Agenda
Advisory Committee on Model Civil Jury Instructions

November 13, 2017
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, announcements, fond farewell, and approval of minutes	Tab 1	Juli Blanch, Chair Judge Andrew Stone, Chair Elect
Subcommittees and subject area timelines	Tab 2	Juli Blanch
Economic Interference	Tab 3	Ryan Frazier
Other business		Juli Blanch

Committee Web Page

Published Instructions

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

December 11, 2017
January 8, 2018
February 12, 2018
March 12, 2018
April 9, 2018
May 14, 2018
June 11, 2018
September 10, 2018
October 15, 2018
November 19, 2018
December 10, 2018

Tab 1

MINUTES
Advisory Committee on Model Civil Jury Instructions
October 2, 2017
4:00 p.m.
DRAFT

Present: Juli Blanch (Chair), Nancy Sylvester (staff), Professor Marianna Di Paolo, Joel Ferre, Tracy H. Fowler, Ruth A. Shapiro, Honorable Andrew H. Stone, Peter W. Summerill, Christopher M. Von Maack.

Excused: Paul Simmons, Patricia Keundig

Guests: Judge Barry Lawrence, Ryan Frazier

1. *Welcome, announcements and approval of minutes*. Ms. Blanch welcomed the committee's guest, Judge Barry Lawrence, to the meeting. On motion of Ruth Shapiro, seconded by Tracy Fowler, the committee approved the minutes of the September 11, 2017 meeting.

2. *Subcommittees and subject area timelines*. Ms. Blanch asked the committee members to treat this as a running task and look at it periodically to make sure these are in the right order of importance. If members notice they're not, they were asked to advise Judge Stone since he will be taking over as the committee chair in November.

3. *Negligence Instructions Revisited*. Judge Barry Lawrence was invited to the first hour of the meeting to discuss the Negligence Instructions. He expressed his concern that jurors may have a difficult time comprehending some of the instructions that they are given and that they may not fully comprehend the definition and elements involving "negligence." In an effort to make the instructions easier for them to understand, he has created his own set of instructions to provide to juries at his jury trials.

Ms. Blanch stated that she does not want to rewrite the instructions at this time, but would like to receive feedback from judges and attorneys in order to determine if the instructions may need to be revisited in the future.

Ms. Blanch noted that the way the instructions are currently written, the term "fault" is synonymous with the wrongful act or failure to act; whereas in Judge Lawrence's instructions, he would have "fault" be synonymous with that wrongful act or failure to act plus causation (or causing the harm). When the committee was first drafting these instructions in 2004, there was extensive discussion on how to define fault and where it would fit in with causation. The committee came up with a Special Verdict Form, and if fault was found, then the instructions would go to a second grouping, causation.

The committee would design a Fault Instruction Form and a Harm Instruction Form accordingly.

Ruth Shapiro said one of the issues that we run into is that everybody seems to have a lay opinion of what negligence is, and they are not aware that there are four elements related to the definition of negligence (duty, breach, causation, and damages). She has also had a jury come back and say there is no cause, so they checked off the box showing "fault", but the fault was not the cause. She feels that there needs to be a set of jury instructions that defines from a legal standpoint what the four elements of negligence are. Judge Lawrence said he doesn't necessarily agree with this and feels that she is using the term "negligence" to define the wrongful act. He feels that we mostly use the term "negligence" in sort of a non-legal way to mean the tort of negligence has four elements. It lets jury members know that for purposes of this, there was a wrongful act which we're going to call "negligence".

Judge Lawrence said he believes that the concept of fault is not the same as negligence (duty, breach, causation and damages). The first two elements constitute negligence. If there is cause, then you are at fault. If there is no cause, you are not at fault. That's why the verdict form is set up the way it is. Did someone breach the standard of care, and if so, was there cause? You don't apportion fault unless there is cause. Fault is a concept that encompasses both of them. You should be held at fault only if you did something wrong and you caused the injury. He said it doesn't really matter what you call these things, but he feels more comfortable with "fault" than "negligence" on the instructions because it is something everybody understands. Since most people understand the concept of negligence, he doesn't think it's right to say that negligence equals fault. Were they negligent? If so, was there a cause? If the answer is yes to both of these, then fault is established and then you apportion. Juries use these forms all the time and there hasn't been a significant problem up until now, but he doesn't think they are accurate so he has changed the forms for his trials. The whole concept is apportioning fault. In order to get to the apportionment there has to be a negligent act and causation. This could be confusing for some jury members. If a jury hears "we're apportioning fault," what if this guy is at fault out of negligence, but it wasn't the cause, do we still apportion it? The answer would be no.

Ms. Shapiro argued that one is inclusive of the other, so if you have negligence, that doesn't necessarily equal fault because there has to be other components of it. Fault is a portion of negligence. Judge Lawrence responded that negligence plus causation equals fault. Ms. Shapiro said if you go from the way the verdict is form is set up, it spans more like a pyramid than an inverse pyramid. Fault, in and of itself, doesn't equate to negligence because there have to be other elements. Judge Lawrence recommended that the form read "negligence" instead of "fault." Was the defendant negligent? Yes. If so, was that a cause? If so, then you move to the apportionment of fault phase.

Judge Lawrence said he doesn't care whether you say it's a wrongful act or whether you say it's negligence. You're defining it for the jury. Theoretically, negligence could be defined as encompassing all four elements, but if we're instructing them that "negligence" for purposes of these instructions is the wrongful act, then that should take care of that. He would like to simplify it for the jury to understand.

Ms. Shapiro said she thinks there needs to be jury instructions that define from a legal standpoint what negligence is with those four elements. Judge Lawrence does not necessarily agree; he feels that you can use the term "negligence" to define the wrongful act. He thinks we've used the term "negligence" in sort of a non-legal way. Even though the tort of negligence has four elements, he doesn't think it's inappropriate to tell a jury for purposes of this wrongful act, we're going to call it "negligence."

Ms. Shapiro thought this would be confusing for a jury because as an attorney for the defendant, you may be arguing causation and so a jury may say yes it's negligence, and thinking based on the jury instructions, they have checked off the box for all four. Then you are again asking them to determine again whether there's cause. If they have checked the box saying there's negligence, then they've checked the box for all four, so you don't need the second question about cause.

Ms. Blanch said two concerns that are paramount with any instruction are whether they are legally accurate and whether they are confusing to jurors. Are you repeating causation again if you give them a separate cause group of instructions in the special verdict form? She said whatever this committee decides to do, we need to know if jurors are confused by these instructions.

Judge Lawrence said we could define negligence in the instructions, but he doesn't believe that's the problem. Under the existing MUJI, we have that problem. He has not had a problem with it, and he believes his instructions are appropriate. He doesn't think that juries are confused by when a wrongful act has occurred, negligence is defined as whether a person has used reasonable care.

Ms. Blanch noted that there is a judge's conference coming up, and since these particular instructions are so commonly used, she asked whether there would be an opportunity during the conference to have a set of Judge Lawrence's instructions with his Special Verdict Form and then MUJI 2d with a Special Verdict Form to pass around. Judge Lawrence noted that the topics fill up far in advance, so there wouldn't likely be an opportunity at this conference, but maybe a later one.

A committee member asked what prompted the review of these instructions. Judge Lawrence said he was reading the instructions one day and felt that these

instructions weren't quite right. And an attorney pointed out some problems with the MUJI instructions at one of Judge Lawrence's trials. He believes the possibility exists that jurors could be confused, although none have personally mentioned it. He is not aware of anyone who has said that jurors are misled or confused, but the possibility exists when you're interchanging terms that really aren't the same.

Judge Lawrence noted that no one has objected to the MUJI instructions, but he'll continue to use his own instructions. If someone points out something that is wrong, he is happy to look at it. He reiterated his stance on the instructions, saying that the first questions is, "Was there a breach of the duty that was owed?" He said he's calling it negligence. The second question should be, "Is that a cause of damages?" And not until you've answered both of those questions, do you apportion fault. So in this case, it's negligence; in a different case, it could be fraud or could be an intentional inference. He said he's not advocating that his instructions would replace every type of tort claim. He just feels they more accurately reflects what a negligence claim is. He doesn't think it's problematic to tell the jury that negligence means that a person didn't use reasonable care.

Judge Lawrence excused himself from the meeting at this time.

Ms. Blanch reminded the committee that no changes will be made to the jury instructions at this time, but she does hope that the committee receives some feedback from judges and attorneys about potential concerns or a compelling reason to rewrite the current jury instructions. Part of the goal is to try to make the instructions uniform and if the instructions are revised, there needs to be a compelling reason to make changes to the instructions such as citing new case law or precedent, or if someone objects to the instructions as they are currently written.

Judge Stone joined the meeting.

Ms. Blanch said it was her understanding that the instructions are currently being used in all eight districts. Judge Stone said that there are a few judges and attorneys who don't care for the instructions or don't use them. He said in the past there was a preamble to the jury instructions that stated, "The Utah Supreme Court approves these instructions," indicating that judges and practitioners should use them. Ms. Sylvester noted that part of the reason the MUJI committees had moved under the Judicial Council rather than the Supreme Court was that the Supreme Court had not approved them and needed to freely review them on appeal. Judge Stone said although the opening and closing instructions differ from judge to judge, the instructions basically have the same substance but may be stated a different way. He believes that there is a value in putting the message out to judges more that their feedback would be helpful.

4. *Economic Interference Instructions*

Ms. Blanch introduced Ryan Frazier to the committee and explained to him that the committee discusses the instructions in order and then approves each instruction as it is finished. Once an instruction is approved, then they move to the next instruction but occasionally have to go back and revisit instructions.

Brian then introduced the economic interference instructions. He said the subcommittee was in agreement on virtually everything. There were a few times that they weren't quite sure as it was unclear in the law. He said there were originally 23 instructions but they whittled them down to six. He said several instructions were obsolete due to the law changing and the subcommittee dropped damages because they are addressed elsewhere.

Instruction 1401 – Mr. Frazier said this instruction is the statement of the law in this area. He said they combined both intentional interference with contract and intentional interference with prospective business relations. The subcommittee agreed that there wasn't a substantive enough difference between the two that it merited a separate instruction. The subcommittee's proposed language was as follows: "To award damages for this claim, you must find three things: you must find that Plaintiff proved three things: 1) that [name of defendant] intentionally interfered with an existing or potential economic relationship that plaintiff had 2) that [name of defendant] did so by improper means, and 3) that [name of defendant]'s interference caused injury to [name of plaintiff]."

Ms. Blanch suggested brackets around "existing" and "potential" to allow for the instruction to be tailored to the particular case. Professor DiPaolo said she's not sure if people know what "economic relations" means. Also the word "injury" in Element 3 may cause someone to believe that it's physical injury. The committee inserted "harm" instead of "injury."

Ms. Shapiro recommended taking out the last line in the note, "The next three instructions define the critical terms of the first two elements--"economic relationship" (CV1402), "intentionally interfered" (CV1403), and "improper means" (CV1404)," which the committee did. The committee then changed "subcommittee adopted" in the notes to "the committee adopted."

A motion was made to adopt Instruction 1401 and it passed unanimously.

Instruction 1402 – "Economic Relationship Defined." The subcommittee's instruction read as follows:

> As part of the first element, you must first determine whether [name of plaintiff] had an existing or potential economic relationship with [name of

> third party] from which, at the time of the interference, [name of plaintiff] expected or was likely to receive some future economic benefit. A contract is a form of an existing economic relationship, but the relationship does not have to be evidenced by a contract. It is enough if you find that there were either dealings or a course of conduct between [name of plaintiff] and [name of third party] from which [name of plaintiff] had a reasonable expectation of future economic benefit. [Name of plaintiff] must show that this expected benefit was likely to occur and was not just a mere hope, but [he/she/it] does not have to show that it was certain to occur.

Ms. Blanch said her initial impression was that this instruction may need to be divided into two instructions since it was so long. The committee felt that it would be messy to divide it into two instructions and that it would be best to leave Instruction 1402 as it is.

The committee discussed the instruction at length and ultimately crafted the instruction as follows:

> An economic relationship exists when [name of plaintiff] has a reasonable expectation of economic benefit from [his/her/its] relationship with one or more third parties. This expectation must be present at the time of the interference.
>
> An economic relationship can be based upon an existing contract but does not have to be. It is enough if you find that there were either dealings or a course of conduct between [name of plaintiff] and [name of third party] from which [name of plaintiff] had a reasonable expectation of economic benefit. The expected benefit must be likely to occur but does not have to be a certainty.

A motion was made to approve instruction 1402 and it passed unanimously.

5. *Other business*. There was no other business to discuss at this time.

6. *Next meeting*. The next committee meeting will be held on Monday, November 13th from 4:00 – 6:00 p.m.

The meeting adjourned at 5:49 p.m.

Tab 2

Priority	Subject	Sub-C in place?	Sub-C Members	Projected Starting Month	Projected Finalizing Month	Comments Back?
1	Civil Rights: Set 1	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	September-16	September 2017 (wrap up 1/2, then send for comment)	Projected: January Meeting
2	Economic Interference	Yes	Frazier, Ryan (D) (Chair); Shelton, Ricky (D); Stevenson, David (P); Simmons, Paul (P); Kuendig, Patricia (P)	October-17	November-17	
3	Injurious Falsehood	Yes	Dryer, Randy; Hoole, Greg; Hoole, Roger; Hunt, Jeff; Reymann, David (Chair); Stevens, Greg	December-17	February-18	
4	Assault/False Arrest	Yes	Rice, Mitch (chair); Carter, Alyson; Wright, Andrew (D); Cutt, David (P)	March-18	May-18	
5	Trespass and Nuisance	Yes (more members needed)	Hancock, Cameron; Figueira, Joshua (researcher); Abbott, Nelson (P); Steve Combe (D)	June-18	October-18	
6	Insurance	Yes	Johnson, Gary (chair); Pritchett, Bruce; Ryan Schriever, Dan Bertch, Andrew Wright, Rick Vazquez; Stewart Harman (D); Ryan Marsh (D)	November-18	January-19	
7	Unjust Enrichment	No (instructions from David Reymann)	David Reymann	February-19	February-19	
8	Abuse of Process	No (instructions from David Reymann)	David Reymann	March-19	March-19	
9	Directors and Officers Liability	Yes	Call, Monica;Von Maack, Christopher (chair); Larsen, Kristine; Talbot, Cory; Love, Perrin; Buck, Adam	April-19	June-19	
10	Wills/Probate	No	Barneck, Matthew (chair); Petersen, Rich; Tippet, Rust; Sabin, Cameron	September-19	November-19	
11	Civil Rights: Set 2	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	December-19	February-20	
12	Sales Contracts and Secured Transactions	Yes	Cox, Matt (chair); Boley, Matthew; Maudsley, Ade	March-20	May-20	

Tab 3

Model Utah Civil Jury Instructions, Second Edition
Economic Interference

CV1401. ELEMENTS OF A CLAIM FOR INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS. Approved 10/2/2017.

[Name of plaintiff] claims that [name of defendant] intentionally interfered with [name of plaintiff]'s economic relations. To award damages for this claim, [name of plaintiff] must prove three things:

(1) That [name of defendant] intentionally interfered with [an existing] or [a potential] economic relationship that [name of plaintiff] had;

(2) That [name of defendant] did so by improper means; and

(3) That [name of defendant]'s interference caused harm to [name of plaintiff].

References

Eldridge v. Johndrow, 2015 UT 21, ¶ 70, 345 P.3d 553
Anderson Dev. Co. v. Tobias, 2005 UT 36, 116 P.3d 323

MUJI 1st Instruction

19.1

Committee Note

The next three instructions define the critical terms of the first two elements--"economic relationship" (CV1402), "intentionally interfered" (CV1403), and "improper means" (CV1404).

The Utah Supreme Court first recognized a claim for intentional interference with prospective economic relations in *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293 (Utah 1982). In defining the elements of the tort, the court rejected the approaches of both the Restatement of Torts and the Restatement (Second) of Torts and instead followed the approach of the Oregon Supreme Court in *Top Service Body Shop, Inc. v. Allstate Insurance Co.*, 582 P.2d 1365 (1978). As originally adopted, the court held that a plaintiff could make out a claim for tortious interference by proving that the defendant interfered with the plaintiff's economic relationship either for an improper purpose or by improper means. In *Eldridge v. Johndrow*, the court dropped the "improper purpose" prong of a tortious interference claim. Accordingly, the committee has eliminated "improper purpose" from this instruction and the former definition of "improper purpose" in MUJI 19.4.

MUJI 1st included separate instructions for intentional interference with prospective economic relations (MUJI 19.1 through 19.6) and interference with contract (MUJI 19.7 through 19.13). But MUJI 19.1, entitled "Intentional Interference with Prospective Economic Relations: Elements of Liability," expressly applied to both the plaintiff's "existing or potential economic

relations." MUJI 19.8, titled "Interference with Contract: Elements of Liability," listed five elements for interference with contract. Those elements, however, are not found anywhere in Utah case law. Utah cases dealing with interference with contract have used the same elements as those dealing with "interference with economic relations." *See, e.g., Eldridge,* 2015 UT 21, ¶ 70; *Alpine Orthopaedic Specialists, LLC v. Intermountain Healthcare, Inc.,* 2012 UT App 29, ¶¶ 4-10, 271 P.3d 174; *Jones & Trevor Mktg., Inc. v. Lowry*, 2010 UT App 113, ¶ 17 n.16, 233 P.3d 538. Other cases have referred broadly to intentional or tortious "interference with economic relations." *See Eldridge,* 2015 UT 21, ¶¶ 1, 8; *St. Benedict's Dev. Co. v. St. Benedict's Hosp.,* 811 P.2d 194, 200 (Utah 1991); *Anderson Dev. Co. v. Tobias,* 2005 UT 36, ¶ 20, 116 P.3d 323. Because the elements of the two claims, as stated in *Eldridge,* are the same (the only difference being whether the economic relation is existing, as in the case of a contract, or prospective), the committee decided to treat the elements of a tortious interference claim in a single instruction.

CV1402. "ECONOMIC RELATIONSHIP" DEFINED. Approved 10/2/2017.

An economic relationship exists when [name of plaintiff] has a reasonable expectation of economic benefit from [his/her/its] relationship with one or more third parties. This expectation must be present at the time of the interference.

An economic relationship can be based upon an existing contract but does not have to be. It is enough if you find that there were either dealings or a course of conduct between [name of plaintiff] and [name of third party] from which [name of plaintiff] had a reasonable expectation of economic benefit. The expected benefit must be likely to occur but does not have to be a certainty.

References

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)

MUJI 1st Instruction

19.2

Subcommittee Note

If the case involves a claim of interference with an existing contract and the existence of the contract is disputed, the court should give the relevant general instructions regarding the creation and elements of a contract. *See* CV2103-07.

CV 1403. "INTENTIONALLY INTERFERED" DEFINED.

You must next determine whether [name of defendant] intentionally interfered with [name of plaintiff]'s [existing] or [potential] economic relationship. For [name of defendant] to have intentionally interfered with an existing or potential economic relationship of [name of plaintiff], [name of defendant] must have acted for the purpose of interfering with that relationship or acted knowing that the interference was substantially certain to occur as a result of [his/her/its] actions.

References:

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)

Mumford v. ITT Commercial Fin. Corp., 858 P.2d 1041, 1044 (Utah Ct. App. 1993)

Restatement (Second) of Torts § 8A (the word "intent" denotes that the actor desires to cause the consequences of his act or believes that the consequences are substantially certain to result from it)

MUJI 1st Instruction

19.3

CV1404. DEFINITION OF "IMPROPER MEANS."

The second element of [name of plaintiff]'s claim is that [name of defendant] interfered with [name of plaintiff]'s existing or potential economic relations by improper means. "Improper means" is defined as some action that was contrary to law or violated an established standard of a trade or profession. Improper means may include such things as [acts of violence, threats or other intimidation], [bribery], [false statements], [defamation], [a wrongful lien], [bringing a lawsuit without any basis], [taking money or property to which one was not entitled], or [violating a court order].

A deliberate breach of contract, even when used to secure economic advantage, is not, by itself, an "improper means"; nor is an intent to inflict injury, by itself, an "improper means."

References:

Eldridge v. Johndrow, 2015 UT 21, 345 P.3d 553
Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)
Sampson v. Richins, 770 P.2d 998 (Utah Ct. App. 1989)

MUJI 1st Instructions

19.5 & 19.6

Subcommittee Note

The court and parties should tailor examples of improper means to the facts of the case. If there is some question as to whether the defendant violated a statute or rule or committed a separate tort as part of his improper means, the court may have to give separate instructions on the elements of the statute or tort.

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293, 309 (Utah 1982), suggested that an intentional breach of contract with the intent to inflict injury may constitute improper means. The subcommittee did not think this part of *Leigh* survived the Utah Supreme Court's abandonment of the "improper purpose" prong of *Leigh* in *Eldridge v. Johndrow*, 2015 UT 21. Arguably, the same considerations that caused the court to abandon the "improper purpose" prong would also counsel against finding liability for tortious interference for even a malicious breach of contract. The court in *Eldridge*, however, did not specifically address the issue but recognized that a defendant's motivation may still be relevant to a tortious interference claim, including "relevant to the improper means prong of the *Leigh Furniture* test." *Id.* ¶ 67. The subcommittee thought that the court was probably referring to improper means that require intent

as an element of the tort or crime and not to lawful actions that were taken with a bad motive. To hold otherwise would in effect reinstate the abandoned "improper purpose" alternative.

CV1405. DEFENSES: PRIVILEGE

[Name of defendant] claims that [his/her/its] actions in interfering with [name of plaintiff]'s economic relations were privileged. [Name of defendant] has the burden of establishing this defense. [Name of defendant] claims that [his/her/its] conduct was privileged under the [describe the privilege]. To prevail on this defense, [name of defendant] must prove the following: [Describe the elements of the privilege.]

References:

Mumford v. ITT Commercial Financial Corp., 858 P.2d 1041 (Utah Ct. App. 1993)
Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)

MUJI 1st Instructions

None

Subcommittee Note

Privilege has been recognized by the Utah Supreme Court and the Utah Court of Appeals as an affirmative defense to an intentional interference with prospective economic relations claim. It does not become an issue unless "'the acts charged would be tortious on the part of an unprivileged defendant.'" *Mumford v. ITT Commercial Financial Corp.*, 858 P.2d 1041, 1043-44 (Utah Ct. App. 1993) (quoting *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293, 304 (Utah 1982)).

The Utah Court of Appeals has explained that "'[e]ven a recognized privilege may be overcome when the means used by defendant are not justified by the reason for recognizing the privilege.'" *Mumford*, 858 P.2d at 1043-44 (quoting *Top Serv. Body Shop, Inc. v. Allstate Ins.*

Co., 582 P.2d 1365, 1371 (Or. 1978) (en banc)). Therefore, a privilege is not an absolute defense. If the plaintiff claims that a recognized privilege should not apply because the reason for recognizing the privilege does not apply under the facts of the case, the court may also need to instruct the jury on the reason for the privilege and the parties' arguments for why it should or should not apply under the circumstances.

Whether a privilege instruction will be given in a particular case is within the discretion of the trial court. If a privilege instruction is given to the jury, an instruction defining and describing the applicable privilege should be given to the jury so that it can properly assess whether the privilege applies. For example, an individual may be able to raise a privilege for statements that would otherwise be defamatory if the statements were made in the course of or incident to juridical or quasi-judicial proceedings. Because of the number and variety of possible privileges, the subcommittee did not think it practicable to provide instructions on each possible privilege. Where a privilege is claimed, the court should instruct the jury as to the nature of the privilege claimed and what the jury must find to conclude that it bars the plaintiff's claim.

CV1406. DAMAGES

If you find that [name of the defendant] intentionally interfered with [name of plaintiff]'s economic relations, then you should award [name of the plaintiff] damages that you believe, based on the evidence, will reasonably compensate for the losses [name of the plaintiff] has suffered because of the interference with economic relations. [Name of defendant] may be liable for any losses or damages that are caused by [name of defendant]'s interference. Such damages could include lost monetary or other benefits or expectations under a contract, any actual harm to

[name of plaintiff's] reputation, lost profits, or emotional distress caused by [name of defendant's] interference.

For lost profits to be recovered as damages, there must be a reasonable basis for calculating them. Although past profits cannot be taken as an exact measure of future or anticipated profits, you may consider the past profits and losses of the plaintiff's business in determining lost future profits. You may also consider any increase or decrease in business that might have been reasonably expected if there had been no interference, as shown by the evidence.

References:

TruGreen Cos. v. Mower Bros., Inc., 2008 UT 81, 199 P.3d 929
Sampson v. Richins, 770 P.2d 998 (Utah Ct. App. 1989)
Restatement (Second) of Torts § 774A (1979)

MUJI 1st Instructions

19.15 & 19.16

Subcommittee Note

If punitive damages have been alleged in connection with this tort, the parties should use the instructions found at CV2026 to CV2034.