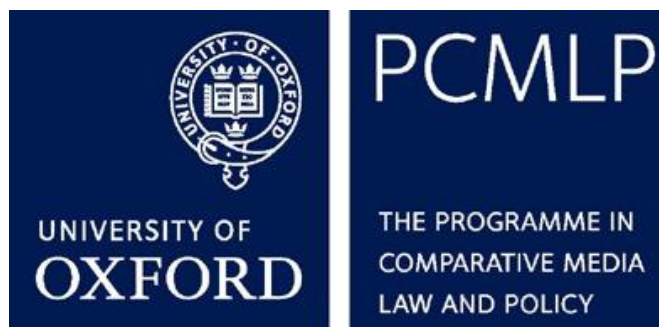


PRICE MEDIA LAW MOOT COURT COMPETITION CASE

2017/2018 COMPETITION YEAR



*Official case of the 2018 International Rounds and the
2017/2018 Regional Rounds in South Asia, Asia Pacific,
South-East Europe, North-East Europe, the Americas
and the Middle East*

Fact pattern

1. Turtonia

- 1.1 Turtonia is a small country with a democratically elected government and an ethnically homogeneous population. Turtonia is a member of the United Nations and has ratified the International Covenant on Civil and Political Rights (ICCPR).

2. Aquaria

- 2.1 In the past three years, Turtonia has seen a significant influx of immigrants from neighboring country Aquaria. Aquaria is also a democratic country, and the majority of its citizens share the same ethnicity and religion as the Turtonians.
- 2.2 Turtonia has a civilian system whose highest source of law is the Basic Law for the Federal Republic of Turtonia (which serves as the nation's constitution) and sets up the modern judiciary. There are no jury trials in Turtonia. The judge or judges take on a highly active role and preside over all aspects of the court proceedings. All parties and their lawyers have the same rights and duties regarding presenting facts and evidence in support of their case without the assistance of the judge. The law adjudicated in court comes from the Turtonia Codes and Turtonia law is primarily codal in nature. Appeals from trial courts are made directly to the three-judge Supreme Court which has discretion whether or not to hear an appeal.

3. True Religion

- 3.1 Since 2015, a religious extremist terror group called True Religion has gained popularity with some young people in Aquaria and has attacked mainstream religious institutions and schools, including murdering a dozen people on a university campus. Four gunmen stormed the university building where daily lectures were taking place and held people hostage demanding that anyone who did not follow their religion identify themselves so they could be killed. Two lecturers and ten students were killed and the siege lasted for 7 hours before police stormed the building killing the gunmen on sight. Two police officers were also injured.
- 3.2 True Religion is widely regarded as a terrorist organization in Aquaria, Turtonia, and many other countries (including members of the UN Security Council). Its charismatic leader, an Aquarian named Prinsov Parkta, has been in hiding for some time to avoid arrest, but he nevertheless regularly issues calls to action through public videos. The Aquarian government has increased its law enforcement response to True Religion and over the past year has successfully arrested and prosecuted a number of its members.

4. Turton Power

- 4.1 In Turtonia, the wave of Aquarian immigrants has caused a furor among some Turtonians, who claim that the immigrants have disrupted the economy and diluted the culture. Beginning in late 2015, a particularly vocal group of nationalist

Turtonians, calling themselves Turton Power, began publicly denouncing the Turtonian Minister of Immigration, Wani Kola for allowing Aquarians to enter the country. They've called for her resignation and have occasionally protested outside her office. Kola is known for being a champion of immigration who believes Aquarian immigrants can contribute meaningfully to the Turtonian society. Kola has been subjected to harassment and abuse online, and one person - a member of Turton Power - has been convicted of attempting to assault her in a public place.

5. Scoops

- 5.1 Scoops is the most popular social media platform. It is based in Turtonia and last year had annual revenues equivalent to 100 million USD. Through the app, users build a profile that consists of (1) a screen name, (2) topics of interest, and (3) friends. Users can upload photos and videos with up to 200 words of text and tag the post with up to two topics of interest. When they hit "send," the content will appear on the screens of the devices of friends of the poster and up to 20 other users who have listed a matching topic of interest. These 20 other users are selected by an algorithm. Users can pay to have their posts "boosted" so that they are seen by more users, the more they pay the more users will see the content. Scoops also uses human review to assist the algorithm in reaching the right users who may be interested in the content.
- 5.2 The viewer of the post can swipe the post left to dismiss it or right to forward it to their friends and to another 20 people. Every time a user posts new content or forwards someone else's content, the app records how many people eventually view the content from that user's actions.
- 5.3 Each user has a publicly-visible "influencer score" at the top of his or her profile based on how many people have seen content from him or her. When asked why the company built the "influencer score," Scoops CEO said, "An 'influencer score' is a fun way to see how many people you can influence. And it also creates an incentive for posters to create compelling content and for readers to keep sharing content when they see it, which is important to us, because whether people are sharing news, an opinion, or just the latest gossip, we want people to hear it first on Scoops." The higher your influencer score, the less you have to pay to have your content boosted.

6. XYZ News

- 6.1 XYZ News is a popular TV news network in Turtonia. XYZ is well-respected in Turtonia and neighbouring countries for being a reliable and objective news source.
- 6.2 XYZ maintains a Scoops account called "XYZ News."

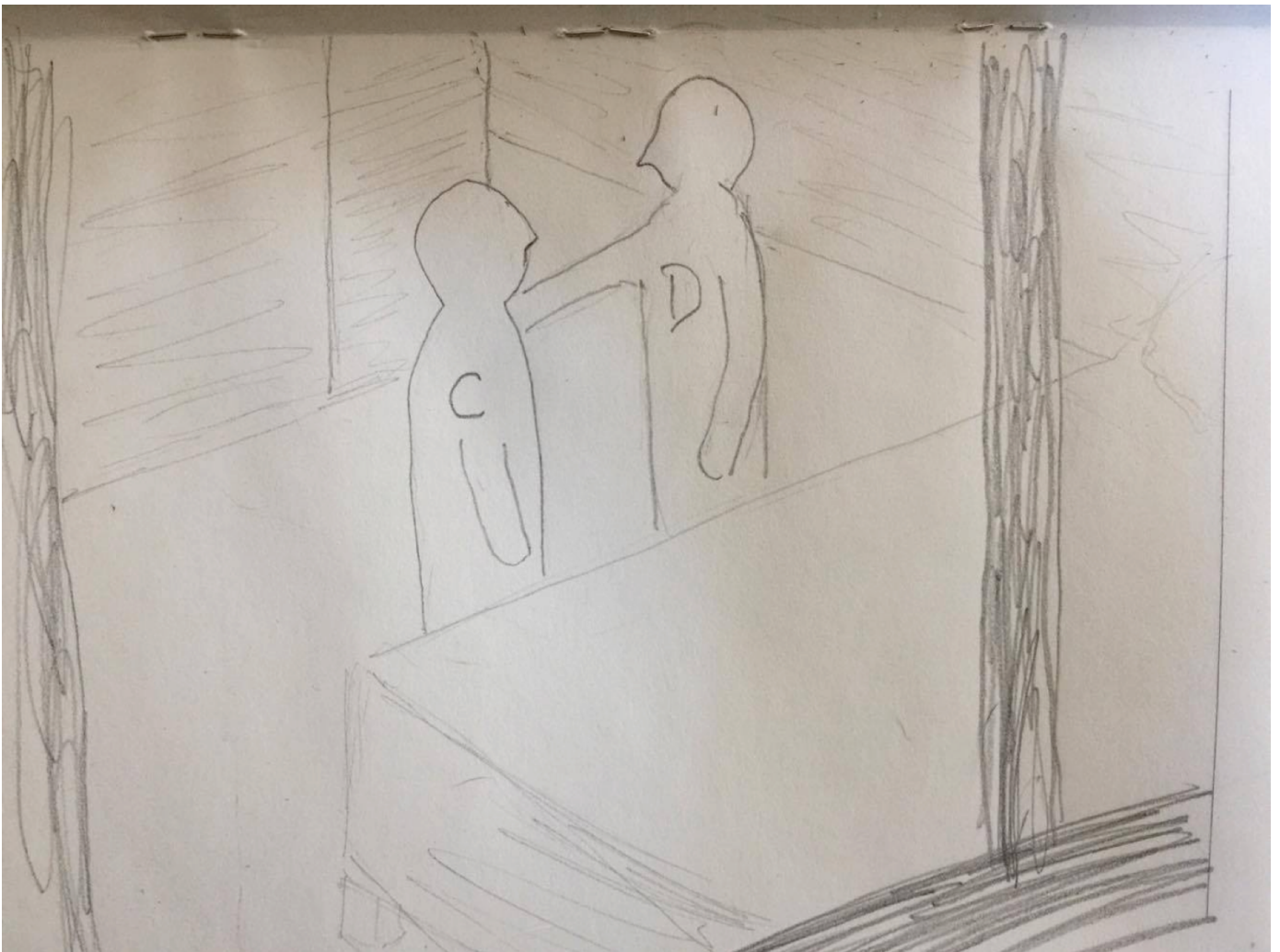
7. Peaps

- 7.1 Niam Peaps is a Turton Power member who, on May 1, created a Scoops account with the screen name "XYZ News12." Peaps has no affiliation with XYZ News.

8. The Post

8.1 At noon on May 2, Peaps used the “XYZ News12” account to post an image that appeared to show Kola standing naked in a hotel room. [Exhibit A]. She is in profile, facing another individual, who has his right arm on her left shoulder. The second individual appears to be Parkta, the leader of True Religion. The photo appears to have been taken from outside the hotel room window, and neither person in the image appears to be aware of the camera.

8.2 Exhibit A:



8.3 Peaps selected “XYZ News” as the Topic of Interest for the post, and because the “XYZ News12” account had no friends, the post showed to 20 Scoops users who had listed “XYZ News” as a Topic of Interest. The caption of the post read: “XYZ NEWSFLASH: KOLA IMPLICATED IN SEX-FOR-VISA SCANDAL! Sources within Ministry of Immigration today revealed that Minister Kola approved visas for at least

23 members of the True Religion terror group at the request of her secret lover, Princev Parkta, who leads the group. In conversations with XYZ News this morning, one ministerial staffer reported that Kola's tryst with Parkta, which began nine months ago during Kola's visit to Aquaria, has led to a 'free handout' of visas to terrorists. Another staffer described Kola ordering the destruction of documents that showed that some of the visa recipients were, 'truly terrifying individuals who will use any measure of violence to enforce their religion on Turtonians.'"

8.4 The post went viral on Scoops, reaching more than 10,000 on Scoops within the first hour of appearing, and spreading to other websites and social media.

9. After the post

9.1 By 5:00pm, XYZ Media's corporate department of public affairs released a statement, also published on its Scoops account, declaring that XYZ Media had no role in the post and no connection to the XYZ News12 account. Also at 5:00pm, Kola's office released a statement calling the post "a horrific lie with no basis in fact," and asserting that Kola's head had been photoshopped onto a stranger's body in the image.

9.2 In the wake of the post, Kola received harassment and death threats online and offline, including threatening phone calls at her office. At 7:00pm on May 2, Kola's staff reported the post to Scoops through Scoops' online reporting form as a violation of Scoops' terms of service. When users of Scoops sign up to the service they agree to Scoops' Terms of Service that specify that they do not allow harmful and malicious content such as spam, non-consensual sharing of intimate images, hate speech or child exploitative imagery. The Scoops report form gives four options: "spam," "threat of violence," "child pornography," and "a nude image of me shared without my consent." Kola's staff selected "a nude image of me shared without my consent" as the reason to request removal. Scoops responded with an electronic message that read, "Thanks for letting us know. Before we can remove this image, we need you to please enter your name and check the box below to certify that you are the person depicted in this image." Kola's staff did not complete the form. Instead, on May 3, at 11:00 a.m., Kola's legal counsel submitted a letter to Scoops, threatening a civil action for defamation and violation of privacy. Scoops removed the post and all shares of the post at 1:00pm on May 5, 50 hours after the submission of the complaint. At that point, it had 21,000 shares and 145,000 views.

9.3 On May 3, Turtonia's major newspaper, TurtonTimes, a print and online newspaper that is affiliated to the political party that opposes Kola's party, ran a factual article about the post, without presenting an opinion on or judgement of its accuracy. The TurtonTimes also ran an opinion piece mentioning that the post coincided with growing dissatisfaction with Kola, and that it was time for her to resign. The opinion piece cited the rising fear of Turtonians that Aquarian immigrants were stealing jobs and that True Religion might begin to take root in Turtonia.

9.4 On May 4 and May 5, protesters gathered outside Kola's office calling for her resignation. Although small groups of protesters had appeared from time to time throughout Kola's three years in office, with one such gathering resulting in a conviction for attempted assault of Kola, these groups of protesters on May 4 and 5

were by far the largest, numbering more than 100. Protesters chanted, “No more Aquarians!” and many held signs criticizing Kola. Most of the signs were unrelated to the post, but at least some of them had slogans like, “Sleeping with the enemy!” and “No More Sex-For-Visas!” or “No Visas for Your Lover’s Terrorists!”

9.5 On the evening of May 5, two Aquarian immigrants were beaten to death by an angry mob of at least 10 people that were yelling anti-Aquarian epithets.

9.6 Kola resigned from office on May 10 without public statement.

10. The Online Dignity Protection Act of 2015

10.1 The Online Dignity Protection Act of 2015 was passed in response to a growing problem of Non Consensual Sharing of Intimate Images (commonly known as “revenge porn”). This problem reached a peak in the years before the passing of the ODPAs as easy access to devices like smart phones meant pictures and videos taken with the expectation of privacy could be shared publicly online far more easily through outlets such as social media. Research commissioned by Turtonia Women's Aid found that more than two thirds (79%) of Turtonian residents believed it should be illegal for someone to share an intimate image they have been sent. Women's rights groups said sharing intimate photographs and videos caused "devastating harm" to victims, and local media outlets widely reported two separate suicides of Turtonian teenage girls in February 2013 and March 2014, both of whom had been victims of non-consensual sharing of nude images of themselves.

10.2 **Online Dignity Protection Act of 2015** (regarding Non Consensually Shared Intimate Images)

1. An individual, organization or other publisher may not knowingly distribute an image of another person who is identifiable from the image itself or information displayed in connection with the image and whose intimate parts are exposed, when the actor knows or consciously disregards a substantial and unjustified risk that the depicted person has not consented to such disclosure
2. Definitions. For the purposes of this Act:
 - a. “Distribute” includes transferring, publishing, or reproducing;
 - b. “Image” includes a photograph, film, videotape, recording, digital, or other reproduction;
 - c. “Intimate parts” means the naked genitals, pubic area, anus, or female postpubescent nipple of a person.
3. Exceptions. This Act does not apply to:
 - a. Images involving voluntary exposure in public or commercial settings; or
 - b. Disclosures made in the public interest, including but not limited to the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.
 - c. Penalties. A violation of this Act shall be punishable by a term of imprisonment not to exceed 5 years, a fine of up to 3 million units of Turtonian currency [equivalent to 300,000 USD], or both.

11. The Information Act of 2006

11.1 The Information Act of 2006 was passed after the distribution of fake documents, which purported to be real, private documents, ahead of the 2005 Turtonian General Elections (the famous “Micron leaks”). After the distribution of false information about a favoured political candidate – that purported to show he was involved corruption and bribery – the public polls showed a massive shift in voter opinions. The favoured candidate lost the election, and civil unrest followed, along with a decrease in public faith in the democratic process. The government passed this law in order preserve the integrity of the democratic process and avoid the hijacking of elections as well as to safeguard the peace.

11.2 **Information Act of 2006**

1. An individual, organization or other publisher may not:
 - a. Knowingly communicate to any person, by any means, information that the individual, organization, or other publisher communicating such information knows to be false, where the communication:
 - i. Exposes another living person to public hatred, contempt or ridicule;
 - ii. Deprives such person of the benefits of public confidence and social acceptance; or
 - iii. Injures any person, corporation, or association of persons in his or their business or occupation; or
 - b. Knowingly or recklessly communicate false information with the intent to incite civil unrest, hatred, or damage the national unity.
2. Penalties. A violation of section (a) of this act shall be punishable by a fine of up to 2 million units of Turtonian currency (equivalent to 200,000 USD). A violation of section (b) of this act shall be punishable by a term of imprisonment not to exceed one year and a fine of up to 3 million units of Turtonian currency [equivalent to 300,000 USD], or both.
3. An online service provider (OSP) is immune from liability for transmitting, caching or storing material at a user's direction where certain conditions are met. To qualify for immunity for stored content an OSP must:
 - a. not receive a financial benefit directly attributable to the infringing activity, where the OSP has the right and ability to control the activity;
 - b. not know the material or activity is infringing or be aware of facts or circumstances that make the infringement apparent;
 - c. expeditiously remove or disable access to the material if it learns of the infringement, or facts or circumstances that make the infringement apparent, or receives a Notification;
 - d. adopt, reasonably implement and inform, subscribers and account holders of a policy for terminating repeat infringer's subscriptions and accounts.

12. Peaps' Prosecution:

12.1 Peaps is identified through a Turtonian criminal search warrant served upon Scoops corporate offices in Turtonia, which warrant asked for the subscriber information of the person who created and owned the "XYZ News 12" Scoops account. Peaps was then prosecuted, and convicted of the following offences in Turtonia:

1. Distributing an image of Kola in violation of the Online Dignity Protection Act of 2015. For this conviction, the court sentenced Peaps to two years' imprisonment and no fine.
2. Inciting violence, or being reckless as to whether violence was incited, through false information in violation of Section 1(b) of the Information Act of 2006. For this conviction, the court sentenced Peaps to a fine equivalent of 100,000 USD.

12.2 At trial, Peaps maintained that he was under the impression he had heard that XYZ was about to break the sex-for-visa story, and he wanted to break the story first to maximize his influence score on Scoops. He said he did a quick online search to see if anyone else had broken the sex-for-visa story before he did, and on the Turton Power website he found the image of Kola and Parkta in the hotel room, which he decided to use to "illustrate the relationship for my Scoops friends."

12.3 Based on evidence at trial, the trial court found the following:

1. The image showed "intimate parts" and therefore qualified as an "image" covered by the Online Dignity Protection Act.
2. The image had been created by a member of Turton Power with screen name "PowerPlayer," who had taken a nude image from a free pornography site (person unknown), photoshopped Kola's head on to the body, and then photoshopped in an image of Parkta with his right arm outstretched and positioned it to look as though Parkta was touching Kola's shoulder.
3. Parkta's figure in the image had been photoshopped from a video of Parkta speaking to True Religion followers, which video had been released publicly by True Religion in March 2016.
4. The person who created the photoshopped image with Kola and Parkta posted it in mid-April on the Turton Power website in a discussion thread saying, "If Kola had a boyfriend it would be this guy! Ha!" but removed the image from the site on May 3.
5. By publishing the image on Scoops, Peaps knowingly distributed an image of Kola appearing to show her intimate parts.
6. At the time he distributed the image, Peaps knew or consciously disregarded a substantial and unjustified risk that Kola had not consented to the disclosure.
7. Peaps was not entitled to protection under section (3)(b) of the ODP.

13. Scoops prosecution

13.1 Scoops is prosecuted and convicted of the following offenses in Turtonia:

1. Distributing an image of Kola in violation of the Online Dignity Protection Act of 2015. For this conviction, the court sentenced Scoops to a fine equivalent to 200,000 USD.

2. Knowingly communicating false information in violation of Section 1(a) of the False Information Act of 2006. For this conviction, the court sentenced Scoops to a fine equivalent of 100,000 USD.
- 13.2 Based on evidence at trial, the trial court made the additional findings:
1. For purposes of Count One (violating the ODPa), Scoops received notice of the image at 7:00 p.m., on May 2, when Kola's staff reported the image as "a nude image of me shared without my consent."
 2. After that report, Scoops knew or consciously disregarded a substantial and unjustified risk that Kola had not consented to the disclosure.
 3. For purposes of Count Two (violating the FIA), Scoops was on notice of the Peaps post from 11:00 a.m., on May 3, when Kola's legal counsel submitted a defamation claim. Scoops failed to remove the post within a reasonable time.

14. Appeal

- 14.2 The Supreme Court of Turtonia, which has discretionary review, declined to consider Peaps' and Scoops' appeals, thereby exhausting their domestic remedies.
- 14.3 They now have applied to the Universal Court of Free Expression, asserting that Turtonia has failed to comply with its human rights obligations. The Court has certified their appeals on four discrete issues:
1. **Issue 1A:** Whether Turtonia's prosecution of Peaps under the ODPa violates Article 19 of the ICCPR.
 2. **Issue 1B:** Whether Turtonia's prosecution of Scoops under the ODPa violates this same international principle.
 3. **Issue 2A:** Whether Turtonia's prosecution of Peaps under the IA violates Article 19 of the ICCPR
 4. **Issue 2B:** Whether Turtonia's prosecution of Scoops under the IA violates this same international principle.