814.03 BAILMENTS - BAILEE'S NEGLIGENCE.

The (*state number*) issue reads:

"Was the plaintiff's (*describe property*) [lost] [damaged] by the negligence of the defendant?"

(You will answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the plaintiff.)[1]

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's [loss] [damage].

Negligence refers to a person's failure to follow a duty of conduct imposed by law. Every person is under a duty to use ordinary care to protect bailment property from [loss] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect bailment property from [loss] [damage]. A person's failure to use ordinary care is negligence.[2]

The plaintiff not only has the burden of proving negligence, but also that such negligence was a proximate cause of the [loss] [damage].

Proximate cause is a cause which in a natural and continuous sequence produces [loss] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [loss] [damage] or some similar injurious result.

There may be more than one proximate cause of [a loss] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence

was the sole proximate cause of the [loss] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in (one or more) of the following way(s):[3]

(Read all contentions of negligence supported by the evidence.)

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's [loss] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [loss] [damage].

With respect to (each of) the plaintiff's contention(s),

(Give law as to each contention of negligence included above.)

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant was negligent in any one or more of the ways contended by the plaintiff and that such negligence was a proximate cause of the plaintiff's [loss] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. Use where there is an issue as to whether a bailment relationship existed between the plaintiff and the defendant.

2. For years North Carolina jurisprudence distinguished among the three common law classes of bailments and the standard of care associated therewith. Thus, prior to 1971, the appellate courts recognized bailments for the sole benefit of the bailor (bailee liable only for gross negligence), bailments for the bailee's sole benefit (bailee liable for slight negligence), and bailments for the mutual benefit of both parties (bailee and bailor liable for ordinary negligence). *Clott v. Greyhound Lines, Inc.*, 278 N.C. 378, 384, 180 S.E.2d 102, 107 (1971). In 1971, *Clott* concluded that in the last analysis, the care required by the law is that of a man of ordinary prudence. This is the safest and best rule, and rids us of the technical and useless distinctions in regard to the subject; ordinary care being that kind of care which should be used in the particular circumstances and is the correct standard *in all cases*." *Id*. (emphasis added). Accordingly, the Supreme Court established "that classification of bailments is of little import since the degree of care required *in all classes* of bailments is . . . the care of the man of ordinary prudence as adapted to the particular circumstances." *Id.*, 278 N.C. at 388, 180 S.E.2d at 110 (emphasis added). The ordinary care standard, however, does not apply to certain special bailment situations. For example, if a bailee agrees to store property in a definite place and breaches the agreement by moving the property to another place, he becomes an insurer. *Pennington v. Styron*, 270 N.C. 80, 153 S.E.2d 776 (1967).

3. For a *prima facie* case, use N.C.P.I.-Civil 814.02. A *prima facie* case is made out when the plaintiff offers evidence "tending to show (1) that the property was delivered to the bailee, (2) that bailee accepted it and therefore had possession and control of the property, and (3) that bailee failed to return the property, or returned it in a damaged condition. . .". *Clott*, 278 N.C. at 388, 180 S.E.2d at 110. "When a *prima facie* case is made out, it warrants but does not compel a verdict for plaintiff. The jury is simply authorized to find either way. . .". *Id*. *See also Martin v. Hare*, 78 N.C. App. 358, 363, 337 S.E.2d 632, 635-636 (1985).