



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

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## SECTION A

(Answer ALL questions in Section A)

1. Identify **two** common law torts.  
(2 marks)
2. Identify **two** of the requirements for establishing negligence.  
(2 marks)
3. What is meant by proximity when establishing the existence of a duty of care?  
(1 mark)
4. When deciding whether to impose liability in negligence which **two** factors should a court consider under s1 Compensation Act 2006?  
(2 marks)
5. How does the Bolam test affect the standard of care expected of a defendant in a negligence claim?  
(2 marks)
6. Explain the **two** tests for establishing causation in negligence.  
(4 marks)
7. Identify the **three** tests for establishing whether a person is an employee.  
(3 marks)
8. Explain the effect of **s2(1) Unfair Contract Terms Act 1977** on claims for negligence.  
(2 marks)
9. What limitation period applies to a claim for negligence where there is no element of personal injury?  
(1 mark)
10. To which category of damages would a claimant's loss of earnings between the date of a tort and the date of trial belong?  
(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

Aysha runs a youth group in Kempston. Last summer the group took part in a swimming competition. In order to practise, Aysha took the group to the public swimming pool. Ed, one of the youths, was running around the swimming pool to impress his girlfriend, Freya. Aysha warned him that he was likely to fall and hurt himself. She told him that, if he did not stop, he would have to leave the swimming pool and get dressed.

Ed ignored Aysha and continued running around. Because Aysha was busy organising swimming races, she did nothing more to stop him. Ed slipped and fell. He hit his head on the edge of the pool and cut it badly. There was blood everywhere.

Ed's girlfriend, Freya, who was watching him running around the pool, suffered nervous shock when she saw the blood gushing from Ed's head. As a result, she developed a serious psychological (psychiatric) illness.

Whilst returning from the swimming pool, the youths were in a minibus driven by Aysha. Aysha stopped at some traffic lights which were on red. A lorry, driven by Hal, collided with the rear of the minibus. One of the youths, Ian, who was sitting on the back seat and looking out of the rear window, saw the lorry approaching too fast. Although not physically injured, he suffered post-traumatic stress disorder as a result of the collision. He is no longer able to work or enjoy swimming.

## Scenario 1 Questions

1. (a) Explain the legal tests for establishing whether a 'duty of care' is owed by one party to another.

**(8 marks)**

- (b) Apply the above tests to determine whether or not Aysha owes a duty of care to Ed.

**(7 marks)**

**(Total: 15 marks)**

2. (a) Explain the requirements which must be established by a secondary victim to succeed in a claim for psychological (psychiatric) harm.

**(8 marks)**

- (b) Apply the above requirements to determine whether or not Freya can establish that she is a secondary victim.

**(7 marks)**

**(Total: 15 marks)**

3. Explain whether Ian may be able to make a successful claim as a primary victim against Hal for his psychological (psychiatric) injury.

**(5 marks)**

4. Explain what damages Ian may be awarded if he is able to make a successful claim.

**(5 marks)**

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

## Scenario 2

Jan was driving her car along a busy road towards Kempston. She was tired. Unfortunately, Jan fell asleep at the wheel and her car suddenly swerved into the path of the oncoming traffic on the opposite carriageway. Her car collided with a lorry driven by Ken. Jan was seriously injured in the accident.

Later that day Leanne, a university student, was walking along the road in Kempston to the library. When waiting at a pedestrian crossing she was texting a friend on her mobile phone. Leanne started to cross the road while still texting and she misjudged the speed of the traffic. Leanne was hit by a car being driven by Meena. Meena's car knocked Leanne into the path of a motor-cycle approaching from the opposite direction and ridden by Nolly. Leanne was then also hit by the motor-cycle. She suffered serious cuts and bruises and a broken leg.

Owen, a passer-by, who saw what had happened, stopped to help Leanne. He telephoned for an ambulance and then went to help Leanne until the paramedics arrived. He moved Leanne in order to make her more comfortable but in doing so the fracture was made worse and will now take longer to heal. As a result of Owen's actions, Leanne will also be left with a permanent limp.

## Scenario 2 Questions

1. Explain:

- (a) using relevant case law, the **three** elements a claimant would need to show in order to establish negligence;

**(10 marks)**

- (b) whether Ken could establish these elements in respect of the collision with Jan.

**(4 marks)**

**(Total: 14 marks)**

2. Explain:

- (a) how a court would determine causation in respect of Leanne's injuries if Leanne brought a negligence action against Meena and Nolly;

**(4 marks)**

- (b) what effect, if any, Owen's intervening act would have on the liability of Meena and Nolly.

**(5 marks)**

**(Total: 9 marks)**

3. Explain whether contributory negligence would be available as a defence to Meena and Nolly.

**(4 marks)**

4. (a) Explain the test which would be used by the court to determine whether a defendant has breached a duty of care.

**(5 marks)**

- (b) Assuming that Owen owes a duty of care to Leanne as a rescuer, explain whether Owen has breached his duty.

**(4 marks)**

- (c) If Owen had been a qualified paramedic, explain the difference in the approach, if any, which would be taken by the court in determining whether Owen has breached his duty.

**(4 marks)**

**(Total: 13 marks)**

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

### Scenario 3

Peta works on the production line at Qpec Ltd making nuts and bolts. On 25th October 2010, her supervisor, Raj asked her to collect some materials from the storeroom. There were two possible routes to the storeroom. The shorter route would take her through a 'hard hat area' but the longer route would not have done so.

Because Peta was paid according to the number of nuts and bolts she produces, she was anxious to collect the materials as quickly as possible. She, therefore, decided to take the shorter route even though she was not wearing a hard hat.

There was a notice at the entrance to the 'hard hat area' which stated:



Peta ignored the sign and continued to walk through the 'hard hat area'.

Sam, another employee had been asked by his supervisor to collect a can of oil from some tall shelving in the 'hard hat area'. Sam had climbed a ladder to get the can but carelessly dropped it as Peta walked past the ladder. The can of oil fell on to Peta's head. Peta suffered cuts and bruising to her head and face. She was taken to hospital with a suspected fractured skull. Following an examination, the fractured skull was confirmed and, as a result of the injury, Peta developed epilepsy. She was unable to go back to work.



### Scenario 3 Questions

1. (a) Explain the requirements necessary to make an employer liable for the acts of an employee.

**(5 marks)**

- (b) Apply the above requirements to determine who will be held responsible for the injuries to Peta.

**(5 marks)**

**(Total: 10 marks)**

2. If Peta brought an action in negligence against Qpec Ltd.

Explain:

- (a) (i) what **full** defence may be available to Qpec Ltd;

**(6 marks)**

- (ii) whether such defence is likely to succeed;

**(3 marks)**

- (b) (i) what **partial** defence may be available to Qpec Ltd;

**(5 marks)**

- (ii) whether such defence is likely to succeed.

**(5 marks)**

**(Total: 19 marks)**

3. Assume the warning notice had read "Employees enter this hard hat area at their own risk; the management accept no responsibility for injury, howsoever caused".

Explain:

- (a) what defence may be available to Qpec Ltd under the Unfair Contract Terms Act 1977;

**(3 marks)**

- (b) whether this defence is likely to succeed.

**(3 marks)**

**(Total: 6 marks)**

4. Explain by what date Peta's negligence action would become statute-barred.

**(5 marks)**

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

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