

PEDESTRIAN--CROSSING AT OTHER THAN CROSSWALKS.¹ G.S. 20-174(a),(b) and (c).

The motor vehicle law provides that a pedestrian: *(Here use one or more of the following bracketed statements as the evidence justifies)*

[shall not cross a roadway, except in a marked crosswalk, at any place between adjacent intersections at which traffic control signals are in operation]

[crossing a roadway at any point other than within an unmarked crosswalk at an intersection² or a marked crosswalk, shall yield the right-of-way to all vehicles upon the roadway]

[crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, shall yield the right-of-way to all vehicles upon the roadway].

The failure of a pedestrian to yield the right-of-way is not negligence within itself.³ However, the failure to yield the right-of-way, when, under the same or similar circumstances, a reasonably careful and prudent person would have yielded the right-of-way, would be negligence.

¹The evidence in a pedestrian crossing case may be such as to present an issue of Last Clear Chance. See Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965). In such a case this instruction might be given in conjunction with the instruction (N.C.P.I.--Civil 105-15) on Last Clear Chance.

²For definition of an unmarked crosswalk at an intersection, see N.C.P.I.--Civil 211.10, Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968).

³It is expressly so held in such cases as Wanner v. Alsup, supra footnote 1, and Pompey v. Hyder, 9 N.C. App. 30, 175 S.E.2d 319 (1970) and Pope v. Deal, 39 N.C. App. 196, 249 S.E.2d 866 (1978). However, the evidence in a pedestrian case may be such as to show contributory negligence as a matter of law and require a nonsuit. See Blake v. Mallard, 262 N.C. 62, 136 S.E.2d 214 (1964), approved but distinguished in the Wanner case.

