**21.02 NEGLIGENT BAILMENT – NEGLIGENCE DEFINED**

Negligence is the failure to use reasonable care to prevent [damage to] [loss of] the [bailed property].

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 owner of the [bailed property] would not do in the same situation, or fails to do something that a reasonably careful owner of the [bailed property] would do in the same situation. The law does not require exceptional caution or skill, only the care that a reasonably careful owner of the [bailed property] would exercise.

You must decide how a reasonably careful owner of the [bailed property] would have acted in [defendant’s] situation.

**Use Note**

Instruction 21.02 should be given in a negligent bailment case when the defendant’s response to the plaintiff’s prima facie case includes a defense that the damage or loss to the bailed property was beyond the defendant’s control, and the defendant used due care to protect the bailed property.

# **Comment**

This instruction is based on Negligence Instruction 3.03A (Negligence Defined – Adult) and Alaska case law. If the defendant in a negligent bailment case puts on evidence that the damage to or loss of the bailed property was beyond his or her control and evidence allowing an inference of reasonable care, the plaintiff must meet the elements of a negligence case. *E.g*., *Coster v. Piekarski*, 3 P.3d 333, 334 (Alaska 2000); *Silvers v. Silvers*, 999 P.2d 786, 793 (Alaska 2000). Instruction 21.02 would be given in that case. If the defendant does not make such a showing, the plaintiff can rely on the prima facie case, which requires only that the plaintiff show there was a bailment and that the bailed property was damaged or lost. *See, e.g*., *Coster,* 3 P.3d at 334; *State v. Stanley*, 506 P.2d 1284, 1288-89 (Alaska 1973). In the latter case, Instruction 21.02 would not be given.

The jury is required to weigh the actions of persons charged with negligent bailment against the standard of conduct of a reasonable owner of the bailed property in similar circumstances. The bailee has a duty to exercise the degree of care of a reasonably careful owner. *E.g*., *Madonna v. Tamarack Air, Ltd.*, 298 P.3d 875, 880 (Alaska 2013); *Coster v. Piekarski*, 3 P.3d 333, 335 (Alaska 2000). *See* *Lyons v. Midnight Sun Transp. Services, Inc.*, 928 P.2d 1202, 1203 (Alaska 1996)(reasonable person is typically the standard in a negligence case not involving a bailment).

What is reasonable will depend on the particular circumstances of each bailment. *Coster,* 3 P.3d at 335.