

5.10A NEGLIGENCE AND ORDINARY CARE – GENERAL
(Approved before 1984; Revised 05/2019)

1. Negligence may be defined as a failure to exercise, in the given circumstances, that degree of care for the safety of others, which a person of ordinary prudence would exercise under similar circumstances. It may be the doing of an act which the ordinary prudent person would not have done, or the failure to do that which the ordinary prudent person would have done, under the circumstances then existing.

[Where a more detailed definition is desired, the following may be used:]

2. Negligence is the failure to use that degree of care, precaution and vigilance which a reasonably prudent person would use under the same or similar circumstances. It includes both affirmative acts which a reasonably prudent person would not have done and the omission of acts or precautions which a reasonably prudent person would have done or taken in the circumstances.

By “a reasonably prudent person” it is not meant the most cautious person nor one who is unusually bold but rather one of reasonable vigilance, caution and prudence.

In order to establish negligence, it is not necessary that it be shown that the defendant had an evil heart or an intent to do harm.

To summarize, every person is required to exercise the foresight, prudence and caution which a reasonably prudent person would exercise under the same or similar circumstances. Negligence then is a departure from that standard of care.

NOTE TO JUDGE

Negligence is defined as conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. *2 Restatement, Torts, Sec. 282; Harpell v. Public Service Coord. Transport*, 20 N.J. 309, 316 (1956); *Prosser, Torts*, p. 119.

The defendant's conduct is compared with that which the hypothetical person of reasonable vigilance, caution and prudence would have exercised in the same or similar circumstances or conditions. *Overby v. Union Laundry Co.*, 28 N.J. Super. 100, 104 (App. Div. 1953), *aff'd* 14 N.J. 526 (1954); *McKinley v. Slenderella Systems of Camden, N.J., Inc.*, 63 N.J. Super. 571 (App. Div. 1960).

"The conduct of the reasonable man will vary with the situation with which he is confronted. The jury must therefore be instructed to take the circumstances into account; negligence is a failure to do what the reasonable man would do 'under the same or similar circumstances.'" *Prosser*, p. 125.

The above may be modified to cover cases involving property damage.

If at trial there is a genuine dispute of material fact as to whether one or more of the parties performed a discretionary function (subject to a "palpably unreasonable" standard) or ministerial function (subject to "ordinary negligence principles"), *N.J.S.A. 59:2-3, N.J.S.A. 59:3-2*, you must tailor both the final jury charge and the verdict sheet so the jury can make the appropriate fact findings and evaluate the party's liability exposure using the proper standard of care. *See Henebema v. S. Jersey Transp. Auth.*, 403 N.J. Super. 485, 506-07 (App. Div. 2013), *aff'd*, 219 N.J. 481 (2014).