

Certain Issues in Actual Causation

Professor Eric E. Johnson
Torts I
October 30, 2007

Copyright 2007 Eric E. Johnson

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

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.



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? **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 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.

Caveat: If the act is only a trivial necessary condition, then proximate causation is not satisfied.

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 kill someone.



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 kill someone.

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

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 kill someone.

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 kill someone.

Analysis: Was either company's action a trivial factor? **NO**

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 kill someone.

Result: Neither company's action is a but-for cause of the resident's death, yet both companies are held liable.

“Substantial Factor” Test

- If any of multiple acts was sufficient to cause the injury, any actor whose conduct was a substantial factor in bringing about the injury meets the causation element.
- Some courts view this as an alternative to the but-for test for actual causation in multiple tortfeasor situations. (See *Aldridge v. Goodyear*.)
- Commentators argue that this is an incorrect interpretation of the Restatement. (See CB, n.4 on p.252.)