

Answers to self-test questions

Chapter 18: Mooting skills

Moots used:

1. *Pollard v Windsor* (in *Legal Skills*)
2. *R v Reynard* (website)
3. *Massinger v Wax* (page 105, Blackstone Book of Moots)
4. *ex parte Friends of Dingley Dell* (page 152, Blackstone Book of Moots)

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Appellant	Respondent
Pollard	Windsor
Reynard	The Crown
Massinger	Wax
Friends of Dingley Dell	Secretary of State for the Environment

In *R v Reynard*, Molly Reynard was convicted at first instance and this was upheld by the Court of Appeal so she is now appealing against her conviction to the House of Lords. The Crown (as the prosecutor of the case) is the respondent.

In *Massinger v Wax*, it states that Demi (Massinger) appeals to the Court of Appeal so she is the appellant. You could also reach this conclusion on the basis that Sally Wax was the successful party at the first instance trial. If you look at the findings of the trial judge, it states that Wax was in breach of contract which might lead you to conclude (incorrectly) that she was the losing party. However, if you read on, you will see that the trial judge concluded that the exclusion clause was incorporated into the contract between the two women and its terms were reasonable. In other words, Wax was in breach of contract but she would not be liable for the damage sustained by Massinger as she had excluded liability.

It is not difficult to work out who is the appellant in judicial review cases such as *ex parte Dingley Dell* once you understand the format of the name of the case. In judicial review, an action is brought against a public body (the Secretary of State for the Environment) by an individual or group (the Friends of Dingley Dell). Looking at the facts of the moot problem, it is clear that the Friends of Dingley Dell were unsuccessful at first instance so they are initiating an appeal and the Secretary of State for the Environment is the respondent. Note that the style of citation for judicial review cases has changed in recent years and this case would now be cited as *R (Friends of Dingley Dell) v Secretary of State for the Environment*.

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Pollard v Windsor

- Senior counsel for the appellant: the advertisement is an offer.
- Junior counsel for the appellant: the offer was not withdrawn prior to acceptance.
- Senior counsel for the respondent: the advertisement was an invitation to treat.
- Junior counsel for the respondent: even if the advertisement was an offer, it was withdrawn prior to acceptance so there was no binding contract.

R v Reynard

- Senior counsel for the appellant: the foxes were property because they were in the process of being reduced to possession.
- Junior counsel for the appellant: the test of reasonableness is subjective.
- Senior counsel for the respondent: the foxes were wild animals so did not fall within the meaning of 'property' for the purposes of the Criminal Damage Act.
- Junior counsel for the respondent: the weight of case law indicates that the test of reasonableness in relation to this particular aspect of the defence is objective.

Massinger v Wax

- Senior counsel for the appellant: the clause on the form was not incorporated into the contract
- Junior counsel for the appellant: even if the clause were incorporated into the contract, it was not reasonable within the meaning of UCTA.
- Senior counsel for the respondent: the clause was incorporated into the contract.
- Junior counsel for the respondent: the clause satisfied the reasonableness requirements of UCTA and was valid.

R v Secretary of State ex parte Dingley Dell

- Senior counsel for the appellant: the interest group had sufficient interest in the decision hence had standing to mount a challenge.
- Junior counsel for the appellant: the interest group had a legitimate expectation that the regulations would not be altered.
- Senior counsel for the respondent: the interest group did not have standing to challenge the decision.
- Junior counsel for the respondent: the interest group lacked any basis upon which to claim a legitimate expectation that the regulations would not be altered.