ESU-
Essex Court
Chambers National Mooting Competition

Official Handbook 2007/2008
www.essexcourt.net/mooting

Official Handbook 2007/2008

Contents

Foreword

For hundred of years a key component of the training of barristers in this country has been the moot. The purpose has always been that, whereas the content of the law can be learned out of books and lecture notes, the deployment of legal rules and principles in the face of a court or other tribunal or a jury has been a skill all on its own. Indeed, it has always been regarded as an absolutely essential ability for being a barrister. Now it must be regarded as an equally essential facility for a solicitor advocate.

The Inns of Court have since Tudor times provided for this kind of training by laying on moots as part of their educational function. Until very recently it was thought that mere experience of mooting, either as counsel or as a spectator, could, together with listening to argument in court, provide an effective method of learning advocacy skills. Of course latterly the advocacy involved was invariably that before an imaginary appellate tribunal such as the Court of Appeal or House of Lords. It therefore reflected only one facet of a barrister's work and probably a facet only of a senior barrister's work but it nevertheless called for advocacy skills much needed before lesser courts.

Today, however advocacy training has developed into a much more sophisticated exercise. The Inns of Court have taken a major part in providing this training and have done so with the help of the experienced members of the Bar. That training goes to the very heart of the needs of modern advocacy. We are here concerned not merely with fluency of exposition from a prepared text but also with the effective arrangement of the content of submissions, with the ability to anticipate adverse prints which might be raised by the court or an opponent and with the facility of re-acting instanly to awkard interventions from the court.

The recognition that these advocacy skills can be taught is an important development which is very beneficial to the quality of the legal profession.

It is therefore entirely appropriate that Essex Court Chambers should join with ESU in presenting and organising this National Mooting Competition. The work done by the barristers of Essex Court Chambers extends to many fields of commercial law and calls for the widespread deployment of those advocacy skills before all levels of tribunals, courts and arbitrators alike, which it is the very purpose of this Competition to invoke. To win this Competition young lawyers have to demostrate potentially high levels of quality in argument showing persuasiveness, first class marshalling of materials and ability to duck and weave in response to the interventions of the court.

Experience of this Competition in previous years suggests that, at least the winners and the runners up as well as many of the other competitors, will demonstrate astonishingly high levels of quality advocacy. I feel sure that this year will be no exception and I wish all those who take part, winners and losers, and enjoyable and rewarding experience.

Sir Anthony Colman

About Essex Court Chambers

ESSEX COURT CHAMBERS is widely acclaimed as one of the leading sets of barristers' chambers in the nation and is presently home to 75 barristers, as well as associate members and arbitrators from no fewer than 12 countries including Australia, Brunei, Canada, Hong Kong, Ireland, Malaysia, Mauritius, New Zealand, Singapore, South Africa, the United Kingdom and the United States.

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Essex Court Chambers has succeeded in maintaining its tradition of excellence by attracting some of the finest advocates at the Bar. Its ranks include 30 Queen's Counsel as well as Senior Counsel from a large number of jurisdictions worldwide and at least ten Professors of Law. Essex Court Chambers also boasts one of the most impressive selections of arbitrators internationally, including well-known figures such as Lord Mustill, Lord Millett, Lord Steyn, Sir Anthony Evans (formerly Lord Justice Evans) and Sir Anthony Colman now retired from the Bench. Many of its former practitioners currently serve as members of the judiciary including Lord Saville of Newdigate, Lord Justice Thomas, Mr Justice Beatson and Dame Rosalyn Higgins, President of the International Court of Justice in the Hague.

Although Essex Court Chambers remains first and foremost a commercial set of barristers' chambers, members of Essex Court Chambers are also regularly instructed to act as advocates in a wide range of other areas including EU law, human rights law, immigration law, public international law and VAT.

Essex Court Chambers is always keen to recruit outstanding individuals to add to its ranks and typically offers up to four pupillages each year. The finalists of this year's ESU-Essex Court Chambers National Mooting Competition will be invited to spend a week as mini-pupils in Chambers. Others (including those who do not participate in the Competition) are nevertheless encouraged to apply for mini-pupillage at Essex Court Chambers. Whilst participation in the ESU-Essex Court Chambers National Mooting Competition will undoubtedly give each participant an opportunity to hone his or her advocacy skills, a mini-pupillage at Essex Court Chambers will allow you to experience first-hand, life as a barrister at one of the "magic circle" sets of barristers' chambers.

Information about mini-pupillages at Essex Court Chambers and about Chambers generally can be found on its website (www.essexcourt.net) or obtained from the Secretary to the Pupillage Committee, Essex Court Chambers,
24 Lincoln's Inn Fields, London WC2A 3EG; Tel.: 020 7813 8000; E-mail: clerksroom@essexcourt.net

The ESU–Essex Court Chambers National Mooting Competition

Welcome to the thirty-sixth year of the ESU-Essex Court Chambers National Mooting Competition. This handbook is aimed not just at those taking part in the competition, but also at those who will act as judges, or indeed anyone with an interest in Mooting.

The National Mooting Competition provides law students from universities and colleges throughout the United Kingdom with the opportunity to gain experience in their future role as advocates. In taking part in a moot, students do not just show their knowledge and skill in handling legal materials, but also their ability to practise the art of forensic and persuasive argument in a concise and effective manner. Furthermore, mooting enables students to gain confidence as advocates in a courtroom setting.

The winning finalists, as well as receiving the silver Mace, will be awarded a prize of £1,000 each, whilst the educational establishment at which they study will also receive a donation of £1,000. The members of the running-up team will receive £750 each, and their institution will receive £500. Additionally this year the four semi-finalists will receive £250 each for reaching that stage of the competition. These prizes have been generously donated by Essex Court Chambers. All four finalists will be offered a mini-pupillage at Essex Court Chambers. The winners of the ESU - Essex Court Chambers Mooting Competition will represent the UK in the Commonwealth Mooting Competition during the years in which the Commonwealth Moot takes place.

The 2007–2008 competition is administered by Patrick Emerson of The English-Speaking Union. Eric Baskind of Liverpool John Moores University is the National Adjudicator.

Entry to the Competition

The competition is to be known as "The ESU-Essex Court Chambers National Mooting Competition". The National Adjudicator is responsible for the setting of the moot problems and any matters of a legal nature relating to the competition.

Entry to the competition is open to all universities or higher education colleges involved in the teaching of law in the United Kingdom. To qualify for entry, an institution must:

- send an entry fee of £25.00 to the ESU;
- complete and return the staff and student entry forms by the required deadlines;
- submit a moot problem as described below.

A participating institution may enter a team consisting of two eligible students at that institution. The members of the team may be varied between rounds; however, the members of a team that wins a competition semi-final must also represent the institution in the final. Students are regarded as eligible if they are registered students at the participating institution and are not graduates in law. GDL Students are eligible to take part in the competition. Students are not eligible if they hold or are studying for professional legal qualifications (i.e. Legal Practice Course, Bar Vocational Course or ILEX courses). No individual may enter the competition if he or she has participated in a semi-final in any previous year.

There shall be no appeal on any grounds from the decision of a judge or upon the conduct of the moot itself in any round. Any complaints about, or problems with, the conduct of the teams during a round must be made in writing to the National Adjudicator, who may then investigate and resolve the problem as she thinks fit in the best interests of the competition. The National Adjudicator and the ESU have the discretion to disqualify at any stage any institution that fails to comply with these rules or with the spirit of the competition. An institution may be disqualified either on the basis of its own acts or omissions, or on the basis of the conduct of the team representing it in a given round.

Any questions regarding the interpretation of these rules shall be submitted to the National Adjudicator who may, in consultation with the ESU, resolve the problem in her absolute discretion.

In the event of a dispute involving the institution from which the National Adjudicator is drawn, the National Adjudicator shall refer the dispute to one or more of the members of the Competition Advisory Panel.

Communications

For the purposes of any communication in connection with this competition, it is sufficient if the communication is sent, as appropriate, to the email or postal address of either of the contacts listed in the contact list supplied with this handbook, save where a specific rule below requires communication in a particular way. If an institution wishes to change either of its contacts, it must inform the ESU and the opposing team.

Competition Format and Timetable

The competition is run on a simple knock-out basis for 64 teams. The six rounds of the competition will conform as closely as possible to the following pattern:

First Round (64 teams) to be held by Friday 14th December 2007	
Second Round (32 teams) to be held by Friday 8th February 2008	
Third Round (16 teams) to be held by Friday 21st March 2008	
Quarter-Finals (8 teams) to be held by Friday 16th May 2008	
Semi-Finals (4 teams) to be held on Thursday 26th June 2008	**To be held the same day**
National Final (2 teams) to be held on Thursday 26th June 2008	

Please pay careful attention to these deadlines. If it is impossible for a team to comply with these dates, the team will withdraw from the competition and offer its opponent a bye, unless a change of date has the consent of both their opponent AND the ESU. The ESU, however, cannot guarantee that extensions of the deadline will be allowed.

Where more than 64 teams enter, a preliminary round will be held to reduce the number to 64. The teams required to participate in the preliminary round will be chosen by the ESU in an order determined by the receipt of entry fees and moot problems.

The following rules apply to all rounds except semi-finals and finals. Participating institutions will be informed of their opponents and moot problems at least two weeks before the deadline date set for the moot. Institutions are allocated as either "Home" or "Away" teams. These are selected at random and are used to indicate who will host that round of the competition.

In the first round of the competition, the "Home" team also take the position of the moot problem's Appellant or equivalent, **BUT THIS IS ONLY THE CASE IN THE FIRST ROUND.**

In each of the subsequent rounds (except the semi-finals and final) the decision on which team is to be the appellant and which team is to be the respondent will be made by the ESU, independent of whether or not an institution is hosting a round, and will be released to each section of the draw for the next round when either:

a) both teams in a specific part of the draw can carry out the next round of the competition as they know who their opponents will be, or
b) the deadline date for the completion of the previous round has passed, whichever is earlier.

All of the above information, including details of moot problems and the allocation of appellant/respondent in each round will be available on the competition website:

http://www.essexcourt.net/mooting

It is the responsibility of the winning team to inform the ESU of the result of a round within three days of it being held.

Semi-Finals and Final

The semi-finals and national final will be held in London on the same day. The same problem will be used for both semi-finals and final. This is seen as having two advantages. First, it alleviates pressure on the timetable, enabling the first round to be later in the academic year. Second, it will be an advantage for all four teams in the semi-finals to have to prepare both sides of the argument, in case they reach the final. The lead time to that date will be appropriately substantial. There will be a special procedure for skeleton arguments and authorities for both the semi-finals and final, which will be provided to the semi-finalists immediately after the results of the quarter-finals are known.

The final of the competition was judged last year by a panel chaired by Sir Anthony Colman, a Judge of the Commercial Court, in the High Court, London from 1992 to 2007. The other judges were Roderick Cordara QC and Professor Dan Sarooshi - both members of Essex Court Chambers.

The semi-finals will be held at Dartmouth House, and the final will take place in the Royal Courts of Justice. Supporters are encouraged to attend the semi-finals in the morning and to stay on for the final in the afternoon even if their institution does not reach the final.

The semi-finals will take place concurrently. Immediately after their conclusion there will be a draw to determine which team acts for which side in the final. Essex Court Chambers will be responsible for the distribution of skeleton arguments and copies of authorities to the judges for the semi-finals and finals as appropriate.

Moot Format

All moot problems are set as a case on appeal to the Court of Appeal or the House of Lords, represented by a single judge. Each round consists of two teams. In the first round, the "Home" team represents the Appellant and the "Away" team represents the Respondent. In subsequent rounds sides will be allocated at random, as detailed in the above competition format and timetable section.

Moot problems for the first three rounds of the competition are included later on in this handbook. Moot problems for later rounds of the competition will be released on the competition website. Three judges will sit at the National Final.

Each team consists of two speakers, a leader and a junior. The leader takes the first ground of appeal; the junior takes the second. The four speakers will be heard in the following order and for the following times:

Leader for the Appellant 20 minutes
Junior for the Appellant 15 minutes
Leader for the Respondent 20 minutes
Junior for the Respondent 20 minutes
Appellant's Right to Reply 5 minutes (not obligatory)

On an occasion where the moot takes the form of an appeal and cross-appeal, the order and timing of speeches shall be as follows:

Leader for the Appellant 20 minutes
Leader for the Respondent 20 minutes
Junior for the Cross-Appellant 15 minutes
Junior for the Cross-Respondent 15 minutes
Reply by the Appellant 5 minutes
Reply by the Cross-Appellant 5 minutes

The order may be changed with the consent of all concerned. No team may concede a point of law identified in the problem as one to be argued except with the express prior consent of the other team and the judge of that round.

Problems

Every participating institution must submit a moot problem, which must be of **a sufficient standard for university students**. Each moot problem submitted must be approved by at least one member of staff in the faculty or department concerned, other than the person who devised the problem.

A moot problem must be on a 'core' legal subject that does not require specialist knowledge. Examples of 'core' subjects are criminal law, contract, tort (or delict), company and commercial law, constitutional law, employment law, consumer protection law, EC law and any area of law based on a UK statute. Problems should be on legal issues that are common to all the legal jurisdictions of the United Kingdom.

The moot problem shall be solely concerned with points of law. It shall be a case heard on appeal by the Court of Appeal or the House of Lords and must have no less and no more than two grounds for appeal clearly stated.

No objection to any moot problem will be sustained unless communicated to the National Adjudicator within seven days of the receipt of the problem. If the National Adjudicator is satisfied with the objection, she may direct that another problem be used.

An archive of moot problems used in previous years' competitions can be found on the competition website.

Authorities

A team may rely on no more than eight authorities of its own choosing, which it must cite in a list of authorities. All authorities cited may be used by either the Appellants or the Respondents for any purpose. If an authority is cited as part of the moot problem, it is classed as a court authority which may be used by either team and which need not be included in either side's list.

A single case which has been decided in more than one court (e.g. a case that has started in the High Court and then gone to the Court of Appeal and then to the House of Lords) counts as one authority, although all references must be cited if a team wishes to use them.

For the purposes of this competition, only cases count as authorities. However, if it is intended to cite statutes, texts or other legal literature then, notwithstanding that these do not count towards the maximum of eight authorities, they must be disclosed by provision of copies to the opposing team at the time of the exchange of authorities.

Both lists of authorities must be exchanged by fax or email, to the fax number or email address provided on the contact sheet at least 3 working days before the moot. Their arrival and contents must be confirmed by the sender, e-mail to the contact email address or by telephone. No variation of authorities will be allowed unless the opposing team agrees.

Each team must bring to the moot copies of its own authorities for both the opposing team and the judge. The home team must additionally supply copies of the "court authorities" referred to in the problem for the judge. (See below for details as to the provision of the teams' authorities and skeletons to the judge in advance.)

Cases should be cited as authorities in the following descending order of priority:

The Law Reports
The Weekly Law Reports
The All England Law Reports
Others

A team that cites an authority which is not in the Law Reports, the Weekly Law Reports or the All England Law Reports must provide copies of that authority to their opponents, at the time of exchange of lists.

Skeleton Arguments

A team must also submit a skeleton argument setting out the main propositions and submissions in support of their case. The skeleton arguments must be exchanged by email to the contact email address or by fax to the fax number provided on the contact sheet at least 3 working days before the moot. The arrival of the skeleton must be confirmed by the sender by telephone. **The skeleton argument should not be longer than one side of A4, and should be typed, word processed, or hand written in block capitals.**

The main grounds of argument should be set out concisely together with the authorities relied on to support the argument.

The home team, when arranging for the judge, should ask the judge whether he wishes to be provided with copies of the skeleton and of any of the authorities in advance. If so, the home team must ensure that the judge receives material he asks for.

By way of guide only, an example of a skeleton argument is included at page 16 of this booklet. This is not a set or required format but an indication of what is acceptable.

Teams in the Semi-Finals and Final

Immediately after all of the quarter-finals are completed the teams that have reached the semi-finals will be given instructions as to the procedure for the semi-finals and final.

Host Responsibilities

The English-Speaking Union greatly appreciates the hospitality of the institutions that host the rounds of the competition. All participating institutions undertake to host a round if allocated the position of 'Home' team. A host institution has a number of responsibilities:

- to locate a judge who meets the criteria described on page 8 in Selection of Judges. The 'Away' team must give their consent to the judge, whose identity and background should be made known to them with as much notice as possible;
- to provide the judge with a copy of the moot problem and this handbook, drawing their attention to these rules and the marking sheets;
- to provide the judge with the skeleton arguments and court authorities prior to the moot;
- to communicate details of the round venue, date and time to the Away team, and to confirm that they have been received;
- to inform the ESU of the date of the round as soon as it has been agreed;
- to prepare a Moot Courtroom and provide water for the judge's and speakers' use;
- to provide a clerk to the Moot Court, who is required to keep time. The clerk shall inform the judge when the time periods have elapsed, preferably by means of a note. Mooters should also be alerted, through the display of a card, when they have 5 minutes left to speak and also 1 minute left. The clerk should use a stopwatch to keep time. **Please note that the clock is not stopped for interruptions by judges.**

Selection of Judges

Judges shall be qualified legal practitioners (barristers, solicitors or advocates - not pupil barristers or trainee solicitors) or lecturers in law, and must be experienced in the judging of moots. Unless agreed in advance by both competing institutions and the National Adjudicator, the judge in a given round other than the National Final (for which a panel of judges must be arranged before the finalists are known) may not be an employee, former employee, student or former student of either competing institution. An employee of a neighbouring institution is an appropriate judge.

Judges should be selected who have some relevant experience of the fields of law upon which the moot is set. For example, a practitioner or academic who has acted solely in the area of civil law would be an inappropriate judge in a criminal moot problem.

Guidance for Judges

A judge has the following duties:

- to give judgment on the various points of law argued by the speakers;
- to give a reasoned judgment as to the merits and faults of the participants;
- to decide upon and announce the winning team.

The winning team of the round is at the sole discretion of the judge. The decision of the judge on any point cannot be

It is suggested that, in order to ensure an element of consistency throughout the competition, the judge should use four criteria to decide upon each team's performance: Content, Strategy, Ability to Respond and Style. It is hoped that these criteria can best evaluate each team's relative strengths. An optional scoring sheet has been provided to assess mooters' individual marks. In the end, however, it is the overall impression of which team made the most convincing presentation of their case that will determine the outcome. The better team will not necessarily be the team for whom judgment is given on the points of law. The following areas can be considered as relevant guidelines for assessment of the mooters:

Content

- the insight into and analysis of the moot problem and grounds of appeal;
- the relevance of the authorities cited and the fluidity with which they are adduced;
- the ability to summarise facts, cases or law where appropriate.

Strategy

- the presentation and structure of the legal arguments, including skeleton arguments, where used (rigidly scripted speeches, in particular, should be penalised);
- the ability of the two individuals to work as a team;
- the effective use of the speaker's limited time.

Ability to Respond

- the rebuttal of opponents' arguments;
- the ability to answer questions from the bench.

Style

- the speaker's skill as an advocate;
- the proper use of court etiquette.

The judge may retire to consider the decision. Since this is a team competition, it is expected that the best all-round team will be chosen. When announcing the decision, it is greatly appreciated if, in addition to the questions of law, the judge makes some comment on the merits of the mooters' performances. This advice is always listened to very carefully and the mooters will value such balanced assessments.

Judges are encouraged to interrupt speakers at any time where the judge requires clarification of the legal argument being presented; interruptions also test the mooter's ability to respond as an advocate. **However, the clock is not stopped during interruptions by judges so they are asked to treat all four mooters equitably.** Questions should not be unduly difficult at this level. None of the stated grounds of appeal should be thought to be unarguable by counsel or the judge, and judges should not refuse to hear an argument for that reason. However, if a team fails to produce cited authorities, the judge has the discretion to render the citation inadmissible. Finally, judges should not ask so many questions that mooters are unable to complete the points raised in their skeleton argument. Although it is proper for judges to assess the quality and appropriateness of arguments, mooters should not be prevented from putting forward arguments in their own way.

Round 1 Problem

IN THE COURT OF APPEAL (CIVIL DIVISION)

Craig and Another v Harvey

Alex Harvey owns and runs a care home for the elderly in Southsea and employs a number of staff, including Roy White. Roy's responsibilities are to maintain the grounds, carry out minor repairs to the building and drive the mini-bus, which is used for outings for the residents. Last summer Roy was asked by Alex to take four of the residents to Chichester for afternoon tea, which was booked at a particular hotel. Jane Craig, one of the carers, accompanied the group. Following the tea, Roy announced that he was going to use the opportunity to drop some things into his son's house, which would involve extending the route back by some ten miles. Jane protested as the passengers were all very tired by that stage but Roy was insistent. As he was approaching his son's house, his attention was diverted by seeing his grandson walking along the road, and he had to swerve suddenly to avoid a stationary car, and crashed into a wall. Jane Craig was injured in the crash.

After the crash Roy was not used as a driver by Alex, which upset Roy as he had enjoyed the driving. He tried to throw himself into the gardening but then became increasingly frustrated when one of the residents, Doris Smith, who is suffering from senile dementia, walked across the flower beds without realising what she was doing. Roy shouted at her, which one of the carers reported to Alex. It was the last straw for Roy when Doris then walked over a newly seeded lawn and he lost his temper with her. He screamed at her to get off the lawn and, when she did not respond, he then pushed her hard, causing her to fall to the ground and she broke her hip.

Both Jane and Doris sued Alex for damages on the basis that he was vicariously liable for the negligence of, and the assault by, Roy respectively. At first instance Walker J found in favour of Alex with regard to both claims. He determined that Roy was on a frolic of his own when the accident occurred in which Jane was injured and that he was not acting within the course of his employment when he assaulted Doris.

Jane now appeals against the decision of Walker J on the ground that Roy was still within the course of his employment when the accident occurred and so Alex is vicariously liable for Roy's negligence.

Doris now appeals against the decision of Walker J on the ground that there was sufficient connection between Roy's employment and the assault to bring that assault within the course of his employment and so Alex is vicariously liable for the assault by Roy.

Round 2 Problem

IN THE HOUSE OF LORDS

Atkins v Bateman

Atkins owned a block of flats. In May 2001 he entered into a contract with Bateman under which the latter agreed to paint 10 flats in 10 days for £4000 payable in advance. The money was paid.

Bateman began work on Monday 10th May. He decided not to work on Saturday and told Atkins as much. However, Atkins had new tenants moving in on the 20th May and insisted that Bateman work the weekend. Atkins said that Bateman was contractually obliged to do so. Bateman denied that he was obliged to work at the weekend and demanded an extra £1000 for doing so. Atkins refused to pay and Bateman said that he would finish 10 working days after he started – i.e. the 24th. Atkins was worried about the reaction of his tenants and offered Bateman £500 if he completed the work by the 20th. Bateman agreed and did the work, but now Atkins refused to pay the £500.

At first instance Pratt J said that Bateman was entitled to recover. Atkins had received a practical benefit from the promise to finish by the 20th May, and the works actually being done by then. Pratt J referred to Williams v Roffey Bros [1991] QB 1.

The Court of Appeal agreed.

Atkins appeals to the House of Lords on two grounds:

1) Williams v Roffey was wrongly decided. It was inconsistent with Foakes v Beer (1883) 9 App Cas 605 and should be overruled. Stilk v Myrick (1809) 2 Camp 317, 170 ER 1168 should be reaffirmed.

2) Alternatively Williams v Roffey could be distinguished, as Atkins had not actually received a practical benefit.

Round 3 Problem

IN THE HOUSE OF LORDS

Beatrice and Carl v R

Abel, a member of a terrorist organisation, wished to kill the Molvanian ambassador to London. He approached Beatrice and Carl who lived as his tenants in a London flat, and who owed him substantial arrears of rent. They both worked as cleaners at an hotel where a reception in honour of the ambassador was due to be held. He threatened them that if they did not place a bomb in a place likely to kill the ambassador they could expect to meet with serious harm from his associates. He also said he would cancel their rent arrears if they did.

Beatrice and Carl were far from sure that Abel did in fact have associates who would do them serious harm but they were highly attracted by the idea of being relieved of their debts. They discussed the matter and agreed to do what Abel asked. The police, however, having received intelligence information, had already bugged their flat and recorded the conversation. They were arrested before the execution of the plan ever got off the ground.

Beatrice and Carl were charged with conspiracy to murder, to which they raised a defence of duress.

The trial judge gave two rulings:

(1) A defence of duress is open to a charge of conspiracy to murder.

(2) In considering whether the particular defendant felt compelled, and a reasonable person would likewise have felt compelled, to act as he did the law must not take account of any motivations other than death or grievous bodily harm.

Beatrice and Carl were convicted.

The Court of Appeal dismissed their appeal and held that the ruling of the trial judge was wrong on (1) and therefore duress should have been withdrawn from the jury. However, they added that in their opinion he was right on (2). They certified the following points of law of general public importance for the House of Lords:

1. Is duress available as a defence to conspiracy to murder?

2. Is a defendant entitled to a defence of duress where he was threatened with death or grievous bodily harm but that threat did not constitute his main reason for committing the offence, ie there was another threat, or an offer of a reward, which was his main reason?

Quarter Final Problem

IN THE HOUSE OF LORDS

Cinders & Potter v Commissioner of Police of The Metropolis

Torch, a rich young man of liberal sympathies but unstable disposition, delivered a letter to a national newspaper which set out in some detail his plan to stage what he described as a 'spectacular protest' involving fire outside the House of Commons against the government's policy on the Middle East.

The letter was immediately passed to the Metropolitan Police. Torch was well known to the police, having been arrested on several occasions for violence and public order offences arising out of 'anti-nuclear' demonstrations in the capital. On receipt of the letter, the officer in charge, in breach of standing orders, omitted to cross-check Torch's identity or to run a search through the criminal records database. Given the heightened security arrangements already planned, he decided that no further special precautions were necessary to forestall the threat.

Two days later, before a large crowd of sightseers gathered for the state opening of Parliament, Torch doused himself in petrol and set fire to his clothes. P.C. Potter was badly burnt when trying to rescue him. Despite this intervention and emergency treatment in a nearby intensive care unit, Torch died subsequently of his injuries.

Brian Cinders, Torch's father and the executor of his estate, sat by his son's bedside throughout the protracted efforts to save Torch. He now suffers from clinically diagnosed morbid depression that has disabled him from working.

Brian Cinders brought a claim in negligence against the police authority claiming (i) damages on behalf of the estate and (ii) damages on his own behalf in respect of his psychiatric injuries.

P.C. Potter also brought a claim in negligence against the police authority claiming that their failure to prevent Torch's actions led to his injuries.

It was held by Justice J:

1(a) The action on behalf of the estate by Mr Cinders must fail. Apart from a limited category of special relationships, of which this case was not one, nobody owes a duty to go to the aid of a stranger so as to save them from themselves. There was no proximity between the deceased and the defendant, whose responsibilities for public safety created no special duty of affirmative action. Hill v Chief Constable of West Yorkshire [1989] AC 53 applied, Reeves v Commissioner of Police of the Metropolis [2000] 1 AC 360 distinguished.

1(b) The personal claim for damages for psychiatric injuries must also fail. Even on the assumption that the 'no duty' finding in (a) above was wrong and that the police as 'professional rescuers' do owe a duty to those known to be at risk of grave physical harm, such duty does not extend to mere secondary parties, such as the claimant, who suffer 'nervous shock'. Since the claimant could not have sued his son or the estate, see Greatorex v Greatorex [2000] 1 WLR 1970, it was not 'fair, just and reasonable' that he should be able to recover damages from more distant parties who did not create the hazard merely because they might have saved Torch by the exercise of reasonable care.

2. There was no duty owed by the Commissioner to P.C. Potter since the injuries he received were the normal risks of his employment to which he had consented. The only person who owed a duty to P.C. Potter was Torch who died penniless.

Both claimants' appeals were dismissed by the Court of Appeal and they now appeal to the House of Lords.

Notes for Mooters

Introduction

A moot is an argument on points of law which aims to simulate, as far as possible, an authentic court hearing before a judge. A successful mooter is one who manages to persuade the judge of the superiority of his or her legal arguments. A good legal

- is clearly and, if possible, concisely stated;
- is well-reasoned and logical;
- is supported, so far as possible, by legal principles established in previous cases; and
- is directly applicable to the facts of the case.

A successful mooter is likely:

- to be familiar with the facts but will not speculate upon them;
- to offer well-structured and clear arguments without reading them from a prepared script;
- to be able to engage with the judge in unscripted discussion about the strengths and weaknesses of the argument; and
- to refer to case law to support his or her arguments but will avoid lengthy quotations, or quotations taken out of context, and will acknowledge the relative weight of different authorities.

Preparing for the Moot

Preparing for a moot is a different exercise to preparing for a tutorial or other abstract legal discussion. While the skills of legal research and legal problem-solving which you have developed as a law student are useful, mooting requires something extra. It is an argument in which you have to persuade the judge by force of legal reasoning. One of the rewards of mooting however is a deepened understanding of the nature of legal reasoning and its application within our legal system. You should benefit not just in terms of your professional future but in terms of your intellectual and academic skills also. When preparing for a moot:

- familiarise yourself thoroughly with the facts and the grounds of appeal;
- become equally familiar with the legal reasoning adopted in the authorities relevant to your ground of appeal (including the authorities upon which your opponent will rely);
- construct a legal argument which is consistent with the authorities upon which you will rely and which is applicable to the facts of the case;
- ensure that in adopting your argument, the court is not being asked to act beyond its powers e.g. do not expect the Court of Appeal to overrule a House of Lords decision (although it could distinguish it);
- draft a skeleton argument which summarises accurately your arguments and which refers appropriately to your authorities (see page 16 for an example of a skeleton argument);
- anticipate your opponent's likely arguments and think how you will counter them during the moot.

There is nothing wrong in seeking advice from tutors or others nor in asking them to act as coach.

Conduct of the Moot

Speakers should dress soberly as if in a court. Gowns may be worn but only if all four speakers are able to do so. Try not to deflect attention away from what you are saying by fiddling with coins in pockets, shuffling about, walking up and down, leaning on the desk and so on.

The first speaker in the moot must introduce himself or herself and the three other speakers, and should say, "May it please your lordship, I am [Caroline Whitmore] and I appear in this matter on behalf of the [appellant], together with my learned friend [Miss Sally Webb], and the [respondent] is represented by my learned friends [Mr William Postgate] and [Miss Mary White]." Always end your submission by asking the judge if there are any questions to be asked by saying, "Unless I can help your lordship any further...", wait to see if you can, then thank the judge and sit down.

Address the judge directly as "My Lord" and indirectly as "Your Lordship". Refer to other speakers as "My learned friend" or "My learned junior/leader".
In court an advocate will never say "I think..." or "In my opinion..." in the presentation of their arguments; the correct form is that which connotes the advancement of opposing ideas, such as "I submit..." or "It is my submission that..." or even "I

Do not interrupt the judge when you are being asked questions. If the judge interrupts you, let him. When responding to the judge's questions or interruptions, be deferential but firm; whether agreeing or disagreeing, always do so "with respect...". If the judge directs you to address a particular point, say, "If your Lordship pleases".

General

You are strongly advised to read the guidance for judges so that you are familiar with the kinds of things that the judge is looking for in a mooter. The judge will be particularly interested in your ability to present your submissions on the law while at the same time dealing with questions arising all within the relevant time-frame. The judge is likely to be aware of the facts of the problem, though opening counsel should enquire about this and be prepared to provide to the judge an accurate or balanced summary. Do not spend time on this unless it is necessary. The facts of a moot problem are never in dispute and should not be argued over. In the rare event that the problem may appear to be ambiguous, the National Adjudicator should be contacted as soon as possible to clarify the matter or set a new problem.

'Hot air' and oratory do not win moots, but the style in which an argument is presented is nevertheless important. As the object of the moot is to persuade the judge to find for your side, you must first make sure that the judge can hear and see you; so speak deliberately and audibly and try to establish eye contact. Do not speak in a rushed or mumbled manner. You should never read your speech or write it out word for word. Detailed notes are fine, but be prepared at any stage to be told by the judge that he wants you to move on. A rigid script will limit your flexibility to do so. Speeches that are read tend to be given in a dull monotone and eye-contact is not achieved.

The structure and development of your argument should also be presented slowly and concisely — your judge will certainly be taking notes and may know little of the area of law to which you refer. In particular, cite any authority slowly, giving the judge time to find and read the passage. Indicate when you are finished with one point by saying, "If I may move on...".

Watch out for 'leads' from the bench and be ready to make immediate use of them, even if it means re-arranging or amending your argument. In particular, if the judge has indicated he is with you on a point, or does not wish to hear further argument upon it, move on to the next one.

If the judge asks you a question which you cannot answer on the spur of the moment, you may ask for leave to return to the point later or even to confer with your colleague. If you cannot answer, it is best to be honest about it rather than provide a hopeless response or promise to come to the point later in your argument and then fail to do so.

Try to ensure that, so far as is possible, your argument can stand by itself and has no excessive dependency upon authority. Authorities are a tool, not an end in themselves. Use them to support your argument rather than making your argument a connection between a list of quotations. However, always be prepared to support any point in your argument with authority if called upon to do so, which authority should be contained in your list. If you refer to a dictum in passing you should cite the portion of it on which you rely. Do not cite a case without offering to tell the judge, however briefly, of the facts and the decision.

Always ensure the clerk to the court has all the cases you have listed present in court for the use of the judge. As there are often omissions, it is wise to prepare an unmarked copy that can be handed to the judge. When citing cases, the full reference should always be given e.g. [1966] 1 W.L.R. 1234 is: "reported in the first volume of the Weekly Law Reports for 1966 at page 1234". Cases should be cited as e.g. "Hills and Duhig" or "The Crown against Dixon." Do not say "versus" or "v." Do not refer to judges in a case by their abbreviated titles, but rather as "Mr Justice Kirk" or "Lord Justice Sheridan".

Do be concise; the timing of a moot is very limited, so ensure you do not waste your or the court's time by reading out unnecessarily long passages from authorities. The effective use of your time is rewarded by judges. Do not exceed the time allotted to you or you may risk being told to sit down by the judge.

A speaker must never mislead the court. The most likely occasion for this is to cite a case without referring to other relevant but opposing authorities. Tactically, it is better for you to bring them to the attention of the judge than for your opponent to do so.

Good luck!

In The House Of Lords

Parrot Quay Limited Appellant

-and-

Armoury Football Club Limite Respondent

Respondent's Skeleton Argument

Ground 1:

1. The pre-cursor to the operation of promissory estoppel is that a recognised legal relationship exists between the parties.

Thomas Hughes v The Metropolitan Railway Company (1877) 2 App. Cas 439 (cited as [1874-1880] All E.R. 187)
Central London Property Trust Ltd v High Trees House [1947] 1 K.B. 130
Attorney General of Hong Kong v Humphreys Estates (Queen's Gardens) Ltd [1987] 1 A.C. 114
Law of Property (Miscellaneous Provisions) Act 1989, s.2
Chitty on Contracts (Vol 1) at 3-083 to 3-096.

2. No legal relationship exists between the parties to the present appeal. There is no contract. There is no pre-existing legal relationship. The operation of promissory estoppel provides that a party promises not to enforce their "strict legal rights". By definition such rights must already be in existence. In the present appeal there are no rights that give rise to a promissory estoppel.

Central London Property Trust Ltd v High Trees House [1947] 1 K.B. 130
Amalgamated Property Co. v Texas Bank [1982] 1 Q.B. 84

3. In the alternative, if the House of Lords find the requirements of promissory estoppel are satisfied, it is submitted that the Court of Appeal was bound by precedent. English contract law rests upon the indivisible trinity of offer, acceptance and consideration. The nature of promissory estoppel does not require the presence of consideration because it is not a contract. To allow a cause of action to be founded upon a promise unsupported by consideration would be to undermine the doctrine of consideration.

Brikom Investments v Carr [1979] 1 Q.B. 467 at 486.
Combe v Combe [1951] 2 K.B. 215

Ground 2:

1. It is accepted that accelerated payment of an anticipated contract at the specific request of the other negotiating party can give rise to a quantum meruit. However, in the present case there was no specific request.

William Lacey (Hounslow) Ltd v Davis [1957] 1 W.L.R. 932
British Steel Corp v Cleveland Bridge and Engineering Co Ltd [1984] 1 All E.R. 504

2. Where work is done in order to put oneself in a position to obtain and perform a contract, the costs incurred are at one's own risk and do not give rise to any form of liability.

Regalian Properties plc v London Docklands Development Corporation [1995] 1 W.L.R. 212
Marston Construction Co Ltd v Kigass Ltd (1989) 15 Con. L.R. 116

3. In any event, the services in the present case did not benefit the defendant and, as such, there is no liability under a quantum meruit.

Regalian Properties plc v London Docklands Development Corporation [1995] 1 W.L.R. 212

The Respondent submits that the appeal be dismissed

Leading Counsel: **Junior Counsel:**

The ESU - Essex Court Chambers National Mooting Competition

Judge's Score Sheet

Appellants: *Respondents:*

APPELLANTS

	Speaker name	Content	Strategy	Ability to respond	Style	Total	Comment
Leader							
Junior							
Reply Speech							
Total							

RESPONDENTS

	Speaker name	Content	Strategy	Ability to respond	Style	Total	Comment
Leader							
Junior							
Reply Speech							
Total							

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1997 University of Cambridge
1996 University of Bristol
1995 University of Leicester
1994 University of Edinburgh
1993 King's College London
1992 University of Birmingham
1991 University of East Anglia
1990 Nottingham Trent Polytechnic
1989 King's College London
1988 University of East Anglia
1987 Essex Institute of Higher Education
1986 Polytechnic of Central London
1985 University of Lancaster
1984 University of Bristol
1983 University of Hull
1982 Polytechnic of Central London
1981 Queen Mary College
1980 Queen Mary College
1979 School of Oriental and African Studies
1978 Queen Mary's College
1977 University of Leicester
1976 University of Leicester
1975 Mid Essex Technical College
1974 University of Leicester
1973 University of Leicester
1972 University College, London

Contact Information

Eric Baskind
National Adjudicator
email: e.i.baskind@ljmu.ac.uk
Tel: 0151 231 3978

Patrick Emerson
Moot Convener
The English-Speaking Union
Dartmouth House
37 Charles Street
London W1J 5ED
Tel: 020 7529 1550
Fax: 020 7495 6108
email: patrick_emerson@esu.org

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e-mail: esu@esu.org - website: www.esu.org

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