

## 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]