

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 2021-2022, 32nd edition, Francis Rose, Oxford University Press, 2021**
- 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.

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

1. Critically assess if the legal principles relating to whether the chain of causation has been broken are satisfactory.

(25 marks)

2. A 'give and take between neighbours approach' forms the basis of the law involving claims of private nuisance. Critically analyse how the courts attempt to achieve this balance.

(25 marks)

3. (a) Explain the changes introduced by the Defamation Act 2013.

(10 marks)

(b) Critically discuss the extent to which the changes brought about by the Defamation Act 2013 allow for freedom of expression at the expense of the protection of an individual's reputation.

(15 marks)
(Total: 25 marks)

4. Critically assess the role of the tort of trespass to land at the present time.

(25 marks)

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

Question 1

Aaron was driving home with his friend Ben. Carl was driving behind them, but had become distracted by his mobile phone ringing. As Carl leaned over to answer the call, he took his eyes off the road and did not notice that the cars in front had begun to slow down. Carl hit the rear of Aaron's car when Carl failed to stop in time.

Both Aaron and Ben were thrown forward. Ben was not wearing his seatbelt, so he sustained additional injuries compared with those that a person wearing their seatbelt would have suffered. His neck hurt and he had a sharp pain in his ribs, but he did not think he was seriously injured.

Annoyed and in shock at what had just happened, Aaron and Ben decided to go to a bar a few streets away for a drink. Aaron's girlfriend, Donna, joined them there. At the end of the evening, after several drinks each, Ben walked home, and Aaron started to drive home with Donna. Aaron got into a race with another driver. Donna encouraged Aaron to drive faster so they could win the race. Aaron speeded up but lost control, swerving back and forth across the road and crashing into a lamp post. Donna banged her head against the dashboard and suffered a deep cut to her head.

It was later discovered that Ben had suffered whiplash and a fractured rib. He was off work for a month and was unable to play amateur football with the local club at the weekends, as he usually did.

[NOTE TO CANDIDATES: For both parts of this question, assume that a duty of care and its breach have been established.]

(a) Advise Carl whether there would be any defences available to him, if Ben were to bring a claim in the tort of negligence.

(12 marks)

(b) Advise Aaron whether there would be any defences available to him, if Donna were to bring a claim in the tort of negligence.

(13 marks)

(Total: 25 marks)

Turn over

Question 2

Rashid and Usman were friends, aged 21 and 24 respectively. One day, when they were hanging out at Rashid's parents' house, they found some antique knives in the loft and took them down to Rashid's bedroom on the first floor to look at.

They began playing around with them, imitating stabbing motions in the air.

Rashid got somewhat carried away and began swinging a knife around in front of Usman's face and making stabbing gestures at Usman's abdomen.

Fearing that his friend was going to injure him, Usman grabbed hold of Rashid's arm and wrestled him to the floor.

Now, fearing that his friend had also got carried away, Rashid struggled free from Usman's grip and ran out of the room, locking it behind him. There was no other way to get out of the room, which was on the first floor. Usman looked out of the window, to see if it would be possible to climb down to the ground, but there was only a sheer drop.

Infuriated at being locked in the room, Usman began to smash items in the room, including Rashid's television and laptop. Usman also noticed a CD on Rashid's desk. Usman owned a copy of this CD, but had mislaid it. He thought he must have left it behind on some earlier occasion when he had been hanging out with Rashid. Usman put the CD in his pocket. However, the CD was not Usman's, as Rashid had bought it the day before.

Wondering what the noises coming from the room were, and fearing for his property inside, Rashid unlocked the door. Usman pushed past him, rushed downstairs and ran out of the house.

(a) Advise Usman whether he could have a successful claim against Rashid under the tort of trespass.

(10 marks)

(b) Advise Rashid whether he could have a successful claim against Usman under the tort of trespass.

(15 marks)

(Total: 25 marks)

Question 3

Frank is an electrician. Frank was contracted to carry out work on a local paintballing centre, Paintballz (PB). This was on a day when PB was closed to the public, but the manager told Frank that he could invite a few friends for a private paintballing session after the repair was complete. Frank invited several friends, including Haima and her nine-year-old niece, Gaia, who both turned up early.

Frank was looking forward to the paintballing session and was not concentrating on his work. He forgot to turn off the electricity supply at the mains. When Frank started to work on the electrical circuits, he received an electric shock and minor burns.

Meanwhile, Haima and Gaia were exploring an outside area, where there were various obstacles providing cover. There were large signs at the entrance, stating that it was forbidden to climb on the obstacles. Gaia got carried away and climbed on to one of the obstacles, to see if it would give her a better line of fire later. The obstacle, which was made of canvas covered in plaster, collapsed under her and she suffered a sprained wrist.

While Gaia was complaining to the staff about her injury, Haima noticed a room full of tables displaying different types of weapons. Tempted to enter the room in the hope of getting a bigger and better paintballing gun, Haima went into the room without noticing the sign on the door that stated, 'No Entry, Staff Only!'. The centre had dealt with a similar situation several times before, as customers often seemed to be intrigued by bigger weapons than those that were issued to 'inexperienced' customers.

Haima began to play around with the weapons in the room and one of them fired a paintball, injuring her on the top of her head, leaving her with a deep bruise and concussion.

Advise the parties as to the potential for a successful claim against PB.

(25 marks)

Turn over

Question 4

Jack had suffered from back pain for many years. He was finally referred to a specialist, Dr Kennet.

After meeting Jack, Dr Kennet decided that the length of time Jack had been suffering from intense pain had resulted in severe depression. She judged that if Jack had known of the possibility of being confined to a wheelchair for the rest of his life, he would have chosen to refuse an operation and would have continued to live in constant pain.

An operation was therefore recommended; however, Dr Kennet had not disclosed that there was a 1–2% chance that it might not work and could result in Jack being unable to walk.

Believing that he was fully aware of the options available, Jack consented to the operation. Unfortunately, it was unsuccessful, and Jack was confined to a wheelchair. In addition to being unable to enjoy his previous lifestyle, Jack also had to have major adaptations made to his home and had to make regular trips to the hospital using a cab service in order to receive the ongoing physiotherapy that he would need for the rest of his life.

After being notified that there was a long waiting list on the NHS, Jack chose to access the physiotherapy privately.

Jack was a 45-year-old solicitor advocate, and had been earning £65,000 per year. He has been unable to continue with this work. Jack also claims that he was promised a promotion that would have increased his earnings to £80,000 per year, and he is extremely upset that he has lost out on this opportunity. He has obtained a post as an adviser working for a disability charity at a salary of £25,000 per year. This is funded by a grant for two years, and future employment in this sector is quite precarious.

Advise Jack as to the potential damages he could be awarded.

(25 marks)

End of Examination Paper

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