

A pedestrian was injured when hit by a chair that was thrown from an upper-story hotel window. The pedestrian sued the occupants of all the rooms from which the chair might have been thrown.

At trial, the pedestrian has been unable to offer any evidence as to the exact room from which the chair was thrown. The defendants have filed a motion for a directed verdict.

Should the court grant the motion?

- A. No, because it is unreasonable to expect the pedestrian to prove which of the defendants caused the harm.
- B. No, because of the doctrine of alternative liability.
- C. Yes, because a plaintiff always has the burden to prove that a particular defendant's conduct was the factual cause of the plaintiff's physical harm.
- D. Yes, because the pedestrian has failed to offer evidence that the defendants jointly engaged in tortious conduct.

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.

Tort claims for personal injury generally require proof that a particular defendant's tortious conduct was the **actual and proximate** cause of the plaintiff's harm. But when two or more **defendants jointly engage in tortious conduct** (ie, act in concert)—and at least one of them causes the plaintiff's harm—all of the defendants are **jointly and severally liable** for the harm **(Choice C)**.

Here, the pedestrian was injured by a chair that was thrown from a hotel window. She then sued the occupants of *all* the rooms from which it might have been thrown. Since she offered no evidence as to the exact room from which the chair was thrown, she cannot prove which defendant(s) caused her injury. And since she also offered no evidence of joint tortious conduct, the defendants' motion for a directed verdict should be granted.

(Choices A & B) The doctrine of alternative liability applies when (1) there were multiple tortfeasors, (2) at least one of them caused the plaintiff's harm, and (3) it is impossible to tell which one of them did. The burden then shifts to each defendant to prove that he/she did *not* cause the harm. Here, it may be unreasonable to expect the pedestrian to prove which defendant caused her harm. But alternative liability only applies if each defendant's tortious conduct is proved (not seen here).

Educational objective:

When multiple defendants engage in joint tortious conduct and one or more of them causes the plaintiff's harm, *all* of the defendants are jointly and severally liable for the harm.

References

Restatement (Second) of Torts § 876 (Am. Law Inst. 1965) (explaining that a defendant is subject to liability if he/she does a tortious act in concert with others or pursuant to a common design).

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