THE LAW OF TORTS

CUTTING DOWN THE CHAIN OF CAUSATION

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Introduction

1. A lot can happen between a defendant's act and the consequences of that act. This "chain of causation" between defendant's act and its consequences may be broken either by a natural event or by some human act. This is where the latin term "Novus Actus Interveniens" comes in, which means a new intervening act. This act or event breaks the causal connection which at times can relieve the defendant from the responsibility for the happenings. This suggests that intervention of some act or event can break the "chain of causation' thereby rendering the consequence too remote and wrongdoer's liability comes to end by such intervention. Figuring out the chain could be tricky but we can determine the relation between events. Such intervention should have been without the consciousness or intention of the defendant. This in other words, means that defendant has to show that "but for" the intervention of an act or an event at the behest of some third person, the cause of action would not have arisen. There is a fine line between the events and that is where this maxim operates. This research paper looks to establish that fine line.

   "Novus actus interveniens", once found, has the effect of extinguishing the causal link between the defendant's wrongdoing and the plaintiff's damage. The law in this area is in some confusion, and commentators like Fleming have noted that the ostensible principles applied in determining whether or not an intervention constitutes a novus actus are no more than a cloak for the real motivation of judges. The maxim Novus Actus Interveniens generally applies to three categories of cases, namely (1) where a natural event occurs independent of any act of human being ; (2) where the event consists of the act or omission of a third party, and (3) where the event consists of an act or omission of the plaintiff, i.e., the claimant himself".

Intervening Natural Event

2. Sometimes the plaintiff suffers damage as the immediate result of some natural event which occurs independently of the defendant's breach of duty but which would have caused no damage if the breach of duty had not occurred. The case of *Carslogie Steamship Co. Ltd. v. Royal Norwegian Government*[1] is an illustration on the point. In this case, the plaintiff's ship was damaged in collision caused by the negligence of defendant's ship. After temporary repairs, the plaintiff's ship set out on a voyage to United States for permanent repairs~ a voyage which it would not have undertaken 'but for' the requirement of its permanent repairs. While on its way to the US, there was a heavy sea-storm in Atlantic Ocean which caused extensive damage to the plaintiff's ship. The House of Lords held the defendant not liable for damage to plaintiff's ship as it was due to intervention of a natural event i.e. heavy sea storm.

[1] (1952) AC 292 (HL)

3. Where there is an intervening natural event or calamity between the defendant's wrongful act and its consequences, the defendant is held not liable due to breaking of "chain of causation".

Intervention of Act or Omission of a third party.

4. In finding a Novus actus when a third party's act intervenes, judges look at the foreseeability and the reasonableness of the intervention. Where there has been a breach of duty on the part of defendant towards the plaintiff but the damage would not have caused to him but for the intervention of an act or omission of a third party, the defendant is not held liable. In *Topp v London Country Bus*[2], the act involved was an omission, which led to the stealing of a bus and a car accident with a cyclist – and the fact that it was an omission made it become more of a novus actus. Moreover, proximity and duty were seen to be unsatisfied in that case. Generally, the more foreseeable an act, the less likely it will constitute a novus actus (*Stansbie v Troman*[3]). However, the level of foreseeability required varies. In *Prendergest v. Sam and Dec Ltd*[4], the defendant, a doctor wrote prescription for the plaintiff in very shabby hand writing which could not be read clearly as a result of which the pharmacist misread it and gave a wrong medicine which aggravated the sufferings of the plaintiff. On being sued by him, the defendant (doctor) pleaded novus actus interveniens of the third party (i.e., the pharmacist in this case) which had broken the chain of causation between his act and plaintiff's aggravation of sickness. Held, that the chain of causation was not broken as the pharmacist ought to have contacted the doctor and enquired about the correct name of the medicine prescribed by him. However, pharmacist's liability in this case was assessed as 25 per cent and that of the defendant (Doctor) as 75 per cent. The intervention of a third party may be antecedent, concurrent or subsequent. In the above case, the intervention was subsequent to doctor's negligence in writing prescription which was clearly not readable.

5. As to reasonableness, when an intervening act is criminal or reckless, it is virtually certain to constitute a novus actus, see e.g. *Wright v Lodge*[5], where the recklessness of a driver, who ricocheted off the defendant's negligently parked car and killed the plaintiff, was held to be a novus actus that extinguished the defendant's wrongdoing. When an intervening act is merely negligent, the answer varies. In *Knightley v Johns*[6] the defendant, who negligently caused a traffic accident, was not held liable for a subsequent accident caused by the negligent response of the police to the initial accident. It was held that there were too many mistakes made, and that the unfortunate turn of events leading up to the final disaster was considered a novus actus. In *Rouse v Squires*[7] the defendant, who negligently caused a traffic accident, remained 25% liable for the damage caused by another negligent driver colliding with the accident scene. This suggests a commonsensical approach to the facts of individual cases.

Intervention of Act or Omission of plaintiff himself

6. In *Lamb v. Camden London Borough*[8], the defendant negligently damaged the plaintiff's house. It had to be left unoccupied for a long period. Thereafter, squatters moved in, which caused more damage. The Court of Appeal held the defendant not liable as the plaintiff as he should have foreseen the possibility of squatters moving in and taken steps to protect it against entry.

[2] (1993) 1 WLR 976
[3] (1948) 2 KB 48
[4] (1989) Decided on March 14,1989
[5] (1993) 4 AII ER 299
[6] (1982) I WLR 349
[7] (1973) QB 889
[8] (1981) QB 625

7. In *Reeves v. Metropolitan Police Commissioner*[9], the claimant commited suicide in police custody. The House of Lords by majority held that the Police were liable as they owed a duty of care to the claimant that he is prevented from inflicting harm on himself, therefore, it would be futile to argue that the claimant's voluntary decision to commit suicide and die was his own independent intervening decision which had broken the link between his arrest by the police and act of suicide. Even the plea of volenti non fit injuria would not be acceptable in the instant case. However, the plaintiff's negligence has sometimes been held to be a novus actus, such as in *McKew v Holland*[10], where an unreasonable act breaks the chain of causation. That decision however has been criticised and it is submitted that *Sayers* and *Wieland*, where the plaintiff's own negligence counts towards contributory negligence but not causation, represents the better view.

8. In the event where a plaintiff suffers physical damage which leads to depression and psychiatric illness, and eventually, death; it is unlikely that the courts will see that the chain of events has been broken. Because it is foreseeable that there would be physical damage, and that it is also foreseeable that the injury would cause depression that subsequently turns into suicidal tendencies, the claimant's deliberate acts of suicide will still be able to remain unbroken (*Pigney v Pointers Transport Services*[11], *Corr v IBC Vehicles Ltd*[12]). It is submitted that these cases are, however, examples of how the court is sympathetic and would like to uphold justice on the part of the long-suffering plaintiffs.

Defenses to the Maxim

Contributory Negligence

9. The defence of contributory negligence refers to the duty of the claimant to take reasonable care for his own safety and well being and is not a duty to the defendant (*Nance v British Columbia*[13], *Ng Weng Cheong v Soh Oh Loo*[14]). Following the Contributory Negligence and Personal Injuries Act the defence has become a partial defence. The standard of care owed follows the general standards for negligence – children are held to a lower standard (*Gough v Thorne*[15]) and lower standards apply for emergencies (*Jones v Boyce*[16]). The plaintiff's breach must have caused him to suffer a damage of a foreseeable type (*Jones v Livox Quarries*[17] *Froom v Butcher*[18]). Damages are reduced by a larger extent when a plaintiff contributes to the accident (*Barrett v MOD*[19], *Revill v Newbury*[20]) and to a smaller extent when the plaintiff merely contributes to the damage *(Capps v Miller*[21]). Contributory negligence will only be imputed in when an employee contributes to an employer's property damage, and in no other instance. When there is more than one defendant, liability will be apportioned between the plaintiff and the defendants as a whole first, then between

[9] (2001) AC 360
[10] (1969) 3 AII ER 1621
[11] (1957) I WLR 1121
[12] (2008 2 AII ER 943
[13] (1951) 2 AII ER 398
[14] (1993) I SLR (R) 532
[15] (1966) 3 AII ER 398
[16] (1816) 171 ER 540
[17] (1952) 2 QB 608
[18] (1976) QB 286
[19] [1995] 1 WLR 1217
[20] (1996) 2 WLR 239
[21] (1989) 1 WLR 839

the defendants individually. As held in *Pitts v Hunt*[22] the notion of 100% contributory negligence is logically insupportable, despite the dictum of Moritt LJ in *Reeves* – because for a plaintiff to be contributorily negligent, it would require a prima facie duty and breach of standard on the defendant's part, which would require the defendant to bear some liability.

Ex turpi causa

10. Ex turpi causa non oritur actio (Latin "from a dishonorable cause an action does not arise") is a legal doctrine which states that a plaintiff will be unable to pursue legal remedy if it arises in connection with his own illegal act. As illegality is a complete defence at common law, courts require that the tort be proportionate to the illegality (*Revill v Newbury*[23]) and connected to the illegality in terms of severity (*Saunders v Edwards*[24]) and that the plaintiff understand that his act was illegal (*Clunis v Camden HA*[25] the mens rea for manslaughter is sufficient) before allowing the defence. In any case Yong CJ's dicta in *Ooi Han Sun* suggests that the defence in Singapore would only apply to joint illegal enterprises only – and examples of these include *Ashton v Turner*[26] (where the court refused to find a duty of care for two burglars who got hurt while in their get-away car) and *Pitts v Hunt*[27] (where the court refused to find a standard of care for two drunk men who were driving).

11. Where the defendants had a duty to prevent the act of the plaintiff, the illegality defence fails (*Reeves v Commissioner of Police of the Metropolis*[28]). A duty and a defence may fail because of policy reasons (*Vellino v Chief Constable of Manchester Police*[29]).

Volenti non fit injuria

12. The defence of volenti non fit injuria, being a complete defence, has been construed very strictly by the courts. The risk must have been freely consented to, and the injury suffered must be a result of the risk consented to. Employees are generally not regarded as having freely consented to the risks of employment (*Bowater v Rowley Regis Corporation*[30]) unless they show a blatant disregard for their own safety (*ICI v Shatwell*[31]). Rescuers are deemed to have been compelled by a sense of social or moral duty (*Baker v Hopkins*) and acting of their own free will, rendering the defence of consent inapplicable. In the rare situation where there is a duty to prevent self-inflicted harm, the defence will not succeed (*Reeves v Commissioner of Police for the Metropolis*[32]). In any case the UCTA, s2(1), has prohibited consent by contracting out, and the Motor Vehicles Act has struck the defence for all motor accidents. In other situations consent may be inferred from the plaintiff's actions (*Morris v Murray*[33] *Woolridge v Sumner*[34]*).*

13. For driving or flying incidents, the defence of consent will not apply where the UK legislation, the Motor Vehicles (Third Party Risks and Compensation Act) applies (*Nettleship v Weston*[35]). Also, the risk must genuinely be communicated and accepted by

[22] (1990) 3 AII ER 344
[23] (1996) 2 WLR 239
[24] (1987) I WLR 1116
[25] 1998 QB 978
[26] (1981) QB 137
[27] Same as 22
[28] (2001) AC 360

[29] (2002) I WLR 218
[30] (1944) KB 476
[31] (1965) AC 656
[32] (2001) AC 360
[33] (1991) 2 QB 6
[34] (1963) 2 QB 43
[35] (1971) 2 QB 691

the plaintiff (*Dann v Hamilton*[36]). Finally, where the activity was joint, and the plaintiff was not intoxicated to the extent of not knowing what is a risk, the defence of consent will apply – thought this is a rather subjective assessment of how intoxicated one is (*Morris v Murray*[37]).

14. For sports cases, atheletes are said to have consented to a certain amount and level of risk regarding physical injury and battery, but expect a level no higher than that. (*Smoldon v Whitworth*[38], *Vowles v Evans*[39], *Watson v British Boxing Board of Control*[40]). Spectators are said to have accepted a lowered standard of care due to the hazardous nature of the sport – and thus the defence of consent applies (Wooldridge v Sumner[41]). An international sports association (*Agar v Hyde*[42]) is less likely to be found liable for injury of players as compared to a local regulator of the sport (*Green v Country Rugby Football League of NSW*[43]).

Where Intervening Act of third party is lawful :

15. Obviously, where the act of the intervening third party is lawful, it would be futile for the defendant to argue that such an act has broken the chain of causation and therefore, he is not liable. This may be illustrated by few cases decided by Courts.

16. In *Harnett v. Bond*[44], the plaintiff who was an insane person was detained in a mental hospital. He was momentarily released to see whether there was any improvement in his condition. Immediately on release he straight away went to the Commissioner of the mental hospital who apprehending damages from him, phoned the Manager to come and take the plaintiff back in custody as he was not in a fit condition to be released. The Manager came after 3 hours and took custody of the plaintiff and put him in the mental hospital where he remained for nine years. Thereafter, the plaintiff escaped from the mental hospital and sued the Commissioner and the Manager of the hospital for false imprisonment. Held, custody of plaintiff for nine years was no doubt an intervening act of the defendants but it was a lawful act in View of the mental condition of the plaintiff, hence the defendants could not be held liable.

17. Where the intervention of a third party's act is anticipated by the defendant, the injury resulting from his act would be deemed to be the direct consequence, and he shall be held liable. In *R v. Moore*[45], the defendant was using his premises as shooting ground of pigeons. He was held liable for public nuisance by reason of damage caused to adjoining property by invading crowd. His defence that crowd's intervention had broken the chain of causation had been disallowed as he ought to have anticipated the crowd coming there for shooting pigeons.

Casual Connection between Wrong and the Injury.

18. Where there is no direct connection between the act of the defendant and the injury caused by it to the plaintiff, the defendant will not be liable. In other words, only casual connection between the wrong and the injury caused thereby shall not be enough to make the dependent liable. Thus in *Metropolitan Railways v. Jackson*[46], Jackson was a passenger in

[36] [1939] 1 KB 509
[37] As per 33
[38] [1996] EWCA Civ 1225
[39] [2003] EWCA Civ 318
[40] 2001 QB 1134
[41] 1963 2 QB 43
[42] 2000 HCA 41
[43] 2008 NSWSC 26
[44] (1925) AC 699
[45] (1932) 3 B & Ad 184
[46] (1877) 3 AC 19

a train. When the train stopped at a station, a crowd of passengers tried to board the train, hence the plaintiff Jackson came to the door to stop the entry of the crowd in the compartment. As the train moved, Jackson in order to prevent himself from falling down put his hand at the edge of the door. While he was standing at the door, a railway porter came and pushed the passengers inside the bogie and closed the door. As a result of this Jackson's thumb was badly crushed and got severely injured. The House of Lords dismissed the claim of Jackson against the defendant railway on the ground that the injury was too remote. It was held that although the railway had failed to prevent over-crowding but the railway employee's act of pushing inside the boarding passengers in order to shut the door was justified as the train was shortly to pass through a tunnel, hence doors could not be allowed to be left unclosed. It was further pointed out that the railway employee would have performed his duty of closing the doors of carriages even had there been only few passengers in the compartment, hence injury to plaintiff's thumb cannot be attributed to railway-man's negligence, on the contrary he was acting in performance of his duty.

Effect of Novus Actus Interveniens on Strict Liability cases.

19. There are certain situations when a person is held liable for the consequences of his act or omission irrespective of his negligence or non negligence. In other words, liability is imposed on him regardless of any fault. The rule in this regard was laid down for the first time in *Rylands v. Fletcher*[47], decided by the House of Lords in 1868. According to this rule, the plaintiff is not required to prove the negligence or lack of care or wrongful intention of the defendant. The category of cases in which the rule is generally applied is dangerous chattels, explosives, dangerous structures, dangerous animals, dangerous buildings or premises etc. Blackburn, J, in this case inter alia observed.

"If a person brings or accumulates on his land anything, which if it should escape may cause damage to his neighbours does so at his own peril, if it does escape and causes damage, he is responsible, however, careful he may have been, and whatever precaution he may have taken to prevent the damage".

20. In cases falling under the category of strict liability rule, if the defendant can successfully show that the cause of damage to plaintiff was some intervening act or event which broke the chain of causation between defendant's act and the damage caused, he will not be liable for want of proximity between his act and the resultant consequences. The case of *Perry v. Kendrick*[48], is an illustration on this point. In this case, a child of about 10 years of age threw a lighted match into the petrol tank of a bus which caught fire and caused damage. The defendant pleaded that escape of petrol was caused by the act of a stranger over whom he had no control. Parker, LJ. ruled, "once the defendants prove that the escape was caused by a stranger, whether adult or a child, they escape liability, unless the plaintiff (claimant) can go on to show that the act which caused the escape (petrol) was an act of the kind which the occupier could reasonably have anticipated and guarded against." The Court dismissed the plaintiff's claim on the ground that damages were too remote and the defendants were not liable.

Exceptions

21. It has been seen that Novus Actus of a third party's act or event absolves the defendant from liability because the chain of causation is snapped thereby rendering the damages too remote. However there are exceptions to the general rule-

i) Where the intervening event or act has been intentionally procured by the defendant.
ii) In rescue cases which involve plaintiff's assumption of risk in aid of someone in danger.
iii) Where the intervening act is in pursuance of duty.

[47] (1868) LR 3 HL 330
[48] (1956) 1 WLR 85

iv) Where the intervening act could be anticipated by the defendant.
v) Dilemma cases where the plaintiff is put in an awkward situation whether to act and thereby suffers damage or injury.

Conclusion

22. In the context of application of the rule of 'Novus Actus' I feel that it is hard to assume that a rescuer would not be justified in exposing himself to imminent danger in saving property, as he would do in saving human life. On the other hand some suggest that this seems to be a sound principle but there may be cases in which the rescuer encounters just as much danger in trying to preserve property as to preserve life. For example, where documents of great national importance or involving national security, no copies of which exist, are in danger of being removed, destroyed or tampered with, by natural causes by a human conduct of some person, the rescuer may be justified in putting his life in peril and in such cases rule of novus actus interveniens should not be allowed to be a pretext for the defendant to escape liability for his wrong doing.

END NOTES

Ratanlal and Dhirajlal's "The Law of Torts"

R.K Bangia "Law of Torts"

The Adelaide Law Review

Rediscovering the Law of Negligence By Allan Beever
http://www.legalserviceindia.com/articles/torts_s.htm