



VICTORIAN BAR

ENTRANCE EXAM

VICTORIAN BAR READERS' COURSE

31 OCTOBER 2019

EXAM DURATION: **3 hours** writing time
 30 minutes perusal time (prior to commencement of exam)

INSTRUCTIONS TO CANDIDATES:

- 1) During the exam, you must not be in possession of anything other than writing implements, this exam script and the hard copies of the Reading Guide and examinable excerpts of legislation that have been provided. You are not permitted to have in your possession any other paper, notes, books, electronic devices, mobile phones, pencil cases or any other items that have not been specifically authorised by the Chief Examiner and/or Invigilators of the exam. Any item on your person, on your chair, or on your desk are deemed to be in your possession.
- 2) Your Candidate Number (but not your name) appears at the top of this page. Your Candidate Number represents your unique identifier for the purposes of this exam. You have previously been advised in writing of the Candidate Number which has been assigned to you. Please ensure that the Candidate Number above matches the Candidate Number which has been assigned to you. You **must not write your name** on any page in this exam script.
- 3) This exam tests your knowledge and understanding of rules of **Civil Procedure, Criminal Procedure, Evidence** and **Legal Ethics**. The exam consists of two parts – Part A and Part B. You **must answer all questions (and sub-questions) in both Parts of the exam**. The total number of marks allocated to questions in the exam is 100, so that the maximum score attainable by any candidate is 100. A total mark of 75 or more is required to pass the exam.
- 4) **Part A** contains 15 questions (Questions 1 to 15) and is worth a total of 50 marks. Part A commences with a preliminary statement of facts giving rise to a hypothetical **criminal proceeding**. Questions 1 to 15 then follow. In answering Part A, you should assume that all

questions are referable to the preliminary statement of facts. Each question posed in Part A informs you of the following: (i) whether you are being tested on rule(s) of criminal procedure, evidence or legal ethics (but note paragraph 6 of these instructions below); and (ii) the total number of marks allocated to the question. The total number of marks allocated to each subject area in Part A is: Criminal Procedure (22 marks), Evidence (19 marks) and Legal Ethics (9 marks).

- 5) **Part B** contains 13 questions (Questions 16 to 28) and is worth a total of 50 marks. Part B commences with a preliminary statement of facts giving rise to a hypothetical **civil proceeding**. Questions 16 to 28 then follow. In answering Part B, you should assume that all questions are referable to the preliminary statement of facts. Each question posed in Part B informs you of the following: (i) whether you are being tested on rule(s) of civil procedure, evidence or legal ethics (but note paragraph 6 of these instructions below); and (ii) the total number of marks allocated to the question. The total number of marks allocated to each subject area in Part B is: Civil Procedure (21 marks), Evidence (21 marks) and Legal Ethics (8 marks).
- 6) Although each question is designated as either ‘Criminal Procedure’, ‘Civil Procedure’, ‘Evidence’ or ‘Ethics’, you may refer to legal rules and principles outside the designated subject area if you consider these to be relevant in answering the question. With some questions, it may be necessary to do so in order to completely answer the question.
- 7) You must write your answers in the writing space provided after each question. The reverse side of each page in this exam script contains further writing space if required. Further additional blank writing pages have been provided at the end of this exam script.
- 8) In the case of multi-choice questions, you must simply circle the answer(s) you consider to be correct. Some multi-choice questions are worth 1 mark where **only one answer** may be circled, and other multi-choice questions are worth 2 marks where **two answers** may be circled. If you circle more than one answer for a 1-mark multi-choice question, or more than two answers for a 2-mark multi-choice question, a score of **zero marks will be recorded** for that question. If you wish to change your answer(s) to a multi-choice question, you will not be penalised for doing so provided that the change is effected in such a manner that clearly indicates your intended final answer(s).
- 9) Your attention is also drawn to the following:
 - i) If an application of state law is necessary in answering any question, you should assume that the law of Victoria applies.

- ii) In answering questions, you are not required to cite section numbers or case names unless the question specifically directs you to do so. You may restate principles of law or rules in your own words. A significant degree of latitude is given to you paraphrasing rules and principles.
 - iii) The standard of expression, spelling, punctuation, grammar, and conciseness will be taken into account in the assessment of your answers. Please take care to ensure your writing is legible.
- 10) It is suggested that you allocate time spent on each question proportionate to the number of marks allocated. The table below is provided to assist you in planning time (calculated on the basis of 180 minutes total writing time).

**TABLE – SUGGESTED TIME SPENT ANSWERING
QUESTION BASED ON MARKS ALLOCATED**

Marks	Time (approx.)
1 mark	no more than 2 minutes
2 marks	3½ minutes
3 marks	5½ minutes
4 marks	7 minutes
5 marks	9 minutes
10 marks	18 minutes

- 11) You are **not permitted to remove this exam script** from the examination room.

PART A (Questions 1 to 15) – Candidates are required to answer ALL questions in Part A.

Assume the following prosecution summary of alleged facts relates to all questions in Part A.

The ‘Temple of the Winds’ rotunda (‘the Rotunda’) is a building located in Fitzroy Gardens, Melbourne. It was constructed in 1873 and comprises a domed concrete roof supported by 10 Corinthian columns. The Rotunda is on land owned and maintained by the City of Melbourne, a local municipal council.



Temple of the Winds

Image Source: <http://citycollection.melbourne.vic.gov.au/>

On the afternoon of 1 September 2019, between 400 and 500 hundred people gathered at Fitzroy Gardens to participate in a protest against global warming and climate change. The protest was organised by members of the Coalition of Australian Residents for the Environment, Inc (‘CARE’), an environmental organisation based in Melbourne. None of the protesters nor CARE had sought permission from Victoria Police or the City of Melbourne to gather and protest in the gardens.

At approximately 2:15 PM, using the assistance of other protesters, 10 protesters hoisted themselves onto the domed roof of the Rotunda. They formed a circle, linked arms and sat against the dome, each protester facing outwards towards the gardens (‘the dome protesters’).

As soon as the dome protesters had secured themselves on top of the roof, another 10 protesters formed a circle on the ground around the base of the Rotunda, with each protester standing upright and facing outwards towards the gardens. The circle of protesters positioned themselves equidistant from one another, so that there was 1 protester between 2 pillars. Each protester raised their arms and placed the palms of their hands behind the pillar on either side of them. This had the effect of creating

a 'human fence' around the perimeter of the Rotunda ('the human fence protesters'). Prior to placing their hands on the pillars, each protester had applied super glue (cyanoacrylate adhesive) to the palm of each hand.

Police and emergency service workers attended the scene of the Rotunda at approximately 2:25 PM. By this stage, the hands of each of the human fence protesters were firmly affixed to the pillars of the Rotunda by the super glue. Emergency service workers ascertained that police would not be able to forcibly remove the human fence protesters from the Rotunda without causing serious injury to the protesters' hands. Because of the inability to easily remove the human fence protesters, police were also unable to enforce the removal of the dome protesters.

At approximately 2:50 PM, as police and emergency service workers contemplated how to remove the protesters from the Rotunda, the pillars on the northern side of the Rotunda buckled without warning. Four of the pillars collapsed, leading to the partial collapse of the concrete roof. The dome protesters fell to the ground, with several suffering non-life-threatening injuries. Fragments of the concrete roof fell onto several of the human fence protesters below. A large piece of falling debris struck one of the protesters in the head and knocked her unconscious. Other protesters were struck by falling debris and suffered scrapes and bruising.

The protester who was knocked unconscious was eventually freed from the structure and taken to The Alfred hospital for treatment. She remained under observation until she was later discharged that night. The other human fence protesters were eventually freed from the debris by emergency service workers who used a chemical to dissolve the super glue from their hands so that they could safely be separated from the pillars.

Following the collapse of the roof of the Rotunda, only 3 of the 10 pillars were left completely intact with no noticeable damage. However, the other 7 pillars had been significantly damaged. More than 80% of the domed roof had fallen away. The City of Melbourne arranged for the damaged structure to be assessed by a team of engineers. The engineering team considered that the Rotunda had 'effectively been destroyed' and was beyond repair. The City of Melbourne subsequently removed the remnants of the Rotunda.

Many of the dome and human fence protesters have been identified and each charged with an offence under s 206 of the *Crimes Act 1985* (Vic), which provides:

206 Rioters demolishing buildings

- (1) Whosoever is one of any persons riotously and tumultuously assembled together to the disturbance of the public peace who unlawfully and with force demolish or pull down or destroy or begin to demolish pull down or destroy any church chapel meeting-house or other place of divine worship, or any house stable coach-house outhouse warehouse office shop mill malthouse hop-oast barn granary shed hovel or fold, or any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned belonging to the Queen or the Government of Victoria or to any municipal council or belonging to any university, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery (whether fixed or movable) prepared for or employed in any manufacture or any steam-engine or other engine for sinking working ventilating or draining any mine, or any staith building or erection used in conducting the business of any mine or any bridge waggon-way tramway trunk or shoot for conveying minerals from any mine, shall be guilty of an indictable offence, and shall be liable to level 4 imprisonment (15 years maximum).

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One of the protesters who has been charged is Davina LONGMAN, the president of CARE, who was one of the dome protesters. Her charge sheet and summons has been reproduced over the page.

FORM 3

Magistrates' Court Criminal Procedure Rules 2009

**Charge-Sheet and
Summons**

(Copy for the Accused)

To the Accused	Davina LONGMAN 7/22 Berry Close Clayton VIC 3168	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	Date of Birth 01/12/1997
	You have been charged with an offence. Read these pages to see what you must do.	Registration No.	State
		Licence No.	State

DETAILS OF THE CHARGE AGAINST YOU

What is the charge? (Description of offence)	1 [INSERT DRAFT CHARGE] <i>(YOUR ANSWER TO QUESTION 2)</i>		
Under what law?	<input checked="" type="checkbox"/> State <input checked="" type="checkbox"/> Act <input type="checkbox"/> Other-specify <input type="checkbox"/> C'wealth <input type="checkbox"/> Reg.	Act or Regulation No. <i>Crimes Act 6231/58</i>	Section or Clause (Full Ref.) 206(1)
Are there more charges?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – See Continuation of Charges attached		
Request for Committal Proceedings	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		
Type of offence	<input type="checkbox"/> Summary Offence (You should go to Court) <input checked="" type="checkbox"/> Indictable offence (You must go to Court)		
Who filed the charge-sheet(s)? (informant)	Kenneth WARING	Email: K.Waring@police.vic.gov.au	
Agency and Address	Caulfield Police Station 289 Hawthorn Road Malvern VIC 3162	Phone: (03) 9876 5432 Fax: (03) 1234 5678 Ref: PMZ4321/21	
Signature of Informant	<i>Kenneth Waring</i>	Date: 12 September 2019	

Charge filed at	MELBOURNE (Venue)	on	12 September 2019 (Date)
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WHERE WILL THE CASE BE HEARD

Where you must go	The Magistrates' Court of Victoria at MELBOURNE			
Address	233 William Street, Melbourne VIC 3000		Phone: (03) 9628 7777	
When	Time 10.00am	Day 31 st	Month OCTOBER	Year 2019

DETAILS ABOUT THIS SUMMONS

Issued at	Caulfield Police Station 289 Hawthorn Road Malvern VIC 3162	Date: 12 September 2019
Issued by (Signature)	<i>Kenneth Waring</i>	<input type="checkbox"/> Registrar <input type="checkbox"/> Magistrate <input type="checkbox"/> Public Official <input checked="" type="checkbox"/> Member of Police Force <input type="checkbox"/> Prescribed Person

For the purpose of answering further questions in Part A, assume the following additional facts:

- Each of the 14 Accused are now represented by different barristers.
- Samuel EDGES is 16 years old. His mother, Leonie EDGES, is one of the 14 Accused protesters. Leonie EDGES is the human fence protester who was knocked unconscious and taken to The Alfred. While Samuel attended the protest, he did not play an active role like his mother did. However, Samuel EDGES had attended the briefing of the protesters with his mother at the warehouse in Richmond earlier that morning.
- Samuel travelled with Leonie in the ambulance that took her to hospital after the collapse of the Rotunda. He was extremely upset by the whole incident. At The Alfred, police questioned him about the events while his mother was still unconscious (police did not consider him to be a suspect). He told police about the briefing given by Ms LONGMAN and how she had told everyone about the risk of the Rotunda collapsing. Police hand-wrote a statement for Samuel to sign at the hospital, which he did. At this point, Samuel was only too happy to sign the statement because he wanted those responsible for his mother's injuries to be held accountable.
- The matter has now proceeded to a committal hearing. Samuel EDGES' statement has been provided as part of the prosecution brief disclosed to all Accused.

QUESTION 9

Criminal Procedure: Several Accused (not including Samuel EDGES' mother) want Samuel EDGES to attend the committal hearing so that their barristers can question him about his observations of events that occurred at the Richmond warehouse. Explain the processes available to the Accused under the *Criminal Procedure Act 2009* (Vic) which can be applied to achieve this purpose, and whether Counsel for the Accused are likely to be permitted to question Samuel EDGES at the committal hearing. **[3 marks]**

Answer: _____

For the purpose of answering further questions in Part A, assume the following additional facts:

- The trial judge rules Samuel EDGES’ evidence and Richard TRUONG’s evidence admissible. Both witnesses will give evidence at trial that is largely consistent with what has been described above.
- The Accused, Davina LONGMAN, intends to give evidence following the close of the Prosecution’s case. She has instructed her Counsel that:
 - o The Richmond warehouse meeting took place, which she chaired. She spoke at the meeting but never said anything about the possibility of the Rotunda roof collapsing.
 - o She had no idea that the Rotunda roof might collapse.
 - o The whole purpose of the protest was to draw attention to climate change in a peaceful manner. There was never any intention to damage any property of the City of Melbourne. As one of the dome protesters, she was in absolute shock when the roof collapsed. It was completely unexpected. She regrets that the Rotunda roof collapsed and, with the benefit of hindsight, would have done things differently if she had realised the Rotunda would not have been able to carry the weight of the protesters.

QUESTION 13

Evidence: Explain the rule in *Browne v Dunn* and how it is likely to applied by the Prosecution and/or the Defence in this case. What could happen if the rule is breached? **[5 marks]**

Answer: _____

END OF PART A

PART B (Questions 16 to 28) – Candidates are required to answer ALL questions in Part B.

Refer to the facts in Part A. The following further facts relate to all questions in Part B.

Bernardo KOZ was one of the ‘human fence’ protesters. After the Rotunda roof collapsed, the pillar on which his right hand was affixed broke into 2 pieces. His hand was glued to the top half of that pillar. The top half fell to the ground and rolled away slightly from its original position. Mr KOZ’s hand was still stuck to it and, because his left hand remained affixed to the pillar that was still standing on the other side of him, the ‘pulling’ force of the rolling pillar resulted in his super-glued hands being pulled away from where they were affixed. The pain of the sheering forces was unbearable. He continued to scream out in agony. Many of the onlooking protesters became extremely distressed as a result of observing his pain. Emergency service workers attended to Mr KOZ and observed that a significant amount of blood was coming from his hands. A significant part of the skin had been torn away from the flesh of his hand that remain glued to the pillar.

St John ambulance paramedics administered methoxyflurane to Mr KOZ intravenously to ease his pain. They then applied an acetone concentrate liquid to dissolve the super glue. After about 10 minutes of dripping the acetone in between Mr KOZ’s hands and the pillars, his hands eventually came free. He was then transported to The Alfred. At the hospital, doctors performed surgery on both his hands to reattach skin that had partially come away from the flesh. Hospital staff administered tetracaine as the local anaesthetic.

While extremely rare (1 in 5000), there is a risk that tetracaine may produce an allergic reaction in patients to whom it is administered. Apart from Mr KOZ, in the last 2 years The Alfred has had 3 patients suffer the allergic reaction. In all of those cases, the allergic reaction followed from a situation where the patient had been admitted due to ‘super glue’ being stuck to their skin, first-response paramedics had administered methoxyflurane for pain relief, acetone was used to remove the glue, and tetracaine was subsequently administered to the patient at hospital. None of those occasions of allergic reaction resulted in any longer-term complications or the death of the patient.

Mr KOZ suffered an allergic reaction almost immediately after being administered the tetracaine. He suffered elevated blood pressure and an increased heart rate. While doctors were concerned, the symptoms of the reaction were only mild. He was discharged a few hours later.

Over the course of the next 2 weeks, Mr KOZ began to develop a rash, beginning at his hands. Over subsequent weeks, it spread up his arms. Mr KOZ grew concerned and saw a GP who referred him

back to The Alfred. Doctors at the Alfred examined Mr KOZ and advised him that it was simply an allergic reaction and that the rash will eventually ‘go away’. They did not perform any blood tests. Mr KOZ was told to go home.

Two days later Mr KOZ suffered a heart attack. He was not able to be resuscitated. A subsequent post-mortem examination revealed that, at the time of death, Mr KOZ had extremely high levels of an IgE antibody in his system which was the most likely trigger for the heart attack. The antibody was produced as a result of the tetracaine entering his system at The Alfred some 3 weeks earlier. The levels of the antibody continued to increase over that time to the point of the heart attack.

Sheila KOZ, in her capacity as executor of the estate of her deceased husband, has issued proceedings in the Supreme Court of Victoria on behalf of herself and her three children who are the beneficiaries under Mr KOZ’s will. Mrs KOZ (as Executor) is named as Plaintiff. She has named Alfred Health as Defendant. In her pleadings, she has alleged negligence (committed against Mr KOZ) where she relies on her statutory right to pursue such claims under the *Wrongs Act 1958* (Vic). She has also pleaded claims based in negligence for the psychiatric injuries that she and her children have suffered as a result of Mr KOZ’s death. She has alleged that Alfred Health is vicariously liable for the actions of its medical staff. The critical allegations in the claim include claims that:

- staff failed to inform Mr KOZ of the risk of an allergic reaction prior to administering the tetracaine;
- staff failed to effectively monitor and provide remedial treatment following the observations by medical staff of the immediate allergic reaction Mr KOZ suffered when he was originally treated for his hand injuries;
- staff failed to act with all due care when Mr KOZ presented himself at The Alfred 2 days prior to his death.

QUESTION 16

Civil Procedure:

Which of the following **TWO** propositions are most likely to be correct in this case?

Your answer:
(circle **TWO**)

- a) The proceedings will be commenced by Notice of Proceedings.
- b) The proceedings will be commenced by Originating Motion.
- c) The proceedings will be commenced by Writ.
- d) The filed claim will include a ‘arguable case’ certification.
- e) The filed claim will include a ‘no frivolous claim’ certification.
- f) The filed claim will include a ‘proper basis’ certification.

[2 marks]

QUESTION 17

<p>Civil Procedure:</p> <p><i>Your answers:</i> <i>(circle TWO)</i></p> <p>[2 marks]</p>	<p>Which TWO of the following are overarching obligations in civil proceedings, as set out in Part 2.3 of the <i>Civil Procedure Act 2010</i>?</p> <ul style="list-style-type: none">a) to maximise the number of claims/defences available.b) to act impartially.c) to act consistently.d) to co-operate with other parties in connection with the proceeding.e) to minimise litigation risk for all parties in the proceeding.f) to act honestly.
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QUESTION 18

Civil Procedure: Consider the following proposition:

In a criminal case, a valid charge alleging criminal negligence against a doctor may be expressed in as little as two or three lines. In a comparable civil proceeding, however, the pleaded and particularised allegations will span 20 to 30 pages.

To what extent is this likely to be true in Mrs KOZ’s civil claim? With reference to the rules relating to pleadings and particulars, explain what will need to be included in her statement of claim and the justification for requiring Mrs KOZ to provide that level of detail at the commencement of the civil proceeding. **[4 marks]**

Answer: _____

For the purpose of answering further questions in Part B, assume the following additional facts:

- There was no successful summary judgment application.
- There is likely to be a significant amount of evidence relevant to the determination of the factual issues in the upcoming civil trial that can be found in the police records relating to the criminal proceedings referred to in Part A above.

QUESTION 21

Civil Procedure: Explain the procedure(s) that may be invoked by the Plaintiff to obtain these police records. [3 marks]

Answer: _____

For the purpose of answering further questions in Part B, assume the following additional facts:

- The Plaintiff has obtained the relevant police records for use in the upcoming civil trial.
- There were 15 members of Victoria police who made written statements for the purposes of the criminal investigation that led to the charges being laid against the protesters. Each of these statements contains relevant evidence for the purposes of the civil claim brought by Mrs KOZ.

For the purpose of answering further questions in Part B, assume the following additional facts:

- Prior to trial, junior counsel briefed for the Defendant, Serina BROWN, had a conference with a senior administrative officer, Jared COLE, employed at The Alfred for the purposes of preparing their witness statements. In the course of the conference, Mr COLE let slip that there were significantly more patients that were likely to have suffered allergic reactions to tetracaine at The Alfred, other than the 3 which the Plaintiff’s lawyers were aware of. Upon further inquiry, Ms BROWN quickly came to the realisation that there were probably in excess of 10 additional patients who suffered similar allergic reactions within the last 5 years and that all of the relevant hospital records relating to those patients had been deliberately destroyed on Mr COLE’s instruction to ‘cover up’ the potential liability issues associated with Mrs KOZ’s claim.
- Ms BROWN was appalled at Mr COLE’s behaviour. At some point in the course of the conference, Ms BROWN activated her audio recording application on her computer without Mr COLE’s knowledge. She managed to get him to repeat a sufficient amount of information for the recording to demonstrate that Mr COLE had deliberately destroyed a significant amount of evidence that could potentially have been of significant assistance to the Plaintiff in the upcoming trial.
- The day after the conference, Ms BROWN returned the brief. She forwarded a digital copy of the audio recording to Counsel for the Plaintiff, which Counsel for the Plaintiff listened to immediately.

QUESTION 25

Ethics: Discuss the ethical implications arising out of this situation, in relation to both Ms BROWN, as well as for Counsel for the Plaintiff who has now listened to the recording. **[4 marks]**

Answer: _____

For the purposes of answering further questions in Part B, assume the following additional facts:

The matter was heard before a judge and jury. The jury returned a verdict in favour of the Plaintiff and awarded the sum of \$300,000.

Two weeks after the Defendant was served with the Plaintiff's statement of claim, the Defendant's solicitors wrote a letter to the Plaintiff's solicitors marked '*without prejudice save as to costs*', stating:

- The Defendant offered to pay \$400,000 to the Plaintiff in full and final settlement of its claim;
- The offer was open to be accepted for 10 days from the date of the letter;
- If the offer was accepted by the Plaintiff, the Defendant would pay the sum of \$400,000 within 30 days from the date of acceptance.

The Plaintiff did not respond to the letter within the 10-day time frame.

QUESTION 28

Civil Procedure: What is an 'offer of compromise'? Is the Defendant's letter such an offer? Explain with reference to the *Supreme Court (Civil Procedure) Rules 2015* and the significance of the Plaintiff's failure to respond to the letter. **[4 marks]**

Answer: _____

