



Tort law! → by distinguish have contract or not

LW 2903 Business and Law

Lecture 7 Negligent Statement

no contract
involved,
incorrect
statement
↳ cause economic
loss!! (money)

Negligent Statement

- The earlier position was summed up by Bowen LJ :

Quote not important — “The law of England does not consider that what a man writes on paper is, like a gun or other dangerous instrument.”

- A negligent statement that causes a pure economic loss can now be the subject matter of a tortious claim.

(buyer & surveyor)
(x contract, ∴ contract only btw bank & surveyor)
— but actually wrong
(x pay for advice ∴ no contract)

• Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964]

✓ Disclaimer at the bottom of letter → plaintiff lose

fulfill 4 points

- A negligent misrepresentation might give rise to an action for financial loss caused even if the maker of the statement and the recipient do not have any contractual relationship, provided that the maker and the recipient had a 'special relationship'.

btw plaintiff & defendant

- A special relationship arose where: ☆

1. The plaintiff ask for advice or information from the defendant who possessed special skill; eg. accountant

2. The defendant knew or ought to have known that the plaintiff would rely on such information and advice;

defendant know the answer

3. The plaintiff, in fact, acted on such advice or information and suffered loss; and

whether plaintiff should rely

4. It was reasonable for the plaintiff to seek the advice and information from the defendant and act on them.

plaintiff rely

Fullfill all 4 elements 先可以 sue

• Followed in Baron v Hartford Fire Insurance Co [1998]

Father & insurance company
son & insurance company

tell that if father is
shot by gun, insurance cover

even not professional

↓

act on professional & provide incorrect advice

↳ u sue

↓
not correct

① Ask

② Reply

③ Reliable

④ Economic loss

Special Relationship

advice must tailor to
your need / specific recipients

if to general public $\Rightarrow$ X liability

- Giving negligent advice or information **does not create any liability** on the **person giving such advice or information**.
= general information

- **Mutual Life & Citizens' Assurance Co v Evatt [1971]:**
Special relationship exists where the person giving advice is a **professional adviser** or holds himself out as having some professional skills.

must be in the field / eligibility to
give such advice

(not a good case to
rely on (': some said
not rly professional adviser
is needed)

inform existing shareholder only (not provide to general public, not tailor to plaintiff need/particular purpose)
plaintiff & ask for advice
↳ just obtained document himself (x defendant give)
Special Relationship x special relationship

- **Caparo Industries v Dickman [1990]** – the defendant did not owe a duty of care to the plaintiffs as potential investors.
(outsider) only owe to member of company
- An important **requirement of liability** is that the defendant assumes some sort of **responsibility to give correct advice or information**.
- For advice requested and given on a **purely social occasion**, representor would **not think** that his **advice will be taken seriously** and it is **unreasonable for the representee to take such advice seriously**.

not reasonable to base investment on a pure conversation



Special Relationship

- In *Caparo v. Dickman* (1990), D prepared an annual **audit report** of X (a company), P bought the shares of X (i.e. to **takeover** X). In doing this, P **relied on D's audit report which negligently over-valued** assets of X. P's **investment** was virtually **wiped out**.
- **Issue:** Any **special relationship** between P and D?
- **Held: No.** D prepared the **audit report** for the **benefit of the shareholders** of X, **not to** assist the **potential investors** of X.

building society

Surveyor
↑ Report (negligent)
bank
↑ payment

payment indirectly

Special Relationship

- **Proximity: *Smith v Eric S Bush* [1990]** – extended the Hedley Byrne principle to known users of the advice whether or not they are the **intended recipients** of the advice or information.
- **Professional advice in a social context: *Chaudry v Prabhaker* [1989]** – giving advice to a friend but it was not considered to be given on a purely social occasion.
(Assumption of responsibility)
Ard can held liable too
- **Passive sufferer: *Spring v Guardian Assurance Plc* [1995]** – reference letter was ‘the kiss of death’
Incorrect reference letter

Professional Negligence

Professional negligence is concerned with judging the **conduct of a particular profession** (e.g. accountant/ auditor) mainly in accordance with the **normal practices and procedures** of that profession.

After establishing that the defendant (e.g. accountant/ auditor) owes a **duty of care** to the plaintiff, the next thing to do is to find out the **standard of care**.

For professionals, the test is “*what a reasonably competent practitioner would do having regard to the standards normally adopted in his profession”.*”

Professional Negligence

Therefore, the court may refer to the **codes of practice and industry standards** of the profession in **deciding the proper standard**.

e.g. In preparing the **financial statements** of a company, the **auditor has to abide by** the Statements of Standard Accounting Practice (“**SSAPs**”), which was issued by the Hong Kong Society of Accountants.

In *Peter P F Chan v. Hong Kong Society of Accountants (2001)*, the court emphasised that the **SSAPs were required to be followed** (though they do not have the status of law) and any **deviation** from them should only be made in **exceptional** circumstances and had **to be justified**.
but still need to follow unless exceptional circumstance

Susan v Asin Limited
↳ liable