

Review

What you do, you become

Outlining

What is the purpose of an outline?

Blueprint

Roadmap

Instruction manual

Instructions for processing unfamiliar facts

Exam writing process

1. Identify the issue
2. State the correct legal rule
3. Apply the rule to the facts
4. Analyze nuances (like gaps, contradictions, ambiguities)

Structural pattern in outline

Issue

--- Rule

--- Application

--- Nuances

Factual Causation

Rule?

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Rule: “But for” the defendant’s negligence, the harm to the plaintiff would not have occurred.

Factual Causation

Rule: “But for” the defendant’s negligence, the harm to the plaintiff would not have occurred.

Application?

Factual Causation

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Application: Imagining that the defendant had not acted negligently, would the harm still have occurred?

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Nuances?

Factual Causation

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Application: Imagining that the defendant had not acted negligently, would the harm still have occurred?

Nuances:

- Multiple sufficient causes
- Multiple possible causes
- Toxic harms

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Nuances:

--- Multiple sufficient causes

----- *Rule:*

----- *Application:*

----- *Nuances:*

--- Multiple possible causes

----- *Rule:*

----- *Application:*

----- *Nuances:*

--- Toxic harms

----- *Rule:*

----- *Application:*

----- *Nuances:*

In-Class Exercise

Factual Cause

Stubbs v. City of Rochester: “Sewage in the Drinking Water”

Zuchowicz v. United States: “Prescribed Drug Overdose”

Anderson v. Minneapolis, St. Paul & Sault Ste. Marie Railway Co.:
“Multiple Fires Whodunnit”

Summers v. Tice: “Hunting Party Whodunnit”

Garcia v. Joseph Vince Co.: “Fencing Sabre Whodunnit”

Sindell v. Abbott Laboratories: “Toxic Harms”

Four typical scenarios in which factual cause may be contested

1. Toxic exposure
2. No idea what happened
3. Know what happened, but don't know that it wouldn't have happened if defendant had behaved reasonably
4. Know what happened, but don't know who to blame

Proximate Cause

In re Polemis: “The Plank that Made a Ship Explode”

Wagner v. International Railway Co.: “The Injured Rescuer”

Benn v. Thomas: “The Time-Delayed Heart Attack”

Steinhauser v. Hertz Corp.: “Sudden Schizophrenia”

Gibson v. Garcia: “The Rotten Telephone Pole that Fell on the Car”

Berry v. Borough of Sugar Notch: “The Rotten Tree that Fell on the Speeding Car”

Palsgraf v. Long Island Railway Co.: “Fireworks on the Train Platform”

Vicarious Liability

Miller v. Reiman-Wuerth Co.: “The Bank Errand”

Christensen v. Swenson: “The Lunch Break”

Kuehn v. Inter-city Freight: “Road Rage”

Sage Club v. Hunt: “The Violent Bartender”

Three criteria for scope of employment

- 1) Employee's conduct must be of the general kind the employee is hired to perform.
- 2) Employee's conduct must occur substantially within the hours and ordinary spatial boundaries of the employment.
- 3) Employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.