LECTURE 1 AND 2

PURE ECONOMIC LOSS (Ch 8)

Critically examine whether a party can claim for pure economic loss as a result of the negligence of another. Examine why the courts have been cautious for issuing liability based on PEL.

Intro:

PEL arises from a loss that is not from damage to plaintiffs property or person…economic loss can be passed on from person to person (unlike damage to property / person) as a result a single act of negligence can have a wide reaching economic loss of class of people, the loss can easily reverberate through the economy.

Traditionally = courts responded to indeterminate liability by denying liability altogether. Until 2 case:

Hedley byrne v Heller [1964] – PEL by negligent misstatement

Caltex Oil v The Dredge 'Willemstad' (1976) – PEL by negligent acts.

NEGLIGENT MISSTATEMENTS CAUSING PEL:

Liability for negligent misstatements causing PEL was recognised before liability for negligent acts causing PEL. Described in *Hedly Byrne – "words are more volatile than deeds. They travel fast and far afield…take effect with innumerable facts and other words. Yet they are dangerous and can cause vast financial damage"*

IF liability for negligent misstatements (relating to PEL) were to be based solely on reasonable foreseeability of loss, the potential liability of defendants would be enormous.

Ultramares Corp v Touche (1931) – Judge Cardozo stated – "if liability for negligence exists, a thoughtless slip or blunder,…may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class"

Until a case that changed the courts attitude:

Hedley Byrne & Co v Heller [1964] – pg 360- advertising, asked bank for a credit reference 'quite good for its engagements' but made 'without liability'. Did P owe a DofC to take reasonable care? HELD: NO, not liable. Due to 'without liability' statement. However all judge stated orbiter, that had there been no disclaimer then yes, DofC was owed. "that others could reasonably rely upon his judgement or his skill or upon his ability to make careful enquiry…will place reliance upon it, then a duty of care will arise".

Hedley did not lay down a single test, instead identified several factors as being relevant, different factors would have different weight in different cases.

The Hedley Byrne factors were first adopted in Australia in: *MLC v Evatt (1968).*

Not a checklist of factors for the requirement of DofC, need to look at all the circumstances of the case.

RELIANCE AND REASONABLE RELIANCE:

No statement can cause loss unless and until it is relied upon, D will not be liable for Ps loss if P did not in fact rely on Ds statement. If that reliance is not reasonable in the circumstances, it is not reasonable to expect the D to

compensate the plaintiff for any losses suffered as a result. Conversely, if it is reasonable then it (may) be reasonable to require the defendant to recompense the defendant.

MLC v Evatt – expressed the requirement of reliance – "the speaker must realize or the circumstances be such that he ought to have known that the recipient intends to act upon the information or advice in respect of his property or of himself in connection with some matters of business or serious consequence…the circumstances must be of such that it is reasonable in all the circumstances for the recipient to seek, or to accept, and to rely upon the utterance of the speaker".

This was applied in the High Court case of:

Tepko v Water Board (2001) pg 362– relied upon the estimation of the water board for water connection (that was given but was inaccurate) the deal for the land was called off due to it being too expensive. Tried to sue the water board since they relied on the estimate given. HELD: No DofC – High Court – was not reasonable to rely on a estimation, and the nature of the reliance was not reasonable.

As tested in Tepko the reasonableness needs to be taken into account with all the facts of the situation as well as the context in which the advice was given.

Mohr v Cleaver [1986] – accountant owed no DofC to take reasonable care when giving 'off the cuff' advice on the phone, because the recipients had jjstasked for casual advice, they did not make it clear they were seeking considered advice. The Plaintiffs ahd not acted reasonable on the advice.

Shaddock & Associates v Paramatta City Council (1981) – High Court held, no DofC arose from information given over the phone because of the informality of the occasion.

Conversely, in some cases the reasonableness of the plaintiffs reliance is so obvious to be assumed:

Pullen v Gutteridge Haskins & Davey – where the defendant is a professional person and the plaintiff is the defendants client, it is not necessary to plead and prove reliance in order to est a DofC.

"SPECIAL SKILL':

Significant factor in determining if its reasonable for the plaintiff to rely of the information. If the defendant is, or claims to be, an expert in the fiend in which they are giving advice or information, and the plaintiff is not, then there are strong grounds for saying that the plaintiff can reasonably and will rely on the statement and the defendants expertise rather than their own judgement. 'Special skill' has always been a factor in determining a DofC.

MCC v Evatt (1968) – High court case – asked for advise from an insurance company, if a sub-sidery company was a sound investment (it wasn't), acting on the advice the plaintiff invested in the company and lost his money. Claimed for negligent advice. HELD: did owe a DofC to take care in giving advice, the fact that the defendant was not in the business of giving investment advice did not affect the duty to take reasonable care in giving out such advice.

Was appealed to the Privy council – held 3:2 that the insurance company did not owe a DofC because it did not have, nor claim to have, a special skill in the giving of investment advice.

Evatts case highlighted the importance of having a 'special skill' – not merely