

A homeowner resides downhill from a metal fabrication facility. She has sued both the owner of the facility and the supplier of a solvent used at the facility. She contends that contaminants, consisting mostly of the solvent, were released into the ground at the facility and have migrated and continue to migrate to her property, contaminating the soil, the groundwater, and her well. She alleges various acts of negligence on the part of the facility owner in causing the release of the contaminants into the ground. She also alleges that employees of the solvent supplier were negligent in frequently spilling some of the solvent onto the ground while filling a rooftop tank at the facility.

The solvent supplier has moved for summary judgment, arguing that if there was any contamination, the facility owner and the supplier independently contributed indeterminate amounts to the contamination and that therefore the homeowner cannot show how much damage each has inflicted on her.

There is no evidence that the facility owner and the solvent supplier acted in concert.

Should the court grant the summary judgment motion?

- A. No, because concurrent tortfeasors are jointly and severally liable for an indivisible injury.
- B. No, because the solvent supplier is vicariously liable for damage inflicted by the facility owner.
- C. Yes, because there is no basis for allocating damages against the solvent supplier.
- D. Yes, because there is no evidence that the facility owner and the solvent supplier acted in concert.

Explanation:

Liability of multiple negligent actors

	Indivisible injuries	Separable injuries
Acting independently	Joint & several liability*	Several liability only
Acting in concert	Joint & several liability	

*Default rule on MBE.

A movant is entitled to summary judgment when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law—eg, when the nonmovant fails to prove his/her claim. A claim for **negligence** requires proof that a tortfeasor's conduct **actually and proximately** caused the alleged harm. If the harm was caused by **multiple tortfeasors**, then those tortfeasors can be held:

severally liable – when each tortfeasor is liable for a **proportionate amount** of damages because his/her **independent actions** caused **separable injuries** *or*

jointly and severally liable – when any tortfeasor can be held liable for the **total amount** of damages because his/her **independent or concerted actions** concurrently caused an **indivisible injury**.*

Here, the solvent supplier's motion for summary judgment alleges that both parties contributed indeterminate amounts to the contamination. This allegation shows that the homeowner suffered an *indivisible* injury, so either the solvent supplier or the facility owner can be held jointly and severally liable for all of her harm—even though they did not act in concert. As a result, the solvent supplier is not entitled to judgment as a matter of law, and the court should deny its summary judgment motion **(Choice C)**.

*When a plaintiff recovers the full amount of damages from any one of the tortfeasors, that tortfeasor can then sue the others for indemnity or contribution.

(Choice B) Under **vicarious liability**, a principal is strictly liable for its agent's tortious acts committed within the scope of an agency relationship (eg, employer-employee). Here, the solvent supplier is vicariously liable for the damage caused by its employees—but not for the damage caused by the facility owner.

(Choice D) Joint and several liability applies if the concerted *or* independent acts of multiple tortfeasors concurrently caused an indivisible injury. Therefore, evidence that the facility owner and the solvent supplier acted in concert is not required.

Educational objective:

When multiple tortfeasors caused the plaintiff harm, each will be liable for a *proportionate* amount of damages if his/her independent actions caused *separable* injuries (ie, several liability) OR for the *total* amount if their independent or concerted actions concurrently caused an *indivisible* injury (ie, joint and several liability).

References

Restatement (Third) of Torts: Apportionment of Liab. § A18 (Am. Law Inst. 2000) (joint & several liability).

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