

**8027 TRESPASS: CHILD TRESPASSER (ATTRACTIVE NUISANCE): SPECIAL VERDICT**

**Question 1:** Was (child) a trespasser upon (landowner)'s property?

ANSWER: \_\_\_\_\_  
Yes or No

**If you answered Question 1 "no," then answer no further questions.**

**If you answered Question 1 "yes," then answer the following questions.**

**Question 2:** Did (landowner) maintain or allow to exist an artificial condition on the property that (landowner) knew or should have known was inherently dangerous to children and involved an unreasonable risk of serious bodily harm or death to children?

ANSWER: \_\_\_\_\_  
Yes or No

**Question 3:** Could (landowner) have reasonably provided safeguards that would have obviated the inherent danger without interfering with the purpose for which the artificial condition was maintained or allowed to exist?

ANSWER: \_\_\_\_\_  
Yes or No

**Question 4:** Did (landowner) know or should (he) (she) have known that children trespassed on the property?

ANSWER: \_\_\_\_\_  
Yes or No

**If you answered "yes" to questions 2, 3, and 4, then answer the following question. If you answered "No" to question 2, 3, or 4, then answer no further questions.<sup>1</sup>**

**Question 5:** Did (child) because of (his) (her) youth or tender age fail to discover the artificial condition or realize the risk involved in entering onto the property or playing in close proximity to the inherently dangerous artificial condition?

ANSWER: \_\_\_\_\_  
Yes or No

**If you answered "No," then answer no further questions.**

**Question 6:** Was the artificial condition a cause of (child)'s injury?

ANSWER: \_\_\_\_\_  
Yes or No

#### NOTE

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1. This instruction may need to be modified to address the following possibilities: Plaintiff will likely plead that child had consent to be on property and allege that Landowner failed to use ordinary care under the existing circumstances in [constructing/managing/maintaining] his or her property so as to avoid exposing persons who are on the property with consent to an unreasonable risk of harm. If Landowner does not contest this allegation or if the jury answers "No" to question No.1, the facts may warrant the giving of the following question:

Did (landowner) use ordinary care under the existing circumstances in [constructing/managing/maintaining] (his) (her) property to avoid exposing persons who are on (landowner)'s property with consent to an unreasonable risk of harm?

A second scenario that could arise is an alternative claim by plaintiff/child that if he or she was a trespasser, the landowner "willfully, wantonly or recklessly inflicted injury" upon the child. Depending upon the facts presented, the following question may be warranted (assumes an answer of "yes" to the child being a trespasser):

At or immediately before the (injury) (death) of (child), were the actions of (defendant) willful, wanton, or reckless?

#### COMMENT

This special verdict was approved in 2012.

See Wis. Stat. § 895.529; Christians v. Homestake Enterprises, Ltd., 101 Wis.2d 25, 303 N.W.2d 608 (1981).