

8015 CONSENT OF POSSESSOR TO ANOTHER'S BEING ON PREMISES

Consent to be on the premises of another may be express or implied. There is an express consent when the possessor expressly invites or authorizes another person to be on his or her premises. There is an implied consent when the possessor, by his or her conduct or his or her words, or both, by implication consents to such other person's being on the premises.

In determining whether an implied consent exists, you should look at all of the circumstances then existing, including the acquiescence of the possessor, if any, in the previous use of the premises by others (including the plaintiff); the customary use, if any, of the premises by others (including the plaintiff); the apparent holding out of the premises, if any, to a particular use by the public; and the general arrangement or design of the premises. If, under all the existing circumstances, a reasonable person would conclude that the possessor of the premises impliedly consented that the plaintiff be on the premises, then there was consent.

COMMENT

This instruction and comment were originally published in 1978. The comment was updated in 2012.

2011 Wisconsin Act 93 codifies the civil liability of possessors of property to trespassers. See Wis. Stat. § 895.529. Under the new law, a possessor owes no duty of care to a trespasser on his or her property and may not be found liable for an act or omission relating to a condition on his or her property that causes injury or death to a trespasser, except under certain circumstances. The act defines a "trespasser" as anyone who enters onto private property without the express or implied consent of the property owner.

In *Antoniewicz v. Reszczyński*, 70 Wis.2d 836, fn. 4, 236 N.W.2d 1 (1975), the court abolished the distinction between the duty owed to licensees and invitees by possessors of land. It created one common and equal duty that the possessor of land owes to all persons on his lands (excepting trespassers) and that is the duty to exercise ordinary care under the circumstances.

The instruction is framed to accompany the following question in the special verdict: Was the plaintiff at the time of the accident on the premises with the defendant's consent?