

Toxic Harms

Midterm Review Meetings

In-class exercise

Donald Dawson was murdered in his hotel room while on a business trip to Loyola City. Dawson had eaten breakfast with a business associate, Anastasia Kent, in a coffee shop next to the hotel. Following breakfast, Dawson returned to his room on the eighth floor of the hotel to use the bathroom before beginning his business day. When Dawson did not meet Kent shortly thereafter as arranged and did not answer his phone or door, Kent became concerned and asked a hotel maid to open the door to Dawson's room. Kent and the maid found Dawson lying face down on the floor, dead. He had been shot twice in the back of the head with a .22 caliber weapon.

Both Dawson's luggage and Kent's, which had been left in Dawson's room because Kent was checking out, had been rifled. Dawson's wallet was lying on one of the suitcases with the cash missing. Neither Dawson's Rolex watch nor his credit cards were taken. There was no sign of forced entry into the room and no sign of a struggle other than scratches on Dawson's arm in the area of his watch. Dawson's room key was found lying in front of the bathroom door. The murderer was never apprehended.

At the time of the murder, the hotel had no security cameras or alarms at any of the entrances, in the stairwells, or on any of the guest floors. The hotel only employed a security guard at night, so there was no guard on duty at the time.

Question to Answer:

You are a district court judge ruling on a defendant's motion for summary judgment. Assuming the plaintiff can prove duty and breach, was the hotel's negligence a factual cause of the plaintiff's injuries?

If the plaintiff has not made out a prima facie case, then the motion should be granted.

If the plaintiff has made out a prima facie case, then the question should go to the jury, and the motion for summary judgment should not be granted.

Sindell v. *Abbott Laboratories*

“Toxic Harms”

Possible alternatives for factual causation

1. Concert liability
2. Alternative liability
3. Enterprise liability
4. Market share liability

Toxic Harms

Why is the tort system such a poor fit?

Three frequent problems:

1. Identification of the cause: Can't be certain that the toxin was a "but for" cause
2. Boundaries of the harm: Can't be certain of the extent of the harm
3. Source of the cause: Can't be certain who in particular is responsible

Mass Torts

A procedural story in two parts:

1. The Supreme Court killed the mass tort class action
2. Multidistrict litigation (MDL) took over

Exercises for Friday...

Exercise #1

You are an attorney at a plaintiff's side firm in the state of Loyola.

Luna Waters was driving her car and rolled to a stop at a red light. Just behind her on the road, Joseph Meyer was texting while driving and negligently rear-ended Waters's car. Minutes later, another driver, Myla Morales, was lost in thought, awestruck by the idea that causation can never be directly observed but is always an inference vulnerable in some way to *post hoc ergo propter hoc* "since Y followed X, X must have caused Y," and negligently rear-ended Meyer's car, which struck Waters's car a second time.

In one collision or the other, Waters sustained an injury to her neck. She doesn't know which of the two accidents caused the injury. The doctors that treated her injury cannot determine whether it was the first or second impact that caused it.

Waters visits your office as a prospective client. She wants to know if she has a viable negligence claim against Meyer or Morales, who she should sue, and if she will win. Please advise her.

Exercise 2

Same initial fact pattern as the first exercise. Except now, in addition to being hit by Meyer and Morales, Waters was also hit by two other drivers who fled the scene.

In one of the four collisions, Waters sustained an injury to her neck. She doesn't know which of the four accidents caused the injury. The doctors that treated her injury cannot determine which of the four impacts caused it.

Waters visits your office as a prospective client. She wants to know if she has a viable negligence claim against Meyer or Morales, who she should sue, and if she will win. Please advise her.

Exercise 3

You are an attorney at a plaintiff's side firm in the state of Loyola.

A labor activist, Ayla Ross, comes to visit you in your office. She has been organizing workers at a slaughterhouse in the region. She's learned that the slaughterhouse had been euthanizing chickens with a particular gas, BirdBeGone, for the many years. but stopped using the gas when it was taken off the market six months ago. The gas was banned by state authorities after emerging research indicated that human beings exposed to the gas could develop skin cancer and that the gas could induce miscarriages and result in severe birth defects.

Ross wants to talk with these workers about the possibility of suing the slaughterhouse for negligence. She is particularly interested in the possibility of a class action lawsuit so that the workers don't need to litigate individual cases, but she knows that issues of causation can be challenging in toxic harm lawsuits.

For this question, assume that duty and breach can be proven. Please advise her on the most pertinent remaining issues.