

13-305. Causation (Proximate cause).

An [act] [or] [omission] [or] [_____ (condition)] is a "cause" of [injury] [harm] [_____ (other)] if[, unbroken by an independent intervening cause,] it contributes to bringing about the [injury] [harm] [_____ (other)] [, and if injury would not have occurred without it]. It need not be the only explanation for the [injury] [harm] [_____ (other)], nor the reason that is nearest in time or place. It is sufficient if it occurs in combination with some other cause to produce the result. To be a "cause", the [act] [or] [omission] [or] [_____ (condition)], nonetheless, must be reasonably connected as a significant link to the [injury] [harm].

USE NOTE

This instruction should be used in all cases in which an act, omission or condition is said to have caused injury or harm, and ties to UJI 13-302 NMRA.

The 2004 amendments to this instruction eliminated the word "proximate". The trial court and counsel should be careful, when preparing other instructions that use the term "proximate cause" to eliminate the word "proximate" until appropriate amendments to those instructions are published. The Court, by administrative order dated December 10, 2005, authorized the elimination of the word "proximate" for all civil Uniform Jury Instructions that had formerly referred to "proximate cause".

The bracketed "independent intervening cause" clause shall not be used for a plaintiff's comparative negligence or in cases involving multiple acts of negligence by concurrent tortfeasors. *Torres v. El Paso Electric Co.*, 1999-NMSC-029, 127 N.M. 729, 987 P.2d 386, dramatically limits the application of independent intervening cause under New Mexico tort law. The clause is to be used when there is an unforeseeable force, not in operation at the time the defendant acted, that is not a concurrent cause of the plaintiff's injury. *Chamberland v. Roswell Osteopathic Clinic, Inc.*, 2001-NMCA-045, 130 N.M. 532, 27 P.3d 1019, *cert. denied*, 130 N.M. 713.

Independent intervening cause is not appropriate when a defendant is merely arguing lack of causation. An instruction on independent intervening cause presupposes a defendant's negligence and causation in fact. Without some initial tortious act or omission by a defendant that precipitates the plaintiff's ultimate injury, subsequent causes and their injuries cannot "intervene".

[As amended, effective March 1, 2005; as amended by Supreme Court Order No. 08-8300-061, effective February 2, 2009; by Supreme Court Order No. 11-8300-003, effective March 21, 2011.]