

**1393 LIABILITY OF A PARTICIPANT IN A RECREATIONAL ACTIVITY**

A person participating in recreational activities, including (specify recreational activity, e.g., camping), accepts the risk inherent in the recreational activity of which the ordinary prudent person is or should be aware.

A participant in a recreational activity must do all of the following:

1. Act within the limits of his or her ability.
2. Heed all warnings regarding participating in the recreational activity.
3. Maintain control of his or her person and the (equipment) (devices) (animals) he or she is using while participating in the activity.
4. Refrain from acting in any manner that may cause or contribute to the death or injury to himself or herself or to other persons while participating in the recreational activity.

A participant who fails to do so is negligent.

**COMMENT**

This instruction and comment were approved in September 2021.

This instruction provides the duties of a recreational participant pursuant to Wis. Stat. § 895.525(4)(a).

See Wis. Stat. Sec. 895.525(2)(b) for the definition of “recreational activity”.

For liability of contact sports participants, see Wis JI-Civil 2020.

§ 895.525 “does not impose a greater duty on an individual than that which exists under the common law.” Rockweit by Donohue v. Senecal, 197 Wis.2d 409, 417, 541 N.W.2d 742.

In Ansani v. Cascade Mountain, Inc., 223 Wis.2d 39, 49, 588 N.W.2d 321 (Ct. App. 1998), the court

of appeals concluded that pursuant to § 895.525, a skier had a duty to exercise ordinary care to avoid foreseeable harms, including adherence to four statutorily enumerated conditions stated in subsec. (4). Additionally, citing Rockweit, supra, the Ansani court concluded that § 895.525 does not mandate that all who ski are negligent under all circumstances as a matter of law. 223 Wis.2d 39 at 49.

See Wis JI-Civil 1005 for the definition of “ordinary care.”

**Wis. Stat. § 895.525; Jury Instructions.** The court in Ansani, supra, held that the trial court properly instructed the jury that the person participating in the recreational activity of skiing was obligated to comply with all four conditions enumerated in § 895.525(4) and that the participant had a duty of ordinary care to avoid foreseeable harms. 223 Wis.2d 39 at 59. This was opposed to instructing the jury that the participant was negligent as a matter of law solely because he skied. Id. at 59.