**3.03A NEGLIGENCE DEFINED – ADULT**

Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. The law does not require exception caution or skill, only reasonable care.

You must decide how a reasonably careful person would have acted in [plaintiff’s] [defendant’s] situation.

Directions for Use

This instruction should be given in all negligence cases unless the claim is based exclusively on negligence per se and the court has adopted a statute or regulation as the applicable standard of care. In such cases, Instruction 3.04A (Violation of Statute-Negligence Per Se) should be given instead of this instruction. When the negligence of a child is at issue, Instruction 3.03B (Negligence Defined-Child) or 3.03C (Negligence Defined-Capacity of Child under Seven) should be given with this instruction.

# Comment

This instruction is modeled after California Pattern Instruction 401.

The jury is required to weigh the actions of persons charged with negligence against the standard of conduct of a reasonable person in similar circumstances. *Lyons v. Midnight Sun Transp. Services, Inc.*, 928 P.2d 1202, 1203 (Alaska 1996).

A negligence claim may be based on a failure to act. *See* *State v. Guinn*, 555 P.2d 530, 536 (Alaska 1976)(state’s failure to remove abandoned vehicle breached the state’s duty to maintain roadway).

A child who engages in adult activities for which adult qualifications are required may be held to an adult standard of care. *See Ardinger v. Hummell*, 982 P.2d 727, 731 (Alaska 1999)(child driving car).