

A construction company was digging a trench for a new sewer line in a street in a high-crime neighborhood. During the course of the construction, there had been many thefts of tools and equipment from the construction area. One night, the construction company's employees neglected to place warning lights around the trench. A delivery truck drove into the trench and broke an axle. While the truck driver was looking for help, thieves broke into the truck and stole \$350,000 worth of goods.

The delivery company sued the construction company to recover for the \$350,000 loss and for the damage to its truck. The construction company has stipulated that it was negligent in failing to place warning lights around the trench and admits liability for damage to the truck, but it denies liability for the loss of the goods.

On cross-motions for summary judgment on the claim for the goods, how should the court rule?

- A. Deny both motions, because there is evidence to support a finding that the construction company should have realized that its negligence could create an opportunity for a third party to commit a crime.
- B. Grant the construction company's motion, because no one could have foreseen that the failure to place warning lights could result in the loss of a cargo of valuable goods.
- C. Grant the construction company's motion, because the criminal acts of third persons were a superseding cause of the loss.
- D. Grant the delivery company's motion, because but for the construction company's actions, the goods would not have been stolen.

Explanation:

Summary judgment should be granted when (1) there is no genuine issue of material fact and (2) no reasonable jury could find for the opposing party—thereby entitling the movant to judgment as a matter of law. Such motions are often brought in **negligence** claims, which require proof of the following **elements**: duty, breach, **causation**, and damages. The causation element consists of two prongs:

actual cause – the plaintiff's harm would not have occurred **but for** the defendant's negligence *and*

proximate cause – the plaintiff's harm was a **foreseeable consequence** of the defendant's negligence.

The proximate-cause prong **cannot be satisfied** if there was a **superseding cause**—ie, an **unforeseeable** act or force that (1) occurred after the defendant's negligence and (2) contributed to the plaintiff's harm. And though criminal acts of third parties are generally unforeseeable, these acts are not superseding causes if the defendant had reason to know that his/her conduct would increase the risk that such acts would occur.

Here, the construction company admitted liability for the damaged truck but argued that it was not liable for the stolen goods because the theft was a superseding cause. Since the construction site was in a high-crime neighborhood with many prior thefts, it is possible (but not certain) that the construction company should have known that its negligence could create an opportunity for a third party to commit a crime. As a result, there is a genuine issue of material fact that warrants the denial of both motions (**Choices B & C**).

(Choice D) The goods would not have been stolen from the disabled truck but for the construction company's negligence (actual cause). However, this alone does not justify summary judgment for the delivery company since it must also establish proximate cause.

Educational objective:

Criminal acts of third parties are a superseding cause unless the defendant had reason to know that his/her negligence would increase the risk that such acts would occur.

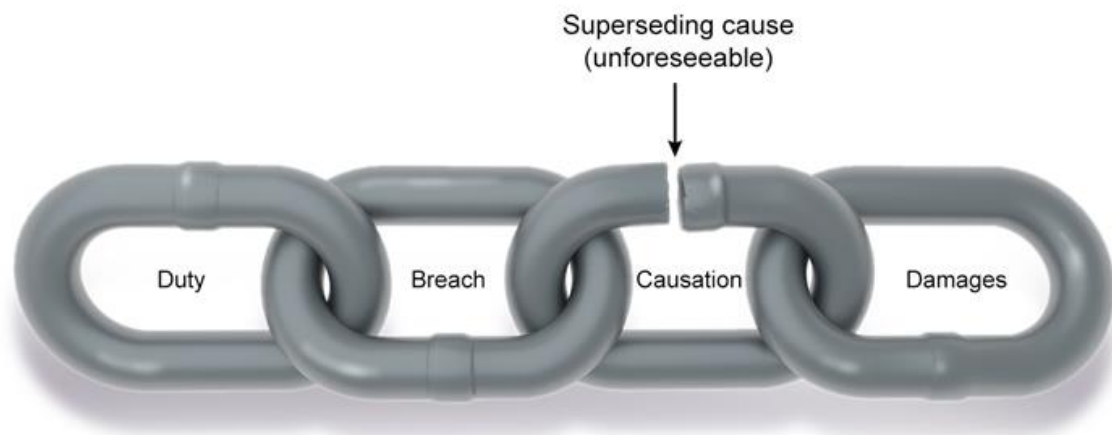
References

Restatement (Second) of Torts § 448 (Am. Law Inst. 1965) (explaining when a criminal act of a third party constitutes a superseding cause in a negligence action).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Chain of causation for negligence



©UWorld