

1-1-1997

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Recommended Citation

Lynch, Andrew (1997) "Book Review: Mooting manual," *Legal Education Review*: Vol. 8 : Iss. 2 , Article 6.
Available at: <https://epublications.bond.edu.au/ler/vol8/iss2/6>

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BOOK REVIEW

MOOTING MANUAL

ANDREW LYNCH*

Terry Gygar and Anthony Cassimatis, *Mooting Manual*, Sydney, NSW, Butterworths, 1997, pages i-xiii, 1-166. Price \$32 (softcover) ISBN 0409308269.

The perception often exists that mooting is a rather specialist component of a student's legal education, given that few students will be engaged in much advocacy work after graduation. Such views seem to ignore the many benefits which students derive from the exercise¹ — even when they are determined not to enter into legal practice at the conclusion of their degree, let alone go to the Bar. As a learning task, mooting contains elements of various educational models which aim to improve the quality of student cognition. Specifically, the construction of knowledge through reflection upon its experiential application may be drawn out by appropriately designed mooting assessment. Through their heavy emphasis on process and method over outcome, moots also encourage students to refine their problem-solving skills.²

Bentley says, “the skills identified as essential to good lawyering are not exclusive to the legal profession. The skills are often defined in different terms in other disciplines, but the content is essentially similar.”³ Even more than other “legal skills” such as client interviewing and drafting, the great appeal of mooting is that it fosters generic skills, while also engaging the students in a discipline-specific context. The ability to work in a team and communicate effectively, both within that team and also with out-

side parties are things which all graduates should be able to do well. In addition, legal research, case preparation and the art of oral advocacy are essential skills for legal practitioners and students are able to develop all three through the experience of mooting.

Terry Gygar and Anthony Cassimatis extoll the virtues of mooting briefly in the first chapter of the latest offering in the Butterworths Skills Series, *Mooting Manual*. And quite rightly so — the value of mooting and their belief in its importance in a student's legal education is made clear by the proceeding chapters of this extremely worthy book. Apart from giving the reader a little historical information and explaining why mooting is still featured in law curricula, Gygar and Cassimatis get straight down to the business of answering the “How To...?” questions of both teachers and students. The book is not an academic discourse on the historical development or value of mooting, but rather a very practical source of information for those involved with moots today.

Whether moots are part of a substantive subject or a separate advocacy unit in their own right — and Gygar and Cassimatis describe both alternatives in detail by reference to their respective institutions⁴ — it is vital that the exercise be thoroughly organised. Students are under enough pressure without continually needing to seek clarity in their instructions so as to establish exactly what is required of them. The *Mooting Manual* includes a chapter on moot organisation, much of which may appear to state the obvious to those who have co-ordinated a moot programme, and learnt through experience of the degree of organisational detail which is required, but it will doubtless prove very helpful to those who are undertaking such a task for the first time or are perhaps just considering mooting as an assessable task in their subjects. However, the part of this chapter dealing with feedback, although fairly concise, is very well written and highlights a commonly neglected element of mooting, but certainly the most important if students are to develop their skills. This is enhanced by two excellent marking guides reprinted in the Appendix section. This is vital reading for anyone judging a moot — even if not otherwise involved in the particular moot programme.

More valuable is the book's presentation of alternative ways of approaching both setting the moot problems and written requirements for the students. Setting moot problems is an

extremely difficult task. The authors suggest two options — write a factual scenario or have the students appeal the result of an actual case. There are various pitfalls with the latter method — notably that there should be more than one arguable issue on each side — and the authors conclude:

Inventing your own case and writing the judgment against which the appeal is to be run is really the only satisfactory way to achieve this balance. This approach has the additional advantage of allowing you to select a simple area of law which you either have covered or intend to cover in the particular substantive subject in which the moot is being done. In this way the moot reinforces and complements the general course objectives. It also has the advantage of allowing you to select and limit the cases around which the research is to be conducted. This is a lot of hard work initially, but soon you will build up a bank of problems which can be “recycled for successive classes.”⁵

As well as making the reader aware of the advantages and disadvantages of each particular method, the *Mooting Manual* provides examples which serve to demonstrate the authors’ claim that creating such problems is “a lot of hard work.” In addition, the book lists some actual cases which are viewed as appealable for mooting purposes.

The chapter on written summaries and case files is similarly peppered with examples and this section of the book will prove especially helpful as it makes clear exactly what is required of students without needing to create a pro forma specially. Many moot co-ordinators may have already done this as part of an “in house” moot guide used by their faculty, but such documents can suffer from aberrations and are not always reasonably consistent across institutions.⁶ One of many reasons why this publication is welcome is that it may help bring about a greater degree of uniformity in mooting in Australian law schools. This is desirable for two reasons. Firstly it provides a base platform upon which to develop improvements to mooting practice, and secondly it facilitates intervarsity mooting competitions.

The chapter explains the distinction between summaries of argument and written submissions and provides various styles of presenting these which students may be directed to use. Additionally, students are advised of the need for an organised case file:

A case file (sometimes also called the trial notebook) is, after the summary of argument, the second most important weapon in the counsel’s armoury. It would be self delusion for any mooter or counsel

to think that they could make a professional appearance without both of these documents prepared and on the bar table when they rise to address a court.⁷

The advice which the book gives in regard to case files is designed to ensure that students are thoroughly prepared and are not scrambling among loose notes for information requested by the Bench. The detail in which this advice is provided may seem pedantic or unnecessary but we often forget how much guidance (especially in relation to moots) students crave and lawyers, beginning a career in trial advocacy, desperately need. The coverage given to case files is an example of how matters which are often overlooked in the instructions we give to our mooting students have been included in this publication which aims to provide comprehensive coverage of the practice.

The sixth and longest chapter in the Mooting Manual, “Presentation of Argument”, will prove most useful to students. It covers not just the court etiquette expected, but also the structure and presentation of oral arguments. Additionally, familiar mistakes in making oral submissions are identified and students are advised on how to respond to interjections from the Bench. This chapter, more than any other, is written in a rather conversational style which should make it easier for students to absorb (the book reminds you just *how much* there is to know about mooting). For example:

Common errors in responding to judges include:

...“Yes, I will get to that point in a minute if Your Honour doesn’t mind.” (Her Honour does mind! She wants to talk about that point now, so anything you say before you get to it will be a total waste of time and only antagonise the bench.)⁸

This chapter is enhanced by frequent use of transcripts created to demonstrate ways of handling the various parts of a submission and questions:

Example 1: Addressing judicial doubts

J: No, Miss Green, I’m not convinced at all that under these circumstances she was an employee of the defendant.

C: If it pleases Your Honour, is it the way Miss Jones was paid by the defendant that leads you to this conclusion, or are you unconvinced that there was a sufficient degree of control over the way in which she was required to discharge her duties?

J: I think it is the fact that she supplied her own computer to do the work and she had far too much latitude in the way she could decide to keep the accounts — none of the managers could use the equipment and they were only interested in the finished accounts.

C: Thank you Your Honour. On that point, might I draw your attention to...⁹

Obviously this kind of interchange is easier to watch than to read, but due to some fairly clever editing, and restraint in using the device, these transcript excerpts improve the “user-friendliness” of the book and provide exactly the kind of practical assistance which students will be looking for.

The authors’ gamble seems to be their coupling of material which may only interest teachers with material clearly designed for student readers. In its effort to please everybody, does the *Mooting Manual* really satisfy anyone? Whilst understanding concerns about making “behind the scenes” information available to students (it would be a sobering experience indeed to be informed by your undergraduates that your mooting programme has failed to take into account the recommendations made by Gygar and Cassimatis in Chapter X at page yz!), this reviewer thinks that the authors’ approach is probably the best one, in that they have created a comprehensive work on the practice of mooting — from both sides of the Bar table. Neither the academic nor student reader has been neglected at the expense of the other, and there is a degree of overlap in the information provided. Law teachers should read the entire book, if only to clarify what they expect from their students. Students can confidently skip a few chapters, and will doubtless do so without the need for an invitation. The layout of the book is excellent. Clearly the use of examples helps to break up the text and there is liberal use of subheadings and bullet points. There is virtually no stone left unturned and the reader would be hard pressed to identify anything which they needed to know about mooting which is not addressed in the *Mooting Manual*. There is even a chapter on mooting as part of a high school curriculum. In short, Gygar and Cassimatis have produced a thorough yet readable publication which will quickly establish itself as indispensable for all those involved in mooting in Australian law schools — be they staff or students.

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- 1 See A Lynch, "Why do we Moot? Exploring the Role of Mooting in Legal Education" (1996) 7(1) *Legal Educ Rev* 67.
- 2 *Id* at 74-81.
- 3 D Bentley, "Mooting in an Undergraduate Tax Program" (1996) 7(1) *Legal Educ Rev* 97, at 99.
- 4 Terry Gygar is a lecturer at Bond University, while Anthony Cassimatis lectures at the University of Queensland.
- 5 T Gygar, & A Cassimatis, *Mooting Manual* (Sydney: Butterworths, 1997) 10.
- 6 This is often painfully apparent during intervarsity mooting competitions.
- 7 Gygar, & Cassimatis, *supra* note 6, at 69-70.
- 8 *Id* at 97.
- 9 *Id* at 102.