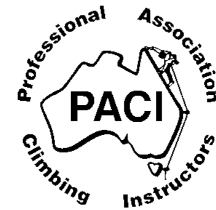
THE ORIGINS OF THE PRINCIPLE OF DUTY OF CARE



The concept of duty of care is a proposition of law which defines the standard of care owed by one person to another (or to a group of others). The modern concept of duty of care was first defined by **Lord Atkin** in the famous landmark case of Donoghue v. Stevenson [1932] A.C. 562 in the House of Lords England.

This case was an appeal to the House of Lords by Mrs Donoghue (the appellant) who became ill after drinking a bottle of ginger beer that was contaminated by a decomposing snail. She subsequently sued the respondent (Stevenson) the manufacturer of the article.

Presiding over the case were Lord Buckmaster, Lord Atkin, Lord Tomlin, Lord Thankerton and Lord Macmillan.

At (580) Lord Atkin said:

> ***"The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyers question, Who is my neighbour? Receives a restricted reply. 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".***

IN FAVOUR	AGAINST
Lord Atkin	Lord Tomlin
Lord Thankerton	Lord Buckmaster
Lord Macmillan	

Result: A majority of three to two held in favour for the Appellant (Mrs Donoghue). Courts have specific rules for determining the outcomes of a judgement. Note that there are always an odd number of judges sitting. The decision is normally based on the majority view and is known as the *ratio decidendi* (latin term meaning reason for the judgement). This means that Mrs Donoghue won her appeal and a new area of law was developed.

The statement of basic principle by Lord Atkin does not make liability for negligence depend solely on a failure to take reasonable care to avoid acts or omissions which it can reasonably be foreseen will be likely to injure someone. The duty is owed not to the world, but to one's neighbour, i.e., "*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 principle, which is one of proximity as well as of foreseeability, was stated in the following words by Lord Wilberforce in Anns v. Merton London Borough Council [1978] A.C. 728 at 751-752:

> ***"First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter – in which case a prima facie duty of care arises."***

Furthermore, the principal of Donoghue's case can only be applied where the defect is *hidden and unknown* to the consumer, otherwise the directness of cause and effect is absent: the person who consumes or uses a thing which he knows to be noxious cannot complain in respect of whatever mischief follows, because it follows from his/her own conscious volition in choosing to incur the risk or certainty of mischance.

The development of the law relating to liability for negligent acts has progressed extensively since Donoghue's case. Parliaments have also intervened to protect consumers through the provisions of the Federal Trade Practices Act 1974.

The present day requirements for an action in negligence must prove (on the balance of probabilities i.e., that it was more likely than not):

1. That a duty of care was owed; and
2. That the duty of care was breached; and
3. That there was a proximate relationship (i.e. the neighbourhood principle); and
4. That there were damages.

Note: A Plaintiff (the person suing) will usually have little trouble proving that an instructor (i.e. the defendant) owes a student a duty of care.

Legal dictionary

Appellant – The person who is appealing. A person can only appeal a previous court decision if there was a mistake in law or a mistake of fact. Appeals are made to a court *higher* than the court that heard the case at first instance (ie the court that originally heard the case).

Defendant – The person who is being sued.

Prima facie – means 'on the face of it'. If a prima facie case exists, it means there is sufficient evidence to proceed.

Ratio decidendi – means the reason for the judgement. Only the 'ratio' of a particular case can be binding and potentially set a precedent. There is a strict hierarchy within the Australian court system. At the lower end are the Magistrates courts and the highest court in the land is the High Court. High court decisions (ie ratios) are binding upon ALL other courts. A 'ratio' of a lower court WILL NOT be binding on a higher court.