



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 2018-2019, 29th edition, Francis Rose, Oxford University Press, 2018.**
- 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**

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

1. 'The law on the recovery of compensation for pure psychiatric harm is a patchwork quilt of distinctions which are difficult to justify.'

Lord Steyn in *White v Chief Constable South Yorkshire Police* (1999)

Critically analyse the distinctions made by English law in determining the existence of a duty of care, where a person's negligence causes another to suffer pure psychiatric harm.

(25 marks)

2. (a) Explain the policy reasons for making business organisations vicariously liable.

(7 marks)

- (b) Critically analyse the extent to which recent developments in vicarious liability have helped to further these policy considerations.

(18 marks)

(Total: 25 marks)

3. Critically analyse the way in which a tortfeasor's liability may be affected by an intervening event, occurring sometime after his/her negligent act, which increases the loss suffered by the claimant.

(25 marks)

4. Critically analyse the extent to which the torts of assault and battery, and the tort in *Wilkinson v Downton* 1897, protect the physical integrity and autonomy of potential victims.

(25 marks)

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

Question 1

A team of plain clothes police officers attempted to arrest Adam, who was a dangerous offender. Adam had a long criminal record, which included many offences involving serious violence, and it was known that he would probably try to resist arrest. The attempt took place in a crowded nightclub following a tip-off from a member of the public. When he realised what was happening, Adam hit Brian over the head with a heavy object and stabbed Chris with a knife, thinking that they were both police officers. In fact, Brian and Chris were ordinary civilians enjoying a night out with friends. Adam managed to escape during the commotion that followed.

An ambulance was called, but there was a delay because of the high demands on the service that night. When Chris arrived at Wessex Hospital Accident and Emergency Department (A&E), he was left on a trolley while doctors attended to other incoming patients. By the time he was attended to, Chris had suffered significant blood loss, resulting in permanent damage to a number of his internal organs.

Due to the delay, Brian was driven by a friend to Wessex Hospital A&E. He told the A&E receptionist that he had suffered a bad head injury and was feeling very unwell. After being booked in, Brian was told by the receptionist that there would be a five-hour delay before he was seen. This was inaccurate: hospital policy was that patients with head injuries would be assessed by a triage nurse within 30 minutes of arrival. After remaining for a short period in the waiting area, Brian, who was dismayed at the prospect of a long delay, decided to go home and 'sleep it off'. Two hours later, Brian collapsed after suffering a major brain haemorrhage. By the time he was returned by ambulance to Wessex Hospital and operated on, he had suffered serious permanent mental and physical disability.

Advise whether any of the following emergency services are liable in negligence to Brian or Chris:

(a) the police service;

(7 marks)

(b) the ambulance service;

(5 marks)

(c) Wessex Hospital.

(13 marks)

(Total: 25 marks)

Turn over

Question 2

Daniel recently lost a substantial part of his wealth on the stock market following a series of poor investment decisions. He needed to recoup his losses, to maintain his expensive lifestyle. He consequently became very interested in the possibility of investing in cryptocurrencies – virtual electronic currencies used as a means of exchange in the online trading of goods and services. Daniel received advice from a friend, Esther, who was an experienced city stockbroker, suggesting that a new electronic currency called 'hypercoin' was currently a very attractive investment, with the potential to multiply rapidly in value.

Daniel contacted Cryptobrokers Ltd, a company specialising as brokers in the purchase and sale of cryptocurrencies. Daniel entered into several small transactions for the purchase of hypercoin and was so encouraged by the steep rise in value of his investment that he requested a credit facility from Cryptobrokers Ltd for the placing of further transactions.

Cryptobrokers Ltd used an associate company, Investment House Ltd, to request a reference from Daniel's bank, Wessex Bank plc. The reference request was made under the name of Investment House Ltd, rather than Cryptobrokers Ltd, so as not to disclose Daniel's intention to enter into risky cryptocurrency transactions. The request from Investment House Ltd stated that it wished, on behalf of an unnamed client, to enquire about Daniel's 'trustworthiness to meet a financial commitment to the extent of £500,000 at any one time'. Wessex Bank plc confirmed, by fax, that Daniel was an account holder. It carelessly stated that Daniel was trustworthy up to £500,000 in any one week, adding that the information was given in strict confidence.

As a result of the bank's reference, Cryptobrokers Ltd acted on Daniel's instructions to invest £500,000 in hypercoin. A few days later, hypercoin lost all its value after the trading system it supported was revealed to be a fraudulent scam. Daniel was subsequently unable to pay Cryptobrokers Ltd in relation to the £500,000 transaction, as his liabilities far outweighed his assets.

Advise:

- (a) Daniel as to any claim he may have against Esther in negligence;

(13 marks)

- (b) Cryptobrokers Ltd as to any claim it may have against Wessex Bank plc in negligence.

(12 marks)

(Total: 25 marks)

Question 3

Frank bought a semi-detached house in 2014. In 2016, his partner, Georgina, moved in with him. Georgina is a professional trumpet player. She practises her playing at home, often late into the night. Harry recently bought the adjoining semi-detached house and has complained frequently about the noise. Georgina has ignored all requests to reduce her practising hours and to stop playing late into the night. Harry, who is a light sleeper, has responded by banging on the party wall, shrieking and imitating the sound of Georgina's trumpet during practice sessions.

Frank and Harry's houses back onto council land. After watching a TV documentary on Japanese knotweed in 2015, Frank realised that there was a large growth of this plant on council land within several metres of the outbuilding at the back of his garden. Japanese knotweed is a hardy, bamboo-like plant, which can spread rapidly by underground roots. These can grow up to 7 metres horizontally and 3 metres vertically. Frank contacted a surveyor, who advised that there was no evidence of any existing damage to the outbuilding or to Frank's drains or patio, though such damage would be likely to occur in the future. The surveyor also indicated that any future work undertaken in Frank's garden would require excavated soil to be disposed of as controlled waste. This would be very expensive. In addition, even once the knotweed is removed, the possibility of repeated infestation will make Frank's house more difficult to sell. This means that Frank's house is now less valuable than an equivalent, unaffected property.

Frank contacted the council, which refused to address the problem, claiming that the knotweed has been there for many years and 'is part of the existing character of the area'.

Advise Frank, Georgina and Harry whether they have any claim in private nuisance and, in outline, the nature of any remedy if they are successful.

(25 marks)

Turn over

Question 4

Wessex College of Further and Higher Education offers a wide range of full-time and part-time adult education courses. The large college building contains a crèche for the use of both staff and students. A series of unfortunate incidents have recently occurred.

Ivan, a law graduate, who was not a Wessex College student, fraudulently sat a first-year law examination in place of one of Wessex's undergraduate students in return for payment. During the examination, Ivan's chair gave way beneath him. The chair had been severely weakened over time by college students pivoting on its rear legs. Ivan suffered injury to his back, and his fitness-tracking smartwatch was also destroyed.

Jennifer was a contractor hired by Wessex College to supply and erect both stage and lighting for a college play. After constructing the stage, she fell off a ladder and broke her leg while attaching a spotlight to a ceiling bracket in the hall. The ladder was not long enough, and Jennifer had been balancing precariously on one of the highest rungs.

During the first night of the play, the staging erected by Jennifer collapsed, injuring a student, Kim, who was performing the leading role.

Liam, a childcare student working in the crèche, failed to closely supervise a four-year-old boy, Makena, while he was using the climbing frame. Makena fell and broke his leg on the hard-concrete surface below.

Advise Wessex College as to any liabilities it may have under the Occupiers' Liability Acts.

(25 marks)

End of Examination Paper

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