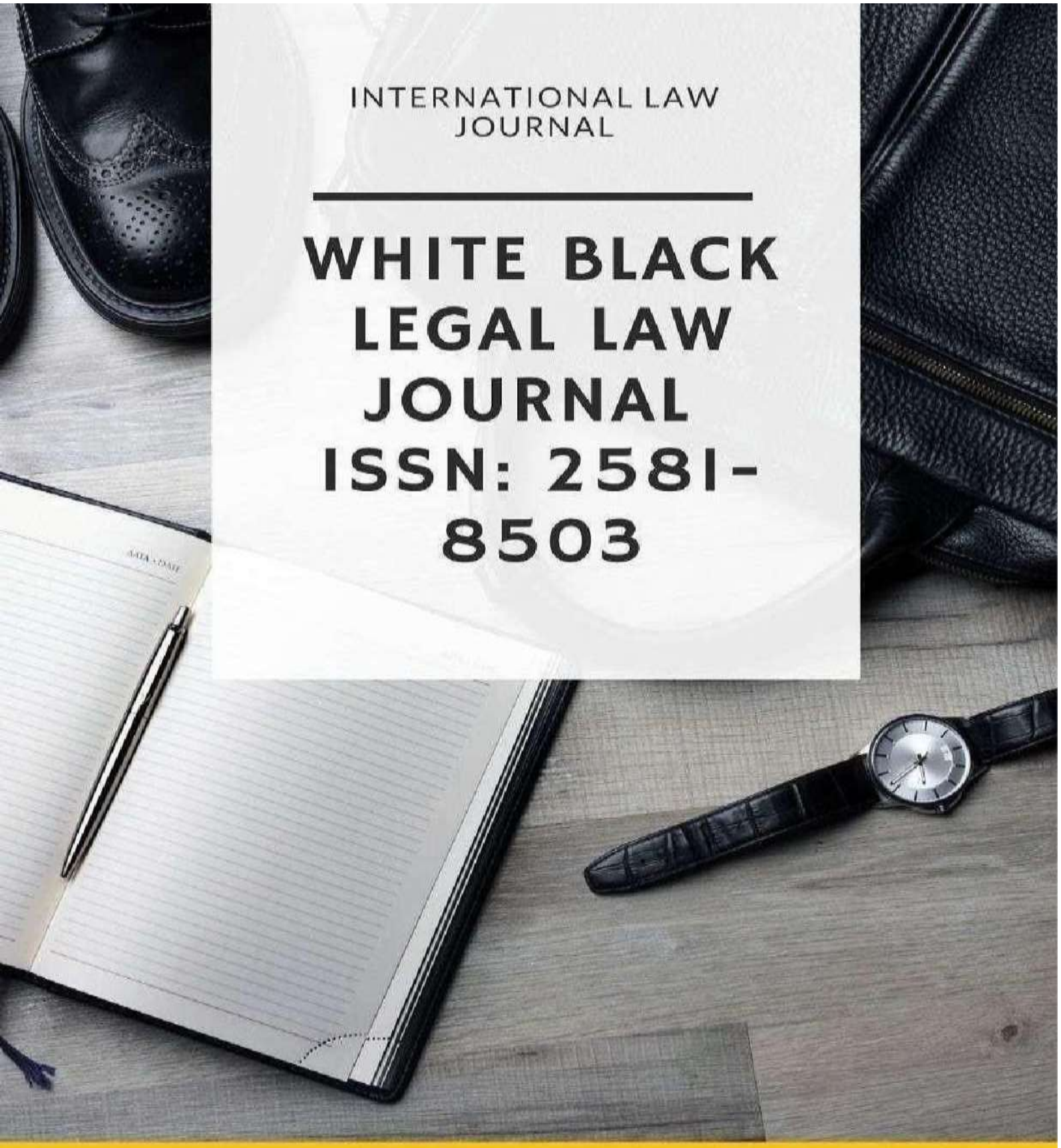

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

www.whiteblacklegal.co.in
Volume 3 Issue 1 | May 2025 ISSN: 2581-8503

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

www.whiteblacklegal.co.in
Volume 3 Issue 1 | May 2025 ISSN: 2581-8503

THE DOCTRINE OF PROXIMATE CAUSE – THEORIES, JUDICIAL INTERPRETATION AND CONTEMPORARY DEVELOPMENTS

AUTHORED BY - K.ROOPESH

Introduction

Before the assured can recover under a policy of insurance it is incumbent upon him to show that loss has occurred, and that the loss is the consequence of the event insured against. The relation between the event insured against and the loss, must be that of cause and effect. Thus, for an insured person to recover under an insurance policy, they must establish a direct causal link between the insured event and the loss suffered. Causa Proxima or the proximate cause is a legal concept that determines whether an event is the direct and natural cause of a loss, or whether there are intervening factors that break the chain of causation. It's often described as the "but for" test.

Philosophers such as Aristotle distinguished between different types of causes – material, formal, efficient and final; his categorisations especially the efficient cause has influenced later legal interpretations of proximate cause in Insurance Law. One of the first legal doctrine of proximate cause has its roots in a maxim formulated by Francis Bacon: '*In jure non remota causa, sed proxima spectator*' i.e. the proximate cause is observed, not the remote one. The maxim signified a move towards focusing on the most immediate and efficient cause in legal disputes rather than pursuing endless chains of causations. Over time, the doctrine became more confined and specific in its application. Courts increasingly favored practical interpretations of proximate cause, focusing on direct causes of events rather than remote causes.[1]

While the concept of proximate cause seems rather straight forward as it is the idea of the cause of an occurrence or bringing about a result i.e. loss, is an idea perfectly familiar to the mind, and to the law. The fundamental problem with proximate cause is also its inherent subjective

[1] Hall, P. F. (1902). Some Observations on the Doctrine of Proximate Cause. *Harvard Law Review*, *15*(7), 541–567. https://www.jstor.org/stable/1322929

understanding. For want of confined legal definition, its application can be complex and often can lead to disputes between insurers and insured. Some key reasons for which proximate cause can be difficult to understand are intervening causes, foreseeability, policy language, changing circumstances, Judicial Interpretation. Last reason can be attributed to different understanding courts have given to the concept of Proximate cause, which again is due to the fact that the concept itself is not defined and left to the whimsy of Adjudicators. However, due to plethora of judgements we now have enough principles to rely on and enough clarity of concept to apply in cases of insurance to determine liability in case of loss.

This paper aims to explore the concept of proximate cause in depth. We will delve into legal theories, analyze judicial interpretations from various courts, and discuss contemporary developments in the field. By understanding these aspects, we can gain a clearer picture of how proximate cause is applied in insurance cases and identify potential areas for improvement.

What is Proximate Cause? – Theories Laid down.

Once a legal cause is established, the next step is determining whether it is the proximate cause of the injury. A legal cause refers to a forbidden act or omission that contributes to harm.[2] For instance, eating eggs may scientifically cause indigestion, but if not forbidden by law, it cannot be considered a legal cause. Proximate cause refers to an act that is closely and intimately connected to the injury, so much so that the law will hold the actor responsible.[3] James Angell Mclaughlin in his paper titled "Proximate Cause"[4] delves into the complex concept of proximate cause in legal liability. Mclaughlin, reviews various interpretations and applications of proximate cause given by scholars like Professor Beale and Professor Edgerton, highlighting their significant contributions while suggesting a balanced view.

Professor Beale's theory of proximate cause is grounded in the 'isolation test' and emphasizes the use of definite rules to determine when a defendant can be held liable for consequences of their actions. Key principles involved in this theory is: -

[2] Levitt, A. (1922). Cause, Legal Cause and Proximate Cause. In *Michigan Law Review* (Vol. 21, Issue 1, pp. 34–62). The Michigan Law Review Association. https://www.jstor.org/stable/1278106
[3] Supra.
[4] McLaughlin, J. A. (1925). Proximate Cause. *Harvard Law Review, 39*(2), 149–199. https://www.jstor.org/stable/1328484

- Direct Causation: When there is a direct link between the defendant's act and the harm caused without any intervening force.
- Causation by dependent intervening forces: When the harm is caused by an intervening force that is dependent on the defendant's actions.
- Causation by foreseeable independent intervening forces: When an independent force, which was foreseeable, intervenes, and the defendant is still held liable because they created or increased the risk of that intervention.
- The Isolation Test: It is a critical concept in Beale's theory. This test isolates an intervening cause that cuts off the chain of causation and thus, the defendant's liability. If a new cause, independent and unforeseeable, intervenes between the defendant's action and the harm, the causation is considered remote, and the defendant is not liable. If no such cause intervenes, or if the intervening cause is foreseeable, the defendant remains liable.[5]

Professor Edgerton's theory of proximate cause is more flexible and pragmatic as compared to Professor Beal.[6] His views can be summarized as follows:

- Rejection of Fixed Rules: Edgerton believes that the concept of proximate cause cannot be reduced to definite rules, as cases vary significantly in terms of facts and social context. Thus, he proposes a more contextual understanding of cause and effect, where courts can weigh the harm done and assess the defendant's responsibility within the framework of what is just and practical in a given case.
- While Beale places significant importance on foreseeability in his theory, Edgerton critiques this approach, arguing that foreseeability alone is too limiting and often unrealistic in practice.[7] According to him, cases of proximate cause should focus more on whether the consequences are fairly attributable to the defendant's conduct, rather than whether the exact chain of events could have been predicted. He views legal cause as broader than mere foreseeability.

This abstract understanding of proximate cause can be extended to Insurance cases by attributing defendant's act as an event/peril that is insured and result that it follows to the loss occurred due to the insured event. A fundamental difference between both scenarios[8] is that in

[5] Supra.
[6] Supra.
[7] Also see, Levitt, A. (1922). Cause, Legal Cause and Proximate Cause. In *Michigan Law Review* (Vol. 21, Issue 1, pp. 34–62). The Michigan Law Review Association. https://www.jstor.org/stable/1278106
[8] Hall, P. F. (1902). Some Observations on the Doctrine of Proximate Cause. *Harvard Law Review*, *15*(7), 541–567. https://www.jstor.org/stable/1322929

torts, it's about whether the defendant's wrongful act directly or foreseeably caused the plaintiff's injury. In contracts i.e. insurance, it's about the closest cause linked to the breach and often involves stricter rules. For example, in insurance, proximate cause relates to the insured risk/event, and courts focus on the last peril affecting the insured item.

Proximate Cause as already mentioned earlier is a complex and multifaceted due to its inherent subjectivity. One theory can't provide complete picture of the problem at hand and one also can't be followed blindly negating other views. Different legal theories propose varying approaches to determine proximate cause, including the "common sense" test, the "reasonable foreseeability" test, and the "inevitability" test. Each provides different criteria, but none have been universally accepted.[9] Further, in many insurance cases, multiple events lead to a loss, some of which are covered by the policy (perils) and others that are excluded (exceptions). Determining which event should be considered the proximate is a complex challenge. Thus, while theoretical understanding provides a foundational framework, practical application of proximate cause is heavily influenced by the specific facts of each case, the applicable laws, and requires a deep dive into legal interpretations provided by various courts. Therefore, studying legal interpretation is essential for gaining a comprehensive understanding of this complex legal concept and its implications in real-world scenarios.

Proximate Cause – What Courts Say!

Courts have consecutively upheld the doctrine of proximate cause i.e. the proximate, direct and dominant cause must be looked into and not remote one. "The law will not allow the assured to go back in the succession of causes to find out what is the original cause of loss."[10] However, what exactly is Proximate cause; how to apply it in practical scenarios and what exactly is the problem regarding multiple causations? Courts' reasoning may be helpful for the said purpose.

In the case of "*Marsden v. City and County Assurance Company,"*[11] The plate glass in the plaintiff's shop front was insured against any loss or damage, except for fire, or breakage during removal. A fire started on the premises next to the plaintiff's shop, causing minor damage to the rear of his shop, but at that time it did not reach the area where the plate glass was located.

[9] Clarke, M. (1981). Insurance: The Proximate Cause in English Law. In *The Cambridge Law Journal* (Vols. 40–40, Issue 2, pp. 284–306). Cambridge University Press. https://www.jstor.org/stable/4506368
[10] Pink vs. Flemming, (1890) 35 QBD 396: 59 LJQB 151
[11] Marsden v. City and County Assurance Company, (1865) 35 LJCP 60

While the plaintiff was moving his stock and furniture to a safer location, a crowd, drawn by the fire broke the shop shutters and stole the plate glass. Here, it was decided that the damage caused was not fire-related within the meaning of the exception, and the insurers were held liable. The court laid down: -

"No doubt the remote cause of the damage was the fire, but the proximate cause was the lawless violence of the mob. I think, the general rule of insurance law that the proximate and not the remote cause of the loss is to be regarded as a rule which must govern our decision in this case. the assembling of the mob was caused by fire, and but for the fire, the plaintiff's windows would not have been broken. But the breakage was not caused by the fire, it was the result of assured's attempt to save his stock and furniture, coupled with the desire of the mob to seize what they could lay their hands on." Thus, in this case Proximate Cause was attributed to the immediate cause of the damage.

However, in case of "*Leyland Shipping Company vs. Norwich Union Fire Insurance Society,"*[12] it was held that the "proximate cause of the loss does not mean that which is nearest in point of time to the disaster, but means the real efficient or dominant cause of loss. Proximate cause is the cause which sets other causes in motion. It is often earliest in the point of time." As was pointed out by the court in this case: "To treat proximate cause as the cause which is nearest in time is out of question….. The cause which is truly proximate is that which is proximate in efficiency. The efficiency may have been preserved although other causes may in meantime have sprung up, which have not yet destroyed it, or truly impaired it, and it may culminate in a result of which it still remains the real efficient cause to which the event can be described."

There is further difference in the points of views expressed in the above case and that of Lord Esher in "*Pink vs. Flemming,"*[13] In this case the proximate cause was again held to be that which is nearest in point of time. For determination of proximate cause, the following different facts may be considered. "Where the loss is caused immediately by the event insured against, without the help or intervention of any other intermediary cause, the question does not present much difficulty, for such loss is covered by the policy, and the forces which set into motion the immediate cause may be disregarded. Even if the event insured against is the proximate cause of the damage, within the meaning of the term, there are cases where the damage is so far

[12] Leyland Shipping Company vs Norwich Union Fire Insurance Society, (1918) AC 350: 87 LJKB 395
[13] Pink vs. Flemming, (1890) 35 QBD 396: 59 LJQB 151

removed from the particular peril in the chain of causation, that by the common understanding of the insurer and the insured, it is not considered to be a consequence of the peril within the meaning of the policy."[14]

Thus, if the event insured is not last in time, and the causes intervening between it, and the loss, are so connected with the event insured against as to form a direct and natural consequence of the event insured against, the loss would be covered within policy. Further, in the case of "*Stanley vs. Western Insurance Co.,"*[15] where the assured removed property from the building in which the fire was raging with the intention of removing it to a safer place and thereby minimizing the risk of loss, any loss occurred to such property by reason of such removal is covered by policy provided that the removal is justified, reasonable and bona fide. Thus, the insurance company cannot take plea of wilful misconduct, voluntary harm or contributory negligence in such cases subject to reasonableness of such act.

However, If the sequence of events starting from the insured event is interrupted by a new and independent occurrence (novus actus interveniens) that cannot be directly or naturally linked to the insured event, then any resulting loss is not covered by the insurance policy. Courts examine the sequence of events leading to the loss. If they determine that a new event intervened and caused the loss, they may conclude that the insurer is not liable for losses after the intervention. Thus, in the case of "*Clan Line Steamers v. Board of Trade,"*[16] where an insurance is affected against the consequence of railway operation and the assured commits suicide by jumping in front of a train, the act of the assured would not be the consequence of railway operation. Similarly, where the train of events leading from the excepted cause to the loss is broken, and the event insured against is an independent and a fresh cause, which is indirectly and remotely connected with the excepted event, the loss is a loss within the meaning of the policy.

It is to be noted that losses caused by the wilful misconduct of the insured or those responsible for the reasonable care of the property is not covered by the Insurance Company; even if the event comes under the Insured Perils or events. This is done with public policy considerations in mind, as it prevents individuals from benefiting from their own wrongdoings and also protecting equitable rights of insurance Companies. In the case of "*Amicable Society vs.*

[14] Taylor v. Dunbar, (1869) 38 LJCP 178
[15] Stanley v. Western Insurance etc. (1868) 37 LJ Ex. 73
[16] Clan Line Steamers v. Board of Trade, (1928) 2 KB 557

Bolland"[17] court held that an insured person cannot recover under a life insurance policy if the death resulted from wilful misconduct, such as suicide. Further, the court held that a person involved in a violent criminal act (shooting) could not claim under an insurance policy for a death caused during the crime.[18]

Concurrent or Multiple Causes

It may happen that the causes, instead of forming various links of chain, may be concurrent in their operation. In such cases the loss is traceable to one as much as to the other cause. The challenge in these situations is determining whether the loss is covered by the insurance policy, especially when one of the causes is covered and another is excluded. Although there has been lesser number of cases in which judges have faced this problem as it has been held that the effect of each cause not being distinguishable from the other is in fact enough to hold that the loss is covered by the policy.[19] Even then, the judges may face two situations which could lead them to difficulties to decide proximate cause:

- There are two proximate causes of the loss occurred, one of them is covered within the policy and the other is neither covered nor excepted by the Insurance policy.
- There are two proximate causes of the loss, one of them is covered by the policy and the other falls within the terms of an exception clause of the said policy.

In first situation in the case of "*JJ Lloyd Instruments Ltd. vs. Northern Star Insurance CO."*[20] The Court of Appeal ruled that the ship, *The Miss Jay Jay*, was lost due to a combination of two factors: adverse sea conditions and design defects in the vessel, and the insured was unaware of such design defects in the ship. While the insurance policy covered losses caused by adverse sea conditions (insured peril), it did not specifically mentioned losses due to design flaws i.e. neither an exception nor covered within policy. If the design defect had been the sole cause of the loss, the insurer would not have been liable as per the terms of the policy. However, in this case, the insurers were held responsible for the loss. Slade LJ said, "As there were no relevant exclusions or warranties in this policy the fact that there may have been another proximate cause did not call for specified mention since proof of a peril which was within the policy was enough to entitle the plaintiffs to judgement." It is to be mentioned here that interpretation of ambiguous terms of the contract is usually interpreted against the party who

[17] Amicable Society vs. Bolland, (1830) 4 Bligh N.S. 194
[18] Gray vs. Barr, (1971) 2 Q.B. 554
[19] Anderson v. Marten, (1908) AC 334: 77 LJKB 950
[20] JJ Lloyd Instruments Ltd. vs. Northern Star Insurance Co., (1987) Lloyd's Rep 32.

has drafted the contract in this case insured.

In the second Situation, where the loss is the result of the combined operations of both the excepted cause and the insured event, and the consequence cannot be traced to either. What would be the principle of proximate cause which is to be applied to see whether the insurers are liable or not? If the excepted cause is first in point of time, and starts a train of events leading to the insured event, which ultimately produces the loss, such loss is not covered. The liability of the insurers is exempted if the excepted cause can be regarded as the proximate cause of the event insured against. In this case the excepted cause is the original cause, and if the entire mischief can be traced from this original cause, as a sequence without any breakage, the loss will not be covered, even though the event insured against is one of the intervening causes.

English approach: - In the case of "*Wayne Tank and Pump Co. Ltd. vs. Employers' Liability Assurance Corpn. Ltd.,"*[21] Wayne installed equipment in a factory for storing and transporting liquid wax. After the installation, the factory was destroyed by the fire, there are two negligent acts in this matter: the use of plastic pipes for conveying hot wax and the use of an inadequate thermostat, and second, the engineers' action of turning on the equipment and leaving it unattended. The question before Court of Appeal was "whether Wayne's liability for the losses caused by these acts of negligence was covered by the public liability policy issued by the insurers." The main clause of the policy stated that the insurers would indemnify the insured for all sums legally required to be paid as damages resulting from property damage due to accidents outlined in the policy schedule. However, the policy had an exclusion for damage caused by the nature or condition of goods or containers supplied by the insured. The Court of Appeal held that the term "goods" included both the pipe and the thermostat. Lord Denning MR and Roskill LJ concluded that the defective equipment was the proximate cause of the loss, and the exclusion clause therefore absolved the insurers from liability. They also noted that, even if there were two proximate causes—the faulty installation (covered) and the defective goods (excluded)—the insurers were not liable because the exclusion clause had explicitly mentioned to avoid such risks. Cairns LJ, rather than focusing on finding a single proximate cause, agreed with the majority's alternative reasoning.

[21] Wayne Tank and Pump Co. Ltd. vs. Employers' Liability Assurance Corpn. Ltd. (1974) QB 57, 69 per Cairns LJ.

US approach (alternative approach): - US has taken a rather different approach to the same problem and held in plethora of judgements that where there are multiple causes. The insurer will be help liable in this case. For example, in the case of the "*State Farm Mutual Auto Ins Co vs. Partridge,"*[22] the court held that where there are two proximate causes and one is insured against (and other is not), the insurer is liable notwithstanding the fact that the policy excepted liability for loss resulting from the other proximate cause. The facts of the case are that the insured accidentally shot and injured his friend. Two proximate causes were attributed to the loss occurred; one is insured's negligence in filing down the trigger mechanism to create a 'hair trigger' on his gun and other negligence in driving with the gun in his hand while his friend sat in the passenger seat. A single proximate cause could not be assigned to the loss occurred. The Policy exclusively excluded injury caused by negligent driving. The court went on to hold the following, "the crucial question is whether a liability insurance policy provides coverage for an accident caused jointly by an insured risk and by an excluded risk. Defendants correctly contend that when two such risks constitute concurrent proximate causes of an accident, the insurer is liable so long as one of the causes is covered by the policy."

The reason for difference in approach in case of USA and English Law is that in USA many courts construe policies as per "reasonable expectations of the insured." In many cases, decisions regarding causation issues in insurance policies are often shaped by the courts' tendency to favour coverage, either by interpreting unclear policy terms against the insurer or by safeguarding the reasonable expectations of the insured. On the other hand, English courts uphold the principle of freedom of contract, where both parties are presumed to have equal bargaining power. As a result, they enforce exclusion clauses and other contractual terms strictly. Further, English Courts follow *contra proferentem* rule, which interprets ambiguous terms against the party that inserted them, applies only when there is genuine ambiguity in the contract, and it doesn't easily favour the insured. Courts look at the underlying intention of the parties by looking at the contract as a whole.[23]

It is advised by the Lowry and Rawlings in their paper titled, *Proximate Cause in Insurance Law*, that a more flexible approach to interpretation of multiple causes should be followed by English Courts. while neither country provides a full and well-balanced approach to proximate cause in case of multiple and concurrent causes. It is balancing the theories of both countries

[22] State Farm Mutual Auto Ins Co vs Patridge 10 Cal. 3d 102 (California, 1973)
[23] Lowry, J., & Rawlings, P. (2005). Proximate Causation in Insurance Law. *The Modern Law Review*, *68–68*(2), 310–319. https://www.jstor.org/stable/3699047

which will lead to a better regime to be followed for proximate cause and setting liability of the insurer.[24] In India, as the Insurance Law is heavily derived from England's system of Insurance. Decision of English Courts decision have persuasive effect on Indian Law and their interpretation of the terms.

Rules to be followed for interpretation of Proximate Cause

After understanding various interpretations of Proximate Cause given by various courts across the world. A pattern to the interpretation of the term can be drawn from these judgements and academic writings. Thus, following rules may be followed while interpreting Proximate Cause:-

1. Proximate Cause is the Event that Inevitably Leads to the Loss: Proximate cause should be the event that leads inevitably to the type of loss in question. This rule does not require that the full extent of the loss be foreseeable at the time of peril rather it only needs to be the inevitable result of that event.
2. Proximate Cause need not be last in the chains of events: It is the efficient cause and not immediate cause which is to be looked at while deciding proximate cause. If a loss can directly be attributed to an insured event, then it will be called as proximate no matter some other events, direct and natural cause of the insured event come in between the ultimate loss.
3. Dependent Intervening Events: If the event insured is not last in time, and the causes intervening between it, and the loss, are so connected with the event insured against as to form a direct and natural consequence of the event insured against, these are called dependent Intervening Events and the loss occurred thereby would be covered within the policy.
4. Independent Intervening Events: However, If the sequence of events starting from the insured event is interrupted by a new and independent occurrence (Independent Intervening Events) that cannot be directly or naturally linked to the insured event, then any resulting loss is not covered by the insurance policy.
5. Excluded Perils Prevail if Proximate: If both an insured event and exception are proximate causes of the loss and both are indivisible from each other, the exception should prevail and the insurer shall not be held liable.

[24] Lowry, J., & Rawlings, P. (2005). Proximate Causation in Insurance Law. *The Modern Law Review*, *68–68*(2), 310–319. https://www.jstor.org/stable/3699047

6. Concurrent/Multiple Causes: If two causes operate simultaneously, one being an insured event and other being an exception, the exception will prevail and insurers will not be held liable. This is largely followed in England and India. In USA, however, Insured Event will prevail and the insurers will be held liable, on account of favourable interpretation of Insurance policy in favour of Insured.
7. Wilful Misconduct Voids Claims: Losses caused by the wilful misconduct of the insured or those responsible for the property cannot be claimed under the insurance policy. This rule is grounded in the public policy considerations, as it prevents individuals from benefitting from their own wrongdoing. However, if the conduct of insured is reasonable then the insurer cannot deny liability to insure. However, if the actions of the insured are deemed reasonable, the insurer cannot refuse to provide coverage. This holds true even when the loss stems from the insured's actions, and had they not acted in that manner, the loss could have been avoided.

Recent Developments

The doctrine of proximate has faced significant challenges and undergone notable evolution in the recent years, particularly in the context of natural disasters and the unprecedented COVID-19 pandemic. This section will examine how courts have been interpreting and applying the concept of proximate cause in these extraordinary circumstances and analysing the implications for both the insurers and the policyholders.

Natural Disasters and Multiple Concurrent Causes: Natural disasters often present complex scenarios involving multiple concurrent causes of loss, challenging the straightforward application of the proximate cause doctrine. Courts have addressed these situations in plethora of judgements keeping in mind public policy considerations. So as to provide equitable protection to insured keeping in mind rights of insurers so that they are not held liable for unlimited loss. Even then the courts have been more reluctant to provide protection to insured and interpret the law in their favour. In Natural disaster cases, courts have to deal with multiple causes lead to a loss.

In the aftermath of Hurricane Katrina, courts faced numerous insurance disputes involving the interplay between wind damage (covered) and flood damage (excluded). The landmark case of

"*Leonard v. Nationwide Mutual Insurance Co."*[25] addressed this issue, where the court held that when wind and water synergistically cause damage to property, the insurer is liable only for that portion of the damage caused by wind. This decision emphasized that courts in these cases try to attribute loss to the single cause and try to rule in favour of insured. Further in the case of "*United India Insurance Co. Ltd. vs. Pushpalaya Printers"*[26] The Karnataka High Court dealt with a case where both flood (excluded) and rain (covered) caused damage to insured goods. The Court applied the principle of proximate cause to determine that since rain was the initiating and dominant cause, the insurer was liable for the entire loss, even though flood water subsequently contributed to the damage. Further in the case of "*Bajaj Allianz General Insurance Co. Ltd. vs. Gondamal Rameshlal Kalantri"*[27] In this case involving crop insurance, the Bombay High Court examined the causation chain when multiple natural factors affect crop yield. The Court emphasized that in agricultural insurance, the proximate cause doctrine must be applied with consideration for the interconnected nature of various natural phenomena. Thus, from these case studies we can say that courts in natural disaster cases try to interpret the law in favour of insured keeping in mind public welfare and insurers' superior financial condition. It is to be noted that insurance do not cover whole loss occurred to insured in practically all of the cases.

In response to challenges posed by multiple causes, insurers have increasingly relied on anti-concurrent causation clauses. These provisions state that losses caused by a combination of covered and excluded perils are entirely excluded from coverage. Which is in line with some early judicial interpretations of doctrine of proximate cause as we have already seen above. But this does not stop courts to hold these clauses unreasonable and still giving judgements in favour of insured.

Impact of Covid-19 Pandemic: The COVID-19 pandemic has sparked unprecedented insurance litigation, particularly concerning business interruption coverage. A central issue has been whether the presence or threat of the virus constitutes "physical loss or damage" to property, typically required to trigger coverage.

[25] Leonard v. Nationwide Mutual Insurance Co., (2007) Cir. 499
[26] United India Insurance Co. Ltd. vs. Pushpalaya Printers, 2004 AIR SCW 1140
[27] Bajaj Allianz General Insurance Co. Ltd. v. Gondamal Rameshlal Kalantri, (2019) 18 SCC 130

In this case of "*Studio 417, Inc. v. Cincinnati Insurance Company,"*[28] the U.S. District Court for the Western District of Missouri rejected the insurer's motion to dismiss, concluding that the plaintiffs had sufficiently claimed that COVID-19 led to a physical loss of their properties. The court reasoned that "physical loss" could encompass the inability to use the property, even if there was no physical or tangible alteration.

However, this interpretation is not widely followed, even in USA in other case, *Oral suregeons, "P.C. vs. Cincinnati Insurance Co."*[29] The Eighth Circuit Court of Appeals held that the mere presence of COVID-19 or the suspension of operations due to government orders did not constitute direct "physical loss" or "physical damage" to property.

Causation chains in Covid-19 Claims which courts have to examine: -

1. The Presence or threat of the virus
2. Government shutdown orders
3. Economic Conditions

The interpretation provided by Indian Courts during Covid-19 clears the position: -
In the case of "*Udyam Vikas v. Tata AIG General Insurance Co. Ltd."*[30] In COVID-19 claims, however, the Delhi High Court approved a more liberal approach to the issue of causation. Though did not step outside the proximate cause doctrine, the Court expanded the meaning of the "physical loss" to situations when business premises became unsuitable for use due to virus transmission threat, thus, potentially enlarging the application of the rule.

Further in the case of "*Gagandeep Singh Sodhi vs. Bajaj Allianz General Insurance Co. Ltd.,"*[31] A restaurant owner claimed under a business interruption policy that specifically excluded losses due to infectious or contagious diseases. The claim was for losses during the government-mandated lockdown. Court in this case held that proximate cause for loss is Government Orders, though it is prompted by the Pandemic, thus it could be considered a separate proximate cause. The exclusion for infectious diseases did not automatically exclude losses primarily caused by government actions.

[28] *Studio 417 Inc. v. Cincinnati Ins. Co.*, Case No. 20-cv-03127-SRB (W.D. Mo. Dec. 18, 2020)
[29] *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2 F.4th 1141 (8th Cir. 2021)
[30] Udyam Vikas v. Tata AIG General Insurance Co. Ltd., 2021 SCC Online 1446
[31] Gagandeep Singh Sodhi v. Bajaj Allianz General Insurance Co. Ltd., (2022) 7 SCC 627

Thus, in India court follows only one rule that is of equity, and interpretation of proximate cause heavily depended on the facts and circumstances of the case. But largely in India, business is helped by the court to get their claim so that they can stay afloat during pandemic. This should be seen from the broader perspective of national economic consideration by the courts in Indian Cases. In the case of "*National Insurance co. Ltd. vs. Sayed Jafri"*[32] The Supreme Court highlighted the need for insurance policies to evolve in response to emerging risks, while emphasizing that the fundamental principle of proximate cause remains crucial in determining coverage of Insurance policy.

Conclusion

The doctrine of proximate cause remains a dominant principle in Insurance law, serving as the crucial determinant of causation and ultimately liability of insurer for coverage of the loss. Through this comprehensive analysis, it is evident that while the concept seems straightforward in theory – being dominant, efficient cause of loss – its practical application presents significant challenges due to its inherent subjectivity and the complex nature of facts.

The historical evolution of proximate cause, highlight the tension between rigid rule-based frameworks and more flexible, context and facts-based interpretations of proximate cause. This theoretical dichotomy is also reflected in judicial decisions across jurisdictions. The analysis of multiple or concurrent causes presents one of the most challenging aspects of proximate cause doctrine. The different approaches between the English and American approaches highlighted the impact of underlying judicial philosophies on Insurance Law. Where English Law hold both parties to Insurance policy as equals; American Courts often interpreting policies in favour of the insured in case of ambiguity and as per reasonable expectation of the insured.

Recent developments, particularly in the context of covid -19 pandemic have tested the boundaries and adaptability of the proximate cause doctrine. Courts have had to decide increasingly complex causation chains, often involving multiple, interlinked causes. The Indian Judiciary has demonstrated a nuanced approach, particularly in Covid-19 cases, balancing rights of parties with broader economic and public policy considerations.

[32] National Insurance Co. Ltd. v. Sayed Jafri, (2014) 2 SCC 611

Several key considerations emerge from the discussion above that there is a need for cleared policy wording to address complex causation scenarios and the importance of balancing certainty for insurers with reasonbale protection for policyholders. Mclaughlin proposes a middle ground approach to the problem of Causation; Courts must also consider broader policy and justice angles to ensure that causes too remote are not considered to held defendant liable. He further emphasizes that courts need clear principles but must also retain flexibility to adapt to the unique circumstance of each case.[33]

As progress is achieved, the central proposition in the successful application of the proximate cause doctrine is to keep its centrality to the purpose for which it was created – to make sensible and fair decision for the purpose of insurance claims – while making sure it is flexible enough to suit the environments at different times in the future. This may necessitate to some extent sophisticated thinking with respect to several causes especially in instances of acts of God loses or even pandemic or epidemics centuries in which such thinking has proved limitation to single cause analysis.

Bibliography

[33] McLaughlin, J. A. (1925). Proximate Cause. *Harvard Law Review*, *39*(2), 149–199. https://www.jstor.org/stable/1328484