Torts Chapter 15 outline for Midterm Negligence: Legal/Proximate Cause

Scope of Liability (Proximate Cause)

Definition page 337

Third Restatement - While scope of liability is an element of the prima facie case, facts beyond those established for other elements of the tort are almost never involved, because usually the P’s harm is within the scope of D’s liability and requires no further attention. This means that the element operates “more like an affirmative defense, although formally is not one.”

CENTRAL TO PROX CAUSE IS **FORESEEABILITY**

**Balancing Test**

**Court weighs the foreseeable of harm.**

**Probability is the standard, big difference between probability versus possibility**

**Duty is decided by the balancing test**

**Gravity of the harm**

**One owes a duty of reasonable care**

FACTUAL CAUSE IS AN ENTIRELY SEPARATE ELEMENT.

**Proximate cause rules are among those that seek to determine the appropriate scope of a neg D’s liability**.

**Central goal** = to limit the D’s liability to the kinds of harms he risked by his neg conduct.

Proximate cause issue = the appropriate scope of legal responsibility. This does not arise until neg and factual cause have been proven.

EX: surgeon performs a vasectomy but was neg and patient fathers a child. The child at age 13 sets fire to the P’s barn. Is surgeon liable for barn fire? No, the surgeon’s neg was not a proximate cause of the harm.

EX: D neg manufactures a vacuum. Purchaser takes it to the shop when it isn’t working. The purchaser is struck by a car while crossing the street with the vacuum and is injured. The manufacturer was neg, but-for the neg, the purchaser would have had to go to the shop with the vacuum. The D’s neg did not create or increase the risk of injury in a vehicular collision.

**Foreseeability Test**

A neg D is liable for all the general kinds of harms he foreseeably risked by his neg conduct and to the class of persons he put at risk by that conduct.

Several wrongdoers are frequently proximate causes of harm. In that case, all are liable either jointly or **severally** or on the basis of the comparative fault shares**.**

**Second person or a new force unforeseeably intervenes – second actor**

The second actor’s unforeseeable conduct = superceding cause.

Courts will ask where the intervening cause itself was foreseeable rather than asking whether the general type of harm was foreseeable.

The D’s liability is limited to those harms risked by his neg, so that he escapes liability altogether for those harms that were not reasonably foreseeable at the time he acted.

**Reasons for Scope of Liability**

Practical concerns – harms could go on forever – line must be drawn somewhere.

Scope of Liability cases are not limited to neg cases.

Neg rules say that the D is free to ignore risks (foreseeable harms) that a reasonable person would ignore.

EX: D parks his car on the street in a no parking zone. This conduct is neg but a car parked there does not neg create a risk to an able-bodied pedestrian. Courts most likely will say the driver is not a proximate cause even though the risks made it neg to park there.

**Language**

**The D must have been reasonably able to foresee the kind of harm that was actually suffered by the P (or in some cases, to foresee the harm might come about through intervention of others). The D is not liable merely b/c he could foresee harm; the harm must be the kind that he should have avoided by acting more carefully.**

**The harm suffered by the P must have been within the scope of the risk the D neg created.**

**Courts say for P to prove proximate cause must:**

1. show factual cause
2. that the general type of harm was foreseeable

**Breach of Duty page 342**

The issue of prox cause does not arise at all unless the D is neg in a way that can be identified.

A reasonable person would have taken some precautions against such harm.

EX: neg issues only – keys in the car. If you leave your keys in the car may be foolish but not neg. If your car was stolen and a person is injured by your car, you would have had to foreseen the thief and his reckless driving. Usually the worse that would happen would be your loss of the car, not an injury to another.

**Relation to Duty**

Sometimes courts will limit the liability of a neg D by holding that the D owes no duty to the P or that the D owes only a duty not to be grossly or wantonly neg.

1. **whether duty is owed is a question of law, while the scope of liability issue is for the jury**
2. **duty rules are categorical and abstract while scope of liability or prox cause decisions are fact-specific**

Courts may hold that social hosts may continue to serve alcohol to a guest long after he is intoxicated in spite of the fact that he will foreseeably drive neg and cause injuries.

Simplification by extending duty issues

Courts treat stand-alone emotional distress differently than physical injuries.

Patterns and Formal Tests of Scope of Liability

Direct Harm – A creates a risk of harm, but a totally different type of harm comes to B

Ex: A drops a banana peel, B doesn’t slip on it but hurts her back picking it up. Courts would ask whether this type of harm was foreseeable

Intervening cause pattern – D drops the banana peel, P slips but only b/c a purse snatcher pushes her as he grabs her purse. New cause that superceded the neg of the banana peel pg 345

Formal tests –

**Definition** Prox Cause - prox cause of an injury is one which, in a natural and continuous sequence, without any efficient intervening cause, produces the injury.

Now reduced to being called a foreseeability test.

If a P’s injury is triggered by a new or intervening cause - one arising AFTER the D’s neg act – courts may conclude that the new cause is a SUPERCEDING cause and that the D is relieved of liability

Wagon Mound illustration – page 347 – type of harm risked

Ship neg discharge oil into the water while at the harbor, no risk of fire but still harmful. But, a piece of debris caught fire that was started by a welder’s spark and the P’s dock was burned.

Court said D should not be liable for the unseen harm caused by the fire.

**RESCUERS**

D who who neg to A may be liable to an injured rescuer, B, so long as B’s actions are not wholly abnormal or hopeless The D’s neg is a prox cause of the rescuer’s injury and the rescuer’s natural heroism in not a superceding cause. B may recover for injury incurred in a reasonable rescue attempt if the D neg created an appearance that rescue was needed when it was not.

Physical risks of harm are in the same general category as risks of physical harm to persons.

If a man neg sets fire to your house, he is held liable for harm to its occupants, even if he had every assurance that the house was empty at the time.

Polemis case - page 350

Leading case – the D would be liable for all harms directly caused, whether foreseeable or not. Stevedore places a plank across a hatchway. A sling disclodges and falls into the hold. Flames erupt, fire consumes the ship. This case was eventually overruled by the Wagon Mound decision.

1. D creates a risk to A, he is held liable not only for harm to A but also to rescuers who come to A’s aid
2. P who is unusually susceptible to injury, and for that reason, suffers more harm than an ordinary person – EGGSHELL SKULL RULE – the D is liable for the general type of harm he foreseeably put at risk, even if that harm is greater in degree than could be expected
3. A carrier of goods neg delayed delivery to the consignee, it would be held liable for any harm that befell the delayed goods, even if that harm resulted from an unforeseeable force of nature over which the carrier had no control.

INTERVENING CAUSE PATTERN/SUPERCEDING CAUSE ANALYSIS page 351

**If the first actor neg creates a risk and the 2nd actor neg triggers the risk, both actors are tortfeasors, both are causes of the harm and both are commonly held liable to the P under the rules of joint and several liability or comparative fault shares.**

An intervening cause is a new cause that comes into play after the D’s neg conduct. If the intervening force is in operation at the time the D acted, it is not an intervening cause at all.

EX: the D sets a fire when the wind is blowing, he cannot avoid liability when the wind carries the fire to the P’s house. The wind as a force is not an intervening cause.

Superceding Causes - page 352

If courts perceive an intervening act or force as triggering an injury, the D’s original neg is still one of the prox causes of harm if the D’s conduct led to the P’s injury in a continuous sequence, uninterrupted by an efficient or independent intervening cause.

BUT, if the trier of fact believes the intervening cause is the ONLY prox cause b/c it is the efficient or immediate cause, then the intervening cause will be called a superceding cause and the D will not be liable.

Page 353

THE ultimate inquiry is whether the intervening cause is foreseeable or whether the injury is within the scope of the risk negligently created by the D.

EX: P working for a company sealing gas mains with boiling enamel. Contractor puts P to work at one end of the street where he was exposed to traffic. A driver suffered a seizure and ran into the P causing severe injury. The risk to the P was foreseeable even if the driver’s seizure was not.

Extent of Harm – Foreseeability General Rule page 355

**The Risk Rule** holds the D subject to Liability if he could reasonably foresee the nature of the harm done, even if the total amount of harm turned out to be quite unforeseeably large.

Ex: D neg operates a boat, the P’s stamp collection is washed overboard and lost. The D is liable for the loss of the collection.

**The Thin-skull or Eggshell-skull Rule**

The D is held liable for the foreseeable harms even when the amount of harm is not foreseeable. D hits P and P has an unusually thin skull. P is entitled to recover for all harm done, even though the fractured skull was not foreseeable.

**THE COURTS SAY TAKE THE PLAINTIFF AS HE FINDS HER.**

**A variant of this rule is that the D is liable for aggravation of preexisting injuries or conditions.**

**1. The thin-skull rule merely holds that the D is liable for the unforeseeable aggravation of that preexisting condition, not the condition itself.**

**2. The rule applies only to the scope of liability issue, not to the neg issue. It does not require the D to exercise special care for an unforeseeably vulnerable P. The D only need exercise ordinary care to prevent foreseeable harms. The thin-skull rule comes into play only when the D’s conduct would put normal people at risk.**

**Injury remote in time or distance –** page 360

In emotional harm cases, courts frequently require the P to be nearby and to witness the injury before the P can recover for emotional distress.

**“Come to rest” -** Ex: P trips over a piece of equipment brought to an accident by an investigator after the D’s neg caused the accident. Passage of time has brought the D’s neg to “come to rest.”

**Zone –** ex: motorist runs into utility pole, causes power outage 2 miles away. Court said the zone of foreseeable danger in an auto accident “encompasses the area immediately surrounding the accident scene This includes those areas which are unsafe b/c of the downed power lines or property which may have been directly damaged by an electric pole falling upon it” but not a power loss miles away.

**Intervening Criminal Acts** – page 361

If an intervening and unforeseeable intentional harm or criminal act triggers the injury to the P, the criminal act is ordinarily called a superceding cause with the result that the D negligently creates the opportunity for such acts escapes liability.

EX: Lessor of an auto failed to check the lessee’s driving record and leases the car to A. A loans the car to B who then loans it improperly to C. C has a bad driving record and injures P while driving under the influence. C’s criminal act is the superceding cause so lessor is not liable.

**NO DUTY RULES** – page 364

Courts have said in the absence of a special relationship, the D simply owes no duty to take affirmative action to protect the P from a 3rd person.

**INTERVENING FORCES OF NATURE**  page 365-366

Acts of God – Natural forces almost never create issues of scope of liability as distince from issues of factual cause.

Ex: D starts a fire in his field, wind rises, spread to P’s house. Jury would have to find him neg if the wind and the fire were foreseeable.

Ex: doctor fails to tell patient his disease is contagious. Was foreseeable that it could spread. Cannot avoid liability to others.

**ENTRUSTMENT –** page 367

Ex: dangerous weapon – D’s neg in allowing an unsafe user to have access

Injury Outside the Risk

Sheehan v City of New York – bus stops at an intersection but did not pull to curb. Bus struck from behind when a truck’s brakes failed. Passenger on the bus was injured. Truck was a superceding cause. No special risks to passengers by not pulling to curb.

Termination of the Risk – page 370-371

A tortfeasor may be liable for injuries inflicted by a health care provider in treating the first injury and also for second injuries resulting b/c of the weakness caused by the first injury.

Prox Cause – NO DUTY RULE

1. Alcohol Providers – the drinker, not the provider is the sole prox cause. But some of these rules have changed as courts recognize the issue is not one of scope of liability but of duty

2. Suicide /Failure to protect the P from herself. Courts often hold the person who committed suicide is the “sole prox cause.” Exception: the neg D would liable for suicide if the D’s neg caused the insanity in the victim, who then committed suicide as a result from the insanity.

There is a duty for suicidal patients in a hospital or jail.

3.Emotional Harm

4. Economic Harm – D cuts off supply of electricity to a factory, workers lose a days pay

Exxon v Sofec case – page 374

Tanker ship broke away from D’s moorings. The D’s may have been responsible. The ship’s captain was able get past perils and get to sea. At sea he ran aground. Exxon was denied a recovery against the Ds. The captain’s neg was a superceding cause.

**Joint and Several Liability page 375**

Allocates responsibility among tortfeasors

In intervening cause cases, the all-or-nothing rule is no longer the only method for allocating responsibility. Courts can allocate a portion of responsibility to each of several Ds. **Courts can now say that both tortfeasor A and tortfeasor B are prox causes and impose liability, either jointly or severally or according to their comparative fault.**

**Now the P who would have been barred for even a slight contributory neg may be awarded damages against the D reduced to reflect her fault.**

**Cases for this chapter**

*Caldwell v. Ford Motor Co.*

In this products liability case, Ford Motor Company appeals a verdict of damages for personal injuries for $150,000.00 awarded by a jury to plaintiff on the theory of strict liability against Ford Motor Co., the manufacturer of a pickup truck.

Plaintiff Caldwell is a home builder and was in the process of transporting a load of building materials to a job site when his truck suddenly caught fire. Plaintiff was injured while hurriedly unloading the building materials from the bed of his newly-purchased Ford pickup truck, after the fire had broken out in the engine area of the truck. The injury occurred as plaintiff was pulling a 57 pound piece of siding from the truck and he experienced a severe pain in his back which brought him to his knees. He suffered a ruptured intervertebral disc with resulting permanent partial disability.

We resolve the issues raised on appeal against Ford Motor Company and affirm the judgment, and remand the case to the trial court with costs incident to the appeal assessed against appellant, Ford Motor Company.

SANDERS, J., and GEORGE F. McCANLESS, Special Judge, concur.

NOTES

[1] (a) A manufacturer or seller of a product shall not be liable for any injury to person or property caused by the product unless the product is determined to be in a defective condition or unreasonably dangerous... .

*Roe v. Catholic Diocese of Memphis, Inc.*

On July 16, 1993, Robert and Jean Roe filed a complaint individually and as next friend for their son, John Roe, against St. Paul's. The complaint avers the following facts. John Roe, a four-year-old boy, was enrolled in the preschool day care program at St. Paul's from August 1991 to May 21, 1993. On May 21, 1993, John Roe asked permission to go to the restroom which was located down the hall out of the sight and hearing of the teacher. While John Roe was in the restroom, Jimmy Doe, a four-year-old classmate, was allowed to leave the room to get a drink of water at the fountain near the restroom. Jimmy Doe entered the restroom and sexually assaulted and molested John Roe. Neither child was supervised by an adult while they were absent from the classroom.

The Roes allege that St. Paul's was negligent in its care and supervision with respect to John Roe, both under the common law and in violation of the minimum standards for child care established by the Tennessee Department of Education. The Roes also allege breach of contract, outrageous conduct, and intentional infliction of emotional distress.

The Roes argue that the trial court interpreted the question of foreseeability too narrowly. The Roes claim that scuffles or pushing and shoving between two preschool boys are foreseeable, and therefore, the injury in this case is foreseeable. However, the injuries that result from a scuffle are different from the injuries alleged in the complaint. The Roes alleged severe and irreparable emotional and physical damage. These are the types of injuries that result from a sexual assault, not a scuffle or pushing and shoving. We believe that these types of injuries, and the acts that produced them, were unforeseeable to St. Paul's.

We conclude that St. Paul's could not have foreseen the "general manner in which the injury . . . occurred." *McClenahan,* [806 S.W.2d at 775](https://casetext.com/case/mcclenahan-v-cooley#p775). The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellants.

*McClenahan v. Cooley - Tenn. Code Ann. No application to vehicles left unattended in privately owned parking lots.*

 P filed a wrongful death against Cooley. Cooley had left his keys in his car in a public parking lot while he entered a bank. Thief drove off, police gave chase, car ran into McClenahan’s wife’s car who was pregnant. His wife, the baby and a child were killed. An intervening act is not a superceding cause breaking the causal connection between neg conduct and resulting injury if:

1). Reasonably forseeable and 2.) a substantial factor in bringing about the harm

The trial court dismissed but was reversed in appeal.

**Important Facts about McClenahan**

**For P to win a neg action they must establish:**

1. **duty of care owed by the D to the P**
2. **that the D’s conduct fell below the applicable standard of care, resulting in a breach of duty**
3. **an injury or loss**
4. **causation in fact**
5. **arguably the most important, proximate or legal causation**