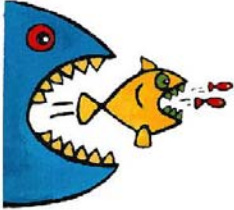


Proximate Cause



Torts I
Professor Hensel
11/3/09

Enterprise / Market Share Liability

Sindell v. Abbott Laboratories

- * Enterprise Liability
- * Market Share Liability
- * Apportionment of Damages
- * Availability of MS Liability



Cause in Fact Hypotheticals

An apartment manager, A, negligently leaves the Plaintiff's door unlocked after checking the apartment. The security guard, B, who is required to check all doors, negligently omits to check this one. Later that night, a thief walks in the unlocked door and steals P's stereo & jewelry.




Is cause in fact satisfied against A? B?

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A three-year-old boy was badly mauled by an unidentified dog. Investigation reveals that it was probably a German shepherd, but no direct eyewitness is available. One German Shepherd lives next door owned by A, and one GS lives across the street owned by B. Both are allowed to roam free in violation of the leash law.

Can P establish causation against A? B?



GEORGIA STATE UNIVERSITY **LAW**

Molly, a resident of a small town in Georgia, recently was in a car accident that led to lower back and stomach pain. She consulted Dr. X for help. Dr. X recommended that P take a series of X-rays to determine whether or not she had any bone fractures causing her difficulties. The doctor did not ask her whether she was pregnant, which is standard practice in Georgia. Plaintiff later learned that she was pregnant and that the x-rays might have injured her fetus. She terminated the pregnancy and brought suit for negligence. **Evaluate her chances of success.**




GEORGIA STATE UNIVERSITY **LAW**

Negligence Cause of Action

1. Duty
2. Breach
3. Causation
 - A. Cause In Fact
 - B. Proximate Cause**
4. Damages

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PROXIMATE CAUSE



Atlantic Coast Line R. Co. v. Daniels


- * Proximate Cause vs. Cause-in-Fact
- * Terminology of the Restatement

GEORGIA STATE UNIVERSITY LAW

“Remote” Consequences

Ryan v. New York Central RR Co.

- * “Remote” Causation
- * Policy Arguments
- * Applicability of This Precedent



GEORGIA STATE UNIVERSITY LAW

Problems in Proximate Cause:


1. Unforeseeable **EXTENT** of Harm;
2. Unforeseeable **TYPE** of Harm;
3. Unforeseeable **MANNER** in which the Harm Arises; and
4. Unforeseeable **PLAINTIFF**.

GEORGIA STATE LAW

Unforeseeable EXTENT of Harm:

The "Eggshell" Plaintiff

Bartolone v. Jeckovich



- * Liability for pre-existing conditions
- * Policy Rationales
- * Application to Non-Physical Characteristics of Plaintiff

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Approaches to Proximate Cause


Unforeseen EXTENT of Harm:

Eggshell Plaintiff: D is liable for all consequences flowing from a physical injury whether or not the consequences were foreseeable.

D must take the P as he finds him.

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Proximate Cause




Torts I
Professor Hensel
11/5/09

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Unforeseeable EXTENT of Harm:

The "Eggshell" Plaintiff

Bartolone v. Jeckovich



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GEORGIA STATE UNIVERSITY LAW

Approaches to Proximate Cause

Unforeseen EXTENT of Harm:

Eggshell Plaintiff: D is liable for all consequences flowing from a physical injury whether or not the consequences were foreseeable.

D must take the P as he finds him.


GEORGIA STATE UNIVERSITY LAW

Unforeseeable TYPE of Harm:

Direct causation approach

In re Arbitration Between Polemis and Furness, Withy & Co., Ltd.

- * The Significance of the Type of Harm
- * Policy Rationales
- * Direct Causation Approach



GEORGIA STATE UNIVERSITY **LAW**

Approaches to Proximate Cause:

Unforeseen TYPE of Harm

(1) **Direct Consequences:** D liable for all direct consequences of harm, where some harm of any kind was foreseeable. (Polemis)

Unforeseeable Type of Harm:

Scope of the Risk Approach

Overseas Tankship Ltd. V. Miller Steamship
("Wagon Mound 1")

- * The Significance of the Type of Harm
- * Policy Arguments
- * Relationship between Liability Imposed and the Risk Created by Defendant
- * Significance of the Manner in which the Harm is Imposed

GEORGIA STATE UNIVERSITY **LAW**

Approaches to Proximate Cause:

Unforeseen TYPE of Harm

(1) **Direct Consequences:** D liable for all direct consequences of harm, where some harm of any kind was foreseeable (Polemis)

(2) **Harm within the Scope of the Risk:**
D liable only if the particular TYPE of harm was foreseeable & thus within the scope of the risk of the negligent conduct. (Wagon Mound 1)

Ask: Why was the conduct risky in the first place?

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Approaches to Proximate Cause:

Unforeseen MANNER of Harm


If the **TYPE** of harm is foreseeable, the **MANNER** in which it comes about does **NOT** need to be foreseeable.

GEORGIA STATE UNIVERSITY **LAW**

Unforeseeable Type of Harm:
Magnitude of the Risk

Overseas Tankship Ltd. v. Miller Steamship
 (WagonMound 2)

- * Relationship between Probability and Foreseeability
- * Policy Concerns



GEORGIA STATE UNIVERSITY **LAW**

Unforeseen Type of Harm

(1) **Direct Consequences:** D liable for all direct consequences of harm, where some harm of any kind was foreseeable (Polemis)

(2) **Harm within the Scope of the Risk:**
 D liable only if the particular type of harm was foreseeable (Wagon Mound 1)

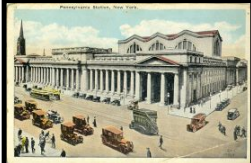
If a type of injury is known to be possible, the fact that it is unlikely to happen does not make it unforeseeable if a reasonable man would have prevented the risk. (Wagon Mound 2)

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Unforeseeable Plaintiffs

Palsgraf v. Long Island R.R. Co.

- * The "Foreseeable" Plaintiff
- * The "Zone of Danger" Approach
- * "Natural & Continuous Sequence" Approach



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Unforeseen Plaintiff (Palsgraf)

(1) **Plaintiff Within Scope of the Risk:**
liable to persons whose injuries are of the general type that made D's conduct unreasonable in the first place IF those persons were within the zone of foreseeable risk (Cardozo)

(2) **Unbroken, Natural Sequence:**
liable to all persons whose harm arises from an unbroken, natural sequence of events started by defendant's act, w/o the intervention of active external forces. (Andrews)
