



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES
UNIT 2 – THE LAW RELATING TO EMPLOYERS' LIABILITY*

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 two 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 following CILEX qualifications: **LEVEL 4 DIPLOMA IN PERSONAL INJURY LITIGATION** and **LEVEL 4 EXTENDED DIPLOMA IN PERSONAL INJURY LITIGATION**

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SECTION A

(Answer ALL questions in Section A)

1. Describe the nature of the test generally used to establish whether the relationship of employer and employee exists.
(2 marks)
2. Explain the concept of a 'relationship akin to employment' in the context of vicarious liability.
(4 marks)
3. Explain what is meant by a 'non-delegable duty'.
(3 marks)
4. Explain how the courts determine whether a defendant has fallen below the standard of care required in a claim for negligence.
(3 marks)
5. Explain the significance of the 'material contribution test' in establishing causation.
(4 marks)
6. Explain the basis for calculation of future loss of earnings.
(4 marks)
7. Describe the concept of the 'date of knowledge' in relation to limitation of actions.
(4 marks)
8. Identify **three** circumstances in which a case which has been commenced under the Employers Liability/Public Liability Protocol will exit the protocol at Stage 1.
(3 marks)
9. Identify the costs payable when Part 8 proceedings are necessary in relation to an infant settlement.
(3 marks)

(Total Marks for Section A: 30 marks)

Turn over

SECTION B

(There are two scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

Sofafit Ltd reupholsters and refurbishes sofas and easy chairs. It occupies a small unit on an industrial estate.

Sofafit has a contract with Tom to maintain the unit and the various machines that Sofafit operates. Tom has similar contracts with several of the other companies operating from premises on the industrial estate. The contract with Tom requires him to provide all tools and equipment. Tom is obliged to carry out various maintenance tasks at fixed times to a schedule produced by Sofafit, and he must also attend to any repairs which become necessary. Tom is required to perform these tasks personally. Tom is paid a regular sum for the scheduled maintenance, and submits invoices for repairs he undertakes. Tom pays tax and National Insurance as a self-employed person.

Nine months ago, Jenny, an upholsterer employed by Sofafit, was injured when a sofa that she was working on fell on her. The sofa was supported on a frame to allow Jenny access to its underside. Tom had recently overhauled the frame, and it appears that he had not reassembled it correctly. However, the instructions Sofafit had given Jenny specified that she must also support the sofa with a hydraulic lift, and it appears that Jenny did not use this because it slowed her down.

Jenny initially suffered ligament and tendon damage to her left knee. Last week, while she was still off work recuperating, she entered a local fun run. During the run, this knee gave way, causing Jenny to fall and catch the knee on the corner of a park bench. The knee is now much more seriously damaged.

Scenario 1 Questions

1. Assume that Tom has committed the tort of negligence against Jenny.
Explain whether Sofafit will be vicariously liable for Tom's tort.
(10 marks)
2. Explain whether Sofafit has breached its own non-delegable duty to Jenny in relation to her initial injury.
(7 marks)
3. In relation to Jenny's initial injury, explain any defence on which Sofafit can rely and its effect.
(8 marks)
4. Explain whether Sofafit will be liable to Jenny for the additional damage to her knee resulting from the incident at the fun run.
(9 marks)
5. Describe how damages for pain, suffering and loss of amenity will be assessed in this case.
(6 marks)

(Total Marks for Scenario 1: 40 marks)

Turn over

Scenario 2

Gopher Timber Ltd is a timber merchant. It employed Karen, aged 40, as the supervisor, and Ahmed, aged 25, as a labourer at its timber yard. Timber is stored on high racks. These are made of metal shelving and are regularly inspected by outside contractors, Mexiar Ltd.

In October 2015 one of the racks collapsed and a large amount of timber fell on Karen and Ahmed. Investigations have established that the rack had become corroded. This corrosion should have been found in previous inspections and appropriate repairs undertaken.

Karen suffered serious head injuries, as well as multiple fractures. She was in a coma for six weeks, and tests then proved that she had suffered devastating brain damage. With the consent of her next-of-kin, her life-support systems were withdrawn and she died a week later. She was survived by her daughter Eve, aged seven, and her partner Zak, to whom she had been informally engaged for two years.

Ahmed was struck on the knee by a large piece of timber and sustained anterior cruciate ligament damage. He was unable to work for 12 weeks and received Statutory Sick Pay of £88.45 per week. His normal earnings were £220 per week net. He was unable to play amateur football, which is his principal leisure activity, for the remainder of the 2015-16 season. He has now made a complete recovery. The guideline figure for this kind of injury is an award of up to £17,500.

Scenario 2 Questions

1. Explain whether Gopher Timber Ltd is liable to Ahmed in relation to this accident.

(8 marks)

2. Explain the procedure applicable to initiating Ahmed's claim, outlining the steps his lawyers should take.

(7 marks)

3. Assume that liability is admitted but quantum cannot be agreed.

Explain how Ahmed's claim will be determined.

(7 marks)

4. Describe what costs are payable to Ahmed's lawyers, and when they are payable.

(6 marks)

5. Assume that Karen would have been able to establish liability if she had survived.

Explain the claims that can be made in respect of Karen's injury and death:

- (a) by Karen's estate;

(7 marks)

- (b) under the Fatal Accidents Act 1976.

(5 marks)

(Total: 12 marks)

(Total Marks for Scenario 2: 40 marks)

End of Examination Paper

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