

The proximate and remote causes of loss

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Question of causation: a matter of judgment

- It is true that questions of causation can give rise to problems both of **law** and of **fact** and opinions may and often do differ upon them.
 - *Royal Greek Government v Minister of Transport (The Ann Stathatos)* (1949)
 - *Shell International Petroleum Co Ltd v Gibbs* [1983], Lord Roskill

A matter of law

- s 55(1) of the MIA 1906 – s.61(1) of the MIA 1909:

“ 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.”

'Proximate' cause : the meaning

- *Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021]
the word “proximate” is somewhat misleading.
- *Becker, Gray and Co v London Assurance Corporation* Lord Sumner [1918]
the word “direct” would be a better word as “the terminology of causation in English law is by no means ideal. It would be the better for a little plain English”.

Terminology

- The proximate cause does not mean “proximate and absolute certain cause”
- Proximate refers to
 - determining
predominant
real causes
- *eliminates*
 - remote
 - indirect
 - distant causes.



Unless otherwise agreed

- “directly or indirectly caused by” and
- “following”
- “in connection with”
- “as a result of”,
- “arising from”, and
- “in consequence of”,
- The FCA test case “it is rare for the test of causation to turn on such nuances” and hence it was not profitable to search for shades of semantic difference between such phrases.

Chubb Insurance Singapore Ltd v Sizer Metals Pte Ltd [2023] SGHC(A) 17

- Export of tin concentrate from Rwanda to Penang
- Transit by road to a bonded warehouse in Kigali, then transport to the port of Dar es Salaam for shipping to Penang. Each consignment of tin concentrate :
 - was packed into drums and thereafter sealed
 - was replaced with iron oxide after the drums were sealed
 - The replacement was due to a fortuitous casualty, namely theft.
- The primary issue: where had the thefts of tin concentrate occurred?

Rhesa Shipping Company SA v Edmunds (The Popi M)

[1985] 1 WLR 948

- “all risks” : any fortuitous accident or casualty unless excluded
- the assured need not to show how the theft had occurred: proving accidental nature suffices.
- the alleged event was the least improbable possibility amongst a number of other possibilities **X**
- at Excellent Mining’s premises: several layers of checks and surveillance x

- on the seaward voyage to Penang or at the port in Penang: too many people around **x**

- during the inland transit between the Warehouse in Kigali to the port in Dar es Salaam ✓

Brian Leighton (Garages) Ltd v Allianz Insurance plc [2023] EWCA Civ 8

- BLG ran a 24-hour petrol filling station.
 - A fuel leak: from the underground fuel tanks to the forecourt fuel pumps.
 - The pressure of a sharp object on the pipe (possibly a sharp stone)
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- "In the event of Damage in consequence of escape of ... leakage of fuel from any fixed oil heating installation, We will pay costs ...incurred ...in locating the source of such Damage, and in the subsequent making good of Damage ..."

Exclusion: “Damage caused by pollution or contamination...”

- “caused by pollution or contamination” laid down a causation test
- the focus was on the peril giving rise to pollution or contamination and not the pollution or contamination itself.
- the chain of causation leading to the loss included the process of pollution or contamination, but that was not the proximate cause of the loss.
- the proximate cause of the damage was the puncturing of the pipe



Concurrent interdependent causes

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- none of the rival causes can be identified as the proximate cause under the standards of “real” or “efficient” or “direct” cause.
 - One excluded v one insured risk
 - One insured and one uninsured

Polladio Holdings Ltd v New India Assurance Co Ltd

[2023] NZHC 1147

- “against accidental loss to insured property”
- “accident” : an event or omission that is unexpected and unintended from your point of view.
- “loss” : accidental physical loss or accidental physical damage.

Excluded: Loss caused by rust, action of light, or inherent nature of the property.

Insurer: the hail exposed weaknesses where there was already corrosion and highlighted the already existing need for repairs and maintenance.

Hail: an insured peril; rust: an excluded peril.

Interdependent causes

The Court must seek to identify a single proximate cause of the claimed loss if it can.

- absent rust, the hail did not punch holes in the roof, and
- the hail would not have damaged the nail heads.
- the rust and the hail: both were effective contributors to the loss suffered.
- the exclusion prevails

Allianz Insurance PLC v The University of Exeter

[2023] EWHC 630 (TCC)

- A bomb dropped in 1942 was unearthed in Exeter.
- Bomb disposal experts: it could not safely be transported away, should be exploded.
Controlled detonation, damaged to property
- The detonation of the bomb or its presence?
- “The” sole proximate cause? or each was “a” proximate cause?.

Allianz v Exeter Uni : Appeal outstanding

- As a matter of common sense: the dropping of the bomb and its consequent presence at the site: the proximate cause
- The presence of the bomb led to the detonation and the damage.
- Alternatively:
- the detonation and the presence of the bomb were "*equal, or at least nearly equal* " in their efficiency. Exclusion applies

Allianz v Exeter Uni

- *Contra proferentem*: does not apply
- No ambiguity
- The rule applies to contractual provisions which exempt a party from a liability which (absent the exclusion) would arise. That is not the case here.
- No liability arises if the exclusion applies. The exclusion is an exclusion from cover, not from liability.

***London International Exhibition Centre Plc v Royal and Sun Alliance Insurance Plc and others* [2023] EWHC 1481 (Comm)**

- Six test cases on BI losses suffered due to COVID-19
- “at the premises” (ATP) cover
- a non-damage extension for “closure of the Premises ... on the order or advice of any local or governmental authority as a result of an outbreak or occurrence at the Premises of ... any human contagious or infectious disease ... an outbreak of which is required by law or stipulated by the governmental authority to be notified”.

FCA test case

- *Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1
- There were concurrent causes of loss:
 - the outbreak within the area specified by clause and
 - each individual outbreak outside the area, and
 - that because the wider outbreaks were not excluded perils then the insured peril prevailed.

London International Exhibition Centre Plc

- ***ATP and radius clauses***
- HELD: No distinction could be drawn between ATP clauses and radius clauses
- The purpose of the radius provision:
 - was simply to define the geographical area in which the insured peril had to occur
 - it had nothing to do with causation