

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**

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

1. In the context of cases involving the police, rescue services and local authorities, critically analyse the conflict between the trend to expand the law of negligence to 'novel' situations and the court's use of 'policy' considerations.

(25 marks)

2. Identify and analyse the criteria the court may consider when deciding whether the claimant's conduct amounts to contributory negligence.

(25 marks)

3. The law must draw a line somewhere; it cannot take account of everything that follows a wrongful act.

With reference to this statement, critically analyse the principles relating to the rule of remoteness of damage in relation to a claim for damages based on negligence.

(25 marks)

4. In the tort of defamation identify and critically analyse:

(a) How the courts have interpreted the term 'defamatory meaning'.

(15 marks)

(b) How the courts have interpreted the phrase 'right-thinking members of society'.

(10 marks)

(Total: 25 marks)

Turn over

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

Question 1

Sunshine Holidays Ltd (SHL) owned a residential holiday park, which comprised holiday chalets and fairground rides. The company employed Adam as the manager of the park. Brian and Carole took their children, Drew (aged eight) and Edward (aged thirteen) to stay at the park.

Adam learned that there was a serious problem with the rollercoaster ride, when a rattling noise was heard coming from the track of the ride.

Adam asked his friend, Fred, to inspect and repair the rollercoaster track. Adam knew that Fred was a partially qualified engineer, with no experience of fairground rides. The next morning, before the rollercoaster ride opened, Fred inspected the track and failed to notice a number of bolts were loose.

One hour later Brian and Carole allowed Drew and Edward to ride on the rollercoaster by themselves. Both boys were so excited that neither put on his safety belt in the car, despite the notice in the car instructing them to do so.

At the fastest section of the rollercoaster ride one of the bolts that secured the track to its frame broke away, causing the cars to halt abruptly. Drew was thrown out of the car and suffered serious injuries. Edward was thrown forward in the car, hitting his head on the handrail, fracturing his skull.

Adam closed the rollercoaster ride immediately and, following safety checks, called in George, a fully qualified engineer, who maintains rides for all the holiday parks in that part of the country.

George proceeded to inspect the rollercoaster. Whilst checking the track, George inadvertently disturbed one of the stationary cars whose brakes had not been applied properly. The car collided with George, breaking his leg.

Adam subsequently placed the following sign at the entrance to the park.

<p>DANGER</p> <p>DO NOT USE THE ROLLERCOASTER AS IT IS OUT OF ACTION AND UNDER REPAIR</p>

Harry (aged fourteen) lives locally. He crawled through a hole in the perimeter fence and followed a well-worn path to the rollercoaster. Trespassers had been seen in the past climbing on the rides and the rollercoaster in particular. Harry climbed up on to the rollercoaster track and walked along it. He stepped onto a loose rail, lost his balance, and fell four metres from the track to the ground. He is now paralysed from the waist down as a result of his injuries.

- (a) Advise SHL of any possible claims that may be made against the company by Drew, Edward and George, including a discussion of any defences that may be available.

(15 marks)

- (b) Advise Harry of any claims he may bring against SHL including a discussion of any defences that may be available.

(10 marks)

(Total: 25 marks)

Turn over

Question 2

Ian is a tenant farmer of a large farm approximately three miles outside Oakridge, a small market town. The only close residential dwelling is a cottage owned by Ken, who lives there with his partner Lynn and their twelve year old daughter, Mary.

John, Ian's landlord for many years, is a regular visitor to the farm.

The everyday farming activities created a considerable amount of dust which blew across Ken's property. As a result, none of the family was able to enjoy the garden for some weeks.

Further, Mary had grown especially delicate flowers from seed in the garden and the dust killed them. To replace the flowers would require importing expensive plants from Holland.

In previous growing seasons, Ian had always used sprays on his crops to ensure they provided a full harvest. During the most recent growing season, Ian used a new and even more powerful spray, which he had obtained from the local farm supplier. Ian knew the spray was not officially on the market as it was still being trialled and tested by the manufacturer. This spray was rumoured to be the most efficient way to deal with insect damage. Ian sprayed his crops for some weeks. The spray drifted over to Ken's cottage and also into Oakridge.

The powerful chemical content of the new spray caused Ken's cottage to suffer damage to the paintwork. Mary suffered a serious allergic skin reaction to the spray, leaving her with permanent scarring to the face and arms. She cannot now pursue her intended career as a model.

In Oakridge, the spray caused the inhabitants to cough, be short of breath and suffer from eye irritation. Naseem, a local resident, suffered a panic attack due to his inability to swallow and see properly. He was admitted to hospital and was unable to work for eight weeks. He later made a full recovery.

Advise Ken, Lynn, Mary and Naseem on any claim they may have in tort against Ian and John.

(25 marks)

Question 3

Oscar arranged a sky-diving event to raise sponsorship for a national charity. The event attracted a lot of publicity, and both local and national newspapers sent reporters. The local TV station agreed to broadcast the event live in the early evening news programme.

Peter runs Fly Co Ltd, a parachute training company. He agreed that the company would provide the necessary packed parachutes, free of charge, for Oscar's event.

The event took place on a clear summer's afternoon. Oscar, an experienced sky-diver, was in the aircraft to supervise the jumps. Oscar encouraged Rose, his wife, to be the first to jump. Rose's parachute had not been packed correctly. The parachute did not open and Oscar saw Rose fall to her death. Oscar was racked with grief and subsequently became severely depressed.

Peter's parachute did not open and he landed in a tree. He was badly injured but survived. His wife Terri, a local nurse, had seen the incident and attended to his injuries. Terri now suffers from anxiety attacks as a consequence of what she experienced.

Immediately after Sarah jumped from the aircraft she saw what was happening to Rose and Peter. Sarah was terrified that her parachute would also not open and feared she would die. Fortunately, her parachute did open. She landed, unharmed physically. She nevertheless later developed survivor's guilt as a result of the experience. This has meant that she has been unable to work since the incident and has lost all interest in caring for her young children.

Vince also attended the event. He ran to help the injured parachutists. What he saw and heard caused him to become very upset and he suffered from nightmares for a week after the event.

William, the son of Oscar and Rose, heard a live report of the incident on his car radio. He went to the local hospital, where he saw Rose's body. He became very distressed and now suffers from long-term depression.

Xavier was 100 miles away when the event happened. He watched it live on TV. He knew that his long-time girlfriend, Sarah, was taking part and became so upset about her safety that he now suffers from a psychotic illness.

Advise Oscar, Sarah, Terri, Vince, William and Xavier as to their potential claims against Peter and Fly Co Ltd in negligence.

(25 marks)

Turn over

Question 4

Charles owned and managed a large warehouse which was the main depot for the collection and delivery of all newspapers, magazines and journals for the local region.

David was new to the area. He had worked for Charles for about six weeks when he was promoted to the position of main delivery driver. At that time David was still getting to know the route for his daily deliveries.

Charles supplied David with a new map of the region and a detailed description of the routes from one customer to the next for each delivery. Time was crucial to deliveries because all the shops wanted their publications as early as possible each morning. Charles told David that he should never take any tea breaks during these early-morning deliveries nor should he take any short cuts through country lanes as the van was too wide.

At six one morning, whilst on his delivery round, David stopped for a cup of tea. As a result he was late and so he decided to take a short cut along a country lane. Whilst driving too fast, he collided head-on with Hassan's car. Hassan's car was a write-off and Hassan suffered multiple fractures to his legs.

James was a fork-lift truck driver at the depot. He was asked to move crates of paper from one lorry to another. On one occasion, and without warning, due to a mechanical defect, the fork-lift truck failed to hold a load, which fell on to another employee, Kevin, who suffered a broken arm.

James was instructed by Charles to stack the crates of paper by hand. The crate manufacturer's instructions stated that the crates should not be stacked to a height of more than six crates. Charles instructed James to stack them nine crates high. James objected to this, claiming the crates of paper were too heavy for manual movement and there should be some form of guard to stop the crates from toppling over. Charles ignored James's objections.

A few hours later, James damaged his spine when lifting one of the crates and as he leaned against the crates due to the pain, a pile of crates fell on him, fracturing his skull.

Advise Charles as to the potential claims that could be made against him in tort by Hassan, James and Kevin, and any defences that may be available to him.

(25 marks)

End of Examination Paper

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