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THE ANALYSIS OF PROXIMA CAUSA IN MARINE INSURANCE

Author –

Saurabh Anand

Student (LLM)

Jaipur National University, Jaipur

ABSTRACT

This project focuses on whether proximate cause and its relevance in marine insurance and weather it has a clear definition or is it interpretation of Courts. The detailed study indicates that the court decides and interprets what proximate cause is in each case and the court has full discretion to decide the matter in each case and thus there does not exists any clear definition of this doctrine. this has been analysed with the help of different case laws and illustrations.

INTRODUCTION

The concept of causation is very hard to find as no proper definition is laid down. From starting of era to present scenario scholars have not be able to describe causation in exact terms or some definitions. The concept and definition plays a very important role in the study of insurance law[1].

In marine insurance law the insurer company not just indemnifies the covered peril, but also against the loss or damage *causally linked* to the perils covered under the insurance contract[2]. The term "casually linked" is not in the statutes as the legislature has not drafted it yet but the concept is the general rule of 'Proximate causa' or causa proxima non remota spectator. The doctrine was defined under the Section 55(1) of the Marine Insurance Act, 1906 of the U.K.

"Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against"[3]

Section 55 of the Marine Insurance Act declares the general rule of proximate cause previously adopted by the common law and directs that insurer will be liable for the damages 'proximately' caused by a peril insured against. This principle is against the laws followed earlier i.e. of 'remote cause'. The law stated that the event closet in time and directly leading to the loss is the cause of the loss.

The Act further do not deals with the concept of doctrine 'proximate cause' as used and this lead to numerous rendition of the explanation of the doctrine. Proximate cause is stated to be the immediate cause not necessarily nearest in time.

[1] Graydon S. Staring and George L. Waddell, Marine Insurance (Tulane Law Review, Vol. 73, 1999) 29
[2] Howard N. Bennett, Causation in the Law of Marine Insurance: Evolution and Codification of the Proximate Cause Doctrine, The Modern Law of Marine Insurance (D. Rhidian Thomas, LLP, 1996) 173.
[3] Section 55, Marine Insurance Act, 1906

BRIEF HISTORICAL BACKGROUND

Marine insurance is the oldest law of insurance. The first statute of Marine Insurance was passed in 1601. The principle of proxima causa developed abreast with the marine insurance because it is crucial doctrine in the marine insurance. Causation is insurance law is easy to delineate but hard to use in reality. The fundamental belief backing this notion is that the insured should only be able to claim for the losses that have caused in peril which the insures has agreed to cover. Also, the insured's claim shall not be refused for a loss caused in peril that is proximately linked to the perils covered in the insurance policy.[4]

"In marine insurance, ensured has to save his damage pay certain amount in form premium. The risks covered include various types of risks in the sea or at port, for a specific voyage or for certain period of time."[5] contract of marine insurance is in use from centuries. contract of marine insurance is the 'earliest validated insurance contract' exhibiting the traits of insurance in terms of shifting risk due to any unavoidable occurrence in lieu of any payment of premium. At inception insurance came in the form of 'bottomry', a pecuniary amount to protect traders from loss if merchandise is lost or damaged.

In 1829, the Madras Equitable started life insurance trading in the Madras Presidency. The British Insurance Act was passed in the year 1870. In 1907, the Indian Mercantile Insurance Ltd was founded. It was the first company which started trading all types of general insurances. In 1914 the GOI started the publication of returns of Insurance Companies in India. Explicitly in shipping law India has undergone extensive change and substantial augmentation and thus it became inescapable to codify it for smooth functioning and evolution of Marine Insurance law in India[6].

In India the marine insurance law was codified in the year 1963- Marine Insurance Act, 1963. The preamble to the Act expresses that it is "an Act to codify the law relating to marine insurance." In case of *Bank of England v Vagliano Brothers*[7], Lord Herschel stated that "The

[4] Proximate Causation in Insurance Law ,http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.2005.00539.x/pdf
[5] Christopher Kingston, Marine Insurance in Britain and America, 1720-1844: A Comparative Institutional Analysis, EHS (13-04-18, 11.13 PM), http://www.ehs.org.uk/dotAsset/332686ee-2db9-4f09-abc6-cb900150d473.pdf
[6] Addya Mishra and Archika Agarwal, Marine insurance and its legal aspects in India: Perils of the sea, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212:Volume 1 Issue 8
[7] Bank of England v Vagliano Brothers,(1891) A.C. 107, 144 H.L

canon of construction generally applicable to a codifying statute is well known: the language of the statute must be given its natural meaning, regard being had to be previous state of the law only in cases of doubt or ambiguity.

THE MEANING OF THE TERM PROXIMATE CAUSE

The concept of the proxima causa is usually accepted by the court, mainly after it got codified under Section 55 of the Act, Although, the accurate meaning of the doctrine is not completely consented upon. The dictionary has defined the word 'proximate' as 'closest in relationship' and 'immediate'[8]. The connotation of the word 'immediate' is 'nearest in time or relationship'[9]. So the meaning of the doctrine of proxima causa perhaps be perceived in two distinct ways, one is the temporal immediacy and another is dominance in efficacy[10].

Causa proxima non remota has been accepted by scholars as fundamental doctrine in the law of marine insurance which is encompasses by the doctrine of proximity. The maxim is perceived as the proximate cause and not the remote cause that should be glanced in determinig the insurance company's liability. Usually, Proximate cause is an action that directs to an unbroken chain of events that concludes with losing of goods or valuable by someone. Proximate cause is commonly used to inspect how damage happened and how many incidents might have played a role that resulted in the damages. Proximate cause refers to the inceptive action that caused a loss[11].

In the case of Pawsey v.Scottish Union and National (1908) the court stated that Proximate cause means the agile, structured cause that starts a chain of events which brings a result, without the interceding any force applied and functioning cordially from a new and unconventional source [12]. It is very effective means that there is direct connection between the cause and the consequence, and that the cause is evident that in every juncture of the happenings one can rationlly forecast what the next occurence in the succession will be, till the outcome under cogitation takes place.

[8] https://en.oxforddictionaries.com/definition/proximate
[9] https://en.oxforddictionaries.com/definition/immediate
[10] Howard N. Bennett, Causation in the Law of Marine Insurance: Evolution and Codification of the Proximate Cause Doctrine, The Modern Law of Marine Insurance (D. Rhidian Thomas, LLP, 1996) 173.
[11] Shambhavi, Doctrine of Proximate Cause- The Application of common sense, Charted Accountant Practice Journal, 2012
[12] (1918) 58 S.C.R. 169

TEMPORAL IMMEDIACY AND DOMINANCE IN EFFICACY

In temporal immediacy, the court looks at the immediate cause of the mislaying or the earlier occurred event in the chain of causes. The approach to the doctrine of proximate cause was approved in the case of *Pink v Fleming*[13]. The fundamental squabble proposition of temporal immediacy is that it would be strenuous to scrutinize specific cause for a specific loss, which might have been occurred due to a number of reasons. So the court preferred immediate cause which led to the loss, without having inspecting the series of causes.

In contemporary times the courts in U.K unconditionally adopted the ascendancy in effective approach and rescinded the temporal immediacy approach. *Reischer v Borwick*[14] is a leading case which articulated this approach. In this case, a vessel Rosa was insured by defendant against any crash with objects including ice. During the voyage it crashed with a floating obstacle which led to entering of water in the vessel. It was then anchored and by temporary measures the hole was plugged. When the insured started towing her, the hole reopened due to the motions and the tug filled with water. The insured demanded indemnity for the total damages but the agency paid only for damages to ship due to crash and refused to pay for other losses. The court favoured the insured and held that the crash was the efficient and chief cause of the loss. Lopez LJ in his judgement stated:

"In marine insurance proximate cause should be preferred and other be rejected, though the damage would not have occurred without it. Impairment due to collisions must be the proximate cause of the harm to be permitted the plaintiff to retrieve."

The landmark case that explains proximate cause is *Leyland v Norwich Union Fire Insurance Society*[15], where the court turned down the path taken prior to the proximate cause is the direct as adjudged in *Reischer v Borwick*[16]. Here a vessel that the named Ikaria, was insured by agency, which provided cover to perils of the sea but in contract it contained Free of capture and seizure clause which stated 'Vindicated free of capture, paroxysm and internment and the outcome there of or any attempt of piracy excepted, and also from all consequences of hostile situations or warlike scenario'. The ship took a strike by missile fired by a submarine which resulted in creation of two holes in it which filled the ship with water. But the ship managed to

[13] Pink v Fleming, (1890) 25 QBD 396
[14] Reischer v Borwick, (1894) 2 QB 548, CA
[15] Leyland v Norwich Union Fire Insurance Society, [1918] AC 350
[16] Supra note 4

reach the port but was not allowed to enter into port. Instead the authorities asked the insured to move the vessel to the outer harbor. In the outer harbor the ship submerged due to the filling of excess water.

The insured stated that the last action that led to sinking of the ship should be considered so he should get the benefit of policy. However, insurer argued that the ship sank because it was hit by missile and it was proximate cause therefore it excluded by the F.C and S clause. The court adjudged that perils of the sea was not the reason of the loss and it was due to the missile and dispersed the last in time approach to proximity of causation. Lord Shaw in his judgement held that the to find the causes we must look into principle as a whole and to sequel what the parties really has gone through. Jury dismissed proxima causa as the cause which is nearest in time. He delivered the meaning of proximate cause, which has since been accepted.

> "The cause which is, candidly proximate is the cause which is proximate in structure. That effectiveness might have preserved though other circumstances might in the meanwhile have sprung up which have yet not destroyed it, or truly impaired it, and it may culminate in a result which it still remains the real efficient cause to which the event can be ascribed. Proximate cause is an expression referring to the efficiency as an operating factor upon the result. Where various factors or causes are concurrent, and one has to be selected, the matter is determined as one of fact, and the choice falls upon the one to which may be ascribed the qualities of reality, predominance, efficiency".

Furthermore, in the case of *Brownsville Holdings v Adamjee* [17]Insurance the court held that the "rule is that the immediate and proximate cause will be seen and not a remote cause. The *maxim sed causa proxima non-remote spectature* which means that see the proximate cause and not the distant cause. The real cause of the loss is to be considered. If the real cause is insured, then the insurer is liable to pay otherwise not".

The principle laid developed in Leyland case, that the term 'proximate cause' should be interpreted to mean 'predominant or efficient cause' and it is followed widely in subsequent decisions such as *Board of Trade v Hain SS Co Ltd*[18]; *Yorkshire Dale SS Co Ltd v Minister of War Transport, The Coxwold*[19]; *Ashworth v General Accident Fire and Life Assurance*

[17]Brownsville Holdings v Adamjee, [2000] 2 Lloyd's Rep 458
[18]Board of Trade v Hain SS Co Ltd, [1929] AC 534
[19]Yorkshire Dale SS Co Ltd v Minister of War Transport, The Coxwold (1942) 73LIL Rep 1

Corporation [20]; and *Gray and Another v Barr*[21]. It can be derived from all such judgements that 'proximate causes' are the true and leading cause for loss. We can conclude that deducted events do not happen on its own. So, to come to conclusion we must examine series of events to find proximate cause, which led to reasonable loss.

COMMON SENSE APPROACH TO THE MEANING

Since its inception to retrieve proximate cause supported by intelligence and has been updated from judgements. To find the cause of loss out of sequence of events one does not need extraordinary knowledge or talent. In the landmark case *Yorkshire Dale steamship Co ltd v Minister of War Transport*[22], the court held that 'the interpretation does not require a scientific view of causation, it depends on the judicial creativity in ascertaining the link between the peril and the loss'. It also depends type of enquiry that is the enquiry for confirmation of actual cause to find loopholes in law.

In the case of *Ionides v The Universal Marine Insurance co*, Judge Willes held that "you are not to trouble yourself with distant causes, or to go into a metaphysical distinction between causes efficient and material and causes final, but you are to look exclusively to the proximate and immediate cause of loss.''[23]

Lord Greene in the case of *Athel Line Ltd v Liverpool and London War Risks Insurance Association*[24] adjudged that detecting the proximate cause is a matter of common sense and intelligence of a reasonable man.

So finding proxima causa has evolved a lot and way to discover it have changed a lot. Earlier proxima causa was thought to be the closest in time but now a cause may be closest in time but still not be a proxima causa. The proxima causa is that leads to loss, this cause can be found by mere application of common sense.

[20] Ashworth v General Accident Fire and Life Assurance Corporation, [1955] IR 268
[21] Gray and Another v Barr [1971] 2 Lloyd's Rep 1, CA.

[22] Supra note 19
[23] Ionides v The Universal Marine Insurance co, 1863, 14 CB, (NS) 259, 289.
[24] Athel Line Ltd v Liverpool and London War Risks Insurance Association, 1946, 1KB 117.

APPLICATION OF THE PROXIMATE CAUSE

There are different consequences of the principle of Proximate cause on the insured and the insurer. Firstly, this principle narrows down the liability of the insurer only to the loss which is a proximate cause of the insured peril. Secondly, it widens the liability of the underwriters with regards to remote causes, contributed by certain circumstances without which such an event would not have happened[25].

The application of this doctrine is not difficult when the loss is caused by just one event. In such cases the court only looks at whether such cause is covered under the insurance policy or not[26]. It becomes difficult for the court to ascertain the real cause of loss when there are more than one cause which contributes to the loss. The situation becomes more difficult when all the causes appear equally influential.

APPLICATION OF PROXIMATE CAUSE TO GENERAL INSURANCE POLICIES

The principle of proximate cause is also applicable in the determination of kindred insurance liabilities, like motor insurance, fire insurance etc. its rules and applications are on all fours, and cases can be cited freely once the facts of a particular case are in pari material. In the case of *Liesch v The standard life assurance*[27] the court held causality is a philosophical and legal question. The law takes a practical approach by treating the causality as practical factual matter. The doctrine of proxima causa has been used in a number of non marine insurance cases. In the case of *Sherwin-Williams Co. Of Canada v Boiler Insp and Ins. Co. Of Canada*[28] the court held that "the direct or proximate cause may not be the last, or, indeed, that in any specified place in the list of causes but is the one which has been variously described as the 'effective', the 'dominant' or 'the cause without which' the loss or damage would not have been suffered." The principle of proxima causa has developed in the United Kingdom with time. In the case of *Wayne Tank co Ltd v The Employers liability Assurance Co lts*[29] the court applied the doctrine of proxima cause in deciding a property damage claim.

[25] Arnould's Law of Marine Insurance and Average, 763 at p. 185 (Sir M.J. Mustill & J.C.B. Gilman, 16th ed. 1981).
[26] Susan Hodges, Cases and Materials on Marine Insurance Law (Cavendish Publishing, 2004) 336.
[27] Liesch v The standard life assurance ,2005 BCCA 195; 39 B.C.L.R. (4th) 313 at 324
[28] Sherwin-Williams Co. Of Canada v Boiler Insp and Ins. Co. Of Canada , [1950] S.C.R. 187, aff'd, [1951] A.C. 319 (H.L.)
[29] Wayne Tank co Ltd v The Employers liability Assurance Co lts ,1974,QB 57.

TWO OR MORE PROXIMATE CAUSE OF LOSS

Usually more than one cause leads to a loss or damage. These causes may operate simultaneously or successively. Susan Hodge, argued that there can be situations where the causation to the loss can be attributed to various causes[30].

In Lloyd (JJ) *Instruments Ltd v Northern Star Insurance Co Ltd, 'Miss Jay jay'* a yacht the ratio of the case is that where there are two operative causes one covered by the policy risks and one not then provided that that the second cause is not an excluded peril the assured can recover. There was only one less and the total repair bill for the hull to be paid by insurer. A loss may be said to be caused by perils of the sea even where the sea state is that which could reasonably have been expected. The word 'proximate cause' and direct cause came to be used interchangeably and there can be more than one proximate cause of loss.'[31]

In the case of *Wayne Tank and Pump Co Ltd v Employers Liability Insurance Corporation Ltd* [32] the plaintiffs designed and installed equipment for storing and conveying liquid wax in a factory. The plaintiffs had a policy of insurance which indemnified them for 'damages consequent upon ... damage to property as a result of accidents'. The insurance policy had a clause which excluded the loss by 'the nature or condition of any goods... sold or shipped by or on behalf of the insured'. The equipment caught fire due to negligence and destroyed the factory. The plaintiffs asked the insurer to indemnify which they refused. The court held that the dominant cause of loss was the defective nature of the installation of the equipment and therefore the insurer will not be liable. The reasoning given by the court was that there were two separate causes, one was covered under the insurance policy and the other was excluded. Since in the current case it could clearly be distinguished that the loss was caused by a clause which was explicitly excluded, therefore the insurer are not liable to indemnify. Thus when there are two or more effective proximate causes and there are express exclusions in the policy and the loss is caused due to the cause excluded the insurers are not liable to pay.

[30]http://books.google.co.uk/books?id=G8sBdRAYzLQC&pg=PA344&lpg=PA344&dq=two+or+more+proximate+cause

[31] Instruments Ltd v Northern Star Insurance Co Ltd, 'Miss Jay Jay' , [1987] 1 Lloyd's Rep 32, CA

[32] Supra note 29

CONCEPT OF LOSS AND PROXIMATE CAUSE

As the contract in insurance law is a indemnity contract, the accountability of the insurance company arises when there is a loss suffered by insured. Moreover there is a caution that the insurance company is only accountable for the 'loss' being 'proximately caused' at the peril.

Section 56(1) of the Marine Insurance Act, states that;

'A loss may be either total or partial. Any loss other than a total loss as herein defined is a partial loss.'[33]

The statute provides that loss can be actual total loss or constructive total loss [34] it is considered to be actual total loss when the goods are destroyed, so damaged as to cease to be the thing insured[35], or where the assured is irretrievably deprived of them. In the case of Reischer v Borwick[36] the court did not make distinction between actual loss and subsequent loss. In the case of *Navierade Canarias SA v Nacional Hispanica Aseguradore*[37] the court turned down the argument that 'consequent on' and 'proximate cause' means the same while parse marine loss. Lord Diplock held that delay which happened due to an intermediate event in between the incidence of the peril insured and the loss of cargo in peril, as commonly known as doctrine proximate cause in the marine insurance.

Loss due to proximate cause includes a lot of elements. Certain elements which must be there in marine insurance cause of action includes-

1. "The peril must be covered under the insurance policy.
2. The loss is proximately connected to the risk insured against
3. The insured has the insurable interest over the insured goods and has fulfilled the entire requirement to bring in a claim.
4. The assureds' claim is not defeated by fraud or breach of good faith
5. The assured has complied with all the warranties and conditions." [38]

[33] Marine insurance Act of 1906
[34] Ibid, 56(2)
[35] Chuah J.C.T, Op cit, p.370.
[36] Reischer v Borwick, 1894, 2QB 548.
[37] Navierade Canarias SA v Nacional Hispanica Aseguradore , [1977] 1 Lloyd's Rep. 457.
[38] Chuah J.C.T, Op cit,p. 370

INTERCONNECTIONS BETWEEN INHERENT VICE AND PROXIMATE CAUSE

It is a president or rule whatever we call it or doctrine that settled that insurance company is not accountable for the damage caused by ordinary wear and tear, breakage and leakage, intrinsic flaws or damage caused proximately by rats or vermin etc. This doctrine is also laid down in Section 55(2) of the Marine Insurance Act of the UK and also in the of cargo clauses.

The notion of inherent vice was first explained in *Soya v white*[39] where the court held that the insurance company will not be responsible for the losses because of result of some flaws present or natural functioning in the reasonable path of the voyage without the interposing it to some external element. In the landmark case of *Global Process Systems v Syarikat Takaful Malaysia Berhad* [40] the court tapered the explanation of the inherent vice and suggested a test for inherent vice which is not that weather which is within the range that could be prudently be forceable, but whether it is a loss that certainly going to happen during voyage.

The jury suggested incidents of the voyage that can be tendered as inherent vice in marine insurance. Moreover, to discover about the proximate cause and inherent vice requires certain facts. So inherent vice can only be a proximate cause of loss if no such insurance for hazard that is a proximate cause. It suggests that the insured and marine surveyors would harshly inspected. The jury will glance at specific facts to ascertain the fact that the loss was a outcome of ordinary voyage that is going to happen or is there any is a new unconventional cause responsible for the loss.

BURDEN OF PROOF OF PROXIMATE CAUSE OF LOSS

When loss is because of the assured cause at peril of the sea than insurer becomes liable to indemnify the insured. The duty of the insured for claiming reimbursement from insurer shall consist of certain aspects such as notice of the loss, furnish particulars of the loss, to furnish proof of loss etc. If the insured completes all specified duties and then makes a claim then the insurance company has to indemnify. If the insurance company declines to indemnify then the assured can bring a suit in the court and has to prove that the proxima causa was the one which is insured peril. The evidence of the proxima causa in different outline are-

[39] Soya v white ,1983, 1 Lloyds, Rep
[40] Global Process Systems v Syarikat Takaful Malaysia Berhad [2009] EWCA Civ 1398.

A) PERILS OF THE SEA

Perils of the sea is defined to mean the natural actions of the sea that overcomes the strength of a well designed ship taking normal precautions and following the marine practices[41]. In the famous case of *Compania naviera vascongada v British and Foreign Marine Insurance Co. Ltd* the court adjudged that the "onus of proof lies on the insured to prove that the loss was caused due to the perils of the sea. There must be some evidence by the insured to prove the loss by perils of the sea"[42]. The burden to prove the unseaworthiness of the plaintiff's ship is on the insurer. In the case of *Green v Brown* the court held that "there is an assumption of damages at peril of the sea when a ship has sailed and never heard of." [43]

B) PERIL OF BARRATRY

"Barratry has been defined as a wrongful act willfully committed by the crew or the master to the prejudice of the owner or as the case may be"[44]. When the assured claims of loss due to barratry, the onus of proof is on the insurance company to prove that there was collusion by the owner, the assured onus on him the too prove that there was no collusion on the part of the owner or crew of the ship. It follows the common law doctrine that the individual who claims must provide evidence for his claim. The insured too has the duty to prove his claim and assert that there was no complicity.

So it has been set doctrine that for jury to contemplate a proximate cause within the insured peril, then the assured must present all the evidence required.

COLINVAUX'S RULES

Colinvaux suggested that a number of sub-rules for applying the principle of proximate cause. These rules have been taken from various case laws and have been used in determining the proximate cause of particular losses[45].

[41] Black LawDictionary, 6th edition, p'1138;
[42] Compania naviera vascongada v British and Foreign Marine Insurance Co. Ltd, (1934)54LILRep35
[43] Green v Brown, (1743) 2str 1199
[44] Id.
[45] Colinvaux's Law of Insurance (Robert Merkin ed., 7th ed. 1997) 106.

1. **THE PERIL INSURED MUST IN FACT OPERATE (APPREHENSION OF A PERIL)**

Insured have right of recovery only if the insured risk or peril actually took place. Insured have no right to claim for recovery for any action on a just apprehension of peril. It is due to the reason that the proximate cause of the loss is no longer the peril. This principle was followed in the case *Kacianoff v. China Traders Insurance Co Ltd* [46], here the plaintiff insured 4000 barrels of salt beef under a war risk policy which also included cover for capture. The first two cargos were captured by Japanese warships because of hostilities between Japan and Russia. To protect the cargo the plaintiff had the cargo discharged and it was sold and forwarded to somewhere else. The plaintiff claimed for indemnity which the underwriters rejected. The court rejected the claims of the plaintiff and held that the loss was not caused by the risk insured against. The cargo had to be in peril of capture for claim to succeed but in this case the cargo was never in risk of capture.

2. **ONCE THE RISK OPERATES, DAMAGE TO THE SUBJECT MATTER FROM EFFORTS TO CHECK THE PROGRESS OF THE CASUALTY OR PROTECT THE SUBJECT MATTER IS ALSO COVERED (RESPONSE TO PERILS).**

This outlook describes when a peril is covered by the policy, any measures taken to circumvent or minimise any loss from the peril will not displace the peril as the proximate cause. In the case of *Canada Rice Mills Ltd. v Union Marine & General Insurance Co. Ltd*[47] the crew closed the contrived ventilators due to the bad weather which caused the heating of rice in cargo. The court held that "Damage to cargo due to action which are reasonable and necessary to prevent the perils of the sea affecting the goods, is a loss due to the peril of the sea and is recoverable as such."

Same measures taken by court in *Symington v. Union Insurance of Canton*[48], disposing of corks in the sea to avert fire was held to be covered under the policy although the loss to the corks was caused due to disposing it in water.

[46] Kacianoff v. China Traders Insurance Co Ltd, [1914] 3 KB 1121
[47] Canada Rice Mills Ltd. v Union Marine & General Insurance Co. Ltd, [1941] AC 55
[48] Symington v. Union Insurance of Canton, (1928) 32 Ll.L.Rep. 287

3. NOVUS ACTUS INTERVENIENS

This doctrine is applicable when there is unique and unconventional situation arises. When unconventional cause interferes a series of happenings it breaks the chain of occurrence, thereby making the interfering cause the proximate cause of the loss.

4. THE DEATH- BLOW

When a loss starts due to human agency and then some natural forces takes it from there than the loss of the insured freight and the sequence of events is not broken. In the case of *Leyland v. Norwich Union fire insurance Society*, the cargo ship sustained damages as torpedo hit the ship which was fired by a submarine and ship sank due to a storm. The court adjudged that the proximate cause of the loss as torpedo hit it and not the storm.

CHALLENGES TO THE

DOCTRINE OF PROXIMATE CAUSE OF LOSS

Although lot of endeavours have been made to draw the ambit, scope, tests etc. of the Principle of Proxima Causa till now no certain rule or any statute is there in existence to identify it we are still relying on trial and error method. These problems include-

1. HOW TO DETERMINE THE PROXIMA CAUSA-

It is certainly not easy to find out proxima cause when there is a series of branched or unbranched occurrences. It is baffling about the approach that should be taken to ascertaining the proxima causa. The judicial pronouncement has tried to bring various methods to ascertain proxima causa and one method developed i.e. of ‘common sense’, this has made it the rule of thumb and not the rule of law. This approach is very subjective in nature and it varies from case to case.

2. NON-USE OF THE DOCTRINE

The rule of proximate cause is not applied or valid in various jurisdiction such as Canada. In the case of *C.C.R Fishing Ltd V British Reserve Insurance co* the court adjudged that the “question whether insurance applies to loss should not be dependent on metaphysical debates such as of various cases were proximate cause. Indemnity should not be dependent on such

debates and reasoning and that this test is calculated to produce disputed claims and litigation".[49]

3. LANGUAGE OF THE POLICY

The insurance contract contains words such as 'caused by', 'attributed to', 'reasonable attributed to', 'in consequences thereof', 'arising from' etc. all these are commonly used in insurance contract. These words have now been adopted in the hull clause, institute cargo clause etc. The contention is that whether all these words are synonymous or contradictory to the context of the doctrine of proxima causa. The most suitable response to this query will help in discover the meaning and application of the doctrine vis a vis and all other expressions used in the insurance contract.

RECOMMENDATION AND CONCLUSION

The principle of proxima causa should be interpreted reasonably and should not be used as an exercise to decrypt some concepts, causes or remote causes. To get the benefit of claim of proximate cause assured must have gratified all his duties and commitment and it must be in good faith. So a empirical approach should be applied as to find out what caused the loss, there should be literal interpretation of law and good faith must be used so that it did not defeat the marine insurance contract. The loss caused should be within the ambit of the risk covered, the loss occurred should have happened at peril and no unusual claim such for the inherent vice or ship which has not sailed.

The doctrine of proxima cause is very important part of the marine insurance contract. The ascertainment of the cause generally determined by the judiciary from time to time comes up with various ways to determine the loss. The ascertainment of proxima causa is very easy if in that event only single cause is there. In that case the insurance company will have to indemnify for the loss. However, if there are series of events taking place in the insured perils then that peril has to be segregated. All the simultaneous causes may be may be separable and inseparable. Separable causes are those causes which can be segregated from each other. The loss that took place due to a specific cause may be distinguished.

[49] C.C.R Fishing Ltd V British Reserve Insurance co, 1990, 1 S.C.R, 814, p.823

If in a situation the perils that can't be separated, then the insurance company can't be held liable at all when there is existence of any excepted peril which was not in insurance contract. If the loss occurred in the chain of events, then it has to be observed that which event finally triggered off the marine loss at peril.

Where there is inseparable chain of events, the insured perils have to be segregated. If an excepted hazard exceeds the expected effect of the insured peril then the loss caused by the hindmost is the direct and natural outcome of the excepted peril, than there is no liability.

In the circumstance of unbranched chain of causes with no anticipated peril intricated, it is possible to segregate the losses. The insurance company is liable only for loss which took place by an insured peril; when there is an anticipated peril, the successive damage by an insured peril will be a new and indirect as of the intrusion in the chain of causes.