Prepared by Cooter and Ulen
The McDonald's Hot Coffee Case

Those who contend that the U.S. system of justice is out of control frequently begin with the McDonald's hot coffee case. According to a common understanding of that case, a woman spilled hot coffee on herself while driving. She had purchased the coffee at the drive-through window of a McDonald's Restaurant. She sued McDonald's for compensation for her injuries (about $11,000) and was awarded nearly $3 million in compensatory and punitive damages by a New Mexico jury.

So, what's wrong with that? The most fundamental criticism of the case seems to be that the plaintiff had no strong cause of action. She sought compensation for something that was almost certainly an everyday accident and well within her control. There does not seem, at first blush, to be anything about the facts above that indicates fault on the part of McDonald's. Second, most countries do not allow punitive damages, and foreign students are hard pressed to understand why these facts in this case make out an argument, even by U.S. standards, for punitive damages. Rather, this seems to be an instance of a local jury piling on damages in favor of a local resident against an out-of-state corporation.

But a complete account of the facts in the case may present a slightly different story. Professor Rick Hasen of Loyola Law School of Los Angeles once circulated this account of the case, based on an article in the news magazine, *Newsweek*:

Stella Liebeck, 79, purchased the coffee and while driving her car, placed the coffee cup between her legs and tried to remove the lid. The cup spilled and coffee ran into her lap. Wearing a sweatsuit and sitting in a bucket seat, she received second- and third-degree burns across her buttocks, thighs, and labia.

After the spill, Liebeck spent seven days in the hospital and three weeks recuperating at home with her daughter in attendance. This was followed by skin grafts. During this period, she lost 20 pounds—to 83 pounds—an almost 20% of her body weight.

Liebeck wrote to McDonald’s and asked them to turn down the coffee temperature, which was set at 170 degrees. She also asked for her out-of-pocket medical expenses of about $2,000 plus the lost wages of her daughter. McDonald’s offered $800. She sued, asking for no less than $100,000 in compensatory damages, including pain and suffering, and triple punitive damages. Just before trial, she offered to settle for $300,000, but McDonald’s rejected the offer.

The case went to trial in August, 1994. After the trial one juror said, “I was just insulted. The whole thing sounded ridiculous to me.”
McDonald’s moved for summary dismissal, defending the heat of its coffee and blaming Liebeck for spilling it. She was, according to McDonald’s, the “proximate cause” of the injury.

Photos were shown of Liebeck’s burned skin, and a burn expert, Dr. Charles Baxter (Southwestern Medical School), testified that 170-degree coffee would cause second-degree burns within 3.5 seconds of hitting the skin. Christopher Appleton, a quality assurance supervisor at McDonald’s headquarters testified that the company had not lowered the heat under the coffee despite receiving 700 burn complaints in 10 years. Safety consultant Robert Knall said that 700 complaints was about 1 in 24 million cups and “basically trivially different from zero.”

A juror’s response, "Each statistic is somebody badly burned. That really made me angry." The juror also was not impressed with the CAUTION: CONTENTS HOT label on the cup. She said she needed her glasses to read it.

After four hours of deliberation, the jury found for Liebeck. She was awarded $200,000 for compensatory damages, reduced by 20 percent because Liebeck had contributed to the accident. They also awarded $2.7 million in punitive damages. One juror said, “It was our way of saying, ‘Hey, open your eyes. People are getting burned’.”

Trial Judge Robert Scott reduced the award to $640,000, calculating the punitive damages at three times the compensatory damages. He stated that it “was appropriate to punish and deter” McDonald’s corporate coffee policy. Scott, a self-described conservative Republican, says the case “was not a runaway. I was there.”

The two sides ultimately settled for an undisclosed amount.

According to Andrea Gerlin’s excellent Wall Street Journal article, “A Matter of Degree: How a Jury Decided that a Coffee Spill is Worth $2.9 Million,” Sept. 1, 1994, p. A1, members of the jury learned at the trial that 180-degree coffee like McDonald’s served may produce third-degree burns in about 12 to 15 seconds. Lowering the temperature by 20 degrees (to 160 degrees Fahrenheit) would increase the time for the coffee to produce such a burn to 20 seconds. Those extra 5 to 7 seconds in many cases could provide adequate time to remove the coffee from exposed skin, thereby preventing such burns. Ms. Gerlin also reported that 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.
Questions:

1. Using the rule of comparative negligence, the jury found that both McDonalds and Ms. Liebeck did not exhibit due care and apportioned damages accordingly. With respect to McDonalds, it is not entirely clear what standards the jury applied. It seems that the jury was more bothered by the temperature of the coffee rather than a lack of adequate warning. How would efficient due care standards be determined with regard to sellers of hot coffee?

2. Under strict liability without punitive damages, how would McDonalds measure the benefits and cost of reducing the temperature or providing a more adequate warning? Do you think it would change the way it markets coffee? Would the level of care differ from the due care standard applied in this case? If so, is the due care standard applied by the jury in this case efficient?

3. What is the rationale for awarding punitive damages in this case? Provide an economic methodology for calculating the relevant punitive damages.

4. If you had been on the jury, how would you have decided this case? Provide a proper economic basis for your decision.

Note:

You might compare this case with McMahon v. Bunn-O-Matic, 150 F.3d 65 (1998). Jack and Angelina McMahon had stopped at a gas station-convenience store to get coffee. Later, as they were driving, Angelina tried to pour the coffee from the Styrofoam cup provided at the convenience store into a smaller cup that would, she felt, have been easier for her husband, Jack, to hold while driving. She was burned severely by the hot coffee falling on her lap. The McMahons sued the manufacturer of the Styrofoam cup and lid and the manufacturer of the commercial coffee maker. They settled their complaints against the cup and lid manufacturers but sought to proceed to trial against Bunn-O-Matic. Their theories were that the manufacturer had a duty to warn consumers of the product that the coffee sold to them would be 180 degrees Fahrenheit and that any coffee served at a temperature of greater than 140 degrees Fahrenheit was "unfit for human consumption" and, therefore, a defective product. Judge Easterbrook held for the Seventh Circuit Court of Appeals that neither of these theories withstood scrutiny.

Statement on defect in manufacturing and design

“Restaurants that serve coffee in china cups would not worry about the effect of a liquid's temperature on foam, or about the jostling of a moving car. They could serve at whatever temperatures their clientele preferred. Thus it cannot be that producing hot liquids makes a machine defective any more than a knife is defective because its blade is sharp; the theory has to be that vendors with a more mobile trade and weaker cups must use machines that brew and hold coffee at lower temperatures (or must use cups capable of holding liquids at the temperatures they have chosen to serve). Perhaps Bunn advertised the machine used by the Mobil station as suitable to businesses serving carry-out coffee
in flimsy cups; that would be a better basis of liability, but it is not one to which plaintiffs advert. Still, both sides in this case treat Bunn and the retailer as identical. We proceed on that basis, while doubting that it is sound.”

“We may assume that ordinary consumers do not know this — that, indeed, ordinary consumers do not know what a "full thickness third degree burn" is. But how, precisely, is this information to be conveyed by a coffee maker? Bunn can't deliver a medical education with each cup of coffee. Any person severely injured by any product could make a claim, at least as plausible as the McMahons', that they did not recognize the risks ex ante as clearly as they do after the accident.”

“Indiana does not require vendors to give warnings in the detail plaintiffs contemplate. It expects consumers to educate themselves about the hazards of daily life — of matches, knives, and kitchen ranges, of bones in fish, and of hot beverages — by general reading and experience, knowledge they can acquire before they enter a mini mart to buy coffee for a journey.”

“It is easy to sympathize with Angelina McMahon, severely injured by a common household beverage — and, for all we can see, without fault on her part. Using the legal system to shift the costs of this injury to someone else may be attractive to the McMahons, but it would have bad consequences for coffee fanciers who like their beverage hot. First-party health and accident insurance deals with injuries of the kind Angelina suffered without the high costs of adjudication, and without potential side effects such as lukewarm coffee. We do not know whether the McMahons carried such insurance (directly or through an employer's health plan), but we are confident that Indiana law does not make Bunn and similar firms insurers through the tort system of the harms, even grievous ones, that are common to the human existence.”

With minor changes this case was written by Cooter and Ulen.

Addendum by Frasca

If there were 700 burn complaints in 10 years and there was one complaint for every 24 million cups served, then there were 16.8 billion cups of coffee served over the 10 year period. In order to recoup a $2.9 million award over a representative 10-year period McDonald’s would have to raise the price of a cup of coffee by about .02 cents. If it paid $2.7 million to each burn victim it would raise the price of a cup of coffee by 12.08 cents.

The final award was for $.64 million in punitive damages. For a single payment this averages out to .0038 cents per cup and for multiple payments it increases the cost of a cup by 2.7 cents.
<table>
<thead>
<tr>
<th>700 burns in 10 years</th>
<th>700 burns in 10 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 million cups per burn</td>
<td>24 million cups per burn</td>
</tr>
<tr>
<td>16,800 million cups sold</td>
<td>16,800 million cups sold</td>
</tr>
</tbody>
</table>

Total award = punitive + compensatory

<table>
<thead>
<tr>
<th>2.90 million</th>
<th>0.64 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0002 per cup price</td>
<td>0.000038 per cup price</td>
</tr>
<tr>
<td>0.12083 per cup per burn victim</td>
<td>0.02667 per cup per burn victim</td>
</tr>
</tbody>
</table>