



## 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**

**BLANK PAGE**

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

1. (a) Explain the basic test used to establish factual causation in negligence.  
**(10 marks)**
- (b) Evaluate the extent to which this test may be departed from in particular circumstances.  
**(15 marks)**  
**(Total: 25 marks)**
2. Critically analyse the extent to which persons are protected against unfair claims by those who come into their premises under the Occupiers' Liability legislation.  
**(25 marks)**
3. (a) Explain the approach for awarding compensatory damages in cases where the claimant suffers serious non-fatal injuries.  
**(17 marks)**
- (b) Critically evaluate the use of structured settlements in damages awards.  
**(8 marks)**  
**(Total: 25 marks)**
4. Critically examine the extent to which the rules of vicarious liability adequately protect persons against risks arising from business activities.  
**(25 marks)**

**Turn over**

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

**Question 1**

Andrew and Bethany are immediate neighbours. They have never enjoyed good relations. Andrew keeps an air rifle on his premises and occasionally uses it to kill rats in his back garden. One day, he aimed at a rat and pulled the trigger. The pellet ricocheted off a nearby lawnmower and hit Bethany's son, Charles, in the eye, while Charles was playing on a swing in Bethany's garden.

Bethany was having building work done to her house. The workmen used a mini-crane to lift heavy materials into Bethany's loft. The boom of the crane often swung across Andrew's boundary and above his garden path. Andrew was incensed and told Bethany that if this continued, he would hit her.

Bethany was furious with Andrew following these incidents. One night, she used her key to scratch the paintwork on Andrew's car, which was parked in the street. At that moment, Andrew was returning home after walking his Rottweiler dog. He spotted Bethany, ran towards her, opened the car door and pushed Bethany inside, locking the vehicle, while he summoned the police.

Advise the following parties as to any claims they may have in trespass:

- (a) Charles; **(5 marks)**
  - (b) Andrew; **(10 marks)**
  - (c) Bethany. **(10 marks)**
- (Total: 25 marks)**

**NOTE: Candidates should NOT consider remedies available in the event of any successful claim(s).**

## **Question 2**

In the early 1990s, Eddie began to lease music rehearsal and recording studios, which were situated underneath railway arches near Westchester. Eddie's business was successful and, until recently, the music practice rooms and recording facilities were often fully booked by bands during both weekday evenings (until midnight) and weekend days and evenings.

However, an upgrade to nearby railway signalling equipment, six months ago, caused electromagnetic interference, affecting musical equipment in Eddie's premises. In particular, an annoying high-pitched noise is produced by amplification equipment, affecting those rehearsing in the practice rooms. The same interference sometimes renders unusable the recorded performances produced in the recording studios. Accordingly, Eddie has suffered a downturn in business and is now struggling to make a profit.

One year ago, contractors completed work on the development of former industrial brownfield land approximately 50 metres away from Eddie's studios into a new block of 30 residential flats. Since moving in, residents have frequently complained about annoying and obtrusive low-frequency thuds and noises emanating from Eddie's premises.

Advise Eddie as to any claims or liabilities he may have in nuisance.

**(25 marks)**

**Turn over**

### Question 3

Frederick, a police officer, was on patrol in a police car one Friday evening. He responded to a report of an armed robbery at a nearby convenience store. On his way to the incident, Frederick drove through a red light at speed and collided with Hilary's car as it entered the busy junction. The traffic lights were green in Hilary's favour at the time. Whilst Frederick's emergency lights and siren had been switched on, Hilary had not heard Frederick approach the junction, as she had been listening to loud music on her car stereo system.

Hilary was injured and needed to be cut from the wreckage of her car. However, both the fire and ambulance services were delayed in their arrival. The leading fire officer carelessly misunderstood the 999 call handler's instructions and initially drove to the wrong location. In addition, all ambulances and their crews were engaged on other callouts when Hilary's accident was reported.

When Hilary was eventually taken to hospital, Ivan, a junior doctor, failed to notice signs that Hilary was suffering from internal bleeding. By the time Hilary was properly treated, she had suffered permanent kidney damage.

Advise Hilary as to any claims she may have in negligence:

- (a) against the police, fire and ambulance services; **(15 marks)**
- (b) as a result of her medical treatment in hospital. **(10 marks)**

**(Total: 25 marks)**

#### **Question 4**

In May 2018, a serious head-on collision occurred between two trains near Kempstonville in Wessex approximately two miles outside Kempstonville railway station. The crash was the result of a signalling problem caused by the admitted negligence of the railway network operator. Around 30 passengers were killed and many more suffered injuries, some of which were serious and life-changing.

Julie, a passenger in the third carriage of one of the trains, escaped physical harm but suffered a personality change after witnessing the death and serious injuries sustained by other passengers in the crash. A year later, Julie was sent to prison, after stabbing a stranger in a pub. Julie claimed that the crime she committed was a result of her personality change.

Kai, a member of the fire service, suffered vivid and regular flashbacks for many months after the incident. He had helped to release many of those trapped in the wreckage during the rescue operation.

Lina, the mother of one of the passengers killed in the accident, had been waiting at Kempstonville station when the accident happened. She had first been made aware of the accident following an announcement over the public address system by the station manager. During the following hours, she observed, from a distance, some bodies being carried along the railway tracks on stretchers by emergency service workers, but did not receive confirmation of death until carrying out a formal identification of her daughter's body in the Kempstonville hospital mortuary some time later. Lina suffered severe clinical depression after these events.

Michael, whose twin sister was seriously injured in the crash, witnessed YouTube footage in the hours following the incident via a Facebook Link. The video had been captured on a mobile phone and uploaded by a passenger on one of the trains. The video contained graphic images of Michael's sister covered in blood and screaming in agony. Michael was so traumatised by these images that he was unable to lead a normal life again.

Advise Julie, Kai, Lina and Michael as to any claims they may have in negligence against the railway network operator.

**(25 marks)**

**End of Examination Paper**

**BLANK PAGE**

