NEGligence – provides a remedy to C for loss or damage caused by the negligence of D. There are principal elements, namely: 1.d of c owed to the C; 2.Breach of that d of c; 3.The breach caused the damage (ie causation); 4.The c suffered some damage that was reasonably foreseeable (ie remoteness). The universal test of *Donoghue v Stevenson* devised the ‘neighbour principle’ and has been extended to cover a wide variety of situations eg *Hedley Byrne & co v Heller v Partners*. Has a d of c already been established? If yes, apply d of c. If no, follow the 3 stage Caparo test.

**Hedley Byrne v Heller**

1.A special relationship of trust and confidence between c and d.

*The phrase is not actually fully explained in Hedley Byrne. Early decisions concentrated on there being a business, professional or fiduciary relationship between the parties. This, however, is no longer a requirement. Social relationships were considered in Chaudry v Prabhakar.

2.D must have voluntarily assumed the risk, expressly and impliedly.

Henderson v Merrett Syndicates Ltd; Spring v Guardian Assurance plc. NB Policy considerations in Caparo.

3.Reliance by C on the advice or information.

Caparo:

*The d knew the statement would be communicated to c (actual reliance - JEB Fasteners Ltd v Marks Bloom & Co);

*the advice was given for a specific purpose or transactions of a particular kind (reasonable reliance);

*the c reasonably anticipated that the d would be likely to rely on the advice for the purpose for which it was given (or at seeking further independent advice on the advice being relied upon) (reasonable reliance)

*D knew of the identity of the c.

4.Reasonable for C to rely on advice.

Statements made by third party – exceptional case:

*statutory duty – Ministry of housing and local government v sharp

*Drafting wills – Ross v Caunters; white v jones

*References/provision of services – sping v guardian assurance plc

**Summary of current law**

*James McNaughton Paper Group v Hicks – no liability as no knowledge by d that c would rely on accounts. Reasonable assumption that c would take independent advice.

*cf Morgan Crucible v Hill Samuel Bank; Yorkshire Enterprise ltd v Robson Rhodes.

**Use of disclaimers:**

* Hedley Byrne & co v Heller v Partners – disclaimer was effective.

* cf Smith v Eric S Bush –disclaimer was not effective, so not reasonable to exclude liability for negligence under UCTA 1977.

**Liability of a company director for negligent misstatement:**

*The concept of limited liability upon incorporation of a limited company is liable for debts incurred.

*The protection of the veil of incorporation (only pursue limited company not the directors/shareholders) – Salomon v Saloman & Co.

*A director of a limited company will be personally liable for a statement – Williams v Natural Life Health Foods Ltd – principle of veil of incorporation applied, no personal liability on d for negligent misstatement, UNI Exempt a special relationship between c and d (reasonable reliance by c and an assumption of personal liability by d) BUT…

*cf MCA Records Inc v Charly Records ltd (No.5) – joint liability in tort of d with the company. No protection for d as did act through company.

*Standard Chartered Bank v Pakistan National Shipping Corporation – liability of a company director in the tort of deceit. Generally cts will allow personal liability to flow to d or employee if evidence of deceit.