Negligence: Element III: Proximate Cause

Chapter 15
Introduction

- **Proximate Cause....**
  
  1) the causation question (*cause in fact*):
  - Did the defendant cause the plaintiff’s injury?
  
  2) The policy question (a *cut-off test*):
  - At what point will the law refuse to hold the defendant responsible for the injury or injuries that he or she has in fact caused?
Cause In Fact

The **but-for test** and the **substantial factor test** are alternative tests that courts often use to determine whether the defendant was the cause in fact of the plaintiff’s injury.

**But-for test** ➔ Would the plaintiff have been injured but for what the defendant did or failed to do?

**Substantial factor test** ➔ was the defendant a substantial factor in producing the injury?
Weight of the Evidence

- What is standard of proof?
- How convincing the evidence of something must be before a fact finder can accept it as true.
- The amount and believability of evidence is referred to as the weight of the evidence.
- In most tort cases, the minimum standard of proof that must be met is preponderance of the evidence.
  - party must prove that its version of fact is more likely true than not.
  - a mere possibility is not enough.
Parra v. Tarasco, Inc. d/b/a Jiminez Restaurant

**Background:** Parra died when he choked on a piece of food at Jiminez Restaurant. The suit alleges that the restaurant negligently failed to post instructions in the restaurant on how to aid a choking victim and negligently failed to summon emergency medical assistance.

In this case, plaintiff has failed to adequately allege that failure to post the sign was the proximate cause of decedent’s death.
The violation of a statute or ordinance designed for the protection of human life or property can be *prima facie* evidence of negligence, but the injury must have a direct and proximate connection with the violation.
Cut-Off Test of Proximate Cause

- Was the defendant the cause of the plaintiff’s injury?
- If yes, then ask the policy question of whether there is a need for a cut-off of the defendant’s liability.
- The cutoff test is whether the injury suffered by the plaintiff was the foreseeable consequences of the original risk created by the defendant.
- If no, liability is cut off; the defendant will not be liable for what he or she has caused in fact.
The conclusion that defendants are liable for the injuries they proximately cause is subject to the requirement that the plaintiff must take reasonable steps to **mitigate the consequences** of those injuries.

Plaintiff, for example, cannot refuse all medical attention and then hold the defendant responsible for the **aggravation**.
Exceptions to Test

“Eggshell Skull” Rule – Extent of Injury

- If it is foreseeable that defendant’s unreasonable acts or omissions will result in any *impact on plaintiff’s body*, and this impact does occur, the defendant will be liable for the foreseeable *and the unforeseeable* personal injuries that follow.

- **Eggshell skull** → a very high vulnerability to injury to any part of the body, but the injury was not within the risk originally created by the defendant.
Unforeseeability of Manner of Injury

- Frequently, the precise **manner** in which the damage or injury would occur is not foreseeable.

- **What is the rule?**

- The manner in which an injury occurs does not have to be foreseeable in order of the defendant to be the proximate cause of the injury, as long as the harm that resulted was within the risk originally created by the defendant’s acts or omissions.
Unforeseeable Plaintiff

- What happens when injury to someone is foreseeable but not injury to the particular plaintiff who is injured?
- Zone of danger test?
- World at large test?
- Because of the close relationship between duty and proximate cause, a plaintiff who successfully establishes duty is well on the way to establishing proximate cause as well.
- The cut-off principle of proximate cause will prevent liability only if the injury was beyond the scope of the foreseeable risk.
Intervening Causes

- A force that produces harm after the defendant’s act or omission….4 different kinds
  - 1) force of nature
  - 2) innocent human fore
  - 3) negligent human force
  - 4) intentional or criminal human force

- These intervening forces can be classified as a **superseding cause**, the cut off test of proximate cause will prevent the defendant from being responsible for the harm caused by the intervening force.

- An intervening force becomes a superseding cause when the harm caused by the intervening force is beyond the foreseeable risk originally created by the defendant’s unreasonable acts or omissions, and or the harm caused by the intervening force is considered highly extraordinary.
Overview of the Steps Needed to Analyze Proximate Cause

- Cause in Fact
- Burden of Proof
- Original Risk
- Eggshell Skull
- Unforeseeable Manner
- Intervening Human Force
- Intervening Force of Nature
- Highly Extraordinary
- Causation v. Policy
Mussivand v. David

**Background:** David has a venereal disease, but does not tell the woman he is having an affair with. She contracts the disease from him and then gives it to her husband, Mussivand. Mussivand sues David for negligence in failing to tell his wife that he had the disease.

Courts have placed upon persons who have a venereal disease the duty to protect others who might be in danger of being infected by such disease.

People with venereal disease have a duty to use reasonable care to avoid infecting others with whom they engage in sexual conduct....
However, in this case because it is not known whether Mussivand’s wife knew, or should have known, of her exposure to a venereal disease is a question of fact to be decided by the trier of fact.

Fore the foregoing reasons we cannot say that Mussivand could not prove any set of facts entitling him to recover in negligence from David. Trial court erred in granting David’s motion to dismiss.
Gaines-Tabb v. ICI Explosives, USA, Inc.

**Background:** in 1995, a terrorist bomb killed 163 people when it exploded at a Federal building in Oklahoma City. McVeigh & Nichols were later convicted of murder for their role in the bombing. The material allegedly used to construct the bomb was ammonium nitrate that was manufactured by ICI Explosives and eventually sold as fertilizer by Mid-Kansas Co-op.

Plaintiff sued ICI for negligence, among other theories.
Gaines-Tabb v. ICI Explosives, USA, Inc.

- The three essential elements of a claim for negligence are:
  - A duty owed by the defendant to protect the plaintiff from injury;
  - A failure to properly perform that duty;
  - The plaintiff’s injury being the proximately caused by the defendant’s breach.
Gaines-Tabb v. ICI Explosives, USA, Inc.

- Whether the complained of negligence is the proximate cause of the plaintiff’s injury is dependent upon the harm being the result of both the natural and probable consequences of the primary negligence.

- Under Oklahoma law, “the causal nexus between an act of negligence and the resulting injury will be deemed broken with the intervention of a new, independent and efficient cause which was neither anticipated nor reasonably foreseeable.”
Such an intervening cause is known as a “supervening cause”
1) independent of the original act
2) adequate by itself to bring about the injury
3) not reasonably foreseeable

When the intervening act is intentionally tortious or criminal, it is more likely to be considered independent.

In this case, the terrorist’s act was considered independent and a supervening cause that cut off the manufacturer’s liability.
THE END!!!