

SESSION CASES ~ LAW REPORTING IN SCOTLAND *SUPPORTING MATERIALS*

Working with Cases¹

Objectives

The aim of these exercises is to demonstrate the importance of case law as a source of law and to show you how judges' reasoning is expressed in case reports. We use the argument and analysis in the classic case of *Donoghue v Stevenson* 1932 SC (HL) 31. To give you an early insight into the main facts of the case and the significance of law reporting you should look at the first of the SCLR films which starts with a dramatised summary of *Donoghue v Stevenson*.

Having watched the first SCLR video you now have an understanding of why legal decisions are reported. You should now watch the second and third SCLR films. These explain the criteria for the reporting of court decisions and how reported cases are used by judges to inform their decision making processes by means of the doctrine of precedent.

Having viewed the first three SCLR films you are now:

- Familiar with what happened in *Donoghue v Stevenson*;
- Aware of the reasons for reporting cases and how judges use case reports;
- Ready to tackle the first tutorial.

Outcomes

By the time you have viewed the SCLR films, read the case report and completed the three tutorials you will:

- Be familiar with the facts of *Donoghue v Stevenson*;
- Understand the legal arguments put forward in the case;
- Appreciate that judges can reach differing conclusions when hearing the same case;
- Understand the policy arguments which influenced the judges in reaching their decisions;
- Appreciate how cases are used as a source of law and in support of legal arguments.

¹ These teaching materials are addressed to law students. They are designed to support law teachers when using the films and have been prepared for the Council by Mr Stuart Cross, LLB, solicitor, who is a Senior Lecturer at Dundee Law School, University of Dundee. They are free to print out, download or reproduce but please acknowledge the original publication by the Council when so doing.

Tutorial 1: Introduction-Cases as a Source of Law

1. What is a case report and why do we need reports of court proceedings?
2. Why do we have/need multiple series of law reports?
3. How important are cases as a source of law?
4. Are all cases of potentially equal importance as sources of law?
5. Which court first discussed the problem of the snail in the bottle? Why was that court selected to hear the case?
6. Which court made the final adjudication on the issue? Why was that court selected to hear the case?
7. Does that court still exist?
8. Which courts in the United Kingdom are bound by *Donoghue v Stevenson* and why?

Tutorial 2: Reading the Case Report

The starting point for this exercise is the case report which is available in hard copy or via the SCLR website. It may look daunting at first so it is suggested you approach the case by identifying the rubric and reading that as way of introducing yourself to the case.

Having gained an outline understanding of the case from the rubric you should now read the different judgments out of order as explained below.

Task 1: For a brief but straight forward introduction to the facts of the case, an outline of the legal arguments put by counsel and a majority view, read Lord Thankerton's speech [pages 58-61] which largely confines itself to the facts and (unlike some of the other speeches) has very little discussion of the authorities.

As you read, identify the arguments based upon the facts and those based upon the law in the speech, and think about the significance of that distinction. Make a list of what you consider to be the key facts and the key legal arguments.

Task 2: Read the speeches of Lord Buckmaster and Lord Atkin in that order. Identify the policy reasons behind Lord Atkin's reasoning [at pages 44-46] and think about the particular emphasis he placed upon moral responsibility.

Task 3: Compare Lord Atkin's policy reasons with those referred to in Lord Buckmaster's speech [at pages 42-44] and consider the reasons why these two judges differed in their respective emphases.

Once you have completed these tasks you will begin to understand why so much more can be extracted from reading a case report in full rather than simply relying on the rubric.

Tutorial 3: Using Cases

Watch the fourth and fifth SCLR films.

1. What is the citation for *Donoghue v Stevenson*?
2. Why do we need citations and do they matter in an era of electronic databases of cases?
3. Would you cite an electronic version of a case report in a differing manner from the hard copy?