

II. Negligence

A. Prima-Facie Case

- Duty
- Breach
- 3. Legally Cognizable Harm
 - a. Actual, Physical “Injury” to Person or Property
 - b. Reconceptualizing the Harm Because of Causation Problems
 - i. Loss of Chance for a Better Outcome as the Harm
- 4. Cause in Fact, aka Factual Cause or Actual Cause
 - a. The Tests of Cause in Fact
 - i. But-For Test
 - a. Generally
 - b. Multiple, Interdependent But-For Causes
 - ii. Substantial Factor Test—Multiple, Independently Sufficient Causes
 - b. Proof of Causation
 - i. Preponderance of the Evidence
 - ii. Res Ipsa Loquitur
 - iii. Alternative Causes and the Shifted Burden of Proof
- Apportionment of Fault [this is *not* causal apportionment]
 - A. Joint and Several Liability
 - B. Proportionate Share Liability aka Several Liability
- Vicarious Liability [this is *not* causation]