

## Duty 1 – General principles governing duty of care

- The framework for negligence: there's a difference between the existence of a duty of care in the context of loss caused by physical injury or property damage, and where economic loss or psychiatric injury is caused -> Lord Rodger: *the world is full of harm for which the law furnishes no remedy* ->

-> A duty of care is a legal duty imposed on D, by law, to exercise reasonable care and/or skill to avoid the risk of injury to C -> several points of significance: 1. A duty is imposed upon D (not a legal obligation he has agreed to)

2. the duty is to exercise reasonable care

3. a duty of care is owed by D to either C, or a class of persons of whom C was one

- A brief historical overview:

Early 19<sup>th</sup> century: *Donoghue v Stevenson*: recognised only a few cases where a duty of care was to exist: road-users who injured others, manufacturers towards consumers where the product was dangerous, and occupiers who invited visitors onto their premises, where there was some hidden danger on those premises -> there was still no general principle of law

1893: *Le Lievre v Gould*: Lord Esher resiles from his earlier statement -> 'What duty is there when there is no relations between the parties by contract?'

1906: *Cavalier v Pope*: the privity of contract to substantiate a duty of care

1929: *Mullen v AG Barr*: 'where the goods of D are widely distributed throughout Scotland it would seem little short of outrageous to make the manufacturer responsible to members of the public for the condition of the contents to every bottle which issues from their works'

1932: *Donoghue v Stevenson*: 1. a duty of care no longer depended on contractual relations -> 2. A new category of duty of care was created -> 3. The neighbour principle: a duty of care is owed by D to persons who are so closely and directly affected by my act that I ought to have them in contemplation as being so affected

1970: *Home Office v Dorset Yacht Co*: categorization approach (when a new scenario arises, it is necessary to ask whether it is covered by existing authority) vs the principled approach (that a single general principle should be applied in all new circumstances to determine the existence of a duty of care -> the latter approach was favoured)

1978: *Anns v Merton LBC*: the principled approach was endorsed -> gave rise to a 2-stage test: whether the harm to C was foreseeable and should a duty to care be excluded for public policy reasons? -> if there's a prima facie duty of care, then there will be a duty of care -> the problem with this is the lack of proximity -> the whole world can be held liable

1990: *Caparo Industries v Dickman*: the Anns test was disapproved -> a more restrictive view was proposed: 1. There's no single or simple formula which would definitively state when a duty of care was owed -> 2. The law should develop novel categories of negligence incrementally and by analogy with established categories ->

2009: *Mitchell v Glasgow CC*: the application of Caparo's test is not precluded to operate in personal injury as well as economic loss cases

2013: *Woodland v Essex*: the incremental approach to the development of law was again endorsed

- The Modern Duty of Care Tests: -> those concepts are said to operate at a high level of abstraction and that what matters is how, and by reference to what lower-level factors, they are interpreted in practice -> in Caparo, Lord Bridge held that the requirements of proximity, reasonable foreseeability and policy were labels only and not capable of precise definition

The test	The definition	The Source
The Caparo test	<ul style="list-style-type: none"><li>• Harm to C was actually foreseen, or reasonably foreseeable, by D</li><li>• The requisite proximity existed between C and D</li><li>• It is fair, just and reasonable to impose a duty of care</li></ul>	Caparo Industries v Dickman
The voluntary assumption of responsibility/ reliance test	<ul style="list-style-type: none"><li>• Applies where D, possessed of special skill, undertook to apply that skill for the assistance of C, who relied upon that skill</li><li>• An assumption of responsibility by D towards C to conduct himself with due care and/or skill</li><li>• A reciprocal reliance by C on D in so conducting himself</li></ul>	Hedley Byrne Co Ltd v Heller Partners Ltd
The incremental test	Any new or novel duty of care scenarios should develop incrementally, by close analogy with established categories -> courts should hug the coastline of established duties of care	Caparo

-> the Caparo tri-partite test is considered to be the primary test for novel negligence scenarios involving personal injuries or property damage -> the test of voluntary assumption of responsibility may be used instead of, or in conjunction with, the Caparo test -> the incremental test serves primarily as a cross-check

-> the Caparo test has been indicated to have the most prominent role -> whether in the area of pure economic loss or in personal injury and property damage

-> there are instances where the assumption of responsibility test doesn't work well -> where D didn't know of the existence, let alone the identity, of C, at the time of the allegedly negligent act or omission, then to hold that D objectively assumed responsibility towards that unknown party, or that D knew, or should've known, that C was relying on his skill, knowledge or expertise, tends to be a highly artificial analysis

-> the tests have sometimes been used in conjunction together -> in some cases of serious personal injury -> some courts have noted that the various tests are mutually supportive and likely to lead to the same conclusion

-> Assuming the existence of duty to care: where C sustains personal or property damage, then if C can align his relationship with D with one of the recognised categories in which a duty of care has, traditionally arisen as a matter of law, there is no need for C to prove the individual ingredients of the duty of care tests -> if however, the scenarios giving rise to C's grievance against D falls outside of the traditional categories, then a legal analysis of whether a duty of care should attach to D is always called for

- Recognised categories of duty of care:

School and teacher, D, to pupil, C, for his welfare and educational needs	- a nursery school certainly owes a duty to the child to protect him from injury - where third parties do the harm to the pupils, the duty of care is novel and not recognised scenario
Road-user, D, towards other road-users	- when a person is injured in the course of his employment, or in a road traffic accident, then it can be taken for granted that the employer owes a duty of care to the person who is in his employment - there is a relationship of proximity between the employer and his employees, and the driver and other road users
Employers, D, who cause physical injury to their employees, C	
Transport operator, D, towards passenger C	Bus companies owe a duty to their passengers, but not once they have alighted(descend) at their stop
Healthcare practitioner, D, towards patient C	A doctor owes a duty to his patients, which is a single comprehensive duty covering all the ways in which a doctor is called on to exercise his skill and judgement in the improvement of the physical or mental condition of the patient
Jailers/ custodian, D, towards prisoners, C	The duty on those responsible for one of HM's prisons is to take reasonable care for the safety of those within
Occupier of premises, D, who invites visitors, C, and C is injured from state of the premises	This duty of care relationship is now governed by statute

- Caveat: certain scenarios in which no duty is owed regardless of the fact that C and D are in a recognised category of relationship that traditionally does give rise to a duty of care

1. the doctor-patient relationship: case law had limited a doctor's duty to warn in some scenarios, and insofar as sterilisation operations are concerned, a doctor's duty is not to avoid or minimise all adverse consequences flowing from a failed sterilisation
2. the employer-employee relationship: psychiatric injury incurred by an employee in the workplace does not automatically give rise to a duty of care on the employer D's part

### **The Caparo Test**

- Reasonable foreseeability of harm: different tests of foreseeability -> arise at recurrent stages of the negligence analysis – in the duty of care, breach duty and remoteness of damage stages -> they may closely duplicate each other -> at duty stage where C suffers from physical injury or property damage, as a result of D's acts or omissions, then some injury of that nature is likely to have been a reasonably foreseeable occurrence

-> duty of care stage: widest -> was some type of harm reasonably foreseeable  
-> breach stage: narrower -> was the type of accident which befell C reasonably foreseeable, against which D should have taken some precautionary steps? If reasonable D should not have reasonably foreseen the type of accident which occurred, then D would not have taken precautionary steps to prevent the accident happening  
-> remoteness stage: narrowest -> was the kind or type of harm suffered by C reasonably foreseeable

-> How the test of foreseeability becomes more focused, from duty of care to the latter stages:

- Road user to another road user: the circumstances of the road accident may be so unusual so as to render the injury to C unforeseeable
- Hospitals/ doctors and patients: if the accident suffered by C was so unusual so as to have been unforeseeable, then no precautionary steps should have been taken by D
- Employer and employees: -“-
- An accident victim and his rescuer: -“-

-> Foreseeability at duty of care stage: D must have either actually foreseen or reasonably foreseen the risk that his failure to exercise reasonable care might cause harm of some type to C individually or to a class of persons of whom C was one. A risk is reasonably foreseeable if it is a real risk, more than a mere possibility

- Some general type of harm: Buxton LJ: the level of certainty required for an outcome to be deemed, after the event, to have been foreseeable is, to a large extent, a matter of impression -> it must be a real risk, not a mere possibility -> it must not be fanciful -> the concept of reasonable foreseeability embraced a wide range of degrees of possibility, from the highly probable to the possible but highly improbable -> the first limb of the Caparo's test has not acted as a stringent control mechanism

*Urbanski v Patel*: Patel, a surgeon, removed the only kidney of Shirley Firman believing that it was an ovarian cyst. As a result, she had to be placed on dialysis until she could find a kidney. Urbanski, Shirley's father, tried to donate his kidney to her, but it was rejected. Urbanski brought an action for the losses he experienced from the removal of his kidney.

- C individually, or as one of a class: where C is known to D personally, then C may be an actually foreseen victim -> where C is unknown to D, then it is sufficient if C was foreseeable as one of a class of persons whose person or property might be harmed by D's activities -> because of the requirements of a 'limited class of whom C was one' and a 'duty attaches when the damage crystallises', there is no prospect of D being liable to the whole world, even if there is a foreseeable risk of injury to the general public

-> Although reasonable foreseeability is an objective test, it is the particular D whose breach caused the injury to C to whom the test must be applied -> should D have reasonably foreseen that a lack of reasonable care and/or skill on his part might give rise to C's injury?

*Islington LBS v UCL Hosp NHS Trust*: the hospital had failed to advise the patient to resume taking warfarin when her operation was postponed, with the result that she suffered a stroke, which rendered her incapable of looking after herself and required institutional care funded by her local authority. -> the failure was an institutional one and not the fault of the secretary -> this case illustrates how important it is to select the relevant D carefully

-> Reasonable foreseeability of injury to C is a necessary, but not sufficient, condition to prove a duty of care. All ingredients of the Caparo test must be met -> even in cases of foreseeable physical injury, proximity may be

lacking, and public policy may preclude a duty of care -> for example where C suffers personal injury or property damage in the failure-to-control-third-parties cases

-> Claimants susceptible to injury: where unknown to D, C was particularly susceptible or vulnerable to the risk of the physical injury which befell him, as a result of D's acts or omissions, that harm to C may nevertheless be reasonably foreseeable, C being within a class of persons to whom a duty is owed by D -> this applied even where: a duty wouldn't have been owed to a person of ordinary physical robustness, the harm to the physically vulnerable C was statistically speaking very small, and D was not personally aware of C's physical vulnerability

*Haley v London Electricity Board*: Some workmen were digging a trench in a pavement. They went off to lunch. They had nothing to fence off the trench so they left a shovel and pick at one end and a punner at the other end to warn pedestrians. The claimant, a blind man, tripped on the punner and fell hitting his head. As a result of the fall he became deaf. The defendant argued they had done all that was necessary to warn an ordinary person of the danger and there was no need to take extra precautions for blind persons as it was not foreseeable that a blind person would be walking unaided down that street.

-> The unborn claimant: where C is born with a disease, deformity or abnormality which was due to the alleged negligence of D, whether caused whilst C was in utero, or pre-conception via parental treatment, the child, C has the capacity to sue D for the ante-natal injury- provided that C was born alive -> s1(1) of the Congenital Disabilities Act 1976 -> any of the following could fall within the scope of the Act:

- something occurring pre-conception, something which affected C's mother's pregnancy -> where a trauma is inflicted upon C's mother by some car or train accident caused by D; or where harmful drugs were taken by the mother during pregnancy that cause injury to C in utero, or an event which affected C's mother during C's birth
- additionally, disabled child, C, has an actionable claim where C's disability was caused by damage to the selection or handling of gametes
- triggers for the Act to apply: applies to any birth in England after 22 July 1976 -> under the Act, there are several criteria for a duty of care to be owed to the unborn claimant, C. These do not replicate the common law requirements set by the Caparo test but are defined uniquely by the Congenital Disabilities Act

1. C is born alive -> if C dies prior to delivery because of D's negligence and is still-born, C's estate had no capacity to sue under the Act
2. C is born 'disabled' with disabilities which wouldn't have been present, but for D's acts or omissions -> the Act gives no cause of action for C with naturally-occurring or congenital disabilities, because the disability itself must result from the wrongful act of D
3. The disability was caused by an 'occurrence' attributable to D, which occurred before C's birth
4. C's claim is derivative upon a claim against C's parents -> if D was under an actual or potential tort liability to either parent of C -> any shared negligence which may be pleaded by D as against the child's parent/s, will reduce the child, C's, damages too -> the Act does NOT assist at all to prove whether D committed any breach of duty towards C

- The other options:

Option 1: *Burton v Islington HA*: a child injured in utero, born alive, was owed a duty of care, because that risk of damage was reasonably foreseeable

Option 2: was to recognise C, a damaged foetus, as a legal entity, separate from the mother -> that would enable C to recover heads of damage such as funeral expenses and loss of expectation -> in the Burton case the English authority didn't endorse the view that a foetus enjoyed an independent legal personality

Option 3: was to deny any duty of care owed to C who was negligently injured in utero

- Proximity: the degree of closeness or neighbourhood between C and D which must be proven to justify imposing a duty of care on D -> proven via a combination of: geographical proximity, temporal, relational and casual -> to show that C was a person so closely and directly affected by D's act that D ought reasonably to have C in contemplation as being so affected

-> geographical proximity: the physical closeness between C, when the damage was suffered, and D, when the breach occurred

-> temporal proximity: the closeness in time between when C suffered the damage, and when the breach by D occurred

-> relational proximity: was C in a vulnerable position vis-à-vis D? -> was D exercising control over the circumstances in which C was harmed or injured? -> did C and D have a pre-existing relationship, in which C obviously relied upon D to exercise reasonable care, or where D assumed responsibility to exercise care towards C?

-> casual proximity: whether D precluded a step which had it occurred, would have almost certainly protected C from the harm that eventuated

-> where D has physically injured C, or caused C property damage, by reason of his acts or omission, then proximity is, generally speaking, a non-contentious matter -> Lord Hoffmann: there will usually be geographical and temporal proximity wherever D had physically injured C's person or property

*Harrison v Technical Sign Co Ltd*: A sign had fallen from a building injuring passers by. Judgment had been entered in their favour against several defendants who now disputed their respective levels of contributory negligence. The present appellant, who had surveyed the property with the sign denied duty of care to the passers by. -> D didn't owe C a duty of care -> D's inspection had nothing to do with ensuring the safety of passers-by, but only to see whether the shop fixtures had sustained damage for which the landlord might be liable. If D had been asked by Maison Blanc to inspect the awning to ensure that it didn't pose a danger to the passers-by, the requisite proximity would probably have existed between C and D, because the very purpose of D's inspection would have been to ensure the public's safety

- Even where C and D were geographically and relationally proximate, proximity may not be proven

*Geary v JD Wetherspoon plc*: the mere relationship of occupier-entrant could not, of itself, give rise to sufficient proximity -> there was no third party involved, so no proximity could arise where the allegation was that D's duty was to protect C from her own foolish actions

- The gravity of harm to C, resulting from D's breach, has no impact upon the question of proximity

- Policy factors: both legal and public policy factors inform an assessment as to whether it is fair, just and reasonable to impose a duty of care on D. that judicial assessment of policy may change over time. The assessment of policy factors is a balancing exercise in novel fact scenarios, whereby some factors will support a duty of care, and others will disfavour it

-> while it may appear fair, just and reasonable for that particular C to recover for his injury or loss, his entitlement may be forsaken, because of other types of aggrieved Cs who could seek to press through the doorway over time

-> policy has a tendency to change over time too -> that 'unruly horse' can change direction, responding to stimuli from its surroundings -> Lord Millett remarked that 'legal policy, in this sense, is not the same as public policy -> however, other courts before have used public policy in precisely the sense in which Lord Millett described legal policy -> it is not clear what the difference between legal and policy factors usually is

-> policy factors are used in a true balancing or competing exercise, whereby some factors will positively support a duty of care being owed

-> a sample of the most common policy arguments:

- Corrective justice: the primary requirement of public policy is that 'every wrong should have a remedy'
- Distributive justice: takes account of whether the losses are being allocated in a way that gives the public confidence in the legal system
- Floodgates concerns: if to hold that D owed a duty of care would expose similarly-situated Ds potential liability for many persons in C's position, and would likely increase the volume of litigation against similarly-situated Ds in the future, then that may preclude a duty of care
- Defensive practices: if to impose a duty on D would promote overly cautious practices which would put third parties at risk, that may preclude a duty of care
- Diversion of resources: if to find a duty of care would divert D's manpower, money and staff resources away from the frontline services into reviews of old cases, that may preclude...
- The no-need policy: a duty of care may not be warranted, if it is unnecessary to afford a remedy via negligence (ie C had other forms of redress)
- The insurability factor: which of C or D could and should have insured himself against the loss suffered?
- Conflict of duties: would D's duty to C require him to put C's interests above those of another party to whom he owes a duty of care? Any conflict of duties will preclude a duty to C
- The indeterminate liability problem: if the losses sustained by C were very large, and if the time period over which losses were sustained was lengthy, and if the members of Cs could be very large, then the prospect of exposing D to indeterminate liability may preclude a duty of care -> however, the mere prospect of indeterminate liability does not, of itself preclude a duty of care arising
- The law's preference for personal injury: if C is claiming only for economic loss and not for personal injury, any duty to avoid such economic loss is more likely to be precluded by policy, personal injury being considered more worthy of compensation
- A matter for the ballot box, or for Parliament: if D's liability is better decided by elected parliamentarians, then the court should not usurp that democratic function

- The what would it achieve factor: if to impose a duty of care on D would neither enhance the standard of care expected of D nor provide the general public with any greater confidence in D's activities, that may count against a duty of care
- The incalculables problem: why should D be the subject of a duty of care, when C obtained benefits, resulting from D's breach. Which are immeasurable?
- Treating Ds alike: if imposing a duty of care upon D would bring D into line with other similarly-situated Ds, that is a factor in favour of a duty
- The protection of the public argument: the purpose of negligence law is to set standards of D's behaviour for the public's benefit
- Compromise of D's liberty: if to impose a duty of care on D would compromise D's individual liberty to act without positively hurting others, then that may militate against a duty
- Battle conditions: where D must make difficult decisions with little or no time for considered thought, which decisions can expose C to physical injury, it may be inappropriate to impose a duty of care
- The disproportionate problem: no duty will be imposed if it would have a punitive element

-> English law is unsettled as to whether the non(availability) of insurance either to C(against the risk of injury) or to D (against the risk of legal liability) is a relevant policy factor governing a duty of care

*Watson v British Boxing Board of Control*: the argument that no duty of care should be imposed on a non-profit making organisation because it didn't carry insurance couldn't succeed, because 'considerations of insurance are not relevant to the duty of care issue

On the other hand:

*Vowles v Evans*: the availability of insurance 'could bear on the policy question of whether it is fair, just and reasonable to impose a duty of care on referees

-> Children(young) -> very young children do not owe a duty of care to those injured or killed by their acts or omissions

*Carmarthenshire CC v Lewis*: The claimant in this matter was the wife of a lorry driver killed whilst trying to avoid a child in the road(who was left unattended by his kindergarden teacher) -> the child was not old enough to be responsible -> D1(the kindergarden teacher) was liable in systematic negligence for allowing David to escape the confines of the kindergarden

*Young v Kent*: contributory negligence which have been held against children as young as 12

-> Police: unless 'special and exceptional' circumstances apply, a police service, D, in the course of carrying out its functions of investigating, detecting and combatting crimes, owes no duty of care to any individual member of the public, C, who suffers physical injury or property damage via the activities of criminals. Even if C is pre-identified to D, as a person in a vulnerable position with respect to actual or criminal activity, no duty of care is owed by D to C -> the Hill core principle



*Hill v CC of West Yorkshire*: Jacqueline Hill was the last victim of Peter Sutcliffe, the Yorkshire Ripper -> C's estate sued that the police service, D, claiming that they had been negligent in investigating the crimes committed by PS -> even though there was reasonable foreseeability of likely harm to persons such as Ms Hill, the requisite proximity between D and C was lacking and several policy reasons precluded a duty of care

*Brooks v MPC*: The claimant and his friend, who were black, were attacked by white youths. The claimant was dealt with by the police in a way that was subsequently subjected to severe criticism in the report of the inquiry into the matters arising from the friend's death

*Smith v CC of Sussex Police*: Smith lived with his lover Gareth Jeffrey. He then ended the relationship and Jeffrey assaulted him. Sometime later Smith moved away but maintained contact with Jeffrey. Jeffrey wanted to resume the relationship but Smith did not. Jeffrey then started sending abusive and threatening texts which included death threats. Smith contacted the police several times in relation to the threats and told them of the previous violence. Jeffrey eventually attacked Smith with a hammer causing him three fractures to the skull and brain damage -> no duty of care was owed to C

At the time Hill was decided, the Anns two-stage test still had currency -> in Brooks Lord Steyn stated that the public had become more cynical of the police's conduct over the years and that with hindsight not every observation in Hill can now be supported

- Policy reasons precluding a duty on the part of the police, D:
  1. floodgate concerns: Jacqueline Hill was 'at no special distinctive risk' -> C could not be seen as a person at special risk simply because she was young and female
  2. defensive practices: if a duty was owed, then D would be likely to carry out their investigations in a 'detrimentally defensive frame of mind (more prone to arresting with insufficient grounds)
  3. diversion of resources: it would be commonly alleged that D failed to catch some criminal as soon as they might have done, with the result that the criminal went on to commit further crimes -> the preparation of D's defence and calling police witnesses would lead to significant diversion of police manpower and attention from the suppression of crime
  4. subordination of the individual for the public good: D's ability to perform their public function in the interests of the community, fearlessly and with dispatch, would be impeded
  5. the no-need factor: there were other torts for which D could be liable
  6. the what would it achieve factor: retired police inspectors would have to be asked whether they would have been misled by the hoaxer who acted in the in the Yorkshire Ripper case -> it would not help anybody punish anybody
  7. potential conflict of duties: if a police officer were to concentrate on one crime, he might be accused of neglecting other crimes
  8. a matter for the ballot box: Parliamentarians must ensure that the public 'get the police force they deserve' -> the threat of litigation would not make D more efficient or capable

*Michael v South Wales Police*: the 999 call was wrongly downgraded in priority(response time 60mins) and the woman was killed -> given that a 999 call had been logged, there was an investigation into criminal activity already on foot, thus placing the case within the Hill core principle

*Robinson v West Yorkshire Police*: an injury to a bystander present at the scene of a drug dealer arrest -> the act of arresting criminals was part of the core functions of D and fell within the Hill core principle -> it also had an obvious public interest so that the risk of injury to passers-by like C was trumped by the risk to public as a whole if drug dealers were permitted to operate on the street

*Osman v Ferguson*: P, a school teacher, formed an unhealthy attachment to a 15-year-old pupil. P repeatedly harassed the pupil. In May 1987 threw a brick to the pupil's home window, smeared dog excrement on the front door and slashed the tyres of the car belonging to the boy's father. The police were made aware of these incidents. Subsequently, P was dismissed from the school. P warned the police that the dismissal was affecting him and he was likely to do something criminally insane. In March 1988 P shot and severely injured the boy and killed his father.

- Where C is a pre-identified victim: the dangerous predicament in which those Cs found themselves was clearly well known to the police and yet still no duty of care arose -> hence, even where C is a particular member of the public whose vulnerability or exposure to risk is well known to the police, the Hill principle will apply
  - The Osman is an arguable case: a very close degree of proximity amounting to a special relationship between the Osman family and the police, D, was established -> it was still against police to impose a duty of care
  - In the Smith case Lord Bingham said that where C, a member of the public, provides police officer D with credible evidence that a third party presents a specific and imminent threat to his life or physical safety, then D owes C a duty to take reasonable steps to assess such threat -> the Smith majority disagreed
  - No blanket immunity: the police do not enjoy a blanket immunity -> the decision in Osman was appealed in the European Court of Human Rights -> *Osman v UK* -> the EU court considered that the Hill principle gave the police a blanket immunity -> however, that critique was later toned down in *Z v UK* -> the European Court admitted that it misunderstood the precise ambit and source of the Hill immunity
  - Exceptional circumstances where a duty will be owed:
    1. where the police themselves created dangerous situations for C -> *Rigby v CC of Northamptonshire*
    2. assuming a specific responsibility: where they have assumed specific responsibility for C's safety and where there is a reciprocal reliance -> *Kirkham v CC of the Great Manchester Police*
- Michael v South Wales Police*: a pre-identified victim of crime is not able to assert that, where the police knew of an imminent threat to C's safety, an assumption of responsibility was undertaken towards him by the police -> the fact that the 999 operator, D1 told C that the South Wales Police D2 would want to call C back, and to keep the line free, didn't constitute any exceptional scenario in which the police assumed responsibility for C's safety
3. Some other police function: the police owe a duty of care where the activities under scrutiny are not done in the course of investigating or suppressing crime, but as part of some other police function
  4. System of work: the police service owes a duty of care to a police employee where the system of work established for police operations requires that the police assume substantial or total control of and responsibility for C's safety and well-being