

Common Law Reasoning

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Part 1: *Donoghue v Stevenson*

“We are not final because we are infallible, but we are infallible only because we are final.”

Justice Robert H Jackson, speaking of the US Supreme Court,
in *Brown v Allen* 344 US 443 (1953), 540

Donoghue v Stevenson – two preliminary matters

Two areas of law: contract law and tort law

Contract law

- A **contract** is a legally enforceable agreement
- The parties to the contract owe each other obligations under the contract
- A person who breaches a contract (breaks the agreement) must pay damages (compensation)

Tort law

- **Torts** are civil wrongs other than a breach of contract
- A person who commits a tort must pay damages
- **Negligence** is a tort
- A commits the tort of negligence when:
 - A owes a duty of care to B, to take a certain amount of care to avoid harming B
 - A breaches that duty, by not taking enough care
 - A thereby causes harm to B

The UK

- **The United Kingdom of Great Britain and Northern Ireland** (“UK”) is a sovereign state
- The UK consists of 4 countries: **England, Scotland, Wales, and Northern Ireland**
 - (“**Great Britain**” refers to England, Scotland, and Wales)

Encyclopaedia Britannica: <https://www.britannica.com/story/whats-the-difference-between-great-britain-and-the-united-kingdom>

The UK's legal systems

Each of the following has its own legal system, with its own system of courts:

- **England and Wales**

- Various lower courts and tribunals
- High Court of England and Wales (“EWHC”)
- Court of Appeal of England and Wales (“EWCA”)

- **Scotland**

- Various lower courts and tribunals
- Court of Session – civil cases:
 - Outer House of the Court of Session (“CSOH”)
 - Inner House of the Court of Session (“CSIH”)
- High Court of Justiciary / Court of Criminal Appeal (“HCJT” or “HCJAC”) – criminal cases

- **Northern Ireland**

- Various lower courts and tribunals
- High Court of Northern Ireland (“NIQB”, “NIFam”, “NICH”) – civil cases
- Crown Court of Northern Ireland (“NICC”) – criminal cases
- Court of Appeal of Northern Ireland (“NICA”)

The UK's legal systems

- The **final** court of appeal for:
 - all civil cases from England and Wales, Scotland, and Northern Ireland
 - all criminal cases from England and Wales and Northern Ireland
 - questions of law (only) in criminal cases from Scotland
- was the **Appellate Committee of the House of Lords**, often called the **House of Lords** for short (“UKHL”), until October 2009
- is now the **Supreme Court of the United Kingdom** (“UKSC”)

Back to *Donoghue v Stevenson*

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Donoghue v Stevenson – the basics

- Who sued whom?
 - Who was the plaintiff (known in Scots law as the pursuer)?
 - Who was the defendant (known in Scots law as the defender)?
- What courts heard, and ruled on, the dispute?

The persons involved

**Defender (defendant) /
respondent before the House of Lords:**
Stevenson – manufacturer

Contract

Minchella – café operator

Contract

Donoghue's friend

Gift

**Pursuer (plaintiff) /
appellant before the House of Lords:**
Donoghue

Did Stevenson owe Donoghue
a duty of care?

Hence, could Donoghue sue
Stevenson in negligence?

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The courts involved

- **Donoghue sued Stevenson** in the Outer House of the Court of Session, which ruled in Donoghue's favour.
 - Pursuer (plaintiff): Donoghue
 - Defender (defendant): Stevenson
- **Stevenson appealed** to the Inner House of the Court of Session, which ruled in Stevenson's favour (by a majority of 3-1).
 - Appellant: Stevenson
 - Respondent: Donoghue
- **Donoghue appealed** to the House of Lords.
 - Appellant: Donoghue
 - Respondent: Stevenson

The question for the House of Lords

- While this case was governed by Scots law,
- all the judges and the parties agreed that Scots law on negligence was the same as English law.
- These proceedings were on a **question of law** only: *if Donoghue's account was true, would Stevenson be legally liable to Donoghue?*
- These proceedings were *not* about **questions of fact** (was Donoghue's account true?)

The judgment of the House of Lords, as it appears in the law reports

The judgment of the House of Lords, and what happened next

- The House of Lords, by a majority of 3 to 2, said: Stevenson owed Donoghue a duty of care *if* Donoghue's account was true.
- The House of Lords then remitted the matter to the Court of Session to answer the question of fact: was Donoghue's account true?
- Shortly after that, Stevenson died.
- The case was then settled out of court.
- So we will never know whether Donoghue's account was true.

Lord Buckmaster's judgment

National Portrait Gallery x31062

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Lord Buckmaster's judgment (13 pages)

- “The law applicable is the common law, and,
- though its principles are capable of application to meet new conditions not contemplated when the law was laid down,
- these principles cannot be changed nor can additions be made to them because any particular meritorious case seems outside their ambit.”

Is he saying that rules of the common law can never be changed?

Lord Buckmaster's judgment – starting with a specific rule about product manufacturers' liability

“The general principle of these cases is stated by Lord Sumner in the case of *Blacker v Lake & Elliot, Ltd*, in these terms...”

[My paraphrase:]

- The manufacturer is obliged to take care that the product not be defective.
- But this obligation arises from the **contract** with the café operator.
- Therefore, the obligation is owed to the café operator.
- Not to the ginger beer drinker.
- So the ginger beer drinker can't sue the manufacturer if the product is defective.

Lord Buckmaster's judgment – starting with a specific rule about product manufacturers' liability

“From this general rule there are two well known exceptions:

- (1) In the case of **an article dangerous in itself**; and
- (2) where the article not in itself dangerous is **in fact dangerous, by reason of some defect or for any other reason, and this is known to the manufacturer.**”

If you were Donoghue's lawyer, how would you argue that Stevenson (manufacturer) is legally liable to Donoghue (drinker)?

Ginger beer: “dangerous in itself”?

The judge in the Outer House of the Court of Session, Lord Moncrieff, said:

- “Tainted food when offered for sale is, in my opinion, amongst the most subtly potent of ‘dangerous goods’, and to deal in or prepare such food is highly relevant to infer a duty.”

In the House of Lords, Lord Buckmaster disagreed:

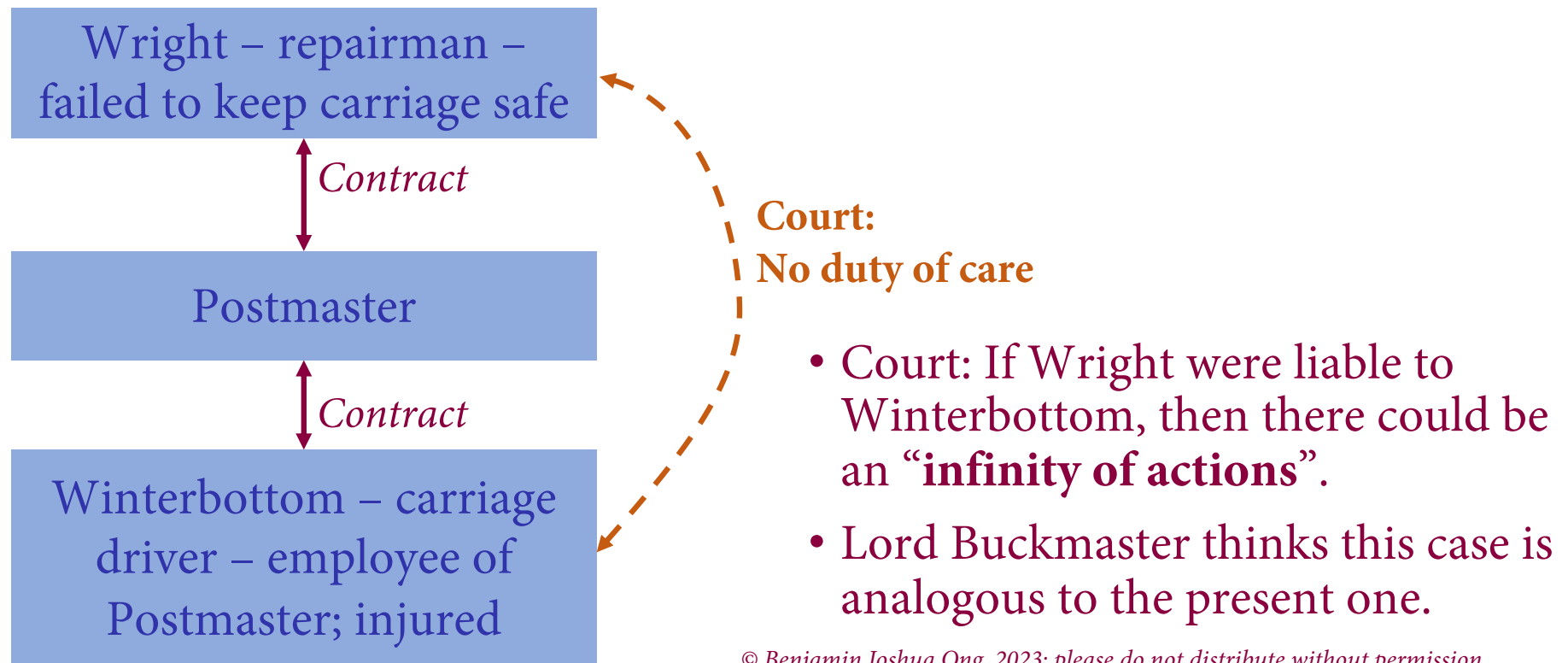
- “In this case no one can suggest that ginger-beer was an article dangerous in itself.”

Why did they disagree?

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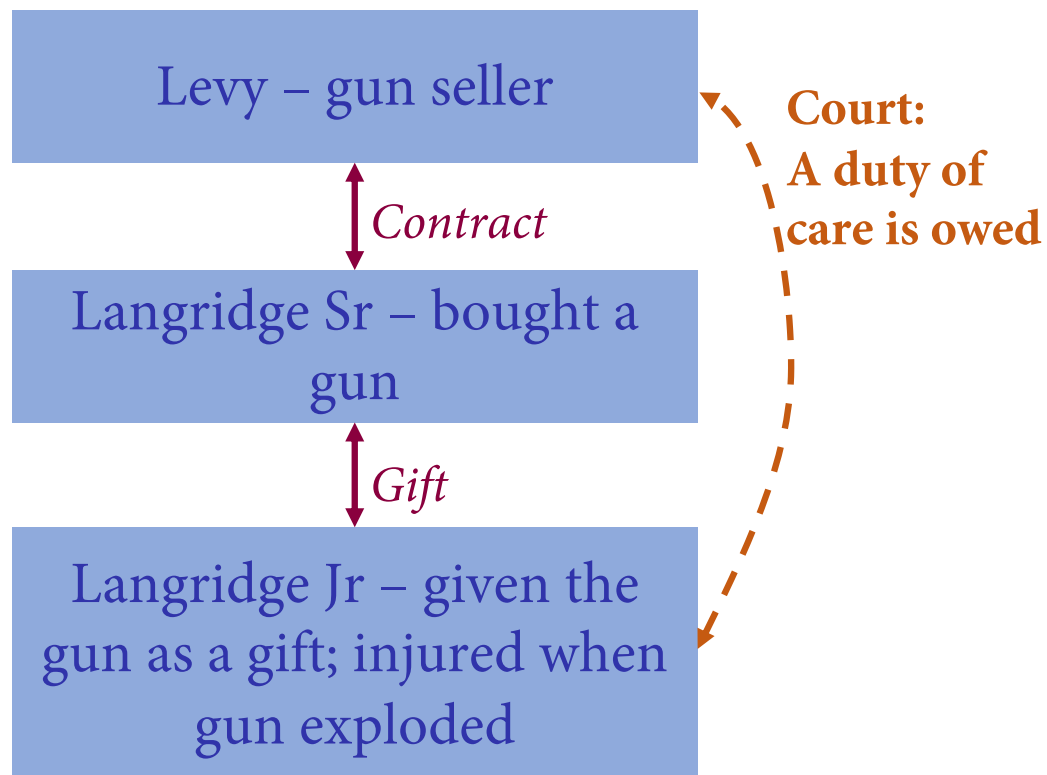
Lord Buckmaster's analysis of previous cases

– *Winterbottom v Wright*



Lord Buckmaster's analysis of previous cases

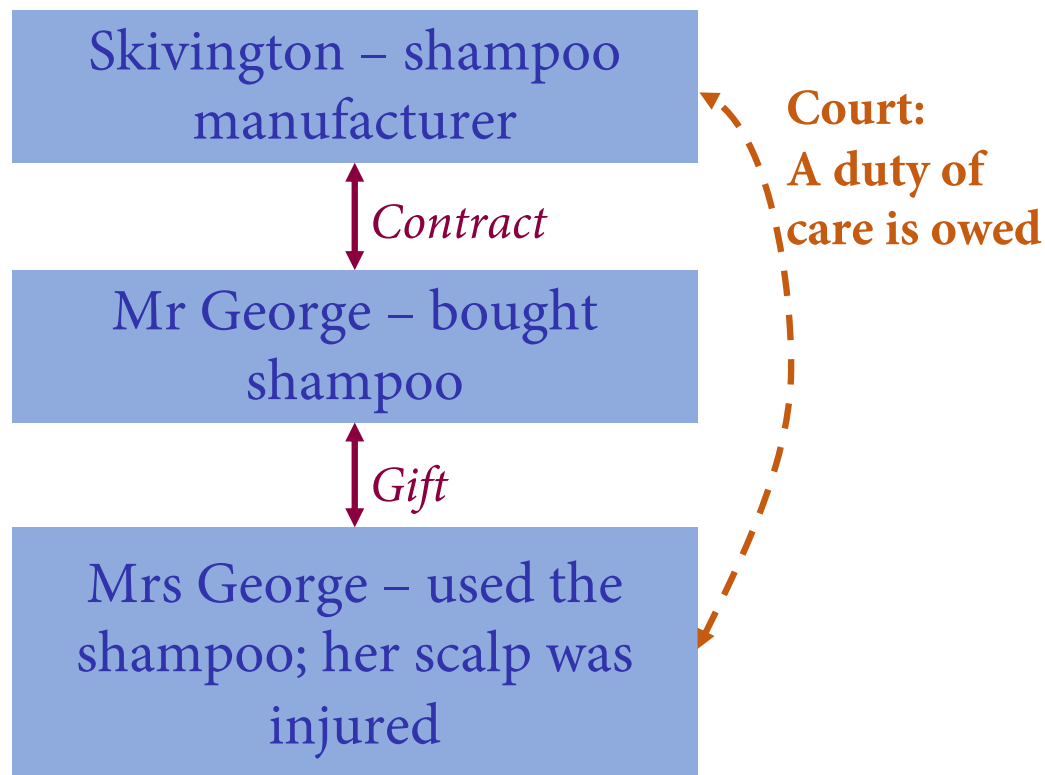
– *Langridge v Levy*



- Court: Levy owed Langridge Jr a duty of care.
- Lord Buckmaster thinks this case is **not** analogous to the present one.
- In this case, the court's point was that Levy had acted *fraudulently* – he *knew* that the gun was faulty, yet said it was not.
- In the present case, Stevenson has not been accused of fraud.

Lord Buckmaster's analysis of previous cases

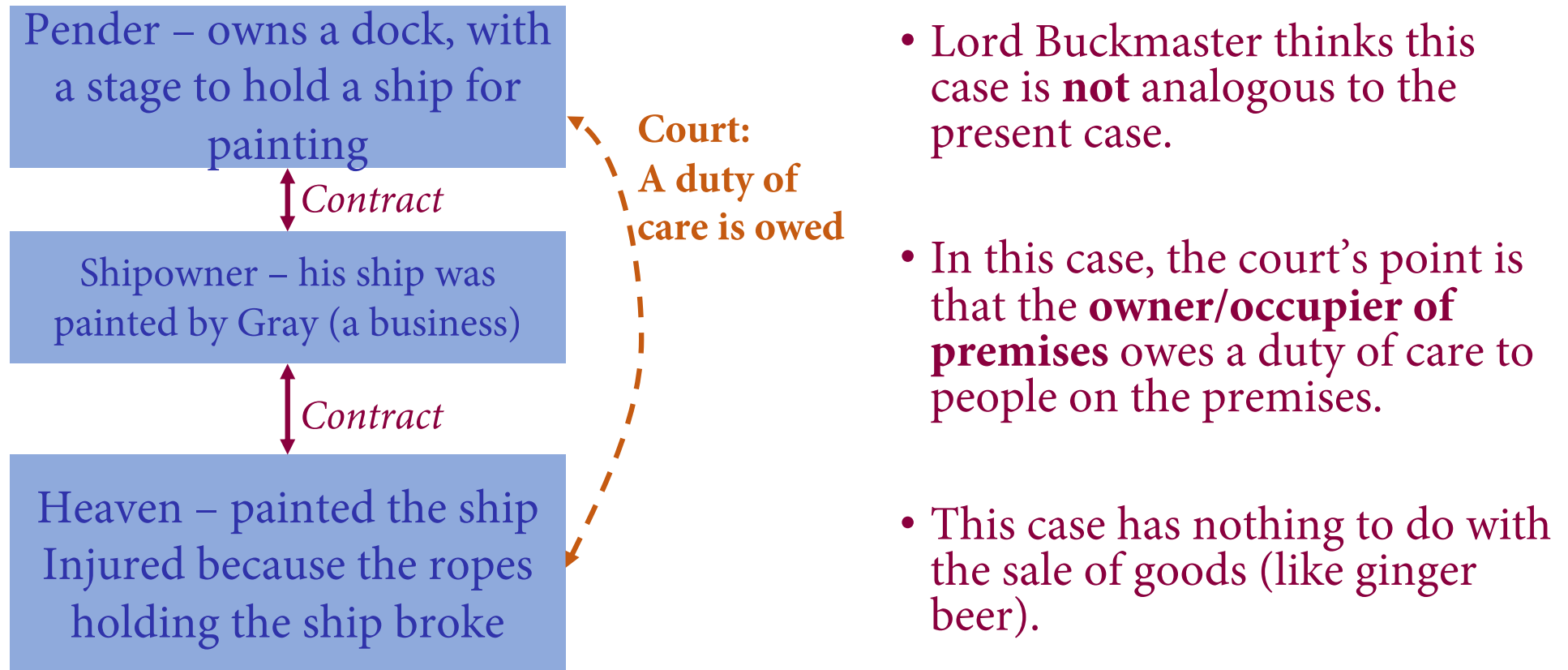
– *George v Skivington*



- Court: This case is analogous to *Langridge v Levy*.
- Just as Levy owed a duty of care to Langridge Jr,
- Skivington owes a duty of care to Mrs George.
- Lord Buckmaster thinks this case was **wrongly decided**.
- In this case, the court was wrong to draw an analogy with *Langridge v Levy*. In this case, there was no fraud.
- Lord Buckmaster: this case “should be buried so securely that [its] perturbed spirits shall no longer vex the law”.

Lord Buckmaster's analysis of previous cases

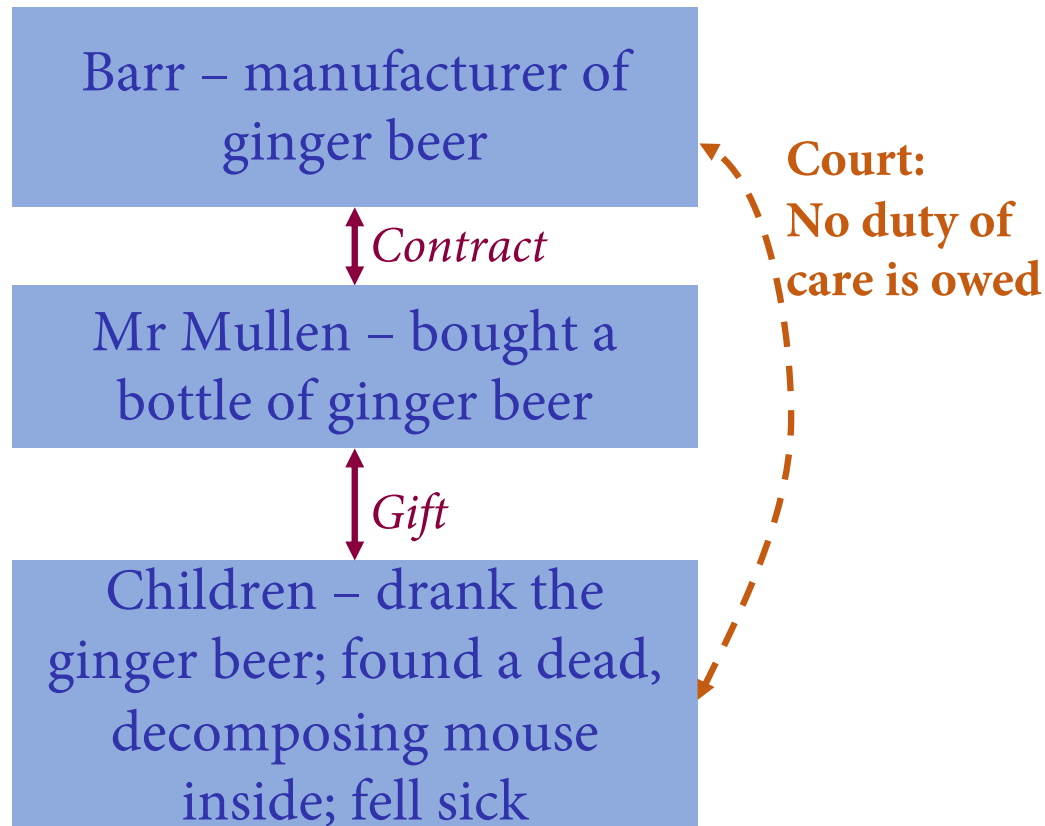
– *Heaven v Pender*



- Lord Buckmaster thinks this case is **not** analogous to the present case.
- In this case, the court's point is that the **owner/occupier of premises** owes a duty of care to people on the premises.
- This case has nothing to do with the sale of goods (like ginger beer).

Lord Buckmaster's analysis of previous cases

– *Mullen v Barr*



- Court: “where the goods of the defenders are widely distributed... it would seem little short of outrageous to make them responsible to members of the public for the condition of the contents of every bottle...”
- if such responsibility attached to the defenders, **they might be called on to meet claims of damages which they could not possibly investigate or answer.**”
- Lord Buckmaster thinks this case is analogous to the present case.

Lord Buckmaster's conclusion: Stevenson was not liable to Donoghue.

Lord Tomlin's judgment

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Lord Tomlin's judgment (< 2 pages)

- He agreed with Lord Buckmaster.
- He didn't add much of his own.
- He did, however, raise the following point:
- By Donoghue's logic, "every one of the sufferers by such an accident as that which recently happened on the Versailles Railway might have his action against the manufacturer of the defective axle."
 - This refers to an accident in 1842 where a train's axle broke, causing the train to derail. Hundreds of people were injured/killed.

Lord Atkin's judgment

<https://www.allanmanning.com/lord-atkin-from-queensland-to-the-house-of-lords-exhibition/>

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Lord Atkin's judgment

- How is Lord Atkin's judgment different from Lord Buckmaster's?

Lord Atkin's judgment: he searches for a general principle

- What general principles did he start with?

Lord Atkin's judgment: he searches for a general principle

- “the Courts have been engaged upon an elaborate classification of duties... with... distinctions based on the particular relations of the one side or the other, whether manufacturer, salesman or landlord, customer, tenant, stranger, and so on.”
- “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 book are but instances.”

Lord Atkin's judgment: he starts with a general moral principle...

- “The liability for negligence... is no doubt based upon a **general public sentiment of moral wrongdoing for which the offender must pay.**”

... but tempers this with pragmatism

- “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.**”
- Lord Atkin says that one such rule is the “neighbour” principle.
- Under this principle,
 - Who is your “neighbour”?
 - How must you treat your “neighbour”?

The 'neighbour' principle

- “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.”

The ‘neighbour’ principle

- “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.”

Lord Atkin derives the ‘neighbour’ principle by induction from previous cases

How does Lord Atkin derive the ‘neighbour’ principle from previous cases?

- He analyses several cases in which A was held to owe a duty of care to B, like *Heaven v Pender*.
- He says that in all these cases, there was “proximity” / “close[ness]” between A and B.
- So he says: the *general* principle is that A owes a duty of care to B if A has sufficient “proximity” to B.
- He says that this principle explains the outcome in many previous cases.

Qualifying the ‘neighbour’ principle

- In *Heaven v Pender*, Lord Esher remarked that a manufacturer of goods owes a duty of care to those whom he can foresee would use the goods.
- But what about Lord Buckmaster’s / Lord Tomlin’s concerns – “if one step, why not fifty” – the ‘floodgates’ problem?

Qualifying the ‘neighbour’ principle

- Lord Atkin points out Lord Esher’s qualifications to the general rule:
 - The manufacturer is not liable if the user had a “reasonable opportunity of inspection” of the goods.
 - The manufacturer is not liable if the goods were not “used immediately”.
- He does not deny that ‘if one step, why not fifty?’ is a problem.
- But he thinks that Lord Esher provides a satisfactory solution.

Is the ‘neighbour’ principle too unclear?

- Lord Atkin doesn’t deny that the boundaries of the ‘neighbour’ principle are uncertain:
 - “There will no doubt arise cases where it will be difficult to determine whether the contemplated relationship is so close that the duty arises.”
- But he doesn’t need to explore precisely what the boundaries are:
 - “But in the class of case now before the Court I cannot conceive any difficulty to arise.”
- He says that at least *this* is clear: a manufacturer of goods owes a duty of care to intended consumers, subject to the qualifications on the previous slide.
 - “I confine myself to **articles of common household use**, where every one, including the manufacturer, knows that the articles will be used by other persons than the actual ultimate purchaser – namely, by members of his family and his servants, and in some cases his guests...”
- So he is going only 5 steps, not 50?

How far can the ‘neighbour’ principle go?

- How far can this reasoning go beyond ginger beer and snails?
- Lord Atkin gives the following examples:
 - Sale of food or drink
 - Sale of medication
 - Sale of “ointment”, “soap”
 - Sale of “cleaning fluid”, “cleaning powder”
- What else?

But what about all the cases that Lord Buckmaster cited?

- Lord Atkin disagrees with Lord Buckmaster's interpretation of those cases. For example:
- *Langridge v Levy* (gun case): He thinks Lord Buckmaster's interpretation, which focused on the *fraud* by the seller, was too narrow.
- *Winterbottom v Wright* (carriage case): He agrees with the outcome: the repairman isn't the postman's 'neighbour'. But he says that is different from the present case.
- Various other cases...
- In short: "... I think that the judgments in the case err by seeking to confine the law to rigid and exclusive categories, and by not giving sufficient attention to the general principle which governs the whole law of negligence..."

Other things that Lord Atkin mentions

- “I do not think a more important problem has occupied your Lordships... important... because of **its bearing on public health...**”

Other things that Lord Atkin mentions

- “It is said that the law of England and Scotland is that the poisoned consumer has no remedy against the negligent manufacturer.
- If this were the result of the authorities, I should consider the result a **grave defect in the law**, and so contrary to principle that I should hesitate long before following any decision to that effect which had not the authority of this House.
- I would point out that, in the assumed state of the authorities, not only would the consumer have no remedy against the manufacturer, he would have none against any one else...
- I do not think so ill of our jurisprudence as to suppose that its principles are so remote from **the ordinary needs of civilized society and the ordinary claims it makes upon its members** as to deny a legal remedy where there is so obviously a social wrong.”

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Other things that Lord Atkin mentions

- “It is always a satisfaction to an English lawyer to be able to test his application of fundamental principles of the common law by **the development of the same doctrines by the lawyers of the Courts of the United States.**
- In that country I find that the law appears to be well established in the sense in which I have indicated.
- The mouse had emerged from the ginger-beer bottle in the United States before it appeared in Scotland, but there it brought a liability upon the manufacturer.”

Summing up the ‘neighbour’ principle

- It started as a *moral* principle (with religious origins) – *love your neighbour*
 - For commentary on this principle as expressed in Christian, Confucian, Kantian, etc. thought, see: *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 (CA) [22]
- Lord Atkin added more detail to it to make it workable as a *legal* principle: *do not harm* your neighbour + definition of ‘neighbour’
- He derived the principle through *inductive* reasoning: by looking *backwards* – to explain and rationalise decisions in past cases
- He says the principle can be applied *forwards* – as a principle to help develop the law of negligence further in future cases

Lord Macmillan's judgment

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Lord Macmillan's judgment (18 pages)

- “In the daily contacts of social and business life human beings are thrown into, or place themselves in, an infinite variety of relations with their fellows...
- The categories of negligence are never closed.”

Lord Macmillan's judgment

- “a person who for gain engages in the business of manufacturing articles of food and drink intended for consumption by members of the public in the form in which he issues them is under a duty to take care in the manufacture of these articles.
- That duty, in my opinion, he owes to those whom he intends to consume his products.
- He manufactures his commodities for human consumption; he intends and contemplates that they shall be consumed.
- By reason of that very fact he places himself in a relationship with all the potential consumers of his commodities, and that relationship which he assumes and desires for his own ends imposes upon him a duty to take care to avoid injuring them.”

Would it be accurate to say that Lord Macmillan agrees with Lord Atkin?

What is the legal rule laid down by this case?

1. A manufacturer of ginger beer must take reasonable care to prevent snails from contaminating its products, thus causing a woman to suffer gastroenteritis in Glasgow.
2. A manufacturer of food/beverages must take reasonable care to make its products safe for consumption, such that they will not harm consumers.
3. A manufacturer of products must take reasonable care to make its products safe, such that they will not harm consumers.
4. A person must take reasonable care to avoid causing reasonably foreseeable harm to others who are closely and directly affected.
5. Take care not to injure your neighbour.

What is the *ratio* of a case?

- A lower court is bound to apply the *ratio decidendi* (plural: *rationes decidendi*) (*ratio* for short) of a case
- Definition of *ratio decidendi*: “any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him”
 - Cross, *Precedent in English Law* (3rd ed, 1977) 76, cited in *Indo Commercial Society (Pte) Ltd v Ebrahim* [1992] 2 SLR(R) 667 (HC), in turn cited in *Peter Low LLC v Higgins, Danial Patrick* [2017] SGHCR 18
- Anything else said by the court is an *obiter dictum* (plural: *obiter dicta*) – not binding, but possibly persuasive

The *ratio* of *Donoghue v Stevenson*

R F V Heuston, '*Donoghue v Stevenson* in Retrospect' (1957) 20 *Modern Law Review* 1 at 8:

- “Whatever the status of the ‘neighbour principle’ in Lord Atkin’s own judgment,
- it hardly seems possible to say that it forms part of the *ratio decidendi* of the decision,
- for the two other members of the majority seem to have been careful to avoid expressing their concurrence with it.
- Lord Thankerton said that he agreed with Lord Atkin’s speech, but... his agreement was confined to that part of the speech which analyses the English cases on manufacturers’ liability...
- Lord Macmillan recognised that new duties might be created – ‘the categories of negligence are never closed’ – but maintained a cautious silence about the principle or principles upon which this might be done.”

The legacy of *Donoghue v Stevenson* in English law

- Paul Mitchell, *A History of Tort Law 1900-1950* (Cambridge University Press, 2015) at 4-5:
- “Today, of course, it is known for Lord Atkin's articulation of the neighbour principle as the unifying explanation for when duties of care are owed in negligence.
- That foundational status, however, was only acquired after the principle had been taken up by judges in the 1960s and 1970s.
- In the 1930s the response was less enthusiastic...
- For judges...*Donoghue v Stevenson* was initially seen as a valuable decision on manufacturers' duties to the ultimate consumers of their products...
- Attempts to draw a more ambitious message from the case, which would have resulted in the recognition of duties of care in a broader range of situations, were unsuccessful. The case's iconic status was all in the future.”

Donoghue v Stevenson in English law

R F V Heuston, '*Donoghue v Stevenson* in Retrospect' (1957) 20 *Modern Law Review* 1, 12:

- “It is common knowledge that the scope of the duty has been extended to include repairers, assemblers, and erectors,
- and that it is not confined to articles of food or drink – underwear, tombstones, lifts and motor-cars have all been included.
- Further, by perhaps the most daring extension of all, the category of those protected has been extended to persons who happen to be in physical proximity to the article.”

Donoghue v Stevenson in Singapore law

- *Dobb & Co Ltd v Hecla* [1971-1973] SLR(R) 821 (HC)
- *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 (CA)
 - **Worker injured while at work**
- *Ngiam Kong Seng v Lim Chiew Hock* [2008] 3 SLR(R) 674 (CA)
 - **A person suffered psychiatric harm upon hearing someone else's words**
- *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 (CA)
 - **A superintending officer allegedly failed to certify construction work on time, leading to delays in payments to the builders**

Further reading

- Martin R Taylor QC, ‘Mrs Donoghue’s Journey’, in Peter T Burns QC, ed, *Donoghue v Stevenson and the Modern Law of Negligence – The Paisley Papers* (Continuing Legal Education Society of British Columbia, 1991) <<https://www.scottishlawreports.org.uk/resources/donoghue-v-stevenson/mrs-donoghue-s-journey>>
- R F V Heuston, ‘*Donoghue v Stevenson* in Retrospect’ (1957) 20 *Modern Law Review* 1
- *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 (CA) especially [31]-[49]
- *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 (CA) [20]-[38]
- *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 (CA) especially at [15]-[27]

Part 2: Attorney-General v Ting Choon Meng

- “Moses was an excellent draftsman, and when he said 'thou shalt not steal'... everyone knew what he meant...
- But in the UK we have the Theft Act 1978 [*sic*] which sets out the law in 35 sections, which have given rise to various problems of interpretation, and has had to be considered by our Court of Appeal on many occasions.”

Lord (David) Renton QC, ‘Current Drafting Practices and Problems in the United Kingdom’ (1990) 11 *Statute Law Review* 11, 17

Key questions

- Is legislation always clear?
- How do courts interpret legislation?

Which of these is a person?

POHA

PROTECTION FROM HARASSMENT ACT 2014

(No. 17 of 2014)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

OFFENCES

3. Intentionally causing harassment, alarm or distress
4. Harassment, alarm or distress
5. Fear or provocation of violence
6. Threatening, abusing or insulting public servant or public service worker
7. Unlawful stalking
8. Enhanced penalty for subsequent offence
9. Community order
10. Contravention of certain orders

PART III

REMEDIES

11. Action for statutory tort
12. Protection order
13. Expedited protection order
14. No civil action for common law tort of harassment
15. False statements of fact
16. Knowledge of certain orders presumed

PART IV

GENERAL

17. Application to person outside Singapore

An Act to protect persons against harassment and unlawful stalking and to create offences, and provide civil remedies related thereto or in relation to false statements of fact, and to make consequential amendments to other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

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Former section 15(1)-(2) of the Protection from Harassment Act (before its amendment in 2019)

- “5.—(1) Where any **statement of fact about any person** (referred to in this section as the subject) **which is false** in any particular about the subject has been published by any means, the subject may apply to the District Court for an order under subsection (2) in respect of the statement complained of.
- (2) Subject to section 21(1), the District Court may, upon the application of the subject under subsection (1), order that no person shall publish or continue to publish the statement complained of unless that person publishes such notification as the District Court thinks necessary to bring attention to the falsehood and the true facts.”

Other provisions of the Protection from Harassment Act

- “3.—(1) No person shall, with intent to cause harassment, alarm or distress to another person, by any means —
- (a) use any threatening, abusive or insulting words or behaviour; or
- (b) make any threatening, abusive or insulting communication,
- thereby **causing that other person** or any other person (each referred to for the purposes of this section as the victim) **harassment, alarm or distress.**”

Other provisions of the Protection from Harassment Act

- “7.—(1) No person shall **unlawfully stalk** another person.
- (2) Subject to subsection (7), a person (referred to in this section as the accused person) unlawfully stalks another person (referred to for the purposes of this section as the **victim**) if the accused person engages in a course of conduct which —
 - (a) involves acts or omissions associated with stalking;
 - (b) **causes harassment, alarm or distress to the victim**; and
 - (c) the accused person —
 - (i) intends to cause harassment, alarm or distress to the victim; or
 - (ii) knows or ought reasonably to know is likely to cause harassment, alarm or distress to the victim.”

The key issue

- Section 15: “Where any statement of fact **about any person** (referred to in this section as the subject) which is false in any particular about the subject has been published by any means, the subject may apply to the District Court...”
- Is the Government a “person” **as that term is used in the Act?**
 - Where would one look to find out?

Interpretation Act 1965

- “In this Act, and in every written law... the following words and expressions shall... have the meanings respectively assigned to them **unless there is something in the subject or context inconsistent with such construction** or unless it is therein otherwise expressly provided:
- [...]
- ‘person’ and ‘party’ include any company or association or body of persons, corporate or unincorporate...”

Majority judgment in the Court of Appeal

- “[15] ... *read alone*, s 15 would appear to be broad enough to encompass entities such as the Government...
- [16] Support for this particular interpretation includes the reference to ‘the subject’ of the alleged false statement(s) – as opposed to the reference to a ‘victim’ [in] ss 3 to 7 of the Act...”

Majority judgment in the Court of Appeal

- “[17] However, the approach just described looks *only* at the *text*. It is, in our view, also as (if not more) important to look at the *context* in which s 15 was promulgated...
- (b) Second, s 15 appears to be the *only* provision in the entire Act that could potentially apply to entities other than human beings...”

Statement by the Minister for Law in Parliament

- “Third, **victims of harassment** and related anti-social behaviour under clauses 3 to 7 may apply to the Court for a Protection Order...
- Fourth... it should not be the case that every time a person is harassed, or experiences a wide range of conduct that amounts to harassment, the victim is forced to always either go and file a criminal complaint or bring a civil claim...
- Instead, if there are falsehoods, and let us say it is harassment, or it is borderline harassment; or maybe nearly harassment; or not harassment but it is a clear falsehood, then the victim has the right to ask the relevant parties that the falsehoods be corrected...
- ... 82% of those polled by REACH felt that people should have a legal right to require that factual inaccuracies about themselves be corrected...”

Majority judgment in the Court of Appeal

- “[22] It is clear that the Minister’s focus was *solely* on *human beings* (as opposed to other entities) – as evidenced by the references (on no fewer than *five* occasions in his speech) to “*victims*” as well as by the references... to “*harassment*...”
- the detailed speech by the Minister points, in our view, to... [the conclusion] *that s 15 was intended by Parliament to confer upon human beings (only) an additional... remedy...*”

Dissenting judgment in the Court of Appeal

- “[73] The ordinary meaning of the text of s 15...
- The text refers to any falsehood which is made about ‘*any person*’.
- To ascertain the ordinary meaning of ‘person’, the first port of call should be s 2 of the [Interpretation Act]...
- The plain and ordinary meaning of the text of the provision... indicates that ‘person’ under s 15 can include the Government.”

Dissenting judgment in the Court of Appeal

- “[76] ... there is no express statement to the contrary within the Act to suggest that the definition of persons under the [Interpretation Act] should not apply to s 15.”
- Other provisions – e.g. sections 3 and 7 – mention “harassment, alarm or distress” – so only apply to human beings.
- But section 15 *doesn't* contain such words.

Dissenting judgment in the Court of Appeal

- “[97] ... nowhere in the Minister’s speech does he expressly exclude the view that s 15 can apply to non-natural persons...”

Present section 15A of the Protection from Harassment Act

- “15A.—(1) A court may, on an application by **the subject of an alleged false statement of fact** (called in this section the relevant statement), make a stop publication order against any individual or entity (called in this section the respondent), if —
- (a) the court is satisfied on the balance of probabilities that —
 - (i) the respondent has published the relevant statement; and
 - (ii) the relevant statement is a false statement of fact; and
- (b) it is just and equitable in the circumstances to make the stop publication order.”

Statement on behalf of the Minister for Law in Parliament in 2019

- “In light of the decision by the Court of Appeal in *AG v Ting Choon Meng*, which ruled that only individual persons have recourse under section 15,
- clause 20 of the Bill states that both individuals and entities can apply for remedies under section 15...
- the Government will not have recourse under section 15...”

Conclusion

Conclusions

- A court's stating the reasons for their decision in a judgment:
 - Compels the court to *have* reasons, i.e. not decide arbitrarily
 - Shows the parties and the public that the case has been duly considered and determined according to law
 - Forms part of the law to be applied in future cases / allows a higher court hearing an appeal to make sense of the lower court's reasoning
 - Forms a historical record of the development of the law over time

See *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 (CA) [15]-[27]
- When working with the common law, we can reason from:
 - Past cases
 - A search for general principles built up from past cases
 - Broader concerns of public policy?
 - Moral principles?

Conclusions

- How can we use a case? Among other things, we can:
 - Draw analogies with the facts – e.g. Lord Buckmaster with the case involving the mouse
 - Cite statements made by judges as legal rules
 - But which statements?
 - Argue that the case stands for a broader principle – how Lord Atkin derived the ‘neighbour’ principle
 - Argue that the case is wrongly decided
- Do judges always agree with each other? Why?