



CLASS 6

TORTS AND PERSONAL INJURY

CAUSATION - CAUSE IN FACT

- The first element of causation is that the defendant's negligence must have been the “**but-for**” cause of the plaintiff's harm.
- Exceptions:
 - 1) Where 2 people act concurrently to cause harm, they are each fully liable (“joint and several liability”)
 - 2) Where 2 or more negligent actions combine to cause a single harm, but each would have been sufficient to cause the harm by itself and it's difficult to actually apportion who is responsible for what, both parties are fully liable

CAUSATION - CAUSE IN FACT (CONT.)

- Exceptions:

- 3) If 2 or more people are negligent and one of them definitely caused the harm, but it cannot be proven which one, they both can be liable (the burden shifts to the defendant to show that it was not his or her negligence that caused the harm)
- 4) If the defendant wrongfully destroys evidence of causation, the court can shift the burden to the defendant to disprove negligence

CAUSATION - PROXIMATE CAUSE

- The link by which the negligence caused the harm must be **foreseeable** and there must be a **strong and sensible link between the negligence and the harm**
- Examples of cases in which proximate causation is lacking:
 - The harm happened in a manner that was unforeseeable (similar to the duty element)
 - An unforeseeable “superseding” cause interrupted the line of causation
- [An “intervening” cause is foreseeable and thus does not break up the line of causation.]

CAUSATION - PROXIMATE CAUSE (CONT.)

Examples:

Intervening cause (original actor still liable)	Superseding cause (original actor not liable)
Medical malpractice	Doctor intentionally harming the patient
Child using dangerous instrument negligently left for him to take	Intentional tort or crime committed by another adult (in most cases)
Escape attempt from dangerous situation caused by negligence	Reckless escape attempt that was not called for by the situation

- Unforeseeable extent of harm is irrelevant!
("eggshell rule")



QUIZ TIME

TYPES OF DAMAGES

- **Compensatory:** Designed to compensate the plaintiff for the harm suffered. It is equal to the value of the harm inflicted by the tort.
 - Includes pain and suffering
 - Designed to put the plaintiff into the same position she'd been in prior to the commission of the tort
- **Punitive:** Designed to “punish” the defendant, to teach him not to do it again...
 - Should there be limits on punitive damages?

TYPES OF DAMAGES (CONT.)

- **Nominal:** Where there are no actual damages, a court can award a small amount (e.g., \$1) just to show that the plaintiff is correct.
- **Equitable:** Injunction or similar relief where the court orders something to be done.