



Cross-examinations #5

Excerpts from the Transcript of the Examination for Discovery of May Donoghue, June 6

149. I will now ask about when Mr. Minchella served the order. You were conversing with Audrey MacIsaac when he attended the table, correct?
- a. Yes, but we stopped as the owner served our desserts.
150. Did you pay attention to Minchella?
- a. Not really.

Direct Examination of May Donoghue at Trial

57. I will now ask about when Mr. Minchella served the order. What were Audrey MacIsaac and you doing when he attended the table with your orders?
- a. We were chatting but stopped as the owner approached to serve our desserts.

58. Did you pay attention to Minchella?

- a. Yes, closely. Audrey had talked up the dish we ordered, and I was looking forward to tasting it.

Impeachment of May Donoghue at Trial

1. Mrs. Donoghue, I want to clarify what you said earlier today. When asked what you and Audrey MacIsaac were doing when the owner attended the table with your orders, you answered that you were chatting, but we stopped as the owner approached to serve our desserts. That's what you said, correct?
 - a. Yes, it is.
2. When asked whether you paid attention to Mr. Minchella, you answered that you did so closely. "Audrey had talked up the dish we ordered, and you were looking forward to tasting it." Correct?
 - a. Yes.
3. Do you recall being questioned at an examination for discovery on June 6 last year?
 - a. Yes, I do.
4. My colleague, Ms. Trusdale, asked you questions about this case, correct?
 - a. Yes.
5. And you solemnly affirmed to tell the truth that day, correct?
 - a. Yes, I did.
6. And you did tell the truth, right?
 - a. I tried to, yes.

7. Because you knew you had to, correct?
 - a. Yes.
8. I will read questions 57 and 58 and your answers. They are on page 14 of the transcript I am handing the Clerk, your Honour. [Counsel hands transcript to Clerk to give to the Trial Judge, then reads the passage].
Now, Mrs. Donoghue, you were asked those questions, right?
 - a. Yes.
9. And you gave those answers, correct?
 - a. Yes.
10. And you believed them to be accurate, correct?
 - a. Yes.

OK. You thought about it and decided to plunge ahead. What could go wrong? Let's see how it plays out.

Substance

1. I want to ask about where you directed your attention as the owner served your order. You were in the Wellmeadow Café, right?
 - a. Yes.
2. With your friend Audrey, right?
 - a. Yes.
3. Your best friend Audrey, right?
 - a. Yes.
4. You had a lot to catch up on, right?
 - a. Yes.
5. And you were catching up with her at the table, right?
 - a. Yes.

6. And let's talk about the owner of the Wellmeadow Café, Mr. Minchella.
You had met him a few minutes before, right?
 - a. Yes.
7. When you entered the Café, right?
 - a. Yes.
8. With Audrey, right?
 - a. Yes.
9. Who he recognized, right?
 - a. Yes.
10. Would you agree that he was not your friend?
 - a. Yes.
11. And you didn't expect him to become your friend, do you agree with that?
 - a. Yes.
12. Let's talk about what happened next. Mr. Minchella showed you to your table, right?
 - a. Yes.
13. And gave Audrey and you menus, right?
 - a. Yes.
14. And then left for a few minutes, right?
 - a. Yes.
15. So you could read the menu, right?
 - a. Yes.
16. And discuss your choice with Audrey, right?
 - a. Yes.
17. You chatted with Audrey while Mr. Minchella served other tables, right?
 - a. Yes.

18.About this and that, right?

a. Yes, including how wonderful was the Scotsman's Float.

19.Let's discuss what happened when Mr. Minchella returned to take your order, right?

a. Yes.

20.Which Audrey gave him, right?

a. Yes.

21.Not you, but Audrey, do you agree?

a. Yes.

22.And then he left, right?

a. Yes.

23.So you had seen him close up a few times at this point, right?

a. Yes.

24.To greet Audrey at the door?

a. Yes.

25.To show you to your table and to present the menu?

a. Yes.

26.To take your order?

a. Yes.

27.OK, then. Let's talk about when Mr. Minchella delivered your order. He showed up at your table with a tray and a few items, right?

a. Yes.

28.He placed the tumblers in front of Audrey and you, right?

a. Yes.

29.Which already had ice cream in them, right?

a. Yes.

30.You had seen ice cream in a dish several times before this, am I right?

- a. Yes.
- 31.Nothing special there, do you agree?
- a. Yes.
- 32.I suggest that he opened the bottle of ginger beer at your table. Can you recall?
- a. Yes.
- 33.He did open it there, right?
- a. Yes.
- 34.But he will testify that he opened it in the kitchen. Is he mistaken?
- a. Yes, I believe he is.
- 35.Let's move on from there to what Mr. Minchella did with the ginger beer. He poured the liquid onto the ice cream in your tumbler, correct?
- a. Yes.
- 36.You had seen soda poured into a tumbler before, right?
- a. Yes.
- 37.Nothing special about his technique, do you agree?
- a. Yes.
- 38.And you still did not plan to befriend Mr.Minchella, do you agree?
- a. Yes.
- 39.And you still had things to chat with your best friend about, right?
- a. Yes.
- 40.Which Mr. Minchella was interrupting, right?
- a. Yes.

Discussion: in Episode #4, we presented the impeachment sequence and exploitation without considering whether the earlier statement helped or hurt Mr. Stevenson's case. Let's take a moment and do so now. The impeachment challenged whether Mrs. Donoghue was paying close attention or not.

- 1. If she had paid close attention, she should have noticed the remains of the snail, either in the bottle or in the ice cream dish as Mr. Minchella poured it. This conclusion supports a contributory negligence defence and her statement that she saw what she claims she saw, which Mr. Minchella denied.**
- 2. If she did not pay close attention, how can she say that Mr. Minchella is mistaken when he denies that any foreign substance appeared in the ice cream?**