

Court's Standard Instructions to the Jury

Civil Cases before Judge Duffey

NOTE TO COUNSEL:

These are the Court's draft general instructions, which will be modified to conform to the facts of a case. These are provided to you (i) to avoid your having to submit charges which are covered by the Court's general charge, (ii) to allow you to request changes to the general charge, and (iii) to advise you where charges specific to this case are given.

Members of the Jury:

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you instructions—that is to explain to you—the law that applies to this case.

It is your duty as jurors to follow the law as I state it to you, and to apply the law to the facts as you find them from the evidence in this case. You are not to single out any one instruction as stating the law. You must consider my instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than those given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence admitted in the case.

In deciding the facts of this case you must not be swayed by bias, or prejudice, or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially

consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life.

CORPORATION

The fact that a corporation is involved as a party must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, of course, it may act only through people as its employees; and, in general, a corporation is responsible under the law for any of the acts and statements of its employees that are made within the scope of their duties as employees of the company.

GOVERNMENT ENTITY

The fact that a government entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for any of the acts and statement of its employees of that governmental agency.

EVIDENCE

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and, in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. That is to say, the lawyers say is not binding upon you.

You should not assume from anything I may have said that I have any opinion about any factual issues in this case. Except for my instructions to you on the law, [and any limiting instructions I gave regarding your consideration of certain evidence,] you should disregard anything I may have said during the trial in arriving at your own decision concerning the facts.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—which is the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. Let me give you an example. [Court gives example to jury].

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial. I will, in a few minutes, explain specifically the preponderance of the evidence standard and what it means.

CREDIBILITY OF WITNESSES

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In evaluating the credibility of a witness, I suggest that you ask yourself a few questions:

1. Did the witness impress you as one who was telling the truth?
2. Did the witness have any particular reason not to tell the truth?
3. Did the witness have a personal interest in the outcome of the case?
4. Did the witness have a bias or prejudice?
5. Did the witness seem to have a good memory?
6. Did the witness have the opportunity and ability to observe accurately the things about which he or she testified?

7. Did the witness appear to understand the questions clearly and answer them directly?
8. Did the witness's testimony differ from other testimony or other evidence?
9. What was the witness's demeanor while testifying?
10. Any other facts that affect the witness's credibility.

Felony Offense: The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe the testimony of that witness.]

You may accept or reject the testimony of a witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

IMPEACHMENT

A witness may be discredited or “impeached” by contradictory evidence, by a showing that he testified falsely concerning some important fact matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness’ present testimony on a material point.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

If you believe that any witness has been impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

EXPERTS

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

When a witness has been or will be paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such a witness where court testimony is given with regularity and represents a significant portion of the witness' income.

DEPOSITIONS

In addition to sworn testimony of the witnesses appearing in court, deposition testimony may also be received in evidence. Depositions contain sworn testimony with counsel for each party being entitled to ask questions. Testimony produced in a deposition may be read to you in open court or, if the testimony was visually recorded, the visual recording may be played. Deposition testimony may be accepted by you, subject to the same instructions which apply to witnesses testifying in open court.

NOTETAKING

You have been permitted to take notes during the trial. Most of you—perhaps all of you—have taken advantage of that opportunity.

You must use your notes only as an aid to your memory during your deliberations. You must not give your notes priority over your independent recollection of the evidence. You also must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

BURDEN OF PROOF

The burden is on the plaintiff in a civil action such as this to prove every essential element of his claim by a “preponderance of the evidence.” A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a “preponderance of the evidence” merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If the proof fails to establish any essential element of plaintiff's claim by a preponderance of the evidence, the jury should find for the defendant as to that claim.

[When more than one claim is involved, and when more than one defense is asserted, you should consider each claim and each defense

separately; but in deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the party making that claim or contention.]

I now turn to the specific claim[s] made by [the Plaintiff] in this case.

SPECIFIC INSTRUCTIONS FOR THE CASE

[Counsel will prepare requests to charge for the Court to consider to insert here on the specific claims and defenses, special issues, and damages.]

DAMAGES

In considering the issue of plaintiff's damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the plaintiff's damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. Neither can damages be based on speculation because it is only actual damages -- what the law calls compensatory damages -- that are recoverable.

Of course, the fact that I have given you instructions concerning the issue of plaintiff's damages should not be interpreted in any way as an indication that I believe the plaintiff should, or should not, prevail in this case.

GENERAL CONCLUSION

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You

may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet service, or any text or instant messaging service; or any internet chat room, blog, or website to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Upon retiring to the jury room you should first select one of your number to act as your foreperson who will preside over your deliberations and will be your spokesman here in court. A form of verdict has been prepared for your convenience.

[Explain verdict form]

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then advise the Court Security Officer that you have reached a verdict.

If, during your deliberations, you want to communicate with me, please reduce your message or question to writing signed by the foreperson, and pass the note to the court security officer who will bring

it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

Those are your instructions. You will now go to the jury room, but do not begin your deliberations until you receive the exhibits and I tell you that you are allowed to begin your deliberations.