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**“QUALITY AND DIVERSITY”**

# The Rule of *Causa Proxima* as a Principle of Insurance

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## Abstract

*The rule of causa proxima (proximate cause) is derived from a latin phrase causa proxima non remota spectator (the immediate, and not the remote cause is to be considered). This article highlights the significance of the rule of causa proxima which is a key principle of insurance and is concerned with how the loss or damage actually occurred and whether it is indeed a result of an insured peril. It primarily discusses about the emphasis laid on the test of proximate cause in Insurance Law, in order to identify the causation of the loss or damage. It makes an effort to substantiate the subject matter by looking into the trends of interpretation of the rule, including in countries like the United Kingdom, the United States, India and Canada.*

## Introduction

‘Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual.’

- J.B. Maclean<sup>2</sup>

Causation is a fundamental component in insurance law. Insurance is said to be a social device providing financial compensation for the effects of misfortune or perils. Insurance cannot restore the life or property lost, but compensates the dependants from economic hazards.<sup>3</sup> Essentially, as also in the case of tort law,

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<sup>2</sup> C.L. Tyagi & Madhu Tyagi, *Insurance Law and Practice*, Atlantic Publishers & Distributors, New Delhi, 2007, p. 2.

<sup>3</sup> See J.V.N Jaiswal, *Law of Insurance*, 1<sup>st</sup> edn, Eastern Book Company, Lucknow, 2008.

insurance law recognizes that loss or damage may be the product of multiple causes.

Every discipline has certain generally accepted and a systematically laid down principles to achieve the objectives of insurance. Insurance is not exception to this general rule. In insurance, there is a body of doctrine commonly associated with the theory and procedures of insurances serving as an explanation of current practices and as a guide for all stakeholders making choice among procedures where alternatives exit. These principles may be defined as the rules of action or conduct that are universally adopted by the different stakeholders involved in the insurance business.<sup>4</sup>

*Causa Proxima Non Remota Spectatur* stands for ‘the immediate, not the remote cause’<sup>5</sup> whereas a condensed version of the phrase *Causa Proxima* means ‘the immediate/proximate cause’<sup>6</sup>. In insurance law, in order to pay the insured loss, it has to be seen as to what was the cause of loss. If the immediate cause is an insured peril, the insurer is bound to make good the loss<sup>7</sup>, otherwise not. In this vein, the scope of *causa proxima* is very relevant and vital. However, much refinement is needed in this subject.

It is an established understanding in insurance law that *causa sine qua non* or remote cause of loss is generally irrelevant. This is embodied in the heart of the maxim *causa proxima non remota spectator*. But when a remote cause takes the form of an act of wilful misconduct, the rule of *causa proxima* has to give way, and rightly so, to another fundamental principle that a one shall not take advantage of one’s own wrong<sup>8</sup>.

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<sup>4</sup> Nimish Patanakar, ‘Re insurance and Double insurance’, *Scribd* available at <http://www.scribd.com/doc/59335976/Re-Insurance-Double-Insurance>, accessed on 15 October 2014.

<sup>5</sup> *M/S.Skypak Service Specialities Ltd. v M/S.Shaw Wallace & Co. Ltd.*, Madras High Court, India, Cross-Appeal SR. no.74864/1991, decided on 9 July 2008; *National Insurance Co. Ltd. v. Presiding Officer*, Patna High Court, India, 2000 ACJ 343; *Ralli Brothers v. Perumal*, Madras High Court, India, 57 MLJ 88.

<sup>6</sup> See *Ex. Sepoy Hayat Mohammed v. Union of India &Ors.*, Delhi High Court, India, 138 (2007) DLT 539, decided on 11 January 2007, para. 16.

<sup>7</sup> *C. Sivadasan v. The New India Assurance Co.*, Kerela High Court, India, A.S. no. 647 of 1994, decided on 25 March 2011.

<sup>8</sup> See Susan Hodges, *Law of Marine Insurance*, 1<sup>st</sup> edn, Cavendish Publishing Ltd., London, 1996, p.158.

This stance was later made clearer in *Trinder, Anderson & Co. v. Thomes & Mersey Marine Insurance Co*<sup>9</sup> in which, L.J Smith, after acknowledging the fact that remote causes were generally inconsequential, reminded the court that the maxim *causa proxima non remota spectator* was qualified by a well established legal maxim *dolus circuitu non purgatur*, which simply means that a loss, even though proximately caused by a peril insured against, would not be recoverable if it was also occasioned *albeit* remotely by the wilful misconduct of the assured.

The reason why the principle of *causa proxima* had come to be recognized as a fundamental principle in the dictum of Lord Francis Bacon is that it were infinite for the law to consider the causes of causes and their impulsion one on the other, therefore it contenteth itself with the immediate cause, and judgeth of each by that without looking to any further degree certain questions are involved. Does it mean nearest in time? Does it exclude the concurrent operation of more than one cause?<sup>10</sup>

The doctrine of cause has been since the time of Aristotle and the famous category of material, formal, efficient and final cause, one involving the subtlest of distinctions<sup>11</sup>. Lord Wright in *Yorkshire Dale Steamship Company Ltd. v. Minister of War Transport*<sup>12</sup> stated that ‘The choice of the real or efficient cause from out of the whole complex of the facts must be made by applying common-sense standards. Causation is to be understood as the [person] in the street, and not as either the scientist or the metaphysician, would understand it. Cause here means what a business or seafaring [person] would take to be the cause without too microscopic analysis but on a broad view’.

### Construing the Rule of Causa Proxima

The scope of *causa proxima* is very relevant and its ascertainment is vital<sup>13</sup>. The rule may be construed in two different manners and this duality was

<sup>9</sup> *Trinder, Anderson & Co. v. Thomes & Mersey Marine Insurance Co*, Queen’s Bench, the United Kingdom, (1898) 2 QB 114, p.124.

<sup>10</sup> *Re: Rabenfels, Stoomvart ... vs Unknown*, Calcutta High Court, India, AIR 1930 Cal 97, para. 9; See Kotaro Fujimoto, ‘A Tendency of Arguments on the Principle of Causa Proxima’, vol. 10, no. 2, *The Annals of the Hitosubashi Academy* 158, 1959, pp.158-170.

<sup>11</sup> *S.K Exports Pvt. Ltd. v. New India Assurance Co. Ltd*, National Consumer Disputes Redressal, India, Lord Shaw’s Observation, III (2004) CPJ 74 NC.

<sup>12</sup> *Yorkshire Dale Steamship Company Ltd. v. Minister of War Transport*, HL, the United Kingdom, [1942] AC 691.

<sup>13</sup> *S.K. Exports* (n 13).

caught in sight in the year 1918 when *Leyland Shipping Co. Ltd. v. Norwich Union Fire Society Ltd.*<sup>14</sup> was decided.

One school of thought was endorsed by the court in *Pink v. Fleming*<sup>15</sup> which held that ‘only the *causa proxima* or immediate cause of the loss must be regarded’. It was thought that as the test of the last event in the chains was well known, people must be taken to have contracted on that footing.

Another school of thought was expressed by Lopes LJ, in *Reischer v. Borwick*<sup>16</sup> and the current understanding of the rule of *causa proxima* was sown in this case<sup>17</sup>. It states that the rule does not refer to immediate cause, but the efficient or predominant cause. Hence, the cause which is truly proximate is that which is proximate in efficiency<sup>18</sup>.

In *Pawsey & Company v. Scottish Union and National Insurance Co.*<sup>19</sup>, the proximate cause has been defined to mean ‘the active efficient cause that sets in motion train or events which bring about a result, without the intervention of any force, started and working actively from a new and independent source.’

In an English case, *Coxe v. Employers’ Liability Assurance Corporation*<sup>20</sup>, an army officer visiting sentries posted along the railway lines was accidentally run over by a passing train and killed. The policy excluded death or injury directly or indirectly caused by war, among other grounds. The place of accident was dark due to a blackout. The passing of train was held to be proximate, efficient and effective cause of the accident but the indirect cause was the war because it was the reason for the presence of the officer on the spot. The claim was rejected on the ground that the death of the officer was not a directly but an indirect, result of the war.

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<sup>14</sup> *Leyland Shipping Co. Ltd. v. Norwich Union Fire Society Ltd.*, HL, the United Kingdom, [1918] AC 350.

<sup>15</sup> *Pink v. Fleming*, Queen’s Bench, the United Kingdom, (1890) 25 QBD 396.

<sup>16</sup> *Reischer v. Borwick*, Queen’s Bench, the United Kingdom, (1894) 2 QB 548.

<sup>17</sup> Hodges(n 8), p. 158

<sup>18</sup> *Leyland Shipping Co. Ltd. v. Norwich Union Fire Insurance Ltd*, HL, the United Kingdom, (1918) AC 350, p. 368.

<sup>19</sup> *Pawsey & Company v. Scottish Union and National Insurance Co.*, The Times, 17 October 1908.

<sup>20</sup> *Coxe v. Employers Liabilities Assurance Corporation*, King’s Bench, the United Kingdom, [1916] 2 KB 629.

The Indian judiciary has predominantly followed the principle of second school of thought, emphasizing much on the efficient proximate cause rather than on the proximate cause.

In *Kajima Daewoo Joint Venture v. New India Assurance Co. Ltd.*<sup>21</sup>, Uttaranchal State Commission stated that the numbers of machines were employed in constructing a power project was duly insured. One such machine was the TIL excavator. The machine was insured for site and burst when the lubricating system failed. With much effort, the machine was lifted to a safe place. Otherwise, that 30 ton machine would have fallen much below suffering an absolute harm. Still, the machine was reported as irreparable on the ground of damage caused to the engine. A surveyor was deputed for the assessment of the loss/damage. The claim was repudiated on the ground, *inter alia*, that the machine did not suffer any external impact and that the damage to the engine was mechanical on account of seizure of the engine due to deprivation of lubricant oil, which was not within the purview of the policy. The commission observed entire material on record and reached a conclusion that the mechanical failure of the machine was due to its slipping on the hilly terrain and the accident was the proximate cause of the mechanical failure. Therefore, it was well covered under the policy.

Another essential aspect of the rule is that when a loss is the result of two or more causes operating simultaneously or one after the other in succession, the proximate cause need not be the cause immediately preceding the occurrence of the loss or damage. The last cause could simply be a link in the chain connecting the event with the proximate cause.<sup>22</sup>

### Perils Relevant to an Insurance Claim

Perils relevant to the insurance claim are classified under three categories<sup>23</sup>:

*Insured perils* are named in the policy as insured, such as those caused by fire, sea, water, lightening, storm theft, among others.

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<sup>21</sup> *Kajima Daewoo Joint Venture v. New India Assurance Co. Ltd* , Uttaranchal State Commission, India, (2005) 1 CPJ 534

<sup>22</sup> Chartered Institute of Loss Adjusters, 'The Principles of Insurance: Proximate', *CILA*, p. 48 available at <http://www.cila.co.uk/files/Certificate/Chapter%208.pdf>, accessed on 22 April 2014.

<sup>23</sup> See Rob Merkin & Jenny Steele, *Insurance and the Law of Obligations*, Oxford University Press, Croydon, 2013, pp. 45-46.

*Excluded perils* are stated in the policy as excluded, generally including those caused by riots, earthquake, war, among others.

*Uninsured perils* are not mentioned in the policy at all, as opposed to insured and excluded perils. For instance, perils caused by smoke or water are found not mentioned may not be excluded nor mentioned in a fire policy.

It is significant to note here that the rule of *causa proxima* applies only in case of insured perils and not otherwise. The general principle is that if an insured peril takes place, it is immaterial whether its occurrence was the result of negligence of the insured party or any third party<sup>24</sup>.

In *Harris v. Poland*<sup>25</sup>, a lady had a comprehensive insurance regarding her jewellery. The insurance also covered loss or damage by fire. The lady used to conceal the jewellery in a fireplace. However, in an instance, she forgot about it and lit fire on the fireplace, as a result of which her hidden jewellery got damaged. In a claim preferred with the insurance company, it was held that the insurer was liable because the jewellery was damaged due to fire and it was immaterial whether the fire was the negligent act of the insured.

### **Proximate and Remote Cause vis-à-vis Direct and Indirect Cause**

An important question to contemplate is whether proximate cause is synonymous to direct cause and remote cause to indirect cause. Regarding this discussion, Lord Selborne, in *Spaight v. Tedcastle*, made an effort to show the distinction between direct and immediate cause by using the term ‘and’ between the two words. He remarked that:

When the direct and immediate cause of damage is clearly proved to be the fault of the defendant, contributory negligence by the plaintiffs cannot be established merely by showing that if those in charge of the ship had in some earlier state of navigation taken a course, or exercised a control over the course taken by the tug, which they did not actually take or exercise, a different situation would have resulted, in which the same danger might not have occurred.<sup>26</sup>

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<sup>24</sup> Jaiswal (n 3), p. 85

<sup>25</sup> *Harris v. Poland*, the United Kingdom, (1941) 1 All ER 204.

<sup>26</sup> *Spaight v. Tedcastle*, HL, the United Kingdom, [1881] 6 A.C. 217 , p. 219

Likewise, Lord Sumner observed in *British Columbia Electric Railway Co. Ltd. v. Loach*<sup>27</sup> that many epithets eminent Judges have applied to the cause, which has to be ascertained for this judicial purpose of determining liability and how many more to other acts and incidents, which for this purpose are not the cause at all. 'Efficient or effective cause', 'real cause', 'proximate cause', 'direct cause', 'decisive cause', 'immediate cause', 'causacausans' on the one hand, as against, on the other, *causa sine qua non*, occasional cause, remote cause<sup>28</sup>, contributory cause, inducing cause, condition, and so on<sup>29</sup>.

The above discussion clarifies that 'directly or indirectly' cannot and must not be read as synonymous with 'proximately or remotely'. If 'directly' and 'proximately' are synonymous, the term 'indirectly', as the antonym of 'directly', must, presumably, refer to a minor cause which operates in some indirect or ineffective fashion. That reading would lead to the nonsensical conclusion that the policy does not insure loss or damage where rust, corrosion, frost or freezing constitute 'minor' or 'indirect' cause of the loss or damage.<sup>30</sup>

### Can There Be Two Proximate Causes?

In *Global Process Systems v. Syarikat Takaful*<sup>31</sup>, the court was occupied with the question whether there could be two proximate causes, and if so, what would be the result depending on the terms of the policy. Therefore, it is worth recalling that if two causes are equally proximate, the situation is not an issue. In a different light, if there are two proximate causes one of which is covered by the policy and the other is not excluded, the policy responds. However, if there are two proximate causes one of which is covered and one of which is expressly excluded, the policy does not respond. In *Global Process Systems v.*

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<sup>27</sup> *British Columbia Electric Railway Co. Ltd. v. Loach*, HL, the United Kingdom, [1916] 1 A.C. 719, p.727

<sup>28</sup> Remote cause is defined as 'when an initiating peril and the chain of events it sets in motion is broken by a new and independent peril (an intervening cause), the initiating peril becomes a remote cause of loss and not a dominant cause of loss. *In re Estate of Heckman*, Colorado State of Appeals, 39 P.3d 1228 (Colo. App. 2001).

<sup>29</sup> *Nani Bala Sen v. Auckland Jute Co. Ltd.*, Calcutta High Court, India, (1925) ILR 52 Cal 602, para. 12.

<sup>30</sup> *Canevada Country Communities v. Gan Canada Insurance Co*, Court of Appeals for British Columbia, Canada, 1999 BCCA 339, para. 27.

<sup>31</sup> *Global Process Systems v. Syarikat Takaful*, Supreme Court, the United Kingdom, 2010 (3) All ER 248.



*Syarikat Takaful*, the policy in question specifically excluded the inherent vice which was floated as a reasoning by the respondents.<sup>32</sup>

### **Judicial Trends in Rejuvenating the Concept of *Causa Proxima***

The judiciary has played a significant role in the growth of doctrine of *causa proxima* and the admissibility of this rule depends upon the facts and circumstances of a case. The role of judiciary has been particularly commendable in cases regarding fire and marine insurance, in which the rule has been found to be succinctly applied.

#### **i) Fire Insurance**

In *Morsden v. City and County Assurance Company*<sup>33</sup>, the shop in question was insured for loss from any cause, save fire. Unfortunately, a fire broke out in the adjoining building which spread to the rear of the plaintiff's shop. The plaintiff was engaged in shifting the contents of the shop to a safer place when a mob attacked the shop and broke down the shutter and windows in order to loot the property. Under these circumstances, it was held that the proximate cause for the damage was not fire but the act of the mob.

As mentioned earlier, there is also a general principle that when a fire occurs, it is immaterial whether it was the result of the negligence of the insured or his/her servants as evidenced in the case of *Harris v. Poland*.<sup>34</sup>

Likewise, in *New India Assurance Co. Ltd. v. Vivek*<sup>35</sup>, a national commission of India made an insurance company liable under the comprehensive policy (fire insurance policy). The facts of this case in a nutshell are: The policy covered fire risk as well as other risks to building and machinery and deterioration of stocks of potatoes stored in the complainant's cold storage. The 'accident clause' covered the

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Morsden v. City and County Assurance Company*, the Court of Common Pleas, the United Kingdom, (1850) LR 1 CP 232

<sup>34</sup> *Harris v. Poland* (n 25).

<sup>35</sup> *New India Assurance Co. Ltd. v. Vivek Cold Storage*, National Commission, India, II (1999) CPJ 26 (NC).

breakdown of machinery due to unforeseen circumstances. A leakage of ammonia gas occurred, due to which the plant was shut down, causing loss to the stock of potatoes in the godown. The insurance company contested the claim as there was no breakdown of the plant and machinery. This contention was rejected and it was held by the commission that as the plant and the machineries of cold storage had developed leakage and ammonia gas had escaped, the plant had to be shut down for repairs of the leak, which resulted in damage to the stored potatoes. Therefore, the insurance company was held liable.

## ii) Marine Insurance

In cases of marine insurance, it is a well settled law that it is only the proximate cause that is to be regarded and all other rejected, although the loss would not have happened without them<sup>36</sup>. In India, the 1963 *Marine Insurance Act*<sup>37</sup> incorporates the doctrine of *causa proxima*.

The issue as to whether the negligence on the part of the members of the crew can constitute peril of the sea has been considered by the Supreme Court of Canada in the decision reported in *C.C.R. Fishing Ltd. v. British Reserve Insurance Co.*<sup>38</sup>. In the said case, a fishing vessel, which had been safely berthed for more than an year, sank because of a sudden ingress of sea water, due to the failure of cap screws, further due to corrosion and due to the failure to close a valve, which would have stopped the ingress of the sea water. The appellant, in the said case, was provided with coverage for perils of the sea. There too, it was observed that the term 'perils of the sea' refers to only fortuitous accident or casualties of the sea.

In *Taylor v. Dunbar*, a ship carrying meat was delayed by storm, as a result of which the meat in the cargo decomposed and had to be thrown overboard. It was held that the loss of meat was not a loss by the peril

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<sup>36</sup> *Reischer v. Borwick*, Queen's Bench, the United Kingdom, (1894) 2 QB 548, p. 552.

<sup>37</sup> Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils. *Marine Insurance Act*, 1963, India, s. 55(c).

<sup>38</sup> *C.C.R. Fishing Ltd. v. British Reserve Insurance Co*, Supreme Court, Canada, (1990) 1 SCR 814.

of sea, the proximate cause being the delay although the delay was caused by a peril insured against.<sup>39</sup>

In *Hamilton Fraser & Co. v. Pandrof & Co.*<sup>40</sup>, cargo carrying rice was insured against damaged by sea water. During the voyage, rats made a hole in a pipe which connected the bathroom with the sea, and as a result, sea water seeped through the hole and damaged the cargo. It was held that the proximate cause of damage being the sea water and rat being the remote cause, the insured cargo was entitled to damages.

## Conclusion

Proximate cause is a key principle of insurance and is concerned with how the loss or damage actually occurred and whether it is indeed as a result of an insured peril. It is a settled principle that in order to decide whether a claim is covered by the policy, the *status quo* is to establish proximate cause. As observed in a case discussed earlier, simply taking the last event in point of time is not a judicious act but a routine process, a process of selection<sup>41</sup> and this statement reconfirms the significance of the rule of *causa proxima*.

Causation itself is inherently complex. The cases that have been discussed in the paper reflect that the paradigm of proximate cause is a necessary one, and it was not made more complex when the courts began to utilize this paradigm. Rather, the judgements have served to reflect our innate perceptions about the degrees of causation. Hence, differentiation between the proximate and the remote is neither artificial nor arbitrary.

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<sup>39</sup> *Taylor v. Dunbar*, Court of Common Pleas, the United Kingdom, LR 4 CP 206

<sup>40</sup> *Hamilton Fraser & Co. v. Pandrof & Co.*, the United Kingdom, (1887) 12 App Cas 518.

<sup>41</sup> *C. Sivadasan v. The New India Assurance Co* (n 7).