

2017

**Mooting Problem - Factual
Scenario, Notes and
Instructions**



FACTUAL SCENARIO

In the Moot Supreme Court *Adams v Police*

(NB These are fictitious facts and parties)

Jennifer Adams is a student at Brightmeadow High School. Every year in July the school traditionally funds a student committee (the Ball Committee) to organise a Ball for senior students, and this year Jennifer Adams has been chosen by popular vote as the chairperson. This committee is responsible for all aspects of the ball, including promotion, booking venues and caterers, ticket sales and budget management. The only input the School has is assisting with industry connections and funding based on proposals made by the Committee.

In the past the Ball has always been followed by an after-ball function. Generally, this has been a great success. Staff and students get involved with event management, security, dispensing food and drink (alcoholic and non-alcoholic) and the Police and St Martins' Ambulance often volunteer to be present. The entire community gets behind these events because they would rather their children experiment with alcohol in a safe and controlled environment.

While making preparations for the Ball, Adams and Brightmeadow High School were contacted by the Police. They were warned that due to a new decision in the District Court, interpreting the Sale and Supply of Alcohol Act 2012, an after-ball without proper licencing would be in breach of ss 233 and 235 of the Act. This put Adams in a difficult position – there were no licenced venues available now at short notice, as up until this point the Committee had decided to use a large, re-purposed barn on Adam's parent's property, which she had used the previous year for her 16th birthday party.

After consulting with the School Board of Trustees, the Committee was given permission to go ahead with organising the function. Tickets were sold, and were carefully worded to include only the costs of the DJ, decoration, a fee asked for by Adams' parents for use and cleaning of the barn, the fee requested by St Martins', and food and non-alcoholic beverages. The community and Police were informed of their intentions, and were met with support by parents and the School Community Police Officer, who had always supported the after-ball functions on a personal level. Then, at a separate assembly, the Ball-goers were informed that the event was BYO, restricted to 3 drinks at less than 5% alcohol content each, and the alcohol had to be supplied the day before at the venue by their parents accompanied with a signed permission slip. There would also be a single beer or glass of wine supplied at entrance, free of charge, as Adam's parents happened to have some leftovers from a large 50th birthday party the month before.

The Ball and after-function went off without any difficulty. The Community Officer, parents and staff present all expressed their satisfaction at the high standard of the event and the behaviour of the students. However, the local police decided to investigate and discovered that the venue was unlicensed, and charged both the School and Adam's parents under ss 233 and 235 of the Sale and Supply of Alcohol Act 2012. They were convicted and charged in the lower Courts.

The Adams now appeal their conviction to the Moot Supreme Court. They contend that they did not 'sell' alcohol under s 233 of the Act, nor did they 'supply' alcohol under s 235 of the Act, as they did not supply alcohol to the attendees, except by way of gift, which is an exception under the Act as they reside on the premises.

Prosecution argue that a strict interpretation of the sections should be adopted, as the consumption of alcohol was implicit in the sale of the ticket and provided after the sale had been completed in the meaning of s 233, and by allowing the attendees to bring their own alcohol the premises became a 'resort' for the consumption of alcohol regardless.

Issues:

1. Under s 233 of the Sale and Supply of Alcohol Act 2012, the word "sells" IS / IS NOT applicable in these circumstances.
2. The Appellant DID / DID NOT use the premises as a place of resort for the consumption of alcohol as defined in s 235 of the Sale and Supply of Alcohol Act 2012.

NOTES AND INSTRUCTIONS TO MOOTERS

- (a) Because of the high level of public interest and the lack of judicial decisions relating to the unlicensed sale and consumption of alcohol involving school students, the Moot Supreme Court has agreed to hear the pretrial hearing under its jurisdiction.
- (b) Prosecution will be arguing in favour of the alcohol being sold, and that the premises were a place of resort for the consumption of alcohol. Defence will be arguing in favour of the alcohol not being sold, and that the premises were not a place of resort for the consumption of alcohol.
- (c) The Moot Supreme Court is not bound by the authorities of any lower Court or those internationally, however, it **can** be persuaded (but is not actually bound) by cases from another jurisdiction (country) of the same or higher level.
- (d) Mooters will each have 10 minutes to present their submissions. This includes any questions the Judge may have. Following both teams' presentation of submissions, each team will have a 3 – 5 minute right of reply.
- (e) Mooters are not to appeal any findings of fact. You should assume that the facts provided are correct and undisputed. You may **ONLY** use the facts given and the research material

provided. Materials cited within given research materials may be utilised in argument, but no other materials/facts may be introduced.

(f) Whilst mooters need to be familiar with one another's arguments and how these relate to their case overall, each mooter should select only one issue for presentation. Materials and authorities allowing for creativity in the construction and presentation of your argument are included in this pack. Accordingly, while the need for reference to particular materials will become obvious as you prepare your argument, you should not feel obligated to refer to all authorities provided. Rather, particularly in terms of presentation, reliance should be placed on what you consider to be your strongest argument(s). The strength of a particular authority may depend on whether you are Prosecution or Defence.

(g) The correct citation for this case is: *Adams v Police*.

(h) A list of relevant authorities for the issues being argued before the Moot Supreme Court is attached below.

RELEVANT AUTHORITIES

Statutory Materials

s233, 235 & 274 Sale and Supply of Alcohol Act 2012 (reprinted as at 17 December 2016)

s3(1) Sale of Goods Act 1908 (reprinted as at 14 April 2014)

NB Legislation is free to access and has no copyright. The official website for New Zealand legislation is: <http://www.legislation.govt.nz>. You can locate and copy any legislation from there.

Case Law

1. Relating to s233 Sale and Supply of Alcohol Act 2012:

Malcolm v Police [1986] 2 CRNZ 66

Attorney-General v L.D. Nathan & Co. Ltd [1990] 1 NZLR 129 (CA)

Ashford v Police NZHC AP65-67/92

Browne v Police [1962] NZLR 801 at 804 (SC) (NB Old Supreme Court equivalent to our current High Court)

2. Relating to s235 Sale and Supply of Alcohol Act 2012:

Police v Clarke [1977] 1 NZLR 621 at 622 and 627 (SC) (Old Supreme Court as above)

Bingham v Coleman (1914) 33 NZLR 989 at 993 (SC) (Old Supreme Court as above)

Police v MacDonald [2016] NZDC 2371 (DC)

NB

- The Sale of Goods Act 1908 and s274 of the Sale and Supply of Alcohol Act 2012 can help with your interpretation of what 'sale' means.
- *Police v MacDonald* will help to understand how the Courts currently apply s235 of the Sale and Supply of Alcohol Act 2012.
- If you find any conflict with how the Courts interpret something, remember that the **highest level Court** is the most authoritative (but still not binding on this Moot Court!). If the Courts are at the same level, the Moot Court may be persuaded either way.



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