

Special duty problems: economic loss annotated problem question

It should be noted at the outset that there is generally no duty of care owed in respect of claims for pure economic loss and that their only potential route would be to rely on *Hedley Byrne v Heller* and any later derivations of this rule.

Would this invoke a relationship of 'trust and confidence'?

Rachael and Chris invested £600,000 in Read-Sing-Sign, a children's charity bookshop, after speaking to Amanda, a personal friend who is also an auditor. Amanda had prepared a financial report for the trustees of the shop, but showed it to Rachael and Chris 'off the record'. This showed that the bookshop was doing well and made good annual profits. It later transpired that the audit was inaccurate as Amanda failed to include some unpaid debts in the figures. The shop was in fact worthless.

Meanwhile, Rachael, who was relying on a £200,000 inheritance from her grandfather in order to be able to pay for her share of the shop, was told by the solicitors dealing with her grandfather's will that it is invalid and the terms of his previous will, which left everything to a local cats' home, would have to be followed. This is because he failed to sign both copies of the latest version of the will. The solicitor's copy was filed without checking the signature was present.

Advise Rachael and Chris as to the likelihood of success of any claims in negligence that they may take.

This brings into question whether any reliance on the part of R & C would be 'reasonable'.

This is a negligent act—again, the question is whether the solicitors would owe a duty of care to Rachael. A duty of care would clearly be owed to the grandfather but he (and his estate) has suffered no loss. See *White v Jones*. Note, however, this is not a question of the negligent drafting of a will, but negligent administration. Would the outcome be any different?

Compare *Caparo and Cramaso LLP (Appellant) v Ogilvie-Grant, Earl of Seafield and others (Respondents) (Scotland)* [2014]. Is this a similar situation?

This is, therefore, Rachael's loss.

A has clearly been negligent in her preparation of the report. The question is whether she would owe R & C a duty of care in respect of the economic loss they have suffered. As indicated in **Chapter 7**, this depends on whether their claim can be said to fall within the exception to the general exclusionary rule created in *Hedley Byrne*, including whether it was reasonable for the claimant to rely on the advice given.