Judicial Council Standing Committee on Model Utah Civil Jury Instructions

Agenda

December 9, 2024
4:00 to 6:00 p.m.
Via Webex

Welcome and Approval of Sept. Minutes	Tab 1	Alyson
Public Comments re CV301C "Standard of Care" Defined; and CV2015 Survival Claim Committee Note (no comments)		Alyson
Public Comments re CV920, CV922, CV923 Easements	Tab 2	Robert Cummings
Public Comments re CV107A Avoiding Bias	Tab 3	Alyson
Public Comments re CV2021 Present Cash Value	Tab 4	Alyson
Public Comments re CV324 Use of Alternative Treatment Methods	Tab 5	Alyson
Revised Draft Assault Instructions	Tab 6	Mitch Rice/Monica Howard
Revised Draft False Imprisonment Instructions	Tab 7	Mitch Rice/Monica Howard
Revised Draft Malicious Prosecution Instructions	Tab 8	Mitch Rice/Monica Howard
Progress on Instruction Topics	Tab 9	(Informational)

Committee Web Page

Published Instructions

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

Next meeting: Jan. 13, 2025

TAB 1

MINUTES

Advisory Committee on Model Utah Civil Jury Instructions
September 9, 2024
4:00-6:00 pm

Present: Alyson McAllister, Ben Lusty, Bill Eggington, Douglas G. Mortensen, John Macfarlane, Mark Morris, Michael D. Lichfield, Ricky Shelton, Stewart Harmon, Jace Willard (staff), Kara H. North (staff).

Excused: Judge Brian D. Bolinder.

1. *Welcome and Approval of Minutes*

Ms. McAllister welcomed the Committee. The Minutes from the May meeting were approved.

2. *Progress on Instruction Topics*

Ms. McAllister informed the Committee that Mr. Mitch Rice and his group who are working on some additional research regarding instructions for Assault, False Imprisonment, and Malicious Prosecution will plan to come back before the Committee in December.

With respect to the Product Liability Instructions, the subcommittee agrees that changes are needed (due to *Bylsma v. R.C. Willey*, 2017 UT 85), but is struggling to come to a consensus, so additional members will likely be added to the subcommittee to assist in making the needed amendments.

3. *CV2015: Survival Claim Statute*

Ms. McAllister noted that the Committee Notes to this MUJI instruction needed to be corrected to reflect the statutory removal of a damage cap (Utah Code § 78B-3-107). The Committee unanimously agreed to this change.

4. *CV301C: Committee Notes and Defense Letter*

Mr. Willard reviewed the recent public comments (previously reviewed by the Committee at its meeting in May) and questioned whether the Committee had fully addressed the concerns raised regarding the jury's task to assess credibility of expert witnesses. The Committee discussed the appropriateness of this language when only one party has an expert witness and noted that the jury is still tasked with assessing credibility. Mr. Macfarlane suggested that CV133 likely resolved those concerns. The Committee reviewed the language of CV301C, and unanimously agreed to change the final sentence to: "It will be your responsibility to determine the credibility of the experts and to resolve any dispute."

The Committee also reviewed the CV301C Committee Notes regarding CV129, and discussed whether this instruction may or may not be used to supplement CV301C. Following discussion, including review of the Committee Notes to CV326, and the reasoning in *Lyon* in relation to

expert testimony being disregarded by the jury, the Committee agreed the statement regarding CV129 should be left unchanged.

5. Public Comments re: Removal of CV324 and Related Committee Note

The Committee reviewed the correspondence from Mr. James Driessen, which seemed to be directed at holistic medicine or alternative medicine. The Committee found that it did not appear to be relevant to the current instruction.

The Committee then discussed the correspondence sent by Mr. Miller and numerous defense counsel, submitted on June 28, 2024. The Committee noted that the correspondence was sent without the benefit of the minutes from the May 13, 2024, committee meeting where this was addressed in greater detail.

Ms. McAllister disagreed with the correspondence that there was any procedural error in the decision to remove the instruction prior to receiving public comment, as once the Committee votes on an instruction change, it is always immediately implemented. Ms. McAllister invited discussion of the other concerns raised by Mr. Miller. Mr. Macfarlane noted that Mr. Miller didn't address the underlying concern which precipitated the removal of CV324, which was confusing the jury. Rather, the argument of the letter was that CV324 or a similar instruction would be appropriate under certain circumstances, but not all. Mr. Macfarlane felt that the mere fact of applicability in some cases does not justify a required MUJI instruction, particularly without amendments to give courts and counsel guidance on when it is reasonably applicable.

Mr. Macfarlane and Mr. Lusty discussed the arguments on both sides of the issue. Mr. Macfarlane emphasized the lack of existing case law guidance and contradictory rulings in the district courts. The majority of the Committee agreed that there may be times when such an instruction would be appropriate, but it was not every time, and so it shouldn't be set as a standard instruction, which seemed to result in courts or counsel believing it was appropriate all the time.

Mr. Mortensen noted that while the correspondence cited 18 states that have a rule similar to CV324, that is a minority of the states, and that the majority of states apparently do not have such an instruction. Ms. McAllister noted that one or more of those states used instructions with language that was similar to the language previously rejected by the Court in Utah.

The Committee discussed various options about how to proceed. The options discussed included inviting others to come speak about their concerns to the committee, having the committee members themselves come up with an amendment to the original language and/or significant guidance in the notes. The committee agreed that the opinions of those on both sides of the issue had already been presented at length and there was no need for further public comments. Mr. Shelton pointed out that the need to come up with hypotheticals for when the instruction is appropriate or get into fact specific scenarios was evidence that the instruction should be left to the Courts and parties to propose appropriate language on a case by case basis. This is essentially what the committee previously did when coming up with and approving the note language that is currently in MUJI. The majority voted to affirm the Committee's prior decision to remove CV324, but keep the committee note language that acknowledged the inclusion of a more neutral

instruction regarding alternate treatment methods may be appropriate on a case by case basis upon a request by one of the parties. Mr. Harman and Mr. Lusty dissented and Mr. Lichfield abstained. The Committee did unanimously agree to remove the reference to CV324 in the CV301C Committee Notes given that the instruction is no longer included in MUJI.

6. *Next Committee Meeting*

Due to the lack of outstanding issues for the Committee to consider and the holiday in November, the Committee will reconvene on December 9th.

TAB 2

MUJI **CV920 "Easement" Defined.** An "easement" is a right to use or control land owned by another person for a specific limited purpose (such as to cross it for access [or insert other example]). An easement prohibits the landowner from interfering with the uses authorized by the easement. [An express easement is an easement that the landowner grants to someone else in writing, such as in a contract or a deed.] **References** Black's Law Dictionary (Abridged 7th ed.). **Committee Notes** The parties may include in the parenthetical a description of additional or other particular uses more specific to the facts of the case. Depending on the easement at issue, the easement may include an area above or below the surface of the land. If there are additional types of easements, the jury may be instructed according to the particular easement. By including these instructions, the Committee does not intend to take a position on the question of whether a right to a jury trial exists for any particular easement claim.	**Marcie Jones, 2024/02/23 at 1:19 pm** propertyrights.utah.gov/find-the-law/legal-topics/easements I recommend changing the wording of the definition of easement to include the word "unreasonably." An "easement" is a right to use or control land owned by another person for a specific limited purpose (such as to cross it for access [or insert other example]). An easement prohibits the landowner from UNREASONABLY interfering with the uses authorized by the easement. The right to use an easement is not absolute. The easement holder has the right to use and enjoy their easement in a manner not inconsistent with the rights of the owner to use their property to the fullest extent. See, eg. Wykoff v. Barton, 646 P.2d 756.
MUJI **CV922 Prescriptive Easement. Elements of a claim.** [Plaintiff] claims a prescriptive easement to continue to use [Defendant's] property in the following manner: [describe the particular use]. To establish this prescriptive easement, [Plaintiff] must prove by clear and convincing evidence for at least 20 years that: 1. [Plaintiff] has continuously used [Defendant's] property for [describe the particular use]; 2. [Plaintiff's] use of [Defendant's] property in this manner was open and notorious; and 3. [Plaintiff's] use of [Defendant's] property in this manner was adverse. If you find that [Plaintiff] has proved each of these elements by clear and convincing evidence, then [Plaintiff] is entitled to a prescriptive easement to continue using [Defendant's] property for [describe the particular use].	**Leslie Slaugh, 2024/02/20 at 9:22 am** CV922 states: "To establish this prescriptive easement, [Plaintiff] must prove by clear and convincing evidence for at least 20 years that:" This could mean that the proof or trial must continue for 20 years. It would be more clear to state: "To establish this prescriptive easement, [Plaintiff] must prove by clear and convincing evidence that, for at least 20 years:

References M.N.V. Holdings LC v. 200 South LLC, 2021 UT App 76, para. 9, 494 P.3d 402. Judd v. Bowen, 2017 UT App 56, para. 10, 397 P.3d 686, 692. Valcarce v. Fitzgerald, 961 P.2d 305, 311 (Utah 1998). **Committee Notes** For the definition of clear and convincing, see CV118.	
MUJI **CV920 "Easement" Defined.** An "easement" is a right to use or control land owned by another person for a specific limited purpose (such as to cross it for access [or insert other example]). An easement prohibits the landowner from interfering with the uses authorized by the easement. [An express easement is an easement that the landowner grants to someone else in writing, such as in a contract or a deed.] **References** Black's Law Dictionary (Abridged 7th ed.). **Committee Notes** The parties may include in the parenthetical a description of additional or other particular uses more specific to the facts of the case. Depending on the easement at issue, the easement may include an area above or below the surface of the land. If there are additional types of easements, the jury may be instructed according to the particular easement. By including these instructions, the Committee does not intend to take a position on the question of whether a right to a jury trial exists for any particular easement claim.	Adam E Weinacker, 2024/02/14 at 1:46 pm Greetings, CV920 (Easement defined) states that a landowner cannot interfere with uses authorized by an easement. Under Utah law, "the owner of the land has the right to continue using its land so long as it does not unreasonably interfere with the easement holder's use of its easement." Metro. Water Dist. of Salt Lake & Sandy v. SHCH Alaska Tr., 2019 UT 62, ¶ 49, 452 P.3d 1158. This instruction should say "unreasonably interfering."
CV923 Prescriptive Easement. "Continuous" Defined. [Plaintiff's] use of [Defendant's] property was continuous if [Plaintiff] used [Defendant's] property as often as required by the nature of the use and [Plaintiff's] needs, for an uninterrupted period of at least twenty years. A prescriptive use is not continuous where, sometime during the twenty-year period: (1) [Plaintiff] stops using [Defendant's] property;	Adam E Weinacker, 2024/02/14 at 1:42 pm (Highlight added below.) Greetings, CV923 (definition of "continuous") should more accurately reflect the discussion of the "mental state" requirement under Harrison v. SPAH Family Ltd., 2020 UT 22. Below is a proposed revision. (My apologies that the website does not allow for formatting to highlight changes.)

(2) [Defendant] [or a previous owner of [Defendant's] property] prevents [Plaintiff] from using the property; or (3) [Plaintiff] accepts permission from [Defendant] [or a previous owner of [Defendant's] property] to continue using the property. **References** SRB Inv. Co., Ltd v. Spencer, 2020 UT 23, 463 P.3d 654. Harrison v. SPAH Family Ltd., 2020 UT 22, paras. 31, 41-43, 466 P.3d 107, 116-17. Valcarce v. Fitzgerald, 961 P.2d 305, 311 (Utah 1998). Marchant v. Park City, 788 P.2d 520, 524 (Utah 1990). Lunt v. Kitchens, 260 P.2d 535, 537 (Utah 1953). Zollinger v. Frank, 175 P.2d 714, 716 (Utah 1946). Jensen v. Gerrard, 39 P.2d 1070, 1073 (Utah 1935). M.N.V. Holdings LC v. 200 South LLC, 2021 UT App 76, paras. 14-15, 494 P.3d 402, 407-08. Judd v. Bowen, 2017 UT App 56, para. 16, 397 P.3d 686, 693. Jacob v. Bate, 2015 UT App 206, para. 27, 358 P.3d 346, 355.	[Plaintiff's] use of [Defendant's] property was continuous if [Plaintiff] physically used [Defendant's] property as often as required by the nature of the use and [Plaintiff's] needs, with the mental state that [Plaintiff] had the right to use the property as against [Defendant], for an uninterrupted period of at least twenty years. A prescriptive use is not continuous where, sometime during the twenty-year period: (1) [Plaintiff] stops using [Defendant's] property; (2) [Defendant] [or a previous owner of [Defendant's] property] prevents [Plaintiff] from using the property; or (3) [Plaintiff] alters [Plaintiff's] mental state such that it is using the property under [Defendant], such as by accepting permission from [Defendant] [or a previous owner of [Defendant's] property] to continue using the property.

TAB 3

MUJI **CV107A Avoiding Bias.** Our system of justice requires all of us--attorneys, judges, and jurors--to minimize the impact of any biases, whether conscious or subconscious, on our decision making. Researchers have identified several techniques we can use to accomplish this difficult, but necessary task: First, reflect carefully and consciously about the evidence presented. Focus on the facts and on the evidence you hear and see. The law requires that jurors' decision(s) are to be based on the evidence, and not on bias, sympathy, passion, or prejudice. Second, take the time you need to challenge what might be bias in your own thinking. Don't jump to conclusions that may be influenced by stereotypes about the parties, witnesses, or events. Third, try taking another perspective. Ask yourself if your opinion of the parties or witnesses would be different if the people participating looked different or if they belonged to a different group or if they had a different accent or if they spoke in a more educated manner. Fourth, when deliberating at the end of trial, listen to the opinions of the other jurors, who may have different backgrounds and perspectives from your own. Working together with the other jurors will help achieve a fair result. However, keep in mind that your decision(s) must be your own. You may consider these techniques helpful in lessening the impact of any biases on your decision-making.	**Ken Johnson, 2023/08/08 at 4:27 pm** This comment concerns proposed new Model Civil Jury Instruction CV107A – Avoiding Bias. For the last phrase of the third listed technique for minimizing the impact of biases, I suggest changing the following phrase at the end from ". . . if they spoke in a more educated manner." to ". . . if they spoke in a more educated or less educated manner." I'm sure the sentence isn't intended to be a comprehensive list of different perspectives about people, but the other examples in the sentence emphasize imagining people as different than they are, whereas the education example isn't simply about imagining a difference, but doing so in one particular way (imagining the speech as "more educated"). Making this change will emphasize that any difference can result in bias, and possibly help people to see that biases can work to the detriment of anyone. An alternative would be something like, ". . . if they're way of speaking suggested a different educational background."

TAB 4

MUJI **CV2021 Present cash value.** If you decide that [name of plaintiff] is entitled to damages for future economic losses, then the amount of those damages must be reduced to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not suffer the economic losses until some time in the future. Money received today would be invested and earn a return or yield. To reduce an award for future damages to present cash value, you must determine the amount of money needed today that, when reasonably and safely invested, will provide [name of plaintiff] with the amount of money needed to compensate [name of plaintiff] for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment. **References** Florez v Schindler Elevator, 2010 UT App 254 (Absence of life expectancy evidence does not preclude award of future medical costs as damages.) Gallegos ex rel. Rynes v. Dick Simon Trucking, Inc., 2004 UT App 322, 110 P.3d 710, cert. denied (Utah 2005). Bennett v. Denver & Rio Grande Western R. Co., 213 P.2d 325 (Utah 1950). **Committee Notes** Utah law is silent on whether inflation should be taken into account in discounting an award for future damages to present value. The United States Supreme Court, however, has ruled that inflation should be taken into account when discounting to present value. See Jones & Laughlin Steel Corp. v. Pfeifer, 462 U.S. 523 (1983). Utah law is silent on whether plaintiff or defendant bears the burden of proving present cash value. Other jurisdictions are split. Some courts treat reduction to present value as part of the plaintiff's case in chief. See, e.g., Abdulghani v. Virgin Islands Seaplane Shuttle, Inc., 746 F. Supp. 583 (D. V.I. 1990); Steppi v. Stromwasser, 297 A.2d 26 (Del. Super. Ct. 1972). Other courts treat reduction to present value as a reduction of the plaintiff's damages akin to failure to mitigate, on which the defendant bears the burden of proof. See, e.g., Energy Capital Corp. v. United States, 47 Fed. Cl. 382 (Fed. Cl. 2000), aff'd in part, rev'd in part on other grounds, 302 F.3d 1314 (Fed. Cir. 2002); CSX Transp., Inc. v. Casale, 441 S.E.2d 212 (Va.1994). There is a good discussion of the issue in Lewin Realty III, Inc. v. Brooks, 771 A.2d 446 (Md. Ct. Spec. App. 2001), aff'd, 835 A.2d 616 (Md. 2003),	**Mark Dahl, 2023/11/09 at 4:15 pm** CV2021 – Present Cash Value should be altered to reflect the economic reality that in some markets, and for some future expenses, the present case value may actually need to be increased, rather than reduced, to obtain the present case value. This can occur, for example, when the inflation rate of the cost of medical care is higher than the average return on a government bond. If that is the case, then it would actually be necessary to increase the amount of money given now to compensate for future costs. It would be far better to state “the amount of damages must be adjusted to present cash value” rather than “the amount of damages must be reduced to present cash value” and “To adjust an award for future damages” rather than “To reduce an award for future damages.” This allows the parties to present the economic data and reach allow a conclusion without a judicial presumption that the present cash value requires a “reduction” when that may not be the economic reality.

holding the burden to be on the defendant. It cites Miller v. Union P.R. Co., 900F.2d 223, 226 (10th Cir. 1990), as support. There are several Utah cases holding that the burden is on the defendant to show that a damage award should be reduced, but they deal with failure to mitigate, not reduction to present value. See Covey v. Covey, 2003 UT App 380, 29, 80 P.3d 553; John Call Eng'g, Inc. v. Manti City Corp., 795 P.2d 678, 680 (Utah Ct. App. 1990). The Utah Court of Appeals has noted in dicta that, while having an expert testify as to the present value calculation of future economic damages is usually preferred, such expert testimony is not required. Brinkerhoff v. Fleming, 2023 UT App 92, para. 19 n.4. Expert testimony on annuities as relevant to present value of future damages is permitted. Gallegos ex rel. Rynes v. Dick Simon Trucking, Inc., 2004 UT App 322, 110 P.3d 710, cert. denied (Utah 2005). Annuity tables and their related data also are permitted without expert testimony. See Schlatter v. McCarthy, 113 Utah 543, 196 P.2d 968 (1948).	

TAB 5

MUJI **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** The wording of the removed instruction could have suggested bias in favor of the Defendant. However, there may be circumstances in which some version of an alternative treatment methods instruction would be appropriate.	**Todd Wahlquist**, 2024/05/14 at 4:37 pm Regarding CV324. Removal of this instruction was long overdue. Defendants were attempting to have it included in the majority of medical malpractice cases, without any real explanation as to why it would apply. Judges seemed confused by the instruction and were often tempted to give into the defense argument that, "your honor, it's in MUJI, so it must be a correct statement of the law." It is difficult to conceive of a scenario where this instruction would be appropriate. Giving the instruction is essentially a judicial declaration on how the jury should resolve disputes about which expert to believe. If the defense expert says there is more than one way to do something, this instruction tells the jury the defense expert is correct. If there does happen to be a scenario where alternative methods of treatment would be within the standard of care, there is nothing stopping a judge from giving an appropriate, case specific, instruction. However, having a stock instruction in MUJI on this issue is not necessary.
	Beau Burbidge, 2024/05/15 at 9:36 am I whole-heartedly support the removal of this instruction. Not only was it confusing, but it was unsupported by the law. Cleaning up our instructions to include only those solidly supported by black-letter law is critical to maintaining the integrity of our trials. I applaud the committee for its work here.
	McKay Corbett, 2024/05/15 at 9:40 am It is great that CV324 was removed. It was way too confusing and defense counsel

	seemed to believe that it applied to every case and would push to have it in every trial even though it did not.
	Ashton Hyde, 2024/05/15 at 9:47 am and **Dan Steele**, 2024/05/15 at 1:15 pm I am a medical malpractice attorney. I fully support the removal of CV324 (Use of Alternative Treatment Methods). It is a poison pill instruction that is not supported by the underlying case law. The model jury instructions already provide that the standard of care is established through experts. If the experts testify there are different ways of doing things, that is sufficient. We don't need a jury instruction on it. Defense counsel tries to inject this instruction into every case, even in cases of missed diagnosis. It is confusing to the court because it seems to have some weight behind it when it is included in MUJI. It is a dangerous instruction because it is essentially a blessing from the Court to the jury that a doctor can deviate from the standard of care and do "alternative treatments," even when that is not supported by the experts. Even if it is supported by the experts, it gives undue focus on the defense theory. Long story short, thank you for removing this terrible instruction.
	Geena Arata, 2024/05/15 at 10:02 am I agree with the removal of CV324 MUJI instruction because it is confusing for the Court and for jury members. It favors Defendants and is prejudicial to Plaintiffs. It should not be included in most medical malpractice case jury instructions. For example, in a retained object malpractice case, there is no argument that leaving the object in the person's body is an alternative treatment method compliant with the standard of care.

TAB 6

CV--- 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~~ fear of an imminent 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. State, 915 P.2d 500, 503 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

CV--- Harmful or Offensive Physical Contact Defined.

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

~~(1)~~ [nName of plaintiff] did not consent to the contact either directly~~expressly~~ or by implication~~;~~ ~~or~~ This includes all physical contact that:

(~~2~~1) [Name of plaintiff] expressly communicated ~~that the contact~~ was unwanted; or

(~~3~~2) 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.

Utah federal district court cases did not provide additional insight regarding the elements of an assault. Please see two federal district court cases below:

"In Utah, the elements of civil assault are: 1) "[t]he defendant acted, intending to cause harmful or offensive contact with the plaintiff, or imminent apprehension of such contact;" 2) "[a]s a result, the plaintiff was thereby put in imminent apprehension of [harmful] contact;" and 3) "[t]he plaintiff suffered injuries proximately caused by the defendant's actions." D.D.Z. ex rel. M.T.Z. v. Molerway Freight Lines, Inc., 880 P.2d 1, 3 (Utah Ct. App. 1994)."

Tingey v. Midwest Off., Inc., 2023 U.S. Dist. LEXIS 221738, *8

"To prove her civil assault claim, Plaintiff must demonstrate that (1) Maddox acted "to cause a harmful or offensive contact with" her "or an imminent apprehension of such contact;" and (2)

Commented [JW1]: Bill to consider alternative language or definition.

Commented [JW2]: Monica to review whether UT fed district court cases include different instruction/elements.

she was "put in such imminent apprehension." *See Reynolds v. MacFarlane*, 2014 UT App 57, 322 P.3d 755, 758 (Utah Ct. App. 2014) (citation omitted)."

Billy v. Edge Homes, 2020 U.S. Dist. LEXIS 90504, *15

TAB 7

CV--- False Imprisonment.

Commented [JW1]: Mitch and Monica to consider whether Rest. 2d Torts sec. 35 (1)(b) to be included.

[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]~~directly or indirectly 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~~; and~~.~~
(4) [Name of defendant] acted without legal authority.

[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
Tiede v. State, 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).
Lee v. Langley, 2005 UT App 339, ¶ 19, 121 P.3d 33.
Restatement (Second) of Torts § 35 (1965).

MUJI 1st Instruction
10.14, 10.15

Utah law is sparse regarding the elements of a false imprisonment claim. The most recent illustrative case is *Lee v. Langley* cited above. While the Restatement language is critical to an understanding of the elements of false imprisonment, it does not include all needed elements for a false imprisonment claim. Notably, it lacks the unlawful element. Therefore, I recommend incorporating the Restatement 35(1)(b) "directly or indirectly" language but adding a fourth element regarding the action being unlawful. I also recommend deleting the word restrain for simplicity.

TAB 8

CV--- 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~~began or ~~helped to~~ continued criminal proceedings against [name of plaintiff]; and

(2) [name of defendant] did not have probable cause to ~~initiate~~ begin 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.

Commented [JW1]: Mitch and Monica to consider whether, per Neff, para. 52, additional language explaining innocence requirement or separate instruction is desirable.

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

CV--- Definition of Probable Cause in Malicious Prosecution Claim.

[Name of defendant] has probable cause for ~~initiating~~ beginning or continuing ~~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~~ person 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~~beginning or continuing the criminal proceeding.

References

Neff v. Neff, 2011 UT 6, ¶ 58 n.34, 247 P.3d 380.
Hodges v. Gibson Prods. Co., 811 P.2d 151, 158 (Utah 1991).
Restatement (Second) of Torts § 662 (1977).

Restatement (Second) of Torts, § 660 clarifies when criminal proceedings are not terminated in favor of the accused as it relates to the definition of "innocence." Should we refer parties to §

660 for guidance, or should we attempt to simplify the below and include it in the MUJI instructions?

§ 660 Indecisive Termination of Proceedings
A termination of criminal proceedings in favor of the accused other than by acquittal is not a sufficient termination to meet the requirements of a cause of action for malicious prosecution if
(a) the charge is withdrawn or the prosecution abandoned pursuant to an agreement of compromise with the accused; or
(b) the charge is withdrawn or the prosecution abandoned because of misconduct on the part of the accused or in his behalf for the purpose of preventing proper trial; or
(c) the charge is withdrawn or the proceeding abandoned out of mercy requested or accepted by the accused; or
(d) new proceedings for the same offense have been properly instituted and have not been terminated in favor of the accused.

Restat 2d of Torts, § 660

TAB 9

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.	2025
1700	Assault / False Arrest / Malicious Prosecution	Mitch Rice, David Cutt, Andrew Wright, Alyson McAllister	Mitch Rice and Monica Howard presented draft instructions in May 2024. Will return with proposed revisions in December.	Dec. 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 sent out for public comment. Public comments addressed at May 2024 meeting and	Dec. 2024

			revisited at Sept. 2024 meeting, with additional revisions made. Public comments to be reviewed at Dec. meeting.	
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. Committee approved Committee Note at May 2024 meeting. Public comments reviewed at Sept. meeting. Additional public comments to be reviewed at Dec. meeting.	Dec. 2024
2015	Survival Claim	Alyson McAllister	Committee approved revision to Committee Note at Sept. 2024 meeting due to legislative amendment removing damages cap. Public comments to be reviewed at Dec. meeting.	Dec. 2024
920, 922, 923	Easements	Robert Cummings	Public comments to be reviewed at Dec. meeting	Dec. 2024
107A	Avoiding Bias	Alyson McAllister	Public comments to be reviewed at Dec. meeting	Dec. 2024
2021	Present Cash Value	Alyson McAllister	Public comments to be reviewed at Dec. meeting	Dec. 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
900	Easements (prescriptive 920-925, easement by necessity 930-931, and easement by implication, 940-941)	February 2024