

The issue of causation and Barker v/ Corus under French Law

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Tort law principles

In a situation when several individuals can be responsible for an injury suffered, but it is not clear who is the one who should be held liable at law, it does not belong to the victim to establish who is responsible for the injury caused to her; The French Supreme Court of Justice stated that all the defendants shall at first be regarded as liable for the injury at law; it then belongs to the defendant himself to rebut the presumption, and establish that he or she could not have been responsible. If no defendant can rebut this liability presumption, then all of them shall be held liable for damages.

Cour de Cassation, 2nd Chambre Civile, 14th December 1983

Mrs C had been bitten by a dog, but it was not possible to establish which dog, among the two involved in the accident, was the one responsible at law for the injury suffered by Madame C.
« Attendu que pour refuser de déclarer Mr D responsable de dommages par application de l'article 1385 du code civil, l'arrêt énonce que la preuve n'était pas rapportée de l'intervention du chien ni de ce que la bagarre entre deux chiens ait été la cause exclusive de la morsure.

Qu'en statuant ainsi, la cour d'appel a violé le texte susvisé »

The presumption is a way to fill the gap created by the absence of a causal link that would be certain. It is based on the idea of risk: the dog, or any defendants created a risk to the victim by causing her an injury, therefore they should be the one to bare the risk they caused, and they should repair the injury. Of course they should repair the injury, unless they can prove that they were not responsible, or that they could not have caused an injury to the victim.

“Barker v. Corus” under French Law

However, in a situation like Barker v. Corus, French law judges would not apply basic principles of the law of torts as English lawyers would, but rather the principles of

employment law, that were specifically designed to rule the relationships and litigations between employers and their employees.

Employment law rules both the liability incurred, and the amount of compensations awarded to the victim.

Asbestos related claims are recognized as work related claims, being either work related illnesses, or work related injuries.

Cour de Cassation, chambre sociale, 17 fevrier 2005

“Mais attendu que le fait que la maladie professionnelle soit imputée aux divers employeurs chez lesquels le salarié a été exposé n’interdit pas à celui-ci, pour demander une indemnisation complémentaire, de démontrer que l’un ou plusieurs d’entre eux ont commis une faute inexcusable »

This case recognizes the possibility that several employers be liable at the same time, but it confirms the distinction between tort and employment law principles, as well as the distinction between basic and complementary compensation.

The non excusable fault of the current employer is not necessarily the only cause of the asbestos related injury: the supreme court of justice admitted that asbestos related illness have several causes, and are caused by several employers, the current one as well as the previous ones.

The idea behind this decision is the requirement to compensate victims and weak parties, and to awards them the maximum amount of damages.

French law, and especially employment law is always concerns with the protection of weak parties, and these recent decisions reveal this priority.