

AGENDA  
ADVISORY COMMITTEE  
ON MODEL CIVIL JURY INSTRUCTIONS

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Council Room, Suite N31

April 12, 2004  
4:00 to 6:00 p.m.

Welcome and approval of minutes	John Young
Negligence Instructions	Frank Carney, Ch.
Preliminary and General Instructions	Phil Ferguson, Ch. Ralph Dewsnap
MUJI Organization	Tim Shea
Future Subcommittee Reports	John Young

**Meeting Schedule: Matheson Courthouse, 4:00 to 6:00, Judicial Council Room**

May 10  
June 14  
July 12  
August 9  
September 13  
October 18 (3<sup>rd</sup> Wednesday)  
November 8  
December 13

**MINUTES**  
Advisory Committee on Model Civil Jury Instructions  
March 8, 2004  
4:05 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Juli Blanch, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Paul M. Simmons

Excused: Honorable William W. Barrett, Jr., Ralph L. Dewsnup

1. *Minutes.* Ms. Blanch moved that the minutes of the February 9, 2004, meeting be approved. Mr. Ferguson 2d. The motion passed without opposition.

2. *Instruction Headings.* The committee thought that the instruction headings could help jurors find particular instructions more easily. The committee agreed to add a note recommending that trial judges include the headings with the instructions and give the jury copies of the instructions to follow while the court reads them.

3. *Gender.* The committee discussed how best to deal with gender in the instructions. It was agreed that it will be less of a problem if the judge uses the actual names of the parties rather than referring to "the plaintiff," "the defendant" or "a person." Where possible, instructions should be worded to avoid generic personal pronouns.

**Mr. Shea will review the instructions to see if references to "s/he" can be eliminated.**

4. *References to Parties.* The committee preferred "the plaintiff" and "the defendant" to simply "plaintiff" or "defendant."

5. *Negligence Instructions.* The committee continued its review of the draft instructions prepared by Mr. Carney's Negligence Subcommittee. Mr. Shea had renumbered and edited some of the instructions previously discussed.

a. 3.01. *Verdict form.* The committee agreed to move this instruction to the end of the general and preliminary instructions, since it applies regardless of the plaintiff's theory of liability. The committee otherwise approved the instruction unchanged.

b. 3.02. *"Negligence" defined.* "Ordinarily careful person" was changed to "ordinary, careful person" throughout. Mr. Young asked whether there was a legally significant difference between "care" and "caution." If not, we may wish to use "care" (the more common word) throughout. Mr. Shea asked whether the sentence stating that reasonable care does not require extraordinary caution was consistent with the sentence that the amount of caution required varies with the circumstances. The committee

decided to leave the sentence in but in a modified form. The last sentence of the instruction (“You must decide . . .”) was made a separate paragraph.

c. *3.03. Standard of care for the physically disabled.* Based on the comment to this instruction, Mr. Simmons asked whether the instruction should be expanded to cover physically ill adults as well as disabled adults. After much discussion, the committee decided to leave the instruction as written pending further research on what the law requires of physically ill (but not disabled) people.

Ms. Blanch was excused.

d. *3.04. Amount of care required when children are present.* The committee changed “adults only” to “only adults” and approved the instruction as modified.

e. *3.05. Negligence applied to children.* Mr. Simmons asked whether there should be a separate instruction stating that children engaged in adult activities are held to the same standard of care as an adult. A new instruction (3.05a) was added to that effect, with a comment that it is for the court to decide whether an activity is considered an adult activity.

f. *3.06. Amount of care for dangerous activities.* The committee questioned under what circumstances the instruction would be given.

**Mr. Simmons will send Mr. Carney a list of Utah cases on the subject. Mr. Carney will review the law in this area before the next meeting and, if necessary, revise the instruction accordingly.**

g. *3.07. Amount of care required in controlling electricity.* Rick Rose had proposed adding a sentence to the end of the instruction that read, “This does not mean that one who supplies electricity to the public is liable without regard to fault.” The committee decided not to add the sentence. Dr. Di Paolo noted that liability was a concept that had not been introduced before and might confuse the jurors. Mr. Shea noted that the instruction does not suggest liability without fault. Mr. Carney and Mr. Simmons thought that the sentence was argumentative and not in line with recent Supreme Court cases holding that instructions telling the jury that the mere fact that an accident happened does not mean that anyone was at fault should not be given. The sentence is also not unique to electricity cases but could be added to every instruction. Mr. Ferguson suggested adding a sentence to the effect that people have a duty to be careful around power lines if they are aware of them. Mr. Carney questioned whether that was the law, since some people may reasonably assume that a downed power line has been deactivated or may not be aware that they can receive a shock if they are close enough to the line even if they do not touch it.

h. *Violation of safety law.* Dr. Di Paolo noted that the last paragraph does not clearly explain what the jury is supposed to do. Mr. Simmons noted that the problem is that the violation of a safety law is not negligence *per se*, so the jury does not have to decide whether a safety law has been violated to decide whether or not a party was negligent. The committee will revisit the instruction at a later meeting.

6. *Schedule.* Mr. Young expressed concern with the slow progress the committee is making. He asked committee members to think of ways to streamline the process so that the instructions can be completed more expeditiously, such as by working with subcommittees on editing the instructions, so that the subcommittees have our input earlier and the instructions reach the full committee in a more polished form. Mr. Young also suggested asking the Litigation Section of the Bar for money to hire research help on issues of substantive law that arise during our discussions. Mr. Carney suggested that we may need to meet more often than once a month.

7. *Next Meeting.* The next meeting will be Monday, April 12, 2004, at 4:00 p.m.

The meeting concluded at 6:00 p.m.

1 3.08 Violation of safety law. Violation of a safety [statute/ordinance/rule] is evidence of  
2 negligence unless the violation is excused. The plaintiff claims that the defendant violated a  
3 safety [statute/ordinance/rule] that says:

4 [summarize or quote the statute/ordinance/rule]

5 If you decide that the defendant violated the [statute/ordinance/rule], you must decide  
6 whether the violation is excused.

7 The defendant claims the violation is excused because:

8 1. Obeying the [statute/ordinance/rule] would have created an even greater risk of harm.

9 2. S/he could not obey the [statute/ordinance/rule] because s/he faced an emergency that s/he  
10 did not create.

11 3. S/he was unable to obey the [statute/ordinance/rule] despite a reasonable effort to do so.

12 4. S/he was incapable of obeying the [statute/ordinance/rule].

13 5. S/he was incapable of understanding what the [statute/ordinance/rule] required.

14 If you decide that the defendant violated the [statute/ordinance/rule] and that the violation  
15 was not excused, you may consider the violation as evidence of negligence. If you decide that the  
16 defendant did not violate the [statute ordinance rule] or that the violation should be excused, you  
17 must disregard the violation and decide whether the defendant acted with reasonable care under  
18 the circumstances.

19 References

20 Child v. Gonda, 972 P.2d 425 (Utah 1998)

21 Gaw v. State ex rel. Dep't of Transp., 798 P.2d 1130 (Utah Ct. App. 1990)

22 Jorgensen v. Issa, 739 P.2d 80 (Utah Ct. App. 1987)

23 Hall v. Warren, 692 P.2d 737 (Utah 1984)

24 Intermountain Farmers Ass'n v. Fitzgerald, 574 P.2d 1162 (Utah 1978)

25 Thompson v. Ford Motor Co., 16 Utah 2d 30; 395 P.2d 62 (1964)

26 Comment

27 Before giving this instruction, the judge should decide whether the safety law applies. The  
28 safety law applies if:

29 1. Plaintiff belongs to a class of people that the law is intended to protect; and

30 2. The law is intended to protect against the type of harm that occurred as a result of the  
31 violation.

- 1 The judge should include the section on excused violations only if there is evidence to
- 2 support an excuse and include only those grounds for which there is evidence.

1        3.09. “Fault” defined. You must decide whether [names of persons on verdict form] were at  
2 fault. As used in these instructions and in the verdict form, the word “fault” has special meaning.

3 Someone is at fault if:

4        1. that person’s conduct was [insert applicable causes of action];

5        and

6        2. that person’s conduct was the legal cause of plaintiff’s harm.

7        I will now explain what these terms mean.

8        References

9        Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.

10        *Biswell v. Duncan*, 742 P.2d 80, (Utah Ct. App. 1987).

11        *Haase v. Ashley Valley Medical Center*, 2003 UT 360.

12        *Bishop v. GenTec*, 2002 UT 36.

13        Comment

14        “Fault” under the Comparative Negligence Act includes negligence, breach of warranty, and  
15 other breaches of duty. This instruction should be followed by those defining the specific duty  
16 (for example, negligence) and the instruction on legal cause.

17

1 3.10. “Legal cause” defined. If you decide that the conduct of a person named on the verdict  
2 form was [insert applicable cause of action], you must then decide whether that conduct was a  
3 legal cause of the plaintiff’s harm. For the conduct to be a legal cause of harm, you must decide  
4 that all of the following are true:

- 5 1. there was a cause and effect relationship between the conduct and the harm;
- 6 2. the conduct played a substantial role in causing the harm; and
- 7 3. a reasonable person could foresee that harm could result from the conduct.

8 There may be more than one legal cause of the same harm.

9 References

10 MUJI 3.13, 3.14, and 3.15

11 Comments

12 The term “proximate” cause should be avoided. While its meaning is readily understandable  
13 to lawyers, the lay juror may be unavoidably confused by the similarity of “proximate” to  
14 “approximate.”

15  
16 FJC NOTES ON PROXIMATE CAUSE INSTRUCTION:

17 Much of our 14 Jan 04 meeting was devoted to a discussion of this instruction. There was  
18 much disagreement over the need to include “foreseeability” as an element of proximate  
19 causation. We agreed that further research needs to be done– we absolutely need to go back and  
20 have a clear idea of how our courts have defined causation.

21 Our present MUJI has Alternatives A and B.

22 MUJI 3.13- PROXIMATE CAUSE (Alternate A) A proximate cause of an injury is that  
23 cause which, in natural and continuous sequence, produces the injury and without which the  
24 injury would not have occurred. A proximate cause is one which sets in operation the factors that  
25 accomplish the injury.

26 MUJI 3.14- PROXIMATE CAUSE (Alternate B) In addition to deciding whether the  
27 defendant was negligent, you must decide if that negligence was a “proximate cause” of the  
28 plaintiff’s injuries. To find “proximate cause,” you must first find a cause and effect relationship  
29 between the negligence and plaintiff’s injury. But cause and effect alone is not enough. For  
30 injuries to be proximately caused by negligence, two other factors must be present:

- 31 1.The negligence must have played a substantial role in causing the injuries; and
- 32 2.A reasonable person could foresee that injury could result from the negligent behavior.

33 The new “CACI” from California has a negligence instruction (#400) that says a plaintiff  
34 must prove negligence, that plaintiff was harmed, and that the negligence was a “substantial  
35 factor” in causing the harm. Then #430 states that “A substantial factor in causing harm is a  
36 factor that a reasonable person would consider to have contributed to the harm. It must be more  
37 than a remote or trivial factor. It does not have to be the only cause of the harm.”



1        3.11. Comparative fault. You must decide and record on the verdict form a percentage of  
2 fault<sup>1</sup> for the conduct of each party based on the gravity or seriousness of the conduct. The total  
3 fault must equal 100%.

4        For your information, the plaintiff's total recovery will be reduced by the percentage of fault  
5 that you attribute to the plaintiff. If you decide that the plaintiff's fault is 50% or greater, the  
6 plaintiff will recover nothing. When you answer the questions on damages, do not reduce the  
7 award by the plaintiff's percentage of fault. The judge will make that calculation later.

8        References

9        Utah Code Sections 78-27-38; 78-27-40.

10       Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).

11       Haase v. Ashley Valley Medical Center, 2003 UT 360.

12       Bishop v. GenTec, 2002 UT 36.

13       Comment

14       The judge should ensure the verdict form is clear that fault should only be assessed as to  
15 those parties for whom the jury finds both breach of duty and causation.

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<sup>1</sup> With the addition of 3.09, fault includes both breach of duty and legal cause. Is the percentage the jurors are to decide based on "seriousness of the conduct", level of breach or contribution to causation?

1 1.1. Opening instructions; nature of case; general instructions.

2 Before the trial of this case begins, there are certain instructions you should have to better  
3 understand what will be presented to you and how you should conduct yourself during the trial.

4 The party who brings a lawsuit is called the plaintiff. In this action the plaintiff  
5 is\_\_\_\_\_. The party against whom the suit is brought is called the defendant. In this  
6 action the defendant is \_\_\_\_\_.

7 The plaintiff seeks recovery for [damages on account of \_\_\_\_\_].

8 The defendant [denies liability, etc.]

9 [The defendant has filed what is known as a counterclaim, seeking recovery from the  
10 plaintiff on account of \_\_\_\_\_.]

11 You will decide disputed questions of fact. Your decision is called a VERDICT. Your  
12 verdict must be based on the evidence produced here in court. I will decide all questions of law  
13 that arise during the trial. Before you are excused to decide the case, I will give you final  
14 instructions on the law that you must follow and apply in reaching your verdict.

15 From time to time during the trial, I may have to make rulings on objections or motions  
16 made by the lawyers. Lawyers on each side of a case have a right to object when the other side  
17 offers evidence that the lawyer believes is not properly admissible. You should not think less of  
18 a lawyer or a client because the lawyer has made objections. You should not draw any  
19 conclusions from any ruling or other comment I may make that I have any opinion on the merits  
20 of the case favoring one side or the other. And if I sustain an objection to a question that goes  
21 unanswered by the witness, you should not draw any conclusion from the question itself.

22 During the trial it may be necessary for me to confer with the lawyers out of your hearing  
23 with regard to questions of law or procedure that require consideration by me. Sometimes you  
24 may be excused from the courtroom for the same reason. I will try to limit these interruptions as  
25 much as possible, but you should remember the importance of the matter you are here to decide.  
26 Please be patient even though the case may seem to go slowly.

1        1.2. Order of trial.

2        The trial will generally proceed as follows:

3        Opening statements. The lawyers will make opening statements outlining what the case is  
4 about and indicate what they think the evidence will show.

5        Presentation of Evidence. The plaintiff will offer evidence first, followed by the defendant.  
6 Rebuttal evidence may be offered after hearing the witnesses and seeing the exhibits.

7        Instructions on the Law. After the evidence has been fully presented, I will supplement these  
8 instructions and review them with you. You must obey the instructions. You are not allowed to  
9 reach decisions that go against the law.

10       Closing Arguments. The lawyers will then summarize and argue the case. They will share  
11 with you their views of the evidence, how it relates to the law and how they think you should  
12 decide the case.

13       Jury Deliberations. The final step is for you to go to the jury room and deliberate until you  
14 reach a verdict. I will give you more instructions about that step at a later time.

15

1        1.3. Evidence in the case.

2        Evidence is anything that tends to prove or disprove the existence or non-existence of a  
3        disputed fact. It can be testimony, or documents, or objects, or photographs, or stipulations, or  
4        certain qualified opinions, or any combination of these things. In limited instances, I may take  
5        what is called “judicial notice” of a well-known fact. If that happens, I will explain how you  
6        should treat it.

7        Depositions may also be received in evidence. Depositions contain sworn testimony, with  
8        the lawyer for each party being entitled to ask questions. Testimony provided in a deposition  
9        may be read to you in open court or may be seen on a video monitor. Deposition testimony is to  
10       be considered by you, subject to the same instructions which apply to witnesses testifying in  
11       open court.

12       Statements and arguments of lawyers are not evidence in the case, unless made as an  
13       admission or stipulation of fact. When the lawyers on both sides stipulate or agree to the  
14       existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and  
15       regard that fact as proved.

16       Any evidence as to which I sustain an objection, and any evidence I order to be stricken,  
17       must be entirely disregarded.

18       Anything you may have seen or heard outside the courtroom is not evidence, and must be  
19       entirely disregarded. Do not make any investigation about the facts in this case. Do not make  
20       any personal inspections, observations or experiments. Do not view premises, things or articles  
21       not produced in court. Do not let anyone else do anything like this for you. Do not look for  
22       information in books, dictionaries or public or private records which are not produced in court.

23       Do not consider anything you may have heard or read about this case in the media or by word  
24       of mouth or other out-of-court communication.

25       Some evidence is admitted for a limited purpose only. When I instruct you that an item of  
26       evidence has been admitted for a limited purpose, you must consider it only for that limited  
27       purpose and for no other purpose.

28       You are to consider only the evidence in the case, but you are not expected to abandon your  
29       common sense. You are permitted to interpret the evidence in light of your experience.

1        1.4. Stipulated facts.

2        Prior to the trial of this case, the parties entered into certain “stipulations” concerning the  
3 facts. A stipulation is a voluntary agreement between opposing parties concerning a relevant  
4 point. The parties have stipulated to the following facts:

5        The stipulated facts are as follows:

6        [Here read stipulated facts.]

7        Since the parties have so agreed on these facts, you are to take these facts treat them as true  
8 for purposes of this case.

9

1        1.5. Province of the court and jury.

2        The judge, the jury and the lawyers are all officers of the Court and play important roles in  
3 the trial.

4        It is the judge's role to decide all legal questions, supervise the trial and instruct the jury on  
5 the law that must be applied.

6        It is the jury's role to follow that law and decide the factual questions. Factual questions  
7 generally relate to who, what, when, where, how or similar things for which evidence will be  
8 presented.

9        It is the lawyers' role to present evidence, generally by calling and questioning witnesses and  
10 presenting exhibits. Each lawyer will also try to persuade you to decide the case in favor of his  
11 or her client.

12        Keep in mind that neither the lawyers nor I actually decide the case. That is your role. You  
13 should decide the case based upon the evidence presented in court and the instructions that I will  
14 give you.

15

1        1.6. Note-taking.

2        You are entitled to take notes during the trial if you wish and to have those notes with you  
3 during deliberations. We will provide you with writing materials for that purpose if you desire.  
4 If you take notes, do not over do it and do not let your note taking distract you from your duty to  
5 follow the evidence. Your notes are not evidence and should only be used as a tool to aid your  
6 personal memory when it comes time to deliberate and render a decision in this case.

7        References

8        U.R.Civ.P. 47(n)

1        1.7. View of the scene.

2        Since this case involves an incident that occurred at a particular location, you may be  
3        tempted to visit the scene yourself. Please do not do so. In view of the time that elapses before a  
4        case comes to trial, substantial changes may have occurred at the location after the event that  
5        gives rise to this lawsuit. Also, in making an unguided visit without the benefit of explanation,  
6        you might get erroneous impressions. Therefore, even if you happen to live near the location,  
7        please avoid going to it or near it until the case is over.

8



1 1.8. Rules applicable to recesses.

2 From time to time I will call for a recess. It may be for a few minutes, a lunch break,  
3 overnight or longer. You will not be required to remain together while we are in recess. It is  
4 important that you obey the following instructions during the recesses of the court:

5 1. Do not talk about this case with anyone; not family, friends or even each other. The Clerk  
6 may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss  
7 the case with you.

8 2. If anyone tries to discuss the case in your presence, despite your telling them not to, report  
9 that fact to me as soon as you are able. If you must make any communication to me, do not  
10 discuss it with your fellow jurors.

11 3. Though it is a normal human tendency to talk with other people, please do not talk or  
12 otherwise communicate with any of the parties or their lawyers or with any witness. By this, I  
13 mean do not talk or communicate at all, even to pass the time of day.

14 4. Do not read about the case in the newspapers or on the internet, or listen to radio television  
15 or other broadcasts about the trial. If a headline or announcement catches your attention, do not  
16 read or listen further. Media accounts may be inaccurate and may contain certain matters which  
17 are not proper evidence for your consideration. You must base your verdict on the evidence that  
18 you see and hear in this courtroom.

19 5. Finally, I instruct you again – do not make up your mind about what the verdict should be  
20 until after you have gone to the jury room to decide the case and you and your fellow jurors have  
21 discussed the evidence. Keep an open mind until then.

22 Now, we will begin by giving the lawyers for each side an opportunity to make their opening  
23 statements in which they may explain the issues in the case and summarize the facts they expect  
24 the evidence will show.

25

Possible MUJI Organization

Section. Subsection. Instruction	Title	Current MUJI Section
1	General.	1; 2
1.01	Opening instructions.	
1.01.010	Nature of case; General instructions.	
1.01.020	Order of trial.	
1.01.030	Rules applicable to recesses.	
1.01.040	Province of the court and jury.	
1.01.050	Note-taking.	
1.02	Evidence.	
1.01.030	Evidence in the case.	
1.01.040	Stipulated facts.	
1.03	Optional.	
1.03.010	View of the scene.	
2	Negligence.	
2.01	General.	3
2.01.010	Verdict form.	
2.01.020	“Negligence” defined.	
2.01.030	Standard of care for the physically disabled.	
2.01.040	Amount of care required when children are present.	
2.01.050	Negligence applied to children.	
2.01.060	“Fault” defined.	
2.01.070	“Legal cause” defined.	
2.01.080	Comparative fault.	
2.01.090		
2.01.100		
2.02	Ultra Hazardous Activities.	3
2.02.010	Amount of care for dangerous activities.	
2.02.020	Amount of care required in controlling electricity.	
2.03	Tort Law/Special Doctrine.	4
2.03.010	Violation of safety law.	
2.04	Motor Vehicles.	5
2.05	Railroad Crossings.	8
2.06	Common Carriers.	9
2.07	Negligent Infliction of Emotional Distress.	22
3	Intentional Torts.	10
3.01	Defamation.	
3.02	Slander.	

Possible MUJI Organization

Section. Subsection. Instruction	Title	Current MUJI Section
3.04	Malicious Prosecution.	
3.05	False Arrest.	
3.06	Abuse of Process.	
3.07	Battery.	
3.08	Business Torts/Interference with Contract.	
4	Fraud & Deceit.	17
5	Officers, Directors, Partners, Insiders Liability.	20
6	Professional Liability.	
6.01	Architects, Engineers.	7
6.02	Lawyers, Accountants.	7
6.03	Medical Negligence.	6
7	Premises Liability.	11
8	Civil Rights.	15
9	Insurance Co. Obligations.	21
10	Eminent Domain.	16
11	Contracts (Commercial).	26
12	Contracts (Construction).	
13	Damages.	27
14	Employment.	
14.01	Federal Employer's Liability Act.	14
14.02	Employee rights.	18
15	Will Contest.	23
Unaccounted	Products liability. Includes some negligence duty instructions.	12
Unaccounted	Business Torts / Interference With Contract	19
Unaccounted	Vicarious Responsibility / Partnership / Joint Venture / Parent / Guardian.	25
Unaccounted	Verdict Forms (Special/General).	36

<b>Subcommittee</b>	<b>Priority</b>	<b>First Draft Due</b>	<b>Chair</b>
Negligence	1	Dec-03	Frank Carney
Damages	1	Feb-04	Rich Humpherys
Preliminary and General Instructions	1	Feb-04	Phillip S. Ferguson
Contracts (Commercial)	1	Mar-04	Alan Sullivan
Employment	2	Apr-04	Jathan W. Janove
Premises Liability	2	May-04	Robert C. Morton
Product Liability	3		Tracy H. Fowler
Professional Liability: Architects, Engineers	3		Craig R. Mariger
Professional Liability: Lawyers, Accountants	3		Robert G. Gilchrist
Professional Liability: Medical Negligence	3		Ralph L. Dewsnup
Contracts (Construction)	4		Kent Scott
Fraud & Deceit	4		George M. Haley
Insurance Company Obligations	4		Paul Belnap
Officers, Directors, Partners, Insiders Liabilit	4		Jay D. Gurmankin
Civil Rights	5		Robert R. Wallace
Intentional Torts	5		Robert M. Anderson
Probate, Guardianship, Wills	5		Charles M. Bennett