

**FROM THE COMMITTEE ON  
MODEL CIVIL JURY INSTRUCTIONS**

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The Committee has adopted the following amended and new model civil jury instructions and deleted an additional instruction effective November 17, 2015.

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**ADOPTED AND DELETED**

**M Civ JI 19.07 Duty of Possessor of Land, Premises, or Place of Business to Trespasser**

[ Because plaintiff was a trespasser on defendant's ( land / premises / place of business ) ]  
/ If you find that plaintiff was a trespasser on defendant's [ land / premises / place of business ],  
then defendant had a duty to plaintiff only if you find that one or more of the following  
circumstances existed:

- (1) Defendant injured the plaintiff by willful and wanton misconduct, or
- (2) Defendant was aware or in the exercise of ordinary care should have known, of plaintiff's presence on the [ land / premises / place of business ], but [ he / she / it ] failed to use ordinary care to prevent injury to plaintiff arising from defendant's active negligence, or
- (3) Defendant knew, or should have known from facts within [ his / her / its ] knowledge, that trespassers constantly intrude on a limited area of [ his / her / its ] [ land / premises / place of business ] and plaintiff was harmed because:
  - (a) Defendant carried on an activity in that limited area,
  - (b) that involved a risk of death or serious bodily harm, and
  - (c) [ he / she / it ] failed to use reasonable care for the trespasser's safety.

If you find that one or more of these circumstances existed, then defendant had a duty to exercise reasonable care to put the land in a condition reasonably safe for plaintiff or to carry on activities on the land so as not to endanger trespassers.

*Note on Use*

If there is a factual question as to the legal status of the plaintiff as invitee, licensee, or trespasser, M Civ JI 19.01 should be given.

M Civ JI 19.01 defines "trespasser"; M Civ JI 14.11 defines "wanton misconduct"; 14.12 defines "willful misconduct."

“Active negligence” is not yet defined in MCL 554.583(2)(b) and since this statute has not yet been subject to judicial interpretation, the committee is not providing a definition.

This instruction may apply to a child trespasser who claims injury due to a non-artificial condition. See M Civ JI 19.07A.

This instruction does not affect the applicability of any instructions for immunities or defenses to which the defendant-possessor is otherwise entitled under statute or common law. See MCL 554.583(3).

*Comment*

*See Blakeley v White Star Line*, 154 Mich 635; 118 NW 482 (1908); MCL 554.583

*History*

M Civ JI 19.07 was added January 1982. Amended November 2015.

**M Civ JI 19.07A Duty of Possessor of Land, Premises, or Place of Business to Child Trespasser for Artificial Conditions**

[ Because plaintiff was a child trespasser / If you find that plaintiff was a child trespasser ], defendant had a duty to plaintiff only if you find that all of the following circumstances exist:

(1) Plaintiff was injured by an artificial condition on defendant’s [ land / premises / place of business ],

(2) Defendant knew or had reason to know that a child would be likely to trespass on the place where the condition existed,

(3) Defendant knew or had reason to know about the condition and realized or should have realized that it would involve an unreasonable risk of death or serious bodily harm to a child,

(4) Plaintiff, because of [ his / her ] youth, did not discover the condition or realize the risk involved in meddling with it or coming within the area made dangerous by it,

(5) The usefulness to defendant of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child, and

(6) Defendant failed to exercise reasonable care to eliminate the danger or otherwise protect the child.

If you find that all of these circumstances existed, then defendant had a duty to exercise reasonable care to put the land in a condition reasonably safe for plaintiff or to carry on activities on the land so as not to endanger child trespassers.

*Note on Use*

If a child trespasser does not claim injury due to an artificial condition, then M Civ JI 19.07A is inapplicable. In such a case, M Civ JI 19.07 may be given.

This instruction does not affect the applicability of any instructions for immunities or defenses to which the defendant-possessor is otherwise entitled under statute or common law. *See* MCL 554.583(3).

M Civ JI 19.01 defines “trespasser.”

*History*

Added November 2015.

**[ DELETED ] M Civ JI 19.08 Duty of Possessor of Land, Premises, or Place of Business to Trespasser Whose Presence Is Known or Should Have Been Known to Possessor**

This instruction was deleted because it was subsumed in the amended M Civ JI 19.07.

*History*

M Civ JI 19.08 was added January 1982. Deleted November 2015.