

A lawyer conducted a free consultation with a businessman who wanted advice on a tax matter for which he sought a refund from the IRS. The lawyer declined to represent the businessman, but an eager intern who had overheard their conversation stopped the businessman as he was leaving the office. The intern told the businessman that she was a law student and wanted to share her opinion with him. She then told the businessman that she believed that the applicable statute of limitations for claiming a refund had more than a year to run and that he had plenty of time in which to act before his legal rights would expire.

Although the intern believed this statement to be accurate, the statute of limitations for claiming a refund had only days to run at the time of the consultation. Relying on the intern's statement, the businessman delayed in contacting another attorney to assist him with the tax refund claim. As a result, his refund claim was barred by the statute of limitations.

The businessman has sued the intern for negligent misrepresentation, seeking damages for financial loss resulting from his inability to timely file for a refund. The intern has filed a motion to dismiss for failure to state a claim.

How should the court rule on the intern's motion?

- A. Deny it, because the businessman is seeking to recover only pecuniary damages and not damages for physical harm.
- B. Deny it, because the intern should have known that her statement about the statute of limitations was false.
- C. Grant it, because the intern believed that the statute of limitations had more than a year to run when she made that statement.
- D. Grant it, because the intern was expressing a lay opinion that the businessman should not have relied upon.

Explanation:

Misrepresentation

(fraudulent v. negligent)

	Conduct	Setting	Harm
Fraudulent	Knowingly or recklessly misrepresented material fact to induce reliance	Any setting	Justifiable reliance caused pecuniary loss
Negligent	Negligently provided plaintiff false information	Commercial setting or setting with risk of physical harm	Justifiable reliance caused pecuniary loss <i>or</i> physical harm

Negligent misrepresentation is based upon a **breach** of the **duty to supply correct information** and often arises in the context of accountants and other suppliers of commercial information (eg, attorneys). This tort requires proof of the following elements:

The defendant negligently provided **false information** during the **course of his/her business** or profession.

The plaintiff **justifiably relied** upon the false information and suffered **pecuniary (ie, financial) loss** as a result **(Choice A)**.

The plaintiff was in a **contractual relationship** with the defendant or was a third party known by the defendant as one for whose benefit the information was supplied.

A plaintiff's **reliance was not justified if** the information was **obviously false** or if the defendant was clearly stating a **lay opinion**.

Here, the intern provided the businessman with false information regarding the statute of limitations. However, she was clearly expressing a lay opinion since she told the businessman that she was still a law student and merely offering an opinion. As a result, the businessman cannot establish that he was justified in relying upon the information provided, and the intern's motion to dismiss should be granted **(Choice B)**.*

*Additionally, there was no contractual relationship between the businessman and the intern, so the businessman also cannot establish that element of negligent misrepresentation.

(Choice C) Negligent misrepresentation requires that the defendant act negligently. Negligence will be found if the defendant failed to exercise the same level of care and competence as a reasonable person in his/her business or professional position. The standard is an objective one, so the intern's subjective belief that her statement was true is irrelevant.

Educational objective:

One of the elements of negligent misrepresentation is that the plaintiff's reliance on the false information provided was justifiable. Reliance was not justified if the information was obviously false or the defendant was clearly stating a lay opinion.

References

Restatement (Second) of Torts § 552 (Am. Law Inst. 1977) (negligent misrepresentation).

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