

Agenda

Advisory Committee on Model Civil Jury Instructions

April 11, 2011
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
CV1109 Recovery for injury to ski resort patrons.	Tab 2	David Cutt
Jury Orientation Video		
General Instructions	Tab 3	Phil Ferguson Peter Summerill

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 9, 2011 (Education Room)
June 13, 2011
September 12, 2011
October 11, 2011 (Tuesday)
November 14, 2011
December 12, 2011

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions

March 14, 2011

4:00 p.m.

Present: John L. Young (chair), Dianne Abegglen, Juli Blanch, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Timothy M. Shea, Paul M. Simmons, Ryan M. Springer, Peter W. Summerill, Honorable Kate A. Toomey

Excused: Honorable Deno Himonas, David E. West

1. *Premises Liability Instructions.* The committee continued its review of the premises liability instructions:

a. *CV1108. Duty of property seller.* The committee approved the committee note that was added to this instruction since the last meeting.

b. *CV1109. Recovery for injury to ski resort patrons.* The instruction was previously approved, subject to a revision of the committee note. Mr. Simmons asked if the statement in the new committee note that “[t]here may be other risks identified in the case which are or may be ‘an integral part of . . . skiing’” meant that whether other activities are “an integral part of skiing” was a question of fact that the jury had to decide or a preliminary matter for the court to decide as a matter of law. The committee decided that it was probably a question for the court to decide and that the instruction did not need to be changed. The committee approved the committee note as written.

2. *General Instructions.* The committee revisited the general instructions. Mr. Ferguson and Mr. Shea had read through them and tried to take out duplicative language. Mr. Summerill did a frequency analysis of the instructions and noted that the words most commonly used were *you*, *evidence*, *not*, *case*, and *must*. He suggested that the instructions could be revised even more to reduce the use of these words and that they could be rephrased in a positive manner.

Dr. Di Paolo joined the meeting.

a. *CV101A, General admonitions, & CV101B, Further admonition about electronic devices.* Mr. Young thought that CV101A needed a positive introduction. He suggested that the instruction should start with what the jury is supposed to do. Mr. Carney suggested that the instruction tell the jury how important their job is. Mr. Summerill concurred. He said that in a recent focus group, all the participants said they would do their own research, but after they were told why it was important that they not do their own research, all but two changed their minds and said they would follow the instruction. Mr. Carney read a proposed instruction from the American College of Trial Lawyers cautioning

against the use of the internet and use of electronic devices in the courtroom. Mr. Carney will e-mail the ACTL proposed instructions to the committee.

Ms. Blanch joined the meeting.

Ms. Blanch noted that prospective jurors need to be cautioned against use of the internet as well. She had some Google the attorneys and witnesses before filling out juror questionnaires in a recent trial. Mr. Humpherys suggested that they be asked to commit to follow the admonition against use of electronic devices. Mr. Carney noted that the ACTL has jurors sign a statement that they will abide by the court's admonition. He added that the jurors need to be told why it is important that they not use electronic devices in connection with their jury service. Dr. Di Paolo agreed, noting that even college students don't understand why they cannot use term papers and research they find on the internet. Mr. Shea suggested shortening CV101B and combining it with CV101A. Mr. Ferguson thought they should be kept separate because electronic devices need their own emphasis. The committee deferred further discussion of CV101A and CV101B.

Mr. Shea will work on revising CV101A and CV101B, with the help of Mr. Carney.

b. *CV102. Role of the judge, jury and lawyers.* Judge Toomey suggested that someone go through all the general instructions and reduce the number of *you's*. Mr. Summerill suggested changing the passive verbs to active voice. Dr. Di Paolo said that whether *you* and the active voice are appropriate in a given case depends on the discourse, that sometimes it is necessary to use them to engage the listener and to keep what you want the listener to focus on at the beginning of the sentence. Mr. Humpherys asked whether it was necessary to say that jurors are officers of the court. Messrs. Carney and Summerill questioned whether that was true. Mr. Humpherys also wondered whether it was necessary to explain the lawyer's role, since the jurors will see what the lawyers do. Messrs. Fowler and Springer thought the important part of the instruction was that the law comes from the judge, not from the lawyers or the jurors' own opinions. Judge Toomey offered to look at the instructions with an eye towards tightening them up but would not be able to get to them this week. Mr. Carney thought the committee should do the first draft and then run them by the judges on the committee. Mr. Shea noted that the last paragraph of CV102 is included in the new juror video. Mr. Young suggested that the committee watch the video at the next meeting. Dr. Di Paolo suggested that the instructions be revised to follow and supplement the video. The committee revised the instruction to read:

You and I and the lawyers all play important roles in the trial.

I supervise the trial and decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also explain the meaning of the law.

You must follow that law and decide what the facts are. The facts generally relate to who, what, when, where, why, how or how much. The facts must be supported by the evidence.

The lawyers present the evidence and try to persuade you to decide the case in favor of their clients.

Television and movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

The committee approved the instruction as modified.

c. *CV103. Nature of the case.* Judge Toomey suggested striking the first sentence. Dr. Di Paolo thought it was helpful to let the jurors know where they are in the process. Mr. Springer asked whether jurors will understand the term *damages*. The committee revised the instruction to read:

In this case the plaintiff is [name of plaintiff]. The defendant is [name of defendant].

[Name of plaintiff] seeks [describe claim].

[Name of defendant] [denies liability, etc.].

[[Name of defendant] has filed what is known as a [counterclaim/cross-claim/third-party complaint/etc.], seeking [describe claim].]

The committee approved the instruction as revised.

d. *CV104. Order of trial.* Mr. Humpherys suggested deleting the last sentence of subparagraph (2). Mr. Springer thought it was useful to explain the order of proof and reception of evidence. Dr. Di Paolo thought it could be a problem to delete the sentence if the court allowed rebuttal evidence; she pointed

out that *may* is permissive, not mandatory. Mr. Humpherys also suggested deleting the last sentence of subparagraph (5), but Mr. Ferguson thought the jurors need to hear some things more than once. The committee revised the instruction to read:

The trial proceeds as follows:

(1) The lawyers will make opening statements outlining what the case is about and what they think the evidence will show.

(2) [Name of plaintiff] will offer evidence first, followed by [name of defendant]. I may authorize additional evidence.

(3) Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must follow the law as I explain it to you, even if you do not agree with it.

(4) The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

(5) The final step is for you to go to the jury room and discuss the evidence and the instructions among yourselves until you reach a verdict.

The committee approved the instruction as modified.

e. *CV105. Sequence of instructions not significant.* At Judge Toomey's suggestion, the first two sentences were deleted. (The second sentence was moved to CV104.) The committee approved the instruction as modified.

f. *CV106. Jurors must follow the instructions.* The committee deleted the instruction, on the grounds that it is adequately covered in other instructions. Subsequent instructions will be renumbered accordingly.

g. *CV107. Jurors may not decide based on sympathy, passion and prejudice.* At Mr. Summerill's suggestion, the order of the sentences was reversed. The committee approved the instruction as modified.

h. *CV108. Note-taking.* Mr. Humpherys asked whether the instruction should say that the court will keep the notes. Mr. Shea said that the

practice depends on the judge. Mr. Young thought the committee should recommend that a rule be adopted that requires jurors to leave their notes during breaks and at the end of the trial. Mr. Shea noted that, if it were a rule that jurors leave their notes, then the notes would become a court record and would be presumptively public. Mr. Springer noted that Utah Rule of Civil Procedure 47(n) already covers the jurors' use of notes. The committee revised the instruction to read as follows:

You may take notes during the trial and have those notes with you when you discuss the case. If you take notes, do not over do it, and do not let your note-taking distract you from following the evidence. Your notes are not evidence, and you should use them only as a tool to aid your personal memory. I will secure your notes in the jury room during breaks and have them destroyed at the end of the trial.

The committee deleted the committee note and approved the instruction as modified.

Judge Himonas joined the meeting and asked to be excused. He had just gotten out of trial.

i. *CV110. Rules applicable to recesses.* The committee approved the deletion of this instruction as redundant. Mr. Carney asked whether a jury instruction is needed for the start of recesses. The committee thought not. Judge Toomey noted that she reminds the jurors of the court's admonitions before every recess, as do most other judges.

j. *CV111. All parties equal before the law.* The committee revised the instruction to read:

"Person" means an individual, corporation, organization, or other legal entity.

Judge Toomey thought the second sentence, identifying the parties and the types of entities they are, was necessary. She suggested moving it to CV103, where the court introduces the parties, as an option if one or more of the parties is not an individual. Ms. Blanch thought it was important to keep the instruction a separate instruction if the defendant is a corporation. Mr. Young suggested moving the instruction to CV104 and moving CV111-CV116 to follow CV104. Mr. Simmons thought it was important to keep the definition of *person* because the term is used in other instructions. Judge Toomey suggested starting CV103 with,

“All parties are equal before the law. A party may be . . .” Mr. Shea suggested adding, “In this case the plaintiff is [identify entity]. The defendant is [identify entity]. This should make no difference to you. . . .” Mr. Summerill suggested: “All parties are equal before the law. It should make no difference to you if a party is an individual, a corporation or other legal or business entity” or “It should make no difference to you that the plaintiff is [e.g., an individual] or that the defendant is a [identify entity]. Messrs. Humpherys and Carney noted that the instruction that all parties are equal before the law also applies to more than just whether the party is an individual or a corporation but also applies to such things as height, weight, sex, race, and immigration status. Mr. Shea suggested revising the instruction to read: “All parties are equal before the law. [It makes no difference that the plaintiff is [describe plaintiff] or that the defendant is [describe defendant]. You must decide this case as if it were between individuals.” Mr. Springer suggested deleting CV111 and beefing up the committee note to CV107. Dr. Di Paolo thought that CV111 fit the title of CV107 better. She thought the title of CV111 should be “Definition of *person*.” The title of CV107 was changed to “All persons equal before the law,” and the title of CV111 was changed to “Definition of *person*.” Mr. Springer suggested putting CV111 just before CV107 and questioned whether the instruction was necessary in a case where all the parties are individuals. CV107 was revised to start out, “All parties are equal before the law. You must decide this case based on the facts . . .” The committee deferred further discussion of CV107 and CV111 until the next meeting.

3. *Next Meeting.* The next meeting will be Monday, April 11, 2011, at 4:00 p.m.

The meeting concluded at 6:00 p.m.

Tab 2

CV1109 Recovery for injury to ski resort patrons.

[Name of defendant] claims that [he] is not liable for that part of [name of plaintiff]'s harm that was caused by one or more of the risks of skiing. To succeed on this claim, [name of defendant] must prove that [name of plaintiff]'s harm that was caused by [describe applicable conditions in Utah Code Section 78B-4-402(1)(a)-(h)].

References

Utah Code Section 78B-4-402.

Utah Code Section 78B-4-403.

Clover v. Snowbird Ski Resort, 808 P.2d 1037 (Utah 1991).

Ghionis v. Deer Valley Resort Co., 839 F. Supp. 789 (D. Utah 1993).

White v. DeSeelhorst, 879 P.2d 1371 (Utah 1994).

Rothstein v. Snowbird Corp., 2007 UT 96, 175 P.3d 560.

MUJI 1st Instruction

11.16

Committee Notes

This instruction is designed for use when a question of fact exists about whether the mechanics of the injuries or the instrumentality involved falls within those risks inherent in skiing. This instruction should be given with instructions defining the elements of negligence and reasonable care and with an instruction that all of the jury instructions be read together and considered as a whole.

Give this instruction in conjunction with Instruction CV202A. "Negligence" defined.

The committee decided against using "inherent" to modify "risks." The risks identified in the statute are, by definition, inherent risks or risks that are integral to skiing, and the modifier "inherent" adds no value to the instruction. The judge should instruct on those risks, taken from the statute, for which there is evidence. However, the statutory list is not an exhaustive list. There may be other risks identified in the case which are or may be "an integral part of the sport of recreational, competitive, or professional skiing."

Tab 3

General Instructions

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(1) CV101A General admonitions.

You have now been sworn as jurors ~~in this case. I want to impress on you the seriousness of being a juror. You must come to the case without bias and attempt to reach a fair verdict based on the evidence and on the law. Before we begin, and~~ I need to explain how to conduct yourselves during the trial and during recesses. You must decide this case based only on the evidence presented in this trial and the instructions that I provide. Therefore, there are a lot of things that people often do that you are not permitted to do.

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

Do not allow anything that happens outside this courtroom to affect your decision. ~~During the trial do~~ Do not talk about this case with anyone, including your family, friends, or even your fellow jurors until after I tell you that it is time for you to decide the case. ~~When it is time to decide the case, you will meet in the jury room.~~ You may then discuss the case only in the jury room, ~~at the end of the trial,~~ when all of the jurors are present. After the trial is over and I have released you from the jury, you may discuss the case with anyone, but you are not required to do so.

~~During the trial you must~~ Do not listen to anyone talk about the case outside this courtroom. ~~A~~ although it is a normal human tendency to talk with other people, ~~do~~ Do not talk with any of the parties or their lawyers or with any of the witnesses. ~~By this, I mean do not talk with them~~ at all, even to pass the time of day. While you are in the courthouse, the clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you.

If anyone tries to talk to you about the case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and tell the clerk or the bailiff that you need to see me to report the incident. If you must talk to me, do not discuss it with your fellow jurors.

~~During the trial do~~ Do not read about the case in the newspapers or on the internet or listen to radio or television broadcasts about the trial. If a headline or an announcement catches your attention, do not read or listen further. Media accounts may be inaccurate or may contain matters that are not evidence.

~~You must decide this case based only on the evidence presented in this trial and the instructions that I provide.~~ Do not investigate the case or any facts in the case or conduct any experiments. Do not do any research on your own or as a group. Do not use dictionaries, the internet, books, public or private records, or other reference materials that are not produced in court. Do not contact anyone to assist you. Do not visit or view the scene of the events in this case or inspect any things not produced in court. If you happen to pass by the scene, do not stop or investigate. Do not let anyone else do any of these things for you.

Keep an open mind throughout the trial. Evidence can only be presented one piece at a time. ~~Do, and it is only fair that you do~~ not form ~~or express~~ an opinion ~~about this case while the trial is going on~~ until all of the evidence is in. ~~You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.~~

~~Do not let bias, sympathy, prejudice, or public opinion influence your verdict.~~

~~At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.~~

Pay special attention to these warnings during recesses, when you will be on your honor to follow them.

References

CACI 100

MUJI 1st Instruction

1.1; 2.4.

(2) CV101B Further admonition about electronic devices.

Serious problems have been caused around the country by jurors using computer and electronic communication technology during trial. It's natural that we want to investigate a case, or to share with others our thoughts about the trial, and it's easy to do so with the internet and instant communication devices or services, such as Blackberries, iPhones, Facebook, Twitter, and so on.

However, please understand that the ~~rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes.~~ The fairness of the entire system depends entirely on you, the jurors, reaching your decisions based on evidence presented to you in court, and not on other sources of information. You violate your oath as jurors if you conduct your own investigations or communicate about this trial with others.

Jurors have caused serious consequences for themselves and the courts by "Googling" the parties, issues, or counsel; "Twittering" with friends about the trial; using

Blackberries or iPhones to gather or send information on cases; posting trial updates on Facebook pages; using Wikipedia or other internet information sources, and so on. Even using something as seemingly innocent as "Google Maps" can result in a mistrial.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

Violations may also result in substantial penalties for the juror.

So I must warn you again - do not use your cell phone or computer to investigate or discuss anything connected with this trial until it is completely finished. Do no internet research of any kind, and advise me if you learn of any juror who has done so.

[Pay special attention to these warnings during recesses, when you will be on your honor to follow them.](#)

Committee Notes

News articles have highlighted the problem of jurors conducting their own internet research or engaging in outside communications regarding the trial while it is ongoing. See, e.g., Mistrial by iPhone: Juries' Web Research Upends Trials, New York Times (3/18/2009). The court may therefore wish to emphasize the importance of the traditional admonitions in the context of electronic research or communications.

(3) CV102 Role of the judge, jury and lawyers.

You and I and the lawyers play important but different roles in the trial.

I supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also explain the meaning of the law.

You must follow that law and decide what the facts are. The facts generally relate to who, what, when, where, why, how or how much. The facts must be supported by the evidence.

The lawyers present the evidence and try to persuade you to decide the case in favor of his or her client.

Television and the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

MUJI 1st Instruction

1.5; 2.2; 2.5; 2.6.

Approved

(4) CV103 Nature of the case.

In this case [Name of plaintiff] seeks [describe claim].

[Name of defendant] [denies liability, etc.].

[Name of defendant] has filed what is known as a [counterclaim/cross-claim/third-party complaint/etc.,] seeking [describe claim].

MUJI 1st Instruction

1.1.

Approved

(5) CV104 Order of trial.

The trial proceeds as follows:

(1) The lawyers will make opening statements, outlining what the case is about and what they think the evidence will show.

(2) [Name of plaintiff] will offer evidence first, followed by [name of defendant]. I may allow the parties to later offer more evidence.

(3) Throughout the trial and after the evidence has been fully presented, I will instruct you on the law. You must follow the law as I explain it to you, even if you do not agree with it.

(4) The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

(5) The final step is for you to go to the jury room and discuss the evidence and the instructions among yourselves until you reach a verdict.

MUJI 1st Instruction

1.2.

Approved

(6) CV105 Sequence of instructions not significant.

The order in which I give the instructions has no significance. You must consider the instructions in their entirety, giving them all equal weight. I do not intend to emphasize any particular instruction, and neither should you.

MUJI 1st Instruction

2.1.

Approved

(7) ~~CV106 Jurors must follow the instructions.~~

Approved

(8) CV111 Definition of "person."

"Person" means an individual, corporation, organization, or other legal entity.

(9) CV107 ~~Jurors may not decide based on sympathy, passion and prejudice~~ All persons are equal before the law.

All persons are equal before the law. You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice. You must not decide ~~this case~~ for or against anyone because you feel sorry for or angry at anyone ~~or angry at anyone. You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice.~~

[The fact that one party is a natural person and another party is a [corporation/partnership/other legal entity] should not play any part in your deliberations. You must decide this case as if it were between individuals.]

MUJI 1st Instruction

2.3.; 2.8

(10) CV108 Note-taking.

You may take notes during the trial and have those notes with you when you discuss the case. If you take notes, do not over do it, and do not let your note-taking distract you from following the evidence. Your notes are not evidence, and you should use them only as a tool to aid your personal memory. [I will secure your notes in the jury room during breaks and have them destroyed at the end of the trial.]

References

URCP 47(n).

MUJI 1st Instruction

1.6.

Committee Notes

Approved

(11) ~~CV110 Rules applicable to recesses.~~

Approved

(12) ~~CV111 All parties equal before the law.~~

~~"Person" means an individual, corporation, organization, or other legal entity. In this case the plaintiff is [identify entity] and the defendant is [identify entity]. This should make no difference to you. You must decide this case as if it were between individuals.~~

MUJI 1st Instruction

2.8.

(13) CV112 Multiple parties.

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and

separately as to each ~~plaintiff and each defendant party~~. Unless otherwise instructed, all instructions apply to ~~each plaintiff and to each defendant~~ all parties.

(14) CV113 Multiple plaintiffs.

Although there are _____ plaintiffs ~~in this action~~, that does not mean that they are equally entitled to recover or that any of them is entitled to recover. [Name of defendant] is entitled to a fair consideration of [his] defense against each plaintiff, just as each plaintiff is entitled to a fair consideration of [his] claim against [name of defendant].

MUJI 1st Instruction

2.21.

(15) CV114 Multiple defendants.

Although there are _____ defendants ~~in this action~~, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of [his] defense against each of [name of plaintiff]'s claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other defendants are liable.

MUJI 1st Instruction

2.22.

(16) CV115 Settling parties.

[Name of parties] have reached a settlement agreement ~~in this case~~.

There are many reasons why parties settle ~~during the course of a lawsuit~~. A settlement does not mean that any party has conceded anything. You must still decide which party or parties, including [name of settling parties], were at fault and how much fault each party should bear. In deciding how much fault should be allocated to each party, you must not consider the settlement agreement as a reflection of the strengths or weaknesses of any party's positions.

You may consider the settlement in deciding how believable a witness is.

References

Slusher v. Ospital, 777 P.2d 437 (Utah 1989).

Paulos v. Covenant Transp., Inc., 2004 UT App 35 (Utah App. 2004).

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

URE 408.

MUJI 1st Instruction

2.24.

Committee Notes

The judge and the parties must decide whether the fact of settlement and to what extent the terms of the settlement will be revealed to the jury in accordance with the principles set forth in *Slusher v. Ospital*, 777 P.2d 437 (Utah 1989).

(17) CV116 Discontinuance as to some defendants.

[Name of defendant] is no longer involved in this case because [explain reasons]. But you must still decide whether fault should be allocated to [name of defendant] as if [he] were still a party.

MUJI 1st Instruction

2.23.

Committee Notes

This instruction should be given at the time the party is dismissed. The court should explain the reasons why the defendants have been dismissed to the extent possible. If allocation of fault to the dismissed party is not appropriate under applicable law the final sentence should not be given.

(18) CV117 Preponderance of the evidence.

When I tell you that a party has the burden of proof or that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence ~~presented in court~~, that the fact is more likely to be true than not true.

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but ~~I must emphasize to you that~~ this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

After weighing all of the evidence, if you decide that a fact is more likely true than not, then you must find that the fact has been proved. On the other hand, if you decide that the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved, and the party has therefore failed to meet its burden of proof to establish that fact.

[Now] [At the close of the trial] I will instruct you in more detail about the specific elements that must be proved.

References

Johns v. Shulsen, 717 P.2d 1336 (Utah 1986).

Morris v. Farmers Home Mut. Ins. Co., 500 P.2d 505 (Utah 1972).

Alvarado v. Tucker, 268 P.2d 986 (Utah 1954).

Hansen v. Hansen, 958 P.2d 931 (Utah App. 1998)

MUJI 1st Instruction

2.16; 2.18.

(19) CV118 Clear and convincing evidence.

Some facts in this case must be proved by a higher level of proof called “clear and convincing evidence.” When I tell you that a party must prove something by clear and convincing evidence, I mean that the party must persuade you, by the evidence ~~presented in court~~, to the point that there remains no serious or substantial doubt as to the truth of the fact.

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

I will tell you specifically which of the facts must be proved by clear and convincing evidence.

References

Jardine v. Archibald, 279 P.2d 454 (Utah 1955).

Greener v. Greener, 212 P.2d 194 (Utah 1949).

See also, Kirchgestner v. Denver & R.G.W.R. Co., 233 P.2d 699 (Utah 1951).

MUJI 1st Instruction

2.19.

Committee Notes

In giving the instruction on clear and convincing evidence, the judge should specify which elements must be held to this higher standard. This might be done in an instruction and/or as part of the verdict form. If the judge gives the clear and convincing evidence instruction at the start of the trial and for some reason those issues do not go to the jury (settlement, directed verdict, etc.) the judge should instruct the jury that those matters are no longer part of the case.

(20) CV119 Evidence.

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

You must entirely disregard any evidence for which I sustain an objection and any evidence that I order to be struck.

Anything you may have seen or heard outside the courtroom is not evidence and you must entirely disregard it. ~~Do not make any investigation about the facts in this case. Do not make any personal inspections, observations or experiments. Do not view~~

~~locations involved in the case, or inspect any things or articles not produced in court. Do not look things up on the internet. Do not look for information in books, dictionaries or public or private records that are not produced in court. Do not let anyone else do any of these things for you.~~

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

The lawyers might stipulate to a fact or I might take judicial notice of a fact. Otherwise, what I say and what the lawyers say usually are not evidence.

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

MUJI 1st Instruction

1.3; 2.4.

(21) CV120 Direct and circumstantial evidence.

A fact may be proved by direct or circumstantial evidence. Circumstantial evidence consists of facts ~~or circumstances~~ that allow someone to reasonably infer the truth of the facts to be proved. For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact.

MUJI 1st Instruction

2.17.

(22) CV121 Believability of witnesses.

Testimony in this case will be given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions. In evaluating the testimony of a witness, you may want to consider the following:

(1) Personal interest. Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?

(2) Bias. Do you believe the accuracy of the testimony was affected by any bias or prejudice?

(3) Demeanor. Is there anything about the witness's appearance, conduct or actions that causes you to give more or less weight to the testimony?

(4) Consistency. How does the testimony tend to support or not support other believable evidence that is offered in the case?

(5) Knowledge. Did the witness have a good opportunity to know what [he] is testifying about?

(6) Memory. Does the witness's memory appear to be reliable?

(7) Reasonableness. Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability.

MUJI 1st Instruction

2.9.

(23) CV122 Inconsistent statements.

You may believe that a witness, on another occasion, made a statement inconsistent with that witness's testimony given here. That doesn't mean that you are required to disregard the testimony. It is for you to decide whether to believe the witness.

MUJI 1st Instruction

2.10.

(24) CV123 Effect of willfully false testimony.

If you believe any witness has intentionally testified falsely about any important matter, you may disregard the entire testimony of that witness, or you may disregard only the intentionally false testimony.

References

Gittens v. Lundberg, 3 Utah 2d 392, 284 P.2d 1115 (1955).

MUJI 1st Instruction

2.11.

(25) CV124 Stipulated facts.

A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as proved.

The parties have stipulated to the following facts:

[Here read stipulated facts.]

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

MUJI 1st Instruction

1.3; 1.4

Committee Notes

This instruction should be given at the time a stipulated fact is entered into the record.

(26) CV125 Judicial notice.

I have taken judicial notice of [state the fact] for purposes of this trial. This means that you must accept the fact as true.

MUJI 1st Instruction

1.3.

Committee Notes

This instruction should be given at the time the court takes judicial notice of a fact.

(27) CV126 Depositions.

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

MUJI 1st Instruction

2.12.

(28) CV127 Limited purpose evidence.

Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose ~~and for no other purpose.~~

MUJI 1st Instruction

1.3.

(29) CV128 Objections and rulings on evidence and procedure.

From time to time during the trial, I may have to make rulings on objections or motions made by the lawyers. Lawyers on each side of a case have a right to object when the other side offers evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a party because the lawyer makes objections. You should not conclude from any ruling or comment that I make that I have any opinion about the merits of the case or that I favor one side or the other. And if a lawyer objects and I sustain the objection, you should disregard the question and any answer.

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

MUJI 1st Instruction

2.5.

(30) CV129 Statement of opinion.

Under limited circumstances, I will allow a witness to express an opinion. ~~You do not have to believe an opinion, whether or not it comes from an expert witness.~~ Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

MUJI 1st Instruction

2.13; 2.14.

(31) CV130 Charts and summaries.

Certain charts and summaries will be shown to you in order to help explain the evidence. However, the charts or summaries are not ~~in and of~~ themselves evidence. If the charts or summaries correctly reflect facts or figures shown by the evidence, you may consider them.

MUJI 1st Instruction

2.15.

(32) CV131 Spoliation.

You may consider whether [name of plaintiff] [name of defendant] intentionally concealed, destroyed, altered, or failed to preserve evidence. If so, you may assume that the evidence would have been unfavorable to ~~that party~~ [name of plaintiff] [name of defendant].

References

Burns v. Cannondale Bicycle Co., 876 P.2d 415 (Utah Ct. App. 1994).
URCP 37(g).

(33) CV135 Out-of-state or out-of-town experts.

You may not discount the opinions of [name of expert] merely because of where [he] lives or practices.

References

Swan v. Lamb, 584 P.2d 814, 819 (Utah 1978).

MUJI 1st Instruction

6.30

Committee Notes

The committee was not unanimous in its approval of this instruction. Use it with caution.

(34) CV136 Conflicting testimony of experts.

In resolving any conflict that may exist in the testimony of [names of experts], you may compare and weigh the opinion of one against that of another. In doing this, you may consider the qualifications and credibility of each, as well as the reasons for each opinion and the facts on which the opinions are based.

MUJI 1st Instruction

6.31

(35) CV137 Selection of jury foreperson and deliberation.

When you go into the jury room, your first task is to select a foreperson. The foreperson will preside over your deliberations and sign the verdict form when it's completed. The foreperson should not dominate the discussions. The foreperson's opinions should be given the same weight as the opinions of the other jurors.

After you select the foreperson you must discuss with one another—~~or that is~~ deliberate—with a view to reaching an agreement. Your attitude and conduct during discussions are very important.

As you begin your discussions, it is not helpful to say that your mind is already made up. Do not announce that you are determined to vote a certain way or that your mind cannot be changed. Each of you must decide the case for yourself, but only after discussing the case with your fellow jurors.

Do not hesitate to change your opinion when convinced that it is wrong. Likewise, you should not surrender your honest convictions just to end the deliberations or to agree with other jurors.

(36) CV138 Do not speculate or resort to chance.

When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

If you decide that a party is entitled to recover damages, you must then agree upon the amount of money to award that party. Each of you should state your own independent judgment on what the amount should be. You must thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence, and reach an agreement on the amount. You must not agree in advance to average the estimates.

References

Day v. Panos, 676 P.2d 403 (Utah 1984).

(37) CV139 Agreement on special verdict.

I am going to give you a form called the Special Verdict that contains several questions. You must answer the questions based upon the evidence you have seen and heard during this trial.

Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors must agree on the answer to each question, but they do not have to be the same six jurors on each question.

As soon as six or more of you agree on the answer to ~~each~~all questions, the foreperson should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort you back to this courtroom; you should bring the completed Special Verdict with you.

(38) CV140 Discussing the case after the trial.

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.