

NATIONAL UNIVERSITY OF SINGAPORE

IFS 4101 – LEGAL ASPECTS OF INFORMATION SECURITY

Academic Year 2021-2022 (Semester 2)

Week 5 Assignment

A. History of the Moot Court

A "moot" refers to a regular meeting of a county (or shire) in pre-medieval England, where cases were heard and local matters were discussed. The moot was attended by the local lords and bishops, the sheriff and four **representatives** of each village within the county.

After William of Normandy conquered England, the moot was converted to the County Court. It became a place where the representatives of the villages could express their views, introducing the idea of representative government at the local level.

These days, moot courts serve as venues for law students to practice their oral legal reasoning skills. Students are given hypothetical scenarios and are asked to craft legal arguments to defend the positions of the parties in the hypothetical cases.

B. Assignments Due on 8 Feb 2022

1. Prepare for moot court

You will represent and defend the positions of the parties involved in the hypothetical case. The details of the case are provided in **Annex A**.

You should prepare written arguments to defend the positions of both parties in the case IN ADVANCE OF CLASS. Your arguments should address the issues concerning (a) the cough medicine and (b) the dandruff shampoo. In other words, please prepare FOUR sets of written arguments (for Brown and for Mixit, for the cough syrup and the dandruff shampoo). I recommend that you meet your group members before class to discuss your plan of attack as well as assign the individuals who will be representing your group for each set of arguments.

During class, I will randomly assign you and your group to one of the parties to the dispute and to one of the issues (either the cough syrup or dandruff shampoo).

Each group will get 10 minutes to discuss and consolidate its best arguments for the group during class. Each group will nominate two representatives to present that group's arguments. The case presentation will be according to the following structure:

- The first representative from the group presenting the plaintiff's (Brown) case starts first and will have 10 minutes to make out Brown's best case.
- The first representative from the group presenting the defendant's (Mixit) case will have 10 minutes to rebut the plaintiff's case and make out Mixit's best case.

- The second representative from the Brown group will have 2 minutes to rebut Mixit's case.
- The second representative from the Mixit group will get the last word in 2 minutes of surrebuttal.

The rest of the class will act as the jury. Their job is to decide which side has the more legally persuasive and reasoned argument and to determine the verdict. I will then review each side's arguments and suggest ways to improve your arguments.

Unlike in a real court proceeding, neither side can raise any points to attack the integrity of the evidence. The facts given in the hypothetical scenario must be taken as real. You cannot add or detract from the given facts or assume or introduce anything that is not contained in **Annex A**.

The arguments that you put forth during moot court must be founded on the legal rules established in the following cases you have read as part of your Week 3 readings.

- *Langridge v. Levy*
- *Longmeid v. Holliday*
- *George v. Skivington*
- *Heaven v. Pender*

These four cases demonstrate the evolution of the common law of manufacturers' liability, or product liability, over time. The opinions that you have read illustrate how judges try to balance the need to ensure stability in the law through the practice of *stare decisis* while recognizing the changing marketplace and the need to protect consumers from the significant harm that can arise from product manufacturing defects.

You will notice that these cases were decided during the 1800s, at a time when manufacturers were able to significantly increase their production output due to industrialisation. Before the Industrial Revolution, the amount of harm any manufacturer could cause to society would have been limited in numbers. With the advent of manufacturing in previously unimaginable quantities, the number of consumers who could be hurt by a negligent manufacturer increased dramatically, leading the jurists to ask the question: Do manufacturers have a duty of care to their consumers?

The answer turned out to be a "yes" but only because the majority of the panel that heard *Donoghue v. Stevenson* thought so. Notice that some of the jurists thought that the majority went too far in creating a new form of liability for manufacturers that did not previously exist. While you should not use the ruling from *Donoghue v. Stevenson* to bolster your arguments in the moot court case, I encourage you to read *Donoghue v. Stevenson* and analyse how the jurists cited previous case holdings to support their positions or to distinguish the less favourable cases to prevent their opinion from being bound by prior holdings. Note also how the dissent rubbished previous court decisions and went so far as to say it was better to ignore their existence.

While the cases do not necessarily represent current law, they provide a historical and insightful perspective on not only how the modern law developed, but also how judges reasoned from previous decisions and evolved new rules from these decisions.

Some of the holdings in the pre-*Donoghue v. Stevenson* case may seem a bit odd to you (e.g., in *Longmeid v. Holliday* there was a reference that Mrs. Longmeid was unable to bring a claim of her own even though she was the one injured).

Before *Donoghue*, there were only two avenues to bring a claim against a manufacturer for injury caused to a buyer. The first was by asserting a breach of contract. However, any breach of contract claim would require there to be a contract between the parties (i.e., *privity of contract* must exist) before any action could be initiated. This meant that a person who was not the direct purchaser of the defective product could not sue the seller.

The second cause of action was under the common law action of fraud.

Based on these two actions, it would have been impossible for someone who did not contract to buy the defective product, and who was injured by the defect, to recover damages. Also, you might be interested to know that at this period of time in England, a married woman did not have the legal capacity to enter into a contract in her own name or to sue in her own name. Therefore, husbands would have to enter into contracts on behalf of their wives and bring suits on behalf of their wives.

The surnames of the judges who wrote the opinions are followed by acronyms such as M.R., L.J., and B. These acronyms indicate the rank of the judge who wrote the opinion. M.R. stands for Master of the Rolls, who is second only to the Chief Lord Justice in the English court system. To understand the ranks of all the judges of the English courts (which, unfortunately, is necessary because English cases have enormous influence in Singapore judicial decisions), you may wish to visit the UK Courts and Tribunals Judiciary site at <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/high-court-judges/>.

2. Turn in a memo in support of the party you select to represent

To prepare you for your mid-term, you are given the opportunity to practice writing your argument in support of Brown or Mixit. You can pick which side you want to represent and the single issue you want to focus on.

Write your argument in support of your position. Keep it at 500 words or less. The whole point about this exercise is to force you to think through your logical flow and figure out how to pen it down in English. The logical flow is more important than your English.

With each argument that you make, please cite to the authority that you are relying upon to support your argument. An example is provided below.

In Langridge v. Levy (1837) 2 M. & W. 519; 4 M. & W. 337, the court stated that a claim for a breach of product warranty cannot be brought by a plaintiff who was not the direct purchaser of the defective product in question.

Your memo should be written in the following format:

- A. Question – this section should identify the key legal question you want to address in your legal memo. E.g., if you are focusing on the question of whether or not Mixit should be liable to John Brown's mother for selling a defective shampoo, the question you might want to ask could focus on whether the mother can bring a suit given that she wasn't the direct purchaser of the shampoo.

- B. Answer – this is the short answer to the question. It is the summary of your analysis.
- C. Analysis – in this section, you will write down your arguments. You can use the case opinions that you have read as examples for how arguments can be written.

Please submit your work product to LumiNUS.

Annex A

John Brown went to a local chemist, Mixit, and purchased a cough medicine for his 6-year-old son and a dandruff shampoo for his mother. When John Brown asked Mixit for the shampoo, Mixit informed him that he had a new dandruff shampoo which Mixit himself had mixed, and which was guaranteed to cure dandruff within 30 days. Mixit was not informed who was going to use the shampoo.

When Mixit made the shampoo, he added an acid compound by mistake. As a result, when Brown's mother used the shampoo, it burned her scalp and caused patches of her hair to fall out.

Before purchasing the cough syrup, Brown told Mixit that he needed a cough medicine that was safe for a 6-year-old boy. Mixit checked the list of ingredients on the label and assured Brown that the medicine was perfectly safe for children. The cough mixture was sold in containers to which Mixit affixed its own brand label.

However, Mixit did not make the cough mixture. Instead, Mixit bought the cough mixture in bulk from another chemist, Careless. Unknown to Mixit, Careless had neglected to include an ingredient on Careless's own label. When Mixit repackaged the cough mixture into smaller containers, Mixit copied the content of Careless's label onto Mixit's own labels. As a result, Mixit's own label also excluded the ingredient that was missing from Careless's label. This ingredient made the cough syrup very dangerous for consumption by children.

Mr. Brown's son fell gravely ill and lost his sight as a result of consuming the Mixit cough syrup.

Mr. Brown wishes to pursue, on behalf of his son (as a minor), redress against Mixit. His mother also wishes to pursue redress against Mixit.

(reference: *Case Analysis and Statutory Interpretation (2001)*, 203-204)

Assume that the dispute arose in England in 1915, and that the only relevant judicial precedents are these cases:

- *Langridge v. Levy*
- *Longmeid v. Holliday*
- *George v. Skivington*
- *Heaven v. Pender*