

Agenda

Advisory Committee on Model Civil Jury Instructions

January 15, 2019
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	Judge Andrew Stone, Chair
Subcommittees and subject area timelines	Tab 2	Judge Andrew Stone
Uniformity discussion and subcommittee assignment	Tab 3	Judge Andrew Stone, Judge Keith Kelly
Trespass and Nuisance Instructions	Tab 4	Ryan Beckstrom
Other business		Judge Andrew Stone

[Committee Web Page](#)

[Published Instructions](#)

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

February 11, 2019
March 11, 2019
April 8, 2019
May 13, 2019
June 10, 2019
September 9, 2019
October 15, 2019 (Tuesday)
November 12, 2019 (Tuesday)
December 9, 2019

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions

November 26, 2018

4:00 p.m.

Present: Honorable Andrew H. Stone (chair), Nancy J. Sylvester (staff), Marianna Di Paolo, Tracy H. Fowler, Honorable Keith A. Kelly, Douglas G. Mortensen, Ruth A. Shapiro, Lauren A. Shurman, Paul M. Simmons, Christopher M. Von Maack. Also present: Cameron M. Hancock, Chair of the Trespass and Nuisance subcommittee

Excused: Joel Ferre, Peter W. Summerill

1. *Use of MUJI.* Judge Stone noted that the Judicial Council supports the use of the model instructions. Some judges have not been using them because they think they are too long. Judge Stone and Judge Blanch presented on the model instructions at the conference for district court judges and encouraged them to use the instructions.

2. *Minutes.* On motion of Mr. Mortensen, seconded by Mr. Fowler and Ms. Shurman, the committee approved the minutes of the May 14, 2018 meeting.

3. *Implicit Bias.* Judge Stone noted that a national judicial organization has circulated a model jury instruction on implicit bias and some courts have adopted such an instruction. The chair may appoint a subcommittee to consider such an instruction. The committee members noted that they did not know whether such an instruction would improve jury service or make bias more likely.

4. *Trespass and Nuisance Instructions.* The committee reviewed the proposed trespass and nuisance instructions. Mr. Hancock noted that the subcommittee tried to update the MUJI 1st instructions with more current case law. The subcommittee was undecided on whether former MUJI 4.16, Private Nuisance, should be broken out into separate instructions. The MUJI 1st instructions cited to "IJI." No one knew what IJI was. Mr. Simmons noted that the convention in MUJI 2d is to use "[name of plaintiff]" and "[name of defendant]" for "plaintiff" and "defendant," respectively. Ms. Sylvester volunteered to make the necessary changes throughout the instructions.

Mr. Von Maack and Dr. Di Paolo joined the meeting.

a. *CV1211, Damages for Nuisance.* Mr. Mortensen thought that the instruction did not give the jury enough guidance on how it was to determine damages. Ms. Shurman and Ms. Shapiro agreed. They thought the instruction was confusing and needed clearer, plainer language. Dr. Di Paolo advised the subcommittee to write shorter sentences. Mr. Mortensen thought that the instruction should say that the jury may award economic damages, noneconomic

damages, or nominal damages. Judge Stone suggested cross-referencing the instructions on economic and noneconomic damages in a committee note. Mr. Von Maack asked whether damages should be added as an element of the cause of action, but the committee noted that it was not an element. Ms. Shurman noted that *Walker Drug Co. v. La Sal Oil Co.*, 972 P.2d 1238, 1245-49 (Utah 1998), discusses the damages awardable in a nuisance action. The subcommittee will rework the damage instruction and consider whether and under what circumstances noneconomic damages may be awarded in a nuisance action.

b. *Former MUJI 4.8, Trespass--Introductory Instruction.* Ms. Shurman questioned the use of “encroachment.” Dr. Di Paolo asked if it added anything to “invasion.” Ms. Shurman noted that the invasion has to be a “physical” invasion and suggested adding “physical” before “invasion.” Judge Stone asked if there was any difference between an “invasion” and an “intrusion.” Dr. Di Paolo thought that “encroachment” was clearer than “invasion.” “Invasion” implies a hostile, aggressive act. Judge Stone suggested “use” as a synonym, and Mr. Simmons suggested “entry on.” Judge Stone thought that “entry on” implied an action and wondered if it was broad enough to cover a case where someone merely allows his or her livestock to wander onto a neighbor’s property. Mr. Hancock noted that no mens rea is required other than the intent to do the act. Mr. Mortensen suggested reversing the order, to “encroachment or invasion.” Mr. Von Maack quoted a 1911 Utah case that defined trespass as the “wrongful entry on the lands of another.”

Dr. Di Paolo asked whether MUJI 4.8 was necessary. She thought that the tort of trespass was defined by its elements, which are set out in CV1201 and CV1202 (former MUJI 4.9 and 4.10). She suggested taking out the second sentence of MUJI 4.8. Mr. Mortensen preferred to leave it in. Dr. Di Paolo noted that a juror could be confused by two definitions of trespass, one in MUJI 4.8 and the other in the elements instruction. Mr. Simmons agreed. The committee decided to delete MUJI 4.8 and move the reference to *Sycamore Family, L.L.C. v. Vintage on the River Homeowners Ass’n*, 2006 UT App 387, 145 P.3d 1177, to CV1201.

c. *CV1201, Trespass to Real Property (former MUJI 4.9).* At Mr. Simmons’s suggestion, “had [ownership/lawful possession] of” was changed to “[owned/lawfully possessed]” in subparagraph 1. Dr. Di Paolo questioned the use of “object” in subparagraph 2. She noted that “object” implies something inanimate and may not be broad enough to cover wandering livestock, for example. She suggested replacing it with “thing.” But Judge Stone noted that “thing” could cover particulates (such as smoke or odors), which are generally covered by nuisance doctrine. Ms. Shapiro and Ms. Shurman noted that trespass is meant to protect one’s right to possession of his or her property, not necessarily

his or her right of enjoyment, which is protected by nuisance law. Judge Stone questioned whether an owner not in possession of property would have standing to complain of a temporary trespass on the property. Mr. Hancock noted that he could if, for example, a person drove his car into a structure on the property, damaging it. Mr. Simmons thought any question as to standing would be decided as a matter of law before trial and would not go to the jury.

Judge Kelly joined the meeting.

Mr. Mortensen suggested changing the first sentence of the instruction to read, "To establish trespass," instead of "To award the plaintiff damages for trespass," since one can have a trespass claim even if he or she has suffered no damage. Judge Kelly questioned whether noneconomic damages are available for a trespass. The subcommittee will look at that issue. Ms. Shurman noted that *Walker Drug* says that typically the measure of damages in trespass and nuisance cases involving a permanent injury includes "consequential losses to the use of the land or from discomfort or annoyance to the possessor."

The committee revised CV1201 to read:

In this action, [name of plaintiff] seeks to recover damages from [name of defendant] for a trespass to [name of plaintiff]'s property.

To establish trespass against the property involved in this case, [name of plaintiff] must prove that:

1. [name of plaintiff] [owned/lawfully possessed] the property;
2. [name of defendant] interfered with [name of plaintiff]'s exclusive right to possession of the property by physically entering or encroaching upon [or causing some thing to physically enter or encroach upon] [name of plaintiff]'s land;
3. [name of defendant] intended to perform the act that resulted in the unlawful entry or encroachment upon [name of plaintiff]'s property; and
4. [name of defendant] had no right to do the act that constituted the unlawful entry or encroachment upon [name of plaintiff]'s property.

d. *CV1202, Trespass to Personal Property (former MUJI 4.10)*. Ms. Sylvester revised CV1202 to conform to the changes to CV1201.

e. *CV1204, Consent (former MUJI 4.11 & 4.12)*. At Mr. Mortensen's suggestion, the committee combined former MUJI 4.11 and 4.12 into one instruction, labeled "Consent." It noted that the subcommittee had found no implied consent cases in the context of trespass in Utah and thought that the instruction should therefore be more generic. Dr. Di Paolo noted that "express" should be "expressed." She further noted that implication is complicated and can depend on many things, including culture.

Ms. Shurman was excused.

Mr. Von Maack noted that the Restatement treats consent as a privilege. Mr. Simmons asked whether the instruction should say that the trespass cannot exceed the scope of the consent. The committee tentatively revised the instruction to read:

[Name of defendant] asserts that [he/she/it] was given consent by [name of plaintiff] or [name of plaintiff]'s agent to [use/enter upon] [name of plaintiff]'s property, and that [name of defendant] is thus not liable for trespass.

[Name of defendant] is not liable for trespass to the extent [he/she/it] can establish that [name of plaintiff] consented to the entry or encroachment upon the property.

Consent means permission to enter or encroach upon property was communicated. Consent can be expressed or implied.

Dr. Di Paolo thought that putting in the extent or scope of the consent turns trespass into something different. Ms. Shapiro questioned whether the issue shifts the burden back to the plaintiff to prove that the defendant exceeded the scope of the consent. Judge Stone asked the subcommittee to revisit the consent instruction with these issues in mind.

5. *Christopher M. Von Maack*. This was Mr. Von Maack's last committee meeting. Mr. Von Maack has been asked to chair the Utah Supreme Court Professionalism Counseling Board. Mr. Von Maack was thanked for his service and given a certificate.

6. *Next meeting*. The next meeting is Monday, December 10, 2018, at 4:00 p.m.

The meeting adjourned at 6:00 p.m.

Tab 2

<u>Priority</u>	<u>Subject</u>	<u>Sub-C in place?</u>	<u>Sub-C Members</u>	<u>Projected Starting Month</u>	<u>Projected Finalizing Month</u>	<u>Comments Back?</u>
1	Injurious Falsehood	Yes	Dryer, Randy; Hoole, Greg; Hoole, Roger; Hunt, Jeff; Reymann, David (Chair); Stevens, Greg	December-17	February-18	December 2018 Meeting
2	Trespass and Nuisance	Yes	Hancock, Cameron; Abbott, Nelson (P); Steve Combe (D)	November-18	February-19	
3	Uniformity	TBD	Judge Keith Kelly (chair)	March-19	March-19	
4	Assault/False Arrest	Yes	Rice, Mitch (chair); Carter, Alyson; Wright, Andrew (D); Cutt, David (P)	April-19	June-19	
5	Insurance	Yes	Johnson, Gary (chair); Pritchett, Bruce; Ryan Schriever, Dan Bertch, Andrew Wright, Rick Vazquez; Stewart Harman (D); Ryan Marsh (D)	September-19	December-19	
6	Unjust Enrichment	No (instructions from David Reymann)	David Reymann	January-20	March-20	
7	Abuse of Process	No (instructions from David Reymann)	David Reymann	April-20	June-20	
8	Directors and Officers Liability	Yes	Call, Monica; Von Maack, Christopher (chair); Larsen, Kristine; Talbot, Cory; Love, Perrin; Buck, Adam	TBD	TBD	Much of this is codified in statute. There may not be enough instructions to dedicate an entire instruction area.
9	Wills/Probate	No	Barneck, Matthew (chair); Petersen, Rich; Tippet, Rust; Sabin, Cameron	TBD	TBD	
10	Civil Rights: Set 2	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	TBD	TBD	
11	Sales Contracts and Secured Transactions	Yes	Cox, Matt (chair); Boley, Matthew; Maudsley, Ade	TBD	TBD	
12	Products Liability	No	Tracy Fowler, Nelson Abbott, and Todd Wahlquist	TBD	TBD	Time to update due to significant changes in case law.
13	Implicit Bias	TBD	Judge Su Chon (chair)	TBD	TBD	

Tab 3

To: Civil MUJI Committee

From: Judge Keith Kelly

Date: November 29, 2018

Re: Suggestions for additions to Model Civil Jury Instructions

Having done a number of criminal jury trials, I have found the following criminal jury instructions (CR201 through CR205 slightly modified) to be useful, and I have been giving them to the jury post-evidence in civil cases – where they equally apply.

I suggest that our committee formally recommend that we split our general civil jury instructions (100 series) between “opening instructions” and “closing instructions,” as done with criminal jury instructions.

I also propose that our committee borrow the following closing instructions from the indicated criminal model jury instructions and include them as civil post-evidence instructions.

This is just an initial suggestion. Our committee should discuss borrowing other model criminal jury instructions that could be useful to give in civil cases.

INSTRUCTION NO. ____

[from CR201]

Members of the jury, you now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the lawyers will give their closing arguments. The Plaintiff(s) will go first, then the Defendant(s). The Plaintiff(s) may give a rebuttal.

Finally, you will go to the jury room to discuss and decide the case.

INSTRUCTION NO. ____

[from CR202]

You have two main duties as jurors.

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine.

The second duty is to take the law I give you in the instructions, apply it to the facts, and reach a verdict.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during the trial, and these instructions. All the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

Perform your duty fairly. Do not let bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

INSTRUCTION NO. ____

[from CR203]

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

INSTRUCTION NO. ____

[from CR204]

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However,

- if I sustained an objection,
- if I did not accept evidence offered by one side or the other, or
- if I ordered that certain testimony be stricken,

then you must not consider those things in reaching your verdict.

INSTRUCTION NO. ____

[from CR205]

As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret anything I have done as indicating that I have any particular view of the evidence or the decision you should reach.

INSTRUCTION NO. ____

[from CR206]

You must base your decision only on the evidence that you saw and heard here in court. Evidence includes:

- what the witnesses said while they were testifying under oath;
- any exhibits admitted into evidence; and
- any facts to which the parties have stipulated, that is to say, facts to which they have agreed.

Nothing else is evidence. The lawyer's statements and arguments are not evidence. Their objections are not evidence. My legal rulings and comments, if any, are not evidence. In reaching a verdict, consider all the evidence as I have defined it here, and nothing else. You may also draw all reasonable inferences from that evidence.

Tab 4

CV1201 TRESPASS TO REAL PROPERTY

In this action, [name of plaintiff] seeks to recover damages from [name of defendant] for a trespass to [name of plaintiff]'s property.

To establish [name of plaintiff]'s claim for trespass against the property involved in this case, you must find that:

1. [name of plaintiff] [owned/lawfully possessed] the property;
2. [name of defendant] interfered with [name of plaintiff]'s exclusive right to possession of the property by physically entering or encroaching upon [or causing some thing to physically enter or encroach upon] [name of plaintiff]'s land;
3. [name of defendant] intended to perform the act that resulted in the unlawful entry or encroachment upon [name of plaintiff]'s property; and
4. [name of defendant] had no right to do the act that constituted the unlawful entry or encroachment upon [name of plaintiff]'s property.

References:

Sycamore Family, L.L.C. v. Vintage on the River Homeowners Ass'n, Inc., 2006 UT App 387, ¶ 4, 145 P.3d 1177

Purkey v. Roberts, 2012 UT App 241, ¶ 17, 285 P.3d 1242

John Price Associates v. Utah State Conference, 615 P.2d 1210 (Utah 1980)

Wood v. Myrup, 681 P.2d 1255 (Utah 1984)

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CV1202 TRESPASS TO PERSONAL PROPERTY

In this action, [name of plaintiff] seeks to recover damages from [name of defendant] for a trespass to [name of plaintiff]'s property.

To establish [name of plaintiff]'s claim for trespass against the property involved in this case, you must find that:

1. [name of plaintiff] had [ownership/lawful possession] of the property at the time of the alleged trespass;
2. [name of defendant] interfered with [name of plaintiff]'s exclusive right to possession of the property, by [specify briefly the acts alleged to constitute wrongful interference with [name of plaintiff]'s personal property];
3. [name of defendant] intended to perform the act that amounted to the unlawful interference with the personal property of [name of plaintiff]; and
4. [name of defendant] had no right to do the act that constituted the interference with the personal property of [name of plaintiff].

References:

Purkey v. Roberts, 2012 UT App 241, ¶ 17, 285 P.3d 1242

Peterson v. Peterson, 117 P. 70, 71 (Utah 1911)

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CV1204 CONSENT

[Name of defendant] asserts that [he/she/it] was given consent by [name of plaintiff] or [name of plaintiff]'s agent to [use/enter upon] [name of plaintiff]'s property, and that [name of defendant] is thus not liable for trespass.

[Name of defendant] is not liable for trespass if [he/she/it] can establish that [name of plaintiff] consented to the ~~the~~ entry or encroachment upon the property, but only to the extent that the entire entry or encroachment was authorized.

Consent means permission to enter or encroach upon property was communicated. Consent can be expressed or implied.

~~[Name of defendant] is not liable for trespass if [name of plaintiff] consented to [name of defendant] entering or encroaching upon [name of plaintiff]'s property.~~

Comment [RB1]: This is merely a slight rephrasing of the second paragraph of this instruction. I suggest cutting.

Comment: The MUJI 1 instructions enumerated express and implied consent separately. But the Utah case law speaks only of consent-, which may be express or implied. ~~Consent can be given by the rightful [owner] [possessor] [authorized agent] gave express consent to [name of defendant]'s [use of/entry upon] [name of plaintiff]'s property, and that [name of defendant]'s use did not exceed the consent given by the rightful [owner] [possessor] [authorized agent].~~

Comment [RB2]: This is already explained above.

References:

Lee v. Langley, 2005 UT App 339, ¶ 20 n.3, 121 P.3d 33

Haycraft v. Adams, 24 P.2d 1110, 1115 (Utah 1933)

Restatement (Second) of Torts § 252 (1965)

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CV1205 IMPLIED CONSENT - CUSTOM AND USAGE

[name of defendant] asserts that [name of defendant] had the implied consent of [name of plaintiff] or [name of plaintiff]'s agent to [use/enter upon] [name of plaintiff]'s property, and that [name of defendant] is thus not liable for trespass.

Consent is an absolute defense to an action for trespass. Consent for [use of/entry upon] real property need not be expressly given but may be implied from the circumstances. The implied consent may be derived from custom, usage, or conduct. Therefore, [name of defendant] is not liable for trespass if [name of defendant] can show that:

1. [name of defendant] was a member of a category of persons for whom [use of/entry upon] the property would be considered customary or common;
2. [name of defendant]'s [use of/entry upon] [name of plaintiff]'s property was within the fair and reasonable bounds of the implied consent to [use/enter upon] the property; and
3. [name of plaintiff] did not indicate, either verbally or by posted signs on the property, that [name of plaintiff] did not consent to the entry.

References:

Lee v. Langley, 2005 UT App 339, ¶ 20 n.3, 121 P.3d 33

Haycraft v. Adams, 24 P.2d 1110, 1115 (Utah 1933)

Restatement (Second) of Torts § 252 (1965)

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CV1206 ~~MEASURE OF DAMAGES~~ - NOMINAL DAMAGES

If you found that [name of defendant] trespassed [name of plaintiff]'s [real/personal] property, you may award economic, non-economic, or nominal damages to [name of plaintiff].

Even if you find that no actual damage was suffered by [name of plaintiff] as a result of [name of defendant]'s trespass, you may still award [name of plaintiff] a trivial amount, called "nominal damages," to compensate [name of plaintiff] for the invasion of [name of plaintiff]'s property rights. "Nominal damages" has been defined as a trivial sum such as one dollar.

References:

Haycraft v. Adams, 24 P.2d 1110, 1115 (Utah 1933)

Henderson v. For-Shor Co., 757 P.2d 465 (Utah App. 1988)

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Comment: For a definition of economic and non-economic instructions, see CV2001 et. seq. ~~for make a custom instruction on damages for trespass.~~ For instructions on the measure of damages for injury to personal or real property resulting from a trespass, see CV2008-2011.

CV1207 NUISANCE - INTRODUCTORY INSTRUCTION

Nuisance law protects property interests from nontrespassory invasions. A person who intentionally or negligently invades the property interest ~~(describe interest)~~ of another, or who uses that person's own property in a manner that is unreasonable, inappropriate, abnormal, or dangerous considering the character of the surrounding property, may be liable for creating a nuisance. The person may be liable for the nuisance if that person's use of the property disturbs the use or enjoyment, or causes an invasion, of the property of another that renders its ordinary use or occupation physically disagreeable. Such liability is also dependent on the nature and relative importance of the interests interfered with or invaded.

[name of plaintiff] in this case claims that [name of defendant], through the use of [name of defendant]'s property, has created a nuisance that has interfered with the [health/comfort/safety/property rights] of [name of plaintiff]. [name of plaintiff] claims that [name of plaintiff] has suffered economic injury as a result of this nuisance, and seeks to recover damages from [name of defendant] for that injury.

References:

Utah Code Ann. § 76-10-801 ~~(1992)~~

Morgan v. Quailbrook Condominium Co., 704 P.2d 573 (Utah 1985)
Branch v. Western Petroleum, Inc., 657 P.2d 267 (Utah 1982)
Vincent v. Salt Lake County, 583 P.2d 105 (Utah 1978)
Turnbaugh v. Anderson, 793 P.2d 939 (Utah Ct-App. 1990)
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CV1208 NUISANCE PER SE

The court has determined, and instructs you as a matter of law, that [name of defendant]'s conduct constitutes a nuisance.

References:

Erickson v. Sorensen, 877 P.2d 144, 149 (Utah App. 1994)
Branch v. Western Petroleum, Inc., 657 P.2d 267 (Utah 1982)
Turnbaugh v. Anderson, 793 P.2d 939 (Utah Ct-App. 1990)
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CV1209 PRIVATE NUISANCE

A private nuisance is any activity that interferes with the use and enjoyment by another of that person's property. A private nuisance is generally defined as a substantial and unreasonable nontrespassory interference with the private use and enjoyment of another's land. The activity may infringe either on the right of one person or on the rights of a specific number of people.

[name of plaintiff] claims that [name of defendant] has interfered with [name of plaintiff]'s use and enjoyment of [name of plaintiff]'s property by [specify nature of alleged nuisance]. To establish [name of Plaintiff/defendant]'s claim for is liable to [name of plaintiff] for creating or maintaining a private nuisance, if you must find that:

1. [name of plaintiff] owned or possessed an actual property interest in the real property that is the subject of this action;

2. ~~The defendant's activity substantially interfered~~ Defendant caused or was responsible for a substantial interference with [name of plaintiff]'s use and enjoyment of [name of plaintiff]'s property;

3. ~~The defendant's interference with [name of plaintiff]'s use and enjoyment of the land resulted in substantial annoyance, discomfort, or harm, which is measured by what would be offensive to a person who has ordinary health and ordinary and reasonable sensitivities; and~~

4-~~[name of defendant]'s use of the property was either (a) intentional and unreasonable, or (b) unintentional and otherwise actionable.~~

[Name of defendant]'s use of its property may be "unreasonable" under the circumstances, in that the where the harm caused by [name of defendant]'s activity outweighs any benefits it produces, and the activity is not suitable to the location.

Comment [RB3]: The *Whaley* case sets forth the most updated elements of both private and public nuisance, which I have incorporated into both instructions.

A “substantial interference” with [name of plaintiff]’s use and enjoyment of the land is typically one that results in substantial annoyance, discomfort, or harm, which is measured by what would be offensive to a reasonable person—or one who has ordinary health and ordinary and reasonable sensitivities.

An unintentional use that is “otherwise actionable” is generally one that negligent or reckless, or that results in abnormally dangerous conditions or activities in an inappropriate place.

Comment [RB4]: Not sure if these should be their own definitional instructions or included here under the elements for the benefit of the jury in interpreting the elements.

References:

Whaley v. Park City Mun. Corp., 2008 UT App 234, 190 P.3d 1
Stanford v. Univ. of Utah, 488 P.2d 741 (Utah 1971)
Johnson v. Mount Ogden Enterprises, Inc., 460 P.2d 333 (Utah 1969)
Turnbaugh v. Anderson, 793 P.2d 939 (Utah Ct. App. 1990)
Walker Drug Co. v. La Sal Oil Co., 972 P.2d 1238, 1245 (Utah 1998)
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CV1210 PUBLIC NUISANCE

A-To establish [name of plaintiff]’s claim that defendant created a public nuisance, you must find where:

1. is The alleged nuisance consists of ~~unlawfully doingg~~ any act or ~~omittingg~~ to perform any duty, ~~which act or omission~~;

2. [name of defendant]’s conduct was unreasonable;

3. The act or omission either

a. Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;

b. Offends public decency;

c. ~~2-~~Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway; or

d. ~~3-~~In any way renders three or more persons insecure in life or the use of property;

4. Plaintiff has suffered damages different from those of society at large.

An act which affects three or more persons in any of the ways specified in this instruction is still a nuisance regardless of the extent of annoyance and regardless of whether the damage inflicted on individuals is unequal.

References:

Utah Code Ann. § 76-10-803 (~~1992~~)
Whaley v. Park City Mun. Corp., 2008 UT App 234, 190 P.3d 1
Solar Salt Co. v. Southern Pac. Transp. Co., 555 P.2d (Utah 1976)
Monroe City v. Arnold, 452 P.2d 321 (Utah 1969)
Turnbaugh v. Anderson, 793 P.2d 939 (Utah Ct. App. 1990)
Erickson v. Sorensen, 877 P.2d 144, 148 (Utah App. 1994)

CV1211 **DAMAGES FOR NUISANCE**

Once you have determined that defendant is liable for creating a nuisance, you may consider evidence of the degree of a defendant's interference in the use and enjoyment of [name of plaintiff]'s land and the reasonableness of the interference in the context of wider community interests to determine the amount of damages recoverable once liability is established.

References:

Walker Drug Co. v. La Sal Oil Co., 972 P.2d 1238, 1245 (Utah 1998)

Comment [NS5]: Economic and non-economic?
Refer in a comment to the Tort Damages instructions starting at [CV2001](#).