Mooting: An Undergraduate's Perspective

Gabriel Wishart, Liverpool John Moores University, School of Law

Abstract

Mooting is the tried and tested method of legal education of preparing law students for practice. It is to many law firms and chambers as essential to employability as the degree itself. It exists as a test of a future trainee or pupil's advocacy, communication, and research skills. With the advent of legal advice clinics in universities, the status of moots as an effective form of practical legal education has been brought into question. Arguably, however, this claim is unfounded. The essential value of mooting is expanded upon through this article by the author's own anecdotal experiences as a mooter both at the national and international level.

Keywords: mooting; legal education; employability; legal advice clinic; International Law.

1. Introduction

Throughout my undergraduate degree, I have had the opportunity to develop numerous analytical, intellectual, and most importantly legal professional skills. From my lectures, I have developed a great appreciation of the substantive and analytical nature of the law. From my time in my University's legal advice centre, I have seen the practical, ethical, and often emotional side of practising law. Neither, however, have intellectually challenged, invigorated, and prepared me for life as a practitioner in the same way as mooting. My experiences in mooting have been a mixture of elation, stress, disappointment, and everything in between. Whilst I acknowledge that this is a common viewpoint,[1] the fact that this is often said is a testament to the demanding,

[1] For general commentary on the views of mooting participants see Andrew Lynch, 'Why do we Moot? Exploring the Role of Mooting in Legal Education' (1996) Legal Education Review 67, 82-93.

all-consuming, and occasionally anxiety-inducing nature of mooting. Yet, despite all of these challenges associated with mooting, I, like thousands of law

students before me, consider it to be the highlight of my time as a student.[2] I say this both as a participant and as a judge of moots, although each comes with its unique joys and trials.

Despite mooting's prominence in common law legal education, there is a surprising literature deficit in this field.[3] This article cannot address this from an academic perspective and to do so would be outside the scope of this article's remit. Therefore, this article will give a perspective from the viewpoint of the undergraduate and aims to describe to future or current students of law the often hidden, daunting, and confusing practices of mooting and demonstrate how it is one of the most beneficial practices one can undertake as an aspiring legal practitioner.

2. What is Mooting?

Before recounting my own experiences, it is essential to outline what mooting is. Whilst certainly a redundant exercise to the engaged student, new law students, especially those who do not start their degrees with the advantage of legal exposure or family members, will have no idea what this is. I can count myself among them and this is an opinion that has been echoed: 'Mooting is a contrived and alien world for law students who will ordinarily have had little experience of anything that approaches the intensity, exposure and vulnerability involved in making oral submissions.'[4] Mooting has been described as 'an argument on points of law that aims to simulate an appeal court hearing before a jury or panel of judges. The participants, known as "mooters" argue the legal merits of appealing a fictitious case that has been decided in a lower court.'[5] Another has described it as 'a practical legal exercise that mimics court or arbitration

[2] Ibid.
[3] Mark Thomas and Lucy Cradduck, 'The Art of Mooting: Mooting and the Cognitive Domain' (2014) 20(2) International Journal of the Legal Profession 223, 224.
[4] Thomas and Cradduck (n3).
[5] Eric Baskind, *Mooting: The Definitive Guide* (Routledge 2018) 1.

proceedings.'[6] Mooting then is, in essence, a simulation, a chance for aspiring advocates to practice their skills in a tense, challenging but ultimately safe environment as these are not real judges or clients one may make errors for. A moot begins with a hypothetical case, as mentioned often in the appeal court, most frequently in the Supreme Court but occasionally in

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the Court of Appeal as well (at least in the UK domestic context) there are others held in simulated international settings such as the International Court of Justice. The mooters who most commonly work in pairs will then try to find appropriate case law and/or statute to support their legal arguments on the facts of the case, in their capacity as either applicant or respondent (i.e. the party who is appealing the decision or the party who is responding to that appeal). They will then combine this into two documents, firstly a skeleton argument which, as the name may suggest, is an overview of the legal argument put forward by the party and secondly, a court bundle, including a table of contents, the skeleton argument, and the full authorities relied on in the case. Then, both parties will advocate these arguments in front of a judge or panel of judges. This is where the skill of the mooter is truly tested. No matter how brilliant the documents brought before the court, a moot team lives and dies on the strength of the understanding of the facts and law relevant to the case as '[a] lack of understanding of the factual and legal information relevant to the problem will inevitably lead to a poor, and equally inevitably embarrassing performance.'[7] Moreover, there must be a sufficient demonstration by the participants of oral advocacy and the ability to handle judicial intervention (the process by which the judge or panel will interrupt the mooter and question them on their argument or general points of law). By the end of submissions, the judges adjourn (although for a significantly shorter time than in a real case), a winner is announced, and feedback is received.

The history and development of mooting is also of interest. Mooting was conceived in the early 14th century when books were of limited use and the law of England less developed.[8] Instead, '[young] men residing at the Inns as apprentices took instructions from their seniors and were required to perform in moots over several years before

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[6] Louise Parson, 'Competitive Mooting as Clinical Legal Education: Can Real Benefits be Derived from an Unreal Experience?' (2017) 1(1) Australia Journal of Clinical Education 3.
[7] Thomas and Cradduck (n3) 225.
[8] Baskind (n5) 2.

they could be admitted as practitioners. Moots were one of the few formal features of the legal education of the time.'[9]Therefore, one did not have to "read'" for a law degree as is the case in modern times. Indeed, the law degree itself has only been present for two hundred years. 'Until the early nineteenth century, it was not possible to study English law at an English University. Roman law was an option, but English law was not regarded as an academic subject. The only way to

study English law academically was at the inns of court… Study was in two forms. The first was lectures, known as "readings". The second was through moots.' [10] So ingrained was mooting to a life at the bar, '[no] member of an Inn of Court could have a chamber in his inn, or be in commons unless he kept moots.'[11] Given the historical significance of mooting, it is easy to understand why '[mooting] is an established mechanism for assessment within many law schools and a mechanism for delivery of essential skills training.'[12] Although some have suggested that the moot is no longer an effective mechanism and should indeed be phased out or at least reimaged in a more practical context,[13] '[perhaps] the most often-raised criticism about mooting is that the emphasis on appeals does not reflect the reality of practice. Few advocates will undertake appellate work in their early years of practice.'[14] Respectfully, while this raises a valid point, it undermines the value of mooting to a law student's development. Over the remainder of this article, I aim to demonstrate the value of mooting through my own anecdotal experiences as a participant.

3. First Exposure

My first experience with mooting was the same as the vast majority of law students, an internal moot competition. I was one month into my first year of university. I had the advantage of having done A-level law at college before my admission, so I was already at least broadly familiar with the content. The first time I ever encountered the word

[9] Lynch (n1) 68.
[10] Barrie Lawerence Nathan, 'The Practical Guide to Mooting (2021) by Jefferey Hill' (2021) 3(2) Amicus Curiae, 370, 370.
[11] Lynch (n1) 69.
[12] Thomas and Cradduck (n3) 224.
[13] Bobette Wolski, 'Beyond Mooting: Designing an Advocacy, Ethics and Values Matrix for the Law School Curriculum' (2009) 19(1) Legal Education Review 41.
[14] Wolski (n13) 59.

mooting was on the 25 October 2021 by email. It read: ‘As a member of the law society, you have been invited to participate in the JMSU Autumnal Mooting Competition. What’s a moot? A moot is a mock court scenario where you will be participating as a mock barrister in a mock appeal court. This competition gives you the chance to gain experience in a moot court scenario, where you can do your own research and create your own arguments in front of a group of judges. Many law firms and chambers view mooting experience as a necessity, so here is your chance to get some!’ At the first instance, I was immediately attracted to the concept of

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mooting. I had always considered myself a shy and anxious person who detested public speaking. Even though I had, at that time, only the ambition to be a non-court room-based solicitor, I acknowledged that it was necessary to learn how to address a room of people. To this end, I had already joined the Debating Society and had made great progress in my ability to speak publicly. Mooting would allow me to test my new-found confidence in a strictly legal setting. My interest was compounded further by the revelation that this was a requirement from most chambers or firms. Therefore, my course of action was clear: join the competition and see where this would take me.

The following week, I received my moot problem. A criminal case in which a Mr Steven Lannister had on the facts been subject to criminal conduct which mirrored the tragic case of *R v Atiken*[15] in which colleagues of a drunken RAF officer set him alight and caused serious harm as a practical joke.Rather confusingly, the defence was allowed under the grounds that it was a practical joke and thus the officer had consented, or the appellant had reasonable belief as such. In any event, my opinion of the law was irrelevant, and I had been assigned as appellant on behalf of Mr Lannister who in this case had been burned. I had eight days until my moot. However, I made the error of the vast majority of first-time mooters, I grossly underestimated the sheer scale and workload that goes into even a modest moot such as the one I was involved in. Even if I had not made this error, my research would have been inadequate. I had no idea how to use LexisNexis, Westlaw or Practical Law appropriately and, at this stage of my studies, sincerely believed that a textbook was the sole resource I should have been relying on (admittedly had I heeded the advice I was given in my foundations' module, I would not have found myself in this situation). Nevertheless, I researched

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[15] [1992] 1 WLR 1006.

and got what I thought I needed. And then the first problem arose: what was a skeleton argument? While to me it seems obvious now what would be required of me, absent of any prior knowledge or explanation, I was completely confused and wrote a script for the judge and submitted it. I would encounter this two years later when I had risen to the position of mooting coordinator for the Student Law Society and had made my moot. I would see mooters who were now in those shoes submit similar skeleton arguments. I could only look at these arguments and smile with nostalgia.

With my skeleton argument duly submitted, I went to the moot nervous but ultimately confident. Unfortunately, the respondent had pulled out of the moot at the last minute leaving me de-facto the winner. I was disappointed as I had hoped to develop skills and gain the experience of learning how to advocate. I made my submission before the judge regardless and received mostly positive feedback. The only real negatives were the standard etiquette deductions one receives when he is uninitiated with mooting (saying R rather than crown, addressing the judge as your honour rather than my lord, and making excessive movement during my submission, which UK moot courts in particular are not fond of).

I continued to the next round which would take place on 23 January. I was once again acting as an appellant in a breach of contract case. A series of unfortunate circumstances would follow. Firstly, I had never encountered Contract Law, not even at A-Level. For the first time at university, I was outside of my comfort zone academically. Secondly, even if I did know, contract law (corporate law in general) is a particular weak spot of mine and the concepts were confusing and hard to follow, especially compared to Criminal Law. Thirdly, due to concerns about the reemergence of COVID-19, the moot was moved to Zoom, a software I was unfamiliar with. This would throw me off on the day. On the day, I was unprepared and out of my depth, leading to the final unfortunate circumstance, the respondent was a future bar scholarship winner and my predecessor as mooting coordinator. One can imagine what followed. The systematic destruction of my argument and my swift exit from the competition. I came away from the experience with a sour taste but that was only natural given the severity of my defeat. In hindsight, I have to concur with the statement

of a fellow undergraduate: ‘Now that I know what it is like, I can do it better. I left feeling empowered by the experience for the next time.’[16]

4. A Surprise Induction into the World of International Mooting

I would not participate in another moot until January of the following year. I remember the circumstances. I was halfway through my 24-hour exam on Equity and Trusts and I received an email which stated that I had been mentioned in a discussion regarding students who could represent the University in mooting

competitions. This was surprising to me as, although I had distinguished myself academically during the semester, I had not been involved with mooting since the previous year. Although I was slightly apprehensive given my less-than-desirable performance the last time, I accepted. Firstly, because when one is asked directly to represent the school, you take it. It is rare to get such opportunities to stand out from your peers and ultimately employability was at the heart of my decision. Secondly, things have changed since the last moot. I was a significantly better prepared, educated, and disciplined law student and was confident I could achieve a good result.

The following day I sat down to have a Microsoft Teams meeting with the relevant lecturer who made the offer. I was then informed that I could participate in the Jessup Moot. ‘Jessup is the world’s largest moot court competition, with teams from roughly 700 law schools in 100 countries and jurisdictions across the world participating annually.’[17] In its own words, ‘[the] Competition is a simulation of a fictional dispute between countries before the International Court of Justice.’ [18] This would be a monumental step up from my previous experience. Indeed, I would have been hard-pressed to have found a more difficult moot to join. Nevertheless, for the reasons outlined above, I accepted and began my first journey into International Law of which, at the time, I had no experience.

[16] Lynch (n1) 90.
[17] Frans Viljoen and others, ‘Christof and Mooting’ (2022) 95 <https://www.pulp.up.ac.za/edocman/edited_collections/a_life_interrupted/Mooting.pdf> accessed 12 February 2024.
[18] ‘Jessup 2024 International Law Students Association’ <https://www.ilsa.org/jessup-2024/> accessed 11 February 2024.

The following weeks of research were among the hardest I had ever undertaken. I was unaware even how to begin looking at International Law. Moreover, far from the usual two or three pages of case facts I was accustomed to, the facts of the case themselves represented the equivalent reading of a journal article. It was incredibly overwhelming. Yet that feeling of excitement, fascination, and genuine understanding of the workings of the law in context as opposed to reading out of a textbook in preparation for a seminar or assignment made it the highlight of my time as a student and reinvigorated my passion for learning the law, which had been waning in the previous months. The case in question concerned various key concepts of
International Law, chiefly jus ad bellum and jus in bello (put in very simple terms, the

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law regulating war and the law regulating the conduct within a war respectively). With the case being so detailed, it was refreshing and deeply interesting to look at the law from numerous angles (in the Jessup, participant teams are required to take on the role of both applicant and respondent). This dual perspective also gave me an amazing comprehension of the law in this area, far more than I most likely would have obtained otherwise at this early stage in my legal development.

Ultimately, I went to London to do the competition confident and eager in my ability to present my arguments. Confident as I was, however, I could not have anticipated what revelations about my abilities and my plans for my future career the next three days would bring. On arrival at the competition hosted at Lincoln’s Inn, I had not truly grasped the scale of what I was involved in and believed that it would be what I was accustomed to: a single judge and some light judicial intervention. I was mistaken. Jessup is judged by a panel of judges, comprising leading practitioners and academics throughout the world. Indeed, I remember the lead judge for my final moot being an official with the UN headquarters in Geneva. Any conception I thought I had of my knowledge of the law quickly evaporated under what I consider to be the most intense judicial intervention I have ever participated in. In particular, I remember in my third moot during the competition, I had one strain of questioning last for almost half of my allotted time. The questioning itself was about what standing the Applicant had to appear before the court. Although undoubtedly one of the hardest parts of my degree to date, I was able to conduct myself well and answer the questions correctly, appropriately, and succinctly. For those questions I could not answer, I was able to

spin on the facts of the case. A memorable excerpt for myself was when I was asked to explain a particular point of facts that completely contradicted a point of law I had made as mere rhetoric on the part of the individual in question and not representative of the actual position of the respondent. Ultimately, after two hard-fought days of competition, we were unable to progress to the quarterfinals. This I am not ashamed of. However, as even without me having taken this on incredibly short notice (one month as opposed to the customary six), the Jessup is immensely competitive and to even get up and advocate within it is an enormous privilege and achievement. I stand by what I said at the time: this was the most intellectually stimulating period of my life and I hope to one day compete in it again.

5. A Defence of Mooting

In the year since the Jessup, I have had other mooting experiences. Notably, I am a participant in the Oriel Mooting Competition and at the time of writing, I am due to appear in its semi-finals. I have also become the mooting coordinator for the Student Law Society. My experiences in that could comprise an article in itself but as most of these developments are still ongoing, I shall not elaborate on them further. I shall now turn back to the viewpoint that mooting should be toned down to a more realistic demonstration of practice. Bobette Wolski argued that mock appellate courts should be dropped because 'other advocacy situations such as civil applications, pleas in mitigation of penalty and so on … would have precisely the same practical advantages as those claimed for the appellate moot.'[19] The crux of Wolski's argument is that mooting focuses far too little on the ethical development of law students and that, with the rapid emergence of legal clinics in universities, mooting has lost its relevancy as '[to] the extent that clinical education "enables students to integrate skills and theory with practice and emphasises structured student experience and thoughtful feedback on that experience, it may be the most effective methodology for teaching these goals.'[20] Respectfully, this argument is not persuasive. Just because legal clinics emphasise practical measures alongside ethics does not mean that there is no practical benefit in mooting. While legal clinics do teach practical skills such as client management, mooting is essential practice for aspiring advocates and with the emergence of solicitor advocates, surely it is more important than ever to make good

[19] Wolski (n13) 45.
[20] Wolski (n13) 50.

advocates out of all law students, not only those who wish to take their degree to the Bar. Mooting also is such an important practice because it allows law students to gain a true understanding of the law. 'Having to learn the material in order to be able to present it orally made me really think about the law and legal principles. It was only then that I started to understand it.'[20] While it is true that there are few ethical considerations directly within mooting the understanding one obtains of the law can allow students to think more deeply about the law and gain an understanding of whether the "good law" is something they agree with or even ethical. Mooting should be a supplementary force to legal advice

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clinics rather than stripped out because it does not consider ethical implications, a purpose that it was never intended to serve and, by Wolski's admission, is served in other areas of practical development.

6. Conclusion

Mooting is and will continue to be the highlight of my law degree. It is intellectually stimulating and demanding. It is character-building, even at the smallest level, and trains law students to become effective advocates for the future, or at the very least more comfortable and confident in their future careers, irrespective of whether that be in the law. To disregard it as an unrealistic method of preparing lawyers for the future is ill-informed as to the true purpose of mooting. Were such an approach ever to gain traction in the mainstream of the common law legal education system, it would harm the generations of lawyers to come. Therefore, it is hoped that, through my own experiences, benefits of mooting have been demonstrated, whether time will prove this right remains to be seen.

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