



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 & Restitution 2013-2014, 24th edition, Francis Rose, Oxford University Press, 2013.**
- 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 ballpoint 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. Critically assess the factors taken into account by the court in assessing whether there has been a breach of duty in negligence.

(25 marks)

2. (a) What forms can trespass to land take and how does trespass to land differ from the tort of nuisance?

(17 marks)

- (b) To what extent is a licence a defence to trespass to land?

(8 marks)

(Total: 25 marks)

3. The tort of *Rylands v Fletcher* has no function in the modern law of tort and should be abolished.

Discuss.

(25 marks)

4. Critically analyse the circumstances in which an employer may be liable when one of their employees commits a tort against another person.

(25 marks)

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

Question 1

Jack owns the Hotel Splendide and extensive renovations were recently carried out to the hotel. The main contractor for the work has since gone into liquidation.

A computerised room service system, using a small lift network to transport orders to the rooms, was installed. This was designed and installed by Robot plc. Before the renovations, representatives of Robot Plc had given several presentations of their system to Jack and taken him to other hotels to inspect similar systems. They produced very detailed specifications and a business plan showing how profitable this system would be in operation. Jack was so impressed that he directed the main contractors to nominate Robot Plc to install the system as sub-contractors, in accordance with the Robot Plc specifications.

A new gym was also installed. The gym was supplied and installed by Piscine, a sub-contractor.

Jack's handyman, Fred, is responsible for the day-to-day maintenance of the room service system, including the automatic doors which give access to the small lift network.

There have been a series of accidents to guests involving the small lift network and gym. Defective work by Robot and Piscine may have caused these accidents. Following these accidents, Jack disconnects the small lift network and loses the profit from it, also incurring expense in employing temporary staff to provide a manual room service.

The gym has been closed by the Health and Safety Executive and Jack has had to cancel contracts to let out the gym to clubs and has lost room bookings.

Advise Jack as to any rights in tort which he may have in respect of recovering his economic loss.

(25 marks)

Turn over

Question 2

Raul owns the Hotel Majestic. He had new electronic doors fitted to the hotel. These were designed and installed by Electrics plc.

The swimming pool was overhauled and a new filtration system installed. This system was supplied and installed by Poolside plc.

Raul's handyman, Geoff, is responsible for the day-to-day maintenance of the electric doors.

Alan, Betty and their three year old son Chris are staying at the hotel. Alan suffers an electric shock as he tries to push the electric doors open. This is due to a design fault in the system. Betty goes to his assistance and is caught in the doors as they close. This is due to incorrect maintenance by Geoff. Both suffer personal injuries.

The swimming pool has a prominent notice at the entrance:

'Important Notice.

The pool is for the use of hotel guests only.

All children must be accompanied by a responsible adult.

Non-swimmers in the shallow end only.'

Chris cannot swim. He is holding a float provided by the hotel and paddles to the deep end. He sinks to the bottom and becomes trapped in a loose outflow grille. David, the lifeguard on duty, who was busy flirting with another pool user, only notices Chris after he has sunk to the bottom of the pool. David then attempts to rescue Chris but cannot release him from the grille for some time. David had received only limited training in resuscitation. Chris suffers serious injuries through lack of oxygen.

Advise Raul on his potential liability in tort to Alan, Betty and Chris.

(25 marks)

Question 3

The Daily Wrangler, a newspaper circulating in the Midlands, publishes a serialised weekly column on medical matters purporting to be written by 'Dr Goodfellow'. This is a purely fictitious name and as far as the newspaper staff are aware there is no doctor of this name in the Midlands.

One week, the column contains a statement that Dr Goodfellow would be prepared, in deserving cases, to perform an abortion on an unmarried woman - even though, strictly speaking, the conditions required by law were not wholly satisfied.

In fact, there is a Dr Goodfellow living and practising in a Midlands town where he is well known as being, on religious grounds, an opponent of abortion. He claims that a number of his friends, who think as he does about abortion, have read the article and believe it refers to him.

- (a) Advise Dr Goodfellow whether he could succeed in an action in tort against the publishers of The Daily Wrangler.

(18 Marks)

- (b) Would it make any difference to your answer if Dr Goodfellow had once been convicted of performing an abortion on an unmarried woman in circumstances where the law would not permit it?

(7 marks)

(Total: 25 marks)

Turn over

Question 4

John has been badly injured in a traffic accident caused by the negligence of Mike. Before the date of the trial John has incurred private medical expenses of £50,000 and has also spent a number of weeks in a National Health Trust hospital at public expense. The household costs incurred by Nila, John's wife, are therefore less than usual for part of the time but greater once John returns home for convalescence. Nila has had to give up her job to care for him. During the period in hospital, and while having medical treatment, John is unable to work as an accountant. His salary at the time of the accident was £100,000 per annum.

The extent of John's injuries mean that he will be unable to work as an accountant for a further three years after the trial but should be able to do so thereafter. He will be unable to continue his pastime as an amateur golfer. There is a distinct prospect that his injuries may worsen in years to come, although this is by no means certain. John took out personal accident insurance some years before the accident and the policy will pay substantial benefits following the accident. He has also received social security benefits and will continue to do so until the date of the trial.

Advise John as to the basis on which his claim for damages will be successful.

(25 marks)

End of Examination Paper

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