Chapter 8 – Proximate Cause (pg. 203)

1. The Principle: Scope of Risk
   1. Final element the plaintiff must prove is the harm fell within the scope of defendant’s liability, in other words that the harm resulted from the risks that made the defendant’s conduct negligent in the first place.
   2. Liability for negligence is liability for the unreasonable risks the defendant created, not for reasonable risks or for those that were foreseeable.
   3. FROM CLASS:
      1. The Defendant is negligent and is the actual cause, but doesn't have to be a proximate cause.
      2. The harm caused by the negligence must be within the scope of the kind risk of harm caused by the negligence. Lack of foreseeability.
      3. Doctor and vasectomy –
         1. But for negligence of the defendants of the botched vasectomy then the child would not have been born then the fire would not have occurred.
         2. Therefore the defendant's negligence is a but for cause.
         3. Should the defendant be liable? NO!! This is what proximate cause.
      4. There will be many but for causes and we will have to draw a line somewhere. Proximate cause is where that happens as a matter of policy.
   4. **CASE: Thompson v. Kaczinski (pg. 204)**
      1. PURPOSE: Illustrate proximate cause, foreseeability.
      2. COURTS: (Iowa 2009). Summary judgment granted (defendants prevailed 0 finding no duty and no proximate cause). Moved to court of appeals which affirmed trial court’s ruling. Supreme Court now.
      3. FACTS: Disassembled a trampoline and placed it out for the trash. However, a storm came and blew the trampoline to the surface of the road.
      4. ISSUE: Was this an issue for the judge to decide (law) or jury (fact)?
      5. RULE: The defendant is responsible for the harms that fall within the risk that was created.
      6. ANALYSIS: Defendant had no statutory duty to avoid obstructing a highway right of way because that duty applied only to an intentional obstruction. However, defendants did owe a common law duty of reasonable care. We turn next to the issue of causation.
      7. Range of harms injury to a motorist driving by could blow away
      8. Two components of causation
         1. Cause in fact
         2. Cause in legal cause: the policy of law must require the defendant to be legally responsible for the injury.
      9. CONCLUSION: Should have gone to the jury because it is the facts as determined by jury.
   5. FROM CLASS
      1. Legal cause is a policy determination.
      2. RS3- a person will not be liable for all of the harms they cause.
      3. Scope of Risk Rule - the liability will be limited to those risks that made the conduct negligent.
         1. What was the range of harms risked by the defendant's conduct?
         2. Does the plaintiff's harm come within the range?
      4. **Proximate Cause 1 - Defendant responsible for the type of injury risked by negligence**
      5. Actual cause is FACT - evidence - to the jury.
   6. Notes
      1. Foreseeability
         1. Breach – Concerned with the broader question of whether the defendant’s conduct foreseeably risks some type of harm to someone such that the conduct should have been avoided.
         2. Liability – we are concerned with whether the defendant’s conduct foreseeably risked the type of harm that actually happened to the plaintiff.
   7. Pg. 207
      1. Broken buzzer - what is the range of harms? Falling down the stairs, or being attacked. It is within the range of harms but it is remote.
   8. FROM CLASS
      1. Proximate cause LINKS
      2. Risk of harm (negligence) ->proximate cause -> injury
   9. **CASE: Abrams v. Chicago (pg. 208)**
      1. PURPOSE: Illustrate foreseeability
      2. COURTS: Trial court dismissed, appeals court reversed, Supreme Court affirmed trial court.
      3. FACTS: labor pains 10 minutes apart and had to take private car on ambulance refusal to come get her. Her friend drove her in a car and they were struck by another car.
      4. ISSUE: Whether the ambulance company could have been proximate cause to the car accident.
      5. RULE: All traffic accidents are to some extent remotely foreseeable this is not the kind of harm that was sufficiently foreseeable.
      6. ANALYSIS: There are accidents every day. The odds a drunk driver would come through the intersection was bad luck.
   10. NOTES:
   11. FROM CLASS:
       1. Was this within the range of harms? Medical risks were reasonable. An automobile risk was not foreseeable.
       2. Thomson - risk of an automobile accident
       3. Medcalf - a tenants inconvenience
       4. Abrams - a medical issue
   12. **CASE: Palsgraf v. Long Island Railroad (pg. 209)**
       1. PURPOSE: Illustrate foreseeability
       2. COURTS: NY 1928. Found for plaintiff. Reversed.
       3. FACTS: Lady standing on platform two men late for train. Attendants help men on train. Fireworks fell. Explosion caused scale at other end to fall and injury Plaintiff.
       4. ISSUE: Did the defendant have foreseeability?
       5. RULE: The risk reasonably to be perceived defines the duty to be obeyed. [THE DEFENDANT IS LIABILITY TO THE CLASS OF PERSONS WITHIN THE RANGE OF APPREHENSION]
       6. ANALYSIS: No. The duty is to the reasonably foreseeable risk. The railroad owed a duty to the man they helped aboard but had not foreseeability to the woman at the far end of the platform. The dissent:
       7. CONCLUSION:
       8. FROM CLASS:
          1. Was this a type of harm? He was focused on the range of apprehension. Did the plaintiff the fall within the range of apprehension. It is not a type of harm case. It is a class of person case. Palsgraf was found to be outside the range of apprehension.
          2. **Proximate Cause II –** 
             1. **Harms within risk**
             2. **to the class of persons at risk**
          3. Cardozo focused on Duty and Breach of Duty.
             1. The role of the jury.
             2. Reasonable person would not differ whether the person was at risk.
       9. CARDOZO
          1. Duty and Breach
          2. Harm to the plaintiff was not foreseeable
          3. The question was for the court.....
       10. ANDREWS
           1. Proximate Cause
           2. Factors: Scope and Harm
           3. Question for the jury - should have been upheld
       11. Since then the courts adopt Cardozo's foreseeability and Andrew's test of foreseeability (class of plaintiff). This is notes 6 and 7.
   13. Pg. 209 – SCOPE->???? HARM-> ????? LIABILITY=?????
       1. Scope->Pollution, Harm->Fire, Liability=No
       2. Scope->Accident, Harm\_>2nd Accident, Liability->No

Recap at the beginning of class (10/29)

* Do you need all of the elements for liability? Yes.
* Proximate cause connects the risk of harm to the injury. The injury is the negligence. The glue.
* Thompson – storm. Range of harm; what kind of harm could happen from that? Injury to a motorist, automobile accident.
  + The rule is: Proximate Cause 1: The Defendant is responsible for Type of Injury risked by negligence
    - We see this in Medcalf (broken intercom)
      * Buzzer broken – walking up and down stairs.
      * Scope->walking up down steps, Harm->Attack, Liability->NO
    - Abrams
      * Not sending ambulance….
      * Scope->Medical Risks, Harm->Accident, Liability->NO
      * Not within the scope of risk
* Palsgraf – key facts, push person, fireworks fell, scales fell
  + Cardozo said there was a duty to a certain group of people (Range of Apprehension). Matter of law and dismiss this case.
  + Andrews – question for the jury.
* Proximate cause has two elements
  + D Responsible for the type of harms within the risk
  + The class of persons within the risk

The Rescue Doctrine

1. Defendant negligently creates risk to A. B, having not been harmed by defendant attempts to rescue A, and is harmed. Is there liability?
2. **CASE: Wagner v. International Railway (pg. 216)** 
   1. PURPOSE: illustrates rescue doctrine
   2. COURTS: Cardozo.
   3. FACTS: standing between railway cars, A fell. B, attempted to rescue and was hurt in the process.
   4. ISSUE: Should a 3rd person be able to hold defendant negligible?
   5. RULE: The rescuer can recover from the defendant whose negligence prompted the rescue attempt if the rescuer had a reasonable belief the victim was in peril.
   6. ANALYSIS: The wrong doer may not have foreseen the coming of a deliverer, he is accountable as if he had.
3. FROM CLASS
   1. Will recover if there is belief there is peril
   2. Proximate Cause shrinks liability. Rescue doctrine expands.
   3. Hypo
      1. Spouse in accident, negligent driver. Husband rushes to scene and slips when getting out of car. Rescue doctrine? No.
   4. Don’t forget the BUT FOR

Violation of statue –

1. Violation of a non-tort statute is negligence per se
   1. Conditioned on type of harm and class of persons.
2. FROM CLASS
   1. Negligence per se is violation of statute
      1. The person harmed is within the class of person and they type of harm
      2. Duty and breach are satisfied.
3. **CASE: Larrimore v. American National Insurance (pg. 217)**
   1. FACTS: rat poison put out, but a statute forbade laying out poisons. Coffee shop put poison near burner. Exploded.
   2. ISSUE: Was it enough to show the defendant neglected a duty imposed by statute?
   3. RULE: Must show it was purpose of statute to protect him.
   4. ANALYSIS: Although there is a statue and it demonstrates negligence per se the class of persons the statute was designed to protect still factors into the issue.
      1. Scope – People poisoned. Harm – Explosion. Liability =>No.

Assessing the Scope of Risk

1. **CASE: Hughes v. Lord Advocate (pg. 218)**
   1. PURPOSE: to show foreseeability, even though the accident was unpredictable.
   2. COURTS: Lord Advocate was accountable for the post office – defendant. Courts found in favor of the Lord Advocate. Dismissed appellants claim originally due to lack of foreseeability. The appeal is allowed.
   3. FACTS: A phone company had been working at a manhole. They left the manhole uncovered and their equipment out, which included a lantern. Two boys lowered a lantern into a man hole. Climbed down inside. When they came back up the lantern fell and caused explosion injuring one of the boys.
   4. ISSUE: May a defendant escape liability due to his negligence when a harm occurred that was foreseeable but in an unforeseeable manner?
   5. RULE: A harm is not outside the scope of risk because it occurs in an unforeseeable manner.
   6. ANALYSIS: The mere fact of manner in which an accident occurred is not enough to relieve liability. Concentration was placed on the manner of the accident which was too narrow.
   7. Scope->Burn. Harm->Burn. Liability =>YES
   8. FROM CLASS
      1. General character of the injury is foreseeable
      2. Lord Pierce tells us the accident was but a variant
2. **CASE: Doughty v. Turner Manufacturing Co. (pg. 219)**
   1. PURPOSE: Illustrate unforeseeably
   2. COURTS: Trial court found in favor of the defendant (finding negligence on the workers part). Appeal in favor of the defendants is allowed.
   3. FACTS: A cement asbestos cover is used to cover molten liquid at 800F. A worker knocked one of the covers into the liquid. Cover sank, with no splash. 1-2 minutes later there was an explosion due to a chemical change of the cement in the cover.
   4. ISSUE: Even though the accident was unforeseeable in the manner it occurred is there liability?
   5. RULE: If there is no duty owed to the plaintiff in regard to the initial action that led consequentially to the injury, then the defendants are not liable for damages.
   6. ANALYSIS: One would expect a splash upon the cover falling in. The only duty owed to Doughty was to ensure that he would not be injured if the top fell in the molten liquid and splashed some over the side. This was prevented – the only reason he was injured was because of the unforeseeable explosion. Turner did not have a duty to protect Doughty from this, as they could not have foreseen it.
   7. Scope-> Splash. Harm-> Explosion. Liability =>NO
   8. NOTES
      1. Level of Generality – to what detail do you describe the scope of harm? This would impact the outcome.
3. **CASE: Hamerstein v. Jean Development West (pg. 221)**
   1. PURPOSE: illustrates a sequential harm and defendant should have predicted
   2. COURTS: Summary judgment for defendant at trial. Appeal - Overturned summary judgment for defendant.
   3. FACTS: Diabetic man had to stay on the 4th floor. Defendant's fire alarm went off and he had to walk down. He twisted ankle, got a blister, got infected.
   4. ISSUE: Should defendant
   5. RULE: Defendant should foresee a certain type of person being impacted by potential negligence. Because the harm was greater than foreseeable it does not matter, he is liable for all harm he caused.
   6. ANALYSIS: Should have been foreseeable to the defendant if its fire alarm was faulty, harm to a certain type of plaintiff (guests), could result. Also, injuring an ankle on the stairs could result.
      1. But for defendants faulty fire alarm then plaintiff would not have had to walk down the stairs and twist ankle.
      2. Scope -> twisted ankle Harm-> twisted ankle Liability->Yes
4. NOTES:
   1. Thin skull rule – If the defendant is found guilty of tort, he was negligent or guilty of intentional harm, then the fact the harm was much worse does not limit his liability
   2. The defendant takes the plaintiff as he finds him
   3. Nuances
      1. Do not impose liability without fault
      2. Merely holds the defendant does not escape liability for the unforeseeable personal reactions of the plaintiff, once negligence on intentional fault is established.
5. FROM CLASS
   1. Manner of Harm
   2. Manner
      1. Specific manner – there is NO liability (Doughty)
      2. General character – there is liability (Hughes)
   3. Extent (Hammerstein)
      1. The extent of the liability was not foreseeable, take him as you get him.
   4. Class of persons | Scope | Harm?
   5. **Specific manner and extent of harm will be disregarded if the general character is within the scope of risk.**
   6. What is the difference between this and extended liability?
      1. Extended liability applies to intentional torts. All direct consequences and were foreseeable.
      2. Negligent extent of injury – even if not foreseeable.

Intervening Forces

1. The proximate cause of an injury is that which, in a natural and continuous sequence, unbroken by any efficient and intervening cause, produces an injury, and without which the injury would not have occurred.
2. Intervening Cause – a superseding cause breaks the causal chain
   1. An intervening act of some second tortfeasor should relieve the first tortfeasor of liability only when the resulting harm is outside the scope of the risk negligently created by the first tortfeasor.
3. FROM CLASS:
   1. Where an intervening cause is within the scope of the original risk it is not a superseding cause and original tortfeasor is liable.
   2. A leaves excavation, B jostles P, P sues A, P sues B
      1. A will argue B was the intervening act that supersedes A’s negligence

FROM CLASS

* Intervening cause is within the scope of the original risk it is not a superseding cause the original tortfeasor is liable.

Intentional or Criminal Intervening Acts

1. CASE Marcus v. Staubs
   1. Facts: Car wreck after minors got alcohol, stole car and wrecked. It was argued there were intervening causes.
2. **CASE: Collins v. Scenic Homes (P225)**
   1. PURPOSE: Illustrate intervening facts
   2. COURT: Trial court granted summary judgment based on the intervening criminal act. At appeal, HELD: summary judgment was improper.
   3. FACTS: Apartments built twenty years prior without a licensed architect. Did not comply with fire codes: no fire retardant materials, sprinklers were inadequate, windows were too small. A fire occurred 20 years after the complex was built and the fire was intentionally set. Henry Rice was guilty of Arson.
   4. ISSUE
   5. RULE: If the harm is within the foreseeable scope of harms then there is a liability.
   6. ANALYSIS: It is a foreseeable risk that a fire at an apartment complex, however started, will occur. It will harm the inhabitants if the owner fails to provide adequate means off escape.
   7. Scope-> Fire, Harm-> Fire, Liability => YES
   8. NOTES:
      1. Not required to anticipate the criminal acts of others by which damage is inflicted
      2. The Very Duty Rule – when an actor is found liable precisely because of the failure to adopt adequate precaution against the risk of harm of another’s acts or omissions, or by an extraordinary force of nature, there is no scope of liability limitation on the actor’s liability.
   9. FROM CLASS:
      1. Should have been decided by the jury.
      2. What was the negligence? Failure to comply with the fire safety codes.
      3. What was intervening act? The arson.
3. **CASE: Delaney v. Reynolds**
   1. SUMMARY: Police officer Reynolds had a gun in the house that girlfriend Delaney got. Shot twice, misfired. Then, held to chin and went off injuring her. Was the suicide attempt an intervening cause?
   2. NOTES:
      1. Suicide as a superseding cause: Where a plaintiff intentionally attempts to commit suicide that is a superseding cause of plaintiff’s harm, freeing the defendant from any liability for negligence.
      2. Two issues for consideration:
         1. Induce mental illness (therapist or bullying)
         2. Special relationship.
      3. Foreseeability – a small number of courts use this test.
      4. Scope of risk – would scope matter?

Negligent Intervening Acts

1. **CASE: Derdiarian v. Felix Contracting (pg 230)**
   1. PURPOSE: Illustrate negligent intervening acts
   2. COURTS: NY 1980. Court found in favor of the plaintiff. The appeal is by Felix. Affirmed.
   3. FACTS: Pot of liquid enamel at 400F for sealing gas mains was on site. Eastbound Lane of traffic was excavated. Pot was setup on west side of the hole, where traffic would come to it. Only a wooden horse barricade and one flagman protected Derdiarian and the pot. Dickens was driving east on toward the excavation when he suffered a seizure. He was under treatment for epilepsy but neglected to take his medicine at the proper time. Derdiarian was struck, covered by the enamel, and yet survived.
   4. ISSUE: Does a third party intervening act invariably break the causal link between the defendant’s negligence and the harm caused?
   5. RULE: An intervening act may not serve as a superseding cause, and relieve an actor of liability, where the risk of the intervening act occurring is the very same risk which renders the actor negligent.
   6. ANALYSIS: Defendant claims it is a freakish accident and that there was no causal link, as a matter of law, between Felix’s breach of duty and the injuries. The exact harm that was foreseeable—injury to workers—was the harm that occurred
   7. CONLUSION:
   8. NOTES:
      1. Foreseeability – if the intervening cause is foreseen or might have been foreseen by the first actor his negligence may be considered the proximate cause, notwithstanding the intervening cause.
2. **CASE Ventricelli v. Kinney System Rent a Car (pg 233)**
   1. PURPOSE: Superseding causes
   2. COURT: NY 1978. Court – jury awarded $550,000 to Plaintiff. Appellate Division reversed and dismissed.
   3. FACTS: Plaintiff rented a car from defendant. Trunk lid on the car was defective. Plaintiff was trying to fix the lid. At that time, another car, several car lengths behind, “jumped ahead” and ran into plaintiff.
   4. ISSUE: Could Kinney (D) have foreseen that a driver would negligently strike its client while the latter was
   5. Attempting to shut the trunk negligently maintained by Kinney?
   6. RULE: The foreseeability of an intervening act can be a question of law or fact depending on the circumstances.
   7. ANALYSIS: The law refuses to trace a series of events beyond a certain point. Proximate cause is a convenient formula for disposing of the case. Plaintiff could have been loading or unloading the trunk and the same accident could have happened. Thus, the broken lid was not a foreseeable risk.
   8. CONCLUSION:
3. **CASE: Marshall v. Nugent (Pg. 235)**
   1. PURPOSE: Illustrate intervening acts
   2. COURT: Jury found against the truck driver.
   3. FACTS: Plaintiff was a passenger. Driving on an ice and snow highway, topped a hill and saw a truck part way in their lane. They went off the road. Then, were able to pull the car back up but while doing so the plaintiff walked to the top of the hill to warn motorists, but was hit by the next car coming, driven by defendant Nugent.
   4. ISSUE: Must a defendant’s negligence immediately precede the harm to the plaintiff?
   5. RULE: No.The scope of risk from a defendant’s negligence can be extended in temporarily and geographically, depending on the circumstances.
   6. ANALYSIS: It is not necessarily true to show that the defendant’s culpable act must be the next or immediate cause of the plaintiff’s injury.
   7. CONCLUSION:
   8. NOTES:
      1. Termination of risk – defendant’s conduct created a risk, but the risk so created was no longer existent.
4. FROM CLASS:
   1. Acts of God will not cut off liability
   2. HYPO (the problem with children and tar)
      1. What are the harms within the risk? That the child’s feet will be covered with tar
      2. Was child within the class of persons? Yes because it happened in an area where children play
      3. Type of Harm
         1. General Characteristics: Injury to the foot risked by negligence
      4. Intervening Acts
         1. Intervening act of the solvent
            1. Was within the original risk of cleaning feet. Within the original scope.
         2. Intervening act of the cap gun
            1. Cap igniting the fume of the solvent was not within the harm and therefore was a superseding cause.

Part 4, page 241

Chapter 9, pages 243-46, 252-60, and 265-68

For Thursday, please read the rest of Chapter 8 and the assigned readings for Chapter 9 through page 256.