



Multiplicity in Actual Causation

Torts
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Konemark
Most rights sharable

How do we determine actual causation?

but for

the but for

~~the~~ but for

 ~~the~~ but for

**You don't have
to pick one
defendant.**

**You can sue
everybody who's
a but-for cause.**



Multiple necessary causes

Multiple sufficient causes

Multiple necessary causes

When each of multiple careless acts is a necessary condition for an injury, each is deemed an actual cause of that injury.

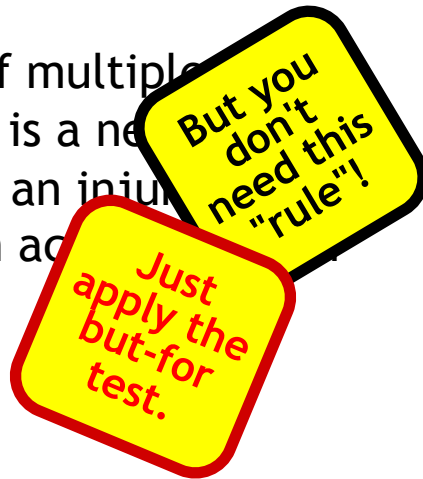
Multiple necessary causes

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Multiple necessary causes

When each of multiple careless acts is a necessary condition for an injury, the injury is deemed an accident that injury.



Multiple necessary causes

Hypo: Someone heaves a bowling ball off a building. Someone else lobs a knife up into the air over the sidewalk. Both the ball and knife would have landed harmlessly on the sidewalk, but the bowling ball deflects the knife, which hits a pedestrian, badly injuring him.



Who's liable?

- A. Lobber only
- B. Heaver only
- C. Lobber and heaver
- D. Neither

Multiple necessary causes

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Analysis: Ask the “*but for*” question.

Is it correct to say that the plaintiff would not have been injured but for the actions of the heaver?

Is it correct to say that the plaintiff would not have been injured but for the actions of the lobber?

Multiple necessary causes

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Analysis: Ask the “but for” question.

Is it correct to say that the plaintiff would not have been injured but for the actions of the heaver? YES

Is it correct to say that the plaintiff would not have been injured but for the actions of the lobber? YES

Multiple necessary causes

Hypo: Someone heaves a bowling ball off a building. Someone else lobs a knife up into the air over the sidewalk. Both the ball and knife would have landed harmlessly on the sidewalk. But the bowling ball deflects the knife, which hits a pedestrian, badly injuring him.

Result: The heaver and the lobber are both liable. The actions of both are but-for causes. Pointing to the other as an additional but-for cause does not release either from liability.

Multiple sufficient causes

When each of multiple discrete careless acts committed by different multiple actors would, by itself, have caused the injury that resulted from the confluence of those acts, each act is deemed an actual cause, even though neither satisfies the but-for test.

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When each of multiple discrete careless acts committed by different multiple actors would, by itself, have caused the injury that resulted from the confluence of those acts, each act is deemed an actual cause, even though neither satisfies the but-for test.

You can think of this as the "twin fires" doctrine.

Multiple sufficient causes

Hypo: Two chemical companies both dump roughly equal amounts of toxic chemicals into the ground which seep through the soil and contaminate a nearby residential well. The well water has 1000 ppm of the chemical. The resident drinks the water and dies. A dosage of 300 ppm is enough to injure and kill someone.



Who's liable?

- A. Only one of the companies
- B. Both
- C. Neither
- D. I really don't have a good guess

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Analysis: Ask the “but for” question.

Is it correct to say that the plaintiff would not have been injured but for the actions of the first company?

Is it correct to say that the plaintiff would not have been injured but for the actions of the second company?

Multiple sufficient causes

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Analysis: Ask the “*but for*” question.

Is it correct to say that the plaintiff would not have been injured but for the actions of the first company? **NO**

Is it correct to say that the plaintiff would not have been injured but for the actions of the second company? **NO**

Multiple sufficient causes

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Analysis: Does the *multiple sufficient cause doctrine* apply?

Were the actions of the first company enough to bring about the plaintiff's injury?

Were the actions of the second company enough to bring about the plaintiff's injury?

Multiple sufficient causes

Hypo: Two chemical companies both dump roughly equal amounts of toxic chemicals into the ground which seep through the soil and contaminate a nearby residential well. The well water has 1000 ppm of the chemical. The resident drinks the water and dies. A dosage of 300 ppm is enough to injure and kill someone.

Analysis: *Does the multiple sufficient cause doctrine apply?*

Were the actions of the first company enough to bring about the plaintiff's injury? [YES](#)

Were the actions of the second company enough to bring about the plaintiff's injury? [YES](#)

Multiple sufficient causes

Hypo: Two chemical companies both dump roughly equal amounts of toxic chemicals into the ground which seep through the soil and contaminate a nearby residential well. The well water has 1000 ppm of the chemical. The resident drinks the water and dies. A dosage of 300 ppm is enough to injure and kill someone.

Result: *Neither company's action is a but-for cause of the resident's death, yet both companies can be held liable.*

Tweaked hypothetical ...

Hypo: Two chemical companies both dump roughly equal amounts of toxic chemicals into the ground which seep through the soil and contaminate a nearby residential well. The well water has 400 ppm of the chemical. The resident drinks the water and dies. A dosage of 300 ppm is enough to injure and kill someone.



Who's liable?

- A. Only one of the companies
- B. Both
- C. Neither
- D. Honestly speaking, I'm lost

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Is it correct to say that the plaintiff would not have been injured but for the actions of the first company?

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Analysis: Ask the “*but for*” question.

Is it correct to say that the plaintiff would not have been injured but for the actions of the first company? YES

Is it correct to say that the plaintiff would not have been injured but for the actions of the second company? YES

Result: The but-for test is satisfied for both defendants. The actual cause element is met. No need to engage in multiple-sufficient-cause analysis.

Let 's do another tweaked hypothetical ...

Another tweaked hypothetical ...

Hypo: Two chemical companies both dump toxic chemicals into the ground which seep through the soil and contaminate a nearby residential well. The first company dumped 150% as much as the second company. The well water has 500 ppm of the chemical. The resident drinks the water and dies. A dosage of 300 ppm is enough to injure and kill someone.



Who's liable?

- A. Only one of the companies
- B. Both
- C. Neither
- D. I'm more lost than ever

Another tweaked hypothetical ...

Hypo: Two chemical companies both dump toxic chemicals into the ground which seep through the soil and contaminate a nearby residential well. *The first company dumped 150% as much* as the second company. The well water has *500 ppm* of the chemical. The resident drinks the water and dies. A dosage of 300 ppm is enough to injure and kill someone.

Analysis: Ask the “*but for*” question.

Is it correct to say that the plaintiff would not have been injured but for the actions of the first company?

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Analysis: Does the *multiple sufficient cause doctrine* apply? **NO**

Were the actions of the first company enough to bring about the plaintiff's injury? **YES**

Were the actions of the second company enough to bring about the plaintiff's injury? **NO**

Result: Only the first company may be held liable.