15.00

PROXIMATE CAUSE

15.01 Proximate Cause--Definition

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.]

Instruction and Comment revised September 2009.

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.

Comment

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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 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, 191-192; 89 Ill.Dec. 299, 305-306 (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 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 brackets 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, 167-168; 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 long form 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, 870-871, 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, 715-717, 91 Ill.Dec. 365, 369-371 (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, 514-515; 108 Ill.Dec. 347, 353-354 (2d Dist.1987) (short form proper on facts; 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 long form 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, 305-306 (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 long form was properly given in a motor vehicle accident 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 long form of the instruction prejudiced a party. *See*, *e.g.*, *Chambers v. Rush-Presbyterian-St. Luke's Medical Center*, 155 Ill.App.3d 458, 508 N.E.2d 426, 431-432; 108 Ill.Dec. 265, 270-271 (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 Western 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, 1067-1068; 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 (1) it will rarely be error to give the long form of the instruction, and (2) the short form may now be restricted to those cases where the evidence shows that the sole cause of the plaintiff's injury (other than the plaintiff's predisposition) was the conduct of a single defendant and there is no evidence that the plaintiff's conduct was a contributing cause.