

Special duty problems: omissions and acts of third parties annotated problem question

At the outset it is important to note what claims will be made, by whom, for what and against whom. Here, we have M v B (and the supermarket vicariously?), M v K, J & H v M, L v M.

The central question here is whether these are all 'callous bystanders' (Lord Nicholls, *Stovin v Wise*) or whether anyone owed M a duty to come to her aid.

Does the action B has taken mean that he has 'assumed responsibility' for M in any way? See *Barrett v MOD*. If he has, he will owe her a duty of care. If he has not, there is no duty and M's claim against him will end here.

Margaret, who is 75, is in 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.

Meanwhile, some youths see Margaret's car, which was left unlocked and with the key still in the ignition in the supermarket car park as she did not want to spend time looking for a parking space. The youths drive off in the car, failing to stop at a pedestrian crossing, hitting Jill and her daughter Heather who were crossing the road. Both are injured, Heather seriously. One of the youths, Luke, who was not wearing a seat belt, suffers a serious head injury.

Advise the parties.

This indicates negligence on M's part. Can she be sued even though she is dead? (See *Chapter 21*.) Who would sue her and what for? Would this also make her contributorily negligent (see *Chapter 10*) in relation to her own claims, should any succeed?

Here, L is another potential claimant. However, the question here is whether M should owe him a duty of care, even though he, as the third party, was (at least in part) responsible in some way for his own injuries. See also *Chapter 9* on causation points (quite tricky here), including whether he may have broken the chain of causation in his own claim.

Does this mean that even if L can establish a claim against M he should be found contributorily negligent? See *Chapter 10*.

This is definitely assumption of responsibility by K—is a duty then owed? If so, what is the content of the duty? Working out how far the duty extends allows you to consider whether or not there is a breach.

The alleged negligence (whether K fell below the standard of care expected) would have to be established. Failing to do something is an omission (which is why it is first important to establish whether K owed M a duty of care in respect of omissions).

So who would actually be taking this action, and what for? See *Chapter 21*.

Therefore, J and H have been harmed by the actions of the youths, who become the third party in relation to a claim against M. The question is whether M should be held to owe J and H a duty of care in respect of the actions taken by third parties as a result of her own negligence (leaving the car unlocked). Compare *Home Office v Dorset Yacht* and *Topp v London Country Bus*.