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L.L.B Part- 2nd

Subject- Insurance Act

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Topic- What do you understand by 'Cause Proxima'? Discuss with illustration. Under what circumstances the insurer is not liable under the Marine Insurance.

Cause Proxima-

It is a rule of law that in actions on fire policies, full regard must be had to the causa proxima. If the proximate cause of the loss is fire, the loss is recoverable. If the cause is not fire but some other cause remotely connected with fire, it is not recoverable, unless specifically provided for. Fire risks do not cover damage by explosion, unless the explosion causes actual ignition, which spreads into fire. The cause of the fire is immaterial, unless it was the deliberate act of the insured.

The insurer is liable for any loss that has been proximately caused by a peril insured against.5 In Hamilton, Fraser and Co. v. Pandorf and Co.,6 it has been observed that "where damage to cargo was caused by sea water escaping through a hole in a pipe gnawed by rats, the damage was due to 'dangers and accidents of the sea' ."

Therefore in any insurance cover knowing the causation7 of loss or damage is a primary step for the purpose of claiming the policy cover. Causation means the ability of one thing which results in the happening of the other thing. In Reynold v. Accidental Insurance Co.,8 a question was raised as to whether the last cause is a mere consequence of the preceding cause of the peril insured against or was there a break in the causation? "it was observed that if the last cause is a mere probable and reasonable consequence of the peril insured against without any novus actus interveniens, the peril insured against will have to be treated as the real and efficient cause and the insurer will be liable, on the other hand, if the connection between the preceding cause and the last cause is interrupted by the intervention of a fresh cause, which is not a mere reasonable and probable consequence directly and naturally resulting in the ordinary course of events from the peril insured against the insurer will not be liable."

Circumstances when the insurer is not liable under the Marine Insurance.-

In general, what I understood about the theory of proximate cause is that it is that cause which triggers a chain of events resulting in the actual loss. For example, due to a storm if the wall collapses and as a result of this there is short circuit and due to the spark there is damage resulting from fire(insured peril). Thus herein in the present example there is a train of events which resulted in the actual damage. Even though fire is the insured peril the proximate cause is storm and thus the insurer is liable to pay the damage. However, the insurer in no case is liable to compensate if the loss is from excepted perils or uninsured perils or if it is caused by the misconduct or fault of the assured. The main point to note in the principle of proximate cause is that it is not applicable in the case of life Insurance as in the case of death the insurer is liable to pay whatever may be the cause of death whether natural or unnatural except in the case of suicide. There are certain exceptions to this as well like in the case of Accident Benefit, if an insured is killed or suffered injury which has an immediate cause which results to death of the insured. Once the cause is identified and then the relationship of the cause with the insured peril is established and after it becomes clear that it is covered under the head of proximate cause the principle of indemnity takes effect; indemnity is the way the insurer places the insured as before the loss i.e, making good the loss or reinstating the position of the insured. Both the principle of indemnity and causa proxima is not applicable in the case of life insurance. The principle of indemnity cannot be applied in the case of life insurance as human life cannot be measured in terms of money and thus it cannot be regarded as contract of indemnity. Also the principle of causa proxima does not apply to Life Insurance as the insurer is obliged to pay the money regardless of the reason for death be it natural or unnatural. As far as what I understood with the determination of proximate cause is that it is always easy to determine the direct cause of loss but when there exist a series of events the process becomes complicated i.e, to determine whether the cause of loss has been covered under the insurance or is it proximately connected with the insured peril . There are no legal definition of the term proximate cause, it is a mere use of common sense and also in each case the term can be interpreted differently, it is always important to establish the relationship between cause and effect. Proximate cause is not always the last cause which resulted in the loss it is the nearest cause which resulted in the happening of the uncertain event and not the cause which is nearest in time. “All the judicial pronouncements are considered to be mere illustrations upon which the court decides the case. It should also be noted that the doctrine can be excluded by appropriate wording.”15 Section 55(i) of the Marine Insurance Act, 1963 talks about the liability of the insurer to compensate for any loss proximately16 caused by any peril which is insured against subject to certain exceptions under the section. This provision of the Marine Insurance Act also does not provide the exact definition of the term proximate cause instead it states the liability of the insurer. Everything depends upon the circumstances and the facts of the case and therefore it is important to note that the Court interprets and decides the proximate cause in each case and that it is a question of fact. Another important phrase to note in this context is the ‘immediate cause’ or ‘nearest cause’. While deciding the proximate cause only the immediate cause and not the remote cause is taken into consideration. The term proximate cause has been explained under the tort law as legal cause. Under the law of torts, proximate cause must be proved to establish that the loss was not caused due to the negligent act of the defendant. Inorder to determine the proximate cause the plaintiff’s harm must be a reasonably foreseeable consequence of the defendant’s wrongful action i.e, when deciding if someone is not the proximate cause of an injury, the law looks for an unforeseeable

type of injury or superseding intervening event. For example in one case the owner of a building negligently maintained some explosive material in the building which has the potential to catch fire; this material caught fire and a rat ran over it as a result its fur caught fire and then it ran through the whole of another building causing damage to that property. This was held to be a foreseeable event and the owner is the proximate cause in this case. Another example to understand the applicability of foreseeability is that if someone is speeding down the road the foreseeable consequence is an injured pedestrian or another car. This is applied to eliminate the liability of the defendant who caused the harm to the plaintiff. As no one can be held responsible for all the causes. Similarly in the case of Insurance Law also the reasonable foreseeability by a common prudent man can be administered. Not all causes are proximate the cause of loss must be "effective", "dominant" and "operative". It must be have an impact on the resultant. To be exact proximate cause operates to determine the real cause not the actual. Lord Bacon's statement in his Maxims of law is relevant in this context where he said: "it was infinite for the law to consider the cause of causes, and their impulsions one of another; therefore it is contenteth itself with the immediate cause and judgeth of act by it without looking into any further degree."17 When a case comes before the court, it is the duty of the insured to elucidate the happening of an uncertain event and the onus is on the insured to prove it comes within the purview of insured peril or it is the nearest or proximate cause which resulted in the loss. And the insurer must demonstrate the exceptions related to the policy cover that whether it was an excluded peril and so on; after hearing all this and seeing the appropriate wordings in the policy cover the court decides the cause in fact and the case is decided on pure factual concepts . The only point to be noted is in case of a series or chain of events is that the loss must be attributable to the perils covered by the insurance policy.

The End