

HANKE v. RESURFICE

“BUT FOR IS BACK”



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“DID IT EVER LEAVE”

ATHEY v. LEONATI (SCC 1996)

CAUSATION TESTS:

1. BUT FOR
2. MATERIAL CONTRIBUTION

BUT FOR

- **Was and remains primary test for causation**
 - Atthey did not change this
 - “Original” position altered by wrongdoing, causing “injured” position
- **When But For fails, but sense of fairness demands different test**
 - Cook v. Lewis (two hunters, one bullet wound)
 - Material contribution to risk

WHEN DOES MATERIAL CONTRIBUTION TO RISK APPLY:

1. For reasons outside Plaintiff's control it is impossible to prove But For
2. Defendant's tortious conduct must have exposed the Plaintiff to an unreasonable risk of harm and the injury suffered is within the ambit of such risk

LESSONS FROM ATHEY AND HANKE:

- **Athey was a But For case**
- **Hanke – on Plaintiff’s own evidence no connection between outcome and tortious conduct**
- **But For is primary:**
 - Won’t apply only in unusual cases
 - Plaintiff must call evidence on but for if even remotely possible
 - Many cases that have argued alternative test involved a failure to call causation evidence
 - There are no shortcuts
- **But For Never Left**
- **Hanke leaves Snell v. Farrell untouched**