

UCJI 20.04

NEGLIGENCE *PER SE*

The plaintiff claims that the defendant's conduct was negligent because the defendant violated the following [statute / ordinance / regulation / rule]: [*set forth relevant language of statute, ordinance, regulation, or rule*].

If you find that the defendant violated this [statute / ordinance / regulation / rule], the defendant's conduct was negligent [unless the defendant proves that (he / she) was acting with reasonable care under the circumstances].

COMMENT: *Barnum v. Williams*, 264 Or 71, 78–79, 504 P2d 122 (1972). This instruction is appropriate on the issue of the applicable standard of due care once the court determines as a matter of law that the plaintiff falls within the class of persons the statute, ordinance, regulation, or rule is intended to protect and that the harm the plaintiff has suffered is the type that the statute, ordinance, regulation, or rule is intended to prevent. The final bracketed phrase is appropriate when the court rules that the evidence produced is sufficient to create a jury question whether the defendant acted reasonably despite having violated the statute, ordinance, regulation, or rule. *Weitzel v. Wingard*, 274 Or 185, 189–90, 546 P2d 121 (1976).

This instruction can be modified to apply to negligence *per se* counterclaims by reversing the terms defendant and plaintiff.

This instruction used to be UCJI 20.03.