Hedley Byrne & Co Ltd v Heller & Partners Ltd

Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 is an English tort law case on pure economic loss, resulting from a negligent misstatement. Prior to the decision, the notion that a party may owe another a duty of care for statements made in reliance had been rejected,[1] with the only remedy for such losses being in contract law.[2] The House of Lords overruled the previous position, in recognising liability for pure economic loss not arising from a contractual relationship, introducing the idea of "assumption of responsibility".

Facts

Hedley Byrne were a firm of advertising agents. A customer, Easipower Ltd, put in a large order. Hedley Byrne wanted to check their financial position, and creditworthiness, and subsequently asked their bank, National Provincial Bank, to get a report from Easipower's bank, Heller & Partners Ltd., who replied in a letter that was headed,
"without responsibility on the part of this bank"
It said that Easipower was,
"considered good for its ordinary business engagements".
The letter was sent for free. Easipower went into liquidation and Hedley Byrne lost £17,000 on contracts. Hedley Byrne sued Heller & Partners for negligence, claiming that the information was given negligently and was misleading. Heller & Partners argued there was no duty of care owed regarding the statements, and in any case liability was excluded.

Judgment

The court found that the relationship between the parties was "sufficiently proximate" as to create a duty of care. It was reasonable for them to have known that the information that they had given would likely have been relied upon for entering into a contract of some sort. This would give rise, the court said, to a "special relationship", in which the defendant would have to take sufficient care in giving advice to avoid negligence liability. However, on the facts, the disclaimer was found to be sufficient enough to discharge any duty created by Heller's actions. There were no orders for damages. Lord Morris of Borth-Y-Gest,[3]

> **"**I consider that it follows and that it should now be regarded as settled that if someone possessing**"** special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise. The fact that the service is to be given by means of or by the instrumentality of words can make no difference. Furthermore, if in a sphere in which a person is so placed that others could reasonably rely upon his judgment or his skill or upon his ability to make careful inquiry, a person takes it upon himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows or should know, will place reliance upon it, then a duty of care will arise.
> ...in my judgment, the bank in the present case, by the words which they employed, effectively disclaimed any assumption of a duty of care. They stated that they only responded to the inquiry on the basis that their reply was without responsibility. If the inquirers chose to receive and act upon the reply they cannot disregard the definite terms upon which it was given. They cannot accept a reply given with a stipulation and then reject the stipulation. Furthermore, within accepted principles... the words employed were apt to exclude any liability for negligence.

Effectively, the House of Lords had chosen to approve the dissenting judgment ofDenning LJ in *Candler v Crane, Christmas & Co* [1951] 2 KB 164.

Subsequent developments

- *Home Office v Dorset Yacht Co* [1970] AC 1004, Lord Reid remarked,

In later years there has been a steady trend towards regarding the law of negligence as depending on principle so that, when a new point emerges, one should ask not whether it is covered by authority

but whether recognised principles apply to it. *Donoghue v Stevenson* [1932] AC 562 may be regarded as a milestone, and the well-known passage in Lord Atkin's speech should I think be regarded as a statement of principle. It is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. But I think that the time has come when we can and should say that it ought to apply unless there is some justification or valid explanation for its exclusion. For example, causing economic loss is a different matter: for one thing it is often caused by deliberate action. Competition involves traders being entitled to damage their rivals' interests by promoting their own, and there is a long chapter of the law determining in what circumstances owners of land can and in what circumstances they may not use their proprietary rights so as to injure their neighbours. But where negligence is involved the tendency has been to apply principles analogous to those stated by Lord Atkin (cf. *Hedley Byrne v. Heller* [1964] A.C. 465).

- *Smith v Eric S Bush* [1989] 1 AC 831; The defendants were surveyors for amortgagee. They performed a survey of the house, declaring it to need no significant repair. Relying on this, the house was conveyed to a purchaser. The chimney stack in the house subsequently fell down, and the purchaser sued for the negligent statement. It was held that even though the defendants had issued a liability waiver, this could not stand up to the Unfair Contract Terms Act 1977's test of reasonableness. More importantly, however, the court held that it was not unreasonable for the purchaser of a modest house to rely on the surveyors' evaluation, as it was such common practice. In this way the court extended Hedley Byrne liability to proximate third parties.
- *Caparo Industries plc v Dickman* [1990] 2 AC 605; This concerned an auditor (Dickman) who had negligently approved an overstated account of a company's profitability. A takeover bidder (Caparo) relied on these statements and pursued its takeover on the basis that the company's finances were sound. Once it had spent its money acquiring the company's shares, and company control, it found that the finances were in poorer shape than it had been led to believe. Caparo sued the auditor for negligence. The House of Lords however held that there was no duty of care between an auditor and a third party pursuing a takeover bid. The auditor had done the audit for the company, not the bidder. The bidder could have paid for and done its own audit. Consequently there was neither a relationship of "proximity" nor was it "fair, just and reasonable" to make the auditor liable for the lost sums of money that the takeover incurred.
- *White v Jones* [1995] 2 AC 207; In this case, which was only carried by a 3:2 majority, a solicitor was told to draw up a new will, splitting the testator's estatebetween the two plaintiffs, his daughters. He negligently failed to do this by the time of the testator's death, and the estate passed in accordance with the testator's wishes expressed in a previous will. The daughters sued the solicitor in negligence. It was held that the solicitor had assumed a special relationship towards them, creating a duty of care which he had carried out negligently, and therefore had to indemnify them for their loss. Once again this extended Hedley Byrne liability to a proximate third party.
- *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145; This case concerned the near collapse of Lloyd's of London when hurricanes in America devastated its property holdings. It called upon its "Names" (the shareholders) to indemnify them for its losses. The Names sued the shareholding company for mismanagement and negligence. The Names were both direct shareholders and, crucially, those who had obtained a stake through another third-party agent. It was held that Merrett Syndicates was liable to both types of shareholders, as there was enough foreseeability to extend pure economic loss liability to "un-proximate" third parties. The major significance here was, however, the allowance of claims in both contract and tort, which blurred the divide between the two. Some of the first party Names claimed in tort to overcome the three-year limit in which an action must be taken in contract. In allowing such an action, the House of Lords expressly overruled Lord Scarman's ruling in *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986], in which it was held that:

"there is nothing advantageous to the law's development in searching for a liability in tort where the parties are in a contractual relationship." The allowance of concurrent actions was immensely controversial, as it ran contrary to legal orthodoxy.