

9.4. FORM JURY DUTIES, ETC. INSTRUCTION (CIVIL)

JURY INSTRUCTION NO. 4

Members of the jury:

Now, I will give you some preliminary instructions to guide you in your participation in the trial.

Duty of Jury

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as I, the court, will give it to you. You must follow that law whether you agree with it or not.

Nothing I may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that I may instruct you to find.

Generally, there are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. You may consider both kinds of evidence and determine how much weight to give it.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you

some guidelines for determining the credibility of witnesses at the end of the case.

Judge the evidence just like any reasonable and careful person would treat an important question that must be resolved by examining facts, opinions and other evidence. Use your good sense in considering and evaluating the evidence. Give it a reasonable and fair interpretation in light of your life experiences and knowledge of people and their tendencies. You are not limited solely to the admitted evidence itself as you may also make inferences and reach conclusions that reason and common sense lead you to draw from that evidence.

Certain things are not evidence and must not be considered by you:

1. Statements, arguments and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is admitted for a limited purpose only, you must follow that instruction.

3. Testimony that I have excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence. You are to decide the case solely on the evidence presented here in the courtroom.

Burden of Proof

This is a civil case. Except for [state any exception such as punitive damages], the plaintiff(s) has/have the burden of proving his/her/its/their case by what is called the

preponderance of the evidence. That means the plaintiff(s) has/have to produce evidence which, considered in the light of all the facts, leads you to believe that what plaintiff(s) claims/claim is more likely true than not. To put it differently, if you were to put plaintiff's(s') and defendant's(s') evidence on opposite sides of the scales, plaintiff(s) would have to make the scales tip somewhat on his/her/its/their side. If plaintiff(s) fails/fail to meet this burden, the verdict must be for defendant(s).

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case and you should therefore put it out of your mind.

Conduct by the Jury

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone, including yourselves and your families, or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case. Should anyone try to talk to you about it, bring it to my attention promptly. When you are deliberating you may discuss the case only when all of you are present.

Second, do not read or listen to anything touching on this case in any way. Should anyone try to give you anything about this case, or if you inadvertently hear or see something about it, bring it to my attention promptly.

Third, do not research or investigate the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberation at the end of the case.

If you wish, you may take notes to help your recollection. If you do, leave them in the jury room when you leave at night. And remember that they are for your own personal use--they are not to be given or read to anyone else.

Course of the Trial

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, plaintiff(s) will present his/her/its/their witnesses, and defendant(s) may cross-examine them. Then defendant(s) will present his/her/its/their witnesses, and plaintiff(s) may cross-examine them. Plaintiff(s) then may have a final opportunity to present rebuttal evidence, again subject to the defendant's(s') cross examination.

After that, the attorneys will make their closing arguments to summarize and interpret the evidence for you. Those will be followed by further instructions on the law.

You will then retire to deliberate on your verdict.