

Free Resource: Reading & Understanding the Moot Problem

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You have chosen your moot – the destination and also your team – the co-travellers in this beautiful journey called mooting. You also have the **moot problem** which is your itinerary so to speak. It will and should be your go-to document in this journey. You and the team are all set to begin this journey. Therefore, this module will acquaint you with the first steps that you will take in this journey.

In a competitive sense, you have to make the best case for your client. However, moots being an instructive activity, require you to do a little more. A moot problem usually deals with new issues, unsettled issues or issues involving conflicting understandings in law. Therefore, your preparation requires you to take a step back and develop arguments which not only **aid the client** but also ensure that the **jurisprudence** surrounding the issues is enriched.

In such a set-up, it is almost useless if one believes that the first argument that I think of is the best. There are at least a dozen other teams working on any moot. If you have to do better than them, the least that your arguments require is **nuance** and a well-thought out approach. The best arguments inevitably are those which take into account all these factors. Therefore, we must structure our preparation accordingly.

Here is how this module is structured: in the *Second* part, we will discuss how to begin the preparation with background research. In the *Third*, we will understand how you must approach reading a moot problem for the first time and each time during the course of

the preparation. And finally, in the *Fourth* part, after having got a grip on the problem, we will begin understanding how to start our research on the issues involved in the problem.

Beginning the Preparation – Background Research

Why Background Research?

Importance of Background Research: Often, we start the moot by reading the moot problem and want to immediately find answers. However, this is not always advisable. In most moots, we have not studied the area of law which is going to be part of the moot problem. Or, even if we have, preparation for a moot requires a different perspective of the subject or sometimes understanding of an altogether different aspect of the subject which may not have been taught in law schools. Therefore, it is necessary to **acquaint ourselves with the basics of the area of law**.

To take a small example, we have often been taught Article 226 of the Constitution of India confers the High Court with wide jurisdiction, even larger than that of the Supreme Court under Article 32 of the Constitution of India. However, we may not be taught if an unregistered society can file a writ petition under Article 226 of the Constitution of India.

Having Knowledge of the Subject Matter from Before: In such situations, if we know that the problem is based on a specific subject matter, for example Constitutional Law, it is always advisable to do some background research. If you have done so, you will immediately be able to appreciate the significance of certain facts in the moot problem. Remember, it is as important to know which facts are relevant and why as it is to know which facts are irrelevant and why so. Therefore, if you know the area of law which the moot is generally going to cover, it is always advisable to do some background research.

Not Having Knowledge of the Subject Matter from Before: If the moot does not follow any fixed pattern on the subject area to be covered, start this process once you receive the problem. In that situation, go through the problem once to only understand

what area of law the problem is based on and whether there are any specific legislations that it intends to cover.

For example, a moot on arbitration law can also have an issue based on the Indian Contract Act, 1872. Similarly, in a moot on Constitutional Law, the Petitioner can challenge the constitutional validity of the Prevention of Money Laundering Act, 2002. In such situations, you must not only do background research on the basics of Constitutional Law and Arbitration Law but also, on the other specific legislations that your problem deals with.

It may seem like the background research is pointless and it may seem tempting to start working on the problem but, you *will* have to come back and do the background reading. You will have to know the ‘what’ and ‘why’ of the law before you can answer ‘how’ the law helps your client. ‘What’ and ‘why’ are essentially the questions you seek to answer during the basic reading. Having also understood the ‘why’ of background research, we will now understand what it entails.

What is Background Research?

By this time, you are already wondering what all is included in background research. What we will see is just a general guideline to approach background research and it may vary with a specific moot. As a thumb rule, anything which helps you get a better context of the problem is background research.

i. Knowing the Jurisdiction of the Forum

It is extremely important to know the forum before which you are going to argue your case i.e. Supreme Court, High Court, International Court of Justice, Arbitral Tribunal etc. Usually, each forum has different jurisdictional challenges i.e. the International Court of Justice’s jurisdiction is defined in its Statute and is extremely narrow. Or, that of the Supreme Court which is defined under the Constitution of India, and is generally considered very wide. It is also important to know why the jurisdiction is limited or

expansive so that you may know how to mould your relief or understand whether to make an extravagant claim or not.

For instance, the High Court does not have the power to do complete justice like the Supreme Court under Article 142 of the Constitution of India. In essence, there may be jurisdiction limitations based on subject matter of the claim, the parties before the forum, or temporal constraints. All of these are best understood before proceeding with the problem even if there are no jurisdictional issues. It not only helps you in moulding your relief but also your arguments. It's always a cherry on the cake if you can answer general questions which the judges may ask you about the forum in which you are arguing your case. As a result, we must possess the requisite knowledge about the forum in which we are arguing.

ii. Applicable Laws

Applicable law does not necessarily mean limiting itself to the statute or the founding document of the Court or tribunal which gives it jurisdiction. It also includes the general principles around which the particular forum will seek to function. The understanding of the context in which each dispute settlement body functions allows you to back up your substantive arguments with larger policy claims. These arguments are generally better appreciated.

To take an example, in arbitration, knowing that the Arbitration and Conciliation Act, 1996 applies is not enough if you do not know that one of the fundamental principles of arbitration law is the consent of parties or fair treatment of parties. Therefore, while you are developing legal arguments based on the language of the statute, you should also justify it on the broader principles of arbitration law.

Therefore, in understanding applicable law, one must look at the statute or the founding document, the **general principles surrounding the law**, the sources of law that are understood to be persuasive or binding in the forum, the historical context and

background on the basis of which a particular statute was enacted or a particular body was formed to adjudicate specialized disputes.

For instance, the International Criminal Court was formed under the Rome Statute in 2002 as a permanent forum for international criminal law adjudication. However, there have been several ad-hoc international criminal law tribunals in modern history from the Nuremberg Trials. So, even if your moot is based in the International Criminal Court, the history of international criminal law, the role of ad-hoc tribunals, their collective jurisprudence, their shortcomings, limitations and the development of law in these places should feature in your understanding of the International Criminal Court. After all, it is the only permanent body for adjudicating such disputes. Therefore, an understanding of all these things will add greater context and understanding of the moot problem.

iii. Miscellaneous

Research Based on GK around the Subject Matter: Apart from the specifics we mentioned above, there are other aspects as well. For instance, in a contract dispute in say the ‘wine industry’, it is sometimes important to also understand how a particular industry functions. For instance, in a dispute involving delivery of deficient software, it is crucial to know the extent of the deficiency and the consequence of that deficiency in the larger context. Here, you will have to know some basics of software technicalities. Therefore, these are situations involving background research on the larger factual setting of the problem. Therefore, these are situations involving background research on the larger factual setting of the problem.

Research Based on Applicable Rule of Evidence: Other aspects include specific norms of appreciating evidence. It is important to understand the weight given by the forum to different forms of evidence and their value. Even if the moot does not involve a trial, summary proceedings also allow you to argue on the aspects like insufficient causation (sometimes problems provide two separate facts without saying that one caused another). In such a case, you have to ascertain whether there is a cause-effect relationship or mere

one of correlation. This helps you argue that the wrongdoing did not cause the harm or that whatever material is being relied upon to show causation merely reflects a correlation) which can be argued based on the evidence in the problem. To give an example, moots refer to reports by NGOs to establish causation between the alleged wrong and the wrongdoer. However, there is a rule in evidence where unless the information which comes from a single source is corroborated by another source, it may not be completely trusted. Such arguments make for a stronger case than to just allege bias based on clumsy facts deliberately put as clickbait. Therefore, we must also have a keen eye on these aspects.

Research Based on Stage of the Dispute: Equally important is to understand the specific powers of the forum at the stage at which your dispute is viz. **pre-trial, trial stage, appellate stage, review stage, etc.** In most circumstances, this has an impact on the nature of your arguments and the legal burden on the Applicant and Respondent.

For instance, the appellate courts usually do not entertain a new piece of evidence which hasn't been produced before the court of the first instance. Hence one may need to know in what circumstances additional evidence is admissible at the appellate stage. Therefore, it is important to use these aspects to your benefit while preparing your arguments, finding appropriate authorities etc.

All in all, background research includes any research which will help you to prepare your arguments better. In doing this, it is important to recognize the fact that during the process of mooting, **nothing you will read goes in vain**. Once you have read a particular case, article or report you will assess the strength and relevance of the argument it makes. It may not help you build your argument but can help you rebut the opposing team's arguments if they choose to make that argument or sometimes a judge's question. Add to it good background research and you already have a head start in the competition.

Having acquainted ourselves with the know-how of the background research, it is important we move to the next step – getting familiar with our moot problem.

Understanding the Mystery – The Moot Problem

Even the most accomplished mooters will agree that they have never fully cracked a moot problem. That it remains a mystery even after the moot is over is the most exciting part of the process. However, each of those mooters will also agree that they have never ignored the moot problem during the process. It remained their guide – their itinerary in the journey. We will try and break down this mystery as much as we can.

What is a Moot Problem?

Before we try and understand the ways to crack a moot problem, it is important to know the anatomy of a moot problem.

At the outset, it is important to know that a moot problem is a fictional document. Therefore, a moot problem builds up an artificial dispute and because it is artificial, the author has balanced out the strengths and weaknesses of both the sides. Therefore, while reading the problem for one side, you should be conscious of finding an appropriate response from the other side.

Equally, while framing arguments always remember that **there will never be that ‘one’ argument which will win the case for one side**. There will be an appropriate response from the other side which will balance the problem. Since, that is the case, every line in the moot problem is a deliberate choice of the author. It has some relevance which you need to find out.

At the same time, also be conscious of red-herrings in the moot problem i.e. certain facts deliberately included to lead you to an incorrect argument. Therefore, it is very important to distill these facts from those which help your argument.

In the same vein, also remember to understand which facts are weak and which ones are strong. The author has either provided certain additional facts to mitigate against those weak facts or there is some legal answer to those weak facts. Either way, it is of significant

importance to ensure that you have an answer to weak facts and that you do not ignore them.

Another point which comes in with the fictional nature of the is **the importance of not assuming things which are prevalent in real life**. We should not try and find a fact in real life which is out of context in the fictional world of a moot problem. Therefore, it is best to work within the setup which is created by the moot problem.

Therefore, what all of this alludes to is the fact that the moot problem not only contains your problems but also *all* your solutions. They may take time to unravel but, they surely will. A moot problem will be the only mystery which has a self-contained solution.

Reading a Moot Problem

Reading a moot problem is perhaps the most important part of your preparation. Therefore, we will all read a moot problem together in the video lecture. However, let us also get familiar with some basics.

i. First Few Readings

It is always advisable to get a hard-copy print of the moot problem. This not only helps you during the moot rounds where soft-copies are not permitted but also to make notes and marking which can be of significant help. After doing so, it helps if you do the first reading of the moot problem on your own. This helps you develop an independent first impression of what the problem is all about. At the same time, it is important to not start thinking of arguments.

This first reading of the problem should ideally be followed by another few readings where your aim is to prepare a **list of dates** and events in the problem. This will allow you to put certain facts in perspective at a later stage but, in the beginning make you more familiar with the story line. Ideally, these first few readings and making a list of dates should enable you to summarize the problem for your friend who is not part of the moot

team and this summary should be short (5-8 sentences covering the parties to the dispute, the origin of the dispute, the claims and defences given in the problem and reliefs sought). If you can give this summary, you have had a great initial understanding of the problem.

ii. Team Readings and Discussions

No one else is going to help you through the moot as your team mates will. Be it as co-speakers, researchers or otherwise. They become an integral part of your preparation. Even if they are working on different issues, the only other people who know the problem well are them. Therefore, it is important to have periodic team reading and discussion sessions. This can begin with a discussion on the whole problem and can, depending on the need, come down to understanding a particular paragraph in a moot problem. However, the importance of having discussions with the team cannot ever be overstated.

iii. Reading the Problem

Once you have done your background research and have also got a general sense of the factual set-up, you can start reading the problem with a more focused approach. While team reading can happen periodically, **you must read the problem every day**. This can happen at any time of your choice but, you *must* read the problem every day. Equally it is important that this must be done with the assumption that every word mentioned in the problem is important. While more can be elaborated only in a video where we discuss a moot problem, here are some pointers on what to look for in a moot problem.

Advanced readings can involve the following objectives:

- Finding keywords which guide you in the right direction.
- Differentiating words with legal significance from those with merely factual implications.
- Co-relating different parts of the problem to develop an argument based on those facts which may seem unrelated.

- Questioning a particular mention of the detail and its relevance to the arguments you wish to make. This can include mention of dates, places etc. For instance, the designation of the person who drafted the contract may throw light on the manner in which it can be interpreted. Sometimes, usage of capitalized letters in an agreement can be the basis on which those words are accorded a special meaning in the agreement.

In sum and substance, you must focus on everything written in the problem and half the job is done. The rest of the half depends on the research that you carry out on the problem. Researching a moot problem is the next part of this module.

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