

Cause in Fact, Proximate Cause, Superseding Forces, and Intervening Forces as they are evaluated for the Defendant's liability

Actual Cause/Cause in Fact

* *'But for'* test, or 'substantial factor' (multiple causes for one injury, such as a gang of people beating up one person).

Joint Tortfeasors

Where the combined negligent acts of two or more tortfeasors commit an act that is indivisible, each is **held joint and severally liable**. Either may be sued for the entire amount of damages suffered.

Joint and Several Liability

* The tortfeasors must act in concert (simultaneous acts when the injury is suffered by the victim). Injury is not divisible.

Divisible Liability

* Damages must be divisible. If each tortfeasor each causes separate parts of the Plaintiff's harm and the harm is subject to apportionment, each Defendant will each be liable only for the portion of the harm that they each caused (only if the harm can clearly be divisible among the tortfeasors).

Proximate Cause (Legal Cause)

* There are policy considerations limiting the scope of liability which are determined primarily on the concept of the *foreseeability* of risks and consequences.

* If cause in fact is satisfied and there are *no intervening causes*, then the cause in fact is also the proximate cause.

Foreseeability of Harm

* If Defendant's conduct is a *substantial factor* in bringing about the harm to another, the mere fact that the Defendant neither foresaw, nor should have foreseen, the extent of the harm of the manner in which it occurred- does NOT shield the Defendant from liability.

Rescue Doctrine: A negligent Defendant owes an independent duty of care to a rescuer. Even where rescue efforts are done negligently, provided they are not wanton, the negligent Defendant will be liable for personal injury and property damage, whether the rescuer succeeds in injuring himself, the person rescued, or a stranger.

* Rescuer is privileged to threaten more force than she is privileged to deliver. He or she is privileged to threaten deadly force to save someone's life, if that person's life is *in fact* in danger.

Eggshell Skull Doctrine: The Defendant is liable for the full consequences of the Plaintiff's injury even though, due to the Plaintiff's peculiar susceptibility to harm of which the Defendant was unaware, those consequences were more severe than they would have been for a normal person.

Superseding Cause

* A superseding cause is an *unforeseeable intervening cause* that breaks the *chain of causation* between the initial wrongful act and the ultimate injury, and thus **relieves the initial tortfeasor from liability**. The intervention, of the superseding cause itself, becomes the direct, immediate cause of the injury suffered by the Plaintiff.

Types: Acts of God, criminal acts of third persons, intentional torts of third persons, and extraordinary forms of negligent conduct.

Intervening Force

* A force, which actively operates in producing harm to another **after** the actor has already committed his or her negligent act or omission.

Rule of Liability: The Defendant will be held liable for harm caused by **foreseeable** intervening forces.

Types of Foreseeable Intervening Causes:

Negligent Rescuers: Because rescuers are foreseeable, the original tortfeasor will be held liable for the **ordinary negligence** (not gross or wanton conduct) of the rescuer.

Subsequent Medical Malpractice: The original tortfeasor is usually held liable for the **ordinary negligence** (not gross or wanton conduct) of the Plaintiff's treating physician or nurse.

Subsequent Disease: The original tortfeasor is usually held liable for the diseases contracted, or subsequent injuries, sustained because of the impairment of the Plaintiff's health resulting from the original injury caused by the Defendant's tortious conduct.

Efforts to Protect Property: The Defendant will be held liable for negligent efforts on the part of persons to protect life or property interests (of themselves and third parties) endangered by the Defendant's negligence.

Subsequent Accident: Where the Plaintiff suffers a subsequent injury after his or her original injury, and the original injury was a **substantial factor** in causing the accident, the original tortfeasor is held liable for damages.

Example: The Defendant negligently fractures the Plaintiff's leg. The Plaintiff is walking on crutches and trips and falls- and breaks the other leg; the Defendant is liable for the breaks on both legs.

* If the below three elements are found, then a **superseding cause** and *chain of causation* is broken, so the Defendant's liability is severed for the consequences of the antecedent conduct.

1. The fact that the intervening force brings about harm different in kind from that which would otherwise have resulted from the Defendant's negligence;
2. The fact that the intervening force's operation, or the consequences thereof, appear *after* the event to be extraordinary and unforeseeable;
3. The fact that the intervening force is operating independently of any situation created by the Defendant's negligence.