

INSTITUTE OF LEGAL EXECUTIVES

UNIT 13 – LAW OF TORT*

Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Contract, Tort & Restitution 2010 – 2011 by Francis Rose, Oxford University Press.**
- 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 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

SECTION A
(Answer at least one question from this section)

1. (a) Critically evaluate the fault based system of accident compensation operating in England at present and the case for reform of the means of accident compensation.

(12 marks)

- (b) Critically analyse the extent to which the Human Rights Act 1998 has influenced the development of tort law.

(13 marks)

(Total: 25 marks)

2. Identify and critically analyse the criteria used by the courts to determine whether a defendant is in breach of the duty of care owed to the claimant in a tort action.

(25 marks)

3. The Law Commission in its Report '*Liability for Psychiatric Illness*' (1998) recommended that 'special limitations over and above reasonable foreseeability should continue to be applied to claims for psychiatric illness where the defendant has injured or imperilled someone other than the claimant, and the claimant, as a result, has suffered psychiatric illness'.

Critically examine the 'special limitations' which are placed on such claimants in psychiatric illness claims and discuss whether those limitations should be retained.

(25 marks)

4. Following recent developments in the rule in *Rylands v Fletcher* it is difficult to see what the rule adds to the already existing English law.

Critically analyse this statement.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Westford County Council ('the Council') recently engaged Better Builders Limited ('BB Ltd') to build a new ice-skating stadium. Although some parts of the building were not yet complete, the Council opened the stadium for the regional ice hockey championships. The Council displayed a notice at the entrance to the stadium stating:

'Building work in progress. The Council and its contractors accept no responsibility for any harm whatsoever and howsoever caused to members of the public on these premises.'

In an attempt to reach the best seats at the front before other people, Audrey, a spectator, took a short cut through an area of the stadium which had been roped off with prominent signs saying:

'Keep out. Work in progress'.

In her haste, Audrey caught her sleeve on the sharp edge of some partly assembled seating, cutting her arm and tearing her new jacket.

Meanwhile, Bhatt had taken his six year old son, Callum, to watch the ice hockey match. Bhatt was so engrossed in watching the exciting game that he failed to notice that Callum had wandered down towards the ice rink and was playing nearby with some builder's tools. These tools had been left under a seat on the front row by BB Ltd's workmen, the previous day.

During the game, Glenn, one of the ice hockey players, committed a foul, accidentally hitting another player, Josh, so hard with his stick that he broke Josh's leg. Josh had arrived late for the match and had not had time to put on all the protective padding which players would normally wear.

(a) Advise the Council of their potential liability to Audrey and Callum under the Occupiers' Liability Acts 1957 and 1984.

(18 marks)

(b) Advise Josh of any claim he may bring in negligence in respect of his broken leg.

(7 marks)

(Total: 25 marks)

Turn over

Question 2

The senior management team at Sudbury University has decided to close a number of academic departments. Some academic staff organised meetings to indicate their concern about the plans but Professor Brayne, a finance lecturer, wrote an article in the student newspaper, 'The Shout', supporting the closures on economic grounds.

A week later, a poster appeared on the Student Union notice board which said 'Sudbury University finance lecturers cannot be trusted to act in the best interests of their students and care more about their lucrative consultancy than teaching'. This item also appeared on the Student Union intranet.

Sir Matt Brown, the Vice Chancellor of the University, asked Claudia, the President of the Students Union, to remove the poster and take the item off the intranet but Claudia refused.

Meanwhile Janice, a business student, believes she is being bullied by a lecturer, Dr Grund. She composes a letter to send to all academic staff which she takes to the University library to photocopy. Janice makes 100 copies and sends them in the internal post marking them 'private and confidential'. The letter includes the phrase 'Dr Grund is sexist and a bully'. Unfortunately Janice leaves a copy of the letter in the University library photocopier, this is found by Dick who sends the letter anonymously to Dr Grund's wife.

Janice wishes to take up a place on a post graduate degree course and has asked Professor Crump, the Head of the Business Department, for a reference. As he is displeased at her general behaviour he includes the following comment in the reference:

'Janice has not participated in any aspect of academic study and has wasted her entire time at Sudbury University'.

In fact Janice obtained an excellent degree.

- (a) Advise Professor Brayne on any action in defamation he may take in respect of the poster and the intranet item, including discussion of possible defences that may be used to defeat such an action.
- (b) Advise Janice on her liability in defamation and on any action she may take in respect of the reference.

(14 marks)

(11 marks)

(Total: 25 marks)

Question 3

Rosie is a qualified legal secretary who works for Lawsec Ltd, a legal personnel agency. She has been sent to Duberry Solicitors on a three month contract. She is working for the senior partner James, covering a member of staff who is on sick leave. One evening Rosie was working late, when she saw a man she did not know loading computers onto a trolley in an adjoining office. She took her umbrella and hit the man over the head, he fell down and Rosie quickly locked the office door. The man is in fact, Jason, who is employed by the maintenance department of Duberry Solicitors and he was moving the computers to a different location in preparation for painting of the offices. Jason is known to his employers to suffer from epilepsy and to be prone to fainting fits during which he requires assistance. After recovering from the effects of the blow from Rosie, Jason had a very severe epileptic attack and fell down banging his head.

An ambulance was called which took Jason to the local hospital. The casualty doctor, Dr Sven, decided emergency surgery was necessary, requiring a blood transfusion, to which Jason would have objected on religious grounds had he been conscious.

Advise Jason of his claims, if any, in tort and against whom.

(25 marks)

Turn over

Question 4

Ray works part-time as a blacksmith in a small country village. He operates his back yard having obtained the appropriate planning permission. He is the only blacksmith within a thirty mile radius and the local equestrian community rely on him to shoe their horses. On the days Ray is working, smoke from his furnace regularly hangs in the air over neighbouring houses. Although he is aware of this, and has taken steps to reduce the amount of smoke, a certain amount is inevitable unless he purchases an expensive air filter which he cannot afford.

When Ray is working, Paul and Queenie, who moved into the house next door the year after Ray started working as a blacksmith, are unable to relax in their own garden for fear of being overwhelmed by the smoke. Several items of clothing belonging to Queenie have been damaged by smoke while on the washing line. Paul's collection of garden sculptures has also suffered smoke damage. Whilst other garden sculptures in the area are unaffected, Paul's sculptures are made from a special type of resin that is particularly susceptible to smoke damage.

Also, unknown to Ray, his smoke contains toxic particles which dissolve in the local stream and are carried onto David's land half a mile away. David is a farmer and the toxic particles have contaminated his land for the past three years.

Advise Ray of any potential claims that may be made against him in tort.

(25 marks)

End of Examination Paper

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