1902 SAFE-PLACE STATUTE: NEGLIGENCE OF PLAINTIFF FREQUENTER

(Plaintiff) had a duty to use ordinary care for (his) (her) own safety and protection and to observe the immediate surroundings and all other conditions surrounding (him) (her), and the dangers, if any, which were open and obvious to (him) (her), and to use for (his) (her) safety all such care and caution as the ordinarily prudent person ordinarily uses under like circumstances.

[However, (plaintiff) is not bound absolutely by law to see every hazard or danger, if any exists, in (his) (her) pathway, even should they be plainly observable, nor to remember the existence of every condition of which (he) (her) had knowledge. (Plaintiff) is only required to act as a reasonably prudent person under the same circumstances would act.]

[Ordinary care demands that such vigilance be increased where special circumstances exist. The degree of diligence with respect to keeping a proper lookout on the part of a (customer of a store) – such as (plaintiff) was – in order to measure up to the standard of ordinary care which the law requires varies with the time and place and the conditions which might normally be brought about by weather or traffic into a _____ (mercantile establishment), and the opportunity to observe things ahead of and about (him) (her), and all other circumstances then and there present.]

COMMENT

The instruction and comment were initially approved by the Committee in 1975. The instruction was revised in 1986. The comment was updated in 2003.

Neitzke v. Kraft-Phenix Dairies, Inc., 214 Wis. 441, 253 N.W. 579 (1934).

Comparative negligence is applicable to violations of the safe place statute. Hofflander v. St. Catherine's Hospital, Inc., 2003 WI 77, 262 Wis.2d 539, 664 N.W.2d 545.

In Hofflander v. St. Catherine's Hospital, supra, the court held that the Safe Place Statute "does not apply to unsafe conditions caused by an injured party's own negligence or recklessness . . ." It also said if a "structure's alleged disrepair requires reckless or negligent conduct by the plaintiff to achieve injury to herself, then the initial disrepair may not be construed as having caused the injury."

For lesser duty of plaintiff workman, see Wis JI-Civil 1051. The cases in the comment to Wis JI-Civil 1051 are of interest also in connection with the above.

The second paragraph is to be added in instances such as the following: plaintiff did not see the platform of weighing scale in the walk space, Zehren v. F. W. Woolworth Co., 11 Wis.2d 539, 542, 105 N.W.2d 563 (1960); plaintiff did not see that the pipes were joined by wire instead of bolts, Vogelsburg v. Mason, et al., 250 Wis. 242, 245, 26 N.W.2d 678 (1947); plaintiff tripped on the step close to the bottom of the door, Hommel v. Badger State Inv. Co., 166 Wis. 235, 249, 165 N.W. 20 (1917).

In connection with the second paragraph, note the following, from Steinhorst v. H. C. Prange Co., 48 Wis.2d 679, 680, 180 N.W.2d 525 (1970): "A customer in a retail store is not bound as a matter of law to see every defect or danger in his pathway, especially where the display of merchandise was so arranged and intended to catch the customer's attention and divert her from watching the floor." See also Carlson v. Drews of Hales Corners, Inc., 48 Wis.2d 408, 180 N.W.2d 546 (1970).

The language of the third paragraph is from Mondl v. F. W. Woolworth Co., 12 Wis.2d 571, 107 N.W.2d 472 (1961). This paragraph is to be used in situations where special conditions actually exist.