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## Forms Standardization Committee Presents Sample Civil Jury Instructions

Dicta Editorial Board

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## FORMS STANDARDIZATION COMMITTEE PRESENTS SAMPLE CIVIL JURY INSTRUCTIONS

The following jury instructions have been approved by the Forms Standardization Committee of the Colorado Bar Association and their use, in appropriate cases, is recommended. With the exception of Instructions 15 and 16, all have been approved by the District Judges Association. Instructions 15 and 16 have been approved in a recent Supreme Court case.

ROYAL C. RUBRIGHT,  
General Chairman,  
Forms Standardization Committee.

KENNETH M. WORMWOOD,  
Chairman of Sub-committee  
on Civil Jury Instructions.

### No. 1

#### *Negligence.*

Negligence is the failure to exercise for the protection of others the care and caution that would be exercised by an ordinarily prudent person under the same circumstances. The failure to do what an ordinarily careful and prudent person would have done under all of the circumstances of the case, or the doing of something that an ordinarily prudent person would not have done under all of the circumstances of the case, is negligence.

\* \* \* \*

### No. 2

#### *Contributory Negligence*

You are instructed that contributory negligence is such negligence on the part of the plaintiff as helped to produce the injuries complained of, and without which they would not have occurred. Such negligence need not have been the sole cause of the injuries, but merely such that but for the negligence of the plaintiff they would not have occurred.

\* \* \* \*

### No. 3

#### *Proximate Cause*

Proximate cause is the efficient cause from which an injury flows, in unbroken sequence without any intervening cause to break the continuity.

\* \* \* \*

## No. 4

*Burden of Proof*

You are instructed that the mere happening of an accident does not raise any presumption of negligence.

The burden of proof is upon the plaintiff in this case to establish all the material allegations of his complaint by a preponderance of the evidence.

The burden of proof is upon the defendant to establish his affirmative defense and counterclaim by a preponderance of the evidence.

By "burden of proof" is meant the obligation resting upon the party or parties who assert a proposition to establish the same by a preponderance of the evidence.

By "preponderance of the evidence" is meant that evidence which is most convincing and satisfactory to you and which you believe is a truthful account of the matters in controversy between the parties.

In order for you to reach a conclusion that the plaintiff in this case has proven his case by a preponderance of the evidence, you must feel satisfied in your minds, after hearing and weighing all the evidence, that the evidence produced by the plaintiff in this case outweighs that produced by the defendant.

In order for you to reach a conclusion that the defendant has proven his affirmative defense or counterclaim, you must feel satisfied in your minds, after hearing and weighing all the evidence, that the evidence produced by the defendant as to such affirmative defenses and counterclaim outweighs that produced by the plaintiff.

\* \* \* \*

## No. 5

*Unavoidable Accident*

The jury is instructed that if you find from the evidence that the accident was unavoidable, then none of the parties is entitled to any damages.

An unavoidable accident is one happening suddenly and unexpectedly and without negligence on the part of anyone.

\* \* \* \*

## No. 6

*Emergency*

A party suddenly confronted with an emergency due to no negligence on his part is not guilty of negligence for an error of judgment when practically instantaneous action is required.

\* \* \* \*

## No. 7

*Joint Enterprise*

The law is that, if two people riding in an automobile are engaged in a joint enterprise or joint adventure and both share in driving, directing, controlling and governing the movements of the automobile, then the negligence, if any, of the driver is the negligence of the one riding with the driver.

\* \* \* \*

## No. 8

*Intoxication*

A person is "intoxicated" or is "under the influence of alcoholic liquor" if such person is under the influence of intoxicating liquor to such an extent as to have lost to an appreciable degree the normal control of his body or mental faculties.

\* \* \* \*

## No. 9

*Traffic Violation*

You are not a liberty to consider the violation of any municipal ordinance or State Traffic Regulation as negligence unless you find and believe from a "preponderance of the evidence," as elsewhere defined in these instructions, that the particular violation of the ordinance or regulation under the circumstances in evidence was the "proximate cause" of the accident, as elsewhere defined in these instructions, or materially contributed as a proximate cause of the accident in this case.

\* \* \* \*

## No. 10

*Experts*

You have heard the testimony of the witnesses who have given evidence and testified as experts, giving opinions. This class of testimony is proper and competent concerning matters involving special knowledge or skill, or experience upon some subject which is not within the realm of the ordinary experience of mankind and which requires special research and study to understand. The law allows those skilled in that special branch to express their opinions and, upon a hypothetical set of facts stated to them, say whether or not, according to their experience and research, a fact may or may not exist. But nevertheless, while their opinions are allowed to be given, it is entirely within the

province of the jury to say what weight shall be given to them. The jurors are not bound by the testimony of the experts; their testimony is to be canvassed as that of other witnesses, just as far as their testimony appeals to your judgment, convincing you of its truth, you should adopt it; but the mere fact that the witnesses were called as experts and gave opinions upon a particular point, does not necessarily obligate the jury to accept their opinions as to what the facts are in the face of the testimony of witnesses claiming to have actual knowledge of the facts.

\* \* \* \*

No. 11

*Preponderance of the Evidence*

A preponderance of the evidence, as mentioned in these instructions, is not alone determined by the number of witnesses testifying, but also by the credibility of the witnesses and the weight of their testimony and of the evidence generally, and of these matters you are the sold judges. In determining the weight to be given to the testimony of the witnesses you should take into consideration their means of knowledge, strength of memory and opportunities for observation, as shown by the evidence in the case; the reasonableness or unreasonableness of their statements; the consistency or inconsistency of their testimony; the motives actuating them, so far as such motives appear from the evidence in the case; the fact, if it be a fact, that they have been contradicted by other evidence in the case; their bias, prejudice or interest, if any has been shown; their manner or demeanor upon the witness stand and all other facts and circumstances shown by the evidence, which in your judgment affected the credit due to them respectively. If, after considering all the evidence, you find that any witness has wilfully and corruptly testified falsely to any fact material to the issues in the case, you have a right to disregard the whole or any part of his or her testimony.

\* \* \* \*

No. 12

*Credibility of Witnesses*

The court instructs you that you are the sold judges of the credibility of the witnesses, and of the weight to be given to the testimony of each witness. In determining the weight to be given to the testimony of the witnesses you should take into consideration their means of knowledge, strength of memory, and opportunities for observation, as shown by the evidence in the case; the reasonableness or unreasonableness of their statements; the consistency or inconsistency of their testimony; the motives ac-

tuating them, so far as such motives appear from the evidence in the case; the fact, if it be a fact, that they have been contradicted by other evidence in the case; their bias, prejudice or interest, if any has been shown; their manner or demeanor upon the witness stand, and all other facts and circumstances shown by the evidence, which in your judgment affect the credit due to them respectively. If, after considering all the evidence, you find that any witness has wilfully and corruptly testified falsely to any fact material to the issues in the case, you have a right to disregard the whole or any part of his or her testimony.

\* \* \* \*

### No. 13

#### *General Instruction*

These instructions contain the law that will govern you in this case, and in determining the facts you should consider only the evidence given upon trial. Evidence offered at the trial and rejected by the court and evidence stricken from the record by order of the court should not be considered by you. The opening statements and the arguments of counsel and the remarks of the court and of counsel are not evidence.

The arguments, statements and objections made by counsel to the court or to each other, and the rulings and orders made by the court, and the remarks made by the court during the trial and not directed to you, should not be considered by you in arriving at your verdict.

The court did not by any words uttered during the trial, and the court does not by these instructions, give or intimate, or wish to be understood by you as giving or intimating, any opinions as to what has or has not been proven in this case, nor as to what are or are not facts in the case.

No single one of these instructions states all the law applicable to the case, but all of these instructions must be taken, read and considered together, as they are connected with and related to each other as a whole.

\* \* \* \*

### No. 14

#### *Sympathy*

Jurors in the trial of a case, such as this one, are apt to allow their feelings of sympathy on the one side, or their feelings of prejudice on the other, to induce them to render a verdict which the law does not consider proper because such a verdict would be contrary to the law and contrary to the evidence.

Therefore, you are instructed that you should not be governed or influenced by sympathy for the plaintiff because he was injured in an accident and you should not be governed or influenced by any prejudice or feeling either in favor or against the plaintiff, or in favor of or against the defendants, but in arriving at your verdict in this case you should be governed solely by the evidence given from the witness stand and the instructions of the Court.

\* \* \* \*

No. 15

*Last Clear Chance No. 1*

A plaintiff who has negligently placed himself in a situation of imminent peril, and is either unconscious of his peril, or unable to avoid the danger, or both, may nevertheless recover damages of the defendant who negligently inflicts injury, if the defendant could have avoided the injury after he discovered, or by the exercise of reasonable care, could have discovered the plaintiff's peril.

\* \* \* \*

No. 16

*Last Clear Chance No. 2*

If there was a mere possibility that defendant might have avoided the accident, and that possibility rests upon split seconds, this is not enough to meet the rule of Last Clear Chance. Such circumstances may present a last, but not a clear chance to avoid the accident. In order for the defendant to be held liable under the Last Clear Chance theory, you must not only find that he had the last chance, but the last clear chance, to avoid the accident.

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ARTICLE ON CURATIVE STATUTES IS NOW  
AVAILABLE

The editor has received many requests for copies of the article by Percy S. Morris entitled "Curative Statutes of Colorado Respecting Titles to Real Estate" which appeared in the November and December, 1949, issues of *Dicta*, Volume XXVI, Numbers 11 and 12.

Our supply of these issues has been exhausted for over two years and the cost of a further printing has been prohibitive. Because of the great demand, this article was duplicated and copies may now be obtained at the Bar Association Office, 702 Midland Savings Building, Denver, at a price of fifty cents each.

These copies, consisting of 36 pages bound in a durable folder, contain the original article without any attempt at revision.