



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. Define 'negligence'.
(2 marks)
2. Identify **two** examples of established common law duties of care.
(2 marks)
3. Explain what is meant by a primary victim in claims for psychiatric harm.
(2 marks)
4. Identify whether the court will take an objective or subjective approach when assessing the standard of care.
(1 mark)
5. Explain when a claimant's own act can break the chain of causation.
(2 marks)
6. Identify the **three** requirements which must be established for an employer to be held vicariously liable.
(3 marks)
7. Explain the requirements to establish the defence of contributory negligence.
(4 marks)
8. Explain the effect of s.65 Consumer Rights Act 2015.
(3 marks)
9. Define 'general damages'.
(1 mark)

(Total Marks for Section A: 20 marks)

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SECTION B

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

Scenario 1

Alison, her new boyfriend Bradley, and Alison's daughter Clarissa (aged 20) purchased tickets to 'Kempsfest', a local music festival organised annually by Kempston Council. All money raised from the event is donated to local charities. The festival is very popular and a number of charities rely on this annual donation for a large part of their income.

Bradley had agreed to meet Alison and Clarissa at the festival. On arrival at the festival, Bradley had to pass through a security check, which included a body search looking for illegal drugs. The search was conducted by Dave, a security guard. While carrying out the search, Dave felt a package in Bradley's pocket that he suspected could be drugs. In fact, the package was merely some legal anti-allergy medication. Without speaking to Bradley or taking any care over his actions, Dave roughly tried to pull the package out of Bradley's pocket. Bradley lost his balance and fell over, breaking his ankle.

Alison and Clarissa were already inside the music festival and unaware of what had happened to Bradley. When Clarissa's favourite band took to the stage, she ran forwards into the crowd and pushed her way to the front row. A metal fence had been erected to separate the crowd from the stage. Alison remained at the back of the crowd, but could see her daughter's distinctive hat approximately 50 metres away.

Unfortunately, the metal fencing at the front of the crowd had been negligently installed by Kempston Council. The metal fencing collapsed and a large number of festival-goers close to the stage were physically injured, including Clarissa. Alison saw Clarissa fall to the ground when the metal fencing collapsed. Clarissa was taken to the medical tent, where Bradley was being treated for his broken ankle. Bradley was shocked to see his girlfriend's daughter covered in bruises and bleeding from a number of wounds.

Alison and Bradley have both been diagnosed with Post-Traumatic Stress Disorder (PTSD) as a result of what they saw.

Scenario 1 Questions

1. Explain:

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

(7 marks)

(b) whether a duty of care is owed by Dave to Bradley.

(6 marks)

(Total: 13 marks)

2. Explain what public policy arguments Kempston Council may raise, to avoid liability to Clarissa.

(7 marks)

3. Explain, in relation to psychiatric injury:

(a) what a claimant must establish to claim as a secondary victim;

(6 marks)

(b) whether Alison will be able to successfully claim as a secondary victim;

(7 marks)

(c) whether Bradley will be able to successfully claim as a secondary victim.

(7 marks)

(Total: 20 marks)

(Total Marks for Scenario 1: 40 marks)

Turn over

Scenario 2

Hope qualified as a professional physiotherapist in July 2019. In September 2019, Hope started her own business, specialising in sports physiotherapy.

One of her first patients was Indira, a semi-professional footballer, who was recovering from a broken leg. Indira was hoping to be shown some techniques that would help her regain muscle strength and flexibility.

Hope showed Indira a number of techniques, all of which she suggested that Indira practise daily. In particular, Hope recommended that Indira used the 'full stretch' technique. The full stretch technique was developed for patients with well-developed leg muscles, who were in good health and looking to increase their leg strength.

After a number of weeks of using the technique, Indira found that her leg was seemingly more painful and had actually lost flexibility. She visited another physiotherapist, who told her: 'Only the most old-fashioned physiotherapists would still think the full stretch can be used after a broken leg'.

In January 2020, Jasmine visited Hope in search of a solution for her chronic back pain. Jasmine had tried a number of other treatments, but had been unable to find anything effective. Hope told Jasmine that she could use a particular therapy involving electrical charges. Jasmine replied, 'I don't mind what it costs, but just bear in mind as a new mum and a professional childminder, I really can't afford to lose any more mobility'.

Hope did not tell Jasmine that on average nine out of 100 patients undergoing the electrical charges therapy found that their back pain became considerably worse. Unfortunately, this risk happened in Jasmine's case and she now finds it extremely difficult to bend down. Due to her highly restricted mobility, Jasmine can no longer be left in sole charge of young children.

Scenario 2 Questions

1. Explain why a duty of care is owed by Hope to Indira.

(3 marks)

2. Explain:
 - (a) what factors the court will consider, in determining the standard of care required of Hope as a medical professional;

(10 marks)

 - (b) whether Hope is in breach of her duty to Indira.

(9 marks)

(Total: 19 marks)

3. Explain:
 - (a) the duty of a medical professional to warn a patient about the risks of treatment;

(4 marks)

 - (b) whether Hope has breached her duty to Jasmine, by failing to tell her of the risk of her back pain becoming worse.

(4 marks)

(Total: 8 marks)

4. Explain what damages Jasmine may claim, if a breach of duty is proved.

(10 marks)

(Total Marks for Scenario 2: 40 marks)

Turn over

Scenario 3

GoodFare is a large supermarket located on Kempston High Street. In February this year, Teemu visited GoodFare to do his weekly shopping.

While browsing the shelves, Teemu slipped in a puddle of water and fell heavily to the floor. Teemu has particularly brittle bones and, while the vast majority of people would be unlikely to have suffered anything more than bruising, Teemu broke his leg in three places.

Teemu has since discovered that the puddle of water was caused by Umar, who delivers frozen goods to GoodFare. Rather than taking a pallet of frozen peas straight to the warehouse, Umar had left the pallet in the aisle, while he talked to a friend, Valentina, who was stacking shelves. The frozen peas defrosted and caused the puddle of water.

In his contract with GoodFare, Umar is described as an 'independent contractor'. The contract allows Umar to make deliveries for other companies, although around 60% of Umar's work is for GoodFare. While Umar is required to wear a GoodFare uniform when making deliveries for GoodFare, Umar owns the lorry that he uses to make deliveries. When Umar works for GoodFare, he is paid a flat fee per delivery, and it is Umar's responsibility to pay tax and national insurance.

Later that day, Wesley came to the store to buy milk. After making his purchase, he was walking across the car park to his car, when he was struck and injured by another car, driven by Valentina. Valentina's shift had ended a few minutes earlier and she was on her way home. Wesley suffered a broken right arm due to the accident, and his doctor predicted that he would lose around 20% of the mobility in his right arm permanently.

Last month, Wesley was diagnosed with a serious illness, which is not connected to his accident. One of the effects of the illness was to cause considerable damage to his arms. In fact, he is now unable to use his right arm.

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Scenario 3 Questions

1. Explain, assuming that Umar has breached his duty of care, whether Teemu can recover for the full extent of his injuries.

(8 marks)

2. Explain:

- (a) how the court will use the 'multiple test' to decide if an individual is an employee;

(5 marks)

- (b) whether Umar is an employee of GoodFare.

(7 marks)

(Total: 12 marks)

3. Explain:

- (a) the tests that the courts use to decide whether an employee is acting in the 'course of employment';

(4 marks)

- (b) whether Valentina was acting in the 'course of employment', when she injured Wesley.

(6 marks)

(Total: 10 marks)

4. Explain:

- (a) the test for factual causation;

(3 marks)

- (b) whether Wesley will be able to claim for the loss of mobility in his right arm for the rest of his life.

(7 marks)

(Total: 10 marks)

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper

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