



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 - Tort Law

Question paper

June 2023

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, 33rd edition, Francis Rose, Oxford University Press, 2022.**
- 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. The law on psychiatric harm has been described as a “patchwork quilt” (White v CC of South Yorkshire (1998)).

Explain the implications of this statement for claims made by secondary victims.

(25 marks)

2. A basic principle of causation is that a “defendant ... is not a wrongdoer at large: he is a wrongdoer only in respect of the damage which he actually causes.”
Browning v War Office (1962)

Critically analyse the approach of the courts when assessing the apportionment of damages in cases involving multiple tortfeasors

(25 marks)

3. Principles established in the law of private nuisance date back centuries.

(a) Describe the principles underlying a claim for private nuisance.

(10 marks)

(b) Critically evaluate how the courts have adapted these principles to balance the competing interests in contemporary communities.

(15 marks)

(Total: 25 marks)

4. Critically assess the extent to which the rules of vicarious liability protect persons against risks arising from business activities.

(25 marks)

SECTION B

Answer at least one question from this section

Question 1

Kempston Leisure Centre (KLC) contained a gym, swimming pool, café area and children's creche.

Alan finished a session in the gym and entered the café area to buy a bottle of water. A few minutes earlier Bella, the only member of staff on duty due to staff shortage, had spilled a drink whilst serving a customer. She had gone to the back of the kitchen area to get a mop and bucket. Alan did not see the spillage and slipped over on it, twisting his ankle.

Carl, aged eight, had been left in the creche by his Mum, Deana. Carl was bored and discovered an unlocked door at the back of the creche. There was a sign on it that stated, 'Danger. Do not enter'. This made Carl intrigued as to what could be behind it and he opened it, discovering a roof area with a skylight in the middle. Carl lay down on the skylight so he could better see what was below, but the glass shattered, and he fell through, breaking his leg.

Edwina was on her way out of the leisure centre. There were a lot of people exiting the building at the same time. Edwina stepped on a ramp at the entrance. There was a raised edge that had been painted yellow and black, but Edwina did not notice this due to the crowd. Edwina put her foot down beyond the edge of the ramp and lost her balance. As she felt herself fall, she reached out for a handrail, however there was none and she fell to the floor, suffering a serious concussion. A risk assessment previously undertaken by KLC showed that they had received several complaints regarding the exit, but KLC had decided against installing handrails due to the constraints it placed on those leaving the building and believed the brightly coloured paint was a sufficient warning to take care when exiting the centre.

Frances had just finished swimming one evening and was on her way to the exit but took a wrong turn. She came across a room that Kempton Contractors were developing into a new gym area for KLC, with a sign saying, "authorised personnel only". All the workmen had left for the day but left the area unlocked. The area looked almost complete so Frances thought it would be fun to try the new equipment. However, the treadmill Frances tried had not been fully assembled, and should have been electrically isolated. Frances was thrown to the floor, injuring her hip, and breaking her phone. KLC had used Kempton Contractors successfully for several other renovations and so the staff at KLC did not supervise the work being carried out on the new gym.

Advise KLC as to their potential liability for the incidents involving Alan, Carl, Edwina and Frances.

(25 marks)

Turn over

Question 2

Gavin, aged 16 and Harry, aged 21, were shopping in Kempston Department Store. As they were browsing, they began gently bumping into each other with force, laughing at how each nearly fell over, however the 'game' soon escalated in terms of the force being used and Gavin pushed Harry particularly hard.

This angered Harry and he raised his fist in the air, as if he was about to punch Gavin in the face and shouted, "Watch yourself, push me that hard again and I'll knock you out!" Fearful of being struck by Harry's fist, Gavin reacted by pushing Harry to the ground. Infuriated, Harry began to get up from the floor whilst shouting at Gavin "You've had it!"

During their struggle, they knocked several mannequins over and damaged them. Two security guards, Ian and Ivana, approached. Ivana told Gavin and Harry that they would have to accompany them to the security office whilst the police were called. They were taken to a small office with a locked window and although the door was left ajar, Ian and Ivana waited directly outside the door for the police. After 25 minutes two officers arrived, arrested Gavin and Harry, and took them to the local police station.

Gavin was interviewed with a solicitor and social worker due to his age and cautioned and released after a couple of hours. However, the police suspected Harry of further offences and decided to detain him for 24 hours whilst they investigated. When the 24 hours were over, the officers failed to request authorisation to detain Harry further, but, despite this, Harry was held for another three hours before being cautioned for the incident at the department store and released.

Explain the liability of Gavin, Harry, the department store and the police service for trespass to the person.

(25 marks)

Question 3

Mustafa was speeding around a bend and lost control of his car, resulting in a head-on collision with Natasha who was driving in the other carriageway. Due to the impact Natasha sustained a deep cut to her knee.

Natasha was taken to hospital and was examined by Doctor Osborne who, after a superficial examination of the cut, sent Natasha home with some painkillers and told her to return if the pain persisted after seven days. Doctor Osborne advised Natasha that by keeping the cut clean she could avoid the need for and cost of antibiotics.

A week later, despite following the doctor's advice about keeping the cut clean, Natasha was in excruciating pain and generally feeling very unwell. She returned to the hospital and after being re-examined it was discovered that the cut had become seriously infected, and Natasha was given the news that she would require life-saving treatment involving her lower leg being amputated. Medical reports confirmed that if antibiotics had been prescribed by Doctor Osborne, the infection and amputation could almost certainly have been avoided completely.

Natasha, who is a college lecturer, had originally taken a week off work due to the incident, however she will now need a minimum of six months off work to recover and has been told by the medical team she will experience considerable pain for some time to come. Natasha has had to make adaptations to her home and must make regular trips to the hospital for post-operative care. Natasha was a keen amateur footballer and had hoped to progress to a professional contract. It was later revealed that a scout had seen Natasha play and so expert evidence was presented to the court stating that there was an 80% chance of Natasha being signed up as a professional football player due to her record as an amateur.

For all defendants it has already been established that a duty of care was owed, please do not consider this element of the tort.

- (a) Advise of the issues that will be considered in relation to causation and the extent of the liability of Mustafa and the hospital.

(12 marks)

- (b) Explain to Natasha how the courts could assess the damages if liability is established.

(13 marks)

(Total: 25 marks)

Turn over

Question 4

Stephanie, aged 17, had been waiting at a bus stop with her friends. They had all been out drinking and were listening to music as they waited for the bus. A few of them were dancing and Stephanie wanted to show her friends a new dance she had been practising. She stepped backwards off the kerb, and as she began to dance in the middle of the road, Peter came speeding around the corner.

Despite Peter slamming on the brakes, he was unable to stop in time and hit Stephanie, breaking both her legs. Once the emergency services arrived on the scene, Peter was breathalysed and was found to be three times over the legal limit.

Quentin had been in the front seat of Peter's car and suffered serious head injuries due to not wearing his seat belt. It transpired that he had stopped wearing seat belts a few months earlier due to the belt hurting a hernia from which he suffered and was in the process of applying for a medical exemption certificate. When questioned, Quentin claimed that he had not known how drunk Peter was as they had only met up shortly before the drive started.

Richard had been in the back seat of Peter's car. He had also been drinking heavily and had drunkenly forgotten to wear his seat belt. He had been encouraging Peter to 'drift' round the corner in a controlled skid but had to lean forward between the two front seats as he could not be heard over the loud music in the car. Richard knew how intoxicated Peter was and so thought he was willing to try drifting. Peter had been speeding up to drift as he came around the bend and hit Stephanie.

Assuming that a breach of the duty of care has been established, advise Peter of his potential use of defences in tort against claims made by Stephanie, Quentin, and Richard.

(25 marks)

End of the examination