

STATE OF MAJOR CIVIL JURY INSTRUCTIONS

Jury Instruction No. 1

Negligence

Negligence is the failure to exercise ordinary care. It is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances.

Jury Instruction No. 2

Negligence Per Se

The violation, if you find any, of a statute or a regulation is negligence as a matter of law. Such negligence has the same effect as any other act of negligence.

The violation of a regulation is actionable negligence only if its violation was a proximate cause of the injury in question.

Jury Instruction No. 3

Duty of Tavern Owner

The keeper of an establishment where intoxicating liquors are dispensed, while not an insurer of the safety of his patrons, owes the duty to his patrons to exercise reasonable care and vigilance to protect them from reasonably foreseeable injury, mistreatment or annoyance at the hands of other patrons.

If you find from the evidence that the defendant, his agents and/or employees knew or should have known the possibility of injury, mistreatment or annoyance by other guests, then it was his duty to exercise reasonable care, vigilance and prudence to protect his patrons from injury from the acts of the defendant.

Jury Instruction No. 4

Infliction of Emotional Distress

A person who through outrageous action causes severe emotional distress to another is liable if each of the following elements is proven by a preponderance of the evidence:

- (a) The defendant owed a duty to the victim;
- (b) The defendant breached that duty;
- (c) The injury to the victim from the outrageous conduct was foreseeable;

- (d) The emotional distress was inflicted upon a plaintiff who was the direct victim of the outrageous conduct or upon a plaintiff in a close relationship to the victim who perceived the injury to the victim and was present at the time of injury or arrived shortly thereafter;
- (e) The plaintiff's mental distress must be the reaction of a normally constituted reasonable person; and
- (f) The emotional distress must manifest itself in objective symptoms.

Jury Instruction No. 5

Intoxication

A person who becomes intoxicated voluntarily is held to the same standard of care as one who is not so affected. Whether a person is intoxicated at the time of an occurrence may be considered by the jury, together with all the other facts and circumstances, in determining whether that person was negligent.

Jury Instruction No. 6

Affirmative Defense

The defendant has the burden of proving the following affirmative defenses claimed by the defendant:

A. Comparative Negligence

Comparative negligence is negligence on the part of a person claiming injury or damage which is a proximate cause of the injury or damage complained of.

If you find comparative negligence, you must determine the degree of such negligence, expressed as a percentage, attributable to the person claiming such injury or damage. The court will reduce the amount of any damages you find to have been sustained by a party who was comparatively negligent by the percentage of such comparative negligence.

B. Self-Defense

You may find that the defendant acted as a reasonably prudent person under the circumstances that existed when the deceased was killed and reasonably believed that killing the decedent was necessary to protect the defendant's own life or to ward off great bodily harm; if so, the defendant's act was excusable and justifiable so as to bar recovery for the plaintiffs. The defendant may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the defendant at the time.

If you find from your consideration of all the evidence that this affirmative defense has been proven, your verdict should be for the defendant.

Jury Instruction No. 7

Principal and Agency

The defendants are sued as principal and agent. The defendant _____ is the principal and the defendants _____ are the agents.

A. An agent is a person employed under an express or implied agreement to perform services for another called the principal, and who is subject to the principal's control or right to control the manner and means of performing the services. The agency agreement may be oral or in writing.

B. One of the questions for you to determine is whether the agents were acting within the scope of employment.

An agent is acting within the scope of authority if the agent is engaged in the performance of duties which were expressly or impliedly assigned to the agent by the principal or which were expressly or impliedly required by the contract of employment. Likewise, an agent is acting within the scope of authority if the agent is engaged in the furtherance of the principal's interests.

If you find the defendant agents are liable, then you must find that the principal is also liable. However, if you do not find that the agents are liable, then the principal is not liable.

Jury Instruction No. 8

Burden of Proof

The plaintiffs have the burden of proving each of the following propositions:

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiffs and that in so acting or failing to act, the defendants were negligent;

Second, that the plaintiffs were injured;

Third, that the negligence of the defendants was a proximate cause of the injury to the plaintiffs;

Fourth, the amount of money which will compensate the plaintiffs.

The defendants have the burden of proving both of the following propositions:

First, that the plaintiffs acted, or failed to act, in one of the ways claimed by the defendants, and that in so acting or failing to act, the plaintiffs were negligent;

Second, that the negligence of the plaintiffs was a proximate cause of the plaintiffs' own injuries and was therefore contributory negligence.

When a party has the burden of proof of any proposition, the proposition must be proven by a "preponderance" of the evidence, or if the expression "if you find" is used, it means that you must be persuaded, considering all the evidence in the case bearing on the question that the

proposition on which that party has the burden of proof is more probably true than not true.

Jury Instruction No. 9

Proximate Cause

The term "proximate cause" means a cause, which in a direct sequence, unbroken by any new independent cause, produces the injury complained of and without such, injury would not have happened.

There may be one or more proximate causes of an injury.

Jury Instruction No. 10

Independent Intervening Cause

If you find that a person was negligent but that the sole proximate cause of the alleged injury was a later independent intervening cause that a person, in the exercise of ordinary care, could not reasonably have anticipated as likely to happen, the person's original negligence is superseded by the intervening cause and is not a proximate cause of the alleged injury.

If in the exercise of ordinary care, however, a person should reasonably have anticipated the intervening cause, that independent intervening cause does not supersede the person's original negligence and that original negligence can still be considered a proximate cause of the alleged injury.

It is not necessary that the sequence of events or the particular resultant injury be foreseeable. It is only necessary that the resultant injury fall within the general field of danger which a person should reasonably have anticipated.

Jury Instruction No. 11

Expert Opinion

A witness who has special training, education or experience in a particular science, profession or calling may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness's information, together with the factors already given you for evaluating the testimony of any other witnesses.

Jury Instruction No. 12

Damages

The State of Major permits an award for damages for a survival action, and for an alleged wrongful death.

The following factors should be considered to measure damages in a survival action:

1. The reasonable value of the decedent's lost earnings.
2. Medical and hospital expenses which were reasonably and necessarily incurred by the decedent's estate because of his injuries.
3. Any pain and suffering that the decedent experienced before his death. There are no fixed standards by which to measure pain or suffering. Rather, you must be governed by your judgment, the evidence in the case, and these instructions.

The following factors should be considered to measure damages for wrongful death:

1. Pecuniary loss. In determining "pecuniary loss" you should consider what benefits of pecuniary value, including money and goods and services the decedent would have contributed to the widow and children had the decedent lived.

2. What decedent could reasonably have been expected to contribute to the survivor in the way of support, love, affection, care, services, companionship, society and consortium.
3. What the decedent could reasonably have been expected to contribute to his children in the way of support, love, care, guidance, training, instruction and protection.
4. What the decedent could reasonably have been expected to contribute to his dependent mother and father in the way of support, love, care, guidance, training, instruction and protection.
5. Medical, hospital and funeral expenses which were reasonably and necessarily incurred by the decedent's estate because of his injuries and death (if not claimed in a survival action).

In determining damages you should consider the decedent's age, health, life expectancy, occupation and habits of industry, sobriety and thrift.

(a) According to mortality tables, the average expectancy of life of a male aged 30 years is 71.25 years. This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits and activity of the person whose life expectancy is in question.

You should also consider the decedent's earning capacity, and in this connection you should consider the actual earnings prior to death, and what earnings might reasonably have been expected in the future, together with the amount which you find the decedent customarily contributed to his spouse and children, and what contribution might reasonably have been expected in the future.

(b) The burden of proving damages rests upon the plaintiffs and you must determine whether pecuniary loss has been proven by a preponderance of the evidence. You should not base damages upon speculation, guess, conjecture, grief or sorrow of or for the survivors.