


**Donoghue v Stevenson –
what the law textbooks
didn't tell you!**


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Learning Outcomes

- Develop and use critical thinking skills to evaluate previously decided case law.
- Understand the historical context of the development of the law of negligence.
- Appreciate more fully the background to the seminal case of *Donoghue v Stevenson*.
- Approach the facts of the case as a modern-day insurer would to decide whether the same outcome would be likely today!



The Cast

- The Snail – the cast member about which we know the least.
- May Donoghue - born on 4 July 1898 and died from a heart attack on 19 March 1958. Mrs Donoghue had quite a tragic life (aside from the snail).
- A 'friend' – more later!
- Francis Minghella – the proprietor of the Wellmeadow Café in Paisley.
- David Stevenson – a manufacturer of lemonade and ginger beer at 11 Glen Lane in Paisley.
- Lord Atkin – delivered the leading judgment.
- Walter Leechman – the tenacious solicitor of WG Leechman & Co.






A Modern-Day Insurer's View


➤ A letter of claim lands on your desk alleging the following:

- The claimant has suffered from severe shock, nausea, sickness and gastroenteritis and claims £25,000.
- This was the result of drinking some ginger beer from a bottle containing a decomposed snail.
- It is specifically alleged the snail entered the bottle before it was filled and sealed at the insured's premises.
- It is specifically alleged that bottles at the insured's premises were "allowed to stand in places to which it was obvious that the snails had freedom of access from outside the [insured's] premises, and in which, indeed, snails and the slimy trails of snails were frequently found."



What We Do Know

- The bottle of ginger beer was purchased at the Wellmeadow Café on 26 August 1928 at 20:50.
- The 'friend' bought the bottle for Mrs Donoghue.
- The bottle was made of dark opaque glass.
- Mr Minghella poured from the bottle first and then later 'the friend' poured some more of the ginger beer over some ice cream.



What We Don't Know

- The identity or even the sex of the 'friend'.
- Why they went to this particular café and whether they arrived together.
- Whether or not there was a decomposed snail in the bottle.
- Whether Mrs Donoghue ever really suffered from illness by way of nausea and shock.

The Case Proceeded on Assumed Facts



The Medical Evidence

By Dr James Y. Simpson, General Practitioner of 11 Kirklee Quadrant, Glasgow and dated 29 November 1928:

" ... she came to me on 29th August complaining about an incident which she told me had taken place in the Wellmeadow Café in Paisley on 26th August.

May suffered severe shock and a prolonged illness as a result of this incident. She suffered from nausea and sickness which persisted.

When she consulted me she was suffering from gastroenteritis - which she told me was induced by snail infected ginger beer ...

... prior to the incident in the Wellmeadow Café May suffered from no stomach trouble. However, she has in the past felt unwell after eating too much ice cream.



Progression of the Case


- May Donoghue claimed £500 in damages (approximately £25,000 in today's values)



➤ Lord Moncrieff at first instance in the Court of Session found for Mrs Donoghue. It was ordered that the case proceed to trial on the factual issues.

➤ On appeal, Lord Alness in the Second Division, referred to the case of *Mullen v A G Barr & Co Ltd*. He said the following:

“Now, the only difference – and, so far as I can see, it is not a material difference – between that case and this case is that there we were dealing with a mouse in a ginger-beer bottle, and here we are dealing with a snail in a ginger-beer bottle.”



To the House of Lords


➤ The petition was filed on 25 February 1931.

➤ Two days of argument on 10 and 11 December 1931.

➤ Speeches were not delivered until 26 May 1932.

➤ The Celtic trio of Lords Atkin, Macmillan and Thankerton found for the claimant.


➤ Lords Buckmaster and Tomlin dissented.



The Neighbour Principle

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

Donoghue v Stevenson [1932] AC 562, 580 (HL) per Lord Atkin



Ratio or Obiter?

“The ... [neighbour principle], although perhaps the most commonly cited and in many ways the most significant, cannot properly be regarded as part of the ratio decidendi of the decision. No amount of posthumous citation can of itself transfer with retrospective effect a proposition from the status of obiter dictum to that of ratio decidendi; no doubt it will serve to magnify greatly the interest and importance of the case, but that is another matter.”

Heuston, RFV ‘*Donoghue v Stevenson in Retrospect*’ (1957) 20 MLR 1, 9



The Secular Predecessor

“... everyone ought by the universally recognised rules of right and wrong, to think so much with regard to the safety of others who may be jeopardised by his conduct ... the law, which takes cognisance of and enforces the rules of right and wrong, will force him to give an indemnity for the injury”

Heaven v Pender (1883) 11 QBD 503, 508 per Brett MR



Keeping Up With The Times

“I do not think so ill of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilized society and the ordinary claims it makes upon its members as to deny a legal remedy where there is so obviously a social wrong.”

Donoghue v Stevenson [1932] AC 562, 580 (HL) per Lord Atkin



A Summary of the Neighbourhood Principle?

“Compassion should overrule code”

Holloway, R *Introduction to the Gospel According to Luke* (Canongate Pocket Canons, 1998) at page xii



After the House of Lords

- Mr Stevenson passed away shortly after the decision in the House of Lords.
- There was never a trial and no witnesses ever gave evidence.
- The case was settled by the executor's of Mr Stevenson's estate. Even the amount of settlement is not clear with some sources suggesting £100 and others £500.



The Legacy?

- The case changed the modern law of negligence.

-or-

- “There is a duty not to sell opaque bottles of ginger beer containing dead snails to Scottish women.”

RFV Heuston in 'Donoghue v Stevenson in Retrospect' (1957) 20 MLR 1