

**LEVEL 4 - UNIT 3 – THE LAW AND PRACTICE RELATING TO ROAD
TRAFFIC ACCIDENTS
SUGGESTED ANSWERS – JUNE 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

SECTION A

1. The 'eggshell skull rule' states that where some physical harm/damage to the claimant is reasonably foreseeable as a result of the defendant's breach of duty of care, the defendant is responsible for whole extent of the claimant's harm/damage even though this was not foreseeable: Smith v Leech Brain & Co Ltd (1962).
2. Section H is the specific section of the CNF/RTA1 form which must be completed for a road traffic accident claim brought against the Motor Insurers Bureau Uninsured Drivers Agreement 2015 and pursued under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the RTA Protocol).
3. (a) *Volenti non fit injuria* means no injury can be done to a willing person. For the defence to succeed the defendant must prove that the claimant knew the nature and extent of the risk he/she was undertaking and voluntarily agreed to the risk. The defence, if successful, provides a complete defence.

(b) Section 149 of the Road Traffic Act 1988 excludes the defence of *volenti* from (vehicle) passenger claims.
4. There are several conditions that a claimant must satisfy to bring a claim under the Motor Insurers Bureau (MIB) Untraced Drivers Agreement 2003. For example, the accident must have occurred in the United Kingdom and the claimant must have reported the accident to the police within 14 days of the accident for a personal injury claim and within 5 days for a claim for property damage. The claimant must also have cooperated with the police investigation into the accident and provided the MIB with the police/crime incident number.

5. A local Highway Authority owes a statutory duty of care to road users to maintain public highways maintainable at the public expense. The duty is non-delegable: s.41 Highways Act 1980. Consequently, the Highway Authority remains liable for negligent work carried out by independent contractors which causes accident and injury. Section 58 of the Highways Act provides the highway authority with a defence if it has taken such care as is reasonably required in the circumstances.
6. Section s.38(7) of the Road Traffic Act 1988 permits the Highway Code to be admitted in evidence in civil RTA claims in relation to the defendant's alleged breach of duty of care. Breach of the Code does not automatically mean breach of duty.
7. Section s.11 Civil Evidence Act 1968 renders a conviction relevant to a civil claim admissible as evidence in that civil claim.
8. The costs payable by the defendant for each stage of the RTA Protocol in relation to a child's claim, which has concluded for the sum of £12,000 after the issue of proceedings but before the hearing date, are as follows:

Stage 1	£200
Stage 2	£600
Stage 3	£250 [solicitor's fee] £250 [counsel's fee for approval hearing] £150 [counsel's written advice on quantum]

SECTION B

Scenario 1 Questions

1. As a driver, Gareth owed Gio, another road user, a common law duty of care not to take action, or omit to take action, which would put Gareth and/or Gio in foreseeable danger: Donoghue v Stevenson (1932) / Nettleship v Weston (1971). On the facts of the case, Gareth owed Gio a duty of care as they were both on the same stretch of road at the same time and, therefore, it was foreseeable that Gio would be affected by Gareth's actions, such as the way he drove.
2. To discharge his duty of care Gareth Tomkins must have driven as a reasonably prudent driver in the same circumstances: Blyth v Birmingham Waterworks Co (1856). Gareth apparently saw Gio swaying backwards and forwards slightly on the kerb, and eating chips. On these facts the court will consider if Gareth should reasonably have recognised/foreseen that there was sufficient risk that Gio might suddenly step into the road in front of his van, so as to make it necessary for Gareth to take precautionary measures, such as reducing his speed and/or steering into the centre of the road to afford more reaction time and space: Birch v Paulson (2012).
3. (a) Gareth's motor insurance details could be requested from the police as they attended the scene of the accident, or the police accident report could be requested as it should contain these details. Alternatively, an online search of the Motor Insurers Database (MID search) could be conducted against the van's registration number, or the Motor Insurers Bureau could be asked to carry out the search, as it administers the database.

- (b) The following steps should be taken to begin the claim: Under stage 1 of RTA Protocol, Gio's solicitors must undertake an online search of 'askCUE PI' to ascertain Gio's history of reporting/claiming for accidents against insurance policies. This measure is designed to reduce the number of fraudulent claims. The CNF/RTA1 form should be completed by the claimant's solicitor, checked and confirmed as accurate by the claimant, and then sent electronically (through the portal) to Gareth Tomkins' motor insurers. A 'defendant only' version of the CNF/RTA1 should be sent to Gareth Tomkins.
4. (a) In light of the additional information provided, the defendant insurance company may argue that Gio's conduct was negligent because he drank an excessive amount of alcohol. This exposed him to a foreseeable risk of harm and caused or contributed to the accident and his injuries. This argument may defeat the claim entirely if the defendant insurer can establish that Gio's conduct was solely responsible for the accident. Alternatively, the argument may be used to reduce any damages awarded to Gio to reflect the degree of responsibility he holds for the accident and his injuries: Law Reform (Contributory Negligence) Act 1945; Fitzgerald v Lane (1989).
- (b) If the defendant insurance company denies liability the claim will leave the RTA Protocol/portal process and continue under the Pre-Action Protocol for Personal Injury Claims. The CNF/RTA1 will be treated as a letter of claim and the defendant insurer will, usually, have three months to continue/carry out investigations into liability. A form of fixed costs will still apply to the claim
- 5 (a) The claim will have fallen out of the portal. Although the defence was successful at trial, Qualified One-way Costs Shifting (QOCS) applies as this is a personal injury claim. This means that the defendant insurer can only enforce a costs order against Gio to the extent of damages awarded (to Gio) by the court. As the claim has failed entirely, no damages have been awarded and, therefore, no costs are recoverable from Gio by the defendant insurer, which will have to bear its own costs.
- (b) Gio is protected from paying his own solicitors' costs by the conditional fee agreement. Therefore, Gio may be responsible only for his own solicitors' disbursements unless these were protected by After the Event insurance.

Scenario 2 Questions

1. To assess liability the following evidence should be obtained:

The police accident report should be obtained as this was an accident on the motorway creating a dangerous situation for road users and resulting in serious injuries.

The report should contain any independent witness statements, an indication of the roadworthiness of Josh's and Frank's vehicles before the accident and whether Josh and / or Frank have been convicted of motoring offences in relation to the accident.

If there are relevant convictions indicated, it is likely that they will be used to support any negligence claim brought against Josh and/or Frank by Jasmine in relation to the accident. Given the seriousness of the accident, the police may have arranged for an accident reconstruction report.

The maintenance records of Josh's and Frank's vehicles should be obtained to ascertain whether either was defective.

2. Jasmine and/or Frank can rely on the breach of Rule 265 of the Highway Code as admissible evidence on the question of liability.
3.
 - (a) On the facts provided, the court is likely to conclude that Josh, having caused an obstruction of the motorway through his initial negligent driving, could reasonably foresee that he had created a danger to other road users on the motorway, including those driving too fast and not keeping a proper lookout. Therefore, he contributed to the causation of the second accident, although the immediate cause of this was Frank's negligent driving. The court is likely to recognise that the second accident would not have occurred without the continuing danger from the obstruction caused by Josh's initial negligence: Rouse v Squires (1973); Knightley v Johns (1982). In the circumstances, the court is unlikely to find a break in the chain of causation. (Credit was given for reasoned arguments which reached a different conclusion.)
 - (b) The court will consider whether Frank's speeding led to the collision with Jasmine's car, which directly caused the accident and Jasmine's injuries, and whether this creates a new intervening act that breaks the chain of causation between Josh's original alleged negligent driving and Jasmine's injuries.
 - (c) Under the Civil Liability (Contribution) Act 1978 the court is likely to apportion damages payable by Josh's and Frank's insurers to reflect the proportionate responsibility that each driver has for Jasmine's injuries/losses. For example, the court may order that Frank pays 75% of damage due to Jasmine and Josh pays 25%, as in Rouse v Squires (1973).
4.
 - (a) Jasmine's solicitors will obtain medical evidence in Stage 2 of the RTA Protocol by selecting and instructing an appropriate expert of their choice without reference to the defendant insurers. They will need to send the report to Jasmine to obtain her authority to disclose it. They will then submit it with form RTA5, which will also contain details of special damages claimed by Jasmine, and their offer of the sum that Jasmine would be prepared to accept to settle the claim.
 - (b) The defendant insurer has, initially, 15 days to consider the Stage 2 settlement pack and make a counter offer if they do not wish to settle on the claimant's proposed terms. There is then a further 20 days for parties to negotiate. Either or both periods can be extended by agreement.
5. Josh had valid insurance at the time of the accident and Aldrite Insurance has admitted liability. Therefore, Jasmine's solicitors are likely to issue court proceedings against Aldrite Insurance plc as Jasmine has sustained injuries as a result of an accident, which creates right of action in tort, and the

accident occurred in a public place in the UK: Regulation 3 of the European Communities (Rights against Insurers) Regulations 2002.