

Factual causation and adequate causation

KAGAYAMA Shigeru
Professor of Law, Meijigakuin University

Issues on factual and adequate causation



- Issues of factual causation
 - Issue 1
 - Issue of understanding the principle
“**b will not occur without a (conditio sine qua non)**”
applied to examine the existence of factual causation
- **Issue of adequate causation**
 - Issue 2
 - Issues of clarifying the differences between factual and adequate causation
 - Issue 3
 - Interpretation of the relationship between Article 416 of the Civil Code and adequate causation theory

Issue 1

Factual causation



- Through the “conditio sine qua non” test method, or “‘B’ will not occur without ‘A’, the factual causation is judged, “existing or not”.
- Question 1: Using the factual causation test method, choose the correct ones in the following examples (multiple answer is possible)
 - (a) The premise ““if wind blows, pipe fitters make profit” is an example of the factual causation.
 - (b) The premise “no smoke without fire”. The source of smoke comes from fire is an example of the factual causation
 - (c) Both Kinohorumu medicine and virus were doubted as source of Subacute-Myelo-Optico-Necuroopathy disease. After suspending the circulation of Kinohorumu, the disease stopped spreading. The proof that there is a relationship between Kinohorumu medicine and Subacute-Myelo-Optico-Necuroopathy disease is an example of the factual causation.

Explanation of issue 1 (1/3)

Factual causation test method

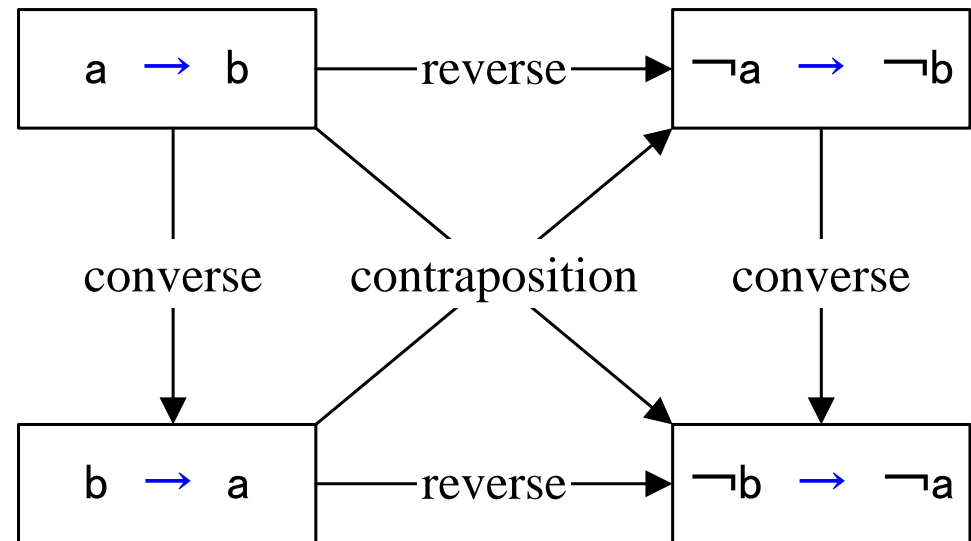


- Within the test method “b will not occur without a” (or *conditio sine qua non*) used to decide the existence of factual causation
 - When circumstance a is eliminated, consequence b will occur or not is assumed as follows:
 - If consequence b does not occur, a is the causer. In other words, there is a causality between a and b
 - If consequence b still occurs, a is not the causer. In other words, there is not a causality between a and b
- In order to decide if there is a factual causation or not, we have first to use the test method. However, it should be noted that the test result is not always correct.

Explanation of issue 1 Main points of conditio sine qua non



- To understand whether a causes b or not the application of the test method “without a, will b occur or not” is considered “opposite-reverse” logical test in logic. This logical test is not equivalent to the original assumption.
- The solely correct meaning of this test method is that only a causes b ($a \rightarrow b$).
- In cases where several other events in addition to a cause b, for example, in joint tortious acts, the application of this test method is risky.



Explanation of issue 1 (3/3)

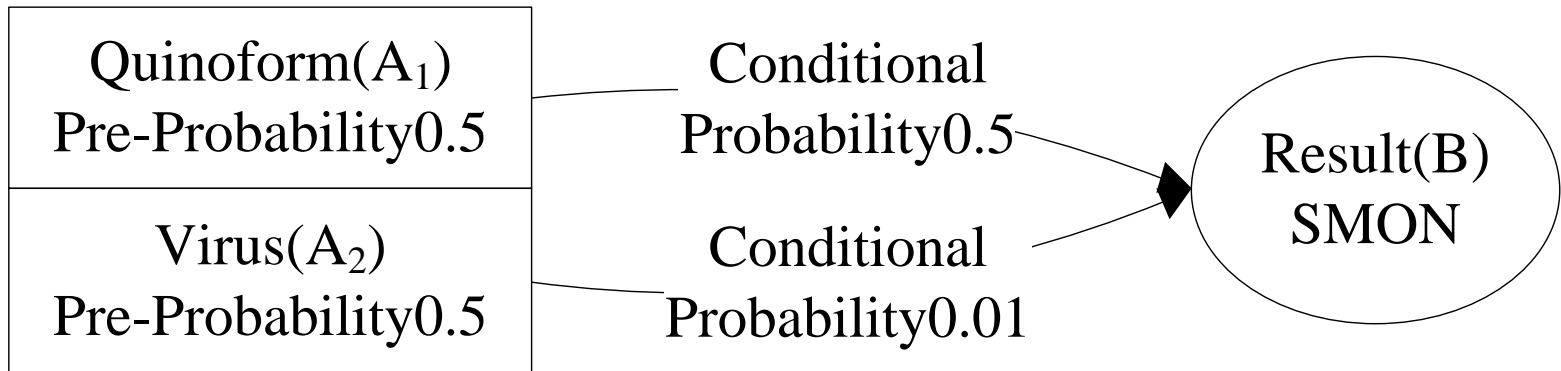
Conclusions



- Because the premise “if wind blows, pipe fitters make profit” is an “ $a \rightarrow b$ ” premise, it is not included in the reverse *conditio sine qua non* test.
- The reverse premise of the premise “smoke comes from fire” is “no fire no smoke.” That means the premise “no fire no smoke” is the application of the *conditio sine qua non* test to prove that “the cause of smoke is fire.”
- Truly, the premise “no fire no smoke” is not the reverse premise of the premise “there is smoke, there is fire” but a contraposition one. However, when considering the original premise “there is fire, there is smoke,” under the *sine qua non* test, the premise “no fire no smoke” is its reverse premise.
- In the Subacute-Myelo-Optico-Neuropathy disease case, since the circulation of Kinohorumu medicine was stopped, there occurred no such disease case. So there is a factual causation between the medicine intake and the disease outbreak.

How to prove the causation A and B?

- subacute myelo-optico-neuropathy



$$\text{Post-Probability } A_1 = \frac{0.5 \times 0.5}{0.5 \times 0.5 + 0.5 \times 0.01} \doteq 0.98$$

$$\text{Post-Probability } A_2 = \frac{0.5 \times 0.01}{0.5 \times 0.5 + 0.5 \times 0.01} \doteq 0.02$$

Issue 2

Adequate causation (1)



- If factual causation is established by the test method
“**without a, b will not occur**”
the scope of causality is too broad.
Therefore, in order to limit the broad scope of causation, it was proposed that, within the factual causation, only adequate or, in other words, legal causation is permissible.
- The proposal made by J. von Kries under his adequate causation theory

Issue 2

Adequate causation (1)



- Question 2: to explain the differences between factual causation and adequate causation, several following appropriate examples are given. Decide which example is relevant to each type of causation (multiple answer is possible).
 - (a) A woman gave birth to a child. 15 years later, the child committed murder.
 - (b) A wagoner, by his carelessness, turned his car to the left side of instead of the right one at the crossroad. Unfortunately, a thunder stroke on the wagon causing dead to passengers.
 - (c) The captain mistakenly handled the airplane driving it into the airspace of a non-diplomatic-relation country. The airplane was attacked and the entire passengers died.

Explanation of Question 2

(1/3)



- Example (a) is a frequently cited example in German textbooks on criminal law. Applying the test method “without a there is no b” we see there is a factual causation.
- However, according to statistics, there is no adequate relation between the probability of producing murderers with the growth or decrease rate of childbirth. Childbirth does not contribute to the increase in number of murderers.
- Therefore, there is no adequate causation between the giving birth action and the murderous act.
- As a result, we can say that example (a) is an appropriate example distinguishing factual causation with adequate causation.

Explanation of Question 2

(2/3)



- Example (b) is a famous example of the author of the adequate causation theory, Kris. Similar to example (a) in the sense that if we apply the test method “without a there is no b” we see there is a factual causation.
- However, according to meteorology, no matter what the wagoner turns his car left or right, the probability of thunder strikes is the same. The driving of his car to the left side does not contribute to the increase of probability of the thunder strike.
- Therefore, There is no adequate causation between the misjudging of the wagoner and the thunder strike.
- As a result, we can say that example (b) is also an appropriate example distinguishing factual causation with adequate causation.

Explanation of issues 2

(3/3)



- This example is a development from the mistake of the wagoner in the above example to the mistake of the captain. Also in this example there is a factual causation if we apply the test method “without a there is no b.”
- What is worse is that as the plane having freely entered a non-diplomatic-relation country, we can realize the probability of being attacked is high.
- Therefore, in case that the captain mistakenly drove the plane into a non-diplomatic-relation country, then was attacked causing dead to passengers there was a adequate causation.
- As a result, we can say that example (c) is an inappropriate example distinguishing factual causation with adequate causation.

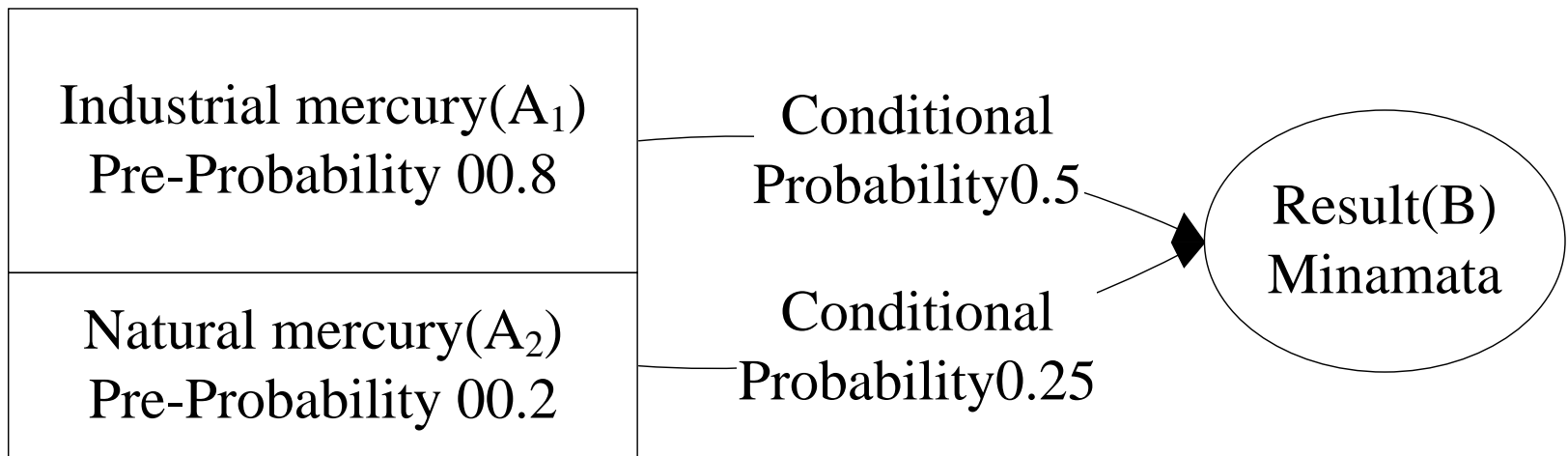


Explanation of issues 3



- Rules of the Anglo-Saxon system from Hadley v. Baxendale (1854)
 - Ordinary damage Regarding the claim for compensation, foreseeability is not required (Article 416 para. 1)
 - Special damage Regarding the claim for compensation, foreseeability is required (Article 416 para. 2)

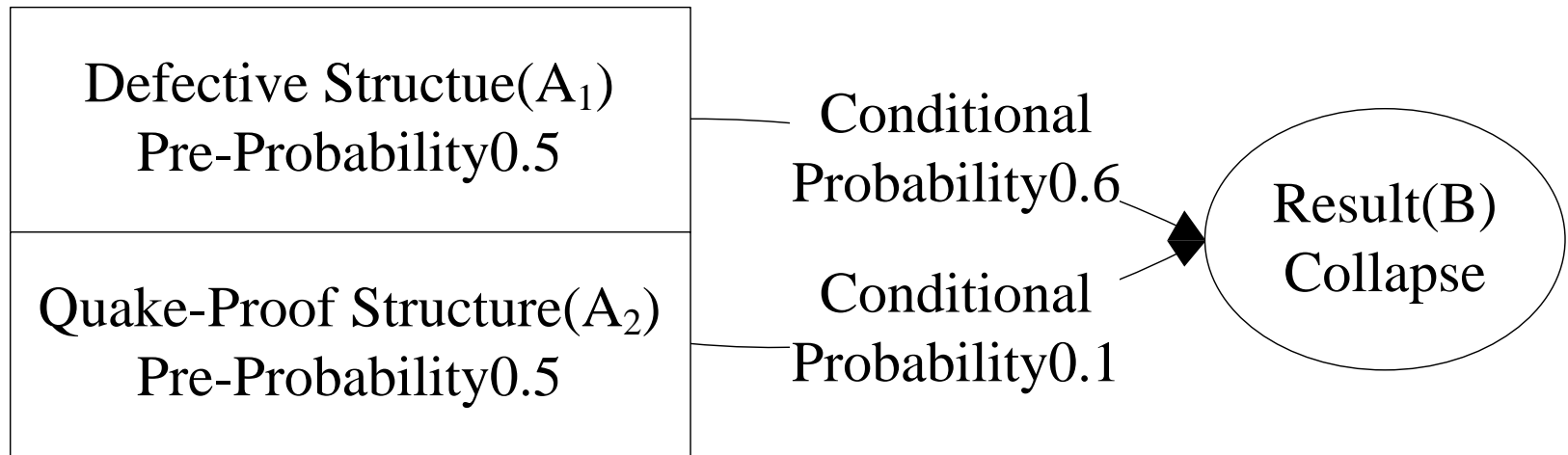
How to calculate partial causation ?



$$\text{Post-Probability } A_1 = \frac{0.8 \times 0.5}{0.8 \times 0.5 + 0.2 \times 0.25} \doteq 0.89$$

$$\text{Post-Probability } A_2 = \frac{0.2 \times 0.25}{0.8 \times 0.5 + 0.2 \times 0.25} \doteq 0.11$$

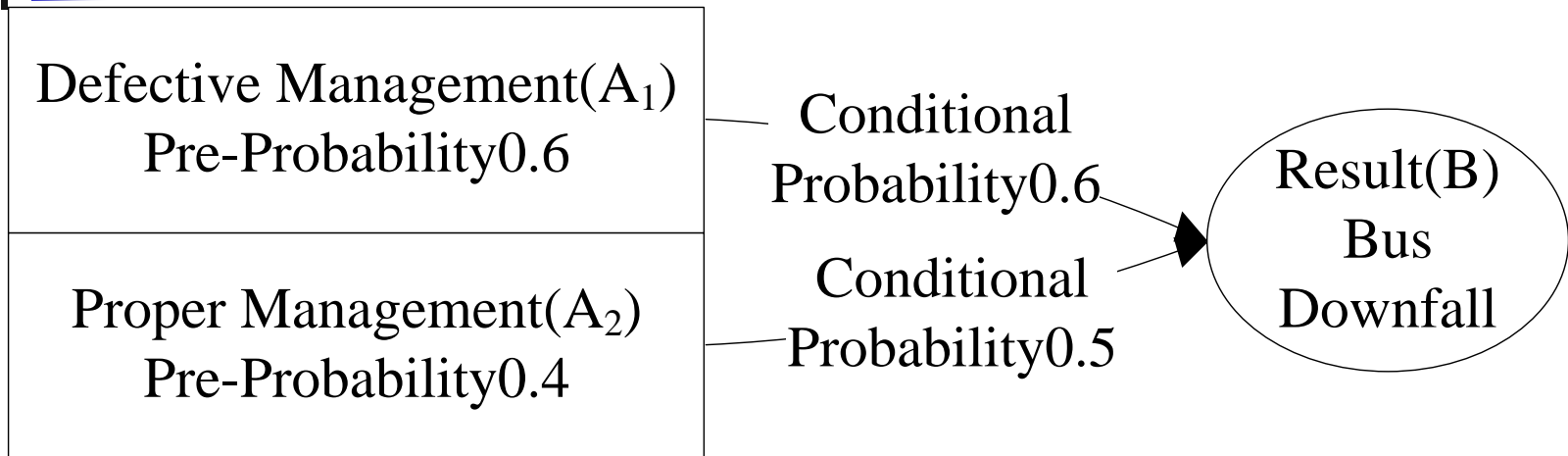
How to calculate partial causation ?



$$\text{Post-Probability } A_1 = \frac{0.5 \times 0.6}{0.5 \times 0.6 + 0.5 \times 0.1} \doteq 0.86$$

$$\text{Post-Probability } A_2 = \frac{0.5 \times 0.1}{0.5 \times 0.6 + 0.5 \times 0.1} \doteq 0.14$$

How to calculate partial causation ?



$$\text{Post-Probability } A_1 = \frac{0.6 \times 0.6}{0.6 \times 0.6 + 0.4 \times 0.5} \doteq 0.64$$

$$\text{Post-Probability } A_2 = \frac{0.4 \times 0.5}{0.6 \times 0.6 + 0.4 \times 0.5} \doteq 0.36$$



Case Law on adequate causation in Japan 1/2

- 1. Affirmative case
 - Judgment of Supreme Court, March 24, 2000 (Dentsu case)
- 2. Negative case
 - Judgment of Supreme Court, December 20, 1999



1. Affirmative case 1/2

- Judgment of Supreme Court, March 24, 2000 (Dentsu case)
 - 1. In a case where A, an employee, who worked in a major advertising company became chronically depressed and committed suicide after working long overtime for more than a year, A was working under a general and comprehensive business instruction to finish the given work within the time limit, and had no choice but to do long overtime work on a continuous basis as mentioned above. A's superiors were aware that A was constantly working excessively long hours and that his state of health had deteriorated but failed to take measures to alleviate the workload of A, and as a result, A became mentally and physically exhausted, which triggered chronic depression and as the state of depression deepened, extemporaneously committed suicide. Under such circumstances, the employer is liable for compensation based upon Article 715 of the Civil Code.



1. Affirmative case 2/2

- Judgment of Supreme Court, March 24, 2000 (Dentsu case)
 - 2. In a claim for compensation based upon the infliction of mental or physical harm on an employee, where the character of the employee and the resulting manner of the execution of work had contributed to the occurrence or expansion of the damage, unless the character of the employee is outside the scope which is normally expected in employees involved in similar work, when determining the amount of compensation, the court cannot take into account the character of the employee and similar factors as a mental factor by applying, with the modification, Article 722, paragraph 2 of the Civil Code.

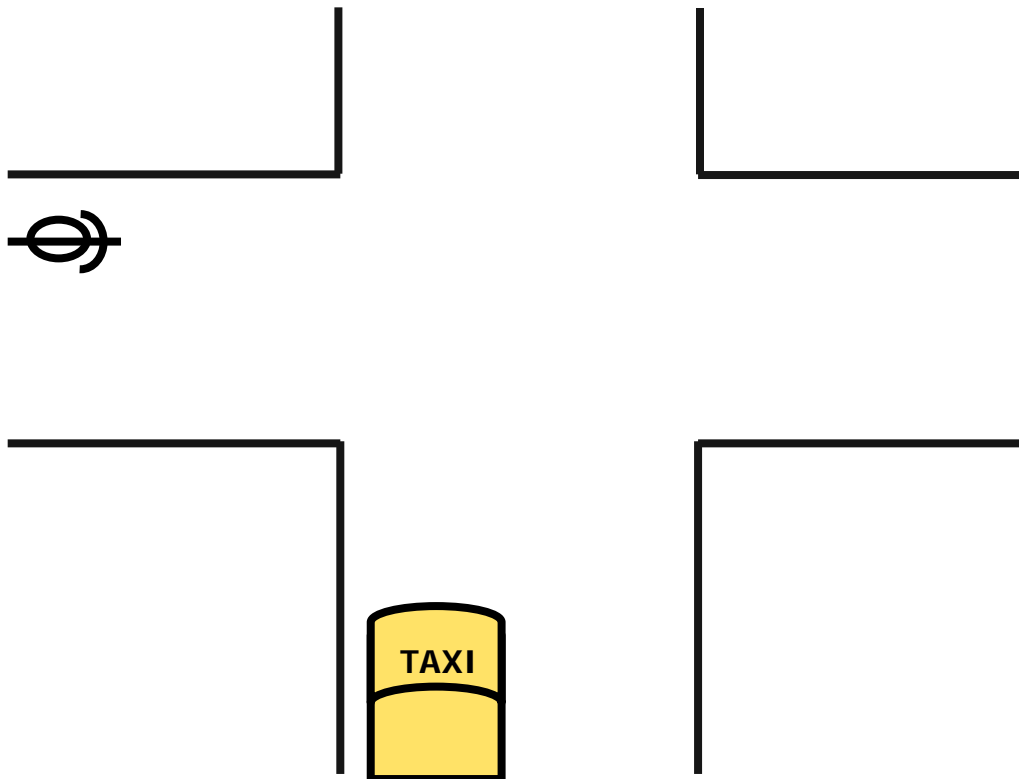


2. Negative case

- Judgment of Supreme Court, December 20, 1999
 - In cases where a victim of a traffic accident who was in need of care after the accident, later died from another cause, it is not permissible to claim the cost of the care during the period after the death as loss emanating from the traffic accident.

Calculation of comparative negligence in case bicycle and motorcar(1/2)

Comparative negligence of bicycle is 20%
in case there is no excess of speed of bicycle



Calculation of comparative negligence in case bicycle and motorcar(2/2)

Comparative negligence of bicycle is 30%
in case there is excess of speed of bicycle

