



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 examine the rules of causation where there may be a break in the chain between the defendant's negligence and the loss suffered by the claimant, and the consequent effect on the defendant's liability.

(25 marks)

2. Critically examine recent developments in vicarious liability regarding:
 - (a) non-employment relationships;

(13 marks)
 - (b) the 'course of employment' test.

(12 marks)

(Total: 25 marks)

3. Critically analyse the rules relating to liability for psychiatric harm in the tort of negligence.

(25 marks)

4. Critically assess whether the rules of defamation successfully balance the competing interests of media organisations and persons they report on.

(25 marks)

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

Question 1

Shale Gas Extraction plc (SGE) has been carrying out exploration activities for underground reserves of shale gas, using the process known as 'fracking'. SGE received the necessary government and local authority permissions to carry out these activities on land owned by the British Heritage Trust (BHT) as well as the permission of BHT itself.

SGE constructed a well on BHT's land that descended vertically for 1,200 metres, before diverting horizontally for several kilometres. At one point along its length, SGE inadvertently extended the horizontal shaft into the subsoil beneath neighbouring farmland owned by Amy.

SGE's activities have attracted a great deal of controversy. One day, a large group of activists gathered on the public highway adjacent to BHT's land, with banners and placards protesting against fracking and its perceived adverse environmental effects. A number of activists entered BHT's land in an attempt to disrupt SGE's activities. They were quickly surrounded by police in riot gear and kept in close confinement for seven hours. The activists were unable to sit down during this period. Eventually, they were gradually released and escorted from BHT's land.

During the period of confinement, two activists, Bill and Colin, managed to escape. Bill, who was carrying a baseball bat, broke the police cordon. He ran towards Davina, a police constable, with the bat raised threateningly in the air. Davina managed to seize the bat from Bill's hands, and used it to hit Bill over the head. Bill suffered a fractured skull.

Colin ran away and crossed the boundary onto Amy's farm. He accidentally tripped over a tree stump and severely sprained his ankle. Some farm workers took Colin to a nearby barn, while an ambulance was called. Unknown to Colin, Amy had called the police and had instructed the farm workers to stand on guard outside the barn and to prevent Colin from leaving until the police arrived.

Advise the following as to any claims they may have in trespass:

(a) British Heritage Trust (BHT);

(6 marks)

(b) the activists, including Bill and Colin;

(13 marks)

(c) Amy.

(6 marks)

(Total: 25 marks)

Question 2

Gita, a taxi driver, received a call to collect two customers, Edwin and Farah, from Wexford town centre one Friday evening. Edwin and Farah had already agreed between themselves that they would attempt to avoid payment for the journey if possible. As they neared their destination, Edwin suddenly opened the car door and ran away, just as Gita was about to pull away at a set of traffic lights. Gita, who did not want to lose her fare, started to drive away, even though she knew that Farah was not wearing a seatbelt and the car door was still open. Farah jumped from the moving vehicle in an attempt to follow Edwin, and was knocked unconscious after striking her head on the road.

Gita called for an ambulance, but was told that there would be a delay due to a large number of callouts. By the time an ambulance eventually transported Farah to hospital, she had developed a blood clot and serious brain damage.

In an unrelated incident that day, Henry, a contractor working for a major construction company in Wexford, carelessly punctured a high-pressure water main, while digging the foundations for a building. The resulting flood caused damage to a number of local retailers, including a sportswear shop run by Iqbal. Iqbal's shop and some of his stock were damaged, and he was forced to close his business for two weeks, while remedial work was undertaken.

Advise the following in relation to any claims they may have in the tort of negligence:

(a) Farah;

(17 marks)

(b) Iqbal.

(8 marks)

(Total: 25 marks)

Question 3

During the 1990s, Jason received planning permission from Westhurst County Council ('WCC') to build and operate an outdoor drive-in cinema in Westhurst Retail Park. The business became very successful, especially during the summer months, and Jason now employs a large number of staff. The cinema operates every day during the afternoon and evening, with late-night screenings every Friday and Saturday, which run into the early hours of the morning.

Two years ago, WCC sold the old town hall opposite the retail park to private developers, to allow for the conversion of the building into 28 luxury residential apartments. The old town hall is situated on the other side of the main road, opposite the cinema. Karen, an elderly resident in one of the apartments, who is a light sleeper, has unsuccessfully complained to Jason about the noise from the cinema on a number of occasions.

Lemar, another resident, was so upset by the disruption to traffic on the main road caused by customers entering and leaving Jason's cinema that he used a long-range radio transmitter to disrupt cinema screenings: the equipment caused interference with Jason's sound system. This resulted in a downturn in Jason's trade.

Advise Jason as to any claims or liabilities he may have in the tort of nuisance.

(25 marks)

Question 4

Nancy, a wealthy woman, owns a house with a large garden to the rear, including a decking area and swimming pool. Nancy often holds summer parties for her teenage daughters, which are attended by large numbers of young people. Guests are carefully chosen by Nancy in consultation with her daughters, and invitations are subsequently issued in writing.

During a recent late-night party, a number of incidents occurred.

Peter, a guest at the party, slipped on some damp, untreated decking, breaking one of his wrists as he put out his hands to break his fall.

Quinn, who had not received a written invitation, but who had been informally invited to the party by one of Nancy's daughters, suffered injury to his back after a garden recliner that he was sitting on, unexpectedly collapsed. Quinn's smartwatch was also broken as he fell to the ground.

Richard, an invited guest, became rather drunk. He dived into the shallow end of the pool, despite Nancy's clear instructions that swimming was prohibited. Richard hit his head on the bottom and suffered a broken neck. There were no warning signs indicating the depths at either the shallow end or the deep end of the swimming pool.

Sarah, another invited guest, suffered cuts to the soles of her feet, after walking on a broken wine glass dropped by an unknown party-goer by the pool.

Advise Nancy as to her potential liabilities under the Occupiers' Liability Acts.

(25 marks)

End of Examination Paper

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