

Actual Causation Multiplicity Issues

Torts Eric E. Johnson ericejohnson.com



How do we determine actual causation?

but for

the but for





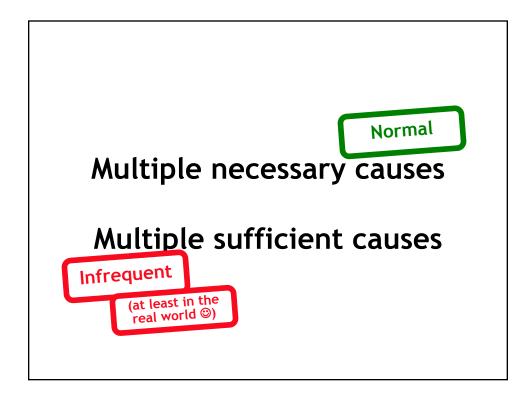
You don't have to pick one defendant.

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

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?

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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.

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Multiple sufficient causes

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Multiple sufficient causes

Remember, in the real world, this is ... Infrequent careless acts committed by di multiple actors would, by itself, have caused the injury that resulted from the confluence of those each act You can think is deemed an actual ca of this as the though neither satisfie

test.

"twin fires" doctrine.



Multiplas

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 ...

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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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 <u>but for</u> the actions of the first company? <u>NO</u>

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

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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?

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

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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?

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- 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 ...

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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 <u>first</u> <u>company</u> contributed <u>300 ppm</u>, and the <u>second company</u> contributed <u>200 ppm</u>.]



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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 load math anxiety into the equation.)

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Who's liable?

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- 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 second company enough to bring about the plaintiff's injury? NO

Result: Only the first company may be held liable.