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## ACTIVITY 9

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### **Application of the *Caparo* test: issues of proximity and policy** (allow 30 minutes)

This activity will allow you to consider two cases which illustrate the factors to be taken into account when deciding whether or not a duty of care will be owed in a novel case. When carrying out this activity you will note that one of the cases pre-dates the *Caparo* decision. It nonetheless remains a good illustration of foreseeability, proximity and the sort of arguments that may be relevant when deciding if it is fair, just and reasonable to impose a duty.

Please read the summary of *Hill v. Chief Constable of West Yorkshire* [1989] AC 53 in *Lunney & Oliphant*, pp. 143–144. Then, using the internet, find the case of *Swinney v. Chief Constable of Northumbria (No. 1)* [1997] QB 464 and read the judgments of Peter Gibson LJ and Ward LJ.

Now answer the following questions:

- 1 What was the decision of the court in the case of *Hill* and what was the reasoning of the House of Lords?
- 2 Why did the Court of Appeal find that arguably a duty was owed in *Swinney* whereas no duty existed in *Hill*? What distinguishes the two cases?

#### COMMENT

- 1 Although it was foreseeable that a failure by the Police to catch the Yorkshire Ripper could lead to further killings the House of Lords decided the Police did not owe a duty of care to any individual. Rather their duty is owed to the public at large.

The reasoning of the courts was founded firmly in policy. If a duty had been imposed on the police in *Hill*, the duty owed to the public would be too wide. Every time the police failed to apprehend a criminal or prevent a road traffic accident they would be liable in a civil claim. The duty would be too onerous. The court was worried that imposing a duty would divert the efforts of the police and financial resources away from policing generally and that this would not be for the greater public good.

(Note: Although the summary in *Lunney & Oliphant* concentrates on the policy aspects of the decision the House of Lords also felt that there was insufficient proximity. As Lord Keith said ‘... Miss Hill was one of a vast number of the female general public who might be at risk from his [the Yorkshire Ripper] activities but was at no special distinctive risk in relation to them’. In other words Miss Hill was not singled out in any way that justified her being protected over and above other members of the public.)

- 2 In *Swinney* the court decided that there arguably was a duty of care. Foreseeability was not problematic. As regards proximity, the court decided the police had assumed responsibility for the claimant and this meant an appropriate relationship of proximity existed. The facts of the case were distinguishable therefore from those in *Hill* as here the claimant was not in a vast indeterminate class but was singled out by the fact she had approached the police and had been reassured by them that her identity would be kept confidential.

As regards policy the court felt that, in appropriate cases, the *Hill* policy arguments would have to be balanced against other policy considerations. Here another policy issue was the desirability of encouraging informants and this pointed in favour of a duty of care arising.