



## 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 2017-2018, 28th edition, Francis Rose, Oxford University Press, 2017.**
- 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**

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

1. Critically analyse whether the standard of care in negligence provides an objective but flexible mechanism to assess the defendant's liability.

**(25 marks)**

2. Analyse the extent to which the torts of private and public nuisance overlap.

**(25 marks)**

3. (a) Critically evaluate whether the police service should enjoy immunity for the negligent investigation and suppression of crime.

**(15 marks)**

- (b) Explain the circumstances in which the police service may owe a duty of care in the tort of negligence.

**(10 marks)**

**(Total: 25 marks)**

4. Evaluate whether the defences of contributory negligence, consent and illegality achieve fairness between the parties, as they apply in the tort of negligence.

**(25 marks)**

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

**Question 1**

Funfair Leisure Ltd (FLL) runs a theme park on the outskirts of Northchester. Customers pay a single entrance fee for admittance to all the attractions in the park. A number of tragic incidents occurred recently.

Amina, a 6-year-old girl, visited the theme park with her parents. While queueing on an elevated walkway for the Ghost Train ride, Amina leaned on the wooden fence that separated the walkway from the concrete path below. The fence gave way and Amina fell 4 metres onto the path, sustaining broken ribs and a fractured skull. Upon later investigation, it was discovered that the wooden fencing had become rotten over time, due to water dripping on it from the roof above.

The next day Colin, a 20-year-old student, managed to gain entry to the park without paying, by climbing the tall perimeter fence. He went for a ride on the dodgems – electrically powered cars with surrounding rubber bumpers. During the ride, the overhead electrical wire mesh, which powered the dodgems, came loose. One of the sections of mesh fell on Colin, who suffered painful electrocution burns. Colin's jacket was badly damaged.

The sparks from the wire mesh that had fallen on Colin started a fire, which spread rapidly, eventually engulfing the whole dodgem ride. A number of customers perished in the ensuing blaze. Others, including Deena, managed to escape from the fire without physical injury. However, Deena suffered post-traumatic stress disorder as a result of her experiences.

Deena's brother, Ernie, was some distance away on the Ferris wheel, watching the events unfold. He knew that Deena had gone to ride on the dodgems and was so concerned for her safety that after the event he was unable to lead a normal life again and had to take medication for depression.

Advise FLL as to any liability it may have in relation to:

(a) Amina and Colin; **(15 marks)**

(b) Deena and Ernie. **(10 marks)**

**(Total: 25 marks)**

## Question 2

Edward worked as a food delivery driver. One Friday night, Edward was intercepted on his moped by Fred at a set of red traffic lights. Fred produced a bottle of liquid and threatened to spray the contents into Edward's face, unless Edward handed over any cash he had with him. Edward, who was wearing a safety helmet, immediately handed Fred the money he had just received from a customer on his last delivery. Fred sped away on his motorcycle. In fact, Fred's bottle contained only water.

The next day, Fred and his girlfriend, Gina, went to their local supermarket, Kelly's Foodmarkets Ltd (KFL), having previously agreed between themselves that Fred would attempt to leave the store without paying for the shopping. Fred was intercepted by Harry, one of the store detectives employed by KFL, as Fred attempted to push a full trolley of food and drink through the store entrance. Harry punched Fred hard in the stomach and told Fred that he would have to accompany Harry to the manager's office. A struggle ensued, in which Harry dragged Fred back into the store. As they passed one of the cash tills, Harry aimed a punch at Fred. Fred ducked and Harry accidentally hit Ivan, who was queuing to pay for his goods, hard in the face.

Fred was eventually escorted to the manager's office, to await the arrival of the police. In the meantime, Gina demanded to see Fred. Jerry, another store detective, agreed that Gina could wait for Fred in the back room, next to the manager's office, and he took her there. Gina waited for an hour before the police arrived, unaware that if she had tried to leave, Harry would have prevented her from doing so.

- (a) Advise Edward as to any potential claim against Fred in trespass;  
**(7 marks)**
- (b) Advise Harry and KFL as to their potential liability for trespass.

**(18 marks)**  
**(Total: 25 marks)**

**Turn over**

### **Question 3**

Lesley Construction Services Ltd (LCS) specialises in the removal of asbestos from old buildings. It employs around 50 administrative and technical staff. Lesley is the owner and Managing Director. Several years ago, Lesley hired Michael as Works Manager. Michael was experienced and well qualified. Part of Michael's role was to undertake risk assessments and to enforce health and safety standards at LCS's premises and on site.

Nathan, an employee of LCS, who had many years of experience working for other employers in the asbestos removal industry, was nearing retirement. He had become notoriously lazy in observing LCS's strict safety rules while working on site. He sometimes failed to wear the full body suits and breathing apparatus supplied by LCS for his protection. Nathan was recently diagnosed with a very serious asbestos-related lung condition. Some experts are of the opinion that this lung condition is made worse by repeated exposure to asbestos fibres; other experts believe that the condition may be triggered by a single exposure to asbestos, and that repeated exposures do not aggravate the symptoms.

Ola and Paula were employed as administrators in LCS's office. As a practical joke, Ola pulled Paula's chair away from her as Paula was about to sit down. Paula fell heavily to the ground and suffered injury to her back.

One day, Quinn, who was employed as a technician, was working on site. Quinn used an angle grinder to cut through a pipe. Michael had not replaced the cutting disc for a long time. The disc shattered during use, and fragments flew into Quinn's face, causing deep lacerations.

Advise LCS as to its possible primary liability to each of the injured employees, Nathan, Paula and Quinn.

**(25 marks)**

#### **Question 4**

Steven is a self-employed minibus driver. He is under a contract to transport a number of young children to Wessex Junior School (WJS) every morning and to take them home at the end of the day. Rick, Steven's neighbour, has become increasingly concerned about Steven's drinking habits, having often observed a large collection of whisky bottles in Steven's doorstep glass recycling box.

Rick wrote an email addressed to info@wessexjunior.org.uk, which stated: 'To whom it may concern. I believe that your minibus driver has a drinking problem and may be over the blood alcohol limit during the morning school run. Please would you look into the matter further?' The email was read by the school receptionist, who forwarded it to the head teacher and the school governors. Rick heard nothing further.

Rick became increasingly alarmed after several weeks had elapsed and Steven was still working as a minibus driver for WJS. Consequently, Rick posted a message on the school Facebook page, simply stating: 'I believe your minibus driver has a problem and should not be allowed contact with schoolchildren'. Rick was in a hurry that day and did not explain the basis for his concerns.

It transpires that WJS's head teacher had passed Rick's original email to the police who, upon investigation, concluded that the whisky was being consumed by Steven's alcoholic wife.

Advise Steven as to any claims he may have in defamation.

**(25 marks)**

**End of Examination Paper**

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