

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 the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **The 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 in Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the ILEX 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 ball point 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 ILEX qualifications: **LEVEL 3 CERTIFICATE IN LAW AND**

BLANK PAGE

StudentBounty.com

SECTION A

(Answer ALL questions in Section A)

1. In addition to establishing a duty of care and its breach, what must claimant demonstrate in order to make a successful claim in negligence?
(1 mark)
2. (a) Describe what is meant by 'reasonable foreseeability' when establishing whether a duty of care exists in negligence.
(1 mark)
(b) Identify a situation or case in which 'reasonable foreseeability' is shown in order to establish the existence of a duty of care.
(1 mark)
(Total: 2 marks)
3. In the context of the duty of care in negligence explain the role of public policy in relation to claims against the police.
(3 marks)
4. In negligence, explain what standard of care is expected of a doctor.
(3 marks)
5. Explain the 'material increase in risk' test used in establishing causation in fact.
(2 marks)
6. Identify any **two** requirements in order to establish 'vicarious liability'.
(2 marks)
7. In order to establish contributory negligence the defendant must prove that the 'claimant acted carelessly'. Explain with the aid of case law or examples **two** situations in which the claimant will be shown to have acted carelessly.
(4 marks)
8. What is the effect of s2(1) Unfair Contract Terms Act 1977 with regard to the avoidance of liability for negligence?
(1 mark)
9. In the event of a negligent act causing the death of the victim:
 - (a) Who could bring any action under the Law Reform (Miscellaneous Provisions) Act 1934?
(1 mark)
 - (b) Who could bring any action under the Fatal Accidents Act 1976?
(1 mark)(Total: 2 marks)

(Total Marks for Section A: 20 marks)

SECTION B

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

Scenario 1

In 2008, Kempston College had a number of problems with students throwing items out of classroom windows. All staff at the college (including part-time staff) were sent emails instructing them to keep all classrooms locked, unless there was a member of staff present. Baljit Kaur who worked through an agency called Tutor 'R' Us was a part-time tutor at the college at that time.

Ahmed Rashid was a student at Kempston College from September 2008 until June 2010. On 14 December 2008 Baljit had just left a classroom forgetting to lock the door. Shortly after this Ahmed and his friends went into the classroom and started fooling around, whilst they were waiting for their tutor.

Ahmed was celebrating his 17th birthday that day; he and his friends were in high spirits. They were chasing each other around the desks and chairs in the classroom and trying not to be caught. This had been going on for about 10 minutes when Ahmed sidestepped Paul trying to avoid being caught. Ahmed slipped and fell awkwardly. He put out his hand in an attempt to break his fall but, as he has unusually brittle bones, he fractured his wrist as a result of the fall.

An ambulance was called and, when it arrived it parked in the College car park outside the classroom block. As the paramedics were walking Ahmed across the car park to the ambulance, a chair was thrown out of the classroom window and it struck Ahmed on the head. Ahmed suffered concussion and his memory has been affected.

Dianne Roberts, another student, had parked her car in the College car park that morning. After the chair struck Ahmed, it landed on Dianne's car denting the bodywork and scratching the paint. The cost to repair the car was £500.

In the car park close to where Dianne's car was parked, there was a sign which read:

KEMPSTON COLLEGE

All cars are parked here at the owners' risk.

The College does not accept any responsibility for damage to vehicles or other property or for injury to persons, howsoever caused.

Scenario 1 Questions

1. (a) Describe what a claimant would have to demonstrate in order to establish that the defendant owed a duty of care.

(3 marks)

- (b) Explain whether Baljit could be held to have owed Ahmed such a duty of care.

(5 marks)

(Total: 8 marks)

2. (a) Explain what a claimant would have to demonstrate in order to establish that the defendant had caused his injuries.

(7 marks)

- (b) In the circumstances which have occurred, explain whether Baljit is likely to have caused Ahmed's injuries.

(8 marks)

(Total: 15 marks)

3. Assume, for the purposes of this question, that Baljit is held to have been negligent.

Explain what Ahmed would need to establish for a successful claim against Kempston College for Baljit's negligence.

(8 marks)

4. If negligence actions were brought by both Ahmed and Dianne against Kempston College, explain:

- (a) What effect the notice in the car park would have on any claim brought by Ahmed.

(2 marks)

- (b) What effect the notice in the car park would have on any claim brought by Dianne.

(4 marks)

(Total: 6 marks)

5. If Ahmed wishes to bring an action in negligence, explain by what date he would need to commence any such action.

(3 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Edward Jones is a driver for Fawcett and Co (Plumbing Supplies) Ltd 'Fawcetts'. On 13 January 2011 he was delivering a new gas boiler to Gurdip Gill. Gurdip was converting a house into flats. Edward was supposed to be working with Hari Dhillon to help him load and unload his van but, on 12 January, Hari had slipped on some ice and fractured his arm. Hari's wife telephoned Fawcetts on the morning of 13 January to inform them that Hari would not be coming in to work. Ian Fawcett, one of the directors of Fawcetts, told Edward that he would have to do his deliveries alone that day as there was no-one else available to accompany Edward. Edward protested but Ian told him that Gurdip was an important customer and he could not afford to upset him. Edward therefore went alone.

The roads that morning were extremely slippery due to ice. Edward telephoned his wife to tell her that he would come home and take his daughter to school to save his wife driving in the difficult conditions. He said he would do this on his way to deliver the boiler.

Edward loaded the boiler into his van with some difficulty. On his way home, he was driving fast, as he did not want his daughter to be late for school. He had to brake suddenly at a bend and his van skidded on some ice. It collided with a parked car belonging to Julie Gadd. The front wing and driver's door of Julie's car were damaged. There was no damage to the van Edward was driving.

When Edward arrived at Gurdip's property, he managed to unload the boiler from the van. As he was moving the boiler on its trolley towards the house, because there was no one to guide him, the boiler slipped off the trolley and fell onto Edward's foot. It crushed his toes. Gurdip called for an ambulance and Edward was taken to Kempston General Hospital's Accident and Emergency Department.

Scenario 2 Questions

1. (a) Describe what a claimant would have to demonstrate in order to establish that the defendant owed a duty of care.

(3 marks)

- (b) Explain whether Fawcetts could be held to have owed Edward such a duty of care.

(5 marks)

(Total: 8 marks)

2. If Edward brings an action in negligence against Fawcetts:

- (a) Outline the defences, if any, which might be available to Fawcetts.

(8 marks)

- (b) Explain whether any such defences could be successfully pleaded by Fawcetts in this case.

(8 marks)

(Total: 16 marks)

3. As a road user, Edward owes Julie a duty of care.

Explain what Julie would have to demonstrate in order to establish that Edward had breached that duty and whether Edward has, in fact, breached that duty.

(9 marks)

4. Assume, for the purposes of this question, that Edward is held to have been negligent.

Explain what Julie would need to show to establish a claim against Fawcetts for Edward's negligence.

(7 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Karen Davies is a triathlete and on 12 September 2010 she was taking part in a triathlon in Kempston, which involved a swim, followed by a bicycle race and then a half-marathon. She had completed the swim in Kempston Lake without incident and was about to begin the bicycle race which started in Kempston Park. As she was mounting her bicycle to start this part of the race, another competitor, Lakshmi Persaud was also mounting her bicycle. Lakshmi jumped onto her bike but lost her balance and fell into Karen's path. As a result, Karen fell off her bike. A third competitor, Matt Lewis was following quickly behind them. Although Matt swerved and tried to avoid Karen, he nevertheless ran over Karen's hand.

Karen retired from the race and was taken to Kempston General Hospital's Accident and Emergency Department. Her hand was x-rayed and the x-ray was seen by Dr Neale. Dr Neale, a newly qualified doctor, had been on duty for over 18 hours and was very tired. He saw a fracture to one finger but did not notice that Karen's thumb was also fractured. Karen's finger was then put in a splint but no treatment was given in respect of the thumb.

When Karen went back to the hospital six weeks later to have the splint removed she complained that her thumb was still sore and appeared to be out of shape. Doctor Neale decided to have Karen's thumb x-rayed again. It was clear from the second x-ray that the thumb had also been fractured but that the bones had reset in an unnatural position. Karen's thumb would be permanently disfigured and, although the pain would now subside, she was likely to suffer from arthritis in the joint later in life.

Scenario 3 Questions

1. (a) Explain the test for establishing a duty of care initially set out in the case of *Donoghue v Stevenson* [1932].
(2 marks)
- (b) Explain how this test was developed by the case of *Caparo Industries plc v Dickman* [1990].
(3 marks)
- (c) Explain whether a duty of care exists between Lakshmi and Karen.
(5 marks)
(Total: 10 marks)
2. As there is no single cause of Karen's hand injuries, explain the legal principle the court would use to determine the issue of causation and how it might be applied in this case.
(5 marks)
3. (a) Explain what standard of care is owed by a doctor to a patient.
(4 marks)
- (b) Explain whether Dr Neale has breached any duty of care owed to Karen.
(5 marks)
- (c) Explain to what extent, if at all, the failure of diagnosis by Dr Neale affects the liability of Lakshmi and Matt for Karen's injuries.
(6 marks)
(Total: 15 marks)
4. Explain:
- (a) The defence of consent.
(3 marks)
- (b) Whether the defence of consent would be successful if used by Lakshmi and Matt if Karen brought an action against them in negligence.
(4 marks)
(Total: 7 marks)
5. Assume for the purposes of this question that Karen had contributed to the accident due to her own carelessness:
- (a) State the statutory authority which would regulate the question of damages.
(1 mark)
- (b) What does the statutory authority provide?
(2 marks)
(Total: 3 marks)
- (Total Marks for Scenario 3: 40 marks)

End of Examination Paper

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com