15.00
PROXIMATE CAUSE

15.01 Proximate Cause—Definition and Use

When I use the expression "proximate cause," I mean a cause that, in the natural or ordinary course of events, produced the plaintiff's injury. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury.]

[If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that [something] [or] [someone] else may also have been a cause of the injury. However, if you decide that the defendant's conduct was not a proximate cause of the plaintiff's injury, then your verdict should be for the defendant.]

Instruction revised August 2021; Notes on Use and Comment revised October 2021.

Notes on Use

This instruction in its entirety should be used when there is evidence of a concurring or contributing cause to the injury or death. In cases where there is no evidence that the conduct of any person other than a single defendant was a concurring or contributing cause, the short version without the bracketed material may be used. The second paragraph should be used only where there is evidence tending to show that the conduct of the defendant[s] was not a proximate cause of the occurrence and the conduct of third persons or outside instrumentalities was the proximate cause of the occurrence.

Comment

The Committee modified this instruction in 2007 with the intent of making it more comprehensible and conversational. That modification used the word "and" in the first sentence instead of "or." "Or" is a more accurate statement of the law and more consistent with the predecessor instruction and case law. "That" is preferred usage in place of "which."

In negligence actions and in other cases which involve the violation of statutes and ordinances, the injuries, death or loss of support must have been caused by the negligence or particular statutory violation alleged in the complaint. The jury is informed that one of the elements of the plaintiff's case is that the conduct of the defendant is a proximate cause of the plaintiff's damages or injuries. *See* IPI B21.02. This instruction, defining proximate cause, should accompany those in which the phrase "proximate cause" is used, *e.g.*, IPI 11.01 and IPI B21.02.

An instruction encompassing the bracketed material of the first paragraph is proper where there is evidence that something or the acts of someone other than the negligence of the defendant, or intoxication of a person who has been sold or given intoxicants, was a proximate cause of the injury or death. *James v. Checker Taxi Co.*, 22 Ill.App.2d 22, 159 N.E.2d 12 (1st Dist.1959); *Harrold v. Clinton Gas & Elec. Co.*, 205 Ill.App. 12 (3d Dist.1917); *St. Clair v. Douvas*, 21 Ill.App.2d 444, 158 N.E.2d 642 (1st Dist. 1959); *Heitz v. Hogan*, 134 Ill.App.3d 352, 480 N.E.2d 185, 191-92; 89 Ill.Dec. 299, 305-06 (4th Dist.1985). However, some courts have determined that if the only possible cause of the occurrence is the conduct of A single defendant, the use of the long form of the first paragraph might be confusing to the jury. *Willson v. Pepich*, 119 Ill.App.3d 552, 456 N.E.2d 882, 886; 75 Ill.Dec. 61, 65 (2d Dist. 1983).

Prior to the Illinois Supreme Court's decision in *Alvis v. Ribar*, 85 Ill.2d 1, 421 N.E.2d 886, 52 Ill.Dec. 23 (1981), adopting comparative negligence, some cases held that when the only possible causes of the occurrence were the conduct of the plaintiff and the defendant, the material in the bracketed portion of the first paragraph would be improper because it would prejudice the defendant's defense of contributory negligence. *Borowski v. Von Solbrig*, 60 Ill.2d 418, 431; 328 N.E.2d 301, 308 (1975); *Budovic v. Eschbach*, 349 Ill.App. 163, 167-68; 110 N.E.2d 477, 479 (2d Dist. 1953) (court properly refused an instruction containing the bracketed material in a case involving a pedestrian injured by an automobile). Cases have also held that the bracketed portion of the first paragraph should not be given when the only other possible cause of the harm in question was the plaintiff's predisposition to the injury. These cases interpret the bracketed phrase to refer only to the conduct of third persons and not mere "conditions." *Lounsbury v. Yorro*, 124 Ill.App.3d 745, 464 N.E.2d 866, 870-71, 80 Ill.Dec. 1, 5-6 (2d Dist. 1984).

Some cases have held that it is not necessarily error to give the short form, even when multiple concurring or contributing causes are possible. *See*, *e.g.*, *Curry v. Summer*, 136 Ill.App.3d 468, 474; 483 N.E.2d 711, 715-17, 91 Ill.Dec. 365, 369-71 (4th Dist.1985) (although long form would have been preferable, short form not error even though there were multiple defendants); *Webb v. Angell*, 155 Ill.App.3d 848, 508 N.E.2d 508, 514-15; 108 Ill.Dec. 347, 353-354 (2d Dist. 1987) (short form proper onfacts; use of term "any" in short form permits argument that injury had multiple causes); *Greene v. Rogers*, 147 Ill.App.3d 1009, 498 N.E.2d 867, 874-875; 101 Ill.Dec. 543, 550-551 (3d Dist.1986) (same; short not error, although long form would have been preferable); *Mazur v. Lutheran Gen. Hosp*., 143 Ill.App.3d 528, 493 N.E.2d 62, 69; 97 Ill.Dec. 580, 587 (1st Dist.1986) (short form not error where other instructions sufficiently conveyed idea that more than one defendant could be liable). Conversely, it has been held error to refuse to give the bracketed portion of the first paragraph when the evidence shows that the injury complained of could have been caused by the conduct of two or more persons other than the plaintiff or decedent. *Heitz v. Hogan*, 134 Ill.App.3d 352, 480 N.E.2d 185, 191-192; 89 Ill.Dec. 299, 305-06 (4th Dist.1985).

After the adoption of comparative negligence in *Alvis v. Ribar*, 85 Ill.2d 1, 421 N.E.2d 886, 52 Ill.Dec. 23 (1981), the Illinois Supreme Court in *Casey v. Baseden*, 111 Ill.2d 341, 490 N.E.2d 4, 7; 95 Ill.Dec. 531, 534 (1986), held that the bracketed portion of the first paragraph was properly given in a motor vehicle collision case involving only one plaintiff and one defendant:

> While it is possible that the long form of the instruction could, in remote circumstances, prove confusing to a jury when only two parties are involved in an accident, we do not think this is such a case. Other instructions did not allude to the possible acts of third parties; they clearly instructed the jury on how to apportion damages if it found that both parties were negligent and advised the jurors to calculate the comparative negligence of the parties assuming that "100% represents [their] total combined negligence." Viewed in their entirety, the instructions fully and fairly apprised the jury of the relevant principles . . . relating to treatment of the plaintiff's fault.

Other recent decisions have demonstrated a similar reluctance to hold that the bracketed portion of the first paragraph of the instruction prejudiced a party. *See*, *e.g.*, *Chambers v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 155 Ill.App.3d 458, 508 N.E.2d 426, 431-32; 108 Ill.Dec. 265, 270-71 (1st Dist. 1987); *Drake v. Harrison*, 151 Ill.App.3d 1082, 503 N.E.2d 1072, 105 Ill.Dec. 66 (5th Dist. 1987); Shiner v. Friedman, 161 Ill.App.3d 73, 513 N.E.2d 862, 869; 112 Ill.Dec. 253, 260 (1st Dist. 1987); *Johanek v. Ringsby Truck Lines, Inc.*, 157 Ill.App.3d 140, 509 N.E.2d 1295, 1305; 109 Ill.Dec. 283, 293 (1st Dist. 1987); *Lee v. Grand Trunk W. R. Co.*, 143 Ill.App.3d 500, 492 N.E.2d 1364, 1375; 97 Ill.Dec. 491, 502 (1st Dist. 1986); *Roman v. City of Chicago*, 134 Ill.App.3d 14, 479 N.E.2d 1064, 1067-68; 89 Ill.Dec. 58, 61-62 (1st Dist. 1985).

In *Willson v. Pepich*, 119 Ill.App.3d 552, 456 N.E.2d 882, 886; 75 Ill.Dec. 61, 65 (2d Dist.1983),the court stated:

> We agree that the principal reason for not permitting the inclusion of the bracketed material in IPI Civil No. 15.01 is no longer present under the doctrine of comparative negligence.So long as the doctrine of contributory negligence was a viable doctrine in this State, the negligence of the defendant had to be the sole cause of the injury to the plaintiff when the only other possible contributing cause was the conduct of the plaintiff herself, and it was for this reason that the bracketed material was held to be improper in such cases.

From these authorities, it may be concluded that, it will rarely be error to give the bracketedportion of the first paragraph.

The Committee again modified this instruction in 2021 with the intent of harmonizing the proximate cause instructions formerly found in IPI 12.04, 12.05, and 15.01 into one proximate cause instruction to avoid unnecessary confusion and consternation. The first paragraph and its bracketed material is unchanged from the prior version of 15.01. The second paragraph in this instruction merges the concepts previously conveyed in IPI 12.04 and 12.05 and combines those concepts into one proximatecause instruction because "Nomenclature aside, the sole proximate cause theory is simply one way a defendant argues that the plaintiff failed to carry its burden of proof on proximate cause – specifically, byarguing that the negligence of another person or entity, not a party to the lawsuit, was the only proximate cause of the plaintiff's injuries." *Douglas v. Arlington Park Racecourse, LLC*, 2018 IL App (1st) 162962, ¶ 36, 426 Ill. Dec. 896, 117 N.E.3d 313. As such, "sole proximate cause" is not an affirmative defense. *Leonardi v. Loyola Univ.*, 168 Ill. 2d 83, 101, 212 Ill. Dec. 968, 977, 658 N.E.2d 450, 459 (1995). Ultimately, the jury is charged with discerning whether plaintiff has carried its burden, not whether thedefense has negated said proof.

The second paragraph in this instruction instructs the jury that "[w]here a person is guilty of the negligence charged against him, it is no defense that some other person, or thing, contributed to bring about the results for which the damages are claimed." *Romine v. City of Watseka*, 341 Ill.App. 370, 377, 91 N.E.2d 76, 79 (2d Dist. 1950); *Manion v. Chicago, R.I. & P. Ry. Co.*, 12 Ill.App.2d 1, 18, 138 N.E.2d 98, 106-07 (2d Dist. 1956); *Liby v. Town Club*, 5 Ill.App.2d 559, 565, 126 N.E.2d 153, 156 (1st Dist. 1955). This form of instruction was approved in *Dickeson v. Balt. & O.C.T.R.R. Co.*, 73 Ill.App.2d 5, 34,220 N.E.2d 43, 56 (1st Dist. 1965), *aff'd* 42 Ill.2d 103, 245 N.E.2d 762 (1969); *Ballweg v. City of Springfield*, 114 Ill.2d 107, 120, 499 N.E.2d 1373, 1379, 102 Ill. Dec. 360, 366 (1986); *Berry v. Am. Com. Barge Lines*, 114 Ill.App.3d 354, 373, 450 N.E.2d 436, 449, 71 Ill. Dec. 1, 14 (5th Dist. 1983), *cert.denied*, 465 U.S. 1029, 104 S.Ct. 1290, 79 L.Ed.2d 692 (1984). In *Frank Parmelee Co. v. Wheelock*, 224 Ill. 194, 79 N.E. 652 (1906), and *W. Chi. St. R. Co. v. Horne*, 100 Ill.App. 259 (1st Dist. 1902), *aff'd*, 197Ill. 250, 64 N.E. 331 (1902), the courts approved the word "blame." Nonetheless, if the defendant's conduct was not a proximate cause of the plaintiff's injury, then the plaintiff has failed to carry its burdenof proof on proximate cause.