



## 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.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

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## SECTION A

### (Answer ALL questions in Section A)

1. Identify **one** statutory tort. **(1 mark)**
  
2. Explain the neighbour test. **(3 marks)**
  
3. Identify the **four** tests set out in Alcock v Chief Constable of South Yorkshire (1992) for deciding whether a secondary victim may claim damages for psychiatric injury. **(4 marks)**
  
4. Identify **three** factors considered when assessing the standard of care expected of a defendant. **(3 marks)**
  
5. Identify and explain the test for establishing 'causation in law'. **(3 marks)**
  
6. Define vicarious liability. **(1 mark)**
  
7. Identify what a defendant must show to establish the defence of consent (*volenti non fit injuria*). **(2 marks)**
  
8. What is the effect on damages if a defendant establishes the defence of contributory negligence? **(2 marks)**
  
9. Is loss of amenity classified as 'special' or 'general' damages? **(1 mark)**

**(Total Marks for Section A: 20 marks)**

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## **SECTION B**

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

### **Scenario 1**

Amy worked for a company called BootifulBirds Ltd earning £20,000 per year. One afternoon in December 2016, Amy was working on a machine that packaged turkeys when the machine suddenly stopped because the packaging material had become jammed.

Amy could see where the packaging was jammed, so she tried to free it herself. She ignored the safety instructions written on the outside of the machine and put her hand inside it, in an attempt to free the packaging. There should have been a guard on the machine to prevent operators from putting their hands inside, but the guard had not been refitted after routine maintenance earlier that day.

Amy released the jammed packaging and the machine sprang back into action crushing Amy's fingers. Amy was taken to hospital, where she was told that she needed an immediate operation to save her badly damaged fingers. Amy refused to have the operation because she was terrified, and she left the hospital. A week later, Amy's fingers developed an infection and had to be amputated as a result of Amy having refused the recommended operation.

Amy was no longer able to carry out her job at BootifulBirds Ltd, and the company did not have any suitable alternative work for her to do. She was therefore given notice and her employment ended on 31 December 2016.

Amy was lucky to find another job at a reduced annual salary of £16,000. She will begin this job on 1 February 2017.

Amy always enjoyed dressmaking as a hobby and she sold some of her dresses in a local dress shop. She earned about £2,000 per year from these sales. As a result of losing her fingers, she is no longer able to sew.

Amy wants to claim against BootifulBirds Ltd.

## Scenario 1 Questions

1. (a) Describe the three-stage test from Caparo and explain whether it will be used to determine if BootifulBirds Ltd owes a duty of care to Amy.  

**(6 marks)**
- (b) Describe the general test for breach of duty.  

**(4 marks)**
- (c) Describe the test which will be used to determine whether BootifulBirds Ltd is in breach of any duty of care owed to Amy.  

**(3 marks)**
- (d) Explain whether BootifulBirds Ltd is in breach of any duty of care owed to Amy.  

**(4 marks)**
- (Total: 17 marks)**
2. Explain whether Amy will be able to establish that all of her injuries were **caused** by BootifulBirds Ltd.  

**(7 marks)**
3. If Amy can establish liability against BootifulBirds Ltd, explain what defence BootifulBirds Ltd may be able to use to reduce the amount of damages payable to Amy.  

**(8 marks)**
4. (a) Define what is meant by 'general damages'.  

**(1 mark)**
- (b) Identify and explain what general damages Amy may be able to claim.  

**(7 marks)**
- (Total: 8 marks)**

**(Total Marks for Scenario 1: 40 marks)**

**Turn over**

## Scenario 2

Jez works as a driver for Ken's Dental Supplies. Jez's contract states that:

- He is self-employed.
- He has to pay his own tax and national insurance.
- He has to supply his own van, which must have 'Ken's Dental Supplies' painted on the sides.
- He is not allowed to carry passengers.
- Ken's Dental Supplies will maintain and service the van.
- He can only work for Ken's Dental Supplies and has to work when he is told to do so.
- He can choose when to take his holidays and can delegate work to someone else if he wishes to do so, subject to the approval of Ken's Dental Supplies.

On 31 December 2014, Jez was delivering some boxes of dental equipment to various addresses in Midshire. He was accompanied by his 18-year-old nephew, Lionel, who sometimes used to join Jez on his days off from college to keep him company.

It was getting late in the afternoon, and Jez still had two deliveries to make. Lionel was keen to get home in order to go out that evening to a party. He, therefore, suggested to Jez that he use a short-cut, which involved driving down a short length of road restricted to use by buses and taxis only. Jez at first hesitated but, encouraged by Lionel, Jez agreed to do so. Halfway along the road Jez, who was driving too fast, lost control of the van and collided with a bus coming the opposite way. Lionel, who was not wearing a seatbelt, was thrown forward into the windscreen, which shattered. He suffered serious cuts to his face and now wishes to bring an action to recover damages for his injuries.

## Scenario 2 Questions

1. (a) Identify and explain **three** tests used to determine whether a person is an employee.

**(6 marks)**

- (b) Explain how these tests may be applied to decide whether or not Jez is an employee of Ken's Dental Supplies.

**(10 marks)**

**(Total: 16 marks)**

**Assume for the purposes of the remaining questions that Jez is an employee of Ken's Dental Supplies.**

2. Explain the basis on which Lionel could bring a claim for damages against Ken's Dental Supplies.

**(7 marks)**

3. If Lionel brings an action for damages against Ken's Dental Supplies, explain:

- (a) whether the defence of illegality may be available to Ken's Dental Supplies;

**(5 marks)**

- (b) why the defence of consent is not available to Ken's Dental Supplies.

**(2 marks)**

**(Total: 7 marks)**

4. If Lionel does not bring an action for damages against Ken's Dental Supplies until 2018, explain the full statutory defence which would be available to Ken's Dental Supplies.

**(10 marks)**

**(Total Marks for Scenario 2: 40 marks)**

**Turn over**

### **Scenario 3**

One morning, Fatima witnessed an accident as she was walking to work along Kempston High Street. On the opposite side of the road, a car, driven at high speed by George, skidded and mounted the pavement. George's car collided with a mother and two children, who were walking towards the local school. Fatima later learnt that all three had been killed instantly. One other person on the pavement was also seriously injured. Fatima was in a state of shock as a result of witnessing the accident, and has been suffering from depression ever since.

Izzy, the local postwoman, who was standing nearby, called an ambulance. She then waited with the injured person, comforting him and helping him with his injuries.

The ambulance, driven by Harjit, was approaching the scene of the accident when Harjit applied the brakes too suddenly and lost control. The ambulance skidded towards the spot where Izzy was standing and crashed into a wall. Izzy had to leap out of its way to avoid being run down herself.

Izzy feared for her life when she saw the ambulance coming towards her and was extremely upset by this incident. As a result of it, she is now suffering from severe depression and has recurring nightmares about being run over by an ambulance.

When the ambulance hit the wall, broken glass from the windscreen hit John, a passing cyclist, causing cuts to his face.

### Scenario 3 Questions

1. Explain the **three** elements that John needs to establish to bring a successful claim in negligence against Harjit.  
**(7 marks)**

2. (a) Identify and explain the general test for determining whether a duty of care has been breached.  
**(4 marks)**

In the circumstances that have occurred, explain:

- (b) **one** of the factors which a court will consider when deciding whether a duty of care has been breached by Harjit;  
**(4 marks)**

- (c) whether Harjit has breached any duty of care which might be owed to Fatima.  
**(6 marks)**  
**(Total: 14 marks)**

3. (a) Explain what is meant by a secondary victim.  
**(2 marks)**

- (b) Apply the **four** factors from Alcock v Chief Constable of South Yorkshire (1992) to explain whether George owed Fatima a duty of care for her severe depression.  
**(6 marks)**  
**(Total: 8 marks)**

4. Explain:

- (a) what is meant by a primary victim;  
**(2 marks)**

- (b) what a primary victim has to establish to make a successful claim for psychiatric harm in a negligence action;  
**(5 marks)**

- (c) whether Izzy could successfully claim against Harjit for her severe depression.  
**(4 marks)**  
**(Total: 11 marks)**

**(Total Marks for Scenario 3: 40 marks)**

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