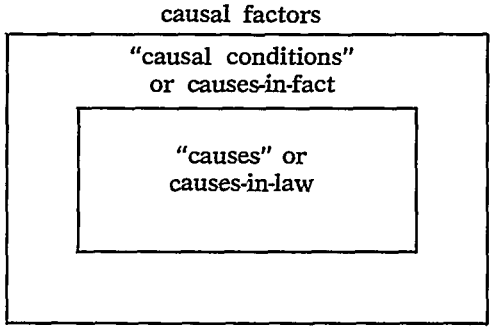
A Diagramatic Approach to Causation

It is proposed that causation problems may be analyzed more readily by use of a series of diagrams. This will involve identifying the various legal rules which govern causation and the typical fact patterns to which these may apply, and then representing these diagramatically. By use of these diagrams one should be able to predict with some accuracy the analysis a court is likely to adopt in relation to any particular causation problem and hence the result it will probably attain in this respect.

Firstly, one must distinguish two entities, causation-in-fact, or, as it is sometimes called, the *causa sine qua non*, and causation-in-law, or *causa causans*. The former may be referred to as causal conditions, the latter as "the cause or causes".[1] Further, causal conditions may be distinguished from what I will call causal factors, those elements of the "cause-in-fact" which are considered so remote in time, space, or relationship to the effect of which a cause is sought, that they are ignored as a cause. As a tentative suggestion, it may be that what distinguishes a causal condition from a causal factor, is that the former exists because the defendant has in some way been instrumental in altering the latter. Clearly then, causal factors are a wider category than causal conditions, which are wider than causes-in-law. Thus, a selection process occurs at three stages which will be represented in the following way:



This diagram may then be further modified to accomodate rules regarding the cutting-off of liability of the defendant, even though his act may have been the cause-in-law. These may be regarded as

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[1] See Fleming, *The Law of Torts* 5th ed. (1977), 179 *et seq.*

rules on remoteness of damage, as distinct from rules on causation. Although the two are often treated as one, I submit that a more precise analysis may be achieved by separating them. The rules determining whether there is causation-in-law are the ones requiring directness,[2] or foreseeability,[3] or foreseeability and directness[4] of that type of damage for its recoverability by the plaintiff from the defendant. The rules on remoteness may be regarded as those regulating the extent of the damage which is recoverable, for instance under the "thin-skull" doctrine,[5] or requiring some degree of foreseeability of the way in which the damage occurred.[6] Although the dividing line between the two proposed categories of causation-in-law and remoteness is vague, it may be considered analogous to the distinction between duty of care and standard of care. The former concept Fleming describes as "more appropriately reserved for the problem whether the relation between the parties ... warrants the imposition upon one of an obligation of care for the benefit of the other ...",[7] that is, as reserved to the *general* legal formulation of the policy to be implemented. The standard of care, on the other hand, is to be used "to deal with individual conduct in terms of the legal standard of what is required to meet that obligation",[8] that is, the latter is the application of policy in the *particular* circumstances. Similarly the plaintiff must surmount the general threshold requirements for showing causation-in-law, which, on the whole, are objective factors and then must fulfil all the particular recoverability conditions applicable in the situation, which often tend to be more subjective factors, as, for example, recovery under the "thin-skull" principle.

Thus I suggest that although there are apparently precise substantive principles of law applicable as one moves from one stage in the analysis to the next, these are but frameworks into which policy considerations may be introduced in order to be taken into

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[2] *In Re An Arbitration Between Polemis and Furness, Withy & Co.* [1921] 3 K.B. 560 (C.A.).

[3] *The Wagon Mound (No. 1) Overseas Tankships (U.K.) Ltd* v. *Morts Dock & Engineering Co.* [1961] A.C. 388, 1 All E.R. 404 (P.C.).

[4] *Gypsum Carrier Inc.* v. *The Queen* (1977) 78 D.L.R. (3d) 175 (F.C.T.D.).

[5] See *Smith* v. *Leech Brain & Co.* [1962] 2 Q.B. 405, [1961] 3 All E.R. 1159; *Malcolm* v. *Broadhurst* [1970] 3 All E.R. 508 (Q.B.).

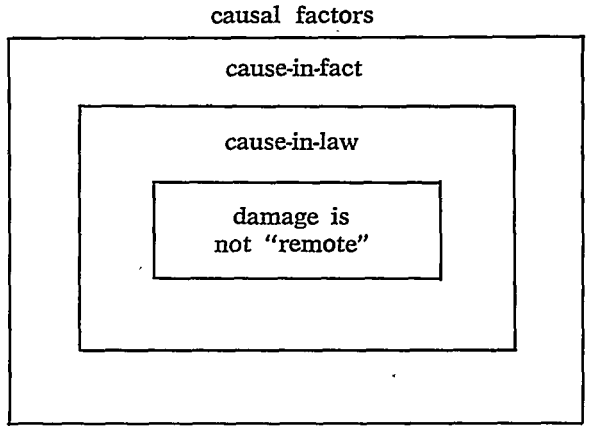
[6] See *Doughty* v. *Turner Manufacturing Co.* [1964] 1 All E.R. 98 (C.A.) and *Hughes* v. *Lord Advocate* [1963] A.C. 837, 1 All E.R. 705 (H.L.).

[7] *Supra*, note 1, 106.

[8] *Ibid.*, 106-7, citing Morison and Fleming, *Duty of Care and Standard of Care* (1953) 1 Syd.L.Rev. 69.

account in decision-making. I submit that the type of division proposed will result in more consistent and comprehensive analysis, carried out on the basis of a fuller and more adequate range of decision-making factors, while allowing the maximum of flexibility.

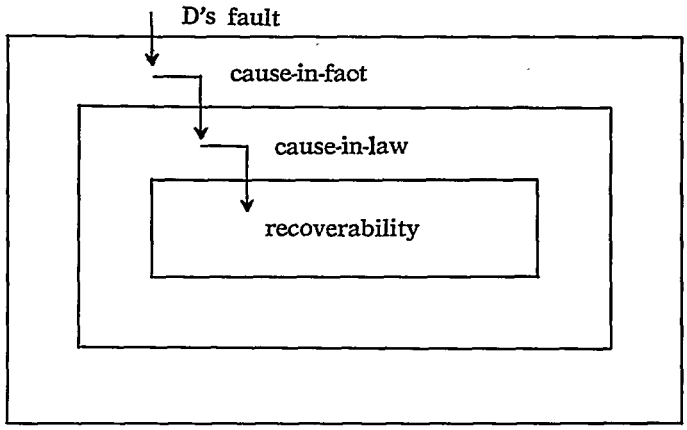
Thus, the diagram may be modified:



and it is only within the inner square that the plaintiff has a right of recovery.

I. Single Cause

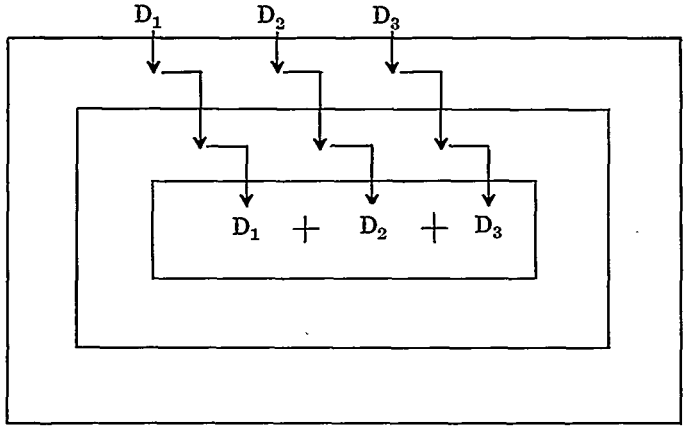
A. *Where one defendant commits an act which breaches the duty that he, as a reasonable man, owes to the plaintiff in those particular circumstances, and the plaintiff suffers injury as a result of the breach, then the situation may be represented as follows:*



The determining factors are: Did D, really as a question of common-sense, cause the damage in fact; is this regarded as a cause-in-law, that is, was this risk of damage "reasonably foreseeable" and "but for" the defendant's act would the damage have occurred; and to what extent is the damage recoverable, as not being too remote?

II. Multiple Causes

A. *Where the damage is not divisible and the defendants are concurrent tortfeasors:*



The test for determining the liability of each defendant is: Would the act of that defendant taken apart from the acts of the other defendants have caused, or "materially contributed"[9] to the damage, assuming the other acts had not occurred? This is often referred to as the "but for" test, that is, but for the act of the defendant, which it is alleged is a fault, would the damage have occurred? If the answer is no, then that defendant's act is a cause, if yes, it is not a cause, with the proviso, in the latter case, that it may rank as a cause if it "would have been necessary to produce the damage if no other conditions sufficient to produce it had been present".[10]

Here, where the damage is not separately attributable to the act of each defendant, all defendants will be both jointly and severally liable for the totality of the damage.

B. *Where the damage is divisible and the defendants are concurrent tortfeasors:*

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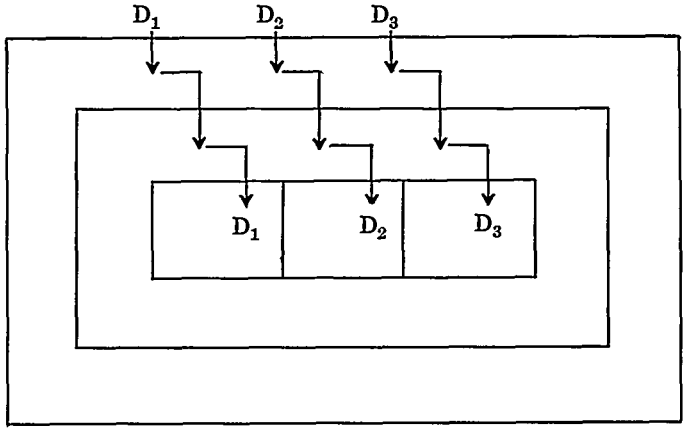
[9] See *McGhee* v. *National Coal Board* [1972] 3 All E.R. 1008, 1010 (H.L.) *per* Lord Reid.

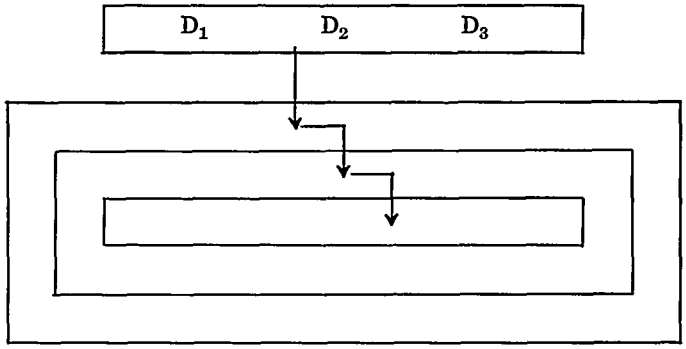
[10] See Fleming, *supra*, note 1, 182.



In this situation each defendant will only be severally liable for his part of the damage, which may be apportioned according to relative culpability[11] or the extent to which each defendant's act is responsible for the damage, according to what the court deems is "just and equitable".[12]

Thus, in either of situations A or B, any one defendant could escape liability at any step along the chain. This should be contrasted with the following situation where D_1, D_2, and D_3 are joint tortfeasors, when the liability of one will involve the liability of all.

C. *Where the defendants are joint tortfeasors — that is, where they are "acting together"[13] in some common enterprise and the concurrence is not exclusively in the realm of causation — causation may be represented as follows:*

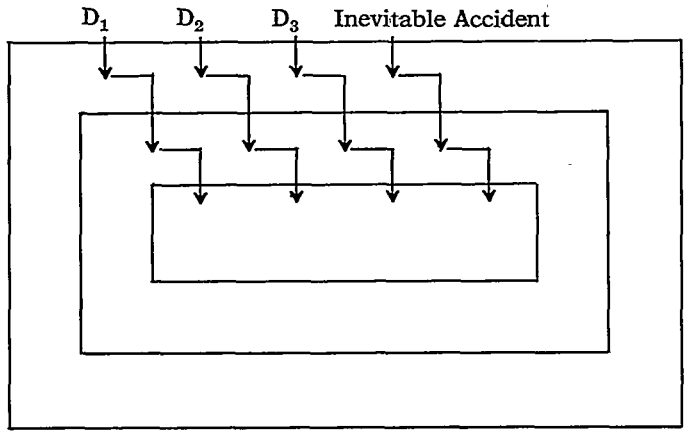


[11] See, *e.g., The Negligence Act*, R.S.O. 1970, c.296, s.2(1).

[12] See the *Law Reform (Married Women and Tortfeasors) Acts, 1935*, 1934-35, 25 & 26 Geo. V., c.30, s.6(2).

[13] See *Arneil* v. *Patterson* [1931] A.C. 560 (H.L.) and Fleming, *supra*, note 1, 237.

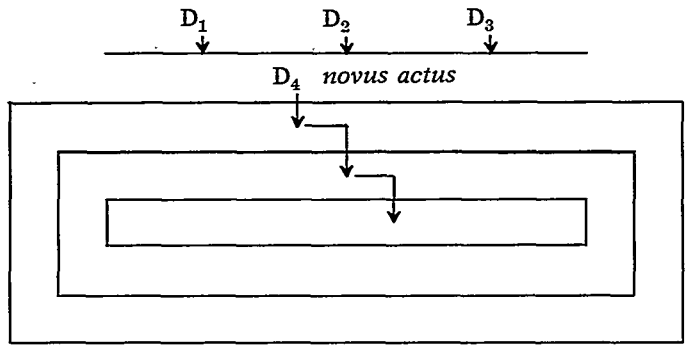
D. *Where an inevitable accident is one of the causes of the damage:*



Here, if the damage is *not* divisible, situation A,[13a] applies and the three defendants will be jointly and severally liable for the whole damage. If, on the other hand, the damage is divisible, then the situation will be governed as in paragraph B above, and the "inevitable accident" will take its share of the liability, thus lifting the compensatory burden, to this extent, from the defendants.

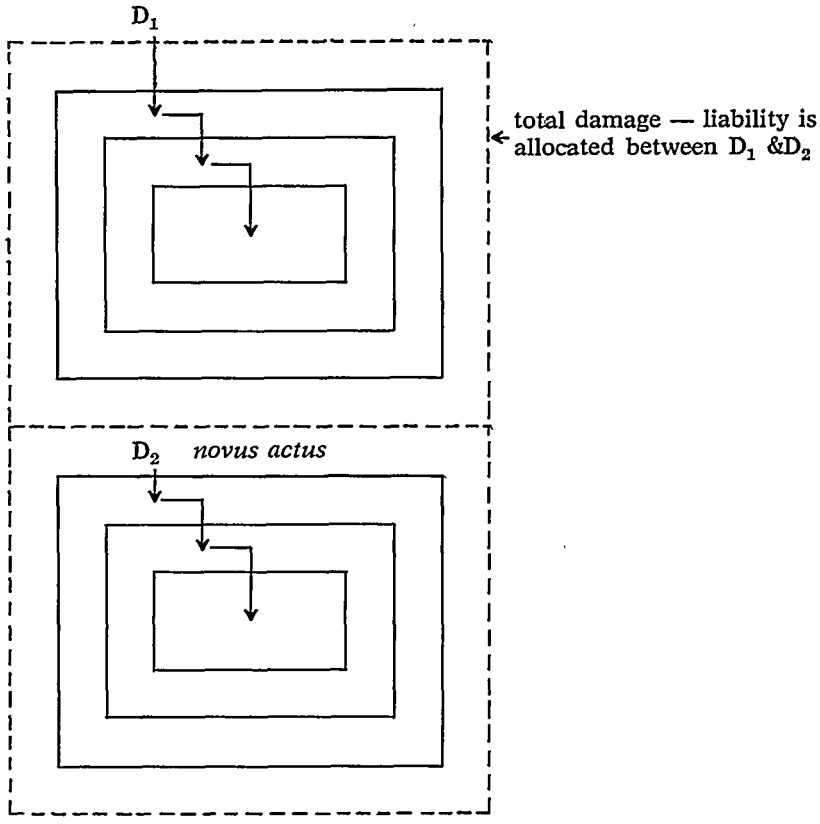
E. *Where there is a novus actus interveniens, three possibilities exist:*

(i) The liability of each defendant will be cut off if the *novus actus* is held to be the sole cause of the damage suffered. This may be represented as follows:



[13a] See *supra*, p.445.

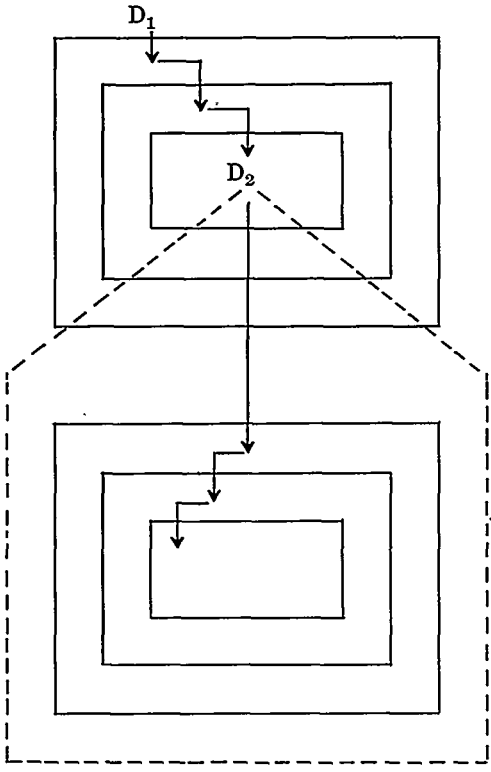
(ii) Where the *novus actus* is a cause, but not the sole cause of the damage,[13b] then the attribution of liability changes as shown:



(iii) However, if the *novus actus* would have been foreseeable to the reasonable defendant, D_1, as occurring within the area of risk which he created by his act, then the putative *novus actus* may be designated as simply one step in the causal sequence generated by D_1's fault.[14] D_1 will then be liable for any damage arising from his fault, according to the usual rules on duty, breach, damage and causation. This may be illustrated, where the alleged *novus actus* is a second damaging event, as follows:

[13b] It is debatable from a terminological point of view, whether an act should be described as a *novus actus* when it does not cut off the whole of the damage-causing effect of the other (possibly) causative act. However, to classify the situation as *novus actus* aids the analysis.

[14] See *Thompson* v. *Toorenburgh* (1972) 29 D.L.R. (3d) 608 (B.C.S.C.) and *The Oreposa* [1943] P. 32 (C.A.), especially Lord Wright, *ibid.*, 39.



It is impossible to formulate precise rules which will predict which of these three possibilities a court will choose to apply in any particular circumstances, but it is suggested that there are two major factors influencing the choice. These are firstly the relative time sequences of both the wrongful acts and their resulting infliction of damage and secondly the likelihood of the second damaging act occurring. For instance, situation (i) can only apply where the *novus actus* causes damage before any of the other wrongful acts do so. Situation (ii) requires some damage to be inflicted by D_1 before liability for further damage is terminated by the *novus actus*. In situation (iii), in comparison with the other two, neither the time sequence of the wrongful acts, nor of their respective infliction of damage, is significant, but the likelihood of the second damaging act occurring is, as D_1 must be able to be deemed as a reasonable man to have foreseen the total risk which he was creating, which includes the second damaging act for which he is then liable. It may be that this lack of significance of time factors in situation (iii) is what, in fact, characterizes it. In other words the court, in order to achieve what it sees as a just resnlt, will depart from the sequential time based analysis which it uses in situations

(i) and (ii), through the mechanism of applying a test of "reasonable foreseeability", enabling it to achieve a result which a time based analysis would block and further, will allow this without apparent overt inconsistency with other precedents. Thus the court's *choice* of result is hidden in that the analysis used leads to a predetermined result and the fact that this analysis is *chosen* is not always readily apparent.

A variation of the analysis which may otherwise apply to determine whether a first accident is the cause-in-law of a second, may be found in those circumstances where there is an allegation that the plaintiff's contributory negligence was the cause of the second accident, rather than the defendant's initial negligence. This test has been described in terms of "reasonableness". That is, if the plaintiff's conduct was reasonable, it will not break the chain of causation; if it was unreasonable, it will.[15]

It is worthwhile considering whether this test of reasonableness should be extended to second damaging acts perpetrated by someone other than the plaintiff. Although it is not clear from decided cases whether a second *negligent* act arising in a situation in which the plaintiff was placed *because of* a first act of negligence,[16] will necessarily sever the results of the former from the latter, so that the original wrongdoer ceases to be liable for further injury caused by the second act,[17] it is submitted that the test of reasonableness of the second act should not be used except when the second wrongdoer is the plaintiff. Rather, as stated in alternative (iii) above, the test is whether the second act was reasonably foreseeable to the original defendant as within the risk created by his act, and it is

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[15] See *McKew* v. *Holland* [1969] 3 All E.R. 1621 (H.L.) and *Wieland* v. *Cyril Lord Carpets, Ltd* [1969] 3 All E.R. 1006 (Q.B.).

[16] For instance, the plaintiff is injured by D's negligent driving and then suffers further injury through faulty medical treatment.

[17] See *Mercer* v. *Gray* [1941] 3 D.L.R. 564 (Ont.C.A.); *Watson* v. *Grant* (1970) 72 W.W.R. 665 (B.C.S.C.); *Thompson* v. *Toorenburgh, supra,* note 14. In *Mercer* v. *Gray,* McTague, J.A. cited *Denton on Municipal Negligence,* which supports the view that a second act of negligence does not necessarily sever the liability of the first wrong-doer, but adds that perhaps the principle "may be a little too broadly stated by Judge Denton" (p.568). In both *Watson* v. *Grant* and *Thompson* v. *Toorenburgh,* there was no express finding of negligence on the part of the physicians, the second wrong-doers, and hence it is debatable whether such a finding would have made any difference as to the original wrong-doer defendants' liability for *all the damage suffered* by the plaintiffs.

not incomprehensible that he should have foreseen unreasonable, or even faulty, acts by another.[18]

To adopt such an approach to *novus actus interveniens*, that is that a subsequent negligent act is not *necessarily* a *novus actus*, is consistent with the courts' abandonment of the "last wrong-doer" doctrine,[19] that is, the rule that the person with the last clear opportunity to avoid the damage was liable, as causation would be attributed to him.

It is interesting to analyse this "last wrong-doer" doctrine in terms of the "but for" test.[20] The "but for" test is a means of attributing liability, through its establishing causation-in-fact, where otherwise a defence would be open that the defendant's act was either insufficient, or although sufficient, it did not cause the damage. Thus, at this stage, the "but for" test is used to *create* a causal chain. Now the basis of the argument in the "last wrong-doer" doctrine is that "but for" the negligence of the last wrong-doer, there would have been no damage and, therefore, the prior wrong-doer seeks exoneration. Here, in contrast to the previous analysis, it is sought to use the "but for" test to *break* the chain of causation, that is, to lift liability from an otherwise causally responsible defendant, and this is what the courts have rejected. In short, the "but for" test will be used to establish the chain of causation, but not to un-link it.

This analysis, where the intervening act is incorporated into the defendant's chain of causation, becomes crucial when the *novus actus* is not a fault, because then if the chain of causation were cut, the plaintiff faces a different problem, as it is always debatable whether the fault by another is reasonably foreseeable to the reasonable man. In general, one is not required to foresee the fault of another,[21] but "[l]iberty to act on an expectation of non-negligence

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[18] Such a test of recoverability from a first actor of damage arising because a second actor was also involved may be supported by reference to Lord Wright's statement in *The Oreposa, supra,* note 14, 39, (citing *Canadian Pacific Railway* v. *Kelvin Shipping Co.* 138 L.T. 369, 370) that "the damage is recoverable ... if it can be shown to be such a consequence as in the ordinary course of things would flow from the situation which the ... [first actor] had created", that is if the damage is foreseeable. However this may not extend to foreseeing the fault of the second actor as Lord Wright speaks of such a person acting "reasonably".

[19] See, *e.g., Grant* v. *Sun Shipping Co.* [1948] A.C. 549, 2 All E.R. 238 (H.L.).

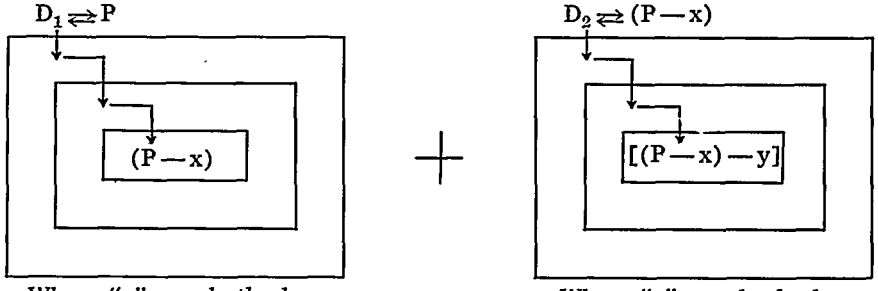
[20] See para.A, *supra,* p.445.

[21] See Fleming, *supra,* note 1, 120; see also cases cited *supra,* note 15.

in others ceases as soon as there are indications that they are, or are likely to be, acting imprudently".[22] Thus, it is a question of fact whether or not the *novus actus interveniens* was reasonably foreseeable; if it was, then regardless of whether or not it is a fault, or even a crime,[23] it may be incorporated into the defendant's chain of causation. I would suggest, however, that the courts would be more likely to treat a *novus actus* which was a fault as breaking the chain of causation, than they would a non-faulty act.

F. *Where there are two acts causing damage but each act is a separate and successive injury, as the House of Lords found in Baker* v. *Willoughby*:[24]

This causation situation, in comparison to the one involving *novus actus* in paragraph E above, seems to apply where the second defendant's act is not seen as cutting short either the first defendant's actual act of inflicting damage, or the damaging effect of this act (that is the loss) and the second damaging act is not within the foreseeable risk created by the first act.



Where "x" equals the loss which P as a "whole" plaintiff suffers and for which D_1 is liable in law.

Where "y" equals the loss which P as a "devalued" plaintiff suffers and for which D_2 is liable in law.

It should be noted that "y" may equal zero, that is, D_2's wrongful act does not increase the quantum of damage represented by "x", as where D_2 negligently bumps P's car in the same place as it has already been negligently hit by D_1, and the repair of the damage done by D_1 also repairs that done by D_2.[25]

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[22] Fleming, *ibid.*

[23] See *Stansbie* v. *Troman* [1948] 2 K.B. 48 (C.A.).

[24] [1970] 2 W.L.R. 50, [1969] 3 All E.R. 1528. See also *Long* v. *Thiessen and Laliberté* (1968) 65 W.W.R. 577, 591 (B.C.C.A.).

[25] See *Performance Cars Ltd* v. *Abraham* [1962] 1 Q.B. 33.

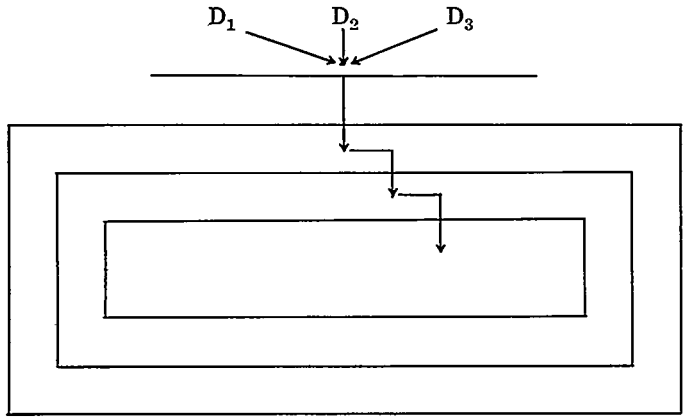
G. *To contrast the effect of inevitable accident and novus actus interveniens on causation — a brief digression.*

Inevitable accident appears to be taken into account at the same level, one could say horizontally, as other acts, as demonstrated in paragraph D, whereas *novus actus* is in a more vertical relationship to the other possibly causative acts. Both concepts require that some element of unforeseeability as to their occurrence be present if they are to relieve all, or some of a defendant's liability, and the difference between them is not always clear. I suggest that "inevitable accident" should be reserved for such incidents as could be described as an "act of God", and *novus actus interveniens* for voluntary human interventions, by a party other than the defendant in relation to whom the assessment of causation is being carried out.

H. *Where there is contributory negligence by the plaintiff:*

The analysis of causation is the same as that exposed so far; the plaintiff merely replaces the defendant, or one of the defendants, in applying each test. Similarly, the plaintiff's act may constitute *novus actus interveniens,* in which case he will become the sole author of his own damage.[26]

I. *Where each individual act alone is not tortious, as it would be insufficient to cause the threshold damage needed to give rise to a particular cause of action in tort, for example, negligence or nuisance, but a combination of individually non-faulty acts causes sufficient damage*:



[26] See *Harris* v. *T.T.C. and Miller* [1967] S.C.R. 460. This case shows that depending on whether the plaintiff's act is designated contributory negligence

Again, this approach[27] shows abandonment of any "last wrongdoer" doctrine,[28] which is clearly equitable in circumstances in which this analysis could apply, such as environmental pollution, where all have contributed to the damage and it is simply fortuitous who was the ultimate contributor.

One interesting problem which is raised here, and it may be more than academic, concerns the effect of a plaintiff's contributory negligence in such circumstances. The alternatives are that such negligence merely operates (as normally) to apportion part of the damages to the plaintiff,[29] or that as the tortious cause of action would not have existed without the plaintiff's contribution to the damage, he is estopped from pursuing a litigious remedy, perhaps on the basis of some principle similar to the equitable one that the plaintiff must approach the court with clean hands.

J. *Where there is a faulty act by* D_1, *sufficient to cause the damage, but the fault of* D_2 *prevents such act from doing so and, itself, causes the same loss*:

The well-worn example of such a case is where D_1 negligently lights a fire and D_2 is at fault in releasing floodgates. D_1's fire would have burnt down the plaintiff's house except that D_2's flood extinguished it, and destroyed the house by flooding. D_2 is unable to avoid liability by arguing that the house would have been destroyed even if his own act of negligence had not occurred. This is an exception to the normal "but for" test, but Fleming suggests that it may be accommodated by recognizing that D_2's act was "both *sufficient* and *necessary* to cause the destruction of the house in this particular way, *i.e.* by flooding rather than by fire".[30]

It is suggested that there are two alternative approaches to analysing causation that a court may take in such a case:

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or *novus actus interveniens* he will recover some or none of the damages respectively. (This corresponds to the situation where it must be determined whether a defendant's act was causal in relation to the damage or whether its effect was cut off by a *novus actus interveniens*, that is whether the defendant is liable for all or none of the damage respectively. See para.E, *supra*, p.447. It is also interesting to consider whether there is any difference between an act which is characterized as 100% contributorily negligent and one which is designated *novus actus interveniens*.

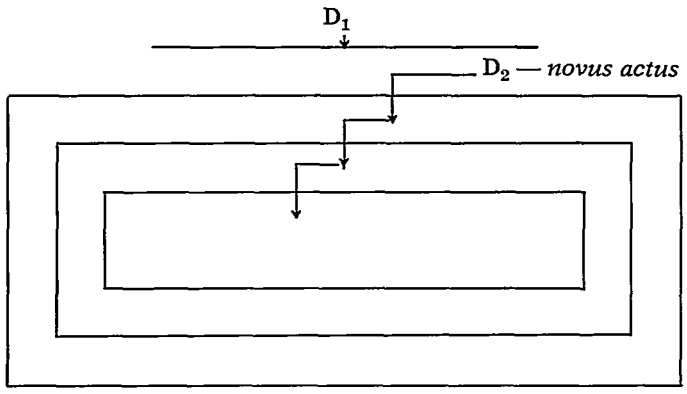
[27] See, *e.g.*, *Duke of Buccleuch* v. *Cowan* (1886) 5 Macph. 214 (Ct of Sess.).

[28] See para.H, *supra*, p. 447.

[29] See para.H, *supra*, p.453.

[30] Fleming, *supra*, note 1, 183.

(i)



This probably represents the usual approach of the courts. The act of D_2 may be characterised as a *novus actus* when it will cut off the causality of D_1's act, in the manner discussed in paragraph E above.

(ii) *Alternatively:*

In the unique situation postulated, that is where the negligent act of D_2 neutralizes the causation-in-fact of the wrongful act of D_1 and the act of D_2 results in the same type of loss as the act of D_1 would have caused if not negated, then, it is suggested, it would be equitable to apply a doctrine of "incorporation". That is, the act of D_1 may be regarded as being incorporated into the act of D_2 and both wrong-doers will become jointly and severally liable for the totality of the damage.

There could, however, be a problem with apportionment here, as it is possible that D_2's act may cause less or more damage than D_1's would have.[31] Notice should be taken of such considerations by the court which, it is proposed, should apportion liability taking into account both the relative fault of D_1 and D_2 and the likely damage which would have occurred in each case had the acts been unrelated to each other, or to the same piece of property. In situations where such an estimation is impossible, liability should be apportioned equally, subject to the provision that each defendant may bring proof to exonerate himself. Such a scheme may be represented diagramatically as follows:

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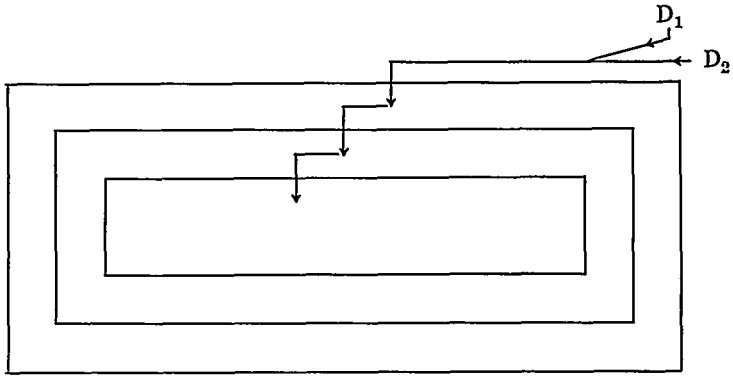
[31] It may also be considered a problem that it is speculative, at least to some degree, what damage D_1's act would have caused. However, such assessment is no different in kind from that made every day by courts in awarding prospective general damages or in reducing these because either



The objection to this approach is that it results in holding a person (D_1) liable for damage which *in fact* his act did not cause. This is completely contrary to the normal attribution of liability by the law; for one may be as "negligent" as one chooses if one does not cause damage. Further, such an approach may be seen as the "thin edge of the wedge", going even further than strict, or enterprise, liability and imposing liability through the fortuitousness of one's presence, or the presence of the results of one's act, at the scene of the damage. It is, however, precisely a fortuitousness argument which supports imposing liability on both wrong-doers when the conditions outlined exist, as it is through the fortuitousness of a second *wrongful* act neutralizing the first that one defendant escapes liability. As shown, in these circumstances the normal operation of the "but for" test is suspended in order to find D_2 liable and likewise, it is suggested, that in the strict conditions outlined,[32] which will be a rare occurrence, the normal rules on causation-in-fact should be modified to find D_1 jointly liable with D_2.

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some element of the damage was *likely* to occur irrespective of the defendant's wrongful act (for instance as in *Cutler* v. *Vauxhall Motors* [1971] 1 Q.B. 418) or because the damage caused by the defendant *might* be mitigated by later events (*e.g.*, a widow's loss of financial support is assessed in light of the chances of her remarrying).

[32] That is: two wrongful acts; one neutralized the other; and both acts, if effective, would individually have resulted in the same type of loss. This last criterion is somewhat open-ended, as a court may manipulate it to allow or deny recovery, respectively, through classifying the two types of loss as similar or dissimilar. In this respect one can compare the approach of the Court of Session in *Hughes* v. *Lord Advocate* [1961] S.C. 310, with that of the House of Lords, [1963] A.C. 837. The latter, by describing the damage which actually occurred in a general fashion was able to find it "reasonably foreseeable", whereas the former had not been able to do so by using a more specific characterization.

This approach may, in some measure, be supported by reference to *Baker* v. *Willoughby*[33] where the Court, in effect, held that the plaintiff had a stiff leg and no leg, at the same time. Similarly, one may deem the house destroyed by fire and by flood. The difference between the two situations is that in *Baker* v. *Willoughby* the act of D_2 *neutralizes* the *damage* caused by D_1's act;[34] that is, the infliction of damage on P by the two acts is sequential and the latter damage encompasses the first. In the second example D_2's act *neutralizes* D_1's act *itself*, before it is able to cause damage; that is, the two potentially damaging acts are concurrent and interact. It is suggested that this is not a difference in kind and that, therefore, in both situations both defendants should share the liability.

Finally, it is submitted that even should a court prefer alternative (i) in dealing with a situation where one wrongful act negatives the damage-causing potential of another, it is still possible to find both defendants liable. This may be achieved by an analysis which regards the likely threat posed to P's property by D_1's act as causing a reduction in the value of that property, which reduction in value is realized when P sues D_2. That is, at the moment when D_2's act damages P's property, it has already been reduced in value by the threat arising from D_1's act. This loss may be recovered from D_1 as "pure" economic loss, which is recoverable when it is suffered pursuant, *inter alia*, to a risk to one's property.[35] Alternatively, the loss caused by D_1 may be styled as a damage to, and a resultant reduction of, P's claim against D_2,[36] although it is possible to regard this alternative simply as the means of quantifying P's economic loss.

III. Conclusion

I submit that the above diagramatic scheme is capable of being applied to solve most causation problems. It seeks to cover not only

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[33] *Supra*, note 24.

[34] It should be noted that the Court in *Baker* v. *Willoughby*, *ibid.*, expressly refused to adopt this "neutralization" analysis, but logically it is a tenable argument.

[35] See *Rivtow Marine Ltd* v. *Washington Iron Works* [1974] S.C.R. 1189, 1218 *per* Laskin J. and *Gypsum Carrier Inc.* v. *The Queen*, *supra*, note 4, 183 *per* Collier J. I am indebted to my colleague Professor Michael Bridge for suggesting this as a possible solution to the problem posed here.

[36] The same rationale for allowing recovery against two wrong-doers, only one of whom caused the damage, is used in *Cook* v. *Lewis* [1951] S.C.R. 830, 832 *per* Rand J., although in that case the justification for employing it was that it was impossible, rather than inequitable, to hold only one wrong-doer liable, as that one could not be identified.

liability in relation to the type of damage, that is, causation-in-law, but also rules relating to liability for the extent of damage, which I have differentiated as the rules on remoteness. This is not a traditional division, rather these two terms tend to be used interchangeably to indicate the total extent of the defendant's liability in law for the damage of which the plaintiff makes complaint. As a result the two aspects involved in determining liability have tended to be treated as one question and hence both have been seen as depending on the same decision-making factors. It is clear that where society, or its agent, marks off the dividing line between liability and non-liability for the results flowing from any particular act, is a policy decision and I submit that it seems desirable to separate the two factors involved in an effort to see whether they are necessarily based on the same policy consideration, how far they interact, and whether the same or different rules apply to each. The three stage analysis adopted above is an attempt to take a step towards achieving this aim.

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