

**5.20H DANGEROUS INSTRUMENTALITIES OR CONDITIONS**  
(Approved before 1983)

**A. In General**

The law imposes upon a defendant the duty to exercise the care that a reasonably prudent person would exercise under all the circumstances confronting him/her at a particular time. Failure to exercise such care constitutes negligence.

Obviously the risk of harm will vary with the circumstances. In some settings that risk is greater than in others, and, when this is so, a reasonably prudent person will exercise a greater amount of care, that is, care in proportion to the increased risk.

Whoever uses a highly destructive agency is held to a correspondingly high degree of care toward all persons who in the exercise of their lawful right may come in contact with it.

The responsibility imposed is the use of reasonable care consistent with the dangerous instrumentality employed and a proper anticipation of the results which could be reasonably foreseen.

***[Where applicable the following may be added:]***

*(See Beck v. Monmouth Lumber Co., 137 N.J.L. 268, 273 (E. & A. 1947) and other cases cited below.)*

Ordinarily, the adoption and operation of a method which accords with that in general use by well regulated companies satisfies the duty of due care owed. But the care which must be exercised over the construction and maintenance of a highly destructive agency requires more than the use of mere mechanical skill and approved mechanical appliances. It also includes circumspection and foresight with regard to reasonably probable contingencies.

It is for you to determine from the evidence whether the defendant used reasonable care under the circumstances, considering the dangerous instrumentality employed and a proper anticipating of the results which could reasonably have been foreseen.

**Cases:**

**ELECTRICITY**

*Beck v. Monmouth Lumber Co.*, 137 N.J.L. 268, 273 (1947); *Adams v. Atlantic City Electric Co.*, 120 N.J.L. 357 (E. & A. 1938); *Heyer v. Jersey Central Power & Light Co.*, 106 N.J.L. 211 (E. & A. 1929); *Manning v. Public Service Elec. & Gas Co.*, 58 N.J. Super. 386, 395 (App. Div. 1959); *Robbins v. Thies*, 117 N.J.L. 389, 393 (E. & A. 1936); cf. *Berg v. Reaction Motors Div.*, 37 N.J. 396 (1962).

A number of the above cases set forth a more minute specification of the duty owing.

### GAS

*Seward v. Natural Gas Co.*, 11 *N.J. Super.* 144 (App. Div. 1950) *rev'd in* 8 *N.J.* 45 (1952); *Guzzi v. Jersey Central Power & Light Co.*, 12 *N.J.* 251, 257 (1953); *Harty v. Elizabethtown Consolidated Gas Co.*, 11 *N.J. Misc.* 382 (C.P. 1933); *Farrell v. N.J. Power & Light Co.*, 111 *N.J.L.* 526 (E. & A. 1933); *Andreoli v. Natural Gas Co.*, 57 *N.J. Super.* 356 (App. Div. 1959), *but see Araujo v. N.J. Natural Gas Co.*, 62 *N.J. Super.* 88 (App. Div. 1960).

### EXPLOSIVES

*McAndrew v. Collerd*, 42 *N.J.L.* 189 (E. & A. 1880). Absolute liability imposed for damage due to storage of explosives within city limits. Referred to in *Majestic Realty Associates, Inc. v. Toti Contracting Co.*, 30 *N.J.* 425, 434 (1959).

But in Black Tom Explosion case, *N.J. Fidelity Ins. Co. v. Lehigh Valley R.R.*, 92 *N.J.L.* 467, 470 (E. & A. 1918) the court said that a high degree of care is required, which means a “degree of care commensurate with the risk of danger.” *See also Berg v. Reaction Motors Div., supra.*

### DEMOLITION OF BUILDING

*Majestic Realty Associates, Inc. v. Toti Contracting Co.*, 30 *N.J.* 425, 434-438 (1959).

### FIREARMS

*Davis v. Hellwig*, 21 *N.J.* 412, 415 (1956). “Courts have universally regarded loaded firearms as dangerous instruments and have ascribed an elevated degree of reasonable care to be exercised in their use.” *Peer v. Newark*, 71 *Super.* 12 (App. Div. 1961); *certif. denied*, 36 *N.J.* 300; *Wimberly v. Paterson*, 75 *N.J. Super.* 584, 596 (App. Div. 1962).

X-RAY MACHINES

*Kress v. Newark*, 9 N.J. Super. 70 (App. Div. 1950), *rev'd*, 8 N.J. 562;  
*Rakowski v. Raybestos-Manhattan, Inc.*, 5 N.J. Super. 203, 207 (App. Div. 1949), *certif. denied*, 3 N.J. 502 (1949).

ROLLER COASTER AND SIMILAR DEVICES

*Kahalili v. Rosecliff Realty, Inc.*, 26 N.J. 595, 603 (1958) “care commensurate with the reasonably foreseeable risk of harm, such as would be reasonable in the light of the apparent risk.” *Garafola v. Rosecliff Realty Co.*, 24 N.J. Super. 28 (App. Div. 1952).

FIREWORKS

*Zpenzierato v. Our Lady of Mt. Virgin*, 112 N.J.L. 93 (1933).