


CLAT 2024
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THE FINAL SPRINT

— THE CLAT COMBAT —
THE LEGAL EAGLE


LEGAL REASONING
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Legal Reasoning 6

It is an accepted legal position that when the defendant has deliberately made a false statement and caused loss to the plaintiff, who relied and acted on the statement, the Defendant would be liable for fraud.

In *Cann v. Wilson*, 1888, an action for negligent misstatement was recognized and damages awarded. There, the defendants who were valuers of property, over-valued certain property. At that time, they knew that the property was being valued for the purpose of mortgage. On the strength of the valuation, the plaintiff granted a loan to the owner of certain property. When the owner of the property defaulted in repayment, the plaintiff found that the true value of the property was not sufficient to satisfy the mortgage debt. He wanted to recover the loss from the defendants. The defendants were held liable because in these circumstances, they “incurred a duty towards the plaintiff to use reasonable care in the preparation of the document.”

In 1889, in *Derry v. Peek*, the House of Lords decided that there could be no liability for deceit in respect of negligent statement, it could be there only for a dishonest statement. This decision was subsequently understood to mean that there could be no liability at all for a mere negligent misstatement; for the purpose of liability, the statement must be deceitful. It was because of such an interpretation that the decision in *Cann v. Wilson* was considered to be inconsistent with *Derry v. Peek* and deemed to be overruled thereby.

Source: Extracted (with edits and revisions) An excerpt from article titled “Fraud or Deceit in Torts”, published at ‘iPleaders’.

1. Vidhaan gave some loan on the mortgage of certain property on the basis of a certificate given by Vidyut. Vidyut, who was a surveyor, had negligently given this certificate to the builder of the property who had employed him. Vidhaan sued Vidyut on the basis of the false certificate issued by him on the ground of deceit. Decide.

- (a) There can be no action for mere negligent statement.
- (b) Vidyut actively defrauded Vidhaan and thereby Vidhaan’s action is maintainable.
- (c) Vidhaan could only sue Vidyut if there was a contract in place.
- (d) Vidyut will be liable for fraud.

2. XYZ and Co. were advertising agents who had been instructed by their customer, ABC Ltd. to obtain substantial advertising contracts for them. XYZ and Co. were also anxious to know the credit worthiness of ABC Ltd. They requested their own bankers to ascertain the financial position of ABC Ltd from ABC Ltd’s bankers. On an enquiry whether ABC Ltd were trustworthy to the extent of 1,00,000 pounds a year, ABC Ltd’s bankers replied that they were a respectably constituted company, considered good for their ordinary business engagements. The letter also mentioned that this information was for their private use without responsibility on the part of the bank or its officials. On the basis of such statements, XYZ and Co. went ahead with the contracts made on behalf of ABC Ltd. ABC Ltd subsequently went into liquidation and XYZ and Co. suffered massive losses which they had spent on the orders. They sued ABC Ltd’s bankers contending that the negligent misstatement made in this case amounted to a breach of duty. Decide.

- (a) ABC Ltd’s bankers were liable as they had deliberately misrepresented facts to XYZ and Co. so that they could continue engaging with ABC Ltd.
- (b) ABC Ltd’s bankers were not liable as they had protected themselves by stating that the statement had been without any responsibility on their part.
- (c) ABC Ltd’s bankers were liable as their statement amounted to a deceitful statement, knowingly made.
- (d) ABC Ltd’s bankers action amount to cheating and hence they will be liable.

3. What would your answer to the above question be, if you were told that the law also stated that when someone possessed of special skills who undertakes, irrespective of a contract, to apply that skill, for the assistance of another person who relies on such a skill, a duty of care will arise. If in a sphere in which a person is so placed that another could reasonably rely on his judgment or his skill or on his ability to make careful inquiry, a person takes it on himself to give information or advice to another person who places reliance on it, then a duty of care will arise. Decide.

- a) The bankers would not be liable as they did not themselves volunteer the information to XYZ and Co.
- b) The bankers would be liable as they should have been aware that the information supplied by them would be made use of by XYZ and Co. for business engagement purposes.
- c) The bankers would not be liable as they still maintain the fact that the information imparted by them was without responsibility.
- d) The bankers would be liable as they specialize in the knowledge of the affairs of the business of ABC.

4. Consider that in the factual scenario presented in the second question under this passage, XYZ and Co. didn’t approach ABC’s banker for any information. However, before they can take the final decision of going ahead with the contracts on behalf of ABC Ltd., their own bank is required to give them clearance, in terms of raising any possible red flags in the business undertaken by ABC Ltd. The bank does the same without adequate due diligence. However, ABC

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Ltd. subsequently went into liquidation and XYZ and Co. suffered massive losses which they had spent on the orders. Can they sue their own bank for breach of duty of care? Decide.

- a) No, as their bank did not undertake to provide any information about ABC's business.
- b) Yes, as in this situation their bank is under a duty to provide them with information.
- c) No, as there was only negligence on part of the bank, and no deceit.
- d) Yes, as the Bank has defaulted in its duty.

5. Suppose there is a new ruling of the Supreme Court which states that "one must take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure one's neighbour". Neighbours are understood to mean persons so closely and directly affected by one's act that one ought to reasonably have them in contemplation as being so affected when one directs one's mind to the acts or omissions which are called in question. Supposedly, ABC'S liquidation was reasonably foreseeable. In light of the above, what would be your answer to the second question of this passage if the caveat absolving the responsibility of the bank for their information is not present? Decide.

- (a) XYZ and Co. can be understood to be the banker's "neighbour" as per the above definition, and therefore they were owed a duty of care by them.
- (b) The liquidation of ABC Ltd. was something that should have been reasonably foreseeable by their bankers and therefore, they owed a duty of care to inform the same to XYZ and Co.
- (c) The bankers would not be liable as neither do they qualify as neighbours to XYZ and Co. nor are they required to abide by the ruling as quoted above.
- (d) Insufficient Information.

1. Ans. (a)

Sol. As has been stated in the passage, there could be no liability at all for a mere negligent misstatement; for the purpose of liability, the statement must be deceitful. A false certificate issued by Vidyut is more of a negligent act than being in the nature of a deceit. The facts state that Vidyut had negligently given the certificate.

2. Ans. (b)

Sol. XYZ and Co. had accepted the condition on behalf of the bankers which mentioned that their statements were made without any responsibility on their part, which basically means that they cannot be held liable for any ramifications that anyone who takes their statements to word might face. Hence, (b).

3. Ans. (a)

Sol. Please note that in the factual scenario presented in the above question, XYZ had approached ABC's bankers for information. The bankers did not "undertake" or they "did not take it on" themselves to impart the information. Hence, in such a situation and in light of what is stated in this question, there is no duty of care which arises. Hence, (a).

4. Ans. (b)

Sol. The principle stated in the above question states that when a person is so placed that another could reasonably rely on his judgment or his skill or on his ability to make careful inquiry, that person takes it on himself to give information or advice to another person who places reliance on it, then a duty of care will arise. This squarely applies to the present situation as being XYZ and Co.'s own bank, they were required to do a thorough check of the affairs of ABC Ltd., for which they owed a duty of care.

5. Ans. (a)

Sol. As XYZ and Co. has been affected by the advice rendered by the bank, they can be said to be the neighbours of the bank. Hence, they owed a duty of care. All the other options are out of scope.