



MiniTrial Starter Pack

Chapter 3 – MiniTrial Case Papers

This Chapter contains a set of MiniTrial Case Papers for use in conducting your MiniTrial.

This “remix” set of papers includes:-

1. **The Facts** – a brief summary,
2. **The Closed Record** – the written pleadings in the case,
3. **The Law** – a very brief summary of the relevant principles,
4. **Precognitions** (witness statements) for the pursuer’s witnesses,
5. **Precognitions** for the defender’s witnesses,
6. **Summary sequence of events** – plus **additional documents / materials**,
7. **The Pursuer’s Opening Speech to the Jury** – a possible outline,
8. **The Defender’s Opening Speech to the Jury** – a possible outline,
9. **The Pursuer’s Closing Speech to the Jury** – a possible outline,
10. **The Defender’s Closing Speech to the Jury** – a possible outline,
11. **The Charge** – a style which the Judge can use for the Charge to the Jury,
12. **Jury Observation Sheets** – for the jurors to use if they wish.



1. The Facts – a brief summary

This is a civil action – between two individuals. It is not a criminal prosecution – by the state.

The facts are simple.

On 26th August Mrs May Donoghue was in the Wellmeadow Café in Paisley with a friend who bought her a drink.

Mrs Donoghue had consumed part of bottle of ginger beer – as part of an ice-cream float. At that point all was well.

However, when the rest of the bottle was poured into her glass out floated what appeared to be the rotting remains of a decomposing snail.

That caused May Donoghue to feel very unwell – or so she claimed.

She sued the manufacturer of the ginger beer – David Stevenson.

Many civil cases are decided by a judge sitting without a jury (at a hearing called a “Proof”) but this particular case has now come to a “Jury Trial” – to be decided by a jury.

We will be following, in essence, the sort of court procedure that is actually used in the Court of Session in Edinburgh – albeit modified for the purposes of MiniTrial.

Will May Donoghue succeed?

What will the verdict be?

What sum, if any, will be awarded as damages?



2. The Closed Record – the written pleadings

IN THE COURT OF SESSION

CLOSED RECORD (As Amended)

1. – SUMMONS (Personal Injuries Action)

MRS MAY McALISTER OR DONOGHUE, Junior, (Assisted Person),
formerly residing care of McAlister, 49 Kent Street, off London Road, Glasgow,
and now residing at 101 Maitland Street, Cowcaddens, Glasgow- ,

PURSUER

against

DAVID STEVENSON, Junior, Aerated-Water Manufacturer, 5 Glen Lane,
Paisley – ,

DEFENDER

Elizabeth II by the Grace of God, of the United Kingdom of Great Britain and
Northern Ireland and of Her Other Realms and Territories, Queen, Head of the
Commonwealth, Defender of the Faith to DAVID STEVENSON :

By this summons the pursuer craves the Lords of Council and Session to
pronounce a decree against you in terms of the conclusions appended to this
summons. If you have any good reasons why such decree should not be
pronounced, you must enter appearance at the Office of Court, Court of Session,
2 Parliament Square, Edinburgh, EH1 1RQ, within three days after the date of the
calling of the commons in court. The summons shall not call in court earlier than
Twenty-one days after the date of service upon you of this summons. **Be warned
that, if appearance is not entered on your behalf, the pursuer may obtain
decree against you in your absence.**

GIVEN UNDER OUR SIGNET AT EDINBURGH ON 9th APRIL

Richard A. J. Godden, Solicitor
McKay Norwell, W.S.
7 Rutland Square, Edinburgh, EH1 2AS.
Solicitor for Pursuer.



CONCLUSIONS

FIRST. For payment by the defender to the pursuer of the sum of TWENTY FIVE THOUSAND POUNDS (£25,000) STERLING together with interest thereon at the rate of 8 per cent a year from the date of decree to follow hereon until payment; and,

SECOND. For the expenses of the action.



**2. – STATEMENT OF CLAIM for PURSUER,
and
*ANSWERS thereto for DEFENDER***

Stat. 1. The pursuer is employed as a shop assistant, and resides at 49 Kent Street, off London Road, Glasgow.

Ans. 1. Not known and not admitted.

Stat. 2. The defender is an aerated-water (soft drinks) manufacturer, and carries on business at Glen Lane, Paisley.

Ans. 2. The description of the defender is admitted.

Stat. 3. This court has jurisdiction to hear this claim because the harmful events in consequence of which the pursuer seeks reparation occurred in Scotland.

Ans 3. Admitted that this court has jurisdiction.

Stat 4. At or about 8.50 p.m. on or about 26th August, the pursuer was in the shop occupied by Francis Minchella, and known as Wellmeadow Café, at Wellmeadow Place, Paisley, with a friend. The said friend ordered for the pursuer ice-cream, and ginger-beer suitable to be used with the ice-cream as an iced drink. Her friend, acting as aforesaid, was supplied by the said Mr. Minchella with a bottle of ginger-beer manufactured by the defender for sale to members of the public. The said bottle was made of dark opaque glass, and the pursuer and her friend had no reason to suspect that the said bottle contained anything else than the aerated-water. The said Mr Minchella poured some of the said ginger-beer from the bottle into a tumbler containing the ice-cream. The pursuer then drank some of the contents of the tumbler. Her friend then lifted the said ginger-beer bottle and was pouring out the remainder of the contents into the said tumbler when a snail, which had been, unknown to the pursuer, her friend, or the said Mr Minchella, in the bottle, and was in a state of decomposition, floated out of the said bottle. In consequence of the nauseating sight of the snail in said circumstances, and of the noxious condition of the said snail-tainted ginger-beer consumed by her, the pursuer sustained the shock and illness hereinafter condescended on. The said Mr Minchella also sold to the pursuer's friend a pear and ice. The averments in answer, so far as not coinciding herewith, are denied. The said ginger-beer bottle was fitted with a metal-cap over its mouth. On the side of the said bottle there was pasted a label containing, inter alia, the name and address of the defender, who was the manufacturer. It was from this label that the pursuer's said friend got the name and address of the defender.



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Ans. 4. Denied. Any illness which the pursuer suffered was not due to her having partaken of the contents of a bottle of ginger-beer manufactured and sent out from the defender's factory. The defender has never issued bottles answering the description given by the pursuer. The system employed at the defender's factory is the best known in the trade. No bottle of ginger-beer has ever passed out there-from containing a snail. The defender and his employees exercised every care in the carrying out of that system.

Stat 5. The pursuer suffered severe shock and a prolonged illness in consequence of the said fault of the defender and his employees. She suffered from sickness and nausea which persisted. Her condition became worse, and on 29th August she had to consult a doctor. She was then suffering from gastroenteritis induced by the said snail-infected ginger-beer. Even while under medical attention she still became worse, and on 16th September had to receive emergency treatment at the Glasgow Royal Infirmary. She vomited repeatedly, and suffered from acute pain in the stomach, and from mental depression. She was rendered unfit for her employment. She has lost wages and incurred expense as the result of her said illness. Her heads of claim are (1) Past *Solatium* (2) Future *Solatium* (3) Past Loss of Earnings and (4) Expenses. The sum sued for is reasonable. The averments in answer are denied. Prior to the incident condescended on, the pursuer suffered from no stomach trouble.

Ans. 5. Not known and not admitted. The alleged injuries are grossly exaggerated. Any illness suffered by the pursuer on and after 26th August was due to the bad condition of her own health at the time.

Stat 6. The pursuer contends that she has suffered loss injury and damage through the fault and negligence of the defender at common law and that she is entitled to damages from him.

Ans. 6. The defender contends that the pursuer's case is unfounded in fact and law and that the pursuer is not entitled to damages. In any event the sum sued for is excessive.

[This marks the end of the Closed Record]



3. The Law – a summary

You will find **the main legal concepts** outlined in the draft Judge's charge and in the draft speeches to the jury – which are with your case papers (below). Please read them to help you prepare.

The main legal principles are those underlying the original case of *Donoghue v Stevenson* 1932 S.C. (H.L.) 31. In that case The House of Lords held (decided):-

Where the manufacturer of a product intended for human consumption sends it out in a form which shows that he means it to reach the ultimate consumer in the form in which it left his factory, with no reasonable possibility of intermediate examination by the retailer or consumer, and with the knowledge that want of reasonable care on his part in the preparation of the product may result in injury to the consumer, the manufacturer owes a duty to the consumer to take such care, and will be liable to the latter, in damages if he suffers injury through the failure to take such care.

In his speech Lord Atkin said:

“You must take reasonable care to avoid acts and 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 and omissions which are called in question.”

The principle on which his judgment rested was as follows:

“[A] manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.”

Those principles still lie at the heart of the modern common law of negligence and consumer protection. You can visit the Scottish Council of Law Reporting site at www.scottishlawreports.org.uk for further background information.

Has May Donoghue proved a lack of reasonable care on the part of David Stevenson? If so, what award of damages should she receive?



4. Precognitions – pursuer’s witnesses

Pursuer’s Witnesses

1. **May McAlister or Donoghue, Junior – the pursuer**
2. **Ann Onymous**

Pursuer’s witness No 1

MRS MAY McALISTER OR DONOGHUE, Junior,

Aged 29, shop assistant, formerly residing care of McAlister, 49 Kent Street, off London Road, Glasgow, and now residing at 101 Maitland Street, Cowcaddens, Glasgow,

I am the pursuer in this action of damages for personal injuries against David Stevenson.

The defender, Mr Stevenson, is an aerated-water manufacturer, and carries on business at Glen Lane, Paisley.

At or about 8.50 p.m. on or about 26th August, I was in the premises occupied by Francis Minchella, known as the Wellmeadow Café, Wellmeadow Place, Paisley, with a friend. My friend, Ann, ordered for me ice-cream and ginger-beer suitable to be used with the ice-cream as an iced drink. Ann was supplied by Mr. Minchella with a bottle of ginger-beer manufactured by Mr Stevenson for sale to members of the public. The bottle was made of dark opaque glass. I had no reason to suspect that the said bottle contained anything else than the aerated-water. Mr Minchella poured some of the said ginger-beer from the bottle into a tumbler containing the ice-cream. I then drank some of the contents of the tumbler. Ann then lifted the said ginger-beer bottle and was pouring out the remainder of the contents into the said tumbler when to my horror a snail (which was in a state of decomposition) floated out of the said bottle. In consequence of the nauseating sight of the snail and of the noxious condition of the snail-tainted ginger-beer which I had consumed I became ill. I was shocked. The snail had been, unknown to myself, Ann or Mr Minchella, in Mr Stevenson’s bottle.

Mr Minchella also sold Ann a pear and ice.

The said ginger-beer bottle was fitted with a metal-cap over its mouth. On the side of the said bottle there was pasted a label containing, inter alia, the name and address of the defender, who was the manufacturer. It was from this label that Ann got the name and address of the defender. It was definitely one of Mr Stevenson’s bottles.



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I believe that the shock and illness which I suffered were due to the fault of Mr Stevenson or his employees. The ginger-beer was manufactured by Mr Stevenson to be sold as a drink to members of the public (including me). It seems to me that it was up to Mr Stevenson to exercise the greatest care in order that snails would not get into the bottle, render the ginger-beer dangerous and harmful, and be sold with the ginger-beer.

Further, it was Mr Stevenson's duty to provide a system of working his business that was safe, and would not allow snails to get into his ginger-beer bottles (including the bottle I had). I know that such a system is usual and customary, and is necessary in the manufacture of a drink like ginger-beer to be used for human consumption. In these duties Mr Stevenson culpably failed, and my illness and shock were the direct result of his failure in duty.

I suffered severe shock and a prolonged illness in consequence of the fault of Mr Stevenson and his employees. I suffered from sickness and nausea which persisted. My condition became worse, and on 29th August I had to consult a doctor. I was then suffering from gastroenteritis induced by the snail-infected ginger-beer. Even while under medical attention I still became worse, and on 16th September I had to receive emergency treatment at the Glasgow Royal Infirmary. I vomited repeatedly, and suffered from acute pain in my stomach, and from mental depression. I was rendered unfit for my employment. I lost wages and incurred expense as the result of that illness.

Prior to the incident in the Wellmeadow Café I suffered from no stomach trouble.

I understand that Mr Stevenson contends that he is not liable to pay me any damages – so the jury will have to determine the question of liability.

There has been no agreement as to past or future solatium – damages for my pain and suffering – so those figures will also have to be determined by the jury.

In the event of Mr Stevenson being found liable, I believe that our respective lawyers have agreed damages figures for past loss of earnings and for expenses – namely £200 and £50 respectively.

I contend that I have suffered loss injury and damage through the fault and negligence of the defender at common law and that I am entitled to damages from him.



Pursuer's witness No 2

ANN ONYMOUS,

Aged 30, factory worker, care of McAlister, 49 Kent Street, off London Road, Glasgow,

I am a friend of the pursuer in this action – May Donoghue.

The defender, David Stevenson, is an aerated-water (soft drinks) manufacturer. He carries on business at Glen Lane, Paisley.

At or about 8.50 p.m. on or about 26th August 1928, I was in the premises occupied by Francis Minchella, known as the Wellmeadow Café, Wellmeadow Place, Paisley, with May. I ordered for May ice-cream and ginger-beer suitable to be used with the ice-cream as an iced drink. I was supplied by Mr. Minchella with a bottle of ginger-beer manufactured by Mr Stevenson for sale to members of the public. The bottle was made of dark opaque glass. I had no reason to suspect that the said bottle contained anything else than the aerated-water. Mr Minchella poured some of the said ginger-beer from the bottle into a tumbler containing the ice-cream. May then drank some of the contents of the tumbler. I then lifted the said ginger-beer bottle and was pouring out the remainder of the contents into the said tumbler when to my horror a snail (which was in a state of decomposition) floated out of the said bottle. In consequence of the nauseating sight of the snail and of the noxious condition of the snail-tainted ginger-beer which May had consumed she became ill. I was shocked too. The snail had been, unknown to May, myself, or Mr Minchella, in Mr Stevenson's bottle.

Mr Minchella also sold me a peach melba – peaches and ice cream.

The ginger-beer bottle was fitted with a ceramic stopper over its mouth. On the side of the said bottle there was pasted a label containing, inter alia, the name and address of the defender, who was the manufacturer. It was from this label that May got the name and address of the defender.

I agree with May that it was Mr Stevenson's duty to provide a system of working his business that was safe, and would not allow snails to get into his ginger-beer bottles (including the bottle May had).

I remember working for Mr Stevenson for a week or so shortly before the accident. His system of working his business was defective, in respect that his ginger-beer bottles were washed and allowed to stand in places to which it was obvious that snails had freedom of access from outside the defender's premises, and in which, indeed, snails and the slimy trails of snails were frequently found. The snails at the factory were smaller than the snails that you get near the Wellmeadow Café.



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I believe it was the duty of Mr Stevenson to provide an efficient system of inspection of said bottles before the ginger-beer was filled into them, and before they were sealed. In this duty also he culpably failed, and so caused May's accident.

Mr Stevenson well knew, or ought to have known, of the frequent presence of snails in those parts of his premises where the ginger-beer bottles were washed and dried, and further, ought to have known of the danger of small animals (including snails) getting into his ginger-beer bottles.

I believe that the snail involved in this case, in going into the bottle, left on its path a slimy trail, which should have been obvious to anyone inspecting the said bottle before the ginger-beer was put into it. In any event, the trail of the snail should easily have been discovered on the bottle before the bottle was sealed, and a proper (or indeed any) inspection would have revealed the presence of the said trail and the said snail, and the said bottle of ginger-beer with the snail in it would not have been placed for sale in the said shop. Further, Mr Stevenson well knew, or in any event ought to have known, that small animals like mice or snails left in aerated-water (including ginger-beer), and decomposing there, render aerated-water exceedingly dangerous and harmful to persons drinking the contaminated aerated-water. Accordingly, it seems to me that it was his obvious duty to provide clear ginger-beer bottles, so as to facilitate the system of inspection. In this duty also Mr Stevenson culpably failed, and the said accident was the direct result of his said failure in duty. If the defender and his employees had carried out their said duties May would not have suffered the shock and illness which she did.

May suffered severe shock and illness as a result of the incident. She suffered from sickness and nausea. I think she consulted her doctor and received emergency treatment at the Glasgow Royal Infirmary.

As far as I know, prior to the incident in the Wellmeadow Café May suffered from no stomach trouble.

There were two small scoops of ice-cream in May's glass. She had eaten one of them before the snail emerged.



5. Precognitions – defender’s witnesses

Defender’s Witnesses

- 1. David Stevenson Junior – the defender**
- 2. Robert L. Stevenson**

Defender’s witness No 1

**DAVID STEVENSON, Junior,
Aged 40, Aerated-Water Manufacturer, 5 Glen Lane, Paisley.**

I am an aerated-water (soft drinks) manufacturer, and I carry on business at Glen Lane, Paisley.

I am aware of the allegations being made against me by May Donoghue – which are set out in the Closed Record. Her allegations are simply not true.

May Donoghue is mistaken. I never employed an Ann Onymous. I would have remembered the name.

I do not accept that any bottle of ginger-beer manufactured by me ever contained a snail.

Any illness which May Donoghue suffered was not due to her having consumed the contents of a bottle of ginger-beer manufactured and sent out from my factory.

I have never issued bottles answering the description given by the pursuer. All my bottles are solid opaque glass. They have the name “D. Stevenson, Glen Lane, Paisley” embossed on the side of the glass as raised lettering. They don’t have paper labels.

The system employed at my factory is the best known in the trade.

No bottle of ginger-beer has ever passed out from my factory containing a snail. We don’t have any snails at Glen Lane – and certainly no big snails.

I exercised every care in the carrying out of my system, and every stage of the process has been properly executed by my employees.

I am not liable to pay any damages.



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Further, the alleged injuries are grossly exaggerated. Any illness suffered by the pursuer on and after 26th August was due to the bad condition of her own health at the time.

I contend that the pursuer's case is unfounded in fact and law.

I believe that the pursuer is not entitled to any damages.

In any event the sum sued for is excessive.



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Defender's witness No 2

**ROBERT L. STEVENSON,
Aged 35, part-time factory worker, c/o 5 Glen Lane, Paisley.**

I am the brother of David Stevenson.

David is an aerated-water (soft drinks) manufacturer who carries on business at Glen Lane, Paisley.

I sometimes help David out at work. Just part-time. I also write books.

I am aware of the allegations being made against David by May Donoghue – which are set out in the Closed Record.

I think May Donoghue is mistaken. David's factory is very well run.

All David's bottles are solid opaque glass. They have the name "D. Stevenson, Glen Lane, Paisley" embossed on the side of the glass as raised lettering. They don't have paper labels. I think there's a photograph of an actual bottle somewhere. (It might be a useful production – if you can find it.)

I don't believe that any bottle of ginger-beer manufactured by David ever contained a snail.

The snail which May Donoghue describes seems to be fairly small. By that I mean it must have been small enough to get into a bottle.

That sounds like a much smaller kind of snail than the fairly big snails that we sometimes get at Glen Lane. The ones we get are common garden snails – *Helix aspersa* I think they are called. They are too big to fit through the neck of bottle. I may have a shell from one of the snails somewhere. (That might be useful production too – if you can find one.)

You get lots of tiny wee snails at the Wellmeadow – right beside the Café. I'm not sure what they are called. Just wee snails I suppose. Maybe it was one of them. But if there was a snail in the bottle – what happened to the shell?

I've never heard of anyone called Ann Onymous. It's an odd name.

There's not much more I can say really. Hope that's of some help.



6. Summary – the sequence of events during the trial

1. **The Court convenes / assembles – the Judge is brought on to the bench.**
2. **The Pursuer’s Senior Counsel introduces the Case.**
3. **The Clerk of Court ballots the jury – chosen from those cited for jury service.**
4. **The Clerk reads the “The Proposed Issue for the Pursuer” to the jurors.**
5. **The Clerk administers the oath to the Jury.**
6. **The Judge outlines the procedure.**
7. **Junior Counsel for the Pursuer introduces the case for the Pursuer.**
8. **The witnesses give evidence.**
9. **The Judge puts each witness on Oath – to tell the truth.**
10. **The Pursuer’s evidence begins.**
Evidence-in-chief. Cross-examination. Re-examination?
11. **Pursuer’s Junior Counsel reads Joint Minute etc. The Pursuer’s case closes.**
12. **The Defender’s case begins.**
Evidence-in-chief. Cross-examination. Re-examination?
13. **Counsel for the Pursuer’s Speech to the Jury – asking the jury to answer the Proposed Issue “Yes” and to award damages.**
14. **The Defender’s Speech to the Jury – asking the jury to answer the Proposed Issue “No” and to award nothing or very little by way of damages.**
15. **The Judge’s Charge to the Jury – giving them directions in law.**
16. **The Jury Retire – to consider their verdict.**
17. **The Verdict.**
18. **Expenses and the question of a “Tender”.**
19. **The End. Feedback please.**



Additional Documents / Materials

The additional materials, which follow, consist of:-

Document 1. The **“Proposed Issue for the Pursuer”**

- which is essential.

Copies should be made available for all the jurors too.

Document 2. The **“Joint Minute”**

- agreeing certain matters and certain heads of damage.

The Joint Minute should be read to the jury by Junior Counsel for the Pursuer at the end of the pursuer’s case.

Document 3. A draft **“Minute of Tender”**

- which the defender’s lawyers can use if they wish.

See above page 31.

Even if the pursuer accepts the tender – proceed with the MiniTrial to find out what the jury would have done.

Document 4. A **medical report** by Dr. James Y. Simpson.

- which has been agreed in the Joint Minute.

The medical report should be read to the jury by Junior Counsel for the Pursuer at the end of the pursuer’s case.



Document 1.

IN THE COURT OF SESSION

PROPOSED ISSUE FOR THE PURSUER
(Personal Injuries Action)

MRS MAY McALISTER OR DONOGHUE, Junior, (Assisted Person), formerly residing care of McAlister, 49 Kent Street, off London Road, Glasgow, and now residing at 101 Maitland Street, Cowcaddens, Glasgow- ,

PURSUER

against

DAVID STEVENSON, Junior, Aerated-Water Manufacturer, 5 Glen Lane, Paisley – ,

DEFENDER

WHETHER on or about 26th August in the Wellmeadow Café, Wellmeadow Place, Paisley, the pursuer sustained injury caused by the fault of the defender or his employees?

DAMAGES CLAIMED *£25,000*

- | | | |
|----|------------------------|----------|
| 1. | Past Solatium | £ |
| 2. | Future Solatium | £ |
| 3. | Past Wage Loss | £ |
| 4. | Expenses | £ |

TOTAL DAMAGES **£**



Document 2.

IN THE COURT OF SESSION

JOINT MINUTE FOR THE PARTIES
(Personal Injuries Action)

MRS MAY McALISTER OR DONOGHUE, Junior, (Assisted Person), formerly residing care of McAlister, 49 Kent Street, off London Road, Glasgow, and now residing at 101 Maitland Street, Cowcaddens, Glasgow,

PURSUER

Against

DAVID STEVENSON, Junior, Aerated-Water Manufacturer, 5 Glen Lane, Paisley,

DEFENDER

A For the Pursuer and

B For the Defender stated to the Court that (without prejudice to the defender's whole other rights and pleas) the parties have agreed and hereby agree as follows:-

- (1) That No. 6/1 of Process is a medical report from Dr. James Y. Simpson, M.B.Ch.B., General Practitioner, 11 Kirklee Quadrant, Glasgow, dated 29th November and relating to the Pursuer; and that for the purposes of the present action said report shall be held as the equivalent of Dr Simpson's oral evidence;
- (2) That in the event of the defender being found liable to the pursuer the sum to be awarded in respect of Head 3 of the Proposed Issue for the Pursuer (Past Wage Loss) shall be £200;
- (3) That in the event of the defender being found liable to the pursuer the sum to be awarded in respect of Head 4 of the Proposed Issue for the Pursuer (Expenses) shall be £50; and
- (4) That said sums agreed above in relation to Heads 3 and 4 of the Proposed Issue are each inclusive of interest.

IN RESPECT WHEREOF

A

B



Document 3.

IN THE COURT OF SESSION

**MINUTE OF TENDER
FOR THE DEFENDER**
(Personal Injuries Action)

MRS MAY McALISTER OR DONOGHUE, Junior, (Assisted Person), formerly residing care of McAlister, 49 Kent Street, off London Road, Glasgow, and now residing at 101 Maitland Street, Cowcaddens, Glasgow- ,

PURSUER

against

DAVID STEVENSON, Junior, Aerated-Water Manufacturer, 5 Glen Lane, Paisley – ,

DEFENDER

B For the Defender (without prejudice to the defender's whole other rights and pleas) tendered and hereby tenders to the pursuer the sum of

POUNDS (£) STERLING, together with the taxed expenses of process to date, in full of the conclusions of the Summons.

IN RESPECT WHEREOF

B

Dated :



Document 4.

Production No. 6/1 of Process

**DR. JAMES Y. SIMPSON,
General Practitioner,
11 Kirklee Quadrant,
Glasgow G12 OTS.**

29th November

To Whom it may concern.

**MEDICAL REPORT relating to
MRS MAY McALISTER or DONOGHUE, Junior,
101 Maitland Street, Cowcaddens, Glasgow**

May Donoghue has been a patient of mine for several years.

She came to see me on 29th August complaining about an incident which she told me had taken place in the Wellmeadow Café in Paisley on 26th August.

May suffered severe shock and a prolonged illness as a result of this incident. She suffered from sickness and nausea which persisted.

When she consulted me she was suffering from gastroenteritis – which she told me was induced by snail-infected ginger-beer.

On 16th September she had to receive emergency treatment at the Glasgow Royal Infirmary.

She vomited repeatedly, and suffered from acute pain in her stomach.

She also suffered from mental depression.

She was unfit for her employment for several weeks.

Prior to the incident in the Wellmeadow Café May suffered from no stomach trouble. However she has in the past felt unwell after eating too much ice cream.

Yours sincerely,

James Y. Simpson

Dr James Y. Simpson, M.B.Ch.B.



7. The Pursuer's Opening Speech to the Jury **- a possible outline**

Junior Counsel can begin with something along the following lines:-

“Ladies and Gentlemen of the Jury, you are here today to deal with a claim for damages brought by Mrs May Donoghue against Mr David Stevenson. May Donoghue is seeking compensation for injuries sustained as a result of her drinking ginger-beer which had been manufactured by Mr Stevenson and which was contaminated with the remains of a decomposing snail. I am Junior Counsel for the Pursuer.

Junior Counsel then summarises in general terms the essential features of the pursuer's case. For the purposes of MiniTrial that can be done by simply highlighting the important elements of the case as set out in the written pleadings. By this stage the pleadings are contained in the document known as the “Closed Record”. A copy of the updated Closed Record can be found in the case papers – at pages 36 to 39 inclusive. The Pursuer's Statements are the paragraphs headed “Stat. 1” and so on in the Closed Record. The Defender's Answers are the indented paragraphs headed “Ans. 1” and so on. It is for Counsel to decide which parts of the Record to specifically highlight – so that is left to the student's judgement. Counsel might begin by saying for example:-

“The essence of the pursuer's case is as follows. ... (then go to the Closed Record and summarise the main allegations as set out in the pursuer's pleadings – the paragraphs headed “Stat.”)

Junior counsel can then continue by saying:-

The question for you is set out in the document called the Issue. Would you please look at that document with me? You will see that it begins with a question – and then it has a list of various heads of damages. On behalf of the pursuer, you will be invited to answer the Issue (the main question) “Yes”. You will also be asked to insert the appropriate figures against each of the heads of damages – all as set out in the Proposed Issue – up to the maximum which is stated to be £25,000. You will now hear the evidence for the pursuer.”



8. The Defender's Opening Speech to the Jury - a possible outline

Junior Counsel can begin with something along the following lines:-

“Ladies and Gentlemen of the Jury, I now have the opportunity to address you on behalf of the defender Mr David Stevenson – who denies that he has any liability in this case.”

Junior Counsel then summarises in general terms the essential features of the defender's case. For the purposes of MiniTrial that can be done by simply highlighting the important elements of the case as set out in the written pleadings. By this stage the pleadings are contained in the document known as the “Closed Record”. A copy of the updated Closed Record can be found in the case papers – at pages 36 to 39 inclusive. The Pursuer's Statements are the paragraphs headed “Stat. 1” and so on in the Closed Record. The Defender's Answers are the indented paragraphs headed “Ans. 1” and so on. It is for Counsel to decide which parts of the Record to specifically highlight – so that is left to the student's judgement. Counsel might begin by saying for example:-

“The essence of the defender's case is as follows. ... (then go to the Closed Record and summarise the main allegations as set out in the defender's pleadings – the paragraphs headed “Ans.”)”

Junior counsel can then continue by saying:-

The question for you is set out in the document called the Issue. Would you please look at that document again with me? You will see that it begins with a question – and then it has a list of various heads of damages. On behalf of the defender, you will be invited to answer the Issue (the main question) “No”. If there is to be any award of damages – it should be very small. Much less than the maximum which is stated to be £25,000. You will now hear the evidence for the defender.”



9. The Pursuer's Closing Speech to the Jury - a possible outline

Senior counsel for the Pursuer stands and says (as a courtesy to the court)

“May it please your Lordship.”

Counsel then makes his / her way from his seat round into the well of the court to stand directly in front of the jury. Counsel begins with something along the following lines:-

“Ladies and Gentlemen of the Jury, I now have the opportunity to address you on behalf of the pursuer May Donoghue. As you have heard, the question for you is set out in the Issue. Would you please look at that document again with me?

First of all, on behalf of the pursuer, I am inviting you to answer the Issue (the main question) “Yes”.

The reasons *why* you should answer the Issue “Yes” are as follows:-

- 1. As a matter of fact, the incident happened as May Donoghue alleges. That is clear from the evidence of ...**
- 2. The incident was caused by the fault of the Defender. Mr Stevenson or his employees did *not* take reasonable care. That is clear from the evidence of ...**
- 3. May Donoghue sustained injury caused by that fault. That is clear from the evidence of ...**
- 4. Finally, the evidence from the defender should be rejected. The suggestions made by the defender should not be accepted because ...**

Accordingly you should answer the Issue “Yes”.

You should also assess damages – by inserting the appropriate figures against each of the 4 heads of claim which are all set out in the Issue.

Head (1) is for past *solatium* – that is the pain and suffering and distress experienced by May Donoghue from the time of the incident to date.



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Head (2) is for future *solatium* – that is the pain suffering and distress that May Donoghue will experience as a result of the incident in future – from today onwards.

Head (3) “past wage Loss” has been agreed between the parties – so you should insert the agreed figure of £200.

Head (4) “expenses” has also been agreed – so you should insert the agreed figure of £50.

The assessment of damages is a matter for you. When selecting the appropriate figure for solatium you will no doubt bear in mind the evidence of:-

- a.
- b.
- c.

On the whole evidence, you may well take the view that your awards should be substantial – to properly reflect the evidence.

Finally, I should say that the figure of £25,000 which is mentioned in the Issue is a maximum. You cannot award more than £25,000. If you consider it appropriate you could award £25,000 in total but you could not award any more than that.

In short, I am inviting you firstly to answer the Issue “Yes” – and then to make a reasonable assessment of damages totalling up to but no more than £25,000.

Thank you for your attention.



10. The Defender's Closing Speech to the Jury - a possible outline

Senior counsel for the Pursuer stands and says (as a courtesy to the court)

“May it please your Lordship.”

Counsel then makes his / her way from his seat round into the well of the court to stand directly in front of the jury. Counsel begins with something along the following lines:-

“Ladies and Gentlemen of the Jury, I now have the opportunity to address you on behalf of David Stevenson – the defender.

First of all, on behalf of the defender, I am inviting you to answer the question in the Issue (the main question) “No”.

The reasons *why* you should answer the Issue “No” are as follows:-

- 1. The pursuer has failed to prove that the incident in fact happened as May Donoghue alleges. You will remember the doubts and the inconsistencies in the evidence of ...**
- 2. The pursuer has failed to prove any fault on the part of the Defender. Mr Stevenson and his employees *did* take reasonable care. You will remember the evidence of ...**
- 3. May Donoghue has failed to prove that she sustained injury caused by the fault of the defender. You will remember the evidence of ...**
- 4. Finally, the evidence from the pursuer should be rejected and should not be accepted because ...**

Accordingly, the Issue should be answered “No”.

In relation to damages, I have very little to say. My primary position is that there should be no award at all. If you are against me on that, then any award of damages should be modest.

Head (3) “past wage loss” has been agreed – at £200.

Head (4) “expenses” has also been agreed – at £- so you should insert the agreed figure of £50.



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That only leaves Heads (1) and (2) for you to decide.

Head (1) is for past *solatium*.

Head (2) is for future *solatium*.

The assessment of damages is a matter for you but when selecting the appropriate figure for solatium you will no doubt bear in mind the evidence of:-

- a.**
- b.**
- c.**

On the whole evidence you may feel that any award of damages should be very small. Perhaps a few hundred pounds – but nowhere near the total which the pursuer has chosen as her maximum.

In short, I am inviting you to answer the Issue “No”.

In relation to damages, if you decide to make any award at all, I suggest that the award should be very small.

Thank you for your attention.



11. The Charge

THE JUDGE'S CHARGE TO THE JURY – a possible outline

LADIES and GENTLEMEN OF THE JURY, it is now my duty to give you directions as to the law in this case.

You and I have **DIFFERENT FUNCTIONS**.

It's MY FUNCTION to deal with questions of law and you must accept and apply my directions on **THE LAW**.

But YOU are the judges of **THE FACTS**.

It's **YOUR FUNCTION** to assess the evidence. It's for you to decide: – what evidence you believe and what you disbelieve; what evidence you find reliable and what unreliable. Please consider the evidence with care. It is your recollection and your assessment of the evidence that counts – and not mine.

There are **TWO LEGAL PRINCIPLES** which I wish to draw to your attention at the outset.

1. **THE ONUS OF PROOF**. The burden of proving the case lies on **THE PURSUER**. It is up to May Donoghue to prove her case to your satisfaction.
2. **THE STANDARD OF PROOF** – is “**THE BALANCE OF PROBABILITIES**”. It is for May Donoghue to satisfy you of the essential features of her case – and that means that she has to satisfy you that those essential features are “more probable than not”.

The evidence is very fresh in you minds – including the evidence which was agreed by Joint Minute – and I propose to say nothing further about it.

However, I would like to say a few words about the **LAW**.

The main legal principles are to found in a famous case called *Donoghue v Stevenson* 1932 S.C. (H.L.) 31. In that case, which bears a number of similarities to the present one, The House of Lords held (decided) as follows:-

Where the manufacturer of a product intended for human consumption sends it out in a form which shows that he means it to reach the ultimate consumer in the form in which it left his factory, with no reasonable possibility of intermediate examination by the retailer or consumer, and with the knowledge that want of



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reasonable care on his part in the preparation of the product may result in injury to the consumer, the manufacturer owes a duty to the consumer to take such care, and will be liable to the latter, in damages if he suffers injury through the failure to take such care.

In his speech Lord Atkin said:

“You must take reasonable care to avoid acts and 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 and omissions which are called in question.”

The principle on which his judgment rested was as follows:

“[A] manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer’s life or property, owes a duty to the consumer to take that reasonable care.”

The main questions for you are (Firstly) has May Donoghue proved that the incident happened as she alleges, (Secondly) has she proved a breach of duty – that is fault – on the part of David Stevenson and (Thirdly) has that breach of duty caused May Donoghue loss injury or damage?

As you have already heard, the main question for you is set out in the Issue. Would you please look at that document again with me?

First of all, you have to decide how to answer the Issue (the main question) – either “Yes” (as the pursuer suggests) or “No” (as the defender suggests).

You have heard two excellent closing speeches – summarising the contentions for the parties. I don’t propose to rehearse the various arguments which have been advanced by counsel.

In light of those submissions you require to ask yourself the following three questions:

1. Are you satisfied that, as a matter of **fact**, the incident happened as May Donoghue alleges – and in particular that she consumed ginger-beer which was manufactured by the defender and which was contaminated by a snail?



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2. Was that incident caused by the **fault** of the Defender – and in particular are you satisfied that Mr Stevenson or his employees failed to take reasonable care?
3. Did May Donoghue sustain **injury** caused by the fault of the defender?

If you answer all those questions “Yes” then you should find in favour of the pursuer – by answering the Issue “Yes”.

If you answer any of those questions “No” then you should find in favour of the defender – by answering the Issue “No”.

You also require to assess damages – and to insert the appropriate figures against each of the 4 heads of claim which are all set out in the Issue.

Head (1) is for past solatium – that is the pain and suffering and distress experienced by May Donoghue from the time of the incident to date.

Head (2) is for future solatium – that is the pain suffering and distress that May Donoghue will experience as a result of the incident in future – from today onwards.

Head (3) “past wage Loss” has been agreed between the parties – so I direct you to insert the agreed figure of £200.

Head (4) “expenses” has also been agreed – so I direct you to insert the agreed figure of £50.

The assessment of damages under Heads (1) and (2) for past and future solatium is entirely a matter for you. Your award should properly reflect the evidence and provide fair compensation. The amount of damages should be moderate and reasonable but adequate to put May Donoghue back into the position she would have been in if there had been no incident. You should reach a figure for solatium as a whole before apportioning it between the past and the future.

Finally, the figure of £25,000 which is mentioned in the Issue is simply a maximum figure. You cannot award more than £25,000.

In short, you require to answer the Issue either “Yes” or “No” and then make a reasonable assessment of damages totalling up to but no more than £25,000.

The verdict is however entirely a matter for you.



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Your verdict can be unanimous or by majority. Since there are twelve of you, if you are going to return a majority verdict there must be at least 7 of you in favour of that verdict.

When you have reached a verdict please tell the Clerk of Court. Please also appoint a spokesperson to speak for you when you return to give your verdict.

WOULD YOU NOW PLEASE **RETIRE** AND CONSIDER YOUR VERDICT.



12. Jury Observation Sheets – for the jurors.

(a) JURY OBSERVATIONS on the PURSUER’S Case

Note: The jury will determine whether the pursuer has proved her case – based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

FACTS established by the evidence of the pursuer’s witnesses
and any doubts raised.

Witness Number 1

Witness Number 2

CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree
A = Agree
D = Disagree
SD = Strongly Disagree

Witness 1 was a believable and reliable witness SA A D SD

Witness 2 was a believable and reliable witness SA A D SD

Why did you reach those conclusions?

Pursuer’s Closing Speech:

How did the pursuer’s counsel use the evidence to prove the pursuer’s case?



(b) JURY OBSERVATIONS on the DEFENDER’S Case

Note : The jury will determine whether the pursuer has proved her case – based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

FACTS established by the evidence of the defender’s witnesses and any doubts raised.

Witness Number 1

Witness Number 2

CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

- SA = Strongly Agree
- A = Agree
- D = Disagree
- SD = Strongly Disagree

Witness 1 was a believable and reliable witness SA A D SD

Witness 2 was a believable and reliable witness SA A D SD

Why did you reach those conclusions?

Defence Closing Speech to the Jury:

How did the defender’s counsel use the evidence to cast doubt on the pursuer’s case?

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