

# **JURISPRUDENCE**

## **CASE NOTES**



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Sample

## ***Donoghue v Stevenson* (1932) UKHL 100**

**Source:** Hard copy via your law library or electronically via a subscription service

**Court details:** United Kingdom House of Lords

**Procedural history:**

- Prior to *Donoghue v Stevenson* liability for personal injury in tort usually depended upon showing physical damage inflicted directly (trespass to the person) or indirectly (trespass on the case).
- Being made ill by consuming a noxious substance did not qualify as either, so the orthodox view was that Mrs Donoghue had no sustainable claim in law. However, the decision fundamentally created a new type of liability in law which did not depend upon any previously recognised category of tortious claims.
- This was an evolutionary step in the common law for tort, moving from strict liability based upon direct physical contact to a fault-based system which only required injury.
- Injuries resulting from defective products were normally claimed on the basis of a contract of sale between the seller and the consumer. However, Donoghue had no contractual relationship with Minghella as she had not purchased the ginger beer; while her friend did have a contract through having placed the order, she had not suffered any injury.
- Moreover, neither had a contract with Stevenson, the manufacturer.
- Donoghue was therefore required to claim damages for negligence.
- *Ansell v Waterhouse* had established in 1817 that legal liability could arise for an act or omission "contrary to the duty which the law casts on him in the particular case" (i.e. negligence). However, there was no general duty of care and therefore no general liability for negligent behaviour. Only limited exceptions to this rule were made in which duties were found in specific circumstances, most of which had a contractual background.
- The most difficult precedent for Donoghue was *Mullen v AG Barr & Co Ltd*, a recent Court of Session case. In Mullen, two children, John and Francis Mullen, and Jeanie Oribine had separately found dead mice in their bottles of ginger beer, manufactured by AG Barr & Co Ltd, and claimed to have become ill through drinking the tainted liquid. In separate hearings in Glasgow and Greenock Sheriff Court respectively, Oribine was successful in claiming compensation while the Mullens were not. The losing parties of both cases appealed to the Court of Session.
- At the Court of Session, the claimants argued that although there was no direct evidence that the manufacturer had been negligent in preparing the ginger beer,

negligence could be presumed from the mere presence of dead mice in ginger beer bottles. However, the court ruled against the claimants.

- The majority held that on a factual basis AG Barr & Co Ltd had rebutted a presumption of negligence and that on a legal basis product manufacturers only owed a duty of care to the ultimate consumers if there was a contractual relationship between the parties; if the dangerousness of the product was intentionally withheld from the consumer (in which case there might also be a claim for fraud); or if there was no warning of the intrinsic dangerousness of certain products, such as explosives.
- Only Lord Hunter dissented, finding that negligence to be inferred and that the fact that the bottle contents could not be examined (because of the dark glass) gave rise to a specific duty of care that would allow consumers to claim for damages.
- However, neither of the circumstances in which negligence could be found in product liability cases applied to Donoghue: ginger beer is not intrinsically dangerous, nor did Stevenson intentionally misrepresent the threat it posed.
- Nevertheless, Donoghue's counsel argued that manufacturers also owed a duty of care to their ultimate consumers if it was not possible to examine the goods before they were used, an exception that would apply to Donoghue.
- The first interlocutory action was heard on the Court of Session on 21 May 1929 in front of Lord Moncrieff. After an adjournment, Minghella was added as a defender on 5 June; however, the claim against him was abandoned on 19 November, likely due to his lack of contractual relationship with Donoghue (Donoghue's friend had purchased the ginger beer) and his inability to examine the contents of the dark glass bottle.
- On 12 December, Minghella and Stevenson were awarded a combined costs claim of £108 6s 3d against Donoghue for this abandoned strand of litigation. However, it was recorded on 20 December that Donoghue did not pay the costs awarded to Minghella.



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