

## Moot Court Exercise Outline

There are a number of ways that a moot court for undergraduates or graduate students can be effectively conducted without the trappings of a formal legal proceeding. The moot trial is not intended to teach the students court procedure, but is rather an introduction to the civil court system and an overview of what is necessary to present meaningful evidence in a court of law.

The instructor should pick a case that was closely contested by both sides and was subjected to appeal after the original trial court. The instructor should feel free to change the names, location, and some of the facts of the cases he chooses to use. The facts of the cases and what was discovered during the deposition and interrogatory phase can be created by the instructor.

The instructor has the option of being the witness (all witnesses) or instructing members of the class, not part of the court proceedings, to act as an expert, material, or character witness.

Depending on the number of students in the class and the desire to have every student participate in some aspect of the actual court proceedings, it may take a number of class periods to conduct moot trials. Each case will require 13 to 23 students.

A student-conducted moot court can enhance the understanding and application of legal principles, court procedures, and the practical aspects of legal liability.

The students should be graded on:

- A. their professionalism (demeanor, court dress, and court courtesy),
- B. their preparation, legal research, fact finding, and presentation (opening and closing remarks), and
- C. their reasoning skills.

Their grade should not be determined by whether or not their team won or lost the case.

Grading can be done by any of the following methods or a combination of methods:

- A. the instructor,
- B. a panel of outside legal experts, or
- C. peers (fellow students grading on a forced balanced scale system).

The judge controls the conduct of the trial. This includes response to objections and motions, instructions to the jury, accept or reject challenged testimony, and determining if he accepts the decision of the jury and stating reason for making a judgment notwithstanding the decision of the jury. (the instructors may need more "hands-on" time with the judge when dealing with the judge, particularly a judgment notwithstanding decision. The final judgment should be in writing and state the reasons for the decision.

1. Organize the classroom in a typical manner with specific locations for the judge (1), jury (6-12), defense attorneys (3-5), plaintiff attorneys (3-5), court clerk/recorder (1), and audience. If possible the placement should replicate a typical court.

2. The instructor should utilize the facts from a real court case with names, times, and location changed. Some flexibility and creativity is usually necessary to enhance the student experience.
3. The defense and plaintiff attorney teams should separately send the opposing attorneys, judge and instructor a simple document listing their witnesses in the order they plan to call them in court, the exhibits that they may want to use, and what they plan to prove in the court. (findings of fact).
4. The jury should be seated and given instructions by the judge to not discuss the case except during deliberations and what testimony should be ignored (hearsay and undocumented theory, hypothetical evidence, etc.)

The instructor should feel free to periodically stop the moot court to teach a principle or correct the proceedings.

After the trial, the attorneys should submit the reasons for asking for a review by a higher court (appeal) to the judge if warranted.

The judge should write his or her decision and the reasons why he or she made the decision and submit them to the instructor. After the trial the judge should present his decision to the class as a whole. The class should be given an opportunity to ask the judge and attorneys questions related to the trial after the final decision is made.

After the trial has been conducted the instructor should have the patience to wait for the jury decision, and the judgment of the court. It may take a day or more. The moot court exercise accelerates learning and can be the highlight of the semester.

## Sample Moot Court Assignment

Each group has been given a hypothetical case. Your graded assignment will be submitted in written form (items I-IV). Your oral moot court presentation information is listed in the table below. You will need to determine the cause(s) of action for each lawsuit and make your case as a representative for your side (defendant or plaintiff- designated below).

Group information is provided as follows:

Group	Side Represented	Case	Presentation Date	Party Represented for Presentation
1	Plaintiff			
2	Defendant			
3	Plaintiff			
4	Defendant			

Organize your project paper and presentation to address the following topics:

### I. Opening and Closing Arguments

Write your opening and closing arguments including your cause of action (plaintiff) or primary defenses (defendant). Incorporate elements of the cause of action (e.g., Negligence: duty, breach, causation and injury), or defenses (e.g., comparative fault, assumption of risk...).

### II. Witnesses

Provide a list of witnesses that you would wish to use in support of your case, and to better determine the facts of the case. Additionally, provide a list of questions that you would ask them. Justify your reason for asking each question. Additionally, relate these questions to the cases you have discovered and the supporting material you have found. You must include at least four expert witnesses, in addition to those you select who are a part of the organization being sued (e.g., management, security, etc.). Although, you are required to submit typed questions and justifications for these questions for all witnesses for the written portion that you will submit, you may choose which witnesses to examine at the moot court trial. Sample format for written witness questions is as follows:

1. Name the Witness and provide a brief description of this person and your reason for questioning them.
2. Provide a list of questions that you will ask them.
3. Provide answers to the questions that you plan to ask the witnesses in the oral presentation. These will be presented to the instructor at least two days prior to the presentation.
4. Beneath each question, provide your justification for the question (e.g., This question goes to the issue of duty of care. We know that the standard of care in a case such as this is determined, in part, by the guidelines set forth by the consumer products safety commission which state... We want to know whether this witness is familiar with these guidelines... If so, we want to know if the opinion of this expert witness on guideline 3.211. ...

### III. Case Precedent

Provide at least four cases which either support your position in the case, or help shed light on your position. The cases may either be directly related to the case as a whole, or a critical issue or component of your case. Summarize the key facts, and apply the facts to the law as presented in the case. Additionally, provide a synopsis of the relevance of your scenario to the chosen case.

### IV. Supporting Documents

Provide information in support of your case from the real world. Sources might include: 1) agency policies and procedures, 2) industry/community practice, 3) professional association position statements, 4) federal regulatory standards, 5) state laws, 6) municipal rules and regulations, 7) expert opinion, and/or 8) other sources of documentation or evidence to support your case. This is a critical component for your project. This will be due the day of your moot presentation and should be included in your case. (Note: Include a copy of your source in addition to a typed summary of your findings).

### V. Moot Presentation

You will be graded on the quality and creativity of your arguments and questions and reasoning. The issue of importance is process. Do not base your argument on a state law or procedural matter that might ultimately determine the outcome of the case. Everyone in the group must participate equally. The instructor will play the part of the witnesses unless you wish to specify otherwise.

Trial Process:

Opening Arguments (Plaintiff, Defendant)

Plaintiff Examines Witnesses- Defense Cross

Defense Examines Witnesses- Plaintiff Cross

Closing Arguments

Judgment

- For the moot presentation, groups must provide the course instructor with a list of witnesses that they plan to examine, and a list of questions they plan to ask at least two days prior to the presentation. Answers to questions may also be provided. These will be evaluated and used if not unduly biased. Judges will be graded on their evaluation of the issues raised in both cases and submit a written discussion of the rationale for their decisions.