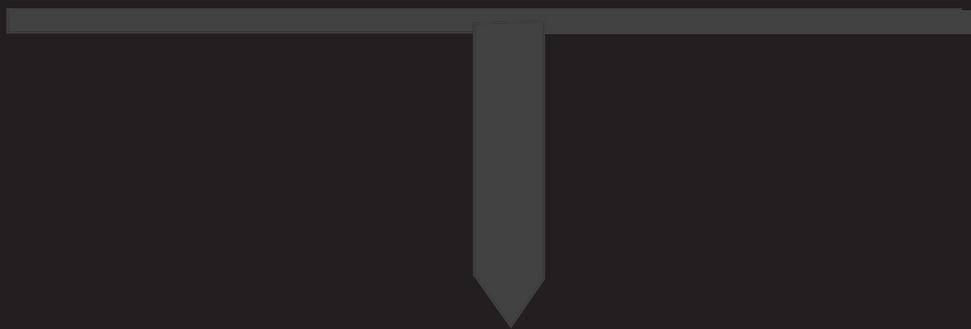




THE PRINCIPLES OF INSURANCE –  
PROXIMATE CAUSE

8





## 8. THE PRINCIPLES OF INSURANCE – PROXIMATE CAUSE

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### Introduction

Insurance Policies only provide cover for loss or damage if it is as a result of one of the perils listed in the Policy. Determining the actual cause of loss or damage is therefore a fundamental step in the consideration of any claim.

Proximate cause is a key principle of insurance and is concerned with how the loss or damage actually occurred and whether it is indeed as a result of an insured peril.

This section provides a definition of proximate cause and explains how it should be determined in practice.

### 8.1 Proximate Cause Definition

Proximate cause was defined in the case of *Pawsey v Scottish Union & National Insurance Company (1908)* as:

*“the active and efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source”.*



#### Activity

Use a dictionary to look up the meaning of the word Proximate. Look for other words in a thesaurus that might assist you in explaining the term proximate cause to a Policyholder or colleague.

The important point to note is that the proximate cause is the nearest cause and not a remote cause.

Unfortunately when a loss occurs there will often be a series of events leading up to the incident and so it is sometimes difficult to determine the nearest or proximate cause. Let us consider the following scenario:

Jim, a guitar player in a local band, **plays at a gig on a Sunday evening**. The gig goes well and an **encore is demanded** by the crowd. The encore is played but as a result Jim finishes later than he expected and **misses the train home**. Jim then has to take a bus home and **does not get to bed until 01:30 am**. In the morning he oversleeps due to tiredness and because he had **forgotten to put his alarm on**. Jim is now in a hurry and quickly makes his breakfast, including toast which **he puts under the grill**. **The postman then arrives** and rings the bell (Jim has normally left long before the postman arrives.) The postman engages in a **long conversation** with Jim who eventually returns to the kitchen to find that the **toast has ignited setting alight a tea towel**. The tea towel in turn has **scorched the kitchen table**.

Jim is not worried about the tea towel or the toast but submits a claim for the table. Fire is covered by the Policy and the proximate cause of the loss must be established. The cause of the loss could be:

1. Playing at the gig
2. The fact the encore was demanded
3. Missing the train home
4. Going to bed late
5. Omitting to set the alarm
6. The arrival of the postman
7. The long conversation with the postman
8. The ignition of the toast
9. The ignition of the tea towels.

Referring back to the definition in *Pawsey v Scottish Union (1908)*, we have to find the “active efficient cause that sets in motion the chain of events”. Arguably, playing the gig (1) set in motion the chain of events. Playing a gig is not normally an insured peril and so if that was determined to be the proximate cause there would be no cover for the damage to the table.

However, the definition in *Pawsey v Scottish Union (1908)* goes on “without the intervention of any force acting independently from a new and independent force”. All causes from 2 to 7 are new forces acting independently from new and independent forces so we can forget all prior causes in the chain. The ignition of the toast (8) and the ignition of the tea towels (9) are the closest causes and therefore appear to fit most comfortably with our definition in *Pawsey v Scottish Union (1908)*. They are not remote causes.

The decision now is whether the ignition of the toast and tea towels constitutes fire as meant by the Policy and, if yes, whether there are any relevant exclusions. (The definition of fire will be discussed later in the course but it can be noted that the fire peril has operated in this instance.)



### Activity

Review a sample of claims and look at the sequence of events leading to the loss or damage. Decide what the remote causes are, highlight new and independent forces and identify the closest cause. This will be the proximate cause.

## 8.2 Other Considerations

It is important to note that the proximate cause need not be the cause immediately before the loss or damage occurs. The last cause could simply be a link in the chain connecting the event with the proximate cause. For example, a fire might cause a water pipe to burst. Despite the resultant loss being water damage, the fire would still be the proximate cause of the incident.

## 8.3 Burden of Proof in Relation to Proximate Cause

In the majority of claims, the cause is obvious and so it is relatively easy to establish whether it is a peril covered by the Policy. Difficulties arise when there are exceptions in the Policy or when more than one cause has operated and not all are covered. As already

discussed, the proximate cause must be identified before it is possible to decide whether the loss or damage is covered by the Policy.

There is a general rule that applies to the burden of proof. The Policyholder must demonstrate that an insured peril has caused the loss or damage and, having done so, it is then for the Insurer to demonstrate the operation of any exclusion (if they wish to deny policy liability).

The situation is slightly different with an All Risks Policy. In this instance, the Policyholder need only demonstrate that damage has occurred to the insured property during the period of insurance. If an Insurer wishes to apply an exclusion, the Insurer must then prove that the cause was one of the excluded events.

If one or more perils have operated and one or more of these perils are covered by the Policy, the resultant loss or damage will be covered. However, in some cases that is not the end of the matter as different excesses may apply to the various perils concerned. You will then need to make a decision as to under which peril to pay the claim (and therefore which excess to apply). Be aware that your choice of peril can have repercussions for reinsurance or dual insurance matters.



#### Activity

Consider an escape of water claim. What types of proof could an Insured provide to demonstrate that the damage is as a result of an escape of water? Now do the same exercise for a storm claim.

## 8.4 Key Points to Remember

- You must establish proximate cause in order to decide whether a claim is covered by the Policy.
- Proximate cause is defined as *“the active and efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source”*.
- The Policyholder is required to demonstrate that an insured peril has caused the loss or damage claim. If the Insurer then wants to reject the claim, they must demonstrate that an exclusion applies.

