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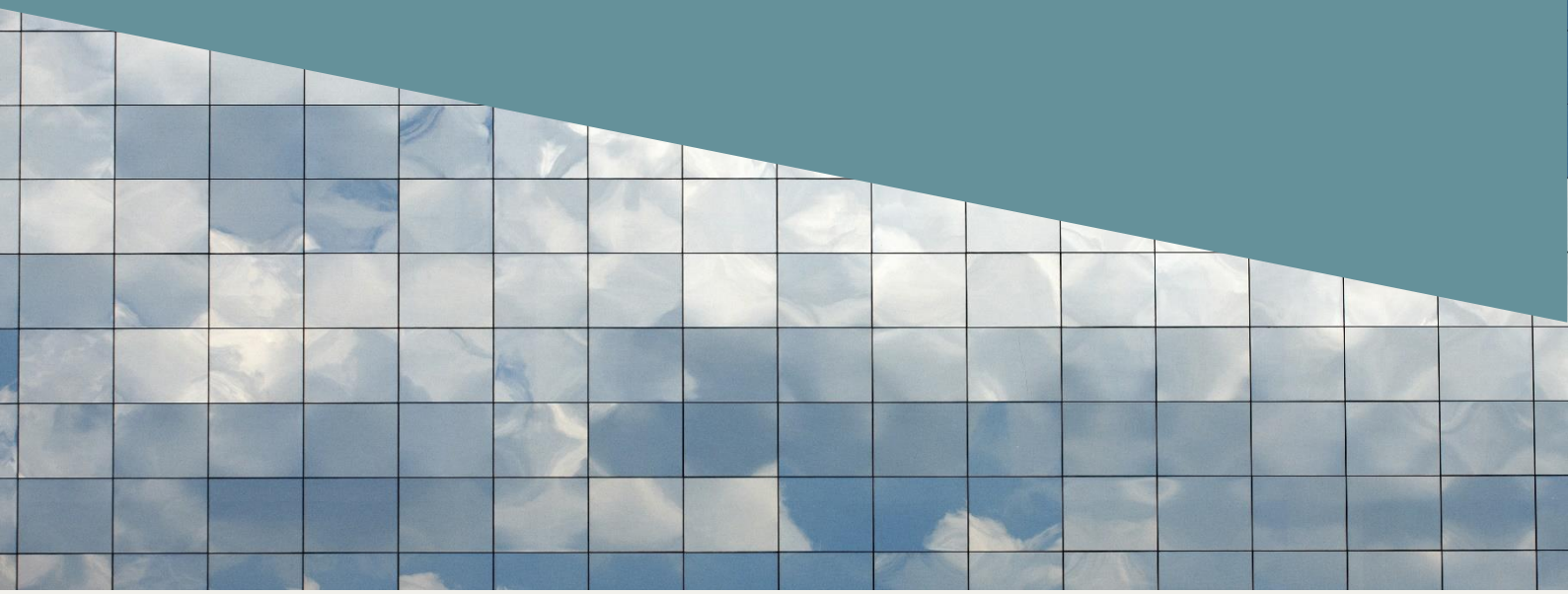

Favourite Cases: *Donoghue v Stevenson*

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Starting from a traditional Chancery base of property, trusts and wills, Elizabeth's practice has developed to include substantial pensions, retail financial services and professional negligence work. She describes it as a varying and fascinating mix of case law and black letter law with regulatory overtones and a hint of charity.

Reported at [1932] AC 562.

It may be because I am writing this article on an extremely hot day when a refreshing cool drink would be very welcome that the case which comes to mind is *Donoghue v Stevenson*, known to generations of law students for the best part of a century as the case of the snail in the ginger beer bottle.

The facts alleged by the appellant, a shop assistant, were that in August 1928 a friend bought her a bottle of ginger beer at a café in Paisley. The proprietor poured some of the ginger beer into a tumbler and she drank some of it. Her friend was then proceeding to pour the rest of the ginger beer into the tumbler when a decomposed snail floated out of the bottle, which was made of dark glass so its contents could not be seen. The appellant alleged that, perhaps not surprisingly, she suffered shock and severe gastro-enteritis. She further alleged that the manufacturer of the ginger beer owed her a duty to run his ginger beer factory in such a way that snails did not get into the bottles or, if they did, were detected before the bottles were filled with ginger beer.

We are doomed never to know whether there was really a snail in the ginger beer bottle, because the respondent took as a preliminary point that he owed no such duty of care to a person with whom there was no contractual relationship. Some considerable time later, the point fell to be decided by the House of Lords, where it was accepted that there was no difference between the law of Scotland and the law of England and Wales on the point. By a majority of three to two, it was decided that the manufacturer did owe the appellant the duty she claimed.

In delivering the leading judgment for the majority, Lord Atkin, drawing in part on the parable of the Good Samaritan, formulated a duty not to injure one's neighbour and in response to the question, "Who is my neighbour?" answered, "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

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the acts or omissions which are called in question."

This "neighbour" principle has become the foundation of tortious liability for negligence. Although *Donoghue v Stevenson* was a case of alleged physical injury resulting from negligent acts, an analogous approach was adopted to a case of alleged financial injury resulting from negligent words in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465. *Donoghue v Stevenson* was still being described as "paradigmatic" by the House of Lords in *Caparo Industries Plc v Dickman* [1990] 2 AC 605.

Work at the Chancery Bar these days often involves the questions whether a professional adviser such as a solicitor, an accountant, a surveyor or an actuary owed a duty of care to a person who was not a client but arguably was so closely and directly affected by the advice given that the professional adviser ought reasonably to have had that person in contemplation when giving the advice, or whether the adviser was in breach of a duty owed to such a person. Very substantial financial damage may result from advice which arguably was given negligently to a person to whom a duty was owed. Professional advisers are usually obliged to be insured against liability for such negligence, so a claimant who can make out a case of breach of duty will have good prospects of recovery, although there are often difficult further questions about the extent to which the financial damage suffered was caused by the negligent advice or was within the scope of the duty owed.

I find cases in this area are often factually interesting, intellectually challenging and capable of being resolved on terms which reflect the merits on both sides of the argument. Failing such a resolution, they may lead to a trial which brings clarity on points which have long been recognised as uncertain. It is a satisfying area in which to practise.

So my thanks go to the snail in the ginger beer bottle and to the shop assistant who pursued her case, and so, presumably, do the thanks of many a neighbour in law.

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