

Judicial Council Standing Committee on
Model Utah Civil Jury Instructions

Agenda

February 10, 2025

4:00 to 6:00 p.m.

Via [Webex](#)

Welcome and Approval of Dec. Minutes	Tab 1	Alyson
Public Comments re CV107A Avoiding Bias (none); CV920 "Easement" Defined (none); CV922 Prescriptive Easement. Elements of a Claim (none); CV923 Prescriptive Easement. "Continuous" Defined (none); CV2021 Present Cash Value (one comment)	Tab 2	Alyson
Update re Need for Battery Instruction		Alyson
Update re Products Liability Subcommittee		Alyson
Update re Linguistics and Law Subcommittee		Professors Eggington and Egbert
Changing Meaning of Reasonableness		Professor Eggington
Pending Leadership Changes		Alyson
Fond Farewell to Doug Mortensen		Alyson
Progress on Instruction Topics	Tab 3	(Informational)

[Committee Web Page](#)

[Published Instructions](#)

Meeting Schedule: Monthly on the 2nd Monday at 4 pm

Next meeting: March 10, 2025

TAB 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
December 9, 2024
4:00-6:00 pm

Present: Alyson McAllister, Ben Lusty, Bill Eggington, John Macfarlane, Michael D. Lichfield, Ricky Shelton, Stewart Harmon, Doug G. Mortensen, Judge Brian D. Bolinder, Jace Willard (staff), Kara H. North (staff).

Guests: Robert Fuller, Robert Cummings, Monica Howard.

Excused: Mark Morris

1. *Welcome and Approval of Minutes*

Ms. McAllister welcomed the Committee. The Minutes from the September meeting were approved.

2. *Public Comments re: CV301C “Standard of Care” and CV2015 “Survival Claim”*

Ms. McAllister notes that there were no public comments received as to the recent changes to CV301C and CV2015; therefore, no additional changes will be made.

3. *Public Comments re: CV920, CV922, CV923 Easements*

With respect to CV920, comments were received regarding adding the word “unreasonably” as it frequently appears in the case law. The Committee discussed this section with the assistance of Mr. Robert Fuller, who agreed that adding “unreasonably” to the definition would be consistent with the case law regarding easements. It was agreed to add cases to the references, including *Wykoff v. Barton*, 646 P.2d 756 (Utah 1982), and *Metro Water District of Salt Lake & Sandy v. SHCH Alaska Tr.*, 2019 UT 62, 452 P.3d 1158.

Regarding CV922, public comments centered on concerns about the need to make the language clearer. This was supported from a linguistic standpoint by Mr. Eggington. After some discussion regarding the redline edits, the Committee agreed to move the “that” and added a comma, as suggested in the comments. The motion to accept these changes was unanimously approved.

With respect to CV923, public comment was received suggesting the addition of a required mental state, and about the property being “physically used.” The Committee discussed some of the difficulties with including a mental state with respect to property cases. The Committee discussed whether it would be more appropriate for there to simply be a reference in the comments that in certain cases the mental state of one of the parties may be applicable with reference to the case of *Harrison v. SPAH Family, Ltd.*, 2020 UT 22, paras. 31, 41-43, 466 P.3d 107, 116-117. After consideration, the Committee unanimously approved the addition of a comment, and decided to reject the addition of other language.

4. CV1710 Revised Draft of False Imprisonment Instruction

With the assistance of Monica Howard, the Committee discussed whether the terms “confined” and “restrained” were duplicative or had different connotations. Similar discussion was had regarding the use of “detained,” instead of “confined” or “restrained,” but there was concern that “detained” may imply a connotation of someone acting with official authority. The Committee ultimately agreed to use “confined, restrained, or detained,” throughout the instruction to capture the different ways false imprisonment can occur.

The Committee discussed how the confinement, restraint, detention occurs, through “physical force, verbal threats, or any other actions that would reasonably lead [the person] to believe [they are] not free to leave,” and how they may need to distinguish from situations where someone is being lawfully detained, like by the police, versus unlawfully detained. Overall, the Committee worked to refine the language and structure of the definition to clearly convey the different elements required, while attempting to avoid overly technical or complex language. The Committee adopted the changes unanimously.

5. CV1720 and CV1721 Revised Draft of Malicious Prosecution Instructions

The Committee reviewed CV1720 regarding Malicious Prosecution. Ms. Howard suggested the Committee look to the Restatement (Second) of Torts § 660 should the question of innocence need to be evaluated. The Committee agreed and added a comment to that effect. The Committee further agreed to amend draft CV1721, changing “initiating or helping to initiate” to “beginning or continuing” and changing “reasonable man” to “reasonable person.”

6. CV1700 and CV1701 Revised Draft Assault Instructions

The Committee discussed changes to the assault instructions, including defining “harmful or offensive conduct.” There was a question about whether or not to replace “imminent” with the word “impending” and to simplify some of the phrasing. The lawyers clarified for non-lawyers on the Committee that actual physical contact is not required for an assault to have taken place. In CV1700, the Committee agreed to change “acted with the intent” to “acted intending to,” and changed “in imminent apprehension” to “in fear of an immediate.” The Committee also added a statement indicating that “[p]hysical contact does not have to occur.” In CV1701, the Committee changed the definition of “harmful or offensive conduct.” The vote to adopt these changes was unanimous. There was discussion about evaluating whether there needed to be a separate instruction for battery. Ms. McAllister will consult her contacts as to why no battery instruction was included in MUJI 1st. If a battery instruction is needed, Ms. Howard can help with that.

7. Public Comments re: CV107A Avoiding Bias

CV107A instructs jurors to consider whether their opinion of parties or witnesses would be different if “they spoke in a more educated manner.” A public comment suggested they should also consider whether it would be different if they spoke in a less educated manner. The Committee agreed that using the phrase “more or less educated” was more neutral in presentation and covered

both perspectives and the need to avoid potential bias. All on the Committee agreed with this change.

8. Public Comments re: CV2021 Present Cash Value

CV2021 instructs jurors that if they decide a plaintiff is entitled to damages for future economic losses that “the amount of those damages must be reduced to present cash value.” A public comment suggested using the word “adjusted” rather than “reduced” to reflect that in certain circumstances the amount must be increased rather than decreased. After hearing from Mr. Eggington and others, the Committee unanimously agreed that “adjusted” was the most accurate and neutral word to avoid biasing the jury’s understanding of the calculations and adopted that into the rule.

9. Public Comments re: CV324 Use of Alternative Treatment Methods

The Committee considered public comments to CV324 but determined that the issues raised were fully addressed on this topic back in May, and no further discussion was needed.

10. Conclusion

The Committee discussed that the next meeting is set for January 13, 2025. The Committee believes that additional individuals, particularly defense attorneys, will need to be consulted with respect to product liability instructions.

TAB 2

MUJI Instruction	Public Comment
<p>CV2021 Present cash value.</p> <p>If you decide that [name of plaintiff] is entitled to damages for future economic losses, then the amount of those damages must be reduced<u>adjusted</u> to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not suffer the economic losses until some time in the future. Money received today would be invested and earn a return or yield.</p> <p>To reduce<u>adjust</u> an award for future damages to present cash value, you must determine the amount of money needed today that, when reasonably and safely invested, will provide [name of plaintiff] with the amount of money needed to compensate [name of plaintiff] for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment.</p> <p>...</p>	<p>Shawn McGarry January 24, 2025 at 4:27 pm</p> <p>CV 2021 Present Cash Value: the word “adjusted” should be replaced with the original and correct word “reduced.” The reason why the word ”reduced” is the only appropriate word choice for this jury instruction is because of a simple concept called the time value of money. The present cash value of future cash flows is less than the sum of those future cash flows simply because money today is worth more than the same amount of money in the future due to its potential earning capacity. The word “adjusted” falsely implies that the time value of money is not true. Take for instance when someone wins the lottery, they can have the full amount paid out over their lifetime, or they can take the present value of those future cash flows which is less than or a reduction to present value of those future cash flows. This is also called discounting to present value. Either way, it is appropriate to reduce an award for future damages to present cash value. The word ”adjust” implies than it can increase or decrease. Anyone trained in finance or any investment professional understands discounting cash flows to present value is a reduction to present value. It is not an increase. It is not an “adjustment”; it is a “reduction.”</p>

TAB 3

MUJI Civil Upcoming Queue:

Numbers	Subject	Members	Progress	Next Report Date
1000	Products Liability	Tracy Fowler, Paul Simmons, Nelson Abbott, Todd Wahlquist	Appeared on Agenda November 2021. Continuing to work and will report back.	2025
1700	Assault / False Arrest / Malicious Prosecution	Mitch Rice, David Cutt, Andrew Wright, Alyson McAllister	Mitch Rice and Monica Howard presented draft instructions in May 2024. Monica returned in December 2024 and committee approved revisions. Not yet published pending decision re need for battery instruction.	Feb. 2025
2400	Insurance	Andrew Wright, Richard Vazquez, Stewart Harman, Kigan Martinaeu	Appeared on Agenda March 2022. Currently 5 members – 3 defense, 2 plaintiffs. Will work on one more plaintiffs attorney.	
	Unjust Enrichment	David Reymann	Stacy was researching and following up on these instructions.	
1700	Abuse of Process	David Reymann	Instructions were shared in the past, were these completed? Marianna could only find notes as to intention to form this subcommittee.	
2700	Directors and Officers Liability	Adam Buck	Lauren has been working with Adam to fill this group and has reached out regarding a timeframe.	
2500	Wills / Probate	Matthew Barneck; Rustin Diehl	Matthew and Rustin have met to discuss direction and have started reaching out to various recommendations – Elder law section, Probate Subcommittee, WINGS, recommended individuals.	
2300	Sales Contracts and Secured Transactions	Matthew Boley, Ade Maudsley	Matthew and Addie are willing to work on this topic and would like more feedback from the Committee.	
	Case law updates	TBD	Previous chairs or group leads may have feedback.	
	Linguistics and Law	Bill Eggington, Judge Kelly, John Macfarlane, Michael Lichfield, Robert Cummings, Clark Cunningham, Jesse Egbert, Scott Jarvis	Identifying instructions in need of plain-language adjustments	Feb. 2025
920, 922, 923	Easements	Robert Cummings	Revision approved at Dec. 2024 meeting; Public comments to be reviewed at Feb. 2025 meeting	Feb. 2025

107A	Avoiding Bias	Alyson McAllister	Revision approved at Dec. 2024 meeting; Public comments to be reviewed at Feb. 2025 meeting	Feb. 2025
2021	Present Cash Value	Alyson McAllister	Revision approved at Dec. 2024 meeting; Public comments to be reviewed at Feb. 2025 meeting	Feb. 2025

Archived Topics:

Numbers	Subject	Completed
1500	Emotional Distress	December 2016
200 / 1800	Fault / Negligence	October 2017
1300	Civil Rights: Set 1 and 2	September 2017
1400	Economic Interference	December 2017
1900	Injurious Falsehood	February 2018
1200	Trespass and Nuisance	October 2019
100	Uniformity	February 2020
1600	Defamation Update	March 2022, December 2022
135	Pretrial Delay	December 2022, February 2023
107A	Avoiding Bias	May 2023
632, 632A-632D	Minimum Injury Requirements Update and New	October 2023
132A	Remote Testimony	October 2023
2021	Present Cash Value Update	October 2023
900	Easements (prescriptive 920-925, easement by necessity 930-931, and easement by implication, 940-941)	February 2024
301B/301C	Elements of a Medical Negligence Claim; Standard of Care	December 2024
324	Use of Alternative Treatment Methods (removed with explanatory committee note)	December 2024
2015	Survival claim (amended committee note)	December 2024