# THE THREE BODY PROBLEM IN QUASI-DELICTS: DETERMINING LIABILITY WHEN MULTIPLE PERSONS ARE NEGLIGENT*

*Maria Patricia S. Valeña* **

## I. INTRODUCTION

In physics, a three-body problem is generally understood as the problem of determining the evolution of three masses under their own gravity.[1] Adopting the phrase to our own purposes, a three-body problem arises in the law on quasi-delicts whenever the Court is faced with a situation where opposing parties in a case are negligent and the Court must apportion liability among them. In such cases, the Court is tasked to solve a three-body problem, *i.e.*, determining the legal relationship between two or more negligent acts on one hand, and the resulting injury on the other.

The Court has developed several frameworks to deal with such situations: *the doctrine of intervening causes*, which is a component of the classic definition of proximate cause adopted into this jurisdiction from American jurisprudence;[2] *the doctrine of last clear chance*, also imported from American case law;[3] and *the rule of contributory negligence*, which is different from the American

---

* *Cite as* Maria Patricia S. Valeña, *The Three Body Problem in Quasi-Delicts: Determining Liability when Multiple Parties are Negligent*, 96 PHIL. L.J. 572, [page cited] (2023).

** Court Attorney, Supreme Court of the Philippines. Senior Lecturer, University of the Philippines College of Law. J.D., *cum laude*, University of the Philippines (2018).

The author thanks Assoc. Prof. Rommel J. Casis, whose book, *An Analysis of Philippine Law on Torts and Quasi-Delicts* (2012), was instrumental in the author's education and teaching, as well as the writing of this paper.

[1] Yonadav Barry Ginat & Hagai Perets, *Analytical, Statistical Approximate Solution of Dissipative and Nondissipative Binary-Single Stellar Encounters*, 11 PHYSICAL REV. 031020-1 (2021). The Three-Body Problem is also the title of a remarkable science fiction novel by the author and engineer Cixin Liu, and a 1965 paper dealing with situations where two relatively innocent parties will bear the consequences of a loss caused by a third party. *See* R.B. Jones, *Three-Body Problem in Law*, 24 FAC. L. REV. 5 (1966).

[2] Vda. de Bataclan v. Medina [hereinafter "*Bataclan*"], G.R. No. 10126, 102 Phil. 181, 185–86 (1957).

[3] *See* Williams v. Yangco, G.R. No. 8325, 27 Phil. 68, 71 (1914), where the Court stated: "In cases of a disaster arising from mutual negligence of two parties, the party who has a last clear opportunity of avoiding the accident, notwithstanding the negligence of his opponent, is considered wholly responsible for it under the common-law rule of liability as applied in the courts of common law in the United States."

rule on contributory negligence.[4] However, throughout the years the Court has applied these three different frameworks without clear standards defining the parameters for the use of one over another or their relationship to each other; this has, unsurprisingly, resulted in a lack of clarity in our jurisprudence.

After defining the scope of review and relevant terms, this Article will provide an overview of each of the foregoing frameworks and illustrate how their inconsistent application has resulted in often conflicting jurisprudence. This Article will then propose a framework to reconcile said inconsistencies by integrating the doctrine of last clear chance into the framework of intervening causes. However, while that is the focus of this Article, it is also necessary to examine the Court's usage of the concept of "contributory negligence" in last clear chance cases, and to address the confusion created by such cases.

For clarity and consistency, it is proposed that the framework of intervening causes be adopted as the general conceptual framework governing situations where more than one party is negligent, as the rules on intervening causes are consistent with the definition of proximate cause found in the landmark case of *Vda. de Bataclan v. Medina*. Under this framework, the doctrine of last clear chance is treated as a pseudo-efficient intervening cause that does not completely sever the chain of causation set into motion by the first negligent act. Accordingly, the second negligent actor who failed to avoid the risk created by the first negligent act remains liable for the injury; however, such liability will be mitigated in view of the negligence of the first negligent actor. It is also proposed that the prior negligent act in last clear chance cases be characterized as antecedent negligence instead of contributory negligence, as such negligence cannot properly be considered merely contributory under the definition of contributory negligence found in *Rakes v. Atlantic, Gulf and Pacific Co.*[5]

## II. QUASI-DELICTS UNDER PHILIPPINE LAW

Under Philippine law, obligations may arise from law, contracts, quasi-contracts, criminal offenses or delicts, and quasi-delicts.[6] *Quasi-delict* or *culpa*

[4] Rakes v. Atlantic, Gulf & Pacific Co. [hereinafter "*Rakes*"], G.R. No. 1719, 7 Phil. 359, 370–74 (1907).

[5] *Rakes,* 7 Phil. 359 (1907).

[6] CIVIL CODE, art. 1157.

*aquiliana* is "the wrongful or negligent act or omission which creates a *vinculum juris* and gives rise to an obligation between two persons not formally bound by any other obligation."[7] Its statutory basis is Article 2176 of the Civil Code, which provides: "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict."[8] Under Article 2176, the elements of a quasi-delict are: (1) damage to the plaintiff; (2) negligence, by act or omission, of the defendant or by some person for whose acts the defendant must respond; and (3) the connection of cause and effect between such negligence and the damage, or proximate cause.[9]

The Court has distinguished quasi-delict from *tort*, with the latter being a much broader concept that includes both intentional and negligent acts.[10] However, the Court has also used the terms *quasi-delict* and *tort* interchangeably when enumerating the same three aforementioned elements: (1) damage suffered by the plaintiff; (2) fault or negligence of the defendant, or some other person for whose acts he or she must respond; and (3) the connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff.[11]

For the purposes of this Article, we will use the term *quasi-delict*, as our study is limited to the Court's jurisprudence on negligence in the context of Article 2176 cases and does not extend to other causes of action which might also be considered *torts* under the Civil Code and the Supreme Court's jurisprudence.

In determining liability for quasi-delict, the dispute generally focuses on the concepts of *proximate cause* and *negligence*.

### A. Proximate Cause

Proximate cause is "that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury

---

[7] Sanggacala v. Nat'l Power Corp. [hereinafter "*Sanggacala*"], G.R. No. 209538, July 7, 2021.

[8] CIVIL CODE, art. 2176.

[9] Cagayan II Elec. Coop., Inc. v. Rapanan, G.R. No. 199866, 749 Phil. 338, 347 (2014), *citing* Dela Llana v. Biong, GR. No. 182356, 722 Phil. 743, 756 (2013); VDM Trading, Inc. v. Carungcong [hereinafter "*VDM Trading*"], G.R. No. 206709, 846 Phil. 425, 436 (2019).

[10] Baksh v. Ct. of Appeals, G.R. No. 97336, 219 SCRA 115, 127, Feb. 19, 1993.

[11] *See Sanggacala*, G.R. No. 209538, July 7, 2021.

and without which the result would not have occurred."[12] To constitute a quasi-delict, the alleged fault or negligence committed by the defendant must be the proximate cause of the damage or injury suffered by the plaintiff.

*Vda. de Bataclan v. Medina* is the seminal case on proximate cause in Philippine jurisprudence. Citing American Jurisprudence, the Court defined proximate cause as follows:

> *[T]hat 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.'* And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.'[13]

While the *Bataclan* definition of proximate cause has been repeatedly cited in quasi-delict cases, it is to be noted that the case involved a claim for damages arising from breach of a contract of carriage. The identification of the proximate cause of the passengers' death was not relevant for purposes of identifying the liable party, but was instead used to determine the extent of the common carrier's liability for a breach of the contract of carriage.[14] Additionally, despite its status as a landmark case, the Court has not been strict in applying the *Bataclan* test to proximate cause in quasi-delict cases. "Mixed considerations of logic, common sense, policy and precedent" have also been considered sufficient bases for the determination of proximate cause when coupled with a sufficient link.[15]

Under *Bataclan*, the proximate cause need not be the event closest in time to the injury. The Court has explained that temporal proximity, while

---

[12] *VDM Trading*, 846 Phil. at 441, *citing* Consolidated Bank & Trust Corp. v. Ct. of Appeals, 457 Phil. 688, 709 (2003).

[13] *Bataclan*, 102 Phil. at 185–86, *citing* 38 AM.JUR. 695-696 (1941) (Emphasis supplied).

[14] *Id.* at 185.

[15] Dy Teban Trading, Inc. v. Ching [hereinafter "*Dy Teban Trading*"], G.R. No. 161803, 567 Phil. 531, 548 (2008).

possibly a factor in the determination of proximate cause, does not determine legal proximity.[16] Accordingly:

> To be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage. […] ["I]f an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such act or condition is the proximate cause." [17]

Because proximate cause need not be the event closest in time to an injury, the *Bataclan* definition of proximate cause acknowledges the possibility that other events may intervene between the happening of the proximate cause and the resulting injury. As will be discussed below, the legal effect of these intervening causes depends on whether they are characterized as efficient or foreseeable intervening causes, and whether the doctrine of last clear chance is applicable.

An injury may also be the result of more than one proximate cause. In such cases, solidary liability is imposed on the joint tortfeasors.[18] For the purposes of this Article, the term "concurring negligence" will be used to refer to situations where more than one negligent actor is the proximate cause of the injury.

### B. Negligence

Under the Civil Code, the existence of negligence is determined according to two parameters: *first*, the nature of the obligation, and *second*, the circumstances of persons, time, and place. The diligence required, in default of any provision of law or contract, is the due diligence of a good father of a family.[19]

Negligence has been defined in jurisprudence as "[T]he failure to observe for the protection of the interests of another person, that degree of

---

[16] *Bataclan*, 102 Phil. at 186.

[17] Abrogar v. Cosmos Bottling Co., G.R. No. 164749, 807 Phil. 317, 359 (2017). (Citations omitted.)

[18] Ruks Konsult & Constr. v. Adworld Sign & Advert. Corp., G.R. No. 204866, 751 Phil. 284, 291–92 (2015).

[19] CIVIL CODE, art. 1173.

care, precaution[,] and vigilance which the circumstances justly demand, whereby such other person suffers injury."[20] The Court has maintained that the test of negligence applied in jurisprudence is objective, as courts "measure the act or omission of the tortfeasor with that of an ordinary reasonable person in the same situation."[21] Accordingly, the relevant inquiry to make is: "Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence."[22]

The Court has also considered the foreseeability of harm in determining whether an actor was negligent, stating the test as follows: "[c]onduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing [sic] the conduct or guarding against its consequences."[23]

As Philippine courts do not employ a jury system, the "ordinary reasonable person" or "prudent man" of jurisprudence can be viewed as simply a proxy for the courts' own determination of the proper course of conduct in any situation where a person is accused of negligence. Accordingly, it is doubtful whether the test for negligence can truly be considered objective. However, an in-depth examination of the subjective nature of the test for negligence is beyond the scope of this Article; the discussion is limited to examining how the Court distributes liability among several negligent parties in quasi-delict cases.

## III. CASES WHERE MULTIPLE PARTIES ARE NEGLIGENT

Apportioning liability for quasi-delicts becomes a complex matter when more than one party is determined to be negligent in relation to the same incident or injury, but their negligence does not fall under Article 2194 of the Civil Code, *i.e.*, not all the negligent acts are a proximate cause of the injury. In such situations, the Court has adopted or developed different frameworks for determining who among several negligent persons should be made responsible for an injury, and the extent of such responsibility.

---

[20] St. Martin Polyclinic, Inc. v. LWV Constr. Corp., G.R. No. 217426, 822 Phil. 1, 15 (2017), *citing* Mendoza v. Spouses Gomez, G.R. No. 160110, 736 Phil. 460, 474 (2014).

[21] *Dy Teban Trading*, 567 Phil. at 543.

[22] Picart v. Smith [hereinafter "*Picart*"], G.R. No. 12219, 37 Phil. 809, 813 (1918).

[23] *Id.*

As will be discussed below, however, our jurisprudence lacks clear rules defining the applicable scope of each framework, and technical terms such as contributory negligence are often used improperly, resulting in confusion.

### A. Intervening Causes

Because the proximate cause of an injury is not necessarily the cause nearest in time to the injury, the *Bataclan* definition of proximate cause acknowledges the possibility that other events may intervene between the happening of the proximate cause and the resulting injury; thus, it requires that the "natural and continuous sequence" between the proximate cause and the injury be "unbroken by any *efficient intervening cause*."[24]

In *Phoenix Construction, Inc. v. Intermediate Appellate Court*,[25] a moving car collided with a truck parked askew on a street. In his defense, the truck owner argued that the negligence of the driver of the car was an *efficient intervening cause* that broke the chain of causation initiated by the negligence of the truck driver in parking the truck.[26] The Court rejected the argument and held:

> *What the petitioners describe as an "intervening cause" was no more than a foreseeable consequence of the risk created by the negligent manner in which the truck driver had parked the dump truck.* In other words, the petitioner truck driver owed a duty to private respondent Dionisio and others similarly situated not to impose upon them the very risk the truck driver had created. *Dionisio's negligence was not of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the* juris vinculum *of liability.* It is helpful to quote once more from Prosser and Keeton:
>
> > Foreseeable Intervening Causes. If the intervening cause is one which in ordinary human experience is reasonably to be anticipated, or one which the defendant has reason to anticipate under the particular circumstances, the defendant may be negligent, among other reasons, because of failure to guard against it; or the defendant may be negligent only for that reason. Thus one who sets a fire may be required to foresee that an ordinary, usual and

[24] *Bataclan*, 102 Phil. at 186. (Emphasis supplied.)
[25] [Hereinafter "*Phoenix*"], G.R. No. 65295, 148 SCRA 353, Mar. 10, 1987.
[26] *Id.* at 361.

> customary wind arising later will spread it beyond the defendant's own property, and therefore to take precautions to prevent that event. The person who leaves the combustible or explosive material exposed in a public place may foresee the risk of fire from some independent source. x x x In all of these cases there is an intervening cause combining with the defendant's conduct to produce the result, and in each case the defendant's negligence consists in failure to protect the plaintiff against that very risk.
>
> *Obviously the defendant cannot be relieved from liability by the fact that the risk or a substantial and important part of the risk, to which the defendant has subjected the plaintiff has indeed come to pass. Foreseeable intervening forces are within the scope of the original risk, and hence of the defendant's negligence. The courts are quite generally agreed that intervening causes which fall fairly in this category will not supersede the defendant's responsibility.*
>
> Thus it has been held that a defendant will be required to anticipate the usual weather of the vicinity, including all ordinary forces of nature such as usual wind or rain, or snow or frost or fog or even lightning; that one who leaves an obstruction on the road or a railroad track should foresee that a vehicle or a train will run into it; x x x.
>
> The risk created by the defendant may include the intervention of the foreseeable negligence of others. x x x *[T]he standard of reasonable conduct may require the defendant to protect the plaintiff against 'that occasional negligence which is one of the ordinary incidents of human life, and therefore to be anticipated.'* Thus, a defendant who blocks the sidewalk and forces the plaintiff to walk in a street where the plaintiff will be exposed to the risks of heavy traffic becomes liable when the plaintiff is run down by a car, even though the car is negligently driven; and one who parks an automobile on the highway without lights at night is not relieved of responsibility when another negligently drives into it.[27]

In *Dy Teban Trading v. Ching*, a moving van collided with an improperly parked prime mover. Like its ruling in *Phoenix*, the Supreme Court held that the proximate cause of the event was the improper parking of the prime mover:

---

[27] *Id.* at 367–68. (Emphasis supplied; citations omitted.)

> Here, We agree with the RTC that the damage caused to the Nissan van was a natural and probable result of the improper parking of the prime mover with trailer. As discussed, the skewed parking of the prime mover posed a serious risk to oncoming motorists. Limbaga failed to prevent or minimize that risk. *The skewed parking of the prime mover triggered the series of events that led to the collision, particularly the swerving of the passenger bus and the Nissan van.*
>
> *Private respondents Liberty Forest, Inc. and Limbaga are liable for all damages that resulted from the skewed parking of the prime mover. Their liability includes those damages resulting from precautionary measures taken by other motorist in trying to avoid collision with the parked prime mover.* As We see it, the passenger bus swerved to the right, onto the lane of the Nissan van, to avoid colliding with the improperly parked prime mover. The driver of the Nissan van, Ortiz, reacted swiftly by swerving to the left, onto the lane of the passenger bus, hitting the parked prime mover. Ortiz obviously would not have swerved if not for the passenger bus abruptly occupying his van's lane. The passenger bus, in turn, would not have swerved to the lane of the Nissan van if not for the prime mover improperly parked on its lane. The skewed parking is the proximate cause of the damage to the Nissan van.[28]

In both *Phoenix* and *Dy Teban Trading*, the improper parking of a vehicle was considered the proximate cause of injury to a moving vehicle that collided with the parked vehicle. Consequently, the actions of the moving vehicle—*albeit later in time than the improper parking of the stationary vehicle*—were treated as *foreseeable* intervening causes that did not break the "natural and continuous sequence" set into motion by the improperly parked vehicle. As will be discussed below, however, application of the doctrine of last clear chance leads to the opposite conclusion.

### B. Doctrine of Last Clear Chance

The Court has also used the doctrine of last clear chance to determine liability in situations where both parties to a dispute are negligent, but the negligent act of one party (usually the defendant) occurs after an appreciable lapse of time from the first negligent act.

In *Picart v. Smith*, Smith, who was driving a car on the correct side of the road, was held liable for damages to Picart, who was riding a pony on the

---

[28] *Dy Teban Trading*, 567 Phil. at 549–50. (Emphasis supplied.)

wrong side of the road. In determining that it was the negligence of Smith that was the proximate cause of the injury to Picart, the Court applied the doctrine of last clear chance:

> It goes without saying that the plaintiff himself was not free from fault, for he was guilty of antecedent negligence in planting himself on the wrong side of the road. But as we have already stated, the defendant was also negligent; and in such case the problem always is to discover which agent is immediately and directly responsible. It will be noted that *the negligent acts of the two parties were not contemporaneous, since the negligence of the defendant succeeded the negligence of the plaintiff by an appreciable interval.* Under these circumstances the law is that the *person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.*[29]

In *Ong v. Metropolitan Water District*,[30] the Court defined the doctrine of last clear chance as follows:

> The doctrine of last clear chance simply means that *the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence.* Or, "As the doctrine usually is stated, *a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent or the negligence of a third person which is imputed to his opponent, is considered in law solely responsible for the consequences of the accident*."[31]

In *Lapanday Agricultural and Dev't Corp. v. Angala*,[32] the Court held that a person driving a rear vehicle in the innermost lane of a road had the last clear chance to avoid a collision with another vehicle executing an illegal U-turn from the second lane:

> We rule that *both parties were negligent in this case.* Borres was at the outer lane when he executed a U-turn. Following Section 45 (b) of RA 4136, Borres should have stayed at the inner lane which is the lane nearest to the center of the highway. However, Deocampo was equally negligent. Borres slowed down the pick-

---

[29] *Picart*, 37 Phil. at 814. (Emphasis supplied.)

[30] [Hereinafter "*Ong*"], G.R. No. 7664, 104 Phil. 397 (1958).

[31] *Id.* at 405. (Emphasis supplied; citations omitted.)

[32] [Hereinafter "*Lapanday Agric. & Dev't Corp.*"], G.R. No. 153706, 552 Phil. 308 (2007).

> up preparatory to executing the U-turn. *Deocampo should have also slowed down when the pick-up slowed down.*
>
> * * *
>
> *Since both parties are at fault in this case, the doctrine of last clear chance applies.*
>
> [I]n this case, *Deocampo had the last clear chance to avoid the collision.* Since Deocampo was driving the rear vehicle, he had full control of the situation since he was in a position to observe the vehicle in front of him. Deocampo had the responsibility of avoiding bumping the vehicle in front of him. A U-turn is done at a much slower speed to avoid skidding and overturning, compared to running straight ahead. Deocampo could have avoided the vehicle if he was not driving very fast while following the pick-up. Deocampo was not only driving fast, he also admitted that he did not step on the brakes even upon seeing the pick-up. He only stepped on the brakes after the collision.[33]

The doctrine of last clear chance is not limited to instances where the negligence of one party is followed by the negligence of the other party after an appreciable amount of time has passed. It also applies in situations where it is "impossible to determine whose fault or negligence brought about the occurrence of the incident."[34] For purposes of this Article, however, the focus will be on the first concept or application of the doctrine of last clear chance.

While the doctrine of last clear chance has been cited favorably in numerous cases,[35] it has been ruled inapplicable in certain instances. The Court has clarified that the doctrine of last clear chance does not apply where the party charged is required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered—at least in cases where any previous negligence of the party charged did not contribute to the injury.[36] The doctrine is also inapplicable in situations where only one party's negligence is proven (as it

---

[33] *Id.* at 315–16. (Emphasis supplied; citations omitted.)

[34] Phil. Nat'l Railways Corp. v. Vizcara [hereinafter "*Phil. Nat'l Railways Corp.*"], G.R. No. 190022, 682 Phil. 343, 358 (2012).

[35] *See*, *e.g.*, the following cases where the Court upheld the applicability of the doctrine of last clear chance in this jurisdiction: *Picart,* 37 Phil. 809; Allied Banking Corp. v. Bank of Phil. Islands [hereinafter "*Allied Banking Corp.*"], G.R. No. 188363, 705 Phil. 174 (2013); *Ong*, 104 Phil. 397; *Phil. Nat'l Railways Corp.,* 682 Phil. 343.

[36] *Ong*, 104 Phil. at 406.

presupposes that both parties are negligent)[37], and where a passenger demands responsibility from the carrier to enforce its contractual obligations.[38]

In other cases, the Court has strongly rejected the application of the doctrine of last clear chance. In *Phoenix*, the Court explained the origin of the doctrine and rejected its application in our jurisdiction:

> The last clear chance doctrine of the common law was imported into our jurisdiction by *Picart vs. Smith* but it is a matter for debate whether, or to what extent, it has found its way into the Civil Code of the Philippines. *The historical function of that doctrine in the common law was to mitigate the harshness of another common law doctrine or rule — that of contributory negligence.* The common law rule of contributory negligence prevented any recovery at all by a plaintiff who was also negligent, even if the plaintiff's negligence was relatively minor as compared with the wrongful act or omission of the defendant. The common law notion of last clear chance permitted courts to grant recovery to a plaintiff who had also been negligent provided that the defendant had the last clear chance to avoid the casualty and failed to do so. *Accordingly, it is difficult to see what role, if any, the common law last clear chance doctrine has to play in a jurisdiction where the common law concept of contributory negligence as an absolute bar to recovery by the plaintiff, has itself been rejected, as it has been in Article 2179 of the Civil Code of the Philippines.*
>
> *Is there perhaps a general concept of "last clear chance" that may be extracted from its common law matrix and utilized as a general rule in negligence cases in a civil law jurisdiction like ours? We do not believe so.* Under Article 2179, the task of a court, in technical terms, is to determine whose negligence — the plaintiff's or the defendant's — was the legal or proximate cause of the injury. That task is not simply or even primarily an exercise in chronology or physics, as the petitioners seem to imply by the use of terms like "last" or "intervening" or "immediate." *The relative location in the continuum of time of the plaintiff's and the defendant's negligent acts or omissions, is only one of the relevant factors that may be taken into account. Of more fundamental importance are the nature of the negligent act or omission of each*

---

[37] Morales v. People, G.R. No. 240337, Jan. 4, 2022, slip op. at 6; *Phil. Nat'l Railways Corp.*, 682 Phil. at 358–59.

[38] Tiu v. Arresgado [hereinafter "*Tiu*"], G.R. No. 138060, 437 SCRA 426, Sept. 1, 2004.

> *party and the character and gravity of the risks created by such act or omission for the rest of the community.*[39]

The Court came to a similar conclusion in *Tiu v. Arriesgado*,[40] which also involved a collision between a moving vehicle and an improperly parked and stationary vehicle. As in *Phoenix*, the Court found that the stationary vehicle, and not the moving vehicle, was liable. Additionally, in *Phoenix* the Court also stated that to apply the doctrine of last clear chance:

> [W]ould be to come too close to wiping out the fundamental principle of law that a man must respond for the foreseeable consequences of his own negligent act or omission. Indeed, our law on *quasi-delicts* seeks to reduce the risks and burdens of living in society and to allocate them among its members. To accept this proposition would be to weaken the very bonds of society.[41]

As will be discussed below, the policy considerations discussed by the Court in *Phoenix* and *Tiu* are intuitive and appear persuasive, especially when considered together with the definitions of proximate cause and intervening causes, as well as the rule on contributory negligence.

### C. Contributory Negligence

In some instances where both the plaintiff and the defendant are negligent, but the Court deems the plaintiff's negligence only "contributory," the Court has allowed the negligent plaintiff to recover reduced or mitigated damages.

Under Article 2179 of the Civil Code, contributory negligence does not preclude a negligent plaintiff from recovering damages from a negligent defendant if the latter's negligence was the proximate cause of the injury, and the negligence of the former was only contributory. The negligent plaintiff will, however, be made to bear a share of the damages because of their negligence, and the liability of the negligent defendant will be mitigated by the Court.[42]

---

[39] *Phoenix*, 148 SCRA 353, 368–69. (Emphasis supplied; citations omitted.)

[40] *Tiu*, 437 SCRA 426.

[41] *Phoenix*, 148 SCRA 353, 357; *Tiu,* 437 SCRA 426, 446.

[42] CIVIL CODE, art. 2179. "When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of

While Article 2179 differentiates contributory negligence from negligence that is the proximate cause of an injury, or concurring negligence, it does not define contributory negligence. This lack of a statutory definition has led to conflicting definitions in jurisprudence. Some cases define contributory negligence as "conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection."[43] According to the Court, the underlying precept of contributory negligence is that "a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence."[44]

Alternatively, the Court has also used the terms "comparative negligence" and "concurring negligence" to refer to contributory negligence. The Court defined *comparative negligence* as:

> [A] legal principle that limits the extent of reparation that may be recovered by a person who is guilty of contributory negligence. Under this doctrine, a person who is guilty of contributory negligence, though allowed to seek recourse against the principal tortfeasor, must nonetheless bear a portion of the losses proportionate to the amount of his negligence.[45]

On the other hand, the Court used the term *concurring negligence* as follows:

> *The concurring negligence* of Lomotos, as the driver of the Kia Ceres wherein Rebultan, Sr. was the passenger, does not foreclose the latter's heirs from recovering damages from Viloria. As early as 1933, in *Junio v. Manila Railroad Co.*, we already clarified that *the contributory negligence of drivers* does not bar the passengers or their heirs from recovering damages from those who were at fault.[46]

---

due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded."

[43] Phil. Nat'l Bank v. Sps. Cheah [hereinafter "*Sps. Cheah*"], G.R. No. 170865, 686 Phil. 760, 773 (2012); Sealoader Shipping Corp. v. Grand Cement Mfg. Corp. [hereinafter "*Sealoader Shipping Corp.*"], G.R. No. 167363, 653 Phil. 155, 184 (2010).

[44] Calilung v. Caltex Phil., Inc., G.R. No. 193011, July 30, 2019.

[45] Metropolitan Bank & Trust Co. v. Junnel's Mkt'g Corp., G.R. No. 235511, 833 Phil. 1107, 1129 n.38 (2018).

[46] Rebultan v. Sps. Daganta, G.R. No. 197908, 835 Phil. 521, 534 (2018). (Emphasis supplied; citations omitted.)

In one case, the Court laid down the following test for determining whether a person is guilty of contributory negligence:

> To hold a person as having contributed to his injuries, *it must be shown that he performed an act that brought about his injuries in disregard of warning or signs of an impending danger to health and body. To prove contributory negligence, it is still necessary to establish a causal link, although not proximate, between the negligence of the party and the succeeding injury.* In a legal sense, negligence is contributory only when it contributes proximately to the injury, and not simply a condition for its occurrence.[47]

The difficulty with defining contributory negligence as "a causal link, although not proximate, between the negligence of the party and the succeeding injury," is that it defines contributory negligence by stating what it is not, i.e., contributory negligence is *not* the proximate cause of the injury. It does not otherwise describe the conditions under which a "causal link" between a negligent act and an injury could constitute contributory negligence rather than proximate cause.

In *Sps. Vergara v. Sps. Sonkin*,[48] the Court held that the respondent spouses were guilty of contributory negligence for failing to observe the legal easement over their property as well as the two-meter setback rule under the National Building Code, while the negligence of the petitioner spouses in dumping gravel and soil onto their property was the proximate cause of the injury. Accordingly, the damages due to the respondent spouses were mitigated by the Court.

At times, however, the distinction between contributory negligence and negligence that contributes to the event itself is blurred. The problem arises in determining whether a plaintiff's negligence is merely contributory to their injury, in which case they may recover reduced damages, or whether their negligence is a proximate cause of the injury, in which case they are barred from recovering damages under the first sentence of Article 2179.

In *Travel & Tours Advisers, Inc. v. Cruz*,[49] a case involving a collision between a bus and a jeepney, the Court held that the proximate cause of the injury was the negligence of the bus driver, but that the jeepney driver was

---

[47] Dela Cruz v. Octaviano, G.R. No. 219649, 814 Phil. 891, 910 (2017). (Emphasis supplied.)

[48] G.R. No. 193659, 759 Phil. 402 (2015).

[49] G.R. No. 199282, 783 Phil. 257 (2016).

guilty of contributory negligence as he was driving outside his assigned route at the time of the collision:

> Be that as it may, this doesn't erase the fact that at the time of the vehicular accident, *the jeepney was in violation of its allowed route* as found by the RTC and the CA, hence, *the owner and driver of the jeepney likewise, are guilty of negligence as defined under Article 2179* of the Civil Code […]
>
> * * *
>
> The petitioner and its driver, therefore, are not solely liable for the damages caused to the victims. *The petitioner must thus be held liable only for the damages actually caused by his negligence. It is, therefore, proper to mitigate the liability of the petitioner and its driver.*[50]

However, the jeepney's negligence in leaving its assigned route did not merely contribute to the injuries it suffered, but to the event (i.e., the collision) itself, in that the collision could not have occurred if the jeepney had remained in its assigned route. Accordingly, it appears to fall under the *Bataclan* definition of proximate cause and to have contributed to the event itself, not simply the injury.

In the landmark case of *Rakes v. Atlantic, Gulf and Pacific Co.*, the Court had the opportunity to distinguish between negligence that contributes to the injury of the plaintiff and negligence that contributes to the event itself and therefore bars recovery by the plaintiff, or concurring negligence:

> Difficulty seems to be apprehended in deciding which acts of the injured party shall be considered immediate causes of the accident. The test is simple. Distinction must be between the accident and the injury, between the event itself, without which there could have been no accident, and those acts of the victim not entering into it, independent of it, but contributing under review was the displacement of the crosspiece or the failure to replace it. this produced the event giving occasion for damages […] *Where he contributes to the principal occurrence, as one of its determining factors, he can not recover. Where, in conjunction with the occurrence, he contributes only to his own injury, he may recover the amount that the defendant responsible for the event should pay for such injury, less a sum deemed a suitable equivalent for his own imprudence.*[51]

---

[50] *Id.* at 276–77. (Emphasis supplied.)

[51] *Rakes*, 7 Phil. at 374–75. (Emphasis supplied.)

One would be hard put to find a clearer definition of contributory negligence, or a more useful distinction between contributory negligence as negligence that contributes only to the plaintiff's own injury and not the principal occurrence. However, it must be noted that this case was decided prior to the passage of the new Civil Code and did not involve the application of Article 2179 or any equivalent provision in the previous Civil Code. Moreover, inconsistent jurisprudential applications have resulted in confusion as to the exact meaning of contributory negligence and its effect on the plaintiff's ability to recover damages.

The purpose of this Article is not to provide a detailed examination of the various ways in which the Court has defined and applied the concept of contributory negligence, or to propose a framework for determining the existence of contributory negligence. Professor Casis has already provided a thorough discussion on the different ways contributory negligence has been defined by the Court, and points out that "[t]he absence of a clear definition for contributory negligence renders it an empty concept — one which allows the courts to reinvent its meaning in every case,"[52] and that this absence of a definition "has given the courts plenary, if not, arbitrary authority to determine the existence of contributory negligence."[53]

For the purposes of this Article, we will use the *Rakes* definition of contributory negligence as our guide in examining how the Court has applied the concept of contributory negligence in relation to other doctrines in the law on quasi-delicts and evaluating its utility in relation to the doctrine of last clear chance and the rules on intervening causes.

## IV. CONFLICTING APPLICATION OF THE RULES ON INTERVENING CAUSES, LAST CLEAR CHANCE, AND CONTRIBUTORY NEGLIGENCE

### A. The Muddled Relationship Between Last Clear Chance and Contributory Negligence

The loose use of the term "contributory negligence" has led to confusion in the application of the doctrine of last clear chance. See, for instance, the following discussion in *Allied Banking Corp. v. Bank of Philippine*

[52] Rommel J. Casis, *Blame Game: Determining Contributory Negligence*, 63 ATENEO L.J. 955, 977 (2019).

[53] *Id.*

*Islands*, where the Court held that the doctrine of last clear chance necessarily presumes contributory negligence on the part of the plaintiff:

> The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. *The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption.*
>
> * * *
>
> In this case, the evidence clearly shows that *the proximate cause of the unwarranted encashment of the subject check was the negligence of respondent who cleared a post-dated check sent to it thru the PCHC clearing facility without observing its own verification procedure.* As correctly found by the PCHC and upheld by the RTC, if only respondent exercised ordinary care in the clearing process, it could have easily noticed the glaring defect upon seeing the date written on the face of the check "Oct. 9, 2003". Respondent could have then promptly returned the check and with the check thus dishonored, petitioner would have not credited the amount thereof to the payee's account. Thus, *notwithstanding the antecedent negligence of the petitioner in accepting the post-dated check for deposit*, it can seek reimbursement from respondent the amount credited to the payee's account covering the check.[54]

In that case, the Supreme Court affirmed the Court of Appeals' allocation of the resulting loss on a 60-40 ratio, based on the doctrine of contributory negligence. However, it is questionable whether the petitioner's negligence was merely contributory to its injury. It appears to have contributed to the event itself, as the unwarranted encashment could not have occurred where it not for the acceptance of the post-dated check for deposit in the first instance.[55]

In *Philippine National Bank v. Spouses. Cheah,* the Court employed a similar reasoning to uphold the Court of Appeals' ruling that the spouses Cheah—who were found to be guilty of contributory negligence—should

---

[54] *Allied Banking Corp.*, 705 Phil. 174, 182–83. (Emphasis supplied; citations omitted.)

[55] Casis, *supra* note 52, at 963.

bear the loss equally with PNB, whose negligence was deemed the proximate cause of the loss under the doctrine of last clear chance:

> Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.
>
> The CA found Ofelia's credulousness blameworthy. We agree. Indeed, *Ofelia failed to observe caution in giving her full trust in accommodating a complete stranger and this led her and her husband to be swindled.* Considering that Filipina was not personally known to her and the amount of the foreign check to be encashed was $300,000.00, a higher degree of care is expected of Ofelia which she, however, failed to exercise under the circumstances. Another circumstance which should have goaded Ofelia to be more circumspect in her dealings was when a bank officer called her up to inform that the Bank of America check has already been cleared way earlier than the 15-day clearing period. The fact that the check was cleared after only eight banking days from the time it was deposited or contrary to what Garin told her that clearing takes 15 days should have already put Ofelia on guard.
>
> * * *
>
> *All told, the Court concurs with the findings of the CA that PNB and the spouses Cheah are equally negligent and should therefore equally suffer the loss. The two must both bear the consequences of their mistakes.*[56]

Again, however, the spouses' negligence did not contribute only to their injury; it contributed to the swindling itself, which could not have occurred without their negligence in withdrawing the proceeds of the check.[57]

In *Sealoader Shipping Corp. v. Grand Cement Manufacturing Corp.*, the Court held that the doctrine of last clear chance did not apply, there being no *contributory* negligence on the part of the plaintiff:

> In light of the foregoing, the Court finds that the evidence proffered by Sealoader to prove the negligence of Grand Cement was marred by contradictions and are, thus, weak at best. We therefore conclude that *the contributory negligence of Grand Cement was*

---

[56] *Sps. Cheah*, 686 Phil. 760, 773–74. (Emphasis supplied; citations omitted.)
[57] Casis, *supra* note 52, at 963.

> *not established in this case*. Thus, the ruling of the Court of Appeals in the Amended Decision, which reduced the actual damages to be recovered by Grand Cement, is hereby revoked. *Accordingly, the doctrine of last clear chance does not apply to the instant case.*[58]

Additionally, in *McKee v. Intermediate Appellate Court*[59] it was ruled that:

> Even if Jose Koh was indeed negligent, the doctrine of last clear chance finds application here. *Last clear chance is a doctrine in the law of torts which states that the contributory negligence of the party injured will not defeat the claim for damages if it is shown that the defendant might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party.* In such cases, the person who had the last clear chance to avoid the mishap is considered in law solely responsible for the consequences thereof.[60]

It bears noting that under Philippine law, contributory negligence does not defeat a plaintiff's claim for damages. Consequently, the above is a misstatement, as it implies that contributory negligence defeats a plaintiff's claim for damages, with the exception being situations where the doctrine of last clear chance applies.

Contrast the foregoing cases with *LBC Air Cargo, Inc. v. Court of Appeals*,[61] where it was the defendant that cited the doctrine of last clear chance in their defense, claiming that the victim had the last clear chance to avoid injury. The Court declined to apply this doctrine, as it found that the victim had no opportunity to avoid the collision. However, the Court then went on to rule that the victim was guilty of contributory negligence because he was trailing closely behind the vehicle at fault:

> Petitioners poorly invoke the doctrine of "last clear chance" (also referred to, at times, as "supervening negligence" or as "discovered peril"). The doctrine, in essence, is to the effect that where both parties are negligent, but the negligent act of one is *appreciably* later in time than that of the other, or when it is impossible to determine whose fault or negligence should be attributed to the incident, the one who had the last clear opportunity to avoid the impeding harm and failed to do so is chargeable with the consequences thereof. Stated differently, the

---

[58] *Sealoader Shipping Corp.*, 653 Phil. 155, 186.
[59] G.R. No. 68102, 211 SCRA 517, July 16, 1992.
[60] *Id.* at 542–43. (Emphasis supplied; citations omitted.)
[61] G.R. No. 101683, 241 SCRA 619, Feb. 23, 1995.

> rule would also mean that *an antecedent negligence of a person does not preclude the recovery of damages for the supervening negligence of, or bar a defense against liability sought* by, another *if the latter, who had the last fair chance, could have avoided the impending harm by the exercise of due diligence.*
>
> In the case at bench, the victim was traveling along the lane where he was rightly supposed to be. The incident occurred in an instant. No appreciable time had elapsed, from the moment Tano swerved to his left to the actual impact, that could have afforded the victim a last clear opportunity to avoid the collision.
>
> It is true, however, that *the deceased was not all that free from negligence in evidently speeding too closely behind the vehicle he was following. We, therefore, agree with the appellate court that there indeed was contributory negligence on the victim's part that could warrant a mitigation of petitioners' liability for damages.*[62]

In this case, the antecedent negligence (i.e., the negligence of the petitioner defendants) was not characterized as contributory negligence; instead, it was the victim who was held to be guilty of contributory negligence, as he was speeding behind the swerving vehicle.

The tension in the foregoing cases is clear. Contributory negligence is defined as negligence that contributes to the plaintiff's injury, and *not* to the event itself. Such negligence results in a mitigation of the damages due to the contributorily negligent plaintiff.

On the other hand, the doctrine of last clear chance states that a plaintiff who is guilty of *antecedent* negligence is not barred from recovering damages if the respondent who had the last clear chance of avoiding the injury failed to do so. It is a rule for determining which negligent act is the proximate cause of the injury. In *Picart*, the negligent plaintiff did not contribute merely to his injuries, he contributed to the happening of the event itself by remaining on the wrong side of the road and failing to steer his horse away from Smith's motor vehicle.

Accordingly, while a plaintiff in a last clear chance case may be guilty of contributory negligence (as in *LBC Air Cargo*) this negligence should not be conflated with *antecedent* negligence, which is necessarily negligence that contributed to the event itself and not merely to the first negligent actor's

---

[62] *Id.* at 624–25. (Emphasis supplied; citations omitted.)

injury. It is antecedent, and not contributory, negligence that is essential for the application of the doctrine of last clear chance.

**B. Last Clear Chance versus Intervening Cause**

To recall, the doctrine of last clear chance provides that a person guilty of antecedent negligence will not be held liable for injury to another, provided that the latter had the last clear chance to avoid the injury. It is the negligence of the injured party in failing to avoid the results of the plaintiff's negligence that is treated as the proximate cause of the injury.

Similarly, the framework of intervening causes involves more than one negligent party or negligent act, where one actor's negligent act is followed by another's negligent act. Under this framework, however, and unlike the doctrine of last clear chance, the legal effect of the second negligent act will depend on whether the Court considers the second act of negligence an efficient intervening cause or a foreseeable intervening cause. Where the second act of negligence is deemed foreseeable, i.e., within the scope of the original risk created by the first negligent actor, it is the first negligent act that is considered the proximate cause of the injury and not the second negligent act. On the other hand, where the second act of negligence is deemed efficient, or beyond the scope of the original risk created by the first negligent actor, it is the second negligent act that is considered the proximate cause of the injury.

However, if we attempt to situate the doctrine of last clear chance in the framework of intervening causes, it seems clear that the duty of the injured negligent actor to avoid the risk of injury created by the first negligent actor is merely a foreseeable intervening cause and not an efficient intervening cause. The duty to avoid injury lies within the scope of the original risk created by the first negligent actor, precisely because the duty to avoid injury arises by reason of the former's negligent acts. It is not independent of the first act of negligence and therefore cannot be characterized as an efficient intervening cause.

If the duty to avoid injury is considered a foreseeable intervening cause, however, the chain of causation between the first negligent actor's antecedent negligence and the injury will not be deemed broken, and the first negligent actor's antecedent negligence will be considered the proximate cause of the injury. This is the logical result of the rules on intervening causes, and yet the doctrine of last clear chance leads to the opposite conclusion—the negligence of the second actor, reacting to the situation created by the

negligence of the first negligent actor, is deemed the proximate cause of the injury. The negligence of the first actor is, at most (and most likely incorrectly), considered "contributory" negligence warranting reduction of the damages to which he is entitled.

To illustrate, if the Court had applied the doctrine of last clear chance in *Phoenix*, Dionisio's negligent driving would have been deemed the proximate cause of his injuries, not the negligent parking of the dump truck. As a result, he would not have been permitted to recover. However, because the Court declined to apply this doctrine and instead used the framework of intervening causes, it came to the opposite conclusion: that the improperly parked dump truck was the proximate cause of the injury, because Dionisio's negligent driving was merely a foreseeable intervening cause within the scope of the original risk created by the dump truck. This situation, where the outcome of a negligence dispute will depend on the framework the Court chooses to apply, is hardly ideal and will produce unpredictability in the resolution of disputes and inconsistent jurisprudence.

## V. INTEGRATING THE DOCTRINE OF LAST CLEAR CHANCE WITH THE FRAMEWORK OF INTERVENING CAUSES; HARMONIZING THE RULE ON CONTRIBUTORY NEGLIGENCE

Currently, the doctrine of last clear chance and the framework of intervening causes are treated as separate conceptual frameworks. While this approach may be expedient when resolving disputes on a case-to-case basis, it has resulted in inconsistent jurisprudence as well as confusion regarding the appropriate framework to apply. To address these problems, it is suggested that the doctrine of last clear chance be integrated into the framework of intervening causes.

The simplest way to reconcile the doctrine of last clear chance with the framework of intervening causes is to treat the negligence of the second actor (in failing to avoid injury caused by the first actor's preceding negligence) as an efficient intervening cause. In other words, the second actor's negligence in failing to avoid injury will be treated as an intervening cause that is independent and beyond the scope of the original risk created by the first negligent actor, instead of a foreseeable result of the negligence of the first actor.

In support of this interpretation, it might be argued that every person, including a negligent actor, has a right to expect diligence from

others, including diligence in avoiding injury or risk. Accordingly, a person guilty of antecedent negligence is entitled to expect that others will exercise diligence to avoid the risk they created, and failure to exercise such diligence is an efficient intervening cause that breaks the chain of causation between the antecedent negligence of the first negligent actor and the injury.

However, the problem with this interpretation was succinctly explained by the Court in *Phoenix*:

> The petitioners urge that the truck driver (and therefore his employer) should be absolved from responsibility for his own prior negligence because *the unfortunate plaintiff failed to act with that increased diligence which had become necessary to avoid the peril precisely created by the truck driver's own wrongful act or omission.* To accept this proposition is to come too close to wiping out *the fundamental principle of law that a man must respond for the foreseeable consequences of his own negligent act or omission.* Our law on quasi-delicts seeks to reduce the risks and burdens of living in society and to allocate them among the members of society. *To accept the petitioners' proposition must tend to weaken the very bonds of society.*[63]

The interpretation of last clear chance as an efficient intervening cause may be argued to unfairly place an undue burden of increased diligence on persons to avoid danger and injury caused by other persons' negligent actions. In other words, negligent persons are effectively permitted to create or cause dangerous situations or place others at risk, without incurring any liability. Persons placed at risk by such negligence, on the other hand, are required to exercise increased diligence to avoid injury, and face liability if they are unable to do so.

The question that must be answered, then, is whether a negligent actor has a right to expect increased diligence from persons around them, such that the negligent actor can be excused from the effects of their negligence. May a negligent actor rely on others to avoid the risk of injury created by the latter? To echo the Court's concern in *Phoenix*, shifting the burden of diligence in this manner might come "too close to wiping out the fundamental principle of law that a man must respond for the foreseeable consequences of his own negligent act or omission."

---

[63] *Phoenix*, 148 SCRA 353, 369–70. (Emphasis supplied).

The other option is to treat the second negligent act as a foreseeable intervening cause within the scope of the original risk created by the first negligent actor.

As discussed above, however, the rules on foreseeable intervening causes and last clear chance lead to opposite results. Consequently, if we treat the second negligent act as a foreseeable intervening cause, the fact that the second negligent actor had the last clear chance to avoid the injury will become irrelevant, as the chain of causation between the first negligent act and the injury will not be broken. In effect, to treat the second negligent act as a foreseeable cause would be to render the doctrine of last clear chance practically non-existent in our jurisdiction.[64]

While this interpretation is consistent with the definition of foreseeable intervening causes, it would result in the reversal of a significant portion of Philippine case law applying the doctrine of last clear chance. More importantly, it may be argued that this interpretation effectively amounts to judicial imprimatur of increased negligence. If the second act of negligence is treated as merely a foreseeable intervening cause, and the first negligent actor is held solely liable for the injury, people may be encouraged to willfully ignore risks created by the antecedent negligence of others. To illustrate: if the Court had held that Picart—and not Smith—was the proximate cause of his own injury, Smith's negligence in continuing to drive along the same lane despite the clear risk posed by Picart would be excused.

In view of the foregoing, the doctrine of last clear chance cannot be considered either an efficient or a foreseeable intervening cause under the existing framework.

Accordingly, the best option may be to treat last clear chance situations as a *new category of intervening cause*, i.e., *a pseudo-efficient intervening cause*, where the chain of causation between the first negligent act and the injury is not completely severed by the intervening negligence of the second negligent actor, and both parties are made to share liability for the injury in the form of mitigated damages for the first negligent actor. This is not a novel idea, and finds support in jurisprudence where the Court has decided to treat the first negligent actor's antecedent negligence as "contributory negligence"

---

[64] As discussed above, the doctrine also applies in situations where "it is impossible to determine whose fault or negligence brought about the occurrence of the incident," and not just in situations where both parties are negligent but the negligence of one party is appreciably later in time than that of the other party. *See supra* Part III.B.

resulting in the reduction of damages due to the first negligent actor.[65] In other words, the Court has already distributed liability between both negligent actors in several last clear chance cases.

However, contributory negligence does not appear to be the appropriate mode of sharing liability between two negligent actors in last clear chance cases. As discussed above, antecedent negligence, or the creation of a risk, does not contribute only to the first negligent actor's injury (as required by the *Rakes* definition of contributory negligence); rather, it contributes to the event itself. While antecedent and contributory negligence will have the same effect under the proposed rule, i.e., mitigation of damages, clarity in nomenclature is essential to retain the fundamental distinction between the two concepts. To characterize antecedent negligence in a last clear chance case as contributory negligence will result in inconsistent case law on the meaning of contributory negligence, and further blur the (already ambiguous) jurisprudential distinction between negligence that contributes to the plaintiff's injury and negligence that contributes to the event itself.

If antecedent negligence contributes to the event itself, can the rules on concurring negligence be applied such that *both* negligent actors can be treated as the proximate cause of the injury? Doing so would result in a situation where neither party can recover damages, effectively equating the gravity and legal consequences of the two negligent acts; this does not appear to be a feasible solution. Accordingly, concurring negligence, like contributory negligence, does not appear to be the appropriate mode of liability between two negligent parties.

Since antecedent negligence cannot properly be characterized as either contributory negligence or concurring negligence, *a distinct rule* on apportionment of liability, specific to situations where there is antecedent negligence and the pseudo-efficient intervening cause of last clear chance applies, is necessary.

Under this distinct proposed rule, both parties in a last clear chance situation would be held liable for their respective negligent acts, with the damages due to the first negligent actor from the second negligent actor reduced by a certain degree in view of the former's antecedent negligence. Under this system, antecedent negligence will have the same effect as contributory negligence: mitigation of damages. Given that there is already

[65] *Supra* Part IV.A.

case law on the last clear chance doctrine where the first negligent actor is awarded reduced damages in view of their "contributory" negligence, the proposed system is consistent with the result achieved by the Court in those cases. At the same time, it retains the necessary conceptual distinction between contributory negligence under Article 2179 and antecedent negligence in a last clear chance situation, and, more broadly, between negligence that contributes to the plaintiff's injury as against negligence that contributes to the event itself.

Awarding only mitigated damages to a negligent plaintiff in a last clear chance case also recognizes that the historical function of the last clear chance doctrine in common law, as explained by the Court in *Phoenix*, is not relevant in our jurisdiction. In common law, the last clear chance doctrine allows a negligent plaintiff (who would otherwise be barred from recovering damages under the doctrine of contributory negligence) to recover damages if the respondent had the last clear chance to avoid the injury. In our jurisdiction, however, contributory negligence does not bar recovery of damages; rather, it only reduces the damages due to a negligent plaintiff. Accordingly, the common law function of the last clear chance doctrine has no place in the context of Philippine rules on contributory negligence.

If, however, the last clear chance doctrine is understood instead as a mode of sharing liability between two negligent parties, one of whom creates the risk and another who fails to avoid it, the doctrine can properly be situated in the *Bataclan* framework of proximate cause and efficient versus foreseeable intervening causes as a pseudo-efficient intervening cause. That does not completely sever the chain of causation from the first negligent act to the injury.

This proposal also creates a conceptual parallel between antecedent negligence in last clear chance cases and contributory negligence under Article 2179. As explained by the Court, our jurisdiction rejected the strict common law rule on contributory negligence, adopting instead the rule of mitigation,[66] which is currently embodied in Art. 2179 of the Civil Code. If a plaintiff guilty of contributory negligence—who only contributed to his own injury—is only allowed to recover a reduced amount of damages from a negligent respondent, it stands to reason that a plaintiff guilty of antecedent negligence—who was responsible for creating the very risk or danger that

[66] Dell v. Manila Elec. Railroad & Light Co., G.R. No. 4290, 13 Phil. 585, 600 (1909).

the negligent respondent failed to avoid, thereby causing injury—should only be allowed to recover a reduced amount of damages.

At the same time, abandoning the zero-sum application of the doctrine of last clear chance would address the concerns expressed by the Court in *Phoenix*. The doctrine of last clear chance would no longer serve as a subterfuge or excuse for persons who, through their negligence, create risks that others are burdened to avoid. Instead, this interpretation would recognize and penalize the negligence of all negligent parties, while at the same time recognizing that the negligent respondent did have the last opportunity to avoid the injury and should therefore bear a greater proportion of the damages.

In sum, it is proposed that the doctrine of last clear chance be integrated in the framework of intervening causes as a pseudo-efficient intervening cause that does not completely sever the causal link between the antecedent negligence of the first negligent actor and the injury, despite the intervening negligence of the second negligent actor. This proposal addresses the current inconsistency between the frameworks of intervening cause and last clear chance, as well as the policy considerations raised by the Court in *Phoenix* and *Tiu*. As a necessary incident to the proposed treatment of last clear chance cases as a pseudo-efficient intervening cause, the practice of using of the term "contributory negligence" to refer to the first negligent act must be abandoned, and the latter should properly be referred to as *antecedent negligence*. Under the proposed framework, this antecedent negligence will, like contributory negligence, result in mitigated damages.

## VI. CONCLUSION

There is a lack of consistency in the Court's jurisprudence involving situations where more than one party is negligent, including last clear chance situations where both the plaintiff and respondent are negligent. At times, the Court has held that the doctrine of last clear chance allows the negligent plaintiff to recover in full;[67] in other cases, the Court has characterized antecedent negligence as contributory negligence warranting reduction of the damages due to the negligent plaintiff.[68] The Court has also treated

[67] *See*, *e.g.*, *Picart*, 37 Phil. 809, 814–15, and *Lapanday Agric. & Dev't Corp.*, 552 Phil. 308, 312–13 & 317 (2007).

[68] *Supra* Part IV.A.

subsequent negligence as both a foreseeable intervening cause *and* contributory negligence warranting a reduction of damages.[69]

Because a last clear chance situation cannot feasibly be classified as either a foreseeable or an efficient intervening cause, the framework proposed by this Article treats the doctrine of last clear chance as a third type of intervening cause, where both negligent actors share responsibility for the injury. Put differently, last clear chance might be understood as a pseudo-efficient intervening cause, because (as in efficient intervening cause), it is the second negligent actor who is primarily held liable for the injury. Unlike an efficient intervening cause, however, the chain of causation between the first negligent act and the injury is not completely severed, and the first negligent actor is also made to bear a portion of the liability in the form of mitigated damages. This approach is consistent with the Court's jurisprudence where the damages due to the negligent plaintiff are mitigated due to their "contributory" negligence in committing the first negligent act.

Further to the proposed framework, the Article also proposes that the prior negligence of the first negligent actor in last clear chance cases be characterized as antecedent, instead of contributory, negligence, because the first negligent act cannot be considered contributory under the *Rakes* definition of contributory negligence. Use of the term "contributory negligence" to refer to the first negligent act in last clear chance cases has resulted in jurisprudence where this act is treated as "contributory negligence," even if it did not contribute to the injury but to the event itself as a proximate cause thereof under *Bataclan*. The proposed change in nomenclature more accurately reflects the nature of the first negligent act as contributing to the event itself by creating the risk, instead of merely contributing to the injury.

**- o0o -**

[69] *Phoenix*, 148 SCRA 353.