



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

Unit 5 – Law of Tort

Question paper

January 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.

Turn over

SECTION A

(Answer ALL questions in Section A)

1. Define 'tort'.
(1 mark)
2. Explain the test the court will use to establish whether a duty of care exists in a new (novel) situation resulting in physical personal injury.
(3 marks)
3. Explain whether a person who acts negligently owes a duty of care to a rescuer.
(3 marks)
4. Describe what is meant by 'reasonable foreseeability' when assessing whether a duty of care has been breached.
(3 marks)
5. Explain how the 'material increase in risk' test relates to establishing causation in fact.
(3 marks)
6. Explain the test for legal causation in the tort of negligence.
(2 marks)
7. State the effect of the principle of 'vicarious liability'.
(1 mark)
8. Explain the effect on damages awarded where the defendant successfully establishes contributory negligence.
(2 marks)
9. Identify for whose benefit a claim under the Fatal Accidents Act 1976 can be made.
(2 marks)

(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

Anita is a young police officer. After completing her training, she started work at Kempston Police Station. On her first day at work, she received a call to attend Buyitbetta Grocery Store in Kempston. Cam, one of the shoppers, was being held hostage by Don. Don was holding a knife to Cam's throat. Emrys, Buyitbetta's security officer, knew that Don had previously threatened customers in the store and should not have been allowed to enter it again. When Don came into the store, Emrys was not paying attention and did not see him.

When Anita arrived at the store, she made an urgent call for more police officers to help her, but her request was not passed on and no help arrived.

Without warning, Don stabbed Cam several times. Anita went to help Cam, who was bleeding heavily, and Anita became covered in blood. The incident was shown on local television news. Anita's husband, Frank, saw Anita covered in blood and was shocked by what he saw.

As a result of seeing Cam stabbed and, in particular, due to becoming covered in blood, Anita suffered serious psychiatric harm. Her mind was so badly affected that she now lives in a psychiatric hospital. She can no longer enjoy a normal family life with Frank and their young child or family holidays. Anita now has no recollection of what family life was like before this event.

Turn over

Scenario 1 Questions

1. (a) Explain the approach that a court should take in determining whether a duty of care exists.

(8 marks)

- (b) Explain whether a potential claim by Cam, against Buyitbetta Grocery Store, could be considered as a new (novel) duty situation and whether a duty of care is likely to be owed in these circumstances.

(6 marks)

(Total: 14 marks)

2. Explain the extent to which public policy issues may affect the existence of any duty of care owed by Kempston Police to Cam.

(9 marks)

3. (a) Explain whether Anita meets the requirements for a primary victim in a negligence claim.

(4 marks)

- (b) Explain whether Frank meets the requirements for a secondary victim in a negligence claim.

(9 marks)

(Total: 13 marks)

4. Explain what general damages Anita may be able to claim.

(4 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Harold is a member of a flying club, and he owns a small aeroplane. On 3 August 2020, Harold and his friends, Aaron and Collette, agreed to go for a flight in Harold's aeroplane to celebrate Collette's 30th birthday. They all got into Harold's car and set off towards the airfield. During the journey, Harold negligently drove into the back of Bella's car, which was stationary at a junction.

Bella sustained a whiplash injury in the road traffic accident. Her car was off the road for a week for repairs to the back bumper. Sadly, Bella's whiplash injury triggered the onset of a pre-existing cancerous condition, and she later died as a result. Bella worked as a dentist earning £80,000 a year. She left a husband and two school-aged children.

Collette was not wearing a seat belt at the time of the accident and was thrown forward by the impact, hitting her head on the windscreen. Collette said that she felt all right, so they decided to continue the journey.

On arrival at the airfield, Collette felt dizzy and sick and decided not to go up in the aeroplane. Harold and Aaron drank several pints of beer and then decided, as a prank, to fly a plane belonging to another member of the club. Harold's pilot's licence was not valid for flying this aeroplane, and Harold was too drunk to fly legally. Harold managed to take off but could not handle the plane, and it crashed. Both Harold and Aaron were seriously injured. Harold and Aaron have been convicted of various offences in relation to this incident.

Meanwhile, a consultant has told Collette that her head injuries, sustained in the road traffic accident, would have been less severe if she had been wearing a seat belt.

Turn over

Scenario 2 Questions

1. In a claim for negligence:

- (a) explain by what date Collette would have to bring any action for her injuries and why;

(6 marks)

- (b) state the effect on her claim of any failure to bring an action by such a date.

(1 mark)

(Total: 7 marks)

2. If Collette decides to bring a claim against Harold within the required timeframe, explain:

- (a) the statutory defence available to Harold and, if successful, the likely effect on any damages awarded to Collette;

(8 marks)

- (b) the defence which Harold cannot use against Collette.

(2 marks)

(Total: 10 marks)

3.

- (a) Explain whether Bella's personal representatives will be able to establish factual causation of damage in a negligence action against Harold.

(3 marks)

- (b) Explain, with reference to legal causation, the extent of the injuries to Bella for which Harold is likely to be liable.

(5 marks)

(Total: 8 marks)

4.

- (a) Explain what damages may be claimed by Bella's personal representatives on behalf of her estate.

(5 marks)

- (b) Identify the relevant legislation under which Bella's widower and children may be able to bring an action for loss of dependency.

(1 mark)

(Total: 6 marks)

5. Explain the common law defences available to Harold if Aaron brings an action for damages against him.

(9 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

In July last year, Henry was driving on the motorway, obeying the speed limit of 70mph. His girlfriend, Georgina, was also in the car and seated in the front passenger seat. Ahead of Henry's car, Iqbal was driving a large lorry. Iqbal lost concentration, as he was using his mobile phone while driving, and he hit the central barrier of the motorway. His lorry spun round, blocking the path of Henry's car. Despite braking as soon as possible, Henry crashed his car into Iqbal's lorry.

Jennifer was driving on the same stretch of motorway, just behind Henry's car. She witnessed the crash and had just enough time to swerve and narrowly avoid the other vehicles. Jennifer was unharmed by the incident.

Ten minutes later, Kelvin, Henry's cousin, drove past the scene of the accident at slow speed. Kelvin knew that Henry drove a distinctive yellow car and saw Henry being treated by paramedics. Kelvin was shocked and distressed and has suffered from depression since the incident.

Henry and Georgina were taken to hospital, where it was discovered that Henry had suffered a fractured skull and Georgina had fractured her left ankle. Georgina's leg was placed in plaster and she was advised to use a crutch whenever walking. Two weeks later, Georgina tried to walk her dog without her crutch. She stumbled and fell, causing the ankle further injury, as a result of which there is a much worse outlook for recovery.

Although Jennifer was physically unharmed by the incident, she began to suffer from nightmares and panic attacks soon afterwards. She has been diagnosed with post-traumatic stress disorder (PTSD).

When clearing the scene, the police found illegal drugs hidden in Henry's car. Henry has admitted that the drugs belonged to him, and the police are satisfied that Georgina was unaware of their presence.

Turn over

Scenario 3 Questions

1. Assuming that Iqbal is in breach of his duty of care to Georgina:

(a) explain the test for factual causation in negligence;

(3 marks)

(b) explain whether there has been a break in the chain of causation in Georgina's case.

(8 marks)

(Total: 11 marks)

2. Explain what factors assist the court to decide whether a duty of care is owed in psychiatric injury cases to:

(a) a primary victim;

(4 marks)

(b) a secondary victim.

(7 marks)

(Total: 11 marks)

3. Explain whether Iqbal is likely to be found to have owed a duty of care to:

(a) Jennifer;

(4 marks)

(b) Kelvin.

(7 marks)

(Total: 11 marks)

4. Explain whether the defence of illegality (*ex turpi causa*) may defeat any claim by Henry in negligence.

(7 marks)

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper