

1049 PEDESTRIAN, NEGLIGENCE: SIDEWALK DEFECT OR INSUFFICIENCY

A pedestrian has a duty to exercise ordinary care to observe the sidewalk (roadway) and its immediate surroundings to discover any dangerous condition or defect that would be discoverable by an ordinarily prudent pedestrian under like or similar circumstances.

The exercise of such care requires the efficient use of one's eyes, faculties, and opportunities for observation that an ordinarily prudent person would use under like circumstances in order to become aware of the dangers naturally incident to the situation or to see unsafe conditions that are in plain sight.

COMMENT

This instruction was approved in 1974. The comment was reviewed without change in 1989.

Wis. Stat. §§ 81.15, 66.615. LeMay v. Oconto, 229 Wis. 65, 281 N.W. 688 (1938), held that Wis. Stat. § 81.15 applies to defects of sidewalks, as well as roads and streets.

See, generally, Hales v. Wauwatosa, 275 Wis. 445, 82 N.W.2d 301 (1957); Paulson v. Madison Newspapers, 274 Wis. 355, 80 N.W.2d 421 (1957); Pumorlo v. Merrill, 125 Wis. 102, 103 N.W.464 (1905); Hoffman v. North Milwaukee, 118 Wis. 278, 95 N.W. 274 (1903).

Knowledge of the defect does not conclusively establish contributory negligence. Hales v. Wauwatosa, *supra*; Zoellner v. Fond du Lac, 147 Wis. 300, 133 N.W. 35 (1911).