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## E-Newsletter

### PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

### Understanding Toxic Torts

The number of toxic tort cases has increased dramatically over the last thirty years, as a result of rising awareness of and activism over injuries caused by environmental pollutants and unsafe products. Due to the nature of chemical accidents and the long latency periods of many diseases associated with toxic substances, large populations often are exposed to toxics. As a result, many toxic tort lawsuits are brought as class actions. Examples of toxic tort litigation in recent years include cases concerning Agent Orange use in Viet Nam, toxic waste disposal in the Love Canal area of New York, radiation from the Three Mile Island nuclear power plant accident, and the chemical cloud released by the Union Carbide plant in Bhopal, India.

Liability for toxic torts can be grounded in a number of different legal theories, including negligence, premises liability, breach of warranty, misrepresentation, and strict products liability. No matter which legal theory is used in a toxic tort case, the plaintiff must prove that he or she was exposed to the toxic substance, energy, or device. In some cases this may be easy, such as in a case like the disaster in Bhopal in which there was a known cause of injury—a toxic cloud that was released from a chemical plant. Other types of exposure are more difficult to prove, such as exposure to a tasteless, but harmful water pollutant.

A plaintiff also must prove that the defendant in some way caused his or her injuries. Proof of causation has two parts. First, a defendant's action or inaction must have been the "cause in fact" of a particular injury. In other words, the defendant's act or omission was a necessary antecedent to the plaintiff's injury. Cause in fact can be difficult to prove in a toxic tort case, because the cause of many diseases, especially cancer, is uncertain; the effects of toxic-substance exposure



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may take years to show up; and plaintiffs often have been exposed to other potentially harmful substances besides the one at issue. Experts in various fields often must testify at a trial about what they believe could have caused a plaintiff's injury or disease.

The second kind of causation a plaintiff must prove is that a particular tort was the "proximate cause" of his or her injury. Proximate causation involves questions of whether the defendant had a duty to the plaintiff, and whether the particular injury was foreseeable by the defendant. Although proximate cause sounds complicated, in toxic tort cases, if cause in fact is established, proximate cause also usually is established.

Finally, a toxic tort plaintiff must be able to prove that he or she suffered damages. A person injured by a toxic tort may be able to recover monetary damages for past and future medical expenses, past and future pain and suffering, lost wages, loss of future earning capacity, and punitive damages.

Quiz: Your Deposition

To read and printout the Quiz please click below.

[Your Deposition](#)

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