

1 **13-1320. Duty to visitor; acts of third persons.**

2 If an [owner] [occupant] breaches the duty to use ordinary care to keep the premises safe  
3 for use by a visitor, resulting in injury to the visitor from the acts of a third person, the [owner's]  
4 [occupant's] breach of duty is to be compared with the conduct of the third person who actually  
5 caused the injury to the visitor [, as well as with the visitor's own fault,] in order to determine the  
6 [owner's] [occupant's] proportionate degree of fault. The [owner's] [occupant's] duty to protect  
7 visitors arises from a foreseeable risk that a third person will injure a visitor and, as the risk of  
8 danger increases, the amount of care to be exercised by the [owner] [occupant] also increases.  
9 Therefore, the proportionate fault of the [owner] [occupant] is not necessarily reduced by the  
10 increasingly wrongful conduct of the third person.

11 USE NOTES

12 This instruction is to be used in conjunction with UJI 13-1309 NMRA in cases in which a  
13 visitor is injured by the conduct of a third person which must be compared to the negligence of the  
14 defendant. The bracketed language referring to the visitor's own fault is to be given if the court  
15 determines that a jury question [~~exists~~exists] regarding the visitor's comparative fault.

16 [Adopted, effective March 1, 1996; as amended by Supreme Court Order No. S-1-RCR-2025-  
17 00173, effective for all cases pending or filed on or after December 31, 2025.]

18 **Committee commentary.** — A landowner has a duty to exercise ordinary care to protect a visitor  
19 against harm resulting from the foreseeable conduct of a third party, whether that conduct is  
20 innocent, negligent, intentionally tortious, or criminal. *Reichert v. Atler*, 117 N.M. 623, 875 P.2d  
21 379 (1994). Under New Mexico's system of comparative fault, the landowner's negligent failure  
22 to protect visitors from foreseeable harm may be compared to the conduct of the third party. *Id.*  
23 This instruction allows the jury to consider the importance of the owner's duty to protect visitors

1 and to weigh the failure to perform that duty against the conduct of the third party, while avoiding  
2 the possibility that the landowner could shift a disproportionate share of responsibility to a third  
3 party whose intentional wrongful conduct was the direct cause of the plaintiff's injury.