CRITICAL ANALYSIS OF 'NOVUS ACTUS INTERVENIENS' AND ITS APPLICATION IN INDIAN LAW

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ABSTRACT

The most important aspect of solidifying liability in tort law is the doctrine of causation. It is meant to establish a cause-and-effect relationship to prove that the plaintiff has suffered primarily due to the defendant's fault. Novus Actus Interveniens is the exception or defence used against such an established causation. The principle of the doctrine of causation is that an individual should not be unjustly blamed for an act which she did not directly cause. The issue at hand is the inconsistency and subjectivity employed in judgment when determining the applicability of this exception. This paper critically examines this exception to formulate a clearer and more reproducible definition of Novus Actus Interveniens for the Indian law of Torts.

Introduction

A tort is committed when an individual, D, breaches her duty of care and infringes the legal right of another individual, P. This means that D can only be held responsible if D's act (or omission) has a nexus with P's damage.

Correspondingly, the most important aspect of solidifying liability in tort law is the doctrine of causation. This doctrine refers to the direct link between the act, i.e. the defendant's conduct and the injury, i.e. the legal damage faced by the plaintiff. It is meant to establish a cause-and-effect relationship to prove that the plaintiff has suffered primarily due to the defendant's fault.

There is a possibility of the result deviating from the original chain of causation and causing possibly greater harm. This deviation may occur due to a new intervening act. Novus Actus Interveniens is the exception or defence used against an established causation. The principle of the doctrine of causation is that an individual should not be unjustly blamed for an act which she did not directly cause. This exception allows the defendant to prove that it is due to a new intervening act that the plaintiff has been injured.

Research Objectives

While there are numerous ancient foreign cases applying the legal concept of Novus Actus Interveniens, there is a dearth of current and Indian discourse on the maxim. This paper is meant to address this void through the following research objectives:

1. Foundation of the Doctrine of Causation and Analysis of Novus Actus Interveniens: Exploring and completely comprehending the doctrine of causation and its components of factual and legal causation. Establishing a foundational understanding of the same to be able to understand its method of defence. Understanding the origin and dissecting the logic by considering its primary test, i.e. Haber v Walker, and diverse types of application.

2. Critique of Novus Actus Interveniens overall: Recognising the disadvantages of this maxim due to its excessive subjectivity and other issues. Looking at examples of the same through discrepancies in different landmark cases.

3. Exploring the Indian Context and Comparison between India, the US and the UK:

Researching various Indian judgements using this exception and identifying the patterns of its application. Checking whether the inherent flaws of this maxim, as seen in UK and US precedents, are similarly present in India and to what extent. Noting the differences and deducing what problems are particularly disturbing in India.

Methodology

The goal is to understand the historical development of Novus Actus Interveniens, identify its inconsistencies and then derive a more apt formula. For the same, this paper uses a doctrinal method of research. This includes critically analysing various journal articles to understand the existing (albeit ancient) discourse on the matter and realise why and how it became what it is today. Moreover, the paper thoroughly examines relevant case judgments to allow holistic comprehension of the application of Novus Actus Interveniens and the complexities that arise in this practice. Secondly, the paper uses a comparative research approach to find similarities and differences in the concept of Novus Actus Interveniens in India with that in foreign jurisdictions such as the United States, the United Kingdom, Australia and Canada. Through this research, the paper deduces a deeper grasp of the exception and learns what India is doing better and what needs to be improved. The bifold research methodology intends to provide clarity and a learned position to this paper.

Literature Review

Since Novus Actus Interveniens is a highly debated and disorienting defence, there has been a decent amount of deliberation on the same by learned scholars and respected judges in the ancient past. Nonetheless, recent discourse is loudly lacking, and contributions specific to India are almost non-existent. Let us have a look at some of the background literature on this concept.

The basis of our current debate is in the doctrine of autonomy (Finis for Novus Actus?, 1989), using which we may or may not establish intervention by a third party (Third Party Intervention in Tort, 1986). This concept universally relies heavily on the doctrine of causation, and just as any other legal exception, it has its own exceptions (Novus Actus Interveniens: The Interplay Between Intention, Consequences, and Liability in Tort Law, 2022). However, we can recognise that there is a huge concern of wide discrepancy seen in many landmark judgements applying Novus Actus Interveniens (Novus Actus Interveniens: A Comprehensive Study, 2023).

Most of this discrepancy occurs because of confusion on how to recognise a new intervening act (Analysis of the Wagon Mound Case: Overseas Tankship UK LTD. vs Morts Docks Engineering Company, 2022). Although great deliberation finally established a mandate to look at foreseeability, we can still see a severe lack in reliability of the test of remoteness of damage (A review of The Law of Intervening Causation, 2010). Different applications in the same circumstance show us that foreseeability is still confusing (Foreseeable Act as Novus Actus Interveniens, 1970). Courts tend to reason based on their personally decided levels of abstraction, which is too individualistic (Foreseeability of Injury and Remoteness of Damage, 1962). Some scholars believe that it is foolish to expect the foresight principle to bring any improvement (Foresight and Remoteness of Damage in Negligence, 1962). Even relatively recent discourse cannot define foreseeability (*Risk and Remoteness of Damage in Negligence,* 2001).

If we make a comparison of earlier judgments and now, we do not see much growth. Judgements of the past were naturally confused, but they were also extreme and unjust (Rylands v Fletcher: Liability for Personal Injuries, Defence of Novus Actus, 1956). Today's application, however, continues this monumental injustice. Correspondingly, some foundational ideas, such as those suggested by the seminal work on Novus Actus Interveniens, i.e. Glanville's 'Finis for Novus Actus?', finally reject the impractical definition for autonomy (NOVUS ACTUS and Beyond: Attributing Causal Responsibility in the Criminal Courts, 2021).

Criticism has also been made of the monocausal approach of Novus Actus Interveniens (A review of The Law of Intervening Causation, 2010). There may be a mentor in the concept of contributory negligence and its division of liability, as enforced by apportionment legislation (Apportionment of Damages for Contributory Negligence: The Causal Potency Criterion, 2016).

When it finally comes to formulating a concrete definition, the idea of an 'imputable cause' sticks out (*Finis for Novus Actus?, 1989)*. Moreover, foreseeability remains something which certainly cannot be rejected because of its fundamental position in Tort law (*The Foreseeability Factor in the Law of Torts,* 1932).

Doctrine of Causation

Let us first understand the basis of tort liability: the Doctrine of Causation. This is what

establishes the nexus, i.e. a cause-and-effect relationship between the defendant's act and the plaintiff's damage. Such a relationship is established using two components: factual causation and legal causation.[1]

Factual causation refers to whether the defendant's act was a necessary condition for the damage to occur. The frame of questioning follows as: would the plaintiff still have faced damage *but for* the defendant's act? In other words, if the defendant had not acted (or omitted) wrongfully, would the plaintiff still have suffered damages? This question is quite broad and can have many different factors which are 'necessary conditions,' including natural factors and voluntary behaviours of many insignificant actors.

The second element is legal causation. This considers proximate causation and studies the directness (or remoteness) of damage and may consider the defendant's foresight. Legal causation is based on the principle that only an individual who is substantially or operatively responsible for the damage should be held responsible. It aims to ensure that the liability is fair and justified.

We can understand that the doctrine of causation is crucial when determining liability because it is the only way to understand whether the defendant is actually the one responsible for the plaintiff's complaint.

Novus Actus Interveniens

When there is a new intervening act or event which breaks the nexus between the defendant's act and the plaintiff's damage, then it is said to be a case of Novus Actus Interveniens.[2] The new intervening act needs to be something that deviates from the original effect the defendant had caused and leads to some new effect, i.e. the plaintiff's actual damage. The new act usually absolves the defendant's liability, as the actual responsibility falls on the new act. Typically, the intervening event is either an act of a third party, an act of god (natural occurrence) or the victim's act.

When the court attempts to establish whether the new act is actually intervening or not, it may

[1] Rakshith Mukund, *Novus Actus Interveniens: The Interplay Between Intention, Consequences, and Liability in Tort Law*, 2 JOURNAL OF LEGAL RESEARCH AND JURIDICAL SCIENCES 1611, 1612-1620 (2022).,
[2] Iza Eldita Lobo, *Novus Actus Interveniens: A Comprehensive Study*, 5 INDIAN JOURNAL OF LAW AND LEGAL RESEARCH 2788, x (2023).

consider two tests.[3] The first one checks whether there was a duty owed by the defendant to the plaintiff.

Lord Reid in Home Office v Dorset Yacht Co.[4] established that a duty may be derived from a special relationship held between the defendant and the intervening actor such that the defendant is responsible for preventing damage from the new act. However, if there is no such relationship, i.e the new act is done by another factor unknown to the defendant, then the defendant is not liable. The same was proved in Lamb v London Borough of Camden[5] and P. Perl Exporters Ltd. v Camden London Borough Council[6]. At the same time, there may be found a special duty to prevent interference from a new act wherein the defendant will be liable for not taking enough measures to disallow interference, as proved in Holian v United Grain Growers[7] and Patel[8]. Additionally, there may be a scenario where the defendant does not complete her original known duty, which leads to an intervention, and the damage from said intervention is the responsibility of the defendant, according to Hedly Byrne v Heller.

The issue is that the establishment of these duties is neither concrete nor defined. It becomes a subjective whim of the court to declare or deny the existence of a duty owed. Let us consider this with an illustration. The case of Patel talks about a coach driver who parked the company bus near his home every day. His house was on a hill, and there was a defective lock on the driver's side. One night, a one-of-a-kind mischievous third party released the brakes of the bus, which made it roll down into the plaintiff's dining hall. Herein, Patel was held liable. On the other hand, the case of Lamb talks about contractors who damaged the plaintiff's house by negligently digging into a water pipe. The water damaged the foundation of the house, so the plaintiff needed to vacate the house. In the meantime, the unattended house was trespassed into by squatters who damaged the furniture in the house. Herein, the contractors were not held liable. However, this does not make sense because in both cases the damage to the plaintiff is being caused by a third party taking advantage of the defendant's failure to properly maintain his duty of care.

The second test is the test for remoteness. This aspect checks whether the eventual damage

[3] Paul Brown, *Third Party Intervention in Tort*, 3 CANTERBURY LAW REVIEW. 101, 101-115 (1986).
[4] [1970] 2 All E.R. 294
[5] [1981] 2 All E.R. 408
[6] [1983] 3 All E.R. 161
[7] [1980] 112 D.L.R. (3d) 611
[8] Patel v De Boer Unrep. H.C. Wellington, 19 June 1985

caused was foreseeable to the defendant and thus falls in the chain of causation initiated by the defendant. It needs to be noted that foreseeability is distinct from intent because intent requires a desire for the consequences, whereas foreseeability only focuses on knowing the consequences. If there is no foreseeability for the eventual damage, then it can be said that the damage is too remote from the defendant's conduct and is therefore not a result of the defendant's act. The liability congruently shifts to the intervening act, which is from where we can establish foreseeability of the final result. There has been a great deal of debate about the concepts of 'remoteness' and 'foreseeability', and it forms the main crux of contention for understanding Novus Actus Interveniens.

Foreseeability as a test for Novus Actus Interveniens

We look at foreseeability because there is no end to the consequences from an act, and those same consequences may lead to further consequences and so on. It is impractical and unjust to hold the defendant responsible for infinite consequences.[9] Hence, the proximity, i.e. the relationship between the act and the consequence, needs to be looked at to establish liability following the doctrine of causation. This relationship is very situational and is decided by the concerned court.

Let us first understand the development of this test. Four judgments hold importance in deciding the position of foreseeability as a test for Novus Actus Interveniens.

The first is Re Polemis and Furness, Withy & Co Ltd.[10] The case maintained the preexisting test of rule of directness. Here, the defendant had chartered a ship containing benzene petrol in tins which ended up leaking and collecting into the holds of the ship. The defendant's servant's negligence led to a plank falling in the hold, leading to a spark which caused the ship to be destroyed. The plaintiff (owners of the ship) were entitled to damages because it was a direct result of the defendant's act. The rule of directness states that the defendant was responsible for all direct consequences of her act, regardless of the foreseeability of the act. The justification was that the damages were not too remote; however, this explanation was not defined.

[9] Uma Shanker Mishra, *Analysis of the Wagon Mound Case: Overseas Tankship UK LTD. vs Morts Docks Engineering Company*, 2 INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW. 888, 888-902 (2022).
[10] [1921] 3 KB 560

Secondly, the case of Wagon Mound (No. 1)[11]. Herein, the ship was chartered by the defendant and was taking fuel oil when a lot of the oil spilt out onto the water. Soon, the oil drifted away and reached the plaintiff's wharf, which was engaged in welding. The plaintiff had assured that it was safe to continue the work despite the oil-laden water. At one point, a hot piece of metal from the welding operation flew and fell into the water, which, through some unknown circumstance, ignited the oil, and the fire destroyed the wharf. It was held that this was a case of Novus Actus Interveniens. The Privy Council decided that Polemis was not just. They decreed that a test of remoteness needs to be established based on the logic that the defendant is liable only for those consequences which could have been foreseen by a reasonable person placed in the defendant's circumstances.

The next landmark development came from Haber v Walker.[12] Herein, the defendant had, by his negligence, severely injured the plaintiff's husband. Due to the husband's pain, he ended up becoming 'insane' and hung himself. The contention was whether the defendant was liable for the death. The respected judge proposed that an intervening act severs the causal connection if it is either a voluntary human action or a coincidental independent event. The court decided that the husband's act to hang himself was not voluntary due to his state of insanity and thus did not count as an intervening act. Moreover, since the state of insanity was a direct consequence of the defendant's accident, the defendant is liable for the hanging. This follows a reasoning of if C was caused by B and B was caused by A, then A has caused C. Critics say this is not sufficient for rejecting Novus Actus Interveniens since the test of foreseeability has not been considered. Interestingly, the court here decided that once the causal relationship has been established, the question of foreseeability is no longer relevant (thus rejecting Wagon Mound). Furthermore, even if the question of foreseeability is to be considered, then this case established that the foresight required need not be exact because that is impossible.[13] Unfortunately, what level of exactness is possible was never clarified.[14]

Finally, another landmark case is Knightley v Johns[15]. Herein, the police had come to a crime scene but forgot to close the entry to that tunnel. A superior police officer instructed the plaintiff to drive down the tunnel against the flow of traffic. The defendant was driving in the tunnel

[11] Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (The Wagon Mound) (No. 1) [1961] AC 388
[12] [1963] VR 339
[13] Goodhart, *Liability and Compensation*, 76 LAW QUARTERLY REVIEW. 567, 582 (1960).
[14] *Case Notes Haber v Walker*, 4 MELBOURNE UNIVERSITY LAW REVIEW. 398, 398-402 (1964).
[15] [1982] 1 W.L.R. 349

improperly and collided with the plaintiff, who came from the opposite direction. It was held that, indeed, the defendant could foresee that a crime scene suggests that the police may take certain odd measures, and so he should not drive negligently. However, the defendant could not have foreseen such an extreme departure from common sense and procedure to the point that a policeman would drive the opposite way. Therefore, the police's order to go the opposite way was considered Novus Actus Interveniens. Here we can see that a major component of judgment is foreseeability, even though the same had been rejected by Haber v Walker.

It can be derived from this inconsistency that remoteness needs to precede establishment of duty.[16] As established, remoteness refers to foreseeability, and duty is the obligation to avoid foreseeable harm. It becomes difficult to establish duty in respect to a certain damage when the damage is too remote, because when the damage is too remote, then it is unforeseeable, and if it is unforeseeable, then there cannot be an expected duty to avoid the unforeseeable damage. However, a lack of duty due to remoteness of damage does not work conversely in the sense that proximity of damage assures duty. Therefore, both components are significant and need to be tested separately.

Contentions

As we can see, the biggest problem facing the use of Novus Actus Interveniens is the subjectivity. It becomes incredibly difficult to accept or reject the defence because often the scope of liability is based on the normative judgement of the court.[17]

A glaring example of this subjectivity is when the same circumstance is interpreted in two different ways. For example, a plaintiff suffering a further leg injury while descending a staircase due to a disability arising from the first injury, i.e. the original tort. In Wieland v Cyril Lord Carpets Ltd.[18], it was decided that the defendant was liable for the subsequent injury as well. To reject the claim of foreseeability, it was said that victims of one injury resulting from the original injury are wholly entitled to recover from the defendant. This uses the same logic as Haber v Wade, wherein if C is caused by B and B is caused by A, then C is caused by A. Secondly, it was held that the fall was foreseeable because it is obvious that one injury may affect the individual's daily life. Contrastingly, McKew v Holland & Hannen & Cubittis

[16] Paul Brown, *Third Party Intervention in Tort*, 3 CANTERBURY LAW REVIEW. 101, 101-115 (1986).
[17] Mark Lunney, *A review of The Law of Intervening Causation by Douglas Hodgson*, 21 KING'S LAW JOURNAL. 411, 411-416 (2010).
[18] [1968] 3 All ER 1006

(Scotland) Ltd.[19] held that the defendants were not liable for the second injury because it was not foreseeable and the plaintiff's decision to walk unassisted was Novus Actus Interveniens. We can clearly see that even though both circumstances were quite similar, the foreseeability test gave different results. This renders the concept of foreseeability inherently confusing.[20]

Another concern is the reasoning given to justify this subjectivity, i.e. the level of abstraction concept. In Wells v Sainsbury & Hannigan Ltd.[21] decided that though the actual injury suffered by the plaintiff may not have been foreseen, a general injury could have and that is sufficient for placing liability on the defendant and rejecting the defence of Novus Actus Interveniens. An explanation for what generality needs to be considered was derived from Denning L.J in King v Phillips[22], which essentially proposed that the highest level of abstraction is required. Even Smith v Leech Brain & Co. Ltd.[23] placed liability on the defendant due to the foreseeability of general injury. Unfortunately, this relates to Haber v Walker and the level of abstraction chosen to determine adequate foreseeability becomes highly subjective and deceptive.

Many learned professors believe that the foresight principle is not reliable at all[24] and that it becomes impossible to accurately define foreseeability.[25]

To narrow down the scope of Novus Actus Interveniens, when a consequence can be attributed to separate qualified and informed agency then the original agent is absolved of liability. However, even when Novus Actus Interveniens is distinguished to be a voluntary act only, there are still more complexities. This is because the definitions of voluntary and information are not concrete. We can see this in Roberts[26] where the plaintiff's reaction to jump out of a car when told to undress was considered Novus Actus Interveniens because it was too 'daft.' On the other hand, in Blaue[27], a religiously motivated refusal to get a blood transfusion was not considered

[19] [1969] 3 All E.R. 1621
[20] D. B. Casson, *Foreseeable Act as Novus Actus Interveniens*, 33 THE MODERN LAW REVIEW. 450, 450-453 (1970).
[21] [1962] N.Z.L.R. 552
[22] [1953] I Q.B. 420, 441.
[23] [1962] 2 W.L.R. 148
[24] Douglas Payne, *Foresight and Remoteness of Damage in Negligence*, 25 MODERN LAW REVIEW.1, 21-22 (1962).
[25] Marc Stauch, *Risk and Remoteness of Damage in Negligence,* 64 THE MODERN LAW REVIEW. 191, 191-214 (2001).
[26] [1971] 56 Cr.App.R.
[27] [1975] 1 W.L.R. 1411

Novus Actus Interveniens. Thirdly, in Kennedy (No. 2)[28], there was a debate over whether requesting drugs was voluntary or not, simply due to the possibility of addiction.

India

Indian tort law, fortunately, has no confusion over the necessity of establishing foreseeability. Yet, the concern remains of excessive subjectivity and abstraction in understanding the same. Moreover, Novus Actus Interveniens seems to be less commonly used in India, primarily being limited to medical negligence. In addition, while tort law is used in India as a quicker and simpler alternative to criminal law, Novus Actus Interveniens may add cost and complicate the matter, which requires more time. This could explain the aversion to applying this defence in India, where most of the civil courts do not have the time or the resources to conduct a great level of investigation. We can see in many cases, the defence is often rejected or accepted through the judge's deductive reasoning simply because there is a lack of evidence to establish the presence or lack thereof.

In Rajkot Municipal Corporation v Manjulben Jayantilal Nakum and Others[29], the corporation was not held liable because a roadside tree suddenly falling was considered Novus Actus Interveniens and the corporation had no duty to take precaution and maintain the health of said trees.

In Dr. Usha Sharma v State of Delhi[30], due to a lack of evidence to prove or deny the defendant's negligence, the conditions at LNJP hospital were considered Novus Actus Interveniens.

In M.V. Kew Bridge v Finolex Industries,[31] the judge employed the doctrine of remoteness of damage and stated that a ship's grounding had happened due to interference by bad weather. The plaintiff's claim was rejected as his damage was too remote from the defendant, and many others may have suffered just as remotely, so an acceptance of his claim would lead to endless claims.

In Oriental Insurance Company Ltd. through Branch Manager vs Sukyarnin and Others[32], again, there was a lack of evidence regarding the cause of the final result. Instead of absolving

[28] [2007] UKHL 38, [2008] 1 A.C. 269
[29] [1997] 9 Supreme Court Cases 552
[30] [2006] SCC OnLine Del 1410 : (2007) 51 AIC 813 (Del)
[31] [2014] SCC OnLine Bom 618 : [2014] 4 AIR Bom R 639 : [2014] 7 Bom CR 261
[32] [2024] SCC OnLine Chh 7750

the plaintiff of liability as in Dr. Usha Sharma, the court held the original tortfeasors liable following the same causal reasoning stated in Haber v Walker. As we understood, abstraction tends to be highly subjective.

In E.A. Mansoor Ali v Additional Chief Secretary Municipal Administration and Water Supply Department and Others[33], the victim's 'unreasonable behaviour' was considered Novus Actus Interveniens. However, one may wonder if it is not foreseeable that leaving a manhole unattended and improperly sealed could lead to some abstract injury in the classic flooding of Indian monsoons.

Conclusion and Policy Recommendations

The aforementioned proves to us that Novus Actus Interveniens as a defence is indeed extremely subjective and highly unpredictable despite the guiding principles used when approaching such cases. This paper will now suggest a firmer and more reliable approach, ideally to restart exhaustive discussion on this matter.

First, we should universally accept that foreseeability is a must.[34] The defendant should be able to predict and expect the plaintiff's damage from her act. If the damage cannot reasonably be predicted then she should not be held liable for the same. Moreover, as we previously established, foreseeability must precede the establishment of duty. Impressively, India has already addressed these two concerns to some great extent.

Second, the biggest issue: subjectivity in determining foreseeability. This paper proposes to eliminate the concept of 'different abstraction levels' in understanding causation and simply consider the nearest cause in the chain of events. If the cause just preceding the event constitutes an independent tort, typically negligence, and the defendant is responsible for this cause, then she may be held liable. However, if the immediate cause, i.e. most substantial and irreplaceable cause, is not belonging to the defendant but is actually produced by an intervening act or event, then the defence of Novus Actus Interveniens should be applied. This concept of irreplaceable cause is derived from Williams' concept of 'imputable cause' (Finis for Novus Actus?, 1989). If we do not limit our perspective to the most immediate cause, then we risk

[33] [2025] SCC OnLine Mad 4829
[34] Fowler V. Harper, *The Foreseeability Factor in the Law of Torts,* NOTRE DAME LAWYER. 468, 468-467 (1932).

punishing an individual for the Butterfly Effect, i.e. small change in one small aspect leading to infinite changes and chaos.

For illustration, in Haber v Walker, the defendant was held liable for the plaintiff's husband's suicide, which is already one step removed from the defendant's causation. If we consider a realistic hypothetical wherein the husband had died by jumping from a building and had landed on a car, would the defendant be liable for this car's damage? Furthermore, if the car had an individual inside who got hurt, would the defendant be liable for this, too?

The third suggestion is removing the extremeness of Novus Actus Interveniens. It is unnecessary to absolve an individual of liability completely, and this makes a judge more hesitant to allow this defence. We may use a polyliability approach and apportionment[35] i.e. holding both the defendant and the new intervening act responsible for the final consequence. To determine the division of liability, we must trace forward from the actor's deviance (blameworthiness) instead of tracing back from the eventual outcome (causal potency).

While this field is puzzling and discussion may be difficult, we need to remember that Tort is a law of deliberation. It is inherently subjective to some extent because of its case-by-case application. Nonetheless, the only way to balance the probabilities is to continue the deliberation and to understand the intricacies of even the most baffling aspects, including Novus Actus Interveniens.

[35] James Goudkamp & Lewis Klar, *Apportionment of Damages for Contributory Negligence: The Causal Potency Criterio*n, 53 ALBERTA LAW REVIEW. 849, 849-862 (2016).