



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**

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SECTION A

(Answer ALL questions in Section A)

1. Define 'tort'.
(1 mark)
2. (a) *Caparo v Dickman* (1990) established the 'three-stage test' as to whether a duty of care is owed in negligence.
Describe the stage of 'reasonable foreseeability'.
(2 marks)
- (b) Give an example or a case which illustrates 'foreseeability'.
(1 mark)
(Total: 3 marks)
3. (a) State what is meant by a 'secondary victim'.
(1 mark)
- (b) Identify and explain any **two** of the four tests set out in the case of *Alcock & Others v Chief Constable of South Yorkshire* (1991) for establishing whether a secondary victim may be able to claim for psychiatric harm.
(4 marks)
(Total: 5 marks)
4. When deciding whether there has been a breach of duty of care, how does the social importance of the defendant's objective influence the court?
(2 marks)
5. Identify and explain **one** test for establishing causation in fact.
(2 marks)
6. State what must be foreseen when establishing causation in law.
(2 marks)
7. (a) Define vicarious liability.
(1 mark)
- (b) Explain what must be demonstrated in order to establish an employer's vicarious liability for the wrongful acts of an employee.
(2 marks)
(Total: 3 marks)
8. Give **one** example or case to illustrate the defence of consent.
(1 mark)
9. Give an example of '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

April is a lawyer and Baljit is a trainee lawyer with her firm.

On 24 February 2011, April was driving her car through Kempston with Baljit as a passenger. April was driving within the appropriate speed limit. April saw Chris standing on the pavement by a pedestrian crossing. As she approached the pedestrian crossing, Chris, without looking to see if any vehicle was approaching, stepped out into the road immediately in front of her car.

April braked very hard but was unable to avoid knocking Chris off balance. Chris stumbled into the opposite carriageway where he was also hit by a delivery van driven by Damian. The delivery van was travelling within the speed limit, in the opposite direction. Each collision was very minor but, because Chris has brittle bones, his leg was badly fractured.

Baljit was not wearing his seatbelt, and, when April braked hard, he was thrown forward and hit his head on the windscreen of April's car. Baljit suffered severe bruising to his head and face, and he was badly concussed.

Both Chris and Baljit were taken by ambulance to Kempston General Hospital.

Baljit was given an x-ray at the hospital and was admitted for 24 hours for observation. Unfortunately, Dr Ed failed to notice a fracture to Baljit's skull and Baljit was allowed to go home the next day without treatment. As a result of the fractured skull, Baljit later suffered brain damage.

Scenario 1 Questions

1. (a) Explain what must be shown in order to establish that a defendant has caused damage to a claimant.

(10 marks)

- (b) Apply the above rules to show who is liable for the injuries caused to Chris.

(10 marks)

(Total: 20 marks)

2. (a) Explain what statutory defence would be available to April in order to reduce her liability to Chris.

(6 marks)

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

(2 marks)

(Total: 8 marks)

3. Explain:

- (a) by what date Chris would have to bring any action in negligence for his injuries;

(5 marks)

- (b) the effect on his claim of any failure to bring an action by such date.

(1 mark)

(Total: 6 marks)

4. In relation to Baljit, the passenger, explain what effect, if any, Dr Ed's failure to spot Baljit's fractured skull may have on April's liability for all of Baljit's injuries.

(6 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Fatima works at the Kempston 'Living History' Museum as a part-time assistant. Her agreement with the museum provides that she is self-employed. It also states that she is free to either accept or reject work when it is offered to her and that she can decide when to take holidays. She is only paid for the hours she actually works. She is supplied with a uniform which she has to wear and she is required to obey the reasonable orders of the museum's manager.

For the last two years she has always worked on Saturdays and Sundays and has been offered extra hours during school holidays (including half-term holidays).

On 23 October 2013, during half-term, Georgina, a girl in a wheelchair, was visiting the museum with her mother, Harriet. Harriet was pushing Georgina's wheelchair. There were steps leading from the entrance hall into the museum and a lift for wheelchair users. Fatima helped Georgina and her mother to use the lift. When Fatima shut the gate of the lift, she unfortunately closed it on Georgina's fingers and fractured Georgina's finger.

Scenario 2 Questions

1. (a) Explain the legal tests for establishing whether or not a duty of care exists in negligence.

(9 marks)

- (b) Applying these tests, explain whether Fatima owes a duty of care to Georgina.

(5 marks)

(Total: 14 marks)

2. Assume for the purpose of this question that Fatima owes a duty of care to Georgina.

Identify and apply the test that determines whether Fatima has breached her duty of care.

(4 marks)

3. (a) Explain the tests used to decide whether someone is an employee under a contract of service or an independent contractor under a contract for services.

(6 marks)

- (b) Applying these tests, explain whether Fatima is an employee or an independent contractor.

(8 marks)

(Total: 14 marks)

4. Explain:

- (a) what a claimant must show to establish that a tort was committed in the 'course of employment';

(4 marks)

- (b) who may be liable to Georgina for the injury caused to her finger if Fatima is held to be an employee of the museum.

(4 marks)

(Total: 8 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Ian is the owner of a café. One Saturday evening, after the café was closed, Jamil hired the café to host a fund-raising event on behalf of a national charity.

Jamil was boiling some water to make coffee when he knocked over the kettle, spilling a large quantity of boiling water. Katrina, a guest, was standing nearby and boiling water splashed onto her trousers. Katrina's leg was badly burned.

Sadly, due to an existing predisposition to cancer, Katrina's burnt leg became cancerous and she later died as a result.

A few weeks later, Manny, Ian's cook at the café, was frying some food in a deep-fat fryer in the kitchen of the café. Unfortunately, Neil, a public health inspector who was in the process of inspecting the café, knocked over the deep-fat fryer and started a fire. The fire spread rapidly, trapping Manny in the kitchen. Neil managed to escape.

Ian, who lived nearby, saw his café on fire and rushed into the kitchen of the café to rescue Manny. He found Manny unconscious and was unable to rescue him. Ian suffered serious burns and was admitted to Kempston General Hospital. He has now recovered but is permanently scarred.

Owen, a passerby, saw Ian rush into the café and looked through the window to see what was happening. He saw Ian, whose clothes were on fire, coming out of the kitchen. Owen has had recurring nightmares of Ian screaming and has suffered psychiatric harm.

The café was closed for three months for the necessary repair work to be done and Ian lost profits amounting to £8,000.

Scenario 3 Questions

1. (a) The tort of negligence has three main elements. Explain 'duty of care', 'breach' and 'damage' caused.

(8 marks)

- (b) Explain whether Jamil:

(i) owes a duty of care to Katrina;

(7 marks)

(ii) has breached any duty of care which he may owe to Katrina;

(6 marks)

(iii) has caused damage to Katrina which might form the basis of an action in negligence and, if so, whether he is liable for her death.

(8 marks)

(Total: 29 marks)

2. Explain whether Neil is liable in negligence:

(a) to Ian as a rescuer;

(3 marks)

(b) to Owen for his psychiatric harm.

(4 marks)

(Total: 7 marks)

3. Explain:

(a) what general damages Ian could claim if his action against Neil is successful;

(2 marks)

(b) what 'special' damages Ian could claim if his action against Neil is successful.

(2 marks)

(Total: 4 marks)

(Total Marks for Scenario 3: 40 marks)

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