

TO: CE 401 STUDENTS  
FROM: RICHARD CHEEKS  
SUBJECT: WHY CAUSATION REQUIRES FORESEEABILITY

While the following passage is drawn from a paper about Intellectual Property Law, this passage about limits of “But-For” Causation is clarifying in regards to why the law places practical limits on causation with a foreseeability component called “Proximate Cause.” It acknowledges that “... the law does not—and likely cannot—fully undo the harm caused by various infractions of the law.” This passage also provides many defendants with a road map for challenging plaintiff claims of damage by showing an absence of Proximate Cause.

#### *A. THE LIMITS OF BUT-FOR CAUSATION<sup>1</sup>*

Many legal doctrines struggle with the limits of causation. The world is a complex and interconnected place. **We can trace the echoes of actions through an almost endless chain of likely, or at least possible, circumstances.** When you drove your car into mine, you damaged it, causing me to pay towing and repair costs. This causation chain is simple enough and is something the law will surely compensate me for. But you also caused me to miss work for several days, so I didn’t get paid. Perhaps the law will compensate me for that too, if it views the loss as sufficiently foreseeable. But, suppose that while I was without a car, I lost focus on a long-term work project, and the bid I submitted wasn’t as good as it could have been. My employer lost out on the contract as a result, and the business’s profits were less than they otherwise would have been. That meant, in turn, that the stock price declined, and the retirees who held that stock had less money than they otherwise would have. The stress brought on by money woes even caused one of those retirees to have a heart attack. It is at least possible—though progressively less likely—that each of those statements is true as a matter of causal inference. **None of those things would have happened were it not for the car accident. But the law will not allow me or those around me to recover for all of those losses, even if we can prove they happened. Rather, the doctrine of proximate cause seeks to restrict plaintiffs to remedies that were both caused by the defendant’s actions in a but-for sense and were also sufficiently direct, and therefore foreseeable.<sup>9</sup> The result is that the law does not—and likely cannot—fully undo the harm caused by various infractions of the law. Instead, it tries to balance the effort to redress injury with the practical limits of tracing the ripples of causation as far as they might go.**

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<sup>1</sup> Lemley, Mark A., ***The Fruit of the Poisonous Tree in IP Law***, IOWA LAW REVIEW, Vol. 103:245, 2017, at 249.