

Protecting consumers in Australia

Case study

Read the extract and answer the following questions.

It was a warm day in the town of Paisley, outside of Glasgow, Scotland in 1928 when Mrs May Donoghue and a friend stopped for a drink at a small café.

Mrs Donoghue ordered a small bottle of ginger beer. The shopkeeper poured the cold soft drink into a glass for Mrs Donoghue.

Mrs Donoghue then drank her ginger beer only to receive a terrible shock when she looked into the bottom of her empty glass. There lay the decomposed remains of a snail!

Needless to say Mrs Donoghue was very distressed. A dead snail had contaminated her drink. She not only became upset, but sick as well and had to take time off work to recover.

The shopkeeper assured her that he was not in the habit of adding dead snails to his customers’ drinks. It was then determined that the snail had been sealed in the bottle at the time it was manufactured.

Mrs Donoghue decided to sue the manufacturer for shock, gastro-enteritis, mental depression and loss of wages. This was the first time such a legal action had been taken against a manufacturer. Because it was the first case of its type it went all the way to the House of Lords in England!

Here the House of Lords decided that the manufacturer had been negligent. They argued that people who make products have a duty of care to those who will buy their products (consumers). They should be responsible enough to ensure their products are safe and will not harm consumers.

The House of Lords then said that if a product is found to be unsafe and harmful to a person, that person has a legal right to seek compensation from the manufacturer. Compensation usually takes the form of a monetary sum. Unfortunately for Mrs Donoghue, the manufacturer died before the case was finalised and she only received 200 pounds (about \$700).

But, most importantly, Mrs Donoghue’s persistence in taking the manufacturer to court helped governments all over the world realise that consumers needed protection. The truth is that not everyone can afford to take a manufacturer to court if they are unhappy with a product. In Mrs Donoghue’s case a law firm offered their services for free to help her take her case to the House of Lords. Now there are laws that protect consumers from manufacturers who produce unsafe or harmful products or who conduct business in an unfair way.

What fundamental consumer right was not met in the case involving Mrs Donoghue?

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What was so significant about this case? Discuss the issue of ‘duty of care’.

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Source: *Issues in business law: protecting consumers in Australia*, David Parker, Senior Lecturer, Victoria University of Technology.

Why do you think governments have become involved in protecting consumer rights?

Give an example of situations today where this principle is applied.

Further discussion

How has the practice of buying goods changed in terms of who should be wary?

Does a contract between a consumer and supplier or manufacturer have to be in writing?

What is the difference between a civil and a criminal action?

What is the purpose of the *Competition and Consumer Act 2010 (Cth)*?

Why would pyramid selling be seen as diminishing consumer rights under the Act?
