**3.01 NEGLIGENCE – WHEN PLAINTIFF ENTITLED TO RECOVER**

The plaintiff claims that [he] [she] was harmed because of the defendant’s negligence.

In order to find that the plaintiff is entitled to recover, you must decide it is more likely true than not true that:

1. the defendant was negligent;

2. the plaintiff was harmed; and

3. the defendant’s negligence was a substantial factor in causing the plaintiff's harm.

Directions for Use

Instruction 03.03A (Negligence Defined – Adult) and Instruction 03.07 (Substantial Factor) must be given in addition to this instruction, unless the claim is based exclusively on negligence per se, in which case Instruction 03.04A (Violation of Statute-Negligence Per Se) should replace 03.03A.

In cases of vicarious liability, see generally Article 23 Legal Relationships, and Instruction 23.O1C (Agency-Contract Liability-Principal Sued Alone).

Comment

The elements of a cause of action for the tort of negligence are: (1) a duty of care owed by defendant to plaintiff; (2) a breach of that duty; (3) a proximate causal connection between the breach and the harm; and (4) actual harm. *E.g*., *Parks Hiway Enterprises, LLC v. CEM Leasing, Inc.*, 995 P.2d 657, 667 (Alaska 2000); *Silvers v. Silvers*, 999 P.2d 786, 793 (Alaska 2000).

The existence and extent of duty are questions of law. *See, e.g., Robles v. Shoreside Petroleum, Inc.*, 29 P.3d 838, 841 (Alaska 2001). Breach of duty and causation are questions of fact. *See, e.g., Guerrero v. Alaska Housing Finance Corp.*, 6 P.3d 250, 255 (Alaska 2000); *Schumacher v. City & Borough of Yakutat*, 946 P.2d 1255, 1256 (Alaska 1997). *See generally* *Williams v. Municipality of Anchorage*, 633 P.2d 248, 251 (Alaska 1981)(“The precise nature and extent of . . . duty, while a question of law, depends upon the nature and extent of the act undertaken, a question of fact”).

Instruction 3.01 does set out the negligence elements typically presented to the jury for decision. *See, e.g.,* *Hogg v. Raven Contractors, Inc*., 134 P.3d 349, 351 (Alaska 2006).

Instruction 3.01 uses the term “substantial factor” rather than “legal cause” or “proximate cause” for the causation element to make it consistent with the causation instruction, 3.06, and because substantial factor is the general causation test for Alaska negligence cases. *E.g.,* *Robles v. Shoreside Petroleum, Inc.*, 29 P.3d 838, 841 (Alaska 2001).