



**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 2022**

**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

1. Identify **one** statutory tort. **(1 mark)**
  
2. Explain the test created in *Donoghue v Stevenson* (1932) to establish a duty of care. **(3 marks)**
  
3. Explain what is meant by the 'floodgates' argument in relation to claims for psychiatric injury. **(3 marks)**
  
4. Define what is meant by a "primary victim". **(2 marks)**
  
5. Describe a doctor's duty to warn a patient of the risks of medical treatment. **(3 marks)**
  
6. Identify **one** category of act that could amount to a *novus actus interveniens* (new intervening act). **(1 mark)**
  
7. Define vicarious liability. **(2 marks)**
  
8. Explain the defence of illegality (*ex turpi causa*). **(3 marks)**
  
9. Define 'special' damages and provide one example of such damages. **(2 marks)**

**(Total 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 January 2022 Agathe was driving along the main road from Bedford to Kempston. It was early evening and visibility was poor. Agathe was driving at around 50mph, well below the speed limit of 60mph.

Suddenly, a red car pulled out of a small side road directly in front of Agathe. Despite applying the brakes as quickly as possible, Agathe was unable to stop her car in time and it collided with the red car. She later learned that the red car was driven by Bode, a young man who had only passed his driving test the previous week.

Agathe and Bode were both taken to hospital in separate ambulances. Agathe was found to have a broken leg. Bode was unconscious when the ambulance arrived and his heart rate was dangerously slow. During the journey to the nearby hospital, the paramedic, Caitlyn, carried out emergency treatment. This included a manual heart massage technique and she also injected Bode with Exampleoprine, a commonly used treatment for slow heart rates.

Bode has only made a partial recovery from his injuries. He now suffers from heart problems and has been told by a cardiologist that these were most likely caused by Caitlyn's treatment. The heart massage technique Caitlyn used is not generally recommended for use in younger patients such as Bode, although a small minority of doctors disagree and would recommend the treatment. In April 2022 a research study discovered a rare side effect in which Exampleoprine could interact with certain other medications to cause heart damage. It has been confirmed that this interaction occurred in Bode's case as a result of the injection given to him by Caitlyn.

***Turn over***

## Scenario 1 Questions

1. Explain whether a duty of care is owed:

(a) by Bode to Agathe;

**(3 marks)**

(b) by Caitlyn to Bode.

**(3 marks)**

**(Total: 6 marks)**

2. Explain, assuming Bode does owe a duty of care to Agathe:

(a) the standard of care owed;

**(7 marks)**

(b) whether Bode is likely to have breached that duty.

**(5 marks)**

**(Total: 12 marks)**

3. Explain, assuming Caitlyn does owe a duty of care to Bode, the standard of care owed by Caitlyn.

**(8 marks)**

4. Explain whether Caitlyn is likely to have breached her duty of care to Bode in relation to:

(a) the heart massage technique;

**(6 marks)**

(b) injecting him with Exampleoprine.

**(8 marks)**

**(Total: 14 marks)**

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

## Scenario 2

Gavin has worked as a driver of HGVs (heavy goods vehicles) since 1990. From 1990 to 2000 Gavin drove for Harlington Haulage (HH). From 2000 to 2020 Gavin drove for Jubilee Associated (JA). In both roles Gavin was assigned a vehicle by his employer.

In 2020 Gavin was diagnosed with a rare form of lung disease. His doctor told him that the disease might have been caused by his long-term exposure to fumes from the engines of the vehicles that he drove. Gavin has since found out that both HH and JA negligently failed to install or maintain widely available insulation, which would have at least partially protected Gavin from the engine fumes.

In 2020 JA had financial problems, made Gavin redundant and gave him a large amount of compensation. Gavin used this money to buy his own lorry, with the intention of going into business for himself. JA has since ceased trading.

While Gavin initially took on a range of haulage jobs for different clients, in the last 12 months he has increasingly worked for Lorryload Logistics Limited (LLL). Gavin is described as an 'independent contractor' in his contract with LLL. He has been provided with a uniform, which he must wear when driving on behalf of LLL, and he has been asked to paint his lorry with LLL's company logo. Gavin is free to accept other work but has agreed that he will reserve a minimum of 30 hours per week for LLL deliveries. Gavin is paid a flat fee for each delivery he makes on LLL's behalf and is responsible for paying his own tax and National Insurance.

Three months ago, Gavin was making a delivery for LLL when he negligently collided with a car. The driver of the car suffered severe injuries.

**Turn over**

## Scenario 2 Questions

1. Explain, in relation to a claim by the injured car driver:
  - (a) the tests used by the courts to decide whether an organisation has a relationship with someone which will give rise to vicarious liability;  
**(5 marks)**
  - (b) whether LLL is likely to have such a relationship with Gavin.  
**(10 marks)**

**(Total: 15 marks)**
  
2. Explain, in relation to a claim by Gavin against HH for his lung disease:
  - (a) the 'but for' test;  
**(3 marks)**
  - (b) why the 'but for' test is not suitable in Gavin's case.  
**(4 marks)**

**(Total: 7 marks)**
  
3. Explain:
  - (a) the tests used by the courts to establish factual causation in cases where the 'but for' test is not suitable;  
**(10 marks)**
  - (b) how these tests apply in Gavin's case and whether HH will be liable.  
**(8 marks)**

**(Total: 18 marks)**

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

### Scenario 3

Manoj, Nina and Omar are all members of the Kempston 5-a-side football league. The league is run by Perfect Pitches, a company that owns a sports centre in Kempston. Last month, during a league match, Manoj slide tackled Nina, injuring her. It was a strict rule of the 5-a-side league that slide tackles were not permitted at any time.

After the match was over, Manoj returned to the changing rooms. He had left his sports bag, containing his belongings, including a valuable gold watch, on a peg in the changing room. Manoj was upset to find that his watch was missing. Perfect Pitches' usual policy is to lock the changing room while it is unoccupied during matches, but on this occasion their employee forgot to lock the door. However, Perfect Pitches have pointed out a large sign in the changing room which stated:

'WARNING. THIEVES MAY OPERATE IN THIS AREA.

Please use the lockers provided to secure valuables.

Perfect Pitches will not be liable for any loss or damage caused if items are left unattended.'

The following week, during a match, Omar took a powerful shot at goal. The ball went high over the goal. Perfect Pitches had provided netting above the goal to a height of two metres but the ball went over this netting and hit Quita who was walking her dog on the public footpath that ran alongside the football pitches. This was the fifth time this year that someone had been struck by a football while walking on the public footpath. Quita fell awkwardly when she was struck by the ball and broke her ankle. As a result, she missed three weeks of work and has needed extensive physiotherapy. She is no longer able to take her dog on long walks.

**Turn over**

### Scenario 3 Questions

1. Explain:

(a) the defence of *volenti non fit injuria* (no harm can be done to someone who consents);

**(4 marks)**

(b) whether Manoj could rely on the *volenti* defence in relation to Nina's injury.

**(5 marks)**

**(Total: 9 marks)**

Manoj sues Perfect Pitches in negligence for the loss of his gold watch.

2. Explain whether Perfect Pitches can rely on:

(a) the exclusion notice, with reference to the Consumer Rights Act 2015;

**(8 marks)**

(b) the defence of contributory negligence.

**(8 marks)**

**(Total: 16 marks)**

3. Explain which factors the court will consider in deciding whether Perfect Pitches were in breach of their duty of care to Quita.

**(7 marks)**

4. Explain what damages Quita may claim from Perfect Pitches in respect of her injury.

**(8 marks)**

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

**End of the examination**