1.33 Causation is a matter of inference and in construction is based on expert reports, but over-elaborate analysis should be avoided *John Doyle Construction Limited v Laing Management (Scotland) Limited* [2004] 1BLR 295 Inner House the Inner House.

1.34 It appears then that English law does not easily accept the results of scientific analysis. The concern is justified in relation to programme analysis in construction. The analyses are frequently flawed and there can be little confidence in the methods adopted. The facts are many, varied, and disputed. The experts usually admit that the different methods will give different results. In some cases, the experts adopt incorrect logic and ignore the evidence.

1.35 It is not surprising that reference is frequently made to the everyday understanding of causation, which is referred to as "common sense".

1.36 The problem with the concept of common sense is that without further definition it is a test that is not easy to apply to practical problems that occur in construction.

1.3. DOMINANT OR EFFECTIVE CAUSE

1.37 The terms "*effective cause*", "*proximate cause*" or "*dominant cause*" are often used to classify the operative cause of damage. The classification is used to distinguish one event as the cause of the damage, from a number of other events that are simply part of the circumstances in which the damage occurred. The classification also distinguishes situations where there is a break in the causal connection making the initial event simply part of the circumstances in which the damage occurred[1].

1.38 Although often used interchangeably, the terms do not have the same meaning. An "effective cause" does not necessarily exclude other events being "effective" or being a "material cause". The term "dominant cause" is intended to classify the event as ruling or prevailing over other events.

1.39 In some circumstances, there may well be no "dominant cause" and more than one cause of equal efficacy. The use of the classification in English Law does not mean that liability is precluded if there is more than one cause of equal efficacy. It is not necessary that one cause should be "dominant". Liability in contract will depend upon the terms of the contract and the intention of the parties.

1.40 When the classification is used, there is no guidance on how the "dominant cause" is to be ascertained. It does not provide a method of legal analysis.

1.41 In *Leyland Shipping Company Ltd v Norwich Union Fire Insurance Society Ltd,* [1918]HL AC 350 a ship was torpedoed by a German submarine and taken into the harbour of le Havre. When a gale sprang up, she was moved to a berth inside the outer breakwater, where she took the ground at each ebb tide. Ultimately, her bulkheads gave way and she sank. She was insured against perils of the sea, but excluding the

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1 The dominant cause approach may in some cases use the concept of new intervening act to establish whether or not the initial event is still effective.

consequences of hostilities. It was held that the "*proximate cause*" of the loss was the damage inflicted by the torpedo, which fell within the exclusion.

1.41.1 The principle is that although the subsequent event played a part, the identification of the hostile act as the "proximate cause" means that it is treated in law as the operative cause of the loss.

1.41.2 The overriding principle in contract is to look at the contract as a whole and to ascertain what the parties had in mind when they identified the particular cause. The "effective cause" is not necessarily the cause that is most proximate in time.

1.41.3 Lord Shaw of Dunfermline observed that causes were often referred to as if they were as distinct from one another as beads in a row or links in a chain. Although the term "chain of causation" was a handy expression it was inadequate since causation was not a chain but a net. He considered that the cause which was truly proximate was that which was proximate in efficiency[2].

1.42 There is little guidance on the identification of the "dominant cause", except for the application of commonsense as understood by the ordinary man taking a broad view *Yorkshire Dale Steamship Co v Minister of War Transport (The Coxwold)* [1942] AC 691.

1.42.1 Lord Wright considered that the choice of the real or efficient cause from out of the whole complex of the facts had to be made by applying commonsense standards.

1.42.2 Causation was as understood by the man in the street, and not as understood by the scientist or the metaphysician.

1.42.3 Cause in the case before him was what a business or seafaring man would take to be the cause without too microscopic analysis but on a broad view.

1.43 In *Monarch Steamship Co Ltd v Karlshamns Oljefabriker* [1949]HL AC196 the ship boilers were defective and delayed leaving Port Said, at the north end of the Suez Canal, until 24 September l939. By that date, the Second World War had broken out and the British Admiralty prohibited the ship from proceeding to Sweden as intended and ordered her to proceed to, and discharge at, Glasgow. The cargo was eventually trans-shipped in neutral ships and delivered to Sweden at extra cost.

1.43.1 Lord Wright adopted the classification of "dominant cause" and chose unseaworthiness as the cause of the loss.

1.43.2 He considered that unseaworthiness caused the Admiralty order diverting the vessel.

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2 The facts of the case can be analysed using the principles of new intervening act. It could be said that the moving of the ship to a safe harbour was the natural consequence of being torpedoed and not sunk immediately. The break up followed naturally from the incidence of normal weather.