

A rancher owns a herd of cattle that are permitted to freely roam his ranch. The cattle's blood is more alkaline than normal because their diet consists primarily of the natural grasses that grow in the ranch's slightly alkaline soil. The primary source of water for the ranch is a stream that runs through it.

Two upstream landowners use water from the stream to operate mills. Recently, each landowner has negligently increased the alkaline nature of the water. As a result, several of the rancher's cattle have died from alkalosis, a disease caused by an animal's bodily fluids being too alkaline, and the rancher has had to treat the rest of his herd to prevent their deaths. The alkali added to the water by each landowner was a substantial factor in causing the injuries to the rancher's cattle. Although each alkali addition alone would have been a factual cause of the injuries to the cattle, neither landowner added enough alkali to the water to have caused the injuries in the absence of the naturally occurring alkali in the stream.

The rancher has brought a negligence action against the two landowners for the harm suffered by his herd.

Is each landowner's conduct a cause in fact of the damage suffered by the rancher?

- A. No, because neither landowner's conduct as the sole source of alkali in the stream would have caused the damage.
- B. No, because neither landowner's conduct was the "but for" cause of the damage since it would have been caused by the action of the other landowner.
- C. Yes, because each landowner's conduct in adding additional alkali to the stream was a substantial factor in causing the damage.
- D. Yes, because it was foreseeable that each landowner's negligence in adding alkali to the stream could cause alkalosis.

Explanation:

Tort causation

Actual (factual) cause	Single cause – but for defendant's conduct, plaintiff would not have been harmed Multiple causes: Second Restatement (majority rule) – defendant's conduct was substantial factor causing plaintiff's harm Third Restatement (minority rule) – defendant's conduct regarded as factual cause of plaintiff's harm
Proximate (legal) cause	Plaintiff's harm was reasonably foreseeable consequence of defendant's conduct

A **negligence** action requires proof that the defendant's conduct was a **cause in fact** (ie, actual cause) of the plaintiff's injury. The predominant test for actual causation is the but-for test, which is satisfied if the plaintiff's injury would not have occurred without the defendant's conduct. However, this test will not work if **multiple forces combine** to cause the plaintiff's injury and **any one alone** would have been **sufficient to cause the injury**. In that case, the test is whether the defendant's conduct was a **substantial factor** in causing the injury.

Here, each landowner negligently added alkali to the stream, and each addition was sufficient to cause the injuries to the rancher's cattle when combined with the naturally occurring alkali in the stream. As a result, the substantial-factor test (not the but-for test) applies. And since the facts stipulate that each landowner's conduct was a substantial factor in causing the injuries to the rancher's cattle, each landowner's conduct is a cause in fact of the damage suffered by the rancher (**Choices A & B**).

(Choice D) The foreseeability of the plaintiff's harm is relevant to *proximate* cause, which is considered only after a defendant's conduct is determined to be a cause in fact of that harm.

Educational objective:

Where multiple forces combine to cause the plaintiff's injury and any one alone would have been sufficient to cause the injury, the test for actual causation is whether the defendant's conduct was a *substantial factor* in causing the injury.

References

Restatement (Second) of Torts § 432(2) (Am. Law Inst. 1965) (substantial-factor test for multiple causes).

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