102.83 COMMON LAW LIABILITY FOR PROVIDING IMPAIRING SUBSTANCE TO PERSON EXPECTED TO DRIVE.[1]

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's [injury] [damage].

"Negligence" refers to a person's failure to follow a duty of conduct imposed by law. Every person is under a duty to use ordinary care to protect *himself* and others from [injury] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect *himself* and others from [injury] [damage].

A person is under a duty not to provide an impairing substance[2] to someone whom *he* knows or, in the exercise of ordinary care, should know, [is] [is likely to become] under the influence of an impairing substance and is likely to be operating a motor vehicle shortly thereafter.[3]

A violation of this duty is negligence.

[A person is under the influence of an impairing substance when *he* has consumed a sufficient quantity of that impairing substance to cause *him* to lose the normal control of *his* physical or mental faculties, or both, to such an extent that there is an appreciable impairment of either or

both of these faculties. (*Name impairing substance*) is an impairing substance.]

[A person is (also) impaired when *he* has consumed a sufficient quantity of alcohol[4] that at any relevant time after the driving *he* has an alcohol concentration of 0.08 or more grams of alcohol per [210 liters of breath] [100 milliliters of blood]. A relevant time is any time after the driving in which the operator still has in *his* body alcohol consumed before or during the driving.][5]

[A person is (also) impaired when *he* has any amount of [a Schedule I controlled substance] [metabolites[6] of a Schedule I controlled substance] in *his* blood or urine].[7] (*State name of substance*) is a [Schedule I controlled substance] [metabolite of a Schedule I controlled substance].

The plaintiff not only has the burden of proving negligence, but also that such negligence was a proximate cause of the [injury] [damage].

Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage], and one which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

I instruct you that negligence is not to be presumed from the mere

fact of [injury] [damage].

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was negligent, and that such negligence was a proximate cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. *See generally Hart v. Ivey*, 332 N.C. 299, 420 S.E.2d 174 (1992) (recognizing a claim for social host liability within the general negligence framework).

2. "Impairing Substance. -Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances." N.C. Gen. Stat. § 20-4.01(14a).

3. *See Hart*, 332 N.C. at 305, 420 S.E.2d at 178.

4. "Alcohol. –Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol." N.C. Gen. Stat. § 20-4.01(1a) (2009).

5. It should be noted that a person charged with driving while impaired cannot plead as a defense that he was legally entitled to use the impairing substance (*e.g.*, "my doctor prescribed this medicine"). N.C. Gen. Stat. § 20-138.1(b) (2009).

6. "'Metabolites' are defined as a 'product of metabolism.'" *State v. Harris*, 361 N.C. 400, 401, 646 S.E.2d 526, 527 n.1 (2007). In the context of drug usage, urine samples may be used to detect the presence of metabolites of a particular drug. *See id*.

7. Effective December 1, 2006, any person who "drives any vehicle upon any highway, any street, or any public vehicular area within this State . . . [w]ith any amount of a Schedule I controlled substance . . . or its metabolites in his blood or urine" commits "the offense of impaired driving." N.C. Gen. Stat. § 20-138.1(a)(3).