
**IN THE SECOND JUDICIAL DISTRICT COURT,
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

JURY INSTRUCTIONS

Plaintiff,

vs.

Defendant.

Case No.:

Judge: Thomas L. Kay

Ladies and Gentlemen: Attached are instructions numbered one (1) through twenty-four (24), given to you at the beginning of the trial. You will receive additional instructions at a later time in the proceedings. Taken together, these instructions govern your conduct and deliberations during the trial of this case and must be carefully followed.

Dated this ____ day of _____, 2014.

BY THE COURT:

THOMAS L. KAY
DISTRICT COURT JUDGE

1. GENERAL INSTRUCTION

There are certain laws and rules which apply to this case. I will explain them to you from time to time during the trial. Please pay careful attention. Each of you has been given a copy of these instructions. This copy is yours to keep. As I read these instructions to you, please follow along on your copy. Keep in mind the following points:

Many Instructions. There will be many instructions. All are equally important. Do not pick out one and ignore the rest. Think about each instruction in the context of all the others.

Obey Instructions. You must obey the instructions. You are not allowed to reach decisions that go against the law.

Gender - Singular/Plural. In these instructions, the masculine gender such as “he” or “him” includes the feminine “she” or “her” and the singular such as “defendant” includes the plural “defendants” when appropriate.

Note Taking. You may take notes during the trial, but do not over do it, and do not let it distract you from following the evidence. The lawyers will review important evidence in their closing arguments and help you focus on that which is most relevant to your decision. I also caution that notes are not evidence. Use them only to aid personal memory or concentration.

Keep an Open Mind. Do not form an opinion about the ultimate issues in this case until you have listened to all the evidence and the lawyers' summaries, along with the instructions on the law. Keep an open mind until then.

2. WHAT RULES APPLY TO RECESSES

From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. During recesses, do not talk about this case with anyone; not family, friends or even each other. The Clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you. Do not mingle with the lawyers, the parties, the witnesses or anyone else connected with the case. Do not accept from or give to any of these persons any favors, however slight, such as rides or food. Finally, do not read about this case in the newspaper or listen to any reports on television or radio. These restraints are necessary for a fair trial.

3. THE GENERAL ROLE OF THE JUDGE, THE JURY AND THE LAWYERS

The judge, the jury and the lawyers are all officers of the Court and play important roles in the trial.

Judge. It is my role as judge to decide all legal issues, supervise the trial and instruct the jury on the LAW that it must apply.

Jury. It is your role as the jury to follow that law and decide the factual issues. Factual issues generally relate to WHO, WHAT, WHEN, WHERE, HOW or similar things concerning which evidence will be presented.

Lawyers. It is the role of the lawyers to present evidence, generally by calling and questioning witnesses and presenting exhibits. Each lawyer will also try to persuade you to accept his version of the facts and to decide the case in favor of his client.

Keep in mind that neither the lawyers nor I actually decide the case, because that is your role. Do not be influenced by what you think our personal opinions are; rather, you decide the case based upon the law explained in these instructions and the evidence presented in court.

4. OUTLINE OF THE TRIAL

The trial will generally proceed as follows:

Opening Statements. The lawyers will outline what the case is about and indicate what they think the evidence will show.

Presentation of Evidence. The plaintiff will offer its evidence first followed by the defendant. Each side may also offer rebuttal evidence after hearing the witnesses and seeing the exhibits offered by the other side.

Instructions on the Law. After each side has presented its evidence, I will supplement these written instructions and review them with you.

Closing Arguments. The lawyers will then summarize and argue the case. They will share with you their respective views of the evidence, how it relates to the law and how they think you should decide the case.

Jury Deliberation. The final step is for you to retire to the jury room and deliberate until you reach a verdict.

5. WHAT IS THE ROLE OF THE JURY IN THIS CASE

This is a civil trial, which means there is a disagreement between individuals or entities about their respective entitlements or obligations and what they owe each other, if anything. You must decide these questions in this case. Your decision is called a VERDICT. Your verdict must be based only on the evidence produced here in court. Anything else you may have heard about this case should be put out of your mind.

6. WHAT IS EVIDENCE?

Evidence is anything that tends to prove or disprove the existence of a disputed fact. It can be testimony, or documents, or objects, or photographs, or stipulations, or certain qualified opinions, or any combination of these things. Some times the lawyers may agree that certain facts exist. You should accept any agreed or stipulated facts as having been proved. In limited instances, I may take "judicial notice" of a well-known fact. If this happens, I will explain how you should treat it.

7. OPINION TESTIMONY

Under certain circumstances, witnesses are allowed to express an opinion. A person who by education, study or experience has become an expert in any art, science or profession, may give his opinion and the reason for it. A layman (or, a non-expert) is also allowed to express an opinion if it is based on personal observations and it is helpful to understanding his testimony or the case. You are not bound to believe anyone's opinion. Consider it as you would any other evidence, and give it the weight you think it deserves.

8. WHAT IS NOT TO BE USED AS EVIDENCE?

I have explained to you what evidence is. Now I will tell you about some things which do not qualify as evidence or which, for some other good reason, you should not consider in reaching your verdict.

Lawyer Statements. What the lawyers say is not evidence. Their purpose is to give you a preview of expected evidence and to help you understand the evidence from their viewpoint.

Personal Investigation. Evidence is not what you can find out on your own. You should not make any investigation about the facts in this case. Do not make personal inspections, observations or experiments. Do not view premises, things or articles not produced in court. Do not let anyone else do anything like this for you. Do not look for information in law books, dictionaries or public or private records which are not produced in court.

Out of Court Information. Do not consider anything you may have heard or read about this case in the media or by word of mouth or other out-of-court communication. You must rely solely on the evidence that is produced and received in court.

9. THE JUDGE DECIDES WHAT EVIDENCE IS ADMISSIBLE

Sometimes a question will be raised about whether certain evidence is proper for the jury to consider. This type of question is called an OBJECTION. I rule on objections. If an objection is SUSTAINED the evidence is kept out and you should not consider it. If an objection is OVERRULED the evidence comes in and you may consider it. If evidence is STRICKEN you should ignore it.

[OPENING STATEMENTS BY COUNSEL]

10. HOW TO MAKE DECISIONS ABOUT THE EVIDENCE

Once evidence is admitted, you must decide three things about it: whether it should be believed, how important it is, and what you can infer or conclude from it.

Use your common sense as a reasonable person in making these decisions. Review all the evidence. Do not imagine things which have no evidence to back them up. Consider the evidence fairly without any bias or sympathy toward either side.

11. DECIDING WHETHER TO BELIEVE A WITNESS

As each witness testifies, you must decide how accurate that testimony is. It may help you to ask yourself questions such as these:

Personal Interest. Does the witness have a personal interest in how the trial comes out?

Other Bias. Does the witness have some other bias or motive to testify a certain way?

Demeanor. What impression is made by the witness's appearance and conduct while answering questions?

Consistency. Did the witness make conflicting statements or contradict other evidence?

Knowledge and Memory. Did the witness have a good opportunity to know the facts and the ability to remember them?

Reasonableness. Is the testimony reasonable in light of human experience?

You are not required to believe all that a witness says. You are entitled to believe one witness as against many or many as against one, in accordance with your honest convictions.

12. WHAT IF A WITNESS PURPOSELY GIVES FALSE TESTIMONY?

If you believe a witness has purposely given false testimony about anything relevant to the case, you may disregard not only the false testimony but the remaining testimony from that witness unless it is corroborated by other evidence; in which event you should give it what weight you think it deserves.

13. QUESTIONS BY JURORS DURING THE TRIAL

A jury member may direct questions to the judge or to a witness by writing the question on a piece of paper and handing it to the bailiff who will hand it to me. I will share the same with the lawyers who have the right to express an opinion as to whether it is proper. If the question is not one that is allowed under the rules of evidence or it otherwise improper, I will tell you. Otherwise, the question will generally be allowed.

I remind you that the lawyers are trained in asking questions that will produce the evidence necessary to decide this case. However, if you feel there is something important that has been missed or that needs clarification, you may ask a question by complying with the procedure outlined in this instruction.

14. HOW CONVINCED SHOULD THE JURY BE BEFORE MAKING A DECISION?

In a civil trial, the party making a claim is responsible to prove it. This responsibility is sometimes called a "burden" or a "burden of proof."

The party making a claim is responsible to prove that claim by a preponderance of evidence. This means that, after considering and comparing all the evidence presented in court, the convincing weight thereof must be in favor of the party making the claim. If the evidence is evenly balanced or if the balance is not in favor of the claimant, then the claimant has not met its burden as to that claim.

15. USE OF ELECTRONIC COMMUNICATION TECHNOLOGY DURING TRIAL

Jurors have caused serious problems during trials by using computer and electronic communication technology. You may be tempted to use these devices to investigate the case, or to share your thoughts about the trial with others. However, you must not use any of these electronic devices while you are serving as a juror.

You violate your oath as a juror if you conduct your own investigations or communicate about this trial with others, and you may face serious consequences if you do. Let me be clear: do not “Google” the parties, witnesses, issues, or counsel; do not “Tweet” or text about the trial; do not use Blackberries or iPhones to gather or send information on the case; do not post updates about the trial on Facebook pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as “Google Maps” can result in a mistrial.

Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends on you reaching your decisions based on evidence presented to you in court, and not on other sources of information.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

[THE EVIDENCE WILL NOW BE PRESENTED]

16. INSTRUCTIONS ON THE LAW THAT APPLIES TO THIS CASE

The clerk has attached to your copy of these instructions some additional pages which contain instructions relating to the particular laws or rules that apply in this case. These additional instructions begin with instruction number twenty-four (24). We will read those after completing our review of the following instructions which relate essentially to the procedure that you should follow.

17. WHAT TO TAKE WITH YOU INTO THE JURY ROOM

You may take the following things with you when you go into the jury room to discuss this case:

- a. All exhibits admitted in evidence;

- b. your notes (if any);
- c. your copy of these instructions; and
- d. the verdict form or forms.

18. WHAT TO DO IN THE JURY ROOM

The first thing you should do in the jury room is choose a person to be in charge. This person is called the "Foreperson" or the "Chair." The Chair's duties are:

- a. To keep order and allow everyone a chance to speak;
- b. to represent the jury in any communications you make; and
- c. to sign your verdict and bring it back into court.

In deciding what the verdict should be, all jurors are equal. The Chair has no more power than any other juror.

19. CONSIDER EACH OTHER'S OPINIONS, THEN REACH YOUR OWN DECISION BASED UPON HONEST DELIBERATION

It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of opinion or to announce a determination to stand for a certain verdict. When that is done at the outset, a person's sense of pride may block appropriate consideration of the case. Use your common memory, your common understanding and your common sense. Talk about the case with each other as you ponder and deliberate.

Your verdict must be your own. Do not make a decision just to agree with everyone else. However, you should respect and consider the opinions of the other jurors. If you are persuaded that a decision you initially made was wrong, do not hesitate to change your mind. Help each other arrive at the truth. Also, do not resort to chance or some form of decision-making other than honest deliberation.

20. WHAT TO DO IF YOU HAVE QUESTIONS DURING DELIBERATION

If you think you need more information or a clarification, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question whenever appropriate. However, these instructions should contain all the information you need to reach a verdict based upon the evidence.

21. FOCUS ON THIS CASE ALONE

Your duty is to decide this case and this case alone. You should not use this case as a forum for correcting perceived wrongs in other cases, or as a means of expressing individual or collective views about anything other than the issues you are called upon to decide. Your verdict should reflect the facts as found by you applied to the law as explained in these instructions and should not be distorted by any outside factors or objectives.

The final test of the quality of your service will be the verdict you return. You will contribute to efficient judicial administration if you focus exclusively on this case and return a just and proper verdict.

22. REACHING A VERDICT

This being a civil case, your verdict must be agreed upon by at least three-fourths of the jurors (six of eight). When you reach this level of agreement, then you have reached a verdict and your work is finished.

23. HOW TO REPORT YOUR VERDICT

When you have reached a verdict, the Chair should date and sign the verdict form which corresponds to your decision. Then, notify the bailiff that you are ready to return to court.

24. WHAT HAPPENS AFTER THE VERDICT HAS BEEN REPORTED?

After you have given your verdict to the Judge, he or the clerk may ask each of you about it to make sure you agree with it. Then you will be excused from the jury box and you may leave at any time. You may remain in the courtroom, if you wish, to watch the rest of the proceedings, which should be quite brief.

After you are excused, you may talk about the case with anyone. Likewise, you are not required to talk about it. If anyone attempts to talk to you about the case when you do not want to do that, please tell the Court Clerk.