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# **2023 UniSQ Secondary Schools Moot Competition**

**Teacher Information Session - 15 March 2023**

**Dr Katie Murray  
Mr Anton La Vin**

# Acknowledgement of Country

UniSQ acknowledges the First Nations of southern Queensland and their ongoing connection to Country, lands, and waterways. We pay deep respect to Elders past and present.

# Session Overview

- Competition overview
- Mooting format and behavioural rules
- The question
- The relevant law
  - The cases
  - The legislation
- How to prepare
- Coaching tips





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# Competition Overview

Welcome from Dr Katie Murray and Mr Anton La Vin (Competition Coordinators)

A team effort:

- UniSQ Sales and Student Recruitment Team
  - Stacey Hennelly; Georgina Humphrys
- Miss Anna Dean
- Coaches
- Judges



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# Competition Overview

## **Preliminary Round 1**

15 and 16 May 2023

## **Preliminary Round 2**

5 and 6 June 2023

## **Quarter Finals**

24 and 25 July 2023 (top 8 teams)

## **Semi-Finals**

7 and 8 August 2023 (top 4 teams)

## **Grand Final**

7 September 2023

### **Preliminary Rounds**

- Moots will be on a rolling schedule all day.
- All teams are guaranteed two mooting rounds before any elimination occurs.
- We try to ensure that schools do not moot the same side of the argument twice (e.g. as Appellant in PR1 and PR2). However, that is not always possible to avoid.
- Three-team moots/late changes to draw.



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# Competition Overview

- We are accommodating a maximum of 32 teams
- Schools are permitted to enter two teams on a first in basis
- If your students cannot commit to the competition days, please notify us as soon as possible



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# A recap on points

Ladder points and bonus ladder points (Preliminary Rounds only).

## **Base Ladder points:**

- Forfeit/fail to appear = 0
- Loss = 1
- Win = 2

## **Bonus Ladder points:**

Team scores from the judge:

- Less than 170 = 0
- 170 to 179 = 1
- 180+ = 2
- Awarded win or loss

Ladder points and bonuses will be calculated and updated after each round. Bonus points have been included to ensure that high-performing teams are not knocked out unnecessarily in the event of a loss.



# What is a moot?

- An ancient means of education in the common law tradition.
- A typical moot involves the selection of a judicial decision that raises legal points that are still arguable on both sides - 'moot points'.
- Differs from trial advocacy in that it is limited to legal argument only. There are usually no witnesses or tendering of evidence.
- The moot is based upon a given set of facts.
- The facts are contained in the court judgment from which there is an appeal e.g. this year's case: *Smith v State of Queensland* [2023] QDC 101.
- Moot problems can be self-contained, in that the relevant law to be applied to the facts is also provided to each mooter in a set of cases that can be used as authorities, or it can be open, in that mooters are free to use any relevant cases they can find.
- For this competition, cases are limited to those given (or referred to in the given cases).







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# Ethical Duties of Counsel

- Every lawyer appearing in an Australian court has a primary duty to the administration of justice.
- Conduct case honestly, never attempt to mislead the court or suppress relevant information.
- The key thing to remember is that it is counsel's role to assist the judge in deciding the case.
- The moot is a process of informing the judge of the relevant facts, the relevant law and the correct application of the law to the facts in this case.



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# Courtroom Etiquette

Entry of appearance, e.g. -

*May it please the Court, my name is Murray, initial K, of counsel and I appear with my friend Mr. Smith, initial J, for the Appellant.*

(Not “Good Morning” or “Hello” etc.)



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# Courtroom Etiquette

Handover to co-counsel, e.g. –

*Your Honour, that concludes submissions for the appellant in respect of the first ground of appeal. If Your Honour has no further questions, I will now hand over to my friend Mr. Smith, who will continue with submissions on behalf of the appellant in respect of the second ground of appeal.*



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# Courtroom Etiquette

Closing comments, e.g. –

*If Your Honour has no further questions, that concludes the submissions for the appellant. Thank you, your Honour.*



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# The Case to be Appealed

***Paul John Smith v The State of Queensland* [2023] QDC 101**

Our hypothetical Queensland District Court decision being appealed to the Court of Appeal.

- The argument on appeal is about the correct application of the relevant law to the facts. The facts were established in the trial.
- Argument can only be made on the stated grounds of appeal.



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# The Case to be Appealed

*Paul John Smith v State of Queensland* [2023] QDC 101

Please note to broaden the legal aspects for the enjoyment of students, we have oversimplified some of the legal concepts and procedures that would otherwise apply.

Students should not add additional grounds to the appeal by suggesting a technical defect in proceedings, based on civil or appeals procedure. We are aware that the current matter may well be dealt with in a slightly different manner if before an actual court.





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# The Case to be Appealed

***Paul John Smith v State of Queensland [2023] QDC 101***

This will be referred to as 'our case'.

Mr Paul Smith, was seriously injured on 5 January 2021 when he suffered compound fractures of both legs. He was 19 years of age. He had been standing at the top of a natural rocky ledge that was approximately 10 metres above a popular swimming hole known as the 'Blue Pool' and situated at Flagstone Creek near Toowoomba in the Blue Pool National Park. He was taking photographs of others who were jumping from the ledge into the water below. The plaintiff lost his footing and slipped off the ledge and landed not in the water but on rocks at water level and as a result suffered his injuries. Mr Smith claims that the defendant is liable to him for his injuries and has sued for damages for negligence. Quantum of damages has been agreed at \$700,000.



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# The Case to be Appealed

*Paul John Smith v State of Queensland* [2023] QDC 101

At the trial in the District Court, the judge found that the Plaintiff was owed a duty of care by the defendant, that the duty of care was breached, and the defendant was liable for the loss and damage caused, less 20% for contributory negligence.  $\$700,000.00 \times 80\% = \$560,000.00$  awarded.

The defendant appeals to the Supreme Court of Appeal...



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# The Case to be Appealed

Your school's team will either be acting for the appellant, the State of Queensland (the defendant in the trial), or the respondent (the plaintiff in the trial), Paul Smith.

The issues for determination at trial were:

- (a) Was the relevant risk “obvious” within the meaning of s 13 of the Civil Liability Act 2003?  
If so, there was no duty to warn of the risk.
- (b) Was the plaintiff engaged in a “dangerous recreational activity” within the meaning of s 19 of the CLA at the time he was injured? If so, the defendant cannot be liable.



# The Case to be Appealed

(c) Did the defendant breach any duty of care owed to the plaintiff? The plaintiff contends that the defendant was in breach of its duty of care to him by failing to do one or more of the following:

1. Have a warning sign that clearly warned about the danger of standing on the rocky ledge and not just of the danger of jumping or diving into the pool;
2. Fence off the area that gave access to the rocky ledge;
3. Enforce the prohibition on jumping and diving into the pool by having a park ranger stationed at the pool during opening hours.



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# The Case generally

*Paul John Smith v State of Queensland* [2023] QDC 101

- Students can get a general understanding of the relevant law from this decision.
- Can identify the relevant statutory provisions and the relevant judicial authorities.
- May disagree with the way the judge has applied and interpreted the relevant law. This might be most relevant depending on which side the student is on – appellant or respondent.



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# Terminology

## At Trial:

Paul Smith – the plaintiff

v.

The State of Queensland – the defendant

## On Appeal:

The **appellant** – The State of Queensland

v.

The **respondent** – Paul Smith





# The Grounds of Appeal

**The grounds of appeal are as follows:**

1. The Judge should have found that the risk to the plaintiff was an obvious risk pursuant to Section 13 of the *Civil Liability Act 2003*.
2. The Judge should have found that the plaintiff was engaged in a dangerous recreational activity pursuant to Section 18 of the *Civil Liability Act 2003*.
3. The Judge should have found that the defendant is not liable in negligence for the harm suffered by the plaintiff because the harm suffered was the materialisation of an obvious risk of a dangerous recreational activity engaged in by the plaintiff pursuant to Section 19 of the *Civil Liability Act 2003*.
4. The Judge should have found that the defendant did not beach its duty of care to the plaintiff.



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# The Law to be Applied - Cases

## 1. *State of Queensland v Kelly* [2014] QCA 27

Queensland Supreme Court of Appeal decision that upheld the original decision of the Supreme Court. The respondent was rendered a partial tetraplegic by injuries he suffered when he ran down a sand dune and fell into Lake Wabby on Fraser Island in September 2007. He sued the appellant for damages for negligence. The appellant conceded that it had the care, control and management of the public land on Fraser Island and owed a duty of care to lawful entrants on that land, including the respondent.



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# The Law to be Applied - Cases

## 2. *Roads and Traffic Authority of NSW v Dederer* [2007] HCA 42

The High Court, by a 3-2 majority allowed an appeal from the Supreme Court of New South Wales.

Mr Philip Dederer, then a boy aged fourteen and a half years, dived from a bridge linking the adjoining towns of Forster and Tuncurry in New South Wales. He plunged some eight or nine metres to a water channel below. His head came into abrupt contact with the bottom of the channel. As a result, he was rendered a partial paraplegic.

(Judgements of Gummow J who was part of the majority and Kirby J who was part of the minority).



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# The Law to be Applied

Teams must only use the material provided to design their strategy and to formulate their submissions:

1. The original decision in the District Court, i.e. the decision being appealed.
2. The two cases provided as authority:
  - *State of Queensland v Kelly* [2014] QCA 27,
  - *Roads and Traffic Authority of NSW v Dederer* [2007] HCA 42. (Gummow J and Kirby J only)
  - Plus - cases cited in these judgements
3. The relevant provisions of the *Civil Liability Act* 2003 (Qld).



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# Coaching Tips 1

Preparing your team/s:

- Don't assume the Judge is familiar with the case or the relevant law.
- Don't use the 'machine-gun' approach: A few submissions of high quality, well explained, is best.
- Students should always try to answer a Judge's question immediately.
- It is OK to disagree with the Judge.



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# Coaching Tips 2

- We use a number of Judges. They have different styles and personalities.
- Students should expect a number of questions and will not simply read submissions for all of their allotted time. Questioning will increase in complexity as the rounds progress, so student must be aware that each appearance lays a level of experience to build upon.
- Students are discouraged from having their notes on a laptop or notebook. Paper notes are encouraged.





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# Coaching Tips 3

- Do not allow your students to add or embellish facts.
- Fundamentals of public speaking:
  - Volume
  - Speed – go slow!
  - Demeanour and presentation
  - Understanding the facts and argument
- The key to success is to practise in full role play with questions from a judge. Practise ‘thinking on your feet’.



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# Prizes and Scholarships

## **The Prizes for 2023 are:**

- A scholarship for a full year's study in the Bachelor of Laws degree at the University for each barrister and instructing solicitor (if applicable) of the winning team of the Grand Final
- A scholarship for a half year's study in the Bachelor of Laws degree at the University for each barrister and instructing solicitor (if applicable) of the runner-up team of the Grand Final
- All members of the winning team will share the Turner Freeman Lawyers Prize for the Winning Team, worth \$1,500.
- The name of the winning moot team will be inscribed on a perpetual trophy for the Competition.

**Thank you to our 2023 sponsors for supporting this competition.**



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