Pure economic loss negligence

" Many losses resulting from tort could be described as economic; the term is usually used to cover losses which are 'purely' economic meaning those where a claimant has suffered financial damage that does not directly result from personal injury or damage to property, as when a product brought turns out to be defective, but does not actually cause injury or damage to other property". Catherine Elliott & Frances Quinn (7th Edition).

A plaintiff can claim in negligence if he suffers financial loss due to negligent mis-statement.'Special relationship' between parties and the 'special skill' represented by the defendant together with 'Reliable reliance' are the necessary elements required by a Plaintiff for establishing a liability in a professional negligence action.

Albert's trust and action can be discounted, as Barry was not qualified to provide professional advice pertaining to investment decisions. Also, the advice was imparted in a social set up and thus held little trust for serious consideration. Lastly, Albert had not specially requested for considered advice, mentioning to Barry that it would be adhered to. Therefore, the condition of notion of proximity was not satisfied. According to Lord Devlin's formulation, a duty of care arose only when there existed a relationship " Equivalent To Contract"[1], between the claimant and the defendant, an application of the general conception of proximity, between the two parties. In the given scenario a special relationship between the parties was non-existent.

Albert's reliance on Barry's advice was unjustifiable, as the loss suffered here was not attributable to the defendant's negligent mis-statement; he had not

voluntarily assumed responsibility towards the claimant. A duty of care would only arise if the defendant foresaw the claimant's reasonable reliance on his statement.

The case of HEADLEY BYRNE & CO. LTD v HELLER AND PARTNERS LTD[2] (HOUSE OF LORDS, 1964) applies to the given situation. Here the court held that if a professional person in the course of his business imparted advice, knowing that it was being relied upon, then he owed a duty of care to that person, to exercise reasonable care and skill, failing which, he would be liable in negligence. However, a disclaimer prevented any duty of care from arising.

Since, the above is not applicable to Barry, he did not owe any duty of care to Albert. The advice I would give Albert is not to take recourse to legal proceedings. With so many factors working against him, the chances of a successful outcome were highly unlikely. It would be time consuming besides not being monetarily feasible. The claim being made in the County court would require regular legal payments and he might also end up being responsible for the legal costs of Barry since it would be difficult to prove that the loss was only due to Barry's negligent mis-statement.

CASE II

Although the claimant did not pay to receive the information, the essential element of 'proximity' between the defendant and claimant existed. Jim was aware that his advice would be acted upon in a specific way, making him responsible for the provision of accurate advice, which he failed to provide. Parties bound in a contractual relationship owe a duty to be careful while

providing statements to the contracting party. Reliance by the Plaintiff was reasonable as she had particularly requested 'considered advice'. Therefore, although it was not in Jim's professional capacity to provide legal advice, he owed her a duty of care.

The significant effect of the reliance element can be illustrated by MORGAN CRUCIBLE CO PLC V HILL SAMUEL BANK[3] (1991) where the court held that defendants were liable for the claimant's losses. It was reasonable for the claimants to rely on the defendant's advice since the advice had been specifically prepared for the purpose of the take-over bid. The negligent professional owed a duty of care to the identified client.

In the HEADLEY BYRNE & CO. LTD v HELLER AND PARTNERS LTD (HOUSE OF LORDS, 1964) case, the bank was sufficiently precise, disclaiming any responsibility, thus preventing any duty from arising[4]. Jim however, did not indicate that the advice given was subject to a disclaimer and that it should not be relied upon, therefore, proving Mrs Smith's reliance on his statement as foreseeable and reasonable.

In the CAPARO INDUSTRIES PLC v DICKMAN[5] (1990) case the court held that no duty of care was owed to the claimant. The accounts were not for the purpose of providing advice regarding investment decisions. There was insufficient proximity between the claimant and the defendants as the accountants were unaware that the claimants intended using the accounts as guides for investment. Although, Jim could argue that he lacked the required skills to provide advice regarding claims and that she should have made use of independent advice, this maybe shunned on the grounds that

he was consciously aware of the claimant's intention of adhering to his advice.

The advice I would give Mrs Smith is to impose a claim, as the loss suffered by her because of not claiming her insurance was attributable to the defendant's negligent mis-statement. He had voluntarily assumed responsibility towards her and therefore it was his duty to find out about any changes in law that affected her position. He owed her a duty of care and was clearly in breach of that duty. It would be reasonable to sue him in the County Court in order to make good the loss or otherwise try for an out of court settlement to avoid legal costs.

CASE III

The loss suffered here resulted from a negligent act, the basic rule for which is that a person can sue for economic loss consequent on physical loss suffered by the person, but may not sue if he has suffered economic loss alone. However, an exception to this rule is when there is sufficient proximity between the parties and one element in this maybe reliance by one on the other.

The loss arising from direct damage to Percy's crops was an economic loss. The loss on profit arising from his inability to sell the damaged crop was a 'consequential economic loss'[6]. Financial loss due to his inability to plant and sell a further field of crops because of the state of the land was a 'pure economic loss'[7].

SPARTAN STEEL v MARTIN & CO[8] (1973) is a case holding relevance in the given context. The court held that the claimants could only recover for the

physical damage to the melt in progress, plus loss of profit on that melt, but not for the profits they would have made while the power was off. The damage to the melt was an economic loss while the loss of profit on that melt was consequent thereon but loss on profit caused by the power cut was not directly consequential upon any damage done and therefore a pure economic loss, and not claimable.

Percy can therefore claim for the economic loss as well as for consequential losses thereon. However, he cannot recover the pure economic losses that were independent of the physical damage. Pure economic losses are usually not compensated for a number of reasons, including but not limited to the court's fear of the floodgate[9] problem.

Even in the case of MURPHY v BRENTWOOD[10] (1990, HL) the House of Lords held that no duty of care existed in case of apparent defects. The cost of remedying the defect was purely an economic loss and not recoverable.

Therefore, it is recommendable to pursue a legal claim in the County court for the loss Percy suffered as a result of damage to his crops and on the consequential losses but not for the pure economic losses. Preceding cases give sufficient assurance that Percy could claim for the former two. Since the losses suffered were quite large it would be reasonable for Percy to go ahead with legal proceedings.

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