

Oxford International Intellectual Property Moot 2026

Instructions

The 2026 moot concerns *Aggarwal & Roper Television Productions v Holly-Jaye Hayes* [2025] HCE 190. A copy of this case is included in the pages that follow, along with relevant statutory provisions and a list of the authorities referred to by Justice Armour.

At first instance in the High Court of Erewhon, Justice Armour held that:

1. The confidentiality undertaking in clause 12 of Ms Hayes' Participation Contract, and the restrictions on social media use in clause 19, are unenforceable.
2. Ms Hayes is a performer in a 'performance' for the purposes of the *Copyright Act 1997* and enjoys performers' moral rights. Her right of integrity of performership has been infringed through the editing techniques used in *Marriage Maestros*.

Aggarwal & Roper Television Productions ('Agro') (the claimant and cross-defendant) applied for leave to appeal from this judgment. The Court of Appeal upheld (without releasing a substantive opinion) the decision of Justice Armour and therefore dismissed the appeal. Agro has been granted leave to bring a further appeal to the Supreme Court of Erewhon.

It is your task to prepare written and (for teams that are invited to the Oral Proceedings in March 2026) oral submissions for this appeal.

Some points to consider:

- a. Appeals to the Supreme Court are on points of law only, although it is permissible to challenge the legal conclusions that arise from findings of fact.
- b. Each submission must cover all issues on appeal:
 - i. whether clauses 12 and 19 of Ms Hayes' Participation Contract, in relation to confidentiality and social media use, are enforceable; and
 - ii. whether Ms Hayes is a performer in a performance for the purposes of the *Copyright Act* and (assuming she is) whether her moral right of integrity of performership has been infringed.
- c. You may not seek to introduce entirely new causes of action, press arguments that were conceded in the original proceedings, or raise matters outside the scope of the appeal. To illustrate, you may not seek to argue that Ms Hayes breached an equitable obligation of confidence, as this was not pleaded by Agro; nor is there any relevant statute that might invalidate clauses 12 and 19. In contrast, you may present legal arguments that were not mentioned or considered in detail by

Justice Armour. To illustrate, Justice Armour refers to, but does not elaborate on, the submissions as to whether clause 19 was reasonable as judged by the public interest. You may include submissions on this point.

- d. Erewhon is a common law jurisdiction, and the opinion of Justice Armour includes reference to a number of cases. For the purposes of the written submissions, it is expected that you will deal with these cases as appropriate, and you risk missing out on credit if you omit any mention of them. However, these references are **not** intended to constitute your sole authorities for the moot, and indeed you are **expected** to rely on other primary materials. The emphasis you give to any particular authority (including those cited by Justice Armour) is up to you, although the Panel will not look favourably upon strong reliance on an unduly narrow spectrum of authorities.
- e. Although the moot is held in the UK, this is an international competition and you are not limited in the jurisdictions from which you use authority. You may therefore use cases from around the world. You should make it clear why any given case is relevant to the legal issues in dispute.
- f. It is permissible to cite academic commentary in support of your legal arguments. Where you use academic commentary, this should be of direct relevance to the interpretation and application of Erewhonian law.
- g. Erewhon is not, and has never been, a member of the European Union. It is a signatory to the TRIPS Agreement and is a member of the Berne Convention, the WIPO Performances and Phonograms Treaty and the Beijing Treaty on Audiovisual Performances. Treaties are not self-executing in Erewhon.
- h. Requirements for your written submissions are contained in §14 of the Moot Rules. The following is some additional guidance:
 - i. You do not need to include such things as a table of contents, statement of jurisdiction, statement of facts, index of authorities, etc. Submissions should focus on the substantive matters raised in the appeal.
 - ii. When marking your submissions, the Panel will not give extra credit for court headings and other flourishes that merely give the submissions the superficial 'look' of an official court document. Credit may be awarded for a presentation style that facilitates the arguments being made (for instance, in the content and number of headings, the use of a logical paragraph numbering system, and so forth). You should not, therefore, be worried about purely stylistic matters when writing your submissions.
 - iii. The word count includes all the text in the footnotes. It is recommended that footnotes are used for citation purposes only and that you minimise the amount of substantive text that appears in the footnotes.

- iv. There is no prescribed style guide for the submissions. Teams should, however: (i) maintain consistency of style throughout each submission; (ii) include full citations for sources on which they rely (at least the first time any given source is cited); and (iii) ensure that whenever they *quote* from a source, a pinpoint reference is included to the relevant page number and/or paragraph.
- v. You may refer to Justice Armour as 'Armour J' and/or 'His Honour' in your written submissions.

The timetable for the Written Phase is as follows:

If you are planning to enter submissions, please review your team's eligibility under §1-4 of the Moot Rules. If you have any questions about eligibility or would like to request a dispensation from the Rules for an individual mooter, please email the Moot Secretary at moot@oiprc.ox.ac.uk as soon as possible so that the Moot Organising Committee ('OC') can consider your question or request.

You should apply at your earliest convenience for an **anonymous identifier**. You must use this identifier – and only this identifier – on your Written Submissions to ensure that the marking process is anonymous. The earlier you apply the better, as it will assist the OC in its arrangements for the marking of submissions. To apply, please send an email to the Moot Secretary at the email above. Please include the name of your university or higher education institution when applying for your identifier.

Any requests for clarifications of or corrections to the Moot Problem must be directed to the Moot Secretary by **10.00am on Tuesday 4 November 2025** (Oxford time). Requests should note the paragraph number to which they relate and explain why the requested information is expected to have legal significance for the problem. If any clarifications or corrections are deemed necessary by the OC, these will be released on the moot website by ~~Friday~~ Wednesday 14-26 November 2025. The OC will not respond individually to any requests for clarifications or corrections, nor will it respond to requests that are seeking assistance with substantive aspects of the moot.

Your submissions must be received by the Moot Secretary by **10.00am on Monday 15 December 2025** (Oxford time); see §15-§16 of the Rules. As noted there, within their written submissions, teams must identify themselves **only** by use of the anonymous identifier given to them in advance by the Moot Secretary.

The registration process will not open until *after* invitations have been issued to compete at the oral rounds. These invitations will be issued in mid-January 2026. **Only those teams who are invited to the oral rounds will need to register and pay the registration fee.**

Before:

THE HONOURABLE JUSTICE ARMOUR

Between:

Aggarwal & Roper Television Productions

- and -

Holly-Jaye Hayes

Justice Armour:

[1] On 30 March 2025, the sixth season of hit reality television show, *Marriage Maestros*, returned to Erewhonian screens. Following extensive advertising and promotion, viewing figures for the opening weeks set new records and resulted in *Marriage Maestros* being the highest-rating reality television show in Erewhon.

[2] However, as the series continued, it became the subject of controversy. One of its most vocal critics has been one of the contestants, Holly-Jaye Hayes. Ms Hayes' central complaint is that events during filming have been misrepresented and indeed fabricated to give her a 'villain edit'. In response, the show's producer, Aggarwal & Roper Television Productions (referred to in the industry and this judgment as Agro), cancelled all her media engagements and ceased posting on her Instagram account (being an account it controlled under the terms of Ms Hayes' Participation Contract). With Ms Hayes indicating that she intended to continue disclosing behind-the-scenes information about the show, Agro applied on 20 May 2025 for an interim injunction restraining any such disclosures and her use of her new TikTok account. When I heard this application, counsel for Agro and Ms Hayes presented an agreed timetable for an expedited hearing (this hearing commencing two days after the final episode was due to air). Given I was able to agree to this timetable, Ms Hayes did not resist the making of interim orders.

[3] Agro's position is that Ms Hayes has acted, and is threatening to continue to act, in breach of undertakings in her Participation Contract. Ms Hayes says that these undertakings are unenforceable, plus she counterclaims for infringement of performers' moral rights. I wish to acknowledge the extremely helpful submissions made by counsel in this case, Mr Tiny SC and Ms Marina (for Agro) and Ms Jam SC and Dr River (for Ms Hayes). For the reasons set out in this judgment, I have found in favour of Ms Hayes in relation to all matters in the claim and counterclaim.

***Marriage Maestros* – premise and structure**

[4] *Marriage Maestros* seeks to answer the ‘scientific question’ of which experts are most adept at matching couples for a long-term relationship. In each season, there are four teams of experts who undertake the matching. The makeup of the expert teams varies from season to season, and has included:

- astrologers;
- clinical psychologists;
- divorce lawyers;
- grandmas and nonnas;
- mathematicians and statisticians; and
- professional poker players.

[5] The first few episodes show each team of experts reviewing applications and discussing which combinations will, in their opinion, be most likely to result in a happy marriage. After each team has ranked their top couples, the four teams meet to present their selections. This meeting can reveal sharp differences of opinion as to the predictors of a successful marriage, and the experts regularly express bewilderment at the inane reasoning of the other teams. Some applicants may have been selected by more than one team, resulting in heated negotiations to decide which team ‘gets’ that individual. The meeting concludes with each team putting forward three couples to proceed to the next stage, i.e. twelve couples in total.

[6] The next stage is for the twenty-four successful applicants to meet at a party. While these contestants know that everyone has been matched with, and will ‘marry’, someone at the party, they do not know who has been paired with whom. The party therefore lays the foundations for a good deal of drama for the series. Viewers gain further insights into the experiences, feelings and opinions of the contestants through confessionals: separately filmed, private interviews in which interviewees comment on and/or answer questions in relation to the events taking place in the programme. The questions are asked by a producer who stands off camera. Confessionals are used throughout the series to help explain and develop the storylines.

[7] At the end of the party, the contestants are informed that they will find out their matches soon on their wedding days. In the meantime, they must wait, in isolation, in their hotel rooms. I should clarify that while the ceremonies have the look of a wedding, all official elements are omitted, so they have no legal effect. The wedding episodes are constructed to maximise the drama around (1) each contestant finding out the identity of their match at the ceremony itself, and (2) the fallout from this discovery. Following the weddings, the twenty-four contestants are taken to an exclusive country resort for an ‘extended honeymoon’. Each contestant is given their

own bedroom and has access to resort facilities including a café, restaurant and bar, swimming pool, gym and nine-hole golf course. The resort is booked for the exclusive use of the claimant, so no members of the public are present during filming. All resort staff are either supplied by the claimant or have agreed to its terms and conditions, including in relation to confidentiality.

[8] The remainder of the series is set at the resort. There is a combination of free time and producer-devised activities, including regular parties. The parties tend to feature heavily in the episodes because of the tendency for drama to occur or be discussed there. The most significant party (in terms of size and importance to the narrative) is the 'Maestro Mixer'. The Mixer is attended not only by the couples but by singles who applied to be on the show. The Mixer is presented as a valuable opportunity for contestants to reflect on the strength of their marriages and to think about whether they could do better. At the end of each Mixer, the contestants return to their bedrooms. They are instructed that they must decide whether they wish to *stick* with their marriage, *twist* and be considered by the expert teams for a new marriage, or *fold* and leave the show entirely.

[9] If both members of a couple decide to stick, they remain on the show together. If, on the other hand, only one individual wishes to stick, the marriage is over, and the 'sticker' will be told that they must elect whether to twist or fold. The end result is therefore a pool of contestants available for recoupling. At this point, the expert teams undertake a second round of matching. A key rule is that individuals must not be recoupled by the expert team responsible for their initial match, as the point is to see whether another team can identify a more suitable partner. When rematching contestants, the expert teams may match that person with another twister or with someone who applied to be on the show. For various reasons – including preventing the cast size from assuming gargantuan proportions – not all twisters are matched with a new partner. Those that are recoupled put on their wedding clothes and attend a wedding ceremony where they discover the identity of their latest partner. Those not recoupled must leave the resort.

[10] This process repeats so that there are three Mixers and three rounds of resort weddings. The series concludes with the 'Maestro Gala' party, which is attended by the final set of couples, previous contestants from the series, and the four expert teams. At the Gala, we find out whether the members of each couple wish to stay in their marriage (i.e. continue their relationship in real life) or break up. This produces the final strike rate for each expert team: how many of their couples were still together at the end of the series compared with how many broke up.

Production of *Marriage Maestros*

[11] Given this action was brought in response to Ms Hayes' public criticisms of her portrayal on *Marriage Maestros* as a 'villain', I shall set out my findings of fact in relation to the show's production. Ms Hayes claims that Agro exercises a high degree of control over what takes place during filming and deploys numerous techniques to

influence the actions of contestants. Between this and decisions made during editing, Agro misrepresents and even falsifies the events that occurred during filming and the characters of the contestants.

[12] I accept Agro's evidence that *Marriage Maestros* is not scripted, by which I mean that the production team does not plan all the dramatic incidents for the series, write lines to be spoken by the contestants, give them a 'character' to 'play', etc. That said, I accept that the evidence makes it clear that the production team intervenes in many ways to influence what viewers see on their screens.

[13] To illustrate, although the expert teams match the couples, this takes place with the oversight of Agro. Some applicants are scouted, i.e. invited by the casting team to make an application. Ms Hayes was in this category. All non-solicited applications are reviewed by the casting team and an initial cull made to exclude those not suitable for this production. Thus, only a subset of applications is provided to the experts. Senior members of the production team also attend and participate in the meetings at which the expert teams discuss the couples. They are able to veto coupling decisions. As Ryan Smith, executive producer of *Marriage Maestros*, explained in his evidence, excellent casting is crucial as a well-selected group of contestants will enjoy a dynamic in which the dramatic incidents unfold naturally. The involvement of the production team in matching the couples is not shown on screen, although the show credits state: 'Decisions made by the experts took place in consultation with producers.'

[14] The production team also manages daily life at the resort. A number of producers live on site and work closely with the cast, including designing activities for them to undertake, organising their schedules and running the confessionals. Mr Smith explained that some situations are devised because they are predicted to highlight compatibilities or tensions between contestants. That said, the production team must be adept and light-footed, as they can never be sure how a given situation or storyline will pan out. Mr Smith also explained that producers may need to give specific instructions to the contestants during filming, for instance, where a couple is asked to re-shoot a scene due to a technical issue or to improve the clarity of a storyline. On the other hand, the evidence of Ms Hayes is that the producers play a far more prominent role in influencing and crafting the events that appear on-screen. For example, the questions in the confessionals often have the effect of sustaining or heightening the drama between contestants. The producers also have off-camera conversations with contestants in which they discuss what has been taking place and provide thoughts on what the contestants might do. At times they give overt instructions. Ms Hayes gave the illustration of a producer halting filming at one resort party to complain that 'nothing interesting has happened' and to 'turn up the volume'.

[15] The show is recorded by a team of camera and sound operators. As Mr Smith explained, given the number of cameras, there can be hundreds of hours of raw footage for every hour of finished content. However, Ms Hayes alleges that the editorial decision-making goes beyond the mere selection of incidents and storylines to include. She alleges that, via different editing techniques, Agro is able to exaggerate

and embellish storylines and introduce straight-out fabrications in relation to what took place.

[16] First, Ms Hayes says that important context behind, or elements of, an incident may be left out, thereby effecting a fundamental change to the nature of what is depicted. Similarly, elements of a conversation or interaction may be cherry-picked to support the storyline the producers want to develop. Ms Hayes gave the example of the speeches that she and her third husband, TJ, gave at the Gala party in relation to whether they wished to remain in their marriage after the show. She said that contestants were told by the producers to include positive and negative comments in their speeches to help build suspense and keep audiences guessing. Although she and TJ decided to break up, they were on good terms, and each said many positive things about the other. However, these were largely omitted, with the result that Ms Hayes came across as judgmental and intolerant, and TJ as finally having come to his senses.

[17] Second, Ms Hayes alleges that the footage is edited to create entirely fictitious *sequences of events*. One example given by Ms Hayes was of a conversation at the dinner following her second wedding, in which she was getting to know her new husband. The following interaction was shown:

HOLLY-JAYE: What do you do for a living?

JAXXSON: I'm a part-time model and semi-professional rugby player. I also run a charity working with disadvantaged youth, they come to rugby training each week and we help them play competitively. Like, we raise money through lamington drives and provide transport to away games.

HOLLY-JAYE: That sounds like a waste of time.

JAXXSON looks shocked and takes a sip of wine.

The recollection of Ms Hayes, as corroborated by another contestant, is that her statement, 'that sounds like a waste of time', came from a separate conversation with that contestant about the best exercises for leg day at the gym. Ms Hayes surmises that the final cut to Jaxxson likewise came from another, unrelated, moment.

[18] Finally, Ms Hayes points to a practice sometimes known as Frankenbiting in which pieces of audio are spliced together to create a *sequence of words* that was never spoken. Mr Smith accepted that the editors on *Marriage Maestros* engage in this practice, which he described as a legitimate and accepted part of reality television production. Because contestants are not given lines, their conversations can be meandering and disjointed. Given it is not possible or desirable to continuously ask contestants to reshoot scenes, Frankenbiting is used to, for example, make the sense of dialogue clearer or remove pauses and filler words. However, Ms Hayes complains that the use of Frankenbiting in *Marriage Maestros* goes beyond this to create

statements that bear no resemblance to anything said by the contestants. For instance, Ms Hayes pointed to a conversation she had with Jaxxon at the café:

JAXXSON: Milly seemed pretty upset with Carlos last night.

HOLLY-JAYE: Milly is upset with Carlos a lot.

JAXXSON: Yeah.

The vision cuts to Milly sitting by the pool. HOLLY-JAYE (off camera): I think that Milly needs to be less possessive. The girls find her really annoying.

JAXXSON: Yeah.

Ms Hayes denies that she ever called Milly possessive or said that anyone found Milly annoying. It is her position that three separate audio clips have been stitched together to produce the statement that was played alongside the footage of Milly.

[19] Reviewing all the evidence, I accept Ms Hayes' claims about the editing practices at *Marriage Maestros*. The claimant did not seek to rebut any of the examples provided by Ms Hayes, for instance by providing the court with raw footage to show Ms Hayes' allegations were false. Furthermore, its own description of its editing techniques and editorial decision-making are entirely consistent with those practices serving to create dramatic content.

Participation of Holly-Jaye Hayes

[20] Prior to appearing on *Marriage Maestros*, Ms Hayes worked as a visual merchandiser at fast fashion and beauty chain, No Limits. There are over fifty No Limits stores in Erewhon, each selling clothing, accessories, footwear, skincare products, makeup and toiletries. As a visual merchandiser, Ms Hayes worked not only on window, interior and point of purchase displays, but advised on such things as store layout, lighting and other atmospherics. Ms Hayes was also very active on Instagram, posting images and videos in relation to interior design, including short instructional videos and tips. She also posted personal content, for instance in relation to her cats, Ferrero and Rocher, photographs from outings and holidays, and so forth. Prior to appearing on *Marriage Maestros*, Ms Hayes had 10,000 followers on Instagram. By the final episode, this had increased to 200,000 followers.

[21] As noted above, Ms Hayes was invited to apply to be on the show. A member of the casting team contacted her via Instagram and set up a meeting to discuss her possible participation. Ms Hayes agreed to be put forward for consideration by the experts and was subsequently selected to be in one of the twelve original couples. I have set out key terms of her Participation Contract, below. After signing her contract on 3 September 2024, Ms Hayes resigned from her job at No Limits. Although this was necessitated by filming demands, she also hoped that the exposure she received from *Marriage Maestros* would boost her public profile and enable her to become a social

media influencer. Prior to the show, she had already received some income from her Instagram content, albeit sporadically. Her hope was to instead receive more regular and sizable income through brand collaborations, sponsorships, promotion and the like. She also planned to continue some design work, but on a freelance basis as an interior designer. In February 2025 – ahead of the broadcast of *Marriage Maestros* – she launched a website to help promote this future business. This website mentioned her forthcoming appearance on *Marriage Maestros* in a form permitted under the Participation Contract.

[22] However, things did not turn out as planned. Ms Hayes was on *Marriage Maestros* for the entirety of the sixth season, filming for which took place from 23 September to 22 November 2024. She decided to twist after her first two marriages but found a stronger match with her third husband, although each of them decided to leave the relationship at the Gala party. Importantly, however, Ms Hayes is of the view that she was given a ‘villain edit’ by Agro. The Urban Dictionary defines a villain edit as ‘a reality TV phenomena that makes one person seem unlikable/conniving, aka makes them the villain, for the sake of good tv’. Ms Hayes says that she was portrayed as judgmental, standoffish and lacking a sense of humour, and that her edit suggested her interactions with others were characterised by sly remarks and cutting put-downs. The evidence of story producer, Anna Cunningham, was that during filming, Ms Hayes was one of the more ‘controversial’ contestants. While Ms Cunningham did not agree with the use of the term ‘villain’, she broadly accepted Ms Hayes’ description of her portrayal on the show. Ms Cunningham instead rejected any suggestion that Ms Hayes’ on-screen persona was wholly invented by the producers. She emphasised that the events on-screen are always based on things contestants have said and done. While I am willing to accept that there must be some truth in this, it does not change the findings of fact, above, in relation to producer intervention and editing techniques.

[23] Ms Hayes also produced evidence in relation to her reception by the public. For instance, she provided copies of content posted on official *Marriage Maestros* social media channels, and said that she received far more adverse public comments than other contestants, and that those negative comments were ‘liked’ much more than the positive ones made about her. She complained that one clip of her giving a fellow wife the side-eye went viral and has become a meme. She also pointed to articles and commentary from newspapers, media platforms, podcasts, and the like, which she said were strongly critical of her actions on the show. For instance, she pointed to lengthy threads on r/MarriageMaestros (the subreddit for *Marriage Maestros*) with titles such as ‘I can’t stand Holly-Jaye’, ‘Does anyone else feel really sorry for TJ?’ and ‘Is Holly-Jaye the meanest contestant in the history of the show?’, which attracted hundreds of critical comments about her.

[24] Again, Agro does not seek to deny this evidence. Rather, Mr Smith said that prospective contestants are encouraged to watch previous seasons of the show and are given a full explanation of how the show is produced. Their contracts are detailed and require participants to acknowledge, in subclause 4(9), that information may be

revealed about them that is disparaging or unfavourable, and that their depiction may expose them to public ridicule. They are advised in the strongest possible terms to seek legal advice, preferably from a lawyer who specialises in entertainment law. In his view, contestants 'know what they're getting into'.

[25] I shall discuss the contract in more detail soon. Significantly, it contains (1) a confidentiality undertaking and (2) a provision handing temporary control of contestants' social media accounts to Agro and prohibiting them from setting up any new accounts. Mr Smith explained that the former is essential for a programme like *Marriage Maestros* because the producer needs to be able to control the narrative around the show. *Marriage Maestros* is recorded months ahead of broadcast. As such, the secrecy of its storylines and episode outcomes must be maintained. Furthermore, audience confusion and hostility will arise if contestants start disputing the events shown on-screen. Mr Smith said that taking control of contestants' social media accounts is motivated by similar concerns. He also explained that accounts are not completely dormant; for the period it controls the account, Agro will post from time-to time (these posts being approved by contestants).

[26] During the first month of the season, Ms Hayes adhered to all her contractual obligations. She approved some Instagram posts prepared by Agro and undertook some Agro-organised media appearances. However, by week five she was starting to get 'fed up with not being able to call out the lies on the programme' and therefore decided to 'set the record straight'. She signed up for an account on TikTok (a platform she had not previously used) and on 4 May 2025 began posting videos outlining her complaints about the editing and identifying ways in which the producers had, in her view, misrepresented actual events. Within hours of the first video appearing, her allegations were being reported on mainstream and social media platforms. In addition to posting on TikTok, Ms Hayes also gave a number of interviews in which she expanded on her complaints. She said she would continue to release information about 'what really happened' on the show.

[27] Agro made a number of communications to Ms Hayes warning that she was acting in breach of contract. On 20 May 2025, it applied for an interim injunction. Ms Hayes did not resist the making of interim orders, although it remains her position that both clauses – in relation to confidentiality and social media accounts – are unenforceable. She has also counterclaimed that Agro infringed her performers' moral rights. I shall deal with the contract-related claims and the performers' moral rights claims in turn.

Claims in relation to the Participation Contract

[28] The claims in relation to Ms Hayes' Participation Contract revolve around the same question: whether the provisions in relation to confidentiality and social media accounts are enforceable. Ms Hayes says they are not, but concedes that if they are, she has breached them. For completeness, I note that Ms Hayes has not sought to argue that the entire contract should be set aside, for instance on the basis that it was

procured through undue influence. Her answer to Agro's claims is that there is no breach because the provisions are unenforceable and can be severed from the rest of the contract.

[29] Before I consider Agro's claims in detail, I shall set out some basic matters in relation to the contract.

[a] The contract was signed on 3 September 2024.

[b] The parties to the contract are Ms Hayes (referred to in the Contract as 'You' or 'Your') and Agro (referred to as the 'Producer').

[c] The 'Programme' is defined as *Marriage Maestros*.

[d] The contract states, in clause 2, that the relationship between the parties is not one of employer/employee, and the case has proceeded on this basis.

[e] The contract sets out the nature of the contribution to be made by contestants in clause 4. The clause covers such things as expectations during filming, the activities in which contestants might be asked or required to participate, their obligations to undertake media engagements set up by Agro, and so forth. Subclause 4(9) states:

You acknowledge that the Producers may include in and in connection with the Programme information and opinions about yourself (including personal and private information and information that is inaccurate) which you may find disparaging, embarrassing, offensive, surprising or of an otherwise unfavourable nature. You also acknowledge that you may find your appearance, depiction and/or portrayal in and in connection with the Programme to be disparaging, embarrassing, offensive, surprising or of an otherwise unfavourable nature, and that it may expose you to public ridicule.

[f] Clause 5 covers payments. It lists expenses that will be covered by Agro, such as transport to filming locations and wedding attire to a maximum value of ERD\$1,500 (£1,200). In addition, contestants are paid ERD\$100 (£80) per day for the period in which they are on location for production (whether or not they are filmed that day). For Ms Hayes, this period started five days before filming the pre-wedding party and continued until the final day of filming at the resort.

[g] Clause 10 covers intellectual property. It states, inter alia, that contestants give a worldwide, perpetual assignment to the Producer of all rights in all products of their contribution, including copyright and performers' rights. It also confirms that contestants do not enjoy any ongoing rights to royalties or fees in relation to any intellectual property assigned under the agreement.

Confidentiality

[30] Agro argues that Ms Hayes has breached, and threatens to continue to breach, clause 12 of the Participation Agreement:

Clause 12: Confidentiality

- (1) You shall not directly or indirectly disclose to any party, at any time, any information falling within the definition of 'Confidential Information' in sub-clause (2), except:*
 - a. with the written authorisation of the Producer; or*
 - b. in accordance with sub-clause (4) ('Permitted Disclosures').*
- (2) Confidential Information is defined for the purposes of this Agreement as any information, however recorded, that you obtain or learn during, or as a result of, your participation in the Programme. It includes but is not limited to the contents of this Agreement, the contents of any other contracts and/or documents that you receive from the Producer, the production methods used by the Producer on the Programme, the application process to appear on the Programme, the results of particular episodes or events, and any information whatsoever relating to any events and/or activities undertaken and/or recorded for the Programme or otherwise presented in the Programme.*
- (3) The obligations with respect to confidentiality in this clause shall continue in perpetuity and shall survive the termination of this agreement.*
- (4) The obligation in sub-clause 12(1) shall not apply to the following Permitted Disclosures:*
 - a. disclosures to professional advisors who are also bound by a duty of confidentiality; and*
 - b. disclosures required by law.*

[31] More particularly, Agro says that Ms Hayes has breached this clause by disclosing information about the programme's 'production methods' (e.g. the role of the producers during filming and the editing techniques) and 'information ... relating to any events and/or activities undertaken and/or recorded for the Programme' (e.g. asserting that events shown on screen have been misrepresented or fabricated and outlining what, in her view, really happened). As an aside, I note that Agro pleaded its breach of confidence case solely in contract. It has not sought to argue that Ms Hayes is bound by some separate or residual equitable obligation.

[32] Ms Hayes accepts that she has disclosed information about 'production methods' and 'information ... relating to any events and/or activities undertaken and/or

recorded for the Programme', this being information she learnt from her participation. But she challenges the enforceability of clause 12 on the basis that the definition of 'Confidential Information' is too general and covers information with no quality of confidentiality, for instance because it covers mere trivia, information that was already in the public domain when the contract was signed, and information that was subsequently put in the public domain by or with the authorisation of Agro (in particular by being broadcast on television). I agree with these concerns for the reasons that follow.

[33] First, there is a problem with the *identification* of the information. The definition of 'Confidential Information' in sub-clause 12(2) is so broad that it is impossible for me to objectively ascertain the intentions of the parties. For instance, the reference to 'any information ... that you obtain or learn during, or as a result of, your participation in the Programme' seems to suggest that no quality of confidence is required and that Ms Hayes would be in breach if she disclosed how members of the cast preferred their eggs cooked at breakfast. Indeed, if we take literally that Ms Hayes may not tell anyone about anything learnt 'during' the filming period, it would seem that she could not discuss the results of the 2024 US presidential election if these were learnt during filming, but could discuss them if she learnt about them afterwards.

[34] Ms Jam, counsel for Ms Hayes, pointed me to *De Maudsley v Palumbo* [1996] FSR 447, which I found helpful. The facts were that Mr de Maudsley revealed his idea for a nightclub at a supper party attended by himself, Mr Palumbo and Mr Palumbo's girlfriend. Mr Palumbo was impressed by the idea and offered to become involved in its financing. Discussions between Mr de Maudsley and Mr Palumbo continued over the coming weeks, and two other individuals were also brought on board. In 1991, a club – the Ministry of Sound – was opened, but without the involvement of Mr de Maudsley. In an action brought by Mr de Maudsley, it was held that the argument that a contract had arisen was 'hopelessly bad' (p. 451). The claim for breach of an equitable obligation of confidence was less bad but still failed. Relevantly, Knox J held that the pleaded features were either (1) too vague (e.g., a big club with high-tech décor and high quality disc jockeys); (2) lacked novelty (e.g., separate areas inside the club); or (3) were not the idea originally disclosed by Mr de Maudsley (e.g., the acoustically-designed dancing area – this was worked out later).

[35] I appreciate that this case related to the equitable obligation of confidence rather than a contractual one, however, it aligns with a basic principle of contract law that a contract must be sufficiently certain in order to be enforceable as a contract. While judges have a number of tools to address vagueness and gaps, most notably through rules in relation to construction and the implication of terms, there will come a point at which the judge is ~~making~~ writing the contract themselves rather than interpreting the agreement made by the parties.

[36] Second, even assuming that the information caught by clause 12 can be identified, there are numerous issues with the *quality* of that information, including that there is no requirement that it is secret or be kept secret by Agro. Although it was held in

Attorney-General v Blake [2001] 1 AC 268 (HL) that a post-employment restraint could be effective to prohibit disclosure of information that, in the meantime, was no longer confidential, I think that case should be confined to its facts. There, Mr Blake had been employed as a member of the intelligence services. It was observed by Lord Nicholls that an absolute rule against disclosure ‘makes good sense’ given the need for members of the service and those they recruit as informers to have ‘complete confidence in all their dealings with each other’ (p. 287). But this makes the case different from the facts before me, and I do not think its approach can and should apply to all confidentiality undertakings.

[37] I was also directed to the decision of the High Court of Australia in *Maggbury Pty Ltd v Hafele Australia Pty Ltd* (2001) 210 CLR 181. Again, the facts are quite different from those before me. Maggbury wished to commercialise a new foldaway ironing board. It had filed patent applications in relation to the ironing board and had entered into negotiations with Hafele in relation to their production. Hafele signed confidentiality undertakings that were stated to last ‘forever’. Negotiations broke down. Hafele then began producing its own ironing boards. By this stage, information about Maggbury’s ironing board had been made public by Maggbury. The majority held that the confidentiality undertakings were unenforceable for being in restraint of trade. I think this outcome is plainly right.

[38] I do not accept that parties to a contract have a free hand to place confidentiality undertakings around *any* information, irrespective of its substance or whether it is already, or becomes, common knowledge. If the sole issue with clause 12 related to its application to information in the public domain, I would have been minded to imply an additional term into subclause 12(4) (Permitted Disclosures). However, the problems with clause 12 are much more extensive than this, and in the end I have concluded that clause 12 is simply too vague to be enforceable.

Social media use

[4039] Clause 19 provides:

Clause 19: Social media accounts

(1) *You agree that for the Period defined in ~~subsection~~ sub-clause (32), you will give complete control of your Social Media Accounts to the Producer, and that the Producer will have the sole right to post content from those accounts. Any content posted by the Producer will be provided to you in advance for approval. You also agree that during the Period, you will not set up and post content on any new Social Media Accounts. You will provide to the Producer all login details and passwords for your Social Media Accounts when asked in order to enable the Producer to take control of your Social Media Accounts as permitted in this clause.*

(2) *The Period is calculated by reference to the dates your season is first broadcast in Erewhon. It begins one month before the date of the first episode and ends three months after the date of the final episode.*

(3) *Social Media Accounts refers to all accounts to which you have access and on which you can post, whether those accounts are in your name or otherwise, and includes, but is not limited to, accounts on Facebook, Instagram, TikTok and X.*

[40] Ms Hayes concedes that if clause 19 is enforceable, she has acted in breach of it by opening and posting on a new TikTok account. However, she argues that it is an unlawful restraint of trade and is unenforceable and may be severed from the rest of the Participation Contract.

[41] Paragraph [11-102] of Treitel's *Law of Contract* provides a brief history of the restraint of trade doctrine in English law.¹ It explains that while contracts which prevented business competition were initially regarded as void, over time 'it came to be recognised that this inflexible attitude might defeat its own ends.' For instance, a master 'might be reluctant to employ and train apprentices if he could not to some extent restrain them from competing with him after the end of their apprenticeship.' A shift therefore occurred to recognise that 'a restraint was prima facie valid if it was supported by adequate consideration and was not general, i.e. did not extend over the whole Kingdom'. As explained in paragraph [11-103], the present position in England has changed again. The starting point is that restraints that engage the doctrine are void 'but can be justified if they are reasonable and not contrary to the public interest.' Consideration may be relevant to the question of reasonableness but does not operate as a free-standing consideration. Nor is there a blanket prohibition on general restraints.

[42] As seen in the discussion in Treitel, the policy concern underpinning the doctrine is the need to protect free trade. I agree with Jonathan Parker J in *Panayiotou v Sony Music Entertainment (UK) Ltd* [1994] EMLR 229 that this can be contrasted with equitable jurisdictions to grant relief in relation to contracts that are unfair or unconscionable, for which the underlying policy is 'preventing unfair advantage being taken of the weak and the vulnerable' (p. 316). While those cases respond to 'morally reprehensible conduct affecting the conscience of the defendant' (p. 319), for restraint of trade, it is not necessary to show such conduct or sharp practice.

[43] In determining whether clause 19 is enforceable, the first question is whether the doctrine is engaged. This reflects the idea that commercial contracts often contain restrictions on the ability of one party to trade, but those restrictions do not rise to the level of something that the law should prima facie consider void. The Participation Contract is not within a category that, in English law at least, has been held to be

¹ E. Peel, *Treitel. The Law of Contract*, 16th edition (Sweet & Maxwell, 2025).

within the doctrine. However, I agree that those categories are not closed: *Proactive Sports Management Ltd v Rooney* [2011] EWCA Civ 144, para 56. The question is therefore whether the restrictions are 'in restraint of trade'. Looking at the facts before me, I reject any suggestion that (1) trade that involves or is reliant on the exploitation of image rights is not a relevant trade and (2) the doctrine applies only to one's main trade and not ancillary ways of generating income: *Proactive Sports Management Ltd v Rooney*, above, paras 93-95. I am of the view that the doctrine is engaged. To my mind, the trade of being a social media influencer cannot be carried out when one has no control of one's social media accounts. It matters not that Ms Hayes' trade was still in its early stages, nor that (as Agro argued and I accept) other reality television shows restrict or ban social media use in their standard-form participation contracts. On the latter point, Agro directed me to *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd* [2020] UKSC 36, where the UK Supreme Court held, in relation to a very different set of facts, that the doctrine is not engaged where a restraint has 'passed into the accepted and normal currency of commercial or contractual or conveyancing relations' (para. 46). However, I do not think those words have any currency here.

[44] This brings me to the question of whether the restraint is reasonable, as regards both (1) the parties and (2) the public interest. In arguing the restraint was not reasonable between the parties, Ms Hayes said that, amongst other things: (1) the Participation Contract was presented to her on a take-it-or-leave-it basis; (2) the clause on social media accounts was unnecessary, or went beyond what was necessary, to protect any interest of the claimant; and (3) the restraint went for too long (around six months in total). It is preventing her from using her social media accounts at precisely the time she could grow her business as an influencer. Agro argued the restraint was reasonable. It said that Ms Hayes was encouraged and given time to obtain legal advice in relation to the Participation Contract. It also said that the restriction on social media use was motivated by the legitimate desire to maximise the chances that *Marriage Maestros* would be successful. Agro said it invested a lot of time and resources in producing the show and in arranging promotion and publicity, including for the contestants. For instance, it promoted their involvement in the series, arranged media interviews, and so forth. It was legitimate to expect a high degree of cooperation by the contestants, including that they would not say things to challenge or undermine the show's narratives or production, and would not post content that diluted, confused or contradicted its extensive promotion efforts. The post-broadcast restraint covered a period in which there was still a high level of interest in the show.

[45] I have formed the view that the restraint in clause 19 was not reasonable. Even assuming Agro had a legitimate interest in controlling the narrative around the show and its contestants, this was effected through taking control of social media accounts rather than, say, a targeted policy in relation to social media use. Given my finding on reasonableness, I do not need to address Ms Hayes' alternative arguments (and the responses of Agro) that the restraint is unenforceable by reason of the public interest.

Counterclaim in relation to performers' moral rights

[46] This now brings me to Ms Hayes' counterclaim in relation to performers' moral rights. To succeed, Ms Hayes must show that (1) she is a performer in a 'performance' as defined in section 100 of the Copyright Act 1997, and (2) there has been 'a distortion, mutilation or other modification of [her] performance that [is] prejudicial to [her] reputation': subsection 115(2). Agro argues that Ms Hayes has not taken part in a 'performance' or, in the alternative, that there has been no actionable prejudice to reputation. As an aside, although clause 10 of the Participation Contract states that contestants assign all copyright and performers' rights to the Producer, section 117 of the Copyright Act makes it clear that performers' moral rights are not assignable. As such, clause 10 does not assist Agro.

[47] Ms Hayes submits that her performance falls within paragraphs (a) or (c) of the definition of performance in section 100. I do not find it convincing that she has contributed to a 'dramatic performance'. To my mind, that would require her to be performing a dramatic work (whether pre-existing or improvised), which, in turn would require her to be acting. Given I have accepted that contestants are not given a character to play, I reject the contention that Ms Hayes is an actor.

[48] On the other hand, I find persuasive the submission that she is delivering a literary work. First, the category 'literary works' is defined broadly, and in my view includes interviews and spontaneous conversations, there being nothing to suggest that (1) the dynamic nature of the interaction is inimical to the requisite literary quality or (2) literary works must be expressed in print or writing rather than being spoken. That is, so long as they are original and are recorded in a material form, interviews and conversations can be literary works. Second, the reference to 'delivering' a literary work also suggests to me that 'performance' includes not just formal lectures, recitations and speeches but any sort of presentation that is given in front of an audience (whether live or remote). Mr Tiny pointed to the following passage from Birss J (as he then was) in *Heythrop Zoological Gardens Limited (t/a Amazing Animals) v Captive Animals Protection Society* [2016] EWHC 1370 (Ch), which considered whether a presentation at a zoo fell within the equivalent provision in the UK statute. It was stated by Birss J at para. 37 that part of the presentation involved:

a handler standing by an animal, such as a sloth, and speaking about it enthusiastically. While there may be no formal script, this is clearly something that has been rehearsed and would be described in ordinary language as a performance. I would hold that this qualifies as a performance by an individual within the meaning of s. 180 [of the CDPA]. ...

[49] Mr Tiny submitted that the reference to rehearsal is important, but I think that the key words in that passage are that a talk of this kind 'would be described in ordinary language as a performance'. I likewise think that whenever contestants are being recorded, whether in conversation with one another or in an interview or confessional, they are performers. I therefore conclude that Ms Hayes is a performer.

[50] This brings me to the application of subsection 115(2). I have concluded that prejudice to reputation is required in all cases, and it does not matter whether the relevant treatment is a 'distortion', a 'mutilation' or an 'other modification': for similar reasoning, see *Confetti Records v Warner Music UK Ltd* [2003] EWCH 1274 (Ch), para. 150. Here, there can be no doubt that the editing techniques used by Agro fall within at least one of these categories. As such, the live question is whether there is prejudice to reputation.

[51] It was suggested by Mr Tiny for Agro that prejudice to reputation is purely objective, going to the effect of the treatment on Ms Hayes' reputation in the eyes of others: e.g., *Boomerang Investments Pty Ltd v Padgett (Liability)* [2020] FCA 535, para. 400 (reputation 'would appear to me to be something which can be objectively determined'). I agree. To the extent that moral rights law seeks to operationalise any dignitarian concerns, this is effected through prejudice to honour – however, honour is an element only of the right of integrity of authorship, not performership: compare Berne Convention, Art. 6*bis* with the Beijing Treaty, Art. 5.

[52] Ms Jam submitted that even if Ms Hayes' subjective views are not relevant, the evidence of the negative public response to her appearance on *Marriage Maestros*, as seen in social media posts, media commentary and the like, easily satisfies the requirement for prejudice to reputation. Agro disagrees. Mr Tiny's starting point was that the standard for prejudice to reputation is high, and that it is necessary, according to subsection 115(2) of the *Copyright Act*, to take 'due account of the nature of audiovisual fixations' in considering whether prejudice is made out. Mr Tiny said that this qualification permits me to consider the usual editing practices for reality television, and that Agro's practices do not depart from those industry norms. I accept as a matter of fact that producers of other reality television programmes also engage in practices such as Frankenbiting. However, I do not think that this is the sort of matter that the qualification to subsection 115(2) has in mind.

[53] Mr Tiny then presented another argument, pointing to subclause 4(9) of the Participation Contract in which participants acknowledge that information may be revealed about them that is disparaging or unfavourable, and that their depiction may likewise be disparaging or unfavourable or expose them to public ridicule. He argued that even if Erewhonian law does not go so far as to recognise that performers' moral rights can be waived, this contractual provision must have some bearing on how the integrity right is understood. However, I consider that prejudice to reputation is strictly objective and based on the perceptions of the audience. Just like the feelings or views of the performer are not relevant, nor is the intent of alleged infringer. Further, even if I were to accept that a contract can be relevant, it would not be a detailed, one-sided agreement presented to the performer on a take-it-or-leave-it basis.

[54] Mr Tiny's final argument was that even if Ms Hayes was *unpopular* amongst members of the public, her *reputation* has not been prejudiced as people know that

reality TV is not the same as watching the news or a documentary. While they may have adverse comments on Ms Hayes *as portrayed*, this is very different from judging her *as a person*. I did not find this fine distinction to be convincing.

[55] I therefore conclude that infringement of performers' moral rights is made out.

Justice Armour made orders that clauses 12 and 19 of the Participation Contract are unenforceable and that Agro has infringed Ms Hayes' performers' moral rights. He indicated that he would schedule a further hearing to determine the remedies for the moral rights claim. Prior to this, the Court of Appeal granted leave to appeal.

Appendix 1: Statutory extracts

Copyright Act 1997 – extracts

Part I COPYRIGHT

Section 1 Interpretations

In this Act, unless the contrary intention appears:

...

“dramatic work” includes a work of dance or mime

...

“literary work” includes:

(a) a table, or compilation, expressed in words, figures or symbols; and

(b) a computer program or compilation of computer programs

...

“material form” includes any form of storage, whether visible or not ...

...

Section 2 Subject matter of copyright

(1) Subject to this Part, copyright subsists in the following types of work:

(a) original literary, dramatic, musical and artistic works;

(b) sound recordings, films and broadcasts; and

(c) the typographical arrangement of published editions.

(2) Copyright does not subsist in a literary, dramatic, musical or artistic work unless and until it is recorded in writing or some other material form; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

...

Part II RIGHTS IN PERFORMANCES

Chapter 1 Introduction

Section 100 Interpretations

(1) In this Part:

“audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device;

...

“performance” means:

- (a) a dramatic performance (which includes dance and mime);
- (b) a musical performance;
- (c) a reading, recitation or delivery of a literary work; or
- (d) a performance of a variety act or any similar presentation,

which is, or so far as it is, a live performance given by one or more individuals.

...

Chapter 3 Moral Rights

...

Section 115 Moral right of integrity of performership

(1) Performers shall, as regards their live aural performances and performances fixed in phonograms, have the right to object to any distortion, mutilation or other modification of their performance that would be prejudicial to their reputation.

(2) Performers shall, as regards their live performances and performances fixed in audiovisual fixations, have the right to object to any distortion, mutilation or other modification of their performance that would be prejudicial to their reputation, taking due account of the nature of audiovisual fixations.

Section 117 Moral rights of performership not assignable

The rights conferred by this Chapter are not assignable.

Erewhonian Human Rights Code

Article 3: 'Everyone has the right to freedom of speech. ...'

Appendix 2: Authorities cited by Justice Armour

Cases

De Maudsley v Palumbo [1996] FSR 447

Attorney-General v Blake [2000] UKHL 45, [2001] 1 AC 268 (HL), available at <https://www.bailii.org/uk/cases/UKHL/2000/45.html>

Maggbury Pty Ltd v Hafele Australia Pty Ltd (2001) 210 CLR 181, available at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2001/70.html>

Panayiotou v Sony Music Entertainment (UK) Ltd [1994] EMLR 229

Proactive Sports Management Ltd v Rooney [2011] EWCA Civ 144, available at <https://www.bailii.org/ew/cases/EWCA/Civ/2011/1444.html>

Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd [2020] UKSC 36, available at <https://www.bailii.org/uk/cases/UKSC/2020/36.html>

Heythrop Zoological Gardens Limited (t/a Amazing Animals) v Captive Animals Protection Society [2016] EWHC 1370 (Ch), available at <https://www.bailii.org/ew/cases/EWHC/Ch/2016/1370.html>

Confetti Records v Warner Music UK Ltd [2003] EWCH 1274 (Ch), available at <https://www.bailii.org/ew/cases/EWHC/Ch/2003/1274.html>

Boomerang Investments Pty Ltd v Padgett (Liability) [2020] FCA 535, available at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/535.html>