

Tort law and compensation culture

General introduction: what is tort law?

PART 1: The McDonald's Coffee Case – 1992: a frivolous case?

I. Presentation of the case : *Stella Liebeck v. McDonald's Corporation*

II. Please fill in the blanks with what you now know about the case :

Stella L. _____ v. M. _____'s Corporation, a.k.a the *McDonald's coffee case* and *the hot coffee lawsuit*, is a 1994 product liability lawsuit that became a flashpoint in the debate in the U.S. over t_____ reform. The brief summary that is often retold is similar to this: in February, _____ (date), Liebeck, a 79 year old woman from A _____, New Mexico, ordered coffee from the d_____ through of a local McDonald's restaurant, which she then s_____ on her lap. The hot coffee b_____ her, and she subsequently s_____ McDonald's. The jury awarded her \$2.9 m_____ in d_____. Based on this summary, the case has become emblematic of f_____ and outrageous l_____ for many people and is often used as an example of the need for t_____ reform in the United States legal system. The summary, however, omits a large number of relevant information and leads to many myths and mis_____. For example many people thought Stella Liebeck was driving when the incident occurred, or that she was very lightly injured and sued McDonald's only to get money. None of that is true, here are the true facts of the case.

The person driving the car was Liebeck's grandson Chris, who had parked the car so that Liebeck could add cream and sugar to her coffee. She placed the coffee cup between her k_____ and attempted to r_____ the lid. In the process, she spilled the entire cup of coffee on her l_____. Liebeck was w_____ sweatpants; they absorbed the coffee and held it against her s_____. She was taken to the hospital where it was determined that she had suffered third degree burns. She r_____ in the hospital for 8 days while she underwent skin g_____. Two years of treatment followed. Liebeck sought to s_____ with McDonald's for \$20,000 to cover her m_____ costs, but the company offered \$800. When McDonald's refused to r_____ their offer, Liebeck f_____ suit.

During the case it was discovered that McDonald's r_____ franchises to serve coffee at 180-190 degrees Fahrenheit (82-88 C°). At that temperature, the coffee would cause a third degree burn in two to seven seconds. T_____ by witnesses for McDonald's revealed that:

- consumers were not a _____ the coffee was so hot that there was a risk of serious burns.
- McDonald's did not i_____ customers of this risk and they could offer no explanation as to why there was no warning.
- McDonald's did not intend to reduce the temperature of its coffee.

Documents obtained from McDonald's also showed that in ten years, from 1982 to 1992, more than 700 other people were burned by McDonald's coffee with varying degrees of severity. These incidents resulted in many other legal c_____.

The j_____ found that McDonald's was 80% responsible for the accident, while Liebeck was 20% _____ (*prep*) fault. They awarded her \$200,000 in _____ damages, which was then reduced _____ (*prep*) 20% to \$160,000. In addition, they awarded her \$2.7 million in _____ damages. However, the judge reduced this amount _____ (*prep*) \$480,000: thus Liebeck was awarded \$640,000 in total.

However the amount she a_____ received from McDonald's is u_____. Rather than a _____ the decision, McDonald's entered into secret n_____ with Liebeck and came to a s_____.

III. Pairwork: in small groups of 2 or 3 students, ask each other the following questions:

1. What is tort law?
2. What is a frivolous lawsuit?
3. Where and when did the McDonald's Coffee take place? (use the past)
4. Who was the plaintiff?
5. What happened to Stella Liebeck? (the facts – use the past)
6. Describe S. Liebeck's injuries and hospitalization (what type, how long, the cost – use the past)
7. Describe McDonald's attitude (what was revealed during the trial – use the past)

8. What was the verdict ? (damages – use the past)

IV. Here is another more detailed summary of the case:

There is a lot of hype about the McDonalds' scalding coffee case. No one is in favor of frivolous cases of outlandish results; however, it is important to understand some points that were not reported in most of the stories about the case. McDonalds coffee was not only hot, it was scalding -- capable of almost instantaneous destruction of skin, flesh and muscle.

Critics of civil justice often mock Stella Liebeck, calling the McDonald's coffee case laughable and frivolous. However, it was McDonald's own testimony and action, and the severity of the plaintiff's injuries, that led a jury to rule against the company.

Facts

Stella Liebeck of Albuquerque, New Mexico, was in the passenger seat of her grandson's car when she was severely burned by McDonalds' coffee in February 1992. Liebeck, 79 at the time, ordered coffee that was served in a styrofoam cup at the drive through window of a local McDonald's.

After receiving the order, the grandson pulled his car forward and stopped momentarily so that Liebeck could add cream and sugar to her coffee. (Critics of civil justice, who have pounced on this case, often charge that Liebeck was driving the car or that the vehicle was in motion when she spilled the coffee; neither is true.) Liebeck placed the cup between her knees and attempted to remove the plastic lid from the cup. As she removed the lid, the entire contents of the cup spilled into her lap.

Stella Liebeck's injury and hospitalization:

The sweatpants Liebeck was wearing absorbed the coffee and held it next to her skin. A vascular surgeon determined that Liebeck suffered full thickness burns (or third-degree burns) over 6 percent of her body, including her inner thighs, perineum, buttocks, and genital and groin areas. She was hospitalized for eight days, during which time she underwent skin grafting. Liebeck, who also underwent debridement treatments, sought to settle her claim for \$20,000, but McDonald's refused.

McDonald's attitude:

During discovery, McDonalds produced documents showing more than 700 claims by people burned by its coffee between 1982 and 1992. Some claims involved third-degree burns substantially similar to Liebeck's. This history documented McDonalds' knowledge about the extent and nature of this hazard.

McDonald's also said during discovery that, based on a consultants advice, it held its coffee at between 180 and 190 degrees fahrenheit to maintain optimum taste. He admitted that he had not evaluated the safety ramifications at this temperature. Other establishments sell coffee at substantially lower temperatures, and coffee served at home is generally 135 to 140 degrees.

Damaging testimony:

Further, McDonalds' quality assurance manager testified

that the company actively enforces a requirement that coffee be held in the pot at 185 degrees, plus or minus five degrees. He also testified that a burn hazard exists with any food substance served at 140 degrees or above, and that McDonald's coffee, at the temperature at which it was poured into styrofoam cups, was not fit for consumption because it would burn the mouth and throat. The quality assurance manager admitted that burns would occur, but testified that McDonalds had no intention of reducing the "holding temperature" of its coffee.

Plaintiffs' expert, a scholar in thermodynamics applied to human skin burns, testified that liquids, at 180 degrees, will cause a full thickness burn to human skin in two to seven seconds. Other testimony showed that as the temperature decreases toward 155 degrees, the extent of the burn relative to that temperature decreases exponentially. Thus, if Liebeck's spill had involved coffee at 155 degrees, the liquid would have cooled and given her time to avoid a serious burn.

McDonald's asserted that customers buy coffee on their way to work or home, intending to consume it there. However, the company's own research showed that customers intend to consume the coffee immediately while driving.

McDonald's also argued that consumers know coffee is hot and that its customers want it that way. The company admitted its customers were unaware that they could suffer third degree burns from the coffee and that a statement on the side of the cup was not a "warning" but a "reminder" since the location of the writing would not warn customers of the hazard.

The verdict:

The jury awarded Liebeck \$200,000 in compensatory damages. This amount was reduced to \$160,000 because the jury found Liebeck 20 percent at fault in the spill. The jury also awarded Liebeck \$2.7 million in punitive damages, which equals about two days of McDonalds' coffee sales.

Post-verdict investigation found that the temperature of coffee at the local Albuquerque McDonalds had dropped to 158 degrees fahrenheit.

The trial court subsequently reduced the punitive award to \$480,000 -- or three times compensatory damages -- even though the judge called McDonalds' conduct reckless, callous and willful.

Subsequent to remittitur, the parties entered into a secret settlement which has never been revealed to the public, despite the fact that this was a public case, litigated in public and subjected to extensive media reporting.

<http://www.lectlaw.com/files/cur78.htm>

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Please match the definitions below with the underlined words from the above article:

1. extremely hot, burning hot:

2. court of first instance where most civil and criminal cases begin and where the facts are established:
3. money to pay for the actual cost of an injury or loss:
4. also called exemplary damages --intended to deter the defendant and others from engaging in similar conduct:
5. someone who brings a legal action against another person in a court of law
6. something that may be dangerous, or cause accidents or problems
7. an official request for money that you think you have a right to
8. to give evidence, under oath, as a witness in a court of law:
9. evidence presented orally by witnesses during trials.
10. to give an official decision
11. to give money following an official decision by a court
12. a legal decision
13. an agreement to end a legal argument, in which one party agrees to pay money to the other party so that the problem is not continued in court
14. to negotiate to end an argument:
15. irresponsible:
16. cruel:
17. intentional, deliberate:
18. ruling by a judge to lower the amount of damages granted by a jury in a civil case

V. Other helpful Legal vocabulary words:

1. **A witness:** a person giving sworn testimony to a court of law or the police.
2. **To sue :** to bring a civil action against someone
3. **An action :** A lawsuit brought to enforce, redress, or protect rights of private litigants—the plaintiffs and the defendants—not a criminal proceeding
4. **Negligence :** a failure to exercise the care that a reasonably prudent person would exercise in like circumstances.[1] The area of tort law known as *negligence* involves harm caused by *carelessness*, not intentional harm
5. **Tort :** A tort, in common law jurisdictions, is a civil wrong. Tort law deals with situations where a person's behavior has unfairly caused someone else to suffer loss or harm. A tort is not necessarily an illegal act but causes harm.
6. **A plaintiff :** also known as a claimant, is the term used for the party who initiates a lawsuit (also known as an *action*) before a court. The other party is called a **defendant**.

Now please fill in the blanks:

In this case the p_____ was Mrs Liebeck. She s_____ McDonald's for damages, saying the company had been n_____ in serving her coffee that was too hot. The jury heard much damaging t_____ from w_____ even those called by the d_____ McDonald's Corporation, and finally r_____ that Mrs Liebeck should receive both c_____ and p_____ damages.

VI. Asking questions:

Student A: use the words below to formulate questions. *Remember to use the past tense.*

Student B: answer your partner's questions using the numbers below when necessary (and making full sentences).

Questions:

Background information about the accident:

1. When / buy coffee / McDonald's drive through?
2. Seriously burned?
3. Stella Liebeck / old?
4. How long / stay in hospital?
5. How / treatment last?
6. How / treatment cost?

3. How / jury / award / compensatory damages?
4. How / jury / award / punitive damages?
5. How / judge / reduce / award?
6. You / know / much / receive / finally?

Coffee temperature:

Damages:

1. How / money / Stella Liebeck / McDonald's?
2. How / McDonald's / offer?

1. temperature / coffee / McDonald's / sell?
2. That temperature / dangerous?
3. Many people / burn / McDonald's coffee?
4. Temperature / coffee / at home?
5. Temperature / Stella Liebeck's case?

Answers: 700 - \$200,000 -3rd - 135F° - \$20,000 - 20% - 180/190 F° - 2 years - \$800 - 8 days - 1992

VII. Tort reform: what does it mean?

Tort reform refers to proposed changes in common law civil justice systems that would reduce tort litigation or damages. Tort actions are civil common law claims created to compensate wrongs and harm done by one party to another's person, property or other protected interests (e.g. physical injury or reputation, under libel and slander laws).

In the United States tort reform is a contentious political issue. US tort reform advocates propose, among other things, procedural limits on the ability to file claims, and capping the awards of damages. Supporters of the existing tort system, including consumer advocates, argue that reformers have mis-stated the existence of any real factual issue and criticize tort reform as disguised corporate welfare. http://en.wikipedia.org/wiki/Tort_reform

Match the definitions with the underlined words:

1. claims, lawsuits, legal proceedings
2. important topic for debate
3. give (someone) something in recognition of loss, suffering, or injury incurred.
4. likely to cause disagreement or controversy
5. place a limit on (prices, expenditure, etc.)
6. people who publicly support or recommend a particular cause or policy (*the definition applies to two words in the article*).

VIII. Grammar: traduire devoir, falloir

1. Stella Liebeck aurait du être plus prudente.
2. Vous devriez essayer de lire en anglais.
3. Tu devrais acheter un dictionnaire, tu aurais du en acheter un quand tu étais à Londres.
4. Vous devez être déçu.
5. Comme ils ont du être heureux de la voir.
6. Faut-il que vous travailliez tous les samedis?
7. Il devait au moins avoir 51 ans quand son fils est né.
8. Il faudra que tu me dises qui nous devrions inviter.

IX. Listening: Democracy Now interviews Stella Liebeck's daughter

Please fill in the blanks with the words that you hear:

AMY GOODMAN: We're broadcasting this week from Park City, Utah, where the Sundance Film Festival is in full swing. Today we spend the hour on one of the most provocative films at the festival. It begins by looking at a famous case that, well, most everyone seems to have heard of, but gives it a very different spin. The film is called *Hot Coffee*.

It tells the story of Stella Liebeck. She was 79 years old. She made national headlines when she _____ McDonald's after spilling a _____ cup of hot coffee on her _____. The _____ had the whole country talking — and many laughing.

But what most people don't know is that Stella suffered third-degree burns on 16 percent of her body. And you also may not know that corporations have spent millions of dollars distorting the story to promote _____ reform and alter our country's justice system.

Stella Liebeck passed away in 2004 at the age of 91. We're joined now by her daughter Judy and her son-in-law Charles Allen. We welcome you both to *Democracy Now!*

JUDY LIEBECK: Thank you.

CHARLES ALLEN: Thank you.

AMY GOODMAN: *Hot Coffee* is the name of this documentary, and it's based on your mother's case. Judy, tell us what happened. What day was it? And really explain. We heard your mother in this documentary when she was filmed talking about it. Talk about it yourself.

JUDY LIEBECK: Well, whoever I talk to, they don't have the right story. So I always ask, "What do you think happened?" What really happened was that my nephew was driving the car, not my mother. They drove into a McDonald's, got coffee and a meal, drove into the parking lot. There were no cup holders in the car, so my mother steadied the cup between her _____ and peeled off the _____. The whole cup collapsed. The temperature — McDonald's _____ that their temperature be held around 187 degrees.

AMY GOODMAN: In a styrofoam cup.

JUDY LIEBECK: In a styrofoam cup. And styrofoam will _____ at that temperature. She went to the hospital. We thought, oh, she's in for observation overnight, no problem. But she was in for _____ days. She had _____-degree burns. She could not — you could not touch that area. She had to have a sheet held up. She —

AMY GOODMAN: The pictures that are shown in the film are gruesome.

JUDY LIEBECK: They're very gruesome.

AMY GOODMAN: Her _____.

JUDY LIEBECK: Yes. She had _____ grafts. And the skin — when they started talking about skin grafts, that's when she became _____ about her money, because she had moved from Tucson to _____. She wanted to buy a little house. And she thought all of her money would go, because Medicare was only going to pay 80 percent, and so she would have to pay _____ percent. And we started thinking, why is McDonald's _____ not paying for the medical? I have insurance on my home. If someone comes in and breaks an arm or hurts themselves, I expect my insurance to pay for it. That's what I'm paying insurance for.

So, we wrote a letter to McDonald's. Chuck and I wrote a letter to McDonald's, asking them to _____ her medical and to _____ the temperature on the coffee, because it seemed not reasonable that someone would have this kind of an _____ from a cup of coffee. They came back with an offer of — what was at that point \$10,000 in medical, they came back with an offer of \$_____. And we were just appalled. We wrote another letter, hadn't heard from them, started getting very angry about this whole situation, and contacted a lawyer, searched for a lawyer that had already had a case against McDonald's. And —

AMY GOODMAN: A similar case? A case where someone was _____ by hot coffee?

JUDY LIEBECK: A similar case, yes. Yes, six years before. And that —

http://www.democracynow.org/2011/1/25/do_you_know_the_full_story

Part 2: Donoghue v. Stevenson: How a snail changed product liability law.

I. Presentation of the case:

Key words: *landmark case, common law, neighbor principle or duty of care breach of duty, negligence, product liability lawsuit, no win no fee or conditional fee system, personal injury.*

II. Summary:

It is generally considered that the single most significant precedent for the law as it today relates to product liability claims was set in 1932 in the now famous case of Donoghue v. Stevenson. During this case the bulk of the legal principles which relate to product liability law as it still stands were laid down in a landmark legal ruling.

The grievance of the product liability claimant in Donoghue v. Stevenson, Mrs Mary Donoghue, arose out of an incident where after buying a bottle of ginger beer from a Cafe and drinking most of the contents she found that the bottom of the bottle contained the decomposing remains of a snail.

What made her product liability claim so historically significant was that she sought compensation from the manufacturer of the ginger beer (Stevenson), with whom she had no explicit contract. Her product liability claim outlined how she felt that she was owed personal injury compensation for both the nervous shock she had suffered as a result of the defect and the gastro-enteritis she claimed to have developed from drinking it.

(...) In the House of Lords Donoghue's personal injury solicitor successfully argued his client's case and won the single most important ruling to date in British product liability claim law. Lord Atkin's ruling still forms the basis of UK product liability

claim law today: "The complainant has to show that he has been injured by the breach of duty owed to him in the circumstances by the defendant to take reasonable care to avoid such injury." The key legal principle decided by the Atkin in the case was the one of **duty of care, or the 'neighbour principle'**.

His definition of neighbour is absolutely crucial to understanding the complexities of product liability claim law: "There must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. ... 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. 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 long as so affected when I am directing my mind to the acts or omissions that are called in question."

With that decision, it became inscribed in UK law that manufacturers, not only those businesses the consumer has an explicit contract with, had a liability to all UK consumers under the terms of the neighbour principle. Just as thousands of UK consumers would go on to do afterwards, Mrs Mary Donoghue successfully won personal injury compensation from the manufacturer of the ginger beer.

<http://www.youclaim.co.uk/product-liability-claim-law-origins.htm>