

## REMOTENESS OF DAMAGE

### Abstract

As the phrase implies, a tort is a legal violation that is committed by one person or entity (the tortfeasor) against another person or entity. Damages are usually paid as the response to a tort. Numerous torts defend essential rights and liberties, like individual liberty, and fundamental rights, including property rights, as well as offer protection from outside intrusion. The issue of the defendant's liability becomes pertinent following the occurrence of a tort. A series of repercussions or a single consequence may result from an act that constitutes a wrong. Natural law demands that no one be held responsible for all of the repercussions of their crime because there is no limit to the impacts of an act.

We must understand the **Remoteness of Damage** concept in order to respond to issues about how liability can be established, how much culpability can be fixed, and what factor decides it.

According to **Lord Wright**

“Since it is impossible for the law to ascertain the causes or effects of effects, it considers some following concerns to be outside of its scope. The law cannot account for everything that occurs after a wrongdoing. The law must take certain outcomes into account in the complicated web of events, often not for purely logical reasons but rather for pragmatic ones.”

This paper critically examines the two test types,

1. The Reasonable Foresight Test  
Directness Test

And Explaining the jurists' perspectives and patterns in their rulings on the Remoteness of Damage.

### Author

**M.Annapurna**  
Department of Ballb 2<sup>nd</sup> Year  
VIT Ap University  
Amaravati, Andhra Pradesh, India  
anumahankali2004@gmail.com

**Keywords:** Remoteness of damage, directness, reasonability, proximate, liability, justice, negligence

## I. INTRODUCTION

The Latin proverb "*Injure non remota causa sed proxima spectatur*" states that in law, only the immediate cause should be taken into account when calculating the damage, not the remote cause. This proverb is the foundation for the idea of "remoteness of damage." The term "doctrine of Natural and Probable Consequence" is also used to refer to this doctrine. According to the doctrine of remoteness of damage; a plaintiff is not eligible to receive damages if the harm he has suffered is too remote from the defendant's actions. By determining which is remote from the defendant and which is proximate, a line must be drawn to indicate which act the defendant is responsible for and for which he is not responsible.

The two tests listed below can be used to decide where to draw the line in terms of the recoverability of consequential losses.

- The Tests of Foreseeability
- The Test of Directness

**1. Test of Foreseeability:** If a reasonable person could anticipate the consequences of a wrongdoing, the consequences would not be too remote. The ramifications are too far off, though, if a rational person couldn't have foreseen them. And only outcomes that are reasonably foreseeable or that can be expected will a person be held liable.

For instance, if a student is injured by a teacher using a tiny stick and later passes away since he was already hurt by other students before that. Here, the teacher was unable to recognize that the student had already been hurt, and hitting him with a short stick could also result in death. However, if the teacher struck him severely with an iron rod, it can be assumed that even the pupil who was uninjured before then would have suffered serious consequences, even death. In the first case it is not a foreseeable circumstance where as in the second case it is foreseeable

The test of Foreseeability was adopted by the courts till 1921, and was restored in 1961. Between 1921 and 1961; the test of Directness was followed.

**2. Test of Directness:** This standard holds a criminal accountable for any direct effects of their unlawful act. Whether the consequences of a defendant's wrongdoing are imminent or not or whether a reasonable person could have predicted them or not, is irrelevant. This test was especially crucial because *Re Polemis and Furness, Withy & Co., Ltd.* disregarded the standards of reasonable foresight.

After the test of directness was introduced, the test of reasonable foresight lost favour.

For instance, A left rat poison in a corner of his home, and a visiting relative's child ate it while playing and later hospitalised as a result. By the directness test, He is accountable because the damage was a direct result of his action even though he wasn't aware that the child would eat it or that it wasn't predictable by a reasonable man.

## II. ANALYSIS

We shall examine some of the important rulings in order to comprehend the concepts clearly.

1. **Re Polemis and Furness, Withy & Co.Ltd:** The Re Polemis Case, as this case is often called, is recognized as a key illustration of the directness test. The Courts of Appeal found the criterion of reasonable foresight to be pertinent, but the Privy Council eventually upheld the directness requirement.

One of the important factors in the case is the fact that the defendants rented a ship to transport freight. The package contained several of cans of benzene or gasoline. Some oil accumulated in the ship's hold as a result of a leak in the cans. Now, due to carelessness on the part of the defendant's employees, a plank crumbled in the hold and set off a fire. The ship caught fire as a result of the sparks, and was totally destroyed. Despite the fact that the defendants could not have foreseen the loss, the Privy Council concluded that the ship's owners were entitled to compensation in this case. The jury came to the conclusion that the defendant was responsible for the fire, which directly contributed to the destruction of the ship.

According to **Scrutton, L.J:**

“When a conduct is found to be negligent, it doesn't matter that precisely how it would be carried out was not foreseen.”

### 2. Re Polemis Case Ruling in Subsequent Cases

1. **Smith v London & South Western Railway Company:** The railroad company made the reckless decision to allow a pile of grass and hedge clippings next to a railway line in dry weather. A fire was ignited by a spark from the train's engine. Strong winds enabled the fire to spread and cause damage to the plaintiff's cabin, which was nearby. Despite the possibility that they may have foreseen the destruction, the railway corporation was still held responsible for the cottage fire. This is due to the fact that the damage was directly caused by their irresponsibility.
3. **Foreseeability Restored:** In 1961, in the decision of **Overseas Tankship (UK) Ltd. v. Mort's Dock and Engg. Co. Ltd.**, the Privy Council's judicial committee re-adopted the test of foreseeability after nearly 40 years of using the standard of directness imposed in the Re Polemis case.

The Wagon Mound was a ship that the appellants (Overseas Tankship Ltd.) were renting. It was refueling in a Sydney port about 180 meters from the respondent's wharf. Work on welding was going on on the wharf. A significant amount of oil was spilt into the water as a result of the appellant's servants' negligence; part of it even made it as far as the respondent's wharf. The welding there resulted in the fall of molten metal (from the responder's wharf), the ignition of the fuel oil, and the beginning of a fire. The respondent's equipment and wharf both suffered significant damage as a result of the fire.

The court held O.T. Ltd. liable after using the directness rule. The Supreme Court's ruling was overturned by the Privy Council after an appeal, which ruled that *Re Polemis* was no longer a sound legal precedent. Despite the fact that their workers' negligence directly caused the loss, the appellants were found to be immune from liability for negligence since a reasonable person could not have predicted such harm.

4. **Lord Viscount Simonds** observed: The idea that someone who commits a negligent act should be held responsible for all repercussions, even those that are unexpected, “does not appear to be in line with modern notions of justice or morality.”

“The *Polemis* rule leads to a conclusion that is 'Direct' being used in place of a reasonably anticipated result is both irrational and unjust.”

“The only repercussions of a man's actions that should be deemed his responsibility are those that are likely to occur”

- **Haynes v Harwood**<sup>1</sup>: Police officer on duty in a busy street made the claim. The accused neglected to watch his horses. Unruly kids let the horses loose, and they stampeded along the street. The claimant was aware that if the horses continued to stampede, a mother and numerous children would be in grave risk. He jumped forward as a result and stopped the horses. He was injured during the parade and filed a claim for damages.

It was held that the driver was responsible because it was foreseeably possible for a two-horse vehicle to inflict any proximate harm due to any mischievous actions by anyone. Despite the fact that he did not directly cause an injury by doing anything,

- **Scott v Shepherd**: In the marketplace, where a sizable throng had gathered, the defendant threw a lit squib of gunpowder from the roadway. Near Yates, the ignited squib, it came to rest. Willis threw the dime across the marketplace, trying to protect himself and Yates from damage. Ryal was nearby when the squib came down. Ryal grabbed the squib and flung it to another area of the market in order to protect his own wares. The plaintiff then received a facial blow from the squib. Plaintiff's eyes were hurt because the lighted squib's composition was flammable. The plaintiff's eye is now entirely blind.

Despite the fact that the injury did not occur as a direct or immediate result of the defendant's action but rather as a result of a number of subsequent consequences, it is reasonable to assume that throwing a squib made of gun powder into a crowded market could result in injuries to anyone.

### III. CONCLUSION

The "remoteness of damages test" refers to the legal method used to identify which types of damages that result from a breach of contract may be compensated by a judgment for them.

We have learned some information about the remoteness of damage and the tests that can be used to determine whether a case is distant or not, after taking into consideration the conversations, judgments, and viewpoints of judges. We also learn that in some circumstances, whether or not they were foreseeable, the defendant may still be held accountable because of the fact that his actions directly caused the incident.

It can be seen that Damages are typically not recoverable by the plaintiff in situations where they are thought to be too far away. This idea shields defendants from being held accountable for extensive and unforeseen repercussions that can be out of their control or disproportionate to their actions. However, providing the losses are not overly hypothetical or contingent and are foreseeable and within the defendant's scope of culpability, they might be recoverable.

We can conclude that in order to maintain a fair and just balance between compensating injured parties and preventing undue burden on defendants, the notion of remoteness of damage is used. This protects the defendant from accountability for losses that are too far away to be appropriately attributed to the defendant's actions or omissions and limits liability to those that were reasonably foreseeable and closely related to the defendant's wrongful conduct.

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