

102.20 PROXIMATE CAUSE—PECULIAR SUSCEPTIBILITY.

In deciding whether the [injury<sup>1</sup> to the plaintiff] [death of the decedent] was a reasonably foreseeable consequence of the defendant's negligence, you must determine whether such negligent conduct, under the same or similar circumstances, could reasonably have been expected to [injure] [cause the death of] a person of ordinary [physical] [mental] condition.<sup>2</sup> If so, the harmful consequences resulting from the defendant's negligence would be reasonably foreseeable and, therefore, would be a proximate cause of the [plaintiff's injury] [decedent's death]. Otherwise, the harmful consequences resulting from the defendant's negligence would not be reasonably foreseeable and, therefore, would not be a proximate cause of the [plaintiff's injury] [decedent's death].

*NOTE WELL: Use the below parenthetical language when prior knowledge of susceptibility to injury is at issue.*

(Furthermore, even if a person of ordinary [physical] [mental] condition would not be reasonably expected to [be injured] [die], you must determine whether the defendant had knowledge or a reason to know of the plaintiff's peculiar or abnormal [physical] [mental] condition.<sup>3</sup> If so, the harmful consequences resulting from the defendant's negligence would be reasonably foreseeable and, therefore, would be a proximate cause of the [plaintiff's injury] [decedent's death]. Under such circumstance(s), the defendant would be liable for all the harmful consequences which occur, even though these harmful consequences may be unusually extensive because of the peculiar or abnormal [physical] [mental] condition which [happens] [happened] to be present in the [plaintiff] [decedent].<sup>4</sup>

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On the other hand, if you determine that the defendant did not have knowledge or a reason to know of the plaintiff's peculiar or abnormal [physical] [mental] condition, the harmful consequences resulting from the defendant's negligence would not be reasonably foreseeable and, therefore, would not be a proximate cause of the [plaintiff's injury] [decedent's death].)

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1. "Injury" includes all legally recognized forms of personal harm, including activation or reactivation of a disease or aggravation of an existing condition. See N.C.P.I.- Civil 102.22 (Proximate Cause – Activation/Aggravation).

2. *Hughes v. Webster*, 175 N.C. App. 726, 625 S.E.2d 177 (2006); *Potts v. Howser*, 274 N.C. 49, 53-54, 161 S.E.2d 737, 741 (1968); *Lockwood v. McCaskill*, 262 N.C. 663, 670, 138 S.E.2d 541, 546 (1964); *Wyatt v. Gilmore*, 57 N.C. App. 57, 59-60, 290 S.E.2d 790, 791-92 (1982); *Lee v. Regan*, 47 N.C. App. 544, 550, 267 S.E.2d 909, 912, *cert. denied*, 301 N.C. 92, 273 S.E.2d 299 (1980); *Hinson v. Sparrow*, 25 N.C. App. 571, 573-74, 214 S.E.2d 198, 199-200 (1975); *Redding v. F. W. Woolworth Co.*, 9 N.C. App. 406, 409-10, 176 S.E.2d 383, 385 (1970).

3. The Court of Appeals described the impact of prior knowledge of susceptibility on the foreseeability standard as follows:

Negligence is the failure to use due care under the circumstances. One of the circumstances in a particular case might be the known susceptibility to injury of a person to whom the duty of due care is owed. Obviously, in the exercise of due care one may not act toward a frail old lady in the same way one could act toward a robust young man. The duty owed, to exercise due care, is the same in each instance, but in fulfilling that duty the difference in circumstances requires a difference in conduct by the actor.

*Hinson*, 25 N.C. App. at 574, 214 S.E. 2d at 200. In such cases, the following supplement to the above charge may be used: "A negligent person is held responsible for knowing of the peculiar condition when, under the circumstances, [he] [she] should have known or anticipated it."

4. *Potts v. Howser*, 274 N.C. 49, 54, 161 S.E.2d 737, 742 (1968).