

THE NATIONAL MOOT COURT  
COMPETITION 2017



QUESTION PACK

*Kindly Sponsored by Matheson*

**Matheson**

18<sup>TH</sup> NOVEMBER 2017, THE CRIMINAL COURTS OF JUSTICE



School of Law & Government

October 3<sup>rd</sup>, 2017

A chara,

We are pleased to provide you with this information pack for the upcoming **National Moot Court Competition 2017**. All of the information you need in relation to this competition is in the pack, including the problem question, rules and procedures, and the outline timetable for the day.

The competition will take place in the Criminal Courts of Justice complex on Parkgate Street, Dublin on Saturday November 18<sup>th</sup> 2017. As indicated on the timetable, registration will begin at 9am and the first round will begin at 10am.

Please note specifically the information below:

1. Institutions may enter a maximum of **5 teams**. We need to receive information on the number of teams that you are entering and the participants' names by 5pm on **Monday October 30<sup>th</sup>**. Teams should consist of 3 students, though only 2 students from each team will be entitled to present oral submissions in each round (not necessarily the same 2 students for each round). Please email the team names to [nationalmoot@gmail.com](mailto:nationalmoot@gmail.com)
2. As was the case last year, marks awarded to memorials will not count on the day of the Moot itself, except in a tie-break situation (i.e. in deciding which teams progress to the semi-finals, if there are teams on equal points in terms of the oral rounds then they will be divided on the basis of their memorial marks). All participants must submit a memorial for each side and these will be exchanged at the beginning of each round. Failure to submit memorials by the specified deadline will mean that a team cannot participate. No exceptions will be made to this. All arguments must be contained in the memorial and teams cannot add additional substantive arguments on the day (though you could add a new case,

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for example, so long as the substantive argument is set out in the memorial). A prize will be awarded to the team with the best memorials. This will be announced at the end of the Grand Final on the day of the competition.

3. We need to receive all written submissions (in MS Word or PDF format) by **5pm on Friday November 10<sup>th</sup> 2017**. **Late submissions will not be accepted under any circumstances.** Send submissions to [nationalmoot@gmail.com](mailto:nationalmoot@gmail.com). As detailed further within the information pack, these submissions should include a memorial on behalf of the Plaintiff and a memorial on behalf of the Defendant. Each document should be no longer than 2,500 words. Only the designated Team Letter should appear on the memorials; there should be no way to identify the institution submitting the memorials.
  
4. Once again, thanks to the kind sponsorship of Matheson solicitors, the entry fee for the competition is just **€25 per team**. This must be paid by way of deposit to the bank account below, either by online transfer or in-bank lodgement, and physical **evidence of payment** (e.g. print-out of lodgement slip/evidence of online transfer) **must be presented at registration on November 18<sup>th</sup>**. **Teams that fail to present this evidence of payment will not be allowed to participate in the Competition.**

- **N.B. Please use “LawGov” as reference**
- Bank Account Details: Allied Irish Banks, 7/12 Dame Street Dublin 2
- Account Number: 91765488 / Sort Code: 93-20-86
- BIC: AIBKIE2D
- IBAN: E89AIBK93208691765488

**The Winning Team will receive €200 worth of one-for-all vouchers and the Best Speaker in the Final will receive €100 worth of one-for-all vouchers. There will also be a €60 prize (in one-for-all voucher format!) for the Best Memorials.**



Please read the information pack in its entirety as it contains important information on the format of the competition, the procedures and rules, and, of course, the problem question itself.

We look forward to hearing from you in relation to your participation, and we thank you for supporting this competition.

If you have any questions do not hesitate to contact us by emailing [nationalmoot@gmail.com](mailto:nationalmoot@gmail.com) or by calling me on 01-7006471.

Le gach deá-ghuí,

Dr Aisling de Paor





## **National Moot Court Competition 2017**

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### **Guidelines for Participants**

1. The case does not address any questions of liability under the following pieces of legislation: Employment Equality Acts 1998 – 2015; Safety, Health and Welfare at Work Acts 2005 – 2010.
2. You are required to prepare written submissions for the Plaintiff/ Appellant and written submissions for the Defendant/ Respondent. There is no need to prepare additional court documents.
3. There will be no oral evidence taken on the hearing date. Participants must submit legal arguments only. The primary question at issue is whether the findings of the Court of Appeal are right in law. Because it is an appeal on point of law to the Court of Appeal, no new pleadings may be raised. Participants must address the issue of (i) nervous shock (ii) employer liability for failure to provide a safe system of work.
4. This question pack contains a total of 17 pages.



## **Background and facts to case**

John Murphy is a 21 year old engineering student. Since 2015 he has worked part-time as a glass collector at Disko Risko, a popular Dublin city nightclub. He is outgoing, but sometimes feels overwhelmed when trying to balance work, his studies and his active social life. John has always enjoyed his part-time job and the social side of it in particular, but his heavy workload, sometimes causes him stress. In addition to his role as glass collector in the nightclub, he is often asked to help out doing odd jobs in the kitchen (the nightclub serves late night burgers and pizzas). Over the past year, John has been obliged to work longer hours to keep up with the hectic workload, which he mentioned to his manager that he was finding difficult. Disko Risko's motto is 'work hard, play hard', encouraging staff to stay on after their shift is over to fraternise with patrons. Several other staff members at Disko Risko have complained about the pressures of the job, but none have brought it to management's attention, though some have joked that they are being "worked to death".

On the night of 24 July 2016, John was feeling particularly stressed and fed up with his job. In an effort to relieve some of his stress and take a break from glass collecting in the busy dance floor and bar areas, he walked into the kitchen. Upon entering the kitchen, John came upon a distressing situation. As he opened the door, he saw that the Head Chef, Luigi, had fallen into the pizza oven and was in distress. He immediately tried to turn the oven off, but accidentally pressed a switch to increase the heat in the oven. For several minutes he tried to switch off the oven without success. Eventually he managed to switch it off and call for help. The Chef suffered burn injuries. John initially believed the injuries to be life-threatening, but the injuries were less severe on examination. Nevertheless, John was severely traumatised after seeing the injuries to the chef and witnessing an accident of this nature.

Following this incident, John was given three days off work. On the 28 July, John returned to work. He was not his jovial self, but continued to fulfil his tasks in a perfunctory way. John felt guilty over potentially inflicting additional injury to the Chef by failing to switch off the oven in time. This had a very negative impact on his mental health. As a result of his heightened stress and anxiety levels, John noticed that he was also exhibiting some physical symptoms: he lost a significant amount of weight and suffered from insomnia (as well as nightmares). His social life and personal interactions were also under strain. John attended his doctor on 20 August and was diagnosed with depression. He was prescribed with anti-depressants. He went back to work, but became quite withdrawn and dispirited. Still, John fulfilled his tasks to the best of his ability.

His distress escalated and he then suffered a nervous breakdown on 15 September, 2016. When he attended a psychiatrist, a Dr. O'Flynn, the doctor advised that John's

psychiatric illness was triggered by the shock of seeing the Chef fall into the oven. Additionally, Dr. O’Flynn advised that John’s stress was exacerbated by his working environment, including the heavy workload and staff shortages, which all contributed to his condition. The psychiatrist recommended a course of treatment for John, which included stronger medication. In addition, he recommended that John take a break from his employment at Disco Risko.

John approached his employer the next day, 16 September 2016, to inform them of his health status and diagnosis. They responded with surprise and stated that although John indicated that he was not happy with the workload, he did not indicate that he had been suffering from anxiety or depression. They said that he should have been able to deal with the stresses of everyday working life and that the breakdown was not reasonably foreseeable. Further, they said that if they had been informed as to how serious his mental health condition had been, they would have tried to help and avoid the manifestation of a more serious condition. They also made reference to the fact that they operate a nightclub, where late nights and long hours are part of the culture of the industry – they claimed that John would have been very well aware of the nature of this nightclub industry.

#### **Procedural history:**

John contacted his solicitors, a leading law firm, Brown, Power & Sons and obtained legal advice. Following unsuccessful correspondence between John’s solicitors and the solicitors for Disko Risko to settle the matter, proceedings were initiated on John’s behalf in the High Court on 12 December 2016 against Disko Risko. John pursued an action in employer’s liability and nervous shock. He claimed that his employer breached the duty of care to the employee on a number of grounds. A full defence was entered by the defendant, Disko Risko.

#### **The Plaintiff claimed the following:**

1. Damages for psychiatric injuries suffered, including ongoing stress and depression, (culminating in a nervous breakdown), which ought to have been foreseeable to the Defendant. The Plaintiff claims that the Defendant breached the duty of care to the Plaintiff, to provide a safe system of work, on the grounds of poor hours and heavy work load. The Plaintiff claimed that there should have been a system in place regarding the long hours and heavy workload.
2. Damages for nervous shock, on the grounds of witnessing the injury to Luigi and suffering post traumatic stress. The Plaintiff claimed that the employer’s negligence and the resulting accident left him exposed to suffering nervous shock, which was reasonably foreseeable in all the circumstances. He further claimed that he was a participant in and not a mere observer of the accident.

**THE HIGH COURT:**

**John Murphy**

**Plaintiff**

**-and-**

**Risko Disko Ltd.**

**Defendant**

**At first instance, Williams J. of the High Court found the following and held in favour of the Defendant, Disko Risk Ltd:**

1. Regarding the claim that the Defendant breached the duty to provide a safe system of work on the grounds of heavy workload and long hours, Williams J. found the Defendant did not breach this duty. He acknowledged that the Plaintiff was under work pressure, but due to the nature of the nightclub industry, the learned judge stated that all staff members were under similar pressure and should be able to withstand the everyday pressure of work. The judge found that the employer could not have reasonably foreseen the employee's psychological breakdown in the circumstances. The judge (in referring particularly to the case of *Hatton v Sutherland* [2002] EWCA Civ 76) focused on whether the kind of harm to this particular employee was reasonably foreseeable and found that each employee must be treated differently. He noted that foreseeability depends upon what the employer knows, or ought reasonably to know, about the individual employee. An employer is entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability.
2. Regarding the claim of nervous shock that the Defendant did not breach their duty of care, Williams J. stating that it was not reasonably foreseeably that the Plaintiff would suffer such injury, and that such injury was not caused by the Defendant's negligence, distinguishing *Curran v Cadbury* [2000] 2 ILRM 343.



**COURT OF APPEAL:**

The Plaintiff, decided to appeal to the Court of Appeal. On 23 August 2017, the Plaintiff (Appellant) caused a Notice of Appeal to be issued from the Court of Appeal Office, which was served on the Defendant (Respondent) the same day. In the said Notice of Appeal, the Appellant indicates his desire to appeal the findings made by trial judge above.

**John Murphy**

**Appellant**

-and-

**Risko Disko Ltd.**

**Respondent**

**The Appellant argues the following:**

1. Williams J. erred in law in finding that the Respondent did not breach the duty to provide a safe system of work on the grounds of heavy workload and long hours.
2. Williams J. erred in law in refusing to find that the Defendant breached its duty to care to the Appellant on the grounds of witnessing an injury to the patient and his subsequent nervous shock.

**The Respondent argues the following:**

1. Williams J. was correct in finding that the Respondent did not breach the duty to provide a safe system of work on the grounds of heavy workload and long hours. No reasonable employer could have foreseen that the ordinary conditions of work in the nightclub industry would have caused such injury.
2. Williams J. was correct in finding that the Respondent did not breach the duty of care on the grounds of witnessing an injury to the Chef and subsequently suffering nervous shock.

## **Rules and Procedure**

### **Plaintiff/Defendant**

For the purposes of the National Moot Court Competition 2017 the Plaintiff will always be John Murphy, and the Defendant will always be Disko Risko Ltd. In the preliminary oral presentation rounds, teams will be given an opportunity to act as counsel for both the Plaintiff and the Defendant.

### **What is required of participants?**

#### **A. Written Requirements**

Students, working in teams of three, are required to prepare

- 1) A Memorandum on behalf of the Plaintiff setting out the arguments which will be made on his behalf.

#### **And**

- 2) A Memorandum on behalf of the Defendant setting out the arguments which will be made on its behalf.

**Each document should be no longer than 2,500 words and should make reference to relevant case-law, legislation, constitutional provisions or other relevant legal sources.**

**Written Submissions must be sent to [nationalmoot@gmail.com](mailto:nationalmoot@gmail.com) in MS Word or PDF by 5pm on 10<sup>th</sup> November 2017.**

#### **B. Oral Rounds**



On the day of the competition, teams will be given an opportunity to represent both the Plaintiff and the Defendant in preliminary rounds.

Teams will be provided with the relevant Memorandum of the opposing team 15 minutes before each preliminary round. Having had 15 minutes to consider this information, the round will begin. Teams will have been assigned Team Letters so as to ensure anonymity of institutions. Teams **must not reveal** their institution of origin to judges at any time during the competition. The Administrators may disqualify or impose a penalty against any Team that intentionally or inadvertently discloses its institution of origin to a judge, whether or not such disclosure occurs during an Oral Round.

Only **2 students** from each team will be entitled to present oral submissions in each round (though these need not necessarily be the same 2 students for each round). Each student may speak for **7 minutes**. Students may not interrupt one another when speaking, though a student may confer with his/her colleagues (including the third student team member who may sit at the bench as counsel). Students may deviate from their written submissions so as to take into account the submissions of the opposing team. Students will be asked questions by the judges during their oral submissions.

The two speakers on behalf of the Plaintiff will present their submissions to the court first, followed by the two speakers on behalf of the Defendant. Students will then each be afforded **2 minutes** rebuttal time, in the same order as their original submissions to the Court. Rebuttal must be confined to submissions already before the Court and **no new material** may be introduced at this time. Judges may ask questions during rebuttal and su-rebuttal.

#### Ex Parte Procedure



In extreme circumstances, such as when a Team fails to appear for a scheduled Oral Round, the Administrator, after waiting 10 minutes, may allow the Oral Round to proceed *ex parte*. In an *ex parte* proceeding, the attending Team will present its oral pleadings and these will be scored by the judges to the extent possible as if the absent Team had been present and arguing. In such a case, the Team that fails to appear for its scheduled Round forfeits the points.

### Advice on Oral Submissions

Teams should address the court at all times with the utmost respect. Students should mirror the language which is used in courts when addressing the judge or their colleagues. The following tips may be of assistance in preparing your legal submissions.

#### A. Opening Submissions

When a student commences his or her oral submission, the student will stand and say: *“May it please the court, my name is ..... I appear on behalf of the Plaintiff/Defendant in this matter”*

The speaker should also make some reference to his colleague: *“My learned friend, Mr./Ms. X will also be addressing/has already addressed the Court on the Plaintiff’s/Defendant’s behalf.”*

The student should briefly refer to the issues of the case with which he / she will deal: *“I will deal with the issue of ...”*

#### B. Content of submissions

In different courts, different modes of address may be used. The correct mode of address for judges of the Superior Courts as set out in the Rules of the Superior Courts specify “Judge” or “A Bhreithimh” as the correct modes of address. You can also refer to “the Court” if you prefer.

When a judge asks a question of a student, the student should listen to the question and should never interrupt the judge when he/she is asking the question.

A judge is only human. The judge's question may not be clear to the student. The student may ask the judge to repeat or rephrase the question: *"Judge, could you please repeat the question?"*

Students representing a party must not interrupt a student who is making an oral submission. A student making an oral submission may consult with a colleague. As a general rule when counsel is on his/her feet, it is customary that the opponent sits. There should only be one barrister standing at a time – unless the judge is addressing them both.

A student may refer to legal materials during the course of an oral submission. Students must have this material in the court with them. The judges may ask to view the legal materials that students rely upon.

When referring to a case in some detail, you should "open the case to the Court" e.g. *"May it please the Court, I wish to open the case of DPP v Potter,<sup>1</sup> reported in volume 2 of the 1995 Random Law Reports Weekly at page 4 and referred to at paragraph 5 of the Plaintiffs' submissions. Would you like me to state the facts of the case, Judge?"*

### C. Closing submissions

If you are the first speaker for your team, make sure that you have made all your points clearly. Repeat them in summarised form. End by asking if the judge has any questions. Then introduce your teammate and give a very brief statement of what he/she is about to say. e.g

*"In summary, the Plaintiff makes the following points: 1, 2, 3..."*

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<sup>1</sup> Always say "DPP and Potter". Never say "DPP v Potter" or "DPP versus Potter".

*“If the Court has no further questions, my learned colleague, Mr./Ms. X will make submissions based on ..... to which I referred at the beginning of my submissions...”*

or

*“Ms. X will rebut the legal submission made on behalf of the Defendant with respect to....”*

The second speaker from the team should end his/her speech by summarising the argument of the team as a whole, recapping what the first speaker said, as well as reiterating the points he/she has made. Again, questions should be invited. Before sitting down the speaker should enquire if the court wishes to hear any more from him/her: *“May I be of any further assistance to the court?”*

#### D. Other tips

Students will be anxious - even the greatest advocates get nervous. A case in point is Cicero who during his defence of Aulus Clentius Habitus for murder stated that:

*“I am always nervous when I begin a speech. Every time I get up to speak I feel as if it is I myself who am on trial, nor merely for my competence but for my integrity and conscience as well. I fluctuate between two fears: either I shall be claiming more than I can achieve, which would be imprudent, or I shall not be making the best of my case, which would be a blameworthy act of negligence, a failure to meet my obligations.”*

Students should not fear the oral submissions! The judges are not attempting to trick the students but attempting to determine whether students understand the legal issues involved, and can persuade the court.

If you have a well-researched and well-constructed argument, presenting it orally should not pose a problem, provided you are familiar with each aspect of it. The aim is to present the argument clearly, calmly, without reading, with only a minimal reference to notes. While you should be relaxed and in control of the argument, you do need to present it with a degree of formality.

### E. Useful phrases

- *“In my submission I will show that...”*
- *“It is my respectful submission that...”*
- *“Opposing counsel’s argument overlooks the fact that...”* or *“...overlooks the case of...”*
- *“I appreciate your point, Judge, however, I would (nonetheless) submit that...”* or *“...I would argue that...”*
- *“My learned friend Ms./Mr. X...”*
- *“Learned counsel for the Plaintiff/Defendant...”*

### F. Dress Code

Students should dress smartly for all rounds of the National Moot Competition. The winning team will be making legal submissions before a High Court/Supreme Court Judge and therefore teams should look the part as well as act the part.

## Marking Scheme

### Memorials

Teams must submit 2 memorials – each will be given a mark out of fifty. The marking scheme is as follows:

<b>Command of the Issues, including application of relevant law to the facts</b>	<b>30</b>
<b>Structure and Clarity</b>	<b>20</b>

These marks are relevant to the **Best Memorials competition** and will only be relevant on the day of the oral submissions in the context of a tie-break situation, i.e. in deciding which teams progress to the semi-finals, if there are teams on equal points in terms of the oral rounds then they will be divided on the basis of their memorial marks.

### Oral Presentations

Each individual speaker on the team will be given a mark out of 100 for their oral presentation, including their rebuttal. The marking scheme is as follows:

<b>Command of the Issues, including application of relevant law to the facts</b>	<b>30</b>
<b>Persuasiveness</b>	<b>30</b>
<b>Ability to answer questions/respond to points made</b>	<b>20</b>
<b>Structure and Clarity</b>	<b>10</b>
<b>Courtroom Manner</b>	<b>10</b>

Scoring will not reflect the merits of the facts of the case but only the quality and force of the legal arguments.



# National Moot Court Competition 2017

## Outline Timetable

<b>Registration:</b>	<b>9.00 - 9.45</b>
<b>Opening Welcome:</b>	<b>9.45 - 10.00</b>
<b><u>Round 1:</u></b>	<b>10.00 - 11.15</b>
Teams in Courtrooms:	10.00
Reading of Memorials:	10.00 - 10.15
Oral Presentations:	10.15 - 11.15
<b>Tea / Coffee:</b>	<b>11.15 - 11.45</b>
<b><u>Round 2:</u></b>	<b>11.45 - 1.00</b>
Teams in Courtrooms:	11.45
Reading of Memorials	11.45 - 12.00
Oral Presentations	12.00 - 1.00
<b>Lunch:</b>	<b>1.00 - 2.15 (light lunch is provided)</b>
<b><u>Semi-final:</u></b>	<b>2.15 - 3.30</b>
Teams in Courtrooms:	2.15
Reading of Memorials:	2.15 - 2.30
Oral Presentations:	2.30 - 3.30
<b>Break:</b>	<b>3.30 – 3.45</b>
<b><u>Grand Final:</u></b>	<b>3.45 - 5.30</b>
Teams in Courtrooms:	3.45
Reading of Memorials:	3.45 - 4.00
Introduction of Judges & Preliminary Comments:	4.00 - 4.10
Oral Presentations:	4.10 - 5.10
<b>Judgment Pronounced:</b>	<b>circa 5.30</b>