

1 **13-1601. Negligence (of all persons); definition.**

2 The term "negligence" may relate either to an act or a failure to act.

3 An act, to be "negligence", must be one which a reasonably prudent person would foresee  
4 as involving an unreasonable risk of injury to [~~himself~~ ~~herself~~] themselves or to another and  
5 which such a person, in the exercise of ordinary care, would not do.

6 A failure to act, to be "negligence", must be a failure to do an act which one is under a duty  
7 to do and which a reasonably prudent person, in the exercise of ordinary care, would do in order  
8 to prevent injury to [~~himself~~ ~~herself~~] themselves or to another.

9 USE NOTES

10 This is a basic instruction defining negligence and is to be used when negligence is an issue  
11 unless the term is specifically defined in a separate chapter, e.g., medical malpractice.

12 No separate definition is given of contributory negligence. The negligence of all parties  
13 whose negligence is to be compared[—]—plaintiff, defendant, other parties, or absent persons[—  
14 ]—is defined by this single instruction.

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.** — The definition of negligence as found in the Restatement, Torts §  
18 284, from which this instruction was adopted, was approved, inter alia, in *Cotter v. Novak*, 1953-  
19 NMSC-093, 57 N.M. 639, 261 P.2d 827[~~-(1953)~~]; *Krametbauer v. McDonald*, 1940-NMSC-049,  
20 44 N.M. 473, 104 P.2d 900[~~-(1940)~~]. It includes the indispensable element of foreseeability which  
21 is discussed in *Ramirez v. Armstrong*, 1983-NMSC-104, 100 N.M. 538, 673 P.2d 822[~~-(1983)~~];  
22 *Valdez v. Gonzalez*, 1946-NMSC-044, 50 N.M. 281, 176 P.2d 173[~~-(1946)~~]; and *Reif v. Morrison*,  
23 1940-NMSC-015, 44 N.M. 201, 100 P.2d 229[~~-(1940)~~].

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