

1157 RIGHT OF WAY: AT INTERSECTION OF HIGHWAYS; ULTIMATE VERDICT QUESTION

The Wisconsin statutes define "right of way" as the privilege of the immediate use of the roadway.

The statutes further provide that when two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. The statute does not make the right of way on the part of the vehicle on the right depend on whether it reaches or begins to enter the intersection first.

The phrase "approach or enter an intersection at approximately the same time" means the approach or entry of two vehicles toward or into the intersection so nearly at the same time that there is imminent danger of a collision if both vehicles continue their same courses at their same speeds.

If you find that the automobiles in question approached or entered the intersection at approximately the same time, then it became the duty of the driver of the automobile on the left to yield the right of way to the automobile on the right. This duty compelled the driver either to stop the driver's automobile, if necessary, or to control and manage it so that the driver could yield the right of way to the vehicle within the zone of danger on the driver's right and avoid colliding with it.

Another safety statute provides that the driver of any vehicle operating at an unlawful speed on a highway is negligent and forfeits any right of way which he would otherwise have. Thus, before you can find negligence for failure to yield the right of way, you must first find that the vehicle on the right was being driven at a lawful speed.

COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008.

Wis. Stat. §§ 340.01(51) and 346.18(1); Baier v. Farmers Mut. Auto Ins. Co., 8 Wis.2d 506, 99 N.W.2d 709 (1959); Van Wie v. Hill, 15 Wis.2d 98, 103, 105, 112 N.W.2d 168 (1961).

Driver or Operator. This instruction applies to either an operator or a driver of a motor vehicle. If "operator" is more appropriate to the evidence, then substitute "operator" for "driver."

Speed. Speed need not be causal to deprive a driver of his statutory right of way. Van Wie v. Hill, *supra*.

Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 274 Wis. 210, 79 N.W.2d 834 (1956).

Kraskey v. Johnson, 266 Wis. 201, 63 N.W.2d 112 (1954).

Nessler v. Nowicki, 12 Wis.2d 421, 107 N.W.2d 616 (1961).

Burkhalter v. Hartford Accident & Indem. Ins. Co., 268 Wis. 385, 68 N.W.2d 2 (1955).

Leonard v. Employers Mut. Liab. Ins. Co., 265 Wis. 464, 62 N.W.2d 10 (1953).

Paragraph 5 should not be used unless, under the evidence, the right-hand driver can be found negligent as to speed. "Unlawful speed" mentioned in paragraph 5 is defined in Wis JI-Civil 1285. See Drake v. Farmers Mut. Auto Ins. Co., 22 Wis.2d 56, 125 N.W.2d 391 (1963).