

COUNCIL OF LEGAL EDUCATION  
*NORMAN MANLEY LAW SCHOOL*

**ADVOCACY PROGRAMME**

**YEAR II**

**CIVIL BRIEF**

**THE UPSTANDINGS v. THE WILDES**

**NORMAN DAVIS**

## PARTICULARS OF CLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 2 of 2009
---------------

BETWEEN	RACHAEL UPSTANDING	CLAIMANT
	(By her mother and next friend Karen Upstanding)	
AND	JOHN & JOAN WILDE	DEFENDANTS

1. The claimant is a minor who brings this action by her mother and next friend, Karen Upstanding.
2. On the 14<sup>th</sup> May 2008 the claimant attended the defendants' dwelling house by invitation for a party put on by the defendants for their daughter Britney Wilde, a minor also. The claimant was therefore a lawful visitor to and the defendants' occupiers of the premises within the meaning of the Occupiers Liability Act.
3. In the circumstances the defendants owed the claimant a common duty of care under Section 3 of the Occupiers Liability Act. v
4. The claimant while at the defendants' premises lost balance while dancing and fell to the concrete floor because she was heavily intoxicated from liquor served on the Defendants' premises.
5. The claimant's fall to the concrete floor was caused by the defendants' breach of statutory duty namely the common duty of care under the Occupiers Liability Act. Further and in the alternative, the defendants were negligent in that they were under a duty to exercise control over their own daughter to ensure that she by her actions did no harm to her guests.

## **PARTICULARS OF BREACH OF STATUTORY DUTY/NEGLIGENCE**

The defendants were in breach of their statutory duty and/or negligent in:-

- (a) Causing or permitting their daughter to serve her guests, including the claimant, liquor.
  - (b) Failing to ensure that liquor was not served to minors on the premises thereby exposing the claimant to this.
  - (c) causing or permitting liquor to be on the premises with minors having access to this in circumstances where it being there was an allurement to minors
  - (d) Failing to take any adequate precautions to prevent liquor from entering the premises.
  - (e) Failing to supervise or to adequately supervise the behaviour of minors on their premises in light of their propensity to be less careful and responsible than adults.
6. As a result of the fall, the claimant suffered severe injuries and damage and incurred expenses.

## **PARTICULARS OF INJURY**

The claimant who is 17 years old having been born on January 21, 1992 suffered:

- a) Unconsciousness
- b) Epidural hematoma
- c) Right basal skull fracture
- d) Pressure in the intracranial space
- e) Buildup of blood causing permanent damage to delicate brain tissue
- f) Necrosis of cells in the right temporal lobe

- g) Mental incapacitation for the rest of her life
- h) Permanent limited motor function to the left side of the body.

The claimant will rely, as part of her case, on the medical report of Dr. Kevin Lightbourne, a copy of which was attached to the claim form and is attached hereto.

#### **PARTICULARS OF SPECIAL DAMAGE**

- a) Medical Expenses - \$400,000.00
  - b) Cost of nursing care \$720,000.00 from June 1, 2008 to present at \$80,000.00 per month and continuing.
7. The claimant also claims interest under the Law Reform (Miscellaneous Provisions) Act for such rate and from such period as this Honourable court deems fit.
8. And the Claimant claims
- i) General damages
  - ii) Special damages
  - iii) Interest
  - iv) Costs.

Signed: John Sawyers  
Attorney-at-law

I certify that all the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

Dated the 23rd day of February, 2009

Signed: Karen Upstanding (Mother and next friend of Rachael Upstanding)

The claimant's address for service is that of his Attorneys-at-Law, John Sawyers of 12 Lucky Street, Kingston whose telephone number is 123-5454 and fax number is 123-5459.

Filed by John Sawyers, Attorneys-at-Law of 12 Lucky Street, Kingston whose telephone number is 123-5454 and fax number is 123-5459.

## EXPERT REPORT OF DR. KEVIN LIGHTBOURNE

### RE: RACHEL UPSTANDING

1. My name is Dr. Kevin Lightbourne and I reside at 27 Mount Harrod Street, Kingston 07 and my office address is 04 Fairhaven Boulevard, Kingston 10 and I practice at the Angels of Mercy Hospital as well as in private practice. I have worked in the emergency room and surgical ward of the Angels of Mercy Hospital since January 2006.
2. I studied at the University of the West Indies and have a Bachelor of Medicine and Bachelor of Surgery degree (M.B.B.S.) and have been practicing medicine for 12 years and am a certified medical practitioner.
3. On May 14, 2008, I was on duty at the Hospital's Emergency Room when a 16 year old female was admitted in an unconscious and unresponsive state. I was told by a man who accompanied her and said his name was Jack Wilde and he was her neighbor that her name was Rachel Upstanding. I was also told by Mr. Wilde that the girl had sustained a blunt force trauma to the right side of her head when she fell from a table.
4. On examination I found that Ms. Upstanding had a right basal skull fracture. This is a form of traumatic brain injury where a separated part of the skull pierces the protective layers and penetrates the delicate brain tissue. The fracture also led to an epidural and hematoma in which blood collects between the brain's outer membrane and the skull.
5. Ms. Upstanding was admitted by me to the surgical ward under my care. I conducted an emergency surgical procedure which involved drilling holes in the skull in order to release the pressure on the brain, as well as repaired the fractured portion of the skull to prevent further tissue damage caused by the penetration.

6. The surgical procedure was successful and the patient's vital signs stabilized. The emergency surgery prevented any permanent damage as a result of the hematoma. However, the fracture caused significant damage to the right temporal lobe resulting in necrosis of cells in this region. This part of the brain is responsible for the control of memory, speech and comprehension, as well as motor control of the left side of the body.
7. Ms. Upstanding was discharged from the hospital but she will never regain full brain activity and will remain mentally incapacitated along with limited motor function to the left side of her body for the rest of her life.
8. I received oral instructions to prepare a Medical Report on Ms. Upstanding's injuries, the treatment administered and any resulting permanent disability on October 10, 2008 from Mr. Upstanding, her father and I was asked to send it to his Attorney-at-law, John Sawyers at 12 Lucky Street, Kingston.
9. I have set out in paragraphs 5, 6, 7 and 8 of this Report the injuries I observed and the treatment administered to Ms. Upstanding.

I understand that it is my duty to help the Court impartially on all matters relevant to my expertise and that duty overrides any obligation to Ms. Upstanding and her father and attorney who instructed me and who paid me for the report. I have read Part 32, in particular Rules 32.3 and 32.4 of the Civil Procedure Rules and state that I believe that I have carried out my duty in the manner set out in the Rules.

I have included all matters within my knowledge and area of expertise relevant to the issue on which my expert evidence is given. There is nothing to my knowledge which affects the validity of this report.

I certify that the matters contained in this Expert Report are true to the best of my knowledge and belief and outlines all matters within my knowledge and area of expertise relevant to the issue on which the expert evidence is given.

DATED THE 20th DAY OF October, 2008

-----*K. Lightbourne*-----

Dr. Kevin Lightbourne

M.B.B.S. (UWI)



## DEFENCE

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 2 of 2009
---------------

BETWEEN	RACHAEL UPSTANDING (By her mother and next friend KAREN UPSTANDING)	CLAIMANT
AND	JOHN & JOAN WILDE	DEFENDANTS

1. Paragraph 1 of the Particulars of Claim is admitted.
2. Paragraphs 2 and 3 of the Particulars of Claim are denied. The defendants say that they warned the claimant not to attend the party at their premises without her parents' permission and there was no basis to indicate that she had not done so. The claimant was, unaware to the defendants, refused permission and was thereby a trespasser at all material times.
3. Save that the defendants admit that the claimant was injured when she fell, the defendants require the claimant to prove that she was intoxicated, heavily or otherwise, as alleged in paragraph 4 of the particulars of claim.
4. In response to paragraph 5 of the Particulars of Claim, the defendants require the claimant to prove the particulars alleged therein.
5. The Defendants deny paragraph 6 of the Particulars of Claim and the particulars therein. Further, the defendants say that the claimant's injuries were caused or contributed to by her own negligence in that she lost her balance and fell from a table while engaging in a popular dance, "The Dutty Wine", well known publicly to be a dangerous dance.

## **PARTICULARS OF NEGLIGENCE**

- (a) Failing to heed well publicized warnings of the risk of injury by doing the said dance.
  - (b) Voluntarily assuming the risk of injury incidental to the said dance.
6. In the circumstances, the Defendants also rely on the defence under section 7 of the Occupiers Liability Act and/or volenti non fit injuria in that the claimant with full knowledge of the risk of injury in dancing as she did nevertheless voluntarily assumed that risk.
7. Further and in the alternative the Defendants say that they took all reasonable precautions and undertook adequate supervision to ensure that liquor was not served to minors.

## **PARTICULARS**

- a) Issuing printed invitations to guests bearing the words "No consumption of alcohol allowed"
  - b) Monitoring the automatic gate to ensure that only invited guests attended.
  - c) Keeping liquor on the premises for use by adults away from the area(s) used by the minors.
  - d) Warning their daughter, Britney Wilde not to allow drinking on the premises.
8. In all the circumstances the defendants deny breach of statutory duty and/or negligence on their part.

Dated the 1st day of March 2009

Signed: William Dayz  
Attorney-at-law

I certify that all the facts set out in this Defence are true to the best of my knowledge, information and belief.

Signed: John Wilde

The defendant's address for service is that of his Attorneys-at-Law, Dayz, & Goodrich of 10 Star Road, Kingston 5 whose telephone number is 145-0017 and fax number is 145-0020.

Filed by Dayz and Goodrich, Attorneys-at-Law of 10 Star Road, Kingston 5 whose telephone number is 145-0017 and fax number is 145-0020.

## **WITNESS STATEMENT OF MICHAEL DEVOTED**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 2 of 2009
---------------

Made on behalf of: Claimant  
Witness: Michael Devoted  
Date made: April 10, 2009

I am 19 years old. I live at Sanford Road and I am a student at the University of Jamaica in my first year.

Rachael Upstanding is my girlfriend. We went to Holy Trinity High School together. Her parents did not approve of the relationship between us and forbade me calling and visiting her. Her father is a pastor at the Strict and Faithful Church and her mother is a housewife. They live in Angel Acres and their neighbours are the Wilde family. Britney Wilde their daughter is our close friend as we all went to the same High school.

We were very close. Rachael and I would go out late at night when her parents were asleep because we could no longer see each other after I graduated from the school. There was also a time when Rachael was allowed to visit the Wilde's next door but she was later forbidden by her parents from doing so. I know as a fact that Rachael would go against her parents' wishes and visit Britney, her best friend, because I would meet her there after school before her parents reached home.

The Wildes did not believe in sending her back home because it was against their parenting beliefs to do so.

On the night of May 14, 2008, the Wilde's held a sweet sixteen birthday party for Britney. Britney invited both me and Rachael to the party. Rachael was her best friend and she said it was important that she attend.

On the night of the party, Saturday, May 14, 2008 at about 11:30 I agreed to meet Rachael outside her gate to go to the party next door. She climbed through her bedroom window as she usually does when we want to see each other at nights. Since her parents went to bed early we were never caught.

We went to the party where there were approximately 50 guests. We did not see Britney's parents. We saw several guests drinking from champagne glasses. Britney offered her friends champagne, including us. Rachael was never exposed to this before and she drank too much. Britney was serving the champagne freely. Rachael was so drunk that she jumped on a table near the dance floor to dance. I had never seen her do this before. While on the table Rachael lost her balance and fell. We were both in a drunken state.

I tried to revive her with no success. Britney and I went into the house immediately to notify the Wildes. I was present when the Wildes called the Upstandings and we all met at the Angels of Mercy Hospital where the Wildes had taken her.

Statement of Truth.

I believe that the facts stated in this witness statement are true.

Signed: *Michael Devoted*

Date: April 10, 2009

## **WITNESS STATEMENT OF JOHN UPSTANDING**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 2 of 2009
---------------

Made on behalf of: Claimant

Witness: John Upstanding

Date made: April 10, 2009

I am an Accountant and a Pastor at the Strict and Faithful Church. I live at 24 Angel Acres with my wife Joan and daughter Rachael.

The Wildes are our next door neighbours. They moved next door and they enrolled their daughter Britney in our daughter's school, Holy Trinity High. They quickly became best of friends.

Rachael was a straight "A" student on the Honour Roll and participated in track and field. She was also Deputy Head Girl and aspired to be a pediatrician.

At first we allowed our daughter to visit the Wilde's next door because of the girls' close friendship. We would also visit the Wilde's occasionally. However, as the relationship developed we noticed a difference in parenting styles and philosophies. We believe strongly in observing and enforcing rules and in Rachael adhering to strict religious values. We noticed that Britney expressed her feelings to her parents in a way which we regarded as disrespectful. Also we did not like the type of music or the TV programmes she was allowed to watch at her age.

We raised this with the Wildes who explained their parenting style to us. They said in their defence that parents should allow children to participate in rule making. They also said children should be exposed to the realities of life for their own development and to learn to make choices in a controlled and trusting environment. In terms of how Britney communicated with them, they said that

the fact that she felt free to communicate with them was more important than the method. They did not see the mode of communication as disrespectful but regarded it as an expression of teenage emotions which should be acknowledged.

Also, on one occasion when we went there for dinner, we noted that Britney was served wine along with the adults. When we enquired, the Wilde's explained that they exposed her to liquor in a very moderate and occasional way so that liquor would not be an allurement in her future.

My wife and I agreed that we did not wish Rachael to be exposed to this kind of behaviour so we forbade her from going next door to visit. Occasionally Rachael would disobey us in relation to this and when we instructed the Wilde's to order her home they refused saying that that was Rachael's choice and they would never force a welcomed visitor out of their home.

On the night in question we were aware that Britney was having a "sweet sixteen" birthday party next door. We refused Rachael permission to go despite her protest. We left her at home and went to a crusade at the church. On our way home from church we heard loud music from the Wilde's premises including obscene dancehall music. We stopped at the gate hoping to see either parent but did not enter because of the previous disagreement between the families. To our dismay we saw young people with champagne glasses and bottles resembling those for lit wine. We spoke to Mr. Wilde by way of the gate intercom and protested about the loud music and the fact that some persons outside had been drinking what appeared to be liquor. Mr. Wilde cut me off abruptly. We checked on Rachael who was asleep in bed.

We later got a call that Rachael had been injured and we were instructed to meet the Wilde's at Angel's of Mercy Hospital. As a result of her injuries, Rachael is mentally incapacitated. For this reason, we have had to hire two full time nurses at the cost of \$10,000 per week for each.

Statement of Truth.

I believe that the facts stated in this witness statement are true.

Signed: *John Upstanding*

Date: April 10, 2009



## STATEMENT OF BRITNEY WILDE

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 2 of 2009
---------------

Made on behalf of: Defendant

Witness: Britney Wilde

Date made: June 5, 2009

I am 17 years old and I live with my parents at 26 Angel Acres and I am a student at Holy Trinity High School.

Rachael and I are best friends but because of the disagreement between my parents and hers she was forbidden to come to my home. Despite this, she and her boyfriend, who is also my good friend, would visit my home.

Despite the disagreement between the parents, I invited Rachael and her boyfriend to my "sweet sixteen" party which was a very special occasion for me and I could not help but invite her. She said she would ask her parents for permission.

On the night of the party my parents let in guests based on a guest list I provided them. Rachael and her boyfriend were on the list. Some of their friends were at the pool for the cutting of the cake and we served sparkling non-alcoholic wine in plastic champagne glasses to celebrate the occasion. The adults then went inside. My parents wanted me and my friends to feel comfortable so they stayed there inside. The dancing and music areas were outside by the pool and not visible from where they were.

Guests who wished to enter the premises would announce their arrival by the intercom at the gate and my parents would open and close the automatic gate with reference to a guest list that I gave them.

Rachael and Michael arrived at about 11:30 p.m. Prior to that time I decided to share champagne with some of my closest friends. My parents had several chilled bottles of champagne in the kitchen for their friends. I went inside, took out bottles of champagne and returned outside. I did not tell my parents about it because I only intended to serve a small amount to friends. I served only a glass to each, no more. Rachael and Michael were among the persons with whom I shared the champagne. She did not appear drunk at all. She simply continued to enjoy herself on the dance floor; her parents did not know this side of her. However, because they gave her little opportunities to go, out I knew she wanted to enjoy herself on those rare occasions she was out. Later in the night the DJ started to play the latest dancehall songs, one of which was the "Dutty Wine". Rachael declared herself to be an expert at the "dutty wine" and went on a table near to the dance floor to prove this. While gyrating on the table, I saw Rachael stagger, appear off balance and fall to the concrete floor of the pool deck.

Several persons rushed to her aid. She was unconscious and my parents rushed her to the hospital.

Statement of Truth.

I believe that the facts stated in this witness statement are true.

Signed: **BRITNEY WILDE**

Date: June 5, 2009

## **WITNESS STATEMENT OF JACK WILDE**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 2 of 2009
---------------

Made on behalf of: Defendant

Witness: Jack Wilde

Date made: June 5, 2009

I am a Psychiatrist who specializes in counselling teenagers with behavioral problems. I live with my wife Joan who is an artist and singer and my daughter Britney at 26 Angel Acres.

About three years ago I met my daughter's friend Rachael when she came to our home. I eventually met her parents Mr. and Mrs. Upstanding. We quickly became friends but later the friendship deteriorated because of strong objections on their part to our parenting practices and philosophies. Because of my experience and study in this area, I believe that in raising children, one should give them opportunities to make informed choices and allow them to express themselves freely without fear of parental disapproval. The Upstandings objected to this generally. In particular they expressed this in relation to things like having a serious boyfriend and allowing them to visit each other's home in the absence of parents, allowing Britney to have wine on special occasions; allowing her freedom as to her choice of music, including dancehall. They also felt that allowing her to express her emotions freely to us was disrespectful, whereas we felt that openness of communication and connection to her parents were far more important objectives. In terms of religion, we believe in exposing Britney to religious values but not in imposing our faith on her.

As a result it reached a point where the Upstandings forbade Rachael from visiting our home. Rachael disobeyed them and this caused even more intense resentment on their part to us when we refused their request to force her from

our home. We simply did not believe it was right to force any of our daughter's friends from our home.

Britney as a result of our parenting has grown up to be a very responsible and independent young lady able to make her own choices. Because of our excellent relationship, we decided to throw her a sweet sixteen birthday party. She decided on the guest list and we printed invitations. We were aware that Rachael was invited but we did not interfere with Britney's choice to invite her despite the tension between us and her parents. It was Britney's night. We told her not to invite Rachael unless her parents gave permission.

On the night in question, we monitored the guests who were entering by way of our intercom at the gate. They would announce themselves and my wife and I would allow them in based on the guest list. There was no need for security at the gate based on this. We had issued printed invitations to Britney's guests which expressly stated "No alcohol to be consumed".

Except on the occasion of the cutting of the cake in the early hours of the party, we stayed inside with our invited adult guests in order to give her friends, who we considered responsible, their privacy. This was Britney's request. We had bought several bottles of champagne for our adult friends and purchased non-alcoholic sparkling wine and plastic champagne glasses for Britney and her friends. Britney's friends were served from the pool area. The pool area is not visible from where we were in the house and neither is the kitchen where the champagne was stored.

At about 11:00 p.m. Mr. Upstanding called from the gate to protest the loud music. I did not hear him mention anything about alcohol. The music was loud and he was ranting and raving in a self-righteous manner as he usually does. I went down to the DJ and had him turn down the music. At that time I saw no evidence of any alcohol use or anything untoward; neither did I see Rachael at the party. She apparently came there after this. I had no reason to suspect any alcohol use whatsoever and although I had exposed Britney to wine on special

occasions it was under my supervision and simply to prevent alcohol being a temptation to her. My hope was that this would prevent later alcohol abuse.

Later that night I got word of what happened. I informed her parents immediately and rushed Rachael, to the hospital.

Statement of Truth.

I believe that the facts stated in this witness statement are true.

Signed: *Jack Wilde*

Date: June 5, 2009

*Britney Wilde*

CORDIALLY INVITES

*RACHAEL UPSTANDING*

TO HER

*Sweet Sixteen Birthday Party*

ON



**SATURDAY, MAY 14, 2008**



**AT 9:30 P.M.**

**VENUE: 26 ANGEL ACRES, EAST PALM ESTATES**

\*\*\*\*\*

**---- NO CONSUMPTION OF ALCOHOL ALLOWED ----**

RSVP: 899-2255



# *Britney Wilde's Sweet Sixteen Party*

SATURDAY, MAY 14, 2008

## *Guest List*

### **NAMES**

1. ADAMS, Petunia
2. ATKINSON, Arlin
3. BANNER, Jason
4. BLAKE, Patsy
5. BOYNE, Nardia
6. BRADY, Fred
7. BRISSETT, Marie
8. BRIZAN, Jackie
9. BROWNE, Michael
10. CAMERON, Sarah
11. CAMPBELL, Fiona
12. COLMAN, Karen
13. CUNNINGHAM, Meisha
14. DESNOES, Royland
15. DEVOTED, Michael
16. EBANKS, Ann
17. EBANKS, Octavius
18. FACEY, Donovan
19. FFRENCH, Michelle
20. FIFE, Carolyn
21. FLOWERS, Nina
22. FOLKES, Kia

## **NAMES**

- 23.** FORBES, Nadene
- 24.** FRANCIS, Lisa
- 25.** GAYLE, Sheryl-Ann
- 26.** GENAS, Sheila
- 27.** GRANT, Deidre
- 28.** GREENE, Tricia-Mae
- 29.** GUMBS, Wayne
- 30.** JACKSON, Jenna
- 31.** JAMES, Michelle
- 32.** JOSEPH, Nancy
- 33.** KEMBLE, Kira
- 34.** LAWSON, Tabitha
- 35.** LEE, Andy
- 36.** LEWIS, Aaron
- 37.** MAIS, Celia
- 38.** MATTIS, Jared
- 39.** McLYMONT, Kemisha
- 40.** MORRIS, Reynold
- 41.** MORTON, Marlina
- 42.** REYES, Sydney
- 43.** RICKETTS, Luther
- 44.** ROBINSON, Michelle
- 45.** ROBINSON, Eve
- 46.** RUSSELL, Elliot
- 47.** SALMON, Mauricio
- 48.** WESTON, Riley
- 49.** STAPLE, Diandra
- 50.** STEWART, Allison
- 51.** TAYLOR, Julene
- 52.** TOMLINSON, Kareen



## **NAMES**

- 53.** UPSTANDING, Rachel
- 54.** WADE, June
- 55.** WALTERS, April
- 56.** WILKS, G'Ann