

Causation

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Two parts:

1. Factual cause

2. Proximate cause

Factual Cause

The plaintiff must prove:

But for the defendant's negligence, the plaintiff would not have been harmed.

How? By showing what would have happened if the defendant has exercised reasonable care.

Factual cause is usually simple

Mathias v. Accor Economy Lodging, Inc.: “Punishing the Bedbug Hotel”

Akins v. Glen Falls: “Baseball Park Injuries”

The T.J. Hooper: “Tugboats and Radios”

Rushink v. Gerstheimer: “Leaving Keys in the Ignition”

Factual cause is usually simple

Trimarco v. Klein: “Broken Shower Door”

Robinson v. District of Columbia: “Jaywalking”

McDougald v. Perry: “The Flying Tire”

Tarasoff v. Regents of University of California: “The Psychiatrist
Who Didn’t Warn the Murder Victim”

What about multiple possible causes?

Anderson v. Minneapolis, St. Paul & Sault Ste. Marie Railway Co.

“Multiple Fires Whodunnit”

Necessary and Sufficient Conditions

Necessary condition:

Result happens ONLY IF condition exists.

Put another way:

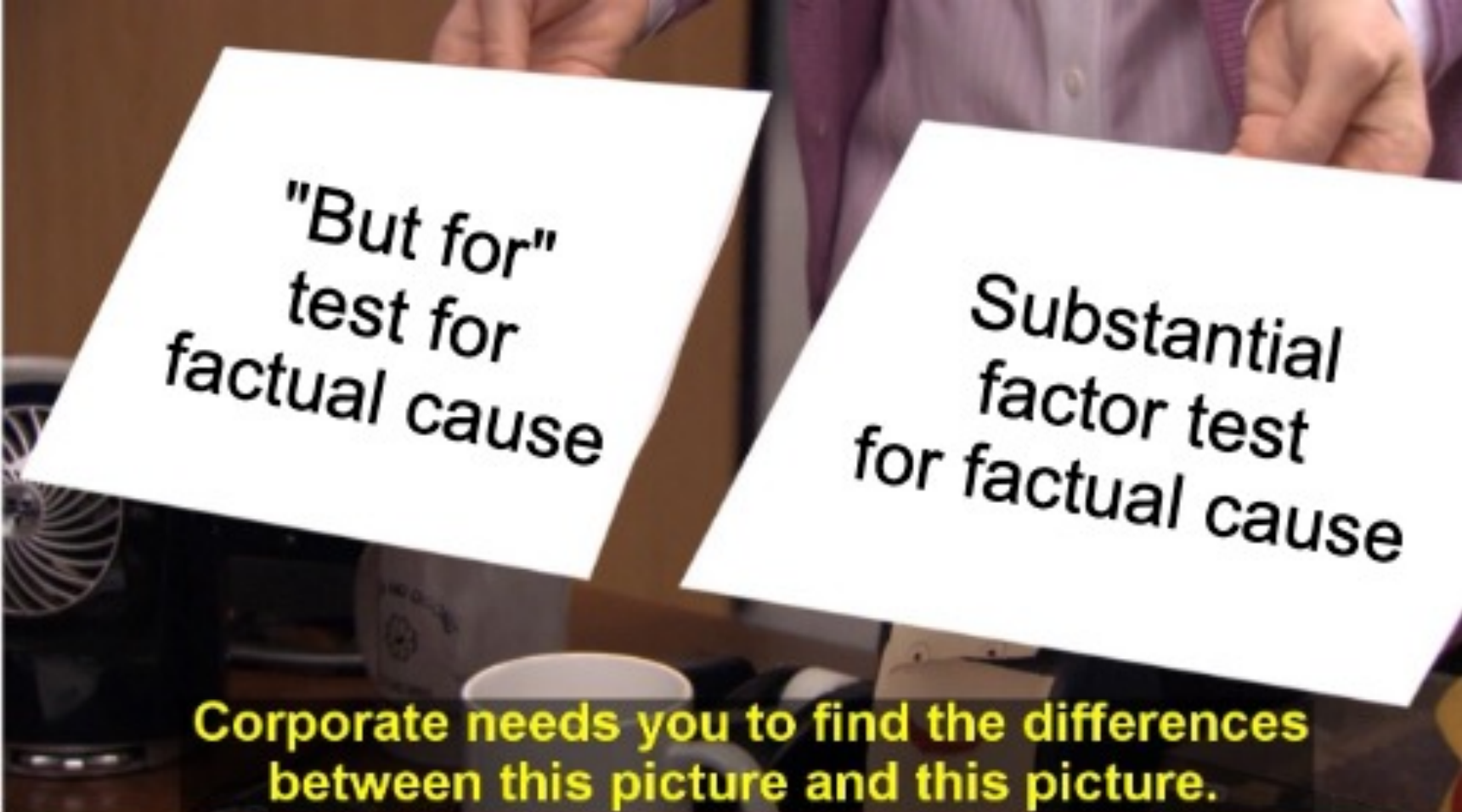
IF NOT condition, then NO result.

Sufficient condition:

IF condition exists, then result happens.

Two different tests for factual causation


1. “But for”
2. Substantial factor



"But for"
test for
factual cause

Substantial
factor test
for factual cause

Corporate needs you to find the differences
between this picture and this picture.



They're the same picture.

California Jury Instructions

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

[Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.]

Summers v. Tice

“Hunting Party Whodunnit”

Summers v. Tice

Three reasons for alternative liability:

1. Almost 51% probability
2. Fairness
3. “Smoke out” the real evidence

Summers v. Tice

~~Three~~ reasons for alternative liability:

1. ~~Almost 51% probability~~
2. Fairness
3. ~~“Smoke out” the real evidence~~

Garcia v. Joseph Vince Co.

“Fencing Sabre Whodunnit”

Exercise: Hotel Room Whodunnit

How do you rule on defendant's motion for summary judgment?

Sindell v. *Abbott Laboratories*

“Toxic Harms”

Possible alternatives for factual causation

1. Concert liability
2. Alternative liability
3. Enterprise liability
4. Market share liability

Toxic Harms

Why is the tort system such a poor fit?

Three frequent problems:

1. Identification of the cause: Can't be certain that the toxin was a "but for" cause
2. Boundaries of the harm: Can't be certain of the extent of the harm
3. Source of the cause: Can't be certain who in particular is responsible

Mass Torts

A procedural story in two parts:

1. The Supreme Court killed the mass tort class action
2. Multidistrict litigation (MDL) took over

Factual Cause Exercises

Exercise 1

Back-to-back car accidents: Waters was negligently hit by Meyer, then negligently hit by Morales. In one collision or the other, Waters sustained an injury to her neck. She doesn't know which of the two accidents caused the injury. The doctors that treated her injury cannot determine whether it was the first or second impact that caused it.

Waters visits your office as a prospective client. She wants to know if she has a viable negligence claim against Meyer or Morales, who she should sue, and if she will win. Please advise her.

Exercise 2

Same initial fact pattern as the first exercise. Except now, in addition to being hit by Meyer and Morales, Waters was also hit by two other drivers who fled the scene. In one of the four collisions, Waters sustained an injury to her neck. She doesn't know which of the four accidents caused the injury. The doctors that treated her injury cannot determine which of the four impacts caused it.

Waters visits your office as a prospective client. She wants to know if she has a viable negligence claim against Meyer or Morales, who she should sue, and if she will win. Please advise her.

Exercise 3

A labor activist, Ayla Ross, comes to visit you in your office. She has been organizing workers at a slaughterhouse in the region. She's learned that the slaughterhouse had been euthanizing chickens with a particular gas, BirdBeGone, for the many years. but stopped using the gas when it was taken off the market six months ago. The gas was banned by state authorities after emerging research indicated that human beings exposed to the gas could develop skin cancer and that the gas could induce miscarriages and result in severe birth defects.

Ross wants to talk with these workers about the possibility of suing the slaughterhouse for negligence. She is particularly interested in the possibility of a class action lawsuit so that the workers don't need to litigate individual cases, but she knows that issues of causation can be challenging in toxic harm lawsuits. For this question, assume that duty and breach can be proven. Please advise her on the most pertinent remaining issues.