



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

June 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.
- A basic calculator is provided should you require the use of one.
- 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. *“Illegality has the potential to provide a defence to civil claims of all sorts, whether relating to contract, property, tort or unjust enrichment, and in a wide variety of circumstances.”*
(Lord Toulson, *Patel v Mirza* (2016))

Critically evaluate what is described as the ‘post-Patel approach’ adopted by the courts, involving illegality and the reasons behind any changes.

(25 marks)

2. The imposition of strict liability can be seen as prioritising the interests of the public over those of individuals.

Critically analyse this statement and provide arguments for and against the imposition of strict liability in tort.

(25 marks)

3. When assessing a standard of care, courts must focus on the ‘act and not the actor’.

Critically assess the courts’ approach to applying this test and any circumstances under which they may permit the inclusion of subjective factors.

(25 marks)

4. The tort of trespass to land being actionable per se shows the fundamental importance of protecting interests in land.

(a) Explain the principles that are applied in cases involving trespass to land.

(10 marks)

(b) Critically analyse issues faced by the courts when dealing with cases involving trespass to land.

(15 marks)

(Total: 25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Andrew was staying at Kempston Hotel with his wife Belinda and six-year-old son Callum. Having drunk too much wine at lunch, Andrew decided to return to their room to lie down. Belinda decided to take Callum to the hotel's creche facility, run by their staff, so that she could browse around the local shops.

While in his room, Andrew wanted to get some air and to smoke a cigarette. He opened the sash window and sat on the windowsill. As he leaned out to blow the smoke away, the sash mechanism broke and threw Andrew out of the window. He fell two floors to the ground and sustained a fractured skull and a broken leg.

After being settled into the creche by his mother, Callum began to play with a ball. A cleaner, Donna, was working nearby and this section of the creche had been closed off using plastic barriers to prevent children reaching the area being cleaned. There was also a sign stating 'No Admittance. Cleaning in Progress'. Donna knocked over her bucket of water and ran to the cleaning closet a few rooms down the corridor to get a roll of kitchen towel to mop up the spillage. While she was gone, Callum's ball rolled through the barrier. Callum climbed the barrier to retrieve his ball but slipped over on the spilled water and bruised his arm and back.

Kempston Hotel were currently renovating a wing of the hotel and had hired Elan Contractors (EC) to carry out the work. The hotel manager had thoroughly investigated EC's references and legal documentation, such as their insurance certificate. EC had agreed to fence off the wing they were working on in a way that enabled their workers to access the site but which prevented any guests, especially children as it was a family hotel, gaining access.

On her way back to the creche after shopping, Belinda noticed the fenced-off area and, feeling nosy, decided to investigate. She pushed open a panel in the fence that the workforce had left insecure when they went for a tea break. As Belinda stepped inside the work area, she tripped over loose wiring for nearby machinery, spraining her wrist and breaking her new phone.

Advise Kempston Hotel as to the likely success of any claims made by Andrew, Belinda and Callum.

(25 marks)

Turn over

Question 2

Erica had recently ended a violent relationship with Frank. Heated arguments between the two had seen police officers visit their home on several occasions. Erica and members of her family had previously appealed to the police for assistance in removing Frank from the home and preventing him from gaining access to Erica but had been told that it was a civil matter. Eventually brave enough to end the relationship, Erica applied for a restraining order preventing Frank coming near her or the home they previously shared.

One Friday night, a passerby rang 999 to let the police know that there was a man (subsequently confirmed to be Frank) outside a house (Erica's) threatening those inside that he was about to set fire to the house if they did not let him in. The caller told the call handler that the man had a bottle in his hand with a rag hanging out of it.

The call handler gave the report the highest priority, meaning that officers should have been dispatched as soon as possible. However, minutes later, due to a misunderstanding in the communication centre, the call was downgraded and officers were not sent for over an hour. When the police arrived at Erica's home, they found the front door open and Erica inside covered in blood on the hallway floor. She had been stabbed several times. There was no sign of Frank. An ambulance was summoned but despite the police officers being assured that their call had been logged and accepted, an ambulance failed to turn up for almost an hour owing to there being no crew available as they were actively dealing with other calls. When the ambulance arrived, despite the best efforts of the paramedics Erica passed away at the scene.

Not satisfied with his earlier attack, Frank lay in wait for the police and ambulance to leave the scene. He then set fire to Erica's home. A neighbour saw the smoke and called the fire service, which arrived and extinguished the fire. However, they failed to deal with some smouldering material; the fire later reignited and the house burned to the ground. The fire service was unable to attend the second fire in time as all units were on other callouts.

As he fled the scene, Frank was seen running by officers, who had been alerted to keep an eye out for him. As they chased him, Frank spotted the officers and ran into a crowded pub. The police entered the pub, shouting for everyone to give way. One patron, Gina, failed to move out of the way in time and fractured her hip when she was pushed into a table by an officer running past.

Advise the emergency services as to their potential liability for claims made by Erica's estate and Gina.

(25 marks)

Question 3

Harriett and her childhood friend, Indie, were enjoying a Saturday night out at Kempston Nightspot, a nightclub. The club had recently been remodelled but a problem with wiring for the lighting system ignited a fire. The crowd began to panic. Harriett and Indie were separated in the chaos. Harriett fell to the ground amidst all the pushing and shoving, injuring her hip and ankle. Unable to get up, Harriett soon realised that she was in the path of the fire.

As he was trying to find his way out of the club, another clubber, Jasper, saw Harriett struggling to get to her feet and realised how close the fire was to her. He ran towards her, lifted her from the floor and supported her away from the fire just in time.

Although almost at the exit and safe from danger, Indie ran up a flight of stairs to gain a better view to find Harriett. She saw her friend on the floor in the path of the fire but realised that she was too far away to get to Harriett before the fire reached her. She then saw that Jasper had begun to help Harriett and ran to meet them.

Leroy saw Harriett being treated by paramedics outside the venue. Leroy was annoyed that Harriett had rejected his advances and had started a relationship with their mutual friend, Manuel. Out of spite, Leroy called Manuel and told him that Harriett had been killed in the fire.

As a result of the incident at the club, Jasper, after realising how close he came to death, has developed chronic depression. As a result of fearing her closest friend was going to burn to death, Indie has developed PTSD and Manuel suffers recurring nightmares in which Harriett is killed.

Immediately after the incident, Harriett developed serious breathing complications from smoke inhalation and her mother, Olive, had to move in with her to care for her. Over the following seven days Harriett deteriorated and eventually passed away; Olive developed a chronic fear of leaving home as she feared danger could happen at any moment.

Advise Kempston Nightspot as to their potential liability in claims against them made by Jasper, Indie, Manuel and Olive.

(25 marks)

Turn over

Question 4

Peter is a self-employed quantity surveyor who works with large construction companies on preparing tenders for building projects. While working on such a project with Kempston Contractors, Peter had an argument with their managing director, Rosie, over lunch where many of those present were discussing politics.

Despite the disagreement not being related to work-based issues, Rosie sent out an email to other large construction companies and industry leaders claiming that she had had to terminate the contract with Peter due to him being incompetent and dishonest, and warning them not to hire him.

Steven worked at one of the companies that received the email. Using a falsified profile, he was part of a Facebook group that named and shamed those in the industry who, in their opinion, should not be trusted. Steven's false profile published a Facebook post asserting that not only was Peter dismissed for the reasons in Rosie's email but that he had conducted research and found out that Peter had been convicted of theft 20 years earlier. Steven also posted the same information on X (formerly Twitter) and this was re-posted several times by others.

This conviction occurred when Peter was in his youth and he has not committed any further offences. Since then, Peter has worked hard to build up his business, a wide network of contacts and an impeccable reputation.

Terry, a director of a construction company, accosted Peter at an industry awards ceremony. He addressed Peter very loudly about the email and the social media posts. Terry said that he had heard other rumours that Peter already had a bad reputation, so he had no doubt that the statements he had seen in the email and online were true but no one else had been willing to make it public. Terry began taunting Peter by asking "What job are you going to do now, go back to stealing people's money?". Terry later claimed this was merely banter.

Angered by the impact the statements made by Rosie had had on his life, Peter created a leaflet claiming that Kempston Contractors was engaged in illegal tax evasion. Peter printed off 100 copies of the leaflet and delivered them to houses in Kempston.

An accountant employed by Kempston Contractors had earlier told Peter that he had been asked to "do whatever was necessary, including going above and beyond, to save money on the tax bill.". Peter included in the leaflet his opinion that if the company was willing to commit fraud on the government, they must be willing to do the same to suppliers and customers.

(a) Advise Peter as to the likelihood of success in a claim against Kempston Contractors, Rosie, Steven and Terry for defamation.

(15 marks)

(b) Advise Kempston Contractors as to the likelihood of success in a claim against Peter for defamation.

(10 marks)

(Total: 25 marks)

End of the examination