

CAUSATION

The second element is causation. The plaintiff must prove two things. First, that but for Defendant's failure to act with reasonable care, the harm would not have occurred.

Second, that Defendant's conduct was a "proximate cause" of the harm. Proximate cause is a cause that results in an injury which flows directly and continuously from Defendant's conduct.

This does not mean that Defendant's conduct must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage. In such a case, each may be a proximate cause.

Reporter's notes: Recent Vermont Supreme Court cases have made it clear that Plaintiff must show both "but for" causation and "proximate" causation. Collins v. Thomas, 2007 VT 92, ¶ 8, 183 Vt. 250, 253-54, 938 A.2d 1208, 1211; Harrington v. Rheaume, 729-10-09 Rdcv, at 4 (Teachout, J. July 9, 2012). The court in Collins cited language from an earlier case that defined proximate cause as "all the injurious consequences that flow [from the defendant's negligence] until diverted by the intervention of some efficient cause that makes the injury its own." Collins, 2007 VT 92, ¶ 8. We find this language too legalistic and have opted for the more plain "directly" and "continuously."

Recent Vermont cases appear to suggest that it would be error to fail to instruct the jury, if requested, that there can be more than one proximate cause. Chater v. Cent. Vt. Hosp., 155 Vt. 230, 236 (1990) and Mobbs v. Cent. Vt. Ry., Inc., 155 Vt. 210, 219-20 (1990).