

One of the main issue here is whether Adder is liable for Bust Ltd going into liquidation, and whether Adder is liable for Kevin, Pablo's financial loss, including physical injury to Pablo, this also includes whether Adder is also liable for Musko Plc's loss of profit for Pablo not performing at there theatre.

Let start of with Adders liability for Bust limited, where he mislead the company's financial report in negligent, leaving the company in liquidation. The Hedley Byrne case introduced the concept that a claimant could recover for economic loss; however the courts have always distinguished such an action for pure economic loss, arising out of negligence act. The House of Lords held that no duty of care was accepted by Heller and none arose, so the daim failed, the Lordship stated obiter that in appropriate circumstances, there could be a duty of care to give careful advice, and that breach of that duty could give rise to liability for negligence, but the fact is the sole damage was economic loss did not, they said did not effect the question of liability, this proves that Adder may not be liable for Busted Ltd.

If we look at the legal principle laid out in Spartan Steel v Martin Co Ltd, the defendants negligently caused all three of the types of loss that resulted from the power cut and all three types of loss were easily foreseeable, the court only compensated for the two sorts of loss, but not for the third, in many cases this can be seen as allowing the defendant to get away with serious careless behaviour regardless loss caused by others. If we look at another legal principle laid out in Mutual Life Assurance v Evatt, the Privy Council held that there was no duty of care, the defendants were in business providing investment information and could not be liable for such advice. It was held Williams and Reid v Natural Life Health Food, the house of Lords rejected the view of the special relationship for the claimant and the company.

Let us now look at Kevin's case, if Adder is liable for his loss, if we look at the legal principle laid out in Howard Marine v Ogden which looks at the special relationship which Hedley

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If we look at the legal principle laid out in *James McNaughton Paper Group Ltd v Hicks Anderson & Co*, the Court of Appeal identified the factors that should be taken into account in establishing a duty of care, one of which is the relationship between the person giving the advice, the person receiving the advice and the relevant third party. There are a few observations from the *Hedley Byrne* case, the type of duty owed from Adder to Kevin, the advice must be required for a purpose described at the time to the defendant at least in general terms, this purpose must be made known actually or by inference, the advisor i.e. Adder given the advice at the time given, Adder must be aware that the advice given to Kevin will be acted upon without benefit of any other independent advice, which has not been raised by Kevin. In *Caparo*, Lord Bridge had drawn up a distinction between giving advice to someone who is fully aware of the nature of the transaction, is not as same to a statement that is put into more or less general circulation, which the maker of the statement has no specific reason to contemplate.

Now let us look at the Adders liability toward Pablo's loss, it was held in *Caparo* where the test applies to anyone that fall under these categories, a duty of care will exist where the

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damage was reasonable foreseeable, there is a relationship of proximity and it is just fair and

reasonable to impose such a duty, with Pablo he will need to prove that the existing duty from
Adder was breached and that breach caused damage.

If we look at the legal principle laid out in the *London Waste v AMEC Civil Engineering*, a case similar to *Spartan Steel* in that the claimants, a company which burnt waste to provide electricity, lost profit. As a result of being forced to close down when the defendant road menders severed a power cable, the road company was allowed to recover for physical damage done but not for loss of income for the sale of electricity. From looking at this case we can say that Pablo has a good case for claiming his loss of physical damage but not for his profit lost, he will receive damage from his car insurance which should cover the damage done to his car. Another legal principle we can look at is *Watson v British Boxing Board of Control*, the Court of Appeal applied the *Caparo* case and upheld the boxers claim against the sports controlling body, the injury was foreseeable by the boxers licensing system operated by the board, created a relationship of proximity and it was just fair and reasonable to impose duty. Pablo may not be successful to claim for psychiatric

Now let us look at Musko Plc and if Adder is liable for their loss of profit, pure economic loss is only recoverable under the *Hedley Byrne* principles, where it is caused by either negligent advice or information or by negligent acts. It is also not recoverable when caused by negligent acts other than provision of services this was held in *London Waste v AMEC Civil Engineering*. It was also held in *Hedley Byrne* that there was no liability for economic loss, the following principle will apply for economic loss, there should be a duty of care to give careful advice and that breach of that duty could rise to liability for negligence, the fact that the sole damage was economic loss did not affect the question of liability, and this principle applies to Adder. It was held in *Alcock v Chief Constable of South Yorkshire* that one of the requirements for recovery by a secondary victim was that they should have a relationship with a primary victim that was 'close in care, meaning that it is not sufficient to establish for

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example that the primary and secondary victims were brothers, it must also be proved that the

relationship between them was close in terms of the way felt about each, as you can see there is no relationship like that with him and Musko Plc, even with Pablo there is no such relationship.

In the case of *Weller v Foot and Mouth Disease Research Institute*, it was held although a duty of care was owed to the cattle owners in the vicinity, none was owed to the claimants as they had no proprietary interest in anything which could be affected by the escape of the virus. It was held that all who had suffered financially as a result of the defendant's carelessness, for policy the defendants were outside their area of responsibility and the same will apply to Adder for his liability. It was held in *Liesbosch Dredger V SS Edison*, the House of Lords refused to compensate for the cost of the hired ship, on the ground that this loss was caused by their own financial circumstance and was not foreseeable by the defendants, as you can see from the above cases Adder may not be liable for Musko Plc going into liquidation.

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