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NEGLIGENCE — PROXIMATE CAUSE — WHEN CONDITION CREATED BY PRIOR OF SUCCESSIVE NEGLIGENT ACTS MAY BE THE PROXIMATE CAUSE — A railroad's employee negligently allowed plaintiff's intestate to board the wrong train and then put her off at an intermediate station to await the proper train. Coming from the waiting room later, preparatory to boarding the right train, intestate fell on the waiting room steps and suffered fatal injuries. Plaintiff sued the railroad. *Held*, that the employee's negligence was the proximate cause of

intestate's injuries and that the employer railroad is liable. *Louisville & N. R. R. v. Maddox*, 236 Ala. 594, 183 So. 849 (1938).

"Each time one or more active causes operate on a condition to create a new condition a new causal step is taken, ending with the given result." [1] In a chain of successive negligent acts culminating in the injurious result, only those incur legal liability that are proximate causes of the injury.[2] It is said an act cannot be a proximate cause once it comes to rest in a position of apparent safety; [3] if it precedes the act of the last human wrongdoer; [4] if the act is not the substantial factor, efficient cause; [5] or if its effects are too remote and minute for legal notice.[6] Thus the Oklahoma court held a city not liable to a pedestrian who was hit by a negligently driven automobile when the pedestrian digressed from the usual footpath to avoid a pool of water the city negligently had allowed to accumulate in the usual path.[7] The court said that, in view of the intervening affirmative act of the negligent driver and the voluntary nature of the pedestrian's acts, at most the city created a remote and unsubstantial condition for

[1] Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633 (1920), quoted in Morgan Hill Paving Co. v. Fonville, 218 Ala. 566 at 579, 119 So. 610 (1928).

[2] 29 CYC. 488 (1908); City of Okmulgee v. Hemphill, 183 Okla. 450, 83 P. (2d) 189 (1938); Ford v. Trident Fisheries Co., 232 Mass. 400, 122 N. E. 389 (1919); In re Polemis, Furness & Withy Co., [1921] 3 K. B. 560; Hill v. Winsor, 118 Mass. 251 (1875). All actively concurring interdependent forces are equally liable for a direct result. Green-Wheeler Shoe Co. v. Chicago, R. I. & Pac. Ry., 130 Iowa 123, 106 N. W. 498 (1906). See Rider v. Syracuse Rapid Transit Ry., 171 N. Y. 139, 63 N. E. 836 (1902).

[3] Rex v. Gill, 1 Str. 191, 93 Eng. Rep. 466 (1719); Central of Georgia Ry. v. Price, 106 Ga. 176, 32 S. E. 77 (1898). But notice that where the force comes to rest in a state of dangerously suspended animation it still may be a proximate cause. Herman v. Markham Air Rifle Co., (D. C. Mich. 1918) 258 F. 475 (manufacturer liable for injuries from accidental discharge of loaded gun it has sold as unloaded).

[4] Southern Pac. Ry. v. Ralston, (C. C. A. 10th, 1933) 62 F. (2d) 1026; Stone v. Philadelphia, 302 Pa. 340, 153 A. 550 (1931); Munroe v. Schoenfield & Hunter Drilling Co., 178 Okla. 149, 61 P. (2d) 1045 (1936); Stephens v. Oklahoma City Ry., 28 Okla. 340, 114 P. 611 (1911); Alexander v. Town of Newcastle, 115 Ind. 51, 17 N. E. 200 (1888). But see Hines v. Garrett, 131 Va. 125, 108 S. E. 690 (1921), and David v. Missouri Pac. R. R., 328 Mo. 437, 41 S. W. (2d) 179 (1931), where defendant was held to foresee an intervening criminal act.

[5] Mahoney v. Beatman, 110 Conn. 184, 147 A. 762 (1929); Goe v. Northern Pac. Ry., 30 Wash. 654, 71 P. 182 (1903); Milwaukee, etc., R. R. v. Kellogg, 94 U. S. 469 (1876).

[6] Bennett v. Robertson, 107 Vt. 202, 177 A. 625 (1935). Cf. Mahoney v. Beatman, 110 Conn. 184, 147 A. 762 (1929).

[7] City of Okmulgee v. Hemphill, 183 Okla. 450, 83 P. (2d) 189 (1938). Accord: Steenbock v. Omaha Country Club, 110 Neb. 794, 195 N. W. 117 (1923); Independent Ice Cream Co. v. United Ice Cream Co., 69 Misc. 623, 125 N. Y. S. 1106 (1910). Cf. Stemmler v. Pittsburgh, 287 Pa. 365, 135 A. 100 (1926); Bruggeman v. City of York, 259 Pa. 94, 102 A. 415 (1917); Riley v. Standard Oil Co. of Indiana, 214 Wis. 15, 252 N. W. 183 (1934).

which liability of this kind does not follow. Other statements of the test of legal causation are that an act will be the proximate cause if it culminates in foreseeable results,[8] if the result is the natural, or natural and probable, consequence of the act,[9] or if the active force comes to rest in a dangerous position with the risked loss materializing.[10] Though the principal case might not have exemplified foreseeable loss, the result can be, and was by the court, strongly supported by the natural and probable consequence doctrines.[11] Which of these tenuous,

[8] 29 CYC. 494 (1908), authorities cited. Notice that if an intervening cause is itself foreseeable it does not break the causal chain of liability. Hinnant v. Atlantic Coast Line R. R., 202 N. C. 489, 163 S. E. 555 (1932); David v. Missouri Pac. R. R., 328 Mo. 437, 41 S. W. (2d) 179 (1931); Riley v. Standard Oil Co. of Indiana, 214 Wis. 15, 252 N. W. 183 (1934); Hines v. Garrett, 131 Va. 125, 108 S. E. 690 (1921); Daneschocky v. Sieble, 195 Mo. App. 470, 193 S. W. 966 (1917). Unforeseeable intervening acts generally cut the chain. The Mars, (D. C. N. Y. 1914) 9 F. (2d) 183. Note the caveat suggested by Mahoney v. Beatman, 110 Conn. 184 at 188, 147 A. 762 (1929): "The test of negligence—the measure of duty—and that for measuring or ascertaining liability resulting from the negligence are wholly apart."

Perhaps the foreseeability doctrine as it applies to raising a duty is foreseeability of some injury to particular types of persons [Palsgraf v. Long Island R. R., 248 N. Y. 339, 162 N. E. 99 (1928)], whereas applied to limiting the causal chain it is foreseeability of the particular type of harm which results in the injury [Bonniwell v. Milwaukee, Light, Heat & Traction Co., 174 Wis. 1, 182 N. W. 468 (1921)].

[9] Notice the distinction between the "foreseeable" test and the "natural and probable consequences" test. Dissent in Mahoney v. Beatman, 110 Conn. 184 at 202, 147 A. 762 (1929): "harm to be deemed a proximate result of wrong conduct must follow from it in a 'natural sequence.' This is not at all to say that to be compensable harm must have been reasonably foreseeable. The latter proposition puts the trier in the shoes of the wrongdoer and looks forward; a consideration of 'natural sequence' is made '*ex post facto*,' the problem is looked at in the light of all the circumstances, known, knowable or unknowable in advance, as they have ultimately appeared, and the question is, was the harm so outside the range of human experience that it could be said to be not a natural result." See Smith v. London & South Western Ry., L. R. 6 C. P. 14 (1870); Warren v. Chicago, B. & Q. R. R. 219 Iowa 723, 259 N. W. 115 (1935); T. H. I. & E. Traction Co. v. Hunter, 62 Ind. App. 339, 111 N. E. 344 (1916); New York, Chicago & St. L. Ry. v. Doane, 115 Ind. 435, 17 N. E. 913 (1888); Hartnett v. Tripp, 231 Mass. 382, 121 N. E. 17 (1918); Wilder v. General Motorcycle Sales Corp., 232 Mass. 305, 122 N. E. 319 (1919); Louisville & N. R. R. v. Maddox, (Ala. 1938) 183 So. 849; Stemmler v. Pittsburgh, 287 Pa. 365, 135 A. 100 (1926). See particularly Osborne v. Montgomery, 203 Wis. 223, 234 N. W. 372 (1931).

[10] United States v. Freeman, (C. C. Mass. 1827) 4 Mason 505; Williams v. Vanderbilt, 28 N. Y. 217 (1863); Burk v. Creamery Package Mfg. Co., 126 Iowa 730, 102 N. W. 793 (1905). Of similar type but perhaps technically distinguishable are the cases where defendant's wrong stimulates a comparatively involuntary intervening act. Defendant's motivating force is considered a proximate cause. Scott v. Shepherd (The Squib Case), 2 Bl. W. 892, 96 Eng. Rep. 525 (1773); Isham v. Dow, 70 Vt. 588, 41 A. 585 (1898); Boggs v. Jewell Tea Co., 263 Pa. 413, 106 A. 781 (1919); and see the collection of "fright" cases in Throckmorton, "Damages for Fright," 34 HARV. L. REV. 260 (1921).

[11] Principal case, 183 So. 849 at 854.

and not mutually exclusive but somewhat descriptive, concepts is emphasized in a given case to determine whether the condition created by the defendant's act will be pregnant as a possible proximate cause of the resulting injury may depend upon the identity of the parties at bar: what are the standards and degree of duty imposed upon the defendant?[12] It may depend upon the degree of affirmative contribution of each force to the injury: is each force substantially increasing the risk at the time of the injury or is one passively directed by its successor? [13] In the principal case the defendant was a railroad to whose practically complete control the passenger of necessity resigns himself, and upon whom is thrust, therefore, the highest degree of care throughout the entire journey.[14] The court found that the passenger's innocent act, descending the steps, was but an incident in contributing to the injury, for she was at the time but obeying defendant's instructions.[15] It is difficult, though, to see how negligently misinforming the plaintiff unreasonably increased her risk of falling when it is considered that the fall itself was of the unavoidable or fault-free accident type.[16] Except for railroads and persons charged with the highest degree of care,[17] putting the plaintiff in the position or location wherein the injurious transaction

[12] It would seem reasonable that from one extreme, the breach of contract where liability extends only to "contemplated damages" [Hadley v. Baxendale, 9 Exch. 341, 156 Eng. Rep. 145 (1854)] to the other, liability for all direct consequences of criminal acts [Cincinnati, etc., R. R. v. Eaton, 94 Ind. 474 (1883); Terra Haute & Ill. R. R. v. Buck, 96 Ind. 346 at 350 (1884)], the comparative severity of the rule applied to limit the extent of legal liability should depend on the relative standard of duty breached, e.g., the railroad with the very high degree of care is held to all the natural consequences of its breach of duty. Louisville & N. R. R. v. Maddox, (Ala. 1938) 183 So. 849. Then, too, the choice of axiom utilized may depend on the equities of each case as it arises. See Osborne v. Montgomery, 203 Wis. 223, 234 N. W. 372 (1931).

[13] This, though broadly stated, seems to be the fundamental distinction between the principal case, wherein the railroad's negligence continued to direct the passenger's conduct involuntarily, and the Hemphill case, supra note 7, wherein the defendant's negligence was passive and did not derogate from plaintiff's free will nor affect the negligent auto driver's acts in any respect.

[14] Principal case, 183 So. 849 at 851.

[15] Principal case, 183 So. 849 at 854.

[16] See Gray v. Pennsylvania R. R., 3 Harr. (33 Del.) 459, 139 A. 66 (1926); Arkansas Power & Light Co. v. Cates, 180 Ark. 1003, 24 S. W. (2d) 846 (1930); Cooper & Co. v. American Can Co., 130 Me. 76, 153 A. 889 (1931). A pure accident, without fault on the part of either party, is not actionable.

[17] The railroads are by many courts held liable even for injuries resulting from an act of God, if they occur in fact because of a negligent delay in shipment. The theory is that the delay exposes the shipper to unreasonably longer risk of loss in transitu. The courts to the contrary refuse to consider the delay which is merely conditional as the proximate cause of the injury. Green-Wheeler Shoe Co. v. Chicago, R. I. & Pac. Ry., 130 Iowa 123, 106 N. W. 498 (1906), and authorities collected in 46 A. L. R. 302 (1927).

occurs is considered at most as creating a remote condition.[18] Rationalization might be attempted on the ground that the railroad has a greater control over the positions of its passengers than most defendants, short of physical force, have over plaintiffs.[19] But other than to indicate the factors considered pertinent in the particular circumstances, any attempt to rationalize the decisions upon one uniform standard would result in idealistic academic illusion.[20]

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[18] Bruening v. Miller, 57 S. D. 58, 230 N. W. 754 (1930), authorities cited. Here defendant was excused as creating a remote condition only when he negligently parked on the highway and plaintiff was injured in collision with another car going around him. See 73 A. L. R. 1070 (1931), and A. L. R. Blue Book for more recent cases concerning the effect of negligently parking cars where plaintiff was injured in avoiding the parked car. Compare also the extent of the landowner's liability to the invitee for dangerous conditions with that to licensee. Garis v. Eberling, 18 Tenn. App. 1, 71 S. W. (2d) 215 (1934). See Daneschocky v. Sieble, 195 Mo. App. 470, 193 S. W. 966 (1917). The recent case of Winder's Admr. v. Henry Bickel Co., 248 Ky. 4; 57 S. W. (2d) 1009 (1933), is interesting. Here defendant was excused as creating a remote condition when he in building construction blocked the sidewalk and part of the street, thus forcing plaintiff, a pedestrian, to cross the street into the path of a truck passing through the bottle-neck right of way.

[19] See Illinois Cent. R. R. v. Oswald, 338 Ill. 270, 170 N. E. 247 (1930), in which, however, it was found that plaintiff was acting as a free agent when, blinded by smoke issuing from defendant's train, he got out of his car to see what caused the smoke; defendant was excused as creating a remote condition. In Tayer v. York Ice Mach. Corp., (Mo. 1938) 119 S. W. (2d) 240, and New York Cent. R. R. v. Brown, (C. C. A. 6th, 1933) 63 F. (2d) 657, we find defendant not liable for creating condition imperiling property if plaintiff, aware of circumstances, is injured saving the property. The impelling motive to protect *property* is not strong enough to render rescuer's act as a matter of policy involuntary. See 64 A. L. R. 515 (1929). If plaintiff is a would-be rescuer of *life*, acting spontaneously because of conditions created by defendant, the result is different. Here public policy demands that persons involuntarily motivated to save life be protected so they will continue to save lives without reluctance. See 19 A. L. R. 4, 13 (1922). With these propositions, compare Munsen v. Illinois Northern Utilities Co., 258 Ill. App. 438 (1930); Bufkin v. Louisville & N. R. R., 161 Miss. 594, 137 So. 517 (1931). As to the effect of control over injured party's activities, see 17 A. L. R. 646 (1922) for a note dealing with street obstructions which force plaintiff out of the usual path.

[20] Perhaps one of the most highly respected statements of the general proposition is Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633 at 658 (1920): "To sum up the requirements of proximity of result: 1. The defendant must have acted (or failed to act in violation of a duty). 2. The force thus created must (a) have remained active itself or created another *force* which remained active until it directly caused the result; or (b) have created a new active *risk* of being acted upon by the force that causes the result." See also Levitt, "Cause, Legal Cause and Proximate Cause," 21 MICH. L. REV. 34 (1922); McLaughlin, "Proximate Cause," 39 HARV. L. REV. 149 (1925); Goodhart, "The Unforseeable Consequences of a Negligent Act., 39 YALE L. J. 449 (1930).