



## Bugg's Boilerplate

The interaction of a rather slow creature of nature and a bottle of ginger beer would not normally be suspected as being capable of lighting the fuse for a dramatic legal explosion.

But in the case of *Donoghue v. Stevenson* (a landmark decision that every common law student is confronted with) the painfully slow movements of a snail result in the creation of the tort of negligence and herald the birth of several major areas of modern law. The case is remarkable not only for its explosive impact but also for the fact that a judge had to refer to the bible and principles of loving thy neighbour in order to adapt the law to modern realities.

We should now always remember what the snail proved: even without a contract there can be liability!

Happy reading

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Nürnberg  
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## A legal message from a snail in a bottle

On Sunday 26th August 1928 May Donoghue sat in a café with a friend. The friend ordered and paid for some ginger beer, which came in a bottle made from dark opaque glass. Donoghue drank some of the contents then her friend proceeded to pour the remainder of the contents of the bottle into the tumbler when a snail, which was beginning to rot, floated out of the bottle.

As a result of the sickening sight of the snail and the impurities in the ginger beer, Donoghue suffered from shock and severe gastro-enteritis. She argued that the ginger beer was manufactured by the defendant (Stevenson) to be sold as a drink to the public; that it was bottled with a label bearing his name; and that the bottles were then sealed with a metal cap by the defendant.

Donoghue's lawyer, Walter Leechman, claimed that it was the duty of the defendant to provide a system of working his business which would not allow snails to get into ginger beer bottles, and that it was also his duty to provide a system of inspection of the bottles before the ginger beer was filled into them, and that he had failed in both these duties and had so caused the accident.

The case went all the way to the House of Lords where the Law Lords ruled for Donoghue. It was the speech of Lord Atkins that was most influential. He said: "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."

This 'neighbour principle' was, and to a certain extent still is, the foundation of the modern law of negligence.

The above report is taken from <http://www.brightknowledge.org/knowledge-bank/law-and-politics/features-and-resources/famous-cases-donoghue-v-stevenson>

**Donoghue v. Stevenson shows us that negligence establishes liability regardless of whether a contract exists or not. The impact of this case is still felt today in areas such as product liability, consumer protection laws and in negligent misrepresentation. Certainly, in contract and contract negotiation situations most people tend to link liability with the issue of the contract, whether it exists, and the exact nature of the agreement. The idea that most business people have seems to be that all liability starts and ends with a contract.**

**It is often forgotten that legal responsibility or liability may exist totally independently from the law of contract. So our modern business contracts have to deal with this and expressly limit or exclude negligence liability wherever possible. ▽**

## Just a question of law

The main tool of lawyers, especially in examining witnesses in court hearings, is supposed to be language. However, sometimes the related logic is forgotten. In the following anecdotal examples, the questions and/or answers prove the difficulties that may arise when the lawyer forgets common sense:

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

Q: Is it possible that the patient was alive when you began the autopsy?

A: No.

Q: How can you be so sure, doctor?

A: Because his brain was sitting on my desk in a jar.

Q: Was it you or your younger brother who was killed in the war?

Q: You were there until the time you left, is that true?

Q: How many times have you committed suicide?

Q: Can you describe the individual?

A: He was about medium height and had a beard.

Q: Was this a male or a female?

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

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- 1. Masterclass on Boilerplate Clauses in Contracts**  
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- 2. German Law Contracts in English**  
27-28 June 2014  
Hotel Victoria Nürnberg
- 3. Legal English**  
11-12 July 2014  
Hotel Victoria Nürnberg
- 4. Introduction to Working with Contracts in English**  
26-27 September 2014  
exact venue in Nürnberg to be announced
- 5. Update 2014: Masterclass on Developments in English Contract Law**  
5-6 December 2014  
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