

COMPARATIVE NEGLIGENCE

In this case, [Defendant] asserts the affirmative defense of comparative negligence. That is, [Defendant] asserts that [Plaintiff's] negligence was a cause of [his/her] injury. The law requires that [Plaintiff] act with reasonable care for [his/her] own safety and well-being.

If you find that [Defendant] was negligent and that the [Defendant's] negligence contributed to [Plaintiff's] injury, you must next decide whether [Defendant] has met its burden of proving by a preponderance of the evidence the following elements of its comparative negligence defense:

1. [Plaintiff] [himself/herself] was negligent by failing to act with reasonable care for [his/her] own safety and well-being at the time and place in question; and that
2. [Plaintiff's] negligence was a direct and proximate cause of [his/her] injury.

As to the first element, [Plaintiff] had a duty to act with reasonable care for [his/her] own safety. Reasonable care is not the greatest possible care, such as might be employed by an unusually cautious person. Rather, it is ordinary care, given all the circumstances existing at the time and place of the event. Here, [Plaintiff's] conduct must be measured against that of a reasonable [to be designated, i.e., "eighteen year-old student"].

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

Second, that [Plaintiff'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 [Plaintiff's] conduct.

This does not mean that [Plaintiff'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.

If you find that [Defendant] has satisfied its burden on these issues, then you must next compare any negligence attributed to [Plaintiff] with any negligence you have

attributed to [Defendant]. To do so, you must assign a percentage to the negligence of [Plaintiff] on one hand, and [Defendant] on the other. The percentages you assign must add up to 100 percent. Let me suggest two hypothetical examples:

	Example 1	Example 2
[Plaintiff]	15%	60%
[Defendant]	85%	40%
Total negligence	100%	100%

Of course, these examples are for illustrative purposes only. They do not indicate in any way how you should decide the case.

If you determine that [Plaintiff] share of the negligence is greater than 50%, then you should return a verdict for [Defendant] and you should not go on to consider damages. If [Plaintiff's] share of the negligence is 50% or less when compared to the negligence of [Defendant], then the total damages award, if any, must be reduced by the percentage of [Plaintiff's] negligence. I will provide you with a worksheet that will help you work through these questions during your deliberations.

Reporter's notes: See *Arroyo v. Milton Academy*, *D.VT 5:10-cv-117 (Doc. 139) (jury charge)*; *12 V.S.A. § 1036*; *Barber v. LaFromboise*, *908 A.2d 436, 442-45 (Vt. 2006)*; *Vermont Jury Instructions § 7.28 (1993)*.