

Chapter 10

Negligence: General Instructions

Instructions

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M Civ JI 10.01
Definitions Introduced

I shall now give you the definitions of some important legal terms. Please listen carefully to these definitions so that you will understand the terms when they are used later.

Note on Use

This instruction may be given as a transition from the General Instructions to the applicable definitions.

History

M Civ JI 10.01 is a revision of SJI 10.00.

M Civ JI 10.02 Negligence of Adult—Definition

Negligence is the failure to use ordinary care. Ordinary care means the care a reasonably careful *person would use. Therefore, by “negligence,” I mean the failure to do something that a reasonably careful *person would do, or the doing of something that a reasonably careful *person would not do, under the circumstances that you find existed in this case.

The law does not say what a reasonably careful *person using ordinary care would or would not do under such circumstances. That is for you to decide.

Note on Use

*Use of the word “person” may be inappropriate depending on the nature of the defendant’s activity. *Laney v Consumers Power Co*, 418 Mich 180; 341 NW2d 106 (1983).

This instruction is not intended to apply to the defendant in a malpractice case. See M Civ JI 30.01 and 30.02.

This instruction should not be used in a case involving co-participants in a recreational activity. *Ritchie-Gamester v City of Berkley*, 461 Mich 73; 597 NW2d 517 (1999) (co-participants owe each other a duty not to act recklessly).

Comment

Authority for this instruction appears in numerous cases, some of which are *Detroit & M R Co v Van Steinburg*, 17 Mich 99, 118 (1868); *Knarian v South Haven Sand Co*, 361 Mich 631, 643; 106 NW2d 151, 157 (1960); *Muth v W P Labey’s, Inc*, 338 Mich 513, 523; 61 NW2d 619, 623 (1953); *Reedy v Goodin*, 285 Mich 614, 620; 281 NW 377, 379 (1938); and *Frederick v Detroit*, 370 Mich 425, 435; 121 NW2d 918, 922 (1963); *Case v Consumers Power Co*, 463 Mich 1; 615 NW2d 17 (2000).

Under Michigan law, the standard of conduct required may differ depending on the activity, trade, occupation, or profession, but the degree of care does not change. It is always what a reasonably careful person engaged in a particular activity, trade, occupation, or profession would do or would refrain from doing under the circumstances then existing. *Frederick*; *Laney*. It is ordinarily error to instruct a jury on the specific standard of conduct. *Case* (in this stray-voltage case, the court held it was reversible error to instruct the jury that defendant had a duty to inspect and repair electrical wires); *but see Schultz v Consumers Power*, 443 Mich 445; 506 NW2d 175 (1993), which approved that standard of conduct in a case involving dangers from high-voltage electricity.

The general rule for a child as set forth in *Restatement (Second) of Torts* §283A, is that “the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances.” However, there is an exception to this rule where the child is engaging in an adult activity. The exception is set forth in comment c to §283A, which states as follows:

An exception to the rule stated in this Section may arise where the child engages in an activity which is normally undertaken only by adults, and for which adult qualifications are required. As in the case of one entering upon a professional activity which requires special skill (see §299A), he may be held to the standard of adult skill, knowledge, and competence, and no allowance may be made for his immaturity. Thus, for example, if a boy of fourteen were to attempt to fly an airplane, his age and inexperience would not excuse him from liability for flying it in a negligent manner. The same may be true where the child drives an automobile. In this connection licensing statutes, and the examinations given to drivers, may be important in determining the qualifications required; but even if the child succeeds in obtaining a license he may thereafter be required to meet the standard established primarily for adults.

It is not clear whether the court or jury decides whether the activity is one normally undertaken only by adults.

The Michigan Supreme Court considered this exception in *Constantino v Wolverine Insurance Co*, 407 Mich 896; 284 NW2d 463 (1979). Reversing an unpublished court of appeals opinion, the supreme court said that “the instruction that the appellee driver was not held to the same standard of conduct as an adult was erroneous. When a minor engages in a dangerous and adult activity, e.g., driving an automobile, he is charged with the same standard of conduct as an adult.” *See also Osner v Boughner*, 180 Mich App 248; 446 NW2d 873 (1989). The adult standard of care applies even if the minor is a student driver. *Stevens v Veenstra*, 226 Mich App 441; 573 NW2d 341 (1997).

History

M Civ JI 10.02 is a revision of SJI 10.01 and SJI 10.02.

Amended February 1, 1981, June 1998.

M Civ JI 10.03
Ordinary Care—Adult—Definition
[Instruction Deleted]

Comment

This instruction was deleted by the committee June 1998. The subject matter of this instruction is now part of M Civ JI 10.02.

History

M Civ JI 10.03 was SJI 10.02.

Deleted June 1998.