

# TORTS

“The American Recipe”

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# CAUSE IN FACT (Cont'd)

## SUMMERS v. TICE (CA 1948)

- Multiple Independent Negligent Acts But One Cause
- PI Cannot ID Cause
- PI Sues All Possible Ds
- Shifting Burden of Proof
- Individual Liability = Joint & Several Liability

## SINDELL v. ABBOTT LABS (CA 1980)

- Multiple Independent Negligent Acts But One Cause
- PI Cannot ID Cause
- Fungible Item Caused Harm
- PI Sues Some Ds With Substantial Market Share
- Shifting Burden of Proof
- Market Share Liability

# "DUTY" OR "PROXIMATE CAUSE"?

## NO LIABILITY BEYOND FAULT

1. DUTY TO PL? – NECESSARY RELATIONSHIP BETWEEN PL & D
2. STANDARD OF CARE – REQUISITE LEVEL OF CONDUCT
3. BREACH OF DUTY – FAILURE TO MEET STANDARD
4. CAUSE IN FACT – BREACH OF DUTY RELATES TO INJURY
5. PROXIMATE CAUSE – EXTENT OF LIABILITY FOR HARM
6. INJURY – REQUISITE HARM

# INTERVENING CAUSES

**INTERVENING CAUSE**: A NEW CAUSE THAT JOINS WITH D's NEGLIGENT CONDUCT TO INJURE PI.

**SUPERSEDING INTERVENING CAUSE**: A HIGHLY UNFORSEEABLE INTERVENING CAUSE THAT RELIEVES D OF LIABILITY FOR HARM CAUSED BY D's NEGLIGENT CONDUCT.

**DEPENDENT INTERVENING CAUSE**: AN INTERVENING CAUSE STIMULATED BY D's NEGLIGENCE AND USUALLY CONSIDERED FORESEEABLE.

# JOINT & SEVERAL LIABILITY

JOINT TORTFEASORS: TWO OR MORE Ds WHO EITHER:

- 1) ACT IN CONCERT TO COMMIT A TORT, or
- 2) ACT INDEPENDENTLY BUT CAUSE AN INDIVISIBLE INJURY
- 3) SHARE RESPONSIBILITY BECAUSE OF VICARIOUS LIABILITY

JOINT TORTFEASORS ARE "JOINTLY & SEVERALLY" LIABLE FOR ALL OF THE DAMAGES CAUSED BY THEM.

JOINT TORTFEASORS MAY CROSS-CLAIM AGAINST ONE ANOTHER FOR "CONTRIBUTION" (PARTIAL SHIFTING) OR "INDEMNITY" (TOTAL SHIFTING) OF RESPONSIBILITY.

# DEFENSES TO NEGLIGENCE

## ORIGINAL DEFENSES

CONTRIBUTORY NEGLIGENCE  
ASSUMPTION OF RISK

## MODERN APPROACH

COMPARATIVE NEGLIGENCE

- 1) PURE
- 2) MODIFIED – GREATER THAN 50%
- 3) MODIFIED - 50% or GREATER

# IMMUNITIES – ON DECLINE

CHARITABLE IMMUNITY

SPOUSAL IMMUNITY

PARENT-CHILD IMMUNITY

GOVERNMENTAL IMMUNITY