



## THE CHARTERED 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 and Restitution 2012-2013, 23<sup>rd</sup> edition, Francis Rose, Oxford University Press 2012.**
- 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 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. Reasonable foresight alone is a satisfactory test for determining when a duty of care is owed and there is no need for policy to play a part.

Analyse this statement with regard to the tests used by English Courts to assess whether a duty of care in negligence exists.

**(25 marks)**

2. Critically analyse the defence of public interest privilege ('Reynolds Privilege') in a claim for defamation.

**(25 marks)**

3. (a) The courts may deny a cause of action to a claimant who suffers damage while participating in criminal activity.

Critically analyse the defence of *ex turpi causa*.

**(13 marks)**

- (b) Analyse the defence of contributory negligence.

**(12 marks)**

**(Total: 25 marks)**

4. Analyse what the following expressions mean in relation to damages in the law of tort.

- (a) Exemplary damages

**(10 marks)**

- (b) The multiplier

**(5 marks)**

- (c) Non-pecuniary damages

**(10 marks)**

**(Total: 25 marks)**

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

**Question 1**

Steel plc operates a foundry. As a crucible of molten metal was being transported across the foundry on an overhead gantry the crucible tilted suddenly and a quantity of molten metal spilled out and fell on to the foundry floor.

Adam, a foundry worker, was splashed with the molten metal and suffered serious burns.

Barry, Adam's colleague, was working nearby. He suffered no physical injuries but has developed a post-traumatic stress disorder which prevents him continuing to work at the factory.

Chris, the foundry supervisor, was in the control room some fifty feet away. He was controlling the movement of the crucible (although his actions did not actually cause the spillage) and had a clear view of the incident. He too has developed a stress related disorder which prevents him working.

Diana, Adam's wife, and Edna, his aunt, who brought him up after his mother died when he was two, both work in the foundry offices. They heard, on the foundry intercom system, that an incident had occurred and fearing for Adam's safety, they went to see what had happened. They were not allowed into the area where the incident occurred but were told that Adam had been injured. They could hear screams of pain and see the activity of rescue workers and paramedics. Diana now suffers recurrent panic attacks and Edna's angina has become much worse since the incident.

(You may assume that Steel plc has been negligent.)

Advise Barry, Chris, Diana and Edna as to whether they have an action for damages against Steel plc.

**(25 marks)**

**Turn over**

## Question 2

Peabody Park is owned and maintained by the Peabody Trust. Admission to the park for the public is granted on payment of 50 pence; this is done by placing a 50-pence coin in a ticket-dispensing machine. Each ticket bears the words:

'The Trust shall not be liable for damage to visitors or their property whether caused by negligence or otherwise.'

Bertram paid his 50 pence and entered the park. He was badly injured when a rowing boat, which he took on the lake, sank because it had not been properly maintained by the Trust.

Clarence entered the park at the request of the Trust to repair the gas cooker in the cafeteria. He suffered personal injuries when the cooker exploded.

Dick, an eight-year-old boy, entered the park through a hole in the fence, after the park had closed. He was attracted by some bright red berries on a bush. The berries were poisonous and a notice to this effect was attached to the bush. Dick became ill after eating the berries.

Advise Bertram, Clarence and Dick as to any claims that they may have under the Occupiers' Liability Acts 1957 and 1984 and as to any defences that they might be met with.

**(25 marks)**

**Question 3**

Ersatz Properties own premises in the centre of Bedford. They are approached by Alan, a well known local entrepreneur, who leases the building for use as a nightclub. The nightclub is adjacent to a hotel owned by Ishmael. Vibrations from the nightclub cause extensive damage to the plasterwork in the hotel. Exhibited on the wall of the hotel there is a valuable 14<sup>th</sup> century tapestry and the vibrations cause extensive damage to its fibres. The hotel also suffers a dramatic fall in profits due to the disturbance.

Alan consults Pardon, a leading firm of sound and vibration insulation experts. All reasonable measures are taken to insulate the nightclub but the effect is marginal and the problems continue.

The Bistro restaurant is located on the approach road to the nightclub. The restaurant's customers are deterred by the hoards of drunken revelers queuing to enter the club. Consequently profits decline.

Advise Ishmael and the Bistro as to whether they have an action for public or private nuisance and what remedies they could claim.

**(25 marks)**

**Turn over**

#### Question 4

Alex is sitting in a wine bar waiting for her boyfriend. She sees Gary walk out of the wine bar with a computer which she believes is hers.

Alex runs after Gary shouting "Stop thief!" and "I'll get you for this". Gary gets into his car but before he can drive off Alex blocks him in with her own car. She then starts banging on the driver's window demanding the computer back. The passenger door of Gary's car is only three inches from a high wall.

Gary finally opens the driver's door and Alex pushes him into the passenger seat, reaches into the car and grabs the computer. She starts to run back to the wine bar but Gary chases her, knocks her to the ground and kicks her in the head. He then takes the computer back. It is in fact Gary's own computer which looks very similar to Alex's.

Alex is now suffering from serious brain damage.

- (a) Advise Alex as to what she would have to prove in order to bring an action in trespass to the person and what defences she could be met with.

**(13 marks)**

- (b) Advise Alex as to what actions in trespass to the person could be brought against her and what defences she could raise.

**(12 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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