

1014 NEGLIGENCE ENTRUSTMENT

To find (defendant) negligent in permitting _____ to use (the object), you must find that:

1. (defendant) was initially in control of (the object);
2. (defendant) permitted _____ to use (the object); and
3. (defendant) either knew or in the exercise of ordinary care should have known that _____ intended or was likely to use (the object) in a way that would create an unreasonable risk or harm to others.

COMMENT

This instruction was approved in 1985. The comment was updated in 1995, 1998, 2002, and 2017.

Bankert v. Threshermen's Mut. Ins. Co., 110 Wis.2d 469, 329 N.W.2d 150 (1983); Restatement, Second, Torts ' 308 (1965). See also Kempf v. Boehring, 95 Wis.2d 435, 290 N.W.2d 562 (Ct. App. 1980); Bruttig v. Olsen, 154 Wis.2d 270, 453 N.W.2d 153 (Ct. App. 1989); Erickson v. Prudential Ins. Co., 166 Wis.2d 82, 479 N.W.2d 552 (Ct. App. 1991); Johnson v. Cintas Corp. No. 2, 2015 WI App 14, 360 Wis.2d 350, 860 N.W.2d 515.

This instruction applies only to situations when the person who is negligently entrusted with an item or activity injures someone else. Stehlik v. Rhoads, 2002 WI 73, 253 Wis.2d 477, 645 N.W.2d 889; Johnson v. Cintas Corp. No. 2, supra. It does not apply to self-inflicted injuries.

This type of claim is not limited to parental liability. Bankert, supra at 475-76.

For liability to result, the negligence of the entruster and the trustee must result in the injury. Bankert, supra.

For a discussion of the difference between a claim based on negligent entrustment and a claim based on failure to control, see Comment to Wis JI-Civil 1013.

Failure to Supervise or Properly Instruct a Juvenile in Hunting Procedures. In Kramschuster v. Shawn E., 211 Wis.2d 697, 565 N.W.2d 581 (Ct. App. 1997), the plaintiff based its tort claim on the defendant's failure to supervise or properly instruct a juvenile in regard to safe hunting procedures. The court said that because under the circumstances of the case no duty to supervise or instruct the juvenile was created between the parties or assumed by the defendant and no such duty was imposed by law, the court of appeals concluded that there was no duty for the defendant to supervise or instruct the juvenile in regard to the deer hunt. The court said the failure to reiterate basic hunting rules to an independent member of the hunting party does not create a foreseeable unreasonable risk of injury to another person under the facts of the case. The

court of appeals, however, said that while the law may imply a duty of supervision when the experience, age, or other factors of a child's engaging in a hunt may suggest such supervision is necessary, those were not the facts of the case before it in Kramschuster v. Shawn E. The court concluded that the defendant had no special duties of supervision, control, or responsibility over the juvenile hunter because of the juvenile's experience in certification as a hunter authorized by law to engage in the hunting of deer. 211 Wis.2d 697, at 706.