

# **EVIDENCE LAW**

## **MODEL EXAM**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

## Question One

At 5.14 pm Anke was driving to collect her young daughter from day care in Belconnen, ACT. She was travelling in a westerly direction towards the setting sun and changed into the right hand lane in order to make the necessary right hand turn into the day care centre's car park. Anke turned right across oncoming traffic and hit a car driven by Jennifer who was also turning into the car park of the day care centre. Jennifer suffers whip lash amongst other injuries and is suing Anke in negligence.

Jennifer alleges that Anke turned right across unbroken lines on the road and that she also did not check for a safe gap to turn across the traffic. Anke refutes these allegations stating there was a specified turning lane for entry to the day care centre.

### Part A

Jennifer calls Bonita, a day care centre teacher, to give evidence. Bonita's evidence is that she was inside her office, which has a window overlooking the car park at the front of the day care centre, and heard the accident occur; she did not see the collision. She knows Anke and Jennifer well and went out to the accident site. Bonita was standing near Anke when she heard her on her mobile talking to her husband saying: "I wasn't looking where I was going... I crossed double yellow lines... someone is injured!"

- (i) Is Bonita's evidence that Anke said this relevant to any fact in issue in this case?
- (ii) Is Bonita's evidence inadmissible under s.59 *Evidence Act*? Explain your answer.
- (iii) Assume that Bonita's evidence is inadmissible under s.59, do any exceptions apply?

**Part B**

Bonita is cross examined by Anke's lawyer. Anke's lawyer asks Bonita: "Is it not the case that two days ago you sent an email to Jennifer containing the following: 'Anke drives like a crazy person, I have been in her car with both of our kids, she takes far too many risks. I am more than happy to help you out and make sure my evidence sticks to her like glue'?....."

**Question Two**

George has been charged with an offence under the *Road Act 2000* (ACT) which provides:

*A Person commits an offence if the person operates a motor vehicle recklessly on a road and by that act or omission causes an injury to or death of another person.*

The facts are as follows:

On 21 June 2006 at 7.35 am, George was driving to work in Canberra, ACT. He was travelling south along Northbourne Avenue. He was approaching a major and busy intersection controlled by traffic lights, George was continuing straight. In doing so, he collided with a car driven by Christina who was turning right onto the road so as to be heading north. Christina was injured suffering severe whiplash and a broken collar bone.....

**Question Three**

Assume that the following sections are contained in the *Medical Profession (Elective Procedures) Act* (2001) ACT:

1. No medical practitioner shall, in a misleading manner, advertise their services, or promise potential clients unreal outcomes, with the intention of misleading and encouraging clients to undergo non essential elective medical procedures.
2. A person who suffers costs in reliance upon a promise or advertisement by medical practitioner, in contravention of section 1, may take civil action against the practitioner to recover the costs.
3. The person who suffers loss shall bear the burden of proof in all manners of sections 1 and 2.

Derek is a medical practitioner in the ACT and is widely known to be the ACT's expert plastic surgery Doctor. Derek advertises his services on television and also in *The Canberra Times* health supplement. In a recent newspaper ad Derek claims that he is using "the botox of Hollywood stars" and that it is proven to be much safer and more effective than other manufacturers of botox. In fact, he claims that the botox is so safe that it can be used to prevent excess body odour and under arm perspiration.....



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