



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 3 – THE LAW AND PRACTICE RELATING TO ROAD TRAFFIC ACCIDENTS*

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 two 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 following CILEx qualifications: **LEVEL 4 DIPLOMA IN PERSONAL INJURY LITIGATION** and **LEVEL 4 EXTENDED DIPLOMA IN PERSONAL INJURY LITIGATION**

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SECTION A

(Answer ALL questions in Section A)

1. Explain the 'eggshell skull' rule in civil litigation.
(3 marks)

2. State which specific section of the CNF/RTA1 form must be completed for a road traffic accident claim brought against the Motor Insurers' Bureau (MIB) Uninsured Drivers' Agreement 2015 and pursued under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol').
(1 mark)

3. (a) Explain the defence of *volenti non fit injuria*.
(4 marks)

(b) Explain whether the defence of *volenti non fit injuria* has any significance in relation to a road traffic accident claim brought by a passenger injured while travelling in a vehicle driven by an allegedly negligent driver.
(2 marks)
(Total: 6 marks)

4. State **three** conditions that a claimant must satisfy to bring a claim against the Motor Insurers' Bureau (MIB) under the Motor Insurers Bureau Untraced Drivers Agreement 2003.
(3 marks)

5. Explain whether a Highway Authority may have any legal liability for the negligent repair of a public highway by an independent contractor, which caused a road traffic accident and personal injury.
(5 marks)

6. State the effect of s.38(7) of the Road Traffic Act 1988.
(4 marks)

7. State the function of s.11 of the Civil Evidence Act 1968.
(3 marks)

8. Itemise the costs for each stage of the RTA Protocol which are payable by a defendant where the case has concluded for the sum of £12,000 after the issue of proceedings but before the hearing date, and the claimant is a child.
(5 marks)

(Total Marks for Section A: 30 marks)

Turn over

SECTION B

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

Scenario 1

Extract from Attendance Note by Kempstons Solicitors

Date: 8 June 2017
Time: 2 pm
Fee Earner: PD

Meeting with Gio Almafi (DOB: 4/7/1990), who was involved in a road traffic accident as a pedestrian at approximately 11.45 pm on 7 March 2017. He says that he had been to a bar on Turner Street, where he drank a few beers with his friends. At about 11.30 pm, he left the bar and went to the kebab shop situated next door on Turner Street. The street is a long, straight road with good visibility in both directions. He bought a doner kebab and some chips, left the kebab shop and went to cross the road. He started to cross and was about halfway between the kerb and the central white line when, suddenly, a van appeared on his right-hand side and hit him. He fell to the ground and does not remember anything else about this incident until he woke up in hospital. A doctor told him that he had suffered moderate concussion and a fractured right scapula.

The police visited Gio in hospital and the reporting officer, PC Standish, said that the police had attended the scene of the accident and that Gio had been taken to hospital in an ambulance. PC Standish gave Gio the incident reference number, MAR457/Stand981. He also told Gio that the van driver's name is Gareth Tomkins, and his vehicle registration is BWV 2KR15. Gareth Tomkins apparently told the police that he saw Gio standing on the kerb, swaying backwards and forwards slightly, and eating chips but making no attempt to cross the road. He then, suddenly, staggered onto the road just as Gareth's van was approaching, leaving Gareth no time to avoid hitting him. The police are, apparently, still appealing for witnesses to the accident.

Scenario 1 Questions

1. Explain why Gareth Tomkins owed Gio a duty of care in the circumstances. **(4 marks)**

2. Explain, with reference to relevant law and facts, the court's likely approach to determining whether Gareth Tomkins is responsible for the collision with Gio. **(6 marks)**

On the information provided, you decide to commence a claim against Gareth Tomkins.

3. (a) Explain the steps you will take to ascertain Gareth Tomkins' insurance details. **(3 marks)**

You obtain relevant insurance details for Gareth Tomkins. You estimate the value of Gio's claim to be below £25,000.

(b) Explain the steps you will take to begin the claim on behalf of Gio. **(8 marks)**
(Total: 11 marks)

You subsequently receive the police accident report. It contains a witness statement from Ella Ryan, who says that she saw Gio drink 10 pints of beer in the bar. Ella next saw Gio staggering from the kebab shop and swaying backwards and forwards on the kerb as he attempted to eat his chips. She then saw Gio suddenly lurch into the road directly in front of a van.

4. In light of this additional information:
(a) explain the legal arguments upon which the defendant insurance company may rely in defending Gio's claim, and the effect that those arguments may have on his claim; **(7 marks)**

(b) explain how the claim will progress if liability is denied. **(3 marks)**
(Total: 10 marks)

The defendant denies liability and the matter progresses. Gio's claim fails in its entirety at trial. The claim is funded by a conditional fee agreement.

5. Explain the likely costs consequences:
(a) for the defendant insurer; **(5 marks)**
(b) for Gio. **(4 marks)**
(Total: 9 marks)

(Total Marks for Scenario 1: 40 marks)

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Scenario 2

Memorandum by Kempstons Solicitors

Date: 5 June 2017
To: Trainee Legal Executive
From: Melissa Treat - Trainee solicitor
Client: Aldrite Insurance plc
Aldrite's insured: Josh Parkin

We are instructed by Aldrite Insurance plc in connection with a road traffic accident involving its insured driver, Josh Parkin. He was driving his lorry (over 10 tonnes in weight) on the M36 westbound carriageway in the direction of Tarnworth, Metfordshire. He was driving in the outside lane of the motorway when he lost control of his vehicle, which overturned and blocked all three lanes of the motorway. A Volvo motor car, registration number D11 TPK, was travelling behind Josh but managed to stop in time. The Volvo driver, who we now know as Jasmine Khan, put on the car's hazard lights and got out to help Josh.

Unfortunately, a Renault lorry, registration number LO8 RGF, travelling behind Jasmine, failed to stop in time and collided with the back of Jasmine's stationary car. Jasmine's car was pushed forward and collided with her, causing Jasmine serious injuries.

The Renault lorry driver is Frank Latham. He is insured by Stollard Insurance plc.

Although Josh accepts that he drove for a short while in the outside lane of the motorway, he does not accept that he was negligent or responsible for Jasmine's injuries. Please research the court's likely approach to this matter.

Signed: Melissa Treat

Scenario 2 Questions

1. Explain the evidence you will obtain in order to assess liability. **(8 marks)**

Rule 265 of the Highway Code states that heavy goods vehicles, with a maximum weight exceeding 7.5 tonnes, must not use the right-hand (outside) lane of a motorway.

2. State how Josh's breach of the Highway Code may be used to support a claim against him. **(1 mark)**

Your investigations establish that Frank Latham was driving at 75 mph just before he crashed into Jasmine's stationary car.

3. (a) Explain, with reference to relevant law and facts, how Josh may be found to have caused Jasmine's injuries, even though his vehicle was not directly involved in the collision with Jasmine's vehicle. **(6 marks)**

- (b) Advise Aldrite Insurance plc, with reference to relevant law and facts, how Frank, rather than Josh, might be found to have caused Jasmine's injuries. **(4 marks)**

- (c) Advise Aldrite Insurance plc, with reference to relevant law, of the court's approach to allocating damages if both Josh and Frank are found to have caused Jasmine's injuries. **(4 marks)**

(Total: 14 marks)

You receive notification of a claim brought by Jasmine against Josh Parkin. Aldrite Insurance plc makes an economic decision and instructs your firm to admit liability, which you do.

4. (a) Explain how you expect Jasmine's solicitors to obtain and disclose medical evidence in support of her claim. **(8 marks)**

- (b) Explain the timescales you have to seek to negotiate settlement with Jasmine's solicitors. **(4 marks)**

(Total: 12 marks)

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Unfortunately, you are unable to negotiate settlement of Jasmine's claim. Aldrite Insurance plc writes to inform you that Josh Parkin has sold his lorry and his house, and has moved abroad without providing a forwarding address. It has no record of Josh's whereabouts. Following enquiries, neither your firm nor Jasmine's solicitors are able to locate him.

5. Explain what step Jasmine's solicitors are likely to take in order to progress her claim in these circumstances.

(5 marks)

(Total Marks for Scenario 2: 40 marks)

End of Examination Paper