

**140 CREDIBILITY OF WITNESSES; WEIGHT OF EVIDENCE**

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.

The weight of evidence does not depend on the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness or even of several other witnesses.

#### COMMENT

This instruction was approved by the Committee in 2017. It was adapted from Wis JI-Civil 215.

**Jury's Duty:** *Collier v. State*, 30 Wis.2d 101, 140 N.W.2d 252 (1966). See also *Shawver v. Roberts Corp.*, 90 Wis.2d 672, 280 N.W.2d 226 (1979); *American Family Mut. Ins. Co. v. Dobzynski*, 88 Wis.2d 617, 277 N.W.2d 749 (1979).

**Weight of Evidence:** *O'Brien v. Chicago & N.W. Ry.*, 92 Wis. 340, 343, 66 N.W. 363, 364 (1896).

**Juror's Knowledge:** *Solberg v. Robbins Lumber Co.*, 147 Wis. 259, 266-70, 133 N.W. 28, 30-32 (1911), laid down the rule held that a juror may use individual knowledge, observation, and experience. See also *Coenen v. Van Handel*, 269 Wis. 6, 10, 68 N.W.2d 435, 437 (1955); *McCarty v. Weber*, 265 Wis. 70, 72, 60 N.W.2d 716, 718 (1953); and *De Keuster v. Green Bay & W. R.R.*, 264 Wis. 476, 479, 59 N.W.2d 452, 454 (1953).

Although a jury may, if it so desires, place less credence in the testimony of a witness whose evidence is inconsistent, the inconsistency does not render that testimony incredible as a matter of law. It is the function of the jury to determine where in the discrepant testimony and contradiction of the witness the truth really is. *Millonig v. Bakken*, 112 Wis.2d 445, 453-54, 334 N.W.2d 80 (1983).

For the credibility of a child witness, see Wis JI-Criminal 340.