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2023 UniSQ Secondary Schools Moot Competition

Mentor Session 1

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

- The case and grounds of appeal
- How to approach drafting submissions
 - ILAC
 - Issue, Law, Application, Conclusion
- Example – Ground of Appeal 1 for the Appellant





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The Case to be Appealed

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

- 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

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 new name: The State of Queensland v Paul John Smith [2023] QCA 87

- 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.
- No new facts or evidence can be introduced.



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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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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



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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 - *Smith*.
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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Example – Using ILAC

Issue: What is the legal issue?

Law: What is the applicable law?

Application: Apply the relevant law to our facts

Conclusion: What is the correct conclusion by the court?



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Example – ILAC ground 1: Issue

Your Honour, I will make submissions in respect of grounds of appeal 1 and 2 and Mr. Smith will make submissions in respect of grounds 3 and 4.

Firstly your Honour, Ground 1 is that 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. –

The issue – was it an obvious risk?



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ILAC – ground 1: Law - citing legislation

Section 13 contains the definition of obvious risk. Subsection 1 of section 13 provides that an obvious risk to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.

(The law – this is a reference to the relevant part of the legislation)



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ILAC – ground 1: Law – citing case law

Your Honour, I refer you to the decision of this court in *State of Queensland v Kelly* [2014] QCA 27 (State of Queensland and Kelly, two thousand and fourteen, Queensland Court of Appeal no 27.) At paragraph 33 Frazer JA (Justice of Appeal, Frazer) is discussing the meaning of the term ‘an obvious risk’. He refers to the summary by Beazley JA (Justice of Appeal Beazley) in a 2010 decision of the NSW Court of Appeal (*Council of the City of Greater Taree v Wells* [2010] NSWCA 147 at [75]-[76]). Beazley JA says:

“Whether a risk is obvious is determined objectively, having regard to the particular circumstances in which the respondent, as the relevant plaintiff, was in”.



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ILAC – ground 1: Application

Your Honour, the particular circumstances the Respondent was in at the time he fell show a clear position of danger, a clear and obvious risk of harm.

Firstly, he was standing on a wet, slippery, rocky ledge, some 10 metres above a rock pool, with no safety railing.

Secondly, he was engaged in the activity of photography, taking photos of people jumping from the rocks into the pool below.



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ILAC – ground 1: Application

The appellant submits that taking photographs would be distracting for the respondent. It would add to the risk. It is a factor that a reasonable person would take into account in deciding if there was any obvious risk to their safety. It may be reasonably safe for a person to stand, carefully, on a rocky ledge, but a wet, rocky ledge whilst engaging in photography, is obviously dangerous.



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ILAC – ground 1: Application

Thirdly, he was in a prohibited area of the park. Your honour, this is an area which is designated as out of bounds for visitors. There were signs that made it clear that visitors, such as the respondent, should stick to the designated paths (128).

The relevant signs says as follows: “for their own safety visitors must not deviate off the pathways provided for access” (128). Your Honour, there is a specific safety warning in the sign. This was not a pathway provided for access.



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ILAC – ground 1: Conclusion

Your Honour, the Appellant submits that on any objective assessment, the position the respondent was in, constituted a position with obvious and substantial risk and as such, satisfies the requirements of the definition in section 13 of the CLA.

The appellant submits that this court should find that the risk of harm to the respondent was an obvious risk pursuant to that section.



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