

Causation

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According to Horsey and Rackley (2013), a duty of care is considered the centre of tort law, a test which establishes whether a duty of care is owed is known as Lord Atkin's 'neighbour principle'. This test demonstrates that a person must avoid certain acts that can be foreseen to harm your neighbour. According to Elliot and Quinn (2013), a key case that demonstrates a breach of duty of care is *Donoghue v Stevenson* [1932]. Mrs Donoghue was in a cafe drinking ginger beer bought by her friend when a decomposing snail fell out of the remains of her bottle. Mrs Donoghue became ill and sued the manufacturer. The House of Lords concurred that the manufacturer owed her a duty of care as a consumer of their product. Horsey & Rackley (2024), state that a duty of care is the action to ensure that no harm is caused to an individual through "acts" or "omissions." A breach of this duty occurs when this is not upheld like what Donoghue experienced. This assignment will show an overview of the tests used in tort law to demonstrate causation in relation to a breach of duty of care.

Regarding factual causation reform is necessary in circumstances that courts face challenges when attempting to determine what would have occurred without the actions of the defendant. This could make it more difficult for courts when determining liability Horsey & Rackley (2024).

Cooke (2007), causation is an evaluation of whether a breach of duty of care was the result of harm caused. Factual causation must be established first which determines if the claimant's damages have been caused by a breach of the defendant's duty of care. According to Perry (2024), the test for factual causation is known as the "but for" test. The claimant must demonstrate that the duty of care owed was breached, meaning that if it were not for the defendant's actions the incident would not have occurred in the same manner or at the exact time it took place.

According to Reece (1996), the case of *Barnett v Chelsea and Kensington Hospital Management* [1969] established the "but for" test. Barnett was sent away from the hospital without treatment and later died due to arsenic poisoning, "but for" was not proved as it was later found out that Barnett still would have died even with the treatment from a doctor. The "but for" test is only successful if it can be proved that the outcome would not have occurred if it were not for the defendant's actions. Despite the simplicity of this test this case proves that courts can experience challenges when it comes to deciding what would have happened in the absence of the defendant's actions. An example of the "but for" test functioning to its full ability is seen in the case of *Wilsher v Essex Area Health Authority* [1988], this case shows that a claimant was born preterm and blind. Professionals listed a few probable causes, but they were judged to be "non negligent" the catheter had been found to have been misplaced in the claimant's arm by a junior doctor. This resulted in the claimant receiving access oxygen. Therefore, the claimant would not have suffered the harm if it were not for the doctor's acts. The defendant was held liable for the harm caused (Kidner, 2008).

Morgan (2003) suggested that the case *Fairchild v Glenhaven Funeral Services* [2002], concerns claimants who contracted "mesothelioma" which is lung cancer due to the exposure of asbestos. "But for" was not established due to the exposure tracing back to all three of the claimant's previous employers. It is physically impossible to prove because the cancer could have developed gradually, or it could have triggered the claimant suddenly. Therefore, all the employers were held liable due to them materially contributing to the claimant contracting the disease. Having several different employers does make a case more complex in terms of the "but for" test but all will go in favour of the claimant if it can be proved that the employers materially contributed to the harm caused.

Byrne (2022) explained that the defendant's acts and the subject of whether the incident was foreseeable are referred to as legal causation. According to JSTOR (2024), the cycle of

causation can be affected by a variety of factors such as a victim refusing medical attention for their injuries, or improperly administered treatment from a medical professional that results in long-term health issues for their patient. According to Elliot and Quinn (2013 p.112), an intervening act, also referred to as a break in the chain of causation occurs when something else happens to aggravate the harm caused further. However, the first defendant will only be held liable for the harm that they caused before the intervening act of a third party. An intervention in tort law is often referred to as “novus actus interveniens.” The case *Baker v Willoughby* [1969] shows this when the defendant’s carelessness causes Baker to suffer from a leg injury in a traffic accident. Following this, an armed robber shot him in the same leg, further injuring it and necessitating its amputation. The robber escaped the accident without being caught in the act. Since the claimant’s leg would have sustained damage later due to the robbery, it would be inaccurate to say that the harm would not have taken place if it was not for the defendant’s negligence, hence the “but for” test is not considered applicable.

According to Horsey & Rackley (2021 p.223), the test for legal causation is known as the “thin skull” test. This test rules out that “you take your victims as you find them.” This means even if the claimant’s damages were more severe than what was predicted for a typical person, the defendant will still hold liability for the harm caused. A case which shows this test in action is *Baker v Willoughby* [1969]. This is also known as a break in the chain of causation. The intervening event in this case is when the claimant was shot by the armed robber after the traffic accident occurred and made his sustained injury even worse. The house of Lords takes into consideration the potential affects injuries can have on an individual’s life, this instance demonstrates how the “thin skull” test can affect a case. The standard implies that we should accept victims as they are, but it could be misleading if an intervening event occurs making it harder for courts to decide which defendant is liable for the harm caused. However, this test does take a sympathetic approach when it comes to victims and their injuries and how they are taken seriously under the law Elliot and Quinn (2019). This is seen in the case of *Mckew v Holland* [1969], Due to the negligence of the defendant the claimant injured his leg in a work-related accident. Although his leg remained weak, he proceeded to descend a dangerous staircase. This resulted in additional injuries, and it was held that the chain of causation was broken because of the irrational actions putting himself in that position despite his already existing injuries, a claimant failing to take action can also cause a break in the chain of causation. *Razumas v Ministry of Justice* [2018] a prisoner received negligent cancer treatment which resulted in the amputation of his leg. However, upon the claimant’s release he failed to seek the medical attention needed which he required this failure was deemed an intervening act by the court.

In conclusion, “but for” is a straightforward test for courts to carry out when establishing what would have happened in certain cases without the actions of the defendant but complications can be faced. This is seen in the case *Barnett v Chelsea and Kensington Hospital Management* [1969] when the test for factual causation was not proved since the claimant would have died without the treatment of a professional anyway. Courts could face difficulties with cases like this if they cannot predict an outcome without the acts of the defendant. However, the simplicity of “but for” is proved in the case of *Wilsher v Essex Area Health Authority* [1988], it was proved that the claimant would not have been born premature and blind if it were not for the actions of the defendant. The case of *Fairchild v Glenhaven Funeral Services* [2002], proves that multiple employers can contribute to a claimant’s harm. The “but for” test indicated that the claimant’s illness was associated to all three of the prior jobs; as a result, all the previous employers were held liable for the harm caused. This shows that the test for factual causation goes back to find the cause of the harm on the claimant. However, this could become problematic in terms of “but for” if it cannot be demonstrated that prior employers contributed to the claimant’s harm. The test for legal causation the “thin

skull” test suggests that “you take your victims as you find them.” This states that the defendant will still be held liable even if the claimant’s injuries are more extreme than a typical individual. However, legal causation can be affected by intervening acts or events. An intervening act in tort law is often referred to as a break in the chain of causation. This is seen in the case *Baker v Willoughby* [1969] when the claimant was shot by an armed robber while already having existing injuries. However, this means that the first defendant will only be held liable up until the chain of causation was broken. A claimant can also be held responsible for an act which may prevent courts establishing legal causation. This is seen in the case *Mckew v Holland* [1969], after the claimant sustained injuries by the defendant, he proceeded to walk down an unsafe staircase which worsened his injuries. This is considered an intervening act because the claimant already knew the seriousness of the harm and continued to worsen the already existing injuries which broke the chain of causation. An intervening act is also seen in *Razumas v Ministry of Justice* [2018], when the claimant failed to seek attention from a professional for existing cancer even though the disease was diagnosed through negligent treatment. The “thin skull” test shows that a sympathetic approach is given to victims regarding their harm however, this can be massively impacted by acts or events which can cause a break in the chain of causation. Overall, as much as the test for factual causation is straightforward complications can arise which suggest the need for reform if it cannot be predicted by the courts what would have happened without the acts of the defendant. Legal causation does take victim’s harm very seriously, but events or acts can occur that cause a break in the chain of causation affecting who is held liable.

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