

**Chapter 13: Mixed Topic Questions
Extra Questions**

Question 1

Rapido is a successful furniture removal business. It had been hired to move the contents of a large house. Gio, the driver, found that there was too much furniture to fit in the lorry, so he hitched up a trailer to the lorry to carry the excess. This was part of the standard procedure used by Rapido in such circumstances. Before setting off, Gio failed to check that the trailer was properly coupled to the lorry. On the way back, while going uphill, the trailer became unhitched and rolled back down the hill. It hit Paolo, who was riding his new Moto scooter. Paolo was knocked off his scooter, which was destroyed.

Hera was taking her first driving lesson. As she was driving up the hill, she saw the trailer hit Paolo and carry on gathering speed towards her car. She tried to brake to avoid the trailer, but hit the accelerator instead, driving off the road and into a tree, causing £6,000 damage to Greta, her instructor's, car and causing him a severe whiplash injury.

Paolo was taken to hospital, where Dr Hidalgo, a junior doctor on his second day, examined Paolo's X-rays. He decided that there was nothing wrong with him and sent him home. That night, Paolo developed a blood clot on his brain and died. Expert medical opinion was divided as to whether the results of Paolo's X-rays merited treatment at the hospital, although it was discovered that Paolo had a rare undiagnosed blood disorder that made him much more susceptible to developing potentially fatal clots.

Gio was subsequently convicted of careless driving.

Discuss the various claims in negligence that may arise on these facts. Do not consider any liability on the part of the removal company.

Answer guidance

Questions that you will need to consider:

- What duties does Gio owe and to whom?
- Was the loss/damage suffered by Greta foreseeable?

Note that you do not need to consider Rapido's liability.

- Gio appears to have suffered no loss or damage. There is nothing to suggest that his trailer was damaged, and even if it was it would have been as a result of his own carelessness. Paolo suffered the loss of his scooter and ultimately his life. Hera suffered no loss or injury. Greta, the instructor, sustained a severe whiplash injury and £6,000 damage to his car. Gio owed Paolo, Hera and Greta

a duty of care as between road users. This is an established duty situation and an application of the general neighbour principle as reformulated in *Caparo Industries v Dickman* [1990] 1 All ER 568. Similarly, Paolo and Hera owed a general duty of care to other road users. Hera, in particular, owed a duty of care to Greta, her instructor. Greta also owes Hera a duty of care as her instructor.

- Gio was in breach of his duty of care to the other road users. He fell below the standard of the reasonable driver with trailer by failing to ensure that the trailer was properly covered (*Blyth v Birmingham Waterworks* [1865] 11 Exch). Moreover, he was convicted of careless driving. Section 11 of the Civil Evidence Act 1968 will apply. This will assist claimants against him. Gio's liability for Paolo's death and Greta's injuries will turn on causation and remoteness of damage. Were the consequences foreseeable?
- Hera has breached her duty to Greta by confusing the brake and accelerator pedals and this falls below the standard of driving expected of the reasonably competent driver. It is irrelevant that she is taking her first lesson or is in the presence of her instructor as she is judged on the standard of the ordinary driver not the inexperienced driver (*Nettleship v Weston* [1971] 3 All ER 581). Causation can be established as 'but for' her breach of duty, Greta would not have suffered whiplash or £6,000 worth of damage to his car. The injury and damage to Greta and his car were foreseeable consequences of Hera's careless driving, thus not too remote (*Overseas Tankship (UK) Ltd v Morts Docks & Engineering Co Ltd (The Wagon Mound No 1)* [1961] AC 388). Hera is therefore liable to Greta in negligence.
- Dr Hidalgo owed Paolo a duty of care. The doctor-patient relationship is another established duty situation. Was Dr Hidalgo in breach of duty? Although he was only a junior doctor on his second day, *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118 requires him to reach the standard of the ordinary skilled doctor of his level. However, did he act in accordance with a recognised body of medical opinion? There was a school of thought that some doctors might also have sent Paolo home. If so, *Bolam* would suggest that Dr Hidalgo was not in breach. However, if *Bolitho v City and Hackney HA* [1997] 3 WLR 1151 is followed, despite there being a recognised body of medical opinion in accordance with Dr Hidalgo's practice, a doctor can be liable in negligence if it can be demonstrated that the professional opinion is not capable of withstanding logical analysis.

Question 2

Evaluate fault as the basis of liability in tort.

Answer guidance

This is a very broad question, requiring both a general understanding of tort law and demonstration of knowledge in certain topics.

Tort only provides a remedy where you can find someone at fault. A person who suffers serious disability because someone is at fault can obtain millions in damages. A person who is born with the same disability must rely on the state or family or charity.

Viewed as a system of accident compensation, Conaghan and Mansell consider tort fails miserably at both a moral and practical level.

“It can be strongly argued that the tort system represents a political solution which is undesirable both because of the arbitrariness of its results and because of the underlying callousness of its ideology”.

Conaghan and Mansell argue that a system, which relies on providing compensation only where damage is caused by someone at fault, wrongly puts individual responsibility and economic efficiency above equality and social responsibility. After all, a person who is hurt suffers the same hurt whether or not she can find someone to blame.

It is possible that the main problem with tort law is that it was designed for a less complex industrial, scientific and technological era, and that its ideological basis and principles are just not applicable to today.

What of no fault compensation? Is there any practical point to this argument on the role of tort? Consider the Thalidomide litigation e.g. *Davis v City and Hackney Health Authority* [1991] 2 Med LR 366.

In the assessment of reasonable care for breach of duty, special issues arise in relation to the unskilled, the incapacitated and children. In all of these situations, the difficulty is in applying an objective standard of reasonableness to those who have difficulty. These cases indicate that ‘fault’ as it has come to be used within the standard of care is not synonymous with blameworthiness. In *Nettleship v Weston* [1971] 3 All ER 581 Megaw LJ said that ‘tortious liability ceased in many cases to be based on moral blameworthiness’.

The vicarious liability of an employer, which arises by way of the law distributing liability for the loss suffered by the claimant to the employer of the specific tortfeasor, is a form of liability that arises even there was no personal fault on the part of the employer e.g. see *Lister v Hesley Hall* [2002] 1 AC 215.