

# NATIONAL MOOTING COMPETITION

## Finals Day

The English-Speaking Union  
with Essex Court Chambers  
20th June 2017



ENGLISH-SPEAKING UNION

discovering voices



# WELCOME...

Any common law system of dispute resolution depends heavily on the skills of the advocate to persuade the tribunal. Mooting is an important means by which young aspiring advocates can practise and hone their communication skills. It teaches them to focus on the issues and to present the legal and factual material in a manner that is clear, cogent and concise. It also helps them to develop the ability to work with others as members of a team, and to respond to rigorous judicial questioning. As a judge of the High Court of England and Wales, I can testify to the sound foundation that participation in mooting provides for those who wish to enjoy a successful career at the bar, as I did over a period of thirty years in practice from Essex Court Chambers.

Since 1972, teams from 28 different institutions have won the competition and had their names inscribed on the elegant prize, the Silver Mace. The runners-up have their names inscribed on the Scarman Shield. Since 1999, the competition has also been supported by Essex Court Chambers, one of the country's leading sets of barristers' chambers, based in London. Many former participants in the competition have gone on to become successful practitioners at the Bar of England and Wales.

The English-Speaking Union and Essex Court Chambers deserve our thanks for the many years that they have devoted to supporting this historic competition. It has served an important function in promoting an understanding of what advocacy is about and what the bar does. If the standard displayed in previous competitions is displayed in this, we can be confident that the competition will leave a legacy to be proud of.

**THE HON. MRS JUSTICE ANDREWS DBE**  
**ROYAL COURTS OF JUSTICE**



## TODAY'S SCHEDULE

- 9.15am** Mooters arrive at Dartmouth House
- 9.30am** Judges and guests arrive at Dartmouth House, refreshments
- 9.45am** Welcome
- 10am** Semi-Finals begin
- 11.30am** Semi-Finals judges retire
- 11.45am** Judges decision and feedback
  
- 1pm** Finalists leave for Essex Court Chambers to prepare for the Grand Final
  
- 5.30pm** Judges and guests arrive at the Royal Courts of Justice
- 5.30pm** Judges are briefed in the ante-chamber by David Grief, Clerk to the Court
  
- 6pm** Welcome
- 6.10pm** Audience rises for judges' entry Moot begins
- 7.30pm** Grand Final judges retire
- 7.45pm** Judges return. Announcement of National Mooting Competition 2017 Winner
- 7.55pm** Prize presented to winners and runners up
  
- 8.15pm** Guests leave for reception

## THE PRIZES

As well as having their names engraved on the Silver Mace, the winning finalists will be awarded a prize of £1,000 each. The educational establishment at which they study will also receive a donation of £1,000.

The members of the runners-up team will receive £750 each, and their institution will receive £500.

The four semi-finalists will receive £250 each for reaching that stage of the competition.

All four finalists will be offered a mini-pupillage at Essex Court Chambers.

The prizes have been generously donated by Essex Court Chambers.



*Congratulations to James Fennemore and Jonathan Goddard of Oxford Brookes University in winning the coveted Silver Mace trophy at the Royal Court of Justice on June 22nd 2016. Worthy runners-up and winners of the Scarman Shield were Abhishek Lalji and Ben Wilkie of Liverpool John Moores University.*

## THE TEAMS

SEMI-FINAL 1 IN THE CHURCHILL ROOM, DARTMOUTH HOUSE

### For the Appellant

Liverpool John Moores University

Marc Tyler

Abigail King

### For the Respondent

London Metropolitan University

Sarah Harty

Daniel Dawson

SEMI-FINAL 2 IN THE SMALL DRAWING ROOM, DARTMOUTH HOUSE

### For the Appellant

Newcastle University

Daniel Boal

Joseph Beenev

### For the Respondent

University of York

Charlie Tye

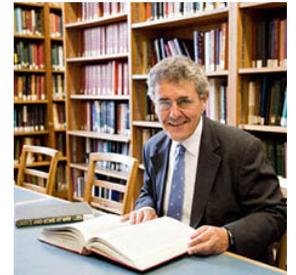
Jessica Gracie

## GRAND FINAL JUDGES

### The Right Honourable Professor Sir Robin Jacob (Chair of the Judges)

Having read Natural Sciences at Trinity College Cambridge, Sir Robin then read for the Bar and took an LLB from the LSE and read for the Bar at Grays Inn, being called in 1965. He practiced at the Intellectual Property Bar from 1967. From 1976 to 1981 he was the Junior Counsel for the Comptroller of Patents and for Government departments in intellectual property. He was made a Queen's Counsel in 1981. His practice took him abroad often (Hong Kong, Singapore, Europe, USA, Australia).

He was appointed to the Bench in 1993 and was a designated Patent Judge. From 1997 to 2001 he was Supervising Chancery Judge for Birmingham, Bristol and Cardiff. He was appointed a Lord Justice of Appeal in October 2003. He formally retired from the Court of Appeal in May 2011 to take up the Hugh Laddie Chair of Intellectual Property Law at University College London. He continues to sit from time to time in Court of Appeal. He also sometimes acts as an arbitrator, mediator or expert witness on English or European law.



### Roderick Cordara QC

Roderick Cordara is a law graduate of Cambridge University (Trinity Hall, first class degree). He is a Leading Counsel ('Silk') in the UK and Australia. He is admitted to practice in the Courts of the UK, Australia, Singapore (SICC), and the European Court of Justice. He is unique at the Bar in being a Leader in both commercial and revenue fields. He is a commercial litigator with an international practice, mainly in arbitration. He is also a leading revenue practitioner, with extensive public law experience (both domestic and international law) in litigation and arbitration on tax issues involving governments and parastatal entities. In many disputes, the two fields of commercial and revenue law overlap.



### Martin Griffiths QC

Martin Griffiths has a general commercial practice. He is an experienced lead trial advocate in all divisions of the High Court and is a member of COMBAR, the Chancery Bar Association and a former committee member of the Employment Law Bar Association. Martin is regularly instructed to bring a fresh look at cases in the Court of Appeal, the Employment Appeal Tribunal and the Privy Council. As well as acting in arbitrations, he is Chairman of the Professional Conduct Sub Committee of the London Maritime Arbitrators Association.

His practice is based in London but Martin is also instructed in cases overseas including appearances in the Court of Appeal of the Eastern Caribbean, the Grand Court of the Cayman Islands; and he is admitted to practise in the Courts of the Dubai International Financial Centre. Martin is a Deputy High Court Judge, a Recorder of the Crown Court and a Master of the Bench of the Inner Temple. He served on the Bar Council 2008-2015.



## THE MOOT PROBLEM

### IN THE SUPREME COURT OF THE UNITED KINGDOM

#### Abacus plc v Smithfield Motors Limited

Abacus plc is a manufacturer of high-quality paint finishes for the automobile industry. They have recently launched a new line of paints designed to repel bird faeces so that it does not damage a vehicle's paintwork. This is achieved by mixing into the paint a new compound "Xerior" which is also manufactured by Abacus. The new paint is marketed under the brand name "Clean-n-Clear". Vehicle owners send their vehicles to Abacus to be treated with Clean-n-Clear.

Smithfield Motors Ltd own a large number of up-market car dealerships throughout the UK. Many of their showrooms are situated near coastal resorts where bird faeces presents a significant problem. Smithfield sent 250 of their new vehicles to Abacus to be treated with Clean-n-Clear at a cost of £3,000 per vehicle, making a total order value of £750,000.

Two weeks later, the completed vehicles were duly returned to Smithfield and the price was paid. Shortly after Smithfield took delivery of the newly-painted vehicles they noticed that bird faeces was damaging the paint finish albeit nowhere near to the same extent as it would have done had the vehicles not been treated with a repellent.

Smithfield engaged an independent expert to examine and report on the paint finish. The report stated that Abacus did not in fact use Xerior but a much cheaper product called "Repulse" which has been on the market for a long time albeit with mixed reviews about it by the industry. The report concluded by noting that the only way to remedy the problem would be to apply a chemical to all of the vehicles which will remove Repulse from them and then to apply Xerior. The remedial cost would be £1,000,000.

Shortly after the defect was discovered, Abacus's production manager resigned from Abacus and provided a witness statement to Smithfield stating that the reason Abacus failed to use Xerior on their cars was because although they had reserved a sufficient quantity of Xerior for Smithfield's order, they sold the entire batch to Boris, a billionaire, who wanted it to finish his luxury yacht and who paid a substantial premium for it, thus enabling Abacus to make an additional profit of £250,000.

Smithfield commenced an action for damages in the sum of £1,000,000 against Abacus for the cost of removing Repulse from the vehicles and replacing it with Xerior as well as an action for an account of profits for the £250,000 that Abacus made when they sold the Xerior to Boris.



At first instance, Bentley J held that:

- (1) following the House of Lords' ruling in *Ruxley Electronics and Construction Ltd v Forsyth* [1996] AC 344 the action for damages failed, as the cost of repainting the vehicles was disproportionate to the benefit that could be expected to be obtained. Smithfield was instead awarded damages of £5,000 for loss of amenity.
- (2) the claim for an account of profits also failed as the case did not fall within the principles laid down by the House of Lords in *AG v Blake* [2001] 1 AC 268.

Smithfield's appeal to the Court of Appeal was dismissed. They now appeal to the Supreme Court on both of the above points.

## PAST WINNERS OF THE NATIONAL MOOTING COMPETITION (originally Observer Mace)

2016	Oxford Brookes University	1982	Polytechnic of Central London
2015	Oxford Brookes University	1981	Queen Mary College
2014	Liverpool John Moores University	1980	Queen Mary College
2013	University College London	1979	School of Oriental and African Studies
2012	Oxford Brookes University	1978	Queen Mary College
2011	University of Glasgow	1977	University of Leicester
2010	University of Oxford	1976	University of Leicester
2009	University of Manchester	1975	Mid Essex Technical College
2008	University of Hertfordshire	1974	University of Leicester
2007	Liverpool John Moores University	1973	University of Leicester
2006	Queen Mary, University of London	1972	University College London
2005	City University		
2004	University of Bristol		
2003	University of Liverpool		
2002	University of Southampton		
2001	University of Middlesex		
2000	University of Kingston		
1999	University of Greenwich		
1998	University of Aberdeen		
1997	University of Cambridge		
1996	University of Bristol		
1995	University of Leicester		
1994	University of Edinburgh		
1993	King's College London		
1992	University of Birmingham		
1991	University of East Anglia		
1990	Nottingham Trent Polytechnic		
1989	King's College London		
1988	University of East Anglia		
1987	Essex Institute of Higher Education		
1986	Polytechnic of Central London		
1985	University of Lancaster		
1984	University of Bristol		
1983	University of Hull		

## ESSEX COURT CHAMBERS

Essex Court Chambers is a leading set of barristers' chambers, specialising in commercial and financial litigation, arbitration, public law and public international law. Members of Chambers are recognised specialists in all areas of commercial law and handle disputes across the full spectrum of the business and financial world, including banking & finance, civil fraud, corporate/chancery & offshore, insurance & reinsurance, energy, trade, shipping, revenue, and employment.

The barristers at Essex Court Chambers advise and act in disputes both in the UK and worldwide. They have a reputation for exceptional talent, top-class advocacy and a client-oriented approach.

Chambers was founded in 1961, when the then five members of chambers included the future judges Lord Mustill, Lord Justice Evans and Lord Justice Kerr. Other distinguished alumni include Jack Beatson (now Lord Justice Beatson), Bernard Eder (now Sir Bernard Eder), Geraldine Andrews (now Mrs Justice Andrews), Dame Rosalyn Higgins (former president of the International Court of Justice) and Sir Christopher Greenwood (the current British Judge of the International Court of Justice). Essex Court Chambers continues to attract the highest calibre of recruits, and now comprises over 80 members.

Essex Court Chambers is always keen to recruit outstanding individuals to add to its ranks and typically offers up to four pupillages each year. The finalists of this year's ESU-Essex Court Chambers National Mooting Competition will be invited to spend two days as mini-pupils in Chambers.

Others (including those who do not participate in the competition) are nevertheless encouraged to apply for mini-pupillage at Essex Court Chambers. Whilst participation in the competition will undoubtedly give each participant an opportunity to hone his or her advocacy skills, a mini-pupillage at Essex Court Chambers will allow you to experience first-hand life as a barrister at one of the "magic circle" sets of barristers' chambers.

Information about mini-pupillages at Essex Court Chambers and about Chambers generally can be found on its website, [www.essexcourt.net](http://www.essexcourt.net), or obtained from **Essex Court Chambers, 24 Lincoln's Inn Fields**



## GUIDELINES FOR JUDGES

A judge has the following duties:

- to give judgment on the various points of law argued by the mooters
- to give a reasoned judgment as to the merits and faults of each mooter
- to decide upon and announce the winning team.

The winning team of the round is at the sole discretion of the judge. The decision of the judge on any point cannot be appealed. It is suggested that, in order to ensure an element of consistency throughout the competition, the judge should use four criteria to decide upon each team's performance: Content, Strategy, Ability to Respond and Style. It is hoped that these criteria can best evaluate each team's relative strengths. An optional scoring sheet has been provided for judges to assess each mooter and allocate them individual marks. In the end, however, it is the overall impression of which team made the most convincing presentation of their case that will determine the outcome. The better team will not necessarily be the team for whom judgment is given on the points of law.

The following areas can be considered as relevant guidelines for assessment of the mooters:

### Content

- The insight into and analysis of the moot problem and grounds of appeal.
- The relevance of the authorities cited and the fluidity with which they are adduced.
- The ability to summarise facts, cases or law where appropriate.

### Ability to respond

- The rebuttal of opponents' arguments.
- The ability to answer questions from the bench.

### Strategy

- The presentation and structure of the legal arguments, including skeleton arguments, where used (rigidly scripted speeches, in particular, should be penalised).
- The ability of the mooters to work as a team.
- The effective use of the mooter's limited time.

### Style

- The mooter's skill as an advocate.
- The proper use of court etiquette.



## THE ENGLISH-SPEAKING UNION

The English-Speaking Union is a unique global educational charity and membership organisation that brings together and empowers people of different languages and cultures. By building skills and confidence in communication, we give people the opportunity to realise their full potential. Worldwide, our members and alumni support us in this work. Our vision is to provide people in the UK and internationally with communications skills, confidence and opportunities to engage in an exchange of ideas and opinions. We endeavor to see that the value of good communication and cultural exchange as essential to individual, community and global development and understanding is widely recognised.

Our aims, as laid out in our Royal Charter, are:

- To promote education across the English-speaking world and beyond, respecting the traditions and heritage of those with whom we work, whilst acknowledging the current events and issues that affect them.
- To use English as a means of international communication of knowledge and understanding.

The ESU is a non-political organisation, working with people regardless of nationality and background, and from all walks of life.

### The English-Speaking Union

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