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Maynooth Law Society presents:

*The Silken Thomas
Moot Court Competition
2018*



MAYNOOTH
LAW SOCIETY

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Welcome,

The Maynooth Law Society is delighted to host the eighth annual Silken Thomas Moot Court Competition. Each year this competition has drawn teams from both national and international universities to showcase their adversarial abilities.

This year the competition will be held over the course of Friday the 13th, and Saturday the 14th of April 2018. It will take place in the South Campus of Maynooth University, with the final and gala dinner taking place in Carton House. The final panel will include Mr Justice John MacMenamin of the Supreme Court. There will also be a best speaker award entitled the “Mr Justice Carney Best Speaker Award” in memory of the late Mr Justice Paul Carney who had judged the competition for many years.

This year’s question concerns issues arising in Criminal Law and the Law of Evidence, focusing on the area of common design. I would like to say a big thank you to Dr David Doyle, Dr Claire Hamilton, and Ms Siobhan Buckley BL, for their help in both the composing and reviewing of this question

I would like to take this opportunity to thank our title sponsor Matheson for their generous sponsorship of this competition and, in particular Ms Carmel Mellett for her constant support and guidance throughout the year.

I wish every team the best of luck and I look forward to welcoming you in April.

Ciara McCarthy.

Moot Court Convenor

Maynooth Law Society.

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SCHEDULE OF EVENTS

Friday 13 April 2018

- 17:00- Registration in Callan Hall Maynooth University South Campus
- 17:30- Welcome by Maynooth Law Society and Round Information
- 18:00- Round One
- 19:00: Break
- 19:30- Round Two
- 20:30- Dinner in Brady's Maynooth town
- 21:30- Social Event in Brady's Maynooth town

Saturday 14 April 2018

- 09:00- Breakfast in Pugin Hall
- 10:00- Round Three
- 11:00- Break
- 11:30- Round Four
- 12:30- Lunch in Pugin Hall
- 13:30- Announcement of Semi- Finalists
- 14:00- Semi Final
- 15:15- Announcement of Finalists
- 15:30- Transport to Carton House
- 16:00- Final
- 18:00- Prize Giving and Wine Reception
- 19:00- Dinner in Carton House

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RULES & PROCEDURES

Registration

- The Registration fee is **€85** per team. The registration fee is **non-refundable**.
- The closing date for registration is **Tuesday, 3 April 2018 by 6pm**.
- Registration payment details are:

Account number: 11501078

Sort Code: 933201

Bank Name: AIB Maynooth

Bank Address: AIB Main Street, Maynooth, Co Kildare, Ireland.

If teams are paying by bank transfer, please add a comment stating the name of your institution.

Alternatively, cheques can be made payable to NUIM Law Society.

Accommodation

- If any teams require accommodation, please inform the moot court convenor by the registration date. The rate of rooms is very reasonably priced when booked through the Maynooth Law Society.

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Teams

- Each institution may enter up **to four teams** (If an institution seeks to enter an additional team, contact the Maynooth Law Society Moot Court Convenor). Teams shall comprise **of exactly two participants**.
- In the event of illness or emergency or any other intervening factor, upon written permission from Maynooth Law Society's Moot Court Convenor, institutions may send an alternative team.

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Written Submissions

- Each team is required to present **two written submissions**: one on behalf of the **Appellant** on the matter, and the other, on behalf of the **Respondent**. The written submissions shall include all relevant quotations and extracts from case law and other materials in proper sequence. They should also include all arguments that the team seek to rely on.
- All text and footnotes shall be in **12-point Times New Roman type**. Total length of **each written submission** must **not exceed 1,500 words** (1,500 being the maximum, not the suggested word count), text should be **double-spaced**, and pages should be **numbered**. **Full citation** should be used for all cases cited
- The written submissions must be received by the Moot Court Convenor in accordance with the written submission deadline **of 6pm, Wednesday 11 April 2018**.
- Written submissions must be made as an attachment to an e-mail addressed to the Maynooth University Moot Court Convenor at mootcourtnuim@gmail.com . They must be supplied in Microsoft Word or PDF format only.
- No alterations to written submissions are permitted after the written submission deadline unless otherwise agreed with the Maynooth Law Society Moot Court Convenor.
- Each team will be given **five minutes** before each round to consult their opponents written submission. The written submission will then be returned to the timekeeper prior to the oral submission commencing. Teams are not permitted to make notes on their opponent's written submission.

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Oral Submissions

- The Moot Court Convenor will be responsible for the draw to decide which teams face one another in the preliminary rounds. They will be drawn at random prior to the competition date.
- This is an appeal; the facts of the case are admitted and agreed, and so no evidence or witnesses may be introduced.
- Oral submissions shall be limited to a total of **seven minutes** per speaker in the preliminary rounds, not including rebuttal. Judges, at their discretion, may interrupt arguments and ask questions, as advised to do so. The time **will not be stopped** for questions.
- In the event of additional time required for the course of the Oral Submission, full discretion lies with the judge.
- Once teams have broken to the semi-finals and the final, oral submissions shall be limited to **ten minutes** per speaker.
- Both speakers of each team are required to make a rebuttal following initial arguments. Rebuttal time is set at **two minutes** per speaker. In the semi-finals and for the final it shall be increased to **three minutes** per speaker.
- Rebuttals should be confined to addressing arguments already made before the Court. (ie **no new material** may be introduced at this time.)
- The timekeeper will signal at the **three-minute** and **six-minute** mark during the preliminary rounds. In the semi-finals and the final the timekeeper shall signal at the **five** and **nine-minute** mark. When the participant's time has expired, the timekeeper will continue to signal at ten second intervals, signalling that the participant must conclude promptly, unless otherwise directed by the Judge.

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Oral Submissions Continued

- The order of the arguments shall be as follows:
 - (1) Appellant Speaker 1**
 - (2) Appellant Speaker 2**
 - (3) Respondent Speaker 1**
 - (4) Respondent Speaker 2**
 - (5) Appellant Rebuttal Speaker 1**
 - (6) Appellant Rebuttal Speaker 2**
 - (7) Respondent Rebuttal Speaker 1**
 - (8) Respondent Rebuttal Speaker 2**
- The use of mobile phones, laptops and all other electronic devices throughout the oral submission are strictly prohibited. No audio or visual taping or photography of a round shall be permitted without the prior permission from the Maynooth Law Society Moot Court Convenor.
- Visitors are welcome to attend the oral arguments of any round with the permission of the presiding judge(s).
- There is to be no communication to the advocates with anyone other than their fellow advocate and the bench. Notes may not be passed other than between the two advocates.

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Score Calculation

- Each individual speaker on the team will be given a mark out of 100 for their oral presentation, including their rebuttal. Scoring will not reflect the merits of the facts of the case, but only the quality and force of the legal arguments. The four teams from the preliminary rounds with the highest speaker points overall, will progress to the semi-finals.
- The score per team will be based solely on Oral Submissions.
- Please see below the Marking Scheme
 - Command of the Issues including application of the relevant law to the facts: **30**
 - Persuasiveness: **30**
 - Ability to answer questions/ respond to points made: **15**
 - Structure and clarity: **15**
 - Courtroom Manner: **10**

Ex Parte Procedure

- In the event of a team not turning up or uneven numbers, teams will be expected to present themselves on their own to the judge. The judge will direct questions and comments to the team. Timing will remain the same.

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Penalties

- The Maynooth Law Society Moot Court Convenor may assess such penalties, including disqualification, as they deem reasonable and appropriate in their discretion for failure to comply with the rules or deadlines set pursuant to these rules.

Dress Code

Students should dress smartly for all rounds of this competition. The teams in the final will be making submissions to a Supreme Court Judge and therefore, teams should look as well as act the part.

KEY DATES

Registration: **Tuesday 3 April 2018 by 6pm**

Written Submissions due: **Wednesday 11 April 2018 by 6pm**

Competition Dates **Friday & Saturday 13/14 April**

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PROBLEM QUESTION

THE COURT OF CRIMINAL APPEAL

Between:

The Director of Public Prosecutions (“DPP”)

Prosecutor/Respondent

- and –

Mr Harry Potter

Accused/Appellant

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Facts

On the evening of November 5th, 2017, Mr Harry Potter was summoned to his close friend Mr. Ronald Weasleys' house. When he arrived, he found Mr Weasley waiting for him in a state.

Mr Weasley had discovered that his wife Hermione had been engaged in an extra-marital affair with a colleague Mr Draco Malfoy and was leaving him to live with Draco. Naturally, he was upset and angry that his wife of twenty years could have done this to him.

Mr. Potter spent the next 3 hours with Mr Weasley helping him to drown his sorrows. At some point Mr Weasley said, "I'm going to go to Draco's house and rough him up a little, so he thinks again about stealing another man's wife." Mr Potter tried to talk him out of this idea as Mr Malfoy was known to have dealings with criminal gangs in the area, but to no avail. He decided that he would not allow his friend to walk into this confrontation alone and so agreed to accompany him. Mr Potter knew Mr Weasley owned a gun but could only see that he had brought a wooden bat along with him. He decided not to ask whether Mr Weasley had brought the gun with him as he could tell at this stage he was in a state of rage.

On the way to Mr Malfoy's house it was decided that Mr Potter would ensure Mr Weasley's estranged wife Hermione was in a separate room so that Mr Weasley could "teach Draco a lesson" and Mr Potter could assist him to show him what happens when "you go off with another man's wife".

When they got to the house Hermione answered the door. Both Mr Potter and Mr Weasley forced her into the kitchen and closed and blocked the door.

Mr Weasley went into the sitting room where Mr Malfoy was. Mr Potter proceeded into the sitting room after him after first ensuring the door to the kitchen was blocked. They both then proceeded to talk to Mr Malfoy about his actions, but then a violent fight ensued between all of them. Mr Weasley hit Mr Malfoy twice with the bat on his torso. Mr Potter thought he could hear Hermione in the kitchen attempting to break down the door. Mr Weasley told Mr Potter to go and make sure that Hermione could not leave and to try and calm her down to avoid alerting the neighbours. Mr Potter held the kitchen door closed and tried to calm Hermione down. He could still hear Mr Malfoy's shouts from the other room. At this point, he entered the other room to get Mr Weasley to leave. However, as he walked into the room he saw Mr Weasley pointing a gun towards Mr Malfoy. Mr Potter was about to reach for the gun, but a shot went off and hit Mr Malfoy.

Mr Potter called an ambulance and fled the scene with Mr Weasley. Mr Malfoy, was brought to hospital, but it was confirmed that he had died on arrival from the gunshot wound.

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Hermione informed the Gardaí what had happened, and the following morning, Mr Weasley and Mr Potter were both arrested pursuant to Section 4 of the Criminal Law Act, 1997 and brought to the local Garda station. They were both detained under Section 4 of the Criminal Justice Act, 1984 and they both requested to speak to a solicitor. Once Mr Potter's solicitor arrived at the station, he was permitted a five-minute consultation with his solicitor before being brought in for an interview. He requested his solicitor to be present with him during the interview, but this request was refused. Following this he was questioned 3 times by 2 Gardaí over the course of 24 hours, for a period of 3, 4 and 5 hours each respectively. He received a permissible number of breaks between questioning. He made a confession during the final interview in regards his role in the events that had unfolded.

Mr Weasley and Mr Potter were both charged with the murder of Mr Malfoy, with the DPP submitting that there was a joint enterprise between the co-accused. Both of the accused pleaded not guilty.

The Case in the Central Criminal Court

It was argued by Mr Potter's legal team that the statement from Mr Potter in which he implicated himself should not be included for the jury to consider as firstly, this statement was made after oppressive questioning in contravention to S12(4) of the S.I. No. 119/1987 - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and, secondly, Mr Potter was refused the presence of a solicitor during the interviews which should have been acceded to. This application was strongly rebutted by the Prosecution. The Trial Judge, McGonagle J decided, that as Mr Potter had access to legal advice and was satisfied that a breach of the 1987 Regulations does not of itself result in the exclusion of evidence, that she would allow the statement to be admitted for the jury to consider.

Further, Counsel for Mr Potter submitted that the shooting of the deceased was an unauthorized act that went beyond the scope of his agreement with Mr Weasley.

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Following submissions made by both legal teams, McGonagall J, in her Judge's charge to the jury, included the following:

- 1.** That the jury had to consider whether there was an express or tacit agreement between Mr Weasley and Mr Potter to seriously injure Mr Malfoy and if they found this was the case they could reach the verdict of guilty for both defendants.
- 2.** In coming to that decision, if the jury found that Mr Potter participated in the joint enterprise with foresight that Mr Malfoy could suffer serious bodily injury it was within the scope of contemplation that Mr Malfoy may die and was therefore evidence of intention.
- 3.** That the non-admission of the solicitor during questioning was in accordance with the Supreme Court decision in *DPP v Doyle* [2017] IESC 1.
- 4.** That the jury could consider the statement made by Mr Potter in the Garda station.

The Jury found Mr Weasley and Mr Potter both guilty of the murder of Mr Malfoy under the doctrine of common design.

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Appeal to the Court of Criminal Appeal

Mr Potter is appealing his conviction to the Court of Criminal Appeal on the following grounds:

- 1.** That Mr Weasley's actions went beyond the scope of what was agreed and therefore Mr Potter should not have been tried for murder as a party to a common design in accordance with the decision of *People (DPP) v Murray* [1977] 1IR 360.
- 2.** That the basis of a common design is agreement and not mere contemplation, and that the court should follow the cases of *People (DPP) v Cumberton* (unreported, CCA 5th Dec 1994) and, *R v Jogee* [2016] UKSC 8 which ruled that foresight should not be used as a definitive test for common design.
- 3.** That the non-admission of his solicitor during questioning was in fact a breach and not in accordance with the decision of *Salduz v Turkey* (2008) 49 EHRR 421 and other ECHR jurisprudence, distinguishing the decision of *DPP v Doyle* [2017] IESC 1 as Mr Potter had specifically requested a solicitor to be present during questioning.
- 4.** In any event, that the Trial Judge erred in law in admitting the statement of Mr Potter for the jury to consider, due to the oppressive nature of the questioning.

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The respondent respectfully submits that:

1. The jury were correct in finding that there was an express or tacit agreement to seriously injure Mr Malfoy and could find Mr Potter guilty in accordance with the decision of *DPP v Doohan* [2002] 4 IR 463.
2. That the jury could find any foresight on the behalf of Mr Potter as evidence of intention in accordance with the case of *DPP v Costa and Batista* [2008] IEECA 1 which used the foresight test from *R v Uddin* [1999] QB 431
3. That to date, Ireland has not opted in to EU Directive 2013/48 on the right of access to a lawyer and the decision of *DPP v Doyle* [2017] IESC 1 is the most current and bindind authority on this matter.
4. That 7(3) of the CJA 1984 which provides that a breach of the rules does not automatically result in the exclusion of evidence.

This case solely deals with the appellant of Mr Potter, and students are not to represent Mr Weasley in their arguments.