



Actual Causation Multiplicity Issues

Torts
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Konemark
Most rights sharable

How do we determine actual causation?

but for

the but for

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 ~~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

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 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

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 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 necessary causes

Hypo: Someone throws a bowling ball out of 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.

Again ...

But you don't need this "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.

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

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.

Infrequent

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

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 ...

So

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!

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: Ask the “but for” question.

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?

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?

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

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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?

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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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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 situation**.)



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- B. Both
- C. Neither
- D. I'm more lost than ever

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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? NO

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



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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.