

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

2. Explain what is meant by 'foreseeability' in relation to a duty of care. **(3 marks)**

3. Identify **two** reasons why the courts are reluctant to find in favour of claims for psychiatric harm. **(2 marks)**

4. Identify **two** factors which are relevant to setting the standard of care expected of a defendant. **(2 marks)**

5. Explain causation in fact and causation in law. **(4 marks)**

6. Identify the possible defendants, if an employee commits a tort. **(2 marks)**

7. Explain the defence of *volenti non fit injuria* (no harm is done to someone who consents). **(2 marks)**

8. Distinguish between 'special' and 'general' damages, using examples. **(3 marks)**

9. Identify **one** statute used in awarding damages in a claim where the victim has died. **(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

In July 2018, Ahmed was driving along Kempston High Road, a busy stretch of road which runs through the town of Kempston. Ahmed's mobile phone rang and he tried to take it out of his pocket and answer it, while driving. As he did so, Ahmed lost control of his car and collided with the car in front of him, which was being driven by Bella. Both vehicles were damaged in the incident, and Bella later found out that she had suffered a whiplash injury due to the collision.

PC Carter, a local police officer, was the first officer to reach the scene of the accident. Ahmed's and Bella's vehicles were stationary in the middle of the road, which meant that other vehicles could not pass. Ahmed's car was leaking oil as a result of the damage it had sustained, and a large puddle of oil had formed in the road. PC Carter called for assistance and was told that a towing vehicle would arrive to collect the cars involved in about 20 minutes.

Worried that a traffic jam was already forming, PC Carter told Bella that she needed to move her car off the road 'right now'. PC Carter told Bella that she should get back into her car and drive it further up the road, where there was a small car park. Bella followed PC Carter's instructions, but when she drove through the oil puddle, Bella's car went into a skid that Bella could not prevent. The car crashed into a low wall by the side of the road. Bella broke her ankle in this second incident.

Scenario 1 Questions

1. Explain:

(a) the approach of the courts to whether the police owe a duty of care to members of the public;

(7 marks)

(b) whether PC Carter owes a duty of care to Bella.

(5 marks)

(Total: 12 marks)

2. Explain:

(a) the test for establishing factual causation;

(4 marks)

(b) when the actions of a third party will break the chain of causation;

(3 marks)

(c) whether Ahmed or PC Carter is likely to be found to have been the factual cause of Bella's broken ankle.

(6 marks)

(Total: 13 marks)

3. Explain:

(a) the defence of contributory negligence and how it may affect Bella's claim;

(7 marks)

(b) the limitation rules and how they affect Bella's claim.

(8 marks)

(Total: 15 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Earlier this year, there was a serious fire at Gavenham halls of residence at Kempston University. The fire began on the eastern side of the building, where university employees had been renovating some unused rooms. The fire was due to the employees' negligence.

Holly, Isaac, Kai and Lyla are all students at Kempston University.

Holly lived in a room close to where the fire began. She had to run through the flames to escape from her room and suffered severe burns. As a result of this incident, and the burns that Holly suffered, she was later diagnosed with Post-Traumatic Stress Disorder (PTSD).

Isaac saw the flames from the nearby Student Union and ran to Gavenham halls to see if he could help. When he arrived, the fire service was already on the scene and they told Isaac to stay back. While he watched, Isaac saw Holly, covered in soot and with severe burns, being treated by paramedics. Isaac was particularly upset as he and Holly were close friends. Isaac has been diagnosed with clinical depression as a result of what he saw at the fire.

Kai was also injured during the fire. While most students in rooms near Kai suffered only minor injuries from smoke inhalation, Kai's underlying asthma made his symptoms much worse, and he spent several weeks in hospital as a result.

Lyla was also badly burned in the fire. She has suffered permanent scarring to her hands and face, which has made her extremely self-conscious. Her laptop was destroyed in the fire. The rehabilitation from her injuries also meant that she had to take a year off from her university studies while recovering.

Scenario 2 Questions

1. Explain:

(a) what must be established for a claimant to be a primary victim of psychiatric injury;

(4 marks)

(b) whether Holly is a primary victim;

(4 marks)

(c) whether Isaac is a primary victim.

(3 marks)

(Total: 11 marks)

2. Explain:

(a) what must be established for a claimant to be owed a duty of care as a secondary victim of psychiatric injury;

(6 marks)

(b) whether Isaac is a secondary victim.

(8 marks)

(Total: 14 marks)

3. Explain whether, assuming the University has breached its duty of care to Kai, he can recover damages for the full extent of his injuries.

(7 marks)

4. Explain what damages Lyla may be entitled to claim.

(8 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Phoebe recently qualified as a professional skiing instructor. She gives skiing lessons at the dry ski slope in Kempston Ski Centre (KSC). Phoebe also teaches at a number of other dry ski slopes in the area.

KSC has a full-time skiing instructor, Saanvi, who is employed by KSC. Often, more people want lessons than Saanvi has capacity to teach. When this occurs, KSC contacts Phoebe, who will teach the individual pupil. KSC has told Phoebe that when she is teaching pupils, she must wear the KSC-branded snowsuit that it has provided for her. It also expects Phoebe to follow the lesson plans created by KSC. KSC pays Phoebe a flat fee of £25 for each lesson she gives at KSC. It is Phoebe's responsibility to pay the appropriate tax and national insurance contributions.

Last month, Phoebe was giving a skiing lesson to Robyn. Robyn had never been skiing before and was trying to learn the basics, before an upcoming winter sports holiday with her husband. Soon after the lesson started, Phoebe saw her friend Saanvi and went over to talk to her, leaving Robyn unsupervised.

Robyn, without Phoebe's supervision, soon lost control of her skis and fell awkwardly, breaking her leg. Saanvi rushed over to where Robyn was lying, halfway down the slope. Saanvi had been given first aid training by KSC, during which she was taught never to move an injured person. However, she picked Robyn up and started to carry her off the slope.

Saanvi wandered into the path of Teddy, who was skiing down the slope. Teddy could not avoid Saanvi, crashed into her, fell and broke his arm.

Scenario 3 Questions

1. Explain, in relation to a claim for negligence by Robyn against Phoebe:
 - (a) what standard of care is expected of Phoebe;
(9 marks)
 - (b) whether Phoebe is in breach of this standard of care.
(5 marks)**(Total: 14 marks)**

2. Explain:
 - (a) how the courts establish whether an organisation has a relationship with someone that will give rise to vicarious liability;
(5 marks)
 - (b) whether KSC is likely to have such a relationship with Phoebe in relation to a claim by Robyn.
(9 marks)**(Total: 14 marks)**

3. Explain:
 - (a) how the courts establish whether someone was acting in the 'course of employment' when committing a tort;
(8 marks)
 - (b) whether Saanvi was acting in the course of employment when she injured Teddy.
(4 marks)**(Total: 12 marks)**

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper