Sindell (1980). Focus on the majority opinion (pp. 7–19) and read the dissenting opinion (pp. 19-24) if you’ve got time.

(pp. 7-10) Background. No need to understand the details, but make sure you understand what the disputed fact is.

(section I: pp. 10–13) Discussion of plaintiff’s first claim based on Summers theory. Why does the court think that the Summers theory cannot be applied to the instant case?

(section II: pp. 13–15) Discussion of “concert of action” theory. You may skip this part.

(section III: pp. 15–17) Discussion of industry-wide or enterprise liability theory. Why does the court think that this theory cannot be applied to the instant case (pp. 16,17)?

(section IV: pp. 17-19) Presentation of the Sindell market share liability theory. Read carefully!

(dissenting opinion: pp. 19–24) Read at least the top two paragraphs on page 22.

Schmalbeck (1986). This is a response to Thomson’s article. It might be of interest to know that while Thomson is a moral philosopher, Schmalbeck is a legal scholar.

(section I pp. 221-223) Recapitulation of Thomson’s hypotheticals.

(section II: pp. 223–225) Here the author urges us to think beyond the epistemological question of whether the defendant caused the harm. How would a court ruling in favour of the defendant affect the plaintiff? And how would it affect future civil proceedings?

(section III: pp. 225–231) Three reasons to be careful with statistical evidence (confidence; parts/whole; mistrust).

(section IV: pp. 231-235) Criticism of Thomson’s causality account. The key criticism is on page 232. Interesting IRS example on pp. 234,235.

(section V: pp. 235-end) You may skip this part.

Response paper. In the response paper for this week, you are required to do *two* things.

First. The Sindell Court distinguishes four (actually five) theories of civil liability: (1) standard causality requirement; (2) Summers theory; (3) enterprise liability, (4) extension of Summers. The Court examines these theories and concludes that (4) should be applied in Sindell. Give a brief description of each theory (a few lines for each theory should suffice). Further, summarize the Court’s reasoning for using theory (4). Why didn’t the Court apply Summers theory?

Second. You have two options here. Option 1. What is Schmalbeck’s criticism of Thomson’s definition of individualized evidence (p. 232, in particular)? Option 2. Why does Schmalbeck think that Thomson’s hypotheticals are only “superficially troubling”? What does the IRS example (p. 234) tell us?