

The Law and You

Quarterly writing assessment

Grading: 100 points (i.e., don't blow this assignment off)

This assessment will focus on the *Liebeck v. McDonald's Restaurants* civil lawsuit of 1994.

Read the article, and choose one of the following assignments. Outside research is welcome, and should be properly cited.

1. Complete the worksheet that begins on the next page, and write a **reflection paper**. Use the worksheet to organize your thoughts on paper, then write a paper that adheres to the guidelines of the worksheet.
2. Imagine that you're the lead attorney representing Stella Liebeck. Compose an **opening statement for the prosecution** laying out the case for Ms. Liebeck.

The opening statement presents a persuasive overview of evidence, events, and circumstances. It also presents a general framework of how you intend to present your case to the jury.

Remember, the opening statement is addressed directly to the jurors who will decide the case's outcome. Consider the many discussions of jury behavior that have been presented and analyzed in class.

Why was McDonald's negligent? Why should she be compensated for what happened? How can you prove it?

For some useful tips about writing an opening statements, consult these sites:

<http://www.uark.edu/depts/comminfo/Lindsley/lc4.html>

<http://www.youthcourt.net/content/view/23/>

3. Same as #2, but write an **opening statement for the defense**, explaining why McDonald's isn't liable for Liebeck's injuries.

Why are the injuries the responsibility of Stella Liebeck and not the corporation that manages the restaurant that contributed to her injuries? What risks are inherent to drinking a simple cup of coffee?

The sites listed in #2 will be equally beneficial in writing your opening statement.

Liebeck v. McDonald's Restaurants

***Liebeck v. McDonald's Restaurants*, a.k.a. the „McDonald's coffee case“ is a well-known product liability lawsuit that became a flashpoint in the debate in the U.S. over tort reform after a jury awarded \$2.9 million to a woman who burned herself with hot coffee. The trial judge reduced the total award to \$640,000, and the parties settled for a confidential amount before an appeal was decided.**

The case entered popular understanding as an example of frivolous litigation; ABC News calls the case „the poster child of excessive lawsuits.“

Others, especially opponents of tort reform, argue that Liebeck's recovery was just. They argue that the popular understanding of the case omits significant and relevant information. Liebeck's attorneys argued that McDonald's coffee was „defective“ claiming that it was hotter and more likely to cause serious injury than coffee served elsewhere.

Moreover, McDonald's had refused several prior opportunities to settle for less than the \$640,000 ultimately awarded. Reformers defend the popular understanding of the case as materially accurate; note that the vast majority of judges to consider similar cases dismiss them before they get to a jury; and argue that McDonald's refusal to offer more than a nuisance settlement reflects the meritless nature of the suit rather than any wrongdoing.

On February 27, 1992, Stella Liebeck, a 79-year-old woman from Albuquerque, New Mexico, ordered a 49¢ cup of coffee from the drive-thru of a local McDonald's restaurant. Liebeck was in the passenger's seat of her Ford Probe, and her grandson Chris parked the car so that Liebeck could add cream and sugar to her coffee. She placed the coffee cup between her knees and pulled the far side of the lid toward her to remove it. In the process, she spilled the entire cup of coffee on her lap.

Liebeck was wearing cotton sweatpants; they absorbed the coffee and held it against her skin as she sat in the puddle of hot liquid for over 90 seconds, scalding her thighs, buttocks, and groin.

Liebeck was taken to the hospital, where it was determined that she had suffered third-degree burns on six percent of her skin and lesser burns over sixteen percent. She remained in the hospital for eight days while she underwent skin grafting. Two years of treatment followed.

Attempts to settle

Liebeck sought to settle with McDonald's for US \$20,000 to cover her medical costs, which were \$11,000, but the company offered only \$800. When McDonald's refused to raise its offer, Liebeck retained Texas attorney Reed Morgan. Morgan filed suit in a New Mexico District Court accusing McDonald's of „gross negligence“ for selling coffee that

was „unreasonably dangerous“ and „defectively manufactured.“ McDonald's refused Morgan's offer to settle for \$90,000.

Morgan offered to settle for \$300,000, and a mediator suggested \$225,000 just before trial, but McDonald's refused these final pre-trial attempts to settle.

McDonald's refused to settle perhaps because, though there had been numerous lawsuits alleging that hot coffee was „defectively manufactured,“ courts had consistently dismissed the cases before trial on the grounds that coffee burns were an open and obvious danger.

Evidence presented to the jury

During the case, Liebeck's attorneys discovered that McDonald's required franchises to serve coffee at 180-190 °F (82-88 °C). At that temperature, the coffee would cause a third-degree burn in two to seven seconds. Stella Liebeck's attorney argued that coffee should never be served hotter than 140 °F (60 °C), and that a number of other establishments served coffee at a substantially lower temperature than McDonald's.

Liebeck's lawyers presented the jury with evidence that 180 °F coffee like that McDonald's served may produce third-degree burns (where skin grafting is necessary) in about 12 to 15 seconds (as a reference, the boiling point of water is 212 °F or 100 °C). Lowering the temperature to 160 °F (71 °C) would increase the time for the coffee to produce such a burn to 20 seconds.

Liebeck's attorneys argued that these extra seconds could provide adequate time to remove the coffee from exposed skin, thereby preventing many burns. McDonald's reason for serving such hot coffee in its drive-through windows was that, because those who purchased the coffee typically wanted to drive a distance with the coffee, the high initial temperature would keep the coffee hot during the trip.

Documents obtained from McDonald's showed that from 1982 to 1992 the company had received more than 700 reports of people burnt by McDonald's coffee to varying degrees of severity, and had settled claims arising from scalding injuries for more than \$500,000.

McDonald's quality control manager, Christopher Appleton, testified that this number of injuries was insufficient to cause the company to evaluate its practices. He argued that all foods hotter than 130 °F (54 °C) constituted a burn hazard, and that restaurants had more pressing dangers to warn about. The plaintiffs argued that Appleton conceded that McDonald's coffee would burn the mouth and throat if consumed when served. [11]

The trial lasted from August 8-17, 1994, and the twelve-person jury reached their verdict before Judge Robert H. Scott on August 18.

Verdict and settlement

APPLYING the PRINCIPLES OF COMPARATIVE NEGLIGENCE, the jury found that MCDONALD'S was 80% RESPONSIBLE for the incident and LIEBECK was 20% at fault. THOUGH there was a warning on the coffee cup, the jury decided that the warning was neither large enough nor sufficient. They awarded LIEBECK US \$200,000 in COMPENSATORY DAMAGES, which was then reduced by 20% to \$160,000. In addition, they awarded her \$2.7 million in PUNITIVE DAMAGES. The jurors apparently arrived at this figure from MORGAN'S suggestion to penalize MCDONALD'S for one or two days worth of coffee revenues, which were about \$1.35 million per day.

The judge reduced PUNITIVE DAMAGES to \$480,000, three times the COMPENSATORY amount, for a total of \$640,000. The decision was appealed by BOTH MCDONALD'S and LIEBECK in December 1994, but the parties settled out of court for an undisclosed amount less than \$600,000.

Name _____ Period ____ Mr. Tripodi

Pre-reading questions. Think about these questions before reading

1. Preview the passage. What do you think it is about?
2. What do you already know about this topic?
3. What strategies could you use as you read the passage to help you understand what you are reading?

THE ANSWERS TO THE FOLLOWING QUESTION ARE TO BE WRITTEN

INTRODUCTION: GLOBAL UNDERSTANDING: STAND BACK AND LOOK AT THE OVERALL TEXT

1. The paper writer should identify the topic and explain why it is important. (This is your introduction)

BODY PART I: PERSONAL REFLECTION: PUT YOURSELF IN THE TEXT

2. What is one of the main points of the article, support it with your ideas (avoid "I" statements in your writing assessment)

BODY PART II: DEVELOPING INTERPRETATION: STEP BACK AND ANALYZE THE DETAILS

3. WHAT ARE SOME OTHER IMPORTANT POINTS OF THIS SUBJECT **AND/OR** WHAT CONCLUSIONS CAN YOU DRAW FROM THE PASSAGE (make sure you support as well)? (No "I" statements; define the subject in broad terms)

CONCLUSION: CRITICAL STANCE

4. WHY IS THE INFORMATION CONTAINED IN THIS ARTICLE SIGNIFICANT TO YOU AND IN A BROADER SENSE TO OTHERS? This is your conclusion. What is the overall importance of the subject to posterity?

The conclusion should strive to answer questions that readers will raise: "Why is the writer telling me this?" "Why does the writer think that I need to understand his/her main point?"