



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 2016-2017, 27th edition, Francis Rose, Oxford University Press, 2016.**
- 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**

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

1. Critically analyse the approach for awarding compensatory damages with particular reference to those who suffer permanent unconsciousness as a result of another person's negligence.

(25 marks)

2. Critically analyse the circumstances in which a medical practitioner may be liable for failing to fully inform an adult patient of sound mind, of the risks associated with a proposed procedure:

(a) in the tort of battery;

(10 marks)

(b) in the tort of negligence.

(15 marks)

(Total: 25 marks)

3. Critically examine whether the rules restricting recovery for pure economic loss in the tort of negligence appropriately prevent indeterminate liability.

(25 marks)

4. Critically assess whether the rules of private nuisance successfully balance the competing interests of neighbouring landowners.

(25 marks)

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

Question 1

Wessex Area Health Authority (WAHA) operates a health centre on the outskirts of Wessex town centre. The centre combines GP and dental surgeries, as well as a number of further specialist medical services. The centre is located in an area of woodland, which is also owned by WAHA.

The GP surgery provides books, magazines and toys for patients and their children to use in the waiting room. When visiting his GP, Adrian, an elderly gentleman with impaired vision, tripped and fell over a toy that had been left in the middle of the waiting room floor by the young child of a previous patient. Adrian fell heavily and broke his hip.

Charles visited his dentist, Beatrice, for a routine check-up. Due to a mechanical fault, the backrest of the dental chair (which is a permanent fixture securely attached to the floor) suddenly dropped to its lowest horizontal position while Charles was being examined. Charles suffered injury to his back, and Beatrice's sharp dental probe pierced Charles's lip. The chair was serviced annually by the manufacturer, Davis & Ellington Medical Supplies Ltd, under a service contract with WAHA.

WAHA was aware that the woodland surrounding the health centre was frequently used by local residents for walking dogs and jogging. It was also sometimes used by teenagers for smoking cannabis and drinking alcohol. One day, Francine, a 14-year-old girl who had been drinking and smoking with her friends in the woods, tripped over a beaten-down wire fence that had been obscured by fallen leaves. Francine suffered cuts, bruises and tears to her trousers.

Advise WAHA as to its potential liability for these incidents under the Occupiers' Liability Acts.

(25 marks)

Question 2

Gaston owns a busy and thriving coffee shop in central London. His business requires a large number of workers. Some of his key supervisory and waiting staff are permanently employed, but others are recruited on a 'zero-hours' basis by Gaston directly. This means that there is no guarantee of work, and staff are only paid for work they actually do. Gaston also engages some staff via a catering and hospitality recruitment agency run by Hattie. These methods of recruitment allow Gaston to maintain appropriate staffing levels during busy periods.

Imran occasionally works for Gaston as a waiter under a 'zero-hours' contract arranged by Gaston. Last week, Imran accidentally spilled a mug of hot coffee over a customer, Josie, while attempting to carry too many items to the tables. Josie sustained painful scalding injuries.

Karen was sent by Hattie to work at Gaston's coffee shop for a month, to take orders from customers and to make coffees. One day, a customer, Leon, approached Karen and asked her if she would tell him her sexual fantasies. Karen, who did not know Leon, was enraged and threw a cup of hot cappuccino over him. Leon also received painful scalding injuries.

(a) Advise Josie whether Gaston will be vicariously liable for the incident involving Imran.

(12 marks)

(b) Advise Leon whether Gaston and/or Hattie will be vicariously liable for the incident involving Karen.

(13 marks)

(Total: 25 marks)

Turn over

Question 3

Oscar, a disabled pensioner, lived on a housing estate in a deprived area. Peter, Oscar's neighbour, was a local authority housing tenant whom the authority knew to be violent.

Peter had mounted a campaign of harassment against Oscar, including a number of death threats. Whilst Oscar's complaints about Peter to the local authority were taken seriously, the local police regarded Oscar merely as a nuisance and a fantasist, and often failed to follow up his reports of harassment.

One day, the local authority invited Peter to a meeting before serving an eviction notice on him. During the meeting, Peter lost his temper and became abusive, but eventually calmed down, left the council offices and returned home. Later that day, Peter broke into Oscar's house and attacked Oscar with an iron bar. A number of local residents witnessed the break-in and telephoned 999 for the police.

Two police officers were dispatched to the scene but, learning that they were being sent to Oscar's address, decided to take their time. When they eventually arrived, they found Oscar unconscious with severe head injuries, but still alive. They radioed for an ambulance. The request for emergency assistance was accepted, but there was a further delay because the paramedics stopped on the way to pick up a sandwich from a local café. When Oscar eventually arrived at hospital, he was pronounced dead.

That night, a riot erupted on the housing estate. Residents were enraged at what they perceived to be a complete indifference on the part of the police service to the plight of those living on the estate. Some youths set fire to a local unstaffed police station. The fire service was called, but the driver of the fire engine got lost. By the time they arrived, the police station was engulfed in flames. A fireman carelessly damaged a fire hydrant, while fitting a standpipe to tackle the blaze, and the resulting escape of water flooded a shop owned by Nigel.

Advise:

(a) Oscar's Personal Representatives as to possible claims in the tort of negligence;

(20 marks)

(b) the fire service as to any liability it may face in the tort of negligence.

(5 marks)

(Total: 25 marks)

Question 4

Quincy runs a well-known art gallery in Manchester. He hosted a special reception to celebrate the lifetime achievements of a famous artist, Rosie Savage. Many of Rosie's famous paintings from her long career were on display, and the event generated a huge amount of interest in the media, with TV news reporters in attendance.

To accommodate all the paintings, Quincy was forced to put up many additional display stands, and there were also a number of further art installations requiring special lighting and the display of videos on large TV screens. While setting up these displays, Quincy negligently instructed one of his assistants, Theo, to connect a number of extension cords to a single power outlet.

During the reception, the power socket overloaded, causing an electrical fire that spread rapidly. The sprinkler system failed to activate, because Quincy had negligently failed to maintain it. A number of people at the event suffered horrific burns, including Quincy himself. Many people were overcome by fumes and died.

Rosie managed to escape from the fire without physical injury, but suffered severe depression after watching the destruction of the gallery together with all her paintings.

Theo was overcome by feelings of guilt when the cause of the fire was later discovered. He suffered from insomnia for many months afterwards and was unable to work again.

Victoria, Quincy's fiancée, was at their home several miles away when the accident occurred. While watching a live TV report of the disaster, Victoria recognised Quincy, unconscious and wrapped up in blankets, being transferred to an ambulance. She immediately rushed to hospital, where she witnessed the extent of Quincy's burns. Victoria suffered Post-traumatic Stress Disorder as a result of her experiences.

Wayne, one of the firefighters who first arrived at the scene, was so affected by what he saw that he too suffered Post-traumatic Stress Disorder.

Advise Quincy as to his potential liability to Rosie, Theo, Victoria and Wayne in the tort of negligence.

(25 marks)

End of Examination Paper

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