

# Agenda

## Advisory Committee on Model Civil Jury Instructions

April 9, 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 2	John Lund
CV1005. Industry standard.	Tab 3	Paul Simmons

[Committee Web Page](#)

[Published Instructions](#)

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

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

March 12, 2012

4:00 p.m.

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

Excused: Tracy H. Fowler, John R. Lund, Honorable Kate A. Toomey, David E. West

1. *Vicarious Liability Instructions.* The committee continued its review of the vicarious liability instructions:

a. *CV2805. "Scope of employment" defined.* At the last meeting, the committee had tentatively approved CV2805 as revised, subject to the approval of Mr. Simmons (who had drafted the instruction). Mr. Simmons said he approved of the changes, and the committee approved the instruction.

b. *CV2803. Apparent authority.* The committee had deferred further discussion of CV2803 to allow the subcommittee and Mr. Lund (who drafted the instruction) to look more into the issue of whether reliance was an element of apparent authority. The subcommittee (including Mr. Lund) concluded that it was not, although reliance may be relevant to the issue of causation. The committee approved the instruction.

Dr. Di Paolo and Mr. Humpherys joined the meeting.

c. *CV2807. Scope of employment; travel to and from work.* The committee had deferred approval of CV2807 until Mr. Simmons (who drafted the instruction) could be present. Mr. Simmons said that he approved of the committee's changes, and the committee approved the instruction.

d. *CV2808. Scope of employment; dual purpose.* Some committee members questioned how CV2808 fit with CV2807. Mr. Young said that CV2808 was a limitation on CV2807. Mr. Humpherys questioned whether the phrase "over the same route" was necessary. Although the language comes from the case law, the committee thought that it was not a legal requirement, that whether or not someone was acting within the scope of his employment should not depend on whether the employee decided to go, for example, south on Main Street and then east on 400 South or east on South Temple and then south on State Street to arrive at the courthouse. At Dr. Di Paolo's suggestion, "over the same route" was replaced with "to the same destination." The committee approved the instruction as revised.

e. *CV2809. Scope of employment; intentional act.* Dr. Di Paolo questioned whether subsection (2) ("occurred during [his] work hours") was

necessary. The committee thought that it was for intentional torts. Mr. Humpherys questioned whether subsection (3) (“occurred within the boundaries of employment”) was appropriate and raised the question of the “boundaries of employment” for a delivery person, someone sent on an errand for the employer, or a salesman, whose territory could include, for example, the entire western United States. Mr. Carney checked the Restatement and Am. Jur. 2d for the legal standard. Based on those authorities, the committee replaced subsections (2) and (3) with a new (2): “occurred substantially within the authorized time and space limits of [his] employment.” The committee also rewrote subsection (4) (now subsection (3)) to read: “was at least partly motivated to serve [name of employer]’s interest.” Mr. Carney thought the last paragraph would provoke controversy. Mr. Shea suggested changing the phrase “served a personal interest” to “served only a personal interest.” Dr. Di Paolo suggested deleting the paragraph altogether. The committee revised the last paragraph to read: “However, if [name of employee]’s conduct was unprovoked, highly unusual, and outrageous, then [name of employee]’s conduct was not within the scope of employment.” Dr. Di Paolo asked whether all three modifiers (“unprovoked,” “highly unusual,” and “outrageous”) were required. The committee thought that the instruction should follow the case law, which appears to require all three. The committee approved the instruction as revised.

f. *CV2810. Joint venture defined.* Mr. Carney noted that the distinction between a partnership and joint venture is slight. A joint venture is usually created for a single project. Joint ventures were included in the old partnership act, but the new act takes joint ventures out of the definition of partnership. Mr. Carney thought that the liability principles were still the same for both. Mr. Humpherys questioned whether the jury would understand the phrases “community of interest” and “joint proprietary interest.” Dr. Di Paolo thought that “performing” was an odd choice of verb in the phrase “performing a common purpose.” Judge Barrett suggested substituting “goal” for “purpose.” Mr. Young questioned whether subsection (3) was necessary and noted that in construction contracts, a third party usually owns the subject matter (the real property and improvements). Ms. Blanch asked whether there was a distinction between “shared” and “mutual.” Some committee members thought that “mutual” implied an equal sharing, whereas “shared” implied that the parties’ interest may not be equal. Mr. Simmons thought that “mutual” implied that either joint venturer can exercise the right of control, whereas “shared” implies that it must be exercised jointly. Messrs. Ferguson and Young concurred. The committee was not sure what the law was on mutual or shared control. At the suggestion of Messrs. Shea and Humpherys, the instruction was revised to read:

A joint venture is a relationship voluntarily agreed to by two or more people in which the parties combine their property, money, skill, labor or knowledge and share--

- (1) an interest in a common goal;
- (2) an ownership interest in [describe the subject matter];
- (3) a right to control;
- (4) the profits; and
- (5) any losses, unless there is an agreement to the contrary.

The committee approved the instruction as modified.

Ms. Blanch was excused.

g. *CV2811. Liability of [partnership/joint venture] for acts of [partner/joint venture].* Mr. Humpherys asked whether “authority” in subsection (2) needed to be modified. He suggested putting “express or implied” in front of it. At Mr. Ferguson’s suggestion, the committee revised subsection (2) to read, “[name of partner/joint venturer] acted under the [actual/apparent] authority of the [partnership/joint venture],” since “actual” encompasses both express and implied authority. Those present approved the instruction as revised, subject to one more vote for approval.

h. *Old CV2812. Liability of partnership for misapplication of property or money.* Mr. Shea noted that the subcommittee had deleted old CV2812 because it could not envision a case where it would be needed. Those present approved of the deletion.

i. *New CV2812. Liability of parents or legal guardians for property damage caused by a minor.* The committee questioned the need to list specific modes of transportation in subparagraph (2). Mr. Carney noted that the cause of action was statutory, and the instruction tracks the statute. The statute specifically names “railway car[s]” and “caboose[s],” for example, but not motorcycles. Therefore, the committee did not think that it could simply say “vehicle.” Mr. Ferguson suggested adding a committee note to highlight the problem. Mr. Simmons suggested also noting in the committee note that the parents’ liability is limited to \$2,000. He did not think, however, that the statutory limit needed to be included in the instruction; it would be up to the court to apply the limit if the jury awarded more than \$2,000. The committee approved the instruction, subject to obtaining one more vote for approval.

j. *CV2814. Liability of one signing minor's application for a learner permit or provisional license.* Mr. Young suggested making this instruction CV2812B and the preceding instruction CV2812A. He also questioned whether the instruction should include the statutory amounts for liability insurance. He thought that was a legal question for the court to determine. The committee questioned whether the instruction was needed at all. Mr. Carney reported that he had asked the plaintiffs' bar if anyone had used the prior instruction (MUJI 25.21). No one reported having used it at trial, although some people said that they had relied on it for settlement demands. Mr. Ferguson thought that whether the defendant signed a minor's application may be a fact question for the jury to decide, but the committee agreed that the instruction was not necessary.

k. *CV2813. Liability of an owner who gives a minor permission to drive his vehicle.* The committee agreed that this instruction presents a question for the jury (namely, whether the defendant "knowingly permitted" or "furnished" a vehicle for a minor's use. Mr. Humpherys asked what the difference was between subsections (1) and (2). Under subsection (2), the defendant does not have to be the owner of the vehicle. Mr. Carney suggested adding "or" between the two subsections. Dr. Di Paolo noted that a second distinction is that, under (2), the vehicle need not be driving on a "highway" and questioned whether the instruction should define "highway." Mr. Humpherys asked whether the statute would apply if, as a result of the minor's operation of a vehicle on a highway, an injury occurred off the highway. The committee thought that the statute would still apply, as long as the negligence related to driving the vehicle on the highway. At Mr. Ferguson's suggestion, the title was changed from "Liability of an owner . . ." to "Liability of a person . . .," since, under subsection (2), the person need not be the owner. The committee deferred further discussion of the vicarious liability instructions.

2. *CV1005. Industry standard.* Mr. Simmons had asked that the committee revisit CV1005, which, he said, was not supported by either Utah law or the authorities cited for it. The committee asked him to bring the matter to the attention of Mr. Fowler, the chair of the products liability subcommittee, so that the subcommittee can consider the issue first.

3. *Insurance Instructions.* Mr. Humpherys noted that the Utah Supreme Court recently heard oral argument on the question of when the "fairly debatable" defense in insurance bad faith actions presents a jury question. The committee will begin consideration of the insurance instructions at the May 2012 meeting.

4. *Next Meeting.* The next meeting will be Monday, April 9, 2012, at 4:00 p.m.

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The meeting concluded at 6:00 p.m.

# Tab 2



**Vicarious Liability Instructions**

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Vicarious Liability Instructions ..... 1

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

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

(3) CV 2803. Apparent authority. (Approved) ..... 2

(4) CV 2804. Approval of conduct. (Approved) ..... 3

(5) CV2805. “Scope of employment” defined. (Approved) ..... 4

(6) CV 2806. Deviation from scope of employment. (Approved)..... 5

(7) CV 2807. Scope of employment; travel to and from work. (Approved) ..... 5

(8) CV 2808. Scope of employment; dual purpose. (Approved)..... 6

(9) CV 2809. Scope of employment; intentional act. (Approved) ..... 6

(10) CV 2810. Joint venture defined. (Approved)..... 7

(11) CV 2811. Liability of [partnership/joint venture] for acts of [partner/joint venturer. 7

(12) CV 2812. Liability of parents or legal guardians for property damage caused by a minor. 8

(13) CV 2813. Liability of a person who gives a minor permission to drive his vehicle. 9

(14) CV 2814. Independent contractor defined. .... 9

(15) CV 2815. Liability of employer for acts of independent contractor. .... 10

(16) CV. 2816. Liability of employer for physical harm caused by independent contract when non-delegable duty is present..... 10

(17) CV 2817. Liability of employer for physical harm caused by independent contractor if work is inherently dangerous. .... 11

(18) CV 2818 Vicarious punitive damages liability) ..... 11

**(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**

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094-95 (Utah 1988).

Orlob v. Wasatch Management, 2001 UT App 28, ¶ 18, 33 P.3d 1078.

**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**

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

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

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

Restatement (Third) of Agency Section 3.01

**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](http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=28#2805) >Instruction CV2805</a>. Scope of employment. If the relationship is a traditional principal and agent relationship, the court should use this instruction.

**(3) CV 2803. Apparent 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 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).

Sutton v. Byer Excavating, Inc., 2012 UT App 28.

Restatement (Third) of Agency, Section 2.03, Comment (e). "To establish that an agent acted with apparent authority, it is not necessary for the plaintiff to establish that the principal's manifestation induced the plaintiff to make a detrimental change in position, in contrast to the showing required by the estoppel doctrines.... Establishing that a plaintiff took an action as a result of the principal's manifestation may also help to establish that the person to whom the manifestation was made believed it to be true. Moreover, the underlying substantive cause of action on which the third party sues the principal may require proof that the plaintiff took a specific type of action. For example, if the underlying cause of action is fraud, it is necessary for the plaintiff to establish that the defendant's misrepresentation led to a detrimental change in position."

### 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**

Bradshaw v. McBride, 649 P.2d 74 (Utah 1982).

Bullock v. Utah, Dep't of Transp., 966 P.2d 1215 (Utah Ct.App.1998).

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

**MUJI 1st Instruction**

25.5.

**Committee Notes**

**(5) CV2805. "Scope of employment" defined. (Approved)**

[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 was within the scope of employment. "Scope of employment" means that the conduct:

- (1) was of the general kind [name of employee] was [employed/authorized] to do; 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).

Sutton v. Byer Excavating, Inc., 2012 UT App 28.

**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 <a href=http://www.utcourts.gov/resources/muji/inc\_list.asp?action=showRule&id=28#2802>Instruction CV2802</a>. Actual authority.

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

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 (Third) of Agency. Section 7.07.

**MUJI 1st Instruction**

25.7.

**Committee Notes**

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

Traveling to and from work is usually not within the scope of employment. [Name of plaintiff] claims that, [name of employee]'s [describe act or omission] while traveling to or from work is within the scope of employment. To succeed on this claim, [name of plaintiff] must prove that:

(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.

Christensen v Swenson, 874 pd 125 (Utah 1994).

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

Windsor Ins. Co. v. American States Ins. Co., 22 P.3d 1246, (Utah App.,2001).

27 ALR 5th 174. Employer's liability for negligence of employee in driving his or her own automobile.

## **MUJI 1st Instruction**

25.8.

### **Committee Notes**

Ahlstrom v. Salt Lake City Corp., 2003 UT 4, 73 P.3d 315, includes a thorough discussion of the scope of employment doctrine and of several exceptions to it.

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

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 related 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 to the same destination or to perform the same task if the trip had not been made.]

### **References**

Ahlstrom v. Salt Lake City Corp., 2003 UT 4, ¶ 14, 73 P.3d 315.

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**

### **Committee Notes**

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

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

[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 substantially within the authorized time and space limits of [his] employment; and

(3) was at least partly motivated to serve [name of employer]’s interest.

However, if [name of employee]’s conduct 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. (Approved)**

A joint venture is a relationship voluntarily agreed to by two or more people in which the parties combine their property, money, skill, labor or knowledge and share:

- (2) a common goal;
- (3) ownership in the [describe subject matter];
- (4) the right to control;
- (5) the profits; and
- (6) any losses, 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 partnership/joint venture] is liable for [describe act or omission] by [name of partner/joint venturer]. To succeed on this claim, [name of plaintiff] must prove that:

- (1) [name of partner/joint venturer]’s conduct was within the ordinary course of [name of partnership/joint venture]’s business; or

(2) [name of partner/joint venturer] acted under the [actual / apparent] authority of the [partnership/joint/venture].

**References**

Utah Code Section 48-1-10 (repealed effective July 1, 2012).

Utah Code Section 48-1b-305.

**MUJI 1st Instruction**

25.14.

**Committee Notes**

See also <a

href=[http://www.utcourts.gov/resources/muji/inc\\_list.asp?action=showRule&id=28#2802](http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=28#2802)>Instruction CV2802</a> Actual authority, and <a

href=[http://www.utcourts.gov/resources/muji/inc\\_list.asp?action=showRule&id=28#2803](http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=28#2803)>Instruction CV2803</a> Apparent authority.

**(12) CV 2812. 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 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];] or

[(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] is not liable for any damages.

**References**

Utah Code Section 78A-6-1113.

**MUJI 1st Instruction**

25.10.

**Committee Notes**



The list of vehicles in (2) is a statutory list, and some vehicles are not included. The statute limits the amount of damages; if the damages awarded are greater than allowed, the judge can reduce the amount.

**(13) CV 2813. Liability of a person 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 knowingly permitted [name of minor] to drive the vehicle on a highway], or

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

then [name of defendant] is liable for damages caused by the negligence of [name of minor] in driving the vehicle on a highway.

**References**

Utah Code Section 53-3-212.

Utah Code Section 53-3-102. Definition of “highway.”

**MUJI 1st Instruction**

25.22 & 25.23.

**Committee Notes**

This instruction should be given only of the owner or the person who furnished the motor vehicle did not have security covering the minor's operation of the vehicle in amounts as required under Section 31A-22-304.

**(14) CV 2814. 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**

#### **(15) CV 2815. 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 that the employer participated in or controlled the manner in which the contractor's work was performed. For an employer to be liable for the acts of an independent contractor, it is not enough that the employer has a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to suggest changes.

Specifically, the employer must exert sufficient control over the independent contractor such that the contractor could not carry out the injury-causing aspect of the work 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**

#### **(16) CV. 2816. 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**

**(17) CV 2817. 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 reason to know to be inherent in or normal to the work, or which [he] understands or has reason to understand when making the contract, is subject to liability for physical harm caused to others by the contractor's failure to take reasonable precautions against such danger. [This rule does not apply to employees of the independent contractor.]

**References**

**MUJI 1st Instruction**

**Committee Notes**

**(18) CV 2818 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**

# Tab 3

**(1) CV1005 Industry standard.**

In deciding whether the [product] is defective, you may consider the evidence presented concerning the design, testing, manufacture and type of warning for similar products.

References

Tafoya v. Sears Roebuck & Co., 884 F.2d 1330, 1332 (10th Cir. 1989).

Restatement (Third) of Torts, Product Liability §4.