

**CRITICAL ANALYSIS OF DONOGHUE V STEVENSON [1932] A.C. 562**

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**Abstract**

*Profoundly, it has been accepted globally that life on this good earth of ours is regulated either by the laws of Mother Nature or by those made by man. Negatively it has been interpreted by individuals worldwide that the existence of laws is the living testimony that we men are not at peace with ourselves but jurists have often articulated that it's the very existence of these laws that affirms the fact that peace and man can co-exist together, otherwise it's the stone-age for us all over again. With recent advancements being executed and implemented in the field of law in order to accelerate the justice delivery system and make it a mass reach out programme, on a war footing, little is being articulated and researched upon the fact that what really drives law making, policy making, availability of impartial, practically feasible and judicious laws. When a consumer if a product suffers any injuries because of the product, he can claim damages on the seller of the product. The act of sale and purchase of a product establishes a contractual relationship between the two parties and there exists a duty of care that the seller must exercise towards the buyer to ensure that the product is free from any defect. However, in the absence of any contractual relationship, such a duty of care doesn't explicitly exists. Donoghue v. Stevenson was a famous case under the English law which became famous for introducing the doctrine of negligence in the contract law. Regarding its important Lord Hope has once remarked, "One might say that the modern law of negligence was created by it." Negligence is a liability which one has because of disregarding a duty of care towards another. When any conduct is done without the reasonable standard of care, it can be considered negligent.*

**Keywords-** Negligence, Liability, English Law, Purchase, Duty of Care.

## I. Introduction

Donoghue v. Stevenson<sup>1</sup> was a famous case under the English law which became famous for introducing the doctrine of negligence in the contract law. Regarding its importance Lord Hope has once remarked, “one might say that the modern law of negligence was created by it.”<sup>2</sup> Negligence is a liability which one has because of disregarding a duty of care towards another. When any conduct is done without the reasonable standard of care, it can be considered negligent.

## II. Synopsis

The facts of the case are that Mrs. Donoghue got a ginger beer and found a dead snail in it. She sued the manufacturer as she suffered severe gastro enteritis from consuming the content of that ginger beer. As the drink was ordered by her friend, there was no contract between her and the manufacturer and hence the main issue of the case was whether the manufacturer owed her any duty of care in the absence of any direct contract. There was already a landmark in which the court had held that, “a manufacturer owed no duty of care to a consumer when putting a product on the market except if the manufacturer was aware that the product was dangerous because of a defect and it was concealed from the consumer or the product was dangerous per se and failed to warn the consumer of this.”<sup>3</sup>

## III. Background

In the case of Ansell v. Waterhouse,<sup>4</sup> decided in 1817 it was established that there exists a legal liability for an act or an omission which is contrary to the duty of care the party was contractually responsible for. However, at this time, the duty of care arose contractually. A general duty of care did not exist. Such a line of approach emerged because of the doctrine of privity of contract. In Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.,<sup>5</sup> it was held that, “a contract cannot confer rights or impose obligations upon any person who is not a party to the agreement.”

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<sup>1</sup> *Donoghue v. Stevenson*, [1932] AC 562 (HL).

<sup>2</sup> *D Hope, James McGhee- A Second Ms. Donoghue*, (2003) 62 CLJ 587.

<sup>3</sup> *Mullen v AG Barr & Co Ltd* 1929 S.C. 461, 1929 S.L.T. 341

<sup>4</sup> *Ansell v. Waterhouse*, 1817, M & S, 385.

<sup>5</sup> *Dunlop Pneumatic Tyre Co. Ltd v. Selfridge & Co. Ltd* [1915] A.C. 847 (HL)

The very foundation of this principle is that only parties involved in contracts should be able to sue in order to enforce their rights or claim damages. Following this traditional line of reasoning, it appears that a man deciding to put a product in the market has no duty to anyone regarding any possible damage caused by the product except the person with whom he contracts, unless two precise conditions: a) he is well aware that the article is dangerous per se and hides this detail from the buyer, committing a fraud; 2) he is normally a vendor of perilous products (e.g. explosives, weapons, dangerous substances, etc.) and gives no warning to the purchaser about the real danger inherently connected with the handling of the product.”

In another case, *Mullen v. A.G. Barr & Co. Ltd.*,<sup>6</sup> Lord Ormidale’s observation acknowledged such a general duty of care when he laid out that, “it would appear to be reasonable and equitable to hold that, in the circumstances and apart altogether from contract, there exists a relationship of duty as between the maker and the consumer of the beer.” In another precedent of *MacPherson v. Buick Motor Co.*<sup>7</sup> directly liability of an automobile manufacturer was established. It was held that, “that such a defect could have been discovered upon a simple inspection, before installing the imperfect wooden wheels into the vehicle.”

#### IV. Facts of the case

The material facts of the case are the manufacturer; the respondent in the instant case produced the ginger beer for the consumption of general public. The beer was distributed in dark bottles because of which contents inside the bottle were not visible. The manufacturers supplied the drink to the retailers. The ginger beer was purchased by a friend of plaintiff from one of the retailers. As such there was no contract between the plaintiff and the defendant. She consumed the beer and found a dead snail after inside the bottle after consuming it. She felt nauseated upon consumption and suffered gastroenteritis and sued the defendant for damages.

#### V. Issues

In light of the facts of the case and legal background then, three issues were raised in this case:-

- a. Does a duty of care exist in the absence of contractual relationships?
- b. Can a breach of duty attract a civil claim in such cases?

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<sup>6</sup> *Mullen v AG Barr & Co Ltd* 1929 S.C. 461, 1929 S.L.T. 341

<sup>7</sup> *MacPherson v. Buick Motor Co.* [1916] 111 N. E. 1050, 217 N.Y. 382

- c. Does the manufacturer hold a duty of care to customers if any injury is caused because of their product?

## VI. Contentions

The plaintiff claimed that the manufacturer, defendant in the instant case owed a duty of care towards her as she was the consumer of the product. They should have ensured that the bottles are stored in a clean place. The fact that a snail was found in the bottle is an evidence of the fact that the manufacturer was not careful in the preparation or storage of the ginger beer, making it unfit for consumption and causing harm to the health of its consumers.

The defendant claimed that there were no snails in any of the ginger bottles that it manufactures. It sells these bottles to a retailer and the snail might have gone into a bottle during the filling of these bottles. They also claimed that the health impact was not caused directly by the sight of a dead snail in the bottle. Further, they claimed that there is no legal basis for the claim as there was no contract between Ms. Donoghue and the manufacturer.

## VII. Findings

The court in this case however took a different stand and ruled against the manufacturer.

The majority opinion held that it is necessary that the product goes to the consumer in the exact form as it leaves the manufacturer for the manufacturer to attract any kind of liability. While, there is no contractual relationship between manufacturer and consumer, still there exists a duty of care that the product doesn't contain any obnoxious matter. Further, the court held that all manufacturers owe a duty of care to their end consumers.

The judgment established the following three rules:-

- a. Negligence is a separate offence under the tort. The party who is affected by the product can claim damages from the manufacturer if it has been negligent in his actions. The affected party need not have a contractual relationship with the manufacturer. A breach of the duty of care is enough to prove a negligent conduct. A total or partial breach because of which the party has been affected would be enough to prove negligence.

- b. It is not necessary to have a contractual relationship to have a duty imposed. The court established that all manufacturers owe a duty of care to their consumers. Lord Atkin held that, “a manufacturer of products, which he sells... to reach the ultimate consumer in the form in which they left him... owes a duty to the consumer to take reasonable care.” this observation has acted as a precedent for consumer protection laws.
- c. It laid down the neighbor principle. According to this principle, the duty of care only exists if the damage is foreseeable to the manufacturer. As such the standard of duty of care is that of a reasonable man. If a person has acted reasonable, he will not attract any liability.

The minority judgment was rendered as per the traditional rules of the contract law then. It held that no duty of care exists in the absence of any contractual relationship. As there was no proximity between the manufacturer and consumer, it will wrong to hold that there exists a duty of care. Lord Buckmaster was also of the opinion that it would have a great social and economic impact on the businesses if all potential consumers are allowed to claim damages from them. Lord Tomlin agreed and remarked that, “The proposition that every manufacturer or repairer of any article is under a duty to everyone who may thereafter legitimately use the article to exercise due care in the manufacture or repair would have been a real disaster in all commercial transactions because it might constitute a factor that will render easier to claim negligence towards manufacturers.”<sup>8</sup>

### VIII. Reasoning

Lord Atkin observed that, “The rule that you are to love your neighbor becomes in law, you must not injure your neighbor; and the lawyer’s question, Who is my neighbor? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who, then, in law is my neighbor? 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.”<sup>9</sup>

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<sup>8</sup> *Donoghue v. Stevenson*, [1932] AC 562 (HL).

<sup>9</sup> *Donoghue v. Stevenson*, [1932] AC 562 (HL).

To establish the principle of having a duty of care in the absence of contractual relationship, Lord Atkin relied on two cases. In *Heaven v. Pender* it was held that, “A duty of due care did arise when the person or property of one was in such proximity to the person or property of another that, if due care was not taken, damage might be done by the one to the other”.<sup>10</sup> In another case of *Lievre v. Gould*,<sup>11</sup> it was held that, “That case established that, under certain circumstances, one man may owe a duty to another, even though there is no contract between them. If one man is near to another, or is near the property to another, a duty lies upon him not to do that which may cause a personal injury to that other or may injure his property”. A similar line of reasoning was given by Lord Ormidale in the minority judgment of the *Mullen* case wherein he observed, “it would appear to be reasonable and equitable to hold that, in the circumstances and apart altogether from contract, there exists a relationship of duty as between the maker and the consumer of the beer.”<sup>12</sup>

The instant case has had a significant impact on the tort law. The principle born out of Lord Atkin’s observation in this case was developed later in *Caparo Industries v. Dickman*<sup>13</sup> which was concerned with the economic loss. The doctrine thus developed to have the three essentials of foreseeability, proximity and fairness. There should be two parties where one owe a fair and reasonable duty of care to another who resides in proximity to the first party and thus a damage from the act or omission thereof is foreseeable by the first party.

## IX. Critical Analysis

Today, the case has become significant for the origin of consumer protection laws, however, Lord Atkin’s opinions was not rendered from the perspective of rights of consumers, but from the perspectives of breach made by the manufacturer. The doctrine of foreseeability is the origin of this perspective. It has severely restricted the rights of the consumers and left the scope for the corporation to defend themselves on the ground of reasonable standard of care even if their products has caused harm to the bodily integrity of their consumers.

Further, consumers can only claim damages for a defect that was unknown to them. If they willingly consume a product being aware of its defect, then they cannot use the doctrine of

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<sup>10</sup> *Heaven v. Pender*, (1883) (11 QBD 503, Court of Appeal).

<sup>11</sup> *Lievre v. Gould*, [1893] 1 QB 491.

<sup>12</sup> *Donoghue v. Stevenson*, [1932] AC 562 (HL)

<sup>13</sup> *Caparo Industries Plc v Dickman* 1990 2 A.C. 605, 1990 2 W.L.R. 358, 617-618 (Lord Bridge).

negligence. However, in today's world, when the information is shared through misleading advertisement, the consumer cannot claim this doctrine. The judgment follows the principle of buyers beware and makes the consumer more responsible for their choice of consumption.

**X. Conclusion**

The case has laid down a very important decision on the duty of care and law of negligence. It has been a landmark in the jurisprudence of consumer protection laws. If contractual agreement was made the basis of duty of care, no consumer would be able claim damages from manufacturer leaving a wide scope of unhealthy practices for the manufacturer. The impact on health of the consumer then would be of huge concern. However later jurisprudence has focused on the rights of the consumer more and have developed a rights based perspective to the relationship between manufacture and consumer.

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