

# Homework 3 essay sample

[Business](#), [Strategy](#)



Go to Kubasek, Chapter 13, page 369, problem 13-16. Use LexisNexis in the Keller library and look up the Nadel et al. v. Burger King Corp. & Emil, Inc. case. Use the citation you find in your book to do the search. Read the case and answer these questions. Copy and paste this information into a Word document, include your name on that document, and answer the questions.

1. What must a party establish to prevail on a motion for summary judgment? (3 points) In order to prevail on a motion for summary judgment, a movant has the burden to demonstrate that no genuine issue of material fact remains to be litigated; that it is entitled to judgment as a matter of law, and that it appears from the evidence, when viewed most strongly in favor of the nonmoving party, that reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party. Civ. R. 56(C) What court decided the case in the assignment? (2 points)

Supreme Court of Ohio is the court that decided this case.

2. Briefly state the facts of this case, using the information found in the case in LexisNexis. (5 points) The facts of this case: On the morning of 1993, the plaintiff's dad was driving him and his two sisters to school. The plaintiff was sitting in the front of the car with the mom and dad. They all stopped at a Burger King drive through to get breakfast and ordered two coffees. The mom started drinking one and found that it was too hot and said the lid of the coffee "jiggled off" and burnt her right leg. She then put the coffee down not remembering exactly where she put it next to her son. While the dad was driving away, the son started screaming as the coffee had spilled on his right foot. He then was treated for second-degree burns for his right foot. The Nadel's claim that because the coffee was too hot to consume it's a breach

of warranty of merchantability and warranty of fitness for a particular purpose. They feel that the product was defective and there were no warnings for handling hot liquid and at that temperature.

Burger King pointed to the evidence that the appellant knows the coffee was hot when they purchased it and their operating manual requires coffee to be served at approximately 175 degrees and they are unaware of any problems resulting from that. 3. According to the case, why was this not defamation, and what tort did the court approve a filing for? (5 points) This is not defamation because the fact is that there was an injury of a second degree burn on a child caused by the spilling of the coffee. The court approved filing for Negligence under the intervening causation. 4. In the decision, why does the court state further proceedings will be required? (5 points) The court feels that they don't have enough evidence to decide on the factors of products liability claims and punitive claims. Therefore, even though they had affirmed the trial court's summary judgment with respect to warranties of merchantability and fitness for a particular reason, premises-related negligence and the claims for negligent infliction of emotional distress, they still need to look for further proceedings that will help them to make a judgment on product liability and punitive claims that's similar to this case. 5. Do you agree with this decision? Why or why not? (5 points)

On the product liability perspective, I can understand why the court would need more precedent examples or evidence as the coffee is excessively hot is merely an opinion by the Nadel. If they cannot provide evidence of other people also thinking it's too hot, who is to say that coffee at 175 degrees is

categorized as excessively hot? As for the punitive damage charges, I believe the court should have overruled the Nadel's claim. The court believes that the just by the second degree burn caused on the child, it was enough for them to dispute if the coffee was defective or not under the Ohio's Product Liability Act. R. C. 2307. 75(a) (1) and (2). I believe just because the product caused the injury doesn't mean the product is defective. The questions arise in my head while I was reading this case was: 1. couldn't Burger King sue the parent's of Nadel of negligence of the care of their child? 2. First of the all, the child was in the front seat, in between the parents. Is that even safe? 3. Second of all, she placed the hot coffee, knowing that it's hot because it burned her and still placed it near the child? It is not the manufacture's duty to make their product accident-proof. For instance, the child in the Kessel case, the court ruled that steaming hot water is common sense, what can the manufactures do at that point? Make sinks that only dispense cold water? Does that mean the sinks that dispense hot water are all defective? *Kessel v. Stansfield Vending, Inc.*, 2006 WI App 68, 291 Wis. 2d 504, 714 N. W. 2d 206, 2006 Wisc. App. LEXIS 237 (2006). Nadel's mom clearly knows the coffee was hot since it already burned her, she should've used this knowledge to warn or to watch for his son's actions.

Now, in the library, click the "Shepardize" button in the top right of the LexisNexis page while on the case. This provides you with all of the cases which have used *Nadel et al. v. Burger King Corp. & Emil, Inc.* case as "precedent" since its publication. Out of the cases listed, pick one, click the link, read the case, and provide the following information:

<https://assignbuster.com/homework-3-essay-sample/>

A. The name and citation of the case (5 points)

The name and citation of the case is Olliver v. Heavenly Bagels, Inc., 189 Misc. 2d 125, 729 N. Y. S. 2d 611, 2001 N. Y. Misc. LEXIS 281 (N. Y. Sup. Ct. 2001).

B. The name of the court which decided the case (3 points)

The Name of the court which decided the case is Supreme Court of New York, Nassau County.

C. The year of the decision (2 points)

The Year of the decision was 2001.

D. The facts of the case (5 points)

The customer purchased coffee at a restaurant and placed it in a bag between his legs while driving. The coffee splashed onto the customer, causing second degree burns on his lower stomach, thighs, and groin. The defendant thinks he has no duty to warn the customer on how hot the coffee is and there's no defect on their coffee machine (the brewing temperature was at 194 where industry standards require it to be plus or minus 5 degrees of 200 degrees).

E. The issue of the case (5 points)

The plaintiff wants to sue the restaurant for the damages caused by the hot coffee. New York precedent on the issue of scalding coffee that caused first and second degree burns provides that the fact that the coffee was hot enough to cause injury if not properly handled does not mean that it was defective or negligently served. The court believes that hotness of the coffee

is an essential attribute of the product. The defendant does not need to warn the plaintiff unless the coffee's temperature exceeds what it's supposed to be in the industry standard. In this case, the evidence shows that the coffee temperature was within industry standard, the coffee is served hot is a well known fact and that there's evidence that the temperature range recommended by the coffee industry for brewing coffee is a temperature that will cause second degree burns. The plaintiff has failed to provide evidence from which a jury could conclude that the subject coffee was unreasonably hot. That it caused second degree burns does not suffice. Consequently, there is no factual basis for a conclusion that the coffee was defective.

F. The “ decision” of the case (5 points)

This Court is reluctantly compelled to conclude on this record that plaintiff has failed to provide evidence from which a jury could conclude that the subject coffee was unreasonably hot. That it caused second degree burns does not suffice ( Huppe, supra; McMahon, supra; Oubre, supra; cf. Nadel, supra). Consequently, there is no factual basis for a conclusion that the coffee was defective or that a failure to warn was necessary. Under these circumstances, summary judgment dismissing the complaint and all cross claims against the restaurant.

G. The principle of law the case was used (cited) for in the case (5 points);  
and

The principles of law the case was used was *Huppe v Twenty-First Century Rests.*, 130 Misc 2d 736, 738, affd on opn below 116 AD2d 797. “ coffee is served hot ... that its heat may cause ... second-degree burns ... does not make less obvious the risk that hot coffee purchased for consumption will burn upon contact with skin ... [and therefore] ... requires no warning.” The fact that the coffee was hot enough to cause injury if not properly handled does not mean that it was defective or negligently served.

H. Following the directions in the library, download a Word-Doc copy of the case, and include your name in the “ note” section of the download. Attach a copy of the document with your assignment this week. (10 points) (Your name must be in the automatically populated “ note” area for full points for this.)

Please see separate attachment.