

1 **13-1631A. Justification offered; balance of factors.**

2 Defendant states that ~~[[he]-[she]]~~ Defendant was justified in [acting] [failing to act] on the
3 basis that _____ (*insert statement of justification*).

4 Defendant's justification must be balanced to determine if it outweighs any motive of
5 defendant to injure plaintiff. In determining whether defendant's [act] [failure to act] was justifiable
6 or not under the circumstances, you must weigh the following factors:

- 7 1. The nature and seriousness of the harm to the plaintiff;
- 8 2. The fairness or unfairness of the means used by the defendant;
- 9 3. Defendant's motive or motives; and
- 10 4. The value to defendant or to society in general of the interests advanced by
11 the defendant's conduct.

12 USE NOTES

13 This instruction should be given with UJI 13-1631 NMRA.

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

16 **Committee commentary.** — The balancing factors set forth in this instruction are adopted from
17 *Schmitz v. Smentowski*, 1990-NMSC-002, 109 N.M. 386, 785 P.2d 726[~~-(1990)~~]. *See also*
18 Restatement (Second) of Torts Section 870, Comments f, g, h and i, discussing the various
19 balancing factors.

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