

Hedley Byrne & Co Ltd v Heller & Partners Ltd 1964 UKHL → **Negligent misstatement/special relationship**

Advertising firm asked bank about a company's financial stability, as they were set to do a deal that would make them personally liable to pay for advertising offers. The bank gave a favourable credit reference with a disclaimer avoiding responsibility. This credit rating proved to be wrong, and the appellant lost \$ and sued for negligent misstatement. The issue was that no contract existed between the parties, due to no direct link in privity nor no consideration given.

Was the bank liable for negligent misstatement?

Lord Reid:

Tort law approach

Endorses Denning LJ in *Candler v Crane*: Proximity argument of identifying person/purpose

- Donoghue v Stevenson dealt with negligent action
- There is a difference between negligent actions and negligent misstatement, and thus a difference in the law:
 - o Difference in the care people take in what they say depending on the circumstances (e.g. social vs business environment)
 - o Also how far words can spread

Test of DOC: when they provided the information was it reasonably foreseeable that Hedley Byrne would act on it to its detriment?

- o Yes; but this wasn't enough – concern over **indeterminate liability**

Must be more than misstatement on the facts:

- **Person must have undertaken some responsibility, or been in a "special relationship"**
 - o Any relationship where the party seeking information is trusting the other to exercise a DOC, where it was reasonable for the person to do that, and also knew/ought to have known that the information would be relied on e.g. fiduciary relationship
 - o **Modifies Candler v Crane:** the bank did not know the trade creditors **but knew the class of people relying on it, this was sufficient**
 - The banker was a professional, and the advertising agency was relying upon it to prepare information they would rely on
- Reasonable person standard: if person knows information will be relied upon, has three options
 - o **Say nothing**
 - o **Give answer with a disclaimer**
 - o **Just answer**
 - If they just answer, then this is an acceptance of responsibility
- Because the bank made the disclaimer, they cannot be held liable

Lord Morris

In any situation where a person has a special skill and that is relied upon, a duty of care can arise

- Anywhere where a judgement is made based on skill or knowledge, and a person takes it upon themselves to tell another, and knows that this other person will rely on that information
 - o Bank disclaimer: they were safe as they only provided the information on the basis that there was no expectation that it would be solely relied upon

Lord Devlin

Focused on the nature of the overall dealings

- Distinction between physical injury and financial loss is stupid, should be able to recover for both

Special relationship:

- Value of Donoghue v Stevenson: does the relationship between the parties give rise to a special duty?
 - o Special relationships not limited to contractual or fiduciary relationships
 - o No contract law could apply here as no consideration was given, bank provided information without being paid
 - o But a “special relationship” can also include those “**equivalent to contract**”
- Have to consider whether relationships are professional or social; whether they are of contractual character; whether an indirect reward is being given; whether it is general or particular
 - o General: banker and customer, solicitor and client = assumed duty
 - o Particular: more dependant on facts

Again, the bank disclaimer meant that they were exempt from responsibility

Result: a duty of care could have been established due to it being reasonably foreseeable that Hedley Byrne would be relying on the information, the bank knew of the class of people using the information, and a special relationship could be thought to have existed given the bank was acting as a professional body dealing with a client. However, due to the disclaimer, this meant that the bank was exempt from responsibility as they only provided the information on the basis that they would not be held liable if it was relied upon.

Test now to establish DOC:

1. Was it reasonably foreseeable?

2. Did the expert know the person using the information/purposes of using the information: not as important, can know be knowledge of the class/type of person relying on the information

3. Did a “special relationship” exist: fiduciary, “equivalent to contract”, consider whether social/professional etc.