Judicial Council Standing Committee on Model Utah Civil Jury Instructions

Agenda

May 13, 2024
4:00 to 6:00 p.m.
Via Webex

Welcome and Approval of March Minutes	Tab 1	Alyson
Welcome New Member – Seventh District Judge Brian D. Bolinder		Alyson
CV324 Use of Alternative Treatment Methods - Deletion; Committee Note	Tab 2	Alyson
Public Comments re CV920, CV930, and CV940 series instructions – NONE		Alyson
Public Comments re CV301B and CV301C	Tab 3	Alyson
Assault/Malicious Prosecution/False Arrest	Tab 4	Mitch Rice
Progress on Instruction Topics	Tab 5	(Informational)

Committee Web Page

Published Instructions

Meeting Schedule: Monthly on the 2nd Monday at 4 pm

Next meeting: June 10, 2024

TAB 1

MINUTES
Advisory Committee on Model Civil Jury Instructions
March 11, 2024
4:00 p.m.

Present: Alyson McAllister, Ben Lusty, John Macfarlane, Douglas G. Mortensen, Stewart Harman, Ricky Shelton, Michael D. Lichfield, William Eggington, Jace Willard (Staff), Kara H. North (Staff).

Excused: Mark Morris

Guest: Todd Wahlquist

1. *Welcome and Approval of Minutes*

Ms. McAllister welcomed the Committee and the February meeting minutes were approved.

2. *Welcome to Kara North*

Ms. McAllister welcomed the new Recording Secretary, Kara H. North, and the Committee members introduced themselves.

3. *CV301B and CV301C - Draft Amendment per Meeks v. Peng, 2024 UT 5, ¶ 43 n.5*

Ms. McAllister invited discussion from the Committee regarding CV301B and CV301C in light of the recent *Meeks* decision. The Committee discussed whether language needs to be added to either instruction specifying that the Plaintiff has the burden to establish the standard of care, or whether the comments should reflect that consideration of the jury instructions as a whole together address the issue.

Mr. Macfarlane suggested the instructions are adequate given the instructions as a whole, and CV301B's instruction that Plaintiff has the burden of proof. He suggested adding a comment in the Committee Notes, referencing that the Committee considered the *Meeks* decision.

Mr. Lusty disagreed, urging that the instructions need to reinforce that the Plaintiff has to prove what the standard of care is. He suggested adding language to CV301C: "It is your duty to decide, based on the evidence, what the standard of care is. The Plaintiff has burden of proving what the standard of care requires."

Mr. Harman moved to add a reference to *Meeks* to both instructions. Mr. Lichfield seconded. The Committee unanimously approved.

Mr. Macfarlane further moved to make no changes to the language of the instructions, but to add comment language, allowing the combining of 301B and 301C in some manner on a case by case basis. Mr. Shelton seconded. The Committee voted in favor of the motion, except for Mr. Lusty and Mr. Lichfield, who opposed it.

Mr. Macfarlane moved to add language to the Committee Notes as follows:

> The Committee has met and considered footnote 5 from the Meeks decision, and determined that the instructions, when read together, accurately reflect the law. CV301B states it is the plaintiff's burden to prove breach of the standard of care, and proving the standard of care is implicit in that instruction. Additionally, CV301C is generally read immediately after CV301B. If either party has additional concerns, it may be appropriate to combine CV301B and CV301C into a single instruction to further clarify that the burden is on the plaintiff.

A majority of the Committee voted in favor of this amendment (Mr. Macfarlane, Mr. Shelton, Mr. Mortensen, Dr. Eggington, and Ms. McAllister), with two opposing (Mr. Lichfield and Mr. Harman) and one abstention (Mr. Lusty).

Following further discussion, Mr. Lusty moved to add a further sentence indicating as follows: "A minority of the Committee advocated amending the language of the instruction regarding the burden of proof." Mr. Lichfield seconded, and the Committee unanimously voted in support.

4. *CV324 – Use of Alternative Treatment Methods*

Mr. Todd Wahlquist, from the Medical Malpractice Committee of the Utah Association for Justice, expressed concerns as to CV324, which states: "The standard of care may include more than one acceptable method of treatment." Plaintiffs, who have the burden of proving the standard of care and its breach, will often present an expert saying that no reasonable doctor would have done what the Defendant doctor did. The defense expert then says, Plaintiff's expert is wrong, what the Defendant doctor did was within the standard of care, there is more than one way to do things. The jury then goes back to decide what the standard of care is, meaning they decide which expert to believe. The problem is that this instruction may lead the jury to side with the defense because the court instructs them as a matter of law that there is more than one way to treat a problem. This instruction is not necessary.

The Committee discussed *Turner v. University of Utah Hospitals and Clinics*, 2013 UT 52, 310 P.3d 1212. Mr. Macfarlane said that, compared to other instructions, this one does not have clear support or helpful guidance for its use in the case law. Although there is recognition that it may not always be appropriate, we can't say when that would be the case. Ms. McAllister agreed and said that it inherently favors the defense. Dr. Eggington at first expressed that it was a legal question, but later agreed that the language seems to be biased toward the defense.

Mr. Lichfield stressed that standard of care in the instruction is singular and that the word "may" leaves it within the discretion of the jury to determine that factual issue. He suggested that "or may not" could be added. Mr. Lusty argued that the instruction should be given whenever there is evidence that there is more than one way of meeting the standard of care.

Following discussion, a majority of those present voted to remove this instruction from MUJI (Mr. Macfarlane, Mr. Shelton, Mr. Mortensen, Ms. McAllister, and Dr. Eggington) and three opposed (Mr. Lusty, Mr. Lichfield, and Mr. Harman).

The Committee discussed how to announce the removal.

Mr. Lichfield said that, under *Turner*, there may still be times that it may be appropriate to give the instruction, and that the Committee should not indicate a prejudice in all cases, if a party wants to request it. Ms. McAllister agreed. She suggested the Committee could note that the instruction was removed from the model instructions, but that the parties could still submit/propose the instruction to the court. Discussion of this will continue at the next meeting.

5. *Adjustment of Committee Meeting Schedule*

Due to scheduling conflicts for multiple Committee members and staff, the next Committee meeting will be May 13, which will also include public comments regarding the recently published easement instructions, and draft assault instructions from Mr. Mitch Rice.

The Committee adjourned at 6:01 p.m.

TAB 2

CV324 Use of alternative treatment methods.

~~The standard of care may include more than one acceptable method of treatment.~~

~~**Committee Notes**~~

~~The committee discussed this instruction at length and agreed that previous versions of the instruction were not adequately supported by Utah law. See *Turner v. University of Utah Hospitals and Clinics*, 2013 UT 52, 310 P.3d 1212. Whether there are multiple ways to comply with the standard of care is an issue that should be determined based on the facts and circumstances of the case. The court should determine whether it is appropriate to instruct the jury on alternative treatment methods.~~

Removed 5/2024.

Committee Notes

Although the instruction as worded could suggest bias toward the Defendant, there may be circumstances in which a party may propose a revised version of an alternative methods instruction be given.

TAB 3

CV301B Elements of a medical negligence claim.

To establish that (name of defendant) was at fault, (name of plaintiff) has the burden of proving two things, a breach of the standard of care, and that the breach was a cause of (name of plaintiff)'s harm.

References
Meeks v. Peng, 2024 UT 5, ¶¶ 34-43, --- P.3d ----.

Committee Amended
March 2014.

CV301C "Standard of care" defined.

A [health care provider] [doctor] is required to use that degree of learning, care, and skill used in the same situation by reasonably prudent [providers] [doctors] in good standing practicing in the same [specialty] [field]. This is known as the "standard of care." The failure to follow the standard of care is a form of fault known as either "medical negligence" or "medical malpractice." (They mean the same thing.)

The standard of care is established through expert witnesses and other evidence. You may not use a standard based on your own experience or any other standard of your own. It is your duty to decide, based on the evidence, what the standard of care is. The expert witnesses may disagree as to what the standard of care is and what it requires. If so, it will be your responsibility to determine the credibility of the experts and to resolve the dispute.

References
Meeks v. Peng, 2024 UT 5, ¶¶ 34-43, --- P.3d ----.
Lyon v. Bryan, 2011 UT App 256 (jury entitled to disregard even unrebutted expert testimony). Jensen v. IHC Hosps., Inc., 2003 UT 51, ¶ 96, 82 P.3d 1076.
Schaerrer v. Stewart's Plaza Pharmacy, 2003 UT 43, 79 P.2d 922.
Dalley v. Utah Valley Regional Med. Ctr., 791 P.3d 193, 195 (Utah 1990).
Dikeou v. Osborn, 881 P.2d 943, 947 (Utah 1981).
Chadwick v. Nielsen, 763 P.2d 817, 821 (Utah 1981).
Kent v. Pioneer Valley Hospital, 930 P.2d 904 (Utah App. 1997).
Robb v. Anderton, 863 P.2d 1322 (Utah App. 1993).
Farrow v. Health Servs. Corp., 604 P.2d 474 (Utah 1979).

MUJI 1st Instruction
6.2

Committee Notes

The Committee has met and considered footnote 5 from the *Meeks* decision, and determined that the instructions, when read together, accurately reflect the law. CV301B states it is the plaintiff's burden to prove breach of the standard of care, and proving the standard of care is implicit in that instruction. Additionally, CV301C is generally read immediately after CV301B. If either party has additional concerns, it may be appropriate to combine CV301B and CV301C into a single instruction to further clarify that the burden is on the plaintiff. A minority of the Committee advocated amending the language of the instruction regarding the burden of proof.

In *Nielson v. Pioneer Valley Hospital*, 830 P.2d 270 (Utah 1992), and *Brady v. Gibb*, 886 P.2d 104 (Utah App. 1994), the courts held that instructions similar to this should not be given in conjunction with a "common knowledge" or res ipsa loquitor instruction unless the plaintiff is also alleging breach of a different standard of care.

Instruction CV129, Statement of opinion, should not be given when this instruction is used, as it instructs the jurors that they may disregard expert testimony.

Instruction CV324, Use of alternative treatment methods, should also be given when defendant claims to have used an alternative treatment method.

Public Comments on CV301B (Elements of a medical negligence claim) and CV301C ("Standard of care" defined) (with minor formatting changes).

FROM: Cami Schiel Tue, Mar 12, 2024 at 2:21 PM

I disagree with the proposed changes/edits/review of the MUJI panel for

CV301B Elements of a medical negligence claim.
CV301C "Standard of care" defined.

If the plaintiff has the burden of proof to show that the medical provider breached the standard of care, then it should be the plaintiff's expert's burden to show that the medical provider more likely than not breached the standard of care. Thus, the MUJI should read something along the lines of:

CV301C "Standard of Care" defined: …The expert witnesses may disagree as to what the standard of care is and what it requires. If so, it will be your responsibility to determine the credibility of the experts and to resolve the dispute as to whether or not plaintiff's expert showed the medical provider more likely than not breached the standard of care.

If the medical expert cannot show that the medical provider more likely than not breached the standard of care, then plaintiff has not met his burden.

Cami R. Schiel
Attorney

rencher | Anjewierden
460 South 400 East
Salt Lake City, Utah 84111

FROM: Nan Bassett Fri, Apr 12, 2024 at 2:34 PM

Below is a comment regarding the jury instructions identified in the subject line above. This comment specifically relates to the "Notice of Published Modul Utah Civil Jury Instructions" emailed on March 12, 2024, which set today, April 12, 2024 as the comment deadline.

The undersigned attorneys comment on updated CV301C "Standard of care" defined, and submit related comments as follows:

NECESSARY REVISION TO UPDATED CV301C; RELATED REVISION TO CV302; and, INCLUSION OF CV129

The updated MUJI 2d CV301C should be revised to specify that the plaintiffs have the burden of proof. Likewise, CV302 should be updated to be consistent with CV301C. Finally, CV129, "Statement of opinion" should also be given.

ARGUMENT

I. The Updated CV301C Inappropriately Suggests that Defendants are Required to Put Forth Rebuttal Experts

The updated CV301C wrongly implies that defendants must put on expert testimony to rebut a plaintiff's standard of care experts. CV301B (Elements of a medical negligence claim) accurately instructs that the plaintiff has the burden of proof to establish medical malpractice. However, CV301C then suggests otherwise, implying that the burden shifts to defendants to disprove negligence by putting on their own standard of care experts, merely because plaintiffs have presented an expert to offer standard of care testimony.

The instruction states that expert testimony is required to establish the standard of care and informs the jurors they may not use their own standard of care. That is accurate. However, what makes the language confusing and suggests that defendants are required to put on their own standard of care expert is the statement: "the experts may disagree as to what the standard of care is and what it requires. If so, it will be your responsibility to determine the credibility of the experts and to resolve the dispute." Without necessary context, this wrongly suggests that rebuttal experts are a necessity – that the jury must hear from defense experts or be forced to accept the opinions of the plaintiff's standard of care experts.

This does not accurately reflect the law. In fact, it is directly contrary to *Lyon v. Bryan*, which is cited in the references to CV301C, and which states that "*[a] jury is not required to believe an expert witness, even when that expert's opinion is unchallenged by the opinion of an opposing expert*." *Lyon v. Bryan*, 2011 UT App 256, ¶ 10, 262 P.3d 1199. (Emphasis added) (citation omitted); *See also* CV301C References, *citing Lyon v. Bryan*. To demonstrate just how much latitude a jury is given with regard to believing an expert, the court compared fact witnesses to expert witnesses, observing,

> A jury's latitude to weigh the credibility of witnesses is extraordinarily broad. We will override a jury's acceptance of factual testimony only if the fact testified to is physically impossible or when the falsity of the testimony is apparent, without any resort to inferences or deductions. *When it assesses expert testimony, a jury's latitude is even broader. A jury is not required to believe an expert witness even when that expert's opinion is unchallenged by the opinion of an opposing expert*.

Id., ¶ 10 (emphasis added).

While *Lyon v. Bryan* is a case involving a jury's rejection of an unrebutted causation expert in a medical malpractice case, the same applies to a standard of care expert because, like standard of care, causation in a medical malpractice case must generally be established by expert testimony. *See Killebrew v. Ruiz*, 2020 UT 6, ¶ 11, 459 P.3d 1005. ("To ensure that the jury is not left to speculate, plaintiffs may not provide just any evidence of proximate cause: They must generally produce expert testimony that the medical professional's negligence proximately caused the plaintiff injury."). (Citations omitted) (emphasis in original). Even with that requirement the *Lyon v. Bryan* court determined, rightfully, that defendants are not required to put on rebuttal experts.

Therefore, the updated CV301C should be revised to specify that the plaintiffs have the burden of proof, to keep it consistent with CV301B. CV302, which is the same instruction as CV301C, but for nurses, should be changed to mirror CV301C.

CV129, "Statement of opinion" should also be given, contrary to the committee note stating that CV129 should not be given when CV301C is given. That instruction instructs jurors that they may disregard expert testimony. As demonstrated above, a jury can in fact reject expert testimony, even if unrebutted.

II. Instructing Jurors That They Can Reject Expert Testimony is not Inconsistent With Precluding Them From Using Their Own Standard of Care

The important and long standing jury function discussed above is not inconsistent with instructing the jury that the standard of care must be established by expert testimony and that the jury cannot apply its own standard of care. Rather, it simply means that a jury can determine that plaintiff's expert has not established a standard of care at all. In fact, it must be that way, or a jury could be forced to accept the testimony of a plaintiff's standard of care expert, even in the face of evidence challenging the credibility of testimony offered by that expert. The following two examples are illustrative:

> Example 1: Under direct examination the plaintiff's expert points to a professional guideline and testifies that it sets the standard of care. Under cross examination, defense counsel points to language in the same guidelines stating that the guidelines do not replace professional medical judgment and are not intended to set the standard of care.

Example 2: Under direct examination the plaintiff's expert testifies that the standard of care required the defendant to provide a specific treatment for a specific condition. Under cross examination, defense counsel points to an article authored by the expert at the same time the care was provided, stating that the standard of care requires a different treatment for the same condition.

In these situations, a jury should be able to determine that plaintiffs have not satisfied their burden of establishing the applicable standard of care. This does not mean the jurors are establishing their own standard of care, but simply determining that plaintiffs' experts have failed to establish a standard of care at all.

PROPOSED INSTRUCTION

Based on the foregoing, we propose the following CV301C instruction:

CV301C "Standard of care" defined

A [health care provider] [doctor] is required to use that degree of learning, care, and skill used in the same situation by reasonably prudent [providers][doctors] in good standing practicing in the same [specialty][field]. This is known as the "standard of care." The failure to follow the standard of care is a form of fault known as either "medical negligence" or "medical malpractice." (They mean the same thing).

The standard of care is established through expert witnesses and other evidence. You may not use a standard based on your own experience or any other standard of your own. It is your duty to decide, based on the evidence, what the standard of care is. Expert witnesses may disagree as to what the standard of care is and what it requires. It will be your responsibility to determine whether plaintiffs have met their burden of establishing the standard of care.

CV302 ("Standard of care" for nurses defined) also should be revised accordingly, and CV129 should be given in addition to CV301C and/or CV302.

Dated this 12th day of April, 2024

Nan T. Bassett

Shawn McGarry

Kirk G. Gibbs

Chelsey Phippen

Katia Conrad

Greg Anjewierden

Cami Schiel

Michael J. Collins

Brian P. Miller

Christopher Droubay

Joel Taylor

Christian W. Nelson

Brandon Hobbs

Cortney Kochevar

Kristina H. Ruedes

Vaun Hall

Derek J. Williams

Nathan Burbidge

Patrick L. Tanner

Paul D. Van Komen

Elliott Scruggs

Michael J. Miller

Kathleen J. Abke

Dustin M. Johnson

Justin Pendleton

Mary Essuman

Stephen W. Owens

Scott H. Epperson

James Egan

Tawni Anderson

Shelley Doi-Taketa

Rafael Seminario

TAB 4

TO: Mitchel T. Rice

FROM: Monica N. Howard

DATE: April 17, 2023

RE: Draft Model Jury Instructions: Assault, Malicious Prosecution, and False Imprisonment

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This memorandum contains draft Model Utah Jury Instructions for Assault, Malicious Prosecution, and False Imprisonment. It also contains relevant quotations from Utah case law and from the Restatements supporting the proposed instructions.

A. **Background**. From the Introduction to MUJI 2d, we are looking for accurate statements of the law "using simple structure, and, where possible, words of ordinary meaning."

B. **Format**. Regarding the format of this memorandum, I separated the three topics by a page break (Assault: Page 3; Malicious Prosecution: Page 6; False Imprisonment: Page 12). After the proposed draft MUJI instruction, I included relevant quotations from the case law and language from the Restatements supporting the proposed language.

C. **Exclusion of District Court Cases**. Recent district court cases have addressed the torts of Assault, Malicious Prosecution, and False Imprisonment, but the district court cases are excluded in this memorandum and the MUJI citations since they are only persuasive and not precedential.

D. **Assault: Topic to Discuss.** Regarding the tort of Assault, I primarily grappled with the use of the word "apprehension." Case law frequently refers to the language cited in my draft MUJI instruction below, and the Restatement uses the word "apprehension." If this word is not simple enough, my proposal would be to substitute it with "recognition" or "realization" as I tried to do in Assault, subsection (2). However, the word apprehension has a connotation of fear in this context, and I could not come up with an appropriate, simple synonym for Assault subsection (1)(b).

E. **Malicious Prosecution: Topic to Discuss.** Regarding the tort of Malicious Prosecution, I thought it necessary to provide instructions for what constitutes probable cause. Should we also include the affirmative defense below in the draft instructions?
    a. Alternatively, [name of defendant] has probable cause if [name of defendant] fully disclosed the facts to a reputable attorney, and the criminal action was initiated in good faith reliance on the attorney's counsel. *See Perkins v. Stephens*, 28 Utah 2d 436, 437 (Utah 1972).

F. **False Imprisonment. Topics to Discuss.**

a. Burden of Proof. Should the jury instruction clarify that after the plaintiff makes a prima facie case, the defendant bears the burden of proving legal jurisdiction for an imprisonment? See the below cases:

i. "Since a plaintiff is required to allege something more than a mere imprisonment to constitute a good cause of action for false imprisonment, we think it logically follows that to make a prima facie case plaintiff is required to prove something more than a mere imprisonment by the defendant. When by proof of facts or circumstances tending to show that the plaintiff was restrained or detained or imprisoned by the defendant, without a warrant, or other process, or by threats or force, or other facts or circumstances which naturally give rise to the inference or presumption that the restraint or imprisonment was wrongful or unlawful, he undoubtedly has made a prima facie case. The duty of proceeding to show a legal jurisdiction for such restraint, detention, or imprisonment then rests upon the defendant." *Smith v. Clark, 37 Utah 116, 106 P. 653 (Utah 1910).*

ii. "Before the enactment of the immunity statutes of which Section 77-13-32 is an example, the general rule regarding the burden of proof in false arrest and false imprisonment cases was the burden rested upon the defendant to justify the arrest or imprisonment by showing that it was effected under lawful authority, including the existence of probable cause, where that was a factor. Generally, the presumption arises that warrantless arrests and subsequent imprisonment are unlawful and the burden of proving justification, in an action to recover for false arrest, rests on defendant." *Terry v. Zions Coop. Mercantile Inst.*, 605 P.2d 314, 321 (Utah 1979) (overturned on other grounds).

b. False Arrest. It seems to me that a jury instruction for False Imprisonment should be more specific depending on the facts of the case, especially if there is a claim for false arrest (a subset of false imprisonment).

c. Applicable Statutes. Finally, a statute may apply, and statutory provisions creating immunity may be applicable. *See* Utah Code Section 32B-4-209 (sale of alcohol); Utah Code Section 77-7-12 (shoplifting or library theft); Utah Code Section 78B-3-108(3) (shoplifting), etc. I do not know how to best incorporate these distinctions into the MUJI instruction. Should we simply include a comment after the instruction addressing (1) Burden of Proof; (2) False Arrest; and (3) Statutes Granting Immunity? Please let me know if you would like me to prepare a comment addressing these three nuances.

ASSAULT

Assault

[Name of plaintiff] claims that [name of defendant] assaulted [him]. To succeed on this claim, [name of plaintiff] must prove the following:

(1) [name of defendant] acted with the intent

(a) to cause harmful or offensive contact with [name of plaintiff]; or

(b) to put [name of plaintiff] in imminent apprehension of a harmful or offensive contact; and

(2) [name of plaintiff] was aware of [name of defendant]'s action and recognized the harmful or offensive contact was about to occur.

References
Reynolds v. Macfarlane, 2014 UT App 57, ¶7, 322 P.3d 755.
Tiede v. Utah State Dep't of Corr., 915 P.2d 500, n.3 (Utah 1996).
D.D.Z. v. Molerway Freight Lines, Inc. 880 P.2d 1, 3 (Utah Ct. App. 1994) (overruled on other grounds).
Restatement (Second) of Torts § 21 (1965).

MUJI 1st Instructions
10.17, 10.18

Harmful or Offensive Physical Contact Defined

Contact is harmful or offensive if any of the following is true:

(1) [Name of plaintiff] did not consent to the contact either expressly or by implication; or

(2) [Name of plaintiff] expressly communicated that the contact was unwanted; or

(3) No reasonable person would consent to the contact.

Reference
Wagner v. Utah Dep't of Human Servs., 2005 UT 54, ¶ 51, 122 P.3d 599.

Case Law and Restatement Supporting Above MUJI Instruction for Assault

A. *Reynolds v. Macfarlane*, 2014 UT App 57, 322 P.3d 755.

a. "Under Utah law, "[a]n assault is an act '(a) . . . intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such a contact' by which '(b) . . . the other is . . . put in such imminent apprehension.'" *citing Tiede v. State*, 915 P.2d 500, 503 n.3 (Utah 1996) (omissions in original) (*quoting* Restatement (Second) of Torts § 21 (1965))." *Id.* at ¶ 7.

b. "A plaintiff complaining of assault "must be aware of the defendant's act." See W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 10, at 44 (5th ed. 1984) ("Since the interest involved is the mental one of apprehension of contact, it should follow that the plaintiff must be aware of the threat of contact, and that it is not an assault to aim a gun at one who is unaware of it.")." *Id.* at ¶ 8.

c. "However, a plaintiff complaining of assault cannot be in apprehension of harmful or offensive contact unless he is aware of such contact before the threat of the contact is accomplished or has dissipated." *Id.* at ¶ 9.

d. "As a result, we conclude that the trial court correctly ruled that Reynolds was not in imminent apprehension of harmful or offensive contact because he was not aware of MacFarlane's presence until after MacFarlane took the ten dollar bill from Reynolds's hand. In other words, Reynolds could not have been in apprehension of a physical contact without having been aware of MacFarlane's impending action to grab the ten dollar bill before MacFarlane completed the act of taking the bill." *Id.* at ¶ 10.

B. *Tiede v. Utah State Dep't of Corr.*, 915 P.2d 500, n.3 (Utah 1996).

a. Contains only limited discussion of definition of tort of assault in a footnote.

b. "An assault is an act "(a) . . . intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such a contact" by which "(b) . . . the other is . . . put in such imminent apprehension." Restatement (Second) of Torts § 21 (1965)." *Id.* at Note 3.

C. *D.D.Z. v. Molerway Freight Lines, Inc.* 880 P.2d 1, 3 (Utah Ct. App. 1994) (overruled on other grounds).

a. "The gravamen of an assault and battery is the actor's intention to inflict injury. *Matheson v. Pearson*, 619 P.2d 321, 322 (Utah 1980) (emphasis added). The elements of civil assault in Utah are: 1. The defendant acted, intending to cause harmful or offensive contact with the plaintiff, or imminent apprehension of such contact; 2. As a result, the plaintiff was thereby put in imminent apprehension of [harm or contact]; and 3. The plaintiff suffered injuries proximately caused by the defendant's actions." *Id.* at 3 *citing* Model Utah Jury Instructions 10.18 (1993) (emphasis added); accord Restatement (Second) of Torts § 21 (1965).

b. "As stated above, liability for assault requires action by the defendant." *Id.* at 4; *see also* Restatement (Second) of Torts §§ 25-26.

D. Restatement (Second) of Torts § 21 (1965).

(1) An actor is subject to liability to another for assault if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) the other is thereby put in such imminent apprehension.

(2) An action which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

E. *Wagner v. Utah Dep't of Human Servs.*, 2005 UT 54, ¶ 51, 122 P.3d 599

a. "A harmful or offensive contact is simply one to which the recipient of the contact has not consented either directly or by implication. Prosser, supra, § 9, at 41-42. Under this definition, harmful or offensive contact is not limited to that which is medically injurious or perpetrated with the intent to cause some form of psychological or physical injury. Instead, it includes all physical contacts that the individual either expressly communicates are unwanted, or those contacts to which no reasonable person would consent." *Id.*

b. The Utah Supreme Court also noted that consent depends on who is making the contact. *Id.* at ¶ 54. "For example, it seems clear that "the usages of a decent society" and "polite manners" are in nowise offended when a baby reaches out to perform the non-medically injurious act of stroking the hair of a nearby stranger." *Id.* However, society has not assumed to have consented from the same act from a grown man. *Id.* at ¶ ¶ 54, 64.

MALICIOUS PROSECUTION

[Name of plaintiff] claims [name of defendant] harmed [him] through a malicious prosecution. To succeed on this claim, [name of plaintiff] must prove the following four elements:

(1) [name of defendant] actively initiated or helped to continue criminal proceedings against [name of plaintiff]; and

(2) [name of defendant] did not have probable cause to initiate or help to continue criminal proceedings; and

(3) [name of defendant]'s primary motivation was something other than bringing a criminal to justice; and

(4) The criminal proceedings against [name of plaintiff] ended in [name of plaintiff]'s innocence.

References
Neff v. Neff, 2011 UT 6, ¶ 52, 247 P.3d 380.
Gilbert v. Paul R. Ince & Callister, 1999 UT 65, ¶ 18, 981 P.2d 841.
Hodges v. Gibson Prods. Co., 811 P.2d 151, 156 (Utah 1991).
Vandermeide v. Young, 2013 UT App 31, ¶ 27, 296 P.3d 787.
Cline v. State, Div. of Child & Family Servs., 2005 UT App 498, 142 P.3d 127.
Amica Mut.Ins.Co. v. Schettler, 768 P.2d 950, 959 (Utah Ct. App. 1989).
Callioux v. Progressive Ins. Co., 745 P.2d 838, 843 (Utah Ct. App. 1987).
Johnson v. Mount Ogden Enterprises, Inc., 23 Utah 2d 169,460 P.2d 333 (Utah 1969).
Restatement (Second) of Torts §§ 653, 660 cmt. a (1977).

MUJI 1st Instruction
10.19

Definition of Probable Cause in Malicious Prosecution Claim

[Name of defendant] has probable cause for initiating or helping to initiate criminal proceedings against [name of plaintiff] if:

(1) [name of defendant] believes [name of plaintiff] was guilty; and

(2) A reasonable man in [name of defendant]'s position would believe [name of plaintiff] was guilty; and

(3) [name of defendant] is sufficiently informed as to the facts and applicable law to justify [name of defendant] initiating or helping to continue the criminal proceeding.

References

Hodges v. Gibson Prods. Co., 811 P.2d 151, 158 (Utah 1991).
Restatement (Second) of Torts § 662 (1977).

Case Law and Restatement Supporting Above MUJI Instruction for Malicious Prosecution

A. *Neff v. Neff*, 2011 UT 6, ¶ 52, 247 P.3d 380.

a. A claim for malicious prosecution requires proof of four elements: (1) [the] defendant[] initiated or procured the initiation of criminal proceedings against an innocent plaintiff; (2) [the] defendant[] did not have probable cause to initiate the prosecution; (3) [the] defendant[] initiated the proceedings primarily for a purpose other than that of bringing an offender to justice; and (4) the proceeding terminated in favor of the accused. *Id.* at ¶ 52 *citing Hodges v. Gibson Prods. Co.*, 811 P.2d 151, 156 (Utah 1991).

b. "Under the Restatement (Second) of Torts, proceedings have "terminated in favor of the accused" only when the "final disposition [of the criminal charges] is such as to indicate the innocence of the accused."" *Id.* at ¶ 52.

B. *Gilbert v. Paul R. Ince & Callister*, 1999 UT 65, ¶ 18, 981 P.2d 841.

a. "Under the Restatement, malicious prosecution relates only to criminal actions and pertains to a private person who improperly "initiates or procures the initiation of criminal proceedings against another who is not guilty of the offense charged." Restatement (Second) of Torts § 653 (1977); see also *Hodges v. Gibson Prods. Co.*, 811 P.2d 151, 158-59 (Utah 1991); *Crease*, 30 Utah 2d at 455, 519 P.2d at 890; *Schettler*, 768 P.2d at 959. Typically, then, malicious prosecution applies to the circumstance when a person with improper motive falsely accuses another individual of a crime. See generally Restatement (Second) of Torts §§ 653-73." *Id.*

C. *Hodges v. Gibson Prods. Co.*, 811 P.2d 151, 156 (Utah 1991).

a. "The trial court instructed the jury that Hodges had the burden of proving the following four elements of the tort of malicious prosecution: (1) defendants initiated or procured the initiation of criminal proceedings against an innocent plaintiff; (2) defendants did not have probable cause to initiate the prosecution; (3) defendants initiated the proceedings primarily for a purpose other than that of bringing an offender to justice; and (4) the proceedings terminated in favor of the accused. See Kennedy v. Burbidge, 54 Utah 497, 500-01, 183 P. 325, 326 (Utah 1919); Callioux v. Progressive Ins. Co., 745 P.2d 838, 843 (Utah Ct. App. 1987); Restatement (Second) of Torts § 653 (1977); see also W. Keeton, Prosser and Keeton on the Law of Torts § 119, at 871 (5th ed. 1984)."

b. "In determining tort liability, the knowledge which the actor has or should have is usually of great importance. This is particularly true in cases of negligence and in torts which, like deceit or malicious prosecution, are based upon the fact that the defendant has acted improperly in view of the knowledge which he has." *Id.* at 157.

c. "An accusation leading to the initiation of a criminal prosecution must be based on probable cause determined as of the time the action was filed. See Restatement (Second) of Torts § 662 comment e (1977). 3 The accuser must have sufficient information based on an adequate investigation to justify the conclusion that there is probable cause to initiate a criminal proceeding. See

Potter v. Utah Driv-Ur-Self System, Inc., 11 Utah 2d 133, 135, 355 P.2d 714, 716 (1960). The accuser must have a reasonable basis for believing the accusation and must also subjectively believe the accusation to be true. See Sweatman v. Linton, 66 Utah 208, 218, 241 P. 309, 312 (1925); McKenzie v. Canning, 42 Utah 529, 530-31, 131 P. 1172, 1172-73 (1913); Wright v. Ascheim, 5 Utah 480, 491, 17 P. 125, 131 (1888). Comment j to § 662 of the Restatement (Second) of Torts provides the following definition of probable cause:

In summary, it may be said that the defendant has probable cause only when a reasonable man in his position would believe, and the defendant does in fact believe, that he has sufficient information as to both the facts and the applicable law to justify him in initiating the criminal proceeding without further investigation or verification." *Id.* at 158.

d. "[A]n essential component of probable cause is that the person responsible for initiating the action must personally believe the accused to be guilty." *Id.* at 158.

D. *Vandermeide v. Young*, 2013 UT App 31, ¶ 27, 296 P.3d 787.

a. "With respect to that claim, the court stated that "there were never facts that would give rise to a claim for malicious prosecution absent a criminal proceeding being instituted," a fact that the Youngs' counsel conceded." See *Neff v. Neff*, 2011 UT 6, ¶ 52, 247 P.3d 380." *Id.*

E. *Cline v. State*, 2005 UT App 498, 142 P.3d 127 (Utah Ct. App. 2005).

a. "In order to successfully maintain a claim for malicious prosecution, a party must establish four elements . . . ." Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 959 (Utah Ct. App. 1989). The first of these elements requires a plaintiff to establish that there is "[a] criminal proceeding instituted or continued by the defendant against the plaintiff." *Id.* Because neither DCFS nor Forsyth instituted a criminal proceeding against Cline, his claim for malicious prosecution must fail. See *id.* ("The failure to establish any one of the four elements is fatal to the cause of action.")." *Id.*at ¶ 30.

F. *Amica Mut.Ins.Co. v. Schettler*, 768 P.2d 950, 959 (Utah Ct. App. 1989).

a. "In order to successfully maintain a claim for malicious prosecution, a party must establish four elements: "(1) A criminal proceeding instituted or continued by the defendant against the plaintiff; (2) termination of the proceeding in favor of the accused; (3) absence of probable cause for the proceeding; [and] (4) 'malice,' or a primary purpose other than that of bringing an offender to justice." *Callioux v. Progressive Ins. Co.*, 745 P.2d 838, 843 (Utah Ct. App. 1987) (citing W. Prosser & W. Keeton, Law of Torts § 119 (5th ed. 1984)). The failure to establish any one of the four elements is fatal to the cause of action." *Id.*

b. "To prove that a defendant instituted the criminal proceeding, a plaintiff must show that the defendant was "actively instrumental in putting the law in force." *Callioux*, 745 P.2d at 843 (*quoting Rose v. Whitbeck*, 277 Or. 791, 562 P.2d 188, 190 (1977))." *Id.*

G. *Callioux v. Progressive Ins. Co.*, 745 P.2d 838, 843 (Utah Ct. App. 1987).

a. "The elements necessary for a claim of malicious prosecution are summarized in W. Prosser & W. Keeton, Law of Torts § 119 (5th ed. 1984): (1) A criminal proceeding instituted or continued by the defendant against the plaintiff; (2) termination of the proceeding in favor of the accused; (3) absence of probable cause for the proceeding; (4) "malice," or a primary purpose other than that of bringing an offender to justice. The absence of any one of the four elements is fatal to the cause of action. *Rose v. Whitbeck*, 277 Ore. 791, 562 P.2d 188, 190 (Or. 1977)." *Id.* at 843.

b. "Proof that a party instituted the criminal proceeding requires a showing that the party was "actively instrumental in putting the law in force." *Rose v. Whitbeck*, 562 P.2d at 190 (citations omitted). Not only do the Callioux fail to raise any evidence of Progressive's active enforcement of the law, but the affidavits of Lorraine Collins, a claims adjuster for Progressive, and R. Don Brown, Sevier County Attorney, clearly deny any affirmative action on the part of Progressive to prosecute David Callioux. R. Don Brown, in his affidavit, specifically states he "at no time, had any dealings with Progressive Insurance Company or any of its officers, agents or employees, with respect to the prosecution of David Callioux . . . ." *Id.*

c. "The third element, absence of probable cause, cannot be proven because there were two findings of probable cause in the criminal trial of David Callioux for arson and insurance fraud as previously discussed." *Id.*

d. "Finally, the fourth element, requiring proof of malice or a purpose other than that of bringing the party to justice, is precluded by Utah Code Ann. § 63-29-24(2) (1987). Pursuant to this section, Progressive was mandated to report any fire of suspicious origin to the State Fire Marshal." *Id.*

H. *Perkins v. Stephens*, 28 Utah 2d 436, 437 (Utah 1972).

a. "This court on a number of occasions, has said that full disclosure to a reputable attorney is a defense to a malicious prosecution action allegedly arising out of a case where an accuser has filed an unsuccessful criminal action against the plaintiff. The instant case presents an identical factual situation as to lack of probable cause as is the case of criminal prosecutions, and a case of first impression in this state. We can see little difference in principle between the two, and subscribe to the rule enunciated by our sister state in Allen v. Moyle to the effect that advice of counsel is a defense in such actions, either civil or criminal, if the action was instituted in good faith in reliance thereon, given after a full and fair disclosure of the facts to such counsel." *Id.*

I. *Johnson v. Mount Ogden Enterprises, Inc.*, 23 Utah 2d 169,460 P.2d 333

(Utah 1969).

a. "While it is true that malice is an essential element of a cause of action for malicious prosecution, it should be noted that in proving malice in a civil action it is not necessary to prove actual spite, ill will or grudge, but it is only necessary to prove wrongful or improper motive." *Id.* at 172.

J. Restatement (Second) of Torts §§ 653 (1977).

A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if

(a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and

(c) the proceedings have terminated in favor of the accused.

K. Restatement (Second) of Torts §§ 662 (1977).

One who initiates or continues criminal proceedings against another has probable cause for doing so if he correctly or reasonably believes

(a) that the person whom he accuses has acted or failed to act in a particular manner, and

(b) that those acts or omissions constitute the offense that he charges against the accused, and

(c) that he is sufficiently informed as to the law and the facts to justify him in initiating or continuing the prosecution.

FALSE IMPRISONMENT

[Name of plaintiff] claims [name of defendant] falsely imprisoned [him]. To succeed on this claim, [name of plaintiff] must prove all the following elements:

(1) [Name of defendant] acted with intent to confine or restrain [name of plaintiff]; and

(2) [Name of plaintiff] was unlawfully or wrongfully confined or restrained by [name of defendant]; and

(3) [Name of plaintiff] knew that [he] was confined or restrained without [his] consent; or [name of plaintiff] was harmed by the confinement or restraint.

[Name of plaintiff] can be confined or restrained by physical force or by verbal threats or by other conduct leading [him] to reasonably believe [he] is not free to leave.

References
Lee v. Langley, 2005 UT App 339, ¶ 19, 121 P.3d 33.
Tiede v. Utah State Dep't of Corr., 915 P.2d 500, 503 n.4 (Utah 1996).
McFarland v. Skaggs Cos., 678 P.2d 298, 301 (Utah 1984).
Terry v. Zions Coop. Mercantile Inst., 605 P.2d 314 (Utah 1979).
Tolman v. K-Mart Enters., 560 P.2d 1127, 1128 (Utah 1977).
Mildon v. Bybee, 13 Utah 2d 400, 375 P.2d 458 (Utah 1962).
Hepworth v. Covey Bros. Amusement Co., 97 Utah 205, 210, 91 P.2d 507, 509 (Utah 1939).
Smith v. Clark, 37 Utah 116, 106 P. 653 (Utah 1910).
State v. Pass, 30 Utah 2d 197,200, 515 P.2d 612, 613 (Utah 1973).
Restatement (Second) of Torts § 35 (1965).

MUJI 1st Instruction
10.14, 10.15

Case Law and Restatement Supporting Above MUJI Instruction for False Imprisonment

A. *Lee v. Langley*, 2005 UT App 339, ¶ 19, 121 P.3d 33.

a. ""False imprisonment is an act 'intending to confine the other . . . within boundaries fixed by the actor,' which 'results in such a confinement' while 'the other is conscious of the confinement or is harmed by it.'" *Tiede v. State*, 915 P.2d 500, 503 n.4 (Utah 1996) (alteration in original) (quoting Restatement (Second) of Torts § 35 (1965)). " *Id.* at ¶ 19.

b. "False imprisonment occurs whenever there is an unlawful detention or restraint of another against his will." *quoting Mildon v. Bybee*, 13 Utah 2d 400, 375 P.2d 458, 459 (1962)." *Id.*

c. "We have already concluded that Langley's apprehension of Gerald Lee was lawful so long as Langley was acting as an agent of Ranger. The Lees asserted that Langley was Ranger's agent in their complaint, and Langley's deposition testimony further established at trial that he was acting pursuant to Gerald Lee's contract with Ranger. Accordingly, the trial court did not err in concluding that Gerald Lee's detention was lawful and that his claim for false imprisonment could not proceed." *Id.* at ¶ 20.

d. "The sole basis for George Lee's false imprisonment claim is his allegation that Langley knocked him unconscious during their struggle. Lee presents no authority for his proposition that a claim for false imprisonment arises any time an altercation results in unconsciousness. Even assuming that unconsciousness can be equated with confinement, Lee presented no evidence that Langley intended to confine him, as required to make out a claim of false imprisonment. *See Tiede,* 915 P.2d at 503 n.4. Under these circumstances, the trial court acted properly when it directed a verdict on George Lee's false imprisonment claim and allowed him to seek damages from the altercation under his other theories of assault and endangerment." *Id.* at ¶ 21.

B. *Tiede v. Utah State Dep't of Corr.*, 915 P.2d 500, 503 n.4 (Utah 1996).

a. False imprisonment is an act "intending to confine the other . . . within boundaries fixed by the actor," which "results in such a confinement" while "the other is conscious of the confinement or is harmed by it." *Id.* quoting Restatement (Second) of Torts § 35.

C. *Terry v. Zions Coop. Mercantile Inst.*, 605 P.2d 314 (Utah 1979) (overturned on other grounds).

a. "Before the enactment of the immunity statutes of which Section 77-13-32 is an example, the general rule regarding the burden of proof in false arrest and false imprisonment cases was the burden rested upon the defendant to justify the arrest or imprisonment by showing that it was effected under lawful authority, including the existence of probable cause, where that was a factor. Generally, the presumption arises that warrantless arrests and subsequent imprisonment are unlawful and the burden of proving justification, in an action to recover for false arrest, rests on defendant." *Id.* at 321.

b. "Therefore, the statute does not alter the common law rule. When the defendant

seeks to justify the detention or arrest of a person, by reliance on this statute, it is incumbent upon him to show reasonable and probable cause for believing items offered for sale by the mercantile establishment have been unlawfully taken by the plaintiff."

c. NOTE: the standard for punitive damages described in *Terry* was overruled in *McFarland v. Skaggs Cos.*, 678 P.2d 298 (Utah 1984). In *McFarland*, the court adopted the new standard of "actual malice."

D. *Mildon v. Bybee*, 13 Utah 2d 400, 375 P.2d 458 (Utah 1962).

a. "Nevertheless, false imprisonment occurs whenever there is an unlawful detention or restraint of another against his will. The right to be free from restraint of one's person is one of the most fundamental and cherished of freedoms. It is the policy of the law to afford it the highest degree of protection possible consistent with the rights of others." *Id.* at 402.

b. "It is to be kept in mind that as against this important right of individuals to be free from unlawful restraint there must be measured the practical exigencies confronting peace officers. . . In that tenor of thought, we agree that a peace officer will not necessarily be held liable for mistaking the identity of the person named in a warrant of arrest. But this is true only if he has exercised reasonable diligence and care in ascertaining the identity before he serves the warrant." *Id.* at 402-403.

E. *Hepworth v. Covey Bros. Amusement Co.*, 97 Utah 205, 210, 91 P.2d 507, 509 (Utah 1939).

a. "Any exercise of force, or express or implied threat of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain or to go where he does not wish to go, is an imprisonment. The essential thing is the restraint of the person. If the words or conduct are such as to induce a reasonable apprehension of force, and the means of coercion are at hand, a person may be as effectually restrained and deprived of liberty as by prison bars." *Id.* at 210.

b. "That such restraint may occur wrongfully without regard to the thought of making an arrest, we cite merely the cases of *Whittaker v. Sanford*, 110 Me. 77, 85 A. 399, Ann. Cas. 1914B, 1202; and *Salisbury v. Poulson*, 51 Utah 552, 172 P. 315. In the former, a yacht captain would not let a woman off the yacht; in the latter, a dentist would not let his client out of the office until her bill was paid." *Id.* at 210.

c. "We wish to invite attention to a distinction in the law which we believe has been confused in the briefs. False arrest may be committed only by one who has legal authority to arrest or who has pretended legal authority to arrest. False imprisonment may be committed by anyone who imprisons without legal right. One who commits a false arrest of another may be liable in damages for false imprisonment, but from this we must not reason that if there is a failure of proof of false arrest, of necessity there is a failure of proof of false imprisonment. False arrest is merely one means of committing a false imprisonment. False imprisonment may be committed without any thought of attempting an arrest." *Id.*

at 210.

F. *Smith v. Clark*, 37 Utah 116, 106 P. 653 (Utah 1910).

a. "False imprisonment is the unlawful arrest and detention of the person of another, with or without a warrant or other process. It consists in an unlawful restraint upon a man's person, or control over the freedom of his movements, by force or threats; and every such restraint or confinement is unlawful where it is not authorized by law." *Id.*

b. "Since a plaintiff is required to allege something more than a mere imprisonment to constitute a good cause of action for false imprisonment, we think it logically follows that to make a prima facie case plaintiff is required to prove something more than a mere imprisonment by the defendant. When by proof of facts or circumstances tending to show that the plaintiff was restrained or detained or imprisoned by the defendant, without a warrant, or other process, or by threats or force, or other facts or circumstances which naturally give rise to the inference or presumption that the restraint or imprisonment was wrongful or unlawful, he undoubtedly has made a prima facie case. The duty of proceeding to show a legal jurisdiction for such restraint, detention, or imprisonment then rests upon the defendant." *Id.* at 127.

G. *Tolman v. K-Mart Enters.*, 560 P.2d 1127, 1128 (Utah 1977).

a. "So viewed it will be seen as a claim of wrongful imposition of control over his freedom of movement, and thus comes within the framework of the fundamental tort of false imprisonment, and that false arrest is but a particular circumstance that may be involved therein." *Id.*

H. *State v. Pass*, 30 Utah 2d 197, 200, 515 P.2d 612, 613 (Utah 1973).

a. "The essence of false imprisonment is a wilful and wrongful interference with the freedom of movement of another against his will. This is true, whether it is accomplished by actual imprisonment, or by interference or restraint upon his freedom of movement imposed by force or threats." *Id.*

b. "The defendants make a similar argument as to the charge of false imprisonment of Officer Harris: That after they decided to take the car, he was simply there in the rear seat when they drove it away; and that they were guilty of neither act nor intent to imprison him. . . . Under the same rule as stated above with respect to the jury's prerogative in viewing the evidence, it is similarly plain that there is a reasonable basis in the evidence and the inferences to be drawn therefrom that the defendants wilfully and wrongfully interfered with the freedom of Officer Harris who was carried away in the car against his will until he was able to escape at great hazard to himself." *Id.*at 199-200.

I. Restatement (Second) of Torts § 35 (1965)

(1) An actor is subject to liability to another for false imprisonment if

(a) he acts intending to confine the other or a third person within boundaries

fixed by the actor, and

(b) his act directly or indirectly results in such a confinement of the other, and

(c) the other is conscious of the confinement or is harmed by it.

(2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for a merely transitory or otherwise harmless confinement, although the act involves an unreasonable risk of imposing it and therefore would be negligent or reckless if the risk threatened bodily harm.

TAB 5

MUJI Civil Upcoming Queue:

Numbers	Subject	Members	Progress	Next Report Date
1000	Products Liability	Tracy Fowler, Paul Simmons, Nelson Abbott, Todd Wahlquist	Appeared on Agenda November 2021. Continuing to work and will report back.	2024
900	Easements and Boundary Lines	Adam Pace, Robert Cummings, Robert Fuller, Doug Farr	Finished Boundary by Acquiescence. Prescriptive Easement draft CV920-925 addressed at January, February, April, and May 2023 meetings. Easement by Necessity draft CV930-931 addressed at April 2023 meeting. Easement by Implication CV940-941 addressed at April and May 2023 meetings. Easement by necessity and implication were approved at the July meeting. Robert Fuller and Robert Cummings addressed Chris Hogle feedback re prescriptive easement CV922 and 924 at Sept. meeting. Robert Cummings presented re new CV925A and CV925B at Jan. 2024 meeting. Draft CV920, CV930, and CV940 series instructions reviewed and approved at Feb. 2024 meeting and were sent out for comment. No comments received.	May 2024
1700	Assault / False Arrest	Mitch Rice, David Cutt, Andrew Wright, Alyson McAllister	Mitch is circulating instructions with the group and will report back.	May 2024
2400	Insurance	Andrew Wright, Richard Vazquez, Stewart Harman, Kigan Martinaeu	Appeared on Agenda March 2022. Currently 5 members – 3 defense, 2 plaintiffs. Will work on one more plaintiffs attorney.	?
	Unjust Enrichment	David Reymann	Stacy was researching and following up on these instructions.	
1700	Abuse of Process	David Reymann	Instructions were shared in the past, were these completed? Marianna could only find notes as to intention to form this subcommittee.	
2700	Directors and Officers Liability	Adam Buck	Lauren has been working with Adam to fill this group and has reached out regarding a timeframe.	
2500	Wills / Probate	Matthew Barneck; Rustin Diehl	Matthew and Rustin have met to discuss direction and have started	

			reaching out to various recommendations – Elder law section, Probate Subcommittee, WINGS, recommended individuals.	
2300	Sales Contracts and Secured Transactions	Matthew Boley, Ade Maudsley	Matthew and Addie are willing to work on this topic and would like more feedback from the Committee.	
	Case law updates	TBD	Previous chairs or group leads may have feedback.	
	Linguistics and Law	Bill Eggington, Judge Kelly, John Macfarlane, Michael Lichfield, Robert Cummings, Clark Cunningham, Jesse Egbert, Scott Jarvis	Identifying instructions in need of plain-language adjustments	
301B and 301C	Med Mal	Alyson McAllister	Meeks v. Peng, 2024 UT 5, ¶ 43, n.5 asked Committee to consider revisions. Addressed at March 2024 meeting. Revisions were made and sent out for public comment. Comments received to be addressed at May 2024 meeting.	May 2024
324	Use of Alternative Treatment Methods	Pete Summerhill/UAJ	At March 2024 meeting, concerns were discussed re when/how instruction is being used. Committee voted to remove instruction and discussed possible language to include in Committee Note. To be addressed further at May meeting.	May 2024

Archived Topics:

Numbers	Subject	Completed
1500	Emotional Distress	December 2016
200 / 1800	Fault / Negligence	October 2017
1300	Civil Rights: Set 1 and 2	September 2017
1400	Economic Interference	December 2017
1900	Injurious Falsehood	February 2018
1200	Trespass and Nuisance	October 2019
100	Uniformity	February 2020
1600	Defamation Update	March 2022, December 2022
135	Pretrial Delay	December 2022, February 2023
107A	Avoiding Bias	May 2023
632, 632A-632D	Minimum Injury Requirements Update and New	October 2023

132A	Remote Testimony	October 2023
2021	Present Cash Value Update	October 2023