

## 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?**

## 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.

## 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)

## 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.**

## HYPOTHETICAL #1

E is D's employee. One winter day, D instructs E to clean his machines with gasoline in an enclosed room. The room is heated by a heater with an open flame. A resident rat is hiding under one of the machines and gets doused with the gas. In a panic, it runs toward the heater, catches fire, and runs back to the machine. The room explodes, killing E.

## Hypothetical #2

One rainy day, Debbie, traveling on I-75, is driving to Macon going 75 miles an hour, or 5 miles above the posted speed limit. Debbie hits a slick spot, veers out of control, and hits and severely damages a vintage Porsche worth \$400,000.

### Hypothetical #3

Betty, the mother of three boys, went outside one day to clean her rifle. Distracted, she went inside w/o locking it up. A few minutes later her 5-year-old son Joe and a neighbor's child found the gun. After pointing the gun at each other while playing cops and robbers, Joe decides to "clobber" the other child over the head with the butt of the gun. Child's father sues Betty for child's injuries.

### Hypothetical #4

One dark evening, John leaves a movie theater to drive home. Because the parking lot is well lit, John forgets to turn his lights on. During his drive, John stops at a red light to wait, short of the crosswalk. Next to and slightly in front of him on the right is a large truck which obscures his vision. When the light turns green, John presses the accelerator and immediately hits a pedestrian in the crosswalk who steps in front of the car from the right.

### Hypothetical #5

Two weeks after 9/11, Kenny, driving negligently, crashes at high speed into a utility pole, making a loud explosive noise. Mary, in her car one block away, is startled by the noise and runs into a parked car.