

## **Civ. J.I. 13.1601 Negligence (of all persons); definition.**

### **13-1601. Negligence (of all persons); definition.**

Statute text

**The term "negligence" may relate either to an act or a failure to act.**

**An act, to be "negligence", must be one which a reasonably prudent person would foresee as involving an unreasonable risk of injury to [himself] [herself] or to another and which such a person, in the exercise of ordinary care, would not do.**

**A failure to act, to be "negligence", must be a failure to do an act which one is under a duty to do and which a reasonably prudent person, in the exercise of ordinary care, would do in order to prevent injury to [himself] [herself] or to another.**

#### **DIRECTIONS FOR USE**

This is a basic instruction defining negligence and is to be used when negligence is an issue unless the term is specifically defined in a separate chapter, e.g., medical malpractice.

No separate definition is given of contributory negligence. The negligence of all parties whose negligence is to be compared - plaintiff, defendant, other parties or absent persons - is defined by this single instruction.

#### **History**

[As amended, effective November 1, 1991.]

#### **Annotations**

**Committee comment.** - The definition of negligence as found in the Restatement, Torts § 284, from which this instruction was adopted, was approved, inter alia, in *Cotter v. Novak*, 57 N.M. 639, 261 P.2d 827 (1953); *Krametbauer v. McDonald*, 44 N.M. 473, 104 P.2d 900 (1940). It includes the indispensable element of foreseeability which is discussed in *Ramirez v. Armstrong*, 100 N.M. 538, 673 P.2d 822 (1983); *Valdez v. Gonzalez*, 50 N.M. 281, 176 P.2d 173 (1946); and *Reif v. Morrison*, 44 N.M. 201, 100 P.2d 229 (1940).

#### **COMPILER'S ANNOTATIONS**

**The 1991 amendment**, effective for cases filed on or after November 1, 1991, made substitutions to make references gender neutral in the second and third paragraphs.

**Negligence based on failure to act.** - In order to find negligence for failure to act, there must be a duty to perform that act. *Devlin v. Bowden*, 97 N.M. 547, 641 P.2d 1094 (Ct. App. 1982), overruled on other grounds, *Ruiz v. Garcia*, 115 N.M. 269, 850 P.2d 972 (1993).

**Law reviews.** - For article, "Survey of New Mexico Law, 1979-80: Torts," see 11 N.M.L. Rev. 217 (1981).

For article, "Unintentional Homicides Caused by Risk-Creating Conduct: Problems in Distinguishing Between Depraved Mind Murder, Second Degree Murder, Involuntary Manslaughter, and Noncriminal Homicide in New Mexico," 20 N.M.L. Rev. 55 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 57 Am. Jur. 2d Negligence § 1.

Insurer's tort liability for consequential or punitive damages for wrongful failure or refusal to defend insured, 20 A.L.R.4th 23.

Liability to real-property purchaser for negligent appraisal of property's value, 21 A.L.R.4th 867.

Liability to one struck by golf club, 63 A.L.R.4th 221.

Rescue doctrine: applicability and application of comparative negligence principles, 75 A.L.R.4th 875.

Liability of proprietor of private gymnasium, reducing salon, or similar health club for injury to patron, 79 A.L.R.4th 127.

Liability for negligence of ambulance attendants, emergency medical technicians and the like, rendering emergency medical care outside hospital, 16 A.L.R.5th 605.

Liability of school or school personnel in connection with suicide of student, 17 A.L.R.5th 179.

Recovery of damages for expense of medical monitoring to detect or prevent future disease or condition, 17 A.L.R.5th 327.

Liability of property owner for damages from spread of accidental fire originating on property, 17 A.L.R.5th 547.

Applicability of comparative negligence principles to intentional torts, 18 A.L.R.5th 525.

Title insurer's negligent failure to discover and disclose defect as basis for liability in tort, 19 A.L.R.5th 786.

Liability of owner or operator of shopping center, or business housed therein, for injury to patron on premises from criminal attack by third party, 31 A.L.R.5th 550.

Liability of owner or operator of skating rink for injury to patron, 38 A.L.R.5th 107.

Res ipsa loquitur in gas leak cases, 34 A.L.R.5th 1.

65 C.J.S. Negligence §§ 1(1) to 1(14).