



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 2019-2020, 30th edition, Francis Rose, Oxford University Press, 2019.**
- 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. Critically analyse whether the approach to determining the standard of care, in negligence, promotes a fair balance between the interests of claimants and those of defendants.

(25 marks)

2. (a) Analyse the circumstances in which employers owe a primary duty of care to avoid exposing employees to unnecessary risks.

(15 marks)

- (b) Critically evaluate the extent to which the rules on vicarious liability complement the protections enjoyed by employees, as identified in part (a) above.

(10 marks)

(Total: 25 marks)

3. Critically evaluate whether the law of defamation adequately protects the freedom of expression of media organisations.

(25 marks)

4. Critically evaluate whether the Occupiers' Liability Acts achieve a fair balance between the interests of occupiers and those of claimants.

(25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

Aileen suffered from periodic severe lower back pain. Scans revealed that this was caused by a displaced lumbar disc (a 'slipped disc') exerting pressure on spinal nerves. Aileen was eventually referred to Ben, a specialist consultant neurosurgeon. Ben recommended that Aileen should have an operation for the removal of the lumbar disc, in order to correct the problem. However, he failed to advise Aileen of a small risk (1–2%) that the surgical procedure might cause permanent spinal nerve root damage – a serious complication that might make Aileen's condition much worse.

Aileen consented to the surgery, which was undertaken by Ben several days later. However, when Aileen regained consciousness, she was found to have suffered permanent paralysis in her legs and lower body. Investigations revealed that this was the result of irreversible spinal nerve root damage arising from the surgery. Investigation has also shown that the surgery was competently performed.

Before the surgery, Aileen, who is 30 years old and unmarried, led an active lifestyle – at least when her back pain did not prevent her from doing so. She was a keen amateur football player and enjoyed going to nightclubs at weekends with her friends. Aileen will now be confined to a wheelchair for the rest of her life. She was working full-time as an associate solicitor in a regional firm specialising in commercial litigation. Even with adjustments resulting from Aileen's loss of mobility, as a result of fatigue caused by post-operative pain, Aileen will only be able to work part-time, two days a week.

Aileen's father, Calvin, has decided to give up his part-time administrative job to help support his daughter, so that Aileen can continue to live independently in her own home.

Advise Aileen as to:

- (a) whether she has any claim in negligence arising from the surgical procedure;
(12 marks)
- (b) the basis on which she will be compensated, if her claim is successful.

(13 marks)

(Total: 25 marks)

Turn over

Question 2

Damian is a 16-year-old pupil at Kempston Manor Secondary School. During a science lesson, Damian threw his pen at Edward, another pupil. Edward, who was sitting at the front of the class, ducked to avoid being hit. The pen passed just over Edward's head and struck the science teacher, Ms Franklin, hard in the face, causing her to suffer a bruised eye.

Damian was consequently placed in detention for an hour after school that evening and was required to complete some extra work. The detention supervisor, Mr Gilbert, who was in desperate need of the toilet, slipped out unnoticed, quietly locking the door behind him. Mr Gilbert returned five minutes later, silently unlocking the door as he re-entered the room.

Annoyed that the detention had caused him to miss football practice, Damian used his door key to scratch the paintwork of Mr Gilbert's car as he left school that evening.

The following day, Kempston Manor's headteacher received complaints from the parents of Hina, who is a 14-year-old pupil at the school. Damian has been repeatedly sending Hina unwanted sexually explicit and suggestive text messages over the past several months. Hina's parents have decided to keep Hina away from school temporarily, as she is in a state of great emotional distress.

Advise Damian as to any claims or liabilities that he may have in both trespass and in the tort in Wilkinson v Downton.

[Note: You do not need to consider the practical difficulties of enforcing judgments against minors.]

(25 marks)

Question 3

Kempston Building Supplies Ltd (KBS Ltd) operates a large warehouse with a racking system used by forklift truck drivers to store and retrieve pallets loaded with heavy materials for use in the construction industry.

In 2018 a serious accident occurred, involving the complete collapse of a 5-metre-high pallet rack, after Harry, an employee, drove a forklift truck into one of the pallet rack columns. Harry was crushed to death in the accident. Gary, Ivan, Jessica and Liam were colleagues working nearby.

Gary suffered serious head injuries from falling bricks and consequently lapsed into severe clinical depression. One year later, Gary committed suicide, by throwing himself from a motorway bridge.

Ivan narrowly missed being hit by the collapsing rack. He suffered vivid flashbacks for many months following the accident, as a result of witnessing Harry's death. Harry and Ivan had previously been close friends.

Jessica suffered minor injuries to her leg. Three weeks later, after she had apparently been making a good recovery, Jessica suddenly collapsed at home and died due to a blood clot, which blocked a major artery. Medical evidence established that the blood clot was caused by Jessica's injuries from the collapsed pallet rack. Jessica's daughter, Mary, had been looking after Jessica at the time and witnessed her mother's collapse. Mary suffered post-traumatic stress disorder as a result of this experience.

Liam suffered abdominal injuries in the accident. He quickly developed an infection, resulting in sepsis. Liam was transferred to a hospital intensive care unit, where Norma, Liam's fiancée, witnessed his rapid deterioration over 24 hours prior to his death. During this period, Liam's body became swollen and almost unrecognisable. Norma, who had previously suffered from depression, witnessed Liam as he was being connected to various machines, including drips and monitors. Norma developed severe clinical depression as a result of her experiences.

An investigation, by the Health and Safety Executive, into the accident subsequently concluded that KBS Ltd had poorly designed the racking system with insufficient protection for the columns in the event of a collision.

KBS Ltd has admitted responsibility for the physical injuries and deaths caused by the accident but denies any further liability for those suffering psychiatric harm.

Advise KBS Ltd as to its liability to Gary's estate, Ivan, Mary and Norma.

(25 marks)

Turn over

Question 4

Orla lives in a large house on the outskirts of the town of Kempstonville. This has previously been a quiet, sought-after residential area. Despite fierce resistance from local residents, Kempstonville County Council gave planning permission for the conversion and use of the detached property neighbouring Orla's house as a bail hostel, the property having been authorised as 'Approved Premises' by the Home Office.

The house now accommodates around 20 persons, who have either been released from prison on licence, or who are on bail awaiting trial. The hostel is run by an independent voluntary organisation (the fictitious National Prisoner Placement Service – NPPS), which acquired a lease on the property from its owner, Richard, prior to applying for the planning permission.

Since the hostel opened, there have been a number of instances of burglaries, knife crime and anti-social behaviour in the local area. Drug dealers from the other side of Kempstonville have also been active in the locality for the first time.

Orla is often forced to listen to arguments and obscene language coming from the hostel as residents interact with one another and with members of staff. Orla has also often discovered beer cans and drug-taking equipment deposited in her garden. Orla's young daughter, Philippa, recently picked up a hypodermic needle while playing outside, suffering a bleeding finger as a result of the puncture wound. While Orla has complained to NPPS about these issues, the problems have continued unabated.

To demonstrate her continuing opposition to the hostel, Orla has been lighting regular bonfires in her garden, using old car tyres. This has produced thick, acrid smoke, which has made some of the hostel staff and residents cough and choke and has prevented others from getting to sleep after curfew hours.

Advise Orla as to any claims or liabilities she, or her family, may have in nuisance.
(25 marks)

End of Examination Paper

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