Monash Faculty of Law High School Moot Competition
Information for Competitors

Welcome to the 2015 Monash Faculty of Law High School Moot Competition.

This competition will provide an opportunity to introduce you to skills required by law students when answering problem based questions, as well as an opportunity to experience a Moot.

We hope you find the Moot an entertaining and worthwhile experience.

Best of luck to all the teams!

Important Dates:

Registrations open: Wednesday 1 April 2015
Registrations close: Tuesday 30 June 2015

Moot Rounds: Wednesday 22 or Thursday 23 July 2015
Final: Monash University Clayton Campus Open Day Sunday 2 August 2015

Courtroom Terminology

The party who is bringing the action in a court proceeding (i.e. the party who has suffered the loss and is seeking compensation) is called the plaintiff. The party defending the action is appropriately the ‘defendant’. In a first instance decision (i.e. a court proceeding on a matter that has not been heard before, as opposed to an appeal of a previous decision), the plaintiff’s name will appear first in the case citation (e.g. in Smith v Johns, Smith is the plaintiff and Johns is the defendant). In an appeal decision (i.e. where one party seeks to challenge the decision of the Court by taking the matter to a higher court), the appealing party is called the ‘appellant’ and the other party the ‘respondent’. In the case citation, the appellants name will appear first, followed by the respondents.

General Tips for Courtroom Arguments

Legislation and Case Law
Distinguishing and Analogising with cases.

Introduction to the Law of Negligence

The law of negligence is designed to compensate parties who have suffered loss as a result of the carelessness of another party, where that party owed the first party a duty to take reasonable care. Negligence falls within a broader category of law known as tort law, which are privately enforceable civil rights, as opposed to criminal offences. Examples of other torts include trespass, false imprisonment, defamation, and passing off goods as those of another.
To succeed in an action in negligence, the plaintiff must establish all of the following:

1. **Duty of Care**: The defendant owed the plaintiff a duty of care at the relevant times; and
2. **Breach**: The defendant breached their duty of care by failing to satisfy the relevant standard of care required of them; and
3. **Causation**: The plaintiff suffered compensable loss that was caused by the defendant’s breach; and
4. **Remoteness**: The kind of loss suffered by the plaintiff was not too remote.

If these four elements are established, then it the defendant will be liable to pay monetary compensation to the plaintiff (known as ‘damages’) unless he or she can raise a valid defence. One such defence is that the plaintiff’s own carelessness was a contributory factor to their injury (known as **contributory negligence**). If the defendant successfully shows the plaintiff was contributory negligent in failing to look after their own safety with reasonable care, then the amount of damages the defendant has to pay may be reduced. The reduction in damages payable will typically be proportionate to the plaintiff’s share of responsibility in their injury, meaning anywhere from 0-100%.

1. **Duty of Care**
   
   Whether a duty of care exists between two parties requires consideration of a range of different factors. The purpose of this element is to restrict liability in negligence to only certain relationships and circumstances where harm by one party to another was at least foreseeable. For the purposes of this competition it is safe to assume that both parties accept that a duty of care existed. It is therefore not necessary to research or argue this element.

2. **Breach of the Duty of Care**

   It is not enough that the defendant owes a duty of care to the plaintiff; they must also have breached that duty by failing to take reasonable precautions against a risk of harm to the plaintiff.

   The law in Victoria relating to whether or not a person has breached a duty of care owed to another is set out in the Victorian *Wrongs Act 1958* section 48. The key provisions in section 48 are as follows:
Normally subsection (1)(a) and (1)(b) are non-contentious and easily established by the plaintiff. For the purposes of this moot it is recommended that you spend no more than 5 minutes on these elements.

Subsection (1)(c) is the key provision in section 48 and where you should devote the most time in your argument. Subsection (1)(c) essentially involves a three-step process:

1. Who is a ‘reasonable person’ in these circumstances?
2. What precautions would that reasonable person have taken in the circumstances against the risk of harm?
3. Did the defendant do less than what the reasonable person in their circumstances would have?

A reasonable person is an ordinary but prudent member of society in the same position as the defendant, possessing any special skills or knowledge that the defendant had. For example, if the defendant was a doctor in a case of medical negligence, the reasonable person in those circumstances would be a reasonable doctor in the same position of the defendant, and the question would then become what precautions against harm such a reasonable doctor would take.

What precautions the reasonable person would have taken are determined in light of the four factors outlined in section 48(2), collectively known as the **negligence calculus**:

**WRONGS ACT 1958 - SECT 48**

**General principles**

(1) A person is not negligent in failing to take precautions against a risk of harm unless—

   (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and

   (b) the risk was not insignificant; and

   (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.

(2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things)—

   (a) the probability that the harm would occur if care were not taken;

   (b) the likely seriousness of the harm;

   (c) the burden of taking precautions to avoid the risk of harm;

   (d) the social utility of the activity that creates the risk of harm.

(3) ...
• The probability of a risk of harm occurring; and
• The seriousness of the consequences if the risk eventuates; and
• How burdensome it would be to take precautions against that risk; and
• Whether the activity giving rise to the risk had any social benefit.

Each of these four factors must be balanced against the others, and no one factor will be conclusive in determining what a reasonable person would have done.

2.1. Probability of Harm

Generally, the more probable that the risk of harm will eventuate, the more precautions a reasonable person would take to prevent or minimise that risk. Conversely, if

Key cases:
- *Bolton v Stone* [1951] AC 850

2.2. Seriousness of Consequences

Key cases:
- *Paris v Stepney Borough Council* [1951] AC 367
- *Caledonian Collieries Ltd v Speirs* (1957) 97 CLR 202
- *Swinton v The China Mutual Steam Navigator Co Ltd* (1951) 83 CLR 553

2.3. Burden of Taking Precautions

Key cases:
- Graham Barclay Oysters
- Romeo
- *Paris v Stepney Borough Council* [1951] AC 367
- *Caledonian Collieries Ltd v Speirs* (1957) 97 CLR 202

2.4. Social Benefit

Key cases:
- Wyong Shire Council v Shirt
- *Watt v Hertfordshire CC* [1954] 2 All ER 368

3. Causation

The 'but for' test

3.1. Intervening Acts

A defendant will not be liable if there is some intervening act that occurs between the allegedly negligent conduct

4. Remoteness