

MISREPRESENTATION OF HIV TRANSMISSION RISK IN INTIMATE RELATIONSHIPS

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No court has spoken directly on whether a plaintiff can maintain an action for fraudulent misrepresentation of positive HIV status that results in the plaintiff having to seek preventative treatment. This Article will argue by analogy to case law that involve the actual transmission of HIV. Arguably, causation arises because the defendant misrepresented the risk of HIV transmission when asked by the plaintiff about HIV status, prior testing information, and sexual history. Damages may result from experiencing severe and unpleasant side effects after having to take HIV prophylactic medication. Section II presents several cases that illustrate the historical legal treatment of tortious transmission of Sexually Transmitted Diseases (“STDs”). Section III discusses the facts of the hypothetical scenario contemplated by this Article, and argues by analogy to the aforementioned case law regarding the viability of a cause of action for fraudulent misrepresentation in sexual relations resulting in the plaintiff having

to seek preventing medical treatment. This Article briefly discusses possible defenses to such a cause of action. In sum, this Article attempts to provide a framework upon which an aggrieved party may construct a prima facie cause of action. Whether a court is willing to entertain the same will almost certainly depend on the specific facts.