

# Agenda

## Advisory Committee on Model Civil Jury Instructions

October 14, 2008  
4:00 to 6:00 p.m.

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

Approval of minutes	Tab 1	John Young
Motor Vehicle Instructions	Tab 2	Rich Humpherys Lynn Davies

**Committee Web Page:** <http://www.utcourts.gov/committees/muji/>

**Published Instructions:** <http://www.utcourts.gov/resources/muji/>

**Meeting Schedule:** Matheson Courthouse, 4:00 to 6:00 p.m.

October 27, 2008	Construction Contracts
November 10, 2008	Premises Liability
December 8, 2008	Insurance Obligations
January 12, 2009	Intentional Torts / Fraud and Deceit
February 9, 2009	Eminent Domain
March 9, 2009	Probate
April 13, 2009	Professional Liability
May 11, 2009	Employment
June 8, 2009	

# Tab 1

**MINUTES**

Advisory Committee on Model Civil Jury Instructions

September 22, 2008

4:00 p.m.

Present: John L. Young (chair), Juli Blanch, Francis J. Carney, Dr. Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Gary L. Johnson, Stephen B. Nebeker, Timothy M. Shea, Paul M. Simmons, Peter W. Summerill, David E. West. Also present: Lynn Davies, chair of the Motor Vehicle subcommittee.

1. *Motor Vehicle Instructions.* The committee reviewed the motor vehicle instructions.

a. *CV601. Introduction.* The committee approved CV601.

b. *CV602. Driver's general duty.* Mr. Summerill asked whether the instruction needed to define reasonable care. Mr. Davies noted that some general negligence instructions are typically given in motor vehicle cases. At Mr. Young's suggestion, a committee note was added referring users to the general negligence instruction defining reasonable care (CV202). The committee approved CV602.

Ms. Blanch and Dr. Di Paolo joined the meeting.

c. *CV603. Duty. Control of automobile.* Mr. Summerill did not think the driver's "ability to guide" the vehicle was a relevant factor; a driver has a duty to keep the vehicle under reasonable control even if he has a medical or other condition that would prevent him from doing so. The committee revised the instruction to read: "A driver has a duty to keep the vehicle under reasonable control and to operate the vehicle so as to avoid danger." The committee approved the instruction as revised.

Mr. Humpherys joined the meeting.

Mr. Davies noted that the instruction the subcommittee had prepared (5.4) had seven subsections. Mr. Davies acknowledged the desire to simplify the instructions and put them in plain English but thought that there should still be a general instruction on violations of the motor vehicle code that could be adapted to specific provisions of the code. The subcommittee's proposal had stated that the court should paraphrase the relevant statute in plain English. Mr. Nebeker thought the court should have the option of instructing in the words of the statute. Mr. Humpherys and Mr. Simmons noted that the subcommittee's general instruction was now CV625 and asked whether it should come earlier in the instructions. Mr. Shea suggested that there be a general committee note to all the motor vehicle instructions, as there is with the medical malpractice instructions. The committee deferred further discussion on the proposal.

Mr. Ferguson and Mr. Fowler joined the meeting.

d. *CV604. Lookout.* The instruction was revised to read: “A driver has a duty to keep a proper lookout for other traffic and hazards that can be reasonably anticipated.” The committee approved the instruction as revised.

e. *CV605. Following at a safe distance.* Dr. Di Paolo did not like stating the driver’s duty in the negative (“A driver has a duty not to follow . . .”). At Mr. Davies’s suggestion, the instruction was revised to read: “A driver has a duty to follow another vehicle at a distance that is reasonable and prudent under all existing conditions and circumstances.” Ms. Blanch questioned whether both “conditions” and “circumstances” were necessary. Dr. Di Paolo thought there was a distinction in meaning and that it did not hurt to include both. The committee approved the instruction as revised.

f. *CV606. Duty of maintenance.* At Mr. Davies’s suggestion, the instruction was revised to read: “A driver [an owner] has a duty to drive [move] a vehicle [allow a vehicle to be driven/moved] on a roadway only if the vehicle is in a safe condition.” Mr. Carney suggested deleting “on a roadway.” Mr. Davies noted that the statute uses the term “highway,” which is a defined term under the Motor Vehicle Code, but he thought jurors would have a different understanding of “highway” than the statutory definition and that the term “roadway” would be understood by most jurors to include those roads that come within the statutory term “highway” and was therefore acceptable. The committee debated whether there was a common-law duty not to move a vehicle in other circumstances if the vehicle is in an unsafe condition. Some committee members thought there was, but others (including Mr. Johnson) thought there was not. Someone suggested adding a committee note saying that the scope of any common-law duty was not clear. Mr. Humpherys thought no committee note was needed; if the instruction does not apply because the vehicle was not on a roadway, then the parties and the court will have to craft their own instruction, but no instruction is necessary to tell them that. Mr. Humpherys further noted that the duty of maintenance is a statutory duty that is subject to the statutory exceptions set out in CV625. He suggested having a general committee note at the beginning of the instructions saying that, if a person is alleged to have violated a statutory duty, the parties and court should consider CV625 dealing with violations of statutes and exceptions to and justifications for such violations. Mr. Davies suggested that a note to CV606 be added referring to the statute, since the statute itself says it does not apply to certain equipment, such as farm equipment. The committee noted was revised to read: “If there is an alleged violation of a particular statute regarding required equipment and circumstances (e.g., Utah Code section 41-6a-1601), instruction CV625 may be considered.” The instruction was approved as revised.

g. *CV607. Speed.* Dr. Di Paolo said she did not understand what the jury was supposed to do with CV607. She suggested deleting the first sentence, but Mr. West preferred starting each instruction with the phrase, “A driver has a duty to . . .” Dr. Di Paolo also suggested revising the order of the sentences. Messrs. Carney and Humpherys noted that “negligence” should be replaced with “fault.” Mr. Summerill thought, based on *Gaw v. State*, 798 P.2d 1130 (Utah 1990), that the instruction should say that driving faster than the posted speed limit “is” evidence of fault, not “may be” evidence of negligence. Others preferred the phrase “may be evidence,” noting that *Gaw* uses both terms and further noting that driving above the speed limit may be subject to justification or excuse. Mr. Humpherys and Dr. Di Paolo thought that jurors would not distinguish between “is evidence of fault” and “is fault.” Mr. Davies thought there should be a general committee note explaining that, if there is evidence of a justification or excuse for breaking the speed limit (or any other statutory violation), the court should instruct the jury according to CV625. Dr. Di Paolo noted that the last sentence of the instruction tells the jury that a driver may have to drive above or below the speed limit, depending on the circumstances, yet the sentence before tells the jury that driving above the speed limit is negligent. She asked whether the last sentence was meant to trump the preceding sentence. At Mr. Shea’s suggestion, “posted” was dropped from the phrase “posted speed limit”; the committee noted that there are default speed limits that apply even where no speed limit is “posted.” Mr. Summerill suggested adding a citation to *Gaw* to the reference section, but Mr. Carney thought that *Gaw* did not support the instruction and noted that it is already cited to support CV625. Mr. Summerill suggested replacing “accident” with “collision,” for fear that jurors would interpret “accident” to mean that no one was at fault. Dr. Di Paolo did not think that fear was realistic, and Mr. Fowler pointed out that not all motor vehicle accidents involve collisions between vehicles; there may be a one-car rollover accident, for example. The committee revised the instruction to read:

A driver has a duty to drive at a safe speed.

The speed limit at the place of this accident was [\_\_\_\_] miles per hour. Driving at a speed in excess of the posted limit may be evidence of fault. However, conditions and circumstances may allow a driver to drive at a [lower/greater] speed with proper regard for existing and potential hazards.

The committee approved the instruction as revised.

h. *CV608. Minimum speed.* Mr. West suggested starting the instruction, “A driver has a duty to not operate . . . ,” but Dr. Di Paolo noted that

that construction was hard to make sense of. The committee revised the instruction to read: “A person may not drive at a speed so slow as to interfere with the normal and reasonable movement of traffic unless conditions or circumstances justify a reduced speed for safe operation.” The committee approved the instruction as revised.

i. *Titles.* Mr. Summerill proposed deleting the word “Duty” from the titles of CV609 to CV624. Mr. Humpherys thought that the titles were not part of the instructions and would not be given to the jury. Mr. Carney, however, noted that the introduction to MUJI 2d says that “judges and lawyers should include the title of the instruction” in written instructions because they help jurors “organize their deliberation and decision-making.” The committee decided to delete “Duty” from the titles of CV609 to CV624.

j. *CV609. Turning/lane change.* Mr. West thought that the instruction improperly implied that a driver has a duty to turn. The committee revised the instruction to read: “A driver may turn a vehicle [change lanes] only when it can be done with reasonable safety and after giving an appropriate signal.” The committee approved the instruction as revised.

k. *CV610. Right of way. Left turns.* Mr. Young asked whether the phrase “yield the right of way” needed to be defined. The committee did not think so, since lay people must understand the phrase to get a driver’s license. Mr. Young noted that some jurors may not be licensed drivers. After Mr. Davies read the statutory definition of “right-of-way” (Utah Code Ann. § 41-6a-102(50)), most of the committee thought it would only confuse the jury to attempt to define the term. Dr. Di Paolo offered to try to draft an instruction defining “right-of-way” if someone would send her the statutory language. Mr. Carney asked whether the phrase “the right of way” was necessary. Mr. Davies thought it had a well understood meaning among lay people. The committee approved the instruction as written, subject to any further instruction defining “right-of-way” that Dr. Di Paolo may suggest.

l. *CV611. Right of way. Unregulated intersection.* Mr. West questioned whether the last sentence was necessary. The committee decided to make the last two sentences separate paragraphs and to bracket them to indicate that they should only be included if they are supported by the facts of the case. At Mr. Simmons’s suggestion, the first sentence of the second paragraph was revised to read: “When more than one vehicle enters or approaches the intersection at approximately the same time, the driver of the vehicle on the left has a duty to yield the right of way to the vehicle on [his] right.” The committee approved the instruction as revised.

m. *CV612. Right of way. Traffic signals.* Mr. Humpherys noted that the first sentence was problematic. The duty of a driver faced with a red light is to stop, not to “yield the right of way.” Mr. Shea thought the second sentence was too long. The committee revised the instruction to read:

A driver who approaches an intersection with a red light has a duty to stop. The driver with the green light has the right to assume that traffic will not enter the intersection against a red light. However, if that driver sees, or in the exercise of reasonable care should see, that another vehicle is going to proceed against the red light, the driver with the green light has a duty to use reasonable care to avoid a collision.

At Mr. Davies’s suggestion, references were added to the statutes on traffic control signals, Utah Code Ann. §§ 41-6a-304 & -305. The committee approved the instruction as revised.

n. *Additional instructions.* Mr. Davies noted that yellow lights are more problematic than red lights. The committee asked him to ask the subcommittee to propose an instruction on rights-of-way at yellow lights. Mr. Nebeker suggested that there should be instructions on flashing red and yellow lights. Dr. Di Paolo suggested that there should be an instruction on approaching an intersection where the lights are not operating. Mr. Humpherys and Mr. Davies did not think the latter situation resulted in much litigation.

o. *CV613. Intoxicated driver.* Mr. Humpherys noted that the reviewing committee (the so-called gang of three) had a question as to whether a blood alcohol level of 0.08 or greater resulted in strict liability or whether it only gives rise to a presumption that a driver was impaired. Mr. Davies read the subcommittee’s response:

With regard to all of our instructions setting forth Traffic Code provisions, including the .08 standard, the committee intended the negligence *per se* instruction (our MUJI 2d 5.5, which it appears you have renumbered [now CV625]) to be given, followed by the pertinent instruction(s) explaining the applicable Traffic Code provision. In the case of .08 intoxication, testing out at .08 is by statute legal intoxication. The presumption to which you refer is, we think, the rebuttable presumption that the testing equipment is accurate. *State v. Vigil*, 772 P.2d 469 (Utah App. 1989). Establishing .08 blood alcohol or breath alcohol is not a presumption; it shows intoxication. In addition, a driver whose

blood alcohol is less than .08 can also be deemed intoxicated, if impairment can be shown.

There is one caveat, which should perhaps be a Committee Note. There is an involuntary intoxication rule (see *State v. Gardner*, 870 P.2d 900 (Utah 1993), which could apply in the rare or unusual case. To keep the instructions as simple as possible, we have not attempted to write that exception into the main instruction. However, it does provide a defense to a claim of intoxication.

In other words, a blood alcohol content of .08 is negligence per se, but the plaintiff must still prove causation. At Mr. Shea's suggestion, the instruction was revised to read:

A driver may not operate a vehicle

[(1) if [he] has a blood or breath alcohol concentration of .08 grams or greater at the time of operation of the vehicle.]

[(2) if [he] is under the influence of [alcohol, any drug, or the combined influence of alcohol and any drug] to a degree that the person cannot operate the vehicle safely.]

Mr. West thought there should be an "or" between subparagraphs (1) and (2). Other committee members thought that "or" was implied by putting the subparagraphs in brackets. Some committee members noted that it may not be an "either/or" situation, but both subparagraphs could apply in a particular case. Mr. Shea will see how the committee has treated similar situations. Subject to further revision to make the instruction consistent with prior practice, the committee approved the instruction as revised.

p. *CV614. Young drivers.* The instruction was revised to read: "A minor driving a motor vehicle is held to the same standard of care as an adult driver." The committee approved the instruction as revised.

q. *CV615. Drivers approached by emergency vehicle.* At Mr. Summerill's suggestion, "immediately" was dropped from the first line. Ms. Blanch recommended replacing the phrase "audible or visual" signals with "audio or visual" or "audible or visible," to be consistent. Dr. Di Paolo noted that the choice of words depends on whether the focus is on what is being emitted or what is being perceived. Ms. Blanch then suggested replacing the phrase with "horns, sirens, or lights." After Mr. Davies read the statutory language, which included

“bells” and “whistles,” the committee decided to use “audio or visual warning devices” instead of “audible or visual signals.” The committee revised the last paragraph to read: “In complying with these duties, a driver must use reasonable care under all of the conditions and circumstances.”

The committee decided to continue its review of the motor vehicle instructions at the next meeting, to allow the subcommittee and the gang of three to address some of the remaining issues in the meantime and to allow the subcommittee to propose a general, introductory committee note explaining the importance of tailoring statutory instructions to the facts of the particular case and to instruct on justifications or excuses for statutory violations when there is evidence to support them.

2. *Next Meeting.* The next meeting will be Tuesday, October 14, 2008 (because of Columbus Day on Monday, October 13, 2008), at 4:00 p.m. The committee will finish its review of the motor vehicle instructions at that time. It will then take up the construction contact instructions at the October 27, 2008, meeting, since the premises liability and insurance obligations subcommittees have not yet finished their work.

The meeting concluded at 6:00 p.m.

# Tab 2

## Motor Vehicle Instructions

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**(1) CV601A. Committee Note**

Much of motor vehicle law is governed by statute, and a civil claim for damages will often involve a violation of the motor vehicle code. These instructions are general in nature, and, rather than include the statutory regulations in each instruction, the Committee recommends appropriate use of Instruction CV625, Violation of statute, ordinance or safety law. If the trial includes evidence of a violation of a statute, the court should supplement the general instruction with CV625, quoting or summarizing the specific subsection(s) – or even parts of subsections – relevant to the evidence.

**(1)(2) CV601B. Introduction.**

Under the law, a driver has various duties that [he] must comply with while driving. I will now explain these duties that apply to this case.

Approved

**(2)(3) CV602. Driver's general duty.**

A driver has the duty to use reasonable care at all times.

References

MUJI 1ST Instruction

5.1

Committee Notes

The court should instruct the jury on the definition of "reasonable care." Instruction CV202.

Approved

**(3)(4) CV603. Duty. Control of automobile vehicle.**

A driver has a duty to keep the vehicle under reasonable control. ~~A vehicle is under reasonable control when the driver has the ability to guide and direct the course of and to operate~~ the automobile vehicle so as to avoid danger.

References:

MUJI 5.3

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

Approved

**(4)(5) CV604. Lookout.**

A driver has a duty to ~~maintain-keep~~ a proper lookout for other traffic and hazards ~~that can be~~ reasonably ~~to be~~ anticipated.

References

Henderson v. Meyer, 533 P.2d 290 (Utah 1975).

Wardell v. Jerman, 18 Utah 2d 359, 423 P.2d 485 (1967).

MUJI 1st Instruction

5.14.

Approved

**(5)(6) CV605. Following at a safe distance.**

A driver has a duty ~~not~~ to follow another vehicle ~~more closely than~~ at a distance that is reasonable and prudent under all existing conditions and circumstances.

References

Utah Code Section 41-6a-711.

Approved

**(6)(7) CV606. Duty of maintenance.**

A driver [an owner] has a duty ~~not~~ to [drive/move a vehicle] [allow a vehicle to be driven/moved] on a roadway only if the vehicle is in an ~~un~~safe condition.

References

Utah Code Section 41 6a 1601.

MUJI 1st Instruction

5.6.

Committee Notes

If there is an alleged violation of a particular statute regarding required equipment and circumstances (e.g., Utah Code Section 41-6A-1601) Instruction CV625 ~~should~~ may be used considered.

Approved

**(7)(8) CV607. Speed.**

A driver has a duty to drive at a safe speed ~~that is safe under the circumstances,~~ ~~with proper regard for existing and potential hazards.~~

The ~~posted~~ speed limit at the place of this accident was [\_\_\_\_\_] miles per hour. Driving at a speed in excess of the ~~posted~~ limit may be evidence of ~~negligence~~ fault. However, conditions and circumstances may allow a driver to drive at a [lower / greater] speed with proper regard for existing and potential hazards. Regardless of the speed limit, all drivers must drive at an appropriate speed in light of all of the existing conditions and circumstances.

References

Utah Code Section 41-6a-601.

Anderson v. Bradley, 590 P.2d 339 (Utah 1979).

MUJI 1st Instruction

5.15.

Approved

**(8)(9) CV608. Minimum speed.**

A ~~person driver~~ may not ~~operate a motor vehicle drive~~ at a speed so slow as to ~~impede or block interfere with~~ the normal and reasonable movement of traffic ~~except when a reduced speed is necessary for safe operation given the existing circumstances unless conditions or circumstances justify a reduced speed for safe operation.~~

References

Utah Code Section 41-6a-605

Approved

**(9)(10) CV609. ~~Duty.~~ Turning/lane change.**

A driver ~~has a duty to not may~~ [turn a vehicle ~~right or left or /~~ change lanes] only ~~when the movement if it~~ can be ~~made done~~ with reasonable safety and after ~~giving~~ an appropriate signal ~~has been given.~~

References

Utah Code Section 41-6A-804.

Batty v. Mitchell, 575 P.2d 1040 (Utah 1978).

MUJI 1st Instruction

5.16.

Approved

**(11) CV6##. "Right of way" defined.**

Statute

"Right-of-way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under circumstances of direction, speed, and proximity which give rise to danger of collision unless one grants precedence to the other.

Option 1. A [vehicle/pedestrian] has the right of way when [he] has the right to proceed.

Option 2. "Right-of-way" means the right of a [vehicle / pedestrian] to proceed in a lawful manner in preference to an approaching [vehicle / pedestrian].

Option 3. Use the phrase "right to proceed in a lawful manner" rather than defining the right of way as the right to proceed

References

Utah Code Section 41-6a-102.

MUJI 1<sup>st</sup> Instruction

**(10)(12) CV610. ~~Duty.~~ Right of way. Left turns.**

A driver turning left has a duty to yield the right of way to any vehicle approaching from the opposite direction that is so close it is an immediate hazard.

References

Utah Code Section 41-6A-903.

MUJI 1st Instruction

5.17.

[Approved](#)

**(11)(13) CV611. ~~Duty.~~ Right of way. Unregulated intersection.**

A driver approaching an intersection not regulated by a traffic control device [or stop signs] has a duty to yield the right of way to any vehicle that is already in the intersection.

When more than one vehicle enters or approaches the intersection at approximately the same time, ~~T~~the driver of a the vehicle on the left has a duty to yield the right of way to the vehicle on [his] right ~~when more than one vehicle enters or approaches the intersection at approximately the same time.~~

[However, a driver may not speed up to enter an intersection first.]

[In order for a driver approaching from the left to have the right-of-way, that driver must enter the intersection clearly ahead of the driver approaching from the right.]

References

Utah Code Section 41-6a-901.

MUJI 1st Instruction

5.5.

Committee Notes

This instruction would also apply to an intersection regulated from all directions by stop signs.

[Approved](#)

**(12)(14) CV612. ~~Duty.~~ Right of way. Traffic signals.**

A driver who approaches an intersection with a red light has a duty to ~~yield the right of way to traffic entering the intersection on a green light stop.~~ The driver with the green light has the right to assume that traffic will not enter the intersection against a red light, ~~and may continue to rely on this assumption unless that.~~ However, if that driver sees, or in the exercise of reasonable care should see, that another vehicle is going to proceed against the red light, ~~In such a situation, the the~~ driver with the green light has a duty to use reasonable care to avoid a collision.

References

[Utah Code Sections 41-6a-304 and -305.](#)

MUJI 1st Instruction

5.8.

[Subcommittee will prepare instruction on yellow light/flashing red light](#)

**(13)(15) CV613. ~~Duty.~~ Intoxicated driver.**

A driver may not operate a vehicle

[if [he] has a blood or breath alcohol concentration of .08 grams or greater at the time of operation of the vehicle.]

[if [he] is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that the person cannot operate the vehicle safely.]

References

Utah Code Section 41-6a-502.

MUJI 1st Instruction

5.12.

[Approved](#)

**(14)(16) CV614. ~~Duty.~~ Young drivers.**

A minor driving a motor vehicle is held to the same standard of care [required of as](#) an adult-driver.

References

Summerhill v. Shipley, 890 P.2d 1042 (Utah App. 1995).

[Approved](#)

**(15)(17) CV615. ~~Duty.~~ Drivers approached by emergency vehicle.**

When ~~immediately~~ approached by an emergency vehicle using ~~audible audio~~ or visual [warning devices or](#) signals, a driver has a duty to:

(1) yield the right-of-way to the emergency vehicle;

(2) immediately move parallel to, and as close as possible to, the right edge or curb of the roadway, clear of any intersection; and

(3) stop and remain stopped until the emergency vehicle has passed.

In complying with these duties, a driver must ~~always~~ use reasonable care [given under](#) all of the [conditions and](#) circumstances.

References

See Utah Code Section 41-6a-904.

MUJI 1st Instruction

5.20.

Committee Notes

This instruction assumes that the emergency vehicle is authorized by law in its emergency travel. If authorization is not stipulated to, the court should address this issue as a matter of law or, if a question of fact exists, by additional instructions relating thereto.

Approved

**(16)(18) CV616. ~~Duty.~~ Emergency vehicles.**

[Name of party] claims that [name of other party] is subject to the following duty(ies):  
[describe the duties] at issue

[Name of other party] claims that [he] was excused from complying with these duties.

Under certain conditions, the law may allow the driver of an emergency vehicle to disregard certain duties if each of the following is true:

(1) if the driver of an emergency vehicle sounds an audible signal or uses emergency lights which are visible from the front of the emergency vehicle, and

(2) the driver was

[responding to, but not returning from, an emergency call];

[in pursuit of an actual or suspected violator of the law];

[responding to, but not returning from, a fire alarm.]

If you decide that both of these conditions are true, then [name of the other party] may

[park or stand in the roadway]

[drive through a stop signal or stop sign, but only slowing down as needed for safety]

[exceed the posted speed limit]

[disregard the duties concerning direction of travel, lane change, or turning]

[describe any other applicable duty]

The right to disregard this duty, however, does not relieve the driver of the duty to operate the emergency vehicle with reasonable care, considering the emergency situation and all other circumstances.

References

See Utah Code Section 41-6a-212. (41-6-14 was amended to 41-6a-212).

MUJI 1st Instruction

5.18; 5.19.

Committee Note

See comment note to CV615 regarding the definition of “authorized” emergency vehicle if the issue is relevant.

**(17)(19) CV617. ~~Duty.~~ Pedestrians.**

A pedestrian must use reasonable care at all times to avoid harm to [himself] and others and to avoid causing an accident.

References

MUJI 1st Instruction

5.21.

**(18)(20) CV618. ~~Duty.~~ Pedestrian crossing a roadway.**

To determine if a pedestrian used reasonable care, you may consider the following:

[(1) A pedestrian crossing a road at any point other than within a marked crosswalk [or within an unmarked crosswalk at an intersection (If this alternative is used, a definition of unmarked crosswalk should be given, see Utah Code Section 41-6a-102(a)) shall yield right-of-way to all vehicles on the road.]

[(2) A pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to be an immediate hazard. An "immediate hazard" exists whenever a reasonably careful person in the position of a pedestrian would realize that [he] would be in danger.]

References

See Utah Code Section 41-6a-1002 and Section 41-6a-1003. (formerly Section 41-6-78 and Section 41-6-79).

MUJI 1st Instruction

5.22.

**(19)(21) CV619. ~~Duty.~~ Drivers toward pedestrians.**

When traffic signals are not in place or not in operation, a driver shall yield the right-of-way by slowing down or stopping, if necessary:

(1) to a pedestrian crossing the road within a crosswalk when the pedestrian is on the half of the road where the driver is traveling, or

(2) when the pedestrian is approaching so closely from the opposite half of the road as to be in danger.

Both a driver and a pedestrian have a continuing duty at all times to use reasonable care for the safety of others and themselves, even when one has the right-of-way over the other.

References

See Utah Code Section 41-6a-1002(1)(a).

**(20)(22) CV620. ~~Duty.~~ Pedestrian signals.**

When pedestrian traffic control signals exist, a pedestrian has the following rights and duties:

(1) A pedestrian facing a steady “Walk” or “Walking Person” signal has the right-of-way and may cross the road in the direction of the signal.

(2) A pedestrian facing a flashing [or steady] “Don’t Walk” or “Upraised Hand” signal may not start to cross the road in the direction of the signal, but a pedestrian who has partially completed crossing on the walk signal keeps the right-of-way while continuing to a sidewalk or safety island.

Both a driver and a pedestrian have a continuing duty at all times to use reasonable care for the safety of others and themselves, even when [he] has the right-of-way over the other.

References

See Utah Code Section 41-6a-306.

MUJI 1st Instruction

5.24.

Question

Do the exceptions to a violation of a statute as described in Instruction CV625 apply?

**(21)(23) CV621. Duty. Driving near children.**

A person has a duty to drive more carefully around a child than a mature person.

References

Woodward v. Spring Canyon Coal Co. 90 Utah 578, 63 P.2d 267 (Utah 1936).

Rivas v. Pacific Finance Co. 16 Utah 2d 183, 397 P.2d 990 (1964).

Kilpack v. Wignall 604 P2d 462, 1979 Utah Lexis 953 (Utah 1979).

**(22)(24) CV622. Duty. Bicyclist.**

A bicyclist has a duty to operate [his] bicycle safely under the circumstances, both for [his] own safety and for the safety of others. Drivers must also consider the nature of bicycles when driving near a bicyclist.

Bicyclists are usually more exposed to injury than drivers of motor vehicles, and therefore drivers should exercise appropriate caution when they know or should know bicyclists to be riding in the vicinity. Similarly, bicyclists should exercise reasonable care for their own safety, given the issues and risks applicable to bicycles.

References

Utah Code Sections 41-6a-1101 to -1114, 41-6a-706.5.

Utah Code Sections 41-6a-102(4), (34), (42).

**(23)(25) CV623. ~~Duty.~~ Bicycles. Three-foot rule.**

A driver may not drive a motor vehicle within three feet of a moving bicycle, unless conditions are such that it is necessary to drive closer than that distance and it can be done reasonably and safely.

References

Utah Code Section 41-6a-706.5.

Committee Note

Instruction CV625 may apply, in which case this instruction should be incorporated into CV625.

**(24)(26) CV624. ~~Duty.~~ Real property owner to remove obstruction impairing view.**

The owner of real property has a duty to remove from [his] property any part of a tree, plant, shrub or other obstruction, that creates a traffic hazard by obstructing the view of a driver on a roadway.

References

Utah Code Section 41-6a-216.

Committee Notes

The exception to a violation of a statute as described in Instruction CV625 may apply and should be used as appropriate.

**(25)(27) CV625. Violation of statute, ordinance or safety law.**

A violation of a safety law is evidence of fault unless the violation is excused. [Name of plaintiff] claims that [name of defendant] violated a safety law that says:

[Quote or summarize in plain language the statute, ordinance or rule.]

If you decide that [name of defendant] violated this safety law, you must decide whether the violation is excused.

A violation is excused if:

[Obeying the law would have created an even greater risk of harm.]

[[he] could not obey the law because [he] faced an emergency that [he] did not create.]

[[he] was unable to obey the law despite a reasonable effort to do so.

[[he] was incapable of obeying the law.]

[[he] was incapable of understanding what the law required.]

Even if a driver complies with a safety law, or is excused from complying with the safety law, a driver must still comply with all other duties that I have explained to you.

References

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

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

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

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

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

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

MUJI 1st Instruction

3.11.

#### COMMITTEE NOTES

The safety law applies if:

(1) [name of plaintiff] belongs to a class of people that the law is intended to protect;  
and

(2) the law is intended to protect against the type of harm that occurred as a result of the violation.

Committee Notes

The instruction should be modified to include only those excuses for which there is supporting evidence.

References

Utah Code Section 41-6a-605.

#### **(26)(28) CV626. Comply with all duties.**

The failure to comply with one or more of the duties or safety laws that I have just explained, unless that failure was excused, is evidence of fault.

The compliance with any duty does not justify the violation of another duty or safety law.

#### **(27)(29) CV627. Assuming obedience to law.**

A driver has a right to assume that other persons will obey the law and exercise reasonable care, unless there is a good reason to believe otherwise.

References:

MUJI 1st Instruction

5.2

#### **(28)(30) CV628. Increased duty.**

The amount of caution required increases with the level of danger that a reasonably careful person would understand in the same situation.

**(29)(31) CV629. Owner who allows minor to drive.**

The owner of a vehicle who knowingly permits a person under age 18 to drive [his] vehicle [or a person who gives or furnishes a vehicle to a person under the age of 18] is responsible for that driver's fault, regardless of how cautious the [owner, giver or furnisher] may have been. Any compensation that you award will apply fully against either or both the driver and the person(s) who [own(s), give(s) or furnish(es)] the vehicle.

References

Utah Code Section 53-3-212.

Committee Notes

The separate imputed liability addressed in Utah Code Section 53-3-211 seldom results in jury trial issues, and also involves insurance issues. As a result, such issues are normally resolved by the court, often in pre-trial motions. This Instruction does not attempt to address section -211.

**(30)(32) CV630. Negligent entrustment.**

The owner of a motor vehicle who allows another person to [use/drive] [his] vehicle, may be responsible under certain circumstances for the harm caused by the [user/driver] if the owner knew or should have known that it was unsafe to allow the driver to [use/drive] the vehicle, and as a result, a reasonable person would realize that the driver may injure someone in the [name of plaintiff]'s position.

In deciding whether the owner exercised reasonable care in giving the vehicle to the [user/driver], you may consider what the owner knew or should have known, such as the [condition of the vehicle] [and the driver's or user's physical and mental condition, his experience, his abilities, his driving habits, etc.].

Committee Notes

The law is not clear to what extent the negligent entrustor is liable for the negligence of the drivers.

**(34)(33) CV631. Threshold.**

[Name of defendant] claims that [name of plaintiff] has not met any of the threshold injury requirements and therefore cannot recover non-economic damages.

A person may not recover non-economic damages resulting from an automobile accident unless [he] has met one or more of the following threshold injury requirements:

[(1) permanent disability or permanent impairment based on objective findings]

[(2) permanent disfigurement];

[(3) medical expenses in excess of \$3,000.]

References

Utah Code Section 31A-22-309(1)(a).

Committee Notes

Neither the statute nor case law has provided clear boundaries on the definitions of disability and impairment. It is also undecided whether the plaintiff or the defendant who asserts the defense carries the burden of proof or burden of moving forward.

**(32)(34) CV632. Police officer testimony.**

A police officer may testify as a fact witness or as an expert witness or both.

If the police officer testified about what [he] saw, about [his] observations of the accident scene or the individuals or vehicles involved, or about [his] interviews of the parties or witnesses, the officer was testifying as a fact witness.

If the officer offered opinions based on [his] education, training, or experience, [he] was testifying as an expert witness.

In either case, you should evaluate the officer's testimony the same as you would the testimony of any other fact or expert witness and give the testimony the weight you think it deserves. You should not give a police officer's testimony greater weight simply because [he] is a police officer.

References

URE 416, 608, 612, 613, 701-705.

Committee Notes

This instruction is a practical answer to one of the most common questions posed by jurors in motor vehicle accident trials. Whether or not to defer to the police officer's assessment of the accident and the issuance of a traffic ticket. The instruction results from the Committee's extensive experience in jury trials involving motor vehicle accidents, and interviewing jurors after their verdicts. This instruction is not based on any specific Utah case law regarding police officer testimony, but instead, represents the Committee's unanimous view of the proper application of the Utah Rules of Evidence to police officer testimony.

**(33)(35) CV633. Insurance.**

You should not consider sources of payment for bills that [name of plaintiff] has incurred, nor how the verdict in this case will be paid. If you have heard or seen any references to insurance during this trial, that information should not be a factor one way or the other in your decision-making. You should not speculate about whether a party had insurance, did not have insurance, nor the amount of insurance, if any. Doing so might produce a verdict which is not based on the evidence.

References

C.R. Owens Trucking Corp. v. Stewart, 29 Utah 2d 353, 509 P2d 821 (1973).

Robinson v. Hreinson, 17 Utah 2d 261, 409 P2d 121 (1965).

Ivie v. Richardson, 9 Utah 2d 5, 336 P2d 781 (1959).

Morrison v. Perry, 104 Utah 151, 140 P2d 772 (1943).

Gibbs M. Smith, Inc. v. U.S. Fidelity & Guar. Co., 949 P2d 337 (Utah 1997).

URE 411.

Committee Notes

The Committee unanimously agreed on the need to address insurance in motor vehicle accident cases, given the ubiquitous nature of automobile insurance and jurors' knowledge of such, the frequency with which insurance is introduced at trial either intentionally or inadvertently, and the inclination of jurors to speculate about insurance coverages during deliberation.

**(34)(36) CV634. Motorcycle helmet usage.**

[A person 18 years of age or over is not required by law to wear protective head gear while riding on a motorcycle on a highway.]

[A person under age 18 is required by law to wear protective headgear riding on a motorcycle on a highway.]

References

Utah Code Section 41-6a-1505

**(35)(37) CV635. Seatbelt usage.**

You are to decide this case without regard to whether you believe that a seatbelt or a child restraint device was either used or not used by any party in this case. If you have either heard evidence directly or indirectly or if you believe that any party in this case either used or did not use seatbelts or child restraint devices, you should not consider such information in deciding a verdict.

References

Utah Code Section 41-6a-1806.