



THE CHARTERED 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 CILEX 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 CILEX 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. Describe **two** of the functions of the law of tort.
(2 marks)
2. Describe **two** of the three requirements set out in the case of *Caparo Industries plc v Dickman* (1990) for establishing the existence of a duty of care.
(2 marks)
3. Following the case of *Alcock* (1992), in cases where someone suffers psychiatric (psychological) harm, what presumption is made relating to parents and children?
(1 mark)
4. Explain the 'magnitude of risk' test for establishing the standard of care expected of a defendant.
(2 marks)
5. Describe **two** of the three intervening events which can break the chain of causation.
(2 marks)
6. Explain the test for remoteness of damage in negligence.
(3 marks)
7. Arthur, a skilled worker employed by B & Co, is lent by his employers to C Ltd, to help them with a particular job. Arthur is negligent in doing this job. How will the courts decide who is vicariously liable for Arthur's negligence?
(2 marks)
8. Outline the requirements for the defence of consent (*volenti*).
(3 marks)
9. Define what is meant by:
 - (a) Special Damages;
(2 marks)
 - (b) General Damages.
(1 mark)**(Total: 3 marks)**

(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

Ajay was a police officer and a trained negotiator. One day, he received a call to attend Kempston College where a gunman was holding a lecturer, Bev, and her class of students hostage. The college policy is that no one is allowed on the premises without a college identification card. On arrival at the college, the gunman had been asked for his card by a college security officer but the gunman said that he had left his card at home. Nevertheless, the security officer let him into the college.

When Ajay arrived at the college he summoned re-enforcements, including police marksmen. He then began negotiating with the gunman.

Lengthy and tense negotiations came to a sudden end when the gunman shot Bev, who sadly died. On hearing the gunshot which killed Bev, several of the police marksmen immediately opened fire and the gunman was shot dead. Unfortunately, one of the police bullets also hit Cass, a student, who was seriously injured. Cass wishes to take action against both Kempston College and the Police Authority.

As a result of seeing the two dead bodies and, in particular, the bullet ridden body of the gunman, Ajay suffered serious psychiatric harm. His mind is so badly affected that he does not understand what happened and he now lives permanently in a psychiatric hospital. He can no longer enjoy family life with his wife or children or family holidays. His wife wishes to take action on his behalf against the Police Authority.

Scenario 1 Questions

1. (a) Outline the tests for establishing the existence of a duty of care in negligence.

(9 marks)

- (b) Applying these tests, explain whether Cass is owed a duty of care by Kempston College.

(6 marks)

(Total: 15 marks)

2. Explain the extent to which 'public policy' issues may affect the existence of any duty of care owed to Cass by the Police Authority.

(9 marks)

3. If a court decided that Ajay is owed a duty of care by the Police Authority, explain whether:

- (a) Ajay is a primary or secondary victim;

(5 marks)

- (b) Ajay's wife could win an action brought on his behalf against the Police Authority.

(7 marks)

(Total: 12 marks)

4. If any action brought on Ajay's behalf against the Police Authority was successful, Ajay may be able to recover damages for pain and suffering, loss of future earnings, the cost of future care and, if appropriate, lost years.

Using the information from the scenario only, explain what other general damages may be recoverable.

(4 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Dimitri works for Eddy, an industrial chemist. Eddy was the owner of a factory in Kempston where he manufactured industrial chemicals. There were a considerable number of large tanks in the factory where the chemicals were manufactured. Each of the tanks had a lid which could be lifted off to allow for inspection of their contents. In order to save money Eddy had used inferior quality lids which he should have known would react with the chemicals upon contact.

One day, Eddy was inspecting the contents of one of the tanks with Dimitri. Eddy lifted the lid off the tank. Unfortunately, the lid slipped out of his hand and fell into the tank, causing a chemical reaction. Due to the reaction, some of the liquid chemical from the tank splashed onto Dimitri's face, and his cheek was badly burned.

As the burn on Dimitri's cheek did not heal, Dimitri was referred to Kempston General Hospital where he was seen by Dr Fiona. Dr Fiona examined Dimitri but did not know that Dimitri had an existing predisposition to cancer and failed to diagnose that Dimitri's burn was cancerous. Had she made this diagnosis when she first examined Dimitri it would have been possible for the cancerous growth to be removed without risk to Dimitri's life.

Several months later Dimitri went back to the hospital because his cheek was still not healing. He saw Dr Kuldip, who immediately diagnosed that the burn was cancerous. By this time the cancer had grown to such an extent that it could no longer be removed. As a result, Dimitri is now seriously ill and has been told that he only has about three months to live.

Scenario 2 Questions

1. (a) Describe the standard test for establishing whether a breach of a duty of care has occurred.

(8 marks)

- (b) If it is established that Eddy owes a duty of care to Dimitri, explain whether Eddy has breached that duty.

(6 marks)

(Total: 14 marks)

2. (a) Explain the requirement for causation in establishing negligence.

(3 marks)

- (b) If it is established that Eddy has breached a duty of care owed to Dimitri, explain whether Eddy has caused Dimitri's cancer.

(10 marks)

(Total: 13 marks)

3. Explain what effect Dr Fiona's failure to diagnose Dimitri's cancer may have on any liability which may be attributed to Eddy.

(10 marks)

4. If Dimitri should die as a result of his cancer, explain what damages his wife may be able to claim under statute.

(3 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

On 31 December 2010, Ian was delivering some heavy wardrobes for Haq Ltd, furniture manufacturers. His friend Gurjit went with him.

Ian was driving his own van. Ian's contract stated that he was self-employed but required him to work only for Haq & Co Ltd and to obey the company's orders. He could choose when to work and when to take holidays. However, if Haq & Co Ltd wanted him to work when it was inconvenient, he could not delegate the work to anyone else. Although his van had to be painted in the company's colours, Ian was responsible for its maintenance.

Ian was anxious to finish work on time at 5.00 p.m. as he was holding a party that evening. Gurjit was to be one of the guests.

At 4.00 p.m. they still had one delivery to make. The road they needed to use was closed, due to roadworks, and the consequent diversion would mean that they would be working late. Ian suggested taking a short cut but this would involve driving the wrong way down a short one-way street. Gurjit agreed because he was also looking forward to the party.

Half way along the one-way street there was a junction with a side road. Jane was driving her car along the side road and began to turn onto the one-way street just as Ian reached the junction. She did not expect a vehicle to be approaching from the wrong direction. Ian's van collided with Jane's car.

The front of the van was damaged. Gurjit, who was not wearing a seat belt, was thrown forward against the windscreen, which shattered, and he suffered serious cuts to his face. Gurjit now wishes to bring an action to recover damages for his injuries.

Scenario 3 Questions

1. (a) Describe the **three** tests for determining whether a person is an employee. **(7 marks)**
- (b) Explain whether a court is likely to decide that Ian was an employee of Haq & Co Ltd. **(8 marks)**

(Total: 15 marks)

Assume for the purposes of the remaining questions that Ian is an employee of Haq & Co Ltd.

2. Explain whether Gurjit could bring a successful action against Haq & Co Ltd for damages for his injuries. **(8 marks)**

3. If Gurjit brings an action for damages against Haq & Co Ltd, explain:

(a) the **common law** defence available to Haq & Co Ltd;

(5 marks)

(b) which **common law** defence is **not** available to Haq & Co Ltd.

(2 marks)

(Total: 7 marks)

4. If Gurjit brings an action for damages against Haq & Co Ltd, explain:

(a) what partial defence may be available to Haq & Co Ltd;

(7 marks)

(b) by what date any action must be commenced and why.

(3 marks)

(Total: 10 marks)

(Total Marks for Scenario 3: 40 marks)

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