

September 23 2015

A chara,

We are pleased to provide you with this information pack for the upcoming **National Moot Court Competition 2015**. 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 14<sup>th</sup> 2015. 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 26<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,

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 6<sup>th</sup> 2015. 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 appellant and a memorial on behalf of the respondent. 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 14<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.**



**Matheson**

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



Matheson



## **National Moot Court Competition 2015**

Kindly sponsored by



### **Problem Question**

Helen Davis

**Plaintiff/ Appellant**

**-and-**

Ireland

**Defendant/ Respondent**

### **Background and facts:**

On 21<sup>st</sup> August 2014, The Irish Moon printed an article in its newspaper entitled 'Young and Talentless Turn to Drug Deals'. The following is the newspaper article itself:



# The Irish

## Young and Talentless Turn to Drug Deals

By RUAN YOLYFE

21st August 2014

Breaking into the acting scene in Dublin is notoriously difficult. It is well known that young actors often have to take unsavoury roles until they get their first big break. Usually mortifying themselves on Grafton St. dressed as a giant mobile phone is enough to sustain the young creatives. However, the Irish Moon can exclusively report that some of the young actors are turning to drug dealing in order to fuel their creative habit. One such young aspiring actress is Helen Davis. You may remember Helen from such tv adverts as the Bad Breath Banisher and playing one of the Capulets in Romeo and Juliet. With the soaring prices of rent in the capital and that elusive big break getting further from reality it seems that Ms. Davis has turned to distributing bags of white powder to the rich and famous in one very exclusive Dublin nightclub. What further depths our young creatives might sink to in pursuance of the acting dream remains to be seen.

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Helen Davis strenuously denied the allegations made in the newspaper article and she claimed that they were defamatory. Helen did not have the funds to take a case privately through a solicitor for defamation. Helen Davis approached her local law centre in Ballyhack in September 2014. Helen was told by the solicitor in the law centre that the Civil Legal Aid Act 1995 precluded them from offering civil legal aid in respect of defamation proceedings. Helen was horrified as she was going to be unable to defend her good name.

Helen brought a defamation case before the courts herself, as a litigant in person. Kommunikorp who owns The Irish Moon instructed a 'big 5' firm and two of the most eminent Senior and Junior Counsels in defamation law. The case, *Davis -v- Kommuikorp*, was thrown out by the President of the High Court. Helen was ordered to pay €80,000 in costs.

Helen's acting career has been ruined, people think she's a drug dealer and she has judgment marked against her for the costs order.

Helen had heard of Berin Rokovitz Solicitors who take on public interest cases. She approached them in February 2015 and they agreed to bring a challenge to the Civil Legal Aid Act, 1995 in respect of the exclusion of defamation cases from the civil legal aid scheme.

The case was heard in the High Court in May 2015 by Ms. Justice Honner. Ms. Justice Honner delivered a 260 page judgment in, *Davis -v- Ireland*, refusing the relief sought by Ms. Davis and finding for the State.

The following are excerpts from Ms. Justice Honner's judgment;

*1.4 This Court accepts that the offending article is capable of being read as defamatory. That is not the issue before this Court. The function of this Court*

*is to decide whether or not the exclusion of defamation from the legal aid scheme under the 1995 Act is lawful.*

*15.2 The right of citizens to freedom of expression must be balanced with the right to a good name. The Defamation Act seeks to achieve that balance. Merely because the Plaintiff was precluded from free legal representation does not mean that her right to a good name was violated.*

*87.9 Counsel for the Plaintiff opened Steel and Morris v United Kingdom to the Court. This Court takes the view that this case must be distinguished on the basis that the Applicants in that case were the Defendants in a defamation action against a multi billion dollar company. They did not have a choice in whether the litigation took place or not.*

*104.2 In their wisdom, the Oireachtas have determined that defamation, is appropriately excluded from the remit of the 1995 Act. That is a matter to be more appropriately reviewed in Leinster House. It is not my function to tell the Oireachtas how to legislate. It is clear that the objective was to prevent frivolous defamation claims wasting the public resources. Is it disproportionate that there is no scope for exceptional circumstances, as has been suggested? I find that this is not disproportionate.*

*106.1 The Courts must look to the ideals of distributive justice, the public purse is limited and therefore so must the remit of civil legal aid be limited too. In the hierarchy of needs, in terms of legal aid, defamation must therefore be appropriately excluded.*

*107.9 There is certainly an issue of equality of arms. The initial case does seem to have somewhat of a David and Goliath scenario. I am not satisfied that this is enough to strike down the legislation. Similarly, I do not find that the Applicant's right of access to the Courts has been violated. The Applicant*

*appears to have no difficulty with accessing the Courts having been before this Court twice in the space of a number of months.*

*110.5 Can it be said that because of the denial of legal aid the Applicant's right to a good name and right to earn a livelihood have been violated? In the view of this Court, the denial of legal aid has not resulted in a violation of these rights. The Applicant has full access to the statute book and The Rules of the Superior Courts. There is no unlimited entitlement to legal representation. Even if it could be said that there was an interference with these rights, was this interference disproportionate? This Court does not find any such disproportion. Nor does this Court find any interference with the legitimate aim and public interest of the legal aid scheme.*

Helen has been advised that she should appeal the decision to the Court of Appeal. The Appeal is due to be heard before the Court of Appeal on the 14th day of November 2015.



## **Rules and Procedure**

### **Appellant/Respondent**

For the purposes of the National Moot Court Competition 2015 the Appellant will always be Helen Davis, and the Respondent will always be Ireland. In the preliminary oral presentation rounds, teams will be given an opportunity to act as counsel for both the Appellant and the Respondent.

### **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 Appellant (Helen Davis), setting out the arguments which will be made on his behalf.

#### **And**

- 2) A Memorandum on behalf of the Respondent (Ireland), 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 Friday 6<sup>th</sup> November 2015.**

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

On the day of the competition, teams will be given an opportunity to represent both the Appellant (Helen Davis) and the Respondent (Ireland) 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 Appellant will present their submissions to the court first, followed by the two speakers on behalf of the Respondent. 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 Appellant/Respondent 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 Appellant’s/Respondent’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 Appellants' 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 Appellant 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

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

*“Ms. X will rebut the legal submission made on behalf of the Respondent 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 Appellant/Respondent...”*

#### 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 2015

## 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>Break:</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>Tea / Coffee:</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>