Answers to practical exercises

Chapter 18: Mooting skills

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Moots used:

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

R v. *Renard* includes some explanation as to why the Court of Appeal dismissed the appeal. Firstly, it is stated that previous case law requires that the test of reasonableness is to be judged according to an objective standard and, secondly, that a badger is a wild animal so cannot be property within the meaning of section 10(1) of the Criminal Damage Act 1971.

1. As the decision of the Court of Appeal went against the appellant, the reasoning provided is valuable to the respondent as it provides a strong starting point for the formulation of submissions. The respondent may want to provide occasional reminders to the moot judge that this was the view adopted by the Court of Appeal. The respondent should not limit their submissions exclusively to these points though as this does not show sufficient creativity, insight or research skills.

2. Although the reasoning went against the appellant, the points raised are still useful as they provide a clear indication of what points need to be countered. Close attention should be paid to the cases identified by the Court of Appeal so see if these can be distinguished or otherwise avoided, *e.g.* perhaps they have been criticized or not followed in subsequent cases.

3. It would be foolish for either side to ignore the reasoning of the Court of Appeal. The respondent is given an automatic advantage (in terms of the legal argument not the moot as a whole) in that the House of Lords will be influenced by the findings of the Court of Appeal so it would be extremely ill-advised not to pick up on the reasons that the appeal was dismissed and use this as the basis for at least one submission. The appellant cannot afford to overlook the reasoning of the Court of Appeal because it needs to be tackled head on rather than ignored. It is always difficult to argue against the reasoning of the trial judge or Court of Appeal but you are not doing your job properly if you fail to do so and, as such, risk losing on both the law and the moot.

Massinger v. *Wax* provides some insight into the reasoning of the trial judge. This is only three bullet points but it nonetheless gives the appellant and respondent some idea of how to tackle the moot.

1. The respondent will want to encourage the Court of Appeal to uphold the decision of the trial judge so it is important to take these points into account. Remember that findings of fact are not amenable to appeal so there is no scope to argue that there was no breach of contract.

2. The appellant needs to bear the points raised in the bullet points in mind but they are not very detailed. Do not be distracted by these points into arguing outside the grounds of appeal. You are not asked to argue that Wax was not operating on the same terms of the salon (which is one of the trial judge's findings) but that the exclusion clause was not incorporated into the contract with the salon (as required by the grounds of appeal). This is a fine point but an important one as far too many teams have gone wrong with the moot by basing their submissions on a challenge of the finding in the bullet point rather than the ground of appeal.

3. As there is so little detail provided in the reasoning of the trial judge, there is little advantage to be gained for either side. This risk here is that either the appellant or respondent will be tempted into basing arguments on the bullet points which would reopen an issue of fact and be outside of the stated grounds of appeal.

R v. *Secretary of State for the Environment ex parte Dingley Dell* provides some detail on the findings of the judge at first instance. It is stated that he does not accept that the group has *locus standii* but there is no further elaboration on this point. There is more detail in relation to the second finding as there is reference to the case upon which the decision is based. One thing that could cause confusion here is the way that the grounds of appeal are worded.

1. The interest group will need to take note of the limited reasoning provided by the judge to ensure that it is tackled in their submissions. In relation to the second ground of appeal, this involves finding the decision upon which reliance was placed and trying to get around it.

2. The respondents will need to reiterate and reinforce the finding of the judge at first instance. This involves finding additional support for the submission that there is no legitimate expectation other than the court authority cited.

3. Both teams would need to take care to formulate their submissions in response to grounds of appeal, taking into account the sentence that precedes them. Students have come to grief with this moot in the past by taking the first ground of appeal as it is worded: 'the applicants did not have *locus standii*' to challenge the decision. If the appellants adopt this as the basis for their appeal, the would be arguing against themselves, *i.e.* that they should not be entitled to challenge the decision. This is because the grounds of appeal need to be read in conjunction with the sentence that precedes them: this then makes the appellant's grounds of appeal far more sensible.