



University of  
Southern  
Queensland



20 January 2023

# Secondary Schools Moot Competition

Competition Overview and  
Teacher and Student Guide

## Competition Outline

This outline explains the organisation, structure (including an indication of the timetable) and prizes of the USQ Secondary Schools Moot Competition. More detailed *Competition Rules* and materials will be released to schools that enter teams in the moot competition.

## What is the competition?

The purpose of the competition is to:

- promote legal education, specifically the deeper and broader knowledge of law gained by close analysis and argument of legal problems; along with the development of the advocacy skills that are central to the public development of law; and
- deepen engagement between the University and secondary schools and enable secondary students to become familiar with professional legal education as it is practised in Australian universities.

## What is a moot?

A moot is a simulated appeal on an arguable point of law. It is an ancient form of education in the common law tradition. A typical moot involves the selection of a judicial decision or hypothetical problem that raises legal points that are still arguable on both sides – ‘moot points’. It differs from trial advocacy as it is limited to legal argument only. Accordingly, it is purely appellate advocacy. There are no witnesses. There is no tendering of evidence.

## Minimum requirements for the competition

For the competition to run, at least 16 moot teams must enter the preliminary round.

## Registration

Registration must be completed online ([www.usq.edu.au/moot-competition](http://www.usq.edu.au/moot-competition)) by the close of the registration period.

Please note, it is likely that the latter rounds of the competition could receive some media attention. In previous years, the final has been covered on television News. Written permission to photograph students is therefore sought in the registration. Also, a condition of registration is that a teacher will accompany the students to the moot and observe the conduct of the moot.

## Cost

There is no cost for competing or for registration.

## Materials

Upon close of registration, all schools will be given online access to a set of written materials outlining the *Competition Rules*, how the University will communicate with teams, a competition timetable, contact details, how to secure coaching, information about mooting, courtroom protocol, and the moot problem.

## Topics

A purpose of the competition is to complement the Year 11 and 12 Legal Studies curriculum. The University has consulted with schools that participated in previous competitions, and they gave strong support to mooting in previous years on a problem involving criminal law or the law of torts. This year, the problem is based on the law torts, specifically an action in negligence. It involves an Irish tourist who was badly injured while visiting a State National Park near Toowoomba.

The moot topic is self-contained. It is written by reference to decided cases, and therefore the judgments given in the cases (or an extract of these) will be provided. Students are free to make any credible legal argument but will be limited to drawing on the cases and legislation outlined in the problem or referred to in the judgments themselves. That is, references to cases and statutory materials must be those found in the 'problem' and the judgments provided, and students are not required to read or research beyond the materials provided.

The moot topic will remain the same throughout all rounds of the competition. The problem may have an extra element or two added for the Grand Final, at the discretion of the competition co-ordinators. Teams will find themselves arguing for the respondent in one round, and the appellant in another.

## Contacts

The competition is being organised by the Engagement Team and the School of Law and Justice at the University of Southern Queensland. For further information, please contact:

- *Engagement Team*
  - *Marketing Coordinator* – Mrs Georgina Humphrys
  - *Marketing Coordinator* – Mrs Stacey Hennelly[futurestudents@usq.edu.au](mailto:futurestudents@usq.edu.au)
- *Advocacy Coordinator (Ipswich)* – Mr Anton La Vin: [Anton.LaVin@usq.edu.au](mailto:Anton.LaVin@usq.edu.au)
- *Advocacy Coordinator (Toowoomba)* – Dr Katie Murray: [Katie.Murray@usq.edu.au](mailto:Katie.Murray@usq.edu.au)
- *Head of School* – Professor Reid Mortensen: please contact Professor Mortensen through Ms Anna Dean: [law@usq.edu.au](mailto:law@usq.edu.au)

## Structure

### Teams

Each invited school will be entitled to enter two teams in the competition. Each team will

comprise two 'barristers' also referred to as 'counsel'. Schools may, but need not, appoint a third student to act as the 'instructing solicitor'. All members of the winning team (including the instructing solicitor) will be eligible for the competition's USQ scholarship prizes and also eligible to share in the Turner Freeman Lawyers Prize of \$1,500 cash for the winning team. The instructing solicitor's role may be useful experience for a Year 11 student, who can therefore learn how the competition is conducted before opting to participate in the competition when they study Year 12. It may also be useful to have an instructing solicitor if, after beginning the competition, a barrister is unable to complete it and permission is given to enter a replacement. The instructing solicitor would be the preferred replacement.

- The members of a school moot team must be enrolled in Year 11 or Year 12 at the school. While it is expected that the competition will be of most interest to students taking Legal Studies, there is no requirement for the entrants to be Legal Studies students.
- It is recommended that schools aim to enter two teams each. This will enable the teams to practise by mooting against each other within the school before the competition begins.
- Once the competition begins, a change to the membership of a team can only be made with the approval of the Advocacy Coordinators. An instructing solicitor in a team will be the preferred replacement of a barrister. The Advocacy Coordinators will be increasingly reluctant to allow a replacement as the rounds of the competition progress.

### Coaching and preparation

Teams are encouraged to practise mooting before the competition begins, and to secure professional instruction in advocacy, protocol and legal argument.

- If it is at all possible, schools are asked to secure coaching from any alumni or parents who are legally qualified.
- The University can also arrange coaching by legal academics, and practising lawyers who have volunteered to assist with the competition for schools in the Darling Downs, Ipswich region, Lockyer Valley, Somerset Region, South Burnett and South West Queensland. Schools from these regions that are interested in securing coaches through the University should note this when they register online. The University is unable to arrange 'in person' coaching for schools outside these regions but may be able to arrange this via Zoom.
- A coach may also serve as a moot judge in the competition; however, a coach will not be permitted to judge any moot that includes a team from the school that they assisted.
- An optional information session will be held for teachers and students in any competing moot teams on 15 March 2023 (online via Zoom) to provide assistance in understanding the moot problem and the competition structure. This session is available to all teams, including those for which the University is unable to provide

coaching.

## Rounds

The competition will have a preliminary round (comprising two moots per team), quarter finals, semi-finals and a final.

- Preliminary round. Each team will participate in two moots in the preliminary round, and each moot will be against a different team. Points will be awarded for participating in the moot and for winning the moot, and bonus points will be given for good performance in terms of the absolute score (team score 170 or above). Progression to the quarter finals will depend on a team's ranking in the ladder – the top eight teams on the ladder will progress to the quarter final. If it becomes necessary, points for and against may have to be taken into account to identify the eighth team on the ladder.
- Progressing through rounds. The competition in the quarter finals and semi- finals is a knock-out competition. Only the winning team in any one moot in each round will progress to the next round. If for any reason a winning team cannot continue in the competition, the next highest scoring team from the relevant round will be invited to continue into the next round.
- The quarter finals aim to identify four teams for progression to the two semi- finals, and the semi-finals will identify the finalists.

## Dates for Rounds

- Preliminary round one Monday 15 and Tuesday 16 May 2023
- Preliminary round two Monday 5 and Tuesday 6 June 2023
- Quarter finals Monday 24 and Tuesday 25 July 2023
- Quarter finals Monday 24 and Tuesday 25 July 2023
- Semi-finals Monday 7 and Tuesday 8 August 2023
- Grand final Thursday 7 September (evening) 2023

For each round with more than one date listed, a team will compete on only one of those dates. Moots will be held during school hours and after hours (between 9.00 am and 5.30 pm), with the possibility of extending to 7.30 pm if required.

## The moots

Moots will be allocated to teams by random ballot. UniSQ will advise all teams of the roster for each round once the previous round is completed.

- *Simulation.* The moot will be conducted as an appeal from a lower court to the Queensland Court of Appeal.
- *Oral submissions.* All argument in moots before the final will be oral only. There will be no written submissions.
- *Teachers present.* A condition of entry is that a teacher will accompany students to the moot and be present while the moot is conducted.



- *Observers.* Family and friends of the members of the moot teams are welcome to sit in the Moot Court and to observe the moot.
- *Teams from the same school.* All effort will be made to avoid teams from the same school mooting against each other. This may not be possible once the semi-finals are reached.
- *Moots of two competing teams.* In general, the strong preference is that each moot will involve one team (the appellant) mooting against one other team (the respondent). The winner is the one team (of the two) that scores the highest points.
- *Moots of three competing teams.* It may become necessary in the preliminary round to arrange for three teams to compete in the one moot ('a three-team moot') if there are odd numbers of teams or in the event that one or more teams withdraws from the competition after the competition draw has been released. In a three-team moot, one team will be the first appellant, a second will be the respondent, and a third will be the second appellant. In these cases, the second appellant team will sit outside the Moot Court while the first appellant argues its case. After the first appellant closes its argument, the second appellant may enter and sit in the Moot Court while the respondent argues its case. The first appellant team must leave the Moot Court when the second appellant team argues its case. I.e., both appellant teams will hear the respondent's argument, and the respondent will hear both appellant teams' arguments. Neither appellant team would hear the other appellant's argument. The two teams (out of three) that score the highest points will be awarded two (2) ladder competition points. The team that scores the lowest points will be awarded one (1) ladder competition point. All three teams will be eligible for ladder bonus points. It is assumed that, on entering the Competition, schools accept the possibility that teams may end up in a three-team moot.
- *Time and venue, online moots.* Generally, moots will be held in either the **Wonderley & Hall Moot Court at UniSQ Toowoomba** or the **Moot Court at UniSQ Ipswich**. However, in the preliminary rounds and the quarter final, arrangements may be made for schools that are remote from Toowoomba or Ipswich to participate in an online moot, if requested, probably using Zoom. Teams that have competed online will be asked to travel to Toowoomba or Ipswich if progressing to the semi-final or Grand Final.
- *Conduct of moot.* Each team has 20 minutes to argue its case. Each barrister will be expected to present her or his argument for approximately 10 minutes. If the team has an instructing solicitor, he or she may assist the barristers by quiet instruction (i.e., handwritten note). There is no reply to the other side's case.
- *Dress.* Students must dress in formal school uniform for a moot.
- *Questioning.* The moot judge will question each counsel. Teams should expect that questioning will commence in the preliminary rounds and in subsequent rounds will progressively become more challenging. Each counsel is expected to allow time for questions in their appearance and to adjust their submissions if questions take up significant time. Questions are expected to be dealt with inside the 10 minutes allocated to each counsel. It is recommended that students allow around 1-2 minutes in the early rounds for questions and answers.

- *Moot judges.* The moot judge will be a legal academic or a practising lawyer. There will be three judges in the final. We expect to have a Supreme Court judge, a District Court judge and a Professor of Law in the panel.
- *Criteria.* Judges will not be asked to give judgment on the appeal, but to name the team that won the moot. The winner of the moot may not necessarily be the team that wins on the grounds of appeal. The facts may make a certain outcome more likely. Rather, the moot judge will be required to assess the teams in the moot against fixed criteria relating to legal knowledge, adherence to protocol, oral presentation, and ability to answer questions. The judging criteria will be provided to all schools that enter the competition. The winning team for each moot will be the team that secures the highest number of points awarded in accordance with the judging criteria.
- *Feedback.* The aim is to make the moot a significant educational experience. The moot judge is also expected to speak from the bench to each team about its performance, and to give suggestions for improving a team's performance.

## Prizes

### The winning team

Each barrister and instructing solicitor (if applicable) of the winning team will be awarded a scholarship for the equivalent of a full year's study in the Bachelor of Laws degree at the University. The scholarship amounts to a waiver of HECS for 8 units of study and is therefore valued at around \$14,624 for each barrister and instructing solicitor (if applicable) in the winning team. The scholarship may only be taken at the University of Southern Queensland, and the normal academic standards of entry to the LLB program must still be met.

All members of the winning team will share the Turner Freeman Lawyers Prize for the Winning Team, worth \$1,500 in cash.

The competition's perpetual trophy will be awarded to the winning team.

### The runners-up

Each barrister and instructing solicitor (if applicable) in the second placed team will be awarded the equivalent of a half year's scholarship (4 units) of study in the Bachelor of Laws degree at the University. The scholarship is therefore valued at approximately \$7,312 for each barrister and instructing solicitor (if applicable) in the second placed team. Again, the scholarship may only be taken at the University of Southern Queensland, and the normal academic standards of entry to the LLB program are still required.

### Participants

All participants – barristers and instructing solicitors – will receive a Certificate of Participation. For those who participated in teams that reached the quarter or semi-finals, the certificate will also indicate achievement in those later rounds of the competition.

## The 2023 Moot Problem

This guide is intended to assist teachers and students in approaching the moot competition. It explains the basics of preparing and presenting submissions in a moot court setting. Please read the Competition Rules as well.

### **The case being appealed**

You have been provided with a hypothetical decision of the District Court of Queensland: *Paul John Smith v The State of Queensland* [2023] QDC 101 ('*Smith*'). This will be referred to as 'our case'.

The decision in *Smith* is being appealed to the Supreme 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 (see below).

#### Overview:

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. Mr Smith claims that the defendant is liable to him for his injuries and has sued for damages for negligence. Quantum of damages was agreed at \$700,000.

The issues for determination at trial were:

- Was the relevant risk "obvious" within the meaning of s 13 of the Civil Liability Act 2003 ('CLA')? (If so, there was no duty to warn of the risk).
- Was the plaintiff engaged in a "dangerous recreational activity" within the meaning of s 18 of the CLA at the time he was injured?
- Was the harm suffered by the plaintiff a result of the materialisation of an obvious risk of a dangerous recreational activity pursuant to s 19 of the CLA? (If so, the defendant cannot be liable).
- 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 take one or more of the following precautions:
  - a. 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;
  - b. Fence off the area that gave access to the rocky ledge;
  - c. Enforce the prohibition on jumping and diving into the pool by having a park ranger stationed at the pool during opening hours.

#### Result at the trial:

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 x 80% = \$560,000.00 awarded.

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

### **The grounds of appeal**

The grounds of appeal are closely matched to the issues for determination in the trial:

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 breach its duty of care to the plaintiff.

### **The precedent cases**

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

This is a Queensland Supreme Court of Appeal decision that upheld the original trial 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 in 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.

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.

(Only the judgements of Gummow J, who was part of the majority and Kirby J, who was part of the minority, are extracted).

### **Terminology and procedure**

At Trial: Paul Smith – the plaintiff v The State of Queensland – the defendant.

On Appeal: The State of Queensland – the appellant v Paul Smith – the respondent.

Please note: Students **should not** add additional grounds or arguments to the appeal by suggesting a technical defect in proceedings, based for example, 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.

### Using the decided cases

The relevant legislation for our case is cited in the judgement. Participants cannot refer to any other sections of legislation that are not referred to in the precedent decisions or in our case. The decided cases provide authority for the court to follow in our appeal. Queensland courts are bound to follow, in most cases, their own previous decisions and are always bound to follow relevant decisions of the High Court. However, different facts may lead to different outcomes, even when applying the same rules of law. Just because the High Court found the defendant was not liable in *Dederer*, does not mean that the State of Queensland will escape liability in our case. Likewise, the success of the plaintiff in *Kelly*, does not mean success for our plaintiff, Paul Smith. The facts in our case and the facts in *Kelly* and to a lesser extent in *Dederer*, certainly have some correlation, however they are different enough to create arguable cases for both the appellant and the respondent. The key to using the precedent cases is to identify the legal principles that were applied and then to apply the same principles to our case and its unique facts.

### Preparing submissions

First, you need to be clear whom you are representing. If you are representing the appellant, then you are acting for the State of Queensland. If you are representing the respondent, then you are acting for Paul John Smith. The grounds of appeal are clearly set out in the Notice of Appeal. Submissions are strictly limited to these grounds. No other grounds of appeal may be argued. If your team is acting for the appellant, you must decide which barrister will argue in favour of each ground of appeal. Likewise, if you are acting for the respondent, you must decide which barrister will argue *against* each ground of appeal. There are four grounds of appeal. Sometimes teams elect to split the grounds equally between them, i.e., two each. If three of the grounds are closely related, then the split may be different, e.g., 3-1. This decision is made by the teams in consultation with their teachers and coaches.

The first task is to identify the relevant law for each ground of appeal. For all grounds, the applicable legislation is very relevant. What the judges said about the application of the legislation to the facts of the given cases will be vital. The High Court decision in *Dederer* involved New South Wales legislation, so it does not consider the provisions of the Queensland CLA. However, this decision is important for the issue of breach of duty of care and the precautions that should be taken. The same common law principles are used, regardless of whether it is Queensland legislation or not.

The job of the barristers representing each side is to explain to the court why acceptance of their argument will result in a beneficial conclusion for their client. This involves the second task, applying the facts of our case to the relevant law. The key is that although our facts are different, the law remains the same. The argument is that the application of different facts to the same law results in a different outcome. It is also possible to argue that the court misinterpreted the law. However, it is usually easier to convince a court that the facts warrant a different conclusion rather than the court was wrong in its interpretation and understanding of the applicable law. It should be noted that in *Dederer*, a High Court decision, 3 judges allowed the appeal, and 2 judges did not. So, even High Court judges will argue about the correct result, based on the same facts.

To reiterate, first you should identify the relevant law and, second, you apply the facts of our case to that law, explaining to the court why the resulting conclusion will be in favour of your client.

For example, if for the appellant: "Your Honour, in interpreting the provisions of the *Civil Liability Act* 2003 with respect to the definition of an obvious risk, the appellant disagrees with the finding of the trial judge. The appellant's submission is that a different conclusion is warranted on the facts and that the risk to which Mr. Smith was exposed was an obvious risk in accordance with the Act and also in accordance with the guidance laid down by the Court of Appeal in *State of Queensland v Kelly* [2014] QCA 27".

### **Delivering your submissions**

Make it as easy as possible for the judge to understand your submissions. Make it clear at the outset which party you are representing, and which counsel will address which of the grounds of appeal. Remind the judge where you are up to as you go, e.g. "Your Honour, I have so far dealt with the first ground of appeal. I will now make our submissions in respect of the 2nd ground of appeal." And "Your Honour, that concludes our submissions in respect of the first four grounds of appeal. If Your Honour has no further questions I will now hand over to my colleague, Ms Jones, who will deal with the final two grounds of appeal."

### **Stick to the relevant issues**

Remember, the four grounds of appeal set the limits as to what issues must be dealt with in the moot. Do not raise other issues.

### **A final word**

Please, do not be overawed or scared. This is a difficult task, and we understand that. The idea is that the moots are an enjoyable learning experience for students and where they may just win an amazing prize. Judges are being briefed so that student's do not feel embarrassed or unduly criticised. The more you do it, the more fun it might become! Please contact the Mooting Coordinators, Katie Murray ([Katie.Murray@usq.edu.au](mailto:Katie.Murray@usq.edu.au)) and Anton La Vin ([Anton.Lavin@usq.edu.au](mailto:Anton.Lavin@usq.edu.au)) if you have any questions.



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