



**CILEX Level 3 Certificate in Law and Practice/
CILEX Level 3 Professional Diploma in Law and Practice**

Unit 5 – Law of Tort

Question paper

November 2023

Time allowed: 1 hour and 45 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.
- You must answer **all** questions from Section A.
- There are three scenarios in Section B — you must choose **one** scenario and answer **all** questions relating to that scenario.
- This question paper is out of 60 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 are **not** allowed access to any statute books.
- A basic calculator is provided should you require the use of one.
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

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SECTION A

Answer ALL questions in Section A.

1. Identify **one** statutory tort. **(1 mark)**

2. Explain what is meant by reasonable foreseeability when establishing whether a duty of care exists. **(2 marks)**

3. Identify any **two** policy considerations that have led the courts to restrict claims for psychiatric injury. **(2 marks)**

4. Identify **three** factors considered by the court when determining the standard of care expected of a defendant. **(3 marks)**

5. Describe the test used to establish factual causation. **(2 marks)**

6. Identify the **three** situations which may break the chain of causation between a defendant's negligence and the harm suffered by a claimant. **(3 marks)**

7. Identify the potential defendants where an employee commits a tort in the course of employment. **(2 marks)**

8. Identify what a defendant must show to establish the defence of consent (*volenti non fit injuria*). **(2 marks)**

9. Identify **three** examples of general damages. **(3 marks)**

(Total Marks for Section A: 20 marks)

SECTION B

There are three scenarios in Section B. Answer the questions relating to **ONE** of the scenarios **ONLY**.

Scenario 1

Mary works as an administrator on a casual basis in the offices of Midshires Police. Mary can choose the number of hours she works each week. She is required to wear her work uniform and to obey reasonable orders.

Mary's sister, Jan, is employed by Midshires Police as an emergency call handler.

On 1 June 2018, Jan received a 999-emergency telephone call from Liam, saying that there were burglars in his factory. Jan told Liam that she would immediately log the call on the police computer system and that the police would attend the scene. Jan then became distracted and forgot to log the call. As a result, the police did not attend the scene of the burglary. The burglars stole several items of expensive equipment from the factory.

That afternoon, Mary was asked to collect some office stationery from a nearby store. Mary was told to use a police van. While on her way to the store, Mary decided to make a short detour to her house to feed her dog. She parked the police van on her drive and went into her house to feed the dog. After leaving the house, and without looking, Mary reversed the police van out of her drive onto the road and knocked over and injured a passing cyclist.

Turn over

Scenario 1 Questions

1. Explain whether Mary is an employee of Midshires Police. **(8 marks)**

2. Explain:

(a) what is meant by the term 'in the course of employment'; **(6 marks)**

(b) whether Mary was acting in the course of her employment when she knocked over the cyclist. **(6 marks)**

(Total: 12 marks)

3. (a) Explain the requirements for an employer to be vicariously liable for the acts of an employee. **(3 marks)**

(b) Explain the public policy considerations that may affect whether Midshires Police owe a duty of care to Liam. **(9 marks)**

Assume that Jan owes a duty of care to Liam.

(c) Explain whether Midshires Police will be vicariously liable for Jan's failure to log Liam's emergency call. **(4 marks)**

(Total: 16 marks)

4. Explain by what date Liam would have to bring any action against Midshires Police. **(4 marks)**

(Total Marks for Scenario 1: 40 marks)

Scenario 2

One morning, Fatima witnessed an accident as she was walking to work along Kempston High Street.

On the opposite side of the road to Fatima, a car, driven at high speed by George, skidded and mounted the pavement. George's car collided with a mother and two children, who were walking towards the local school. Fatima later learnt that all three had been killed instantly. A man on the pavement was also knocked down by the car and seriously injured. Fatima was in a state of shock as a result of witnessing the accident and has been suffering from depression ever since.

Izzy, the local postwoman who was standing nearby, called an ambulance. Izzy then waited with the injured man, comforting him and helping him with his injuries.

The ambulance, driven by Harjit, was approaching the scene of the accident when Harjit applied the brakes too suddenly and lost control of the ambulance. It crashed into a wall near where Izzy was standing. Izzy had to leap out of the way to avoid being run down herself.

When Izzy saw the ambulance coming towards her, she feared for her life and was extremely upset by this incident. As a result, she is now suffering from PTSD (post-traumatic stress disorder) and has recurring nightmares about being run over by an ambulance.

When the ambulance crashed into the wall, broken glass from the windscreen hit John, a passing cyclist, causing cuts to his face.

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Scenario 2 Questions

1. Explain the **three** elements that John needs to establish to bring a successful claim in negligence against Harjit.

(7 marks)

 2. In relation to a claim by the pedestrians injured in the accident against Harjit:
 - (a) identify and explain the test for determining whether a duty of care has been breached;

(4 marks)

 - (b) explain whether Harjit has breached his duty of care.

(10 marks)

(Total: 14 marks)

 3. (a) Describe what is meant by a secondary victim.

(2 marks)

(b) Explain whether George owed Fatima a duty of care for her severe depression, applying the **four** factors from Alcock v Chief Constable of South Yorkshire (1992).

(6 marks)
- (Total: 8 marks)**
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4. (a) Describe what is meant by a primary victim.

(2 marks)

(b) Explain what a primary victim must establish to make a successful claim for psychiatric harm in negligence.

(5 marks)
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- (c) Explain whether Izzy could successfully claim against Harjit for her severe depression.

(4 marks)

(Total: 11 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Anya is a landscape gardener who has worked in the industry since the early 1990s. Recently, Anya has been suffering with shortness of breath and a persistent cough. Anya consulted her doctor who, after a series of tests, told her that Anya had a lung condition. The doctor also told Anya that the condition was caused by exposure to Radiant Green, a chemical often used in the gardening industry to treat grass lawns.

Anya used Radiant Green in her employment with Barry's Backyards, where she worked from 1991 to 1997, and with her next employer Classic Countryside, where she worked from 2000 to 2015. Since 2017, she has worked for Gary's Greenery, where she has continued to use Radiant Green.

Having heard of the possible risks involved in using Radiant Green, Gary's Greenery provided Anya with a face mask to wear when spraying the chemical. However, Anya finds the face mask uncomfortable so she frequently chooses not to wear it. Gary, the owner of the business, who often works with Anya, does the same, and he has never commented on her failure to wear the mask.

Neither Barry's Backyards nor Classic Countryside ever issued Anya with a face mask. The dangers of Radiant Green only became known in 1998, after a national newspaper revealed that it caused lung conditions. A face mask is completely effective in preventing Radiant Green's effects on the lungs. The face mask can be used for six months and costs £25.

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Scenario 3 Questions

1. Explain whether:

(a) Barry's Backyards was in breach of its duty of care in failing to issue Anya with a face mask;

(7 marks)

(b) Classic Countryside was in breach of its duty of care in failing to issue Anya with a face mask.

(8 marks)

(Total: 15 marks)

2. Anya wishes to sue Gary's Greenery for negligence.

(a) Explain whether she can establish a breach of duty even though a face mask was provided.

(4 marks)

(b) Explain whether she can establish factual causation for her lung condition.

(7 marks)

(Total: 11 marks)

3. Explain whether Gary's Greenery could rely on the following defences if Anya sues for negligence:

(a) *volenti non fit injuria* (consent);

(7 marks)

(b) contributory negligence.

(7 marks)

(Total: 14 marks)

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper