Agenda
Advisory Committee on
Model Civil Jury Instructions

June 11, 2012
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
Vicarious liability instructions	Tab 2	John Lund
CV1005. Industry standard.	Tab 3	Paul Simmons

Committee Web Page

Published Instructions

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 4:00 to 6:00 unless otherwise stated.

September 10, 2012
October 9, 2012 (Tuesday)
November 13, 2012 (Tuesday)
December 10, 2012

Tab 1

MINUTES
Advisory Committee on Model Civil Jury Instructions
May 14, 2012
4:00 p.m.

Present: John L. Young (chair), Dianne Abegglen, Juli Blanch, Honorable William W. Barrett, Jr., Francis J. Carney, Phillip S. Ferguson, Tracy H. Fowler, Gary L. Johnson, John R. Lund, Timothy M. Shea, Paul M. Simmons, Ryan M. Springer, Peter W. Summerill, Honorable Kate A. Toomey, David E. West

Vicarious Liability Instructions. The committee continued its review of the vicarious liability instructions:

1. *CV2810. Joint venture defined.* Mr. Ferguson pointed out that the numbered subparagraphs start with (2). Mr. Shea will fix them so that they start with (1).

2. *CV2811. Liability of [partnership/joint venture] for acts of [partner/joint venturer].* The committee approved the instruction.

3. *CV2812. Liability of parents or legal guardians for property damage caused by a minor.* Mr. West noted that the two numbered subparagraphs at the end of the instruction need to be separated by "and" or "or." Since either condition is sufficient, Mr. Shea added "or" to the end of subparagraph (1). Mr. West also thought that subparagraph (1) was vague and did not give the jury much guidance; he questioned whether it was an accurate statement of the law. The committee reviewed the statutory language. It debated adding the language from section 78A-6-1113(5) until someone pointed out that subsection (5) says that "A court may waive part or all of the liability for damages" if certain conditions are met. The committee thought that this language meant that the question of whether the conditions were met was for the court, not the jury, to decide. On Mr. Lund's motion (Judge Toomey 2d), the committee approved the instruction as proposed, with the addition of the word "or" at the end of subparagraph (1).

4. *CV2813. Liability of a person who gives a minor permission to drive his vehicle.* On Mr. Ferguson's motion (Judge Toomey 2d), the committee approved CV2813.

5. *CV2814. Independent contractor defined.* Mr. Johnson noted that the Vicarious Liability Subcommittee had not had a chance to review the instructions dealing with vicarious liability for the acts of an independent contractor. Since the intent of CV2814 is to help the jury decide whether a given actor was an independent contractor or an employee, Mr. Shea suggested giving two instructions--one defining "employee," and one defining "independent contractor"–along with an instruction telling the jury that the defendant can be vicariously liable if the actor was an employee but not if he or she was an independent contractor, unless certain exceptions to the

general rule apply. Mr. Johnson noted that there is not an instruction defining "employee," just instructions defining scope of employment (CV2805-09). Mr. Ferguson suggested using the following language from *Utah Home Fire Insurance Company v. Manning,* 1999 UT 77, ¶ 11, 985 P.2d 243:

> [A]n employee is one who is hired and paid a salary, a wage, or at a fixed rate, to perform the employer's work as directed by the employer and who is subject to a comparatively high degree of control in performing those duties. In contrast, an independent contractor is one who is engaged to do some particular project or piece of work, usually for a set total sum, who may do the job in his [or her] own way, subject to only minimal restriction or controls and is responsible only for its satisfactory completion.

Judge Toomey suggested that the two definitions be separate instructions. Mr. West thought that CV2814 was too vague. It lists some factors for the jury to consider but does not tell jurors how to weigh them, that they are not exclusive, or that no one factor is dispositive. He suggested prefacing the list with "Among the factors you may consider are the following:" Mr. Summerill noted that the factors were taken from workers' compensation cases, not from tort cases. He agreed with Mr. West that the jury should be told that no one factor is dispositive. Mr. Springer offered as authority for that position *Gourdin ex rel. Close v. Sharon's Cultural Education Recreational Association (SCERA),* 845 P.2d 242 (Utah 1992). Mr. Shea added the sentence, "You may consider the following factors, no one of which is controlling, and weigh them as you think appropriate." Mr. Young suggested bracketing the factors, so that the court would only give those for which there is evidence. Mr. Lund and Ms. Blanch questioned the sentence "An independent contractor is responsible only for the job's satisfactory completion," and noted that a jury could think from this sentence that the only way an independent contractor could be liable is for the unsatisfactory completion of the work. Ms. Blanch suggested deleting the word "only," and Judge Toomey suggested deleting the sentence altogether.

Mr. Johnson will rewrite CV2814 in light of the committee's discussion.

6. *CV2815. Liability of employer for acts of independent contractor.* Mr. Young questioned the use of the phrase "employer of an independent contractor." He noted that a jury may infer from the phrase that an independent contractor was an "employee." The committee deleted "of employer" from the title of the instruction and replaced references to the "employer" of an independent contractor with "[name of defendant]." It also replaced references to "independent contractor" or "contractor" with "[name of contractor]." Ms. Blanch suggested deleting "or participated in" from the third line. She thought that it would allow the jury to find an employer liable merely for

having provided some tools, for example. Mr. Ferguson suggested that whether the level of participation rose to the level of control, making the employer liable, was a question for the jury. Mr. Summerill thought that whether an employer's participation could make him liable depends on whether the employer participated in the injury causing act. Ms. Blanch thought that that would not be vicarious liability but that the employer would then be liable for its own negligence. Mr. Summerill noted that the "participation" standard comes from *Begaye v. Big D Construction Corp.,* 2008 UT 4, 178 P.3d 343, which in turn relied on *Thompson v. Jess,* 1999 UT 22, 979 P.2d 322, and thought it should not be abandoned. At the suggestion of Messrs. Lund and Johnson, the committee added "actively" before "participated in." Mr. Summerill noted that the last sentence of the first paragraph is stated in the negative and thought the committee had agreed to stay away from instructions of the type that "X is not enough." At Mr. Shea's suggestion, the sentence "The employer must exert sufficient control over the independent contractor such that the contractor could not carry out the injury-causing aspect of the work in his or her own way" was moved to the second sentence of the first paragraph, and the last sentence of the instruction was deleted as tautological. Mr. Lund thought that the instruction should tell the jury that it needs to find a causal relation between what the defendant/employer did and what the contractor did. Mr. Young suggested separating the concepts of active participation and control. Ms. Blanch thought that the two concepts are equivalent and should not be separated. At Mr. Johnson's suggestion, the committee agreed to revisit the instruction at the next meeting, after reviewing Mr. Shea's latest draft.

7. *CV2816. Liability of employer for physical harm caused by independent contractor when non-delegable duty is present.* Mr. Johnson noted that he was not sure how CV2816 differs from MUJI 1st 25.11. Mr Shea wondered what the jury was supposed to do with the instruction, since the court will have already determined whether or not a duty exists, and the only question for the jury is to determine whether any duty was breached. Mr. Ferguson agreed that the instruction does not say what the jury is supposed to decide. Mr. Lund thought the instruction was explanatory, that it explained to the jury why there was an exception in the particular case to the general rule that the employer of an independent contractor is not liable for the fault of the contractor, much like other instructions explain to the jury the effect of its finding of comparative fault. Mr. Summerill noted that Judge Hadfield had given an instruction on non-delegable duty in a trial Mr. Summerill had. He will try to find the instruction and give it to Mr. Johnson to consider in revising CV2816. The committee deferred further discussion of the instruction.

8. *CV2817. Liability of employer for physical harm caused by independent contractor if work is inherently dangerous.* Mr. Johnson noted that the authority for the instruction is *Thompson v. Jess.* Ms. Blanch thought that the instruction could be improved by giving an example, such as the use of explosives. Mr. Lund thought the

instruction could give more guidance on what is considered "a special danger." Mr. Ferguson thought the instruction, like CV2816, did not clearly say what the jury was supposed to decide. He and Mr. Carney asked whether the existence of a special or inherent danger was a question for the court or the jury. Mr. Young suggested adding an introductory instruction explaining the claims of the parties, for example: "[Name of defendant 1] claims that [name of defendant 2] was an independent contractor and that [name of defendant 1] is therefore not liable for [name of defendant 2]'s fault. [Name of plaintiff] claims that [name of defendant 1] can be liable for [name of defendant 2]'s fault because [describe the reason, e.g., retained control, non-delegable duty, inherently dangerous work]." Mr. Lund thought that whether the retained control doctrine applies is probably a question of fact, whether a case involves a nondelegable duty is probably a question of law, and whether a case involves inherently dangerous work is probably somewhere in between. Mr. Young suggested further research on the issue of whether an activity is "inherently dangerous" is a question of law or fact. If there is no clear answer under Utah law, he suggested providing alternative instructions (instruction A if the court decides it is a question of law, in which case the court would instruct the jury, "I have determined that [describe the activity] was inherently dangerous," or instruction B if the court decides it is a question of fact).

9. *CV2818. Vicarious punitive damages liability.* Mr. Ferguson questioned whether this instruction should go with the vicarious liability instructions or whether it should go with the punitive damage instructions. The committee thought it should probably go with the vicarious liability instructions. In the interest of time, the committee deferred further discussion of the instruction and of CV1005 for a later meeting.

Next Meeting. The next meeting is Monday, June 11, 2012, at 4:00 p.m. The committee will then take July and August off.

The meeting concluded at 5:55 p.m.

Tab 2

Vicarious Liability Instructions

(1) CV 2801. An organization acts through its agents. (Approved)

[Name of party] is a [corporation, partnership, joint venture, etc.] and acts or fails to act when [name of party]’s officers, employees, or agents act or fail to act within the scope of their duties or authority.

References

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094-95 (Utah 1988).

Orlob v. Wasatch Management, 2001 UT App 28, ¶ 18, 33 P.3d 1078.

MUJI 1st Instruction

25.1.

Committee Notes

If the jury must decide whether the defendant is a corporation, partnership, or joint venture, then this instruction should not be given. Or phrased as "If you find that [name of defendant] is …."

(2) CV 2802. Actual authority. (Approved)

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of principal] granted [name of officer/employee/agent] the authority to [describe actual authority]; or

(2) [name of officer/employee/agent]'s conduct was necessary, usual, proper or incidental to the conduct that [name of principal] actually authorized.

References

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090 (Utah 1988)

Bowen v. Olsen, 576 P.2d 862 (Utah 1978)

B & R Supply Co. v. Bringhurst, 28 Utah 2d 442, 503 P.2d 1216 (1972)

Restatement (Third) of Agency Section 3.01

MUJI 1st Instruction

25.2; 25.4.

Committee Notes

The courts have adopted a more specific test in cases involving scope of employment. If the relationship between principal and agent is a traditional employment relationship, the court should use Instruction CV2805. Scope of employment. If the relationship is a traditional principal and agent relationship, the court should use this instruction.

(3) CV 2803. Apparent authority. (Approved)

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove all of the following:

(1) [name of principal] acted in a way that would cause a reasonable person to believe that [name of principal] consented to or knowingly permitted [name of officer/employee/agent]'s conduct; and

(2) at the time of [name of officer/employee/agent]'s conduct, [name of plaintiff] knew of [name of principal]'s acts; and

(3) [name of plaintiff] did in fact believe that [name of officer/employee/agent] had the authority to [describe act or omission].

However, if [name of plaintiff] knew of the real scope of [name of officer/employee/agents]'s authority in time to avoid the harm, then [name of principal] is not liable for [name of officer/employee/agent]'s conduct.

References

City Elec. v. Dean Evans Chrysler-Plymouth, 672 P.2d 89 (Utah 1983).

Bank of Salt Lake v. Corporation of the President of the Church, 534 P.2d 887 (Utah 1975).

Sutton v. Byer Excavating, Inc., 2012 UT App 28.

Restatement (Third) of Agency, Section 2.03, Comment (e). "To establish that an agent acted with apparent authority, it is not necessary for the plaintiff to establish that the principal's manifestation induced the plaintiff to make a detrimental change in position, in contrast to the showing required by the estoppel doctrines…. Establishing that a plaintiff took an action as a result of the principal's manifestation may also help to establish that the person to whom the manifestation was made believed it to be true. Moreover, the underlying substantive cause of action on which the third party sues the principal may require proof that the plaintiff took a specific type of action. For example, if the underlying cause of action is fraud, it is necessary for the plaintiff to establish that the defendant's misrepresentation led to a detrimental change in position."

MUJI 1st Instruction

25.3.

Committee Notes

(4) CV 2804. Approval of conduct. (Approved)

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of third party] because [name of principal] approved of [name of third party]'s conduct after the fact. To succeed on this claim, [name of plaintiff] must prove that [name of principal] knew of [name of third party]'s conduct; and approved of it.

[Name of plaintiff] may prove that [name of principal] approved of [name of third party]'s conduct by any acts, words, or conduct, including silence, which, under the circumstances, indicate approval.

References

Bradshaw v. McBride, 649 P.2d 74 (Utah 1982).

Bullock v. Utah, Dep't of Transp., 966 P.2d 1215 (Utah Ct.App.1998).

Franklin Credit Mgmt. Corp. v. Hanney, 2011 UT App 213.

MUJI 1st Instruction

25.5.

Committee Notes

(5) CV2805. "Scope of employment" defined. (Approved)

[Name of plaintiff] claims that [name of employer] is liable for [describe act or omission] by [name of employee]. To succeed on this claim, [name of plaintiff] must prove that [name of employee]'s conduct was within the scope of employment. "Scope of employment" means that the conduct:

(1) was of the general kind [name of employee] was [employed/authorized] to do; and

(2) occurred substantially within working hours and within the normal work area; and

(3) was motivated, at least in part, by the purpose of serving [name of employers]'s interest.

References

Helf v. Chevron U.S.A., Inc., 2009 UT 11, ¶ 48, 203 P.3d 962.

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

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

Sutton v. Byer Excavating, Inc., 2012 UT App 28.

MUJI 1st Instruction

25.6.

Committee Notes

The courts have adopted a more specific test in cases involving scope of employment. If the relationship between principal and agent is a traditional employment relationship, the court should use this instruction. If the relationship is a traditional principal and agent relationship, the court should use <a

href=http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=28#2802 >Instruction CV2802. Actual authority.

(6) CV 2806. Deviation from scope of employment. (Approved)

If [name of employee] deviates from carrying out [his] employment duties for personal reasons, whether [he] was still acting within the scope of employment depends on the extent of the deviation.

If it was a slight deviation to attend to business other than [name of employer]'s, then the acts are still within the scope of employment.

However, if [name of employee]'s deviation was so substantial that it had no relation to [his] employment or to [name of employer]'s business, then [name of employee]'s acts are not within the scope of employment.

References

Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1042 (Utah 1991).

Carter v. Bessey, 97 Utah 427, 93 P.2d 490, 492 (1939).

Restatement (Third) of Agency. Section 7.07.

MUJI 1st Instruction

25.7.

Committee Notes

(7) CV 2807. Scope of employment; travel to and from work. (Approved)

Traveling to and from work is usually not within the scope of employment. [Name of plaintiff] claims that, [name of employee]'s [describe act or omission] while traveling to or from work is within the scope of employment. To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of employer] benefited from the travel other than just in [name of employee]'s presence at work; or

(2) [name of employer] had control over [name of employee]'s conduct during [his] travel.

References

Ahlstrom v. Salt Lake City Corp., 2003 UT 4, ¶ 6, 73 P.3d 315.

Christensen v Swenson, 874 pd 125 (Utah 1994).

Whitehead v. Variable Annuity Life Ins. Co., 801 P.2d 934 (Utah 1989).

Windsor Ins. Co. v. American States Ins. Co., 22 P.3d 1246, (Utah App.,2001).

27 ALR 5th 174. Employer's liability for negligence of employee in driving his or her own automobile.

MUJI 1st Instruction

25.8.

Committee Notes

Ahlstrom v. Salt Lake City Corp., 2003 UT 4, 73 P.3d 315, includes a thorough discussion of the scope of employment doctrine and of several exceptions to it.

(8) CV 2808. Scope of employment; dual purpose. (Approved)

If [name of employee]'s [describe act or omission] was motivated to benefit [name of employer], then the conduct was within the scope of employment even though [name of employee] was also pursuing some personal interest.

However, if [name of employee]'s primary motivation was personal, then [his] conduct was not within the scope of employment, even though [he] may have also transacted some business or performed some duty related to [his] employment.

[Where [name of employee] is involved in an accident while traveling for [name of employer], you should ask whether the trip was one for which [name of employer] would have had to send another employee to the same destination or to perform the same task if the trip had not been made.]

References

Ahlstrom v. Salt Lake City Corp., 2003 UT 4, ¶ 14, 73 P.3d 315.

Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1041 (Utah 1991).

Whitehead v. Variable Annuity Life Ins. Co., 801 P.2d 934 (Utah 1989).

MUJI 1st Instruction

25.7

Committee Notes

Use the bracketed paragraph only if the case involves the employee's travel.

(9) CV 2809. Scope of employment; intentional act. (Approved)

[Name of employee]'s intentional [describe act or omission] is within the scope of employment if [name of employee]'s conduct:

(1) is of the type that [he] was hired to perform; and

(2) occurred substantially within the authorized time and space limits of [his] employment; and

(3) was at least partly motivated to serve [name of employer]'s interest.

However, if [name of employee]'s conduct was unprovoked, highly unusual, and outrageous, then [name of employee]'s conduct was not within the scope of employment.

References

Clark v. Pangan, 2000 UT 37, 998 P.2d 268.

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

MUJI 1st Instruction

25.13.

Committee Notes

(10) CV 2810. Joint venture defined. (Approved)

A joint venture is a relationship voluntarily agreed to by two or more people in which the parties combine their property, money, skill, labor or knowledge and share:

(1) a common goal;

(2) ownership in the [describe subject matter];

(3) the right to control;

(4) the profits; and

(5) any losses, unless there is an agreement to the contrary.

References

Ellsworth Paulsen Const. Co. v. 51-SPR-L.L.C., 2008 UT 28, 183 P.3d 248 (must be evidence to support each element, 183 P.3d 253, n. 2; "loss-sharing" discussed).

Rogers v. M.O. Bitner Co., 738 P.2d 1029 (Utah 1987) (elements of joint venture).

Basset v. Baker, 530 P.2d 1 (Utah 1974).

MUJI 1st Instruction

25.16.

Committee Notes

(11) CV 2811. Liability of [partnership/joint venture] for acts of [partner/joint venturer. (Approved)

[Name of plaintiff] claims that [name of partnership/joint venture] is liable for [describe act or omission] by [name of partner/joint venturer]. To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of partner/joint venturer]'s conduct was within the ordinary course of [name of partnership/joint venture]'s business; or

(2) [name of partner/joint venturer] acted under the [actual / apparent] authority of the [partnership/joint/venture].

References

Utah Code Section 48-1-10 (repealed effective July 1, 2012).

Utah Code Section 48-1b-305.

MUJI 1st Instruction

25.14.

Committee Notes

See also Instruction CV2802 Actual authority, and Instruction CV2803 Apparent authority.

(12) CV 2812. Liability of parents or legal guardians for property damage caused by a minor. (Approved)

[Name of defendant] is the [parent] [legal guardian] of [name of minor]. [Name of defendant] is liable for damage to [name of plaintiff]'s property if you find that:

[(1) [Name of minor] intentionally [damaged, defaced, destroyed, or took] [name of plaintiff]'s property;]

[(2) [Name of minor] recklessly or willfully shot or propelled an object at [name of plaintiff]'s [car, truck, bus, airplane, boat, locomotive, train, railway car, or caboose];] or

[(3) [Name of minor] intentionally and unlawfully tampered with [name of plaintiff]'s property and thereby [recklessly endangered human life] [recklessly caused or threatened a substantial interruption or impairment of any public utility service.]

However, if you find that [name of defendant]:

(1) [made a reasonable effort to supervise and direct [name of minor] or]

(2) [made a reasonable effort to restrain [name of minor] if [name of defendant] knew of [name of minor]'s intended acts in advance]

then [name of defendant] is not liable for any damages.

References

Utah Code Section 78A-6-1113.

MUJI 1st Instruction

25.10.

Committee Notes

The list of vehicles in (2) is a statutory list, and some vehicles are not included. The statute limits the amount of damages; if the damages awarded are greater than allowed, the judge can reduce the amount.

(13) CV 2813. Liability of a person who gives a minor permission to drive his vehicle. (Approved)

If you find that [name of defendant]

[(1) was the owner of the motor vehicle involved in the accident and knowingly permitted [name of minor] to drive the vehicle on a highway, or]

[(2) furnished the motor vehicle to [name of minor],

then [name of defendant] is liable for damages caused by the negligence of [name of minor] in driving the vehicle on a highway.

References

Utah Code Section 53-3-212.

Utah Code Section 53-3-102. Definition of “highway.”

MUJI 1st Instruction

25.22 & 25.23.

Committee Notes

This instruction should be given only if the owner or the person who furnished the motor vehicle did not have security covering the minor's operation of the vehicle in amounts as required under Section 31A-22-304.

(14) CV 2814. Independent contractor defined.

[Name of plaintiff] claims that [name of actor] was [name of defendant]’s agent or employee. [Name of defendant] claims that [name of actor] was an independent contractor.

An independent contractor is one who does some particular project or piece of work in his or her own way, subject only to minimal direction and control, and is responsible only for completing the job satisfactorily. An employee is one who is does the work in the manner and by the means directed by the employer.

In deciding who had the right to control the manner and means of accomplishing the work, you may consider the following factors and weigh them as you think proper:

(1) agreements between the parties about who had the right of direction or control;

(2) the right to hire and fire;

(3) the method of payment; and

(4) who furnished the equipment.

References

Utah Home Fire Ins. Co. v. Manning, 1999 UT 77, ¶11, 985 P.2d 243.

Gourdin By & Through Close v. Sharon's Cultural Educ. Recreational Ass'n (SCERA), 845 P.2d 242 (Utah 1992).

Harry L. Young & Sons v. Ashton, 538 P.2d 316, 318 (Utah 1975).

MUJI 1st Instruction

25.9

Committee Notes

(15) CV 2815. Liability for independent contractor.

If [name of actor] was an independent contractor, then [name of defendant] [usually] is not liable for [name of actor]'s negligent acts or omissions.

[However, … As applicable, follow with:

CV 2815A. Principal controls method or operative detail of work.

CV 2815B. Principal prohibited from delegating duty.

CV 2815C. Inherently dangerous work.]

Committee Note:

Include the bracketed "usually" if the jury will be instructed on one of the circumstances in which the principal is liable for an independent contractor's negligence.

(16) CV 2815A. Principal controls manner and means of work.

… [name of defendant] is liable for physical harm caused by [name of actor]'s negligent acts or omissions if [name of defendant] actively participated in the injury-causing aspect of the work or exerted so much control over the manner and means of the injury-causing aspect of the work that [name of actor] could not carry out that work in [his] own way.

References

Magana v. Dave Roth Constr., 2009 UT 45, ¶27,215 P.3d 143.

Begaye v. Big D Constr. Corp., 2008 UT 4, ¶¶ 9-10, 178 P.3d 343.

MUJI 1st Instruction

25.10

Committee Notes

Magana v. Dave Roth Constr., 2009 UT 45, defines “injury-causing aspect of the work” to mean the proximate cause of plaintiff’s harm. See Instruction CV209. "Cause" defined.

(17) CV 2815B. Principal prohibited from delegating duty.

… [name of defendant] is liable for physical harm caused by [name of actor]’s negligent acts or omissions if [name of defendant] was prohibited by [describe the law or contract that is claimed to prohibit delegation] from delegating the duty to perform the injury-causing aspect of the work.

References

Gleason v. Salt Lake City, 94 Utah 1, 74 P.2d 1225 (1937).

Yazd v. Woodside Home Corp., 2006 UT 47, ¶14, 143 P.3d 283.

MUJI 1st Instruction

25.11

Committee Notes

Magana v. Dave Roth Constr., 2009 UT 45, defines “injury-causing aspect of the work” to mean the proximate cause of plaintiff’s harm. See Instruction CV209. "Cause" defined.

(18) CV 2815C. Inherently dangerous work.

… [name of defendant] is liable for [name of actor]’s negligent acts or omissions if the work involved a special danger which [name of defendant] knew or had reason to know was inherent in or normal to the work.

References

Thompson v. Jess, 1999 UT 22, 979 P.2d 322, 329 citing Restatement (Second) of Torts §§ 416, 427 (1965).

MUJI 1st Instruction

25.12

Committee Notes

Tab 3

(1) CV1005 Industry standard.

In deciding whether the [product] is defective, you may consider the evidence presented concerning the design, testing, manufacture and type of warning for similar products.

References

Tafoya v. Sears Roebuck & Co., 884 F.2d 1330, 1332 (10th Cir. 1989).

Restatement (Third) of Torts, Product Liability §4.