**05.02 PASSENGERS – GENERAL DUTY OF CARE**

A passenger in a motor vehicle is negligent if the passenger does not use reasonable care. Ordinarily a passenger is not negligent in relying on the competence of the driver for the operation of the vehicle. However, a passenger is negligent in relying on the driver after the passenger knows or should know that it is unreasonable to do so.

# Use Note

This instruction may be given in an action by a passenger when the defendant alleges that the plaintiff was contributorily, negligent, or where it is alleged that the passenger was negligent. This instruction may be preceded by instruction 03.03A, defining negligence, or 03.02A, defining contributory negligence.

Comment

The substance of this instruction was approved in Ross v. British Yukon Navigation Co., 188 F. 2d 779 (9th Cir. 1951). This instruction is not derived from Alaska case law.

The duty owed by a passenger is built on a requirement of reasonable care. The Alaska Supreme Court has rejected assumption of risk as a defense and instead requires that plaintiff’s behavior be judged against a standard of due care. Leavitt v. Gillaspie, 443 P.2d 61, 68 (Alaska 1968).

The Alaska Supreme Court adopted the doctrine of comparative negligence in Kaatz v. State, 540 P.2d 1037 (Alaska 1975), where a passenger’s damages are reduced in proportion to the amount of negligence attributed to him.

See Powell v. Alaska Marine Equipment, Inc., 453 P.2d 407 (Alaska 1969), where a passenger on a snowmobile was found to be contributorily negligent. See also Young v. State, 491 P.2d 122 (Alaska 1977), where the court held a person may be contributorily negligent by merely agreeing to be a passenger in a vehicle. See Annot. 1 A.L.R. 4th 556 for discussion of passenger’s contributory negligence or assumption of risk where accident resulted from driver’s drowsiness, physical defect, or illness.