

## **FACT SITUATION:**

### **The Incident:**

At around 6:00 p.m. on March 9, 2009, Martin Horton and Tim Brier were playing curling at the Hurry Hard Curling Rink in Edmonton, Alberta. They had just finished a game and had decided to stay on the ice for some extra practice. The men were clearing the stones from the house by pushing them to the side of the rink with their feet. Martin said something to Tim, and Tim turned around quickly to ask Martin what he'd said. As he spun around, Tim accidentally hit Martin in the back of the head with his broom. Martin stumbled and tripped over a curling stone. He fell forward, hitting his head on a metal bench which was situated on the narrow pathway just off the end of the ice.

At the time of the Incident:

- the Hurry Hard Curling Rink was owned by an Alberta corporation registered as "HHCR Ltd";
- corporate registry documents listed Roger Rings as its sole director and shareholder of HHCR Ltd.;
- the corporation had contracted the daily management and operation of the curling rink to Billy Brooms;
- Billy Brooms ran his business as a sole proprietorship under the name of "Brooms Management Services";
- Tim Brier was 18 years old.

Tim Brier's mother usually calls him "Timmy", his friends usually call him "Tim" and he has all of his bank accounts and credit cards under the name "Timothy J. Brier."

### **Consequences of the Incident:**

Martin suffered a serious and debilitating head injury as a result of the Incident. He wants to sue Tim Brier, the owner of the Hurry Hard Curling Rink, and the operator of the Hurry Hard Curling Rink to recover \$100,000 in general damages and \$500,000 in special damages (including expenses already incurred plus future cost of care and future loss of income).

**FOR QUESTIONS 1-4 ONLY, ASSUME THAT MARTIN HORTON WAS BORN ON AUGUST 1, 1992.**

**VALUE      QUESTION 1:**

2 Marks      If Martin wants to sue Tim Brier in negligence, by what date does he have to commence legal proceedings? Fully explain your answer.

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**VALUE      QUESTION 2:**

2 Marks      Martin wants to start his lawsuit right away. Martin has heard that he needs a 'legal representative' in order to commence the action. What purpose is served by a legal representative and why does Martin need one?

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**VALUE**

**QUESTION 3:**

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Martin's mother, Hannah Horton, is willing to serve as Martin's Legal Representative. What, if anything, must Hannah do in order to officially assume this role?

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**VALUE**

**QUESTION 4:**

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If Hannah Horton takes on the role of Martin's Legal Representative, how will Martin be named as a Plaintiff in the style of cause for this lawsuit?

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**VALUE QUESTION 5:**

1 Mark Check the most correct statement:

- In order to commence an action so as to satisfy the requirements of the *Limitations Act*, a Statement of Claim must be filed at the courthouse.
- In order to commence an action so as to satisfy the requirements of the *Limitations Act*, a Statement of Claim must be filed at the courthouse and served on the named defendants.

**VALUE QUESTION 6:**

1 Mark How should the owner of the rink be named in the style of cause for this lawsuit?

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**VALUE QUESTION 7 :**

1 Mark How should the manager / operator be named in the style of cause for this lawsuit?

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**VALUE QUESTION 8:**

1 Mark How should Tim Brier be named in the style of cause for this lawsuit?

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**FOR THE REMAINING QUESTIONS IN THIS EXAM, ASSUME THAT ANGELA ATTORNEY HAS BEEN RETAINED AS LEGAL COUNSEL FOR MARTIN HORTON.**

**VALUE QUESTION 9:**

1 Mark Assume that no pleadings have yet been filed in respect of this action. How does Angela Attorney become counsel of record for Martin?

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**VALUE QUESTION 10:**

1 Mark Assume that a Statement of Claim has already been filed on Martin's behalf by Larry Lawyer. Martin now wishes Angela to take over his case. How does Angela become counsel of record for Martin?

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**VALUE QUESTION 11:**

1 Mark What is the purpose of an "address for service"?

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**VALUE**

**QUESTION 14:**

2 Marks

How would your answer to Question 13 change, if at all, if Martin's death was caused by the injuries he suffered in the Incident?

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**VALUE**

**QUESTION 15:**

2 Marks

Assume that Angela files the Statement of Claim on Martin's behalf. Which of the following would constitute proper service of the Statement of Claim on Tim Brier, assuming that, at the time Angela is effecting service, Tim is living in Vancouver, British Columbia: [check the correct answer(s)]

- After asking Tim to identify himself, a process server hands Tim the document while Tim is visiting the Vancouver aquarium.
- A courier slides the document under the door of Tim's house.
- Martin Horton hands Tim the document when Martin sees Tim at a curling event in Edmonton.
- Angela's secretary sends the document to Tim by email.

**VALUE**

**QUESTION 16:**

3 Marks

Assume that, after filing the Statement of Claim on Martin's behalf on April 1, 2009, Angela has trouble locating Tim for the purpose of serving the Statement of Claim. She speaks with Tim's sister, Dawn, who informs Angela that Tim has embarked on a solo, year long adventure hike through the Rocky Mountains. His plan is to call Dawn once a month to let her know that he is okay. He is expected to return to Edmonton on April 5, 2010. Identify 3 options Angela has for dealing with service of the Statement of Claim in light of Dawn's comments.

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2. \_\_\_\_\_

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3. \_\_\_\_\_

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**VALUE**

**QUESTION 17:**

3 Marks

Which of the options identified in your answer to QUESTION 16 should Angela pursue first and why?

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**FOR THE REMAINING QUESTIONS IN THE EXAM, ASSUME THAT:**

- **ANGELA ATTORNEY FILED A STATEMENT OF CLAIM ON BEHALF OF MARTIN HORTON ON APRIL 1, 2009**
- **THE DEFENDANTS IN THE ACTION ARE TIM BRIER, THE OWNER OF THE HURRY HARD CURLING RINK (“HH”), AND THE OPERATOR OF THE HURRY HARD CULRING RINK (“BROOMS”)**
- **TIM BRIER’S LAWYER IS BARRIE BARRISTER**
- **HH’S LAWYER IS SAM SOLICITOR**
- **BROOM’S LAWYER IS EDNA ESQUIRE**

**VALUE      QUESTION 18:**

3 Marks      In order to establish liability against HH, Angela must prove that HH was the owner of the Hurry Hard Curling Rink at the time of the Incident. Describe 3 ways that Angela might try to obtain an admission of this fact from HH before trial.

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**VALUE      QUESTION 19:**

Assume that, on April 2, 2009, Angela Attorney serves the Statement of Claim on HH. On April 5, 2009, she receives a phone call from Sam Solicitor. Sam asks Angela to refrain from taking any step against his client until May 30, 2009.

1 Mark (a) What “step” is Barrie referring to?

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2 Marks (b) What response should Angela give to this request and why?

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2 Marks (c) Assume that Angela refuses Sam’s request. What options are now available to Sam to protect his client’s interests?

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**VALUE QUESTION 20:**

Assume that Angela Attorney effects proper service of the Statement of Claim on each defendant. What is the best step for Angela to take in

response to:

- 1 Mark (a) A Statement of Defence filed by Barrie Barrister denying that Tim was responsible for Martin Horton's injuries and stating that: "This lawsuit shows what a poor friend Martin Horton is", "Martin Horton is a bad, bad man", and "Martin Horton is the worst curling skip ever."

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- 1 Mark (b) Sam Solicitor files a Statement of Defence and Counter-claim on behalf of HH. The Counter-claim alleges that Tim Brier and Martin Horton owe HH \$5000 in unpaid fees for using the Hurry Hard Curling Rink over the 2008-2009 curling season.

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1 Mark (c) Edna Esquire files a Statement of Defence on behalf of BROOMS. The defence denies all allegations in the Statement of Claim and, without any elaboration, states that: "The incident did not occur the way it is described in the commencement pleading" and "Martin Horton was the author of his own misfortune."

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**VALUE QUESTION 21:**

Angela Attorney is preparing an Affidavit of Records. She asks Martin to provide her with all of the records he has which may relate to this matter.

1 Mark (a) What test should Angela apply for determining which records to list in the Affidavit?

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1 Mark (b) Who should be the deponent of the Affidavit?

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**VALUE QUESTION 22:**

6 Marks

Below is the list of the records which Angela has determined SHOULD be included in the Affidavit of Records. For each record, indicate whether Angela should list this record in the schedule of privileged records ("PRIV") or in the schedule of producible records ("PROD"). For each document that you identify as privileged, state the grounds for the privilege claim.

- an opinion letter prepared for Martin by a student at SLS assessing the likelihood of him succeeding in this claim

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- pharmacy receipts pertaining to medications purchased by Martin since the Incident

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- a letter which Martin wrote to his mother two weeks after the Incident, advising her of his medical condition

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- photographs of Martin and Tim taken during the curling match which took place at the Hurry Hard Curling Rink just before the Incident, with the site of the Incident clearly shown in the photographs
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- a video recording of the Incident site which Angela took after being retained by Martin
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- a copy of a demand letter which Martin sent to HH prior to retaining Angela's services. In the letter, Martin states that he plans to commence legal action but will refrain from doing so if the owner of the rink pays him \$100,000 as compensation for his injuries
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**VALUE QUESTION 23:**

2 Marks Barrie Barrister (counsel for Tim Brier) wants to have an application put “on the list” for April 30, 2009. What does “on the list” mean and what step(s) must Barrie take to get his application put “on the list”?

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**VALUE QUESTION 24:**

What evidence (both in terms of form and content) should Barrie Barrister bring to a chambers application which he has initiated if:

2 Marks (a) the application is to strike out the commencement document on the grounds that it discloses no cause of action

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2 Marks (b) the application is for Summary Judgment

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2 Marks (c) the application is to strike out the action for delay

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2 Marks (d) the application is for Security for Costs

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**VALUE QUESTION 25:**

2 Marks Assume that Barrie Barrister is unsuccessful in his chambers application. Under what circumstances would Barrie be entitled to apply for a re-hearing of the application instead of having to appeal the chambers ruling?

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**VALUE**

**QUESTION 26:**

2 Marks

Assume that Barrie is seeking the following relief in his Chambers application:

“An Order requiring the Plaintiff to provide answers to undertakings by June 3, 2009, failing which the Plaintiff will be held to be in civil contempt without further Order of this court.”

Should Barrie make his application in Master’s Chambers or in Justice Chambers? Why?

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**FOR THE REMAINING QUESTIONS IN THE EXAM, ASSUME THAT, IN ADDITION TO THE STATEMENT OF CLAIM FILED ON BEHALF OF MARTIN HORTON AND A STATEMENT OF DEFENCE FILED ON BEHALF OF EACH DEFENDANT:**

- **HH HAS FILED A THIRD PARTY NOTICE AGAINST BROOMS, ALLEGING NEGLIGENCE AND BREACH OF CONTRACT;**

**AND**

- **TIM BRIER HAS FILED A NOTICE TO CO-DEFENDANT AGAINST HH AND BROOMS.**

**VALUE QUESTION 27:**

3 Marks

Which of the following people are entitled, under the Rules of Court, to conduct oral questioning (Examination for Discovery) of Billy Brooms?

- Angela Attorney (counsel for Martin Horton)
- Barrie Barrister (counsel for Tim Brier)
- Sam Solicitor (counsel for HH)

**VALUE QUESTION 28:**

3 Marks

What pleading(s), if any, should Edna Esquire (counsel for BROOMS) file in order to fully protect BROOM's interests?

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**VALUE QUESTION 29:**

1 Mark (a) Assume that Angela Attorney wants to conduct oral questioning (Examination for Discovery) of Tim Brier. What is the first step Angela should take to secure the attendance of Tim Brier at oral questioning ?

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1 Mark (b) What is the next step Angela should take if the step you described in question (a) doesn't work?

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**VALUE QUESTION 30:**

4 Marks

When conducting oral questioning (Examination for Discovery) of Tim Brier, Angela Attorney asks the following questions. Place an “X” next to the questions which Barrie Barrister (Tim’s counsel) should object to Tim answering. For questions you mark with an “X”, state the basis of the objection.

- “Do you have a valid driver’s license at the present time?”

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- “Did your lawyer give you any special instructions about today’s Examination for Discovery?”

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- “Who do you think bears the most responsibility for Martin’s injury?”

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- “How could you be so stupid as to hit Martin in the head with your broom?”

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**VALUE QUESTION 31:**

2 Marks (a) Under what circumstances, if any, would Angela Attorney entitled to conduct oral questioning (Examination for Discovery) of Ivan Iceman, an employee of HH?

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2 Marks (b) Under what circumstances, if any, would Sam Solicitor (counsel for HH) be permitted to read in at trial evidence from the transcript of Angela Attorney's questioning of Ivan Iceman?

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2 Marks (c) Assume that Angela Attorney conducts an oral questioning (Examination for Discovery) of Ivan Iceman. During questioning, Ivan admits that HH never took any steps to warn patrons about the

dangers involved in using a curling rink. Under what circumstances, if any, can Angela rely on this statement as an admission made by HH?

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**VALUE QUESTION 32**

3 Marks When can counsel for the defendants in this action expect to see the expert reports which Angela Attorney intends to rely on at trial? Fully explain your answer.

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**VALUE QUESTION 33:**

3 Marks Describe the difference between the use which may be made of the transcript of evidence obtained at an Examination on Affidavit and evidence obtained at an oral questioning (Examination for Discovery).



**VALUE**

**QUESTION 34:**

2 Marks

Assume that Martin Horton has instructed Angela to try to resolve this lawsuit prior to trial. Angela knows that two methods she could use to try to achieve a settlement under the Rules of Court are the Judicial Dispute Resolution process or by means of a Formal Offer of Settlement. What are the main factors which Angela must consider in determining which of these approaches to take?

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**VALUE QUESTION 35:**

2 Marks

Assume that, except for Barrie Barrister (Tim Brier's counsel), the lawyers for all of the parties in this action agree that the matter is ready to go to trial. Barrie thinks that a final, follow-up oral questioning of Martin Horton on the current status of his personal injury is required before trial is scheduled. Can the matter be set down for trial despite Barrie's objection? Fully explain your answer.

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**VALUE QUESTION 36:**

2 Marks

What is the difference between an order and a judgment?

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**VALUE QUESTION 37:**

2 Marks      Why is it necessary or beneficial to have a judgment entered?

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**VALUE      QUESTION 38:**

1 Mark      Assume that Martin instructs Angela to withdraw his claim prior to trial. Can this be done and, if so, what are the consequences to Martin, if any?

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**VALUE QUESTION 39:**

2 Mark Assume that Martin Horton’s lawsuit goes to trial and that Angela Attorney serves as Martin Horton’s counsel from the time of the Incident to the end of trial. List two occasions during this lawsuit when you would expect Angela Attorney to have made use of her law firm’s Limitation Diary system.

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**VALUE QUESTION 40:**

1 Mark What is a “Bill of Costs”?

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