



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**

BLANK PAGE

SECTION A

(Answer ALL questions in Section A)

1. Describe the multifactorial test for determining whether the relationship of employer and employee exists.
(5 marks)
2. Explain the circumstances in which vicarious liability is imposed in relation to deliberate wrongdoing by an employee.
(4 marks)
3. Explain what is comprised in the employer's common law duty to provide a safe system of work.
(3 marks)
4. Identify **three** factors which may be relevant to the issue of whether there has been a breach of common law duty by an employer.
(3 marks)
5. Explain the concept of *novus actus interveniens*.
(3 marks)
6. Explain the basis on which general damages (excluding those for future pecuniary loss) are calculated.
(3 marks)
7. Explain what constitutes 'knowledge' in relation to the Limitation Act 1980.
(3 marks)
8. Identify **three** situations in which a claim commenced in the portal under the employers' liability/public liability protocol will exit the portal at stage 1.
(3 marks)
9. Explain what costs are recoverable in relation to stages 1 and 2 of the portal procedure in respect of a claim by an adult which is settled at stage 2, and state when they are payable.
(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

Tiptop Tilers Ltd (TT) is a roofing company. Ahmed, Bella and Chris are employed by TT as roofers, and work together as a team. Ahmed is the team leader.

TT recently secured a contract to replace the roof on a row of shops on the local high street. Dinesh, the contract manager, decided to instruct Ahmed and his team to get on with the work, without carrying out a detailed risk assessment.

TT uses its own scaffolding, although the poles and boards have been acquired at various times and from different suppliers. Ahmed asked the store supervisor to provide him with the necessary scaffolding components, and these were delivered to site. Ahmed, Bella and Chris then proceeded to erect the scaffolding.

Chris decided to see how many scaffolding poles he could stack on the scaffolding boards at first-floor level. This was not the approved method. As Chris placed one further pole on the stack, the whole stack slipped and several poles fell from the boards. These hit Bella, who was working on the ground below. Bella was wearing her safety helmet, but had not fastened the chinstrap. One pole hit her and dislodged her safety helmet and another pole then hit her on the head, fracturing her skull.

The expert evidence is that, if a risk assessment had been undertaken, it would have specified that retaining boards should be fitted at the edge of the scaffolding boards at first-floor level before any materials were stacked on the scaffolding boards. If retaining boards had been in place, it is unlikely that the poles would have fallen as they did.

Ahmed heard the noise of the poles falling and Bella's scream when she was hit. He was on the other side of the building, and ran round on the scaffolding at the first-floor level. As he did so, a scaffolding pole fractured beneath him, causing the board that he had just put his foot on, to slip. As a result, Ahmed sustained a broken ankle. The subsequent enquiries revealed that the pole was defective, because it had been manufactured at too low a temperature, making it liable to fracture due to metal fatigue. Ahmed is likely to make a full recovery after a period of four months and the total value of his claim, including loss of earnings, has been assessed at between £18,000 and £21,000.

Scenario 1 Questions

1. Explain whether TT will be liable to Bella for a breach of its primary liability under its own duty of care.

(10 marks)

2. Explain whether TT will be vicariously liable to Bella in respect of the actions of Chris.

(6 marks)

3. Advise TT whether it can successfully rely on any defence in relation to Bella's claim.

(8 marks)

4. Explain whether TT will be liable to Ahmed.

(6 marks)

5. Explain the procedure applicable to Ahmed's claim, on the assumption that TT will admit liability.

(10 marks)

(Total Marks for Scenario 1: 40 marks)

Turn over

Scenario 2

Heliotrope Enterprises Ltd (HE) operates a dye works. The cloth is dyed at high temperatures and there is a high-pressure steam system transporting steam from the boiler to the various dyeing vats. One day, a steam pipe fractured as a result of inadequate maintenance. HE has accepted full responsibility for this.

Three people were injured by the escaping steam.

Eric, aged 24, who was employed in the packing department, sustained very extensive scalding and died in hospital three days after the accident without recovering consciousness. He is survived by his parents and by his girlfriend, Fliss, with whom he had been living for just over two years, and who is three months pregnant with their first child.

Glenda, aged 55, is the dye house supervisor and has been employed by HE for 20 years. She sustained severe scalding to her face and hands. While she was being treated in hospital, she suffered an allergic reaction to the medication prescribed to deal with an infection that had developed. Haris, the doctor who administered the medication, failed to carry out the standard test for allergy to the medication. As a result, Glenda will be permanently unfit for work, although it was extremely likely that, in the absence of the allergic reaction, she would have made a full recovery in approximately six months.

Isaac, aged 30, is an electrician. He sustained severe scalding, but has made a full recovery. Isaac carries out all the electrical maintenance work required at HE's premises. He also undertakes similar work for other companies. He has an agreement with HE which provides that he will work for HE for not less than 10 hours and not more than 20 hours per week, calculated over a 16-week period. Isaac must provide all his own equipment, and can specify which hours he will work within the hours during which the dye works is operating. He is paid £12 per hour for the hours worked, and is responsible for his own tax and national insurance. In addition, the agreement provides that HE will offer Isaac the first opportunity to tender for any major electrical works, such as the installation of new machinery, with payment on a lump-sum basis.

Scenario 2 Questions

1. Explain what claims may be brought in relation to the death of Eric.
(9 marks)

2. Advise HE as to the extent of its liability for the injuries to Glenda and the extent to which liability may also be attributable to Haris.
(10 marks)

3. Explain the principles on which Glenda's entitlement to compensation for loss of future earnings will be calculated.
(6 marks)

4. Explain whether Isaac is in a position to pursue a claim against HE for breach of the primary duty of care owed to employees.
(10 marks)

Assume that Isaac commenced proceedings by issuing a Claim Notification Form in the portal under the employers' liability/public liability protocol, but the claim exited the portal as liability was initially denied. Subsequently, a settlement in the total sum of £17,000 has been agreed between the parties.

5. Explain the fixed costs payable to Isaac in this situation.
(5 marks)

(Total Marks for Scenario 2: 40 marks)

End of Examination Paper

BLANK PAGE