

8.1. FORM NATURE OF CASE INSTRUCTION (CIVIL)

INSTRUCTION NO. 1

Members of the jury, we are about to begin the trial of this case. Before the trial begins, however, there are certain instructions you should have to better understand what will be presented to you and how you should conduct yourselves during the trial.

The party who brings a lawsuit is called plaintiff. In this action the plaintiff(s) is/are _____. The party against whom the suit is brought is called defendant. In this action the defendant(s) is/are _____.

The plaintiff(s) seeks/seek damages [injunction, etc.] for what he/she/it alleges to be _____.

The defendant(s) deny/denies any wrongdoing and claims that:

8.2. FORM ELEMENTS OF CLAIM INSTRUCTION (CIVIL)

INSTRUCTION NO. 2

In order for plaintiff(s) to establish his/her/its/their claim of _____, he/she/it/they has/have the burden of proving the following essential elements by a preponderance of the evidence:

- 1.
2. (etc.)

If you find that plaintiff(s) has/have failed to prove any of those [number] elements by a preponderance of the evidence, then your verdict must be for defendant(s), as to the claim of _____.

If, on the other hand, you find that plaintiff(s) has/have proved the [number] elements by a preponderance of the evidence, then your verdict must be for plaintiff(s) on this claim, unless defendant(s) proves/prove _____, in which event your verdict on this claim must be for defendant(s).

8.3. FORM STIPULATED FACTS INSTRUCTION (CIVIL)

INSTRUCTION NO. 3

The parties to this lawsuit have agreed to certain facts which you must treat as having been proved. Those facts are:

- 1.
2. (etc.)

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

INSTRUCTION NO. 4

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.

Certain things are not evidence and must not be considered by you. I will list them for you now:

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 received 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 and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

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. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

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.

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 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.

Second, do not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bring it to my attention promptly.

Third, do not try to do any research or make any investigation about 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.