

Tort reform



“ A tort is a civil wrong resulting in injury to a person or property”; that is brought before a court to compensate the injured party (Bagley & Savage, 2010, pg 251). In order to prove an intentional tort, the following conditions must be met: 1) Intent 2) Voluntary act by the defendant 3) Causation 4) Injury or Harm. The following tort cases, Pearson v. Chung and Liebeck v. McDonalds, have been a pinnacle “ poster child” for tort reform in the United States. In 2002, frivolous lawsuits cost taxpayers over \$233 billion (Insideprison. com, 2006).

What is considered a frivolous lawsuit? It is when an attorney files a suit that they are aware is without merit, lacking legal arguments, and no basis for the claims. (USLegal. com, 2010) Each of these cases, at first glance, presents like a frivolous lawsuit, but after delving into the facts, new appreciation is given to our current legal system. Whether one agrees with the verdict or not, one does come away knowledgeable, as a critical thinker, in deciding the merits of each case based on the facts and evidence presented in each case, and not by the media hype.

Pearson v. Chung Facts The Chung family immigrated to the United States in 1992 and opened various dry cleaning businesses, including Custom Cleaners in 2000. From October 1999 until May 2005, Mr. Pearson patronized Custom Cleaners on numerous occasions. In July 2002, Mr. Pearson brought in a pair of pants for cleaning or alterations, which went missing. The Chungs agreed to compensate Mr. Pearson for the loss of the pants at a value of \$150. Mr. Pearson continued to patronize Custom Cleaners, even after the Chungs requested that he not, until May 3, 2005, when Mr. Pearson brought in numerous suits for alterations.

The last items to be brought in for alterations was a Hickey Freeman suit, which was blue and burgundy pinstripe, and a gray pair of pants that was supposed to be ready on Thursday at 4: 00 PM. When Mr. Pearson returned, on May 5th, to pick up his suit, Ms. Chung informed him that the suit was accidentally sent to another store and will be ready the next morning at 7: 00AM. The following morning, May 6th, Mr. Pearson returned to pick up his suit, and was informed that the suit pants could still not be located.

A few days later, Mr. Pearson brought his suit jacket to Custom Cleaners to assist in identifying his suit pants. At that time, Ms. Chung returned his gray pants, but not before measuring the inseam. On May 14th, Ms. Chung presented to Mr. Pearson a pair of pants with cuffs, which Mr. Pearson refused to accept citing that these were not his pants, since he does not wear cuffs and it did not match his suit jacket. Mr. Pearson contacted Nordstrom's salesman, Samuel Adinew, to determine if the fabric was still available and it was not.

Mr. Pearson wrote a letter to Custom Cleaners informing them that the pants could not be replaced and that Custom Cleaners should compensate him \$1, 150 for the lost pants to honor the " Satisfaction Guaranteed". When the Chungs refused, because they found the pants but Mr. Pearson would not accept it, Mr. Pearson filed a lawsuit in the District of Columbia where he contends that the Custom Cleaners participated in an " unfair trade practice under the Consumer Protection Procedures Act (CPPA). "

During the trial, the Chungs testified that the pants were Mr. Pearson's because: a) Ms. Chung remembered the " same unique belt loop

configuration as the pants he originally submitted. " b) The measurements of the pants were identical to the one he dropped off. c) The tag number on his pants matched the ones on his claim ticket. (Manning-Sossamon. com, 2009) Issues & Law The defendants in this case, Custom Cleaners, requested that the case be dismissed since it has no merit.

However, the judge felt that there were two factual issues in dispute that needed to be resolved: a) Were the pants that the Chungs offered to Mr. Pearson really his? b) Are the signs hanging in Custom Cleaners, " Satisfaction Guaranteed", and " Same Day Service" misleading? (Manning-Sossamon. com, 2009) Originally, Mr. Pearson sued Custom Cleaners for the loss of his pants, alleging claims of common law fraud and that they violated the CPPA by displaying signs that read " Satisfaction Guaranteed", " All Work Done on Premises" and " Same Day Service". The amount Mr. Pearson was seeking for relief was \$67 million dollars, since that is what it would take for the Chungs to satisfy his claim (Pearson 2).

It was Mr. Pearson's belief, that there is an unconditional warranty that Custom Cleaners now must provide since they have the " Satisfaction Guaranteed" sign hanging in there store. (Pearson 4). In the pretrial discovery, the court confirmed that all work was done on premises, and the judge granted summary judgment to the defendants on the portion of fraud. Mr. Pearson amended his lawsuit and stated that he is " not suing for lost pants", but only regarding the " Satisfaction Guaranteed" sign. (Pearson 4). Mr. Pearson insists that the " Satisfaction Guaranteed" sign is unconditional and limitless (Pearson 7).

In addition, the claim tickets that are printed have limitations on the back which further limit the unlimited guarantee that is provided by the signs hanging in the store, which is a violation of the FTC regulations regarding “Satisfaction Guaranteed” (Pearson 20). The court, however, ruled that the “Satisfaction Guaranteed” means how a reasonable person interprets the sign, which is not limitless. It had precedence with the case of *Alicke v. MCI Communications Corp.* (Alicke 1), where MCI rounded up the telephone bills to the next full minute.

The court there ruled that a reasonable person would not be deceived by this billing practice, hence there is no negligent misrepresentation (Alicke 2). Based on the ruling of reasonable assumption, a reasonable customer would not interpret “Satisfaction Guaranteed” to mean the company is required to pay unreasonable demands and it does not constitute a violation of the CPPA (Pearson 20). In addition, the court ruled that since Mr. Pearson never requested “Same Day Service”, but if he did, he would have been accommodated, thus there no basis for misrepresentation.

The court also ruled that having claim ticket stubs with the terms of service for the store on back does not violate the FTC regulations since the regulations were created in a “Bait and Switch” tactic, where, once you were lured into the store on advertised promises, the store added additional conditions to the advertisement. The court ruled that in reality, the pants that the Chungs returned were not his pants. It was determined that it was reasonable to assume this, since he frequently lent suits to his son, and it was possible the pants on the hanger were from a different suit.

The court does not have a requirement to assume what happened to the pants. Mr. Pearson had an obligation to prove intent, that the Chungs intentionally misled him by returning the wrong pants; which he failed to do. The court's ruling was just. The court interviewed both the plaintiff's and defendant's witnesses and all of them soundly admitted that "Satisfaction Guaranteed" does not mean unlimited restitution. They all agreed that the cleaners should be responsible for the lost or damaged item, if it could not be repaired (Pearson16).

In addition, the judge soundly ruled that Mr. Pearson failed to prove that Custom Cleaners were liable based on the CPPA. *Liebeck v. McDonalds - Facts* Stella Liebeck, 79, was in a car driven by her grandson, to a drive-through McDonalds to order coffee. Her grandson testified that he stopped his car to allow Ms. Liebeck the ability to add cream and sugar to her coffee. During the process of opening the coffee lid, Ms. Liebeck spilled the contents on her groin area and suffered third degree burns over 6% of her body. Ms. Liebeck was hospitalized for eight days where she received numerous skin grafts and incurred medical bills for \$20, 000.

She wrote to McDonalds to settle the case for the cost of her medical bill and lost wages, but they refused. She sued McDonalds for negligence for using a defective product and initially won \$160, 000 in compensatory damages and \$2. 7 million for punitive damages. The final settlement is unknown since both parties entered into a secret agreement (The 'Lectric Law Library, 1996). *Issues and Law In Liebeck v. McDonalds*, Liebeck is suing McDonalds because of inadequate warnings that their coffee is burning hot, and for negligence.

To prove negligence, the following must be proven by the plaintiff: 1) The defendant has a duty to the plaintiff. 2) The defendant breached the duty. 3) A reasonable connection exists between the plaintiff's injury and the defendant breach. 4) " The plaintiff suffered an actual loss or injury. " (Bagley & Savage, 2010, pg 303) In this case, McDonalds has a duty to its customers, which is Liebeck, to protect her from any harm that McDonalds products might cause. As the McDonalds' quality assurance manager testified, coffee that was poured into Styrofoam cups was not fit for consumption, and that they received over 700 complaints of people being burned by the coffee.

McDonalds still did not see any cause to lower the temperature (The 'Lectric Law Library, 1996). This provided the actual and proximate cause that showed McDonalds was negligent by continuing to keep their coffee at 180°F, even after they were warned numerous times of the damages that can occur. Finally, Ms. Liebeck proved that there were actual injuries during trial, by showing the jury photos of her and that she lost 20% of her bodyweight during the hospitalization (The 'Lectric Law Library, 1996). The jury was correct in awarding Ms. Liebeck compensatory and punitive awards.

McDonalds was negligent by keeping their coffee at a temperature that was unfit for human consumption. In addition, by having a warning label that looked more like an advisory than a warning defines the product as defective. Ethics Both cases faced numerous ethical dilemmas, and some passed, but others failed. In Pearson v. Chung, Mr. Pearson misplaced his claim ticket. He accused Ms. Chung of keeping the ticket, while Ms. Chung denied that accusation and informed Mr. Pearson that she returned it to him.

Without the ticket Ms. Chung could have used the defense that she returned the pants to Mr. Pearson.

The only evidence that can link the missing pants to the cleaners was the claim ticket. Without it, there is no proof that Mr. Pearson brought in his suit or that the cleaners still have it and hence, there was no case. On the other hand, Mr. Pearson sued Custom Cleaners and demanded to be compensated for his legal fees, a total of \$500, 000 compared to the \$100, 000 for the defense, even though he was representing himself. Finally, after the Chungs won the case and Mr. Pearson was required to pay for their legal fees, the Chungs did not require Mr. Pearson to pay them since they received money from donations that paid for all their expenses.

However, in *Liebeck v. McDonalds*, the quality assurance manager and McDonalds acted unethically when they knew their coffee was injuring people. They were more concerned more about their profits than public health. As the quality assurance manager testified, even after 700 complaints the company still did not change its practice of setting the coffee 20 degrees cooler which would give a person 20 extra seconds to remove the coffee and avoid burns. Comparing these two cases, both parties had the opportunity to gain substantial amounts of money based upon their decisions.

The Chungs felt the ethical decision was to forgo a handout of \$100, 000 from a person who caused them to lose two of their businesses. On the contrary, McDonalds had a business decision to make, should it lower the coffee's temperature and forgo the optimum flavor or keep it at the current

180°F, with the hazards that were inherent. Unfortunately, McDonald's decided that their coffee sales were more important. Frivolous Not all cases that start off sounding frivolous turn out to be that way. Unfortunately, Pearson v. Chung was a frivolous case which caused the Chungs to close two out of the three cleaners that they owned.

The court only decided to allow the case to proceed to resolve the dispute of:

a) Were the pants that the Chungs offered to Mr. Pearson really his? b) Are the signs hanging in Custom Cleaners, "Satisfaction Guaranteed", and "Same Service" misleading? (Manning-Sossamon. com, 2009) However, during the amended dispute, Mr. Pearson was not suing for the lost pair of pants, but only for the violation of the CPPA. As the court justly ruled, any sane person knows that "Satisfaction Guaranteed" does not mean unlimited resolution, but to satisfy the customer with the work that had been done.

The onset of the case Liebeck v. McDonalds seemed to be a frivolous case until the evidence that was presented showed how the opposite was true. McDonalds blatantly ignored the risks associated with its coffee. Third degree burns damage the skin and tissue down to the muscle within 2-7 seconds. Their quality assurance manager was aware of the risks and complaints but decided to err on the side of a consultant who recommended that McDonalds keep the coffee at 180°F. This gross negligence should make McDonalds accountable for their actions. True, Ms.

Liebeck was found to have 20% comparative negligence, since she opened the cap of the coffee while it was between her legs. As such, her reward was reduced comparatively (Bagley & Savage, 2010, pg 308). On the contrary,

this case was far from the media cry of frivolous. What could one do differently? There were many points in the relationship between Mr. Pearson and the Chung family that could have avoided this fiasco. Right after the first incident involving his missing pants, they should have automatically removed the " Satisfaction Guaranteed" sign. This should have foreshadowed what event might lie ahead.

In addition, Custom Cleaners should have installed a sign that read " We Reserve the Right to Refuse Service to Anyone", which is legal. This would have notified all individuals that Custom Cleaners can refuse service to customers who cause trouble, which was clearly what Mr. Pearson was advocating. This, however, does not grant any business to refuse service based on color, sex or religion (USLegal. com). An unethical approach would be that once Mr. Pearson served them with a lawsuit, Custom Cleaners should have insisted that the suit pants were returned and the onus would be on Mr. Pearson that he did not receive it.

Since Mr. Pearson lost his claim ticket, he had no proof to indicate otherwise. In the case of Liebeck v. McDonalds, McDonalds should have heeded the previous 700 complaints and lowered the temperature of the coffee. They should have realized something was amiss and contacted their quality assurance manager for more details into these complaints. Once Ms. Liebeck informed them of her condition and requested reimbursement for lost wages and medical bills, McDonalds should have sent a third party auditor to verify Ms. Liebeck's claim. If it was justified, they should have reimbursed her to resolve any potential lawsuits.