

**Note for Candidates Academic Year 2016/18:** Any increase in the small claims personal injury general damages threshold and/or the proposed abolition of damages for minor soft tissue (whiplash) claims will not be examinable in 2018.



<b>Title</b>	<b>The Law and Practice Relating to Road Traffic Accidents</b>	
<b>Level</b>	4	
<b>Credit value</b>	7	
<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the duty of care owed by a road user to other users of the road</b>	1.1 Explain the common law duty of care in law owed by road users to other users of the road	1.1 Common law duty of care in law not to cause harm to people using the highway whom he/she could reasonably expect to be affected by his/her use of the highway, such as driving, pedal cycling, motorcycling, walking; e.g. <i>Donoghue v Stevenson (1932)</i> ; <i>Nettleship v Weston (1971)</i>
	1.2 Explain the common law duty of care on the facts	1.2 Duty of care on facts: recognition of the need to establish the particular claimant is owed a duty of care by the defendant on the facts – the foreseeable claimant e.g., <i>Bourhill v Young (1943)</i> ; <i>Palsgraf v Long Island Railroad (1928)</i>
	1.3 Explain the Highway Authority's duty of care owed to users of the road	1.3 Highway Authority's common law duty and non-delegable statutory duty to maintain highways maintainable at public expense: sections 41 and 36 Highways Act 1980; <i>Dabinett v Somerset County Council (2006)</i> ; accumulation of water on the highway: <i>Dept of Transport, Environment &amp; The Regions v Mott McDonald Ltd &amp; others [2006] EWCA Civ 1089</i> ; obstruction of the highway from accumulation of snow or collapse of banks on side of highway, or any other cause – s150 Highways Act 1980 - duty to remove, and s41(1A) Highways Act 1980 – ensure so far as reasonably practicable that safe passage along a highway is not endangered by snow

		and ice; comparison with common law – no duty of care owed to prevent/remove accumulation of snow: <i>Sandhar v The Dept of Transport, Environment &amp; The Regions [2004] EWHC 28 (QB)</i> ;
	1.4 Apply the law relating to duty of care in the context of a variety of road user scenarios to a given situation	1.4 Application of the law to a complex scenario
<b>2 Understand the common law duty of care in relation to breach of duty, causation, damage and defences in the context of a variety of road traffic accident scenarios</b>	2.1 Outline the relevant legal principles to consider when analysing breach of common law duty of care in road traffic accident (RTA) claims	2.1 Standard of care: 'reasonable person' test e.g., <i>Blyth v Birmingham Waterworks Co (1856)</i> ; <i>Glasgow Corp v Muir (1943)</i> ; <i>Nettleship v Weston (1971)</i> ; not hindsight test nor a standard of near perfection e.g., <i>Roe v Minister of Health (1954)</i> ; <i>Stewart v Glaze (2009)</i> ; <i>Smith v Co-operative Group Ltd (2010)</i> ; <i>Birch v Paulson (2012)</i> ; <i>Mansfield v Weetabix Ltd (1998)</i> ; elements to consider/balance in relation to standard of care: likelihood of harm e.g., <i>Bolton v Stone (1951)</i> , <i>Hilder v Associated Portland Cement Manufacturers Ltd (1961)</i> ; seriousness of harm e.g., <i>Paris v Stepney Borough Council (1951)</i> ; cost of taking precautions e.g., <i>Latimer v AEC Ltd (1953)</i> ; social value of the defendant's conduct e.g., <i>Watt v Hertfordshire County Council (1954)</i> , <i>Ward v London County Council (1938)</i> .  Explain the civil law burden of proof.
	2.2 Describe the importance of causation in RTA claims	2.2 The Claimant must establish that defendant's breach of duty caused claimant's injuries and losses e.g., <i>Barnett v Chelsea and Kensington Hospital Management Committee (1969)</i> ; <i>Whittle v Bennett (2006)</i>
	2.3 Summarise the requirement for damage/loss/harm in RTA claims in common	2.3 The Claimant must prove that damage/loss/harm suffered was the kind that was a reasonably foreseeable result of

	law negligence	<p>the defendant's breach of duty e.g., <i>Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co (The Wagon Mound) (No 1) (1961)</i>. Explain courts' narrow and wide interpretation of 'type' of damage with reference to relevant case law e.g. <i>Hughes v Lord Advocate (1963)</i>, <i>Vacwell Engineering Co Ltd v BDH Chemicals Ltd (1971)</i>, <i>Jolley v London Borough of Sutton (2000)</i>, <i>Doughty v Turner Manufacturing Co (1964)</i>, <i>Tremain v Pike (1969)</i>.</p> <p>Explain the 'egg-shell skull' rule – <i>Smith v Leech Brain &amp; Co Ltd (1962)</i>.</p>
	2.4 Identify factors relevant to a <i>novus actus interveniens</i> in relation to road traffic accident claims	2.4 Recognise and apply law relevant to break in chain of causation between original defendant and claimant e.g. <i>Weld-Blundell v Stephens (1920)</i> ; <i>Rouse v Squires (1973)</i> ; <i>Knightley v Johns (1982)</i> ; <i>Wright v Lodge (1993)</i> ; claimant's own negligence: <i>McKew v Holland and Hannen and Cubitts (Scotland) Ltd (1969)</i> ; <i>Wieland v Cyril Lord Carpets (1969)</i> ; significance of the Civil Liability (Contribution) Act 1978
	2.5 Summarise the law relevant to the defences of contributory negligence, <i>volenti</i> and <i>ex turpi causa</i> , and the significance of these defences in relation to road traffic accident claims	2.5 The Law Reform (Contributory Negligence) Act 1945 section 1(1) - applies to RTA claims; partial defence; reversal of burden of proof; courts' approach; <i>Farley v Buckley (2007)</i> ; <i>Heaton v Hertzog (2008)</i> ; emerging from minor onto major road e.g. <i>Worsford v Howe (1979)</i> ; queue jumping e.g. <i>Powell v Moody (1966)</i> ; rescuers and contributory negligence – <i>Haynes v Harwood (1935)</i> ; <i>Tolley v Carr (2010)</i> ; s149 Road Traffic Act 1988 excludes reliance on <i>volenti</i> defence in relation to RTA passenger claims; <i>ex turpi causa</i> - complete defence e.g. <i>Pitts v Hunt (1991)</i> ; <i>Gray v Thomas Trains Ltd and Another (2009)</i> ; <i>Beaumont v Ferrer (2014)</i> ; <i>Delaney v Pickett (2011)</i> - defence may fail if

		damage suffered by claimant was not caused by his/her unlawful act; <i>Joyce v O'Brien (2013)</i>
	2.6 Explain the impact of not wearing a seatbelt in relation to RTA claims	2.6 Motor Vehicles (Wearing of Seat Belts) Regulations 1993 (SI 1993/176) (as amended); the rule in <i>Froom v Butcher (1976)</i> establishing: 15% reduction if injuries would have been lighter, 25% reduction if injuries would have been avoided entirely; <i>Stanton v Collinson (2010)</i> ; <i>Gawler v Raettig (2007)</i> ; parental obligation: liable to order for contribution under Civil Liability (Contribution Act) 1978, e.g., <i>J (a Child) v Wilkins (2002)</i> ; <i>Hughes v Williams (deceased) (2013)</i>
	2.7 Explain the effect of a driver driving at speed in establishing breach of the duty of care in RTA	2.7 The impact of 'speed'; whether above the speed limit or not e.g., <i>Quinn v Scott (1965)</i> ; <i>Richardson v Butcher (2010)</i>
	2.8 Explain the court's approach to passengers travelling with intoxicated drivers	2.8 Knowledge of risk e.g., <i>Owens v Brimmel (1977)</i> ; <i>Booth v White (2003)</i>
	2.9 Explain the rules relating to the conduct required for a road user to discharge his/her duty of care and the rules relating to conduct which may give rise to a finding of contributory negligence on the part of a road user	2.9 The need for drivers to be careful, to keep a look out for other road users and drive with the standard of care to be expected of an experienced, skilled and careful driver, <i>Nettleship v Weston (1971)</i> ; <i>Stewart v Glaze (2009)</i> ; <i>Gray v Botwright (2014)</i> .  The need for pedal cyclists and motorcyclists to keep a lookout; whether or not the pedal cyclist needs to wear a helmet; contributory negligence, e.g., <i>Smith v Finch (2009)</i> ; whether lack of a helmet made any difference, e.g., <i>Phethean-Hubble v Coles (2012)</i> ; motorcyclist not wearing helmet e.g., <i>O'Connell v Jackson (1972)</i> ; wearing

		<p>helmet but not securing chin strap e.g., <i>Capps v Miller (1989)</i>.</p> <p>The need for pedestrians to use due care for his/her own safety e.g., <i>Nance v British Columbia Electric Railway Co Ltd (1951)</i>; the need for drivers to keep a lookout especially for children; the need for pedestrians to keep a lookout for cars e.g., <i>Birch v Paulson (2012)</i>; contributory negligence e.g., <i>Eagle v Chambers (2003)</i> on percentage deduction generally; Civil Liability (Contribution) Act 1978; court's approach to child pedestrians generally and, in particular, very young children, children under 12 years of age e.g., <i>Richardson v Butcher (2010)</i>; <i>Toropdar v D (2009)</i>, teenagers e.g., <i>Ehrari v Curry (2006)</i>; <i>Paramasivan v Wicks ([2013])</i>; <i>Rainford v Lawrence (2014)</i>; <i>Sabir v Osei-Kwabena (2015)</i> and <i>Jackson v Murray and another [2015] UKSC 5</i>.</p>
	2.10 Analyse common situations where drivers are involved in road traffic accidents	2.10 Non-exhaustive list of examples, and cases, of common situations where drivers are involved in road traffic accidents: the position on the road of the respective parties and the relevant obligation e.g., <i>Powell v Moody (1966)</i> ; the junction of major and minor roads e.g., <i>Heaton v Herzog (2008)</i> ; the consequence of a car having suffered a breakdown e.g., <i>Houghton v Stannard (2003)</i> ; the effect of the rules for Zebra, Pelican and Puffin pedestrian crossings
	2.11 Identify relevant factors to consider when analysing the Highway Authority's breach of statutory duty of care in road traffic accident claims	2.11 Condition of highway - foreseeable danger - failure to maintain - damage caused by dangerous condition; e.g. <i>Rider v Rider (1973)</i> , <i>Gorringe v Calderdale MBC (2004)</i> , <i>Yetkin v London Borough of Newham (2010)</i> , <i>Valentine v Transport for London &amp; London Borough of Hounslow (2010)</i> organic matter

		<p><i>Rollinson v Dudley MBC (2015)</i> ; awareness of purpose and status of Dept of Transport's <i>Well- maintained Highways - Code of Practice for Maintenance Management</i>, e.g. <i>AC(1) DC(2) TR(3) v Devon County Council (2012)</i>; comparison with duty owed in negligence at common law.</p> <p>Documentary evidence required in connection with claims brought against the Highway Authority.</p>
	2.12 Summarise the statutory defence available to the Highway Authority	2.12 Defence set out in Section 58 Highways Act; defendant driver joining Highway Authority as another defendant, e.g. <i>AC(1) DC(2) TR(3) v Devon County Council (2012)</i>
	2.13 Apply the law relating to common law negligence and/or breach of statutory duty, in the context of a variety of road traffic accident scenarios, to a given situation	2.13 Application of the law to a complex scenario
<b>3 Understand the role of the Highway Code in road traffic accident (RTA) claims</b>	3.1 Evaluate the evidential status of the Highway Code in RTA claims	3.1 Section 38(7) Road Traffic Act 1988 renders it admissible on the question of breach of duty, but breach of the Code does not automatically mean that there was negligence, e.g., <i>Powell v Phillips (1972)</i> ; <i>Goad v Butcher (2011)</i>
	3.2 Explain what the Highway Code is used for in RTA claims	3.2 Liability, Contributory Negligence, Contribution or Indemnity
	3.3 Apply knowledge of the role of the Highway Code in road traffic accidents to a given situation	3.3 Application to a complex scenario
<b>4 Understand the practical steps that need to be taken in investigating an RTA claim</b>	4.1 Analyse what insurance enquiries need to be made in investigating an RTA claim	4.1 s154 RTA 1988 identification; Motor Insurers Bureau database; Police Accident Report
	4.2 Evaluate what evidence may assist the investigation of an RTA claim	4.2 Location; conditions on the ground with traffic, weather; sequence of events

	4.3 Explain which part of the contents of the police accident report may assist the investigation of an RTA claim	4.3 Statements; plan of accident; photographs; measurements: all important as they may help prove what happened
	4.4 Explain which part of the contents of the medical records may assist the investigation of an RTA claim	4.4 Accessing triage notes from hospital: may be the only contemporaneous record of the claimant's version of events
	4.5 Explain how the maintenance history of a vehicle may assist the investigation of an RTA claim	4.5 If issue is one of condition of the car, then records may help establish the facts
	4.6 Explain how the conviction of a party may assist the investigation of an RTA claim	4.6 s11 Civil Evidence Act 1968 makes relevant s11 convictions admissible in evidence; rule in <i>Stupple v Royal London Insurance (1970)</i> ; examples of possible relevant convictions: Road Traffic Act 1988 - s2 dangerous driving; s3 driving without due care and attention; s4 driving or being in charge of a motor vehicle when unfit through drink or drugs, or s5 if alcohol intake is over the legal limit; s41D driving whilst holding hand-held mobile phone; s14 not wearing seat belt; s15 inappropriate child restraint; s16 motorcyclist not wearing safety helmet
	4.7 Apply knowledge of the practical steps that need to be taken when investigating an RTA claim to a given situation	4.7 Application to a complex scenario
<b>5 Understand the scope and application of the RTA Protocol with reference to use of the Portal</b>	5.1 Explain how the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the RTA Protocol) works in outline	5.1 RTA cases not exceeding £25,000 – method of valuing; the need for there to be an admission; 3 stages of claim; use of the electronic portal
	5.2 Analyse what happens during each stage of the application of the RTA Protocol	5.2 Stage 1: Claims and Underwriting Exchange Personal Injury Search (CUE PI search), claim, CNF/RTA1, response RTA2 content and timing, matter exiting the scheme – reasons for leaving and how claims continue.

		<p>Uninsured defendant driver and MIB involved – completion of Section H of CNF/RTA1.</p> <p>Stage 2: Interim payment; seeking £1,000: RTA 4; seeking more than £1,000: RTA 4; insurer's response.</p> <p>Stage 2: RTA 5; claimant obtains medical report, soft-tissue injury - definition; for soft-tissue injury claims claimant obtains medical report from expert selected by and registered with MedCo Registration Solutions [MedCo] – separate portal system; submission of RTA5; response acceptance or counter-offer. Mistaken acceptance: <i>Draper v Newport</i> (Birkenhead County Court 3 September 2014).</p> <p>Stage 3: Part 8 proceedings (PD8B); used if no settlement on quantum; submission of RTA 6 and RTA 7; issue of Part 8 claim; service acknowledged N210B; paper hearing or hearing if requested or claimant is a child; the impact of Part 36 on claims under the scheme.</p> <p>Main steps to take under Personal Injury Pre-Action Protocol, if claim exits RTA portal.</p>
	5.3 Apply knowledge of the RTA Protocol, and outline knowledge of Personal Injury Pre-Action Protocol, to a given situation	5.3 Application to a complex scenario
<b>6 Understand costs in RTA cases</b>	6.1 Explain main methods of funding RTA claims	6.1 Before the event insurance; conditional fee agreements and success fees; after the event insurance; damages based agreements
	6.2 Explain the fixed costs regime under the RTA Protocol	6.2 CPR 45 Section III Qualifying conditions; method of calculation of amount of fixed costs under PI RTA Protocol; success fee calculation and recoverability before and

		after 1 April 2013, ATE premium recoverability before and after 1 April 2013; allowable disbursements; outline fixed costs under CPR 45 Section IIIA - where claim commenced in RTA Protocol leaves the portal and subsequently settles
	6.3 Explain recoverable costs, disbursements and success fees in relation to different types of settlements/judgments in RTA claims	6.3 Fixed costs, disbursements and success fees in relation to: CPR 45.19 – disbursements; CPR 45.29 where parties issue costs only proceedings following settlement; CPR 45.21 and 45.22 where Part 8 proceedings issued to approve child settlement; CPR 45.20 or 45.26 where the claimant obtains judgment for more or less than the defendant's Protocol offer; costs provisions applicable to multi-track-value claims; outline effect of qualified one-way costs shifting on defendant's recoverability of costs following successful defence; interrelation of Part 36 costs rules and fixed costs rules – claimant awarded damages more advantageous than own Protocol offer entitled to costs consequences under Part 36 – <i>Broadhurst v Tan and Taylor v Smith [2016] EWCA Civ 94</i>
	6.4 Apply knowledge of costs to a given situation	6.4 Application to a complex scenario
<b>7 Understand the key elements and underlying principles of RTA insurance policies</b>	7.1 Analyse common terms which may be found in RTA insurance policies	7.1 Common extensions to the policy; persons permitted to drive; limitations which may be imposed on use; the condition of the vehicle; liability in damages; invalid terms; breaches of condition; the duty to satisfy judgments
	7.2 Analyse the doctrines of 'Utmost Good Faith' and Subrogation in the context of RTA	7.2 The duty of 'Utmost Good Faith' and how it can apply to RTA insurance; the doctrine of Subrogation and how it can apply to RTA insurance

	<p>7.3 Explain significance of European Communities (Right against Insurers) Regulations 2002 SI2002/3061</p>	<p>7.3 Reg 3 of the 2002 Regulations: where claimant has a right of action in tort against an insured defendant; he/she has right of action against the defendant's insurance company; therefore can issue proceedings against insurer, defendant or both. Impact of <i>Vnuk v Zavarovalnica Triglav D.D.</i> CJEU (Third Chamber) 4/9/2014 C-162/13</p>
	<p>7.4 Evaluate the situations in which a driver might be uninsured</p>	<p>7.4 No insurance cover for the vehicle at all; insurance cover but driver is not named driver; insurance cover but insurer voids policy due to breach by driver/applicant e.g., false statements made when applying for policy; insurance cover but driver driving without permission, e.g., stolen vehicle</p>
	<p>7.5 Evaluate the obligation of an RTA insurer to pay claims in respect of an uninsured driver.</p>	<p>7.5 Driver is insured - cover effective under s151 RTA1988; driver is not insured but is driving stolen car which is insured – insurer will provide cover under s151 RTA 1988</p>
	<p>7.6 Evaluate the role and scope of the Motor Insurers' Bureau (MIB) scheme in relation to RTA claims</p>	<p>7.6 The role of the Motor Insurers' Bureau; where defendant driver has no insurance and no policy of insurance covers the car the Uninsured Drivers' Agreement 2015 will apply; preconditions which must be met; exclusions to payment under the Agreement: voluntarily, knowledge e.g. <i>Smith v Stratton &amp; Another</i> [2015], intoxication; fatal accidents; if not subject to RTA Protocol, completion of application form and submission with relevant documents; Clause 13(1) of 2015 MIB Agreement – mandatory joinder of MIB to proceedings. Driver is not traced - the Untraced Drivers' Agreement 2003 and Supplementary Agreements will apply; death or personal injury; damage to property; notification; longstop date (ordinary limitation); matters not covered; conditions precedent to liability; use of the accelerated procedure; use of the normal procedure</p>

	7.7 Apply key elements and underlying principles of RTA insurance policies to a given scenario	7.7 Application to a complex scenario
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<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand the law relating to Road Traffic Accidents (RTAs) including the application of the duty of care in the context of a variety of RTA scenarios, how to investigate an RTA claim and the scope and application of the RTA protocol with reference to the use of the Portal.
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 <sup>st</sup> September 2014