities to assist all students.

As the Law Faculty for the Waikato region, we are committed to offering the best possible legal education. We welcome this opportunity to provide a unique experience for those who will be our future graduates and lawyers.

PART 2

STRUCTURE OF THE COMPETITION

What is a moot?

A moot is an exercise employed throughout the world as a tool of legal education. Basically, mooting provides an opportunity for students to argue over an area of uncertainty in the law. To add to the realism of the event, a moot usually takes place within a formal courtroom-like setting in front of a judge, or a panel of judges.

One way of looking at a moot is as a sort of 'mock-trial'. However, moots are not exactly the same as the court trials you may have seen on television or read about. The primary difference is one of focus. Mooting is only concerned with points of law, rather than with finding out about the facts in a case. There are no witnesses to question and no jury to convince. In mooting, the agreed facts are always provided in the mooting problem.

The moot itself involves two pairs of 'lawyers' who prepare their case on the basis of the fact problem provided. Your job as one of the lawyers will be to convince the judge that your case is the best one. This is achieved by skilfully applying the relevant law and legal principles to the facts of your case. Details about researching relevant law and presentation of your moot are provided later in this Handbook.

Mooting has a long history in legal education. This is because moots are a useful way to introduce students to the skills that lawyers use every day in practice. By participating in the competition, you will get an introduction to the following skills and ideas:

- The process of litigation (taking a case to court)
- Court etiquette and procedures
- The process of legal reasoning
- The sources of law in New Zealand
- The principles of legal research
- The development and presentation of a legal argument
- General public speaking and presentation skills

What do the mooters have to do?

As mentioned above, your job as a mooter will be to prepare a case and then argue it before a judge. You will be working in a team of two or three.¹ Te Piringa – Faculty of Law will provide each team with the same fact scenario and a set of materials that you will use for your legal research. It is up to your school to decide how a team will be selected, and once selected; the team will argue the case against a team from another school in a preliminary round. Eight to twelve schools will be selected for a semi-final round, with the final round comprising two schools chosen from the semi-

¹ See the rules on p 25 for more information about the teams.

final. Schools that progress through the rounds will get to argue both sides of the moot problem. The same problem will be argued through all the rounds.

The information in this Handbook will assist you with preparation and presentation of your moot. In addition to these written materials, further assistance is available if you require it. A CD has also been given to your school to demonstrate aspects of mooting procedure.

How will the competition be structured?

The first round of the competition will have each school moot against one other school. Because there are two sides to a moot, your school will be given a side of the moot to take from the outset. The two parties or sides in a moot are known as the Appellant (the party taking the case to the court) and the Respondent (the party responding to the case in the court).

Progression through the rounds is determined by Cheryl Green after viewing all the videos of the moots, and taking into account the judges' scores and comments. This ensures that teams are judged and assessed in a consistent manner.

The preliminary rounds are held at the University of Waikato, and depending on the number of registrations, over one or two evenings. The semi-finals are held on one night at the District Court in Hamilton, and the final will take place at the High Court, Hamilton.

PART 3

LEGAL BACKGROUNDING

Now that you have an understanding of what is expected and how the competition will be structured, you probably want to know how to progress from here. The rest of this Handbook gives some ideas to help you get ready for your moot. Let's start with some basic background material.

Mooting is about persuading a judge that your arguments are the best ones. In order to be persuasive in front of a judge you will need to be able to work out what the law relevant to your fact situation is, and then apply that law convincingly to your case. This means that to participate effectively in the competition you need an understanding of some basic legal concepts.

If you are involved with a Legal Studies course or have some background knowledge about the law from other sources, then this section of the Handbook will be useful revision material. If you are relatively new to legal ideas, then this material will provide a useful starting point.

This is a very brief introduction to a few aspects of New Zealand's legal system. Although the information in this Handbook will be enough to help you get ready for the mooting competition, you may like to investigate more fully some of the points raised here. A good way to become more familiar with the ideas presented here is to keep an eye on the news and talk with people who work in law-related fields. In this way you can get a feel for how the legal system operates in the real world.

What is law?

Basically, laws are a system of rules that we have in our society. These rules are designed to help maintain order between people. They do this by governing our relationships with each other.

These rules are sometimes broken, and as a result various people and agencies can become associated with the law. When you think of the term 'law', it might give rise to images like police, lawyers and judges. These figures are not the law themselves – they are responsible for administering the application and function of the law.

The term 'law' also conjures up images of dramatic court cases and the courts. People go to court if they break the law, or if there is a dispute between two or more people that they need sorted out according to the law.

But how do the police or the courts know what the law is? How do the police know when somebody has broken the law, and how do the courts know which person is right and which person is wrong in a dispute?

In New Zealand the *substance* of the law comes from a number of different places. You will be arguing about the meaning of the law in your particular case, and so an understanding of the sources of law (ie where law comes from) becomes important.

Where does the law come from?

Different parts of the world have different legal systems. In New Zealand we have a *common law* based legal system, which is derived from the English legal system. Similar systems exist in many other countries, including Australia, Canada, Ireland, Kenya, Israel, Malaysia, India and the United States of America. Although the legal systems in all of these common law countries have a lot in common, each legal system has developed in its own way. This is because different countries have different social conditions and different ideas about what concepts like 'justice' mean. Differences like these between societies are reflected in the sorts of laws that are made.

A feature of all common law legal systems is that there are a number of sources of the law. In New Zealand there are three main sources of law: the Parliament, the Executive, and the Courts. These are known as the *three arms of government*. All have an important part to play in the setting and administering of New Zealand's laws.

Parliament – statute law

Parliament is the group of elected politicians who meet together in Wellington. These politicians are elected every three years according to the Mixed Member Proportional (MMP) method of voting. All of the elected members of the various political parties (for example Labour, National, the Greens etc) together make up what is known as the House of Representatives, which is the basis of our Parliament.

The reigning Monarch (Her Majesty Queen Elizabeth II) is also part of the Parliament. In New Zealand the Monarch is usually represented by the Governor-General.

Together this group of people is responsible for discussing and making laws known as *statutes*. Statutes are often also referred to as Acts of Parliament, Acts, or sometimes simply legislation. There are many statutes that have been passed by Parliament that cover all aspects of our lives.

One example of a statute is the Crimes Act 1961. This Act specifies all of the major crimes and criminal defences in New Zealand, including crimes such as murder, arson, theft and defences such as insanity or self-defence. A more recent example of a statute is the Employment Relations Act 2000. In part this Act sets down rules for hiring and firing people, and gives guidelines for how disagreements between employers and employees are to be resolved. You may be able to think of many other New Zealand Statutes.

Parliament is said to be the 'supreme law making body' in New Zealand. This is because any other type of law can be overridden by an Act of Parliament. The laws

made by our elected politicians are general in nature and are *binding* on everybody in the country.

The Executive – delegated legislation

A second body responsible for making laws in New Zealand is the Executive. While Parliament is the supreme law making body, it sometimes gives power to the Executive to make certain types of laws. Laws of this type are also sometimes called *delegated legislation*, because Parliament has delegated the authority to make certain types of laws to other bodies.

The Executive is the part of government that deals with administration. In New Zealand, the Executive is made up of a number of different offices and bodies. Central to the Executive is a group of politicians known as the 'Cabinet'. The Cabinet is a select group of senior politicians from the ruling political party or parties. They are largely responsible for setting policy on important matters. Members of Cabinet are also responsible for various government departments and public agencies, including the police and the armed forces. These departments and agencies are also part of the executive.

As well as the Cabinet and government departments, the Executive also comprises a number of other bodies: the Governor-General; the Prime Minister; the executive council (which is the Governor-General, the Prime Minister, and ministers of the Crown); local government bodies; state-owned enterprises; and various other public organisations.

While Parliament focuses on general laws applicable for the whole country, the Executive concerns itself with more specific matters. For example, local councils (like the Hamilton City Council) are part of the Executive. Local councils are given the power to pass local laws regarding things like dog control, parking, and skateboarding.

The Courts – case law

The Courts are our third source of law. As has been mentioned earlier, sometimes when people have a dispute they need to go to court to have it resolved. The judge or judges in the court listen to the arguments of the people involved in the dispute and then make a decision about who will 'win' the case. In making that decision, the judge will start by looking at the facts of the case.² The lawyers involved will then try to persuade the judge that their version of the law is the correct one.

This indicates the central role of the courts. Acts of Parliament and delegated legislation set down quite general rules. The role of the courts in making law is more specific. It is up to the judges in the courts to *interpret* the law that is contained in the

² The way facts are considered by the judge is a complex issue governed by the law of evidence (mainly contained in a statute called the Evidence Act 2006), which tells the judge what facts may or may not be considered in reaching a decision. You don't have to worry about this for your moot.

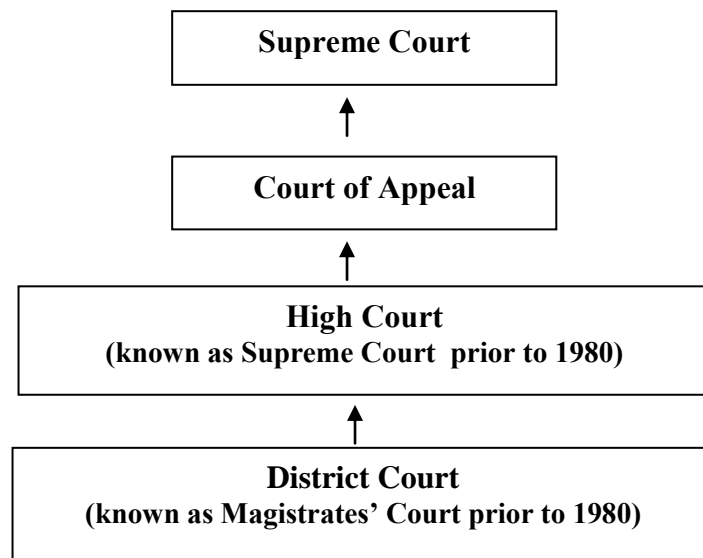
Acts and regulations, and then to *apply* the law to the particular cases that the judges have before them.

When considering the correct meaning of the law, judges will look to relevant Acts of Parliament and regulations made by the Executive. Judges will also take a cue from similar types of cases that have been before the courts before.

When judges look at previous decisions made by courts, they are applying a concept known as *precedent*. This concept of precedent is an important one. You will need to have a good understanding of what precedent is to be a good mooter.

Precedent is concerned with the cases that have gone before the current dispute. Judges are concerned with cases that considered the same or a similar point of law, and the reasoning applied by the judge or judges in the previous cases. Precedent is linked to the hierarchy of courts, or the levels of the court structure. In New Zealand, the court structure is simply shown below.

The Court Hierarchy in New Zealand



A decision of a higher court will bind the courts below it, provided that the cases in question are very similar to each other. For example, let's suppose a case being heard in the High Court is very similar to one that was recently heard in the Court of Appeal. The doctrine of precedent says that the judge in the High Court case must follow the decision in the case that was heard in the Court of Appeal. On this basis a decision from a higher court is known as a *binding* precedent.

While a decision of a higher court binds the courts below it, lawyers who do not want the lower court to follow the precedent set by the higher court because it goes against their case, will seek to *distinguish* the upper court's decision based on some difference in the facts between the two cases.

Additionally, a decision of a court at the same level in the hierarchy will be a *persuasive* precedent. The practical effect of this is that a judge may choose whether or not to follow the older case.

Cases and decisions of other courts of common law countries (as discussed in the introductory section) may be introduced to have persuasive precedent value only. For this to be worthwhile there should be clear similarities between the law in both New Zealand and the other common-law jurisdiction a case comes from.

Note: Each of your moots shall be as if they were being heard in the Court of Appeal of New Zealand.

PART 4

GETTING READY FOR THE MOOT

Preparation

The secret to succeeding in mooting is preparation. Your preparation for the moot will begin when you receive a copy of the mooting problem and the legal materials to assist in putting together your arguments. The problem will consist of a series of facts, and the relevant legal issues you will need to discuss in your moot.

When beginning to prepare for your moot, you might like to follow this checklist:

- Read the instructions you are given to decide what needs to be done. Make sure you note any deadlines (eg submissions due at Law Faculty), including when you will be presenting your moot case.
- Read the moot problem carefully so that you gain an overview of the problem itself. Think about the general facts in the case and the legal issues identified for you. It is a good idea to discuss the problem with your team members and those helping you.
- Read and re-read the moot problem to master the facts of your moot case. Constructing a timeline based on the facts provided in the case can assist you in understanding what happened and when in your scenario. A recommended way of doing this is to set out your information in table form, putting the dates you have from earliest to latest. Next to the dates set out the events that took place.
- Know the “material facts” of your problem intimately. Material facts are those facts that are directly relevant to the issue of law you are looking at. When looking at these facts try to piece them together in a way that assists your client’s case.
- Once you have mastered the facts, it is time to turn to the relevant law. The relevant law is all important in a moot. The issues will be clearly identified for you, but you need to fully understand how the law operates in your case. Only then can you use the facts in the case to support your argument. Always remember that you are trying to convince the judge that the issues should be decided in your favour, so know the facts and the law of your case.
- As mentioned above, in your moot you will be given cases and any statute law necessary to assist you with preparing your argument. You will not need any further specialised legal materials for the purposes of the moot. Using only the materials that are provided, you should start to develop your legal argument.
- When you have an understanding of what you want to say in your submissions to the court, you should write them down. This will help you to understand your case and make sure of the issues you want to present to the Court.

Preparing legal submissions

The points that you raise in support of your arguments are known as *submissions*. The legal submissions that you put together will be the basis of your argument.

As you will have seen in the competition rules, you are expected to put your submission in written form. This brief written summary will then be given to the team against whom you will be mooting, and you will get a copy of their written submissions. In this way you will have a good understanding of what the other side is arguing, and you will be able to prepare accordingly.

Note *Writing out your submission is not supposed to be a big task. Your written submission should only be a couple of pages long. Please make sure that your submissions have a title page clearly identifying the name of your school, the names of the team members, and the side of the moot that you have been assigned.*

The construction of effective mooting arguments will generally involve three steps:

1. Set out the legal idea that you want the judge to adopt.
2. Set out why the judge should adopt your idea (ie why your idea is correct on the law and the facts of the case).
3. Set out the consequences for your case and for other similar cases if the judge adopts your idea.

By constructing your arguments in this way you will be able to lead the judge through your case in a logical fashion. However, you should note that the judge is able to ask questions during your presentation. The judge will not necessarily be interested in hearing your ideas in the order that you have prepared them (more about this later). As such you need to be flexible and have some “back up” arguments in case the judge is not persuaded by the first arguments that you put forward.

It is a good idea to lead with your strongest arguments. You only have ten minutes to get your points across, so it is a good idea to start strongly. Also this means that if you run short of time it is your weaker arguments that will be discarded rather than your stronger ones.

PART 5

WHAT TO EXPECT AT THE MOOT

Flow of proceedings – how to conduct a moot

Moots are presented in a mock-courtroom setting. This means that your moot will be similar to a real court sitting. The court system has a well-established set of conventions, and these conventions dictate who does what and when. Your moot will progress in the following way:

Introduction

- When everything is ready the court clerk will announce that the judge is ready to enter by saying something like: “Please stand for His/Her Honour”.
- You should stand.
- The judge will enter and bow. Each counsel should bow to the judge. The judge will then sit down.
- When the judge has sat down you should sit down.
- The court clerk will then announce that the court is sitting and announce the name of the case.

Appearances

- The senior counsel for each side will be given a chance to introduce his or her team. Introducing your team is known as “giving appearances”. Both members of the team should stand while these introductions are made. Counsel for the appellant (the side taking the case to court) goes first, saying: “May it please Your Honour, my name is Smith [put your own surname in here] and I appear for the appellant with my friend Jones [put your partner’s surname in here].”
- If you are a male it is customary to give just your surname (ie “My name is Smith” rather than “My name is Mr Smith”). If you are a female it is customary to give your title before your name: ie “Miss”, “Mrs”, or “Ms”.
- Counsel for the appellant then sit down, and counsel for the respondent (the side responding to the case in the court) will introduce themselves in a similar manner.

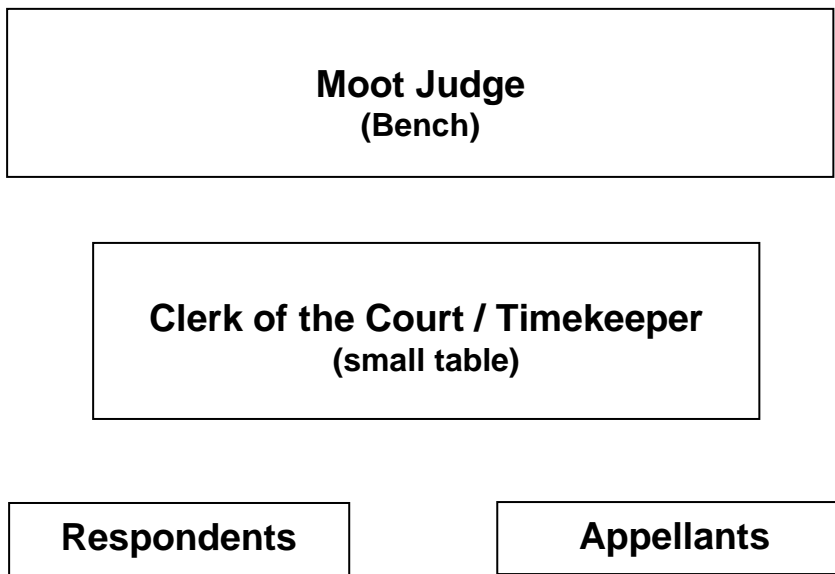
The moot

- When the judge indicates that he or she is ready, counsel for the Appellant then proceed with the case.

- *Both* counsel for the Appellant speak in turn, followed by *both* counsel for the Respondent.
- There is no interruption or interjection permitted while other mooters are giving their presentations.
- Note, however, that the judge will ask questions as each person presents their arguments. This is one of the most interesting parts of mooting. The purpose of these questions is for the judge to test the case of each mooter.
- Before a new speaker begins, some time should be given to allow the judge an opportunity to take notes. Wait for the judge to indicate that he or she is ready before the next speaker begins.
- At the conclusion of the argument for both the Appellant and the Respondent, the case should be concluded using the following or similar words: “May it please the Court, that is the case for the Appellant/Respondent”.
- Each team will have a three-minute right of reply. This is an opportunity for one member from each team to reply to the points raised by the other team. The Appellant team has their right of reply first.
- At the conclusion of the moot the judge will provide some comments.

Layout of the Court

A real court has a layout very much like the diagram below. Your moot court will be set up in a fashion similar to this:





Mooting at the High Court, Hamilton

PART 6

SOME THOUGHTS ON ORAL PRESENTATION

Speaking to persuade

A mooter's primary aim is to be an effective advocate. An advocate's role is to present an argument on behalf of someone else. This is what happens when a lawyer is 'representing' someone in court.

Your moot and the perception that the judge forms of the quality of your argument will depend on the way you present it. Speaking skills are all-important when presenting a moot case. The basic rule is that everything you say should be clear and well structured.

Speak clearly and at a reasonable pace

Sometimes the argument you are trying to put across can be quite complicated and this makes it more important that the judge can hear every word you are saying clearly. To achieve this, practice speaking in front of others before your moot presentation, warm up your voice and mouth before you begin your presentation, and try to relax so you are not too nervous.

Maintain eye contact

You should remember in a moot that you are speaking to the judge rather than an audience – you should try to maintain eye contact with him or her to hold their attention. Watch the judge for clues about how your case is going, keep an eye on their body language, and watch to see whether it appears they are following what you have to say. You should of course refer to your written submissions when you need to, but maintaining eye contact when practical, will stop you from mumbling into the page from which you are reading and give the impression that you are comfortable with your argument and with what you are saying.

Be persuasive

Remember that the desired outcome of a moot is to convince the judge that your argument or case is the 'best' or 'correct' one. Persuasion can be a difficult concept to master – no judge likes being bullied by a lawyer when the lawyer is presenting their case. You are not there to try and intimidate the judge, but to inform them and help them apply the legal rules in your case. You may disagree with a judge's interpretation if you think that a judge may have gained a wrong impression of your case, and you can take the opportunity to explain to the judge what your case really is.

Often a judge will appear to disagree just to test your mooting skills, so don't be afraid to stand your ground. The key is knowing when to move on to a new argument if it is clear that the judge is not buying what you have to say.

Know the time

Timing is also important in a moot. You will each have ten minutes for your moot presentation, and some of that time will be taken up by questions from the judge. Because of this, you should plan to speak for only 6-8 minutes to present your argument and allow for the judge's questions during your presentation or at the end. To ensure you do not go over time with your planned presentation, practice it several times before the actual moot. Time yourself so you know how long it takes you to say what you have to say.

Practice, practice, practice

Try to record on tape or video your practice moot presentations, and listen or watch them to check your posture, speaking manner, eye contact and pace at which you are speaking. You could also ask a friend or family member to listen to your presentations and look for the same things.

Making oral submissions

Always remember that you are presenting submissions for a hypothetical client. This means that the court is not interested in what you *think*, but rather what you *submit* on behalf of your client. Avoid using phrases like "*I think*" or "*In my opinion*". Instead use "*I submit*" or "*It is submitted*" or "*It is the contention of the appellant...*".

Using "signposts"

While you will know your submissions extremely well, it can sometimes be difficult for someone listening to your arguments for the first time to follow exactly what you are saying. For this reason it is essential that you *signpost* your points. For example, you can start your presentation by briefly outlining the main points that you will make. You can then say something like "*I now turn to my first / second / third (etc) submission...*" as you go (although you can probably think of more exciting ways to guide the judge through your submissions).

Concluding your submissions

At the conclusion of your submissions, it is appropriate to say something like "*If I can be of no further assistance to the court, that concludes my submissions for the appellant / respondent.*" If you are the senior counsel for your team, you can then add something like "*My junior will now continue with our submissions by discussing the following key points ...*".

There is no need to say "*Thank you*" to the judge at the end of your submissions. This just spoils the effect. The judge and audience should be thanking *you* for sharing your insights into the problem.

Addressing questions from the Judge

In mooting you must be prepared to accept questions from the judges. This is one of the most exciting and challenging aspects of mooting. Judges ask questions to clarify

and test the arguments you are raising. This means that you must have a good understanding of your argument and be flexible enough to respond to the types of issues raised by the judges.

While some judges may test you by setting tripwires that you must work around, you do not need to assume that every question from the judge is a trap. If you seem to have wavered from your line of argument, most judges will give you a “lifeline” question to help you get back on track. You need to be able to recognise when the judge is helping you and use these lifelines effectively.

Taking a moment

It is sometimes a good idea to take a few moments to think before answering a question from the Bench so as to ensure you are giving the best answer you can. There is no need to rush. A short period of silence is also a good way to build tension, which in turn is a good way to get the judge’s interest.

Even though pausing in this way is acceptable, you should be wary of over-using these pause tactics. Your primary aim is to persuade the judge, and in order to do this you must appear confident. This means being well-organised and prepared in advance for most of the questions that the judge might put to you.

If you are stuck for an answer, it is perfectly acceptable to say “*Your Honour, may I have a few moments to refer to my notes*” or “*Your Honour, may I have a few moments to confer with my friend*”. Alternatively, you might like to take a sip of water in order to give yourself time to consider an answer.

Is it okay to skip over a question?

Often when a judge asks you a question, it is about a topic that you mean to cover later in your submissions. Some mooters ask the judge whether it is permissible to address the judge’s question later in their talk. Should you choose to do this, it is a good idea to *briefly* address the judge’s question anyway. You can then tell the judge why you would prefer to leave a full answer until later in your submissions. For example: “*Your Honour, that question relates to ... In brief, that point is explained by the case of A v B. That case said that ...*”

What if you don’t understand a question?

If you cannot work out what a judge has asked you, it is fine to ask the judge to repeat the question. If, after the question is repeated, you still have no idea about what the judge is getting at, it is usually best to admit that you are unable to help the Court on that point and move on. If you try to make something up you will probably end up digging yourself a hole, and you are also wasting time that could be spent on your stronger submissions.

PART 7

SOME IMPORTANT ETIQUETTE

General points about moot presentation

You will have picked up that mooting (and appearances in real courts) use highly stylised forms of language and procedure. Here are some of the most important conventions that you need to be aware of:

- Once the moot has started, you should refer to the other members of your own team as “my junior / senior”. For example, “*my junior will cover that point in more detail your Honour*”. It is not proper to refer to the other person on your team as “My mate Tim”.
- Members of the opposing team should be referred to as “counsel for the appellant / respondent”, or individually as “my learned friend Ms Smith”. It is not a good idea to refer to the other side as “the opposition” or “those guys” or “Chris over there”.
- You are advocating on behalf of your client. Because of this the court is not interested in what your personal views are. For this reason you should not say “*I think...*” or “*I believe...*”. Rather you should say “*I submit...*” or “*It is the appellant’s contention...*”.
- Always display respect for the judge. The judge should always be referred to as “Your Honour”. Alternatively, the judge may be referred to as “Sir” or “Ma'am”. Statements from the court, even if they go against what you are saying, should be acknowledged by saying “May it please the Court” or “As your Honour pleases”. You should try to avoid saying things like “That’s choice your Honour”.
- If the judge is disagreeing with something that you are saying, try to resist the temptation to resort to bullying. Use of the phrase “With respect, your Honour” enables you to gently try to direct the judge back to your way of thinking. For example, “*With respect, your Honour, the thrust of my argument is that ...*”. If the judge is still not interested, it is wise to move to your next point.
- In legal writing there are a number of shortcuts that are used. Instead of writing “Judge Smith” or “Justice Smith”, legal writers use “Smith J”. However, oral submissions are different. When giving your oral submissions you should not read the names of judges as they are written down. When referring to a High Court Court of Appeal or Supreme Court judges in oral submissions, they should be referred to as “*Justice [Surname]*” and not “[Surname] J.” District Court judges should be referred to as “*Judge [Surname]*”.
- The correct formula for citing cases when speaking is “Brown and Jones” - not “Brown v Jones” or “Brown versus Jones”. If a case is written as “R v Smith”, the “R” stands for Rex or Regina. This is Latin meaning the King or Queen. “R v Smith” should be spoken as “The Crown against Smith”.

PART 8

FINALLY - SOME MOOTING DO'S AND DON'TS

(Do's and Don'ts in Mooting updated from materials prepared by Tim Blake)

Don't	Do
Attempt to impress the judge by raising lots of complicated arguments and using lots of sources.	Keep it simple. Attempt to cover the legal issues with specific reference back to the problem at hand and the materials you have been provided with
Focus exclusively on the law.	Remember that most cases are won or lost by reference to the facts, not on the basis of sophisticated legal argument. Know your facts thoroughly.
Focus exclusively on the facts as they exist	Use hypothetical fact situations to show the logic or policy merit of your argument
Refer to your "co-counsel" (there is no such thing).	Refer to your "learned friend" in the case of your opponent, your "friend" or "senior" or "junior" when referring to your senior / junior counsel.
When encountering an unexpected request from the judge say ".....Ookkaaay".	When encountering an unexpected request from the judge say "As your Honour pleases".
When asked by the Judge to address a particular issue, tell her/him that you will deal with it later.	When asked by the Judge to address a particular issue, if you can deal with the matter simply do so. If you cannot, provide a brief indication of your approach to the issue in question. Follow this by informing the Judge that you had planned to deal with the issue more substantively at a later stage (and, if applicable, why you had intended to deal with that matter at that later stage). Tell the Judge that you are able to deal more fully with the matter at this stage if she/he would prefer.
Be the "Court Jester".	Always remember that it is the Judge's exclusive and jealously guarded right to make jokes in her/his Court. Usually, you can't expect to be taken seriously if you do not act seriously.

Don't	Do
Strive to always be deadpan serious.	Bear in mind that an element of colour in your approach and/or analysis can help to keep the Judge's attention and win her/him over to your case (it is essential however that you do not go so far as to be flippant or disrespectful). You need to find a balance between this and the point made above.
Back down when a judge asks question that test your submissions.	Argue your case firmly and bear in mind that a judge may wish to test your case with probing argument, even through she/he is well disposed towards it.
Stick to your submissions, without modification, even though the judge has made it perfectly clear that she/he will simply not accept that line of reasoning.	Remember that you have limited time in a moot. If the judge has made it perfectly clear that she/he will simply not accept that line of reasoning, consider moving on to alternative approaches or arguments. You need to find a balance between this and the point made above.
Make reference to the fact that the exercise is a moot, and not a real court hearing. Make reference to "the moot instructions" and "the facts set out in the moot problem".	Maintain the pretence that it is a real case in a real court. Refer to "the facts found in evidence" and "the instruction issued by the Registrar of this Court".
Tell the judge what you believe and feel.	Remember that you are acting as a professional person, and that your primary duty is to the Court (not to your client). Make submissions, and tell the judge that you are "...Submitting that ...". The judge is interested in your professional opinion. The judge is not interested in your personal beliefs or your feelings.
Tell the judge as much as you can in the time available.	Speak clearly and slowly. Pause while the judge takes in what you have said. Pause if/when the judge is writing down notes.
Argue every issue.	Focus on the issues where you are strong. Identify what issues are essential prerequisites to a successful result.

Don't	Do
<p>Make sure that you address every issue that your opponents raise or plan to raise.</p>	<p>Ensure that it is you, and not your opponents, that select the parameters on which you will argue your side of the case. Work out in advance what issues are essential to your case, and what are not. If you are weak on a particular issue, and it is not essential to your case, you may be better to focus on other issues. However, if an issue is essential to your case, you must address it.</p>
<p>Never accept your opponents' submissions.</p>	<p>Assess how strong your case is on particular issues, and how vital that issue is to your case. Sometimes it is better to concede, or only spend minimal time disputing particular issues, if they cannot be won.</p>
<p>Concede every point that appears weak.</p>	<p>Sometimes a point in your favour might appear weak to you. Unbeknown to you, this point might appear to the judge to be strongly in your favour. If you think the point is weak, you probably will have made a judgment call not to focus on it. However, this doesn't mean you have to go so far as to concede it. If you concede the point, you make it very hard for the judge to find in your favour based on this point. You need to find a balance between this and the point made above.</p>
<p>If you have a right of reply, use it to restate your case.</p>	<p>Remember that any right of reply/rebuttal is only to be used to specifically rebut issues raised by the other side.</p>
<p>Emphasise your case by using strong words such as "clearly" and "obviously".</p>	<p>Remember that, if your case is clear and strong, this will speak for itself. Undue use of words such as "clearly" and "obviously" raise the suspicion that your case cannot stand on its own merit.</p>
<p>Read from your submissions.</p>	<p>You are expected to prepare brief written submissions from which the judge can read. When making submissions, speak to the judge, rather than reading from your written submissions; however, what you say should follow what you have written. Tell the judge when you are making oral submissions that depart from your written submissions.</p>

Don't	Do
Spring as many surprises on your opponents as you can.	Your opponents will receive a copy of your written submissions ahead of time. You should not depart too much from the submissions that you have prepared.
Spend large amounts of your time on your weaker arguments.	Lead trumps. If you have a winning argument, it is usually best to make it at an early stage in your submissions.
Launch straight into your submissions without an introduction.	Consider opening your case by discussing its merits. In basic and adversarial terms, discuss why your client deserves the Court's sympathy.
Be too friendly with the Judge.	Use formal and disciplined language. One of the purposes of the Competition is to introduce you to the etiquette followed in Court. Judges and lawyers speak carefully in Court – sloppy, vague or over-familiar expressions will not help your case.
Read case names and names of judges exactly as they are written down.	Be familiar with the points of etiquette referred to on p 18 of these materials.
Dress casually.	Wear appropriate clothing. If you have a school uniform, you should wear this. Otherwise dress in smart, dark clothing.

Glossary Of Terms

Appellant	One of the two parties to a moot. The appellant is the side that is taking the case on appeal from a lower court. The appellant team presents its argument first in a moot. (Also see Respondent).
Appearances	Formal introductions at the start of a moot.
Common Law	Refers to a system of law that is based on the English legal system. Also used to refer to law that is contained in case law as opposed to statute law.
Court	The place where legal cases are heard and justice is administered. Also used to refer to the judges who administer justice.
Executive	The branch of government that brings laws into effect. The Executive is responsible for making delegated legislation on the authority of the Parliament.
Governor-General	The representative of the Queen in New Zealand.
House of Representatives	Made up of elected politicians known as “members of Parliament”. The House of Representatives is the basis of our Parliament.
Litigation	Taking a case to court.
Material Facts	Those facts that are central to the issue in question.
MMP	“Mixed Member Proportional” – refers to the system of voting used every three years to elect the members of Parliament. (See House of Representatives).
Moot	The arguing of a legal case as a form of legal education.

Parliament	Made up of the House of Representatives and the Queen's representative (the Governor-General). Parliament is the supreme law making body in New Zealand. It passes laws known as statutes.
Precedent	A previous decision of a court that is used to support an argument. Precedents may be <i>binding</i> or <i>persuasive</i> . A binding precedent is one which a Court must follow. Binding precedents are those that come from higher courts (eg the High Court must follow a relevant decision of the Court of Appeal). A persuasive precedent is one which is taken into consideration by the Court. Persuasive precedents may come from a court of similar standing, a lower court, or an overseas court.
Respondent	One of the two parties to a moot. The respondent is the side that is answering the case brought by the appellant. In a moot, the respondent team speaks last. (Also see Appellant).
Statute	The laws passed by Parliament. Statutes are also known as Acts of Parliament.

Definitions adapted from Spiller, P *Butterworths New Zealand Law Dictionary* (6th ed) LexisNexis, NZ, 2005

Appendix 1

Competition Rules

1 Registration and teams

- 1.1 Registration forms will be attached to initial invitation letters or emails, handed out at Information Evenings, or mailed to schools on request. Each school that wishes to participate should complete the registration form prior to the notified due date.
- 1.2 Each participating school may enter *three teams* in the competition. It is up to individual schools to determine how these teams are selected. An internal school mooting competition or selection of students based on relevant interests and experience may be appropriate.
- 1.3 Each team from each school will consist of two or three members:
 - 1.3.1 If the team has two members, there will be one person acting as “senior counsel” and one as “junior counsel”. Both members will be expected to give oral presentations in the mooting competition.
 - 1.3.2 If the team has three members, one member will act as a solicitor and assist with research and preparation. This third team member will not give an oral presentation in the mooting competition. However, the third member will act as a reserve in case one of the other team members is unable to participate on the evening of the moot.
 - 1.3.3 Team membership may not be altered as teams progress through the rounds, although roles within a team can be swapped.

2 Research and preparation

- 2.1 The moot topic and materials required for research will be distributed approximately four weeks prior to the preliminary round of the competition.
- 2.2 The same problem will be used for the whole event, including the final.
- 2.3 The participants are required to restrict themselves to the facts and research materials that are provided. Participants should not make up additional facts or rely on other legal authorities.
 - 2.3.1 Mooters should not research beyond the materials provided. If other material is referred to in the material that the mooters are provided with, then it may be used only to the extent that it is referred to. For example, if a precedent case is referred to in a judgment provided to the mooters, then the discussion of that precedent may be used by the mooters.

3 Written submissions (example Appendix 3)

- 3.1 Each team is required to prepare and submit a written outline of their submissions. The written outline should be no longer than 2-3 pages, and include a cover sheet showing team members' names and the name of the school. This written outline will briefly contain:

- 3.1.1 a summary of the structure of the team's submissions; and
- 3.1.2 an outline of the major arguments to be raised.

- 3.2 Each team's written submission must be **emailed** (as **one** word document including the cover page) to the Mooting Co-ordinator one week prior to the date of the preliminary round of the competition.
- 3.3 The written submissions will then be emailed to the opposing teams. One email address per team should be consistent throughout the competition.
- 3.4 Teams will be expected to follow their written submissions wherever possible when giving their oral submissions. However, minor departures from written submissions are permitted.

4 The event

- 4.1 Each moot should take around one hour to complete. Schools will be notified with a timetable prior to the preliminary round.
- 4.2 Each school is encouraged to bring students or other guests to watch their moot.
- 4.3 Each student will be given ten minutes to make their submission. Mooters should keep a close eye on the time. Time may be extended with the leave of the court.
- 4.4 Each team will have a three-minute right of reply (rebuttal).
- 4.5 Each moot will be filmed for judging purposes.

5 Judging

Each team will be judged as a team, rather than as individuals. Eight to twelve teams will progress to the semi-final round, from which two teams will advance to the final. The preliminary and semi-final rounds are assessed by Cheryl Green, assisted by the judges' comments and marking.

6 The final

The final of the moot, and presentation of the trophy and award, will take place in June in the Hamilton High Court before the judiciary, members of the legal profession, school principals, senior teachers, fellow mooters, family and friends.

7 Scholarships and awards

- 7.1 Each member of the winning team will receive a \$100 book voucher and be offered a scholarship of \$3,000 to assist towards tuition fees for the first year of study at Te Piringa - Faculty of Law subject to the managed entry requirements. Runner up team members will each receive a \$50 book voucher.
- 7.2 There is an award for the Best Individual Mooter, including a \$500 cash prize.
- 7.3 The winning team's school will hold the Te Piringa – Faculty of Law Secondary Schools' Mooting Competition trophy until the next competition.
- 7.4 All participants will be awarded a Certificate of Participation.

Appendix 2
Example of how to set out a Cover Sheet and Submission

IN THE MOOT SUPREME COURT OF APPEAL OF NEW ZEALAND
SC 14/2009

UNDER **CARE OF CHILDREN ACT 2004**

BETWEEN **VEEDA ASHRAF**
Appellant

AND **AHMED ASHRAF**
Respondent

SYNOPSIS OF SUBMISSIONS ON BEHALF OF THE APPELLANT

Senior Counsel: John Doe
Junior Counsel: Jane Doe
WAIKATO SECONDARY SCHOOL

SUBMISSION to be typed in 1.5 spacing

MAY IT PLEASE THE COURT, COUNSEL FOR THE APPELLANT SUBMITS;

1.0 That the Family Court, the High Court and the Court of Appeal erred in finding a defence under s 106 (1)(d) of the Care of Children Act 2004.

1.1 The Care of Children Act 2004 gives effect to New Zealand's obligation under the Convention on the Civil Aspects of the International Child Abduction (the Hague Convention). The purpose of this Convention is to ensure that abducted or improperly retained children are returned to their country of habitual residence so that the courts of that Country can determine the child's best interests. The French courts are the appropriate forum for determining issues relating to Zanab's best interests.

Care of Children Act 2004, ss 3 (2)(f) 6, 105.

Convention on the Civil Aspects of the International Child Abduction, preamble, art 1

1.2 The elements of the s 106 (1)(d) exception to return have not been made out.

1.2.1 The burden of proof under this exception to return is on the person opposing the return. The standard of proof requires the Court to be satisfied on the evidence.

S v S [1999] 3 NZLR 513 at 520.

1.2.2 The evidence is insufficient to satisfy the Court that Zanab's objection to return is of the required standard.

1.2.3 Zanab has not reached an age and degree of maturity at which it is appropriate for the Court to give weight to her views.

Clarke v Carson [1996] 1NZLR 349.

W v N [Child abduction] [2006] NZFLR 793.

Smith v Adam [2007] NZFLR 447 (CA).

1.3 In the alternative the residual discretion should be exercised in favour of returning Zanab to France.

1.3.1 In the exercise of the court's discretion the primary consideration is the purpose and policy of the Hague Convention.

1.3.2 Without the essence of an established exception there is a duty to return to order return.

Secretary of Justice v HJ [2007] NZFLR 195 (SCNZ).

1.3.3 The appropriate place to determine custody, access and residence is the country from which the child was wrongfully removed.

White v Northumberland [2006] NFLR 1105 (CA).

P v P 23/6/08 DC Auckland FAM -2008-004-978.

2.0 That the Family Court, the High Court and the Court of Appeal erred in finding a defence under s 106 (1)(e) of the Care of Children Act 2004.

2.1 The defence under s 106(1)(e) of the Care of Children Act 2004 has not been established. This section gives effect to Article 20 of the Hague Convention on the Civil Aspects of International Child Abduction 1980 which states that:

The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

2.2 Section 15 of the New Zealand Bill of Rights Act 1990 (NZBORA) states that every person has the right to manifest religion in public or in private. Zanaab has the right to manifest her religion in private or outside of school.

2.2.1 Even if there has been a breach of s 15 it is reasonably justified as provided by s 5 of the NZBORA. The restriction is proportionate to preventing bullying, it is rational and it is the least restrictive as it is only during school hours.

New Zealand Bill of Rights Act 1990 s 5.

R v Hansen [2007] 3 NZLR 1 (NZSC).

Police v Razamjoo [2005] DCR 408.

2.3 Alternatively, if the Court finds that Zanaab has been discriminated against, the discrimination is not 'flagrant'. Furthermore, the law protects Muslim students against bullying and is therefore permissible discrimination.

Care of Children Act 2004 s 106(2).

Northern Regional Health Authority v Human Rights Commission [1998] 2 NZLR 218.

2.4 Zanaab should be returned to France because France provides mechanisms to protect the best interests of the child.

Care of Children Act 2004 s 4.

A v Central Authority for New Zealand [1996] 2 NZLR 517 (CA).

DATED this day the 30th of September, 2009.

Signature

Signature

Counsel for the Appellant