Proximate Cause in Louisiana

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The term "proximate cause" has been given many and varied definitions in the jurisprudence. In one case the court has said that proximate cause is "that which immediately precedes and produces the effect, as distinguished from remote, mediate, or predisposing cause." On another occasion, proximate cause was defined as "efficient cause — the cause that sets other acts in motion that produces the accident without an intervening and independent agency." In another instance the court remarked that it was no defense "that the particular injurious consequence was unforeseen, improbable, and not to have been reasonably expected so long as it was the natural consequence of

the negligence of defendant's servant."³ One case has held that to be the proximate cause the original act of negligence alleged must be so "inextricably interwoven with the subsequent occurrences involved that it cannot be disassociated from any of them."⁴ The court has further stated that "a person is answerable for the consequences of his negligence only so far as they are the natural and proximate results of the injury, and might have been anticipated by ordinary forecast and not for those consequences arising from a conjunction of his faults with circumstances of an extraordinary nature."⁵

These statements are but a few of a variety of definitions or "formulae" for proximate cause found in the Louisiana decisions. As will be hereafter seen, these formulae are vague and general expressions used by the court in deciding the issue of proximate cause. Various reasons require this generality in the wording of formulae. First, the considerations which influence the courts in their decisions are often difficult to articulate. Second, the factors which underlie the decisions are often policy matters which courts are reluctant to use as an announced basis of decision. The use of legal-sounding terminology is more acceptable. Moreover, in phrasing their decisions the courts are moved by a desire to adhere to reason and the established decisions. In many instances, as will be hereafter noted, a particular formula may roughly approximate just what the court had in mind in making its decisions. This is not always true, however.

Even if the decisions contained only one formula for proximate cause, instead of many, the law would be little improved. There are no reliable criteria for determining whether an act is an "efficient cause" or a "remote cause," or whether a certain injury is "foreseeable" or "unforeseeable." An attempt to apply one formula would require still other formulae to interpret the one at hand.

Since, at best, the formula for proximate cause in any particular case only roughly approximates the actual issues involved, it is evident that formulae cannot serve as guides to, or criteria for, the determination of the issue in other cases. Thus the

problem is one of establishing the dependable criteria for the
determination of the issue of proximate cause.

Scope and Meaning

In all negligence cases, plaintiff must establish that defend-
ant was a wrongdoer, and that this wrongdoing was in fact a
cause of his injury. Moreover, it is not sufficient that defend-
ant’s negligence was in fact a cause of plaintiff’s injury; in ad-
dition, it must also be the “legal” or “proximate” cause.

The issue of cause in fact can usually be answered by in-
quiring whether or not the accident would have occurred irre-
versible of defendant’s wrongdoing. Thus the negligence of a
train engineer in failing to blow the train whistle to warn an
approaching motorist was not a cause in fact of plaintiff’s in-
jury when the latter’s own automobile made so much noise that
he could not have heard the whistle had defendant blown it. Similarly, the negligence of a defendant who parked a car on a
street facing in an unauthorized direction was not the cause in
fact of plaintiff’s injury when the accident would have occurred
even had the vehicle been properly parked. In each of these
cases, there was clearly no cause in fact between defendant’s
negligence and plaintiff’s injury. This is the proper scope of the
cause in fact issue.

In cases where the question of proximate cause is found,
defendant’s conduct usually will clearly be the cause in fact as
determined above. The inquiry of proximate cause concerns
itself with the possibility that despite the causal relationship,

6. The typical expression of this rule is that “consequences are in fact causal if they would not have happened but for the defendant’s conduct. If the acts of the defendant were necessary antecedents of the consequence in question, they are a cause in fact of those consequences. This has become known as the ‘but for’ or sine qua non rule.” Arnold v. Griffith, 192 So. 761, 763 (La. App. 1939), citing Harper, A Treatise on the Law of Torts 253, § 109 (1933). This rule, however, is ordinarily not applicable to cases in which defendant’s negligence has created a moving force. See Restatement, Torts § 432(2) (1934).
9. Defendant’s negligence need not be the sole cause in fact of plaintiff’s in-
jury. As illustrated in the case of Giardina v. Massaro and Patarno, 3 La. App. 221 (1925), separate acts of negligence may, by unfortunate circumstances, combine to produce an injury. In such cases, the court may be willing to hold that the negligence of each tortfeasor was a proximate cause of plaintiff’s injury, and accordingly enter a judgment in solido against them. For an explanation of joint tortfeasor and multiple cause in fact cases, see Russo v. Autoin, 7 So.2d 744 (La. App. 1942).
10. In Arnold v. Griffith, 192 So. 761, 763 (La. App. 1939), the court ob-
served that “there can be no legal or proximate cause unless there is a causal connection in fact.”
the court may nevertheless feel that sound policy dictates a denial of recovery.

It should be noted, however, that courts often use the terms cause in fact and proximate cause interchangeably. In addition, the issue of proximate cause is often interjected into the case when the only serious inquiry is whether defendant is guilty of negligence.

The Problem

The consequences that follow a negligent act may continue indefinitely in one form or another. It may be that good morals would require that he who commits a wrongful act should be answerable for all the losses which flow from that act, however remote. Any attempt to impose liability on such a basis, however, would result in almost infinite liability for wrongful acts, and in the words of one court "would set society on edge, and fill the courts with endless litigation." As a matter of policy, therefore, liability cannot be imposed indiscriminately for all consequences that follow a wrongdoing. Thus, even in situations where it is conceded that defendant is a wrongdoer and that his wrongdoing was in fact a cause in bringing about the injury suffered by plaintiff, the court may nevertheless feel that sound policy dictates a denial of recovery.

Law protects numerous interests of an individual. Typical among these are the interests in one's person and property. This


12. Globe & Rutgers Fire Insurance Co. v. Standard Oil Co., 158 La. 763, 104 So. 707 (1925); Martinez v. Bernhard, 106 La. 368, 30 So. 901 (1901); Sherman v. Parish of Vermillion, 51 La. Ann. 880, 25 So. 538 (1899); New Orleans & N.E.R.R. v. McEwen & Murray, 49 La. Ann. 1184, 22 So. 675 (1897); Palmetto Fire Insurance Co. v. Clarke Garage, 6 La. App. 420 (1927). In these cases, the court spoke in terms of proximate cause although it appears that the question was probably whether defendant was engaged in conduct which was unreasonable and hence negligent. See Green, Rationale of Proximate Cause 78, 81-84 (1927).


14. "Interest" has been defined as "a claim or want or desire of a human being or group of human beings which the human being ... seeks to satisfy, and of which, therefore, the ordering of human relations in civilized society must take account." Pound, Selected Essays on the Law of Torts 86 (1924); Note, 28 Harv. L. Rev. 343, 345 (1924). See Green, Rationale of Proximate Cause 5-11 (1927); Green, Judge and Jury, c. 1 (1930); Prosser, The Law of Torts 12-14 (2d ed. 1955).
legal protection is afforded by numerous rules of law which impose certain standards of conduct to which individuals are expected to conform. Plaintiff always comes into court relying upon a certain rule or rules which he claims defendant has violated. Sometimes the rule of law on which plaintiff relies is a statute prohibiting a particular act or class of acts. In such cases, it is well settled that the violation of a statute will not give rise to civil liability unless the type of accident which befell the plaintiff was a type against which the legislature intended to afford protection. Thus a statute which prohibits the employment of minors in occupations exposing them to noxious chemicals does not protect against the risk of injury to a minor by a fall through a roof. In determining this, the court usually indicates that it is interpreting legislative intent. Frequently, however, it is impossible to know what the legislature had in mind by enacting a particular statute. As a consequence, in such instances the courts are obliged to resort to their own judgment to determine the extent of protection intended by the legislature.

Where the rule of law on which plaintiff relies is not statutory, the process is nevertheless basically the same. In such cases, though the court does not have the aid of "legislative intent," it still must determine whether the risk plaintiff has encountered is within the ambit of protection of the rule of law which forms the basis of his cause of action. Although in general terms it may be said that plaintiff is relying on the "negligence" of defendant for recovery, plaintiff will in fact present some specific particular in which he claims defendant was negligent. Thus a plaintiff injured by a train may rely upon defendant's violation of the particular rule of law that the engineer must keep a proper lookout, or that the engine must be equipped with an adequate spark arrester, or that the train must be run at a reasonable rate of speed. "Negligence" is merely the aggregate description of an infinite variety of such rules comprising what is commonly called the law of negligence.

The violation of rules of law may in fact subject the interest

16. Cutrer v. Southdown Sugars Inc., 42 So.2d 314 (La. App. 1949). Other cases of this type are Lopes v. Sahuque, 114 La. 1005, 38 So. 510 (1905) (statute prohibiting leaving carts unhitched to draft animals in the streets held not intended to protect children from injury from playing on the carts); Cropper v. Mills, 27 So.2d 764 (La. App. 1948) (statute prohibiting employment of boys under sixteen on any night except Saturday held not intended to protect against personal injury).
of others to a great variety of risks. Thus the interest in one's person may be endangered by such risks as a defective safety device on a fallen electric wire, a descending fire escape, the explosion of blasting caps concealed in a trash can, the explosion of an unknown mixture of gasoline and kerosene, or a pistol shot from a dazed accident victim. Since the law never gives absolute protection to any interest, recovery will be allowed only if the rule of law on which plaintiff relies includes within its limits protection against the particular risk that plaintiff's interests encountered. This determination of the particular risks to plaintiff that fall within the ambit of protection of the rule of law on which plaintiff relies is the determination of the issue of proximate cause.

An example of the nature of this process is illustrated by Davis v. H. B. Loeb Piano Co. In that case, plaintiff's daughter leaned against and fell through a window screen which had been negligently replaced by defendant's employee while making repairs. The question presented to the court was whether the risk of a person falling through a window was included within the scope of protection afforded by the rule of law requiring reasonable care in replacing window screens. Finding for defendant, the court concluded that the notion of a person falling out of a window does not suggest itself as the type of harm to result from a loose window screen, particularly since a fall through a window is not easily associated with a loose screen. The court thought aloud along these lines and remarked that "a screen is ordinarily used for the purpose of keeping out insects, and not as a means of support." Perhaps the decision would have been

17. The term "risk" is used to describe roughly the kind of danger to which plaintiff's interest is exposed. Thus plaintiff's house may be destroyed by fire from encountering the risk of flying sparks emitted from a passing train. The interest of the houseowner that has been invaded is his interest in property. Suppose that while the house was burning the flames reached a box of pistol cartridges in a closet causing an explosion wounding the next-door neighbor seated in his own house a few yards away. The neighbor's invaded interest would be his interest in his person. The risk the neighbor's interest has encountered was the explosion of the burning box of cartridges. In this hypothetical situation, the single violation of one rule of law has caused two risks, one of which invaded the property interest of the houseowner, and the other the interest in person of the neighbor.

23. 119 So. 746 (La. App. 1929).
24. Id. at 747.
different had the screen fallen from its support to injure a passerby below. Faced with the problem of explaining its position, the court resorted to the language of proximate cause and stated that the injury could not have been "reasonably foreseen as a direct or probable consequence of the [defendant's] act." 25 Through the use of the term "foreseeable" in its formula, the court has given a rough expression to the idea that underlay its decision. The risk involved was not readily associated with the rule of law invoked and for this reason was found to be outside the scope of the rule's protection.

The assumption cannot be made, however, that obvious risks easily associated with the rule of law on which plaintiff relies are always within the realm of protection. In *Cappel v. Pierson* 26 defendant was superintendent of the state insane asylum, in the custody of which was placed one Smith, an inmate known to be suffering from paranoia, a mental disease which caused Smith to have a persistent desire to take human life. Immediately upon defendant's negligent release of Smith from the asylum, the latter killed plaintiff's husband. Since it is to be expected that Smith would kill if given the opportunity, the risk of homicide is obviously *easily associated* with the rule of law requiring a superintendent to use reasonable care before releasing a dangerous paranoid. The court, however, rendered judgment for defendant, thus determining that the risk of homicide was not within the ambit of protection afforded by the rule of law on which plaintiff relied.

In determining whether the risk of homicide was included within the protection of this rule, the court was probably influenced by several considerations. The function performed by mental institutions to society is important. Mental institutions do not create a danger to society, but, on the contrary, attempt to remove from society those who are already mentally ill. As compared with some other activities later to be noted, the court has demonstrated a tendency to be more lenient toward those who merely undertake to protect against a peril which was not of their own making. Further, the superintendent's negligence consisted of his exercise of poor judgment in the performance of a discretionary act. The practice of imposing personal liability on public officials in such instances might result in the

ultra-conservative administration of public duties, or the discouragement of responsible men from serving in public office for fear of ruinous liability for mistakes. The court, couching its decision in part in the flexible language of proximate cause, concluded in effect that on a basis of sound public policy the risk of homicide was not included within the scope of the protection of the rule on which plaintiff relied.

In reality there are many considerations of judicial policy which influence the court in its determination of the issue of proximate cause. *Ease of association* is merely one of this group of many. In any given case, one or more considerations may be present. Some of these considerations may influence the court to protect against the risk, while other considerations may tend to induce the court to exclude the risk from the ambit of protection of the rule on which plaintiff relies. The function of the court, therefore, is one of weighing the respective considerations to reach a decision. *In the aggregate, these considerations of judicial policy are the only dependable criteria for the determination of the issue of proximate cause.*

The Considerations of Judicial Policy

*Ease of association.* As indicated in the discussion of *Davis v. H. B. Loeb Piano Co.*, the notion that a risk does not readily

27. *Id.* at 526, 132 So. at 392. The language used by the court was "the defendants could not, by the exercise of ordinary care and caution, have anticipated, foreseen, or expected that the death of the plaintiff's intestate would follow as the natural result of their act in discharging [Smith] from the hospital." Inasmuch as the risk was actually of the kind to be expected, one may doubt the accuracy of the court's observation.

28. The weight of authority is probably in accord with this view. Henderson v. Dade Coal Co., 100 Ga. 568, 28 S.E. 251 (1897) (plaintiff raped by convict who was negligently permitted to escape from prison labor gang); Bollinger v. Rader, 151 N.C. 383, 66 S.E. 314 (1900) (patient negligently released from state insane asylum killed young girl six months later). *But cf.* Austin W. Jones & Co. v. Maine, 122 Maine 214, 119 Atl. 577 (1923) (plaintiff's property burned by patient who was negligently released from state asylum); Williams v. State, 204 Misc. 843, 126 N.Y.S.2d 324 (Ct. Cl. N.Y.) *aff'd*, 284 App. Div. 1027, 134 N.Y.S.2d 857 (4th Dep't 1953) (plaintiff died from brain hemorrhage brought on by fright occasioned when convict, who was negligently permitted to escape, forced plaintiff to aid him); Weeks v. State, 267 App. Div. 233, 45 N.Y.S.2d 542 (3d Dep't 1943) (plaintiff stabbed by patient who was negligently permitted to escape from insane asylum).

29. Case illustrations are hereafter given for the various considerations of judicial policy discussed. Though several considerations may be presented in a cited case, for purposes of emphasis, mention is made only of the operation of the particular consideration under discussion. The interaction of various considerations in a single case is illustrated on page 409 *infra.*

It is to be noted that in Louisiana the jury is of no significance in civil cases. Louisiana appellate courts are triers of both fact and law and for this reason the use of jury trials in civil cases is for all practical purposes non-existent.
suggest itself as the type against which the rule of law would seem to protect is an inducement for the court to deny recovery. Conversely, when risks are easily associated with the rule of law upon which plaintiff relies, this induces the court to allow recovery. Thus if restaurant co-owners were to engage in fighting in the presence of customers, there would be a strong tendency for the court to allow recovery for the unintentional injury of a patron. Similarly, a pharmacist who negligently compounds a prescription is liable when the patient dies from its effects, and an electric company that negligently permits electricity to flow through a fallen line is liable when a child comes in contact with it and is electrocuted. In these types of cases, courts are likely to use the formula that "negligence is the proximate cause of injury which, under the circumstances, is foreseeable as the natural and probable consequence of such negligence." In a large number of cases, the association is so easily made that the proximate cause issue is not seriously considered by the courts. The ordinary traffic collision is a typical example.

The presence of causes intervening subsequent to defendant's act which brings about injury presents no special problem. In such cases, the inquiry of the court is simply whether the risk produced by the combination of defendant's act and the intervening cause is one which is within the scope of protection of the rule of law upon which plaintiff relies. Thus the rule requiring a pilot to take reasonable precautions to secure his aircraft when warned of an approaching storm includes within the ambit of its protection the risk of wind blowing the plane into another craft. Similarly, an electric company that maintains a rotten line pole is liable when an ordinary wind causes

32. Lasyone v. Zenoria Lumber Co., 163 La. 185, 111 So. 670 (1927) (tenant's child killed by falling against a nail which landlord had negligently permitted to protrude from the wall); Claussen v. Cumberland Telephone & Telegraph Co., 126 La. 1087, 53 So. 357 (1910) (plaintiff injured by electric wires negligently left across a road while attempting to free his tangled wagon); Gibbs v. Tourre, 50 So.2d 652 (La. App. 1951) (plaintiff's truck damaged when rotten limb fell); Harding v. Metropolitan Life Insurance Co., 188 So. 177 (La. App. 1939) (applicant's beneficiary suffered loss of value of life insurance policy when insurance company negligently failed to notify applicant whether application was accepted or rejected and applicant died in the interim); Ledet v. Lockport Power & Light Co., 15 La. App. 426, 102 So. 272 (1928); Hatcher v. Burlett, 110 So. 748 (La. App. 1928) (mule negligently permitted to run away forced auto into pedestrian).
the pole to fall upon a pedestrian.\textsuperscript{34} By the same token, a theater that negligently maintains a descending fire escape over a sidewalk is liable when a small boy rides it down from the balcony exit and injures a pedestrian.\textsuperscript{35} In cases of this kind, the courts ordinarily use the "foreseeability" formula previously mentioned, and indicate that "foreseeable intervening forces do not supersede defendant's negligence."

Conversely, when risks produced by the combination of an intervening cause with defendant's negligence are of a type not easily associated with the rule of law upon which plaintiff relies, there is an inducement for the court to exclude the risk from the scope of protection of the rule and to deny that defendant's negligence was the proximate cause of the injury. Accordingly, a suicide-bent defendant who negligently fires a pistol and causes plaintiff to flee the room is not liable when plaintiff is mistakenly shot by policemen as a result of the confusion.\textsuperscript{36} In this type of case, the courts usually use the "foreseeability" formula and add that "unforeseeable intervening causes supersede defendant's negligence."

If the \textit{kind of injury} is readily associated with the rule of law upon which plaintiff relies, the court is often constrained to permit recovery even though the particular means by which the injury was inflicted is unusual in nature. A classic case is \textit{Stumpf v. Baronne Building},\textsuperscript{37} in which the owner of an office building was held liable for maintaining and operating an elevator that was not equipped with a collapsible door. As the elevator moved in the shaft, numerous projections from the shaft wall threatened any passenger whose person was beyond the limits of the car. As the elevator descended plaintiff slipped

\textsuperscript{34} Joseph v. Edison Electric Co., 104 La. 634, 29 So. 223 (1901).
\textsuperscript{35} Fletcher v. Ludington Lumber Co., 142 La. 151, 76 So. 592 (1917) (lumber company negligently placed skidder cable behind working loggers; cable obstructed plaintiff's path of escape when limb fell from tree and plaintiff injured); Blanks v. Saenger Theaters Inc., 19 La. App. 305, 138 So. 883 (1931); Finney v. Banner Cleaners & Dyers, Inc., 18 La. App. 101, 126 So. 573 (1930) (defendant's employee negligently opened door leading to alley; plaintiff knocked into the path of an oncoming truck and injured); Hart v. Town of Lake Providence, 5 La. App. 294 (1926) (municipality negligently permitted rotten limb to remain for more than a year in dangerous proximity to electric wires suspended below; wind of ordinary force caused limb to fall on wires, thus pulling line pole down on plaintiff); Holden v. Toye Bros. Auto & Taxisb Co. and the Sewerage & Waterboard of the City of New Orleans, 1 La. App. 521 (1925) (highway construction crew displayed warning lanterns; storm blew lights out and plaintiff injured when auto crashed into excavation).
\textsuperscript{36} Perez v. Carbrey, 22 So.2d 76 (La. App. 1945).
\textsuperscript{37} 16 La. App. 702, 135 So. 100 (1931).
in his attempt to avoid being burned by a negligently ignited box of matches being thrown about the car and fell so that his hand was crushed by a projection from the shaft wall. In such cases the courts are likely to remark that "negligence is the proximate cause of injury when under the circumstances the type of injury is foreseeable, even though the manner in which it is brought about is unforeseeable."

*Moral considerations.* Courts are conscious of the fact that all who may be said to be negligent are not necessarily guilty of the same degree of wrongdoing. The courts appear to be moved by an instinctive feeling that liability should be commensurate with the caliber of defendant's culpability. This tendency is best illustrated in cases where an intentional wrongdoer is held fully responsible for the consequences of his wrongdoing under the doctrine of transferred intent. By the same token, it is unlikely that defendant will be held for extraordinary consequences of his act when, although technically negligent, he is not guilty of conduct which from a moral standpoint is basically reprehensible. A more subtle aspect of this tendency may lead courts to feel that overt and active negligent conduct is more

38. Similar cases of this type are: Hughes v. Southwestern Gas & Electric Co., 175 La. 336, 143 So. 251 (1932) (public utility held for fire caused when negligently driven wagon struck guy wire); Thompson v. Commercial National Bank, 156 La. 479, 100 So. 688 (1924) (building owners liable for awning support falling on pedestrian when awning caught fire from unknown cause); Lee v. Powell Bros. & Sanders Co., 126 La. 51, 52 So. 214 (1910) (steam lever of log carriage negligently left unlocked; plaintiff crushed when the lever engaged due to unknown cause); Payne v. Georgetown Lumber Co., 117 La. 983, 42 So. 475 (1906) (lumber company negligently maintained unsafe latch on steam lever operating lumber carriage; plaintiff crushed when thrown shovel bounced unexpectedly and knocked latch out); Edelman v. Refrigeration Co., 72 So.2d 627 (La. App. 1954) (installment of heating-air conditioning unit in improperly ventilated equipment room caused formation of carbon monoxide gas; plaintiff asphyxiated when fumes were carried to her bedroom due to a section of transmission duct broken by negligence of another); Mason v. Herrin Transfer & Warehouse Co., 168 So. 331 (La. App. 1936) (heavy chain was negligently wedged against overhead construction; worker lifted other end of rafter and chain fell on plaintiff); Theodore v. J. G. McCrory Co., 137 So. 352 (La. App. 1931) (splinter from negligently maintained store floor entered plaintiff's foot through hole in his shoe).

39. Perhaps this is illustrated in the recent case of Preuett v. State, 62 So.2d 686 (La. App. 1953), in which a state highway department construction crew's negligent repair of the section of a bridge resulted in liability when travel over the bad section was so rough that plaintiff was thrown from the truck in such a manner that her foot was caught in the door, dragging her for some distance before the foot was dislodged, whereupon she was run over by the rear wheel. In modern times when great numbers of vehicles travel the roads at high speeds, it is a serious thing to obstruct or in any manner impair the safety of the highways. The court's willingness to hold the state for such attenuated consequences as these may have been prompted by the serious moral reprehensibility of defendant's act.

morally reprehensible than mere passive failure to exercise the required care.

Similarly, the intervening act of a third person may be so morally reprehensible that the court will be constrained to feel that the simple negligence of defendant does not warrant the imposition of liability. Thus the carelessness of an automobile driver who leaves his keys in the car,\(^\text{41}\) or leaves his motor running,\(^\text{42}\) is not sufficiently serious to warrant recovery against the vehicle owner when a mature person deliberately steals the vehicle and injures life or damages property in the escape.\(^\text{43}\) In such cases, the disparity in the extent of wrongdoing prompts the court to place sole responsibility on the more blameworthy of the two. The courts are likely to indicate in such situations that the act of the third person was “unforeseeable and thus superseded defendant’s negligence.”

Though the courts are inclined to be lenient toward defendants whose wrongdoing is augmented by the intervening act of a third person, this is usually not true in situations where the act of the third person consists only in his failure to remove the peril defendant has created. Thus, when a gas company negligently fails to repair a leak in its pipeline, the unsuccessful attempt of a third person to remove the danger by placing upright a seven-foot pipe to carry away the escaping gas will not relieve the gas company of liability when a child is later burned.\(^\text{44}\) In


\(^{43}\) Other cases of this type are: Moore v. Jefferson Distilling & Denaturing Co., 160 La. 1156, 126 So. 691 (1930) (shipper of steel drums negligently permitted alcohol to remain in drums; plaintiff injured when third party with knowledge of the presence of the dangerous fumes stuck lighted match into the bung hole); Petrich v. New Orleans City Park Improvement Association, 188 So. 199 (La. App. 1939) (golf instructor negligently placed pupil near fairway; pupil injured when third party golfer negligently drove his ball without calling “fore”).

In some cases, due to the counterbalancing influence of other considerations, a different result is reached. Thus in Japhet & Co. v. Southern Ry., 8 La. App. 706 (1927), plaintiff’s freight was destroyed by fire when the railroad negligently left its cars exposed to a race riot. See n. 68 infra.

Similarly, in Jackson v. Jones, 224 La. 403, 69 So.2d 729 (1953), a contractor who left an unenclosed and unguarded stack of lumber on the school playground was held liable when a seven-year old pupil was injured from an intentional push given by a classmate. See page 403 infra.

\(^{44}\) Jackson v. Texas Co., 143 La. 21, 78 So. 137 (1918); Cornell v. United States Fidelity & Guaranty Co., 8 So.2d 304 (La. App. 1942) (nurse negligently prepared incubator for the arrival of baby; doctor failed to check personally the incubator and baby received third degree burns); Varnado v. State, 136 So. 771 (La. App. 1931) (defendant negligently placed blasting caps in waste basket in defendant’s store; third person told of the act failed to inform store owner who was later injured while burning the trash). But cf. Pittsburg Reduction Co. v.
such cases, the courts are likely to indicate that the intervening act of the third person was a "foreseeable intervening cause which does not supersede defendant's negligence."

Moral considerations may sometimes influence the court to be reluctant to hold those who have undertaken to protect others from a danger or evil which was not of their own making. In Cappel v. Pierson,45 this was probably a considerable influence on the court to deny recovery against the state insane asylum.

Courts prompted by moral considerations often manifest a particular solicitude for certain classes of plaintiffs. Plaintiffs injured in their attempt to rescue others have been given legal protection which would be difficult to justify under the circumstances in the absence of some special inclination to protect this class of persons.46 In one leading case, the court observed that though the wrongdoer could not foresee the coming of the rescuer, "he is accountable as if he had."47 It is likely that in these cases the courts feel that such regard for the welfare of others should be rewarded and encouraged. Only when the rescuer is rash or otherwise clearly imprudent under the circumstances will recovery be denied.48 In these cases the courts usually base their decision on some landmark decision,49 rather than on a formula for proximate cause.

A solicitude for the welfare of children is another consideration that apparently influences the courts. This attitude is perhaps due to the fact that children cannot be under constant parental supervision and are incapable of safeguarding adequately their own welfare. One feature of this willingness to permit

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45. See page 397 supra.
46. Peyton v. Texas & Pacific Ry., 41 La. Ann. 861, 6 So. 690 (1889) (plaintiff injured in attempt to rescue drunk from oncoming train). One court has said, "we call attention to the fact that a rescuer is favored in the eyes of the law"; Lynch v. Fisher, 41 So.2d 692, 695 (La. App. 1949) (plaintiff injured in attempt to rescue accident victims from burning auto); see Davis v. Hochfelder, 153 La. 183, 95 So. 598 (1923) (mother injured in attempt to rescue son from asphyxiation and drowning); Whitworth v. Shreveport Belt Ry., 112 La. 363, 36 So. 414 (1904) and Short v. Central Louisiana Electric Co., 36 So.2d 638 (La. App. 1948) (plaintiff injured in attempt to rescue a companion who came into contact with electric wire).
children to recover for their injuries is that others will be encouraged to conduct their affairs in a manner not dangerous to children. Thus, building contractors who have maintained an unenclosed stack of lumber have been held liable for injuries to children playing thereon due to falls caused from tripping, or being intentionally pushed by a playmate. The courts usually apply the “foreseeability” formula in these cases and decide that under the circumstances, “the injury was foreseeable as the natural and probable consequence of defendant’s negligent act.”

Administrative considerations. The courts are concerned with the practical effect that a decision may have on the course of future litigation. They are well aware that a case once decided may provide the basis on which attorneys may press for further extensions of the law. This urge felt by courts to protect the judicial machinery from future imposition is one of the most conservative influences in the law.

Relatively speaking, some situations suggest extensions more readily than others. This is particularly true of situations where remoteness in time and space is involved. In such cases, counsel for defendant are quick to call to the attention of the court the dilemma it may encounter in future litigation should recovery be allowed in the case at bar. In many instances judicial awareness of these considerations may be dependent upon the ability of counsel to effectively call the attention of the court to the quandary which would result if judgment were to be given for the plaintiff. This is illustrated in the case of Cruze v. Harvey & Jones in which a mule was killed in falling into an abandoned well two miles from the pasture from which defendant permitted it to escape. Mindful of the fact that recovery might invite future litigation in which the courts may experience difficulty in avoiding extensions of the protection of the rule to cover injuries occurring even farther away and at an even later date, the court expressly denied recovery on administrative grounds. In cases

52. 134 So. 730 (La. App. 1931).
53. Id. at 732. In a rare instance of literal expression of the influence of administrative considerations, the court stated: “Could it be said that if plaintiff’s mule has wandered into the city of Monroe [a distance of approximately fifty miles] and been killed by congested traffic on DeSiard street, the defend-
of this kind, the courts may state that the injury is not "fore-
seeable," or perhaps indicate that "proximate cause is that
which immediately precedes and produces the effect, as distin-
guished from a remote, mediate, or predisposing cause. . . ."

Although administrative considerations usually exert their
influence toward a denial that defendant's negligence was the
proximate cause of plaintiff's injury, yet in at least one class of
cases it seems likely that the same considerations may have
served to expand the scope of liability. Once it has been deter-
mined that defendant's wrong was the cause of plaintiff's injury,
courts are reluctant to accept the contention that plaintiff is less
entitled to recovery than a normal person merely because he was
peculiarly predisposed to injury for some special reason. Thus a
defendant is liable when his negligence operates on a concealed
physical condition such as a dormant, or active disease, or the
susceptibility to disease or injury. Similarly, a defendant is
liable for injury to a pregnant woman which produces mental
anguish, or a miscarriage. In such cases the courts retreat

ant would be liable for its death? We think not. By the same process of reason-

54. Roth v. Russell, 141 La. 551, 75 So. 418 (1917) (dormant enlarged
(lumber fell from defendant's truck and slightly injured child with latent heredi-
tary hysterical diathesis which caused child to later become a constant invalid
with seriously affected mind and nervous system); Levy v. Indemnity Ins. Co.
v. North America, 8 So.2d 774 (La. App. 1942) (dormant dementia praecox
causing manic depressive psychosis); Peppers v. Toye Bros. Yellow Cab Co., 198
So. 177 (La. App. 1940) (dormant colitis became active causing hemorrhages).

55. Shaffer v. Southern Bell Telephone & Telegraph Co., 184 La. 158, 165
So. 651 (1936) ("certain" diseased bodily condition accelerated expected death);
Castelluccio v. Cloverland Dairy Products Co., 7 La. App. 534 (1923), reversed in
part on other grounds, 165 La. 606, 115 So. 796 (1928) (existing arteriosclerosis
and high blood pressure produced death); Hall v. Excelsior Steam Laundry Co.,
5 La. App. 6 (1925) (existing climacteriosis produced insanity). For cases concerning
the judicial attitude toward the acceleration of impending death, see Orgeron v.
Hourgettes, 67 So.2d 746 (La. App. 1953); Walker v. Geddes Funeral Service,
33 So.2d 570 (La. App. 1948).

56. Goins v. Moore, 143 So. 522 (La. App. 1932) (blow to old knee injury
produced complete ankylosis); Poncelet v. South New Orleans Light & Traction
Co., 3 La. App. 64 (1925) (serious complications arising due to previous old
injury which made wrist susceptible to injury). No Louisiana cases are directly
in point on susceptibility to disease. See, however, Louisville N.A. & C. Ry. v.
Falvey, 104 Ind. 409, 8 N.E. 389, 4 N.E. 908 (1885); Baltimore City Pass Ry. v.
Kemp, 61 Md. 74 (1883).

(auto-truck collision); Favalora v. New Orleans Ry. & Light Co., 143 La. 572,
78 So. 944 (1918) (train collision); Holzab v. New Orleans & Carrollton R.R.,
38 La. Ann. 185 (1886) (train collision); Youman v. McConnell & McConnell

58. White v. Juge, 176 La. 1045, 147 So. 72 (1933); Thompson v. Cooke,
from the prospect of continuously probing into the combination of circumstances which are responsible for making a particular injury unusually severe.

**Economic considerations.** Although courts consistently deny that a distinction should be drawn between a wealthy defendant and an impecunious one, there nevertheless seems to be a tendency to impose more extensive liability where defendant is covered by insurance. This inclination is probably due to the fact that recovery against insurance companies results in wide distribution of the losses in the form of increased premiums paid by holders of similar policies. Thus the costs of risks attendant to the operation of trains are absorbed by railroad insurance companies whose increased premiums are paid for by railroad customers in the form of higher freight rates and passenger fares. Perhaps this accounts for the growing tendency to impose liability on insured motorists, public carriers, public utilities, and similar activities for consequences which the uninsured individual would not be held liable.

Conversely, where defendant is a charitable institution, or an enterpriser in some activity whose continued existence is vital to society, economic considerations seem to prompt the court to deny recovery altogether, or permit it only for those injuries readily associated with defendant’s wrong. In *Cappel v. Pierson,* these considerations probably influenced the court in denying recovery against the insane asylum for the criminal misconduct of an inmate who was negligently allowed his freedom.

**The type of activity in which defendant engages.** As a result of the combination of various considerations, particularly moral and economic ones, there appears to be some significance in the

147 La. 922, 86 So. 332 (1920) (fall from defective steps); Joiner v. Texas & Pacific Ry., 128 La. 1050, 55 So. 670 (1911) (train accident); Stewart v. Arkansas So. Ry., 112 La. 704, 36 So. 676 (1904) (shock and fright produced when passenger coach became unhooked when train en route); Green v. Frederick, 141 So. 505 (La. App. 1932) (miscarriage of twins resulting from fall from defective steps).

59. See page 397 supra.

60. The classic case on this aspect of the influence of economic considerations is Ryan v. New York Central R.R., 35 N.Y. 210, 211, 216-17, 91 Am. Dec. 49 (1866), in which the court, hypothetically speaking of a negligently caused fire in the house of A, stated: "... if, however, the fire communicates from the house of A to that of B, and that is destroyed, is the negligent party liable for his loss? And if it spreads thence to the house of C, and thence to the house of D, and thence consecutively through the other houses until it reaches and consumes the house of Z, is the party liable to pay the damages sustained by these
type of activity in which a defendant is engaged. By nature, some activities are so highly dangerous that even after the exercise of the utmost care, an irreducible amount of danger remains to imperil society. Typical examples are persons who deal with electricity, or explosives such as gasoline, oil, gases, or dynamite.

An instinctive feeling of justice seems to indicate that those who choose to engage in ultra-hazardous activities should bear the responsibility for the losses which must inevitably result. These activities are usually large-scale operations well suited to insure adequately against losses, or to absorb them directly as a cost of doing business. In either event, the customers whose demands indirectly occasion the operation of the activity absorb the losses in the form of increased prices for the service or product. Although it is impossible to say definitely that the courts maintain this attitude toward such activities, negligence has been found in seemingly reasonable conduct, and liability has been imposed for the most extraordinary consequences, under circumstances which would be difficult to justify in the absence of some special tendency to impose liability.

Thus an electric company which places a pole on the dam of a pond is liable for plaintiff's electrocution when during unusually heavy rains a culvert becomes clogged and high water erodes the dam so badly that the pole falls and exposes the high voltage twenty-four sufferers? . . . To sustain such a claim as the present, and to follow the same to its legitimate consequences would subject to a liability against which no prudence could guard, and to meet which no private fortune would be adequate. . . . To hold that the owner must not only meet his own loss by fire, but that he must guarantee the security of his neighbors on both sides, and to an unlimited extent, would be to create a liability which would be the destruction of all civilized society."

61. The defendants in tort cases are to a large extent public utilities, industrial corporations, commercial enterprises, and automobile owners. A count of 94 Louisiana cases bearing on the issue of proximate cause revealed the following list of defendants: railway and street railway companies, 17; manufacturers and industrial concerns, 16; airplanes, trucks, buses and taxi owners, 12; electric and telephone companies, 10; automobile owners, 7; gasoline and gas companies, 6; others, 26.

62. Other cases involving electric companies are: Hughes v. Southwestern Gas & Electric Co., 175 La. 336, 143 So. 281 (1932) (wires negligently strung too close together; fire damage from short circuit caused when negligently driven wagon struck guy wire); Joseph v. Edison Electric Co., 104 La. 634, 29 So. 223 (1901) (electric light company maintained rotten pole on public street at the base of which local telephone company made an excavation weakening pole; high wind broke pole which fell on a pedestrian); Wilson v. Great Southern Telephone & Telegraph Co., 41 La. Ann. 1041, 6 So. 781 (1889) (negligently placed guy wire on street neutral ground; plaintiff fireman injured when he drove an open cockpit fire truck onto neutral ground).
wires. Similarly, a distributor of butane gas whose tank truck explodes and burns following a collision is responsible for injury to a spectator when the heat from the flames burns an overhead wire which falls against plaintiff, knocking her into a bridge.

Even when the activity has become commonplace, such as the operation of motor vehicles and trains, the availability of insurance combined with the pressing social problem of automobile and train accident victims perhaps induces the courts to deal more severely with these activities than they otherwise would. Thus a defendant motor vehicle owner who parks his car too close to the vehicle in front is liable when in the driver of the latter vehicle’s attempt to pull away from the curb, defendant’s car motor starts, thereby propelling the automobile in reverse down the street, across an intersection, and through the plate

63. Scott v. Claiborne Electric Co-op., 13 So.2d 524, 529 (La. App. 1943): “We think that which did happen, in view of all of the facts and circumstances, could have been, in legal contemplation, reasonably expected and anticipated.”

64. Another case of this type which involves a distributor of gasoline is Frazier v. Ayres, 20 So.2d 754 (La. App. 1945) (defendant gasoline distributor negligently placed gasoline in kerosene tank but warned retailer of this fact; plaintiff’s entire family injured by the mixture purchased from retailer).

65. Chavers v. A. R. Blossman, Inc., 45 So.2d 398, 402 (La. App. 1950): “The chain of circumstances from the collision to the igniting and burning of the truck and electric line which fell across Mrs. Chavers’ shoulder, was one continuous chain of unbroken circumstances.”

In connection with this case, it is to be noted that the truck driver could have foreseen no unreasonable risk of injury to the plaintiff. Perhaps in a sense of words the language in the case of Palsgraf v. Long Island Ry., 248 N.Y. 339, 162 N.E. 99 (1928) would seem to state a contrary view to the instant case. It is likely that these cases are not diametrically opposed to one another. In the Palsgraf decision, the negligence of the railroad employees in helping a passenger on the train is probably not a severe moral wrong. In the instant case, however, morality would seem to indicate that the dealer in explosives should bear the losses occasioned by the use of his product.

Dean Green and Professor Goodhart have engaged in the same controversy concerning the Palsgraf case and the case of Smith v. Lowdon & S.W. Ry., L.R. 6 C.P. 14 (1870). See Green, Judge and Jury 249-67 (1930).

glass window of plaintiff's store. Similarly, a railroad that negligently burns weeds and grass off its right-of-way is liable when wind-blown smoke envelopes the nearby highway, causing moving vehicles to collide and careen into plaintiff's parked car. In cases involving these activities, courts may employ a variety of formulae to substantiate their position.

The Interaction of the Considerations of Judicial Policy

As previously noted, in any given case one or more considerations may influence the court's decision. Of these, some may influence the court to include the risk within the protection of the rule upon which plaintiff relies for recovery, while other considerations may exercise greater or less influence that the risk be excluded. The function of the court in the determination of the issue of proximate cause is to weigh these influences to reach a sound decision. One cannot know precisely which considerations will dominate in any given controversy. The conclusion may depend upon the personality of the judge, the drama of the controversy, the availability of a forceful decision that seems to control the case, or other imponderables.

67. Weiss v. King, 151 So. 681 (La. App. 1934): "Where, in the sequence of events between the original default and the final mischief an entirely independent and unrelated cause intervenes, and is of itself sufficient to stand as the cause of the mischief, the second cause is ordinarily regarded as the proximate cause and the other as the remote cause." The court then determined that the intervening act was not "entirely independent and unrelated."

68. It is not unlikely that one element of the tendency to impose liability on railroads results from the inequality of position between the engineer in the cab and the man on the tracks or the vehicle at the intersection. In such situations, the train is well suited as a destructive force, but the engineer is in little danger. Furthermore, by the exercise of the privilege of expropriation, a special favor afforded by the Legislature, tracks may be laid through one's front yard, or through a pine forest thus endangering life and property.

In its status as a common carrier, the contract of fare is an additional influence for the court to impose liability. Thompson v. New Orleans Railway & Light Co., 148 La. 698, 87 So. 716 (1921) (defendant's conductor suggested that passenger cross over a canal on a nearby railroad bridge to catch the trolley waiting on the other side; train approached while plaintiff was crossing tracks, she became confused and fell to her death).

Under La. Civil Code art. 2754 (1870) common carriers are made near insurers of their freight. Under this article, only loss occasioned by "accidental and uncontrollable events" will vitiate liability. It has long been held, however, that even in these instances, such as loss by flood [National Rice Milling Co. v. New Orleans & N.E.R.R., 132 La. 615, 61 So. 708 (1913)], or loss by mob violence [Japhet & Co. v. Southern Ry., 8 La. App. 706 (1927)], the carriers will be held legally responsible if negligently exposing the freight. Hunt v. Morris, 6 Mart. (O.S.) 676 (La. 1819); Perrin v. T. & P. Ry., 14 Orl. App. 376 (La. App. 1817).

69. Graham v. Kansas City Southern Ry., 54 So.2d 822, 826 (La. App. 1951). The damages was held to be "reasonably foreseeable."

70. See notes 63, 65, 67, and 69, supra.
This weighing process may be observed in the classic case of *Lynch v. Fisher.*

In that case, defendant's truck was negligently parked on the highway at night without lights, as a consequence of which an automobile crashed into the rear of the truck and caught fire with the driver and his wife trapped inside. Plaintiff, who lived nearby, rushed to the scene, and extricated both the wife and the driver, the latter being mentally deranged from the impact. Plaintiff found a loaded pistol in the burning automobile which he handed to the dazed driver, whereupon the latter shot plaintiff in the ankle.

Plaintiff sought recovery for his gunshot wound against the truck owner, relying upon the rule of law that motorists who stop on highways at night must take reasonable precautions to warn other motorists of their presence. Plaintiff's claim was that the risk of an accident victim shooting a man who attempts to aid the injured is within the ambit of protection afforded by the rule. It was for the court to decide, and thus determine the issue of proximate cause, whether such a risk was within the protection of the rule. In the factual situation presented, the following conflicting considerations would seem to influence the court.

The risk of an accident victim shooting one seeking to aid the injured does not readily suggest itself as the type of injury against which a rule requiring motorists to take precautions to warn others of their presence would protect. Ease of association, therefore, would influence the court to exclude the risk from the protection of the rule.

Administrative considerations would suggest that a verdict for plaintiff might open the door to future claims to extend the protection of the rule to cover absurd risks. The court might envision attempts to extend this rule to cover a case in which a collision causes the victim such extended pain and suffering that he becomes despondent and commits suicide, or injures a third party. As a practical matter, the courts do not yet seem willing to place full confidence in medical science to determine whether a person is mentally deranged or not, or whether a given act is the product of derangement. Fearful of a flood of groundless
litigation over mental cases, administrative considerations might influence the court to exclude such a risk even from a case where the reality of a party's mental derangement is not doubted.

Several moral considerations would operate to influence the court to include the risk within the protection of the rule. Defendant has committed the dangerous act of obstructing a highway. This kind of conduct becomes more pernicious as the speed of modern motor vehicles continuously increases. The degree of defendant's moral culpability is great, and thus is a pronounced influence on the court to trace defendant's responsibility to extraordinary consequences. Furthermore, plaintiff is a rescuer, and as such, morality urges that he should be rewarded and encouraged.

Economic considerations would probably influence the court to include the risk within the protection of the rule. Truck owners are ideally situated to provide insurance against the dangers to which they subject society. The solvency of the insurance company is reached to satisfy plaintiff's claim, and the paid claim is in turn reflected in the form of slightly increased premium rates on truck insurance policies.

Closely allied with both moral and economic considerations, the fact that the operation of motor vehicles is a dangerous activity is an influence on the court to impose liability even for the most unusual consequences.

In the cited case, the court found that plaintiff should recover. No serious mention was made of the considerations influencing the decision. In typical style, the opinion was cast in the familiar language of proximate cause, the court holding that "the original act of negligence . . . is so inextricably woven with the subsequent occurrences involved that it cannot be disassociated from any of them."73