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Book Review

Reviewed by Jacob M. Fridline*

LEGAL CAUSE IN THE LAW OF TORTS, by Robert E. Keeton.
Published by Ohio State University Press; 137 pp. (1963).

For students seeking an introduction to the diverse subject of legal cause, this small volume should be profitable. Although legal or "proximate" causation stands out as the very foundation in the determination of liability in negligence cases, it has remained an extremely nebulous concept. In the case of most students, early attempts to acquire a broader perspective of this complex problem often result in confusion and a retreat to the comfortable "but-for" rule. This is understandable, for as Professor Keeton points out, the rules with respect to legal cause have failed to evolve a pattern which is precise yet not rigid, flexible yet not arbitrary. After this disclosure, the author approaches the subject primarily as a critical examination of current views, extensions of existing rules, and trends in the development of new principles.

The book is arranged in three sections. Part One is mainly an investigation of the basic principles of liability in negligence cases. Professor Keeton refers to this as the Risk Rule which he dissects via the classic "exploding-rat-poison-on-the-stove" case. He first discusses the prevailing "but-for" or "sine qua non" rule. The ambiguity of this rule gives rise to his opinion that liability should be based upon the "negligent aspect of the conduct" which causes harm. A variation on this theme points to the element of foreseeability. The remainder of this section is a contrast of the Risk Rule applications with other principles, highlighted by discussions of the *Palsgraf* and *Polemis* cases and an analysis of the *Restatement* view of legal cause.

Although Part Two purports to depict the various applications of the Risk Rule concept, it is more of an examination of classic deviations, extensions, and limitations. Since the determination of liability with respect to scope of risk is by its nature quite fact-oriented, it is only by a study of selected "type" cases that one can acquire sufficient understanding for accurate prediction. A very interesting and notable inclusion in this section is Professor Keeton's explanation of various factors which

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account for deviation from the Risk Rule. Public policy and a general tendency in the direction of expanded liability are two such factors which are examined.

The subject of termination of risk is one area where the author recommends a return to the Risk Rule. Although the trend here is toward a limitation of liability, the author feels that reasoning with regard to intervening and superseding cause may not stand up well to a causation-in-fact analysis.

In Part Three, "Battle Fronts in the Law of Causation," three factors influencing the trend toward strict liability are delineated. All are the subject of continuing dispute. The first merely summarizes the ever-expanding scope of liability concept which the author treated in depth in the preceding section. A tendency toward a very broad description of risk is now quite obvious. An equally prominent factor is pointed out with respect to judicial supervision of jury findings on questions concerning description of risk. Courts seem to shy away from their rightful authority and duty in the re-examination of jury verdicts. The author is not alone in his opinion that many such questions should be ruled upon as a matter of law, rather than left for jury determination. As third factor, he indicates the "directly-traceable-consequences" rule which naturally tends toward strict liability. The author prefers general adherence to the Risk Rule, but acknowledges that the former rule, when discriminatingly applied, is very often more suitable to modern circumstances.

Professor Keeton does not claim to present an exhaustive treatise on the subject of causation, but he provides the reader with a basic understanding of the concept of legal cause terms. Therefore, I feel that the book would be of considerable value to the beginning law student. Most of the case examples are those which are likely to be studied in detail by such students in elementary tort law. For those seeking a more thorough investigation of the subject, the use of the book in conjunction with an examination in depth of its footnotes would be recommended.