

**5.20E ACTIVITY OF OWNER/OCCUPIER AS DISTINGUISHED
FROM CONDITION OF PREMISES, DUTY OWED**
(Approved 3/00)

NOTE TO JUDGE

(Regarding Independent Contractor Rule)

This charge does not deal with the negligence of an independent contractor as it may affect the duty owed by an owner/occupier of premises to third persons. The owner/occupier of premises can be held liable for injury to persons caused by conditions negligently created on the premises by an independent contractor, as well as for the owner's independent negligence. *Mayer v. Fairlawn Jewish Center*, 38 N.J. 549, 555 (1962). See also, *Majestic Realty Associates, Inc. v. Toti Contracting Co.*, 30 N.J. 425, 431 (1959), holding that demolition of a building adjacent to other buildings may be inherently dangerous activity for which a landowner is liable notwithstanding the demolition work was done by an independent contractor. See also, *Berquist v. Panterman*, 46 N.J. Super. 74 (App. Div. 1957), *certif. denied*, 25 N.J. 55 (1957), where conduct of a property owner combined with that of an independent contractor may constitute negligence. Cf. *Barnard v. Trenton-New Brunswick Theatres Co.*, 32 N.J. Super. 551 (App. Div. 1954), where a theatre owner was held not liable for injury caused by a ladder negligently placed on the premises by an independent contractor's employees; see also, *Tarranella v. Union Bldg. & Construction Co.*, 3 N.J. 443, 446-447 (1950).

A general contractor as the occupier in control of the premises under construction is burdened with a duty similar to that owed by the landowner to business invitees. *Schwartz v. Zulka*, 70 N.J. Super. 256 (App. Div. 1961), *modified on other grounds*, 38 N.J. 9 (1962); *Wolczak v. National Elec. Products Corps.*, 66 N.J. Super. 64 (App. Div. 1961).

An owner/occupier of property is liable to a person who comes onto the property for harm caused by the owner's/occupier's failure to exercise reasonable care in conducting an activity upon the property.

Where Appropriate Add:

The owner/occupier of the property owes a duty to exercise reasonable care in the conduct of activities on the premises to persons who are allowed or have a right to be on the premises. Thus, the owner/occupier of the property must exercise reasonable care in conducting activities on the property so as to avoid injury to persons who are invited or who are otherwise allowed or have a right to be on the property.

Cases:

Cropanese v. Martinez, 35 N.J. Super. 118 (App. Div. 1955); *Barbarisi v. Caruso*, 47 N.J. Super. 125, 131 (App. Div. 1957); see also, *Berger v. Shapiro*, 30 N.J. 89, 97 (1959); *Prosser, Torts* (3rd ed. 1964), § 60, p. 388; 2 *Harper & James, The Law of Torts*, § 27.10, p. 1474 (1956). The liability of a defendant cannot be exclusively determined by a static condition of the land. The liability of a landowner may be predicated upon an activity conducted by the owner of the property which contributed to the guest's injury. *Vallillo v. Muskin Corp.* 218 N.J. Super. 472, 475 (App. Div. 1987).