

# OFFICE OF JUDICIAL EDUCATION 2022



March 2022

TO: Holders of *Wisconsin Jury Instructions – Civil*

FROM: Bryce Pierson, Office of Judicial Education – Wisconsin Court System  
Legal Advisor – Jury Instructions  
Reporter, Wisconsin Civil Jury Instructions Committee

SUBJECT: 2022 Supplement to *Wisconsin Jury Instructions – Civil*

The enclosed 2022 supplement to *Wisconsin Jury Instructions – Civil* was recently approved by the Wisconsin Judicial Conference’s Civil Jury Instructions Committee. It is the fifty-third supplement in the publication’s 62-year history.

**Content.** The 2022 supplement updates the publication on legislative actions and judicial decisions through January 21, 2022.

**Information.** For information on the status of the Committee’s work, please contact Bryce Pierson at [bryce.pierson@wicourts.gov](mailto:bryce.pierson@wicourts.gov).



# WIS JI-CIVIL

---

## 2022 Supplement

## Filing Instructions

---

Volume I	
Remove Old Pages Entitled	Insert New Pages Entitled
Title Page ..... 2021 Supplement with (Release No. 52) in lower right corner	Title Page 2022 Supplement (Release No. 53) in lower right corner
Committee Members (p. ii).....	Committee Members (1959-2022) (p.ii)
Summary of Contents (2021).....	Summary of Contents (2022)
Table of Contents (2021) .....	Table of Contents (2022)
JI-50 (© 2020).....	JI-50 (2022)
JI-400 (© 2011).....	JI-400 (2022)
JI-1008 (© 2004).....	JI-1008 (2022)
JI-1023 (2021).....	JI-1023 (2022)
JI-1023.5 (2021).....	JI-1023.5 (2022)
JI-1153 (© 2008).....	JI-1153 (2022)
JI-1155 (© 2008).....	JI-1155 (2022)
JI-1157 (© 2008).....	JI-1157 (2022)
JI-1158 (© 2008).....	JI-1158 (2022)
JI-1159 (© 2008).....	JI-1159 (2022)
JI-1160 (© 2008).....	JI-1160 (2022)
JI-1165 (© 2008).....	JI-1165 (2022)
JI-1170 (© 2008).....	JI-1170 (2022)
JI-1175 (© 2008).....	JI-1175 (2022)
JI-1180 (© 2008).....	JI-1180 (2022)
JI-1185 (© 2008).....	JI-1185 (2022)

JI-1190 (© 2008).....	JI-1190 (2022)
JI-1190.5 (© 2008).....	JI-1190.5 (2022)
JI-1191 (© 2008).....	JI-1191 (2022)
JI-1192 (© 2008).....	JI-1192 (2022)
JI-1193 (© 2008).....	JI-1193 (2022)
JI-1193.5 (© 2008).....	JI-1193.5 (2022)
JI-1195 (© 2008).....	JI-1195 (2022)
JI-1205 (© 2008).....	JI-1205 (2022)
JI-1210 (© 2008).....	JI-1210 (2022)
JI-1220 (© 2008).....	JI-1220 (2022)
JI-1225 (© 2008).....	JI-1225 (2022)
JI-1230 (© 2008).....	JI-1230 (2022)
JI-1235 (© 2008).....	JI-1235 (2022)
JI-1240 (© 2008).....	JI-1240 (2022)
JI-1245 (© 2008).....	JI-1245 (2022)
JI-1250 (© 2008).....	JI-1250 (2022)
JI-1255 (© 2008).....	JI-1255 (2022)
JI-1260 (© 2008).....	JI-1260 (2022)
JI-1265 (© 2008).....	JI-1265 (2022)
JI-1270 (© 2008).....	JI-1270 (2022)
JI-1275 (© 2008).....	JI-1275 (2022)
No instruction.....	JI-1393 (2022)

## Volume II

Title Page .....	Title Page 2022 Supplement (Release No. 53) in lower right corner
2021 Supplement with (Release No. 52) in lower right corner	
Table of Contents (2021) .....	Table of Contents (2022)
JI-1762 (© 2003).....	JI-1762 (2022)
JI-1900.4 (2021).....	JI-1900.4 (2022)
JI-2600 (© 2015).....	JI-2600 (2022)

JI-2605 (© 2015).....	JI-2605 (2022)
JI-2770 (© 2005).....	JI-2770 (2022)
JI-2790 (© 2020).....	JI-2790 (2022)
JI-3028 (© 2020).....	JI-3028 (2022)
No instruction.....	JI-3079 (2022)

### Volume III

Title Page ..... 2021 Supplement with (Release No. 52) in lower right corner	Title Page 2022 Supplement (Release No. 53) in lower right corner
Table of Contents (2021) .....	Table of Contents (2022)
JI-3110 (© 2013).....	JI-3110 (2022)
JI-7050 (2021).....	JI-7050 (2022)
No instruction.....	JI-7050A (2022)
JI-8025 (© 2016).....	JI 8025 (2022)
JI-8060 (© 2018).....	JI 8060 (2022)
JI-8100 (© 2020).....	JI 8100 (2022)
JI-8110 (© 2008).....	JI 8110 (2022)
JI-8120 (© 2008).....	JI 8120 (2022)
Table of Cases Cited (2021) .....	Table of Cases Cited (2022)
Index (2021).....	Index (2022)

2022 Supplement filed by \_\_\_\_\_, \_\_\_\_\_.  
initials date

#### FOR QUESTIONS:

If you have any questions about these filing instructions or the civil jury instructions, please contact the Committee's reporter, Bryce Pierson at [bryce.pierson@wicourts.gov](mailto:bryce.pierson@wicourts.gov).





---

---

# WISCONSIN JURY INSTRUCTIONS

---

## CIVIL

---

---

**Wisconsin Civil Jury  
Instructions Committee**

- 2022 Supplement (Release No. 53)







---

---

# WISCONSIN JURY INSTRUCTIONS

---

## CIVIL

---

---

## VOLUME I

---

---

**Wisconsin Civil Jury  
Instructions Committee**

- 2022 Supplement (Release No. 53)



## WISCONSIN CIVIL JURY INSTRUCTIONS COMMITTEE (1959-2022)

### CURRENT MEMBERS

Hon. William Sosnay, Milwaukee County (Chair)  
Hon. Michael Fitzpatrick, Court of Appeals District IV  
Hon. Marc Hammer, Brown County  
Hon. Sarah Harless, Eau Claire County  
Hon. Barbara Key, Winnebago County  
Hon. William Pocan, Milwaukee County  
Hon. Michael Waterman, St. Croix County

### FORMER MEMBERS

Hon. Helmuth F. Arps (1959-1962)	Hon. Emily Mueller (2004-2014)
Hon. M. Eugene Baker (1959-1975)	Hon. Gordon Myse (1978-1983)
Hon. Michael J. Barron (1983-1996)	Hon. Harvey L. Neelen (1959-1977)
Hon. Dennis J. Barry (1994-1997)	Hon. J. Michael Nolan (1991-2001)
Chief Justice Bruce F. Beilfuss (1959-1964)	Hon. Daniel Noonan (2003-2013)
Hon. Herbert A. Bunde (1962-1963)	Hon. William I. O'Neill (1959-1974)
Hon. George A. Burns, Jr. (1976-1994)	Hon. Richard W. Orton (1959-1961, 1973-1979)
Hon. Lewis J. Charles (1962-1976)	Hon. Robert J. Parins (1970-1982)
Hon. William E. Crane (1978-1994)	Hon. Andrew W. Parnell (1959-1982)
Hon. Richard J. Dietz (1997-2006)	Hon. Robert F. Pfiffner (1970-1987)
Hon. Daniel Dillon, (2007-2018)	Hon. Paul Reilly (2013-2018)
Hon. Edward M. DuQuaine (1959-1961)	Hon. John Roethe (2003-2007)
Hon. Mark J. Farnum (1979-1989)	Hon. Michael Schumacher (2011-2021)
Hon. Merrill R. Farr (1962-1975)	Hon. Richard H. Stafford (1987-1997)
Hon. James P. Fiedler (1981-1991)	Hon. Lisa Stark (2001-2011)
Hon. Richard G. Greenwood (1983-1994)	Hon. Michael P. Sullivan (1994-2003)
Hon. Gerald W. Jaeckle (1989-1994)	Hon. Joseph M. Troy (1994-2003)
Hon. P. Charles Jones (1994-2004)	Hon. Albert J. Twesme (1962-1980)
Hon. Philip Kirk (2006-2009)	Hon. Clair H. Voss (1974-1978)
Hon. Norris Maloney (1964-1978)	Hon. Francis T. Wasielewski (1996-2006)
Hon. Robert Mawdsley (1997-2007)	Hon. Patrick Willis (2006-2016)
Hon. Dennis Moroney, (2010-2020)	

**Reporter:** Bryce Pierson, Office of Judicial Education – Wisconsin Court System



# WIS JI-CIVIL

## SUMMARY OF CONTENTS

<b>Tributes</b>	
<b>Memorials</b>	
<b>1981 Foreword</b>	
<b>1978 Preface</b>	
<b>1960 Introduction</b>	
 <b>GENERAL INSTRUCTIONS</b>	
Right to a Jury Trial	1
Suggested Order	10
Preliminary Instructions	50-66
Jurors' Duties	100-197
Evidence, Burdens, and Presumptions	200-358
Witnesses	400-425
Accrual of Action	950
 <b>NEGLIGENCE</b>	
Standard of Care Required	1000-1029
Duties of Persons in Specific Situations	1030-1413
Cause	1500-1511
Comparative Negligence	1580-1595
Imputed Negligence	1600-1610
Damages	1700-1897
Safe Place	1900.2-1911
Nuisance	1920-1932
 <b>INTENTIONAL TORTS</b>	
Assault and Battery	2000-2020
False Imprisonment	2100-2115
Federal Civil Rights	2151-2155
Conversion	2200-2201
Misrepresentation	2400-2420
Defamation	2500-2552
Misuse of Procedure	2600-2620
Trade Practices	2720-2722
Domestic Relations	2725
Business Relations	2750-2791
Civil Conspiracy; Injury to Business	2800-2822
Tort ImmunityBLaw Note	2900
 <b>CONTRACTS</b>	
General	3010-3095
Insurance	3100-3118
Breach of Warranty	3200-3230
Duties of Manufacturers and Sellers	3240-3310
Damages	3700-3760
 <b>AGENCY; EMPLOYMENT; BUSINESS ORGANIZATIONS</b>	4000-4080
<b>PERSONS</b>	5001-7070
 <b>PROPERTY</b>	
General	8012-8060
Eminent Domain	8100-8145
 <b>TABLE OF CASES CITED</b>	
<b>INDEX</b>	



**WIS JI-CIVIL****TABLE OF CONTENTS****VOLUME I****GENERAL INSTRUCTIONS****Jurors' Duties**

## Inst. No.

1	Right to a Jury Trial: Law Note for Trial Judges (2017)
10	Suggested Order of Instructions: Negligence Cases (2018)
50	Preliminary Instruction: Before Trial (2022)
57	Juror Questioning of Witnesses (2014)
60	Notetaking Not Allowed (2011)
61	Notetaking Permitted (2011)
63	Transcripts Not Available for Deliberations; Reading Back Testimony (2011)
65	Preliminary Instruction: Use of an Interpreter for a Witness (2011)
66	Preliminary Instruction: Use of an Interpreter for a Juror (2011)
80	Recording Played to the Jury (2011)
100	Opening (2013)
103	Summary Exhibit (2013)
106	Submission on General Verdict (2010)
107	Submission on Ultimate Fact Verdict [Withdrawn 2011]
108	Submission on Ultimate Fact Verdict When Court Finds One or More Parties at Fault [Withdrawn 2011]
110	Remarks and Arguments of Counsel (2011)
115	Objections of Counsel (2015)
120	Ignoring Judge's Demeanor (2011)
125	Counsel's Reference to Insurance Company (2011)
130	Stricken Testimony (2011)
145	Special Verdict Questions: Interrelationship (2016)
150	Damage Question Answered by the Court (2005)
152	View of Scene (2011)
155	Question Answered by the Court (2011)
180	Five-Sixths Verdict (2017)
190	Closing: Short Form (2011)

191	Closing: Long Form (2017)
195	Supplemental Instruction Where Jury is Unable to Agree (2003)
197	Instruction after Verdict is Received (2010)

### **Evidence, Burdens, and Presumptions**

200	Burden of Proof: Ordinary (2004)
202	Burden of Proof: Ordinary: Compensatory Damages (2005)
205	Burden of Proof: Middle (2016)
210	Burden of Proof Where Verdict Contains a Middle Standard Question [Withdrawn 1998]
215	Credibility of Witnesses; Weight of Evidence (2011)
220	Jury Not to Speculate [Withdrawn 1990]
230	Circumstantial Evidence (2011)
255	Driver's Manual: Use by Jury [Withdrawn 2011]
260	Expert Testimony (2017)
261	Medical or Scientific Treatise in Evidence (1989)
265	Expert Testimony: Hypothetical Questions (2011)
268	Opinion of a Nonexpert Witness (2013)
305	Measurements (1989)
315	Negative Testimony (2016)
325	Physical Facts (1989)
349	Presumptions and Permissive Inferences - Law Note for Trial Judges (2017)
350	Presumptions: Conflict as to Existence of Basic Fact; Evidence Introduced from Which Nonexistence of Presumed Fact May Be Inferred (2013)
352	Presumptions: Existence of Basic Fact Uncontradicted; Evidence Introduced from Which Nonexistence of Presumed Fact May Be Inferred (2013)
353	Presumptions: Deceased Person was Not Negligent (2003)
354	Presumptions: Conflict as to Existence of Basic Fact; No Evidence Introduced from Which Nonexistence of Presumed Fact Could Be Inferred (1991)
356	Permissive Inferences; e.g., <u>Res Ipsa Loquitur</u> (1989)
358	Subsequent Remedial Measures (2021)

### **Witnesses**

400	Spoliation: Inference (2022)
405	Falsus in Uno (2018)
410	Witness: Absence (2015)
415	Witness: Prior Conviction (2011)
420	Impeachment of Witnesses: Prior Inconsistent or Contradictory Statements (1981)
425	Witness Exercising Privilege Against Self-Incrimination (2011)



950 Reasonable Diligence in Discovery of Injury (Statute of Limitations) (2016)

## **NEGLIGENCE**

### **Standard of Care Required**

- 1000 Unavoidable Accident (1989)
- 1001 Negligence: Fault: Ultimate Fact Verdict (2004)
- 1002 Gas Company, Duty to Customer (1989)
- 1003 Negligence, Gas Company, Duty in Installing Its Pipes, Mains, and Meters (1989)
- 1004 Negligent Versus Intentional Conduct (1995)
- 1005 Negligence: Defined (2016)
- 1006 Gross Negligence: Defined (2016)
- 1007 Contributory Negligence: Defined (2015)
- 1007.5 Contributory Negligence: Rescue Rule (2016)
- 1008 Intoxication: Chemical Test Results [Reflects Changes in 2003 Wisconsin Act 30] (2022)
- 1009 Negligence: Violation of Safety Statute (2010)
- 1010 Negligence of Children (© 2014)
- 1011 Attractive Nuisance: Ultimate Fact Question [Renumbered JI-Civil 8025 (2013)]
- 1012 Parents' Duty to Protect Minor Child (1989)
- 1013 Parent's Duty to Control Minor Child (2006)
- 1014 Negligent Entrustment (2017)
- 1014.5 Negligent Entrustment to an Incompetent Person (2017)
- 1015 Negligence in an Emergency [Renumbered JI-Civil-1105A 1995]
- 1019 Negligence: Evidence of Custom and Usage (1995)
- 1020 Negligence: Under Special Circumstances [Withdrawn 2011]
- 1021 Negligence of Mentally Disabled (2006)
- 1021.2 Illness Without Forewarning (2002)
- 1022.2 Negligence of General Contractor: Increasing Risk of Injury to Employee of Subcontractor (2020)
- 1022.4 Negligence: Building Contractor (2016)
- 1022.6 Liability of One Employing Independent Contractor (2015)
- 1023 Medical Negligence (2022)
- 1023.1 Professional Negligence: Medical: Duty of Physician to Inform a Patient: Special Verdict (2015)
- 1023.2 Professional Negligence: Medical: Duty of Physician to Inform a Patient (2015)
- 1023.3 Professional Negligence: Medical: Duty of Physician to Inform a Patient: Cause (2015)
- 1023.4 Professional Negligence: Medical: Duty of Physician to Inform a Patient: Contributory Negligence (2015)

- 1023.5 Professional Negligence: Legal—Status of Lawyer as a Specialist is Not in Dispute (2022)
- 1023.5A Professional Negligence: Legal—Status of Lawyer as Specialist is in Dispute (1997)
- 1023.6 Negligence of Insurance Agent (2021)
- 1023.7 Professional Negligence: Registered Nurses and Licensed Technicians Performing Skilled Services (2016)
- 1023.8 Professional Negligence: Chiropractor-Treatment (2016)
- 1023.9 Professional Negligence: Chiropractor-Determining Treatability by Chiropractic Means (1999)
- 1023.14 Professional Negligence: Dental (2016)
- 1023.15 Professional Negligence: Chiropractor, Dentist, Optometrist, or Podiatrist: Duty to Inform a Patient: Special Verdict (2015)
- 1023.16 Professional Negligence: Chiropractor, Dentist, Optometrist, or Podiatrist: Duty to Inform a Patient (2015)
- 1023.17 Professional Negligence: Chiropractor, Dentist, Optometrist, or Podiatrist: Duty to Inform a Patient: Cause (2015)
- 1024 Professional Negligence: Medical: Res Ipsa Loquitur (2017)
- 1025 Negligence of a Common Carrier (2006)
- 1025.5 Bailment: Defined (2009)
- 1025.6 Duty of Bailor for Hire (1992)
- 1025.7 Bailment: Duty of Bailee under a Bailment for Mutual Benefit (2009)
- 1025.8 Bailment: Liability of a Gratuitous Bailor (2009)
- 1026 Bailment: Negligence of Bailee May Be Inferred (2005)
- 1026.5 Bailment: Negligence of Carrier Presumed (2005)
- 1027 Duty of Owner of Place of Amusement: Common Law [Renumbered JI-Civil 8040 1985]
- 1027.5 Duty of a Proprietor of a Place of Business to Protect a Patron from Injury Caused by Act of Third Person [Renumbered JI-Civil 8045 1986]
- 1027.7 Duty of Hotel Innkeeper [Renumbered JI-Civil 8050 1986]
- 1028 Duty of Owner of a Building Abutting on a Public Highway [Renumbered JI-Civil 8030 1986]
- 1029 Highway or Sidewalk Defect or Insufficiency [Renumbered JI-Civil 8035 1986]

### **Duties of Persons in Specific Situations**

- 1030 Right to Assume Due Care by Highway Users (1992)
- 1031 Conditional Privilege of Authorized Emergency Vehicle Operator (2016)
- 1032 Defective Condition of Automobile: Host's Liability (1992)
- 1035 Voluntary Intoxication: Relation to Negligence (2004)
- 1045 Driver's Duty When Children Are Present (1992)

1046	Contributory Negligence of Passenger: Placing Self in Position of Danger (1992)
1047	Contributory Negligence of Guest: Riding with Host (1992)
1047.1	Negligence of Guest: Active: Management and Control (1992)
1048	Driver, Negligence: Highway Defect or Insufficiency (1992)
1049	Pedestrian, Negligence: Sidewalk Defect or Insufficiency (1989)
1050	Duty of Persons with Physical Disability (2005)
1051	Duty of Worker: Preoccupation in Work Minimizes Duty (1995)
1051.2	Duty of Worker: When Required to Work in Unsafe Premises (1992)
1052	Equipment and Maintenance of Vehicles: General Duty (2008)
1053	Equipment and Maintenance of Vehicles: Headlights (2008)
1054	Equipment and Maintenance of Vehicles: Brakes (2008)
1055	Lookout (1997)
1056	Lookout: Camouflage (2013)
1060	Lookout: Backing (2008)
1065	Lookout: Entering or Crossing A Through Highway (2003)
1070	Lookout: Failure to See Object in Plain Sight (1992)
1075	Lookout: Guest (1996)
1076	Lookout: Guest's Duty to Warn (1992)
1080	Lookout: Limited Duty on Private Property (1992)
1090	Driver on Arterial Approaching Intersection: Lookout; Right of Way; Flashing Yellow Signal (1992)
1095	Lookout: Pedestrian (2008)
1096	Duty to Sound Horn (2008)
1105	Management and Control (2008)
1105A	Management and Control–Emergency (2016)
1107	Racing (2008)
1112	Operation of Automobile Following Another (2015)
1113	Duty of Preceding Driver: Slowing or Stopping: Signaling (2008)
1114	Duty of Preceding Driver to Following Driver: Lookout (2008)
1115	Parking: Stopping: Leaving Vehicle Off the Roadway (2008)
1120	Parking: Stopping: Leaving Vehicle On the Roadway (2008)
1125	Parking: Stopping: Leaving Vehicle On or Off the Roadway: Exception to Prohibition (2008)
1132	Stopped School Bus: Position on Highway (2008)
1133	School Bus: Flashing Red Warning Lights (2008)
1135	Position on Highway on Meeting and Passing (2008)
1140	Position on Highway on Meeting and Passing; Violation Excused (2008)
1141	Passing: Vehicles Proceeding in Same Direction (2008)
1142	Passing: Vehicles Proceeding in Same Direction: Obstructed View (2008)
1143	Passing: Vehicles Proceeding in Same Direction: In No Passing Zone or Where Overtaken Vehicle Turning Left (2008)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 1144 Passing: Vehicles Proceeding in Same Direction (2015)
- 1145 Res Ipsa Loquitur (2002)
- 1153 Right of Way: At Intersection with Through Highway (2022)
- 1155 Right of Way: At Intersections of Highways (2022)
- 1157 Right of Way: At Intersection of Highways: Ultimate Verdict Question (2022)
- 1158 Right of Way: To Pedestrian Crossing at Controlled Intersection (2022)
- 1159 Right of Way: Pedestrian Control Signal: Walk Signal (2022)
- 1160 Right of Way: To Pedestrian at Intersections or Crosswalks on Divided Highways  
or Highways Provided with Safety Zones (2022)
- 1161 Right of Way: Pedestrian Crossing Roadway at Point Other Than Crosswalk  
(1982)
- 1165 Right of Way: To Pedestrian at Uncontrolled Intersection or Crosswalk (2022)
- 1170 Right of Way: Blind Pedestrian on Highway (2022)
- 1175 Right of Way: Entering Highway from an Alley or Nonhighway Access Point  
(2022)
- 1180 Right of Way: Funeral Processions; Military Convoys (2022)
- 1185 Right of Way: Green Arrow (2022)
- 1190 Right of Way: Green Signal (2022)
- 1190.5 Plaintiff and Defendant Each Claims Green Light in Their Favor (2022)
- 1191 Duty of Driver Entering Intersection with Green Light in Driver's Favor: Lookout  
(2022)
- 1192 Duty of Driver Approaching Intersection When Amber Light Shows (2022)
- 1193 Red Traffic Control Light Signaling Stop (2022)
- 1193.5 Flashing Red Traffic Control Light (2022)
- 1195 Right of Way: Left Turn at Intersection (2022)
- 1200 Right of Way: Livestock (2008)
- 1205 Right of Way: Moving from Parked Position (2022)
- 1210 Right of Way: On Approach of Emergency Vehicle (2022)
- 1220 Right of Way: Pedestrian's Duty: At Pedestrian Control Signal (2022)
- 1225 Right of Way: Pedestrian's Duty: Crossing at Controlled Intersection or  
Crosswalk (2022)
- 1230 Right of Way: Pedestrian's Duty: Crossing Roadway at Point Other than  
Crosswalk (2022)
- 1235 Right of Way: Pedestrian's Duty: Divided Highways or Highways with Safety  
Zones (2022)
- 1240 Right of Way: Pedestrian's Duty: Facing Green Arrow (2022)
- 1245 Right of Way: Pedestrian's Duty: Facing Red Signal (2022)
- 1250 Right of Way: Pedestrian's Duty: Standing or Loitering on Highway (2022)
- 1255 Right of Way: Pedestrian's Duty at Uncontrolled Intersection or Crosswalk;  
Suddenly Leaving Curb or Place of Safety (2022)
- 1260 Position on Highway: Pedestrian's Duty; Walking on Highway (2022)

1265	Right of Way: Persons Working on Highway (2022)
1270	Right of Way: When Vehicle Using Alley or Nonhighway Access to Stop (2022)
1275	Right of Way: When Yield Sign Installed (2022)
1277	Safety Belt: Failure to Use (2009)
1278	Safety Helmet: Failure to Use (2009)
1280	Skidding (2008)
1285	Speed: Reasonable and Prudent; Reduced Speed (2008)
1290	Speed: Fixed Limits (2008)
1295	Speed: Special Restrictions for Certain Vehicles (2008)
1300	Speed: Impeding Traffic (2008)
1305	Speed: Failure to Yield Roadway (2015)
1310	Speed: Obstructed Vision (2008)
1315	Speed: Obstructed Vision: Nighttime (2008)
1320	Speed: Camouflage (1992)
1325	Stop at Stop Signs (2008)
1325A	Stop at Stop Signs [Alternate] (2008)
1330	Stop: Emerging from an Alley (2008)
1335	Emerging from a Private Driveway or Other Nonhighway Access (2008)
1336	Railroad Crossing: Driver's Duty (2008)
1337	Stop: All Vehicles at Railroad Crossing Signals (2015)
1337.5	Stop: Pedestrian Crossing Railroad Tracks (2015)
1338	Stop: Nonoperation of Railroad Crossing Signals (2008)
1339	Stop: Special Vehicles at Railroad Crossing (2008)
1340	Stop: For School Bus Loading or Unloading Children (2008)
1350	Turn or Movement: Signal Required (2008)
1352	Turn: Position and Method When Not Otherwise Marked or Posted (2008)
1354	Turn or Movement: Ascertainment that Turn or Movement Can Be Made with Reasonable Safety: Lookout (2009)
1355	Deviation from Traffic Lane: Clearly Indicated Lanes (2008)

### **Other Negligence**

1380	Negligence: Teacher: Duty to Instruct or Warn (2020)
1381	Negligence: Teacher: Duty to Supervise Students (2016)
1383	Employer Negligence: Negligent Hiring, Training, or Supervision (2019)
1384	Duty of Hospital: Granting and Renewing Staff Privileges (Corporate Negligence) (2017)
1385	Negligence: Hospital: Duty of Employees: Performance of Routine Custodial Care Not Requiring Expert Testimony (1999)
1385.5	Negligence: Hospital: Duty of Employees: Suicide or Injury Resulting from Escape or Attempted Suicide (2006)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 1390 Injury by Dog (2017)
- 1391 Liability of Owner or Keeper of Animal: Common Law (2016)
- 1393 Participation in Rec. Act (2022)
- 1395 Duty of Public Utility: Highway Obstructions: Nonenergized Facilities (1989)
- 1397 Negligence: Voluntary Assumption of Duty to a Third Person (2014)

### RAILROADS

- 1401 Railroads: Duty to Ring Engine Bell Within Municipality (2007)
- 1402 Railroads: Duty to Ring Engine Bell Outside Municipality (2007)
- 1403 Railroads: Duty to Blow Train Whistle Within Municipality [Withdrawn 2007]
- 1405 Railroads: Duty of Train Crew Approaching Crossing (2006)
- 1407 Railroads: Speed: Fixed Limits (2006)
- 1408 Railroads: Speed: No Limit (2006)
- 1409 Railroads: Negligent Speed, Causation (2006)
- 1410 Railroads: Duty to Maintain Crossing Signs (2006)
- 1411 Railroads: Duty to Maintain Open View at Crossings (2006)
- 1412 Railroads: Duty to Have Proper Headlights (2006)
- 1413 Railroads: Ultrahazardous or Unusually Dangerous Crossings: Increased Duty (2006)

## WIS JI-CIVIL

## TABLE OF CONTENTS

## VOLUME II

## NEGLIGENCE (Continued)

- 1500 Cause (2021)
- 1501 Cause: Normal Response (1998)
- 1505 Cause: Where Cause of Death is in Doubt (1998)
- 1506 Cause: Relation of a Medical Procedure to the Accident (1998)
- 1510 Negligent Infliction of Severe Emotional Distress (Bystander Claim) (2014)
- 1511 Personal Injuries: Negligent Infliction of Severe Emotional Distress (Separate or Direct Claim) (2018)

## Comparative Negligence

- 1580 Comparative Negligence: Plaintiff and One or More Defendants (2011)
- 1582 Comparative Negligence: Adult and Child (1990)
- 1585 Comparative Negligence: Plaintiff-Guest and Host-Defendant Negligent (1992)
- 1590 Comparative Negligence: Plaintiff-Guest Passively Negligent; Host (Or Other Driver) Negligent (2003)
- 1591 Comparative Negligence: Guest Passively Negligent; Claims Against and Among Drivers; Apportionment from One Comparative Negligence Question (2015)
- 1592 Comparative Negligence: Guest Passively Negligent; Claims Against and Among Drivers; Apportionment of Comparative Negligence from Two Questions (2003)
- 1595 Comparative Negligence: Where Negligence or Cause Question Has Been Answered by Court (1990)

## Imputed Negligence

- 1600 Servant: Driver of Automobile (Presumption from Ownership of Vehicle) (2003)
- 1605 Driver: Scope of Employment (2014)
- 1610 Joint Adventure (Enterprise): Automobile Cases (1990)

**Damages**

- 1700 Damages: General (2016)
- 1705 Damages: Burden of Proof in Tort Actions: Future Damages [Withdrawn 2001]
- 1707 Punitive Damages: Nonproducts Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707A Punitive Damages: Products Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707.1 Punitive Damages: Nonproducts Liability (2018)
- 1707.2 Punitive Damages: Products Liability (2008)
- 1708 Battery: Punitive Damages: Mitigation by Provocation [Withdrawn © 2010]
- 1710 Aggravation of Injury Because of Medical Negligence (2015)
- 1715 Aggravation of Pre-existing Injury (1990)
- 1720 Aggravation or Activation of Latent Disease or Condition (1992)
- 1722 Damages from Nonconcurrent or Successive Torts (1992)
- 1722A Damages from Nonconcurrent or Successive Torts (To be used where several tortfeasors are parties) (1996)
- 1723 Enhanced Injuries (2009)
- 1725 Further Injury in Subsequent Event (2003)
- 1730 Damages: Duty to Mitigate: Physical Injuries (2012)
- 1731 Damages: Duty to Mitigate: Negligence or Breach of Contract (2012)
- 1732 Damages: Duty to Mitigate: Intentional Tort (2012)
- 1735 Damages: Not Taxable as Income (1990)
- 1740 Damages: Common Scheme or Plan; Concerted Action (Wis. Stat. § 895.045(2)) (2009)
- 1741 Personal Injuries: Negligence in Informing the Patient (2015)
- 1742 Personal Injuries: Medical Care: Offsetting Benefit from Operation Against Damages for Negligence in Informing the Patient (2015)
- 1749 Personal Injuries: Conversion Table for 1998 Revision of Damage Instructions (1998)
- 1750.1 Personal Injuries: Subdivided Question as to Past and Future Damages (1998)
- 1750.2 Personal Injuries: Past and Future: One Verdict Question (Except Past Loss of Earnings and Past Medical Expenses) (1998)
- 1754 Personal Injury: One Subdivided Question as to Past Damages [Withdrawn © 1998]
- 1756 Personal Injuries: Past Health Care Expenses (2015)
- 1757 Personal Injuries: Past Health Care Expenses (Medical Negligence Cases) (Negligence of Long-Term Care Provider): Collateral Sources (2013)
- 1758 Personal Injuries: Future Health Care Expenses (2010)
- 1760 Personal Injuries: Past Loss of Earning Capacity (2016)
- 1762 Personal Injuries: Future Loss of Earning Capacity (2022)



1766	Personal Injuries: Past Pain, Suffering, and Disability (Disfigurement) (2009)
1767	Personal Injuries: Future Pain, Suffering, and Disability (Disfigurement) (1999)
1768	Personal Injuries: Past and Future Pain, Suffering, and Disability (Disfigurement) (1998)
1770	Personal Injuries: Severe Emotional Distress (2006)
1780	Personal Injuries: Loss of Business Profits [Withdrawn 1998]
1785	Personal Injuries: Past Loss of Professional Earnings [Withdrawn 1998]
1788	Loss of Earnings: Delay in Obtaining Degree [Withdrawn 1999]
1795	Personal Injury: Life Expectancy and Mortality Tables (1992)
1796	Damages: Present Value of Future Losses (2003)
1797	Damages: Effects of Inflation (1993)
1800	Property: Loss of Use of Repairable Automobile (1997)
1801	Property: Loss of Use of Nonrepairable Automobile (1997)
1803	Property: Destruction of Property (2010)
1804	Property: Damage to Repairable Property (2010)
1805	Property: Damage to Nonrepairable Property (2010)
1806	Property: Damage to a Growing Crop (1997)
1810	Trespass: Nominal Damages (2013)
1812	Quantum Meruit: Measure of Services Rendered (1992)
1815	Injury to Spouse: Loss of Consortium (2012)
1816	Injury to Spouse: Past Loss of Earning Capacity: Household Services (1993)
1817	Injury to Spouse: Future Loss of Earning Capacity: Household Services (2001)
1820	Injury to Spouse: Nursing Services: Past and Future (1992)
1825	Injury to Wife: Medical and Hospital Expenses [Withdrawn 1995]
1830	Injury to Wife: Medical and Hospital Bills: Dispute over Ownership of Claim [Withdrawn 1995]
1835	Injury to Minor Child: Parent's Damages for Loss of Child's Earnings and Services: Past and Future (2001)
1837	Injury to Minor Child: Parent's Damages for Loss of Society and Companionship (2001)
1838	Injury to Parent: Minor Child's Damages for Loss of Society and Companionship (2001)
1840	Injury to Minor Child: Parents' Damages for Medical Expenses: Past and Future (1996)
1845	Injury to Child: Parents' Damages for Services Rendered to Child: Past and Future (1992)
1850	Estate's Recovery for Medical, Hospital, and Funeral Expenses (2016)
1855	Estate's Recovery for Pain and Suffering (2018)
1860	Death of Husband: Pecuniary Loss [Withdrawn 1992]
1861	Death of Spouse (Domestic Partner): Pecuniary Loss (2010)
1865	Death of Wife: Pecuniary Loss [Withdrawn 1992]

- 1870 Death of Spouse: Surviving Spouse's Loss of Society and Companionship (2019)
- 1875 Death of Spouse: Medical, Hospital, and Funeral Expenses (1992)
- 1880 Death of Parent: Pecuniary Loss (2016)
- 1885 Death of Adult Child: Pecuniary Loss (2001)
- 1890 Damages: Death of Minor Child: Premajority Pecuniary Loss (2001)
- 1892 Damages: Death of Minor Child: Postmajority Pecuniary Loss (2001)
- 1895 Death of Child: Parent's Loss of Society and Companionship (2019)
- 1897 Death of Parent: Child's Loss of Society and Companionship (2019)

### **Safe Place**

- 1900.2 Safe-Place Statute: Duty of Employer (1992)
- 1900.4 Safe-Place Statute: Injury to Frequenter: Negligence of Employer or Owner of a Place of Employment (2022)
- 1901 Safe-Place Statute: Definition of Frequenter (1996)
- 1902 Safe-Place Statute: Negligence of Plaintiff Frequenter (2004)
- 1904 Safe-Place Statute: Public Buildings: Negligence of Owner (1990)
- 1910 Safe-Place Statute: Place of Employment: Business (1990)
- 1911 Safe-Place Statute: Control (1992)

### **Nuisance**

- 1920 Nuisance: Law Note (2019)
- 1922 Private Nuisance: Negligent Conduct (2010)
- 1924 Private Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
- 1926 Private Nuisance: Intentional Conduct (2010)
- 1928 Public Nuisance: Negligent Conduct (2010)
- 1930 Public Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
- 1932 Public Nuisance: Intentional Conduct (2010)

## **INTENTIONAL TORTS**

### **Assault and Battery**

- 2000 Intentional Tort: Liability of Minor (2014)
- 2001 Intentional Versus Negligent Conduct (1995)
- 2004 Assault (2011)
- 2005 Battery (2011)
- 2005.5 Battery: Offensive Bodily Contact (2015)

- 2006 Battery: Self-Defense (2013)
- 2006.2 Battery: Self-Defense; Defendant's Dwelling, Motor Vehicle, Place of Business; Wis. Stat. § 895.62 (2016)
- 2006.5 Battery: Defense of Property (2013)
- 2007 Battery: Liability of an Aider and Abettor (2011)
- 2008 Battery: Excessive Force in Arrest (2002)
- 2010 Assault and Battery: Offensive Bodily Contact [Renumbered JI-Civil- 2005.5 2011]
- 2020 Sports Injury: Reckless or Intentional Misconduct (2018)

### **False Imprisonment**

- 2100 False Imprisonment: Definition (2014)
- 2110 False Imprisonment: Compensatory Damages (2014)
- 2115 False Arrest: Law Enforcement Officer; Without Warrant (1993)

### **Federal Civil Rights**

- 2150 Federal Civil Rights: §§ 1981 and 1982 Actions (1993)
- 2151 Federal Civil Rights: § 1983 Actions [Withdrawn 2014]
- 2155 Federal Civil Rights: Excessive Force in Arrest (in Maintaining Jail Security) [Withdrawn 2014]

### **Conversion**

- 2200 Conversion: Dispossession (2014)
- 2200.1 Conversion: Refusal to Return Upon Demand (Refusal by Bailee) (1993)
- 2200.2 Conversion: Destruction or Abuse of Property (1991)
- 2201 Conversion: Damages (2016)

### **Misrepresentation**

- 2400 Misrepresentation: Bases for Liability and Damages - Law Note for Trial Judges (2021)
- 2401 Misrepresentation: Intentional Deceit (2018)
- 2402 Misrepresentation: Strict Responsibility (2018)
- 2403 Misrepresentation: Negligence (2018)
- 2405 Intentional Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2405.5 Strict Responsibility: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)

- 2406 Negligent Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Out of Pocket Rule) (2014)
- 2418 Unfair Trade Practice: Untrue, Deceptive, or Misleading Representation: Wis. Stat. § 100.18(1) (2021)
- 2419 Property Loss Through Fraudulent Misrepresentation: Wis. Stat. § 895.446 (Based on Conduct (Fraud) Prohibited by Wis. Stat. § 943.20) (2018)
- 2420 Civil Theft: Wis. Stat. § 895.446 (Based on Conduct (Theft) Prohibited by Wis. Stat. § 943.20(1)(a)) (2019)

**Defamation**

- 2500 Defamation - Law Note for Trial Judges (2016)
- 2501 Defamation: Private Individual Versus Private Individual, No Privilege (2003)
- 2505 Defamation: Truth as a Defense (Nonmedia Defendant) (2014)
- 2505A Defamation: Truth of Statement (First Amendment Cases) (1989)
- 2507 Defamation: Private Individual Versus Private Individual with Conditional Privilege (2020)
- 2509 Defamation: Private Individual Versus Media Defendant (Negligent Standard) (2003)
- 2510 Defamation: Truth as Defense Where Plaintiff Charged with Commission of a Crime [Withdrawn 1993]
- 2511 Defamation: Public Figure Versus Media Defendant or Private Figure with Constitutional Privilege (Actual Malice) (2003)
- 2512 Defamation: Truth as Defense Where Plaintiff Not Charged with Commission of a Crime [Withdrawn 1993]
- 2513 Defamation: Express Malice (1993)
- 2514 Defamation: Effect of Defamatory Statement or Publication [Withdrawn 1993]
- 2516 Defamation: Compensatory Damages (1991)
- 2517 Defamation: Conditional Privilege: Abuse of Privilege [Renumbered JI-Civil 2507 1993]
- 2517.5 Defamation: Public Official: Abuse of Privilege [Renumbered JI-Civil 2511 1993]
- 2518 Defamation: Express Malice [Renumbered JI-Civil 2513 1993]
- 2520 Defamation: Punitive Damages (2003)
- 2550 Invasion of Privacy (Publication of a Private Matter) Wis. Stat. § 995.50(2)(c) (2015)
- 2551 Invasion of Privacy: Highly Offensive Intrusion; Wis. Stat. § 995.50(2)(a) (2011)
- 2552 Invasion of Privacy: Publication of a Private Matter: Conditional Privilege (2003)

**Misuse of Procedure**

- 2600 Malicious Prosecution: Instituting a Criminal Proceeding (2022)
- 2605 Malicious Prosecution: Instituting a Civil Proceeding (2022)
- 2610 Malicious Prosecution: Advice of Counsel: Affirmative Defense  
(Criminal Proceeding) (2015)
- 2611 Malicious Prosecution: Advice of Counsel: Affirmative Defense  
(Civil Proceeding) (2015)
- 2620 Abuse of Process (2013)

**Trade Practices**

- 2720 Home Improvement Practices Act Violation; Wisconsin Administrative Code  
Chapter ATCP 110; Wis. Stat. § 100.20 (2013)
- 2722 Theft by Contractor (Wis. Stat. § 779.02(5)) (2015)

**Domestic Relations**

- 2725 Intentional Infliction of Emotional Distress (2020)

**Business Relations**

- 2750 Employment Relations: Wrongful Discharge - Public Policy (2020)
- 2760 Bad Faith by Insurance Company (Excess Verdict Case) (2003)
- 2761 Bad Faith by Insurance Company: Assured's Claim (2012)
- 2762 Bad Faith by Insurance Company: Third Party Employee Claim Against  
Worker's Compensation Carrier [Withdrawn] (2009)
- 2769 Wisconsin Fair Dealership Law: Existence of Dealership (2020)
- 2770 Wisconsin Fair Dealership Law: Good Cause for Termination, Cancellation,  
Nonrenewal, Failure to Renew, or Substantial Change in Competitive  
Circumstances (Wis. Stat. § 135.03) (2022)
- 2771 Wisconsin Fair Dealership Law: Adequate Notice by Grantor (Wis. Stat. §  
135.04) (2005)
- 2772 Wisconsin Fair Dealership Law: Special Verdict (2005)
- 2780 Intentional Interference with Contractual Relationship (2020)
- 2790 Trade Name Infringement (2022)
- 2791 Trade Name Infringement: Damages (2010)

**Civil Conspiracy**

- 2800 Conspiracy: Defined (2018)
- 2802 Conspiracy: Proof of Membership (2003)
- 2804 Conspiracy: Indirect Proof (2003)
- 2806 Conspiracy to be Viewed as a Whole (1993)
- 2808 Conspiracy between Affiliated Corporations [Withdrawn 2009]
- 2810 Conspiracy: Overt Acts (2003)
- 2820 Injury to Business: (Wis. Stat. § 134.01) (2008)
- 2822 Restraint of Will (Wis. Stat. § 134.01) (2003)

**Tort Immunity**

- 2900 Tort Immunity: Immunities Abrogated - Law Note for Trial Judges (1993)

**CONTRACTS****General**

- 3010 Agreement (2011)
- 3012 Offer: Making (1993)
- 3014 Offer: Acceptance (1993)
- 3016 Offer: Rejection (1993)
- 3018 Offer: Revocation (1993)
- 3020 Consideration (1993)
- 3022 Definiteness and Certainty (1993)
- 3024 Implied Contract: General (1993)
- 3026 Implied Contract: Promise to Pay Reasonable Value (1993)
- 3028 Contracts Implied in Law (Unjust Enrichment) (2020)
- 3030 Modification by Mutual Assent (1993)
- 3032 Modification by Conduct (1993)
- 3034 Novation (1993)
- 3040 Integration of Several Writings (1993)
- 3042 Partial Integration: Contract Partly Written, Partly Oral (1993)
- 3044 Implied Duty of Good Faith (Performance of Contract) (2007)
- 3045 Definitions – “Bona Fide” (1993)
- 3046 Implied Promise of No Hindrance (1993)
- 3048 Time as an Element (2016)
- 3049 Duration (2016)
- 3050 Contracts: Subsequent Construction by Parties (1993)
- 3051 Contracts: Ambiguous Language (2012)
- 3052 Substantial Performance (1994)
- 3053 Breach of Contract (2007)

3054	Demand for Performance (2014)
3056	Sale of Goods: Delivery or Tender of Performance (1993)
3057	Waiver (2018)
3058	Waiver of Strict Performance (1993)
3060	Hindrance or Interference with Performance (1993)
3061	Impossibility: Original (1993)
3062	Impossibility: Supervening (1993)
3063	Impossibility: Partial (1993)
3064	Impossibility: Temporary (1993)
3065	Impossibility: Superior Authority (1993)
3066	Impossibility: Act of God (1993)
3067	Impossibility: Disability or Death of a Party (1993)
3068	Voidable Contracts: Duress, Fraud, Misrepresentation (2016)
3070	Frustration of Purpose (2020)
3072	Avoidance for Mutual Mistake of Fact (2014)
3074	Estoppel: Law Note for Trial Judges (2018)
3076	Contracts: Rescission for Nonperformance (2001)
3078	Abandonment: Mutual (1993)
3079	Termination of Easement by Abandonment (2022)
3082	Termination of Servant's Employment: Indefinite Duration (1993)
3083	Termination of Servant's Employment: Employer's Dissatisfaction (1993)
3084	Termination of Servant's Employment: Additional Consideration Provided by Employee (1993)

### **Real Estate**

3086	Real Estate Listing Contract: Validity: Performance (2019)
3088	Real Estate Listing Contract: Termination for Cause (1993)
3090	Real Estate Listing Contract: Broker's Commission on Sale Subsequent to Expiration of Contract Containing "Extension" Clause (1993)
3094	Residential Eviction: Possession of Premises (2020)
3095	Landlord - Tenant: Constructive Eviction (2013)

**WIS JI-CIVIL****TABLE OF CONTENTS****VOLUME III****CONTRACTS (Continued)****Insurance**

- 3100 Insurance Contract: Misrepresentation or Breach of Affirmative Warranty by the Insured (1998)
- 3105 Insurance Contract: Failure of Condition or Breach of Promissory Warranty (1994)
- 3110 Insurance Contract: Definition of “Resident” or “Member of a Household” (2022)
- 3112 Owner’s Permission for Use of Automobile (1993)
- 3115 Failure of Insured to Cooperate (2016)
- 3116 Failure to Cooperate: Materiality (2016)
- 3117 Failure to Give Notice to Insurer (1994)
- 3118 Failure to Give Notice to Insurer: Materiality (2002)

**Breach of Warranty**

- 3200 Products Liability: Law Note (2021)
- 3201 Implied Warranty: Merchantability Defined (2009)
- 3202 Implied Warranty: Fitness for Particular Purpose (1994)
- 3203 Implied Warranty: By Reason of Course of Dealing or Usage of Trade (1994)
- 3204 Implied Warranty: Sale of Food (1994)
- 3205 Implied Warranty: Exclusion or Modification (2009)
- 3206 Implied Warranty: Exclusion by Reason of Course of Dealing or Usage of Trade (1994)
- 3207 Implied Warranty: Use of Product after the Defect Known (2009)
- 3208 Implied Warranty: Failure to Examine Product (2009)
- 3209 Implied Warranty: Susceptibility or Allergy of User (2009)
- 3210 Implied Warranty: Improper Use (1994)
- 3211 Implied Warranty: Notice of Breach (1993)
- 3220 Express Warranty: General (1994)
- 3222 Express Warranty: No Duty of Inspection (1994)
- 3225 Express Warranty: Statement of Opinion (1994)



3230 Express Warranty under the Uniform Commercial Code (1994)

**Duties of Manufacturers and Sellers**

- 3240 Negligence: Duty of Manufacturer (2007)
- 3242 Negligence: Duty of Manufacturer (Supplier) to Warn (2020)
- 3244 Negligence: Duty of Manufacturer (Seller) to Give Adequate Instructions as to Use of a Complicated Machine (Product) (1994)
- 3246 Negligence: Duty of Manufacturer (Seller) Who Undertakes to Give Instruction as to the Use of a Machine (Product) (1994)
- 3248 Negligence: Duty of Restaurant Operator in Sale of Food Containing Harmful Natural Ingredients (1994)
- 3250 Negligence: Duty of Seller: Installing (Servicing) Product (1994)
- 3254 Duty of Buyer or Consumer: Contributory Negligence (2015)
- 3260 Strict Liability: Duty of Manufacturer to Ultimate User (For Actions Commenced Before February 1, 2011) (2014)
- 3260.1 Product Liability: Wis. Stat. § 895.047 (For Actions Commenced after January 31, 2011) (2014)
- 3262 Strict Liability: Duty of Manufacturer (Supplier) to Warn (For Actions Commenced Before February 1, 2011) (2014)
- 3264 Strict Liability: Definition of Business (1994)
- 3268 Strict Liability: Contributory Negligence (2015)
- 3290 Strict Products Liability: Special Verdict (For Actions Commenced Before February 1, 2011) (2014)
- 3290.1 Product Liability: Wis. Stat. § 895.047: Verdict (For Actions Commenced after January 31, 2011) (2014)
- 3294 Risk Contribution: Negligence: Verdict (For Actions Commenced Before February 1, 2011) (2014)
- 3295 Risk Contribution: Negligence Claim (For Actions Commenced Before February 1, 2011) (2014)
- 3296 Risk Contribution: Negligence: Verdict (Wis. Stat. § 895.046) (For Actions Commenced after January 31, 2011) (2014)

**Lemon Law**

- 3300 Lemon Law Claim: Special Verdict (2016)
- 3301 Lemon Law Claim: Nonconformity (2001)
- 3302 Lemon Law Claim: Four Attempts to Repair: Same Nonconformity (1999)
- 3303 Lemon Law Claim: Out of Service Warranty Nonconformity (Warranty on or after March 1, 2014) (2016)
- 3304 Lemon Law Claim: Failure to Repair (Relating to Special Verdict Question 6)

- (2006)  
3310 Magnuson–Moss Claim (2020)

### **Damages**

- 3700 Damages: Building Contracts: Measure of Damages (2012)  
3710 Consequential Damages for Breach of Contract (2018)  
3720 Damages: Incidental (1994)  
3725 Damages: Future Profits (2008)  
3735 Damages: Loss of Expectation (1994)  
3740 Damages: Termination of Real Estate Listing Contract (Exclusive) by Seller;  
Broker's Recovery (1994)  
3750 Damages: Breach of Contract by Purchaser (1994)  
3755 Damages: Breach of Contract by Seller (1994)  
3760 Damages: Attorney Fees (1994)

### **AGENCY; EMPLOYMENT; BUSINESS ORGANIZATION**

- 4000 Agency: Definition (2019)  
4001 General Agent: Definition (1994)  
4002 Special Agent: Definition (1994)  
4005 Agency: Apparent Authority (1994)  
4010 Agency: Implied Authority (1994)  
4015 Agency: Ratification (1994)  
4020 Agent's Duties Owed to Principal (1994)  
4025 Agency: Without Compensation (2005)  
4027 Agency: Termination: General (1994)  
4028 Agency: Termination: Notice to Third Parties (1994)  
4030 Servant: Definition (2015)  
4035 Servant: Scope of Employment (2020)  
4040 Servant: Scope of Employment; Going to and from Place of Employment (2014)  
4045 Servant: Scope of Employment While Traveling (2020)  
4050 Servant: Master's Ratification of Wrongful Acts Done Outside Scope of  
Employment (1994)  
4055 Servant: Vicarious Liability of Employer (2005)  
4060 Independent Contractor: Definition (2005)  
4080 Partnership (2009)

### **PERSONS**

- 5001 Paternity: Child of Unmarried Woman (2021)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 7030 Child in Need of Protection or Services [Withdrawn 2014]
- 7039 Involuntary Termination of Parental Rights: Child in Need of Protection or Services: Preliminary Instruction [Withdrawn 2014]
- 7040 Involuntary Termination of Parental Rights: Continuing Need of Protection or Services [Withdrawn 2014]
- 7042 Involuntary Termination of Parental Rights: Abandonment under Wis. Stat. § 48.415(1)(a) 2 or 3 [Withdrawn 2014]
- 7050 Involuntary Commitment: Mentally Ill (2022)
- 7050A Involuntary Commitment: Mentally Ill: Recommitment Alleging Wis. Stat. § 51.20(1)(am) (2022)
- 7054 Petition for Guardianship of the Person: Incompetency; Wis. Stat. § 54.10(3)(a)2 (2019)
- 7055 Petition for Guardianship of the Estate: Incompetency; Wis. Stat. § 54.10(3)(a)3 (2009)
- 7056 Petition for Guardianship of the Estate: Spendthrift; Wis. Stat. § 54.10(2) (2009)
- 7060 Petition for Guardianship of Incompetent Person and Application for Protective Placement; Wis. Stat. § 54.10 and 55.08(1) (2019)
- 7061 Petition for Guardianship of Incompetent Person and Application for Protective Services; Wis. Stat. § 54.10 and 55.08(2) (2014)
- 7070 Involuntary Commitment: Habitual Lack of Self-Control as to the Use of Alcohol Beverages (2003)

## PROPERTY

### General

- 8012 Trespasser: Definition (2013)
- 8015 Consent of Possessor to Another's Being on Premises (2013)
- 8017 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture for Guests (Renumbered JI-Civil 8051) (1994)
- 8020 Duty of Owner or Possessor of Real Property to Nontrespasser User (2020)
- 8025 Trespass: Owner's Duty to Trespasser; Duty to Child Trespasser (Attractive Nuisance) (2022)
- 8026 Trespass: Special Verdict (2016)
- 8027 Trespass: Child Trespasser (Attractive Nuisance): Special Verdict (2013)
- 8030 Duty of Owner of a Building Abutting on a Public Highway (2006)
- 8035 Highway or Sidewalk Defect or Insufficiency (2021)
- 8040 Duty of Owner of Place of Amusement: Common Law (1994)
- 8045 Duty of a Proprietor of a Place of Business to Protect a Patron from Injury Caused by Act of Third Person (2012)

- 8050 Duty of Hotel Innkeeper: Providing Security (1994)
- 8051 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture for Guests (2020)
- 8060 Adverse Possession Not Founded on Written Instrument (Wis. Stat. § 893.25) (2022)

### **Eminent Domain**

- 8100 Eminent Domain: Fair Market Value (Total Taking) (2022)
- 8101 Eminent Domain: Fair Market Value (Partial Taking) (2012)
- 8102 Eminent Domain: Severance Damages (2008)
- 8103 Eminent Domain: Severance Damages: Cost-To-Cure (2007)
- 8104 Eminent Domain: Unity of Use - Two or More Parcels (2007)
- 8105 Eminent Domain: Lands Containing Marketable Materials (2008)
- 8107 Eminent Domain: Severance Damages; Unity of Use (Renumbered JI-Civil 8104) (2008)
- 8110 Eminent Domain: Change in Grade (2022)
- 8111 Eminent Domain: Access Rights (2020)
- 8112 Eminent Domain: Air Rights (2007)
- 8115 Eminent Domain: Special Benefits (2008)
- 8120 Eminent Domain: Comparable Sales Approach (2022)
- 8125 Eminent Domain: Inconvenience to Landowner [Withdrawn 2008]
- 8130 Eminent Domain: Income Approach (2008)
- 8135 Eminent Domain: Cost Approach (2008)
- 8140 Eminent Domain: Legal Nonconforming Use, Lot or Structure (Definitions) (2007)
- 8145 Eminent Domain: Assemblage (2007)

**Table of Cases Cited** (2022)

**Index** (2022)

**50 PRELIMINARY INSTRUCTION: BEFORE TRIAL**

(NOTE TO THE TRIAL JUDGE: The following is a suggested instruction to be given to the jury before opening statements are made by the lawyers for the parties. While most of this instruction should apply to most cases, some parts of it do not apply to all cases and some parts of it may not apply to the case before you now. Read the instruction before it is given and delete any parts that are not applicable. Also, the language used in this Instruction is “suggested” language. You may have another way of expressing the same ideas in this instruction and may do so, consistent with Wisconsin law.)

**MEMBERS OF THE JURY:**

Before the trial begins, there are certain instructions you should have to better understand your functions as a juror and how you should conduct yourself during the trial.

Your duty is to decide the case based only on the evidence presented at trial and the law given to you by the court. Anything you may see or hear outside the courtroom is not evidence. [Do not let any personal feelings, prejudices or stereotypes about personal characteristics such as (race), (religion), (national origin), (sex), or (age) affect your consideration of the evidence.]<sup>1</sup>

In fairness to the parties, keep an open mind during the trial. Do not begin your deliberations and discussion of the case until all the evidence is presented and I have instructed you on the law. Do not discuss this case among yourselves or with anyone else until your final deliberations in the jury room. This order is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic devices, such as a mobile phone or computer, text or instant messaging, or social

networking sites, to send or receive any information about this case or your experience as a juror. Once deliberations begin in the jury room you will then be in a position to intelligently and fairly exchange your views with other jurors.

## **CONDUCT**

We will stop, or “recess,” from time to time during the trial. You may be excused from the courtroom when it is necessary for me to hear legal arguments from the lawyers. If you come in contact with the parties, lawyers [interpreters,] or witnesses, do not speak with them. For their part, the parties, lawyers, [interpreters,] and witnesses will not contact or speak with the jurors. Do not listen to any conversation about this case.

Do not research any information that you personally think might be helpful to you in understanding the issues presented. Do not investigate this case on your own or visit the scene, either in person or by any electronic means. Do not read any newspaper reports or listen to any news reports on radio, television, over the internet, or any other electronic application or tool about this trial. Do not consult dictionaries, computers, electronic applications, social media, the internet, or other reference materials for additional information. Do not seek information regarding the public records of any party or witness in this case. Any information you obtain outside the courtroom could be misleading, inaccurate, or incomplete. Relying on this information is unfair because the parties would not have the opportunity to refute, explain, or correct it.

Do not communicate with anyone about this trial or your experience as a juror while

you are serving on this jury. Do not use a computer, cell phone or other electronic device, including personal wearable electronics, applications, or tools with communication capabilities, to share any information about this case. For example, do not communicate by telephone, blog post, e-mail, text message, instant message, social media post, or in any other way, on or off the computer.

Do not permit anyone to communicate with you about this matter, either in person, electronically, or by any other means. If anyone does so despite your telling them not to, you should report that to me. I appreciate that it is tempting when you go home in the evening to discuss this case with another member of your household, but you may not do so. This case must be decided by you, the jurors, based on the evidence presented in the courtroom. People not serving on this jury have not heard the evidence, and it is improper for them to influence your deliberations and decision in this case. After this trial is completed, you are free to communicate with anyone in any manner.

These rules are intended to assure that jurors remain impartial throughout the trial. If any juror has reason to believe that another juror has violated these rules, you should report that to me. If jurors do not comply with these rules, it could result in a new trial involving additional time and significant expense to the parties and the taxpayers.

## **PARTIES**

A party who brings a lawsuit is called a plaintiff. In this case, the plaintiff[s] [is] [are] \_\_\_\_\_ [state separately as to each if more than one]. The

plaintiff[s] [is] [are] suing to [note: state purposes of the action for each plaintiff, for example, recover damages from a defendant].

[If there are multiple plaintiffs, give the following: You should decide the case of each plaintiff as if it were a separate lawsuit. Each plaintiff is entitled to separate consideration of [his] [her] [its] own claim(s). All instructions apply to each plaintiff unless I tell you otherwise.]

A party against whom a claim is made is called a defendant. In this case, the defendant[s] [is] [are] \_\_\_\_\_ [state separately to each if more than one].

[If there are multiple defendants, give the following: You should decide the case against each defendant as if it were a separate lawsuit. Each defendant is entitled to separate consideration of [his] [her] [its] own defenses. All instructions apply to each defendant unless I tell you otherwise.]

[If there is a counterclaiming defendant, give the following: The defendant[s] in this case have also filed a claim against the plaintiff[s]. [Identify the party making the counterclaim and the party against whom the counterclaim is made]. The claim of a defendant against a plaintiff is called a counterclaim. The defendant[s] [is] [are] counterclaiming for [note: state purposes of the counterclaim for each defendant, for example, recover damages from a plaintiff.]

[If there are parties with subrogated interests or other parties named in caption and



not appearing at trial, give the following: There [is another party] [are other parties] named in this case that will not participate in this trial. Do not speculate on the reasons. Any claims involving them are not to be considered by you in deciding this case.]

[If there are settled, dismissed, or withdrawn parties, give the following: [Former party] is no longer a party in this case. [The claims of that party] [Claims against that party] have been [settled] [dismissed] [withdrawn]. Do not speculate on the reasons.]

## **EVIDENCE**

You are to decide the case solely on the evidence offered and received at trial.

Evidence is:

1. testimony of witnesses given in court, both on direct and cross-examination, regardless of who called the witness;
2. deposition testimony presented during the trial;
3. exhibits admitted by me regardless of whether they go to the jury room; and
4. any facts to which the lawyers have agreed or stipulated or which I have directed you to find.

Anything you may have seen or heard outside the courtroom is not evidence.

Remarks of the attorneys are not evidence. If any remarks suggest certain facts not in evidence, disregard the suggestion.

## **ORDER OF PROOF**

Normally, a plaintiff will produce all witnesses and exhibits supporting plaintiff's

claim against the defendant before the defendant introduces any evidence, although exceptions are sometimes made to that rule to accommodate a witness. After the plaintiff's case is presented, the defendant may present witnesses and exhibits to establish any defenses. There is no requirement that the defendant call any witnesses or present any evidence [unless the defendant is making a claim against the plaintiff]. If the defendant does introduce evidence, the plaintiff is then permitted to offer additional evidence to rebut the defendant's case. Each witness is first examined by the lawyer who called the witness to testify and then the opposing lawyer is permitted to cross-examine.

## **OBJECTIONS**

At times during a trial, objections may be made to the introduction of evidence. I do not permit arguments on objections to evidence to be made in your presence. Any ruling upon objections will be based solely upon the law and are not matters which should concern you at all. You must not infer from any ruling that I make or from anything that I should say during the trial that I hold any views for or against either party to this lawsuit.

During the trial, I will sustain objections to questions asked without permitting the witness to answer or, where an answer has been made, will instruct that it be stricken from the record and that you are to disregard it and dismiss it from your minds. You should not draw any inference from an unanswered question, nor may you consider testimony which has been stricken in reaching your decision. This is because the law requires that your decision be made solely upon the competent evidence before you.

**[NOTETAKING NOT ALLOWED]**

Do not take notes during the trial. Taking notes will not be permitted in this case because \_\_\_\_\_.]

**[NOTETAKING PERMITTED]**

You are not required to but you may take notes during this trial, except during the opening statements and closing arguments. The court will provide you with materials.

In taking notes, you must be careful that it does not distract you from carefully listening to and observing the witnesses.

You may rely on your notes to refresh your memory during your deliberations. Otherwise, keep them confidential. After the trial, the notes will be collected and destroyed.]

**TRANSCRIPTS NOT AVAILABLE FOR DELIBERATIONS; READING BACK TESTIMONY**

You will not have a copy of the written transcript of the trial testimony available for use during your deliberations. [You may ask to have specific portions of the testimony read to you.] You should pay careful attention to all the testimony because you must rely primarily on your memory of the evidence and testimony introduced during the trial.

**USE OF DEPOSITIONS**

During the trial, the lawyers will often refer to and read from depositions. Depositions are transcripts of testimony taken before the trial. The testimony may be that

of a party or anybody who has knowledge of facts relating to the lawsuit. Deposition testimony, just like testimony during the trial, if received into evidence at the trial, may be considered by you along with the other evidence in reaching your verdict in this case.

### **[JUROR QUESTIONING OF WITNESSES]**

You will be given the opportunity to ask written questions of the witnesses testifying in this case.

After both lawyers have finished questioning a witness, you may raise your hand if you have any questions that have not been addressed by the lawyers. Questions must be in writing and directed to the witness and not to the lawyers or me. If I determine that your question may be asked, I will ask it. If I do not ask your question, you should not speculate what the answer to the question is or why I did not ask it.]

### **CREDIBILITY OF WITNESSES**

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;

- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

### **BURDEN OF PROOF**

In every trial there is a burden of proof. The phrase "burden of proof" means that when a party comes into a courtroom and makes a claim, as the plaintiff is making here, the law says that claim must be proved. After the trial, I will instruct you on the proper burden of proof to be applied to the questions in the verdict that will be submitted to you.

### **[CLOSING ARGUMENTS**

After all of the evidence is introduced and both parties have rested, the lawyers will again have an opportunity to address you in a closing argument. While the closing

arguments are very important, they are not evidence and you are not bound by the argument of either lawyer.

After the final arguments are concluded, I will instruct you on the rules of law applicable to the case, and you will then retire for your deliberations. Your function as jurors is to determine what the facts are and to apply the rules of law that I give you to the facts. The conclusion you reach will be your verdict. You will determine what the facts are from all the testimony that you hear and from exhibits that are submitted to you. You are the sole and exclusive judges of the facts. In that field, neither I nor anyone may invade your province. I will try to preside impartially during this trial and not to express any opinion concerning the facts. Any views of mine as to what the facts are totally irrelevant.

I do caution you, however, that under your oath as jurors, you are duty bound to accept the rules of law that I give you whether you agree with them or not. As the sole judges of the facts in this case, you must determine which of the witnesses you believe, what portion of their testimony you accept, and what weight you attach to it.]

## **OPENING STATEMENTS**

We have now reached that stage of the proceedings where both lawyers have the opportunity to make an opening statement.

The purpose of an opening statement is to outline for you what each side expects to prove so that you will better understand the evidence as it is introduced during the trial. I must caution you, however, that the opening statements are not evidence.

After [counsel/the parties] have completed their opening statements, we will begin the trial, by (plaintiff)’s lawyer calling the first witness.

#### NOTES

1. The current non-exhaustive list of personal characteristics may be revised by the trial judge based on the needs of each case. An expanded list, for example, may include additional personal characteristics like [(disability) (gender) (gender identity) (sexual orientation)], etc.

#### COMMENT

This instruction was approved in 2010, and revised in 2017 and 2020. The 2017 revision included a “Note to the Trial Judge” at the beginning of the instruction. The 2020 revision expanded on the use of social media and other digital tools. This revision was approved by the Committee in October 2021; it added to the comment. See footnote 1.





**400 SPOILIATION: INFERENCE**

[Describe the conduct the court has found to constitute spoliation of evidence.]

You may, but are not required to, infer that ((plaintiff) (defendant)) (describe spoliation) because producing that evidence would have been unfavorable to (plaintiff)’s (defendant)’s interest.

(For example: The defendant destroyed all of his or her medical records for patient care provided prior to (relevant date). You may, but are not required to, infer that the defendant destroyed his or her medical records from prior to (relevant date) because producing that evidence would have been unfavorable to defendant’s interest.)

**COMMENT**

This instruction and comment were approved in 2010. This revision was approved by the Committee in September 2021; it added to the comment.

Prior to giving this instruction, the court must first determine if spoliation occurred. If the court finds spoliation has occurred, the court must then determine if the proper sanction for the spoliation of evidence is to instruct the jury on the spoliation inference. This may be appropriate when the destruction of evidence is intentional.

**Spoliation Defined.** Omnia Praesumuntur Contra Spoliatores: “All things are presumed against a despoiler or wrongdoer.” Black’s Law Dictionary 1086 (rev. 6th ed. 1990).

Spoliation is defined as the destruction or withholding of critically probative evidence resulting in prejudice to the opposing party. Estate of Neumann v. Neumann, 2001 WI App. 61, 242 Wis.2d 205, 245, 626 N.W.2d 821.

The duty to preserve evidence exists whether litigation is pending or not. In evaluating an allegation of document destruction a court should examine whether the party knew or should have known at the time it caused the destruction of the documents that litigation against (the opposing parties) was a distinct possibility. Garfoot v. Fireman’s Fund Ins. Co., 228 Wis.2d 707, 718, 599 N.W.2d 411 (Ct. App. 1999), citing Milwaukee Constructors II v. Milwaukee Metro Sewerage District, 177 Wis. 2d 523, 532, 502

N.W.2d 881 Ct. App. 1993; S.C. Johnson & Son, Inc. v. Morris, 2010 WI App. 6, 322 Wis.2d 766, 779 N.W.2d 19.

When a party deliberately destroys documents, the court may find spoliation by applying a two-part analysis. First, the court should consider “whether the party responsible for the destruction of evidence knew, or should have known, at the time it destroyed the evidence that litigation was a distinct possibility.” Second, the court should consider “whether the offending party destroyed documents which it knew, or should have known, would constitute evidence relevant to the pending or potential litigation.” “The purposes of the spoliation doctrine are served only if the offending party has notice that the evidence is or is likely to be relevant to pending or foreseeable litigation and proceeds to destroy the evidence anyway.” Ins. Co. of N. Am. v. Cease Electric Inc., 2004 WI App 15, ¶¶15 and 16, 269 Wis.2d 286, 294, 674 N.W.2d 886, 890.

There is a five step process for evaluating the destruction of evidence and whether it constitutes spoliation.

- (1.) Identification, with as much specificity as possible, of the evidence destroyed;
- (2.) The relationship of that evidence to the issues in the action;
- (3.) The extent to which such evidence can now be obtained from other sources;
- (4.) Whether the party responsible for the evidence destruction knew or should have known at the time it caused the destruction of the evidence that litigation against the opposing parties was a distinct possibility; and
- (5.) Whether, in light of the circumstances disclosed by the factual inquiry, sanctions should be imposed upon the party responsible for the evidence destruction and if so, what those sanctions should be.

Milwaukee Constructors II v. Milwaukee Metro Sewerage District, 177 Wis.2d 523, 532, 502 N.W.2d 881 Ct. App. 1993 citing Struthers Patent Corp. v. Nestle Co., 558 F. Supp. 747, 756 (D.N.J. 1981).

**Burden of Proof.** The party seeking the evidence must prove by clear, satisfactory, and convincing evidence that relevant evidence was intentionally withheld or destroyed. Estate of Neumann v. Neumann, 2001 WI App. 61, ¶¶82 and 83, 242 Wis. 2d 205, 246, 626 N.W.2d 821 citing Jagmin v. Simonds Abrasive Co., 61 Wis.2d 60, 80-81, 211 N.W.2d 810 (1973).

**Sanctions.** The decision whether to impose a sanction for the spoliation of evidence is committed to the trial court’s discretion. City of Stoughton v. Thomasson Lumber Co., 2004 WI App. 6, & 38, 269 Wis.2d 339, 675 N.W.2d 487 citing Garfoot v. Fireman’s Fund Ins. Co., 228 Wis.2d at 717. A circuit court has a “broad canvas upon which to paint in determining what sanctions are necessary.” Milwaukee Constructors II v. Milwaukee Metropolitan Sewerage District, 177 Wis. 2d 523, 538, 502 N.W.2d 881 (Ct. App. 1993).

The primary purpose behind the doctrine of spoliation is two fold: (1) to uphold the judicial system’s truth-seeking function and (2) to deter parties from destroying evidence. A remedy for spoliation should “advance truth by assuming that the destroyed evidence would have hurt the party responsible for the

destruction of evidence and act as deterrent by eliminating the benefits of destroying the evidence.” Ins. Co. of N. Am. v. Cease Electric Inc., 2004 WI App. 15, ¶16, 269 Wis.2d 286, 295, 674 N.W.2d 886, 891 (Ct. App. 2003).

Courts have fashioned a number of remedies for evidence spoliation. The primary remedies used to combat spoliation are:

- (1) Pretrial discovery sanctions;
- (2) Monetary sanctions;
- (3) Exclusion of evidence;
- (4) Reading the Wis JI-Civil 400 to the jury;
- (5) Dismissal of one or more claims; and
- (6) See American Family Mut. Ins. Co. v. Golke, 319 Wis.2d 397, ¶42, 768 N.W.2d 729 (Ct. App. 2015); Sentry Ins. V. Royal Ins. Co. of America, 196 Wis.2d 907, 918-19, 539 N.W.2d 911 (Ct. App. 1995); Estate of Neumann v. Neumann, 242 Wis.2d 205, ¶80, 626 N.W.2d 821 (Ct. App. 2001); Mueller v. Bull’s Eye Sport Shop, LLC, 2021 WI App 34, 398 Wis.2d 329, ¶20, 961 N.W.2d 112.

See also Wis. Stat. § 804.12 for sanctions for a failure to make discovery.

**Spoliation Inference.** Where the spoliation inference is applied, the trier of fact is permitted to draw an inference from the intentional spoliation of evidence that the destroyed evidence would have been unfavorable to the party that destroyed it. Estate of Neumann v. Neumann, 2001 WI App. 61, ¶81, 242 Wis.2d 205, 246, 626 N.W.2d 821 citing Beers v. Bayliner Marine Corp., 236 Conn. 769, 675 A.2d 829, 832 (Conn. 1996). The spoliation inference is inappropriate where evidence was negligently destroyed, but may be appropriate where destruction is intentional. Jagmin v. Simonds Abrasive Co., 61 Wis. 2d 60, 80-81, 211 N.W.2d 810 (1973). See also, Mueller, *supra*, at ¶21. In Wisconsin, the operation of the Maxim Omnia Praesumuntur Contra Spoliatores is reserved for deliberate, intentional actions and not mere negligence even though the result may be the same as regards the person who desires the evidence. Jagmin v. Simonds Abrasive Co., 61 Wis.2d 60, 80-81, 211 N.W.2d 810 (1973) *Id.* at 80-81. See also S.C. Johnson & Son, Inc. v. Morris, 2010 WI App 6, 322 Wis.2d 766, 779 N.W.2d 19.

A permissible inference instruction is a proper sanction when the spoliation was intentional but not egregious. American Fam. Mut. Ins. Co. v. Golke, 319 Wis. 2d 397, ¶42; Jagmin v. Simonds Abrasive Co., 61 Wis.2d 60, 80-81, 211 N.W.2d 810 (1973). Wisconsin case law does not mandate that sanctions for intentional spoliation achieve a remedial effect or a definitive result. Instead, this instruction allows a jury to infer that that unavailable evidence is adverse to the spoliator. Mueller, *supra*, at ¶40.



**1008 INTOXICATION: CHEMICAL TEST RESULTS [REFLECTS CHANGES  
IN 2003 WISCONSIN ACT 30]**

The results of a chemical test for intoxication have been received in evidence.

(NOTE: USE THE APPROPRIATE PARAGRAPH):

[If you find there was an alcohol concentration of more than 0.04 but less than 0.8 at the time of the test, you should consider that fact as relevant evidence on the issue of whether the person (was under the influence of an intoxicant) (had an alcohol concentration of 0.8 or more) at the time in question, but it is not by itself a sufficient basis for a finding that the person (was under the influence of an intoxicant) (had an alcohol concentration of 0.8 or more) at the time in question.]

[If you find there was an alcohol concentration of 0.8 or more at the time of the test, you should find from that fact alone that the person was under the influence of an intoxicant at the time in question, unless you are satisfied to the contrary from other evidence.]

[If you find there was an alcohol concentration of more than 0.00 but less than 0.8 at the time of the test, you should consider that fact as relevant evidence on the issue of whether the person was under the combined influence of alcohol and (a controlled substance) (a controlled substance analog) (any other drug) at the time in question, but it is not by itself a sufficient basis for a finding that the person was under the combined influence of alcohol and (a controlled substance) (a controlled substance analog) (any other drug) at the time in question.]

**COMMENT**

This instruction and comment were originally published in 1961. They were revised in 1974, 1983, 1989, 1994, 1996, 2000, and 2003. This revision was approved by the Committee in January 2022; it added to the comment.

Evidence of chemical tests for intoxication is generally admissible if intoxication is at issue. Wis. Stat. § 885.235(1g). But if the sample (blood, breath, or urine) was taken more than three hours after the event, the analysis is admissible only if expert testimony establishes its probative value and may be given prima facie effect only if established by expert testimony. Wis. Stat. § 885.235(3).

With regard to the operation of a commercial motor vehicle, Wis. Stat. § 885.235(1g)(d) indicates that an alcohol concentration of 0.04 or more is prima facie evidence that he or she was under the influence of an intoxicant with respect to operation of a commercial motor vehicle and is prima facie evidence that he or she had an alcohol concentration of 0.04 or more.

“The provisions of this section relating to the admissibility of chemical tests for alcohol concentration or intoxication shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant. . . .” Wis. Stat. § 885.235(4).

See also Wis JI-Criminal 230, 232, 234, 235, 237, 1185, 1185A, 1186 1186A, 1188, 1190, and 1191 for jury instructions dealing with chemical test results.

**Prima Facie Evidence.** In drafting this instruction, the question arose whether “prima facie evidence” was the same as presumption. Wis. Stat. § 903.01 makes clear that it is. The statute reads:

Except as provided by statute, a presumption recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts, imposes on the party relying on the presumption the burden of proving the basic facts, but once the basic facts are found to exist the presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. (Emphasis added.)

Wis Stat. § 885.235(1g)(c) is a statutory provision that makes a chemical test showing an alcohol concentration of 0.08 or more (the basic facts) “prima facie evidence” of being under the influence of an intoxicant (the other fact). Wis. Stat. § 903.01 makes this statutory provision a presumption. Wis. Stat. § 903.01 makes clear, also, that the introduction of the basic fact establishes the presumed fact for the jury and shifts the burden to the opposing party to overcome or rebut the presumption.

In terms of meeting the presumption, Chief Justice Heffernan’s words in Kruse v. Horlamus Indus., Inc., 130 Wis.2d 357, 365 66, 387 N.W.2d 64 (1986) are instructive:

Under Wisconsin law, presumptions do not “disappear” or “burst” when evidence to the contrary of the presumed fact is introduced. This means that, even where rebutting evidence has been produced, the inference from the presumption survived and is sufficient to support a jury verdict until the presumption is met by evidence of equal weight.

This language supports the use of “should” in the civil instruction (“you should find from that fact alone that the person was under the influence of an intoxicant”) rather than the permissive “may” used in the criminal instruction; it also supports the language “unless you are satisfied from other evidence to the contrary” because the presumption shifts the burden of production.

**Civil/Criminal Distinction.** In drafting this instruction, the Committee recognized that there is a distinction between Wis JI-Criminal 230 and Wis JI-Civil 1008. The Committee believes that Wis. Stat. § 903.01 supports the slightly different treatment in the civil instruction. Wis. Stat. § 903.03(3) supports the criminal instruction and indicates why the criminal instruction is worded as it is. The statute provides in the most relevant section:

(3) Instructing the jury. Whenever the existence of a presumed fact against the accused is submitted to the jury, the judge shall give an instruction that the law declares that the jury may regard the basic facts as sufficient evidence of the presumed fact but does not require it to do so. In addition, if the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge shall instruct the jury that its existence must, on all the evidence, be proved beyond a reasonable doubt. (Emphasis added.)

The criminal instruction must use the permissive “may” and the cautionary adjunct because of the higher burden of proof. The instruction also must instruct that the jury can only rely on the presumed fact if all the evidence proves the presumed fact beyond a reasonable doubt. The instruction may not suggest that the burden shifts to the defendant to overcome or rebut the presumption.





**1023 MEDICAL NEGLIGENCE**

In (treating) (diagnosing) (plaintiff)'s (injuries) (condition), (doctor) was required to use the degree of care, skill, and judgment which reasonable (doctors who are in general practice) (specialists who practice the specialty which (doctor) practices) would exercise in the same or similar circumstances, having due regard for the state of medical science at the time (plaintiff) was (treated) (diagnosed). A doctor who fails to conform to this standard is negligent. The burden is on (plaintiff) to prove that (doctor) was negligent.

A doctor is not negligent, however, for failing to use the highest degree of care, skill, and judgment or solely because a bad result may have followed (his) (her) (care and treatment) (surgical procedure) (diagnosis). The standard you must apply in determining if (doctor) was negligent is whether (doctor) failed to use the degree of care, skill, and judgment that reasonable (general practitioners) (specialists) would exercise given the state of medical knowledge at the time of the (treatment) (diagnosis) in issue.

**[Use this paragraph only if there is evidence of two or more alternative methods of treatment or diagnosis recognized as reasonable:** If you find from the evidence that more than one method of (treatment for) (diagnosing) (plaintiff)'s (injuries) (condition) was recognized as reasonable given the state of medical knowledge at that time, then (doctor) was at liberty to select any of the recognized methods. (Doctor) was not negligent because (he) (she) chose to use one of these recognized (treatment) (diagnostic) methods

rather than another recognized method if (he) (she) used reasonable care, skill, and judgment in administering the method.]

You have heard testimony during this trial from doctors who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment that a reasonable doctor would exercise is not a matter within the common knowledge of laypersons. This standard is within the special knowledge of experts in the field of medicine and can only be established by the testimony of experts. You, therefore, may not speculate or guess what the standard of care, skill, and judgment is in deciding this case but rather must attempt to determine it from the expert testimony that you heard during this trial. In determining the weight to be given an opinion, you should consider the qualifications and credibility of the expert and whether reasons for the opinion are based on facts in the case. You are not bound by any expert's opinion.

**(Insert the appropriate cause instruction. To avoid duplication, JI-1500 should not be given if the following two bracketed paragraphs are used.)**

[The cause question asks whether there was a causal connection between negligence on the part of (doctor) and (plaintiff)'s (injury) (condition). A person's negligence is a cause of a plaintiff's (injury) (condition) if the negligence was a substantial factor in producing the present condition of the plaintiff's health. This question does not ask about "the cause" but rather "a cause." The reason for this is that there can be more than one cause of (an injury) (a condition). The negligence of one (or more) person(s) can cause (an

injury) (a condition) or (an injury) (a condition) can be the result of the natural progression of (the injury) (the condition). In addition, the (injury) (condition) can be caused jointly by a person's negligence and also the natural progression of the (injury) (condition).]

[If you conclude from the evidence that the present condition of (plaintiff)'s health was caused jointly by (doctor)'s negligence and also the natural progression of (plaintiff)'s (injury) (condition), then you should find that the (doctor)'s negligence was a cause of the (plaintiff)'s present condition of health.]

[The evidence indicates without dispute that when (plaintiff) retained the services of (doctor) and placed (himself) (herself) under (doctor)'s care, (plaintiff) was suffering from some (disability resulting from injuries sustained in an accident) (illness or disease). (Plaintiff)'s then physical condition cannot be regarded by you in any way as having been caused or contributed to by any negligence on the part of (doctor). This question asks you to determine whether the condition of (plaintiff)'s health, as it was when (plaintiff) placed (himself) (herself) under the doctor's care, has been aggravated or further impaired as a natural result of the negligence of (doctor)'s (treatment) (diagnosis).]

**(Insert appropriate damage instructions.)**

[(Plaintiff) sustained injuries before the (treatment) (diagnosis) by (doctor). Such injuries have caused (and could in the future cause) (plaintiff) to endure pain and suffering and incur some disability. In answering these questions on damages, you will entirely exclude from your consideration all damages which resulted from the original injury; you

will consider only the damages (plaintiff) sustained as a result of the (treatment) (diagnosis) of by (doctor).]

[It will, therefore, be necessary for you to distinguish and separate, first, the natural results in damages that flow from (plaintiff)’s original (illness) (injuries) and, second, those that flow from (doctor)’s (treatment) (diagnosis) and allow (plaintiff) only the damages that naturally resulted from the (treatment) (diagnosis) by (doctor).]

#### COMMENT

This instruction was approved by the Committee in 1963. It was revised in 1966, 1974, 1984, 1987, 1988, 1989, 1990, 1991, 1992, 1995, 1996, 1998, 2002, 2009, 2011, and 2012. The comment was updated in 1990, 1992, 1996, 2001, 2002, 2003, 2004, 2005, 2006, 2009, 2011, 2012, 2016, 2017, 2019, and 2021. The 2009 revision added “(diagnosis)” throughout the instruction to the alleged negligence. This revision was approved by the Committee in October 2021; it added to the comment.

The Committee recommends that the basic inquiry with respect to the defendant’s conduct be framed in simple terms of negligence. Failure on the part of the doctor to conform to the applicable standard of care constitutes negligence. This form of submission is preferable to the form previously employed, i.e., stating the duty in the question. The statement of the duty is the function of the instruction. The Committee recommends that the general negligence instruction, JI-Civil 1005, not be used in addition to this instruction.

There are a series of concepts involved in the instruction. The duty of the doctor in his or her care, treatment, and procedures; the effects of bad results on liability; the degree of care, skill, and judgment required to satisfy his or her duty; the duty allows a choice of accepted alternative methods of treatment; the doctor’s liability cannot be predicated on other than expert testimony (except in a res ipsa case); and the issue is not on the judgment the doctor made but on the degree and skill he or she exercised in arriving at the judgment. The Committee concluded that foreseeability of injury or harm is inherent in the standard expressed in the first paragraph, and if an issue in the case, it must be addressed by expert testimony.

If the trial judge prefers, this instruction can be divided into its components (i.e., negligence, cause, alternative care, damages, etc.) when instructing the jury and when providing the jury with written instructions during its deliberations.

**Standard of Care.** This instruction reflects the changes recommended by the Wisconsin Supreme Court in Nowatske v. Osterloh, 198 Wis.2d 419, 543 N.W.2d 25 (1996). The former version of this instruction was based on prevailing case law which measured ordinary care based on what an “average”

physician would have done. The court in Nowatske said “the standard of care applicable to physicians in Wisconsin can not be conclusively established either by a reflection of what the majority of practitioners do or by a sum of the customs which those practitioners follow.” Instead, the court said “it must be established by a determination of what it is reasonable to expect of a professional given the state of medical knowledge at the time of the treatment.” Nowatske, supra, at 438-39. See also the comment to Wis JI-Civil 1005.

**Standard of Care: Unlicensed First-Year Resident.** The Wisconsin Supreme Court in Phelps v. Physicians Ins. Co., 2005 WI 85, 282 Wis.2d 69, 698 N.W.2d 643, has held that unlicensed first-year residents should be held to:

the standard of care applicable to an unlicensed first-year resident . . . Although we anticipate this new standard of care to be lower than that of an average licensed physician in some cases, we do not expect that it will become a grant of immunity. After all, unlicensed first-year residents are graduates of a medical school who provide sophisticated health care services appropriate to their “in training” status. Therefore, unlicensed residents could still be found negligent if, for example, they undertook to treat outside the scope of their authority and expertise, or they failed to consult with someone more skilled and experienced when the standard of care required it.

The court characterized the status of an unlicensed first-year resident as “unique.” It said the resident’s authority was limited:

Although [resident] could refer to himself as an “M.D.,” his freedom of action was more restricted than that of a licensed physician. Indeed, the circuit court found that Dr. Lindemann “had no authority or privileges to provide primary obstetrical care,” and “was not supposed to act as the primary attending physician.” Rather, “[h]is primary duty was to assess and report findings and differential diagnoses to an upper level senior resident or to the attending obstetrician.”

**Effect of Bad Results.** The second paragraph states the rule as to the effects of bad results on the doctor’s liability. Bad results raise no presumption of negligence. DeBruine v. Voskuil, 168 Wis. 104, 169 N.W. 288 (1918); Ewing v. Goode, 78 F. 442 (S.D. Ohio 1897); Wurdemann v. Barnes, 92 Wis. 206, 66 N.W. 111 (1896); Francois v. Mokrohisky, supra; Finke v. Hess, 170 Wis. 149, 174 N.W. 466 (1920); Hoven v. Kelble, 79 Wis.2d 444, 256 N.W.2d 379 (1976). See also Nowatske v. Osterloh, supra.

The judgment of a doctor in his or her care, treatment, and procedures, whether good, bad, honest or mistaken, is not at issue on his or her liability. The issue raised is whether in making the judgment, he or she exercised that degree of care and skill imposed on him or her. If he or she failed to meet that standard, he or she was negligent and liable. Christianson v. Downs, supra; Hoven v. Kelble, supra; Carson v. Beloit, 32 Wis.2d 282, 145 N.W.2d 112 (1966); Wurdemann v. Barnes, supra; Jaeger v. Stratton, 170 Wis. 579, 176 N.W. 61 (1920).

“Not omniscience, but due care, diligence, judgment, and skill are required of physicians. When they meet such test, they are not liable for results or errors in judgment.” Jaeger v. Stratton, supra.

“The question . . . is not whether a physician has made a mistake; rather, the question is whether he was negligent.” Francois v. Mokrohisky, supra.

“The law . . . recognizes the medical profession for what it is: a class of fallible men, some of whom are unusually well qualified and expert, and some of whom are not. The standard to which they must conform is determined by the practices of neither the very best nor the worst of the class.” Francois v. Mokrohisky, *supra*.

In 1988, the court in Schuster v. Altenberg, *supra*, reaffirmed the concept that liability will not be imposed under this negligence standard for mere errors in judgment. It quoted from its earlier holdings:

The law governing this case is well settled. A doctor is not an insurer or guarantor of the correctness of his diagnosis; the requirement is that he use proper care and skill. Knief v. Sargent, 40 Wis.2d 4, 8, 161 N.W.2d 232 (1968). The question is not whether the physician made a mistake in diagnosis, but rather whether he failed to conform to the accepted standard of care. Francois v. Mokrohisky, 67 Wis.2d 196, 201, 226 N.W.2d 470 (1975). Christianson v. Downs, 90 Wis.2d 332, 338, 279 N.W.2d 918 (1979).

The second paragraph also deals with the extent and quality of the doctor’s treatment required to satisfy his or her duty. A doctor is not required to exercise the highest degree of care, skill, and judgment. Hrubes v. Faber, 163 Wis. 89, 157 N.W. 519 (1916); DeBruine v. Voskuil, *supra*; Jaeger v. Stratton, *supra*; Trogun v. Fruchtmann, *supra*; Christianson v. Downs, *supra*; Carson v. Beloit, *supra*; Francois v. Mokrohisky, *supra*; Hoven v. Kelble, *supra*.

**Alternative Methods.** It is appropriate to instruct the jury using the bracketed language at the bottom of page one when there is evidence that more than one method of treatment or diagnosis is recognized as reasonable. See Nowatske v. Osterloh, *supra*, at 448. This is true even if an alternative method is not actually employed, as long as the treatment utilized is not the equivalent of “doing nothing.” See Barney v. Mickelson, 2020 WI 40, ¶31, 391 Wis.2d 212, 942 N.W.2d 891. (In Barney, there was substantial testimony that the continued use of an external monitor was a reasonable method to continue to assess the patient’s heart rate and was within the standard of care, even if accepted alternatives were available and could have been utilized). It is inappropriate, however, to give this instruction where the alleged negligence “lies in failing to do something, not in negligently choosing between courses of actions.” Miller v. Kim, 191 Wis. 2d 187, 198, 528 N.W.2d 72 (1995). (The circuit court in Miller committed prejudicial error when it gave the alternative methods instruction because experts unanimously testified that a spinal tap is the only reasonable method of diagnosis for a young child with symptoms of spinal meningitis). The reasonable pursuit of an accepted alternative method does not establish a doctor’s liability, even if experts disagree on the method used. A physician is required by statute to inform a patient about the availability of all alternate, viable medical treatments and the benefits and risks of these treatments, Wis. Stat. § 448.30. For claims based on a failure by a physician to adequately inform a patient, see Wis JI-Civil 1023.2 Malpractice: Informed Consent.

Unnecessary and improper treatment constitutes medical malpractice. Northwest Gen. Hosp. v. Yee, 115 Wis.2d 59, 61-62, 339 N.W.2d 583 (1983).

**Expert Testimony.** Expert testimony is needed to support a finding of negligence on the part of the doctor. Kuehnemann v. Boyd, 193 Wis. 588, 214 N.W. 326 (1927); Holton v. Burton, *supra*; Lindloff v. Ross, 208 Wis. 482, 243 N.W. 403 (1932); Ahola v. Sincok, 6 Wis.2d 332, 94 N.W.2d 566 (1959); Froh

v. Milwaukee Medical Clinic, S.C., 85 Wis.2d 308, 270 N.W.2d 83 (Ct. App. 1978); McManus v. Donlin, 23 Wis.2d 289, 127 N.W.2d 22 (1964); Treptau v. Behrens Spa, Inc., *supra*.

The degree of care and skill (of a physician) can only be proved by the testimony of experts. Without such testimony, the jury has no standard which enables it to determine whether the defendant failed to exercise the degree of care and skill required of him or her. Kuehnemann v. Boyd, *supra*; Holton v. Burton, *supra*; Lindloff v. Ross, *supra*. In 2011, the Committee added language which instructs the jury that in determining the weight of an expert's testimony, it should consider the qualifications and credibility of the expert and whether the reasons for the opinion are based on facts in the case. The jury is further instructed that it is not bound by any expert's opinion. See Weborg v. Jenny, 2012 WI 67 (Paragraph 73), 341 Wis.2d 668, 816 N.W.2d 191.

For a discussion of the admissibility of expert evidence in a medical negligence case, see Seifert v. Balink, 2017 WI 2, 372 Wis.2d 525, 888 N.W.2d 816.

The general instruction on expert testimony, Wis JI-Civil 260, should be used for issues in the trial other than standard of care.

**Causation.** The court in Young v. Professionals Ins. Co., 154 Wis.2d 742, 454 N.W.2d 24 (Ct. App. 1990), was critical of an earlier version of JI-1023 relating to cause. The present instruction concerning situations when there is evidence of both negligence and a condition of health resulting from the natural progression of a disease (injury) correctly states that a doctor's negligence may be causal, notwithstanding, that the plaintiff's present condition of health may in part be the result of the natural progression of plaintiff's disease (injury). This is because Wisconsin has long adopted the "substantial factor test" in deciding causation questions and no longer requires that the negligence be the sole or proximate cause. Matuschka v. Murphy, 173 Wis. 484, 180 N.W. 821 (1921), has been overruled because it is "likely to misstate the law of causation." See Young, *supra*, at 749.

This instruction comports with the supreme court's decision in Fischer v. Ganju, 168 Wis.2d 834, 485 N.W.2d 10 (1992). In Fischer, the supreme court stated that a paragraph from a prior version JI-1023 (1989) was "less than completely accurate." The version given by the trial judge in Fischer in January 1990 was based on the 1989 version of this instruction which was published in April of 1989. This version was revised by the committee following the decision in Young v. Professionals Ins. Co., *supra*. The revised JI- 1023 was published in May of 1991 as part of the 1991 supplement. This revision (1991) changed the language of the prior version dealing with causation. It has not been revised since the 1991 supplement. The Committee has closely compared this present version of Wis JI-Civil 1023 to the court's criticism of the 1989 version of the instruction. The Committee concludes that the causation language of the present instruction is consistent with the discussion of causation in the Fischer decision and accurately states the law of causation in medical malpractice pre-existing condition cases.

**Specialists.** See Johnson v. Agoncillo, 183 Wis.2d 143, 515 N.W.2d 508 (Ct. App. 1994), where the First District Court of Appeals held that under current Wisconsin law, a doctor who practices one medical specialty is not held to the standard of care of another medical specialty, even when treating a patient in that latter specialty. Dr. Agoncillo was a family practitioner treating a high-risk obstetrical patient. Plaintiff Johnson requested an instruction that would hold Agoncillo to the standard of the "average physician who

treats high risk obstetrical patients. . . .” The trial judge refused to give such an instruction and the court of appeals affirmed, stating:

Thus, that Dr. Agoncillo chose to care for and treat Ms. Johnson during her high-risk pregnancy did not transform his class of physician to that of those who treat high-risk obstetrical patients; he was and he remained a general family practitioner who treated obstetrical patients and, as instructed by the trial court, he was thus ‘required to use the degree of care, skill, and judgment which is usually exercised in the same or similar circumstances’ by the average physician in that class.

The court went on to say, however, that the physician who attempts to treat a patient outside her or his expertise is not, thereby, immunized from liability. Referring to a cardiologist who treats a cancer patient, the court said in Johnson at 152:

If competent evidence establishes that the average cardiologist would either refer the cancer patient to an oncologist or would consult with an oncologist, the cardiologist could be found negligent for not referring or consulting.

**Captain of Ship Doctrine.** In a recent decision, the plaintiff in a medical malpractice action argued that the surgeon should be held vicariously liable for the negligence of two hospital nurses from a county-owned hospital who were responsible for counting sponges. Lewis v. Physicians Ins. Co., 2001 WI 60, 243 Wis.2d 648, 627 N.W.2d 484. The hospital was county-owned and, therefore, its liability at the time was limited to \$50,000.

The trial court, on summary judgment, agreed with the plaintiff’s argument that, as a matter of law, the surgeon is the “captain of the ship” and is responsible for the actions of the parties that were in the operating room. Interestingly, the plaintiff did not argue that the surgeon was vicariously liable for the nurses’ actions under the doctrine of respondeat superior. Both the court of appeals and supreme court rejected the adoption of the captain of the ship doctrine to impose liability on the doctor. The supreme court said the “captain of the ship doctrine” has lost its vitality across the country as plaintiffs have been able to sustain actions against full-care modern hospitals for the negligence of their employees.

**Psychiatric Malpractice Claims.** The Wisconsin Supreme Court recognized in Schuster v. Altenberg, *supra*, that a psychiatrist may be negligent by:

1. negligent diagnosing and treating, including failing to warn of side effects of medication,
2. failing to warn a patient’s family of the patient’s condition and its dangerous implications,
3. failing to seek the commitment of the patient.

Warning a patient of risks associated with a condition and the patient as to appropriate conduct constitutes treatment as to which a physician must use ordinary care. Schuster v. Altenberg, *supra*. A psychiatrist may be held liable to third parties for failing to warn of the side effects of medication if the side effects were such that a patient should have been cautioned against driving, because it was foreseeable that an accident could result causing harm to the patient or third parties.



A psychotherapist has the duty to warn third parties or to institute proceeding for the detention or commitment of a dangerous individual for the protection of the patient or the public.

**Dental Malpractice.** For dental malpractice, see Wis JI-Civil 1023.14.

**Determination of Future Economic Damages.** In a claim based on injury from any treatment or operation performed by, or from any omission by, a person who is a health care provider, the determination of future economic damages must reflect present value, life expectancy, and the effects of inflation. Specifically, Wis. Stat. § 893.55(4)(e) states:

(e) Economic damages recovered under ch 655 for bodily injury or death, including any action or proceeding based on contribution or indemnification, shall be determined for the period during which the damages are expected to accrue, taking into account the estimated life expectancy of the person, then reduced to present value, taking into account the effects of inflation.

The Committee interprets this subsection as requiring the jury to make a reduction based on the time value of money and to consider inflation in determining future economic damages. The Committee believes that the statutory language quoted above does not mean that the trial judge should make allowance for present value of money or inflation immediately after the jury has determined economic damages or on motions after verdict.

**Medical Negligence Damage Caps.** In Ferdon v. Wisc. Patients Compensation Fund, 2005 WI 125, 284 Wis.2d 573, 701 N.W.2d 440, the court held that the \$350,000 cap (adjusted for inflation) on noneconomic medical malpractice damages set forth in Wis. Stat. §§ 655.017 and 893.55(4) violates the equal protection guarantees of the Wisconsin Constitution. Previously, the court had held there is a single cap on noneconomic damages recoverable from health care providers for medical malpractice. Maurin v. Hall, 2004 WI 100, 274 Wis.2d 28, 682 N.W.2d 866. The amount of the cap is determined by whether the patient survives the malpractice or whether the patient dies. When the patient survives, the cap is contained in Wis. Stat. § 893.55(4)(d). When the patient dies, the cap is contained in Wis. Stat. § 895.04(4). In cases where medical malpractice leads to death, the wrongful death cap applies in lieu of - - not in addition to - - the medical malpractice cap. Following Ferdon, the legislature acted to impose a \$750,000 cap on noneconomic damages set forth in Wis. Stat. § 893.55(1d)(b).

The court in Ferdon also created an intermediate level of constitutional review that it called “rational basis with teeth, or meaningful rational basis.” However, in Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 2018 WI 78, 383 Wis.2d 1, 914 N.W.2d 678, the court overruled Ferdon for erroneously invading the province of the legislature and found that rational basis with teeth has no standards for application and created uncertainty under the law. Instead, the court held that rational basis review is appropriate because the cap on noneconomic damages does not deny any fundamental right or implicate any suspect class. When the five-step rational basis scrutiny provided in Aicher v. Wis. Patients Comp. Fund, 2000 WI 98, 237 Wis.2d 99, 613 N.W.2d 849 was applied, the court concluded that “the legislature’s comprehensive plan that guarantees payment while controlling liability for medical malpractice through the use of insurance, contributions to the Fund and a cap on noneconomic damages has a rational basis.” Therefore, the \$750,000 cap on noneconomic damages in medical malpractice actions is not facially unconstitutional.” See Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 2018 WI 78, 383 Wis.2d 1, 31, 914 N.W.2d 678.

**Bystander Recovery Claims for Negligent Infliction of Emotional Distress Based on Misdiagnosis.** See the committee commentary to Wis. JI-Civil 1510 and 1511.

**Answering Special Verdict Questions; Possibility of Inconsistent Verdicts.** In medical negligence cases, allowing the jury to award damages regardless of how it answered negligence and cause verdict questions can lead to inconsistent verdicts under Runjo v. St. Paul Fire Marine Ins. Co., 197 Wis.2d 594, 541 N.W.2d 173 (Ct. App. 1995); LaCombe v. Aurora Medical Group, Inc., 2004 WI App 119, 274 Wis.2d 771, 683 N.W.2d 532; Hegarty v. Beauchaine, 2006 WI App 248, 297 Wis.2d 70, 727 N.W.2d 857. In Runjo, the jury was instructed to answer the damage questions only if it affirmatively answered the negligence and cause questions.

**Time limitations.** A circuit court may dismiss a plaintiff's medical malpractice claim as untimely. See Wis. Stat. § 893.55(1m)(a) concerning the statute of limitations for medical malpractice claims. See Wis. Stat. § 893.55(1m)(b) concerning the grounds on which the statute of repose bars such claims.

For time limitations concerning claims based on an alleged omission, specifically a misdiagnosis or failure to diagnose, see Paul v. Skemp, 2001 WI 42, ¶25, 242 Wis. 2d 507, 625 N.W.2d 860. See also Brusa v. Mercy Health Sys., Inc., 2007 WI App 166, ¶¶11, 14, 304 Wis. 2d 138, 737 N.W.2d 1, and Winzer v. Hartmann, 2021 WI App 68, 399 Wis.2d 555, 966 N.W.2d 101.

**1023.5 PROFESSIONAL NEGLIGENCE: LEGAL—STATUS OF LAWYER  
AS A SPECIALIST IS NOT IN DISPUTE**

In providing legal services to a client, it is a lawyer's duty to use the degree of care, skill, and judgment which reasonably prudent lawyers practicing in this state would exercise under like or similar circumstances. A failure to conform to this standard is negligence. The burden is on (plaintiff) to prove that (lawyer) was negligent.

You are to determine whether (lawyer) was negligent in representing (plaintiff) in light of the facts and circumstances of which (lawyer) was aware or should have discovered at the time legal services were provided to (plaintiff). A lawyer is negligent if the lawyer fails to discover or recognize the importance of relevant facts or legal principles which reasonably prudent lawyers would discover or recognize or if the lawyer's skill or judgment was not consistent with that exercised by reasonably prudent lawyers. A lawyer is not negligent because of the results of (his) (her) representation, if (his)(her) efforts were those reasonably prudent lawyers would have taken.

**[Use this paragraph if the parties stipulate or the trial judge finds as a matter of law that the lawyer presented himself or herself as a specialist in the relevant area of law: Lawyers who present themselves to the public or their clients as having special experience, knowledge, or skill in a particular area of law are held to the standard of care of reasonably prudent lawyers with that special experience, knowledge, or skill. This is the standard you should apply in considering question \_\_\_\_\_ of the special verdict.]**

You have heard testimony during this trial from lawyers who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment which a reasonably prudent lawyer would exercise is not a matter within the common knowledge of lay persons. This standard is within the special knowledge of experts in the field of law and can only be established by expert testimony. You, therefore, may not speculate or guess what that standard of care, skill, and judgment is in deciding this case, but rather must attempt to determine this from the expert testimony that you heard in this trial.

(Also Give Wis JI-Civil 265)

### **SPECIAL VERDICT**

1. Was (lawyer) negligent in providing legal services to (plaintiff)?

Answer: \_\_\_\_\_

Yes or No

### **COMMENT**

This instruction and comment were approved in 1997. The comment was updated in 1998, 2002, 2003, 2016, 2020, and 2021. This revision was approved by the Committee in January 2022; it added to the comment.

If the status of the lawyer as a specialist is in dispute, see Wis JI-Civil 1023.5A.

Consistent with the supreme court's direction in medical malpractice cases, the Committee has eliminated reference to "guaranteed results" and has framed the duty of lawyers in terms of "reasonable care" rather than in reference to what is "usually exercised" by lawyers. See Nowatske v. Osterloh, 198 Wis. 2d 419, 543 N.W.2d 265 (1996), and Comment to Wis JI-Civil 1023.

**Elements.** The Wisconsin Supreme Court has said that the following rule governs legal malpractice actions:

In an action against an attorney for negligence or violation of duty, the client has the burden of proving the existence of the relation of attorney and client, the acts constituting the alleged negligence, that the negligence was the proximate cause of the injury, and the fact and extent of the injury alleged. The last element mentioned often involves the burden of showing that, but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action. Lewandowski v. Continental Casualty Co., 88 Wis.2d 271, 277, 276 N.W.2d 284 (1979). See also Kraft v. Steinhafel, 2015 WI App 62, 364 Wis.2d 672, 869 N.W.2d 506.

To establish causation and injury in a legal malpractice action, the plaintiff is often compelled to prove the equivalent of two cases in a single proceeding or what has been referred to as a “suit within a suit.” Lewandowski v. Continental Casualty Co., 88 Wis.2d 271, 277, 276 N.W.2d 284 (1979); Helmbrecht v. St. Paul Ins. Co., 122 Wis.2d 94, 103, 362 N.W.2d 118 (1985); see also Pierce v. Colwell, 209 Wis.2d 355, 563 N.W.2d 166 (Ct. App. 1997). This entails establishing that, “but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action.” Lewandowski, 88 Wis.2d at 277, citing 7 Am. Jur. 2d, Attorneys at Law, sec. 188 at 156 (1963).

In Helmbrecht v. St. Paul Ins. Co., *supra*, the court made several important holdings which cleared up some uncertainty. First, in calculating damages due to the loss of a claim, an objective standard should be used, *i.e.*, what a reasonable judge (jury) would have awarded in the initial action. Second, the court said the Code of Professional Responsibility, although beneficial as an ethical guide, “does not exhaustively define the obligations an attorney owes his client,” nor does it “undertake to define standards for civil liability of lawyers for professional conduct.” Helmbrecht, *supra*, at 111.

In Denzer v. Rouse, 48 Wis.2d 528, 534 180 N.W.2d 521 (1970), the court said that “between the end points of competence and malpractice lies a broad area of difficult and complex situations in which an attorney is bound to exercise his best judgment in the light of his education and experience, but is not held to a standard of perfection or infallibility of judgment.”

**Cause.** The court of appeals in 1997 considered the following question: When a client is represented sequentially by two lawyers, both of whom were arguably negligent with respect to the same manner, can the first lawyer’s alleged negligence be a cause of the client’s damages if the client would not have sustained any damage if the second lawyer could have prevented the harm but did not? The court of appeals concluded that the answer to this question was “no.” Seltrecht v. Bremer, 214 Wis.2d 110, 571 N.W.2d 686 (Ct. App. 1997).

**Outcome of Representation.** In DeThorne v. Bakken, 196 Wis. 2d 713, 539 N.W.2d 695 (1995), the court of appeals considered a lawyer’s mistaken judgment that was made in good faith. The court stated: “we will not hold attorneys responsible when their decisions are ones that a reasonably prudent attorney might make even though they are later determined by a court of law to be erroneous.” *Id.* at 724. The Committee believes that juries should be informed that the outcome of the representation is not determinative of lawyer’s negligence. The jury should, instead, determine whether the representation conformed with reasonable care, considering all of the evidence.

**Nature of Representation.** If there is a dispute concerning the nature or scope of the representation, add the following paragraph:

Whether (lawyer) has discharged (his) (her) duty depends on the purpose for which (lawyer) was retained or agreed to provide representation. The purpose (or scope) of the representation for which the (lawyer) was retained is for you to determine from the evidence. It is irrelevant to the determination of the lawyer's negligence whether the lawyer was paid.

**Specialists.** The court of appeals has adopted the higher standard of care for lawyers who represent themselves as specialists in Duffy Law Office v. Tank Transport, Inc., 194 Wis. 2d 675, 535 N.W.2d 91 (1995). The Committee recommends use of the higher standard paragraph when the trial court finds that there is credible evidence of such representation by the lawyer. See also Wis JI-Civil 1023.5A. Since most areas of practice do not have State Bar sanctioned specialty certification, these cases will generally present a question of fact concerning whether the lawyer held himself or herself out as a specialist to the public or to the particular client. (Patent and admiralty practice have recognition as specialists by policy and tradition in federal courts.)

**Contributory Negligence.** The contributory negligence of a client can be a defense in a legal malpractice action. Gustavson v. O'Brien, *supra* at 204.

**Tort Versus Contract Claim.** The Wisconsin Supreme Court has stated that legal malpractice may give rise to either a tort claim or a contract claim. The tort claim arises from a breach of the attorney's common law duty; whereas, the contract claim arises from a breach of a duty created by contractual agreement between the attorney and the client. See Milwaukee County v. Schmidt, Gardner, and Erickson, 43 Wis.2d 445, 168 N.W.2d 559 (1969); Klingbeil v. Saucerman, 165 Wis. 60, 160 N.W. 1051 (1917).

**Expert Testimony.** Expert testimony is not required to establish a standard of care in cases involving conduct not necessarily related to legal expertise where the matters to be proved do not involve special knowledge or skill or experience on subjects which are not within the realm of the ordinary experience of mankind and which require special learning, study, or experience. Nor is expert testimony required where no issue is raised as to defendant's responsibility, where the negligence of defendant is apparent and undisputed, and where the record discloses obvious and explicit carelessness in defendant's failure to meet the duty of care owed to plaintiff for the court will not require expert testimony to define further that which is already abundantly clear. Olfe v. Gordon, 93 Wis.2d 173, 286 N.W.2d 573 (1980). See also Kraft v. Steinhafel, 2015 WI App 62, 364 Wis.2d 672, 869 N.W.2d 506; DeThorne v. Bakken, 196 Wis. 2d 713, 718, 539 N.W.2d 695 (1995). In Olfe v. Gordon, *supra*, the client's claim alleged negligence by the attorney in failing to follow specific instructions. The court concluded that proof of this negligence does not require expert testimony. Such a claim is controlled by the law of agency. Thus, the duties of care owed by the attorney to the client are established not by the legal profession's standards but by the law of agency. The court held that a jury is competent to understand and apply the standards of care to which agents are held. Olfe v. Gordon, *supra* at 184 (citing Wis JI-Civil 4000, Agency: Definition, and Wis JI-Civil 4020, Agent's Duties Owed to Principal).

**Damages.** The supreme court has said it is appropriate, in some complex cases, for the trial judge to determine reasonable attorney's fees as a matter of law. See Glamann v. St. Paul Fire & Marine Ins., 144 Wis.2d 865, 424 N.W.2d 924 (1988). For the determination and awarding of attorney fees (both trial and appellate), see Glamann, *supra* at 870-75.

**Legal Malpractice Claim for Criminal Defense.** The court of appeals has held that, in a legal malpractice claim for criminal defense, the plaintiff must prove that he or she did not commit the offenses of which he or she was convicted. Hicks v. Nunnery, 253 Wis.2d 721, 643 N.W.2d 809 (2002). This proof requirement is commonly referred to as the “actual innocence” rule, and was adopted in Hicks as a matter of public policy. More specifically, this rule is meant to prevent individuals who commit criminal offenses and are convicted of those crimes from recovering damages for legal malpractice. In such a case, the following language is suggested:

Question no. \_\_\_\_\_ asks whether (Plaintiff) is innocent of the charge of \_\_\_\_\_. This charge consists of the following elements: (Here explain the elements of the offense from the appropriate instruction in Wisconsin Jury Instructions-Criminal.)

(Plaintiff) has the burden of proof to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that (he) (she) is innocent.

[Give JI-Civil 200, Ordinary Burden of Proof]

The suggested question for the special verdict is:

Was Plaintiff innocent of the charge of \_\_\_\_\_?

The court of appeals in Hicks states that “the question of plaintiff’s innocence is in addition to, not a substitute for, a jury question regarding whether the plaintiff would have been found not guilty absent the defendant’s negligence. A defendant’s negligence must . . . have been a substantial factor contributing to the plaintiff’s conviction.” Thus, the questions of existence of the attorney-client relationship, negligence, causation and damages would be first submitted for the jury’s consideration.

**Actual Innocence Rule.** The application of the actual innocence rule has been considered in several Wisconsin decisions. As noted, the rule was first adopted in Hicks v. Nunnery, *supra*, which held that, in addition to proving the four elements of a standard legal malpractice claim, public policy considerations require that a criminal malpractice plaintiff must also establish that he or she “is innocent of the charges of which he [or she] was convicted.” Hicks, *supra* at ¶46. This is true even if a plaintiff can prove that his or her conviction resulted from their attorney’s failure “to bring a clearly meritorious motion to suppress evidence that establishes guilt, which the state could not prove without it[.]” Id. at ¶43.

The court of appeals later relied on the actual innocence rule adopted by Hicks in Tallmadge v. Boyle, 2007 WI App 47, 300 Wis.2d 510, 730 N.W.2d 173. In this decision, the court stated that the public policy considerations supporting the actual innocence rule require that the criminal malpractice plaintiff must “prove that ‘but for’ that defense counsel’s actions, the convicted criminal would be free.” Id. at ¶22. This principle was later refined in Skindzelewski v. Smith, 2020 WI 57, 392 Wis.2d 117, 944 N.W.2d 575. In that case, the claimant conceded his guilt to the underlying offense but advocated for an exception to the actual innocence rule because his attorney had negligently failed to raise a statute of limitations defense that would have precluded his conviction. Stating that such an exception would be contrary to public policy considerations and would reward criminality, the court in Skindzelewski explained that even if an attorney’s negligence results in a conviction that is unauthorized by law, there is no applicable exception to the actual innocence rule if the error does not negate a guilty defendant’s culpability. Id. at 128. The court concluded that “[T]he law bars such legal malpractice claims because even if an attorney’s negligence harms a

defendant by adversely affecting the outcome of the case, attorney error does not negate a guilty defendant's culpability." Id. at 130.

**Split innocence.** In order to establish a claim for legal malpractice, a criminal malpractice plaintiff who claims "split innocence" need only show that they are actually innocent of the convictions that form the basis of their complaint of legal malpractice. See Jama v. Gonzalez, 2021 WI App 3, 395 Wis.2d 655, PP43-44, 954 N.W.2d 1 (Affirmed by an equally divided court in Jama v. Gonzalez, 2021 WI 79, 399 Wis.2d 392, 965 N.W.2d 458). The split innocence exception adopted in Jama is distinct from the exception to the actual innocence rule requested and denied in Skindzelewski, supra.

**Nonliability of an Attorney to a Non-Client.** A longstanding rule in Wisconsin is that an attorney is not liable to a non-client for "acts committed in the exercise of his [or her] duties as an attorney." See Auric v. Continental Cas. Co., 111 Wis.2d 507, 512, 331 N.W.2d 325 (1983). However, there are exceptions to this rule in the context of estate planning. The "Auric exception," established in Auric, holds that the beneficiary of a will may maintain an action against an attorney who negligently drafted or supervised the execution of a will even though the beneficiary is a third-party not in privity with the attorney. In general, this exception allows a named beneficiary to sue an attorney for malpractice when the beneficiary can show that he or she was harmed by attorney negligence that frustrated the intent of the attorney's client.

In 2009, the post-Auric decision of Tensfeldt v. Haberman, 2009 WI 77, 319 Wis.2d 329, 768 N.W.2d 641 seemed to narrowly limit the Auric exception to negligence by an attorney in drafting or supervising the execution of an estate-planning document which resulted in a loss to a named beneficiary. However, the supreme court's holding in MacLeish v. Boardman Clark LLP, 2019 WI 31, 386 Wis.2d 50, 924 N.W.2d 799, provided that "[t]he narrow Auric exception to the rule of nonliability of an attorney to a non-client applies to the administration of an estate in addition to the drafting of a will. That is, a non-client who is a named beneficiary in a will has standing to sue an attorney for malpractice if the beneficiary can demonstrate that the attorney's negligent administration of the estate thwarted the testator's clear intent." Id. at ¶48.

For estate planning post-MacLeish, see Pence v. Slate, 387 Wis.2d 685, 928 N.W.2d 806 (Table), 2019 WI App 26.

**Negligence; Standard of Care.** See the comment to Wis JI-Civil 1005.



**1153 RIGHT OF WAY: AT INTERSECTION WITH THROUGH HIGHWAY**

A safety statute provides that the operator of a vehicle shall stop before entering a through highway and shall yield the right of way to other vehicles which have entered or are approaching the intersection upon the through highway.<sup>1</sup>

“Right of way” means the privilege of the immediate use of the roadway.<sup>2</sup>

The highway on which (operator) was operating a vehicle was a “through highway” as defined by the statute<sup>3</sup> at the time of the collision.

A vehicle on a through highway is approaching an intersection when it is so close to the intersection that, considering the rate of speed at which it is traveling, it would be reasonable to assume that a collision would occur if the vehicle which stopped, as required, before entry onto the through highway moves onto the highway and into the path of the oncoming vehicle.

If you find that the oncoming vehicle on the through highway had entered the intersection, or was approaching it as here defined, it then became the duty of the operator of the vehicle entering the through highway to yield the right of way to the vehicle on the through highway.

**NOTES**

1. Wis. Stat. §§ 346.18(3).
2. Wis. Stat. § 340.01(51).

3. Wis. Stat. § 340.01(67).

#### COMMENT

This instruction and comment were originally published in 1966. The comment was, revised in 1983 and the instruction was revised in 2008. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

This instruction is based on the assumption that there is no issue on the record about one highway being a through highway, as defined by Wis. Stat. § 340.01(67). If, however, an issue develops as to whether the highway in question is a through highway, then a preliminary question would be required and would be covered by an instruction giving the statutory definition.

Although the law in Wisconsin gives the operator of a vehicle on a through highway a preference, such preference is not absolute. Leckwee v. Gibson, 90 Wis.2d 275, 280 N.W.2d 186 (1979). In Leckwee, the court, citing prior decisions, stated:

It is clear that:

. . . while one may have the right of way and may presume others will respect it, he may nevertheless be negligent in respect to management and control if his right of way is not respected and he does not do what he can do to prevent the accident. Chille v. Howell (1967), 34 Wis.2d 491, 497, 149 N.W.2d 600. Tombal v. Farmers Ins. Exchange, 62 Wis.2d 64, 69, 214 N.W.2d 291 (1974).

The operator of an automobile having the right of way on an arterial highway must still maintain a proper lookout. Having the right of way does not relieve one of the duty of watching the road for vehicles on the highway or entering thereon. Puhl v. Milwaukee Automobile Ins. Co., 8 Wis.2d 343, 348, 99 N.W.2d 163 (1959).

The former version of the comment to this instruction included an optional paragraph based on Ogle v. Avina, 33 Wis.2d 125, 146 N.W.2d 422 (1966). This optional paragraph expressed a view which held that a “special dignity” was to be afforded to an operator of a vehicle traveling on an arterial. The optional portion stated that the right of way of the operator of a vehicle on the through highway meant “not only the right to the immediate use of the roadway; but the enjoyment of such right without being required to brake one’s rate of speed or divert one’s course to the right or left.”

Because of the contrary holdings in Leckwee and cases cited by the court in Leckwee, which refused to extend an absolute preference to an operator of a vehicle on a through highway, the optional paragraph is withdrawn.

Where the issue is presented as to the negligence of the operator of a vehicle on a through highway with respect to management and control or lookout, see Wis JI-Civil 1030, 1090, 1190, and 1191.

Wis. Stat. § 346.18(3) is the stopping statute referred to in the first paragraph. If stopping is at issue, it would be covered by a separate question and by Wis JI-Civil 1325.

In regard to the duty to look and to calculate, see Plog v. Zolper, 1 Wis.2d 517, 85 N.W.2d 492 (1957).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1155 RIGHT OF WAY: AT INTERSECTIONS OF HIGHWAYS**

A safety statute provides that when two vehicles approach or enter an intersection at approximately the same time, the operator of the vehicle on the left shall yield the right of way to the vehicle on the right. The statute does not make the right of way on the part of the vehicle on the right depend on whether it reaches or begins to enter the intersection first.<sup>1</sup>

“Right of way” means the privilege of the immediate use of the roadway.<sup>2</sup>

The phrase “approach or enter an intersection at approximately the same time” means the approach or entry of two vehicles toward or into the intersection so nearly at the same time that there is imminent danger of a collision if both vehicles continue their same courses at their same speeds.

If you find that the vehicles in question approached or entered the intersection at approximately the same time, then it became the duty of (the operator of the vehicle on the left) to yield the right of way to the vehicle on the right. This duty compelled (operator) either to stop the vehicle, if necessary, or to control and manage it so that (he) (she) could yield the right of way to the vehicle within the zone of danger on the right and avoid colliding with it.

**NOTES**

1. Wis. Stat. § 346.18(1).

2. Wis. Stat. § 340.01(51).

#### COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 2002 and 2008. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

The question of right of way is to be answered only in the event the operator of the vehicle on the right is not negligent with respect to speed. The last sentence of Wis. Stat. § 346.18(1) provides that, “The operator of any vehicle driving at an unlawful speed forfeits any right of way which he (or she) would otherwise have under this subsection.”

This instruction is based on the language adopted in the case of Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 274 Wis. 210, 214, 79 N.W.2d 834 (1956), and Kraskey v. Johnson, 266 Wis. 201, 206, 63 N.W.2d 112 (1954), citing Vogel v. Vetting, 265 Wis. 19, 25, 60 N.W.2d 399 (1953). See also Nessler v. Nowicki, 12 Wis.2d 421, 425, 107 N.W.2d 616 (1961).

It is recommended that the verdict contain a direction to the jury that they should first consider the question of speed on the part of the operator who has the geographical right of way before the right of way of the competing operator is considered. See Burkhalter v. Hartford Accident & Indem. Ins. Co., 268 Wis. 385, 388, 68 N.W.2d 2 (1955); Leonard v. Employers Mut. Liab. Ins. Co., 265 Wis. 464, 468, 62 N.W.2d 10 (1953); Johnson v. Fireman's Fund Indem. Co., 264 Wis. 358, 361, 59 N.W.2d 660 (1953).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1157 RIGHT OF WAY: AT INTERSECTION OF HIGHWAYS; ULTIMATE VERDICT QUESTION**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that when two vehicles approach or enter an intersection at approximately the same time, the operator of the vehicle on the left shall yield the right of way to the vehicle on the right. The statute does not make the right of way on the part of the vehicle on the right depend on whether it reaches or begins to enter the intersection first.<sup>2</sup>

The phrase “approach or enter an intersection at approximately the same time” means the approach or entry of two vehicles toward or into the intersection so nearly at the same time that there is imminent danger of a collision if both vehicles continue their same courses at their same speeds.

If you find that the vehicles in question approached or entered the intersection at approximately the same time, then it became the duty of the operator of the vehicles on the left to yield the right of way to the vehicle on the right. This duty compelled the operator either to stop the operator’s vehicle, if necessary, or to control and manage it so that the operator could yield the right of way to the vehicle within the zone of danger on the operator’s right and avoid colliding with it.

The safety statute provides that the operator of any vehicle operating at an unlawful

speed on a highway is negligent and forfeits any right of way which he or she would otherwise have. Thus, before you can find negligence for failure to yield the right of way, you must first find that the vehicle on the right was being operated at a lawful speed.

#### NOTES

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.18(1).

#### COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. This revision was approved by the Committee in September 2021.

Baier v. Farmers Mut. Auto Ins. Co., 8 Wis.2d 506, 99 N.W.2d 709 (1959); Van Wie v. Hill, 15 Wis.2d 98, 103, 105, 112 N.W.2d 168 (1961).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Speed.** Speed need not be causal to deprive an operator of his or her statutory right of way. Van Wie v. Hill, *supra*.

Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 274 Wis. 210, 79 N.W.2d 834 (1956).

Kraskey v. Johnson, 266 Wis. 201, 63 N.W.2d 112 (1954).

Nessler v. Nowicki, 12 Wis.2d 421, 107 N.W.2d 616 (1961).

Burkhalter v. Hartford Accident & Indem. Ins. Co., 268 Wis. 385, 68 N.W.2d 2 (1955).

Leonard v. Employers Mut. Liab. Ins. Co., 265 Wis. 464, 62 N.W.2d 10 (1953).

Paragraph 5 should not be used unless, under the evidence, the right hand operator can be found negligent as to speed. “Unlawful speed” mentioned in paragraph 5 is defined in Wis JI-Civil 1285. See Drake v. Farmers Mut. Auto Ins. Co., 22 Wis.2d 56, 125 N.W.2d 391 (1963).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a



crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1158 RIGHT OF WAY: TO PEDESTRIAN CROSSING AT CONTROLLED INTERSECTION**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that at an intersection or crosswalk where traffic is controlled by (traffic control signals) (a traffic officer), the operator of a vehicle shall yield the right of way to a pedestrian crossing or who has started to cross the highway on a green or ‘WALK’ signal.<sup>2</sup>

If you find that (pedestrian) was crossing or had started to cross the highway (at the direction of a traffic officer) (with the green or ‘WALK’ signal in his or her favor), it became the duty of (operator) to yield the right of way to (pedestrian).

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.18(1).

**COMMENT**

This instruction and comment were approved in 1977. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

Schoehauer v. Wendinger, 49 Wis.2d 415, 182 N.W.2d 441 (1971).

If the highway is a divided highway or contains safety zones, use Wis JI-Civil 1160.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1159 RIGHT OF WAY: PEDESTRIAN CONTROL SIGNAL: WALK SIGNAL**

Question \_\_ asks whether (name) failed to yield the right of way to (name).

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that, “A pedestrian facing a ‘Walk’ signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the operators of all vehicles.”<sup>2</sup>

If you find that (pedestrian) faced a ‘Walk’ signal and was proceeding across the roadway in the direction of the signal, then it became the duty of (operator) to yield the right of way to (pedestrian).

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.38(1).

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

The pedestrian also retains the right of way if he or she has partially completed his or her walk to the far curb or to a safety island when the light changes to “Wait” or “Don't Walk.” Wis. Stat. § 346.38(2).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1160 RIGHT OF WAY: TO PEDESTRIAN AT INTERSECTIONS OR CROSSWALKS ON DIVIDED HIGHWAYS OR HIGHWAYS PROVIDED WITH SAFETY ZONES**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

In a divided highway, the term “roadway” refers to each roadway separately but not to all the roadways collectively.<sup>2</sup>

The statutes further provide that at intersections or crosswalks on divided highways or highways provided with safety zones where traffic is controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who (is crossing or) has started to cross the roadway either from the near curb or shoulder or from the center dividing strip or safety zone with the green or “WALK” signal in his or her favor.<sup>3</sup>

Divided highway is defined as a highway with two or more roadways separated by spaces not intended for the use of vehicular traffic.<sup>4</sup>

The term “safety zone” means the area or space officially set apart within a roadway for the exclusive use of pedestrians, including those about to board or alighting from public conveyances, and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.<sup>5</sup>

If you find that (pedestrian) (was crossing or) had started to cross the roadway either

from the near curb or shoulder or from the center dividing strip or safety zone (at the direction of a traffic officer) (with the green or “WALK” signal in (his) (her) favor), then it became the duty of (operator) to yield the right of way to (pedestrian).

#### NOTES

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 340.01(54).
3. Wis. Stat. § 346.23(2).
4. Wis. Stat. § 340.01(15).
5. Wis. Stat. § 340.01(55).

#### COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

If the facts warrant it, the court should instruct that the pedestrian no longer enjoys the right of way over a vehicle if the signal turns against the pedestrian before the pedestrian leaves the center dividing space or safety zone. If that occurs, the right of way belongs to the vehicle lawfully proceeding directly ahead on a green or “GO” signal. Wis. Stat. § 346.23(2).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1165 RIGHT OF WAY: TO PEDESTRIAN AT UNCONTROLLED INTERSECTION OR CROSSWALK**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that, at an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who is crossing the roadway within a marked or unmarked crosswalk.<sup>2</sup>

(A marked crosswalk is any portion of a roadway clearly indicated for pedestrian crossing by signs, lines, or other markings on the surface of the roadway.)

(An unmarked crosswalk is formed by extending imaginary lines the width of the sidewalk at an intersection, across the roadway, to the sidewalk on the opposite side of the intersection.)

(If there is a sidewalk on only one side of an intersection, an unmarked crosswalk is formed by extending imaginary lines the width of the sidewalk, at right angles to the centerline of the roadway, to the opposite side of the intersection.)

If you find that (plaintiff) was crossing the roadway within a (marked) (unmarked) crosswalk, then it became the duty of (defendant) to yield the right of way to (plaintiff). If, however, you find that (plaintiff) was crossing the roadway and was not within a (marked) (unmarked) crosswalk, then it became (plaintiff)’s duty to yield the right of way to

(defendant).

## NOTES

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.24(1).

## COMMENT

This instruction was approved in 1978 and revised in 1989. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

**“Marked” or “Unmarked” crosswalk.** The appropriate statutory definition of “marked” or “unmarked” crosswalk should be given. Definitions are found in Wis. Stat. § 340.01(10)(a) or (b). There may be marked crosswalks at places other than intersections.

Burke v. Tesmer, 224 Wis. 667, 670 71, 272 N.W. 857 (1937), indicates that there are no unmarked crosswalks at intersections in the country where there are no sidewalks and that a pedestrian crossing at such an intersection is under a duty to yield the right of way to a vehicle on the highway. Wis. Stat. § 346.24(2) is a statutory admonition to pedestrians not to suddenly leave a curb or other place of safety and walk or run into the path of a vehicle.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1170 RIGHT OF WAY: BLIND PEDESTRIAN ON HIGHWAY**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that a operator of a vehicle must stop the vehicle before approaching closer than 10 feet to a pedestrian carrying a cane or walking stick which is white in color or white trimmed with red and which is held in an extended or raised position and shall take such precautions as may be necessary to avoid accident or injury to the pedestrian. The fact that the pedestrian may be violating any of the laws applicable to pedestrians does not relieve the operator of a vehicle from the duties imposed by the rule just stated.<sup>2</sup>

If you find that (pedestrian) was carrying a cane or walking stick identified by the specified colors and extended or raised in position, then it became the duty of (operator) to stop the vehicle before approaching closer than 10 feet to (him) (her) and to take such precautions as might be necessary to avoid accident or injury to the pedestrian.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.26(1).

**COMMENT**

This instruction and comment were approved in 1978. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was

approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

A blind person unidentified by cane or walking stick enjoys the rights of other pedestrians in crossing highways. Wis. Stat. § 346.26(2).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1175 RIGHT OF WAY: ENTERING HIGHWAY FROM AN ALLEY OR  
NONHIGHWAY ACCESS POINT**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that the operator of a vehicle entering a highway from an alley or from a point of access other than another highway shall yield the right of way to all vehicles approaching on the highway which the operator is entering.<sup>2</sup>

The word “entering” means going or moving into.

The phrase “point of access” means a place where an entry can be made onto a highway.

A vehicle is said to be approaching the point where the entry on a highway is to be made when it is not so far distant the entry point that, considering the rate of speed at which it is traveling, it would be reasonable to assume that a collision would occur if the operator of the vehicle intending to enter the highway undertakes to do so and operates a vehicle across or into the path of the oncoming vehicle.

If you find that the vehicle on the highway was approaching the place where the entry onto the highway was to be made, then it became the duty of the operator entering the highway to yield the right of way to the vehicle on the highway.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.18(4).

**COMMENT**

The instruction and comment were originally published in 1960. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

If there is need for a definition of “alley,” see Wis. Stat. § 340.01(2).

Plog v. Zolper, 1 Wis.2d 517, 525 29, 85 N.W.2d 492, 498 99 (1957).

The negligence of one using excessive speed on an arterial does not excuse one approaching the arterial for not yielding the right of way. Ogle v. Avina, 33 Wis.2d 125, 132, 146 N.W.2d 422 (1966). One entering an arterial must be reasonably sure he or she can enter into the flow of traffic thereon without disrupting it. Ogle v. Avina, supra at 133. However, having the right of way does not relieve an operator of the duty of watching the road for vehicles entering onto the highway. Leckwee v. Gibson, 90 Wis.2d 275, 287, 280 N.W.2d 186 (1979).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1180 RIGHT OF WAY: FUNERAL PROCESSIONS; MILITARY CONVOYS**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that, “(Funeral processions) ([M]ilitary convoys) have the right of way at intersections when vehicles comprising such procession have their bright headlights lighted. . . .”<sup>2</sup>

[Note: The preceding paragraph may be subject to certain conditions and exceptions in Wis. Stat. § 346.20(4)(a), (b), or (c). Conclude the paragraph with the statement of the law as to the applicable condition or exception.]

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.20(1).

**COMMENT**

This instruction and comment were approved in 1978. The instruction was revised in 2008. This revision was approved by the Committee in September 2021.

This instruction is prepared solely as a suggested general pattern. It can be adapted to fit the particular need of any given situation.

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.





**1185 RIGHT OF WAY: GREEN ARROW**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that vehicular traffic facing a green arrow signal may enter the intersection only to make the movement indicated by the arrow but shall yield the right of way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.<sup>2</sup>

[“Vehicular traffic,” includes any device in, upon, or by which persons or property may be transported or drawn upon a highway. The term includes (bicycles) (\_\_\_\_).]

If you find that (\_\_\_\_) faced a green arrow signal before entry into the intersection, then it became (\_\_\_\_)’s duty to yield the right of way (to pedestrians lawfully within a crosswalk at the intersection) (to other traffic lawfully using the intersection).

**NOTES**

1. Wis. Stat. §§ 346.18(3).
2. Wis. Stat. § 346.37(1)(d).

**COMMENT**

This instruction and comment were approved in 1978. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

The blank in the third paragraph is for the inclusion of other vehicles about which the jury may be in doubt. Wis. Stat. § 340.01(74) has a specific mention of snowmobiles.

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1190 RIGHT OF WAY: GREEN SIGNAL**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

The statutes further provide that vehicular traffic facing a green signal may proceed straight through or turn right or left unless a sign at the place prohibits either turn, but vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.<sup>2</sup>

“Vehicular traffic,” includes any device in, upon, or by which persons or property may be transported or drawn upon a highway. The term includes (bicycles) ( \_\_\_\_ ).

“Adjacent” means near, close, or adjoining. As here used, it refers to (the crosswalk the driver of the vehicle will be compelled to cross if the driver moves straight ahead) (the crosswalk the driver will be compelled to cross on the intersecting street if the driver turns right or left).

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.37(1)(a).

**COMMENT**

This instruction and comment were approved in 1978. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

The blank in the third paragraph is for the inclusion of other vehicles about which the jury may be in doubt. Wis. Stat. § 340.01(74) has a specific mention of snowmobiles.

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1190.5 PLAINTIFF AND DEFENDANT EACH CLAIMS GREEN LIGHT IN THEIR FAVOR**

Both operators claim that the green traffic light (or “Go” signal) was facing them as they proceeded to cross the intersection in question. It was a physical impossibility for this to happen, in the absence of evidence that the lights were not in good working order. It is for you to determine which operator the green light was facing and which operator, at that same time, the red light was facing as each operator proceeded into the intersection.

**COMMENT**

This instruction and comment were approved in 1978. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

Matthews v. Schuh, 5 Wis.2d 521, 526, 93 N.W.2d 364 (1958).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1191 DUTY OF OPERATOR ENTERING INTERSECTION WITH GREEN LIGHT IN OPERATOR'S FAVOR: LOOKOUT**

An operator entering an intersection with the light in his or her favor does not have an absolute right of way. The operator, when entering the intersection, has the duty of maintaining an efficient lookout to determine the presence of other vehicles approaching his or her course of travel and must also exercise reasonable judgment in calculating the distance and speed of any approaching vehicles so as to determine whether such approaching vehicle will run the light. If after such lookout and calculation it is apparent that the approaching vehicle is going to run the light, then the operator having the light in his or her favor must exercise ordinary care in an attempt to avoid a collision.

If the operator entering the intersection with the light in his or her favor properly determined that any automobile approaching the intersection was traveling at such speed and was at such distance from the intersection that the approaching operator could, as a matter of physical fact, yield the right of way if the operator responded to the red light, then the operator with lights in his or her favor, after entering the intersection, need not make continuing observations to either side for approaching traffic.

**COMMENT**

The instruction and comment were originally published in 1972, and editorial changes were made in 1992 to address gender references in the instruction. The comment was updated in 2008. This revision was approved by the Committee in September 2021.

See Wis JI-Civil 1190, Right of Way: Green Signal; Wis JI-Civil 1030, Right to Assume Due Care; and Wis JI-Civil 1090, Driver at Arterial Approaching Intersection: Lookout; Right of Way; Flashing Yellow Signal.

Hardware Dealers Mut. Fire Ins. Co. v. Home Mut. Ins. Co., 24 Wis.2d 381, 129 N.W.2d 214 (1964); Oelke v. Earle, 271 Wis. 479, 74 N.W.2d 336 (1956); Wilson v. Koch, 241 Wis. 594, 6 N.W.2d 659 (1942); Gleason v. Gillihan, 32 Wis.2d 50, 55, 145 N.W.2d 90 (1966).

When approaching a green light, if an operator's view of traffic approaching on the intersection road is obstructed, the operator has a duty to make further observation at a point which will enable the operator to take effective steps to avoid a collision. Oelke v. Earle, *supra*, at 483. See also Battice v. Michaelis, 255 Wis. 571, 576, 39 N.W.2d 702 (1949).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If "driver" is more appropriate to the evidence, then substitute "driver" for "operator."

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1192 DUTY OF OPERATOR APPROACHING INTERSECTION WHEN AMBER LIGHT SHOWS**

A safety statute provides that an operator facing a yellow signal shown with or following a green light, shall stop before entering the intersection unless so close to it that a stop cannot be made in safety.<sup>1</sup>

If you find that the yellow or amber light, which signifies caution, was showing before (operator) entered the intersection, then (operator) was required to stop unless (he) (she) was so close to the traffic signal that a stop could not be made in safety.

**NOTES**

Wis. Stat. § 346.37(1)(b).

**COMMENT**

The instruction and comment were originally published in their present form in 1966. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”



**1193 RED TRAFFIC CONTROL LIGHT SIGNALING STOP**

A safety statute provides that vehicles facing a red traffic light shall stop before entering the crosswalk on the near side of an intersection, or, if there is no crosswalk, at a point indicated by a clearly visible sign or other marking, or if there is no sign or marking, before entering the intersection, and shall remain standing until a green light or other signal permitting movement is shown.<sup>1</sup>

**NOTES**

1. Wis. Stat. § 346.37(1)(c).

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 2008. This revision was approved by the Committee in September 2021.



**1193.5 FLASHING RED TRAFFIC CONTROL LIGHT**

When a red traffic control light is illuminated with rapid intermittent flashes, operators of vehicles shall stop before entering the intersection at the nearest crosswalk or at a limit line if marked, or, if there is no crosswalk or limit line, then before entering the intersection; the right to proceed is subject to the rules applicable after making a stop at a stop sign.<sup>1</sup>

[Here add appropriate parts of Wis JI-Civil 1325 Stop at Stop Signs.]

**NOTES**

1. Wis. Stat. § 346.39(1).

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 2008. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1195 RIGHT OF WAY: LEFT TURN AT INTERSECTION**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that the operator of a vehicle within an intersection intending to turn to the left across the path of any vehicle approaching from the opposite direction shall yield the right of way to that vehicle.<sup>2</sup>

The word “approaching” involves a concept of nearness in space and time. A vehicle is approaching an intersection when it is not so far distant from the intersection that, considering the speed at which it is traveling, it is reasonable to assume that a collision will occur if the operator of the vehicle intending to turn left undertakes to do so by changing the course of the vehicle from the right lane, across the center line, and into the path of the oncoming vehicle.

If you find that the oncoming vehicle was approaching the intersection, it became the duty of the operator turning left to yield the right of way to the approaching vehicle.

**NOTES**

1. Wis. Stat. § 340.01(51).

2. Wis. Stat. § 346.18(2).

**COMMENT**

The instruction and comment were originally published in their present form in 1967. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

Wis. Stat. § 346.18(7) provides: “The operator of any vehicle intending to turn to the left into an alley or private driveway across the path of any vehicle approaching from the opposite direction shall yield the right of way to such vehicle.” Thus this statute does impose a duty on the left turning operators independent of lookout. Zartner v. Scopp, 28 Wis.2d 205, 216, 137 N.W.2d 107 (1965).

For the definition of “intersection,” see Wis. Stat. § 340.01(25).

See Plog v. Zolper, 1 Wis.2d 517, 529, 85 N.W.2d 492 (1957).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1205 RIGHT OF WAY: MOVING FROM PARKED POSITION**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that the operator of any vehicle that has been parked or standing shall, while moving the vehicle from its position, yield the right of way to all vehicles approaching on the highway.<sup>2</sup>

A vehicle is said to be “approaching” when it is not so far distant that, considering the rate of speed at which it is traveling, it would be reasonable to assume that a collision would occur if the vehicle parked or standing is put in motion and moved onto the roadway and into the path of the oncoming vehicle.

If you find that the oncoming vehicle on the highway was approaching, then it became the duty of the operator of the parked or standing vehicle, while moving it from its position, to yield the right of way to a vehicle approaching on the highway.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.18(5).

**COMMENT**

The instruction and comment were originally published in their present form in 1960 and revised in 2008. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1210 RIGHT OF WAY: ON APPROACH OF EMERGENCY VEHICLE**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that upon the approach of any authorized emergency vehicle giving audible signal by siren, the operator of a vehicle shall yield the right of way and shall immediately operate the vehicle to a position as near as possible and parallel to the right curb or to the right hand edge of the shoulder of the roadway, clear of any intersection and, unless otherwise directed by a traffic officer, shall stop and remain standing in such position until the authorized emergency vehicle has passed.<sup>2</sup>

[The (type of vehicle) was an emergency vehicle, as defined in the statutes.]

[Note: In the alternative, the language of Wis. Stat. § 340.01(3)(a), (b), (c), (d), (e), (f), or (g) may appropriately be used in defining “emergency vehicle.”]

“Audible” means capable of being heard.<sup>3</sup>

“Roadway” means that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel.<sup>4</sup>

If you find that the emergency vehicle of (name) was approaching, giving audible signal by siren, then it became the duty of (name) to yield the right of way.

**NOTES**

1. Wis. Stat. § 340.01(51).

2. Wis. Stat. § 346.19(1).

3. The definition of “audible” is its common meaning.
4. “Roadway” is defined in Wis. Stat. § 340.01(54).

#### COMMENT

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 2008. An editorial correction was made in 1996. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

As to “audible signal,” see Frankland v. Peterson, 268 Wis. 394, 397, 67 N.W.2d 865, 866 (1955); Swinkles v. Wisconsin Michigan Power Co., 221 Wis. 280, 287 88, 267 N.W. 1, 4 5 (1936).

If the fact of hearing the signal is in issue, and the evidence warrants, it may be desirable to expand the definition of “audible” to cover a siren in good operating condition, and a reasonably attentive vehicle operator or pedestrian. The operator giving the signal need not show that the signal was actually heard by the operator. Werner Trans. Co. v. Zimmerman, 201 F.2d 687, 691 (1953). Testimony that the signal was not heard may be negative testimony and may require an instruction on the value of such testimony. Anderson v. Stricker, 266 Wis. 1, 5 6, 62 N.W.2d 396, 398 (1953); Hunter v. Sirianni Candy Co., 233 Wis. 130, 132 33, 288 N.W. 766, 769 (1939); Zenner v. Chicago, St. P., M. & O. Ry., 219 Wis. 124, 126 27, 262 N.W.2d 581, 582 83 (1935). See Wis JI-Civil 315, Negative Testimony.

This instruction is based on the assumption that there is no issue on the emergency nature of the vehicle involved. If this issue develops, it may require a separate preliminary question with an instruction defining emergency vehicles.

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1220 RIGHT OF WAY: PEDESTRIAN'S DUTY: AT PEDESTRIAN CONTROL SIGNAL**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that no pedestrian may start to cross the roadway (or other vehicular crossing) in the direction of a “Don’t Walk” signal, but a pedestrian who has partially completed crossing on the “Walk” signal may proceed to a sidewalk or safety island while the “Don’t Walk” signal is showing.<sup>2</sup>

If you find that (pedestrian) was facing a “Don’t Walk” signal, then it was (pedestrian)’s duty before entering into the roadway to yield the right of way to an approaching vehicle on the roadway. If, however, you find that (pedestrian) started to cross the roadway on a “Walk” signal and had partially completed crossing when the signal turned to “Don’t Walk,” then (pedestrian) had the right to proceed to the (sidewalk) (safety island).

**NOTES**

1. Wis. Stat. § 340.01(51).

2. Wis. Stat. § 346.38(2).

See City of Hartford v. Godfrey, 92 Wis.2d 815, 286 N.W.2d 10 (Ct. App. 1979); Schoenauer v. Wendinger, 49 Wis.2d 415, 182 N.W.2d 441 (1971).

**COMMENT**

The instruction and comment were originally published in 1960. The comment was updated in 1989. Editorial changes were made in 1992 to address gender references in the instruction. The instruction was

revised in 1992 and 2008. This revision was approved by the Committee in September 2021.

The first paragraph refers to Wis. Stat. §§ 340.01(51) and 346.38(2). See City of Hartford v. Godfrey, 92 Wis.2d 815, 286 N.W.2d 10 (Ct. App. 1979); Schoenauer v. Wendinger, 49 Wis.2d 415, 182 N.W.2d 441 (1971).

“Roadway” is defined in Wis. Stat. § 340.01(54).

See Sub. (1) of § 346.38 giving the pedestrian the right of way if on a “walk” signal.

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1225 RIGHT OF WAY: PEDESTRIAN'S DUTY: CROSSING AT CONTROLLED INTERSECTION OR CROSSWALK**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that at an intersection or crosswalk where traffic is controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who has started to cross the highway on a green or “Walk” signal and in all other cases pedestrians shall yield the right of way to vehicles lawfully proceeding directly ahead on a green signal.<sup>2</sup>

If you find that at (intersection), where traffic was controlled by (traffic control signals) (a traffic officer), (pedestrian) was in the act of crossing the highway on the (green) (Walk) signal, then (pedestrian) was entitled to the right of way over an approaching vehicle. However, if you find that (pedestrian) was not crossing or had not started to cross the highway on a (green) (Walk) signal, then it became (pedestrian)’s duty to yield the right of way to an approaching vehicle on the highway proceeding directly ahead on the (green) signal.

**NOTES**

1. Wis. Stat. § 340.01(51).

2. Wis. Stat. § 346.23(1).

See also, See City of Hartford v. Godfrey, 92 Wis.2d 815, 286 N.W.2d 10 (Ct. App. 1979); Schoenauer v. Wendinger, 49 Wis.2d 415, 182 N.W.2d 441 (1971).

**COMMENT**

The instruction and comment were originally published in their present form in 1972. This comment was updated in 1989 and 2008. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

For the definition of “intersection,” see Wis. Stat. § 340.01(25); for “traffic control signal,” see § 340.01(39); for “pedestrian,” see 340.01(43); and for “crosswalk,” see § 340.01(10)(a) and (b). For the right of way at intersections or crosswalks on divided highways or highway provided with safety zones, see Wis. Stat. § 346.23(2).

An instruction defining “crosswalk” was approved in Van Galder v. Snyder, 254 Wis. 120, 123, 35 N.W.2d 187, 188 89 (1948). The changing of a light does not justify an operator of a vehicle to move forward until a reasonable opportunity is given to the pedestrian to reach the sidewalk. Raaber v. Brzoskowski, 204 Wis. 319, 321, 236 N.W. 133, 134 (1931).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1230 RIGHT OF WAY: PEDESTRIAN'S DUTY: CROSSING ROADWAY AT POINT OTHER THAN CROSSWALK**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that a pedestrian crossing a roadway at any point other than within a marked or unmarked crosswalk shall yield the right of way to all vehicles upon the roadway.<sup>2</sup>

If you find that (pedestrian) was crossing the roadway at a point other than a marked or unmarked crosswalk, then it became (pedestrian)’s duty to yield the right of way to a vehicle approaching on the roadway.

**NOTES**

1. Wis. Stat. § 340.01(51).

2. Wis. Stat. § 346.25.

See also, the notes to these sections in Wis. Stat. Annot.

**COMMENT**

The instruction and comment were originally published in their present form in 1972. The comment was updated in 1989. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

For the definition of “roadway,” see Wis. Stat. § 340.01(54); for “marked” or “unmarked crosswalk,” see § 340.01(10)(a) and (b).

Wis. Stat. § 891.44 provides an exception to § 346.25, and this instruction is not to be given when the pedestrian is a child under 7 years of age. Thoreson v. Milwaukee & Suburban Transp. Corp., 56 Wis.2d 231, 201 N.W.2d 745 (1972).

The duty of a pedestrian to yield the right of way under Wis. Stat. § 346.25 is absolute, regardless of

any negligence on the part of the operator. Failure to yield is causal negligence as a matter of law. Field v. Vinograd, 10 Wis.2d 500, 505, 103 N.W.2d 671 (1960); Staples v. Glienke, 142 Wis.2d 19, 416 N.W.2d 920 (Ct. App. 1987).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1235 RIGHT OF WAY: PEDESTRIAN'S DUTY: DIVIDED HIGHWAYS OR HIGHWAYS WITH SAFETY ZONES**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that at intersections or crosswalks on divided highways or highways provided with safety zones where traffic is controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who has started to cross the roadway either from the near curb or shoulder or from the center dividing strip or safety zone with the green or “Walk” signal in his or her favor.<sup>2</sup> If the signal turns against a pedestrian before the pedestrian leaves the center dividing space or safety island, the pedestrian shall yield the right of way to vehicles lawfully proceeding directly ahead on a green signal.

If you find that at (intersection on a divided highway), where traffic was controlled by traffic control signals, (pedestrian) was in the act of crossing the roadway from the near curb or shoulder with the (green) (Walk) signal in (his) (her) favor, then (pedestrian) was entitled to the right of way over an approaching vehicle. However, if you find that the signal turned against (pedestrian) before (he) (she) left the center dividing space or safety island, then it was (pedestrian)’s duty to yield the right of way to a vehicle on the roadway lawfully proceeding directly ahead on the (green) signal.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.23(2).

**COMMENT**

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

For the definition of specific words and phrases, see Wis. Stat. § 340.01.

The instruction should be changed to accommodate it to the factual situation, as to crosswalk, or divided highway, or highways provided with safety zones, or if traffic is controlled by a traffic officer.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1240 RIGHT OF WAY: PEDESTRIAN'S DUTY: FACING GREEN ARROW**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that no pedestrian facing a green arrow signal shall enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic.<sup>2</sup>

If you find that (pedestrian) was facing a green arrow, then it became (pedestrian)’s duty, before entering onto the roadway, to yield the right of way to an approaching vehicle unless (pedestrian) could enter the roadway safely and without interference with vehicle traffic on the roadway.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.37(1)(d)(2).

**COMMENT**

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

“Roadway” is defined in Wis. Stat. § 340.01(54).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1245 RIGHT OF WAY: PEDESTRIAN'S DUTY: FACING RED SIGNAL**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that no pedestrian facing a red signal shall enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic.<sup>2</sup>

If you find that (pedestrian) was facing a red signal, then it was (pedestrian)’s duty before entering onto the highway to yield the right of way to an approaching vehicle unless (he) (she) could enter the roadway safely and without interference with traffic on the roadway.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.37(1)(c)(2).

**COMMENT**

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

“Roadway” is defined in Wis. Stat. § 340.01(54).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.





**1250 RIGHT OF WAY: PEDESTRIAN'S DUTY: STANDING OR LOITERING ON HIGHWAY**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway<sup>1</sup> and, further provide, that no person shall be on a roadway for the purpose of soliciting a ride from the operator of any vehicle other than a public passenger vehicle.<sup>2</sup>

If you find that (pedestrian) was on the roadway for the purpose of soliciting a ride from the operator of any vehicle other than a public passenger vehicle, then it was (pedestrian)’s duty to yield the right of way to a vehicle approaching on the roadway.

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.29(1).

**COMMENT**

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

The instruction should be changed to accommodate it to the factual situation if the pedestrian is loitering on the roadway, as prohibited by Wis. Stat. § 346.29(2), or if the pedestrian is on a bridge, or approach thereto, to fish or swim, in violation of signs prohibiting his or her presence thereon for such purpose, as prohibited by subsection (3).

“Roadway” is defined in Wis. Stat. § 340.01(54).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a

crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1255 RIGHT OF WAY: PEDESTRIAN’S DUTY AT UNCONTROLLED INTERSECTION OR CROSSWALK; SUDDENLY LEAVING CURB OR PLACE OF SAFETY**

A safety statute provides that at an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who is crossing the highway within a marked or unmarked crosswalk.

“Right of way” means the privilege of the immediate use of the roadway.<sup>1</sup>

The statute further provides that a pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is difficult for the operator of the vehicle to yield the right of way.<sup>2</sup>

If you find that (pedestrian) suddenly left the curb [or other place of safety] and walked or ran into the path of (operator)’s vehicle which was so close that it was difficult for (operator) to yield, then (operator) did not have a duty to yield the right of way; but if you find that (pedestrian) did not enter the roadway, then it became the duty of (operator) to yield the right of way to (pedestrian).

**NOTES**

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.24(2).

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

Wis JI-Civil 1165 covers the duty of the motorist to yield the right of way to a pedestrian crossing an uncontrolled intersection within a crosswalk. Wis JI-Civil 1225 covers the right of way situation where the pedestrian crosses at a controlled intersection or crosswalk. Wis JI-Civil 1230 covers the duty of a pedestrian who crosses at a point other than a crosswalk.

This instruction covers the situation where the pedestrian is within the crosswalk but has darted into the street from a place of safety. Other combinations of pedestrian motorist right of way situations can be handled in the manner suggested by this instruction.

Hintz v. Mielke, 15 Wis.2d 258, 263, 112 N.W.2d 720 (1961); Schoenauer v. Wendinger, 49 Wis.2d 415, 182 N.W.2d 441 (1971); Schueler v. City of Madison, 49 Wis.2d 695, 183 N.W.2d 116 (1971).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1260 POSITION ON HIGHWAY: PEDESTRIAN'S DUTY; WALKING ON HIGHWAY**

A safety statute provides that a pedestrian walking along and upon a highway other than a sidewalk shall walk on and along the left side of the highway and upon meeting a vehicle shall, if practicable, step to the extreme outer edge of the traveled portion of the highway. The traveled portion of the highway includes the shoulder.<sup>1</sup>

If you find that (pedestrian) was on the left side of the highway as (he) (she) walked on and along it, then it became (pedestrian)'s duty upon meeting a vehicle, if it could be practicably done by (him) (her), to step to the extreme outer limits of the traveled portion of the highway.

**NOTES**

1. Wis. Stat. § 346.28(1).

**COMMENT**

This instruction and comment were approved in 1977. The comment was updated in 1989. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

Pedestrian walking on right side of highway is negligent as a matter of law. Panzer v. Hesse, 249 Wis. 340, 24 N.W.2d 613 (1946); Staples v. Glienke, 142 Wis.2d 19, 416 N.W.2d 920 (Ct. App. 1987).

The traveled portion of the highway includes the shoulder. Wojciechowski v. Baron, 274 Wis. 364, 80 N.W.2d 424 (1957).

The jury may find a pedestrian walking on the edge of the blacktop roadway not negligent. Dahl v. Ellis, 35 Wis.2d 441, 151 N.W.2d 61 (1967).

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

**1265 RIGHT OF WAY: PERSONS WORKING ON HIGHWAY**

A safety statute provides that an operator of a vehicle shall yield the right of way to persons engaged in maintenance or construction work on a highway whenever the operator is notified of their presence by flagmen or warning signs.<sup>1</sup>

“Right of way” means the privilege of the immediate use of the roadway.<sup>2</sup>

If you find that (plaintiff) was engaged in maintenance or construction work on a highway at the time and place in question and that a flagman or warning signs were present to notify (defendant) of (plaintiff)’s presence and occupation, then it became the duty of (defendant) to yield the right of way to (plaintiff).

**NOTES**

1. Wis. Stat. § 346.27.
2. Wis. Stat. § 40.01(51).

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

As to the lessened duty of care imposed on persons so engaged in highway construction, see Knowles v. Stargel, 261 Wis. 106, 109 10, 52 N.W.2d 387 (1952); Gunning v. King, 249 Wis. 176, 180 81, 23 N.W.2d 602 (1946); Isgro v. Plankington Packing Co., 176 Wis. 507, 514 16, 186 N.W. 606 (1922).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”





**1270 RIGHT OF WAY: WHEN VEHICLE USING ALLEY OR NONHIGHWAY ACCESS TO STOP**

A safety statute provides that the operator of a vehicle emerging from an alley or about to cross or enter a highway from any point of access other than another highway shall stop the vehicle immediately prior to moving onto the sidewalk, or onto the sidewalk area extending across the path of the vehicle, and shall yield the right of way to any pedestrian, and upon crossing or entering the roadway shall yield the right of way to all vehicles approaching on the roadway.<sup>1</sup>

“Right of way” means the privilege of the immediate use of the roadway.<sup>2</sup>

The words “emerging from” mean “leaving or coming out of.”

“Point of access,” means “a place where an entry can be made onto a highway.”

**NOTES**

1. Wis. Stat. § 346.47(1).

2. Wis. Stat. § 340.01(51).

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 2008. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

Wis. Stat. § 346.18(4) provides for yielding the right of way to vehicles approaching on the highway under these circumstances. Wis JI-Civil 1175 Right of Way: Entering Highway from an Alley or Non Highway Access Point covers this situation.

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.



**1275 RIGHT OF WAY: WHEN YIELD SIGN INSTALLED**

A safety statute provides that the operator of a vehicle when approaching any intersection at which has been installed a yield right of way sign, shall yield the right of way to other vehicles which have entered the intersection from an intersecting highway or which are approaching so closely on the intersecting highway as to constitute a hazard of collision and, if necessary, shall reduce speed or stop to yield.<sup>1</sup>

“Right of way” means the privilege of the immediate use of the roadway.<sup>2</sup>

**NOTES**

1. Wis. Stat. § 346.18(6)
2. Wis. Stat. § 340.01(51)

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 2008. This revision was approved by the Committee in September 2021.

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”



**1393 LIABILITY OF A PARTICIPANT IN A RECREATIONAL ACTIVITY**

A person participating in recreational activities, including (specify recreational activity, e.g., camping), accepts the risk inherent in the recreational activity of which the ordinary prudent person is or should be aware.

A participant in a recreational activity must do all of the following:

1. Act within the limits of his or her ability.
2. Heed all warnings regarding participating in the recreational activity.
3. Maintain control of his or her person and the (equipment) (devices) (animals) he or she is using while participating in the activity.
4. Refrain from acting in any manner that may cause or contribute to the death or injury to himself or herself or to other persons while participating in the recreational activity.

A participant who fails to do so is negligent.

**COMMENT**

This instruction and comment were approved in September 2021.

This instruction provides the duties of a recreational participant pursuant to Wis. Stat. § 895.525(4)(a).

See Wis. Stat. Sec. 895.525(2)(b) for the definition of “recreational activity”.

For liability of contact sports participants, see Wis JI-Civil 2020.

§ 895.525 “does not impose a greater duty on an individual than that which exists under the common law.” Rockweit by Donohue v. Senecal, 197 Wis.2d 409, 417, 541 N.W.2d 742.

In Ansani v. Cascade Mountain, Inc., 223 Wis.2d 39, 49, 588 N.W.2d 321 (Ct. App. 1998), the court

of appeals concluded that pursuant to § 895.525, a skier had a duty to exercise ordinary care to avoid foreseeable harms, including adherence to four statutorily enumerated conditions stated in subsec. (4). Additionally, citing Rockweit, supra, the Ansani court concluded that § 895.525 does not mandate that all who ski are negligent under all circumstances as a matter of law. 223 Wis.2d 39 at 49.

See Wis JI-Civil 1005 for the definition of “ordinary care.”

**Wis. Stat. § 895.525; Jury Instructions.** The court in Ansani, supra, held that the trial court properly instructed the jury that the person participating in the recreational activity of skiing was obligated to comply with all four conditions enumerated in § 895.525(4) and that the participant had a duty of ordinary care to avoid foreseeable harms. 223 Wis.2d 39 at 59. This was opposed to instructing the jury that the participant was negligent as a matter of law solely because he skied. Id. at 59.



---

---

# WISCONSIN JURY INSTRUCTIONS

---

## CIVIL

---

---

## VOLUME II

---

---

**Wisconsin Civil Jury  
Instructions Committee**

- 2022 Supplement (Release No. 53)





## WIS JI-CIVIL

## TABLE OF CONTENTS

## VOLUME II

## NEGLIGENCE (Continued)

- 1500 Cause (2021)
- 1501 Cause: Normal Response (1998)
- 1505 Cause: Where Cause of Death is in Doubt (1998)
- 1506 Cause: Relation of a Medical Procedure to the Accident (1998)
- 1510 Negligent Infliction of Severe Emotional Distress (Bystander Claim) (2014)
- 1511 Personal Injuries: Negligent Infliction of Severe Emotional Distress  
(Separate or Direct Claim) (2018)

## Comparative Negligence

- 1580 Comparative Negligence: Plaintiff and One or More Defendants (2011)
- 1582 Comparative Negligence: Adult and Child (1990)
- 1585 Comparative Negligence: Plaintiff-Guest and Host-Defendant Negligent (1992)
- 1590 Comparative Negligence: Plaintiff-Guest Passively Negligent; Host (Or Other  
Driver) Negligent (2003)
- 1591 Comparative Negligence: Guest Passively Negligent; Claims Against and  
Among Drivers; Apportionment from One Comparative Negligence  
Question (2015)
- 1592 Comparative Negligence: Guest Passively Negligent; Claims Against and  
Among Drivers; Apportionment of Comparative Negligence from Two  
Questions (2003)
- 1595 Comparative Negligence: Where Negligence or Cause Question Has Been  
Answered by Court (1990)

## Imputed Negligence

- 1600 Servant: Driver of Automobile (Presumption from Ownership of Vehicle)  
(2003)

- 1605 Driver: Scope of Employment (2014)
- 1610 Joint Adventure (Enterprise): Automobile Cases (1990)

**Damages**

- 1700 Damages: General (2016)
- 1705 Damages: Burden of Proof in Tort Actions: Future Damages [Withdrawn 2001]
- 1707 Punitive Damages: Nonproducts Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707A Punitive Damages: Products Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707.1 Punitive Damages: Nonproducts Liability (2018)
- 1707.2 Punitive Damages: Products Liability (2008)
- 1708 Battery: Punitive Damages: Mitigation by Provocation [Withdrawn © 2010]
- 1710 Aggravation of Injury Because of Medical Negligence (2015)
- 1715 Aggravation of Pre-existing Injury (1990)
- 1720 Aggravation or Activation of Latent Disease or Condition (1992)
- 1722 Damages from Nonconcurrent or Successive Torts (1992)
- 1722A Damages from Nonconcurrent or Successive Torts (To be used where several tortfeasors are parties) (1996)
- 1723 Enhanced Injuries (2009)
- 1725 Further Injury in Subsequent Event (2003)
- 1730 Damages: Duty to Mitigate: Physical Injuries (2012)
- 1731 Damages: Duty to Mitigate: Negligence or Breach of Contract (2012)
- 1732 Damages: Duty to Mitigate: Intentional Tort (2012)
- 1735 Damages: Not Taxable as Income (1990)
- 1740 Damages: Common Scheme or Plan; Concerted Action (Wis. Stat. § 895.045(2)) (2009)
- 1741 Personal Injuries: Negligence in Informing the Patient (2015)
- 1742 Personal Injuries: Medical Care: Offsetting Benefit from Operation Against Damages for Negligence in Informing the Patient (2015)
- 1749 Personal Injuries: Conversion Table for 1998 Revision of Damage Instructions (1998)
- 1750.1 Personal Injuries: Subdivided Question as to Past and Future Damages (1998)
- 1750.2 Personal Injuries: Past and Future: One Verdict Question (Except Past Loss of Earnings and Past Medical Expenses) (1998)
- 1754 Personal Injury: One Subdivided Question as to Past Damages [Withdrawn © 1998]
- 1756 Personal Injuries: Past Health Care Expenses (2015)

**CONTENTS****WIS JI-CIVIL****CONTENTS**

1757	Personal Injuries: Past Health Care Expenses (Medical Negligence Cases) (Negligence of Long-Term Care Provider): Collateral Sources (2013)
1758	Personal Injuries: Future Health Care Expenses (2010)
1760	Personal Injuries: Past Loss of Earning Capacity (2016)
1762	Personal Injuries: Future Loss of Earning Capacity (2022)
1766	Personal Injuries: Past Pain, Suffering, and Disability (Disfigurement) (2009)
1767	Personal Injuries: Future Pain, Suffering, and Disability (Disfigurement) (1999)
1768	Personal Injuries: Past and Future Pain, Suffering, and Disability (Disfigurement) (1998)
1770	Personal Injuries: Severe Emotional Distress (2006)
1780	Personal Injuries: Loss of Business Profits [Withdrawn 1998]
1785	Personal Injuries: Past Loss of Professional Earnings [Withdrawn 1998]
1788	Loss of Earnings: Delay in Obtaining Degree [Withdrawn 1999]
1795	Personal Injury: Life Expectancy and Mortality Tables (1992)
1796	Damages: Present Value of Future Losses (2003)
1797	Damages: Effects of Inflation (1993)
1800	Property: Loss of Use of Repairable Automobile (1997)
1801	Property: Loss of Use of Nonrepairable Automobile (1997)
1803	Property: Destruction of Property (2010)
1804	Property: Damage to Repairable Property (2010)
1805	Property: Damage to Nonrepairable Property (2010)
1806	Property: Damage to a Growing Crop (1997)
1810	Trespass: Nominal Damages (2013)
1812	Quantum Meruit: Measure of Services Rendered (1992)
1815	Injury to Spouse: Loss of Consortium (2012)
1816	Injury to Spouse: Past Loss of Earning Capacity: Household Services (1993)
1817	Injury to Spouse: Future Loss of Earning Capacity: Household Services (2001)
1820	Injury to Spouse: Nursing Services: Past and Future (1992)
1825	Injury to Wife: Medical and Hospital Expenses [Withdrawn 1995]
1830	Injury to Wife: Medical and Hospital Bills: Dispute over Ownership of Claim [Withdrawn 1995]
1835	Injury to Minor Child: Parent's Damages for Loss of Child's Earnings and Services: Past and Future (2001)
1837	Injury to Minor Child: Parent's Damages for Loss of Society and Companionship (2001)
1838	Injury to Parent: Minor Child's Damages for Loss of Society and Companionship (2001)
1840	Injury to Minor Child: Parents' Damages for Medical Expenses: Past and Future (1996)
1845	Injury to Child: Parents' Damages for Services Rendered to Child: Past and Future (1992)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

1850	Estate's Recovery for Medical, Hospital, and Funeral Expenses (2016)
1855	Estate's Recovery for Pain and Suffering (2018)
1860	Death of Husband: Pecuniary Loss [Withdrawn 1992]
1861	Death of Spouse (Domestic Partner): Pecuniary Loss (2010)
1865	Death of Wife: Pecuniary Loss [Withdrawn 1992]
1870	Death of Spouse: Surviving Spouse's Loss of Society and Companionship (2019)
1875	Death of Spouse: Medical, Hospital, and Funeral Expenses (1992)
1880	Death of Parent: Pecuniary Loss (2016)
1885	Death of Adult Child: Pecuniary Loss (2001)
1890	Damages: Death of Minor Child: Premajority Pecuniary Loss (2001)
1892	Damages: Death of Minor Child: Postmajority Pecuniary Loss (2001)
1895	Death of Child: Parent's Loss of Society and Companionship (2019)
1897	Death of Parent: Child's Loss of Society and Companionship (2019)

### Safe Place

1900.2	Safe-Place Statute: Duty of Employer (1992)
1900.4	Safe-Place Statute: Injury to Frequenter: Negligence of Employer or Owner of a Place of Employment (2022)
1901	Safe-Place Statute: Definition of Frequenter (1996)
1902	Safe-Place Statute: Negligence of Plaintiff Frequenter (2004)
1904	Safe-Place Statute: Public Buildings: Negligence of Owner (1990)
1910	Safe-Place Statute: Place of Employment: Business (1990)
1911	Safe-Place Statute: Control (1992)

### Nuisance

1920	Nuisance: Law Note (2019)
1922	Private Nuisance: Negligent Conduct (2010)
1924	Private Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
1926	Private Nuisance: Intentional Conduct (2010)
1928	Public Nuisance: Negligent Conduct (2010)
1930	Public Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
1932	Public Nuisance: Intentional Conduct (2010)

**INTENTIONAL TORTS****Assault and Battery**

- 2000 Intentional Tort: Liability of Minor (2014)
- 2001 Intentional Versus Negligent Conduct (1995)
- 2004 Assault (2011)
- 2005 Battery (2011)
- 2005.5 Battery: Offensive Bodily Contact (2015)
- 2006 Battery: Self-Defense (2013)
- 2006.2 Battery: Self-Defense; Defendant's Dwelling, Motor Vehicle, Place of Business;  
Wis. Stat. § 895.62 (2016)
- 2006.5 Battery: Defense of Property (2013)
- 2007 Battery: Liability of an Aider and Abettor (2011)
- 2008 Battery: Excessive Force in Arrest (2002)
- 2010 Assault and Battery: Offensive Bodily Contact [Renumbered JI-Civil- 2005.5  
2011]
- 2020 Sports Injury: Reckless or Intentional Misconduct (2018)

**False Imprisonment**

- 2100 False Imprisonment: Definition (2014)
- 2110 False Imprisonment: Compensatory Damages (2014)
- 2115 False Arrest: Law Enforcement Officer; Without Warrant (1993)

**Federal Civil Rights**

- 2150 Federal Civil Rights: §§ 1981 and 1982 Actions (1993)
- 2151 Federal Civil Rights: § 1983 Actions [Withdrawn 2014]
- 2155 Federal Civil Rights: Excessive Force in Arrest (in Maintaining Jail Security)  
[Withdrawn 2014]

**Conversion**

- 2200 Conversion: Dispossession (2014)
- 2200.1 Conversion: Refusal to Return Upon Demand (Refusal by Bailee) (1993)
- 2200.2 Conversion: Destruction or Abuse of Property (1991)
- 2201 Conversion: Damages (2016)

**Misrepresentation**

- 2400 Misrepresentation: Bases for Liability and Damages - Law Note for Trial Judges (2021)
- 2401 Misrepresentation: Intentional Deceit (2018)
- 2402 Misrepresentation: Strict Responsibility (2018)
- 2403 Misrepresentation: Negligence (2018)
- 2405 Intentional Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2405.5 Strict Responsibility: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2406 Negligent Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Out of Pocket Rule) (2014)
- 2418 Unfair Trade Practice: Untrue, Deceptive, or Misleading Representation: Wis. Stat. § 100.18(1) (2021)
- 2419 Property Loss Through Fraudulent Misrepresentation: Wis. Stat. § 895.446 (Based on Conduct (Fraud) Prohibited by Wis. Stat. § 943.20) (2018)
- 2420 Civil Theft: Wis. Stat. § 895.446 (Based on Conduct (Theft) Prohibited by Wis. Stat. § 943.20(1)(a)) (2019)

**Defamation**

- 2500 Defamation - Law Note for Trial Judges (2016)
- 2501 Defamation: Private Individual Versus Private Individual, No Privilege (2003)
- 2505 Defamation: Truth as a Defense (Nonmedia Defendant) (2014)
- 2505A Defamation: Truth of Statement (First Amendment Cases) (1989)
- 2507 Defamation: Private Individual Versus Private Individual with Conditional Privilege (2020)
- 2509 Defamation: Private Individual Versus Media Defendant (Negligent Standard) (2003)
- 2510 Defamation: Truth as Defense Where Plaintiff Charged with Commission of a Crime [Withdrawn 1993]
- 2511 Defamation: Public Figure Versus Media Defendant or Private Figure with Constitutional Privilege (Actual Malice) (2003)
- 2512 Defamation: Truth as Defense Where Plaintiff Not Charged with Commission of a Crime [Withdrawn 1993]
- 2513 Defamation: Express Malice (1993)
- 2514 Defamation: Effect of Defamatory Statement or Publication [Withdrawn 1993]
- 2516 Defamation: Compensatory Damages (1991)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 2517 Defamation: Conditional Privilege: Abuse of Privilege [Renumbered JI-Civil 2507 1993]
- 2517.5 Defamation: Public Official: Abuse of Privilege [Renumbered JI-Civil 2511 1993]
- 2518 Defamation: Express Malice [Renumbered JI-Civil 2513 1993]
- 2520 Defamation: Punitive Damages (2003)
- 2550 Invasion of Privacy (Publication of a Private Matter) Wis. Stat. § 995.50(2)(c) (2015)
- 2551 Invasion of Privacy: Highly Offensive Intrusion; Wis. Stat. § 995.50(2)(a) (2011)
- 2552 Invasion of Privacy: Publication of a Private Matter: Conditional Privilege (2003)

### Misuse of Procedure

- 2600 Malicious Prosecution: Instituting a Criminal Proceeding (2022)
- 2605 Malicious Prosecution: Instituting a Civil Proceeding (2022)
- 2610 Malicious Prosecution: Advice of Counsel: Affirmative Defense (Criminal Proceeding) (2015)
- 2611 Malicious Prosecution: Advice of Counsel: Affirmative Defense (Civil Proceeding) (2015)
- 2620 Abuse of Process (2013)

### Trade Practices

- 2720 Home Improvement Practices Act Violation; Wisconsin Administrative Code Chapter ATPC 110; Wis. Stat. § 100.20 (2013)
- 2722 Theft by Contractor (Wis. Stat. § 779.02(5)) (2015)

### Domestic Relations

- 2725 Intentional Infliction of Emotional Distress (2020)

### Business Relations

- 2750 Employment Relations: Wrongful Discharge - Public Policy (2020)
- 2760 Bad Faith by Insurance Company (Excess Verdict Case) (2003)
- 2761 Bad Faith by Insurance Company: Assured's Claim (2012)
- 2762 Bad Faith by Insurance Company: Third Party Employee Claim Against Worker's Compensation Carrier [Withdrawn] (2009)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 2769 Wisconsin Fair Dealership Law: Existence of Dealership (2020)
- 2770 Wisconsin Fair Dealership Law: Good Cause for Termination, Cancellation, Nonrenewal, Failure to Renew, or Substantial Change in Competitive Circumstances (Wis. Stat. § 135.03) (2022)
- 2771 Wisconsin Fair Dealership Law: Adequate Notice by Grantor (Wis. Stat. § 135.04) (2005)
- 2772 Wisconsin Fair Dealership Law: Special Verdict (2005)
- 2780 Intentional Interference with Contractual Relationship (2020)
- 2790 Trade Name Infringement (2022)
- 2791 Trade Name Infringement: Damages (2010)

### Civil Conspiracy

- 2800 Conspiracy: Defined (2018)
- 2802 Conspiracy: Proof of Membership (2003)
- 2804 Conspiracy: Indirect Proof (2003)
- 2806 Conspiracy to be Viewed as a Whole (1993)
- 2808 Conspiracy between Affiliated Corporations [Withdrawn 2009]
- 2810 Conspiracy: Overt Acts (2003)
- 2820 Injury to Business: (Wis. Stat. § 134.01) (2008)
- 2822 Restraint of Will (Wis. Stat. § 134.01) (2003)

### Tort Immunity

- 2900 Tort Immunity: Immunities Abrogated - Law Note for Trial Judges (1993)

## CONTRACTS

### General

- 3010 Agreement (2011)
- 3012 Offer: Making (1993)
- 3014 Offer: Acceptance (1993)
- 3016 Offer: Rejection (1993)
- 3018 Offer: Revocation (1993)
- 3020 Consideration (1993)
- 3022 Definiteness and Certainty (1993)
- 3024 Implied Contract: General (1993)
- 3026 Implied Contract: Promise to Pay Reasonable Value (1993)
- 3028 Contracts Implied in Law (Unjust Enrichment) (2020)



## CONTENTS

## WIS JI-CIVIL

## CONTENTS

3030	Modification by Mutual Assent (1993)
3032	Modification by Conduct (1993)
3034	Novation (1993)
3040	Integration of Several Writings (1993)
3042	Partial Integration: Contract Partly Written, Partly Oral (1993)
3044	Implied Duty of Good Faith (Performance of Contract) (2007)
3045	Definitions – “Bona Fide” (1993)
3046	Implied Promise of No Hindrance (1993)
3048	Time as an Element (2016)
3049	Duration (2016)
3050	Contracts: Subsequent Construction by Parties (1993)
3051	Contracts: Ambiguous Language (2012)
3052	Substantial Performance (1994)
3053	Breach of Contract (2007)
3054	Demand for Performance (2014)
3056	Sale of Goods: Delivery or Tender of Performance (1993)
3057	Waiver (2018)
3058	Waiver of Strict Performance (1993)
3060	Hindrance or Interference with Performance (1993)
3061	Impossibility: Original (1993)
3062	Impossibility: Supervening (1993)
3063	Impossibility: Partial (1993)
3064	Impossibility: Temporary (1993)
3065	Impossibility: Superior Authority (1993)
3066	Impossibility: Act of God (1993)
3067	Impossibility: Disability or Death of a Party (1993)
3068	Voidable Contracts: Duress, Fraud, Misrepresentation (2016)
3070	Frustration of Purpose (2020)
3072	Avoidance for Mutual Mistake of Fact (2014)
3074	Estoppel: Law Note for Trial Judges (2018)
3076	Contracts: Rescission for Nonperformance (2001)
3078	Abandonment: Mutual (1993)
3079	Termination of Easement by Abandonment (2022)
3082	Termination of Servant’s Employment: Indefinite Duration (1993)
3083	Termination of Servant’s Employment: Employer’s Dissatisfaction (1993)
3084	Termination of Servant’s Employment: Additional Consideration Provided by Employee (1993)

**Real Estate**

- 3086 Real Estate Listing Contract: Validity: Performance (2019)
- 3088 Real Estate Listing Contract: Termination for Cause (1993)
- 3090 Real Estate Listing Contract: Broker's Commission on Sale Subsequent to  
Expiration of Contract Containing "Extension" Clause (1993)
- 3094 Residential Eviction: Possession of Premises (2020)
- 3095 Landlord - Tenant: Constructive Eviction (2013)

**1762 PERSONAL INJURIES: FUTURE LOSS OF EARNING CAPACITY**

(Question \_\_\_\_\_) (Subdivision \_\_\_\_\_ of question \_\_\_\_\_) asks what sum of money will fairly and reasonably compensate (plaintiff) for future loss of earning capacity.

If you are satisfied that (plaintiff) has suffered a loss of future earning capacity as a result of the injuries sustained in the accident, your answer to this question will be the difference between what (plaintiff) will reasonably be able to earn in the future in view of the injuries sustained and what (he) (she) would have been able to earn had (he) (she) not been injured.

**[Where appropriate add the following paragraph:** Because (plaintiff) was the owner and operator of a business at the time of the accident, you should, in determining (his) (her) loss of future earning capacity, consider the character and size of the business, the capital and labor employed in the business, (and) the extent and quality of (plaintiff)'s services to the business, (and the profits of the business).]

While the plaintiff has the burden of establishing loss of future earning capacity, the evidence relating to this item need not be as exact or precise as evidence needed to support your findings as to other items of damage. The reason for this rule is that the concept of (loss of future earning capacity) requires that you consider factors which, by their very nature, do not admit of any precise or fixed rule. You, therefore, are not required in determining the loss of future earning capacity to base your answer on evidence which is

exact or precise but rather upon evidence which, under all of the circumstances of the case, reasonably supports your determination of damages.

## COMMENT

This instruction and comment were approved in 1998 and revised in 2000 and 2003. This revision was approved by the Committee in October 2021; it added to the comment.

**Burden.** The injured party bears the burden “to establish to a reasonable certainty the damages sustained[.]” Ghiardi, James D., Personal Injury Damages in Wisconsin (1964). “The evidence must be sufficient to enable the jury to estimate with reasonable probability what would have happened had the injury not occurred.” Schulz v. St. Mary’s Hosp., 81 Wis. 2d 638, 657, 260 N.W.2d 783 (1978).

**Determining damages.** Damages for loss of earning capacity are “generally arrived at by comparing what the injured party was capable of earning before and after the time of the injury.” Klink v. Cappelli, 179 Wis. 2d 624, 630, 508 N.W.2d 435 (Ct. App. 1993). Without a showing of evidence, “the jury must speculate or conjecture as to the amount of lost earning capacity.” Klink, supra, at 630, citing Schulz v. St. Mary’s Hosp., 81 Wis.2d 638, 658, 260 N.W.2d 783, 790 (1978). The Wisconsin Supreme Court has held that the jury may not “speculate” when it determines a damages award for loss of future earning capacity. Ianni v. Grain Dealers Mut. Ins. Co., 42 Wis. 2d 354, 364, 166 N.W.2d, 148 (1969).

**Evidence of permanent injury.** “It is true that evidence of a permanent injury may be sufficient in itself for the inference of a loss of earning capacity where the nature of the injury by common knowledge disables the plaintiff from performing the only type of work he or she is fitted to do, but, except in such situation, the fact of injury, standing alone, is not sufficient to establish a loss of earning capacity.” Ianni, supra, at 363, citing Wells v. National Indemnity Co. (1968), 41 Wis.2d 1, 162 N.W.2d 562.

**Loss of Earning Capacity – Business Profits.** Where an injured plaintiff is the owner and operator of a business, the profits of which business are mainly dependent on plaintiff’s personal exertions, the profits of the business, along with all other evidence pertaining to the operation of the business, may be considered in determining plaintiff’s loss of earning capacity. However, if the income of the business is chiefly the result of capital invested, the labor of others, or other factors than the personal services of the owner, evidence of business profits should not be received. See Featherly v. Continental Ins. Co., 73 Wis.2d 273, 243 N.W.2d 806 (1976).

**Evidence of Future Loss.** See Comment to Wis. JI-Civil 1760. The last paragraph of the instruction was previously contained in Wis JI-Civil 1705 as a general instruction. The Committee believed it was important and more convenient to users to add this general language from Wis JI-Civil 1705 to each instruction on future loss of earning capacity and pecuniary loss.

**1900.4 SAFE PLACE STATUTE: INJURY TO FREQUENTER: NEGLIGENCE  
OF EMPLOYER OR OWNER OF A PLACE OF EMPLOYMENT**

**(Give Wis JI-Civil 1005.)**

Question 1 asks: Was (defendant) negligent in failing to (construct) (repair) (maintain) the premises as safe as the nature of its business would reasonably permit.

The Wisconsin Legislature enacted a law which is known as the Safe-Place Statute, which applies to this case. That law imposes a duty upon (defendant) in this case to (construct) (repair) (maintain) the premises upon which (plaintiff) was injured so as to make them safe. The law requires (defendant) to (furnish and use safety devices and safeguards) (adopt and use methods and processes) reasonably adequate to render the place of employment safe. Violation of this law is negligence.

The term “safe” or “safety,” as used in this law, does not mean absolute safety. The term “safe” or “safety,” as applied to the premises in this case, means such freedom from danger to the life, health, safety, or welfare of (plaintiff) as the nature of the premises will reasonably permit.

(Defendant) was not required to guarantee (plaintiff)’s safety but rather was required to (construct) (repair) (maintain) the premises as safe as the nature of the place would reasonably permit.

In determining whether (defendant)’s premises were as free from danger as its nature would permit, you will consider the adequacy of the (construction) (repair) (maintenance) of the premises, bearing in mind the nature of the business and the manner in which the business is customarily conducted.

[**Note:** The following paragraph should not be given where the defect is a structural defect: To find that (defendant) failed to (construct) (repair) (maintain) the premises in question as safe as the nature of the place reasonably permitted, you must find that (defendant) had actual notice of the alleged defect in time to take reasonable precautions to remedy the situation or that the defect existed for such a length of time before the accident that (defendant) or its employees in the exercise of reasonable diligence (this includes the duty of inspection) should have discovered the defect in time to take reasonable precautions to remedy the situation. However, this notice requirement does not apply where (defendant)’s affirmative act created the defect.]

#### COMMENT

The instruction and comment were approved by the Committee in 1974. The instruction was revised in 1986, 1992, 1995, 1996, 1998, and 2003. This instruction was renumbered in 1976 from Wis JI-Civil 1900. The comment was updated in 1990, 1993, 1995, 1998, 2001, 2003, 2004, 2006, 2014, and 2020. This revision was approved by the Committee in September 2021, it added to the comment.

See Petoskey v. Schmidt, 21 Wis.2d 323, 124 N.W.2d 1 (1963); For the form of the question, see Petoskey, *supra*; Krause v. V. F. W. Post 6498, 9 Wis.2d 547, 101 N.W.2d 645 (1960).

The safe-place statute imposes a higher standard of care than ordinary negligence at common law, Krause, *supra*; Saxhaug v. Forsyth Leather Co., 252 Wis. 376, 31 N.W.2d 589 (1948); Dykstra v. Arthur G. McKee & Co., 92 Wis.2d 17, 26, 284 N.W.2d 692 (1979); Topp v. Continental Ins. Co., 83 Wis.2d 780,

266 N.W.2d 397 (1978). Although the safe-place statute establishes a higher standard, failure of a safe place claim does not necessarily preclude a common law negligence claim arising out of the same condition. A safe-place statute addresses the condition of the premises while the common law claim looks at negligent acts. Megal v. Green Bay Area Visitor & Convention Bureau, et al., 2004 WI 98, Case No. 02-2932.

The giving of common-law negligence instruction followed by the safe-place instruction was approved in Carr v. Amusement, Inc., 47 Wis.2d 368, 375, 177 N.W.2d 388 (1970).

Although the statute creates a presumption that an injury was caused by a violation of the statute, the presumption does not establish as a matter of law that the defendant's negligence was greater than the plaintiff's, Brons v. Bischoff, 89 Wis.2d 80, 88, 277 N.W.2d 854 (1979); Fondell v. Lucky Stores, supra; Imnus v. Wisconsin Public Ser. Corp., 260 Wis. 433, 51 N.W.2d 42 (1952).

In reading Wis. Stat. § 101.11, it is suggested that parts dealing solely with employment be omitted, as well as other portions inappropriate under the facts of the case. A community-based residential facility, as defined in Wis. Stat. § 50.01(1), is a place of employment. Wis. Stat. § 101.11(3).

This instruction applies to an injury to a frequenter. For the definition of "frequenter," see Wis. Stat. § 101.01(2)(e) and JI-Civil 1901. Independent contractor employee as frequenter – McNally v. Goodenough, 5 Wis.2d 293, 300, 92 N.W.2d 890 (1958); Dykstra, supra; Sampson v. Laskin, 66 Wis.2d 318, 326, 224 N.W.2d 594 (1975); Hortman v. Becker Constr. Co., Inc., 92 Wis.2d 210, 226, 284 N.W.2d 621 (1979).

The definition of "safe" and "safety" is from Wis. Stat. § 101.01(2)(g).

**Nature of Business.** Neitzke v. Kraft-Phenix Dairies, Inc., 214 Wis. 441, 446, 253 N.W. 579 (1934). Free from danger – Olson v. Whitney Bros. Co., 160 Wis. 606, 612-13, 150 N.W. 959 (1915); Dykstra v. Arthur G. McKee & Co., supra; Topp v. Continental Ins. Co., supra, at 788; Fondell v. Lucky Stores, Inc., 85 Wis.2d 220, 230-31, 270 N.W.2d 205 (1978). An Elks Club was held to be a "place of employment" in Schmorrow v. Sentry Ins. Co., 138 Wis.2d 31, 405 N.W.2d 672 (Ct. App. 1987).

The defendant is not a guarantor of a frequenter's safety. Hipke v. Industrial Comm'n, 261 Wis. 226, 52 N.W.2d 401 (1952).

A business is not an insurer of a frequenter's safety. Zehren v. F. W. Woolworth Co., supra; Dykstra, supra; Stefanovich v. Iowa Nat'l Mut. Ins. Co., 86 Wis.2d 161, 166, 271 N.W.2d 867 (1978); May v. Skelly Oil Co., 83 Wis.2d 30, 36, 264 N.W.2d 574 (1978).

Safety is a relative, not an absolute, term. Sykes v. Bensinger Recreation Corp., 117 F.2d 964, 967 (7th Cir. 1941); Heckel v. Standard Gateway Theater, 229 Wis. 80, 281 N.W. 640 (1938); May v. Skelly, supra.

The statutory duty is to make the place as safe as the nature and place of employment will reasonably permit. Mullen v. Larson-Morgan Co., 212 Wis. 52, 249 N.W. 67 (1933); Saxhaug v. Forsyth Leather Co., supra. This duty is not a lesser standard than that imposed by the common law, Balas v. St. Sebastian's Congregation, 66 Wis.2d 421, 425, 225 N.W.2d 428 (1975).

A place is safe if it is as free from danger as the nature of the employment will reasonably permit when used in a customary or usual manner for the work intended or in such a manner as an ordinarily prudent and careful person might anticipate it might be used. Olson v. Whitney Bros. Co., *supra*; Topp v. Continental, *supra*.

The words “construction” or “constructing” should be used when, on the facts, faulty construction is involved.

**Notice.** Werner v. Gimbel Bros., 8 Wis.2d 491, 99 N.W.2d 708 (1959). There is no requirement of notice where the condition was created by the party sought to be charged. Merriman v. Cash-Way, Inc., 35 Wis.2d 112, 150 N.W.2d 472 (1967); Kosnar v. J. C. Penney Co., 6 Wis.2d 238, 242, 277, 132 N.W.2d 595 (1965). Or where the alleged defect is a structural defect Hannebaum v. DiRenzo & Bomier, 162 Wis.2d 488, 469 N.W.2d 900 (Ct. App. 1991); see also Fitzgerald v. Badger State Mut. Casualty Co., 67 Wis.2d 321, 227 N.W.2d 444 (1975). Also, if the defendant claims that no defective condition existed, then proof of notice is not necessary. Petoskey v. Schmidt, *supra*.

The employer must have notice of the defect except where the alleged defect is a structural defect, Fitzgerald, *supra*. Krause v. V. F. W. Post 6498, *supra*; Petric v. Gridley Dairy Co., 202 Wis. 289, 232 N.W. 595 (1930). As to the length of time of notice required, see Bergevin v. Chippewa Falls, 82 Wis. 505, 52 N.W. 588 (1892); Topp v. Continental Ins. Co., *supra* at 780; Fitzgerald v. Badger State Mut. Casualty Co., *supra*, at 326; Dykstra, *supra*; May v. Skelly Oil Co., *supra*, at 36.

**Defect Versus Unsafe Condition.** This instruction provides that a property owner is liable for injuries caused by a structural defect regardless of whether the owner knew or should have known that the defect existed. However, where the property condition that causes the injury is an unsafe condition associated with the structure, the owner is liable only if it had actual or constructive notice of the condition. This instruction contains an optional paragraph to be used in cases involving a structural defect. This paragraph reads:

[**Note:** The following paragraph should not be given where the defect is a structural defect. To find that (defendant) failed to (construct) (repair) or (maintain) the premises in question as safe as the nature of the place reasonably permitted, you must find that (defendant) had actual notice of the alleged defect in time to take reasonable precautions to remedy the situation or that the defect existed for such a length of time before the accident that (defendant) or its employees in the exercise of reasonable diligence (this includes the duty of inspection) should have discovered the defect in time to take reasonable precautions to remedy the situation. However, this notice requirement does not apply where (defendant)’s affirmative act created the defect.]

A decision of the supreme court discussed whether a loose stairway nosing that caused the plaintiff to fall down stairs was a “structural defect” or an “unsafe condition associated with the structure.” The trial judge found that the loose nosing was a structural defect and, therefore, did not instruct the jury on notice. The court said that the classification of the loose nosing was a question of law. Barry v. Employers Mut. Casualty Co., 2001 WI 101, 245 Wis.2d 560, 630 N.W.2d 517. The court concluded that the nosing was an “unsafe condition.” Thus, the court said the plaintiff was required to prove the defendant property owner had notice of the condition. Because the jury was not instructed on the notice issue, the court said the case



was not fully tried and remanded the case. For a discussion of defect versus unsafe condition, see Mair v. Trollhaugen Ski Resort, 2006 WI 61, 291 Wis.2d 132, 715 N.W.2d 598.

**Constructive Notice.** Constructive notice requires evidence as to the length of time that the condition existed Kaufman v. State Street Ltd. Partnership, 187 Wis.2d 54, 59 (Ct. App., 1994). An owner or employer is deemed to have constructive notice when that defect or condition has existed a long enough time for a reasonably diligent owner to discover and repair it. May v. Skelley Oil Co., 83 Wis.2d 30, 36 (1978); Strack v. Great Atlantic & Pacific Tea Co., 35 Wis.2d 51, 55 (1967). Determining the exact point in time at which an unsafe condition commenced is not an essential condition in establishing constructive notice. Although a plaintiff is still obligated to prove the unsafe condition lasted long enough to establish constructive notice, it is not necessary for the plaintiff to locate the “temporal commencement” of the unsafe condition if the evidence shows it existed long enough to give a reasonably diligent owner an opportunity to discover and remedy it. Correa v. Woodman's Food Market, 2020 WI 43, ¶26, 391 Wis. 2d 651, 943 N.W.2d 535.

“Speculation as to how long the unsafe condition existed and what reasonable inspection would entail are insufficient to establish constructive notice.” Kochanski v. Speedway SuperAmerica, LLC, 2014 WI 72, ¶36, 356 Wis.2d 1, 850 N.W.2d 160. Therefore, before a case may reach the jury, the plaintiff “must present a quantum of evidence sufficient to render the eventual answer non-speculative.” See Correa v. Woodman's Food Market, *supra*, at 662.

Length of time required for constructive notice depends on the surrounding facts and circumstances, including the nature of the business and the nature of the defect. May, 83 Wis.2d 30 at 37. The need for “length of time” evidence (and therefore any constructive notice) is obviated where harm from the method of merchandising is reasonably foreseeable. See Strack, 35 Wis.2d 51 at 55.

**Duty to Inspect.** Wisconsin Bridge and Iron Co. v. Industrial Comm’n, 8 Wis.2d 612, 618, 99 N.W.2d 817 (1959). There is no duty to inspect and warn unless it is shown that the premises were not in a reasonably safe condition. Balas v. St. Sebastian’s, *supra*.

**Acts of Operation Versus an Unsafe Condition.** In Stefanovich v. Iowa Nat’l Mut. Ins. Co., *supra*, at 166, the court stated that liability under the safe-place statute is based on unsafe conditions, not unsafe acts. See also Korenak v. Curative Workshop Adult Rehabilitation Center, 71 Wis.2d 77, 84, 237 N.W.2d 43 (1976). Similarly, the court in Leitner v. Milwaukee County, 94 Wis.2d 186, 195, 287 N.W.2d 803 (1980), concluded that injuries to a frequenter caused by unsafe conditions of an employer’s premises are covered by the safe-place statute, while injuries caused by negligent, inadvertent, or even intentional acts committed therein are not. See also Viola v. Wisconsin Electric Power Co., 352 Wis.2d 541, 842 N.W.2d 515 (2014).

**Recreational Use Immunity.** If a private property owner is immune from liability under Wis. Stat. § 895.52(2), the owner is not subject to liability under the safe-place statute. However, if the recreational use immunity of § 895.52(2) is negated by Wis. Stat. § 895.52(6) (because the owner collects over \$500 in payments), then the safe-place statute may apply to premises used for recreational purposes. Douglas v. Dewey, 154 Wis.2d 451, 453 N.W.2d 500 (Ct. App. 1990).

**Construction statute of repose.** Wis. Stat. § 893.89 sets forth a seven-year statute of repose during which a plaintiff must bring an action for injuries resulting from improvements to real property. The

“construction statute of repose” bars safe place claims “resulting from injuries caused by structural defects, but not by unsafe conditions associated with the structure,” beginning seven years after a structure is substantially completed. See Mair, supra, at ¶29. For purposes of determining whether the construction statute of repose is applicable, the fundamental inquiry is “whether the safe place claims resulted from an injury caused by a structural defect or by an unsafe condition associated with the structure.” Nooyen v. Wisconsin Electric Power Company, 390 Wis.2d 687, ¶12, 939 N.W.2d 621 (Ct. App. 2020). See also the comment on “Defect Versus Unsafe Condition” above.

Wisconsin Stat. § 893.89(4)(a)-(d) creates four exceptions to which the construction statute of repose does not apply. See, Hocking v. City of Dodgeville, 2010 WI 59, 326 Wis.2d 115, 785 N.W.2d 398, and Soletski v. Krueger International, Inc., 2019 WI App 7, 385 Wis.2d 787, 924 N.W.2d 207 concerning exceptions to the statute of repose.

**2600 MALICIOUS PROSECUTION: INSTITUTING A CRIMINAL PROCEEDING**

Question \_\_\_\_\_ asks did (defendant) maliciously prosecute (plaintiff).

To establish malicious prosecution, (plaintiff) must prove the following six elements:

- 1) A criminal proceeding was brought against (plaintiff).
- 2) (Defendant) was actively involved in instituting the criminal proceeding (prosecution) against (plaintiff).
- 3) The criminal proceeding was terminated in favor of (plaintiff).
- 4) (Defendant) acted with malice in instituting the criminal proceeding (prosecution).
- 5) The criminal charges were made without probable cause.
- 6) (Plaintiff) suffered damages as a result of the criminal proceeding (prosecution) on those charges.

The fourth element requires that (defendant) acted with malice in instituting the criminal proceeding in causing (the prosecution) (charges to be brought). A person acts with malice when he or she has a hostile or vindictive motive, or acts primarily for a purpose other than bringing a guilty person to justice.

The fifth element relates to whether the charges made by (defendant) were without probable cause. This element is satisfied if, at the time (defendant) made the charges against (plaintiff), (defendant) knew or had reason to believe that (plaintiff) was not guilty of the

charge(s). There is no probable cause if you are satisfied that (defendant) did not have sufficient facts concerning (plaintiff)'s conduct that would lead a person of ordinary caution and prudence to believe (plaintiff) had committed a criminal offense.

It is not enough that (plaintiff) establish that (defendant) acted with malice in instituting the criminal proceeding (in causing the prosecution); (plaintiff) must also prove that (defendant) had no probable cause to make the charges.

### **SPECIAL VERDICT**

Question 1: Did (defendant) maliciously prosecute (plaintiff)?

Answer: \_\_\_\_\_

(Yes or No)

Question 2: What sum of money will compensate (plaintiff) for [insert damages]?

Answer: \_\_\_\_\_

### **COMMENT**

The instruction and comment were initially approved by the Committee in 1966. The instruction and comment were revised in 1986, 1991, 2014, and 2015. This revision was approved by the Committee in September 2021; it added to the comment.

**Elements.** The six essential elements in an action for malicious prosecution are:

- (1) a prior institution of judicial proceedings against the plaintiff;
- (2) such former proceedings must have been put in motion by or at the instance of the defendant in the malicious prosecution action;

- (3) such proceedings must have terminated in favor of the defendant in such criminal proceedings;
- (4) malice in instituting the former proceedings;
- (5) want of probable cause for instituting the former proceedings;
- (6) damage.

See Strid v. Converse, 111 Wis.2d 418, 331 N.W.2d 350 (1983); Elmer v. Chicago & N.W. Ry., 257 Wis. 228, 43 N.W.2d 244 (1950).

The first three elements may be determined by the court. Ordinarily, the first three elements do not arise in a malicious prosecution action, as they are generally established beyond question by the records in the criminal proceedings. Therefore, no special instruction is necessary on these elements.

The fourth element, “malice in instituting the criminal proceedings,” and the fifth element, lack of probable cause, are submitted in this instruction.

**Instigation of Prior Proceedings.** A party will be found to have instigated prior criminal proceedings against the present plaintiff if that party was instrumental in prosecuting the present plaintiff. Thus, the malicious swearing and signing of a criminal complaint can satisfy the instigation-of-prior-proceedings element for malicious prosecution. Peters v. Hall, 263 Wis. 450, 57 N.W.2d 723 (1952). But, no malicious prosecution action will lie where the defendant supplied the authorities with information and the prosecution was begun only after the authorities conducted their own independent investigation. Pollock v. Vilter Mfg. Corp., 23 Wis.2d 29, 126 N.W.2d 602 (1964).

**Element 3; Termination of Prior Criminal Actions.** A termination of the original proceeding resulting from a voluntary settlement or agreement between the parties does not satisfy the “favorable termination” element and, thus, bars a subsequent malicious prosecution suit. Lechner v. Ebenreiter, 235 Wis. 244, 292 N.W. 913, 916 (1940). However, the discharge by an examining magistrate, or a nolle prosequi by the district attorney, except under certain circumstances, does satisfy the “favorable termination” element. Id. at 917. Additionally, dismissal of one count of a criminal complaint does not constitute favorable termination of the proceedings where the defendant in the prior action is convicted on another count arising out of the same incident. Heilgeist v. Chasser, 98 Wis.2d 97, 295 N.W.2d 26 (Ct. App. 1980).

**Element 4; Malice.** The plaintiff must prove that the defendant acted “maliciously” in order to recover in a malicious prosecution suit. Meyer v. Ewald, 66 Wis.2d 168, 224 N.W.2d 419 (1974). While the voluntary dismissal of the prior proceeding may be used to establish the lack of probable cause for the prior action, a voluntary dismissal may not be used to infer the existence of malice. Id.; Yelk v. Seefeldt, 35 Wis.2d 271, 151 N.W.2d 4 (1967). There must be some independent evidence of conduct from which improper motives can be inferred. Id. Malice may be proven by showing “malice in fact” or “malice in law.” Meyer, supra.

“Malice in fact” involves situations where the defendant acted chiefly from motives of ill will. Id. A willful and wanton disregard for the facts or law may provide a basis for malice in fact but such willful and wanton conduct must be of such a nature and character as to evince a hostile or vindictive motive. Id.

“Malice in law” may exist even when the defendant cannot be shown to have acted from motives of

actual ill will or vindictiveness. Malice in law exists if evidence is presented from which the jury might infer that the defendant instigated the former proceedings for an improper motive or purpose, that is, for a primary purpose other than bringing an offender to justice. Meyer, supra; Yelk, supra. An example of malice in law is where a criminal prosecution is instituted for the purpose of collecting a debt or compelling the delivery of property. See Peters, supra.

**Element 5; Lack of Probable Cause for the Prior Proceedings.** Lack of probable cause is an essential element for an action for malicious prosecution. Krieg v. Dayton-Hudson Corp., 104 Wis.2d 455, 311 N.W.2d 641 (1981). Probable cause is an objective standard measured by the reasonably prudent person's belief in the cause of action in light of the facts known or reasonably ascertainable. Id. However, probable cause for the prior action is not necessarily lacking where the present defendant acted without knowledge of all of the facts or acted negligently. See Neumann v. Industrial Sound Engineering, Inc., 31 Wis.2d 471, 143 N.W.2d 543 (1966).

For prior criminal proceedings, the court should not apply the state of mind of a prosecutor in determining whether a private party had probable cause to believe that another person committed a crime. Rather, the court should decide whether there was a quantum of evidence that would lead an ordinary and reasonable layman in the circumstances to believe that the present plaintiff committed a crime. Hajec v. Novitzke, 46 Wis.2d 402, 175 N.W.2d 193 (1970). Discharge of the present plaintiff in the prior criminal proceeding is prima facie evidence of want of probable cause. Id.

**Advice of Counsel.** Advice of counsel is an affirmative defense. If the defense of advice of counsel is in the case, then the Committee suggests that the trial judge submit that question to the jury first. In Elmer, supra, the court held that advice of counsel is a complete defense. This was affirmed in Peters v. Hall, 263 Wis. 450, 57 N.W.2d 723 (1953).

If full disclosure of all facts within the knowledge of the defendant was made to the district attorney or his lawyer for the purpose of obtaining legal guidance and the disclosure results in advice which is honestly followed in commencing the criminal proceedings, such proof constitutes a complete defense. The result is that one of the essential elements of malicious prosecution, i.e., want of probable cause, is negated and the entire malicious prosecution action fails. Also, in some instances, the determination of whether there has been such a full and fair disclosure is a matter of law and not properly for the jury. See Smith v. Federal Rubber Co., 170 Wis. 497, 175 N.W. 808 (1920).

**Differences Between Abuse of Process and Malicious Prosecution.** For a discussion of the differences between the tort of malicious prosecution and abuse of process, see Brownsell v. Klawitter, 102 Wis.2d 108, 306 N.W.2d 41 (1981), Strid v. Converse, 111 Wis.2d 418, 331 N.W.2d 350 (1983), and Maniaci v. Marquette University, 50 Wis.2d 287, 184 N.W.2d 168 (1971).

**Burden of Proof.** The Committee believes the burden of proof to establish malicious prosecution is the middle burden. See Wis JI-Civil 205.

**2605 MALICIOUS PROSECUTION: INSTITUTING A CIVIL PROCEEDING**

Question \_\_\_\_\_ asks: did (plaintiff) maliciously prosecute (defendant) [by instituting a civil proceeding].

To establish a malicious prosecution based on instituting a civil proceeding, (plaintiff) must prove the following six elements:

- 1) A judicial proceeding was (brought) (continued) against (plaintiff). [Insert type of civil proceeding] is a judicial proceeding.
- 2) The proceeding was (brought) (continued) by, or at the instance of, (defendant).
- 3) The proceeding was terminated in favor of (plaintiff).
- 4) (Defendant) acted with malice in instituting the proceedings.
- 5) The proceeding was instituted without probable cause.
- 6) (Plaintiff) suffered damages as a result of the proceeding.

The fourth element requires that (defendant) acted with malice in instituting the proceeding. A proceeding is maliciously instituted when a person who brings the proceeding has a hostile or vindictive motive or when the person's primary purpose was something other than succeeding on the merits of the claim.

The fifth element relates to whether the proceeding instituted by (defendant) was without probable cause. This element is satisfied if, at the time (defendant) initiated the proceeding against (plaintiff), (defendant) knew or had reason to believe that (plaintiff)

was not [insert facts necessary to establish probable cause]. There is no probable cause if you are satisfied (defendant) did not have sufficient facts concerning (plaintiff)’s conduct that would lead a person of ordinary caution and prudence to believe (plaintiff) [insert facts establishing a claim.]

### **SPECIAL VERDICT**

Question 1: Did (defendant) maliciously prosecute (plaintiff)?

ANSWER: \_\_\_\_\_

(Yes or No)

Question 2: What sum of money will compensate (plaintiff) for [insert damages]?

ANSWER: \_\_\_\_\_

### **COMMENT**

This instruction and comment were approved in 2015. This revision was approved by the Committee in September 2021; it removed language following the elements of the instruction and added to the comment.

See also, the Comment to Wis JI-Civil 2600.

**Institution of a Prior Civil Action.** In Wisconsin, the unjustified institution of a prior criminal or civil action may provide a valid claim for malicious prosecution as long as the other five elements of malicious prosecution are present. Strid v. Converse, 111 Wis.2d 418, 331 N.W.2d 350 (1983); Maniaci v. Marquette Univ., 50 Wis.2d 287, 184 N.W.2d 168 (1970).

**Element 3; Termination of Prior Action in Present Plaintiff’s Favor.** The prior civil action is terminated in the present plaintiff’s favor when the prior action results in a defense verdict or dismissal on the merits with prejudice. However, the voluntary compromise and settlement of a prior civil suit does not satisfy the “favorable termination” element and, thus, bars a subsequent malicious prosecution suit. Thompson v. Beecham, 72 Wis. 2d 356 (1976); Tower Special Facilities, Inc. v. Investment Club, Inc., 104



Wis.2d 221 (Ct. App. 1981); Lechner v. Ebenreiter, 235 Wis. 244, 292 N.W. 913 (1940). Similarly, termination of the prior proceeding by some act, trick, or device of the present defendant does not constitute a “favorable termination.” See Bristol v. Eckhardt, 254 Wis. 297 (1948); Schwartz v. Schwartz, 206 Wis. 420 (1932) (no bar to malicious prosecution suit where settlement of prior action induced by duress).

In Monroe v. Chase, 2021 WI 66, ¶3, 397 Wis.2d 805, 961 N.W.2d 50, the Wisconsin Supreme Court clarified that a withdrawal of a prior proceeding may satisfy the favorable-termination element of a malicious prosecution action. The Court came to this conclusion after adopting the approach of the Restatement (Second) of Torts §674 cmt. J., which “focuses on the circumstances of the termination to determine whether it was favorable.” Id. at ¶20. The Restatement (Second) of Torts §674 cmt. J, provides as follows:

Termination in favor of the person against whom civil proceedings are brought. Civil proceedings may be terminated in favor of the person against whom they are brought . . . by (1) the favorable adjudication of the claim by a competent tribunal, or (2) the withdrawal of the proceedings by the person bringing them, or (3) the dismissal of the proceedings because of his [or her] failure to prosecute them . . . Whether a withdrawal or abandonment constitutes a final termination of the case in favor of the person against whom the proceedings are brought, and whether the withdrawal is evidence of a lack of probable cause for the initiation, depends upon the circumstances under which the proceedings are withdrawn.

Whether or not a withdrawal of a prior proceeding constitutes a favorable termination is a question for a fact-finder. Monroe, supra, at ¶26.

**Element 4; Malice.** The plaintiff must prove that the defendant acted “maliciously” to recover in a malicious prosecution suit. Meyer v. Ewald, 66 Wis.2d 168, 224 N.W.2d 419 (1974). While the voluntary dismissal of the prior proceeding may be used to establish the lack of probable cause for the prior action, the voluntary dismissal may not be used to infer the existence of malice. Id.; Yelk v. Seefeldt, 35 Wis.2d 271, 151 N.W.2d 4 (1967). There must be some independent evidence of conduct from which improper motives can be inferred. Id. Malice may be proven by showing “malice in fact” or “malice in law.” Meyer, supra.

“Malice in fact” involves situations where the defendant acted chiefly from motives of ill will. Id. A willful and wanton disregard for the facts or law may provide a basis for malice in fact but such willful and wanton conduct must be of such a nature and character as to evince a hostile or vindictive motive. Id.

“Malice in law” may exist even when the defendant cannot be shown to have acted from motives of actual ill will or vindictiveness. Malice in law exists if evidence is presented from which the jury might infer that the defendant instigated the former proceedings for an improper motive or purpose, that is, for a primary purpose other than bringing an offender to justice. Meyer, supra; Yelk, supra. An example of malice in law is where a criminal prosecution is instituted for the purpose of collecting a debt or compelling the delivery of property. See Peters v. Hall, 263 Wis. 450, 57 N.W.2d 723 (1953).

**Element 5; Lack of Probable Cause for the Prior Civil Proceedings.** Lack of probable cause is an essential element for an action for malicious prosecution. Krieg v. Dayton-Hudson Corp., 104 Wis.2d

455, 311 N.W.2d 641 (1981). Probable cause is an objective standard measured by the reasonably prudent person's belief in the cause of action in light of the facts known or reasonably ascertainable. Id. However, probable cause for the prior action is not necessarily lacking where the present defendant acted without knowledge of all of the facts or acted negligently. See Neumann v. Industrial Sound Engineering, Inc., 31 Wis.2d 471, 143 N.W.2d 543 (1966).

Probable cause may be lacking with respect to prior civil proceedings where the party initiating the prior proceedings acted without a reasonable belief in the existence of the facts underlying the claim or did not reasonably believe that such facts state a valid claim. Neumann, supra. Generally, for purposes of a malicious prosecution action, no inference of want of probable cause arises from the dismissal of the prior civil proceeding. Novick v. Becker, 4 Wis.2d 432, 90 N.W.2d 620 (1958). However, the dismissal of an involuntary bankruptcy petition or insanity proceeding is prima facie evidence of lack of probable cause because these actions "stand in the same class as a criminal case." Neumann, supra.

**Advice of Counsel.** See Wis JI-Civil 2611.

**Element 6; Damages.** For malicious prosecution suits involving prior civil proceedings, Wisconsin adheres to the minority "English" rule that the plaintiff must plead and prove special damages. Krieg, supra; Schier v. Denny, 9 Wis.2d 340 (1960); Johnson v. Calado, 159 Wis.2d 446; 464 N.W.2d 647 (1991). "Special damages" are injuries in the nature of an interference with the person or property of the present plaintiff by the prior action. See Schier, supra, Myhre v. Hessey, 242 Wis. 638, 9 N.W.2d 106 (1943). Special damages are present where the present plaintiff has been subjected to a wrongfully brought garnishment action (Novick, supra) or a wrongful winding up of a partnership which interfered with the plaintiff's possession and use of property (Luby v. Bennett, 111 Wis. 613 (1901)).

An allegation that the present plaintiff incurred expenses in defending himself against the prior proceeding fails to allege special damages. See Myhre, supra. In Schier, supra, the Wisconsin Supreme Court concluded that the plaintiff's claims of business reputation damage, mental anguish, public ridicule, humiliation, embarrassment, and attorney fees failed to allege such interference with the plaintiff's person or property as to amount to special damages.

**Burden of Proof.** The committee believes the burden of proof to establish malicious prosecution is the middle burden. See Wis JI-Civil 205.

**2770 WISCONSIN FAIR DEALERSHIP LAW: GOOD CAUSE FOR  
TERMINATION, CANCELLATION, NONRENEWAL, FAILURE TO  
RENEW, OR SUBSTANTIAL CHANGE IN COMPETITIVE  
CIRCUMSTANCES (WIS. STAT. § 135.03)**

The plaintiff claims that (grantor) violated the Wisconsin Fair Dealership Law by (terminating) (cancelling) (failing to renew) (substantially changing the competitive circumstances) of its dealership agreement w/ \_\_\_\_\_ without good cause. Question \_\_\_\_ of the special verdict asks:

Was the dealership agreement between (dealer) and (grantor) (e.g. terminated, cancelled, etc.) by (grantor) for good cause?

To answer this question “yes” you must determine whether (grantor) had good cause to (e.g. terminate) the dealership agreement it had with (dealer). The burden of proof on this question is on (grantor) to satisfy you that it had good cause to (e.g. terminate) the dealership agreement.

To determine if good cause existed, you must consider the efforts of (dealer) in fulfilling the terms of the agreement. [(Grantor) had good cause to (e.g. terminate) its dealership agreement with (dealer) if (dealer) did not substantially comply with an essential and reasonable requirement imposed, or sought to be imposed, by (grantor). [A requirement that discriminates against (dealer) and does not apply to other similar dealers either by its terms or in the way it is enforced is not an essential and reasonable requirement.]]

**[Where evidence of bad faith by a dealer is presented: (Grantor) had good cause to**

(insert act) if (dealer) acted in bad faith in carrying out the dealership agreement. Bad faith means an intention to take unfair advantage of (grantor) through fraud, dishonesty, or failure to cooperate or to provide accurate information, or by other activities that render the transaction unfair to (grantor).]

### **SPECIAL VERDICT**

See Wis JI-Civil 2772.

### **COMMENT**

This instruction was approved in 2002 and revised in 2004. This revision was approved by the Committee in January 2022; it revised the language of the instruction to more accurately mirror the statute.

Wis. Stat. § 135.03. For the definition of “good cause,” and the burden of proof, see Wis. Stat. § 135.02(4).

**2790 TRADE NAME INFRINGEMENT**

(Plaintiff) alleges that (defendant) has infringed (plaintiff)’s trade name. Trade names are entitled to protection from infringement to protect the reputation and goodwill of the trade name owner.

A trade name is a word or designation (symbol), or a combination of words or designations, that is used in a manner that identifies a business and distinguishes it from the business or enterprise of others.

To find infringement in this case, you must find first that (plaintiff)’s use of the name “\_\_\_\_\_” is a trade name; and, second, that the use of the name “\_\_\_\_\_” by (defendant) creates a likelihood of confusion among the consuming public with (plaintiff)’s trade name, “\_\_\_\_\_.”

A designation is protectable as a trade name only if the designation is distinctive. Designations can be either inherently distinctive or can acquire distinctiveness, through secondary meaning. Inherently distinctive designations are designations that are likely to be perceived by prospective purchasers as symbols that indicate an association with a particular source. Secondary meaning describes the function of identifying goods or services with a particular or single source. A name that is inherently distinctive does not require secondary meaning to be protectable. A name that is not inherently distinctive requires secondary meaning to be protectable. Secondary meaning occurs when the

consuming public has come to recognize the trade name as one that identifies the business. The consuming public must recognize the trade name as identifying and distinguishing a (plaintiff)'s goods or services. Secondary meaning can be established through: direct evidence, such as consumer testimony or consumer surveys, or through circumstantial evidence, such as evidence of exclusivity, length and manner of the trade name's use, the amount and manner of advertising, amount of sales, market share, and number of customers.

To constitute an infringement, it is not necessary that every word of the trade name be appropriated. It is sufficient that enough be taken to deceive the public. If one word of the trade name is the prominent portion, it may be given greater weight than surrounding words.

(Plaintiff) and (defendant) do not have to be in direct competition for you to find infringement.

[A designation that is understood by prospective customers to denominate the general category of services or business with which it is used is a generic designation. The user of a generic designation, for example, barber shop, lumber company, hospital, or plumber, can never acquire rights in the generic designation as a trade name.]

Once (plaintiff) has established that the designation it seeks to protect is distinctive, either inherently or through secondary meaning, it must prove that (defendant)'s use of a similar designation will cause a likelihood of confusion. In determining whether there is

or was a likelihood of confusion between (plaintiff)'s [trade] name and (defendant)'s use of “\_\_\_\_\_” you may draw on your common experience as citizens of the community.

The factors you may consider in determining likelihood of confusion are:

- the degree of similarity between the names
- the similarity of the products and overlap of marketing channels
- the area and manner of concurrent use
- the degree of care likely to be used by consumers in selecting the (goods) (services)
- the strength and distinctiveness of (plaintiff)'s name
- evidence of actual confusion, and (defendant)'s intent when selecting the name.

No one factor or consideration is conclusive. Each aspect should be weighed in light of the total evidence presented at the trial. However, while actual confusion or deception is not essential to a finding of trade name infringement, this evidence is entitled to substantial weight.

### **SPECIAL VERDICT**

Question 1: Did (plaintiff) establish that its use of the name “\_\_\_\_\_” is a trade name?

ANSWER: \_\_\_\_\_

Yes or No

If you answered “yes” to question 1, then answer the following question.

Question 2: Does (defendant)’s use of the name “\_\_\_\_\_” infringe  
(plaintiff)’s trade name?

If you answered “yes” to question 2, then answer the following question.

Question 3: Was (defendant)’s infringement a cause of damages to (plaintiff)?

ANSWER: \_\_\_\_\_

Yes or No

If you answered “yes” to question 3, then answer the following question.

Question 4: What sum of money, if any, do you award against (defendant) as damages  
for the trade name infringement?

\$ \_\_\_\_\_

#### COMMENT

This instruction and comment were approved in 2009. The comment was updated in 2020. This revision was approved by the Committee in September 2021; it updated the comment.

In Ritter v. Farrow, 2021 WI 14, 395 Wis.2d 787, 955 N.W.2d 122, the Wisconsin Supreme Court provided a brief primer on trademarks and trade names. The Court concluded that while Wisconsin law has long recognized a common law and statutory cause of action for trademark and trade name infringement, “the state’s jurisprudence on trademark law is ‘undeveloped.’” Id. at ¶25. Therefore, the Court provided that it “look to federal law for guidance and key principles, as well as to treatises” when interpreting such infringement matters. Id. at ¶25. See also First Wis. Nat’l Bank of Milwaukee v. Wichman, 85 Wis.2d 54, 63, 270 N.W.2d 168 (1978), Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd., 2004 WI App 129, ¶34, 275 Wis.2d 397, 685 N.W.2d 853.

**Trade Name.** The Wisconsin Supreme Court defined trade name in First Wisconsin National Bank of Milwaukee v. Wichman, 85 Wis.2d 54, 270 N.W.2d 168 (1978), in which the court adopted the rationale of Restatement (Second) of Torts, Tentative Draft No. 8 as the common law in Wisconsin. The court said:



Restatement (Second) of Torts capsulizes this trend of the courts to bring the definitions of trade names and trademarks in harmony with their function. Tentative Draft No. 8 (1963), sec. 715, defines both trademarks and trade names which have acquired a secondary meaning as trademarks. The term, “trade name,” standing alone, refers to a business name. Sec. 716, supra. Sec. 715 defines trademark:

“A trademark is a word, name, symbol, device, letter, numeral, or picture, or any combination of any of them in any form or arrangement, which is used by a person on or in connection with his goods or services in a manner which identifies them as his and distinguishes them from those of others, provided such use is not prohibited by legislative enactment or by an otherwise defined public policy.”

“[i]f a trade name has acquired distinctiveness, or secondary meaning, and thus identifies a particular business entity, the user of such trade name is entitled to protection against infringement of that trade name in the same manner and to the same extent as the user of a trademark which has acquired a secondary meaning, that is, to protect the user of the trade name in his business and to protect the public against confusion and deception. The mere fact of the use of a trade name, however, is not sufficient to entitle the user to enjoin all other uses. It is necessary to show that the effect of the use has been to identify the particular business entity and to distinguish it from others and that the actor’s use of likely to cause confusion and deception.” 85 Wis.2d 54, at p. 62-63; Sec. 717, supra, comment a.

**Infringement Claims; Jury Instructions.** In D. L. Anderson, 2008 WI 126, 314 Wis.2d 560, 757 N.W.2d 803, the Wisconsin Supreme Court discussed the elements, proof, damages, and jury instructions for trade infringement cases.

The supreme court approved the Wichman analysis of trade name infringement for use in jury instructions, in D. L. Anderson’s Lakeside Leisure Co., Inc. v. Anderson:

“¶42 The trade name infringement jury instructions given by the circuit court were based directly on language in Wisconsin case law.[fn15] In First Wisconsin National Bank of Milwaukee v. Wichman, 85 Wis.2d 54, 270 N.W.2d 168 (1978), this court adopted the approach enunciated in the Restatement (Second) of Torts §§ 715, 716, 717 (Tentative Draft No. 8, 1963). There this court said, “[T]he user of [a] trade name is entitled to protection against infringement of that trade name.” Wichman, Page 1985 Wis.2d at 62-63. Spheeris Sporting Goods, Inc. v. Spheeris on Capitol, 157 Wis.2d 298, 459 N.W.2d 581 (Ct. App. 1990), which like this case dealt with a trade name in connection with the purchase of a business appears to be the source of the sections in the jury instructions on trade names that include family names: “Ordinarily, a party has a right to do business under his or her own name. The right may, however, be voluntarily limited by contract. . . . [W]hen a family name is part of a trade name, the family name may be transferred to the purchaser the same as any other asset of the business.” Id. at 308 (citations omitted).

**Elements.** The plaintiff must prove two elements to establish infringement: First, that the plaintiff’s trade name has acquired a secondary meaning, and, second, that there is a likelihood of confusion between plaintiff’s name and the one the defendant is using.

Anderson approved the trial court’s instructions on secondary meaning and likelihood of confusion as

follows:

¶ 50 Next we proceed to the question of whether the evidence was sufficient to support the jury's verdict. The jury was instructed as follows regarding trade name infringement:

When a trade name has acquired a secondary meaning, the name is entitled to protection from unfair competition based on trade name infringement. . . . If you find that plaintiff's trade name has acquired secondary meaning, you must then determine whether there is a likelihood of confusion between plaintiff's trade name, "D. L. Anderson Co." and defendant's name, "Anderson Marine" . . . . It is not necessary to constitute an infringement that every word of the trade name be appropriated. It is sufficient that enough be taken to deceive the public. If one word of the trade name is the salient portion, it may be given greater weight than surrounding words.

¶ 51 The jury instructions thus lay out the two elements a plaintiff must establish to prevail on a trade name infringement Page 23 claim: that the name had secondary meaning and that a second party's use created a likelihood of confusion.

¶ 52 Secondary meaning "describes the function of identifying goods or services with a particular or single source. . . . Key to establishing secondary meaning for a trade name is evidence that the relevant target group mentally identifies the trade name as the single source for the product." Spheeris, 157 Wis.2d at 312 (citations omitted). . .

**Damages for Infringement.** Anderson approved the use of the tort damage instruction, modified Wis JI-Civil 1700. On this point, the supreme court reversed the court of appeals, and clarified that a damage verdict for trade name infringement does not require precise mathematical evidence:

¶ 62 As we noted, the jury was instructed here that the party claiming damages must "satisfy [the jury] by the greater weight of the credible evidence, to a reasonable certainty, that the person sustained damages . . . and the amount of the damages." Wis JI-Civil 1700.

¶ 63 In evaluating the sufficiency of the evidence on a damage award in tort, there is thus a two-step analysis: the fact of damages and the amount.

¶ 64 "[T]he fact of damage need only be proved with reasonable, not absolute, certainty. And once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the nature of the tort and the circumstances of the case permit." 4 Rudolf Callmann, Callmann on Unfair Competition, Trademarks and Monopolies § 23:55 (4th ed. 2003).

**Infringement claims in connection with the purchase of a business.** In Ritter v. Farrow, supra, the Wisconsin Supreme Court, citing McCarthy on Trademarks and Unfair Competition § 18:37 (5th ed. 2019), provided that "It is an 'old and clear rule, universally followed' that when a business is sold, 'trademarks and the good will of the business that the trademarks symbolize are presumed to pass with the sale of the business.'" 2021 WI 14 at ¶27. Therefore, when a business sells the entirety of its assets, the trade name is presumably included, and passes to the buyer.

**Reverse trademark confusion.** For a decision discussing the theory of reverse trademark confusion, see Fabick, Inc. v. JFTCO, Inc., 944 F.3d 649, (7th Cir. 2019).



**3028     CONTRACTS IMPLIED IN LAW (UNJUST ENRICHMENT)**

This case involves a claim based upon alleged unjust enrichment.

The elements of unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) knowledge or appreciation of the benefit by the defendant; and (3) acceptance and retention by the defendant of such benefit under such circumstances that it would be unfair for him or her to retain it without paying the value thereof.

It is not necessary to prove that the recipient of the benefit was at fault or guilty of wrongdoing in any way, but it must be established that as between the parties it would be unfair for the recipient to retain the benefit without paying the reasonable value of the benefit.

A benefit to the defendant may be (services rendered for (defendant)) (goods or merchandise received by (defendant)) (improvements to (defendant)'s real estate) (money paid to (defendant) or someone else on (defendant)'s behalf).

A loss to the plaintiff without an actual benefit to the defendant is not recoverable as unjust enrichment.

If a person declines in advance a benefit to be conferred by another, then the person conferring the benefit may not recover for unjust enrichment.

[It is not a defense to the action that (defendant) is a minor or otherwise incompetent to make a contract, but a minor may show that in equity and good conscience, (plaintiff) is

not entitled to recover in whole or in part.]

[In this case, (plaintiff) has alleged fault or wrongdoing on the part of (defendant) (fraud) (duress) (nonperformance or breach of contract) which is elsewhere in these instructions defined for you. The burden of proof is on (plaintiff) to establish wrongdoing by (defendant).]

#### COMMENT

This instruction was originally approved by the Committee in 1979 and revised in 2015 and 2020. This revision was approved by the Committee in September 2021; it added to the comment.

In cases where an unjust enrichment claim is based on contributions made by one party for the benefit of another, the unjust enrichment claim must demonstrate that, viewed in their entirety, the contributions were made to a “joint enterprise” in which the parties were mutually engaged, and which resulted in an accumulation of wealth that a party had unfairly retained. See Sands v. Menard, 2017 WI 110, ¶43, 379 Wis.2d 1, 904 N.W.2d 789.

“A claim for unjust enrichment may exist when two people work together or when two people combine assets for defendant’s benefit.” See Lawlis v. Thompson, 137 Wis.2d 490, 493, 405 N.W.2d 317 (1987).

**Knowledge of Benefit.** When the benefit conferred can be easily returned, like money for example, the benefited party need not have knowledge or appreciation of the gain at the precise time it is conferred. Instead, the party asserting an unjust enrichment claim satisfies the knowledge or appreciation element by proving that the benefited party had knowledge of or appreciated the benefit at a time which provided the party a fair opportunity to choose whether to accept or reject that benefit. Buckett v. Jante, 2009 WI App.55, 316 Wis.2d 804, 767 N.W.2d 376.

**Subject matter covered in contract.** The doctrine of unjust enrichment does not apply where parties have entered into a contract, and the subject matter of that contract covers the aspects of a plaintiff’s equitable claim. Greenlee v. Rainbow Auction/Realty Co., 202 Wis.2d 653, 671-672, 553 N.W.2d 257 (1996). However, “Wisconsin law does not bar a party from seeking equitable relief for a benefit conferred, if that benefit falls outside the scope of the parties’ contractual relationship.” Meyer v. Laser Vision Inst., LLC, 2006 WI App 70, 290 Wis. 2d 764, 781, 714 N.W.2d 223 quoting Northern Crossarm Co., Inc. v. Chemical Specialties, Inc., 318 F.Supp.2d 752. This is known as the “total business relationship exception.”

**Issue triable of right by a jury.** Recovery based on unjust enrichment is sometimes referred to as an action for “quasi contract,” Watts v. Watts, 137 Wis.2d 506, 530-531, 405 N.W.2d 303 (1987). This doctrine has been a well-recognized and long-accepted as part of Wisconsin law since 1844. See Rogers v.

Bradford, 1 Pinney Wis. 418 (1844). Quasi contracts are legal obligations in the sense that they originated in the courts of law and are enforced by legal remedies. Graf v. Neith Co-op. Dairy Products Association, 216 Wis. 519, 257 N.W. 618, 619 (1934). See also Arjay Investment Co. v. Kohlmetz, 9 Wis.2d 535, 539, 101 N.W.2d 700 (1960), Watts, supra, at 530, and Lawlis, supra, at 496. Because actions on the theory of quasi contract are actions at law, they are triable as of right to a jury. See State v. Schweda, 2007 WI 100, ¶20, 303 Wis.2d 353, 736 N.W.2d 49 (2007).





**3079 TERMINATION OF EASEMENT BY ABANDONMENT**

(Servient landowner) contends that the easement was abandoned by (easement holder). To prove this abandonment, (servient landowner) must prove that (easement holder) has shown by (his) (her) (its) conduct a clear intention to forgo all future uses authorized by the easement. The fact that (easement holder) has not used the easement for (specify period of nonuse, e.g., three years) is not by itself proof of abandonment, but it is evidence that you may consider in deciding whether (he) (she) (it) intended to abandon the easement. You must find that (easement holder)'s conduct clearly indicates an intention to give up the use of the easement for the future as well as for the present.

[Conduct, that is inconsistent with the continued use of the easement, indicates an intention to give it up].

**[Use this paragraph if there is evidence of that the easement holder made verbal expressions indicative on an intent to abandon:** Verbal expressions, by themselves are insufficient to constitute the type of conduct required to forgo all future uses authorized by an easement. However, verbal expressions may give meaning to acts that indicate an intention to abandon an easement but do not conclusively demonstrate such an intention on their own.]

**COMMENT**

This instruction and comment were approved by the Committee in September 2021.

This instruction should be used when a servient landowner sues or defends by claiming that the dominant owner's easement has been abandoned.

In Burkman v. New Lisbon, 246 Wis. 547, 18 N.W.2d 4 (1945), the Wisconsin Supreme Court adopted comments (c) and (d) of the RESTATEMENT OF THE LAW OF PROPERTY, VOL. V, § 504 (1940) to determine whether flowage rights acquired by prescription were lost by abandonment. Comments (c) and (d) read as follows:

c. Conduct as to Use. An intentional relinquishment of an easement indicated by conduct respecting the use authorized by it constitutes an abandonment of the easement. The intention required in the abandonment of an easement is the intention not to make in the future the uses authorized by it. The benefit of an easement lies in the privilege of use of the land subject to it. There is no abandonment unless there is a giving up of that use. The giving up must be evidenced by conduct respecting the use of such a character as to indicate an intention to give up the use for the future as well as for the present. Conduct, when inconsistent with the continuance of the use, indicates an intention to give it up. The conduct required for abandonment cannot consist of verbal expressions of intention. Such expressions are effective to extinguish an easement only when they comply with the requirements of a release and operate as such. Verbal expressions of an intention to abandon are relevant, however, for the purpose of giving meaning to acts which are susceptible of being interpreted as indicating an intention to give up the use authorized by an easement, but which do not give themselves conclusively demonstrate the intention which animated them.

d. Non-use. Conduct from which an intention to abandon an easement may be inferred may consist in a failure to make the use authorized. Non-use does not of itself produce an abandonment no matter how long continued. It but evidences the necessary intention. Its effectiveness as evidence is dependent upon the circumstances. Under some circumstances a relatively short period of non-use may be sufficient to give rise to the necessary inference; under other circumstances a relatively long period may be insufficient. The duration of the period of nonuse, though never conclusive as to the intention to abandon, is ordinarily admissible for the purpose of showing intention in that regard. (Emphasis added).

Comments (c) and (d) of the RESTATEMENT OF THE LAW OF PROPERTY, VOL. V, § 504 (1940) were also adopted by the Wisconsin Court of Appeals in Spencer v. Kosir, 2007 WI App 135, 301 Wis.2d 521, 733 N.W.2d 921 and Bohn v. Leiber, 2020 WI App 52, 393 Wis.2d 757, 948 N.W.2d 370.

**Demonstrating an intention to permanently abandon.** In Spencer v. Kosir, 2007 WI App 135, 301 Wis.2d 521, ¶10, 733 N.W.2d 921, the Wisconsin Court of Appeals noted the requirement that there be an “affirmative act” by the easement holder, rather than the property owner, to show abandonment. For example, despite a significant period of non-use by the easement holder, along with acquiescence in the property owner's non-permitted use of the property, the court found no abandonment since there was a lack of an affirmative action by the easement holder demonstrating his intent to abandon. Id. at ¶¶9-10.

In regard to the affirmative action requirement, Bohn v. Leiber, 2020 WI App 52, 393 Wis.2d 757, 766, 948 N.W.2d 370, is distinguishable from Spencer, supra. In Bohn, the Wisconsin Court of Appeals

determined that the easement holder's comment that "he had 'no intention of ever building a roadway on the easement,' by itself, would be insufficient to constitute abandonment." Additionally, the fact that the easement area was never utilized as a roadway, by itself, would also be insufficient to show abandonment. Id. at 766. However, when these examples were coupled with the easement holder's affirmative act of planting numerous trees within the easement area, the court concluded that there was a question of fact as to whether the easement was abandoned.





---

---

# WISCONSIN JURY INSTRUCTIONS

---

## CIVIL

---

---

## VOLUME III

---

---

**Wisconsin Civil Jury  
Instructions Committee**

- 2022 Supplement (Release No. 53)



**WIS JI-CIVIL****TABLE OF CONTENTS****VOLUME III****CONTRACTS (Continued)****Insurance**

- 3100 Insurance Contract: Misrepresentation or Breach of Affirmative Warranty by the Insured (1998)
- 3105 Insurance Contract: Failure of Condition or Breach of Promissory Warranty (1994)
- 3110 Insurance Contract: Definition of "Resident" or "Member of a Household" (2022)
- 3112 Owner's Permission for Use of Automobile (1993)
- 3115 Failure of Insured to Cooperate (2016)
- 3116 Failure to Cooperate: Materiality (2016)
- 3117 Failure to Give Notice to Insurer (1994)
- 3118 Failure to Give Notice to Insurer: Materiality (2002)

**Breach of Warranty**

- 3200 Products Liability: Law Note (2021)
- 3201 Implied Warranty: Merchantability Defined (2009)
- 3202 Implied Warranty: Fitness for Particular Purpose (1994)
- 3203 Implied Warranty: By Reason of Course of Dealing or Usage of Trade (1994)
- 3204 Implied Warranty: Sale of Food (1994)
- 3205 Implied Warranty: Exclusion or Modification (2009)
- 3206 Implied Warranty: Exclusion by Reason of Course of Dealing or Usage of Trade (1994)
- 3207 Implied Warranty: Use of Product after the Defect Known (2009)
- 3208 Implied Warranty: Failure to Examine Product (2009)
- 3209 Implied Warranty: Susceptibility or Allergy of User (2009)
- 3210 Implied Warranty: Improper Use (1994)

- 3211 Implied Warranty: Notice of Breach (1993)
- 3220 Express Warranty: General (1994)
- 3222 Express Warranty: No Duty of Inspection (1994)
- 3225 Express Warranty: Statement of Opinion (1994)
- 3230 Express Warranty under the Uniform Commercial Code (1994)

**Duties of Manufacturers and Sellers**

- 3240 Negligence: Duty of Manufacturer (2007)
- 3242 Negligence: Duty of Manufacturer (Supplier) to Warn (2020)
- 3244 Negligence: Duty of Manufacturer (Seller) to Give Adequate Instructions as to Use of a Complicated Machine (Product) (1994)
- 3246 Negligence: Duty of Manufacturer (Seller) Who Undertakes to Give Instruction as to the Use of a Machine (Product) (1994)
- 3248 Negligence: Duty of Restaurant Operator in Sale of Food Containing Harmful Natural Ingredients (1994)
- 3250 Negligence: Duty of Seller: Installing (Servicing) Product (1994)
- 3254 Duty of Buyer or Consumer: Contributory Negligence (2015)
- 3260 Strict Liability: Duty of Manufacturer to Ultimate User (For Actions Commenced Before February 1, 2011) (2014)
- 3260.1 Product Liability: Wis. Stat. § 895.047 (For Actions Commenced after January 31, 2011) (2014)
- 3262 Strict Liability: Duty of Manufacturer (Supplier) to Warn (For Actions Commenced Before February 1, 2011) (2014)
- 3264 Strict Liability: Definition of Business (1994)
- 3268 Strict Liability: Contributory Negligence (2015)
- 3290 Strict Products Liability: Special Verdict (For Actions Commenced Before February 1, 2011) (2014)
- 3290.1 Product Liability: Wis. Stat. § 895.047: Verdict (For Actions Commenced after January 31, 2011) (2014)
- 3294 Risk Contribution: Negligence: Verdict (For Actions Commenced Before February 1, 2011) (2014)
- 3295 Risk Contribution: Negligence Claim (For Actions Commenced Before February 1, 2011) (2014)
- 3296 Risk Contribution: Negligence: Verdict (Wis. Stat. § 895.046) (For Actions Commenced after January 31, 2011) (2014)

**Lemon Law**

- 3300 Lemon Law Claim: Special Verdict (2016)



## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 3301 Lemon Law Claim: Nonconformity (2001)
- 3302 Lemon Law Claim: Four Attempts to Repair: Same Nonconformity (1999)
- 3303 Lemon Law Claim: Out of Service Warranty Nonconformity (Warranty on or after March 1, 2014) (2016)
- 3304 Lemon Law Claim: Failure to Repair (Relating to Special Verdict Question 6) (2006)
- 3310 Magnuson–Moss Claim (2020)

### **Damages**

- 3700 Damages: Building Contracts: Measure of Damages (2012)
- 3710 Consequential Damages for Breach of Contract (2018)
- 3720 Damages: Incidental (1994)
- 3725 Damages: Future Profits (2008)
- 3735 Damages: Loss of Expectation (1994)
- 3740 Damages: Termination of Real Estate Listing Contract (Exclusive) by Seller; Broker's Recovery (1994)
- 3750 Damages: Breach of Contract by Purchaser (1994)
- 3755 Damages: Breach of Contract by Seller (1994)
- 3760 Damages: Attorney Fees (1994)

### **AGENCY; EMPLOYMENT; BUSINESS ORGANIZATION**

- 4000 Agency: Definition (2019)
- 4001 General Agent: Definition (1994)
- 4002 Special Agent: Definition (1994)
- 4005 Agency: Apparent Authority (1994)
- 4010 Agency: Implied Authority (1994)
- 4015 Agency: Ratification (1994)
- 4020 Agent's Duties Owed to Principal (1994)
- 4025 Agency: Without Compensation (2005)
- 4027 Agency: Termination: General (1994)
- 4028 Agency: Termination: Notice to Third Parties (1994)
- 4030 Servant: Definition (2015)
- 4035 Servant: Scope of Employment (2020)
- 4040 Servant: Scope of Employment; Going to and from Place of Employment (2014)
- 4045 Servant: Scope of Employment While Traveling (2020)
- 4050 Servant: Master's Ratification of Wrongful Acts Done Outside Scope of Employment (1994)

- 4055    Servant: Vicarious Liability of Employer (2005)
- 4060    Independent Contractor: Definition (2005)
- 4080    Partnership (2009)

### **PERSONS**

- 5001    Paternity: Child of Unmarried Woman (2021)
- 7030    Child in Need of Protection or Services [Withdrawn 2014]
- 7039    Involuntary Termination of Parental Rights: Child in Need of Protection or  
          Services: Preliminary Instruction [Withdrawn 2014]
- 7040    Involuntary Termination of Parental Rights: Continuing Need of Protection or  
          Services [Withdrawn 2014]
- 7042    Involuntary Termination of Parental Rights: Abandonment under Wis. Stat.  
          § 48.415(1)(a) 2 or 3 [Withdrawn 2014]
- 7050    Involuntary Commitment: Mentally Ill (2022)
- 7050A   7050A Involuntary Commitment: Mentally Ill: Recommitment Alleging Wis.  
          Stat. § 51.20(1)(am)
- 7054    Petition for Guardianship of the Person: Incompetency;  
          Wis. Stat. § 54.10(3)(a)2 (2019)
- 7055    Petition for Guardianship of the Estate: Incompetency;  
          Wis. Stat. § 54.10(3)(a)3 (2009)
- 7056    Petition for Guardianship of the Estate: Spendthrift;  
          Wis. Stat. § 54.10(2) (2009)
- 7060    Petition for Guardianship of Incompetent Person and Application  
          for Protective Placement; Wis. Stat. § 54.10 and 55.08(1) (2019)
- 7061    Petition for Guardianship of Incompetent Person and Application  
          for Protective Services; Wis. Stat. § 54.10 and 55.08(2) (2014)
- 7070    Involuntary Commitment: Habitual Lack of Self-Control as to the Use of  
          Alcohol Beverages (2003)

### **PROPERTY**

#### **General**

- 8012    Trespasser: Definition (2013)
- 8015    Consent of Possessor to Another's Being on Premises (2013)
- 8017    Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture for  
          Guests (Renumbered JI-Civil 8051) (1994)
- 8020    Duty of Owner or Possessor of Real Property to Nontrespasser User (2020)
- 8025    Trespass: Owner's Duty to Trespasser; Duty to Child Trespasser (Attractive  
          Nuisance) (2022)

## CONTENTS

## WIS JI-CIVIL

## CONTENTS

- 8026 Trespass: Special Verdict (2016)
- 8027 Trespass: Child Trespasser (Attractive Nuisance): Special Verdict (2013)
- 8030 Duty of Owner of a Building Abutting on a Public Highway (2006)
- 8035 Highway or Sidewalk Defect or Insufficiency (2021)
- 8040 Duty of Owner of Place of Amusement: Common Law (1994)
- 8045 Duty of a Proprietor of a Place of Business to Protect a Patron from Injury  
Caused by Act of Third Person (2012)
- 8050 Duty of Hotel Innkeeper: Providing Security (1994)
- 8051 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture for  
Guests (2020)
- 8060 Adverse Possession Not Founded on Written Instrument (Wis. Stat. § 893.25)  
(2022)

### **Eminent Domain**

- 8100 Eminent Domain: Fair Market Value (Total Taking) (2022)
- 8101 Eminent Domain: Fair Market Value (Partial Taking) (2012)
- 8102 Eminent Domain: Severance Damages (2008)
- 8103 Eminent Domain: Severance Damages: Cost-To-Cure (2007)
- 8104 Eminent Domain: Unity of Use - Two or More Parcels (2007)
- 8105 Eminent Domain: Lands Containing Marketable Materials (2008)
- 8107 Eminent Domain: Severance Damages; Unity of Use (Renumbered JI-Civil  
8104) (2008)
- 8110 Eminent Domain: Change in Grade (2022)
- 8111 Eminent Domain: Access Rights (2020)
- 8112 Eminent Domain: Air Rights (2007)
- 8115 Eminent Domain: Special Benefits (2008)
- 8120 Eminent Domain: Comparable Sales Approach (2022)
- 8125 Eminent Domain: Inconvenience to Landowner [Withdrawn 2008]
- 8130 Eminent Domain: Income Approach (2008)
- 8135 Eminent Domain: Cost Approach (2008)
- 8140 Eminent Domain: Legal Nonconforming Use, Lot or Structure (Definitions)  
(2007)
- 8145 Eminent Domain: Assemblage (2007)

**Table of Cases Cited** (2021)

**Index** (2021)



**3110 INSURANCE CONTRACT: DEFINITION OF “RESIDENT” OR “MEMBER OF A HOUSEHOLD”**

Question No. \_\_\_\_ asks was \_\_\_\_\_ a resident of \_\_\_\_\_’s household at the time of the (accident) (injury).

A resident of a household is one, who, in a manner consistent with the closeness of a family or household, lives under the same roof.

However, a person may be a resident of more than one household for insurance purposes. Residents of a household are not required to live under the same roof to be considered part of the same household for insurance purposes provided they have the intent to return to live under the same roof.

Factors you may consider in determining residency include:

- The subjective or declared intent to return, if any, and actions evidencing this intent;
- Whether the parties live in a close, intimate, and informal relationship;
- Whether the intended duration of the relationship is likely to be substantial;
- Whether it is reasonable to conclude that the parties would consider the relationship when contracting for insurance;
- The age of the respective parties;
- Whether a separate residence is established;
- The self-sufficiency of the person;

- The frequency and duration of stays in the residence;
- Whether personal possessions remain in the home;
- Whether a person is driving or has the opportunity to drive cars interchangeably rather than by merely causal use; and,
- Whether the residence continues to be the mailing address of the parties.

A determination of residency is based upon the facts of each individual case. Consider all of the relevant facts and circumstances in determining whether \_\_\_\_\_ was a resident of \_\_\_\_\_'s household at the time of the (accident) (injury). No single factor is controlling, but all of the elements must combine to a greater or lesser degree to establish the relationship.

The burden of proof on the issue of whether \_\_\_\_\_ was a resident of \_\_\_\_\_'s household is upon (plaintiff).

If, after review of all the facts and circumstances in this case you find that (plaintiff) was a resident of \_\_\_\_\_'s household at the time of the (accident) (injury), you should answer question \_\_\_\_\_ on the Special Verdict "yes." If not, you should answer that question "no."

#### COMMENT

This instruction and comment were approved in 2002 and revised in 2012. The comment was also updated in 2003. This revision was approved by the Committee in October 2021; it added to the comment.

Muskevitch-Otto v. Otto, 2001 WI App 242, 248 Wis.2d 1, 635 N.W.2d 611 (Ct. App. 2001); Seichter v. McDonald, 228 Wis.2d 838, 845, 599 N.W.2d 71, 74 (Ct. App. 1999); Ross v. Martini, 204 Wis.2d 354, 555 N.W.2d 381, (Ct. App. 1996); Londre v. Continental Western Ins. Co., 117 Wis.2d 54, 58, 343 N.W.2d

128 (Ct. App. 1983); Belling v. Harn, 65 Wis.2d 108, 112-114 (1974); Pamperin v. Milwaukee Mutual Ins., 55 Wis.2d 27, 35-37, 197 N.W.2d 783 (1972); Doern v. Crawford, 30 Wis.2d 206, 140 N.W.2d 193 (1966); National Farmers Union Property & Casualty v. Maca, 26 Wis.2d 399, 407-408 (1965).

**Resident; Member.** Although not explicitly stated, the terms “resident” or “member” of a household appear to be equivalent. The Supreme Court has used them interchangeably. Belling, pp. 109, 111; Pamperin, pp. 33-34.

The term “resident or member of the same household” as used in policies of automobile liability insurance is not ambiguous. It should be given its plain and common meaning regardless of whether it is used to define exclusion or inclusion from coverage or whether the question is one of creating or terminating the relationship. Pamperin, p. 37.

**Factors.** No single factor is the sole or controlling test of whether a person is a resident of a household. Londre, p. 54. The issue of residency for insurance purposes “is fact specific to each case.” Seichter, p. 845. The Seichter court approved use of considerations from a Minnesota case, Schoer v. West Bend Mutual Ins. Co., 473 N.W.2d 73, 76 (Minn. App. 1991) which had been cited with approval in Ross v. Martini, *supra*. The list of factors in paragraph 4 is not exhaustive.

Unmarried persons can be residents of the same household, but whether they are depends on the facts in each case. Quinlan v. Coombs, 105 Wis.2d 330, 333, 314 N.W.2d 125, (Ct. App. 1981).

**Residence Distinguished from Domicile.** “It might be said that ‘domicile’ includes residence, but ‘residence’ does not necessarily include domicile. Domicile is generally regarded as the place where a man has his fixed and permanent home or residence to which he intends to return whenever he is absent therefrom.” Estate of Daniels, 53 Wis.2d 611, 614-5 (1971).

The length of time necessary to establish residency for insurance purposes is sufficient if “the intended duration is likely to be substantial.” Pamperin, p. 37 “[W]hile the intended duration does not require the permanency generally associated with the establishment of a legal domicile, something more is required than a mere temporary sojourn.” Pamperin, p. 35.

Thus, a person may have only one domicile but may have more than one household for insurance purposes. Londre, p. 58.

**Children.** A child placed in a family-operated foster home pursuant to a court dispositional order under sec. 48.34 Stats. is considered a resident of that household for insurance purposes. A.G. v. Travelers Ins. Co., 112 Wis.2d 18, 24 (Ct. App. 1983).

The intent of minor children of divorced parents is discussed in Ross v. Martini, *supra*, pp. 358-9. Where the child is of tender years, the finder of fact would look to the intent of the child’s parent or custodian. Muskevitch-Otto v. Otto, par. 9 p. 8. Generally, the issue of residence for minor children of divorced parents is “inexorably linked” to custody provided in the divorce decree. Ross, p. 359. It is possible in joint custody situations for children to be members of both parents’ households for insurance purposes. Londre, *supra*, p. 59.

**Divorce.** As a matter of public policy, removal from a household following commencement of divorce proceedings and during the pendency of the action is not a factor to be given weight in determining residency in a family household. Language to the contrary in the Doern case is withdrawn. Belling v. Harn, 65 Wis.2d 108, 115-116, 221 N.W.2d 888 (1974). However, this modification of Doern appears to be limited to divorce proceedings. Seichter, p. 843, fn. 1.

**Legal separation.** Wisconsin law plainly distinguishes between a divorce and a legal separation. Pursuant to Wis. Stat. § 767.001(1f), “divorce” is defined as “the dissolution of the marriage relationship.” In contrast, a judgment of legal separation does not terminate a marriage. As the Wisconsin Supreme Court has noted, “there are ... rights and obligations remaining in the marriage after a legal separation.” Kemper Independence Insurance Company v. Islami, 2021 WI 53, ¶18, 397 Wis.2d 394, 959 N.W.2d 912, citing Herbst v. Hansen, 46 Wis. 2d 697, 706, 176N.W.2d 380 (1970). A legal separation does not alter the status of two individuals as spouses under the law, and therefore a named insured’s spouse remains covered under a policy. Kemper, *supra*, at ¶18. The fact that a named insured and their spouse may commence living separate and apart while legal separation is pending “is not a factor to be given weight in determining whether or not such spouses are members of the same household.” Belling, *supra*, at 118.

**Intent.** While Pamperin, pp. 35, 37, Seichter, pp. 843-844, and other cases hold that no one element is controlling on the question of household membership, and an individual's subjective or declared intent, while a fact to be considered, is also not controlling, the Court of Appeals in Muskevitch-Otto v. Otto *supra*, approved an instruction which made intent “the key element.” The instruction provided that “In deciding whether a person is a resident of a particular household, the key element is the intent of that person to be a resident of the household in question and to live under the same roof . . . .” (emphasis supplied). In harmonizing these decisions, the Committee believes that because of the fact-driven nature of these cases, intent might assume more importance in a particular situation. However, none of the Pamperin elements (including intent) predominates as a matter of law. Until further guidance on this issue is received from the appellate courts, the Committee believes the more prudent course is to follow Pamperin and Seichter.

**“In Your Care” Policy Language.** For cases involving policy language dealing with the term “in your care,” see also, Cierzan v. Kriegal, 2002 WI App 317, 259 Wis.2d 264, 655 N.W.2d 217. In this decision, the court of appeals listed the relevant considerations in determining whether a person is in the care of the insured.



**7050 INVOLUNTARY COMMITMENT: MENTALLY ILL**

(Insert Wis JI Civil 100, Opening.)

A petition has been filed seeking the involuntary [(initial commitment) (recommitment)] of (respondent). The petition alleges that (respondent) is mentally ill; that (his) (her) mental illness is subject to treatment; and that (he) (she) is dangerous.

The fact that a petition has been filed is not evidence that (respondent) is mentally ill, dangerous, or a proper subject for treatment. Our law presumes that a person is not mentally ill until you are convinced that the person is mentally ill. If you find that (respondent) is mentally ill based on the evidence, that fact does not mean that you must find that (respondent) is also dangerous. The burden of proving each of the allegations in the petition is on (petitioner).

This is a civil, not a criminal, case. [The fact that the district attorney is present does not mean that (respondent) is accused of a crime. The district attorney and \_\_\_\_\_, the other attorney, are required to be here by the Wisconsin statutes.] While (respondent) is not on trial to be punished for any offense, nevertheless, this trial and your verdict could result in a loss of (respondent)'s personal liberty. Therefore, you should approach this task with a sense of serious duty.

Wis JI Civil 110,        Arguments of Counsel

Wis JI Civil 115,        Objections of Counsel

Wis JI Civil 120,	Judge's Demeanor
Wis JI Civil 130,	Stricken Testimony
Wis JI Civil 215,	Credibility of Witnesses; Weight of Evidence
Wis JI Civil 260,	Expert Testimony: General
Wis JI Civil 265,	Expert Testimony: Hypothetical Question
Wis JI-Civil 205,	Middle Burden of Proof
Wis JI Civil 145,	Special Verdict Questions: Interrelationship

At the end of the trial, I will give you a special verdict consisting of three questions.

Question 1 asks: Is (respondent) mentally ill?

The term “mentally ill” means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs the judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.

Question 2 asks: Is (respondent) a proper subject for treatment?

A person who is mentally ill is a proper subject for treatment if (his) (her) mental illness is treatable. In determining if (respondent)’s mental illness is treatable, you should consider whether the administration of any, or a combination of, techniques may control, improve, or cure the substantial disordering of the person’s thought, mood, perception, orientation, or memory.

Question 3 asks: Is (respondent) dangerous to [(himself) (herself)] or to others?

[NOTE: MORE THAN ONE STANDARD FOR DANGEROUSNESS MAY

APPLY. SELECT THE STANDARD(S) ALLEGED AND SUPPORTED BY  
SUFFICIENT EVIDENCE AS PUT FORTH BY THE PETITIONER

[Under Standard A, a person is dangerous to (himself) (herself) if (he)(she) evidences a substantial probability of physical harm to (himself) (herself) as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.] [or]

[Under Standard B, a person is dangerous to others if (he) (she) evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.] [or]

[Under Standard C, a person is dangerous to (himself) (herself) or others if (he) (she) evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is substantial probability of physical impairment or injury to (himself) (herself) or other individuals. The probability of physical impairment or injury is not substantial (if reasonable provision for (respondent)'s protection is available in the community and there is a reasonable probability that (respondent) will avail (himself) (herself) of these services) (if (respondent) may be provided protective placement or protective services under chp. 55) (or) (where the subject is a minor: if (respondent) is appropriate for services or placement under § 48.13(4) or (11) or §

938.13(4)) (where the subject is a minor: (Respondent)’s status as a minor does not automatically establish a substantial probability of physical impairment or injury). Food, shelter, or other care provided to an individual who is substantially incapable of obtaining the care for (himself) (herself), by a person other than a treatment facility, does not constitute reasonable provision for the individual’s protection available in the community.] [or]

[Under Standard D, a person is dangerous to (himself) (herself) if (he) (she) evidences behavior manifested by recent acts or omissions that, due to mental illness, (he) (she) is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless (respondent) receives prompt and adequate treatment for this mental illness. No substantial probability of harm exists (if reasonable provision for (respondent)’s treatment and protection is available in the community and there is a reasonable probability that (respondent) will avail (himself) (herself) of these services), (if (respondent) may be provided protective placement or protective services under chp. 55) (or) (where the subject is a minor; if (respondent) is appropriate for services or placement under § 48.13(4) or (11) or § 938.13(4).) (Respondent)’s status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious

disease. Food, shelter, or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community.] [or]

[Under Standard E, a person is dangerous to (himself) (herself) if (he) (she) has recently had explained to (him) (her) the advantages and disadvantages of and alternatives to accepting a particular medication or treatment and; (1) Due to mental illness, (respondent) is (incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives) (substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives of (his) (her) mental illness to make an informed choice as to whether to accept or refuse medication or treatment); and (2) There is a substantial probability, as demonstrated by both (respondent)'s treatment history and (his) (her) recent acts or omissions, that (he) (she) needs care or treatment to prevent further disability or deterioration, and further, there exists a substantial probability that, if left untreated, (he) (she) will lack the services necessary for (his) (her) health or safety, and will suffer severe mental, emotional, or physical harm that will result in (respondent)'s loss of ability to function independently in the community or loss of cognitive or volitional control over (his) (her) thoughts or actions; and (3) There is no reasonable probability that (respondent) will avail (himself) (herself) of services in the

community for care or treatment necessary to prevent (him) (her) from suffering severe mental, emotional, or physical harm.]

Do not concern yourselves with the length of custody or nature of any treatment that I might order as a result of your answers to the questions of the Special Verdict.

[**Note:** Give Wis JI Civil 180, Five Sixths Verdict and Wis JI Civil 190, Closing.]

### **SUGGESTED VERDICT**

Question 1: Is (respondent) mentally ill?

Answer: \_\_\_\_\_

Yes or No

Question 2: If you answered question 1 “yes,” then answer this question:

Is (respondent) a proper subject for treatment?

Answer: \_\_\_\_\_

Yes or No

Question 3: If you answered questions 1 and 2 “yes,” then answer this question:

Is (respondent) dangerous to [(himself) (herself)] or to others?

Answer: \_\_\_\_\_

Yes or No

Question 3(a): If you answered question 3 “yes,” then answer this question: Under which standard(s) has it been proven by clear and convincing evidence that (respondent) is

dangerous? [For initial commitment hearings and recommitment hearings not alleging 51.20(1)(am), SELECT THE STANDARD(S) ALLEGED AND SUPPORTED BY SUFFICIENT EVIDENCE AS PUT FORTH BY THE PETITIONER and include:]

Standard A _____	Answer:	Yes or No
Standard B _____	Answer:	Yes or No
Standard C _____	Answer:	Yes or No
Standard D _____	Answer:	Yes or No
Standard E _____	Answer:	Yes or No

[**Note:** For a trial involving several of the statutory definitions of “dangerous,” see the comment below on the “Dangerousness Standard” for advice on subdividing verdict question 3(a).]

#### COMMENT

The instruction was revised in 1981, 1989, 1998, 2002, 2006, 2014, and 2018. The comment was updated in 2011, 2012, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021.

While this verdict and jury instruction are designed for an alleged mentally ill case, they can, by substitution of the disability terms, be converted to a verdict and jury instruction for an alleged drug dependent case or developmentally disabled case.

**Proper Subject for Treatment.** The court of appeals approved the language of the instruction dealing with the determination of whether the individual is a proper subject for treatment in verdict question three. In Matter of Mental Condition of C.J., 120 Wis.2d 355, 354 N.W.2d 219 (Ct. App. 1984). A person with Alzheimer’s disease is not a proper subject for treatment under Chapter 51. Fond du Lac County v. Helen E.F., 2012 WI 50, 340 Wis.2d 500, 814 N.W.2d 179. See also Waukesha County v. J.W.J., 2017 WI 57, 375 Wis.2d 542, 895 N.W.2d 783

In Fond du Lac County v. Helen E.F., the supreme court said the court of appeals in C.J., *supra*, provided a “useful and well-constructed fact-based test for determining whether a subject individual is capable of rehabilitation, and therefore treatable under Wis. Stat. § 51.01(17).” The supreme court said the following test from C.J. accurately reflects the interests embodied in chs. 51 and 55.

If treatment will “maximize[e] the [] individual functioning and maintenance” of the subject, but not “help [] in controlling or improving their disorder [],” then the subject individual does not have rehabilitative potential, and is not a proper subject for treatment. However, if treatment will “go beyond controlling . . . activity” and will “go to controlling [the] disorder and its symptoms,” then the subject individual has rehabilitative potential, and is a proper subject for treatment. Fond du Lac County v. Helen E.F., supra, at ¶36.

**Mental Illness.** The definition of “mental illness” does not include alcoholism. Wis. Stat. § 51.20(13)(b).

Alzheimer’s disease does not fall within the definition of a mental illness as it is a “degenerative brain disorder.” An individual with Alzheimer’s disease is not a proper subject for treatment. Ch. 51 provides for active treatment for those who are proper subjects for treatment, while Ch. 55 provides for residential care and custody of those persons with mental disabilities, such as Alzheimer’s, that are likely to be permanent. Fond du Lac County v. Helen E.F., 2012 WI 50, 340 Wis.2d 500, 814 N.W.2d 179.

**Dangerousness Standard.** The issue of dangerousness is an element in all commitment proceedings, except proceedings under Wis. Stat. 51.20(1)(ar). The Committee believes the specification by the petitioner of the applicable standard(s) at issue as well as a finding by the factfinder as to which dangerousness standard(s) were proven by clear and convincing evidence is mandatory. See Langlade County v. D.J.W., 2020 WI 41, 391 Wis.2d 231, 942 N.W.2d 277. While D.J.W. involved a recommitment hearing, the Committee believes and recommends that, based on language in D.J.W., that specific findings regarding which standard(s) of dangerousness is alleged and which standard(s) of dangerousness have been proven must also occur at initial commitment hearings. See ¶¶42-44. In addition to these considerations, specificity is also important in cases in which dangerousness is alleged under sec. 51.20(1)(a)2.e. (“Standard E”). That is because a person committed based on this standard may only be treated on an inpatient basis for up to 30 days. See Wis. Stat. § 51.20(13)(g)2d.b. Thus, knowing which standard forms the basis for a dangerousness finding will also affect disposition in the event both Standard E and another standard are alleged.

**Threats.** In Outagamie County v. Michael H., supra, the court concluded that in evaluating dangerousness, “an articulated plan is not a necessary component of a suicide threat.” See ¶6. The court concluded that it did not need to adopt a precise definition for “threat” for purposes of Wis. Stat. § 51.20.

**Acceptance of Medication and Treatment.** Medication is a “service” within the meaning of the community services exclusion of the Standard E (Wis. Stat. 51.20(1)(a)2.e.). In re Kelly M., 2011 WI App 69, 333 Wis.2d 719, 798 N.W.2d 697. Individuals who are under a Ch. 55 protective placement or who are a proper subject for a Ch. 55 protective placement come within the Ch. 55 exclusion within Standard E and Wis. Stats. § 55.14 should be utilized for the petition for the involuntary administration of medication. Commitment is available under Standard E for individuals who have dual diagnoses; i.e. a diagnosis of mental illness and also a diagnosis of drug dependency or developmental disability. In re Kelly M., supra.

**Right to Remain Silent.** Under Wis. Stat § 51.20(5), the subject individual has the right to remain silent at the commitment hearing. If requested by the individual, the trial court should instruct the jury on the individual’s failure to testify. See Wis JI-Criminal 315.



**Cooperation with Doctors.** If there is evidence that the patient did not properly cooperate with the doctors, then this instruction should be included following the instruction on expert testimony:

There is testimony in this case that (respondent) was unresponsive to the doctors. You are advised that he/she has the constitutional right to remain unresponsive and to say nothing. He/She was so informed by the court and by the officials at the hospital. He/She also had then the right to refuse treatment. In answering question 1, you may consider his/her silent behavior only if you are convinced that his/her silence was related to his/her mental condition and was not an exercise of his/her constitutional right to remain silent.

**Temporary Protective Placement.** If the jury returns a verdict finding that the individual is mentally ill and dangerous but not a “proper subject for treatment,” the trial judge may consider ordering temporary protective placement for the individual pursuant to Wis. Stat. § 51.67 which states:

**51.67 Alternate procedure; protective services.** (intro.) If, after a hearing under § 51.13(4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. Temporary protective placement for an individual in a center for the developmentally disabled is subject to § 51.06(3). Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of serious and persistent mental illness, and after the advantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual ....

**Definition of a Drug.** In a case involving drug-dependency and the definition of the term “drug,” see Wis. Stat. § 450.01(10) and § 961.01(11). See also an unpublished decision (one-judge) which discusses the court’s jury instruction allowing the jury to consider multiple definitions of the term “drug.” Marathon County v. Zachary W., 2015 WI App 13, 359 Wis.2d 676, 859 N.W.2d 629.

**Prisoner.** When Wis. Stat. § 51.20(1)(ar) is pled, it governs the involuntary commitment of inmates of the Wisconsin state prison system. If a commitment or recommitment proceeding concerns a prisoner pursuant to § 51.20(1)(ar), the following elements must be proven: “a county must show that (1) the individual is an inmate of the Wisconsin state prison system; (2) the inmate is mentally ill; (3) the inmate is a proper subject for treatment and is in need of treatment; (4) appropriate less restrictive forms of treatment were attempted with the inmate, and they were unsuccessful; (5) the inmate was fully informed about his treatment needs, the mental health services available, and his rights; and (6) the inmate had an opportunity to discuss his treatment needs, the services available, and his rights with a psychologist or a licensed physician.” For the involuntary commitment of a mentally ill prisoner, see Winnebago County v.

Christopher S., 2016 WI 1, ¶27, 366 Wis.2d 1, 878 N.W.2d 109. While a finding of dangerousness is not required for commitment, it is required for an involuntary medication order in a Wis. Stat. sec. 51.20(1)(ar) proceeding. See Winnebago County v. Christopher S. (III), 2020 WI 33, 391 Wis.2d 35, 940 N.W.2d 875.

**Psychotropic Medication Order.** Where a psychotropic medication order is sought related to a commitment proceeding, a court, not a jury, makes the determination. Wis. Stat. § 51.61(1)(g)3.

**7050A INVOLUNTARY COMMITMENT: MENTALLY ILL:  
RECOMMITMENT ALLEGING Wis. Stat. § 51.20(1)(am)**

(Insert Wis JI Civil 100, Opening.)

A petition has been filed seeking the involuntary recommitment of (respondent). The petition alleges that (respondent) is mentally ill; that (his) (her) mental illness is subject to treatment; and that (he) (she) is dangerous.

The fact that a petition has been filed is not evidence that (respondent) is mentally ill, dangerous, or a proper subject for treatment. Our law presumes that a person is not mentally ill until you are convinced that the person is mentally ill. If you find that (respondent) is mentally ill based on the evidence, that fact does not mean that you must find that (respondent) is also dangerous. The burden of proving each of the allegations in the petition is on (petitioner).

This is a civil, not a criminal, case. [The fact that the district attorney is present does not mean that (respondent) is accused of a crime. The district attorney and \_\_\_\_\_, the other attorney, are required to be here by the Wisconsin statutes.] While (respondent) is not on trial to be punished for any offense, nevertheless, this trial and your verdict could result in a loss of (respondent)'s personal liberty. Therefore, you should approach this task with a sense of serious duty.

Wis JI Civil 110,        Arguments of Counsel

Wis JI Civil 115,        Objections of Counsel

Wis JI Civil 120, Judge's Demeanor  
Wis JI Civil 130, Stricken Testimony  
Wis JI Civil 215, Credibility of Witnesses; Weight of Evidence  
Wis JI Civil 260, Expert Testimony: General  
Wis JI Civil 265, Expert Testimony: Hypothetical Question.  
Wis JI-Civil 205, Middle Burden of Proof

Wis JI Civil 145, Special Verdict Questions: Interrelationship

At the end of the trial, I will give you a special verdict consisting of three questions.

Question 1 asks: Is (respondent) mentally ill?

The term “mentally ill” means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs the judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.

Question 2 asks: Is (respondent) a proper subject for treatment?

A person who is mentally ill is a proper subject for treatment if (his) (her) mental illness is treatable. In determining if (respondent)'s mental illness is treatable, you should consider whether the administration of any, or a combination of, techniques may control, improve, or cure the substantial disordering of the person's thought, mood, perception, orientation, or memory.

Question 3 asks: Is (respondent) dangerous to [(himself) (herself)] or to others?

This is a recommitment proceeding and therefore there may not be proof of recent

acts or omissions demonstrating that (respondent) is dangerous, however, the law provides that you may find (respondent) to be dangerous to [(himself) (herself)] or to others if there is a substantial likelihood based on (respondent)'s treatment record that (respondent) would be a proper subject for commitment if treatment were withdrawn, meaning that (respondent) would meet one or more of the dangerousness standards, A through E, described below if treatment were withdrawn. If you find that (respondent) is dangerous if treatment were withdrawn, you must state under which standard(s) (A, B, C, D, E) you came to this conclusion.

[NOTE: MORE THAN ONE STANDARD FOR DANGEROUSNESS MAY APPLY. SELECT THE STANDARD(S) ALLEGED AND SUPPORTED BY SUFFICIENT EVIDENCE AS PUT FORTH BY THE PETITIONER]

[Under Standard A, a person is dangerous to (himself) (herself) if (he)(she) evidences a substantial probability of physical harm to (himself) (herself) as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.] [or]

[Under Standard B, a person is dangerous to others if (he) (she) evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.] [or]

[Under Standard C, a person is dangerous to (himself) (herself) or others if (he)

(she) evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is substantial probability of physical impairment or injury to (himself) (herself) or other individuals. The probability of physical impairment or injury is not substantial (if reasonable provision for (respondent)'s protection is available in the community and there is a reasonable probability that (respondent) will avail (himself) (herself) of these services) (if (respondent) may be provided protective placement or protective services under chp. 55) (or) (where the subject is a minor: if (respondent) is appropriate for services or placement under § 48.13(4) or (11) or § 938.13(4)) (where the subject is a minor: (Respondent)'s status as a minor does not automatically establish a substantial probability of physical impairment or injury). Food, shelter, or other care provided to an individual who is substantially incapable of obtaining the care for (himself) (herself), by a person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community.] [or]

[Under Standard D, a person is dangerous to (himself) (herself) if (he) (she) evidences behavior manifested by recent acts or omissions that, due to mental illness, (he) (she) is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless (respondent) receives prompt and adequate

treatment for this mental illness. No substantial probability of harm exists (if reasonable provision for (respondent)'s treatment and protection is available in the community and there is a reasonable probability that (respondent) will avail (himself) (herself) of these services), (if (respondent) may be provided protective placement or protective services under chp. 55) (or) (where the subject is a minor; if (respondent) is appropriate for services or placement under § 48.13(4) or (11) or § 938.13(4).) (Respondent)'s status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease. Food, shelter, or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community.] [or]

[Under Standard E, a person is dangerous to (himself) (herself) if (he) (she) has recently had explained to (him) (her) the advantages and disadvantages of and alternatives to accepting a particular medication or treatment and; (1) Due to mental illness, (respondent) is (incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives) (substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives of (his) (her) mental illness to make an informed choice as to whether to accept or refuse medication or treatment); and (2) There is a substantial

probability, as demonstrated by both (respondent)'s treatment history and (his) (her) recent acts or omissions, that (he) (she) needs care or treatment to prevent further disability or deterioration, and further, there exists a substantial probability that, if left untreated, (he) (she) will lack the services necessary for (his) (her) health or safety, and will suffer severe mental, emotional, or physical harm that will result in (respondent)'s loss of ability to function independently in the community or loss of cognitive or volitional control over (his) (her) thoughts or actions; and (3) There is no reasonable probability that (respondent) will avail (himself) (herself) of services in the community for care or treatment necessary to prevent (him) (her) from suffering severe mental, emotional, or physical harm.]

Do not concern yourselves with the length of custody or nature of any treatment that I might order as a result of your answers to the questions of the Special Verdict.

[**Note:** Give Wis JI Civil 180, Five Sixths Verdict and Wis JI Civil 190, Closing.]

### **SUGGESTED VERDICT**

Question 1: Is (respondent) mentally ill?

Answer: \_\_\_\_\_

Yes or No



Question 2: If you answered question 1 “yes,” then answer this question:

Is (respondent) a proper subject for treatment?

Answer: \_\_\_\_\_

Yes or No

Question 3: If you answered questions 1 and 2 “yes,” then answer this question:

Is (respondent) dangerous to [(himself) (herself)] or to others?

Answer: \_\_\_\_\_

Yes or No

Question 3(a): If you answered question 3 “yes,” then answer this question: If you find (respondent) dangerous if treatment were withdrawn, under which standard(s) has it been proven by clear and convincing evidence that (respondent) is dangerous if treatment were withdrawn? [SELECT THE STANDARD(S) ALLEGED AND SUPPORTED BY SUFFICIENT EVIDENCE AS PUT FORTH BY THE PETITIONER and include:]

Standard A _____	Answer:	Yes or No
Standard B _____	Answer:	Yes or No
Standard C _____	Answer:	Yes or No
Standard D _____	Answer:	Yes or No
Standard E _____	Answer:	Yes or No

[**Note:** For a trial involving several of the statutory definitions of “dangerous,” see the comment below on the “Dangerousness Standard in Recommitment Proceedings under

Wis. Stat. 51.20(1)(am)” for advice on subdividing verdict question 3(a).]

## COMMENT

This instructions and comment were approved by the Committee in September 2021.

While this verdict and jury instruction are designed for an alleged mentally ill case, they can, by substitution of the disability terms, be converted to a verdict and jury instruction for an alleged drug dependent case or developmentally disabled case.

**Proper Subject for Treatment.** The court of appeals approved the language of the instruction dealing with the determination of whether the individual is a proper subject for treatment in verdict question three. In Matter of Mental Condition of C.J., 120 Wis.2d 355, 354 N.W.2d 219 (Ct. App. 1984). A person with Alzheimer’s disease is not a proper subject for treatment under Chapter 51. Fond du Lac County v. Helen E.F., 2012 WI 50, 340 Wis.2d 500, 814 N.W.2d 179. See also Waukesha County v. J.W.J., 2017 WI 57, 375 Wis.2d 542, 895 N.W.2d 783

In Fond du Lac County v. Helen E.F., the supreme court said the court of appeals in C.J., *supra*, provided a “useful and well-constructed fact-based test for determining whether a subject individual is capable of rehabilitation, and therefore treatable under Wis. Stat. § 51.01(17).” The supreme court said the following test from C.J. accurately reflects the interests embodied in chs. 51 and 55.

If treatment will “maximize[e] the [] individual functioning and maintenance” of the subject, but not “help [] in controlling or improving their disorder [],” then the subject individual does not have rehabilitative potential, and is not a proper subject for treatment. However, if treatment will “go beyond controlling . . . activity” and will “go to controlling [the] disorder and its symptoms,” then the subject individual has rehabilitative potential, and is a proper subject for treatment. Fond du Lac County v. Helen E.F., *supra*, at ¶36.

**Mental Illness.** The definition of “mental illness” does not include alcoholism. Wis. Stat. § 51.20(13)(b).

Alzheimer’s disease does not fall within the definition of a mental illness as it is a “degenerative brain disorder.” An individual with Alzheimer’s disease is not a proper subject for treatment. Ch. 51 provides for active treatment for those who are proper subjects for treatment, while Ch. 55 provides for residential care and custody of those persons with mental disabilities, such as Alzheimer’s, that are likely to be permanent. Fond du Lac County v. Helen E.F., 2012 WI 50, 340 Wis.2d 500, 814 N.W.2d 179.

**Dangerousness Standard in Recommitment Proceedings under Wis. Stat. 51.20(1)(am).** If the individual has been the subject of inpatient or outpatient treatment for mental illness immediately prior to commencement of the proceeding as a result of a voluntary admission, a commitment or protective placement, or protective services ordered by a court, the requirements of a recent overt act, attempt, or threat to act or a pattern of recent acts, omissions, or behavior may be satisfied by a showing that there is a substantial likelihood, based on the individual’s treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. Wis. Stat. § 51.20(1)(am). If the individual has been

admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of these proceedings and remains under voluntary admission at the time of the commencement of these proceedings, the requirements of a specific recent overt act, attempt, or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act, or a pattern of acts or omissions which took place immediately previous to the voluntary admission. Specific factual findings must be made with reference to the subdivision of 51.20(1)(a)2. on which the recommitment is based. Langlade County v D.J.W., 2020 WI 41, 391 Wis.2d 231, 942 N.W.2d 277. The instructions and verdict must include any of the standard(s) that the evidence supports.

In addition to these considerations, specificity is also important in cases in which dangerousness is alleged under sec. 51.20(1)(a)2.e. (“Standard E”). That is because a person committed based on this standard may only be treated on an inpatient basis for up to 30 days. See Wis. Stat. sec. 51.20(13)(g)2d.b. Thus, knowing which standard forms the basis for a dangerousness finding will also affect disposition in the event both Standard E and another standard are alleged.

**Threats.** In Outagamie County v. Michael H., *supra*, the court concluded that in evaluating dangerousness, “an articulated plan is not a necessary component of a suicide threat.” Paragraph 6. The court concluded that it did not need to adopt a precise definition for “threat” for purposes of Wis. Stat. § 51.20.

**Acceptance of Medication and Treatment.** Medication is a “service” within the meaning of the community services exclusion of the Standard E (Wis. Stat. 51.20(1)(a)2.e.). In re Kelly M., 2011 WI App 69, 333 Wis.2d 719, 798 N.W.2d 697. Individuals who are under a Ch. 55 protective placement or who are a proper subject for a Ch. 55 protective placement come within the Ch. 55 exclusion within Standard E and Wis. Stats. § 55.14 should be utilized for the petition for the involuntary administration of medication. Commitment is available under Standard E for individuals who have dual diagnoses; i.e. a diagnosis of mental illness and also a diagnosis of drug dependency or developmental disability. In re Kelly M., *supra*.

**Right to Remain Silent.** Under Wis. Stat § 51.20(5), the subject individual has the right to remain silent at the commitment hearing. If requested by the individual, the trial court should instruct the jury on the individual’s failure to testify. See Wis JI-Criminal 315.

**Cooperation with Doctors.** If there is evidence that the patient did not properly cooperate with the doctors, then this instruction should be included following the instruction on expert testimony:

There is testimony in this case that (respondent) was unresponsive to the doctors. You are advised that he/she has the constitutional right to remain unresponsive and to say nothing. He/She was so informed by the court and by the officials at the hospital. He/She also had then the right to refuse treatment. In answering question 1, you may consider his/her silent behavior only if you are convinced that his/her silence was related to his/her mental condition and was not an exercise of his/her constitutional right to remain silent.

**Temporary Protective Placement.** If the jury returns a verdict finding that the individual is mentally ill and dangerous but not a “proper subject for treatment,” the trial judge may consider ordering temporary protective placement for the individual pursuant to Wis. Stat. § 51.67 which states:

**51.67 Alternate procedure; protective services.** (intro.) If, after a hearing under § 51.13(4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. Temporary protective placement for an individual in a center for the developmentally disabled is subject to § 51.06(3). Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for an participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of serious and persistent mental illness, and after the advantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual ....

**Definition of a Drug.** In a case involving drug-dependency and the definition of the term “drug,” see Wis. Stat. § 450.01(10) and § 961.01(11). See also an unpublished decision (one-judge) which discusses the court’s jury instruction allowing the jury to consider multiple definitions of the term “drug.” Marathon County v. Zachary W., 2015 WI App 13, 359 Wis.2d 676, 859 N.W.2d 629.

**Prisoner.** When Wis. Stat. § 51.20(1)(ar) is pled, it governs the involuntary commitment of inmates of the Wisconsin state prison system. If a recommitment proceeding concerns a prisoner pursuant to § 51.20(1)(ar), the following elements must be proven: “a county must show that (1) the individual is an inmate of the Wisconsin state prison system; (2) the inmate is mentally ill; (3) the inmate is a proper subject for treatment and is in need of treatment; (4) appropriate less restrictive forms of treatment were attempted with the inmate, and they were unsuccessful; (5) the inmate was fully informed about his treatment needs, the mental health services available, and his rights; and (6) the inmate had an opportunity to discuss his treatment needs, the services available, and his rights with a psychologist or a licensed physician.” For the involuntary commitment of a mentally ill prisoner, see Winnebago County v. Christopher S., 2016 WI 1, ¶27, 366 Wis.2d 1, 878 N.W.2d 109. While a finding of dangerousness is not required for commitment, it is required for an involuntary medication order in a Wis. Stat. sec. 51.20(1)(ar) proceeding. See Winnebago County v. Christopher S.(III), 2020 WI 33, 391 Wis.2d 35, 940 N.W.2d 875.

**Psychotropic Medication Order.** Where a psychotropic medication order is sought related to a commitment proceeding, a court, not a jury, makes the determination. Wis. Stat. § 51.61(1)(g)3.

**8025 TRESPASS: OWNER'S DUTY TO TRESPASSER; DUTY TO CHILD  
TRESPASSER (ATTRACTIVE NUISANCE)**

**TRESPASSER: DEFINITION**

A person who enters or remains upon property in possession of another without express or implied consent is a trespasser.<sup>1</sup>

Consent to be on the premises of another may be express or implied. There is an express consent when the possessor<sup>2</sup> expressly invites or authorizes another person to be on his or her premises. There is an implied consent when the possessor, by his or her conduct or his or her words, or both, by implication consents to such other person's being on the premises.

In determining whether an implied consent exists, you should look at all of the circumstances then existing, including the acquiescence of the possessor, if any, in the previous use of the premises by others (including the plaintiff); the customary use, if any, of the premises by others (including the plaintiff); the apparent holding out of the premises, if any, to a particular use by the public; and the general arrangement or design of the premises. If, under all the existing circumstances, a reasonable person would conclude that the possessor of the premises impliedly consented that the plaintiff be on the premises, then there was consent.

Question \_\_\_\_ asks: At the time and place in question, was (plaintiff) a trespasser?

If by your answer to Question \_\_\_\_ you have found that the plaintiff, \_\_\_\_\_, was

a trespasser, it will then be for you to determine whether the defendant, \_\_\_\_\_, as the (owner) (occupant possessor) of the premises, complied with those rules of law relating to the duties owed by an owner-occupant to a trespasser.

A trespasser enters upon premises of another at his or her peril. The (owner) (occupant-possessor) is under no duty to anticipate a trespasser's entry or to provide for a trespasser's safety. An (owner) (occupant possessor) may engage in any lawful work conducted in a customary manner, upon his or her premises without incurring liability to a trespasser. This is so even though some danger to trespassers reasonably may be anticipated due to the nature of the work being performed or the manner in which it is being conducted. The (owner's) (occupant-possessor's) only duty to a trespasser is to refrain from acts which willfully, wantonly, or recklessly cause injury or death to trespassers. If (owner) (occupant-possessor) becomes aware, or in the exercise of ordinary care should have become aware, of the presence of trespassers upon his or her premises, (he) (she) may not affirmatively act or set any force in motion likely to cause injury or death to trespassers.

Willful actions are deliberate acts with intent to accomplish a result. Wanton or reckless actions are those so unreasonable and dangerous that the actor knows or should know that it is highly probable harm to another will result.<sup>3</sup>

Question \_\_\_\_ asks:

At or immediately before the (injury to) (death of) (plaintiff), were the actions of (defendant) willful, wanton, or reckless?

If you determined that the actions of (defendant) were willful, wanton, or reckless, then you must determine if the actions were a cause of (plaintiff)'s (injury)(death);

Question \_\_\_\_ asks:

Was the action of (defendant) a cause of (injury)(death) to (plaintiff)?

(**NOTE:** If the plaintiff is a child and his or her claim is based on “attractive nuisance,” the following instruction should be given. For a suggested verdict, see Wis JI-Civil 8027.)

### **CHILD TRESPASSER**

When a child trespasses upon the premises of another, the owner-occupant owes no duty of care to a child injured or killed unless all of the following apply:

- a) The possessor of real property maintained, or allowed to exist, an artificial condition on the property that was inherently dangerous to children.
- b) The possessor of real property knew or should have known that children trespassed on the property.
- c) The possessor of real property knew or should have known that the artificial condition he or she maintained or allowed to exist was inherently dangerous to children and involved an unreasonable risk of serious bodily harm or death to children.
- d) The injured or killed child, because of his or her youth or tender age, did not discover the condition or realize the risk involved in entering onto the property or in playing in close proximity to the inherently dangerous artificial condition.

- e) The possessor of real property could have reasonably provided safeguards that would have obviated the inherent danger without interfering with the purpose for which the artificial condition was maintained or allowed to exist.

An artificial condition, as used in this instruction, includes a machine or device as well as a land condition artificially created. The duty of the possessor is to exercise ordinary care to eliminate dangers or otherwise protect children. Ordinary care is that degree of care which the great mass of mankind ordinarily exercises under the same or similar circumstances. The duty placed upon the possessor is to take such steps as a reasonable person would take under the circumstances. The duty of the possessor does not apply to children who know, or should know, of the danger involved in the condition.

In determining whether the (artificial condition), maintained on the land known to be subject to trespass by children, involves an unreasonable risk to them, you should consider and compare the recognizable risk to the children with the utility to the possessor of maintaining the condition. In this regard, you should consider whether safeguards could reasonably be provided which would obviate the danger without materially interfering with the purpose for the artificial condition. You must further decide if the (artificial condition) was a cause of the (injury to) (death of) (child).

## NOTES

1. Wis. Stat. § 895.529(1)(b). This instruction was revised in accordance with 2011 Act 93.



2. Wis. Stat. § 895.529(1)(a). “Possessor of real property” means an owner, lessee, tenant, or other lawful occupant of real property.

3. This exception does not apply if the possessor used reasonable and necessary force for the purpose of self-defense or the defense of others under Wis. Stat. § 939.48 or used reasonable and necessary force for the protection of property under § 939.49

#### COMMENT

The committee revised the instruction and comment in 2012. The comment was revised in 2016. This revision was approved by the Committee in September 2021; it added to the notes and comment.

Wis. Stat. § 895.529. See Wis. Stat. § 895.529(4) which states: “This section does not create or increase any liability on the part of a possessor of real property for circumstances not specified under this section and does not affect any immunity from or defenses to liability available to a possessor of real property under common law or another statute.”

This instruction incorporates the former Wis JI-Civil 8012: Trespasser: Definition and Wis JI-Civil 8015: Trespass: Consent of Possessor to Another’s Being on Premises. The instruction also covers a claim based on attractive nuisance which formerly had been addressed in Wis JI-Civil 1011.

**Special Verdicts.** For special verdicts on the duty of a possessor of property, see Wis JI-Civil 8026 and 8027.

It is the opinion of the committee that there is no comparative negligence comparison involving an owner’s duty to a child trespasser (attractive nuisance). It is our opinion that Wis. Stat. § 895.529(3)(b) is designed to limit the liability of a landowner and that the statute does not provide for a comparison of negligence.

**Burden of Proof.** The committee believes the burden of proof as to the first verdict question (i.e. was the plaintiff a trespasser?) is on the defendant to show the plaintiff was a trespasser. The middle burden of proof applies to the question: “At or immediately before the injuries to plaintiff, were the actions of defendant willful, wanton, or reckless?”

**Attractive Nuisance.** See Wis. Stat. § 895.529(3)(b); Christians v. Homestake Enterprises, Ltd., 101 Wis.2d 25, 303 N.W.2d 608 (1981); Restatement, Second, Torts § 339. For a suggested verdict, see Wis JI-Civil 8027.

**Duty to Non-Trespassers.** In Antoniewicz v. Reszczynski, 70 Wis.2d 836, fn. 4, 236 N.W.2d 1 (1975), the court abolished the distinction between the duty owed to licensees and invitees by possessors of land. The decision created one common and equal duty that a possessor of land owes to all persons on his or her lands (excepting trespassers) and that is the duty to exercise ordinary care. See Wis JI-Civil 8020.

**Duty of care owed to trespassers.** Wis. Stat. § 895.529(2) states that “Except as provided in sub. (3), a possessor of real property owes no duty of care to a trespasser.” As noted in Note 2, supra, § 895.529(1)(a) defines a “possessor of real property” as “an owner, lessee, tenant, or other lawful occupant of real property.” However, there is no statutory definition provided for the phrase “other lawful occupant of real property.”

In Stroede v. Society Insurance, 2021 WI 43, 397 Wis.2d 17, 959 N.W.2d 305, the Wisconsin Supreme Court provided an interpretation of this phrase, and determined that such a person “must have some degree of possession or control over the property and the ability to give and withdraw consent to enter or remain on the property.” Id. at ¶19.



**8060 ADVERSE POSSESSION NOT FOUNDED ON WRITTEN INSTRUMENT  
(WIS. STAT. § 893.25)**

(Name of adverse possessor) claims ownership of real estate based on adverse possession. To claim ownership of real estate based on adverse possession, a person, together with his or her predecessors in interest, must have had uninterrupted adverse possession of the real estate for at least 20 years. Real estate is adversely possessed when the person claiming adverse possession (together with (his) (her) predecessors in interest) has had actual continued occupation of the real estate, under a claim of title, exclusive of any other right and the real estate claimed and occupied is either protected by a substantial enclosure or is usually cultivated or improved.

[In determining whether real estate is adversely possessed, you must look at the physical character of the possession. The physical possession must be open, notorious, exclusive, continuous, and hostile for at least 20 years.]

[The adverse possession must be sufficiently open and obvious to have apprised (title holder) of both the fact of the possession and the intent to exclude others from possession. Exclusive possession does not mean absolutely exclusive but rather the kind of possession that would characterize an owner's use.]

**[Note: The following paragraph should be given where the use claimed to be continuous is seasonal in nature:** Where the adverse possession is seasonal in character, the requirement of continuity of possession is satisfied by the use of the real estate

according to the existing seasonal uses, needs, requirements, and limitations, taking into consideration the location and the adaptability of the real estate for the seasonal use.]

[“Hostile” does not mean a deliberate, willful, or unfriendly intent. If the characteristics of open, notorious, exclusive, and continuous possession are satisfied, the law presumes the element of hostile intent. “Hostile” means that the person in actual possession of the land claims exclusive right to it.]

[Land is “actually occupied” when it is used in a way it is ordinarily capable of being used and in such a manner as an owner would use it. Actual occupation is not limited to structural encroachment, although that it is a common physical characteristic of possession.]

The requirement of “substantial enclosure” must alert a reasonable person of a dispute over the land. “Usually cultivated or improved” means the one in possession has put the land to the same kind of use that a title holder might generally put the land.

(Title holder) is presumed to be in possession of the land claimed by (adverse possessor). Therefore, the burden is on (adverse possessor) to establish (his) (her) claim. Finally, (adverse possessor) has the burden of proof to clearly define the area of land claimed to be adversely possessed. While absolute precision or utilization of a surveyor is not required to establish lines of occupancy, the evidence must provide a reasonably accurate basis upon which to determine the boundary of the land adversely possessed.

[Burden of Proof, Wis JI-Civil 200]

**COMMENT**

This instruction and comment were approved in 1996. The comment was updated in 2011, 2015, 2016, and 2018. The instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment. This revision was approved by the Committee in October 2021; it added to the comment.

**Elements.** To constitute adverse possession, “the use of the land must be open, notorious, visible, exclusive, hostile and continuous, such as would apprise a reasonably diligent landowner and the public that the possessor claims the land as his own.” Pierz v. Gorski, 88 Wis.2d 131, 137, 276 N.W.2d 352 (Ct. App. 1979) (citations omitted); see also Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis.2d 455, 785 N.W.2d 631; Wilcox v. Estate of Hines, 2014 WI 60, 355 Wis.2d 1, 849 N.W.2d 280. “Hostile” does not mean a deliberate and unfriendly animus; rather, the law presumes the element of hostile intent if the other requirements of open, notorious, continuous, and exclusive use are satisfied. Burkhardt v. Smith, 17 Wis.2d 132, 139, 115 N.W.2d 540 (1962). Kruckenbergh v. Krukar, 2017 WI App 70, 378 Wis.2d 314, 903 N.W.2d 164. “Both the fact of possession and its real adverse character” must be sufficiently open and obvious to “apprize the true owner in the exercise of reasonable diligence of the fact and of an intention to usurp the possession of that which in law is his own.” Allie v. Russo, 88 Wis.2d 334, 343-44, 276 N.W.2d 730 (1979) (citations omitted). The size and nature of the disputed area are relevant in deciding if the use is sufficient to apprise the true owner of an adverse claim. See Pierz, 88 Wis.2d at 139.

In 2017, the Wisconsin Legislative Council published an information memorandum, IM-2017-04, which provides background information on the law of adverse possession and provides an overview of relevant court decision and statutes.

**Tacking.** The Judicial Council Committee's note following Wis. Stat. § 893.25 indicates that the phrase “in connection with his or her predecessors in interest” expresses the doctrine of “tacking” together periods of possession by adverse possessors in privity with each other.

**Presumption of Hostile Possession.** In Wilcox v. Estate of Hines, 2014 WI 60, 355 Wis.2d 1, 849 N.W.2d 280, the Wisconsin Supreme Court held that evidence regarding a possessor's subjective intent to claim title may be relevant in an adverse possession claim to rebut the presumption of hostility that arises when all other elements of adverse possession are satisfied. The court said the circuit court properly considered the predecessors in interest subjective intent and concluded that the adverse possession claimants failed to establish adverse possession for the requisite statutory period. The question presented in this case was whether the plaintiffs could establish that they adversely possessed the disputed property when their predecessors in interest expressly disclaimed ownership of it and sought permission to use the property from an entity that they mistakenly believed was its true owner.

**Burden of Proof.** This instruction is similar to the one used by the trial court in Kruse v. Horlamus Indus., 130 Wis.2d 357, 387 N.W.2d 64 (1986). It also conforms with the supreme court's clarification in Kruse as to the burden of proof to be used in adverse possession cases. The court held that the civil burden, not the middle burden, of proof applies in adverse possession cases. Some older cases used the term “clear and positive” evidence regarding evidence of possession. The court stated at page 362:

The confusion surrounding the phrase “clear and positive,” derives from the word, “clear,” which frequently appears in the middle burden of proof. Because of the confusion which this portion of the instruction may cause, we direct that the words, “must be clear and positive and,” be omitted from the instruction. The amended instruction will therefore read, “The evidence of possession must be strictly construed against the claimant.” The instruction as so modified comports with the presumption of § 893.30 Stats. that favors the holder of the legal title.

**Titleholder.** As suggested in a footnote in Kruse (p. 361), this instruction uses the term “title holder” as opposed to the term “true owner” to avoid possible confusion.

**Seasonal Use.** In both Laabs v. Bolger, 25 Wis.2d 17, 23, 130 N.W.2d 270 (1964) [involving a deer-hunting shack] and Kraus v. Mueller, 12 Wis.2d 430, 440, 107 N.W.2d 467 (1960) [involving a summer-cottage property], the court cites the A.L.R. annotation, “Adverse Possession: Sufficiency, as regards continuity, of seasonal possession other than for agricultural or logging purposes,” 24 A.L.R. 2d 632, 633, for the rule that seasonal use can satisfy the continuity requirement under certain circumstances, with the annotation stating:

The requirement of continuity of possession as one of the essential elements of adverse possession is satisfied, as regards activities which are seasonal in character (other than those relating to agriculture and logging), by the use of land commensurate with and appropriate to existing seasonal uses, needs, requirements, and limitations, having regard for the location and adaptability of the land to such uses.

**Defining the Area Possessed.** The requirement that the adverse possessor provide a reasonably accurate basis upon which a legal description of the occupied area can be based is stated in Droege v. Daymaker Cranberries, Inc., 88 Wis.2d 140, 146; 276 N.W.2d 356 (Ct. App. 1979). The trial court must be provided with a reasonably accurate basis to determine the boundary. Otto v. Cornell, 119 Wis.2d 4, 11, 349 N.W.2d 703 (1984).

The court of appeals in Klinefelter v. Ditch, 161 Wis.2d 28, 37, 467 N.W.2d 192 (Ct. App. 1991) notes:

§ 893.25 Stats. makes no distinction between “wild lands” and any others. Whether land is wild or not, a substantial enclosure plus “actual continued occupation” under a claim of right results in adverse possession if maintained for twenty years.

**Permission.** Hostile intent does not exist if the use is pursuant to the titleholder's permission. Northwoods Dev. Corp. v. Klement, 139 Wis.2d 695, 129 N.W.2d 121 (1964). See also Wilcox v. Estate of Hines, 2014 WI 60, 355 Wis.2d 1, 849 N.W.2d 280.

**Substantial Enclosure.** See Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis.2d 455, 785 N.W.2d 631; Illinois Steel Co. v. Bilot, 109 Wis. 418, 444, 84 N.W.2d 855 (1901); Kruckenbergh v. Krugar, 2017 WI App 70, 378 Wis.2d 314, 903 N.W.2d 164.

**Acquiescence.** The adverse possessor may contend that, by tolerating his or her use, the titleholder was acquiescing in the use rather than permitting it, and argue that use by acquiescence is adverse. Allie v.

Russo, 88 Wis.2d 334, 343, 276 N.W.2d 730 (1979). However, for the doctrine of acquiescence to apply, the adverse possessor's use of the disputed property must be exclusive. See Allie v. Russo, supra, at pp. 345-47, and cases cited therein.

The doctrine of acquiescence is a “supplement” to the older rule of adverse possession which held that adverse intent was the first prerequisite of adverse possession. Chandelle Enters., LLC v. XLNT Dairy Farm, Inc., 2005 WI App 110, 282 Wis.2d 806, 699 N.W.2d 241. Northrop v. Opperman, 2010 WI App 80, 325 Wis.2d 445, 784 N.W.2d 736; Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis.2d 455, 785 N.W.2d 631. Courts have developed the doctrine of acquiescence, which substitutes “mutual acceptance” for adverse or hostile intent. Buza v. Wojtalewicz, 48 Wis.2d 557, 562-63, 180 N.W.2d 556 (1970). See also Shrestha, Jessica, “Hey! That's My Land,” Wisconsin Lawyer, Vol. 83, No. 3, March 2010 and Vol. 88, No. 7, June 2015.

**All-or-nothing vs. portions of land theories.** The way that a claimant pursues a theory of adverse possession can limit their ability to argue that the finder of fact should be offered an opportunity to find that portions of the land have been adversely possessed rather than an all-or-nothing choice. See Pierz v. Gorski, 88 Wis.2d 131, 134, 276 N.W.2d 352 (Ct. App. 1979) (allowing adverse possession “[o]nly to the extent” actual occupancy, along with other requirements, are proven); and Droege v. Daymaker Cranberries, Inc., 88 Wis.2d 140, 147, 276 N.W.2d 356 (Ct. App. 1979) (When “evidence was presented as to the extent of occupancy of only a portion of the land, only that portion may be awarded.”). Per these two decisions, a rule that appears to emerge is that adverse possession claimants certainly can, and must generally be allowed to, pursue theories of adverse possession to portions within claims on larger parcels of property.





**8100 EMINENT DOMAIN: FAIR MARKET VALUE (TOTAL TAKING)**

The sole question in the Special Verdict asks, “What was the fair market value of the property on (date of evaluation)?”

In answering this question, consider only the price for which the property would have sold on (date of evaluation) by a seller then willing, but not forced, to sell, to a buyer who was then willing and able, but not forced, to buy. Fair market value is not what the property would sell for at a forced sale or at a sale made under unusual or extraordinary circumstances, or what might be paid by a particular buyer who might be willing to pay an excessive price for his or her special purpose. In determining fair market value, you should not consider sentimental value to the seller or his or her unwillingness to sell the property.

You should consider the use to which the property was put by the owner or any other use to which it was reasonably adaptable. You may base your determination on the most advantageous use or highest and best use shown to exist, either on (date of evaluation) or in the reasonably foreseeable near future after (date of evaluation). The terms “most advantageous use” and “highest and best use” have the same meaning. The highest and best use, or the most advantageous use, of the property, is the use to which the property could legally, physically, and economically be put on (date of evaluation) or in the reasonably foreseeable near future after (date of evaluation). If you consider future uses, they must be so reasonably probable as to affect fair market value on (date of evaluation).

They must not be merely possible uses based upon speculation, theory, or conjecture. You should consider every element that establishes the fair market value of the property.

### SPECIAL VERDICT

What was the fair market value of the property on (date of evaluation)?

\$ \_\_\_\_\_

### COMMENT

This instruction and comment were approved in 2006. The comment was revised in 2009, 2010, 2011, 2014, 2015, and 2020. The 2020 revision updated case law citations. This revision was approved by the Committee in January 2022; it added to the comment.

Wis. Stat. § 32.09(5).

**Fair Market Value.** The definition of “fair market value” is taken from Arents v. ANR Pipeline Company, 2005 WI App. 61, 281 Wis. 2d 173, 189, 696 N.W. 2d 194 (Ct. App. 2005). The principle that the trier of fact is to consider every element which would be considered by the buyer and the seller in the marketplace in setting the price for the subject property on the date of taking is found in Ken-Crete Products Company v. State Highway Commission, 24 Wis.2d 355, 359-360, 129 N.W.2d 130 (1964), Herro v. Department of Natural Resources, 67 Wis.2d 407, 420, 227 N.W.2d 456 (1974) and Clarmar Realty Company, Inc. v. Redevelopment Authority of the City of Milwaukee, 129 Wis. 2d 81, 91, 383 N.W.2d 890 (1986). See also 260 North 12th Street, LLC v. State of Wisconsin Dep’t of Transportation, 2011 WI 103, 336 Wis.2d 150, 805 N.W.2d 381.

**Date of Evaluation.** Under Wis. Stat. § 32.09(1), the value of the subject property in eminent domain valuation litigation is to be determined as of the date of evaluation. Schey Enterprises, Inc. v. State, 52 Wis.2d 361, 190 N.W.2d 149 (1971). For a taking under Wis. Stat. § 32.05, the date of evaluation is the date the award is recorded in the register of deeds office, which is also the date of taking. For a taking under Wis. Stat. § 32.06, the date of evaluation is the date of filing the lis pendens.

**Unit Rule.** In a total taking, fair market value must be determined using the “unit rule.” Green Bay Broadcasting v. Redevelopment Authority, 116 Wis.2d 1, 342 N.W.2d 27 (1983); see also Hoekstra v. Guardian Pipeline, 2006 WI App 245, 298 Wis.2d 165, 726 N.W.2d 648; The Lamar Co. v. Country Side Restaurant, 2012 WI 46, 340 Wis.2d 335, 814 N.W.2d 159.

The Wisconsin Supreme Court discussed the “unit rule” in City of Milwaukee Post No. 2874 VFW v. Redevelopment Authority, 2009 WI 84, 319 Wis.2d 553, 768 N.W.2d 749. The issue in the case was

expressed as follows: “If the VFW, which holds a long-term favorable lease, receives no compensation for its leasehold interest under the unit rule, has the VFW’s right to just compensation under Article I, Section 13 of the Wisconsin Constitution been violated? In other words, the court is asked to determine whether the application of the unit rule in the present case violates the just compensation clause when the fair market value of the property is zero, rendering the VFW entitled to \$0 for the loss of its property interest as a lessee.”

The court concluded that using the unit rule in the case to value the whole property to determine the amount of compensation due to the VFW does not violate the just compensation clause. The court said that the VFW receives just compensation when it receives no compensation for its leasehold interest in a property that has no value.

The VFW court explained the unit rule as follows:

... under the unit rule there is no separate valuation of improvements or natural attributes of the land, and the manner in which the land is owned or the number of owners does not affect the value of the property.[21] When property that is held in partial estates by multiple owners is condemned, the condemnor provides compensation by paying the value of an undivided interest in the property rather than by paying the value of each owner’s partial interest.[22] Simply stated, the unit rule determines the fair market value as if only one person owned the property. When the value of the property is determined, the condemnor makes a single payment for the property taken and the payment is then apportioned among the various owners.[23]

That property is valued as an integrated and comprehensive unit does not mean that the individual components of value may not be examined or considered in arriving at an overall fair market value.[24] “The unit rule requires only that the various components be valued as contributing parts of an organic whole.”[25]

In Wisconsin jurisprudence, “acceptance [of the unit rule] is beyond question.”[26] Indeed the unit rule is accepted in the majority of American jurisdictions.[27] The unit rule is a carefully guarded rule and only in rare and exceptional situations are departures permitted.[28]

**Jurisdictional Offer.** For a taking under Wis. Stat. § 32.05, a jurisdictional offer does not have to equal the appraisal on which the offer is based. Otterstatter v. City of Watertown, 378 Wis.2d 697, ¶27, 904 N.W.2d 396 (Ct. App. 2017). Instead, the words “based upon” provided in § 32.05 (2)(b) and (3)(e) mean that “the appraisal must be a supporting part or fundamental ingredient of the jurisdictional offer.” Id. at ¶24. See also, Christus Lutheran Church of Appleton v. Wisconsin Dept. of Transportation, 2021 WI 30, ¶30, 396 Wis.2d 302, 956 N.W.2d 837.

Likewise, the fact that a jurisdictional offer increases based on the re-evaluation of items “considered but not fully addressed in the initial appraisal” does not mean that the offer is not “based upon” the appraisal. Christus, supra, at ¶33. The statutory process provided in § 32.05 does not require that a condemnor stay with its initial offer based on its appraisal, “but rather it is required to negotiate to see if that number was too low.” Otterstatter, supra, ¶28. There is no statutory prohibition against offering more than the appraised amount in the jurisdictional offer.

**Environmental Contamination and Remediation Costs.** In 260 North 12th Street, LLC v. State of

Wisconsin Dept. of Transportation, 2011 WI 103, 336 Wis.2d 150, 805 N.W.2d 381, the Wisconsin Supreme Court held that a property's environmental contamination and the costs to remediate it are relevant to the property's fair market value if they would influence a prudent purchaser who is willing and able, but not obliged, to buy the property. 2011 WI 103, ¶7, 47, and 48. In this case, the trial judge instructed the jury according to JI-Civil 8100. See 260 North 12th Street, *supra*, ¶65-67.

**Damages for the Taking of an Easement or a Loss of Direct Access.** See 118th Street Kenosha, LLC v. Wisconsin Dept. of Transportation, 2014 WI 125, 359 Wis.2d 30, 856 N.W.2d 486.

**8110 EMINENT DOMAIN: CHANGE IN GRADE\***

You have heard testimony about a change in grade on the property.

A change in grade may affect the fair market value of the remaining property. If the completed public project changes the grade of the remaining property, you are to consider the change in grade when you determine the fair market value of the remaining property immediately after (date of evaluation) as if the public project was completed by (date of evaluation).

**COMMENT**

This instruction and comment were approved in 2006. The instruction was revised in 2008. This revision was approved in October 2021; it added to the comment.

\*This instruction is to be used only in partial taking cases. Read in conjunction with Wis. JI-Civil 8102. See also Wis. Stat. § 32.09 (6)(f).

There can also be a change in grade under Wis. Stat. § 32.18 where no property has been taken. A modification of this instruction should be used in such cases.

**Definition of “property.”** Wis. Stat. Sec. 32.01(2) provides a definition for the term “property” as it is used in matters concerning eminent domain. While the legislature did not define the term “lands” in this definition, the Wisconsin Supreme Court determined that § 32.01(2) indicates that “lands” constitutes some smaller subset of “property,” ... and that per § 32.01(2), “‘property’ includes ‘estates in lands, fixtures[,] and personal property directly connected with lands.’” United America, LLC v. Wis. Dept. of Transportation, 2021 WI 44, ¶12, 397 Wis.2d 42, 959 N.W.2d 317.

**Compensation for damages under § 32.18.** Wis. Stat. Sec. 32.18 applies only when a change in grade is not accompanied by the “constitutional taking” of land, and recovery is limited to “damages to the lands.” United America, *supra*, at ¶3. In United America, the Wisconsin Supreme Court concluded that based on its interpretation of the definition of “property,” the phrase “‘damages to the lands’ is a narrower category of injuries than ‘damages to property.’” *Id.*, at ¶13. Therefore, under § 32.18, compensation for the diminution in property value is barred. *Id.*, at ¶21. See Wis. Stat. Sec. 32.01(6)(f) for grade changes involving a taking of land.



**8120 EMINENT DOMAIN: COMPARABLE SALES APPROACH\***

You have heard testimony about other sales [and contracts] to assist you in determining the fair market value of the property on (date of evaluation) [and/or the fair market value of the remaining property immediately after (date of evaluation)], as if the public project had been completed by (date of evaluation)].

In determining fair market value, you must consider the price and other terms and circumstances of any good faith sale of [or contract for the sale of] comparable property. A sale [or contract] is comparable if it was made within a reasonable time before or after (date of evaluation) and if that property is sufficiently similar with respect to location, situation, usability, improvements, and other characteristics to warrant a reasonable belief that it is comparable to the property [or remaining property] being valued.

You are to consider all the elements of similarity and dissimilarity in deciding whether the other sales [or contracts] assist you in determining the fair market value of the property on (date of evaluation) [and/or the fair market value of the remaining property immediately after (date of evaluation) as if the public project had been completed by (date of evaluation)].

**COMMENT**

This instruction and comment were approved in 2006. It was revised in 2008 and 2021. The 2021 revision reflects statutory amendments pursuant to 2017 Wisconsin Act 243 [effective date: April 5, 2018].

\*The bracketed language is to be used in partial taking cases.

Wis. Stat. § 32.09 (1m)(a) provides:

As a basis for determining value, a commission in condemnation or a court shall consider the price and other terms and circumstances of any good faith sale or contract to sell and purchase comparable property. A sale or contract is comparable within the meaning of this paragraph if it was made within a reasonable time before or after the date of evaluation and the property is sufficiently similar in the relevant market, with respect to situation, usability, improvements, and other characteristics, to warrant a reasonable belief that it is comparable to the property being valued.

See Calaway v. Brown County, 202 Wis. 2d 736, 553 N.W.2d 809 (Ct. App. 1996)(citing Kamrowski v. State of Wis., 37 Wis.3d 195, 201-02, 155 N.W.2d 125, 129 (1967)); Rademann v. State Dept. of Transportation, 252 Wis. 2d 191, 642 N.W.2d 600 (Ct. App. 2002); Alsum v. Wisconsin Dept. of Transportation, 276 Wis. 2d 654, 689 N.W.2d 68 (Ct. App. 2004); Justmann v. Portage County, 278 Wis. 2d 487, 692 N.W.2d 273 (Ct. App. 2004) and Rosen v. Milwaukee, 72 Wis. 2d 653, 242 N.W.2d 681, (1976).

**Income Approach to Valuation.** The trial judge must decide if evidence on the income approach is admissible. See Hoekstra v. Guardian Pipeline, 2006 WI App 245, 298 Wis.2d 165, 726 N.W.2d 648; Alsum v. Wisconsin Dept. of Transportation, 276 Wis.2d 654, 689 N.W.2d 68 (Ct. App. 2004); National Auto Truckstops, Inc. v. State, Dept. of Transportation, 263 Wis. 2d 649, 665 N.W. 2d 198 (2003); Wisconsin Dept. of Transportation, *supra*; Rademann v. State Dept. of Transportation, 252 Wis. 2d 191, 642 N.W.2d 600 (Ct. App. 2002).

See also, the comment to Wis JI-Civil 8130.



## WIS JI-CIVIL

### TABLE OF CASES CITED

118<sup>th</sup> Street Kenosha, LLC v. Wisconsin Dept. of Transportation, 8100, 8111  
260 North 12<sup>th</sup> Street, LLC v. State of Wisconsin Dept. of Transportation, 8100, 8101  
1325 N. Van Buren, LLC v. T-3 Grp., Ltd., 2400

#### A

A. E. Inv. Corp. v. Link Builders, Inc., 1005, 1022.4, 8020  
A.G. v. Travelers Ins. Co., 3110  
Abbott v. Truck Ins. Exch. Co., 1000, 1280  
ABC Outdoor Advertising, Inc. v. Dolhun's Marine, Inc., 3030  
Abdella v. Catlin, 2800  
Ackley v. Farmers Mut. Auto Ins. Co., 1105A  
Acme Equip. Corp. v. Montgomery Coop. Creamery Ass'n, 3220, 3230  
Adams v. Maxcy, 2200  
Affett v. Milwaukee & Suburban Transport. Corp., 1796  
Affiliated F. M. Ins. Co. v. Constitution Reinsurance Corp., 3051  
Afflerbaugh v. Geo. Grede & Bro., 1025.7  
Ahola v. Sincock, 1023, 1145  
Aicher v. Wis. Patients Comp. Fund, 1023, 1870, 1895, 1897  
Aikens v. Wisconsin, 2820  
Albert v. Waelti, 1023.14  
Alden v. Matz, 1133, 1132  
Allen v. Bonnar, 1760  
Allen v. Chicago N.W. Ry., 1803, 8100  
Allen v. Ross, 3117  
Allen v. Wisconsin Public Service Corp., 950  
Allen & O'Hara v. Barrett Wreckers, Inc., 2820  
Allie v. Russo, 8060  
Allis-Chalmers Mfg. Co. v. Eagle Motor Lines, 1026.5  
Alpirn v. Williams Steel & Supply Co., 3056  
Alsteen v. Gehl, 1511, 2725  
Alsum v. WISDOT, 8102, 8103, 8120, 8130, 8135  
Alt v. American Family Mut. Ins. Co., 2760  
Alvarado v. Sersch, 1005  
Alwin v. State Farm Fire and Casualty Co., 1390  
American Family Mut. Ins. Co. v. Dobzynski, 215  
American Family Mut. Ins. Co. v. Golke, 400  
American Family Mut. Ins. Co. v. Osusky, 3112  
American Family Mut. Ins. Co. v. Shannon, 152  
American Fidelity & Casualty Co. v. Travelers Indem. Co., 1350  
American Ins. Co. v. Rural Mut. Casualty Ins. Co, 3117  
American Nat'l Red Cross v. Banks, 1025.5  
American States S. Co. v. Milwaukee N. R. Co., 8100, 8120  
American Steam Laundry Co. v. Riverside Printing Co., 3725  
American Tobacco Co. v. United States, 2802, 2804  
Andersen v. Andersen, 260  
Anderson v. Alfa-Laval Agri, Inc., 3240  
Anderson v. Anderson, 4080  
Anderson v. Continental Ins. Co., 1707, 2725, 2761, 3044  
Anderson v. Eggert, 260  
Anderson v. Seelow, 100

## WIS JI-CIVIL CASES CITED

Anderson v. Stricker, 1144, 1210  
Anderson v. Tri-State Home Improvement Co., 2400, 2405, 2405.5  
Anderson v. Yellow Cab Co., 1025  
Andraski v. Gormley, 1125  
Anello v. Savignac, 2000  
Ansani v. Cascade Mountain, Inc., 1393  
Ansul v. Employers Ins. Co. of Wausau, 3116  
Antoniewicz v. Reszczynski, 1901, 8012, 8015, 8020, 8025  
Antwaun A. v. Heritage Mut. Ins. Co., 1005, 1009  
Apex Hosiery Co. v. Leader, 2800  
Appleton Chinese Food v. Murken Ins., 1023.6  
Appleton Elec. Co. v. Rogers, 3063  
Appleton State Bank v. Lee, 3048, 3076  
Arbet v. Gussarson, 1500  
Arents v. ANR Pipeline Company, 8100, 8101, 8102, 8103  
Arjay Investment Co. v. Kohlmetz, 3028  
Arledge v. Scherer Freight Lines, 1026  
Armstrong v. Milwaukee Ins. Co., 1390, 1391  
Arndt Brothers Minkery v. Medford Fur Foods, 3200  
Arnold v. National Bank of Waupaca, 2400  
Arnold v. Shawano County Agricultural Soc'y, 1815  
Arsand v. City of Franklin, 1600, 4000, 4030, 4060  
Ashley v. American Auto Ins. Co., 1090, 1758, 1760  
Atlee v. Bartholomew, 3020  
Attoe v. State Farm Mut. Auto Ins. Co., 3057  
Augsburger v. Homestead Mutual Ins. Co., 1390, 1391  
Augustine v. Anti-Defamation League B'nai B'rith, 2780, 2800  
Ault v. International Harvester Co., 358  
Auric v. Continental Cas. Co., 1023.5  
Austin v. Ford Motor Co., 1277  
Autumn Grove Joint Venture v. Rachlin, 3044  
Ayala v. Farmers Mut. Auto Ins. Co., 1500

### B

Bach v. Liberty Mut. Fire Ins. Co., 1610, 1760  
Bachand v. Connecticut Gen. Life Ins. Co., 2520  
Bachman v. Salzer, 2401  
Bade v. Badger Mut. Ins. Co., 3057, 3074  
Badger Cab Co. v. Soule, 2620  
Badger Furniture Co. v. Industrial Comm'n, 4030, 4060  
Bagnowski v. Preway, Inc., 1022.4  
Baier v. Farmers Mut. Auto Ins. Co., 1157  
Baierl v. Hinshaw, 1001  
Bailey v. Bach, 100, 1285  
Bailey v. Hagen, 1310  
Bailey v. Hovde, 205, 3040  
Baird v. Cornelius, 1046  
Baker v. Herman Mut. Ins. Co., 1075  
Baker v. Northwestern Nat'l Casualty, 2760, 2770, 3725  
Balas v. St. Sebastian's Congregation, 1900.4  
Baldewein Co. v. Tri-Clover, Inc., 2769  
Ballard v. Lumbermen's Mut. Casualty Co., 410, 1760, 1815  
Bank of Calif., v. Hoffmann, 4020  
Bank of Sheboygan v. Fessler, 3040  
Bank of Sun Prairie v. Esser, 2401, 3068  
Bank of Sun Prairie v. Opstein, 3057

## WIS JI-CIVIL CASES CITED

Bankert v. Threshermen's Mut. Ins. Co., 1013, 1014  
Bannach v. State Farm Mut. Auto Ins. Co., 1350  
Barker Barrel Co. v. Fisher, 1310  
Barlow v. DeVilbiss Co., 3200  
Barnard v. Cohen, 2520  
Barnes v. Lozoff, 1022.4, 1812  
Barney v. Mickelson, 1023  
Barr v. Granahan, 3020  
Barragar v. Industrial Comm'n, 1605, 4045  
Barry v. Employers Mut. Casualty Co., 1022.6, 1900.4  
Bartelt v. Smith, 4080  
Barth v. Downey Co., 1022.2  
Barthel v. Wisconsin Elec. Power Co., 1901  
Basche v. Vanden Heuvel, 1725  
Battice v. Michaelis, 1191  
Bay View Packing Co. v. Taff, 2511  
Beacon Fed. Sav. & Loan Ass'n v. Panoramic Enter., Inc., 3020  
Becker v. Barnes, 315  
Beer v. Strauf, 1105  
Beers v. Bayliner Marine Corp., 400  
Behringer v. State Farm Mut. Auto Ins. Co., 1735  
Bekkedal v. City of Viroqua, 1  
Bell v. County of Milwaukee, 1838  
Bell v. Duesing, 1012, 1582  
Belling v. Harn, 3110  
Bellrichard v. Chicago & N. W. Ry., 1336, 1405, 1408, 1409  
Below v. Norton, 2400, 2418, 2419  
Bembister v. Aero Auto Parts, 1336  
Benke v. Mukwonago Mut. Ins. Co., 2761  
Benkoski v. Flood, 2418, 2720  
Bensend v. Harper, 180  
Bentley v. Foyas, 2401, 2402  
Bentzler v. Braun, 1114, 1277, 1300  
Bergevin v. Chippewa Falls, 1900.4  
Berner Cheese Corp. v. Krug, 1707.1  
Bernhagen v. Marathon Fin. Corp., 4028  
Betchkal v. Willis, 1005, 1009, 1350  
Betehia v. Cape Cod Corp., 3200, 3204, 3248  
Beul v. ASSE International, Inc., 2005.5  
Bey v. Transport Indem. Co., 1065  
Beyak v. North Central Food Systems, Inc., 8045  
Bielski v. Schulze, 1006, 1383  
Biersach v. Wolf River Paper & Fiber Co., 1580, 1585, 1590  
Bigelow v. West Wis. Ry. Co., 8102, 8103, 8105  
Binsfeld v. Curran, 1045  
Bird v. Kleiner, 2400  
Bishop-Babcock Co. v. Keeley, 3034  
Black v. General Elec. Co., 260  
Blahnik v. Dax, 100  
Blair v. Staats, 1582  
Blaisdell v. Allstate Ins. Co., 1766  
Blankavag v. Badger Box & Lumber Co., 405  
Bleyer v. Gross, 1758  
Bloom v. Krueger, 4040  
Bloomer v. Bloomer, 1796  
BMW of North Am., Inc., v. Gore, 1707.1, 1707.2  
Bockemuhl v. Jordan, 4020

## WIS JI-CIVIL CASES CITED

Bode v. Buchman, 410  
Boelter v. Ross Lumber Co., 1705  
Bohn v. Leiber, 3079  
Bohn Mfg. Co. v. Reif, 3034  
Bohnsack v. Huson-Ziegler Co., Inc., 1605  
Boles v. Milwaukee County, 1880  
Bolick v. Gallagher, 1722A  
Booth v. Frankenstein, 410, 1135, 1140  
Borello v. United States Oil Co., 950  
Borg v. Downing, 3220  
Boschek v. Great Lakes Mut. Ins. Co., 3116  
Bourassa v. Gateway Erectors, Inc., 1051, 1767, 1768, 1796  
Bourestom v. Bourestom, 1112  
Bovi v. Mellor, 1144  
Bowen v. American Family Ins. Co., 1897  
Bowen v. Industrial Comm'n, 410  
Bowen v. Lumbermens Mut. Casualty Co., 1510, 1511, 1770, 1855  
Bowers v. Treuthardt, 1065, 1325, 1610  
Boynton Cab Co. v. ILHR Dep't, 1025  
Bradford v. Milwaukee & Suburban Transp. Corp., 1025  
Bradley v. Harper, 1025.5  
Brain v. Mann, 1760  
Brandenburg v. Briarwood Forestry Services, LLC, 1022.6  
Bratt v. Peterson, 3074  
Braun v. Wisconsin Elec. Power Co., 8102, 8103, 8105  
Brekken v. Knopf, 2005.5  
Brest v. Maenat Realty, 3040  
Brethorst v. Allstate, 2761  
Breunig v. American Family Ins. Co., 1021, 1021.2  
Brew City Redevelopment Group v. The Ferchill Group, 2808, 2820  
Brice v. Milwaukee Auto Ins. Co., 1010, 1582  
Bridgeport Mortgage & Realty Corp. v. Whitlock, 3045  
Bridgkort Racquet Club v. University Bank, 1796  
Briese v. Maechtle, 1010  
Briggs v. Miller, 3010, 3020  
Bright v. City of Superior, 4015  
Bristol v. Eckhardt, 2605  
Britz v. American Ins. Co., 3117  
Broadbent v. Hegge, 3057  
Brockmeyer v. Dun & Bradstreet, 2750  
Brodis v. Hayes, 1022.6, 4060  
Brons v. Bischoff, 1900.4  
Brooks v. Hayes, 1022.6, 4060  
Brown v. Dibbell, 1023.4  
Brown v. Maxey, 1707, 1707.1, 3051  
Brown v. Milwaukee Terminal Ry. Co., 1920, 1922, 1928  
Brown v. Muskego Norway School Dist. Group Health Plan, 4035, 4045  
Brown v. Oneida Knitting Mills, Inc., 3082  
Brown v. Travelers Indem. Co., 1055, 1501  
Brown v. Wisconsin Natural Gas Co., 1002, 1003  
Browne v. State, 2115  
Brownsell v. Klawitter, 2600, 2620  
Brueggeman v. Continental Casualty Co., 1910  
Brunette v. Slezewski, 1806  
Brunke v. Popp, 1006  
Bruner v. Heritage Co., 2200, 2800  
Brunner v. Van Hoof, 1145

## WIS JI-CIVIL CASES CITED

Brusa v. Mercy Health Sys., Inc., 1023  
Bruss v. Milwaukee Sporting Goods Co., 3250  
Bruttig v. Olsen, 1013, 1014  
Bryan v. Noble, 3072  
Buchberger v. Mosser, 3115  
Buchholz v. Rosenberg, 3700  
Buckett v. Jante, 3028  
Buckman v. E. H. Schaefer & Assoc., Inc., 3086  
Buckner v. General Casualty Co., 3115  
Bump v. Voights, 1885  
Bunbury v. Krauss, 3074  
Bunkfeldt v. Country Mut. Ins. Co., 1140  
Burant v. Ortloff, 1045  
Burch v. American Family Mut. Ins. Co., 1021  
Burg v. Cincinnati Cas. Ins. Co., 1120  
Burke v. Milwaukee & Suburban Transp. Co., 1005, 1009  
Burke v. Tesmer, 1165  
Burkhalter v. Hartford Accident & Indem. Ins. Co., 1155, 1157  
Burkhardt v. Smith, 8060  
Burkman v. New Lisbon, 3079  
Burnside v. Evangelical Deaconess Hosp., 1024  
Bursack v. Davis, 2100  
Burton v. Sherwin-Williams Co., 3295  
Burzlaff v. Thoroughbred Motorsports, Inc., 3303  
Bushweiler v. Polk County Bank, 1025.5, 1025.7  
Buss v. Clements, 3117, 3118  
Butler v. Industrial Comm'n, 4045  
Butts v. Ward, 1320  
Butzow v. Wausau Memorial Hosp., 1710, 1722A, 1723  
Buxbaum v. G. H. P. Cigar Co., 3725  
Buza v. Wojtalewicz, 8060  
Bychinski v. Sentry Ins., 1796, 1797  
Byerly v. Thorpe, 1052  
Byrnes v. Metz, 1731

### C

Calaway v. Brown County, 8101, 8120  
Calero v. Del Chemical, 2500, 2501, 2511, 2513, 2520, 2552  
Calhoun v. Lasinski, 1000  
Calhoun v. Western Casualty & Sur. Co., 3117  
California Wine Ass'n v. Wisconsin Liquor Co. of Oshkosh, 3024, 3049, 3083, 3084  
Callan v. Peters Constr. Co., 1056, 1901, 1904  
Callies v. Reliance Laundry Co., 1835  
Calumet Cheese Co. v. Chas. Pfizer & Co., 3200  
Cameron v. Union Auto Ins. Co., 1895  
Camp v. Anderson, 1511  
Campbell v. Spaeth, 1032  
Campenni v. Walrath, 1390  
Camper Corral v. Alderman, 1023.6  
Canifax v. Hercules Powder Co., 3200  
Converters Equip. Corp. v. Condes Corp., 2500  
Capello v. Janeczko, 410, 1052, 1054  
Capital Sand & Gravel Co. v. Waffenschmidt, 305  
Capital Investments, Inc. v. Whitehall Packing Co. Inc., 3049, 3051  
Carazalla v. State, 8110, 8125  
Carl v. Spickler Ent. Ltd, 3302

## WIS JI-CIVIL CASES CITED

Carlson v. Drews of Hales Corners, Inc., 1760, 1902  
Carlson & Erickson v. Lampert Yards, 205  
Carr v. Amusement, Inc., 410, 1900.4  
Carson v. Beloit, 1023, 1385  
Carson v. Pape, 2115  
Cary v. Klabunde, 1315  
Casper v. American International South Ins. Co., 1005  
Cass v. Haskins, 3016  
Cedarburg Light & Water Comm'n v. Allis-Chalmers, 3240  
Central Corp. v. Research Products Corp., 2769  
Champion Companies v. Stafford Development, 3700  
Chandelle Enters., LLC v. XLNT Dairy Farm, Inc., 8060  
Chapleau v. Manhattan Oil Co., 1804, 1805  
Chapman v. Zakzaska, 2400  
Chapnitsky v. McClone, 1506  
Charolais Breeding Ranches, Ltd. v. FPC Securities Corp., 2780  
Chart v. General Motors Corp., 325, 358  
Chernetski v. American Family Mutual Insurance Co., 1153, 1555, 1157, 1558, 1159, 1160, 1165, 1170, 1175, 1180, 1185, 1190, 1190.5, 1191, 1193.5, 1195, 1205, 1210, 1220, 1225, 1230, 1235, 1240, 1245, 1250, 1255, 1260, 1270  
Chicago & N.W. R. Co. v. James, 4015  
Chicago & N.W. Ry. v. Railroad Comm'n of Wisconsin, 1412  
Chicago, Milwaukee, St. Paul & Pac. R.R. Co. v. Chicago & N.W. Transp. Co., 3070  
Chille v. Howell, 1153  
Chmill v. Friendly Ford-Mercury, 3301, 3302  
Christ v. Exxon Mobil Corp., 950  
Christians v. Homestake Enter., Ltd., 1011, 8025, 8027  
Christianson v. Downs, 1023  
Christus Lutheran Church of Appleton v. Wisconsin Dept. of Transportation, 8100  
Chrysler Corp. v. Lakeshore Commercial Fin. Corp., 2780  
Chudnow Constr. Corp. v. Commercial Discount Corp., 3020  
Cierzan v. Kriegal, 3110  
Cincoski v. Rogers, 1870  
Cirillo v. Milwaukee, 1381  
City of Franklin v. Badger Ford Truck Sales, 3290  
City of Hartford v. Godfrey, 1220, 1225  
City of Milwaukee v. Allied Smelt Corp., 410  
City of Milwaukee v. NL Industries, Inc., 1920, 2800  
City of Milwaukee v. Roadster LLC, 8104  
City of Milwaukee Post No. 2874 VFW v. Redevelopment Authority, 8100  
City of Stoughton v. Thomasson Lumber Co., 400  
Clark v. Corby, 1901  
Clark v. Leisure Vehicles, Inc., 1500  
Clarmar Realty Company, Inc. v. Redevelopment Authority of the City of Milwaukee, 8100, 8101, 8145  
Claypool v. Levin, 950  
Cluskey v. Thranow, 2401  
Coakley v. Prentiss-Wabers Stove Co., 3254  
Cobb v. Simon, 2100  
Cochran v. Allyn, 1600  
Coenen v. Van Handel, 215, 1280  
Cogger v. Trudell, 1861  
Cohan v. Associated Fur Farms, Inc., 3200  
Cohen v. Lachenmaier, 3020  
Cole v. Schaub, 1756  
Coleman v. Garrison, 1742  
Colla v. Mandella, 1145  
Collier v. State, 215  
Collins v. Eli Lilly Co., 1707, 3295

## WIS JI-CIVIL CASES CITED

Collova v. Mutual Serv. Casualty Ins. Co., 1730  
Colton v. Foulkes, 1022.4  
Commerce Ins. Co. v. Merrill Gas Co., 1002, 1145  
Commonwealth Tel. Co. v. Paley, 4005  
Concrete Equip. Co. v. Smith Contract Co., Inc., 3207  
Coney v. Milwaukee & Suburban Transp. Corp., 410  
Congreve v. Smith, 1920  
Connar v. West Shore Equip. of Milwaukee, Inc., 1900.2  
Conrad Milwaukee Corp. v. Wasilewski, 3012, 3042  
Conrardy v. Sheboygan County, 315  
Consolidated Papers, Inc. v. ILHR Dep't, 305  
Continental Ore Co. v. Union Carbide & Carbon Corp., 2806  
Convenience Store Leasing and Management v. Annapurna Marketing, 3070  
Cook v. McCabe, 3062  
Cook v. Wisconsin Tel. Co., 1096  
Cooper v. Chicago & N.W. Ry., 230  
Copperweld Corp. v. Independence Tube Corp., 2808  
Corbitt v. Stonemetz, 3054  
Cords v. Anderson, 1007.5, 1796, 1797  
Corning v. Dec Aviation Corp., 325  
Correa v. Woodman's Food Market, 1900.4  
Coryell v. Conn, 1767, 1768  
Costa v. Neimon, 2406  
Costas v. City of Fond du Lac, 1920, 1928, 1930, 1932  
Couillard v. Van Ess, 1911, 8020  
Cramer v. Theda Clark Memorial Hosp., 1385  
Crane v. Sears Roebuck & Co., 3200, 3262  
Cranston v. Bluhm, 2800  
Crest Chevrolet-Oldsmobile Cadillac, Inc. v. Willemsen, 1383, 1731, 8045  
Criswell v. Seaman Body Corp., 1051, 1911  
Cronin v. Cronin, 1870  
Cross v. Leuenberger, 1910  
Crotteau v. Karlgaard, 1708, 2006  
Crowder v. Milwaukee & Suburban Transp. Corp., 155  
Crown v. General Motors Corp., 3200  
Crown Life Ins. Co. v. LaBonte, 3044  
Cruis Along Boats, Inc., v. Standard Steel Prods. Mfg. Co., 1804  
Crye v. Mueller, 1090  
Cudd v. Crownhart, 2780  
Culton v. Van Beek, 1080  
Culver v. Webb, 1285  
Cunnien v. Superior Iron Works Co., 1055  
Curtis Land & Loan Co. v. Interior Land Co., 3014  
Cutler Cranberry Co. v. Oakdale Elec. Coop., 1806  
Czapinski v. St. Francis Hosp., 1897  
Czarnetzky v. Booth, 1080

### D

D.L. v. Huebner, 358, 410, 1019  
D.L. Anderson's Lakeside Leisure Co., Inc. v. Anderson, 2790, 2791  
Dabareiner v. Weisflog, 1797  
Dahl v. Ellis, 1260  
Dahlberg v. Jones, 1385, 1385.5  
Dakter v. Cavallino, 1005  
Dalton v. Meister, 1707, 2500, 2516, 2520, 2800  
Darst v. Fort Dodge D.M. & S.R.R., 3074

## WIS JI-CIVIL CASES CITED

Dauplaise v. Yellow Taxicab Co., 1025  
Davis v. Allstate Ins. Co., 1075, 2761  
Davis v. Feinstein, 1050  
Davis v. Nuzum, 2400  
Dawson v. Jost, 410  
DeBaker v. Austin, 1354  
DeBruine v. Voskuil, 1023  
DeChant v. Monarch Life Ins. Co., 410, 2761  
Degenhardt v. Heller, 2004  
Dehnart v. Waukesha Brewing Co., 3710, 3735  
De Keuster v. Green Bay & W. R.R., 215  
Dekeyser v. Milwaukee Automobile Ins. Co., 1030  
Delaney v. Supreme Inv. Co., 8030  
Delap v. Institute of Am., Inc., 3048  
Delmore v. American Family Mut. Ins. Co., 1046, 1047, 1047.1  
Delong v. Sagstetter, 1350  
Delvaux v. Vanden Langenberg, 100, 1580, 8045  
Denil v. Coppersmith, 1391  
Denil v. Integrity Mut. Ins., 1815  
Denny v. Mertz, 2500, 2501, 2505, 2505A, 2509, 2516, 2520  
Denzer v. Rouse, 1023.5  
DeRuyter v. Wisconsin Elec. Power Co., 1605, 4035  
DeSombre v. Bickel, 3052, 3700  
Desotelle v. Continental Casualty Co., 4035  
DeThorne v. Bakken, 1023.5, 1023.5A  
Devine v. McGowan, 1403  
Dick v. Heisler, 190  
Dickman v. Schaeffer, 1766  
Dickson v. Pritchard, 3725  
Diemel v. Weirich, 1767, 1768  
Diener v. Heritage Mut. Ins. Co., 1114  
Dieter v. Chrysler Corp., 3301  
Dietz v. Hardware Dealers Mut. Fire Ins. Co., 3115, 3116  
Digicorp, Inc. v. Ameritech Corp., 2400  
DiMiceli v. Klieger, 2500, 2505  
Dippel v. Sciano, 1924, 1930, 3200, 3260, 3260.1, 3268  
Docter v. Furch, 3044  
Dodge v. Dobson, 410  
Doern v. Crawford, 3110  
Dombeck v. Chicago, M. St. P. & P. Ry., 1405, 1407, 1408, 1409  
Dombrowski v. Albrent Freight & Storage Corp., 1500  
Dombrowski v. Tomasino, 1  
Donlea v. Carpenter, 1350, 1795  
Donovan v. Barkhausen Oil Co., 2200, 2200.1, 2200.2  
Doolittle v. Western States Mut. Ins. Co., 1750.2  
Douglas v. Dewey, 1900.4  
Doyle v. Engelke, 1383  
Doyle v. Teasdale, 3072  
Drake v. Farmers Mut. Auto Ins. Co., 1157  
Draper v. Baker, 1707  
Draper v. United States, 2115  
Dreazy v. North Shore Publishing Co., 3022  
Droege v. Daymaker Cranberries, Inc., 8060  
Duffy Law Office v. Tank Transport, 1023.5, 1023.5A, 1023.8  
Dumas v. Koebel, 2550, 2725, 2780  
Dumer v. St. Michael's Hosp., 1385  
Duncan v. Steeper, 2900



## WIS JI-CIVIL CASES CITED

Dunn v. Pertzsch Const., Inc., 3074  
Durand West, Inc. v. Milwaukee W. Bank, 3020  
Dutcher v. Phoenix Ins. Co., 1047.1  
Dwyer v. Jackson Co., 8051  
Dykstra v. Arthur G. McKee & Co., 1900.4, 1904

### E

E. L. Chester Co. v. Wisconsin Power & Light Co., 1003  
Eastern States Retail Lumber Dealers' Ass'n v. United States, 2800  
Eckel v. Richter, 4035  
Eckstein v. Northwestern Mut. Life Ins. Co., 3074  
Edeler v. O'Brien, 1105A  
Eden v. LaCrosse Lutheran Hosp., 1385  
Edlebeck v. Hooten, 1610  
Edward E. Gillen Co. v. John H. Parker Co., 3060  
Egan v. Travelers Ins. Co., 1715  
Ehlers v. Colonial Penn. Ins. Co., 3117  
Eide v. Skerbeck, 8040  
Einhorn v. Culea, 1005  
Eleason v. Western Casualty & Sur. Co., 1021.2  
Ellsworth v. Schelbrock, 202, 1723, 1756  
Elmer v. Chicago & N.W. Ry., 2600  
Elmergreen v. Kern, 3020  
Emerson v. Riverview Rink & Ballroom, 8040, 8045  
Employers Ins. Co. v. Pelczynski, 3112  
Employers Mut. Ins. Co. v. Industrial Comm'n, 4030  
Enea v. Pfister, 1600  
Engel v. Dunn County, 1804, 3700  
Engsberg v. Hein, 1144  
Engstrum v. Sentinel Co., 1095  
Erickson v. Prudential Ins. Co., 1014, 1014.5  
Ernst v. Greenwald, 350  
Ertl v. Ertl, 2900  
Esch v. Chicago M. & St. P. R. Co., 8100  
Estate of Ansell, 3024  
Estate of Briese, 3020  
Estate of Cavanaugh v. Andrade, 1031  
Estate of Chayka, 3044  
Estate of Daniels, 3110  
Estate of Gooding, 8100  
Estate of Hatten, 3020  
Estate of Holt v. State Farm, 1861  
Estate of Lade, 1812  
Estate of Lube, 3012  
Estate of Miller v. Storey, 2420  
Estate of Nale, 1812  
Estate of Neumann, 400, 405  
Estate of St. Germain, 3024  
Estate of Schoenkerman, 3020  
Estate of Starer, 1610  
Estate of Steffes, 1812  
Estate of Stromstead, 1825  
Estate of Voss, 1812  
Estate of Zellmer, 3061  
Estate of Zhu v. Hodgson, 1153, 1555, 1157, 1558, 1159, 1160, 1165, 1170, 1175, 1180, 1185, 1190, 1190.5, 1191, 1193.5, 1195, 1205, 1210, 1220, 1225, 1230, 1235, 1240, 1245, 1250, 1255, 1260, 1270

## WIS JI-CIVIL CASES CITED

Everlite Mfg. Co. v. Grand Valley Machine & Tool Co., 3030  
Ewen v. Chicago & N.W. Ry., 1012, 1861  
Ewers v. Eisenzopf, 3202, 3220, 3225, 3230  
Ewing v. Goode, 1023

### F

Fabick, Inc. v. JFTCO, Inc., 2790  
Fahrenberg v. Tengel, 415, 1707, 2520  
Fairbanks v. Witter, 1708  
Farley v. Salow, 3049  
Farm Credit Bank of St. Paul v. F&A Dairy, 2200  
Farmers Mut. Auto Ins. Co. v. Gast, 1500  
Farrell v. John Deere Co., 1723  
Faultersack v. Clintonville Sales Corp., 4020  
Fawcett v. Gallery, 1605, 4045  
Featherly v. Continental Ins. Co., 410, 1760, 1762  
Federal Pants, Inc. v. Stocking, 2780  
Fee v. Heritage Mut. Ins. Co., 1825  
Fehrman v. Smirl, 415, 1024  
Fenelon v. Butts, 1708  
Ferdon v. Wisc. Patients Compensation Fund, 1023, 1870, 1895, 1897  
Ferraro v. Koelsch, 2750  
Ferris v. Location 3 Corp., 2400  
Field v. Vinograd, 1230, 1582  
Fieldhouse Landscape v. Gentile, 1812  
Fields v. Creek, 1501  
Fifer v. Dix, 1390  
Filipiak v. Plombon, 1910  
Finch v. Southside Lincoln-Mercury, Inc., 2780  
Finke v. Hess, 1023  
Finken v. Milwaukee County, 1025  
Fire Ins. Exchange v. Cincinnati Ins. Co., 1390  
Firemen's Fund Ins. Co. v. Schreiber, 1025.7, 4035  
First Credit Corp. v. Behrend, 2401  
First Nat'l Bank v. Hackett, 2400  
First Nat'l Bank of Oshkosh v. Scieszinski, 2401, 2402  
First Trust Co. v. Holden, 3020  
First Wisconsin Land Corp. v. Bechtel Corp., 1806  
First Wisconsin Nat'l Bank v. Oby, 3020  
First Wisconsin Nat'l Bank of Milwaukee v. Wichman, 2790  
First Wisconsin Trust Co. v. L. Wiemann Co., 3095  
Fischer v. Cleveland Punch and Shear Work Co., 1760  
Fischer v. Fischer, 60, 61, 1825  
Fischer v. Ganju, 1023  
Fisher v. Lutz, 4015  
Fisher v. Simon, 1022.4  
Fitzgerald v. Badger State Mut. Casualty Co., 1900.4  
Fitzgerald v. Meissner & Hicks, Inc., 1815  
Fiumefreddo v. Mclean, 1024  
Fleming v. Thresherman's Mut. Ins. Co., 1383, 1580, 8045  
Fletcher v. Ingram, 1025.5  
Flies v. Fox Bros. Buick Co., 3200, 3240  
Flynn v. Audra's Corp., 8045  
Foellmi v. Smith, 1052, 1140, 3074  
Foerster, Inc. v. Atlas Metal Parts Co., 2769  
Foley v. City of West Allis, 1277, 1278, 1722A

## WIS JI-CIVIL CASES CITED

Fond du Lac County v. Helen E.F., 7050, 7050A, 7060, 7061  
Fondell v. Lucky Stores, Inc., 1001, 1900.4, 1904  
Foote v. Douglas County, 3116  
Ford, Bacon & Davis, 1580  
Ford Motor Co. v. Lyons, 2808  
Forrer v. Sears Roebuck & Co., 3084  
Fortier v. Flambeau Plastics Co., 1924, 1930  
Foseid v. State Bank of Cross Plains, 2780, 3044  
Foss v. Madison Twentieth Century Theaters, 2401  
Foster v. Fidelity & Casualty Co. of N. Y., 3117  
Fouse v. Persons, 1710, 1756  
Fox v. Boldt, 3202  
Francois v. Mokrohisky, 1023  
Frank v. Metropolitan Life Ins. Co., 3018  
Frankland v. Peterson, 1144, 1210  
Franz v. Brennan, 1707  
Fredrickson v. Kabat, 2007  
Freeman v. Dells Paper & Pulp Co., 4005  
Freeman v. Morris, 3022  
Freuen v. Brenner, 1750.2  
Frey v. Dick, 1035  
Fricano v. Bank of America, 2418  
Frinzi v. Hanson, 2500  
Frion v. Coren, 1910  
Frion v. Craig, 115  
Froh v. Milwaukee Medical Clinic, S.C., 1023, 1385  
Fuchs v. Kupper, 1707  
Fuchsgruber v. Custom Accessories, 3290  
Fultz v. Lange, 1605, 4045  
Fun-N-Fish, Inc. v. Parker, 3058

### G

Gabriel v. Gabriel, 3074  
Gage v. Seal, 1105A  
Gall v. Gall, 3054  
Gallagher v. Chicago & N.W. Ry., 1405  
Galst v. American Ladder Co., 3242  
Gamble-Skogmos v. Chicago & N.W. Transp. Co., 1410  
Garceau v. Bunnell, 1105A, 1730  
Garcia v. Samson's, Inc., 4015  
Garfoot v. Fireman's Fund Ins. Co., 400  
Garlick v. Morley, 4005, 4015  
Garner v. Charles A. Krause Milling Co., 3220  
Garrett v. City of New Berlin, 1510 1511  
Garrison v. State of Louisiana, 2511  
Gaspord v. Hecht, 1090  
Gauerke v. Rozga, 2400, 2402  
Gauthier v. Carbonneau, 1580, 1585, 1590  
Gay v. Milwaukee Elec. Ry. & Light Co., 1145  
Geis v. Hirth, 1030, 1105A  
Geise v. Montgomery Ward, Inc., 180, 191, 1600, 1837  
Geldnich v. Burg, 4035, 4040  
Gelhaar v. State, 420  
Gename v. Benson, 1812  
Gedanke v. Wisconsin Evaporated Milk Co., 3076  
General Elec. Co. v. N.K. Ovalle, Inc., 3074

## WIS JI-CIVIL CASES CITED

Georgeson v. Nielsen, 4000, 4027  
Georgia Casualty Co. v. American Milling Co., 1145  
Gerbing v. McDonald, 1756  
Gerlat v. Christianson, 1013  
Gerovac v. Hribar Trucking, Inc., 3024  
Gerrard Realty Corp. v. American States Ins. Co., 3117  
Gertz v. Robert Welch, Inc., 2500, 2505, 2509, 2516, 2520  
Gervais v. Kostin, 1600  
Gessler v. Erwin Co., 3060, 3078  
Gewanski v. Ellsworth, 4035  
Gibson v. American Cyanamid, 3295  
Gibson v. Overnite Transportation Company, 2507  
Gibson v. Streeter, 1090  
Gilberg v. Tisdale, 1056  
Gill v. Benjamin, 3066  
Gilman v. Brown, 1806  
Gladfeldter v. Doemel, 1707  
Glamann v. St. Paul Fire & Marine Ins., 1023.5  
Gleason v. Gillihan, 1055, 1060, 1191  
Godfrey Co. v. Crawford, 3058  
Godoy v. E.I. du Pont De Nemours et al, 3260.1  
Goebel v. General Bldg. Serv. Co., 1145  
Goehmann v. National Biscuit Co., 1075  
Goetz v. State Farm Mut. Auto Ins. Co., 3012  
Goldberg v. Berkowitz, 1010  
Goldenberg v. Daane, 1140  
Goller v. White, 2900  
Gonzalez v. City of Franklin, 1010, 1582, 1795  
Gordon v. Milwaukee County, 1023  
Gosse v. Navistar Int'l Transp. Corp., 3300  
Gouger v. Hardtke, 2001  
Gould v. American Family Mut. Ins. Co., 1021  
Graass v. Westerlin & Campbell Co., 3244  
Graf v. Neith Co-op. Dairy Products Association, 3028  
Grana v. Summerford, 1141, 1350, 1354, 1355, 1580, 1585, 1590  
Grand Trunk W. R.R. v. Lahiff, 3072  
Granger v. Chicago M. & St. P. Ry., 3072  
Gray v. Wisconsin Tel. Co., 1395  
Greco v. Bueciconi Eng'r Co., 3200  
Green Bay Broadcasting v. Redevelopment Authority, 8100, 8101  
Green Bay-Wausau Lines, Inc. v. Mangel, 1355  
Green Spring Farms v. Spring Green Farms, 1  
Green v. Kaemph, 3062  
Green v. Rosenow, 1756  
Green v. Smith & Nephew AHP, Inc., 3200, 3260, 3260.1  
Greene v. Farmers Mut. Auto Ins. Co., 1285  
Greenlee v. Rainbow Auction/Realty Co., 3028  
Greenville Coop. Gas Co. v. Lodesky, 1350  
Greiten v. LaDow, 3240, 3260  
Gremban v. Burke, 1010  
Griebler v. Doughboy Recreational, Inc., 8020  
Grimes v. Snell, 1840  
Gritzner v. Michael R., 1005, 1013, 1397  
Grognet v. Fox Valley Trucking Serv., 425  
Grossenbach v. Devonshire Realty, 8012  
Grosso v. Wittemann, 1380, 1381  
Grube v. Daun, 1005, 1009, 2403

## WIS JI-CIVIL CASES CITED

Gruen Indus., Inc. v. Biller, 3074  
Gruenberg v. Aetna Ins. Co., 2761  
Grunwald v. Halron, 1001  
Grutzner v. Kruse, 1070  
Grygiel v. Monches Fish & Game Club, Inc., 1810  
Guardianship and Protective Placement of Shaw, 7060  
Guardianship of Meyer, 1021  
Guderyon v. Wisconsin Tel. Co., 1115, 1310  
Guentner v. Gnagi, 1812  
Guerra v. Manchester Terminal Corp., 2150  
Guillaume v. Wisconsin-Minnesota Light & Power Co., 230  
Gumz v. Northern States Power Company, 950  
Gunderson v. Struebing, 2100  
Gundlach v. Chicago & N. W. Ry., 1338  
Gunning v. King, 1265  
Gustavson v. O'Brien, 1023.5  
Gutzman v. Clancy, 2006  
Guzman v. St. Francis Hospital, Inc., 1707.1, 1897  
Gyldenvand v. Schroeder, 2400, 2405, 2405.5, 2406

### H

H.A. Friend & Co. v. Professional Stationery, Inc., 2200  
Haag v. General Accident Fire & Life Assurance Corp., 1035  
Habrich v. Industrial Comm'n, 4060  
Habrouck v. Armour & Co., 1500, 3242  
Haentz v. Toehr, 2402  
Hafemann v. Milwaukee Auto Ins. Co., 1055  
Hajec v. Novitzke, 2600  
Hale v. Stoughton Hosp. Ass'n, Inc., 2780  
Hales v. City of Wauwatosa, 1049  
Hamed v. Milwaukee County, 1025  
Hamilton v. Reinemann, 1140  
Hamus v. Weber, 1048  
Hanes v. Hermsen, 1045, 1096  
Hannebaum v. DiRenzo & Bomier, 1900.4  
Hannemann v. Boyson, 1023.8  
Hannon v. Kelly, 3042  
Hansberry v. Dunn, 1012  
Hansche v. A. J. Conroy Co., Inc., 4005  
Hansen v. Crown Controls Corp., 1723  
Hansen v. Industrial Comm'n, 4045  
Hansen v. New Holland North America, Inc., 1723  
Hansen v. Texas Roadhouse, Inc., 1383  
Hanson v. Binder, 1582  
Hanson v. Matas, 1050  
Hanson v. Valdivia, 1861  
Hanz Trucking, Inc. v. Harris Bros. Co., 3057  
Hardware Dealers Mut. Fire Ins. Co. v. Home Mut. Ins. Co., 1191  
Hardware Mut. Casualty Co. v. Harry Crow & Son, Inc., 1105A, 1735  
Hardy v. Hoefflerle, 1277  
Hareng v. Blanke, 50, 195  
Hargrove v. Peterson, 1730, 1750.2, 1767, 1795  
Harrigan v. Gilchrist, 1  
Harris v. Kelley, 1880  
Harris v. Richland Motors, Inc., 4030, 4060  
Hartman v. Buerger, 2500

## WIS JI-CIVIL CASES CITED

Hartzheim v. Smith, 1045, 1080  
Harvey v. Wheeler Transfer and Storage Co., 1803  
Harvot v. Solo Cup, 1  
Harweger v. Wilcox, 2400  
Hastings Realty Corp. v. Texas Co., 8111  
Hatch v. Smail, 1501  
Hauer v. Union State Bank of Wautoma, 3044  
Hausman v. St. Croix Care Center, 2750  
Havens v. Havens, 1140  
Hawarden v. The Youghioghenny & Lehigh Coal Co., 2820  
Hayton v. Appleton Machine Co., 4080  
Heath v. Madsen, 1010  
Heck & Paetow Claim Service, Inc. v. Heck, 4080  
Heckel v. Standard Gateway Theater, 1900.4  
Hegarty v. Beauchaine, 1023  
Heikkila v. Standard Oil Co., 1080  
Heilgeist v. Chasser, 2600  
Heims v. Hanke, 1722A, 4025, 4030  
Heldt v. Nicholson Mfg. Co., 1900.2  
Helleckson v. Loiselle, 1750.2  
Hellenbrand v. Bowar, 3200, 3230  
Hellenbrand v. Hilliard, 1804  
Helmbrecht v. St. Paul Ins. Co., 1023.5  
Henricksen v. Mc Carroll, 1025.6  
Henrikson v. Strapon, 1707.1  
Henry v. United States, 2115  
Henschel v. Rural Mut. Casualty Ins. Co., 1065  
Henthorn v. M.G.C. Corp., 1125, 1145  
Herbst v. Hansen, 3110  
Herbst v. Wuennenberg, 2100  
Heritage Farms, Inc. v. Markel Ins. Co., 1757  
Herman v. Milwaukee Children's Hosp., 1796, 1797, 1837, 1845, 1880  
Hernandez v. United States, 2802  
Herro v. Department of Natural Resources, 8100, 8101  
Herro v. Northwestern Malleable Iron Co., 1861  
Herro v. Steidl, 1870  
Herzberg v. Ford Motor Co., 3260  
Hess Bros., Inc. v. Great N. Pail Co., 3063, 3064, 3065  
Hess v. Holt Lumber Co., 3014  
Hett v. Ploetz, 2500  
Heuer v. Wiese, 2200  
Heuser v. Community Insurance Corp., 1380  
Hibner v. Lindauer, 1112  
Hickman v. Wellauer, 1804  
Hicks v. Nunnery, 1023.5  
Hietpas v. State, 8115  
Hildebrand v. Carroll, 1025.7  
Hilker v. Western Automobile Ins. Co., 2760  
Hillman v. Columbia County, 2550  
Hillstead v. Smith, 1114  
Hilmes v. Stroebel, 2007  
Hinrichs v. Dow Chemical Co., 2400  
Hintz v. Mielke, 1255  
Hipke v. Industrial Comm'n, 1900.4  
Hocking v. City of Dodgeville, 1900.4  
Hodgson v. Wisconsin Gas & Light Co., 1051  
Hoeft v. Friedel, 1075, 1600

## WIS JI-CIVIL CASES CITED

Hoekstra v. Guardian Pipeline, 8100, 8101, 8102, 8120, 8135  
Hoff v. Wedin, 1010  
Hofflander v. St. Catherine's Hospital, 1007, 1021, 1385.5, 1902  
Hoffman v. Danielson, 3076  
Hoffman v. Dixon, 3220  
Hoffman v. Halden, 2800  
Hoffman v. North Milwaukee, 1049  
Hoffman v. Pfingsten, 3022  
Hoffman v. Red Owl Stores, Inc., 3020, 3074  
Holbach v. Classified Ins. Corp., 1277  
Holschbach v. Washington Park Manor, 8030  
Holton v. Burton, 1023  
Holytz v. Milwaukee, 2900, 8035  
Holzem v. Mueller, 1045  
Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 1155, 1157  
Home Protective Services, Inc. v. ADT Security Services, Inc., 2769  
Home Sav. Bank v. Gertenbach, 3020, 4015  
Hommel v. Badger State Inv. Co., 1902  
Hornback v. Archdiocese of Milwaukee, 1005  
Horst v. Deere & Company, 3260, 3260.1  
Hortman v. Becker Constr. Co., Inc., 1900.4, 1901, 1904  
Household Fin. Corp. v. Christian, 2401, 2402  
Hoven v. Kelble, 1023, 1024  
Howard v. State Farm Mut. Auto Liab. Co., 1730  
Howe v. Corry, 1076  
Hrubes v. Faber, 1023  
Huchting v. Engel, 1010  
Huck v. Chicago, St. Paul M. & O. Ry., 1026.5, 3051  
Huebner v. State, 2115  
Hunt v. Clarendon Nat'l Ins. Service, Inc., 1025  
Hunter v. Sirianni Candy Co., 1210  
Husting v. Dietzen, 180  
Hutching v. Engel, 2000  
Hyer v. Janesville, 230  
Hyland v. GCA Tractor & Equip. Co., 3200, 3205  
Hynek v. Kewaunee, G.B. & W. Ry., 1405

### I

Ianni v. Grain Dealers Mut. Ins. Co., 1750.1, 1760, 1762  
Ide v. Wamser, 1090, 1506  
Idzik v. Reddick, 4005  
Illinois Cent. R.R. Co. v. Blaha, 3117  
Illinois Steel Co. v. Bilot, 8060  
Imark Industries, Inc. v. Arthur Young & Co., 1383, 1580, 8045  
Imnus v. Wisconsin Pub. Ser. Corp., 1900.4  
Ingram v. Rankin, 2201  
In Matter of Mental Condition of C.J., 7050, 7050A  
In Interest of C.E.W., 180, 191  
In Re Commitment of Dennis H., 7050  
In Re Estate of Schaefer, 4080  
In re Kelly M., 7050, 7050A  
In Re Paternity of M.J.B., 5001  
In Re Paternity of Taylor, R.T., 5001  
In Re Paternity of J.M.K., 5001  
In re Estate of Sheppard, 3070  
Insurance Co. of North Am. v. Cease Electric Inc., 400, 2400

## WIS JI-CIVIL CASES CITED

Insurance Co. of North Am. v. Kriek Furriers, Inc., 1025.7  
Irby v. State, 420  
Irish v. Dean, 3049  
Isgro v. Plankington Packing Co., 1265  
Ivancevic v. Reagan, 3072

### J

J. H. Clark Co. v. Rice, 2401, 2402  
J. F. McNamara Corp. v. Industrial Comm'n, 4035  
J.W. Cartage Co. v. Laufenberg, 1354, 1355  
Jackson v. Robert L. Reisinger & Co., 180  
Jacob v. West Bend Mut. Ins. Co., 1022.6, 3700, 4060  
Jacobs v. Major, 1810  
Jacobson v. Greyhound Corp., 1114  
Jacobson v. Milwaukee, 305  
Jacque v. Steenberg Homes, Inc., 1707.1, 1810  
Jadofski v. Town Kemper Ins. Co., 2762  
Jaeger v. Stratton, 1023  
Jagmin v. Simonds Abrasive Co., 400, 1145  
Jama v. Gonzalez, 1023.5  
Jandre v. Wisconsin Injured Patients and Families Compensation Fund, 1023.1  
Jandrt v. Milwaukee Auto Ins. Co., 205, 3072  
Janke Const. Co., Inc. v. Balcan Materials Co., 3074  
Jankee v. Clark County, 1007, 1021, 1385.5  
Jeffers v. Nysse, 1707  
Jenkinson v. New York Casualty Co., 3115  
Jennings v. Lyons, 3062, 3066, 3067  
Jensen v. Jensen, 1032  
Jessup v. LaPin, 3090  
Jewell v. Schmidt, 1825  
John Doe 1 v. Archdiocese of Milwaukee, 2401  
Johnson v. Agoncillo, 1023  
Johnson v. Calado, 2605  
Johnson v. Cintas Corp. No. 2., 115, 1007, 1014  
Johnson v. Fireman's Fund Indem. Co., 1155  
Johnson v. Heintz, 50, 1710, 1722A, 1723  
Johnson v. Holmen Canning Co., 4035  
Johnson v. McDermott, 1113  
Johnson v. Misericordia Community Hosp., 1384, 1760  
Johnson v. Pearson Agri-Systems, Inc., 1796  
Johnson v. Prideaux, 1140  
Johnson v. Ray, 205, 1506, 1700, 2008, 2155  
Johnson v. St. Paul & W. Coal Co., 1835, 1845  
Jolin v. Oster, 1  
Jonas v. State, 8104, 8107  
Jones v. Alfred H. Mayer Co., 2150  
Jones v. Fisher, 1707  
Jones v. Jenkins, 3051  
Jones v. Pittsburgh Plate Glass Co., 3222  
Jones v. State, 63  
Joplin v. John Hancock Mut. Life Ins. Co., 3057  
Jorgenson v. Northern State Power Co., 1395  
Jungbluth v. Hometown, Inc., 2771  
Justmann v. Portage County, 8102, 8103, 8120



## WIS JI-CIVIL CASES CITED

### K

K & S Tool & Die Corp. v. Perfection Mach. Sales, Inc., 2418  
Kablitz v. Hoeft, 1715, 1720  
Kaesler, Adm'r v. Milwaukee Elec. Ry. & Light Co., 1880  
Kaiser v. Board of Police & Fire Commissioners of Wauwatosa, 2750  
Kalkopf v. Donald Sales & Mfg. Co., 1019, 3260  
Kamp v. Curtis, 4035  
Kamrowski v. State of Wis., 8120  
Kansas City Star Co. v. ILHR Dep't, 3045  
Karls v. Drake, 2401, 2402  
Karsteadt v. Phillip Gross H. & S. Co., 3200, 3246  
Kathan v. Comstock, 3220  
Kaufman v. Postle, 1143  
Kaufman v. State Street Ltd. Partnership, 1900.4  
Keegan v. Chicago, M., St. P. & P. R.R., 1336, 1403, 1405  
Kehl v. Economy Fire & Casualty Co., 1707.1  
Kehm Corp. v. United States, 3060  
Keith v. Worcester & D. V. St. R.R., 1050  
Keithley v. Keithley, 1885  
Kelley v. Ellis, 3022  
Kelley v. Hartford Casualty Ins. Co., 1024  
Kelley v. State, 195  
Kellogg v. Chicago & N.W. Ry., 1030  
Kelly v. Berg, 1007.5, 1105A  
Kemper Independence Insurance Company v. Islami, 3110  
Kempf v. Boehring, 1014  
Kempfer v. Automated Finishing, Inc., 2750  
Kempfer v. Bois, 1140  
Ken-Crete Prod. Co. v. State Highway Comm'n, 8100, 8101, 8103  
Kennedy-Ingalls Corp. v. Meissner, 3200, 3211, 3225, 3230  
Kenwood Equip., Inc. v. Aetna Ins. Co., 110  
Kerkman v. Hintz, 1023, 1023.8, 1023.9  
Kerl v. Rasmussen, 4025, 4030, 4040, 4055, 4060  
Kernz v. J.L. French Corp., 3010  
Kerwin v. Chippewa Shoe Mfg. Co., 1500  
Kettner v. Wausau Ins. Co., 4060  
Kiefer v. Fred Howe Motors, Inc., 2000  
Killeen v. Parent, 2401, 2402  
Kim v. American Family Mut. Ins. Co., 1800  
Kimble v. Land Concepts, Inc., 1707.1  
Kincaide v. Hardware Mut. Casualty Co., 1144  
Kincannon v. National Indem. Co., 1705, 1797  
Kink v. Combs, 410  
Kinsman v. Panek, 1310  
Kirby v. Corning, 4027  
Klassa v. Milwaukee Gas Light Co., 1511  
Kleckner v. Great Am. Indem. Co., 325  
Kleeman v. Chicago & N.W.R. Co., 4035  
Kleinke v. Farmers Coop. Supply & Shipping, 1510  
Kleist v. Cohodas, 1315  
Kleven v. Cities Serv. Oil Co., 3086  
Kline v. Johanneson, 1120  
Klinefelter v. Ditch, 8060  
Klingbeil v. Saucerman, 1023.5  
Klink v. Cappelli, 1762  
Klipstein v. Raschein, 205

## WIS JI-CIVIL CASES CITED

Kluck v. State, 2115  
Klug v. Flambeau Plastics Corp., 3049  
Klug v. Sheriffs, 3026  
Knapke v. Grain Dealers Mut. Ins. Co., 1904, 3057  
Kneeland-McClurg Lumber Co. v. Industrial Comm'n, 4060  
Knief v. Sargent, 1023  
Knoke v. City of Monroe, 8035  
Knowles v. Stargel, 1265  
Knutson v. Fenelon, 1840  
Koback v. Crook, 1009  
Kochanski v. Speedway Superamerica, 410, 1900.4  
Koehler v. Thiensville State Bank, 1145  
Koehler v. Waukesha Milk Co., 1855  
Koele v. Radue, 1760  
Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd., 2790  
Koetting v. Conroy, 1391  
Koffman v. Leichtfuss, 1756  
Kohler v. Dumke, 1582  
Kohloff v. State, 63  
Kohls v. Glassman, 3118  
Kojis v. Doctors Hosp., 2900  
Kolbeck v. Rural Mut. Ins. Co., 1806, 3117  
Kolpin v. Pioneer Power & Light, 950, 1019  
Koltka v. PPG Indus., Inc., 1870  
Korenak v. Curative Workshop Adult Rehabilitation Center, 1900.4  
Korth v. American Family Ins. Co., 1837  
Kosnar v. J. C. Penney Co., 1900.4  
Kottka v. PPG Indus., Inc., 1815  
Kowalczyk v. Rotter, 8045  
Kowalke v. Farmers Mut. Auto Ins. Co., 180, 1032, 1052, 1140, 1705, 1760, 1767, 1768  
Kowalke v. Milwaukee Elec. Ry. & Light Co., 3072  
Kozlowski v. John E. Smith's Sons Co., 3262  
Kraft v. Charles, 1285  
Kraft v. Steinhafel, 1023.5, 4035  
Kraft v. Wodill, 2401  
Krainz v. Strle, 1114  
Kramer v. Alpine Valley Resort, Inc., 3074  
Kramer v. Chicago, M., St. P. & P. Ry., 1501, 1796  
Kramer v. Hayward, 3024  
Kramschuster v. Shawn E., 1014  
Kranzush v. Badger State Mut. Casualty Co., 2760, 2761  
Kraskey v. Johnson, 1070, 1155, 1157  
Kraus v. Mueller, 8060  
Kraus v. Wisconsin Life Ins. Co., 3061  
Krause v. Milwaukee Mut. Ins. Co., 230, 1105A  
Krause v. V. F. W. Post 6498, 1900.4, 1904, 3290  
Krause v. Western Casualty & Sur. Co., 4040  
Krebsbach v. Miller, 3112  
Kremer v. Rule, 1805  
Kreyer v. Driscoll, 3052  
Krieg v. Dayton-Hudson Corp., 2600, 2605  
Krolikowski v. Chicago & N.W. Transp. Co., 1403  
Kruck v. Wilbur Lumber Co., 1840  
Kruckenberg v. Krukar, 8060  
Krudwig v. Kaepke, 2007  
Krueger v. AllEnergy Hixton, LLC, 1920  
Krueger v. Steffen, 1800, 1801, 1805, 3725

## WIS JI-CIVIL CASES CITED

Krueger v. Tappan, 358  
Krueger v. Winters, 180  
Kruse v. Horlamus Indus., 200, 205, 1008, 8060  
Kryzko v. Gaudynski, 4025  
Kuehn v. Kuehn, 200, 205  
Kuehnemann v. Boyd, 1023  
Kuentzel v. State Farm Mut. Auto Ins. Co., 1105A  
Kuhlman, Inc. v. G. Heileman Brewing Co., Inc., 1730, 1731, 1806  
Kujawski v. Arbor View Health Care Center, 1023.7, 1385  
Kukuska v. Home Mut. Hail-Tornado Ins. Co., 3016  
Kurz v. Chicago, M. St. P. & P. Ry., 1408, 1410, 1413  
Kurz v. Collins, 3115, 3116  
Kutsugeras v. Avco Corp., 1723  
Kuzel v. State Farm Mut. Ins. Co., 1610

### L

L.L.N. v. Clauder, 1383  
L. L. Richards Mach. Co. v. McNamara Motor Express, 1026.5, 1804  
La Fave v. Lemke, 1120  
La Fleur v. Mosher, 1511  
Laabs v. Bolger, 8060  
LaChance v. Thermogas Co. of Lena, 1760  
LaCombe v. Aurora Medical Group, Inc., 1023  
LaCrosse Plow Co. v. Brooks, 3202  
LaCrosse Plow Co. v. Helgeson, 3202  
Ladd v. Uecker, 2500  
Ladewig v. Tremmel, 1390, 1397  
Laehn Coal and Wood Co. v. Koehler, 2401, 2402  
Lagerstrom v. Myrtle Werth Hospital - Mayo Health System, 1757, 1850  
Lake to Lake Dairy Coop. v. Andrews, 1070  
Lambert v. Hein, 2400  
Lambert v. Wensch, 1815, 1816  
Lambrecht v. Estate of Kaczmarczyk, 1021.2, 1145  
Lamming v. Galusha, 1920  
Lampertius v. Chmielewski, 1075  
Landess v. Borden, Inc., 3074  
Landrey v. United Serv. Auto Ass'n, 1035  
Langhoff v. Milwaukee & Pr. du Ch. R. Co., 1030  
Langlade County v. D.J.W., 7050, 7050A  
Larry v. Commercial Union Ins. Co., 1381  
Larsen v. Wisconsin Power & Light Co., 1003  
Larson v. Superior Auto Parts, 3018  
Lathan v. Journal Co., 2500, 2505  
Laughland v. Beckett, 2500  
Laurent v. Plain, 1600  
Lauson v. Fond du Lac, 1310, 1315, 1320  
Lautenschlager v. Hamburg, 1715  
Lawlis v. Thompson, 3028  
Lawrence v. E. W. Wylie Co., 1090  
Lawrence v. Jewell Cos., Inc., 2500  
Layton School of Art & Design v. WERC, 205  
Le Mere v. Le Mere, 1075  
Le Sage v. Le Sage, 1600  
Lecander v. Billmeyer, 1024  
Lechner v. Ebenreiter, 4015, 4050, 2600, 2605  
Leckwe v. Ritter, 1096

## WIS JI-CIVIL CASES CITED

Leckwee v. Gibson, 1055, 1065, 1070, 1105A, 1141, 1153, 1175  
Lee v. Bielefeld, 2400  
Lee v. Lord, 4050  
Lee v. Milwaukee Gas Light Co., 8030  
Lee v. National League Baseball Club, 8045  
League v. City of Racine, 1031  
Leibl v. St. Mary's Hosp. of Mil., 1766  
Leipske v. Guenther, 1391, 8112  
Leitinger v. DBart, Inc., 1756  
Leitner v. Milwaukee County, 1900.4, 1904  
Lemacher v. Circle Constr. Co., 1022.2  
LeMay v. Oconto, 1049  
Lembke v. Farmers Mut. Auto Ins. Co., 1285  
Leonard v. Employers Mut. Liab. Ins. Co., 1155, 1157  
Lestina v. West Bend Mut. Ins. Co., 2020  
Leuchtenberg v. Hoeschler, 3014  
Levin v. Perkins, 3020  
Lewandowski v. Continental Casualty Co., 195, 1023.5  
Lewandowski v. Preferred Risk Mut. Ins. Co., 261  
Lewis v. Coursolle Broadcasting, 2511  
Lewis v. Leiterman, 1075, 1325, 1610  
Lewis v. Physicians Ins. Co., 1023, 4030  
Libowitz v. Lake Nursing Home, Inc., 3086  
Liebe v. City Fin. Corp., 2780  
Lieberman v. Weil, 3083  
Lievrouw v. Roth, 180, 1105A, 1707.1, 1710  
Ligman v. Bitker, 1337  
Liles v. Employers Mut. Ins. of Wausau, 1055  
Lincoln v. Claflin, 2802  
Lind v. Lund, 1070  
Linden v. Cascade Stone Co., 2400  
Linden v. City Car Co., 4035  
Linden v. Miller, 1000  
Lindloff v. Ross, 1023  
Lippert v. Chicago & N. W. Ry. Co., 8104, 8107  
Lisowski v. Milwaukee Auto Mut. Ins. Co., 1045, 1050  
Listman Mill Co. v. William Listman Milling Co., 2790  
Little v. Maxam, Inc., 3260  
Lloyd v. S. S. Kresge Co., 1901  
Lobermeier v. General Tel. Co. of Wis., 410, 1730  
Loeb v. Board of Regents, 8100, 8140  
Londre v. Continental Western Ins. Co., 3110  
Lorbecki v. King, 180  
Loser v. Libal, 1730  
Lovesee v. Allied Dev. Corp., 1580, 1585, 1590  
Lubner v. Peerless Ins. Co., 410  
Luby v. Bennett, 2605  
Lueck v. Heisler, 2100  
Luessen v. Oshkosh Elec. Light & Power Co., 1890  
Lukens Iron & Steel Co. v. Hartmann-Greiling Co., 3058  
Lumbermen's Mut. Cas. Co. v. S. Morgan Smith Co., 3200  
Lund v. Keller, 2200  
Lundin v. Shimanski, 1707  
Lundquist v. Western Casualty & Sur. Co., 410, 1065, 1090  
Luther Hosp. v. Garborg, 1825  
Lutz v. Shelby Mut. Ins. Co., 1105A, 1750.2, 1767, 1768

## WIS JI-CIVIL CASES CITED

### M

M & I Marshall & Ilsley Bank v. Pump, 2770  
M. Capp Mfg. Co. v. Moland, 1026.5  
MS Real Estate Holdings, LLC v. Fox Family Trust, 3049  
Maben v. Rankin, 1742  
Macherey v. Home Ins. Co., 205  
Machesky v. Milwaukee, 3012  
Maci v. State Farm Fire & Casualty Co., 8020  
Mack v. Decker, 1045  
Mack Trucks, Inc. v. Sunde, 3200  
Mackensie v. Miller Brewing Co., 2401  
Mackenzie Fandrey v. American Family Mut. Ins. Co., 1500  
MacLeish v. Boardman Clark LLP, 1023.5  
Madison Metropolitan Sewerage Dist. v. Committee, 1922  
Madison Trust Co. v. Helleckson, 2401, 2402  
Madison v. Geier, 205, 1107  
Madix v. Hockgreve Brewing Co., 4060  
Maeder v. Univ. of Wisconsin-Madison, 2750  
Magin v. Bemis, 1070  
Maichle v. Jonovic, 2006  
Mair v. Trollhaugen Ski Resort, 1900.4  
Maitland v. Twin City Aviation Corp., 8112  
Majestic Realty Corp. v. Brant, 1022.6, 8030  
Majorowicz v. Allied Mut. Ins. Co., 2760  
Malco v. Midwest Aluminum Sales, 1707  
Maleki v. Fine-Lando Clinic, 2800, 2820  
Malik v. American Family Ins. Co., 1391  
Maloney v. Wisconsin Power, Light & Heat Co., 1796, 1861  
Malzewski v. Rapkin, 2400, 2401, 2402  
Management Computer Serv. v. Hawkins, Ash, Baptie, 3010, 3051  
Mandell v. Bryam, 4050  
Maniaci v. Marquette Univ., 2100, 2600, 2605, 2620  
Mann v. Reliable Transit Co., 1320  
Manning v. Galland-Henning Pneumatic Malting Drum Mfg. Co., 3046  
Manzanares v. Safeway Stores, Inc., 2150  
Marathon County v. Zachary W., 7050, 7050A  
Mark McNally v. Capital Cartage, Inc., 3086  
Market Street Assoc. Ltd. Ptrshp. v. Frey, 3044  
Marlatt v. Western Union Tel. Co., 4050  
Marmolejo v. DILHR, 4035, 4045  
Marquez v. Mercedes-Benz USA, 3300  
Marsh Wood Prod. Co. v. Babcock & Wilcox Co., 3200, 3240  
Marshfield Clinic v. Discher, 1825  
Martell v. National Guardian Life Ins. Co., 3040  
Martens v. Reilly, 2800  
Martin v. Outboard Marine Corp., 2500, 2501, 2516  
Maskrey v. Volkswagenwerk Aktiengesellschaft, 1723, 1760, 1797  
Maslow Cooperage Corp. v. Weeks Pickle Co., 202, 1705, 3700  
Mastercraft Paper Co. v. Consolidated Freightways, 1026.5  
Matson v. Dane County, 1012  
Matter of Commitment of C.S., 7050  
Matter of Marks v. Gray, 4045  
Matteson v. Rice, 2400, 3220  
Matthews v. Schuh, 1190.5  
Matuschka v. Murphy, 1023  
Maurin v. Hall, 1023, 1870, 1895, 1897

## WIS JI-CIVIL CASES CITED

May v. Skelly Oil Co., 1580, 1900.4  
Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 1023, 1870, 1895, 1897  
MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc., 2418  
McAleavy v. Lowe, 3200  
McAllister v. Kimberly-Clark Co., 1707  
McCaffery v. Minneapolis, St. P. & S.S.M. Ry., 1796  
McCarthy v. Thompson, 325  
McCartie v. Muth, 1766  
McCarty v. Weber, 215  
McCluskey v. Steinhorst, 2005, 2008  
McConaghy v. McMullen, 2006  
McConville v. State Farm Mut. Auto Ins. Co., 1047, 1047.1 1500, 1591, 1592  
McCrossen v. Nekoosa Edwards Paper Co., 1051.2, 1105A, 1705, 1885, 1890, 1892  
McDonnell v. Hestnes, 3115, 3116  
McEvoy v. Group Health Cooperative, 2761  
McGaw v. Wassman, 265  
McGee v. Kuchenbaker, 1285  
McGowan v. Story, 100  
McGuiggan v. Hiller Bros., 1580, 1585, 1590  
McKone v. Metropolitan Life Ins. Co., 4020  
McLaughlin v. Chicago, M. St. P. & P. Ry., 1410  
McLean v. McLean, 3020  
McLuckie v. Chicago, M. St. P. & P. Ry., 1408  
McMahon v. St. Croix Falls Sch. Dist., 1385.5  
McManus v. Donlin, 1023  
McNally v. Goodenough, 1900.4, 1901  
McNamara v. Village of Clintonville, 1720  
McNeil v. Jacobson, 1005, 1009  
Mead v. Ringling, 1812  
Medford Lumber Co. v. Industrial Comm'n, 4060  
Medley v. Trenton Inv. Co., 1022.6, 4010  
Meeme Mut. Home Protective Fire Ins. Co. v. Lorfeld, 3072  
Megal v. Green Bay Area Visitor & Convention Bureau, et al., 1900.4  
Meier v. Meurer, 2500  
Meihost v. Meihost, 1381  
Meke v. Nicol, 1707  
Memphis v. Greene, 2150  
Mendelson v. Blatz Brewing Co., 2780, 3068  
Menge v. State Farm Mut. Automobile Ins. Co., 1105A  
Menominee River Boom Co. v. Augustus Spies Lumber & Cedar Co., 3020  
Meracle v. Children's Serv. Soc., 1705  
Merco Distrib. Corp. v. Commercial Police Alarm Co., Inc., 1500  
Merco Distrib. Corp. v. O & R Engines, Inc., 110  
Merkle v. Behl, 1505  
Merkley v. Schramm, 1050  
Merriman v. Cash-Way, Inc., 1900.4  
Mertens v. Lake Shore Yellow Cab & Transfer Co., 1070  
Meshane v. Second Street Co., 1707  
Metcalf v. Consolidated Badger Coop., 1582  
Methodist Manor Health Center, Inc. v. Py, 2200  
Metropolitan Sav. & Loan Ass'n v. Zuelke's, Inc., 2200, 2201  
Metropolitan Ventures v. GEA Assoc., 3044  
Metz v. Medford Fur Foods, 3200, 3260  
Metz v. Rath, 1105A  
Metzinger v. Perry, 1708  
Meurer v. ITT Gen. Controls, 145  
Meyer v. Ewald, 2600, 2605, 2610, 2611

## WIS JI-CIVIL CASES CITED

Meyer v. Laser Vision Inst., LLC, 3028  
Meyer v. Norgaard, 1023.6  
Meyer v. Val-Lo-Will Farms, 1051.2  
Meyers v. Matthews, 1600, 4001, 4030  
Meyers v. Wells, 3030  
Mezera v. Pahmeier, 1354  
Michaels v. Green Giant Co., 1760  
Mid-Continent Refrigerator Co. v. Straka, 1707  
Midwestern Helicopter v. Coolbaugh, 2200, 2201  
Mikaelian v. Woyak, 1047  
Milaeger Well Drilling Co. v. Muskego Rendering Co., 3058  
Milbauer v. Transport Employees' Mut. Benefit Soc'y, 260, 265  
Miller & Rose v. Rich, 4060  
Miller v. Conn, 3074  
Miller v. Epstein, 4035  
Miller v. Joannes, 1  
Miller v. Keller, 1010  
Miller v. Kim, 1023  
Miller v. Neale, 1806  
Miller v. Paine Lumber Co., 1900.2  
Miller v. Tainter, 1880  
Miller v. Wadkins, 2900  
Miller v. Wal-Mart Stores, Inc., 1383  
Millonig v. Bakken, 215, 1000, 1112, 1145, 1285  
Milwaukee & Suburban Transp. Corp. v. Milwaukee County, 106  
Milwaukee & Suburban Transp. Corp. v. Royal Transit Co., 1112  
Milwaukee Boiler Co. v. Duncan, 3202  
Milwaukee Constructors II v. Milwaukee Metro Sewerage District, 400  
Milwaukee County v. Schmidt, Gardner, and Erickson, 1023.5  
Milwaukee Metro. Sewerage Dist. v. City of Milwaukee, 1920, 1922, 1924, 1926, 1928, 1930, 1932  
Milwaukee Mirror & Art Glass Works v. Chicago, 1025.7  
Milwaukee Rescue Mission, Inc. v. Redevelopment Authority of the City of Milwaukee 8135  
Milwaukee Tank Works v. Metals Coating Co., 100  
Milwaukee Transport Services, Inc. v. Family Dollar Stores of Wisconsin, Inc. 1605, 4035, 4040  
Milwaukee Trust Co. v. Milwaukee, 305  
Milwaukee Western Fuel Co. v. Industrial Commission, 4035, 4045  
Miranovitz v. Gee, 2401, 2402  
Misiewicz v. Waters, 1105A  
Mittelstadt v. Hartford Accident & Indem. Co., 1000  
Mittleman v. Nash Sales, Inc., 4035  
Mixis v. Wisconsin Pub. Serv. Comm'n, 1145  
Modern Materials v. Advanced Tooling Spec., 2800  
Modl v. National Farmers Union Property & Casualty Co., 1145  
Moe v. Benelli U.S.A. Corp., 2769  
Mohs v. Quarton, 3700  
Mondl v. F.W. Woolworth, 1048, 1902  
Monrean v. Eastern Wis. Ry. & Light Co., 1012  
Monroe v. Chase, 2605  
Monsivais v. Winzenried, 8012  
Moore v. Relish, 1025.5  
Moore v. State, 415  
Moran v. Quality Aluminum Casting Co., 1815, 2900  
Morden v. Continental AG, 3240  
Morgan v. Pennsylvania Gen. Ins. Co., 1500  
Moritz v. Allied Mut. Fire Ins. Co., 1820  
Morris F. Fox & Co. v. Lisman, 3014  
Morris v. Resnick, 4080

## WIS JI-CIVIL CASES CITED

Morris v. Juneau County, 8035  
Mortgage Associates v. Monona Shores, 1  
Moulton v. Kershaw, 3012  
Mowry v. Badger State Mut. Casualty, 2760  
Mt. Pleasant v. Hartford Accident & Indemnity, 3118  
Mueller v. Bull's Eye Sport Shop, LLC, 400  
Mueller v. Harry Kaufmann Motorcars, Inc., 2401, 2418, 3068  
Mueller Real Estate Inv. Co. v. Cohen, 1804  
Mulder v. Acme-Cleveland Corp., 1383, 1900.2  
Mullen v. Larson-Morgan Co., 1900.4  
Mullen v. Reinig, 110  
Mullen v. Walczak, 1511  
Murawski v. Brown, 1402  
Murphy v. Nordhagen, 1023.8, 1023.9  
Murray v. Holiday Rambler, Inc., 145, 3201, 3205, 3220, 3222  
Murray v. Yellow Cab Co., 1000  
Muscoda Bridge Co. v. Grant County, 8100  
Muskevitch-Otto v. Otto, 3110  
Mustas v. Inland Constr. Inc., 315, 1901  
Myhre v. Hessey, 2605

### N

Naden v. Johnson, 3700  
Narloch v. State of Wis. Dept of Transp., 8102, 8103  
Nashban Barrel & Container Co. v. Parsons Trucking Co., 1730, 1800, 1801 1804  
National Auto Truckstops, Inc. v. WISDOT, 8111, 8120, 8130, 8135  
National Farmers Union Property & Casualty v. Maca, 3110  
Navine v. Peltier, 3034  
Neas v. Siemens, 2400, 2401, 2402  
Neave v. Arntz, 3220  
Nees v. Weaver, 3052  
Neff v. Barber, 1  
Neitzke v. Kraft-Phenix Dairies, Inc., 1051, 1900.4, 1902  
Nelsen v. Farmers Mut. Auto Ins. Co., 3010, 3032, 3050  
Nelson v. Boulay Bros. Co., 1803, 3208  
Nelson v. Davidson, 1023.6  
Nelson v. Hansen, 3290  
Nelson v. Pauli, 100  
Nelson v. Travelers Ins. Co., 1310  
Nesbitt v. Erie Coach Co., 3074  
Nessler v. Nowicki, 1155, 1157  
Nestle's Food Co. v. Industrial Comm'n, 4030, 4060  
Neuman v. Evans, 155  
Neumann v. Industrial Sound Engineering, Inc., 2600, 2605, 2610, 2611  
New Amsterdam Casualty Co. v. Farmers Mut. Auto Ins. Co., 325  
New Dells Lumber Co. v. Chicago St. P. M. & O. R. Co., 8135  
New York Times Co. v. Sullivan, 2500, 2511  
Nickel v. Hardware Mut. Casualty Co., 1815  
Niedbalski v. Cuchna, 1352  
Nielsen v. Spencer, 1013  
Nimlos v. Bakke, 1756  
Nimmer v. Purtell, 125  
Noffke v Bakke, 2020  
Nolop v. Skemp, 1795  
Nolop v. Spettel, 3057  
Nommensen v. American Cont. Ins. Co., 200



## WIS JI-CIVIL CASES CITED

Nooyen v. Wisconsin Electric Power Company, 1900.4  
Nordahl v. Peterson, 1885, 3112  
Norfolk & Western Ry. Co. v. Liepelt, 1735  
Norfolk Monument Co. v. Woodlawn Memorial Gardens, Inc., 2804  
North Highland Inc. v. Jefferson Mach. & Tool Inc., 2800  
Northern Crossarm Co., Inc. v. Chemical Specialties, Inc., 3028  
Northern Supply Co. v. Vangard, 3207  
Northland Ins. Co. v. Avis Rent-a-Car, 1112  
Northrop v. Opperman, 8060  
Northwest Capital Corp. v. Kimpel, 3070  
Northwest Gen. Hosp. v. Yee, 1023  
Northwestern Blaugas Co. v. Guild, 3202  
Northwoods Dev. Corp. v. Klement, 8060  
Norton v. Kearney, 3040  
Nothem v. Berenschot, 1140  
Novell v. Migliaccio, 2401, 2418  
Novick v. Becker, 2605  
Novitzke v. State, 265  
Nowaczyk v. Marathon County, 8100, 8135  
Nowatske v. Osterloh, 1023, 1023.5, 1023.7, 1023.8, 1023.14, 1024, 1384

### O

O'Brien v. Chicago & N.W. Ry., 215  
O'Connell v. Old Line Life Ins. Co., 1500  
O'Shea v. Lavoy, 1032  
Odgers v. Minneapolis, St. P. & S. S. M. Ry., 1336  
Ody v. Quade, 1140  
Oelke v. Earle, 1191  
Ogle v. Avina, 1060, 1107, 1153, 1175  
Ogodziski v. Gara, 1707  
Ohio Elec. Co. v. Wisconsin-Minnesota Light and Power Co., 3202  
Ohrmund v. Industrial Comm'n, 4040  
Ohrmundt v. Spiegelhoff, 2400, 2402  
Oleson v. Fader, 2006.5  
Olfe v. Gordon, 1023.5  
Ollerman v. O'Rourke Co., Inc., 2405, 2405.5  
Ollhoff v. Peck, 1391  
Ollman v. Wisconsin Health Care Liab. Ins. Plan, 405  
Olsen v. Milwaukee Waste Paper Co., 1080  
Olsen v. Moore, 4035  
Olson v. Red Cedar Clinic, 2550  
Olson v. Siordia, 1585, 1590  
Olson v. Whitney Bros. Co., 1900.4  
Olson v. Williams, 100  
Onderdonk v. Lamb, 2800  
Onsrud v. Paulsen, 3020  
Orlowski v. State Farm Mut. Auto Ins. Co., 1756, 1757  
Ormond v. Wisconsin Power & Light Co., 1025  
Osborne v. Montgomery, 1005, 1384, 1500, 1835  
Otterstatter v. City of Watertown, 8100  
Otto v. Cornell, 1806, 8060  
Outagamie County v. Michael H., 7050, 7050A

## WIS JI-CIVIL CASES CITED

### P

Pachowitz v. LeDoux, 2550  
Pacific Mut. Life Ins. Co. v. Haslip, 1707  
Padley v. Lodi, 1910  
Pagelsdorf v. Safeco Ins. Co. of Am., 8020  
Pallange v. Mueller, 3022  
Palmer v. Smith, 2006  
Palsgraf v. Long Island Railroad Co., 1005  
Pamperin v. Milwaukee Mutual Ins., 3110  
Panzer v. Hesse, 1260  
Papacosta v. Papacosta, 1105A  
Papenfus v. Shell Oil Co., 145  
Papke v. American Auto Ins. Co., 1870  
Pappas v. Jack O. A. Nelson Agency, Inc., 325  
Parchia v. Parchia, 1006  
Parks v. Wisconsin Cent. R. Co., 8102, 8103, 8105  
Parrish v. Phillips, 3117  
Patterman v. Patterman, 1390, 1391  
Patterson v. Edgerton Sand & Gravel Co., 1051, 1080, 1096  
Paul v. Hodd, 1000  
Paul v. Skemp, 1023  
Paulson v. Madison Newspapers, 1049  
Paulson v. Olson Implement Co., Inc., 3211  
Pavelski v. Roginski, 3112  
Pawlack v. Mayer, 1013  
Pawlowski v. American Family Mut. Ins. Co., 1390  
Payne v. Milwaukee Sanitarium Found., Inc., 1384, 1385, 1385.5  
Payne v. State, 100  
Peacock v. Wisconsin Zinc Co., 1806  
Pedek v. Wegemann, 1352, 1795  
Peeples v. Sargent, 1730, 1815  
Pence v. Slate, 1023.5  
Pennell v. Am. Family Mut. Ins. Co. 1500  
Pennington v. United Mine Workers of Am., 2804  
Peot v. Ferraro, 1705, 1707.1, 1870, 1885, 1890, 1895, 1897  
Perlick v. Country Mut. Casualty Co., 3057  
Perpignani v. Vonasek, 200, 205, 260  
Perry Creek C. Corp. v. Hopkins Ag. Chem. Co., 3200  
Peter M. Chalik & Assoc. v. Hermes, 3086, 3740  
Peters v. Hall, 2600, 2605  
Peters v. Holiday Inns, Inc., 8050  
Peters v. Zimmerman, 1505, 1720  
Petersen v. Pilgrim Village, 3012  
Peterson v. Sinclair Refining Co., 1022.6  
Peterson v. Volkswagen of America, Inc., 3310  
Peterson v. Warren, 3117, 3118  
Petkus v. State, 8115  
Petoskey v. Schmidt, 1900.4  
Pettera v. Collins, 1070  
Pettric v. Gridley Dairy Co., 1900.4  
Petzel v. Valley Orthopedics Ltd., 1024  
Pfeifer v. Standard Gateway Theater, Inc., 230, 1500, 8045  
Pfister v. Milwaukee Free Press Co., 4050  
Phaneuf v. Industrial Comm'n, 4030, 4060  
Phelps v. Physicians Ins. Co. of Wisconsin, Inc., 1023, 1510  
Philadelphia Newspapers, Inc. v. Hepps, 2500, 2501, 2505, 2505A

## WIS JI-CIVIL CASES CITED

Philip Morris USA v. Williams, 1707.1, 1707.2  
Phoenix Ins. Co. v. Wisconsin S. Gas Co., 8051  
Physicians Plus v. Midwest Mutual, 1920, 1922, 1924, 1926, 1928, 1930, 1932  
Pickett v. Travelers Indem. Co., 1056  
Pierce v. American Family Ins. Co., 1897  
Pierce v. Colwell, 1023.5  
Pierce v. Physicians Ins. Co. of Wis., 1510, 1511  
Pierz v. Gorski, 8060  
Pizzo v. Wiemann, 3200  
Plaintikow v. Wolk, 2401  
Plante v. Jacobs, 3052, 3700  
Pleasure Time, Inc. v. Kuss, 3700  
Pleucner v. Industrial Comm'n, 4060  
Plog v. Zolper, 1055, 1060, 1065, 1141, 1153, 1175, 1195, 1325, 1337, 1354  
PMT Machinery Sales, Inc. v. Yama Seiki USA, Inc., 2769  
Pokrojac v. Wade Motors, Inc., 3205  
Polar Mfg. Co. v. Integrity Mut. Ins. Co., 3105  
Poling v. Wisconsin Physicians Serv., 2761  
Pollock v. Vilter Mfg. Corp., 2600  
Polzin v. Helmbrecht, 2500, 2511, 2513, 2520  
Poneitowcki v. Harres, 1032  
Poole v. State Farm Mut. Auto Ins. Co., 1280  
Portee v. Jaffee, 1510  
Porter v. Ford Motor Co., 3300  
Poston v. Burns, 2551  
Potter v. Potter, 1895  
Prange v. Rognstad, 1855, 1885  
Pressure Cast Prod. Corp. v. Page, 3710  
Price v. Ross, 2200, 2200.1  
Price v. Shorewood Motors, 4045  
Prill v. Hampton, 1051, 1880  
Prinsen v. Russos, 3200  
Prisuda v. General Casualty Co. of Am., 3112, 4020  
Pritchard v. Liggett & Myers Tobacco Co., 3230  
Production Credit Ass'n v. Equity Coop. Livestock, 2200  
Production Credit Ass'n v. Nowatzski, 2200, 2201  
Prunty v. Schwantes, 1890  
Przybyla v. Przybyla, 2725  
Przybylski v. Von Berg, 4015  
Puccio v. Mathewson, 1120  
Puhl v. Milwaukee Automobile Ins. Co., 1055, 1090, 1153, 1825  
Pumorlo v. Merrill, 405, 1049  
Pure Milk Prod. Coop. v. National Farmers' Org., 2780

### Q

Quady v. Sickl, 1315  
Quinlan v. Coombs, 3110

### R

Raaber v. Brzoskowski, 1225  
Rabata v. Dohner, 260, 265  
Rabe v. Outagamie County, 1880  
Rabideau v. City of Racine, 1510, 2725  
Rademann v. State of Wisconsin Dept. of Transp., 8105, 8120, 8135  
Radloff v. National Food Stores, Inc., 8045

## WIS JI-CIVIL CASES CITED

Radue v. Dill, 2800, 2820  
Raim v. Ventura, 1019  
Rambow v. Wilkins, 315  
Randall v. Minneapolis, St. P. & S.S.M. Ry., 1412  
Ranous v. Hughes, 2500, 2507, 2552  
Rasmussen v. Garthus, 1010, 1582  
Raszeja v. Brozek Heating & Sheet Metal Corp., 1007  
Raymaker v. American Family Mut. Ins. Co., 8020  
Reber v. Hanson, 1012  
Recreatives, Inc. v. Myers, 3201, 3205, 3210  
Red Top Farms v. State Dept. of Transp., Div. of Highways, 8115  
Reda v. Sincaban, 2400, 2402  
Reddington v. Beefeaters Tables, Inc., 1901, 8012  
Redepenning v. Dore, 1705, 1758, 1767, 1768, 1796, 1820, 1861, 1880, 1885, 1890, 1892  
Reed v. Keith, 2513  
Regas v. Helios, 2200  
Reicher v. Rex Accessories Co., 230  
Reid v. Milwaukee Air Pump Co., 4027  
Reiher v. Mandernack, 8040  
Reinke v. Chicago, M. St. P. & P. Ry., 1408, 1409  
Reinke v. Woltjen, 1760  
Reiter v. Dyken, 1580  
Renk v. State of Wis., 8102, 8103  
Repinski v. Clintonville Sav. & Loan Ass'n, 3710  
Reserve Supply Co. v. Viner, 1500  
Reshan v. Harvey, 1055  
Resseguie v. American Mut. Liab. Ins. Co., 315  
Retzlaff v. Soman Home Furnishings, 1500  
Reuhl v. Uszler, 1315  
Reyes v. Greatway Ins. Co., 1707.1  
Reyes v. Lawry, 155, 1591, 1595  
Richards v. Badger Mut. Ins. Co., 1740  
Richards v. Mendivil, 1024  
Rigby v. Herzfeldt-Phillipson Co., 4050  
Riley v. Chicago & N.W. Ry., 1402  
Rineck v. Johnson, 1870  
Rinehart v. Whitehead, 2006, 2007  
Ritter v. Farrow, 2790  
Robinson v. Briggs Transp. Co., 1115, 1120  
Robinson v. City of West Allis, 2008  
Robinson v. Kolstad, 1880  
Rock County v. Industrial Comm'n, 4040  
Rockweit v. Senecal, 8020, 1393  
Roeske v. Diefenbach, 410  
Roeske v. Schmitt, 1090  
Rogers v. Bradford, 3028  
Rolph v. EBI Cos., 3240, 3260  
Romberg v. Nelson, 1047.1, 1075  
Root v. Saul, 2006  
Rosche v. Wayne Feed, Continental Grain, 1803, 1806  
Rosen v. Milwaukee, 8120  
Ross v. Faber, 3222  
Ross v. Martini, 3110  
Rossow v. Lathrop, 1010  
Roth v. City of Glendale, 3051  
Rottman v. Endejan, 3048  
Rowe v. Compensation Research Bureau, Inc., 3067

## WIS JI-CIVIL CASES CITED

RTE Corp. v. Maryland Casualty Co., 3117  
Rubin v. Schrank, 2100  
Ruby v. Ohio Casualty Ins. Co., 1600  
Rud v. McNamara, 2401  
Rudy v. Chicago, M. St. P. & P. R.R., 1026.5  
Ruka v. Zierer, 1045  
Rule v. Jones, 4000  
Rumary v. Livestock Mortgage Credit Corp., 230  
Runjo v. St. Paul Fire Marine Ins. Co., 1023  
Ruppa v. American States, Inc., 1904  
Russell Grader Mfg. Co. v. Budden, 3202  
Ryan v. Cameron, 1500  
Ryan v. Department of Taxation, 4030  
Ryan v. Estate of Sheppard, 3070  
Ryan v. Zweck-Wollenberg Co., 3240, 3242  
Ryder v. State Farm Mut. Auto Ins. Co., 3057

### S

S. A. Healy v. Milwaukee Metropolitan Sewerage District, 3051  
S.C. Johnson & Son, Inc. v. Morris, 400, 425, 1732  
Sabinasz v. Milwaukee & Suburban Transp. Corp., 1025, 1030  
Salladay v. Town of Dodgeville, 63  
Sample v. United States, 4035  
Sampson v. Laskin, 1500, 1900.4  
Samson v. Riesing, 3201, 3204, 3211  
Sandeem v. Willow River Power Co., 1051, 1885  
Sander v. Newman, 4080  
Sanderfoot v. Sherry Motors, Inc., 3117, 3118  
Sandford v. R. L. Coleman Realty Co., 2150  
Sands v. Menard, 3028  
Saros v. Carlson, 4015  
Sasse v. State, 152  
Sater v. Cities Serv. Oil Co., 4005  
Saveland v. Western Wis. R. Co., 4005  
Saxhaug v. Forsyth Leather Co., 1900.4  
Saylor v. Marshall and Ilsley Bank, 3082  
Scales v. Boynton Cab Co., 1025  
Scalzo v. Marsh, 305  
Scandrett v. Greenhouse, 2401, 2402  
Scarpace v. Sears Roebuck & Co., 2750, 2800  
Schaefer v. State Bar of Wis., 2500  
Schaefer v. Weber, 3200  
Schaller v. Marine Nat'l Bank of Neenah, 3044  
Schara v. Thiede, 2200  
Schauf v. Badger State Mut. Casualty Co., 3116  
Schemenauer v. Travelers Indem. Co., 350, 410  
Scherg v. Puetz, 3054  
Schey Enterprises, Inc. v. State, 8100, 8101  
Schicker v. Leick, 8030  
Schier v. Denny, 2605  
Schiller v. Keuffel & Esser Co., 1731  
Schiro v. Oriental Realty Co., 1920, 1922, 1928, 1930, 1932  
Schlewitz v. London & Lancashire Indem. Co., 1095  
Schlitz v. Equitable Life Assurance Soc'y, 3061  
Schlueter v. Grady, 1070, 1090  
Schmidt v. Jansen, 1070

## WIS JI-CIVIL CASES CITED

Schmidt v. Northern States Power Co., 950  
Schmidtke v. Great Atlantic & Pacific Tea Co. of Am., 3072  
Schmiedeck v. Gerard, 1055, 1065  
Schmit v. Klumppan, 2620  
Schmit v. Sekach, 155, 1105A, 1591, 1595  
Schmorrow v. Sentry Ins. Co., 1900.4, 1910  
Schnabl v. Ford Motor Co., 1500  
Schneck v. Mutual Serv. Co., 3116  
Schneider v. Schneider, 3049  
Schneider v. State of Wisconsin, 8111  
Schoedel v. State Bank of Newburg, 2401, 2402  
Schoenauer v. Wendinger, 1158, 1220, 1225, 1255  
Schoenberg v. Berger, 325  
Schoenfeld v. Journal Co., 2500  
Schoer v. West Bend Mutual Ins. Co., 3110  
Schroeder v. Kuntz, 1315, 1320  
Schrubbe v. Peninsula Veterinary Serv., 1800, 1806  
Schubert v. Midwest Broadcasting Co., 3735  
Schubring v. Weggen, 1035  
Schueler v. City of Madison, 1255  
Schuh v. Fox River Tractor Co., 3262  
Schultz v. Industrial Coils, Inc., 2750  
Schultz v. Miller, 1760  
Schulz v. Chicago, M. St. P. & P. Ry., 1407, 1410  
Schulz v. General Casualty Co., 1105, 1855  
Schulz v. St. Mary's Hosp., 265, 315, 1762  
Schulze v. Kleeber, 1383, 2006, 8045  
Schuster v. Altenberg, 1023  
Schuster v. St. Vincent Hosp., 1384, 1385  
Schwalbach v. Antigo Elec. & Gas, Inc., 1803, 3200  
Schwartz v. City of Milwaukee, 1815, 8035  
Schwartz v. Evangelical Deaconess Soc'y of Wis., 3020  
Schwartz v. San Felippo, 1352  
Schwartz v. Schneuriger, 1140  
Schwartz v. Schwartz, 2605  
Schwarz v. Winter, 1354  
Schweidler v. Caruso, 1354, 1355, 1610  
Schwenn v. Loraine Hotel Co., 1910, 1911  
Scipior v. Shea, 180  
Scory v. LaFave, 1500  
Seaman v. McNamara, 3040  
Seavey v. Jones, 4000  
Seefeldt v. WISDOT, 8111  
Segnitz v. A. Grossenbach Co., 3026  
Seichter v. McDonald, 3110  
Seidl v. Knop, 4035  
Seidling v. Unichem, Inc., 3068  
Seif v. Turowski, 1105A  
Seifert v. Balink, 260, 1023  
Seitz v. Seitz, 1090, 1825  
Seitzinger v. Community Health Network, 3051  
Seligman v. Hammond, 353, 1135, 1140  
Sell v. General Elec. Supply Corp., 3014, 4005  
Selleck v. City of Janesville, 1710, 1815  
Sellmer Co. v. Industrial Comm'n, 4040  
Seltrecht v. Bremer, 1023.5  
Selzer v. Brunsell Bros., Ltd. 2400

## WIS JI-CIVIL CASES CITED

Sentry Ins. V. Royal Ins. Co. of America, 400  
Serkowski v. Wolf, 305  
Sevey v. Jones, 1600  
Shain v. Racine Raiders Football Club, Inc., 2020  
Shannon v. City of Milwaukee, 1383, 4035  
Shannon v. Shannon, 8020  
Sharp v. Case Corp., 1707.2, 3240, 3260  
Sharpe v. Hasey, 1910  
Shaw v. Wisconsin Power & Light Co., 1002  
Shaw v. Wuttke, 1010  
Shawver v. Roberts Corp., 100, 215, 3262  
Sherley v. Peehl, 3012  
Shetney v. Shetney, 3022  
Shevel v. Warter, 4020  
Shier v. Freedman, 1023, 1023.7  
Shockley v. Prier, 1815, 1837, 1845  
Short Way Lines v. Sutton's Adm'r, 1050  
Shy v. Industrial Salvage Material Co., 3056, 3076  
Siebert v. Morris, 1013  
Silberman v. Roethe, 3074  
Simmons v. Industrial Comm'n, 4045  
Simon v. Van de Hey, 1105  
Singleton v. Kubiak & Schmitt, Inc., 1911  
Skaar v. Dept of Revenue, 4080  
Skebba v. Kasch, 3074  
Skindzelewski v. Smith, 1023.5  
Slattery v. Lofy, 1060, 1065  
Smader v. Columbia Wis. Co., 4015  
Smaxwell v. Bayard, 1391, 8020  
Smee v. Checker Cab Co., 202, 1705  
Smith v. Atco Co., 3200, 3240, 3242  
Smith v. Federal Rubber Co., 2600  
Smith v. Goshaw, 8020  
Smith v. Milwaukee County, 1020  
Smith v. Pabst, 1025.6, 1391  
Smith v. Poor Hand Maids of Jesus Christ, 1025.7  
Smith v. Sneller, 1050  
Smuda v. Milwaukee County, 8120  
Sniden v. Laabs, 3740  
Snider v. Northern States Power Co., 1022.6  
Snow v. Koepl, 2550  
Solberg v. Robbins Lumber Co., 215  
Soletski v. Krueger International, Inc., 1900.4  
Somers v. Germania Nat'l Bank, 3057  
Sommerfield v. Flury, 1032  
Sparling v. Thomas, 1350  
Spencer v. ILHR Dep't, 1710  
Spencer v. Kosir, 3079  
Spensley Feeds v. Livingston Feed & Lumber, Inc., 1  
Spheeris Sporting Goods, Inc. v. Spheeris on Capitol, 2790  
Spigelberg v. State of Wisconsin, 8104  
Spitler v. Dean, 950  
Spleas v. Milwaukee & Suburban Transp. Corp., 1025, 1500  
Spoehr v. Mittlestadt, 2500  
Sprecher v. Monroe County Fin. Co. v. Thomas, 1731  
Sprecher v. Roberts, 4060  
Sprecher v. Weston's Bar, Inc., 1806

## WIS JI-CIVIL CASES CITED

St. Amant v. Thompson, 2511  
St. Clair v. McDonnell, 1113  
St. Mary's Hosp. Med. Center v. Brody, 1825  
St. Paul Fire & Marine Ins. Co. v. Burchard, 1075  
Stack v. Padden, 1825  
Stack v. Roth Bros. Co., 3020  
Staehler v. Beuthin, 1766  
Stahl v. Gotzenberger, 1  
Stahler v. Philadelphia & R.R., 1880  
Stamnes v. Milwaukee & State Line R. Co., 8105  
Staples v. Glienke, 1230, 1260  
Starobin v. Northridge Lakes, 2500  
State Bank of Viroqua v. Capitol Indem., 3117  
State ex rel. Brajdic v. Seber, 200  
State ex rel. Park Plaza Shopping Center, Inc. v. O'Malley, 410  
State ex rel. Schultz v. Bruendl, 1005, 1009  
State Farm Mutual Automobile Insurance Co. v. Campbell, 1707.1  
State Farm Mutual Automobile Insurance Co. v. Ford Motor Co., 2400  
State Farm Fire & Cas. Co. v. Amazon, 3200  
State Farm Fire & Cas. Co. v. Hague Quality Water, Int'l, 2400  
State of Wisconsin v. Abbott Laboratories, 1  
State v. Anderson, 80  
State v. Automatic Merchandisers of America, Inc., 2418  
State v. Blaisell, 2722  
State v. Caibaosai, 1035  
State v. Camara, 2115  
State v. Chew, 2006.2  
State v. Cooper, 63  
State v. Darcy N. K., 57  
State v. Eaton, 1510  
State v. Genova, 2420  
State v. Henley, 3295  
State v. Herrington, 2115  
State v. Hess, 2722  
State v. Holt, 1005, 1009  
State v. Hutnik, 415  
State v. Joe Must Go Club, 1910, 3264  
State v. Keyes, 2722  
State v. Lederer, 420  
State v. Major, 420  
State v. City of Prescott, 2750  
State v. Robinson, 405  
State v. Schweda, 1, 3028  
State v. Sobkowiak, 2722  
State v. Smith, 2115  
State v. Tarrell, 63  
State v. Vogel, 420  
State v. Williamson, 405  
State v. Wolske, 1035  
State v. Wolter, 2722  
Statz v. Pohl, 1010, 1013  
Steel v. Ritter, 1803, 1804  
Steele v. Pacesetter Motor Cars, Inc., 3053  
Stefan Auto Body v. State Highway Comm., 8111  
Stefanovich v. Iowa Nat'l Mut. Ins. Co., 1900.4, 1904  
Steffen v. McNaughton, 4035  
Steffes v. Farmers Mut. Auto Ins. Co., 1035



## WIS JI-CIVIL CASES CITED

Stehlik v. Rhoads, 1014, 1014.5, 1277, 1278  
Steinbarth v. Johannes, 1861  
Steinberg v. Jensen, 1500  
Steinhorst v. H. C. Prange Co., 1902  
Stelloh v. Liban, 2115  
Stephenson v. Universal Metrics, Inc., 1397  
Steuck Living Trust v. Easley, 8060  
Stevens v. Farmers Mut. Auto Ins. Co., 1140  
Stevenson v. Barwineck, 2400, 2401, 2402  
Stewart v. City of Ripon, 1720  
Stilwell v. Kellogg, 1  
Stippich v. Morrison, 3116  
Stolze v. Manitowoc Terminal Co., 8120  
Stoppleworth v. Refuse Hideaway, Inc., 50  
Strack v. Great Atlantic & Pacific Tea Co., 1900.4  
Strahlendorf v. Walgreen Co., 3200, 3242  
Strait v. Crary, 1010  
Straub v. Schadeberg, 1096  
Strauss Bros. Packing Co. v. American Ins. Co., 1806  
Strelecki v. Fireman's Ins. Co. of Newark, 1815  
Strenke v. Hogner, 1707.1  
Strid v. Converse, 2600, 2605, 2620  
Strnad v. Cooperative Ins. Mut., 325  
Stroede v. Society Insurance, 8025  
Strong v. Milwaukee, 2100  
Strupp v. Farmers Mut. Automobile Ins. Co., 1600  
Stuart v. Weisflog's Showroom Gallery, Inc., 2400, 2720  
Stunkel v. Price Elec. Cooperative, 1922, 1928  
Struthers Patent Corp. v. Nestle Co., 400  
Sufferling v. Heyl & Patterson, 202, 1705  
Suhaysik v. Milwaukee Cheese Co., 1051, 1056  
Suick v. Krom, 315  
Sulkowski v. Schaefer, 1075, 1825, 1840, 1845  
Sullivan v. Minneapolis, St. Paul & S.S.M.R. Co., 200  
Sumnicht v. Toyota Motor Sales, 1500, 1723, 3260, 3260.1  
Sunnyslope Grading, Inc. v. Miller, Bradford & Risberg, Inc., 2400  
Super Value Stores, Inc. v. D-Mart Food Stores, Inc., 3044  
Surety Savings & Loan Association v. WISDOT, 8111  
Swanson v. Maryland Casualty Co., 1115, 1120  
Sweeney v. Matthews, 3200  
Sweet v. Chicago & N.W. Ry., 1796  
Sweet v. Underwriters Casualty Co., 1032  
Swinkles v. Wisconsin Mich. Power Co., 1210  
Sykes v. Bensinger Recreation Corp., 1900.4  
Symes v. Milwaukee Mutual Ins. Co., 8045

### T

T.A.T. v. R.E.B., 5001  
Tackes v. Milwaukee Carpenters Health Fund, 1023.6  
Takera v. Ford Motor Co., 3201, 3211  
Talley v. Mustafa, 1383  
Tallmadge v. Boyle, 1023.5  
Tang v. C.A.R.S. Protection Plus, Inc., 3310  
Tanner v. Shoupe, 3240  
Tatera v. FMC Corp., 1022.2, 3242  
Tatur v. Solsrud, 1005, 1009

## WIS JI-CIVIL CASES CITED

Taylor v. Bricker, 3022  
Taylor v. Western Casualty & Sur. Co., 1580, 1585, 1590  
Teas v. Eisenlord, 1030, 1047.1, 1075, 1076  
Tegen v. Chapin, 3200  
Tempelis v. Aetna Casualty & Surety Co., 3100  
Templeton v. Crull, 1391  
Tenney v. Cowles, 3220, 3225  
Tensfeldt v. Haberman, 1023.5  
Terry v. Journal Broadcast Corp., 1510, 2505, 2725  
Tesch v. Industrial Comm'n, 4060  
Tesch v. Wisconsin Pub. Serv. Corp., 1113  
Tew v. Marg, 3200, 3211  
The J. Thompson Mfg. Co. v. Gunderson, 3058  
The Lamar Co. v. Country Side Restaurant, 8060  
The Milwaukee & Mississippi R.R. Co. v. Elbe, 8115  
The Yacht Club at Sister Bay Condominium Ass'n, Inc. v. Village of Sister Bay, 1920  
Theama v. City of Kenosha, 1838  
Theatre Enterprises, Inc. v. Paramount Film Dist. Corp., 2804  
Theisen v. Milwaukee Auto Mut. Ins. Co., 353, 1021.2, 1046, 1047, 1047.1, 1075, 1140, 1500, 1591  
Theuerkauf v. Sutton, 1812  
Thieme v. Weyker, 1055  
Thomas v. Lockwood Oil Co., 4035  
Thomas v. Mallett, 3295  
Thomas v. Williams, 1707  
Thompson v. Beecham, 2605, 2620  
Thompson v. Nee, 1113  
Thompson v. Village of Hales Corners, 3057  
Thoreson v. Milwaukee & Suburban Transp. Corp., 410, 1230, 1840  
Thorp v. Mindeman, 3040  
Thurn v. LaCrosse Liquor Co., 4030  
Turner Heat Treating Corp. v. Menco, Inc., 3710  
Tidmarsh v. Chicago M. & St. P. Ry., 1855  
Tietsworth v. Harley-Davidson, Inc., 2401, 2418  
Tillman v. Michigan-Wisconsin Pipe Line Co., 8100  
Tills v. Elmbrook Memorial Hosp., Inc., 1023.7  
Todorovich v. Kinnickinnic Mut. Loan & Bldg. Ass'n, 3010, 3014  
Tombal v. Farmers Ins. Exch., 1096, 1105A, 1153  
Tomberlin v. Chicago, St. P., M. & O. Ry., 1075  
Topham v. Casey, 1760  
Topolewski v. Plankinton Packing Co., 4050  
Topp v. Continental Ins. Co., 1900.4  
Topzant v. Koshe, 2201  
Totsky v. Riteway Bus Serv., Inc., 1005, 1009, 1105, 1105A, 1325, 1325A  
Tower Special Facilities, Inc. v. Investment Club, Inc., 2605  
Town of Fifield v. State Farm Ins. Co., 1803, 1806  
Treps v. City of Racine, 8020  
Treptau v. Behrens Spa, Inc., 1023  
Trinity Evangelical Lutheran Church v. Tower Ins. Co., 1707.1  
Tri-State Home Improvement Co. v. Mansavage, 3700  
Tri-Tech Corp. v. Americomp Serv., 2419, 2420, 2722  
Trogun v. Fruchtmann, 1023, 1023.7, 1024, 2005  
Troppi v. Scarf, 1742  
Truelsch v. Miller, 230  
Tucker v. Marcus, 1707  
Turk v. H. C. Prange Co., 1145, 1501, 3200  
Turner v. Industrial Comm'n, 4045  
Tuschel v. Haasch, 1350

## WIS JI-CIVIL CASES CITED

Tuteur, Adm'r v. Chicago & N. W. Ry., 1880  
TXO Prod. Corp. v. Alliance Resources Corp., 1707.1  
Tynan v. JBVBB, LLC, 3074

### U

Underwood v. Paine Lumber Co., 4050  
Underwood v. Strasser, 415  
Underwood Veneer Co. v. London Guar. & Accident Co., 3117  
United America, LLC v. Wis. Dept. of Transportation, 8110  
United Concrete & Construction v. Red-D-Mix Concrete, Inc. 2401, 2403, 2418  
United States Fidelity & Guar. Co. v. Milwaukee & Suburban Transp. Corp., 1025  
United States Fidelity & Guar. Co. v. Forest County State Bank, 4010  
United States v. Bausch & Lomb Optical Co., 2802  
United States v. Causby, 8112  
United States v. Crescent Amusement Co., 2808  
United States v. First Nat'l Bank & Trust Co. of Lexington, 2800  
United States v. National City Lines, 2802  
United States v. Paramount Pictures, Inc., 2802  
United States v. Patten, 2806  
United States v. Richards, 1920  
United States v. Sanno, 2802  
United States v. Standard Oil Co., 2800  
United States v. Twentieth Century Fox Film Corp., 2804  
United States v. Vasquez, 2115  
United States v. Walker, 2115  
United States v. Wise, 2802  
Utech v. Milwaukee, 8100

### V

Valiga v. National Food Co., 410, 3202, 3207, 3208  
Van Galder v. Snyder, 1225  
Van Gheem v. Chicago & N.W. Ry., 1405  
Van Lare v. Vogt, Inc., 2400, 2401  
Van Matre v. Milwaukee Elec. Ry. & Transp. Co., 1280  
Van Riper v. United States, 2802  
Van Wie v. Hill, 1157  
Vandehey v. City of Appleton, 2405, 2405.5  
Vanden Heuvel v. Schultz, 1096  
Vandenack v. Crosby, 1075  
Vanderbloemen v. Suchosky, 100  
Vandermark v. Ford Motor Co., 3200  
Vandervort v. Industrial Comm'n, 1910  
Venzke v. Magdanz, 3700  
Ver Hagen v. Gibbons, 1511  
Verbeten v. Huettl, 1132, 1133  
Verhelst Constr. Co. v. Galles, 1820  
Vetter v. Rein, 1804, 1805  
Victorson v. Milwaukee & Suburban Transp. Corp., 200, 410, 1019, 1025, 1760, 1815  
Village Food & Liquor v. H&S Petroleum, Inc., 1  
Viola v. Wisconsin Electric Power Co., 1900.4  
Vivid, Inc. v. Fiedler, 8130  
Vodrey Pottery Co. v. H. E. Home Co., 3225  
Voell v. Klein, 4005, 4010  
Vogel v. Grant-Lafayette Elec. Coop., 1922, 1928  
Vogel v. State, 420

## WIS JI-CIVIL CASES CITED

Vogel v. Vetting, 1155, 1580, 1585, 1590  
Vogelsburg v. Mason, 1902  
Vogt v. Chicago, M., St. P. & P. R.R., 180  
Voigt v. Voigt, 1140, 1280  
Voith v. Buser, 415, 2005.5  
Volbrecht v. State Highway Comm'n, 8102, 8105  
Volk v. Stowell, 3070  
Vonch v. American Standard Ins. Co., 1035  
Vosburg v. Putney, 1010, 2005  
Vultaggio v. General Motors, 3300, 3304

### W

W.G. Slugg Seed & Fertilizer v. Paulsen Lumber, 3700  
Wadzinski v. Cities Serv. Oil Co, 1025.6  
Wagner v. Continental Casualty Co., 1022.2, 1022.6, 4060  
Wagner v. Mittendorf, 1725  
Wagner v. Wisconsin Municipal Mut. Ins. Co., 8020  
Wait v. Pierce, 2900  
Waldheim & Co., Inc. v. Mitchell St. Bank, 4015  
Waldman v. Young Men's Christian Ass'n, 1910  
Walk v. Boudheim, 1052, 1054  
Walker v. Baker, 1796  
Walker v. Bignell, 1005, 1009  
Walker v. Kroger Grocery & Baking Co., 1585, 1590  
Walker v. Sacred Heart Hospital, 1024, 1384  
Wall v. Town of Highland, 1048  
Walsh v. Wild Masonry Co., 1051  
Walter v. Four Wheel Drive Auto Co., 4005  
Wandry v. Bull's Eye Credit Union, 2750  
Wangen v. Ford Motor Co., 200, 205, 1707, 1707.1, 1850, 2500, 2520, 2725  
Wanta v. Milwaukee Elec. Ry. & Light Co., 305  
Wappler v. Schench, 1076  
Waranka v. State Farm Mut. Auto Ins. Co., 1870, 1895, 1897  
Warren v. American Family Mut. Ins. Co., 2760  
Washburn v. Milwaukee & Lake Winnebago R.R. Co., 8120  
Wasikowski v. Chicago & N. W. Ry., 1338  
Water Quality Store v. Dynasty Spas, Inc., 2769  
Waters v. Markham, 1032  
Waters v. Pertzborn, 1707.1  
Watland v. Farmers Mut. Auto Ins. Co., 1035  
Watts v. Watts, 3028  
Waube v. Warrington, 1510, 1511  
Waukesha County v. J.W.J., 7050, 7050A  
Wauwatosa Realty Co. v. Bishop, 3048  
Webb v. Wisconsin S. Gas Co., 1002  
Webber v. Wisconsin Power & Light Co., 1803, 1804  
Weber v. Hurley, 1022.6, 4060  
Weber v. Interstate Light & Power Co., 1002  
Weber v. Mayer, 1070  
Weber v. White, 1758  
Weber v. Young, 2100  
Weborg v. Jenny, 260, 1023, 1757  
Webster v. Krembs, 1760, 1835  
Webster v. Roth, 1403, 1408, 1409  
Wedell v. Holy Trinity Catholic Church, 2900  
Weggeman v. Seven-Up Bottling Co., 3200

## WIS JI-CIVIL CASES CITED

Weigell v. Gregg, 4005  
Weihert v. Piccione, 8045  
Weil-McLain Co. v. Maryland Casualty Co., 4005  
Weil v. Biltmore Grande Realty Corp., 3030  
Weinhagen v. Hayes, 4020  
Weise v. Polzer, 1500  
Weise v. Reisner, 2800  
Weiseger v. Wheeler, 4015  
Weiss v. Holman, 1395, 8030  
Weiss v. United Fire and Casualty Co., 2760, 2761  
Welch v. Milwaukee St. P. R.R., 8104  
Wells v. Chicago & N.W. Transp. Co., 1411  
Wells v. National Indemnity Co., 1762  
Wendt v. Manegold Stone Co., 8012  
Wendy M. v. Helen E.K., 3074  
Wergin v. Voss, 1920  
Werlein v. Milwaukee Elec. Ry & Transp. Corp., 1025  
Werner Transp. Co. v. Barts, 1300  
Werner Transp. Co. v. Zimmerman, 1210  
Werner v. Gimbel Bros., 1900.4, 1910  
Wertheimer v. Saunders, 1022.6  
West v. Day, 1840  
Westby v. Madison Newspapers, Inc., 2500  
Westcott v. Mikkelsen, 1510, 1511  
Western Casualty & Sur. Co. v. Dairyland Mut. Ins. Co., 1125  
Westfall v. Kottke, 350, 1055, 1070, 1114, 1144, 1355, 1600  
Westmas v. Creekside Tree, 4000  
Weyauwega v. Industrial Comm'n, 4060  
Whipp v. Iverson, 2401, 3068  
White Hen Pantry v. Buttke, 2771  
White v. Benkowske, 3725  
White v. Leeder, 1391  
White v. Lunder, 1815, 1820  
White v. Minneapolis, St. P. & S. S. M. Ry., 1336  
White v. Stelloh, 3220, 3225  
White v. The Milwaukee City Ry. Co., 1705  
Whitty v. State, 415  
Widemshek v. Fale, 2520  
Wiener v. J.C. Penney Co., 3295  
Wiger v. Carr, 4027  
Wilcox v. Estate of Hines, 8060  
Will of Bate, 3032  
Will of Rice: Cowie v. Strohmeyer, 3057  
Williams v. Brown Mfg. Co., 3200  
Williams v. Journal Co., 2505  
Wills v. Regan, 1385  
Wilmet v. Chicago & N.W. Ry., 1411  
Wilson v. Koch, 1030, 1191  
Wilson v. Young, 1708  
Winkelman v. Beloit Memorial Hosp., 2750  
Winnebago County v. Christopher S., 7050  
Winnebago County v. Christopher S.(III), 7050, 7050A  
Winslow v. Brown, 2007  
Winston v Minkin, 3086, 3740  
Wintersberger v. Pioneer Iron & Metal Co., 1352  
Winzer v. Hartmann, 1023  
Wirsing v. Krzeminski, 2008, 2155

## WIS JI-CIVIL CASES CITED

Wischer v. Mitsubishi Heavy Industries America, Inc., 1707.1  
Wisconsin Bell, Inc. v. Labor & Indus. Review Comm'n, 2750  
Wisconsin Bridge and Iron Co. v. Industrial Comm'n, 1900.4  
Wisconsin Elec. Power Co. v. Zallea Bros., Inc., 3202, 3262  
Wisconsin Loan & Fin. v. Goodnough, 1010, 2000  
Wisconsin Natural Gas Co. v. Employers Mut. Liab. Ins. Co., 1021.2  
Wisconsin Natural Gas Co. v. Ford, Bacon & Davis Constr., 1580  
Wisnicky v. Fox Hills Inn & Country Club, 8020  
Wm. Beaudoin & Sons, Inc. v. Milwaukee County, 3070  
Wodill v. Sullivan, 1113  
Wojahn v. National Union Bank of Oshkosh, 3026  
Wojciechowski v. Baron, 1260  
Wojciuk v. United States Rubber Co., 3200, 3211, 3240  
Wolnak v. Cardiovascular & Thoracic Surgeons of Central Wisconsin, S.C., 2780  
Woodcock v. Home Mut. Casualty Co., 1125  
Wood v. Heyer, 3200  
Woodward v. City of Boscobel, 1720  
Wosinski v. Advance Cast Stone Co., 1511, 1707.1, 1855, 3074, 3710  
Wozny v. Basack, 3086  
Wright v. Hasley, 2725  
Wright v. Mercy Hosp., 1021, 1880  
Wunderlich v. Palatine Fire Ins. Co., 100  
Wurdemann v. Barnes, 1023  
Wurtzler v. Miller, 3290  
Wussow v. Commercial Mechanisms, Inc., 2520

### Y

Yanta v. Montgomery Ward & Co., Inc., 2750  
Yao v. Chapman, 1025.7  
Yaun v. Allis-Chalmers Mfg. Co., 3200, 3254  
Yelk v. Seefeldt, 2600, 2605  
Young v. Anaconda Am. Brass Co., 1051.2  
Young v. Professionals Ins. Co., 1023

### Z

Zabel v. Zabel, 1  
Zarling v. LaSalle Coca-Cola Bottling Co., 3200  
Zartner v. Scopp, 1053, 1195, 1354  
Zastrow v. Journal Communications, Inc., 1  
Zawistowski v. Kissinger, 1707.1  
Zehren v. F. W. Woolworth Co., 1900.4, 1902, 1904  
Zeinemann v. Gasser, 1140, 1280  
Zeller v. Northrup King Co., 1707  
Zenner v. Chicago, St. P., M. & O. Ry., 315, 1210  
Ziegler Co., Inc. v. Rexnord, Inc., 2769  
Ziino v. Milwaukee Elec. Ry. & Transp. Co., 1145  
Zimmerman Bros. & Co. v. First Nat'l Bank, 3014  
Zinda v. Louisiana Pacific Corp., 2550, 2552  
Zindell v. Central Mut. Ins. Co., 1030, 1804  
Zintek v. Perchik, 1816  
Zinzow Constr. Co. v. Giovannoni, 3220  
Zoellner v. Fond du Lac, 1049  
Zoellner v. Kaiser, 1056, 1320  
Zombkowski v. Wisconsin River Power Co., 8100  
Zuelke v. Gergo, 3048

## **WIS JI-CIVIL CASES CITED**

Zummach v. Polasek, 4005  
Zweck v. D. P. Way Corp., 3051





# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

## A

- Abettor, liability of, battery, 2007
- Abrogation of tort immunities,
  - Law Note, 2900
- Absent witness, 410
- Abuse of privilege
  - defamation, nonconstitutional conditional privilege, 2507
  - defamation, constitutional, 2511, 2513
  - malicious prosecution, 2552
- Abuse of process, 2620
- Access rights, defined, eminent domain, 8111
- Accident, unavoidable, 1000
- Accrual of claim, 950
- Activation of latent disease or condition, 1720
- Adult and child, comparative negligence, 1582
- Adult child, death of, pecuniary loss, 1885
- Adverse possession
  - elements, 8060
  - burden of proof, 200
- Advice of counsel as defense, malicious prosecution, 2610
- Agency
  - agent's duty to principal, 4020
  - apparent authority of agent, 4005
  - defined, 4000
  - driver of automobile, 1600
  - general agent, defined, 4001
  - implied authority of agent, 4010
  - independent contractor, definition, 4060
  - master-servant, See Scope of employment ratification by principal of agent's acts, 4015
  - servant, See Scope of employment special agent, defined, 4002
  - termination, general, 4027
  - termination, notice to third party, 4028
  - volunteer, without compensation, 4025
- Agent, negligence of insurance, 1023.6
- Aggravation of injury, damages
  - injury because of medical malpractice, 1710
  - latent disease or condition, 1720
  - preexisting injury, 1715
- Agreement, See also Contracts
  - defined, 3010
  - release, avoidance of for mutual mistake of fact, 3012
  - supplemental instruction on, 195
- Air rights, defined, eminent domain, 8112
- Alcohol, See also Negligence
  - negligence of person consuming, 1035 (comment)
  - test for, in blood, 1008,
- Alcoholic, commitment of, 7070
- Allergy of user, implied warranty, 3209
- Alley, emerging from
  - stop, 1330
  - stop and yield right of way, 1270
  - yield right of way, 1175
- Ambiguous contracts, 3051
- Animal (dog) owner's or keeper's liability common law, 1391
  - statutory, 1390
- Animals, right of way, 1200
- Apparent authority, agency, 4005
- Application for insurance, See Insurance
- Approaching car
  - at intersection, defined, 1195
  - on highway, defined, 1205
- Approaching nonarterial intersections, right of way, 1155
  - Approaching or entering intersection about same time, 1157
- Approach of emergency vehicle, right of way, 1210
- Arguments of counsel
  - instruction at close of evidence, 110
  - preliminary instruction, 50
- Arrest
  - defined, 2115
  - excessive force in, 2008, 2155
  - false, 2115
  - without a warrant, reasonable grounds, 2115
- Arterial, driver on, right of way, 1090
- Artificial condition as attractive nuisance, 1011
- Asking questions, by juror, 57
- Assault, 2004
- Assumption of due care by highway user, 1030
- Assumption, of duty, voluntary, 1397
- Attorney, See also Counsel
  - fees, 3760
  - malpractice, 1023.5
  - status as a specialist, 1023.5A
- Attractive nuisance, 1011, 8025
- Audible, defined, 1210
- Authority
  - apparent, agency, 4005
  - implied, agency, 4010
- Automobile, See also Vehicles
  - damage to, 1805
  - defective condition of, host's liability, 1032
  - driver of, agency, 1600
  - joint adventure (enterprise), 1610
  - Lemon Law, 3300, 3301, 3302, 3303, 3304
  - loss of use, damages
    - not repairable, 1801
    - repairable, 1800
  - Magnuson-Moss Act claim, 3310
  - owner's permission for use of, 3112
  - racing of, 1107
- Avoidance of contract for mutual mistake of fact, 3072

## B

- Backing, lookout, 1060
- Bad faith by insurance company, 2760, 2761, 2762
- Bailment
  - defined, 1025.5
  - duty of bailee under for mutual benefit, 1025.7
  - duty of bailor for hire, 1025.6
  - negligence of bailee may be inferred, 1026
  - negligence of carrier presumed, 1026.5
- Bailor, negligence of gratuitous, 1025.8
- Battery,
  - defense of property, 2006.5
  - defined, 2005

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

excessive force in arrest, 2008, 2155  
Battery (continued)

- liability of aider and abettor, 2007
- offensive contact 2005.5
- punitive damages, 1708
- self-defense, 2006
- sports participant, injury, 2020

Bell, railroad, duty to ring within municipality, 1402  
Belt, safety, failure to use, 1277  
Benefit-of-the-bargain, 2405, 2405.5  
Benefits, special, defined, eminent domain, 8115  
Bifurcation, punitive damages, 1707.1 (comment)  
Blind persons

- duty of, 1050
- right of way, 1170

Blood test for alcohol, 1008  
Brakes, equipment, and maintenance of vehicles, 1054  
Breach of contract, 3053

- by purchaser, damages, 3750
- by seller, damages, 3755

Breach of warranty, See Products liability  
Building

- abutting on a public highway, owner's duty, 8030
- public, negligence of owner, safe-place statute, 1904

Building contractor, negligence of, 1022.4  
Building contracts, damages, 3700, 3701  
Burden of proof, See Evidence  
Bus, school

- flashing red signals, 1133
- stopped on highway, 1132

Business

- defined, safe-place statutes, 1910
- defined, strict liability (products), 3264
- injury to, 2820, 2822
- liability of proprietor, patron injured, act of third person, 8045
- loss of profits, damages, 1750.2, 1754, 1780
- nuisance arising out of operation of, 1924

Buyer, duty of, 3254  
Bystander recovery, 1510

## C

Camouflage

- lookout, 1056
- speed, 1320

Capitalization of rental income, eminent domain, 8130  
Care, ordinary, varies with circumstances, 1020  
Caregiver, duty of, 1021  
Carrier, common, 1025  
Castle Doctrine, 2006.2  
Cause

- defined, 1500
- informed consent cases, 1023.1, 1023.3, 1023.16, 1023.17
- normal response, 1501
- probable cause, malicious prosecution, 2605
- proximate, 1500
- relation of collision to physical injury, 1506
- risk contribution theory, 3295
- where cause of death is in doubt, 1505

Charge after verdict, 197  
Chemical tests, intoxication, 1008  
Child

- and adult, comparative negligence, 1582
- attractive nuisance, 1011, 8025
- death of adult child, pecuniary loss, 1885
- death of child, parents' loss of society and companionship, 1895
- death of minor child, pecuniary loss, 1890
- driver's duty when present, 1045
- injury to, parents' damages
  - for loss of child's services, 1835
  - for loss of society and companionship, 1837
  - for medical expenses, 1840
  - for services rendered to child, 1845
- injury to parent, 1838
  - loss of society and companionship for death of parent, 1897
- negligence of, 1010
- negligence of child compared with adult, 1582
- parents' duty
  - negligent entrustment, 1014
  - to control, 1013
  - to protect, 1012
- trespasser, 8025, 8027

Chiropractor

- determining treatability, 1023.9
- duty to inform patient, 1023.15, 1023.16, 1023.17
- negligence of, 1023.8, 1023.9

Circumstantial evidence, 230  
Civil rights, See Federal civil rights  
Civil theft

- by contractor, 2722
- by contractor of movable property of another, 2420

Closing instruction, 190, 191  
Collateral source, 1756, 1757  
College degree, delay in obtaining, 1760  
Commitment

- of a mentally disabled person, 7050
- of an alcoholic, 7070

Common carrier, negligence of, defined, 1025  
Common motor carrier

- defined, 1339
- stop at all railroad crossings, 1339

Common scheme or plan, 1740  
Comparable sales, eminent domain, 8120  
Comparative negligence

- adult and child, 1582
- basis of comparison, 1580, 1585, 1590
- multiple driver-multiple guest comparison, 1591
- recommended questions, 1592
- when negligence or cause question has been answered by the court, 1595

Compensatory damages, See Damages  
Computer use, by jurors, 50  
Concerted action, 1740  
Condemnation, See Eminent domain  
Conditional privilege

- defamation, abuse of, 2509
- emergency vehicle, 1031
- invasion of privacy, abuse of, 2552

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Consortium, defined, 1815

## Conspiracy

- affiliated corporations, between, 2808
- defined, 2800
- evidence of to be viewed as a whole, 2806
- indirect proof, 2802
- injury to business, 2820, 2822
- overt acts, 2810
- proof of membership, 2802
- restraint of will, 2822

Construction workers, right of way, 1265

Constructive eviction, 3095

Consumer, duty of, 3254

Contact sports injury, 2020

## Contractor

- building, contract damages, 3701, 3700
- building, negligence of, 1022.4
- independent, defined, 4060
- liability of one employing, 1022.6
- theft by, 2722

## Contracts

- abandonment, mutual, 3078
- agreement, 3010
- ambiguous provisions, 3051
- avoidance for mutual mistake of fact, 3072
- breach, 3053
  - by purchaser, damages, 3750
  - by seller, damages, 3755
- building contracts, damages, 3700
- consideration, 3020
- damages, out-of-pocket rule, 3710
- definiteness and certainty, 3022
- definitions — "bona fide," 3045
- demand for performance, 3054
- duration, 3049
- estoppel, 3074
- frustration of purpose, 3070
- good faith, 3044
- hindrance or interference with performance, 3060
- implied contract
  - general, 3024
  - promise to pay reasonable value, 3026
  - unjust enrichment, 3028
  - implied promise of no hindrance, 3046
- impossibility
  - act of God, 3066
  - disability or death of a party, 3067
  - original, 3061
  - partial, 3063
  - superior authority, 3065
  - supervening, 3062
  - temporary, 3064
- insurance contracts, See Insurance
- interference with, 2780
- integration of several writings, 3040
- landlord-tenant, 3095
- modification
  - by conduct, 3032
  - by mutual assent, 3030
- novation, 3034

## offer

- acceptance, 3014
- making, 3012
- rejection, 3016
- revocation, 3018
- partial integration, contract partly written, partly oral, 3042
- real estate listing contract
  - broker's commission on sale subsequent to expiration of contract containing "extension" clause, 3090
  - termination for cause, 3088
  - validity, performance, 3086
- rescission for nonperformance, 3076
- sale of goods, delivery or tender of performance, 3056
- subsequent construction by parties, 3050
- substantial performance, 3052
- termination of servant's employment
  - additional consideration provided by servant, 3084
  - employer's dissatisfaction, 3083
  - indefinite duration, 3082
  - time as an element, 3048
- tortious interference with, 2780
- voidable contracts, duress, fraud, misrepresentation, 3068
- waiver, 3057
- waiver of strict performance, 3058

Contribution, risk, 3295

## Contributory negligence

- defined, 1007
- highway defect, 1048
- of guest
  - intoxication, 1035
  - failure to protect, 1047
  - placing self in position of danger, 1049
  - of mentally disabled person, 1007, 1385.5
  - of patient and informed consent, 1007, 1023.4
  - of pedestrian, sidewalk defect, 1049 of rescuer, 1007.5

Control and management, See Management and control

Controlled intersection, right of way, 1150

- Conversion
  - damages, 2201
  - destruction of property, 2200.2
  - dispossession, 2200
  - failure to return upon demand, 2200.1

Corporate officers, liability of, 1005

Costs, reproduction, eminent domain, 8125

## Counsel

- advice of, as defense, malicious prosecution, 2610
- arguments of, 110
- objection of, 115
- reference to insurance company, 125

Course of dealing, implied warranty, 3203, 3206

## Court

- appreciation of jury's services, 197
- damage question answered by, 150
- demeanor of, 120
- finding in special verdict that one or more parties at fault, 108
- negligence question answered by, 155

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

order striking testimony, 130  
reference to insurance company, 125  
Credibility of witnesses, 50, 215  
Credible evidence, defined, 200  
Crops, damages for injury to, 1806  
Crossing arterial highway, lookout, 1065  
Crossing, railroad  
    duty of railroad to maintain open view, 1411  
    duty of train crew, 1405  
Crossing roadway, pedestrian's duties, See Right of way  
Crosswalk, pedestrian's rights and duties, See  
    Right of way  
Custom and usage, evidence of in determining negligence,  
    1019

## D

### Damages

activation of latent disease or condition, 1720  
aggravation of injury because of medical  
    malpractice, 1710  
aggravation of preexisting injury, 1715  
attorney fees, 3760  
automobile  
    loss of use, 1800  
    property, 1805  
breach of contract  
building contracts, 3700, 3701  
burden of proof, 202  
by purchaser, 3750  
by seller, 3755  
bystander, 1510  
collateral source, 1756, 1757  
common scheme or plan, 1740  
compensatory, burden of proof as to, 202  
condemnation, See Eminent domain  
consortium, 1815  
contracts  
    building, 3700  
    breach by purchaser, 3750  
    breach by seller, 3755  
    general, 3710  
conversion, 2201  
crops, 1806  
damage question answered by the court, 150  
death, wrongful  
    estate's recovery for medical, hospital, and  
        funeral expenses, 1850  
    estate's recovery for pain and suffering, 1855  
    of adult child, pecuniary loss, 1885  
    of child, parents' loss of society and  
        companionship, 1895  
    of husband, all items, 1861  
    of minor child, pecuniary loss, 1890  
    of parent,  
        loss of society and companionship, 1897  
        pecuniary loss, 1880  
    of spouse, loss of society and companionship,  
        1870  
    of wife, medical, hospital, and funeral expenses,  
        1875

of wife, pecuniary loss, 1861  
defamation  
    compensatory, 2516  
    punitive, 2520  
disability, past and future, personal injury, 1750.1,  
    1750.2, 1766, 1767, 1768  
divisible injuries from nonconcurrent or successive  
    torts, 1722  
dog bite, 1390  
duty to mitigate, 1730, 1731  
earnings, loss of, as, 1760, 1762  
effects of inflation, 1797  
eminent domain  
    change in grade, 8110  
    loss of access, 8110  
    severance, 8105  
    unit rule, 8100, 8101  
    unity of use, two or more parcels, 8107  
emotional distress, 1770  
enhanced injury, 1723  
estate's recovery, 1850, 1855  
fraud and deceit, See Misrepresentation future profits,  
    3725  
general instruction on, 1700  
incidental, 3720  
income, loss of, as 1760, 1762  
income, not taxable as, 1735  
in general, 1700  
injury to child, parents' damages  
    for loss of child's services, 1835  
    medical expenses, 1840  
    services rendered to child, 1845  
injury to a growing crop, 1806  
injury to parent, 1838  
injury to spouse  
    loss of consortium, 1815  
    medical and hospital expenses, 1825  
    wife's responsibility for her own, 1830  
    nursing services, 1820  
loss of consortium, 1815  
loss of expectation, 3735  
misrepresentation  
    basis for liability and damages, 2400  
    fraud and deceit, measure of damages in sale or  
        exchange of property, 2405  
    negligence, out-of-pocket rule, fraud, 2406  
    strict responsibility, 2405.5  
mitigate, duty to, 1730, 1731  
nominal, 1810  
not taxable as income, 1735  
personal injury  
    aggravation or activation of latent disease or  
        condition, 1720  
    aggravation of injury because of medical  
        malpractice, 1710  
    aggravation of preexisting injury, 1715  
    disability, 1750.1, 1750.2, 1766, 1767, 1768  
    earning capacity, impairment of, 1750.1, 1750.2,  
        1760, 1762  
    earnings, loss of  
        delay in obtaining a degree, 1760

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- future, 1762
- past, 1760
- professional, 1785
- injuries from nonconcurrent or successive torts, 1722
- Damages (continued)
  - life expectancy and mortality tables, 1795
  - loss of business, profits, 1760, 1762
  - loss of professional earnings, 1760, 1762
  - malpractice, lack of informed consent, 1741
  - malpractice, offsetting benefit, 1742
  - medical and hospital expenses
    - future, 1750.1, 1750.2, 1758
    - past, 1750.1, 1750.2, 1756, 1757
  - pain and suffering
    - future, 1750.1, 1750.2, 1767, 1768
    - past, 1750.1, 1750.2, 1766, 1768
  - traumatic neurosis, 1770
  - present value of future damages, 1796
  - property
    - automobile
      - damage to, 1804
      - loss of use, 1800
    - personal
      - damage to, 1804
      - destruction of, 1803
  - punitive
    - when awarded, 1707, 1707.1
    - defamation, 2520
    - products liability, 1707A, 1707.2
    - question answered by the court, 150
    - severance
      - change in grade, 8110
      - defined, 8105
      - loss of access, 8110
    - subsequent event causing further injury, 1725
    - termination of real estate listing contract by seller, broker's recovery, 3740
- Deaf person, duty of, 1050
- Dealership, See Fair Dealership Law this index.
- Death
  - cause of in doubt, 1505
  - of adult child, pecuniary loss, 1885
  - of child, parents' loss of society and companionship, 1895
  - of husband, all items, 1861
  - of minor child, pecuniary loss, 1890
  - of parent,
    - pecuniary loss, 1880
    - society and companionship, 1897
  - of spouse, loss of society and companionship, 1870
  - of wife, medical, hospital, and funeral expenses, 1875
  - of wife, pecuniary loss, 1861
  - presumption of due care, 353
- Deceive, defined, 3105
- Defamation
  - compensatory damages, 2516
  - conditional privilege, abuse of privilege, 2507
  - defined, 2501
  - express malice, 2513
  - Law Note, 2500
  - media defendant, abuse of constitutional privilege, 2509
  - private individual versus media defendant, 2509
  - private individual versus private individual, 2501
  - public figure, 2511
  - punitive damages, 2520
  - truth as defense, 2505, 2505A
- Defective condition of car, host's liability, 1032
- Defects
  - highway, 8035
    - contributory negligence, 1048
  - if known in a product, then no implied warranty, 3207
  - sidewalk, 8035
    - contributory negligence, 1049
- Defense of property, 2006.5
- Degree, delay in obtaining, 1760
- Deliberation, process of, 191
- Demeanor of judge, jury to ignore, 120
- Dentist
  - duty to inform patient, 1023.15-1023.17
  - negligence of, 1023.14
- Depositions, use of, See Preliminary instructions before trial
- Destruction of personal property, 1803
- Deviation
  - ascertainment that movement can be made with reasonable safety, 1354
  - from clearly indicated traffic lanes, 1355
  - signal required, 1350
- Directional signals, 1350
- Disability, damages, 1750.1, 1750.2, 1766, 1767, 1768
- Disabled vehicle, parking, 1125
- Discharge, wrongful, 2750
- Discovery, 950
- Disease or condition, latent, aggravation or activation of, damages, 1720
- Dissenting jurors, to sign verdict, 180
- Distance between front and rear car, 1112
- Divided highway, pedestrians' rights, 1160
- Divisible injuries, 1722
- Doctor, See Physician
- Dog bite, 1390
- Dog owner or keeper, liability of
  - common law, 1391
  - statutory, 1390
- Domestic partner, 1861, 1870 (comment)
- Double damages, dog bite, 1390
- Drinking by driver or guest, relation to negligence, 1035
- Driver of automobile
  - drinking by, relation to negligence, 1035 duties
  - approaching intersection when yellow light shows, 1192
  - at railroad crossing, 1336, 1337
  - entering intersection with green light in his favor, 1191
  - following another, 1112
  - preceding another, lookout, 1114
  - preceding another, slowing or stopping, signalling, 1113
  - when children present, 1045
  - inattentive, 1070

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

obstructed view, 1310  
position on right side of roadway and exceptions,  
1135, 1140  
seat belt negligence, 1277  
as servant, 1600  
scope of employment, 1605  
Driver's manual, use by jury, 255  
Driveway  
emerging from a private driveway or other  
nonhighway access, 1355  
left turn into, 1352  
Due care, by highway users  
right to assume, 1030  
presumption of, 353  
Duties, See entries under specific titles  
Duty to inform patient  
cause, 1023.3, 1023.17  
chiropractor, 1023.15-1023.17  
dentist, 1023.15-1023.17  
medical, 1023.1-1023.4  
optometrist, 1023.15-1023.17  
podiatrist, 1023.15-1023.17  
special verdict, 1023.1, 1023.16  
Duty to sound horn, nonstatutory, 1096  
Duty, voluntary assumption of, 1397

## E

Earnings, loss of  
business profits, 1750.1, 1750.2, 1760, 1762  
delay in obtaining degree, 1760  
impairment of earning capacity, future, 1762  
past, 1750.1, 1750.2, 1760  
professional, 1760, 1762  
Easement, termination by abandonment, 3079  
Economic loss doctrine, 2419  
Economic waste, 3700  
Emergency doctrine, 1105A  
Emergency vehicle, approach of, right of way, 1210  
Emergency vehicle, conditional privilege, 1031  
Emerging from alley or other  
nonhighway, 1175, 1270, 1330, 1335  
Emerging from, defined, 1270  
Eminent domain, 8100-8145  
access rights, defined, 8111  
air rights, defined, 8112  
assemblage, 8145  
capitalization of rental income, 8120  
change in grade, 8110  
comparable sales, 8120  
cost approach, 8135  
fair market value  
defined, 8100  
lands containing marketable deposits, 8105  
partial taking, 8101  
income approach, 8130  
inconvenience to landowner, 8125 (withdrawn)  
legal nonconforming use, 8140  
reproduction costs, 8135  
severance damages, 8102, 8103  
special benefits, 8115  
unit rule, 8100, 8101  
unity of use, 8104  
Emotional distress  
bystander, 1510  
intentional infliction of, 2725  
negligent infliction of, 1510, 1511  
Employees of hospital, See Hospital employees  
Employer  
duty of, safe-place statute, 1900.2  
liability of one employing independent contractor,  
1022  
negligence of, safe-place statute, 1900.4  
negligent supervision, training, or hiring by, 1383  
vicarious liability of, 4055  
wrongful discharge, 2750  
Employment, See also Agency; Scope of employment safe  
place, 1900.2, 1900.4  
wrongful discharge, 2750  
Enhanced injuries, 1723  
Entering  
defined, 1175  
from alley or nonhighway access point, 1175  
or crossing through highway, 1065  
Enterprise, joint, automobile, 1610  
Entrustment, negligent, 1014, 1014.5  
Equipment and maintenance of vehicles  
brakes, 1054  
directional signals, 1350  
general duty, 1052  
headlights, 1053  
school bus, flashing red signals, 1133  
Equitable actions, right to jury trial, 1  
Estate's recovery  
for medical, hospital, and funeral expenses, 1850  
for pain and suffering, 1855  
Eviction, constructive, 3095  
Evidence  
burden of proof, 200  
adverse possession, 200, 205  
compensatory damages, 202  
defined, 100  
false imprisonment, 2105  
"fraud" standard, 205  
higher civil standard, 205  
medical or scientific treatise, 261  
middle, 205  
ordinary civil standard, 200  
preliminary instruction, 50  
circumstantial, 230  
credibility of witnesses, 215, 415  
driver's manual, use by jury, 255  
expert testimony, 260, 265  
failure to call witness, 410  
false testimony, 405  
falsus in uno, 405  
general, 260  
hypothetical question, 265  
inferences, permissive, 356  
Law Note, 349  
measurements, use of, 305  
medical or scientific treatise, 261

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

negative testimony, 315  
opinion of expert, 260  
physical facts, use of as, 325  
permissive inferences, 356,  
    Law Note, 349  
positive testimony, 315  
presumptions, 350-356 spoliation, 400  
subsequent remedial measures, 358  
summary of, 103  
Evidence (continued)  
    weight of, 215  
    witness  
        absence of, 410  
        impeachment of, 420  
        prior conviction of, 415  
        prior inconsistent statement of, 420  
        self-incrimination of, 425  
Exhibits, 50, 100  
Expert testimony  
    general, 260  
    hypothetical question, 265  
Express malice, defamation, 2518  
Express warranty, See Products liability

## F

Failure  
    of insured to cooperate, 3115  
    materiality of failure, 3116  
    to examine product, implied warranty, 3208  
    to give notice to insurer, 3117  
    to protest, guest, 1047  
    to see object in plain sight, 1070  
    to use safety belt, 1277  
    to use safety helmet, 1278  
    to yield roadway, slow moving vehicles, 1305  
Fair Dealership Law, 2769-2772  
Fair market value  
    defined, 1803, 8100, 8105  
    lands containing marketable deposits, 8102  
    testimony by owner, 260  
False arrest  
    felony, 2115  
False arrest  
    reasonable grounds to believe offense committed,  
        2115  
False imprisonment, 2100  
Falsely represent, defined, 3100  
False representative, See Insurance; Misrepresentation  
False testimony, willful, 405  
Falsus in uno, 405  
Fault, defined, ultimate fact verdict, 1001  
Federal civil rights  
    excessive force in arrest (in maintaining jail security),  
        2155  
    Section 1981 actions, 2150  
    Section 1982 actions, 2150  
    Section 1983 actions, 2151  
Fees, attorney, 3760  
Felony, false arrest for, 2115  
Fitness for particular purpose, warranty, 3202

Five-sixths verdict, 180  
Fixed speed limits, 1290  
Flammable liquid, defined, 1339  
Flashing traffic signal  
    red, 1133  
    yellow, 1090  
Following car, operation of, 1112  
Franchise, wrongful termination of, 2770  
Fraud, See also Misrepresentation  
    elements of, 2400, 2419  
Frequenter  
    defined, 1900.4, 1901  
    injury to, safe-place statute, 1900.4  
    negligence of, safe-place statute, 1902  
Front car  
    duty of preceding driver to following driver, 1114  
    slowing, stopping and signalling, 1113  
Funeral  
    burial expenses, wrongful death, 1850  
    procession, right of way, 1180  
Future and past disability, damages, 1750.1, 1750.2, 1766,  
    1767, 1768  
Future damages, present value of, 1796

## G

Gas company  
    duties relating to company's pipes, mains, and meters,  
        1003  
    duties relating to customer's pipes or appliances, 1002  
General agent, defined, 4001  
General benefit, eminent domain, 8115  
General disability, one question as to, 1750.2  
General verdict, submission on, 106  
Good faith,  
    duty of, 3044  
    Lemon law, 3300  
Gratuitous bailor, negligence of, 1025.8  
Green arrow, traffic signal, 1185  
Green light, entering intersection with, 1191  
Green or go, traffic signal, 1190  
Gross negligence, See also Negligence  
    defined, intoxication not involved, 1006  
    reckless conduct, 1006, 2020  
Growing crop, damage to, 1806  
Guardianship, 7054, 7055, 7056, 7060, 7061  
Guest  
    automobile  
        active negligence, management and control,  
            1047.1  
        drinking of intoxicants, relation to negligence,  
            1035  
        failure to protest, contributing negligence, 1047  
    lookout  
        duty of with respect to, 1075  
        duty to warn, 1076  
    placing self in position of danger, 1046

## H

Handicaps, physical, duty of persons with, 1050

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- Headlights
    - automobile, 1053
    - railroads, 1412
  - Helmet negligence, 1277 (comment), 1278
  - Highway
    - defects, 8035
    - defects, contributory negligence, 1048 defined, 1325A
    - divided, defined, 1160
  - Highway (continued)
    - entering from an alley or nonhighway access point, 1175
    - entering or crossing through highway, 1065
    - insufficiency, 8035
    - intersection, right of way, 1157
    - obstructions, public utility, non-energized facilities, 1395
    - users, right to assume due care, 1030
    - worker, right of way, 1265
  - Hiring, Negligent, 1383
  - Horn
    - duty to sound when passing vehicles proceeding in same direction, statutory, 1144
    - failure to sound, duty, nonstatutory, 1096
  - Horse, liability of owner or keeper, common law, 1391
  - Hospital, negligence of, in granting staff privileges, 1384
  - Hospital employees, negligence
    - injury resulting from patient's inability to look out for own safety, 1385
    - registered nurses and licensed technicians performing skilled services, 1023.7
    - suicide or injury resulting from escape or attempted suicide, 1385.5
  - Hospital expenses
    - estate's recovery for, 1850
    - injury to child, 1840
    - injury to spouse, 1825
    - personal injuries, 1750.1, 1750.2, 1756, 1757, 1758
    - wife's responsibility for own, 1830
    - wrongful death, 1850
  - Hospital licensed technicians, See Hospital employees
  - Host-guest relationship
    - agency, driver of automobile, 1600
    - contributory negligence of guest, placing self in position of danger, 1046
    - contributory negligence of guest, riding with host, 1047
    - danger, 1046
    - defective condition of car, host's liability, 1032
    - drinking by driver, relation to negligence, 1035
    - driver's management and control, limited skill, 1110
    - guest's duty as to lookout, 1075
    - joint enterprise, automobile cases, 1610
  - Hotel innkeeper
    - duty to furnish reasonably safe premises and furniture for his guests, 8051
    - duty to provide reasonable security, 8050
  - Household member, 3110
  - Household services, loss of, 1816, 1817
  - Husband
    - death of, damages, all items, 1861, 1870
    - injury to, See Spouse
  - Hypothetical question, expert testimony, 265
- ## I
- Ignoring judge's demeanor, 120
  - Illness without forewarning, 1021.2
  - Immunity, abrogation of torts,
    - Law Note, 2900
  - Impairment of earning capacity, See Earnings
  - Impeachment of witness, prior inconsistent or contradictory statements, 420
  - Impeding traffic
    - by reason of slow speed, 1300 failure to yield roadway, 1305
  - Implied authority, agency, 4010
  - Implied duty of good faith, 3044
  - Implied warranty, See Products liability
  - Imprisonment, See False imprisonment
  - Improper use, implied warranty, 3210
  - Imputed negligence, driver of automobile
    - agency, 1600
    - joint adventure (enterprise), 1610
    - scope of employment, 1605
  - Inattentive driving, 1070
  - Income, damages award, not taxable as, 1735
  - Income, loss of, 1760, 1762
  - Income approach, eminent domain, 8130
  - Incompetent person, 7054-7061
  - Inconvenience to landowners, eminent domain, 8125
  - Independent contractor
    - defined, 4060
    - liability of one employing, 1022.6
  - Inference,
    - self-incrimination, 425
    - spoliation, 400
  - Inflation, effects of, 1797
  - Infliction of emotional distress, 1510, 1511, 2725
  - Informed consent, 1023.2, 1023.3
    - causation, 1023.3
    - contributory negligence, 1007, 1023.4
    - dentist, 1023.15-1023.17
    - optometrist, 1023.15-1023.17
    - podiatrist, 1023.15-1023.17
    - duty of chiropractor, 1023.15-1023.17
    - duty of physician, 1023.2
    - suggested verdict, 1023.1
  - Injuries, divisible, 1722
  - Injury
    - aggravation of, because of medical malpractice, 1710
    - caused by subsequent event, 1725
    - enhancement of, 1723
    - from failure to wear safety belt, 1277 from fright, 1510
    - personal, See Damages
    - preexisting, aggravation or activation of, 1715
    - relation of collision to physical injury, 1506
    - to child
      - parents' damages for loss of child's services, 1835
      - parents' damages for medical expenses, 1840



# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

parents' damages for services rendered to child,  
1845  
to frequenter, safe place, 1900.4  
to spouse  
    medical and hospital expenses, 1825  
    wife's responsibility for own, 1830  
    nursing services, 1820  
    services, society, and companionship, 1815  
Inspection, no duty of, express warranty, 3222  
Insufficiency of highway or sidewalk, 8035  
  
Insurance  
    agent, negligence of, 1023.6  
    application for  
        false representations, 3100  
        misrepresentation with intent to deceive, 3100  
    bad faith by insurance company, 2760, 2761, 2762  
    breach of  
        affirmative warranty, 3100  
        promissory warranty, 3105  
    failure of condition, 3105  
    failure of insured to cooperate, 3115  
        materiality, 3116  
    failure to give notice to insurer, 3117  
        materiality, 3118  
    household member, 3110  
    resident covered by, 3110  
Intent, defined, 3100  
Intentional deceit, misrepresentation, 2401  
Intentional tort, 2000  
    infliction of emotional distress, 2725  
    interference with contract, 2780  
    liability of minor, 2000  
    mitigation of damages, 1732  
    verdict in cases involving  
        joint tortfeasors, 1580 (comment)  
Interrelationship of special verdict questions, 145  
Intersection  
    alley, stop emerging from, 1330  
    defined, 1325A  
    driver on arterial approaching, 1090  
    left turn at, 1195  
    lookout, 1090, 1191  
    of highways, right of way, 1157  
    pedestrians' right, 1158, 1159, 1160, 1165  
    right of way, See Right of way  
    stop at, 1325, 1325A  
Intoxicants  
    drinking by driver, 1035  
    drinking by guest, 1040  
Intoxication  
    chemical tests, 1008  
    not involved in gross negligence, 1006  
    of driver, 1035  
Intrusion, invasion of privacy, 2551  
Invasion of privacy, 2550, 2551, 2552  
Involuntary commitment of mentally ill person, 7050  
Involuntary commitment: mentally ill: recommitment  
alleging Wis. Stat. § 51.20(1)(am), 7050A

## J

Joint adventure, enterprise, automobile, 1610  
Joint and several liability, 1740  
Judge, See Court  
Juror  
    computer use by, 50  
    conduct during trial, 50  
    duties in general, 100-197  
    knowledge, 215  
    no obligation to discuss case, 197  
    questions, 57  
Jury  
    appreciation of services, 197  
    asking questions, 57  
    conduct of, 50  
    election of foreman, 190  
    not to discuss case after verdict, 197  
    note taking, 60, 61  
    reaching a verdict, 190  
    unable to agree, supplemental instruction, 195  
    use of driver's manual, 255  
    view, 152  
Jury trial, right to, 1  
Just compensation, eminent domain, 8100, 8105

## K

Keeper or owner of animal, liability of common law, 1391  
    statutory, 1390  
Knowledge of juror, 215

## L

Landlord-tenant, 3095  
Landowner, inconvenience to, eminent domain, 8125  
Latent disease or condition, activation or  
    aggravation of, 1720  
Lay witness, 268  
Leaving curb or place of safety, pedestrian, 1255  
Leaving vehicle  
    off the roadway, 1115  
    on the roadway, 1120  
        lights, 1130  
    on or off the roadway, exception to prohibition, 1125  
Left side of road, driving on, 1135  
    violation excused, 1140  
Left turn at intersection, 1195, 1352  
Legal nonconforming use, eminent domain, 8140  
Lemon Law, 3300, 3301, 3302, 3303, 3304  
Liability  
    of abettor, battery, 2007  
    of dog (animal) owner or keeper, common law, 1391  
    of dog owner or keeper, statutory, 1390  
    of employer, 4055  
    of host, defective condition of car, 1032  
    of minor, intentional tort, 2000  
    of one employing independent contractor, 1022.6  
    of principal for acts of agent, See Agency

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- of proprietor for injury to patron caused by third person, 8045
- Libel, See Defamation
- Licensed technician, negligence of, 1023.7
- Life expectancy and mortality tables, 1795
- Lights, motor vehicle
  - directional signals, 1350
  - flashing red, school bus, 1133
  - headlights, equipment, and maintenance, 1053
- Limitations period, 950
- Limited skill and judgment of host driver, 1110
- Livestock
  - on highway, 1200 right of way, 1200
- Long term care providers, damages, 1757, 1815, 1870, 1897
- Loitering on roadway, thumbing rides, 1250
- Lookout
  - approaching flashing yellow traffic signal, 1090
  - ascertainment that movement can be made with reasonable safety, 1354
  - backing, 1060
  - camouflage, 1056
  - driver on arterial approaching intersection, 1090
  - entering intersection on green light, 1191
  - entering or crossing through highway, 1065
  - failure to see object in plain sight, 1070
  - guest, 1075
  - guest's duty to warn, 1076
  - limited duty
    - on private property, 1080
    - to rear, 1114
  - on through highway, 1090
  - passing, vehicles proceeding in same direction, 1141
  - pedestrian, 1095
  - turn or deviation, 1354
- Loss of
  - access, eminent domain, 8105
  - child's services, 1835
  - earnings, See Earnings
  - society and companionship of domestic partner, 1870 (comment)
  - society and companionship of spouse, 1815, 1870
  - society and companionship of parent, 1838
  - use of automobile, not repairable, 1801
  - use of repairable automobile, 1800

## M

- Magnuson-Moss Claim, 3310
- Maintenance and equipment of vehicles, See Equipment and maintenance of vehicles
- Maintenance workers on highway, 1265
- Malice
  - defined, 1707
  - express, defamation, 2513
  - punitive damages, 1707, 1707A
- Malicious prosecution
  - advice of counsel as defense, 2610, 2611
  - elements, 2600, 2605

- instituting civil proceeding, 2605
- instituting criminal proceeding, 2600
- Malpractice
  - aggravation of injury because of medical malpractice, 1710
  - attorney, 1023.5, 1023.5A
  - cause, medical, informed consent cases, 1023.3
  - chiropractor, 1023.8, 1023.9
  - dentist, 1023.14
  - nurse, 1023.7
  - physician, 1023
  - professional, 1023.5
  - psychiatrist, 1023 (comment)
  - res ipsa loquitur, 1024
- Management and control
  - defined, 1105
  - in an emergency, 1105A
  - negligence of guest, active, 1047.1
- Manufacturer, negligence of, See Products liability
- Market value, property damaged, 1804, 1805
- Master and servant, See Servant
- Measurements, evidence, 305
- Medical expenses, See Hospital expenses
- Medical negligence, 1023
  - informed consent, 1023.2
  - informed consent, cause, 1023.3
  - res ipsa loquitur, 1024
- Medical technician, See Hospital employees
- Medical treatise, 261
- Meeting and passing
  - position on highway, 1135
  - violation excused, 1140
- Meeting at intersection of highways, right of way, 1155
- Member of household, 3110
- Mentally disabled, See also Protective placement
  - contributory negligence of, 1007, 1021, 1385.5
  - involuntary commitment, 7050
  - recommitment alleging § 51.20(1)(am), 7050A
  - negligence of, 1021
- Merchantability, defined, 3201
- Middle burden of proof, 205
- Military convoys, right of way, 1180
- Minor
  - attractive nuisance, 1011
  - death of, pecuniary loss, 1890
  - liability of, intentional tort, 2000
  - parents' duty
    - to control, 1013
    - to protect, 1012
- Misrepresentation, fraud
  - bases for liability and damages, 2400
  - damages, measure of, in actions involving sale or exchange of property, 2405
  - damages, out-of-pocket rule, negligent misrepresentation, 2406
  - intentional deceit, elements of fraud, 2401
  - negligence, 2403
  - property loss (Wis. Stat. § 895.80), 2419
  - strict responsibility, 2402
    - under Wis. Stat. § 100.18, 2418
  - unfair trade practice, 2418

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

verdicts suggested, 2402, 2403  
insurance  
    application with intent to deceive, 3105  
    in application for insurance, 3100  
Mistake of fact, mutual, avoidance of contract, because of, 3072  
Mitigation of damage,  
    breach of contract, 1731  
    intentional torts, 1732  
    negligence, 1731  
    physical injuries, 1730  
Modification or exclusion of the implied warranty, 3205  
Mortality tables and life expectancy, 1795  
Motor vehicles, See specific headings  
Moving from parked position, 1205  
Multiple driver-multiple guest comparison, 1591  
    recommended questions, 1592  
Municipality, creating or maintaining nuisance, 1922  
  
Mutual mistake of fact, avoidance of contract,  
    because of, 3072

## N

Negative testimony, defined, 315

### Negligence

attorney, 1023.5, 1023.5A  
bailee, 1026  
    for hire, 1025.6  
    for mutual benefit, 1025.7  
    inferred, 1026  
bailor, 1026.8  
building contractor, 1022.4  
bus driver, 1025  
carrier  
    common, 1025  
    negligence presumed, 1026.5  
children, 1010  
chiropractor, 1023.8, 1023.9  
common carrier, 1025  
comparative, See also Comparative negligence  
    adult and child, 1582  
    basis of comparison, 1580  
    multiple driver-multiple guest comparison, 1591  
    recommended questions, 1592  
    where negligence or cause question has been  
        answered by the court, 1595  
contributory, See also Contributory negligence  
    defined, 1007  
    highway defect, 1048  
    of guest  
        drinking by, 1035  
        failure to protest, 1047  
        in informed consent case, 1021  
        placing self in position of danger, 1046  
    of mentally disabled person, 1021  
    of plaintiff frequenter, safe-place statute, 1902  
    sidewalk defect, 1049  
defamation, 2509  
defined, 1005  
dentist, 1023.14

diagnosis, 1023.4  
driver, See individual headings  
duty of  
    agent to principal, 4020  
    buyer, 3254  
    consumer, 3254  
driver  
    approaching intersection when yellow light  
        shows, 1192  
    at railroad crossing, 1336  
    children, when present, 1045  
    drinking, 1035  
    entering intersection with green light in his  
        or her favor, 1191  
    entering or crossing arterial highway, 1065  
    following another car, 1112  
    front car, 1114  
        slowing, stopping, or signalling, 1113  
    highway defect or insufficiency, 1048  
    horn, to sound, 1012  
    lookout  
        defined, 1055  
        private property, 1080  
    management and control, 1047.1, 1105  
    speed, obstructed vision, 1310  
    speed, nighttime, 1315  
    to see defects, 1048  
employer, in hiring, training, or supervising, 1383  
employer, safe-place statute, 1900.4  
frequenter, safe-place statute, 1902  
gas company  
    relating to company's pipes, mains, and  
        meters, 1003  
    relating to customer's pipes or appliances,  
        1002  
guest, See Contributory negligence; Guest  
highway defect, 1049  
hiring, 1383  
hospital employees  
    employees, 1385, 1385.5  
    registered nurses and technicians, 1023.7  
hotelkeeper, to furnish reasonably safe premises  
and furniture for his guests, 8051  
informed consent, 1023.1-1023.4, 1023.15-  
    1023.17  
insurance agent, 1023.6  
jurors, in general, 100-195  
licensed technician, 1023.7  
manufacturer, See Products liability mentally ill,  
    1021  
mitigate damages, injured person, 1730, 1731  
municipality, highway or sidewalk defects and  
    insufficiency, 8035  
nurse, 1023.7  
owner  
    of building on public highway, 8030  
    of land to user, 8020  
    of place of amusement, 8040  
    of place of business, duty to protect patrons,  
        8045  
    of public building, safe place, 1904

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- of public business, not safe place, 8040
  - of vehicle, to equip and maintain, 1052
  - to trespasser, 8025
  - parent
    - to control minor child, 1013, 1014
    - to protect minor child, 1012
  - pedestrian, See also Right of way
    - lookout, 1095
    - sidewalk defect or insufficiency, 1049
  - physically handicapped persons, 1050
  - place of amusement, owner, 8040
  - place of business, owner's duty to protect patrons, 8045
  - possessor of land to user, 8012
  - private nuisance, 1920
  - proprietor for injury to patron caused by third person, 8045
- Negligence (continued)
- public utility, highway obstructions, non-energized facilities, 1395
  - railroad crossing, driver's duty, 1336
  - railroad, See Railroads
  - registered nurse, 1023.7
  - restaurant operator, sale of food containing harmful natural ingredients, 3248
  - risk contribution, 3294, 3295
  - school bus driver
    - and other drivers when bus is stopped, 1132
    - to display flashing red signals when bus is stopped, 1133
  - seller, See Products liability
  - sensory handicapped persons, 1050
  - sidewalk defect, 1048
  - subsequent remedial measures, 358
  - superior skills doctrine, 1005
  - supervision, 1383
  - teacher
    - to instruct or warn, 1380
    - to supervise students, 1381
  - technicians, 1023.7
  - training, 1383
  - worker, preoccupation in work minimizes duty, 1051
- emergency doctrine, 1105A
- employer, in hiring, 1383
  - employer, in supervising, 1383
  - employer, in training, 1383
  - employer, safe place, 1900.2
  - entrustment, 1014, 1014.5
  - evidence of custom and usage, 1019
  - fault, ultimate fact verdict, 1001
  - frequentur, safe place, 1902
  - gas company
    - relating to company's pipes, mains, and meters, 1003
    - relating to customer's pipes and appliances, 1002
  - gross, See Gross negligence
  - handicapped persons
    - physical, 1050
    - sensory, 1050
  - highway defect or insufficiency, 1048
  - highways and sidewalks, care of, 8035
  - hospital
    - employees, 1385, 1385.5
    - registered nurses and technicians, 1023.7
  - imputed, See Imputed negligence
  - independent contractor, liability of one employing, 1022.6
  - infliction of emotional distress, 1510, 1511
  - informed consent, 1023.1, 1023.2, 1023.3, 1023.4
  - intentional acts compared to, 1004, 2001
  - lookout, 1055
  - malpractice
    - attorney, 1023.5
    - chiropractor, 1023.08
    - dentist, 1023.14
    - physician, 1023
    - res ipsa loquitur, 1024
  - management and control, 1047.1, 1105
  - manufacturer, See Products liability
  - mentally ill, 1021, 1385.5
  - misrepresentation, 2403
  - municipality
    - highway and sidewalk defect, 8035
    - highway and sidewalk insufficiency, 8035
    - nuisance, 1922
  - owner, See Owner
  - owner of animal
    - common law, 1391
    - statutory, 1390
    - per se*, 950
  - physically handicapped person, 1050
  - physician, malpractice by, 1023
  - res ipsa loquitur, 1024
  - plaintiff frequentur, 1902
  - product user, 3268
  - psychiatrist, 1023 (comment) question answered by court, 155
  - res ipsa loquitur
    - defined, 1145
    - malpractice, physician, 1024
  - rescuer, 1007.5
  - restaurant operator, sale of food containing harmful natural ingredients, 3248
  - right to assume due care by highway users, 1030
  - seat belt, failure to use, 1277
  - seller, See Products liability
  - sensory handicapped persons, 1050
  - sidewalk defect, duty of pedestrian, 1049
  - speed, See Speed
  - sports participant, 2020
  - strict liability, 3260
  - supplier, See Products liability
  - taxicab driver, 1025
  - teacher
    - instruct or warn, 1380
    - supervise students, 1381
  - user, strict liability, 3260
  - violation of safety statute, 1005, 1009
  - worker, preoccupation in work minimizes duty, 1051
- Negligent

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

conduct contrasted to intentional conduct 1004, 2001  
entrustment, 1014, 1014.5  
hiring, 1383  
infliction of emotional distress, 1510, 1511  
misrepresentation, 2403  
supervising, 1383  
training, 1383  
Nominal damages, 1810  
Nonconcurrent or successive torts  
    divisible injuries from, 1722  
Nonconforming use, legal, eminent domain, 8140  
Nonexpert witness, 268  
Nonhighway access, emerging from, 1270  
No passing zone, vehicles proceeding in same direction, 1143  
Normal response, cause, 1501  
Notetaking by jury, 60, 61  
Notice  
    actual or constructive, as to defect, 1900.4  
    of breach, implied warranty, 3211  
Notice (continued)  
    of municipality with respect to highway or sidewalk defects, 8035  
    timeliness of, breach of warranty, 3211  
    to third parties of termination of agency, 4028  
Nuisance  
    attractive, 1011, 8025  
    private, 1920, 1922, 1924, 1926  
    public, 1920, 1928, 1930, 1932  
Nursing services  
    personal injury, 1756, 1758  
    injury to spouse, 1820

## O

Objections of counsel  
    instruction at conclusion of trial, 115  
    preliminary instruction, 50  
Obstructed view, passing, 1142  
Obstructed vision, driver, speed, 1310  
    nighttime, 1315  
Offensive bodily contact, battery, 2005.5  
Offer, making, 3012  
Opening instruction, 100  
Opening statements of counsel, See Preliminary instructions before trial  
Opinion of nonexpert witness, 268  
Optometrist, duty to inform patient, 1023.15-1023.17  
Order(s), See Court  
Order of proof, See Preliminary instructions before trial  
Ordinary burden of proof, 200, 202  
Ordinary care  
    defined, 1005  
    varies with circumstances, 1020  
Out-of-pocket  
    rule damages, 3710  
    negligence misrepresentation, 2406  
Owner  
    dog, 1390  
    duty to trespasser, 8025  
    duty to user, 8020

of building abutting on a public highway, 8030  
of place of amusement, common law, 8040  
of place of business, duty to protect patrons, 8045  
of place of employment, safe place, 1900.4  
of public building, safe place, 1904  
of public business not under safe-place statute, 8040  
of vehicle, 1600  
permission for use of automobile, 3112  
testimony of, to establish value, 260 (comment)

## P

Pain and suffering, damages  
    estate's recovery for, 1855  
    future, 1768  
    past, 1766, 1768  
    past and future disability, 1750.1, 1750.2, 1756, 1767  
Parent  
    damages  
        adult child, pecuniary loss, 1885  
        loss of society and companionship, 1895  
        minor child  
            postmajority pecuniary loss, 1892  
            premajority pecuniary loss, 1890  
        death of, pecuniary loss, 1880  
        injury to child  
            loss of child's services, 1835  
            loss of society and companionship, 1837  
            medical expenses, 1840  
            services rendered to child, 1845  
        injury to parent, 1838  
        death of, child's loss of society and companionship, 1897  
    duty of  
        to control minor child, 1013, 1014  
        to protect minor child, 1012  
    paternity, 5001  
Parked position, moving from, 1205  
Parked vehicle  
    disabled vehicle, 1125  
    leaving off the roadway, 1115  
    leaving on or off the roadway, exception to prohibition, 1125  
    leaving on the roadway, 1120  
    yield right of way to moving vehicles, 1205  
Participation in a recreational activity, 1393  
Parties to lawsuit, 50  
Partnership, defined, 4080  
Passenger, See Guest  
Passing, vehicles proceeding in same direction  
    lookout, 1141  
    no passing zone, 1143  
    obstructed view, 1142  
    overtaken vehicle turning left, 1143  
    signal, return to right-hand lane, 1144  
Paternity, 5001  
Pecuniary loss  
    death of  
        adult child, 1885  
        domestic partner, 1861  
        husband, 1861

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- minor child, 1890
- parent, 1880
- spouse, 1861
- wife, 1861
- Pedestrian
  - crossing railroad tracks, 1337.5
  - lookout, 1095
  - right of way, See Right of way
  - sidewalk defect, contributory negligence, 1049
  - standing or loitering on highway, 1250
  - suddenly leaving curb or place of safety, 1255
  - walking on highway, position on highway, 1260
- Permission of owner for use of automobile, 3112
- Permissive inferences, 356
  - Law Note, 349
- Personal injury, See Damages
- Personal property, See Property damage
- Persons in specific situations, duties of, 1030-1355
- Persons with physical handicaps, duties of, 1050
- Physical danger
  - in field of, 1510
- Physical facts, 325
- Physical handicaps, duty of persons with, 1050
- Physical injury, relation of collision to, 1506
- Physician
  - duty to inform patient, 1023.2
  - medical malpractice, 1023
  - negligence of hospital in granting staff privileges to, 1384
  - standard of skill, 1023
- Place of business, owner's duty to protect patrons, 8045
- Place of employment, safe-place statute, 1910
- Plaintiff frequenter, negligence of, safe-place statute, 1902
- Podiatrist, duty to inform patient, 1023.15-1023.17
- Point of access, defined, 1175
- Position and method of turn to right or left, 1352
- Position on highway
  - on meeting and passing, 1135
  - violation excused, 1140
- Positive testimony, defined, 315
- Possessor
  - consent of to another's being on his premises, 8015
  - of land, duty to user, 8020
- Post-traumatic disorder, 1511, 1770
- Posted speed limit, 1290
- Preceding car
  - duty of driver to following driver, 1114
  - slowing, stopping, signalling, 1113
- Preexisting injury, aggravation of, 1715
- Preliminary instructions before trial, 50
- Preoccupation in work minimizes duty of worker, 1051
- Present value of future damages, 1796
- Presumption, negligence
  - res ipsa loquitur, 1145
  - res ipsa loquitur, malpractice, physician, 1024
- Presumptions
  - and permissive inferences
    - Law Note, 349
  - basic fact conflict, possibility of nonexistence of presumed fact, 350
  - basic fact conflict, presumed fact may be inferred, 354
  - basic fact uncontradicted, possibility of nonexistence of presumed fact, 352
  - due care by decedent, 353
  - medical expenses, 1756, 1757
  - possibility of nonexistence of presumed fact, basic fact conflict, 350
  - possibility of nonexistence of presumed fact, basic fact uncontradicted, 352
  - presumed fact may be inferred, basic fact conflict, 354
  - servant status from ownership of vehicle, 1600
- Principal, and agent, See Agency
- Prior conviction of witness, 415
- Prior inconsistent or contradictory statements, 420
- Privacy, invasion of, 2550, 2551, 2552
- Private driveway, emerging from or other nonhighway access, 1335
- Private nuisance, 1920, 1922, 1924, 1926
- Private property, lookout, limited duty on, 1080
- Privilege
  - against self-incrimination, 425
  - conditional, abuse of, defamation, 2507
  - invasion of privacy, 2552
  - public official, abuse of, defamation, 2509
- Probable cause, malicious prosecution, 2600, 2610
- Process, abuse of, 2620
- Procession, funeral, right of way, 1180
- Products liability
  - allergy of user, 3209, 3260 (comment)
  - basis, 3200
  - breach of warranty, notice of, implied warranty, 3211
  - business defined, strict liability, 3264
  - buyer, duty of, 3254
  - consumer, duty of, 3254
  - contributory negligence, strict liability, 3268
  - defect, use of product after defect known, 3207
  - exclusion by reason of course of dealing or usage of trade, 3206
  - exclusion or modification, 3205
  - express warranty
    - general, 3220
    - no duty of inspection, 3222
    - statement of opinion under Uniform Commercial Code, 3225, 3230
  - implied warranty
    - allergy of user, 3209
    - by reason of course of dealing or usage of trade, 3203
    - exclusion by reason of course of dealing or usage of trade, 3206
    - failure to examine product, 3208
    - fitness for particular purpose, 3202
    - food, sale of, 3204
    - improper use, 3210
    - merchantability, defined, 3201
    - notice of breach, 3211
    - use of product after defect known, 3207
  - negligence
    - duty of buyer, 3254
    - duty of consumer, 3254
    - duty of manufacturer, 3240

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

duty of manufacturer to give adequate instructions as to the use of a complicated machine (product), 3244  
duty of manufacturer (seller) to warn of dangers with respect to intended use, 3242  
duty of manufacturer (seller) who undertakes to give instructions as to the use of a machine (product), 3246  
duty of restaurant operator in sale of food containing harmful natural ingredients, 3248  
duty of seller installing (servicing) a product, 3250  
duty of seller to warn of dangers of product with respect to intended use, 3242  
punitive damages, 1707A, 1707.2  
Restatement, Third, of Torts, 3260 (comment)  
risk contribution theory, 3294, 3295, 3296  
strict liability  
    comparative negligence, 3290, 3290.1  
    contribution, 3290 (comment)  
    contributory negligence of user, 3268, 3290, 3290.1  
    definition of business, 3264  
    duty of manufacturer to ultimate user, 3260, 3260.1  
Products liability (continued)  
    duty of manufacturer (supplier) to warn, 3260.1, 3262  
    duty of supplier to warn, 3260.1, 3262  
    suggested special verdict, 3290, 3290.1  
Professional earnings, loss of, 1760, 1762  
Proof, burden of, See Burden of proof  
Property  
    automobile  
        damages to, 1805  
        loss of use, not repairable, 1800  
        loss of use, repairable, 1801  
    eminent domain, See Eminent domain  
    personal  
        damage to, 1804  
        damage to, property not repairable, 1805  
        destruction of, 1803  
    relation of property owners to others, 1900.4, 1904, 8012  
    with market value, 1805  
    without market value, 1803  
Property loss through misrepresentation, 2419  
Proprietor of business, duty to protect person from injury by act of third person, 8045  
Prosecution, malicious, See Malicious prosecution  
Protective placement, 7060  
Protective services, 7061  
Protest, failure to on part of guest, 1047  
Proximate cause, 1500  
Psychiatrist, negligence of, 1023 (comment)  
Public building, safe-place statute, 1904  
Public business, not under safe-place statute, duties of owner, 8040  
Public nuisance, 1920, 1928, 1930, 1932  
Public official, defamation, abuse of privilege, 2509

Public utility, duty of, highway obstructions, nonenergized facilities, 1395  
Publication, defamatory effect of, 2514  
Puffing, 3225  
Punitive damages  
    defamation, 2520  
    intentional disregard, 1707.1  
    malice, 1707, 1707.1  
    mitigation of, by provocation of battery, 1708  
    outrageousness, 1707  
    products liability, 1707A, 1707.2  
Purchaser, breach of contract by, 3750

## Q

Quantum meruit, 1812  
Questions,  
    answered by the court  
    damages, 150  
    negligence, 155  
    by juror, 57  
    special verdict, interrelationship, 145

## R

Racing, 1107  
Railroads  
    crossing  
        driver's duty, 1336  
        duty of train crew approaching crossing, 1405  
        duty to maintain open view at, 1411  
        nonoperation of signals, 1338  
        signs, duty to maintain, 1410  
        special vehicles required to stop at all crossings, 1339  
        ultrahazardous or unusually dangerous, increased duty, 1413  
        vehicles stopping at signals, 1337  
    duty to blow whistle  
        outside municipality, 1402  
        within municipality, 1403  
    duty to ring bell within municipality, 1401  
    headlights, duty to have proper, 1412  
    pedestrian crossing tracks, 1337.5  
    speed  
        fixed limits, 1407  
        negligent, causation, 1409  
        no limit, 1408  
Ratification  
    by master of servant's wrongful acts done outside scope of employment, 4050  
    of agent's acts by principal, 4015  
Rear car, operation of, 1112  
Rear lookout, limited duty, 1114  
Reasonable grounds to believe offense committed, defined, 2115  
Recording played to the jury, 80  
Red traffic control light, 1193  
    flashing, 1193.5  
    signalling stop, 1193  
Reduce speed

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

obstructed vision, 1310  
  nighttime, 1315  
  reasonable and prudent speed, 1285  
Reference to insurance company by counsel, 125  
Registered nurse, See Hospital employees, negligence  
Relation of collision to physical injury, 1506  
Release, agreement, avoidance of for mutual mistake of  
  fact, 3072  
Rental income, capitalization of, 8130  
Representations, false, See Misrepresentation  
  costs, eminent domain, 8135  
Res ipsa loquitur  
  defined, 1145  
  malpractice, medical, 1024  
  permissive inference, 356  
Rescuer, contributory negligence of, 1007.5  
Resident, defined, 3110  
Response, normal, cause, 1501  
Responsibility, strict, misrepresentation, 2402  
Restatement, Third, of Torts, effect on products liability,  
  3260 (comment)  
Restaurant operator, duty of, in sale of food containing  
  harmful natural ingredients, 3248  
Restraint of will, 2822  
Right-hand lane, return to, after passing, vehicles  
  proceeding in same direction, 1144  
Right of way  
  auto  
    at intersection of highways, nonarterial, 1155  
    at intersection of highways, nonarterial, ultimate  
      fact question, 1157  
    at intersection with through highway, 1153  
    emergency vehicle approach of, 1210  
    entering highway from an alley or nonaccess  
      points, 1175  
    funeral procession, 1180  
    green arrow, 1185  
    green or go signal, 1190  
    left turn at intersection, 1195  
    livestock, 1200  
    meeting at intersection, 1155  
    military convoy, 1180  
    moving from parked position, 1205  
    vehicles using alley or nonhighway access, 1270  
      when yield sign installed, 1275  
  highway worker, 1265  
  livestock, 1200  
  pedestrian  
    at intersections or crosswalks on divided  
      highways provided with safety zones, 1160  
    at uncontrolled intersections or crosswalks, 1165  
      blind pedestrian on highway, 1170  
    control signal, 1159, 1220  
    crossing at controlled intersection, 1158, 1225  
    crossing at place other than crosswalk, 1095,  
      1230  
    divided highways or highways with safety  
      zones, 1235  
    duty of  
      at pedestrian control signals, 1220

    crossing at controlled intersection or  
      crosswalk, 1225  
    crossing roadway at point other than  
      crosswalk, 1230  
    green arrow, facing, 1240  
    red or stop signal, facing, 1245  
    standing or loitering on highway, 1250  
    to stop when vehicle using alley or nonhighway  
      access, 1270  
    uncontrolled intersection or crosswalk, suddenly  
      leaving curb or place of safety, 1255  
    walking on highway, 1260  
    walk signal, 1159  
    when yield sign installed, 1275  
  persons working on highway, 1265  
Right side of roadway  
  meeting and passing, 1135  
Right side of roadway, meeting and passing  
  violation excused, 1140  
Right to assume due care by highway users, 1030  
Risk contribution theory, 3294, 3295, 3296  
Roadway, defined, 1160

## S

Safe-place statute  
  business, 1910  
  control, 1911  
  duty of employer, 1900.2  
  frequenter  
    defined, 1901  
    injury to, 1900.4  
  negligence of  
    employer, 1900.4  
    owner of place of employment, 1900.4  
    owner of public building, 1904  
  plaintiff frequenter, 1902  
  place of employment, defined, 1910  
  public building, defined, 1904  
  public business not under, duties of owner, 8040  
Safety belt, failure to use, 1277  
Safety, defined, 1900.4-1904  
Safety helmet negligence, 1277 (comment), 1278  
Safety statute, 1005, 1009  
Safety zone, defined, 1160  
Sale of food, implied warranty, 3204  
Sales, comparable, eminent domain, 8120  
Scene, view of, by jury, 152  
Scientific treatises, 261  
School bus  
  flashing red warning lights, 1133  
  stop for, 1340  
  stopped, position on highway, 1132  
School zone, speed, 1290  
Scope of employment  
  driver, 1605  
  servant  
    defined, 4030  
    going to and from place of employment, 4040  
    master's ratification of wrongful acts done  
      outside of, 4050  
    while traveling, 4050



# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- Seat belt, failure to use, 1277
- Section 1983, 2151, 2155
- Self-defense
  - battery, 2006
  - defense of property, 2006.5
- Self-incrimination, 425
- Seller
  - breach of contract by, damages, 3755
  - negligence of, duty of, See Products liability
- Sensory handicaps, duty of persons with, 1050
- Servant, See also Scope of employment
  - defined, 4030
  - driver of automobile, 1600
- Services rendered to child, past and future, 1845
- Services, society and companionship
  - death of child, 1895
  - death of spouse, 1870
  - injury to spouse, 1815
- Severance damages, eminent domain, 8102, 8103
- Sidewalk
  - defect, contributory negligence, 1049
  - defects, 8035
  - insufficiency, 8035
- Signal, required
  - audible warning when passing, 1144
  - deviation, 1350
  - school bus, flashing red, 1133
  - slow or stop, 1113
- Signal, required (continued)
  - turn, 1350
- Signals, railroad crossing
  - non-operation of, 1338
  - stop at, all vehicles, 1337
- Signals, traffic control, See Traffic signals
- Signs
  - railroad crossing, duty to maintain, 1410
  - stop, 1325, 1325A
- Skidding, 1280
- Slander, See Defamation
- Slow moving vehicles, 1300
- Society and companionship
  - death of child, 1895
  - death of parent, 1897
  - death of spouse, 1870
  - injury to minor child, 1837
  - injury to parent, 1838
- Special agent, defined, 4002
- Special benefits, eminent domain, 8115
- Special circumstances, negligence under, 1020
- Special knowledge and skills doctrine, 1005 (comment)
- Special verdict
  - five-sixths verdict, 180
  - informed consent, 1023.1, 1023.15
  - Lemon Law, 3300
  - mentioned in court's opening statement, 100
  - questions, interrelationship, 145
  - recommended, comparative negligence, multiple
    - driver-multiple guest comparison, 1592
  - risk contribution, 3294
  - suggested
    - misrepresentation, 2402, 2403
    - strict liability, 3290
  - ultimate fact verdict, 107
  - when court finds one or more parties at fault, 108
- Speed
  - camouflage, 1320
  - driver on arterial not bound to reduce speed when approaching intersection, 1090
  - failure to yield roadway, 1305
  - fixed limits, 1290
  - impeding traffic, 1300
  - obstructed vision, 1310
  - nighttime, 1315
  - posted limit, 1290
  - reasonable and prudent, reduced speed, 1285
  - school zone, 1290
  - slow-moving vehicles, 1305
  - special restrictions for certain vehicles, 1295
- Speed, railroads
  - fixed limits, 1407
  - negligent speed, causation, 1409
  - no limit, 1409
- Spendthrift, 7056
- Spoliation of evidence, 400
- Sports participant injury, 2020
- Spouse
  - death of
    - loss of society and companionship, 1870
    - medical, hospital, and funeral expenses, 1875
    - pecuniary loss, 1861, 1861
  - injury to
    - household services, loss of, 1816, 1817
    - medical and hospital expenses, 1825
    - wife's responsibility for own, 1830
  - nursing services, 1820
  - services, society, and companionship, 1815, 1816, 1817
- Standing on highway, pedestrian's duty, 1250
- Statement of opinion, express warranty, 3225
- Statement, slander, See Defamation
- Statute of Limitations, 950
- Stop
  - at intersection, 1325, 1325A
  - at railroad crossing signals, 1337
  - duty of preceding driver to signal, 1113
  - emerging from an alley, 1330
  - emerging from a private driveway or other nonhighway access, 1335
  - for school bus, 1340
  - leaving vehicle off roadway, 1115
  - non-operation of railroad crossing signals, 1338
  - parking on or off roadway, exception to prohibition, 1125
  - parking on roadway, 1120
  - pedestrian crossing railroad tracks, 1337.5
  - special vehicles at all railroad crossings, 1339
  - train whistle within municipality, 1403
- Stopped school bus, 1132
- Stopping and leaving vehicle
  - off roadway, 1115
  - on or off roadway, exception to prohibition, 1125

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- on roadway, 1120
- Stricken testimony, 130
- Strict liability, See Products liability
- Strict responsibility, misrepresentation, 2402
- Submission on general verdict, 106
- Submission on ultimate fact verdict, 107
  - when court finds one or more parties at fault, 108
- Subsequent event causing further injury, 1725
  - Subsequent remedial measures, 358
- Successive or nonconcurrent torts
  - injuries from, 1722
- Suddenly leaving curb or place of safety, 1255
- Summary exhibit, 103
- Superior skills doctrine, 1005
- Supervising, negligence in, 1383
- Supplemental instruction on agreement, 195

## T

- Taxicab driver, negligence of, 1339
- Teacher, duties
  - to instruct or warn, 1380
  - to supervise students, 1381
- Tenant, constructive eviction of, 3095
- Termination
  - agency
    - general, 4027
    - notice to third parties, 4028
  - dealership, 2770
- Termination (continued)
  - employment, See Wrongful discharge
  - franchise, 2770
- Testimony
  - expert
    - general, 260
    - hypothetical question, 265
  - negative, 315
  - positive, 315
  - stricken, 130
- Tests, intoxication, chemical, 1008
- Textbooks, 261
- Theft by contractor, 2722
- Through highway, lookout on, 1065, 1090
- Timeliness of notice, breach of warranty, 3211
- Tort, See individual heading
- Tortious interference with contract, 2780
- Traffic signals or signs flashing red, 1133
  - flashing yellow, 1090
  - green arrow, 1185
  - green light, 1190
  - pedestrian, duty of
    - pedestrian control, 1220
    - red light, pedestrian facing, 1245
    - stop sign, 1245
    - walk signal, 1159
  - red flashing, 1090
  - red light, 1245
  - stop sign, 1325, 1325A
  - yellow flashing, 1090
  - yellow light, 1192
  - yield sign, 1275

- Training, negligence in, 1383
- Treatises, 261
- Trespass
  - nominal damages, 1810
  - verdicts, 8026, 8027
- Trespasser
  - attractive nuisance, 1011, 8025
  - children, 1011, 8025
  - consent, 8015
  - defined, 8012
  - duty of owner to, 8025
- Truth as defense to defamation, 2505, 2505A
- Turning movements
  - ascertainment that turn can be made with reasonable safety, 1354
  - deviation from clearly indicated traffic lanes, 1355
  - directional signals, 1350
  - left turn, 1195
  - lookout, 1354
  - overtaken vehicle turning left, passing, 1143
  - position and method when not otherwise marked or posted, 1352
  - signal required, 1350

## U

- Ultimate fact question, attractive nuisance, 1011
- Ultimate fact verdict, See also Special verdict
  - fault, defined, 1001
  - submission on, 107, 108
- Ultimate verdict question, right of way at intersection of nonarterial highways, 1157
- Ultrahazardous or unusually dangerous railroad crossings, increased duty, 1413
- Unavoidable accident, 1000
- Uncontrolled intersection or crosswalk, right of way, 1165
- Unfair trade practice (Wis. Stat. § 100.18), 2418
- Uniform Commercial Code, express warranty under, 3230
- Unit rule, 8100, 8101
- Unity of use, two or more parcels, severance damages, 8104
- Unjust enrichment, 3028
- Unlawful, defined, false imprisonment, 2100
- Unreasonably dangerous, defined, 3200, 3260
- Usage of trade, implied warranty, 3203
- Use
  - improper, implied warranty, 3210
  - legal nonconforming, eminent domain, 8140
  - of product after defect known, 3207
- User, contributory negligence, strict liability, 3268

## V

- Value, fair market, 8100
  - expert testimony to establish, 260
- Vehicles
  - distance between, 1112
  - equipment and maintenance of
    - brakes, 1054
  - general duty, 1052

# WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- headlights, 1053
- horn, 1096
- following, 1112
- lemon law and, 3300, 3301, 3302, 3303, 3304
- parked, See Parked vehicles
- passing, proceeding in same direction, See Passing
  - position and method when turning, 1352
- slow moving, 1300, 1305
- stopping, See Stop; Stopping and leaving vehicle
- Vehicular traffic, defined, 1185
- Verdict
  - case involving intentional and negligent joint tortfeasors, 1580 (comment)
  - dissenting juror to sign, 180 five-sixths, 180
  - general, 106
  - product liability, 3290, 3290.1
  - risk contribution, 3295, 3296
  - special, question, interrelationship, 145
  - suggested special
    - misrepresentation, 2402, 2403
    - strict liability, 3290
  - ultimate fact
    - fault, 1001
    - submission on, 107
    - when court finds one or more parties at fault, 108
- Vicarious liability of employer, 4055
- View
  - by jury, 152
  - railroads duty to maintain open view, 1411
- Violation of safety statute, 1005, 1009
- Vision, obstructed, speed, 1310
- nighttime, 1315
- Voluntary assumption of duty, 1397

## W

- Wages, See Earnings
- Walking on highway, pedestrian's duty, 1260
- Walk signal, pedestrian, 1159
- Warn
  - guest's duty to, 1076
  - teacher's duty to, 1380
- Warrant, arrest without, false arrest
  - felony, 2115
- Warranty claim, Magnuson-Moss, 3310
- Warranty, express or implied, See Products liability
- Weight of evidence, 215
- Whistle, railroads, duty to blow
  - outside municipality, 1402
  - within municipality, 1403
- Wife
  - death of
    - loss of society and companionship, 1870
    - medical, hospital and funeral expenses, 1875
    - pecuniary loss, 1861
  - injury to
    - medical and hospital expenses, 1825
    - wife's responsibility for own, 1830
    - nursing services, 1820
    - services, society, and companionship, 1815

- Witness
  - absent witness, 410
  - contradictory statements, 420
  - credibility of, 50, 215
  - expert testimony
    - general, 260
    - hypothetical question, 265
  - falsus in uno, willful false testimony, 405
  - impeachment of witness, prior inconsistent or contradictory statements, 420
  - opinion of nonexpert, 268
  - prior conviction, 415
  - self-incrimination, 425
  - spoliation of evidence by, 400
- Working on highway, 1265
- Worker
  - preoccupation in work minimizes duty, 1051
  - when required to work in unsafe premises, 1051.2
- Wrongful death
  - adult child, pecuniary loss, 1885
  - child, parents' loss of society and companionship, 1895
  - domestic partner, 1861, 1870 (comment)
  - estate's recovery
    - medical, hospital, and funeral expenses, 1850
    - pain and suffering, 1855
  - husband's death, all items, 1861
  - minor child, pecuniary loss, 1890
  - parent, child's loss of society and companionship, 1897
  - parent, pecuniary loss, 1880
  - spouse, loss of society and companionship, 1870
  - wife
    - medical, hospital, and funeral expenses, 1875
    - pecuniary loss, 1861
- Wrongful discharge, 2750
- Wrong side of road, driving on, 1135
- violation excused, 1140

## Y

- Yellow flashing signal, 1090
- Yellow light, duty of driver, 1192
- Yield sign, 1275

