

THE FIRST-YEAR MOOT 2012

Introduction

All first-year students, working in teams of two, argue a moot problem in the second term. The moot takes the form of an appeal based on a set of given facts, the reasons for judgment of a court, or the reasons for an order or award of an administrative board or tribunal. There are no witnesses or submissions of evidence as there would be in a mock trial, which is another type of academic exercise involving different skills. The party appealing the decision is the *appellant*; the party responding to the appeal is the *respondent*. Two students represent the appellant; two represent the respondent.

A moot has two parts: a written document, called factum, and an oral presentation. There are strict rules regarding the form a factum must take, though there is room for creativity in both the written and oral argument. The rules vary among different courts; the first-year moot has a set of rules modeled on real-world rules, such as those from the British Columbia Court of Appeal. These are called the *Rules of Court* of the Supreme Moot Court of British Columbia, and may be referred to in brief as the “*UBC Moot Court Rules*.” Before preparing the factum and the oral argument, read these rules carefully, as well as any readings on persuasive writing to which your instructors refer you. You should also attend the weekly LRW sessions for additional guidance.

The moot proceeds according to the following steps: (i) the students representing the appellant file their factum and serve it on the students representing the respondent; (ii) the students representing the respondent file their factum and serve it on the students representing the appellant; (iii) the Moot Registrar sends these materials to the judges, who are practicing lawyers; (iv) the judges review them before the moot; and (v) both teams of students argue the case before the judges. The schedule for these steps, is set out in the first-year assignment schedule.

THE SUPREME MOOT COURT OF THE UNIVERSITY OF BRITISH COLUMBIA
— *Rules of court* —

A. General

1. The Supreme Moot Court of the University of British Columbia (the “Court” or the “Moot Court”) is a special court having unlimited jurisdiction.
2. The Court is not strictly bound to follow the decision of any other court. The Court is subject to all statute law now in force and effect in British Columbia.
3. The Court may dispose of technical defects in any manner it sees fit in order to ensure determination of all cases on their merits.
4. The Moot Court Registry will be open for receipt of documents at the times posted by the Moot Court Registrar. The open hours will be posted on the First Year Legal Research and Writing website <http://www.law.ubc.ca/current/jd/lrw/index.html> . No materials will be accepted or given out except during the posted office hours.
5. The Registrar must answer any enquiries of a routine nature. All substantive enquiries are to be directed to the professors or legal writing instructors.
6. Master schedules showing the participants, dates and room numbers of each moot will be posted to the First Year Legal Research and Writing website as soon as they are available. The due date for the filing of materials is the one appearing on the first-year assignment schedule.
7. Applications for extensions or adjournments must be made to the Assistant Dean, Students (Allard 152; Tel. 604-822-6350) by filling out an Assignment Extension Request Form: <http://www.law.ubc.ca/files/pdf/forms/paperextensionform.pdf> and providing it with supporting documentation to the Assistant Dean, Students. For examples of supporting documentation and the full Examinations Committee Procedures Governing Requests for Academic Concession by JD Students go to: http://www.law.ubc.ca/files/pdf/current/Examinations_Committee_Rules.pdf
The Registrar has no jurisdiction to grant extensions or adjournments.
8. All documents must be entitled “The Supreme Moot Court of the University of British Columbia”.

B. Facta

1. The appellant and the respondent must each prepare a factum, *file* it with the Registrar, and *serve* it on the opposing party. The appellant's factum must be filed and served electronically on **Wednesday 18 January, 2012 by 4:30 p.m.** The respondent's factum must be filed and served electronically on **Friday 27 January, 2012 by 4:30 p.m.**
2. The appellant and respondent must each electronically file their facta by emailing them to the Registrar at firstyearmoots@law.ubc.ca. An electronic factum must be a single file, preferably in PDF format. The appellant and respondent must electronically serve their facta by emailing them to each other.
3. The appellant and respondent **must each also file one paper copy** of their facta at the Moot Court Registry. The paper copy must be filed **by 4:30 p.m.** on the required due date (see above).
4. Facta must be typed in a font no smaller than 12 point type on white, letter-sized paper with margins of no less than 2.5 cm. The factum must be double-spaced, except for quotations from authorities, which must be indented left and right and single-spaced. Other than the index and cover page, the text of the factum in the printed version must be printed on the left side of the page only, leaving the right side clear for judge's notes. The cover page and index are printed on the right side, leaving a blank page on the left. Each page must be numbered consecutively on the upper left-hand corner of the page, beginning with the first page of the Statement of Facts.
5. The printed version of the factum must be stapled on the upper left-hand corner and have a white cover page. Do not bind the factum. The cover page must contain all the information indicated in the example provided below.
6. The argument section of the factum (Part 3) must not exceed 14 pages. Each counsel will therefore contribute approximately seven pages of argument. The entire factum, excluding the cover page, must be no longer than 20 pages.
7. Each paragraph in the factum must be consecutively numbered (line numbering is not required).
8. The factum must be signed by the counsel who prepared it.
9. Facta must include the following sections:

Title Page

The title page must include the style of cause and the names of counsel. See the attached form of title page.

Index

The Index is printed on the right hand side of the page (as opposed to the rest of the Factum which is printed on the left) and must include page number references.

Part 1 - Statement of Facts

Appellant’s factum: This section must include a concise statement of the course of proceedings and the facts of the case. The appellant should include and emphasize facts helpful to the case but must also identify non-helpful facts. The Appellant should not leave any important facts to be raised by the Respondent.

Respondent’s factum: This section must include the respondent’s position on the appellant’s Statement of Facts, along with any additional facts that the appellant may not have included. The respondent should not draft a separate Statement of Facts but, rather, should clarify and re-characterize the appellant’s facts as necessary.

Part 2 - Errors in Judgment (appellant’s factum) or Issue(s) on Appeal (respondent’s factum)

Appellant’s Factum: This part must be brief and state the issues on appeal by characterizing them as errors in the judgment under appeal.

Respondent’s Factum: This part is characterized as “Issue(s) on Appeal” rather than “Errors in Judgment,” reflecting the parties’ different perspectives. The respondent should respond to the issues stated by the appellant, but may recast them in a form beneficial to the respondent.

Part 3 – Argument

Both the appellant’s and respondent’s argument must concisely outline the argument and points of law or fact to be addressed, along with properly cited authorities to support each point.¹ *Both appellants and respondents should disclose and discuss all relevant case law, even that which does not support their case.* You may try to distinguish nonsupporting law; you may not ignore it.

Part 4 - Nature of Order Sought

This part must clearly state the relief requested by the appellant. The statement “All of which is respectfully submitted” must appear at the end of the relief requested and counsels’ names must appear at the bottom of this page, along with their signatures.

¹ Citations should conform to the *Canadian Guide to Uniform Legal Citation*, 7th ed (the “McGill Guide”).

Appendices

This optional section may contain reproductions of legislation, if necessary.

List of Authorities

All authorities referred to in the factum must be listed alphabetically in this part. Parallel citations, if available, must be provided for each authority, but only in the list of authorities and not in the factum itself.

C. Facts and Authorities

1. Moots will be decided on the facts stated in the report of the decision appealed from or in the statement of facts provided, as the case may be.

2. All authorities must be referred to in the factum. The Court may, on terms it considers appropriate, permit counsel for a party to cite authorities that were not used in that party's factum. Citations must be indented in the text of the factum and at least one parallel citation, if available, must be given for each authority.

3. Book of Authorities

a. The appellant and respondent must together produce a *joint* Book of Authorities, in triplicate: one for the appellant, one for the respondent, and one for the judges. If the appellant and respondent wish to share a copy to conserve paper, they may prepare only two copies.

b. To reduce photocopying costs, counsel may copy just the headnote and relevant pages from lengthy judgments, rather than the entire judgment. Counsel may use printed copies of electronic judgments, as long as they include essential identifying information, such as style of cause, jurisdiction, court, date, judge(s), and procedural history.

c. You need not bind the Book of Authorities, but you should use tabs to separate and identify each authority. The Book of Authorities must include a Table of Contents.

d. The judges' copy of the Book of Authorities must be submitted by the appellants and respondents to the judges on the evening of the moot.

D. Oral Argument

1. All moots start at 6:30 p.m. on the scheduled day.
2. Judges and counsel must gown. The Registrar will give out gowns before each moot upon receipt of government-issued photo ID (student ID is not sufficient). Gowns must be returned to the Registry at the end of the moot.
3. Arrive at least a half hour early to pick up your gowns and prepare rooms.
4. When the judges enter the room, all counsel must rise and remain standing until told to sit down by the panel of judges.
5. When the judges are seated and ready, the first-named counsel for the appellant rises, states the names of both appellants' counsel, and indicates that they represent the appellant. Counsel for the respondents repeat the process.
6. Argument proceeds as follows:

- a) Counsel for the Appellant

First-named counsel 30 minutes
Second-named counsel 30 minutes

- b) Counsel for the Respondent

First-named counsel 30 minutes
Second-named counsel 30 minutes

- c) Reply by one appellant's counsel 10 minutes

The time limits for arguments will be strictly enforced: at the end of the allotted time, counsel will be instructed to sit down whether or not they have completed their presentation.

7. Mooters should complete a student evaluation form at the end of the moot. This form will be given to each of the mooters on the evening of the moot and must be returned to the Moot Court Registry at the end of the night of the moot (not the following day). Judges' evaluations of the students must be filled out at the end of the moot, with one copy going to the registry and one copy going to the student. Students are responsible for handing in a copy to the registry and getting a copy for themselves.

E. General Instructions and Tips for the Oral Argument

1. Preparation is essential. The object of an appeal is to persuade the Court that a judgment should be rendered in your client's favour. Do your research and analysis, subject to any limitations imposed by your professor as to the scope of case law and other materials on which you are permitted to rely, and organize your argument accordingly.

2. Give careful thought to the arguments of the other side, but fight the battle on your own ground. As counsel for the appellant, your case should stand on its own feet. As counsel for the respondent, you must try to fully counter the appellant's argument, but you may also be able to improve upon the judgment which you seek to uphold.
3. Anticipate difficulties with your argument and questions that the court may have. Prepare answers to those questions in advance.
4. The essence of advocacy is persuasion; your task is to sway the Court. The following points should be observed:
 - a. The argument should be a logical sequence of acceptable propositions buttressed by authority.
 - b. Use your strongest authority. If the Court is persuaded, proceed to the next point. Do not bore the Court with needless repetition of authority. In other words, pay close attention to the judges' reactions to your arguments and adjust accordingly.
 - c. State your propositions clearly so that the Court can follow the steps of your argument.
 - d. Although you must respond to the judges' questions, do not permit yourself to be side-tracked. Figure out a way to get back to where you were before the question.
 - e. Avoid reading the factum. The judges can do that. Oral argument should supplement the factum to ensure a lucid and forceful communication.
5. Observe some simple yet fundamental rules of courtroom decorum.
 - a. Address the judges appropriately (e.g., "Justice")² and when quoting a judge, refer to "Justice Doe", not "Judge Doe" or "Doe J."
 - b. Do not lose your temper or interrupt the judges while they are speaking.
 - c. Use plain language.
 - d. Address opposing counsel as your "friend."
 - e. When citing cases use the full name of the report series, i.e. "Dominion Law Reports", not "DLR"

² Conventions vary by court, The Supreme Court of Canada, Federal Court and Federal Court of Appeal have adopted rules or practice directions stating that judges should be referred to as "Justice" rather than "my Lord," "my Lady," "Mr. Justice," or "Madam Justice." However, such terminology still prevails in British Columbia in the Supreme Court and the Court of Appeal, though in Provincial Court, the convention is "Your Honour." in practice, you need to be sensitive to the protocols of the court in which you work.

f. Dress in a professional manner – Wear “court appropriate” attire such as dress pants and a dress shirt. Although a suit is not required, jeans or other casual attire is not appropriate for moot court.

g. Pause and take your time when responding to judges’ questions. Think before you answer.

h. Remember that you are an officer of the Court and, as such, enjoy the confidence of the judges. In return for this professional privilege, you are expected to instruct the Court fairly and honestly.

UBC Moot Court Registry

IN THE SUPREME MOOT COURT OF THE UNIVERSITY OF BRITISH COLUMBIA
On appeal from *[state from which court and judgment, depending on your moot problem]*

Between:

[full name of Plaintiff]

(Respondent/Appellant)

[state which, depending on your problem]

and:

[full name of Defendant]

(Respondent/Appellant)

[state which, depending on your problem]

Appellant's/Respondent's *[state which]* Factum

[Your name], Counsel for the Appellant

[your signature]

[Your co-counsel's name], Counsel for the Appellant

[your co-counsel's signature]

[Name of counsel for Respondent], Counsel for the Respondent

[Name of co-counsel for Respondent], Counsel for the Respondent

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