

5.30A GENERAL DUTY OWING (Approved 8/99)

NOTE TO JUDGE

While the judge may prefer to adopt his/her own version of this phase of the charge, the following has been found to be satisfactory by many judges.

The plaintiff asserts that the defendant in this case was guilty of negligence in the operation of his/her automobile. You can appreciate that when people drive their motor vehicles on our highways, they have certain rights and assume certain obligations and responsibilities. They have the right to enjoy the streets and highways but they must make proper and lawful use of this right. They must use it with reciprocal regard for the rights of others who may be driving upon the highway, and so as not to negligently injure other persons lawfully upon the streets.

This simply means that the driver of an automobile upon a public highway is under the duty of exercising for the safety of others that degree of care, precaution and vigilance in the operation of his/her car which a reasonably prudent person would exercise under similar circumstances. It has sometimes been defined as care commensurate with the risk of danger. Thus, the driver of an automobile is required to use reasonable care in the control, management and operation of his/her machine. He/She is required to make such observation for traffic and road

conditions and to exercise such judgment to avoid collision or injury to others on the highway, as a reasonably prudent person would have done in the circumstances. This duty of reasonable care by users of the highways is mutual and ordinarily each may assume that the other will observe that standard of conduct in the use thereof. Negligence is then the failure to adhere to this standard of conduct.

Cases:

Goldstone v. Tuers, 189 N.J. Super. 167, 169 (App. Div. 1983) held that “it is a firmly settled principle of law that a person has the right to assume that the driver of an automobile will exercise reasonable care and observe the standard of conduct required of him in the use of the highway.” Therefore, this principle should be ordinarily charged. In this particular case, however, the failure to charge the principle was deemed to be harmless error.