**CASE LAW 22-10**

**Spot the mistakes (five overall ☺)**

**Carlill v Carbolic Smoke Ball Co, 1893**

Mrs Carlill sued the manufacturer of the carbolic smoke ball – a device ~~for~~ **TO** prevent colds and flu – who had promised a reward of £100 for any one catching flu following the use of his ~~produce~~ **PRODUCT** but then refused to pay out. The court decided that this promise, together with Mrs Carlill’s use of the produce as directed, amounted to a legally binding contract and she was **EN**titled to the reward. The case explores many of the principles that must be present in modern ~~contracts day~~ **DAY CONTRACTS**, such as offer and acceptance, before we can make legally enforceable agreements between each other. Yet this most famous case ~~must~~ **MAY** never have been brought at all, had Mrs Carlill not been married to … a solicitor.

**Fagan v Metropolitan Police Commissioner, 1969**

To be guilty ~~for~~ **OF** a criminal offence, there often need**S** to be an unlawful act accompanied by a guilty state of mind, such as a criminal intent. So, having accidentally ~~drove~~ **DRIVEN** his car onto a police~~men’s~~ **MAN’S** foot, did Mr Fagan commit an assault when he decided not to remove it? Mr Fagan suggested not because he had no criminal intent at the time the car first ~~gone~~ **WENT** on to the foot, but [the court held](https://www.youtube.com/watch?v=nDv1hxtCbGQ) that deciding to leave the car there was a combination of act and intention, which meant he was guilty ~~for~~ **OF** offence.

**A) ORAL PRESENTATIONS**

**B) MODALS**

* **Do these sentences use modals correctly? Correct any mistakes you may find.**

1. The project must have been a terrible failure but it turned out to be a success. 2. It is too late to take the report into account now. It must have been submitted yesterday. 3. We wouldn’t have achieved such good results if we hadn’t worked together as a team. 4. By the end of this century, the way we conduct business will have been changed radically. 5. If they tried harder, they will be able to succeed.

* **Fill in the gaps so that the sentences make sense and are grammatically correct.**

1. It’s too late to apply for the job now. You … applied last month.

2. It was silly to leave your wallet in the hotel room. It … stolen ...

3. The fire in our showroom last night … destroyed all our merchandise.

4. Gerry hasn’t arrived yet. He … delayed in traffic.

5. We have plenty of food and drinks. You … brought all this, it was totally unnecessary.

* **Grammar p. 178**

**C) SNAIL IN A BOTTLE CASE, DONOGHUE V. STEVENSON, 1932**

**The legal case of the snail found in ginger beer, news.bbc.co.uk, November 2009**

How a case about a snail gave power to modern consumers and launched a million lawsuits. This is the story of how our modern law of negligence came about all because of a fizzy drink.

And a mollusc from Paisley in Scotland.

It begins on an unremarkable Sunday evening on 26th August 1928. May Donoghue, a shop assistant, met a friend at the Wellmeadow cafe in Paisley, near Glasgow. Her unnamed friend ordered and paid for a pear and ice cream ginger beer 'float' for May. When the ginger beer was poured into her glass, it was alleged the decomposing remains of a snail dropped out of the darkened, opaque bottle. May complained of stomach pains, and a doctor diagnosed gastroenteritis and shock. But if you are thinking McDonalds, hot cups of coffee and big bucks compensation, think again. This is 1928. In those days, the common law only acknowledged a duty of care was owed to people harmed by the negligent acts of others in specific and limited circumstances. For example, this was the case where a contract existed between the parties, or where a manufacturer was making something dangerous, or acting fraudulently. As the law stood, May Donoghue could not take legal action over her snail. As May's unnamed friend had paid for the drink, it meant May had not entered into a contract with the cafe owner.  Clearly, neither May nor her friend had a contract with the manufacturer of the ginger beer. The latter had not committed fraud. And ginger beer could hardly be described as dangerous.

To the rescue came one doughty and determined solicitor called Walter Leechman, who took up May's case. He had already brought two cases against another drinks manufacturer, AG Barr, alleging a dead mouse had been found in a bottle of their ginger beer. Leechman had lost both cases, but he went ahead and issued May Donoghue's writ against David Stevenson, the manufacturer of the ginger beer. The case went all the way to the highest court in the land. It was heard in the House of Lords on 10th December 1931, three years after May allegedly discovered the snail. Her counsel argued that a manufacturer who puts a product on the market in a form that does not allow the consumer to examine it before using it, is liable for any damage caused. Remember May could not have examined her ginger beer before drinking it because the bottle was dark and opaque.

Lord Atkin of Aberdovey, one of the greatest judges of the twentieth century, was on the panel who heard the appeal. On 26th May 1932, he found in favour of May Donoghue and rose to give the leading judgment in the case. "The rule that you are to love your neighbour becomes in law 'You must not injure your neighbour'; and the lawyer's 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." And with those words the modern law of negligence was born. Lord Atkin based his judgment on the Christian principle of 'loving thy neighbour', and the parable of the Good Samaritan. This elastic term could now be applied to almost any relationship, in any circumstances. Among other areas, it covers personal injury, product liability, professional negligence on the part of doctors, architects and even lawyers themselves. For many, Lord Atkin's judgment was a noble principle based upon the Gospel of Luke. For others, it went too far, giving birth to our modern compensation culture. It has made many lawyers and insurance companies rich, but it has also seen the ill and injured compensated for losses caused by the negligent acts of others. In the original case, David Stevenson died less than a year after the Law Lords' decision, and his estate settled May Donoghue's claim to the sum of £200.

In 2008, 21-year-old Simon Enticknap from Basingstoke bit into a Ginsters chicken and mushroom slice and found….a snail. Even though he avoided eating it, Ginsters apologized immediately, and sent £25 in compensation. The speed of their response was down to the Paisley snail.

**1) What were the consequences of the event according to May Donoghue?**

physical and psychological ones (gastroenteritis and shock).

**2) Why couldn’t Donoghue sue for negligence?**

because the duty of care was much more limited at the time + May was not the one who had contracted with the owner of the café.

**3) What was Donoghue's counsel’s argument in front of the House of Lords?**

consumers should be able to examine the product they are going to buy.

**4) What was the reasoning behind Lord Atkin of Aberdovey's decision?**

elastic (far-fetched?) reference to the parable of the Good Samaritan in the New Testament, i.e. “love thy neighbour” and don’t do anything that could harm him or her.

**5) Why has the case remained famous to this day?**

in spite of previous cases, first time there was such a ruling and still applying today.

**6) Do you agree that “compensation culture” goes too far in modern societies? Discuss.**

**D) REVISIONS KAHOOT**