

1397 NEGLIGENCE: VOLUNTARY ASSUMPTION OF DUTY TO A THIRD PERSON

A person is negligent if:

- (1) The person volunteered to provide services to another;
- (2) The person should have recognized those services were necessary for the protection of a third person or their property;
- (3) The person failed to exercise ordinary care in providing the services; and
[the failure to exercise ordinary care increased the risk of harm to the third person] [; or]
[the services volunteered to be performed were a duty owed by another to the third person] [; or]
[harm was suffered because of reliance by the third person or another upon the person to provide the services].

COMMENT

This instruction and comment were approved in 2003. The comment was updated in 2011.

Instruct with one or more subsections of paragraph 3 based upon the evidence.

This instruction is taken substantially from Restatement, (Second), of Torts, Section 324A. See Stephenson v. Universal Metrics, Inc., 2002 WI 30, 251 Wis.2d 171, 641 N.W.2d 158; Gritzner v. Michael R., 2000 WI 68, 235 Wis.2d 781, 611 N.W.2d 906; Ladewig v. Tremmel, 2011 WI App 111, 336 Wis.2d 216, 802 N.W.2d 511.

In Ladewig, supra, § 3, the court of appeals concluded that, "even assuming without deciding" that Restatement (Second) of Torts § 324 could create liability for landlords who use a lease provision prohibiting tenants from keeping vicious dogs, Wisconsin case law precludes liability on public policy grounds.