13-1627. Explosives; ultrahazardous activities; absolute liability.

When a person is engaged in the use of explosives, [~~[he] [she]~~]that person is liable for any damages proximately caused by that activity, including those damages resulting from concussion or vibration. This is true regardless of the amount of care used.

USE NOTES

1. This instruction applies to activities involving the actual use of explosives, including dynamite, nitroglycerine and like substances.

2. This instruction would not apply to the manufacture, storage or transportation of explosives, since liability based on those activities is predicated either on negligence or nuisance.

3. This instruction would not apply to firearms cases.

4. The theory may not apply where an independent contractor is performing a governmental function.

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

Committee commentary. — The rule of absolute liability stated in the foregoing instruction is proper under the facts of *Thigpen v. Skousen & Hise*, 1958-NMSC-084, 64 N.M. 290, 327 P.2d 802[~~ (1958)~~]. There are no New Mexico cases on ultrahazardous activities, other than blasting, and, therefore, the instruction is limited to blasting situations. Liability for damages resulting from the manufacture, storage or transportation of explosives requires proof of negligence [~~of~~]or nuisance. 35 C.J.S. Explosives § 5.

See also the Restatement of Torts §§ 519 to 524 and 35 A.L.R.3d 1177.

In most jurisdictions, the defense of assumption of risk prevents recovery, even on the absolute liability theory, but assumption of risk as such generally is no longer a defense in New Mexico.

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