

## 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**

**BLANK PAGE**

StudentBounty.com

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

1. State the test for proving a breach of a duty of care in negligence.  
**(1 mark)**
2. In addition to proximity and just and reasonableness, explain what a claimant would need to show to establish a duty of care.  
**(2 marks)**
3. Identify and explain any **two** requirements for establishing a successful claim in negligence.  
**(4 marks)**
4. In *Hill v Chief Constable of West Yorkshire [1992]*, it was held that the police did not owe a duty of care in negligence towards the potential victim of a crime.  
  
State the effect of *Osman v UK [1999]* on such police immunity.  
**(1 mark)**
5. Explain how the defendant's objective, at the time of the alleged negligent act, might affect the court's decision on whether there is a breach of the duty of care owed to the claimant.  
**(3 marks)**
6. When a claimant seeks to establish causation in law, explain the test used by the courts to decide whether the damage is too remote.  
**(2 marks)**
7. Explain what a claimant must show in order to establish a claim against an employer for the negligent act of an employee.  
**(3 marks)**
8. Explain the effect of the following on a claimant's action in negligence:
  - (a) a full defence; and  
**(1 mark)**
  - (b) a partial defence.  
**(1 mark)****(Total: 2 marks)**
9. To which category of damages does compensation for each of the following belong?
  - (a) future pecuniary loss (loss of earnings); and  
**(1 mark)**
  - (b) inability to pursue a hobby (loss of amenity).  
**(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

Aftab is a Solicitor in private practice. He recently acted for Ben in his purchase of June Cottage, a semi-detached cottage in the country. Ben is a teacher. Aftab made the usual searches and enquiries about the property but failed to read the results carefully and overlooked the fact that the sellers had a long-standing problem with noisy neighbours who live in the adjoining cottage. He also failed to notice that there is a condition affecting the property, which allows the property to be occupied only by someone employed in agriculture.

Ben has now complained to Aftab that he is unable to get to sleep at night because of noise from the adjoining house. Ben has also told Aftab that he has had a letter from the local council telling him that he is in breach of the condition and threatening legal action against him.

Carlo is a Legal Executive who is employed by Aftab. On the afternoon of 6 January he was driving back to the firm's office from Kempston Crown Court where he had been working that day. As he had not had any time for lunch, he decided, instead of going straight back to the office, to call in at home for a cup of tea and something to eat.

On leaving his house, Carlo reversed out of his driveway and collided with Diane, aged 21, who was illegally riding her bicycle along the pavement. She was knocked off her bicycle.

Diane's bicycle was damaged and she suffered a broken arm and severe cuts to her face. She is distressed to have been told that these cuts will leave her with permanent scars.

### Scenario 1 Questions

1. Explain what Ben must demonstrate in order to establish that Aftab owes him a duty of care.  

**(4 marks)**
  
2. (a) Explain the legal test for deciding whether Aftab has breached any duty of care owed to Ben in negligence.  

**(2 marks)**

(b) Apply the law on breach of duty to Aftab and assess whether he is in breach of any duty of care owed to Ben.  

**(4 marks)**

**(Total: 6 marks)**
  
3. Explain whether Aftab could be held vicariously liable for the damage caused to Diane and her bicycle by Carlo.  

**(9 marks)**
  
4. (a) Identify and explain the two **common law** defences available to a defendant in an action for negligence.  

**(10 marks)**

(b) If Diane brought an action in negligence, consider which of those defences may be available.  

**(3 marks)**

**(Total: 13 marks)**
  
5. (a) If Diane succeeded in an action in negligence in this case, explain what damages she could recover.  

**(5 marks)**

(b) If Diane had died in the accident and her estate had brought the action, explain what damages it could recover.  

**(3 marks)**

**(Total: 8 marks)**

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

## Scenario 2

Enrico works for Fynices (Kempston) Ltd, a small company which makes ice cream. Enrico works in the ice cream manufacturing area of the factory and is required to wear sterile clothing and headgear. One of Enrico's tasks is to add liquid nitrogen to the ice cream mix. As the liquid nitrogen is at an extremely low temperature, in order to protect his skin from the extremely cold temperature of the liquid nitrogen, Enrico has to wear special insulated gloves, provided by the company. The gloves are made from a special non-slip material.

In June 2011, Enrico was carrying some liquid nitrogen across the factory floor. He had lost his special gloves and was wearing a pair of ordinary woollen gloves. These gloves did not have any non-slip properties and when the container of liquid nitrogen began to slip from Enrico's hands he nearly dropped it. As a result some liquid nitrogen spilled onto Enrico's arm and burned it badly.

Gianni was a colleague working nearby. Some of the liquid nitrogen also splashed onto Gianni's lips causing a burn. Unfortunately, due to an existing predisposition to cancer, the burn turned cancerous. Gianni died three weeks ago.

Recently, there was a staff shortage in Fynices warehouse and Holly, Enrico's warehouse supervisor, told Enrico (who had just returned to work) to report to the warehouse to help out there for a few days. The company's rules state that nobody may use a fork lift truck without passing the company's own test. Although Enrico was a qualified fork lift truck driver he had not taken the company's test.

In the warehouse there is a large notice on the wall as follows:

**IMPORTANT**

No employees may drive any fork lift truck unless they have passed the Company's internal test and have been authorised by the warehouse supervisor to do so.

There had been a delivery of sugar, which had been stacked by the entrance to the warehouse. As there was nobody else available to move the sugar into the warehouse, Enrico decided to drive the fork lift truck and to move it himself. Unfortunately, Enrico drove off the edge of a ramp and the fork lift truck tipped over trapping his right leg under the truck. Enrico was subsequently taken to Kempston General Hospital where his right leg was amputated.

## Scenario 2 Questions

1. (a) Explain the three stage test which can be used to determine whether a defendant owes a duty of care to a claimant.  

**(7 marks)**

(b) How will the fact that Enrico is employed by Fynices affect the issue of proximity?  

**(1 mark)**

**(Total: 8 marks)**
  
2. (a) Identify and explain the tests used in negligence to decide the issue of causation;  

**(4 marks)**

(b) Apply those tests to Gianni's claim against Enrico.  

**(6 marks)**

**(Total: 10 marks)**
  
3. Explain whether Fynices will be held liable for any breach of a duty of care owed by Enrico to Gianni.  

**(7 marks)**
  
4. In relation to Enrico's accident with the fork lift truck, explain:
  - (a) what defences, if any, may be available to Fynices;  

**(8 marks)**
  - (b) whether any such defences are likely to be successful.  

**(7 marks)**

**(Total: 15 marks)**

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

### Scenario 3

Ken was a cleaner employed by Kempston Coaches Ltd and worked at Kempston Airport coach station. He had been told by his supervisor, Louis, to clear the snow from the path outside the coach station building. He had swept the snow from the path but had not attempted to remove the ice, which was underneath the snow. The path was therefore made even more dangerous than it had been before he started cleaning it.

Josh was going on holiday to Spain to escape the ice and snow in England. He had travelled from his home to Kempston Airport by coach. As he was walking from the coach towards the airport, he slipped on some ice and broke his leg.

Josh was taken to Kempston General Hospital by ambulance. On the way to the hospital, the driver, Mary, was driving too fast and the ambulance skidded on some ice. The ambulance collided with a wall and Josh fell out of his stretcher onto the floor of the ambulance. He put his hand out to stop his fall and broke his wrist.

At the hospital, his trousers, worth £50, had to be cut off his leg with scissors and his shirt was so badly stained with blood that it will have to be professionally cleaned at a cost of £10.

Josh is an actor. He is not working at present but has been employed to act in a play being produced at Kempston Theatre soon after his planned return from Spain. His agreed monthly salary is £2,000. He will no longer be able to take part in the play for the first two months of the production as his leg and arm will both be in plaster. Josh is also a keen amateur dancer. His broken leg will leave him with a permanent limp and he will have to give up his hobby of dancing.

Josh will be able to recover the cost of his holiday from his holiday travel insurance company.



### Scenario 3 Questions

1. (a) Explain the three elements of the tort of negligence;  
(9 marks)
- (b) With respect to Josh's broken leg, explain whether the three elements of the tort of negligence can be established.

**(5 marks)**

**(Total: 14 marks)**

2. Explain whether Josh could establish that his broken wrist was caused by a breach of a duty of care owed to him by Ken.

**(9 marks)**

3. (a) Explain the tests used to help the courts would decide whether a person is an employee.

**(5 marks)**

**Assume for the purposes of this part of the question that Mary has a contract of employment with Kempston Ambulance Service.**

- (b) Explain whether Kempston Ambulance Service could be held liable to Josh for his broken wrist caused by Mary.

**(3 marks)**

- (c) What effect could public policy have on the liability of Kempston Ambulance Service for the broken wrist caused by Mary?

**(4 marks)**

**(Total: 12 marks)**

4. For what injuries or losses may Josh be able to claim:

- (a) special damages?

**(2 marks)**

- (b) general damages?

**(3 marks)**

**(Total: 5 marks)**

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

**End of Examination Paper**

**BLANK PAGE**

*StudentBounty.com*

**BLANK PAGE**

*StudentBounty.com*

**BLANK PAGE**

StudentBounty.com