



NATIONAL COMMITTEE ON ACCREDITATION

SAMPLE EXAMINATION

ONTARIO CIVIL PROCEDURE

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Instructions

Answer in complete sentences, paying careful regard to the particular instructions provided.

Support your answers and reasoning by reference to any relevant Rules of Civil Procedure and case law.

The examination is 3 hours in length and consists of 4 questions of unequal value and is 4 pages in length.

This is an open book examination. You may bring into the examination and consult any materials with the exception of you own personal handwritten or typed notes.

The examination will be marked on a pass/fail basis.

**YOU MUST RETURN THIS EXAM WITH YOUR ANSWERS.
FAILURE TO DO SO WILL RESULT IN AN AUTOMATIC FAILURE.**



EXAMINATION IN ONTARIO CIVIL PROCEDURE

QUESTION 1 - 40 marks

Hackey Marine Inc. is a New York Corporation that carries on business in the village of Clayton, which is located in the Thousand Islands region of New York State. The Corporation carries on business under the trade name 'Boats by Hackey'.

Many of Hackey's customers live in Ontario which is a short distance from Clayton across the eastern end of Lake Ontario.

Susan Summer lives in Kingston, Ontario, and has been a customer of Hackey's for over ten years. Summer purchased her most recent power boat from Hackey in the spring of 2008 and, under an installment contract, still owes Hackey \$22,000 (Canadian funds) which was due and payable on March 15, 2009. In addition, the boat was serviced by Hackey and stored over the winter of 2008/2009 at Hackey's storage facility in Clayton where the engine was overhauled and prepared for the 2009 summer season.

On April 1, 2009, Susan and her sixteen year old son, Tom, drove to Clayton to pick up the boat. Hackey reminded Susan that the balance of the purchase price was overdue and Susan promised to forward a cheque to Hackey by May 1st. Hackey agreed and released the boat to Susan. Tom, an experienced boatman, started the engine and began the trip over to the Canadian side and back to Kingston. Susan returned to Kingston by car. While the boat was still in American waters, Tom noticed a large tanker moving along the waterway at what seemed like its "faster than normal" speed for a tanker that size. Tom decided to have some fun and wait until the tanker was close when he would dash in front of its bow and hopefully scare the tanker's captain. When the tanker was close enough, Tom made his move but as he gunned the boat's engine, it conked out and Tom was left in the perilous path of the tanker. The tanker could not stop or veer out of the way and it hit Tom's boat near the stern splitting it apart and hurling Tom into the water. Fortunately, the entire incident was observed by a nearby boatman, Vince Viewer, who lives in Syracuse, New York, and who was out on his boat at the time. Vince was able to rescue Tom from the water but Tom was very badly injured in the accident.

Investigations following the accident disclosed the following:

- i. The tanker in question is owned and operated by Nova Scotia Steamship Lines Ltd., a Nova Scotia Corporation, with assets in Nova Scotia and Newfoundland. Its captain on the day in question was Bill Bully whose permanent home is in Halifax, Nova Scotia. At the time of the accident, the tanker was exceeding its permitted speed limit on water;
- ii. Susan's boat's engine was recovered and examined by an expert retained by Susan following the accident. It was discovered that an internal hose line had not been properly attached and that likely lead to the engine quitting at the crucial moment;

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- iii. All of Hackey's assets are located in New York State except that the Corporation owns a cottage on one of the islands on the Ontario side of the border. It permits its president, Harvey Hackey to use the cottage during the summer. All of Susan's assets are located in Ontario.

The following has resulted from the incident:

- a. Tom spent three months in hospital in Kingston and will miss his school year as a result. He will fully recover from his injuries except that he will always have a permanent limp. His medical expenses alone exceed \$75,000.
- b. Susan's boat is a total write-off. It was not insured. It's market value as of the date of the incident was \$64,000. Susan has not paid Hackey the balance of the purchase price of the boat.

Assume that you are a lawyer in Kingston, Ontario. You have been consulted by Susan and Tom who wish to pursue an action in Ontario for their respective losses. Advise them if this can be done and what, if any, procedural issues will arise. Particularly, set out what issues arise because of Tom's age, if any, and how you would deal with them. Who would you join as parties and what steps would you take to effect service of the originating process? What procedural steps would you anticipate from any defendants that you might join and how would you respond? Anticipate that your clients might secure a judgment someday. What problems, if any, would you anticipate in enforcing that judgment? Would this have any effect on your decision as to where to commence any action?

In answering this question, refer to any relevant Rules of Civil Procedure that apply and to any relevant case law. Explain fully the conclusions that you reach.

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QUESTION 2 (5 marks each, total 40 marks)

With reference to any relevant Rules of Civil Procedure and case law, answer all parts of this question.

- i. Explain the differences, if any, between an Application and a Statement of Claim in a civil proceeding.
- ii. Briefly explain Simplified Procedure.
- iii. Write a brief note on our Rule dealing with Summary Judgment, explaining what it is and how our courts are interpreting its application.
- iv. Explain the differences, if any, between a limitation period prescribed by statute and a time period provided by the Rules of Civil Procedure.
- v. Explain the differences, if any, between Crossclaims and Third Party Claims.
- vi. A defendant wishes to Counterclaim against a plaintiff and against a person who is not yet a party to the action. Can this be done? If so, explain the procedure that applies.
- vii. Explain any differences that may exist in the use that can be made at trial of the oral Examination for Discovery of a party and a non-party to an action.
- viii. Describe and explain the benefits and drawbacks of Case Management.

QUESTION 3 - 10 marks.

You represent Annie Smith in a personal injury action for damages. On her oral examination for discovery, she is asked by counsel for the defendant whether her doctor has had any success in treating one of her main symptoms following the accident, terrible headaches. She answers honestly, "no".

Several months later but well before trial, Annie advises you and her doctor confirms that he has prescribed a new anti-migraine drug that has drastically reduced her headaches.

Are you required to disclose this development to the defendant ? Explain your answer by reference to any relevant Rule of Civil Procedure. If you are required to disclose and do so, what steps can you expect the defendant's lawyer to take to follow up on that disclosure?.

EXAMINATION IN ONTARIO CIVIL PROCEDURE**QUESTION 4 -10 marks.**

You have been retained by Uncle Scrooge, a wealthy investor. He tells you that he loaned \$150,000 to his nephew Donald Duke several years ago. The debt is evidenced by a promissory note that indicates that interest at 10% is being charged and it calls for monthly payments of \$2,500 until the note is paid off. Donald has stopped making the monthly payments and some \$57,500 remains owing.

Part A - 5 marks.

You commence an action on behalf of Scrooge against Donald for the amount due. Donald has been properly served but 25 days have passed and no defence has been filed. What can you do ? What procedure will you follow ?

Part B - 5 marks.

Now assume that instead of being in default, Donald has filed a defence. You deliver a formal Offer to Settle the action for \$50,000 inclusive of interest and costs. Donald does not accept your offer and proceeds to trial. At trial, your client is awarded \$60,000. What order for costs would you expect ? Why ?

