

Mooting Competition 2010 – Hints and Tips

This sheet will provide you with key starting points for each moot – you MUST conduct your own, detailed research beyond this in order to develop a good legal argument for your moot.

REMEMBER:

- Your arguments should always be focussed on points of law (you can't dispute the facts of the case)
- You should be conducting detailed legal research
- You should be using cases and materials books etc – looking at what was actually said by judges in the cases (your textbooks merely give an author's interpretation)
- You must use principles of judicial precedent (are cases binding, persuasive or should they be distinguished, overruled etc.)
- If you are a respondent ensure that you are responding to the appellant's arguments
- Tip: If you can prepare your opponents arguments – you can then prepare to counter them.

Moot 1: Dr DoLittle v The Crown

Appellants

Point 1: Arguing Tom made the most significant contribution and should be charged with manslaughter

Can Tom be liable in the circumstances? (*Attorney-General's Reference (No.3 of 1994)*)

Causation – extent of contribution (research case examples e.g. *Kimsey [1971]*)

What impact does medical negligence have on the chain of causation? Can you argue the chain of causation has not been broken? (see *Smith, Cheshire, Jordan*)

How does this case compare with those? Look at the language of the judgments? Which case(s) should be followed? Which case(s) should be distinguished?

Point 2: Arguing the failure to monitor with an alarm constituted negligence but not gross negligence

What is the test/approach for gross negligence (see *Adomako [1995]*)

Any case examples of gross negligence you can use? Why isn't this gross negligence?

Could the jury have reached the conclusion they did if they were properly directed by the judge?

Respondents

Point 1: Arguing Tom did not make the most significant contribution and it was most appropriate to charge Dr DoLittle

Can Tom be liable in the circumstances? (*Attorney-General's Reference (No.3 of 1994)*)

Should he be liable? Causation – what impact does medical negligence have on the chain of causation? Can you argue the chain of causation has been broken? (see *Smith, Cheshire, Jordan*)

How does this case compare with those? Look at the language of the judgments?

Which case(s) should be followed? Which case(s) should be distinguished?

Point 2: Arguing the failure to monitor with an alarm constituted negligence but not gross negligence

What is the test/approach for gross negligence? (see *Adomako [1995]*)

Any case examples of gross negligence you can use? Was this gross negligence?

Who decides and how? Are there any reasons for challenging the decision?

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Moot 2: Ashley v The Crown

Appellants

Point 1: Arguing there was no criminal intent/dangerous act by Ashley

Was there a criminal act? What act? What case demonstrates it? E.g. *Ireland [1997]*
What is the required criminal intent? Was it present in this case?

What is the test for a dangerous act? (see *Church [1966]*) Was this dangerous? What is harm? Are there any relevant circumstances? What cases can you use either to support your arguments or distinguish?

Point 2: Arguing Judge Hangman's novus actus interveniens ruling was wrong in law

Causation - did Ashley's action cause the death? (*White (1910)*) What was the extent of his contribution (research case examples e.g. *Kimsey [1971]*)

What is the novus actus interveniens? How can you argue the chain of causation was broken? Who broke it? How do the cases *Smith, Cheshire* and *Jordan* apply? Which should be followed? Which should be distinguished? How?

Respondents

Point 1: Arguing there was criminal intent and a dangerous act by Ashley

What is the unlawful act? E.g. *Ireland [1997]* What is the required criminal intent? Was the criminal intent present in this case? Why?

What is the test for a dangerous act? (see *Church [1966]*) Was this dangerous? What is harm? Are there any relevant circumstances? What cases can you use to either support your points or distinguish? How can you argue it was dangerous?

Point 2: Arguing Judge Hangman's novus actus interveniens ruling was correct in law

Causation – how did Ashley cause the death (*White (1910)*) What was the extent of his contribution? What should it be? (research examples, e.g. *Kimsey [1971]*).

What is a novus actus interveniens? Why wasn't there one in this case? How has the chain of causation not been broken? What cases can you use? E.g. *Smith, Cheshire* and *Jordan*? Which should be followed? Which should be distinguished? How?

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Moot 3: Andre v The Crown

Appellants

Point 1: Arguing the event was simply an accident and does not amount to gross negligence manslaughter

Adomako – what is gross negligence? What is the test? Are all elements present? Can you argue any are not? Who decides gross negligence? Can you challenge that decision? Could they have reached the decision they did if properly directed by the judge? What cases can you use to support this? Will your team be addressing the direction by the judge?

Point 2: Arguing Judge Hangman was wrong in law to make reference to subjective recklessness, since Andre was not charged with reckless manslaughter

What is the position on recklessness following *Lawrence* and *Adomako*? What guidance did the House of Lords give? Should 'subjective recklessness' have been mentioned? Why? Does *Lidar* have any impact here? Should it/does it apply to this case?

Respondents

Point 1: Arguing the event was not simply an accident and does amount to gross negligence manslaughter

Adomako – what is gross negligence? What is the test? How is it fulfilled in this case? What other cases can you use to support your argument? Who decides? What did they decide? Can that decision be challenged?

Point 2: Arguing it was acceptable for Judge Hangman to make reference to subjective recklessness

Adomako – what was the view on recklessness? How did it change from *Lawrence*? Can there be any reference to 'subjective recklessness'? Can you argue that it is acceptable? Does *Lidar* have any impact here? Should it/does it apply to this case – gross negligence manslaughter?

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Moot 4: The Crown v Jack

Appellants

Point 1: Arguing saying 'boo' can, in certain circumstances, amount to an illegal act

What illegal act could saying 'boo' amount to? (see *Ireland*) Are all elements of the act present? What cases can you use to demonstrate this?

Point 2: Arguing Jack must have been aware of the victim's frailty and therefore, in law, his actions were dangerous

What is the test for dangerousness? (see *Church*) What circumstances are relevant to the test? Compare, for example, *Watson* and *Dawson* – how could they apply or be distinguished? Would Jack have been aware of the victim's frailty? How is this relevant to dangerousness?

Respondents

Point 1: Arguing saying 'boo' cannot/does not amount to an illegal act

What illegal act will the appellants argue? What are the elements of that act? Are they all fulfilled? Can you argue that any are not? What cases can you use to support your argument or distinguish your argument from?

Point 2: Arguing Jack's actions were not, in law, dangerous

What is the test for dangerousness? (see *Church*) What circumstances are relevant to the test? What sort of risk satisfies the test? Compare, for example *Watson* and *Dawson* – how could they apply or be distinguished? How can you argue Jack's actions were not dangerous?