

Converse v. Adkins as an evolution of *Palsgraf* and the law of foreseeability

Jury instruction on the Sudden Emergency Doctrine is pivotal in shaping the jury's perspective

By John Roach

Editor's note: The case presented by the author, while interesting and instructive, was tried successfully by plaintiff but has not been heard by the Court of Appeal and cannot be cited at this time.

The principle of foreseeability in tort law, which limits a defendant's liability to harms that are reasonably predictable, was crystallized in the landmark case *Palsgraf v. Long Island Railroad Co.* (1928). In *Palsgraf*, the New York Court of Appeals held that a defendant owes a duty of care only to those within the "zone of danger" created by their negligent conduct, establishing a relational framework for foreseeability.

The recent California jury trial of *Converse v. Adkins* (Alameda Superior Court No. RG21109307, 2025), where a jury awarded my plaintiff, Gail Converse, $300,000 without finding comparative fault, represents a significant evolution of *Palsgraf*'s foreseeability doctrine. By addressing modern realities such as pet ownership, urban living, and nuanced causation, the jury's decision in *Converse* reflects a refined and expanded application of foreseeability in negligence law.

The *Palsgraf* framework: A starting point

In *Palsgraf*, Helen Palsgraf was injured when a scale fell due to an explosion caused by railroad employees dislodging a package of fireworks while assisting a passenger. Chief Judge Benjamin Cardozo ruled that the railroad was not liable because Palsgraf's injury was not a foreseeable consequence of the employees' actions. The decision introduced the concept of the "orbit of duty," limiting liability to plaintiffs whose harm could reasonably be anticipated. This relational approach to foreseeability has been a bedrock of negligence law, but its strict boundaries – particularly the requirement of physical proximity to the negligent act – have struggled to address complex modern scenarios involving indirect or diffuse harms.

Converse v. Adkins: A modern case study

The case arose from an incident on December 9, 2020, in a working-class neighborhood in Hayward, California. Plaintiff Gail Converse, a 50-year-old woman, was sunbathing in her backyard when the defendants' 11-month-old pit bull mix, Rosie, jumped over a five-to-six-foot wooden fence separating their properties. Converse, startled by the dog, tried to escape to her home but tripped and fell, fracturing her right humerus and damaging her shoulder capsule. Converse sued her neighbors, alleging negligence and negligence per se for failing to prevent Rosie from escaping their yard.

The defendants denied liability, arguing that Rosie had never previously escaped, that the fence was adequate, and that Converse's injuries resulted from her own panic and comparative fault in tripping. They also contended that the harm was not foreseeable, as Rosie did not attack or make contact with Converse. Despite these defenses, the jury found the Adkins fully negligent, awarding Converse $300,000 in non-economic damages with no reduction for comparative fault. I believe this verdict signals a broader interpretation of foreseeability, one that builds on *Palsgraf*.

Advancing foreseeability: *Converse*'s contributions

Converse v. Adkins reflects the modern law of foreseeability in three key ways, addressing limitations in *Palsgraf* and adapting to contemporary societal and legal contexts:

Broadening the zone of danger

Palsgraf's "zone of danger" was narrowly defined, focusing on immediate physical proximity to the negligent act. In *Converse*, the jury implicitly recognized that foreseeability extends to harms caused by a defendant's failure to control a pet in a densely populated urban setting. The Adkins' negligence in allowing Rosie to escape – whether by inadequate fencing or supervision – created a foreseeable risk to neighbors like Converse, even without direct physical contact. This broader conception of the zone of danger reflects the realities of suburban life, where shared boundaries and pet ownership amplify the potential for harm. By holding the Adkinses liable for a non-aggressive dog's escape, *Converse* expands foreseeability to include indirect but predictable injuries, such as those caused by a plaintiff's reasonable reaction to a perceived threat.

Incorporating reasonable expectations of pet owners

Palsgraf did not address the specific duties of individuals in everyday settings, such as pet ownership.

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Converse establishes that pet owners have a duty to anticipate and prevent risks posed by their animals, particularly in close-knit neighborhoods. The jury's verdict suggests that the defendants should have foreseen that a young, energetic pit-bull mix could escape a standard fence, especially given the breed's physical capabilities and public perceptions of its potential danger. This duty is informed by societal expectations and local ordinances, such as Alameda County Code section 5.08.010, which prohibits dogs from running at large. *Converse* thus updates foreseeability by grounding it in community standards and the heightened responsibilities of pet owners in urban environments.

Recognizing reactive causation

Palsgraf required a direct causal link between the defendant's negligence and the plaintiff's injury, limiting liability for remote consequences. In *Converse*, the jury embraced a more flexible causation model, holding the Adkinses liable for injuries resulting from Converse's instinctive reaction to Rosie's sudden appearance. Converse's testimony that she saw a "mouthful of teeth" and fled in fear, only to trip and fall, underscores the foreseeability of harm arising from a startled response. This reactive causation framework acknowledges that negligence can trigger a chain of events, where a plaintiff's reasonable actions (even if panicked) do not break the causal chain. By finding no comparative fault, the jury affirmed that Converse's reaction was a natural and foreseeable consequence of the Adkins' failure to secure their dog, departing from *Palsgraf*'s stricter causation requirements.

The Sudden Emergency Doctrine (CACI 452)

The plaintiff's strategic use of the CACI jury instruction on the Sudden Emergency Doctrine (CACI 452) was pivotal in shaping the jury's perspective, allowing them to evaluate Gail Converse's actions without the distortion of 20/20 hindsight. This instruction guided the jury to consider the context of a sudden and unexpected event – Rosie, the defendants' pit bull mix, leaping over a fence into Converse's yard – prompting an instinctual fight-or-flight response. The Sudden Emergency Doctrine emphasized that her reaction, though resulting in a fall and injury, should be judged based on the split-second decision-making demanded by the perceived danger, not as an overreaction. By framing her response as a natural consequence of the Adkins' negligence in failing to secure their dog, the instruction helped the jury assign full liability to the defendants, awarding Converse $300,000 without comparative fault, thus affirming the foreseeability of harm arising from her instinctive response to a startling threat.

Implications for tort law

The *Converse v. Adkins* case has significant implications for negligence law, particularly in refining the foreseeability doctrine:

Enhanced duty for pet owners

The case establishes a heightened duty for pet owners to prevent their animals from causing harm, even absent prior incidents or aggressive behavior. This duty aligns with public policy goals of promoting safety in residential communities and may encourage proactive measures, such as reinforced fencing or behavioral training.

Expanded liability for indirect harms

By recognizing reactive causation, *Converse* broadens liability to include injuries resulting from a plaintiff's reasonable response to a perceived danger. This approach is particularly relevant in cases involving animals, where fear-based reactions are common, and it may extend to other contexts, such as premises liability or product defects.

Integration of local ordinances

The jury's consideration of the Alameda County ordinance highlights the role of statutory standards in shaping foreseeability. Violations of such codes, even if minor, can establish negligence per se, reinforcing the link between community regulations and tort liability.

Comparison with *Palsgraf*

While *Palsgraf* remains a foundational precedent, its application is limited by its focus on industrial settings and direct causation. *Converse* addresses a domestic, suburban context, where the risks of negligence are more personal and relational. Unlike the railroad in *Palsgraf*, whose employees could not reasonably foresee the explosion's impact on a distant plaintiff, the Adkins' failure to secure Rosie directly implicated their immediate neighbor. *Converse* thus modernizes foreseeability by emphasizing the foreseeability of harm in close-knit communities and the causal role of reasonable human reactions.

Moreover, *Converse* departs from *Palsgraf*'s relational duty by adopting a more community-oriented approach. While Cardozo emphasized the defendant's duty to a specific plaintiff, *Converse* implies a broader duty to the surrounding neighborhood, reflecting the interconnected nature of modern urban living. The jury's rejection of comparative fault further underscores this shift, prioritizing the defendant's responsibility over the plaintiff's self-preservation instincts.

Conclusion

Converse v. Adkins represents a significant evolution of *Palsgraf v. Long Island Railroad Co.*, adapting the law of foreseeability to the complexities of modern suburban life. By broadening the zone of danger, incorporating societal expectations of pet owners, and recognizing reactive causation, *Converse* offers a more flexible and equitable framework for negligence liability. The jury's $300,000 verdict, with no comparative fault, underscores the foreseeability of harm in densely populated neighborhoods and the importance of proactive

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Roach

risk management by pet owners. As tort law continues to navigate evolving social norms and urban dynamics, *Converse* provides a forward-looking precedent, ensuring that foreseeability remains a robust tool for achieving justice in negligence cases.

John Roach is a trial lawyer who enjoys fighting insurance companies to achieve just compensation for his clients. He attended Hastings College of Law where he served as an intern for Judge Robinson of the San Francisco Superior Court and was admitted to the California Bar in 2009.

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