

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 2011 – 2012 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. The historical development of the test for the duty of care has failed to provide a precise definition of proximity.

Critically evaluate this statement.

(25 marks)

2. There are very few claims being brought in the courts for trespass to the person compared to other areas of tort. This suggests that the law of intentional torts against the person is of little relevance.

Critically evaluate this statement.

(25 marks)

3. Critically evaluate:

a) the defence of *volenti non fit injuria*;

(15 marks)

b) the defence of *ex turpi causa non oritur actio*.

(10 marks)

(Total: 25 marks)

4. a) The legal status of two categories of claimant, namely rescuers and fellow workers in psychiatric damage cases is confused and uncertain.

Critically analyse this statement.

(13 marks)

- b) The law commission report 'Liability for Psychiatric Illness' (No 249 1998) recommended:

(i) secondary victims would not need to be proximate in time and space and witness events with their own unaided senses and

(ii) psychiatric harm need not result from the sudden sight or sound of a horrifying event.

Critically consider whether these proposals would improve the state of the law.

(12 marks)

(Total: 25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

Giorgio runs a delivery business and has twenty vans. As Giorgio knows nothing about vehicle maintenance, he employs a full-time mechanic, Harry, who is responsible for the servicing and maintenance of the vans.

Recently Ivor, one of the delivery drivers employed by Giorgio, was driving one of the vans, when Janet carelessly pulled out into his path in her car. When Ivor tried to stop, the brakes on his van failed. He collided with Janet's car and was seriously injured. Ivor was not wearing a seatbelt at the time of the accident. A vehicle engineer's report showed that the brakes had never been serviced.

When Harry heard about the brake failure he suffered a nervous breakdown and can no longer work as a mechanic. Harry asserts that he had been overworked for a long period. He alleges that he had complained to Giorgio on a number of occasions that there were too many vans for him to maintain but Giorgio ignored his comments. Harry maintains that the stress has made him ill but he has tried to carry on until his nervous breakdown.

Advise Ivor and Harry of their possible claims in tort.

(Total: 25 marks)

Turn over

Question 2

Jenny owns Wilcombe Manor, a magnificent eighteenth century house in the village of Wilcombe, which is in an area designated by statute as being of outstanding natural beauty. Victor, the owner of a field adjoining Wilcombe Manor, decided to hold car boot sales in the field on a Sunday twice a month. The sales have been a great success, Jenny, however, is furious. She claims that the peace of Sunday has been ruined by the noise and activity. She is no longer able to host lavish Sunday lunch parties as her dining room looks straight onto the field with the result that the visitors to the car boot sale could stare at her and her friends as they sit at the table.

The villagers of Wilcombe are also upset. The volume of traffic generated by the car boot sale means that the one street in the village is blocked for most of Sunday. A number of visitors' cars park on the grass verges outside the villagers' houses. One resident, Dennis, has frequently been unable to visit his grandchildren in the neighbouring village because of the cars parked in front of his drive.

One of the residents of Wilcombe, Moira, has decided, nevertheless, to take advantage of the success of the car boot sales. She has set up a Sausage and Burger Bar in a caravan, which is permanently parked just outside the entrance to the field. There is a cottage next to the entrance which has been rented by Nat so that his wife, Olive, could finish her latest novel in the peace and quiet of Wilcombe. Both Nat and Olive have complained about the noise and particularly the smell of frying onions from the burger bar.

Moira stores large drums of cooking oil outside the caravan, and one August day while she was out shopping, the sun's heat caused one of these large drums to burst. The oil trickled into a stream in Victor's field which flows into a lake in the grounds of Wilcombe Manor. The lake was badly affected by the oil. A greenish scum covered the surface. Jenny had recently stocked the lake with fish and they all died.

- a) Discuss the possible claims that might be brought against Victor in nuisance.

(15 marks)

- b) Discuss the possible claims that might be brought against Moira.

(10 marks)

(Total: 25 marks)

Question 3

Susie is the owner of a newsagents shop. One morning, Ursula, a customer, through no fault of her own, slipped on a loose floor tile and fell onto a display stand and then through a pane of glass in the shop window. Ursula suffered cuts and bruises to her hands when the glass pane shattered. The floor tiles had been laid the previous day by Linx Carpet Fitters.

Susie boarded up the window and swept up most of the glass. She arranged for a local glazier to repair the window the following afternoon. Unfortunately, Susie did not sweep up all the glass and the following lunchtime, Nick, a 12-year-old schoolboy, came to the shop at 13.00 in order to buy some sweets. He ignored the sign Susie had put on the door of her shop saying that no children were allowed into the shop between the hours of 12.00 and 14.00 on school days. Nick cut himself, very badly, on a large piece of glass that Susie had failed to remove.

Advise Ursula and Nick of any claims they may bring under the Occupiers' Liability Acts 1957 and 1984 and the potential defences that may be available.

(Total: 25 marks)

Turn over

Question 4

A local government election is due to take place in Southwood. The lead story on the front page of the Southwood Gazette contained the following item:

'What an assorted mix of candidates are available for election in two weeks time. Firstly there is Mary Stuart. Like most politicians she likes to pretend she is something which she is not. She may appear to be a glamorous granny but everyone knows it is cosmetic injections and the surgeon's knife which gives her the face and figure she proudly displays. Then there is Norman Hunter, no brilliant debater he. His dull delivery and inconsequential comments make him eligible to be crowned the most boring politician of 2012. Lastly there is Oliver Crane. Just what is Oliver whispering into the ear of the young woman who calls him Daddy but is not his daughter? See the picture and full coverage of the election on page seven'

In fact, Mary Stuart once had cosmetic surgery to remove a small mole from her face. The coverage on page seven explains that the woman in the photograph is Oliver's cousin, Claire, whom he and his wife have brought up as their own child after her parents were killed in a car crash when she was five years old.

(a) Advise Mary, Norman and Oliver of their possible claims in defamation.

(17 marks)

(b) Advise the Southwood Gazette of any defences that may be available.

(8 marks)

(Total: 25 marks)

End of Examination Paper

© 2012 Institute of Legal Executives

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com