

## CAUSATION

**If you decide that the defendant was negligent, the third element you must then consider is whether the defendant's negligent conduct caused (or worsened) the plaintiff's injuries. Even if you find that the defendant was negligent, the defendant is not liable to the plaintiff unless the defendant's negligence caused (or worsened) the plaintiff's harm.**

*Doull v. Foster*, 487 Mass. 1, 7-8, 163 N.E.3d 976, 982-983 (2021) (“Causation has traditionally involved two separate components: the defendant had to be both a factual cause (or ‘cause in fact’) and a legal cause of the harm... [A] defendant is a factual cause of a harm if the harm would not have occurred ‘but for’ the defendant's negligent conduct. Legal cause of the harm means that the harm must have been within the scope of the foreseeable risk arising from the negligent conduct...the question is whether the defendant's conduct was necessary to bringing about the harm.” (internal citations and quotations omitted) (emphasis added).

Optional language for plaintiff with pre-existing condition. **The injuries include**

**the extent to which any pre-existing condition was made worse by the accident.**

Injury enhanced by negligence: *Lally v. Volkswagen Aktiengesellschaft*, 45 Mass. App. Ct. 317, 328 (1998); *Simmons v. Monarch Machine Tool Co.*, 413 Mass. 205, 212 (1992) (liability attaches where defect enhances the injuries a person sustains in an otherwise foreseeable accident). “It is settled that, where an injury arising from a cause which entails liability on the defendant combines with a preexisting or a subsequently acquired disease [or injury] to bring about greater harm to the plaintiff than would have resulted from the injury alone, the defendant may be liable for all the consequences. If the injury causes or contributes to cause the development of a preexisting disease [or injury], the person liable for the injury is liable also for the resulting aggravation. The wrongdoer may be held responsible for the harmful results of the combined effects of his wrongful act and the disease.” *Wallace v. Ludwig*, 292 Mass. 251, 256 (1935).

*The judge should go on to instruct the jury on both factual causation and legal causation, choosing the factual causation option that applies: (A. single cause, B. multiple causes, or, for the rare case, the supplemental instruction C on multiple simultaneous sufficient causes).*

## **I. FACTUAL CAUSATION**

**To meet this burden, the plaintiff must show that the harm was more likely due to causes for which the defendant was responsible rather than some other cause. The plaintiff must show that the defendant's (defendants') negligence was necessary to bring about the harm.**

*Doull v. Foster*, 487 Mass. 1, 8 (2021) (“Another way to think about the but-for causation standard is as one of necessity; the question is whether the defendant’s conduct was necessary to bringing about the harm.”); *Mullins v. Pine Manor College*, 389 Mass. 47, 61 (1983) (“more likely than not”).

### **A. INJURY RELATES TO A SINGLE CAUSE**

**The defendant’s conduct was the cause of the plaintiff’s injury if the injury would not have occurred but for the defendant’s conduct. In other words, the negligence must have been necessary to bring about the harm. If the harm would have occurred anyway, the defendant is not liable.**

## **B. INJURY RELATES TO MULTIPLE CAUSES**

**There may be more than one cause of an incident. The plaintiff is not required to show that the defendant was the only cause of the harm. If the defendant's negligence was one of the causes necessary to bring about the harm, that is enough. Nor does the plaintiff have to show that the negligence was the largest or main cause of the injuries, as long as the injuries would not have occurred without the defendant's negligence.**

## **II. LEGAL CAUSATION**

**Furthermore, to establish causation, the plaintiff must show that the harm was reasonably foreseeable to a person in the defendant's position at the time of the defendant's negligence. The plaintiff does not have to establish that the defendant foresaw, or should have foreseen, the exact manner in which the harm occurred; but (he / she / they / it) must show that this harm was a natural and probable consequence of the defendant's negligence.**

*Kent v. Commonwealth*, 437 Mass. 312, 320 (2002) ("In addition to being the cause in fact of the injury, the plaintiff must show that the negligent conduct was a proximate or legal cause of the injury as well."); *Hill v. Winsor*, 118 Mass. 251, 259 (1875); *Lane v. Atlantic Works*, 111 Mass. 136, 139–40 (1872).

## SUPPLEMENTAL INSTRUCTION

**\*NOTE ON FACTUAL CAUSATION:** *In the rare instance when there are multiple sufficient simultaneous causes of plaintiff's harm, use the following instruction for factual cause instead of the instructions for single or multiple causes, and then follow with the above Legal Causation instruction.*

C. Injury relates to multiple sufficient simultaneous causes

**It may be that there are two or more events that occur at the same time, and each is sufficient to have caused harm to the plaintiff. By way of example:**

**Two people were independently camping in a heavily forested campground. Each one had a campfire, and each negligently failed to ensure that the fire was extinguished upon retiring for the night. Due to unusually dry forest conditions and a stiff wind, both campfires escaped their sites and began a forest fire. The two fires, burning out of control, joined together and engulfed a hunting lodge, destroying it. Either fire alone would have destroyed the lodge. Each person's negligence is a factual cause of the destruction of the hunting lodge.**

**A defendant whose negligent act was fully capable of causing the plaintiff's harm should not escape liability merely because of the happenstance of another sufficient cause, like the second fire,**

**operating at the same time. When there are two or more competing causes like the twin fires, each of which is sufficient without the other to cause the harm and each of which is in operation at the time the plaintiff's harm occurs, the causation requirement is satisfied.**

**In such a case, you do not need to find the injury would not have occurred but for the defendant's conduct. Instead, it is sufficient to find that the defendant's conduct was capable of causing the plaintiff's harm. In other words, if the plaintiff shows that – without the other cause - the defendant's negligence was necessary to bring about the harm, then the plaintiff has met the burden of proof.**

The Supreme Judicial Court has concluded "that the traditional but-for factual causation standard is the appropriate standard to be employed in most cases, including those involving multiple alleged causes." *Doull*, 487 Mass. at 2-3. However, "in the *rare* cases presenting the problem of multiple sufficient causes, the jury should receive additional instructions on factual causation. Such instructions should begin with the illustration from the Restatement (Third) of the twin fires example so that the complicated concept can be more easily understood by the jury...After the illustration, the jury should be instructed, 'A defendant whose tortious act was fully capable of causing the plaintiff's harm should not escape liability merely because of the happenstance of another sufficient cause, like the second fire, operating at the same time.' The jury should then be instructed that 'when there are two or more competing causes like the twin fires, each of which is sufficient without the other to cause the harm and each of which is in operation at the time the plaintiff's harm occurs, the factual causation requirement is satisfied,' See Restatement (Third) § 27 comment a. In such cases, where there are multiple, simultaneously operating sufficient causes, the jury do not have to make a but-for causation finding. This approach avoids the confusing terminology presented by the terms 'substantial fact' or 'substantial contributing factor'. It also eliminates the risk of the judge instructing the jury on the wrong standard, as

this instruction supplements the but-for standard without conflicting with it.” *Doull*, 487 Mass. at 18-19.