



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

**UNIT 3 – THE LAW AND PRACTICE RELATING TO
ROAD TRAFFIC ACCIDENTS***

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**

BLANK PAGE

SECTION A

(Answer ALL questions in Section A)

1. State **three** ways of obtaining details of a defendant driver's motor insurance policy, when the defendant driver has left the scene of the accident without providing those details.
(3 marks)
2. Explain how an intervening act may provide a defendant with a defence.
(2 marks)
3. Explain what is meant by an After-the-Event (ATE) insurance policy.
(4 marks)
4. State the common law legal duty of care owed by one road user to another road user.
(1 mark)
5. Summarise the effect of s.58 of the Highways Act 1980.
(4 marks)
6. Identify **three** limitations on the use of the insured vehicle which may be imposed in a motor insurance policy.
(3 marks)
7. Identify **two** ways in which a breach of the Highway Code may assist in a negligence claim.
(2 marks)
8. State, with reference to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the 'RTA Protocol'), what procedural steps the defendant must take, and the relevant timeframes that apply, after the defendant has received the Stage 2 Settlement Pack.
(4 marks)
9. Explain how s.11 Civil Evidence Act 1968 may assist a claimant in establishing negligence.
(3 marks)
10. State the steps that the parties must take in Stage 1 of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the 'RTA Protocol') where the defendant driver is uninsured.
(4 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

EXTRACT FROM ATTENDANCE NOTE

DATE: 8 May 2018
TIME: 2 pm
FEE EARNER: Gail Lines

Meeting with Kiana Gomez (date of birth: 23/04/1990), who was injured on 8 April 2018 when travelling as a pillion passenger [seated behind the motorcyclist] on a Harley-Davidson motorcycle driven by her boyfriend, Jake Parker. Two weeks before the accident, Jake had obtained a full licence and had bought his motorcycle. Kiana says that he had only had limited opportunities to gain motorcycling experience. On the day of the accident, they were travelling from Eccles, near Manchester, to Sheffield along the Snake Pass, also known as the A57, a winding road which cuts through the Peak District National Park.

The weather was fine and dry, and visibility was good. The traffic was light. They were travelling at approximately 60 mph. The speed limit was 50 mph. They had reached a long stretch of moorland with sheep grazing on either side of the highway. Approximately 150 metres ahead, a sheep stepped from the adjoining moorland onto the road and into the path of Jake's motorcycle. Jake panicked and braked sharply, causing the motorcycle to skid. Jake lost control of the motorcycle, swerved off the road and onto the moorland, where he and Kiana were thrown off the motorcycle. A passing motorist stopped and called the emergency services. Kiana suffered a fractured collarbone and mild concussion.

Kiana is worried about a text message she has received from Jake, which reads: 'Don't even think of claiming against me and my insurance for this accident. I've only just passed my test, these things happen. You agreed to the risk. You've got no case.'

[END OF EXTRACT]

Scenario 1 Questions

Your firm is instructed to pursue a claim for personal injury on behalf of Kiana Gomez.

1. Explain the evidence you will need in order to investigate liability.
(10 marks)

It is accepted that there was a duty of care owed by Jake to Kiana.

2. (a) Explain, with reference to the relevant law, to the facts and to Jake's conduct, why Jake is likely to be found liable for the accident.
(10 marks)

- (b) Explain whether Jake's breach of the Highway Code would be sufficient to prove that Jake was liable for the accident.

(3 marks)

(Total: 13 marks)

You estimate that the value of Kiana's claim is below £25,000. You send notification of her claim to Jake's insurers, who deny liability.

3. (a) Explain the effect of the defendant's denial of liability on the progress of the claim.

(4 marks)

As well as denying liability, the defendant's insurers advise you that Jake Parker failed to pay two instalments of his insurance premium in May and June this year. They therefore inform you that they are no longer prepared to deal with Kiana's claim.

- (b) (i) Explain why, and against which defendant(s), it is possible to pursue Kiana's claim.

(3 marks)

- (ii) Explain the steps you will now take to progress the claim.

(2 marks)

(Total: 9 marks)

In view of the liability dispute, you issue court proceedings, and in due course you exchange witness statements with Jake's representatives. One of the statements indicates that, on the day in question, Kiana was seen in a pub buying Jake numerous alcoholic drinks, which he drank before they both got on his motorcycle and headed off along the Snake Pass.

4. Explain how Jake's solicitors may use this information as a defence argument in the claim brought by Kiana.

(3 marks)

Turn over

You eventually manage to negotiate full and final settlement of Kiana's claim in the total sum of £6,000. You calculate your firm's fixed costs to be £1,250. Kiana's claim is funded by a conditional fee agreement with an agreed success fee of 50%.

5. Calculate the sum that Kiana will receive.

(5 marks)

(Total Marks for Scenario 1: 40 marks)

BLANK PAGE

Turn over

Scenario 2

Extract from proof of evidence

1. My name is Anton Novak. My date of birth is 14 November 1986.
2. On 18 December 2017, at approximately 7.30 am, I was driving my Citroën car, registration number XF26 DXW, along the A1 near Morpeth, Northumberland.
3. My daughter, Nina, aged three years, was a rear-seat passenger, sitting on a booster seat on the nearside of the car. Both Nina and the booster seat were secured with the car's seatbelt.
4. It was cold and dark. It had snowed heavily overnight, but the snowploughs had cleared the road surface and gritted it. The streetlights were still on.
5. I was travelling at approximately 28 miles per hour. The speed limit was 30 mph.
6. As I was driving past a side road on my left, a Renault motor car suddenly emerged from the side road and collided with the nearside rear passenger door of my car.
7. I braked and swerved and eventually both cars came to a halt.
8. A woman, who I now know to be Melissa Armstrong, got out of the Renault.
9. Ms Armstrong said that she had lost control of her car when it skidded on snow and ice. I noticed that the side road had not been cleared of snow and had not been gritted.
10. Nina appeared to be unconscious in my car. I phoned the emergency services; the police and an ambulance arrived. I, Nina and Ms Armstrong were taken to Alnwick Hospital.
11. As a result of the collision, Nina sustained a serious spinal injury, I suffered a soft-tissue strain (whiplash injury) to the cervical spine and I now suffer from mild travel anxiety. Ms Armstrong fractured her right arm.
12. At the time of the accident, I had comprehensive insurance cover with Aldrite Insurance and legal expenses insurance.

[END OF EXTRACT]

Scenario 2 Questions

Your firm is instructed by Anton Novak to pursue a claim for personal injuries on his behalf.

1. (a) Advise Anton on the duty of care owed to him by Ms Armstrong in the circumstances.

(4 marks)

- (b) Explain whether or not the Highway Authority owes a duty of care to Anton Novak and Melissa Armstrong in the circumstances.

(8 marks)

(Total: 12 marks)

You notify Ms Armstrong's insurers of Anton's claim under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'), and they accept liability on her behalf.

With reference to the RTA Protocol:

2. (a) Explain the steps you will take to identify and instruct a medical expert to report on Anton's injuries.

(4 marks)

You finalise the medical evidence and the other evidence for Anton.

- (b) Explain how you will disclose the medical evidence to the defendant insurer.

(5 marks)

(Total: 9 marks)

You are unable to reach a negotiated settlement with Ms Armstrong's insurers.

3. Explain the documents you must provide to the defendant insurers, and the steps that you and they must take, to progress the claim, and the relevant timescales which apply **before** you prepare to issue proceedings.

(9 marks)

You issue proceedings. The claim proceeds to a court hearing, where your client is represented by Counsel. The judge awards Anton damages in the total sum of £6,000. This has no effect on either party's final protocol offers.

4. Itemise and explain the total costs that your firm will have received as a result of the claim.

(6 marks)

Turn over

Ms Armstrong's legal representatives argue that Anton was negligent in not securing his daughter, Nina, in an appropriate child car seat. It is established that Nina was too young and too short for the booster seat. Medical evidence establishes that Nina's injuries were caused by the impact, but would not have been so severe had she been placed in a child car seat with a five-point safety belt.

5. Explain the likely consequences that this information may have on Anton and his insurers in relation to Nina's claim for personal injuries.

(4 marks)

(Total Marks for Scenario 2: 40 marks)

End of Examination Paper

BLANK PAGE

BLANK PAGE