

1050 DUTY OF PERSONS WITH PHYSICAL DISABILITY

(Plaintiff) (Defendant) has a (visual) (hearing) (physical) disability. The extent of the disability is for you to determine from the evidence. A person with such a disability has the same right as others not having this disability to (use the streets and sidewalks) (operate a motor vehicle). (Plaintiff) (Defendant) is required as others are to use ordinary care in doing so. There is no difference in the standard of care for one who has a disability than for one who has not. Ordinary care requires that a person with a disability compensate for (his) (her) disability as necessary under the circumstances to use ordinary care.

COMMENT

This instruction and comment were approved in 1974. The instruction was revised in 1997. The comment was reviewed without change in 1997. Editorial changes were made in 1992 to address gender references in the instruction.

Before an instruction on the duty of a handicapped person is given, there must be evidence of a relationship between the handicap and some element of negligence. Lisowski v. Milwaukee Auto Ins. Co., 17 Wis.2d 499, 117 N.W.2d 666 (1962).

This instruction has been approved for use where a person with a sensory handicap is charged with negligence which resulted in injury to another. Merkley v. Schramm, 31 Wis.2d 134, 142 N.W.2d 173 (1966).

See also Davis v. Feinstein, 370 Pa. 449, 88 Atl.2d 659 (1952); Hanson v. Matas, 212 Wis. 275, 282-83, 249 N.W. 505 (1933); Short Way Lines v. Sutton's Adm'r, 291 Ky. 541, 552, 164 S.W.2d 809 (1942); Keith v. Worcester & D. V. St. R.R., 196 Mass. 478, 482-83, 82 N.E. 680 (1907); Smith v. Sneller, 245 Pa. 68, 72, 26 Atl.2d 452 (1942). 38 Am. Jur. Negligence § 210 (1941).