

THE RULE OF REASONABLE FORSEEABILITY

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An Overview of the Rule of Reasonable Foreseeability

The rule of reasonable foreseeability means that a defendant would only be liable for damages which are a direct and foreseeable result from his actions. It must be possible to be able to draw a causal link between the action of the defendant and the loss suffered by the plaintiff. Thus, if damage cannot be proved to have been as a foreseeable direct consequence of the defendant's act, he would not be liable.

In the case of ***Liesbosch Dredger vs Edison Steamship; The Edison (1933) All ER 144***, the plaintiff, contractors who were doing a dredging work, lost their ship due to the fact that the defendant's ship collided with theirs and caused it to sink. Due to this, they lost their ship and could also not complete their contract work. This resulted into financial embarrassment for the plaintiff company. The company thus sued requesting damages from the loss of the ship and also for the resultant financial embarrassment.

The House of Lords held that the defendants were liable for the ship, however, they were held to be free of liability regarding the financial embarrassment suffered. Lord Wright stated:

“The law cannot take account of everything that follows a wrongful act; it regards some subsequent matters as outside the scope of its selection because it were infinite to trace the cause of causes or consequences of consequences.

Thus, the loss of a ship by collision due to the other vessel's sole fault may force the ship owner into bankruptcy and that again may involve his family in suffering, loss of education or opportunities in life, but no such loss could be recovered from the wrongdoer.

In the varied web of affairs, the law must abstract some consequences as relevant, not perhaps on grounds of pure logic but simply for practical reasons. In the present case, if the appellant's financial embarrassment is to be regarded as a consequence of the respondent's tort, I think it is too remote.”

See also *Obasuyi vs Business Ventures Ltd (1995) 7 NWLR pt 406 184*.

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Tests for Determining the Extent of a Defendant's Liability

The rule of reasonable foreseeability has not always been applied in the law courts. There was a previous test: the test of directness of damage which resulted in a lot of hardship. This rule was later replaced by the rule of reasonable foreseeability. The evolution of the rule of reasonable foreseeability would be subsequently highlighted by first elaborating on the first rule and then discussing the emergence of the rule of reasonable foreseeability.

The Initial Rule of Directness of Damage

The courts initially used the test of directness of damage in order to consider the extent of the defendant's liability. This rule meant that the defendant was liable for all the consequences of his action regardless of the fact that the damage which occurred was not reasonably foreseeable. This rule was espoused by the courts in the case of ***Re Polemis and Furness Withy & Co (1921) All ER 40*** which is popularly known as ***Re Polemis***.

In this case, charterers employed stevedores to unload a ship. Unknown to the stevedores, there was a leakage of petrol in the hold of the ship and thus there was inflammable vapour. One of the stevedores inadvertently kicked a plank into the hold and it caused a spark which ended up burning the ship. The owners of the ship sued the charterers and the stevedores for the damage caused to the ship.

The court held that the defendants were liable irrespective of the fact that it was not reasonably foreseeable to the stevedore that kicking a plank in the hold of a ship would lead to the ship's destruction.

This rule caused a lot of hardship as it meant that the extent of a defendant's liability was unlimited. This rule was however replaced by the rule of reasonable foreseeability.

The Rule of Reasonable Foreseeability

This rule came to replace the old rule of directness of damage. According to this rule, a defendant would only be liable for damages that are reasonably foreseeable consequences of his actions. This rule was laid down by the courts in the case of ***Overseas Tankship (UK) Ltd vs Mordock & Engineering Co Ltd (1961) All ER 404 PC***, also popularly known as ***Wagon Mound's Case***.

In this case, the defendants (appellants) discharged fuel into the Sydney Harbour. This fuel floated into the plaintiff's (respondent's) wharf where they were repairing a ship. There was a piece of cotton floating in the water and it was ignited by welding being done by the respondents. This caused the fuel in the water to catch fire and it

destroyed the respondent's wharf and the ship under repairs. Thus, they sued for damages.

The Privy Council held that the appellants would not be liable because it was not reasonably foreseeable that oil being spilt into the ocean could cause a fire which would subsequently destroy a ship. However, the appellants were held to be liable for fouling up the respondent's slipways since this was a reasonably foreseeable consequence of pouring oil into the ocean.

However, the test of reasonable foreseeability would be reasonable foreseeability by a reasonable man. In the case of ***Adigun vs AG Oyo State (1987) 1 NWLR pt 53, p.678 @ 720***, the court held per Eso JSC that the reasonable man test to be used would be a reasonable man in the position and state of life of the tortfeasor.

The above rule in ***Wagon Mound's case*** was affirmed by a decision of the House of Lords in the case of ***Hughes vs Lord Advocate (1963) AC 837***.

In this case, there was a construction work being done by post office workers on the road. The construction work was covered with tents and there were also paraffin lamps around the tents. While the workers went for a break, two children came around and were playing around the site. During the course of this, one of the children fell with the paraffin lamp and it caused an explosion which injured the child.

In an action against the post office workers, the court held that although it was not reasonably foreseeable for an explosion to occur, it was foreseeable that the presence of paraffin lamps would cause injury. Thus, they were held liable for the burns suffered by the child.

The court further added that a person would still be held liable for a reasonably foreseeable consequence of his action even if the means by which the consequence occurred (in this case, the explosion) was not reasonably foreseeable.

Thus, in the case of ***Doughty vs Turner Manufacturing Co Ltd (1964) 1 QB 518***, the plaintiff, who was an employee of the defendant company was wearing an asbestos suit. A fellow employee allowed the plaintiff slip into a cauldron of molten metal. This caused an explosion and injured the plaintiff. However, at that time, it wasn't known that asbestos coming into contact with molten metal would result in an explosion.

The court held that in this instance, the result (explosion) was not reasonably foreseeable. Hence the defendant was held to be free of liability.

SOURCES

1. Lecture on Law of Torts by Professor R.A Salman
2. [National Open University: Law of Torts](#)