



Multiplicity in Actual Causation

Torts
Eric E. Johnson
ericejohnson.com




Konemark
Most rights sharable

How do we determine actual causation?

but for

the but for

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

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



Multiple necessary causes

Multiple sufficient causes

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

But you don't need this "rule"!

Just apply the but-for test.

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

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

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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?

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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

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

Water Well Contamination Problems

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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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.

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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?

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

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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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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

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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.