AGENDA
ADVISORY COMMITTEE
ON MODEL CIVIL JURY INSTRUCTIONS

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

June 1, 2005
12:00 TO 6:00 P.M.

Preliminary and General Instructions	
Negligence Instructions	
Damages Instructions	

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

July 11, 2005
August 8, 2005
September 12, 2005
October 17, 2005 (3rd Monday)
November 14, 2005
December 12, 2005

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

MINUTES

Advisory Committee on Model Civil Jury Instructions
May 9, 2005
4:00 p.m.

Present: John L. Young (chair), Honorable William W. Barrett, Jr., Paul M. Belnap, Juli Blanch, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, L. Rich Humpherys, Jonathan G. Jemming, Colin P. King, Stephen B. Nebeker, Timothy M. Shea, Paul M. Simmons

The committee discussed the following draft instructions:

1. *01.102: Role of the Judge, Jury and Lawyers.* Mr. Simmons suggested that "why" be added before "how" in the second sentence of the third paragraph and that the last sentence be revised to read, "Real trials should be conducted with professionalism, courtesy and civility." The committee approved these changes and approved the instruction as modified.

2. *01.401: Burden of Proof.* Mr. Humpherys suggested that the instruction as written was misleading because a defendant does not have the burden of proving all defenses; for example, he does not have the burden of proving that there is insufficient evidence to support the plaintiff's claims. Mr. Dewsnup suggested omitting the "general statement of the claim or defense." Mr. Carney suggested going back to something along the lines of MUJI 2.16: "Whenever in these instructions it is stated that the burden of proof rests upon a certain party, or that a party must prove a certain proposition, . . . I mean that unless the truth of the allegation is proved by [a preponderance of the evidence] . . . , you shall find that the same is not true." Mr. Carney noted that the new California civil jury instructions (CACI) include a separate section on evidence that has two instructions on the burden of proof. The instruction on preponderance of the evidence (CACI 200) reads:

> A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."
>
> After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.
>
> In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

Some of the committee expressed a preference for an instruction similar to CACI 200. Mr. Young thought it was important to explain the difference between a preponderance of the

evidence and beyond a reasonable doubt. Mr. Shea suggested eliminating instruction 01.401 from the preliminary instructions. Mr. Carney suggested that the instruction could be given both at the beginning and at the end of trial. The committee agreed to use a modified version of CACI 200.

3. *01.402: Preponderance of the Evidence.* Mr. Jemming reported that his research showed that the phrase "convincing nature" has been used most recently in Utah in the context of a "clear and convincing" standard of evidence and should probably not be used in an instruction defining the preponderance of the evidence.

4. *02.107: Amount of Care Required for an Abnormally Dangerous Activity.* At Mr. King's suggestion, the title was changed to "Abnormally Dangerous Activity," dropping any reference to the "amount of care," since engaging in an abnormally dangerous activity gives rise to strict liability. Mr. Humpherys noted that there may be a factual dispute for the jury to resolve as to whether the defendant was actually engaged in the activity, in which case the instruction could be inaccurate or misleading. Mr. Carney noted that he had drafted a comment addressing when the instruction should be given.

Mr. Carney will e-mail the draft comment to Mr. Shea to include in the next draft of the instruction.

The committee debated whether the second paragraph was necessary. Mr. Young thought it assumed both breach of a duty and causation, whereas strict liability does not relieve a plaintiff of his obligation to prove causation. Mr. Carney shared an illustration from the Restatement (Second) of Torts to show that a defendant is not necessarily strictly liable for all the harm caused by an abnormally dangerous activity, no matter how remote.

Dr. Di Paolo thought the first paragraph was confusing in that it suggested that fault and causation were separate concepts, whereas fault subsumes both breach of a duty and causation. The committee debated the meaning of "fault" and whether "fault" could be used as shorthand for breach of duty (as opposed to causation) or meant breach of duty and causation. Based on the statutory definition of "fault" in the Liability Reform Act, the committee concluded that it meant the latter. Dr. Di Paolo said that if fault, causation and harm are not the same, the distinction among them must be clearly articulated for the jury.

Mr. Humpherys suggested revising the last sentence of the first paragraph to read, "You must still decide what harm resulted from [or was caused by] the defendant's fault." Mr. King moved to delete the last sentence of the first paragraph and leave in the second paragraph, in brackets, to be used in cases of multiple defendants or comparative fault. Mr. Humpherys seconded the motion. Dr. Di Paolo noted that a lay juror would not readily understand the instruction to "allocate" fault. After further discussion, Mr. King withdrew his motion.

Mr. Belnap suggested that the second sentence of the first paragraph read that one "may be liable" rather than "is liable" and that the last phrase of that sentence ("whether or not he exercised reasonable care") be deleted. The committee rejected the suggestions.

Finally, Ms. Blanch suggested that the sentence be revised to read: "One who carries on an abnormally dangerous activity is liable for harm caused by that activity whether or not he exercised reasonable care." The committee approved her suggestion.

5. *02.101a: Order of Decision Making.* Mr. Shea explained that this instruction was his attempt to incorporate Mr. Carney's suggestion from the last meeting by setting out the three questions the jury must answer: (1) Did the act or omission of each actor breach the applicable standard of care or legal duty? (2) If so, was the act or omission a legal cause of the plaintiff's harm? (3) How is the total fault causing the plaintiff's harm to be allocated among those on the verdict form?

Mr. Humpherys noted that it was cumbersome to refer continually to "a person's act or failure to act" and proposed that an act or failure to act that breaches the applicable standard of care and causes harm be defined as "fault" and that thereafter "fault" be used throughout the instructions in place of "act or failure to act." Mr. Carney noted that this was the approach the negligence subcommittee had originally tried. Mr. Shea indicated that he had also tried that approach, but it did not work well because it collapsed the traditional two-step analysis of (1) breach of duty and (2) causation. Under that approach, the special verdict form would just have one question for each actor: Was the person at fault in causing plaintiff's injuries? Mr. Belnap thought that the instructions and verdict form should maintain the traditional two-step analysis.

Mr. Young suggested that the instruction give the jury an overview of its task. Mr. Shea and Mr. King noted that that was what instruction 02.101a was meant to do. Mr. Humpherys suggested that the instruction could read: "A person is at fault if (1) he breaches the applicable standard of care [or breaches a duty he owed the plaintiff], and (2) his breach was a cause of the plaintiff's harm. I will now instruction you on the applicable standard of care [or the applicable duty]. I will then instruction you on causation."

Mr. Dewsnup suggested using "conduct" for "act or failure to act." A majority of the committee thought that most people associate "conduct" with an act, as opposed to a failure to act. Dr. Di Paolo further noted that "conduct" has a connotation of good conduct, not misconduct.

Mr. King and Dr. Di Paolo thought that the repetition of the phrase "act or failure to act" would not be too cumbersome in practice because the jury would only hear the phrase a few times in any given set of instructions.

The committee rejected the phrase "amount of care" as misleading; in cases of strict liability, a defendant can be liable regardless of the amount of care used. Mr. Carney noted that "standard of care" is generally used in cases of professional negligence but could be adapted to refer to any conduct that breaches a legal duty. (Mr. Jemming was excused.)

The committee debated whether to use the term "legal cause" (as a substitute for the disfavored term "proximate cause"). Mr. Dewsnup noted that jurors are likely to think that a "legal cause" is to be contrasted with an "illegal cause." The committee noted that California has abandoned both "proximate cause" and "legal cause." CACI simply refers to "cause."

Mr. Shea will take the ideas discussed in the meeting and revise instruction 02.101a (Order of decision making) and the related instructions on fault and allocation of fault as necessary.

Mr. Humpherys suggested that a subcommittee review the revised instructions on fault and allocation of fault before the next committee meeting to work out any obvious problems.

The committee noted that many of the problems it was grappling with were the result of a poorly drafted statute (the Utah Liability Reform Act). Mr. Dewsnup suggested that the committee draft new language for the statute that would clarify some of the issues without altering the intent of the statute and submit the proposed language to the legislature. Mr. Humpherys noted that the instructions should explain the law to the jury in such a way that jurors can understand it and that will not be affected by any effort to clarify the statutory language.

Next Meeting. The next meeting will be Wednesday, June 1, 2005. It will start at 12:00 p.m. and go to 5:00 p.m. or later. The committee plans to spend the first three hours reviewing the revised instructions on fault and the remainder of the time reviewing the damage instructions.

The meeting concluded at 5:55 p.m.

Model Utah Jury Instructions
Second Edition
Working Draft: May 26, 2005

Table of Contents

00.000. Introduction to the Model Utah Jury Instructions, Second Edition.

The Utah Supreme Court approves this Second Edition of the Model Utah Jury Instructions (MUJI 2d) for use in jury trials. MUJI 2d is a summary statement of Utah law, but it is not a source of law nor the final expression of the law. In the context of any particular case, a model instruction may be amended by the judge and reviewed by the Supreme Court or Court of Appeals.

In areas of the law in which there are no Utah statutes, rules or case law to offer guidance, the judge must nevertheless instruct the jury, and the advisory committees have developed instructions - sometimes in the alternative - based on the law of other jurisdictions. In these areas in particular, the Supreme Court expresses no opinion on the ultimate determination of what the Utah law is.

An accurate statement of the law is critical to instructing the jury, but accuracy is meaningless if the statement is not understood - or is misunderstood - by jurors. MUJI 2d is intended to be an accurate statement of the law using simple structure and, where possible, words of ordinary meaning.

When preparing instructions, judges and lawyers should include the title of the instruction. This information helps jurors organize their deliberation and decision making. Judges and lawyers should also provide a copy of the written instructions to each juror. This is permitted under the Rules of Procedure and is a sound practice because it allows each juror to follow the instructions as they are read and to refer to them during deliberations without disturbing other jurors.

MUJI 2d is drafted without using gender-specific pronouns whenever reasonably possible. However, sometimes the simplest, most direct statement requires using pronouns. MUJI 2d uses masculine pronouns as its protocol. Judges and lawyers should replace these with feminine or impersonal pronouns to fit the circumstances of the case at hand. Judges and lawyers should also use party names instead of "the plaintiff" or "the defendant." Judges and lawyers may have to change a verb's tense or number to fit the circumstances.

Judges should instruct the jurors at times during the trial when the instruction will most help the jurors. Many instructions historically given at the end of the trial should be given at the beginning so that jurors know what to expect. Merely because an instruction is not in the section of "Opening Instructions" does not mean that it cannot be given at the beginning of trial. Judges and lawyers should carefully consider the order and timing of instructions. Instructions relevant to a particular part of the trial should be given just before that part. A judge might repeat an instruction during or at the end of the trial to help protect the integrity of the process or to help the jurors understand the case and their responsibilities.

The Supreme Court has two advisory committees, one for civil instructions and one for criminal instructions, working diligently to draft new and amended instructions to conform to developments in the law. MUJI 2d will likely be a continual work in progress, with approved instructions being published periodically on the state court web site. For civil instructions, MUJI 2d eventually will replace the original MUJI published by the Utah State Bar. As the Supreme Court had no role in publishing the original MUJI, it will not take any steps to repeal the it. For criminal instructions, MUJI 2d represents the first published compilation of instructions in Utah.

MUJI 1st References.

None.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.000. Opening instructions.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status:

01.101. 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 one the law. Before we begin, I need to explain how to conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial 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 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 not listen to anyone talk about the case outside this courtroom. Although it is a normal human tendency to talk with other people, 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 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 on law that I will provide. Do not investigate the case or conduct any experiments. Do not do any research on your own or as a group. Do not use dictionaries, the internet, or other reference materials. Do not contact anyone to assist you. Do not visit or view the scene of the events in this case. If you happen to pass by the scene, do not stop or investigate.

Keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is going on. 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.

From time to time during the trial I may have to rule on points of law. Do not concern yourselves with the reasons for these rulings. Do not conclude from anything I say that I favor one party or the other. Or that I have an opinion about what your verdict should be.

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.

MUJI 1st References.

01.01.

References.

CACI 100

Advisory Committee Notes.

Staff Notes.

Status: New.

01.102. Role of the judge, jury and lawyers.

You and I and the lawyers are all officers of the court, and we play important roles in the trial.

It's my role to 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 instruct you on the law that you must apply.

It's your role to follow that law and to 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. Neither the lawyers nor I actually decide the case. That is your role. You should decide the case based upon the evidence presented in court and the instructions that I give you.

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

Things that you see on television and in 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 References.

01.05; 02.02; 02.05; 02.06.

References.

Advisory Committee Notes.

Staff Notes.

Status: Approved May 9, 2005

01.103. Nature of the case.

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

The party who brings a lawsuit is called the plaintiff. In this case the plaintiff is [_____]. The party who is being sued is called the defendant. In this case the defendant is [_____].

[Name of plaintiff] seeks [damages on account of _____].

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

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

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

MUJI 1st References.

01.01.

References.

Advisory Committee Notes.

Staff Notes.

Delete last Para. It is not part of nature of the case and merely repeats topics better covered in other instructions.

It has been suggested that the instruction on burden of proof follow this instruction.

Status: Reviewed.

01.104. Order of trial.

The trial will generally proceed as follows:

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

(2) Presentation of evidence. [Name of plaintiff] will offer evidence first, followed by [name of defendant]. The parties may offer more evidence, called rebuttal evidence, after hearing the witnesses and seeing the exhibits.

(3) Instructions on the law. Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must obey those instructions. You are not allowed to reach decisions that go against the law.

(4) Closing arguments. 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) Jury deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict. Your verdict must be based on the evidence presented in court and on my instructions on the law. I will give you more instructions about that step at a later time.

MUJI 1st References.

01.02.

References.

Advisory Committee Notes.

Staff Notes.

Delete last sentence of item 3. Covered elsewhere. Not part of order of trial.

Do we want a sentence about direct and cross examination? Do we want a sentence about exhibits?

Status: Reviewed.

01.105. Sequence of instructions not significant.

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

MUJI 1st References.

02.01.

References.

Advisory Committee Notes.

Staff Notes.

Reorder sentences: 4, 1, 3, 2. Consider instead:

From time to time throughout the trial I will instruct you on the law. 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.

Status: Reviewed.

01.106. Jurors must follow the instructions.

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

MUJI 1st References.

01.05.

References.

Advisory Committee Notes.

Staff Notes.

Feels cumbersome and accusatory. Consider instead:

The instructions that I give you represent the law of Utah. You must follow the law and my instructions even if you disagree them.

Status: Reviewed.

01.107. Jurors must decide the facts based on the evidence.

You must decide what the facts are. The facts generally relate to who, what, when, where, how or how much. The facts must be supported by the evidence. Evidence is the testimony and exhibits received in court.

MUJI 1st References.

01.05; 02.04.

References.

Advisory Committee Notes.

Staff Notes.

Point seems to be missing as a separate statement, although it appears as part of other instructions.

Status: New.

01.108. Jurors may not decide based on sympathy, passion and prejudice.

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

MUJI 1st References.

02.03.

References.

Advisory Committee Notes.

Staff Notes.

Replace "It is your swore duty to" with "You must"

Status: Reviewed.

01.109. Note-taking.

If you wish, you may take notes during the trial and to have those notes with you when you discuss the case. We will provide you with writing materials if you need them. 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 when it comes time to decide the case.

You should leave your notes with the Clerk or Bailiff at the conclusion of each day. Your notes will be returned to you when you return each morning.

MUJI 1st References.

01.06.

References.

URCP 47(n)

Advisory Committee Notes.

Staff Notes.

Alternative 1: At the end of the trial, you may keep your notes or leave them with the bailiff or clerk to be destroyed.

Alternative 2: At the end of the trial you must leave your notes with the bailiff or clerk to be destroyed.

Status: Reviewed.

01.110. Service provider for juror with a disability.

During trial, [name of juror] will be assisted by a [service provider] to accommodate a disability. The [service provider] is not a member of the jury and is not to participate in the deliberations in any way other than as necessary to provide the service to [name of juror].

MUJI 1st References.

None.

References.

Advisory Committee Notes.

Oath or affirmation of the service provider: "I do solemnly swear/affirm that I will assist [name of juror] in the manner common to his important personal and business affairs, and in a manner accepted in my professional practice, and that I will not otherwise participate in the trial or in the deliberations of the jury."

Staff Notes.

Adapted from the recommendations of the Committee on Improving Jury Service and CACI 110.

Status: New.

01.111. Duty to abide by official translation.

Some testimony will be given in [insert language other than English]. An interpreter will provide a translation for you at the time the testimony is given. You must rely solely on the translation provided by the interpreter, even if you understand the language spoken by the witness. Do not retranslate any testimony for other jurors. If you believe the court interpreter translated testimony incorrectly, let me know immediately by writing a note and giving it to the clerk or bailiff.

MUJI 1st References.

None.

References.

Advisory Committee Notes.

Staff Notes.

From CACI 108.

Status: New.

01.112. Rules applicable to recesses.

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 talk about this case with anyone – not family, friends or even each other. 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 discuss the case in your presence, despite your telling them not to, tell the clerk or the bailiff that you need to see me. If you must talk to me, do not discuss it with your fellow jurors.

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

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

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

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

MUJI 1st References.

01.08; 01.07

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.201. All parties equal before the law.

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 References.

02.08.

References.

Advisory Committee Notes.

Staff Notes.

Not clear from this text that non-persons are to be treated the same as individuals.

From CACI: A [corporation/partnership/city/county/[other entity]], [name of entity], is a party in this case. [Name of entity] is entitled to the same fair and impartial treatment that you would give to an individual. When I use words like “person” or “he” or “she” in these instructions to refer to a party, those instructions also apply to [name of entity].

Status: Reviewed.

01.202. 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. Unless otherwise instructed, all instructions apply to each plaintiff and to each defendant.

MUJI 1st References.

None.

References.

Advisory Committee Notes.

Staff Notes.

Combine the instructions on multiple parties, multiple plaintiffs and multiple defendants.

From CACI: There are [number] plaintiffs in this trial. You should decide the case of each plaintiff separately as if it were a separate lawsuit. Each plaintiff is entitled to separate consideration of his or her own claim(s). Unless I tell you otherwise, all instructions apply to each plaintiff.

There are [number] defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own defenses. Unless I tell you otherwise, all instructions apply to each defendant.

Status: Reviewed.

01.203. 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 References.

02.21.

References.

Advisory Committee Notes.

Staff Notes.

Combine the instructions on multiple parties, multiple plaintiffs and multiple defendants.

Status: Reviewed.

01.204. Multiple defendants.

Although there are _____ defendants in this action, that doe 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 References.

02.22.

References.

Advisory Committee Notes.

Staff Notes.

Combine the instructions on multiple parties, multiple plaintiffs and multiple defendants.

Status: Reviewed.

01.205. 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.

MUJI 1st References.

02.24.

References.

Child v. Gonda, 972 P.2d 425 (UT. Ct. App. 1998).
URE 408.

Advisory 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).

Staff Notes.

Combine the discontinuance instruction with the settling parties instruction.

Status: Reviewed.

01.206. 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 References.

02.23.

References.

Advisory 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.

Staff Notes.

Combine the discontinuance instruction with the settling parties instruction.

From CACI: 109. Removal of Claims or Parties. [Name of plaintiff]'s claim for [insert claim] is no longer an issue in this case.
[Name of party] is no longer a party to this case.
Do not speculate as to why this [claim/person] is no longer involved in this case. You should not consider this during your deliberations.

Status: Reviewed.

01.301. 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 References.

01.03.

References.

Advisory Committee Notes.

Staff Notes.

Para 5 is new.

Status: Reviewed.

01.302. 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 References.

02.17.

References.

Advisory Committee Notes.

Staff Notes.

Need a new second sentence that "defines" direct evidence. We have an example, but not a definition. Consider: Direct evidence is evidence of the fact to be proved. Circumstantial evidence is evidence of facts from which one can reasonably infer the fact to be proved. For example, …

From CACI 202: It makes no difference whether evidence is direct or circumstantial. You may choose to believe or disbelieve either kind. Whether evidence is direct or circumstantial, you should give it the weight you think it deserves.

Status: Reviewed.

01.303. 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' 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 or she is testifying about?

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

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

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

MUJI 1st References.

02.09.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.304. 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 References.

02.10.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.305. 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.

MUJI 1st References.

02.11.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.306. Stipulated facts.

Statements and arguments of lawyers are not evidence in the case, unless they are made as an admission or stipulation of fact. 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.

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

[Here read stipulated facts.]

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

MUJI 1st References.

01.03.

References.

Advisory Committee Notes.

Staff Notes.

First Para. Last Sentence: … you must accept the fact as true.

Status: Reviewed.

01.307. Judicial notice.

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

MUJI 1st References.

01.03.

References.

Advisory Committee Notes.

Staff Notes.

Last sentence "… you must accept the fact as true."

Status: Reviewed.

01.308. Violation of a safety law.

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

[Summarize or quote the statute, ordinance or rule.]

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

[Name of defendant] claims the violation is excused because:

1. Obeying the law would have created an even greater risk of harm.
2. He could not obey the law because he faced an emergency that he did not create.
3. He was unable to obey the law despite a reasonable effort to do so.
4. He was incapable of obeying the law.
5. He was incapable of understanding what the law required.

If you decide that [name of defendant] violated the safety law and that the violation was not excused, you may consider the violation as evidence of negligence. If you decide that [name of defendant] did not violate the safety law or that the violation should be excused, you must disregard the violation and decide whether [name of defendant] acted with reasonable care under the circumstances.

MUJI 1st References.

03.11.

References.

Child v. Gonda, 972 P.2d 425 (Utah 1998).
Gaw v. State ex rel. Dep't of Transp., 798 P.2d 1130 (Utah Ct. App. 1990).
Jorgensen v. Issa, 739 P.2d 80 (Utah Ct. App. 1987).
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).

Advisory Committee Notes.

Before giving this instruction, the judge should decide whether the safety law applies. The safety law applies if:
(1) the 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.

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

Staff Notes.

Formerly grouped with negligence instructions.

Status: Reviewed.

01.309. Depositions.

Depositions may be received in evidence. Depositions contain sworn testimony of a witness that was given previously, outside of court, with the lawyer for each party being 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 References.

01.03; 02.12.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.310. 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 References.

01.03.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.311. 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 I sustain an objection to a question, you should not draw any conclusions from the question itself.

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 References.

02.05.

References.

Advisory Committee Notes.

Staff Notes.

Para 2. Delete the "but" clause in the third sentence. Seems insulting. Instead: ", but please be patient even though the case may seem to go slowly."

Status: Reviewed.

01.312. 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 References.

02.13.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.313. 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 References.

02.15.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

01.401. 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. 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 the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved. On the other hand, if you decide that a fact is more likely true than not, then you must find that the fact has been proved.

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

Californial Instruction 200.
When I tell you that a party must prove something, I mean that the party must persuade you, by the evidence presented in court, that what he or she is trying to prove is more likely to be true than not true. This is sometimes referred to as “the burden of proof.”

After weighing all of the evidence, if you cannot decide whether a party has satisfied the burden of proof, you must conclude that the party did not prove that fact. You should consider all the evidence that applies to that fact, no matter which party produced the evidence.

In criminal trials, the prosecution must prove facts showing that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove a fact need only prove that the fact is more likely to be true than not true.

MUJI 1st References.

02.18.

References.

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

Advisory Committee Notes.

Staff Notes.

Jonathan will update references.

Status: Reviewed.

01.402. 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.

MUJI 1st References.

02.19.

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).

Advisory 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.

Staff Notes.

Status: Approved February 14, 2005.

02.000. Negligence.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status:

02.101. "Fault" defined.

Your ultimate goal as jurors will be to decide who is at fault for [name of plaintiff]'s harm and to allocate fault among those people.

"Fault" means any act or failure to act that does not meet the required standard of care and that causes harm to the person seeking recovery.

This definition can be separated into two questions, and how you answer these questions will determine whether the person is at fault. The questions you are to answer are on the verdict form. You should answer these questions for every person named on the verdict form. I will state them now, using terms that I will then explain.

First, did a person's act or failure to act meet the required "standard of care." Only if you answer that question "no," do you go on to the second question: Did that person's act or failure to act cause [name of plaintiff]'s harm? There may be more than one cause of the harm. If you answer the first question "no" and the second question "yes," it means that the person named in the verdict form is at fault. You must then "allocate" fault among those you have found to be at fault.

Now I'll explain what each of these terms means.

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

03.01.

MUJI 1st References.

This instruction should be followed by those defining the specific duty (for example, negligence), the instruction on cause, and the instruction on allocating fault.

References.

"Fault" under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

Advisory Committee Notes.

Staff Notes.

Changes from May 9, 2005.

Status:

02.101a. "Responsibility" defined.

Your ultimate goal as jurors will be to decide who is responsible for [name of plaintiff]'s harm and to allocate responsibility among those people.

"Responsibility" means any act or failure to act that does not meet the required standard of care and that causes harm to the person seeking recovery.

This definition can be separated into two questions, and how you answer these questions will determine whether the person is responsible. The questions you are to answer are on the verdict form. You should answer these questions for every person named on the verdict form. I will state them now, using terms that I will then explain.

First, did a person's act or failure to act meet the required "standard of care." Only if you answer that question "no," do you go on to the second question: Did that person's act or failure to act cause [name of plaintiff]'s harm? There may be more than one cause of the harm. If you answer the first question "no" and the second question "yes," it means that the person named in the verdict form is responsible. You must then decide what percentage of the responsibility each person bears. Now I'll explain what each of these terms means. "Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.

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

Bishop v. GenTec, 2002 UT 36.

Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987)." 03.01. "Fault" under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product. This instruction should be followed by those defining the specific duty (for example, negligence), the instruction on cause, and the instruction on allocating responsibility.

Changes from May 9, 2005.

Now I'll explain what each of these terms means.

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

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

Bishop v. GenTec, 2002 UT 36.

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

03.01.

MUJI 1st References.

This instruction should be followed by those defining the specific duty (for example, negligence), the instruction on cause, and the instruction on allocating fault.

References.

"Fault" under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

Advisory Committee Notes.

Staff Notes.

Changes from May 9, 2005.

Status:

02.102. Standard of care required generally.

We all have a duty to use reasonable care to avoid injuring others. Negligence means that a person did not use reasonable care. 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 be added if the physical condition of one or more of the actors is relevant to determining negligence:

A person with a physical disability is held to this same standard of care. However, you may consider [name of person]'s disability among all of the other circumstances when deciding whether his conduct was reasonable. In other words, a physically disabled person must use the care that a reasonable person with a similar disability would use in a similar situation.

You must decide whether [names of persons on the verdict form] were negligent by comparing their conduct with that of a reasonably careful person in a similar situation.

MUJI 1st References.

03.02; 03.05; 03.06.

References.

Mitchell v. Pearson Enters., 697 P.2d 240 (Utah 1985).
Meese v. BYU, 639 P.2d 720 (Utah 1981).

Advisory Committee Notes.

The standard of care for the physically disabled should be distinguished from the standard for the mentally disabled. Under REST 2d Torts § 283C "[i]f the actor is ill or otherwise physically disabled, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under the disability." This is not necessarily a diminished standard, but is subjective in that a party's circumstances, i.e. their physical disability, must be considered in determining whether the actor breached the standard of care.

However, a different approach exists for the mentally disabled. Under REST 2d Torts § 283B "[u]nless the actor is a child, his insanity or other mental deficiency does not relieve the actor from liability for conduct which does not conform to the standard of

a reasonable man under like circumstances." Cited in Birkner v. Salt Lake County, et al., 771 P.2d 1053 (Utah 1989). While Birkner also appears to create a distinction in cases involving either "primary" or comparatively negligent mentally impaired actors, the distinction is factually specific and appears limited to the narrow context of conduct between a therapist and a patient with limited mental impairment. Id. at 1060.

Staff Notes.

Status: Approved April 11, 2005.

02.103. Standard of care required when children are present.

An adult must anticipate the ordinary behavior of children. An adult must be more careful when children are present than when only adults are present.

MUJI 1st References.

03.07.

References.

Kilpack v. Wignall, 604 P.2d 462 (Utah 1979).
Vitale v. Belmont Springs, 916 P2d 359 (Utah App. 1996). (It is improper to give this instruction if the child is older than fourteen.)

Advisory Committee Notes.

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

Staff Notes.

Status: Approved January 10, 2005.

02.104. Standard of care required by children.

You must decide whether a child aged _____ was negligent. A child is not judged by the adult standard. Rather, a child is negligent if he does not use the amount of care that is ordinarily used by children of similar age, intelligence, knowledge or experience in similar circumstances.

MUJI 1st References.

None.

References.

Donohue v. Rolando, 16 Utah 2d 294, 296-297, 400 P.2d 12,14 (1965).
Restatement (Second) of Torts § 283A (1965).
Restatement (Third) of Torts § 8 (1999).

Advisory Committee Notes.

This instruction should not be given if the child is engaged in an 'adult' activity. See Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995).

It is unclear whether this instruction should be given if the child is less than seven years old. In S.H. By and Through Robinson v. Bistryski, the Utah Supreme Court states that children under the age of seven are legally incapable of negligence. 923 P.2d 1376, 1382 (Utah 1996)(citing Nelson v. Arrowhead Freight Lines Ltd., 104 P.2d 225, 228 (Utah 1940)). However, given the backdrop of additional Utah case law that is left unaddressed by Bistryski, combined with its factually-specific nature, it is unclear whether a presumption that children under seven years old are wholly incapable of negligence exists in Utah.

Staff Notes.

Status: Approved April 11, 2005.

02.105. Standard of care required for a child participating in an adult activity.

A child participating in an adult activity, such as operating a motor vehicle, is held to the same standard of care as an adult.

MUJI 1st References.

None.

References.

Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995).

Advisory Committee Notes.

Before giving this instruction the judge should make the preliminary decision whether an activity is an adult activity.

Staff Notes.

Status: Approved January 10, 2005.

02.106. Abnormally dangerous activity.

I have determined that [name of defendant]'s activity was abnormally dangerous. One who carries on an abnormally dangerous activity is liable for harm caused by that activity whether or not he exercised reasonable care.

MUJI 1st References.

03.08.

References.

Walker Drug Co., Inc. v. La Sal Oil Co., 902 P.2d 1229, 1233 (Utah 1995)
Branch v. Western Petroleum, 657 P.2d 267, 273 (Utah 1982)
Robison v. Robison, 394 P.2d 87, 877 (Utah 1964)
Restatement (Second) of Torts §520 (1976); Restatement (Third) of Torts §20 (Tentative Draft No. 1)

Advisory Committee Notes.

Comment "l" to the Section 520 of the First and Second Restatements indicates that the determination of whether an activity qualifies as "abnormally" dangerous is for the court, not the jury. However, there are courts that allow the jurors to weigh the factors and make the decision for themselves. See cases cited in Comment "l" to Restatement (Third) of Torts §20.

In Walker Drug Co., Inc. v. La Sal Oil Co., supra, the Utah Supreme Court adopted the factors set forth in the Second Restatement: a) Existence of a high degree of risk of some harm to the person or property of others; b) Likelihood that the harm that results from it will be great; c) Inability to eliminate the risk by the exercise of reasonable care; d) Extent to which the activity is not of common usage; e) Inappropriateness of the activity to the place where it is carried on; and f) Extent to which its value to the community is outweighed by its dangerous attributes.

Staff Notes.

Status: Approved May 9, 2005

02.107. Standard of care required in controlling electricity.

Power companies and others who control power lines and power stations must use extra care to prevent people and their equipment from coming in contact with high-voltage electricity. The greater the danger, the greater the care that must be used.

MUJI 1st References.

03.09.

References.

Lish v. Utah Power & Light Co., 493 P.2d 611 (Utah 1972).
Brigham v. Moon Lake Elec. Ass'n, 470 P.2d 393 (Utah 1970).
See also, Burningham v. Utah Power & Light, 76 F. Supp. 2d 1243 (D. Utah 1999) (no duty owed to trespasser on power pole.)

Advisory Committee Notes.

Staff Notes.

Status: Approved April 11, 2005.

02.108. “Cause” defined.

If you decide that a person's act or failure to act did not meet the required "standard of care," then you must decide whether that person's act or failure to act was a "cause" of [name of plaintiff]'s 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 the person's act or failure to act:

(1) produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and
(2) could be foreseen by a reasonable person to produce a harm of the same general nature.

Remember, there may be more than one cause of the same harm.

MUJI 1st References.

03.13; 03.14; 03.15.

References.

Steffensen v. Smith's Management Corp., 862 P.2d 1342 (Utah 1993)
Rees v. Albertson's, Inc., 587 P.2d 130 (Utah 1978).

Advisory Committee Notes.

The term "proximate" cause should be avoided. While its meaning is readily understandable to lawyers, the lay juror may be unavoidably confused by the similarity of "proximate" to "approximate." The committee also rejected "legal cause" because jurors may

In Mitchell v. Gonzales, the supreme court of California held that use of the so-called "proximate cause" instruction, BAJI No. 3.75, which contained the "but for" test of cause in fact, constituted reversible error and should not be given in California negligence actions. 819 P.2d 872 (Cal. 1991). 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 revised BAJI 3.76. (See n.3).

Staff Notes.

Substantial factor removed. Goes to allocating fault, not causation.

Status: Changes from May 9, 2005.

02.109. Loss of chance.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

02.110. Superseding cause.

In this case, [name of defendant] claims that a later act by [name of another person] supersedes his earlier act in causing harm to [name of plaintiff]. You must decide whether the later conduct was reasonably foreseeable by [name of defendant]. If [name of defendant] could reasonably foresee the later act, then [name of defendant] is not liable.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

MUJI 3.16. In some cases, more than one negligent act may occur in a chain of events. In some cases, a more recent negligent act may break the chain of causation and relieve the liability of the prior negligent actor. If the later negligent act was foreseeable to the prior actor, both acts were concurring causes and the prior actor is not relieved of liability. The issue is whether the subsequent intervening conduct was reasonably foreseeable. The only way the prior negligent actor is relieved of liability is if the later negligent act is unforeseeable and may be described as extraordinary.

Status: New.

02.111. Allocation of fault.

If you decide that a person's act or failure to act did not meet the required "standard of care," and that that person's act or failure to act was a "cause" of [name of plaintiff]'s harm, it means you haved decided that the person is at fault. You must then allocate fault among those people you have decided are at fault. This must be done on a percentage basis and the total must add up to 100%. Each person's percentage should be based on the gravity or seriousness of that person's conduct.

For your information, [name of plaintiff]'s total recovery will be reduced by the percentage of fault that you attribute to [name of plaintiff]. If you decide that [name of plaintiff]'s fault is 50% or greater, [name of plaintiff] will recover nothing. When you answer the questions on damages, do not reduce the award by [name of plaintiff]'s percentage of fault. I will make that calculation later.

MUJI 1st References.

03.01; 03.17; 03.18; 03.19.

References.

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

Advisory Committee Notes.

"Fault" under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

The judge should ensure that the verdict form is written so that fault is allocated only among those parties for whom the jury finds both breach of duty and legal cause.

Staff Notes.

Status: Changes from May 9, 2005.

02.111a. Allocation of responsibility.

If you decide that a person's act or failure to act did not meet the required "standard of care," and that that person's act or failure to act was a "cause" of [name of plaintiff]'s harm, it means you haved decided that the person is responsible.You must then decide the percentage of responsibility each person bears. This must be done on a percentage basis and the total must add up to 100%. Each person's percentage should be based on the gravity or seriousness of that person's conduct.

For your information, [name of plaintiff]'s total recovery will be reduced by the percentage of responsibility that you attribute to [name of plaintiff]. If you decide that [name of plaintiff]'s responsibility is 50% or greater, [name of plaintiff] will recover nothing. When you answer the questions on damages, do not reduce the award by [name of plaintiff]'s percentage of responsibility. I will make that calculation later.

MUJI 1st References.

03.01; 03.17; 03.18; 03.19.

References.

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

Advisory Committee Notes.

"Fault" under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

The judge should ensure that the verdict form is written so that fault is allocated only among those parties for whom the jury finds both breach of duty and legal cause.

Staff Notes.

Status: Changes from May 9, 2005.

15.000. Damages.

MUJI 1st References.

27

References.

Advisory Committee Notes.

Staff Notes.

Status:

15.101. Introduction to personal injury damage. Liability contested.

If you decide that the fault of [defendant's name] was the Legal Cause of damages to [name of plaintiff], you must award the damages, if any, that you decide will fairly and adequately compensate [name of plaintiff]. There are two kinds of damages: Economic Damages and Non-Economic Damages. I will now explain what each means.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.102. Introduction to personal injury damage. Liability decided.

The Court has determined that [defendant] [cause of action - i.e., was negligent, had a defective product, etc.] and is therefore liable for [plaintiff's] damages, if any, that are legally caused by [defendant's] fault. You must decide what amount of damages will fairly and adequately compensate [plaintiff]. There are two kinds of damages: Economic Damages and Non-Economic Damages. I will now explain what each means.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.103. Personal injury - economic damage. Medical care.

Economic Damages include expenses for medically related care reasonably required and legally caused by [describe event]. You should award the reasonable value of the past medically related care and the care that probably will be reasonably required in the future.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.104. Personal injury - economic damage. Medical care.

The fact, if it be a fact, that any of the foregoing expenses were paid by some source other than the [name of plaintiff]'s own funds does not affect [name of defendant]'s responsibility to pay for such expenses.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.105. Personal injury - economic damage. Loss of earnings.

Economic Damages also include lost earnings and loss of earning capacity. You should award the reasonable value of the work [name of plaintiff] has been unable to do, and the reasonable value of his/her earnings that will be lost in the future. In determining this amount, you should consider evidence of: [name of plaintiff]'s earning capacity; (2) his/her actual earnings; (3) his/her work before and after [describe event]; (4) what he/she would likely have earned if he/she had not been injured; and (5) any other fact that relates to employment.

Loss of earning capacity is not the same as "lost earnings." Earning capacity means the potential to earn income. It is not necessarily determined by the actual loss of earnings. To determine the reasonable value of the loss of earning capacity, you should consider whether the injury legally caused a reduction of [plaintiff's name]'s ability to earn income.

MUJI 1st References.

References.

Dalebout v. Union Pacific R. Co., 980 P.2d 1194, 1200 (Ut. App. 1999)
Corbett v. Seamons dba Big O Tire, 904 P.2d 232, N.2 (Ut. App. 1995)

Advisory Committee Notes.

Staff Notes.

Status: New.

15.106. Personal injury - economic damage. Loss of household services.

Economic Damages also include loss of household services. To recover damages for this loss, [name of plaintiff] must prove the reasonable value of the household services that [name of plaintiff] has been unable to do, and the reasonable value of the household services that he/she will probably be unable to do in the future.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.107. Personal injury damages. Non-economic damages.

In awarding non-economic damages, you may consider the nature and extent of injuries [name of plaintiff] sustained, the degree and character of the disfigurement, the pain and suffering occasioned by the injuries, both mental and physical, their probable duration and severity, the extent to which [name of plaintiff] has been prevented from pursuing his/her ordinary affairs and the extent he/she has been limited in the enjoyment of life. You may consider whether the consequences of these injuries will, with reasonable probability, continue in the future. If so, you should award such damages as will fairly and justly compensate him/her throughout his/her life expectancy.

Pain, suffering, disfigurement and other such non-economic damages are not capable of being exactly and accurately determined, and there is no fixed rule, standard or formula for them. Nevertheless, it is your duty to make this determination. The law does not require the opinion of any witness to establish the amount of non-economic damages. In making an award for non-economic damages, you should do so with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

You are not precluded from awarding damages because of the difficulty in computing the damages. While you may not award damages based upon mere speculation, the law requires only that the evidence provide a reasonable basis for assessing the damages and does not require a mathematical certainty.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.108. Personal injury damages. Proof of damages.

Before you may award damages, [name of plaintiff] must prove two points.

First, he/she must prove that damages occurred. The evidence must do more than raise speculation that damages actually occurred; there must be a reasonable probability that [name of plaintiff] suffered damages from the Fault of [defendant].

Second, [name of plaintiff] must prove the amount of damages. The level of evidence required to establish the amount of damages is generally lower than that required to establish that damages actually occurred.

It is the person at fault, rather than the [plaintiff], who should bear the burden of some uncertainty in the amount of damages. While the standard for determining the amount of damages is not so exacting as the standard for proving that damages actually occurred, there still must be evidence that rises above speculation and provides a reasonable, even though not necessarily precise, estimate of the amount of damages.

If damages actually occurred, the amount of damages may be based upon reasonable approximations, assumptions or projections.

MUJI 1st References.

References.

Atkin Wright & Miles v. Mountain States Telephone & Telegraph Co., et al., 709 P.2d 330, 336 (Utah 1985)

Advisory Committee Notes.

Staff Notes.

Status: New.

15.109. Personal injury damages. Life expectancy.

According to the mortality tables, [name of plaintiff] is expected to live ____ more years. You may consider this fact in deciding the amount of future damages. A life expectancy is merely an estimate of the average remaining life of all persons in our country of a given age and gender, with average health and exposure to danger. Some people live longer and others die sooner. You may consider all other evidence bearing on the expected life of [name of plaintiff], including his/her occupation, health, habits, life style, and other activities.

MUJI 1st References.

References.

JIFU No. 90.36 (1957)
BAJI No. 14.69 (Supp. 1992). Reprinted with permission; copyright © 1986 West publishing Company

Advisory Committee Notes.

Staff Notes.

Status: New.

15.110. Personal injury damages. Present cash value.

If you decide that [name of plaintiff] is entitled to damages for future economic losses, then the amount of those damages must be reduced to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not suffer the economic losses until some time in the future. Money received today would be invested and earn a return or yield.

To reduce future damages to present cash value, you must determine the amount of money needed today that, when reasonably and frugally invested, will provide the [plaintiff] with the amount of money needed to compensate [plaintiff] for future economic losses. In making your determination, you should consider the earning yields of reasonable and frugal, but not necessary risk free, investment, and the effects of inflation over that time period.

MUJI 1st References.

References.

Advisory Committee Notes.

Utah law is silent on whether inflation should be taken into account in discounting an award for future damages to present value. The United States Supreme Court, however, has ruled that inflation should be taken into account in discounting. See Jones & Laughlin Steel Corp. v. Pfeifer, 462 U.S. 523 (1983). The Committee does not feel that it is appropriate to enact a "rule" on this issue in the context of preparing model instructions. Instead, the parties and the court in any particular case should address and resolve this issue.

See Klinge v. Southern Pac. Co., 57 P.2d 367 (Utah 1936) (Evaluating present cash value under FELA claim, holding that it was error for district court to have instructed the jury to use the legal rate of interest in determining present value - present value determination should be left to the jury, to be inferred from the evidence, using the "reasonably safe" standard cited above).

Gleason v. Kueker, 641 N.W. 2d 553 (Ia. Ct. App. 2001) (summarizing Iowa Supreme Court law on present value, using "reasonably safe" investment by person of "ordinary prudence" standard [the same discussed in Klinge], and stating that it is the jury's province "to make the present value reduction based on all the relevant facts and circumstances shown by the evidence.")

St. Louis S'western Ry. Co. v. Dickerson, 470 U.S. 409 (1985) (FELA case, holding that state court's failure to give present value instruction, which closely coincides with the first paragraph of our proposed instruction above, was error).

Staff Notes.

Status: New.

15.111. Personal injury damages. Mitigation of damages.

[Name of plaintiff] has a duty to exercise reasonable diligence and ordinary care to minimize the damages caused by [defendant's] fault. Any damages awarded to [plaintiff] should not include damages for losses that [plaintiff] could have avoided by taking reasonable steps. It is the [defendant]'s burden to prove that the [plaintiff] could have minimized his/her damages, but failed to do so. If [plaintiff] made reasonable efforts to minimize his/her damages, then your award should include the amounts he/she reasonably incurred for this purpose.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.112. Personal injury damages. Susceptibility to injury.

A person who may be more susceptible to injury than someone else is still entitled to recover the full amount of damages that were Legally Caused by [name of defendant]'s Fault. In other words, the amount of damages should not be reduced merely because [name of plaintiff] is more susceptible to injury than someone else may be.

MUJI 1st References.

References.

Biswell v. Duncan, 742 P.2d 80 (Utah 1987)
Brunson v. Strong, 17 Utah 2d 364, 412 P.2d 451 (1966)
Tingey v. Christensen, 987 P.2d 588 (Utah 1999)

Advisory Committee Notes.

Staff Notes.

Status: New.

15.113. Personal injury damages. Aggravation of dormant pre-existing condition.

If [plaintiff] has a pre-existing condition that otherwise does not affect him/her, he/she may recover the full amount of damages legally caused by an aggravation of that condition. In other words, when a pre-existing condition does not cause pain or disability, but the [describe the event] causes the person to suffer pain, disability or other problems, then the person may recover the full amount of these damages.

MUJI 1st References.

References.

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

Advisory Committee Notes.

Staff Notes.

Status: New.

15.114. Personal injury damages. Aggravation of pre-existing condition.

A person who has a physical [or emotional] condition before the time of [described event] is not entitled to recover damages for that pre-existing condition. However, the injured person is entitled to recover damages for any aggravation of the preexisting condition that results from another's fault, even if the person's pre-existing condition made him or her more susceptible to damages than the average person would have been. This is true even if another person would not have suffered any damages from the event at all.

When a pre-existing condition makes injuries caused by another's fault greater than they would have been without the condition, it is your duty, if possible, to determine what portion of the plaintiff's disability, impairment, pain, suffering, and other damages is attributable to the pre-existing condition and what portion is attributable to the [described event]. It is the defendant's duty to prove what portion of the damages is caused by the pre-existing condition. But if you find that the evidence does not allow you to make such a determination, then you must conclude that plaintiff's entire disability, impairment, pain, suffering, and other damages are legally caused by the defendant's fault.

MUJI 1st References.

References.

Brunson v. Strong, 17 Utah 2d 364, 412 P.2d 451 (1966)
Tingey v. Christensen, 987 P.2d 588, 592 (Utah 1999)
Robinson v. All-Star Delivery, 992 P.2d 969, 972 (Utah 1999)

Advisory Committee Notes.

Staff Notes.

Status: New.

15.115. Personal injury damages. Colateral source payments.

You shall award damages in an amount that fully compensates [name of plaintiff] for damages as I have instructed you. You shall not speculate or consider any other possible sources of benefit the plaintiff may have received. After you have returned your verdict I will make whatever adjustments may be appropriate.

MUJI 1st References.

References.

Utah Code Ann. § 78-14-4.5
Mahana v. Onyx Acceptance Corp., 2004 UT 59 37, 39, 96 P.3d 893, 901

Advisory Committee Notes.

Staff Notes.

Status: New.

15.116. Personal injury damages. Deduction for any settlement.

You have heard evidence that [name of plaintiff] has settled [his/her/its] claim against [name of settled party]. Your award of damages to [name of plaintiff] should be made without considering any amount that [he/she/it] may or may not have received under this settlement. After you have returned your verdict, I will make any appropriate adjustment to your award of damages.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

15.117. Arguments of counsel not evidence of damages.

You may consider the arguments of the attorneys to assist you in deciding the amounts of damages, but their arguments are not evidence.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status: New.

16.000. Concluding Instructions.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status:

16.101. Selection of foreperson and deliberation.

After you enter the jury room, and before discussing the case, you must select one of your members to serve as foreperson.

The foreperson will preside over your deliberations and sign the verdict form when it's completed.

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

After you select the foreperson it is your duty to consult with one another - to deliberate - with a view to reaching an agreement.

Your attitude and conduct during discussions are extremely 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. You each must decide the case for yourself, but only after discussing the case with your fellow jurors. You should not hesitate to change an 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.

MUJI 1st References.

02.07; 02.25; 02.28.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.

16.102. Using notes.

In the jury room you may use any notes that you have taken to refresh your memory of what the witnesses said. Remember that your notes are not evidence. Only the testimony of the witnesses and the exhibits received by the court during the trial are evidence.

Each of you must reach your own decision after consultation with the other jurors, and each of you must rely on your own memory of the evidence. One juror's opinion should not be given excessive consideration just because that juror took notes.

MUJI 1st References.

02.20.

References.

Advisory Committee Notes.

Staff Notes.

From CACI: The court makes a record of everything that is said during the trial. If you have a question during deliberations about what a witness said, you should ask that the record be read or shown to you. You must accept the record as accurate.

Status: Reviewed.

16.103. Do not resort to chance.

Your duty as a juror is to evaluate the evidence presented by the parties and to come to a decision that is supported by the evidence. For example, you cannot make a decision by flipping a coin, speculating or choosing one juror's opinions at random.

If you decide that a party is entitled to recover damages, then you must decide the amount of money to be awarded to that party. Each of you should express your own independent judgment of what the amount should be. It is your duty to thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence and come to an agreement on the amount to be awarded. It is unlawful for you to agree in advance to average the independent estimates of each juror.

MUJI 1st References.

02.26.

References.

Advisory Committee Notes.

Staff Notes.

2d Para last sentence. Change "It is unlawful for you to" to "You may not"

Status: Reviewed.

16.104. Verdict form. Agreement on verdict.

I am going to give you a form called the verdict form. You must answer the questions on the form, based upon my instructions and 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. But at least six jurors must agree on the answer to each question, although they need not be the same six jurors on each question. As soon as six or more of you have agreed on the answer to each question, the foreperson should sign and date the form and tell the Bailiff that you have finished. When the Bailiff escorts you back to the courtroom, you should bring the completed verdict form with you.

You must answer the following questions on the verdict form:

[Read questions from verdict form]

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

MUJI 1st References.

02.27.

References.

Advisory Committee Notes.

Staff Notes.

Status: Reviewed.