Agenda
Advisory Committee on
Model Civil Jury Instructions

February 13, 2012
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
Vicarious liability instructions	Tab 3	John Lund Frank Carney Gary Johnson Paul Simmons

Committee Web Page

Published Instructions

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 4:00 to 6:00 unless otherwise stated.

March 12, 2012
April 9, 2012
May 14, 2012
June 11, 2012
September 10, 2012
October 9, 2012 (Tuesday)
November 13, 2012 (Tuesday)
December 10, 2012

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
January 9, 2012
4:00 p.m.

Present: John L. Young (chair), Juli Blanch, Francis J. Carney, Phillip S. Ferguson, Tracy H. Fowler, Hon. Deno Himonas, Gary L. Johnson, Timothy M. Shea, Paul M. Simmons, Ryan M. Springer, Peter W. Summerill, Hon. Kate A. Toomey

Excused: Marianna Di Paolo, John R. Lund, David E. West

1. *Instructions on Ski Resort Injuries*. Mr. Carney moved that the committee approve Mr. Shea's January 3, 2012 memorandum on the effect of the Inherent Risks of Skiing statute on the holdings in *Clover v. Snowbird,* 808 P.2d 1037 (Utah 1991), and *White v. Deseelhorst,* 879 P.2d 13 (Utah 1994), and Mr. Shea's proposals for CV1111, CV1112, and CV1113A and B. Judge Toomey seconded the motion. The motion passed without opposition. Mr. Shea will revise the committee note to CV1113A and CV1113B to say that, if the dispute in a given case is over whether the plaintiff wanted to confront the risk, the defendant will likely have the burden of proof, since it is in the nature of an affirmative defense (assumption of risk), but if the dispute is over whether the defendant could have eliminated the risk through the use of reasonable care, the plaintiff will likely have the burden of proof because it is more in the nature of an element of his cause of action. If both prongs of the test for an inherent risk of skiing are disputed in a given case, each party may have the burden to prove one of the prongs.

2. *CV2013. Wrongful death claim. Adult. Factors for deciding damages.* Mr. Carney noted that the wrongful death verdict form asked the jury to award economic and non-economic damages, but the wrongful death instruction did not clearly define these categories of damages. CV2013 was revised to make it clear what the jury should consider in awarding economic and non-economic damages in a wrongful death case. Mr. Springer noted that the elements of non-economic damages in the instruction did not include some items mentioned in *Oxendine v. Overturf,* 1999 UT 4, 973 P.2d 417, specifically, "pleasure." Mr. Springer noted that one could argue that *Oxendine* leaves open the possibility of recovering hedonic damages under Utah law. He suggested revising the second to the last paragraph of CV2013 to say, "comfort and pleasure." Mr. Fowler opposed trying to make the list of factors the jury may consider exhaustive, since, he noted, a plaintiff's attorney could use the instruction to argue that the jury must award a different sum for each item listed. Judge Himonas asked whether the list was meant to be exclusive. If not, he suggested it say that non-economic damages include damages "for the loss of such things as . . ." Mr. Simmons noted that *Oxendine* also allowed the jury to consider the loss of "counsel and advice" and suggested that that language be added to the instruction as well. Judge Himonas questioned whether there was any difference between "counsel" and "advice." Some committee members thought there was. The committee revised the second-to-last paragraph to read:

> You may calculate non-economic damages for the loss of such things as love, companionship, society, comfort, pleasure, advice, care, protection and affection which [name of plaintiff] has sustained and will sustain in the future.

The committee approved the instruction with this modification, with Mr. Johnson opposed.

3. *Verdict Forms*. Mr. Shea announced that the personal injury and wrongful death verdict forms (CV299) are available on the website as Word files so that attorneys and courts can adapt them more easily to make them case-specific.

4. *CV2019. Aggravation of dormant pre-existing condition*. In light of the Utah Court of Appeals' discussion of CV2019 in *Harris v. ShopKo Stores, Inc.,* 2011 UT App 329, and its approval in that case of the instruction given in *Ortiz v. Geneva Rock Products, Inc.,* 939 P.2d 1213, 1219 n.5 (Utah Ct. App. 1997), Mr. Shea proposed replacing CV2019 with the following:

> If a latent condition does not cause pain, but that condition plus the injury brings on pain by aggravating the latent condition, then it is the injury, not the latent condition, that causes the pain.

At Judge Himonas's suggestion, "latent" was replaced with "pre-existing." At Mr. Simmons's suggestion, "causes" was replaced with "is a cause of." The committee approved the instruction as modified. Mr. Ferguson noted that the defendant in *Harris* has petitioned for a writ of certiorari. He also noted that the issues in such cases will often be whether or not a condition was asymptomatic and at what point the condition must have been asymptomatic.

5. *Vicarious Liability Instructions*. The committee started its review of the vicarious liability instructions.

a. *CV2801. Corporation acts through its agents*. Judge Himonas suggested replacing "corporation" with "business entity" in the title. Mr. Springer suggested "principal," and Mr. Fowler suggested "organization." The committee chose to go with "organization." At Mr. Summerill's suggestion, "[name of defendant]" in the second line was changed to "[name of party]," consistent with the first line. At the suggestion of Messrs. Ferguson and Shea, "while performing" was deleted from the second line. The committee approved the instruction as modified.

Ms. Blanch joined the meeting.

b. *CV2802. Liability of principal for authorized acts or acts within the scope of authority; and CV2804. Scope of actual authority.* The committee questioned whether both CV2802 and CV2804 were necessary. CV2802 was meant as a general statement of the basis for vicarious liability and was meant to replace MUJI 25.2, whereas CV2804 was meant to define actual authority (both express and implied) and was meant to replace MUJI 25.4. The committee agreed, however, that the distinction was not apparent from the instructions and that they could be combined into one instruction. Mr. Ferguson suggested saying that a principal can be liable for the act of an agent under three circumstances: (1) where the principal authorized the act; (2) where the agent was acting within the scope of his duties, authority, or employment; or (3) where the agent's act was necessary or incidental to carrying out his assigned duties. Mr. Shea suggested adding to CV2802 a definition of "scope of duties or authority," and inserting subparagraphs (1) and (2) from CV2804 as the definition. At Ms. Blanch's suggestion, the committee combined the instructions to read:

> *CV2802. Actual authority.*
> [Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove that:
> (1) [name of principal] granted [name of officer/employee/agent] the authority to [describe actual authority]; or
> (2) [name of officer/employee/agent]'s conduct was necessary, usual, proper or incidental to the conduct that [name of principal] actually authorized.

Judge Himonas questioned whether conduct can give rise to vicarious liability if it is "incidental" to the authority but not necessary, usual, and proper. Mr. Simmons thought that it could, that if the agent has discretion as to the manner of carrying out his actual authority, the principal can be liable if the agent chooses a manner that is not "necessary" or "usual" but is nevertheless incidental to his authority and proper. *Zions First National Bank v. Clark Clinic Corp.,* 762 P.2d 1090, 1094 (Utah 1988), defines "implied authority" to include "authority to do those acts which are incidental to, *or* are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent." (Emphasis added and footnote omitted.) The committee approved the instruction as rewritten.

c. *CV2805. Approval of conduct.* This instruction is meant to cover the concept of ratification. Mr. Shea suggested deleting "expressly or impliedly."

Judge Himonas suggested replacing the phrase with "directly or indirectly." Judge Toomey pointed out that the second paragraph makes it clear that approval can be implied from conduct or even silence, so the committee deleted the phrase "expressly or impliedly" from the first paragraph and approved the instruction as modified.

d. *CV2806. Scope of duties.* Judge Himonas questioned whether the instruction was necessary. He saw a possible conflict between it and CV2802. Mr. Simmons noted that CV2806 was a specific application of the general principles stated in CV2802 applicable to employment cases and should be titled "Scope of employment" rather than "Scope of duties." He thought that both instructions would not be given in the same case but that the more specific instruction would be given in employment cases. At Mr. Young's suggestion, the committee deferred further consideration of CV2806 to allow the vicarious liability subcommittee to revisit the issue.

6. *Present Value Tables.* Mr. Carney asked why the committee did not include a present value table for calculating the present value of future damages, as some jurisdictions do. The table would show the value of $1 at different times (e.g., 1 year from the time of trial up to 20 or 30 years after the time of trial) using different discount rates, obviating the need for expert economic testimony in some cases. Ms. Blanch thought that expert testimony would always be required to establish the discount rate. Messrs. Summerill and Springer thought that the court could take judicial notice of inflation rates from government-published statistics. Judge Himonas thought that a table is a good idea, especially if the parties stipulate to the discount rate, but asked what happens when there is a dispute about what rate the jury should use. He noted that the defense often just attacks the plaintiff's economist, without providing a discount rate of its own. Mr. Carney noted that the instructions tell the jurors that they are not required to accept even expert testimony. Ms. Blanch thought that if the jury is given a table, it may select a discount rate that has no basis in the evidence. For example, the parties' experts may disagree about whether the discount rate is 4% or 6%, and the jury could then apply a 20% discount rate. Mr. Young suggested asking the jury on the verdict form to determine the plaintiff's total economic damages and the applicable discount rate and then letting the court reduce the economic damages to present value. Mr. Carney will provide examples of what other jurisdictions have done for the next meeting.

7. *Next Meeting.* The next meeting will be Monday, February 13, 2012, at 4:00 p.m.

The meeting concluded at 5:50 p.m.

Tab 2

Vicarious Liability Instructions

(1) CV 2801. An organization acts through its agents. (approved)

[Name of party] is a [corporation, partnership, joint venture, etc.] and acts or fails to act when [name of party]'s officers, employees, or agents act or fail to act within the scope of their duties or authority.

References

"Corporations can only act through agents, be they officers or employees." Orlob v. Wasatch Management, 2001 UT App 28, ¶ 18, 33 P.3d 1078. See also Davis v. Payne & Day, Inc., 348 P.2d 337, 339 (Utah 1960)

"Under agency law, an agent cannot make its principal responsible for the agent's actions unless the agent is acting pursuant to either actual or apparent authority. Actual authority incorporates the concept of express and implied authority. Express authority exists whenever the principal directly states that its agent has the authority to perform a particular act on the principal's behalf. Implied authority. . . , embraces authority to do those acts which are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent." Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094-95 (Utah 1988).

MUJI 1st Instruction

25.1.

Committee Notes

If the jury must decide whether the defendant is a corporation, partnership, or joint venture, then this instruction should not be given. Or phrased as "If you find that [name of defendant] is …."

(2) CV 2802. Actual authority. (approved)

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of principal] granted [name of officer/employee/agent] the authority to [describe actual authority]; or

(2) [name of officer/employee/agent]'s conduct was necessary, usual, proper or incidental to the conduct that [name of principal] actually authorized.

References

"an agent's actual authority originates with expressive conduct by the principal toward the agent by which the principal manifests assent to action by the agent with legal consequence for the principal." Restatement (Third) of Agency § 3.01

"elements which go to show the existence of an employer-employee relationship. . . , are as follows . . . : "'(1) Exercise of control over the details of the work, (2) payment of

compensation, (3) power of appointment, (4) power of dismissal, and (5) for whose benefit the given work was done.'" Buhler v. Maddison, 176 P.2d 118, 273 (Utah 1947).

Implied authority embraces authority to do those acts which are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent.

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094 (Utah 1988)

This authority may be implied from the words and conduct of the parties and the facts and circumstances attending the transaction in question.

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1095 (Utah 1988)

Whenever the performance of certain business is confided to an agent, such authority carries with it, by implication, authority to do collateral acts which are the natural and ordinary incidents of the main act or business authorized.

Bowen v. Olsen, 576 P.2d 862, 864 (Utah 1978)

As stated in Mechem on Agency, Section 1781: 'Wherever the doing of a certain act or the transaction of a given affair or the performance of certain business is confided to an agent, the authority to so act will, in accordance with a general rule often referred to, carry with it by implication the authority to do all of the collateral acts which are the natural and ordinary incidents of the main act or business authorized. The speaking of words,-the making of statements, representations, declarations, admission, and the like,-may as easily be such an incident as the doing of any other sort of act.'

Further, 'Since the authority for the doing of these incidental acts, however, springs from the authority to do the main act it must ordinarily end with it. The incidental thing must be a part of the main thing. It must occur before the main act is completely ended: it must take place while that is still going on.'

Park v. Moorman Mfg. Co., 121 Utah 339, 349, 241 P.2d 914, 919 (1952)

In this regard plaintiff relies upon a proposition of law that where a principal (defendants) entrusts a duty to his agent or employee, the latter is clothed with implied authority to do those things which are within the scope of assigned duties or reasonably and necessarily incident thereto.

B & R Supply Co. v. Bringhurst, 28 Utah 2d 442, 444, 503 P.2d 1216, 1217 (1972)

MUJI 1st Instruction

25.2; 25.4.

Committee Notes

The courts have adopted a more specific test in cases involving scope of employment. If the relationship between principal and agent is a traditional employment relationship, the court should use <a href=http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=28#2805

>Instruction CV2805. Scope of employment. If the relationship is a traditional principal and agent relationship, the court should use this instruction.

(3) CV 2803. Apparent authority.

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove all of the following:

(1) [name of principal] acted in a way that would cause a reasonable person to believe that [name of principal] consented to or knowingly permitted [name of officer/employee/agent]'s conduct; and

(2) at the time of [name of officer/employee/agent]'s conduct, [name of plaintiff] knew of [name of principal]'s acts; and

(3) [name of plaintiff] did in fact believe that [name of officer/employee/agent] had the authority to [describe act or omission].

However, if [name of plaintiff] knew of the real scope of [name of officer/employee/agents]'s authority in time to avoid the harm, then [name of principal] is not liable for [name of officer/employee/agent]'s conduct.

References

City Elec. v. Dean Evans Chrysler-Plymouth, 672 P.2d 89 (Utah 1983).

Bank of Salt Lake v. Corporation of the President of the Church, 534 P.2d 887 (Utah 1975).

However, even though an agent's act is not actually authorized by the principal, the principal may nevertheless be liable to a third party based on the doctrine of apparent authority. Section 27 of the Restatement (Second) of Agency (1957) defines apparent authority as "conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him."

Luddington v. Bodenvest Ltd., 855 P.2d 204, 208-09 (Utah 1993)

"The doctrine of apparent authority has its roots in equitable estoppel." J.H. v. West Valley City, 840 P.2d 115, 128 (Utah 1992) (Howe, Assoc. C.J., dissenting). "[I]t is founded on the idea that where one of two persons must suffer from the wrong of a third the loss should fall on that one whose conduct created the circumstances which made the loss possible." Id. In order to show apparent authority, the following must be established:

(1) that the principal has manifested his [or her] consent to the exercise of such authority or has knowingly permitted the agent to assume the exercise of such authority; (2) that the third person knew of the facts and, acting in good faith, had reason to believe, and did actually believe, that the agent possessed such authority; and (3) that

the third person, relying on such appearance of authority, has changed his [or her] position and will be injured or suffer loss if the act done or transaction executed by the agent does not bind the principal.

Am.Jur.2d Agency § 80 (1986); see City Elec. v. Dean Evans Chrysler-Plymouth, 672 P.2d 89, 90 (Utah 1983) (“It is the principal who must cause third parties to believe that the agent is clothed with apparent authority.”).

Luddington v. Bodenvest Ltd., 855 P.2d 204, 208-09 (Utah 1993).

Zions First Nat'l Bank v. Clark Clinic Corp., 762 P.2d 1090, 1095 (Utah 1988) (holding that “one who deals exclusively with an agent has the responsibility to ascertain that agent's authority despite the agent's representations”).

Workers' Comp. Fund v. Wadman Corp., 2009 UT 18, 210 P.3d 277, 282, reh'g denied (June 24, 2009). The Utah Supreme Court cited the Restatement (Second) Agency and Luddington favorably.

MUJI 1st Instruction

25.3.

Committee Notes

(4) CV 2804. Approval of conduct. (approved)

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of third party] because [name of principal] approved of [name of third party]’s conduct after the fact. To succeed on this claim, [name of plaintiff] must prove that [name of principal] knew of [name of third party]’s conduct; and approved of it.

[Name of plaintiff] may prove that [name of principal] approved of [name of third party]’s conduct by any acts, words, or conduct, including silence, which, under the circumstances, indicate approval.

References

“It is well-established under Utah law that [s]ubsequent affirmance by a principal of a contract made on his behalf by one who had at the time neither actual nor apparent authority constitutes a ratification, which in general is as effectual as an original authorization.” Bullock v. Utah, Dep't of Transp., 966 P.2d 1215, 1218 (Utah Ct.App.1998) (alteration in original) (citations and internal quotation marks omitted). “A principal may impliedly or expressly ratify an agreement made by an unauthorized agent.” Bradshaw v. McBride, 649 P.2d 74, 78 (Utah 1982).

“Ratification[,] like original authority[,] need not be express. Any conduct which indicates assent by the purported principal to become a party to the transaction[,] or which is justifiable only if there is ratification[,] is sufficient. Even silence with full knowledge of the facts may manifest affirmance and thus operate as a ratification. The person with

whom the agent dealt will so obviously be deceived by assuming the professed agent was authorized to act as such, that the principal is under a duty to undeceive him.... So a purported principal may not be wilfully ignorant, nor may he purposely shut his eyes to means of information within his possession and control and thereby escape ratification if the circumstances are such that he could reasonably have been expected to dissent unless he were willing to be a party to the transaction."

Moses v. Archie McFarland & Son, 119 Utah 602, 230 P.2d 571, 574 (1951) (quoting 1 Samuel Williston & George J. Thompson on Contracts 805 (Rev. Ed. 1936)).

"Ratification is premised upon the knowledge of all material facts and upon an express or implied intention on the part of the principal to ratify." City Elec. v. Dean Evans Chrysler–Plymouth, 672 P.2d 89, 91 (Utah 1983); see also Zions First Nat'l Bank, 762 P.2d at 1098 ("Ratification requires the principal to have knowledge of all material facts and an intent to ratify."). "A deliberate and valid ratification with full knowledge of all the material facts is binding and cannot afterward be revoked or recalled." Zions First Nat'l Bank, 762 P.2d at 1098.

Franklin Credit Mgmt. Corp. v. Hanney, 2011 UT App 213

MUJI 1st Instruction

25.5.

Committee Notes

(5) CV2805. Scope of employment.

[Name of plaintiff] claims that [name of employer] is liable for [describe act or omission] by [name of employee]. To succeed on this claim, [name of plaintiff] must prove that [name of employee]'s conduct:

(1) was of the general kind [he] was [employed/authorized] to do; in other words, [he] was doing [name of employers]'s work rather than being wholly involved in a personal matter; and

(2) occurred substantially within working hours and within the normal work area; and

(3) was motivated, at least in part, by the purpose of serving [name of employers]'s interest.

References

Helf v. Chevron U.S.A., Inc., 2009 UT 11, ¶ 48, 203 P.3d 962.

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

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

MUJI 1st Instruction

25.6.

Committee Notes

The courts have adopted a more specific test in cases involving scope of employment. If the relationship between principal and agent is a traditional employment relationship, the court should use this instruction. If the relationship is a traditional principal and agent relationship, the court should use Instruction CV2802. Actual authority.

(6) CV 2806. Deviation from scope of employment.

If [name of employee] deviates from carrying out [his] employment duties for personal reasons, whether [he] was still acting within the scope of employment depends on the extent of the deviation.

If it was a slight deviation to attend to business other than [name of employer]'s, then the acts are still within the scope of employment.

However, if [name of employee]'s deviation was so substantial that it had no relation to [his] employment or to [name of employer]'s business, then [name of employee]'s acts are not within the scope of employment.

References

Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1042 (Utah 1991).

Carter v. Bessey, 97 Utah 427, 93 P.2d 490, 492 (1939).

Restatement 3d of Agency. Section 7.07.

MUJI 1st Instruction

25.7.

Committee Notes

(7) CV 2807. Scope of employment; travel to and from work.

[Name of employee]'s [describe act or omission] while traveling to or from work are not within the scope of employment unless:

(1) [name of employer] benefited from the travel other than just in [name of employee]'s presence at work; or

(2) [name of employer] had control over [name of employee]'s conduct during [his] travel.

References

Ahlstrom v. Salt Lake City Corp., 2003 UT 4, ¶ 6, 73 P.3d 315.

Whitehead v. Variable Annuity Life Ins. Co., 801 P.2d 934 (Utah 1989).

MUJI 1st Instruction

25.8.

Committee Notes

(8) CV 2808. Scope of employment; dual purpose.

If [name of employee]'s [describe act or omission] was motivated to benefit [name of employer], then the conduct was within the scope of employment even though [name of employee] was also pursuing some personal interest.

However, if [name of employee]'s primary motivation was personal, then [his] conduct was not within the scope of employment, even though [he] may have also transacted some business or performed some duty incidental to [his] employment.

[Where [name of employee] is involved in an accident while traveling for [name of employer], you should ask whether the trip was one for which [name of employer] would have had to send another employee over the same route or to perform the same task if the trip had not been made.]

References

Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1041 (Utah 1991).

Whitehead v. Variable Annuity Life Ins. Co., 801 P.2d 934 (Utah 1989).

MUJI 1st Instruction

25.8.

Committee Notes

Use the bracketed paragraph only if the case involves the employee's travel.

(9) CV 2809. Scope of employment; intentional act.

[Name of employee]'s intentional [describe act or omission] is within the scope of employment if [name of employee]'s conduct:

(1) is of the type that [he] was hired to perform; and

(2) occurred during [his] work hours; and

(3 occurred within the boundaries of employment; and

(4) was partially motivated to serve [name of employer]'s interest.

However, if [name of employee]'s conduct served a personal interest or was unprovoked, highly unusual, and outrageous, then [name of employee]'s conduct was not within the scope of employment.

References

Clark v. Pangan, 2000 UT 37, 998 P.2d 268.

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

MUJI 1st Instruction

25.13.

Committee Notes

(10) CV 2810. Joint venture defined.

A joint venture is a relationship ~~that arises from an agreement between~~ voluntarily agreed to by two or more people ~~to undertake some common objective for the benefit of all, in pursuit of which, each is authorized to act for the other[s]. It is a relationship voluntarily entered into by the parties.~~

~~A joint venture does not always require a written agreement; it may arise out of the words or actions of the parties. On the other hand, that the parties characterize their relationship as a "joint venture" is not determinative.~~

~~In order to determine that a joint venture existed between [names of alleged joint venturers], you must find that~~ in which all of the following are true:

(1) the parties combine~~d~~ their property, money, skill, labor and knowledge;

(2) there ~~was~~ is a community of interest in ~~the performance of~~ performing a common purpose;

(3) there ~~was~~ is a joint proprietary interest in the subject matter;

(4) there ~~was~~ is a mutual right to control;

(5) there ~~was~~ is a right to share in the profits; and

(6) ~~unless there was an agreement to the contrary,~~ there ~~was~~ is a duty to share in any losses~~, that might be sustained~~ unless there is an agreement to the contrary.

References

Ellsworth Paulsen Const. Co. v. 51-SPR-L.L.C., 2008 UT 28, 183 P.3d 248 (must be evidence to support each element, 183 P.3d 253, n. 2; "loss-sharing" discussed).

Rogers v. M.O. Bitner Co., 738 P.2d 1029 (Utah 1987) (elements of joint venture).

Basset v. Baker, 530 P.2d 1 (Utah 1974).

MUJI 1st Instruction

25.16.

Committee Notes

(11) CV 2811. Liability of [partnership/joint venture] for acts of [partner/joint venturer.

[Name of plaintiff] claims that [name of ~~defendant~~ partnership/joint venture] is liable for [describe ~~wrongful~~ act or omission ~~to act~~] by [name of partner/joint venturer]. ~~[Name of defendant] is liable for [name of partner's] conduct if~~ To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of partner/joint venturer]'s ~~acted or failed to act during~~ conduct was within the ordinary course of [name of ~~defendant~~ partnership/joint venture]'s business; or

(2) [name of partner/joint venturer] acted under the authority of ~~a co~~ [all/at least one] partner/joint/venture].

References

Utah Code Section 48-1-10.

59A Am. Jur. 2d Partnership § 413

"The nature of a partnership's business establishes the apparent scope of a partner's authority. . . . Partners are bound by the acts of another partner only within the legitimate scope of the business of the partnership, but a partnership is not liable for a transaction of one partner outside the scope of partnership business."

See Shar's Cars, L.L.C., v. Elder, 2004 UT App 258, ¶ 23, 97 P.3d 724.

"'Under the Utah Uniform Partnership Act, partners are jointly, rather than jointly and severally, liable for all debts and obligations of the partnership not arising from tort or breach of trust.'" Citing McCune & McCune v. Mountain Bell Tel., 758 P.2d 914, 917 (Utah 1988). "The main difference between 'joint and several liability' and simply 'joint liability,' regarding a partnership's contractual debt, is that under the theory of joint liability the partnership's assets must be exhausted before partnership creditors can reach the partners' individual assets." Id. Citing McCune & McCune, 758 P.2d at 917.

An interrogatory regarding this issue should be submitted to the jury to determine if the partner's actions were wrongful created a misapplication of another's money or property. If so, each partner in the partnership is jointly and severally liable. However, if a debt or obligation did not arise from a wrongful act or from the misapplication of money or property, then the partners are jointly liable.

See Utah Code Section 48-1-12:

"[Except in limited liability partnerships], all partners are liable:

(a) jointly and severally for everything chargeable to the partnership under [Utah Code] Sections 48-1-10 and 48-1-11.

(b) jointly for all other debts and obligations of the partnership, except a partner may enter into a separate obligation to perform a partnership contract."

MUJI 1st Instruction

25.14.

Committee Notes

(12) CV 2812. Liability of [partnership/joint venture] for misapplication of property or money.

[Name of plaintiff] claims that [name of ~~defendant~~ partnership/joint venture] is liable for ~~[name of plaintiff]'s~~ the loss of [name of plaintiff]'s [money or property]. ~~[Name of defendant] is liable if~~ To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of partner/joint venturer], while acting within the scope of ~~[name of partner]'s~~ [his] [apparent] authority, received [name of plaintiff]'s [money or property] and misapplied it, ~~and~~ or that

(2) [name of ~~defendant~~ partnership/joint venture], in the course of its business, received [name of plaintiff]'s [money or property] and [name of partner/joint venturer] misapplied the [money or property] while it was in [name of ~~defendant~~ partnership/joint venture]'s custody.

References

Utah Code Section 48-1-11.

Hoth v. White, 799 P.2d 213, 218 (Utah Ct. App 1990).

MUJI 1st Instruction

25.15.

Committee Notes

The old rule stated "or" instead of "and" because the Committee felt it better reflected the Legislature's intent. The instruction above mirrors the language from Utah Code Section 48-1-11.

~~**(13) CV 2814. Liability of joint venture for acts of joint venturer.**~~

~~[Name of plaintiff] claims that [alleged joint venture] is liable for the [describe wrongful act or omission] of [name of alleged joint venturer]. [Alleged joint venture] is liable for [name of alleged joint venturer]'s conduct if you find that~~

~~(1) [name of alleged joint venturer] acted wrongfully or failed to act within the ordinary course of [alleged joint venture]'s business; or that:~~

~~(2) [name of alleged joint venturer] acted with the authority of the other joint venturers.~~

~~**References**~~

~~Utah Code Section 48-1-10 (partnerships).~~

~~Utah Code Section 48-1b-305 (effective 7/01/12) (partnerships).~~

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

~~25.17.~~

~~**Committee Notes**~~

~~**(14) CV 2815. Liability of joint venture for misapplication of property or money.**~~

~~One of the issues you must decide is whether [alleged joint venture] is liable for the loss of [name of plaintiff]'s [money] [property]. [Alleged joint venture] is liable for that loss if you find that:~~

~~(1) [alleged joint venturer], while acting within the scope of [alleged joint venturer's] [apparent] authority, received [name of plaintiff]'s [money] [property] and misapplied it, or that~~

~~(2) [alleged joint venture], in the course of its business, received [name of plaintiff]'s [money] [property] and misapplied it while it was in the custody of [alleged joint venture].~~

~~**References**~~

~~Utah Code Section 48-1-11.~~

~~Utah Code Section 48-1b-305 (Effective 7/01/12).~~

~~Rogers v. M.O. Bitner Co., 738 P.2d 1029 (Utah 1987).~~

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

~~25.18.~~

~~**Committee Notes**~~

~~(15)~~(13) CV 2813. Liability of parents or legal guardians for property damage caused by a minor.

[Name of defendant] is the [parent] [legal guardian] of [name of minor]. [Name of defendant] is liable for up to $2,000 for damage to [name of plaintiff]'s property if you find that:

[(1) [Name of minor] intentionally [damaged, defaced, destroyed, or took] [name of plaintiff]'s property;]

[(2) [Name of minor] recklessly or willfully shot or propelled an object at [name of plaintiff]'s [car, truck, bus, airplane, boat, locomotive, train, railway car, or caboose];]

[(3) [Name of minor] intentionally and unlawfully tampered with [name of plaintiff]'s property and thereby [recklessly endangered human life] [recklessly caused or threatened a substantial interruption or impairment of any public utility service.]

However, if you find that [name of defendant]:

(1) [made a reasonable effort to supervise and direct [name of minor]]

(2) [made a reasonable effort to restrain [name of minor] if [name of defendant] knew of [name of minor]'s intended acts in advance]

then [name of defendant] ~~cannot be~~ is not liable for ~~[name of minor]'s actions~~ any damages.

References

Utah Code Section 78A-6-1113.

MUJI 1st Instruction

25.10.

Committee Notes

~~(16)~~(14) CV. 2814. Liability of one signing minor's application for a learner permit or provisional license.

If you find that [name of defendant] signed [name of minor]'s application for [a learner permit or provisional driver's license], then [name of defendant] is liable ~~with [name of minor]~~ for damages ~~[name of minor]~~ caused ~~while operating a motor vehicle~~ by the negligence of [name of minor] in driving the vehicle on a highway, up to $25,000 for [injury to] [the death of] any one person, $65,000 for [injury to] [death of] two or more persons, and $15,000 for property damage.

~~If, h~~However, if you find that ~~there was~~ [name of minor]'s operation of the vehicle was covered by automobile liability insurance ~~in effect~~ in at least these amounts, then [name of defendant] is not liable for ~~[name of minor]'s actions~~ any damages.

References

Utah Code Section 53-3-211.

MUJI 1st Instruction

25.21.

Committee Notes

The liability imposed by Sections 53-3-211 and 53-3-212 are cumulative. A defendant may be liable under either or both sections.

~~(17)~~(15) CV 2815. Liability of an owner who gives a minor permission to drive his vehicle.

If you find that [name of defendant]

[(1) was the owner of the motor vehicle involved in the accident and ~~caused or~~ knowingly permitted [name of minor] to drive the vehicle on a highway],

[(2) ~~gave or~~ furnished the motor vehicle to [name of minor],

then [name of defendant] is liable ~~with [name of minor]~~ for damages caused by the negligence of [name of minor] in driving the vehicle on a highway up to $25,000 for [injury to] [the death of] any one person, $65,000 for [injury to] [death of] two or more persons, and $15,000 for property damage.

~~If, however, you find that [name of minor]'s operation of the vehicle was covered under a motor vehicle liability insurance policy providing insurance up to $25,000 for [injury to] [the death of] any one person, $65,000 for [injury to] [death of] two or more persons, and $15,000 for property damage.~~ However, if you find that [name of minor]'s operation of the vehicle was covered by automobile liability insurance in at least these amounts, then [name of defendant] is not liable for any damages.

References

Utah Code Section 53-3-212.

MUJI 1st Instruction

25.22 & 25.23.

Committee Notes

The liability imposed by Sections 53-3-211 and 53-3-212 are cumulative. A defendant may be liable under either or both sections.

~~(18)~~(16) CV 2816. Independent contractor defined.

An independent contractor is one who ~~is engaged to do~~ does some particular project or piece of work~~, usually for a set total sum, who may do the job~~ in his or her own way, subject to only minimal restrictions or controls. ~~and~~ An independent contractor is responsible only for the job's satisfactory completion. ~~Factors which you could consider as bearing on the relationship are~~ In deciding whether a party is an independent contractor you may consider:

(1) ~~whatever~~ agreements ~~exist~~ between the parties concerning the right of direction or control, whether the contract was express or implied;

(2) the right to hire and fire;

(3) the method of payment; and

(4) who furnished the equipment.

References

Utah Home Fire Ins. Co. v. Manning, 1999 UT 77, ¶11, 985 P.2d 243

Harry L. Young & Sons v. Ashton, 538 P.2d 316, 318 (Utah 1975)

MUJI 1st Instruction

Committee Notes

~~(19)~~(17) CV 2817. Liability of employer for acts of independent contractor.

~~To find that an employer of an independent contractor is liable for physical harm caused to another by an act or omission of the contractor or the contractor's employees, you must find~~ [Name of plaintiff] claims that [name of defendant] is liable for [describe act or omission] by [name of contractor]. To succeed on this claim, [name of plaintiff] must prove that ~~the employer~~ [name of defendant] participated in or controlled the manner in which the ~~contractor's~~ work that caused the harm was performed.

~~For an employer to liable for the acts of an independent contractor, it~~ It is not enough that ~~the employer~~ [name of defendant] has a general right to order the work stopped or resumed, to inspect its progress or to receive reports, or to make suggestions or recommendations which need not necessarily be followed, or to suggest changes.

~~Specifically, the employer~~ [Name of defendant] must exert sufficient control ~~over the independent contractor such~~ that [name of contractor] could not carry out the ~~injury-causing aspect of the~~ work that caused the injury in his or her own way. ~~The portion of the contractor's work constitutes an injury-causing aspect when that portion of the work is the cause of plaintiff's injuries.~~

References

Magana v. Dave Roth Constr.,2009 UT 45, ¶27,215 P.3d 143

Begaye v. Big D Constr. Corp., 2008 UT 4, ¶¶ 9-10, 178 P.3d 343

MUJI 1st Instruction

Committee Notes

~~(20)~~(18) CV. 2818. Liability of employer for physical harm caused by independent contract when non-delegable duty is present.

One who employs an independent contractor is usually not liable to others for the acts or omissions of the contractor. However, where the Court determines that a duty exists on the part of the employer to third parties, by reason of the terms of [statute] [ordinance][assumption in a contract][_____], then the employer is liable for physical harm caused to others by the failure or omission of the independent contractor to [put in here the relevant requirements from the statute, ordinance, contract or other provision imposing the non-delegable duty].

References

Gleason v. Salt Lake City, 94 Utah 1, 74 P.2d 1225 (1937)

Yazd v. Woodside Home Corp., 2006 UT 47, ¶14, 143 P.3d 283

MUJI 1st Instruction

25.11.

Committee Notes

If the court makes the determination, what is there left for the jury?

~~(21)~~(19) CV 2819. Liability of employer for ~~physical~~ harm caused by independent contractor if work is inherently dangerous.

~~One who employs an independent contractor is usually not liable to others for the acts or omissions of the independent contractor.~~

~~However, one who employs an independent contractor to do work involving a special danger to others which the employer knows or has~~ [Name of plaintiff] claims that [name of defendant] is liable for [describe act or omission] by [name of contractor]. To succeed on this claim, [name of plaintiff] must prove that [name of defendant]:

(1) employed [name of contractor] to do work involving a special danger to others; and

[(2) knew or had reason to know ~~to be inherent in or normal to the work~~ that the danger to others was unavoidable, or ~~which [he] understands or has~~]

[(3) understood or had reason to understand when making the contract~~, is subject to liability~~ that [he] would be liable for ~~physical~~ harm caused ~~to others~~ by ~~the~~ [name of contractor]'s failure to take reasonable precautions against ~~such~~ the danger.]

[This rule does not apply to employees of the independent contractor.]

References

MUJI 1st Instruction

Committee Notes

~~(22)~~(20) CV 2820. Vicarious punitive damages liability)

(OLD????)

You may decide [employer or principal] is liable to the plaintiff for punitive damages only if you find one of the following to be true:

1.[Employer or principal] or a managerial agent of [employer or principal] authorized the conduct that caused the injury and the manner in which that conduct was carried out; or

2.[Employee or agent] was unfit and [employer or principal] or a managerial agent of [employer or principal] was reckless in employing or retaining [employer or agent]; or

3.[Employee or agent] was employed in a managerial capacity and was acting within the scope of employment; or

4.[Employer or principal] or a managerial agent of [employer or principal] ratified or approved the conduct by [employee or agent] that caused the injury.

References

Johnson v. Rogers, 763 P.2d 771 (Utah 1988).

Restatement (Second) of Torts § 909 (1977).

Restatement (Second) of Agency § 217C (1957).

MUJI 1st Instruction

25.20.

Committee Notes