

Negligent statements causing pure economic loss

Negligent statements causing pure economic loss:

- Negligent advice
- Negligent supply of information

As a distinct form:

- Physical harm
- Mental harm
- Acts which cause pure economic loss

Element 1: Duty of care

To establish a duty of care, the plaintiff must prove that there was a special relationship based on:

- An assumption of responsibility by the defendant adviser; and
- Reasonable reliance by the plaintiff

Advisers can include:

- Solicitors
- Accountants
- Auditors

Special relationship?

Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964)

Facts

- The claimants wanted reassurance that they could provide credit to another company (Eazipower). The financial stability was reassured by Eazipower's bank, the defendants
- Soon after giving credit, the Eazipower defaulted and the claimants were liable for Eazipower's debts

Issue

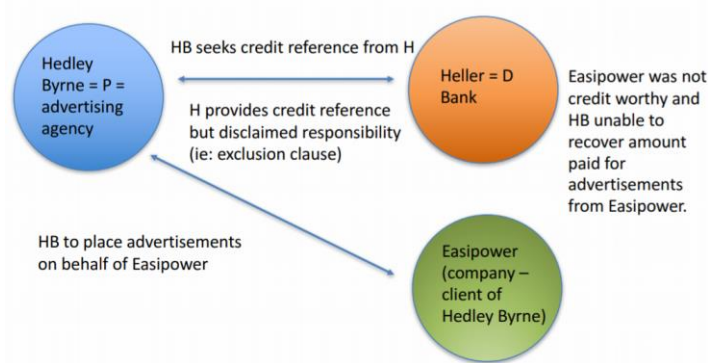
- Could the claimants recover for the negligent preparation of Eazipower's accounts by the defendants
- Could a duty be owed in 'negligent misstatement', a concept previous not used

Decision

- There was a duty, but no liability on the facts

Reasoning

- Where the skill of one is used "for the assistance of another person who relies on such a skill, a duty of care will arise"
- If the advice is passed on to another, where the advisor should know the information will be relied upon, a duty of care will also arise
- If there is a special relationship and reasonable reliance, there is a duty of care



Issue: is Heller liable for the negligent statement it gave to Hedley Byrne that resulted in pure economic loss?

Decision: a duty of care can exist provided there is a 'special relationship' based on some element of 'reliance'.

Note: the limitation clause saved Heller

Hedley Byrne established the concept of 'special relationship'

But what does 'special relationship' mean?

- *Mutual Life and Citizens' Assurance Co Ltd v Evatt* (1971)
- *Shaddock & Associated Pty Ltd v Parramatta City Council* (1981)
- *Esanda Finance Corp Ltd v Peat Marwick Hungerfords* (1997)

Mutual Life and Citizens' Assurance Co Ltd v Evatt (1971)

Barwick CJ:

- Whenever a person gives information or advice (whether that information is actively sought or merely accepted by the other person),
- upon a serious matter (ie: a business matter), and
- the relationship of the parties arising out of the circumstances is such that the speaker realises, or ought to realise, that s/he is being trusted,
- particularly if s/he has access to information or expertise on the matter in question,

THEN:

- the speaker, choosing to give information and advice, comes under a duty to provide that information or advice with reasonable care.

Shaddock & Associated Pty Ltd v Parramatta City Council (1981)

FACTS

- Parramatta City Council asked by Shaddock (developer) whether the land that it intended to acquire was affected by a road widening proposal.
- Parramatta CC advised the Shaddock that the land was not affected by a road-widening proposal, when in fact it was.
- Shaddock suffered pure economic loss as a result of Parramatta CC's failure to disclose the information (the development had to be scaled back).

In *Shaddock v Parramatta City Council*, the High Court posed three questions (similar to Barwick CJ):

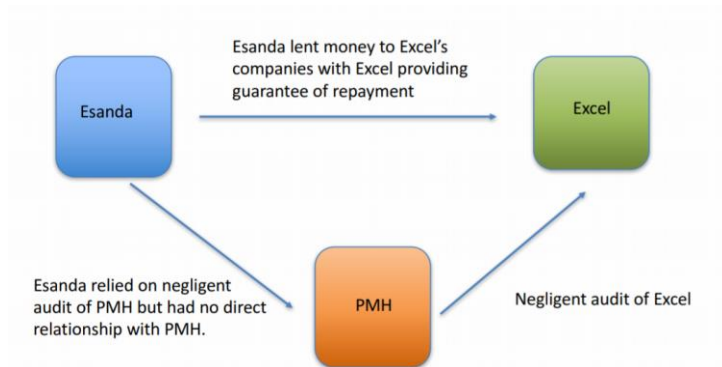
- Was the advice given in respect of a serious or business matter?
- Were the circumstances such that the adviser should have realised that the defendant was being trusted to give correct advice on which the advised intended to act? And
- In the circumstances, was it reasonable for the advised to have relied on the advice?

Esanda Finance Corp Ltd v Peat Marwick Hungerfords (1997)

Where there are three parties in the transaction (ie: auditor/client/third party investor) the duty of care is harder to establish.

- Esanda Finance: Financier
- Peat Marwick Hungerfords: Excel's auditor
- Excel: guarantee of repayment to Esanda for loaning money to various companies associated with Excel

Issue: is a duty owed where the plaintiff did not request the advice?



Test: No duty of care where the defendant acting on the plaintiff's request unless the plaintiff can establish:

- Defendant knew or ought to have known that the information or advice would be communicated to the plaintiff individually or as a member of a class to which the plaintiff belongs,
- For a purpose that would be very likely to lead the plaintiff to enter into a transaction of the kind the plaintiff did enter to,
- In reliance on the information or advice and thereby risk incurring the economic loss if statements were untrue

Note: mere knowledge that someone might see the advice and act on it is not enough

Element 2: Breach of duty of care

Test: has the defendant met the standard of care required by the law of negligence?

Need to consider:

- Foreseeable risk of harm?
S48 (1) *Wrongs Act* + common law
- How would a reasonable person respond to the risk of harm?
S48 (2) *Wrongs Act* + common law

Section 48(1) *Wrongs Act 1958* (Vic)

Division 2—Duty of care

48 General principles

- (1) A person is not negligent in failing to take precautions against a risk of harm unless—
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.