

University of Southern Queensland

First Year Moot Question

2021



The Junior Moot Question is a civil dispute regarding the tort of negligence. The parties are David Schrute (the appellant) and Marvin Jones (the respondent).

Teams should have regard to the *Civil Liability Act 2003* (Qld), in particular, sections regarding motor vehicles, criminal activity and assumption of risk. Teams should also consider negligence cases discussing duty of care and cases discussing withdrawal from criminal activity.

The grounds of appeal are as follows.

At first instance Justice Stevenson found that:

- (1) As a passenger to David, Marvin was owed a duty of care.
- (2) At the time of the accident David was not engaged in an illegal activity.

David Schrute appeals on the grounds of:

- (1) A duty of care did not exist, due to Marvin being an accomplice to stealing the Vespa scooter.
- (2) The plaintiff voluntarily assumed the risk of being driven home by an inexperienced driver on a stolen vehicle.

IN THE USQ COURT OF APPEAL

BETWEEN:

David Schrute

AND

Marvin Jones

[1] David Schrute and Marvin Jones were best friends and co-workers at a small paper company located in the inner-city suburbs of Brisbane. The paper company, Dunder Brisbane, is situated a short walk to many bars and restaurants.

[2] On Friday the 12 March 2021, both David and Marvin were working late. After finishing work at approximately 6 pm they decided to hang out at a local tiki bar, a short walk from their workplace. David and Marvin left their cars behind at work and took the short walk to the bar as traffic and parking in the area was always an absolute nightmare on Friday nights.

[3] The two men arrived at the bar sometime around 6.15 pm and while Marvin consumed far too many mojitos, David refrained and simply enjoyed one drink early in the night. The pair enjoyed their evening out until the point where Marvin was heavily intoxicated. At this point David suggests they leave and Marvin agrees.

[4] Upon exiting the bar there was light rain, so the two men reluctantly started walking back towards their cars at the work car park. Marvin being in a chaotic and energized state, saw a Vespa scooter and tells David “let’s just borrow this bad boy”, pointing at the scooter. Marvin continued to make suggestions in a slurred ramble. “My house isn’t even far really ... Screw walking back to work David that’s just dumb”, Marvin exclaims. David explains to Marvin “I have never ridden one of these things before, I’m not sure I can even handle this. Don’t they go kind of fast?”. Marvin’s response is to simply “shut up and take me home”. The two men board the scooter, which is only fit for one passenger and the men realise this as they squish up and enter a tight hugging position on the scooter.

[5] Neither David nor Marvin wore a helmet as they stole the scooter and began travelling towards Marvin’s house. Marvin’s house was only a short drive away but required them to travel on main roads with speed limits up to 60km/h. David, unfamiliar with scooters but excited by the experience, speeds along the wet main road. Marvin yells “slow down! ... You’re going to kill us you maniac! ... Stop!”. David proceeds to maintain his high speed. Marvin then started swaying his body weight and struggling in frustration, trying to get David’s attention.

[6] David, ignored Marvin and continued on this joy ride of his. On this main road David lost control of the vehicle and the Vespa veered off the road due to his high speed on a wet road. The vehicle crashed into a tree leaving Marvin a paraplegic.

[7] At first instance, the court ruled in favour of the plaintiff. The court found that the plaintiff had sufficiently withdrawn from the illegal activity before the accident occurred. Accordingly, the plaintiff was no longer a party to the illegal enterprise and as such he was owed a duty of care by the defendant. This shift in the nature of the relationship caused s 45 *Civil Liability Act 2003* (Qld) to be

ineffective in this case. It was discussed that dangerous driving was a probable consequence of the theft of the vehicle but it was concluded that each case needs to be dealt with on its own merits. In this particular situation the plaintiff expected the defendant would get him home safely on the Vespa. It was held that the act of driving someone home could not be seen as a journey that courted a serious risk of injury.

[8] The plaintiff was awarded damages in the sum of \$400,000.