

The Peter Cane Prize for Legal Reasoning by an Aspiring Lawyer 2020

The Legal Reasoning Prize in 2021 takes a slightly different form to previous years. In order to provide more for students to engage with, the material is more extensive. First, there are two texts, one bring a proposal for legislation, and one being the law of another country. Second, the material has a fictional case to consider.

Principles of European Tort Law

(<http://www.egtl.org/PETLEnglish.html>)

“Art. 3:101. *Conditio sine qua non*

An activity or conduct (hereafter: activity) is a cause of the victim’s damage if, in the absence of the activity, the damage would not have occurred.

...

Art. 3:105. Uncertain partial causation

In the case of multiple activities, when it is certain that none of them has caused the entire damage or any determinable part thereof, those that are likely to have [minimally] contributed to the damage are presumed to have caused equal shares thereof.

Art. 3:106. Uncertain causes within the victim’s sphere

The victim has to bear his loss to the extent corresponding to the likelihood that it may have been caused by an activity, occurrence or other circumstance within his own sphere.”

German Civil Code, §830.1

(https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p3507)

“If more than one person has caused damage by a jointly committed tort, then each of them is responsible for the damage. The same applies if it cannot be established which of several persons involved caused the damage by his act.”

Fredericks v Vinogradoff’s Books

Lord Levett (for the majority)

Pollock’s disease is a serious and ultimately fatal illness caused by exposure to certain toxic substances, known as XYZ. XYZ is particularly likely to be found in places with large numbers of books, as it is created when certain types of paper degrade with age. It is not scientifically possible to say in advance whether exposure to any one dose of XYZ will give a person Pollock’s disease, and there is no necessary relationship between being exposed to a high dose, or many times, and developing the illness. Pollock’s disease may even be caused by a single exposure to XYZ. It is established, however, that being exposed more times increases the risk

of contracting Pollock's disease, even though multiple exposures have no known effect on the severity of the illness.

The claimant, Mr Fredericks, has developed Pollock's disease. In the past, he has worked for three employers where he claims he was exposed to XYZ during the course of his employment: (1) Vinogradoff's Books; (2) Henrietta's on Main Bookshop; and (3) Seebohm's Bookbinding (collectively, 'the defendants'). When he worked for Vinogradoff's Books, Mr Fredericks signed a 'waiver of liability' which stated that his employer would not be liable for any injury or illness resulting from Mr Fredericks' employment. All three defendants had a duty, as his employer, to protect him from exposure by providing safety equipment and at various times failed to do so. Section 2(1) of the Health and Safety at Work Act 1974 states 'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees'. Section 2(2) stated that this includes 'the matters to which that duty extends includes arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances'. If an employer breaches these duties, they can be guilty of a criminal offence.

This case does not concern criminal law however. It is a tort law action in negligence. The only issue that the court needs to decide concerns causation. Mr Fredericks does not, however, know which of those exposures led to his Pollock's disease. He therefore claims all three defendants should be jointly and severally liable for exposing him and causing his illness. The defendants' lawyers do not dispute that they exposed Mr Fredericks to XYZ. However, they argue that since it is not scientifically possible to prove which exposure caused Mr Fredericks' illness, Mr Fredericks could not prove that any one of them was legally responsible. Without being able to prove this, they argued, he could not claim damages from any of them for injuring him. Mr Fredericks could only prove that their actions increased his *risk* of harm, and not that any one of them contributed to actually *harming* him. Vinogradoff's Books further argues that even if the other defendants are liable, Mr Fredericks signed a waiver in respect of his employment with them, so they cannot be liable. Additionally, the defendants argued that since there were criminal laws regulating imposing sanctions for failure to provide protective equipment in these circumstances, there should not be additional liability for the same actions.

This is a situation where an employee has worked for different defendants and has been exposed to XYZ in breach of the employers' duty to protect them, but because of the limitations of medical knowledge it is not possible to prove which defendant is responsible.

Question

Explain what the legislative texts suggest the solution should be to the case given. What reasons are there for such an outcome. Do you agree with this outcome? What do you think is the best rule?

The questions posed can be answered from the material provided and the application of sufficient thought, but research is welcomed. For example, a vast collection of reports of cases decided by the UK courts is available at www.bailii.org, and many local libraries have textbooks on law.