

**June 2015 Supplement to Pattern Jury Instructions
for Motor Vehicle Cases**

This supplement contains a new table of contents for the motor vehicle instructions, replacement instructions for motor vehicle cases, and a new motor vehicle index. Place the instructions in the book in the proper numerical sequence. Old instructions with the same number should be discarded.

Interim Instructions. As the Pattern Jury Instructions Committee considers new or updated instructions, it posts Interim Instructions that are too important to wait until June to distribute as part of the annual hard copy supplements to the School of Government Website at <http://www.sog.unc.edu/programs/ncpji>. You may check the site periodically for these instructions or join the Pattern Jury Interim Instructions Listserv to receive notification when instructions are posted to the website. Go to the following link to join the Listserv: http://lists.unc.edu/read/all_forums/subscribe?name=ncpjii.

This supplement contains these replacements for existing instructions:

- 100.00 Model Motor Vehicle Negligence Charge And Verdict Sheet
- 106.14 Personal Injury—Damages—Permanent Injury

North Carolina
Conference of Superior Court Judges
Committee on Pattern Jury Instructions

North Carolina
PATTERN JURY
INSTRUCTIONS

for Motor Vehicle
Negligence

June 1975
Reprinted June 2015

Volume I

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MOTOR VEHICLE VOLUME
REPLACEMENT JUNE 2015

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NEGLIGENCE CASES: *Dates the instructions were adopted are found at the lower
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- 225.35 Persons Riding Animals and Drivers of Animal-Drawn Vehicles. (6/89)
- 225.37 Special Acts of Negligence--Moped Operator (Under Age). (6/10)

APPENDICES.

A. DEFINITIONS FROM THE MOTOR VEHICLE CODE. (2/89)

B. TABLE OF SECTIONS OF GENERAL STATUTES INVOLVED IN CIVIL INSTRUCTIONS THROUGH 225.35. (6/85)

C. DESCRIPTIVE WORD INDEX. (6/15)

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100.00 MODEL MOTOR VEHICLE NEGLIGENCE CHARGE AND VERDICT SHEET.

NOTE WELL: This is a sample only. Your case must be tailored to fit your facts and the law. Do not blindly follow this pattern. Other styles may also be used. This is only to guide you in a general style that has in the past met with favor in the appellate courts.

101.05 Members of the jury: All the evidence has been presented. It is now your duty to decide the facts from the evidence. You must then apply to those facts the law which I am about to give you. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you thought it was or as you might like it to be.

As you know, we are trying a case in which the plaintiff seeks to recover money damages resulting from a motor vehicle collision which the plaintiff contends was caused by the negligence of the defendant.

(By counterclaim the defendant also seeks to recover money damages resulting from the same occurrence, which the defendant contends was caused by the negligence of the plaintiff.)

101.10 In this case you will be called upon to answer as many as (seven) questions- also called issues. As I discuss each issue I will tell you which party has the burden of proof. The party having that burden is required to prove, by the greater weight of the evidence, the existence of those facts which entitle that party to a favorable answer to the issue.

The greater weight of the evidence does not refer to the quantity of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence, that the necessary facts are more likely than not to exist.

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If you are so persuaded, it would be your duty to answer the issue in favor of the party with the burden of proof. If you are not so persuaded, it would be your duty to answer the issue against the party with the burden of proof.

101.15 You are the sole judges of the credibility of each witness.

You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of that testimony.

In determining whether to believe any witness, you should use the same tests of truthfulness which you apply in your everyday lives. These tests may include: the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony of the witness is sensible and reasonable; and whether the testimony of the witness is consistent with other believable evidence in the case.

101.20 You are also the sole judges of the weight to be given to any evidence. By this I mean, if you decide that certain evidence is believable, you must then determine the importance of that evidence in the light of all other believable evidence in the case.

101.30 *(You may find that a witness is interested in the outcome of this trial. In deciding whether or not to believe such a witness, you may take the interest of the witness into account. If, after doing so, you believe the testimony of the witness, in whole or in part, you will treat what you believe the same as any other believable evidence.)*

101.50 It is your duty is to recall and consider all of the evidence

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introduced during the trial. If your recollection of the evidence differs from that which the attorneys argued to you, you should be guided by your own recollection in your deliberations.

101.60 As I have already indicated, your verdict will take the form of answers to certain questions or issues.

These issues are as follows:

(Read all issues.)

I will discuss the issues one at a time and explain the law which you should consider as you deliberate upon your verdict.

102.10 The first issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant?"

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 [injury] [damage].

102.11 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 *himself* and others from [injury] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect *himself* and others from [injury] [damage]. A person's failure to use ordinary care is negligence.

102.12 Every person is (also) under a duty to follow standards of conduct enacted as laws for the safety of the public. A standard of conduct established by a safety statute must be followed. A person's failure to do so is

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negligence in and of itself.

102.14 (Ordinarily a person has no duty to anticipate negligence on the part of others. In the absence of anything which gives or should give notice to the contrary, he has the right to assume and to act on the assumption that others will use ordinary care and follow standards of conduct enacted as laws for the safety of the public.

However, the right to rely on this assumption is not absolute, and if the circumstances existing at the time are such as reasonably to put a person on notice that he cannot rely on the assumption, he is under a duty to use that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect himself and others from [injury] [damage].)

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

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

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

102.35 In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in one or more of the following ways:

(Read all contentions of negligence supported by the evidence, for

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example:)

The first contention is that the defendant failed to use ordinary care by failing to keep a reasonable lookout.

The second contention is that the defendant failed to use ordinary care by failing to keep *his* vehicle under proper control.

The third contention is that the defendant violated a safety statute by operating *his* vehicle at a speed greater than 55 miles per hour outside municipal corporate limits.

The fourth contention is that the defendant violated a safety statute by driving *his* vehicle on a highway at a speed greater than reasonable and prudent under the conditions then existing.

(Give any other contentions 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 [injury] [damage].

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

(Give law as to each contention of negligence included above, for example:)

201.20 With respect to the plaintiff's first contention, the operator of a motor vehicle on a highway has a duty to keep a reasonable lookout. This means that the operator is charged with the duty at all times to keep the same lookout that a reasonably careful and prudent person would keep under all the circumstances then existing. The duty is not only to look, but to see what ought to be seen. The operator must be reasonably vigilant and anticipate the

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use of the highway by others.

A violation of this duty is negligence.

201.30 With respect to the plaintiff's second contention, the operator of a motor vehicle on a highway has a duty to keep the vehicle under proper control. This means that the operator is at all times under a duty to operate the vehicle at a speed and in a manner which allows *him* to maintain that degree of control over the vehicle which a reasonably careful and prudent person would have maintained under the same or similar circumstances. *(When the conditions existing at the scene increase the danger in comparison to normal conditions, the care required of the operator is correspondingly increased.)*

A violation of this duty is negligence.

202.15 With respect to the plaintiff's third contention, the motor vehicle law provides that it is unlawful to operate a motor vehicle at a speed greater than 55 miles per hour outside municipal corporate limits unless another maximum speed limit is posted.

A violation of this safety statute is negligence in and of itself.

202.10 With respect to the plaintiff's fourth contention, the motor vehicle law provides that it is unlawful to operate a motor vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing.

A violation of this safety statute is negligence in and of itself.

In determining whether the vehicle was being operated at a speed greater than was reasonable and prudent, you should consider all of the evidence about the physical features at the scene, the hour of day or night, the

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weather conditions, the extent of other traffic, the width and nature of the roadway, and any other circumstances shown to exist.

Considering all such circumstances, a rate of speed may be unreasonable and imprudent even though it is within the posted maximum speed limit at that time and at the scene.

102.50 Finally, as to this first 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 [injury] [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.

You will answer the second issue only if you have answered the first issue "Yes," in favor of the plaintiff. If you have answered the first issue "No" then you will omit issues two, three and four and will go directly to the fifth issue.

104.10 The second issue reads:

"Did the plaintiff, by *his* own negligence, contribute to *his* [injury] [damage]?"

You will answer this second issue only if you have answered the first issue as to the defendant's negligence "Yes" in favor of the plaintiff.

On this second issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that the plaintiff was negligent and that such negligence was a proximate

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cause of the plaintiff's own [injury] [damage].

The test of what is negligence, as I have already defined and explained it, is the same for the plaintiff as for the defendant. If the plaintiff's negligence joins with the negligence of the defendant in proximately causing the plaintiff's own [injury] [damage], it is called contributory negligence, and the plaintiff cannot recover.

104.35 In this case, the defendant contends, and the plaintiff denies, that the plaintiff was negligent in one or more of the following ways:

(Read all contentions of contributory negligence supported by the evidence, for example:)

The first contention is that the plaintiff failed to use ordinary care by failing to keep a reasonable lookout.

The second contention is that the plaintiff failed to use ordinary care by failing to keep *his* vehicle under proper control.

The third contention is that the plaintiff violated a safety statute by operating *his* vehicle at a speed greater than 55 miles per hour outside municipal corporate limits.

The fourth contention is that the plaintiff violated a safety statute by operating *his* vehicle on a highway at a speed greater than reasonable and prudent under the conditions then existing.

(Give any other contentions supported by the evidence.)

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

I instruct you that contributory negligence is not to be presumed from

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the mere fact of [injury] [damage].

(Give law as to each contention of contributory negligence included above, for example:)

The instructions which I gave you on the first issue regarding reasonable lookout, proper control, operating a vehicle at a speed greater than 55 miles per hour and driving at a speed greater than reasonable and prudent are equally applicable here. The plaintiff, as well as the defendant, is under a duty to keep a reasonable lookout and to keep *his* vehicle under proper control. A violation of any one of these duties is negligence. Furthermore, the plaintiff, as well as the defendant, must obey the safety statutes which make it unlawful to operate a motor vehicle at a speed greater than 55 miles per hour outside municipal corporate limits and to operate a vehicle at a speed greater than that which is reasonable and prudent under the conditions then existing. A violation of any one of these safety statutes is negligence in and of itself.

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

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 plaintiff.

If you have answered both the first and second issues "Yes," then that becomes your verdict and ends the lawsuit and you will not consider any of the remaining issues.

If you have answered the first issue "Yes" and the second issue "No," then you will consider the third and fourth issues.

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106.00 The third issue reads:

"What amount is the plaintiff entitled to recover for personal injury?"

If you have answered the first issue "Yes" and the second issue "No" in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the plaintiff.

The plaintiff may also be entitled to recover actual damages. 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, the amount of actual damages proximately caused by the negligence of the defendant.

106.02 Actual damages are the fair compensation to be awarded to a person for any [past] [present] [future] injury proximately caused by the negligence of another.

In determining the amount, if any, you award the plaintiff, you will consider the evidence you have heard as to (each of the following types of damages):

medical expenses

loss of earnings

pain and suffering

permanent injury.

The total of all damages are to be awarded in one lump sum. I will now explain the law of damages as it relates to each of these.

106.04 Medical expenses include all [hospital] [doctor] [drug] [*state other expenses*] bills reasonably [paid or incurred] [to be paid or incurred in

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the future] by the plaintiff as a proximate result of the negligence of the defendant.

106.06 Damages for personal injury also include fair compensation for the [past] [present] [future] loss of time from employment, loss from inability to perform ordinary labor, or the reduced capacity to earn money experienced by the plaintiff as a proximate result of the negligence of the defendant.

In determining this amount, you should consider the evidence as to:

[the plaintiff's age and occupation]

[the nature and extent of the plaintiff's employment]

[the value of the plaintiff's services]

[the amount of the plaintiff's income, at the time of *his* injury, from salary, wages or other compensation]

[the effect of the plaintiff's disability or disfigurement on *his* earning capacity]

[the plaintiff's loss of profits from *his* business or profession]

[the loss of capacity to earn money]

[*specify any other factor supported by the evidence*].

(The fact that a person [was not working at the time of *his* injury] [had not yet begun work at the time *he* was injured] does not, in and of itself, prevent a person from recovering fair compensation for loss of future earning capacity.)

106.08 Damages for personal injury also include fair compensation for the actual [past] [present] [future] physical pain and mental suffering experienced by the plaintiff as a proximate result of the negligence of the

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defendant. There is no fixed formula for placing a value on physical pain and mental suffering. You will determine what is fair compensation by applying logic and common sense to the evidence.

106.14 Damages for personal injury also include fair compensation for permanent injury. An injury is permanent when any of its effects will continue throughout the plaintiff's life. These effects may include

medical expenses

loss of earnings

pain and suffering

to be incurred or experienced by the plaintiff over *his* life expectancy. Life expectancy is the period of time the plaintiff may reasonably be expected to live.

The life expectancy tables are in evidence. They show that for one of the plaintiff's present age, (*state present age*), *his* life expectancy is (*state expectancy*) years.

In determining the plaintiff's life expectancy, you will consider not only these tables, but also all other evidence as to *his* health, *his* constitution and *his* habits.

106.16 Any amount you allow as future damages for medical expenses, loss of earnings, pain and suffering, and permanent injury must be reduced to its present value, because a smaller sum received now is equal to a larger sum received in the future.

(Notwithstanding, there is evidence before you that the calculation of the plaintiff's future medical expenses, loss of earnings, pain and suffering, and permanent injury have already been reduced to their present values.

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Whether they have in fact been so reduced is for you to determine from the evidence using logic and common sense. Therefore, if you find that any type of future damage has already been reduced to its present value, you must not reduce it again.)

106.20 I instruct you that your findings on this third issue must be based on the evidence and the rules of law I have given you with respect to the measure of damages. You are not required to accept the amount of damages suggested by the parties or their attorneys.

Your award must be fair and just. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to this third issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages proximately caused by the negligence of the defendant, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

106.60 The fourth issue reads:

"What amount is the plaintiff entitled to recover for property damages?"

If you have answered the first issue "Yes" and the second issue "No" in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by the plaintiff.

The plaintiff may also be entitled to recover actual damages. On this

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issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual property damages proximately caused by the negligence of the defendant.

106.62 The plaintiff's actual property damages are equal to the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged. The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.

Evidence of [estimates of the cost to repair] (and) [the actual cost of repairing] the damage to the plaintiff's property may be considered by you in determining the difference in fair market value immediately before and immediately after the damage occurred.

106.68 Finally, as to the fourth issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of actual property damages proximately caused by the negligence of the defendant, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

108.10 This will conclude your consideration of the issues submitted by the plaintiff. The remaining issues relate to the defendant's counterclaim. They will be considered by you only if you have answered the first issue as to the defendant's negligence "No" in favor of the defendant.

The fifth issue reads:

"Was the defendant [injured] [damaged] by the negligence of the

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plaintiff?"

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

As I have already instructed you, negligence refers to a person's failure to follow a duty of conduct imposed by law. The test of what is negligence, as it has been defined for you, is the same for the plaintiff as for the defendant.

The defendant not only has the burden of proving that the plaintiff was negligent, but also that such negligence was a proximate cause of the defendant's [injury] [damage].

You will remember the definition of proximate cause, which is also applicable here.

In this case, the defendant contends, and the plaintiff denies, that the plaintiff was negligent in one or more of the following ways:

(Read all contentions of negligence supported by the evidence. Such contentions must be identical to those stated in the contributory negligence issue above, for example:)

The first contention is that the plaintiff failed to use ordinary care by failing to keep a reasonable lookout.

The second contention is that the plaintiff failed to use ordinary care by failing to keep *his* vehicle under proper control.

The third contention is that the plaintiff violated a safety statute by operating *his* vehicle at a speed greater than 55 miles per hour outside municipal corporate limits.

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The fourth contention is that the plaintiff violated a safety statute by operating *his* vehicle on a highway at a speed greater than reasonable and prudent under the conditions then existing.

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

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

The instructions which I gave you on the first issue regarding reasonable lookout, proper control, operating a vehicle at a speed greater than 55 miles per hour and driving at a speed greater than reasonable and prudent are equally applicable here. The plaintiff, as well as the defendant, is under a duty to keep a reasonable lookout and to keep *his* vehicle under proper control. A violation of any one of these duties is negligence. Furthermore, the plaintiff, as well as the defendant, must obey the safety statutes which make it unlawful to operate a motor vehicle at a speed greater than 55 miles per hour outside municipal corporate limits and to operate a vehicle at a speed greater than that which is reasonable and prudent under the conditions then existing. A violation of any one of these safety statutes is negligence in and of itself.

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

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 plaintiff.

If you answer this issue "No" then that becomes your verdict and ends

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this lawsuit, and you will not consider any of the remaining issues. If you answer this issue "Yes", then you will answer the remaining issues.

109.00 The sixth issue reads:

"What amount is the defendant entitled to recover for personal injury?"

If you have answered the fifth issue "Yes" and the first issue "No" in favor of the defendant, the defendant is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the defendant.

The defendant may also be entitled to recover actual damages. On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, the amount of actual damages proximately caused by the negligence of the plaintiff.

109.02 Actual damages are the fair compensation to be awarded to a person for any [past] [present] [future] injury proximately caused by the negligence of another.

In determining the amount, if any, you award the defendant, you will consider the evidence you have heard as to (each of the following types of damages):

[medical expenses]

[loss of earnings]

[pain and suffering]

[scars or disfigurement]

[(partial) loss (of use) of part of the body]

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[permanent injury]

[state any other type of damage supported by the evidence].

The total of all damages are to be awarded in one lump sum. I will now explain the law of damages as it relates to each of these.

(Give the applicable component instruction as supported by the evidence. N.C.P.I.-Civil 106.04 through 106.18 may be adapted for this purpose.)

109.20 (Use N.C.P.I.-Civil 109.22 in place of 109.20 when a *per diem* argument has been made.)

I instruct you that your findings on this sixth issue must be based on the evidence and the rules of law I have given you with respect to the measure of damages. You are not required to accept the amount of damages suggested by the parties or their attorneys.

Your award must be fair and just. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to this sixth issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages proximately caused by the negligence of the plaintiff, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

109.60 The seventh issue reads:

"What amount is the defendant entitled to recover for property damages?"

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If you have answered the fifth issue "Yes" and the first issue "No" in favor of the defendant, the defendant is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by the defendant.

The defendant may also be entitled to recover actual damages. On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, the amount of actual property damages proximately caused by the negligence of the plaintiff.

109.62 The defendant's actual property damages are equal to the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged. The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.

Evidence of [estimates of the cost to repair] (and) [the actual cost of repairing] the damage to the defendant's property may be considered by you in determining the difference in fair market value immediately before and immediately after the damage occurred.

109.68 Finally, as to the seventh issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence the amount of actual property damages proximately caused by the negligence of the plaintiff, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

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150.10 Now, members of the jury, you have heard the evidence and the arguments of the attorneys. It is your duty to consider all of the evidence, all contentions arising from that evidence, and the arguments and positions of the attorneys. You must weigh all of these in light of your common sense and determine the truth of this matter. You are to perform this duty fairly and objectively, and without bias, sympathy, or partiality toward any party.

150.20 The law requires the presiding judge to be impartial and express no opinions as to the facts. You are not to draw any inference from any ruling that I have made. You must not let any inflection in my voice, expression on my face, (or any question I have asked a witness) or anything else that I have done during this trial influence your findings. It is your duty to find the facts of this case from the evidence as presented.

150.30 I instruct you that a verdict is not a verdict until all twelve jurors agree unanimously as to what your decision shall be. You may not render a verdict by majority vote.

NOTE WELL: The procedures set forth in Rule 21 of the General Rules of Practice for the Superior and District Courts must be followed. One procedure that can be used is as follows:

150.40 Your first act when you retire to the jury room should be to select one of your members to serve as your foreperson to lead you in your deliberations.

150.45

NOTE WELL: The judge must excuse the alternate juror(s).

Members of the jury, in just a moment I will send you to the jury room. You are to proceed only with the matter of the selection of your foreperson. Do not begin your deliberations in this case until such time as the bailiff

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delivers the verdict sheet to you. When the verdict sheet is delivered, you may then begin your deliberations. When you have reached a unanimous verdict and are ready to pronounce it, please have your foreperson properly mark or write your answers on the verdict sheet, date and sign the verdict sheet and notify the bailiff by knocking on the door to the jury room. You will then be returned to the courtroom to pronounce your verdict.

You may now go to the jury room and select your foreperson.

NOTE WELL: The procedures set forth in Rule 21 of the General Rules of Practice for the Superior and district Courts must be followed. One procedure that can be used is as follows:

(The judge should then address counsel as follows:)

Counsel, before sending the verdict sheet to the jury and allowing them to begin their deliberations, are there any specific objections to any portion of the charge, or to any omission therefrom?

NOTE WELL: Consider all specific requests and, if appropriate, bring the jury back and correct or add to the charge. If requests for corrections or additions are rejected, attorneys must be allowed to make specific objections on the record.

After all specific requests have been submitted and considered and the proper record notation(s) made, give the verdict sheet to the bailiff and ask him to hand it to the jury without comment, unless further instructions are necessary.

If it is necessary to return the jury to the courtroom for corrections or additions to the charge, the judge should address the jury, in the courtroom, as follows:

Members of the jury, some additional instructions are necessary to [correct] [further explain] the previous instructions I gave you.

I charge you that (*here state additional instructions*).

You may now retire and begin your deliberations as soon as you receive the verdict sheet.

N.C.P.I.—MV 100.00

MODEL MOTOR VEHICLE NEGLIGENCE CHARGE AND VERDICT SHEET.

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NOTE WELL: Repeat the question to the lawyers regarding corrections or additions to the charge. If there are further specific requests repeat the same procedure as before; if not, hand the verdict sheet to the bailiff to give to the jury.

N.C.P.I.—MV 100.00
MODEL MOTOR VEHICLE NEGLIGENCE CHARGE AND VERDICT SHEET.
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REPLACEMENT JUNE 2015

NORTH CAROLINA

IN THE GENERAL

COURT OF JUSTICE

SUPERIOR COURT DIVISION

File No.: _____

_____ COUNTY

Plaintiff

v .

VERDICT

Defendant

We, the jury, return as our unanimous verdict the following
answer(s) to the issues submitted:

Issue One:

1. Was the plaintiff *(name plaintiff)* injured or damaged by
the negligence of the defendant *(name defendant)*?

ANSWER: _____

If you answer Issue One "Yes", you shall proceed to answer Issue
Two. If you answer Issue One "No", you shall not answer Issue Two, Issue
Three and Issue Four, but shall proceed to answer Issue Five.

Issue Two:

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2. Did the plaintiff (*name plaintiff*), by his own negligence, contribute to his injury or damage?

ANSWER: _____

If you answer Issue Two "Yes", you shall not answer any of the remaining issues. If you answer Issue Two "No", you shall proceed to answer Issue Three and Issue Four, but you shall not answer Issue Five, Issue Six and Issue Seven.

Issue Three:

3. What amount, if any, is the plaintiff (*name plaintiff*) entitled to recover for personal injuries?

ANSWER: \$ _____

Issue Four:

4. What amount, if any, is the plaintiff (*name plaintiff*) entitled to recover for damages to personal property?

ANSWER: \$ _____

Issue Five:

5. Was the defendant (*name defendant*) injured or damaged by the negligence of the plaintiff (*name plaintiff*)?

ANSWER: _____

If you answer Issue Five "Yes", you shall proceed to answer Issue Six and Issue Seven. If you answer Issue Five "No", you shall not answer Issue Six and Issue Seven.

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Issue Six:

6. What amount, if any, is the defendant (*name defendant*) entitled to recover for personal injuries?

ANSWER: \$ _____

Issue Seven:

7. What amount, if any, is the defendant (*name defendant*) entitled to recover for damages to personal property?

ANSWER: \$ _____

This _____ day of _____, _____
(month) (year)

Signature of the Foreperson of the Jury

Printed Name of the Foreperson of the Jury

N.C.P.I.—MV 106.14
PERSONAL INJURY—DAMAGES—PERMANENT INJURY.
MOTOR VEHICLE VOLUME
REPLACEMENT JUNE 2015

106.14 PERSONAL INJURY—DAMAGES—PERMANENT INJURY.

NOTE WELL: When this instruction is given, you should also give N.C.P.I.-Civil (MV) 106.16 - Future Worth in Present Value.

Damages for personal injury also include fair compensation for permanent injury.¹ An injury is permanent when any of its effects will continue throughout the plaintiff's life.² These effects may include

[medical expenses]

[loss of earnings]

[pain and suffering]

[scarring or disfigurement]

[(partial) loss (of use) of part of the body]

[(state any other element of damages supported by the evidence)]

to be incurred or experienced by the plaintiff over *his* life expectancy. However, the plaintiff is not entitled to recover twice for the same element of damages. Therefore, you should not include any amount you have already allowed for [medical expenses] [loss of earnings] [pain and suffering] [scarring or disfigurement] [(partial) loss (of use) of part of the body] because of permanent injury.

Life expectancy is the period of time the plaintiff may reasonably be expected to live. The life expectancy tables are in evidence.³ They show that for someone of the plaintiff's present age, (*state present age*), *his* life expectancy is (*state expectancy*) years.⁴

In determining the plaintiff's life expectancy, you will consider not only these tables, but also all other evidence as to *his* health, *his* constitution and

N.C.P.I.—MV 106.14
PERSONAL INJURY—DAMAGES—PERMANENT INJURY.
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his habits.⁵

NOTE WELL: N.C. Gen. Stat. § 8-46, as amended by S.L. 1997-133, effective June 4, 1997, provides as follows:

N.C.P.I.—MV 106.14
 PERSONAL INJURY—DAMAGES—PERMANENT INJURY.
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8-46. Mortality tables as evidence.

Whenever it is necessary to establish the expectancy of continued life of any person from any period of the person's life, whether the person is living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation, as evidence, with other evidence as to the health, constitution and habits of the person, of such expectancy represented by the figures in the columns headed by the words "completed age" and "expectation" respectively:

Completed Age / Expectation

0 / 75.8	29 / 48.5	58 / 22.7
1 / 75.4	30 / 47.5	59 / 21.9
2 / 74.5	31 / 46.6	60 / 21.1
3 / 73.5	32 / 45.7	61 / 20.4
4 / 72.5	33 / 44.7	62 / 19.7
5 / 71.6	34 / 43.8	63 / 18.9
6 / 70.6	35 / 42.9	64 / 18.2
7 / 69.6	36 / 42.0	65 / 17.5
8 / 68.6	37 / 41.0	66 / 16.8
9 / 67.6	38 / 40.1	67 / 16.1
10 / 66.6	39 / 39.2	68 / 15.5
11 / 65.6	40 / 38.3	69 / 14.8
12 / 64.6	41 / 37.4	70 / 14.2
13 / 63.7	42 / 36.5	71 / 13.5
14 / 62.7	43 / 35.6	72 / 12.9
15 / 61.7	44 / 34.7	73 / 12.3
16 / 60.7	45 / 33.8	74 / 11.7
17 / 59.8	46 / 32.9	75 / 11.2
18 / 58.8	47 / 32.0	76 / 10.6
19 / 57.9	48 / 31.1	77 / 10.0
20 / 56.9	49 / 30.2	78 / 9.5
21 / 56.0	50 / 29.3	79 / 9.0
22 / 55.1	51 / 28.5	80 / 8.5
23 / 54.1	52 / 27.6	81 / 8.0
24 / 53.2	53 / 26.8	82 / 7.5
25 / 52.2	54 / 25.9	83 / 7.1
26 / 51.3	55 / 25.1	84 / 6.6
27 / 50.4	56 / 24.3	85 & over / 6.6
28 / 49.4	57 / 23.5	

N.C.P.I.—MV 106.14
 PERSONAL INJURY—DAMAGES—PERMANENT INJURY.
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1 A jury may consider permanent injury as an element of damages where there is sufficient evidence showing that the injury is permanent and that it proximately resulted from the wrongful act. See *Short v. Chapman*, 261 N.C. 674, 682, 136 S.E.2d 40, 46-47 (1964); *Collins v. St. George Physical Therapy*, 141 N.C. App. 82, 84, 539 S.E.2d 356, 358 (2000); *Matthews v. Food Lion, Inc.*, 135 N.C. App. 784, 785, 522 S.E.2d 587, 588 (1999).

2 "Where, however, the injury is subjective and of such a nature that laymen cannot, with reasonable certainty, know whether there will be future pain and suffering, it is necessary, in order to warrant an instruction which will authorize the jury to award damages for permanent injury, that there 'be offered evidence by expert witnesses, learned in human anatomy, who can testify, either from a personal examination or knowledge of the history of the case, or from a hypothetical question based on the facts, that the plaintiff, with reasonable certainty, may be expected to experience future pain and suffering, as a result of the injury proven.'" *Gillikin v. Burbage*, 263 N.C. 317, 326, 139 S.E.2d 753, 760-61 (1965) (internal citations and quotation marks omitted); *Littleton v. Willis*, 205 N.C. App. 224, 231-232, 695 S.E.2d 468, 473 (2010) (finding error in trial court's instruction to jury on permanent injury where the plaintiff "did not present any medical expert testimony that [p]laintiff, 'with reasonable certainty, may be expected to experience future pain and suffering, as a result of the injury proven,'" as an instruction on permanent injury would have required jurors to speculate on how long they believed plaintiff's pain would continue in the future) (citation omitted)

3 Ordinarily the "mortality tables" (reprinted below) will be in evidence. However, since they are statutory (N.C. Gen. Stat. § 8-46) (1997), judicial notice of them may be taken. *Chandler v. Chemical Co.*, 270 N.C. 395, 400, 154 S.E.2d 502, 506 (1967); *Rector v. James*, 41 N.C. App. 267, 272, 254 S.E.2d 633, 637 (1979). The annuity tables (N.C. Gen. Stat. § 8-47) are different and should not be admitted in evidence. As pointed out in *Hunt v. Wooten*, 238 N.C. 42, 76 S.E.2d 326 (1953), the annuity tables have nothing to do with the establishment of life expectancy and that it would be error to admit them for that purpose. Where the life expectancy to be determined is that of the plaintiff, his age is to be measured as of the date the jury charge is given.

4 The purpose of the permanent injury instruction "is to compensate the plaintiff for *additional* future harm that she is expected to experience because of a permanent injury that she suffered as a proximate result of the defendant's conduct." *Nicholson v. Thom*, ___ N.C. App. ___, ___, 763 S.E.2d 772, 792 (2014). In the event that the "decendent is not alive at the time of the trial and [if] Plaintiff did not bring suit for wrongful death," the trial court should not instruct on permanent injury. *Id.* In these circumstances [where the decendent is no longer living and there is no wrongful death claim], this instruction should not be used. *Id.*

5 A failure to include this sentence, or its equivalent, is reversible error. *Kinsey v. Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965); *Harris v. Greyhound Corp.*, 243 N.C. 346, 90 S.E.2d 710 (1956).

MOTOR VEHICLE VOLUME
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