Donoghue v Stevenson (1932) AC 562

Chapter 4 (page 165)

Relevant facts

On 26 August 1928, May Donoghue met a friend at a café in Paisley. The friend ordered and paid for a bottle of ginger of beer for Donoghue. When the bottle arrived, the waiter poured a portion into a glass tumbler. Donoghue drank the contents of the tumbler. When Donoghue's friend poured the rest of the bottle into the tumbler, the remains of a partially decomposed snail fell out. The ginger beer had been packaged in an opaque bottle, and therefore the presence of the snail had not been evident to Donoghue or the staff at the café.

Donoghue suffered from shock from the nauseating sight of the snail. She also suffered severe gastro-enteritis as a result of consuming the ginger beer. She sued the manufacturer of the ginger beer, David Stevenson, for £500 in damages.

At first instance the Judge found in favour of Donoghue. That decision was overturned on appeal to the Second Division of the Court of Session in Scotland. Donoghue appealed to the House of Lords.

Legal issue

Did Stephenson owe a duty of care to Donoghue even though there was no contract between them, and there was no fraud?

Decision

On 26 May 1932, a majority of the House of Lords held that when an article of food, medicine, etc is sold by a manufacturer to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, the manufacturer is under a legal duty to the ultimate purchaser or consumer to take reasonable care to ensure that the article is free from any defect likely to cause injury to health. According to Lords Atkin, Thankerton and MacMillan (Lords Buckmaster and Tomlin dissenting), this duty is owed even if there is no contract between the manufacturer and the consumer.

Lord Atkin (at 579-580) discussed the absence of a general statement of the circumstances in which a duty of care will arise:

> It is remarkable how difficult it is to find in the English authorities statements of general application defining the relations between parties that give rise to the duty.

> The Courts are concerned with the particular relations which come before them in actual litigation, and it is sufficient to say whether the duty exists in those circumstances. The result is that the Courts have been engaged upon an elaborate classification of duties as they exist in respect of property, whether real or personal, with further divisions as to ownership, occupation or control, and distinctions based on the particular relations of the one side or the other, whether manufacturer, salesman or landlord, customer, tenant, stranger, and so on.
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> In this way it can be ascertained at any time whether the law recognises a duty, but only where the case can be referred to some particular species which has been examined and classified. And yet the duty which is common to all the cases where liability is established must logically be based upon some element common to the cases where it is found to exist.

Lord Atkin then (at 580) set out his general conception of when a duty of care is owed (emphasis added):

> At present I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of 'culpa,' is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? 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 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.

Significance

This decision created a new category of duty of care, being that owed by a manufacturer of goods to the ultimate user of the goods. However, it is also credited with establishing the modern form of the tort of negligence by setting out the general principles for determining whether a person owes a duty of care to another. Prior to this decision, it was only recognised that a duty of care was owed in very specific circumstances, such as where a binding contract existed between the parties or the particular article was dangerous. The general conception of duty of care stated by Lord Atkin has since been used to identify numerous categories of situation when a duty of care will arise.