



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 5 – LAW OF TORT*

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 three 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 **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

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SECTION A

(Answer ALL questions in Section A)

1. Identify **two** common law torts. **(2 marks)**

2. Explain the approach suggested by the Supreme Court to 'novel duty' situations in Robinson v CC of W Yorkshire (2018). **(3 marks)**

3. Explain, in the context of claims for psychiatric injury, what is meant by the 'floodgates argument'. **(3 marks)**

4. Identify the basic standard of care expected of those who owe a duty of care. **(2 marks)**

5. Explain what is meant by the 'but for' test. **(2 marks)**

6. Explain what is meant by the 'eggshell skull rule'. **(3 marks)**

7. Identify and explain the test used when the court must decide whether an intentional wrong took place within the course of employment. **(3 marks)**

8. Identify the standard limitation period for a personal injury claim in tort. **(1 mark)**

9. Identify **one** statute which may affect the calculation of damages in a claim where the claimant has died as a result of the negligence alleged. **(1 mark)**

(Total Marks for Section A: 20 marks)

Turn over

SECTION B

(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

Absal decided to celebrate his 15th birthday at 'Kempstonland', a local amusement park. He invited his friends Beryl and Charlie, who were also 15 years old.

When Absal and his friends arrived at Kempstonland, they decided to visit the Mini Golf attraction. As Mini Golf was a relatively unpopular attraction, the management of Kempstonland had decided to cut staffing accordingly. The golf clubs and balls required to play were given out at the gift shop, in exchange for a small deposit, but there was no supervision of the attraction itself.

After a few minutes of playing Mini Golf, Charlie proposed that instead of trying to carefully putt the golf ball into the hole, they should take turns to see who could hit the ball the hardest. On Beryl's turn, she hit the ball straight at a low wall. The ball rebounded off the wall and struck Absal in the eye, causing damage to his sight.

Daffyd, a student at the nearby University of Kempston, had recently signed up with 'Eager Beavers', an agency which specialised in supplying casual labour for short-term contracts. Through Eager Beavers, Daffyd was hired to assist with safety checks at Kempstonland. Daffyd had no set working hours, but would instead be telephoned before 9 am on any day that Kempstonland needed him. While working there, Daffyd wore Kempstonland uniform, but was paid by Eager Beavers, who did not deduct tax or national insurance.

On this particular day, Daffyd had been told by Kempstonland management to check all moving parts on the rollercoaster once every two hours. Daffyd failed to carry out two consecutive inspections and, due to Daffyd's negligence, a loose bolt flew off during the operation of the rollercoaster and struck Frank, a visitor to Kempstonland. Frank suffered personal injury as a result.

Scenario 1 Questions

1. Explain the standard of care owed to Absal by:

(a) Beryl;

(5 marks)

(b) Kempstonland.

(9 marks)

(Total: 14 marks)

2. Explain what damages Absal may be awarded, if he is successful in a claim.

(6 marks)

3. Explain whether Frank may bring a claim in negligence against:

(a) Daffyd;

(5 marks)

(b) Kempstonland;

(10 marks)

(c) Eager Beavers.

(5 marks)

(Total: 20 marks)

(Total Marks for Scenario 1: 40 marks)

Turn over

Scenario 2

Gareth, a keen amateur drone enthusiast, was pleased when the local council granted permission for drones to be flown in his local park.

Two months ago, Gareth was given a new drone for his birthday. It was considerably larger and more complicated than the drones he had flown previously, but Gareth was keen to try out his birthday present. Without practising with the drone, or reading the instruction manual provided, Gareth took his birthday present to the park that afternoon and commenced flying it.

Hephzibah often walked her dog in the park, and was aware that the council had recently permitted the flying of drones. While walking her dog in the park, Hephzibah was hit by Gareth's drone, when he lost control in the very windy conditions.

When the drone struck Hephzibah, she was immediately knocked unconscious. Despite being taken to hospital and undergoing emergency surgery, Hephzibah died three days later from her injuries, without having regained consciousness.

Hephzibah was the civil partner of Ivy and was the sole earner in their household.

Scenario 2 Questions

1. Explain:

(a) the 'three stage test' for establishing a novel duty of care;

(7 marks)

(b) whether a duty of care is likely to be owed by Gareth to Hephzibah.

(5 marks)

(Total: 12 marks)

2. Explain:

(a) on the assumption that a duty of care exists, what standard and factors the court will consider in assessing the level of care required of Gareth;

(7 marks)

(b) whether Gareth is in breach of his duty.

(5 marks)

(Total: 12 marks)

3. Advise Gareth as to whether he is likely to be able to successfully rely on the defence of *volenti non fit injuria*.

(5 marks)

4. Explain what damages may be claimed by:

(a) Hephzibah's estate;

(6 marks)

(b) Ivy.

(5 marks)

(Total: 11 marks)

(Total Marks for Scenario 2: 40 marks)

Turn over

Scenario 3

Maria, Nick, Orville and Paulina all work together at 'Quality Qover', an insurance firm based in Kempston. Last September, all four were working in the office, when a fire broke out due to negligently installed cables. It has since been established that the cables were negligently installed by an employee of Quality Qover.

By the time the fire reached the office in which Maria and Nick were working, it had spread quickly throughout the building. Maria, who was closer to the emergency exit, was able to escape the building without injury, but Nick suffered second-degree burns while making his escape.

Orville was outside the building at the time, having gone to the local coffee shop to buy a drink. On his way back, he saw smoke pouring from the window of Maria and Nick's office. Orville, who had been in a romantic relationship with Maria for six months, was extremely worried for her and Nick's safety. When Orville saw Maria exit the building a few minutes later, he was shocked to see her covered in soot and coughing from the smoke.

Paulina was able to exit the building safely, but on reaching the fire assembly point she realised that Richard, an employee who had limited mobility, was not present. Paulina returned to the building and was able to rescue Richard without suffering any physical injury herself.

Maria, Nick and Paulina have all been diagnosed with post-traumatic stress disorder (PTSD). Orville has been suffering from terrible nightmares since the fire.

Scenario 3 Questions

1. Explain:

- (a) what must be demonstrated for a claimant to be owed a duty of care as a primary victim of psychiatric injury;
(4 marks)
 - (b) whether Nick will be considered a primary victim;
(4 marks)
 - (c) whether Maria will be considered a primary victim;
(3 marks)
 - (d) whether Orville will be considered a primary victim.
(3 marks)
- (Total: 14 marks)**

2. Explain:

- (a) what must be demonstrated for a claimant to be owed a duty of care as a secondary victim of psychiatric injury;
(7 marks)
 - (b) whether Orville will be considered a secondary victim.
(6 marks)
- (Total: 13 marks)**

3. Advise Paulina:

- (a) whether she is owed a duty of care as a primary or secondary victim;
(6 marks)
 - (b) assuming that she is owed a duty of care, as to the likelihood of the defence of contributory negligence being successfully used against her.
(7 marks)
- (Total: 13 marks)**

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper

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