

5.10C UNDERTAKING VOLUNTARILY ASSUMED

(Approved before 1984, Revised 09/2021)

(1) One who in the absence of a legal obligation to do so voluntarily undertakes to render a service for the protection of the safety of another may become liable to that person for the failure to perform, or the failure to exercise reasonable care in the performance of that service. One's responsibility, however, is only commensurate with the extent of one's voluntary undertaking and one's liability does not arise unless it appears from the evidence that one's negligence had a proximate causal relationship to the occurrence of the mishap, which brought about the injuries.

Cases:

Gudnestad v. Seaboard Coal Dock Co., 27 N.J. Super. 227 (App. Div. 1953); *Wolcott v. N.Y. and L.B.R.R. Co.*, 68 N.J.L. 421 (Sup. Ct. 1902). See also *Diaz v. Reynoso*, No. A-1285-20, 2021 N.J. Super. LEXIS 71 (App. Div. June 1, 2021) (holding that a volunteer that fails to discharge his commitment to the police and willingly allows a visibly intoxicated motorist to resume driving can bear a portion of civil liability for an ensuing motor vehicle crash caused by that drunk driver.)

**THE FOLLOWING MAY BE ALTERNATIVELY CHARGED
WHERE APPLICABLE:**

(2) Where a defendant has gratuitously undertaken to do an act or to perform a service recognizably necessary to another's bodily safety and there is reasonable reliance thereon, the defendant will be liable for the harm sustained by

the other party resulting from defendant's failure to exercise reasonable care to carry out the undertaking.

Cases:

Johnson v. Souza, 71 N.J. Super. 240 (App. Div. 1961); *Restatement (Third) of Torts: Liability for Physical and Emotional Harm Sec. 44*, (2012); *Miller v. Muscarelle*, 67 N.J. Super. 305 (App. Div. 1961).