THE LIMITS OF FORSEEABILITY: TORT LAW AT ITS RATIONAL BEST

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Media accounts and advertising campaigns targeting lawsuits and the legal system often suggest something is quite amiss with the U.S. legal system. While outrageous or outrageous sounding cases and verdicts exist, they tend to get a disproportionate amount of attention and fuel demands for tort reform. In contrast, cases that result in decisions that make sense don't receive similar coverage. In the part of the case against Beantown Pub, Bjorgolfsson v. Destination Boston Hotel, et al. is an example of tort law at its rational best. It is important to know that the legal system gets it right sometimes too.

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Widely publicized outcries over everything from too much "red tape" to outrage over those who win the "legal lottery" in what has become an overly "litigious society" contribute to the widely held public perception that something is deeply wrong with the legal system in the United States. Tort law, in particular, is often at the center of such complaints and laments. In fact, *tort reform* seems to have entered public discourse as a widely recognized household term used to counter the perceived explosion of cases that often result in both large and ridiculous

outcomes that, among other things, negatively impact the ability of physicians to practice sound medicine instead of worrying over medical malpractice lawsuits and insurance premiums.

This view is often advanced both by the media and in advertising campaigns. "For instance, a recent Newsweek cover story—in conjunction with a weeklong series of news reports on NBC focused on 'our litigation nation' and the need for fundamental changes in the civil justice system. The Newsweek article was premised on the idea that 'Americans will sue each other at the slightest provocation" (Daniels & Martin, 2004). In fact, pressure to reform tort law has been around for some time—at least since the 1950's.

> For instance, an insurance company advertising campaign in early 1953 included a series of four advertisements that alternated between Life and Saturday Evening Post. Each was explicitly aimed at potential jurors in tort cases. The first advertisement ran in Life on January 26, 1953. It shows a stern-faced bailiff sitting in front of [a] room labeled 'Jury Room.' The advertisement's headline, 'YOUR insurance premium is being determined now.' … The 1953 advertising campaign was quite explicit in explaining the connections between jury verdicts and going rates. Each of the four advertisements used a different vignette to admonish potential jurors about their decisions on … verdicts and awards. However, one thing was exactly the same in all four advertisements. Each contained a box in the lower right corner of the advertisements with the following text: 'As jurors tend more and more to give excessive awards in cases that do go to court, such valuations are regarded as establishing the 'going rate' for the day-to-day-out-of-court claims—all of which means increased insurance premium cost to the public (Daniels & Martin, 2004).

In contrast, research on media portrayals of lawsuits and the legal system suggests a different picture. In one such study, 3,300 articles and commentaries from five major newspapers published from 1980-1999 were analyzed. The "analysis concluded that readers of those newspapers (and probably millions of viewers of TV news shows, which often take up stories reported in major newspapers) would have been given the impression that litigation rates were rising more rapidly than is the case, and also that plaintiffs win more often and win (and receive) much larger jury awards than actually is the case" (Kagan, 2006). Further, the study concludes that "due to U.S. journalism's tendency to highlight the dramatic and to rely on out-of-court

interviews with lawyers, 'news narratives…will almost always report less what transpires legally, formally, or officially in trials and more that is sensationalized, personalized, and unreliable" (Kagan).

Given the nature of such portrayals of the legal system in the media and advertising, it is easy to both miss and ignore the times the law gets it right. Then again, perhaps this is no surprise. Lawsuits resulting in decisions that make sense aren't as likely to sell newspapers or lend themselves to outrageous or intriguing sound bites leading into a newscast. Nevertheless, they exist and are worth examining. One such example is the case of Bjorgolfsson v. Destination Boston Hotel d/b/a Nine Zero Hotel, John Doe & Bosworth Place, Inc. d/b/a Beantown Pub, 2006).

The Facts

In many respects, the facts of Bjorgolfsson are unremarkable. A young woman goes to a bar for the evening after dinner at home which included two glasses of wine. Once at the Beantown Pub, she specifically remembers ordering one glass of wine while sitting at the bar. She knows she had more, but not how much, though she does recall "that her glass was full throughout the evening" (Bjorgolfsson v. Destination Boston Hotel, et al., 2006). She spent much of her time at the pub playing pool with a gentleman she met there. As things turned out, he was Roger Zeghibe, the general manager and part owner of the Beantown Pub.

As the evening progressed, Bjorgolfsson realized two things: that she was intoxicated and that Zeghibe had "a sexual interest in her" (Bjorgolfsson v. Destination Boston Hotel, et al. 2006). The interest was not reciprocal, so at one point Bjorgolfsson excused herself to go to the restroom with the plan to thereafter leave the pub without Zeghibe noticing. Despite the fact that

she was so intoxicated she had trouble walking, she succeeded, got into her car and drove away. However, as she drove she realized that, in fact, she was too intoxicated to be driving. Consequently, she drove around the block returning to the same parking spot she used earlier in the evening after which she became ill and vomited. This continued for a short while.

The parking spot Bjorgolfsson used was located in an alley between the Beantown Pub and the Nine Zero Hotel. During the time Bjorgolfsson was being ill, employees of both the pub and hotel came out into the alley and "surrounded the vehicle" (Bjorgolfsson v. Destination Boston Hotel, et al., 2006). A pub employee took her car keys, told her "We do not want you to drive" and helped her move from the front to the back seat of her car (Bjorgolfsson v. Destination Boston Hotel, et al.). While he tried to talk her into letting him get her a cab, one of the employees from the hotel went to get her a bottle of water. When she rejected the cab idea, the pub employee then suggested she stay at the hotel for the night. She didn't want to do that either and decided to call 911 for police assistance. Before the police arrived, though it is unclear by whom, Bjorgolfsson was carried into the lobby of the Nine Zero Hotel. At this point, it is about 3 am.

One of the three employees working at the hotel in the early morning hours on the day of these events was MacArthur Belin, Jr. According to Bjorgolfsson, despite the hotel's policy against "checking in intoxicated persons during the overnight shift," Belin located Bjorgolffson's credit card, checked her in and used a luggage cart to transport her from the lobby to a guest room (Bjorgolfsson v. Destination Boston Hotel, et al., 2006). Further, Bjorgolffson contends that while taking her to the room, Belin said "Let me see your face, look up, you are beautiful" and that after arriving at the room, he removed her clothes without her consent (Bjorgolfsson v. Destination Boston Hotel, et al.). At some point another hotel employee, Shindo, arrived outside

Bjorgolfsson's room and heard her saying she needed something to vomit into. Shindo knocked on the door but didn't get an immediate response.

> After several minutes Belin finally answered the door. The plaintiff was lying prone on the bed, she did not have her top on, and her pants had been removed. After finally leaving the room with Shindo, Belin admitted to Shindo that he had removed the plaintiff's clothing. Despite this behavior, which Shindo described in his deposition as "inappropriate" he allowed Belin to again enter the plaintiff's room on at least two more occasions that evening. Over the course of the early morning hours of April 10, 2004, at least four entries to the plaintiff's room by hotel staff were recorded by the hotel's electronic door lock system. The plaintiff contends that during one of these entries, Belin raped her (Bjorgolfsson v. Destination Boston Hotel, et al., 2006).

When Bjorgolfsson woke up the next morning, she realized she had been raped. She contacted the hotel manager who called the police. Bjorgolfsson was taken to the New England Medical Center where she was treated for rape. Subsequently, she brought this negligence lawsuit against three defendants: Nine Zero Hotel, John Doe (later identified as MacArthur T. Belin, Jr.) and the Beantown Pub.

In response to the lawsuit, lawyers for the Beantown Pub filed a motion for summary judgment on the negligence case against the bar. In simple terms, a motion for summary judgment is used by a defendant to ask the court to declare, as a matter of law, that given the facts of the case, no law was broken. Framed in terms of negligence law, they argued that Bjorgolfsson's rape by an employee of the Nine Zero Hotel was not foreseeable by pub employees and therefore, the pub was not negligent (i.e., legally responsible) for what happened to her. The court agreed. The following examines the court's decision in the case against Beantown Pub. To do so requires beginning with an examination of the general rules of negligence law particularly in relation to the service of alcoholic beverages.

Negligence and the Service of Alcoholic Beverages

Historically, bars were not legally responsible for injuries suffered by intoxicated customers or others harmed by intoxicated customers. "The rationale for the common law rule was that it was not the furnishing of the liquor, but rather the voluntary consumption of it, which was the proximate cause of any resulting injuries" (Marino, 1998). Like most states, Massachusetts has abandoned that common law rule and now uses a fairly generic application of negligence law to determine whether liability exists for injuries related to bars serving alcoholic beverages. As described by the Massachusetts Court of Appeals in Christopher v. Father's Huddle, the current rule is as follows: "To be liable for negligent conduct, one must have failed to discharge a duty of care owed to the plaintiff, harm must have been reasonably foreseeable, and the breach or negligence must have been the proximate or legal cause of the plaintiff's injury" (Christopher v. Father's Huddle, 2003).

The Nature of the Duty Owed

Under negligence law, the duty owned to a plaintiff varies with the situation and the type of injuries sustained. In cases involving the consumption of alcoholic beverages, considerations include such factors as whether the plaintiff was the intoxicated customer or someone injured by an intoxicated customer; whether the injury occurred on or off the premises; and whether the injury was of a type and severity that was reasonably foreseeable. This duty extends to the protection of the public at large, for example, "where a drunken patron inflicts injuries on others by negligent driving after leaving the premises" (Adamian v. Three Sons, Inc., 1968; Cimino v. Milford Keg, Inc., 1982 and Christopher v. Father's Huddle, 2003).

An examination of cases involving liability for alcohol related injuries shows that they tend to follow similar patterns. As the Massachusetts Appeals Court pointed out: "There have

been two major groups of cases in which … behavior has been held sufficiently foreseeable as to warrant imposing liability on purveyors of alcoholic beverages. One is where injuries result from the acts of drunken patrons on premises, whether the drunk inflicts the injuries or is himself the injured party. The second group is where a drunken patron inflicts injuries on others by negligent driving after leaving the premises" (Westerback v. Harold F. LeClair Co., 2000).

As described earlier, the facts in Bjorgolfsson do not fit either of these more common patterns. In contrast, Bjorgolfsson is a case in which a drunken customer was the victim of a crime that not only occurred away from the business being sued but occurred at the hands of someone who was neither an employee nor another customer of that business. Looked at in this light, it is not surprising that the case was not settled by the bar, but proceeded to a pretrial motion for summary judgment.

Intoxicated Patrons and the Duty of Care

By Massachusetts statute, it is illegal for a licensed server to serve alcoholic beverages to an intoxicated person: "No alcoholic beverages shall be sold or delivered on any premises licensed under this chapter to an intoxicated person" (MGL c. 138, sec. 69). Further, in certain circumstances, licensed servers have a legal responsibility to protect customers from dangers posed by their own intoxication or that of others. For example, as the court explained in Christopher v. Father's Huddle, "The duty to protect patrons…does not require notice of intoxication, but may be triggered when conduct of another patron puts a tavern owner or its employees on notice that harm is imminent" (Christopher v. Father's Huddle, 2003). In other cases, the duty has been found to extend beyond the premises themselves, for example, when dealing with a "potentially dangerous patron" (O'Gorman v. Antonio Rubinaccio & Sons, 1990)

or "where the intoxication of a patron pedestrian leads to that patron's death away from the premises where alcohol was served" (Christopher v. Father's Huddle, 2003).

Based on the record in front of it, the court concluded that the evidence in Bjorgolfsson was sufficient "to establish that Beantown Pub negligently served her alcohol after she showed signs of visible intoxication" (Bjorgolfsson v. Destination Boston Hotel, et al., 2006). Having found this, the next issue the court needed to address was that of foreseeable harm: "In addition to its duty not to serve alcohol to visibly intoxicated patrons, a tavern has a duty of reasonable care to prevent foreseeable harm to its patrons" (Bjorgolfsson v. Destination Boston Hotel, et al.).

Foreseeability is Critical

The duty of care imposed by negligence law is not unlimited. The duty extends only to what is reasonably foreseeable. As explained by Jonathan Cardi in *Reconstructing Foreseeability*:

> Once the court has determined that the defendant owed a duty and has delimited that duty in a standard of care, the jury must then decide, in the context of breach, whether the defendant's conduct failed to conform to that standard. The near-universal standard of care in negligence cases is the duty to act as would have a reasonable person under the circumstances. Reasonableness often turns on (1) the degree of foreseeable likelihood that the defendant's actions might result in injury, (2) the range in severity of foreseeable injuries, and (3) the benefits and burdens of available precautions or alternative manners of conduct (Cardi, September, 2005).

Massachusetts courts have found that the duty to protect patrons extends to all reasonably foreseeable harm including, in some circumstances, harm that occurs not on the bar's premises, but some distance away from it. For example, a bar "has the duty to protect persons on or about the premises from the dangerous propensities of its patrons, served or unserved. When the bar

has served a potentially dangerous patron, the duty may extend beyond the premises" (O'Gorman v. Antonio Rubinaccio & Sons, 1990). And as noted earlier, this can extend to liability for a patron's injury "where the intoxication of a patron pedestrian leads to that patron's death away from the premises where alcohol was served" (Christopher v. Father's Huddle, 2003).

To be fully understood, the question of foreseeability must be viewed in relation to the issue of proximate cause (discussed in more detail later). Westerback v. Harold F. LeClair Co. (2000) provides a good example of how courts approach this interaction. In this case, Westerback had consumed approximately 10-12 twelve ounce bottles of beer during the course of a day. The court found that she was visibly intoxicated when she entered the defendant's tavern at 8:00 PM, where she then proceeded to consume an additional two drinks of hard alcohol and five twelve ounce beers over the next three to four hours. When she left the tavern at 11:30 PM, she was visibly intoxicated, including slurring her speech, having trouble walking, falling down, and acting both depressed and sleepy. When she left, she had to be helped to the door. Shortly afterwards, she was offered and accepted a ride home from two men who had noticed her stumbling down the street. After she was in their van, they drove her to a location where they beat and raped her, leaving her nude and abandoned in the woods. While at the hospital the next morning, her blood alcohol reading was .248. Her attackers pleaded guilty to criminal charges of aggravated rape, kidnapping, and mayhem, and were sentenced to prison. She later filed a negligence lawsuit against the bar owner, Harold F. LeClair Co. As the court stated, the primary issue in the case was whether the plaintiff's injuries were proximately caused by her being sold alcohol when she was visibly intoxicated.

The court in the Westerback case noted that under certain circumstances, bar owners are liable for injuries resulting from intoxication. For example, liability will be imposed where a person is injured on the premises by the actions of an intoxicated person (whether the intoxicated person injures himself or another); or where the intoxicated patron causes injury to others by negligent driving after leaving the premises. Generally speaking, both are reasonably foreseeable. Further, the court acknowledged that a bar owner's duty to protect patrons extends to all reasonably foreseeable harm including, in some circumstances, harm that occurs at some distance from the premises (Westerback v. Harold F. LeClair Co. , 2000).

In the context of serving alcoholic beverages, this is consistent with the factors generally considered when evaluating the facts of a case relevant to the issue of foreseeability. As explained by Cardi (September, 2005):

> Together, the range of likelihood and severity of foreseeable injury constitutes the foreseeable "risk" created by an actor's conduct. As a general matter, the higher the risk -- that is, the more foreseeable it was that injury might result from particular behavior and the more severe the range of foreseeable injuries -- the more careful the defendant is required to have been. This form of foreseeability is one of general focus. That is, it examines not the foreseeability of the particular injury suffered by the plaintiff, but the foreseeable likelihood and severity of injuries that might have resulted from the defendant's conduct (Cardi, 2005).

Proximate Cause

After it has been determined that a duty of care is owed, that the duty of care has been breached, and that an injury to the plaintiff has occurred, the court must then decide if the breach has been the proximate cause of the injury. Proximate cause is the element of negligence that attempts to answer the question—how far should liability extend? Cardi (April, 2005) explains it this way:

> This element of negligence serves to limit the consequences of an actor's conduct. Through proximate cause, courts recognize that although the consequences of an act go forward to eternity, ... any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would set society on edge and fill the courts with endless litigation. Proximate cause thus focuses on the nature and extent of the connection between a defendant's unreasonable conduct and the plaintiff's injury and cuts off liability at the point where the harm that resulted from the defendant's negligence is so clearly outside the risks created that it would be unjust or at least impractical to impose liability.

In the Westerback case, the court examined precisely this question in relation to the criminal acts of the rapists.

> Generally, the act of a third person in committing an intentional tort constitutes a superseding cause of harm to another resulting therefrom, even though the actor's conduct created a situation which afforded an opportunity to the third person to commit such a tort or a crime. However, liability will be imposed where the actor realized, or should have realized, the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit a crime. The specific kind of harm need not be foreseeable provided it was foreseeable that there would be violence toward others (Westerback v. Harold F. LeClair Co., 2000).

The Westerback court concluded that proximate cause did not exist and therefore, the bar was not responsible for the rape of Westerback that occurred off the bar's property.

> We are aware of no Massachusetts appellate decision holding that a tavern owner may be found liable for an intoxicated patron's injuries that were caused by a criminal act perpetrated off the tavern premises by individuals with no connection to the tavern. Most decisions in which proprietors have been held liable to their patrons for criminal acts of others are those in which the proprietor fails to provide reasonably needed security precautions in or just outside the premises, thus laying patrons or their property open to injury or loss (Westerback v. Harold F. LeClair Co., 2000).

Proximate Cause: A Question of Fact or a Question of Law?

The question of whether proximate cause does or does not exist in a specific case is always a vexing question. It is a question that is answered only by examining the specific facts of a specific case. It is for this reason that foreseeability and proximate cause are usually

questions of fact for the jury (Restatement (Second) of Torts § 453 comment b (1965)). Like most other states, Massachusetts usually follows this general rule. As noted by the Massachusetts Appellate Court in Christopher v. Father's Huddle (2003), "The question of the proximate cause of the plaintiff's injury is one for the jury". In addition, the court went on to explain that:

> The question whether the risk of injury was foreseeable is almost always one of fact. The specific kind of harm need not be foreseeable as long as it was foreseeable that there would be harm from the act which constituted the negligence, provided it was foreseeable that there would be violence toward others. In these circumstances, we defer to the determination of a properly instructed jury (Christopher v. Father's Huddle, 2003).

Despite the fact that this is the prevailing rule that is followed in most cases, like many rules of law, it is not absolute. As explained by the Westerback court, “Questions of reasonable foreseeability are ordinarily left to the jury, but the judge may properly decide them as a question of law where the harm suffered, although within the range of human experience, is sufficiently remote in everyday life as not to require special precautions for the protection of patrons” (Westerback v. Harold F. LeClair Co., 2000).

While questions such as whether a particular issue is determined by a judge or a jury may seem to be little more than technicalities that are interesting only to lawyers, they can be critical to the course of a lawsuit. If only a jury is allowed to resolve a particular issue, the case must proceed to trial. This incurs costs, financial and otherwise, for everyone involved—even a defendant who ultimately wins. On the other hand, if a judge can resolve the same issue before trial, a winning defendant has saved time and money not to mention the aggravation and stress that typically accompany any litigation. By some measure, it is a small technical question. Nevertheless, the outcome can have a significant impact on the lawsuit and the parties involved.

This proved to be true in the Bjorgolfsson case as the judge followed the logic in Westerback when he decided to resolve the question of foreseeability as a matter of law.

> Although summary judgment is seldom granted in negligence actions, it is appropriate if a plaintiff has no reasonable expectation of proving that 'the injury to the plaintiff was a foreseeable result of the defendant's negligent conduct.' In addition, while 'questions reasonable foreseeability are ordinarily left to the jury…the judge may properly decide them as a question of law where the harm suffered, although within the range of human experience, is sufficiently remote in everyday life as not to require special precautions for the protection of patrons' (Bjorgolfsson v. Destination Boston Hotel, et al, 2006).

In the following, the Bjorgolfsson court's ruling on foreseeability will be examined.

Focus on Foreseeability

In its simplest terms, Bjorgolfsson's claim against the Beantown Pub is straightforward. She was served too much wine while at the pub and the employees should have exercised greater care in protecting her from harm. They didn't and she suffered harm as a result. Interestingly, as is made clear by the facts recited in the Superior Court's decision, the employees did not ignore her intoxicated state. They did come to her aid. Nevertheless, Bjorgolfsson's negligence case against the pub maintains they didn't do enough. They correctly foresaw that she was in no condition to drive and assisted in preventing her from doing so. While one might second guess the wisdom of deciding to not wait for the police Bjorgolfsson herself had called, it was in the early morning hours. It is easy to imagine, for example, they suspected it might take quite some time for the police to respond to a non-emergency situation. Further, they had another option. She could stay in the hotel across the street. Electing to go with the hotel across the street option turned out to be pivotal in the court's ruling. Before examining that more closely, however, it needs to be placed in the broader context of the general rules of negligence law.

As discussed earlier, in very general terms, negligence law requires people to behave reasonably toward the goal or protecting others from unreasonable risk of harm. Nevertheless, that responsibility goes only so far. In contrast, for example, there is no corresponding duty requiring people to "protect an individual from the wrongful acts of another" (Rooney, 1995). That is, while people are required to behave reasonably themselves, this does not automatically include any responsibility to intervene when someone else fails to do so. Deviations from these general propositions of negligence law do arise but only after it is established that some kind of "special relationship" exists between the parties and is recognized as creating an obligation on the part of one party to come to the aid in protecting the other.

Albeit in a different context, that of a landlord-tenant relationship, one of the leading cases in this area is Kline v. 1500 Massachusetts Avenue Apartment Corporation, et al.(1970). Like Bjorgolfsson, Kline involved a rape. In the district court's ruling in Kline, the court ruled in favor of the landlord on the grounds that the landlord had no duty to protect Kline from such an assault perpetrated by a third party. The Circuit Court of Appeals disagreed. Much of the appellate decision focused on the question of foreseeability. Citing other cases in which liability was imposed even though the injuries were caused by the "wrongful act of another," the court explained the rationale for imposing such responsibility.

> In all, the theory of liability is essentially the same: that since the ability of one of the parties to provide for his own protection has been limited in some way by his submission to the control of the other, a duty should be imposed upon the one possessing control (and thus the power to act) to take reasonable precautions to protect the other one from assaults by third parties which, at least, could reasonably have been anticipated. However, there is no liability normally imposed upon the one having the power to act if the violence is sudden and unexpected provided that the source of the violence is not an employee of the one in control (Kline v. 1500 Massachusetts Ave. Apartment Corp., 1970).

Later in the decision, the court points out that the legal standard for determining what is "*foreseeable"* differs from merely identifying what might be "*possible"* (Kline v. 1500 Massachusetts Ave. Apartment Corp., 1970). It would be folly to impose liability for mere possibilities. But we must reach the question of liability for attacks which are foreseeable in the sense that they are *probable* and *predictable*" (Kline v. 1500 Massachusetts Ave. Apartment Corp., 1970). Using this logic, the Kline court found the landlord responsible for Kline's rape by a third party. Not only had the landlord reduced security at the apartment building, the landlord was aware of increased rates of crime at the property including precisely the type of crime perpetrated against Kline. It was foreseeable because it was likely to happen again.

Foreseeability in Bjorgolffson

The Bjorgolfsson court concluded that it should determine whether Bjorgolfsson's rape was foreseeable by Beantown Pub's employees. In doing so, it cited Westerback as a precedent noting that a "judge may properly decide [foreseeability] as a question of law where the harm suffered, although within the range of human experience, is sufficiently remote in everyday life as not to require precautions for the protection of patrons" (Bjorgolfsson v. Destination Boston Hotel, et al., 2006).

In its most general terms, intoxicated customers pose potential risks of two and somewhat opposite types. There is a risk their intoxication will somehow lead them to harm others, while simultaneously there is a risk that the vulnerability created by their intoxication places them at risk for being harmed *by* others. Bjorgolfsson fell into the latter category. Her intoxication left her in a vulnerable state that ultimately led to her rape.

Nevertheless, just because the intoxication left her in a vulnerable condition that resulted in her rape does not mean the employees of Beantown Pub were negligent. As the court noted in Kline, for an attack to be *foreseeable*, it must be *probable* and *predictable*, not merely *possible* (Kline v. 1500 Massachusetts Ave. Apartment Corp., 1970). In this case, the court pointed out that it was reasonable to "assume that Beantown Pub [employees] know or should have known that the plaintiff's intoxicated state put her in danger of asphyxiation on her own vomit. Furthermore…that Nine Zero's treatment of the plaintiff, by wheeling her into the hotel on a luggage cart, put her in danger of falling and injuring herself. Nevertheless, such injuries are hardly 'of the same general character' as the assault and rape by Belin. … no one from Beantown Pub had any reason to believe that Belin or any other Nine Zero employee intended to be violent towards [Bjorgolfsson] or harm her in any way" (Bjorgolfsson v. Destination Boston Hotel, et al., 2006). Consequently, while the case against the hotel remains, the case against the Beantown Pub is over.

Conclusion

Media accounts of lawsuits and the legal system tend to focus on the things that are attention grabbing (or can be made to sound that way). And advertising from groups that have an interest in the legal system (such as—but certainly not limited to—the insurance industry) oftentimes has a slant on the perspective offered. There is not necessarily anything wrong with that. But it is a mistake to over generalize from that kind of limited information and points of view. The legal system does work—sometimes quite well and very rationally. Bjorgolfsson v. Destination Boston Hotel, et al., is an example of precisely that. It is tort law at its rational best. It is tort law in no need of tort reform.

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