

## 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 PRACTICE** and **LEVEL 3 PROFESSIONAL DIPLOMA IN LAW AND PRACTICE**

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**SECTION A**  
**(Answer All questions in Section A)**

1. Identify **two** statutory torts.  
**(2 marks)**
2. A claimant has established that damage was reasonably foreseeable and that there is sufficient proximity for a duty of care to exist. Why may a court still refuse to find that a duty of care exists?  
**(1 mark)**
3. Explain the **two** factors stated in s1 Compensation Act 2006, that give courts power to consider wider implications in claims in negligence.  
**(2 marks)**
4. Explain the difference between a 'primary' victim and a 'secondary' victim.  
**(5 marks)**
5. In the case of *Watt v Hertfordshire County Council* (1954) why did the fire officer lose his claim for negligence?  
**(1 mark)**
6. Stavros loses a finger at work due to his employer's negligence. Later, he develops an unrelated disease of the spine, which leaves him unable to work. Explain to what extent the employer will be liable to Stavros for damages.  
**(3 marks)**
7. (a) Identify the **three** tests for deciding whether a person is an employee.  
**(3 marks)**
- (b) Briefly explain any **one** of these tests.  
**(1 mark)**  
**(Total: 4 marks)**
8. Identify **one** situation where the courts are likely to find contributory negligence on the part of a claimant.  
**(1 mark)**
9. What are 'general' damages?  
**(1 mark)**

**(Total Marks for Section A: 20 marks)**

**SECTION B**

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

**Scenario 1**

Anne is the owner of Kempston Ferry. The ferry takes cars and foot passengers across the River Kempston. She has one employee, Bill, who assists her in running the ferry and ties up the mooring rope when the ferry arrives at the riverbank.

One day in April 2011, Cam, who was on holiday, drove up to the ferry in his car and waited until it was his turn to board. As Bill waved him forward one of the ropes which held the ferry in position became loose and the ferry began to drift away from the riverbank. Cam did not notice the gap, which had formed between the ferry and the riverbank, and began to drive onto the ferry. Bill also failed to notice the gap because he was talking on his mobile phone and was not concentrating on his job.

As the ferry drifted away from the riverbank, Cam's car fell through the gap into the water. Fortunately, he was able to escape but the car and its contents were ruined. Whilst escaping from the car, Cam cut his arm and was taken to Kempston General Hospital for the cut to be stitched and dressed. At the hospital Cam was given a precautionary anti-tetanus injection. Shortly afterwards, due to a previously undiagnosed condition, Cam had a major reaction to the injection and became ill. As a result, he will be unable to work again. His life expectancy has also been reduced by 20 years. Cam earned an annual salary of £36,500 before the accident.

There was a notice on the approach to the ferry, which read:

***Kempston Ferry***

***Hours of operation:  
7.30 a.m. until 9.00 p.m. daily***

***All passengers use the ferry at their own risk and neither the owner nor her employees will be liable for loss or injury howsoever caused.***

***Owner: Anne Carpenter, Ferry Cottage, Kempston.***

## Scenario 1 Questions

1. (a) Explain the three-stage test for establishing whether a duty of care exists.  
**(5 marks)**
  - (b) In the circumstances which have occurred, explain whether Cam could satisfy this test in an action in negligence against Bill.  
**(3 marks)**
  - (c) Explain what tests Cam could use to establish that his injury and losses were 'caused' by Bill.  
**(5 marks)**
- (Total: 13 marks)**

2. Assume for the purposes of **this question only** that Cam could bring a successful action in negligence against Bill.

Explain whether Cam could bring a successful action in negligence against Anne as Bill's employer.

**(5 marks)**

3. Assume for the purposes of **this question only** that Cam brings a successful action in negligence against Anne.

Explain whether Anne could be held liable for Cam's illness.

**(5 marks)**

4. Explain the effect that the notice may have on any action brought by Cam against Anne.

**(9 marks)**

5. In the circumstances which have arisen, explain what 'general' damages Cam may claim.

**(8 marks)**

**(Total Marks for Scenario 1: 40 marks)**

## Scenario 2

Ephraim is a police officer employed by Kempston Police Authority. In 2008, he passed a police advanced driving course. One night in January 2009, while on duty he received an emergency call requiring him to drive to the Manor Night Club. He took a response vehicle from the car pool at Kempston Police Station. He drove at a dangerously high speed through the town of Kempston towards the club. There was a 30 m.p.h. speed limit in force. He lost control of the vehicle.

Gina and her husband Hal were walking home from the Club and Hal had stopped to urinate behind a tree. Gina had walked on and was about 100 metres away from Hal when she saw Ephraim's car heading rapidly towards the tree where Hal had stopped. Ephraim's car hit the tree and stopped. Fortunately Hal was not injured. On seeing the accident Gina fainted with shock, falling and hitting her head on the ground.

An ambulance was called and Gina was taken to Kempston General Hospital suffering from concussion and cuts to her head. She subsequently developed severe depression as a result of the incident.

Before the incident, Gina worked as a clerical assistant at Kempston General Hospital. She has been unable to return to work due to her depressive state. Her depressive state has also had an adverse effect on her personal relationship with Hal.

## Scenario 2 Questions

1. (a) Explain the general test for determining whether a duty of care has been breached.  
**(4 marks)**

In the circumstances which have occurred, explain:

- (b) **One** of the factors which a court will consider when deciding whether a duty of care may have been breached;  
**(4 marks)**

- (c) Whether Ephraim has breached any duty of care which might be owed to Gina.  
**(5 marks)**

**(Total: 13 marks)**

2. Explain the policy issues, which could affect the existence of a duty of care owed by the police authority towards Gina.  
**(5 marks)**

3. (a) Explain what a secondary victim needs to establish in a successful negligence action.  
**(6 marks)**

- (b) Explain whether Gina could successfully claim against Ephraim for her severe depression.  
**(5 marks)**

**(Total: 11 marks)**

4. Explain the time limitations on bringing an action in negligence and how these limitations apply to Gina.  
**(5 marks)**

5. (a) Explain what is meant by 'special damages'.  
**(1 mark)**

- (b) Identify and explain what 'special' and 'general' damages Gina will be able to claim.  
**(5 marks)**

**(Total: 6 marks)**

**(Total Marks for Scenario 2: 40 marks)**

### Scenario 3

John and his friend Kevin wanted to go fishing. Kevin persuaded John to take John's father's car. John protested that he would be driving illegally as he was only a learner driver and would not be insured. Nevertheless John was persuaded by Kevin to take the car and they set off to Kempston.

Indy was driving her new car along Railway Street in Kempston, a road which was just wide enough for two vehicles to pass. As she approached Kempston High Street, a major road, she had to stop at the junction. She had just stopped when John, who had been driving along Kempston High Street, turned left into Railway Street. John failed to turn the corner correctly and the front driver's side wing of his car hit the front of Indy's car. Both vehicles were damaged.

Kevin was not wearing a seatbelt and in the accident he was thrown forward and hit his head on the front windscreen. He was badly bruised and suffered concussion. He was taken to Kempston General Hospital for treatment and observation.

In order not to block the junction Indy and John decided to move their vehicles onto the pavement in Kempston High Street. Indy was furious at the damage to her new car. She drove onto the pavement too quickly and collided with a lamppost causing further damage to the front of her car.



### Scenario 3 Questions

1. (a) Identify the **three** elements of the tort of negligence, which must be established if a successful claim is to be brought.  
**(3 marks)**
- (b) In the circumstances which have occurred, explain whether John owes a duty of care in negligence to Indy.  
**(5 marks)**
- (c) If it is established that John owed a duty of care to Indy, explain whether John has breached his duty.  
**(5 marks)**  
**(Total: 13 marks)**

2. Explain whether the fact that John was a learner driver affects the standard of care expected of him.  
**(5 marks)**

3. If Kevin brings an action in negligence against John for his injuries sustained in the accident, explain what defences John may be able to rely on.  
**(10 marks)**

4. Explain:
- (a) What a claimant must show in order to establish factual causation of damage by a defendant in a negligence action.  
**(5 marks)**
- (b) The effect of a 'new intervening act'.  
**(3 marks)**
- (c) To what extent John could be held liable for the damage to Indy's car.  
**(4 marks)**  
**(Total: 12 marks)**

**(Total Marks for Scenario 3: 40 marks)**

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