



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

Unit 5 – Law of Tort

Question paper

June 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.
- 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 **two** common law torts. **(2 marks)**
2. Explain what is meant by proximity when establishing a duty of care. **(1 mark)**
3. Explain the relevance of s.1 Compensation Act 2006. **(3 marks)**
4. Define what is meant by a primary victim in claims for psychiatric harm. **(2 marks)**
5. Explain the standard of care expected of a defendant exercising a particular skill. **(2 marks)**
6. Explain the thin-skull rule. **(3 marks)**
7. Describe the relationship required to establish vicarious liability. **(2 marks)**
8. Explain the limitation period that governs a claim for personal injury in the tort of negligence. **(4 marks)**
9. Identify whether loss of future earnings will be general or special damages. **(1 mark)**

(Total Marks for Section A: 20 marks)

SECTION B

There are three scenarios — you must choose one scenario and answer all questions relating to that scenario.

Scenario 1

In March 2021, Dearchester School arranged to take a group of pupils, aged between 13 and 15, on a school trip to the Lake District. The school hired a private coach, owned and driven by Erik, to transport the pupils.

On the day of the trip, the pupils and their parents assembled in the car park at the school. Once the pupils were seated on the coach, Erik set off. Erik drove out of the school gates on to the busy main road, without looking. He collided with a lorry, which crashed into the coach. Erik was clearly at fault for the accident.

Frances, whose daughter Eleanor was on the coach, witnessed the accident from where she was standing 100 metres away. She was very relieved that Eleanor was not injured but has since replayed the accident many times in her mind. She was later diagnosed as having post-traumatic stress disorder and has been unable to return to work since the incident.

Eleanor's father, Gary, was at home when the accident occurred. He was speaking to Eleanor on his mobile phone as she set off on the coach trip. He heard a loud bang, followed by the screams and cries of children. Since the incident, he has suffered from bad dreams and feels stressed when he is apart from his daughter.

Harpreet, an administrative assistant at the school, also saw the collision, as he was looking out of his office window watching the pupils depart. He rushed out of the school and was one of the first people to board the coach. The crash caused the coach to catch fire. Harpreet went onto the coach and helped to carry some of the children to safety. He has now been diagnosed with clinical depression by his doctor.

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Scenario 1 Questions

1. In respect of a claim for psychiatric harm in negligence:

(a) define a 'secondary victim';

(2 marks)

(b) explain how the courts ascertain whether someone is a 'secondary victim'.

(7 marks)

(Total: 9 marks)

2. Explain, with reference to the law relating to secondary victims, whether a duty of care was owed to:

(a) Frances;

(7 marks)

(b) Gary.

(7 marks)

(Total: 14 marks)

3. Explain whether Harpreet was owed a duty of care.

(9 marks)

It is now November 2023 and Harpreet has not yet sued for negligence.

4. Explain how this may affect any claim to be made by Harpreet.

(8 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Harry is an antiques and art dealer. Georgiou telephoned Harry and said that he knew where there were some stolen paintings for sale. Georgiou offered to drive Harry to see the stolen paintings. Harry agreed to go with Georgiou and Harry bought several of the stolen paintings.

On their way back with the stolen paintings, Georgiou drove negligently and crashed into a tree at the side of the road. Harry suffered some minor cuts in the crash.

A few months later, Harry went to an antiques sale that was held in the grounds of Isla's stately home. Harry was keen to look at an antique table he had seen in the sale catalogue. The table was on display in one of Isla's large tents. Harry was about to enter the tent, when he noticed that the main pole holding up the tent was leaning over, making the tent unsafe. Nevertheless, Harry decided to go into the tent to look at the antique table.

Shortly after Harry entered the tent, the main pole fell over, and Harry was trapped beneath it. His chest was crushed and his arm was broken. Harry's suit was also ruined. As a result of his injuries, Harry was unable to return to work for three months. Harry earns £60,000 per year. Harry is a keen amateur cricketer and will be unable to play cricket for the rest of this season. Harry also earns £50 per week writing a weekly cricketing blog about his team's matches for a popular website. As he cannot attend the matches while he is injured, he is unable to continue writing his blog for three months.

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Scenario 2 Questions

1. If Harry brings an action in negligence against Georgiou, for damages in respect of his injuries from the car crash, explain:

(a) the common law defence which may be available to Georgiou;

(3 marks)

(b) whether this defence is likely to succeed.

(4 marks)

(Total: 7 marks)

2. If Harry brings an action in negligence against Isla, in relation to the tent pole falling on him, explain:

(a) the common law defence which may be available to Isla;

(5 marks)

(b) whether this defence is likely to succeed;

(6 marks)

(c) the statutory defence which may be available to Isla;

(4 marks)

(d) whether this defence is likely to succeed.

(7 marks)

(Total: 22 marks)

3. (a) Define special damages and general damages.

(2 marks)

(b) Identify and explain what special damages Harry will be able to claim in relation to his two actions in negligence.

(3 marks)

(c) Identify and explain what general damages Harry will be able to claim in respect of his two actions in negligence.

(6 marks)

(Total: 11 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Brent owns and manages Brent Farm, where he holds an annual folk music festival. William, an experienced farm worker, is one of Brent's workers, who has been working on the farm for two months. Brent provides William with accommodation and meals and an overall to wear over his own clothes. He pays William at an hourly rate, stipulates the hours that William works and guarantees him 20 hours work per week. Brent leaves it to William to pay his own tax and National Insurance. William is also not allowed to delegate his work to anyone else.

One Saturday morning during the music festival, William, on Brent's instructions, went to feed the bull in a paddock adjacent to the campsite, but William failed to secure the gate and the bull escaped. It stampeded through the campsite, knocking down Abbey, who was one of the 500 people camping on the farm for the festival. Brent managed to catch the bull and return it to the paddock. It was clear that Abbey had suffered a broken leg, as the bone was showing through the skin.

An ambulance crew arrived at the farm and confirmed that Abbey needed hospital treatment. They failed to fasten Abbey onto the stretcher securely. Consequently, when carrying her to the ambulance, Abbey fell off the stretcher and her injured leg suffered further damage.

At the hospital, Dr Chappell, a consultant in the Trauma Department, advised Abbey that the second injury to her leg was so severe that the leg would have to be amputated. Abbey wishes to bring a claim in negligence in respect of her injuries.

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Scenario 3 Questions

1. If it is established that William owes a duty of care to Abbey, explain:

(a) the test which will be used to determine whether William has breached his duty of care owed to Abbey;

(5 marks)

(b) whether William has breached his duty of care to Abbey.

(4 marks)

(Total: 9 marks)

2. If it is established that William breached his duty of care owed to Abbey:

(a) explain the relevant test for establishing causation in fact and apply it to William's conduct in relation to Abbey's injuries;

(5 marks)

(b) explain whether the actions of the ambulance crew amount to a *novus actus interveniens* (new intervening act).

(4 marks)

(Total: 9 marks)

3. (a) Describe the Multiple/Economic Reality test for determining whether a person is an employee.
(6 marks)

(b) List the factors that the court can use to determine whether or not William is an employee of Brent.

(8 marks)

(Total: 14 marks)

4. (a) Define what is meant by vicarious liability and identify the requirements for establishing it in employment situations.

(4 marks)

(b) Assuming that William is Brent's employee, explain whether Brent is likely to be vicariously liable for William's negligence.

(4 marks)

(Total: 8 marks)

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper