

CAUSATION—“BUT FOR”

The defendant’s conduct is a cause of the plaintiff’s [harm / injury] if the [harm / injury] would not have occurred when and as it did but for that conduct; conversely, the defendant’s conduct is not a cause of the plaintiff’s [harm / injury] if that [harm / injury] would have occurred when and as it did without that conduct.

Many factors [or things] may operate either independently or together to cause [harm / injury]; in such a case, each may be a cause of the [harm / injury]. You may find that the defendant’s conduct caused the [harm / injury] even though it was not the only cause. In deciding whether the defendant’s conduct is a cause of the plaintiff’s [harm / injury], you are not to consider whether that conduct was more important or less important than any other factor in causing the [harm / injury].

COMMENT: Oregon courts recognize two causation standards that apply to different types of negligence cases. *Haas v. Estate of Carter*, 370 Or 742, 525 P3d 451 (2023) (quoting *Joshi v. Providence Health System of Oregon Corp.*, 342 Or 152, 162, 149 P3d 1164 (2006)). The “but for” instruction should be used in the vast majority of cases. *Joshi*, 342 Or at 162 (“The ‘but-for’ test for causation, in which a plaintiff must demonstrate that the defendant’s negligence more likely than not caused the plaintiff’s harm, applies to the majority of cases.”). The “substantial factor” instruction should only be used when “two causes concur to cause an event, and either, operating alone, would have been sufficient to cause the identical result.” *Haas*, 370 Or at 751. Further discussion of substantial factor is found in the comment of UCJI 23.02. The UCJI Committee has provided pattern instructions for each causation standard. The trial court, with the assistance of the parties, must determine which standard applies to a particular case.