**05.03 PEDESTRIAN – GENERAL DUTY OF CARE**

A pedestrian is negligent if the pedestrian does not exercise reasonable care in using public streets and highways.

# Use Note

This instruction is to be given when the negligence of a pedestrian is at issue.

This instruction should be preceded by Instruction 03.03A, defining negligence or 03.02A, defining contributory negligence.

Comment

For a general discussion of the pedestrian’s duty of care, see 3 Blashfield, Automobile Law Practice, § 141.41-141.53 (3d ed. 1965). The definition of pedestrian is found in 13 Alaska Admin. Code § 40.010 (33) and Instruction 05.27.

The pedestrian’s duty to exercise reasonable care usually is held to include the duty to maintain a proper lookout for approaching vehicles. The pedestrian must make use of all his natural senses to discover the approach of an automobile and avoid being struck. Rexford v. Saslow, 425 P.2d 611 (Alaska 1967); 3 Blashfield, Automobile Law and Practice, § 141.46 (3d ed. 1965). This duty does not impose an absolute rule of law requiring a pedestrian to maintain a constant lookout under all circumstances. The controlling standard remains the care which an ordinarily careful and prudent person would exercise for one’s own safety under similar circumstances. See Annot., 45 A.L.R. 3d 658, for discussion of pedestrian failure to comply with statutes regulating pedestrian travel as affecting right to recover for injuries resulting from automobile collision.

The general rule that a pedestrian has the right to assume that other travelers will exercise due care not to injure him and will obey all traffic regulations, has been implicitly accepted by the Alaska Supreme Court in Rexford v. Saslow 425 P.2d at 613 (Alaska 1967). See 3 Blashfield, Automobile Law and Practice, § 141.47, 141.52–53 (3d ed. 1965).

A child capable of some degree of care and of taking some precautions for his own safety, who knows the danger from automobiles and has been warned by his parents to watch out for vehicles and not to play in the streets, is, as a matter of law, capable of contributory negligence. Patterson v. Cushman, 394 P.2d 657, 660 (Alaska 1964). See Annot., 16 A.L.R. 3d 25 for a discussion of age and mentality of child as affecting application of attractive nuisance doctrine. See also, Annot., 62 A.L.R. 3d 541 for discussion of whether parents where contributorily negligent in permitting a child to walk to school unattended, in action for injury or death of a child.