Judicial Council Standing Committee on Model Utah Civil Jury Instructions

Agenda

November 9, 2026
4:00 to 6:00 p.m.
Via Webex

Welcome and Approval of October Minutes	Tab 1	Alyson McAllister
CV101-101A (adding prohibition of AI use to general admonitions), CV2142-2145 and 2221 (quantum meruit/unjust enrichment) – back from comment (none)		Alyson McAllister
Draft Product Liability Amendments	Tab 2	Tracy Fowler
Progress on Instruction Topics	Tab 3	(Informational)

Committee Web Page

Published Instructions

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

Next meeting: December 14, 2026

TAB 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
October 14, 2026
4:00-6:00 p.m.

Present: Alyson McAllister, Stewart Harman, Judge Brian D. Bolinder, Bill Eggington, Robert Fuller, Ben Lusty, Kara North, Michael Lichfield, John Macfarlane, Jace Willard (staff)

Excused: Aaron Pacini, Clancey Henderson (staff)

Guests: None

1. Welcome and Approval of Minutes

Ms. McAllister welcomed the Committee. The Minutes from the September 2026 meeting were approved.

2. Proposed Amendments to CV212 Violation of a Safety Law

Mr. Willard presented draft amendments to MUJI CV212 and its Committee Notes, based on *Blackwell v. Holiday Oil Co*., 2026 UT App 99, ¶¶ 19-21, holding that uncodified advisory or industry consensus standards do not qualify as safety laws for purposes of this instruction. Following review of the case, discussion, gender neutrality revisions, and citation to additional references, Mr. Macfarlane moved that the proposed amendments be approved. Ms. North seconded. The motion carried and the proposed revisions will be published for public comment.

3. Reasonableness

Dr. Eggington revisited work by semanticist Anna Wierzbicka, who argued that the meaning of "reasonable" changed over time. She controversially posited that an earlier meaning was tied to judgments shared by well-educated people and that a more modern meaning described something for which a reason can be given. Dr. Eggington had thought some kind of shift might be occurring, but he reviewed 10 years of keyword and context and collocate data and found no change in the data. A small trial Dr. Eggington did with a graduate student also compared people age 50 and older with people age 20 to 30. He said the available evidence does not show a shift, though he suspects a change may be occurring among younger people.

The Committee also noted the use and explanation of "reasonable care" in MUJI CV202A, defining "negligence." The helpfulness of that explanation was questioned. Ms. McAllister asked whether the linguistics professors that have been examining MUJI instructions have done any work on this issue. Dr. Eggington does not believe so, but he will approach them about it.

4. AI Disclosure Rules

The Committee also discussed a standing order or policy in at least one Utah judicial district requiring disclosure of generative AI use in court filings. The Board of District Court Judges has seemed open to a similar statewide requirement. Some Committee members view Rule 11 of the civil rules as sufficient to address the issue of unsupported or improper filings.

5. November Agenda

The Committee anticipates the return of the Product Liability subcommittee on next month's agenda and wants to be sure that both sides (plaintiffs and defense) will be represented. Another potential topic for next month is CV905 Exception to Silence Equaling Acquiescence.

6. Scheduling and adjournment

The next meeting will be held on November 9, 2026, at 4:00 p.m.

The meeting adjourned.

TAB 2

CV1002 Strict liability. Elements of claim for a [design] [manufacturing] defect.

[Name of plaintiff] claims that [he] was injured by a [product] that had a [design] [manufacturing] defect that made the [product] unreasonably dangerous. ~~You must decide whether~~To establish a [design] [manufacturing] defect claim, [name of plaintiff] must prove all of the following:

(1) there was a [design] [manufacturing] defect in the [product];

(2) the [design] [manufacturing] defect made the [product] unreasonably dangerous;

(3) the [design] [manufacturing] defect was present at the time [name of defendant] [manufactured/distributed/sold] the [product]; and

(4) the [design] [manufacturing] defect was a cause of [name of plaintiff]'s injuries.

I will now explain what the terms ["design] ["manufacturing] defect" and "unreasonably dangerous" mean.

References

Peterson v. Hyundai Motor Company LLC, 2021 UT App 128, ¶ 56, 502 P.3d 320.
Bylsma v. R.C. Willey, 2017 UT 85, 416 P.3d 595.
Schaerrer v. Stewart's Plaza Pharmacy, Inc., 2003 UT 43, 16, 79 P.3d 922 (citing *Interwest Constr. v. Palmer*, 923 P.2d 1350, 1356 (Utah 1996)).
Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152 (Utah 1979).
Wankier v. Crown Equipment Corp., 353 F.3d 862, 867-68 (10th Cir. 2003).
Brown v. Sears, Roebuck & Co., 328 F.3d 1274, 1280 (10th Cir. 2003).
Allen v. Minnstar, Inc., 8 F.3d 1470, 1472 (10th Cir. 1993).
Restatement (Second) of Torts sect. 402A (1963 & 1964).

MUJI 1st Instruction

12.1.

Committee Notes~~:~~

Section 402A of the Restatement (Second) of Torts, which the Utah Supreme Court adopted in *Ernest W. Hahn, Inc. v. Armco Steel Co.*, 601 P.2d 152 P.2d 152, 158 (Utah 1979), requires that the defendant be engaged in the business of selling the product. Occasional sellers are not liable in product liability actions. See Louis R. Frumer & Melvin I. Friedman, *Products Liability* ~~Section~~§ 5.04 (1997). In most cases, there will be no dispute as to whether the defendant was engaged in the business of selling the product. If the defendant was not, the court will dismiss any strict products liability claim before trial. If there is evidence from which reasonable minds could disagree, however, the court should add a fifth element: "whether ... (5) [Name of defendant] was engaged in the business of selling the [product]."

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CV10-- Strict liability. Chain of distribution.

[Name of plaintiff] may recover for a [design, manufacturing, or warning] defect from any person that distributed or sold the [product] with the [design, manufacturing, or warning] defect present. That is, any designer, manufacturer, wholesaler, retailer, or other distributor may be liable to [plaintiff] if [plaintiff] proves that the defect was present at the time that person or entity participated in the distribution or sale of the [product].

References

Bylsma v. R.C. Willey, 2017 UT 85, ¶ 27, 416 P.3d 595 ("Products liability imposes liability on anyone '*who sells any product in a defective condition unreasonably dangerous* to the user or consumer or to his property' so long as 'the seller is engaged in the business of selling such a product.'" (emphasis added) (citation omitted)).
Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443, 446 (Utah Ct. App. 1988) ("The major purpose of strict liability is to *place the loss caused by a defective product on those who create the risk* and reap the profit by placing a defective product in the stream of commerce...." (emphasis added) (citation omitted)).
Restatement (Third) of Torts: Prods. Liab. § 1 (A.L.I. 1998).

Committee Note

This instruction may not be necessary depending on when the alleged defect was introduced into the product and the nature of the chain of distribution.

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CV1012 Strict liability. Component part manufacturer. Part defective only as incorporated into finished product.

[Name of defendant] supplied ~~[designed/manufactured/distributed/sold]~~ a [component part] used in ~~of~~ the [finished product] manufactured by [name of finished product manufacturer].

If you find that the component part was not defective as supplied ~~[designed/manufactured/distributed/sold]~~, but only became defective as a result of the way it was [installed/incorporated/used] in the finished ~~[~~product~~]~~, then for [name of defendant] ~~can only~~ to be liable ~~to~~, [name of ~~plaintiff] if~~ party(ies) claiming component part is defective] must prove all of the following:

(1) ~~(1)~~ [Name of defendant] ~~knew enough about the design or operation of~~ substantially participated in the integration of the component part into the finished ~~[~~product~~]~~ ~~that [he] could have reasonably foreseen that an injury could occur because~~ ;

(2) The integration of the ~~way the~~ component part ~~would be used in the [~~into the finished product~~],~~ made the finished product defective; and,

~~(2) [Name of defendant] did not warn the [final assembler] of that danger.~~

(3) The defect in the [finished product] created by the integration of the component part was a cause of [name of Plaintiff]'s harm.

~~To substantially participate, [name of defendant] must have had some control over the decision-making process of the final product or system. Knowledge of the ultimate design of the finished product, by itself, does not amount to substantial participation.~~

~~A component part [designer/manufacturer/distributor/seller] does not have a duty to foresee all the dangers that may result from the use of a final product which contains its component part and does not have a duty to analyze or anticipate the design of the finished product or system of which its component is a part. However, if the specifications for the component part are obviously unreasonably dangerous, [name of defendant] may be deemed to have control over the product and to have substantially participated.~~

References

Gudmundson v. Del Ozone, 2010 UT 33, ¶¶ 54-60, 232 P.3d 1059.

Restatement (Third) of Torts: Prods. Liab. § 5 (A.L.I. 1998).

Committee Note

As explained in § 5 of the Restatement (Third), "[p]roduct components include raw materials, bulk products, and other constituent products sold for integration into other products. Some components, such as raw materials, valves, or switches, have no functional capabilities unless integrated into other products. Other components, such as a truck chassis or a multi-functional

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machine, function on their own but still may be utilized in a variety of ways by assemblers of other products." Restatement (Third) of Torts: Prods. Liab. § 5 cmt. a (A.L.I. 1998).

The use of "supplied" is not intended to indicate a change in Utah law regarding potential liability due to being in the chain of distribution, and alternate language consistent with Utah law may be used to fit the circumstances of the case presented to the jury. *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 27, 416 P.3d 595; Restatement (Third) of Torts: Prods. Liab. § 5 (A.L.I. 1998).

The burden of proof is on the party or parties asserting that the component part is defective. For example, if the integrating defendant claims the component part is defective, the integrating defendant would bear the burden of proof.

Utah courts have not yet addressed whether a component supplier has a duty to warn. *But see Gudmundson v. Del Ozone*, 2010 UT 33, ¶¶ 55–56, 232 P.3d 1059 (adopting Restatement (Third) of Torts: Prods. Liab. § 5 (A.L.I. 1998)).

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CV10-- Strict liability. Definition of substantial participation by component part manufacturer.

To substantially participate, [name of defendant] must have had some control over the decision-making process of the final product or system. Knowledge of the ultimate design of the finished product, by itself, does not amount to substantial participation.

References

Gudmundson v. Del Ozone, 2010 UT 33, ¶¶ 58–59, 232 P.3d 1059.

Restatement (Third) of Torts: Prods. Liab. § 5 (A.L.I. 1998).

Committee Note

The Utah Supreme Court adopted Section 5 of the Restatement (Third) of Torts: Products Liability regarding component parts in *Gudmundson v. Del Ozone*, 2010 UT 33, ¶¶ 54–60. In doing so, the Court recited the elements contained in the Restatement (Third) and then proceeded to explain that "[t]o substantially participate, the manufacturer must have had some control over the decision-making process of the final product or system." *Id.* at ¶¶ 58 (citations omitted). Utah courts have not yet had occasion to further address the parameters of substantial participation and control sufficient to trigger liability for the component part supplier. Comment e to Section 5 of the Restatement (Third) of Torts provides examples that practitioners may find helpful.

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CV1013 Strict liability. Component part manufacturer. Defective part incorporated into finished product.

[Name of defendant] [designed/manufactured/distributed/sold~~/distributed/sold~~] a component part of the [product].

If [name of party(ies) claiming component part is defective] proved each of the following:

~~If you find that~~ (1) the component part was defective as [designed/manufactured/distributed/sold], prior to its integration into the finished product ~~and that~~ ,

(2) the defective part made the finished product unreasonably dangerous, and

(3) the defect in the ~~[product] created by the integration of the~~ component part was a cause of [name of plaintiff]'s injuries,

then you ~~may~~must find both [name of defendant], the manufacturer of the component part, and [name of co-defendant or third party defendant], and the manufacturer of the finished product~~,~~ liable to [name of plaintiff].

References

Utah Code §§ 78B-5-817 to -823.
Bylsma v. R.C. Willey, 2017 UT 85, 416 P.3d 595.
Restatement (Third) of Torts: Apportionment Liab. § 13 (A.L.I. 2000).

Committee Notes~~:~~

In *Bylsma v. R.C. Willey, 2017 UT 85, 416 P.3d 595,* the Utah Supreme Court held that strictly liable defendants who are liable for breaching the same duty by selling a dangerously defective product be treated as a unit, and each can be strictly liable for the plaintiff's harm. *See id.* ¶¶ 13, 15. The same rationale is likely to apply to the manufacturer of a component part and the manufacturer of the finished product where both the component part and the finished product are defective and the plaintiff is injured by the defective product.~~The Utah Supreme Court has not yet determined if or how fault should be apportioned between the manufacturer of a defective part and the manufacturer of the finished product. Some courts applying a comparative fault system similar to Utah's have concluded that, in some situations, such as in cases of vicarious liability or strict products liability, multiple defendants should be treated as a single unit, on the theory that they are "joint tortfeasors" in the original sense, that is, persons responsible for carrying out a tort by concerted action. See, e.g., In re Rapco Foam, Inc., 23 B.R. 692 (W.D. Wis. 1982); Arena v. Owens-Corning Fiberglas Corp., 74 Cal. Rptr. 2d 580, 593 (Ct. App.), review denied (Cal. 1998); Wimberly v. Derby Cycle Corp., 65 Cal. Rptr. 2d 532, 535-41 (Ct. App. 1997), and cases cited therein; Steenrod v. Doubrava, 498 N.Y.S.2d 225 (App. Div. 1986); § 7 cmt. j; 13 & cmts. a, c, d, and e. Therefore, some subcommittee members favored the following instruction:~~

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~~If you find that the component part was defective as [designed/manufactured/distributed/sold] and that the defective part made the finished product unreasonably dangerous, then you may find both [name of defendant], the manufacturer of the component part, and [name of co-defendant or third party], the manufacturer of the finished product, liable to [name of plaintiff].~~

Additionally, the Utah Supreme Court in *Gudmundson v. Del Ozone*, 2010 UT 33, ¶ 55 n.14, 232 P.3d 1059, declined to adopt the Restatement (Third) of Torts to the situation where the component part itself is defective. "We do not quote section (a) of the Restatement because it only addresses situations in which the component part itself is defective. Because this situation is adequately addressed in our case law, we do not wish to create confusion by applying the Restatement to those situations." *Id.*

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CV1050 ~~Comparative fault~~Allocation Between Strict Liability Defendants and Other Parties/Third Parties.

~~[Alternative A.]~~

[Name of defendant] claims that [name of plaintiff/other defendants/third-parties] was at fault by [insert theory of fault, e.g. negligent, misused the product, altered/modified the product, assumed the risk of using the product, otherwise acted wrongfully, or failed to act] and that fault was a cause of [name of plaintiff]'s ~~fault caused or contributed to the~~ harm. ~~This is called comparative fault.~~

~~Comparative fault is [negligence] [misuse] [assumption of risk] [or other misconduct] by [name of plaintiff] that causes or contributes to the harm.~~

[Name of defendant] has the burden of proving [name of plaintiff~~'s comparative fault by a preponderance of the evidence~~/other defendants/third-parties] were/was at fault and that fault was a cause of [name of plaintiff's] harm.

If you determine that the [product] was defective, and that any such defect was a cause of [plaintiff]'s harm, then you also must determine what percentage of [name of plaintiff]'s harm was caused by the defective product as compared to what percentage of [name of plaintiff]'s harm was caused by the [acts or omissions] of [name of plaintiff/other defendants/third-parties]. Your allocation of percentages must add up to 100%.

~~Any comparative fault of [name of plaintiff] does not bar [his] recovery unless you apportion 50% or more of the total fault to [name of plaintiff]. In other words, [name of plaintiff] may recover from [name of defendant(s)] if [name of defendant(s)]'s fault is greater than [name of plaintiff]'s.If you allocate 50% or more of the total fault of all parties listed on the verdict form to [name of plaintiff], then [name of plaintiff] will recover nothing. If you allocate less than 50% of the total fault to [name of plaintiff], then I will reduce [name of plaintiff]'s total damages you have determined by the percentage of fault you attribute to [name of plaintiff].~~

If you allocate 50% or more of the total fault of all parties listed on the verdict form to [name of plaintiff], then [name of plaintiff] will recover nothing. If you allocate less than 50% of the total fault to [name of plaintiff], then I will reduce [name of plaintiff]'s total damages you have determined by the percentage of fault you attribute to [name of plaintiff].

~~[Alternative B.]~~

~~[Name of defendant] claims that [name of plaintiff] was at fault and that [name of plaintiff]'s fault caused or contributed to the harm. This is called comparative fault.~~

~~Comparative fault is [misuse] or [assumption of risk] by [name of plaintiff] that causes or contributes to the harm.~~

~~[Name of defendant] has the burden of proving [name of plaintiff]'s comparative fault by a preponderance of the evidence.~~

~~If you determine that both [name of plaintiff] and [name of defendant] were at fault in causing [name of plaintiff]'s harm, then you must determine the percentages of fault attributable to [name of plaintiff] and [name of defendant]. You must also determine the total damages [name of plaintiff] has sustained as a result of the harm. Then I will then reduce the total amount of damages by the percentage of [name of plaintiff]'s fault.~~

References

Bylsma v. R.C. Willey, 2017 UT 85, ¶¶ 78, 81–83, 416 P.3d 595.
Utah Code §§~~Section~~ 78B-5-817 to -823.et seq.

MUJI 1st Instruction

12.9; 12.10.

~~[Alternative B.]~~

~~[Name of defendant] claims that [name of plaintiff] was at fault and that [name of plaintiff]'s fault caused or contributed to the harm. This is called comparative fault.~~

~~Comparative fault is [misuse] or [assumption of risk] by [name of plaintiff] that causes or contributes to the harm.~~

~~[Name of defendant] has the burden of proving [name of plaintiff]'s comparative fault by a preponderance of the evidence.~~

~~If you determine that both [name of plaintiff] and [name of defendant] were at fault in causing [name of plaintiff]'s harm, then you must determine the percentages of fault attributable to [name of plaintiff] and [name of defendant]. You must also determine the total damages [name of plaintiff] has sustained as a result of the harm. Then I will then reduce the total amount of damages by the percentage of [name of plaintiff]'s fault.~~

Committee Notes~~:~~

~~"Fault" is defined in Instruction CV201, Fault defined.~~

"Fault," as defined, is used for brevity in the model instruction, but the instruction should be modified to state the different legal theory(ies) of fault that are at issue in the case (e.g., "was negligent in causing the accident"). "Fault under the LRA incorporates almost every claim that can proximately cause or contribute to injury or damages." *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 72, 416 P.3d 595 (citation modified). Accordingly, the bracketed language listing various legal theories of fault in the first paragraph is not meant to be comprehensive or account for the nuance of any given case.

In *Bylsma*, 2017 UT 85, ¶ 13, the Utah Supreme Court explained that when allocating fault between the plaintiff and the product manufacturer "to avoid conflating negligence and strict liability, the proper approach is one of 'relative causation' rather than 'relative fault.'" To accomplish this, the jury must first determine "that the plaintiff has proven the elements of strict

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liability—the product was defective, it caused some part of the plaintiff's injuries, it was sold by defendant, and the defendant is in the business of selling such products." *Id.* ¶ 81. "Then, after it has made that determination, the jury must allocate the 'fault' in the case by determining the proportion of the injury caused by the defective product and the proportion of the injury caused by the plaintiff's misuse, modification, or abuse of the product." *Id.* (citation modified).

The Supreme Court also clarified in *Bylsma* that the concept of fault is inapplicable in strict products liability claims between the plaintiff and those in the chain of distribution, including for retailers that could raise the passive retailer defense recognized in *Sanns v. Butterfield Ford*, 2004 UT App 203, 94 P.3d 301, but overruled by *Bylsma*, 2017 UT 85, ¶ 12. Instead, issues of which entity should pay more or less of a verdict (or settlement) are to be addressed in indemnity and/or contribution claims. *See, e.g.*, *id.* ¶ 23 ("There are three key aspects of our strict products liability doctrine that work together to achieve its goals. . . . Third, it permits an innocent non-manufacturer (one who sold the product and was therefore held strictly liable) to recover its losses from the manufacturer by way of indemnity. The interplay between these three factors ensured both that the injured plaintiff would obtain a full recovery and that the costs were ultimately borne by those parties who are in a position to absorb the loss by distributing it as a cost of doing business." (citation modified)); *see also id.* ¶ 34.

In an effort to avoid imprecisely interjecting the concept of fault into this instruction, the Committee suggests that it be modified to specifically list the type(s) of fault in dispute (e.g., misuse or unreasonable use). Once those types of fault are listed in this instruction, the court should give separate instructions explaining each type of fault involved, enabling the jury to determine what misconduct by plaintiff, other defendants, or nonparties proximately caused or contributed to plaintiff's harm.

If nonparties are alleged to be at fault or strictly liable and will be listed on the verdict form, the ~~instruction may have to be broadened to include~~name(s) of those nonparties should be included in this instruction, as well as the plaintiff and defendants. Further, in light of the foregoing, unless there are pending claims submitted to the jury among those in the chain of distribution, the jury should not allocate fault among entities in the chain of distribution. In the circumstances where there are no pending claims amongst those in the chain of distribution, the special verdict form may allocate relative causation by assessing the fault of the plaintiff, any non-product defendants, and/or any non-product third-parties against the defective product, not amongst each of the entities in the chain of distribution.

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Finally, the court should ensure that it is clear that the jury should should not make that reduction themselves but should only determine: (1) the total amount of plaintiff's damages and (2) the percentage of fault of the parties and nonparties. Those instructions could be provided in the jury verdict form or included with the jury instructions.

~~The definition of "comparative fault" in the second paragraph should include only those forms of comparative The court should give separate instructions defining the particular type of misconduct involved~~

~~The committee has developed two comparative fault instructions for use in products liability cases. The committee is divided over whether the "pure comparative fault" rule established in~~

Mulherin v. Ingersoll-Rand Co., 628 P.2d 1301 (Utah 1981) survived the Liability Reform Act of 1986.

At the time Utah adopted in 1979, the Utah comparative negligence statute applied the so-called 50/50 rule, under which a plaintiff could not recover if his or her negligence was greater than or equal to that of the defendants. In Mulherin v. Ingersoll Rand Co., 628 P.2d 1301 (Utah 1981)adopted a pure form of comparative fault cases. In 1986 the Utah Legislature enacted the Utah Liability Reform Act, which kept the 50/50 rule of the prior comparative negligence. MUJI contained two similar alternative instructions in light of the uncertainty at the time as to whether the Utah Liability Reform Act applied to strict liability claims involving comparative fault. Some committee members believe this uncertainty still exists. Thus, the two alternative positions are set forth.

However, the Utah Supreme Court has decided a case involving strict liability and other claims apparently based on the 50/50 rule of comparative fault. In Interwest Construction v. Palmer, 923 P.2d. 1350 (Utah 1996), the Utah Supreme Court, in an opinion affirming a bench trial found that the trial court had erred in not considering the appellant's strict liability and negligence claims but found the error harmless because the trial court had correctly ruled against the appellant on its breach of contract and warranty claims because the appellant had caused its own damage. The Supreme Court read this as a factual determination that [the appellant's] misuse of [the product] exceeded the fault, if any, of its suppliers [the appellees]. Otherwise, the trial court would have apportioned damages on [the appellant's] breach of warranty claim." 923 P.2d at 1357. This language suggests that the court thought the Liability Reform Act applied. Nonetheless, some members of the committee believe the trial court's ruling can also be read as meaning that the appellant was the sole proximate cause of damages, in which case an apportionment of fault would be neither necessary nor proper. Notably, in Red Flame, Inc. v. Martinez, 2000 UT 22 the mere fact that the Dramshop Liability Act prescribes a form of strict liability rather than traditional negligence does not exclude it from application of the comparative fault statute. See also S.H. v. Bistryski, 923 P.2d 1376 (Utah 1996) (holding comparative fault provisions of sections 78B-5-817 and 78B-5-818 applied to Utah's strict liability dog bite statute).

CV1051 Product unavoidably unsafe.

In response to [name of plaintiff]'s claim that the [product] was defective in design, [name of defendant] claims that the [product] was unavoidably unsafe and that it is therefore not at fault. Some products cannot be made safe for their intended use, but their benefits are great enough to justify their risks of harm. The rabies vaccination is an example, since a few recipients will suffer serious side effects, but the result of not receiving the vaccination is death.

To establish the defense that the [product] was unavoidably unsafe, [name of defendant] must prove that:

(1) when the [product] was made, it could not be made safe for its intended use even applying the best available testing and research; and

(2) the benefits of the [product] justified its risk.

If [name of defendant] proves both by a preponderance of the evidence, the [product] is not defective.

This defense does not apply to [name of plaintiff]'s claims that the [product] was improperly manufactured or had inadequate warnings.

References

Grundberg v. Upjohn Co., 813 P.2d 89 (Utah 1991).
Burningham v. Wright Med. Tech., Inc., 2019 UT 56, ¶ 39, 448 P.3d 1283.
Restatement (Second) of Torts ~~sect.~~ § 402A, cmt. k.

Committee Notes~~:~~

Some committee members believe that the jury should be permitted to consider whether the safety features are cost prohibitive in determining whether the product was unavoidably unsafe.

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CV1031 Breach of Implied Warranty. Elements of implied warranty of merchantability claim. (Tort).

In this case, [name of plaintiff] claims that [name of defendant] breached an implied warranty that the [product] was merchantable. To establish this claim, [name of plaintiff] must prove all of the following:

(1) that [name of defendant] sold the [product;]

(2) that at the time of sale, the [product]:

[(a) was not reasonably fit for the ordinary purposes for which such [products] are used;] or

[(b) was not of the same kind and quality as other [products] with which it was sold;] or

[(c) would not pass without objection in the industry;]

(3) that this condition rendered the [product] defective and unreasonably dangerous;

(4) that [name of plaintiff] was harmed;

(5) that the defective condition of the [product] was a cause of [name of plaintiff]'s harm.

References

Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152, 159 (Utah 1979).
Kirkbride v. Terex USA, LLC, 798 F.3d 1343, 1353–55 (10th Cir. 2015).
63 Am. Jur. 2d Prod~~uct~~s. Liab~~ility. sect.~~§§ 614-615~~ 707~~.

Committee Notes~~:~~

The Tenth Circuit Court of Appeals, applying Utah law, has concluded that there is no tort claim for breach of the implied warranty because its elements, if such a claim exists, are the same as those for a claim for strict liability. *Kirkbride v. Terex USA, LLC*, 798 F.3d 1343, 1354 (2015) ("We conclude that for purposes of a tort claim for breach of the implied warranty of merchantability, Utah law provides that the warranty is breached only if the plaintiff establishes the elements of a strict-products-liability claim for defective manufacture, defective design, or failure to warn." (citing *Grundberg v. Upjohn Co.*, 813 P.2d 89, 92 (Utah 1991) ("There are three types of product defects: manufacturing flaws, design defects, and inadequate warnings regarding use."))). For the reasons discussed in *Kirkbride* and the cases cited therein, the committee is skeptical that a tort claim for breach of the implied warranty exists in Utah law. To the extent such a claim exists, the committee provides this instruction.

~~In a tort action,~~Because the elements of strict liability and a tort claim for breach of implied warranty "are essentially the same~~."~~," some members of the committee believe that the elements for a claim of breach of implied warranty of merchantability are different if the claim sounds in

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tort than if it sounds in contract. *Ernest W. Hahn, Inc. v. Armco Steel Co*., 601 P.2d 152, 159 (Utah 1979) (citing William L. Prosser, *The Assault Upon the Citadel*, 69 Yale L.J. 1099 (1960); David G. Epstein, *Products Liability: Defenses Based on Plaintiff's Conduct*, 1968 Utah L. Rev. 267); *see also Salt Lake City Corp. v. Kasler Corp*., 855 F. Supp. 1560, 1572 (D. Utah 1994) (citing Utah cases). ~~Thus, some members of the committee believe that the elements for a claim of breach of implied warranty of merchantability are different if the claim sounds in tort than if it sounds in contract.~~ This instruction is meant to state the elements of a tort claim for breach of implied warranty of merchantability if such a claim continues to exist in Utah law.

Other members of the committee believe that the elements of a claim for breach of implied warranty of merchantability are the same whether the claim sounds in contract or tort. These committee members believe that, when the court in *Ernest W. Hahn, Inc.*, said that the elements of strict liability and breach of implied warranty "are essentially the same," it merely meant that a product that breached the implied warranty of merchantability was, by definition, defective, at least under a consumer expectations test such as that set out in Utah Code Section 78B-6-703(2). These committee members do not believe that a plaintiff in a tort case must prove a product defect separate and apart from the breach of implied warranty of merchantability but only has to show ~~that~~ a breach of the implied warranty and that the breach caused his harm.

In paragraph (2) instruct on subparagraphs (a), (b) or (c) for which there is evidence.

Commented [JW7]: It would be helpful to hear from both sides on this point.

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CV10--- Enhanced Injury Instruction.

[Name of plaintiff] has brought what is called an enhanced injury claim. An enhanced injury occurs if an injury caused by some other event is increased or enhanced over and above the harm that would have otherwise resulted from the event, as a result of a defective product.

To establish an enhanced injury claim, [name of plaintiff] must prove by a preponderance of the evidence all of the following:

(1) The product had a [design] [manufacturing] [warning] defect that made it unreasonably dangerous; and

(2) That defect was a substantial factor in increasing the harm [name of plaintiff] experienced, over and above the harm that would have otherwise resulted from the event.

If you find that a product defect was a substantial factor in increasing the harm [name of plaintiff] experienced, over and above the harm that would have otherwise resulted from the event, then you next must apportion the harm caused by the defect and the harm caused by the other event.

References

Egbert v. Nissan N. Am., Inc., 2007 UT 64, ¶ 19, 167 P.3d 1058.
Egbert v. Nissan Motor Co., Ltd., 2010 UT 8, ¶¶ 23, 37, 40, 228 P.3d 737.
Restatement (Third) of Torts: Prods. Liab. § 16(a) (A.L.I. 1998).

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CV10-- – Failure to warn claims for FDA approved drugs.

[Name of plaintiff] claims [drug product] was defective because it did not include an adequate warning. Prescription drug [labels] [warnings] are regulated by the United States Food and Drug Administration ("FDA"), and [name of defendant] claims that the FDA would not have approved any variation of the [label or warning].

If [name of defendant] proves by clear evidence that the FDA would not have permitted [plaintiff's] proposed variation to the [label] [warning], [name of defendant] is not liable to [name of plaintiff] for failure to include an adequate warning.

Commented [JW8]: Is this the clear and convincing evidence standard or another standard?

References

Cerveny v. Aventis, Inc., 855 F.3d 1091 (10th Cir. 2017).

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Committee Notes

In *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), the United States Supreme Court held that state law fraud on the FDA claims conflict with and are preempted by federal law. *Id.* at 353. Accordingly, the committee has not included claims of misrepresentation on the FDA in this instruction. Applicable caselaw analyzing preemption of such claims holds a state law failure to warn claim is preempted by federal law "if a pharmaceutical company presents clear evidence that the FDA would have rejected an effort to strengthen the label's warnings." *Cerveny v. Aventis, Inc.*, 855 F.3d 1091, 1098 (10th Cir. 2017) (citing *Dobbs v. Wyeth Pharm.*, 606 F.3d 1269, 1269 (10th Cir. 2010).

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This instruction is applicable to both negligence and strict product liability claims.

CV10-- Product liability – No Duty to Make a Safe Product Safer.

[Name of defendant] may market a non-defective product even if a safer model is available. There is no duty to make a safe product safer. [Name of defendant] has no duty to inform the consumer of the availability of the safer model.

References

Slisze v. Stanley-Bostitch, 1999 UT 20, ¶¶ 10, 13, 979 P.2d 317.
Clayton v. Ford Motor Co., 2009 UT App 154, ¶ 31, 214 P.3d 865.

Commented [JW9]: It looks like this is somewhat duplicative of CV1020? Do we want to amend that if this one is created?

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Commented [JW10]: Committee to review these cases and discuss with representatives from both sides. The authorities seem older for a new instruction. This or a similar instruction was hotly contested in prior discussions.

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TAB 3

MUJI Civil Upcoming Queue:

Numbers	Subject	Members	Progress	Next Report Date
101, 101A	General admonitions		Clancey suggests adding prohibition re use of AI chatbots. Committee approved revisions Sept. 2026. Back from comment (none).	Nov. 2026
212	Violation of a Safety Law		Revisions and new committee note due to Blackwell v Holiday Oil Co., 2026 UT App 99, approved Oct. 2026. Out for comment.	Dec. 2026
905	Exception to Silence Equaling Acquiescence		Rob Fuller suggested correcting typo; Jace reviewed, substantive revisions may be needed. Presented to the Committee in Sept. 2026. Rob will consult Robert Cummings, who helped with the original instruction.	Dec. 2026
	Med Mal statute of repose		Alyson raised potential need for instruction / revision (awaiting draft)	2026
1000	Products Liability	Tracy Fowler, Paul Simmons, Judge Todd Shaughnessy	Appeared on Agenda April 2026. Continuing to work and will report back.	Nov. 2026
2142-2145, 2221	Unjust Enrichment	Aaron Pacini	Aaron and Jace worked on draft instructions, which were presented to and approved Sept. 2026. Back from comment (none).	Nov. 2026
2400	Insurance	Andrew Wright, Richard Vazquez, Stewart Harman, Dan Bertch, Bruce Pritchett, Jake Hinkins	Appeared on Agenda March 2022. Feb. 2025 Stewart indicates the group is awaiting a decision on appeal.	
2700	Directors and Officers Liability	Adam Buck	April 2025 - Stewart will contact	
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. Alyson, Stewart, and Jace to follow up on this one.	
2300	Sales Contracts and Secured Transactions	Matthew Boley	Matthew willing to work on this topic and would like more feedback from the Committee. Alyson,	

			Stewart, and Jace to follow up on this one.	
	Case law and Statutory Updates	TBD	Previous chairs or group leads may have feedback.	
	Linguistics and Law I - General	Bill Eggington, Judge Kelly, John Macfarlane, Michael Lichfield, Robert Cummings, Clark Cunningham, Jesse Egbert, Scott Jarvis	Presented Feb. 2025 and Feb. 2026. Have identified instructions potentially in need of plain-language adjustments; awaiting feedback on work; working with MUJI (Crim) as well; will submit written findings when complete	2026
	Linguistics and Law II - Reasonableness	Judge Bolinder, Bill Eggington, Ben Lusty	Bill presented Feb. 2025 on the changing meaning of reasonableness; this subcommittee would also like to work with MUJI (Crim); Bill presented again Oct. 2026 and will visit with NAU professors to see about adding reasonableness issue to their research.	2026

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
1700	Assault/Battery/False Arrest/Malicious Prosecution	August 2025
331	Past and Future Medical Expenses	November 2025
1740-42	Abuse of Process	November 2025
2003, 2005	Economic Damages/Collateral Sources	January 2026, April 2026

2119	Implied Covenant of Good Faith and Fair Dealing	February 2026, April 2026