

THE NATIONAL MOOT COURT COMPETITION 2019



QUESTION PACK

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September 30th, 2019

A chara,

We are pleased to provide you with this information pack for the upcoming **National Moot Court Competition 2019**. 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 16th 2019. As indicated on the timetable, registration will begin at 9am and the first round will begin at 9.45am.

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 28th**. 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, 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 8th 2019. 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 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 16th. 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
School of Law & Government,
Dublin City University

A&L Goodbody



National Moot Court Competition 2019

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Guidelines for Participants

1. For the purposes of this question, students are 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 being will the Court of Appeal 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 be hearing substantive arguments on remedies (including damages).
4. This question pack contains a total of 17 pages.

Background and facts to case

Molly is 40-year-old step - mother of two (Carrie, 7 and Harry 9), who is married to Jimmy. She works as a Partner in a busy law firm in Dublin city centre. She is bubbly, outgoing and enjoys her job. On the weekends, Molly enjoys outings with her family. She and her children are particularly fond of going to the zoo and the circus. They regularly go to the circus whenever it is in town.

FunFare Ltd. is a travelling circus and entertainment company, with the motto: “Where excitement lives!” It is a reputable (circus and entertainment) company which includes a range of acts, including clowns, trapeze artists and exotic animals, such as lions, tigers and snakes. Last August 2019, Funfare Ltd. came to the IFSC in Dublin City Centre, which is close to where Molly works. Molly and Jimmy decide to take their daughter Carrie and son Harry to the circus as a treat. Unfortunately, Molly is called into work that weekend to close a deal, and is unable to attend the circus with her family.

Carrie loves wild animals and especially likes to see snakes and other reptiles. Carrie is keen to get a photo taken with Prince the python, a star circus attraction. Jimmy takes Carrie to see Prince the python. Prince is a friendly snake, who is known for his placid, calm nature. He regularly takes photographs with children and others who attend the circus. However, on this occasion, Prince is in particularly foul humour, and in no mood to play with children. As his handler Jake places Prince around Carrie, Prince began hissing and getting excitable, although nobody thought that this was anything to be alarmed about. While Jake was distracted chatting to others, Prince then suddenly bit into Carrie’s neck causing her severe pain, and she began to bleed profusely from her neck. Jimmy feels faint and collapses. Carrie and Jimmy are rushed to the hospital for treatment.

Jimmy is traumatised, but recovers quickly at the hospital. Although feeling disoriented and still in some shock, he immediately rings his wife Molly to let her know what happened. Molly is in the office and has her phone on silent. She checks her phone several hours later and sees five missed calls and a voicemail from Jimmy. She listens to the voicemail, which says: “Carrie had a bad accident, she has been bitten by a snake and it is really bad; come to the hospital immediately.” Jimmy abruptly hangs up the phone. On hearing the news, Molly drops her phone, screams with shock, and immediately gets in her car to drive to the hospital as fast as she can. When Molly arrives at the hospital, she is further distraught at the sight of her injured step- daughter. She was not sure of the extent of her injuries and thought for a second that she had died. She suffers immediate shock, became upset and started vomiting. She is relieved to be told that Carrie will make a full recovery. Carrie presented a distressing sight. Her neck was severely bruised, her face badly swollen and she had some internal (as well as outer) bleeding in the neck area. She undergoes a series of medical tests and receives initial treatment. Although she has some recovery ahead of her, it is likely that the snakebite will have no lasting impact on Carrie’s health.

Following this incident, Molly took three days off work. When she returned to work, Molly was not her upbeat self, but continued to fulfil her tasks in a dutiful way. Thereafter, the Molly “led a traumatised existence”. She became withdrawn, quiet and found her job difficult, as it required her to interact with people regularly. Her social

life and family life, as well as personal interactions were also under strain. She had nightmares, flashbacks and had difficulty sleeping. In addition, she has developed a nervous condition which causes her to panic and sweat whenever she sees wild animals/ reptiles (particularly snakes) either at the zoo, or sometimes on television. Soon after both Molly is diagnosed with Post Traumatic Stress Disorder (PTSD).

The psychiatrist, Dr. Young, recommended a course of treatment for Molly, which included medication and a break from her employment. It was also recommended that she refrain from going to the circus or the zoo, as part of her treatment.

Procedural history:

Molly contacted her solicitors, a leading law firm, Black & Associates and obtained legal advice. Following unsuccessful correspondence between Molly's solicitors and the solicitors for FunFare Ltd to settle the matter, proceedings were initiated on Molly's behalf in the High Court on 12 December 2018 against FunFare Ltd. for nervous shock. A full defence was entered by the defendant, FunFare Ltd.

In the initial hearing of the case, the Plaintiff sought the following:

Damages for nervous shock, on the grounds of witnessing the aftermath of the injury to her daughter and suffering post traumatic stress disorder, a recognisable psychiatric injury. The Plaintiff claimed that FunFare's negligence and the resulting accident left her exposed to suffering nervous shock, which was reasonably foreseeable in all the circumstances.

THE HIGH COURT:

At first instance, Fossett J of the High Court found the following and held in favour of the Defendant, FunFare Ltd in refusing to find a case of nervous shock:

The judge quoted Hamilton CJ (Kelly v Hennessy) and acknowledged that "... the law permits recovery of damages for nervous shock and psychiatric illness induced thereby where a plaintiff comes on the immediate aftermath of the accident." The judge made reference to the growing willingness of the courts to permit recovery for such psychiatric illness. The judge accepted that the plaintiff was a genuine and caring step- mother, who was clearly suffering. Although he expressed concern that the two were not blood relatives, he acknowledged that the plaintiff's ties to her step-daughter are very close, and this close relationship impacted the suffering of the plaintiff.

However, on the facts of this case, the court found that the Defendant did not breach their duty of care. Fossett J. stated 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. In particular, Fossett J applied the five requirements as identified by Hamilton CJ (Kelly v Hennessy). Although he acknowledged that the Plaintiff had the symptoms consistent with Post Traumatic Stress Disorder, a recognisable psychiatric illness, and that this injury appeared to be shock induced, the judge found that the remaining requirements of the "Kelly v Hennessy test" were not satisfied in this case.

As the court refused to find that there was an arguable case of nervous shock, the court refused to consider the question of remedies (including damages).

COURT OF APPEAL:

The Plaintiff, decided to appeal to the Court of Appeal. On 23rd August 2018, 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 Molly Murphy indicates her desire to appeal the findings made by trial judge above.

Molly Murphy

Appellant

-and-

FunFare Ltd

Respondent

The Appellant argues the following:

Fossett J. erred in law in refusing to find that the Defendant breached its duty to care to the Appellant and her subsequent nervous shock.

The Respondent argues the following:

Fossett J. was correct in finding that the Respondent did not breach the duty of care and was not liable for any injuries suffered.

Rules and Procedure of the Competition

Plaintiff/Defendant

For the purposes of the National Moot Court Competition the **Plaintiff/ Appellant** will always be **Molly Murphy**, and the **Defendant/ Respondent** will always be **FunFare Ltd**. In the preliminary oral presentation rounds, teams will be given an opportunity to act as counsel for both the Plaintiff/Appellant and the Defendant/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 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 8th November 2019.

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 sum Carrie, 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...."

¹ Always say "DPP and Potter". Never say "DPP v Potter" or "DPP versus Potter".

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 2019

Outline Timetable

| | |
|---|---|
| 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 |