Law of Tort- Tutorial no.1
Duty of care

"The categories of negligence are never closed". [Lord Macmillan in Donoghue v. Stevenson- (1932)]

The tort of negligence is a relatively recent phenomenon, which has come to become the most dynamic and rapidly changing areas of liability in modern law. Lord Macmillan's assertion that " the categories of negligence are never closed" suggests how courts possess the power to expand the area of liability by bringing in new duty situations as a result of new set of facts coming is everyday.

As it is difficult to define negligence in simple terms, it can be said that the 'neighbour' principle for duty of care, remains within its wider social context one of the most important elements of negligence.

The courts had always been reluctant to provide remedy for claims where there was no contract between the claimant and the defendant in respect for policy consideration. The main reason put forward for this was the so-called 'floodgates' argument. That the courts should not allow a remedy in a particular case as it would open the doors to many claims in similar situation. The same was accepted an obiter dictum by Lord Buckmaster in his dissenting speech in *Donoghue v. Stevenson.*

Decided by a 3-2 majority of the House of Lords, *Donoghue v. Stevenson (1932)* is regarded as the classic case in this regard, in part because it laid down the foundational principle for the modern law of negligence.

However, this can be better understood by looking at the previous cases that presided *Donoghue v. Stevenson* where in similar factual circumstances negligence was not recognised.

In *Bates v. Batey &Co. Ltd.*, the defendants, ginger beer manufacturers, were held not liable to a consumer (who had purchased from a retailer one of their bottles) for injury caused by the defect in the bottle as it could have been avoided by exercise of reasonable care.

Like wise, in *Winterbottom v. Wright*, A contracted with B to provide a mail-coach to convey the mailbags along a certain line of road. Others also contracted to horse the coach along the same line and his co-contractors hired C to drive the coach. Held was that C could not maintain an action against A, for an injury sustained by him while driving the coach, by its breaking down from latent defects in its construction as there was no direct contract between A and C. This was mainly due to the well-established principle that no one other than a party to a contract can complain of a breach of that contract.

The facts of *Donoghue v. Stevenson* were such where the appellant drank a bottle of ginger beer, manufactured by the respondent, which a friend had bought from a retailer and given to her. The bottle contained the decomposed remains of a snail, which were detected after the greater part of contents of the bottle had been consumed. As a result the appellant alleged to have suffered shock and severe gastroenteritis. She sought to recover damages and brought proceedings against the manufacturer in negligence claiming that he had failed in his duty to provide an efficient system of inspection of the bottles.

In his accenting judgement Lord Atkin claimed such liability to be an important problem because of its bearing on public health. His famous 'neighbour principle', as it is known, laid down the factors upon which the liability of negligence can be established. This is to

say that you must take reasonable care to avoid acts or omissions, which you can reasonably foresee, would be likely to injure your neighbours (described as persons who are closely and directly affected by ones acts).
Lord Macmillan held in that a manufacturer knows that the consumer will consume his goods. In such cases where there are no alterations to the product from the manufacturer to the consumer, the manufacturer does come under a duty of care towards the final consumers.
Subsequent cases such as *Anns v. Merton* and *Home Office v. Dorset Yacht Co. Ltd.* can be cited to better explain the duty of care principle. In the later case, the Home Office said that the neighbour principle was applicable in all cases where there was no justification or valid explanation for its exclusion. The HoLs held the Home Office, through its careless officers, did owe a duty of care-foreseeable harm. Where as in Anns case, although overruled on its facts set out to establish the principle of proximity, consideration that might reduce liability or scope of the duty or class of persons whom it is owed or the damages etc. The case that overruled Anns, *Caparo v. Dickman in it,* criticized the expansion of liability. It used an incremental approach based on forseeability, 'proximity' and 'fairness'- (which can be shown where there is forseeability of damage, that the claimant and defendant were in a relationship of proximity and that it would be fair, just and reasonable to impose a duty where the first two conditions are satisfied).
Hence, today, there is the equally well-established doctrine that negligence apart from contract gives a right of action to the party injured by that negligence. Of this the best illustration is the right of the injured railway passenger to sue the railway company either for breach of the contract of safe carriage or for negligence in carrying him. And there is no reason why the same set of facts should not give one person a right of action in contract and another person a right of action in tort.
Donoghue v. Stevenson hence confirmed negligence as a separate tort in its own right, and claim for negligence can exist whether or not there is a contract between the manufacturer and the injured party. Hence the *ratio decendi* was formulated, where a claim for negligence will succeed if the claimant can prove the defendant owes a duty of care to the claimant, that there should be a breach of that duty by the defendant; and resulting damage should not be too remote. That is to say there should be casual link between the defendant and the injury.
So basically the effects of *Donoghue v. Stevenson* have been extremely wide. Since its establishment as a separate tort, it has not only increased available remedies but also taken over a lot of other fields where it would not have applied before. Policy decisions and the need to limit the opening of floodgates have forced the courts to take retroactive steps and limit its scope. This by no means as correctly stated by Lord Macmillan closes the doors on future developments in negligence. Negligence claims and categories will develop depending on the facts and the situation in every individual case.