

2019 Mock Trial 2nd Elimination Round Magistrate Script

INDEX

POULTER V MCMAHON

This is a civil case in which the Plaintiff claims damages against the Defendant based on a negligent breach of the Companion Animal Act. The purpose of this trial is to determine the question of liability and damages shall be determined at a later date.

The Plaintiff will receive the following:

1. Legal Notes
2. Cases
3. Statement of Claim
4. Defence Statement of Claim
5. Affidavit of Sam/Samantha Poulter
6. Affidavit of Bob/Betty Potts

The Defence will receive the following:

1. Legal Notes
2. Cases
3. Statement of Claim
4. Defence Statement of Claim
5. Affidavit of Frank/Fran McMahon
6. Affidavit of Ali/Alison Prigan

2019 Mock Trial 2nd Elimination Round – Magistrate Script

LEGAL NOTES

This case concerns an action by the Plaintiff against the Defendant for personal injury in circumstances where the Plaintiff was injured due to a bike accident caused by an attack by the Defendant's dog, while on public property.

This trial is to determine the question of liability only. The issue of the quantum of damages will be determined at a later date.

The general law in relation to personal injury claims requires that the usual elements of the tort of negligence be proven. The basic elements of a negligence action are:

1. Duty of Care
2. Breach
3. Causation
4. Damage

In most negligence actions, the issues in dispute commonly involve a determination of (3) and (4). Namely, whether there is a causal link between the Defendant's breach of duty, and the damage or injury incurred by the Plaintiff.

This is a civil matter and as such the Plaintiff must prove his/her case on the **balance of probabilities**. The standard of proof in civil proceedings is set out in section 140 of the *Evidence Act 1995*, which provides: "(1) In a civil proceeding, the Court must find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities."

COMPANION ANIMALS ACT 1998 - SECT 16

Offences where dog attacks person or animal
16 Offences where dog attacks person or animal

(1) If a dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not any injury is caused to the person or animal:

- (a) the owner of the dog, or
- (b) if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the dog at that time-that other person,

is guilty of an offence.

Maximum penalty:

- (a) 50 penalty units except in the case of a dangerous or restricted dog, or

2019 Mock Trial 2nd Elimination Round – Magistrate Script

(b) 300 penalty units in the case of a dangerous or restricted dog.

(1A) The owner of a dangerous dog or a restricted dog is guilty of an offence if:

- (a) the dog attacks or bites any person (whether or not any injury is caused to the person), and
- (b) the incident occurs as a result of the owner's failure to comply with any one or more of the requirements of section 51 or 56 (as the case requires) in relation to the dog.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

(2) It is not an offence under this section if the incident occurred:

- (a) as a result of the dog being teased, mistreated, attacked or otherwise provoked, or
- (b) as a result of the person or animal trespassing on the property on which the dog was being kept, or
- (c) as a result of the dog acting in reasonable defence of a person or property, or
- (d) in the course of lawful hunting, or
- (e) in the course of the working of stock by the dog or the training of the dog in the working of stock.

COMPANION ANIMALS ACT 1998 - SECT 12A

Preventing dog from escaping

12A Preventing dog from escaping

(1) The owner of a dog must take all reasonable precautions to prevent the dog from escaping from the property on which it is being kept.

Maximum penalty:

- (a) 8 penalty units except in the case of a dangerous or restricted dog, or
- (b) 50 penalty units in the case of a dangerous or restricted dog.

(2) For the purposes of subsection (1), "owner" of a dog includes the person who is for the time being in charge of the dog.

2019 Mock Trial 2nd Elimination Round – Magistrate Script

CASES

ELLIOTT & ANOR v ANDREW [2009] SADC 31 (27 March 2009)

The plaintiff Dale Ross Elliott suffered serious personal injury on 26 December 2002 when he came off a motorcycle on Virgo Road at Waikerie. The Statement of Claim alleges that Dale Elliott was riding a motorcycle in a westerly direction towards the property of the defendant Mrs Andrew when at a point adjacent to the property he was confronted by the presence of a black and white border collie "Foster" running across Virgo Road and was required to take "immediate evasive action in order to avoid the black and white border collie dog ". It is alleged that "in the course of taking the evasive action... the plaintiff lost control of the motorcycle, fell onto the roadway and sustained serious injuries including paraplegia".

Mrs Andrew is the owner of a black and white border collie named Foster. In her Defence Mrs Andrew says "that at all material times her dog Foster was on her property in her immediate vicinity". She denies that Foster was involved in causing Mr Elliott to lose control of his motorcycle and alleges, in the alternative, that if a dog was involved in causing the plaintiff to take evasive action, Mr Elliott was guilty of negligence causing the occurrence of loss of control of his motorcycle and both plaintiffs should have their damages reduced in accordance with the provisions of s 66(4) of the Dog and Cat Management Act 1995. In particular the Defence alleges that Mr Elliott drove the motorcycle at excessive speed.

EADIE V GROOMBRIDGE (1992) 16 MVR 263

A German Shepherd escaped from the defendant's yard. The dog chased a motorcycle, causing a collision whereby the cyclist suffered serious injuries while the dog was killed. The dog had escaped through a gate, which was left partly open. The owner was found to be negligent because he did not have a self-closing mechanism such as a spring hinge to ensure the gate remained closed.

CRUMP V SHARAH [1999] NSWSC 884

The plaintiff was riding her horse when two dogs came out barking and started to nip at the hocks of the horse which veered across the road and bucked, throwing the plaintiff to the ground hitting her head and breaking her left collar bone. Davies AJ concluded that actual contact was not necessary to establish an attack. It was sufficient that the dogs joined in barking at the horse and one of them, at least, had nipped at its hocks. His Honour also concluded that a wounding directly inflicted by a dog was not necessary to invoke the forerunner to the current statutory provision; an injury suffered by a person as a result of an act of aggression by a dog was sufficient.

2019 Mock Trial 2nd Elimination Round – Magistrate Script

STATEMENT OF CLAIM

COURT DETAILS

Court	DISTRICT COURT
#Division	GENERAL
#List	CIVIL
#Registry	DOWNING CENTRE
#Case Number	ITHELRL/2019

TITLE OF PROCEEDINGS

Plaintiff	SAM/SAMANTHA POULTER
Defendant	FRANK/FRAN MCMAHON

FILING DETAILS

Filed for	PLAINTIFF
Legal Representative	K HUNTER
#Legal Representative Reference	LREP19
Contact name and telephone	GOLDENBERG LAWYERS Ph. 02 9584 5589

TYPE OF CLAIM

TORTS - NEGLIGENCE

RELIEF CLAIMED

1. \$200 000 Damages
2. Cost of and incidental to the Plaintiff's action

PLEADINGS AND PARTICULARS

1. That on 22nd June 2019 at approximately 4pm the Plaintiff was riding his/her bicycle along Dolphin St, Pittwater.
2. The defendant is the responsible owner of black Doberman known as Mason.
3. The Plaintiff was midway down the street when Mason, caused the Plaintiff to fall off his/her bike, with the Plaintiff suffering injuries due to this fall.

2019 Mock Trial 2nd Elimination Round – Magistrate Script

4. The injury loss and damage sustained by the Plaintiff was caused by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

5. (a) The defendant failed to take reasonable precautions to prevent his/her dog from escaping as per Section 12A of the Companion Animals Act.
(b) the defendant was aware, or ought to have been aware, of required maintenance on the fence, the height of the fence and reasonableness of conducting repairs.
(c) thereby exposing the Plaintiff to a foreseeable and significant risk of injury which could have been avoided by reasonable care on the part of the defendant.

PARTICULARS OF INJURIES

6. (a) Psychological shock
(b) Broken Wrist
(c) Cuts and Bruises

SIGNATURE OF LEGAL REPRESENTATIVE

I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	K HUNTER
Capacity	Solicitor on Record
Date of Signature	8 July 2019

REGISTRY ADDRESS

Street Address Downing Centre, Sydney CBD

2019 Mock Trial 2nd Elimination Round – Magistrate Script

Postal Address 143-147 Liverpool St, Sydney NSW 2000
Telephone 1300 679 272

AFFIDAVIT VERIFYING

Name: SAM/SAMANTHA POULTER
Address: 67 Daffodil Lane, Pittwater
Occupation: Student, Part Time Employee for Uber Eats
Date: 8 July 2019

I say on oath that:

1. I am the plaintiff
2. I believe that the allegations of fact in the statement of claim are true

SWORN at SYDNEY
Signature
Signature of witness K HUNTER
Name of Witness Katrina Hunter
Address of Witness 489 Castlereagh Street, Sydney
Capacity of Witness Solicitor

FURTHER DETAILS ABOUT THE PLAINTIFF

Name SAM/SAMANTHA POULTER
Address 67 Daffodil Lane
Pittwater NSW 2097

Legal Representative for the Plaintiff

Name K HUNTER
Practising Certificate Number 155846
Firm Goldenberg Lawyers
Address 489 Castlereagh Street
SYDNEY NSW 2000

DX address 1234 SYD



2019 Mock Trial 2nd Elimination Round – Magistrate Script

Telephone 02 9584 2564
Fax 02 9584 2555
Email khunter@goldernburgelawyers.com.au

DETAILS ABOUT DEFENDANTS

Name FRANK/FRAN MCMAHON
Address 49 Dolphin Street
Pittwater NSW 2097

2019 Mock Trial 2nd Elimination Round – Magistrate Script

DEFENCE TO STATEMENT OF CLAIM

COURT DETAILS

Court	DISTRICT COURT
#Division	GENERAL
#List	CIVIL
#Registry	DOWNING CENTRE
#Case Number	ITHEL/2019

TITLE OF PROCEEDINGS

Plaintiff	SAM/SAMANTHA POULTER
Defendant	FRANK/FRAN MCMAHON

FILING DETAILS

Filed for	Defendant
Legal Representative	P QUINNE
Legal representative reference	LRER12
Contact Name	HILL & BRAG ASSOCIATES
Telephone	02 9587 4569

PLEADINGS AND PARTICULARS

1. The Defendant admits paragraph 2 of the Plaintiff's Statement of Claim
2. The Defendant denies the contents of paragraphs 3, 4, 5 of the Plaintiffs Statement of Claim
3. The Defendant does not know and cannot admit paragraph 1 of the Plaintiff's Statement of Claim
4. The Defendant denies the Plaintiffs entitlement to costs and damages

SIGNATURE OF LEGAL REPRESENTATIVE

This defence does not require a certificate under section 347 of the Legal Profession Act 2004.

2019 Mock Trial 2nd Elimination Round – Magistrate Script

I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success

Signature P QUINNE
Capacity Solicitor on Record
Date of Signature 12 July 2019

AFFIDAVIT VERIFYING

Name FRANK/FRAN MCMAHON
Address 49 DOLPHIN STREET PITTWATER NSW 2097
Occupation ELECTRICIAN
Date 12 July 2019

I FRANK/FRAN MCMAHON affirm that:

1. I am the defendant
2. I believe that the allegations of fact contained in the defence are true
3. I believe that the allegations of fact that are denied in the defence are untrue
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

AFFIRMED at

Signature of deponent
Signature of witness P QUINN
Name of Witness Peter Quinn
Address of Witness Lvl 3, 68 Pendalino Ave, Mosman
Capacity of Witness Solicitor

FURTHER DETAILS ABOUT FILING PARTY

FILING PARTY

Name FRANK/FRAN MCMAHON
Address 49 DOLPHIN STREET PITTWATER NSW 2097

Legal Representative for filing party

Name P QUINN

MockTrial

THE LAW SOCIETY OF NSW



THE UNIVERSITY OF
SYDNEY



THE LAW SOCIETY
OF NEW SOUTH WALES

2019 Mock Trial 2nd Elimination Round – Magistrate Script

Practicing Cert. No.	55891
Firm	Hill & Brag Associates Lvl 3, 68 Pentalino Ave, Mosman
DX Address	1365 Mosman
Telephone	02 9587 4569
Fax	02 9587 4568
Email	quinnep@hillbragassociates.com.au



2019 Mock Trial

2nd Elimination Round – Magistrate Script

AFFIDAVIT OF PLAINTIFF SAM/SAMANTHA POULTER

Address: 67 Daffodil Lane, Pittwater

Occupation: Student, Part Time Employee for Uber Eats

Date: 8 July 2019

1. My name is Sam/Samantha Poulter and I am the plaintiff.
2. I was born on 3 February 1999 and am 20 years of age. I am a student currently studying accounting and I also work part time as a delivery worker for Uber Eats.
3. On 22 June at approximately 4pm, I was riding my bike home. As I can't afford a car, I ride my bike everywhere, and usually take the same route on my way home.
4. I was approximately half way down Dolphin Street, when suddenly a large black Doberman came running out at me.
5. As I ride along this particular road almost every day, I was aware of the dog, known as Mason who often roamed the street. Mason generally will chase me down the road barking and growling.
6. On the day in question, Mason came running out barking and growling, however he seemed more aggressive than normal and he started to bite at my back wheel.
7. Mason managed to knock my back wheel which caused me to fall off my bike.
8. I came off the bike quite heavily and once on the ground Mason continued to try and bite me, thankfully a neighbour came out and chased him away with a broom.
9. I was taken to hospital by ambulance and treated for a broken wrist and numerous cuts and bruises.
10. Since the accident I have been unable to ride my bike. This is a major problem as I rely on my bike not only for transport since I don't own a car, but also as a source of income as an Uber Eats delivery worker.
11. The doctor has said the bones have not healed correctly and I may need further operations to correct this, meaning I will be unable to ride my bike for quite some time.
12. I have also developed a huge fear of dogs and become quite agitated and nervous around them.

2019 Mock Trial

2nd Elimination Round – Magistrate Script

AFFIDAVIT OF PLAINTIFF BOB/BETTY POTTS

Address: 47 Dolphin Street, Pittwater NSW 2097

Occupation: Retired

Date: 8 July 2019

1. My full name is Bob/Betty Potts and I am retired.
2. On 22 June I was sitting in my lounge room watching TV, I remember it was around 4pm as I was waiting for the afternoon news to start.
3. I heard Mason the dog from next door barking loudly, as usual. I also heard someone yelling at him. I went outside to have a look and I saw Mason chasing a man/women on a bike.
4. The bike rider, who I now know as Sam/Samantha Poulter, came off his/her bike and I saw Mason trying to attack, so I ran over and chased the dog with a broom.
5. Sam/Samantha had been quite badly hurt so I called an ambulance.
6. I saw Masons owner, my neighbour Frank/Fran McMahon later on that day and I told him/her that Mason had once again gotten out of the yard, and this time had hurt someone. Frank/Fran told me to mind my own business.
7. Mason is always getting out of the yard and chasing people down the road, and I often tell Frank/Fran that the fence is not adequate enough to keep a large dog, and even more so when the gate is never shut. I have told Frank/Fran I will report Mason to the council if he/she does not fix the fence and keep the gate closed. Frank/Fran ignores all my complaints.
8. Frank/Fran does not look after Mason very well and I think Mason barks and tries to run away as he is bored.
9. I only wish I had complained to the council as then Frank/Fran may have fixed the fence and the accident never would have happened.

2019 Mock Trial 2nd Elimination Round – Magistrate Script

AFFIDAVIT OF DEFENCE FRANK/FRAN MCMAHON

Address: 49 Dolphin St, Pittwater NSW

Occupation: Electrician

Date: 12 July 2019

1. My name is Frank/Fran McMahon, I am an electrician and I live in Dolphin Street, Pittwater.
2. I own a 5-year-old Doberman dog called Mason. Mason is a very well trained friendly dog.
3. I have owned Mason for approximately 2 years and was given him by my friend Ali/Alison. Ali/Alison bought Mason to act as a guard dog at his/her business, but Mason was too friendly and did not deter the vandals Ali/Alison was trying to deter.
4. My job keeps me very busy, however I am always home by 5pm to give me time to take Mason for a run. I am a very responsible pet owner and always make sure Mason has enough food and exercise.
5. I have lived in Dolphin Street for 10 years and up until recently it had been a nice quiet street.
6. Lately however there has been a number of cyclists who have started using our quiet little street as a short cut and occasional race track. They ride extremely fast down the middle of the road, yelling and screaming and generally disturbing the peace.
7. There have been a couple of accidents where riders have fallen off their bikes because they are going so fast. I have often thought that it was only a matter of time before someone gets seriously hurt.
8. All of the cyclist yelling and screaming have not only disrupted our once quiet street, but have also upset Mason. Mason rarely used to bark, however now he often barks at the riders, especially those who come very close to our fence. Thankfully, due to his excellent nature, barking is all Mason does.
9. My neighbour Bob/Betty Potts is always complaining that Mason is barking all day. I told him/her that he is only barking at the cyclists and that he/she should complain to the police about how dangerous the cyclist are.
10. When Bob/Betty told me Mason had been responsible for a cyclist falling from his/her bike, I told him/her that it was not possible. Mason is a good natured dog and would never attack anyone. He never even leaves the yard unless I am with him. I told Bob/Betty that the reason the cyclist fell is more likely to be because they were riding too fast and not because of Mason.
11. I have no idea why Mason is being blamed as the cause of the accident.

2019 Mock Trial

2nd Elimination Round – Magistrate Script

AFFIDAVIT OF DEFENCE ALI/ALISON PRIGAN

Address: 68 Waterside Cres, Manly NSW 2094

Occupation: Car Yard Owner

Date: 12 July 2019

1. My name is Ali/Alison Prigan and I am the owner of Reliable Used Cars.
2. My car yard is often broken into on a regular basis by vandals who like to spray paint graffiti on my cars. This is expensive to repair, so I decided to buy a dog to deter the vandals.
3. I purchased a Doberman and hoped that this would help solve my problem. Unfortunately, the dog I bought, who I named Mason, turned out to be a very good natured dog who loved being with people. This meant that when the vandals break in, Mason greets them with a wagging tail, happy to have friends to play with.
4. I have known Frank/Fran McMahon for 10 years and one day when we were catching up, he/she mentioned that he/she was thinking of getting a dog.
5. As Mason was proving to be a useless guard dog, and I needed to get rid of him, I offered him to Frank/Fran, who gratefully accepted.
6. I was relieved Frank/Fran took Mason, as Frank/Fran is a great person and a real animal lover. I knew he/she would look after Mason really well.
7. I often visit Frank/Fran at his/her place and Mason seems to be really happy. I was quite surprised the last time I was visiting when I heard Mason barking, especially as I had never Mason bark before.
8. When I went outside to see what Mason was barking at, I saw some cyclist riding really fast down the road. I said to Frank/Fran that they were really being very dangerous riding in the middle of the road. I then noticed one of the cyclist ride really close to the fence and run a stick along the fence rails. This made a really loud noise and caused Mason to bark loudly. At no stage did Mason do anything other than bark.
9. I suggested to Frank/Fran that he/she contact the Police and tell them about the dangerous riding of the cyclist before one of them had an accident.
10. When Frank/Fran told me Mason was being blamed for causing an accident I was shocked. Mason is a quiet, good natured dog who would never hurt anyone.