

Judicial Council Standing Committee on
Model Utah Civil Jury Instructions

Agenda

April 14, 2025

4:00 to 6:00 p.m.

Via [Webex](#)

Welcome and Approval of Feb. Minutes	Tab 1	Alyson
Leadership Update and Pending Vacancy		Alyson/Stewart
CV1710 Draft Battery Instruction (other new 1700 series instructions also included)	Tab 2	Monica Howard
Progress on Instruction Topics	Tab 3	(Informational)

[Committee Web Page](#)

[Published Instructions](#)

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

Next meeting: May 12, 2025

TAB 1

MINUTES

Advisory Committee on Model Civil Jury Instructions

February 10, 2025

4:00-6:00 pm

Present: Alyson McAllister, Ben Lusty, Bill Eggington, John Macfarlane, Michael D. Lichfield, Stewart Harmon, Doug G. Mortensen, Judge Brian D. Bolinder, Jace Willard (staff), Kara H. North (staff).

Guests: Scott Jarvis, Jesse Egbert, Clark Cunningham, and Susan Ehrmann Provenzano

Excused: Mark Morris, Ricky Shelton

1. Welcome and Approval of Minutes

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

2. Public Comments re: Public Comments re CV107A Avoiding Bias; CV920 "Easement" Defined; CV922 Prescriptive Easement. Elements of a Claim; CV923 Prescriptive Easement. "Continuous" Defined; CV2021 Present Cash Value

Ms. McAllister notes that there were no public comments received as to the recent changes to CV107A, CV920, CV922, or CV923; therefore, no additional changes will be made as to those instructions. The Committee received one public comment as to CV2021, objecting to the recent change of the word "reduced" in the instruction to "adjusted." Mr. Macfarlane noted that this was the same issue the Committee considered when it voted to make the change. He moved to make no change based on the comment received. Ms. McAllister seconded. The motion passed.

3. Update re Need for Battery Instruction in 1700 Series

Ms. McAllister updated the Committee that she spoke with certain individuals regarding the reason for the absence of a battery instruction in the MUJI 1st instructions, but that they did not remember the reason. She suggested that a battery instruction be drafted. The Committee agreed. Mr. Willard will relay this request to the subcommittee for the 1700 series of instructions that was recently approved, but not yet published.

4. Update re Products Liability Subcommittee

Ms. McAllister updated the Committee that the Products Liability Subcommittee has been seeking additional members. She has some suggestions for possible members from the defense perspective that she can provide to the subcommittee chair if needed.

5. Update re Linguistics and Law Subcommittee

Professors Jesse Egbert and Scott Jarvis provided an update on the work the Linguistics and Law Subcommittee has been doing. They have used corpus linguistics and surveys, including multiple choice exam-type questions, to identify words in the most commonly used MUJI2d (Civil) instructions that may be unfamiliar to many jurors. They are still awaiting feedback on their work and invite Committee members to offer such as well. Mr. Willard forwarded email contact information for them and the other linguistics professor members of the subcommittee (Professors William Eggington and Clark Cunningham) to the Committee.

6. Changing Meaning of “Reasonable”

Professor Eggington presented regarding the changing meaning of the term “reasonable.” He noted that the term may have previously been used with reference to the understanding of the common person, but that may not be how it is used by lawyers and judges now. He has researched the issue and would like to collaborate with someone to write a law review article about it. Ms. McAllister agreed that it would be helpful to define the term “reasonable” for jurors in the instructions. She also suggested that Dr. Eggington might find it more useful as a practical matter to publish in the bar journal if he wants his research to reach lawyers. Mr. Lusty and Judge Bolinder agreed that the matter needs attention and agreed to join the linguistics and law subcommittee. Judge Bolinder suggested that the Committee collaborate with the MUJI (Criminal) Committee on the issue.

7. Pending Leadership Changes and Fond Farewell to Doug Mortensen

Ms. McAllister noted that the Judicial Council will soon be making changes to the Committee’s leadership and appointing a new member.

8. Discussion of Instruction Topics

Ms. McAllister noted a few changes to the subcommittee membership listed in the Instruction Topics tab. Mr. Harmon advised that the insurance subcommittee is fully staffed and awaiting a decision on appeal to pursue certain draft instructions.

9. Conclusion

The meeting was adjourned at 5:15 PM.

TAB 2

CV1700 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 intending to
 - (a) cause harmful or offensive contact with [name of plaintiff]; or
 - (b) put [name of plaintiff] in fear of an immediate 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.

Physical contact does not have 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 in *Stephens v. Bonneville Travel, Inc.*, 935 P.2d 518 (Utah 1997).

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

Tingey v. Midwest Off., Inc., No. 1:22-CV-00145-TC, 2023 WL 8602841, at *3 (D. Utah Dec. 12, 2023) (unpublished).

Billy v. Edge Homes, No. 2:19-CV-00058-JNP-EJF, 2020 WL 2572522, at *5 (D. Utah May 21, 2020) (unpublished).

MUJI 1st Instructions

10.17, 10.18

CV1701 Harmful or Offensive Physical Contact Defined.

Contact is harmful or offensive if [name of plaintiff] did not consent to the contact either directly or by implication. This includes all physical contact that:

- (1) [Name of plaintiff] expressly communicated was unwanted; or
- (2) No reasonable person would consent to.

Reference

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

CV1710 Battery.

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

1. [name of defendant] acted intending to contact [name of plaintiff] or another person;
2. contact with [name of plaintiff] was the direct or indirect result; and
3. the contact was harmful or offensive.

References

Wagner v. Utah Dep't of Human Servs., 2005 UT 54.

Reynolds v. MacFarlane, 2014 UT App 57.

D.D.Z. v. Molerway Freight Lines, Inc., 880 P.2d 1, 3 (Utah Ct. App. 1994), overruled on other grounds in *Stephens v. Bonneville Travel, Inc.*, 935 P.2d 518 (Utah 1997).

Restatement (Second) of Torts § 13 (1965)

Committee Notes

For the definition of harmful or offensive physical contact, *see* CV1701.

CV1720 False Imprisonment.

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

- (1) [Name of defendant] acted with intent to confine, restrain, or detain [name of plaintiff]; and
- (2) [Name of plaintiff] was directly or indirectly confined, restrained, or detained unlawfully by [name of defendant]; and
- (3) [Name of plaintiff] knew that [he] was confined, restrained, or detained without [his] consent or was harmed by the confinement, restraint, or detention.

[Name of plaintiff] can be confined, restrained, or detained through physical force, verbal threats, or any other actions that would reasonably lead [him] to 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

CV1730 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] began or continued criminal proceedings against [name of plaintiff]; and
- (2) [name of defendant] did not have probable cause to begin or 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

Committee Notes

Where the innocence requirement is at issue, the Committee recommends reviewing the Restatement (Second) of Torts § 660 (1977).

CV1721 Definition of Probable Cause in Malicious Prosecution Claim.

[Name of defendant] has probable cause for beginning or continuing criminal proceedings against [name of plaintiff] if:

- (1) [name of defendant] believes [name of plaintiff] was guilty; and
- (2) A reasonable 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] 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).

TAB 3

MUJI Civil Upcoming Queue:

Numbers	Subject	Members	Progress	Next Report Date
1000	Products Liability	Tracy Fowler, Paul Simmons, Judge Todd Shaughnessy	Appeared on Agenda November 2021. Continuing to work and will report back.	2025
1700	Assault / Battery / False Arrest / Malicious Prosecution	Mitch Rice, David Cutt, Andrew Wright, Alyson McAllister	Mitch Rice and Monica Howard presented draft instructions in May 2024. Monica returned in December 2024 and committee approved assault, false arrest, and malicious prosecution instructions. Not yet published pending approval of battery instruction.	April 2025
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. Feb. 2025 Stewart indicates the group is awaiting a decision on appeal.	
	Unjust Enrichment		Stacy was researching and following up on these instructions.	
1700	Abuse of Process		Marianna could only find notes as to intention to form this subcommittee. David Reymann has draft instructions he is willing to share.	
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	Presented Feb. 2025. Have identified instructions potentially in need of plain-language adjustments; awaiting feedback on work; desire to work with MUJI (Crim) as well	

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, February 2025
632, 632A-632D	Minimum Injury Requirements Update and New	October 2023
132A	Remote Testimony	October 2023
2021	Present Cash Value Update	October 2023, Feb. 2025
900	Easements (prescriptive 920-925, easement by necessity 930-931, and easement by implication, 940-941)	February 2024, Feb. 2025
301B/301C	Elements of a Medical Negligence Claim; Standard of Care	December 2024
324	Use of Alternative Treatment Methods (removed with explanatory committee note)	December 2024
2015	Survival claim (amended committee note)	December 2024