**06.03 LANDOWNER LIABILITY - ELEMENTS WHEN THE CLAIM MAY BE SUBJECT TO THE LIMITS IN AS 09.65.200 (APPLICABLE TO UNIMPROVED LAND) BUT ONE OR MORE ELEMENTS ARE DISPUTED**

Plaintiff claims that [he][she] was harmed because the defendant failed to follow the standard of conduct that governs owners of land. The requirements for plaintiff’s claim depend on your answers to two preliminary questions.

Question One:

Did plaintiff [pay] [agree to pay] defendant for the right to [use] [occupy] the land?

Question Two:

[Did plaintiff’s injury occur as a result of a natural condition on the property?] or

[Did plaintiff enter the property to engage in recreational activity?]

If the answer to Question 1 is Yes, or if the answer to Question 2 is No, plaintiff’s claim is governed by the instructions that I will describe as Option B. In all other cases, plaintiff’s claim is governed by the instructions that I will describe as Option A.

**Option A**

Under Option A, in order to find that the plaintiff is entitled to recover, you must decide that it is more likely true than not true that:

1. The defendant failed to guard against unreasonable risks created by a dangerous condition on the property.

2. The defendant’s failure constituted gross negligence, reckless misconduct, or intentional misconduct. This element is not established if the defendant engaged in conduct that constituted only ordinary negligence. In a moment, I will explain each of these terms.

3. The plaintiff was harmed; and

4. The defendant’s failure was a substantial factor in causing the plaintiff’s harm.

Ordinary negligence is the failure to use reasonable care, which is the amount of care that a reasonably careful person would use in the same situation.

Gross negligence is an extreme departure from the amount of care that a reasonably careful person would use in the same situation. Gross negligence means more than ordinary inadvertence or inattention.

Reckless misconduct occurs when a person consciously disregards a substantial and unjustifiable risk. Disregard of this risk must be a gross deviation from the way that a reasonable person would act.

Intentional misconduct is when a person acts, or fails to act, with the purpose of harming another person, or knowing that [his] [her] act or failure to act was substantially certain to harm that person.

**Option B**

Under Option B, in order to find that the plaintiff is entitled to recover, you must decide that it is more likely true than not true that:

1. The defendant was negligent. A landowner/property owner is negligent if the owner fails to exercise reasonable care to guard against unreasonable risks created by a dangerous condition on the property. A person can be negligent by acting or 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 exceptional caution or skill, only reasonable care.

2. The plaintiff was harmed; and

3. The defendant’s negligence was a substantial factor in causing the plaintiff’s harm.

**Use Note**

Instructions 6.03 and 3.07 (Substantial Factor) should be given when there is a dispute regarding whether the limited liability for owners of unimproved property set forth in AS 09.65.200 applies to the claim.

AS 09.65.200 limits the tort liability of owners of unimproved land. Limited liability for owners of unimproved land requires proof of three elements: 1) the accident site is “unimproved land”; 2) the injury occurred because of a natural condition on an unimproved portion of the property, or during recreational activity; and 3) plaintiff had no legal responsibility to pay defendant for occupancy or use of the property. This instruction addresses elements 2 and 3.

This instruction assumes that the judge has decided that the injury occurred on unimproved land. This determination depends on three factors identified in *University of Alaska v. Shanti*, 835 P.2d 1225, 1232 (Alaska 1992). The judge determines whether the land is unimproved, unless there is a disputed fact relevant to this determination that must be resolved by the jury. *Id*. & n. 16. If the jury must decide a factual issue regarding the character of the property, the court will need to instruct the jury on resolution of the appropriate factual question.

For limited liability to apply, AS 09.65.200(a)(1) requires that the injury or death must result from a natural condition on the property, or that the person entered onto the land for recreation. Question Two addresses this element. As drafted, the instruction assumes that there is a factual dispute on only one of these alternatives. In that event, the bracketed language addressing that factual dispute will be used in Question 2. If there are factual disputes on both of these alternatives, the instruction must include both of the bracketed questions in Question 2, and the rest of the instruction must be altered to account for the choices that are presented in Question 2.

This instruction is intended for use with a verdict form that will guide the jury through these choices. See Verdict Form 6.04.