Agenda
Advisory Committee on
Model Civil Jury Instructions

April 12, 2010
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

Welcome and approval of minutes	Tab 1	John Young
Proximate cause and substantial factor revisited	Tab 2	Frank Carney Curt Drake Scott Dubois
Verdict Forms	Tab 3	Frank Carney
CV 140. Post-verdict instruction CV 202(A). "Negligence" defined.	Tab 4	Tim Shea
Post Trial Surveys Of jurors Of judges and lawyers	Tab 5	 Marianna DiPaola Tim Shea

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.

May 10, 2010
June 14, 2010
September 13, 2010
October 12, 2010 (Tuesday)
November 8, 2010
December 13, 2010

Tab 1

MINUTES
Advisory Committee on Model Civil Jury Instructions
March 8, 2010
4:00 p.m.

Present: Juli Blanch, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Timothy M. Shea, Paul M. Simmons, Peter W. Summerill, David E. West

Excused: Honorable William W. Barrett, Jr., John L. Young (chair)

Mr. Carney conducted the meeting in Mr. Young's absence.

1. *Minutes*. Mr. Summerill noted that he is not replacing Jeff Eisenberg as chair of the premises liability subcommittee, as reported in the minutes of January 11, 2010. The minutes were otherwise approved.

2. *Special Verdict Forms*. Mr. Carney proposed using the special verdict form from the medical malpractice instructions as a template for special verdict forms in other areas. He reported that an issue with special verdict forms arose in a recent case. The defendant objected to the special verdict form's use of the term "fault" for "negligence" because "fault," as defined in CV201, includes both the concept of a wrongful act and causation. So by asking the jury, Was the defendant at fault? and Was the defendant's fault a cause of the plaintiff's injuries? the jury was being asked to determine causation twice. Mr. Ferguson thought the same problem would arise if "negligence" were substituted for "fault" because the elements of a claim for negligence include proximate causation. He suggested asking, Did the defendant breach the standard of care? and Was the defendant's breach of the standard of care a cause of the plaintiff's injuries? Mr. Carney suggested asking, Did the defendant act as a reasonable person under the circumstances? The committee thought these alternatives would be too cumbersome. Mr. Simmons noted that "negligence" is used in two different senses--as a cause of action (with all its elements, including causation) and as shorthand for breach of the duty to use reasonable care. The definition of "negligence" in CV202A does not include causation as part of the definition. Dr. Di Paolo suggested asking, "Was the defendant negligent in . . . ," and specifying the particular act or acts of negligence alleged, such as breaking the motor vehicle code. Mr. Carney suggested replacing "fault" with "negligence." Mr. Simmons noted that "fault" would only be necessary where different forms of "fault" are alleged in the same case (such as strict liability, breach of warranty, and negligence in a products liability case) or where different forms of fault need to be apportioned among the parties. Mr. West suggested, as an alternative, to take the causation element out of the definition of "fault." Mr. Fowler noted that "fault" is defined by statute to include causation. Mr. West then suggested asking just one question--"Was the defendant at fault?"--where the question of causation would be subsumed in the question of fault. Mr. Carney suggested adding a note to the effect that the court should specify the type of fault involved in the case, and that it may take more than one question to ask about different forms of fault. Mr. West did not think it was a

big problem, that juries would not interpret the special verdict form to require them to determine the question of causation twice. Mr. Summerill noted that using the term "fault" in the special verdict form could invite the jury to speculate about whether the defendant was guilty of other forms of fault besides negligence or the specific form alleged in the complaint. Mr. Simmons noted that the instruction defining "fault" says that "the fault alleged in this case is . . ." (with the court specifying the form of fault). Mr. Carney noted that he had successfully resisted attempts by plaintiffs to ask, Was the defendant negligent in any of the following respects alleged by the plaintiff? (followed by a laundry list of ways the plaintiff alleges that the defendant was negligent). Mr. Shea thought there is a problem using "fault" and "negligence" interchangeably in the special verdict form because they are defined differently. Mr. Simmons thought that, if the only form of "fault" involved in the case was negligence, the special verdict form could use "negligence" or "negligent" throughout. Mr. Carney suggested adding a note to the effect that the court does not have to list each allegation of negligence or other fault in the verdict form. Mr. Simmons thought that the issue was covered by the instruction setting forth the parties' contentions. Mr. Carney thought that that instruction, MUJI 1st 3.1, was not included in MUJI 2d. Mr. Summerill noted that CV103 allows the court to describe the parties' contentions. Mr. Carney noted that CV103 is a preliminary instruction, given at the beginning of the case, but Mr. Simmons noted that the court is encouraged to repeat the preliminary instructions as necessary at the end of the case. Mr. Carney noted that CV301B allows the court to set out the plaintiff's specific claims in medical malpractice cases and suggested there should be a similar instruction in the general negligence instructions.

Dr. Di Paolo thought there should be another question between the fault/negligence question (question 1) and the causation question (question 2), namely, Was the plaintiff harmed? She noted that the question, Did the defendant's [fault/negligence] harm the plaintiff? assumes that the plaintiff suffered harm. Mr. Carney suggested saying, Did the defendant's negligence cause any harm to the plaintiff? (adding the word *any).* Ms. Blanch preferred the phrase "harm, if any." Messrs. Ferguson and Summerill suggested "the harm alleged by the plaintiff." Mr. Shea noted that the phrase "as alleged by the plaintiff" could modify all of the questions, in which case it would be better to place it in the introduction and not in the questions themselves. The committee approved Mr. Carney's suggestion to add "any" to question 2.

Mr. Ferguson suggested cross-referencing the questions on the special verdict form with the jury instructions, for example, "1. Was the defendant negligent? (*See* instructions nos. 10-12.)" Mr. Carney noted the practical problem of getting the right instruction numbers, since the instructions are often being revised and renumbered up to the time that they are read to the jury. Mr. Summerill noted that it would lead to disputes over which instructions to cross-reference in the verdict form. Mr. Carney

noted that it would also be contrary to the instruction that says no one instruction is to be singled out, that no instruction is more important than another, and that the instructions are to be considered together. Mr. West noted that the attorneys will direct the jury's attention to the instructions they think are important in their closing arguments. The committee decided against cross-referencing instructions in the verdict form.

Dr. Di Paolo thought that the first paragraph of the special verdict form was problematic. Rather than saying, "If you . . . cannot determine a preponderance of the evidence," it should read, "If you . . . cannot determine *the issue based on* a preponderance of the evidence." Mr. Shea thought the phrase "so equally" was also problematic. The first paragraph was revised to read:

> Please answer the following questions *in the order they are presented*. If you find that the issue has been proved by a preponderance of the evidence, answer "Yes." If you find that the evidence is equally balanced, or if you find that the greater weight of evidence is against the issue, answer "No."

Mr. Shea suggested using boxes for the jury to check either Yes or No.

At Mr. Shea's suggestion, the phrase, "sign and return the verdict" was changed to "sign the verdict form, and advise the bailiff."

At Mr. Shea's suggestion, the phrase "do you find" was deleted from question 3 (and from question 6 in the comparative fault special verdict form).

The committee considered the proposed special verdict form for comparative fault. Mr. Fowler noted that question 5 uses both "negligence" and "fault" in the same sentence. Question 5 was revised to read: "Assuming the negligence totals 100%, what percentage is attributable to . . . ," and "fault" was replaced with "negligence" throughout the special verdict form.

Mr. West suggested adding the following sentence after the jury apportions fault: "Stop here if the plaintiff's negligence is 50% or more." Messrs. Ferguson and Carney said that they have seen judges require the jury to complete the damage section of the form even if they find the plaintiff 50% or more at fault, to avoid a retrial if the jury's apportionment of damages is reversed on appeal. Mr. West noted that, by the same reasoning, the jury could be required to answer every question on the verdict form, regardless of its answer to any other question. Mr. Summerill suggested adding a note to say that, if the jury's finding of comparative fault may be thrown out on appeal, it may be appropriate to ask the jury to find damages. Mr. West thought that, if the jury is

asked to complete the damage section, it will think it is awarding damages. Other committee members thought that the jury's findings on damages might be skewed if the jury thinks the plaintiff will not receive the amount of damages it finds. Mr. Simmons noted that, if the jury's apportionment of fault is reversed on appeal, any re-trial could be limited to apportionment (if necessary) and damages. Mr. Summerill thought that the sentence "Stop here . . ." should also say, "If you decide that [name of plaintiff]'s fault is 50% or greater, [name of plaintiff] will recover nothing." Other committee members thought that concept was adequately covered in CV211 and that the jury would realize that the plaintiff will recover nothing if they are not asked to complete the damage section of the verdict form.

Mr. Carney noted that the instructions at the end of question 5 were meant to avoid the "net verdict" problem, where the jury awards only the net amount of the plaintiff's damages, after first applying the percentage of the plaintiff's comparative fault. This leads to a double reduction, because the court then applies the jury's finding of comparative fault to the jury's award of damages.

Question 6 was revised to read, "What amount, if any, would fairly compensate [name of plaintiff] for [his] harm?" Mr. Simmons asked whether that would invite the jury to conclude that no amount of money could fairly compensate the plaintiff for his harm and therefore award nothing.

Mr. Carney noted that some defense attorneys object to having multiple lines for damages because they think juries award more if there are multiple lines, but the committee did not see a way to avoid listing past and future economic damages separately and breaking out economic damages into medical expenses, lost wages, and other economic damages, since prejudgment interest is only awarded on past economic damages, and one must know the amount awarded for medical expenses in determining subrogation interests. Mr. West asked about adding loss of earning capacity and loss of household services as other items of damage. Mr. Carney suggested adding a note to say that only those items should be listed for which there is evidence, and there may be other items supported by the evidence that should also be listed. Ms. Blanch asked whether "Noneconomic Damages" should be followed by "(i.e., pain and suffering)." The committee thought not and noted that "noneconomic damages" are defined in CV2004.

Mr. Carney asked Mr. Fowler's subcommittee to propose a special verdict form for a products liability case.

Mr. Summerill suggested that the instructions also include a proposed special verdict form for a wrongful death and survival case in which there are multiple heirs and issues of comparative fault of the decedent and one or more heirs.

Mr. Summerill will draft a proposed special verdict form for a complex wrongful death case.

3. *Feedback*. Dr. Di Paolo noted that the best feedback the committee could receive would come from jurors themselves. She volunteered to write a question or short survey that could be used in interviewing jurors after the trial. Mr. Carney suggested adding a closing jury instruction, to be given after the verdict is returned, thanking the jurors for their time and reminding them that they can now talk to the attorneys if they would like to but that they do not have to talk to anyone about the case. Mr. West suggested that the instruction should also say that the attorneys should honor the jurors' wishes.

Mr. Shea will draft an advisory committee note regarding post-verdict communications with jurors.

4. *CV202B. Gross negligence*. Mr. Carney introduced a proposed instruction on gross negligence, based on recent case law holding that a release does not release the releasee from claims of gross negligence and defining "gross negligence." At Mr. Shea's suggestion, the phrase "that may result" was deleted from the end of the instruction so that it reads, "it is carelessness or recklessness to a degree that shows utter indifference to the consequences." Mr. Summerill suggested replacing "utter" with "complete," but the committee thought that "complete" imposed a higher burden and decided to stay with "utter."

5. *Products Liability Instructions*. Mr. Fowler noted that the product liability instructions probably need to be revised in light of recent cases, including *Egbert v. Nissan,* 2010 UT 8.

6. *Causation Instructions*. Mr. Carney noted that Curt Drake and Scott Dubois of Snell & Wilmer have complained that the MUJI 2d causation instructions omit the "substantial factor" or "substantial role" language of MUJI 3.14 and 6.35. Mr. Carney suggested that they be invited to the next committee meeting to explain their concerns.

7. *Next Meeting*. The next meeting will be Monday, April 12, 2010, at 4:00 p.m.

The meeting concluded at 6:00 p.m.

Tab 2

(1) MUJI 1st Instructions on Proximate Cause

(a) MUJI 6.34

PROOF OF MEDICAL CAUSATION REQUIRED The plaintiff bears the burden of proving, by a preponderance of the evidence, which evidence must include expert testimony, that deviation from the standard of care more likely than not caused the injury or loss of which the plaintiff complains. Comments This instruction is appropriate in cases that do not deal with an alleged loss of chance or diminution in likelihood of recovery. In cases that involve such issues an instruction should take into account the decision in George v. LDS Hospital, 797 P.2d 1117 (Utah Ct. App. 1990).

This instruction describes a ``but for ...'' test of proximate cause.

THE DRAFTING COMMITTEE WAS NOT UNANIMOUS IN ITS APPROVAL OF THE CORRECTNESS OF THIS INSTRUCTION. IT SHOULD BE REVIEWED WITH CAUTION.

References:

Denney v. St. Mark's Hosp., 21 Utah 2d 189, 442 P.2d 944 (1968)

Edwards v. Clark, 96 Utah 121, 83 P.2d 1021 (1938)

(b) MUJI 6.35

PROOF REQUIRED FOR PROXIMATE CAUSE A physician's failure to conform to the applicable standard(s) of care may be a proximate cause of injury to a patient if the patient proves, by a preponderance of the evidence, which must include expert testimony, that such failure was a substantial factor in bringing about the injury.

Comments

This instruction describes a ``substantial factor'' test of proximate cause.

There is no present case law to establish the measure of damages to be awarded in instances where loss of chance or diminution in likelihood of recovery is alleged.

THE DRAFTING COMMITTEE WAS NOT UNANIMOUS IN ITS APPROVAL OF THE CORRECTNESS OF THIS INSTRUCTION. IT SHOULD BE REVIEWED WITH CAUTION.

References:

George v. LDS Hosp., 797 P.2d 1117 (Utah Ct. App. 1990)

(c) 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.

References:

Bennion v. LeGrand Johnson Constr. Co., 701 P.2d 1078 (Utah 1985)

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

Skollingsberg v. Brookover, 26 Utah 2d 45, 484 P.2d 1177 (1971)

Hall v. Blackham, 18 Utah 2d 164, 417 P.2d 664 (1966)

JIFU No. 15.6 (1957)

BAJI No. 3.75 (1986)

(d) 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.

References:

Bennion v. LeGrand Johnson Constr. Co., 701 P.2d 1078 (Utah 1985)

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

Skollingsberg v. Brookover, 26 Utah 2d 45, 484 P.2d 1177 (1971)

Hall v. Blackham, 18 Utah 2d 164, 417 P.2d 664 (1966)

JIFU No. 15.6 (1957)

BAJI No. 3.75 (1986). Reprinted with permission; copyright © 1986 West Publishing Company

(2) MUJI 2 Instructions on Causation

(a) CV209 "Cause" defined.

I've instructed you before that the concept of fault includes a wrongful act or failure to act that causes harm.

As used in the law, the word "cause" has a special meaning, and you must use this meaning whenever you apply the word. "Cause" means that:

(1) the person's act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and

(2) the person's act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature.

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

References

Raab v. Utah Railway Company, 2009 UT 61.

Steffensen v. Smith's Management Corp., 862 P.2d 1342 (Utah 1993).

McCorvey v UDOT, 868 P.2d 41, 45 (Utah 1993) ("there can be more than one proximate cause or, more specifically, substantial causative factor, of an an injury.")

Rees v. Albertson's, Inc., 587 P.2d 130 (Utah 1978). MUJI 1st Instruction 3.13; 3.14; 3.15.

Committee Notes

The term "proximate" cause should be avoided. While its meaning may be understood by lawyers, the lay juror may be unavoidably confused by the similarity of "proximate" to "approximate." The committee also rejected "legal cause" because jurors, looking for fault, may look only for "illegal" causes. Charrow, Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions (1979) 79 Colum. L. Rev. 1306.

The Utah Code includes "proximate" cause in its definition of "fault" in Section 78B-5-817, but did not define the term. We intend to simplify the description of the traditional definition, but not change the meaning.

In Mitchell v. Gonzales, 819 P.2d 872 (Cal. 1991), the supreme court of California held that use of the so-called "proximate cause" instruction, which contained the "but for" test of cause in fact, constituted reversible error and should not be given in California negligence actions. The court determined, using a variety of scientific studies, that this instruction may improperly lead jurors to focus on a cause that is spatially or temporally closest to the harm and should be rejected in favor of the so-called "legal cause" instruction, which employs the "substantial factor" test of cause in fact. CACI 430 reflects this adjustment in the law; embracing the "substantial factor" test and abandoning the term "proximate cause."

Recognizing additional studies of the confusion surrounding "legal cause," the court also recommended that "the term 'legal cause' not be used in jury instructions; instead, the simple term 'cause' should be used, with the explanation that the law defines 'cause' in its own particular way." Id., at 879 (citation omitted). These recommendations have since been integrated into the California jury instructions.

(b) CV309 “Cause” defined.

As used in the law, the word "cause" has a special meaning, and you must use this meaning whenever you apply the word.

"Cause" means that:

(1) the person's act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and

(2) the person's act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature.

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

MUJI 1st Instruction 6.34; 6.35

Committee Notes

This instruction tracks the MUJI 2nd instruction on causation.

Expert testimony is usually necessary to establish causation in a medical malpractice claim. Butterfield v. Okubo, 831 P.2d 97, 102 (Utah 1992). There are exceptions when the causal link is readily apparent using only "common knowledge." Bowman v. Kalm, 2008 UT 9, 179 P.3d 754.

The committee considered a "loss of chance" instruction, but decided that Utah law is unclear on whether such instructions are appropriate. Counsel should review Restatement (Second) of Torts § 323(a) (1965); Medved v. Glenn, 2005 UT 77; 125 P.3d 913 (increased risk of harm is a cognizable injury where a related injury is also present) ; Anderson v. BYU, 879 F.Supp 1124 (D. Utah 1995); Seale v. Gowans, 923 P.2d 1361 (Utah 1996); George v. LDS Hospital, 797 P.2d 1117 (Utah App. 1990); Anderson v. Nixon, 139 P.2d 216 (Utah 1943); R.A. Eades, Jury Instructions on Medical Issues, Instructions 10-10 to 10-12 (LexisNexis, 6th ed. 2007).

Tab 3

CV299A Special Verdict - One Defendant (No Comparative Fault)

MEMBERS OF THE JURY:

Please answer the following questions *in the order they are presented*. If you find that the issue has been proved by a preponderance of the evidence, answer "Yes." If you find that the evidence is equally balanced or that the greater weight of evidence is against the issue, answer "No."

At least six jurors must agree on the answer to each question, but they need not be the same six on each question. When six or more of you have agreed on the answer to each question that is required to be answered, your foreperson should sign and date the form and advise the bailiff that you have reached a verdict.

(1) Was [name of defendant] negligent? (Check one.)

☐ Yes ☐ No

(If you answer "Yes," please answer Question 2. If you answer "No," stop here, sign the verdict form and advise the bailiff.)

(2) Was this negligence a cause of any harm to [name of plaintiff]? (Check one.)

☐ Yes ☐ No

(If you answer Yes," please answer question 3. If you answer "No," stop here, sign the verdict form and advise the bailiff.)

(3) What amount, if any, would fairly compensate [name of plaintiff] for [his] harm? *(Answer this only if you checked "Yes" on both Questions (1) and (2).)*

(a) Economic Damages:

(1) Past Medical Expenses $_____

(2) Future Medical Expenses: $_____

(3) Past Lost Wages: $_____

(4) Future Lost Wages: $_____

(5) Other Economic Damages: $_____

(b) Noneconomic Damages: $_____

Total Damages: $_____

(When six or more of you have agreed on the answer to each question that is required to be answered, your foreperson should sign and date the form and advise the bailiff that you have reached a verdict.)

_____ _____

Date Jury Foreperson

CV299B. Special Verdict - One Defendant (Comparative Fault)

MEMBERS OF THE JURY:

Please answer the following questions *in the order they are presented*. If you find that the issue has been proved by a preponderance of the evidence, answer "Yes." If you find that the evidence is equally balanced or that the greater weight of evidence is against the issue, answer "No."

At least six jurors must agree on the answer to each question, but they need not be the same six on each question. When six or more of you have agreed on the answer to each question that is required to be answered, your foreperson should sign and date the form and advise the bailiff that you have reached a verdict.

(1) Was [name of defendant] negligent? (Check one.)

☐ Yes ☐ No

(If you answer "Yes," please answer Question 2. If you answer "No," stop here, sign the verdict form and advise the bailiff.)

(2) Was this negligence a cause of any harm to [name of plaintiff]? (Check one.)

☐ Yes ☐ No

(If you answer "Yes," please answer Question 3. If you answer "No," stop here, sign the verdict form and advise the bailiff.)

(3) Was [name of plaintiff] also negligent? (Check one.)

☐ Yes ☐ No

(If you answer "Yes," please answer Question 4. If you answer "No," please skip Questions 4 and 5 and go on to Question 6.)

(4) Was [name of plaintiff]'s negligence a cause of [his] own harm?

☐ Yes ☐ No

(If you answered Question 4 "Yes," please answer Question 5. If you answered Question 4 "No," please skip Question 5 and go on to Question 6.)

(5) Assuming all of the negligence totals 100%, what percentage is attributable to:

[Name of Defendant]: _____ %
[Name of Plaintiff]: _____ %
Total: 100 %

Stop here if [name of plaintiff]'s negligence is 50% or more; do not answer Question (6).

(Please answer Question 6 if you checked "Yes" on both Questions (1) and (2). Do ***not*** *deduct from the damages any percentage of negligence that you have assessed to plaintiff. The judge will make any necessary deductions later.)*

(6) What amount, if any, would fairly compensate [name of plaintiff] for [his] harm?

(a) Economic Damages:

(1) Past Medical Expenses	$_____
(2) Future Medical Expenses:	$_____
(3) Past Lost Wages:	$_____
(4) Future Lost Wages:	$_____
(5) Other Economic Damages:	$_____
(b) Noneconomic Damages:	$_____
Total Damages:	$_____

(When six or more of you have agreed on the answer to each question that is required to be answered, your foreperson should sign and date the form and advise the bailiff that you have reached a verdict.)

_____ _____

Date Jury Foreperson

Advisory Committee Note

Section 78B-5-817 defines “fault” as including causation. Instruction CV201, Fault defined, is in accord. However, the committee believes the jury should determine the issue of fault separately from the issue of causation, and we have ordered the questions accordingly in the verdict form.

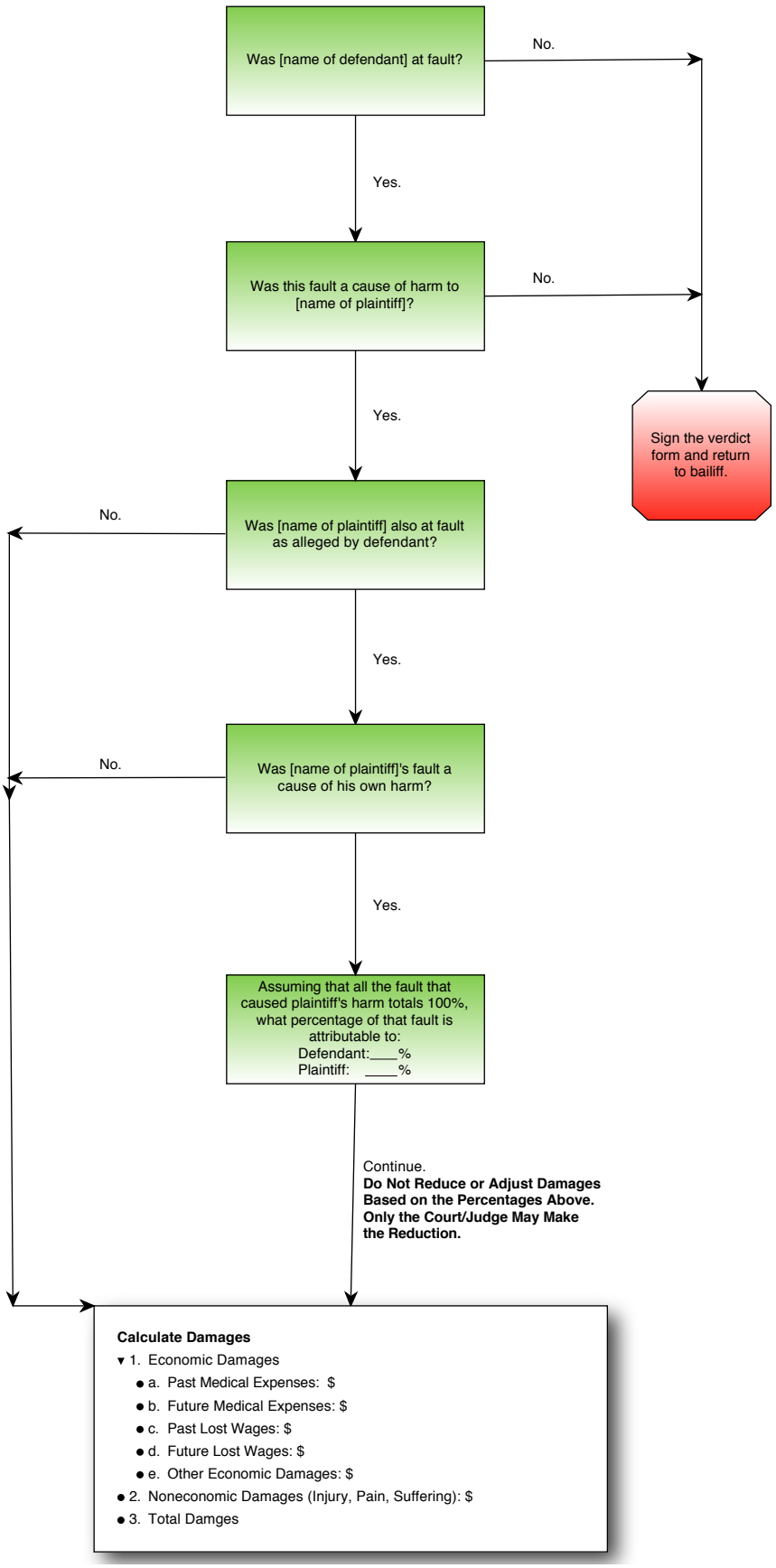
Question (1) Was [name of defendant] negligent? We use the term “negligent” advisedly. “Negligence” is commonly used in two different senses: as a cause of action (with all of its elements, including causation) and as shorthand for breach of the duty to use reasonable care. In question (1), we intend the latter meaning, as the term is defined in CV202A, which does not include causation as part of the definition.

Although the verdict form should not list each act that is claimed to be a violation of the standard of care, if plaintiff claims damages under more than one cause of action (such as strict liability, breach of warranty, and negligence in a products liability case), the court should replace “negligent” with “at fault.” The same is true if the jury needs to apportion different forms of fault among the parties.

Question (2) Was this negligence a cause of any harm to [name of plaintiff]? In this question, we intend that the jury decide whether plaintiff was harmed and whether defendant’s breach of the duty of care caused that harm, as defined in CV209.

Question (3)/(6) What amount, if any, would fairly compensate [name of plaintiff] for [his] harm? There must be some evidence to support each item of damages listed on the verdict form. The court should delete or add items, as needed to conform to the evidence.

Special Verdict Flowchart w/ Comparative Fault



Tab 4

(1) CV140. Post-verdict instruction. (new)

Ladies and gentlemen of the jury, this trial is finished. Thank you for your service. The American system of justice relies on your time and your sound judgment, and you have been generous with both. You serve justice by your fair and impartial decision. I hope you found the experience rewarding.

You may now talk about this case with anyone you like. You might be contacted by the press or by the lawyers. You do not have to talk with them - or with anyone else, but you may. The choice is yours. I turn now to the lawyers to instruct them to honor your wishes if you say you do not want to talk about the case.

If you do talk about the case, please respect the privacy of the other jurors. The confidences they may have shared with you during deliberations are not yours to share with others.

Again, thank you for your service.

(2) CV202A "Negligence" defined.

You must decide whether [names of persons on the verdict form] were negligent.

Negligence means that a person did not use reasonable care. We all have a duty to use reasonable care to avoid injuring others. Reasonable care is simply what a reasonably careful person would do in a similar situation. A person may be negligent in acting or in failing to act.

The amount of care that is reasonable depends upon the situation. Ordinary circumstances do not require extraordinary caution. But some situations require more care because a reasonably careful person would understand that more danger is involved.

To establish negligence, [name of plaintiff] has the burden of proving three things:

(1) first, what the standard of care is;

(2) second, that [name of defendant] failed to follow this standard of care; and

(3) third, that this failure to follow the standard of care was a cause of [name of plaintiff]'s harm.

In this action, [name of plaintiff] alleges that [name of defendant] failed to follow the standard of care in the following respects:

(1)

(2)

(3)

If you find that the [name of defendant] breached the standard of care in any of these respects, then you must determine whether that failure was a cause of [name of plaintiff]'s harm.

References

Dwiggins v. Morgan Jewelers, 811 P.2d 182 (Utah 1991).

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

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

MUJI 1st Instruction

3.2; 3.5; 3.6.

Tab 5

January 12, 2010

Attorney/Judge
Firm Name
Mailing Address

Dear [Attorney/Judge]:

You were recently involved in [CASE NAME/CASE NUMBER], a case tried to jury verdict. Please complete and return the following to Tim Shea/Utah Jury Instruction Committee at:

	Circle One
Did you use the Model Utah Jury Instructions, 2nd?	Yes No
Did you modify or alter any of the Model Instructions? (If yes, please submit your alterations with this form).	Yes No
Did you need to draft an instruction because one was unavailable in MUJI 2nd? (If yes, please submit your instruction with this form).	Yes No
Please provide any comments:	

Jury Trials by Judge, Attorney and Party February 2010

case_num	locn_descr	descr	Date of Trial	judge_last_name	party_code	party_last_name	party_first_name	attorney_last_name	attorney_first_name
060914193	Salt Lake City District	Personal Injury	02/08/10	TREASE	DEF	UTAH TRANSIT AUTHORITY		MULL	DAVID F
060914193	Salt Lake City District	Personal Injury	02/08/10	TREASE	DEF	UTAH TRANSIT AUTHORITY		PETTIT	KARA L
060914193	Salt Lake City District	Personal Injury	02/08/10	TREASE	PLA	MCGINNIS	KAY	NEWHALL	CLARK
060914193	Salt Lake City District	Personal Injury	02/08/10	TREASE	PLA	MCGINNIS	PAUL	NEWHALL	CLARK
070913175	Salt Lake City District	Personal Injury	02/24/10	TOOMEY	DEF	BAMBROUGH	CLARK	GRAY	RICHARD L
070913175	Salt Lake City District	Personal Injury	02/24/10	TOOMEY	PLA	MIGLIACCIO	DANIEL	KIDD	DAMIAN W