

Original Paper

Research on Death Resulting from Hit-and-Run in Secondary Collisions

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Received: April 10, 2026

Accepted: April 29, 2026

Online Published: April 30, 2026

doi:10.22158/elp.v9n1p335

URL: <http://dx.doi.org/10.22158/elp.v9n1p335>

Abstract

In judicial practice, “secondary collision” cases following a hit-and-run traffic accident often face dual difficulties in determining causation and subjective culpability. This paper argues that in most instances, the first perpetrator’s flight creates the risk of the victim being run over again, and the subsequent vehicle’s intervention does not break the causal chain, unless the later driver harbors an intent to kill or the victim has already been moved to a relatively safe area. The adequate causation theory is difficult to apply due to the vague standard of “adequacy” regarding subjective culpability, the mixed culpability theory should be adopted, meaning that for the aggravated consequence of “causing death by fleeing” the perpetrator’s mental state should exclude direct intent and be limited to indirect intent and negligence. The mixed culpability theory helps avoid double counting of harm, reconciles sentencing disparities between the crime of traffic offenses and intentional homicide, and provides a clear, workable approach for judicial practice.

Keywords

Traffic Accident Crime, Escape, secondary collision

1. Introduction

With the rapid development of China’s economy, the living standards of the Chinese people have been continuously improving, and the number of privately-owned vehicles has risen year by year. Ordinary household cars have long since ceased to be luxury goods, leading to a dramatic increase in the number of vehicles on the roads, escalating traffic pressure, and frequent traffic offenses, which pose a serious threat to public health, life, and property safety. Correspondingly, the number of criminal cases involving the crime of causing traffic accidents has remained high for a long time. Both criminal law and administrative law regulate hit-and-run conduct in traffic accidents. Although academia has

accumulated substantial research results on the issue of “hit-and-run,” is undeniable that related disputes have never been fully resolved in judicial practice. So here’s the thing—when you actually look at how specific cases are handled, you still see problems like the same harm being counted twice, or similar cases getting totally different rulings. That brings us to the so-called “secondary collision after a hit-and-run.” Honestly, there’s still a lot we don’t have figured out about this issue, and it really needs a closer look—both from a theoretical standpoint and in real-world practice.

What I’m trying to do in this paper is to lay out the practical problems that keep popping up in court when it comes to deciding whether a “secondary collision” counts as part of a hit-and-run. I’ll go through the main academic arguments out there on how to make that call, try to tease out the key theoretical threads running through the different views, and then offer my own take on it. The goal? To give judges and lawyers something useful to work with, cut down on the misjudgments, and clear up some of the procedural mess we’re seeing on the ground.

2. Criteria for Determining Causation in “Secondary Collision” Cases

In typical “secondary collision” cases, the following scenario often unfolds: the first perpetrator flees the scene after causing a traffic accident, while the victim, due to injuries or other reasons, fails to promptly move away from the accident site. At that moment, a subsequent driver passes through the scene and, owing to inattentiveness or similar factors, collides with the victim again, who is ultimately struck or run over by the following vehicle and dies. When confronted with such extreme cases of death caused by a secondary collision, the uncertainty in the logic of attribution of liability stems from the two-way constitutive relationship between the interpretation of legal norms and the facts of the individual case. Law doesn’t exist in some abstract, fixed form. It only really takes shape—gets its meaning—through the day-to-day work of judges. And the same goes the other way: judicial decisions aren’t carved in stone; they evolve, case by case, feeling their way toward the right standard for the situation at hand. That’s why applying broad legal rules to a specific person’s case is really just a continuous back-and-forth, a process of shaping and being shaped.

So think about a typical hit-and-run. The driver causes an accident, then—instead of stopping to help the victim or putting up warning signs—they just take off. What does that series of choices do? It leaves the victim in a much more dangerous spot, and it dramatically raises the odds that some other car coming down the road will hit them. And that risk gets way worse when visibility is bad or the weather’s lousy. Now, most traffic accidents happen on public roads, where cars are expected to drive. If the second driver is following the rules—not speeding, not driving recklessly—then their behavior is perfectly normal. So even if that driver can’t react in time or swerve to avoid the victim, it’s hard to say that this “intervening factor” should cut off the legal responsibility of the first driver. After all, if the first driver hadn’t run off but had actually done the responsible thing—helped the victim, set up flares or triangles—then even if that didn’t ultimately save the victim’s life, at least the victim wouldn’t have been left lying there, helpless, waiting to be run over. So when courts handle these “secondary

collision” cases, they really need to focus on one thing: What kind of extra danger did the first driver’s hit-and-run create? And how much did that danger actually contribute to the second accident?

Here’s the bottom line: when a hit-and-run driver flees, it’s pretty foreseeable that the victim might get hit again. That’s not some freak accident—it’s a totally ordinary consequence. And if that consequence is foreseeable, then the fleeing driver should bear criminal responsibility for that worse outcome. Their flight objectively leaves the victim in harm’s way, exposed to oncoming traffic. Even if the actual second collision is caused by a third party’s car, that doesn’t break the chain of causation—because it’s still something you’d expect to happen in these situations. It’s not so far-fetched that it wipes out the first driver’s fault. Once a high-probability risk of a secondary accident, rooted in the first perpetrator’s fault, has been pre-established, even if the subsequent impact directly results from third-party intervention, the chain of causation should not be considered broken, and the first perpetrator should be held accountable and bear the corresponding legal liability.

In most cases, a “secondary collision” caused by a subsequent vehicle is not sufficient to break the causal chain between the prior traffic offense and the death result; however, under specific circumstances, exceptions exist that render the causal chain interrupted.

(1) When the driver of the subsequent vehicle perceives an injured person lying ahead and internally forms a clear intent to run over the victim, actively pursuing the occurrence of death. For example, the following driver recognizes the fallen person as an adversary with whom they have a grudge and deliberately seizes the opportunity to retaliate; or, even without prior animosity, the driver derives abnormal psychological stimulation from the collision and running-over process, and upon discovering the injured person, neither reduces speed nor swerves to avoid, instead even accelerating straight toward the victim, causing immediate death. In such circumstances, the subsequent driver clearly possesses a subjective mental state of intentional crime. Having already perceived a traffic accident ahead and having had a full opportunity to take reasonable evasive measures, they not only fail to exercise basic duty of care but actively bring about or acquiesce in the death result. Such conduct significantly deviates from the normal reaction pattern of an ordinary person when encountering a similar situation. Consequently, this “secondary collision” should be regarded as an abnormal intervening factor that breaks the original causal chain. The causal link between the prior traffic offense and the ultimate death result is thereby interrupted, and the legal liability for the death should be borne solely by the subsequent driver, while the prior perpetrator will no longer be held criminally liable for causing death by fleeing. Obviously, the Xu case does not fall under this exception. Evidence shows that Jiang “felt he had run over something,” and there is no proof that he had the intent to run over the victim or the subjective mindset of pursuing the victim’s death.

(2) After the “first collision,” the lying position of the victim, or the place where the victim was moved by the prior perpetrator through assistance or placement, has significantly departed from the traffic lane area. For instance, if the victim is thrown into the central median after impact, or is moved by the prior perpetrator to a relatively safe area such as a pedestrian sidewalk, then the risk of being struck by a

subsequent vehicle has been significantly reduced, and the causal link between the prior perpetrator's abandonment of the scene and the death result is likewise dissolved. When a subsequent vehicle, due to evasive errors or other factors, again collides with or runs over the victim while the victim is already in a relatively safe area such as a pedestrian sidewalk or central median, the likelihood of such secondary impact is extremely low based on ordinary judgment. Under such circumstances, the subsequent vehicle's conduct and its resulting consequences clearly exceed the scope of foreseeability of an ordinary person and should be evaluated as an abnormal intervening factor. The emergence of this factor is sufficient to interrupt the causal chain between the prior traffic offense and the victim's death, and therefore the prior perpetrator should not bear criminal liability for "causing death by fleeing." In the Xu case, the victim Li had been lying in the middle of the road the entire time and was never moved to a relatively safe area such as a pedestrian sidewalk or central median. He remained at all times in the core zone of high danger, and this does not constitute an abnormal intervening factor.

To integrate the two collisions into the same criminal composition of the crime of causing traffic casualties essentially means treating the entire event as a whole, with both collisions falling within the scope of the perpetrating acts covered by the elements of that crime. Under this analytical framework, the prior perpetrator remains liable for the ultimate death result. With regard to the issue of "death caused by secondary collision," different actors have different duties of care.

In "secondary collision" cases, the reasons why the perpetrator is not found to have "caused death by fleeing after a traffic accident" can be primarily summarized into the following three typical scenarios:

First scenario: Break in the causal chain. This view holds that the "secondary collision" by the subsequent vehicle constitutes an intervening factor, and the victim's death is caused by multiple factors rather than solely by the perpetrator's flight from the scene and the resultant failure to receive timely assistance. Accordingly, there is no necessary causal link between the initial hit-and-run conduct and the death, and thus the aggravated provision for causing death by fleeing should not apply.

Second scenario: Lack of subjective elements of the perpetrator. In such cases, the perpetrator often does not realize that they have caused a collision, or after a brief stop and visual check, mistakenly concludes that no harm was done and leaves, after which the victim subsequently dies from being struck by another vehicle, drowning, or other accidents. The perpetrator was never aware of a duty to rescue, and therefore lacked the subjective intent to evade such a duty. Consequently, their conduct does not satisfy the subjective elements required for "causing death by fleeing."

Third scenario: Insufficient evidence or constraints arising from objective conditions.

3. The Applicability Dilemma of the Adequate Causation Theory

In criminal law, causation has always been a bit of a headache. It's one of those tricky issues that you can't avoid when you're trying to decide guilt and hand down a sentence. And if you look at how things actually work in Chinese courts, proving that a hit-and-run directly caused the victim's death has never been easy. That's especially true in secondary collision cases—where someone gets hit again

after the first driver flees. In those situations, people really disagree over whether the death should be pinned on the first driver.

Now, there's this idea called the "adequate causation theory." Basically, it tries to rein in the "but-for" test (you know, "but for the defendant's act, would the result have happened?"). Instead of going down that rabbit hole, it looks at things from an ordinary person's common-sense perspective. So if, based on normal life experience, the result of an act seems like a pretty normal outcome rather than some freak accident, then you've got causation. That makes sense as a general framework. But here's the problem: what counts as "adequate" or "normal" has never been clearly defined. Usually, it just comes down to what the average person would think, or whatever everyday common sense tells us. It's not about crunching objective probabilities or running statistics. And that vagueness leaves a lot of room for debate. Let me know if you'd like an even more casual version or a slightly more polished but still human-sounding alternative. This ambiguity in definition directly limits the theory's practical application. While the general public's understanding grants the "adequacy" standard a degree of flexibility, allowing case-by-case determinations according to specific circumstances, it also means that the standard loses its necessary stability, making it difficult to establish an objective and uniform basis for determination at the level of general rules. Consequently, although the "adequacy" theory appears general in its formulation, its actual application inevitably carries a case-specific character.

And this lack of a clear definition? It directly holds back the theory when you actually try to use it in real cases. Sure, relying on what the average person thinks gives the "adequacy" standard some wiggle room—you can adjust it to fit each situation. But that also means it loses the stability you'd want from a legal rule. It becomes really hard to come up with an objective, uniform test at the general level. So even though the "adequacy" theory sounds broad and universal, in practice it ends up being pretty case-specific.

To try to pin down what "adequacy" really means, scholars have come up with three main approaches over time.

(1) There's the subjective theory. It looks at what the actor actually knew or could have known at the time they did the act. Take Xu, for example. Under this view, maybe Xu only realized that hitting someone would mean paying compensation, and that covering up his tracks was a way to dodge liability. But he might not have foreseen that another car would come along just minutes later and run over the victim. Based on what he actually knew, the result might not be considered "adequate."

(2) This one says we should look at all the facts that objectively existed at the time of the act. From that angle, a reasonable person in Xu's position should have foreseen that kind of consequence. So yes, there is "adequacy."

(3) The compromise theory tries to meet in the middle. It takes what an ordinary person could have known at the time, but also throws in any special knowledge the actor had. So it accounts for the actor's individual awareness, but tries not to make responsibility attribution too subjective.

Now, even though these three take different angles, they all zero in on the same core question: Was the

possibility of harm—stemming from the failure to avoid that outcome—something the actor could reasonably have understood? When you're judging whether the actor could have foreseen and prevented the bad result, the key is whether there's a causal link between their omission and the final outcome. How clear that link is becomes the basis for assessing their capacity.

But here's the tricky part: when you actually apply this standard in practice, you often have to trace back to whether the actor performed their duty in the first place. And that can lead to a logical loop—basically reversing causation—which doesn't feel very convincing as a line of reasoning. What's interesting is that this way of thinking about causation actually overlaps—at least in theory—with how we decide whether someone could have foreseen the harm in a negligence case. But here's the catch: “adequacy” tends to look different depending on who's making the call. Different people bring their own perspectives, so even when they're looking at the same set of facts, they can end up with totally different conclusions about whether causation exists.

Take this example. Say someone intentionally hurts another person, but that victim happens to have a pre-existing medical condition—a fragile health situation, basically. And then the victim dies from that underlying disease. Now, the question is: does the victim's special physical condition alone break the chain of causation at the time of the injury? On this point, you'll find scholars disagreeing all over the place. Some say yes, some say no—and that's exactly the kind of disagreement that shows how tricky “adequacy” can be in practice. Suppose in Case Three the driver of the subsequent vehicle, Jiang, instead of negligently running over the victim, deliberately accelerates to crush the victim, Li, who is lying on the ground and is Jiang's enemy. Under the theory of adequate causation, the average person would consider “intentional homicide” as an abnormal intervening factor that breaks the causal chain between Xu's hit-and-run and the resulting death. Xu would only be liable for ordinary hit-and-run, while Jiang would be liable for intentional homicide.

4. Analysis of the Subjective Mental State of the Perpetrator in “Secondary Collision” Cases

To explore the issue of subjective culpability in “causing death by hit-and-run,” it is necessary to first distinguish between the psychological attitude of the perpetrator at the time of the “hit-and-run” act and the psychological attitude at the time of the aggravating result of “causing death.” Where does this disagreement actually come from? It's really about how people understand the mental state behind two different things: “hit-and-run” on its own, versus “hit-and-run that causes death.” Most people agree that the simple act of fleeing is intentional—you know what you're doing. But when death enters the picture? That's where opinions split. And if you just blur the two together, you're never going to reach a convincing answer.

So let's be clear about one thing: proving intent for the flee-the-scene part doesn't require the same mountain of evidence as for other intentional crimes. The bar is lower. The driver just has to be subjectively “aware” that an accident happened, and “aware” that there's a victim who needs help. That's it. Once you have that, the condition is satisfied. Here's a theory that builds on this: the fleeing

act itself—as part of the aggravating circumstance of “fleeing the scene and causing death”—actually already contains an element of intent within its basic legal structure. In other words, the driver’s mental state isn’t limited to just negligence. It could be negligence, yes, but it could also be intentional, depending on the specific situation. Some scholars have dug deeper into this. They point out that if you look at the statutory punishment range for this aggravating circumstance under current criminal law, it’s significantly harsher than what you’d normally see for ordinary negligent homicide. That big gap in sentencing is no accident. It reflects the fact that the driver’s level of blameworthiness goes way beyond simple negligence.

Think about it: when a driver chooses to flee to avoid legal responsibility, what’s going on inside their head regarding the victim’s possible death? More often than not, it’s a case of “willful indifference.” They might not actively want the victim to die—that would be direct intent. But that doesn’t rule out indirect intent. They see the risk, they do nothing practical to prevent it (even though they could), and they basically let the death happen by turning a blind eye.

The subjective culpability for “causing death by hit-and-run” is mainly divided into three theories: the negligence theory, the intention theory, and the mixed culpability theory.

The negligence theory holds that the perpetrator can only be negligent with respect to the death of the victim resulting from their hit-and-run conduct. That is, at the time of fleeing, the perpetrator either should have foreseen the harm of their act possibly causing the victim’s death but failed to do so due to carelessness, or had foreseen it but believed they could avoid it. Among the scholarly debates over the subjective culpability of the “causing death by hit-and-run” provision in the crime of traffic offenses, those who reject the negligence theory do so on the basis that “hit-and-run causing death” does not constitute an aggravated consequential offense. They then argue from the perspectives of subjective mental state, sentencing scope, and nature of the conduct that “hit-and-run causing death” should be normatively evaluated as indirect intent, and that this does not contradict basic criminal law theory. The mixed culpability theory posits that indirect intent and negligence can coexist within the same aggravating element. According to this view, the hit-and-run conduct encompassed by the aggravating circumstance of “causing death by hit-and-run” itself contains intentional elements in its normative structure; its subjective culpability form is not limited to a single type of negligence, but may instead manifest as either negligence or intent depending on the specific circumstances of the case. The author tends to 认同 the mixed culpability theory, i.e., with respect to the victim’s death resulting from the perpetrator’s hit-and-run conduct, the perpetrator’s subjective mental attitude should exclude direct intent from the scope of this culpability form, and should be limited to indirect intent and negligence. At the same time, the specific situation of “causing death by hit-and-run” is highly consistent in theory with the fundamental principles of aggravated consequential offenses, and should therefore be positioned and interpreted within the theoretical framework of aggravated consequential offenses.

The main grounds supporting the above position can be summarized as follows:

(1) Adopting the interpretive approach of the mixed culpability theory does not directly conflict with existing judicial interpretations in force. An examination of the specific content of current judicial interpretations reveals that they do not provide an exclusive or definitive provision regarding what mental state the perpetrator should hold under the aggravating circumstance of “causing death by hit-and-run.” This normative gap leaves ample room for theoretical justification and institutional development of the mixed culpability theory. It is particularly noteworthy that the Judicial Interpretation has clearly separated out the situation where the perpetrator, after the accident, takes the victim away from the scene and hides or abandons them, ultimately causing their death, and expressly provides that such conduct should be convicted and punished as intentional homicide. If the subjective culpability for “causing death by hit-and-run” were entirely limited to indirect intent, such a situation would neither conform to the theoretical logic of aggravated consequential offenses nor fully satisfy the constitutive elements of the crime of traffic offenses; more critically, such a limitation would make it difficult to clearly distinguish this situation from the crime of intentional homicide at the level of conduct characterization. The author believes that direct intent should not be included within the scope of subjective culpability for “causing death by hit-and-run.”

(2) Adopting the mixed culpability theory can effectively reconcile the contradictions in sentencing ranges between the crime of traffic offenses and the crime of intentional homicide. In terms of subjective culpability, indirect intent is less blameworthy than direct intent but more blameworthy than negligence.

(3) If you go with the mixed culpability theory, it actually lines up pretty well with how courts already handle aggravated consequential offenses. Here’s the basic idea behind that type of offense: one single act leads to two or more separate harmful results. Now, apply that to a “hit-and-run causing death” situation. The act of fleeing the scene itself—that’s not the harmful result we’re talking about for the purpose of aggravated consequences. No, the real aggravating factor is the victim’s death. That’s the extra harm that calls for a harsher evaluation.

(4) Going with the mixed culpability theory actually helps solve some real-world problems courts run into when trying to apply the “causing death by hit-and-run” rule. If you look at current practice, not many cases are actually decided under this provision. And why’s that? Mainly because causation is so hard to pin down. Most of the time, you just can’t prove beyond doubt that the victim died because they didn’t get timely help.

Now, the indirect intent theory offers a different approach. It takes those hit-and-run cases that could amount to intentional homicide and treats them as a separate category. That creates a clean line between the two types of situations, which makes it easier for judges and prosecutors to quickly spot the cases that should be handled as traffic offenses.

At the end of the day, the mixed culpability theory gets us out of that rigid “either it’s intent or it’s negligence” box. It offers a path that makes sense logically and works in practice, so courts can actually impose appropriate punishment on truly bad conduct—like hitting someone, running away,

and causing death by doing so.

5. Conclusion

When a victim dies from something called a “secondary collision”—and that does happen in extreme cases—things get really tricky. I mean, how do you assign blame when both the hit-and-run and the later impact led to the death? The legal logic here is far from straightforward.

So, after digging into the issues of causation, what the driver was thinking at the time, and how the “adequate causation theory” tends to fall short in practice, this chapter comes to a few main conclusions.

First, causation. If another vehicle comes along after the first hit-and-run and essentially causes the fatal crash, that later act can be seen as an independent, abnormal factor—one that might break the causal chain between the first driver’s flight and the victim’s death. In real-world cases, we see three typical situations: the chain of causation is clearly broken, the mental element (like intent or negligence) just isn’t there, or there’s not enough evidence to go on. Courts really need to look at each case individually and ask: was the initial hit-and-run actually the “adequate cause” of death?

Second, the adequate causation theory. It sounds nice in theory, but here’s the problem—its “adequacy” test mostly depends on how the individual judge sees things and their everyday sense of what’s reasonable. There’s no strong, objective standard. And when weird, abnormal factors come into play—say, the victim had a special physical condition, or a third party did something intentional and illegal—different judges can easily reach opposite conclusions. That really hurts legal predictability.

Third, the driver’s mental state regarding the victim’s death. The most convincing and workable approach here is what we call the “mixed culpability theory.” Under this view, when you’re dealing with the aggravated charge of “causing death by fleeing after a traffic accident,” the driver’s subjective attitude should be limited to *dolus eventualis* and negligence. Direct intent is out. This position doesn’t contradict existing judicial interpretations; it helps smooth out the sentencing gaps between regular traffic offenses and intentional homicide; it fits well with the core idea behind aggravated consequential offenses (one act leading to several bad results); and it helps courts draw reasonable lines—especially when the evidence isn’t crystal clear—between ordinary hit-and-run, hit-and-run that causes death, and actual intentional homicide. In other words, it respects the principle that the punishment should really match both the crime and the degree of blame. Bottom line: when courts handle secondary collision cases, here’s what they should do.

Use the adequate causation theory—but always through the lens of common social experience. Ask: was the initial hit-and-run a real, sufficient, and adequate cause of death? And stay alert for those abnormal intervening factors that might break the chain. On subjective culpability, adopt the mixed culpability theory. That means classifying the driver’s mental state as either negligence or indirect intent, based on what they actually knew and chose regarding the risk of death. If the evidence is weak, follow the *in dubio pro reo* principle—when in doubt, rule for the defendant. Don’t automatically bump

a regular hit-and-run up to the “causing death” version just because the outcome was tragic. Only by doing all this can courts strike a real, working balance between messy factual situations and legal norms. You don’t want to let serious hit-and-run conduct slide—but you also don’t want to hold someone liable when there’s no adequate causation to begin with. That’s how criminal law actually serves both justice and prevention.

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