

Section 3: Civil Law

Lesson Plan 1: Introduction to Civil Law

SNAPSHOT

Grade Level	8-10
Duration	2-3 periods

Introduction

Civil cases involve private disputes between individuals. They are different from criminal cases in that they do not involve or affect other members of society. This lesson will introduce students to civil law, with a special focus on the law of negligence. Students will also compare civil law to criminal law and look at different methods of dispute resolution other than court. Though litigation is a traditional process for settling disagreements, there are a number of other options including negotiation, mediation, collaborative law and arbitration.

Objectives

Upon completion of this lesson, students will:

- Understand that civil laws deal with unresolved conflicts between two individuals or groups
- Understand that civil cases often involve torts such as negligence, as well as contracts
- Know what some of the types of civil cases are
- Be able to compare and contrast civil law and criminal law
- Know that sometimes the same case can have both criminal and civil counterparts
- Demonstrate a basic understanding of the pre-court process with lawyers
- Demonstrate a basic understanding of the different methods for dealing with disagreements
- Evaluate the appropriateness of different dispute resolution processes in a variety of situations
- Gain an appreciation for impact that Donoghue vs. Stevenson negligence case has had on Commonwealth common law

Focus Questions

1. What are civil cases and what are the principles behind them?
2. What are some types of civil cases?
3. How can civil law be distinguished from criminal law?
4. What is dispute resolution?
5. What are some dispute resolution processes?
6. What are some pre-court dispute resolution processes?
7. Why do we have dispute resolution processes other than going to court?
8. What might some advantages and disadvantages be of some of the more commonly used dispute resolution processes?
9. What does negligence mean? How can negligence be proved?

Teaching Summary

Topic 1: Introduction to Civil Law

Students will read *Handout 1: Introduction to the Civil Law* and use the information to answer nine questions. Afterwards, students will apply what they have learned to answer three questions about a fictional civil case.

Topic 2: Comparing Criminal and Civil Law

Students will compare civil and criminal law and use this information to answer the questions on *Handout 5: Civil or Criminal? You Decide?* and *Handout 6: Civil and Criminal: Review*.

Topic 3: Introduction to Alternatives to Civil Court

Students will learn about the topics of negotiation, mediation, settlement conferences, collaborative law, arbitration, mediation programs and arbitration. The first activity is a reading comprehension exercise. In the second activity they will work in groups with a scenario to develop the best resolution to the dispute and present this work to the class.

Topic 4: Civil Case Study – The Paisley Snail Optional

Students will watch a video called *The Paisley Snail* (approximately 42 minutes) about a negligence case that occurred in the 1920s in Scotland to learn about the law of negligence. Students will work on vocabulary, comprehension questions and participate in a discussion. The principles laid out in *Donoghue vs. Stevenson* will be highlighted. Some of the exercises and handouts for this activity are advanced, making them more appropriate for grades 11-12. The video itself is suitable for all grades.

CONTENT

Topic 1: Introduction to Civil Law

Civil law involves cases where there are private disputes between individuals or parties that cannot be resolved outside the court system. They do not involve or affect other members of society as in criminal law. Torts, contracts and the law of negligence are integral parts of civil law. These are defined below:

- *Tort*: An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government
- *Contracts*: An agreement between two or more persons which creates an obligation to do or not to do a particular thing
- *Negligence*: The omission to do something which a reasonable person, guided by those ordinary considerations which regulate human affairs would do, or the doing of something which a reasonable and prudent person would not do

The burden of proof in civil cases is on the “balance of probabilities”, which means that it is more probable that one side is correct. The judge or jury listen to both sides then they weigh the evidence and make a decision.

Civil Court

A civil case is started by one party filing a claim in the court against the other party and asking the court to decide the outcome. This case would read differently from a criminal one in that it would be the Plaintiff (Jones) versus the Defendant (Smith). The plaintiff is the person starting the action or the one suing. The defendant is the person who allegedly caused the problem.

A civil jury has eight members. The decision of this jury does not have to be unanimous, as long as 75% or 6 out of 8 jurors agree after at least three hours of deliberation. The penalties are usually monetary in the form of a damage award.

Civil cases with a monetary claim of \$25,000 or less are heard in Small Claims Court. Cases with a claim of over \$25,000 are heard in the Supreme Court. The majority of civil cases are settled out of court.

Types of Civil Cases

- Contract
- Divorces
- Custody
- Contested wills and estates
- Personal injury

Topic 2: Comparing Criminal and Civil Law

Civil cases differ from criminal cases in a number of ways:

- Parties Involved
 - Do you see a connection between your feelings and views and government laws and policies? Why or Why not? Explain your answer in detail.
 - In a criminal case, the Crown or the government in the name of Regina is charging the accused with a crime. The style of cause would read Regina vs. Lee for example.
 - In a civil case, one party is suing the other parties. Either party could be an individual, a company or the government. The party suing is called the Plaintiff and the party being sued is called the Defendant. The style of cause would read Nolette vs. Leung.

- Reason for the Case
 - In a criminal case, someone has broken the law and is being charged with an offence. Most offences are in the Criminal Code of Canada. Other offences may be in other pieces of federal or provincial legislation.
 - In a civil case, the parties are involved in a dispute and cannot come to an agreement. They may be suing the other for the repayment of debt, breach of a contract, damages incurred because of non-performance or for personal injuries suffered.

- Pre-Trial
 - In serious criminal cases, a preliminary inquiry is held in Provincial Court before the case is put over for trial. The Crown will present all its evidence and the accused is entitled to cross-examine the Crown witnesses. The accused does not have to present any evidence at this time.
 - In a civil case, the parties are examined before trial by the other side in a process known as discovery. There may also be pre-trial mediation and trial conferences in the hope of settling or making the trial more streamlined.

- Trials
 - In criminal cases, a trial may be by a judge alone or by a judge and jury. If there is a jury there are 12 jurors who all must decide guilty or not guilty. If they cannot decide it is called a hung jury and a new trial will take place. The jury does not take part in the sentencing of the convicted offender.
 - In civil cases, a trial is usually by judge alone but the parties may request a jury. The jury has 8 members and only 6 out of 8 have to decide that the

defendant is liable. The civil jury also gives its recommendation on how much money should be paid in the case if the plaintiff is successful.

- **Burden of Proof**
 - In a criminal trial, the finding of guilt or innocence must be beyond a reasonable doubt. The judge or jury must be sure that the accused is the one who committed the crime.
 - In a civil trial, the burden of proof is on the balance of probabilities which means that it is more probable that one side is correct. The judge or jury listen to both sides then they weigh the evidence and make a decision.

- **Judgment**
 - In a criminal trial, the judge is responsible for sentencing the convicted offender and will follow guidelines for sentencing set out in the Criminal Code of Canada. Although the judge can order a fine or restitution it is more likely that the sentence is time spent on probation or in time spent in jail.
 - In a civil trial, the judge taking into account the jury's recommendation is responsible for setting the damages in a case. Civil cases are about the amount of money paid by one party to the other.

- **Records**
 - In a criminal case, the convicted offender has a criminal record.
 - In a civil case, there is no criminal record. In some cases the settlement could affect the future business and personal interests of the party who is found liable.

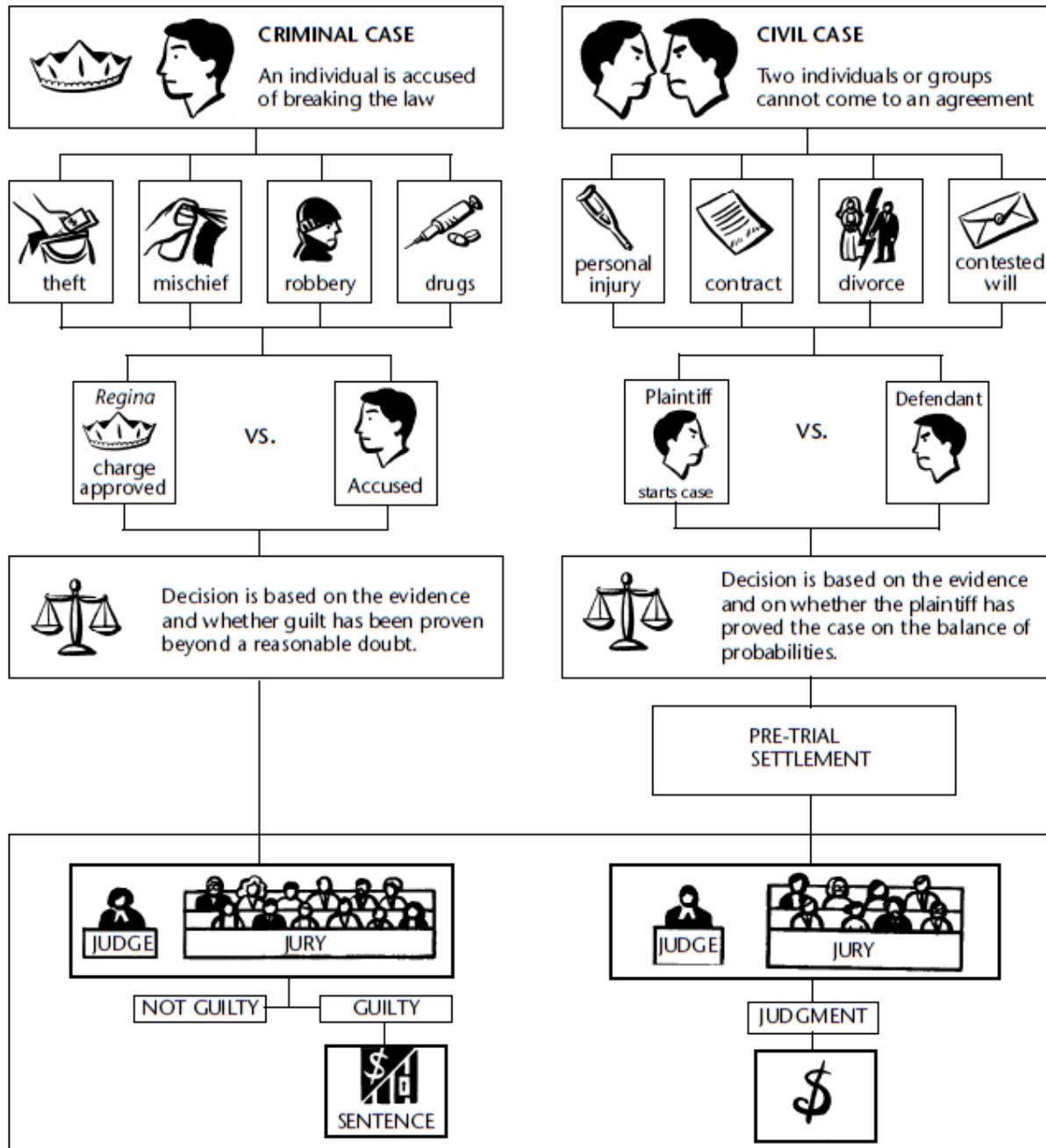
Civil and Criminal Counterparts

Some situations may result in cases being heard both in a criminal proceeding and in a civil proceeding. An example of this would be a car accident where the person at fault could be charged with dangerous driving and that person could also be sued for damages to pay for the injuries suffered.

The civil counterparts of criminal cases are as follows:

Criminal Cases	Civil Counterparts
Theft	Conversion
Attempted murder	Battery
Fraud	Breach of contract
Criminal negligence	Personal injury
Assault	Personal injury
Mischief	Damages

Criminal Law vs. Civil Law



The vast majority of criminal and civil cases are heard by a judge alone.
Cases with a jury are in the minority.

Topic 3: Introduction to Alternatives to Civil Court

Introduction

There are a range of methods for resolving disputes. Alternative dispute resolution means alternatives for going to court or finding other ways to work out a disagreement. Some are collaborative (the parties working together to a common goal, increasing understanding and maximizing satisfaction with the result) and some are adversarial (me vs. you, win: lose, with the problem often stated in terms of monetary value).



We all experience conflict. There are many ways to resolve disputes. Sometimes we talk to the other person informally (discussion), sometimes we have more structured direct discussions (negotiation), sometimes we involve a neutral 3rd party to help facilitate discussion (mediation), sometimes we need someone to make a decision for us in a more formal setting and based on our direct input (arbitration) and sometimes we need a very formal, highly structured process where we hire someone to argue for us (if we can afford it) and a neutral 3rd party makes a decision for us (litigation).

As the process of solving disputes becomes more structured and formal the:

- Individual has less control over the outcome
- Parties will need to involve professional help (mediators, lawyers, arbitrators or judges)
- More expensive the process
- More public the process and the results
- Less personal commitment the parties have to upholding the outcome

Negotiation

For the vast majority of disputes, the parties do not have to resort to the courts but are able on their own or with some help to resolve their disputes. Negotiation may be appropriate. Negotiation is any form of “unfacilitated” communication in which people involved in a dispute discuss steps they could take to resolve a dispute between them. Negotiation can occur directly between the parties or indirectly through agents acting on behalf of the parties, such as lawyers.

However, not all disputes can be easily settled by negotiation. Sometimes one of the parties has much more power, knowledge or negotiating skill over the other and can come to an agreement that would be unfair to the weaker party. It is also easy to get sidetracked by your emotions in negotiation, instead of focusing on the real issues.

Mediation

Another process to resolve disputes that does not involve the courts is Mediation. In mediation, an impartial third party, the mediator, helps the parties discuss their dispute and come to a mutually agreeable solution. The mediation takes place in a private, informal setting, where the parties actively participate in the negotiation and design of the settlement agreement.

The mediator is trained to help people settle conflicts collaboratively and has no decision making power. The dispute is settled only if all of the parties agree to the settlement and the responsibility for resolving the dispute is with the parties. With the help of the mediator, who skillfully facilitates the discussion between the parties, the parties get to move beyond their stated positions (“I want X!”) to talk about what is really important and why. For example, a conflict of positions is when both parties say, “I want the apples” but a mediator would ask the parties to talk about what it is about the apple that is important to the parties. If A says, “The apples are necessary so I can make apple pies to sell for the fundraiser” and B says, “I need the apples for their seeds, so I can grow apple trees.”

Having a neutral, third party mediator may save money and time as the parties may be able to resolve the dispute without litigation. However, sometimes the mediator is not able to help resolve the dispute. In these cases, the mediation may however result in a better understanding on both sides, a greater focus and faster resolution if the dispute then proceeds to a more formal process involving an external decision maker. Mediators will recommend that the participants in mediation seek legal advice on any agreement reached in mediation. Where one person in the mediation has less power, the mediator will take steps to correct for power imbalance and if they cannot do so, are able to end the process.

Mediation is usually an interest-based process and not a rights-based process, so it is acceptable to make an informed choice to trade off on a right if it meets a deeper interest. Many people who have experienced mediation feel that mediation is extremely powerful and has a deeper legitimacy because those involved have created the resolution to their dispute, so they have a deeper personal commitment to following through on the agreement they have made. Especially where there is an ongoing relationship (i.e. children to be raised), mediation creates a better understanding of the other’s interests and creates productive and cooperative communication experiences that help build skills to support the ongoing relationship.

Settlement Conferences

A Settlement Conference is an informal dialogue between a judge, legal counsel and the parties, before a trial. This process is usually geared toward settlement or trial preparation. Some goals of the process are to settle disputes, get the lawsuit to proceed in a timely way, discourage wasteful pre-trial activities and improve efficiency of the trial through more thorough preparation. During a family law proceeding, a Family Judicial Case Conference could be held. This is a private, informal meeting with the judge and

the parties and their lawyers (if represented) for about one hour to identify the legal issues, discuss options for resolution other than trial and to discuss trial management issues such as setting dates and other pre-trial procedures.

Collaborative Law

Collaborative Law is a process, used mainly in family disputes, where the parties and their lawyers make a formal commitment to resolve the dispute without going to court in an atmosphere of trust and collaboration. Lawyers are hired to reach a settlement and if the process breaks down the lawyer must withdraw from the case. Lawyers and parties pledge to work together in a respectful and cooperative manner to resolve the dispute. Lawyers participating in the process often undergo special training in the collaborative approach.

Parties and their lawyers agree to disclose information or material needed to assist the parties in achieving settlement. Such an approach can often be less expensive and time consuming than litigation and can lead to a positive result that will help parties maintain a positive future relationship.

However, there may be instances where collaborative law would not be an appropriate process for the parties. It is a process based on good faith and if one party has a history of not being honest, this process may not be the best way to resolve a dispute. This type of process is also inappropriate where one of the parties wants punitive action (to punish the other side), nor where there is a pattern of violence or inequality of bargaining power in the relationship between the parties. Court-ordered methods of forcing a party to provide information will not be available in this process. Also, if one of the parties is trying to vindicate itself or publicly defend itself from accusations of wrongdoing, this process may not be ideal.

Lawyers and the parties agree not to use litigation or the threat of litigation as long as the parties are in the collaborative process. Lawyers will withdraw from the case if it cannot settle collaboratively or if they or their client breach the participation agreement. Other lawyers must be retained if the case goes into the litigation process.

Arbitration

In arbitration, disputes are submitted to a neutral decision maker through presentation of evidence and arguments. The arbitrator makes a binding decision. Arbitration is generally a private, voluntary method of adjudication; however, government sometimes requires that certain disputes be submitted to arbitration (e.g., disputes under the *Residential Tenancy Act*). Also, a contract may provide that disputes will be resolved by arbitration rather than litigation.

However, arbitration is an adversarial process that pits one person against the other and therefore usually does not improve the relationship between the parties. Decision making is also not in the hands of the parties, but instead the arbitrator. There is less predictability than the courts in the sense that certain procedures may vary from one arbitration to the next, such as the rules around evidence. The ability to appeal an

arbitration award is very limited and arbitration awards do not set precedent, as they are generally not reported and do not bind anyone except the parties.

Litigation

Litigation is a formal method of resolving disputes that involves bring a civil action, or lawsuit, to solve the dispute. It is an imposed final decision that legally binds the parties. Court-based decisions are based on previous decisions and in that sense provide some predictability and also have built-in safeguards to ensure fairness, such as rules about evidence and court procedure. Court decisions can also be appealed. The dispute will be handled by people with legal expertise, people who are familiar with the safeguards for protecting the parties' rights and ensuring fairness (judges). The courts may even involve other parties with specific expertise, such as scientific experts, to help understand the full extent and nature of the problem. Sometimes, just the mere "threat" of litigation can motivate parties to settle the dispute outside of court. Generally speaking, courts are open to the public and in that sense provide a sense of transparency (as opposed to the idea of "behind closed doors" negotiations).

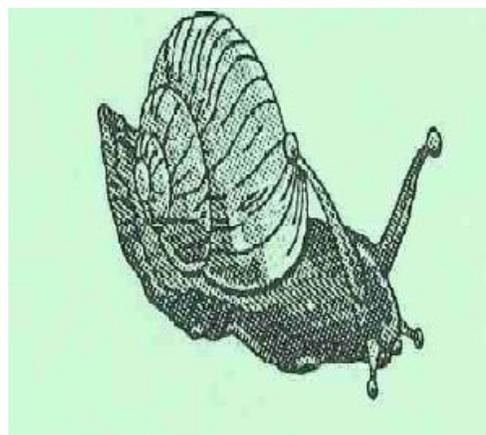
However, litigation is very expensive (making it impossible for some to have their day in court) and is adversarial. Control over the process is in the hands of lawyers (when the parties have a lawyer) and judges and imposed decisions can drive parties further apart and make their future relationship more awkward or difficult. The courts are overbooked and sometimes it can take years to have a dispute heard and then months after that before a decision is made.

Adapted from [Dispute Resolution Office Bulletin](#) on the Government of BC website.

Topic 4: Civil Case Study – The Paisley Snail

Outline

"The Paisley Snail" video relates the history and the impact of *Donoghue vs. Stevenson*, perhaps the most memorable and important case in the history of the Commonwealth common law. Through narration, re-enactment, interviews and still photography, the video takes the audience on a trip to Paisley, as we can imagine May Donoghue doing some 67 years ago, and from there to the Scottish Court of Session, the Second Division and ultimately to the House of Lords. Many themes are woven into the fabric of the video as it follows May Donoghue on her journey and beyond. Some of these themes are:



- Effect that "judge-made" or common law has on our daily lives
- Difference between breach of a duty owed under a contract and the general duty of care owed to one's "neighbour"

- Concept of product liability

A Trip to Paisley: The Facts

On August 26, 1928, Mrs. May Donoghue, a shop assistant of very meager means and a single parent, travelled from her brother's flat in Glasgow, Scotland to the small town of Paisley, nearby, to enjoy a refreshment with a friend. Mrs. Donoghue and her friend met at an establishment bearing the sign "Real Italian Ice Cream Saloon", the so-called "Wellmeadow Café", owned and operated by one Francis Minghella, and located at 1 Wellmeadow Street, Paisley. It is said that at approximately 8:50 p.m., Mrs. Donoghue's friend ordered and paid for their refreshments; ice cream and ginger beer – a Scottish float – for Mrs. Donoghue, and a "pear and ice" for herself. Apparently the "float" was served unassembled; that is, the ice cream was served in a glass and the ginger beer came in its bottle.

The bottle in which the ginger beer was contained was of brown opaque glass so that the contents of the bottle could not be seen until it was poured out. The bottle bore the legend, "D. Stevenson, Glen Lane, Paisley".

As the friend added more ginger beer to Mrs. Donoghue's float, after she had already consumed part of the ice cream and ginger beer, Mrs. Donoghue observed what appeared to her to be the partially decomposed remains of a snail flow into her glass. Mrs. Donoghue claimed that she was made ill both by what she had seen and by what she feared she had eaten: namely, the rotting carcass of a presumed gastropod. Mrs. Donoghue stated that the resulting illness forced her to see her doctor for treatment three days later and that she again was treated about mid-September at the Royal Glasgow Infirmary.

On the Horns of a Snail: The Legal Issue

Mrs. Donoghue had a difficult legal problem. She could not successfully sue the café owner, Mr. Minghella (although she in fact tried to), either in contract or in tort. In the first instance, she had no contract with Minghella, under which he could be said to have guaranteed the ginger beer fit for consumption, Mrs. Donoghue's mysterious friend having ordered and paid for the refreshments. Minghella poured the first ginger beer. But this is not relevant to the outcome in any way. In the second instance, she could not claim negligence on the part of Minghella because clearly he had neither done nor failed to do anything that could be construed as negligent. The bottle of ginger beer came to him sealed with the clear intention that it remain that way until sold to the consumer. Moreover, the darkness of the bottle prevented Mr. Minghella from inspecting the contents for contaminants prior to delivery to the customer.

Mrs. Donoghue's only possible recourse was to tackle the one player remaining on the field, David Stevenson, manufacturer of the ginger beer. Success for Mrs. Donoghue hung upon the single question:

"...whether the manufacturer of an article of drink sold by him to a distributor, in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under

any legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health.”

Unfortunately for Mrs. Donoghue, in 1928 neither the Scottish civil law nor the English common law as they were applied to the tort of negligence had yet progressed to the point of establishing and stating as a matter of general principle, that geographically, a duty of care would be owed by one person remote from another not to cause harm to that other person. Judges relied on precedent, and the absence of a general statement of the law meant that it was difficult to determine if a duty of care existed in a particular case unless a similar fact situation had been ruled upon by the courts previously.

Thus, recovery against a negligent manufacturer who did not directly and in person caused physical harm or property damage was difficult. Given the rapidly changing face of commerce at the time – the shift from small local industries with small local markets to large manufacturers shipping securely packaged foods, beverages, medicines and other household goods across country – it became increasingly important to resolve the issue of legal responsibility for the safety of such items and for any harm they might cause to consumers. Lord Atkin said, at the beginning of the judgment which ultimately decided her case: “I do not think a more important problem has occupied your lordships in your Judicial capacity...”

Progress at a Snail's Pace: The Court Process

Mrs. Donoghue sued Mr. Stevenson in April 1929, seven months after the events at the Wellmeadow Café; however a series of Interlocutors (today we would call them interlocutory motions) delayed proceeding for more than a year. In May 1930, David Stevenson's counsel brought a motion in the Scottish Court of Session before Lord Moncrieff, the Lord Ordinary, to strike out her claim on the grounds that he owned no duty of care to the plaintiff, Donoghue.

It is important to remember that the debate and the subsequent decision of Lord Moncrieff in favour of Mrs. Donoghue were on the point of law: “Was there a duty of care owed, Stevenson to Donoghue?” This narrow question was set within the framework of the larger objection that the claim contained in Mrs. Donoghue writ disclosed no cause of action. Lord Mancrieff dismissed Mr. Stevenson's motion. Had Mr. Stevenson chosen not to appeal Lord Moncrieff's ruling, but instead to take his chances on a trial of the issues of fact, *Donoghue vs. Stevenson* might have remained an obscure Scottish case, perhaps useful only to illustrate that it is difficult for a plaintiff to prove she found a snail in her ginger beer if she cannot produce the sail at trial!

At this stage, it appears that Mr. Stevenson went against the advice of his lawyers and instructed them to appeal the decision of The Lord Ordinary, rather than proceed to a trial on the issues of facts. So it was then in late 1930 the decision of Lord Moncrieff came before the Scottish Second Division. As it happened, the Second Division panel consisted of the same four judges who had heard two similar cases the previous year. Each of those cases involved an alleged mouse in ginger beer and in both, the court found that the mouse actually was in the beverage. The court held that there was no negligence in the brewing and bottling methods employed by the manufacturer in those

cases but the court indicated that it would have ruled in favour of the manufacturer even if the negligence had been found, on the basis that a manufacturer owned no duty of care to an unknown non-contractual consumer of its products.

Predictably, the Second Division ruled in favour of Mr. Stevens, in a case really only distinguishable from the mouse cases by virtue of the species of the contaminant. Having lost in the Scottish Second Division, Mrs. Donoghue's final avenue of appeal was in the House of Lords. Remember that Mrs. Donoghue was a poor shop assistant, that there was no legal aid in the early 1930's, and that it was a very expensive proposition to bring a matter before the Law Lords for consideration.

Mrs. Donoghue was very fortunate to find a lawyer willing to argue a case where the prospects of reward were negligible. In addition, a person wishing to launch an appeal before the House had to post a security deposit, in the event that the appellant lost. This Mrs. Donoghue could not afford to do. Fortunately, a process was available whereby an individual could apply to the House of Lords for permission to appeal *in forma pauperis*; that is, as an impoverished person. This Mrs. Donoghue did. Her application was granted; she was not required to post security for costs and her case went before the Judicial Committee of the House of Lords for consideration on December 10, 1931.

Almost four years had elapsed since Mrs. Donoghue's visit to the Wellmeadow Café when Lord Atkin rose in the House of Lords on May 26, 1932, to deliver his landmark speech. No court was ever to pass judgment on the facts of the case. The truth regarding the misadventures alleged by Mrs. Donoghue was never ruled on because David Stevenson died in November 1932 and, after the executors of his estate were added as parties to the action, they settled the matter out of court.

Thus we do not know if there was a snail and if so, whether it was the cause of Mrs. Donoghue's illness. We do not even know if Mrs. Donoghue was really ill. We do not know whether the ginger beer in the bottle was actually brewed by David Stevenson or by someone else who had pirated a "Stevenson" bottle for his own product, a practice that was apparently common at the time. Finally, even if David Stevenson did brew that offending ginger beer, we do not know if the methods he used in so doing would have been found by the courts to have been negligent.

There is so much we do not know about the case of the snail, the ginger beer and the poor lady from Glasgow with a stomach ache! Yet the shock waves from the decision of the House of Lords in *Donoghue vs. Stevenson* were felt around the common law world and reverberate still today, more than sixty-five years after Mrs. Donoghue met her friend for refreshments at a small café in Paisley, Scotland.

ACTIVITIES

Pre-Activity

As a homework assignment, provide students with *Handout 1: Introduction to Civil Law*. They will use this information to answer the questions on *Handout 2: What Do You Know About Civil Law?*

Activity 1: Examining a Civil Case

Go over *Handout 2: What Do You Know About Civil Law?* with your students to ensure that they have a good understanding of Civil Law. Next, discuss these questions with your students:

- Have you ever bought an item, such as a bicycle, from a friend?
- What could you do if you couldn't afford the bicycle right away?
- Would you ask about a contract or loan?
- What could you do if you couldn't afford to pay the loan?
- What would happen?



Once you have gone over *Handout 2*, you can either present the short civil case scenario outlined on *Handout 3: Examining a Civil Case*, or give students the handout to read themselves. The case describes a situation where a student purchases a bicycle on credit, but defaults on payments when he unexpectedly loses his summer job. Note that in a real situation, it would be up to the storeowner to decide whether to take the bike back or to sue for the amount owing. If s/he accepted the bike back s/he would probably not start a civil action. In criminal matters it is not up to the victim whether or not the case proceeds through the court process. Crown counsel initiates criminal proceedings. Once a matter has been initiated then only the Crown can prevent the matter from proceeding. However in a civil matter the plaintiff can call off the proceedings or settle with the defendant at any time.

After you present this scenario, you can ask students to consider the following questions:

- What do you think will happen to George?
- What do you think would happen if this case goes to court?
- What would happen if George gave the bike back?

You can choose to have students break into groups to tackle these questions and then present their answers to the class or answer these questions as a class.

Activity 2: Comparing Civil Law to Criminal Law

Provide students with *Handout 4: Civil Law vs. Criminal Law*. They will use this information to answer the questions on *Handout 5: Civil or Criminal? You Decide!* as well as *Handout 6: Civil and Criminal: Review*. The answer keys to these handouts are located in the Assessment section.

Activity 3: Introduction to Alternatives to Civil Court

For this activity, provide students with *Handout 7: Alternatives to Civil Court*. They will use this information to answer the questions on *Handout 8: Alternatives to Civil Court Questions*.

Activity 4: Speakers Corner

Group students into pairs and distribute the *Handout 9: Speaker's Corner*. Review the instructions on the sheet and then randomly assign each pair a scenario from those given at the bottom of the sheet. There may be some overlapping of topics (however, not all groups with similar topics will come up with the same strategy or rationale for resolving the dispute). Allow students sufficient time to prepare their speeches and then have student groups take turns presenting their speeches in front of the class, pretending they are on Speaker's Corner. Speaker's Corner does not have a specified format, so students have flexibility in how they choose to get their messages across to the wider public.



Descriptions of the three processes are provided in the answer key scenarios. The responses in the answer key also includes some basic considerations the students may respond with but other answers are possible. The answer key is in the Assessment section.

Activity 5: Watch the Paisley Snail Optional

Begin this activity by briefly reviewing the terms on *Handout 10: Key Terms from the Paisley Snail*. This will familiarize them with some of the terminology in the video. Afterwards, show *The Paisley Snail* video (approximately 42 minutes) to your students.

After the video is finished, explain to the class that the case arose in Scotland, which has “Roman law” system like Quebec and continental Europe, rather than a “common law” system as does England and English speaking Canada, and that it was ultimately decided in the House of Lords, the judicial members of which constitute the highest court in the United Kingdom. The House of Lords decided that on the point in issue the

laws of Scotland and England were the same. This case has since been followed in Commonwealth common law jurisdictions around the world.

Lastly, distribute *Handout 11: The Paisley Snail - Donoghue vs. Stevenson* and ask students to answer the questions *Handout 12: Questions on the Paisley Snail* on as a homework assignment.

Activity 6: The Paisley Snail – Discussion Optional

Discuss the video that the students viewed during the last class, and go over the four principles of law that were laid down in *Donoghue vs. Stevenson*. Provide students with *Handout 13: Principles in Donoghue vs. Stevenson* as a part of the discussion or as a sum up.

If time permits, explore the legal issues involved by discussing the following questions. Answers to these discussion questions can be found in the Assessment section.

1. Why has the concept of “neighbour” following *Donoghue vs. Stevenson* changed the law of negligence so much?
2. Do you have to have a contract or some other special relationship with someone to sue them for negligence under the law of tort?
3. What is the difference between “pure economic loss” and a loss resulting from personal injury or property damage? After all, both types of loss are compensated for in terms of money.

RESOURCES

Pre-Activity

Handout 1: Introduction to Civil Law

Handout 2: What Do You Know About Civil Law?

Activity 1: Examining a Civil Case

Handout 3: Examining a Civil Contract

Activity 2: Comparing Civil Law to Criminal Law

Handout 4: Civil Law vs. Criminal Law

Handout 5: Civil or Criminal? You Decide!

Handout 6: Civil and Criminal: Review

Activity 3: Introduction to Alternatives to Civil Court

Handout 7: Alternatives to Civil Court

Handout 8: Alternatives to Civil Court Questions

Activity 4: Speaker's Corner

Handout 9: Speaker's Corner

Activity 5: Watch the Paisley Snail Optional

The Paisley Snail Video

Handout 10: Key Terms from the Paisley Snail

Handout 11: The Paisley Snail- Donoghue vs. Stevenson

Handout 12: Questions on the Paisley Snail

Activity 6: The Paisley Snail – Discussion Optional

Handout 13: Principles in Donoghue vs. Stevenson

ASSESSMENT

Pre-Activity

Handout 2: What Do You Know About Civil Law? Can be submitted for marking or marked as a class.

Answer Key: Handout 2: What do you know about Civil Law?

1. What are civil laws?
Laws that are not criminal or quasi-criminal.
2. What do civil cases involve?
Private disputes between two or more individuals or groups.
3. Do civil cases always affect the whole of society negatively?
No, they deal with disputes between parties. Protection of society is not an overriding issue as it is in criminal law.
4. List four types of civil disputes.
Contract disputes, divorces, custody disputes, personal injury, contested wills or estates.
5. What does the court call the person who is suing? and defending?
Plaintiff, Defendant
6. Write "True" or "False" on the line provided.
 - a. *FALSE* : A civil case starts when one person files a complaint with the court. That person is called the defendant.
 - b. *TRUE*: The case would be written as Plaintiff (Jones) versus Defendant (Smith).
 - c. *TRUE* : The burden of proof in a civil case is on the balance of probabilities, which means that it is more probable that one side is right.
 - d. *FALSE* : The penalty in a civil case is imprisonment rather than a monetary in the form of damages.
 - e. *TRUE* : Claims of \$10,000 or less are heard in Small Claims Court.
7. How many jurors sit on a civil jury?
8
8. Do all the members of a civil jury have to make the same decision? Explain.
No, as long as three-quarters or six out of eight agree after at least three hours of deliberation.

9. Name two courts that deal with civil cases.

The Provincial Court (Small Claims Division and Family Division), the Supreme Court, and the Court of Appeal.

Activity 1: Examining a Civil Case

It is not necessary to give marks for this activity. You may choose, however to give students participation marks for their contribution in answering the questions on Handout 3: Examining a Civil Contract.

Activity 2: Comparing Civil Law to Criminal Law

Once students have completed the handouts, they can turn them in for marking. The answer keys to Handout 5: Civil or Criminal? You Decide! and Handout 6: Civil and Criminal: Review are below.

Answer Key: Handout 5: Civil or Criminal? You Decide!

1. Peter Rabbit stole carrots from Mr. McGregor's garden.
Criminal/Theft Civil/Conversion
2. The Queen gave Snow White a poisonous apple that she knew was poisonous.
Criminal/Attempted Murder Civil/Battery
3. The bean seller sold Jack seeds that the seller knew would not produce beans.
Criminal/Fraud Civil/Breach of Contract
4. Papa Bear and Mama Bear no longer wanted to be married.
Civil/Divorce
5. The second little pig didn't complete building the other pig's house as he said he would.
Civil/Breach of Contract
6. Humpty Dumpty fell off the wall that the Queen's men built because it collapsed.
Civil/Personal Injury
7. Cat Woman scratched Batman with her claws.
Criminal/Assault Civil/Personal Injury
8. Goldilocks broke Baby Bear's chair.
Criminal/Mischief Civil/Damages
9. Give three examples of each type of case. Answers Vary

*Criminal Robbery Break and Enter Murder
Civil Libel or Slander Negligence Custody*

Answer Key: Handout 6: Civil and Criminal Law: Review

1. What is the definition of a "criminal case"?
A case where a person is accused of breaking one of our criminal laws.
2. What is the definition of a "civil case"?
A case where individuals or parties have a dispute and cannot come to an agreement.
3. Who approves the charge in a criminal case?
Crown counsel
4. Who starts the proceedings in a civil case?
The plaintiff
5. How many jury members are there in a criminal trial?
Twelve
6. How many jury members are there in a civil trial?
Eight
7. What is the difference between proof "beyond a reasonable doubt" and proof "on a balance of probabilities"?
The first means that there is no reasonable doubt that the accused committed the crime. The latter means that it is more likely that one version of the events is more probable or true than the other.
8. Identify these cases as civil or criminal. Write your answer next to each case.
 - a. *Criminal*
 - b. *Civil*
 - c. *Civil*
 - d. *Criminal*
 - e. *Criminal*
 - f. *Civil*

Match these criminal offences with their civil counterpart.

<i>Criminal</i>		<i>Civil</i>
a) Assault	4	1) Conversion
b) Theft	1	2) Battery
c) Attempted murder	2	3) Breach of contract
d) Mischief	6	4) Personal injury

e) Fraud	3	5) Personal injury
f) Criminal negligence	5	6) Damages

Activity 3: Introduction to Alternatives to Civil Court

Handout 8: Alternatives to Civil Court Questions can be discussed and marked as a class or be taken in for marks. The answer key is below.

Answer Key: Handout 8: Alternatives to Civil Court Questions

1. What does Alternative Dispute Resolution mean?
Alternative Dispute Resolution
It means alternatives for going to court or finding other ways to work out a disagreement.
2. Why would it be important to have alternatives to the civil court system?
Alternatives can provide a wider range of potential positive results especially where there are on-going relationships among neighbours, family and community. Some people believe that having alternatives helps everyone and brings down the costs of court time and court personnel. It also will not take as much time to resolve if it goes through an alternative. It takes years to get through a court issue.
3. Describe negotiation, mediation and arbitration.
Negotiation: Occurs when you compromise and reach an agreement with another party. You both work to make the situation fit both of your interests so it is a win/win situation. It is a good idea to sign an agreement stating that the negotiations are “without prejudice”, meaning that anything you discuss will not be used against you if you do decide to go to court.

Mediation: Occurs when two people who are in a dispute agree to call in a third person, who is neutral and impartial, to help resolve their dispute. The mediator manages the process, organizes how the discussions should go, promotes understanding and diffuses tension so that both parties are working to solve the problem. The mediator cannot make a decision or force the two sides to accept a solution.

Arbitration: Is something you would turn to if you are really having difficulty resolving your dispute. It is more formal than mediation but less formal than court. If the two people with the dispute choose, they can have a neutral party or panel, decide how the dispute should be resolved. The two parties decide beforehand how the process should unfold and what the arbitrator should rule on. You both present your case and then the arbitrator makes a decision. The arbitrator is usually an expert in the field he or she is hearing and this works well

for business disputes. It is a good idea to decide before you go through arbitration whether or not you will be able to go to court after the arbitrator has made their decision.

4. Of the three options available to you, which one would you most likely use? Explain your answer.
Answers will vary.

Activity 4: Speaker's Corner

Handout 9: Speaker's Corner can be taken in for marks. The answer key is below.

Answer Key: Handout 9: Speaker's Corner

Your students should be covering similar points for each scenario in their speeches. These common points are below.

Mediation

- Cheaper than litigation.
- Faster than litigation. It could take up to a year or more just to get to court and the trial could take months, depending on the experts involved.
- Having someone to help in a dispute but in a less formal and intimidating way.
- Can always go to court if the mediation fails.

Collaborative Law

- Cheaper and faster than litigation.
- Each side has legal advice and advocacy at all times during the process.
- Even if one side or the other lacks negotiating skill or financial understanding or is emotionally upset or angry, the playing field is leveled by the presence of the skilled advocates.
- It is the job of the lawyers to work with their own clients and if the clients are being unreasonable, to make sure that the process stays positive and productive.
- Less worry about "mediator bias".
- If there is an issue that cannot be resolved this way, it can be submitted to the court for determination without having the court decide on the whole divorce.

Litigation

- Provides for a completely independent adjudication.
- A trial provides certainty and closure for the parties.
- Judge will consider what similar previous cases have decided and come to a reasonable decision based on the individual circumstances.
- Judge's decision is final.

Specific points for each scenario are outlined below each scenario.

Speaker's Corner Scenarios

1. *Mediation*: Faster if mediator can get the parties to negotiate over the property and custody (get out of the media spotlight and reduces the media attention on the child). The couple will not have to go through the time and expense of a trial and can get on with their lives and jobs.

Collaborative Law: A positive outcome will give less fuel to media and will help maintain a positive relationship during custody.

Litigation: The judge's decision is final, which may be useful when it comes to getting the parties to stick to the terms of the custody order. Judge will consider the best interests of the child.

2. *Mediation*: Cheaper as the farmer may not have financial means to go to court. Faster if mediator can get the parties to negotiate over the responsibility and compensation in order to minimize the bad publicity for gas station as well as allow the farmer to start the clean-up and spend more time farming than in court. It could take up to a year or more just to get to court and then there will be the trial, which could take months, depending on the experts involved, and calculating how much damage the farmer has suffered.

Collaborative Law: Faster than litigation, so farmer can get on with clean-up and his business. A positive outcome will help maintain a positive relationship for the future, as these two parties may be stuck with each other for a long time.

Litigation: A judgment in favour of the farmer could send a message to other gas stations that they have to be more careful in their operations.

3. *Mediation*: Owners may not have financial means to go to court. Minimizes the bad publicity for the builder and the owners can get on with clean-up. It could take up to a year or more just to get to court, and then there will be the trial, which could take months, depending on the experts involved and how many owners there are, as well as figuring out how much damage each owner has suffered. Also, if the builder has used this product on other buildings, there may be other lawsuits- by the time this case gets to court, the builder may go bankrupt.

Collaborative Law: Faster than litigation, so owners can get on with repair and their lives.

Litigation: If the judge finds the builder's conduct to be especially bad, the judge can award extra money to the owners. The owners might want to go to court so that the issue can get aired out in public and other condo owners as well as the

general public are aware of the leaky condo problem. A judgment in favour of the owners could send a message to other builders that they have to be more careful in their operations.

4. *Mediation:* The City is not likely to recover the costs of the damaged property nor of the lawsuit if they sue the youth in Tort since the youth likely will not have the money to pay. Then the parties can get on with clean-up and restoration rather than wasting time in court and waiting for court. Mediation also affords a wide range of remedies, which could include the youth going out in the community to educate other youth about the value of the building and the negative consequences of committing crime.

Collaborative Law: Focus is on a positive, cooperative, successful process that models good relationships for youth.

Litigation: If the judge finds the youths' conduct to be especially bad, the judge can award extra money to the City. Depending on the circumstances, the formality of the court's processes and decision might be needed to provide the necessary deterrent for these youth.

5. *Mediation:* Mediation also affords a wide range of remedies, which could include having a "gentleman's agreement" in place until a court or the Land Registry can make a conclusive determination. Time is of the essence for the farmers' plantings and they likely will not want to sacrifice a year's worth of planting waiting for the courts.

Collaborative Law: Since these parties will likely have to put up with each other in the future for quite some time, fostering a good relationship here and now will set the tone for future dealings.

Litigation: A definitive pronouncement from the court about the boundaries may be necessary and desirable "for the record" and in case either of the parties wants to sell or transfer the land to someone else, who will want to know exactly what they are getting.

6. *Mediation:* Model may not have financial means to go to court and it minimizes the bad publicity for the donut shop and the parties can get on with business rather than court. Wider range of solutions available compared to litigation, such as an apology for the derogatory remark.

Collaborative Law: Sends less of a message of opportunism on the model's part. Faster than litigation, so parties can get on with their lives.

Litigation: If the judge finds the donut shop's conduct to be especially bad, the judge can award extra money to the model. A judgment in favour of the model could send a message to other restaurants that they have to be more careful in

their operations. The public nature of the court proceedings could also give the model more media attention, which could help his career.

7. *Mediation*: Seniors may not have financial means to go to court and it minimizes the bad publicity for the company.

Collaborative Law: Since the company has not had prior violations of this nature, adhering to a positive process may help maintain its reputation. Often times, it is the negative energy involved in protracted litigation that takes the real toll on the parties. A collaborative process would allow the seniors to resolve the problem but in a less negatively-charged atmosphere.

Litigation: A judgment in favour of the seniors could send a message to other companies that they have to be more careful in their operations and also could provide the motivation for legislative and policy changes as to how these companies are regulated and monitored.

8. *Mediation*: Cheaper and faster if mediator can get the parties to negotiate over the injury and responsibility. They will get out of the media spotlight and reduce the amount of time the singer will have to spend with her ex so both parties can get on with their lives and jobs. A wider range of remedies is possible – the singer may be able to get her ex to give written consent that he will stay away from her and the ex might be able to get the singer to make a public apology over the untrue claims she made.

Collaborative Law: A positive outcome will give less fuel to media and will help the situation and negative feelings to deteriorate any further. A similarly wide range of remedies to mediation exists.

Litigation: A court decision might be seen by the parties to have more “legitimacy”. If a restraining order against the ex-boyfriend is necessary or desirable, this will have to take place in a civil court anyways. If the ex-boyfriend is more concerned with clearing his name in public over the allegations of unfaithfulness, he may want to pursue court proceedings, although the trade-off may be the consequences for the pit bull attack.

9. *Mediation*: If the mayor is willing to comply with the law, going to court may be an unnecessary expense and it minimizes the bad publicity for mayor.

Collaborative Law: Faster than litigation, so mayor can get on with compliance and renovations. A positive outcome may be better in terms of public image – to have internal conflicts of this kind may be embarrassing.

Litigation: A trial may be a way to affirm the rule of law, by ensuring the mayor does not receive special treatment by way of his public office.

10. *Mediation*: The man may not have the financial means to go to court. A mediator can get the parties to negotiate over the interpretation and compensation which will be cheaper and faster.

Collaborative Law: Cheaper and faster than litigation, so the man can get on with his life.

Litigation: A trial provides certainty and closure for the parties. Judge will come to a reasonable decision based on the individual circumstances. An official pronouncement from the court will set a precedent for future cases of this kind, as well as others where a similar provision is sought to be interpreted.

Activity 5: Watching the Paisley Snail

Handout 12: Questions on the Paisley Snail, which is a homework assignment to complete after watching the video, can be submitted for marks. The answer key to these questions is below.

Answer Key: *Handout 12: Questions on the Paisley Snail*

1. *Mrs. Donoghue did not have a contract with Mr. Minghella. Mrs. Donoghue's friend brought the ginger beer so the friend was the one who had the contract.*
2. *There was nothing that the café did or failed to do that could be considered negligent. The ginger beer came in a sealed bottle from the manufacturer with the intention that it be delivered in the state to the consumer and that it be opened just prior to delivery. Also, the bottle was opaque, so the café owner was prevented from inspecting the contents prior to delivery to the consumer.*
3. *Assuming that Mrs. Donoghue's claim today would be for more than \$10,000, then in British Columbia, she would go from the Supreme Court to the Court of Appeal for British Columbia and finally to the Supreme Court of Canada.*
4. *No. From the very beginning, Stevenson had raised the legal argument that Mrs. Donoghue has no cause of action against him. The House of Lords decision in effect said the Mrs. Donoghue did have a cause of action against Mr. Stevenson and that she would be entitled to damages if she proved the facts of her case at trial. Shortly after the House of Lords decision, Mr. Stevenson died and the executors of his estate decided to settle the case rather than fight it in court. The settlement is said to have been for £200.*
5. *We do not know whether Stevenson was negligent or not. The House of Lords was not concerned with that aspect of the case in their decision. Negligence would have been one of the elements that Mrs. Donoghue would have had to prove at trial.*

6. *The friend probably would only have recovered the price of the defective ginger beer. Her only claim would have been that the café owner sold her a drink that was not fit for consumption: a breach of the implied promise contained in their oral contract that the ginger beer would be drinkable. Since the friends did not drink any of the ginger beer and become ill, she did not suffer any other loss.*
7. *Prior to the decision in Donoghue vs. Stevenson, the legal concept of who our neighbours were was confined to physical or geographic closeness. Lord Atkin said that closeness or proximity should not be thought of strictly in a physical sense but more in a mental sense. He stated that: (My neighbours are) ... persons who are so closely and directly affected by y 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.*
8. *In forma pauperis is a Latin term meaning, literally, “in the form of a poor person.” A litigant (a person suing or being sued in court), allowed to proceed in forum pauperis is not liable to pay court costs.*

In Canada, legal assistance is often available to people who cannot afford lawyers for serious criminal charges and for some family law. Contact the Legal Services Society for more information or for eligibility requirements.
9. *In England, barristers only do court work and are trained only to do that. They do not have “clients” in the same sense that court lawyers do in Canada. Rather, barristers accept “briefs” or cases from solicitors. The solicitors do all of the investigating and interviewing work and the paper-work for the case.*
10. *The barrister’s sole job is to argue the case in court. Solicitors practice in areas of the law other than in court; for example, real estate, tax, company law, wills, or estates. Lawyers in Canada are generally licensed as both barristers and solicitors. While some lawyers do practice as both, most choose to specialize in either barrister’s or solicitor’s work. In Scotland barristers are called “advocates”.*

Activity 6: The Paisley Snail – Discussion

Since this activity is a discussion, marking is not required. You may, however, choose to grant participation marks to students for their contribution to the discussion.

Answer Key: Discussion Questions: The Paisley Snail

1. Why has the concept of “neighbour” following *Donoghue vs. Stevenson* changed the law of negligence so much?

By broadening the concept of “neighbour” to include people whom we should have in mind when we start an activity, the number of potential plaintiff and the number and types of potentially harmful activities expand enormously. For

example, we can all imagine doing financial harm to someone across the country simply imagining that the physical harm we do to one person's property may have a severe financial effect on another person.

2. Do you have to have a contract or some other special relationship with someone to sue them for negligence under the law of tort?

You do not need a contract. That issue was settled once and for all in Donoghue vs. Stevenson. The only relationship that is necessary is that of being a neighbor as described by Lord Atkin.

3. What is the difference between "pure economic loss" and a loss resulting from personal injury or property damage? After all, both types of loss are compensated for in terms of money.

A pure economic loss is a financial loss or a reduction in the value of his property suffered by a plaintiff but not incurred as a result of personal injury to him or physical damage done to his property. Some examples are:

- *An investor relies upon the negligent advice of a financial adviser, invests in the stock market and loses money when the company he invested in goes bankrupt.*
- *A railway which uses but does not own a bridge is put on additional expense to reroute traffic when the bridge is damaged and temporarily put out of service by the negligence of a tug-boat operator.*
- *A company loses business (and therefore money) when it is forced to repair defective equipment during the busiest part of the year. The manufacturer knew the equipment was defective a long time before the plaintiff found out and the manufacturer was negligent in not warning the equipment user.*

ENRICHMENT

Introduction to Civil Law

1. Divide the class into five groups. Write the names of five types of civil law on slips of paper and have a student from each group pick a slip of paper. It is their task to write a scenario about the civil law category they chose with at least four questions. Each group could present its scenario orally to the rest of the class and have the rest of the students offer answers to the questions. One student could be the judge, who would decide for or against the plaintiff after hearing the arguments.
2. Look in the business section of the newspaper or online to see the list of civil business suits listed. Describe three cases noting the problem, the parties, and how much is being claimed. Report your findings orally to the class.

Comparing Civil Law to Criminal Law

1. Research on the Internet the civil case of O.J. Simpson in California, USA. Identify the parties involved and what the claim was as well as what the result was. Indicate if the decision was different or similar to the acquittal in the criminal case.
2. Research criminal and civil laws in another country - perhaps your birthplace or that of your parents or grandparents. Write a short paragraph comparing and contrasting that system to the Canadian system. Present it orally or in written form.

Law of Negligence

Scenario A: A Falling Branch

You are walking to school and you notice the partially broken branch of a tree dangling over the sidewalk across the street. A pedestrian is approaching the tree but you don't warn him about the branch. The branch falls and injures the pedestrian.

Questions for Discussion

1. Does the law impose a duty upon you to warn the pedestrian?
2. Would it make any difference if you were the owner of the land that the tree was on and you were aware of the hanging branch?
3. In question 2, suppose that you were at work when the branch cracked and that it fell on the pedestrian just minutes later. Would your legitimate lack of knowledge protect you from liability?
4. Should property owners be held strictly liable for all dangerous situations on or arising from their property which cause injury or damage?

5. Most people accept that it is morally right to help others when they are in trouble. Why do you think the courts have not made that moral obligation a legal duty as well?

Scenario B: The Olympic Athlete

Millie Miler is a top-ranked distance runner on the world scene. She exudes wholesomeness and good health and in the past has overcome extreme physical adversity to reach the top. As a result she is somewhat of a hero and public figure in Canada and to a lesser extent, around the world. Also, as a result of her efforts, Millie has several lucrative endorsement contracts with athletic wear, soft drinks, and others.

All of the endorsement contracts she has signed contain a provision that if Millie ever tests positive for a banned substance during competition, then the company would have the option of terminating the contracts at once.

In the recent Pan-Am Games, Millie ran individually in the 1500 metre race and she also ran the anchor leg on the 5000 metre relay team. She won gold medals in both events. Two days prior to the first of her races, the relay, Millie developed a cough which naturally interfered with her breathing and her overall health. She therefore bought an over-the-counter cough remedy.

Millie was aware of the possibility that even seemingly innocent enough drugs might contain banned substances. Before taking it, she brought the medicine to the doctor employed by the Canadian Pan-Am Games Committee and asked if the medicine she was safe from a competition point of view. The doctor assured her that it contained no banned substances. On her way back to the athletes' village, Millie met another doctor she knew from her home town. She showed him the medicine and he said he was "pretty sure" that it did not contain any banned substances.

Immediately following her victory in the 1500 metres, Millie was tested for doping in accordance with standard procedure at the Pan-Am Games. Much to her horror, Millie tested positive for pseudo ephedrine, a banned substance. Even though the amount of the drug in her system was so small it could not possibly have enhanced her performance, game officials had no choice but to strip Millie and her relay teammates of their victories and their medals.

Millie's reputation with the public was so outstandingly solid that it did not suffer much. However, two of the companies with whom Millie had endorsement contracts terminated the contracts as allowed, and another company with whom Millie was about to sign backed out when the positive test results were announced. The loss of assured and

potential future income to Millie was in the area of \$250,000 annually over a period of at least three years.

Questions for Discussion

1. Were either or both of the doctors negligent and if so, of what did their negligence consist? Was Millie more of a “neighbor” to the team doctor? Explain.
2. Is it necessary for the doctor to know how important the correct answer was for Millie? Suppose that the doctor does not know about the endorsement contracts and he therefore only contemplates that the worst that will happen if he errs, is that Millie will lose her medals. Should that make a difference?
3. Does the element of reliance distinguish the situation of the two doctors? That is, would it be more evident to the team doctor than the other doctor that Millie was relying on his expertise, and is that element of reliance important in determining liability?
4. If you were the judge in the case between Millie and the team doctor:
 - a. Would you rule in favour of Millie or the doctor? Why?
 - b. Would you award Millie damages for the old contracts that were cancelled?
 - c. What about the contract that Millie was about to sign?