



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. Define 'tort'.

(1 mark)
2. Explain the effect of s.2(1) Unfair Contract Terms Act 1977.

(2 marks)
3. State the purpose of damages in tort.

(1 mark)
4. Explain the court's approach when considering whether a doctor has breached his/her duty of care owed to a patient.

(3 marks)
5. In relation to the 'three-stage' test in Caparo v Dickman (1990), as to whether a duty of care exists, explain the stage of 'reasonable foreseeability'.

(1 mark)
6. Explain the 'organisation test' in relation to whether or not an individual is an employee.

(3 marks)
7. Identify **two** situations when there may be a break in the chain of causation between a defendant's negligence and the harm suffered by a claimant.

(2 marks)
8. Explain the 'floodgates' argument in relation to establishing a duty of care in the tort of negligence.

(5 marks)
9. Explain the test for legal causation in the tort of negligence.

(2 marks)

(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

Brent owns and manages Brent Farm, where he holds an annual folk music festival. He engages extra staff for this event. William, an experienced farm worker, is one of Brent's workers, who has been working on the farm for two months. Brent provides William with accommodation and meals and an overall to wear over his own clothes. He pays William at an hourly rate, stipulates the hours that William works and guarantees him 20 hours' work per week. Brent leaves it to William to pay his own tax and national insurance. William is also not allowed to delegate his work to anyone else.

One Saturday morning during the music festival, William, on Brent's instructions, went to feed the bull in a paddock adjacent to the campsite, but he failed to secure the gate and the bull escaped. It stampeded through the campsite, knocking down Abbey, who was one of the 500 people camping on the farm for the festival. Brent managed to catch the bull and return it to the paddock. It was clear that Abbey had sustained a broken leg; the bone was showing through the skin.

An ambulance crew arrived at the farm and confirmed that Abbey needed hospital treatment. They failed to fasten Abbey onto the stretcher securely. Consequently, Abbey fell off the stretcher and her injured leg suffered further damage.

At the hospital, Dr Chappell, a consultant in the Trauma Department, advised Abbey that the second injury to her leg was so severe that the leg would have to be amputated. Abbey wishes to bring a claim in respect of her injuries.

Scenario 1 Questions

1. If it is established that William owes a duty of care to Abbey, explain:
 - (a) the test which will be used to determine whether William has breached his duty of care owed to Abbey;

(5 marks)
 - (b) whether William has breached his duty of care to Abbey.

(4 marks)
(Total: 9 marks)

2. If it is established that William breached his duty of care owed to Abbey:
 - (a) explain the relevant test for establishing causation in fact and apply it to William's conduct in relation to Abbey's injuries;

(5 marks)
 - (b) explain the defence that William may rely on to say that he is not responsible for Abbey's amputation.

(4 marks)
(Total: 9 marks)

3. (a) Describe the Multiple/Economic Reality test for determining whether a person is an employee.

(6 marks)

 - (b) List the factors that the court can use to determine whether or not William is an employee of Brent.

(8 marks)
(Total: 14 marks)

4. (a) Define what is meant by vicarious liability and identify the requirements for establishing it in employment situations.

(4 marks)

 - (b) Assuming that William is Brent's employee, explain whether Brent is likely to incur vicarious liability for William's actions.

(4 marks)
(Total: 8 marks)

(Total Marks for Scenario 1: 40 marks)

Turn over

Scenario 2

In May this year, Samera was watching her two children, Anish and Katie, take part in a sports day at their local primary school. The sports day was held on the playing field behind the school and within the school grounds. Samera was watching Anish and Katie compete in a three-legged race when a fire engine suddenly crashed through the school's perimeter fence and onto the playing field.

The fire crew were responding to an emergency call. However, the driver of the fire engine failed to slow down sufficiently and, consequently, he lost control of the vehicle, and it headed straight towards the children.

Samera had to run out of the way but saw the fire engine hit several children, including Anish and Katie, before it stopped. Samera rushed over to her children and saw them covered in blood and suffering great pain. Although Anish and Katie made a full recovery, after the accident Samera was diagnosed with post-traumatic stress disorder. She is now unable to enjoy family time with her children, due to associating it with the accident, and she is no longer able to work.

Carl, the uncle of Anish and Katie, was supposed to go to the sports day but was held up at work. However, he was told by work colleagues about the incident, and he watched the television report on it later that day. He clearly saw his sister Samera looking distraught, and all of the emergency services working to help the victims. He subsequently suffered from nightmares and anxiety as a result of witnessing the television report.

Scenario 2 Questions

1. (a) When considering a claim in negligence, explain the legal tests that are generally used for establishing whether a duty of care is owed by one party to another in relation to physical injuries.

(8 marks)

- (b) Explain why Anish and Katie were owed a duty of care by the Fire and Rescue Service.

(3 marks)

(Total: 11 marks)

2. (a) In a claim for psychiatric harm:

- (i) define what is meant by a primary victim and explain the requirements for establishing a duty of care in relation to a primary victim;

(6 marks)

- (ii) define what is meant by a secondary victim and explain the requirements for establishing a duty of care in relation to a secondary victim.

(7 marks)

- (b) Applying the appropriate test, explain, with reference to the relevant circumstances:

- (i) whether Samera is likely to be considered as a primary or secondary victim and whether a duty of care would be owed to her;

(3 marks)

- (ii) the difficulties of bringing a claim on behalf of Carl as either a primary victim or a secondary victim.

(7 marks)

(Total: 23 marks)

3. Explain what damages Samera may be awarded if she is able to make a successful claim.

(6 marks)

(Total Marks for Scenario 2: 40 marks)

Turn over

Scenario 3

Harold is a member of a flying club and he owns a small aeroplane. On 3 August 2014, Harold and his friends, Aaron and Collette, agreed to go for a flight in Harold's aeroplane to celebrate Collette's 30th birthday. They all got into Harold's car and set off towards the aerodrome. During the journey, Harold negligently drove into the back of Bella's car, which was stationary at a junction.

Bella sustained a whiplash injury in the road traffic accident. Her car was off the road for a week for repairs to the back bumper. Sadly, Bella's whiplash injury triggered the onset of a pre-existing cancerous condition, and she later died as a result. Bella worked as a dentist earning £80,000 a year. She left a husband and two school-aged children.

Collette was not wearing a seatbelt at the time of the accident and was thrown forward by the impact, hitting her head on the windscreen. Collette said that she felt all right, so they decided to continue the journey.

On arrival at the aerodrome, Collette felt dizzy and sick and decided not to go up in the aeroplane. Harold and Aaron drank several pints of beer and then decided, as a prank, to fly a plane belonging to another member of the club. Harold's pilot's licence was not valid for flying this aeroplane, and Harold was too drunk to fly legally. Harold managed to take off but could not handle the plane, and it crashed. Both Harold and Aaron were seriously injured. Harold and Aaron have been convicted of various offences in relation to this incident.

Meanwhile, a consultant has told Collette that her head injuries, sustained in the road traffic accident, would have been less severe if she had been wearing a seatbelt.

Scenario 3 Questions

1. In a claim for negligence, explain:
 - (a) by what date Collette would have to bring any action for her injuries and why;

(6 marks)
 - (b) the effect on her claim of any failure to bring an action by such a date.

(1 mark)
(Total: 7 marks)

2. If Collette decides to bring a claim against Harold within the required timeframe, explain:
 - (a) the statutory defence available to Harold and, if successful, the likely effect on any damages awarded to Collette;

(8 marks)
 - (b) the defence which Harold cannot use against Collette's claim.

(2 marks)
(Total: 10 marks)

Bella's personal representatives are pursuing a claim for damages on behalf of her estate.

3. Explain:
 - (a) whether Bella's personal representatives will be able to establish factual causation of damage in a negligence action against Harold;

(3 marks)
 - (b) with reference to legal causation, the extent of the injuries to Bella for which a court is likely to hold Harold liable.

(5 marks)
(Total: 8 marks)

4. (a) Explain what damages may be claimed by Bella's personal representatives on behalf of her estate.

(5 marks)

 - (b) Identify the relevant legislation under which Bella's widower and children may be able to bring an action for loss of dependency.

(1 mark)
(Total: 6 marks)

5. Explain the common law defences available to Harold if Aaron brings an action for damages against him.

(9 marks)

(Total Marks for Scenario 3: 40 marks)

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