

# PAPER 4 – LAW OF TORT UNIT WISE SOLVED PAST PAPER QUESTIONS

## UNIT 1 - NEGLIGENCE



Paper 42 M/J 2023

The reasonable man test ensures a consistent approach to breach of duty in negligence.

Assess the validity of the statement above.

[25]

### AO1: Knowledge and Understanding

The *reasonable man test* is a foundational concept in the law of negligence, used to determine whether a defendant has breached their duty of care. The test is based on the idea that the defendant's actions should be compared to what a hypothetical "reasonable person" would have done in similar circumstances. The reasonable man is not an ideal person but rather an ordinary person with average skills and abilities, as established in *Blyth v. Birmingham Waterworks* (1856), where the court stated that negligence arises when a person fails to do something that a reasonable person would have done, or does something that a reasonable person would not have done.

The test is objective, meaning that it is not concerned with the defendant's own characteristics, abilities, or knowledge. This allows for consistency in applying the law, as the actions of the defendant are judged against the same standard, regardless of personal traits. This objectivity is key to ensuring fairness in negligence claims, as it avoids giving individuals different standards based on their particular circumstances.

### AO2: Analysis and Application

The reasonable man test has traditionally provided a consistent approach to determining breach of duty in negligence cases. The test offers clarity by applying a uniform standard across different cases. For example, in *Nettleship v. Weston* (1971), the court held that a learner driver was held to the same standard of care as a fully qualified driver, highlighting the objective nature of the test. The test ensures that decisions regarding negligence are not based on the subjective abilities or awareness of the defendant but rather on what an ordinary, reasonable person would have done in the same situation.

However, the consistency of the reasonable man test has been questioned, particularly when it comes to situations that involve professionals or children. In the case of professionals, the *Bolam v. Friern Hospital Management Committee* (1957) case established that a professional will be judged by the standard of the ordinary competent professional in their field, not by the reasonable man standard. Similarly, in the case of children, the *Mullin v. Richards* (1998) case determined that a child defendant will be judged against the standard of a reasonable child of the same age rather than an adult standard.

These exceptions to the reasonable man test demonstrate that, while the test generally provides consistency, there are scenarios where special considerations are needed. The law has developed to allow flexibility in cases where applying the reasonable man test could result in unfair outcomes, especially when it comes to minors or individuals with particular expertise.

### AO3: Evaluation

The reasonable man test is effective in ensuring a consistent and objective approach to determining breach of duty in negligence, as it applies a universal standard that avoids subjective biases. It offers a straightforward means for the courts to assess whether a defendant's conduct falls below the acceptable standard of care. However, the exceptions to the reasonable man standard—such as in cases involving children or professionals—illustrate that the test does not always produce a uniform outcome.

The flexibility built into the test, particularly in cases involving professionals or children, can be seen as both a strength and a weakness. On one hand, these exceptions ensure that justice is achieved by applying a standard that is fair and appropriate to the defendant's position. For instance, a doctor should not be held to the same standard as a layperson, and a child should not be judged with the same criteria as an adult. On the other hand, these exceptions can undermine



# Past Questions On Tort Of Negligence

**Carol Brennan**



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