

CAUSATION

Torts I
Professor Hensel
10/27/09



Elements of Negligence:

Duty

Breach of Duty



CAUSATION

Damages

CAUSATION

Perkins v. Texas & N.O. Ry. Co.

- * The Significance of Causation
- * Definition of Causation



The Tests of Causation

Standard Test: "But for"

- (1) Cause in fact established where "but for" the negligent acts of D, P would not have suffered an injury;
- (2) Cause in fact **not** established if P would have suffered the same harm had D not acted negligently.

Standard of proof: More probable than not

Proving Causation

Reynolds v. Texas & Pac. Ry. Co.

* Consideration Given to Alternative Causes of Injury

* Standard of Proof



Proving Causation

Gentry v. Douglas Hereford Ranch, Inc.

* Establishing the Link Between the Alleged Negligence & Injury Suffered

* Definition of Causation




GEORGIA STATE UNIVERSITY **LAW**

Proving Causation

Kramer Service, Inc. v. Wilkins

- * Degree of Evidence Required
- * Post Hoc Ergo Propter Hoc
- * Informed Consent Review




GEORGIA STATE UNIVERSITY **LAW**

Reduced Chance of Recovery

Herskovits v. Grp. Health Cooperative

- * Problems with the “But-For” Test
- * Option #1: Changing the Injury Identified
- * Option #2: Alternative Test of Causation



GEORGIA STATE UNIVERSITY **LAW**

Tests of Causation

Alternative Test: “Substantial Factor”

Causation satisfied when A is a “substantial factor” in bringing about the resultant injury to B.


Potential application: Loss of Chance cases

GEORGIA STATE | **AW**

Reduced Chance of Recovery


Herskovits v. Grp. Health Cooperative

- * Problems with the “But-For” Test
- * Option #1: Changing the Injury Identified
- * Option #2: Alternative Test of Causation
- * Application Outside of Medical Mistakes



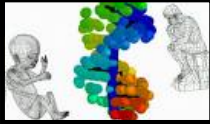
GEORGIA STATE | **AW**

Problems in Causation Arise When:

1. **Scientific Evidence** is Used to Establish Causation 
2. It is Unclear **WHAT** Caused the Harm
3. It is Unclear **WHO** Caused the Harm

GEORGIA STATE | **AW**

Scientific Evidence



- * Admissibility of Expert Testimony
- * Factors Considered by Court
 - (1) whether testimony reflects “scientific knowledge”;
 - (2) whether testimony is relevant

Multiple Causal Factors; Proximate Cause

Torts I
Professor Hensel
10/29/09



The Tests of Causation

Standard Test: "But for"

- (1) Cause in fact established where **"but for" the negligent acts of D, P would not have suffered an injury;**
- (2) Cause in fact **not** established if **P would have suffered the same harm had D not acted negligently.**

Standard of proof: More probable than not

Tests of Causation

Alternative Test: "Substantial Factor"

Causation satisfied when A is a "substantial factor" in bringing about the resultant injury to B.

Potential application: Loss of Chance cases

Problems in Causation Arise When:

1. **Scientific Evidence** is Used to Establish Causation
2. It is Unclear **WHAT** Caused the Harm
3. It is Unclear **WHO** Caused the Harm



Problems in Causation Arise When:

2. It is Unclear **WHAT** Caused the Harm



**Concurrent Causation:
Multiple Insufficient Causes**

Hill v. Edmonds

- * Application of "But-For" Causation
- * Causation involving Multiple Concurrent Agents
- * Examples




GEORGIA STATE UNIVERSITY **LAW**

**Concurrent Causation:
Multiple Sufficient Causes**

Anderson v. Minn., St. P. & S. St. RR. Co.

- * Application of “But-For” Causation
- * “Substantial Factor” Test
- * Policies Supporting Liability



GEORGIA STATE UNIVERSITY **LAW**

Tests of Causation

Alternative Test: “Substantial Factor”

Causation satisfied when A is a “substantial factor” in bringing about the resultant injury to B.

Potential application: [Loss of Chance cases](#)
[Multiple Sufficient Causes](#)

GEORGIA STATE UNIVERSITY **LAW**

Problems in Causation Arise When:

3. It is Unclear **WHO** Caused the Harm

Alternative Liability



Summers v. Tice

- * Policy Concerns with Application of Traditional Causation
- * Procedural Effect of Alternative Liability
- * Availability of Alternative Liability



Enterprise / Market Share Liability

Sindell v. Abbott Laboratories

- * Enterprise Liability
- * Market Share Liability
- * Apportionment of Damages
- * Availability of MS Liability