

3112 OWNER'S PERMISSION FOR USE OF AUTOMOBILE

If an owner of an automobile gives his or her permission to another to use his or her automobile, that person has the right to use the vehicle as long as he or she does not substantially violate the terms and conditions placed upon its use by the owner.

An owner of an automobile may restrict or limit the length of time or the kind of use to which the automobile is to be put by the person using it.

If the person, to whom permission was given by the owner, does not obey the restrictions placed upon its use, as those restrictions relate to a period of time, or the purpose for which the car was to be used, and you determine that the use was a substantial deviation from the restrictions placed by the owner at the time permission for its use was granted, then you must find that the use of the car was not within the scope of permission.

As used in this instruction, the term "substantial deviation" means that the person borrowing the car exceeded the scope of the permitted use significantly in a way that was clearly not in the contemplation of the parties at the time permission was initially granted by the owner.

[A person who uses a car with the owner's permission may allow another person to drive it unless expressly prohibited by the owner from so doing and so long as such driving is within the scope of the permission granted by the owner. Any express prohibition by the owner against another person's driving the car is a valid restriction and must be recognized by you as binding upon the person to whom permission was initially granted.]

The limitations, if any, upon the scope or extent of the permission must be determined from the understanding, either express or implied, between the owner and the person using

the car. This understanding is to be determined from all of the facts and circumstances surrounding the granting of permission.

It is for you, the jury, to determine whether under the facts of this case, the owner did restrict the permission given by limiting the time or purpose of such use, and if you find that there were restrictions, whether the user substantially deviated from those restrictions placed upon the car's use by the owner.

COMMENT

This instruction and comment were originally approved by the Committee in 1980. The instruction was revised in 1992. The comment was updated in 1992.

Wis. Stat. § 632.32.

Krebsbach v. Miller, 22 Wis.2d 171, 125 N.W.2d 408 (1963). Employers Ins. Co. v. Pelczynski, 153 Wis.2d 303, 451 N.W.2d 300 (Ct. App. 1989). As to statutory purpose for the benefit of injured persons, see Pavelski v. Roginski, 1 Wis.2d 345, 84 N.W.2d 84 (1957). Prisuda v. General Cas. Co., 272 Wis. 41, 74 N.W.2d 777 (1956). 7 Am. Jur.2d Automobile Insurance §§ 109-126 at 420-446 (1963). An insured to whom a policy has been issued and who has the complete possession and control of the vehicle is considered to be an "owner" under these instructions. See 7 Am. Jur.2d Automobile Insurance § 115 at 428 (1963).

Where a minor is the real owner of the vehicle and is exercising an owner's control over the vehicle, and where title of the car and insurance has been taken in the name of the father as a matter of convenience or economy, when the son loans the vehicle to another the father's consent or permission is presumed as a matter of law. No jury issue is presented. Nordahl v. Peterson, 68 Wis.2d 538, 229 N.W.2d 682. American Family Mutual Ins. Co. v. Osusky, 90 Wis.2d 142, 279 N.W.2d 719 (Ct. App. 1979).