



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 5 – LAW OF TORT\*

**Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time**

#### Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

#### Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

## SECTION A

### (Answer ALL questions in Section A)

1. Define 'tort'.  
**(1 mark)**
2. Explain the element of 'fair, just and reasonable' as established in Caparo v Dickman (1990).  
**(2 marks)**
3. Explain the effect of s.1 Compensation Act 2006.  
**(3 marks)**
4. Identify **three** of the requirements that a secondary victim must prove in order to establish a duty of care.  
**(3 marks)**
5. Explain the 'magnitude of risk' test that is used to determine the standard of care owed.  
**(2 marks)**
6. Explain the 'material increase in risk' test in factual causation.  
**(3 marks)**
7. Define 'vicarious liability'.  
**(2 marks)**
8. Explain the defence of illegality (*ex turpi causa*).  
**(3 marks)**
9. Identify the aim of damages in tort.  
**(1 mark)**

**(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**

Sutchester Library is run by Sutchester Council. The Council employs Alexis and Brie as librarians.

One Monday morning, Alexis was replacing the books on the shelves that had been returned over the weekend. Due to budget cuts, Sutchester Council had only supplied the library with one specialist stepladder. Alexis and Brie had been told that they must not access high shelves without using the specialist stepladder. Alexis was using the stepladder to replace the books.

While Alexis was busy, Brie decided to find a book that her friend wished to borrow. Unwilling to wait for the specialist stepladder, Brie climbed onto a wheeled office chair to search a high shelf. While Brie was standing on the chair, it moved and she fell off, cutting her arm. She fell on to Christian, a member of the public, who was browsing the library shelves, injuring his leg.

Dai lived locally and volunteered at Sutchester Library two days a week, with the Council telling Dai in advance which days he was needed. As a volunteer, Dai was unpaid and did not have a contract with Sutchester Council, although he was required to sign a statement guaranteeing his good conduct. While working at the library, Dai wore an official library t-shirt.

Seeing that Brie was bleeding heavily from her arm, Dai took a first aid kit from the staff office and used the bandages to stem the flow of blood. Unfortunately, Brie suffered an allergic reaction to the bandages and this has led to permanent scarring. It was only discovered two months after Brie's injury that this allergic reaction could occur.

## Scenario 1 Questions

1. Explain whether there has been a breach of the duty of care owed to Christian by:

(a) Sutchester Council;

**(6 marks)**

(b) Brie.

**(5 marks)**

**(Total: 11 marks)**

2. Explain whether Sutchester Council is vicariously liable for Brie's actions, assuming that Brie is liable for the injury to Christian.

**(10 marks)**

3. Explain:

(a) the tests that the courts use to determine whether a person is an employee;

**(6 marks)**

(b) whether Dai will be considered an employee.

**(7 marks)**

**(Total: 13 marks)**

4. Explain whether Dai has breached the duty of care which he owes Brie.

**(6 marks)**

**(Total Marks for Scenario 1: 40 marks)**

## **Scenario 2**

Hetty is a taxi driver, who works in the Kempston area. In June 2017, Hetty was hired by Imran to take him to a party at his friend's house. Hetty picked up Imran, but on the way to the party Hetty became distracted while trying to change the radio station, and her car collided with a car coming in the opposite direction, driven by Jenna. The accident was entirely the fault of Hetty. Imran suffered a broken arm in the crash.

Jenna's 15-year-old daughter, Kelly, was in the car with her. They were both badly injured in the accident. Jenna was knocked unconscious and was in a coma in hospital for 18 months. Kelly suffered a broken arm and can no longer play tennis.

In December 2018, Jenna was given an injection of a highly potent medicine by Liam, a nurse, who was drunk at the time. The medicine was intended for another patient. Jenna died as a result of the injection. Jenna was a single parent and had financially supported both herself and Kelly.

Hetty has told Imran that she is not liable for any claim by him due to the notice displayed in her taxi, which stated: 'The driver is not liable for any injury to a passenger, howsoever caused'.

## Scenario 2 Questions

1. Explain whether the exclusion notice in Hetty's taxi will prevent a successful claim in negligence by Imran.

**(5 marks)**

2. Explain how the relevant limitation periods will apply to a claim by:

(a) Imran;

**(8 marks)**

(b) Kelly.

**(3 marks)**

**(Total: 11 marks)**

3. Explain, in relation to a claim by Jenna's estate:

(a) the test for factual causation;

**(4 marks)**

(b) whether Liam's act is a new intervening act (*novus actus interveniens*).

**(6 marks)**

**(Total: 10 marks)**

4. Explain what damages may be claimed by:

(a) Jenna's estate under the Law Reform (Miscellaneous Provisions) Act 1934;

**(6 marks)**

(b) Kelly under the Fatal Accidents Act 1976.

**(4 marks)**

**(Total: 10 marks)**

5. Explain what damages Kelly may claim in respect of her own injuries.

**(4 marks)**

**(Total Marks for Scenario 2: 40 marks)**

### **Scenario 3**

In September 2020, Naveen attended the Accident and Emergency Department (A&E) at Kempston Hospital, complaining of severe headaches that would not respond to painkillers. Naveen spoke to Oliver, the receptionist. All receptionists were supposed to have a list of questions to ask if a patient complained of headaches, including whether the patient had suffered loss of vision and whether they felt dizzy.

However, due to an administrative error, Oliver had not received appropriate training and did not have the list of the questions. If Oliver had asked Naveen these questions, Naveen would have answered 'yes' to both and consequently would have been assessed as a high-risk patient. Instead, Naveen was assessed as a low-risk patient and had to wait two hours for medical attention. Because of the delay, Naveen suffered a serious stroke. If he had been processed quickly as a high-risk patient, there is a 75% chance that the stroke would have been prevented.

Naveen later found out that he had an underlying genetic disorder that made the effect of the stroke much worse. Most people would have suffered only temporary symptoms but, due to his genetic disorder, Naveen was paralysed for life.

Elsewhere in the hospital, Paolo was being treated for complications arising from his asthma. Paolo's doctor was Dr Quinton, a consultant who preferred traditional methods to what he considered to be unproven modern technologies. Dr Quinton prescribed Paolo 'Breathease' – a course of medicine that 20 years ago was the standard treatment, but is now considered outdated. Paolo took the medicine and it was successful in suppressing his symptoms, but he suffered severe side effects, which made him feel very ill. Paolo has since found out that only around 3% of doctors still use Breathease.

### Scenario 3 Questions

1. Explain:

(a) whether Kempston Hospital owed Naveen a duty of care;

**(4 marks)**

(b) if so, whether that duty of care was breached.

**(5 marks)**

**(Total: 9 marks)**

2. Explain whether, if there is a breach of a duty of care by Kempston Hospital, Naveen can establish factual causation.

**(8 marks)**

3. Explain:

(a) what is meant by 'causation in law';

**(4 marks)**

(b) whether Naveen will be able to recover damages for the full extent of his injuries.

**(4 marks)**

**(Total: 8 marks)**

4. Explain:

(a) the standard of care expected of Dr Quinton;

**(9 marks)**

(b) whether Dr Quinton has breached that standard of care.

**(6 marks)**

**(Total: 15 marks)**

**(Total Marks for Scenario 3: 40 marks)**

**End of Examination Paper**