

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 Remuera, Auckland. 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!".....

Question Two

You have been consulted by John who is the great-great-grandson of a large landowner, Henry, whose will established a trust fund long before John was born. Since his father died, John has been the only living descendant of Henry. The trustees of the fund have always been the partners for the time being of the firm of accountants who attended to Henry's business.

Henry's will left the trust fund to his trustees in trust to invest the capital in bonds issued by the Canterbury Provincial government and to apply the income to whatever uses in their opinion served to promote the beliefs of the Gaian Society Inc., a group who

believe that the earth responds favourably to human devotions addressed to it. Since the Provincial government was abolished 130 years ago, the trustees have instead invested the fund in New Zealand government bonds which pay at a notably lower rate than the former provincial government bonds did.

Question Three

Adam Smith and his wife Betty are suing the Rubbery Tyres Company for poisoning the air in the area near its factory. The Smiths live 500m from Rob's factory and claim that the factory has been emitting noxious gas for the past five years. As a result of this, the Smiths claim that their property has been reduced significantly in value and also that they have developed a range of physical illnesses as a result of breathing the polluted air (NB: assume that the ACC regime does not apply).

Rubbery Tyres denies that the pollution of the air is caused by his factory. The company argues that its factory is not the cause of the illnesses suffered by the Smiths but that their illnesses are resulted from other causes.

The case is being tried in front of a judge alone.

Part A

The Smiths' lawyer calls Betty Smith as a witness. She testifies that for the past five years, there has been a "toxic smell" in the air. She also states: "It must have been this smell that made me sick because I have a constant feeling of queasiness and have had more upset stomach than ever before since that tyre factory has opened."

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