

## **MUJI 2D GENERAL INSTRUCTIONS**

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## OPENING INSTRUCTIONS

### CV101 GENERAL ADMONITIONS.

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, although it may seem natural to want to investigate a case, you must not try to get information from any source other than what you see and hear in this courtroom. ~~It's natural to want to investigate a case, but~~ You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the Internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, ~~Blackberries,~~ iPhones, Smartphones, ~~PDA's,~~ or any social media or electronic device.

You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, although it may seem natural, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. ~~This also is a natural thing to want to do, but~~ You may not communicate about the case by any means, including by ~~via~~ emails, text messages, tweets, blogs, chat rooms, comments, ~~or other postings, Facebook, MySpace, LinkedIn, or any other or any~~ social media.

You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter. And then please report the contact to the clerk or the bailiff, and they will notify me.

Also, do not talk with the lawyers, parties or witnesses about anything, not even to pass the time of day.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties would not have a chance to explain or contradict that information because they wouldn't know about it. That's why it is so important that you base your verdict only on information you receive in this courtroom.

Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. But this means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court and the taxpayers. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that as well. If anyone tries to contact you about the case, either directly or indirectly, or sends you any information about the case, please report this promptly as well. Notify the bailiff or the clerk, who will notify me.

These restrictions must remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, or post, or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict can be presented only one piece at a time, and it is only fair that you do not form an opinion until I send you to deliberate.

## References

CACI 100

## MUJI 1st Instruction

1.1; 2.4.

## Committee Notes

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

## Amended Dates:

3/2020

## CV101A GENERAL ADMONITIONS. [Self-represented litigant version]

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, although it may seem natural to want to investigate a case, you must not try to get information from any source other than what you see and hear in this courtroom. You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the Internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, iPhones, Smartphones, or any social media or electronic device.

~~First, you must not try to get information from any source other than what you see and hear in this courtroom. It's natural to want to investigate a case, but you may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, Blackberries, iPhones, Smartphones, PDAs, or any social media or electronic device.~~ You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, although it may seem natural, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. You may not communicate about the case by any means, including by emails, text messages, tweets, blogs, chat rooms, comments, other postings, or any social media.

~~Second, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. This also is a natural thing to want to do, but you may not communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or other postings, Facebook, MySpace, LinkedIn, or any other social media.~~ You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter. And then please report the contact to the clerk or the bailiff, and they will notify me.

[Name of plaintiff] [name of defendant] is representing him/herself.

[Name of defendant] [name of plaintiff] is represented by \_\_\_\_\_.

[Name of plaintiff], [name of defendant], attorneys for the [plaintiff][defense] and witnesses are not allowed to speak with you during the case. When you see [plaintiff's] [defendant's] attorneys at a recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly – they are simply following the law.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties would not have a chance to explain or contradict that information because they wouldn't know about it. That's why it is so important that you base your verdict only on information you receive in this courtroom. Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. But this means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court and the taxpayers. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that as well. If anyone tries to contact you about the case, either directly or indirectly, or sends you any information about the case, please report this promptly as well. Notify the bailiff or the clerk, who will notify me.

These restrictions must remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, or post, or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict can be presented only one piece at a time, and it is only fair that you do not form an opinion until I send you to deliberate.

## **References**

MUJI CV 101.

Preliminary Jury Instructions for use with self-represented litigants, U.S. District Court, Eastern District of California.

## **Committee Notes**

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

**Amended Dates:**

3/2020

**CV101B FURTHER ADMONITION ABOUT ELECTRONIC DEVICES.**

Removed 9/2011. Incorporated into CV 101.

**CV102 ROLE OF JUDGE, LAWYERS, AND JURY. ~~ROLE OF THE JUDGE, JURY AND LAWYERS.~~**

All of us, judge, lawyers, and jury, are officers of the court and have different roles during the trial:

As the judge I will supervise the trial, decide what evidence is admissible, and instruct you on the law.

The lawyers will present evidence and try to persuade you to decide the case in one way or the other.

As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.

Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you think our opinions might be. Make your decision based on the law given in my instructions and on the evidence presented in court.

**References**

Utah Code Ann. § 77-17-10(1).

Utah Code Ann. § 78A-2-201.

State v. Sisneros, 631 P.2d 856, 859 (Utah 1981).

State v. Gleason, 40 P.2d 222, 226 (Utah 1935).

75 Am. Jur.2d Trial §§ 714, 719, 817.

**Staff Notes**

Replaced with CR105 (modified)

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

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

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

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

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

**MUJI 1st Instruction**

1.5; 2.2; 2.5; 2.6.

**Amended Dates:**

3/2020

**CV102A ROLE OF THE JUDGE, LAWYERS, ~~PARTIES~~SELF-REPRESENTED PARTY(IES), AND JURY.**

~~(SELF REPRESENTED LITIGANT VERSION)~~

All of us, judge, lawyers, [name of plaintiff] [name of defendant], and jury have different roles during the trial:

As the judge I will supervise the trial, decide what evidence is admissible, and instruct you on the law.

The lawyers and [name of self-represented plaintiff] [name of self-represented defendant] will present evidence and try to persuade you to decide the case in one way or the other.

As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.

Neither the lawyers, parties, nor I decide the case. That is your role. Make your decision based on the law given in my instructions and on the evidence presented in court.

You and I and [name of plaintiff] [name of defendant] and the lawyers play important but different roles in the trial.

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

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

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

It is the self-represented [plaintiff] [defendant] and [plaintiff] [defense] counsel's duty to object when the other side offers testimony or other evidence that the self-represented [plaintiff] [defendant] or [plaintiff] [defense] counsel believes is not admissible. You should not be unfair or prejudiced against the self-represented [plaintiff] [defendant], [plaintiff] [defense] counsel, or [plaintiff] [defendant] because the self-represented [plaintiff] [defendant] or [plaintiff] [defense] counsel has made objections. Television and the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

**References**

MUJI CV 102.

Preliminary jury instructions for use with pro se litigants, U.S. District Court, Eastern District of California.

**Amended Dates:**

3/2020

**CV103 NATURE OF THE CASE.**

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

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

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

**MUJI 1st Instruction**

1.1.

**Amended Dates:**

9/2011.

**CV104 ORDER OF TRIAL.**

The trial will proceed as follows:

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

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

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

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

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

**MUJI 1st Instruction**

1.2.

**Amended Dates:**

9/2011.

**CV105 SEQUENCE OF INSTRUCTIONS NOT SIGNIFICANT.**

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

**MUJI 1st Instruction**

2.1.

**Amended Dates:**

9/2011.

**CV106 JURORS MUST FOLLOW THE INSTRUCTIONS.**

Removed 9/2011. Incorporated into CV 102.

**MUJI 1st Instruction**

1.5.

**CV107 JURORS MAY NOT DECIDE BASED ON SYMPATHY, PASSION, AND PREJUDICE.**

You must decide this case based on the facts and the law, without regard to sympathy, passion, or prejudice. You must not decide for or against anyone because you feel sorry for or angry at ~~anyone~~that person or anyone else.

**MUJI 1st Instruction**

2.3.

**Amended Dates:**

3/2020

**CV108 NOTE-TAKING.**

Feel free to take notes during the trial to help you remember the evidence, but do not let note-taking distract you. Your notes are not evidence and may be incomplete.

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

**References**

URCP 47(n).

**MUJI 1st Instruction**

1.6.

**Committee Notes**

The judge may instruct the jurors on what to do with their notes at the end of each day and at the end of the trial.

**Staff Notes**

Replaced with CR110

**Amended Dates:**

3/2020



**CV109 JUROR QUESTIONS FOR WITNESSES. [Optional for judges who permit questions.]**

During the trial you may submit questions to be asked of the witnesses, but you are not required to do so. You should write your questions down as they occur to you. Please do not ask your questions out loud. To make sure the questions are legally appropriate, we will use the following procedure: After the lawyers have finished questioning each witness, I will ask if you have any questions for that witness. You should hand your questions to the bailiff when I ask for them. I will review them with the lawyers to determine if they are allowed. If they are allowed, your questions will be asked.

**References**

Utah R. Civ. P. 47(j).

**Staff Notes**

Added from CR111 (modified)

**Amended Dates:**

3/2020

**CV110 RULES APPLICABLE TO RECESSES.**

Removed 9/2011. Incorporated into CV 101.

**MUJI 1st Instruction**

1.8; 1.7

**CV111A DEFINITION OF “PERSON.”**

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

**Amended Dates:**

9/2011.

**CV111B ALL PERSONS EQUAL BEFORE THE LAW.**

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

MUJI 1st Instruction

2.8.

**Amended Dates:**

9/2011.

**CV112 MULTIPLE PARTIES.**

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each plaintiff and each defendant. Unless otherwise instructed, all instructions apply to all parties.

**Amended Dates:**

9/2011.

**CV113 MULTIPLE PLAINTIFFS.**

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

**MUJI 1st Instruction**

2.21.

**Amended Dates:**

9/2011.

**CV114 MULTIPLE DEFENDANTS.**

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

**MUJI 1st Instruction**

2.22.

**Amended Dates:**

9/2011.

**CV115 SETTling PARTIES.**

[Name of persons] have reached a settlement agreement.

There are many reasons why persons settle their dispute. A settlement does not mean that anyone has conceded anything. Although [name of settling person] is not a party, you must still decide whether any of the persons, including [name of settling person], were at fault.

You must not consider the settlement as a reflection of the strengths or weaknesses of any person's position. You may consider the settlement in deciding how believable a witness is.

### **References**

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

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

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

URE 408.

### **MUJI 1st Instruction**

2.24.

### **Committee Notes**

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

Substitute other legal concepts if "fault" is not relevant. For example, in commercial disputes.

### **Amended Dates:**

9/2011.

## **CV116 DISCONTINUANCE AS TO SOME DEFENDANTS.**

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

### **MUJI 1st Instruction**

2.23.

### **Committee Notes**

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

## **CV117 PREPONDERANCE OF THE EVIDENCE.**

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but 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.

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, that the fact is more likely to be true than not true.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means

evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

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

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

#### **References**

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

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

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

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

#### **MUJI 1st Instruction**

2.16; 2.18.

#### **Amended Dates:**

9/2011

#### **CV118 CLEAR AND CONVINCING EVIDENCE.**

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

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

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

#### **References**

*Essential Botanical Farms, LC v. Kay*, 2011 UT 71.

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

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

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

#### **MUJI 1st Instruction**

2.19.

#### **Committee Notes**

In giving the instruction on clear and convincing evidence, the judge should specify which elements must be held to this higher standard. This might be done in an instruction and/or as part of the verdict form. If

the judge gives the clear and convincing evidence instruction at the start of the trial and for some reason those issues do not go to the jury (settlement, directed verdict, etc.) the judge should instruct the jury that those matters are no longer part of the case.

**Amended Dates:**

9/2011.

**CV119 EVIDENCE.**

“Evidence” is anything that tends to prove or disprove a disputed fact. It can be the testimony of a witness or documents or objects or photographs or 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.

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

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

**MUJI 1st Instruction**

1.3; 2.4.

**Amended Dates:**

3/2020

**CV119A EVIDENCE. [Self-represented litigant version]**

"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 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.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by ~~pro se~~ [self-represented plaintiff] [self-represented defendant] and [plaintiff] [defense] counsel are not evidence. ~~Pro se~~ [Self-represented plaintiff] [self-represented defendant] when acting as [his/her/their] own counsel and [plaintiff] [defense] counsel are not witnesses. What they ~~have said~~ say in their opening and closing statements, ~~will say in their closing arguments,~~ and ~~what they say at other times~~ when they are not testifying as a witness is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way they have stated them, your memory of them controls. However, ~~pro se~~ [self-represented plaintiff] [self-represented defendant]'s statements as a witness are evidence.

(2) Questions and objections by ~~pro se~~ [self-represented plaintiff] [self-represented defendant] and [plaintiff] [defense] counsel are not evidence.

The ~~lawyers~~ parties might stipulate -- or agree -- to a fact or I might take judicial notice of a fact. Otherwise, what is said in court, other than sworn testimony, ~~I say and what the lawyers say usually~~ is not evidence.

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

### References

CV 119.

Preliminary jury instructions for use with pro se litigants, U.S. District Court, Eastern District of California.

### Amended Dates:

3/2020

### CV120 DIRECT/CIRCUMSTANTIAL EVIDENCE.

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

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

MUJI 1st Instruction

2.17.

### References

29 Am. Jur.2d Evidence § 4.

29 Am. Jur.2d Evidence § 1468.

### Staff Notes

Replaced with CR210 (modified)

### Amended Dates:

3/2020

**CV121 BELIEVABILITY OF WITNESSES. WITNESS CREDIBILITY**

In deciding this case you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?

Does the witness have something to gain or lose from this case?

Does the witness have any connection to the people involved in this case?

Does the witness have any reason to lie or slant the testimony?

Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?

How believable was the witness's testimony in light of other evidence presented at trial?

How believable was the witness's testimony in light of human experience?

Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

**References**

Utah Code Ann. § 78B-1-128.

*United States v. McKissick*, 204 F.3d 1282, 1289 (10th Cir. 2000).

*Toma v. Utah Power & Light Co.*, 365 P.2d 788, 792-793 (Utah 1961).

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

*State v. Shockley*, 80 P. 865, 879 (1905).

75 Am. Jur.2d Trial § 819.

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

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

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

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

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

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

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

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

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

#### **MUJI 1st Instruction**

~~2.9, 2.10, 2.11.~~

#### **Staff Notes**

CV121-123 was replaced with CR207 and consolidated into CV121.

#### **Amended Dates:**

3/2020

#### **CV122 INCONSISTENT STATEMENTS.**

Removed 3/2020. Incorporated into CV 121.

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

#### **MUJI 1st Instruction**

~~2.10.~~

#### **CV123 EFFECT OF WILLFULLY FALSE TESTIMONY.**

Removed 3/2020. Incorporated into CV 121.

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

#### **References**

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

#### **MUJI 1st Instruction**

~~2.11.~~

#### **CV124 STIPULATED FACTS.**



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

The parties have stipulated to the following facts:

[Here read stipulated facts.]

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

**MUJI 1st Instruction**

1.3; 1.4

**Committee Notes**

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

**CV125 JUDICIAL NOTICE.**

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

**MUJI 1st Instruction**

1.3.

**Committee Notes**

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

**CV126 DEPOSITIONS.**

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

**MUJI 1st Instruction**

2.12.

**Amended Dates:**

9/2011.

**CV127 LIMITED PURPOSE EVIDENCE.**

Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose.

**MUJI 1st Instruction**

1.3.

**Amended Dates:**

9/2011.

**CV128 OBJECTIONS AND RULINGS ON EVIDENCE AND PROCEDURE.**

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

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

**MUJI 1st Instruction**

2.5.

**Amended Dates:**

3/2020

**CV128A OBJECTIONS AND RULINGS ON EVIDENCE AND PROCEDURE [Self-represented litigant version].**

From time to time during the trial, I may have to make rulings on objections or motions made by the lawyers or the parties. Lawyers and parties 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 they make objections. You should not conclude from any ruling or comment that I make that I have any opinion about the merits of the case or that I favor one side or the other. And if a lawyer or party objects and I sustain the objection, you should disregard the question and any answer.

During the trial I may have to confer with the lawyers and parties 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. Please be patient even if the case may seem to go slowly.

**MUJI 1st Instruction**

2.5.

**Amended Dates:**

3/2020

**CV129 STATEMENT OF OPINION.**

Under limited circumstances, I will allow a witness to express an opinion. Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

You may choose to rely on the opinion, but you are not required to do so.

If you find that a witness, in forming an opinion, has relied on a fact that has not been proved, or has been disproved, you may consider that in determining the value of the witness's opinion.

**References**

*Lyon v Bryan*, 2011 UT App 256 (jury entitled to disregard even un rebutted expert testimony).

**MUJI 1st Instruction**

2.13; 2.14.

**Committee Notes**

This instruction may be given if an expert or another witness is permitted to express an opinion on a matter that the jury is capable of deciding with or without expert testimony. This instruction should not be given if the jury is required to rely on expert testimony to establish the standard of care or some other fact. See, for example, Instruction CV 326. Expert testimony required..

If the jury is required to rely on expert testimony for some decisions and is allowed to decide other facts with or without expert testimony, the court's instructions should distinguish for the jury which matters the jury must decide based only on expert testimony and which matters they may decide by giving the expert testimony the weight they think it deserves.

**Amended Dates:**

September, 2011; November 13, 2012.

**CV130A CHARTS AND SUMMARIES AS EVIDENCE.**

Charts and summaries that are received as evidence will be with you in the jury room when you deliberate, and you should consider the information contained in them as you would any other evidence.

**MUJI 1st Instruction**

2.15.

**Committee Notes**

Use this instruction if the charts and summaries used at trial are introduced as evidence under URE 1006.

**Amended Dates:**

9/2011.

**CV130B CHARTS AND SUMMARIES OF EVIDENCE.**

Certain charts and summaries will be shown to you to help explain the evidence. However, these charts and summaries are not themselves evidence, and you will not have them in the jury room when you deliberate. You may consider them to the extent that they correctly reflect the evidence.

**MUJI 1st Instruction**

2.15.

### Committee Notes

Use this instruction if the charts and summaries used at trial are used only as demonstrative aids.

### Amended Dates:

9/2011.

## CV131 SPOILIATION.

I have determined that [name of party] intentionally concealed, destroyed, altered, or failed to preserve [describe evidence]. You [may/must] assume that the evidence would have been unfavorable to [name of party].

### References

*Hills v. United Parcel Service, Inc.*, 2010 UT 39, 232 P.3d 1049.

*Daynight, LLC v. Mobilight, Inc.*, 2011 UT App 28, 248 P.3d 1010.

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

URCP 37(ge).

### Committee Notes

Utah appellate courts have not recognized a cause of action for first-party spoliation (a claim against a party to the underlying action – or the party’s attorney – who spoliates evidence necessary or relevant to the plaintiff’s claims against that party), or a cause of action for third-party spoliation (a stranger to the underlying action or a party not alleged to have committed the underlying tort as to which the loss or destroyed evidence is related). *Hills v. United Parcel Serv., Inc.*, 2010 UT 39, 232 P.3d 1049; *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415 (Utah Ct. App. 1994). Rule 37(eg), (e), however, expressly provides authority to trial courts to address spoliation of evidence by a litigant, including instructing the jury regarding an adverse inference. See, URCP 37(b)(7), (2)(F). Instructing the jury to draw an adverse inference is just one of several sanctions the court may impose for spoliation. URCP37(e). There may be circumstances when whether spoliation occurred is a question for the jury.

In *Daynight, LLC v. Mobilight, Inc.*, 2011 UT App. 28, 248 P.3d 1010, the Utah Court of Appeals observed that “spoliation under [Rule 37(eg)], meaning the destruction and permanent deprivation of evidence, is on a qualitatively different level than a simple discovery abuse under [Rule 37(b)(2)] which typically pertains only to a delay in the production of evidence. . . . [R]ule 37(eg) of the Utah Rules of Civil Procedure does not require a finding of ‘willfulness, bad faith, fault or persistent dilatory tactics’ or the violation of court orders before a court may sanction a party.” Id. at ¶ 2.

~~The standard announced by the *Daynight* court differs from that employed by the United States Court of Appeals for the Tenth Circuit. Spoliation sanctions are proper in federal court when (1) a party has a duty to preserve evidence because it knew, or should have known the litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence. If the aggrieved party seeks an adverse inference to remedy the spoliation, it must also prove bad faith. Mere negligence in losing or destroying records is not enough because it does not support an inference of consciousness of a weak case. Without a showing of bad faith, a district court may only impose lesser sanctions. *Turner v. Public Serv. Co.*, 563 F.3d 1136, 1149 (10th Cir. 2009). In addition, it is appropriate for a federal trial court to consider “the~~

degree of culpability of the party who lost or destroyed the evidence.” *North v. Ford Motor Co.*, 505 F. Supp. 2d 1113, 1116 (D.Utah 2007).

The discussion by the Utah Court of Appeals in *Daynight* appears to indicate that even the negligent destruction of evidence will be sufficient to trigger a spoliation instruction without a finding of willfulness or bad faith.

**Amended Dates:**

3/2020

**~~CV135~~ CV132 OUT-OF-STATE OR OUT-OF-TOWN EXPERTS.**

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

**References**

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

**MUJI 1st Instruction**

6.30

**Committee Notes**

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

**Staff Notes**

This instruction was previously numbered CV135.

**Amended Dates:**

3/2020

**~~CV136~~ CV133 CONFLICTING TESTIMONY OF EXPERTS.**

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

**MUJI 1st Instruction**

6.31

**Staff Notes**

This instruction was previously numbered CV136.

**~~CV141~~ CV134 NO RECORD OF TESTIMONY.**

At the end of trial, you must make your decision based on what you recall of the testimony. You will not have a transcript or recording of the witnesses’ testimony. I urge you to pay close attention to the testimony as it is given.

**Amended Dates:**

**3/2020**

**Staff Notes**

This instruction was previously numbered CV141.

**CLOSING INSTRUCTIONS**

**CV-151. CLOSING ROADMAP.**

Members of the jury, you now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the lawyers will give their closing arguments. The Plaintiff(s) will go first, then the Defendant(s). The Plaintiff(s) may give a rebuttal.

Finally, you will go to the jury room to decide the case.

In the jury room you will ~~You~~ have two main duties as jurors.

First, you will decide from the evidence what the facts are. You may draw all reasonable inferences from that evidence.

Second, you will take the law I give you in the instructions, apply it to the facts, and reach a verdict.

**Staff Notes**

This instruction is a modified version of CR201 and CR202.

**Amended Dates:**

**3/2020**

**CV152. CLOSING ARGUMENTS.**

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

**Staff Notes**

This instruction comes from CR203.

**Amended Dates:**

**3/2020**

**CV153. LEGAL RULINGS.**

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However,

- if I sustained an objection,
  - if I did not accept evidence offered by one side or the other, or
  - if I ordered that certain testimony be stricken,
- then you must not consider those things in reaching your verdict.

**Staff Notes**

This instruction comes from CR204.

**Amended Dates:**

3/2020

**CV154. JUDICIAL NEUTRALITY.**

As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret anything I have done as indicating that I have any particular view of the evidence or the decision you should reach.

**Staff Notes**

This instruction comes from CR205.

**Amended Dates:**

3/2020

**CV137-CV155. FOREPERSON SELECTION AND DUTIES AND JURY  
DELIBERATIONS.**~~SELECTION OF JURY FOREPERSON AND DELIBERATION.~~

Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get the chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach an agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach an agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.

In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment

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

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

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

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

**Staff Notes:**

CV 137 was replaced with CR 216-217 (modified) and renumbered.

**Amended Dates:**

3/2020

**CV138 CV156. DO NOT SPECULATE OR RESORT TO CHANCE.**

When you deliberate, do not flip a coin, draw straws, choose opinions at random, or use other methods of chance. speculate or choose one juror's opinions at random. Instead you must Evaluateweigh the evidence carefully and come to a decision that is supported by the evidence.

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

**References**

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

**Staff Notes:**

CV 138 was renumbered to CV156.

**Amended Dates:**

3/2020

**CV139 CV157. AGREEMENT ON SPECIAL VERDICT.**

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



March 11, 2020

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

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

**Staff Notes:**

CV 139 was renumbered to CV157.

**Amended Dates:**

3/2020

**CV140CV158. DISCUSSING THE CASE AFTER THE TRIAL.**

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

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

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

Again, thank you for your service.

**Staff Notes:**

CV 140 was renumbered to CV158.

**Amended Dates:**

3/2020