AGENDA
ADVISORY COMMITTEE
ON MODEL CIVIL JURY INSTRUCTIONS

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

May 9, 2005
4:00 to 6:00 p.m.

01.102.	Role of the judge, jury and lawyers.	Tim Shea
01.401.	Burden of proof.	Tim Shea
02.107.	Amount of care required for an abnormally dangerous activity.	Frank Carney
02.101a.	Order of decision making.	Tim Shea
02.109a.	"Legal cause" defined.	Tim Shea
02.110a.	Allocation of fault.	Tim Shea
01.308.	Violation of a safety law.	Tim Shea

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

June 1, 2005 12:00 to 5:00
(Changed from June 13)
July 11, 2005
August 8, 2005
September 12, 2005
October 17, 2005 (3rd Monday)
November 14, 2005
December 12, 2005

Committee Web Page: http://www.utcourts.gov/committees/muji/

MINUTES
Advisory Committee on Model Civil Jury Instructions
April 11, 2005
4:00 p.m.

Present: John L. Young (chair), Honorable William W. Barrett, Jr., Paul M. Belnap, Juli Blanch, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, L. Rich Humpherys, Jonathan G. Jemming, Timothy M. Shea, Paul M. Simmons

Excused: Tracy H. Fowler

1. *Minutes.* The minutes of the February 14, 2005, meeting were approved. (There was no meeting March 14, 2005; it was canceled.)

2. *Efficiency.* The committee discussed ways to speed up its work:

a. *Starting Time.* Meetings will start promptly at 4:00 p.m.

b. *Minutes.* The committee will not spend meeting time going over minutes. The minutes of the prior meeting will be sent out ahead of time, and if no objections are received before the next meeting, the minutes will be deemed approved.

c. *Law Clerks.* Mr. Young and Mr. Carney will ask the Litigation Section of the Bar to provide law clerk help for subcommittees over the summer.

d. *Extended Meetings.* Mr. Carney suggested that the committee set aside a full day to complete whole sets of instructions. Mr. Young suggested that a half day might be sufficient. The committee agreed to meet for a half day in June to finalize the preliminary, negligence, comparative fault, causation and damage instructions. Mr. Humpherys, the chair of the damages subcommittee, is starting a trial on June 13, the date originally set for the June committee meeting, so the committee tentatively agreed to meet for a half day on Monday, June 6, beginning at noon, subject to the other committee members' availability. (Mr. Dewsnup is not available that day but agreed that the meeting could go ahead without him.)

Note: After the meeting, Mr. Young suggested that the committee meet on Wednesday, June 1, from 12:00 p.m. to 6:00 p.m., rather than Monday, June 6.

Committee members should let Mr. Shea know by e-mail as soon as possible whether they can meet on Wednesday, June 1, from 12:00 p.m. to 6:00 p.m.

Mr. Humpherys said that the damages subcommittee would try to have a draft of its instructions for the next meeting. Mr. Jemming offered to assist the subcommittee.

3. *Draft Preliminary and General Instructions.* The committee continued its review of the draft preliminary and general instructions:

a. *01.102: Role of the Judge, Jury and Lawyers.* Mr. Dewsnup suggested that the instruction start out, "You, I and the lawyers . . ." Several members did not like the language at the end of the fourth paragraph on professionalism. They thought it called undue attention to the attorneys' conduct. Judge Barrett and Mr. Belnap did not think that civility at jury trials was a problem or that the instruction was necessary. Mr. Simmons thought the instruction infringed on the jury's job of determining credibility by suggesting that the attorneys who are most civil are most believable. Ms. Blanch suggested that the instruction be made more general so as not to single out the attorneys. Mr. Carney explained that the purpose of the instruction was not to change the attorneys' behavior but to change juror expectations so that they would not expect the attorneys to act like the attorneys they see on television and in the movies. Mr. Dewsnup suggested the following language in place of the last two sentences of paragraph 4: "Things that you see on television and movies may not be an accurate reflection of the way that trials should be conducted. Modern trials should take place in an atmosphere of professionalism, courtesy and civility." Mr. Ferguson suggested that this language be placed as a separate paragraph at the end of the instruction. The committee also agreed to make the last paragraph part of the third paragraph. Dr. Di Paolo noted that most jurors would not understand the term "legal questions" in the second paragraph. Mr. Carney suggested changing it to "questions about the admission of evidence and the meaning of the law."

b. *01.401. Burden of Proof.* Mr. Simmons suggested that the instruction would be awkward if there are multiple claims or defenses. The committee agreed that it would not be a good idea to list the elements of each claim and defense in the preliminary instructions, that the preliminary instructions should only provide a general statement of the parties' claims and defenses. Mr. Young suggested that an abbreviated instruction on burden of proof follow the general instruction on the parties' claims and defenses.

c. *01.402. Preponderance of the Evidence.* Mr. Dewsnup suggested that "testimony" in the third paragraph be replaced with "evidence" and that the fourth sentence of that paragraph read: "In weighing the evidence, you should consider all the evidence that applies to a fact, no matter which party presented it." Mr. Young questioned whether "the persuasive character of the evidence" in the third sentence of paragraph 3 should be "the convincing character." Mr. Simmons thought "persuasive" was more correct, that "convincing" suggested a higher standard than mere preponderance.

Mr. Jemming will search for cases referring to the "convincing character of the evidence" and will try to update the references.

The committee approved the instruction as modified.

d. *02.102.* Mr. Shea noted that the last paragraph was added for cases in which one of the actors was under a physical disability. Dr. Di Paolo suggested that the last paragraph be placed after the second paragraph, and Mr. Carney suggested that it be set off in brackets, with the introductory sentence italicized, to show that it is only to be used where applicable. Mr. Carney noted that the definition of negligence in the first paragraph was circuitous ("Negligence means that a person did not use reasonable care. Reasonable care is simply what a reasonably careful person would do in a similar situation."). He compared the new California jury instruction on negligence: "Negligence is the failure to use reasonable care to prevent harm to oneself or to others. [¶] A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. . . ." Mr. Dewsnup thought that the standard should be "what a reasonable person would do in a similar situation," not what "a reasonably careful person" would do. Mr. Young, Ms. Blanch and Mr. Jemming all thought the standard should be that of "a reasonably careful person." The committee did not change "reasonably careful person" to "reasonable person" but approved the instruction as otherwise modified, making 02.103 ("Standard of Care of the Physically Disabled") unnecessary.

e. *02.105. Standard of Care of Children.* Mr. Belnap questioned whether the third sentence ("Rather, a child is negligent if he does not use the amount of care that is ordinarily used by children of similar age," etc.) had the effect of directing a verdict on negligence. The committee thought it was merely definitional and did not invade the province of the jury. The instruction was approved as written.

f. *02.107. Abnormally Dangerous Activity.* Mr. Simmons thought that the last sentence did not accurately state the law because, under the Liability Reform Act, a defendant's strict liability for carrying on an abnormally dangerous activity still has to be compared with the fault of others. He suggested that it read, "Therefore, the defendant was at fault." Mr. Humpherys suggested adding "to some degree." Mr. Dewsnup noted that the same defendant may be at fault in multiple ways. Mr. Ferguson noted that the jury must still find that the defendant's abnormally dangerous activity was a legal cause of the plaintiff's damages. He suggested omitting the last sentence and replacing it with: "You must only decide whether the defendant's activity caused the plaintiff's harm." Dr. Di Paolo thought it would be helpful to let the jury know the consequence of the court's determination that the defendant's activity was abnormally dangerous and thought that most jurors would not understand what "strictly liable" means. Mr. Simmons suggested deleting "strictly" from the first sentence and putting the last phrase ("whether or not [name of defendant] exercised reasonable care") at the end of the first sentence. The

discussion raised several philosophical issues under the Liability Reform Act: What is to be compared--fault or causation? If causation, is it causation of the accident, or causation of the injuries? What forms of fault can be compared? Can an intentional tort, for example, be compared with negligence? Mr. Jemming did not think the issue was resolved by *Field v. Boyer.* Mr. Belnap noted that the Supreme Court had heard arguments on the issue last week.

Mr. Shea will revise the instruction.

g. *02.108. Amount of Care Required in Controlling Electricity.* The committee approved the instruction as written.

h. *02.101 & 02.101a. "Fault" Defined.* Mr. Shea presented 02.101a as an alternative to 02.101. He tried to simplify the definition of fault by parsing the statutory language. Mr. Carney and Mr. Simmons thought that a party must show more than simply that another's act or omission caused the injury; he must also show a breach of duty. The statutory language Mr. Shea relied on was added to allow the conduct of employers and governmental entities that would be actionable but for their immunity to be compared. In light of the discussion, Mr. Shea withdrew 02.101a. Mr. Belnap questioned the need for any instruction defining "fault," since the jury will already be instructed on the elements of each claim. Mr. Simmons noted that an instruction defining "fault" is necessary in cases that involve different types of fault, such as negligence and strict liability. Mr. Young and Mr. Humpherys agreed that an instruction was necessary to help the jury understand what it must do in completing the special verdict form. Mr. Humpherys suggested adding a sentence to the end of each instruction on the elements of a claim to the effect that, if the jury finds that the elements of the claim have been met, then the actor is considered to have been at "fault." The committee agreed that the language "gave rise to a claim for" in subparagraph (1) should not be used. Several committee members objected to subparagraph (2) on the grounds that it required the jury to find causation twice--once as an element of a claim and again as part of the definition of "fault." The committee debated whether causation was an element of negligence. Mr. Carney suggested that the instructions should follow the special verdict form and require the jury to first determine whether a party's conduct breached a standard of care and then determine whether it was a legal cause of the plaintiff's harm. The committee will revisit the instruction.

i. *02.109 & 02.109a. "Legal Cause" Defined.* Mr. Belnap preferred 02.109a to 02.109 on the grounds that it more closely follows the law as it has been traditionally stated. He also preferred to keep the term "proximate cause" rather than "legal cause" and asked whether there was any empirical support for the proposition that jurors are confused by "proximate cause." Mr. Young, Dr. Di Paolo and Mr. Simmons

pointed out that "proximate cause" was criticized as foreign to lay jurors in the articles the committee reviewed when it was starting its work, including the Charrow and Charrow article. Dr. Di Paolo thought that lay jurors would also be confused by "legal cause" as well but agreed that it was better than "proximate cause." She noted that most people hear "approximate" for "a proximate." Mr. Young noted that California just uses "cause." Mr. Humpherys suggested that we ask the court to approve the use of "legal cause." Mr. Young suggested that the instruction include an advisory committee note explaining the change from "proximate" to "legal" cause and citing the studies suggesting that jurors have trouble understanding "proximate" cause. Mr. Dewsnup noted that there is a significant difference between "could foresee" (in 02.109) and "could be expected" (in 02.109a) and that the standard should be foreseeability, not expectations. Mr. Dewsnup moved to combine the draft instructions by adding the first sentence of 02.109 to the beginning of 02.109a and changing subparagraph (3) of 02.109a to read, "could be foreseen by a reasonable person . . ." Mr. Belnap suggested using MUJI 3.13 and simply changing "proximate" to "legal." Mr. Dewsnup objected to MUJI 3.13 on the grounds that it was not plain English. Mr. Young thought that it incorporated elements of superseding and intervening cause, which are best explained in separate instructions. Mr. Carney did not think that MUJI 3.13 was an accurate statement of the law. He thought it defined actual causation and not proximate causation. Mr. Simmons objected to the use of the phrases "substantial role" or "substantial factor" in any causation instruction and circulated an article suggesting that the substantiality of the conduct in producing the harm is not a proper consideration under a causation analysis but goes to the party's relative degree of fault. Mr. Carney and Mr. Jemming argued that "substantial factor" and foreseeability are not separate elements of legal causation but alternatives and that there is more support for a foreseeability test than a "substantial factor" test under Utah law. Mr. Young suggested replacing "and" between subparagraphs (2) and (3) with "or." The committee will revisit the instruction at a later meeting.

4. *Field Testing.* Mr. Carney suggested that the instructions be presented to focus groups before they are submitted to the Supreme Court to determine whether lay people can understand them.

5. *Next Meeting.* The next meeting will be Monday, May 9, 2005, at 4:00 p.m.

The meeting concluded at 6:15 p.m.

01.102. Role of the judge, jury and lawyers.

You and I and the lawyers are all officers of the court, and we play important roles in the trial.

It's my role to supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also instruct you on the law that you must apply.

It's your role to follow that law and to decide what the facts are. The facts generally relate to who, what, when, where, how or how much. The facts must be supported by the evidence. Neither the lawyers nor I actually decide the case. That is your role. You should decide the case based upon the evidence presented in court and the instructions that I give you.

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

Things that you see on television and in the movies may not accurately reflect the way real trials should be conducted. In a real trial, you, I, the lawyers, the parties and the witnesses should conduct ourselves with professionalism, courtesy and civility.

MUJI 1st Reference.

01.05; 02.02; 02.05; 02.06.

References.

Advisory Committee Notes.

Staff Notes.

Status: Changes from April 11, 2005.

01.401. Burden of proof.

When I instruct you that a party must prove something or that a party has the burden of proof, it means that the party must persuade you by [a preponderance of the evidence] [clear and convincing evidence] that

[general statement of the claim or defense.]

At the close of the trial I will instruct you in more detail about the specific elements that must be proved.

MUJI 1st Reference.

02.16.

References.

Advisory Committee Notes.

The judge may instruct on the burden of proof and standards of proof at the start of the trial to introduce the jurors to the concepts by which they will evaluate the evidence. At the beginning of the trial, however, the description of the claims and defenses must necessarily be general because the evidence has not yet been introduced.

Staff Notes.

Status: Changes from April 11, 2005.

02.107. Amount of care required for an abnormally dangerous activity.

I have determined that [name of defendant]'s activity was abnormally dangerous. One who carries on an abnormally dangerous activity is liable for harm resulting from that activity whether or not he exercised reasonable care. Therefore, you must assume that [name of defendant] was at fault. You must still decide whether [name of defendant]'s activity caused [name of plaintiff]'s harm.

I will instruct you shortly about allocating fault among those listed on the verdict form. Although you must assume that [name of defendant] was at fault, you must nevertheless allocate [name of defendant]'s fault with that of any others you find to be at fault.

MUJI 1st Reference.

03.08.

References.

Walker Drug Co., Inc. v. La Sal Oil Co., 902 P.2d 1229, 1233 (Utah 1995)
Branch v. Western Petroleum, 657 P.2d 267, 273 (Utah 1982)
Robison v. Robison, 394 P.2d 87, 877 (Utah 1964)
Restatement (Second) of Torts §520 (1976); Restatement (Third) of Torts §20 (Tentative Draft No. 1)

Advisory Committee Notes.

Staff Notes.

Status: Changes from April 11, 2005.

02.101a. Order of decision making.

Your ultimate goal as jurors will be to allocate fault for [name of plaintiff]'s harm among those named on the verdict form. To reach that decision, you should first decide some other questions. I will list the order of your decisions using terms that I will then explain.

Decide first whether a person's act or failure to act failed to meet the required "amount of care."

If you decide that a person's act or failure to act failed to meet the required "amount of care," then decide whether that person's act or failure to act was a "legal cause" of [name of plaintiff]'s harm.

You should decide these two questions for every person named on the verdict form.

If you decide both questions in the affirmative, it means that the person named in the verdict form was at fault.

You must then "allocate fault" among those you have found to be at fault.

I will explain what each of these terms means.

MUJI 1st Reference.

None.

References.

Advisory Committee Notes.

Staff Notes.

This instruction would be followed by whatever standard of care instructions apply, then by legal cause, then by allocation of fault.

Status: New.

02.102. Amount of care required generally.

We all have a duty to use reasonable care to avoid injuring others. Negligence means that a person did not use reasonable care. Reasonable care is simply what a reasonably careful person would do in a similar situation. A person may be negligent in acting or in failing to act.

The amount of care that is reasonable depends upon the situation. Ordinary circumstances do not require extraordinary caution. But some situations require more care because a reasonably careful person would understand that more danger is involved.

To be added if the physical condition of one or more of the actors is relevant to determining negligence:
A person with a physical disability is held to this same standard of care. However, you may consider [name of person]'s disability among all of the other circumstances when deciding whether his conduct was reasonable. In other words, a physically disabled person must use the care that a reasonable person with a similar disability would use in a similar situation.

You must decide whether [names of persons on the verdict form] were negligent by comparing their conduct with that of a reasonably careful person in a similar situation.

MUJI 1st Reference.

03.02; 03.05; 03.06.

References.

Mitchell v. Pearson Enters., 697 P.2d 240 (Utah 1985).
Meese v. BYU, 639 P.2d 720 (Utah 1981).

Advisory Committee Notes.

The standard of care for the physically disabled should be distinguished from the standard for the mentally disabled. Under REST 2d Torts § 283C "[i]f the actor is ill or otherwise physically disabled, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under the disability." This is not necessarily a diminished standard, but is subjective in that a party's circumstances, i.e. their physical disability, must be considered in determining whether the actor breached the standard of care.

However, a different approach exists for the mentally disabled. Under REST 2d Torts § 283B "[u]nless the actor is a child, his insanity or other mental deficiency does not relieve the actor from liability for conduct which does not conform to the standard of

a reasonable man under like circumstances." Cited in Birkner v. Salt Lake County, et al., 771 P.2d 1053 (Utah 1989). While Birkner also appears to create a distinction in cases involving either "primary" or comparatively negligent mentally impaired actors, the distinction is factually specific and appears limited to the narrow context of conduct between a therapist and a patient with limited mental impairment. Id. at 1060.

Staff Notes.

Title approved as: “Negligence” defined.

Status: Approved April 11, 2005.

02.104. Amount of care required when children are present.

An adult must anticipate the ordinary behavior of children. An adult must be more careful when children are present than when only adults are present.

MUJI 1st Reference.

03.07.

References.

Kilpack v. Wignall, 604 P.2d 462 (Utah 1979).
Vitale v. Belmont Springs, 916 P2d 359 (Utah App. 1996). (It is improper to give this instruction if the child is older than fourteen.)

Advisory Committee Notes.

This instruction should be used where there is evidence that a person knew or should have known that young children would be present. It is not intended to create a new duty to anticipate the presence of children.

Staff Notes.

Status: Approved January 10, 2005.

02.105. Amount of care required by children.

You must decide whether a child aged _____ was negligent. A child is not judged by the adult standard. Rather, a child is negligent if he does not use the amount of care that is ordinarily used by children of similar age, intelligence, knowledge or experience in similar circumstances.

MUJI 1st Reference.

None.

References.

Donohue v. Rolando, 16 Utah 2d 294, 296-297, 400 P.2d 12,14 (1965).
Restatement (Second) of Torts § 283A (1965).
Restatement (Third) of Torts § 8 (1999).

Advisory Committee Notes.

This instruction should not be given if the child is engaged in an 'adult' activity. See Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995).

It is unclear whether this instruction should be given if the child is less than seven years old. In S.H. By and Through Robinson v. Bistryski, the Utah Supreme Court states that children under the age of seven are legally incapable of negligence. 923 P.2d 1376, 1382 (Utah 1996)(citing Nelson v. Arrowhead Freight Lines Ltd., 104 P.2d 225, 228 (Utah 1940)). However, given the backdrop of additional Utah case law that is left unaddressed by Bistryski, combined with its factually-specific nature, it is unclear whether a presumption that children under seven years old are wholly incapable of negligence exists in Utah.

Staff Notes.

Status: Approved April 11, 2005.

02.106. Amount of care required for a child participating in an adult activity.

A child participating in an adult activity, such as operating a motor vehicle, is held to the same standard of care as an adult.

MUJI 1st Reference.

None.

References.

Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995).

Advisory Committee Notes.

Before giving this instruction the judge should make the preliminary decision whether an activity is an adult activity.

Staff Notes.

Status: Approved January 10, 2005.

02.108. Amount of care required in controlling electricity.

Power companies and others who control power lines and power stations must use extra care to prevent people and their equipment from coming in contact with high-voltage electricity. The greater the danger, the greater the care that must be used.

MUJI 1st Reference.

03.09.

References.

Lish v. Utah Power & Light Co., 493 P.2d 611 (Utah 1972).
Brigham v. Moon Lake Elec. Ass'n, 470 P.2d 393 (Utah 1970).
See also, Burningham v. Utah Power & Light, 76 F. Supp. 2d 1243 (D. Utah 1999) (no duty owed to trespasser on power pole.)

Advisory Committee Notes.

Staff Notes.

Status: Approved April 11, 2005.

02.109a. “Legal cause” defined.

If you decide that a person's act or failure to act failed to meet the required "amount of care," then you must decide whether that person's act or failure to act was a "legal cause" of [name of plaintiff]'s harm. "Legal cause" means that the person's act or failure to act:

(1) caused the harm directly or set in motion events that caused the harm in a natural and continuous sequence; and
(2) could be foreseen by a reasonable person to cause a harm of the same general nature.

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

MUJI 1st Reference.

03.13; 03.14; 03.15.

References.

Steffensen v. Smith's Management Corp., 862 P.2d 1342 (Utah 1993).
Rees v. Albertson's, Inc., 587 P.2d 130 (Utah 1978).

Advisory Committee Notes.

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

More substantial note on the effort to change the word w/o changing the meaning. Better reference to studies showing misunderstanding of "proximate." Cite states that no longer use "proximate:" CA

Staff Notes.

"Substantial factor" removed. Goes to allocating fault, not causation.

Same as 2-109, but has a more general reference to failure "to meet the required 'amount of care,'" rather than an act constituing a particular cause of action. This suggested phrase dovetails better with the approach suggested in Instruction 2.101a and 2.110a.

Status: New.

02.110a. Allocation of fault.

If you decide that a person's act or failure to act failed to meet the required "amount of care," and that that person's act or failure to act was a "legal cause" of [name of plaintiff]'s harm, then you must allocate fault among those people. This must be done on a percentage basis and the total amount of fault must add up to 100%. Each person's percentage of fault should be based on the gravity or seriousness of that person's conduct.

This instruction should be given at the end of trial to delineate the jury's decision making process. It should also be given at the beginning of trial to alert the jury of their ultimate responsibility. When given at the beginning of trial, add:

I will give you further instructions about "amount of care," "legal cause," and "fault" after you hear the evidence, but you should keep in mind that an important part of your deliberations will ultimately be to allocate the percentages of fault.

When given at the end of trial, add:

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

MUJI 1st Reference.

03.01; 03.17; 03.18; 03.19.

References.

Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.
Haase v. Ashley Valley Medical Center, 2003 UT 360.
Bishop v. GenTec, 2002 UT 36.
Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).

Advisory Committee Notes.

"Fault" under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

The judge should ensure that the verdict form is written so that fault is allocated only among those parties for whom the jury finds both breach of duty and legal cause.

Staff Notes.

Intended to be in lieu of 2.110 and 2.111.

Status: New.

02.101. “Fault” defined.

You must decide whether [names of persons on the verdict form] were at fault. As used in these instructions and in the verdict form, the word “fault” has special meaning. Someone is at fault if:

(1) that person’s conduct gave rise to a claim for [insert applicable causes of action]; and
(2) that person’s conduct was the legal cause of [name of plaintiff]’s harm.

I will now explain what these terms mean.

MUJI 1st Reference.

03.01.

References.

Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.
Haase v. Ashley Valley Medical Center, 2003 UT 360.
Bishop v. GenTec, 2002 UT 36.
Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).

Advisory Committee Notes.

“Fault” under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

This instruction should be followed by those defining the specific duty (for example, negligence) and the instruction on legal cause.

Staff Notes.

Status: Unchanged from April 11, 2005, but roundly criticized. See alternative 2.101a.

02.109 “Legal cause” defined.

If you decide that the conduct of a person named on the verdict form was [insert applicable cause of action], you must then decide whether that conduct was a legal cause of [name of plaintiff]’s harm. Legal cause means that [name of person]'s [failure to] act:

(1) caused the harm directly or set in motion events that caused the harm in a natural and continuous sequence; and
(2) could be foreseen by a reasonable person to cause a harm of the same general nature.

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

MUJI 1st Reference.

03.13; 03.14; 03.15.

References.

Steffensen v. Smith's Management Corp., 862 P.2d 1342 (Utah 1993).
Rees v. Albertson's, Inc., 587 P.2d 130 (Utah 1978).

Advisory Committee Notes.

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

More substantial note on the effort to change the word w/o changing the meaning. Better reference to studies showing misunderstanding of "proximate." Cite states that no longer use "proximate:" CA

Staff Notes.

"Substantial factor" removed. Goes to allocating fault, not causation.

Status: Changes from April 11, 2005.

02.110. Allocation of fault.

In this case you will be called upon to allocate fault among [names of persons on the verdict form]. This must be done on a percentage basis and the total amount of fault must add up to 100%. You will be given further instructions about fault and causation after you hear the evidence, but you should keep in mind that an important part of your deliberations will ultimately be to allocate the percentages of fault.

MUJI 1st Reference.

03.01.

References.

Advisory Committee Notes.

“Fault” under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

Staff Notes.

Combine with "comparative fault."

Status: Reviewed.

02.111. Comparative fault.

You must decide and record on the verdict form a percentage of fault for the conduct of each party based on the gravity or seriousness of the conduct. The total fault must equal 100%.

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

MUJI 1st Reference.

03.17; 03.18; 03.19.

References.

Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.
Haase v. Ashley Valley Medical Center, 2003 UT 360.
Bishop v. GenTec, 2002 UT 36.
Biswell v. Duncan, 742 P.2d 80, (Utah Ct. App. 1987).

Advisory Committee Notes.

The judge should ensure that the verdict form is written so that fault is allocated only among those parties for whom the jury finds both breach of duty and legal cause.

Staff Notes.

Combine with "allocation of fault."

Status: Reviewed.

01.308. Violation of a safety law.

Violation of a safety law is evidence of negligence unless the violation is excused. [name of plaintiff] claims that [name of defendant] violated a safety law that says:

[Summarize or quote the statute, ordinance or rule.]

If you decide that [name of defendant] violated this safety law, you must decide whether the violation is excused.

[Name of defendant] claims the violation is excused because:

1. Obeying the law would have created an even greater risk of harm.
2. He could not obey the law because he faced an emergency that he did not create.
3. He was unable to obey the law despite a reasonable effort to do so.
4. He was incapable of obeying the law.
5. He was incapable of understanding what the law required.

If you decide that [name of defendant] violated the safety law and that the violation was not excused, you may consider the violation as evidence of negligence. If you decide that [name of defendant] did not violate the safety law or that the violation should be excused, you must disregard the violation and decide whether [name of defendant] acted with reasonable care under the circumstances.

MUJI 1st Reference.

03.11.

References.

Child v. Gonda, 972 P.2d 425 (Utah 1998).
Gaw v. State ex rel. Dep't of Transp., 798 P.2d 1130 (Utah Ct. App. 1990).
Jorgensen v. Issa, 739 P.2d 80 (Utah Ct. App. 1987).
Hall v. Warren, 692 P.2d 737 (Utah 1984).
Intermountain Farmers Ass'n v. Fitzgerald, 574 P.2d 1162 (Utah 1978).
Thompson v. Ford Motor Co., 16 Utah 2d 30; 395 P.2d 62 (1964).

Advisory Committee Notes.

Before giving this instruction, the judge should decide whether the safety law applies. The safety law applies if:
(1) the plaintiff belongs to a class of people that the law is intended to protect; and
(2) the law is intended to protect against the type of harm that occurred as a result of the violation.

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

Staff Notes.

Formerly grouped with negligence instructions.

Status: Reviewed.