

Breach of duty: the standard of care annotated problem question

Kate and Iris have spent the afternoon looking at wedding dresses. Before heading home they go to a new champagne bar to celebrate finding 'the one'. Iris offers Kate a lift home in her car, assuring Kate that she's alright to drive as she's 'probably only just over the drink-drive limit'. On the journey home Iris loses control of the car and crashes into a lamp post. Kate suffers minor cuts and bruises and is taken to hospital for a check-up. At the hospital Kate contracts an infection in a cut to her right arm. The doctor on duty decides not to treat the infection with antibiotics immediately as he has recently read a report in a little-known medical journal which suggested that it is better to allow the body 'time to heal' following a trauma. Kate's right arm is partially paralysed.

Advise Kate.

You should also consider whether Kate was contributorily negligent when she got into the car with Iris knowing that Iris had been drinking (Chapter 10).

Iris clearly owes Kate a duty of care (though you should still establish this), and has caused her injuries so the question you need to consider is whether Iris is acting as a reasonable driver. You need to work through the factors which the courts consider when setting the standard of care.

Kate also has a claim against the doctor. Again duty is straightforward. The issue here is one of 'informed consent'. There is no suggestion that the doctor has had a conversation with Kate above the risks relating to treatment vs non-treatment. Compare and contrast the decisions and reasoning in *Bolam* [1957], *Bolitho* [1998] and *Montgomery* [2015]. The doctor's actions also raise issues relating to causation (Chapter 9).