

SCOTTISH MOOT COURT
2023
RULES OF PROCEDURES



WHAT IS A MOOT COURT?

Moot courts are a simulation of how Indian Courts actually function. Students are given a hypothetical case and will take on the role of either the advocate of the plaintiff or defendant or judge. Each side must prepare both written and verbal arguments which they will present to a bench of judges. After hearing the arguments, the panel of judges will then make a ruling based on these submissions and declare a winner.



SECTIONS

- 1) FLOW OF PROCEDURE
- 2) DECORUM OF COURT
- 3) SAMPLE DOCUMENTS

S1] FLOW OF PROCEDURE

1. Submission of memorial, vakalatnama and witness list
2. Presentation of memorial
3. Oral Round – Opening statement
4. Introduction of Statement of Facts and Issues
5. Weighing of Facts and Issues by judges
6. Preparation of witness
7. Testimony
8. Oral Round – Closing Statement
9. Deliberation by judges
10. Judgement or Verdict

1] SUBMISSION OF MEMORIAL, VAKALATNAMA AND WITNESS LIST:

A memorial is a document consisting of everything both parties agree upon. For example, definitions, known facts, proved guilt, etc. It can also be looked at as a timeline of facts that both sides agree upon. It is jointly prepared by both sides before the commencement of court proceedings. Anything mentioned in the memorial cannot be later challenged in court as both parties have already agreed to it. Due to this reason, memorials generally contain mild language and neutral points. It simply serves as a base for further debate. Please keep memorials limited to 1 or 2 pages.



Witness lists have to be submitted by both sides separately. It contains the number and names of witnesses the advocates intend on calling to the stand.

Vakalatnama is a legal document in India that authorises an advocate to represent a client in a court of law or other legal proceedings. It is a mandatory requirement for any advocate to appear on behalf of a client in court. The participants may copy the sample vakalatnama given at the end of this document and adjust it to fit the case.

The memorial, witness lists and vakalatnama have to be submitted to the Chair two days before the commencement of court proceedings. Once the witness lists have been ratified by the Chair, they will be revealed to the other side, as well as the judges. This is because the opposing side and the judges need time to research the witnesses, so that they can ask relevant questions during the Witness Examination.

2] PRESENTATION OF MEMORIAL:

This is how the court proceedings begin. The memorial, after being ratified by the Chair, will be presented to the entire court, so that even the judges know what both sides have agreed on.



3] ORAL ROUND (OPENING STATEMENTS) :

Opening statements in moot court, also known as oral arguments or introductory speeches, serve as a critical component of the proceedings. They allow advocates to set the stage for the case, provide a clear understanding of the situation, and outline their stand or position on the legal issues in question. It serves to engage judges, clarify the case's essence, and establish the advocate's stance, setting the tone for subsequent arguments and emphasising key legal points. Opening statement is an opportunity to make a strong first impression and to frame the case in a way that benefits the respective sides.

Each side of advocates will get a total of 15 minutes to speak. They are free to divide the time amongst themselves how they see fit. However, each advocate must speak at least once and no one advocate can speak for more than 5 minutes. After one side finishes its speech, 5 minutes will be allotted for questions by the judges and the opposing side. The advocates of the plaintiff will speak first, followed by those of the defendant.



4] INTRODUCTION OF STATEMENT OF FACTS AND ISSUES:

The Statement of Facts and Issues is used to introduce evidence that will back up your sides' argument. It is like an Evidence Packet.

Evidence packet is the document that contains all your evidence. It needs to be titled and formatted correctly as it will be scrutinised by the judges. It may be read out in court. The number of clauses allowed is limited to 5.

Each clause of evidence must contain the following:

- Title given to that piece of evidence
- The evidence in the form of a paragraph
- The hyperlink to the article or website from which the paragraph was sourced
- The author of the article, if any
- The date the article was published
- The articles of the Constitution, laws, rules, regulations or precedents set by the courts in previous rulings that are being violated
- The hyperlink to the particular article, law or ruling.

A list of trusted news sites or websites are:

- Any website of an Indian government authority or agency (ending with .gov)
- Any UN website
- Reuters
- The Times of India
- The Economic Times
- The Indian Express
- The Hindu
- The Hindustan Times
- India Today



- The Print

These are the news sites we recommend. However, if you can prove the trustworthiness of some other news site, you are free to use them.

5] WEIGHING OF FACTS AND ISSUES BY JUDGES:

Each clause of the Statement of Facts and Issues will be debated and voted upon.

The grounds for striking out a clause are irrelevance, unreliable source, vague matter, contrary to the memorial and so on. There may be other reasons but the ultimate decision lies in the hands of the judges.

The opposing side will get to speak first on why that particular clause should be struck from the Statement of Facts and Issues. They will get to speak for 1 minute.

Then, the side proposing the Statement of Facts and Issues will get to speak for 1 minute, defending that clause.

Following which, one judge, according to the discretion of the Chair, will be allowed to put forth their views for 1 minute.

Once all sides have made their case, the judges will vote on whether the clause should be struck out or not. Once a clause is struck out, its contents cannot be considered by the judges during deliberation.



6] PREPARATION OF WITNESSES:

Witnesses will be assigned to each side one day prior to the commencement of court proceedings. A maximum of 2 witnesses can be introduced by each side. The person playing the witness will be someone from outside the committee, maybe an EB member from another court. It is the responsibility of the advocates to train their witnesses for the witness examination. We recommend preparing a doc beforehand with all the necessary information for your witness. Be sure to include their background, the statement the witness will say in court and the questions you will ask the witness, during direct examination, along with the answers to the question. Make sure to prepare your witnesses well since you cannot control or predict what the other side and judges will ask your witness.

7] TESTIMONY

This is when lawyers question witnesses to support their case. The witness first presents their side of the case, which is called the witness statement, and then questions are raised.

When lawyers question their own witnesses, it's called 'direct examination,' and they aim to gather helpful information. It is a way of presenting your side of the case through someone else.

When they question the other side's witnesses, it's known as 'cross-examination,' and the goal is to show that the witness may not be trustworthy or that their story doesn't add up.

When judges ask questions to the court's witness, it's referred to as 'judge's evaluation.' It's a crucial moment to prove points or challenge the other side's arguments.



FALSE EVIDENCE:

False evidence is similar to the concept of ‘perjury’ of the Western justice system. If a witness is caught intentionally or voluntarily lying or making false statements, when they have been called to the stand and are under oath, they and anything they have said in court will be invalidated and cannot be considered by the judges during deliberation. There can be two instances of perjury–

- If a witness is caught contradicting their own statements made in court, they can be immediately invalidated. The final decision is taken by the Chair.
- If a judge or an advocate can prove that the witness has made a false statement, they may submit their evidence to the Chair. The Chair, after considering the trustworthiness of the source, will decide whether or not to invalidate the witness. For example, Witness A claimed he had never worked for the government. A judge finds a record in a government website of the witness having worked as a manager in a Post Office. The judge will then send a hyperlink of the particular page in the government website to the Chair and the Chair will decide whether to invalidate the witness or not.

OBJECTIONS:

During cross examination, advocates may raise objections to shield their witnesses from a misleading, irrelevant or forceful line of questioning.

The objections are:

- Hearsay – This objection can be raised when the advocate has asked something based on facts from an unreliable source. It may also be raised when the advocate asks an out-of-court personal question.
- Leading Question – This refers to questions with question tags. An advocate is not allowed to question the witness in a manner which is suggestive in nature.
- Speculation – This objection may be raised when a future event is being anticipated.
- Irrelevance – Questions which may elicit an answer but do not pertain to the case being discussed may be objected against
- Badgering – If the advocate not questioning the witness feels that the manner in which the other advocate is questioning the witness is intimidating or may affect the witness' response, this objection may be raised.
- Competence – If the advocates not questioning feel that the witness is making a statement, he/she is not qualified to make, this objection may be raised.

An objection may be sustained or overruled by the Chair. If sustained, the advocate must immediately stop that line of questioning and the witness has no obligation to answer that question. If overruled, the advocate may continue with the question and the witness must answer it. Objections cannot be raised by advocates during judges' evaluation. So, the responsibility falls on the Chair to ensure that judges do not take advantage of this immunity.



8] ORAL ROUND (CLOSING STATEMENT):

The closing statement is the last part of a moot court presentation. It's when the advocates sum up their main arguments, remind the judges of their position, and try to persuade them one last time. Instead of repeating everything, they highlight the most important points and evidence. During this part, advocates use strong and convincing language to make their case stick in the judges' minds. They might also address any doubts or opposing arguments that came up earlier. The closing statement is a powerful way to leave a strong impression and make the judges remember why your side should win. It's like the grand finale of the competition and can make a big difference in the judges' decision. The same procedure as Opening Statements will be followed here.

Each side of advocates will get a total of 15 minute to speak. They are free to divide the time amongst themselves how they see fit. However, each advocate must speak at least once and no one advocate can speak for more than 5 minutes. After one side finishes its speech, 5 minutes will be allotted for questions by the judges and the opposing side. The advocates of the plaintiff will speak first, followed by those of the defendant.



9) DELIBERATION BY JUDGES:

After all presentations, arguments, and witness testimonies in a moot court competition, the judges convene for a crucial phase known as "deliberation." During this time, the judges carefully review and discuss the performance of both competing teams (plaintiff and defendant). They assess the strengths and weaknesses of each side's arguments, the quality of evidence presented, and the overall persuasiveness of the presentations. This phase often involves a thoughtful and detailed conversation/argument among the judges, where they consider various aspects of the competition. They may weigh factors such as legal proficiency, the ability to apply relevant laws and precedents, effective communication skills, and the coherence of the arguments presented.

During deliberation, each judge will get 2 minutes to speak on which side they think should win and why. After this, a vote will be taken and the winner of the case will be decided. Following which, the judges will enter into an unmoderated discussion to finalise the text of the verdict.

10) JUDGEMENT OR VERDICT:

After deliberation, the judges will read out their verdict. The verdict must not only include which side won, but also the reasoning behind the verdict. It should include the court's instruction to the various parties involved, in order to remedy the situation. It should include the punishment given to a party, if any, in the form of imprisonment or fine. This must be according to the Constitution of India and the Bharatiya Nyay Sanhita.



S2] DECORUM OF COURT

Violation of Decorum of Court in India refers to actions or behaviour that undermine or obstruct the authority, dignity, or proceedings of the court. It can include actions such as disobeying court orders, interfering with the administration of justice, or making derogatory statements about the judiciary that scandalise or lower its authority.

1] THE BREACH OF COURT DECORUM ENCOMPASSES THE FOLLOWING ELEMENTS:

- 1) Disobeying Court Orders- Failure to obey court orders, instructions, or directives from the judge can be considered a violation of decorum.
- 2) Contemptuous Language or Conduct- Using disrespectful, offensive, or insulting language or gestures toward the judge, opposing counsel, witnesses, or other participants in the courtroom.
- 3) Interrupting or Talking Out of Turn- Speaking without permission or interrupting when it is not one's turn to speak during proceedings.
- 4) Failure to Maintain Orderly Entry and Exit- Disorderly entry into or exit from the courtroom can disrupt proceedings and are seen as a violation of decorum.
- 5) Failure to Show Respect- Not showing due respect to the judge, court officials, or other participants in the courtroom can be a violation of decorum.



6) Improper Conduct Toward Witnesses- Treating witnesses in a disrespectful, intimidating, or harassing manner can violate decorum and hinder the pursuit of justice.

7) Use of electronic devices- Participants are permitted to use laptops and cell phones during the proceedings. However, it is essential to ensure that electronic devices are adequately charged. Wifi will not be provided. Participants are reminded that the use of electronic devices during court proceedings is subject to the condition that such usage must not disrupt or show disrespect to the judicial process. Any violation of court decorum resulting from the improper use of electronic devices may be considered a breach of protocol and may be addressed accordingly.

2] THE PENALTIES FOR THE AFOREMENTIONED BREACH OF COURT DECORUM ARE AS FOLLOWS:

In the event that a breach of court decorum has been duly acknowledged by the presiding chairperson of the court, the following measures shall be instituted:

1) Upon the first warning, the offender shall be temporarily suspended from court proceedings for a duration of five minutes.

2) Upon the second warning, the individual shall face a suspension lasting ten minutes or more, at the discretion of the chairman.

3) A third warning shall lead to the exclusion of the offending party from eligibility for awards or recognitions.

4) A fourth and final warning shall result in a complete ban from further participation in court proceedings.



3] OFFICIAL LANGUAGES

The official languages of the Scottish Moot Court are English and Hindi. All rounds on the final day shall be conducted in both English and Hindi. However, it is important to note that all documents must be in English.



S3] SAMPLE DOCUMENTS

Note: For all sample documents, the case considered is the Supreme Court Case that determined the question of whether those of the LGBTQ community should be given marriage rights. This case is also referred to as the Supriyov. Union of India

1] SAMPLE MEMORIAL :

The Supreme Court of India

Case: Supriyo v. Union of India

Authors: Advocates' names

Co-authors: Advocates' names

(Note: The preferred number of authors and co-authors is 2 each)

- The Delhi High Court decision in Naz Foundation v. Govt. of NCT of Delhi of 2009 found Section 377 and other legal prohibitions against private, adult, consensual, and non-commercial same-sex conduct to be in direct violation of fundamental rights provided by the Indian Constitution.
- On 11 December 2013, the Supreme Court set aside the 2009 Delhi High Court order decriminalising consensual homosexual activity within its jurisdiction.

- In August 2017, the Supreme Court unanimously ruled that the right to individual privacy is an intrinsic and fundamental right under the Indian Constitution. The Court also ruled that a person's sexual orientation is a privacy issue.
- On 6 September 2018, the Supreme Court issued its verdict. The Court unanimously ruled that Section 377 is unconstitutional as it infringed on the fundamental rights of autonomy, intimacy, and identity, thus legalising homosexuality in India. The Court explicitly overturned its 2013 judgement.
- In January 2019, the Calcutta High Court ruled that consensual cohabitation between two adults of the same sex is not illegal.
- In a judgement passed on 12 June 2020, Justice Sharad Kumar Sharma of the Uttarakhand High Court observed: “...even if the parties, who are living together though they are belonging to the same gender; they are not competent to enter into a wedlock, but still they have got a right to live together even outside the wedlock”.

2] SAMPLE EVIDENCE PACKET

The Supreme Court of India

Case: Supriyo v. Union of India

Clauses:

1) Title: Illegality of homosexuality in the Indian Army

Case: Addressing the army's annual press conference, Rawat said that while the Army Act, which governs the force, was not above the law of the land, the Indian Army was not "westernised and modernised", and was "conservative" when it came to matters like adultery or homosexuality. He declared that gay sex offenders would be dealt with under relevant sections of the Army Act.

Link: <https://theprint.in/theprint-essential/heres-how-homosexuals-in-indian-military-can-be-punished/176500/>

Author: Amrita Nayak Dutta

Date: 11th January, 2019

Violates: Article 15(1) of the Indian Constitution



Case: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Link: <https://www.mea.gov.in/Images/pdf1/Part3.pdf>

Observations: The sample evidence packet above is not a perfect piece of evidence. The goal was to acquaint you with the format. There are many ways through which you can attack and discredit this piece of evidence. One argument to run could be that soldiers of the Armed Forces have always been denied certain rights, considering the unique role they play in defending the country. Eg. soldiers are not allowed to form unions.



3] SAMPLE VAKALATNAMA

IN THE SUPREME COURT OF INDIA

Supriyo Plaintiff(s) or Petitioner(s)

Government of NCT of Delhi.....Defendant (s)/ Respondent(s) / Accused

Know all to whom

these Present shall come that I/we is/are seeking marriage rights for people of the LGBTQ community

(hereinafter called the advocate/s) to be my / our Advocate in the above – noted case authorise him:-

To act, appear and plead in the above-noted case in this court or in any other court in which the same may be tried or heard.

To sign file, verify and present pleadings, appeals cross-objection or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary

To file and take back documents, to admit and/or deny the documents of the opposite party.

To withdraw or compromise the said case or submit to arbitration any differences of disputes that may arise touching or in any manner relating to the said case.



To do all acts and things which may be necessary to be done for the progress and in the course of the prosecution on the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/we undersigned to hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/we undertake that I/We or my/our duly authorised agent would appear in court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the court shall be of the Advocate which he shall receive and retain for himself.

IN WITNESS WHERE OF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this Day of _____

Advocate(s)-

