

# THE NATIONAL MOOT COURT COMPETITION 2024



**Maynooth  
University**  
National University  
of Ireland Maynooth

## INFORMATION & QUESTION PACK

*Kindly Sponsored by A&L Goodbody*

9 November 2024, Criminal Courts of Justice, Dublin

# A&L Goodbody

1 October 2024

Dear All,

We are pleased to provide you with this information pack for the upcoming **National Moot Court Competition 2024**. All of the information you need in relation to this competition is in the pack, including the problem question, rules and procedures, and the outline timetable for the day for the in-person rounds.

The **competition will take place in-person, in the Criminal Courts of Justice**, on Parkgate Street, Dublin 8 on **Saturday 9 November 2024**.

Please note specifically the information below:

1. Each institution may enter a maximum of **2 teams**. **If more than 2 teams from any one institution register, then the first 2 teams to register will be offered a place in the competition. Teams who register subsequently will be added to a waitlist.**
2. We need to receive information on the teams that are entering and the participants' names by 5pm on **Tuesday 15 October**. Teams should consist of **3 students**, though in each moot, only 2 students from each team will present oral submissions (the 2 speaking mooters can rotate in each round). **Please email the team names (and each team member's email address) to [national.moot.comp@gmail.com](mailto:national.moot.comp@gmail.com).**
3. Marks awarded for memorials will not count on the day of the Moot itself, except in a tie-break situation (i.e. in deciding which teams progress to the semi-finals, if there are teams on equal points in terms of the oral rounds then they will be divided on the basis of their memorial marks).
4. Each team must submit a memorial **for each side of the moot**, and these will be exchanged at the beginning of each round. Failure to submit memorials by the specified deadline will mean that a team cannot participate. **All arguments must be contained in the memorial and teams cannot add additional substantive arguments on the day** (though you could add a new case, for example, so long as the substantive argument is set out in the memorial). A prize will be awarded to the team with the best memorials. This will be announced at the end of the Grand Final on the day of the competition.
5. We need to receive all written submissions (in MS Word or PDF format) by **5pm on 1 November 2024**. **Late submissions will not be accepted under any circumstances**. Please send submissions to [national.moot.comp@gmail.com](mailto:national.moot.comp@gmail.com). As detailed further within the information pack, these submissions should include a memorial on behalf of the Appellant and a memorial on behalf of the Respondent and a list of authorities. Each document should be **no longer than 2,500 words (not including footnotes, cover page or list of authorities)**. Only the designated Team Letter should appear on the memorials (**your Team Letter will be given to**

**you after registration**); there should be nothing in the memorials to identify the institution submitting the memorials.

6. Thanks to the kind sponsorship of A&L Goodbody, the entry fee for the competition is just **€25 per team (per team, NOT per person)**. Details of how to pay this fee will be confirmed to each team upon successful registration. Physical **evidence of payment** (e.g. print-out of lodgement slip/evidence of online transfer) **must be presented at registration on 9 November. Teams that fail to present this evidence of payment will not be allowed to participate in the Competition.**

**The Winning Team will receive €200 worth of one-for-all vouchers and the Best Speaker in the Final will receive €100 worth of one-for-all vouchers. There will also be a €60 Best Memorials prize (in one-for-all voucher format).**

Please read the information pack as it contains important information on the format of the competition, the procedures and rules, and the problem question itself.

We look forward to hearing from you in relation to your participation, and we thank you for supporting this competition. If you have any questions do not hesitate to contact us by emailing [national.moot.comp@gmail.com](mailto:national.moot.comp@gmail.com) or by calling me on 089 601 4421.

I would like to thank A&L Goodbody LLP for their generous support of this event, and the rest of the Maynooth University organising committee – Dr Neil Maddox, Conor Duff BL, and Natasha Richardson. I would also like to thank the Maynooth University School of Law and Criminology for its ongoing support of mooting activities.

Kind regards  
Dr Edana Richardson



**A&L Goodbody**

## National Moot Court Competition 2024

### Guidelines for Participants

1. For the purposes of this question, students are required to address the grounds of appeal only. You are required to prepare written submissions for the Appellant and written submissions for the Respondent. There is no need to prepare additional court documents.
2. There will be no oral evidence taken on the day. **This is a legal argument only.** The primary question is whether the Supreme Court should overturn the decision of the Special Criminal Court proceedings. No new pleadings can be raised on the day.
3. **This is an appeal on point of law.**
4. This question pack contains a total of 15 pages.

**Problem question: background and facts**

**THE SUPREME COURT**

**Record no. 2022/1234P**

**Between:**

**ENYA MAC GABHANN**

**Appellant**

**-and-**

**THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND, AND THE  
ATTORNEY GENERAL, AND THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Respondents**

1. The Appellant is a native Irish speaker who currently lives with her family in Killeel, Co. Kildare. Her family, having relocated from Connemara to Killeel converse in Irish while in the home. The Appellant actively and routinely speaks and practices Irish; firstly, by electing to conduct her Sessile Oak University<sup>1</sup> Law exams in Irish; and, secondly, as the President of the Club Gaeilge Society of Sessile Oak University.
2. On 15 October 2022 the Appellant was attending the Sessile Oak University Law Society Annual Ball, which was hosted in Tatterstown Castle Hotel. On that evening, there was an altercation between two students on the hotel's dancefloor. The Appellant attempted to de-escalate the situation. The situation then became more heated with many of the Ball's attendees taking part in the fight. During the fight, the Appellant was approached by the President of the English Society of Sessile Oak University (Susie Fisher) who made a linguistic slur to the Appellant.
3. The Appellant was so enraged that she picked up a knife from one of the dining tables and stabbed Susie Fisher in the back. Susie immediately fell to the ground and lost a substantial amount of blood. The ambulance arrived soon after and pronounced Susie Fisher dead.
4. The Gardaí arrived and arrested the Appellant pursuant to s.4 of the Criminal Justice Act, 1997 for having committed an arrestable offence.
5. The Appellant arrived at Killeel Garda Station and met with the Member in Charge. The Member in Charge informed the Appellant of her right to consult with a Solicitor prior to questioning. The Appellant acceded to the offer and requested access. Shortly thereafter Mr O'Riordan, Solicitor, attended the station and met with the Appellant for a period of 10 minutes.
6. Following their consultation, the Superintendent of the Garda Station sought to commence interrogation of the Appellant in the interview room. The Appellant requested that her Solicitor be present during the course of the interview. The

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<sup>1</sup> A (fictional) university in Co. Kildare.

Superintendent refused the Appellant's request and remarked "No... No... Ms Mac Gabhann, you've had enough time with that Solicitor, it's time you own up to what you have done."

7. The Appellant was questioned for a period of six hours. Throughout the first five hours of the interview the Appellant replied to each question by stating "gan trácht" ("no comment"). However, after five hours of questioning, the Appellant confessed to the murder. She informed the Superintendent that she stabbed Susie Fisher in the back as she had deeply insulted her.
8. The Appellant was remanded in custody and subsequently arrested for murder pursuant to s.4 of the Criminal Justice Act, 1984.
9. The Appellant was brought before the Naas District Court on 17 October 2022. On that date the DPP made an application to have the accused sent forward to the Special Criminal Court pursuant to s.46(2) of the Offences Against the State Act, 1939. The application of the DPP was made with a certificate issued by the Director pursuant to s.47(2) of the Offences Against the State Act, 1939 stating that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to the trial. The effect of the certificate and the application was that the District Court Judge must send the case forward to the Special Criminal Court.
10. When the matter was sent to the Special Criminal Court, the Appellant sought to have her trial conducted through Irish. The Special Criminal Court was comprised of Judge Dwyer of the District Court, His Honour O'Connell of the Circuit Court and Flanagan J. of the High Court. None of the presiding judges spoke Irish. The Judges directed that an interpreter be present throughout the course of the proceedings in order to provide translation services to the Appellant. Counsel for the Appellant submitted that this was unsatisfactory and that the Appellant had a Constitutional right to have her trial conducted in Irish with Irish speaking judges. Ruling on this preliminary point, Flanagan J. held:

*I am not satisfied that a citizen appearing before a Court within the jurisdiction has a Constitutional right for the case to be conducted in Irish. To do so would place a significant burden on the State and the Judiciary in finding and appointing appropriate Judges who have a fluency in Irish would be onerous, disproportionate and burdensome. In any event, the Accused's position is cured in virtue of the fact that we are willing to provide her with a translator.*

11. As a preliminary objection, the Appellant's Counsel made an argument contesting the jurisdiction of the Special Criminal Court to hear the matter, arguing *inter alia* that the DPP should not be given *carte blanche* with respect to what she chooses to be tried before the Special Criminal Court. No evidence whatsoever was adduced by the Prosecution/ Respondents during the trial that would suggest that the Appellant was a member of any subversive or unlawful organisation.

12. In ruling on the preliminary objection made by the Appellant at trial, Flanagan J. held that:

*The authorities are crystal clear in relation to a trial directed to the Special Criminal Court by the Director of Public Prosecutions. The only way in which the decision of the Director can be challenged is by proving that she acted mala fides. Leading academic in the field, Alice Harrison comments: “the courts have thus far shown great reluctance in interfering with the decision of the DPP or enquiring into whether she has exercised her decision judiciously and reasonably in a given case.” Therefore, I find that this case is properly before the Court and we shall continue to have seisin of these proceedings.*

13. During the course of the proceedings, the Appellant’s Counsel submitted to the Court that the confession evidence that was procured during the interview at Kiltel Garda Station should be deemed inadmissible. The reason advanced was that the Appellant has a constitutional right to have her Solicitor present during the interview in accordance with both Art. 38.1 of the Constitution and Art. 6 of the European Convention on Human Rights (**ECHR**). In finding that the confession was admissible, the Court held:

*The Irish authorities on this point all point to a single conclusion; namely, that the right of access to a solicitor while in Garda custody is only a right of reasonable (emphasis added) access. While the right has been recognised since the decision of the Supreme Court in *DPP v Healy*, the jurisprudence does not point to a situation whereby an accused person is entitled to have a solicitor present during questioning. I am therefore satisfied that the Accused had reasonable, sufficient access to a solicitor and therefore the confession is admissible.*

14. The Judges of the Special Criminal Court reached a unanimous decision and found the Appellant guilty of murder pursuant to s.4 of the Criminal Justice Act, 1984 and sentenced her to life imprisonment.

15. The Appellant has obtained a “leapfrog” appeal from the Supreme Court, appealing the decision of the Special Criminal Court proceedings to the Supreme Court on **three grounds of appeal**; namely,

- a. that the manner in which the DPP can elect, without the provision of reasons, to direct a trial to the Special Criminal Court is unconstitutional;
- b. that the learned trial judges of the Special Criminal Court erred in not allowing the Accused’s trial to be conducted in Irish. The Appellant submits that such a decision was unconstitutional in virtue of Art.8 of the Constitution and that the provision of the translator does not meet the Constitutional threshold of Art. 8; and

- c. that the learned trial judges of the Special Criminal Court erred in finding the confession admissible as it was obtained in breach of the Appellant's Constitutional right to have a solicitor present during questioning in line with the due process provisions of Art. 38.1 and Art.6 of the ECHR.

*Conor Duff BL*



## **RULES AND PROCEDURE OF THE COMPETITION**

**\*Please read carefully and take note of relevant dates/ details**

### **Parties: Appellant / Respondent**

For the purposes of the National Moot Court Competition the **Appellant** will always be **Enya Mac Gabhann**, and the **Respondents** will always be **the Minister for Justice and Equality, Ireland and the Attorney General, and the Director of Public Prosecutions**. In the preliminary oral presentation rounds, teams will be given an opportunity to act as counsel for **either** the Appellant or the Respondent (see below) and you may be asked to swap client between rounds.

### **What is required of participants?**

#### **A. Written Submissions**

Students, working in teams of three, are required to prepare:

1. a Memorial on behalf of the Appellant setting out the arguments that will be made on her behalf; **and**
2. a Memorial on behalf of the Respondents setting out the arguments which will be made on their behalf.

**Each document should be no longer than 2,500 words (not including footnotes, cover page or list of authorities) and should make reference to relevant case-law, legislation, constitutional provisions or other relevant legal sources.**

**Written Submissions must be sent to [national.moot.comp@gmail.com](mailto:national.moot.comp@gmail.com) in MS Word or PDF by 5pm on 1 November 2024.**

#### **B. Oral Submissions**

On the day of the competition, teams will be given an opportunity to represent both the Appellant and the Respondents in preliminary rounds (and you may be asked to swap client between rounds).

Teams will be provided with the relevant Memorial of the opposing team 10 minutes before each preliminary round. Having had 10 minutes to consider this information, the round will begin. Teams will have been assigned Team Letters so as to ensure anonymity of institutions.

Teams **must not reveal** their institution of origin to judges at any time during the competition. The moot organisers may disqualify or impose a penalty against any Team that intentionally or inadvertently discloses its institution of origin to a judge, whether or not such disclosure occurs during an Oral Round.

Only **2 students** from each team will be entitled to present oral submissions in each round (though these need not necessarily be the same 2 students for each round). Each student may speak for **7 minutes (the clock will NOT be stopped for judicial interventions – please build some time buffer into your oral presentations to ensure that you do not run out of time)**. There are 3 grounds of appeal – the students who are speaking for each team should decide amongst themselves how they divide these 3 grounds of appeal between them. Students may not interrupt one another when speaking, though a student may confer with his/her colleagues (including the third student team member who may sit at the bench as counsel). Students may deviate from their written submissions so as to take into account the submissions of the opposing team (but must not bring in new substantive arguments that are not covered in their written submissions). Students will be asked questions by the judges during their oral submissions.

The two speakers on behalf of the Appellant will present their submissions to the court first, followed by the two speakers on behalf of the Respondent. Students will then **each** be allocated **2 minutes** of rebuttal (or sur-rebuttal) time, in the same order as their original submissions to the Court. Rebuttal must be confined to submissions already before the Court and **no new material** may be introduced at this time. Judges may ask questions during rebuttal and sur-rebuttal.

#### Ex Parte Procedure

In certain circumstances, such as when a Team fails to appear for a scheduled oral round, the organisers, after waiting 10 minutes, may allow the oral round to proceed *ex parte*. In an *ex parte* proceeding, the attending Team will present its oral pleadings without their opponents present. These will be scored by the judges to the extent possible as if the absent Team had been present and arguing. In such a case, the Team that fails to appear for its scheduled round forfeits any points that it would otherwise have received in this round.

## Advice on Oral Submissions

Teams should address the court at all times with the utmost respect. Students should mirror the language which is used in courts when addressing the judge or their colleagues. The following tips may be of assistance in preparing your legal submissions.

### 1. Opening Submissions

When a student commences his or her oral submission, the student will stand and say:  
*“May it please the court, my name is ... I appear on behalf of the Appellant / Respondent in this matter.”*

The speaker should also make some reference to his colleague: *“My co-counsel, Mr./Ms. X will be addressing/has already addressed the Court on the Appellant’s / Respondent’s behalf.”*

The student should briefly refer to the issues of the case with which he / she will deal:  
*“I will be addressing the first / second ground of appeal that ...”*

### 2. Content of submissions

In different courts, different modes of address may be used. The correct mode of address for judges of the Superior Courts as set out in the Rules of the Superior Courts specify “Judge” or “A Bhreithimh” as the correct modes of address. You can also refer to “the Court” if you prefer.

When a judge asks a question of a student, the student should listen to the question and should never interrupt the judge when he/she is asking the question.

A judge is only human. The judge’s question may not be clear to the student. The student may ask the judge to repeat or rephrase the question: *“Judge, could you please repeat the question?”*

Students representing a party must not interrupt a student who is making an oral submission. A student making an oral submission may consult with a colleague. As a general rule when counsel is on his/her feet, it is customary that the opponent sits. There

should only be one mover standing at a time – unless the judge is addressing them both.

A student may refer to legal materials during the course of an oral submission. Students must have this material in the court with them. The judges may ask to view the legal materials that students rely upon.

When referring to a case in some detail, you should “open the case to the Court” e.g. *“May it please the Court, I wish to open the case / I wish to refer to the case of DPP v Potter,<sup>2</sup> reported in volume 2 of the 1995 Random Law Reports Weekly at page 4 and referred to at paragraph 5 of the Appellant’s memorial. Would you like me to state the facts of the case, Judge?”*

Try not to run over time – there are a lot of moots to get through and timings are tight. However, if your time runs out and you have a sentence or two left to bring your submissions to a close, you can ask the Court for a moment longer: *“Judge, I note that my time is about to expire, might I have a short extension to finish my submissions?”*. Do not use this as an opportunity to speak for another 10 minutes – it just gives you time to finish off what you are saying.

### 3. Closing submissions

If you are the first speaker for your team, make sure that you have made all your points clearly. Repeat them in summarised form. End by asking if the judge has any questions. Then introduce your teammate and give a very brief statement of what he/she is about to say. e.g

*“In summary, the Appellant makes the following points: 1, 2, 3...”*

*“Unless I can be of any further assistance to the Court, those are my submissions, my co-counsel Mr./Ms. X will now address the Court on the second ground of appeal”*

or

*“My co-counsel Mr./Ms. X will rebut the legal submission made on behalf of the Respondent with respect to....”*

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<sup>2</sup> Always say “DPP and Potter”. Never say “DPP v Potter” or “DPP versus Potter”.

The second speaker from the team should end his/her speech by summarising the argument of the team as a whole, recapping what the first speaker said, as well as reiterating the points he/she has made. Again, questions should be invited. Before sitting down the speaker should enquire if the court wishes to hear any more from him/her: *“Unless I can be of any further assistance to the Court, those are my submissions”*

#### 4. Useful phrases

- *“In my submission I will show that...”*
- *“It is my respectful submission that...”*
- *“Counsel for the Appellant’s argument overlooks the fact that...”* or *“...overlooks the case of...”*
- *“I appreciate your point, Judge, however, I would (nonetheless) submit that...”* or *“...I would argue that...”*
- *“My co-counsel Ms./Mr. X...”*
- *“Counsel for the Appellant / Respondent...”*

### **C. Other tips**

Students will be anxious - even the greatest advocates get nervous. Please do not fear the oral submissions. They are the best part about mooting! The judges are not attempting to trick you, but are, rather, attempting to determine whether students understand the legal issues involved, can persuade the Court and are able to follow Court procedures.

If you have a well-researched and well-constructed argument, presenting it orally should not pose a problem, provided you are familiar with each aspect of it. The aim is to present the argument clearly, calmly, without reading word for word, and ideally with only a minimal reference to notes. While you should be relaxed and in control of the argument, you do need to present it with a degree of formality.

### **D. Dress Code**

Students should dress smartly for all rounds of the National Moot Court Competition. The winning team will be making legal submissions before a High Court/Supreme Court Judge and therefore teams should look the part as well as act the part.

## Marking Scheme

### Memorials

Teams must submit 2 memorials – each will be given a mark out of fifty. The marking scheme is as follows:

- **Command of the issues, including application of relevant law to the facts** 30
- **Structure and clarity** 20

These marks are relevant to the **Best Memorials competition** and will only be relevant on the day of the oral submissions in the context of a tie-break situation, i.e. in deciding which teams progress to the semi-finals, if there are teams on equal points in terms of the oral rounds then they will be divided on the basis of their memorial marks.

### Oral Presentations

Each individual speaker on the team will be given a mark out of 100 for their oral presentation, including their rebuttal. The marking scheme is as follows:

- **Command of the Issues, including application of relevant law to the facts** 30
- **Persuasiveness** 30
- **Ability to answer questions/respond to points made** 20
- **Structure and Clarity** 10
- **Courtroom Manner** 10

Scoring will not reflect the merits of the facts of the case but only the quality and force of the legal arguments.

## National Moot Court Competition 2024

### Outline Timetable

9 November 2024

<b>Registration:</b>	9.00 - 9.30
<b>Opening Welcome:</b>	9.30 - 9.45
<b><u>Round 1:</u></b>	9.45 - 11.00
Teams in Courtrooms:	9.45
Reading of Memorials:	9.45 – 9.55
Oral Presentations:	10.00 - 11.00
<b>Tea / Coffee:</b>	11.00 - 11.30
<b><u>Round 2:</u></b>	11.30 - 12.45
Teams in Courtrooms:	11.30
Reading of Memorials:	11.30 - 11.40
Oral Presentations	11.40 - 12.40
<b>Lunch:</b>	12.45 - 2.00 (lunch is provided)
<b><u>Semi-final:</u></b>	2.00 - 3.15
Teams in Courtrooms:	2.00
Reading of Memorials:	2.00 - 2.10
Oral Presentations:	2.10 - 3.10
<b>Break:</b>	3.15 – 3.30
<b><u>Grand Final:</u></b>	3.30 - 5.00
Teams in Courtrooms:	3.30
Reading of Memorials:	3.30 - 3.40
Introduction of Judges:	3.40 – 3.45
Oral Presentations:	3.45 - 4.45
<b>Judgment Pronounced:</b>	circa 5.00