

1080 LOOKOUT: LIMITED DUTY ON PRIVATE PROPERTY

The duty of a driver of a motor vehicle operating a vehicle on private property is not the same as it is on public highways; the obligation to look becomes operative when the driver knows, or in the exercise of ordinary care should know, that someone or something might be affected by the driver's movement. If it appears probable, or in the exercise of ordinary care should appear probable, that pedestrians, vehicles, or other objects may be affected by the driver's movement, then the driver must exercise ordinary care to keep a proper lookout to enable the driver to prevent a collision or injury.

COMMENT

This instruction was approved by the Committee in 1966. The comment was updated in 1982 and 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.

This instruction is from Heikkila v. Standard Oil Co., 193 Wis. 69, 71, 213 N.W. 652, 653 (1927), which was last approved in Culton v. Van Beek, 256 Wis. 217, 221, 40 N.W.2d 374, 376 (1949). The Culton case also cites Hartzheim v. Smith, 238 Wis. 55, 60, 298 N.W. 196, 198 (1941), and Patterson v. Edgerton Sand & Gravel Co., 227 Wis. 11, 18, 277 N.W. 636, 639 (1938). See also Czarnetzky v. Booth, 210 Wis. 536, 542, 246 N.W. 574, 577 (1933).

The common-law rules of negligence involving parking or management and control of automobiles apply to a private parking lot. Olsen v. Milwaukee Waste Paper Co., 36 Wis.2d 1, 5, 153 N.W.2d 45 (1967). A private road or parking lot is not a "highway" for purposes of the Motor Vehicle Code. Wis. Stat. § 340.01(22) and (46).

The instruction should be phrased in terms of "probability" of harm. In Olsen v. Milwaukee Waste Paper Co., supra at 5, the court said:

Foreseeability of a possibility of harm is not enough to establish negligence. It is the reasonable probability that harm might ensue which is the basis of foreseeability as an element of negligence.

Also see Wis JI-Civil 1045, Driver's Duty When Children Are Present.