

## Negligence misstatement

### Issue:

Does \_\_\_\_\_ (plaintiff) successfully sue \_\_\_\_\_ (defendant) for negligence misstatement?

### Rules & Application

An action for economic loss caused by negligent misstatement may succeed if the criteria for **(1) duty of care, (2) breach in the requisite standard of care, (3) damage caused by the breach that was reasonably foreseeable**. Defences should also be considered.

**A duty of care** in negligent misstatement claims arises where there is a 'special relationship' between the parties (**Hedley Byrne v Heller**). It exists "where the recipient of the advice trusts the other to exercise such a degree of care as the circumstances require, where it is reasonable to do that, and where the speaker knows or ought to know the other is reliant on him/her.

The test for establishing a "special relationship" was set out in **Shaddock v Parramatta City Council**;

1. The subject matter must be of a business or serious nature
2. The speaker must realise or ought to realise that the recipient intended to act on the advice
3. The circumstances must be such that it is reasonable for the recipient to rely on the advice.

Reasonable reliance is the key to establish a duty of care in negligent misstatement cases.

- At the outset, it can be said that \_\_\_\_\_ (Defendant) is **vicariously liable** for \_\_\_\_\_ (plaintiff's negligent advice) as \_\_\_\_\_ (plaintiff's action)
- In giving professional advice, \_\_\_\_\_ (plaintiff) \_\_\_\_\_ (actions)
- The advice given deals with land use rights and has a bearing on investment decisions. It is clearly of a **business or serious nature**.
- \_\_\_\_\_ (Plaintiff) ought to realise that \_\_\_\_\_ (defendant) **intends** to act on his advice as it was sought for ascertaining the purposes for which \_\_\_\_\_
- It is **reasonable** for \_\_\_\_\_ (Plaintiff) to **rely** on advice given by \_\_\_\_\_ (defendant) based on his special skill, in that he had access to knowledge not otherwise available. It would therefore be reasonable for \_\_\_\_\_ (Plaintiff) to act in reliance on the advice given. The nature of the occasion made clear the gravity of the inquiry and the importance and influence attached to the answer (both Shaddock's and Hedley Byrne's cases support this). Because it was reasonable for \_\_\_\_\_ (plaintiff) to rely on \_\_\_\_\_ (defendant's advice), a relationship of proximity or closeness arises between them. Accordingly, \_\_\_\_\_ (Plaintiff) is owed a duty of care by \_\_\_\_\_ (defendant) (acting through AGENT)

### **Breach of duty of care**

The next step to be satisfied is that you **breached your duty of care**. It is highly probable that if you provide your client incorrect advice, they will act on it and may incur economic loss. The harm in this case is serious, \_\_\_\_\_ (results). Therefore there has been a clear breach of your duty.

The breach causes the harm

Clients must satisfy the following

1. The breach of duty was a necessary condition of the occurrence of the harm (factual causation)
2. It is appropriate for the scope of the liability of the defendant to extend to the harm (scope of liability)

In order to satisfy factual causation you must satisfy the “but for” test (**Chappel v Hart (1998) 195 CLR 232**) Here, your negligent advice clearly caused your client to incur a liability of \_\_\_\_\_

In order to satisfy the second requirement, the court must be satisfied that it is appropriate for the defendant’s liability to extend to the harm suffered by the plaintiff. The damage cannot be too remote: **Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (Wagon Mound No 1) [1961] AC 388**. In this matter, incurring \_\_\_\_\_ (actions) as a result of a \_\_\_\_\_ (defendant’s advice) is not too remote.

### **Damages**

**Damage** is obviously apparent, in that the \_\_\_\_\_ (Plaintiff’s loss). Causation is usually worth some consideration in this context because “but’for” \_\_\_\_\_ (defendant’s breach of its duty of care), \_\_\_\_\_ (plaintiff) would not have suffered such loss. This satisfies the causation test. The loss was certainly not caused by some other factor, such as an economic downturn (**Alexander v Cambridge Credit Corp**). Secondly, the damages were not too remote, in that they were a reasonably foreseeable consequence of the breach (the **Wagon Mound** case)

### **Defences**

Once negligence is established, it is necessary to consider whether any defences apply. If the defendant can show the plaintiff *voluntarily assumed the risk*, the defendant escapes all liability (**Agar v Hyde**). In the case of *contributory negligence*, the plaintiff’s compensation is reduced to the extent that the court considers just and equitable having regard to the plaintiff’s share in the responsibility for the damage (**s 26 Wrongs Act 1958 (Vic)**).

After negligence has been established, \_\_\_\_\_ (Defendant’s defences should be discussed. Voluntary assumption of risk does not // does appear relevant on the facts, as \_\_\_\_\_ (plaintiff does not aware of the risk // the plaintiff did not have full knowledge and appreciation of the risk of \_\_\_\_\_). However, this may // not be a successful claim in contributory negligence, given that \_\_\_\_\_. The illegality of the plaintiff’s conduct is also taken into account under **s 14G of the Wrongs Act 1958 (Vic)**.

**Conclusion:** \_\_\_\_ (plaintiff) should be successful in an action against the \_\_\_\_ (defendant) for negligent misstatement.

## Negligence

### Issue:

The main issue in the case is whether \_\_\_\_\_ can successfully bring an action into existence against \_\_\_\_\_ in relation to negligence?

// Is \_\_\_\_\_ (defendant) liable in negligence to \_\_\_\_\_ (plaintiff)?

### Rules & Application:

To succeed in an action in negligence, the plaintiff must prove on the balance of probabilities that (a) a duty of care is owed, (b) that the duty of care has been breached and (c) that the breach caused damage which is not too remote from the breach.

(a) To establish a duty of care, the plaintiff must satisfy the “neighbour principle” established by Lord Atkin in **Donoghue v Stevenson**. Under the neighbour test, a person would be likely to injure their neighbour. In law, your neighbour is “those person so closely and directly affected by your acts that you ought reasonably have them in contemplation as being so affected when directing your mind to the acts or omissions which are called into question.” *Arguably // In this matter // In this case // In this way, it would appear that to be reasonably foreseeable that,*

*\_\_\_\_\_ (XXXXX could cause harm to somebody who is in XXXXX). If it does not exercise reasonable care in the safety conditions on the premises. This means that \_\_\_\_\_ (Plaintiff) who might foreseeably suffer harm as a result of \_\_\_\_\_ (defendant)’s conduct (**Australian Safeway Stores v Zaluzna**). It need not be probable that \_\_\_\_\_ (defendant) would cause harm to \_\_\_\_\_ (plaintiff); only that there is a “real risk” that \_\_\_\_\_ (defendant) would owe \_\_\_\_\_ (plaintiff) a duty of care.*

The court will consider the relationship between the parties and compare the salient features to other cases (**Sullivan v Moody**). Three elements have to be taken into consideration where a duty of care found exists including the need for *coherency in the law, conflicting duties of care: doctors don’t owe a duty of care of parent and the possibility of indeterminate liability*. In this matter, \_\_\_\_\_ ( i.e. relevant factors here are (a) the nature and degree of \_\_\_\_\_ (defendant’s) control over risk and (b) the degree of \_\_\_\_\_ (plaintiff’s) vulnerability and \_\_\_\_\_ his//her reliance on the proper exercise of reasonable care by \_\_\_\_\_ (defendant). \_\_\_\_\_ (defendant) is likely to owe \_\_\_\_\_ (plaintiff) a duty of care. However, as a counterargument, it may be claimed that \_\_\_\_\_ (plaintiff) was not sufficiently vulnerable or reliant in that \_\_\_\_\_ should have been aware of the risk of injury in \_\_\_\_\_.