



**CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma**

**Unit 13 – Law of Tort**

**Question paper**

**January 2024**

**Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)**

**Instructions and information**

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – ***Blackstone’s Statutes on Contract, Tort & Restitution 34th edition, Francis Rose, Oxford University Press, 2023.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

**Turn over**

## SECTION A

Answer at least one question from this section.

1. Critically assess how the courts approach cases in which the general 'but for' test of causation is not capable of delivering a just outcome.  

**(25 marks)**
  
2. Occupiers must ensure their visitors are safe and that trespassers are not at risk from specific, known dangers, but there are clear limits in each case.  

Critically evaluate the scope of liability under the two Occupiers Liability Acts.

**(25 marks)**
  
3. Critically analyse the court's approach when deciding whether to impose a duty on an employer in modern employment circumstances.  

**(25 marks)**
  
4. It has been ten years since the passing of the Defamation Act 2013.
  - (a) Explain the primary changes brought about by the new legislation;  

**(10 marks)**
  
  - (b) Describe whether the new legislation has achieved its objectives of addressing the balance between the protection of reputation and freedom of expression.  

**(15 marks)**

**(Total: 25 marks)**

## SECTION B

Answer at least one question from this section.

### Question 1

Alan had sustained a head injury in a car accident. Brain scans came back as clear but medical evidence suggests that radiographs do not always detect minor lesions, from which Alan was suffering. Alan suffered increasingly painful headaches, was constantly dizzy and found it difficult to concentrate. Assuming the pain would subside, Alan did not seek medical assistance. After a few days of intense pain, Alan went to the hospital but was told that the waiting time exceeded ten hours when, in fact, it was only one hour so Alan left as he felt unable to wait that long in such a noisy environment.

Alan returned to the hospital the following day and was seen by Dr Brown, who claimed that Alan had made matters worse by not seeking help, stating it would now be necessary for Alan to undergo surgery to release pressure on his brain. Dr Brown told Alan that owing to the length of time he had not sought help, other alternatives would be out of the question as swift action was required.

Alan was in so much pain that Dr Brown decided that Alan would not be able to understand all the information associated with the risks of the surgery and therefore did not disclose them all. One of the risks was of the pain not being alleviated but worsening, leaving the patient with life-changing levels of pain. Alan claims that he would never have consented had he known there was such a risk. Medical evidence has since shown that the operation had been unnecessary and that medication could have been used instead. Within a few hours of waking from the operation, Alan's condition worsened. Bouts of intense migraines and dizziness occurred, and Alan began to suffer memory loss.

Since Covid, Alan had built up a successful career online as a tutor but he was unable to continue in this line of employment as he could not bear the light from the computer screen. He wishes the court to consider his claim for loss of earnings on a 'career model' basis. Doctors warned him that the pain would continue for the foreseeable future so Alan would need several medical appointments relating to pain management. Alan is extremely upset that he is now unable to enjoy his favourite pastime of driving and, as he is no longer able to drive, he was forced to sell his beloved classic car.

(a) Advise Alan as to the potential success in a claim against the hospital for negligence in relation to the consent given for the medical procedure.

**(15 marks)**

(b) Assess any damages Alan may be entitled to if his claim were to be successful.

**(10 marks)**

**(Total: 25 marks)**

**Turn over**

## Question 2

Carl was trying to find a parking space in the local supermarket car park. After searching for several minutes, a driver who had just entered the car park drove straight into the space created by a customer who was leaving. Carl shouted out of his window "Oi! That space is mine, get out of it before I get out of my car and remind you of some manners with my fists!".

The other driver, Donald, just laughed and ignored Carl. Donald left his car and began to walk to the supermarket entrance. Carl, enraged at the lack of manners Donald had shown, drove straight towards Donald. He wanted only to scare Donald but Carl lost control as he sped up, hitting Donald, who landed on the bonnet of Carl's car. Carl applied the brakes in an emergency stop and Donald fell to the floor, dazed and bruised.

Carl attempted to leave the car park but the supermarket's security guards had seen what had happened and ran out into the car park, physically blocking Carl's exit with their bodies, arms outstretched. They shouted to him that he was not to leave the car park until the police arrived. Carl did not want to leave his car behind so he tried to manoeuvre his car around the security staff but they had blocked every exit. Other customers, shocked at Carl's behaviour, began to block Carl in with their cars. Carl felt threatened by the increasing and angry crowd, and felt trapped in his car. He locked his car doors and waited for the police to arrive.

One of Carl's neighbours, Eric, was also in the car park at the time of the incident and saw the police arrive and take Carl away. Another customer told him that there had been a 'road rage' incident and that Carl had run someone over but that the 'other man' was okay. As a joke, Eric rang Carl's wife, Fiona, and told her that Carl had been arrested for murdering someone in the car park because of road rage. Fiona suffered nervous shock, believing Carl would be imprisoned for the rest of his life.

- (a) Advise Donald as to the potential success of a claim against Carl for trespass against the person.

**(12 marks)**

- (b) Advise Carl as to the potential success of a claim against the supermarket for false imprisonment.

**(7 marks)**

- (c) Advise Fiona as to the potential success of a claim against Eric using the rule in *Wilkinson v Downton* (1897).

**(6 marks)**

**(Total: 25 marks)**

### Question 3

Gavin had lived his whole life in Kempston Village, a place well known for its rural characteristics. Recently, planning permission has been granted for Home from Home (HfH), a charitable organisation providing accommodation for university students, to convert the house next to Gavin's into temporary student accommodation.

Ten students were moved into the accommodation by HfH and, from the start of their stay, the noise levels coming from the house disturbed not only Gavin but many of the other local residents. In the evening, and into the early hours of the night, students could be heard playing loud music and shouting. At the weekends many of the students, along with their friends, would race up and down the road in their cars, making their exhausts bang and leaving skid marks in the road from driving in circles. The street around the house also became increasingly littered with rubbish and broken furniture. After some of the parties thrown by the students other residents were prevented from being able to manoeuvre their cars out of their driveways because of the number of cars parked along the road owned by the students' friends.

Gavin complained to the charity but despite reassurances that the behaviour would be addressed, the noise and littering continued. Angered and frustrated, Gavin decided to invite his family and friends to his home during the daytime when the students were quiet, seemingly asleep. Gavin ensured that he played music as loud as his system would permit and told his guests to make as much noise as they could.

Rather than the problems being alleviated by those running the charity, Gavin discovered that HfH was applying for permission to build an extension to the house, to accommodate even more students. Not only was Gavin concerned about the increasing levels of noise but also that this would result in him being overlooked in his living room and garden by those staying in the extension. He wants to apply for an injunction to stop the charity letting students stay there or to at least prevent them from extending the property.

Advise Gavin as to the potential success of a claim for nuisance.

**(25 marks)**

**Turn over**

#### Question 4

Iris was travelling to visit her 21-year-old son, Jarred, on a coach owned by Kempston Coaches (KC). Due to rising costs, KC had not carried out recent repairs to the coach, namely the replacement of the tyres that had been identified as no longer meeting legal standards. As the coach was travelling down the High Street, approaching the coach station, a tyre burst and sent the coach crashing into the surrounding traffic.

Many passengers managed to get free from the wreckage but Iris's foot had become stuck. Suddenly, a fire broke out at the back of the coach. As the flames grew closer and closer to Iris, Jarred could do no more than helplessly watch the chaos as the crowd had been held back from the wreckage by staff at the coach station.

Onlookers had called the emergency services and soon the fire service arrived. One of the fire fighters was Iris's brother, Lewis. When he found Iris stuck inside the coach, she was covered in blood from a head injury and was almost unconscious from smoke inhalation. Lewis developed PTSD from seeing his little sister in such a state.

While he had been watching the incident, Jarred managed to call his father, Iris's husband Mitchell. He told his father that his mother was trapped in the wrecked and burning coach, and he was not sure if she was going to make it out. Mitchell suffered nervous shock when he heard the news.

Iris recovered from the smoke inhalation but a brain injury was not immediately detected by the doctors who examined Iris after the crash. Over the following two weeks, Iris's condition gradually worsened as she complained of intense pain in the back of her head. Her condition became so problematic that her husband and Jarred had to care for almost of all her daily needs. After two weeks, Iris passed away owing to an undetected brain injury. Jarred later developed chronic depression because of feelings of guilt that he had not helped his mother sooner. Mitchell's condition worsened so that he was unable to leave his home.

Advise Jarred, Lewis and Mitchell as to the potential of a successful claim for psychiatric harm as against Kempston Coaches.

**(25 marks)**

**End of the examination**