

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

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

USE NOTES

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

[Adopted, effective March 1, 1996.]