

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.

SECTION A

(Answer ALL questions in Section A)

1. Identify the elements required for a successful claim in negligence.

(3 marks)
2. Identify **two** examples of established common law duties of care.

(2 marks)
3. Explain whether the police owe a general duty of care to the public.

(4 marks)
4. Explain how the defendant's purpose in carrying out a particular activity may be relevant in determining the standard of care expected.

(2 marks)
5. Describe the test for remoteness of harm (causation in law) in negligence.

(2 marks)
6. Identify the test established in Ready Mixed Concrete (SE) v MPNI (1968) for deciding whether a person is an employee.

(1 mark)
7. Explain the 'close connection' test in relation to vicarious liability.

(3 marks)
8. Identify the limitation period for personal injury claims in negligence.

(2 marks)
9. Define 'special damages'.

(1 mark)

(Total Marks for Section A: 20 marks)

SECTION B

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

Scenario 1

Absal, Betty, Claudia and Doyle are four friends who decided to visit Exciting Excalibur, a local theme park.

On the day of their visit, Doyle had a stomach ache and stayed at home.

When they arrived at the theme park, Absal and Betty were keen to try out Guinevere, a new rollercoaster that had only opened the week before. While waiting in the queue, Betty decided that she did not want to ride on the rollercoaster and just wanted to watch Absal.

While Absal was riding on the rollercoaster, Betty stood in the viewing area close to the track. Keen to share the moment with Doyle, Betty video-called and held up her phone, so that Doyle could see Absal riding on the rollercoaster. At that moment, the car containing Absal left the track and plunged to the ground below.

The car came to rest 100 metres from a coffee stand, where Claudia was drinking a cup of coffee. Claudia ran into the wreckage to help Absal. As Claudia was pulling Absal to safety, a second car left the track and crashed nearby.

Once Absal had been pulled away from the scene of the accident, Femi, the barista at the coffee stand, put him into the 'recovery position', as he had been taught during first aid training. However, in doing so, he accidentally sprained Absal's wrist.

It was later found that due to the negligence of Exciting Excalibur, the proper safety checks had not been carried out on the Guinevere rollercoaster. Incredibly, Absal did not suffer any physical injuries in the crash, although he has since been diagnosed with Post-Traumatic Stress Disorder (PTSD) as a result of his experience.

Claudia, Doyle and Femi have all been diagnosed with various psychiatric disorders as a result of what they witnessed.

Turn over

Scenario 1 Questions

1. Explain:

(a) what a claimant must establish to be a primary victim of psychiatric injury;

(4 marks)

(b) whether Absal is a primary victim in a claim for negligence against Exciting Excalibur.

(4 marks)

(Total: 8 marks)

2. Explain:

(a) what must be established for a claimant to be a secondary victim of psychiatric injury;

(5 marks)

(b) whether Doyle is a secondary victim in a claim for negligence against Exciting Excalibur.

(7 marks)

(Total: 12 marks)

3. Explain whether a claim for psychiatric injury against Exciting Excalibur can successfully be made by:

(a) Claudia;

(7 marks)

(b) Femi.

(4 marks)

(Total: 11 marks)

4. Explain whether Femi's actions are likely to constitute a *novus actus interveniens* (new intervening act).

(9 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Hester runs her own small business as a computer technician, specialising in repairing and upgrading people's computers.

In March 2021, Hester agreed with loan that she would upgrade his desktop computer. loan wanted Hester to install a very powerful graphics card and a new cooling system in his existing computer.

While Hester was installing the new parts, loan spoke to her about how she could make the computer run even faster. Hester explained that it was possible to 'overclock' the computer to be more powerful, but this could affect the reliability of the computer and that, in the worst-case scenario, 'it could cause serious damage'. loan told Hester that he wanted her to overclock the computer despite this risk.

Hester overclocked the computer as loan had requested. While doing this, Hester mistakenly disabled a number of safety features that would shut down the computer if it reached certain temperatures.

On a particularly hot day in summer, the overclocking caused the computer to overheat. Because Hester had carelessly disabled the shut-down safety features, the overheating continued until an electrical fire broke out. This very quickly set fire to a large stack of paper that loan had left by the computer. The paper was stored underneath the desk where he was sitting, and the fire caused severe burns to his legs.

It has since been established that at the time loan was injured, he was using his computer to harass his ex-girlfriend online, which is a criminal offence.

Turn over

Scenario 2 Questions

1. Explain the approach which the court should take in determining whether a duty of care exists.

(8 marks)

2. Explain, should a claim by loan against Hester be considered as a novel (new) duty situation, whether a duty of care is likely to be owed.

(6 marks)

3. Explain:

(a) the defence of *volenti non fit injuria* (no harm is done to someone who consents);

(4 marks)

(b) whether this defence could be used by Hester against a claim by loan;

(6 marks)

(c) whether, if *volenti non fit injuria* is unsuccessful, contributory negligence could be used as an alternative defence.

(7 marks)

(Total: 17 marks)

4. Explain:

(a) the defence of illegality (*ex turpi causa*);

(5 marks)

(b) whether this defence could be used by Hester in a claim by loan.

(4 marks)

(Total: 9 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Richard is a professional chef, who owns and operates a restaurant in Kempston.

In July 2021, Saloumeh visited Richard's restaurant to dine with a group of friends. Saloumeh had a serious allergy to nuts and made the restaurant aware of this, both when making her booking and on her arrival at the restaurant. On the night that Saloumeh visited, Richard had heard that a famous food critic would be dining at the restaurant. Keen to make a good impression, he decided to focus on making the food critic's meal. He left Teresa, a trainee chef who had only begun working in the kitchen a week ago, in charge of the rest of the kitchen.

Richard's business had been struggling and, to save money, he had chosen not to pay for the allergen training that he would usually provide for new staff. The training cost £150 per person and therefore Teresa was not given the allergen training. Teresa failed to prevent cross-contamination of Saloumeh's food, which meant that considerable traces of nuts were present in the dish served to Saloumeh.

While Saloumeh was eating her meal, she suffered an extreme allergic reaction and lost consciousness. She was taken to hospital, where she remained in a coma. Saloumeh died three weeks later, without regaining consciousness.

Saloumeh had been cohabiting with her partner Ursula for four years. Ursula suffers from chronic health conditions that prevent her from working, and Saloumeh was the sole earner in the household.

A week after Saloumeh was taken ill at the restaurant, Teresa slipped in a puddle of cooking oil that Richard had negligently left on the floor in the kitchen. Teresa broke her leg in the fall. As a result, she was off work for six months and she can no longer enjoy her hobby of long-distance running.

Turn over

Scenario 3 Questions

1. Explain, in relation to a claim for negligence by Saloumeh's estate, what standard of care is expected of:

(a) Richard;

(9 marks)

(b) Teresa.

(5 marks)

(Total: 14 marks)

2. Explain, in relation to a claim for negligence by Saloumeh's estate, whether there has been a breach of the duty of care owed by:

(a) Richard;

(7 marks)

(b) Teresa.

(2 marks)

(Total: 9 marks)

3. Explain what damages may be claimed by:

(a) Saloumeh's estate;

(7 marks)

(b) Ursula.

(5 marks)

(Total: 12 marks)

4. Explain what damages Teresa may claim in respect of her own injuries.

(5 marks)

(Total Marks for Scenario 3: 40 marks)

End of Examination Paper