Agenda
Advisory Committee on Model Civil Jury Instructions

March 14, 2011
4:00 to 6:00 p.m.

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

Welcome and approval of minutes	Tab 1	John Young
Premises Liability Instructions	Tab 2	Peter Summerill
General Instrictions	Tab 3	Phil Ferguson Peter Summerill

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

Published Instructions: http://www.utcourts.gov/resources/muji/

Meeting Schedule: Matheson Courthouse, 4:00 to 6:00 p.m.

April 11, 2011
May 9, 2011 (Education Room)
June 13, 2011
September 12, 2011
October 11, 2011 (Tuesday)
November 14, 2011
December 12, 2011

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions

January 10, 2011

4:00 p.m.

Present: John L. Young, Chair, Juli Blanch, Judge William Barrett, Frank Carney, Professor Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Judge Deno Himonas, Gary Johnson. Ryan Springer, Peter W. Summerill, Judge Kate Toomey, Timothy M. Shea, Diane Abegglen

Excused: Rich Humpherys, John R. Lund, Stephen B. Nebeker, Paul M. Simmons, David E. West

(1) The minutes of the meeting held on December 13, 2010 were approved.

(2) Mr. Young welcomed new members Judge Deno Himonas, Mr. Ryan Springer, and Judge Kate Toomey to the committee. Mr. Young welcomed returning member Mr. Gary Johnson.

(3) Mr. Carney and Mr. Young reported that the Litigation Section of the Bar had offered assistance to the committee.

(4) Mr. Carney asked the judges for their opinions on the instructions that they had used. There were several comments that the general instructions were too repetitive. Mr. Summerill volunteered to review the preliminary and general instructions and offer some suggestions. Judge Toomey reported the attorneys sometimes want to use an instruction from MUJI 1, even though it was omitted deliberately.

Mr. Shea reported that he has been accumulating a list of jury trials every month. The committee decided that Mr. Shea will include the report with the monthly materials and that committee members will be assigned on a rotating basis to contact the judges and lawyers involved for their feedback about the instructions.

(5) 1107. Duty of landlord. The committee changed the “and” connecting paragraphs (a) and (b) to “or.” The committee discussed whether (a) was needed in light of (b). The committee decided there were enough unique elements of each that they were not redundant.

The committee discussed the application of the Fit Premises Act. Mr. Summerill stated that the Fit Premises Act is independent of a claim for negligence. The subcommittee will draft a further committee note for this instruction regarding the Fit Premises Act.

The committee approved the instruction as amended, subject to consideration of the committee note.

(6) CV1108. Duty of property seller. Mr. Summerill reported that the Loveland case, although relevant authority for the instruction, did not expressly adopt Restatement §353. The subcommittee will draft a committee note to that effect. The committee approved the instruction, subject to consideration of the committee note.

(7) CV1109. Recovery for injury to ski resort patrons.

The committee amended the instruction to read:

> [Name of defendant] claims that [he] is not liable for that part of [name of plaintiff]'s harm that was caused by one or more of the risks of skiing. To succeed on this claim, [name of defendant] must prove that [name of plaintiff]'s harm that was caused by [describe applicable conditions in Utah Code Section 78B-4-402(1)(a)-(h)].

The committee discussed whether to use the phrase "was caused by one or more of the inherent risks of skiing." Some preferred including "inherent" because it was part of the statute. Others thought "inherent" too difficult to understand and that the statute would be satisfied as long as the specific example of an inherent risk were drawn from the statutory list. After discussion the committee voted not to include "inherent," with three voting "no."

The subcommittee will draft a further committee note describing the interplay between this instruction and the statute.

The committee approved the instruction as amended, subject to consideration of the committee note.

(8) CV1110. Duty of recreational property owner. To better transition from defendant's and plaintiff's required proof, the committee deleted the sentence "Nevertheless, [name of plaintiff] claims that [name of defendant] is liable for harm because:" and added to the end of the preceding paragraph ", unless [name of plaintiff] proves that: ...." The committee approved the instruction as amended.

(9) There being no further business, the committee adjourned at 5:15.

Tab 2

Premises Liability

(1)CV1101. Premises Liability Committee Notes

(2)CV1102. Duty to invitee.

[Name of plaintiff] claims that [name of defendant] failed to use reasonable care to [conduct [describe activity]] [discover [describe condition]] on [name of defendant]'s property and to repair, replace, or adequately warn about it. To succeed in this claim, [name of plaintiff] must prove that [name of defendant]:

[(1) held [his] property open to the public or that [name of defendant] held [his] property open for a purpose directly or indirectly connected to [his] business; and]

(2) knew or should have known of [describe activity or condition]; and

(3) knew or should have known that [describe activity or condition] presented an unreasonable risk of harm; and

(4) knew or should have known that [name of plaintiff] would not discover [describe activity or condition] or that [name of plaintiff] would fail to protect [himself].

In deciding whether [name of defendant] used reasonable care to discover or correct the [describe activity or condition], you may consider, among other factors, the following:

[(a) the location of the property; or]

[(b) the likelihood that someone would come onto the property in the same manner as [name of plaintiff] did; or]

[(c) the likelihood of harm; or]

[(d) the probable seriousness of the harm.]

References

Jex v. JRA, Inc., 2008 UT 67, 196 P.3d 576.

Hale v. Beckstead, 2005 UT 24, 116 P.3d 263

Carlile v. Wal-Mart, 2002 UT App 412, 61 P.3d 287

Canfield v. Albertsons, Inc., 841 P.2d 1224 (Ut. Ct. App. 1992).

Glenn v. Gibbons & Reed Co., 265 P.2d 1013 (1954).

Restatement (Second) of Torts § 343 (1965)

MUJI 1

11.2; 11.3

Committee Notes

If the status of the plaintiff as an invitee is not disputed, the court does not need to give bracketed paragraph (1) to the jury. For examples of an invitee, see the Restatement (Second) of Torts § 343 (1965).

Instruct only on factors (a) – (d) for which there is evidence.

Approved.

(3)CV1103. Duty to licensee for an activity on the property.

[Name of plaintiff] claims that [name of defendant] failed to use reasonable care in [describe activity] on [name of defendant]'s property. To succeed in this claim, [name of plaintiff] must prove that:

[(1) [name of plaintiff] entered or remained on [name of defendant]'s property with [name of defendant]'s express or implied permission; and]

(2) [name of defendant] knew or had reason to know that [name of plaintiff] would not realize the danger involved in [describe activity]; and

(3) [name of plaintiff] did not know or have reason to know of [describe activity] or did not know or have reason to know of its danger.

References

Lambert v. Western Pac. R. Co., 135 Cal. App. 81, 26 P.2d 824 (1933).

Restatement (Second) of Torts § 341 Activities Dangerous to Licensees (1965).

MUJI 1

11.4; 11.5

Committee Notes

If the status of the plaintiff as a licensee is not disputed, the court does not need to give bracketed paragraph (1) to the jury.

Approved.

(4)CV1104. Duty to licensee for a condition on the property.

[Name of plaintiff] claims that [name of defendant] failed to use reasonable care to repair, replace, or adequately warn about [describe condition] on [name of defendant]'s property. To succeed in this claim, [name of plaintiff] must prove that:

[(1) [name of plaintiff] went onto [name of defendant]'s property with [name of defendant]'s express or implied permission; and]

(2) [name of defendant] knew or had reason to know of [describe condition]; and

(3) [name of defendant] knew or had reason to know that [describe condition] presented an unreasonable risk of harm; and

(4) [name of defendant] knew or had reason to know that [name of plaintiff] would not discover [describe condition] or realize its danger; and

(5) [name of plaintiff] did not discover [describe condition] or did not realize its danger.

References

Lambert v. Western Pac. R. Co., 135 Cal. App. 81, 26 P.2d 824 (1933).

Stevens v. Salt Lake County, 25 Utah 2d 168, 171, 478 P.2d 496 (1970).

Restatement (Second) of Torts §342 Dangerous Conditions Known to Possessor (1965).

MUJI 1

11.4; 11.6

Committee Notes

If the status of the plaintiff as a licensee is not disputed, the court does not need to give bracketed paragraph (1) to the jury.

Approved.

(5)CV1105. General duty to a trespasser.

If you find that [name of plaintiff] entered or remained on [name of defendant's] property without [invitation / permission / privilege / consent], then, generally, [name of defendant] owes [name of plaintiff] no duty to use reasonable care:

(1) to put the property in a safe condition; or

(2) to [describe activity] so as not to endanger [name of plaintiff].

[However, ... [As applicable, follow with:

Instruction CV1105A. Duty to a trespasser for an activity on the property.

Instruction CV1105B. Duty to trespasser for an artificial condition on the property.

Instruction CV1105C. Duty to trespassing child for an attractive nuisance on the property.]

References:

Kessler v. Mortenson, 2000 UT 95, 16 P.3d 1225, 1230 (rejecting 'allurement' basis for attractive nuisance doctrine in Brown v. Salt Lake City, 33 Utah 222, 93 P. 570, 572 (1908)).

Connor v. Union Pac. R.R. Co., 972 P.2d 414, 417 (Utah 1998).

Whipple v. Am. Fork Irr. Co., 910 P.2d 1218, 1220 (Utah 1996)(citing and quoting Restatement (Second) of Torts §§ 333-339).

MUJI 1

11.7; 11.8

Committee Notes:

The court in Whipple adopted the Restatement §§ 333-339 as the "more accurate" statement of the law regarding the duty owed by a possessor of land. While a possessor does not generally owe a duty to trespassers, there are several exceptions enumerated in the Restatement §334-339. Only those exceptions at issue should be given as part of the jury instructions. The last exception is the 'attractive nuisance doctrine,' formerly MUJI 11.1. The conditions of the attractive nuisance doctrine, as described in section 339, impose a reasonable balance between the interests of the property owner and the interests of children.

(6)CV1105A Duty to a trespasser for an activity on the property.

... [name of plaintiff] claims that [name of defendant] owes a duty to use reasonable care in [describe activity/force]. To succeed in this claim, [name of plaintiff] must prove that:

(1) [name of defendant] knew or should have known

[(a) that trespassers constantly intruded upon a limited area of the property in dangerous proximity to [describe activity/force], or]

[(b) that [name of plaintiff] was on the property in dangerous proximity to [describe activity/force];] and

(2) [name of defendant] is in immediate control of [describe activity/force]; and

(3) [name of plaintiff] did not discover [describe activity/force] or did not realize its danger.

References:

Restatement (Second) of Torts §334 (1965).

Restatement (Second) of Torts §336 (1965).

Restatement (Second) of Torts §338 (1965).

Committee Notes

This instruction should be preceded by Instruction CV1105. General duty to a trespasser.

Instruct the jury on paragraphs (1)(a) and/or (1)(b), depending on the evidence.

(7)CV1105B Duty to trespasser for an artificial condition on the property.

... [name of plaintiff] claims that [name of defendant] owes a duty to use reasonable care to warn about [describe condition]. To succeed in this claim, [name of plaintiff] must prove that:

(1) [name of defendant] knew or should have known

[(a) that trespassers constantly intruded upon a limited area of the property in dangerous proximity to [describe condition], or]

[(b) that [name of plaintiff] was on the property in dangerous proximity to [describe condition];] and

(2) [describe condition] is an artificial condition that [name of defendant] created or maintained; and

(3) [name of defendant] knew that coming in contact with [describe condition] likely would cause death or seriously bodily harm; and

(4) [describe condition] is of such a nature that [name of defendant] had reason to believe that trespassers would not discover it or would not realize its danger; and

(5) [name of plaintiff] did not discover [describe condition] or did not realize its danger.

References:

Restatement (Second) of Torts §335 (1965).

Restatement (Second) of Torts §337 (1965).

Committee Notes

This instruction should be preceded by Instruction CV1105. General duty to a trespasser.

Instruct the jury on paragraphs (1)(a) and/or (1)(b), depending on the evidence.

(8)CV1105C Duty to trespassing child for an attractive nuisance on the property.

... [name of plaintiff] claims that [name of defendant] owes a duty to use reasonable care to eliminate the danger from [describe condition] or to protect children from the danger. To succeed in this claim, [name of plaintiff] must prove that:

(1) [describe condition] is an artificial condition; and

(2) [name of defendant] knew or had reason to know that [describe condition] involves an unreasonable risk of death or serious bodily harm; and

(3) [name of defendant] knew or had reason to know that children were likely to intrude on the property in dangerous proximity to [describe condition]; and

(4) [name of child], because of [his] youth, did not discover [describe condition] or did not realize its danger; and

(5) the benefit to [name of defendant] of maintaining [describe condition] and the burden of eliminating the danger are slight compared to the risk to children.

References:

Restatement (Second) of Torts §339 (1965).

MUJI 1

11.1

Committee Notes

This instruction should be preceded by Instruction CV1105. General duty to a trespasser.

Approved

(9)CV1106. Duty to persons on a public way.

[Name of plaintiff] claims that [name of defendant] failed to use reasonable care to discover conditions creating an unreasonable risk of harm to persons on [describe public way] and to repair the condition. To succeed in this claim, [name of plaintiff] must prove that:

(1) [name of defendant] created [describe condition] or it was created with [name of defendant]'s express or implied consent; and

(2) [name of defendant] did not use reasonable care to make [describe condition] safe after [name of defendant] knew or should have known of it; and

[(3) [name of defendant] knew or should have known that [name of plaintiff] might leave the [describe public way] and encounter the [describe condition.]

References:

Schulz v. Quintana, 576 P.2d 855, 856 (Utah 1978).

Restatement (Second) Torts, §§ 364-370 (1965).

Committee Notes

Bracketed paragraph (3) should be given for conditions existing wholly on the land of the defendant, but which a plaintiff may only encounter through an innocent deviation from the public way e.g. a trench adjacent to a public sidewalk which the plaintiff may step into in the dark by virtue of having left the public sidewalk.

Approved.

(10)CV1107. Duty of landlord.

[Name of plaintiff] claims that [name of defendant] is liable for [name of plaintiff]'s harm. To succeed in this claim, [name of plaintiff] must prove that:

[(1) [name of defendant] is the landlord for the property; and that]

(2) [name of defendant] failed to use reasonable care to keep the rented property:

[(a) safe and suitable for its intended use; or]

[(b) free of defects or dangerous conditions of which [name of defendant] knew or should have known would expose others to an unreasonable risk of harm.]

References

Williams v. Melby, 699 P.2d 723 (Utah 1985) (quoting Stephenson v. Warner, 581 P.2d 567 (Utah 1978)).

Hall v. Warren, 632 P.2d 848 (Utah 1981)

Gregory v. Fourthwest Investments, Ltd., 754 P.2d 89, 91 (Utah Ct. App. 1988).

English v. Kienke, 848 P.2d 153 (Utah 1993), aff'g 774 P.2d 1154 (Utah Ct. App. 1989).

Darrington v. Wade, 812 P.2d 452, 458 (Utah Ct. App. 1991)("landlords who lease their property for public admission have a higher duty than run-of-the-mill landlords.")

Utah Air Quality Bd. v. Truman, 2000 UT 67, ¶ 28, 8 P.3d 266, 272

MUJI 1

11.10

Committee Notes

If the defendant's role as a landlord is not in dispute, the court does not need to instruct the jury with bracketed paragraph (1). Instruct the jury on bracketed paragraphs (2)(a) and/or (2)(b) as supported by the evidence.

Under Utah law "the landlord's common law duty has been expanded" and is not limited by the "artificial common law categories" of invitee, licensee or trespasser. Gregory v. Fourthwest Investments, Ltd., 754 P.2d 89, 91 (Utah Ct. App. 1988). Utah law recognizes that "a landlord may be subject to a duty of care imposed by a statute or ordinance." Hall v. Warren, 632 P.2d 848, 850 (Utah 1981). In such circumstances, counsel and the court should consider adding other duties based on these laws. Counsel may also consider use of <a href=

http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=2#212>Instruction CV212, Violation of a safety law.

Court and counsel should also consider including additional language as needed such as a duty to inspect under Darrington v. Wade, 812 P.2d 452, 458 (Utah Ct. App. 1991)("landlords who lease their property for public admission have a higher duty than run-of-the-mill landlords.")

Previous MUJI 11.13 and 11.14 have been eliminated as they involve a situation subject to resolution as a matter of law. In effect, if the condition is created by the tenant or in an area not subject to the control of the landlord, there is no duty and hence no question for the jury to resolve. See, e.g. English v. Kienke, 848 P.2d 153 (Utah 1993), aff'g 774 P.2d 1154 (Utah Ct. App. 1989)(summary judgment affirmed, no duty by landlord); Stephenson v. Warner, 581 P.2d 567 (Utah 1978)(directed verdict granted in favor of landlord, no evidence that landlord aware of or created the condition); and, Williams v. Melby, 699 P.2d 723 (Utah 1985)(overruling summary judgment on the grounds that the dangerous condition was located within area subject to control of the landlord).

Approved

(11)CV1108. Duty of property seller.

[Name of plaintiff] claims that [name of defendant] is liable for [name of plaintiff]'s physical injury. To succeed in this claim, [name of plaintiff] must prove that:

[(1) [name of defendant] sold the property;]

[(2) [name of plaintiff] [purchased the property / was on the property with [name of purchaser]'s permission];]

(3) [name of defendant] knew or had reason to know of [describe condition] on the property and the risk involved;

(4) [name of defendant] had reason to believe that [name of purchaser] would not discover [describe condition] or realize the risk;

(5) [name of purchaser did not discover [describe condition]; and

(6) [name of defendant] failed to disclose [describe condition] to [name of purchaser].

References

Loveland v. Orem City Corp., 746 P.2d 763 (Utah 1987).

Restatement (Second) of Torts §353 (1964).

MUJI 1

11.15

Committee Notes

The committee adopts this instruction as a plain language replacement for MUJI 11.15. The committee notes, however, that Loveland v. Orem City Corp., 746 P.2d 763

(Utah 1987) was a split decision, which upheld a motion for summary judgment granted by the trial court. Accordingly, a paucity of facts prevented the clear adoption of a rule regarding a property seller's duty, but nonetheless provided the court with an opportunity to outline such a duty. For example, the court stated that liability should follow the ability to possess or control the land giving rise to the dangerous condition. "Thus, even where bare legal title has been divested, liability has been imposed where a vendor continued to exercise possession or control." Id. at 767. However, the court did not adopt this as a rule of law because there was "no reasonable dispute" that the defendant lacked control or supervision over the premises. Id. Further, the court noted that sellers owe a duty to disclose concealed dangerous conditions, but again found insufficient facts to support the theory of liability. Id. at 768. Ultimately, the court and counsel should use the above instruction as an outline of liability and tailor the instruction to fit the applicable facts and relevant authorities.

Approved subject to note.

(12)CV1109. Recovery for injury to ski resort patrons.

[Name of defendant] claims that [he] is not liable for that part of [name of plaintiff]'s harm that was caused by one or more of the risks of skiing. To succeed on this claim, [name of defendant] must prove that [name of plaintiff]'s harm that was caused by [describe applicable conditions in Utah Code Section 78B-4-402(1)(a)-(h)].

References

Utah Code Section 78B-4-402.

Utah Code Section 78B-4-403.

Clover v. Snowbird Ski Resort, 808 P.2d 1037 (Utah 1991).

Ghionis v. Deer Valley Resort Co., 839 F. Supp. 789 (D. Utah 1993).

White v. DeSeelhorst, 879 P.2d 1371 (Utah 1994).

Rothstein v. Snowbird Corp., 2007 UT 96, 175 P.3d 560.

MUJI 1

11.16

Committee Notes

This instruction is designed for use when a question of fact exists about whether the mechanics of the injuries or the instrumentality involved falls within those risks inherent in skiing. This instruction should be given with instructions defining the elements of negligence and reasonable care and with an instruction that all of the jury instructions be read together and considered as a whole.

Give this instruction in conjunction with Instruction CV202A. "Negligence" defined.

The committee decided against using "inherent" to modify "risks." The risks identified in the statute are, by definition, inherent risks or risks that are integral to skiing, and the

modifier "inherent" adds no value to the instruction. The judge should instruct on those risks, taken from the statute, for which there is evidence. However, the statutory list is not an exhaustive list. There may be other risks identified in the case which are or may be "an integral part of the sport of recreational, competitive, or professional skiing."

Approved subject to note.

(13)CV1110. Duty of recreational property owner

[Name of defendant] claims that [he] is not liable for [name of plaintiff]'s harm. To succeed in this claim, [name of defendant] must prove that:

(1) [name of defendant] did not charge [name of plaintiff] a fee to come upon [name of defendant]'s property for a recreational purpose; and,

(2) [name of defendant] held the property open to the public for [insert relevant usage enumerated under Utah Code Section 57-14-2].

If you find both (1) and (2) above, [name of defendant] owed no duty to exercise reasonable care to make the land safe or to warn of conditions on the land, unless [name of plaintiff] proves that:

(A) [name of defendant] willfully or maliciously caused [name of plaintiff]'s harm; or

(B) [name of defendant] willfully or maliciously failed to guard or warn against [describe the condition, use, structure or activity].

If you find either (A) or (B), then [name of defendant] is liable for harm caused as a result of (A) or (B).

References

Utah Code Section 57-14-3.

Utah Code Section 57-14-4.

Crawford v. Tilley, 780 P.2d 1248 (Utah 1989)

De Baritault v. Salt Lake City Corp., 913 P.2d 743, 748 (Utah 1996)

Perrine v. Kennecott Mining Corp, 911 P.2d 1290 (Utah 1996)

MUJI 1

11.22

Committee Notes

This instruction should be used only if a question of fact exists as to the application of the act limiting liability or as to the character of the alleged omissions as willful or malicious. The existence of a duty is generally a question of law. If no question exists about the application of the act or the nature of the conduct, the presence or absence of a duty will presumably be determined as a matter of law by application of the act and this instruction will be unnecessary.

This instruction should be accompanied by the related instructions defining "recreational lands" and "recreational purposes," and should also be accompanied by

definitions of “willful” and “malicious.” If appropriate, a definition of a “charge” for use of the land may be given. The last paragraph may be omitted if no question exists of an intentional or willful injury.

This instruction is inappropriate if applied to property that exists in an urban, improved land environment. The instruction is based on Utah’s Recreational Use statute and should only be given where the land is: “(1) rural, (2) undeveloped, (3) appropriate for the type of activities listed in the statute, (4) open to the general public without charge, and (5) a type of land that would have been opened in response to the statute.” De Baritault v. Salt Lake City Corp., 913 P.2d 743, 748 (Utah 1996).

Tab 3

General Instructions

(1) CV101A General admonitions.

You have now been sworn as jurors ~~in this case. I want to impress on you the seriousness of being a juror. You must come to the case without bias and attempt to reach a fair verdict based on the evidence and on the law. Before we begin~~, and I need to explain how to conduct yourselves during the trial and during recesses. There are a lot of things that people often do that you are not permitted to do.

~~From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. You will not be required to remain together while we are in recess. You must obey the following instructions during the recesses.~~

Do not allow anything that happens outside this courtroom to affect your decision. ~~During the trial do~~ Do not talk about this case with anyone, including your family, friends, or even your fellow jurors until after I tell you that it is time for you to decide the case. ~~When it is time to decide the case, you will meet in the jury room.~~ You may then discuss the case only in the jury room, ~~at the end of the trial,~~ when all of the jurors are present. After the trial is over and I have released you from the jury, you may discuss the case with anyone, but you are not required to do so.

~~During the trial you must~~ Do not listen to anyone talk about the case outside this courtroom~~,~~. ~~A~~ although it is a normal human tendency to talk with other people~~,~~. ~~d~~Do not talk with any of the parties or their lawyers or with any of the witnesses~~. By this, I mean do not talk with them~~ at all, even to pass the time of day. While you are in the courthouse, the clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you.

If anyone tries to talk to you about the case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and tell the clerk or the bailiff that you need to see me to report the incident. If you must talk to me, do not discuss it with your fellow jurors.

~~During the trial do~~ Do not read about the case in the newspapers or on the internet or listen to radio or television broadcasts about the trial. If a headline or an announcement catches your attention, do not read or listen further. Media accounts may be inaccurate or may contain matters that are not evidence.

~~You must decide this case based only on the evidence presented in this trial and the instructions that I provide.~~ Do not investigate the case or any facts in the case or conduct any experiments. Do not do any research on your own or as a group. Do not use dictionaries, the internet, books, public or private records, or other reference materials that are not produced in court. Do not contact anyone to assist you. Do not visit or view the scene of the events in this case or inspect any things not produced in court. If you happen to pass by the scene, do not stop or investigate. Do not let anyone else do any of these things for you.

You must decide this case based only on the evidence presented in this trial and the instructions that I provide.

Keep an open mind throughout the trial. Evidence can only be presented one piece at a time~~. Do~~, and it is only fair that you do not form ~~or express~~ an opinion ~~about this case while the trial is going on~~ until all of the evidence is in. ~~You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.~~

~~Do not let bias, sympathy, prejudice, or public opinion influence your verdict.~~

~~At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.~~

Pay special attention to these warnings during recesses, when you will be on your honor to follow them.

References

CACI 100

MUJI 1st Instruction

1.1; 2.4.

(2) CV101B Further admonition about electronic devices.

Serious problems have been caused around the country by jurors using computer and electronic communication technology during trial. It's natural that we want to investigate a case, or to share with others our thoughts about the trial, and it's easy to do so with the internet and instant communication devices or services, such as Blackberries, iPhones, Facebook, Twitter, and so on.

However, please understand that the ~~rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The~~ fairness of the entire system depends entirely on you, the jurors, reaching your decisions based on evidence presented to you in court, and not on other sources of information. You violate your oath as jurors if you conduct your own investigations or communicate about this trial with others.

Jurors have caused serious consequences for themselves and the courts by "Googling" the parties, issues, or counsel; "Twittering" with friends about the trial; using Blackberries or iPhones to gather or send information on cases; posting trial updates on

Facebook pages; using Wikipedia or other internet information sources, and so on. Even using something as seemingly innocent as "Google Maps" can result in a mistrial.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

Violations may also result in substantial penalties for the juror.

So I must warn you again - do not use your cell phone or computer to investigate or discuss anything connected with this trial until it is completely finished. Do no internet research of any kind, and advise me if you learn of any juror who has done so.

Pay special attention to these warnings during recesses, when you will be on your honor to follow them.

Committee Notes

News articles have highlighted the problem of jurors conducting their own internet research or engaging in outside communications regarding the trial while it is ongoing. See, e.g., Mistrial by iPhone: Juries' Web Research Upends Trials, New York Times (3/18/2009). The court may therefore wish to emphasize the importance of the traditional admonitions in the context of electronic research or communications.

(3) CV102 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~~ explain the meaning of the law ~~that~~ to 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, why, 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. Also, ~~E~~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. Real trials should be conducted with professionalism, courtesy and civility.

MUJI 1st Instruction

1.5; 2.2; 2.5; 2.6.

(4) CV103 Nature of the case.

Before the trial ~~of this case~~ begins, I need to give you some instructions to help you understand what you ~~will~~ are about to see and hear.

The party who brings a lawsuit is called the plaintiff. In this case the plaintiff is [name of plaintiff]. The party who is being sued is called the defendant. In this case the defendant is [name of defendant].

[Name of plaintiff] seeks damages on account of [describe claim].

[Name of defendant] [denies liability, etc.].

[Name of defendant] has filed what is known as a [counterclaim/cross-claim/third-party complaint/etc.,] seeking recovery from [name of plaintiff/co-defendant/third party defendant/etc.] for [describe claim].

MUJI 1st Instruction

1.1.

(5) CV104 Order of trial.

The trial will generally proceed as follows:

(1) ~~Opening statements.~~ The lawyers will make opening statements, outlining what the case is about and what they think the evidence will show.

(2) ~~Presentation of evidence.~~ [Name of plaintiff] will offer evidence first, followed by [name of defendant]. The parties may later offer more evidence, called rebuttal evidence~~, after hearing the witnesses and seeing the exhibits~~.

(3) ~~Instructions on the law.~~ Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. ~~You must obey these instructions. You are not allowed to reach decisions that go against the law.~~

(4) ~~Closing arguments.~~ The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

(5) ~~Jury deliberations.~~ The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict. Your verdict must be based on the evidence ~~presented in court~~ and on my instructions ~~on the law~~. I will give you more instructions about that step at a later time.

MUJI 1st Instruction

1.2.

(6) CV105 Sequence of instructions not significant.

From time to time ~~throughout the trial~~ I will instruct you on the law. You must follow the law as I explain it to you, even if you do not agree with it. The order in which I give the instructions has no significance. You must consider the instructions in their entirety, giving them all equal weight. I do not intend to emphasize any particular instruction, and neither should you.

MUJI 1st Instruction

2.1.

(7) ~~CV106 Jurors must follow the instructions.~~

~~The instructions that I give you are the law, and your oath requires you to follow my instructions even if you disagree with them.~~

~~MUJI 1st Instruction~~

~~1.5.~~

(8) CV107 Jurors may not decide based on sympathy, passion and prejudice.

You must not decide ~~this case~~ for or against anyone because you feel sorry for or angry at anyone ~~or angry at anyone~~. You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice.

MUJI 1st Instruction

2.3.

(9) CV108 Note-taking.

If you wish, you may take notes during the trial and have those notes with you when you discuss the case. We will provide you with writing materials if you need them. If you take notes, do not over do it, and do not let your note-taking distract you from following the evidence. Your notes are not evidence, and you should use them only as a tool to aid your personal memory when it comes time to decide the case.

References

URCP 47(n).

MUJI 1st Instruction

1.6.

Committee Notes

The judge may instruct the jurors on what to do with their notes at the end of each day and at the end of the trial.

(10) ~~CV110 Rules applicable to recesses.~~

~~From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. You will not be required to remain together while we are in recess. You must obey the following instructions during the recesses:~~

~~Do not talk about this case with anyone – not family, friends or even each other. While you are in the courthouse, the clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you.~~

~~If anyone tries to discuss the case in your presence, despite your telling them not to, tell the clerk or the bailiff that you need to see me. If you must talk to me, do not discuss it with your fellow jurors.~~

~~Although it is a normal human tendency to talk with other people, do not talk or otherwise communicate with any of the parties or their lawyers or with any witness. By this, I mean do not talk with them at all, even to pass the time of day.~~

~~Do not read about the case in the newspapers or on the internet, or listen to radio, television or other broadcasts about the trial. If a headline or announcement catches your attention, do not read or listen further. Media accounts may be inaccurate and may contain matters that are not evidence. You must base your verdict only on the evidence that you see and hear in this courtroom.~~

~~Since this case involves an incident that occurred at a particular location, you may be tempted to visit the scene yourself. Do not do so. Before a case comes to trial, changes may have occurred at the location after the event that gives rise to this lawsuit. Also, you might draw the wrong conclusions from an unguided visit without the benefit of explanation. Therefore, even if you happen to live near the location, do not go to it or near it until the case is over.~~

~~Finally, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case, and you and your fellow jurors have discussed the evidence. Keep an open mind until then.~~

~~**MUJI 1st Instruction**~~

~~1.8; 1.7~~

(11) CV111 All parties equal before the law.

"Person" means an individual, corporation, organization, or other legal entity. In this case the plaintiff is [identify entity] and the defendant is [identify entity]. This should make no difference to you. You must decide this case as if it were between individuals.

MUJI 1st Instruction

2.8.

(12) CV112 Multiple parties.

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each ~~plaintiff and each defendant~~ party. Unless otherwise instructed, all instructions apply to ~~each plaintiff and to each defendant~~ all parties.

(13) CV113 Multiple plaintiffs.

Although there are _____ plaintiffs ~~in this action~~, that does not mean that they are equally entitled to recover or that any of them is entitled to recover. [Name of defendant] is entitled to a fair consideration of [his] defense against each plaintiff, just as each plaintiff is entitled to a fair consideration of [his] claim against [name of defendant].

MUJI 1st Instruction

2.21.

(14) CV114 Multiple defendants.

Although there are _____ defendants ~~in this action~~, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of [his] defense against each of [name of plaintiff]'s claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other defendants are liable.

MUJI 1st Instruction

2.22.

(15) CV115 Settling parties.

[Name of parties] have reached a settlement agreement ~~in this case~~.

There are many reasons why parties settle ~~during the course of a lawsuit~~. A settlement does not mean that any party has conceded anything. You must still decide which party or parties, including [name of settling parties], were at fault and how much fault each party should bear. In deciding how much fault should be allocated to each party, you must not consider the settlement agreement as a reflection of the strengths or weaknesses of any party's position~~s~~.

You may consider the settlement in deciding how believable a witness is.

References

Slusher v. Ospital, 777 P.2d 437 (Utah 1989).

Paulos v. Covenant Transp., Inc., 2004 UT App 35 (Utah App. 2004).

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

URE 408.

MUJI 1st Instruction

2.24.

Committee Notes

The judge and the parties must decide whether the fact of settlement and to what extent the terms of the settlement will be revealed to the jury in accordance with the principles set forth in Slusher v. Ospital, 777 P.2d 437 (Utah 1989).

(16) CV116 Discontinuance as to some defendants.

[Name of defendant] is no longer involved in this case because [explain reasons]. But you must still decide whether fault should be allocated to [name of defendant] as if [he] were still a party.

MUJI 1st Instruction

2.23.

Committee Notes

This instruction should be given at the time the party is dismissed. The court should explain the reasons why the defendants have been dismissed to the extent possible. If allocation of fault to the dismissed party is not appropriate under applicable law the final sentence should not be given.

(17) CV117 Preponderance of the evidence.

When I tell you that a party has the burden of proof or that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence ~~presented in court~~, that the fact is more likely to be true than not true.

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but ~~I must emphasize to you that~~ this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

After weighing all of the evidence, if you decide that a fact is more likely true than not, then you must find that the fact has been proved. On the other hand, if you decide that the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved, and the party has therefore failed to meet its burden of proof to establish that fact.

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

References

Johns v. Shulsen, 717 P.2d 1336 (Utah 1986).

Morris v. Farmers Home Mut. Ins. Co., 500 P.2d 505 (Utah 1972).

Alvarado v. Tucker, 268 P.2d 986 (Utah 1954).

Hansen v. Hansen, 958 P.2d 931 (Utah App. 1998)

MUJI 1st Instruction

2.16; 2.18.

(18) CV118 Clear and convincing evidence.

Some facts in this case must be proved by a higher level of proof called “clear and convincing evidence.” When I tell you that a party must prove something by clear and convincing evidence, I mean that the party must persuade you, by the evidence

~~presented in court~~, to the point that there remains no serious or substantial doubt as to the truth of the fact.

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

I will tell you specifically which of the facts must be proved by clear and convincing evidence.

References

Jardine v. Archibald, 279 P.2d 454 (Utah 1955).

Greener v. Greener, 212 P.2d 194 (Utah 1949).

See also, Kirchgestner v. Denver & R.G.W.R. Co., 233 P.2d 699 (Utah 1951).

MUJI 1st Instruction

2.19.

Committee Notes

In giving the instruction on clear and convincing evidence, the judge should specify which elements must be held to this higher standard. This might be done in an instruction and/or as part of the verdict form. If the judge gives the clear and convincing evidence instruction at the start of the trial and for some reason those issues do not go to the jury (settlement, directed verdict, etc.) the judge should instruct the jury that those matters are no longer part of the case.

(19) CV119 Evidence.

"Evidence" is anything that tends to prove or disprove a disputed fact. It can be the testimony of a witness or documents or objects or photographs or stipulations or certain qualified opinions or any combination of these things.

You must entirely disregard any evidence for which I sustain an objection and any evidence that I order to be struck.

Anything you may have seen or heard outside the courtroom is not evidence and you must entirely disregard it. ~~Do not make any investigation about the facts in this case. Do not make any personal inspections, observations or experiments. Do not view locations involved in the case, or inspect any things or articles not produced in court. Do not look things up on the internet. Do not look for information in books, dictionaries or public or private records that are not produced in court. Do not let anyone else do any of these things for you.~~

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

The lawyers might stipulate to a fact or I might take judicial notice of a fact. Otherwise, what I say and what the lawyers say usually are not evidence.

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

MUJI 1st Instruction

1.3; 2.4.

(20) CV120 Direct and circumstantial evidence.

A fact may be proved by direct or circumstantial evidence. Circumstantial evidence consists of facts ~~or circumstances~~ that allow someone to reasonably infer the truth of the facts to be proved. For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact.

MUJI 1st Instruction

2.17.

(21) CV121 Believability of witnesses.

Testimony in this case will be given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions. In evaluating the testimony of a witness, you may want to consider the following:

(1) Personal interest. Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?

(2) Bias. Do you believe the accuracy of the testimony was affected by any bias or prejudice?

(3) Demeanor. Is there anything about the witness's appearance, conduct or actions that causes you to give more or less weight to the testimony?

(4) Consistency. How does the testimony tend to support or not support other believable evidence that is offered in the case?

(5) Knowledge. Did the witness have a good opportunity to know what [he] is testifying about?

(6) Memory. Does the witness's memory appear to be reliable?

(7) Reasonableness. Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability.

MUJI 1st Instruction

2.9.

(22) CV122 Inconsistent statements.

You may believe that a witness, on another occasion, made a statement inconsistent with that witness's testimony given here. That doesn't mean that you are required to disregard the testimony. It is for you to decide whether to believe the witness.

MUJI 1st Instruction

2.10.

(23) CV123 Effect of willfully false testimony.

If you believe any witness has intentionally testified falsely about any important matter, you may disregard the entire testimony of that witness, or you may disregard only the intentionally false testimony.

References

Gittens v. Lundberg, 3 Utah 2d 392, 284 P.2d 1115 (1955).

MUJI 1st Instruction

2.11.

(24) CV124 Stipulated facts.

A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as proved.

The parties have stipulated to the following facts:

[Here read stipulated facts.]

Since the parties have agreed on these facts, you must accept them as true for purposes of this case.

MUJI 1st Instruction

1.3; 1.4

Committee Notes

This instruction should be given at the time a stipulated fact is entered into the record.

(25) CV125 Judicial notice.

I have taken judicial notice of [state the fact] for purposes of this trial. This means that you must accept the fact as true.

MUJI 1st Instruction

1.3.

Committee Notes

This instruction should be given at the time the court takes judicial notice of a fact.

(26) CV126 Depositions.

Depositions may be received in evidence. ~~D~~A d~~contain~~epositions ~~contain~~ is the sworn testimony of a witness that was given previously, outside of court, with the lawyer for each party ~~being~~ present and entitled to ask questions. Testimony provided in a deposition may be read to you in court or may be seen on a video monitor. You should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

MUJI 1st Instruction

2.12.

(27) CV127 Limited purpose evidence.

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

MUJI 1st Instruction

1.3.

(28) CV128 Objections and rulings on evidence and procedure.

From time to time during the trial, I may have to make rulings on objections or motions made by the lawyers. Lawyers on each side of a case have a right to object when the other side offers evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a party because the lawyer makes objections. You should not conclude from any ruling or comment that I make that I have any opinion about the merits of the case or that I favor one side or the other. And if a lawyer objects and I sustain the objection, you should disregard the question and any answer.

During the trial I may have to confer with the lawyers out of your hearing about questions of law or procedure. Sometimes you may be excused from the courtroom for that same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to decide. Please be patient even though the case may seem to go slowly.

MUJI 1st Instruction

2.5.

(29) CV129 Statement of opinion.

Under limited circumstances, I will allow a witness to express an opinion. ~~You do not have to believe an opinion, whether or not it comes from an expert witness.~~ Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

MUJI 1st Instruction

2.13; 2.14.

(30) CV130 Charts and summaries.

Certain charts and summaries will be shown to you in order to help explain the evidence. However, the charts or summaries are not ~~in and of~~ themselves evidence. If the charts or summaries correctly reflect facts or figures shown by the evidence, you may consider them.

MUJI 1st Instruction

2.15.

(31) CV131 Spoliation.

You may consider whether [name of plaintiff] [name of defendant] intentionally concealed, destroyed, altered, or failed to preserve evidence. If so, you may assume that the evidence would have been unfavorable to ~~that party~~ [name of plaintiff] [name of defendant].

References

Burns v. Cannondale Bicycle Co., 876 P.2d 415 (Utah Ct. App. 1994).

URCP 37(g).

(32) CV135 Out-of-state or out-of-town experts.

You may not discount the opinions of [name of expert] merely because of where [he] lives or practices.

References

Swan v. Lamb, 584 P.2d 814, 819 (Utah 1978).

MUJI 1st Instruction

6.30

Committee Notes

The committee was not unanimous in its approval of this instruction. Use it with caution.

(33) CV136 Conflicting testimony of experts.

In resolving any conflict that may exist in the testimony of [names of experts], you may compare and weigh the opinion of one against that of another. In doing this, you may consider the qualifications and credibility of each, as well as the reasons for each opinion and the facts on which the opinions are based.

MUJI 1st Instruction

6.31

(34) CV137 Selection of jury foreperson and deliberation.

When you go into the jury room, your first task is to select a foreperson. The foreperson will preside over your deliberations and sign the verdict form when it's

completed. The foreperson should not dominate the discussions. The foreperson's opinions should be given the same weight as the opinions of the other jurors.

After you select the foreperson you must discuss with one another—~~or~~ that is deliberate—with a view to reaching an agreement. Your attitude and conduct during discussions are very important.

As you begin your discussions, it is not helpful to say that your mind is already made up. Do not announce that you are determined to vote a certain way or that your mind cannot be changed. Each of you must decide the case for yourself, but only after discussing the case with your fellow jurors.

Do not hesitate to change your opinion when convinced that it is wrong. Likewise, you should not surrender your honest convictions just to end the deliberations or to agree with other jurors.

(35) CV138 Do not speculate or resort to chance.

When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

If you decide that a party is entitled to recover damages, you must then agree upon the amount of money to award that party. Each of you should state your own independent judgment on what the amount should be. You must thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence, and reach an agreement on the amount. You must not agree in advance to average the estimates.

References

Day v. Panos, 676 P.2d 403 (Utah 1984).

(36) CV139 Agreement on special verdict.

I am going to give you a form called the Special Verdict that contains several questions. You must answer the questions based upon the evidence you have seen and heard during this trial.

Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors must agree on the answer to each question, but they do not have to be the same six jurors on each question.

As soon as six or more of you agree on the answer to ~~each~~ all question~~s~~, the foreperson should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort you back to this courtroom; you should bring the completed Special Verdict with you.

(37) CV140 Discussing the case after the trial.

Ladies and gentlemen of the jury, this trial is finished. Thank you for your service. The American system of justice relies on your time and your sound judgment, and you

have been generous with both. You serve justice by your fair and impartial decision. I hope you found the experience rewarding.

You may now talk about this case with anyone you like. You might be contacted by the press or by the lawyers. You do not have to talk with them - or with anyone else, but you may. The choice is yours. I turn now to the lawyers to instruct them to honor your wishes if you say you do not want to talk about the case.

If you do talk about the case, please respect the privacy of the other jurors. The confidences they may have shared with you during deliberations are not yours to share with others.

Again, thank you for your service.