



## **MIDDLE TEMPLE MOOTING COMPETITION** **for the ROSAMUND SMITH MOOTING CUP**

### **The Competition generally**

1. The Middle Temple Mooting competition is a long established competition, and provides an excellent opportunity for students to acquire and improve advocacy skills. Prizes are awarded to the winners and runners-up.
2. The competition is run on a knock-out basis. There are (depending on the number of entrants) four early rounds, followed by a semi-final and final. The legal subject-matter of the moot will generally be in the area of one of the "core" subjects (crime, contract, tort, etc.).
3. The early rounds take place in rooms in the Middle Temple. These early rounds are essentially "in private"; only the judge, the competitors, and a time-keeper are usually present. These early rounds therefore provide the opportunity to gain mooting experience in a relatively informal atmosphere.
4. The semi-finals and final are held in Hall after dinner.
5. The early rounds take place in January/February/March 2009 at 5.30 pm. The dates for the semi-finals are: **1<sup>st</sup> and 8<sup>th</sup> June 2009**. The final will be held on **21<sup>st</sup> October 2009**.
6. The competition is judged by Benchers of the Middle Temple, who take a great interest in the competition. Thus, the judges will usually be QC's or "professional" judges (ranging from the Circuit Bench to the House of Lords). The early rounds are judged by a single judge; the semi-finals and final by a tribunal of two or three.
7. At the end of each "match", the judge or judges will not only give a judgement on the legal problem raised in the moot; in addition, useful advice will be given as to why the competitors impressed (or went wrong).
8. A moot will require an ability to marshal an argument, and present it clearly and coherently. These are the skills that will be needed in your pupillage year, and your professional career. You are therefore strongly advised to enter the competition

### **The Competition Rules**

9. Each team consists of Leading and Junior Counsel.
10. The Order of speeches will be:-
  - Leader for the Claimant/Appellant
  - Leader for the Defendant/Respondent
  - Junior for the Claimant/Appellant
  - Junior for the Defendant/Respondent
11. Leading Counsel for the Claimant/Appellant may take the facts of the case as read in opening the case.

12. Leading Counsel may speak for a maximum of 15 minutes each. Junior Counsel for 10 minutes. The time-keeper will indicate when 10 minutes, and 14 minutes have elapsed in the case of Leading Counsel and when 7 minutes and 9 minutes have elapsed in the case of junior Counsel. (The Judge or Judges have a discretion to allow slightly longer speeches, where Counsel has had to deal with frequent interruptions from the Bench. But it should be assumed that this licence will not be granted. You are not judged on length. Compression and concision are important.)
13. Each Counsel may cite up to a maximum of 3 authorities. This is a limit applied to each Counsel. One member of the team cannot trade his or her allocation with the other. Authorities can be both from decided cases and from recognised practitioners' textbooks (Chitty on Contracts for example; students' books may not be cited). Normally they should not be from unreported cases and bear in mind the Practice Direction dealing with citation of authority. The fact that you may cite from three, does not mean that you have to use them all. Additionally, where relevant, a statute can be cited; normally this will be included in a judgement and will not be needed.
14. Where an authority is cited Counsel should send with their skeleton argument to Marion Howard or the Judge, as applicable, and the other side a photocopy of (a) the headnote, and (b) the passages in the report relied upon. If, and only if, the whole of any judgement is thought necessary for a proper explanation of the passage relied upon, should the whole of the relevant judgement be copied, but note rule 15 (a).

Before referring to the passage relied upon Counsel should (a) give the name of the case, (b) the reference [report or transcript] and then briefly explain the case and its relevance to the argument advanced. Care should be taken to ensure that the Judge/Judges know quickly the purpose of the citation. This may include a short statement of the facts and relevant part of the decision relied upon. The Court will have pre-read the headnote. Brevity is all, but it must not sacrifice an appreciation of the context and status of what is relied upon (whether the passage is obiter or ratio; whether the authority is appellate or first instance for example).

Citation of authority should be minimised.

15. It is essential that the other side, and the Judge, has advance notice of the authorities intended to be relied upon. Therefore
  - (a) Each team should prepare a typed list of the authorities which they intend to cite. The list should give the name of the case and its reference; it should also indicate the page number of the passage intended to be relied upon. This list should accompany the skeleton (see paragraph 18 below)
  - (b) Not less than 48 hours before the time of the moot, each team should give the skeleton and list of authorities to Marion Howard in the Middle Temple Treasury for transmission to the Judge, and to the other side.
  - (c) Photocopies of the headnote and passage relied upon (see Paragraph 14 above) must accompany the skeleton and list.

- (d) If necessary, an opposing team member should be telephoned in order to obtain the list of authorities; phone numbers will be set out on the competition draw. However, this is intended as a last resort.
16. The penalty for non-compliance with the above rules is disqualification.
  17. In addition to citing three authorities:
    - (a) Counsel are entitled to refer in their argument to statements of authority that are too well-known to require citation: eg. "as Lord Macmillan said in Donoghue v Stevenson, 'the categories of negligence are never closed'". However, this should not be used as a device for evading the three case limit;
    - (b) Counsel are entitled to refer to a separate passage in an authority cited by the other side, provided that they give notice of their intention to do so, and produce photocopies of the relevant passage for the Judge and the opposing team. They may also refer to an additional authority only for the purpose of being a reply to one cited by the other side in order to deal with, in rebuttal, the point made by them in their cited authority. For example if a dictum is subsequently explained or a case is overruled. This is the sole exception to the 3 case citation rule and must be limited to rebuttal. Copies of the rebuttal authority should be sent to Marion Howard and the other side as soon as possible before the moot.
  18. Courts now require skeleton arguments; even when not required they are normally used to speed oral argument. Counsel should be familiar with the recent practise directions as regards skeleton arguments and their exposition, and argument should have regard to them. Chronologies and Dramatis Personae should be annexed,. Skeleton arguments should be delivered together with their list of authorities in accordance with rule 15(b). Again, they should be typed. Delivery to the judge may be by e mail through Marion Howard, but pre agreement for this should be obtained and a hard copy should follow to arrive within the prescribed period set out in 15(b).
  19. The competition is a team competition. The Judge will therefore select the winning team, rather than the best individuals. The contest deals with mooting ability rather than which team was lucky enough to draw the winning legal argument. Therefore the team which wins the moot may be the team that loses the legal argument.
  20. There are no fixed criteria for judging a moot. In general, however, the Judges will be looking at matters such as content, fluency, relevance of the arguments addressed, confidence, and presentation generally. The matters which are most likely to impress the Judges are the ability of the contestants to depart from a prepared note of argument - eg. in dealing with questions raised by the Judge in the course of argument; and in dealing with the arguments raised by the other side. Brevity is also a valuable asset. Do not assume that the longer you go on the better you are doing. It is very important to answer the questions put by the Judge, you are not on the "Today" programme.
  21. It is advisable to speak from notes; Counsel should not read prepared speeches. Short, pithy phrases or sentences may, however, be read from a note - eg. for the purpose of summarising the proposition which you are seeking to put forward.

22. It is important that your argument has a structure; although you should be prepared to depart from it if circumstances demand.
23. It is up to each team to decide how they wish to divide the argument between them. Each moot usually raises a number of points. Some teams may choose to divide these points between them. Other teams may decide that the leader should put forward the main argument on all the points, and that the juniors should deal with the arguments of the other side. Other teams may combine the two. It is ultimately a matter for the team to decide.
24. Further advice is contained on the sheet headed "How to Address the Court".

## HOW TO ADDRESS THE COURT

1. Counsel=s duty to put their client=s case as best it possibly can is subject to the overriding imperative that the Court is not misled as to either the facts or the law.
2. Address the Judge directly as "My Lord" or "My Lady" and indirectly as "Your Lordship" or "Your Ladyship". Refer to other Counsel as Mr, Miss, Mrs or Ms... (the expression "my learned friend", and similar phrases, are now probably best used sparingly). Ensure you know how your opponent prefers his or her name pronounced.
3. If you are **opening** the Moot however, tell the Judge that you and your learned friend Mr/Miss... appear for the Claimant/Appellant and that your learned friends Mr/Miss... and Mr/Miss... appear from the Defendant/Respondent. It may also be convenient for the leader on each side to tell the Judge how he and his junior will divide the argument.
4. Don't ever interrupt the Judge, but let her interrupt you. Listen carefully to their question or remark, it is often the key to what is in their mind and usually must be responded to or dealt with.
5. Watch for leads from the Bench. Try to see how the Judge's mind is working and adapt the way you put your case accordingly. If the judge has a point, then move on. Take advantage of any doubts he may raise about your opponents' case, if you consider that those doubts are well-founded. If, however, the judge is under a misconception in your favour disabuse the judge of it and quickly.
6. Don't say "I think" or "In my opinion". It is misconduct to do so. Your opinion is irrelevant. Use such phrases as "I submit that...", "It is submitted that..." or "In my submission..." which connote that advancement of opposing ideas rather than opinions.
7. Don't refer to a Judge in a case you are citing as e.g. "Smith J." or "Smith L.J." but as "Mr Justice Smith" or "Lord Justice Smith". If a Judge has been promoted since the date of the case you are citing, refer to them as e.g. "Mr Justice Atkin, as he then was". But do not keep doing so if the reference is repetitive. The Judge will know it is Lord Atkin to whom you refer after the first citation in the example just given.
8. Don't cite a law report by its initials. After giving the name of the case, say e.g. "...which is reported in the first volume of the Queen's Bench reports for 1980".
9. Cite a case as e.g. "Rylands and Fletcher" or "Rylands against Fletcher" not as "Rylands v. Fletcher". Unless, in a rare case, you cite or refer to authority in the jurisdiction of the United States so, for example New York Times versus Sullivan is the correct citation.
10. Don't cite an overruled case without drawing attention to the overruling case.
11. If the Judge asks you a question which you cannot answer on the spur of the moment, ask for leave to confer with your leader or junior rather than say you don't know. Do not evade the question, however. Do not answer the question which you wish the judge had

asked. If, in the end, you do not know the answer, say so.

12. Remember that a judge is primarily concerned with deciding the case before her. Don't simply argue propositions of law in the abstract, but make sure that the judge knows how you want her to apply them to the facts of the case and find in your client's favour.