

BUSINESS LAW – LAW OF TORT (lecture 6)

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.

The current test is utilized in *Caparo Industries plc v Dickman*:

1. The loss must be reasonably foreseeable; and
2. there must be a relationship of sufficient proximity between the c and d; and
3. it must be 'fair, just and reasonable' for the law to impose a duty in the situation.

Problem: Pure Economic Loss

*PE can occur in 2 ways: by negligent misstatement or by a wrongful act or omission.

*The courts have sought to make a distinction between actual physical damage to property, consequential economic loss and pure economic loss – *Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd*

Exception to the general rule: the rule in *Hedley Byrne v Heller* – Though the cts have traditionally been reluctant to allow for claims for PE loss, if such losses have been caused by negligent misstatement or service then they may be recoverable. NB A NM is a statement which is made negligently and causes C economic loss.

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 transaction or transactions of a particular kind (purpose reliance);

*the c reasonably anticipated that the c would be likely to rely on the advice for the purpose for which it was given, without seeking further independent advice (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 – *spring 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 Soloman & 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, UNLESS, a special relationship between c and d (require 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.