Supreme Court Moot Policy

General Terms and Conditions

1. We are offering 12 free slots for graduate law schools and university law societies to hold the final round of their mooting competition at the Supreme Court.

2. The moot finals will take place between February and May 2018.

3. We are only able to accept one application per law school/society.

4. Priority will primarily be given to graduate law schools. After this we will prioritise universities/law societies which have not hosted a moot final at the Supreme Court before, followed by those who have not hosted a moot here within the last two years. We welcome applications from across the UK, in particular from institutions outside of England.

5. Please note that we are unable to accept applications from institutions that do not teach law.

6. Following submission of your application, an Education Officer from the Supreme Court may wish to contact you over the telephone to discuss your application in more detail. We will give you advance warning of when we plan to telephone you at a mutually convenient time.

7. Please ensure that the Master or Mistress of the Moot has a deputy who we can contact should we not be able to get hold of the main contact point.

8. Law schools/societies will be allocated a two-hour time slot (between 5pm and 7pm Monday to Thursday) in which to hold their moot final. If a moot finishes after 7pm, the cost of covering extra security arrangements will be passed on to the institution/society.

9. Only one moot final per time slot is allowed – this means only 4 students should take part in the moot (two appellants and two respondents).

10. This is an opportunity primarily for students - our aim is to inspire the next generation of legal professionals. We request that you do not allow qualified lawyers (even if they are studying at the university) to take part in the moot finals.

11. Law schools/societies which are successful in being allocated a slot are expected to hold their moot final at the Supreme Court. Those who pull out at short notice jeopardise the chance of their institution/society being successful in future years. If you are in any doubt that you will be able to commit to this requirement, please do not submit an application form as it is unfair on those institutions which applied but were not allocated a slot.

12. As the moot programme forms part of the court's education and outreach initiatives, we ask that the moot finals are not explicitly branded or marketed, this means no banners or visual branding should be on display in or outside the courtroom (although it is acceptable to produce medals and literature with the sponsor's names on).

Judges

13. We will provide a judge for each moot final – a Justice from the Supreme Court or in certain circumstances another senior UK judge. Law schools/societies cannot choose or state preference for a particular Justice.

14. The allocated Justice will be the only judge of the moot final. Law schools/societies may not bring their own supplementary judges to the Court. Occasionally, however, the Justice's Judicial Assistant may join their Justice on the bench.

15. Given the commitment the Supreme Court Justices are making to this programme, requests for a Justice to judge moots held at the Supreme Court outside of the 12 free slots cannot be met. To avoid embarrassment, we would ask institutions to refrain from asking Justices to judge such moots being held at the Court.

Rules and Deadlines

16. Law schools/societies can choose their own moot problem. However, all moot problems must revolve around an arguable point of law of general public importance, like real-life Supreme Court cases. Please see Appendixes A and B for examples of the type of moot problem which should be submitted. Please note that these moot problems are the copyright of BPP Law School and City Law School respectively. They must not be copied or used, wholly or partly, without the author's express permission.

17. Moot problems need to be submitted by email one month before the date of the moot final.

18. In order to ensure a high standard and legally accurate moot, we would recommend that the moot problem is checked over by a law professor or faculty member of the law school before it is submitted to the Court. If there are any significant legal inaccuracies or errors, the Supreme Court reserves the right to suggest that amendments be made to the moot problem before it is submitted to the judge.

19. Skeleton arguments and bundles should be submitted electronically 7 days before the moot final. In addition to being submitted electronically, parties are expected to bring a copy of their bundle to the moot. In the interests of size and conciseness, please limit the bundles of authorities to those which are essential. We are happy to provide an example of a skeleton argument and bundle from a previous moot, if requested.

20. Each party should provide one bundle combining both Senior and Junior Counsels' authorities. This will be used by the Justice during the moot final. If the Judicial Assistant also takes part in the moot final, it may be necessary to provide an extra set of skeleton arguments and bundles for their use too. We will notify you of this in advance if it is necessary.

21. There will be no exceptions to the deadlines stated above. In keeping with civil courts procedure, we expect deadlines to be strictly adhered to and we reserve the right to cancel the moot final if material is not lodged in time.

22. Supreme Court Justices will not use institution's marking sheets when judging the moot finals. The Justices will choose a team and/or individual moot winner (please notify the Education Officer of your preference in advance) and although they are happy to provide oral feedback on individual participants, they should not be asked to rank the students by level of individual performance.

23. We recommend that Senior Counsel are given 20 minutes and Junior Counsel are given 15 minutes to make their oral submissions, so that students can get the most out of their experience at the Supreme Court. However, we do appreciate that each law school/society has different rules regarding timings and so alternative timings may be permitted at the discretion of the Supreme Court. We do request, however, that during the moots the clock is not stopped for

interventions as this makes the moot a more realistic and worthwhile experience for the participants.

24. Law schools/societies are expected to manage the timing for the moot and to ensure that the event finishes on time. This includes bringing your own equipment to time the moots and ensuring that all necessary batteries are fully charged to last the entirety of the moot final.

Unsuccessful applicants

25. If you are unsuccessful in your application but are still interested in holding your moot final at the UK Supreme Court, you can hire the court as a venue. Please see the Venue hire section of the moots page of this website for more information.

Appendix A: BPP Law School's 2014 Moot Problem

This moot problem was drafted by Robert Scrivener for BPP Law School. It must not be copied or used, wholly or partly, without the author's express permission. For further information, please contact Ishan Kolhatkar at BPP Law School (ishankolhatkar@bpp.com).

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

B E T W E E N:

THE MONEY LENDING GROUP LIMITED

Claimant/

Respondent

and

IT-4-LAWYERS LIMITED

Defendant/

Appellant

Factual background

The Money Lending Group Ltd. ("TMLG") is a small company which specialises in providing loans to new business ventures. It is run and managed by Mrs Ella Nightingale.

IT-4-Lawyers Ltd. ("IT-4-L") was a company established on 1 June 2011. It specialises in providing IT solutions to the legal market. It is a so-called "one man company", owned, controlled and managed by Mrs Margaret Swift. Mrs Swift had long wished to run her own business. After many years of planning, she finally decided that the time had come and incorporated IT-4-L for that purpose.

Mrs Swift was good friends with Mrs Nightingale. When Mrs Swift wanted to start up her own business, she turned to Mrs Nightingale for the funds to do so. She visited her in late June 2011, shortly before IT-4-L was to start trading.

In light of their long-standing friendship, Mrs Nightingale had no hesitation about TMLG lending IT-4-L the money it needed. She even said that she could arrange for the loan to be made on a "mates' rates" basis. IT-4-L would not be required to provide a guarantor and the interest charged would be significantly lower than would normally be the case. Unsurprisingly, Mrs Swift agreed to these terms. As she was optimistic about the prospects of her business, she said that she would only need the money for enough time to enable her to get IT-4-L off the ground, and would be willing to make provision in the agreement whereby TMLG could claim back the loan at any time after one year.

On 30 June 2011, TMLG and IT-4-L entered into a contract for a loan of £60,000. The contract was not by way of deed. Where relevant, it provided:

> ***"CONTRACT OF LOAN***
>
> *1. The Money Lending Group Ltd. (the "lender") will lend to IT-4-Lawyers Ltd. (the "borrower") the sum of £60,000 (the "loan") on 1 July 2011.*
>
> *2. From the 1 July 2011 until the loan is repaid, interest shall be charged at the rate of 3% above the Bank of England base rate. The interest shall be paid by the borrower to the lender at the same time the loan is repaid.*
>
> *3. The entire loan and any interest which has accrued shall be repaid by the borrower on the 5th business day after a demand for it to do so is made by the lender. The lender may make such a demand at any time after one year from the date of this contract, such demand not being made unreasonably or irrationally.*
>
> *4. This contract shall constitute the entire agreement between the lender and the borrower and supersedes all prior agreements. Each party acknowledges that it has not relied on or been induced to enter into this contract by any representation or undertaking other than those expressly set out herein…"*

Pursuant to the loan contract, TMLG lent to IT-4-L £60,000 on 1 July 2011.

At first, IT-4-L was very successful. Mrs Swift was thrilled. The fortunes of Mrs Nightingale and TMLG, however, were not so positive. After a series of bad commercial decisions, TMLG was in severe financial difficulties. It was being pursued by its creditors and was on the verge of insolvency.

Having struggled through the previous months, Mrs Nightingale decided that TMLG had no choice but to call in the loan from IT-4-L. On 7 January 2013, TMLG served a demand (complying with the provisions of the contract) requesting repayment of the loan, plus interest, pursuant to clause 3.

Mrs Swift was concerned about the state of her friend's company, but after its initial successes, IT-4-L's profits were beginning to shrink. It was also starting to look financially precarious. It did not have the funds to repay the full £60,000 plus interest on the fifth business day after the demand.

Mrs Swift contacted Mrs Nightingale on 8 January 2013 by email. She said: *"IT-4-L does not have the whole of the amount you have requested. I am very sorry. In fact, IT-4-L is itself in difficult times. In view of our friendship, perhaps I can pay you £30,000 and leave matters there for good?"*

Although Mrs Nightingale was not entirely pleased about the offer, in order to maintain civility, she responded the same day, saying: "*very well. Those terms are not ideal, but given that both our companies are having problems, that will have to do."*

On the fifth business day after the demand had been made, IT-4-L repaid the money to TMLG. TMLG was able to avoid insolvency and appease its creditors as a result.

About five months after the repayment, IT-4-L's fortunes picked up when it entered into a highly profitable new contract. It now has more than enough money to repay the remainder of the loan and interest due. Mrs Swift decided it would be best if Mrs Nightingale did not know about this, and did not tell her (though she has never expressly or impliedly indicated to the contrary). However, Mrs Nightingale heard the news from a third party. She was quite indignant. She decided that it would be best if TMLG started proceedings against IT-4-L in order to recover the part of the loan and the interest which had gone unpaid.

The judgments in the courts below

Sitting in the High Court, Queen's Bench Division, Smith J. held that:

> (1) He was bound by Foakes v Beer (1884) 9 App. Cas. 605 to conclude that the agreement to repay £30,000 to discharge the debt was not supported by consideration (despite the practical benefit which TMLG had gained). TMLG could sue for the balance. Further, it was not estopped from doing so because the circumstances did not render it unconscionable for it to go back on the agreement.
>
> (2) Even if wrong on that, Smith J. considered that, given the somewhat unusual nature of clause 3 and the factual background, there could be implied into the loan contract a term requiring the parties to act in good faith, following Yam Seng Pte Ltd. v International Trade Corp. Ltd. [2013] EWHC 111 (QB). This had required IT-4-L to inform TMLG of its change in circumstances and repay the balance when it could. The remaining amount of the loan and the accrued interest was due to TMLG on that basis as well.

IT-4-L appealed. The Court of Appeal upheld Smith J.'s judgment for substantially the same reasons as he gave.

IT-4-L now appeals to the Supreme Court against both the grounds given in the courts below for upholding TMLG's claim. The parties have agreed that this matter will be decided only on those two grounds, and nothing else.

Appendix B: City Law School's 2014 Moot Problem

For further information, please contact e.allbon@city.ac.uk

In The Supreme Court

Hardy v Matthews

Mr Hardy and Miss Matthews purchased a large rundown property in 2006 called Corben Mansion and moved in together. The property was registered in both names. However, Matthews paid only 25% of the purchase price, and 25% of the mortgage payments. Hardy paid the remaining 75% of the purchase price and of the mortgage payments. On moving in though, Hardy agreed with Matthews that the property would be owned '50/50' though nothing was put in writing to that effect. Their plan was to develop the property so that it could be used as a refuge for victims of domestic violence and Hardy paid for architects' plans to be drawn up to facilitate the planning permission application process. Miss Matthews carried out extensive work on the property and the gardens to start to get the land into a state of readiness. She collected timber from a reclamation yard, as well as paying for and overseeing the delivery of tiles, bricks and sand. Over the following year she also did the decorating, and planted and tended trees.

Miss Matthews also helped Mr Hardy by giving him advice as to other potential purchases as she had studied on the GDL at Law School. After 18 months in the property, Miss Matthews fell pregnant, and she decided to give up her career at the Chancery Bar to concentrate entirely on being a 'full-time' mother. She spent much of her personal savings decorating a nursery in readiness for the baby, and once baby Lily was born, she agreed that she did not want to employ a nanny so that she could return to work, but rather she would stay at home, at least for the foreseeable future. Hardy continued to work long shifts as a Detective Sergeant in the local police force.

Unfortunately, the stress on their relationship began to tell, and in 2010, Hardy left Matthews for another woman, Miss Hill. Miss Matthews was left in the property with Lily, and from that point onwards, Mr Hardy contributed nothing to either the mortgage payments or maintenance of the child.

In late 2013 Miss Matthews telephoned Mr Hardy to tell him that she was selling the property, and that he would get nothing. Mr Hardy replied by saying 'no way, I want my 75%' Miss Matthews responded by seeking a declaration by the court under the Trusts of Land and Appointment of Trustees Act 1996 that she owned the full beneficial ownership of the property.

At first instance, the judge followed the case of ***Jones v Kernott*** [2011] and held that although there seemed to be a 50/50 agreement at the beginning of their joint ownership of the property, this had changed over time. He said that the correct test was therefore what was 'just and reasonable' taking into account the entire course of conduct of the relationship, and awarded Miss Matthews 70% to Mr Hardy's 30% under a Constructive Trust.

Mr Hardy appealed to the Court of Appeal, where giving the leading judgment Weston LJ held that the correct split could indeed be 50/50 following ***Stack v Dowden*** (2007) in that where property has been put into both names there should be equal shares unless there were exceptional circumstances. However, the Court of Appeal held that the property was subject to a Resulting Trust and awarded Mr Hardy 75% to Miss Matthews 25%.

Miss Matthews now appeals to the Supreme Court on two grounds;

> 1. The Court of Appeal should have followed the judgment in ***Jones v Kernott*** and upheld the ruling at first instance; and
>
> 2. The Court of Appeal was incorrect as there is no place in a situation such as this for a Resulting Trust analysis.