

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. Critically examine the objectives of the law of tort and critically consider how far these objectives are successfully met.

(25 marks)

2. (a) The maxim *res ipsa loquitur* makes it easier for the claimant to prove negligence.

Critically analyse this statement.

(10 marks)

- (b) Critically examine the requirement of causation in fact of damage in the tort of negligence with particular reference to instances of multiple causation.

(15 marks)

(Total: 25 marks)

3. 'The doctrine of vicarious liability has not grown from any very clear, logical or legal principle but from social convenience and rough justice'.
Lord Pearce in *ICI v Shatwell (1964)*

Critically evaluate this statement.

(25 marks)

4. The law of defamation can be said to exercise a chilling effect on freedom of expression in relation to matters of public importance.

Critically examine this statement.

(25 marks)

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

Question 1

Anil was considering using an inheritance to buy a business, CDE Ltd, which specialised in converting the garages of residential properties into additional living space. However he needed additional finance to complete the purchase and wanted to make sure he was investing wisely.

He therefore approached Bobby, who had only just set up as a business consultant, working as a volunteer for a publicly funded advice service for small businesses, to prepare a report advising on the prospects of the business and whether CDE Ltd was a suitable investment. Anil told Bobby the report would be shown to potential investors. Bobby's report was highly favourable and concluded the business was presently sound and had good prospects for the future.

Acting on the information contained in the report Anil decided to invest in the business.

Additional funding was to come from Anil's bank and his friend Clive. Anil showed Bobby's report to Clive. Clive subsequently invested a large amount of money in the purchase of CDE Ltd.

Anil then sent a copy of the report to his bank, to support his application for a business loan. In fact, the bank manager had already signed all the documentation approving the loan, as it was the bank's custom and practice to rely upon its own assessment of the business when making loan decisions. Nevertheless the bank manager was impressed by what he read in the report.

It has now come to light that, when Bobby prepared the report, he did not inspect CDE Ltd's accounts so he was unaware that the business was in a poor financial position. In the latest Chairman's report published by CDE Ltd there was a suggestion that this was a passing trend because people were concerned about losing storage space available in a garage and were instead opting to extend their properties. Also Bobby had not read a recent article in the Business Consultants' Gazette talking about forthcoming changes to building regulations preventing the conversion of garages, and stating that businesses offering garage conversions were no longer considered a sound investment. In fact Bobby, (who was rather new to the profession), was unaware of the Business Consultants' Gazette although it was widely read in the profession.

Anil invested his entire inheritance in CDE Ltd. Subsequently business declined disastrously, Anil was unable to repay the bank loan and CDE Ltd went into liquidation. Anil, Clive and the Bank all lost their investment.

Advise Anil, Clive, and the Bank of their possible claims in negligence.

(25 marks)

Turn Over

Question 2

An accident occurs when a petrol tanker, being driven by Jake, careers off a road, down an embankment and lands on a railway line. Jake admits to driving carelessly whilst talking on his mobile phone. Jake's relief driver, Katie, is thrown through the windscreen of the petrol tanker as she is not wearing a seat belt.

A train travelling along the line is unable to stop in time and crashes into the petrol tanker. Liam, the train driver, suffers an arm injury and is taken to hospital. As all the medical staff are busy, he is treated by a junior doctor who wrongly decides that amputating his arm would be the appropriate treatment.

Manjeet had just seen her son Nikhil onto the train and as she was driving home she saw the train crash and the carriages on fire. Manjeet was informed later in the day that Nikhil had died in the crash and she subsequently suffered a nervous breakdown.

Oliver, a trained first aider, is on leave from his work with a stress related illness. He lives near the railway line and, on hearing the noise of the crash, runs to the accident scene. He spends several hours helping to pull people from the burning wreckage and is now suffering from post-traumatic stress disorder.

- (a) Advise Katie and Liam of any claims they might bring in negligence in respect of their injuries.

(13 marks)

- (b) Advise Manjeet and Oliver of their claims in relation to psychiatric damage.

(12 marks)

(Total: 25 marks)

Question 3

Grand Design is an exclusive school which owns extensive grounds leading to very high and steep cliffs above the sea. Grand Design lease to Supersports an area of the grounds which stretch across the cliffs. Supersports is a sporting club which has members (all over 18) wishing to hang-glide off the cliffs. The area leased by Supersports is fenced off and the entrance is either guarded or locked. A notice at the entrance says 'MEMBERS ONLY'.

Paul is a 15 year old student at Grand Design. Paul enjoys sports and after school one day he walks over to the Supersports club to watch the hang-gliders. When the security guard is not looking, he walks through the entrance into the fenced area and wanders towards the cliffs. The Supersports club tend to ignore (and tolerate) students that sneak inside. While watching a hang-gliding performance Paul fails to notice where he is going and walks straight off the cliff and sustains severe injuries. There is no barrier around the cliff (where the hang-gliders launch from) although a sign at the entrance says "Warning DANGER for anyone except hang gliders!"

Paul is rendered a quadriplegic, completely paralysed, and requires full-time care. He is absolutely devastated as sport is a very important part of his life and he has been told he will never play sport again. The £1500 laptop computer he was carrying, is destroyed. It is estimated that the cost of a carer will be £4 million in total for the rest of his life. Paul's mother leaves her job as a lawyer to care for him full-time. Fortunately, she has comprehensive insurance to cover her if she needs to leave work because of a family crisis. Her insurance company now agrees to pay half the value of her salary for as long as she needs to care for Paul.

- (a) Advise Paul of any claim he may bring under the Occupiers' Liability Act 1984.

(15 marks)

- (b) Advise Paul of how his damages will be assessed should his claim be successful.

(10 marks)

(Total: 25 marks)

Turn Over

Question 4

Vera owns and lives in a semi-detached house in a prosperous suburban area next to Wilson, who also owns his own house. Vera and Wilson are having some disagreements over various issues. Vera likes to go out late at night and often brings home friends in the early hours of the morning. There is often loud slamming of car doors in the early hours and loud music is periodically played until 4.00 am. This annoys Wilson greatly as he works long hours and his sleep is affected. On occasions other residents in the road are also disturbed by the music.

Wilson also sometimes behaves in a way that irritates Vera. He occasionally plays football in his back garden with his daughter. Some of Vera's prize runner beans have been damaged when the football is kicked over the fence between their gardens. Wilson never asks Vera's permission to retrieve the football. On the last occasion he retrieved the football Vera turned her garden hose on him. Wilson was so angry that when he next saw Vera crossing the road, he drove his car at her, only swerving to avoid her at the last minute.

Discuss the potential tortious liability of Vera and Wilson and the potential remedies available.

(25 marks)

End of Examination Paper

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