



Actual Causation Multiplicity Issues

Torts
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Konemark
Most rights sharable

Negligence

the elements:

- Duty of care owed to plaintiff
- Breach of duty
- Actual causation
- Proximate causation
- Injury

It is called by
many names ...

Negligence

the elements:

- Duty of care owed to plaintiff
- Breach of duty
- Causation in fact
- Proximate causation
- Injury

Negligence

the elements:

- Duty of care owed to plaintiff
- Breach of duty
- Factual causation
- Proximate causation
- Injury

Negligence

the elements:

The phrases
“actual causation,”
“causation in fact,” and
“factual causation” all mean
the same thing!

What is the main way for the plaintiff to show actual causation?

What is all the plaintiff has to do to show actual causation?

but for

**but
for**

**but
for**

All the plaintiff ever needs for actual causation is to pass the but-for test! If they pass the but-for test, they are done on actual causation.

but for

if the injury would not have happened but for the defendant's breach of duty, then the plaintiff has met the but for test and won on actual causation for a negligence claim.

Here's another way to think about it ...

“anyway”

if the injury would have happened anyway, then the plaintiff has failed the but for test.

the but for

~~the~~ but for

t  **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

Normal

Multiple necessary causes

Multiple sufficient causes

Infrequent

(at least in the real world 😊)

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

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

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.

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 can both be liable. The actions of both are but-for causes. *Pointing to the other's action as an additional but-for cause does not release either from liability!*

Multiple necessary causes

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Again ...

You don't need the "rule"!

Just apply the but-for test.

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.

Multiple sufficient causes

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This is sometimes called
"merged causes" ...

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 each act satisfies the but-for test.

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

Multiple sufficient causes

Remember, in the real world, this is ...

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Infrequent

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Infrequent

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← plaintiff

Multiple sufficient causes

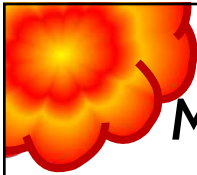
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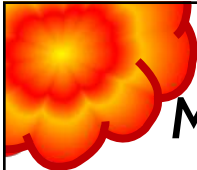

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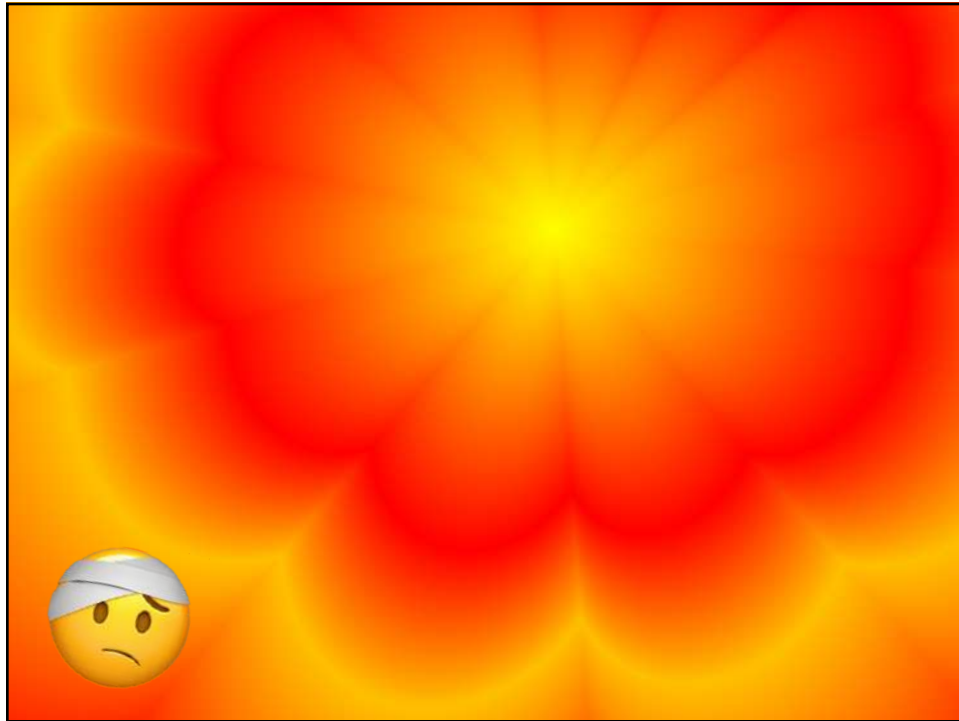
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If A hadn't started
the fire, P would
have been injured
anyway.



If B hadn't started
the fire, P would
have been injured
anyway.

If A hadn't started the fire, P would have been injured anyway.

**Result:
Plaintiff can't
show but-for
causation
against either
A or B!**



If B hadn't started the fire, P would have been injured anyway.

If A hadn't started the fire, P would have been injured anyway.

But wait! Thanks to multiple sufficient cause doctrine, both A's & B's conduct is deemed an actual cause, even though neither is a but-for cause.



If B hadn't started the fire, P would have been injured anyway.

Water Well Contamination Problems

Multiple sufficient causes

For all of these hypos, we'll assume that there was a duty, a breach of that duty, an injury, and that there's proximate causation so long as there's actual causation.

So it all comes down to actual causation ...

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

Multiple sufficient causes

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Analysis: Ask the “but for” question.

We always want to start with 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 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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So now we need to see if the plaintiff can show actual causation through the multiple sufficient cause doctrine.

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Analysis: Does the multiple sufficient cause doctrine apply?

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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?

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' actions were actual causes and thus 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

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.

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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.



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[[Doing the math, the first company contributed 300 ppm,](#) and the [second company contributed 200 ppm.](#)]



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[[Doing the math, the first company contributed 300 ppm,](#) and the [second company contributed 200 ppm.](#)]

FYI: You should probably be able to do that math in your head, but I personally consider it to be just over the borderline for how much math to expect students to do on a law exam. (Because I know you'll be nervous, and I don't want to add math anxiety into the equation.)



Another tweaked hypothetical ...

Hypo: Two chemical companies dump toxic chemicals into the ground which seep into the soil and contaminate a residential well. The first company dumped 100 ppm of chemical as the second company dumped 100 ppm of chemical. The residential well has 200 ppm of chemical. The resident drinks the water and dies. A doctor says 200 ppm is enough to injure someone.

[Doing the math, the first company contributed 100 ppm and the second company contributed 200 ppm.]

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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: Ask the “but for” question.

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Analysis: Does the multiple sufficient cause doctrine apply?



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

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.

If the plaintiff can't show but-for causation to get actual causation and if the plaintiff can't use the multiple sufficient causation approach (twin fires) ...

There's still two more options the plaintiff has for showing actual causation:

- **Summers v. Tice doctrine (a/k/a "uncertainable causes approach," "double fault and alternative liability")**
- **Market-share liability**



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REFERENCES: 1. *Journal of the American Medical Association*, 1954, 157: 1000-1001.
 2. *Journal of the American Medical Association*, 1954, 157: 1001-1002.
 3. *Journal of the American Medical Association*, 1954, 157: 1002-1003.
 4. *Journal of the American Medical Association*, 1954, 157: 1003-1004.

GRANT CHEMICAL COMPANY, INC., Brooklyn 26, N.Y.

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