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A Flood of Inspiration: The 2011 Bond Law High School Mooting Competition

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It's an ill wind...

When 2011 announced its arrival in Queensland with the worst floods on record, it was difficult to imagine that anything good could come out of it. Unless, that is, you have the job of drafting a new problem for the High School Mooting Competition which Bond Law sponsors every year. As the person occupying that particular bed of nails I like to make the problem scenarios topical and as I watched residents being plucked from rooftops, the Lord Mayor of Brisbane with his sleeves rolled up directing clean-up operations, and the Foreign Minister touring his home constituency in gumboots, I had the germ of an idea.

Like all germs it proved contagious and several months later Bond Law academics visited more than 120 schools throughout Australia and Malaysia to judge the preliminary rounds, which focused on criminal charges arising from a less-than-successful post-flood clean-up operation.

'Is this a looter that I see before me?'

The villain of this story ('Barry') was a Council workman cleaning the streets of a country town which had been inundated to a depth of some twenty feet. He received a mobile phone call from his supervisor instructing him to rescue a laptop computer belonging to a local councillor, which had been abandoned in the upper level of his elevated house when the family had abandoned it. Barry was given the number of the house and a brief description, and details of where, in the house, the laptop had been left.

As you have probably already guessed Barry picked the wrong house and instead entered the one next to it. In fairness to him, the house number had been washed away, as indeed had the house itself, which now consisted of a heap of wood and tin next door to the house he actually entered. Against that was the fact that other houses higher up in the sloping street still had their numbers intact, so that Barry could have checked, had he not been in such a hurry. Further, the laptop which he found was not in the room of the house where he had been told to look; however, in his haste this did not occur to Barry either.

So there was Barry, leaving the wrong house with the wrong

computer when he was confronted by a man whom Barry took to be a looter. Council staff had been instructed to look out for them, so that when the man claimed that the computer which Barry was removing from the house was his, and demanded it back, Barry pushed him back down the rotted wooden staircase, which collapsed, leaving the man with a broken leg.

As fate would have it the man in question was the owner of the house that Barry had entered and the lawful owner of the laptop that Barry was making off with. When charged with both 'Looting' and committing 'Grievous Bodily Harm', Barry opted for the defence of 'Honest and Reasonable Mistake of Fact' under s 24 of the *Criminal Code* (Qld).

The legal argument centred on how 'reasonable' his belief (that he was rescuing a local councillor's laptop from the hands of a looter) had been in the circumstances, bearing in mind the fairly recent decision of the Queensland Court of Appeal in *R v Wilson*¹ that the test is not what an objectively 'reasonable' person might believe, but whether or not, given the circumstances in which he found himself, it was 'reasonable' for Barry to have subjectively formed his belief.

That is, of course, a very subtle distinction and the legal arguments mounted by the schools in the various regions were, to varying degrees, ingenious, inspired, optimistic and fatuous. The problem scenario succeeded in identifying the best mooters from each region and on 30 July the regional finalists travelled to Bond University to pit their wits against each other in the custom-built Moot Court.

For the record, and in the order in which they competed, the regional finalists were: Radford College, Canberra; St. Ignatius' College, Sydney; Seymour College, Adelaide; West Moreton Anglican College, Ipswich; Glenmore High School, North Queensland; Smith's Hill High School, Sydney; St. Hilda's School, Gold Coast; The Gap High School, Brisbane; Anglican Church Grammar School, Brisbane; Cranbourne Secondary College, Melbourne; Marymount College, Gold Coast; Scotch College, Melbourne.

'Pass right down the bus, please...'

In keeping with tradition there was a new scenario problem written especially for the finals. This time our villain was the driver of a school bus ('Jim'), who was asked at short notice to change routes and drive a group of High School students from school to their various put-down points in an area of the flood-damaged country town whose streets he knew well, but along a school route he had never taken before.

He had been supplied with a list of route diversions and a list of students who were banned from using the school bus, both of which he chose not to read. It was a banned student who had succeeded in getting on the bus who advised him that it was safe to drive into a dip in the road that was covered by water. Just as Jim was accelerating in order to get through the flood water a girl ('Natasha') ran down to the front of the bus in an effort to warn him that a storm drain culvert had been washed out in the flood and that the dip was therefore sharper than it should be. She arrived at the front of the bus in time to be catapulted through the front windscreen when it 'grounded' in the drain culvert and Natasha suffered a fractured pelvis and severe facial scarring as a result. Jim was charged with 'Dangerous Operation of a Vehicle Causing Grievous Bodily Harm', contrary to s 328A of the *Criminal Code* (Qld).

Once again, legal argument focused on the Wilson precedent and the question of whether or not Jim had been 'reasonable'

in forming the honest, but mistaken, belief that it was safe to drive through the flood. The standard of debate was at its usual high level, making it difficult to choose the two teams for the grand final. In the end they were Seymour College, Adelaide and Scotch College, Melbourne. A fresh panel of judges was installed, consisting of His Honour Judge Newton of the Queensland District Court at Southport, Bernard McCabe, Senior Member of the Administrative Appeals Tribunal in Brisbane and Associate Professor Libby Taylor, Director of Clinical Skills at Bond Law School.

The eventual winners were the girls of Seymour College, Adelaide. This was a remarkable achievement for two reasons; the first was that this was the school's second win in a row, and the second was that the students were drawn from Year 11 and had entered the competition with a view to gaining experience for when they competed next year as Year 12 students! In presenting the prizes, His Honour Judge Newton commented on how high the standards are every year in this competition, with this year being no exception.

The two winning advocates from Seymour were presented with offers of 40% scholarships to study Law at Bond, subject to attaining the minimum academic standards required for entry. Similar scholarships were also awarded to the two Outstanding Advocates of the day, Charles Austin of Scotch College and Simon Brandis of Anglican Church Grammar School. Finally, yet another such scholarship went to the Overall Outstanding Advocate, Tyrone Connell of Scotch College.

'It's not over until...'

Everyone then adjourned to the University Club for the traditional Moot dinner and speeches. Of considerable interest to the assembled company was an address by Rupert Pedler, currently President of the Bond Law Students Association, who recalled how he had first come to Bond as a Mooting Competition finalist. As a Law student he had kept up his mooting interests and earlier this year had been one of the Bond Law moot team which took out the 2010 VIS-East International Commercial Arbitration Competition trophy in Hong Kong, beating teams from twenty other countries, including the USA, Germany and Russia. Ironically, both Rupert and another member of that triumphant team hail originally from Adelaide, so 'The City of Churches' was well celebrated on the night.

The proceedings were closed by the Dean of Bond Law, Professor Geraldine Mackenzie who, in addition to congratulating everyone on their sterling efforts in making it through to the finals, announced that offers of 10% scholarships to study Law at Bond would be sent out to all those who had taken part in the day's mooting. Thus ended yet another successful High School Mooting Competition.

Reference

¹ *R v Wilson* [2008] QCA 349.