

1007.5 CONTRIBUTORY NEGLIGENCE: RESCUE RULE

[Give Wis JI-Civil 1005 & 1007.]

A person is not negligent in attempting to make a rescue if the following circumstances are found to exist:

1. That the person to be rescued was actually in imminent danger of death or injury or it appeared to the plaintiff, in the exercise of ordinary care, that the person was in imminent danger; and
2. That in deciding whether to attempt to make the rescue, the plaintiff acted as a reasonably prudent person even though there was no certainty of success in accomplishing the rescue; and
3. That in carrying out the rescue attempt, the person used ordinary care with respect to the means and manner of making the rescue.

In determining whether the plaintiff used ordinary care, you should consider the alarm, excitement, and confusion, if any, the uncertainty of the means to be employed in the rescue, and the apparent necessity for immediate action, together with all other surrounding circumstances that bear upon the reasonableness of the rescue attempt.

COMMENT

This instruction and comment were approved by the Committee in 1981. The comment was updated in 2016.

Cords v. Anderson, 80 Wis.2d 525, 259 N.W.2d 672 (1977); 65A C.J.S. Negligence ' 124 (1966). The "rescue doctrine" is separate from the "emergency doctrine." Cords, supra at 246. The rescue doctrine is applicable even though the action of the rescuer is deliberate and taken after some planning and consideration.

For the relationship between the rescue rule and emergency doctrine, see Kelly v. Berg, 2015 WI App 69, 365 Wis.2d 83, 870 N.W.2d 481; Cords v. Anderson, 80 Wis.2d 525, 259 N.W.2d 672 (1977).