

Torts

Professor Pope

Class 34: Nov. 11, 2011



PTF **may** have a proximate cause problem if injury:

- Unexpected, fortuitous
- Outside scope of risks DEF negligently created

Basically, we are looking for a “test” or “rule” to capture our intuitive notions of

- Fairness
- Proportionality



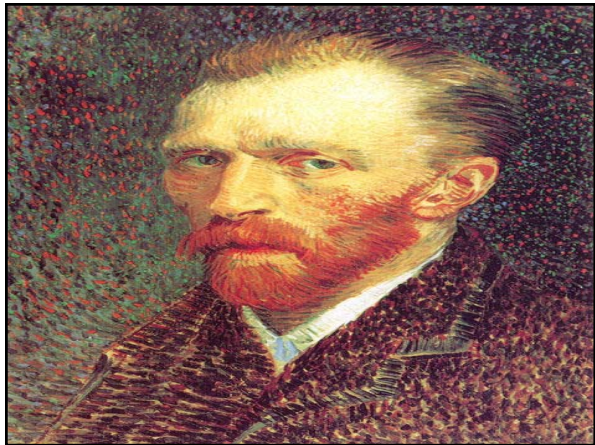
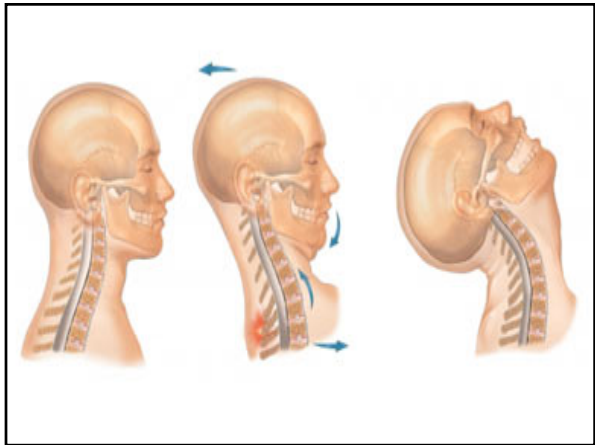
“The **remoteness of the damage**, in my judgment, forms the true rule on which the question should be decided, and which prohibits a recovery by the plaintiff in this case.”



- UF **Plaintiff**
- UF **Type** of harm
- UF **Manner** of harm
- UF **Extent** of harm

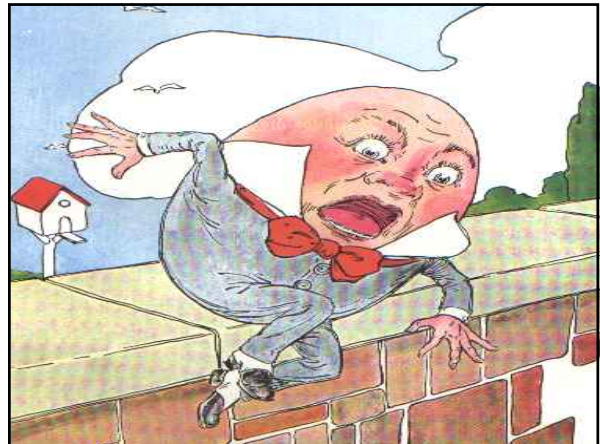
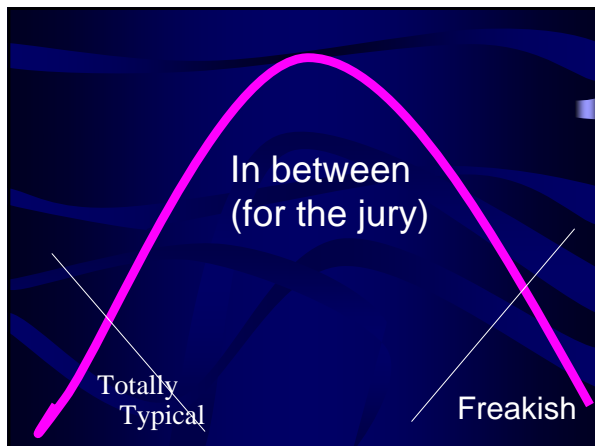
Less likely to affect proximate cause

Bartolone v. Jeckovich



Duty / standard care		
Breach		
Injury		
Cause in fact		

Jury: \$500,000
Trial court: JMOL
CTA: reverse JMOL



Liability is typically extended to injuries of a greater **degree** than anticipated **but not** typically to those of a different **type** than anticipated

Compare intentional torts

- Especially the trespassory torts
Liable for all kinds of unintended (and even unforeseeable) harm
- See, e.g., the consequences of employing **transferred intent**

Compare negligence per se

- Borrow if statute addresses that “type of risk”
- Here, proximate cause if injury is “type of risk” created by DEF negligence (however established)

Rachael, taking a stroll while smoking a cigarette, took a shortcut through a gas station a location where the law forbids smoking. Her exhaled smoke caused Andrew, a patron of the station, to sneeze. His convulsion caused him to spill a few drops of fuel on his bare leg. He suffered a rare allergic reaction, had to have his leg amputated, and brought a negligence claim against Rachael.

- (a) R should win because she could not have foreseen the extent of harm A would suffer.
- (b) R should win because she could not have foreseen the type of harm he caused.
- (c) A should win because R's violation of the law established that she violated a duty.
- (d) A should win because he is a classic

Directness Test

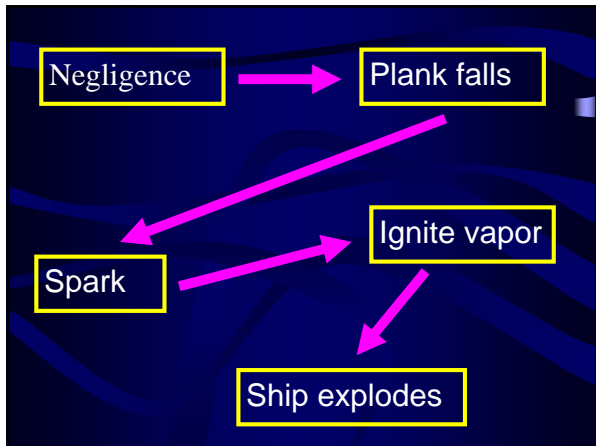
In re Polemis



Duty / standard care	
Breach	
Injury	
Cause in fact	

Not foreseeable

Could **not** have been
anticipated

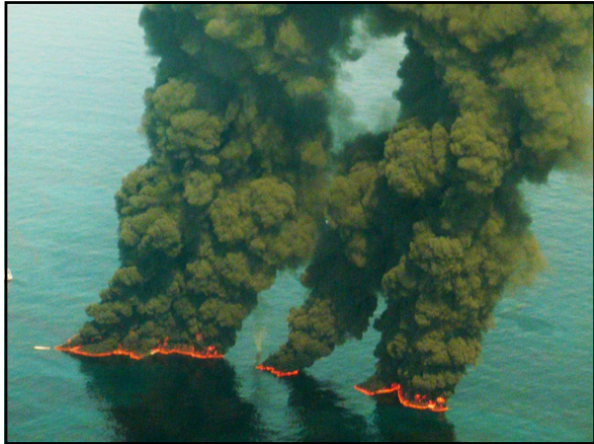


Foreseeability Test

Wagon Mound I



Duty / standard care	
Breach	
Injury	
Cause in fact	



Wagon Mound II

Duty / standard care	same
Breach	same
Injury	
Cause in fact	same



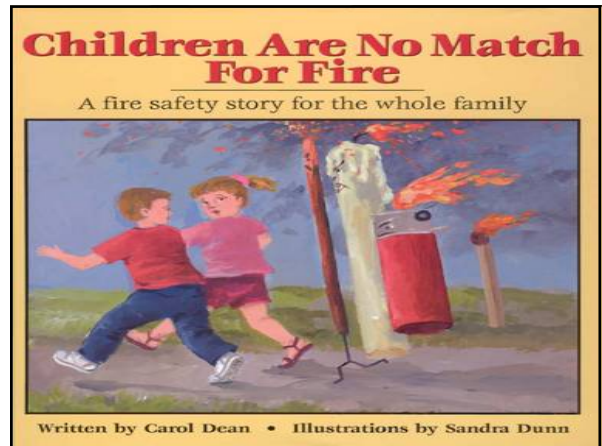
Reconcile the results

Harm to ships
foreseeable

Harm to wharf
not foreseeable



Direct cause <i>Polemis</i>	Rare
Foreseeable consequences <i>Bartolone</i> <i>Wagon Mound</i>	Prevailing



Torts

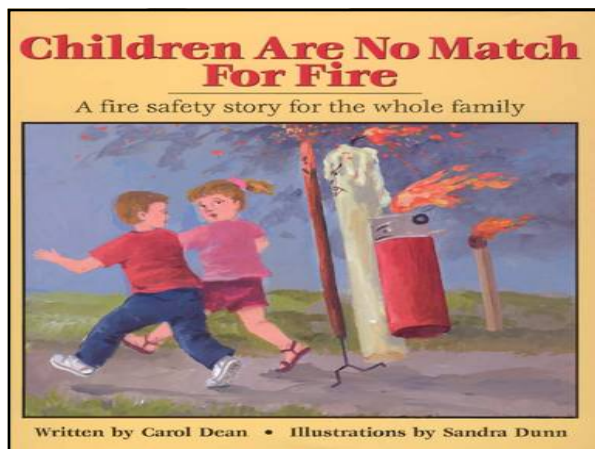
Professor Pope

Class 35: Nov. 14, 2011

THU 11-17	Proximate cause
FRI 11-18	No class But - watch podcast
TUE 11-22	Defenses
TUE 11-29	Defenses
THU 12-01	Defenses
FRI 12-02	Review

Debbie negligently injured Rob, causing him to spend the night in the hospital. While he was there, a thief saw Rob's house unattended, broke in, and stole his iPad2.

- (a) Rob should win because he would not have suffered the loss of his iPad2 but for Debbie's negligence.
- (b) Rob should win because Debbie's negligence increased the risk that he would suffer such a theft.
- (c) Debbie should win because her negligence did not create a risk of theft



	Less impact	More impact
Plaintiff		X
Type H		X
Manner H	X	
Extent H	X	

Factual Cause	Empirical
Proximate case	Normative

Logic
 Common sense
 Justice
 Policy
 Precedent

Foreseeability Test

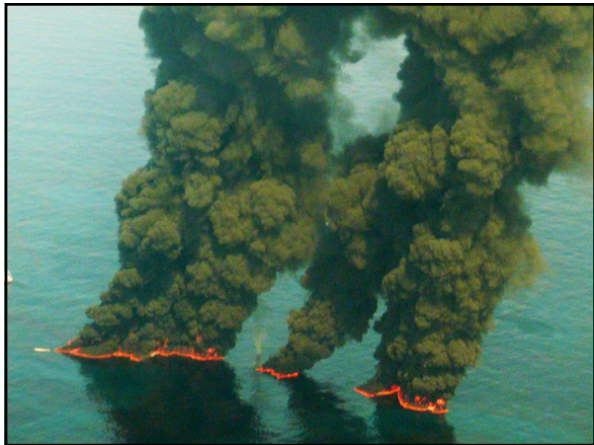
Direct cause <i>Polemis</i>	Rare
Foreseeable consequences <i>Bartolone</i> <i>Wagon Mound</i>	Prevailing

Wagon Mound I





Duty / standard care	
Breach	
Injury	
Cause in fact	



Wagon Mound II

Plaintiff	
Duty	same
Breach	same
Injury	
Cause in fact	same

Reconcile the results

Harm to ships
foreseeable

Harm to wharf
not foreseeable



Palsgraf

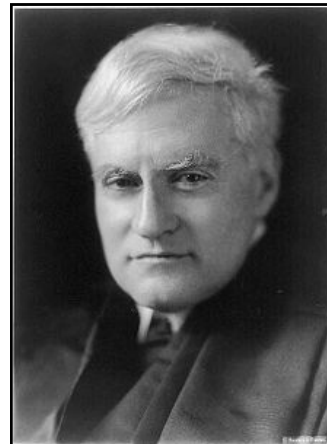


Reason DEF negligent	
PTF injury	

Passenger v. RR

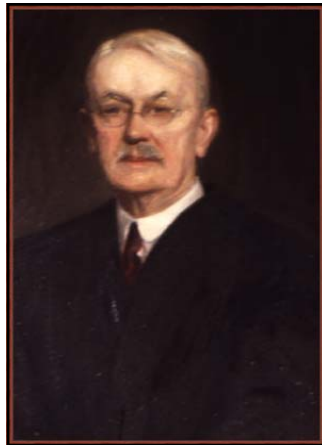


Palsgraf v. Passenger



Cardozo:

No duty



Andrews:

Duty,
use multi-
factorial
proximate
cause

Do not just **label** PTF injury
as “unforeseeable”

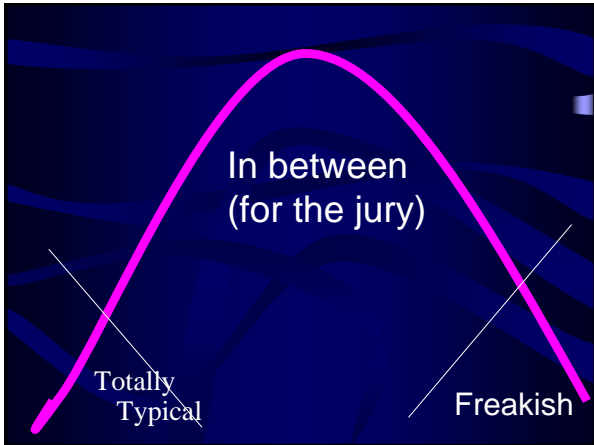
Explain **why** – what are the
natural, expected
consequences and this of
different type

Yun
v.
Ford





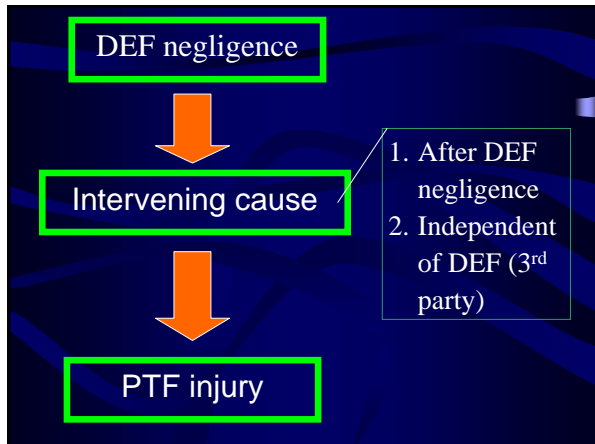
Extraordinary
Senseless
Suicidal
Superseding



	Matter of Law	Give to jury
DCT	Yes – summary judgment	
Ct. App.	Yes	(dissent)
Supreme Court	(dissent)	Yes



Intervening
Causes



Rest. 3d s 34

“When a force of nature or an independent act is also a factual cause of physical harm, an actor’s liability is limited to those harms that result from the risks that made the actor’s conduct tortious.”

Is the intervening cause superseding?

If yes →
No proximate cause
Prevents liability

Intervening Cause

- Is it normal, foreseeable?
- If yes, then probably not superseding

Intervening Cause

- Is it extraordinary?
- Is it unforeseeable?
- Is it intentional, culpable?
- Is it criminal?
- If yes, then, probably superseding

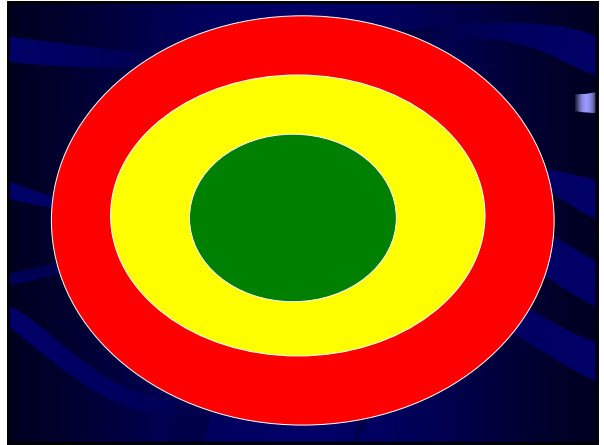
Torts

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Class 36: Nov. 17, 2011

Next class

Tue., Nov. 22



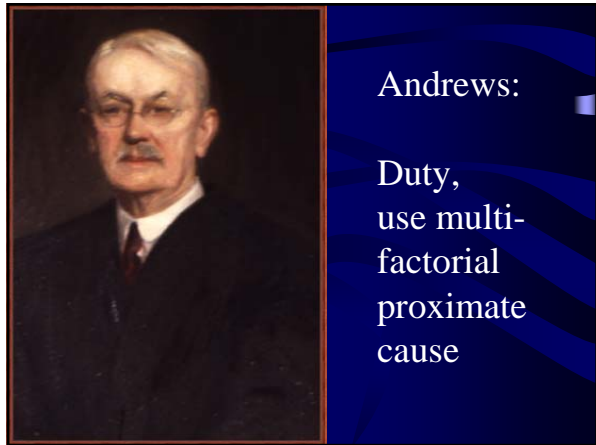
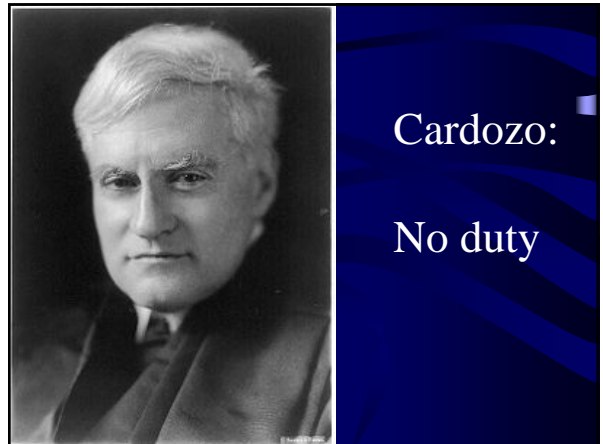
In between
(for the jury)

Totally
Typical

Freakish

Palsgraf

Reason DEF negligent	
PTF injury	



Do not just **label** PTF injury as “unforeseeable”

Explain **why** – what are the natural, expected consequences and this of different type

Yun v. Ford

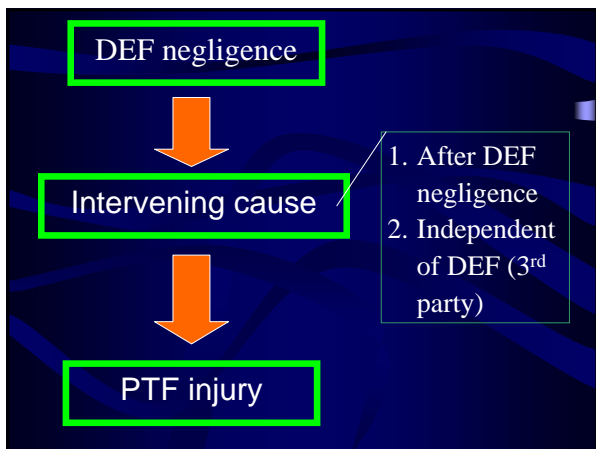




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Intervening
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Superseding

Rest. 3d s 34

“When a force of nature or an independent act is also a factual cause of physical harm, an actor’s liability is limited to those harms that result from the risks that made the actor’s conduct tortious.”

Is it normal, foreseeable?

If yes, then probably **not** superseding

Is it extraordinary?

Is it unforeseeable?

Is it intentional, culpable?

Is it criminal?

If yes, then, probably superseding

Is the intervening cause superceding?

If yes →

No proximate cause

Prevents liability

Derdiarian v. Felix Contracting



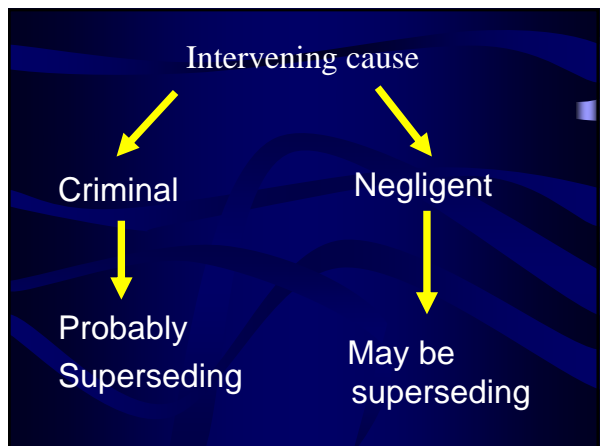
Duty / standard care	
Breach	
Injury	
Cause in fact	
Intervening	



Watson v. KY & IN RR



Duty / standard care	
Breach	
Injury	
Cause in fact	
Intervening	

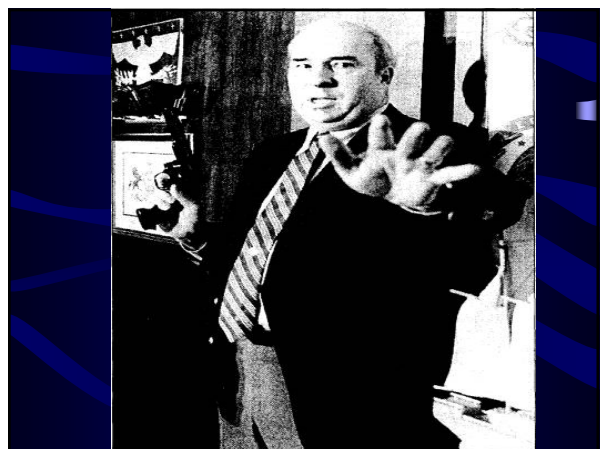




Fuller v. Preis



Duty / standard care	
Breach	
Injury	
Cause in fact	
Intervening	



McCoy v. Am. Suzuki



Public Policy

PWS 344-360