

**Middle Temple Mooting Competition**

**for the Rosamund Smith Mooting Cup 2020**

## INTRODUCTION

1. The Middle Temple Mooting Competition is long-established, and since 1992 the winners have been awarded the Rosamund Smith Cup. Rosamund Smith was a promising Middle Temple student and enthusiastic mooter, when she died tragically in a car accident during her pupillage. The Cup and a prize fund in her memory were provided through the generosity of her family. The competition 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 or five, 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.), but may be from any area of English law.

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. This provides the opportunity to gain mooting experience in a relatively informal atmosphere.

4. The semi-finals and final are held in Hall before dinner.

5. The early rounds take place in January to April (and possibly May) 2020 and will start at 5.30pm unless otherwise stated. The dates for the semi-finals are **14 and 21 June 2021.** The final will be held on **26 October 2021.** Re-scheduling of moot dates for the early rounds only will be accommodated if possible, and with the agreement of both teams (which agreement shall not be unreasonably withheld), but cannot be guaranteed. The dates for the semi-finals and final should be regarded as fixed, and would only be moved in exceptional circumstances.

6. The moots are judged by Benchers, Judges, and experienced practitioners of the Middle Temple, who take a great interest in the competition. Thus, the judges will often be QCs or "professional" judges (ranging from the Circuit Bench to the Supreme Court). The early rounds are judged by a single judge; the semi-finals and final by a tribunal of two, or more usually three.

7. At the end of each "match", the judge or judges will not only give a judgment on the legal problem raised in the moot. In addition, constructive 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

### Eligibility, teams and speeches

1. In order to be eligible to enter the competition each team member must be a member of Middle Temple and:
2. be enrolled on either the BPTC or the GDL for the current academic year; or
3. have completed the GDL in the previous academic year.
4. Each team consists of two counsel: a leader and a junior. After the first round has taken place, no change in the constitution of the team is permitted although team members are free to change roles (as between leader and junior) between rounds.
5. The Order of speeches is as follows:-
* Leader for the Appellant
* Leader for the Respondent
* Junior for the Appellant
* Junior for the Respondent

There are no Replies.

1. Leading Counsel for the Appellant may take the facts of the case as read in opening the case, so it is not advisable to take up time repeating them.

### Time limits

1. Leading Counsel may speak for a maximum of **15 minutes** each and Junior Counsel for **10 minutes** each. These allowances include interruptions from the Bench. These are maximum times: there is no requirement to use the full allotted time.
2. 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. Judges have a discretion to allow slightly longer speeches, where Counsel has had to deal with frequent interruptions from the Bench, but it should not be assumed that this licence will be granted.

### Authorities

1. Citation of authority should be minimised. There is no requirement to use the full entitlement of authorities provided by the rules. The Practice Direction dealing with citation of authority should be consulted and complied with, subject only to the provisions of the moot rules.
2. Each individual Counsel may cite up to **three** authorities. Cases cited within a chosen authority do not count towards the allowance. One member of the team cannot trade his or her allocation with the other. Authorities may be from decided cases or from recognised practitioners' textbooks (Chitty on Contracts for example; students' books may not be cited). If Counsel cites an authority referred to in the problem it still counts as one of their three authorities.
3. In addition to the permitted three authorities:
4. Where relevant, one statute can be cited; but normally this will be included in a judgment and will not be needed.
5. Counsel are entitled to refer in their argument to statements of authority that are too well-known to require citation: e.g. “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 limit.
6. 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.
7. It is permissible to produce an additional authority only for the purpose of rebuttal of an authority cited by the other side; for example, if a dictum relied upon in one of the opponent’s authorities 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 Sally Yorke and Rosalie Bower and the other side as soon as possible before the moot.

### Skeleton Arguments

1. Skeleton arguments must be typed, with one skeleton per team. Counsel should be familiar with the relevant practice directions relating to skeleton arguments, and their written argument should have regard to them. There is no maximum length for the skeleton, but brevity is likely to be rewarded and undue length penalised. Presentation, as well as content, may be adjudged important.

### Lodging of documents

1. It is essential that the other side, and the Judge, have advance notice of the arguments and authorities intended to be relied upon. The following documents must be lodged, one set from each team. For the semi-finals and final three sets from each team are required. Subject to **rule 14** below, the documents shall be presented and lodged in hard copy in a single file of appropriate size for the volume of material:

(a) Skeleton argument, prepared in accordance with **rule 10** above.

(b) List of authorities: Each team should prepare a typed list of the authorities which they intend to cite, as permitted by the rules. The list should give the name of the case and its reference. It should also indicate the page number and paragraph(s) of the passage relied upon.

(c) Bundle of authorities: Copies of the headnote and passage relied upon (with sufficient of the judgment to put the passage relied upon in its proper context) must accompany the list of authorities. If, and only if, the whole of any judgment is thought necessary for a proper explanation of the passage relied upon, should the whole of the relevant judgment be included. The passages relied upon should be marked with side-lining.

1. By 12 noon two working days before the moot, each team should provide hard copies of the documents required under **rule 11** to Sally Yorke or Rosalie Bower in the Middle Temple Treasury. The Middle Temple Treasury will forward a set of these documents to the moot judge.
2. Teams are responsible for liaising with each other in relation to exchange of the documents set out under **rule 11**, and this may be done by email. Exchange shall not be later than the time for lodging the documents under **rule 11**. If a hard copy set has not previously been provided to the opposing team then, one set should be made available for them at the moot itself.
3. Delivery of the documents under **rule 11** above may be by email through Sally Yorke and Rosalie Bower, subject to prior agreement with one or other of them. Agreement will generally be forthcoming for students who are based out of London, but usually not otherwise save in exceptional circumstances. If a team wishes to take advantage of this option, clear instructions must accompany the request for the Middle Temple Treasury to assemble the hard copy of the bundle, and ultimate responsibility for its presentation remains with the team.

### Judging criteria

1. The competition is a team competition. The Judge will therefore select the winning team, rather than the best individuals. The contest is in relation to mooting ability and the decision as to the winning team is independent of the legal outcome. Thus the team which wins the moot may be the team that loses the legal argument.
2. There are no fixed criteria for judging a moot. In general, however, the Judges will be looking at the quality of (1) the written argument; (2) the oral argument; (3) delivery, including fluency, confidence, and the ability to deal with judicial intervention and the arguments raised by the other side. Structure, clarity, and brevity will be rewarded. Judges are likely to be impressed by the ability of contestants to depart from a prepared note of argument. Dealing clearly and directly with questions raised by the judge is an important element of mooting.

### Remote mooting

1. If it is not practicable to hold ‘in person’ moots, the Masters of the Moots may determine that the competition should proceed with moots conducted remotely, by video link. If technical difficulties arise during the moot then the participants should indicate this to the judge so that they can be resolved before continuing. The moot judge has full discretion to make such adjustments, including in relation to timing, as appear necessary to enable the moot to proceed fairly. In the last resort the moot judge may declare that it has been necessary to abandon the moot, in which case attempts will be made to rearrange it, if possible. [*Note: it appears inevitable that at least the early rounds of the 2021 competition will be conducted remotely.]*

### General

1. The penalty for non-compliance with the rules is at the discretion of the moot judge. It may include ‘marking down’ the team in default, or disqualification.
2. Adjustments:
3. The Masters of the Moots will exercise a general power to adjust the requirements of the rules, so as to ensure that reasonable adjustments are made for the needs of any participant with a disability and/or a long-term physical or mental health condition;
4. Such adjustments will be made on a case by case basis, taking into account of the specific circumstances of the individual;
5. Any participant seeking an adjustment must contact Rosalie Bower or Sally Yorke with details of the adjustment sought, and the basis on which it is required, as soon as practicable after submitting their entry;
6. Any such request will be referred to the Masters of the Moots, who may seek further information before determining any adjustments that shall be made.
7. A participant in respect of whom an adjustment has been made by the Masters of the Moots shall ensure that the opposing team is notified of its terms at the same time as lodging his or her team’s skeleton argument.
8. The moot judge will be informed of any adjustment that has been granted, but the participant concerned should ensure that the judge is aware of the adjustment at the outset of the moot.
9. Any issue arising in relation to the competition shall be referred to Rosalie Bower and/or Sally Yorke in the first instance. In so far as necessary, such issues will be passed to the Masters of the Moots to resolve in their absolute discretion.
10. The email contact details for Rosalie Bower and Sally Yorke are:

Rosalie Bower at r.bower@middletemple.org.uk

Sally Yorke at s.yorke@middletemple.org.uk

**Master Martin Chamberlain**

**Master Angus McCullough**

Joint Masters of the Moots

**January 2021**

## GENERAL ADVICE

*This advice is not part of the formal rules, but following it is likely to lead to greater success (and vice versa).*

### 1. Skeleton arguments

1. **Formal requirements**: Rule 10 refers to the formal requirements of skeletons.
2. **Brevity and clarity** are key. A good structure will assist with clarity.
3. **Presentation** is also important. Consider how your points may be most clearly set out. Perhaps adopt a label for each point. Judicious use of bold / underlining / italics may be helpful – but should not become a messy distraction.
4. **Quotation**: Exercise judgement in quoting from key authorities: short extracts may be helpful, but not long passages. Always make sure you have quoted accurately. Would it be helpful to emphasise key words within the quotation? If so, always make it clear that you have done this by adding “[emphasis added]” at the end of the quotation.
5. **Use of English**: Take care with the accurate use of English in your skeleton[[1]](#footnote-1). Some examples of frequent misuse are:

(i) Principle / principal: both words are frequently used in argument, but they have distinct meanings and are not inter-changeable in writing.

(ii) Practice / practise: in British English (unlike US), ‘practice’ is a noun, and ‘practise’ is a verb. Thus, in practice a practitioner may practise in a variety of specialist areas.

(iii) Judgement / judgment: the general legal convention (although not always strictly observed) is that a judgment is the formal ruling that is given by a judge (or other decision-maker), whereas ‘judgement’ is the process of evaluation that may lead to that decision.

(iv) Affect / Effect: know the difference.

(v) Apostrophes: These are frequently misused: do your best to avoid this.

1. **Citation of authority:** The reference in the citation is not underlined (and/or italicised as preferred). So, the correct form for a citation is:

*R (UNISON) v. Lord Chancellor* [2017] UKSC 51, [2017] 3 WLR 409

It is not necessary to provide more extended citation of the full case name, with additional parties: so for example avoid, *R (on the application of UNISON) v Lord Chancellor and Human Rights Commission (Intervener)* [2017] UKSC 51. Where a case is cited in many series of reports, just provide the neutral citation reference and the most authoritative report (see below)[[2]](#footnote-2). If the case is unreported, then there will just be the neutral citation.

1. **Chronology / DP**: Consider producing a chronology and/or a Dramatis Personae to annexe to the skeleton argument if that would assist - perhaps cross-referenced to the paragraph numbers of the moot problem. An example chronology is given below, but consider the best presentation for your particular moot problem, if you think a chronology would assist:

|  |  |  |
| --- | --- | --- |
| **Date** | **Event** | **Ref** |
| 1.1.76 | Appellant (A) born | §3 |
| 2.1.80 | Appellant’s sister (Michelle Diamond) born | §4 |
| 1986 | Alleged offences: 3 separate occasions in the summer of 1986; A aged 10½ | §5 |
| 2000 | A convicted of drink driving; disqualified for 12 months and fined £100 | §12 |
| 2010 | Magistrates’ Court: A bound over to keep the peace* Followed acquittal of common assault on his then girlfriend
 | §12 |
| Early 2017 | Complaint by Michelle Diamond: 31 years after alleged offence | §7 |
| Later 2017 | Crown Court: trial, leading to conviction of A* Judge rejected defence submission of no case to answer
* A did not give evidence
* Sentenced to 2 years imprisonment on each offence, to be served concurrently
 | §9§15§10§11 |
| 24.1.18 | CA: Appeal hearing |  |

### 2. Bundles of authorities

As ever, presentation is important. If you are preparing your own bundle:

* Choose the most authoritative report: see the Practice Direction[[3]](#footnote-3) as to how to identify this.
* Do not put the authorities in a file that is too big (the bulk will not be welcomed by the judge) or – worse – too small (an over-filled file is an extreme irritant).
* Make sure all pages are hole punched in the centre of the page, and all aligned. It creates a bad impression if the pages of the bundle are scraggy.
* Mark with side-lining the key passage or passages relied upon.

### 3. Oral argument

3.1 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.

3.2 As the moot will be set in a higher court, 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, if at all). Ensure you know how your opponent prefers his or her name pronounced.

3.3 If you are **opening** the Moot, tell the Judge that you and (for example) Ms Y appear for the Appellant and that your learned friends (perhaps just the one use of the phrase) Ms A and Mr B appear for the 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.

3.4 It is advisable to speak from notes, not a script. Counsel should not read prepared speeches. Short, pithy phrases or sentences may, however, be read from a note – e.g. for the purpose of summarising the proposition which you are seeking to put forward.

3.5 Don’t say “I think” or “In my opinion” when advancing an argument. Your opinion is irrelevant. Use phrases such as “I submit that...”, “It is submitted that...” or “In my submission...” which connote the advancement of opposing arguments rather than personal opinions. However, there is no problem with saying, for example, “I think that your Ladyship will find our answer to that question summarised at paragraph X of our skeleton.” In that instance, you would not be expressing a belief in your argument.

*Judicial interventions*

3.6 Do not interrupt the Judge, but do let him/ 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.

3.7 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 the Judge 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 them of it immediately.

3.8 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 immediately that 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, if you do not know the answer, say so.

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

*Authorities*

3.10 Don’t refer to a Judge in a case you are citing as e.g. “Hale J” or “Hale LJ” but as “Mrs Justice Hale” or “Lady Justice Hale”. If a Judge has been promoted since the date of the case you are citing, refer to them as e.g. “Mrs Justice Hale, as she then was”. But do not keep doing so if the reference is repetitive. The Judge will know it is Baroness Hale to whom you refer after the first mention.

3.11 Before referring to the passage relied upon Counsel should (a) give the name of the case, (b) the reference [report or neutral citation] 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 (for example whether the passage is part of the ratio, or obiter; and whether the authority is appellate or first instance).

3.12 Strictly speaking, one should not cite a law report by its initials. So, for example, after giving the name of the case which has the reference [1980] 1 QB 456 you would say “...which is reported in the first volume of the Queen’s Bench reports for 1980 at page 456”. However, nowadays and with a proper bundle of authorities for the moot, you do not need to provide a full citation when you mention the case in your oral argument, as you can take the judge to it by tab number.

3.13 Citation of cases orally:

(i) **No ‘v’ or ‘versus’**: Cite a case as e.g. “Rylands and Fletcher” or “Rylands against Fletcher” not as “Rylands v. Fletcher (nor versus Fletcher)”. By way of rare exception, if 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.

(ii) **The Crown**: *R v. Drummond*, would be cited as ‘The Crown and Drummond’ or ‘the Crown against Drummond’. Avoid ‘R’ or ‘Regina’.

(iii) **Judicial review cases**: It is usually most economical to refer to the case as ‘*ex parte Bugdaycay* [or whatever]’ after initially citing it.

3.14 Do not cite an overruled case without drawing attention to the overruling case and explaining why it is submitted that the proposition that you derive from the overruled case remains good law (for example, that it was not appealed on that point).

### 4. General points

Do consider volunteering to act as a time-keeper, particularly if you have little or no prior experience of mooting (as will be the case for many or most in the competition). You will learn a lot from watching others mooting, and from the judge’s comments on their performances.

Early mooting experiences may be a bit nerve-wracking. Everyone makes mistakes – don’t worry too much about these, but do try to learn from them. The Judge’s feedback at the end is likely to be valuable, and any criticism is intended to be constructive.

Moot judging is subjective, and every moot has a loser. Try not to be disheartened if you are the loser. Don’t be surprised if you feel you should have won, but have not: that is an experience with which all practitioners are familiar. Whether you have won or lost, do try to identify learning points from the experience. We hope you will also enjoy it!

KT / AMcC

December 2019

1. ‘Fowler’s Modern English Usage’ is worth consulting in any areas of doubt in this field. [↑](#footnote-ref-1)
2. In the example above, at the time of writing the case does not yet appear in the official reports. When it does, the Appeal Cases (AC) reference should be given in place of the WLR. [↑](#footnote-ref-2)
3. Practice Direction on Citation of Authorities [2012] 1 W.L.R. 780 [↑](#footnote-ref-3)