



# ADVOCACY CLUB PODCASTS

## Case Study (Based on Donoghue v Stevenson)

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## Case Summary

From Wikipedia, [Donoghue v Stevenson - Wikipedia](#), [1932] AC 562. *The Advocacy Club made a donation to the Wikimedia Foundation.*

On the evening of Sunday, August 26 1928, during the [Glasgow Trades Holiday](#), May Donoghue took a [train](#) to [Paisley, Renfrewshire](#). In Paisley, she went to the Wellmeadow Café. A friend, who was with her, ordered a pear and ice for herself. As for Donoghue, she asked for a [Scotsman ice cream float](#), a mix of [ice cream](#) and [ginger beer](#). The owner of the café, Francis Minchella, brought over a tumbler of ice cream and poured ginger beer on it from a brown and [opaque](#) bottle labelled “D. Stevenson, Glen Lane, Paisley”. Although the bottle was labelled as Stevenson’s, ... it is possible it did not originally belong to him. Bottles were often reused, and in the process occasionally returned to the incorrect manufacturer. Moreover, Stevenson initially claimed he did not issue bottles matching the description provided by Donoghue

Donoghue drank some of the ice cream float. However, when her friend poured the remaining ginger beer into the tumbler, a [decomposed snail](#) also floated out of the bottle. Donoghue claimed that she felt ill from this sight, complaining of [abdominal pain](#). According to her later statements of facts, she was required to consult a [doctor](#) on August 29 and was admitted to [Glasgow Royal Infirmary](#) for “emergency treatment” on September 16. She was subsequently diagnosed with severe [gastroenteritis](#) and [shock](#).

The ginger beer had been manufactured by David Stevenson, who ran a company producing both ginger beer and [lemonade](#) at 11 and 12 Glen Lane, Paisley, less than a mile away from the Wellmeadow Café. The contact details for the ginger beer manufacturer were on the bottle label and recorded by Donoghue’s friend.

## State of the Law (1927)

The ‘neighbour’ duty was unknown in English or Scots law at the time, although it had already been recognized in the US for ten years before May Donoghue’s case arose. Absent a contract, 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 (i.e., fraud); or
- The product was dangerous *per se*, and the manufacturer failed to warn the consumer of this.

The ratio of decision: A manufacturer of products sold in such a form as to show an intent to reach the ultimate consumer in the same condition in which the manufacturer with no reasonable possibility of intermediate examination and knowing of a duty of care that, if avoided, will cause injury to the consumers’ life, owes a duty of care to such consumer.

## Legal Procedure in this Case

After the Pursuer (Scots law for ‘plaintiff’) commenced the action and served it on the Defender, the Defender brought a motion for demurrer (summary judgment to dismiss the action) for lack of any legal cause of action. The motion was denied on appeal to the House of Lords. No trial ever took place.

## Statement of May (M'Alister) Donoghue

1. I am a 55-year-old widow. I live and work in Glasgow as a shop clerk.
2. Sunday, August 26, 1928, occurred during the Glasgow Trades Holiday.
3. I took the train that evening to nearby Paisley to visit my friend Audrey MacIsaac, who lives in Paisley.
4. Audrey met me at the train station. Together, we walked to the Wellmeadow Café, which Audrey knew from earlier visits.
5. As we arrived, we were greeted and seated by the owner, Mr. Minghella.
6. Audrey ordered Scotsman Floats for both of us, a mix of ginger beer poured over ice cream.
7. Mr. Minghella served us each a tumbler with ice cream.
8. He then poured ginger beer into our tumblers from opaque bottles labelled "D. Stevenson, Glen Lane, Paisley".
9. I drank some of the float, and Audrey then poured the balance of liquid from my bottle into my tumbler.
10. As she did, I saw the remains of a snail, quite decomposed, come out of the bottle.
11. The sight alone shocked me and made me feel ill in my stomach.
12. I went home immediately, feeling increasingly ill.
13. I consulted a physician at the Glasgow Royal Infirmary on August 29 and was advised to rest at home.
14. My illness worsened until I was admitted to Hospital on September 16, diagnosed with severe gastroenteritis and shock.
15. I was completely healthy before that incident and had not missed a workday for any reason in years.

Signed/sworn by *May Donoghue*

## **Statement of Audrey MacIsaac**

1. I am 56 years old, married, and live and work in Paisley as a shop clerk.
2. Sunday, August 26, 1928, occurred during the Glasgow Trades Holiday, which includes Paisley.
3. My close friend, May Donoghue, took the train that evening to visit me.
4. I met May at the train station. Together, we walked to the Wellmeadow Café, which I knew from earlier visits.
5. As we arrived, we were greeted and seated by the owner, Mr. Minchella.
6. I ordered Scotsman Floats for both of us, a mix of ginger beer poured over ice cream.
7. Mr. Minchella served us each a tumbler with ice cream.
8. He then poured ginger beer into our tumblers from opaque bottles labelled “D. Stevenson, Glen Lane, Paisley”.
9. We each drank some of the float, and I poured the balance of liquid from her bottle into her tumbler.
10. I saw May recoil from the table and turn sheet- white as I did. She said that she saw the remains of a decomposed snail.
11. I did not look into her tumbler and did not see the snail.
12. I summoned Mr. Minchella to our table and told him what had happened. I saw him look into May’s tumbler.
13. I then helped her to the train station and waited as her train left.
14. May was completely healthy before that incident and had not missed a workday for any reason in years.

Signed/sworn by *Audrey MacIsaac*

## Statement of David Stevenson

1. I own and operate a drinks bottler, D. Stevenson of Glen Lane, Paisley.
2. My firm has 20 employees and has distributed ginger beer and lemonade in Paisley for many years.
3. I have sold ginger beer and other products to the Wellmeadow Café, most recently two weeks before the incident.
4. We use modern sanitation and bottling methods, the current standard of our trade.
5. I deny that snails got into my bottles, either intact or decomposed.
6. I have known my competitors to collect my bottles, refill them with their products, and distribute them to merchants in Paisley. Such competitors may not use the same sanitary precautions I do.

Signed/sworn by *David Stevenson*

## **Statement of Francis Minchella**

1. I am the owner and operator of the Wellmeadow Café of Paisley, Scotland.
2. Sunday, August 26, 1928, occurred during the Glasgow Trades Holiday, which includes Paisley.
3. A regular customer, Audrey MacIsaac, attended my café with a colleague who I did not recognize, May Donoghue.
4. As they arrived, I greeted them and showed them to their seats.
5. Audrey ordered Scotsman Floats for both of them, a mix of ginger beer poured over ice cream.
6. I served each a tumbler with ice cream.
7. I then poured ginger beer into both tumblers from bottles labelled “D. Stevenson, Glen Lane, Paisley”, my regular supplier.
8. I left their table to attend to other customers. The evening trade was brisk due to the holiday.
9. Soon after, Audrey called me over to her table.
10. She said May saw the remains of a decomposed snail come from the bottle and was now quite ill.
11. I inspected the tumbler and found no sign of a snail or anything out of the ordinary.
12. May did not appear distressed or ill to me as they left my café.
13. I have never had any other complaint of illness caused by servings of food or beverage consumed at my café.

Signed/sworn by *Francis Minchella*

**Exhibit 1 Opaque Bottle**



**Exhibit 2 – Glass Tumbler**





### **Exhibit 3 - Glasgow Royal Infirmary Records**

August 29, 1926

Glasgow resident May (M'Alister) Donoghue, age 55, attended as an outpatient. Presented with intense abdominal pain, diarrhea, and vomiting. Attributed to the consumption of soda contaminated with decomposed snail remains. Treated with Pepto-Bismol and told to drink fluids and to return if symptoms worsened.

This patient has no previous history of abdominal ailments at this Infirmary.

September 16, 1926

May Donoghue re-presented at the emergency room. C/o heightened symptoms of abdominal pain, high fever, and vomiting. Dx acute gastroenteritis and shock. Admitted as an in-patient for 48 hours for total rehydration, bedrest and observation.

September 19, 1926

May Donoghue was discharged after full recovery of gastroenteritis, with residual symptoms of mild posttraumatic shock.

## Statement of Claim

Between: May Donoghue, Pursuer

And: David Stevenson, Defender

1. The Pursuer claims 500 pounds as damages from the Defender.
2. On August 26, 1926, the Pursuer visited a café in Paisley, Scotland, that sold ginger beer distributed by the Defender.
3. The Pursuer consumed ginger beer so supplied.
4. In doing so, the Pursuer became ill because the ginger beer was contaminated by the remains of a decomposed snail in the bottle sold by the Defender to the owner of the café.
5. The Defender owed the Pursuer and the public a duty to distribute safe products for consumption and to use reasonable methods to ensure such safety.
6. The illness suffered by the Pursuer consisted of acute gastroenteritis and nervous shock.

## Statement of Defence

Between: May Donoghue, Pursuer

And: David Stevenson, Defender

1. The Defender denies that the damages claimed are the responsibility of the Defender and further that they are excessive and too remote.
2. The Defender makes and distributes ginger beer to merchants in the Paisley region, including the café that sold the product that the Pursuer consumed (the 'Café').
3. On August 26, 1926, the Pursuer visited the Café, which on occasion, sold ginger beer distributed by the Defender.
4. The Pursuer may have consumed ginger beer at the Café but not the ginger beer supplied by the Defender.
5. The Defender had no relationship in contract or otherwise with the Pursuer and dealt only with the owner of the café. Further, even the café had no such relationship with the Pursuer, selling its product to a colleague of the Pursuer.
6. The Pursuer became ill, if at all, for reasons unrelated to the Defender's products.
7. The law of Scotland does not recognize that the Defender owed to the Pursuer and the public generally any duty whatsoever.
8. The Defender complied with commercially reasonable standards in the manufacture, bottling and distribution of its product such that snails could not reasonably be foreseen to contaminate its contents.
9. Even if there is such a duty, the Pursuer did not consume the Defender's product. Other suppliers in the Paisley region routinely reuse the

Defender's bottles to package and distribute their own products to merchants such as the café in question.

10. The illness suffered by the Pursuer is greatly exaggerated and unrelated to any consumption of the Defender's product.