**Multiple Choice Questions – DUTY OF CARE**

**(E)** – Easy

**(M)** – Medium

**(H)** – Hard

Underline denotes the correct answer

**1. Why was the case of *Donoghue v Stevenson* so significant to the law of negligence? (M)**

a) It was when the common law first recognised that harm caused by anyone’s negligent actions could be compensated under certain conditions.

b) It established a single test for identifying whether a duty of care exists in the tort of negligence

c) It established that a duty of care would only be found in specific instances, such as when the defendant and claimant are in a contractual relationship with each other

*Explanation: Donoghue v Stevenson, through Lord Atkin’s ‘neighbour principle’, established the duty of care concept, namely that we have a duty to prevent injury to those and to that which we foresee we might injure if we act negligently. Claimants no longer were required to be in a contractual relationship with the defendant or denied claims if they fell outside of a specific kind of relationship.*

**2. Which elements form the *Caparo* test? Select all that apply. (E)**

a) Was the damage reasonably foreseeable?

b) Was there a sufficiently proximate relationship between the parties?

c) Were the parties in a contractual relationship, or a relationship ‘akin to contract’?

d) Would it be ‘fair, just and reasonable’ for the court to impose a duty of care, having regard to policy concerns?

*Explanation: The Caparo test does not require an inquiry into the contractual or ‘akin to contract’ relationship between the parties. The ‘akin to contract’ consideration is conducted in scenarios involving pure economic loss.*

**3. According to Lord Reed in *Robinson*, when should the *Caparo* test be considered? (M)**

a) In every case where a duty of care may arise

b) In only those cases where there is an established duty of care

c) In only those cases where the facts are novel and where established principles and relationships do not provide an answer

d) None of the above

*Explanation: It is important to remember that the Caparo test need not be applied to every single Duty of Care inquiry. The Caparo test is only necessary when dealing with novel facts or relations between the parties. If you are dealing with a well-established relationship (such as a doctor and a patient), you can rely on established authorities to determine whether a duty of care applies. If the facts are ambiguous, but not novel, identify the ‘legally significant features’ and try to argue by analogy to established authorities whether a duty of care exists.*

**4. Which two of the below reasons explains why there is no general liability in negligence for failing to act (i.e. for an omission)? (M)**

a) The ‘why pick on me’ argument: a duty to prevent harm to others or to render assistance to a person in danger or distress may apply to a large class of people who happen to be able to do something. Why should one be held liable rather than another?

b) Allowing omissions liability would open the floodgates to many more claims, which would put a strain on insurance companies or those without insurance

c) A general liability for omissions would be too onerous. English law is loath to compel individuals to act in certain ways.

d) There are no reasons. English law *does* recognise a general liability for omissions.

*Explanation: English law does not, generally, recognise liability for omissions. This is because it would be too onerous to compel individuals to act in certain ways and unfair to place a liability on one person who happens to come across a situation, and not another.*

*The presence (or lack) of insurance is not considered an effective reason for failing to recognise omissions liability.*

**5. Which of the below is *not* an instance when omissions liability may arise? (E)**

a) The defendant exercised control over third parties

b) The defendant exercised control over the victim of the wrong

c) The defendant exercised control over the claimant’s property

d) The defendant creates a risk, which eventuates

e) Omissions are actionable under the Occupiers’ Liability Act 1957 and 1984

f) When the defendant saw a stranger in trouble, but fails to help them

*Explanation: All are true, except for f). Remember, in most instances there is no liability for a stranger who fails to help another, unlike in other countries such as France. A duty of care may, however, be found in these instances if there is an established relationship, such as if the stander-by was a parent and the victim a child.*

**6. Are public bodies subject to the same incremental, analogical approach to the law of negligence as private individuals?****(E)**

a) Yes, it is an important principle of negligence law that public authorities are treated the same as private individuals.

b) No, public authorities have a public function to perform and are authorised in this by statute. Therefore, they should be treated differently.

c) This remains a contentious point in the law of negligence, which has not been resolved.

*Explanation: Despite some lack of clarity in the law, Robinson tells us public authorities are to be treated the same as private individuals. The fact that such bodies also have a common law function is a red herring in terms of their potential liability in negligence at common law.*

**7. How are tort claims under the Human Rights Act 1998 handled by the courts? (M)**

a) Human Rights Act claims tend to take precedence over claims in common law negligence

b) Claims in common law negligence take precedence over Human Rights Act claims

c) Recent trends seem to allow the two avenues (claims under the Human Rights Act and common law negligence) to develop independently of one another

*Explanation: As demonstrated in the case law following Z v UK, the public law framework within which public bodies function is not conducive to the sort of bilateral private claim which is the essence of the tort of negligence. The two are often therefore allowed to develop independently of one another.*

**8. Do emergency services assume a duty to take care to prevent harm occurring to a person when the source of the danger is not created by them? (M)**

a) No, emergency services are only under a duty of care when a private individual would be

b) Yes, emergency services are always under a duty of care when they intervene to help in a situation.

*Explanation: Emergency services are public authorities. Therefore, they are judged in the same way as private individuals with regards to whether a duty of care is owed.*

**9. When *are* public authorities under a duty of care? (H)**

a) Only when they have created the danger

b) Only when they have made the danger worse

c) All of the above

*Explanation: As demonstrated by Capital & Countries plc v Hampshire County Council, public authorities are under a duty of care when they have either created a dangerous situation for which they have assumed responsibility or intervened in a way to make the situation worse.*

**10. Are the courts more likely to find an ambulance service owes a duty of care than other emergency services? (H)**

a) Yes, *Kent v Griffiths* and *Sherratt v Chief Constable of Greater Manchester Police* tell us that ambulances are always treated differently to the police or fire brigade.

b) Not necessarily. The essential criteria are that an assumption of responsibility is found. While this may more readily be found in the instance of the ambulance, a duty of care will not be found unless an assumption of responsibility exists.

c) No, *Kent v Griffiths* and *Sherratt v Chief Constable of Greater Manchester Police* tell us that ambulance services are to be treated the same as the police or fire brigade.

*Explanation: B) is correct. The cases would appear to create a distinction between the ambulance and other emergency services. However, Sherratt shows that, where the assumption of responsibility exists, a duty of care may arise just as readily in the context of the police or fire brigade, as it does for the ambulance services.*