

THE NATIONAL MOOT COURT
COMPETITION 2016



QUESTION PACK

Kindly Sponsored by Matheson

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12TH NOVEMBER 2016, THE CRIMINAL COURTS OF JUSTICE



School of Law & Government

September 28th, 2016

A chara,

We are pleased to provide you with this information pack for the upcoming **National Moot Court Competition 2016**. 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 12th 2016. 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 24th**. 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
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 4th 2016**. **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. 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 12th**. **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 or by calling me on 01-7006471.

Le gach deá-ghuí,

Dr Aisling de Paor





National Moot Court Competition 2016

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Guidelines for Participants

1. If you are preparing the arguments for the Plaintiff, assume the letter of instruction is from the Solicitor for the Plaintiff. If you are preparing the arguments for the Defendant assume the letter of instruction is from the Solicitor for the Defendant.
2. The injunction being sought is a full prohibitive injunction. There was no interim or interlocutory relief sought as such an early hearing date was available. The article has not yet been printed.
3. There are no exhibits to the Grounding Affidavit contained in this pack. They are not necessary to prepare for the moot.
4. There is no need for a replying affidavit. All you need to do is prepare the submissions for the Plaintiff and submissions for the Defendant.
5. There will be no oral evidence taken on the day. This is a legal argument only. The primary question being will the Court grant a prohibitive injunction on the basis that the publication of the article would breach Trisha Roles' constitutional rights.
6. This question pack contains a total of 21 pages.



Dear A. Another BL,

I wish to instruct you in an injunction action.

By way of background, you may know of Trisha Roles? In any event Trisha Roles is a famous actress who is the lead character in a popular Irish television drama. The 7th season of Villagers was filmed in Ruansville, a sleepy town in County Carlow.

The Production Company, EPS Productions booked Ms. Roles a room in a local B&B. The B&B is run by Joanne Jeffers. EPS Productions ensured that Ms. Jeffers signed a non-disclosure agreement which provides at Clause 3 that;

“Joanne Jeffers contracts not to disclose any information regarding the presence and/or activities of Trisha Roles and/or her personal guests to any person and/or company.”

Unfortunately, Trisha and Joanne struck up an unlikely ‘friendship’ and engaged in sexual relations during the long nights in the B&B, despite Trisha being famously married to Andy Star of HotStop, a very successful band.

Being a small town, the rumour mill started pretty quickly about the unlikely liaison. Newspapers were in the driveway of the B&B the following morning. The Daily Galaxy rang Ms. Jeffers and offered her €5,000 for the inside scoop on the affair and despite the non-disclosure agreement she accepted. The Daily Galaxy then rang Trisha and asked her for comment on the story. Trisha rang me/her lawyers immediately. I/They drafted a plenary summons and a notice of motion seeking injunctive relief. I have attached both pleadings. An interim injunction or interlocutory injunction is not necessary, as The Daily Galaxy have agreed to an early hearing date. So, it’s a full prohibitive injunction that is being sought. I/They believe that the article will breach Ms. Roles’ Right to Privacy under the Constitution, that is really the central issue in the case.

I now need you to draft the submissions (/memorials) for the injunction and run the injunction on 12th November 2016 at the Criminal Courts of Justice.

Kind Regards,



Solicitor for the Plaintiff/Defendant



THE HIGH COURT

Record No. 2016/89278P

BETWEEN

TRISHA ROLES

Plaintiff

-AND-

THE DAILY GALAXY LIMITED

Defendant

PLENARY SUMMONS

TO THE DEFENDANT: The Daily Galaxy Limited having its address at 9 News Mews, Dublin 12.

This Plenary Summons is to require that within eight days after the service thereof upon you (exclusive of the day of such service) you in person, or by Solicitor do enter an appearance in the Central Office, Four Courts, Dublin in the above action;

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and Judgment may be given in your absence.

BY ORDER – THE HONOURABLE SUSAN DENHAM, Chief Justice of Ireland, the day of January Two Thousand and Sixteen.

N.B. This Summons is to be served within TWELVE Calendar Months from the date hereof, and, if renewed within six Calendar Months from the date of the last renewal, including the day of such date and not afterwards.

The Defendants may appear hereto by entering an appearance either personally or by Solicitor at the Central Office, Four Courts, Dublin.

GENERAL INDORSEMENT OF CLAIM



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On 12th September 2016 a servant and/or agent of the Defendant newspaper telephoned the Plaintiff seeking comment on an intended story. Said story was an expose on an affair (which same is denied) which allegedly took place between the Plaintiff and one Joanne Jeffers of Ruansville, County Carlow in or around September 2016.

On 15th day of September 2016 the Plaintiff wrote to the Defendant requesting that they refrain from printing said article in that printing same would be in breach of the Plaintiff's constitutional rights and cause her irreparable personal and financial harm. On 16th September 2016, the Defendant wrote to the Plaintiff stating that they would not refrain from printing said article.

And THE PLAINTIFF'S CLAIM is for:

- (a) An injunction prohibiting the Defendant from printing or causing to be printed any information regarding her private life and in particular her marriage and/or extramarital affairs;
- (b) Breach of the Plaintiff's constitutional right to privacy; and
- (c) Costs.

Signed: _____

Solicitors2TheStars



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THE HIGH COURT

Record No. 2016/89278P

BETWEEN

TRISHA ROLES

Plaintiff

-AND-

THE DAILY GALAXY LIMITED

Defendant

NOTICE OF MOTION

TAKE NOTICE that on the 12th day of November 2016 at 11am or at the first available opportunity thereafter, Counsel on behalf of the Plaintiff will apply to this Honourable Court, sitting at the Criminal Courts of Justice, Parkgate Street, Dublin 7 for the following reliefs:

1. An injunction prohibiting the Defendant from printing or causing to be printed any information regarding her private life and in particular her marriage and/or extramarital affairs;
2. Further or other Order;
3. An Order for the costs of the application.

WHICH APPLICATION will be grounded on this originating Notice of Motion, the Affidavit of Trisha Roles sworn on 18th day of September 2016 and the exhibits thereto, the Affidavit of Service of this Notice of Motion and the said Affidavit, the nature of the case and the reasons to be offered.



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Signed: _____

Solicitors2TheStars

Solicitor for the Plaintiff

To:

The Chief Registrar

The High Court

Four Courts

Dublin 7

And To:

O'BrienRing Solicitors

Solicitors for the Defendant



THE HIGH COURT

Record No.

BETWEEN

TRISHA ROLES

Plaintiff

-AND-

THE DAILY GALAXY LIMITED

Defendant

AFFIDAVIT OF TRISHA ROLES

I, **TRISHA ROLES**, of 1 Connolly South Quarter, St. Paul's Road, Dublin 8 aged 18 years and upwards hereby MAKE OATH and say as follows:

1. I am an actress and I make this Affidavit on my own behalf and I do so from facts within my own knowledge save where otherwise appears and whereso otherwise appearing I believe the same to be true.
2. I make this affidavit in support of my application for a prohibitive injunction restraining the publication of an article concerning my private life.
3. I say that on the 12th September 2016 I received a phone call from a reporter from The Daily Galaxy Newspaper asking me for my comment on a story that I had a same-sex affair with the owner of a Bed and Breakfast I was staying in while filming the upcoming season of villagers (which is denied).
4. I say that there is no public interest in printing such an article concerning my private life. I also say, and am so advised, that the publication of same

would be a breach of my constitutional rights, particularly the right to privacy.

5. I wrote to the Defendant through my lawyers on 15th September 2016 requesting that they refrain from printing the proposed article. I beg to refer to a copy of said letter marked with the letters TR1 and upon which I have signed my name prior to the swearing hereof.
6. The Defendant replied to said letter on 16th September 2016 refusing to refrain from printing said article. I beg to refer to a copy of said letter marked with the letters TR2 and upon which I have signed my name prior to the swearing hereof.
7. As a result of the foregoing, I say that my constitutional rights will be breached if said article is published and same will have an irreparable effect on my life both personally and financially. I therefore pray to this Honourable Court for the reliefs sought.

SWORN by the said Trisha

Roles this 18th day of September 2016

, at Dublin 1, before me,

a Practising Solicitors,

and I know this Deponent:

Practising Solicitor

FILED on the 18th day of September 2016, by
Solicitors2TheStars, Solicitor for the Plaintiff.



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Rules and Procedure

Plaintiff/Defendant

For the purposes of the National Moot Court Competition 2016 the Plaintiff will always be Trisha Roles, and the Defendant will always be The Daily Galazy. 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 in MS Word or PDF by 5pm on 4th November 2016.

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,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

¹ 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 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:

| | |
|--|-----------|
| 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 2016

Outline Timetable

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