

5.10B FORESEEABILITY (AS AFFECTING NEGLIGENCE)
(Approved before 1984; Revised 09/2021)

In determining whether reasonable care has been exercised, you will consider whether the defendant ought to have foreseen, under the attending circumstances, that the natural and probable consequence of defendant's act or omission to act would have been some injury. It is not necessary that the defendant have anticipated the very occurrence which resulted from defendant's wrongdoing, but it is sufficient that it was within the realm of foreseeability that some harm might occur thereby. The test is the probable and foreseeable consequences that may reasonably be anticipated from the performance, or the failure to perform, a particular act. If an ordinary person, under similar circumstances and by the use of ordinary care, could have foreseen the result, [*i.e.*, that some injury or damage would probably result] and either would not have acted or, if the ordinary person did act, would have taken precaution to avoid the result, then the performance of the act or the failure to take such precautions would constitute negligence.

Cases:

S.H. v. K & H Transp., Inc., 465 N.J. Super. 201 (App. Div. 2020) (reversing a trial court's grant of summary judgment in favor of a bus company on the basis that it was not foreseeable that its negligence in failing to drop a mentally disabled teenage girl at her mother's home as instructed would result in the girl being sexually assaulted); *Lutz v. Westwood Transportation Co.*, 31 N.J. Super. 285 (App. Div. 1954), *certif. denied*, 16 N.J. 205 (1954); *Glaser v. Hackensack Water Co.*, 49 N.J. Super. 591 (App. Div. 1958); *Martin v. Bengue, Inc.*, 25 N.J. 359 (1957); *Menth v. Breeze Corporation, Inc.*, 4 N.J. 428 (1950); *Andreoli*

v. Natural Gas Co., 57 N.J. Super. 356 (App. Div. 1959); *Avedisian v. Admiral Realty Corp.*, 63 N.J. Super. 129 (App. Div. 1960); 2 *Ohio Jury Instructions, Civil*, 7.12; see also instructions as to Proximate Cause.