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International moots and the demands of modern legal practice: Relooking the role of firms

Siyuan CHEN
Singapore Management University, siyuanchen@smu.edu.sg

INTERNATIONAL MOOTS AND THE DEMANDS OF MODERN LEGAL PRACTICE: RELOOKING THE ROLE OF FIRMS

The demands of modern legal practice are such that the young law graduate is expected to be as practice-prepared as possible right off the bat: able to analyse, research, draft, write, advise, and even advocate on complex issues that do not always present clear demarcations in doctrines, jurisdictions, and cultures – and this is without mentioning other important soft skills required to thrive in practice. International moot competitions used to be the main means to bridge the school-versus-practice and theory-versus-application divides, but that landscape has transformed radically in the past decade. Considering too the competitiveness of the legal market today and Singapore's aspiration to be a leading dispute resolution hub, how can law firms and universities work even closer together in ensuring that the craft of advocacy is effectively transmitted across generations from an early stage?

CHEN Siyuan
LLB (Hons) (National University of Singapore), LLM (Harvard); Associate Professor of Law, Singapore Management University.

I. Setting the context

1 Singapore has a proud tradition of excelling in international moot competitions. It was the first country from Asia to win the two biggest and most prestigious moots in the form of the Jessup (in 1982) and the Vis (in 2002), and it continues to have a strong reputation in all of the major competitions. Many of our leading lawyers and top government officials were mooters – the Chief Justice, the Attorney-General, and the Law Minister, to name but a few. Little has changed to suggest that excelling in international moots is no longer part of our collective identity and aspiration. If anything, it has to be part of the national strategy for our country to be a leading dispute resolution hub and where the best and the brightest operate. What has changed, however, is the international moots landscape and the conditions required to excel in it. What has also changed are the expectations for, and of, young lawyers in Singapore. This piece addresses both of these interconnected issues and posits that there is much to be gained for law firms to take an even more proactive role in the development of law students, particularly in the context of preparing them for international moots. To do any less is in my view no longer a good option.

2 We consider first the issue of young lawyers and what they face in this day and age. The formative years of a young lawyer in Singapore are almost inexorably shaped by the following features of the legal landscape here; some of these have been longstanding ones that have changed little over time because of macro forces at play, while others are perhaps of greater recency:

a. The focus (and one could say purpose too) of legal education is still on mastering doctrines and theories, as opposed to application of knowledge, practice, and skills. This means that students are primarily taught how to analyse and understand jurisprudence, rather than say, draft documents, manage clients, or make arguments before a tribunal.

b. The great majority of the law degrees conferred to those sitting for the local bar examinations are 3- or 4-year LLBs, as opposed to 5-year LLBs (not including double degrees) or JDs.[1] When non-law subjects and exchange are thrown into the mix, this means that the average locally trained law student spends just under 3 years grappling with law subjects.

c. Owing to the fused nature of the profession, those who are called to the bar are both advocates and solicitors at the same time; this double-hatting can be contrasted with a clearer division of duties and skill sets between solicitor and barrister duties in various other common law jurisdictions. At the same time, there are administrative, continuing legal education, and miscellaneous obligations that are significantly time-consuming.

d. Advocacy opportunities, particularly in open court, are the preserve of older lawyers, and younger lawyers are left with the more mundane and less complex stuff, however necessitated this might be by the demands of modern practice and clients.[2] In tandem with this is a growing emphasis and importance placed on written

[1] For SMU LLBs, one quarter of the (compulsory) curriculum comprises non-law subjects.

[2] See generally Nicholas Poon, "The Decline of Oral Advocacy Opportunities: Concerns and Implications" [2018] SAL Prac 1. It is of course possible to pursue *pro bono* work that entails some litigation, and in some firms junior lawyers do make appearances for interlocutory applications and in the lower courts. See also Lim How Khang, "Singapore's Legal Profession: Data Analysis of Lead Counsel Appearance Numbers": <https://medium.com/@howkhang/singapores-legal-profession-data-analysis-of-lead-counsel-appearance-numbers-eee245dc7e0f>.

submissions over oral submissions. Public service does allow many young lawyers to run their own files quite early on, but only a handful are taken in every year. Moreover, the nature of public service work, at least in the initial years, tends to focus on criminal law and procedure, which is what most lawyers would not end up practicing (though the skills acquired are universal).

e. One-on-one mentorship between a senior lawyer and a young lawyer over a sustained period is not always possible (or viable, given modern job mobility trends that would have a dampening effect on long-term investments in training); further, what used to be a craft as between pupil and master now has much greater business and communal elements in it, not to mention intermediate elements in the form of mid-level lawyers.[3]

f. The nature of the work and the level of job satisfaction collectively constitute a big cause for high attrition rates for both young and mid-tier lawyers.[4] This is despite the liberalisation of legal practice, high pay in both absolute and relative terms, and the growing complexity (and therefore interestingness) of legal work.

g. Young lawyers are expected to work hard but efficiently, have a great capacity for stress and pain, possess soft and hard skills, have a good sense of judgment and intuition, and have broad but also deep knowledge in general and specialised fields.[5] Work-life balance, having a family, and so forth is meant to be achieved on one's own terms.

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[3] See generally Nicholas Poon, "The Decline of Oral Advocacy Opportunities: Concerns and Implications" [2018] SAL Prac 1; Hri Kumar, "In Search of Purpose and Mentorship" [2018] SAL Prac 15. See also Cavinder Bull, "Advocacy in Judicial Review and Administrative Proceedings" in Eleanor Wong *et al*, *Modern Advocacy*, 2nd ed (Academy Publishing: 2019).

[4] Report of the Committee for the Professional Training of Lawyers (March 2018) at p 16. See also Hri Kumar, "In Search of Purpose and Mentorship" [2018] SAL Prac 15.

[5] See also Edwin Tong, "Keynote Address at the Litigation Conference 2019" (22 April 2019): https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/Keynote-Address-by-Mr-Edwin-Tong-Senior-Minister-of-State-for-Law-Health-Litigation-Conference-2019.html.

h. Young lawyers tend to, for a start at least, be drawn to the bigger firms that are perceived to be more prestigious and handle more complex work. However, these firms also tend to have certain corporate features that detract from an individualised apprenticeship. The fact that it takes a longer time than before to be promoted probably compounds this.

3 When all the above is considered together, what does one expect the profile of most young lawyers to be like in the first few years of practice, particularly in litigation? It would not be fanciful to suggest that most young law graduates would neither be very adequately prepared for practice, nor be terribly persuaded to remain in it for long (both of which are things they usually only figure this out after starting work). But what they can do while they are still in law school is to acquire as many skills as possible.

4 This is where participating in international moots comes in. True it is that one cannot possibly be perfectly prepared for practice before entering it, but learning what international moots can teach is probably the best possible and most critical investment a student can make before starting work. This is all the more pertinent today when we consider the key characteristics of modern international moots training in the light of modern legal practice that is seldom confined to compartmentalised issues and single jurisdictions.[6] Indeed, in terms of the universal benefits of participating in international moots, they are that:

a. Doctrines and theories invariably meet practice and policy – this allows students to think more deeply and laterally about complex problems that span multiple jurisdictions and legal concepts, and to come up with practical and sound solutions when nothing obvious is presented to them. Further, in certain domains of law such as public international law which often do not have clear legal positions, high-level research skills and the ability to marshall and sometimes finesse disparate elements of argument are honed.

b. Mooters have to work under great pressure, including time pressure. In terms of written submissions, this means producing dozens of drafts within weeks. For oral submissions, all moots require teams to argue both sides and multiple rounds in a day, and so the training students have to go through involve dozens of

[6] See also Chen Siyuan, "International Moot Court as Equaliser: An Asian Paradigm" in *Patterns in Legal Education in Asia: From Imitation to Innovation* (Brill: 2017).

meetings and practice sessions, often after full-day classes. The end result is a nimble mind that can tolerate a great deal of stress while having many things on the plate.

c. Mooters have to come up with arguments and case theories that would appeal to a broad range of judges from different cultures, jurisdictions, and professions. They also have to come up with very thorough arguments as it is difficult to predict what opponents from various parts of the world would argue or place greater emphasis on. They have to do this while not compromising on the clarity, conciseness, and direction of their own positions.

d. Mooters have to learn to work in teams and to do so efficiently, since not everyone has the same role and not everyone has the same amount of experience. Though the team dynamics in any student endeavour are more horizontal than vertical (the latter of which is more often than not is in practice), learning how to communicate and accommodate in a team setting is always useful. And though the coach is no perfect substitute for a supervising solicitor, mooters also learn to receive and act on instructions to perform a variety of tasks, often under great time pressure.

e. When mooters consistently do well in international competitions, they raise the profile of their law school and their country. This is important as major moots often have leading practitioners and judges from around the world adjudicating the rounds, and many of the opponents often come from leading law schools as well. For mooters who know how to network effectively, international moots might even present internship, publication, and longer-term work opportunities.

5 These benefits clearly map quite neatly to some of the most fundamental demands of modern-day legal practice. However, one cannot ignore the fact that the nature of international moot competitions, which subsequently impacts the learning of the craft of advocacy in practice, have significantly changed in the past decade or so. Specifically:

a. Successful moot teams in the major international competitions now seldom comprise rookie mooters. It may sound excessive, but it is not uncommon for such

teams to have each of their members having done up to half a dozen competitions prior. As there is no replacement of competitive experience, teams that have such members tend to do better than the rest.

b. It is also very uncommon for teams to have rookie coaches – having a system where coaching knowledge is successfully handed down the generations has become critical for continued mooting success. Again, teams that have this advantage tend to do better than the rest.

c. Some teams are able to capitalise on competitions that allow big teams (4 members or more). Members assume specialised roles, therefore removing the administrative and research burdens on the oralists. Even in competitions that do not allow big teams, there are schools that work around that by deploying background researchers.

d. Many teams send their own coaches and alumni to judge the competitions. This lets them, at the very least, to better understand the inner workings of the adjudicatory aspects of the competition. It also affords them a close look at how some of the best teams function and perform.

e. As mentioned, judges and competitors are now much more diverse, making it much harder to predict what opponents may argue and what judges like. For instance, those schooled in the American style of advocacy would consider a round with many questions to be a good round, maybe even the minimum expected. But those with other preferences – and these are now a majority in some major moots – consider the triggering of any question a failure to make the perfect submission, no matter how well the question is answered or the circumstances prompting the question.

f. Gone are the days where it is possible to write and vet a couple of draft written submissions, undergo only a small number of practice sessions, and hope to win a major international competition. The top competitions today attract virtually every notable law school out there – from dozens just in the previous decade to hundreds in this – and many of these schools have created elaborate schemes and structures to ensure that

their mooters can have uninhibited and continued success in addition to ecosystems that facilitate their training and preparations.[7] The digitisation of legal knowledge has also meant that barriers to accessing research databases are no longer there, and plenty of training tools can be easily found on the internet.[8]

g. Moot problems have become more even more complex, covering both esoteric and cutting-edge matters. As an illustration, recent editions of the Vis moot have required participants to make arguments relating to third-party funding, the contours of inherent jurisdiction, and the role of emergency arbitrators. As another illustration, recent editions of the Price moot have dealt with issues such as the role of social media companies in regulating fake news, online hate speech, and jurisdiction in cyberspace. The net result is that the research output needs to be nuanced and practical.

6 In other words, any given law school that wants to excel in the arena of international moots must have a solid game plan, or it would be mired in an endless cycle of mediocrity. More than that, there may well be a need for other stakeholders in the legal community to be involved on a different level from before. As will be seen, law schools cannot operate alone.

II. The SMU experiment

7 In 2010/11, I co-founded SMU's International Moots Programme as a means to tackle one facet of the problem young lawyers face: the lack of practice-preparedness generally and the lack of foundational skills specifically. At that time, Singapore's second law school was only 3 years old, and there was no mooting programme to speak of; indeed, the only mooting or learning of any skills the students did was for a couple of weeks in a first-year course.

8 But this gap also gave me a completely open platform to create a system that would equip its graduates with some of the most important foundational skills of legal practice: analysis, research, writing, advice, and advocacy. Having personally benefitted from NUS' rigorous International Legal Process programme when I was a student, I wanted to afford SMU students a similar opportunity at

[7] For instance, with respect to (recurring) course credits, assignment and even exam dispensation, publication KPIs, alumni engagement, and massive corporate sponsorships.

[8] See generally Chen Siyuan, "Advanced Fundamentals of Oral Appellate Advocacy in a Moot Court" (2012) 30 Singapore Law Review 45.

applying what they had learned from the books and cases – and having worked in the courts as a law clerk and registrar, I noticed that, all things equal and with the exception of who simply had a knack for internalising and delivering legal argumentation, there was a perceptible difference between young lawyers who had mooted when they were students, and those who had not.

9 It was difficult attracting anyone to participate in the programme at first, since SMU had (and still has) a relatively small cohort and there was somehow a deep-seated assumption that SMU was supposed to produce more corporate, transaction-focused lawyers than those who had a proclivity or even appetite for something more adversarial and tribunal-centred. It did not help that NUS already had a well-known moots programme.

10 But we started by sending some of our better students to participate in the smaller competitions and found some success there, and this in turn attracted an increasing number of students to participate in the larger competitions. There was some trial and error, but within 3 years SMU had won its first Jessup national round, and even reached the championship final in Washington DC the same year, a feat it would achieve again the next. With a newfound mooting culture sweeping the law school, in the half dozen years that followed we managed to pool together a core group of around 70 alumni coaches, and through their dedication and efforts SMU is now among the world's best in international moot competitions and has helped continue upholding Singapore's proud tradition in this field.[9]

11 Many of SMU's international moots alumni have also gone on to make their mark in the legal sector, be it in terms of clinching clerkships, making partner, producing journal articles, or pursuing postgraduate studies. Notably, most of these moot alumni were not necessarily top students at the start. The feedback I get with a high degree of frequency and consistency is that though participating in international moots is a very big and stressful commitment, students learn to be more efficient with their time, spot issues better, and overall achieve better academic success after having done moots. The

[9] For instance, in just the last 9 years since the launch of the programme, SMU has ranked in the top-3 for Grand Slam moots (Jessup/Vis/Vis East/Price/Frankfurt/International Criminal Court) almost 40 times, more than twice that of any other law school in the world. It has also become tournament leaders the most championships for 2 of the 7 Grand Slams, and holds world records for most international moots won in a season (5) and most finals reached in a season (9). See Singapore Law Gazette, "Another Season of Record-Breaking International Moot Court Achievements" (November 2017); Singapore Law Gazette, "The 2017/18 International Moot Season in Review" (October 2018); Singapore Law Gazette, "A Recap of the 2018/19 International Moots Season".

notion that participating in international moots is detrimental to grades applies to a very small minority of students.

12 Anecdotally, I have also observed that many of the mooters who joined private practice have been given greater opportunities to argue their own applications and cases – both in chambers and open court – at quite an early stage relative to their peers.[10] Arguably, the correlation between mooting success and a good legal career is stronger than any other factor that employers find attractive, such as grades and other academic indicia (though one probably has to accept that there are no good predictors in school for whether one would have the temperament to last in legal practice and whether one would have a knack for good decision-making when managing a file – those can only be discovered in practice). It is of course also possible to add dimensions to one's CV through internships, publications, connections, and other types of competitions, but as far as Singapore is concerned, success in international moots remain a fairly reliable indicator for employers across the full range of possible legal vocations.

III. Can law firms be even more involved?

13 So if our mooters are doing well and the legal community seems involved, why fix something that is not broken, or improve only around the periphery? To answer that question, it depends on not just what standards we set for ourselves, but also whether we want to do even more to ensure that as many young lawyers as possible are given the chance to acquire skills on a deeper level while they are still in law school and in doing so, approach the question of easing young lawyers into practice from a different angle. To be clear, law firms already do play a significant role when it comes to international moots. Law firms and even government agencies have made generous financial contributions,[11] which are indispensable for the law schools to take part in as many competitions as they do. Law firms and government agencies have also always helped out with moot coaching and judging – some on a regular basis, and some on an ad hoc basis, but entailing substantial time commitments all the same. Some even teach courses in the law schools, be it skills courses or substantive ones.

[10] The most recent winner of the Joseph Grimberg Young Advocate Award, perhaps not coincidentally, was a prominent SMU international moots alumnus.

[11] SMU was the beneficiary of contributions by the Singapore Academy of Law and Rajah & Tann in the past, and more recently it has enjoyed a productive collaboration with WongPartnership and also benefitted from sponsorship by the Competition and Consumer Commission of Singapore.

14 All things considered, it may seem to verge on the idealistic or even unreasonable to ask for more contributions from law firms – except that more might indeed be required if we want to go up the next level. I would suggest that the following can be done to simultaneously meet the dual challenges of an increasingly competitive international moots landscape and what can help law students better prepare for modern-day practice. Admittedly, the suggestions represent more than just incremental changes and require mindset shifts and resource commitments, but the hope is that there is purpose and value in all of this. I would also add that, as will be seen, these suggestions are applicable to law firms of all sizes.

15 My first suggestion is for more lawyers to help teach foundational subjects to lower-year students, preferably skills-based subjects such as legal research and writing or legal method and analysis. [12] Unlike doctrinal courses which require substantial preparation and revision by the instructor, the workload of skills-based courses is concentrated in the problem-setting and evaluation – which would not make the task very different from analysing a real-life dispute and commenting on the research and written work produced. Further, unlike other subjects which may be taught using lectures or seminars, these subjects are often taught in much smaller groups of 10 to 15 students, which facilitates individualised interaction and the formation of deeper bonds. The students would have just started their legal education, and there is no greater attention they would pay than to the lawyers teaching them foundational skills courses. Such courses also often are the first – and sometimes last – taste that students would get in translating knowledge to advocacy, and the role and responsibility that lawyers can have is magnified in this regard like no other. Doing this is fundamentally different from merely judging the practice sessions of these courses given the extensiveness of the contact, and different from teaching upper-year students less interactive courses, given the point at which the students are at and the larger class sizes – and I would say also different from coaching upper-year students whose formative years in law school would have been shaped by many other parties. Doing this will also go some way in responding to the timeless debate surrounding the role of law schools – they will no longer be merely academic if the teaching of skills is done by the very people who want those skills taught in law school. If recent trends are an indication, it does appear that the law schools can be persuaded to accept the notion of lower-year skills being taught to a large extent by practitioners. Would law firms be ready to encourage, or even facilitate this? As it were, skills-based courses tend to take place only once a week over a period of 12

[12] These need not necessarily be taught only by senior practitioners, but if young practitioners take on teaching, there may be a question of whether they are taking on too much. This is where firm support would be invaluable.

weeks. Each class is around 3 hours. The commitment looks manageable in this light, and the fact that some side income can be gained might be an additional pull factor.

16 My second suggestion is to look at the teaching of foundational subjects as a start of a longer-term relationship. As mentioned, to remain competitive, students now have to chalk up experience in regional moots before they stand a chance at the larger international moots (and improve their CVs at the same time). To be sure, the idea is not to create an elite and exclusive class of mooters. The idea is to allow as many students as possible to have a stab at this – there are enough competitions to go around (there are at least 30 to 40 reputable moots worth participating in every year), and it would seem there is enough interest on the part of students to go around. What is scarcer is the availability of professional – and personalised – guidance, considering that faculty and alumni help would already be tied up in the larger and more established competitions. A natural extension of teaching lower-year students foundational skills courses would be to guide them in smaller-scale, but nonetheless important, moot competitions. These students would be given a chance to test their skills and would be coached by people they would have developed a trust in. Firms can help defray the costs or even ask for sponsorship rights if they wish. Yet another way of approaching this is to coach students in moots which subject matter align with the firms' specialisations, such as intellectual property or maritime arbitration. Now having said that, it is hard to argue against the fact that that doing any of the above could very well be a "wasted" investment, especially if the students do not end up interning or training at the firms helping them. But I think the principle should not be too different from when a person interns at a firm, in that there is also no guarantee the person would eventually train there – the same too for a person who trains at a firm but leaves later on. The sacrifice in coaching moots of course is not insignificant, but so too is the likelihood of building a meaningful relationship between the lawyer and the student. One should not underestimate the firm's ability to make a persuasive case when they are given an advantageous position, should getting interns and trainees be a priority for them. Sponsoring events and prizes may help raise the visibility and profile of a firm, but there is probably nothing more compelling for a prospective applicant to the firm than having benefitted in a very personalised way.

17 My third and final suggestion is for the creation and hosting of our own major international moot competitions, and this can only be possible with the help of the law firms (be it through problem-setting, sponsorship, judging, or coaching). It seems odd in the extreme that a jurisdiction seeking to be a leading dispute resolution hub has absolutely no international moot to call its own. Hong Kong, our perennial reference point, organises two major competitions in

the form of the Vis East and the Red Cross moots (and the popularity of these moots have not abated the least despite the recent political turmoil). Whenever a country hosts major competitions, they bring together leading practitioners in those fields and also showcase their next generation of legal talents on a global stage. The profile of their entire legal system is lifted. For Hong Kong, when the Vis and Red Cross moots take place every year, the notion that they are the financial, intellectual, and legal hub of Asia is constantly reaffirmed and reinforced. But aside from Hong Kong, no one else in Asia hosts any of the major moots. Elsewhere, law firms have become synonymous with various competitions; the Jessup moot bears the White & Case name, and the antitrust moot in London bears the HSF name, to give just a couple of obvious examples.[13] One must bear in mind that when one organises a competition, it can dictate the rules, format, adjudicatory standards, and issues that form the moot problem. These are matters that have created some dissatisfaction in other competitions due to their growing scale and complexity, and we have a chance to try something different if we wish. There are still no major competitions on areas of law that are of great interest to us such as private international law, data protection, and the use of AI, and we could have first-mover advantage on many fronts, ranging from results to generating thought leadership. We should start charting our own path as to what world-class advocacy means. We have the personnel, resources, and infrastructure to organise the next world-class international moot competition, and it is up to us to look at what we can do for our law students.

18 Skeptics would undoubtedly point to an abject lack of critical ingredients to make any of my suggestions happen: no time, no money, no incentive, and no motivation – and if there were any of those things, all has already been spent in coaching the major moots and other recruitment endeavours. I come back to the question of standards and the things we can do for young lawyers. To use a football analogy, Singapore mooters are probably the Juventus of international moots: clearly excellent, clearly possessing a history of doing well, but not quite the Champions League powerhouse that is a perennial contender at the highest level. We may have reached the Jessup final thrice since 2004, but we lost all of them. We have only won the Vis once, despite reaching the final twice more after that. I think with a little push and coordination, we can truly reach world-class levels and augment our achievements in other Grand Slam competitions. As set out in this piece, that push will involve the help of firms, and it is a responsibility that does have a payoff. By being in charge of the impartation of foundational skills to young law students, pathways to longer-term and deeper relationships will be

[13] For universities, Oxford has become synonymous with the Price and Intellectual Property moots, and Leiden with the International Criminal Court and Air Law moots.

formed, whether it be coaching smaller-scale moots, coaching bigger moots, internships, or even training contracts. When relationships are given time to grow, they are more likely to flourish. My suspicion is that a different take on the cultivation of relationships may have a different result on the problems our young lawyers face today.