

**DONOGHUE V. STEVENSON**

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**INTRODUCTION**

In *Donoghue v Stevenson*, the House of Lords established the principles of English and Scots delict law regarding the duty of care. It laid the foundations for modern law in common law jurisdictions worldwide. In this case, a woman drank a bottle of ginger beer and inadvertently drank a snail. She fell ill and sued the beer manufacturer. The House of Lords held that a manufacturer owed a duty of care to consumers due to the potentially harmful effects of their products. Before *Donoghue v Stevenson* (1932), liability for injuries in tort usually depended on proof of physical damage inflicted by trespass or by negligence. This decision created a new type of liability that did not depend on any prior recognized category of claims.

**BACKGROUND AND FACTS OF THE CASE**

She went to the Wellmeadow Cafe in Paisley to order ice cream and a friend brought her a potato and ice drink. Donoghue then asked for an ice cream float with ginger beer. The owner, Francis Minghella, poured ginger beer on top of the ice cream. After her friend poured the remaining beer, a decomposed snail appeared from the bottle. Donoghue immediately felt ill. She was then taken to the Glasgow Royal Infirmary. The ginger beer was made by David Stevenson, who was a company owner which was located close to the Wellmeadow Cafe. Donoghue then contacted Walter Leechman, a local councillor and a lawyer who had previously acted for the claimants in a similar case. Despite the ruling in *Mullen*, Donoghue issued a writ on April 9, 1929, claiming £500 in damages against Stevenson. The total amount he attempted to recover was equivalent to around £27,000 in 2012.

**Condescendences**

The allegations made by Donoghue included that Stevenson breached his duty of care by not providing a system to clean the bottles of ginger beer. This system would have been used in a business setting and was necessary to ensure that the beer was safe for consumption.

In response, Stevenson denied that his products contained snails and said that the claimant's illness was caused by her poor health. He also argued that the amount claimed was excessive.

**Legal background**

When a defective product is sold, the consumer is usually the one to sue the seller under a contract of sale. Donoghue had no relationship with Minghella and could not purchase the product from him. This meant that she was required to sue the manufacturer for negligence.

In 1817, the *Ansell v Waterhouse*<sup>1</sup> case established that a person could be held liable for an act or omission that When a defective product is sold, the consumer is usually the one to sue the seller under a contract of sale. Donoghue had no relationship with Minghella and could not purchase the product from him. This meant that she was required to sue the manufacturer for negligence.

The claimants argued that since the manufacturer did not negligently prepare the ginger beer, they could not be presumed negligent. The court ruled against them. The majority held that if a consumer has a contractual relationship with the manufacturer and the product's dangerousness is withheld from them, then the consumer has a duty of care. This means that if the product's intrinsic dangerousness was not known to the consumer, then the consumer has a duty of care. Lord Hunter dissented, stating that the concept of negligence could be inferred from the bottle's contents and that consumers could sue for damages caused by the dark glass. Although ginger beer is not considered dangerous, it was not considered an intrinsically safe product. This argument could not be accepted in product liability cases where the manufacturer intentionally misrepresents the threat it poses

**LAW OF TORTS**

A tort is a civil wrong that occurs when a person causes harm or loss to another person. It can result in legal liability for the individual who committed the act. Tort law is an action where a person seeks to obtain a private remedy, usually money damages. It is similar to criminal law, which involves carrying out certain crimes that are punishable by the law. In most cases, a person who commits a wrongful act would be liable to be sued in a civil court. Although crimes may be considered acts of vengeance, the harm caused by negligence is not criminal negligence and can be recovered in a lawsuit. To prevail in a lawsuit, the plaintiff must show that the actions or inactions that led to the harm were legally recognizable and responsible for the harm. Torts are different types of lawsuits that deal with the injuries that people can suffer due to an act or mistake. They include economic, emotional, and reputational damages.

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<sup>1</sup> This case discuss the difference between Tort and Contract.

Usually, a plaintiff can obtain a favourable result even if the defendant was acquitted in a criminal case.

### **NEGLIGENCE IN TORT LAW**

Negligence is a failure to exercise proper and ethical care expected of others. This area of law refers to actions that people can take that could have detrimental effects on the lives of others. Aside from physical injury, negligence can also include mental anguish and economic loss.

### **ELEMENTS NECESSARY FOR NEGLIGENCE**

1. Duty: the defendant has a duty to others, including the plaintiff, to exercise reasonable care,
2. Breach: the defendant breached that duty through an act or culpable omission,
3. Damages: as a result of that act or omission, the plaintiff suffers an injury, and
4. Causation: the injury to the plaintiff is a reasonably foreseeable consequence of the defendant's act or omission. (BANGIA)

### **DUTY OF CARE**

The legal liability of a defendant is based on the failure to perform a duty, which is recognized by law. This concept is the first step in determining the plaintiff's responsibility.

When May Donoghue poured over her ice cream, she was horrified to see the decomposing remains of a snail inside the bottle. She then sued the café owner. The case was referred to the House of Lords after Lord MacMillan considered it to be a new type of delict. There, Lord Atkin argued that the biblical phrase 'love thy neighbour' was a requirement to not harm them. In 1990, the UK's Supreme Court held that a duty of care could be established if the harm was reasonably foreseeable. This test requires that the relationship between the parties should be reasonably proximate to the liability. The Donoghue v Stevenson case was a powerful example of how negligence law can be used in Australia. It was followed<sup>2</sup>, which was also a landmark case. In Australia, the duty of care has now been considered a duty of mental harm under the Civil Liability Act 2002.

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<sup>2</sup> In this case the manufacturer was held liable this case draws precedent from Stevenson V Donoghue.

**BREACH OF DUTY**

The defendant must have a duty to the plaintiff or claimant. The test is objective and subjective. Generally, if the defendant has a duty to the plaintiff, he or she must have known that the risk of loss was substantial. In Australia, in the case of *Watson v. McHale*<sup>3</sup>, a child was blinded after a sharp metal rod was thrown by a 12-year-old boy. The court held that the child did not have the level of care that an adult would have. The House of Lords has held that a defendant is not negligent if the damage he caused was not reasonably foreseeable. In this case<sup>4</sup>, a woman was struck on the head by an errant cricket ball. The court noted that even if a person could hit a ball that far, they would not be able to reach Miss Stone. In the case of the Minister of Health<sup>5</sup>, Lord Denning stated that the reasonable risk of medical professionals should not be judged on the basis of hindsight. He pointed out that modern standards would have indicated that the risk of contamination was low.

**CAUSATION**

It is necessary to show that the negligent act or omission was sufficiently linked to the cause of the injury to be considered liable.

**DAMAGES**

To establish liability for a negligent act, the plaintiff must show that the injury was created by the act or omissions and that there is a connection between the actions and the negligence. One of the main tests that a person has to answer when deciding whether they are entitled to compensation for a certain type of injury is the "reasonable person" test. This test asks if a person would have reasonably behaved in the same manner if they were the one who caused the injury. A compensatory damages award is made to compensate a plaintiff for his or her losses. It should not be too much to make the plaintiff whole. One of these principles is that the award of damages should be in the form of a lump sum. Generally, defendants should not be required to make regular payments. Another example is that the Court is not concerned about how the award will be used.

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<sup>3</sup> *McHale v Watson* [1966] HCA 13 (7 March 1966), High Court (Australia).

<sup>4</sup> *Bolton v. Stone*, 1951

<sup>5</sup> *Roe v Minister of Health*, 1954

**ARGUMENTS IN STEVENSON VS DONOGHUE**

The first argument that was put forward by the defendant is that manufacturer does not owe any liability to the consumer at any level it's the retailer who was responsible for the harm caused to the consumer. The second argument was that does the law provide a remedy with the remedy for the harm suffered to the consumer. The third argument was whether does manufacturer owns any duty of care to the consumer.

**JUDGEMENT****Court of the session, Outer House**

The case was first heard on May 21, 1929. On November 19, the claim against Minghella was abandoned. It was likely that he had failed to establish a contractual relationship with the Donoghues, who had purchased the ginger ale from his friend's store. On December 12, Minghella was awarded costs of £108 for this abandoned claim. English case law that sought to apply a contractual basis to the liability for injuries arising from goods that are not intrinsically dangerous was dismissed by Lord Moncrieff.

**Court of Sessions, Inner House**

The case was appealed to the Inner House, where the judges who found against Mullen were present. On November 13, 1930, they all referred back to the case of Mullen and supported the statements made by Lord Alness, who noted that the only difference was that they were dealing with snails instead of mice.

**House of Lords**

On February 25, 1931, Donoghue applied to the House of Lords to appeal to the Supreme Court. She also sought permission to pursue the case in what is known as forma pauperis. This status was granted for unknown reasons. The appeal was heard on December 10 and 11. According to Donoghue's counsel, William Milligan and George Morton, there may be a duty to take reasonable care when making an article. This duty, they argued, owed to Stevenson for the manufacture of his ginger beer. Wilfrid Normand KC and James Clyde, both of whom were later Lordships, argued that under Scots and English law, a person is not under a duty to anyone if he or she is not in a contractual relationship with that person. They also argued that there was no basis for Donoghue's argument that the product was dangerous. Lord Atkin said that he did not think that a more important problem had occupied his Lordships. He explained

that Scots and English law both require a duty of care to be found when a person has failed to take reasonable care to prevent injury.

He supported this broad test and rejected the cases where the manufacturer was not responsible for the negligent use of food. He also referred to the example of *Heaven v Pender*, where the plaintiff had not claimed against the manufacturer. Lord Thankerton had ruled that Donoghue's case was not covered by a duty of care and that she had no contract with Stevenson. He also held that where goods can be inspected or interfered with, the consumer is entitled to rely on the manufacturer's actions to safeguard them from harm.

Lord Thankerton argued that a consumer's duty to exercise care did not arise apart from a contract. He stated that a manufacturer's care should not relieve the consumer of any responsibility to the seller. Lord Macmillan had held that the law does not take cognizance of carelessness. Instead, it concerns itself with the duty to take care of what has caused damage. The categories of negligence that can be considered closed are never truly closed. In this case, Lord Macmillan held that Stevenson had demonstrated that he was not careless when he left bottles containing snails that could access them. He was satisfied that Donoghue had a claim under English and Scots law. He also noted that the principles of justice and common sense were sufficiently consonant with the claim to allow him to admit it. Lord Buckmaster and Lord Tomlin were the only two members of the court who focused on precedent. Lord Buckmaster warned that the principles of common law could not be changed despite having been set down. Lord Buckmaster has dismissed the case of *George v Skivington*. He has also rejected *Heaven* as a *tabula* that is unrelated to Donoghue's claim. It would seem quite outrageous to make the defenders responsible for the condition of the goods they distribute throughout Scotland. Lord Buckmaster agreed with Atkin's finding that a manufacturer's duty of care did not apply to products that were in a sealed container. However, he disagreed with Lord Atkin's finding that a consumer's duty of care could apply to products that were not produced. The proposed ratio decidendi have varied from the narrowest to the widest. It was suggested that a duty not to sell alcoholic drinks containing dead snails should be imposed. Although Lord Atkin's argument was critical of the neighbour principle, neither the other judges nor the lord himself explicitly endorsed it. Instead, they implied that there is a duty of care to the consumers of goods even if there is no contract.

**THIS CASE WAS USED AS PRECEDENT IN THE FOLLOWING CASES****Hedley Byrne v Heller**

Hedley Byrne, an advertising agency, was indirectly informed by the bankers of Easipower that the company was a "respectfully constituted company". This information led to Hedley Byrne losing over £17,000 when the company went into liquidation. The judges agreed that it would be difficult for Donoghue to immediately apply Hedley Byrne's case, but Lord Devlin suggested that it could be expanded to include cases that give rise to a special duty.

**Home Office v Dorset Yacht Co**

The Home Office's duty of care movement was established after a group of boys were taken from a boat in Poole Harbour and collided with another vessel, which was owned by Dorset Yacht Company. Lord Reid rejected the argument that the claim could not be made on the basis of any precedent, and he instead noted that, in the event of a new point of law, one should ask whether the principles of Donoghue apply to it. In the sole dissenting judgment, Lord Dilhorne argued that the concept of the neighbour principle could not have been applied in all circumstances. He noted that the absence of authority showed that no duty of care could now be asserted by the Dorset Yacht Company.

**Caparo Industries plc v Dickman**

The House of Lords revised the "neighbourhood" principle in 1990 to encompass public policy concerns. The Caparo test requires that a relationship between two parties should be regarded as one that is proximate or neighbourhood and that the law should impose an obligation on one party to the other.

**CONCLUSION**

The Donoghue v Stevenson case established that a duty of care owed to a person is owed to those who will be affected by one's actions. This means that even if a person has a contractual relationship, they can still sue for damages even if they do not have a duty of care.

