

Special duty problems: omissions and acts of third parties - answer

You are asked to advise the parties but in order to do so properly, they must first be identified. Each of their claims can then be dealt with separately. This is the easiest and clearest route through a problem question and you should not be afraid to use subheadings to help you identify each claimant, what they are claiming for and against whom. To decide who your claimants are going to be, you need to identify the parties in the problem who have suffered harm (and say at the outset what harm this is). These are:

- **Margaret** (or, as she is dead, her estate) – for her **death**
- **Jill & Heather** (Jill and Heather can be treated together here as they were together at the time of the incident and harmed in the same way. The fact that Heather may be more seriously injured than Jill goes to quantum of damages, not initial liability) – for **personal injury**
- **Luke** (the youth) – for **personal injury**

You will also need to decide who the defendants to each claim are going to be. At the outset of your answer (and certainly at the planning stage) it is generally best to identify everyone who might possibly be a defendant, even if you think the likelihood of a claim succeeding against them is very small, or totally improbable. These are two different things. To identify defendants, consider who is in any way to *blame* for the harms that befell the claimants (or, put another way, who would the claimants say caused or help to cause their situation – who was at fault, and why?) So:

Margaret (her estate) will sue those who may be at fault in handling her situation, which resulted in her death: **Brian** (the store manager) for failing to do enough to help her, and **Karen** (the nurse), for failing to put her in the recovery position. Note that a claim against Brian would also involve the supermarket, vicariously (see chapter 20), so there would be a couple of sentences to add into a full answer to this question in respect of this.

Jill and Heather will sue for their respective injuries: **Margaret** (her estate) for leaving the keys in the ignition (there is no point suing either 'the youths' for stealing and driving the car or the driver in particular, as they are unlikely to have any money to be able to pay damages and insurance won't cover them).

Luke will sue for his head injury: **Margaret** (her estate) as above (the same issue as above would be relevant regarding the driver of the car he was in).

So, we have:

1. M v B (and supermarket vicariously) & K
2. J & H v M
3. L v M

Margaret, who is 75 years old, is doing her weekly shopping at the supermarket on a busy Saturday afternoon when she feels pains in her chest. It transpires she is having a heart attack and she collapses to the floor. Although the supermarket is crowded, no one comes to help her.

Brian, the store manager, puts a call out over the PA system asking if there is a doctor present, but otherwise offers no assistance. Hearing the announcement, Karen, a nurse, comes forward and tries to help Margaret, but fails to put her in the recovery position. Margaret later dies.

1) M v B (and supermarket vicariously) & K

The starting point for analysis, as always in a negligence claim, is to ask whether either of the defendants owed M a duty of care. There is no action against the shoppers in the supermarket who failed (omitted) to help her, as we know that there is, in English law, no duty to come to another's aid. More is needed than simply being nearby.

Duty

Brian – establishing a duty here is problematic because he **omitted** to do anything other than issue a call over the tannoy. He has no prior relationship with Margaret, so a duty cannot rest on that – as far as the law is concerned, they are strangers. However, although there is no general duty to assist Margaret, the fact that Brian is in a position of responsibility and has taken the steps he did may mean that he has in some way 'assumed responsibility' for the situation and might therefore owe a duty of care to Margaret (*Barnett v MOD* [1995]). A good answer would, however, not simply state this dogmatically. Is this the same as *Barnett* or could it be distinguished in some way? Are the arguments as strong here for an assumption of responsibility?

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