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Investigación

Adequate and Proximate Cause vs Scope of Liability: A Comparative Analysis Between the U.S. Third Restatement of Torts and Colombian Supreme Court Decisions from 2016 to 2018[1]

Causalidad adecuada y causalidad próxima vs. Alcance de responsabilidad: un análisis comparativo entre el tercer *Restatement of Torts* estadounidense y decisiones de la Corte Suprema colombiana entre 2016 y 2018

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Abstract

This paper contrasts Colombian Supreme Court decisions from 2016 to 2018 with current U.S. trends on proximate cause or scope of liability included in the Third Restatement of Torts. First, it provides a review of the changes the Third Restatement of Torts introduced to the proximate cause doctrine. Then, it presents an overview of the general aspects of Colombian Tort Law to provide the legal context surrounding the judicial decisions that will be analyzed. An independent section will be devoted to what, up to now, have been the functional equivalents in Colombia of the Scope of Liability doctrine. The paper also provides context on the Colombian Supreme Court, its jurisdiction, and the effect of its decisions. Lastly, the main part offers an analysis of decisions by the Colombian Supreme Court, which faced scope of liability issues, considering the recent shifts implemented in the Third Restatement of Torts. An appendix provides a translation of the main tort provisions of the Colombian Civil Code.

Key words:

Causation, adequate cause, proximate cause, scope of liability, Colombian tort law

Resumen

Este artículo contrasta las decisiones de la Corte Suprema de Justicia colombiana proferidas entre 2016 y 2018 con las tendencias actuales en los Estados Unidos sobre la causa próxima o el alcance de la responsabilidad. En primer lugar, se ofrece una revisión de los cambios que introdujo el *Third Restatement of Torts* a la doctrina de la causa próxima. Luego, se presenta una visión general de los aspectos generales de la ley de responsabilidad civil colombiana para proporcionar el contexto legal que rodea las decisiones judiciales que se analizarán. Se dedicará una sección independiente a lo que, hasta ahora, han sido los equivalentes funcionales en Colombia de la doctrina del alcance de la responsabilidad. El artículo también proporciona contexto sobre la Corte Suprema de Justicia colombiana, su jurisdicción y el efecto de sus decisiones. Por último, la parte principal ofrece un análisis de las decisiones recientes de la Corte Suprema de Justicia colombiana, que enfrentaron cuestiones de alcance de la responsabilidad, y se consideran los cambios recientes implementados en el *Third Restatement of Torts*. Un apéndice ofrece una traducción de las principales normas del Código Civil colombiano en materia de responsabilidad civil.

Palabras clave:

Causalidad, causa adecuada, causa próxima, imputación objetiva, alcance de la responsabilidad civil

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Must one pay damages for every harm resulting from their actions, or are there limits to liability? If so, how do we distinguish between the harm for which we are accountable and the harm that falls outside the scope of liability? Tort law in various countries—including the United States and Colombia—addresses these questions by defining the circumstances under which a person is liable. In general, liability arises when harm is caused by a breach of a duty or the materialization of risks inherent to a dangerous activity. However, in some cases, even this harm may not require compensation. When harm appears too remote or the connection between the act and the harm too tenuous, courts may decide that the defendant is not liable. As this paper will demonstrate, the way courts arrive at these conclusions has given rise to significant debates on causation and the boundaries of liability in both U.S. and Colombian tort law.

One of the doctrines that experienced a significant change from the Second to the Third Restatement of Torts was the doctrine traditionally referred to as "proximate cause." The change even implied a renaming of the doctrine, and now, "scope of liability" is the term favored by the new Restatement. The modification is not merely cosmetic. As Prof. Stapleton has pointed out again,[2] issues regarding causation have been a source of confusion because, among other things, it is not always clear what lawyers mean by them. At least three separate issues used to fall within the scope of causation: (a) questions regarding what it means to be a cause in private law; (b) questions on how private law requires the causal connection to be proven given evidentiary gaps; and (c) questions of whether a defendant should be held responsible for the consequences of his breach of a legal rule. All three of these distinct issues were covered under the umbrella of causation or legal cause in the previous restatements. Part of the solution was to dissolve the umbrella to give each issue a separate identity. In the case of questions that fitted under 'c' and that were on occasions referred to as proximate cause issues, the name was changed in the latest Restatement to remove any reference to causation, because it was not really an issue of such nature, but a question of whether a person should be held liable for tortious conduct.[3]

These changes were not limited to the United States. At the same time that the Third Restatement was being debated, the Principles of European Tort Law (PETL) were published (Busnelli et al., 2005). These, like the new Restatement, made a conscious effort to distinguish cause in fact from scope of liability.[4] This was no coincidence, of course. Michael Green, one of the reporters of the Third Restatement, is also a member of the European Group on Tort Law (EGTL), which drafted the PETL, and Ken Oliphant, one of the leaders of the EGLT, is a member of the American Law Institute (ALI) and acted as an Adviser on the Restatement Third of Torts.

[2] See Prof. Jane Stapelton' Lecture 3 Causes and Consequences in the Common Law of the Clarendon Lecture Series 2018, Thoughts on torts (Stapelton, 2018). Prof. Stapleton had previously developed this idea in depth in 'Choosing What We Mean by Causation in the Law' (Stapleton, 2008).

[3] See the Reporter's Notes to comment 'a' of § 26 (The American Law Institute, 2009).

[4] While cause in fact is dealt in articles 3:101 to 3:106 of the PETL, scope of liability is dealt under article 3:201 (Busnelli et al., 2005).

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Meanwhile, no similar change has taken place in Colombia. Would Colombia benefit from introducing an approach that divides the issues of causation between factual issues and issues regarding the limits to the scope of liability? In recent years, scholars have begun to call for reform, arguing that Colombian law also confuses questions of fact with question on the scope of liability (Baena, 2021; Rojas Quiñones & Mojica Restrepo, 2014; Vásquez Vega, 2021). However, the Supreme Court has not yet heeded these calls, and only exceptionally have some decisions started to pave the way for dividing what has traditionally been merged in causation into two separate legal concepts. But the work is far from being done; in Colombia, the language of causation still muddles the question of whether a defendant should be held responsible for the consequences of his breach of a rule of law.

In this paper, I will contrast Colombian Supreme Court cases decided between 2016 and 2019 with current U.S. trends on proximate cause or scope of liability. This exercise will demonstrate why it is challenging to address questions of causation under a single heading that combines factual and legal issues. Furthermore, the comparison will illustrate how Supreme Court decisions can be reinterpreted as implicit applications of some of the criteria from the Third Restatement of Torts, to deal with scope of liability.

The task will be carried out as follows: First, I will review the changes the Third Restatement of Torts introduced to the proximate cause doctrine. Then, I will present an overview of the general aspects of Colombian tort law to provide the legal context surrounding the judicial decisions that will be analyzed. A separate section will be dedicated to examining the functional equivalents in Colombia of the Scope of Liability doctrine. I will also provide context on the Colombian Supreme Court, its jurisdiction, and the effect of its decisions. In conclusion, I will present decisions by the Colombian Supreme Court that addressed scope of liability issues, and I will analyze them in light of the recent shifts implemented in the Third Restatement of Torts.

From proximate cause to the scope of liability in U.S. tort law

In 2001, Prof. Stapleton stated that "[f]ew areas in the law of tort are in more need of this re-evaluation than the area covered by the term 'legal cause' as described in the earlier Restatements, where its treatment is opaque, confused, and contradictory" (Stapleton, 2008, p. 943). In her illuminating paper on legal cause, Prof. Stapleton pointed out that the Third Restatement had the task of replacing the "obfuscating terminology of legal cause, proximate cause, and substantial factor" with two elements: "cause in fact" and "scope of liability," the first one factual and the second one normative (Stapleton, 2008, p. 945). The Reporter's notes to Comment 'a' of § 26 evidence the influence of Prof. Stapleton's paper had on the Third Restatement (The American Law Institute, 2009). The Restatement accepted the suggestions of abandoning the term "legal cause" and dividing its content into "cause in fact" (§ 26 to 28) and "scope of liability" (§ 29 to 36).

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The purpose of this shift has been to separate the issues that courts and legal scholars have traditionally grouped under the heading of causation. § 26 to 28 of the Restatement address the question of what constitutes a cause in tort law and how the causal connection must be proven in the face of evidentiary gaps. § 29 to 36 set out in which cases a defendant should not be held responsible for the consequences of breaching a legal rule.

The Restatement has established several rules to reduce the scope of liability. The first one, set forth in § 29, limits an actor's liability "to those harms that result from the risks that made the actor's conduct tortious." The second one, set forth in § 30, consists of not finding liability "for harm when the tortious aspect of the actor's conduct was of a type that does not generally increase the risk of that harm"; § 34 sets that "[w]hen a force of nature or an independent act is also a factual cause of harm, an actor's liability is limited to those harms that result from the risks that made the actor's conduct tortious"; and § 36 rounds up the scope of liability by establishing that "[w]hen an actor's negligent conduct constitutes only a trivial contribution to a causal set that is a factual cause of harm under § 27, the harm is not within the scope of the actor's liability."[5]

The changes have been both praised and criticized (Robertson, 2009; Zipursky, 2009). Some jurisdictions have favored the shift from proximate cause to scope of liability, while others rejected it.[6] However, they represent the current trend in U.S. tort law, and for the purposes of this comparison, I will treat them as the black letter law. In the end, all these rules aim to determine if the defendant's tortious conduct bears enough legal relevance for him to be held liable and recognize this as distinct from the issue of causation. It is only after the plaintiff has proven that the defendant's tortious conduct has caused harm that any analysis regarding the scope of liability is necessary in order to determine if the defendant is to be held liable or if there is some special consideration that must lead to them not being held accountable.

Tort law in Colombia – General aspects

In contrast to the U.S., Colombia has a civil law system, with all its tort law provisions initially set in the Colombian Civil Code.[7] Article 2341 of the Code establishes as a rule that "[a]nyone who has committed a crime or fault, which has inflicted harm on another, is liable for damages." The subsequent articles of the Code regulate who damages are owed to (Art. 2342), who they are

[5] The solution, coupled with some additional changes made regarding the duty doctrine, will lead almost all common law lawyers to think of *Palsgraf*. In the Cardozo-Andrews debate, the Restatement favored the latter up to such point that it has even been stated that "the Third Restatement declares Justice Andrews the winner over Justice Cardozo — by a knock out" (Weigand, 2014, p. 61).

[6] A recount of the Restatement's reception by different jurisdictions can be found in *Duty, Causation and Palsgraf* (Weigand, 2014).

[7] Colombia's Civil Code was drafted in the 19th century by Don Andrés Bello for the Republic of Chile; however, it was adopted by many Latin American countries. During Colombia's federal period, the Code was adopted throughout the country's states. In 1887 it was adopted as the unified Civil Code for the entire country. Recent scholarship has suggested that despite the Civil Code's tort law provisions being in place since the 1860s, tort law was significantly transformed in the late 1800s and early 1900s via judicial interpretation (Vásquez Vega, 2023).

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owed by (Art. 2343), joint and several liability in cases of two or more tortfeasors (Art. 2344), damages caused by children (Arts. 2346 to 2348), third parties (Arts. 2347, 2349 and 2352), animals (Arts. 2353 and 2354) and unanimated objects (Arts. 2350, 2351 and 2355), liability for dangerous activities (Art. 2356), comparative negligence (Art. 2357), limitations (Art. 2358), contingent damages (Art. 2359), and class actions (Art. 2360).[8] The Constitution and statutes, such as the Commercial Code (Decree 910 of 1971) and the Statute for Consumer Protection (Law 1480 of 2011), provide further guidance on other areas of tort law, including State liability, directors and operators liability, and product liability, respectively.

In accordance with the general regime of liability, all individuals are held to a standard of care, and any breach of this duty results in an obligation to provide compensation for any resulting harm. The same goes for intentional harm, without the law or the courts having set any significant difference; this has led academics to group intentional torts alongside the tort of negligence (Tamayo Jaramillo, 2007). Strict liability is exceptional and has only been established by statute for possessing wild animals and for manufacturing and distributing defective products;[9] the Supreme Court has also developed a strict liability scheme for dangerous activities.[10] In Colombia, the scope of what constitutes a dangerous activity is much broader than in the U.S. This includes activities such as the use of motor vehicles, the distribution of electricity, fossil fuels and other energy sources, as well as construction. These have all been deemed dangerous activities by Colombian courts (Tamayo Jaramillo, 2007).

In all schemes of liability, the plaintiff must prove: (a) the occurrence of the tortious circumstance by the plaintiff or their dependents (be it the breach of the general duty of care, the execution of the dangerous activity, the manufacturing or distribution of a defective product, etc.), (b) harm either to the victim's property or to their physical or mental integrity, and (c) that the tortious circumstance was a factual cause the harm. The defendant may question the evidence submitted by the plaintiff and may also argue *force majeure* as a defense.[11] As I will explain in the following section, Colombian courts have addressed what is now known as scope of liability in the Third Restatement of Torts, under the headings of causation and force majeure.

[8] I have included an appendix at the end of this paper in which I have translated and commented the most relevant tort provisions of the Civil Code.

[9] See Civil Code, Article 2354, and the Consumer Protection Statute (Law 1480 of 2011), Articles 19 to 22. Although statutory provisions on defective products are ambiguous, scholars have considered that they contain a strict liability regime (Tamayo Jaramillo, 2016).

[10] This was first set by the Supreme Court in Judgment of March 14th, 1938, MP Ricardo Hinestrosa Daza, GJ XLVI, p 211-223. They case is known as the Arnulfo case.

[11] *Force majeure*, also referenced in Colombia as *causa extraña*, has a broader scope than in the U.S. While in the U.S. it is frequently associated with 'acts of god', in Colombia *causa extraña* comprises all defenses that argue a separate cause for which the defendant is not liable.

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Scope of liability in Colombian tort law

Even though there is no express rule in Colombian statutory law to limit the scope of liability, both courts and legal scholars have agreed, just as it is pointed out in the Editor's Notes to Comment b of § 29 of the Restatement, "that some limit on the liability of an actor whose tortious conduct causes harm is necessary is beyond dispute." Traditionally, the limit was introduced through the doctrine of adequate cause, according to which a circumstance is only to be considered a cause of a result if, in the ordinary course of events, it is adequate to explain that result, taking into account the reasonable maximums of experience, if the matter does not require special technical knowledge, or the rules of science if it is a technical matter. How is this to be determined? The absence of court experts or statistical evidence in tort trials suggests that determining whether a cause is "adequate" primarily depends on the court's reasonable assessment and sense of justice, rather than on a strict formula.

In any case, even though courts and legal scholars mention that the scope of liability should be reduced through the adequate cause test, in practice, this test is never performed on its own. What usually occurs is that courts must decide whether a superseding cause frees the plaintiff from liability, notwithstanding that his conduct constituted a breach of duty or some other tortious conduct that caused the harm. In these cases, before determining if the adequate cause was the tortfeasor's conduct or the superseding cause, courts analyze if the latter constitutes a *force majeure*.

Although, in appearance, this might seem like a departure from the analysis conducted in the U.S., it is not really so. Intervening acts and superseding causes are dealt with under § 34 of the Third Restatement and, as indicated in Comment 'a' "[t]he rule stated in this Section is functionally the same as § 29, but it recognizes that other human acts and forces of nature may concur with tortious conduct to cause harm. Were it not for the long history of intervening and superseding causes playing a significant role in limiting the scope of liability, this Section would not be necessary."

While the Colombian legal system does not have a rule to determine the scope of liability, it does contain some relevant provisions pertaining to intervening acts and superseding causes that may produce a similar effect. Article 2344 of the Civil Code, for example, provides that the harm arising from a delict or fault committed by two or more individuals entail joint and several liability by the tortfeasors. This suggests that when harm is attributable to two or more people, the actions of both are deemed, from a legal point of view, relevant causes of the harm. However, as I will demonstrate, the Supreme Court has considered that there are instances when the actions of a third party do not generate joint and several liability, but rather negate it entirely. Therefore, the necessity for rules to limit the scope of liability arises.

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Article 2357 indicates that courts should reduce compensation in cases where harm was also a result of the victim's negligence. This rule broadens the scope of liability issues to include an evaluation of the victim's conduct as well. As stated in Comment 's' of § 29 of the Restatement, limiting liability to those harms that result from the risks that made the actor's conduct tortious applies not only to the conduct of the defendant but also to the plaintiff's conduct in order to determine if recovery should be reduced based on comparative responsibility. The same applies to Colombian tort law.

On the other hand, Article 64 of the Civil Code defines *force majeure* as an irresistible and unforeseen event.[12] Courts have settled that there will be no civil liability if such a circumstance arises. So, in these cases, even though the three classic requirements for liability are met (that is, the occurrence of a tortious circumstance, harm, and that causal connection between them), the tortfeasor will not be held liable, and (*voila!*) the scope of liability was reduced. However, as some of the Supreme Court decisions that I will analyze will reveal, it is not enough for the act or superseding cause to be an irresistible and unforeseen event; besides this, courts will also have to select which of the causes is to be deemed the legally relevant one but how this is done has not still been appropriately defined. On this point, recent U.S. trends on the scope of liability can be illuminating.

Casación and the role of Colombia's Supreme Court

Before I begin to examine the recent decisions of the Colombian Supreme Court on cases pertaining to liability issues, a short overview of the Supreme Court and its jurisdiction is necessary. In 1886, after the end of a civil war that transformed the country from a federal republic to a unitary state, the Colombian Supreme Court was established as one of the mechanisms intended to unify the country in general and the interpretation of the law in particular.[13] The 1991 Constitution, Articles 116, 234, 236, and 239, establish the Supreme Court as one of the three branches of the judiciary, along with the Constitutional Court and the Council of State. The Supreme Court's jurisdiction encompasses civil and criminal cases, while the Constitutional Court is responsible for judicial review and cases involving fundamental rights, and the Council of State oversees cases related to administrative law.

Regarding civil cases, the Court has special appellate jurisdiction through what is known as "*casación*".[14] Article 333 of the Code of Civil Procedure establishes that *casación* is an extraordinary appeal "aimed at defending the unity and integrity of the legal system… controlling

[12] Just as indicated in Comment d of § 34, even in cases of intervening acts and superseding causes Colombian law will hold the plaintiff liable for failing to take appropriate precautions against such acts or causes.

[13] Cajas-Sarria, M. A. (2013). The Colombian Supreme Court, 1886-1910: From the Court of the Regeneration to Constitutional Court. *Historia Constitucional, 14*, 425.

[14] On the introduction of cassation to Colombian civil procedure see González Jácome (2007).

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the legality of judgments, unifying national jurisprudence[15] and repairing the grievances caused to the parties by the appealed decision." However, in contrast to the Supreme Court of the United States, its Colombian counterpart does not have the authority to grant *certiorari* to those cases it considers worthy of its opinion. Instead, any case that meets the criteria set in Articles 334 and 338 of the Code of Civil Procedure, can be appealed in *casación* by the unsatisfied party.

Causes for *casación* are based on legal and factual matters. Since there are no juries in Colombia, judges decide both on the facts and the law. The Supreme Court respects the decisions of the trial and appellate courts regarding matters of fact. It may only overturn these decisions if there are substantial mistakes in the proceedings. Therefore, if the issues concerning to the scope of liability are interpreted as matters of fact rather than matters of law, the Court will be less inclined to overturn decisions.

Prior to 2001, all decisions issued in *casación* by the Colombian Supreme Court were merely persuasive authority. Furthermore, for the Court's decisions to have such an effect, Law 169 of 1896 required three uniform judicial decisions on the same point of law.[16] However, in 2001, the doctrine of *stare decisis* was implemented in a landmark decision of Colombia's Constitutional Court.[17] As a result, the precedent set by the Supreme Court in casación is now binding, and that lower judges and the Court itself can only depart from it in exceptional cases.[18] This has significantly increased the relevance of case law study.

Scope of liability issues in recent Colombian Supreme Court cases

From 2015 onwards, the Colombian Supreme Court has dealt with several cases concerning the scope of liability.[19] The following section will present an analysis of seven relevant cases to

[15] From the early 20th century, jurisprudencia has become the name given to judicial precedent in spanish speaking countries. See results for jurisprudencia in the 'Mapa de Diccionarios' of the Royal Spanish Academy: https://www.rae.es/obras-academicas/diccionarios/mapa-de-diccionarios-0.

[16] Recent scholarship has explored the importance of judicial decision in Colombian legal practice before they were made binding in the early 2000s (Vásquez Vega, 2023).

[17] The decision was taken in Judgement C-836 of 2001. The implementation of *stare decisis* was not unanimously accepted by all the magistrates of the Constitutional Court. In fact, four out of the nine of the magistrates dissented. However, more decisions have insisted on *stare decisis* even to the point that unjustified departure from precedent has been considered a criminal offense (see Colombian Supreme Court judgment of April 10th, 2013, MP José Luis Barceló Camacho). And statutory law, such as the Law of Administrative Procedure of 2011, has also started to recognize precedent as binding.

[18] Departure was only allowed given one of the following scenarios: (i) significant differences between the facts of the precedent case and the facts of the case at hand; (ii) a legislative reform of the applicable law; (iii) significant social, political or economic change; (iv) previous contradictory decisions; and (v) contradictions between the existing precedent and the core values of the legal system.

[19] The Supreme Court's decisions can be found on its website: http://consultajurisprudencial.ramajudicial.gov.co:8080/WebRelatoria/csj/index.xhtml

The decisions mentioned in this paper were found using the following key words in the Court's search engine: causa extraña, causalidad, fuerza mayor, hecho de un tercero, culpa de la víctima, hecho de la víctima, caso fortuito, nexo causal, causa adecuada y causa eficiente. Thirty-one decisions resulted from the search, but only the ones mentioned here dealt with scope of liability issues. The other results pertained to other causation issues.

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contrasting how the Colombian courts approach the issue of scope of liability in comparison to current trends in U.S. The majority of decisions show that, as in the previous restatements, the Colombian Supreme Court still confusingly merges issues of factual causation with those of scope of liability. In most instances, the Court appears to believe that it is resolving a matter of fact rather than establishing rules that set the limits of liability for damages caused by tortious conduct. I will present a summarized version of the Court's arguments in each case. I will then translate these arguments into statements that fit within the scope of liability analysis.

The first set of three cases concerns the tortious conduct of a third party. The second set of three cases are electrocution cases that involve the tortious conduct of the victim. The last case also involves the tortious conduct of the victim but outside the electrocution scenario.

1. Impersonating a bank. Judgment of April 25th, 2018, M.P. Luis Alonso Rico Puerta, SC1230-2018[20]

In 2005, a savings account was opened at Banco Agrario under the name of Cajacopi (a Colombian family compensation fund) by an individual who fraudulently assumed the identity of the general manager. The impersonator used stationery belonging to Cajacopi, and submitted documents via the bank's fax number. Banco Agrario failed to implement adequate and sufficient control measures and opened the account without adhering to the specific controls to prevent fraud. Money owed to Cajacopi was then transferred to the fraudulent account and was later withdrawn by those who had assumed the identity of the general manager. Although the withdrawn amounts required special verifications, these were not carried out. Following this, Cajacopi sued Banco Agrario, seeking to be held liable for its losses. The bank defended itself, arguing that the criminal intervening acts of a third party (the fraudsters) precluded recovery.

The Court held that since the defendant could have prevented the criminal intervening acts of a third party had it taken appropriate precautions, such acts could not be considered a *force majeure* that freed the defendant from liability because the event could not be described as irresistible and unforeseen. The Court did not address the scope of liability.

Comment 'a' of § 29 of the Restatement mentions that "[o]rdinarily, the plaintiff's harm is self-evidently within the defendant's scope of liability and requires no further attention." This was certainly the case Judgment of April 25th, 2018. The Court decided the issue as if it was self-evident. The general duty of care requires banks to implement security measures to avoid fraud. Financial regulation also exists to promote the same objective. The breach of such duties could not only foreseeably lead to losses, but preventing these breaches is also part of why the regulation was implemented. The facts of this case merely illustrate that, prior to

[20] The judgments are identified by their date, the magistrate who wrote the majority opinion (referred to as the *Magistrado Ponente* or M.P.), and the number of the decision. This information is sufficient to locate a judgment on the Court's website. Unfortunately, our case naming convention does not include the names of the parties involved.

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any considerations regarding the scope of liability are made, Colombian courts assess whether the actions of a third party were irresistible and unforeseen. The following cases will illustrate the potential consequences of third party actions that are both irresistible and unforeseen.

2. The taxi driver who was responsible for María's dismissal. Judgment of June 15th, 2016, M.P. Margarita Cabello Blanco, SC7824-2016

María Esperanza Castellanos, who was employed at the San Bernardo de la Salle Institute, was involved in a vehicular accident while being transported in a taxi. The incident resulted in several injuries that permanently reduced her ability to work. Following the accident and given her reduced work capacity, María was illegally dismissed from her position at the Institute.[21] She subsequently initiated legal proceedings against the taxi driver. The claim included compensation for lost profits resulting from the termination of her employment. The defendant objected, arguing that he was not liable for the third party's illegal decision.

In contrast with the previous case, on this occasion, the Court ruled that the defendant was not liable. It determined that the firing of the employee in this case was not legally admissible, and thus, the defendant's conduct was not the cause of the plaintiff's harm. However, this is not true from a cause-in-fact point of view. The defendant would not have been dismissed had she not lost a portion of her work capacity as a result of the accident. As is often the case in Colombia, the Court conflated the issues of causation and the scope of liability of the defendant for the harm caused by his tortious conduct.

Instead of being a causal issue, the Court should have considered that, even though the defendant's tortious conduct was a factual cause of the harm, he is not liable for it because such harm falls outside the scope of his liability. It is important to note that in Colombia, an individual cannot be terminated from employment based on a reduction in their work capacity. It does not appear that this situation would be considered a risk associated with this type of harm. Therefore, although this was not stated in such a way, the principle underlying the decision seems like the one in § 29, 30, and 34 of the Restatement.

3. The Machuca Massacre. Judgment of December 19th, 2018, M.P. Margarita Cabello Blanco, SC5686-2018

The heartbreaking facts of this case were the following: Ocensa requested the Ministry of the Environment to issue an ordinary environmental license for the construction and operation of a pipeline that would pass, among others, through the municipality of Zaragosa, Antioquia, which included the small town of Machuca. At the public hearings held on this request, Ocensa

[21] In accordance with Colombian labor law, an employer is prohibited from terminating an employee's contract due to a permanent reduction in the employee's capacity to work.

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was consider terrorism as a risk factor, given that other pipelines had been attacked in the past, affecting nearby populations.

The Ministry granted Ocensa the requested license and ordered the pipeline to be built away from towns and their urban expansion areas. It required the development of contingency plans, social management plans, and workshops. In its discussions with the Ministry, Ocensa highlighted the potential risk of public order disturbances and proposed that this variable be managed by the military. This was conceded by the Government, which led Ocensa not to adopt special considerations to mitigate it. In any case, Ocensa was aware that the risk was significant and that the slope under the pipeline represented a high risk for the town in the case of the section that passed near Machuca.

In that area, in particular, there was a severe threat of terrorist attacks for which Ocensa requested the Ministry of Defense physical protection over the pipeline. Nonetheless, terrorist attacks occurred on September 27th, 1997, March 1st, 1998, and October 18th, 1998. The latter broke the tube and produced a spill of approximately 22,000 barrels or 924,000 gallons of oil.

Due to the outbreak and the presence of fuel odors, Machuca's community temporarily evacuated the town. However, approximately 30 to 40 minutes later, after they had returned to their homes, the spilled oil caught fire, destroying much of the town, killing 80 people and injuring another 40. The attacks were perpetrated by the National Liberation Army (known in Spanish as ELN). On October 7th, 2007, the Supreme Court found them responsible for the crimes of rebellion, terrorism, multiple homicides, and injuries. Nevertheless, the victims of the massacre initiated legal proceedings against Ocensa, asserting that it should be held liable as the owner and operator of the pipeline and consequently ordered to pay the damages. Ocensa mounted a defense, alleging, among other things, the absence of a causal link and the involvement of a third party.

The Court ruled that, while private citizens are ordinarily not liable for the actions of terrorist groups, even in cases where the defendant is engaged in a dangerous activity, the defendant in this instance was liable. The pipeline's proximity to Machuca town created a risk that could have been avoided by building the pipeline further away. The tragedy, the Court insisted, would not have happened but for the pipeline being where it was.

This case was addressed in a significantly different way than the previous two. Here, the Court did not focus on whether the third party's actions were unforeseeable and irresistible but on whether the harm that arose from the pipeline's construction and operation was foreseeable. After concluding it was, the Court held that the defendant would be liable for any harm that did occur, no matter the intervening acts or superseding causes involved. The Court stated that its conclusion would have remained unchanged even if the cause of the pipeline's rupture had been an earthquake, as the harm would have still been a direct result of building in such an unnecessarily close proximity to the town.

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Once more, the Court addressed the issue of causation. However, it appears that the underlying rationale for the decision may be that the harms resulted from the risks that made the defendant's conduct tortious.

Illustration 8 of § 29 of the Restatement refers to cases of criminal attacks by third parties and how, in some cases, they fall within the scope of the risk but in other cases, they do not. These first three cases show this is also the case in Colombia's tort law. The following three cases all involve a plaintiff who was electrocuted by a power line, suffering substantial harm or even death.

4. Electrocution #1. Judgment of December 15th, 2016, M.P. Álvaro Fernando García Restrepo, SC1814-20-2016

In this case, the incident that prompted the Court's involvement occurred when a young man attempted to lower a metal tube through the window of the third floor of his father's house. While lowering the tube, he was electrocuted due to a voltaic arc generated between the said object and an external power line. This resulted in severe burns to the upper extremities, the amputation of his right hand and serious injuries to the other. The power line was closer to the house than permitted for several reasons: for starters, it had been installed closer than usual; then additional floors were built that brought the house closer still; and finally, the regulations on the proximity of power lines were modified, increasing the distance that should exist between them and buildings. These lines belonged to Codensa, and as a result, it was sued by the young man who claimed that it be held liable for the injuries suffered by him. Codensa mounted a robust defense, arguing, among others, the victim's fault, the fault of a third party, and comparative negligence.

The Court ruled that the defendant was liable because the event would not have occurred but for the proximity of the electric cable. The Court gave no relevance to the fact that it would not have occurred either had it not been because the plaintiff took the tube out the window, nor had his father not built the extra floors. The absence of any analysis pertaining to the actions of the plaintiff and his father is surprising. While it may be true that the negligent installation of the cables by the defendant was a cause of the harm and that the risk posed by the former set the case within its scope of liability, a minimum analysis should have been conducted of the superseding causes, even if it was to conclude that the harm was outside of their scope of liability.

The reasons behind the absence of analysis on the Court's part are unknown. However, I speculate that the lack of analysis was due to the fact that in Colombian tor law, the factual cause and scope of liability are still intertwined. After the court verified that the defendant's conduct was a factual cause, it may have assumed that its analysis was complete. If the scope of

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liability issues were set clearly apart from factual causation issues, maybe it would have been more evident to the Court that its work was incomplete.

5. Electrocution #2. Judgment of October 24th, 2017, M.P. Álvaro Fernando García Restrepo, SC17261-2017

The similarity of this case with the previous one is surprising. Esteban de Jesús Ávila Martínez sustained fatal injuries when he attempted to catch some coconuts with a rod equipped with a hook at the tip. The incident was caused by a power line in poor condition and lacking maintenance that came into contact with a palm tree. This issue had been brought to the attention of its owner, the public utilities corporation Electricaribe, by the community. As a result, the relatives of the deceased initiated legal proceedings against Electricaribe, asserting that it should be held liable for the fatal incident. The defense asserted that the victim was at fault for his own death, and therefore, there was no causal link.

In contrast with the previous case, on this occasion, the Court ruled that the plaintiff's negligence contributed to causing his death, therefore, held the defendant liable for only 50 % of the damages. Any analysis regarding the scope of liability, either for the defendant or the plaintiff, was utterly absent. For the Court, it seemed apparent that both causes were legally relevant in apportioning liability. The Court explicitly referred to the previous case and mentioned that, in contrast to that instance, the victim's actions had been a determining cause of the harm. However, the Court did not point out how this was to be established.

What is noteworthy about this case is how it led to a significantly different result despite its similarities to the previous one. Both cases consist of plaintiffs negligently handling tubes or rods close to a power line that was negligently installed or in a substandard condition. In both cases, the harm would not have occurred but for the tortious actions of the plaintiffs and the defendants. However, in the first case, the plaintiff was not deemed contributory negligent, whereas in the second case, he was. The only way to explain the different result while upholding the Court's ruling is to assume that there were reasons to conclude that the harm suffered by the first plaintiff was outside his scope of liability while the harm of the second plaintiff was not. However, since the Court only expresses itself in the language of causation, it is difficult to confirm if this does justify the different conclusions.

6. Electrocution #3. Judgment of December 1st, 2018, M.P. Ariel Salazar Ramírez, SC002-2018

On this occasion, the electrocution happened while a man was lifting a metallic window frame to install it on the facade of the third floor of his home. In the process, the frame contacted the power line, which gave the man an electric shock that caused his death. The cables did not

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have the coverage required by the corresponding regulations, nor did they keep the proper distance from the house. In turn, the house had been built without the corresponding permits and had been remodeled, also without a license, which brought it closer to the power line. Finally, work with the metallic window frame was not being carried out in compliance with the construction standards. Following these events, the relatives of the deceased sued Codensa, claiming that it be held liable for the death, to which Codensa objected, alleging, among others, the victim's fault.

The Court ruled that, despite the plaintiff had breached his duty of care by carrying out the construction process without the corresponding permits, the resulting harm was not within the scope of the risks intended to be avoided by the regulation requiring construction permits. Consequently, the Court deemed that the plaintiff's negligence was immaterial and should not give way to any reduction of the defendant's liability based on comparative negligence.

This is the only decision in which the Court explicitly reduced the scope of liability based on the risk standard, and it does so. As stated in Comment 's' of § 29 of the Restatement, this reduction was applied not to the conduct of the defendant, but to that of the plaintiff. The Court's decision to apply the risk standard represents a significant shift in Colombian tort law regarding the scope of liability. As I had mentioned, the standard test usually invoked (although barely ever applied) was that of adequate cause. Although the decision does not reference shifts in other jurisdictions, such as those reflected in the Restatement and the petl, it is clearly pointed in the same direction.

7. A car crash on a radiant day. Judgment of June 12th, 2018, M.P. Luis Armando Tolosa Villabona, SC2107-2018

This last decision did not involve electrocution. The accident occurred "on the morning of a radiant day, on a double-lane road, wide, dry, straight, well signposted and without potholes, illuminated with the glare of the sun." A driver parked his vehicle on the shoulder of the road from Fusagasugá to Bogotá and descended from the car to check the status of the cattle he was transporting; he did not turn on parking lights or provide reflective danger signals. At that time, he was rammed by a truck whose driver had seen the parked vehicle but had hoped he could avoid it. The accident resulted in the amputation of the plaintiff's right leg. As a result, he sued the truck driver who rammed him, claiming he be held liable for the injuries suffered. The defendant argued that the victim's sole fault and comparative negligence caused him harm.

This case is very similar to illustrations 1 and 2 of § 29 of the Restatement. As set in those examples, in this case, it is clear that both the defendant's and the plaintiff's conduct were negligent, caused the harm, and harm resulted from the risks that made such conduct tortious.

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There seemed to be no scope of liability issue. Nonetheless, the case was surprising given that the trial court held the defendant 40 % liable, the appellate court held he was 50 % liable, and the Supreme Court held him 60 % liable. All three courts seemed to believe that apportioning liability could be done via some scientific formula and were trying to determine which conduct had more impact in causing the harm. This, of course, cannot be done, and it illustrates the problem of still using the language of causation to describe a normative issue.

Conclusions

In this paper, I set out to contrast the differences between Colombian tort cases decided by the Supreme Court between 2016 and 2019, and U.S. trends on proximate cause or scope of liability. With this purpose in mind, I summarized the leap that the Third Restatement of Torts gave when it replaced legal cause with independent regulation for cause-in-fact and scope of liability. One of the significant shifts this implied was eliminating causal language from the normative issues posed by the scope of liability test. On the other hand, I also described how the Colombian tort system works and detailed how it has dealt with scope of liability issues. Unfortunately, Colombian law has not yet given the same leap as that suggested by the Restatement, and therefore, these issues are still muddled and confused with causation questions. To illustrate the different problems that can arise when such issues are not clearly separated, I referred to recent decisions by the Colombian Supreme Court.

Most of the analyzed decisions were challenging to understand, given that they resorted to the language of causation, making it hard to identify the real issue at play. This also entailed those similar cases reached significantly different results without any reasonable justification; the analysis in some other cases just seemed to stop halfway. However, the Court's judgment of January 1st, 2018, offers hope. For the first time, the Court introduces the risk standard test to delimit liability and treats it as an independent issue from that of causation. Maybe Colombia is about to get on board the same train that Europe and the U.S. have been riding for the past years.

The different difficulties evidenced by several of the Colombian cases show that despite the difficulties that implementing the new Restatement might carry, it is a change that, given its clarity, will help the decision-making process in those tort cases in which scope of liability is a relevant issue.

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Appendix I – Translation of Colombian Tort Law

Most of Colombian Tort Law can be found in the Civil Code. The Code is composed by a preliminary title and four books. The fourth book is titled *On Obligations in General and on Contractual Obligations.* Title XXXIV of the fourth book sets the rules for *General Liability for Crimes and Negligence*. It is composed by 20 articles. I have translated all these 20 articles alongside the original Spanish version of the articles. I have given each article a title and written a small comment for some of them that will allow a better understanding of them from a U.S. Tort Law perspective.

Article 2341. [Liability for delicts and fault]	
El que ha cometido un delito o culpa, que ha inferido daño a otro, es obligado a la indemnización, sin perjuicio de la pena principal que la ley imponga por la culpa o el delito cometido.	Anyone who has committed a delict or fault that has inflicted harm on another has the obligation to pay damages without prejudice to the principal penalty that the law imposes for the fault or delict committed.
Comment: Article 2341 sets a general duty to not intentionally or negligently inflict harm upon another, the breach of which carries the obligation to pay damages for any harm that may arise. This duty is owed by everyone to everyone and implies a general scheme of liability to which victims can resort in the absence of a breach of a more specific duty or tort.	
Article 2342. [Right to compensation]	
Puede pedir esta indemnización no sólo el que es dueño o poseedor de la cosa sobre la cual ha recaído el daño o su heredero, sino el usufructuario, el habitador, o el usuario, si el daño irroga perjuicio a su derecho de usufructo, habitación o uso. Puede también pedirla, en otros casos, el que tiene la cosa, con obligación de responder de ella; pero sólo en ausencia del dueño.	Compensation may be sought not only by the owner or possessor of the damaged property, or their heir, but also by the usufructuary, the inhabitant, or the user if his right of usufruct, habitation, or use has been harmed. It may also be sought by the person who is liable for the conservation of the property, but only in the absence of the owner.
Comment: Colombian Property Law provides different types of rights that can be exercised in relation to goods. Article 2342 establishes that the right to damages is not exclusive to owners, possessors and their heirs, but extends to all other individuals with rights over goods. The focus on damages to property (and not on physical and emotional harm) might derive from the fact that up until the 1920s tort law was primarily used to protect property instead of physical integrity.	
Article 2343. [Compensation]	
Es obligado a la indemnización el que hizo el daño y sus herederos. El que recibe provecho del dolo ajeno, sin haber tenido parte en él, solo es obligado hasta concurrencia de lo que valga el provecho que hubiere reportado.	Compensation is owed by the person who did the harm and his heirs. He who benefits from someone else's intentional wrongdoing without having played a direct role, the liability for compensation is limited to the value of the benefit obtained.
Comment: The first clause of Article 2343 states that the obligation to pay damages is not extinguished by death but is inherited by the estate of the tortfeasor. The second clause introduces a case of unjust enrichment into tort law. In cases of intentional wrongdoing any third-party beneficiary will be liable for compensation, but only to the extent of the benefit obtained.	

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Article 2344. [Joint and several liability]	
Si de un delito o culpa ha sido cometido por dos o más personas, cada una de ellas será solidariamente responsable de todo perjuicio procedente del mismo delito o culpa, salvas las excepciones de los artículos 2350 y 2355. Todo fraude o dolo cometido por dos o más personas produce la acción solidaria del precedente inciso.	If a delict or fault has been committed by two or more individuals, each of them will be jointly and severally liable for any damages arising from the same delict or fault, but for the exceptions of Articles 2350 and 2355. Any fraud or intentional wrongdoing committed by two or more individuals produces the joint action of the preceding paragraph.
Article 2345. [Liability of intoxicated persons]	
El ebrio es responsable del daño causado por su delito o culpa.	An intoxicated person is responsible for the damages caused by his delict or fault.
Article 2346. [Harm caused by minors]	
Los menores de 12 años no son capaces de cometer delito o culpa; pero de los daños por ellos causados serán responsables las personas a cuyo cargo estén dichos menores, si a tales personas pudieren imputárseles negligencia.	Minors under the age of twelve are not legally capable of committing a delict or fault. However, the persons in charge of said minors may be held liable for any damages caused by the minors if such persons may be charged with negligence.
Comment: Up until 2019, Article 2346 also established that individuals with mental disabilities were also not capable of committing crimes or being at fault. However, following a statutory reform, the scope was limited to the acts of minors.	
Article 2347. [Vicarious liability: persons under one's care.]	
Toda persona es responsable, no sólo de sus propias acciones para el efecto de indemnizar el daño sino del hecho de aquellos que estuvieren a su cuidado. Así, los padres son responsables solidariamente del hecho de los hijos menores que habiten en la misma casa. Así, el tutor o curador es responsable de la conducta del pupilo que vive bajo su dependencia y cuidado. Así, los directores de colegios y escuelas responden del hecho de los discípulos mientras están bajo su cuidado, y los artesanos y empresarios del hecho de sus aprendices, o dependientes, en el mismo caso. Pero cesará la responsabilidad de tales personas, si con la autoridad y el cuidado que su respectiva calidad les confiere y prescribe, no hubieren podido impedir el hecho.	Everyone is responsible, not only for his or her own actions for the purpose of compensating for harm, but also for the actions of those who are in his or her care. Thus, parents are responsible for their minor children living in the same house. Thus, the guardian or curator is responsible for the conduct of the ward who lives under his dependence and care. Thus, the directors of colleges and schools are responsible for the acts of their disciples while they are in their charge, and the artisans and entrepreneurs for the acts of their apprentices or dependents in the same case. But the responsibility of these persons will cease if, with the authority and care that their respective quality confers and prescribes, they could not have prevented the act.
Article 2348. [Vicarious liability: minors]	
Los padres serán siempre responsables del daño causado por las culpas o los delitos cometidos por sus hijos menores, y que conocidamente provengan de mala educación o de hábitos viciosos que les han dejado adquirir.	Parents are held liable for damages caused by the faults or delicts committed by their minor children, which result from inadequate guidance or the acquiescence of harmful habits.

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Article 2349. [Vicarious liability: employees]	
Los empleadores responderán del daño causado por sus trabajadores, con ocasión de servicio prestado por éstos a aquéllos; pero no responderán si se probare o apareciere que en tal ocasión los trabajadores se han comportado de un modo impropio, que los empleadores no tenían medio de prever o impedir empleando el cuidado ordinario y la autoridad competente; en este caso recaerá toda responsabilidad del daño sobre dichos trabajadores.	Employers will be liable for the damages caused by their employees in the course of providing services to the employer. However, the employer is not responsible if it is proven that the employees acted improperly, if employer did not anticipate or prevent the damage with ordinary care and the competent authority. In such case, the said employees are held fully responsible for damages.
Article 2350. [Damages caused by the ruin of a building]	
El dueño de un edificio es responsable de los daños que ocasione su ruina, acaecida por haber omitido las reparaciones necesarias, o por haber faltado de otra manera al cuidado de un buen padre de familia. No habrá responsabilidad si la ruina acaeciere por caso fortuito, como avenida, rayo o terremoto. Si el edificio perteneciere a dos o más personas pro indiviso, se dividirá entre ellas la indemnización, a prorrata de sus cuotas de dominio.	The owner of a building is liable for any damage caused by its deterioration due to having omitted the necessary repairs or for having otherwise failed to take the care of a reasonable pater familias. There will be no liability if the deterioration occurs by a fortuitous case, such as flood, lightning, or earthquake. If the building belongs to two or more persons pro-indiviso, the compensation will be divided among them on a pro-rata basis of their property quota.
Article 2351. [Damages caused by construction defects]	
Si el daño causado por la ruina de un edificio proviniere de un vicio de construcción, tendrá lugar la responsabilidad prescrita en la regla 3a. del artículo 2060.	If the harm caused by the deterioration of a building comes from a construction defect, the liability prescribed in subsection 3 of Article 2060 will take place.
Comment: Subsection 3 of Article 2060 establishes that in such cases, the architect will be held liable for any damage that arises within ten years of the completion of the construction process.	
Article 2352. [Recovery from dependents]	
Las personas obligadas a la reparación de los daños causados por las que de ellas dependen, tendrán derecho para ser indemnizadas sobre los bienes de éstas, si los hubiere, y si el que causó el daño lo hizo sin orden de la persona a quien debía obediencia, y era capaz de cometer delito o culpa, según el artículo 2346.	The persons who ought to pay damages that were caused by their dependents shall have the right to be compensated with their estate, if any, as long as the person who caused the harm did so without order from the person to whom he owed obedience, and was able to commit delict or fault, according to Article 2346.
Article 2353. [Liability for damages caused by animals]	
El dueño de un animal es responsable de los daños causados por el mismo animal, aún después que se haya soltado o extraviado, salvo que la soltura, extravío o daño no puede imputarse a culpa del dueño o del dependiente, encargado de la guarda o servicio del animal. Lo que se dice del dueño se aplica a toda persona que se sirva de un animal ajeno; salva su acción contra el dueño si el daño ha sobrevenido por una calidad o vicio del animal, que el dueño, con mediano cuidado o prudencia, debió conocer o prever, y de que no le dio conocimiento.	The owner of an animal is liable for any damage or injury caused by said animal, whether released or lost. This liability extends to instances where the release, loss, or harm cannot be attributed to the owner´s or animal keeper´s fault. What is said of the owner applies to every person who uses someone else's animal, except for his action against the owner if the harm has been caused by a quality or vice of the animal, which the owner, with medium care or prudence, should have known or foreseen, and did not inform of.

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Article 2354. [Damages caused by fierce animals]	
El daño causado por un animal fiero, de que no se reporta utilidad para la guarda o servicio de un predio, será siempre imputable al que lo tenga; y si alegare que no le fue posible evitar el daño, no será oído.	The harm caused by a fierce animal, of which no utility is reported for the safety or service of a property, will always be attributable to the one who has it, and if he were to claim that it was not possible to avoid the damage, he will not be heard.
Comment: Article 2354 contains one of the few cases of statutory strict liability in Colombia.	
Article 2355. [Liability for objects that fall from buildings]	
El daño causado por una cosa que cae o se arroja de la parte superior de un edificio, es imputable a todas las personas que habitan la misma parte del edificio, y la indemnización se dividirá entre todas ellas, a menos que se pruebe que el hecho se debe a la culpa o mala intención de alguna persona exclusivamente, en cuyo caso será responsable ésta sola. Si hubiere alguna cosa que de la parte de un edificio, o de otro paraje elevado, amenace caída o daño, podrá ser obligado a removerla el dueño del edificio o del sitio, o su inquilino, o la persona a quien perteneciere la cosa, o que se sirviere de ella, y cualquiera del pueblo tendrá derecho para pedir la remoción.	The harm caused by an object that falls or is thrown from the top of a building is attributable to all people who inhabit the same part of the building, and compensation will be divided among all of them, unless it is proven that the fall is due to the fault or bad intention of some person exclusively, in which case he will be solely responsible. If there were something that on a part of a building, or of another high place, threatened to fall or cause a harm, the owner of the building or the site, or its tenant, or the person to whom the object may belong, or the person who benefits from it, may be forced to remove it and anyone in town will have the right to request such removal.
Comment: Article 2355 establishes the sole instance in Colombian tort law where damages are to be apportioned instead of paid severally and jointly. To date, the Supreme Court has not yet ruled on a case that would allow the principle contained in Article 2355 to be applied to analogous cases.	
Article 2356. [Liability for malice or negligence]	
Por regla general todo daño que pueda imputarse a malicia o negligencia de otra persona, debe ser reparado por ésta. Son especialmente obligados a esta reparación: 1. El que dispara imprudentemente una arma de fuego. 2. El que remueve las losas de una acequia o cañería, o las descubre en calle o camino, sin las precauciones necesarias para que no caigan los que por allí transiten de día o de noche. 3. El que obligado a la construcción o reparación de un acueducto o fuente, que atraviesa un camino, lo tiene en estado de causar daño a los que transitan por el camino.	Generally, any harm caused by the malice or negligence of another party must be rectified by that party. Those who are particularly obliged to provide compensation include: 1. Any individual who discharges firearm in a reckless manner. 2. The individual who removes or discovers slabs of a ditch or pipe in the street or on the road without taking the necessary precautions to ensure the safety of those who may travelling in the vicinity, whether by day or night. 3. The individual responsible for constructing or repairing an aqueduct or source that crosses a road must ensure that it is in safe and secure condition, free from any potential harm that could affect those travelling along the road.
Comment: The scope of Article 2356 has significantly changed through its interpretation by the Colombian Supreme Court. Originally, the article was interpreted as a restatement of the general duty of care set in Article 2341 or as a provision that established liability beyond criminal cases. However, in the Arnulfo case, decided on March 14th, 1938, the Supreme Court ruled that Article 2356 established a special liability scheme for activities involving a high degree of risk. In such cases, proving the execution of a dangerous activity relieves the plaintiff from proving the defendant's fault. This means that liability in these cases is presumed. There is still some debate regarding whether the presumption of fault is rebuttable or not. The list of activities deemed dangerous in Colombia is considerably longer than that of the U.S., which considers only a few abnormally dangerous activities. The most common dangerous activity in Colombia is the use of motor vehicles.	

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Article 2357. [Comparative negligence]	
La apreciación del daño está sujeta a reducción, si el que lo ha sufrido se expuso a él imprudentemente.	The assessment of damages may be subject to reduction if the one who suffered harm exposed himself recklessly to it.
Article 2358. [Term limitations to seek compensation]	
Las acciones para la reparación del daño proveniente de delito o culpa que puedan ejercitarse contra los que sean punibles por el delito o la culpa, se prescriben dentro de los términos señalados en el Código Penal para la prescripción de la pena principal. Las acciones para la reparación del daño que puedan ejercitarse contra terceros responsables, conforme a las disposiciones de este capítulo, prescriben en tres años contados desde la perpetración del acto.	The legal grounds for seeking compensation for damages resulting from a delict or fault are subject to the prescription periods set forth in the Criminal Code for the principal penalty. The causes of action for the repair of harm that can be exercised against responsible third parties, per the provisions of this chapter, prescribe in three years counted from the perpetration of the act.
Comment: This provision contains the functional equivalent of statutes of limitations in the U.S. Any cause of action not included in Article 2358, is barred after ten years by Article 2536 of the Civil Code.	
Article 2359. [Contingent damages]	
Por regla general se concede acción en todos los casos de daño contingente, que por imprudencia o negligencia de alguno amenace a personas indeterminadas; pero si el daño amenazare solamente a personas determinadas, sólo alguna de éstas podrá intentar la acción.	As a rule, a cause of action is granted in all cases of contingent harm, which, by recklessness or negligence of anyone, threatens indeterminate individuals, but if the harm threatens only certain people, only one of them can attempt the action.
Article 2360. [Class actions]	
Si las acciones populares a que dan derecho los artículos precedentes, se declararen fundadas, será el actor indemnizado de todas las costas de la acción, y se le pagarán lo que valgan el tiempo y la diligencia empleados en ella, sin perjuicio de la remuneración específica que conceda la ley en casos determinados.	If class actions to which the preceding articles found to be legitimate, the plaintiff shall be compensated for all costs of the lawsuit, and he will be paid whatever the time and diligence used in it, without prejudice to the specific remuneration granted by law in certain cases.