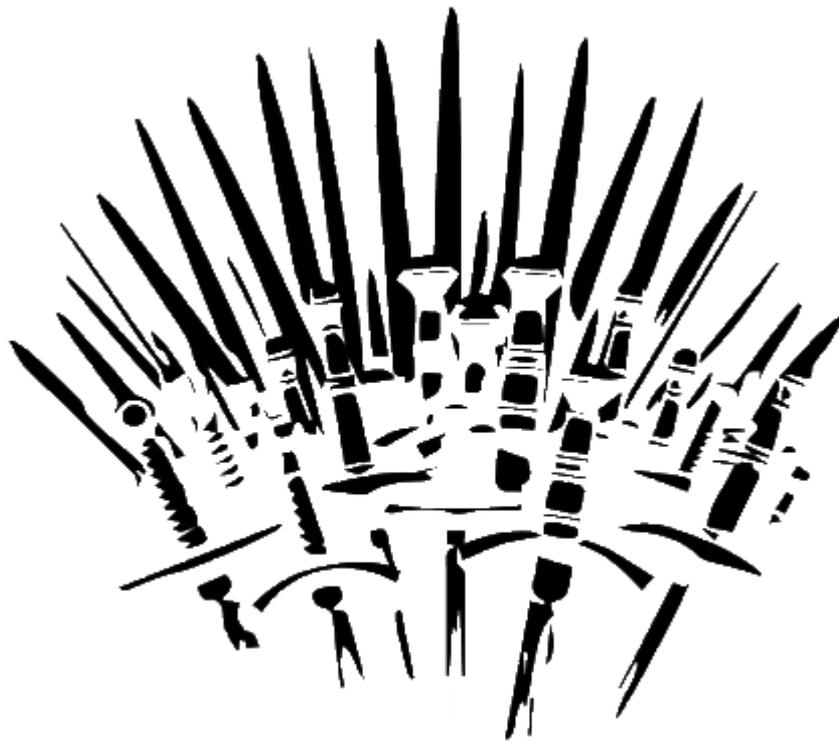


ELSA GAME OF THRONES MCC

PARTICIPANT GUIDE



GAME OF THRONES



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# 1. ABOUT MOOT COURT COMPETITIONS

## 1.1. What is a Moot Court Competition?

A Moot Court is a simulated hearing of a court proceeding about a particular area of law. It aims at bridging the gap between theory and practice by giving law students the chance to act as representatives for fictitious parties in a case in court, to negotiate a case and thus attempt the work of an attorney. Moot Court Competitions (MCC) are a great chance to improve student's legal knowledge, as well as to prepare and train them for proper and successful acting in court, the use of rhetoric, gestures, speaking without notes, increase self-confidence and intellectual flexibility. Although these skills are rarely learnt at University they are however expected from students, especially from future employers.

Participants compete in teams and must assume the representation of one of the parties involved in the case, which is usually determined by random draw. Therefore, they have to prepare both defences in advanced.

The procedure imitates that followed in real courts: so the competition is mostly composed of two Phases. A Writing Phase in which participants present written submissions and an Oral Phase, the simulation of a court hearing.

Usually Moot Court Competitions can have a simple structure consisting exclusively in an Oral Phase which simulates the court proceeding of a fictive case.

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## 1.2. Why are Moot Court Competitions important?

Moot Court Competitions were born more than a century ago English universities but due to their practical character, they quickly became popular around European universities.

Mooting is recognized as one of the best exercises to train students and future lawyers. Extending theoretical and practical background Moot Courts fortify students' education.

With a direct effect in the development of young lawyers Moot Court Competitions act as educational activities. At the same time students work on their knowledge of a specific topic they also improve their legal vocabulary, accuracy and comprehension while working in groups. In the end, Mooting helps students to develop essential skills that will be crucial during their professional life.

In addition, as a natural effect of its characteristics, the participation in a Moot Court Competition is highly valued by companies and law firms as they become the perfect initiation in litigation and a relevant sign of interest in legal practice.

## 1.3. ELSA Moot Court Competitions

ELSA has a strong position in the organization of MCC, not only at national level but also at international. We must mention:

**EHRMCC:** ELSA Human Rights Moot Court Competition simulates a case in the European Court of Human Rights and it is organized in co-operation with Council of Europe in Strasburs court.

**EMC<sup>2</sup>:** ELSA Moot Court Competition (EMC2) in co-operation with the World Trade Organization simulates a hearing of the WTO dispute settlement system.

**ESMCC:** ELSA Spain Moot Court Competition is the Spanish national competition organized by ELSA Spain. Last year was about Competition law.

**EBMCC:** ELSA Barcelona Moot Court Competition organized by ELSA Barcelona UPF. The first edition took place this year in co-operation with the firm Baker McKenzie and was about trademark dispute.

## 2. ELSA GoT Moot Court Competition

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### 2.1. What is the ELSA GoT MCC?

The ELSA Game of Thrones Moot Court Competition (ELSA GoT MCC) is a simulated court proceeding inspired in the famous George R.R. Martin's series of fantasy novels and the HBO TV show *Game of Thrones*. Teams prepare and analyse a fictive **criminal law** case and present their arguments for the Prosecutor or the Defendant in front of a jury that consists of reputed professors and experts. The competition will be held in the University Pompeu Fabra and it is opened to any law students interested.

- Teams of **2-4 law students**.
- Teams will be assigned a case and they will have to prepare the argumentation of both positions: Prosecutor and Defendant.
- The Court will be formed by professionals, professors and experts.
- The competition takes form as an **Oral Procedure**, where teams will have to litigate in front of a jury in representation of the Prosecutor or the Defendant.
- The competition will be held in **English**.
- The aim is to enhance knowledge of criminal law and legal procedures as well as developing professional skills such as legal argumentation and public speaking.

## 2.2. What taking part in the ELSA GoT MCC?

Mooting has been a part of the process of training law students for centuries and plays an important role in legal education not only as a subject but also in the form of Moot Court Competitions. Although it shares some common elements with public speaking or debating is not the same as these activities. It is a specialized application of the art of persuasive advocacy in a simulation of a court proceeding.

Unfortunately, this activity is not usually promoted by Spanish universities that is why participating in the ELSA GoT MCC would be a dynamic and fun approach to the world of Moot Court Competitions. It is a great opportunity to learn how Moot Courts work, as well as to improve your criminal law knowledge and develop your legal skills while having fun in a Game of Thrones inspired world.

It is definitely a good way to acquire mooting experience!

## 3. STRUCTURE OF THE COMPETITION

ELSA GoT MCC will be held by ELSA Barcelona UPF the **17th and 18th May**.

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The Moot Court Competition shall be developed in English and will take place at University Pompeu Fabra, Campus Ciutadella.

The competition will take form as an Oral Procedure, where teams will litigate in front of a jury in representation of the Prosecutor or the Defendant. The determination of the roles corresponds exclusively to the Organization Committee, which will allocate them by randomly draw.

### 3.1. Rounds

ELSA GoT MCC will be composed of three different rounds:

#### **a. 4 Preliminary Rounds:**

8 teams will compete in 4 Preliminary Rounds, consisting of oral pleadings between 2 teams.

#### **b. Semi – Final**

The best 4 teams of the Preliminary Round shall pass to the Semi Final Rounds, consisting of oral pleading between 2 teams.

The pairing shall be determined according to the Preliminary Rounds punctuation:

1. Highest Ranked Team will compete against the Lowest Ranked Team.

2. Second Highest Ranked Team will compete against the Second Lowest Ranked Team.

**c. Final**

The Final will be dispute between the winners of the Semi Final Rounds.

## 3.2. Cases

**a. Preliminary Round**

During the Preliminary Rounds teams will dispute 4 different fictive cases, one for each round. The allocation of the cases to each team corresponds exclusively to the Organizing Committee. It will be done by random draw once the registration period has expired.

**b. Semi Final**

A new fictive case will be disputed during the Semi Final Rounds, being the same for both Rounds. The case will be presented to the participants at the same time of the Preliminary Round cases.

**c. Final**

Final Round fictive case will have identical facts to the Semi Final fictive case. However, witnesses will intervene during the Oral Procedure, therefore finalist teams shall prepare the corresponding set of questions that can contribute for the best to their defence.

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## 3.3. Information and Team Assistance

All the ELSA GoT MCC information, documents and materials will be published in the Competition's website, which URL is <http://www.elsabarcelona-upf.org/actividades-academicas-2/>.

All of the information regarding the organization and structure of the competition, the composition of the teams, registration, participation fee, judges and punctuations is detailed explained in the **rules**.

Participants shall communicate with the Organisation Committee through the following e-mail account: [participants.gotmcc.barcelonaupf@es.elsa.org](mailto:participants.gotmcc.barcelonaupf@es.elsa.org).

Participants who face theoretical doubts while preparing the cases will be able to raise their questions to a member of the criminal law department of the University. Communication between them and participants will be managed by the Organization Committee.

### 3.4. Agenda

<b>17<sup>th</sup> MAY 2018</b>		
<b>TIME</b>	<b>ISSUE</b>	<b>DESCRIPTION</b>
<b>11-12h</b>	<b>PRELIMINARY ROUND</b>	First Team vs. Second Team
<b>12-13h</b>		Third Team vs. Forth Team
<b>13-15h</b>	<b>LUNCH PAUSE</b>	Free Time
<b>15-16h</b>	<b>PRELIMINARY ROUND</b>	Fifth Team vs. Sixth Team
<b>16-17h</b>		Seventh Team vs. Eight Team

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<b>18<sup>th</sup> MAY 2018</b>		
<b>TIME</b>	<b>ISSUE</b>	<b>DESCRIPTION</b>
<b>11-12h</b>	<b>SEMI FINAL ROUND</b> <i>According to Preliminary Rounds Punctuations</i>	Highest Ranked Team vs. Lowest Ranked Team
<b>12-13h</b>		Second Highest Ranked Team vs. Second Lowest Ranked Team
<b>13-15h</b>	<b>LUNCH PAUSE</b>	Free Time
<b>15-16:15h</b>	<b>FINAL ROUND</b> <i>According to the Semi Final Punctuations</i>	1 <sup>st</sup> Semi Final Round Winner Team vs. 2 <sup>nd</sup> Semi Final Round Winner Team
<b>16:15-17h</b>	<b>CLOSING &amp; COCKTAIL</b>	<i>Get together for the participants and judges held by the OC</i>

## 4. ORAL PROCEDURE GUIDE

The different Rounds of the Oral Procedure will be governed by the following rules:

**1. Preliminary and Semi Final Rounds:** Each Team, regardless of the number of participants, will have 15 minutes to present their oral reports. Next, a turn of replies and counter replies will be opened, whose total duration will be 30 minutes.

**2. Final Round:** The Final Round fictive case will have identical facts to the Semi Final fictive case. Therefore, it will begin with the practice of witness evidence, which will consist in the intervention of one or two witnesses that will not exceed 20 minutes. After that, parties will have 10 minutes to adapt their interventions to the information provided by the witnesses. Next, each party will have 15 minutes to present their updated reports, which will be followed by a turn of replies and counter replies with a maximum duration of 30 minutes.

3. Each team may have a maximum of two speakers to present the oral report. However, during the replies and counter-replies turn the other members of the team are allowed to intervene.

4. The Judges may intervene to request clarification on relevant concept exposed by the parties during their interventions.

5. Each speaker must be able to speak freely, without prejudice of the use of notes as a helping support. Nevertheless, the reading of the oral report will be negatively punctuated. In order not to lose clarity of their exposition, participants are requested to follow a logical and structured order during their interventions.

6. The members of a team can communicate with each other through the use of notes. Oral communication during the other party presentation will be penalized.

7. Parties may submit to the Judges an outline of their oral report.

8. If a party refrains from presenting an oral report, in no case shall this silence be interpreted as a full acceptance of the allegations of the other party. This strategy will not eliminate the possibility of replicating.

9. In case of the citation of judicial or administrative resolutions, the parties are requested to refer to it by its common denomination, number of resolution and body that issued it, as well as to the relevant section or sections.

10. Participants may quote word for word brief passages from certain texts or documents to support their arguments, although they must always indicate the source, the author and the page they are quoting.

11. Parties cannot provide evidence at the hearing.

## 4.2. Legal Information

### 1. Jurisdiction of the Court

a. Supreme Court of the Seven Kingdoms, based in King's Landing:

-Preliminary Round: cases 1 to 3.

- Semi Final and Final Round case.

b. Supreme Court of Braavos, based in Braavos.

-Preliminary Round: case 4.

### 2. Procedural Legislation

Both in Braavos and in the Seven Kingdoms the regulation of the criminal jurisdictional order procedure is identical to the Abbreviated Procedure regulated in the Royal Decree of September 14, 1882, which approves the Criminal Procedure Law in its current form -BOE last update published: 06.10.2015- (articles 757-794 Law of Criminal Procedure).<sup>1</sup>

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### 3. Substantive Legislation

The Criminal Codes of Braavos and the Seven Kingdoms have and identical wording to the Spanish Criminal Code, regulated by the Organic Law 10/1995, of November 23, of the Criminal Code, in its current form -BOE last update published: 04.28.2015- . Also, until now, the case law is identical to that of the Spanish criminal jurisdictional order Courts.<sup>2</sup>

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<sup>1</sup> Procedimiento Abreviado regulado en el Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal en su versión actual –BOE última actualización publicada: 06.10.2015– (arts. 757-794 Ley de Enjuiciamiento Criminal).

<sup>2</sup> Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en su redacción vigente – BOE última actualización publicada: 28.04.2015–. Asimismo, hasta el momento, la jurisprudencia es idéntica a la de los tribunales del orden jurisdiccional penal español.

## 5. PROTOCOL

### 5.1. Addressing the Bench/Judges

- You should always address the Judges as: “Your Honour” / “Your Honours”
- The standard Supreme Court oral argument opens with “Mr. Chief Justice, and may it please the court...” For purposes of moot court (and to avoid gender issues and ambiguity regarding who is chief), this may be reduced to “May it please the court...”
- Stop speaking immediately when a judge asks a question. Never speak over a judge. If you were making a critical point, find a way to get back to it. (But ask yourself: was it really that important?)
- Never interrupt a judge as he or she is asking a question. Wait for the entire question.
- Show respect for the judges at all times. Never attack the judges, even if you disagree with their arguments. Do not display frustration with a judge by sighing, rolling your eyes, or shaking your head. Attempt to persuade, and if the judge is lost as far as your essential argument is concerned, you can respectfully acknowledge a disagreement or tactfully change the subject and try to persuade the remaining judges.

### 5.2. Addressing your opponents

- You should always refer to your opponents with respect, and in the following manner: -“My learned colleague /my learned Friend”
- Be professional and courteous to your opponent. Disagree with his argument; use his words against him; but don’t be petty, belittling, or unfair; don’t mischaracterize or misquote him; and, above all, do not make personal attacks.

### 5.3. Style and Demeanour

- Present your case – do not simply read your speech.
- Avoid colloquialisms or slang.
- Be direct in your answers, but take time and get the answers correct. Pause to consider a question before answering, if necessary.
- Speak clearly. Be familiar with the subjects—especially your client’s name and the names of major figures—and avoid using pronouns (which is easier if you speak slowly and practice ahead of time). Avoid “this thing,” “he,” “she,” “they” etc.
- Speak slowly. Take your time. There is no prize for saying the most during an oral argument. Almost all competitors speak more quickly than they think they are, and it is better to be slow and clear. And if you speak quickly, it will be obvious to the judges when you are caught off guard.
- Avoid verbal ticks and “fillers.” Do not say “oh,” “um,” “uh,” or similar words; likewise, do not fill every pause with “your honour.”

- Think about your volume. Be sure you can be heard by the Judges. At the same time, be aware that yelling at the judges is aggressive and unpersuasive. Use your tone and volume to emphasize key points in your argument or key words in a phrase.
- Try to directly answer the question the judge puts to you before you expand on your answer. Almost all questions can be answered with a simple “yes” or “no,” followed by explanation. Or a “yes, however...” followed by an explanation. If you can answer a question in this way, do so.
- Never dodge or ignore questions. It is better to give an answer that may not persuade the judge than give none at all. If the judge found your answer particularly unsatisfactory, you can always go back later if you think of something to address the judge’s concern.
- Don’t reflexively reject everything a judge says. Some judges will ask you questions that help you—sometimes because they want to refocus the conversation or convey something to a fellow judge. Help them help you by accepting that aid whenever it’s handed out.
- Do not react badly to a question from the judge: take a moment to consider the question, if you are unsure ask the court if you can confer with your colleagues; if still unsure inform the Court thusly and move on.

## 5.4. Costume

Have fun dressing up as a Game of Thrones character. Remember that the Team wearing the most original costume will receive a special prize!

# 6. HOW TO PREPARE FOR THE MOOT COURT

## 6.1. Initial Preparation

- Read through the Moot Court Case.
- Ask yourself what is your initial reaction to the problem. Where does the justice appear to lie?
- Brainstorm a list of potential questions. Where are the hard issues? What hard hypotheticals are there? What practicalities could impact the weight of the arguments (that is, what real or hypothetical facts, if slightly altered, could influence the outcome)? Then consider answers to all of these questions. All well-prepared lawyers will have considered the key questions in advanced. Most will outline answers to these questions.
- Next, do some general research on the main issues. This involves finding out what the key legal principles are and how they work.

- After your general research has been completed, you should meet with your mooting partners to discuss strategy. Work out the most obvious key arguments in your case. Detailed research can be done later. Remember that you have a limited amount of time to address the Court, therefore you should concentrate on the main points rather than trying to cover a host of minor details.
- Make sure you know and understand the case, the facts, and the law.

## 6.2. Research

The most important thing to remember when researching is that you may not find the answer. What you should be looking for are arguments. Below is a suggested guide to researching a mooting topic.

- Identify legal principles which support and oppose your main arguments. Remember that your main arguments should be based on principle and not on example.
- Identify relevant case law. If you find a case that you think is similar to your mooting problem scrutinise the arguments and use them to get ideas for your own case.
- Prioritise your case law in order of relevance. This means you should read your cases carefully and work out how you are going to use them to support your arguments.
- Once you have finished researching your main arguments you should meet with your mooting partner to brief them on what you found. This way you are both familiar with where all of your arguments stand.
- Documentation: It may be useful to have a separate document containing the case summaries; legislation relied upon etc.

## 6.3. The hearing

- Establish what you do and not need to defend. Think about: (a) what you absolutely must defend (your bottom line), (b) what you want to persuade the Court of in order to have a good chance of winning (your likely outcome), (c) and what is the most you could possibly hope to convince the court of (your best case scenario).
- Consider what impact losing one of your points would have for the rest of your argument: Do you have alternative or back up arguments? Or, is a seemingly minor/innocuous point actually quite crucial?
- Be as logical and as simplistic as possible without leaving out any important details. A simple argument does not mean an argument devoid of detail. Even a complex argument can be expressed simply if the appropriate law is identified, the key points you need to establish are set out, and the law is applied to the facts.
- Do not come to a round with a fully prepared speech to read. Yes, you should be able to speak for minutes on end if necessary—and sometimes a judge will let you go on that long without any questions—but, more importantly, come with an outline. Be prepared to mix, match, or reorder your arguments in order to get your points across.

- Be prepared to speak extemporaneously from your outline. Do not read from the page. A practice or two will help you memorize key points; if you do not have them memorized then at least know where to find things immediately.

## 6.4. Presentation of the Oral Report

- Present your case (briefly).
- Introduce the principles of law on which you rely and indicate to the court what it is you require.
- If there are important statutory provisions, cite to them: “Section 401 says X.” Similarly, if there are talismanic phrases from a case (e.g., “fair play and substantial justice”), be able to quote them. If you don’t want to memorize them, have a handy sheet ready with the key language and references. Memorize what you can but have the sheet ready for things that come up.
- Every point you make must have solid reasoning; once you have sufficiently prepared then be confident in your arguments; do not crumble just because a judge asks a question or seeks clarification.
- Answer any questions asked
- Conclude by summarising and again indicating to the court what it is you require.

## 6.5. Replies and counter-replies

- A member of the team should take concise notes in respect of your opponent’s arguments to assist in rebuttal.
- Rebuttal can be planned in advance; but note that if you may have to deal with some unanticipated points (know your case).

## 6.6. Witnesses

- When knowing the identity of the witness, you should anticipate what they may have seen or known and what questions the judges or the opponents might ask that can be prejudicial for your defence.
- Prepare the corresponding set of questions that can contribute for the best to your defence.

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