

1 **13-1403. Foreseeable risk of injury; misuse.**

2 The supplier has the duty to consider foreseeable risks of injury. This duty is limited to use
3 of the product for a purpose or in a manner which could reasonably be foreseen.

4 Where an injury is caused by a [risk] [or] [misuse of the product] which was not reasonably
5 foreseeable to the supplier, ~~[he] [she] [it]~~ the supplier is not liable.

6 USE NOTES

7 This instruction will ordinarily be given in every products liability case. (There are cases
8 where giving the instruction would create a false issue.) It is given immediately following UJI 13-
9 1402 NMRA if a negligence theory is submitted and immediately following UJI 13-1406 NMRA
10 if the only theory submitted is strict liability in tort.

11 The product misuse doctrine is a rule that the supplier is responsible for risks arising from
12 foreseeable uses. A plaintiff must prove that the claimed injury results from a foreseeable use of
13 the product. However, the bracketed phrase "misuse of the product" is only used in cases where
14 product misuse has become an issue and is supported by sufficient evidence.

15 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
16 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

17 **Committee commentary.** — As with any negligence action, in products liability cases founded
18 upon negligence, foreseeability of the risk of injury is an essential element and restricts the scope
19 of an actor's liability. *See* UJI 13-1402, committee commentary; *Kelly v. Montoya*, 1970-NMCA-
20 063, ¶¶ 13-16, 81 N.M. 591~~[, 593]~~, 470 P.2d 563~~[, 565 (Ct. App. 1970)]~~.

21 Because the supplier's duty is to consider foreseeable risks of injury, the jury may find the supplier
22 liable for an injury which results from an unintended use of the product, if the use is one which,
23 nonetheless, should have been anticipated. Restatement (Second) of Torts § 388; *First Nat'l Bank*

1 *v. Nor-Am [Agrl.]Agric. Prods., Inc.*, 1975-NMCA-052, ¶¶ 32-46, 88 N.M. 74[~~81-82~~], 537 P.2d
2 682[~~689-690~~ (Ct. App. 1975)]; *Higgins v. Paul Hardeman, Inc.*, 457 S.W.2d 943 (Mo. App.
3 1970); *Dunham v. Vaughan & Bushnell Mfg. Co.*, 86 Ill App. 2d 315, 229 N.E.2d 684 (1967),
4 *aff'd*, 42 Ill. 2d 339, 247 N.E.2d 401 (1969). There are cases where the use to which the product is
5 put is so unintended and unforeseeable that the case should be taken from the jury. *Van de Valde*
6 *v. Volvo of [America]Am. Corp.*, 1987-NMCA-130, 106 N.M. 457, 744 P.2d 930[~~(Ct. App. 1987)~~]
7 (use of a tire restraining strap to secure luggage on a roof luggage rack).
8 Thus, these instructions reject the contention that a manufacturer of an automobile has no duty to
9 consider risks of injury associated with vehicle collision simply because the intended purpose of
10 an automobile does not include its participation in collisions. In the "crashworthiness" cases, as in
11 any other case, the manufacturer's liability is circumscribed by foreseeable use. Since involvement
12 in accidents is reasonably foreseeable, a duty exists to consider this risk in design of the vehicle.
13 *Compare Larsen v. GMC*, 391 F.2d 495, 502 (8th Cir. 1968) *with Evans v. GMC*, 359 F.2d 822,
14 825 (7th Cir. 1966), *cert. denied*, 385 U.S. 836, 17 L. Ed. 2d 70, 87 S. Ct. 83 (1966), *overruled*
15 *Huff v. White Motor Corp.*, 565 F.2d 104 (7th Cir. 1977).
16 Treaties and cases in the products liability field contain lengthy discussions of "misuse." Some
17 cases treat misuse as an affirmative defense. The misuse doctrine is simply one application of the
18 established principle [~~that~~]that an actor is liable for the foreseeable results of the actor's conduct.
19 If a product is handled in a way which cannot be reasonably anticipated by the supplier and such
20 handling is a cause of the plaintiff's injury, the supplier is relieved of liability because the nature
21 and character of the injury is unforeseeable. *State Stove Mfg. Co. v. Hodges*, 189 So. 2d 113 ([~~S.~~
22 ~~Ct.~~] Miss. 1966), *cert. denied*, 386 U.S. 912, 87 S. Ct. 860, 17 L. Ed. 2d 784 (1967); *Van de Valde*
23 [~~*v. Volvo of America Corp.*~~], 1987-NMCA-130[~~101 N.M. 457, 744 P.2d 930 (Ct. App. 1987)~~].

1 Where product mishandling is supportable by the evidence, the bracketed phrase "misuse of the
2 product" may be used in place of the broader "risk," as being more descriptive of defendant's
3 argument. In an appropriate case both bracketed phrases may be used.

4 Because foreseeability of the risk should be the jury's focus in "misuse" cases, rather than a user's
5 culpability, these instructions do not treat mishandling as an affirmative defense to be proved by
6 the defendant under UJI 13-1427 NMRA.

7 As the language of this instruction provides, the foresight required for liability is foresight of the
8 use of the product which gives rise to an unreasonable risk of injury. If the use and risk are
9 foreseeable, plaintiff need not prove that the particular harm was foreseen. *Newman v. Utility*
10 *Trailer & Equip. Co.*, 278 Ore. 395, 564 P.2d 674, 676-77 (1977).

11 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]