



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**

BLANK PAGE

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

1. Critically evaluate the extent to which the general defences in negligence achieve a fair balance between the interests of claimants and the interests of defendants.

(25 marks)

2. Critically evaluate the extent to which the torts of private and public nuisance impose strict liability on defendants.

(25 marks)

3. (a) Critically discuss the use of the 'but for' test in the tort of negligence.

(15 marks)

- (b) Critically evaluate the extent to which the 'but for' test may be departed from in appropriate cases.

(10 marks)

(Total: 25 marks)

4. Critically analyse the circumstances in which the police, ambulance and fire services may owe a duty of care in the tort of negligence.

(25 marks)

Turn over

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

Question 1

Wessex University is a large university situated outside Wessex city centre, near the coast.

Alison, an IT contractor, was working in a lecture theatre at Wessex University main campus, when a cable suspending one end of a halogen bar light suddenly came away from the ceiling. The bar light swung directly into Alison's face, smashing her designer glasses and breaking her nose. The light had been fitted by premises staff employed by HE Facilities Management Ltd, to whom Wessex University had outsourced its building maintenance requirements.

Ben, a sight-impaired student, at Wessex University, who was late for a morning tutorial, stumbled over a bump in a concrete walkway situated within the campus on his way to the session. The uneven surface was marked with heavy yellow cross-hatching and a hazard sign. Ben tripped over, fracturing his left wrist as he put out his hands to break his fall.

Callum, another Wessex University student, had an appointment to see his lecturer and personal tutor, David, to discuss Callum's frequent absence from learning sessions. When he arrived, Callum noticed that David, who had temporarily left his office to make a cup of coffee, had left the door open without locking his computer. Callum entered the room, in order to search David's computer for forthcoming examination material. In doing so, Callum tripped on a raised carpet tile. He suffered bruises during the fall, and the screen of a tablet computer in his bag was also smashed in the process.

One January night, Eileen, who had been drinking with other students in Wessex city centre, walked back to the campus along the seafront. As a dare, she agreed to swim across the small harbour. It was dark and she did not see the sign displayed by Wessex Harbour Board stating 'Danger! No Swimming'. Eileen stripped off her outer clothing and dived into the harbour from the slipway. She hit her head on a concrete pile below the surface of the water, suffering severe head injuries.

Advise Wessex University and Wessex Harbour Board of any potential liabilities arising under the Occupiers' Liability Acts.

(25 marks)

Question 2

Kempstonville Engineering Ltd (KEL) makes precision machine parts for industry. Its manufacturing process involves the use of surface-grinding machines, which use high-speed abrasive wheels to provide a smooth finish for a number of KEL's stainless steel products.

KEL recently employed Frank, an experienced and well-qualified Works Manager, to oversee all health and safety aspects of its manufacturing processes.

A serious accident involving Graham, an experienced grinding machine operator employed by KEL, occurred one day. An abrasive wheel fractured and exploded while at high speed, causing Graham to suffer a broken jaw, deep lacerations to his face and the loss of an eye.

Graham was rushed to Kempstonville Hospital's Accident and Emergency Department. During his treatment, Helen, a junior doctor, administered a full-dose anti-tetanus injection without first testing Graham with a small amount of the vaccine to check for adverse reactions (the standard procedure). A week later, Graham experienced a seizure and suffered permanent brain damage. An investigation subsequently revealed that Graham's further injuries were probably caused by a rare reaction to the anti-tetanus injection.

In relation to the workplace accident, a subsequent investigation and report by the Health and Safety Executive revealed a number of issues. It found that the abrasive wheel in question had probably been damaged prior to fitting, due to mishandling and incorrect storage. An inexperienced employee had also been required by KEL to fit the abrasive wheel to the machine. This procedure had been performed incorrectly, resulting in the wheel vibrating excessively. In addition, the machine had not been fitted with an adequate safety guard, nor had Graham been issued with any face protection or safety goggles.

Some months later at KEL's staff Christmas party, Ivan, the trade union representative for KEL's employees, confronted Frank with the Health and Safety Executive report. An argument developed. Frank, who had been drinking heavily, punched Ivan in the face, breaking his nose.

- (a) Advise Graham as to whether either KEL or Helen are primarily liable to him in the tort of negligence.

(15 marks)

- (b) Advise Ivan as to whether KEL may be vicariously liable for the incident involving Frank.

(10 marks)

(Total: 25 marks)

Turn over

Question 3

Jessica owned a cottage on the coast that had been left to her by her grandmother. She decided to make improvements to the cottage, so as to be able to rent it out as holiday accommodation. Jessica displayed her lifetime collection of watercolour paintings in the cottage as an added attraction to guests.

Jessica hired Kevin, a competent contractor, to install a new central heating system. Kevin incorrectly wired the central heating timer during the installation.

Jessica let her cottage for a week during the Easter holidays to Lisa. Lisa went with her boyfriend, Michael, and her teenage daughter, Nina, together with one of Nina's schoolfriends, Orla, to keep Nina company.

One evening, while Lisa and Michael were drinking at a nearby pub, a fire broke out at the cottage as a result of the faulty wiring of the central heating timer. Nina managed to escape the cottage with minor burns, but Orla, who had been trapped in the bathroom, was overcome by fumes and died at the scene.

Upon hearing the arrival of fire engines, Lisa and Michael left the pub to investigate and were shocked to discover that the cottage was ablaze. Fearful for the lives of the teenage girls, they attempted to enter the cottage, but were held back by several firefighters.

Paula, a firefighter with the Fire Service, suffered post-traumatic stress disorder after pulling Orla's body from the flames. Jessica rushed to the scene after receiving a telephone call from one of the neighbours. She was shocked to witness the complete destruction of the cottage and its contents and was overcome by feelings of personal guilt upon later discovering that the fire had been caused by Kevin, the contractor she had hired.

Nina suffered a recurrence of her clinical depression as a result of the death of her friend. Both Michael and Lisa suffered insomnia, vivid flashbacks and recurring nightmares for many months after the incident as a result of their experiences. Richard, Orla's father, suffered post-traumatic stress disorder, after identifying his daughter's badly burned body in the mortuary several hours after the incident.

Kevin has admitted liability for the property damage, death and physical injuries arising from his negligence, but has denied liability for any of the further consequences.

Advise Kevin.

(25 marks)

Question 4

Kempston College of Further and Higher Education offers various professional business courses for university-level students.

Roger, a partner in a local firm of solicitors, who is a visiting lecturer at the college, was dismayed by the actions of a number of students in his business law class, some of whom fell asleep during his lectures and others of whom appeared to be distracted by social media on their smartphones. Roger decided to take in some lightweight foam balls to throw at offending students during his learning sessions. Roger threw one ball at Sarah, while she was checking her WhatsApp messages. Sarah noticed the approaching ball out of the corner of her eye and quickly leaned back to avoid being hit. The ball glanced off her forehead and, in her attempt to avoid the object, Sarah fell off her chair and hit her head on the corner of the desk behind her.

Sarah picked up a pen in anger and threw it at Roger. She missed her target, the pen instead hitting Trevor, a student sitting in the front row, on the back of his shoulder.

Roger walked menacingly towards Sarah with his hand raised, telling her: 'If you weren't my student, you would pay for that!'

Ursula was resitting an exam. The Chief Invigilator, Victor, noticed that Ursula appeared to have written on her arm and was intermittently pulling up her sleeve to consult the wording. Upon Victor's request, Ursula left the assessment room and accompanied Victor to the Examinations Office. Victor went in search of a female member of staff to examine Ursula's arm. Concerned that Ursula might visit the bathroom in the meantime, to wash the writing off, Victor asked one of the college security staff to stand outside the door and not to allow Ursula to leave before he returned. In Victor's office there was an unlocked connecting door, leading to further offices that were leased by Kempston College to a small start-up company. However, Ursula did not try to leave the office before Victor's return.

After Ursula had left Victor's office, Victor discovered that Ursula had written the words 'I am not a cheat' in permanent pen across his college computer screen.

As it was the end of the college day, Ursula was held up for 15 minutes as students queued to leave the building via the swipe-out barriers at the college entrance.

Advise Roger, Sarah, Ursula, Victor and Kempston College as to any liabilities they may have in trespass.

(25 marks)

End of Examination Paper

BLANK PAGE