

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

May 10, 2004
4:00 to 6:00 p.m.

Welcome and approval of minutes	John Young
Preliminary and General Instructions	Phil Ferguson, Ch.
Negligence Instructions	Frank Carney, Ch.

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

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

MINUTES

Advisory Committee on Model Civil Jury Instructions

April 12, 2004

4:05 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Juli Blanch, Marianna Di Paolo, Phillip S. Ferguson, Paul M. Simmons, Honorable William W. Barrett, Jr., Ralph L. Dewsnup, Paul Belnap, Colin King, Rich Humphreys, Tracy Fowler

Excused: Francis J. Carney

1. *Gender.* The committee discussed how to deal with gender-specific pronouns in the instructions. Tim Shea reported on his communications with Paul Simmons. It was their recommendation that sentences be constructed to avoid the use of gender specific pronouns, but that, when necessary, the pronoun “he” be used. The introduction to the instructions might contain a statement that instructions should be edited to fit the circumstances of the case at hand. John Young observed that it would be easier to find the places that needed attention if the instruction contained a bracketed [she/he/it]. After discussion the committee agreed to bracket alternative pronouns whenever using pronouns cannot be avoided.

2. *Minutes.* The minutes of March 8 were approved without amendment.

3. *Research Assistance.* Mr. Young reported that he and Mr. Carney had contacted the Litigation Section to request a financial contribution to hire a law clerk. The executive committee for the Litigation Section will meet on April 14 and approval is expected. The committee decided that Mr. Young should appoint a research assistant. The committee decided that requests for research from the subcommittees should be directed to Mr. Young.

4. *Negligence Instructions.* The committee postponed its discussion of the negligence instructions until Mr. Carney could attend. Mr. Belnap observed that in the proposed draft to Instruction 3.09 on the definition of “fault,” simply referring to the cause of action raised in the case may not work for strict liability. It was suggested that we might consider the statutory phrase “actionable breach of a legal duty.” Others thought that phrase too obscure for jurors understand. Mr. Belnap inquired whether it was wise to discontinue use of the term “proximate cause” when there was so much caselaw interpreting that term. Mr. Young responded that the committee’s aim was not to abandon that caselaw, but to use a new term, one more understandable to jurors, to summarize the law.

5. The committee reviewed the draft preliminary and general instructions prepared and presented by Mr. Dewsnup, Judge Barrett and Mr. Ferguson. The committee suggested further changes, which the subcommittee will incorporate and present at the next meeting.

6. Mr. Humphreys suggested that we establish routine review of Supreme Court and Court of Appeals opinions to identify those that have an effect on jury instructions. The committee could then more timely incorporate necessary changes to the instructions.

7. The committee adjourned until May 10 at 4:00.

1 PRELIMINARY AND GENERAL INSTRUCTIONS.

2
3 1.1. OPENING INSTRUCTIONS – NATURE OF CASE, GENERAL INSTRUCTIONS
4

5 Before the trial of this case begins, I need to give you certain instructions to help you
6 understand what you will see and hear and how you should conduct yourself during the trial.
7

8 The party who brings a lawsuit is called the plaintiff. In this action the plaintiff is
9 [_____]. The party who is being sued is called the defendant. In this action the defendant
10 is [_____].
11

12 The plaintiff seeks [damages on account of _____].
13

14 The defendant [denies liability, etc.].
15

16 [The defendant has filed what is known as a counterclaim/cross-claim/third-party
17 complaint/etc., seeking recovery from the plaintiff/co-defendant/third party/etc. for
18 _____.]
19

20 I will decide all questions of LAW that arise during the trial. You must decide disputed
21 questions of FACT. Your decision is called a VERDICT. Your verdict must be based on the
22 evidence produced here in court. Before you are excused to decide the case, I will give you final
23 instructions on the law that you must follow and apply in reaching your verdict.
24
25

26 1.2. PROVINCE OF THE COURT AND JURY
27

28 The judge, the jury and the lawyers are all officers of the court and play important roles in
29 the trial.
30

31 It is my role to decide all legal questions, supervise the trial and instruct you on the law that
32 you must apply.
33

34 It is your role to follow that law and decide what the facts are. The facts generally relate to
35 who, what, when, where, how or how much and must be supported by the evidence.
36

37 It is the lawyers' role to present evidence, generally by calling and questioning witnesses and
38 presenting exhibits. Each lawyer will also try to persuade you to decide the case in favor of his or
39 her client.
40

41 Keep in mind that neither the lawyers nor I actually decide the case. That is your role. You
42 should decide the case based upon the evidence presented in court and the instructions that I will
43 give you.
44

45
46 1.3. ORDER OF TRIAL

1
2 The trial will generally proceed as follows:
3

4 1. Opening statements. The lawyers will make opening statements outlining what the case is
5 about and what they think the evidence will show.
6

7 2. Presentation of Evidence. The plaintiff will offer evidence first, followed by the defendant.
8 The parties may offer more evidence, called rebuttal evidence, after hearing the witnesses and
9 seeing the exhibits.
10

11 3. Instructions on the Law. After the evidence has been fully presented, I will instruct you on
12 the law you must apply. You must obey the instructions. You are not allowed to reach decisions
13 that go against the law.
14

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

19 5. Jury Deliberations. The final step is for you to go to the jury room and discuss the case
20 among yourselves until you reach a verdict. I will give you more instructions about that step at a
21 later time.
22

23 1.4. EVIDENCE IN THE CASE 24

25 “Evidence” is anything that tends to prove or disprove a disputed fact. It can be the testimony
26 of a witness or documents or objects or photographs or stipulations or certain qualified opinions
27 or any combination of these things.
28

29 You must entirely disregard any evidence as to which I sustain an objection and any evidence
30 I that order to be struck.
31

32 Anything you may have seen or heard outside the courtroom is not evidence and you must
33 entirely disregard it. Do not make any investigation about the facts in this case. Do not make any
34 personal inspections, observations or experiments. Do not view locations involved in the case,
35 things or articles not produced in court. Do not look for information in books, dictionaries or
36 public or private records that are not produced in court. Do not let anyone else do any of these
37 things for you.
38

39 Do not consider anything you may have heard or read about this case in the media or by word
40 of mouth or other out-of-court communication.
41

42 You are to consider only the evidence in the case, but you are not expected to abandon your
43 common sense. You are permitted to interpret the evidence in light of your experience.
44

45 1.4.1. STIPULATED FACTS 46

1
2 Statements and arguments of lawyers are not evidence in the case, unless they are made as an
3 admission or stipulation of fact. A stipulation is an agreement. Unless I instruct you otherwise,
4 when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as
5 evidence and regard that fact as proved.
6

7 Before the trial, the parties stipulated to the following facts:
8

9 [Here read stipulated facts.]
10

11 Since the parties have agreed on these facts, you must treat them as true for purposes of this
12 case.
13

14 15 1.4.2. SITUATIONAL EVIDENCE INSTRUCTIONS 16

17 JUDICIAL NOTICE 18

19 In limited instances, I may take what is called “judicial notice” of a well-known fact. If that
20 happens, I will explain how you should treat it.
21

22 DEPOSITIONS 23

24 Depositions may be received in evidence. Depositions contain sworn testimony of a witness
25 that was given previously, outside of court, with the lawyer for each party being entitled to ask
26 questions. Testimony provided in a deposition may be read to you in court or may be seen on a
27 video monitor. You should consider deposition testimony the same way that you would consider
28 the testimony of a witness testifying in court.
29

30 LIMITED PURPOSE EVIDENCE 31

32 Some evidence is admitted for a limited purpose only. When I instruct you that an item of
33 evidence has been admitted for a limited purpose, you must consider it only for that limited
34 purpose and for no other purpose.
35

36 VIEW OF THE SCENE 37

38 Since this case involves an incident that occurred at a particular location, you may be
39 tempted to visit the scene yourself. Do not do so. Before a case comes to trial, changes may have
40 occurred at the location after the event that gives rise to this lawsuit. Also, you might draw
41 wrong conclusions from an unguided visit without the benefit of explanation. Therefore, even if
42 you happen to live near the location, do not go to it or near it until the case is over.
43

44 45 1.5. OBJECTIONS AND RULINGS ON EVIDENCE AND PROCEDURE 46

1 From time to time during the trial, I may have to make rulings on objections or motions made
2 by the lawyers. Lawyers on each side of a case have a right to object when the other side offers
3 evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a
4 party because the lawyer has made objections. You should not draw any conclusions from any
5 ruling or other comment I may make that I have any opinion on the merits of the case or favor
6 one side or the other. And if I sustain an objection to a question, you should not draw any
7 conclusion from the question itself.

8
9 During the trial I may have to confer with the lawyers out of your hearing about questions of
10 law or procedure. Sometimes you may be excused from the courtroom for the same reason. I will
11 try to limit these interruptions as much as possible, but you should remember the importance of
12 the matter you are here to decide. Please be patient even though the case may seem to go slowly.

13
14 Comment

15
16 During the discussion of this instruction, the issue was raised concerning the need for
17 instructions regarding non-parties. That matter was not resolved.

18
19 Likewise, members of the committee considered whether the terms “sustain” and “overrule”
20 should be defined in the instruction. That matter was also unresolved.

21
22
23 1.6. NOTE-TAKING

24
25 You are entitled to take notes during the trial if you wish and to have those notes with you
26 when you discuss the case. We will provide you with writing materials for that purpose if you
27 desire. If you take notes, do not over do it, and do not let your note taking distract you from your
28 duty to follow the evidence. Your notes are not evidence and you should only use them as a tool
29 to aid your personal memory when it comes time to make a decision in this case.

30
31 Your notes should be left with the Bailiff at the conclusion of each day. The Bailiff will
32 return your notes to you when you return each morning.

33
34 Ref.Rule 47(n), U.R.Civ.P.

35
36
37 1.8. RULES APPLICABLE TO RECESSES

38
39 From time to time I will call for a recess. It may be for a few minutes, a lunch break,
40 overnight or longer. You will not be required to remain together while we are in recess. You
41 must obey the following instructions during the recesses:

42
43 1. Do not talk about this case with anyone — not family, friends or even each other. The
44 clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to
45 discuss the case with you.

1 2. If anyone tries to discuss the case in your presence, despite your telling them not to, tell
2 the clerk or the bailiff that you need to see me. If you must make any communication to me, do
3 not discuss it with your fellow jurors.
4

5 3. Though it is a normal human tendency to talk with other people, do not talk or otherwise
6 communicate with any of the parties or their lawyers or with any witness. By this, I mean do not
7 talk or communicate at all, even to pass the time of day.
8

9 4. Do not read about the case in the newspapers or on the internet, or listen to radio television
10 or other broadcasts about the trial. If a headline or announcement catches your attention, do not
11 read or listen further. Media accounts may be inaccurate and may contain certain matters that are
12 not proper evidence for your consideration. You must base your verdict only on the evidence that
13 you see and hear in this courtroom.
14

15 5. Finally, do not make up your mind about what the verdict should be until after you have
16 gone to the jury room to decide the case and you and your fellow jurors have discussed the
17 evidence. Keep an open mind until then.
18

19 Now, we will begin by giving the lawyers for each side an opportunity to make their opening
20 statements in which they may explain the issues in the case and summarize the facts they expect
21 the evidence will show.
22

23 24 NEW MUJI 1.9. CREDIBILITY OF WITNESS TESTIMONY 25

26 Testimony in this case will be given under oath. You are responsible to evaluate that
27 testimony as to its believability. In doing so, you may want to consider the following:
28

29 Personal Interest. Does the witness have any personal interest in the outcome of the case that
30 you believe affects the accuracy of the testimony one way or the other?
31

32 Bias. Does the witness have any bias or prejudice for or against one side or the other that you
33 believe affects the accuracy of the testimony?
34

35 Demeanor. Is there anything about the witness' appearance, conduct or actions that causes
36 you to give more or less weight to the testimony given?
37

38 Consistency. How does the testimony that is given tend to support or not support other
39 believable evidence that is offered in the case?
40

41 Knowledge. Did the witness have a good opportunity to know what he or she is testifying
42 about?
43

44 Memory. Does the witness' memory appear to be reliable?
45

46 Reasonableness. Is the testimony of the witness reasonable in light of human experience?

1
2 You may believe all or any part of the testimony of a witness. You may also believe one
3 witness as against many witnesses or many as against one, in accordance with your honest
4 convictions.

5
6 The foregoing instructions are not intended to limit how you evaluate testimony. You are the
7 ultimate judges of how it is to be interpreted.

8 9 10 2.1. SEQUENCE OF INSTRUCTIONS

11
12 You must consider the instructions in their entirety. You must not single out any certain
13 sentence, or any individual point in the instructions. I do not intend to emphasize any particular
14 portion of the instructions. The order in which I give the instructions has no significance.

15 16 17 2.1a. JURORS MUST FOLLOW INSTRUCTIONS

18
19 It would be a violation of your oath to base a verdict upon any other view of the law than
20 what I give you in these instructions, just as it would be a violation of your oath to base a verdict
21 upon anything but the evidence in the case.

22 23 24 MUJI 2.3. SYMPATHY, PASSION AND PREJUDICE

25
26 This case must not be decided for or against anyone because you feel sorry for anyone or
27 angry at anyone. It is your sworn duty to decide this case based on the facts and the law, without
28 regard to sympathy, passion or prejudice.

29 30 31 2.7. SELECT FOREPERSON/ATTITUDE IMPORTANT

32
33 After you enter the jury room, and before discussing the case, you must select one of your
34 jury members to serve as foreperson. Then, you must consult with one another and reach a
35 verdict.

36
37 Your attitude and conduct during discussions are important. As you begin your discussions, it
38 is not productive or beneficial to say that your mind is made up. You should not surrender your
39 honest convictions concerning the effect or weight of evidence just to please other jurors or for
40 the mere purpose of returning a verdict. But do not hesitate to change your opinion if you are
41 convinced it is wrong.

42 43 44 2.8. ALL PARTIES EQUAL BEFORE THE LAW

1 In this case the plaintiff is [identify entity] and the defendant is [identify entity]. This should
2 make no difference to you. You must decided this case as if it were between individuals.
3

4 5 2.9. CREDIBILITY OF WITNESS TESTIMONY 6

7 As each witness testifies, you must decide how believable that testimony is. It may help you
8 to ask yourself questions such as these:
9

10 Personal Interest. Does the witness have a personal interest in how the trial turns out?
11

12 Other Bias. Does the witness have some other bias or motive to testify a certain way?
13

14 Demeanor. What impression is made by the witness's appearance and conduct while
15 answering questions?
16

17 Consistency. Does the witness make conflicting statements or contradict other evidence?
18

19 Knowledge and Memory. Did the witness have a good opportunity to know the facts? Does
20 the witness have the ability to remember them?
21

22 Reasonableness. Is the testimony reasonable in light of human experience?
23

24 You may believe all or only a part of what a witness says. You may believe one witness as
25 against many or many as against one, in accordance with your honest convictions.
26

27 Comment
28

29 This revised 2.9 is based almost entirely upon Instruction No. 11 from Judge McIff. There
30 was general discussion about moving this instruction into the preliminary set, to be read at the
31 outset, rather than the general set, to be read at the conclusion of the evidence.
32
33

34 2.10. INCONSISTENT STATEMENTS 35

36 You may believe that a witness, on another occasion, made statement inconsistent with that
37 witness's given in this case. That doesn't mean that you are required to disregard the testimony.
38 The effect of the inconsistent evidence upon the believability of the witness is for you to
39 determine.
40

41 42 2.11. EFFECT OF WILLFULLY FALSE TESTIMONY 43

44 If you believe any witness has intentionally testified falsely about any important matter, you
45 may disregard the entire testimony of that witness, or you may chose to consider that testimony,
46 or any part of it, as true, especially if it is consistent with other believable evidence.

1
2
3 2.13. STATEMENT OF OPINION
4

5 Under certain circumstances, witnesses are allowed to express an opinion. A person who by
6 education, study or experience has become an expert in any art, science or profession, may give
7 his opinion and the reason for it. A layman (or a non-expert) is also allowed to express an
8 opinion if it is based on personal observations and it is helpful to understanding his testimony of
9 the case. You are not bound to believe anyone's opinion. Consider it as you would any other
10 evidence, and give it the weight you think it deserves.
11

12
13 2.15. CHARTS AND SUMMARIES
14

15 Certain charts and summaries have been shown to you in order to help explain the facts
16 disclosed by the books, records, or other documents which are in evidence in the case. However,
17 such charts or summaries are not in and of themselves evidence or proof of any facts. If such
18 charts or summaries correctly reflect facts or figures shown by the evidence in the case, you may
19 consider them.
20

21
22 2.16. BURDEN OF PROOF
23

24 When these instructions say that a party has the burden of proof, it means that the party must
25 produce evidence that meets the following requirements:
26

27 [Here list the elements of the claim]
28
29

30 2.17. DIRECT AND CIRCUMSTANTIAL EVIDENCE
31

32 A fact may be proved by circumstantial evidence. Circumstantial evidence consists of facts
33 or circumstances that give rise to a reasonable inference of the truth of the facts sought to be
34 proved. For example, if the fact sought to be proved is whether or not Johnny ate the cherry pie,
35 and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of
36 the fact. If the witness testifies that she saws Johnny with cherries smeared on his face and an
37 empty pie plate in his hand, that is circumstantial evidence of the fact.
38

39
40
41 2.19. CLEAR AND CONVINCING EVIDENCE
42

43 Generally speaking, there are 3 levels of proof in the law, (1) proof by a preponderance of the
44 evidence, (2) proof by clear and convincing evidence, and (3) proof beyond a reasonable doubt.
45 The usual level of proof used in a civil case is proof by a preponderance of the evidence, that is,

1 proof that a fact is more likely than not. Another way of saying this is proof by the greater weight
2 of the evidence.

3
4 Some civil cases involve issues that must be proven to a standard higher than the usual
5 greater weight of the evidence standard. This next level of proof is proof by clear and convincing
6 evidence. This level of proof is not as high as the standard used in criminal cases, that is, proof
7 beyond a reasonable doubt. However, in order for something to be proven by clear and
8 convincing evidence, it must be more than merely probable. You must be firmly convinced of
9 the fact at issue.

10
11 An example may be useful. Proof by the greater weight of the evidence is similar to deciding
12 a question by a simple majority vote. Proof by clear and convincing evidence is like deciding a
13 question by a super-majority vote. Proof beyond a reasonable doubt is like deciding a question
14 by a unanimous vote.

15
16 To satisfy the clear and convincing level of proof, the evidence as to the fact in issue should
17 be compelling. It must at least have reached the point where there remains no substantial doubt
18 as to the truth or correctness of the conclusion.

19 20 2.20. TAKING OF NOTES

21
22 I have noticed that some of you have been taking notes during the trial. You are welcome to
23 use your notes in the jury room to refresh your memory of what the witnesses said. Remember
24 that your notes are not evidence; only the testimony of the witnesses and the documents and
25 other things received by the Court during the trial constitute the evidence. You must each reach
26 your own decision after consultation with the other jurors, and each of you must rely on your
27 own memory of the evidence. One juror's opinion should not be given excessive consideration
28 just because that juror took notes.

29 30 31 2.21. MULTIPLE PLAINTIFFS

32
33 Although there are _____ plaintiffs in this action, that does not mean that they are equally
34 entitled to recover or that any of them is entitled to recover. The defendant is entitled to a fair
35 consideration of [his] [her] [its] defense as to each plaintiff, just as each plaintiff is entitled to a
36 fair consideration of that plaintiff's claim against the defendant. Unless otherwise instructed, all
37 instructions apply to each defendant and to each plaintiff.

38 39 40 2.22. MULTIPLE DEFENDANTS

41
42 Although there are _____ defendants in this action, that does not mean that they are equally
43 liable or that any of them is liable. Each defendant is entitled to a fair consideration of that
44 defendant's own defense to each claim of the plaintiff(s). If you conclude that one defendant is
45 liable, that does not necessarily mean that one or more of the other defendants are liable. You
46 must evaluate the evidence fairly and separately as to each plaintiff and each defendant.

1
2
3 2.23. DISCONTINUANCE AS TO SOME DEFENDANTS
4

5 Defendants _____ and _____ are no longer involved in this case.
6 You should not concern yourself with the reasons why, but should consider the issues presented
7 in accordance with the Court’s instructions and the evidence in the case.
8
9

10 2.24. SETTLING DEFENDANTS IN MULTI-PARTY CASES
11

12 The plaintiff(s) and [settling defendant(s)] have reached a settlement agreement in this
13 matter.
14

15 [This settlement agreement provides that _____.] [The relevant portions of
16 this agreement are _____.]
17

18 There are many reasons why parties settle during the course of a lawsuit. Settlement does not
19 mean that the defendant has admitted fault or that the plaintiff has a weak case. You must still
20 determine from the evidence which party or parties, including [the settling defendant(s)] were at
21 fault, if any, and how much fault each party should bear. In deciding how much fault should be
22 allocated to each party you must not consider the settlement agreement as an admission of fault
23 by [settling defendant(s)]. Nor should you consider the settlement agreement as an indication of
24 [settling defendant’s] willingness to deal responsibly with the plaintiff.
25

26 You may, however, consider the settlement agreement when you weigh the believability of
27 the testimony of the witnesses. Since the plaintiff and [the settling defendant(s)] have settled,
28 they are no longer adversary parties in the lawsuit. That means that the plaintiff now has a
29 financial incentive to show that the non-settling defendant(s) is [entirely] [mostly] to blame for
30 the [accident] [injuries] [damages]. Also, the [settling defendant(s)] now has/have no reason to
31 disagree with the plaintiff(s) as to how much money, if any, you should award.
32
33

34 2.25. JURORS TO DELIBERATE AND AGREE IF POSSIBLE
35

36 Is it now your duty to consult with one another—to deliberate—with a view to reaching an
37 agreement. You each must decide the case for yourself, but only after discussing the case with
38 your fellow jurors. You should not hesitate to change an opinion when convinced that it is
39 wrong. However, you should not surrender your honest convictions just to end the deliberations
40 or to agree with other jurors.
41
42

43 2.26. RESORT TO CHANCE
44

1 Your duty as a juror is to evaluate the evidence presented by the parties and to come to a
2 decision that is supported by the evidence. You are not to speculate, draw lots, or flip coins, for
3 example. The law forbids you to decide any issue in this case by resorting to chance.
4

5 If you decide that a party is entitled to recover, you must then decide the amount of money to
6 be awarded to that party. It would be unlawful for you to agree in advance to take the
7 independent estimate of each juror, then total the estimates, draw an average from the total, and
8 to make that average the amount of your award. On the other hand, each of you should express
9 your own independent judgment as to what the amount should be. It is your duty to thoughtfully
10 consider the amounts suggested, evaluate them according to these instructions and the evidence
11 and, after due consideration, come to an agreement on the amount, if any, to be awarded.
12
13

14 2.27. AGREEMENT ON SPECIAL INTERROGATORIES 15

16 I am going to give you a form to fill out. This form is called the Special Verdict. Your duty is
17 to answer the questions, based upon the evidence you have seen and heard during this trial, after
18 discussing the evidence with one another and coming to an agreement as to what the answer to
19 each question should be.
20

21 In answering these questions, you should bear in mind that the burden of proving any
22 disputed fact rests upon the party claiming the fact to be true, and that the fact must be proved by
23 [the greater weight of the evidence] [clear and convincing evidence].
24

25 Because this is a civil action, at least six jurors must agree on the answer to each question,
26 but they need not be the same six on each question. As soon as six or more of you have agreed
27 on the answer to each question, have the verdict signed and dated by your foreperson and tell the
28 bailiff you have finished. The bailiff will escort you back to this courtroom; you should bring the
29 completed Special Verdict with you.
30
31

32 2.28. SELECTION OF JURY FOREPERSON AND RETURN OF VERDICT 33

34 When you leave the courtroom in a few moments and go to the jury room, your first
35 responsibility is to select a foreperson. The foreperson will preside over your deliberations and
36 sign the verdict form to which you agree.
37

38 The foreperson should not dominate the jury or the discussions. The foreperson's opinions
39 should be given the same weight as the opinions of each of the other members of the jury.
40
41

42 MUJI 1.7 Moved to Situational Evidence Instructions currently identified as Revised MUJI
43 1.4.2

44 MUJI 2.2 is rejected in favor of revised MUJI 1.5.

45 MUJI 2.4 is rejected in favor of Revised MUJI 1.3

46 MUJI 2.5 is rejected in favor of revised MUJI 1.1

1 MUJI 2.6 is rejected in favor of revised MUJI 1.1
2 MUJI 2.12 rejected in favor of Revised 1.3.
3 MUJI 2.14 is combined into Revised MUJI 2.13, which, in turn, is based exclusively on
4 McIff No. 7.
5
6
7

8 REMAINING NEGLIGENCE INSTRUCTIONS
9

10 3.08. VIOLATION OF SAFETY LAW.
11

12 Violation of a safety [statute/ordinance/rule] is evidence of negligence unless the violation is
13 excused. The plaintiff claims that the defendant violated a safety [statute/ordinance/rule] that
14 says:
15

16 [summarize or quote the statute/ordinance/rule]
17

18 If you decide that the defendant violated the [statute/ordinance/rule], you must decide
19 whether the violation is excused.
20

21 The defendant claims the violation is excused because:
22

23 1. Obeying the [statute/ordinance/rule] would have created an even greater risk of harm.
24

25 2. [She/He/It] could not obey the [statute/ordinance/rule] because s/he faced an
26 emergency that [She/He/It] did not create.
27

28 3. [She/He/It] was unable to obey the [statute/ordinance/rule] despite a reasonable effort to
29 do so.
30

31 4. [She/He/It] was incapable of obeying the [statute/ordinance/rule].
32

33 5. [She/He/It] was incapable of understanding what the [statute/ordinance/rule] required.
34

35 If you decide that the defendant violated the [statute/ordinance/rule] and that the violation
36 was not excused, you may consider the violation as evidence of negligence. If you decide that the
37 defendant did not violate the [statute ordinance rule] or that the violation should be excused, you
38 must disregard the violation and decide whether the defendant acted with reasonable care under
39 the circumstances.
40

41 References

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

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

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

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

46 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
3 Comment

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

- 6 1. Plaintiff belongs to a class of people that the law is intended to protect; and
- 7 2. The law is intended to protect against the type of harm that occurred as a result of the
8 violation.

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

11
12
13 3.09. "FAULT" DEFINED.

14 You must decide whether [names of persons on verdict form] were at fault. As used in these
15 instructions and in the verdict form, the word "fault" has special meaning. Someone is at fault if:

- 16
17 1. that person's conduct was [insert applicable causes of action];
18 and
19
- 20 2. that person's conduct was the legal cause of plaintiff's harm.

21
22 I will now explain what these terms mean.

23
24 References

25 Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.
26 Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).
27 Haase v. Ashley Valley Medical Center, 2003 UT 360.
28 Bishop v. GenTec, 2002 UT 36.

29
30 Comment

31 "Fault" under the Comparative Negligence Act includes negligence, breach of warranty, and
32 other breaches of duty. This instruction should be followed by those defining the specific duty
33 (for example, negligence) and the instruction on legal cause.

34
35
36 3.10. "LEGAL CAUSE" DEFINED.

37
38 If you decide that the conduct of a person named on the verdict form was [insert applicable
39 cause of action], you must then decide whether that conduct was a legal cause of the plaintiff's
40 harm. For the conduct to be a legal cause of harm, you must decide that all of the following are
41 true:

- 42
43 1. there was a cause and effect relationship between the conduct and the harm;
- 44
45 2. the conduct played a substantial role in causing the harm; and

1 3. a reasonable person could foresee that harm could result from the conduct.

2
3 There may be more than one legal cause of the same harm.

4
5 References

6 MUJI 3.13, 3.14, and 3.15

7
8 Comments

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

12
13 FJC NOTES ON PROXIMATE CAUSE INSTRUCTION:

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

18 Our present MUJI has Alternatives A and B.

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

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

28 1.The negligence must have played a substantial role in causing the injuries; and

29 2.A reasonable person could foresee that injury could result from the negligent behavior.

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

35
36
37 3.11. COMPARATIVE FAULT.

38
39 You must decide and record on the verdict form a percentage of fault¹ for the conduct of each
40 party based on the gravity or seriousness of the conduct. The total fault must equal 100%.

41
42 For your information, the plaintiff’s total recovery will be reduced by the percentage of fault
43 that you attribute to the plaintiff. If you decide that the plaintiff’s fault is 50% or greater, the

¹ 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 plaintiff will recover nothing. When you answer the questions on damages, do not reduce the
2 award by the plaintiff's percentage of fault. The judge will make that calculation later.

3
4 References

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

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

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

8 Bishop v. GenTec, 2002 UT 36.

9
10 Comment

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

13