

# PREPARING FOR A MOOT

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**G**ood advocacy depends on good preparation. In the past *Graya News* has published articles explaining what you should do (or not do) at the moot hearing itself. But how should you prepare for a moot? As it is easier to answer that question by using an example, see the moot problem below (the facts are, of course, entirely fictitious). Imagine you are representing the defendant at the Moot. Everyone develops their own technique in time and the guidance given does not have to be followed rigidly – but it should help if you are wondering how to make a start.

## Case Stated by the District Judge

**1** The defendant was charged in an information preferred by the prosecutor that on 15 July 2016 he was in charge of a motor vehicle, namely a BMW 325 motor car registration number L234AKK, on a road or other public place, namely South Square, Gray's Inn, London WC1, after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit contrary to section 5(1) of the Road Traffic Act 1988.

**2** I found the following facts:

(a) On 15 July 2016 at 10.30pm Police Constable George Dixon observed the defendant sitting in his BMW motor car in South Square, Gray's Inn; the key was in the ignition but the defendant had not started to drive; the car was parked astride the lines delimiting two parking areas.

(b) The constable, having smelt alcohol on the defendant's breath, requested him to take a breath test. The Alcolmeter gave a positive reading, and subsequent specimens of breath provided by the defendant at Holborn Police Station registered levels of 98 and 97 microgrammes of alcohol in 100 millilitres of breath.

(c) The defendant is a law student who, on the evening in question, as he candidly admitted to the police officer, had consumed two glasses of sherry, half a bottle of claret and several glasses of port.

(d) South Square is an area surrounded on west and south sides by barristers' chambers (with residential flats above), on the east side by the library and on the north side by the Hall. There is a bridge over a passageway to Gray's Inn Square, above which is a licensed bar, where alcohol is on sale to members of the Bar and students (such as the defendant) and their guests. There are parking spaces in the Square designated by white lines. Members of the public are freely admitted to the Inn during the daytime, and many people use the Walks at lunchtime. A curfew bell is rung on weekday evenings at 7.50pm, and from 8.00pm (and throughout the weekends) all gates to the Inn are closed other than the gate into Holborn. Access is available to pedestrians or drivers of motor vehicles through this gate but they must pass a barrier under the control of the Inn's

porters. The barrier does not prevent pedestrians gaining access but to do so they must pass the porters' lodge. Evidence by the Inn's staff was that in practice it was not possible to stop and question all pedestrians who in fact passed the barrier after 9.00pm. The Inn charges for the use of parking spaces by visitors – although such charges are not enforced after 9.00pm.

**3** The defendant did not give evidence.

**4** It was contended by the defendant that South Square at 10.30pm on the date in question was not a public place because members of the general public had only limited access under the supervision of the porters.

**5** The prosecutor contended that the marked routes through the Inn were 'roads' and the parking areas were 'other public places' within the meaning of section 5. Such restrictions as were imposed on entry to the Inn did not prevent the Square being a public place because these restrictions were not rigidly imposed by the Inn's staff and in the case of pedestrians hardly enforced at all.

**6** 'Road' is defined in section 192 of the Road Traffic Act 1988 as 'any highway and any other road to which the public has access'. I was referred to *Clarke v Kato* [1998] 1 WLR 1647; [1999] RTR 153.

**7** I agreed with the prosecutor's contention and accordingly convicted the defendant.

**8** The question for the opinion of the court is whether on the facts found I was correct in law in finding that South Square was a 'road or other public place' for the purposes of section 5(1).

## Preparing a Note to use at the Moot

### The opening submissions

Always start with an outline of the submissions you intend to make and then develop your argument by considering each submission separately. Submissions (for the appellant) might read along these lines:

**1** The key question is whether the parking spaces in South Square constitute a 'public place'. This involves considering both the facts (the actual presence of the public) and the rights (whether the public have the legal right to access to South Square at the time in question).

**2** 'Public' here means 'the general public'.

**3** Members of the public who had business at the time in question in chambers in the Square or who were tenants or visitors to the flats in the Square constituted a 'special class' and were not 'the general public' for the purposes of the Road Traffic Act.

**4** There was no evidence before the District Judge of the likely presence of persons outside this ‘special class’ in the Square at the relevant time.

**5** Accordingly there was no evidence of a key element of the offence and the appeal should be allowed.

This is your starting point – you have identified the propositions you are going to expand on in your argument. Reference to case law comes at a later stage – when you justify these propositions in the main argument. In court today skeleton arguments are submitted, but at the moment skeletons are not used in moots at Gray’s Inn. However, if you had been drafting a written skeleton, a very good way to begin would be to write out a summary of the main points of your argument in the form of propositions like those above. The process of reducing your case to a few propositions (whether oral or written) is one of the most important things to learn in presenting a legal argument.

**Tip 1** – Take any of the ICLR law reports and look at the way the reporter has summarised the judgment after stating the facts. It is a summary in that form that you need at the beginning of your argument.

**Tip 2** – Keep the summary short – you only have 15 minutes altogether!

**Tip 3** – At the moot read this summary slowly to the judge so he or she can write it down; better still have a printout and hand it to the moot panel and give a copy to your opponent.

**Tip 4** – It is a good idea, if possible, for both sides to exchange their written summaries in advance – it helps if each side knows in advance the case they have to meet.

### Developing your submissions

#### The case law

This is the stage to analyse the case law. *Clarke v Kato* involved two civil appeals, each raising the question whether a car park where an accident had occurred was a ‘road to which the public had access’ so that the drivers should have been insured. On the face of it a ‘road’ seems to mean something very different from a car park. This Moot problem raises a slightly different point because the offence under section 5 can be committed on ‘a road or other public place’. But the question of what is meant by the use of the word ‘public’ arose in *Clarke*.

**Tip 5** – You should put in the moot bundle a report from the ‘official’ Law Reports (ICLR) if it is available: here [1998] 1 WLR 1647.

Lord Clyde expands on the meaning of the word ‘public’ – he refers to the Scottish case of *Harrison v Hill* 1932 JC 13, where the Lord Justice-General said that in the previous Act this meant ‘the public generally, and not the special class of members of the public who go for business or social purposes to [the place in question]’.

**Tip 6** – Time is so short it is usually acceptable in a moot to read just the quotations from a subsequent case, ie *Clarke*,

but you must put a copy of *Harrison* in the moot bundle in case the moot judge wants to look at it in more detail.

**Tip 7** – When you cite a case, don’t read out the facts – it wastes valuable time – but you should be able to summarise in a sentence what the case was about and know the facts well enough to be able to cope with questions from the panel. For example, *Harrison* was about a disqualified driver driving along a farm road.

#### How to cite a case

Never refer to a case in argument without being able to say precisely why it is relevant to your argument. When you are preparing the note of your argument actually write out what you will say at the moot: ‘I would refer to *Harrison [and] Hill* as authority for the proposition that ...’ If you can’t write that, then think whether you really need to cite the authority or haven’t really understood it.

#### Dealing with the facts

Work on the basis that you do not need to explain the facts of the moot problem to the judge. But that does not mean that you should not identify the facts relevant to your argument. And sometimes (as in this moot problem) you may want to point out matters that have not been established by the evidence. So in your note you would underline the fact that there was no evidence led by the prosecution of what people might be present in South Square at 10.30pm on a July evening. There is no finding that any of them would fall outside the ‘special class’ of people working or living in the Inn. The prosecution have not identified any other people who would be lawfully in the Inn at that time of night – and the burden of proof is on them.

Add to your note other points you want to make – the significance of the barrier and presence of porters at Holborn Gate. Deal with the curfew – it is doubtful it has any significance but someone on the panel is bound to ask you about it! And remember to set out your answers to the other side’s case.

#### How to lose friends and partners

It is very helpful to have a dress rehearsal in front of your partner or some long-suffering friend. Don’t just rehearse the argument but explain in ordinary language to them first what the point of law is. If they don’t understand, you may have to revise the note you have made to make it clearer. Invite them to interrupt and ask questions and try to answer the questions. The questions may seem daft – but you never know what questions you are going to get from the moot panel.

#### Time is up

At the hearing you are very likely to run out of time. So keep an eye on the clock and be able to spend a couple of minutes before you finish just outlining the matters you haven’t had time to cover – eg the significance of the barrier and the employment of the porters who would be watching out for people with no business in the Inn coming past them. You may also need to think about different questions – can a parking space ever fall within section 5 and (horror) what to do if the judge asks you whether he should send the case back to the magistrates’ court for rehearing. ■