

# Donoghue v stevenson analysis



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## **Introduction**

The case of *Donoghue v Stevenson* is arguably one of the most famous cases in the common law system and definitely one of the most important in the history of the development of the tort law. The revolutionary significance of the decision in this case is in the establishment of a standardised duty of care in negligence cases. Indeed, over the years after the precedent was set the courts have progressively shifted from the ascertaining a specific duty of care for each kind of situations, to the approach that assumes the existence of the general duty of care as it was established in *Donoghue v Stevenson*, and in particular Lord Atkin's famous "neighbour principle."<sup>[1]</sup> This essay is going to discuss the relevance of the principles established in this case in the modern tort law. The essay will start with the discussion of the established precedent, then moving to the development of the 'neighbour principle' in the subsequent case law and its application today.

## **The importance of the decision of the case**

In fact, the case established several important principles. They are: the recognition of the negligence as a distinct tort, the recognition of liability in situations, where there is no contractual relationship between the defendant and the claimant, the establishment of a duty of care owed by manufacturers to the ultimate consumers and the neighbour principle.<sup>[2]</sup>

Nevertheless, Lord Atkin's neighbour principle is the most well-known part of the decision of the case, despite the fact that according to the official sources it was never a part of the ratio of the decision in *Donoghue v Stevenson*.<sup>[3]</sup> Lord Atkin's approach was recognised for the first time

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in the case of *Hedley Byrne v Heller* [4], and later in the *Home Office v Dorset Yacht Co Ltd* Lord Reid stated that the decision in the case of Donoghue should be treated as a precedent and that “ that it ought to apply unless there is some justification or valid explanation for its exclusion”.

[5]The idea behind this was to unify the previous cases and to make the decisions in the future cases more predictable. Thus, the neighbour principle established two concepts – foreseeability and proximity. These two key concepts triggered the development of tort law in the 20th century.

### **The development of the established concepts**

The principle established in *Donoghue v Stevenson* was seen as an important milestone in the history of tort law as it was the first successful attempt to set out a general principle with respect to the concept of the duty of care. However, later the courts started to acknowledge that the neighbour principle was too simplistic and limited in scope. Therefore, the evolution of the tort of negligence since the ‘ snail in the bottle’ case has been a search for control mechanisms that can limit the scope of the duty concept. So, within the case law on duty of care there has been a shift from a general concept of duty formulated in the ‘ neighbour principle’ to more specific criteria.

Indeed, in *Anns v Merton London Borough Council* , the House of Lords decided to modify the test for the establishment of a duty of care by imposing policy considerations to limit the imposition of a duty of care.[6]The test formulated in *Anns* was that the defendant owed the claimant to take

reasonable care, as long as it was reasonably foreseeable that a failure of doing so would result in damage to the claimant, “ unless there was some policy reason that limited the scope of the duty or the class of people to whom it was owed or the damages to which a breach of the duty may

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give rise”. [7] The first part of the test clearly corresponds to the Lord Atkin’s test, but the second part was created to restrict claims. The main criticism of this test was that it could lead to an expansion of the situations in which a duty of care could arise. Therefore, in 1990 the *Anns* test was rejected in the case of *Murphy v Brentwood District Council*. [8]

As the test set in *Anns* was not sufficient enough, and it was replaced with the test for a duty of care set in *Caparo Industries v Dickman*. [9] The *Caparo* test narrowed the test set in *Anns* by implementing an additional stage to the test. The *Caparo* test consists of requirements of reasonably foreseeable harm, a relationship of proximity and that for the imposition of a duty to be fair just and reasonable. The first two stages of *Caparo* test were based on judgement in *Anns*, which corresponds back to Lord Atkin’s neighbourhood principle and the ‘ fair, just and reasonable’ requirement relates to same public policy considerations as the second stage of the *Anns* test. However, an essential difference between *Caparo* and *Anns* is that *Caparo* test emphasised the ‘ incremental and by analogy’ approach in order to prevent massive extensions of the duty of care concept, meaning that there must be an analogous situation in the previous case law in order to justify the extension of the duty of care in novel situations. [10] By accepting the ‘

incremental and by analogy' approach the courts rejected the broad formulations from the previous case law and constrained the precedent set in *Donoghue v Stevenson* to cases concerned with physical damage.[11]

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So, from one point of view, it can be said that the decision in *Donoghue v Stevenson* created a basis for the establishment of the test in *Caparo* as first two requirements are clearly taken from the neighbour test. However, some critics say that the intention of judges in *Caparo* was to change the neighbour principle in entirety. Indeed, in the modern times the incremental approach developed in *Caparo* suggests that the claimant can only sue the defendant for the breach of the duty of care only in situations where the existence of the duty is established. This seems to contradict the aim of Lord Atkin's biblical principle.[12]

As has been recognised in *Anns* and *Caparo*, the approach taken by the judges in *Donoghue v Stevenson* is too simple, especially in the modern times, where the law of negligence has become even more complicated than it used to be. Nowadays the courts use different approaches for different situations, for example the approach for the establishment of duty of care for psychiatric injuries is not the same as for physical injuries. Indeed, according to Heuston " other considerations beyond foreseeability and proximity begin to acquire greater significance" and the principles established in *Donoghue* are applicable only to relatively straightforward cases, but not to the " liability for non-physical injuries, or for omissions, or for the conduct of third parties".[13]However, it can be said that the decision in *Donoghue v*

*Stevenson* formed a foundation for the development of all the aforementioned areas of tort law.

## **Conclusion**

To conclude, some scholars express the view that the importance of the case of *Donoghue v Stevenson* was overrated both by its supporters and critics.

[14]However, in my opinion, even though the importance of the decision of this case nowadays is reduced, the case has a lasting effect, the significance of which lies not only in the established principles, but in the ideas that changed the law of tort forever, and in particular the law of negligence.

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