



## 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 and Restitution 2020-2021, 31<sup>st</sup> 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. In relation to establishing a claim in the tort of vicarious liability:
  - (a) critically assess the requirements as to the relationship between an employer and an employee;  

**(10 marks)**
  - (b) critically assess the requirements for circumstances that can be regarded as 'within the course of the employment'.  

**(15 marks)**

**(Total: 25 marks)**
  
2. Critically examine whether the applicable standard of care imposed, in the tort of negligence, is correctly described as flexible.  

**(25 marks)**
  
3. Critically assess whether the law of occupiers' liability achieves a just result in terms of the obligations imposed on occupiers.  

**(25 marks)**
  
4. Critically analyse the circumstances in which the courts are willing to impose a duty of care on the emergency services.  

**(25 marks)**

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

**Question 1**

Andy is employed by Kempston Asbestos Removal (KAR) as Health and Safety Manager. His responsibilities include all aspects of health and safety, including the provision of personal protective equipment (such as protective clothing) and ensuring that it is used in accordance with company policies and the relevant statutory requirements.

Ben is an asbestos removal technician employed by KAR. He had previously worked for three other similar companies and had over 10 years' experience in the industry. Ben had also worked for himself in the same profession for some time before coming to work for KAR. He had become somewhat complacent over the years in relation to wearing protective clothing. Andy was aware of this, since several other asbestos removal technicians had drawn this to his attention. Andy had also seen Ben failing to wear protective clothing properly on three occasions when Andy carried out site visits. On the first occasion, Andy informally advised Ben about his use of protective clothing, but Andy then took no further action. Ben has now been diagnosed with mesothelioma, an asbestos-related lung disease, and wishes to make a claim against KAR for damages.

Collins is employed by KAR as a fitter in the maintenance department. He was recently injured, when a grinding machine malfunctioned, while he was using it to refurbish a piece of equipment. The grinding wheel disintegrated, and fragments caused serious lacerations to Collins' face.

An investigation revealed that when the grinding machine was last serviced by Declan, an inexperienced trainee mechanic, Declan did not replace the grinding wheel, despite the fact that the servicing records indicated that it was due for replacement.

Ellie works for KAR in its administration office. She thought it would be funny to pull out a chair as Andy was about to sit on it. He fell backwards and suffered a serious back injury and had to take six months off work. Ellie is known as a 'joker' and had pulled out the chairs of many other employees, which she frequently described as her 'favourite prank'.

Advise KAR as to whether it is liable for any of the incidents that have occurred.

**[NOTE TO CANDIDATES: Do not discuss the issue of vicarious liability.]**

**(25 marks)**

## Question 2

Frank was travelling home on a train operated by Kempston Railways (KR). Due to driver error, the brakes were not applied as the train approached the terminus station, and it derailed and caught fire. The fire spread rapidly to several carriages. Frank, who was in one of the carriages that caught fire, suffered serious burns and has been unable to work since. This, together with his injuries, has led to Frank suffering from severe clinical depression.

Harry was standing on another platform of the station and saw the incident. Whilst the incident occurred far enough away that Harry was not himself in any danger, he witnessed burning and injured passengers desperately trying to escape from the burning train, and Harry developed post-traumatic stress disorder (PTSD).

Jamal was a passenger on the train, and he suffered severe and extensive burns. The emergency services took him to the hospital, and his friend Kevin, who was only slightly injured, called Jamal's parents to alert them. Jamal's parents rushed to the hospital and saw their son covered in blood and on a stretcher in an emergency room. Jamal's father cannot get the image of his injured son out of his mind, and is suffering from insomnia.

Reporters arrived at the scene before the emergency services had been able to put out the fires and rescue all of the passengers. Scenes of the rescue operation were televised live. Lisa was a close friend of one of the passengers being rescued from the train, and she saw her friend's seriously injured and burned body being taken away on a stretcher live on TV. Lisa developed PTSD from the images shown.

KR accepts liability for all cases involving personal injury and death but denies liability for any of the additional consequences.

Advise Frank, Harry, Jamal's father and Lisa as to whether they may have a claim against Kempston Railways (KR) for psychiatric harm in the tort of negligence.

**(25 marks)**

### Question 3

Michael and Noman were found messing around in a classroom during breaktime at their school, Kempston Secondary School. Mr Owen, a teacher, asked them to leave and told them to join the other pupils outside, but the boys refused to leave the classroom. Not wanting to have to physically remove them, Mr Owen felt it was best to fetch the headteacher. Concerned that the boys would disappear while he was gone, he locked the door. Michael and Noman were joking around at the back of the classroom and did not notice that Mr Owen had locked the door.

Mr Owen could not find the headteacher, but his secretary told Mr Owen to bring the students to the headteacher's office, as he was due back in a few minutes.

The boys agreed to go to the headteacher's office with Mr Owen. However, once they stepped inside the office, they threatened to run away, so Mr Owen locked the door. There was another door on the other side of the office, and it was unlocked, but the boys did not try to use it to leave the office.

When the headteacher returned and unlocked the door, the boys rushed out of the office and left the school building. They went into the local supermarket. Michael was hungry but had no money. He suggested that they steal some food. Noman did not want to shoplift, as he was scared of being caught. This angered Michael and he said to Noman: 'If there wasn't a guard here, I'd slap you for being a coward!' Michael began to steal food, putting items into his coat pockets.

Paul, the security guard, spotted Michael doing this and approached him. Paul explained that he needed to take Michael into the store office to search him. Michael grabbed the security guard's arm and shouted, 'If you lay a hand on me, I will smash your face in!' Paul overpowered Michael and took him to the office, where he detained Michael until the police arrived.

Advise Michael, Noman and Paul as to whether they can make a claim for trespass to the person in relation to any of the incidents that occurred.

**(25 marks)**

## Question 4

Rachael was driving to work, when another vehicle, driven by Samira, crashed into the side of her car. Samira had suffered a blackout, causing her to lose control while driving. Samira has admitted that she was aware that she was not fully conscious and alert, and that she had previously had a blackout after suffering similar symptoms.

Rachael suffered a serious injury to her neck and back, and was referred to a specialist spinal surgeon, Professor Thomas, at the local NHS hospital. Professor Thomas correctly diagnosed a displacement of a vertebra in Rachael's back and recommended an operation. The operation is a recognised and approved treatment in such cases. If successful, it results in a full recovery within six months. However, Professor Thomas failed to disclose to Rachael that there was a 1–2% risk that the operation could cause permanent paralysis. Professor Thomas did discuss other risks with Rachael but did so in quite complicated medical terms. There is an alternative treatment, which carries no risks but does not provide a complete cure, as the patient is left with some weakness in the legs, which interferes with any activity requiring mobility and agility. Professor Thomas did not discuss this treatment with Rachael, as he considered her to be too emotionally distressed to be able to compare the two alternatives.

Rachael agreed to the operation and signed a consent form. The operation was performed competently but did result in paralysis. Rachael has been told that she will be confined to a wheelchair for the rest of her life and will be in constant pain.

Rachael has had to give up her job as a solicitor, and her partner has had to give up his job to become her full-time carer. Prior to the accident, they had been a very active couple, with various hobbies that formed a large part of their life, including kayaking and mountain climbing.

Rachael has developed severe depression, due to facing the prospect of being in constant pain for the rest of her life.

- (a) Advise Rachael as to whether it can be established that the duty of care owed to her by Samira, by Professor Thomas and/or by the hospital trust has been breached.

**[NOTE TO CANDIDATES: Do not address the issues of duty of care, standard of care or causation.]**

**(15 marks)**

- (b) Explain to Rachael what elements will comprise the claim for damages, if she is successful.

**(10 marks)**

**(Total: 25 marks)**

**End of Examination Paper**