Multiplicity in Actual Causation

Torts I
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but for
the but for

a but for
You don’t have to pick one defendant.

You can sue everybody who’s a but-for cause.
Get all you can

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.

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 injure and 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 injure and 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**

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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.

**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 injure and kill someone.

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.
**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.

**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.
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.

**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**

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.
Photos:


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