

Case study 2



Case brief - issues The first cause of action that could arise for Beauty is against Ready Made Corporation on the law of tort and products liability in failing to adhere to normal standards of care in preparation of food by serving undercooked food, thus violating the implied warranty that the food is free of harmful substances¹. Since Ready Made is incorporated in California, it would be the district Court in California that would have jurisdiction to hear a suit. Beauty would also have a cause of action in the local tribal Court in Albuquerque that deals with Indian affairs, since the Casino is located on Indian land that falls outside the jurisdiction of the New Mexican Courts and it is the location where the under cooked food was served. She can file on the same grounds of negligence and breach of warranty by a restaurant which sells food to its customers and it can be sued as a third party which caused the sale of contaminated food through its apathy.

Robin may have a cause of action against Beauty for trespass and damage to his property in the local District Court at Texas, to claim damages and reimbursement of the cost of the sign which was damaged, since the amount in question is 100000\$ and will not fall within the purview of a small claims Court. However, since Beauty was ill when it occurred, the Court may mitigate the damages. However Beauty can also file a counter suit against Robin for bodily assault, and the issue of provocation may also be taken into account by the Court in determining damages, however it will nevertheless mitigate the extent to which beauty may have to reimburse Robin .

Beauty can file a suit against Elmer Fudd in the small claims Court in Florida and make a claim on damages caused to the body of her car, in the event that Elmer Fudd is not covered by insurance. The costs of bodywork must be

less than 5000\$. However, it may also be possible for Elmer Fudd to file a counter claim alleging that he is not responsible for the entire \$12, 000, since only part of the damage was caused due to his negligence and that he is not responsible for the engine damage.

The case against Beasty Boys for recovery of monies Beauty has paid for repair of the car engine could be filed in a small claims court in Delaware where the Company is incorporated, since Delaware state allows for claims up to 15, 000\$. Beauty could file the suit including the head office in Delaware as well as the local branch of Beasty in Nevada that was responsible for the default. The cause of action would be on the basis of the tort of negligence and failure of a professional provider of automotive services to provide oil which caused the engine damage. This suit could also be filed on the basis of a breach of contract of maintenance for Beauty's car, in which case she may not be eligible for further punitive damages which could be imposed in a tort of negligence or a strict products liability suit. In the case of the footstools, Beauty's legal options would be determined on the basis of the online sales contract she may have entered into with Foot Stools-R-U's at the time of placing her order for the product, since it is an online Company with its place of production in China. If the agreement has specified that litigation of any dispute i. e restricted to China, then that would be enforced, even when the clause " looks like, acts like, and is, part of an adhesive consumer contract." 2 In that Beauty would have to file suit against the Company in China, otherwise the courts in New Mexico at her place of residence would be the appropriate forum that would have personal contractual jurisdiction. In this instance, Beauty could bring action under strict products liability tort, for the supply of a defective product.

Alternatively, as in the case of many Internet consumer disputes, the sale agreement may also contain a contractual clause specifying arbitration of disputes, in which case the arbitral body, location and substantive and procedural law that will apply will also be specified and Beauty will have to follow that.

Cinder may not have grounds to file a suit against Beauty for supply of the defective product, since they were given as a gift and Beauty is not responsible for its manufacture or delivery. However Cinder can file a suit against the New York company for supply of a defective product and bring a case in tort for bodily injury, since a District Court in New York in the place of her residence will have personal jurisdiction in the matter on the basis of the injuries Cinder has suffered. Cinder will need to file the suit not only for manufacturing defects and bodily injury but also implied damages, so that the New York Company cannot escape liability on the basis that it is purely a third party Company. To file suit against the production company of Foot Stools R Us in China, Cinder will have to be guided by the provisions of the sale agreement Beauty has with the Company.

References:

* *Bissonette v National Biscuit Company*, 100 F 2d 1003

* Mullenix, Linda S, 1992. " Another easy case, some more bad law: Carnival Cruise lines and contractual personal jurisdiction." 17 *Texas International law Journal*, 323 at 325