Lee Burgess: Welcome to the Law School Toolbox podcast. Today, we have another in our "Listen and Learn" series – this one is on Proximate Cause in Negligence. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you can be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Hello, and welcome back to the "Listen and Learn" series. Today, we will be discussing Proximate Cause – a subtopic of Negligence under Tort Law. Whether you're preparing for a law school Torts exam or studying for the bar exam, you will find Proximate Cause on every Negligence essay. And since Negligence is a heavily tested topic in both law school and on the bar exam, hopefully this podcast will be a helpful resource for you!

Lee Burgess: Let's get started by reviewing the elements of negligence. Remember, for a plaintiff to prevail on a negligence claim, they must prove four elements: duty, breach, causation, and damages. Duty deals with what standard of care one person – the defendant, owes to another – the plaintiff. We've already covered the reasonable person standard on an earlier podcast, which is the baseline standard of care when it comes to duty. If you haven't listened to that episode yet, you can listen to it on our website, or wherever you consume your podcasts. Once you've determined the duty owed to the plaintiff, the next step is to determine whether the defendant breached that duty.

Lee Burgess: Which brings us to causation. Now, there are two hurdles a plaintiff must overcome when it comes to causation. The defendant's conduct must have been both the actual and proximate cause of the plaintiff's injury. Actual cause is the "but for" cause – meaning, but for the defendant's breach, the plaintiff would not have been injured. Today's topic is all about proximate cause, so let's jump right in!

Lee Burgess: Here's the general rule to write down for proximate cause: Proximate cause is the legal cause, which means that the plaintiff's injury must have been a foreseeable result of the breach. The key to proximate cause is foreseeability. Take a negligent driver, for example. Let's assume a defendant was texting while driving and crashed into another vehicle. The car crash was a foreseeable result of the defendant texting and driving, because it's foreseeable that a driver who is distracted and not paying attention to the road would crash into another vehicle.

Lee Burgess: Another piece of the proximate cause rule is that a defendant is not liable for harms that are too remote from the defendant's conduct. So, what if the car our defendant collided with crashed into a telephone pole, the pole fell onto a house, and the house caught fire from the frayed wires on the telephone pole? Proximate cause becomes more of a close call here, which means you'll need to put on your legal argument cap to answer a question like this. Your exam grader will be looking to see that you not only know the rule, but also your ability to make sound legal arguments. If this was a busy street, you might argue that if the other car crashed into the telephone pole, it would be foreseeable that the wires would fray when the pole fell, and something nearby would likely catch fire. Or you could argue that a house catching on fire is an unforeseeable result of texting and driving. What are the odds that the other car would hit the telephone pole just in the right spot, that the wires would fray, that the pole would crash into a nearby house, and the house would catch fire? Like any exam question, make your best argument and show the grader that you've addressed applicable counterarguments too.

Lee Burgess: Okay, now that we've covered the general rule for proximate cause, let's look at a scenario that you're very likely to see on an exam – intervening causes. Here's the rule: Any act that occurs after the defendant's breach that contributes to the harm is an intervening cause. Intervening causes that are dependent on the defendant's wrongful acts are usually foreseeable. If the intervening cause resulted in an unexpected injury to the plaintiff, it is usually considered unforeseeable, and the defendant will not be liable to the plaintiff. As always, the facts are what can turn the analysis one way or the other. So, it's important to critically analyze the chain of events that led to the plaintiff's injury and let the facts drive your analysis. Why? Because to prove proximate cause, each event between the defendant's conduct and the plaintiff's injury must have led to a foreseeable result. If even one of the events in the chain had an unforeseeable result that then led to the plaintiff's injury, the causal chain will be broken and the defendant will not be liable for the plaintiff's injuries.

Lee Burgess: Another common situation involves intervening criminal acts. The rule is that intervening criminal acts are usually considered unforeseeable and the defendant will not be liable to the plaintiff unless, (a) the defendant should have anticipated the criminal act; or (b) if the defendant's conduct makes the criminal act more likely to occur. We'll take a closer look at intervening criminal acts in one of our hypos later on. And with that, let's jump into our first hypo! This one is adapted from a question on the July 2014 California bar exam:

Lee Burgess: "Walter works as a waiter at a local diner and Carl is the cook. Paul, a customer, decided to have dinner at the diner and ordered chicken wings from Walter. Walter returned to the kitchen and gave the order to Carl, who put the chicken wings in the oven immediately. Industry standards mandate that all poultry products be cooked at a minimum temperature of 350 degrees to avoid food

poisoning. Before Walter left the kitchen, he noticed the oven was set at 250 degrees and told Carl the oven needed to be set at 350 degrees. Carl rolled his eyes at Walter and said, "I know how to do my job. Just go wait tables." Carl did not raise the temperature on the oven and removed the chicken wings a few minutes later. Walter served Paul the chicken wings. Paul ate the chicken wings and suffered food poisoning as a result. If Paul brought negligence claims against Carl and Walter, can Paul establish proximate cause?"

Lee Burgess: First, keep in mind that Torts essays are notorious for having one plaintiff that brings several causes of action against multiple defendants. On an essay like this, it's important to address each cause of action separately in your answer. In our hypo, we have one plaintiff suing two defendants for negligence. But even though the cause of action is the same as to both defendants, we would still need to IRAC negligence as to Paul's claim against Carl and to Paul's claim against Walter in separate IRACs.

Lee Burgess: Before we dive in, it is also important to remember that your answer on a Negligence essay needs to address the elements in this order: Duty → Breach → Causation → Damages. But since duty and breach are outside the scope of today's podcast, we're going to assume for purposes of this question that Carl owed a duty to follow industry standards for cooking poultry, and that Carl breached his duty.

Lee Burgess: Okay, let's dive into proximate cause, starting with Paul v. Carl. Remember our rule? Paul's injury must have been a foreseeable result of Carl's breach. So, was getting food poisoning a foreseeable result of Carl not cooking the wings according to industry standards? Certainly. It's foreseeable that cooking chicken wings at a lower temperature than industry standards will cause the chicken to be undercooked. And it's even more foreseeable that serving undercooked chicken wings to a restaurant patron will cause that person to get food poisoning. Pretty straightforward, right?

Lee Burgess: Next, let's look at Paul's claim against Walter. And again, to stay within the scope of our podcast today, we're going to assume that Walter owed Paul a duty not to serve food that he has reason to believe may cause food poisoning, and that Walter breached his duty. So, what do you think? Was Walter's conduct the proximate cause of Paul's food poisoning?

Lee Burgess: Our causal chain of events isn't as straightforward here, so let's break it down and work through each one separately. Remember, each event in the causal chain between Walter's conduct and Paul getting sick must have led to a foreseeable result. First, Walter knew the chicken wings were cooked at a temperature lower than what is mandated by industry standards, and that Carl ignored his warning to raise the temperature of the oven. Would it be foreseeable to a waiter that these circumstances would result in undercooked

chicken? Probably. Walter then served the chicken wings to Paul. The result? Paul ate the chicken wings. Well, of course it was foreseeable that Paul would eat the chicken wings after his waiter served them, because Paul went to a diner for dinner. And lastly, getting food poisoning was a foreseeable result of Paul eating the undercooked chicken. Let's pause for a second though and think of what argument Walter could possibly make. He would say that Carl's actions of not turning up the oven were an intervening cause breaking the causal chain. But given Carl's response of rolling his eyes, and that Walter was pretty sure he was serving undercooked chicken, I don't think this is the strongest argument. But you may still decide it would be an argument you would want to raise, and then dismiss.

Lee Burgess: Okay, let's tackle another hypo. This one is loosely from the July 2010 California bar exam:

Lee Burgess: "Harry kept a handgun in his bedside table in order to protect himself against intruders. A statute provides that 'all firearms must be stored in a secure container that is fully enclosed and locked.' A burglar broke into Harry's house while Harry was out and stole the handgun. Later that night, Patty was walking home from dinner alone. The burglar happened to be walking behind Patty and noticed the designer purse she was carrying. The burglar, who still had Harry's firearm in his pocket, jumped in front of Patty and demanded that she hand over her purse. Patty responded, 'What, are you trying to rob me? I'm not giving you my purse.' The burglar then pointed the firearm at Patty and told her to hand it over. Patty, afraid for her life, gave the burglar her purse. Patty then fainted out of shock and suffered a concussion. If Patty brings a negligence claim against Harry, what is the likely outcome?"

Lee Burgess: Remember that if this were an exam, you would need to first analyze what duty, if any, Harry owed Patty, and then analyze whether he breached that duty. In this hypo, duty and breach are met under the doctrine of negligence per se, because the statute establishes Harry's duty – to store firearms in a secure, locked container. Harry breached his duty because his firearm was not in a locked container. We won't spend more time discussing negligence per se today, but if you're looking for an in-depth discussion on this, you can check out the "Listen and Learn" series on our website, or wherever you get your podcasts.

Lee Burgess: Now, was Patty's harm – being robbed by the burglar, a foreseeable result of Harry's breach – not storing the firearm in a locked container? Well, maybe not. The burglar using the firearm to rob Patty at gunpoint might have been an intervening criminal act that cut off Harry's liability, even though Harry did not properly store the firearm. Under our general rule, Harry would not be liable to Patty, because intervening criminal acts are usually considered unforeseeable.

Lee Burgess: But let's look at the two exceptions to the general rule. First, Harry would still be liable to Patty if he should have anticipated the criminal act. So, what do you think? Should Harry have anticipated that a burglar would break into his home, steal his firearm, and subsequently use that firearm in an armed robbery? Probably not. While Harry should have anticipated that some harm could come from leaving his firearm unsecured on his nightstand, a burglar stealing the firearm and using it to commit an armed robbery is too far attenuated from Harry's breach to say he should have anticipated it.

Lee Burgess: So far, Harry is not the proximate cause of Patty's harm. But let's take a look at the last exception to the rule. The burglar's intervening criminal act was foreseeable if Harry's conduct made the criminal act more likely to occur. We can probably make an argument on both sides here, and on an exam, that's exactly what you should do.

Lee Burgess: On the one hand, Harry leaving a firearm unattended and unsecured in his home could have made the robbery more likely to occur, because the burglar might not have robbed Patty if he didn't have the firearm to scare her with. How do we know? Well, the burglar was only successful in robbing Patty when he used the firearm to scare her into handing over her purse. Since there are no facts to suggest that the burglar had some other weapon that he could have used to carry out the robbery, we can make the argument that the burglar being armed with the firearm made the robbery more likely to occur. But Harry has a counterargument here, right? When the burglar first approached Patty and demanded her purse, the firearm was still in the burglar's pocket. This suggests that Harry's conduct did not make the criminal act more likely to occur, because the robbery – our criminal act – was well underway before the burglar pulled Harry's firearm out of his pocket.

Lee Burgess: Ultimately, your conclusion as to whether Harry was the proximate cause of Patty's injury could go either way. Your grader isn't looking for the "right" answer. They're looking to see that you know the rule, made sound legal arguments, and analyzed any counterarguments that were triggered by the facts.

Lee Burgess: Okay, that's a wrap for today. Glad you could join me as we discussed Proximate Cause! If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

"Listen and Learn" series
California Bar Examination – Essay Questions and Selected Answers, July 2010
California Bar Examination – Essay Questions and Selected Answers, July 2014
Podcast Episode 244: Listen and Learn – Negligence Per Se
Podcast Episode 257: Listen and Learn – The "Reasonable Person" Standard