

Certain Issues in Actual Causation

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Torts

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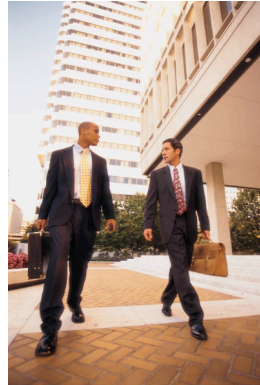
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Multiple necessary causes

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.



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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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*Is it correct to say that the plaintiff would not have been injured but for the actions of the heaver? **YES***

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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.*

Multiple sufficient causes

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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 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?

Is it correct to say that the plaintiff would not have been injured but for the actions of the second 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? **NO***

*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?

Were the actions of the first company enough to bring about the plaintiff's injury?

Were the actions of the second company enough to bring about the plaintiff's injury?

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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](#)

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Analysis: *Was either company's action a trivial factor?*

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

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



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Analysis: Ask 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? 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.*

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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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? **NO**

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? **NO**

Result: Only the first company may be held liable.