

**FACULTY OF LAW, UNIVERSITY OF PRETORIA**  
**2011 INTERNAL MOOT COURT COMPETITION**

**Overview of the competition**

The Moot & Debating Society is proud to host the Faculty's fourth Internal Moot Court Competition, sponsored by Norton Rose Inc. The aim of this competition is to give students the chance to put their legal knowledge into practice and develop their research, writing and oral advocacy skills. What better way than this to equip yourself for life in the legal profession? And if that's not enough incentive, the winning teams in both the English and Afrikaans rounds will each receive R2 000, thanks to our generous sponsor! Please take note of the following important dates:

<b>Release of fact complex:</b>	<b>1 August</b>
<b>Information session and workshop on drafting heads of argument:</b>	<b>4 August, 11:30, Room 1-48 (behind the Moot Court)</b>
<b>Registration deadline:</b>	<b>19 August</b>
<b>Training workshop:</b>	<b>25/26 August</b>
<b>Due date for heads of argument:</b>	<b>5 September, before 24:00</b>
<b>First oral training session:</b>	<b>9/10 September</b>
<b>Second oral training session:</b>	<b>16/17 September</b>
<b>Preliminary oral rounds:</b>	<b>23 September</b>
<b>Final oral rounds:</b>	<b>27 September</b>

**Communication and contact information**

Website: [www.up.ac.za/law](http://www.up.ac.za/law); E-mail: [upmoot@gmail.com](mailto:upmoot@gmail.com); Facebook: UP Moot and Debating Society

Teams will argue on the hypothetical set of facts provided and will prepare and present argument for both the Applicant and the Respondent. Teams will be judged on the written component from the heads of argument submitted and the oral component argued before a panel of judges.

During the oral rounds the teams will be questioned by the judges on their argument. Both members of the team must speak in every oral round. Teams must be made up of two speakers who can be registered for any undergraduate year of study in law at the University. There will be a separate English and Afrikaans round, and teams must choose in which language they would prefer to argue. Assistance and training will be provided to all teams by members of the Moot & Debating Society during the training workshops as well as during the oral training sessions as indicated.

# 2011 INTERNAL MOOT COURT COMPETITION

## \* REGISTRATION FORM \*

Sponsored by  **NORTON ROSE**

Each team must consist of two members.

Language of participation:      English      Afrikaans

	<u>Team Member 1:</u>	<u>Team Member 2:</u>
Name:		
Student number:		
Identity number:		
Degree and Year of study:		
Email address:		
Mobile number:		

Please submit this registration form at the  
Law Library entrance and place it in the marked box,  
or email the completed form to [upmoot@gmail.com](mailto:upmoot@gmail.com).  
Closing date for registration: Friday, 19 August 2011  
For more information, please go to [www.up.ac.za/law](http://www.up.ac.za/law)  
or forward an e-mail to [upmoot@gmail.com](mailto:upmoot@gmail.com).

You can also find us on Facebook.

Our page is called UP Moot and Debating Society.

Good luck!

# 2011 UP Internal Moot Court Competition

## *Fact complex*

[1]

In January 2000, *Joel Na'vi*, his lawful wife and their two children acquired South African citizenship by naturalisation. *Na'vi* and his family established the *Neytiri Believers Church (NBC)* later that year, which is a registered non-profit organisation. *Na'vi* has been referred to as “*Prophet Joel*” and fulfilled the role as the organisation’s spiritual pioneer. The organisation (and more specifically *Prophet Joel*) had been subject to much criticism due to controversial practices of ‘spiritual healing’ that took place. Over the years, until February 2011, the organisation had grown into a multi-million-rand empire.

[2]

In the *NBC* founding document, which is also the primary religious text of the church, it is clearly established that any member belonging to the church is under a moral obligation to abstain from sexual practices of any kind until marriage and when married (only to one person in his/her lifetime), such practices may only take place for reproductive purposes. The usage of drugs, cigarette smoking and alcohol is also strictly prohibited as these are all said to “strip the body of its holy state”.

[3]

The biggest controversy of the *NBC* started in 2010 when *Prophet Joel* started entering the city centres of South Africa and “spiritually healed” many women from barrenness of the womb. During these public spectacles, *Prophet Joel* would draw out a hand full of stones from the womb of the woman concerned. By 21 June 2010, a number of newspapers and tabloids revealed photographs of these public spectacles, and attempted to explain why *Prophet Joel* was a fraudster and used illusionary techniques to obtain the abovementioned stones, and at the same time sexually violating the women that he “treated”. He was accused of being a “womaniser, and a money-hungry sexual freak”.

[4]

Following this controversy, on 1 December 2010, *The Blue Moon Media Company Ltd* (hereinafter called “*BMMC*”) released their first pornographic publication, both in the form of a newspaper and a public website. On the website homepage, members of the public were encouraged to send homemade sex videos to be published on a special webpage of the media company. On 20 December 2010 (10:16), a low-resolution BDSM sex video was published by the media company on their website entitled “A religious affair”. The three individuals involved in the video are not easily identifiable however, the one character who was leading the conduct in the video wore a cloak at the beginning of the scene, which appears to be identical to that of *Prophet Joel’s* signature cloak which he wears to all his public meetings. In the video, the three parties also are seen smoking what appears to be a *tik-pipe* (crystal meth-pipe).

[5]

The part of the site that contains the homemade videos, functions in a similar way to *YouTube* where viewers can log into the site and write comments on the videos and click “like” or “dislike”. By 20 December (13:45), six comments were already posted underneath the video by members of the public. By this time *Prophet Joel* had been informed by members of his church about the video, and visited the site to check up on the contents. He printed the screen and emailed it to his lawyer with the accompanying link. These comments are still on the site:

- a. Rockstar21: omg this prophet joel is suuuuuuch a perve!
- b. HotStuff: I know right, he steals people’s money to pay his prostitutes. Damn ugly ones LOL!
- c. Feminist101: I think it is appalling that a religious man like this treats women the way that he does #allmenarebastards
- d. LilMissSunshine: People should not be the judges of others... The PROPHET has never done any harm to anybody else, and in fact he has healed many women and men by the spiritual power that he possesses! The people who made this video will suffer with by the strike of a rock of the All Powerful for what they have done to the PROPHET!
- e. Sickly777: Now this is what I’m talking about. NICE!

- f. RyRy: @ lilmisssunshine-- judging by this scene, you prophet sure is 'all powerful'  
ROFL... Get real. He is a fraudster and a perv!

[6]

At this stage there was only 1 like and 50 dislikes attached to the video. *Prophet Joel* (through his lawyers) tried various times to contact the *BMMC* to request them to remove the video. But their complaints and requests were not executed by the *BMMC*.

[7]

As a matter of fact, by the 2<sup>nd</sup> of January 2011, the *BMMC* placed this video on the home page of their primary website with a big heading: “NEW YEARS SPECIAL—a religious affair” with the added subtitle: “who could this possibly be?” The *BMMC* also put the video up on their 6 affiliate sites with the same headings. The first publication of the *BMMC*’s newspaper in 2011 had a front- page story on the video (the text is attached to this set of facts). At 23:54 of that same day (2 January 2011) of the newspaper article being published, the total amount of views of the video sat at 20 590, with about 90% likes and the rest dislikes, with more than a thousand comments, all which follow the same basic trend as the first six comments quoted above.

[8]

On the 4<sup>th</sup> of January 2011, *Prophet Joel* suffered a stroke. He was rushed off to hospital, and incurred R45 000 worth of medical costs. He survived the stroke, but is completely paralysed. He requires special medical treatment which costs approximately R23 000 per month. As a result of these injuries, he can no longer earn an income from his normal church activities.

[9]

Moreover, in 2011, the church membership numbers have decreased by 90% from the 2009 figures. The 10% of remaining members are waiting in anticipation for a new prophet to be announced. Thus, the church income has also been severely depleted compared to the 2010 monthly average income—the financial statements of the church clearly show this.

On the other hand, the financial statements of the *BMMC* show an exponential increase in profits after the expose of this video. The Prophet's family and the church are devastated by the status quo.

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## NEWSPAPER ARTICLE:

### NEW YEAR'S SPECIAL

#### *A religious affair—who could this possibly be?*

2 January 2011

Staff reporter, Pretoria

It's the year 2011 and the Mayan Calendar suggests that this will be our last one! It seems that even more prominent celebs are embracing every moment of this year already! The above screenshots are from a video sent to us by one of our readers, and it is spicy indeed!

But wait, what is the lead role wearing? Interesting... We wonder what the public will have to say about this one. Maybe the stories have been true all this time, and maybe our lead character is a sexual beast after all.

For more, turn to page 3.

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You are required to draft heads of argument and present closing arguments in court for the following prayers:

#### **Plaintiff's prayers:**

**The first plaintiff in this matter is: JOEL NA'VI**

**The second plaintiff in this matter is: DEPENDANTS OF JOEL NA'VI**

1. The first plaintiff institutes the *actio iniuriarum* for satisfaction due to his personality rights being violated by the respondent. The amount of damages is not in dispute at this stage.

2. The second plaintiff institutes the *Aquillian action* for loss of support due to injury to a breadwinner. The amount of damages is not in dispute at this stage.

**AND**

**Defendant's prayers**

**The defendant in this matter is: THE BLUE MOON MEDIA COMPANY LTD**

1. The *actio iniuriarum* should have no application here as fault cannot be proven on the part of the defendant. Alternatively, that the publication is justifiable as a matter of truth and public interest, as well as media privilege (in accordance with the s16 constitutional right of the company).
2. A causal link cannot be established between the injury suffered by the first plaintiff and the conduct of the defendant, and therefore the *Aquillian action* for loss of support due to injury to a breadwinner cannot succeed.

# **BASIC SOURCES FOR THE INTERNAL MOOT COURT COMPETITION 2011**

## **Textbooks**

Neethling J, Potgieter J.M. (2010) *Law of Delict* Durban: Lexisnexis

Loubser *et al* (2010) *The law of delict in South Africa* Cape Town: Oxford University Press

## **Cases**

Le Roux and Others v Dey; Freedom of Expression Institute and Another as *Amici Curiae*  
2011 (6) BCLR 577 (CC)

Tsichlas and another v Touch Line Media (Pty) Ltd 2004 (2) SA 112 (W)