

3254 DUTY OF BUYER OR CONSUMER: CONTRIBUTORY NEGLIGENCE

The buyer (consumer) has a duty to use ordinary care for his or her own safety and protection and to observe all defects and dangerous conditions, if any, which are open and obvious to him or her if he or she is using reasonable care and caution for his or her own safety and protection. The danger, however, must not only be obvious, but also must be understood by the buyer (consumer). The failure to use a product in accordance with its instructions, if you find they were adequate, or the use of the product in an abnormal manner is negligence.

A person is not required to see every defect or dangerous condition or even to remember the existence of every defect or dangerous condition of which he or she had knowledge. He or she is only required to act as a reasonably prudent person under the same or similar circumstances would act.

A person is not required to anticipate negligent acts or omissions on the part of others and is not negligent in failing to look out for danger when there is no reason to suspect danger.

COMMENT

This instruction and comment were originally published in their present form in 1971. The instruction was revised in 2015 to simplify the language and to replace the term, "guilty of negligence." Editorial changes were made in 1994 to address gender references.

Yaun v. Allis-Chalmers Mfg. Co., 253 Wis. 558, 34 N.W.2d 853 (1948).

38 Am. Jur. Negligence §§ 181, 182, 184-88, 192 (1941).

Coakley v. Prentiss-Wabers Stove Co., 182 Wis. 94, 104-07, 195 N.W. 388 (1923).