

THE NATIONAL MOOT COURT COMPETITION 2022



INFORMATION & QUESTION PACK

Kindly Sponsored by A&L Goodbody

19th November 2022, Criminal Courts of Justice, Dublin

A&L Goodbody

7th October 2022

A chara,

We are pleased to provide you with this information pack for the upcoming **National Moot Court Competition 2022**. All of the information you need in relation to this competition is in the pack, including the problem question, rules and procedures, details of the preliminary round where participants submit recorded submissions, and the outline timetable for the day for the live rounds.

PLEASE NOTE: the **competition will take place in- person, in the Criminal Courts of Justice**, on Parkgate Street, Dublin 8 on **Saturday 19th November 2022**.

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 24th October**. Teams should consist of 3 students, though only 2 students from each team will be entitled to present oral submissions. Please email the team names to nationalmoot@gmail.com
2. 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. 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, 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 4th November 2022**. **Late submissions will not be accepted under any circumstances**. Send submissions to 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. Thanks to the kind sponsorship of A&L Goodbody, 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 19th November. 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 as it contains important information on the format of the competition, the procedures and rules, and 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 or by calling me on 01-7006471.

Le gach dea-ghuí,
Dr Aisling de Paor
School of Law & Government,
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A&L Goodbody



National Moot Court Competition 2022

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Guidelines for Participants

1. For the purposes of this question, students are required to address recovery under the common law tort of nervous shock only. The case does not address any questions of liability under any legislation. 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.
2. There will be no oral evidence taken on the day. This is a legal argument only. The primary question is whether the Court of Appeal should overturn the decision of the High Court to find a case of nervous shock. No new pleadings can be raised on the day.
3. This is an appeal on point of law. Submissions should focus on whether there is a prima facie case of nervous shock. The Court of Appeal will not accept substantive arguments on remedies (including damages etc).
4. This question pack contains a total of 15 pages.

Problem question: background and facts

Johnny “Dipper” Murphy is a law student and avid hurler. He earned his nickname “Dipper” because in his spare time, he is a thrill-seeking, roller-coaster aficionado. He regularly goes to his local amusement park, Ballyhurley Amusement Park (‘BAP’) to switch off from his studies and to ride its many roller-coasters.

In October 2021, he decides that instead of going to his torts lecture he should go to BAP. BAP has opened a new ride, ‘the Funnel of Doom’, and it is the biggest rollercoaster in Ireland. Johnny just had to try it out. It rises to 100 metres, and loops downwards below the surface of the earth into a 50 metre darkened tunnel. It has been widely advertised in the media as offering the “thrill of a lifetime”; and for Johnny it sounds like a lot more fun than spending a day on campus listening to his torts lecturer droning on. Johnny arrives at 11am, and having purchased a ticket he waits patiently in line. Unfortunately, for Johnny, it seems that half of Ireland have bunked off work and are waiting ahead of him to enter the ride. The queue is channelled into a long, open air corridor or funnel, and walled in by fencing. There is a turnstile near the top of the queue. Part of the crowd is beyond the turnstile, and part of the crowd is behind it. As he stands patiently in line, Johnny soaks in the carnival atmosphere, but he notices that there is some jostling and messing in the queue. He doesn’t think much about it. From past experience, he knows that BAP attracts a buck wild element, and it is all part of the experience.

Anyway, things take a turn for the worse when a number of security staff inform the crowd that there is an emergency and that they should disperse. The security staff are brusque but look concerned. Someone in the crowd shouts that there is a ‘bomb’ planted on the site. This causes a lot of pushing and shoving and the crowd is soon overtaken by panic. Johnny is not really affected because he is at the back of the queue, but he witnesses a crush occurring in front of him. Several people appear to be wedged between turnstiles and the way out. Johnny hears a lot of crying and shouting and then silence. He then sees paramedics rushing to the scene, and security attempting to form a cordon. Shortly afterwards people are being ushered back, but the security appear to be overwhelmed, and poorly equipped to deal with the problem. Johnny and some other patrons decide to help out, so he approaches the front of the queue by running up on the outside of the perimeter fence. It becomes clear to Johnny that the crush has subsided, but has left a number of people prone and apparently lifeless. But, he then realises that the real emergency is not in the queue but in the tunnel. He sees people bloodied and bruised emerging from the tunnel. He is then asked to move back in an aggressive voice by security. Because BAP is so busy, hundreds if not thousands of people witness these terrible scenes. At this point, Johnny retreats in a badly shaken state.

Later on the news, it emerges that thirty people were injured when the rollercoaster derailed in the tunnel. And while no one mercifully died from the secondary crush, twenty people were taken to hospital because they displayed symptoms of asphyxiation. Johnny is badly shaken. In the weeks and months after the accident, Johnny becomes withdrawn and has difficulty focusing. In his dreams, he relives the events of the day in vivid detail. Eventually, he is diagnosed with Post-traumatic stress disorder by his doctor, and prescribed cognitive behaviour therapy, and then medication. The psychiatrist also recommended that Johnny refrain from going to any amusement parks and avoid watching such activities on the television, as part of his treatment. This was devastating for Johnny, who lived for his frequent visits to BAP. He feels that the thrill is gone out of his life. He has also given up hurling because he

suffers from frequent and unannounced flashbacks that interfere with his game. In an attempt to keep fit and keep his mind distracted, he has taken up roller-blading, but it is not the same. He misses the wild abandon of the amusement park. But he knows he cannot go back because to do so would undoubtedly re-traumatise him.

It becomes apparent soon afterwards that security at the site were insufficiently trained in crowd and crisis management, and that the 'Funnel of Doom' roller-coaster was not fully signed off on by engineers before it was opened. Learning of this information through the media, he then initiates legal proceedings.

Procedural history:

Johnny "Dipper" Murphy contacted his solicitors, a leading law firm, DJ, Canning & Ó hAilpín Associates and obtained legal advice. Following unsuccessful correspondence between Johnny's solicitors and the solicitors for Ballyhurley Amusement Park (BAP) LTD to settle the matter, proceedings were initiated on Johnny's behalf in the High Court on 12th December 2021 against Ballyhurley Amusement Park (BAP) LTD. Johnny pursued a tort action for nervous shock.

THE HIGH COURT:

At first instance, Schock J of the High Court found the following and held in favour of the Defendant, Ballyhurley Amusement Park (BAP) LTD in refusing to find a case of nervous shock:

In the High Court, Schock J. finds no duty of care is owed, in particular:

- (i) Although Irish courts have never embraced the distinction between primary and secondary victims, the degree of relational proximity between the victim and those who have been injured is a relevant factor to determine whether there is a duty of care, citing *Cuddy v Mays* [2003] IEHC 103. In this case, Johnny is not a participant in the incident and, although he witnessed the immediate aftermath of the crush, and the emergence of some of the victims of the roller-coaster derailment, he lacks the necessary ties of 'love and affection' that would justify recovery.

- (ii) A court, in novel duty situations, following *Glencar Explorations plc and Anor. v. Mayo County Council (No. 2)* [2002] 1 IR 84, must consider the likely consequences of any extension of the duty of care. The issue of policy and principle in tort law cannot be fully disentangled, following Charleton J. in *P McD v The Governor of the X Prison* [2021] IESC 65. It would not be fair, just or reasonable to extend the duty of care to Johnny's situation because it would give the green light to claims made by multiple bystanders who were present on the day. However, parents and loved ones not present at the site or its immediate aftermath would be denied recovery. This would not accord with common-sense and would be unfair.

Court of Appeal:

The Plaintiff, decided to appeal to the Court of Appeal. On 23rd August 2022, 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 (Johnny Murphy) indicates his desire to appeal the findings made by trial judge above.

Johnny “Dipper” Murphy

Appellant

-and-

Ballyhurley Amusement Park (BAP) LTD

Respondent

The Appellant seeks to overturn the decision of the High Court and argues:

Schock J erred in law in finding that there was no case of nervous shock in respect of the claim made. The Appellant appeals both grounds.

The Respondent calls upon the Court of Appeal to uphold the decision of the High Court and argues:

Schock J was correct in finding that the Respondent is not liable in damages for nervous shock in respect of the claim made.

RULES AND PROCEDURE OF THE COMPETITION

***Please read carefully and take note of relevant dates/ details**

Parties: Plaintiff/Defendant

For the purposes of the National Moot Court Competition the **Plaintiff/ Appellant** will always be **Johnny “Dipper” Murphy**, and the **Defendant/ Respondent** will always be **Ballyhurley Amusement Park (BAP) LTD**. In the preliminary oral presentation rounds, teams will be given an opportunity to act as counsel for **either** the Plaintiff/Appellant or the Defendant/Respondent (see below).

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 in MS Word or PDF by 5pm on 4th November 2022.

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 10 minutes before each preliminary round. Having had 10 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,¹ 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...”

“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:

¹ Always say “DPP and Potter”. Never say “DPP v Potter” or “DPP versus Potter”.

“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:

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

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:

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

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 2022

Outline Timetable 19th November 2022

Registration:	9.00 - 9.30
Opening Welcome:	9.30 - 9.45
<u>Round 1:</u>	9.45 - 11.00
Teams in Courtrooms:	9.45
Reading of Memorials:	9.45 – 9.55
Oral Presentations:	10.00 - 11.00
Tea / Coffee:	11.00 - 11.30
<u>Round 2:</u>	11.30 - 12.45
Teams in Courtrooms:	11.30
Reading of Memorials	11.30 - 11.40
Oral Presentations	11.40 - 12.40
Lunch:	12.45 - 2.00 (lunch is provided)
<u>Semi-final:</u>	2.00 - 3.15
Teams in Courtrooms:	2.00
Reading of Memorials:	2.00 - 2.10
Oral Presentations:	2.10 - 3.10
Break:	3.15 – 3.30
<u>Grand Final:</u>	3.30 - 5.00
Teams in Courtrooms:	3.30
Reading of Memorials:	3.30 - 3.40
Introduction of Judges & Preliminary Comments:	3.40 – 3.45
Oral Presentations:	3.45 - 4.45
Judgment Pronounced:	circa 5pm