



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 4 – THE LAW RELATING TO TRIPPING, SLIPPING AND OCCUPIERS' 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. Explain what constitutes a highway.  
**(3 marks)**
2. Describe the nature and scope of the duty under s.41 Highways Act 1980.  
**(4 marks)**
3. Identify **three** pieces of evidence which could be relied on in support of a claim that the highway had not been maintained.  
**(3 marks)**
4. Explain the scope of the liability of a statutory undertaker in respect of work done on the highway.  
**(2 marks)**
5. Identify **three** steps which the management of a supermarket can take in order to minimise potential liability for slipping incidents.  
**(3 marks)**
6. Explain the operation of the principle of *res ipsa loquitur*.  
**(3 marks)**
7. Explain the criteria for establishing who is the occupier, for the purposes of the Occupiers' Liability Acts 1957 and 1984.  
**(4 marks)**
8. Explain the arguments that a defendant may use in relation to a risk which is alleged to be 'obvious'.  
**(3 marks)**
9. Explain the requirements for a warning notice to be effective in relation to visitors.  
**(2 marks)**
10. Identify **three** differences between the duty which may be owed to a visitor and to a non-visitor.  
**(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**

Cranford Road is a highway maintained by Wessex County Council (WCC). It is the main road between two large towns and provides access to a major supermarket. The supermarket development also includes a parade of shops fronting Cranford Road. At this point, the pavement comprises brick paving. To avoid obstructing the traffic, heavy delivery vehicles regularly park on the pavement and, as a result, over the last six months, the pavement has started to deteriorate. In particular, there is one area of pavement which has subsided to create a hole approximately 60 cm x 30 cm and 10 cm deep at its centre. There is evidence that at least one shopkeeper has contacted WCC to report this. Cranford Road is scheduled to be inspected once every six months, and the last inspection took place five months ago.

One January evening, at approximately 9 pm, Madhu, an 80-year-old woman, alighted from a bus and was walking along the pavement. It had been snowing earlier and the hole in the pavement was full of slush. Madhu put her foot in the hole, and fell heavily, fracturing her hip.

Nick, who had alighted from the same bus, saw Madhu fall. He ran to the supermarket, which was still open, in order to summon assistance. On entering the main entrance of the supermarket, Nick slipped and fell on some liquid. It was subsequently established that this was olive oil. A customer had dropped a bottle of olive oil half an hour earlier, but as the store cleaner was on a rest break, only the broken glass had been removed but no other cleaning up operations had been undertaken nor precautions taken.

An ambulance was summoned, but as it arrived at the scene, Olga, the paramedic driving the ambulance, braked sharply. The ambulance skidded and hit a tree. Although Olga was wearing a seatbelt, she broke her collarbone.

There was mud on the road, resulting from building work undertaken by WCC, on a site near the road. The road was also icy.

WCC has a gritting schedule, and according to this, Cranford Road should have been gritted by 7 pm that evening, but there were insufficient gritter operators on duty, and the gritting operation was behind schedule.

## Scenario 1 Questions

1. Advise Madhu as to:

(a) the basis of the liability of WCC for her injuries;

**(6 marks)**

(b) the evidence which will need to be presented in support of her claim;

**(6 marks)**

(c) any defence which WCC may have.

**(6 marks)**

**(Total: 18 marks)**

2. Advise the supermarket as to its potential liability to Nick.

**(10 marks)**

3. (a) Explain whether WCC will be liable as highway authority in respect of Olga's injury, if the evidence is that the accident was due to the mud.

**(5 marks)**

(b) Explain whether WCC will be liable as highway authority in respect of Olga's injury, if the evidence is that the accident was caused by the ice.

**(7 marks)**

**(Total: 12 marks)**

**(Total Marks for Scenario 1: 40 marks)**

**Turn over**

## Scenario 2

Eastbury Borough Council (EBC) owns the War Memorial Park. The park consists of ornamental gardens and a number of sports pitches. A rugby pitch and a pavilion in the park are leased to the Old Eastonian Rugby Club (OERC).

One Saturday morning, during a junior rugby training session, Jiang, aged 12, was injured when he fell and caught his knee on a piece of plastic that was partly buried in the ground at the corner of the rugby pitch. It was later established that this plastic was part of a corner flag, which had broken during a match the previous week.

On the same Saturday, Katie, aged three, who had been brought to the training session by her father, wandered off into the ornamental gardens. She walked past a sign at the entrance to the gardens which read: 'Caution. Work in Progress'. Katie broke her leg when she fell through a gap in a fence on an elevated pathway. There was plastic tape across the gap. The work was being done by specialist contractors, Parkwise Ltd, under contract with EBC.

That night, after the park had closed and the gates had been locked, a number of youths climbed over the fence and started to mess around with a scrummaging machine\* near the rugby pavilion. This machine belonged to, and was the responsibility of, OERC. One of the youths, Liam, aged 19, was crushed between the scrummaging machine and the wall of the pavilion, when his friends pushed it forward. Liam suffered three broken ribs, and his brand-new, top-of-the-range smartphone was damaged beyond repair.

There had been many reports of people in the park at night time. The scrummaging machine used to be securely chained to the wall of the pavilion, but the padlock had been broken for several months.

**\*NOTE:** A scrummaging machine is a heavy platform, used for training, which can be pushed along the ground with considerable effort.

## Scenario 2 Questions

1. Explain the appropriate defendant(s) to a claim brought under the Occupiers' Liability Acts by;

(a) Jiang;

**(4 marks)**

(b) Katie;

**(4 marks)**

(c) Liam.

**(4 marks)**

**(Total: 12 marks)**

2. Explain the matters that will need to be established in order for Jiang's claim to be successful.

**(7 marks)**

3. A claim is being pursued on behalf of Katie.

(a) Explain whether EBC may successfully rely on s.2 (4) of the Occupiers' Liability Act 1957 (which covers warning notices and independent contractors).

**(7 marks)**

(b) Explain whether EBC may reduce or avoid its liability by reference to the actions of Katie's father.

**(5 marks)**

**(Total: 12 marks)**

4. Explain whether Liam will be likely to establish liability in relation to his claim under the Occupiers' Liability Acts.

**(9 marks)**

**(Total Marks for Scenario 2: 40 marks)**

**End of Examination Paper**

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