WHO THEN IN LAW IS MY NEIGHBOUR?

- John Green

It is a common observation that the law moves at a snails pace, but the mortal remains of one particular snail that slid out of May Donoghue’s friend’s bottle of ginger beer and into her glass in the Wellmeadow Café in Paisley, Scotland, one quiet day in August 1928 led to a revolutionary development of consumer law. The law as it stood at the time recognised only defined contractual relationships.

The story is well told that May Donoghue subsequently became ill and was directed to a solicitor from Glasgow, Walter Leachman, who brought a claim for £500 against David Stevenson, the proprietor of the company that manufactured the bottle of ginger beer. Leachman had previously made some inroads into establishing a duty of care in *Mullen v A G Barr and Company Ltd*. That claim strangely enough involving a dead mouse in a bottle of ginger beer - perhaps that’s where the saying “there must be something in the water” came from!

In any event, Ms Donoghue’s claim was defeated on appeal in the Scottish Court of Session, but undeterred, the matter went before the House of Lords.

Lord Atkin, supported by Scottish Judges Lords MacMillan and Thankerton, ruled that Mrs Donoghue’s case should be heard. It was a narrow 3-2 majority but a win is a win no less (Ms Donoghue settled out of court for £200) but it is the speech of Lord Atkin that was most influential.

Lord Atkin observed: "The rule that you are to love your neighbour becomes in law, you must not 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’ was, and to a certain extent still is, the foundation of the modern law of negligence.
Celebrations were held in Glasgow in May this year to mark the 80th anniversary of the landmark 1932 decision of the House of Lords in *Donoghue v Stevenson* with conference, a parade, a dinner – and a performance of the *Donoghue v Stevenson Operetta* no less. Let’s hope they toasted the occasion with plenty of ‘snail free’ ginger beer!

What then of international consumer law 80 years on? Most people will have heard something about the *Liebeck v. McDonald’s Restaurants* case. This case sparked a national debate about tort reform in the U.S. and is one of the most famous modern day examples of a product liability suit.

The jury awarded the plaintiff, Mrs Liebeck, an 80 year-old woman who spilled McDonald’s coffee on herself, $2.7 million in punitive damages. That amount was later reduced to $480,000 by the judge. There was a public outcry at the outrageous jury and court award. The public were told by the press that a woman who spilled McDonald’s coffee on herself hit the jackpot, but few people ever heard the details of the injury and of McDonald’s conduct in handling the claim which the trial judge described as reckless, callous and wilful.

McDonald’s was serving its coffee 30 degrees higher than allowed by state law, and that it had been warned about this by the Arizona inspectors over 10 times before this accident. At that temperature, the coffee would cause a third-degree burn in two to seven seconds. It is said that McDonald’s gets a few extra cups of coffee per pound when using the scalding water.

McDonald’s claimed that the reason for serving such hot coffee in its drive-through windows was that those who purchased the coffee typically were commuters who wanted to drive a distance with the coffee and the high initial temperature would keep the coffee hot during the trip. However, the company’s own research showed that some customers intend to consume the coffee immediately while driving.

Other documents obtained from McDonald's showed that from 1982 to 1992 the company had received more than 700 reports of people burned by McDonald's coffee to varying degrees of severity, and had settled claims arising from scalding injuries for more than $500,000.
Mrs Liebeck placed the coffee cup between her knees in her grandson’s car and pulled the far side of the lid toward her to remove it. In the process, she spilled the entire cup of coffee on her lap. She was wearing cotton sweatpants and they absorbed the coffee and held it against her skin, scalding her thighs, buttocks, and groin.

Mrs Liebeck was taken to the hospital, where it was determined that she had suffered third-degree burns on about 2 square feet of her groin and lesser burns over sixteen percent of her body. She remained in the hospital for eight days while she underwent skin grafting. During this period, she lost 9 kg (nearly 20% of her body weight), reducing her down to 38 kg. Two years of medical treatment followed.

Prior to trial, Mrs Liebeck offered to settle with McDonald’s for $20,000 to cover her actual and anticipated expenses caused by her 2-plus weeks in the hospital and extended out-patient treatment, but McDonald’s refused. Instead, the company offered only $800. McDonald’s rejected all subsequent pre-trial attempts by Mrs Liebeck to settle.

In the end the jury apportioned 20% fault to Mrs. Liebeck which reduced the compensatory damages they awarded her from $200,000 to $160,000. In addition they awarded her $2.7 million in punitive damages which the judge later reduced to $480,000. The jurors apparently arrived at this figure from Mrs Liebeck’s attorney’s suggestion to penalise McDonald’s for one or two days’ worth of coffee revenues, which were about $1.35 million per day.

The decision was appealed by both McDonald’s and Mrs Liebeck in December 1994, but the parties settled out of court for an undisclosed amount of less than $600,000.

The greatest indignity, however, following this event and the poorly reported trial was the creation of the web phenomenon known as "The Stella Awards", named after Mrs Liebeck, listing frivolous jury and court awards for truly self-inflicted injuries.

Other major vendors of coffee, including Starbucks, Dunkin’ Donuts, Wendy’s and Burger King have been subjected to similar lawsuits over third-degree burns. Similar lawsuits against McDonald’s in the United Kingdom failed.
It would seem the question of whether or in what circumstances a duty of care exists such as to give a remedy to a “neighbour” for harm resulting from careless conduct epitomised by *Donoghue v Stevenson*, has been, and remains, controversial.

---

**Author Profile**

**JOHN GREEN**

John is a Chartered Arbitrator, Mediator and Adjudicator. He also regularly writes and speaks on Dispute Resolution and is the Founder and Director of the Building Disputes Tribunal, NZDRC and NZIAC.

Contact John at rbtr8r@ihug.co.nz
CONTRIBUTIONS

Contributions to ReSolution® are welcome. ReSolution® is published four times a year in March, June, September and December. Readers are invited to submit material to be considered for publication by email to the editor at editor@nzdrc.co.nz. Contributions may consist of articles, case notes, book reviews, news of forthcoming events and other matters of interest to readers. Contributors are entirely responsible for the accuracy of case names and citations, quotations and other references, spelling etc. All contributions should be in final form and in word format.

COPYRIGHT

This issue of ReSolution® and all material and information contained herein are subject to the full protection given by the Copyright Act 1994. In many cases the copyright of individual articles remains the property of the author and articles and commentaries should not be reproduced without first obtaining the express authorisation of the relevant third party copyright owner concerned. If you are in any doubt as to whether a proposed use is covered by this licence please consult the Editor.

DISCLAIMER:

ReSolution® is published by NZDRC and NZIAC. ReSolution® is a newsletter and does not purport to provide a comprehensive analysis of the subjects covered or to constitute legal advice. ReSolution® is intended to promote and engender discussion, debate, and consideration of all matters in relation to the development and application of the law, the resolution of disputes, and the processes that are used for the resolution of those disputes. Articles, commentaries and opinions are intended to raise questions rather than to be emphatic statements on the subjects covered and the views expressed are the views of the author and are not necessarily those of the directors, servants and agents of NZDRC or NZIAC.

Information published is not guaranteed to be correct, current or comprehensive and NZDRC and NZIAC accept no responsibility for the accuracy of any information published in ReSolution® and no person should act in reliance on any statement or information contained in ReSolution®. Readers are specifically advised that specialist legal advice should be sought in relation to all matters in relation to, or in connection with, the subjects covered and articles published in ReSolution®.