

Title	The Law Relating to Employers' Liability	
Level	4	
Credit value	7	
Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the legal framework in which an employer's tortious liability may arise	1.1 Identify and explain the legal tests for establishing an employer/employee relationship	1.1 Identification and explanation of criteria used for establishing the existence of the relationship, control, integration 'multi-factorial test': relevant case law (e.g.) <i>Ready Mixed Concrete (South East) v MPNI (1968)</i> ; <i>Stevenson, Jordan & Harrison v McDonald & Evans (1952)</i>
	1.2 Explain the legal implications of the existence of the employer/employee relationship for an employer's liability in tort	1.2 Liability in tort may arise either vicariously or by breach of the employer's personal duty in negligence to the employee; actions accruing before the Enterprise and Regulatory Reform Act 2013 came into force may also be brought in the tort of breach of statutory duty
	1.3 Explain, in outline only, the legal position in cases arising before the coming into force of the Enterprise and Regulatory Reform Act 2013	1.3 Action might be brought by employee against employer in common law negligence and/or breach of statutory duty under s47 of the Health & Safety at Work Act 1974

	1.4 Explain, in outline only, the legal position in cases arising after the coming into force of s69 of the Enterprise and Regulatory Reform Act 2013	1.4 Section 69 of the Enterprise and Regulatory Reform Act 2013 amends s47 of the Health & Safety at Work Act 1974 in actions brought by the employee against the employer to effectively abolish civil liability for breach of statutory duty as a cause of action save where specifically provided for in legislation
	1.5 Analyse the effect of Section 69 of the Enterprise and Regulatory Reform Act 2013	1.5 Cases arising (determined by date of breach) after the implementation date of the Act may be brought in common law negligence only; cases arising before implementation (determined by date of breach) may be brought in common law negligence and/ or breach of statutory duty
2 Understand the law on employers' vicarious liability in tort for intentional and unintentional wrongdoings of the employee	2.1 Explain the law on the vicarious liability of employers	2.1 Explanation of the concept of vicarious liability: a party is liable in law for the acts of another (irrespective of fault). Explain what must be demonstrated in order to establish an employer's vicarious liability: there was a contract of employment; a tortious or criminal act was done by the employee; the act was done in the course of employment or was so closely connected with the employment that it would be fair just and reasonable to hold the employer vicariously liable. Relevant case law: (e.g.) <i>Joel v Morison (1834)</i> ; <i>Limpus v London Omnibus Co (1862)</i> ; <i>Lloyd v Grace Smith & Co (1912)</i> ; <i>Century Insurance Co Ltd v Northern Ireland Road Transport Board (1942)</i> ; <i>Kay v ITW (1967)</i> ; <i>Rose v Plenty (1976)</i> ; <i>Lister v Hesley Hall (2001)</i> ; <i>Hawley v Luminar Leisure (2006)</i> ; <i>Brinks Global Services v</i>

		<i>Igrox (2010); Weddall v Barchester Healthcare & Wallbank v Wallbank Designs (2012); Various Claimants v Catholic Child Welfare Society (2012); Graham v Commercial Bodyworks (2015); Mohamud v W Morrison (2016); Cox v Ministry of Justice (2016)</i>
	2.2 Apply the law on vicarious liability to a given situation	2.2 Application of the law to a complex scenario
3 Understand the employer's personal duty of care in common law negligence	3.1 Explain how the duty of care arises	3.1 Implied term of the contract of employment: <i>Wilson & Clyde Coal v English (1938)</i>
	3.2 Explain the nature and content of the employer's duty of care to the employee in common law negligence	3.2 Employer owes a personal, non-delegable duty to the employee. That duty is to: employ reasonably competent staff; take reasonable care to provide safe tools and equipment; take reasonable care to ensure that work processes and methods are reasonably safe, per <i>Lord Wright, Wilson & Clyde Coal v English (1938)</i> . Relevant authority (e.g.) as to employment of competent staff: <i>Hudson v Ridge Manufacturing (1957); Hawkins v Ross Castings Ltd (1970); Graham v Commercial Bodyworks (2015)</i> ; as to provision of safe tools and equipment: <i>Stokes v Guest, Keen & Nettlefold (Bolts & Nuts) (1968)</i> , Employers Liability (Defective Equipment) Act 1969; as to safe system of work: <i>Thompson v Smith Ship Repairers (North Shields) (1984), Latimer v AEC (1953), James v Hepworth & Grandage (1967), Qualcast (Wolverhampton) Ltd v Haynes (1959), General Cleaning Co v Christmas (1958)</i> ; stress/psychiatric harm: <i>Walker v Northumberland County Council</i>

		<i>(1994), Hatton v Sutherland (2002), Barber v Somerset (2004)</i>
	3.3 Apply the law on duty of care to a given situation	3.3 Application of the law to a complex scenario
4 Understand the law on breach of duty of care	4.1 Explain the general criteria for determining whether breach of duty has occurred	4.1 Explanation of Alderson B's statement in <i>Blyth v Birmingham Waterworks Co (1856)</i> ; explanation of the legal characteristics of the 'reasonable person': objective standard established by the courts. Judicial tests and criteria for determining whether the standard of the reasonable person has been met: levels of skill and experience; judgment; magnitude of risk taken; importance of the objective to be attained; skilled and professional activities when judgement is involved; the use of hindsight; characteristics of individual Claimant: relevant authority (e.g.) <i>Latimer v AEC (1953), Watt v Herts CC (1954), Knight v Home Office (1990), Roe v Ministry of Health (1954), Paris v Stepney LBC (1951)</i>
	4.2 Apply the law on breach of duty of care to a given situation	4.2 Application of the law to a complex scenario
5 Understand the law on causation	5.1 Explain the law on establishing, in fact, that the breach of duty of care caused harm to the Claimant	5.1 Legal tests for establishing causation in fact: the 'but for test': <i>Barnett v Chelsea & Kensington Hospital Management Committee (1968)</i> ; the 'material contribution test': <i>Bonnington Castings v Wardlaw (1956)</i> ; the 'material increase in risk test': <i>McGhee v National Coal Board (1973)</i> ; dealing with multiple causation: relevant authority (e.g.) <i>Baker v Willoughby (1970); Jobling v</i>

		<p><i>Associated Dairies (1981)</i>, <i>Fairchild v Glenhaven Funeral Services (2003)</i>, <i>Barker v Corus UK Ltd (2006)</i>, for mesothelioma only, s3 Compensation Act 2006, <i>Sienkiewicz v Greif (2011)</i>, for other non-cumulative diseases <i>Heneghan v Manchester Dry Dock (2016)</i>; apportionment generally: <i>Holtby v Brigham & Cowan (Hull) Ltd (2000)</i> and Civil Liability (Contribution) Act 1978</p>
	<p>5.2 Explain the law on establishing, in law, that employer's breach of duty of care caused harm to the Claimant (Remoteness of Damage)</p>	<p>5.2 The principle of remoteness of damage: harm that is too remote is not recognised by the law and so is not actionable. Test for deciding on remoteness of damage: <i>The Wagon Mound (No 1) (1961)</i>, <i>Hughes v Lord Advocate (1961)</i>; acts of third parties. The principle of 'take your victim as you find him': relevant case law (e.g.) <i>Smith v Leech Brain & Co Ltd (1961)</i>, <i>Robinson v Post Office (1974)</i>. Breaks in the chain of causation – new and intervening acts of the Claimant and of third parties: relevant case law (e.g.) <i>McKew v Holland Hannen & Cubitts (1969)</i>, <i>Wieland v Cyril Lord Carpets (1969)</i>, <i>Rouse v Squires (1971)</i>, <i>Knightley v Johns (1982)</i>; <i>Corr v IBC Vehicles (2008)</i>; <i>Spencer v Wincanton Holdings (2009)</i></p>

	5.3 Explain the law on proving that an employer was negligent	5.3 Burden and standard of proof: who asserts must prove upon the balance of probabilities The doctrine of <i>res ipsa loquitur</i> (the thing speaks for itself) and its impact on the burden of proof; the circumstances in which the doctrine <i>res ipsa loquitur</i> may apply: relevant authority (e.g.) <i>Scott v London & St Katherine 's Dock Co. (1865)</i> , <i>Ward v Tesco Stores (1976)</i> S11 Civil Evidence Act 1968
	5.4 Apply the law on causation and/or proof of negligence to a given situation	5.4 Application of the law to a complex scenario
6 Understand the tortious damages available in respect of a claim against an employer	6.1 Explain the principles for calculating damages in tort in respect of fatal and non-fatal personal injury claims	6.1 Purpose of damages: compensatory, to place (in so far as money is able) in the position the Claimant was in before the harm was suffered. Special Damages: actual pecuniary loss to date of trial. General Damages: future pecuniary loss, pain, suffering, loss of amenity, mental distress. Death: survival of deceased's right of action - Law Reform (Miscellaneous Provisions) Act 1934; claims for financial loss and bereavement - Fatal Accidents Act 1976, Administration of Justice Act 1982; <i>Knauer v Ministry of Justice (2016)</i> Non compensatory damages: exemplary, nominal, contemptuous
	6.2 Apply the law on remedies to a given situation	6.2 Application of the law to a complex scenario

7 Understand the defences available to an employer	7.1 Explain the defence of Consent (<i>Volenti non fit injuria</i>), with particular reference to employment situations	7.1 Consent (<i>Volenti non fit injuria</i>): C agreed to take the risk; C had sufficient knowledge to make agreement real; C's agreement was voluntary. Constraints on use in claims by employees. Relevant case law (e.g.) <i>Smith v Baker (1891)</i> , <i>Bowater v Rowley Regis (1948)</i> , <i>ICI v Shatwell (1965)</i> <i>Haynes v Harwood (1935)</i>
	7.2 Explain the defence of contributory negligence, with particular reference to employment situations	7.2 Partial defence; D must show: C was at fault in that he was careless of his own safety; C's carelessness contributed to the harm suffered; D must show that the act of C was reasonably foreseeable as causing harm to C. Sections 1 and 4 Law Reform (Contributory Negligence) Act 1945. Judicial attitudes to contributory negligence in employment situations. Relevant case law: (e.g.) <i>Jones v Livox Quarries Ltd (1952)</i> , <i>Caswell v Powell Duffryn Collieries (1940)</i> , <i>Stapley v Gypsum Mines (1953)</i> , <i>Sherlock v Chester City Council (2004)</i> , <i>Sharp v Top Flight Scaffolding (2013)</i>
	7.3 Explain the law on statutory bars to claims in tort	7.3 Procedural device which extinguishes the right to a remedy (not the cause of action) upon the expiry of 6 years (general time limit) or 3 years (in personal injury cases) from the date of harm or 'date of knowledge'. Relevant authority: Limitation Act 1980 (as amended) ss2, 11, 14, 33. <i>Mackie v Secretary of State for Trade & Industry (2007)</i> , <i>Aktas v Adepta & Dixie v British Polythene Industries (2010)</i> , <i>A v Hoare (2008)</i> , <i>Horton v Sadler (2007)</i>

8 Understand the scope and application of the employers' liability/public liability protocol with reference to use of the portal	7.4 Apply the law on defences to a given employment situation	7.4 Application of the law to a complex scenario
	8.1 Explain how the employers' liability/public liability protocol scheme works in outline	8.1 Employers' liability cases not exceeding £25,000; the need for there to be an admission; 3 stages of claim; use of the electronic portal.
	8.2 Explain what happens during each stage of the employers' liability/public liability protocol	8.2 Explanation of stages 1, 2 and 3
	8.3 Apply the employers' liability/public liability protocol to a given situation	8.3 Application of the protocol to a complex situation
9 Understand fixed and predictable costs in employers' liability cases	9.1 Explain the fixed costs regime under the employers' liability/public liability protocol	9.1 CPR 45 qualifying conditions; method of calculation of amount; success fee; allowable disbursements
	9.2 Explain fixed recoverable costs in relation to employer's liability claims which have been settled	9.2 CPR 45 where parties issue costs only proceedings following settlement or where Part 8 proceedings issued to approve child settlement: fixed recoverable costs disbursements; success fee
	9.3 Explain how the predictable costs system operates in employer's liability cases	9.3 CPR 45 2 stages of fixed success fee; different rates for employer's liability and disease cases; provision for application to vary the uplift in the largest cases

	9.4 Apply knowledge of fixed and predictable costs in employers' liability cases to a given situation	9.4 Application to a complex scenario
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Additional information about the unit	
Unit aim(s)	The learner will have a broad understanding of the law relating to employers' liability in relation to Personal Injury Claims.
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically SFJ1B14: Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	Chartered Institute of Legal Executives (CILEx)
Availability for delivery	1 st September 2014