

8040 DUTY OF OWNER OF PLACE OF AMUSEMENT: COMMON LAW

Persons conducting places of amusement have a duty to use ordinary or reasonable care to keep them safe for the public. Such person is not an insurer of the patrons. He or she owes them only what under the particular circumstances is ordinary or reasonable care.

[This duty requires that the owners make such timely and periodic inspection of their premises as would reveal existing defects therein or which may develop thereon and seasonably repair all defects which might reasonably suggest the probability of danger or injury to the invitees thereon. It is the duty of owners to repair all defects known by them to exist, if any such defects did exist, and to repair defects that have existed a sufficient length of time to give the owners constructive notice of their presence and which, in the exercise of ordinary care, should have been discovered by them.]

COMMENT

This instruction was approved in 1977 and numbered Wis JI-Civil 1027. It was renumbered in 1985. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Emerson v. Riverview Rink & Ballroom, 233 Wis. 595, 598, 290 N.W. 129 (1950); Reiher v. Mandernack, 234 Wis. 568, 570-71, 291 N.W. 758 (1940); Eide v. Skerbeck, 242 Wis. 474, 480, 8 N.W.2d 282 (1943).

This duty cannot be delegated to an independent contractor. Eide v. Skerbeck, *supra*.

When patron is injured by act of third person, see Wis JI-Civil 8045.