



Special Topic: Essay Exam Technique and Working Through a Negligence Problem *with an Emphasis on the Role of Causation*

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Special Topic: Essay Exam Technique

← **WIDESCREEN** →

Role of Causation

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Law school exams are completely different

- You don't regurgitate what you've learned.
- Instead, you must do legal analysis.
- Legal analysis is applying law to facts and explaining what results.
- That's applying the law you've learned to new facts you've never seen.
- To do this, you must mix the law and the facts together in a way that produces some result.

The key is
making purple

If law is blue
and facts are red,
then you want to make purple:

red + blue = purple

Example:

Anna can show a confinement sufficient for false imprisonment because by Denny yelling “If you move, I’ll shoot,” Denny used a threat of physical force to deny Anna’s freedom to move in all directions.

Example:

Anna can show a confinement sufficient for false imprisonment because by **Denny yelling** “**If you move, I’ll shoot,**” Denny **used a threat of physical force to deny Anna’s freedom to move** in all directions.

This example follows this pattern:

legal conclusion → because → **facts + law**

Example:

Anna can show a confinement sufficient for false imprisonment because by **Denny yelling “If you move, I’ll shoot,”** Denny used a threat of physical force to deny Anna’s freedom to move in all directions.

This example follo

legal conclusion →

This sentence is a good length for covering this element (which is, of course, one element of a prima facie case for false imprisonment).

Maybe if the issue were more complicated it would need more words. But it’s not, so it doesn’t.

Example:

The plaintiff in this case cannot prove actual causation under the but-for test because the damage to the gymnasium would have happened anyway, even if the defendant had not been intoxicated.

Example:

The plaintiff in this case cannot prove actual causation under the but-for test because the damage to the gymnasium would have happened anyway, even if the defendant had not been intoxicated.

This example follows this pattern:

legal conclusion → law → because → facts

Example:

The plaintiff in this case cannot prove actual causation under the but-for test because the damage to the gymnasium would have happened anyway, even if the defendant had not been intoxicated.

This example follows th

Again, this single sentence seems an adequate length to cover the analysis for this element, since it's straightforward.

legal conclusion → law → because → facts

Example:

The UCC's statute of frauds requires a writing evidencing a sale-of-goods contract for \$500 or more; therefore, the oral contract to sell the painting for \$11,000 is not enforceable.

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This example follows this pattern:

law → therefore → facts → legal conclusion

Don't make too much of these particular patterns. There's no magic in any particular way of doing it.

What's SUPER IMPORTANT is to use **because** as much as possible. (Or **therefore** if it fits the structure of the sentence.)

legal conclusion → because → facts + law

legal conclusion → law → because → facts

law → therefore → facts → legal conclusion

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legal c → because → facts + law

legal c → law → because → facts

law → therefore → facts → legal conclusion

The words **because** and **therefore** are your best friends!!


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What's SUPER IMPORTANT is to use **cause** as much as **therefore** if it (nature of the sentence.)

legal c
legal c
law → therefore → facts → legal conclusion

The words **because** and **therefore** are your best friends!!

facts + law
e → facts



Let's talk about the role of causation in putting together a prima facie case of liability.

Negligence

elements

- Existence of a duty
- Breach of duty
- Actual causation
- Proximate causation
- Injury

Negligence

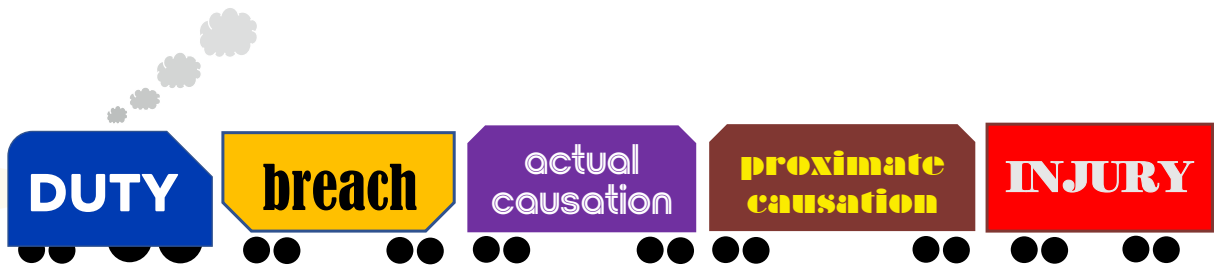
elements

- Existence of a duty
- Breach of duty
- Actual causation
- Proximate causation
- Injury

Keep in mind
what causation
does in a
negligence claim.

Causation
CONNECTS the
 breach to the injury

- Existence of a duty
- Breach of duty
- Actual causation
- Proximate causation
- Injury



Facts: Damian's Drunk Drive

On a dusty autumn afternoon in central Texlahoma, Damien downed half of a fifth of whiskey, waited a good 30 minutes for it to hit his system, and then got behind the wheel of his vintage 1984 Chevy Camaro IROC. A fifth of whisky is a lot of alcohol. Half of the bottle is the equivalent of about eight shots, which, based on Damien's body weight and metabolism, would leave him with a blood alcohol content of 0.24% after a half hour. (The legal limit for driving in Texlahoma, by the way, is 0.08%, meaning Damien is at triple the limit.) According to expert sources, this concentration of alcohol is predicted to cause nausea, impaired sensations, partial loss of understanding, possibility of stupor, and very substantially reduced reaction times. Because of Damien's intoxication while driving, he failed to see a red light at the intersection of Route 8 and Red Dirt Road. A red light, of course, indicates "stop" and obligates the driver to halt and not proceed through the intersection. Not seeing the red light, Damien drove into the intersection, where his car collided with that of Piper, who was driving her mom's car legally through the intersection pursuant to a green light. As a result of the force of the collision, Piper's arm was broken.

problematic essay ...

Piper has a strong negligence claim against D. Damien owes Piper a duty of care because P, as another motorist, is a foreseeable plaintiff. D breached his duty of care because the reasonable person wouldn't have driven drunk. D was an actual cause because but for running the red light, P would not have been injured. D was a proximate cause because it is foreseeable running a red light could cause a car accident. P has an injury because she suffered a broken arm.

problematic essay ...

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breach of duty

injury

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breach of duty

different thing, not the alleged breach ↓

← different thing, not the alleged breach

different thing, not the alleged injury ↑

injury

much better essay ...

Piper has a strong negligence case against Damien. D owes P a duty of care because another motorist on the road with D is a foreseeable plaintiff. D breached his duty of care because the reasonable person wouldn't have driven drunk. D's drunk driving was an actual cause of the broken arm, because but for being drunk and not noticing the red light, D would not have gone into the intersection and collided with P's car, breaking her arm. D's drunk driving was a proximate cause of P's broken arm because it is foreseeable that if you drive drunk you could hit someone, breaking their arm. The injury element is met because the broken arm is a physical, personal injury.

much better essay ...

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much better essay ...

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much better essay ...

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much better essay ...

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Notice that it helps to avoid saying the defendant is a cause. (People aren't causes. Their actions are.)