

**HEDLEY BYRNE & CO LIMITED V HELLER & PARTNERS LIMITED [1964] AC 465**

House of Lords – 28 May 1963

**FACTS**

Hedley were advertising agents who placed expensive forward advertising orders for Easipower. Hedley would be personally liable for the cost of the orders, so they asked their bankers to inquire into Easipower's financial stability. The bankers made inquiries of Heller, Easipower's bankers.

Heller gave a favourable reference but stated that the reference was 'Without responsibility'.

In reliance on the references Hedley placed orders which resulted in a substantial financial loss. Hedley sued Heller for negligence.

**ISSUES**

Did Heller, who was not in a contractual or fiduciary relationship with Hedley, owe a duty of care to Hedley to not give negligent advice?

Did the statement by Heller that the reference was given "without responsibility" exclude Heller from being liable for negligence?

**FINDING**

1. The law will imply a duty of care when a party with a special skill is trusted to exercise due care and knew or ought to have known that reliance was being placed on their skill and judgment.
2. There was an express disclaimer of responsibility, and that disclaimer meant a duty of care would not be implied.

**QUOTE**

Lord Devlin said:

*"I think, therefore, that there is ample authority to justify your Lordships in saying now that the categories of special relationships which may give rise to a duty to take care in word as well as in deed are not limited to contractual relationships or to relationships of fiduciary duty, but include also relationships which in the words of Lord Shaw in Nocton v Lord Ashburton are "equivalent to contract" that is where there is an assumption of responsibility in circumstances in which, but for the absence of consideration there would be a contract. Where there is an express undertaking, an express warranty as distinct from mere representation, there can be little difficulty...*

*Where there is no consideration, it will be necessary to exercise greater care in distinguishing between social and professional relationships and between those which are of a contractual character and those which are not. It may often be materiel to consider whether the adviser is acting purely out of good nature or whether he is getting his reward in some indirect form...*

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*Responsibility can attach only to the single act, that is, the giving of the reference and only if the doing of that act implied a voluntary undertaking to assume responsibility.*” – page 528-529 of [1964] AC 465

*“I shall therefore content myself with the proposition that wherever there is a relationship equivalent to contract, there is a duty of care. Such a relationship may be either general or particular. Where, as in the present case, what is relied on is a particular relationship created ad hoc, it will be necessary to examine the particular facts to see whether there is an express or implied undertaking of responsibility”* – page 530 of [1964] AC 465.

## **IMPACT**

Extreme caution should be exercised where a person’s opinion provided to others may be used in reliance by others.

In order to help prevent this all written advices etc should be prepared carefully and a disclaimer attached where appropriate.

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