

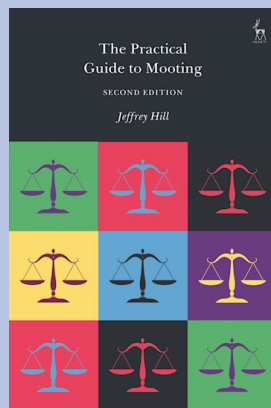
# **THE PRACTICAL GUIDE TO MOOTING (2021)**

**BY JEFFREY HILL**

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Until the early nineteenth century it was not possible to study English law at an English university. Roman law was an option, but English law was not regarded as an academic subject. The only way to study English law academically was at the Inns of Court, which became known as England's Third University. Study was in two forms. The first was lectures, known as 'readings'. The second was through moots. The moots were extremely complicated and sometimes a whole term could be spent on studying one moot.

Mooting still plays an important part in legal education, not only in common law countries, but in many other countries where students can participate in international moots. This writer has taught mooting in China to Chinese students in preparation for an international competition.

Not so long ago there were few, if any, books on mooting. More recently several have come out. In my experience one of the earliest and still one of the best is *How to Moot* by John Snape and Gary Watt. The first edition

was published in 2004. Another good one is *Mooting and Advocacy Skills* by David Pope and Dan Hill, the first edition of which was published in 2007. 2009 saw the publication of first edition of *A Practical Guide to Mooting* by Jeffrey Hill. A second edition of Snape and Watt appeared in 2010, and of Pope and Hill in 2011 (followed by a third edition in 2015). There is now a second edition of Jeffrey Hill's book. (References to Hill hereafter are to Jeffrey Hill, second edition.)

Mr Hill is very well qualified to write about mooting. He has extensive experience of organizing and teaching courses on mooting, and of successfully coaching moot teams. He is a member of the Advisory Board for the Essex Court Chambers/English Speaking Union National Mooting Competition. It is interesting that apparently neither he nor any of the other authors (except perhaps David Pope) have personal experience of arguing a case in the Court of Appeal or Supreme Court. Nevertheless, he is clearly familiar with the process.

Like Gaul, the book is divided into three parts. The first is introductory; the second is practical, giving advice on how to prepare for and take part in moots; the third is miscellaneous, dealing mainly with how to organize and take part in mooting competitions.

The first edition of this book contained links to an online recording of a moot, with commentary on the links. The new edition replaces that with links to online recordings of argument in the Supreme Court. The links are to short excerpts from the arguments. The book helpfully references these links to commentary on them, illustrating what is said in the book. This is a very useful and, I believe, unique feature of the book. The links are listed on pages xv to xvi of the book. The author says that they are selective. They are drawn from rather limited sources. Of the 16 links listed, nine are drawn from the prorogation case of *R (on the application of Miller) v The Prime Minister* (2019) (for which a wrong citation is given), and six from the family law/conflict of laws case, *Villiers v Villiers* (2020). Although the advocacy is excellent, and the links are relevant to the commentary, it would be good to see a wider range of advocates. Many years ago Richard du Cann in his book, *The Art of the Advocate*, gave examples of the different styles in which famous advocates might have approached the same argument.

The book is very comprehensive and thorough. There are certain points which I disagree with or would have liked to see. There are references to senior counsel and junior counsel in the moots. This is not uncommon in books about mooting. I think it incorrect. The references should be to lead counsel and junior counsel. Queen's Counsel are known as 'leading

counsel' or 'leaders'. Any barrister who has not taken silk is a junior barrister. Barristers who have practised for many years but not taken silk are often referred to as senior juniors, but never as senior counsel. A junior counsel may lead another junior.

I have been unable to find anywhere in the book advice about how lead counsel should open the moot and introduce the other mooters. She should begin in the traditional manner, 'May it please your Lordship/Ladyship', and then go on with words such as, 'I appear for the appellant, together with my learned friend, Ms X. The respondents are represented by my learned friends, Mr Y and Mr Z.' Neither the lead appellant nor any of the other mooters should tell the judge their own name, unless, of course, the judge specifically asks for it. As a moot judge I have found it irritating when I invite a mooter to begin, 'Yes, Mr Smith?' and he then gets up and says 'My name is Mr Smith'.

This is based on a misunderstanding of the purpose of the introductions. It is not to introduce the mooters to the judge as if one were introducing strangers at a party. The theory is that the judge knows all the barristers in practice. A couple of hundred years ago, with a small bar, this may well have been true. What the lead appellant is doing is to tell the judge which of the barristers thronging Westminster Hall is appearing in the case. Nowadays in all courts, including even the magistrates' courts, the bench will have been provided with a sheet or other document setting out the names of counsel.

The last point I wish to make is the way counsel should end their submissions. On page 186 Hill says, 'At the end of your submissions, it is normal to ask the judges if they have any further questions for you.' This is true, but it is a feeble ending and is trotted out by mooters as if it were set in stone that this is the way to finish. If the judge has any further questions, she will ask them; she does not need an invitation from you. If you have come to the end of what you wanted to say and the judge has then asked you a question or questions, it would be appropriate to check that the judge has no more questions before you sit down. If the judge is not asking you questions at the end of your submissions, it is better to end not with a question, but with a punchy submission, e.g. for the appellant, 'On those grounds I respectfully submit that the learned judge below was in error and the appeal should be allowed', or for the respondent, 'With respect to my learned friends, this appeal is misconceived and should be dismissed.'

These are minor points. The book is well written, full of good advice, and would be of great benefit to any mooter, prospective mooter or anyone interested in mooting, however experienced or inexperienced.

### About the Author

**Barrie Nathan** is a Visiting Professor at Sun Yat-Sen University, Guangzhou, China, and a Visiting Lecturer at SOAS, University of London. After graduating with an LLB (Hons) from King's College, University of London, he was called to the bar and has spent most of his working life practising as a barrister in a wide range of common law and chancery areas. He has appeared in virtually every type of court except the House of Lords/Supreme Court, although he was a pupil when he observed the leading trusts case of *Gissing v Gissing* argued in the House of Lords. He was the Principal Lecturer on the Lord Chancellor's Training Scheme for Young Chinese Lawyers for 10 years until the scheme came to an end. He has had articles published in *Trusts and Trustees*, the *Journal of Comparative Law*, the *New Law Journal* and the *Solicitors' Journal*. He currently teaches contract law at SOAS on the LLB course, and has previously taught *Civil and Commercial Conflict of Laws*, and *Procedural Principles and Ethical Standards* on the LLM. His research interests include the judiciary. He has an MA in Applied Linguistics from Birkbeck College, University of London. He is a keen photographer and some of his photos may be viewed on his [website](#).

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*Villiers v Villiers* [2020] UKSC 30