YOUR GUIDE TO

Mooting

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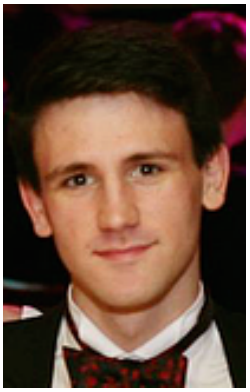
Your Moots Officers



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We understand that mooting can seem rather daunting at first and so we, as your Junior and Senior Moots Officers, will both be here to support you throughout this year.

We hope that this guide is of help to you, but do not hesitate to contact either of us if you have any questions, our contact details are set out above.

Best of luck and happy mooting!

What is a Moot?

A moot is a simulated trial. It is an exercise in arguing points of law, rather than fact, which are raised by a hypothetical case.

In each moot there are four participants:

1. Senior Appellant (SA)
2. Senior Respondent (SR)
3. Junior Appellant (JA)
4. Junior Respondent (JR)

Submissions are presented in the order outlined above. The case will raise two points of law, Senior Counsel will tackle the first, while Junior Counsel will address the second.

Each individual will have 15 minutes, including judicial questioning, to put forward their arguments. This time may be exceeded at the sole discretion of the judge.

There may also be a discretionary 3 minute 'right of reply' given to the SA and JA after all submissions have been made. It is an opportunity for the Appellants to respond to the submissions made by their opposing counsel; the time should not be used to present new submisisons not made in their main speech.

It is the responsibility of the SA to introduce all the individuals in the moot court room and also to appoint a clerk. The clerk is expected to keep time and should use written signs to notify the mooters when 10, 5 and 2 minutes remain during their submissions.

The clerk should sit next to the judge. The Appellants should be seated on the judge's left and the Respondents on the judge's right. Senior Counsel should be seated closest to the judge (if counsel are perpendicular to the judge) or towards the centre of the room (if counsel are arranged parallel to the judge)

Why Moot?

Mooting is an intellectually challenging exercise. It requires in-depth legal research to be conducted and will encourage you to formulate clever legal arguments. It will also significantly improve your advocacy skills, as your legal arguments must be presented to a variety of individuals ranging from experienced student mooters to Supreme Court judges.

UCL has a rich mooting tradition and advocacy is a skill highly valued by the Faculty. We run two internal competitions, the Junior and Senior Mooting Competitions, and also put forward teams for numerous external competitions.

Mooting Competitions

Herbert Smith Freehills Junior Mooting Competition (organised by Orestis Sherman)

This competition is run exclusively for First Year LLB students, its intention being to allow you freshers to give mooting a go and see if it's your thing! The problems have all been authored by Faculty staff and cover issues taught in the syllabus itself, making this competition an excellent revision tool.

The JMC consists of 7 rounds, beginning with the Mini Moot, a round which no-one is knocked out from. The first three qualifying rounds are judged by senior students who have been through the competition themselves, but from the quarter-final onwards, solicitors from HSF and barristers will preside and provide their valuable insight. The final will then be judged by a senior member of the judiciary and, for the first time this year, will take place at Gray's Inn.

It is highly recommended that you enter this competition; each student is guaranteed to compete in at least two moots, so there's plenty of opportunity to see why everyone makes such a big fuss about mooting at UCL.

There's absolutely nothing to lose from participation and, of course, if you decide after the Mini Moot that you'd rather never present a legal argument again, it's absolutely fine if you decide not to participate in the competition's first round.

Slaughter and May Senior Mooting Competition (organised by Anneena Kelay)

The SMC is specifically for those in their second or third year at UCL Laws. It is structured similarly to the JMC, with moot problems based around topics covered in the second year syllabus.

Round 1 will be judged by members of faculty and barristers, but from Round 2 onwards, experienced solicitors from Slaughter & May will be judging the competition. The final will take place in the Supreme Court and, similarly to the JMC, will be judged by a senior member of the judiciary.

External Mooting Competitions (organised by Anneena Kelay)

We enter teams and individuals for a wide range of external mooting competitions every year. These include prestigious international and domestic competitions, subject-specific moots and of course, the famous UCL v KCL Varsity moot (which we ALWAYS win).

A detailed guide to these moots will be published separately and participants will be chosen following try-outs.

Judging Criteria

Participants in the JMC and SMC are scored using the same four criteria outlined below, which are of equal weight.

1. Presentation, clarity and strength of arguments
    a. Clear and easy to follow structure (of skeleton and speech)
    b. Strength of arguments
    c. Confident and persuasive advocacy

2. Use of authority
    a. Wide range of relevant and up to date authorities
    b. Awareness of weight, persuasiveness and dissent in each judgement
    c. Appropriate bundling, tabbing and highlighting

3. Judicial intervention
    a. Dealing with questions in an effective manner
    b. Presenting submissions in a different order to that outlined in the skeleton argument

4. Courtroom manner
    a. Paying appropriate deference to the judge and other counsel
    b. Correct use of formalities
    c. Appropriate dress

Each criterion will be marked out of 10:

9 /10	*Outstanding* – exceptional performance, criterion fully met.
7/8	*Very Good* – criterion mostly met.
5/6	*Good* – average performance
3/4	*Acceptable* – criterion partially met.
1/2	*Unsatisfactory* – criterion hardly met at all.

The participants who proceed to the next round will be those who fulfil the criteria best, not necessarily those who have the law on their side. It is definitely possible to lose on the law, but win the moot!

Mooting Tips

We've gathered together lots of tips and tried to further explain the judging criteria to help you get your head around exactly what is required in order to do well in our mooting competitions!

1. Presentation, clarity and strength of arguments

This criterion relates to your ability to present a convincing argument, which is well structured, clear, and easy to follow. Being articulate is key, avoid colloquialisms, and use all the required formalities (see points 2 and 4).

Normally mooters will present three submissions. Having a much larger number of submissions is not a good strategy as you will find it difficult to complete all your submission sufficiently in the allocated 15 minutes.

Your argument can either be presented in 'series' or in 'parallel.' Presenting in series requires the judge to accept all your submissions in order to accept your overall argument.

- e.g. The defendant is not guilty because of reasons A and B and C.

Structuring submissions independently from each other is therefore usually preferable, as it allows the judge to reject an individual submission and yet still agree with one/more of your other submissions and accept your argument.

- e.g. The defendant is not guilty because of reason A. Alternatively, if reason B or reason C are true, the defendant also cannot be found guilty.

Of course, each individual submission has to be reasoned through carefully and success is dependent on logically and methodically presenting each element required to substantiate your point of law.

The best mooters will use their skeleton as a guide and expand on each submission. Reading a speech word-for-word is strongly discouraged, as this usually results in mooters being unable to effectively answer questions put to them by the judge.

You should speak confidently and not too quickly – rushing through submissions is a trap which many mooters fall into when nervous! It is a good idea to practice presenting your submissions prior to the actual moot and to time yourself while doing so.

2. Use of authority

Mooters need to refer to authorities, e.g. cases and statutes, in order to provide support for their arguments. You may not cite authorities not included in your skeleton argument.

Be aware of the difference between binding and persuasive decisions. Knowing the level and type of court of each case you cite will help you in determining what type of decision has been made.

- A decision is binding on the moot court if reached by a court of higher authority, but you must still justify the logic of that decision and demonstrate its application to your case. (Remember that the Court of Appeal is bound to follow its own decisions, as well as those reached in the Supreme Court, *Young v Bristol Aeroplane Co Ltd* [1944] KB 718)
- Persuasive decisions are those reached in foreign jurisdictions or decisions made in lower courts that are yet to be decided in a binding decision of a higher court.

Academic articles may also be used as authority, but are only considered to be persuasive in nature, as a result of merely being possible interpretations of the law.

You are expected to have two bundles (one for yourself and one for the judge). These are black ring-binders containing your skeleton argument and copies of every single authority contained in the skeleton. A contents page and a copy of the moot problem can also be included in the bundle.

Various skeletons have been included at the back of this guide for you to browse. There are great many styles one can adopt and feel free to format your skeleton in a way that suits you best. However, brevity is essential, as the name skeleton suggests. When listing your authority for each submission ensure that they appear in hierarchical order; i.e. primary legislation, case law (ordered by the level of appeal that the case reached), and then any academic authorities or other relevant authorities you wish to present.

Cases must be printed in full and appear behind separate dividers. This means searching for a pdf, or alternatively photocopying the case from the law reports in the Law Library, of the actual case – transcripts, digests and third party formats (such as Westlaw) are not acceptable. When discussing a particular case, you should refer the judge to its position in your bundle. Remember to include primary legislation in your bundle, if relevant.

You could say, for example:

- "If I may refer your Lordship to divider 1, this is the case of…"
- "The case of … is found at divider 1 of my Lord's bundle"

When referring to a case for the first time, you must cite the case name in full. e.g. for *Partridge v Crittenden* [1968] 1 WLR 1204 you could say:

- "If I may refer your Lordship to divider 1, this is the case of Partridge and Crittenden reported in nineteen sixty-eight at page one thousand, two hundred and four in the first volume of the Weekly Law Reports"
- "May I direct your Lordship's attention to the case of Partridge and Crittenden reported in the first volume of the Weekly Law Reports for the year 1968 at page one thousand, two hundred and four."

N.B. for civil cases the 'v' between the parties' names is said as 'and' but for criminal cases it is said as 'against'.

Mooters should refer to cases from the Law Reports where possible. When reported in multiple places, you must cite a Law Report from higher up the hierarchy. The official order, with abbreviations, is as follows:

- First Tier – AC, QBD, Ch, Fam; these are the Official Law Reports produced by the Incorporated Council of Law Reporting for England and Wales.
- Second Tier – All ER and WLR; these are also classified as Official Law Reports.

- Third Tier – STC, LRC, IRLR, BCLC, BHRC, All ER (EC), All ER Comm, LGR, BMLR, FCR, Con LR, International Tax Law Reports, IP&T; these are authoritative specialist series of reports, which contain a headnote and are made by individuals holding a Senior Courts qualification.

Once one case has been referred to by its full case citation, you can ask the judge if you may 'dispense with full case citations.' If permission is granted, you can then refer to the case using only the party names; e.g. 'Partridge and Crittenden.'

Mooters will need to refer to individual passages within judgements during the course of their oral submissions. These must be highlighted and tabbed (tabs along the top, dividers down the side) so that you can easily guide the judge to the relevant section. It is always a nice touch to mention the name of the judge, with their correct title, who delivered the judgment you are referring to.

You could say, for example:

- "If I may direct your Lordship to the highlighted section at tab A, this is the judgement of Lord Millet"
- "If I may refer my Lord to tab A, to the highlighted section within Lord Bingham's dissenting judgement"

It is also permissible for mooters to refer the judge to the page number of the highlighted section, if this is preferred.

3. Judicial intervention

Judges will question you on your submissions. High marks will be awarded to mooters who are not thrown off by judicial intervention and are able to respond intelligently to any questions posed.

The best mooters are usually those who anticipate questions that could be asked and prepare clear and concise answers to these prior to entering the moot court room. When difficult questions are asked, it is usually beneficial to pause and only respond when you have gathered your thoughts into a coherent structure; do not feel pressured into responding immediately!

If you do not understand the question, it is permissible to ask the judge to re-phrase or to further explain it. It is important that mooters do not talk over the judge and allow them to finish speaking before attempting to answer their question.

You must also be prepared to present your submissions in a different order to that outlined in your skeleton argument.

4. Courtroom manner

You must be on time and formally dressed. Male mooters should wear a dark suit and tie with smart shoes, while female mooters should also dress formally, wearing a skirt or trousers according to personal preference.

Mooters should be aware of their posture and mannerisms. Face the judge when presenting your submissions and ensure that you do not avoid eye contact. Excessive gesticulation is distracting and so it is wise to place your hands behind your back or perhaps on the table in front of you.
You should show deference to the judge at all times. When referring to the judge use "my Lord/my Lady" instead of "you" and "your Lordship/your Ladyship" instead of "your". When there are two judges, one male and one female, you should refer to them as "your Lordship and Ladyship."

Be sensitive to each individual judge; different judges require varying levels of formality and so detecting how best to present your arguments and deciding this on your feet is a key skill.

When referring to other mooters, you should use "my learned friend," "opposing counsel" or their title, e.g. "the Junior Respondent".

The Senior Appellant must introduce both himself and the other participants at the start of his submissions by saying, for example:

- "If it pleases your Lordship, my name is Miss X and I appear today as Senior Counsel for the Appellant. My learned friend Mr Y shall be acting as Junior Appellant, while my learned friends, Mr A and Miss B, shall be appearing on behalf of the respondents."
- "May it so please the court that I am Miss X acting as Senior Appellant. My learned friend Mr Y shall be acting as Junior Appellant, while Mr A and Miss B shall be appearing as Senior Respondent and Junior Respondent respectively."

Other participants need only introduce themselves by saying, for example:

- "If it pleases the court, my name is Miss B and I will appear as Junior counsel for the Respondent."
- "I appear for the Respondent and wish to make three submissions on his behalf…"

You should always offer the judge a summary of your main points before discussing each submission in greater detail. When arguing your point you should never use phrases such as "I think" or "I believe." It is preferable to say "it is submitted that…"

Once you have completed all your submissions, it is customary to use a phrase such as:

- "It is therefore on these three grounds that we urge your Lordship to allow/dismiss the appeal. Unless I can be of further assistance to the court, my submisisons are complete."
- "On these grounds, it is accordingly submitted that my Lord should allow/dismiss the appeal and conclude that… contrary/in line with the previous decision reached."

The Problem Question

Below is a moot problem from the JMC. We have included two example skeletons for the SA, followed by two for the SR. We hope that these will give you some idea of how to structure your own skeleton arguments when the time comes!

Junior Mooting Competition

Quarter-Final Problem

HERBERT SMITH FREEHILLS

In the Supreme Court,

Between:

FRANCES JONES	Appellant
v.	
PAUL SMITH	Respondent

and between:

MAGGIE SMITH	Appellant
v.	
FRANCES JONES	Respondent

Frances is an elderly and wealthy woman with no children of her own. She owns 1,000 shares in Ten Percent Books Ltd, which are now worth £800 per share. She decided to give 100 shares each to Maggie and Paul, the adult children of her deceased sister, Lila. Frances rang Paul and told him of the impending gift. He was thrilled with the news and later that day proposed marriage to his girlfriend, Carla, who accepted his proposal. Frances was unable to contact Maggie, who was overseas at the time. Several days later, Frances filled out the proper forms for transferring the shares and posted them to Maggie and Paul, respectively. The transfer forms have not been registered and Frances remains the legal owner of the shares. The transfer form to Paul could not be registered because Frances forgot to sign it. When Paul asked her to sign the form, she told him that she had changed her mind and decided not to make the gift after all. The form posted to Maggie was properly executed and registrable, but Frances went to Maggie's flat while Maggie was still overseas and recovered the transfer form from Maggie's flatmate, Kim.

Maggie and Paul each commenced an action against Frances seeking a declaration that she held 100 shares of Ten Percent Books Ltd in trust for each of them. Judy J granted the declaration of trust of 100 shares in favour of Paul, but dismissed Maggie's claim.

He held that he was bound by the judgment of the Court of Appeal in *Pennington v Waine [2002] EWCA Civ 227*, which had altered the principle established in *Re Rose [1952] EWCA Civ 4* and *Mascall v Mascall [1984] EWCA Civ 10*. According to Arden LJ in *Pennington v Waine* at [64], the "principle which animates the answer to the question whether an apparently incomplete gift is to be treated as completely constituted is that a donor will not be permitted to change his or her mind if it would be unconscionable, in the eyes of equity, vis a vis the donee to do so".

Therefore:

1. As between Frances and Paul, it was unconscionable for Frances to change her mind because Paul had relied on the promised gift by proposing marriage to Carla. It did not matter whether the share transfer form was registrable nor whether Paul's reliance was sufficiently detrimental to support an estoppel. (to be addressed by senior counsel)

2. As between Frances and Maggie, it was not unconscionable for Frances to change her mind since she did so before Maggie learned of the possible gift and it did not matter whether the share transfer form had been delivered to Maggie or not. (to be addressed by junior counsel)

The Court of Appeal unanimously affirmed the judgment of Judy J.

Frances and Maggie appeal to the Supreme Court: Frances appeals from the declaration of trust in favour of Paul. Maggie appeals from the dismissal of her claim.

In the Supreme Court

Between:

FRANCES JONES	Appellant
-and-	
PAUL SMITH	Respondent

and between:

MAGGIE SMITH	Appellant
-and-	
FRANCES JONES	Respondent

SKELETON ARGUMENT
ON BEHALF OF THE APPELLANT

Anneena Kelay

INTRODUCTION

A. This is an appeal against the decision of the Court of Appeal, which granted a declaration of trust of 100 shares in favour of Mr Smith; he had relied on the promised gift by proposing marriage to Carla, and so it was unconscionable for Ms Jones to change her mind.

B. The appellant will be dealing with the grounds of appeal by which it is claimed: the facts of this case satisfy the requirements necessary to conclude it was not unconscionable for Ms Jones to change her mind. In these circumstances, Mr Smith cannot be granted a declaration of trust.

SENIOR COUNSEL FOR THE APPELLANT: Anneena Kelay

First Submission

1. ***Pennington v Waine*** [2002] 1 W.L.R. 2075 does not apply

    a. Ms. Jones' act of changing her mind is not unconscionable

        i. Mr Smith did not detrimentally rely on the promised gift

    b. Continuing intention to transfer legal title is required for equitable title to pass at an earlier date

        i. Ms. Jones did not have the requisite continuing intention

2. ***Re Rose*** [1952] 1 All E.R. 1217 should be applied, despite the conclusion of the Court of Appeal to the contrary

    a. The unconscionability test is broad, unpredictable and gives the courts unfettered discretion to perfect incomplete gifts arbitrarily

    b. The principle of ***Re Rose*** [1952] 1 All E.R. 1217 is narrowly defined and gives rise to predictable outcomes

        i. It gives better effect to the intention of the transferor than the unconscionability test in ***Pennington v Waine*** [2002] 1 W.L.R. 2075

        ii. It would be against public policy to prohibit a party from changing their mind when everything necessary to effect legal transfer of a gift has not been done

C. For the reasons set out above, it is submitted that the court should allow the appeal.

SENIOR COUNSEL FOR
THE APPELLANT
ANNEENA KELAY
12th MARCH 2014

In the Supreme Court
On Appeal from the Court of Appeal

Between:

FRANCES JONES — Appellant

-and-

PAUL SMITH — Respondent

and between:

MAGGIE SMITH — Appellant

-and-

FRANCES JONES — Respondent

SKELETON ARGUMENT
ON BEHALF OF THE APPELLANT

Maisie Biggs

INTRODUCTION

1. This is an appeal against the decision of the Court of Appeal, which granted a declaration of trust of 100 shares in favour of Paul Smith.

2. The appellant will be dealing with the grounds of the appeal by which it is claimed: The facts of the case demonstrate that an equitable assignment was not executed and it was not unconscionable for the appellant to change their mind concerning the incomplete gift. In the interests of public policy, the court should remain concerned with effectuating the clear and continuing intention of the donor rather than the actions of the donee.

SENIOR COUNSEL FOR THE APPELLANT: Maisie Biggs

1. An equitable assignment was not executed, and so it was an incomplete gift before being rescinded.
    a. By not signing the form, the appellant did not execute a valid equitable assignment
        i. A donee has done everything necessary for a gift to be perfect if a document declaring the gift has been signed **Authority: *Rose v Inland Revenue Comrs* [1952] Ch 499**
        ii. Pennington v Waine confirmed that delivery of forms was irrelevant **Authority: *Pennington v Waine* [2002] EWCA Civ 227**
    b. The imperfect gift cannot be saved as there was no immediacy in the initial announcement of the gift **Authority: *T Choithram International SA v Pagarini* [2001] 1 WLR 1**
    c. Since equity will not come to the aid of a volunteer, and the issue in question is not a 'perfect' gift following the reasoning of Pennington v Waine, equity mustn't 'perfect' the gift **Authority: *T Choithram International SA v Pagarini* [2001] 1 WLR 1**
2. It was not unconscionable for the appellant to change their mind concerning the incomplete gift.
    a. The donor of an incomplete gift can change their mind at any time **Authority: *In re McArdle, deed* [1951] Ch 669**
    b. The respondent acted before the gift was perfected, and the reliance was not sufficient to rule it 'unconscionable' for the appellant to change their mind
        i. Pennington v Waine ruled that the donor was only barred from rescinding their promise following the signatory commitment of the donee to become director **Authority: *Pennington v Waine* [2002] EWCA Civ 227**
3. In the interests of public policy, the court should remain concerned with effectuating the clear and continuing intention of the donor rather than the actions of the donee.
    a. Necessary to give a narrow interpretation to the 'unconscionability' test in Pennington v Waine
        i. A hard case making bad law, the court intended to effect the clear intentions of the deceased donor **Authority: *Pennington v Waine* [2002] EWCA Civ 227**
        ii. Clarification is required to avoid the danger in allowing equity to supersede the necessity for legal formalities

For the reasons set out above, it is submitted that the court should allow the appeal.

IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)
BETWEEN:

Frances Jones (Appellant)
- and -
Paul Smith (Respondent)

Maggie Smith (Appellant)
- and -
Frances Jones (Respondent)

SKELETON ARGUMENT
ON BEHALF OF THE RESPONDENT (PAUL SMITH)

Matthew Hastings

INTRODUCTION

1. This is an appeal against the findings of the Court of Appeal. The court unanimously upheld the decision of Judy J, who found in favour of Paul Smith and against Maggie Smith. Both Frances and Maggie appeal on the basis that the Court of Appeal's decision was incorrect. Frances appeals against the decision in favour of Paul Smith.
2. Senior counsel will be dealing with the grounds of appeal by which it is claimed that it was unconscionable for Frances to change her mind because Paul had relied on the promised gift by proposing to Carla. It did not matter whether the share transfer form was registrable nor whether Paul's reliance was sufficiently detrimental to support an estoppel.

SENIOR COUNSEL FOR THE RESPONDENT: Matthew Hastings

<u>First submission</u>

1. Equity prevents Frances from exploiting her own error upon learning of Paul's change of factual situation. The transfer of shares was complete in equity. It is unconscionable for Frances Jones to go back on her promise to transfer shares.
    a. A transfer of shares is complete at the point (a) at which the donor has done everything in their power to effect the transfer. [**Authority:** *Re Rose* [1952] Ch 499 (CA)]
    b. After this point (a), the donor remains legal owner of the shares until registration of documents is complete.
    c. A constructive trust is formed from point (a) until legal title is transferred on registration.
    d. Equitable ownership is transferred to the donee without further action from either party at point (a).

. Second submission

1. A constructive trust arises on the grounds that it is unconscionable for Frances to withdraw her gift.
    a. The gift may be imperfect, but per Pennington and Waine it is possible for the gift to be construed as complete. [**Authority:** *Pennington v Waine* [2002] 1 WLR 2075 (CA)]
    b. If it is considered unconscionable for the assurance to be withdrawn, a constructive trust is formed with beneficial ownership being held by the donee.
    c. Insofar as Frances was aware, she (the donor) had done all that was necessary to complete the transfer of shares.
    d. Paul made no demonstration of a rejection of the gift.
    e. Paul relied to his detriment on the assurance.
2. The incomplete gift should be treated as completely constituted as it is unconscionable for Frances to withdraw her gift.
    a. Unconscionability is assessed by the court on evaluation of all relevant considerations [**Authority:** *Pennington v Waine* [2002] 1 WLR 2075 (CA)]

Third Submission

1. Proprietary estoppel prevents Frances from withdrawing her gift.
    a. A clear assurance was made by Frances to Paul – she assured him that she was to transfer 100 shares in to his name.
    b. Paul relied on this assurance to his detriment in offering to marry Carla. Marriage involves a significant financial undertaking.
    c. If it is unconscionable for an assurance to be withdrawn, then the assurer is estopped from doing so. [**Authority:** *Thorner v Major* [2009] UKHL 18]

Fourth Submission

1. On the grounds of public policy, the court should reaffirm that the test for unconscionability is the fair, just and correct one when dealing with estoppels and formation of constructive trusts.
    a. The maxim '*equity does not aid volunteers'* remains, but;
    b. In the interests of fairness and certainty, donors should be prevented from recalling gifts at a whim.
    c. This is especially important in cases in which there has been detrimental reliance by the donee.
    d. A more flexible approach that looks at the overall unconscionability of resiling from an assurance provides a more equitable outcome than rigorous and inflexible component tests.

For the reasons set out above, it is submitted that the court should dismiss the appeal.

SENIOR COUNSEL FOR THE RESPONDENT
MATTHEW HASTINGS
12 MARCH 2014

IN THE SUPREME COURT
BETWEEN:

FRANCES JONES (Appellant)

-and-

PAUL SMITH (Respondent)

AND BETWEEN:

MAGGIE SMITH (Appellant)

-and-

FRANCES JONES (Respondent)

SKELETON ARGUMENT
ON BEHALF OF THE FIRST RESPONDENT
Zander Goss

INTRODUCTION

1. This is an appeal against the judgment of Judy J, unanimously affirmed by the Court of Appeal, which declared that the appellant held 100 shares of Ten Percent Books, Ltd in trust for the respondent resulting from an imperfect gift.

2. This skeleton argument relates to the single ground of appeal asking whether it was unconscionable for the appellant to withdraw her gift. If it was unconscionable, then the appeal must be dismissed.

COUNSEL FOR THE FIRST RESPONDENT: Zander Goss

First Submission

3. It would be unconscionable for Frances to opportunistically exploit her own error where, if she had signed the transfer form, she clearly would have held the shares in trust for Paul and been barred from withdrawing the gift.

   a. A gift of shares is complete when the donor has done everything in his power to effect the transfer, after which time the donor holds the shares in trust for the donee until legal title is vested in donee through registration: *Re Rose* [1952] EWCA Civ 4, [1952] Ch 499, 515-517

   b. Once aware of the facts giving rise to the trust, equity operates on the conscience of the owner of the legal interest, compelling him to carry out the purposes of the trust:

Westdeutsche Landesbank Girozentrale v Islington LBC [1996] UKHL 12, [1996] AC 699, 705

c. Unconscionability depends on the court's evaluation of all the relevant considerations: *Pennington v Waine* [2002] EWCA Civ 227, [2002] 1 WLR 2075 [64]

Second Submission

4. Alternatively, proprietary estoppel barred Frances from withdrawing the gift.

a. Where B detrimentally relies on a clear assurance from A to assign a proprietary interest in specified property, A is estopped from her legal right to resile from the promise if it would be unconscionable to do so: *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776 [29], [57]

5. For the reasons above, it is submitted the court should dismiss the appeal.

SENIOR COUNSEL FOR THE RESPONDENT
ZANDER GOSS
12 MARCH, 2014

Best of luck with Mooting 2015-2016 from

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