The Automobile, Negligence, and Wyoming Law

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INTRODUCTION

America is a nation on wheels. Just as the automotive manufacturing industry has become a primary factor in our national economy, so the use of the automobile has become one of the most prolific sources of litigation. A major portion of the work load of the lawyer in general practice is in some way connected with the ownership and use of the automobile.

In view of the complexities of the many facets of litigation involving automobile use and ownership, the editors of the Wyoming Law Journal felt it might be helpful to collect in a single volume much of the statutory and case law governing the ownership and use of the automobile in Wyoming. With this thought in mind, the following symposium is offered for your approval.

WYOMING LAW JOURNAL EDITORS

THE AUTOMOBILE, NEGLIGENCE, AND WYOMING LAW

“We have grown up with the motor vehicle. We are the products of its revolutionary effects, dependent upon it for everything we do. It is so much a part of our lives that we are unable to assess its influence upon our thought, our activities, our livelihoods, our culture, our law. We know its dangers — the great toll of lives it takes and the great toll in suffering, loss of services of those who are injured, and services of those who must care for them, losses in happiness, productive energies, property and money, wholly incalculable.”

When the automobile burst upon this nation, the traditional legal concepts of negligence were applied. By court decision and legislative action the slow process of developing doctrinal refinements and limitations for softening the immunities of the early law of negligence was begun.

This note is limited to how Wyoming law and courts have handled the problem of the automobile. No attempt is here made to suggest what the law should be in Wyoming. The cases and authorities cited do not presume to encompass all the cases or authorities in Wyoming on the particular point discussed. However, the cases and authorities cited, it is hoped, do reflect the present law on the particular point or doctrine.

Negligence has been defined in Wyoming as “the failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby


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such other person suffers injury." This definition imposes a standard of care best described in *Ries v. Cheyenne Cab and Transfer Co.*

Care and vigilance on the part of vehicular travelers should always vary, according to the exigencies which require vigilance and attention. An automobile driver is bound to use his eyes, bound to see seasonably that which is open and apparent, and take knowledge of obvious dangers. When he knows, or reasonably ought to know, the dangers, it is for him to govern himself suitably. Thoughtless inattention on the highway, as elsewhere in life, spells negligence.\(^3\)

Both the above definition and standard apply the reasonable prudent person test to the Wyoming roads and highways. Thus, if in the existing circumstances one does not exercise that degree of care which the reasonable prudent person would exercise in the same or similar circumstances, and another is injured as a proximate result thereof, one is liable for such injury. "The words 'reasonable man' denote a person exercising those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and interests of others."\(^4\)

Once the defendant's negligence is alleged, the defendant may admit such in his answer or deny it and in the alternative plead that even if he be found negligent the plaintiff's conduct bars any recovery by the plaintiff. Herein lies the doctrine of contributory negligence, which in most jurisdictions imposes upon the plaintiff an all or nothing proposition in that should the plaintiff negligently contribute to his own injury, he can not recover from the defendant.

Several jurisdictions apply the doctrine of comparative negligence, which takes into consideration the negligence of each party and proportionately limits recovery by the plaintiff.\(^5\) Wyoming does not adhere to this doctrine\(^6\) except in cases arising under the Federal Employer's Liability Act.\(^7\)

The defense that the plaintiff has negligently contributed to his injury arises in nearly every automobile negligence suit, and imposes upon

5. Prosser, Torts, 2d ed., 1955, ch. 10, § 53, pp. 296 to 299, briefly and adequately discusses the development and extent comparative negligence is used by courts today. This section lists the jurisdictions that apply the doctrine and the situations to which they apply it.
the defendant the burden of alleging and proving the affirmative defense of contributory negligence,⁸ which is defined as:

... conduct on the part of a plaintiff which falls below the standard to which he should conform for his own protection and which is a legally contributing cause, co-operating with the negligence of the defendant in bringing about plaintiff's harm. The standard of conduct to which he should conform is the standard to which a reasonable man would conform under like circumstances.⁹

Thus in Wyoming, the reasonable prudent person test is used in determining whether or not the plaintiff is contributorily negligent. The duty of care or standard mentioned above is just as applicable to the doctrine of contributory negligence as to that of negligence. In addition, the Wyoming Supreme Court has held that assumption of risk is not to be distinguished from contributory negligence.¹⁰ However, this may be questioned because of the recent guest case in which the Court stated that any distinction between contributory negligence and assumption of risk is to be determined upon the facts and circumstances of each case.¹¹ Further, Wyoming does not adhere, as do several sister states, to the doctrine of degrees of negligence except where the guest statute is involved and the language of the statute requires that the doctrine be applied.¹²

Standing alone, the foregoing definitions of negligence, care, and contributory negligence (which lead to the reasonable prudent person test) impart to some degree a moral quality, and perhaps even introduce an element involving the state of mind of the parties. This, of course, is not the purpose of such definitions, and, therefore, when standing alone, the reasonable prudent person test is of little or no actual value. It is when the definition that is employed is applied to the facts of a particular case and to the conduct of the particular party that any value is derived.

In a particular case or controversy each party must satisfy the burden of proof placed upon him. (Burden of proof is used here to mean the burden of persuasion, or risk of non-persuasion, and not the shifting duty of going forward with the evidence.) Thus the plaintiff must prove the defendant's negligent conduct and that such was the proximate cause of the plaintiff's injury. The defendant in turn must explain his conduct and, of course, bears the burden of proving the plaintiff's contributory negligence if the defendant alleges such. So far as contributory negligence and proximate cause are concerned, the party with the burden need not produce


¹². The guest statute and its application is discussed in another note in this symposium; however, in Davies v. Dugan, 365 P.2d 198 (Wyo. 1961), use is made of the term gross negligence in a case not involving the guest statute but such use is at most descriptive and dicta.
direct evidence. Contributory negligence and proximate cause may be
determined from the opposition's evidence and/or the circumstances of
the case. It is sufficient so long as contributory negligence and proximate
cause appear from the evidence.\textsuperscript{13}

Negligence, contributory negligence, and the various doctrines and
theories to be discussed below are to be determined by a jury\textsuperscript{14} unless
the court determines as a matter of law that reasonable men could draw but
one inference from the facts of the particular controversy.\textsuperscript{15} However, it
is not always necessary that there be conflicting facts to have a question
of fact. So long as "different minds may fairly arrive at different con-
clusions, and where the inferences from the facts are not so certain that
all reasonable men, in the exercise of fair and impartial judgment, must
agree upon them"\textsuperscript{16} there exists a question of fact for a jury.

Once the case is appealed, the "rule of review" is applied in Wyoming.
This rule states that the appellate court

must assume that the evidence in favor of the successful party
is true, leave out of consideration entirely the evidence of the
unsuccessful party in conflict therewith, and give to the evidence
of the successful party every favorable inference which may be
reasonably and fairly drawn from it.\textsuperscript{17}

If any benefit is to be forthcoming from the foregoing definitions and
rules, it is to be derived by attempting to find a "thread" between such
definitions and rules on the one hand, and past decisions in which such
definitions and rules have been applied on the other hand. In this
fashion, one should be prepared to venture an opinion as to whether a
particular fact situation will be determined by a jury or by the court as
a matter of law.

It is impossible to list every type of conduct that may or may not
constitute a breach of duty, but it is possible to state several of the more
common areas of duty and what type of conduct has constituted a breach
of duty.

MAINTAINING A LOOKOUT: "A person is presumed to see that
which he could see by looking . . . He will not be permitted to say that he

\textsuperscript{13} As to contributory negligence, Johnston v. Vukelic, supra note 4, at p. 930; as to
proximate cause, O'Malley v. Eagan 43 Wyo. 233, 2 P.2d 1063, 1066 (1931).
\textsuperscript{14} Dallason v. Buckmeier, 74 Wyo. 125, 284 P.2d 386 (1955).
\textsuperscript{15} As to negligence, Davis v. Dugan, 365 P.2d 198, 200, (Wyo. 1961). As to proximate
cause, Ibid, at p. 390, and Ford Motor Co. v. Arguello, supra note 10, at p. 891 and
892. As to contributory negligence, Ries v. Cheyenne Cab and Transfer Co., supra
note 3, at p. 478.
\textsuperscript{16} Templar v. Tongate, 71 Wyo. 148, 255 P.2d 223, 230 (1953); quoting with approval
((1927) Similar language is found in O'Mally v. Eagen, supra note 13, at p. 1066.
\textsuperscript{17} Chandler v. Dugan, 70 Wyo. 439, 251 P.2d 580, 584 (1952). Also found in the
recent cases: Brasel & Sims Construction Co. v. Neuman Transit Co., 378 P.2d 501,
did not see what he must have seen, had he looked."\(^{18}\) The Wyoming Supreme Court has quoted authority stating that, "It has been stated that failure to look at all constitutes negligence as a matter of law while the question as to whether one who looks, sees all that he should see, is one of fact for the jury."\(^{10}\) and the Court has held a driver negligent in at least two cases for not looking in the direction the car was travelling.\(^{20}\)

VISION: Closely related to the duty to maintain a lookout, is the duty concerning vision.\(^{21}\) Wyoming has employed three approaches to automobile negligence cases involving the driver's vision. First, the "assured clear distance" rule which provides that the driver of an automobile is charged with a duty to so drive his vehicle that he can stop the automobile within the visible distance ahead. Second, the assured clear distance rule with exceptions — "disconcerting circumstances." Third, the reasonable prudent person test applied to the circumstances of the particular case.

The assured clear distance rule was applied in Price v. State Highway Commission\(^{22}\) where the plaintiff collided with a snowplow, which possessed no warning signals, because of blowing snow which obscured the plaintiff's vision.

The assured clear distance rule with exceptions was formulated in the case of Merback v. Blanchard,\(^{23}\) wherein the defendant stopped his truck upon the highway at night and the decedent drove into the rear of the truck. The Court reasoned that there were "disconcerting circumstances" in that the defendant's truck was covered with road oil, it was a dark moonless night, the truck's lights were not operating properly, and another of defendant's trucks was approaching from the opposite direction. Thus, the Court reversed the directed verdict rendered below in favor of the defendant upon the assured clear distance rule. In Hawkins v. Lofland Brothers Company\(^{24}\), where plaintiff's decedent crashed into the rear of defendant's truck which was stopped upon the highway without proper lights, the Court reversed the judgment of the lower court and held the decedent guilty of contributory negligence as a matter of law because of the absence of any disconcerting circumstances.

In the case of Templar v. Tongate\(^{25}\), the Court stated that it was for the jury to determine whether or not the defendant was negligent in not seeing the decedent. The defendant was blinded by sunlight upon

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cresting a small hill just prior to the collision with the decedent who was
driving very slowly upon the highway. The Court also recognized that
the defendant had "a right to presume and to act upon the presumption,
that the way is safe for ordinary travel, . . . and he is not required to be
on the lookout for extraordinary dangers or obstructions to which his
attention has not been called."\textsuperscript{26} Because of this last quoted rule, one
cannot definitely classify the \textit{Templar} decision as an application of the
reasonable prudent person test. However, in \textit{Gamet v. Beasley}\textsuperscript{27}, the Court
did apply the reasonable prudent person test where the plaintiff collided
with the defendant's parked car during a foggy night.

This writer doubts if the distinction between the rules is that the
reasonable prudent person test will be employed where two automobiles
are involved, and the assured clear distance rule with or without exception
will be employed where one or more trucks are involved. However, one
cannot determine with any degree of certainty which rule will be applied
in a particular case. This writer believes the better rule considering the
present condition of roads and the modern vehicles is to apply the reason-
able prudent person test to the facts of each case.

\textbf{INTERSECTIONS:} \textit{Ries v. Cheyenne Cab and Transfer Co.} provides the
applicable duty at right-of-way intersections. In this case, the Court
qualifies the rule that the driver to the right has the right-of-way by stat-
ing that such right may not be "invoked when the car moving from the
favored direction is so far from the intersection at the time the car from
the left comes into it that, with both proceeding within the lawful limits
of speed, the latter will reach the line of crossing before the former will
reach the intersection."\textsuperscript{28}

\textbf{CONTROL:} The driver of an automobile must have control of his
automobile under the particular circumstances. Where the driver loses con-
trol, begins to skid, and injury results, the driver has the burden of showing
that such injury and loss of control was not due to his negligence.\textsuperscript{29} There
is also the following inference which he must rebut: "... when it is shown
that causes calculated to produce a certain result were in operation at a
given time, it is a permissible inference that the natural result in fact
followed."\textsuperscript{30} In \textit{Dr. Pepper Co. v. Heiman}, the Court stated in affirming
the lower court, which sat without a jury:

It taxes credulity to suggest that a road intermittently covered
with snow, slush and ice was not a contributing factor when a
vehicle skidded and spun around, or to imply that speed was not

\textsuperscript{26} Ibid., at p. 232.
\textsuperscript{27} Gamet v. Beasley, 62 Wyo. 1, 159 P.2d 916 (1945).
\textsuperscript{28} Ries v. Cheyenne Cab and Transfer Co., supra note 3, p. 472.
\textsuperscript{29} Dr. Pepper Co. v. Heiman, 374 P.2d 206, 209 (Wyo. 1962); Butcher v. McMichael,
370 P.2d 937, 939 (Wyo. 1962); and Wallis v. Nauman, 61 Wyo. 231, 157 P.2d 285,
288 (1945).
\textsuperscript{30} Dr. Pepper Co. v. Heiman, supra note 29, at p. 209.
also a contributing cause when the skidding and spinning actually occurred. This left it reasonable for the trial court to infer that the road's condition and the driving at a speed of as much as 35 miles per hour did induce the skidding and spinning and, hence, such driving was negligent. This is especially true inasmuch as the plaintiff offered no evidence whatever to explain the cause for the car's going into the spin.31

Whenever there is an issue of control, there will be concern and inquiry as to the physical and/or mental condition of the driver, the condition of the road, the speed at which the automobile was traveling, and other pertinent factors.

SPEED: One may be well within the authorized speed limit and still be found negligent. (See above quote from Dr. Pepper Co. v. Heiman.) Such is based upon a rule of the road that one must travel at a speed which is reasonable under the existing circumstances.32 Further, parties may always act under the assumption that an approaching automobile will proceed at a lawful rate of speed.33

TRAFFIC LANES: The general rule is that a motor vehicle is to travel in the right hand lane of traffic.34 However, where two motor vehicles are approaching one another and one is in the wrong lane, the Wyoming Supreme Court has stated that "the driver of a motor vehicle who is in his own lane of traffic and sees another vehicle coming toward him in the wrong lane has a duty to use ordinary care to avoid an impending collision and any assumptions which he makes as to the yielding of the right of way or the return of the vehicle to its proper lane must be reasonable in view of the circumstances."35 When a driver is changing his driving lane or turning onto another street or road, he is "to make certain that this might be done with safety."36

STOPPING IN TRAFFIC: A driver has a right to presume that the automobile in front of him will continue to travel instead of stopping in the lane of traffic.37 If one should find it necessary to stop, one should drive off the road or lane of traffic. The Court has held that one is "negligent and, in fact, grossly negligent in stopping right in the lane of travel when he knew that other cars were following him and when he had ample space to stop his car north of the lane of traffic."38

STOPPING ON HIGHWAYS: A driver has the right to presume that any highway is open to public travel and that all other drivers will observe

34. Wyo. Stat. § 31-99 (1957). This section also lists the exceptions to the general rule.
38. Id.
this presumption and not leave their motor vehicles on the traveled part of the highway. An exception is where the vehicle is "disabled." Wyoming has by statute adopted this exception. States which have a statute similar to that of Wyoming have construed the exception in one of two ways: by holding a vehicle is disabled when it cannot be moved under its own power, or by holding a vehicle disabled when it is impossible to avoid stopping or temporarily leaving them in such position, and that the word "impossible" should not be given a literal construction, but should be construed to mean "not reasonably practical."

In *Merback v. Blanchard* (also discussed supra at page 7.) the Court held that where a vehicle is stopped upon the traveled part of a highway, which has a shoulder two and a half feet wide, because of defective lights of which the driver was aware some time before stopping, it is a jury question as to whether the vehicle is disabled. In view of this decision, it would appear that Wyoming has decided to follow the latter of the two interpretations mentioned above.

**PEDESTRIANS:** In *Johnston v. Vukelic* the Court cited with approval Wyo. Stat. § 60-521 (1945), which placed the duty of care on the pedestrian and motor vehicle driver in the following language:

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(d) Notwithstanding the provisions of this section every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon any roadway.

In *Borzea v. Anselmi*, the Court approved the statement that a pedestrian, who sees an automobile approaching, may calculate upon passing in front of it, upon the assumption that it will approach at a lawful rate of speed, and, if he observes no vehicles on the street within a distance which would be covered by vehicles operating at a lawful speed, he may proceed on the assumption that all vehicles outside of such distance will not run at an unlawful speed.

**VIOLATION OF TRAFFIC REGULATIONS:** The violation of

42. Johnston v. Vukelic, supra note 4, at p. 990.
43. Today the respective statutes are: as to pedestrians the same exact language is quoted in Wyo. Stat. § 31-159 (1957), with two additional subsections; as to the driver's duty, Wyo. Stat. § 31-163 (1957), uses almost the same language with several minor changes.
44. Borzea v. Anselmi, supra note 33, at p. 801.
Wyoming traffic regulations, whether state or municipal, is "at least evidence of negligence"45 or "prima facie evidence" of negligence.46 However, such violation has been viewed as negligence per se.47 Regardless of this distinction, the court immediately points out that liability does not follow unless the violation is also the proximate cause.48

It is apparent that in all the above areas as in any specific area of duty, whether or not the duty has been breached depends upon the reasonable prudent person test. The doctrine of res ipsa loquitur certainly involves due care, but, a specific act of negligence is not directly involved.

The doctrine is applicable,

when a thing that causes injury, without fault of the plaintiff, is shown to be under the exclusive control of the defendant, and the injury is such as in the ordinary course of things does not occur if the one having such control uses proper care, it affords reasonable evidence, in the absence of an explanation, that the injury arose from defendant's want of care.49

Res ipsa loquitur is seldom used in the vehicle negligence area because "If it may be found from other evidence than the event that due care would have avoided" the act or omission, "then liability follows without resort to the formula or res ipsa loquitur."50 Thus once the specific act of negligence is ascertainable, which it usually is in automobile accidents, one has no need of this doctrine.

Once a duty of care has been established and that the duty has been breached, the plaintiff has the burden of proving that such breach was also the proximate cause of the injury.51 Proximate cause has been defined as:

that cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. But the proximate cause is not necessarily the nearest in point of time or place to the injury. . . . It is necessary that an injury should be able to be foreseen. . . . That the efficient cause is the cause that necessarily sets the other causes in operation. Proximate cause is the probable cause, and remote cause is improbable cause.52

and;

Proximate cause has been variously defined, but the definition

47. Checker Yellow Cab Co. v. Shiflett, supra note 26, at p. 666.
48. Ibid., at p. 663; O'Mally v. Eagen, supra note 46, at p. 1067; and Hester v. Coliseum Motor Co., supra note 45, at p. 784.
52. Lemos v. Madden, 28 Wyo. 1, 200 P. 791, 793 (1921).
thereof which appears to meet with general approval is that it is that cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the injury would not have occurred.53

The causal relationship between the defendant's negligence and the plaintiff's injury is usually shown by employing the "but for" or sine qua non test, which simply provides that the defendant's negligence is a cause in fact of the injury where the injury would not have occurred but for the defendant's negligent conduct. Although this rule establishes cause in fact, it is of little aid in determining the proximate cause. The distinction between the two is that the proximate cause doctrine draws an imaginary line beyond which the defendant will not be liable even though he was or is responsible for the cause, or one of the causes, in fact. The reason this line must be drawn is simply that a cause in fact can be carried to unreasonable lengths and that the "but for" rule works both ways — had the plaintiff not been there or acted as he did, the defendant would not have injured him.54

Naturally, the difficulty one encounters with proximate cause is where to draw the imaginary line in the particular circumstances. Courts have used various theories in drawing this line, including such theories and terms as probability and improbability, foreseeability, remoteness, substantial factor or intervening cause. Wyoming is no exception. The terms most often used are substantial factor, intervening cause, foreseeability, and efficient cause. Regardless of the terms used, the issue is always whether or not the defendant's negligence was the proximate cause of the plaintiff's injury.

Rather than discuss the rationale underlying each of the above theories of proximate cause, I believe it will be far more beneficial to attempt to determine by prior Wyoming decisions whether or not the Wyoming Supreme Court has indicated where the imaginary line separating proximate cause from cause in fact is to be drawn. Many decisions exist wherein the Court has discussed this issue but they are of small value to the practitioner because the discussion has little or no bearing upon the facts of the particular case. Upon examining the decisions, one is aware of the fact that either the Wyoming Supreme Court has yet to encounter a difficult proximate cause problem or that the Court is speaking only in terms of cause in fact. There is a logical reason for this conclusion. In this type of case, the motor vehicles are either involved or not involved in an accident. Therefore, in the usual case, there is not a difficult proximate cause issue.

Exceptions — the unusual cases involving a real proximate cause issue—

do exist.\textsuperscript{55} Three recent automobile cases involved a substantial issue of proximate cause. First, \textit{Checker Yellow Cab Co. v. Shiflett}\textsuperscript{56}, in which the defendant truck traveling on the right side of the right hand lane illegally turned left and struck the defendant cab which was passing the defendant at an illegal rate of speed. Upon the collision, the defendant cab crossed the road and struck the plaintiff's parked automobile. The Wyoming Supreme Court affirmed the lower court's determination that both defendants were liable to the plaintiff and that the defendant truck was liable to the defendant cab. The Court held that the defendant cab's excessive speed was not a proximate cause of the collision with the defendant truck; that the illegal left turn by the defendant truck was the proximate cause of the collision with the defendant cab; and that the illegal speed of the defendant cab and the illegal left turn by the defendant truck were the proximate cause of the injury to the plaintiff's automobile.

Second, \textit{Convoy Company v. Dana}\textsuperscript{57}, involved a plaintiff who left his truck with defective brakes, including the emergency brake, at the defendant's garage one evening without the defendant, who was not present, knowing of the defects. The next day while moving the plaintiff's truck, the defendant could not stop the truck and injured one Burdick. Burdick sued and recovered from plaintiff, who sought contribution from the defendant. The Supreme Court affirmed the lower court's decision in favor of the defendant. The Court discussed three theories of proximate cause — foreseeability, intervening cause, and substantial factor — and upon the rationale of each, concluded that the plaintiff's conduct was the proximate cause of Burdick's injury. Third, \textit{Ford Motor Co. v. Arguello}\textsuperscript{58}, wherein the plaintiff, a guest in defendant Peterson's automobile, alleged and the jury found that the accident in which the plaintiff was injured was caused in part by the defendant Ford Motor Company's negligence. The rivets holding the rim to the spider of the right-front wheel of Peterson's automobile were inferior in quality and one did in fact fall out of its hole thus allowing the tubeless tire to deflate. The Court in affirming the jury's determination held that the evidence (including expert testimony) was sufficient to "indicate poor metallurgical control and a lack of proper inspection for the purpose of keeping the quality of the rivets up to prescribed specifications, during the manufacturing process."\textsuperscript{59}

One is immediately aware of the fact that in the foregoing decisions the cause in fact was found to be the proximate cause. Therefore, the practitioner is not provided with any actual criteria upon which to rely when distinguishing a cause in fact from the legal or proximate cause.

\textsuperscript{55} In \textit{Lemos v. Madden}, supra note 52, the Court was confronted with a difficult proximate cause problem. However, this was not a case involving automobiles. The decision discussed the various theories of proximate cause, and found the cause in fact to be the proximate cause.

\textsuperscript{56} Supra note 36.

\textsuperscript{57} 359 P.2d 885 (Wyo. 1961).

\textsuperscript{58} Supra note 10.

\textsuperscript{59} Ibid., at p. 889.
Further, the Court seems to rely heavily upon the substantial factor and foreseeability theories of proximate cause.

The substantial factor doctrine serves two purposes, first to establish cause in fact and second if "defendant's conduct was a substantial factor in causing the plaintiff's injury, it follows that he will not be absolved from responsibility merely because other causes have contributed to the result. . . ." The test of substantial factor sounds of the "but for" rule—"it will be such a substantial factor if the result would not have occurred without it." However, the term substantial conveys the meaning of principal or main cause, and the Court has held that whether the cause is the substantial cause is for the jury to determine.

The term "anticipated" is often interchanged with that of "foreseeability." The issue here is to what extent is the defendant required to anticipate that his act or omission will or could cause injury and to what extent must he foresee the extent of injury? The Wyoming Supreme Court has held that "the universally accepted doctrine, from which no court has dissented, that it is not necessary that the precise injury, or the particular manner or conditions under which it occurred, should have been anticipated, and all that is necessary is that an injury of some character could have been reasonably anticipated." Also, foreseeability "does not require that the negligent person should . . . anticipate the particular consequences which actually flowed from his act or omission. . . ."

Considering the above discussion, this writer believes that the Wyoming situation involves the basic concept that the defendant will be liable for any injury sustained by any person within the risk created by the defendant. To summarize, if the defendant's negligent conduct creates a condition in which a reasonable person could foresee the likelihood of injury to a third person, the defendant's conduct will be the producing or proximate cause of such injury.

Of course, there may be more than one proximate cause. If so, the two separate and distinct acts may be simultaneous in point of time or one act may be subsequent to the other.

Proximate cause has been called "the master doctrine of negligence law into which every difficult problem may be resolved." By the use of this doctrine, the court may take the case from the jury simply because

61. Ibid., at page 889, quoting Prosser, Torts, page 218 (2d ed.). Similar words are found in O'Mally v. Eagan, supra note 46, at p. 1066.
64. Frazier v. Pokorny, supra note 54, at p. 329.
65. Checker Yellow Cab Co. v. Shiflett, supra note 36; and Hester v. Coliseum Motor Co., supra note 45.
66. Convoy Company v. Dana, supra note 57; Hines v. Sweeney, supra note 63; and very often where plaintiff's contributory negligence is involved.
67. Green, Leon, supra note 1, at p. 74.
proximate cause is a mixed question of law and fact. The court determines this upon whether only one inference or conclusion can be drawn from the evidence. Thus by the proximate cause doctrine, the appellate courts are able to control not only automobile negligence law, but the entire area of torts.

Another doctrine often used by the plaintiff as well as the defendant is the emergency or sudden peril doctrine. This doctrine has been described as:

Where the operator of a motor vehicle is by a sudden emergency not caused in whole or in part by him, placed in a position of imminent peril to himself or to another, without sufficient time in which to determine with certainty the best course to pursue, he is not held to the same coolness, accuracy of judgment, or degree of care as is required of him under ordinary circumstances, or of one having ample opportunity for the full exercise of judgment, and is not liable for injuries caused by his vehicle if an accident occurs, provided he exercises ordinary or reasonable care or prudence, concerning the stress of the circumstances, to avoid an accident, and, according to the decisions on the question, acts in a way not obviously faulty or which cannot reasonably be found improper or imprudent, and even though a course of action other than that which he pursues might have been better, safer, or more judicious.

An emergency or sudden peril has been described as "Anything which operates to deprive a person of the ability to exercise his intellectual powers and guide his acts," and will thereby "relieve him of an imputation of negligence that otherwise might arise from his conduct." One requirement is stated again and again, the person in peril must not have placed himself in such position by his own negligent conduct.

A good example of the emergency doctrine is provided by Dallason v. Buckmeier, where the defendant's judgment on his cross-petition was affirmed. The defendant found himself in peril due to the plaintiff's truck driver turning a highway corner in the wrong lane of traffic. To avoid the accident, the defendant turned to his left only to collide with the plaintiff's truck. The Court found that the defendant had acted reasonably under the circumstances.

Assuming that the plaintiff has alleged and proven defendant's negligent conduct, that the defendant has alleged and proven plaintiff's contributory negligence, and that neither party may apply the emergency doctrine, the plaintiff cannot recover unless he is able to invoke the last clear

69. Ibid., at pages 389 and 390, quoting 60 C.J.S., Motor Vehicles, § 257, pp. 624 to 626. The Court said this was the rule applied in Wells v. McKenzie, 50 Wyo. 412, 62 P.2d 305 (1936).
70. Kowlak v. Tensleep Merchantile Co., 41 Wyo. 20, 281 P. 1000, 1002 (1929).
72. Supra note 68.
chance doctrine. This doctrine and the emergency doctrine reach the same result when applicable, by allowing one to recover even though in a position of danger. However, the last clear chance doctrine is applied where the plaintiff by negligent conduct on his part places himself in a position of danger, whereas the emergency doctrine is applied where the plaintiff (or party seeking to apply the doctrine) finds himself in a position of danger not due in part or entirely to any negligent conduct on his part.

The last clear chance doctrine has been very simply defined as:

The party who last has a clear opportunity of avoiding an accident, notwithstanding the negligence of his opponent, is considered solely responsible for it. The doctrine of last clear chance entails a clear and apparent opportunity to avoid the result.

This doctrine is not an exception to the doctrine of contributory negligence nor does it allow one to recover in spite of his contributory negligence. Such result is accomplished by characterizing the defendant's negligence as an intervening cause between the plaintiff's negligence and the accident and in addition finding that the defendant's negligence is the sole proximate cause. Thus the plaintiff's negligence is a remote cause. As a remote cause plaintiff's negligence cannot be contributory negligence, which must be one of the proximate causes.

The Wyoming Supreme Court has adopted both section 480 and section 479 of the Restatement, Law of Torts, which apply to the inattentive and the attentive plaintiff respectively. These sections provide:

§480: A plaintiff who, by the exercise of reasonable vigilance could have observed the danger created by the defendant's negligence in time to have avoided harm therefrom, may recover if, but only if, the defendant
(a) knew of the plaintiff's situation, and
(b) realized or had reason to realize that the plaintiff was inattentive and therefore unlikely to discover his peril in time to avoid the harm, and
(c) thereafter is negligent in failing to utilize with reasonable care and competence his then existing ability to avoid harming the plaintiff.

§479: A plaintiff who has negligently subjected himself to a risk

74. Often it is said that the doctrine of last clear chance is an indirect method of using degrees of negligence.
75. Borzea v. Anselmi, supra note 33, at p. 802.
76. Dr. Pepper Co. v. Heiman, supra note 29, at p. 212.
77. Borzea v. Anselmi, supra note 33, at p. 802.
78. In Johnston v. Vukelic, supra note 4, at p. 931, the Court stated of § 480, "We accept this as a correct statement of the rule to be followed in the case of an inattentive plaintiff."
of harm from the defendant's subsequent negligence may re-
cover for harm caused thereby if, immediately preceding the
harm.

(a) the plaintiff is unable to avoid it by the exercise of
reasonable vigilance and care, and

(b) the defendant
   (i) knows of the plaintiff's situation and realizes
   the helpless peril involved therein; or
   (ii) knows of the plaintiff's situation and has reason
   to realize the peril involved therein; or
   (iii) would have discovered the plaintiff's situation
   and thus had reason to realize the plaintiff's
   helpless peril had he exercised the vigilance which
   it was his duty to the plaintiff to exercise, and

(c) thereafter is negligent in failing to utilize with reason-
able care and competence his then existing ability to
avoid harming the plaintiff.79

Even though this doctrine is frequently invoked, one often overlooks
the limitations and qualifications of the doctrine. Four major "limitations"
are: First, as mentioned above, the last clear chance doctrine applies
only where the plaintiff has placed himself in a position of danger due to
his own negligence. Second, the defendant must be aware or by reasonable
care should have been aware of the plaintiff's situation.80 Third, the
document "can never apply where the party charged is required to act in-
stantaneously, and if the injury cannot be avoided by the application of
all means at hand after the discovery of the peril, or as some would hold,
after the peril should have been discovered, . . . "81 Fourth, the doctrine
"does not apply where the plaintiff has been negligent, and his negligence
continues, and concurrently with the negligence of defendant, directly
contributes to produce the injury, it applies only where there is negligence
of the defendant subsequent to, and not contemporaneous with, negligence
by the plaintiff so that the negligence of defendant is clearly the proximate
cause of the injury, and that of the plaintiff the remote cause."82

Upon reading the Wyoming automobile cases in which the last clear
chance doctrine has been allowed by the Court, one realizes that such
document may be termed in Wyoming a pedestrian's doctrine.

The above are, very briefly, the existing doctrines of automobile
negligence law used in Wyoming today. Because of the wide use and

79. The Court in Borzea v. Anselmi, supra note 33, found for the plaintiff using § 479.
80. Dr. Pepper Co. v. Heiman, supra note 29, at p. 212; Convoy Company v. Dana,
supra note 57, at p. 887; and Rienecker v. Lampinan, 55 Wyo. 159, 96 P.2d 561, 564
(1939).
81. O'Mally v. Eagen, supra note 46, at p. 1071. Also quoted in part in Johnston v.
Vukelić, supra note 4, at p. 932.
82. Davies v. Dugan, supra note 20, at p. 201. Case in which after passing a green
traffic signal, plaintiff stopped in the middle of the right lane of a four lane street.
Defendant ran into plaintiff. The Court held that the last clear chance doctrine
did not apply.
dependency upon the automobile and the impact of automobile insurance, which provides a solvent but undisclosed defendant, it is not surprising that the greater part of the tort litigation today involves the automobile.

The impact of the automobile and insurance upon the law has caused much concern as to the ability of the law to cope with the litigation which results from traffic accidents. Crowded court calendars, astronomical judgments, and other particular problems with each state's negligence law has encouraged scholars and experts in the negligence field to advocate various changes in the administration of traffic accident litigation. Naturally, Wyoming has not felt the impact that New York or California have felt upon their law and procedures. However, now is the time to re-evaluate our law and determine not only if it is sufficient for the present but also for the future.

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