



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 13 – LAW OF TORT*

Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Contract, Tort & Restitution 2020-2021, 31st edition, Francis Rose, Oxford University Press, 2020.**
- 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 following CILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. Critically assess how, if at all, the defences of contributory negligence, consent and illegality achieve fairness between the parties, as they apply in the tort of negligence.

(25 marks)

2. Critically evaluate the approach taken by the courts, when dealing with claims relating to psychiatric harm.

(25 marks)

3. (a) Explain what interests are protected by the torts of assault, battery and false imprisonment.

(10 marks)

- (b) Critically analyse how the common law operates, in order to show the importance of the interests protected by the torts of assault, battery and false imprisonment.

(15 marks)

(Total: 25 marks)

4. 'The development of the law of negligence has been by an incremental process rather than giant steps.'

Michael v Chief Constable of South Wales (2015)

Critically evaluate, in light of the dictum above, the approaches adopted by the courts in relation to establishing the existence of a duty of care in the law of negligence.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Alicia was driving to take her dog to an appointment at the veterinary surgery. The dog was loose inside the car while Alicia was driving, and it climbed into the front and attempted to sit on Alicia's lap. Distracted and with her view blocked, Alicia swerved into oncoming traffic in the other lane and collided with Cody, who was driving to work.

Cody's car was badly damaged and beyond economic repair. Cody suffered severe back injuries and was off work for six months. During that time, he attended multiple hospital appointments for physiotherapy and other follow-ups. He also had to travel everywhere by taxi, as he had been medically advised not to drive. Even though Cody was able to return to work eventually, his doctors advised him that he would suffer from intermittent back pain for the rest of his life.

- (a) (i) Advise Cody whether he is likely to have a successful claim against Alicia in relation to this accident.

(6 marks)

- (ii) On the assumption that Cody does have a cause of action against Alicia, explain how damages will be assessed.

(12 marks)

Cody employed a firm of solicitors to pursue his claim for damages against Alicia. In turn, the solicitors instructed Diane, an experienced barrister specialising in personal injuries. Unfortunately, after Cody's claim was settled, it came to light that Diane had failed to include in Cody's claim several important elements. As a result, Cody has now been advised that he should have received significantly more by way of damages.

- (b) Advise Cody whether he will be able to claim against Diane in the tort of negligence.

(7 marks)

(Total: 25 marks)

Question 2

Instan Transport Ltd (ITL) is a private hire operator of minibuses. Lewis works as a driver for ITL. His contract describes him as a self-employed contractor, and he pays his own tax and national insurance. He is paid a lump sum for each assignment he undertakes, based on the time involved. He has no fixed hours of work and is not obliged to accept assignments that are offered to him. However, ITL policy is to offer work primarily to those drivers who make themselves available on a full-time basis. When working, Lewis is obliged to wear the ITL uniform and to comply with the ITL rulebook.

Lewis was allocated an assignment that involved collecting passengers from a community centre, transporting them to a local art gallery, and returning them to the community centre two hours later. Realising that he was going to be late for an agreed collection time, Lewis drove as fast as he could to the community centre. As Lewis tried to brake, the minibus skidded and glanced off a number of parked cars, before coming to a standstill. This caused significant damage to the paintwork and wing mirrors of these cars, but the minibus sustained only minimal damage.

Lewis had been instructed to wait in the art gallery car park until the agreed time for the return journey, but he decided to use this time to purchase a sofa from a shop for his home. Having bought a sofa from a local furniture shop, Lewis attempted to secure it to the minibus roof rack, but while he was driving home to drop it off, the sofa came loose, fell from the roof rack and caused injury to Selma, a passing pedestrian.

Having taken the sofa home, Lewis then drove back to the art gallery, parked the minibus in the car park, and left the vehicle to go and buy a coffee. On his return, he saw John, closely inspecting the minibus. Suspecting that John was about to steal the minibus, Lewis rugby-tackled John to the ground and then struck him two or three blows to the head. In fact, John was simply a bus enthusiast.

Martin is employed by ITL as an administrator and he works in the traffic office. Anxious to become a driver, Martin took a minibus out on the road to practise driving it and being unfamiliar with a vehicle of this size, collided with a number of parked cars, causing significant damage to them.

Advise ITL as to whether it will be liable for the actions of Lewis and Martin.

(25 marks)

Question 3

Natalie is a leading film actor, who is married with three young children. She is currently working on a film being directed by Oscar, with whom she is having an extra-marital affair. Some years ago, Oscar was questioned by the police in relation to allegations that he had become involved in the activities of a group of figures in the film industry who had been grooming underage children for sexual purposes. No action was taken against Oscar, although several members of the group were convicted and sentenced for a range of offences.

Natalie is well known for her work with a number of children's charities, including running events to encourage children to develop their acting and other performance skills.

Pauline is Natalie's personal assistant. Pauline became upset at what she saw as Natalie's inappropriate behaviour with Oscar and made copies of a number of electronic messages sent between Natalie and Oscar, which demonstrate that they are, in fact, having an affair. Pauline passed these to Quentin, editor of The Mercury newspaper.

One Wednesday, The Mercury advertised that, on the following Sunday, it would publish: 'Scandalous revelations about "NO GOOD NATALIE AND HER PERVERTED RELATIONSHIP WITH PAEDOPHILE SUSPECT OSCAR".'

The following day, Rosie, an MP who has actively campaigned on matters of child sexual exploitation, stated in a speech in the House of Commons: 'I understand on very good authority that Natalie has been behaving inappropriately with children. Why has this been swept under the carpet?'

At a party in London that evening, attended by, among others, trustees of some of the charities with which Natalie is associated, one of the trustees said, in conversation and very loudly, that Rosie's statement to the Commons: 'seems to be the tip of the iceberg. Natalie must have been crazy to let Oscar anywhere near those children.'

On Sunday, The Mercury published its article. It went into considerable detail in relation to the affair between Natalie and Oscar, including reference to sadomasochistic behaviour, but made no reference to any form of inappropriate behaviour with children.

Advise Natalie whether she will be able to bring any successful claims in the tort of defamation.

(25 marks)

Question 4

Kempston Heritage Trust (KHT) operates a toy museum. Kayla, aged 12, visited the toy museum with her parents. Her parents agreed that Kayla could go and look at an interactive exhibit by herself. On her way to the exhibit, Kayla slipped and fell on the residue of a drink, which had been spilled by another visitor and which had not been cleared up. CCTV cameras demonstrate that the spillage had occurred two hours earlier. Kayla suffered a sprained ankle, and her coat was ripped.

Kayla then went off to find the toilets, to clean herself up. However, on the way, she passed the door to a storeroom, which had been left open. Inside the storeroom were a number of antique dolls. As Kayla entered the storeroom to look more closely at the dolls, she dislodged a number of storage cartons that were also in the storeroom. These fell on her shoulder, causing severe bruising.

Elsewhere in the toy museum, in an area currently closed to the public, Phil, an electrical contractor, was undertaking the installation of a model railway exhibit. His work involved drilling through the walls in the vicinity of the railway layout. Phil did not check whether the electricity supply had been disconnected and was electrocuted when he drilled into a live electric cable. Phil was seriously injured as a result.

The area at the rear of the museum had been fenced off, as KHT was aware that the buildings in this area were unsafe. In particular, there were gaps in the floorboards, resulting in a danger of falls into the underlying basements. Wesley, aged 19, entered the fenced-off area, to see what he might be able to find there and ignored a sign saying: 'Danger. Keep Out'. Wesley fell down into the basement, through a gap between the floorboards, sustaining a fractured hip.

Advise KHT as to its liability for the incidents in relation to:

- (a) Kayla; **(13 marks)**
 - (b) Phil; **(5 marks)**
 - (c) Wesley. **(7 marks)**
- (Total: 25 marks)**

End of Examination Paper