

AGENDA
ADVISORY COMMITTEE
ON MODEL CIVIL JURY INSTRUCTIONS

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

March 8, 2004
4:00 to 6:00 p.m.

Welcome and approval of minutes	John Young
Negligence Instructions	Frank Carney, Ch.
Preliminary and General Instructions	Phil Ferguson, Ch. Ralph Dewsnap
MUJI Organization	Tim Shea
Future Subcommittee Reports	John Young

Meeting Schedule: Matheson Courthouse, 4:00 to 6:00, Judicial Council Room

April 12
May 10
June 14
July 12
August 9
September 13
October 18 (3rd Wednesday)
November 8
December 13

MINUTES

Advisory Committee on Model Civil Jury Instructions

February 9, 2004

4:10 p.m.

Present: John L. Young (chair), Timothy M. Shea, Honorable William W. Barrett, Jr., Juli Blanch, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Paul M. Simmons

Excused: Paul M. Belnap

1. *Minutes.* Ms. Blanch moved that the minutes of the January 12, 2004, meeting be approved. Judge Barrett 2d. The motion passed without opposition.

2. *Drafting Guidelines.* Dr. Di Paolo noted that the guidelines to limit the use of the passive voice and subordinate clauses can be overdone and that sometimes the passive voice and subordinate clauses can add clarity. The committee discussed the examples used in paragraph 24 (regarding complex sentences).

Mr. Simmons will revise paragraph 24 before Mr. Young sends the guidelines to all the subcommittee members.

Mr. Dewsnup suggested that we add a guideline discouraging italics, boldface type and other artificial means of emphasis. Dr. Di Paolo thought that some typographical signals could help the jurors' comprehension. The committee decided not to include such a guideline in the initial set of guidelines.

3. *Committee Membership.* Mr. Young noted that Elliott Williams has indicated that he is only interested in serving on the medical malpractice subcommittee. The committee discussed possible replacements for Mr. Williams. Mr. Carney suggested Dave West, who has been serving on the negligence subcommittee. Mr. Young suggested Steve Nebeker. Others who had expressed an interest in serving on the committee included Dan Larsen, James Jenkins, Rick Rose, Morris Haggerty, Don Winder, Pat Christensen, Bruce Badger, Doug Cannon, Lynn Davies and Michael Walk. The committee thought that Mr. West's and Mr. Nebeker's experience could help the committee.

Mr. Young will check with Mr. West and Mr. Nebeker to see if they would be interested in serving on the committee. If they are, he will recommend to the Supreme Court that they be added to the committee.

4. *Negligence Instructions.* The committee continued its review of the draft instructions prepared by Mr. Carney's Negligence Subcommittee.

- a. *Electricity instruction.*

Mr. Carney will ask for input on this instruction from attorneys who handle electricity cases, such as Rick Rose.

- b. *Instruction 10 (violation of a statute, ordinance or safety order).*

Mr. Young suggested that the court should paraphrase the requirements of the statute or ordinance rather than quoting the statute or ordinance verbatim. Mr. Dewsnup objected to the use of the term “law” for a statute or ordinance. Dr. Di Paolo suggested that jurors may not understand “statute” or “ordinance” but understand “law.” Mr. Young suggested adding a sentence or two explaining what a statute or ordinance is and that it is considered “law.” Several committee members thought that the prerequisites for determining whether the violation of a safety statute can be considered as evidence of negligence were for the court--not the jury--to decide. Mr. Carney suggested adding a comment explaining the preliminary determinations that the court must make before giving the instruction.

Dr. Di Paolo thought that the instruction was not clear about exactly what the jury was expected to do. Part of the problem is that, under Utah law, violation of a statute or ordinance is only evidence of negligence, which the jury is free to ignore, so even if the jury finds a violation of a statute, that does not require the jury to also find negligence, and even if the jury finds that a statute was not violated, that does not mean that the person was not negligent. (For that reason, the corresponding California instruction was not too helpful because in California a violation of a statute is negligence *per se*.) Mr. Simmons questioned whether the instruction was even necessary. Mr. Young suggested that it be included in the preliminary instructions on evidence and perhaps repeated in the substantive instructions at the end of the case.

Mr. Carney will revise the instruction in light of the committee's discussion.

- c. *Definition of “fault.”* The committee considered Mr. Humpherys' proposed instruction defining “fault.” The intent was to allow the court to use “fault” to encompass both negligence (or other fault, such as an intentional tort or strict liability) and proximate (or legal) causation. The committee rewrote the instruction.

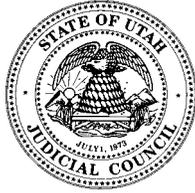
Mr. Carney will have the rewritten instruction for the next meeting.

- d. *Proximate cause and comparative fault.* The committee deferred discussion of these instructions until the next meeting, to allow Mr. Belnap to be present.

5. *Other.* Mr. Humpherys suggested that we make instructions available as we complete them, rather than waiting for the committee to finish its work. Mr. Young indicated that his intent was to send out instructions in sections or groups of sections, beginning with the preliminary and negligence instructions.

6. *Next Meeting.* The next meeting will be Monday, March 8, 2004, at 4:00 p.m.

The meeting concluded at 6:00 p.m.



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: MUJI Committee
From: Tim Shea *TS*
Date: March 3, 2004
Re: Negligence instructions

As requested, I've attached all of the negligence instructions we've been working on. Some of the numbering was a little mixed up so I've assigned new numbers to some of the instructions. A few of the references had incomplete citations, which I've corrected. I've not researched the applicability or correctness of the references. Although there may not have been any final votes on instructions 3.01 through 3.07, I think there has been a loose consensus. By interlineation, I've suggested a few further changes. (The change to 3.07 is from Rick Rose.) Instructions 3-08 through 3-11 have been works in progress. These drafts contain differences from earlier drafts, but, because there's been no sense of closure yet, I've not bothered with interlineation.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

1 **3.01. Verdict form.**¹ You must answer the following questions on the verdict form:

2 [Read questions from verdict form]

3 I will now explain to you what these questions mean, and what you must decide in order to
4 answer them.

5
6 **3.02. “Negligence” defined.** You must decide whether defendant was negligent. We all have
7 a duty to A person is negligent if s/he does not use reasonable care to avoid harming others.
8 ~~Negligence means that a person did not use reasonable care.~~ Reasonable care is what an
9 ordinarily careful person would do in a similar situation. ~~It does not require extraordinary~~
10 ~~caution.~~² A person may be negligent in acting or in failing to act.

11 The amount of care that is reasonable depends upon the situation. Some situations require
12 more ~~caution~~ care because an ordinarily careful person would understand that more danger is
13 involved. You should decide whether the defendant was negligent by comparing his actions
14 against those of an ordinarily careful person in a similar situation.

15 References

16 MUJI 3.2.

17 Mitchell v. Pearson Enters., 697 P.2d 240 (Utah 1985).

18 Meese v. BYU, 639 P.2d 720 (Utah 1981)

19
20 **3.03. Standard of care for the physically disabled.** Physically disabled adults (for example,
21 blind adults) are not held to the same standard of care as adults free from disability. A physically
22 disabled adult must use the care that a person with similar disabilities would use in a similar
23 situation.

24 References

25 MUJI 3.5

26 Comment

27 Disability should be construed to mean physical disability and not deficiencies in mental
28 competency. “Unless the actor is a child, his insanity or other mental deficiency does not relieve
29 the actor from liability for conduct which does not conform to the standard of a reasonable man

¹ Is this a negligence instruction or should it be in the “General” section?

² This sentence seems at odds with the 2d paragraph, which discusses when more caution is required.

1 under like circumstances.” REST 2d TORTS §§ 283B. “If the actor is ill or otherwise physically
2 disabled, the standard of conduct to which he must conform to avoid being negligent is that of a
3 reasonable man under like disability.” REST 2d TORTS §§ 283.

4
5 **3.04. Amount of ~~caution~~care required when children are present.** An adult must
6 anticipate the ordinary behavior of children. An adult must be more careful when ~~dealing with~~
7 children than with other adults children are present than when adults only are present.

8 References

9 CACI 412

10 Kilpack v. Wignall, 604 P.2d 462 (Utah 1979)

11 Vitale v. Belmont Springs, 916 P2d 359 (Utah App. 1996): It is improper to give this
12 instruction if the child is older than fourteen.

13 Comment

14 This instruction should be used where there is evidence that a person knew or should have
15 known that young children would be present. It is not intended to create a new duty to anticipate
16 the presence of children.

17
18 **3.05. Negligence applied to children.** You must decide whether a child aged _____ was
19 negligent. A child is not judged by the adult standard. Rather, a child is negligent if s/he does not
20 use the amount of care that is ordinarily used by children of the same age, intelligence,
21 knowledge, abilities, and experience in similar circumstances.

22 References

23 “The child must exercise that degree of care which ordinarily would be observed by children
24 of the same age, intelligence and experience under similar circumstances.” Donohue v. Rolando,
25 16 Utah 2d 294, 296-297, 400 P.2d 12,14 (1965).

26 “It is a well-established principle of tort law that a minor participating in an adult activity,
27 such as operating a motor vehicle, is held to the same standard of care as an adult.” Summerill v.
28 Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995). The court in Summerill went on to note that
29 this principle is “an exception to the general rule that a “child must exercise that degree of care
30 which ordinarily would be observed by children of the same age, intelligence and experience
31 under similar circumstances.” Id. at n. 5.

1 Restatement (Second) of Torts § 283A (1965).

2 Restatement (Third) of Torts § 8 (1999).

3 Comment

4 This instruction describes the standard of care to be used when determining whether a child
5 acted negligently, as opposed to MUJI 3.7 which addresses whether an adult acted negligently
6 with regard to a child’s behavior. Utah case law recognizes the ‘like age, intelligence and
7 knowledge’ standard. See, *Donohue v. Rolando*, 16 Utah 2d 294, 296-297, 400 P.2d 12,14
8 (1965); and *Summerill v. Shipley*, 890 P.2d 1042, 1044 (Utah Ct. App. 1995).

9 Utah case authority rejects an arbitrary tripartite approach (less than 7 years old incapable of
10 negligence, 7-14 years old rebuttable presumption that child incapable of negligence, and, 14 and
11 older capable of negligence in same capacity as an adult.) See, *Mann v. Fairborn*, 12 Utah 2d
12 342, 346, 366 P.2d 603, 606 (1961) (criticizing *Nelson v. Arrowhead Freight Lines*, 99 Utah 129,
13 104 P.2d 225 (1940)).

14 Nonetheless, this instruction should not be given where the child is less than five years old.
15 See, *Kilpack v. Wignall*, 604 P.2d 462, 466 (Utah, 1979) (“We note that a young child is
16 generally presumed to be incapable of contributory negligence.”); and Restatement (Third) of
17 Torts § 8 (1999). Also, this instruction should not be given where the child is engaged in an
18 ‘adult’ activity. See, *Summerill v. Shipley*, 890 P.2d 1042,1044 (Utah Ct. App. 1995).

19

20 **3.06. Amount of ~~caution~~care for dangerous activities.** Because of the great danger
21 involved, those who are engaged in [describe activity] must use extra-~~caution~~care. The greater
22 the danger, the greater the care that must be used.

23 References

24 MUJI 3.8

25 Comment

26 This instruction should not be given unless the judge has determined that the activity in
27 question is an “ultra-hazardous activity.”

28

29 **3.07. Amount of ~~caution~~care required in controlling electricity.** Power companies and
30 others who control power lines and power stations must use extra ~~caution~~care to prevent people
31 and their equipment from coming in contact with high-voltage electricity. The greater the danger,

1 the greater the care that must be used. [This does not mean that one who supplies electricity to the](#)
2 [public is liable without regard to fault.](#)

3 References

4 Lish v. Utah Power & Light Co., 493 P.2d 611 (Utah 1972)

5 Brigham v. Moon Lake Elec. Ass'n, 470 P.2d 393 (Utah 1970)

6 BAJI No. 3.42 (1986).

7 See also, Burningham v. Utah Power & Light, 76 F. Supp. 2d 1243 (D. Utah 1999) (no duty
8 owed to trespasser on power pole.)

9
10 **3.08 Violation of safety law.** Violation of a safety [statute/ordinance/rule] is evidence of
11 negligence unless the violation is excused. Plaintiff claims that defendant violated a safety
12 [statute/ordinance/rule] that says:

13 [summarize or quote the statute/ordinance/rule]

14 Defendant claims the violation is excused because:

15 1. Obeying the [statute/ordinance/rule] would have created an even greater risk of harm.

16 2. S/he could not obey the [statute/ordinance/rule] because s/he faced an emergency that s/he
17 did not create.

18 3. S/he was unable to obey the [statute/ordinance/rule] despite a reasonable effort to do so.

19 4. S/he was incapable of obeying the [statute/ordinance/rule].

20 5. S/he was incapable of understanding what the [statute/ordinance/rule] required.

21 If you decide that defendant violated the [statute/ordinance/rule] and that the violation was
22 not excused, you may consider the violation as evidence of negligence. If you decide that
23 defendant did not violate the [statute ordinance rule] or that the violation should be excused, you
24 must disregard the statute and decide whether the defendant acted with reasonable care under the
25 circumstances.

26 References

27 Child v. Gonda, 972 P.2d 425 (Utah 1998)

28 Gaw v. State ex rel. Dep't of Transp., 798 P.2d 1130 (Utah Ct. App. 1990)

29 Jorgensen v. Issa, 739 P.2d 80 (Utah Ct. App. 1987)

30 Hall v. Warren, 692 P.2d 737 (Utah 1984)

31 Intermountain Farmers Ass'n v. Fitzgerald, 574 P.2d 1162 (Utah 1978)

1 Thompson v. Ford Motor Co., 16 Utah 2d 30; 395 P.2d 62 (1964)

2 Comment

3 Before giving this instruction, the judge should decide whether the safety law applies. The
4 safety law applies if:

5 1. Plaintiff belongs to a class of people that the law is intended to protect; and

6 2. The law is intended to protect against the type of harm that occurred as a result of the
7 violation.

8 The judge should include the section on excused violations only if there is evidence to
9 support an excuse and include only those grounds for which there is evidence.

10
11 **3.09. “Fault” defined.** You must decide whether [names of persons on verdict form] were at
12 fault. As used in these instructions and in the verdict form, the word “fault” has special meaning.
13 Someone is at fault if:

14 1. that person’s conduct was [insert applicable causes of action];

15 and

16 2. that person’s conduct was the legal cause of plaintiff’s harm.

17 I will now explain what these terms mean.

18 References

19 Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.

20 Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).

21 Haase v. Ashley Valley Medical Center, 2003 UT 360.

22 Bishop v. GenTec, 2002 UT 36.

23 Comment

24 “Fault” under the Comparative Negligence Act includes negligence, breach of warranty, and
25 other breaches of duty. This instruction should be followed by those defining the specific duty
26 (for example, negligence) and the instruction on legal cause.

27
28 **3.10. “Legal cause” defined.** If you decide that the conduct of a person named on the verdict
29 form was [insert applicable cause of action], you must then decide whether that conduct was a
30 legal cause of plaintiff’s harm. For the conduct to be a legal cause of harm, you must decide that
31 all of the following are true:

- 1 1. there was a cause and effect relationship between the conduct and the harm;
2 2. the conduct played a substantial role in causing the harm; and
3 3. a reasonable person could foresee that harm could result from the conduct.

4 There may be more than one legal cause of the same harm.

5 References

6 MUJI 3.13, 3.14, and 3.15

7 Comments

8 The term “proximate” cause should be avoided. While its meaning is readily understandable
9 to lawyers, the lay juror may be unavoidably confused by the similarity of “proximate” to
10 “approximate.”

11

FJC NOTES ON PROXIMATE CAUSE INSTRUCTION:

Much of our 14 Jan 04 meeting was devoted to a discussion of this instruction. There was much disagreement over the need to include “foreseeability” as an element of proximate causation. We agreed that further research needs to be done– we absolutely need to go back and have a clear idea of how our courts have defined causation.

Our present MUJI has Alternatives A and B.

MUJI 3.13- PROXIMATE CAUSE (Alternate A) A proximate cause of an injury is that cause which, in natural and continuous sequence, produces the injury and without which the injury would not have occurred. A proximate cause is one which sets in operation the factors that accomplish the injury.

MUJI 3.14- PROXIMATE CAUSE (Alternate B) In addition to deciding whether the defendant was negligent, you must decide if that negligence was a “proximate cause” of the plaintiff’s injuries. To find “proximate cause,” you must first find a cause and effect relationship between the negligence and plaintiff’s injury. But cause and effect alone is not enough. For injuries to be proximately caused by negligence, two other factors must be present:

1. The negligence must have played a substantial role in causing the injuries; and
2. A reasonable person could foresee that injury could result from the negligent behavior.

The new “CACI” from California has a negligence instruction (#400) that says a plaintiff must prove negligence, that plaintiff was harmed, and that the negligence was a “substantial factor” in causing the harm. Then #430 states that “A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.”

1 **3.11. Comparative fault.** You must decide and record on the verdict form a percentage of
2 fault³ for the conduct of each party based on the gravity or seriousness of the conduct. The total
3 fault must equal 100%.

4 For your information, plaintiff’s total recovery will be reduced by the percentage of fault that
5 you attribute to plaintiff. If you decide that plaintiff’s fault is 50% or greater, plaintiff will
6 recover nothing. When you answer the questions on damages, do not reduce the award by
7 plaintiff’s percentage of fault. The judge will make the calculation later.

8 References

9 Utah Code Sections 78-27-38; 78-27-40.

10 Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).

11 Haase v. Ashley Valley Medical Center, 2003 UT 360.

12 Bishop v. GenTec, 2002 UT 36.

13 Comment

14 The judge should ensure the verdict form is clear that fault should only be assessed as to
15 those parties for whom the jury finds both breach of duty and causation.

16

³ With the addition of 3.09, fault includes both breach of duty and legal cause. Is the percentage the jurors are to decide based on “seriousness of the conduct”, level of breach or contribution to causation?

1 MUJI 1.1

2 OPENING INSTRUCTIONS – NATURE OF CASE,
3 GENERAL INSTRUCTIONS
4

5 ~~Members of the jury, we are about to begin the trial of this case. You have heard some~~
6 ~~details about the case during the process of jury selection.~~ Before the trial of this case begins,
7 ~~however,~~ there are certain instructions you should have to better understand what will be
8 presented to you and how you should conduct yourself during the trial.

9 The party who brings a lawsuit is called the plaintiff. In this action the plaintiff is
10 _____. The party against whom the suit is brought is called the defendant. In this action
11 the defendant is _____.

12 The plaintiff seeks recovery for [damages on account of _____].

13 The defendant [denies liability, etc.]

14 [The defendant has filed what is known as a counterclaim, seeking recovery from the
15 plaintiff on account of _____.]

16 ~~By your verdict, y~~You will decide disputed ~~issues~~ questions of fact. Your decision is called a
17 VERDICT. Your verdict must be based on the evidence produced here in court. I will decide all
18 questions of law that arise during the trial. Before you are excused to decide the case, retire to
19 ~~deliberate at the close of the case,~~ I will give you final instructions ~~instruct you~~ on the law that
20 you must follow and apply in deciding reaching your verdict.

21 ~~Since you will be called upon to decide the facts of this case, you should give careful~~
22 ~~attention to the testimony and evidence presented for your consideration, bearing in mind that I~~
23 ~~will instruct you at the end of the trial concerning the manner in which you should determine the~~
24 ~~credibility or “believability” of each witness and the weight to be given the testimony. During~~
25 ~~the trial however, you should keep an open mind and should not form or express any opinion~~
26 ~~about the case one way or the other until you have heard all of the testimony and evidence, the~~
27 ~~closing arguments of the lawyers, and my instructions to you on the law. [THIS IS COVERED~~
28 IN MUJI 1.8]
29

30 ~~While the trial is in progress, you must not discuss the case in any manner among yourselves~~
31 ~~or with anyone else, nor should you permit anyone to discuss it in your presence. [You should~~

1 ~~avoid reading any newspaper articles that might be published about the case, and should also~~
2 ~~avoid seeing or hearing any television or radio comments about the trial.] [THIS IS COVERED~~
3 IN MUJI 1.8]

4 From time to time during the trial, I may ~~be called upon~~ have to make rulings ~~of law~~ on
5 objections or motions made by the lawyers. ~~It is the duty of the lawyer~~ Lawyers on each side of
6 a case have a right to object when the other side offers ~~testimony or other~~ evidence that the
7 lawyer believes is not properly admissible. You should not ~~think less of~~ ~~be angry at~~ a lawyer or
8 ~~the a~~ client because the lawyer has made objections. You should not ~~infer or conclude~~ draw any
9 conclusions from any ruling or other comment I may make that I have any opinion on the merits
10 of the case favoring one side or the other. And if I sustain an objection to a question that goes
11 unanswered by the witness, you should not draw any ~~inference or~~ conclusion from the question
12 itself.

13 During the trial it may be necessary for me to confer with the lawyers out of your hearing
14 with regard to questions of law or procedure that require consideration by me. ~~On some~~
15 ~~occasions~~ Sometimes you may be excused from the courtroom for the same reason. I will try to
16 limit these interruptions as much as possible, but you should remember the importance of the
17 matter you are here to ~~determine~~ decide ~~and should be~~ Please be patient even though the case
18 may seem to go slowly.

MUJI 1.2

ORDER OF TRIAL

22 The ~~Case trial~~ will generally proceed ~~in the following order as follows:~~

23 ~~1. The plaintiff's lawyer may make an opening statement outlining the case. The~~
24 ~~defendant's lawyer may also make an opening statement outlining the case immediately after the~~
25 ~~plaintiff's statement, or may defer making an opening statement until the conclusion of the~~
26 ~~plaintiff's case. Neither party is required to make an opening statement. What is said in the~~
27 ~~opening statement is not evidence, but is simply designed to provide you with an introduction to~~
28 ~~the evidence the party making the statement intends to produce.~~

29 ~~2. The plaintiff will introduce evidence through testimony of witnesses and exhibits. At the~~
30 ~~conclusion of the plaintiff's case, the defendant may introduce evidence. The defendant,~~

1 ~~however, is not obliged to introduce evidence or to call any witnesses. If the defendant~~
2 ~~introduces evidence, the plaintiff may then introduce rebuttal evidence.~~

3 ~~3. I will instruct you on the law which you are to apply in reaching your verdict.~~

4 ~~4. The parties may present closing arguments to you as to what they believe the evidence has~~
5 ~~shown and the inferences which they contend you should draw from the evidence. What is said~~
6 ~~in a closing argument, just as what is said in an opening statement, is not evidence. The~~
7 ~~arguments are designed to present to you the contentions of the parties based on the evidence~~
8 ~~introduced. The plaintiff has the right to open and to close the argument. [SUBSTITUTE~~
9 ~~MODIFIED INSTRUCTION No. 4 FROM THE MCIF/MOWER PRELIMINARIES]~~

10 ~~Opening statements. The lawyers will make opening statements outlining what the case is~~
11 ~~about and indicate what they think the evidence will show.~~

12 ~~Presentation of Evidence. The plaintiff will offer evidence first, followed by the defendant.~~
13 ~~Rebuttal evidence may be offered after hearing the witnesses and seeing the exhibits.~~

14 ~~Instructions on the Law. After the evidence has been fully presented, I will supplement these~~
15 ~~instructions and review them with you. You must obey the instructions. You are not allowed to~~
16 ~~reach decisions that go against the law.~~

17 ~~Closing Arguments. The lawyers will then summarize and argue the case. They will share~~
18 ~~with you their views of the evidence, how it relates to the law and how they think you should~~
19 ~~decide the case.~~

20 ~~Jury Deliberations. The final step is for you to go to the jury room and deliberate until you~~
21 ~~reach a verdict. I will give you more instructions about that step at a later time.~~

22
23 MUJI 1.3

24 EVIDENCE IN THE CASE

25 ~~The evidence in the case will consist of the sworn testimony of the witnesses, regardless of~~
26 ~~who may have called them; all exhibits received in evidence, regardless of who may have~~
27 ~~introduced them; and all facts which may have been judicially noticed, and which I instruct you~~
28 ~~to take as true for the purposes of this case. [SUBSTITUTE MODIFIED MCIF/MOWER~~
29 ~~PRELIMINARY INSTRUCTION NO.6.]~~

30 ~~Evidence is anything that tends to prove or disprove the existence or non-existence of a~~
31 ~~disputed fact. It can be testimony, or documents, or objects, or photographs, or stipulations, or~~

1 certain qualified opinions, or any combination of these things. In limited instances, I may take
2 what is called “judicial notice” of a well-known fact. If that happens, I will explain how you
3 should treat it.

4 Depositions may also be received in evidence. Depositions contain sworn testimony, with
5 the lawyer for each party being entitled to ask questions. Testimony provided in a deposition
6 may be read to you in open court or may be seen on a video monitor. Deposition testimony is to
7 be considered by you, subject to the same instructions which apply to witnesses testifying in
8 open court.

9 Statements and arguments of lawyers are not evidence in the case, unless made as an
10 admission or stipulation of fact. When the lawyers on both sides stipulate or agree to the
11 existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and
12 regard that fact as proved.

13 ~~I may take judicial notice of certain facts. When I declare that I will take judicial notice of~~
14 ~~some fact, you must accept that fact as true.~~

15 Any evidence as to which I sustain an objection, and any evidence I order to be stricken,
16 must be entirely disregarded.

17 Anything you may have seen or heard outside the courtroom is not evidence, and must be
18 entirely disregarded. Do not make any investigation about the facts in this case. Do not make
19 any personal inspections, observations or experiments. Do not view premises, things or articles
20 not produced in court. Do not let anyone else do anything like this for you. Do not look for
21 information in books, dictionaries or public or private records which are not produced in court.

22 Do not consider anything you may have heard or read about this case in the media or by word
23 of mouth or other out-of-court communication.

24 Some evidence is admitted for a limited purpose only. When I instruct you that an item of
25 evidence has been admitted for a limited purpose, you must consider it only for that limited
26 purpose and for not other purpose.

27 You are to consider only the evidence in the case, but you are not expected to abandon your
28 common sense. But in your consideration of the evidence, you are not limited to the bald
29 statements of the witnesses. In other words, you are not limited solely to what you see and hear
30 as the witnesses testify.—You are permitted to interpret the evidence draw, from the facts which

1 ~~you find have been proved, such reasonable inferences as you feel are justified~~ in light of your
2 experience.

3
4 MUJI 1.4

5 STIPULATED FACTS

6 Prior to the trial of this case, the parties entered into certain “stipulations” concerning the
7 facts. A stipulation is a voluntary agreement between opposing parties concerning a relevant
8 point. The parties have stipulated to the following facts:

9 ~~The stipulated facts are as follows:~~

10 [Here read stipulated facts.]

11 Since the parties have ~~so~~ agreed on these facts, you are to ~~take these facts~~ treat them as true
12 for purposes of this case.

13
14 MUJI 1.5

15 PROVINCE OF THE COURT AND JURY

16 ~~After the evidence has been heard and arguments and instructions are concluded, you will~~
17 ~~retire to consider the evidence and arrive at your verdict. You will determine the facts from all~~
18 ~~the testimony you hear and the other evidence that is received. You are the sole judges of the~~
19 ~~facts. Neither I nor anyone else may invade your responsibility to act as judges of the facts.~~

20 ~~On the other hand, and with equal emphasis, I instruct you that you are bound to accept the~~
21 ~~rules of law that I give you whether you agree with them or not. [SUBSTITUTE MODIFIED~~
22 MCIFF/MOWER INSTRUCTION NO. 3.]

23 The judge, the jury and the lawyers are all officers of the Court and play important roles in
24 the trial.

25 It is the judge’s role to decide all legal questions, supervise the trial and instruct the jury on
26 the law that must be applied.

27 It is the jury’s role to follow that law and decide the factual questions. Factual questions
28 generally relate to who, what, when, where, how or similar things for which evidence will be
29 presented.

1 It is the lawyers' role to present evidence, generally by calling and questioning witnesses and
2 presenting exhibits. Each lawyer will also try to persuade you to decide the case in favor of his
3 or her client.

4 Keep in mind that neither the lawyers nor I actually decide the case. That is your role. You
5 should decide the case based upon the evidence presented in court and the instructions that I will
6 give you.

7
8 MUJI 1.6

9 NOTE-TAKING [OPTIONAL]

10 ~~During this trial I will permit you to take notes. Many Courts do not permit note taking by~~
11 ~~jurors, and a word of caution is in order. There is always a tendency to attach undue importance~~
12 ~~to matters which one has written down. Some testimony that is considered unimportant at the~~
13 ~~time presented, and thus not written down, takes on greater importance later in the trial in light of~~
14 ~~all the evidence presented. Therefore, your notes are only a tool to aid you own individual~~
15 ~~memory and you should not compare your notes with other jurors in determining the content of~~
16 ~~any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and~~
17 ~~are by not means a complete outline of the proceedings or a list of the highlights of the trial.~~
18 ~~Above all, your memory should be your greatest asset when it comes time to deliberate and~~
19 ~~render a decision in this case.~~

20 You are entitled to take notes during the trial if you wish and to have those notes with you
21 during deliberations. We will provide you with writing materials for that purpose if you desire.
22 If you take notes, do not over do it and do not let your note taking distract you from your duty to
23 follow the evidence. Your notes are not evidence and should only be used as a tool to aid your
24 personal memory when it comes time to deliberate and render a decision in this case.

25 Ref.Rule 47(n), U.R.Civ.P.

26
27 MUJI 1.7

28 VIEW OF THE SCENE [OPTIONAL]

29 [no proposed changes]

30 Since this case involves an incident that occurred at a particular location, you may be
31 tempted to visit the scene yourself. Please do not do so. In view of the time that elapses before a

1 case comes to trial, substantial changes may have occurred at the location after the event that
2 gives rise to this lawsuit. Also, in making an unguided visit without the benefit of explanation,
3 you might get erroneous impressions. Therefore, even if you happen to live near the location,
4 please avoid going to it or near it until the case is over.

5
6 MUJI 1.8

7 ~~ADMONITION PRIOR TO COURT'S RECESS~~

8 RULES APPLICABLE TO RECESSES

9 From time to time I will call for a recess. It may be for a few minutes, a lunch break,
10 overnight or longer. You will not be required to remain together while we are in recess. It is
11 important that you obey the following instructions ~~with reference to~~ during the recesses of the
12 court:

13 1. Do not ~~discuss the case wither among yourselves or with anyone else during the trial. In~~
14 ~~fairness to the parties to this lawsuit, you should keep an open mind throughout the trial,~~
15 ~~reaching your conclusion only during your final deliberations. Only after all the evidence is in~~
16 ~~and you have heard the lawyers' summations and my instructions to you on the law, and only~~
17 ~~after an interchange of views with each other may you reach your conclusion.~~ talk about this case
18 with anyone; not family, friends or even each other. The Clerk may ask you to wear a badge
19 identifying yourself as a juror so that people will not try to discuss the case with you.

20 2. If anyone tries ~~Do not permit any person~~ to discuss the case in your presence. ~~.- If anyone~~
21 ~~does so,~~ despite your telling them not to, report that fact to me as soon as you are able. If you
22 must make any communication to me, do not discuss it with your fellow jurors. ~~You should not,~~
23 ~~however, discuss with your fellow jurors either that fact, or any other fact that you feel necessary~~
24 ~~to bring to my attention.~~

25 3. Though it is a normal human tendency to ~~converse~~ talk with other people, please do not
26 ~~converse~~ talk or otherwise communicate with any of the parties or their lawyers or with any
27 witness. By this, I mean ~~not only do not converse about the case, but~~ do not ~~converse~~ talk or
28 communicate at all, even to pass the time of day. ~~In no other way can all the parties be assured~~
29 ~~of the absolute impartiality they are entitled to expect from you as jurors.~~

30 4. Do not read about the case in the newspapers or on the internet, or listen to radio ~~or~~
31 television or other broadcasts about the trial. If a newspaper headline or announcement catches

1 your eye attention, do not read or listen ~~examine the article~~ further. Media accounts may be
2 inaccurate and may contain certain matters which are not proper evidence for your consideration.
3 You must base your verdict ~~solely on what you~~ on the evidence that you see and hear in this
4 courtroom.

5 ~~5. Do not do any research or make any investigation about the case on your own.~~
6 [ALREADY INCLUDED IN 1.3]

7 56. Finally, I instruct you again – do not make up your mind about what the verdict should
8 be until after you have gone to the jury room to decide the case and you and your fellow jurors
9 have discussed the evidence. Keep an open mind until then.

10 Now, we will begin by giving the lawyers for each side an opportunity to make their opening
11 statements in which they may explain the issues in the case and summarize the facts they expect
12 the evidence will show. ~~These statements are intended to help you understand the issues and the~~
13 ~~evidence as it comes in, as well as the positions taken by both sides. So I ask that you now give~~
14 ~~the lawyers your close attention as I recognize them for purposes of opening statements.~~

15

Possible MUJI Organization

Section. Subsection. Instruction	Title	Current MUJI Section
1	General.	1; 2
1.01	Opening instructions.	
1.01.010	Nature of case; General instructions.	
1.01.020	Order of trial.	
1.01.030	Rules applicable to recesses.	
1.01.040	Province of the court and jury.	
1.01.050	Note-taking.	
1.02	Evidence.	
1.01.030	Evidence in the case.	
1.01.040	Stipulated facts.	
1.03	Optional.	
1.03.010	View of the scene.	
2	Negligence.	
2.01	General.	3
2.01.010	Verdict form.	
2.01.020	“Negligence” defined.	
2.01.030	Standard of care for the physically disabled.	
2.01.040	Amount of care required when children are present.	
2.01.050	Negligence applied to children.	
2.01.060	“Fault” defined.	
2.01.070	“Legal cause” defined.	
2.01.080	Comparative fault.	
2.01.090		
2.01.100		
2.02	Ultra Hazardous Activities.	3
2.02.010	Amount of care for dangerous activities.	
2.02.020	Amount of care required in controlling electricity.	
2.03	Tort Law/Special Doctrine.	4
2.03.010	Violation of safety law.	
2.04	Motor Vehicles.	5
2.05	Railroad Crossings.	8
2.06	Common Carriers.	9
2.07	Negligent Infliction of Emotional Distress.	22
3	Intentional Torts.	10
3.01	Defamation.	
3.02	Slander.	

Possible MUJI Organization

Section. Subsection. Instruction	Title	Current MUJI Section
3.04	Malicious Prosecution.	
3.05	False Arrest.	
3.06	Abuse of Process.	
3.07	Battery.	
3.08	Business Torts/Interference with Contract.	
4	Fraud & Deceit.	17
5	Officers, Directors, Partners, Insiders Liability.	20
6	Professional Liability.	
6.01	Architects, Engineers.	7
6.02	Lawyers, Accountants.	7
6.03	Medical Negligence.	6
7	Premises Liability.	11
8	Civil Rights.	15
9	Insurance Co. Obligations.	21
10	Eminent Domain.	16
11	Contracts (Commercial).	26
12	Contracts (Construction).	
13	Damages.	27
14	Employment.	
14.01	Federal Employer's Liability Act.	14
14.02	Employee rights.	18
15	Will Contest.	23
Unaccounted	Products liability. Includes some negligence duty instructions.	12
Unaccounted	Business Torts / Interference With Contract	19
Unaccounted	Vicarious Responsibility / Partnership / Joint Venture / Parent / Guardian.	25
Unaccounted	Verdict Forms (Special/General).	36

Subcommittee Priority List

Chair		Subcommittee	Priority	First Draft Due
Carney	Francis J.	Negligence	1	Dec-03
Humpherys	L. Rich	Damages	1	Feb-04
Ferguson	Phillip S.	Preliminary and General Instructions	1	Feb-04
Sullivan	Alan	Contracts (Commercial)	1	Mar-04
Janove	Jathan W.	Employment	2	Apr-04
Morton	Robert C.	Premises Liability	2	May-04
Fowler	Tracy H.	Product Liability	3	
Mariger	Craig R.	Professional Liability: Architects, Engineers	3	
Gilchrist	Robert G.	Professional Liability: Lawyers, Accountants	3	
Dewsnup	Ralph L.	Professional Liability: Medical Negligence	3	
Scott	Kent	Contracts (Construction)	4	
Haley	George M.	Fraud & Deceit	4	
Belnap	Paul	Insurance Company Obligations	4	
Gurmankin	Jay D.	Officers, Directors, Partners, Insiders Liability	4	
Wallace	Robert R.	Civil Rights	5	
Anderson	Robert M.	Intentional Torts	5	
Bennett	Charles M.	Probate, Guardianship, Wills	5	