

## 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. Give an example of **either** the Tort of Nuisance **or** the Tort of Trespass.  
**(1 mark)**
2. Explain the 'neighbour test'.  
**(4 marks)**
3. Explain **two** of the policy considerations which have led to the courts seeking to restrict claims for psychiatric injury.  
**(2 marks)**
4. Explain the importance of the case of *Roe v Minister of Health (1954)* with reference to the extent of the defendant's knowledge at the time the tort was committed.  
**(3 marks)**
5. In addition to a duty of care and breach of such a duty, a successful claimant in a negligence action is required to establish causation in both fact and law:
  - (a) Explain **one** test which may be used to establish causation in fact;  
**(2 marks)**
  - (b) Explain **one** test which may be used to establish causation in law.  
**(2 marks)****(Total: 4 marks)**
6. An employer is usually vicariously liable for wrongful acts of an employee in the course of employment.  
  
Explain the requirements for an act to be 'in the course of employment'.  
**(2 marks)**
7. A defendant may seek to rely on an 'exclusion clause' or a 'limitation clause' by way of defence. Explain the difference between an 'exclusion clause' and a 'limitation clause'.  
**(2 marks)**
8. What is the main purpose of damages in tort?  
**(1 mark)**
9. State whether loss of earnings up to the date of trial would be classified as 'general' or 'special' 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

Amy is an administrator at her local hospital. She is also an amateur runner who had been selected to run in the London Olympics this year and is planning to make a career as an athlete. In January, as part of her training programme, she was taking part in a race at an athletics meeting in Kempston.

Bea was another competitor in the same race. Halfway through the race, Bea was just in front of Amy. Bea had failed to tie the laces on her running shoes properly and one of her laces came undone. Bea tripped over her loose lace and fell into Amy's path, tripping up Amy who was unable to take any avoiding action. Amy put her arm out to try to break her fall but she still fell heavily and fractured both her wrist and her leg.

She was taken to the Accident and Emergency Unit at Kempston General Hospital where she was seen by Dr Charles, a newly qualified doctor employed by that hospital. Dr Charles requested x-rays of Amy's wrist and ankle and, when he viewed the x-rays, he noticed the fracture of Amy's wrist but, because he had only ordered an x-ray of the ankle, he failed to notice the fracture higher up the leg and that both parts of the leg bone were out of line.

If Dr Charles had seen the fracture, he would have lined up both parts of the leg bone and encased Amy's leg in plaster. As he failed to treat Amy's leg at all, the bone reset itself whilst still out of line. The result of this is that Amy has a weakness in her leg and a permanent limp. This means that she is unable to pursue her athletics career. It also means that she will be unable to continue running as an amateur.

Before the accident, Amy had negotiated a sponsorship deal which was worth £30,000 per year for a five year period. Following the accident, she is unlikely to earn more than £20,000 per year as a hospital administrator.

## Scenario 1 Questions

1. Amy considers that Bea has been negligent by not tying her running laces properly, causing Bea to fall.

Explain:

- (a) what Amy would need to show to establish that Bea was negligent;

**(9 marks)**

- (b) whether Amy could establish that Bea was negligent. **For the purposes of this question do not consider any defences which may be available to Bea.**

**(6 marks)**

**(Total: 15 marks)**

2. Assume that Amy brings a negligence action against Bea.

- (a) Explain whether Bea is liable for:

- (i) Amy's fractured wrist and leg bone; and  
(ii) Amy's permanent limp.

**(9 marks)**

- (b) Explain the defence which may be available to Bea.

**(7 marks)**

**(Total: 16 marks)**

3. Explain what general damages Amy may be able to recover.

**(3 marks)**

4. Assume that Dr Charles is held liable in negligence to Amy.

Explain whether Kempston General Hospital could be held liable for Dr Charles' negligence.

**(6 marks)**

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

**Turn over**

## Scenario 2

Daljit has worked for the last five years at a factory owned by "Ed's Events", a company which makes souvenirs for sale at various events. "Ed's" has a contract to manufacture souvenir items for sale at the London Olympics.

In April, Daljit's supervisor, Fiona, instructed Daljit to help in the packing department as there was an exceptionally large consignment of goods due to be sent out for the Olympics. Daljit had not been trained in how to operate the machinery which packed the goods into cardboard boxes. She told Fiona that she had not been trained in the use of this machinery. Fiona told her that the order was urgent and she would soon find out how the machinery worked just by using it.

Daljit reluctantly started work in the packing department. She had only been there for an hour when the adhesive tape in the machine on which she was working became jammed. Daljit put her hand into the machine to free the tape even though there was a notice on the machine clearly stating: "Danger, do not insert hand into machine".

As she freed the tape, the machine started working again before she had time to withdraw her hand. Her finger became caught and was severed. A colleague retrieved Daljit's finger from the machine and packed the finger in ice.

Daljit and her severed finger were taken to Kempston General Hospital. She was advised that it would be possible to re-attach the finger, although this would involve a series of operations. Daljit is terrified of operations and against medical advice, decided not to have the finger re-attached.

Daljit was away from work for a period of nine months during which time she suffered lost earnings amounting to £9000. Also, she is now unable to pursue her hobby of needlework, due to her missing finger.

## Scenario 2 Questions

1. Ed's Events Ltd owes Daljit a duty of care.

Explain:

- (a) what needs to be shown to establish a breach of a duty of care;  
**(5 marks)**
- (b) whether Ed's Events Ltd is in breach of its duty of care towards Daljit;  
**(3 marks)**
- (c) what defences may be available to Ed's Events Ltd if Daljit brings an action in negligence against it.

**(10 marks)**  
**(Total: 18 marks)**

2. If it is established that Ed's Events Ltd are in breach of its duty of care to Daljit.

Explain:

- (a) what Daljit would need to show in order to establish that Ed's Events Ltd had caused her injuries;  
**(6 marks)**
- (b) whether or not Ed's Events Ltd would be liable for the full extent of Daljit's injuries.

**(5 marks)**  
**(Total: 11 marks)**

3. If Daljit was able to bring a successful action in negligence against Fiona, explain whether Ed's Events Ltd may be held liable.

**(9 marks)**

4. Assume that Daljit is successful in a negligence action against Ed's Events Ltd.

Explain what non-pecuniary general damages she may be able to recover.

**(2 marks)**

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

**Turn over**

### Scenario 3

George is a member of the Kempston-on-Sea Sailing Club which is on the opposite side of the river to where he lives. He keeps a motor boat at the club. On Sunday 7 June 2009, George and a friend, Hansa, had driven to the Sailing Club for lunch. They had drunk a bottle of wine each during lunch and in the course of the afternoon, they each had several more drinks at the bar. George had the equivalent of 17 whiskies.

At 5.00 p.m. Hansa suggested that it was time to return home. George suggested that, as they had both had too many drinks to drive legally, they should take his boat across the river. They set off home in his boat.

Unfortunately, due to the amount of alcohol he had drunk, George steered his boat into a rock. George called the coastguard, Ian, from his mobile phone. Ian then asked his colleague, Jamil, to call out the lifeboat. Due to a misunderstanding between Ian and Jamil there was a thirty minute delay in calling out the lifeboat. George's boat sank just before the lifeboat arrived.

Hansa, who could not swim, almost drowned. When George and Hansa were rescued, Hansa had to be resuscitated. She was then taken to Kempston General Hospital, suffering from hypothermia (a condition in which the body's core temperature falls to a dangerously low level). Sadly, three weeks later, on 30 June, Hansa died as a result of complications from nearly drowning.

Hansa is survived by Ken and their children. Hansa worked as a dentist for the Kempston Health Authority, she only worked part-time. So that she could look after the children and enjoy their childhood. She earned £25,000 per year in this job. She also had a hobby making sea-shell ornaments which she sold. She earned a further £1,000 per year from the sale of these ornaments.

Ken is long term sick and is unlikely to be able to work again.



### Scenario 3 Questions

1. (a) Explain the three stage test for establishing a duty of care.  
**(5 marks)**  
(b) Explain whether George owed Hansa a duty of care.  
**(3 marks)**  
**(Total: 8 marks)**
  
2. Hansa's estate wishes to bring a negligence action against the coastguard service because of the negligence of Ian and Jamil.  
  
Explain the effect of public policy on whether a duty of care is owed to Hansa by the coastguard service.  
**(5 marks)**
  
3. If Hansa's estate brings a negligence action against George, explain what **common law** defence may be available to him.  
**(8 marks)**
  
4. (a) Explain by what date **Hansa's estate** must bring any negligence action against George.  
**(8 marks)**  
(b) What is the consequence of failure to bring an action by that date?  
**(1 mark)**  
**(Total: 9 marks)**
  
5. (a) Under the Law Reform (Miscellaneous Provisions) Act 1934:  
(i) Explain what special damages may be claimed by Hansa's estate in the event of a successful negligence action.  
**(3 marks)**  
(ii) Explain what general damages may be claimed by Hansa's estate in the event of a successful negligence action.  
**(3 marks)**  
(b) In relation to the scenario:  
(i) Explain who may claim damages under the Fatal Accidents Act 1976.  
**(2 marks)**  
(ii) Explain what damages they may claim under the Act in the event of a successful negligence action.  
**(2 marks)**  
**(Total: 10 marks)**

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

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