

## ESSAY QUESTION NO. 7

### Answer this question in booklet No. 7

On a snowy day, Patty, a professional dancer, and her husband, Peter, headed out shopping. As Patty descended the outside stairway to the basement entrance of her favorite store, she fell down on the steps and badly twisted her ankle.

Patty went to a doctor who examined the ankle. The doctor told her to ice and elevate it and to walk only with crutches for one month. Rather than following her doctor's advice, however, Patty put her crutches in the corner and continued to do her intense dance workouts at home. She complained bitterly to Peter about the pain. Not surprisingly, the injury caused permanent damage to Patty's ankle. Patty was forced to give up her dancing career.

A couple of days after the accident, the store called out Ace Investigators to impartially evaluate the accident, something the store did whenever there was an accident in the store. As part of the routine claim investigation, the investigator viewed the scene, interviewed Patty, and wrote an Ace Accident Report. Patty told the investigator how she slipped on the steps that were slippery from accumulated snow and that she was very careful and very conscientious as she descended the steps.

Patty filed suit against the store claiming medical damages, pain and suffering.

The stress from Patty's accident, the pain, and her lost career caused Patty and Peter to divorce before her suit against the store came to trial.

- 1) At trial, the defense calls Peter to testify concerning what he observed with regard to Patty's exercise routine following the accident and whether Patty ever complained to Peter about her ankle pain during those weeks. Patty wishes to keep all such information out. Explain what objections Patty might make on grounds of privilege and whether her objections will be successful.
- 2) Prior to trial, Patty asks the court to take judicial notice that snow on the stairs caused them to be slippery, and says to the judge, "You shop at that store – you know that their steps are always treacherous when it's snowing!" Should the court grant her request? Explain.
- 3) Patty wants to call the records custodian from Ace Investigators to testify concerning statements in the Ace Accident Report. The original investigator no longer works for the company. Explain whether Patty's statements in the report will be allowed into evidence.