

1070 LOOKOUT: FAILURE TO SEE OBJECT IN PLAIN SIGHT

A person who has the duty of keeping a lookout must look with such attention and care as to see what is in plain sight. [If a person looks and does not see what is in plain sight, the person did not keep a proper lookout, and the person is just as negligent as if the person did not look at all.]

[The duty to look means to look efficiently. A person who looks and fails to see what is in plain sight is in precisely the position he or she would be in if he or she did not look at all.]

COMMENT

The instruction and comment were originally published in 1960 and revised in 1984. The comment was reviewed without change in 1989. Editorial changes were made in 1992 to address gender references in the instruction. No substantive changes were made to the instruction.

Weber v. Mayer, 266 Wis. 241, 255-56, 63 N.W.2d 318, 325-26 (1954); Lind v. Lund, 266 Wis. 232, 236, 63 N.W.2d 313, 315 (1954); Lake to Lake Dairy Coop. v. Andrews, 264 Wis. 170, 173, 58 N.W.2d 685 (1953); Pettera v. Collins, 203 Wis. 81, 83, 233 N.W. 545, 546 (1930); Mertens v. Lake Shore Yellow Cab & Transfer Co., 195 Wis. 646, 648, 218 N.W. 85 (1928); Grutzner v. Kruse, 87 Wis.2d 38, 41, 273 N.W.2d 373 (Ct. App. 1978).

This instruction is used, as the subtitle indicates, where the evidence shows that a party failed to see what was in plain sight. Westfall v. Kottke, 110 Wis.2d 86, 110, 328 N.W.2d 481 (1983).

In Leckwee v. Gibson, 90 Wis.2d 275, 290, 280 N.W.2d 186 (1979), the court stated with respect to lookout:

The duty to look means to look efficiently. Gibson was negligent as to lookout in failing to see the vehicle approaching the intersection which he was attempting to enter and has concealed that fact. . . . A driver approaching a through highway on a nonarterial street must not only physically stop his car for the arterial, he also has the duty not to proceed into the intersection until it is safe to do so.

See Schmidt v. Jansen, 247 Wis. 648, 20 N.W.2d 542 (1945); Kraskey v. Johnson, 266 Wis. 201, 63 N.W.2d 112 (1954); Magin v. Bemis, 17 Wis.2d 192, 199, 116 N.W.2d 129 (1962); and Schlueter v. Grady, 20 Wis.2d 546, 555, 123 N.W.2d 458 (1963).

Looking and not seeing what is in plain sight is as negligent with respect to lookout as not seeing at all. Westfall v. Kottke, supra at 110. Grutzner v. Kruse, supra.