

**Proposed
Mississippi
Plain Language
Model
Jury Instructions -
Civil
2012**

(Current as of February 17, 2012)

Proposed Plain Language Model Jury Instructions - Civil

Guide for Using the Proposed Plain Language Model Jury Instructions:

Titles of Instructions - The titles of the instructions are for the attorneys' benefit. Occasionally, the titles will contain words that are not in the instruction.

Sources and Authority - Each instruction lists a source or sources to support the basis for the instruction.

Definitions of Legal Terms - The instructions are generally drafted to include any necessary definitions within the instruction. The definitions are separated from the "General Instruction" and the "Verdict Form."

Burden of Proof - The appropriate burden of proof is included in each instruction.

Alternatives and Options - Many instructions require the attorneys to select from alternative language offered in the instruction. In general, words or phrases contained in brackets require the attorney to select the most appropriate language for the facts of the case.

Multiple Parties - The subcommittee drafted these instructions primarily for a case involving one plaintiff against one defendant. In cases where multiple parties are involved, these instructions will need to be modified to fit the facts of the case.

Multiple Causes of Action - The subcommittee drafted these instructions for a case involving one cause of action. In cases where multiple causes of action are involved, these instructions will need to be modified and/or combined to accompany the facts and causes of action in the case.

Modification as Required by the Facts of the Case - The subcommittee drafted these instructions for a basic, non-complicated case. In more complicated cases, the attorneys will need to modify the instructions to fit the facts and the circumstances of the case.

Practice Notes - Several instructions offer practice notes which should be useful to the attorneys and/or the court when drafting the instructions.

Verdict Forms - The subcommittee drafted verdict forms to accompany the elements listed in the general instructions. The subcommittee was of the opinion that use of the verdict forms will assist the jury in reaching a verdict.

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Proposed Plain Language Model Jury Instructions - Civil

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100 Introductory Remarks - Jury Selection

Ladies and gentlemen, my name is Judge _____, and it is my pleasure to welcome you to the _____ Court.

You have been called here today to possibly serve on a jury in a civil case. Some of you may have served on a jury in the past and some of you may not. Jury duty is one of the most important duties of a citizen. The role of the jury is very important to our justice system.

Today's case is a civil case. It is also called a lawsuit. [Name(s) of plaintiff(s)] filed this lawsuit against [name(s) of defendant(s)]. [Name of plaintiff] is called a "plaintiff." [Name of defendant] is called a "defendant."

We will now begin jury selection for today's case. The reason for jury selection is to get information about you that will help the attorneys and me choose a fair and impartial jury to hear this case.

During jury selection, the attorneys and I will ask you questions. These questions are not meant to embarrass you or to pry into your personal business. The questions are meant to find out if you know anything about this case. We need to find out if you have any opinions or know anything about the case that will influence you either for or against the plaintiff(s) or defendant(s).

The questions will be asked to the entire group. If you need to give a specific answer, you should raise your hand. I will call on you for your answer. If you would like to answer a question privately, you may answer the question here at the court bench.

The attorney(s) representing [name(s) of plaintiff(s)], the plaintiff(s), [is/are] [name(s) of attorney(s)]. The attorney(s) representing [name(s) of defendant(s)], the defendant(s), [is/are] [name(s) of attorney(s)].

This case is about _____ [specify type of action]. The plaintiff has claimed that the defendant has _____

[briefly describe or list the elements of the cause of action].

Have any of you heard anything about this case?

Have any of you been involved with a case like this one?

Do any of you have family members who have been involved in a case like this one?

Would this involvement influence your decision in this case?

Have any of you had any personal or business relationships with either the plaintiff(s) or the defendant(s) or the attorneys for the plaintiff(s) and defendant(s)?

In serving on a jury, there are two important principles that must be remembered:

(1) The first principle is that both the plaintiff(s) and the defendant(s) are entitled to a trial by a fair and impartial jury. That means that you cannot have any pre-conceived ideas about the case for either the plaintiff(s) or the defendant(s). You must keep an open mind throughout the entire trial until the case is given to you to decide. You must then base your decision only on the evidence proved at trial and the law. Do any of you have a problem doing that in this case?

(2) The second principle is that both the plaintiff(s) and the defendant(s) are entitled to a fair trial. To make sure that both the plaintiff(s) and the defendant(s) receive a fair trial, there are certain rules that the trial has to follow. There are rules of evidence, rules of procedure, and rules

of law. Sometimes the rules may prevent you from hearing evidence that you may want to hear or you think that you should be allowed to hear. You may disagree with these rules. Sometimes these rules may require the attorneys and me to discuss things without the jury present to hear them. You may have to leave and go to the jury room while we discuss these matters. However, if you serve on the jury, you will have to follow all of these rules. Do any of you have a problem following the rules in this case?

Lastly, do any of you have a personal matter, a health matter, or an important business matter that will keep you from giving your full attention to this case if you are selected to serve on the jury?

Thank you for your attention and honesty.

Sources

Mississippi Model Jury Instruction - Civil 1:1.

Judicial Council of California Civil Jury Instruction 101.

101 General Introductory Instructions

Now that jury selection is complete, I will give you some instructions.

You have been selected to serve on the jury to decide this case. You will hear the evidence during the trial. You must decide what the facts are in this case. You must then apply the law to the facts and decide a verdict.

It is my duty as the judge to make sure that the trial is conducted in a fair and orderly way. I will rule on the attorneys' objections and motions. I will also instruct you on the law which applies to this case. You are required to follow the law as I explain it to you.

You must pay close attention to the witnesses' testimony and the exhibits presented

during the trial. You should not make a decision or form an opinion about the case until you have heard all of the evidence and the attorneys' closing arguments, and have been instructed on the law.

You may not talk to or have any contact with the plaintiff(s), defendant(s), or their attorneys during this trial. The plaintiff(s), defendant(s), and their attorneys have been told not to talk to or have any contact with you as well. You must not talk to anyone about this case. If anyone attempts to talk to you about this case or talks about the case in front of you, you should immediately tell either the bailiff or me.

The reason you are not to talk about this case with anyone is so that you can decide the case based on the evidence presented at trial and the law. That is your sworn duty as a juror.

It is my duty to rule on the attorneys' motions or objections which are made during the trial. You should not think that I have any opinion about any part of this case based on what I rule or say in response to those motions or objections.

I may need to conduct some hearings on trial matters outside your presence. Sometimes these hearings take a long time. I ask you to please be patient and understanding when this happens.

Serving as a juror means that you will have to sit and listen carefully to testimony for a long period of time. If you feel you need a rest break, please ask for a recess.

Now I will briefly explain the general way that a trial proceeds. First, the plaintiff's attorney will make an opening statement. [He/She] will explain the issues in the case and summarize the facts that the plaintiff expects the evidence to show. Next, the defendant's attorney can make an opening statement, or [he/she] can wait until later in the trial. [He/She] will

explain what the defendant plans to prove. Opening statements are not evidence. They are only designed to introduce the theory of the case to you. You should listen closely to the opening statements to prepare yourself to hear the witnesses' testimony and evidence which will follow.

After the opening statements, the plaintiff will begin [his/her/its] case. The plaintiff will present evidence by calling witnesses to testify under oath and also may introduce exhibits. The defendant will be allowed to cross-examine the plaintiff's witnesses.

At the end of the plaintiff's case, the defendant will present evidence in the same manner as the plaintiff.

At the end of the defendant's case, the plaintiff may have an opportunity to respond to the evidence introduced by the defendant.

At the end of the trial, I will instruct you on the law, and then the attorneys will make their closing arguments.

As a juror, you must pay close attention and keep an open mind until the case is given to you to decide.

Sources

Mississippi Model Jury Instruction - Civil 1:2.

102 Additional Introductory Instructions

It is my duty to instruct and explain the law to you. It is your sworn duty as a juror to follow the jury instructions. At the end of the trial, I will give you written copies of the jury instructions to take with you to the jury room.

You are not to question whether any rule of law is a good rule of law or not. Even if you have an opinion as to what the law should be, you must decide the case based on what the law is,

as defined in the jury instructions. If you decide the case based on what you think the law should be, it would violate your sworn duty as a juror.

A case may require many jury instructions. You cannot follow only one jury instruction but must consider all of the jury instructions together. The order in which the jury instructions are given to you has no meaning about the importance of the instructions.

It is my duty to be completely fair and impartial to the plaintiff and the defendant in this case. If I say anything or rule in a way that makes you think that I have an opinion about any part of this case, you must disregard that idea.

Your role is to determine the facts in this case and to consider and weigh the evidence to determine those facts. You must exercise your role as juror with sincere judgment, common sense, and by following the rules of law given to you by the court.

The plaintiff and the defendant have a right to expect that you will carefully consider and weigh the evidence and apply the law to the facts. You must reach a fair and just jury verdict regardless of what the consequences of that verdict will be.

You must not be swayed or influenced by sympathy for a party who has been injured. Your verdict must not be based on sympathy. Your verdict must be based only on the evidence and the law.

The evidence that you are to consider is the witnesses' testimony and any exhibits which were admitted into evidence.

As the sole judges of the facts in this case, you must decide what weight to give to the testimony and exhibits. You must also determine the credibility of each witness in this case. You must use common sense and honest judgment in considering and weighing the testimony of each

witness. You are also allowed to draw reasonable conclusions from the evidence.

The attorneys' remarks are intended only to help you understand the evidence and apply the law. However, the attorneys' remarks are not evidence. If an attorney's remark is not based on the evidence, then you must not consider that remark.

The introduction of evidence is governed by rules of law. During the trial, I may rule on the admissibility of evidence. You must not consider any evidence which I exclude, and you must not consider the reasons why the evidence was excluded.

You should not guess about any possible answers to questions which I do not require to be answered, and you should not draw any conclusions from those questions.

Sources

Mississippi Model Jury Instruction - Civil 1:3.

103 Jury's Role

You have been selected to serve on the jury to decide this case. You will hear the evidence during the trial. You must decide what the facts are in this case. You must then apply the law to the facts and decide a verdict.

Sources

Mississippi Model Jury Instruction - Civil 1:4.

Judicial Council of California Civil Jury Instruction 100.

104 Jury's Role - Verdict Must Be Based on the Evidence

You are to decide the facts in this case based on the evidence presented at trial. You are then to apply the law to the facts to return a verdict. You should not be influenced by bias, sympathy, or prejudice. Your verdict should not be based upon speculation or guesswork. Your

verdict must be based on the evidence.

Sources

Mississippi Model Jury Instruction - Civil 1:5.

105 Jury's Role - Authority to Determine the Facts

Your role is to determine the facts in this case and to consider and weigh the evidence to determine those facts. You must exercise your role as juror with sincere judgment, common sense, and by following the rules of law given to you by the court.

Sources

Mississippi Model Jury Instruction - Civil 1:6.

106 Jury's Role - Rules of Law Must Be Followed and Not Questioned

You are not to question whether any rule of law is a good rule of law or not. Even if you have an opinion as to what the law should be, you must decide the case based on what the law is, as defined in the jury instructions. If you decide the case based on what you think the law should be, it would violate your sworn duty as a juror.

Sources

Mississippi Model Jury Instruction - Civil 1:7.

107 Jury's Role - Careful Consideration

The plaintiff and the defendant have a right to expect that you will carefully consider and weigh the evidence and apply the law to the facts. You must reach a fair and just verdict regardless of what the consequences of that verdict will be.

Sources

Mississippi Model Jury Instruction - Civil 1:8.

108 Jury's Role - Sympathy Should Not Influence the Verdict

You must not be swayed or influenced by sympathy for a party who has been injured. Your verdict must not be based on sympathy. Your verdict must be based only on the evidence and the law.

Sources

Mississippi Model Jury Instruction - Civil 1:9.

109 Judge's Role - Presiding Over the Trial

It is my duty to make sure that the trial is conducted in a fair and orderly way. I will rule on the attorneys' objections and motions. I will also instruct you on the law which applies to this case. You are required to follow the law as I explain it to you.

Sources

Mississippi Model Jury Instruction - Civil 1:10.

110 Judge's Role - Impartiality

It is my duty to be completely fair and impartial to the plaintiff(s) and the defendant(s) in this case. If I say anything or rule in a way that makes you think that I have an opinion about any part of this case, you must disregard that idea.

Sources

Mississippi Model Jury Instruction - Civil 1:11.

111 Judge's Role - No Opinions from Rulings

It is my duty to rule on the attorneys' motions or objections which are made during the trial. You should not think that I have any opinion about any part of this case based on what I rule or say in response to those motions or objections.

Sources

Mississippi Model Jury Instruction - Civil 1:12.

112 Judge's Role - Hearings Outside the Jury's Presence

I may need to conduct some hearings on trial matters outside your presence. Sometimes these hearings take a long time. I ask you to please be patient and understanding when this happens.

Sources

Mississippi Model Jury Instruction - Civil 1:13.

113 Jurors May Not Have Any Contact with Attorneys, Parties, or Witnesses

You may not talk to or have any contact with the plaintiff, defendant, or their attorneys during this trial. The plaintiff, defendant, and their attorneys have been told not to talk to or have any contact with you as well. You must not talk to anyone about this case. If anyone attempts to talk to you about this case or talks about the case in front of you, you should immediately tell either the bailiff or me.

Sources

Mississippi Model Jury Instruction - Civil 1:14.

114 Jurors May Not Talk About the Case Until the End of Trial

Until the case is given to you to decide, you are not to talk about the case among yourselves. Talking about the case may prevent you from keeping an open mind throughout the entire trial. Also, no one is allowed to talk about the case in front of you. You should tell anyone who attempts to talk about the case in front of you that you are a juror. You should report anyone who talks about the case to you or in front of you to either the bailiff or me.

When you go home during the trial, do not talk to your family, friends, or others about the case. You may tell them that you are a juror on a civil case and that is all that you should tell them. Do not discuss your activities as a juror while the trial and deliberations are going on. Do not e-mail, blog, tweet, text, or post anything to your Facebook, MySpace, or other social networking sites about this trial. Do not visit any “chat rooms” where this case may be discussed.

Sources

Mississippi Model Jury Instruction - Civil 1:15.

115 Jurors Are Not to Conduct Any Research About the Case

Until you are discharged from serving on this jury, you are not to read, listen to, or watch any news reports about this case. You must not do any research on your own or as a group. You must not use dictionaries, a computer, your phone, the Internet, or use any other research materials to learn anything about this case. You are not to contact anyone, including a family doctor, accountant, or attorney, to ask him or her anything about this case. You must not visit or view the scene of any event involved in this case.

You must decide this case based only on the evidence presented in this trial and the instructions of law that I will give you.

Sources

Judicial Council of California Civil Jury Instruction 100.

Michigan Model Civil Jury Instruction 2.06.

116 Jury Instructions to Be Considered Together

A case may require many jury instructions. You cannot follow only one jury instruction but must consider all of the jury instructions together. The order in which the jury instructions are

given to you has no meaning about the importance of the instructions.

Sources

Mississippi Model Jury Instruction - Civil 1:16.

117 Terms “Plaintiff” and “Defendant”

In the instructions, the words “plaintiff” and “defendant” apply to each plaintiff and each defendant unless you are told otherwise.

Sources

Mississippi Model Jury Instruction - Civil 1:17.

118 Multiple Parties - Fairness and Separate Consideration

There are _____ [specify number of plaintiffs] plaintiffs in this trial. You should decide each plaintiff’s case fairly and separately as if it were a separate lawsuit. Each plaintiff’s claim should be considered and decided separately by you.

There are _____ [specify number of defendants] defendants in this trial. Although there is more than one defendant in this case, you must not conclude from that fact alone that if one defendant is legally responsible then [both/all] are legally responsible. You should decide each defendant’s case fairly and separately as if it were a separate lawsuit. Each defendant’s claim should be considered and decided separately by you.

[Unless I tell you differently, all jury instructions in this case apply to each plaintiff and each defendant.] [OR] [Different parts of this case involve different parties. Each instruction will identify the party or parties to whom it applies. You must pay particular attention to the party or parties listed in each instruction.]

Sources

Mississippi Model Jury Instruction - Civil 1:18.

Judicial Council of California Civil Jury Instruction 103.

119 Corporate or Non-Person Party - Fairness

A [corporation/partnership/city/county/other entity] is a party in this lawsuit. [Name of non-person party] is entitled to the same fair and impartial treatment that you would give to a person. You must decide this case with the same fairness that you would give to a person.

When I use words like “person” or “he” or “she” in these instructions to refer to a party, those instructions also apply to [name of non-person party].

Source

Mississippi Model Jury Instruction - Civil 1:19.

Judicial Council of California Civil Jury Instruction 104.

120 Gender Instructions - Corporations

When I use words like “person” or “he” or “she” in these instructions to refer to a party, those instructions also apply to [name of non-person party].

Sources

Mississippi Model Jury Instruction - Civil 1:20.

121 Note-Taking Not Allowed During Trial

You are not allowed to take notes during the trial. There are several reasons why you are not allowed to take notes. One, it is hard to take notes and listen to the witnesses testify. Also, some of you might take lots of notes while others might take very few notes; those of you who do not take lots of notes might be influenced by another juror’s notes. You are to listen to the testimony, pay close attention to the evidence, and reach a fair and just verdict based on the

evidence and the law.

The court reporter will be making a transcript of the trial. However, you will not be able to use the court reporter's transcript during your deliberations.

Sources

Mississippi Model Jury Instruction - Civil 1:22.

URCCC 3.14.

122 Taking Notes During the Trial

You are allowed to take notes during the trial. You are not required to take notes. Each of you should make his or her own decision about whether to take notes. If you decide to take notes, do not let your note-taking interfere with your ability to listen carefully to all of the testimony and to watch the witnesses as they testify.

You should use your notes only to remind yourself of what evidence was presented during the trial. Your memory of the testimony and evidence should guide you in reaching your verdict. You should not be influenced by the notes of other jurors.

The court reporter will be making a transcript of the trial. However, you will not be able to use the court reporter's transcript during your deliberations.

[You have been given [notebooks/legal pads] by the court. Do not take the [notebooks/legal pads] out of the courtroom.]

[You may take your notes with you into the jury room.] [OR] [You may not take your notes with you into the jury room.]

[At the end of the trial, your notes will be collected and destroyed.] [OR] [At the end of the trial, your notes will be collected and kept by the court but not as a part of the case record.]

Sources

Mississippi Model Jury Instruction - Civil 1:23.

URCCC 3.14.

Judicial Council of California Civil Jury Instruction 102.

123 Taking Notes During the Trial - To Aid the Juror's Memory

If you choose to take notes, your notes should only be used by you during the jury deliberations. You should not share your notes with other jurors. You should use your notes to remind yourself of what evidence was presented during the trial. You should decide the case based on your memory of the trial proceedings. You should not let another juror's notes influence you if those notes are different from your memory or understanding of the evidence. You must form your own opinion based on the evidence and the law and return a verdict.

Sources

Mississippi Model Jury Instruction - Civil 1:24.

URCCC 3.14.

Judicial Council of California Civil Jury Instruction 102.

Committee Note: This instruction contains a substantive change from the current version in

URCCC 3.14.

124 Jury Deliberations - Sworn Duty

It is not my role to tell you what your verdict should be. It is your sworn duty as a juror to decide this case and reach a verdict. You should try to agree on a verdict if you can. Each of you must decide the case for yourself, but only after you have discussed the evidence with the other jurors. While deciding this case, do not hesitate to re-examine your own views and change your

mind, but only if you become convinced that you were wrong. Do not change your mind or opinion just because other jurors disagree with you or simply to return a verdict.

Sources

Mississippi Model Jury Instruction - Civil 1:39.

Practice Note: The trial court may delete the word “sworn” if a juror has an objection to being sworn.

125 Circuit Court – Nine-Person Verdict

All twelve of you do not have to agree in order to reach a verdict in this case. If nine or more of you agree on a verdict, you can return that verdict on behalf of the entire jury.

Sources

Mississippi Model Jury Instruction - Civil 1:41.

MRCP 48(a).

126 County Court – Five-Person Verdict

All six of you do not have to agree in order to reach a verdict in this case. If five or more of you agree on a verdict, you can return that verdict on behalf of the entire jury.

Sources

Mississippi Model Jury Instruction - Civil 1:41.

MRCP 48(b).

127 Jury Deliberations - Forbidden Actions

You cannot decide any issue in this case by flipping a coin or any other similar acts.

Sources

Mississippi Model Jury Instruction - Civil 1:42.

128 Juror's Conduct During Jury Deliberations

Keep an open mind and openly discuss your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. Please treat one another courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other.

Sources

Mississippi Model Jury Instruction - Civil 1:43.

Judicial Council of California Criminal Jury Instruction 3350.

129 Manner of Deliberations - Selecting a Foreperson

When you go to the jury room, you may choose a foreperson, but you are not required to do so. A foreperson can make sure that your discussions are conducted in an organized way and that everyone has a fair chance to speak. The foreperson will also serve as the spokesperson before the court.

To reach a verdict, you may vote either by a show of hands or by secret ballot. When _____ [specify (1) nine or more or (2) five or more] of you agree on a verdict, you can return that verdict on behalf of the entire jury. You must write your verdict on a sheet of paper. Then you should tell the bailiff that you have reached a verdict. You (or the foreperson) will then announce the verdict in open court.

Sources

Mississippi Model Jury Instruction - Civil 1:44.

Judicial Council of California Criminal Jury Instruction 3350.

130 Deliberations in a Bifurcated Trial - Liability Issue

You will now go to the jury room to decide only the issue of whether the [defendant/defendants] [is/are] legally responsible for the plaintiff's damages. You are not to discuss the issue of damages at this time.

As soon as _____ [specify (1) nine or more or (2) five or more] of you agree on a verdict on the issue of the defendant's legal responsibility, if any, you should write your verdict on a sheet of paper. Then you should tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 1:46.

131 Deliberations in a Bifurcated Trial - Damages Issue

You have already returned your verdict finding the defendant legally responsible for the plaintiff's damages. You will now go back to the jury room and decide the issue of damages to be awarded to the plaintiff.

The same foreperson may preside over your discussions or you may choose a new foreperson.

As soon as _____ [specify (1) nine or more or (2) five or more] of you agree on a verdict on the issue of damages to be awarded to the plaintiff, if any, you should write your verdict on a sheet of paper. Then you should tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 1:46.

132 Instruction for Deadlocked Jury

You have a duty to discuss the evidence with each other. Your goal should be to reach a verdict. You must each decide this case for yourself, but you should consider the views of the

other jurors with an open mind. You should not hesitate to re-examine your own views and change your opinion if you become convinced that you were wrong. However, you should not change your mind just to agree with the other jurors or just to return a verdict. Please continue your deliberations.

Sources

Mississippi Model Jury Instruction - Civil 1:20.

Colorado Jury Instruction - Civil 4:3.

133 Form of the Verdict - One Plaintiff and One Defendant

When you reach a verdict in this case, you should write it on a separate sheet of paper. It does not need to be signed. The verdict must be in one of the following forms:

If you find for the plaintiff:

“We, the jury, find for the plaintiff in the amount of \$ _____.”

If you find for the defendant:

“We, the jury, find for the defendant.”

Sources

Mississippi Model Jury Instruction - Civil 1:48.

Practice Note: When there are multiple defendants, please refer to Chapter 50 Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 2 Court's Instructions - Evidence

200 Evidence - What Evidence Is

Evidence can be many things. Evidence can be sworn testimony about what a witness saw, heard, felt, or smelled. Evidence can be an exhibit, such as a piece of paper, a photograph, or another type of item, which is admitted into evidence at trial. Evidence may also be a witness's opinion.

Sources

Judicial Council of California Civil Jury Instruction 202.

Michigan Model Civil Jury Instruction 2.04.

201 Evidence - What Evidence is Not

The attorney's statements and questions are not evidence. The witness's answer to the attorney's question is evidence.

Sources

Judicial Council of California Civil Jury Instruction 106 Evidence.

Michigan Model Civil Jury Instruction 2.04.

202 Burden of Proof

I will now explain the term burden of proof. The plaintiff filed this lawsuit and bears the burden of proving by a preponderance of the evidence that what [he/she/it/they] [claim/claims] is true. The defendant does not have to prove any fact or issue in response unless I instruct you otherwise.

Sources

Mississippi Model Jury Instructions - Civil 1:25, 1:26, and 1:27.

203 Preponderance of the Evidence - Definition

A preponderance of the evidence means that a fact is more likely true than not true.

Sources

Mississippi Model Jury Instruction - Civil 1:28.

Judicial Council of California Civil Jury Instruction 200.

204 Clear and Convincing Evidence - Definition

Certain facts must be proved by clear and convincing evidence; this is a higher burden of proof than a preponderance of the evidence. Clear and convincing evidence means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party's [claim/claims] [is/are] true. I will tell you which facts must be proven by clear and convincing evidence.

Sources

Niebank v. Block, 35 So. 3d 1260, 1264 (Miss. Ct. App. 2010) (Clear and convincing evidence has been defined as follows: that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.).

Judicial Council of California Civil Jury Instruction 201.

Michigan Model Civil Jury Instruction 26:16.

205 Direct and Indirect Evidence

Some evidence proves a fact directly, such as a witness's testimony about what [he/she]

actually saw, heard, or did.

Some evidence proves a fact indirectly. Indirect evidence is also called circumstantial evidence.

An example of direct evidence is a witness testifying that she saw an airplane flying across the sky. An example of indirect evidence is a witness testifying that she saw only the white trail that an airplane leaves behind it in the sky. In both of these examples, the witnesses are testifying that an airplane flew across the sky.

It makes no difference whether evidence is direct or indirect. You may choose to believe or not believe either kind of evidence. You should give every piece of evidence whatever weight you think it should have.

Sources

Mississippi Model Jury Instruction - Civil 1:29.

Judicial Council of California Civil Jury Instruction 202.

206 Rulings on Admissibility of Evidence

The introduction of evidence is governed by rules of law. During the trial, I may have ruled on the admissibility of evidence. You must not consider any evidence which I excluded, and you must not consider the reasons why the evidence was excluded.

Sources

Mississippi Model Jury Instruction - Civil 1:30.

207 Evidence Admitted for a Limited Purpose

I am allowing this evidence to be admitted for the limited purpose of _____
[specify the limited purpose]. You may consider this evidence only for this limited purpose and

not for any other purpose.

Sources

Judicial Council of California Civil Jury Instruction 206.

Practice Note: The trial court should give this instruction as needed during the trial.

208 Requests for Admissions - Use at Trial

The following facts are true: _____

_____.

Sources

Mississippi Model Jury Instruction - Civil 1:31.

Practice Note: The trial court should give this instruction as needed when facts are admitted or stipulated into evidence.

209 Depositions - Use at Trial

You will now hear testimony read from a deposition or from a video deposition.

Sources

Mississippi Model Jury Instruction - Civil 1:32.

Judicial Council of California Civil Jury Instruction 208.

Practice Note: The trial court should give this instruction when testimony is read from a deposition or from a video deposition.

210 Witnesses

A witness is a person who testifies under oath about this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, a part, or none of a witness's testimony.

Sources

See Mississippi Model Jury Instruction - Civil 1:36.

Judicial Council of California Civil Jury Instruction 107.

211 Stipulated Testimony by a Witness

The plaintiff's attorney and the defendant's attorney have agreed that if [name of witness] were called to testify as a witness, that [he/she] would testify as the parties (and attorneys) have agreed. You must consider [name of witness]'s agreed-to testimony as if it had been given in court.

Sources

Mississippi Model Jury Instruction - Civil 1:34.

212 Number of Witnesses is Not a Basis for Verdict

You must not base your verdict solely on the number of witnesses for either party.

Sources

Judicial Council of California Civil Jury Instruction 107.

213 Expert Witness Testimony

During the trial, you heard testimony from an expert witness. The law allows an expert witness to give [his/her] opinion about issues in [his/her] area of expertise even if [he/she] did not witness any of the actions or events involved in this trial.

You do not have to accept the expert witness's opinion. As with any other witness, it is up to you to decide whether you believe the expert witness's testimony and whether you choose to use it as a basis for your decision in this case. You may believe all, a part, or none of the expert witness's testimony.

Sources

Mississippi Model Jury Instruction - Civil 1:38.

Judicial Council of California Civil Jury Instruction 219.

214 Credibility of Witnesses

You must determine the credibility of each witness in this case. You must use common sense and honest judgment in considering and weighing the testimony of each witness.

Sources

Mississippi Model Jury Instruction - Civil 1:36.

215 Weight and Credibility of the Evidence

As the sole judges of the facts in this case, you must consider all of the evidence and decide what weight to give to the testimony and exhibits.

Sources

Mississippi Model Jury Instruction - Civil 1:35.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 3 Definitions

300 Abuse of Process

Abuse of process is when a legal procedure is intentionally used for an improper or illegal purpose.

Sources

Mississippi Model Jury Instruction - Civil 2:2.

Allen ex rel. Ayles v. Allen, 907 So. 2d 300, 303 (Miss. 2005) (The action of abuse of process consists in the misuse or misapplication of a legal process to accomplish some purpose not warranted or commanded by the writ. It is the malicious perversion of a regularly issued civil or criminal process, for a purpose and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion an action will lie to recover the pecuniary loss sustained.).

Acceptance - See Contract

301 Accord and Satisfaction

Accord and satisfaction is when two parties agree that something of value will be given and accepted in order to satisfy a prior debt or obligation.

Sources

United Amer. Ins. Co. v. Merrill, 978 So. 2d 613, 625 (Miss. 2007) (This Court has defined the elements of accord and satisfaction as: (1) Something of value offered in full satisfaction of a demand; (2) accompanied by acts and declarations as amount to a condition that if the thing offered is accepted, it is accepted in satisfaction; (3) the party offered the thing of value is bound

to understand that if he takes it, he takes subject to such conditions; and (4) the party actually does accept the item.).

Actual Economic Damages - See Damages

302 Agent

An agent is a person who is authorized to act on behalf of another person or business. The term agent includes an employee, and the term principal includes an employer. A person can act as an agent even though [he/she] is not paid for [his/her] work.

Sources

Mississippi Model Jury Instruction - Civil 4:1.

303 Alienation of Affection

Alienation of affection is when someone intentionally and wrongfully interferes in a person's marriage. The interference leads one spouse to lose [his/her] love and affection for the other spouse.

Sources

Black's Law Dictionary (9th ed. 2009) (Alienation of affection is a tort claim for willful or malicious interference with a marriage by a third party without justification or excuse. The elements are (1) some wrongful conduct by the defendant with the plaintiff's spouse; (2) loss of affection or loss of consortium of the plaintiff's spouse; and (3) a causal relationship between the defendant's conduct and the loss of consortium.).

304 Assault

Assault is when one person attempts to intentionally harm or injure another person or makes that person believe that [he/she] is about to be harmed or injured.

Sources

Mississippi Model Jury Instruction - Civil 6:2.

Authorized Emergency Vehicle - See Rules of the Road

Bailee - See Bailment

305 Bailment

A bailment is when one person gives personal property to another person who will keep, use, and return the personal property in a certain condition. The bailor is the person who gives the personal property; the bailee is the person who receives the personal property.

Sources

Mississippi Model Jury Instruction - Civil 7:1.

Bailor - See Bailment

306 Battery

Battery is when one person intentionally and harmfully touches another person without [his/her] consent or intentionally causes another person to be touched without [his/her] consent.

Sources

Mississippi Model Jury Instruction - Civil 6:3.

307 Breach of a Contract

A breach of a contract is when one party fails to perform all or some of [his/her/its] duties required by the contract.

Sources

Black's Law Dictionary (9th ed. 2009) (Violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.).

Business Invitee - See Invitee

308 Clear and Convincing Evidence

Clear and convincing evidence means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party's [claim/claims] [is/are] true.

Sources

Niebanck v. Block, 35 So. 3d 1260 (Miss. Ct. App. 2010) (Clear and convincing evidence has been defined as follows: that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.).

Judicial Council of California Civil Jury Instruction 201.

309 Common Carrier

A common carrier is a [person/business/corporation/service] [who/which] carries or transports people or property for money.

Sources

Mississippi Model Jury Instruction - Civil 8:1.

Miss. Code Ann. § 77-7-7(e) (The term “common carrier by motor vehicle” means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or household goods.).

Compensatory Damages - See Damages

Condemnation - See Eminent Domain

Consideration - See Contract

310 Consortium

Consortium is the love, care, and companionship that one spouse gives to the other spouse.

Sources

Mississippi Model Jury Instruction - Civil 11:22.

311 Contract

A contract is an agreement between two or more people or parties. A contract consists of an offer, an acceptance of that offer, and consideration. If one of these three items is missing, then there is no contract.

An offer is a proposal to enter into a contract and has conditions or terms stated in the offer. An acceptance of that offer is an agreement to the conditions or terms stated in the offer. [If the [person/business/corporation] to [whom/which] an offer was made changes the offer in any way, then that is not an acceptance of the offer but rather a counteroffer. Unless the counteroffer is accepted, no contract has been made.]

Consideration is a benefit received or something that is given up in order to form the contract. Consideration does not have to be money, but it must be something of value.

Consideration is required in order for the contract to be enforced.

A contract may be verbal or in writing.

Sources

Mississippi Model Jury Instruction - Civil 10:2.

Colorado Jury Instructions 30:2, 30:3, 30:4, and 30:5.

Judicial Council of California Civil Jury Instruction 302.

Practice Note: In cases involving agency and capacity, this instruction would need to be modified to include language on those issues.

312 Damages

“Damages” is the word used to describe the [harm/injury/injuries] suffered by the plaintiff(s) and the amount of money that will compensate the plaintiff(s) for [that/those] [harm/injury/injuries]. There are several different types of damages.

“Actual economic damages” is the term used to describe money damages for medical expenses, a disability, lost income, property damage, and _____ [specify any other type of economic damages pursuant to § 11-1-60(1)(b)].

“Noneconomic damages” is the term used to describe money damages for physical pain, mental suffering, emotional distress, and _____ [specify any other type of noneconomic damages pursuant to § 11-1-60(1)(a)].

Actual economic damages and non-economic damages may also be referred to as compensatory damages, meaning money is awarded to the plaintiff(s) to compensate [him/her/it] for [his/her/its] [harm/injury/injuries] and make [him/her/it] whole again.

“Nominal damages” is the term used to describe a small sum of money to be awarded in certain circumstances.

“Punitive damages” is the term used to describe money damages which are meant to punish a person or party. Punitive damages also help to warn other people or parties not to act in the same or a similar way.

Sources

Mississippi Model Jury Instructions - Civil 11:1, 11:2, 11:3, 11:12, 11:13, 11:14, and 11:15.

Miss. Code Ann. § 11-1-60(1)(a) (“Noneconomic damages” means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. The term “noneconomic damages” shall not include punitive or exemplary damages.).

Miss. Code Ann. § 11-1-60(1)(b) (“Actual economic damages” means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, disabilities, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.).

Miss. Code Ann. § 11-1-60(1)(e) (The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole.).

Practice Note: The trial court should only instruct on the type(s) of damages which will be relevant in the particular case.

313 Defamation

Defamation is a claim that a [person/business/corporation] has made a defamatory

statement. A defamatory statement is the term used to describe a statement of fact that is false and harms the reputation of a person or business. The defamatory statement must have been made to someone other than the plaintiff.

There are two types of defamation claims. Slander is when the defamatory statement is verbal, and libel is when the defamatory statement is written.

Sources

Mississippi Model Jury Instruction - Civil 12:2.

Condere Corp. v. Moon, 880 So. 2d 1038, 1044 n.2 (Miss. 2004) (Defamation is defined as the act of harming the reputation of another by making a false statement to a third person.).

314 Domestic Animal

A domestic animal is an animal that is customarily owned or used by people.

Sources

See Black's Law Dictionary (9th ed. 2009) (An animal that has customarily lived peaceably with people, such as farm animals and pets.).

315 Eminent Domain

Eminent domain is the State's authority to take a [person/business/company]'s private property for a public use. The eminent domain process may also be called condemnation.

Sources

Black's Law Dictionary (9th ed. 2009) (The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.).

316 False Arrest

False arrest is when one person intentionally causes another person to be unlawfully arrested.

Sources

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 141 (Miss. Ct. App. 2008) (citations omitted) (False arrest is an intentional tort, arising when one causes another to be arrested falsely, unlawfully, maliciously and without probable cause. If there is probable cause for the charges made, then the plaintiff's arrest is supported by probable cause, and a claim for false arrest must fail. Thus, if the charges against the plaintiff were supported by probable cause, her claim for false arrest has no merit.).

317 False Imprisonment

False imprisonment is when one person holds or imprisons another person unlawfully or when one person causes another person or party to do so.

Sources

Mississippi Model Jury Instruction - Civil 13:3.

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 140 (Miss. Ct. App. 2008) (To show false imprisonment on the part of a defendant, the plaintiff must prove that she was: (1) detained and (2) that such detainment was unlawful.).

318 Fraud

Fraud is when a [person/business/corporation] intentionally makes a false statement; the statement concerns an important or material fact; the [person/business/corporation] knows or reasonably should know that the statement is false; the [person/business/corporation] intends that the [person/business/corporation] to [whom/which] the statement is made will reasonably act

upon the statement; the [person/business/corporation] to [whom/which] the statement is made does not know that the statement is false; the [person/business/corporation] to [whom/which] the statement is made relies on the statement; the [person/business/corporation] to [whom/which] the statement is made has a right to rely on the statement; and the [person/business/corporation] to [whom/which] the statement is made suffers damages as a result of [his/her/its] reliance on the statement.

Sources

State v. Bayer Corp., 32 So. 3d 496, 501 (Miss. 2010) (Elements of fraud are: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that the representation should be acted upon by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on the representation's truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.).

319 Gross Negligence - Contract Rescission Cases Only

Gross negligence is negligence of a degree so great that it shows a reckless disregard for [his/her] own rights.

Sources

Covington v. Griffin, 19 So. 3d 805, 813-14 (Miss. Ct. App. 2009) (citations omitted) (The remedy for a unilateral mistake is rescission. The supreme court has stated the following regarding a unilateral mistake: Equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent. In order to rescind a contract on the basis of a unilateral mistake, it must be shown

that: (1) the mistake is of so fundamental a character that, the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; (2) there was no gross negligence on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress; (3) no intervening rights have accrued; and (4) the parties may still be placed in status quo.).

Rotenberry v. Hooker, 864 So. 2d 266, 271 (Miss. 2003) (citations omitted) (In Mississippi, equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent: But where the mistake is of so fundamental a character, that the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; and there was no gross negligence on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress; and no intervening rights have accrued; and the parties may still be placed in status quo; equity will interfere, in its discretion, in order to prevent intolerable injustice. This is the clearly defined and well established rule upon the subject, in courts of equity, both in England and America.).

Paracelsus Health Care Corp. v. Willard, 754 So. 2d 437, 447 (Miss. 1999) (citations omitted) ([A prior version of] Section 11-1-65(2)(a) state[d] that the provisions of this section shall not apply to contracts. The issue of punitive damages in suits for tortious breach of contract is instead governed by common law. Although punitive damages are not ordinarily recoverable in cases involving breach of contract, they are recoverable where the breach results from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an independent tort. Before punitive damages can be recovered, the plaintiff must prove by a preponderance of the

evidence that the defendant acted with (1) malice or (2) gross negligence or reckless disregard for the rights of others.).

320 Gross Negligence - Non-Punitive Damages Cases

Gross negligence is negligence of a degree so great that it shows a reckless disregard for the safety and/or rights of others.

Sources

Dame v. Estes, 233 Miss. 315, 318, 101 So. 2d 644 (1958) (There is no precise definition of gross negligence, but one of the approximate definitions may be thus expressed: Gross negligence is that course of conduct which, under the particular circumstances, discloses a reckless indifference to consequences without the exertion of any substantial effort to avoid them.).

Delker v. State, 50 So. 3d 300, 308 (Miss. 2010) (citation omitted) (Chandler, J., dissenting) (This Court has defined gross negligence as that course of conduct which, under the particular circumstances, discloses a reckless indifference to consequences without the exertion of any substantial effort to avoid them.).

Judicial Council of California Civil Jury Instruction 425.

Michigan Non-Standard Jury Instruction - Civil 17:7.

321 Gross Negligence - Punitive Damages Standard

Gross negligence shows a willful, wanton, or reckless disregard for the safety of others.

Sources

Miss. Code Ann. § 11-1-65 (Gross negligence which evidences a willful, wanton or reckless disregard for the safety of others. . . .).

322 Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress is when a [person/business/corporation] intentionally acts in an extreme and outrageous way and causes someone to have emotional distress.

Sources

Black's Law Dictionary (9th ed. 2009) (The tort of intentionally or recklessly causing another person severe emotional distress through one's extreme or outrageous acts.).

323 Intentional Interference with a Contract

Intentional interference with a contract is when a [person/business/corporation] intentionally interferes with and disrupts a party's performance required under a valid and enforceable contract. The [person/business/corporation]'s interference must be a harmful act with no justification or excuse. The intentional interference with the contract must cause damages to one party in the contract.

Sources

Mississippi Model Jury Instruction - Civil 10:18.

Scruggs, Millette, Bozeman & Dent, P.A. v. Merkel & Cocke, P.A., 910 So. 2d 1093, 1098 n.3 (Miss. 2005) (A party to a contract cannot be legally responsible for intentional interference with a contract.).

324 Invasion of Privacy

An invasion of privacy occurs when someone intentionally intrudes on a person's right to privacy or seclusion. An invasion of privacy occurs when someone intentionally uses a person's likeness or photograph for business purposes without [his/her] permission. An invasion of

privacy occurs when someone intentionally and publicly discloses private information about a person without [his/her] permission. An invasion of privacy occurs when someone intentionally and publicly [places/represents] a person in a false [light/way]. The invasion of privacy must cause a person to be embarrassed or disgraced, to feel harassed, to lose [his/her] job, to lose friends, or to be in physical danger.

Sources

Brasel v. Hair Co., 976 So. 2d 390, 392 (Miss. Ct. App. 2008) (citations omitted) (Four theories are recognized for the tort of invasion of privacy. These are: “(1) the intentional intrusion upon the solitude or seclusion of another; (2) the appropriation of another's identity for an unpermitted use, (3) the public disclosure of private facts, and (4) holding another to the public eye in a false light.”).

Harmon v. Regions Bank, 961 So. 2d 693, 698 (Miss. 2007) (citations omitted) (This Court adopted the definition of “invasion of privacy” as occurring “when disclosure would subject a person to embarrassment, harassment, physical danger, disgrace, or loss of employment or friends.”).

Practice Note: The trial court should instruct the jury only on the theory (or theories) being alleged by the plaintiff when reading this instruction to the jury.

325 Invitee

An invitee is a person who goes onto [a/another] [person/business/corporation/organization]’s property for both the invitee’s benefit and the property owner’s benefit. The invitee goes onto the property as a result of the property owner’s express or implied invitation.

A business invitee is a person who goes onto and remains on a business's property by express or implied invitation for a purpose related to the business. A store customer is a business invitee.

A public invitee is a person who goes onto [a/another] [person/business/corporation/organization]'s property by express or implied invitation as a member of the public for a purpose which is related to why the property is open to the public. A person attending church is a public invitee.

Source

Mississippi Model Jury Instruction - Civil 16:8.

Hudson v. Courtesy Motors, Inc., 794 So. 2d 999, 1003 (Miss. 2001) (An invitee is defined as a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage.).

Martin v. B.P. Exploration & Oil, Inc., 769 So. 2d 261, 264 (Miss. Ct. App. 2000) (citations omitted) (The Mississippi Supreme Court delineated between the definitions of a business and public invitee. A business invitee is one who is invited to enter or remain on the premises for a purpose connected with the business, while a public invitee is characterized as one who is invited to enter or remain on the premises as member of the public for a purpose for which the land is held open to the public.).

326 Legal Malpractice

Legal malpractice is when an attorney does not act with the same knowledge, skill, and ability of a reasonable attorney practicing law in the community. This is also called legal negligence.

Sources

Mississippi Model Jury Instruction - Civil 14:1.

Libel - See Defamation

327 Licensee

A licensee is a person who goes onto [a/another] [person/business/corporation/organization]’s property for [his/her] own benefit or convenience. The licensee goes onto the property with the property owner’s consent or permission.

Sources

Mississippi Model Jury Instruction - Civil 16:1.

Hudson v. Courtesy Motors, Inc., 794 So. 2d 999, 1003 (Miss. 2001) (A licensee, on the other hand, is defined as a person who enters upon the property of another for his own convenience, pleasure or benefit pursuant to the license or implied permission of the owner.).

328 Malice

Malice is when a [person/business/corporation] intentionally does something wrong without having a valid reason or excuse.

Sources

Harmon v. Regions Bank, 961 So. 2d 693, 699 (Miss. 2007) (citations omitted) (Malice, in its legal sense, means a wrongful act done intentionally, without just cause or excuse. Malice in law is not necessarily personal hate or ill will, but it is “the intent, without justification or excuse, to commit a wrongful act.”).

329 Malicious Prosecution

Malicious prosecution is when a [person/business/corporation] intentionally brings a civil

or criminal case against [a/another] person without a reasonable basis for the case. The [person/business/corporation] [who/which] brings the case must have either acted with hatred or malice against the accused person or brought the case for a purpose other than bringing [him/her] to justice.

Sources

Woolfolk v. Tucker, 485 So. 2d 1039, 1043 (Miss. 1986) (citations omitted) (For purposes of a malicious prosecution action, the term “malice” is used in an artificial and legal sense and simply means the prosecution was instituted primarily because of a purpose other than that of bringing an offender to justice. In order to have probable cause for criminal prosecution, the prosecutor must have (1) an honest belief in the guilt of the person accused, and (2) reasonable grounds for such belief.).

330 Medical Malpractice

Medical malpractice is when a [medical doctor/physician] does not act with the same attention, skill, ability, and caution of a minimally competent [medical doctor/physician] who practices in the same medical specialty or general field of medicine in the United States. This is also called medical negligence.

Sources

Mississippi Model Jury Instruction - Civil 14:4.

Motorcycle - See Rules of the Road

Motor Vehicle - See Rules of the Road

331 Negligence

Negligence is doing something that a reasonably careful [person/business/corporation]

would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Sources

Mississippi Model Jury Instruction - Civil 15:1.

Nebraska Jury Instructions - Civil 2d 3.02.

Nominal Damages - See Damages

Noneconomic Damages - See Damages

Offer - See Contract

332 Outrageous Conduct

Conduct is outrageous when it is so extreme that it goes beyond all possible bounds of decency. Conduct is outrageous if a reasonable person would consider the conduct shocking and completely unacceptable in a civilized community.

Sources

Riley v. F.A. Richard & Associates, Inc., 16 So. 3d 708, 719 (Miss. Ct. App. 2009) (citations omitted) (Finally, Riley claims the actions of Defendants caused him severe mental and emotional distress and anguish. Riley must establish that the Defendants' conduct through this ex parte meeting was wanton and willful and evoked outrage or revulsion. Generally, “meeting the requisites of a claim for intentional infliction of emotional distress is a tall order in Mississippi.” The severity of the acts must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”).

333 Preponderance of the Evidence

A preponderance of the evidence means that a fact is more likely true than not true.

Sources

Mississippi Model Jury Instruction - Civil 1:28.

Judicial Council of California Civil Jury Instruction 200.

334 Principal

A principal authorizes another person to act on behalf of the principal. The term principal includes an employer.

Sources

Mississippi Model Jury Instruction - Civil 4:1.

335 Private or Contract Carriers

A private or contract carrier is a [person/business/corporation/service] [who/which] enters into a contract to carry or transport people or property for money.

Sources

Mississippi Model Jury Instruction - Civil 8:2.

Miss. Code Ann. § 77-7-7(f) (The term “contract carrier by motor vehicle” means any person, not included under subsection (e) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or household goods.).

Public Invitee - See Invitee

Punitive Damages - See Damages

336 Reckless Disregard

Conduct is reckless when a person knows that a risk of emotional distress would probably

result from [his/her] conduct and then disregards that risk and the harm that may occur as a result.

Sources

City of Laurel v. Williams, 21 So. 3d 1170, 1175 (Miss. 2009) (citations omitted) (Reckless disregard occurs when the conduct involved evinced not only some appreciation of the unreasonable risk involved, but also a deliberate disregard of that risk and the high probability of harm involved.).

Judicial Council of California Civil Jury Instruction 1603.

337 Rules of the Road

A vehicle is any device which carries a person or property on a [highway/road].

A motor vehicle is any vehicle which is propelled by its own [engine/motor].

A motorcycle is any motor vehicle which has a seat for the driver and is not designed to ride on more than three wheels on the [ground/highway/road].

An authorized emergency vehicle is any fire department vehicle, police vehicle, 911 Emergency Communications District vehicle, ambulance, EMS vehicle, municipal emergency vehicle, or a designated public service emergency vehicle.

Sources

Mississippi Model Jury Instruction - Civil 19:11.

Miss. Code Ann. § 63-3-103.

Slander - See Defamation

338 Social Guest

A social guest is a person who goes onto (and remains on) another person's property at

the property owner's invitation to enjoy hospitality or for a visit. There is no financial benefit for the property owner by the social guest's presence. A social guest is a licensee.

Sources

Mississippi Model Jury Instruction - Civil 16:3.

339 Trespasser

A trespasser is a person who unlawfully goes onto [a/another] [person/business/corporation/organization]'s property without the property owner's permission.

Sources

Mississippi Model Jury Instruction - Civil 16:4.

Vehicle - See Rules of the Road

340 Wild Animal

A wild animal is an animal that is not usually domesticated or an animal that is not customarily used by people.

Sources

Mississippi Model Jury Instruction - Civil 5:1.

Practice Note: For cases which have defined wild animals, see *Rosenbloom v. Hanour Corp.*, 78 Cal. Rptr. 2d 686, 687 (Cal. Ct. App. 1998) (Strict liability has been imposed on keepers of lions, tigers, bears, elephants, wolves, and monkeys.) and *Deluca v. Whitemarsh Township*, 526 A.2d 456, 458 (Pa. Commw. Ct. 1987) (A Pennsylvania state law defines "wildlife" as "all bears, coyotes, lions, tigers, leopards, jaguars, cheetahs, cougars, wolves, and any crossbreed of such animals which have similar characteristics of the animals specified herein.").

341 Wrongful Death Claim

Wrongful death is the claim that occurs when a person dies as a result of a wrongdoer's actions or inactions, and the deceased person would have been able to sue the wrongdoer for damages. A wrongful death claim is brought by the deceased person's personal representative.

Sources

Mississippi Model Jury Instructions - Civil 11:23.

Miss. Code Ann. § 11-7-13.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 6 Accord and Satisfaction

600 Accord and Satisfaction - Definition

Accord and satisfaction is when two parties agree that something of value will be given and accepted in order to satisfy a prior debt or obligation.

Sources

United Amer. Ins. Co. v. Merrill, 978 So. 2d 613, 625 (Miss. 2007) (This Court has defined the elements of accord and satisfaction as: (1) Something of value offered in full satisfaction of a demand; (2) accompanied by acts and declarations as amount to a condition that if the thing offered is accepted, it is accepted in satisfaction; (3) the party offered the thing of value is bound to understand that if he takes it, he takes subject to such conditions; and (4) the party actually does accept the item.).

601 Accord and Satisfaction - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [his/her/its] debt or obligation to [name of plaintiff] has been satisfied due to accord and satisfaction. To establish this claim, [name of defendant] must prove all of the following are more likely true than not:

1. [Name of defendant] [gave/offered/performed/other action] [a/an/the] _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction] to [name of plaintiff] to fully satisfy [name of defendant]'s _____ [specify the prior debt or obligation];
2. [Name of defendant] [gave/offered/performed/other action] the _____ [specify

the thing of value allegedly given by the defendant in accord and satisfaction] to [name of plaintiff] with the condition or understanding that the _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction] would fully satisfy [name of defendant]'s _____ [specify the prior debt or obligation];

3. [Name of plaintiff] [knew/understood/other action] that if [he/she/it] accepted the _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction], then [name of defendant]'s _____ [specify the prior debt or obligation] would be satisfied; and

4. [Name of plaintiff] accepted [name of defendant]'s _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction].

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] [give/offer/perform/other action] [a/an/the] _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction] to [name of plaintiff] to fully satisfy [name of defendant]'s _____ [specify the prior debt or obligation]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] [give/offer/perform/other action] the _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction] to [name of plaintiff] with the condition or understanding that it would fully satisfy [name of defendant]'s

_____ [specify the prior debt or obligation]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] [know/understand/other action] that if [he/she/it] accepted the _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction], that [name of defendant]'s _____ [specify the prior debt or obligation] would be satisfied?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] accept [name of defendant]'s _____ [specify the thing of value allegedly given by the defendant in accord and satisfaction]?

YES _____ NO _____

If your answers to questions 1-4 are YES, then you must find in favor of [name of defendant] on [his/her/its] claim of accord and satisfaction.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 3:1.

Judicial Council of California Civil Jury Instruction VF-1504.

See Mississippi Rule of Civil Procedure 8(c) (Accord and satisfaction is an affirmative defense).

Proposed Plain Language Model Jury Instructions - Civil

Chapter 7 Contracts

A. General Instructions

700 Contract - Definition

A contract is an agreement between two or more people or parties. A contract consists of an offer, an acceptance of that offer, and consideration. If one of these three items is missing, then there is no contract.

An offer is a proposal to enter into a contract and has conditions or terms stated in the offer. An acceptance of that offer is an agreement to the conditions or terms stated in the offer. [If the [person/business/corporation] to [whom/which] an offer was made changes the offer in any way, then that is not an acceptance of the offer but rather a counteroffer. Unless the counteroffer is accepted, no contract has been made.]

Consideration is a benefit received or something that is given up in order to form the contract. Consideration does not have to be money, but it must be something of value.

Consideration is required in order for the contract to be enforced.

A contract may be verbal or in writing.

Sources

Mississippi Model Jury Instruction - Civil 10:2.

Colorado Jury Instructions 30:2, 30:3, 30:4, and 30:5.

Judicial Council of California Civil Jury Instruction 302.

Practice Note: In cases involving agency and capacity, this instruction would need to be modified to include language on those issues.

701 Contracts - Breach of a Contract - Definition

A breach of a contract is when one party fails to perform all or some of [his/her/its] duties required by the contract.

Sources

Black's Law Dictionary (9th ed. 2009) (Violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.).

702 Contracts - Interpreting All Parts of a Contract

A contract is interpreted in a way to enforce the binding parts of the contract. The contract is to be interpreted based on the whole contract unless it would be unfair and unreasonable to do so.

Sources

Mississippi Model Jury Instruction - Civil 10:14.

703 Contracts - Interpreting in a Way to Enforce the Parties' Intentions

If possible, a contract should be interpreted in a way to enforce the parties' intentions. You should look at the language in the contract to decide what the parties' intentions were. If the contract does not address an important condition or term, then you can look to evidence outside the contract. A word in a contract should be interpreted using its ordinary and usual meaning unless the contract makes it clear that there is a legal or technical meaning to the word.

Sources

Mississippi Model Jury Instruction - Civil 10:15.

704 Contracts - Interpreted Against the Party Which Wrote the Contract

A contract is interpreted more strictly against the party which wrote the contract. If there

are conditions or terms in a contract that may reasonably be interpreted or understood to have more than one meaning, then those conditions or terms are interpreted against the party which wrote the contract.

Sources

Mississippi Model Jury Instruction - Civil 10:16.

705 Contracts - Agreement to Put Contract in Writing

A contract can be enforced even if it has not been put in writing. If the parties agree to all of the important conditions and terms, then the verbal contract can be enforced even if the parties had agreed to put the contract in writing. [However, if the parties agreed that the contract would not be enforceable until it was put in writing, then the verbal contract cannot be enforced.]

Sources

Mississippi Model Jury Instruction - Civil 10:10.

706 Contracts - Lack of Understanding of the Conditions and Terms

A contract is enforceable if the important conditions and terms of the contract can be determined by looking at the contract as a whole, and at the circumstances when the parties entered into the contract. Even if all of the conditions and terms cannot be defined or understood, the contract can still be enforced. If you find that it is more likely true than not true that the important conditions and terms of the contract between [name of plaintiff] and [name of defendant] can be defined or understood, then the contract can be enforced. However, if you find that it is more likely true than not true that the important conditions and terms of the contract between [name of plaintiff] and [name of defendant] cannot be defined or understood, then the contract cannot be enforced.

Sources

Mississippi Model Jury Instruction - Civil 10:8.

B. Specific Contract Actions

707 Contracts - Breach of Contract - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] breached a contract to _____ [describe the subject matter of the contract] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] and [name of defendant] entered into a contract to _____ [describe the subject matter of the contract];
2. [Name of plaintiff] [performed/was prepared to perform] _____ [describe plaintiff's duties under the contract];
3. [Name of defendant] failed to _____ [describe the defendant's actions which constitute the alleged breach];
4. [Name of defendant]'s failure to _____ [describe the defendant's actions which constitute the alleged breach] was a [material/significant] breach of the contract; and
5. [Name of plaintiff] suffered damages as a result of [name of defendant]'s breach of the contract.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of defendant] enter into a contract to _____

[describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2A. Did [name of plaintiff] perform _____ [describe plaintiff's duties under the contract]?

OR

2B. Was [name of plaintiff] prepared to perform _____ [describe plaintiff's duties under the contract]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to _____ [describe the defendant's actions which constitute the alleged breach]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s failure to _____ [describe the defendant's actions which constitute the alleged breach] a [material/significant] breach of the contract?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s breach of the contract?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Judicial Council of California Civil Jury Instruction 303.

Colorado Jury Instruction 30:1.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

708 Contracts - Cancellation for Material Breach

Statement of Law

A party to a contract has the right to cancel that contract if the other party [materially/significantly] breaches the contract. A breach is [material/significant] (1) if it is a failure to do an important part of the contract or (2) if it defeats the purpose of the contract.

General Instruction

[Name of plaintiff or canceling party] claims that [he/she/it] had the right to cancel the contract to _____ [describe the subject matter of the contract] because [name of defendant] [materially/significantly] breached the contract. To establish this claim, [name of plaintiff or canceling party] must prove all of the following are more likely true than not true:

1. [Name of plaintiff or canceling party] and [name of defendant] entered into a contract to _____ [describe the subject matter of the contract];

2. [Name of defendant] [materially/significantly] breached the contract by _____ [describe defendant's actions which constituted the alleged breach];

3A. [Name of defendant]'s breach was a failure to do an important part of the contract;

OR

3B. [Name of defendant]'s breach defeated the purpose of the contract; and

4. As a result of [name of defendant]'s breach, [name of plaintiff or canceling party] had the right to cancel the contract.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff or canceling party] and [name of defendant] enter into a contract to _____ [describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] [materially/significantly] breach the contract by _____ [describe defendant's actions which constitute the alleged breach]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3A. Was [name of defendant]'s breach a failure to do an important part of the contract?

OR

3B. Did [name of defendant]'s breach defeat the purpose of the contract?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff or canceling party] have the right to cancel the contract as a result of [name of defendant]'s breach?

YES _____ NO _____

If your answers to questions 1-4 are YES, then you must find in favor of [name of plaintiff or canceling party] on [his/her/its] claim to cancel the contract.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 10:1.

709 Contracts - No Completion Date Allows Either Party to Cancel the Contract

Statement of Law

If a contract does not have a specific date when it is to be completed or finished, then either party may decide to cancel the contract at any time.

General Instruction

[Name of plaintiff or canceling party] claims that [he/she/it] had the right to cancel the contract to _____ [describe the subject matter of the contract] because the contract did not have a specific date when the contract was to be completed or finished. To establish this claim, [name of plaintiff or canceling party] must prove all of the following are

more likely true than not true:

1. [Name of plaintiff or canceling party] and [name of defendant] entered into a contract to _____ [describe the subject matter of the contract]; and
2. The contract did not have a specific date when the contract was to be completed or finished.

Verdict Form

1. Did [name of plaintiff or canceling party] and [name of defendant] enter into a contract to _____ [describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the contract have a specific date when the contract was to be completed or finished?

YES _____ NO _____

If you answered NO to question 2 and YES to question 1, then you must find in favor of [name of plaintiff or canceling party] on [his/her/its] claim to cancel the contract.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 10:7.

710 Contracts - Act of God Is No Excuse for Breach or Failure to Perform

Statement of Law

A natural disaster or an act of God does not excuse a party from performing [his/her/its] duties as required by a contract, unless there is a specific condition or term in the contract that excuses the party from [his/her/its] duties under those circumstances. This is so even if the

natural disaster or the act of God makes it impossible for the party to perform the contract.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to perform [his/her/its] duties under a contract to _____ [describe the subject matter of the contract] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] and [name of defendant] entered into a contract to _____ [describe the subject matter of the contract];
2. The contract did not have a condition or term that excused [name of defendant] from performing [his/her/its] duties if a natural disaster or an act of God occurred which made it impossible for [him/her/it] to perform;
3. A natural disaster or an act of God, specifically a _____ [describe the natural disaster or act of God], occurred which made it impossible for [name of defendant] to perform [his/her/its] duties under the contract because _____ [describe reason it was impossible to perform];
4. [Name of defendant] failed to _____ [describe defendant's alleged failure to perform duties]; and
5. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to perform [his/her/its] duties under the contract.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of defendant] enter into a contract to _____

[describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the contract have a condition or term that excused [name of defendant] from performing [his/her/its] duties if a natural disaster or an act of God occurred which made it impossible for [him/her/it] to perform?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Did a natural disaster or an act of God, specifically a _____ [describe the natural disaster or act of God], occur which made it impossible for [name of defendant] to perform [his/her/its] duties under the contract because _____ [describe reason it was impossible to perform]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] fail to _____ [describe defendant's alleged failure to perform duties]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to perform [his/her/its] duties under the contract?

YES _____ NO _____

If your answers to questions 1, 3, 4, and 5 are YES and your answer to question 2 is NO, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 10:3.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

C. Affirmative Defenses

711 Contracts - Based on False Statements

Statement of Law

A contract based on one party's false statements cannot be enforced. If the false statements were intentionally made to get the other party to agree to the contract, and they concerned important conditions or terms in the contract, then the contract cannot be enforced.

The other party must have relied on those false statements in deciding to enter into the contract.

General Instruction

[Name of defendant] claims that [name of plaintiff or party allegedly making false statements] intentionally made false statements to [name of defendant] to get [him/her/it] to enter into the contract and that [name of defendant] is not legally responsible for any alleged breach of

contract. To establish this claim, [name of defendant] must prove all of the following are true by clear and convincing evidence:

1. [Name of plaintiff or party allegedly making false statements] intentionally made false statements concerning _____ [describe the false statements] to [name of defendant];
2. [Name of plaintiff or party allegedly making false statements] knew that the statements were false, and [he/she/it] made them to get [name of defendant] to enter into the contract;
3. The false statements concerned important conditions or terms in the contract; and
4. [Name of defendant] relied on those false statements in deciding to enter into the contract.

Definition(s) in this Instruction:

In this instruction, “clear and convincing evidence” means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party’s [claim/claims] [is/are] true.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff or party allegedly making false statements] intentionally make false statements concerning _____ [describe the false statements] to [name of defendant]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff.

2. Did [name of plaintiff or party allegedly making false statements] know the statements were false, and did [he/she/it] make them to get [name of defendant] to enter into the contract?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the false statements concern important conditions or terms in the contract?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] rely on those false statements in deciding to enter into the contract?

YES _____ NO _____

If your answers to questions 1-4 are YES, then you must find in favor of [name of defendant] on [his/her/its] claim that the contract was made based on intentionally false statements.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 10:12.

712 Contracts - Made Under Duress

Statement of Law

Duress occurs when one party did not act on [his/her/its] own free will in entering into the contract. Duress also requires that the other party to the contract must have caused the

complaining party's lack of free will. Duress does not occur when one party insists on a condition, term, or legal right to be included in a contract, and the other party reluctantly agrees.

Duress is a defense to a breach of a contract claim. A contract entered into under duress is not legally enforceable.

General Instruction

[Name of defendant] claims that [he/she/it] entered into the contract with [name of plaintiff] under duress and that [he/she/it] is not legally responsible to [name of plaintiff] for any alleged breach of the contract. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. At the time [name of defendant] and [name of plaintiff] entered into the alleged contract, [name of defendant] was not acting on [his/her/its] own free will; and
2. [Name of plaintiff] caused [name of defendant]'s lack of free will by _____ [describe plaintiff's alleged actions leading to duress].

Verdict Form

We answer the questions submitted to us as follows:

1. At the time [name of defendant] and [name of plaintiff] entered into the alleged contract, was [name of defendant] acting on [his/her/its] own free will?

YES _____ NO _____

If your answer to question 1 is NO, then answer question 2. If you answered YES, stop here and tell the bailiff.

2. Did [name of plaintiff] cause [name of defendant]'s lack of free will by _____ [describe plaintiff's alleged actions leading to duress]?

YES _____ NO _____

If you answered YES to question 2 and NO to question 1, then you must find in favor of [name of defendant] on [his/her/its] claim of duress.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 10:13.

Colorado Jury Instruction 30:20.

713 Contracts - Rescind the Contract Due to an Important Mistake

Statement of Law

A contract cannot be cancelled just because one party made a simple and unimportant mistake. However, a contract may be cancelled if one party made such a serious and important mistake that it means that there was no true agreement between the parties or that the other party would receive a great benefit unfairly. As long as the party which made the serious and important mistake did not act with gross negligence in making the mistake, then the contract can be cancelled. Gross negligence is negligence of a degree so great that it shows a reckless disregard for [his/her] own rights.

General Instruction

[Name of defendant] claims that [he/she/it] made a serious and important mistake in entering into the contract with [name of plaintiff] and that [he/she/it] is not legally responsible to [name of plaintiff] for any alleged breach of the contract. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] and [name of defendant] entered into a contract to _____

[describe the subject matter of the contract];

2. [Name of defendant] made a serious and important mistake in entering into the contract by

_____ [describe defendant's actions which constitute the alleged mistake];

3. The mistake is so serious and important that there was no true agreement between [name of plaintiff] and [name of defendant] or that [name of plaintiff] would receive a great benefit unfairly; and

4. [Name of defendant] did not act with gross negligence in making the serious and important mistake.

Definition(s) in this Instruction:

In this instruction, "gross negligence" means negligence of a degree so great that it shows a reckless disregard for [his/her] own rights.

In this instruction, "negligence" means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of defendant] enter into a contract to

_____ [describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] make a serious and important mistake in entering into the contract by _____ [describe defendant's actions which constitute the alleged mistake]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the mistake so serious and important that there was no true agreement between [name of plaintiff] and [name of defendant] or that [name of plaintiff] would receive a great benefit unfairly?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] act with gross negligence in making the serious and important mistake?

YES _____ NO _____

If your answer to question 4 is YES, then stop here and tell the bailiff. If your answers to questions 1-3 are YES and your answer to question 4 is NO, then you may find in favor of [name of defendant] on [his/her/its] claim of mistake and allow [name of defendant] to cancel the contract.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 10:4.

Covington v. Griffin, 19 So. 3d 805, 813-14 (Miss. Ct. App. 2009) (citations omitted) (The remedy for a unilateral mistake is rescission. The supreme court has stated the following regarding a unilateral mistake: Equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent. In order to rescind a contract on the basis of a unilateral mistake, it must be shown that: (1) the mistake is of so fundamental a character that, the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; (2) there was no gross negligence on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress; (3) no intervening rights have accrued; and (4) the parties may still be placed in status quo.).

Rotenberry v. Hooker, 864 So. 2d 266, 271 (Miss. 2003) (citations omitted) (In Mississippi, equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent: But where the mistake is of so fundamental a character, that the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; and there was no gross negligence on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress; and no intervening rights have accrued; and the parties may still be placed in status quo; equity will interfere, in its discretion, in order to prevent intolerable injustice. This is the clearly defined and well established rule upon the subject, in courts of equity, both in England

and America.).

Paracelsus Health Care Corp. v. Willard, 754 So. 2d 437, 447 (Miss. 1999) (citations omitted)

([A prior version of] Section 11-1-65(2)(a) state[d] that the provisions of this section shall not apply to contracts. The issue of punitive damages in suits for tortious breach of contract is instead governed by common law. Although punitive damages are not ordinarily recoverable in cases involving breach of contract, they are recoverable where the breach results from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an independent tort. Before punitive damages can be recovered, the plaintiff must prove by a preponderance of the evidence that the defendant acted with (1) malice or (2) gross negligence or reckless disregard for the rights of others.).

714 Contracts - Unenforceable If It Is Unfairly Oppressive (Substantive Unconscionability)

A contract cannot be enforced if it is unfairly oppressive. To determine if a contract is unfairly oppressive, you must decide if a reasonable person would have agreed to that contract and if an honest and fair person would have accepted that contract. The fact that one party may have better conditions or terms than the other party does not make a contract unfairly oppressive. Also, the fact that one party's decision to enter the contract was not a wise decision is not enough to make the contract unfairly oppressive. Rather, a contract is unfairly oppressive if only one party receives all the benefits specified in the contract, or only one party has a legal right under the contract.

Sources

Mississippi Model Jury Instruction - Civil 10:5.

Covenant Health & Rehabilitation v. Estate of Moulds, 14 So. 3d 695, 699-700 (Miss. 2009)

(citations omitted) (Unconscionability can be procedural or substantive. Under substantive unconscionability, we look within the four corners of an agreement in order to discover any abuses relating to the specific terms which violate the expectations of, or cause gross disparity between, the contracting parties. Substantive unconscionability is proven by oppressive contract terms such that there is a one-sided agreement whereby one party is deprived of all the benefits of the agreement or left without a remedy for another party's nonperformance or breach. One example of a one-sided agreement is one that allows one party to go to court, but restricts the other to arbitration.).

Miss. Code Ann. § 75-2-302(1) (If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.).

715 Contracts - Unenforceable If It Was Not Entered into Fairly or Without Knowing and Understanding the Terms and Conditions (Procedural Unconscionability)

A contract may not be enforced if (1) one party did not have the opportunity to know all of the terms and conditions of the contract; (2) one party did not enter into the contract voluntarily; (3) the contract had very small and unreadable print; (4) the contract had legal language which was hard to understand; (5) the two or more parties did not have the same bargaining power or knowledge about forming contracts; and/or (6) one party did not have a chance to study the contract and ask questions about its conditions and terms. To decide if a contract cannot be enforced because of one of these reasons, you must look to the circumstances

of when the parties entered into the contract.

Sources

Mississippi Model Jury Instruction - Civil 10:6.

Community Care Center v. Mason, 966 So. 2d 220, 229 (Miss. Ct. App. 2007) (citations omitted)

(Procedural unconscionability may be proved by showing a lack of knowledge, lack of voluntariness, inconspicuous print, the use of complex legalistic language, disparity in sophistication or bargaining power of the parties and/or a lack of opportunity to study the contract and inquire about the contract terms. Procedural unconscionability looks beyond the substantive terms which specifically define a contract and focuses on the circumstances surrounding a contract's formation.).

716 Contracts - Both Parties Must Agree to Be Bound by the Contract

If both parties to a contract have not acted in a way that shows that they both agreed to be bound by the contract, then the contract cannot be enforced. To decide if the parties have both acted in a way that shows that they agreed to be bound by the contract, you should look at how the parties have acted or what they have said about the contract. If you find that it is more likely true than not true that [name of plaintiff] and [name of defendant] have acted in a way that shows that they both agreed to be bound by the contract to _____ [describe the subject matter of the contract], then the contract can be enforced. However, if you find that it is more likely true than not true that [name of plaintiff] and [name of defendant] have not acted in a way that shows that they both agreed to be bound by the contract to _____ [describe the subject matter of the contract], then the contract cannot be enforced.

Sources

Mississippi Model Jury Instruction - Civil 10:9.

717 Contracts - Not Reading a Contract Cannot Be Used as a Defense

A contract can be enforced even if one party signed the contract but did not read the contract, did not have someone read the contract to [him/her] or own its behalf, or thought that the contract contained different conditions or terms than those actually in the contract. However, if the other party acted in a way as to make the complaining party not read the contract or have it read to [him/her], then the contract may not be enforced.

Sources

Mississippi Model Jury Instruction - Civil 10:11.

D. Tort - Intentional Interference with a Contract

718 Intentional Interference with a Contract - Definition

Intentional interference with a contract is when a [person/business/corporation] intentionally interferes with and disrupts a party's performance required under a valid and enforceable contract. The [person/business/corporation]'s interference must be a harmful act with no justification or excuse. The intentional interference with the contract must cause damages to one party in the contract.

Sources

Mississippi Model Jury Instruction - Civil 10:18.

Scruggs, Millette, Bozeman & Dent, P.A. v. Merkel & Cocke, P.A., 910 So. 2d 1093, 1098 n.3

(Miss. 2005) (A party to a contract cannot be legally responsible for intentional interference with a contract.).

719 Intentional Interference with a Contract - General Instruction and Verdict Form

[Name of plaintiff] claims that [name of defendant] intentionally interfered with a contract between [name of plaintiff] and [name of other contracting party] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] and [name of other contracting party] entered into a valid and enforceable contract to _____ [describe the subject matter of the contract];

2. [Name of defendant] knew or should have known about the contract;

3. [Name of defendant] intentionally and harmfully acted with no justification or excuse to interfere with [name of other contracting party]'s performance of the contract by

_____ [describe the defendant's actions to allegedly interfere];

4A. [Name of defendant]'s interference prevented [name of other contracting party]'s performance of the contract;

OR

4B. [Name of defendant]'s interference caused [name of other contracting party] to breach the contract; and

5. [Name of other contracting party] would have performed the contract if not for [name of defendant]'s intentional interference;

6. [Name of plaintiff] suffered damages as a result of [name of other contracting party]'s failure to perform or breach of the contract; and

7. [Name of defendant]'s intentional interference with the contract was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of other contracting party] enter into a valid and enforceable contract to _____ [describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] know or should [name of defendant] have known about the contract?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] intentionally and harmfully act with no justification or excuse to interfere with [name of other contracting party]'s performance of the contract by

_____ [describe the defendant's actions to allegedly interfere]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4A. Did [name of defendant]'s interference prevent [name of other contracting party]'s performance of the contract?

OR

4B. Did [name of defendant]'s interference cause [name of other contracting party] to breach the contract?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Would [name of other contracting party] have performed the contract if not for [name of defendant]'s intentional interference?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Did [name of plaintiff] suffer damages as a result of [name of other contracting party]'s failure to perform or breach of the contract?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of defendant]'s intentional inference with the contract a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instructions - Civil 10:19, 10:20, and 10:21.

Scruggs, Millette, Bozeman & Dent, P.A. v. Merkel & Cocke, P.A., 910 So. 2d 1093, 1098-99

(Miss. 2005) (citations omitted) (In order to prevail on a claim for intentional interference with contract, a plaintiff must establish (1) that the acts were intentional and willful; (2) that they were calculated to cause damage to the plaintiff in his/her lawful business; (3) that they were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant (which acts constitute malice); and (4) that actual damage or loss resulted. . . . [Other states] require that an additional element be shown in order to prove intentional interference with a contract, and we find that this additional element is impliedly required by Mississippi courts. [Other states] require a showing that the defendant's acts were the proximate cause of the loss or damage suffered by the plaintiff. . . . For intent to be implied, a plaintiff must show that the defendant knew of the existence of a contract and did a wrongful act without legal or social justification that he was certain or substantially certain would result in interference with the contract.)

Par Industries, Inc. v. Target Container Co., 708 So. 2d 44, 48 (Miss. 1998) (citations omitted)

(When a person causes another to breach a contract with some third person, the tort is one of interference with performance of a contract. The four elements for this tort are: (1) that the acts were intentional and willful; (2) that they were calculated to cause damage to the plaintiffs in their lawful business; (3) that they were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice); and (4) that actual damage and loss resulted. The plaintiff must prove that an enforceable obligation existed between the plaintiff and another party. In addition, the plaintiff must prove

that the contract would have been performed but for the alleged interference.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

721 Intentional Interference with a Contract - Affirmative Defense - Justification or Excuse for Interference with a Contract (No Malice)

Statement of Law

If a [person/business/corporation] has a legitimate [excuse/justification/reason] for interfering with a contract, then that [person/business/corporation] is not legally responsible for damages suffered as a result of the interference.

General Instruction

[Name of defendant] claims that [he/she/it] had a legitimate justification or reason for interfering with the contract between [name of plaintiff] and [name of other contracting party] and that [name of defendant] is not legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] and [name of other contracting party] entered into a valid and enforceable contract to _____ [describe the subject matter of the contract];

2. [Name of defendant] did _____ [describe defendant's actions which allegedly interfered with the contract];

3A. [Name of defendant] was justified in acting in a way which interfered with the contract because _____ [describe the reason the defendant was justified];

OR

3B. [Name of defendant] had a legitimate excuse or reason in acting in a way which interfered

with the contract because _____ [describe the reason the defendant was excused].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of other contracting party] enter into a valid and enforceable contract to _____ [describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] _____ [describe defendant's actions which allegedly interfered with the contract]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3A. Was [name of defendant] justified in acting in a way which interfered with the contract because _____ [describe the reason the defendant was justified]?

OR

3B. Did [name of defendant] have a legitimate excuse or reason in acting in a way which interfered with the contract because _____ [describe the reason the defendant was excused]?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must find in favor of [name of

defendant] on [his/her/its] claim that [he/she/it] had a legitimate justification or excuse for interfering with the contract between [name of plaintiff] and [name of other contracting party].

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instructions - Civil 10:22 and 10:23.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 10 Abuse of Process

1000 Abuse of Process - Definition

Abuse of process is when a legal procedure is intentionally used for an improper or illegal purpose.

Sources

Mississippi Model Jury Instruction - Civil 2:2.

Allen ex rel. Ayles v. Allen, 907 So. 2d 300, 303 (Miss. 2005) (The action of abuse of process consists in the misuse or misapplication of a legal process to accomplish some purpose not warranted or commanded by the writ. It is the malicious perversion of a regularly issued civil or criminal process, for a purpose and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion an action will lie to recover the pecuniary loss sustained.).

1001 Abuse of Process - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] committed an abuse of process. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] _____ [describe the alleged abuse of process, such as “issued a subpoena for _____” or “took a deposition of _____”];
2. [Name of defendant] intentionally used this legal procedure to _____ [describe alleged illegal or improper purpose that the procedure was not designed to achieve];

3. [Name of plaintiff] was harmed; and
4. [Name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] _____ [describe alleged abuse of process, such as “issued a subpoena for _____” or “took the deposition of _____”]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] intentionally use this legal procedure to _____ [describe alleged illegal or improper purpose that the procedure was not designed to achieve]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of plaintiff] harmed?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 2:1.

Judicial Council of California Civil Jury Instructions 1520 and VF-1504.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 11 Alienation of Affection

1100 Alienation of Affection - Definition

Alienation of affection is when someone intentionally and wrongfully interferes in a person's marriage. The interference leads one spouse to lose [his/her] love and affection for the other spouse. In an alienation of affection case, the plaintiff is the [hurt/offended/wronged] spouse, and the defendant is the person who interfered in the plaintiff's marriage.

Sources

Black's Law Dictionary (9th ed. 2009) (Alienation of affection is a tort claim for willful or malicious interference with a marriage by a third party without justification or excuse. The elements are (1) some wrongful conduct by the defendant with the plaintiff's spouse; (2) loss of affection or loss of consortium of the plaintiff's spouse; and (3) a causal relationship between the defendant's conduct and the loss of consortium.).

1101 Alienation of Affection - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] interfered in [name of plaintiff]'s marriage and caused an alienation of [name of spouse]'s love and affection. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] intentionally and wrongfully interfered in [name of plaintiff] and [name of spouse]'s marriage by _____ [describe defendant's alleged actions];
2. Because of [name of defendant]'s interference in [name of plaintiff]'s marriage, [name of spouse] lost [his/her] love and affection for [name of plaintiff]; and

3. [Name of defendant]'s interference in [name of plaintiff]'s marriage caused harm to [name of plaintiff].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally and wrongfully interfere in [name of plaintiff] and [name of spouse]'s marriage by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Because of [name of defendant]'s interference in [name of plaintiff]'s marriage, did [name of spouse] lose [his/her] love and affection for [name of plaintiff]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant]'s interference in [name of plaintiff]'s marriage cause harm to [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 21:1.

Pierce v. Cook, 992 So. 2d 612, 626 (Miss. 2008) (Particularly, Jury Instruction No. 7 states:

“The Court instructs the jury that the tort of alienation of affection is comprised of three elements. The elements of the tort of alienation of affections are as follows: 1. wrongful conduct of the Defendant; 2. loss of affection or consortium and 3. causal connection between the conduct and loss. If Ernest Alan Cook Sr. proved the above three elements of the tort of alienation of affections by a preponderance of the evidence, then you must return a verdict for the Plaintiff Ernest Alan Cook Sr. on his claim for alienation of affections. If Ernest Alan Cook Sr. has failed to prove any one or more of the above listed elements, then you must return a verdict for the Defendant.” Therefore, the jury was informed on the elements necessary to prove a claim for alienation of affection.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1102 Alienation of Affection - Damages - Factors to Consider

You may consider the following factors in determining the amount of damages to award the plaintiff for alienation of affection:

1. [Name of plaintiff]’s loss of love, affection, and companionship;
2. [Name of plaintiff]’s loss of help, services, and physical assistance provided by [his/her] [wife/husband];
3. [Name of plaintiff]’s loss of sexual relations with [his/her] [wife/husband];
4. [Name of plaintiff]’s loss of the duties and responsibilities of making a home together; and
5. [Name of plaintiff]’s mental and emotional distress caused by [name of defendant]’s

interference in [name of plaintiff]'s marriage.

Sources

Mississippi Model Jury Instruction - Civil 21:2.

See 5021 Loss of Consortium - Factors to Consider.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 12 Assault

1200 Assault – Definition and Standard of Care

Assault is when one person attempts to intentionally harm or injure another person or makes that person believe that [he/she] is about to be harmed or injured. A person who commits an assault is legally responsible for any [harm/injury/injuries] from the assault.

Sources

Mississippi Model Jury Instruction - Civil 6:2.

1201 Assault – General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] assaulted [him/her] and that [name of defendant] is legally responsible for that assault. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1A. [Name of defendant] attempted to intentionally harm or injure [name of plaintiff] by

_____ [describe alleged assault];

OR

1B. [Name of defendant] made [name of plaintiff] believe that [he/she] was about to be harmed or injured by _____ [describe alleged assault]; and

2. [Name of plaintiff] reasonably believed that [he/she] was about to be harmed or injured by [name of defendant].

Verdict Form

We answer the questions submitted to us as follows:

1A. Did [name of defendant] attempt to intentionally harm or injure [name of plaintiff] by _____ [describe alleged assault]?

OR

1B. Did [name of defendant] make [name of plaintiff] believe that [he/she] was about to be harmed or injured by _____ [describe alleged assault]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] reasonably believe that [he/she] was about to be harmed or injured by [name of defendant]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:2.

Judicial Council of California Civil Jury Instructions 1301 and VF-1302.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1202 Assault - Self-Defense – Standard of Care

A person has a right to use reasonable force to defend [himself/herself] and [his/her]

property. A person who acts in self-defense or defense of [his/her] property is not legally responsible for any [harm/injuries] resulting from [his/her] acts of self-defense.

Sources

Mississippi Model Jury Instruction - Civil 6:4.

1203 Assault - Self-Defense – General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]’s [harm/injury/injuries] because [name of defendant] was acting in _____ [specify (1) self-defense or (2) defense of [his/her] property]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] reasonably believed that [name of plaintiff] was about to harm or injure [him/her] or [his/her] property; and
2. [Name of defendant] used the amount of force that was reasonably necessary to protect [himself/herself] or [his/her] property.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] reasonably believe that [name of plaintiff] was about to harm or injure [him/her] or [his/her] property?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] use the amount of force that was reasonably necessary to protect

[himself/herself] or [his/her] property?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you must find in favor of [name of defendant] on [his/her] claim of self-defense.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:4.

Judicial Council of California Civil Jury Instruction 1304.

1204 Assault - Defense of Other People – Standard of Care

A person has a right to use reasonable force to defend another person. A person who defends another person is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts defending the other person.

Sources

Mississippi Model Jury Instruction - Civil 6:5.

1205 Assault - Defense of Other People – General Instruction and Verdict Form

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]'s [harm/injury/injuries] because [name of defendant] was defending [name of person who defendant was allegedly defending] from an assault by [name of plaintiff]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] reasonably believed that [name of plaintiff] was about to commit an assault against [name of person who defendant was allegedly defending]; and
2. [Name of defendant] used the amount of force that was reasonably necessary to protect [name

of person who defendant was allegedly defending].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] reasonably believe that [name of plaintiff] was about to commit an assault against [name of person who defendant was allegedly defending]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] use the amount of force that was reasonably necessary to protect [name of person who defendant was allegedly defending]?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you must find in favor of [name of defendant] on [his/her] claim of defense of another person.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:5.

Judicial Council of California Civil Jury Instruction 1304.

1206 Assault - When the Aggressor May Act in Self-Defense - Standard of Care

A person who commits an assault on someone may still claim self-defense if the person abandons the attack and makes it clear to the other person that [he/she] no longer wants to continue. A person who abandons an assault and then acts in self-defense is not legally responsible for any [harm/injury/injuries] from the assault.

Sources

Mississippi Model Jury Instruction - Civil 6:6.

1207 Assault - When the Aggressor May Act in Self-Defense - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]'s [harm/injury/injuries] because [name of defendant] abandoned [his/her] assault against [name of plaintiff] and had to act in self-defense because [name of plaintiff] continued to commit [a/an] [assault/battery] against [name of defendant]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] committed an assault on [name of plaintiff];
2. [Name of defendant] abandoned [his/her] assault against [name of plaintiff] and made it clear that [name of defendant] no longer wanted to continue by _____ [describe the defendant's actions which indicated that he or she no longer wanted to continue];
3. However, [name of plaintiff] continued to _____ [specify (1) attempt to intentionally harm or injure [name of defendant]; (2) make [name of defendant] believe that [he/she] was about to be harmed or injured; (3) intentionally and harmfully touch [name of defendant]; or (4) intentionally cause [name of defendant] to be touched] by _____ [describe plaintiff's alleged assault and/or battery];
4. [Name of defendant] reasonably believed that [name of plaintiff] was about to harm or injure [name of defendant]; and
5. [Name of defendant] used the amount of force that was reasonably necessary to protect

[himself/herself].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] commit an assault on [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] abandon [his/her] assault against [name of plaintiff] and make it clear that [name of defendant] no longer wanted to continue by _____ [describe the defendant's actions which indicated that he or she no longer wanted to continue]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] continue to _____ [specify (1) attempt to intentionally harm or injure [name of defendant]; (2) make [name of defendant] believe that [he/she] was about to be harmed or injured; (3) intentionally and harmfully touch [name of defendant]; or (4) intentionally cause [name of defendant] to be touched] by _____ [describe plaintiff's alleged assault and/or battery]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] reasonably believe that [name of plaintiff] was about to harm or

injure [name of defendant]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of defendant] use the amount of force that was reasonably necessary to protect [himself/herself]?

YES _____ NO _____

If your answers to questions 1-5 are YES, then you must find in favor of [name of defendant] on [his/her] claim of self-defense.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:6.

1208 Assault - Insulting Words Defense - Standard of Care

A person who commits an assault as a result of having insulting words stated to [him/her] may not be legally responsible for any [harm/injury/injuries] as a result of the assault if the assault was justifiable or excusable as a result of the insulting words.

Sources

Mississippi Model Jury Instruction - Civil 6:7.

Miss. Code Ann. § 99-17-19.

1209 Assault - Insulting Words Defense - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of

plaintiff]’s [harm/injury/injuries] because [name of defendant] committed the assault as a result of insulting words stated to [him/her] by [name of plaintiff]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] stated insulting words to [name of defendant], specifically _____ [specify the insulting words allegedly stated by the plaintiff]; and
2. [Name of defendant]’s assault in response to the insulting words was justifiable or excusable.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] state insulting words to [name of defendant], specifically _____ [specify the insulting words allegedly stated by the plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant]’s assault in response to the insulting words justifiable or excusable?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you may find in favor of [name of defendant] on [his/her] claim of self-defense.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:7.

Miss. Code Ann. § 99-17-19.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 13 Battery

1300 Battery – Definition and Standard of Care

Battery is when one person intentionally and harmfully touches another person without [his/her] consent or intentionally causes another person to be touched without [his/her] consent. A person who commits a battery is legally responsible for any [harm/injury/injuries] from the battery.

Sources

Mississippi Model Jury Instruction - Civil 6:3.

1301 Battery - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] committed a battery on [him/her] and that [name of defendant] is legally responsible for that battery. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1A. [Name of defendant] intentionally and harmfully touched [name of plaintiff] by _____ [describe alleged battery];

OR

1B. [Name of defendant] intentionally caused [name of plaintiff] to be touched by _____ [describe alleged battery]; and

2. [Name of plaintiff] did not consent to this harmful touching.

Verdict Form

We answer the questions submitted to us as follows:

1A. Did [name of defendant] intentionally and harmfully touch [name of plaintiff] by _____ [describe alleged battery]?

OR

1B. Did [name of defendant] intentionally cause [name of plaintiff] to be touched by _____ [describe alleged battery]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] consent to this harmful touching?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:3.

Judicial Council of California Civil Jury Instruction 1300 and VF-1300.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1302 Battery - Self-Defense – Standard of Care

A person has a right to use reasonable force to defend [himself/herself] and [his/her] property. A person who acts in self-defense or defense of [his/her] property is not legally

responsible for any [harm/injury/injuries] resulting from [his/her] acts of self-defense.

Sources

Mississippi Model Jury Instruction - Civil 6:4.

1303 Battery - Self-Defense – General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]’s [harm/injury/injuries] because [name of defendant] was acting in _____ [specify (1) self-defense or (2) defense of [his/her] property]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] reasonably believed that [name of plaintiff] was about to harm or injure [him/her] or [his/her] property; and
2. [Name of defendant] used the amount of force that was reasonably necessary to protect [himself/herself] or [his/her] property.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] reasonably believe that [name of plaintiff] was about to harm or injure [him/her] or [his/her] property?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] use the amount of force that was reasonably necessary to protect [himself/herself] or [his/her] property?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you must find in favor of [name of defendant] on [his/her] claim of self-defense.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:4.

Judicial Council of California Civil Jury Instruction 1304.

1304 Battery - Defense of Other People – Standard of Care

A person has a right to use reasonable force to defend another person. A person who defends another person is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts defending the other person.

Sources

Mississippi Model Jury Instruction - Civil 6:5.

1305 Battery - Defense of Other People – General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]'s [harm/injury/injuries] because [name of defendant] was defending [name of person who defendant was allegedly defending] from a battery by [name of plaintiff]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] reasonably believed that [name of plaintiff] was about to commit a battery against [name of person who defendant was allegedly defending]; and
2. [Name of defendant] used the amount of force that was reasonably necessary to protect [name

of person who defendant was allegedly defending].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] reasonably believe that [name of plaintiff] was about to commit a battery against [name of person who defendant was allegedly defending]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] use the amount of force that was reasonably necessary to protect [name of person who defendant was allegedly defending]?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you must find in favor of [name of defendant] on [his/her] claim of defense of another person.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:5.

Judicial Council of California Civil Jury Instruction 1304.

1306 Battery - When the Aggressor May Act in Self-Defense - Standard of Care

A person who commits a battery on someone may still claim self-defense if the person abandons the attack and makes it clear to the other person that [he/she] no longer wants to continue. A person who abandons a battery and then acts in self-defense is not legally responsible for any [harm/injury/injuries] from the battery.

Sources

Mississippi Model Jury Instruction - Civil 6:6.

1307 Battery - When the Aggressor May Act in Self-Defense - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]'s [harm/injury/injuries] because [name of defendant] abandoned [his/her] battery against [name of plaintiff] and had to act in self-defense because [name of plaintiff] continued to commit [a/an] [assault/battery] against [name of defendant]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] committed a battery on [name of plaintiff];
2. [Name of defendant] abandoned [his/her] battery against [name of plaintiff] and made it clear that [he/she] no longer wanted to continue by _____ [describe the defendant's actions which indicated that he or she no longer wanted to continue];
3. However, [name of plaintiff] continued to _____ [specify (1) attempt to intentionally harm or injure [name of defendant]; (2) make [name of defendant] believe that [he/she] was about to be harmed or injured; (3) intentionally and harmfully touch [name of defendant]; or (4) intentionally cause [name of defendant] to be touched] by _____ [describe plaintiff's alleged assault and/or battery];
4. [Name of defendant] reasonably believed that [name of plaintiff] was about to harm or injure [name of defendant]; and
5. [Name of defendant] used the amount of force that was reasonably necessary to protect

[himself/herself].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] commit a battery on [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] abandon [his/her] battery against [name of plaintiff] and make it clear that [he/she] no longer wanted to continue by _____ [describe the defendant's actions which indicated that he or she no longer wanted to continue]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] continue to _____ [specify (1) attempt to intentionally harm or injure [name of defendant]; (2) make [name of defendant] believe that [he/she] was about to be harmed or injured; (3) intentionally and harmfully touch [name of defendant]; or (4) intentionally cause [name of defendant] to be touched] by _____ [describe plaintiff's alleged assault and/or battery]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] reasonably believe that [name of plaintiff] was about to harm or

injure [name of defendant]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of defendant] use the amount of force that was reasonably necessary to protect [himself/herself]?

YES _____ NO _____

If your answers to questions 1-5 are YES, then you must find in favor of [name of defendant] on [his/her] claim of self-defense.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:6.

1308 Battery - Insulting Words Defense - Standard of Care

A person who commits a battery as a result of having insulting words stated to [him/her] may not be legally responsible for any [harm/injury/injuries] as a result of the battery if the battery was justifiable or excusable as a result of the insulting words.

Sources

Mississippi Model Jury Instruction - Civil 6:7.

Miss. Code Ann. § 99-17-19.

1309 Battery - Insulting Words Defense - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of

plaintiff]’s [harm/injury/injuries] because [name of defendant] committed the battery as a result of insulting words stated to [him/her] by [name of plaintiff]. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] stated insulting words to [name of defendant], specifically _____ [list the insulting words allegedly stated by the plaintiff]; and
2. [Name of defendant]’s battery in response to the insulting words was justifiable or excusable.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] state insulting words to [name of defendant], specifically _____ [list the insulting words allegedly stated by the plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant]’s battery in response to the insulting words justifiable or excusable?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you may find in favor of [name of defendant] on [his/her] claim of self-defense.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 6:7.

Miss. Code Ann. § 99-17-19.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 14 Defamation

1400 Defamation - Definition

Defamation is a claim that a [person/business/corporation] has made a defamatory statement. A defamatory statement is the term used to describe a statement of fact that is false and harms the reputation of a person or business. The defamatory statement must have been made to someone other than the plaintiff.

There are two types of defamation claims. Slander is when the defamatory statement is verbal, and libel is when the defamatory statement is written.

Sources

Mississippi Model Jury Instruction - Civil 12:2.

Condere Corp. v. Moon, 880 So. 2d 1038, 1044 n.2 (Miss. 2004) (Defamation is defined as the act of harming the reputation of another by making a false statement to a third person.).

1401 Defamation - Malice - Definition

Malice is when a [person/business/corporation] intentionally does something wrong without having a valid reason or excuse.

Sources

Harmon v. Regions Bank, 961 So. 2d 693, 699 (Miss. 2007) (citations omitted) (Malice, in its legal sense, means a wrongful act done intentionally, without just cause or excuse. Malice in law is not necessarily personal hate or ill will, but it is “the intent, without justification or excuse, to commit a wrongful act.”).

1402 Defamation - Malice in a Defamation Action

You must decide whether [name of defendant] [said/wrote] the statement with hatred or malice towards [name of plaintiff]. To determine if a statement was made with hatred or malice, you should consider whether [name of defendant] [said/wrote] the statement knowing that it was false or whether [he/she/it] [said/wrote] the statement with very little care as to whether it was true or false. [Name of plaintiff] must present clear and convincing evidence that [name of defendant] acted with hatred or malice.

Definition(s) in this Instruction:

In this instruction, “clear and convincing evidence” means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party’s [claim/claims] [is/are] true.

In this instruction, “malice” means a [person/business/corporation] intentionally did something wrong without having a valid reason or excuse.

Source

Mississippi Model Jury Instruction - Civil 12:7.

1403 Defamation Per Se - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] harmed [him/her/it] by [saying/writing] a statement of fact that was false and that [name of defendant] is legally responsible for that harm. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [said/wrote] _____ [describe the

allegedly defamatory statement], or similar words, to [name of third party to whom the statements were made]; and

2. The statement accused [name of plaintiff] of _____
[specify (1) committing a serious crime; (2) having an awful or contagious disease; (3) being sexually active or not being a virgin; or (4) doing something that would harm [name of plaintiff]'s business, job, or profession]; and

3. The statement was false.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [say/write] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statements were made]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the statement accuse [name of plaintiff] of _____
[specify (1) committing a serious crime; (2) having an awful or contagious disease; (3) being sexually active or not being a virgin; or (4) doing something that would harm [name of plaintiff]'s business, job, or profession]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the statement false?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 12:3.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1404 Defamation Per Quod - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] harmed [him/her/it] by [saying/writing] a statement of fact that was false and that [name of defendant] is legally responsible for that harm. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [said/wrote] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statement was made];
2. When [name of defendant] [said/wrote] the statement, [he/she/it] intended to harm [name of plaintiff]'s reputation or made the statement with little care for the consequences;
3. [Name of third party to whom the statement was made] reasonably believed that the statement

harmed [name of plaintiff]'s reputation;

4. The statement was false;

5. [Name of plaintiff]'s reputation was harmed by the statement in a special way by

_____ [describe the special damages to the plaintiff]; and

6. [Name of defendant]'s [saying/writing] the statement was a substantial factor in causing [name of plaintiff]'s harm.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [say/write] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statement was made]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. When [name of defendant] [said/wrote] the statement, did [he/she/it] intend to harm [name of plaintiff]'s reputation or make the statement with little care for the consequences?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of third party to whom the statement was made] reasonably believe that the statement harmed [name of plaintiff]'s reputation?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was the statement false?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of plaintiff]'s reputation harmed by the statement in a special way by

_____ [describe the special damages to the plaintiff]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of defendant]'s [saying/writing] the statement a substantial factor in causing [name of plaintiff]'s harm?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are [name of plaintiff]'s damages?

\$_____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 12:4.

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 140 (Miss. Ct. App. 2008) (To prove

defamation under Mississippi law, the following elements must be shown: (a) a false statement that has the capacity to injure the plaintiff's reputation; (b) an unprivileged publication, i.e., communication to a third party; (c) negligence or greater fault on part of publisher; and (d) either action-ability of statement irrespective of special harm or existence of special harm caused by publication.).

Practice Note: In the phrase “defamation *per quod*,” *per quod* means that the defamation is not apparent on its face, and extrinsic facts are required to explain its defamatory meaning. *Kolegas v. Heftel Broadcasting Corp.*, 607 N.E.2d 201, 206 (Ill. 1992).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1405 Defamation of a Public Official or Figure - General Instruction and Verdict Form

General Instruction

[Name of plaintiff], a public official or figure, claims that [name of defendant] harmed [him/her] by acting with hatred or malice by [saying/writing] a statement of fact that was false and that [name of defendant] is legally responsible for that harm. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [said/wrote] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statement was made];
2. [Name of third party to whom the statement was made] reasonably believed that the statement harmed [name of plaintiff]'s reputation;
3. The statement was false;
4. [Name of plaintiff]'s reputation was harmed by the statement by

_____ [describe the harm to the plaintiff]; and
5. [Name of defendant]'s [saying/writing] the statement was a substantial factor in causing [name of plaintiff]'s harm.

Also, [name of plaintiff] must prove by clear and convincing evidence that:

6. [Name of defendant] acted with hatred or malice towards [name of plaintiff] by [saying/writing] the statement.

Definition(s) in this Instruction:

In this instruction, “clear and convincing evidence” means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party’s [claim/claims] [is/are] true.

In this instruction, “malice” means a [person/business/corporation] intentionally did something wrong without having a valid reason or excuse.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [say/write] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statement was made]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of third party to whom the statement was made] reasonably believe that the statement harmed [name of plaintiff]'s reputation?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the statement false?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of plaintiff]'s reputation harmed by the statement by

_____ [describe the harm to the plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here, answer no further questions, and tell the bailiff.

5. Was [name of defendant]'s [saying/writing] the statement a substantial factor in causing [name of plaintiff]'s harm?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Do you find by clear and convincing evidence that [name of defendant] acted with hatred or malice towards [name of plaintiff] by [saying/writing] the statement?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 12:7.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1406 Defamation - Absolute Privilege - Affirmative Defense - General Instruction and Verdict Form

Statement of Law

A person may have an absolute right to make a defamatory statement if it is in the public's interest or if it was made in carrying out justice. If [name of defendant] had an absolute right to say the defamatory statement in the public's interest or in carrying out justice, and [name of defendant]'s statement was related to that interest or to carrying out justice, then [name of plaintiff] cannot recover damages from [name of defendant].

General Instruction

To establish this defense, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] had an absolute right to make a statement that was related to the public's interest or in carrying out justice; and
2. Even if the statement was defamatory, [name of defendant]'s statement was related to the

public's interest or to carrying out justice.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] have an absolute right to make a statement that was related to the public's interest or in carrying out justice?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here, answer no further questions, and tell the bailiff.

2. Even if the statement was defamatory, was [name of defendant]'s statement related to the public's interest or to carrying out justice?

YES _____ NO _____

If you answered NO, stop here and tell the bailiff. If your answers to questions 1 and 2 are YES, then you must find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 12:5.

McCorkle v. McCorkle, 811 So. 2d 258, 265 (Miss. Ct. App. 2001) (Statements made in connection with judicial proceedings, including pleadings, are, if in any way relevant to the subject matter of the action, absolutely privileged and immune from attack as defamation, even if such statements are made maliciously and with knowledge of their falsehood.).

1407 Defamation - Qualified Privilege - Affirmative Defense - General Instruction and

Verdict Form

Statement of Law

A person may have a conditional right to make a defamatory statement under certain circumstances. If [name of defendant] had a conditional right to [say/write] the defamatory statement based on _____ [describe basis for the conditional right], then [name of plaintiff] cannot recover damages from [name of defendant] unless [name of plaintiff] proves by clear and convincing evidence that [name of defendant] acted with hatred or malice towards [name of plaintiff].

General Instruction

[Name of plaintiff] claims that [name of defendant] harmed [him/her/it] by [saying/writing] a statement of fact that was false and that [name of defendant] is legally responsible for that harm. [Name of defendant] claims that [he/she/it] had a conditional right to [say/write] the statement of fact, and the Court has found that [name of defendant] did have a conditional right to [say/write] the statement of fact. To establish [name of plaintiff]'s claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [said/wrote] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statement was made];
2. The statement was false;
3. [Name of plaintiff]'s reputation was harmed by the statement by _____ [describe the harm to the plaintiff]; and
4. [Name of defendant]'s [saying/writing] the statement was a substantial factor in causing [name of plaintiff]'s harm.

Also, [name of plaintiff] must prove by clear and convincing evidence that:

5. [Name of defendant] acted with hatred or malice towards [name of plaintiff] by [saying/writing] the statement.

Definition(s) in this Instruction:

In this instruction, “clear and convincing evidence” means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party’s [claim/claims] [is/are] true.

In this instruction, “malice” means a [person/business/corporation] intentionally does something wrong without having a valid reason or excuse.

Verdict Form

1. Did [name of defendant] [say/write] _____ [describe the allegedly defamatory statement], or similar words, to [name of third party to whom the statement was made]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was the statement false?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of plaintiff]’s reputation harmed by the statement by

_____ [describe the harm to the plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s [saying/writing] that statement a substantial factor in causing [name of plaintiff]'s harm?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Do you find by clear and convincing evidence that [name of defendant] acted with hatred or malice towards [name of plaintiff] by [saying/writing] the statement?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 12:6.

Barmada v. Pridjian, 989 So. 2d 259, 362 (Miss. 2008) (citations omitted) (When analyzing defamation claims, Mississippi courts employ a bifurcated process. First, the Court must determine whether the occasion calls for a qualified privilege. If a qualified privilege does exist,

the Court must then determine whether the privilege is overcome by malice, bad faith, or abuse. This Court has defined qualified privilege as a communication made in good faith and on a subject matter in which the person making it has an interest, or in reference to which he has a duty, is privileged if made to a person or persons having a corresponding interest or duty, even though it contains matter which without this privilege would be slanderous. This Court has recognized that a privilege exists with regard to communications between employers and employees.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1408 Actionable Words - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] said _____ [describe the actionable words] which led to a breach of the peace and that [name of defendant] is legally responsible. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] said _____ [describe the actionable words];
2. These words or statements are generally or commonly considered as insults by a reasonable person;
3. [Name of defendant] said these words or statements to [name of plaintiff]; and
4. These words led to a breach of the peace by _____ [describe the breach of the peace].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] say _____ [describe the actionable words]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Are these words or statements generally or commonly considered as insults by a reasonable person?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] say these words or statements to [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did these words lead to a breach of the peace by _____ [describe the breach of the peace]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 12:1.

Miss. Code Ann. § 95-1-1.

Isaacks v. Reed, 537 So. 2d 409, 411 (Miss. 1988) (We are of the opinion that the purpose of the statute is to allow a cause of action where there is usually a face-to-face encounter or where words are uttered to another in an insulting manner and which would precipitate an immediate, forceful and violent reaction by a reasonable person. They are words of a kind and nature spoken under such circumstances that their very utterance would reasonably tend to provoke a breach of the peace.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 15 False Arrest

1500 False Arrest - Definition

False arrest is when one person intentionally causes another person to be unlawfully arrested.

Sources

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 141 (Miss. Ct. App. 2008) (citations omitted) (False arrest is an intentional tort, arising when one causes another to be arrested falsely, unlawfully, maliciously and without probable cause. If there is probable cause for the charges made, then the plaintiff's arrest is supported by probable cause, and a claim for false arrest must fail. Thus, if the charges against [the plaintiff] were supported by probable cause, her claim for false arrest has no merit.).

See Miss. Code Ann. § 97-23-93.1(4).

See Miss. Code Ann. § 97-23-95.

1501 False Arrest - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be falsely arrested for _____ [describe the basis for the false arrest]. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] caused [name of third party who allegedly arrested the plaintiff] to arrest [name of plaintiff]; and

2. [Name of plaintiff]'s arrest was unlawful and without a reasonable basis because _____ [describe the reason the arrest was allegedly unlawful].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] cause [name of third party who allegedly arrested the plaintiff] to arrest [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of plaintiff]'s arrest unlawful and without a reasonable basis because _____ [state the reason the arrest was allegedly unlawful]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 141 (Miss. Ct. App. 2008) (citations omitted) (False arrest is an intentional tort, arising when one causes another to be arrested falsely, unlawfully, maliciously and without probable cause. If there is probable cause for the charges made, then the plaintiff's arrest is supported by probable cause, and a claim for false arrest must

fail. Thus, if the charges against [the plaintiff] were supported by probable cause, her claim for false arrest has no merit.).

Hudson v. Palmer, 977 So. 2d 369, 383 (Miss. Ct. App. 2007) (To sustain a claim of false arrest a plaintiff must show that the defendant caused him to be arrested falsely, unlawfully, maliciously, and without probable cause. Therefore, if the plaintiff's arrest is supported by probable cause the claim must fail.).

Parker v. Mississippi Game and Fish Comm'n, 555 So. 2d 725, 728-29 (Miss. 1989) (citation omitted) (The elements of a claim for false arrest or imprisonment are two-fold. They include: (1) The detention of the plaintiff and the unlawfulness of such detention; (2) Imprisonment and the falsity thereof.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 16 False Imprisonment

1600 False Imprisonment - Definition

False imprisonment is when one person holds or imprisons another person unlawfully or when one person causes another person or party to do so.

Sources

Mississippi Model Jury Instruction - Civil 13:3.

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 140 (Miss. Ct. App. 2008) (To show false imprisonment on the part of a defendant, the plaintiff must prove that she was: (1) detained and (2) that such detainment was unlawful.).

See Miss. Code Ann. § 97-23-93.1(4).

See Miss. Code Ann. § 97-23-95.

1601 False Imprisonment - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] falsely imprisoned [name of plaintiff] (or caused [name of plaintiff] to be falsely imprisoned) for _____ [describe the basis for the false imprisonment]. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1A. [Name of defendant] held or imprisoned [name of plaintiff] by _____ [describe defendant's alleged actions];

OR

1B. [Name of defendant] caused [name of third party who allegedly imprisoned the plaintiff] to

hold or imprison [name of plaintiff] by _____ [describe defendant's alleged actions]; and

2. [Name of plaintiff]'s holding or imprisonment was unlawful because _____ [describe the reason the imprisonment was allegedly unlawful].

Verdict Form

We answer the questions submitted to us as follows:

1A. Did [name of defendant] hold or imprison [name of plaintiff] by _____ [describe defendant's alleged actions]?

OR

1B. Did [name of defendant] cause [name of third party who allegedly imprisoned the plaintiff] to hold or imprison [name of plaintiff] by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of plaintiff]'s holding or imprisonment unlawful because _____ [specify the reason the imprisonment was allegedly unlawful]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 13:4.

Mayweather v. Isle of Capri Casino, Inc., 996 So. 2d 136, 140 (Miss. Ct. App. 2008) (To show false imprisonment on the part of a defendant, the plaintiff must prove that she was: (1) detained and (2) that such detainment was unlawful.).

Robinson v. Hill City Oil Co., 2 So. 3d 661, 667 (Miss. Ct. App. 2008) (To prevail upon a claim of false imprisonment a plaintiff is required to show: (1) that he was detained, and (2) the detention or imprisonment was unlawful. He must also show that the defendant personally and actively participated directly or through indirect procurement in the event.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 17 Fraud

1700 Fraud - Definition

Fraud is when a [person/business/corporation] intentionally makes a false statement; the statement concerns an important or material fact; the [person/business/corporation] knows or reasonably should know that the statement is false; the [person/business/corporation] intends that the [person/business/corporation] to [whom/which] the statement is made will reasonably act upon the statement; the [person/business/corporation] to [whom/which] the statement is made does not know that the statement is false; the [person/business/corporation] to [whom/which] the statement is made relies on the statement; the [person/business/corporation] to [whom/which] the statement is made has a right to rely on the statement; and the [person/business/corporation] to [whom/which] the statement is made suffers damages as a result of [his/her/its] reliance on the statement.

Sources

Mississippi Model Jury Instruction - Civil 21:3.

State v. Bayer Corp., 32 So. 3d 496, 501 (Miss. 2010) (Elements of fraud are: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that the representation should be acted upon by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on the representation's truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.).

1701 Fraud - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] committed fraud and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following by clear and convincing evidence:

1. [Name of defendant] stated _____ [describe defendant's alleged false statement];
2. This statement was false;
3. This statement concerned an important or material fact;
4. [Name of defendant] knew or reasonably should have known that the statement was false;
5. [Name of defendant] intended that [name of plaintiff] would reasonably act upon the statement;
6. [Name of plaintiff] did not know that the statement was false;
7. [Name of plaintiff] relied on the statement;
8. [Name of plaintiff] had a right to rely on the statement; and
9. [Name of plaintiff] suffered damages as a result of [his/her/its] reliance on the statement.

Verdict Form

We answer the questions submitted to us as follows:

1. Do you find by clear and convincing evidence that [name of defendant] stated _____ [describe defendant's alleged false statement]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Do you find by clear and convincing evidence that this statement was false?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Do you find by clear and convincing evidence that this statement concerned an important or material fact?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Do you find by clear and convincing evidence that [name of defendant] knew or reasonably should have known that the statement was false?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Do you find by clear and convincing evidence that [name of defendant] intended that [name of plaintiff] would reasonably act upon the statement?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Do you find by clear and convincing evidence that [name of plaintiff] did not know that the statement was false?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Do you find by clear and convincing evidence that [name of plaintiff] relied on the statement?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. Do you find by clear and convincing evidence that [name of plaintiff] had a right to rely on the statement?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, stop here and tell the bailiff.

9. Do you find by clear and convincing evidence that [name of plaintiff] suffered damages as a result of [his/her/its] reliance on the statement?

YES _____ NO _____

If your answer to question 9 is YES, then answer question 10. If you answered NO, stop here and tell the bailiff.

10. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

State v. Bayer Corp., 32 So. 3d 496, 501 (Miss. 2010) (Elements of fraud are: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or

ignorance of its truth, (5) the speaker's intent that the representation should be acted upon by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on the representation's truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 18 Intentional Infliction of Emotional Distress

1800 Intentional Infliction of Emotional Distress - Definition

Intentional infliction of emotional distress is when a [person/business/corporation] intentionally acts in an extreme and outrageous way and causes someone to have emotional distress.

Sources

Black's Law Dictionary (9th ed. 2009) (The tort of intentionally or recklessly causing another person severe emotional distress through one's extreme or outrageous acts.).

1801 Intentional Infliction of Emotional Distress - Outrageous Conduct - Definition

Conduct is outrageous when it is so extreme that it goes beyond all possible bounds of decency. Conduct is outrageous if a reasonable person would consider the conduct shocking and completely unacceptable in a civilized community.

Sources

Riley v. F.A. Richard & Associates, Inc., 16 So. 3d 708, 719 (Miss. Ct. App. 2009) (citations omitted) (Finally, Riley claims the actions of Defendants caused him severe mental and emotional distress and anguish. Riley must establish that the Defendants' conduct through this ex parte meeting was wanton and willful and evoked outrage or revulsion. Generally, "meeting the requisites of a claim for intentional infliction of emotional distress is a tall order in Mississippi." The severity of the acts must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.").

1802 Intentional Infliction of Emotional Distress - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] intentionally caused [him/her] emotional distress and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] _____ [describe defendant's alleged actions];
2. [Name of defendant]'s conduct was outrageous;
3. [Name of defendant] intended to cause [name of plaintiff] emotional distress;
4. [Name of plaintiff] suffered emotional distress;
5. [Name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s emotional distress; and
6. It was [expected/foreseeable/predictable] that [name of defendant]'s outrageous conduct would cause [name of plaintiff] emotional distress.

Definition(s) in this Instruction:

In this instruction, "outrageous conduct" means conduct so extreme that it goes beyond all possible bounds of decency. Conduct is outrageous if a reasonable person would consider the conduct shocking and completely unacceptable in a civilized community.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant]'s conduct outrageous?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] intend to cause [name of plaintiff] emotional distress?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer emotional distress?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff]'s emotional distress?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was it [expected/foreseeable/predictable] that [name of defendant]'s outrageous conduct would cause [name of plaintiff] emotional distress?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 21:4.

Pierce v. Cook, 992 So. 2d 612, 626-27 (Miss. 2008) (Jury Instruction No. 9 states: You are instructed that in order to establish a case of intentional infliction of emotional distress against Ronald Henry Pierce, Ernest Alan (sic) Cook Sr. must prove by a preponderance of the evidence the following elements: 1. Ronald Henry Pierce committed an act without justification or reason; 2. The act is one which evokes outrage or revulsion in civilized society; 3. The act was directed at or intended to cause harm to Ernest Alan (sic) Cook Sr.; and 4. Any resulting emotional distress was foreseeable from this intentional act. You are instructed that if you find that Ernest Alan (sic) Cook Sr. has proven the four elements above by a preponderance of the evidence, then you must return a verdict in favor of Ernest Alan (sic) Cook Sr. on his claim for intentional infliction of emotional distress. If Ernest Alan (sic) Cook, Sr., has failed to prove any one or more of the above listed elements, then you must return a verdict for the Defendant. Jury Instruction No. 9 informed the jury of the elements necessary for intentional infliction of emotional distress.).

Gamble ex rel. Gamble v. Dollar General Corp., 852 So. 2d 5, 13 (Miss. 2003) (Instruction 14A states as follows: If you find from a preponderance of the evidence that the actions and/or omissions of Sheri Thornton or any other employee of the Defendant corporation were performed either intentionally in an effort to cause Heather Gamble to sustain and experience mental and emotional distress and anguish or that said actions and/or omissions on the part of the Defendants were performed negligently which resulted in mental and emotional distress and anguish being suffered by Heather Gamble, which distress and anguish were reasonably foreseeable results of Defendant's Conduct, then your verdict shall be for the Plaintiff as to said claim. However, if you find that the Plaintiff has failed to prove these elements by a preponderance of the evidence, then your verdict shall be for the Defendants as to said count. Dollar General states that this instruction is a misstatement of the law and that it improperly fails to distinguish between the standards for proving the elements of intentional infliction of emotional distress and the elements of negligent infliction of emotional distress. Dollar General offers no legal support for its determination that Instruction 14A was improper. This Court finds that Jury Instruction 14A sufficiently instructs the jury as to the elements for proving each claim.).

Speed v. Scott, 787 So. 2d 626, 630 (Miss. 2001) (citations omitted) (The tort of intentional infliction of emotional distress can be dispensed with rather quickly as an arguable basis in this suit. To justify a finding that this tort has occurred, the defendant's conduct must be "wanton and wilful and it would evoke outrage or revulsion." Among the kind of actions that have been found to evoke such outrage were a plot by a girlfriend and her parents to hide the child of an unwed father, arranging for the baby to be adopted by strangers while the father pursued a custody suit. In another suit a car dealership forged a customer's name on a sales contract and sold the contract

to a finance company, resulting in the customer's credit being damaged. Contrarily, what is not sufficient have been such actions as a law firm breaching an employment contract with an attorney, locking him out, refusing him secretarial support and dropping his name from the firm sign. A Mississippi federal court defined the necessary severity as acts “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”).

Judicial Council of California Civil Jury Instruction 1600.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1803 Intentional Infliction of Emotional Distress - Reckless Disregard - Definition

Conduct is reckless when a person knows that a risk of emotional distress would probably result from [his/her] conduct and then disregards that risk and the harm that may occur as a result.

Sources

City of Laurel v. Williams, 21 So. 3d 1170, 1175 (Miss. 2009) (citations omitted) (Reckless disregard occurs when the conduct involved evinced not only some appreciation of the unreasonable risk involved, but also a deliberate disregard of that risk and the high probability of harm involved.).

Judicial Council of California Civil Jury Instruction 1603.

1804 Intentional Infliction of Emotional Distress - Reckless Disregard - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] recklessly caused [him/her]

emotional distress and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] _____ [describe defendant's alleged actions];
2. [Name of defendant]'s conduct was outrageous;
3. [Name of defendant] knew that [name of plaintiff] was present when [name of defendant]'s conduct occurred;
4. [Name of defendant] acted with reckless disregard of the probability that [name of plaintiff] would suffer emotional distress;
5. [Name of plaintiff] suffered emotional distress;
6. [Name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s emotional distress; and
7. It was [expected/foreseeable/predictable] that [name of defendant]'s reckless conduct would cause [name of plaintiff] emotional distress.

Definition(s) in this Instruction:

In this instruction, "outrageous conduct" means conduct so extreme that it goes beyond all possible bounds of decency. Conduct is outrageous if a reasonable person would consider the conduct shocking and completely unacceptable in a civilized community.

In this instruction, "reckless" means that a person knows that a risk of emotional distress would probably result from [his/her] conduct and then disregards that risk and the harm that may occur as a result.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant]'s conduct outrageous?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] know that [name of plaintiff] was present when [name of defendant]'s conduct occurred?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] act with reckless disregard of the probability that [name of plaintiff] would suffer emotional distress?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of plaintiff] suffer emotional distress?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff]'s emotional distress?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was it [expected/foreseeable/predictable] that [name of defendant]'s reckless conduct would cause [name of plaintiff] emotional distress?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Robinson v. Hill City Oil Co., 2 So. 3d 661, 668 (Miss. Ct. App. 2008) (The standard for a claim of intentional infliction of emotional distress is very high in Mississippi, focusing specifically on the defendant's conduct and not the plaintiff's emotional condition. To prevail on a claim of intentional infliction of emotional distress, the plaintiff must prove that the defendant's conduct was reckless, intentional, and so outrageous to such an extreme degree that it exceeds the bounds of decency and, thus, is not tolerated by a civilized community.).

Judicial Council of California Civil Jury Instruction 1600.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1805 Negligent Infliction of Emotional Distress - Negligent - Definition

Conduct is negligent when a [person/business/corporation] does something that a reasonably careful [person/business/corporation] would not do under similar circumstances or fails to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Sources

Mississippi Model Jury Instruction - Civil 15:1.

Nebraska Jury Instructions - Civil 2d 3.02.

1806 Negligent Infliction of Emotional Distress - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] was negligent and caused [him/her] emotional distress and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was negligent;
2. [Name of plaintiff] suffered physical harm with emotional distress;
3. [Name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s emotional distress; and
4. It was [expected/foreseeable/predictable] that [name of defendant]'s conduct would cause [name of plaintiff] emotional distress.

Definition(s) in this Instruction:

In this instruction, “negligent” means that a [person/business/corporation] did something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failed to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer physical harm with emotional distress?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff]’s emotional distress?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was it [expected/foreseeable/predictable] that [name of defendant]’s conduct would cause

[name of plaintiff] emotional distress?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Gamble ex rel. Gamble v. Dollar General Corp., 852 So. 2d 5, 13 (Miss. 2003) (Instruction 14A states as follows: If you find from a preponderance of the evidence that the actions and/or omissions of Sheri Thornton or any other employee of the Defendant corporation were performed . . . negligently which resulted in mental and emotional distress and anguish being suffered by Heather Gamble, which distress and anguish were reasonably foreseeable results of Defendant's conduct, then your verdict shall be for the Plaintiff as to said claim. However, if you find that the Plaintiff has failed to prove these elements by a preponderance of the evidence, then your verdict shall be for the Defendants as to said count. Dollar General states that this instruction is a misstatement of the law and that it improperly fails to distinguish between the standards for proving the elements of intentional infliction of emotional distress and the elements of negligent infliction of emotional distress. Dollar General offers no legal support for its determination that Instruction 14A was improper. This Court finds that Jury Instruction 14A sufficiently instructs the jury as to the elements for proving each claim.).

Judicial Council of California Civil Jury Instruction 1620.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 19 Invasion of Privacy

1900 Invasion of Privacy - Definition

An invasion of privacy occurs when someone intentionally intrudes on a person's right to privacy or seclusion. An invasion of privacy occurs when someone intentionally uses a person's likeness or photograph for business purposes without [his/her] permission. An invasion of privacy occurs when someone intentionally and publicly discloses private information about a person without [his/her] permission. An invasion of privacy occurs when someone intentionally and publicly [places/represents] a person in a false [light/way]. The invasion of privacy must cause a person to be embarrassed or disgraced, to feel harassed, to lose [his/her] job, to lose friends, or to be in physical danger.

Sources

Brasel v. Hair Co., 976 So. 2d 390, 392 (Miss. Ct. App. 2008) (citations omitted) (Four theories are recognized for the tort of invasion of privacy. These are: “(1) the intentional intrusion upon the solitude or seclusion of another; (2) the appropriation of another's identity for an unpermitted use, (3) the public disclosure of private facts, and (4) holding another to the public eye in a false light.”).

Harmon v. Regions Bank, 961 So. 2d 693, 698 (Miss. 2007) (citations omitted) (This Court adopted the definition of “invasion of privacy” as occurring “when disclosure would subject a person to embarrassment, harassment, physical danger, disgrace, or loss of employment or friends.”).

Practice Note: The trial court should instruct the jury only on the theory (or theories) being

alleged by the plaintiff.

1901 Invasion of Privacy - Invading Privacy or Seclusion - General Instruction and Verdict

Form

General Instruction

[Name of plaintiff] claims that [name of defendant] invaded [name of plaintiff]'s privacy by intruding on [his/her] privacy or seclusion. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] had a right to privacy or seclusion in _____ [describe location or circumstance];
2. [Name of defendant] intentionally intruded on [name of plaintiff]'s privacy or seclusion by _____ [describe defendant's alleged actions];
3. [Name of defendant]'s intrusion was highly offensive to a reasonable person; and
4. [Name of defendant]'s intrusion caused harm to [name of plaintiff].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] have a right to privacy or seclusion in _____
[describe location or circumstance]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] intentionally intrude on [name of plaintiff]'s privacy or seclusion by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s intrusion highly offensive to a reasonable person?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant]'s intrusion cause harm to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Candebat v. Flanagan, 487 So. 2d 207, 209 (Miss. 1986) (In the present case, the [plaintiffs] seem uncertain as to which of the sub-torts furnishes their theory of the case. In one point in their rebuttal brief, they assert that their case belongs to that sub-group dealing with “intentional intrusion upon the solitude and seclusion of another” rather than the “commercial appropriation” classification of the tort. If so, then the appellants have committed themselves to sustaining a much heavier burden. For this type of invasion of privacy, there is “no liability unless the interference with plaintiff’s seclusion is a substantial one, of a kind that would be highly offensive to the ordinary reasonable man, as the result of conduct to which the reasonable man

would strongly object.”).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1902 Invasion of Privacy - Using a Person’s Likeness for Business Purposes - General

Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] invaded [name of plaintiff]’s privacy by using [his/her] likeness or photograph for business purposes without [name of plaintiff]’s permission. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] intentionally used [name of plaintiff]’s likeness or photograph for business purposes by _____ [describe defendant’s alleged actions];
2. [Name of plaintiff] did not give [name of defendant] permission to use [name of plaintiff]’s likeness or photograph for business purposes; and
3. [Name of defendant]’s use of [name of plaintiff]’s likeness or photograph for business purposes caused harm to [name of plaintiff].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally use [name of plaintiff]’s likeness or photograph for business purposes by _____ [describe defendant’s alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] give [name of defendant] permission to use [name of plaintiff]'s likeness or photograph for business purposes?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Did [name of defendant]'s use of [name of plaintiff]'s likeness or photograph for business purposes cause harm to [name of plaintiff]?

YES _____ NO _____

If your answers to questions 1 and 3 are YES and your answer to question 2 is NO, then answer question 4. If you answered NO to question 3, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Brasel v. Hair Co., 976 So. 2d 390, 392 (Miss. Ct. App. 2008) (citations omitted) (Four theories are recognized for the tort of invasion of privacy. These are: “(1) the intentional intrusion upon the solitude or seclusion of another; (2) the appropriation of another's identity for an unpermitted use, (3) the public disclosure of private facts, and (4) holding another to the public eye in a false light.” In order to prevail on a claim based on appropriation of one's likeness for commercial gain, a plaintiff must show that the defendant: (1) appropriated his name or likeness, (2) without consent, (3) for use in a commercial enterprise.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1903 Invasion of Privacy - Disclosing Private Information to the Public - General

Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] invaded [name of plaintiff]'s privacy by publicly disclosing [name of plaintiff]'s private information without [his/her] permission. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] intentionally and publicly disclosed private information about [name of plaintiff], specifically _____ [describe the private information];
2. [Name of defendant]'s disclosure of this private information was highly offensive to a reasonable person;
3. The private information was not of valid concern to the public; and
4. [Name of defendant]'s disclosure caused harm to [name of plaintiff].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally and publicly disclose private information about [name of plaintiff], specifically _____ [describe the private information]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant]'s disclosure of this private information highly offensive to a reasonable person?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the private information of valid concern to the public?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4. Did [name of defendant]'s disclosure cause harm to [name of plaintiff]?

YES _____ NO _____

If your answers to questions 1, 2, and 4 are YES and your answer to question 3 is NO, then answer question 5. If you answered NO to question 4, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Franklin Collection Service, Inc. v. Kyle, 955 So. 2d 284, 291 (Miss. 2007) (In *Young v. Jackson*, 572 So. 2d 378, 382 (Miss. 1990), this Court adopted the Restatement (Second) of Torts § 652D, which covers this public disclosure of private facts, the specific privacy claim alleged by [the plaintiff]: One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

1904 Invasion of Privacy - False Light - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] invaded [name of plaintiff]'s privacy by publicly [placing/representing] [name of plaintiff] in a false [light/way]. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] intentionally and publicly [placed/represented] [name of plaintiff] in a false [light/way] by _____ [describe defendant's alleged actions];
2. [Name of defendant]'s [placement/representation] of [name of plaintiff] in a false [light/way] was highly offensive to a reasonable person;
- 3A. [Name of defendant] knew that what [he/she/it] [said/wrote/disclosed] about [name of plaintiff] was false and that it would [place/represent] [name of plaintiff] in a false [light/way];

OR

- 3B. [Name of defendant] acted with reckless disregard about whether what [he/she/it] [said/wrote/disclosed] about [name of plaintiff] was false and that it would [place/represent] [name of plaintiff] in a false [light/way]; and
4. [Name of defendant]'s [placing/representing] [name of plaintiff] in a false [light/way] caused harm to [name of plaintiff].

Definition(s) in this Instruction:

In this instruction, "reckless" disregard means a person knows that a risk of emotional distress would probably result from [his/her] conduct and then disregards that risk and the harm that may occur as a result.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally and publicly [place/represent] [name of plaintiff] in a false [light/way] by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant]'s [placement/representation] of [name of plaintiff] in a false [light/way] highly offensive to a reasonable person?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3A. Did [name of defendant] know that what [he/she/it] [said/wrote/disclosed] about [name of plaintiff] was false and that it would [place/represent] [name of plaintiff] in a false [light/way]?

OR

3B. Did [name of defendant] act with reckless disregard about whether what [he/she/it] [said/wrote/disclosed] about [name of plaintiff] was false and that it would [place/represent] [name of plaintiff] in a false [light/way]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant]'s [placing/representing] [name of plaintiff] in a false [light/way]

cause harm to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Prescott v. Bay St. Louis Newspapers, Inc., 497 So. 2d 77, 79-80 (Miss. 1986) (citations omitted) (Mississippi has by implication judicially recognized the common law right to privacy. Although the law of privacy has developed along divergent lines and amid a welter of confusing judicial pronouncements, four distinct theories of the cause of action have been generally recognized: (1) The intentional intrusion upon the solitude or seclusion of another; (2) the appropriation of another's identity for an unpermitted use; (3) the public disclosure of private facts; and (4) holding another in the public eye in a false light. . . . Apart from acknowledging false light as one recognized theory of recovery, however, we have not confronted the question of whether we will recognize this theory. Section 652E of the Restatement (Second) of Torts (1976) delineates the requisites for recovery under the theory of false light. It states: One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Comment "a" makes clear that "it is essential to the rule stated in this section

that the matter published concerning the plaintiff is not true.” But, comment “b” expresses the institute's position that the falsity need not be defamatory. It states: The interest protected by this Section is the interest of the individual in not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than as he is. It is not, however, necessary to the action for invasion of privacy that the plaintiff be defamed. It is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position. . . . However, Prosser and Keeton note that the real benefit of false light actions is in providing redress where the publication is false yet does not amount to defamation.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 20 Malicious Prosecution

2000 Malicious Prosecution - Definition

Malicious prosecution is when a [person/business/corporation] intentionally brings a civil or criminal case against [a/another] person without a reasonable basis for the case. The [person/business/corporation] [who/which] brings the case must have either acted with hatred or malice against the accused person or brought the case for a purpose other than bringing [him/her] to justice.

Sources

Mississippi Model Jury Instruction - Civil 13:1.

Perkins v. Wal-Mart Stores, Inc., 46 So. 3d 839, 845 (Miss. Ct. App. 2010) (citations omitted)

(In our analysis of a claim of malice, we must focus on the objective of the defendant who instituted the criminal proceedings. The malice required for malicious prosecution occurs when the primary purpose of prosecuting is one other than bringing an offender to justice.)

Woolfolk v. Tucker, 485 So. 2d 1039, 1043 (Miss. 1986) (citations omitted) (For purposes of a malicious prosecution action, the term “malice” is used in an artificial and legal sense and simply means the prosecution was instituted primarily because of a purpose other than that of bringing an offender to justice. In order to have probable cause for criminal prosecution, the prosecutor must have (1) an honest belief in the guilt of the person accused, and (2) reasonable grounds for such belief.)

See Miss. Code Ann. § 97-23-93.1(4).

See Miss. Code Ann. § 97-23-95.

2001 Malicious Prosecution - Malice - Definition

Malice is when a [person/business/corporation] intentionally does something wrong without having a valid reason or excuse.

Sources

Harmon v. Regions Bank, 961 So. 2d 693, 699 (Miss. 2007) (citations omitted) (Malice, in its legal sense, means a wrongful act done intentionally, without just cause or excuse. Malice in law is not necessarily personal hate or ill will, but it is “the intent, without justification or excuse, to commit a wrongful act.”).

2002 Malicious Prosecution - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] maliciously prosecuted [name of plaintiff] for _____ [list the alleged malicious prosecution]. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] brought a [civil/criminal] case against [name of plaintiff];
2. The [civil/criminal] case ended in [name of plaintiff]’s favor;
3. When [name of defendant] brought the [civil/criminal] case against [name of plaintiff], [name of defendant] was acting either with hatred or malice against [name of plaintiff] or for a purpose other than bringing [name of plaintiff] to justice;
4. [Name of defendant] had no reasonable basis to bring the [civil/criminal] case against [name of plaintiff]; and
5. As a result of the [civil/criminal] case against [him/her/it], [name of plaintiff] suffered harm.

Definition(s) in this Instruction:

In this instruction, “maliciously prosecuted” means when a [person/business/corporation] intentionally brings a civil or criminal case against [a/another] person without a reasonable basis for the case. The [person/business/corporation] [who/which] brings the case must have either acted with hatred or malice against the accused person or brought the case for a purpose other than bringing [him/her] to justice.

In this instruction, “malice” means when a [person/business/corporation] intentionally does something wrong without having a valid reason or excuse.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] bring a [civil/criminal] case against [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the [civil/criminal] case end in [name of plaintiff]’s favor?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. When [name of defendant] brought the [civil/criminal] case against [name of plaintiff], was [name of defendant] acting with either hatred or malice against [name of plaintiff] or for a purpose other than bringing [name of plaintiff] to justice?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] have a reasonable basis to bring the [civil/criminal] case against [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is NO, then answer question 5. If you answered YES, stop here and tell the bailiff.

5. As a result of the [civil/criminal] case against [him/her/it], did [name of plaintiff] suffer harm?

YES _____ NO _____

If your answers to questions 1, 2, 3, and 5 are YES and your answer to question 4 is NO, then answer question 6. If you answered NO to question 5, stop here and tell the bailiff.

6. What are [plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 13:2.

Perkins v. Wal-Mart Stores, Inc., 46 So. 3d 839, 845 (Miss. Ct. App. 2010) (citations omitted)

(The elements of malicious prosecution are: (1) the institution of a proceeding; (2) by, or at the insistence of the defendant; (3) the termination of such proceeding in the plaintiff's favor; (4) malice in instituting the proceedings; (5) want of probable cause for the proceeding; and (6) the suffering of the injury or damage as a result of the prosecution. The failure to prove any one of

these elements by a preponderance of the evidence is fatal to the claim. . . . In our analysis of a claim of malice, we must focus on the objective of the defendant who instituted the criminal proceedings. The malice required for malicious prosecution occurs when the primary purpose of prosecuting is one other than bringing an offender to justice. A citizen may file a criminal complaint as long as he acts either in good faith, i.e., for a legitimate purpose or with reasonable grounds to believe that the person against whom proceedings are initiated may be guilty of the offense of which he is charged. For liability to be imposed, there must be an affirmative action that would advise, encourage, or pressure the institution of criminal proceedings.).

Bearden v. Bellsouth Telecommunications, Inc., 29 So. 3d 761, 764 (Miss. 2010) (In order to prevail on a claim of malicious prosecution, the plaintiff must prove the following elements: (1) the institution or continuation of original judicial proceedings, either criminal or civil; (2) by, or at the insistence of the defendants; (3) the termination of such proceeding in plaintiff's favor; (4) malice in instituting the proceedings; (5) want of probable cause for the proceedings; and (6) the suffering of damages as a result of the action or prosecution complained of.).

Proposed Plain Language Model Jury Instructions - Civil

Chapter 25 Negligence

2500 Negligence - Definition

[Name of plaintiff] claims that [name of defendant] was negligent. Negligence is doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Sources

Mississippi Model Jury Instruction - Civil 15:1.

Nebraska Jury Instruction - Civil 2d 3.02.

2501 Negligence - Gross Negligence - Contract Rescission Cases Only

Gross negligence is negligence of a degree so great that it shows a reckless disregard for [his/her] own rights.

Sources

Covington v. Griffin, 19 So. 3d 805, 813-14 (Miss. Ct. App. 2009) (citations omitted) (The remedy for a unilateral mistake is rescission. The supreme court has stated the following regarding a unilateral mistake: Equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent. In order to rescind a contract on the basis of a unilateral mistake, it must be shown that: (1) the mistake is of so fundamental a character that, the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; (2) there was no gross negligence on the part of the plaintiff, either in falling

into the error, or in not sooner claiming redress; (3) no intervening rights have accrued; and (4) the parties may still be placed in status quo.).

Rotenberry v. Hooker, 864 So. 2d 266, 271 (Miss. 2003) (citations omitted) (In Mississippi, equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent: But where the mistake is of so fundamental a character, that the minds of the parties have never, in fact, met; or where an unconscionable advantage has been gained, by mere mistake or misapprehension; and there was no gross negligence on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress; and no intervening rights have accrued; and the parties may still be placed in status quo; equity will interfere, in its discretion, in order to prevent intolerable injustice. This is the clearly defined and well established rule upon the subject, in courts of equity, both in England and America.).

Paracelsus Health Care Corp. v. Willard, 754 So. 2d 437, 447 (Miss. 1999) (citations omitted) ([A prior version of] Section 11-1-65(2)(a) state[d] that the provisions of this section shall not apply to contracts. The issue of punitive damages in suits for tortious breach of contract is instead governed by common law. Although punitive damages are not ordinarily recoverable in cases involving breach of contract, they are recoverable where the breach results from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an independent tort. Before punitive damages can be recovered, the plaintiff must prove by a preponderance of the evidence that the defendant acted with (1) malice or (2) gross negligence or reckless disregard for the rights of others.).

2502 Negligence - Gross Negligence - General and Non-Punitive Damages Cases

Gross negligence is negligence of a degree so great that it shows a reckless disregard for the safety and/or rights of others.

Sources

Dame v. Estes, 233 Miss. 315, 318, 101 So. 2d 644 (1958) (There is no precise definition of gross negligence, but one of the approximate definitions may be thus expressed: Gross negligence is that course of conduct which, under the particular circumstances, discloses a reckless indifference to consequences without the exertion of any substantial effort to avoid them.).

Delker v. State, 50 So. 3d 300, 308 (Miss. 2010) (citations omitted) (Chandler, J., dissenting) (This Court has defined gross negligence as that course of conduct which, under the particular circumstances, discloses a reckless indifference to consequences without the exertion of any substantial effort to avoid them.).

Judicial Council of California Civil Jury Instruction 425.

Michigan Non-Standard Jury Instruction - Civil 17:7.

2503 Negligence - Gross Negligence - Punitive Damages Standard

Gross negligence shows a willful, wanton, or reckless disregard for the safety of others.

Sources

Miss. Code Ann. § 11-1-65 (Gross negligence which evidences a willful, wanton or reckless disregard for the safety of others. . . .).

2504 Negligence - Proximate Cause

In order for [name of defendant] to be legally responsible for [name of plaintiff]'s damages, [name of defendant]'s negligence must have (1) actually caused [name of plaintiff]'s

damages and (2) a reasonable [person/business/corporation] would have anticipated that some damages would occur as a result of [name of defendant]'s negligence.

In order to be a legal cause, [name of defendant]'s negligence must have been a substantial factor in causing [name of plaintiff]'s damages. If [name of plaintiff] would have suffered damages even if [name of defendant] had not been negligent, then [name of defendant]'s negligence was not a substantial factor in causing [name of plaintiff]'s damages.

Sources

Mississippi Model Jury Instructions - Civil 15:2, 15:3, and 15:4.

McCorkle v. United Gas Pipe Line Co., 253 Miss. 169, 175 So. 2d 480, 487 (1965) (citation omitted) (In *Billups Petroleum Company v. Entrekin, supra*, we pointed out that the proximate contributing cause means a substantial factor in producing an injury.).

Lopez ex rel. Zhe v. McClellan ex rel. McClellan, No. 2008-CA-01857-COA, (Miss. Ct. App. April 27, 2010) P. 32 (Proximate cause is a concept which is more accurately defined by reference to the distinct concepts of which it is comprised, which are: (1) cause in fact; and (2) foreseeability. Cause in fact means that the act or omission was a substantial factor in bringing about the injury, and without it the harm would not have occurred. Foreseeability means that a person of ordinary intelligence should have anticipated the dangers that his negligent act created for others. A part of proximate cause is proximate contributing cause which our supreme court has defined as a substantial factor in producing an injury.).

2505 Negligence - Multiple Causes

It is not necessary that [name of defendant]'s negligence be the only cause of [name of plaintiff]'s damages. Two or more [people/businesses/corporations]'s negligence can combine to

cause [name of plaintiff]'s damages. If [name of defendant 1]'s negligence combines with [name of defendant 2/name of non-party]'s negligence to both cause [name of plaintiff]'s damages, then both [name of defendant 1] and [name of defendant 2/name of non-party] can be legally responsible for [name of plaintiff]'s damages.

Sources

Mississippi Model Jury Instruction - Civil 15:5.

2506 Negligence - Independent Superseding Cause

Under certain circumstances, a second event, which occurs later, can cause damages which are completely separate and independent from [name of defendant]'s negligence. In order for this second event to be the actual cause of [name of plaintiff]'s damages, the second event should not have been anticipated and must have been a significant factor in causing [name of plaintiff]'s damages.

Sources

Mississippi Model Jury Instruction - Civil 15:6.

2507 Negligence - Act of God

If you find that it is more likely true than not true that an act of God actually caused [name of plaintiff]'s damages and was a substantial factor in causing [name of plaintiff]'s damages, then [name of defendant] is not legally responsible for [name of plaintiff]'s damages.

Sources

Mississippi Model Jury Instruction - Civil 15:7.

2508 Negligence - Accident Does Not Infer Negligence

The fact that an accident happened does not mean that a [person/business/corporation]

was negligent.

Sources

Mississippi Model Jury Instruction - Civil 15:14.

2509 Negligence - How Would a Reasonable Person, Business, or Corporation Act

To decide whether [name of plaintiff or name of defendant] should have _____ [describe act or failure to act], you should consider whether a reasonable [person/business/corporation] would have _____ [describe act or failure to act] under similar circumstances.

Sources

Mississippi Model Jury Instruction - Civil 15:15.

2510 Negligence - Assumption of the Risk

The plaintiff may also be negligent if [he/she/it] assumes the risk of damages when [he/she/it] knows that damages could occur and then [he/she/it] intentionally and voluntarily exposes [himself/herself/itself] to such risk.

Sources

Mississippi Model Jury Instruction - Civil 15:9.

Practice Note: Assumption of the risk is submitted to the jury in the form of a comparative negligence instruction and verdict form.

2511 Negligence - Negligence by One Defendant - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]'s negligence harmed or injured [name of plaintiff] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages.

To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of defendant]'s negligence; and
3. [Name of defendant]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop

here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Judicial Council of California Civil Jury Instruction VF-400.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2512 Negligence - Negligence by More than One Defendant - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant 1] and [name of defendant 2]'s negligence harmed or injured [name of plaintiff] and that [name of defendant 1] and [name of defendant 2] are legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true concerning each defendant:

Section A - [Name of Defendant 1]

1. [Name of defendant 1] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of defendant 1]'s negligence;

3. [Name of defendant 1]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Section B. - [Name of Defendant 2]

4. [Name of defendant 2] was negligent;

5. [Name of plaintiff] suffered damages as a result of [name of defendant 2]’s negligence; and

6. [Name of defendant 2]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of Defendant 1]

1. Was [name of defendant 1] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant 1]’s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant 1]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of Defendant 2]

4. Was [name of defendant 2] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant 2]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was [name of defendant 2]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C

7. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant 1]: [Name of defendant 1] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of defendant 2]: [Name of defendant 2] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

TOTAL 100 %

8. What are [name of plaintiff]'s damages? TOTAL \$ _____

Sources

Judicial Council of California Civil Jury Instruction VF-400.

Practice Note: This instruction should be modified to include more defendants or non-parties as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2513 Negligence - Negligence by One Defendant and One Non-Party - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] and [name of non-party]'s negligence harmed or injured [name of plaintiff] and that [name of defendant 1] and [name of non-party] are legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

Section A - [Name of Defendant]

1. [Name of defendant] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of defendant]'s negligence;

3. [Name of defendant]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Section B - [Name of Non-Party]

4. [Name of non-party] was negligent;

5. [Name of plaintiff] suffered damages as a result of [name of non-party]'s negligence; and

6. [Name of non-party]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of Defendant]

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of Non-Party]

4. Was [name of non-party] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of non-party]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was [name of non-party]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C

7. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant]: [Name of defendant] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of non-party]: [Name of non-party] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

TOTAL 100 %

8. What are [name of plaintiff]'s damages? TOTAL \$ _____

Sources

Judicial Council of California Civil Jury Instruction VF-402.

Practice Note: This instruction should be modified to include more defendants or non-parties as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2514 Negligence - Comparative Negligence by Plaintiff and Defendant - General

Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]'s negligence harmed or injured [name of plaintiff] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages.

[Name of defendant] claims that [name of plaintiff] was also negligent. To establish [name of plaintiff]'s claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of defendant]'s negligence; and

3. [Name of defendant]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

To establish [name of defendant]’s claim that [name of plaintiff] was negligent, [name of defendant] must prove all of the following are more likely true than not true:

- 4. [Name of plaintiff] was negligent;
- 5. [Name of plaintiff] suffered damages as a result of [name of plaintiff]’s negligence; and
- 6. [Name of plaintiff]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of plaintiff]’s Claim Against [Name of defendant]

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then go to Section B. If you answered NO, then stop and tell the bailiff.

Section B - [Name of defendant]'s Claim that [Name of plaintiff] Was Also Negligent

4. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, go to Section C.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C

7. If your answers to questions 1-6 are YES, then give a percentage of fault to

[Name of defendant]: [Name of defendant] _____%

and

[Name of plaintiff]: [Name of plaintiff] _____%

TOTAL 100 %

8. What are [name of plaintiff]’s damages? TOTAL \$ _____

Sources

Mississippi Model Jury Instruction - Civil 15:8.

Judicial Council of California Civil Jury Instruction VF-401.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2515 Negligence - Comparative Negligence of Plaintiff and More than One Defendant

General Instruction

[Name of plaintiff] claims that [name of defendant 1]’s and [name of defendant 2]’s negligence harmed or injured [name of plaintiff] and that [name of defendant 1] and [name of defendant 2] are legally responsible for [name of plaintiff]’s damages. [Name of defendant 1 or 2] claims that [name of plaintiff] was also negligent. To establish [name of plaintiff]’s claim, [name of plaintiff] must prove all of the following are more likely true than not true:

Section A - [Name of plaintiff]’s Claim Against [Name of defendant 1]

1. [Name of defendant 1] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of defendant 1]’s negligence; and
3. [Name of defendant 1]’s negligence was a substantial factor in causing [name of plaintiff]’s

damages.

Section B - [Name of plaintiff]'s Claim Against [Name of defendant 2]

4. [Name of defendant 2] was negligent;
5. [Name of plaintiff] suffered damages as a result of [name of defendant 2]'s negligence; and
6. [Name of defendant 2]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

To establish [name of defendant 1 or 2]'s claim that [name of plaintiff] was also negligent, [name of defendant 1 or 2] must prove all of the following are more likely true than not true:

7. [Name of plaintiff] was negligent;
8. [Name of plaintiff] suffered damages as a result of [name of plaintiff]'s negligence; and
9. [Name of plaintiff]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of plaintiff]’s Claim Against [Name of defendant 1]

1. Was [name of defendant 1] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant 1]’s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant 1]’s negligence a substantial factor in causing [name of plaintiff]’s damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of plaintiff]’s Claim Against [Name of defendant 2]

4. Was [name of defendant 2] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant 2]’s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, go to Section C.

6. Was [name of defendant 2]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C - [Name of defendant]'s Claim that [Name of plaintiff] Was Also Negligent

7. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, go to Section D.

8. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, go to Section D.

9. Was [name of plaintiff]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section D.

Section D

10. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant 1]: [Name of defendant 1] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of defendant 2]: [Name of defendant 2] _____ %

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

If your answers to questions 7-9 are YES, then give a percentage of fault to

[Name of plaintiff]: [Name of plaintiff] _____ %

If you answered NO to any question 7, 8, or 9, then write 0 in the blank.

TOTAL 100 %

8. What are [name of plaintiff]'s damages? TOTAL \$ _____

Sources

Mississippi Model Jury Instruction - Civil 11:7.

Judicial Council of California Civil Jury Instruction VF-402.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2516 Negligence - Negligence by Plaintiff, Defendant, and a Non-Party - General

Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]'s negligence harmed or injured [name of plaintiff] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages.

[Name of defendant] claims that [name of plaintiff] and [name of non-party] were also negligent.

To establish [name of plaintiff]'s claim, [name of plaintiff] must prove all of the following are more likely true than not true:

Section A - [Name of plaintiff]'s Claim Against [Name of defendant]

1. [Name of defendant] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of defendant]'s negligence; and

3. [Name of defendant]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

To establish [name of defendant]’s claims that [name of plaintiff] and [name of non-party] were also negligent, [name of defendant] must prove all of the following are more likely true than not true:

Section B - [Name of defendant]’s Claim that [Name of plaintiff] Was Also Negligent

4. [Name of plaintiff] was negligent;
5. [Name of plaintiff] suffered damages as a result of [name of plaintiff]’s negligence; and
6. [Name of plaintiff]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Section C - [Name of defendant]’s Claim that [Name of non-party] Was Also Negligent

7. [Name of non-party] was negligent;
8. [Name of plaintiff] suffered damages as a result of [name of non-party]’s negligence; and
9. [Name of non-party]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of plaintiff]'s Claim Against [Name of defendant]

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then go to Section B and answer question 4. If you answered NO, stop here and tell the bailiff.

Section B - [Name of defendant]'s Claim that [Name of plaintiff] Was Also Negligent

4. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, then go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, then go to Section C.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 6 is YES, then go to Section C and answer question 7. If you answered NO, then also go to Section C.

Section C - [Name of defendant]'s Claim that [Name of non-party] Was Also Negligent

7. Was [name of non-party] negligent?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, then go to Section D.

8. Did [name of plaintiff] suffer damages as a result of [name of non-party]'s negligence?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, then go to Section D.

9. Was [name of non-party]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 9 is YES, then go to Section D and answer question 10. If you answered NO, then also go to Section D.

Section D

10. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant]: [Name of defendant] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of plaintiff]: [Name of plaintiff] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

If your answers to questions 7-9 are YES, then give a percentage of fault to

[Name of non-party]: [Name of non-party] _____%

If you answered NO to any question 7, 8, or 9, then write 0 in the blank.

TOTAL 100 %

8. What are [name of plaintiff]'s damages? TOTAL \$ _____

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 11:8.

Practice Note: This instruction should be modified to include more defendants and/or non-parties as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2517 Negligence - Counterclaim by Defendant - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [name of plaintiff]'s negligence harmed or injured [name of defendant] and that [name of plaintiff] is legally responsible for [name of defendant]'s

damages. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] was negligent;
2. [Name of defendant] suffered damages as a result of [name of plaintiff]'s negligence; and
3. [Name of plaintiff]'s negligence was a substantial factor in causing [name of defendant]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here with regard to this counterclaim verdict form.

2. Did [name of defendant] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop

here with regard to this counterclaim verdict form.

3. Was [name of plaintiff]’s negligence a substantial factor in causing [name of defendant]’s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here with regard to this counterclaim verdict form.

4. What are [name of defendant]’s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 15:10.

Practice Note: The trial court should submit the counterclaim to the jury on a separate verdict form.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2518 Negligence - Bystander Recovery - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]’s damages because _____ [describe plaintiff’s bystander claim]. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] was near the scene of _____ [describe the accident]; and
2. [Name of plaintiff] suffered a direct and emotional shock as a result of [his/her] [seeing/hearing/observing] the accident as it happened; and

3. [Name of plaintiff] and [name of victim] were closely related.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of plaintiff] near the scene of _____ [describe the accident]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer a direct and emotional shock as a result of [his/her] [seeing/hearing/observing] the accident as it happened?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Were [name of plaintiff] and [name of victim] closely related?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Smith v. Harrison County, Mississippi, 67 So. 3d 815, 818 (Miss. Ct. App. 2011) (citations omitted) (The Mississippi Supreme Court has set the standard for determining whether a defendant owes a duty of care to a bystander plaintiff: In determining, whether [the] defendant

should reasonably foresee the injury to [the] plaintiff, or, whether [the] defendant owes [the] plaintiff a duty of care, the courts will take into account such factors as the following: (1) Whether [the] plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon [the] plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether [the] plaintiff and [the] victim were closely related, as contrasted with an absence of any relationship or the presence of only a distance relationship.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2519 Negligence - Driving a Motor Vehicle Around Children

General Instruction

[Name of plaintiff] claims that [name of defendant] was negligent while driving a motor vehicle in an area around children and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] knew or should have known that children were likely to be in the area [name of defendant] was driving because _____ [describe facts which show that defendant knew or should have known];
2. [Name of defendant] was negligent by _____ [describe defendant's alleged negligence];
3. [Name of plaintiff] suffered damages as a result of [name of defendant]'s negligence; and
4. [Name of defendant]'s negligence was a substantial factor in causing [name of plaintiff]'s

damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent by _____ [describe defendant’s alleged negligence]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]’s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]’s negligence a substantial factor in causing [name of plaintiff]’s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 15:13.

McGee v. Bolen, 369 So. 2d 486, 492 (Miss. 1979) ([D]rivers of automobiles are charged with the duty to expect children to do the unexpected, to understand that they may do the ununderstandable and unpredictable, and will act upon a second's impulse. Appellee drove under this responsibility, and had he discharged the duty he owed to those he acknowledges he knew to be at the threshold of the lane on which he was advancing, it follows that this care toward them would have avoided the sad catastrophe reflected in the record. The facts here remove this case from those protecting the motorist from liability for injury to children suddenly darting from behind obstructions of view into the path of the driver. Although not himself visible to appellee he was among those who were visible to him and was entitled to the stern care and caution that belonged to those clearly within appellee's view.).

Bland v. Briggs, 512 So. 2d 894, 896 (Miss. 1987) (*Moak v. Black*, 92 So. 2d 845 (Miss. 1959) involved a motorist striking a nine-year-old child on a bicycle. . . . We reversed a jury verdict for the motorist as being against the overwhelming weight of the evidence. Citing a previous case of *McMinn v. Lilly*, 60 So. 2d 603 (Miss. 1952), we stated: [M]oreover, a motorist when passing children who are playing or riding on the streets or highways is required to use proper care in giving the necessary signals, in bringing his car under control, and in anticipating the unusual and

impulsive actions characteristic of persons of immature years. This rule implies that when the motorist sees a child or young person on the street ahead of him, he must be ready to guard against an unexpected and sudden movement on the part of the child, calculated to endanger the child's safety, and the motorist must anticipate that young persons will not always act to protect themselves from danger as will a mature adult under the same circumstances. In *Bozeman v. Tucker*, 203 So. 2d 795, 799 (Miss. 1967), this Court stated: "A reasonably prudent driver can more safely assume that a chicken, dog, cow, mule or child most likely will cross the road in front of an approaching car, and drive accordingly.").

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2520 Negligence - Parents Responsible for Property Damage Intentionally Done by Children

General Instruction

[Name of plaintiff] claims that [name(s) of defendant(s)]'s [child/children] intentionally damaged or destroyed [name of plaintiff]'s property and that [name(s) of defendant(s)] [is/are] legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name(s) of defendant(s)] [is/are] the parent(s) of [name(s) of child or children], who [is/are] more than 10 and less than 18 years old; and
2. [Name(s) of child or children] intentionally and with malice damaged or destroyed _____ [describe property], which [is/was] owned by [name of plaintiff].

Definition(s) in this Instruction:

In this instruction, “malice” means a person intentionally does something wrong without having a valid reason or excuse.

Verdict Form

We answer the questions submitted to us as follows:

1. [Is/Are] [name(s) of defendant(s)] the parent(s) of [name(s) of child or children], who [is/are] more than 10 and less than 18 years old?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name(s) of child or children] intentionally and with malice damage or destroy _____ [describe property], which [is/was] owned by [name of plaintiff]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. What are [name of plaintiff]’s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 15:12.

Miss. Code Ann. § 93-13-2 ((1) Any property owner shall be entitled to recover damages in an amount not to exceed Five Thousand Dollars (\$5,000.00), plus necessary court costs, from the parents of any minor under the age of eighteen (18) years and over the age of ten (10), who

maliciously and willfully damages or destroys property belonging to such owner. However, this section shall not apply to parents whose parental custody and control of such child have been removed by court order or decree.).

Practice Note: The trial court will determine if the child or children's custody has been removed and what the age(s) of the child or children were at the time of the action.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 26 Legal Malpractice (Legal Negligence)

2600 Legal Malpractice - Standard of Care

An attorney owes [his/her] client the duty to act with the same knowledge, skill, and ability of a reasonable attorney practicing law in this community. Legal malpractice is when the attorney does not act with the same knowledge, skill, and ability of a reasonable attorney practicing law in this community. This is also called legal negligence.

Source

Mississippi Model Jury Instruction - Civil 14:1.

Committee Note: There is a trend in some states to refer to the term “legal negligence” instead of “legal malpractice.”

2601 Legal Malpractice - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] was legally negligent and that [name of defendant] is legally responsible for [name of plaintiff]’s harm. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] and [name of defendant] had an attorney-client relationship, specifically

_____ [describe the alleged attorney-client relationship];

2. [Name of defendant] was legally negligent by _____

[describe the defendant’s alleged negligence];

3. [Name of plaintiff] suffered damages as a result of _____

[describe the defendant's alleged negligence] because [name of plaintiff]

_____ [describe the result that occurred or would not have occurred except for defendant's legal negligence]; and

4. [Name of defendant]'s legal negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, "negligence" or "negligent" means doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful person would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of defendant] have an attorney-client relationship, specifically _____ [describe the alleged attorney-client relationship]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant] legally negligent by _____ [describe the defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] suffer damages as a result of _____
[describe the defendant's alleged negligence] because [name of plaintiff]
_____ [describe the result that occurred or would not have
occurred except for defendant's legal negligence]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s legal negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 14:2.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 27 Medical Malpractice (Medical Negligence)

2700 Medical Malpractice - Standard of Care

A [medical doctor/physician] owes [his/her] patient the duty to act with the same attention, skill, ability, and caution of a minimally competent [medical doctor/physician] who practices in the same medical specialty or general field of medicine in the United States. Medical malpractice is when the [medical doctor/physician] does not act with the same attention, skill, ability, and caution of a minimally competent [medical doctor/physician] who practices in the same medical specialty or general field of medicine in the United States. This is also called medical negligence.

Sources

Mississippi Model Jury Instruction - Civil 14:4.

Bickham v. Grant, 861 So. 2d 299, 303 (Miss. 2003) (In medical malpractice cases, the standard of care is objective and requires the physician to exercise the degree of care, diligence, and skill ordinarily possessed and exercised by a minimally competent and reasonably diligent, skillful, careful, and prudent physician in that field of practice.).

McCaffrey v. Puckett, 784 So. 2d 197, 203 (Miss. 2001) (citations omitted) (In *Hall v. Hilbun*, 466 So. 2d 856 (Miss.1985), this Court abolished the locality rule and adopted the national standard of care which provides “each physician has a duty to use his or her knowledge and therewith treat through medical recovery, each patient, with such reasonable diligence, skill, competence, and prudence as are practiced by minimally competent physicians in the same specialty or general field of practice throughout the United States, who have available to them the

same general facilities services, equipment and options.”).

Committee Note: There is a trend in some states to refer to the term “medical negligence” instead of “medical malpractice.”

2701 Medical Malpractice - When a Doctor Assumes Another Specialty to Treat a Patient - Standard of Care

When a [medical doctor/physician], who practices _____ [describe the defendant doctor’s medical specialty], treats a patient, the [medical doctor/physician] is required to use the attention, skill, ability, and caution of a minimally competent [medical doctor/physician] who practices _____ [describe the defendant doctor’s medical specialty]. However, when a [medical doctor/physician], who does not practice in _____ [describe the other medical specialty] and who attempts to treat a patient with the attention, skill, ability, and caution of a minimally competent [medical doctor/physician] who practices _____ [describe the other medical specialty], the [medical doctor/physician] is required to use the attention, skill, ability, and caution of a minimally competent [medical doctor/physician] who practices _____ [describe the other medical specialty].

Sources

Mississippi Model Jury Instruction - Civil 14:5.

Lewis v. Soriano, 374 So. 2d 829, 830-31(Miss. 1979) (This case involves the question of whether the defendant's treatment of plaintiff's injuries should be measured by the accepted standard of care of a general family physician in the community where he practiced, or by the standard of care of a specialist in orthopedic surgery. Defendant maintained throughout his

testimony that he recommended unequivocally the transfer of the plaintiff to a qualified orthopedic surgeon when he first examined plaintiff and at frequent intervals during the following weeks of treatment, but plaintiff refused to leave the Neshoba County Hospital, insisting all medical procedures be conducted there. Defendant candidly admitted that the standard of care furnished defendant was inferior to the care that could have been furnished by an orthopedic surgeon, but undertook and continued to treat plaintiff only because he had no alternative since plaintiff was unwilling to go elsewhere for treatment. . . . However, it is uncontradicted that defendant's recommendation for referral to an orthopedic surgeon was qualified because he represented to the plaintiff that he could obtain a good result in the case. . . . Plaintiff was willing for defendant to treat him if he could obtain a good result. Since defendant told the patient he could achieve a good result thereby claiming he possessed the skill necessary to perform the procedure involved, the recommendation that plaintiff be referred to an orthopedic surgeon was qualified rather than unequivocal. We are of the opinion that the standard of care to be applied in this case is that of an orthopedic surgeon rather than a physician having a specialty in family practice. Defendant admitted that he did not possess the training or skill of an orthopedic surgeon but, nevertheless, undertook treatment of a complicated fracture and dislocation which requires special training and skill not possessed by the defendant. We hold that a judgment notwithstanding the verdict of the jury should have been granted by the trial judge and reach this conclusion from the testimony of the defendant himself.).

Adkins v. Sanders, 871 So. 2d 732, 737 (Miss. 2004) (While the Court of Appeals found that P-21 was identical to a jury instruction previously approved by this Court in *Lewis v. Soriano*, we find that our decision in *Lewis* is inapplicable under the facts presented here. . . . The crucial

factor in [Lewis] was the physician's admission “that he did not possess the training or skill” of an orthopedic surgeon “but, nevertheless undertook treatment of a complicated” fracture and dislocation “which requires special training and skill not possessed by the defendant.” Unlike the physician in *Lewis*, Dr. Sanders did not admit that he assumed responsibility as a specialist in another medical discipline, i.e., as Linda's rheumatologist. He did not admit that the care that was given was inferior to the treatment she could have gotten from a specialist. Dr. Sanders did not assure that he could obtain a good result nor did he claim to possess the skills necessary to treat her condition which resulted from lupus. In fact, Dr. Sanders made significant efforts by referrals to other physicians in an effort to determine the nature of Linda's complications and the appropriate treatments. Further, the issue of whether he undertook treatment of a complicated pregnancy which required special training and skills was an issue for the jury. This instruction effectively instructs the jury that Dr. Sanders assumed the responsibilities of a rheumatologist and undertook treatment of Linda's complicated pregnancy without having the necessary special training and skill. We find that proposed instruction P-21 was properly refused because it is peremptory.).

2702 Medical Malpractice - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] was medically negligent and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1A. [Name of plaintiff] was [name of defendant]'s patient;

OR

- 1B. [Name of defendant] gave medical [advice/services/treatment] to [name of plaintiff]; and
2. [Name of defendant] was medically negligent by _____
[describe the defendant's alleged negligence];
3. [Name of plaintiff] suffered damages as a result of _____ [describe the defendant's alleged negligence] because [name of plaintiff] _____
[describe the result that occurred or would not have occurred except for defendant's alleged negligence]; and
4. [Name of defendant]'s medical negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful person would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1A. Was [name of plaintiff] [name of defendant]'s patient?

OR

1B. Did [name of defendant] give medical [advice/services/treatment] to [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff.

2. Was [name of defendant] medically negligent by _____

[describe the defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] suffer damages as a result of _____

[describe the defendant's alleged negligence] because [name of plaintiff]

_____ [describe the result that would have occurred if not for defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s medical negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 14:4.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2703 Medical Malpractice - Informed Consent

A [medical doctor/physician] has a duty to tell [his/her] patient of the reasonable and important risks of the medical services that the [medical doctor/physician] is or will be providing. A risk is important if a reasonable person in the patient's circumstances would make [his/her] decision about the medical services based on the risk. Important risks include how the medical services will be carried out, the known risks of the medical services, and the likelihood that the medical services will be successful in treating the patient.

Sources

Mississippi Model Jury Instruction - Civil 14:6.

Arledge v. McFatter, 605 So. 2d 781, 790 n.8 (Miss. 1992) (The Court instructs the jury that Mrs. Arledge had four surgical procedures performed on her and the names of them are: liposuction, abdominoplasty, hysterectomy and appendectomy. Dr. McFatter had the duty to inform Mrs. Arledge of the reasonable material risk of surgery. The Court instructs the jury that a risk is material if it would be important to a reasonable person and the patients' position in making the decision whether or not to undergo the procedure or treatment. These material known risks include nature and purpose of the proposed treatment, risks and consequences of the proposed treatment and the probability that the proposed treatment will be successful. The Court further instructs the jury that if you believe from a preponderance of the evidence that Dr. McFatter failed to inform Mrs. Arledge of the material risks known to reasonably prudent physicians performing these procedures and that a reasonably prudent patient would not have undergone the

surgical procedures after having been informed of said risks, then it shall be your sworn duty to return a verdict for Claudia Arledge.).

2704 Medical Malpractice - Informed Consent - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] did not tell [name of plaintiff] about the important risks of _____ [describe the medical services] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1A. [Name of plaintiff] was [name of defendant]'s patient;

OR

1B. [Name of defendant] gave medical [advice/services/treatment] to [name of plaintiff]; and

2. [Name of defendant] did not tell [name of plaintiff] about _____ [describe the important risk(s) which the plaintiff alleges that the defendant did not tell him or her], which [medical doctors/physicians] know about;

3. A reasonable patient would not have agreed to the medical [services/treatment] if [he/she] had been told of the important risk(s);

4. [Name of plaintiff] suffered damages as a result [name of defendant] not telling [name of plaintiff] about _____ [describe the important risk(s) which the plaintiff alleges that the defendant did not tell him or her]; and

5. [Name of defendant]'s failure to tell [name of plaintiff] about _____ [describe the important risk(s) which the plaintiff alleges that the defendant did not tell him or her] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1A. Was [name of plaintiff] [name of defendant]'s patient?

OR

1B. Did [name of defendant] give medical [advice/services/treatment] to [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] tell [name of plaintiff] about _____ [describe the important risk(s) which the plaintiff alleges that the defendant did not tell him or her], which [medical doctors/physicians] know about?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Would a reasonable patient have agreed to the medical [services/treatment] if [he/she] had been told of the important risk(s)?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result [name of defendant] not telling [name of plaintiff] about _____ [describe the important risk(s) which the plaintiff alleges that the defendant did not tell him or her]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to tell [name of plaintiff] about _____ [describe the important risk(s) which the plaintiff alleges that the defendant did not tell him or her] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 2, 4, and 5 are YES and your answer to question 3 is NO, then answer question 6. If you answered NO to question 5, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 14:6.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2705 Medical Malpractice - Emergency Treatment - Standard of Care

If a licensed [medical doctor/physician], physician's assistant, dentist, registered nurse, licensed nurse, certified emergency medical technician, or any other person gives an injured person emergency medical treatment at the scene of an accident or on the way to a hospital, and [he/she] acts with good intentions and with reasonable care, then that licensed [medical doctor/physician], physician's assistant, dentist, registered nurse, licensed nurse, certified emergency medical technician, or other person is not legally responsible for any

[harm/injury/injuries] that [he/she] may cause to the injured person.

Sources

Mississippi Model Jury Instruction - Civil 14:7.

Miss. Code Ann. § 73-25-37.

2706 Medical Malpractice - Emergency Treatment - Affirmative Defense - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [he/she] is not legally responsible for [name of plaintiff]'s damages because [name of defendant] gave [name of plaintiff] emergency medical treatment at the scene of an accident or on the way to a hospital. To establish this defense, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] was injured [at/in] _____ [describe the accident];
2. [Name of defendant] gave [name of plaintiff] emergency medical treatment _____ [specify (1) at the scene of the accident or (2) on the way to a hospital]; and
3. [Name of defendant] acted with good intentions and with reasonable care.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of plaintiff] injured [at/in] _____ [describe the accident]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] give [name of plaintiff] emergency medical treatment

_____ [specify (1) at the scene of the accident or (2) on the way to a hospital]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] act with good intentions and with reasonable care?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must find in favor of [name of defendant] on [his/her] defense.

Sources

Mississippi Model Jury Instruction - Civil 14:7.

Miss. Code Ann. § 73-25-37.

2707 Medical Malpractice - Private Hospital's Standard of Care

If a private hospital is open to the public to provide medical services and has hired a [medical doctor/physician] to provide those medical services, then the hospital may be legally responsible for the [medical doctor/physician]'s medical malpractice.

Sources

Mississippi Model Jury Instruction - Civil 14:3.

Hardy v. Brantley, 471 So. 2d 358, 371 (Miss. 1985) (Where a hospital holds itself out to the public as providing a given service, in this instance, emergency services, and where the hospital enters into a contractual arrangement with one or more physicians to direct and provide the

service, and where the patient engages the services of the hospital without regard to the identity of a particular physician and where as a matter of fact the patient is relying upon the hospital to deliver the desired health care and treatment, the doctrine of respondeat superior applies and the hospital is vicariously liable for damages proximately resulting from the neglect, if any, of such physicians. By way of contrast and distinction, where a patient engages the services of a particular physician who then admits the patient to a hospital where the physician is on staff, the hospital is not vicariously liable for the neglect or defaults of the physician.), *distinguished in Brown v. Delta Regional Medical Center*, 997 So. 2d 195, 196 (Miss. 2008) (Mississippi Tort Claims Act).

2708 Medical Malpractice - Private Hospital's Legal Responsibility - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant doctor] was medically negligent and that because [name of defendant hospital] hired [name of defendant doctor], [name of defendant hospital] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant hospital] [is/was] a hospital open to the public to provide medical services;
2. [Name of defendant hospital] and [name of defendant doctor] entered into a contract for [name of defendant doctor] to provide medical services at [name of defendant hospital];
3. [Name of plaintiff] was a patient at [name of defendant hospital] and needed

_____ [describe the plaintiff's medical condition and

services needed];

4. While [name of plaintiff] was a patient at [name of defendant hospital], [name of defendant doctor] treated [name of plaintiff];

5. [Name of defendant doctor] was medically negligent by

_____ [describe the defendant doctor's alleged negligence];

6. [Name of plaintiff] suffered damages a result of _____

[describe the defendant doctor's alleged negligence] because [name of plaintiff]

_____ [describe the result that occurred or would not have

occurred except for defendant doctor's alleged negligence]; and

7. [Name of defendant doctor]'s medical negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, "negligence" or "negligent" means doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful person would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. [Is/Was] [name of defendant hospital] a hospital open to the public to provide medical services?

YES _____

NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant hospital] and [name of defendant doctor] enter into a contract for [name of defendant doctor] to provide medical services at [name of defendant hospital]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of plaintiff] a patient at [name of defendant hospital] and needed _____ [describe the plaintiff's medical condition and services needed]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. While [name of plaintiff] was a patient at [name of defendant hospital], did [name of defendant doctor] treat [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant doctor] medically negligent by _____ [describe the defendant doctor's alleged negligence]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop

here and tell the bailiff.

6. Did [name of plaintiff] suffer damages as a result of _____ [describe the defendant doctor's alleged negligence] because [name of plaintiff] _____ [describe the result that occurred or would not have occurred except for defendant doctor's alleged negligence]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of defendant doctor]'s medical negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 14:3.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

2709 Medical Malpractice - Multiple Defendants - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant 1] and [name of defendant 2] were medically negligent and that [name of defendant 1] and [name of defendant 2] are legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

Section A - [Name of Defendant 1]

1A. [Name of plaintiff] was [name of defendant 1]'s patient;

OR

1B. [Name of defendant 1] gave medical [advice/services/treatment] to [name of plaintiff]; and

2. [Name of defendant 1] was medically negligent by _____
[describe the defendant's alleged negligence];

3. [Name of plaintiff] suffered damages as a result of _____ [describe the defendant's alleged negligence] because [name of plaintiff] _____
[describe the result that occurred or would not have occurred except for defendant's alleged negligence]; and

4. [Name of defendant 1]'s medical negligence was a substantial factor in causing [name of plaintiff]'s damages.

Section B - [Name of Defendant 2]

5A. [Name of plaintiff] was [name of defendant 2]'s patient;

OR

5B. [Name of defendant 2] gave medical [advice/services/treatment] to [name of plaintiff]; and

6. [Name of defendant 2] was medically negligent by _____

[describe the defendant's alleged negligence];

7. [Name of plaintiff] suffered damages as a result of _____ [describe the defendant's alleged negligence] because [name of plaintiff] _____ [describe the result that occurred or would not have occurred except for defendant's alleged negligence]; and

8. [Name of defendant 2]'s medical negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, "negligence" or "negligent" means doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful person would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of defendant 1]

1A. Was [name of plaintiff] [name of defendant 1]'s patient?

OR

1B. Did [name of defendant 1] give medical [advice/services/treatment] to [name of plaintiff]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Was [name of defendant 1] medically negligent by _____
[describe defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Did [name of plaintiff] suffer damages as a result of _____
[describe defendant's alleged negligence] because [name of plaintiff]
_____ [describe the result that would have occurred if not
for defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and go to Section B.

4. Was [name of defendant 1]'s medical negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section B.

Section B - [Name of Defendant 2]

5A. Was [name of plaintiff] [name of defendant 2]'s patient?

OR

5B. Did [name of defendant 2] give medical [advice/services/treatment] to [name of plaintiff]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was [name of defendant 2] medically negligent by _____
[describe defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and go to Section C.

7. Did [name of plaintiff] suffer damages as a result of _____
[describe defendant's alleged negligence] because [name of plaintiff]
_____ [describe the result that would have occurred if not
for defendant's alleged negligence]?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and go to Section C.

8. Was [name of defendant 2]'s medical negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, stop here and go to Section C.

Section C

9. If your answers to questions 1-4 are YES, then give a percentage of fault to

[Name of defendant 1]: [Name of defendant 1] _____%

If you answered NO to any question 1-4, then write 0 in the blank.

If your answers to questions 5-8 are YES, then give a percentage of fault to

[Name of defendant 2]: [Name of defendant 2] _____%

If you answered NO to any question 5-8, then write 0 in the blank.

TOTAL 100 %

10. What are [name of plaintiff]'s damages? TOTAL \$ _____

Sources

Mississippi Model Jury Instruction - Civil 14:8.

Practice Note: This instruction should be modified to include additional defendants as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 30 Agency

3000 Agency - Agent and Principal - Definitions

An agent is a person who is authorized to act on behalf of another person or business. The other person or business is called a principal. The term agent includes an employee, and the term principal includes an employer. A person can act as an agent even though [he/she] is not paid for [his/her] work.

Sources

Mississippi Model Jury Instruction - Civil 4:1.

Practice Note: This instruction should be modified as needed by the facts of the case.

3001 Agency - In General

A [person/business/corporation/partnership/other entity] is legally responsible for damages caused by the wrongful conduct of [his/her/its] [agent(s)/employee(s)/other relationship(s)] while acting within the scope of [his/her] [authority/employment].

If you find that [name of plaintiff] has proved that the following are more likely true than not true:

1. [Name of agent] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of agent]'s negligence;
3. [Name of agent]'s negligence was a substantial factor in causing [name of plaintiff]'s damages;
4. [Name of agent] was [name of defendant or principal]'s _____ [specify agent, employee, or other relationship]; and

5. [Name of agent] was acting within the scope of [his/her] _____ [specify agency, employment, work, or other relationship] when [name of agent] harmed or injured [name of plaintiff], then [name of defendant or principal] and [name of agent] are both legally responsible to [name of plaintiff].

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Sources

Mississippi Model Jury Instruction - Civil 4:2.

Judicial Council of California Civil Jury Instructions 3700 and VF-3700.

3002 Agency - Express, Implied, and Apparent Authority

An agent’s express authority is what the principal tells the agent or shows the agent about what [his/her] work is and/or how to do [his/her] work.

An agent’s implied authority is what is necessary or usual to do in order for the agent to carry out [his/her] work for the principal.

An agent’s apparent authority is what a reasonable person would believe that an agent has in order to carry out [his/her] work for the principal.

If a person reasonably believes that an agent has authority to act on behalf of [his/her] principal and is harmed or injured as a result of the agent's conduct while working for the principal, then the principal will be legally responsible for the person's harm or injury.

Sources

Mississippi Model Jury Instruction - Civil 4:3.

3003 Agency - Scope of Authority

An agent's conduct is within the scope of [his/her] employment if [he/she] is carrying out the work [he/she] was hired to do or if [he/she] is doing something that is necessary or usually done in order to carry out the work [he/she] was hired to do. You should consider whether the agent's conduct was in fact done in order to carry out the principal's work or whether such conduct is expected in order to carry out the principal's work.

Sources

Mississippi Model Jury Instruction - Civil 4:4.

Practice Note: The term "employment" may be modified as needed by the facts of the case.

3004 Agency - Explanation of Scope of Authority

A principal does not have to specifically authorize an agent's conduct for it to be within the scope of [his/her] employment. An agent's conduct which is connected or necessary to carry out [his/her] employment can be within the scope of [his/her] employment.

Sources

Mississippi Model Jury Instruction - Civil 4:5.

3005 Agency - Conduct Which is Contrary to the Agent's Instructions but Within the Scope of Employment

If an agent does something that is contrary to what the principal has told [him/her] to do, the principal may still be legally responsible for the agent's conduct if the conduct was done within the scope of the agent's employment.

Sources

Mississippi Model Jury Instruction - Civil 4:6.

3006 Agency - Conduct Which Goes Beyond the Scope of Agent's Authority

If an agent does something that goes beyond [his/her] scope of employment, the principal is not legally responsible for the agent's conduct.

Sources

Mississippi Model Jury Instruction - Civil 4:7.

3007 Agency - Conduct Which Goes Beyond the Scope of Agent's Authority - Approved by the Principal

If an agent does something that goes beyond [his/her] scope of employment but then the principal, knowing about the conduct, later approves such conduct, then the principal is legally responsible for the agent's conduct. The principal's later approval of the conduct can be proved by the principal's actions or words which show [his/her] intention to approve the conduct.

If you find that [name of plaintiff] has proved that it is more likely true than not true that:

1. [Name of defendant or principal] knew that [name of agent] _____

[describe the agent's unauthorized conduct]; and

2. [Name of defendant or principal] later approved [name of agent]'s conduct by

_____ [describe principal's actions or words which show

intention to approve the conduct],

then [name of defendant or principal] is legally responsible for [name of agent]'s conduct.

Sources

Mississippi Model Jury Instruction - Civil 4:9.

3008 Agency - Departure from Scope of Employment for Personal Activity

If an agent stops carrying out the principal's work and conducts personal business or an errand, then the principal is not legally responsible for the agent's negligence or harmful actions while the agent is conducting [his/her] personal business or errand. The agent's role as agent is not in force during this time.

If you find that it is more likely true than not true that [name of agent] had stopped carrying out [name of principal]'s [business/employment/work] in order to conduct personal business or an errand when [name of agent] harmed or injured [name of plaintiff], then your verdict shall be for [name of defendant].

Sources

Mississippi Model Jury Instruction - Civil 4:8.

3009 Agency - When a Person Relies on Agent's Apparent Authority

If an agent does something that goes beyond [his/her] scope of employment but a person reasonably believes that the principal had authorized the agent to do such an act, and then that person relies on the agent's conduct in a way that causes [him/her] harm, then the principal is legally responsible for the agent's conduct.

Sources

Mississippi Model Jury Instruction - Civil 4:10.

3010 Agency - Principal's Responsibility for Agent's Conduct While Driving a Motor

Vehicle

If an agent harms or injures another person during the scope of [his/her] employment while driving a motor vehicle [owned/provided] by the principal, then the principal is legally responsible for the agent's conduct.

Sources

Mississippi Model Jury Instruction - Civil 4:11.

3011 Agency - Principal's Responsibility for Agent's Conduct While Driving a Motor Vehicle - Presumptions and Burden of Proof

You must decide whether [name of agent] was acting within the scope of [his/her] employment at the time of the accident. You may find that [name of agent] was acting within the scope of [his/her] employment based on the fact that [name of principal] [owned/provided] the motor vehicle driven by [name of agent]. However, if you find that at the time of the accident, [name of agent] was using [name of principal]'s motor vehicle for [name of agent]'s personal business or an errand, then [name of principal] is not legally responsible for [name of agent]'s conduct.

Sources

Mississippi Model Jury Instruction - Civil 4:12.

3012 Agency - Independent Contractor - Definition

An independent contractor is a person who agrees to perform work or a job for another person but is not an agent of that person. The main difference between an agent and an independent contractor is that the person who hires an independent contractor does not have the right to control how and when the independent contractor performs [his/her] job or work.

Sources

Mississippi Model Jury Instruction - Civil 4:13.

Practice Note: This instruction should be modified as needed by the facts of the case.

Practice Note: For detailed discussions on independent contractors and the “control” test, please see *Quick Change Oil & Lube v. Rogers*, 663 So. 2d 585 (Miss. 1995); *Richardson v. APAC-Mississippi, Inc.*, 631 So. 2d 143 (Miss. 1994); and *W.J. Runyon & Son v. Davis*, 605 So. 2d 38 (Miss. 1992), overruled by *Richardson v. APAC-Mississippi, Inc.*, 631 So. 2d 143 (Miss. 1994).

3013 Agency - Independent Contractor - Legal Responsibility

If you find that it is more likely true than not true that:

1. [Name of independent contractor] agreed to [do/perform/work] _____

[describe the work] for [name of defendant]; but

2. [Name of defendant] did not have the right to control or supervise [name of independent contractor]’s [job/work],

then you shall find for [name of defendant].

Sources

Mississippi Model Jury Instruction - Civil 4:14.

Practice Note: For detailed discussions on independent contractors and the “control” test, please see *Quick Change Oil & Lube v. Rogers*, 663 So. 2d 585 (Miss. 1995); *Richardson v. APAC-Mississippi, Inc.*, 631 So. 2d 143 (Miss. 1994); and *W.J. Runyon & Son v. Davis*, 605 So. 2d 38 (Miss. 1992), overruled by *Richardson v. APAC-Mississippi, Inc.*, 631 So. 2d 143 (Miss. 1994).

3014 Agency - Joint Venture - Responsibility of Members

A joint venture exists when two or more people combine their property, skills, or

knowledge to carry out a single business plan and agree to share the control, profits, and losses. A joint venture can be formed by a written or oral agreement or by an agreement which is indicated by the people's conduct.

A joint venture and each of its members are responsible for the wrongful conduct of any member acting within the scope of [his/her] authority.

You must decide whether a joint venture existed in this case.

Sources

Mississippi Model Jury Instruction - Civil 4:15.

Judicial Council of California Civil Jury Instruction 3712.

3015 Agency - Joint Venture Liability for Motor Vehicle Accident

The members of a joint venture are legally responsible for the wrongful conduct of another member acting within the scope of [his/her] authority while driving a motor vehicle if the purpose of the traveling was related to the joint venture.

However, if members of a joint venture are traveling together on a trip which is not related to the joint venture, then the members of the joint venture are not legally responsible for the wrongful conduct of the driver.

If you find that it is more likely true than not true that [name of joint venture member 1] and [name of joint venture member 2] were traveling to _____ [describe the joint venture purpose of the trip], and that this trip was related to the joint venture, then [name of joint venture member 1] and [name of joint venture member 2] are both legally responsible for the negligence, if any, of each other.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Sources

Mississippi Model Jury Instruction - Civil 4:16.

3016 Agency - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of agent]’s negligence harmed or injured [name of plaintiff] and that [name of defendant principal] is legally responsible for [name of plaintiff]’s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of agent] was negligent;
2. [Name of plaintiff] suffered damages as a result of [name of agent]’s negligence;
3. [Name of agent]’s negligence was a substantial factor in causing [name of plaintiff]’s damages;
4. [Name of agent] was [name of defendant principal]’s _____ [specify agent, employee, or other relationship]; and
5. [Name of agent] was acting within the scope of [his/her] _____ [specify agency, employment, work, or other relationship] when [name of agent] harmed or injured [name of plaintiff].

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of agent] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of agent]’s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of agent]’s negligence a substantial factor in causing [name of plaintiff]’s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of agent] [name of defendant principal]'s _____ [specify agent, employee, or other relationship]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of agent] acting within the scope of [his/her] _____ [specify agency, employment, or other relationship] when [name of agent] harmed or injured [name of plaintiff]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Judicial Council of California Civil Jury Instruction VF-3700.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 31 Animals

3100 Animals – Wild Animal – Definition and Standard of Care

A wild animal is an animal that is not usually domesticated or that is not customarily used by people. A person who owns or keeps a wild animal is legally responsible for the harm that the wild animal causes to others, even if the owner carefully keeps the wild animal and does not know that the particular wild animal is dangerous.

Sources

Mississippi Model Jury Instruction - Civil 5:1.

Practice Note: For cases which have defined wild animals, see *Rosenbloom v. Hanour Corp.*, 78 Cal. Rptr. 2d 686, 687 n.1 (Cal. Ct. App. 1998) (Strict liability has been imposed on keepers of lions, tigers, bears, elephants, wolves, and monkeys.) and *Deluca v. Whitmarsh Township*, 526 A.2d 456, 458 (Pa. Commw. Ct. 1987) (A Pennsylvania state law defines “wildlife” as “all bears, coyotes, lions, tigers, leopards, jaguars, cheetahs, cougars, wolves, and any crossbreed of such animals which have similar characteristics of the animals specified herein.”).

3101 Animals – Wild Animal – General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]’s _____ [specify type of wild animal] harmed or injured [him/her] and that [name of defendant] is legally responsible for [name of plaintiff]’s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. _____ [Specify type of wild animal] is a wild animal;

2. [Name of defendant] owned or kept a _____ [specify type of wild animal];
3. The _____ [specify type of wild animal] harmed or injured [name of plaintiff]; and
4. [Name of defendant]'s _____ [specify type of wild animal] was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “wild animal” means an animal that is not usually domesticated or that is not customarily used by people.

Verdict Form

We answer the questions submitted to us as follows:

1. Is _____ [specify type of wild animal] a wild animal?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] own or keep a _____ [specify type of wild animal]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the _____ [specify type of wild animal] harm or injure [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop

here and tell the bailiff.

4. Was [name of defendant]'s _____ [specify type of wild animal] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 5:1.

Judicial Council of California Civil Jury Instructions 461 and VF-408.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3102 Animals – Domestic Animal – Definition and Standard of Care

A domestic animal is an animal that is customarily owned or used by people. A person who owns or keeps a domestic animal is required to know how the domestic animal generally behaves and to take reasonable steps to make sure that others are not harmed by the domestic animal's natural behavior.

Sources

See Black's Law Dictionary (9th ed. 2009) (An animal that has customarily lived peaceably with people, such as farm animals and pets.).

3103 Animals – Domestic Animal – General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]'s _____ [specify type of domestic animal] harmed or injured [him/her] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [A/An] _____ [specify type of domestic animal] is a domestic animal;
2. [Name of defendant] owned or kept a _____ [specify type of domestic animal], which was not an abnormally dangerous animal;
3. [Name of defendant] did not take reasonable steps under the circumstances to control the _____ [specify type of domestic animal];
4. The _____ [specify type of domestic animal] harmed or injured [name of plaintiff]; and
5. [Name of defendant]'s failure to take reasonable steps under the circumstances to control the _____ [specify type of domestic animal] was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “domestic animal” means an animal that is customarily owned or used by people.

Verdict Form

We answer the questions submitted to us as follows:

1. Is [a/an] _____ [specify type of domestic animal] a domestic animal?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] own or keep a _____ [specify type of domestic animal], which was not an abnormally dangerous animal?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] take reasonable steps under the circumstances to control the _____ [specify type of domestic animal]?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4. Did the _____ [specify type of domestic animal] harm or injure [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to take reasonable steps under the circumstances to control the _____ [specify type of domestic animal] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 2, 4, and 5 are YES and your answer to question 3 is NO,

then answer question 6. If you answered NO to question 5, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 5:2.

Judicial Council of California Civil Jury Instruction VF-408.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3104 Animals – Domestic Animal – With Known Dangerous Nature – Standard of Care

A person who owns or keeps a domestic animal with an unusually dangerous nature or disposition is legally responsible for the harm that the dangerous domestic animal causes to others, even if the owner takes reasonable steps to make sure that others are not harmed by the domestic animal.

Sources

Mississippi Model Jury Instruction - Civil 5:4.

3105 Animals – Domestic Animal - With Known Dangerous Nature – General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]'s _____ [specify type of domestic animal] harmed or injured [him/her] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or kept a _____ [specify type of domestic animal], a domestic animal;
2. The _____ [specify type of domestic animal] had an unusually dangerous nature or disposition;
3. The _____ [specify type of domestic animal] harmed or injured [name of plaintiff]; and
4. That before the _____ [specify type of domestic animal] harmed or injured [name of plaintiff], [name of defendant] knew or should have known that the _____ [specify the type of domestic animal] had an unusually dangerous nature or disposition.

Definition(s) in this Instruction:

In this instruction, “domestic animal” means an animal that is customarily owned or used by people.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own or keep a _____ [specify type of domestic animal], a domestic animal?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the _____ [specify type of domestic animal] have an unusually dangerous nature or disposition?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the _____ [specify type of domestic animal] harm or injure [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] know or should [name of defendant] have known that the _____ [specify the type of domestic animal] had an unusually dangerous nature or disposition before the _____ [specify type of domestic animal] harmed or injured [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 5:3.

Judicial Council of California Civil Jury Instruction 462.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3106 Animals – Livestock Roaming on Highways – Standard of Care

A person who owns livestock is legally responsible for any damages which result from

motor vehicle accidents, bodily injuries, or deaths caused by the livestock being found on a federal or state designated paved highway or highway right-of-way. The owner is required to prove that [he/she] was not negligent in allowing the livestock to be on the federal or state designated paved highway or highway right-of-way.

Sources

Mississippi Model Jury Instruction - Civil 5:5.

Miss. Code Ann. § 69-13-111.

Committee Note: The subcommittee used the exact language concerning federal or state designated paved highway or highway right-of-way from Miss. Code Ann. § 69-13-111. There may be an issue about whether this statute applies to a county road.

3107 Animals – Livestock Roaming on Highways – General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]'s _____ [specify type of livestock] entered or roamed onto a federal or state designated paved highway or highway right of way and caused [name of plaintiff] damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned a _____ [specify type of livestock];
2. [Name of defendant] did not take reasonable steps to keep the _____ [specify type of livestock] from entering or roaming onto a federal or state designated paved highway or highway right of way;
3. [Name of defendant]'s _____ [specify type of livestock] entered or roamed onto a federal or state designated paved highway or highway right of way, specifically _____

[specify the federal or state designated paved highway or highway right of way];

4. The _____ [specify type of livestock] harmed or injured [name of plaintiff] by causing _____ [describe events that allegedly caused plaintiff's harm or injury, such as an accident]; and

5. [Name of defendant]'s failure to take reasonable steps to keep the _____ [specify type of livestock] from entering or roaming onto the federal or state designated paved highway or highway right of way was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own a _____ [specify type of livestock]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] take reasonable steps to keep the _____ [specify type of livestock] from entering or roaming onto a federal or state designated paved highway or highway right of way?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Did [name of defendant]'s _____ [specify type of livestock] enter or roam onto a federal or state designated paved highway or highway right of way, specifically _____ [list the federal or state designated paved highway or highway right of way]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did the _____ [specify type of livestock] harm or injure] [name of plaintiff] by causing _____ [describe events that allegedly caused plaintiff's harm or injury, such as an accident]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to take reasonable steps to keep the _____ [specify type of livestock] from entering or roaming onto a federal or state designated paved highway or highway right of way a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 3, 4, and 5 are YES and your answer to question 2 is NO, then answer question 6. If you answered NO to question 5, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 5:7.

Miss. Code Ann. § 69-13-111.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3108 Animals – Livestock Roaming on Another Person’s Property – Standard of Care

A person who owns livestock is required by law to keep the livestock confined and contained on [his/her] property. The owner is legally responsible for any damages which result from injuries or trespasses committed by the livestock while roaming onto the property of another person.

Sources

Mississippi Model Jury Instruction - Civil 5:6.

Miss. Code Ann. § 69-13-19.

3109 Animals – Livestock Roaming on Another Person’s Property – General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant]’s _____ [specify type of livestock] entered or trespassed onto property owned by [name of plaintiff] causing [him/her] [damages/harm/injury]. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned _____ [specify type of livestock];
2. [Name of defendant]’s _____ [specify type and quantity of livestock] entered or trespassed onto [name of plaintiff]’s property; and
3. The _____ [specify type and quantity of livestock] trespassed onto or [damaged/harmed/injured] [name of plaintiff]’s property.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own _____ [specify type of livestock]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant]'s _____ [specify type and quantity of livestock] enter or trespass onto [name of plaintiff]'s property?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the _____ [specify type and quantity of livestock] trespass onto or [damage/harm/injure] [name of plaintiff]'s property?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 5:6.

Miss. Code Ann. § 69-13-1 and § 69-13-19.

Practice Note: Mississippi Code Annotated § 69-13-19 specifies the amount of damages due to the plaintiff for such entry or trespass onto his or her property.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 32 Bailment

3200 Bailment - Definition

A bailment is when one person gives personal property to another person who will keep, use, and return the personal property in a certain condition. The bailor is the person who gives the personal property; the bailee is the person who receives the personal property.

Sources

Mississippi Model Jury Instruction - Civil 7:1.

3201 Bailment - Mutual Benefit - Bailor's Standard of Care

If the bailment is for the benefit of both the bailor and the bailee, then the bailor must make sure that the property is reasonably safe for the bailee to use, and the bailor must tell the bailee about dangers or defects in the property about which the bailor knows or should know.

Sources

Mississippi Model Jury Instruction - Civil 7:3.

3202 Bailment - Mutual Benefit - Bailee's Standard of Care

If the bailment is for the benefit of both the bailor and the bailee, then the bailee must take reasonable care of the property and must return the property.

Sources

Mississippi Model Jury Instruction - Civil 7:2.

3203 Bailment - Bailor's Benefit - Bailee's Standard of Care

If the bailment is only for the bailor's benefit, then the bailee must take only [minimal/slight] care of the property and must return the property.

Sources

Mississippi Model Jury Instruction - Civil 7:5.

3204 Bailment - Bailee's Benefit - Bailor's Standard of Care

If the bailment is only for the bailee's benefit, then the bailor does not have to inspect the property before giving it to the bailee, and the bailor is only required to tell the bailee about dangers or defects in the property if [he/she] actually knows about them.

Sources

Mississippi Model Jury Instruction - Civil 7:6.

3205 Bailment - For Hire - Consideration

A bailment for hire requires that either the bailee must receive some benefit for keeping the property or the bailor must give up [his/her] right to possess the property.

Sources

Mississippi Model Jury Instruction - Civil 7:4.

3206 Bailment - For Hire - General Instruction and Verdict Form

General Information

[Name of plaintiff] claims that a bailment for hire existed. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of bailor] gave up [his/her/its] right to possess the _____ [specify property];

OR

2. [Name of bailee] received some benefit for keeping the _____ [specify property].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of bailor] give up [his/her/its] right to possess the _____ [describe property]?

YES _____ NO _____

Answer question 2.

2. Did [name of bailee] receive some benefit for keeping the _____ [describe property]?

YES _____ NO _____

If your answer to question 1 or 2 is YES, then you must find that a bailment for hire existed.

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 7:4.

3207 Bailment - Ownership of the Property and Returning the Property to its Actual Owner

The bailee does not take ownership of the bailment property while [he/she] possesses the property. If the property is owned by someone other than the bailor, then the bailee may return it to either the bailor or the actual owner. If the bailee proves that [he/she] gave the property to the actual owner, then it is a complete legal defense to any claim made by the bailor for not returning the property to [him/her].

Sources

Mississippi Model Jury Instruction - Civil 7:7.

3208 Bailment - Property Destroyed by Act of God

A bailee is not legally responsible if the bailment property is damaged or destroyed by an act of God while it is in the bailee's possession.

Sources

Mississippi Model Jury Instruction - Civil 7:8.

3209 Bailment - Mutual Benefit - Bailor's Alleged Failure to Follow the Standard of Care

General Instruction

[Name of plaintiff bailee] claims that [name of defendant bailor] _____ [specify (1) did not make sure that the _____ [specify property] was reasonably safe for [name of plaintiff bailee] to use or (2) did not tell [name of plaintiff bailee] about danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew or should have known]. To establish this claim, [name of plaintiff bailee] must prove all of the following are more likely true than not true:

1. [Name of defendant bailor] gave [a/an/the] _____ [specify property] to _____ [name of plaintiff bailee] to _____ [describe purpose of the bailment]; and
2. The bailment of _____ [specify property] was for the benefit of both [name of defendant bailor] and [name of plaintiff bailee]; and
- 3A. [Name of defendant bailor] did not make sure that the _____ [specify property] was reasonably safe for [name of plaintiff bailee] to use;

OR

- 3B. [Name of defendant bailor] did not tell [name of plaintiff bailee] about any danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew or should have known; and
- 4A. [Name of defendant bailor] knew that [name of plaintiff bailee] was going to use the _____ [specify property];

OR

4B. [Name of defendant bailor] should have known that [name of plaintiff bailee] would have been harmed or injured or suffered damages by using the _____ [specify property]; and

5A. [Name of defendant bailor]'s failure to make sure that the _____ [specify property] was reasonably safe for [name of plaintiff bailee] to use was a substantial factor in causing [name of plaintiff bailee]'s damages;

OR

5B. [Name of defendant bailor]'s failure to tell [name of plaintiff bailee] about danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew or should have known, was a substantial factor in causing [name of plaintiff bailee]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant bailor] give [a/an/the] _____ [specify property] to [name of plaintiff bailee] to _____ [describe purpose of the bailment]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was the bailment of the _____ [specify property] for the benefit of both [name of defendant bailor] and [name of plaintiff bailee]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3A. Did [name of defendant bailor] make sure that the _____ [specify property] was reasonably safe for [name of plaintiff bailee] to use?

OR

3B. Did [name of defendant bailor] tell [name of plaintiff bailee] about danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew or should have known?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4A. Did [name of defendant bailor] know that [name of plaintiff bailee] was going to use the _____ [specify property]?

OR

4B. Should [name of defendant bailor] have known that [name of plaintiff bailee] would have been harmed or injured or suffered damages by using the _____ [specify property]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5A. Was [name of defendant bailor]'s failure to make sure that the _____ [specify property] was reasonably safe for [name of plaintiff bailee] to use a substantial factor in causing [name of plaintiff bailee]'s damages?

OR

5B. Was [name of defendant bailor]'s failure to tell [name of plaintiff bailee] about any danger(s)

or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew or should have known, a substantial factor in causing [name of plaintiff bailee]'s damages?

YES _____ NO _____

If your answers to questions 1, 2, 4, and 5 are YES and your answer to question 3 is NO, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff bailee]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 7:3.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3210 Bailment - Mutual Benefit - Bailee's Alleged Failure to Follow the Standard of Care

General Instruction

[Name of plaintiff bailor] claims that [name of defendant bailee] damaged or harmed [a/an/the] _____ [specify property] and that [name of defendant bailee] is legally responsible for that damage or harm. To establish this claim, [name of plaintiff bailor] must prove all of the following are more likely true than not true:

1. [Name of plaintiff bailor] gave [a/an/the] _____ [specify property] to [name of defendant bailee];
2. The bailment of the _____ [specify property] was for the benefit of both [name of plaintiff bailor] and [name of defendant bailee];
3. [Name of defendant bailee] did not take reasonable care of the _____ [specify

property]; and

4. [Name of defendant bailee]'s failure to take reasonable care of the _____ [specify property] was a substantial factor in causing damage or harm to the _____ [specify property].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff bailor] give [a/an/the] _____ [specify property] to [name of defendant bailee]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was the bailment of the _____ [specify property] for the benefit of both [name of plaintiff bailor] and [name of defendant bailee]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant bailee] take reasonable care of the _____ [specify property]?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4. Was [name of defendant bailee]'s failure to take reasonable care of the _____ [specify property] a substantial factor in causing damage or harm to the _____ [specify property]?

property]?

YES _____ NO _____

If your answers to questions 1, 2, and 4 are YES and your answer to question 3 is NO, then answer question 5. If you answered NO to question 4, stop here and tell the bailiff.

5. What are [name of plaintiff bailor]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 7:2.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3211 Bailment - Bailor's Benefit - Bailee's Alleged Failure to Follow the Standard of Care

General Instruction

[Name of plaintiff bailor] claims that [name of defendant bailee] damaged or harmed [a/an/the] _____ [specify property] and that [name of defendant bailee] is legally responsible for that damage or harm. To establish this claim, [name of plaintiff bailor] must prove all of the following are more likely true than not true:

1. [Name of plaintiff bailor] gave [a/an/the] _____ [specify property] to [name of defendant bailee];
2. The bailment of the _____ [specify property] was only for [name of plaintiff bailor]'s benefit;
3. [Name of defendant bailee] did not take even [minimal/slight] care of the _____ [specify property]; and

4. [Name of defendant bailee]'s failure to take even [minimal/slight] care of the _____
[specify property] was a substantial factor in causing damage or harm to the _____
[specify property].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff bailor] give [a/an/the] _____ [specify property] to [name of defendant bailee]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was the bailment of the _____ [specify property] only for [name of plaintiff bailor]'s benefit?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant bailee] take even [minimal/slight] care of the _____ [specify property]?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4. Was [name of defendant bailee]'s failure to take even [minimal/slight] care of the _____
[specify property] a substantial factor in causing damage or harm to the _____ [specify

property]?

YES _____ NO _____

If your answers to questions 1, 2, and 4 are YES and your answer to question 3 is NO, then answer question 5. If you answered NO to question 4, stop here and tell the bailiff.

5. What are [name of plaintiff bailor]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 7:5.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3212 Bailment - Bailee's Benefit - Bailor's Alleged Failure to Follow the Standard of Care

General Instruction

[Name of plaintiff bailee] claims that [name of defendant bailor] did not tell [name of plaintiff bailee] about any danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew, and that [name of defendant bailor] is legally responsible for [name of plaintiff bailee]'s damages. To establish this claim, [name of plaintiff bailee] must prove all of the following are more likely true than not true:

1. [Name of defendant bailor] gave [a/an/the] _____ [specify property] to [name of plaintiff bailee] to _____ [describe purpose of the bailment];
2. The bailment of the _____ [specify property] was only for [name of plaintiff bailee]'s benefit;
3. [Name of defendant bailor] did not tell [name of plaintiff bailee] about any danger(s) or

defect(s) in the _____ [specify property], about which [name of defendant bailor] knew;

4. [Name of defendant bailor] should have known that [name of plaintiff bailee] would have been harmed or injured or suffered damages by using the _____ [specify property]; and

5. [Name of defendant bailor]'s failure to tell [name of plaintiff bailee] about any danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew, was a substantial factor in causing [name of plaintiff bailee]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant bailor] give [a/an/the] _____ [specify property] to [name of plaintiff bailee] to _____ [describe purpose of the bailment]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was the bailment of the _____ [specify property] only for [name of plaintiff bailee]'s benefit?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant bailor] tell [name of plaintiff bailee] about any danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop

here and tell the bailiff.

4. Should [name of defendant bailor] have known that [name of plaintiff bailee] would have been harmed or injured or suffered damages by using the _____ [specify property]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant bailor]'s failure to tell [name of plaintiff bailee] about any danger(s) or defect(s) in the _____ [specify property], about which [name of defendant bailor] knew, a substantial factor in causing [name of plaintiff bailee]'s damages?

YES _____ NO _____

If your answers to questions 1, 2, 4, and 5 are YES and your answer to question 3 is NO, then answer question 6. If you answered NO to question 5, stop here and tell the bailiff.

6. What are [name of plaintiff bailee]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 7:6.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 33 Common Carriers

3300 Common Carrier - Definition

A common carrier is a [person/business/corporation/service] [who/which] carries or transports people or property for money.

Sources

Mississippi Model Jury Instruction - Civil 8:1.

Miss. Code Ann. § 77-7-7(e) (The term “common carrier by motor vehicle” means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or household goods.).

3301 Common Carriers - Standard of Care

A common carrier must use the highest degree of care and safety for its passengers and property in a manner which is consistent with how it operates its business.

Sources

Mississippi Model Jury Instruction - Civil 8:3.

3302 Common Carriers - Standard of Care for Loss or Damage of Property

In general, a common carrier is legally responsible for damage to or loss of the property that an owner or shipper gives to it to carry or transfer. However, a common carrier is not legally responsible for damage to or loss of the property when that damage or loss is caused by (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property.

Sources

3303 Common Carriers - Passengers - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] harmed or injured [him/her] and that [name of defendant] is legally responsible for that harm or injury. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was a common carrier of passengers;
2. [Name of plaintiff] was a passenger on a _____ [describe type of carrier], which was owned or operated by [name of defendant];
3. [Name of defendant] did not use the highest degree of care and safety for its passengers in a manner which was consistent with how it operated its business by _____ [describe defendant's alleged actions]; and
4. [Name of defendant]'s failure to use the highest degree of care and safety for its passengers in a manner which was consistent with how it operated its business was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] a common carrier of passengers?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of plaintiff] a passenger on a _____ [describe type of carrier], which was

owned or operated by [name of defendant]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] use the highest degree of care and safety for its passengers in a manner which was consistent with how it operated its business by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 3 is NO, then answer question 4. If you answered YES, stop here and tell the bailiff.

4. Was [name of defendant]'s failure to use the highest degree of care and safety for its passengers in a manner which was consistent with how it operated its business a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 2, and 4 are YES and your answer to question 3 is NO, then answer question 5. If you answered NO to question 4, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 8:3.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3304 Common Carriers - Damages to or Loss of Property - General Instruction and

Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] damaged or lost [his/her] _____ [describe plaintiff's property] and that [name of defendant] is legally responsible for that damage or loss. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was a common carrier of property;
2. [Name of plaintiff] delivered _____ [describe plaintiff's property] to [name of defendant] for shipment; and
- 3A. [Name of plaintiff]'s _____ [describe plaintiff's property] was damaged or lost while being carried or transported by [name of defendant];

OR

- 3B. [Name of plaintiff]'s _____ [describe plaintiff's property] was damaged or lost after its arrival at _____ [describe the location where the property was allegedly damaged or lost] before [name of plaintiff] was notified of its arrival and before [name of plaintiff] had a reasonable opportunity to pick up the _____ [describe plaintiff's property].

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] a common carrier of property?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff.

2. Did [name of plaintiff] deliver the _____ [describe plaintiff's property] to [name of defendant] for shipment?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3A. Was [name of plaintiff]'s _____ [describe plaintiff's property] damaged or lost while being carried or transported by [name of defendant]?

OR

3B. Was [name of plaintiff]'s _____ [describe plaintiff's property] damaged or lost after its arrival at _____ [describe the location where the property was allegedly damaged or lost] before [name of plaintiff] was notified of its arrival and before [name of plaintiff] had a reasonable opportunity to pick up the _____ [describe plaintiff's property]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 8:4.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3305 Common Carriers - Damages to or Loss of Property - Affirmative Defense - General Instruction and Verdict Form

General Instruction

[Name of defendant] claims that [name of plaintiff]'s _____ [describe plaintiff's property] [was/were] damaged or lost as a result of _____ [describe the circumstances which form the basis of the defendant's defense, such as (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property] and that [name of defendant] is not legally responsible for such damage or loss. To establish this claim, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] was a common carrier of property;
2. _____ [Describe the circumstances which form the basis of the defendant's defense, such as (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property] occurred or happened; and
3. Such _____ [describe the circumstances which form the basis of the defendant's defense, such as (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property] was the substantial factor in causing damage to or loss of [name of plaintiff]'s _____ [describe plaintiff's property].

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] a common carrier of property?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did _____ [describe the circumstances which form the basis of the defendant's defense, such as (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property] occur or happen?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was such _____ [describe the circumstances which form the basis of the defendant's defense, such as (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property] the substantial factor in causing damage to or loss of [name of plaintiff]'s _____ [describe plaintiff's property]?

YES _____ NO _____

If your answers to questions 1 and 2 are YES and your answer to question 3 is NO, then answer question 4. If you answered YES to question 3, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 8:4.

Illinois Cent. R.R. Co. v. Benoit Gin Co., 248 So. 2d 426, 428 (Miss. 1971) (The common carrier has the burden of proof to establish that the property was damaged or lost as a result of (1) an act of God; (2) an act by a public enemy; (3) an act by public authorities or agencies; (4) an act by the owner or shipper of the property; or (5) a basic defect in the property.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3306 Private or Contract Carriers - Definition

A private or contract carrier is a [person/business/corporation/service] [who/which] enters into a contract to carry or transport people or property for [money/profit].

Sources

Mississippi Model Jury Instruction - Civil 8:2.

Miss. Code Ann. § 77-7-7(f) (The term “contract carrier by motor vehicle” means any person, not included under subsection (e) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or household goods.).

3307 Private or Contract Carriers - Standard of Care and Presumption

A private or contract carrier is presumed to be legally responsible for damage to or loss of the property that an owner or shipper gives to it to carry or transfer.

Sources

Mississippi Model Jury Instruction - Civil 8:5.

3308 Private or Contract Carriers - Damages to or Loss of Property - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] damaged or lost [his/her] _____ [describe plaintiff's property] and that [name of defendant] is legally responsible for that damage or loss. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was a private or contract carrier of property;
2. [Name of plaintiff] delivered [a/an] _____ [describe plaintiff's property] to [name of defendant] for shipment; and
3. [Name of plaintiff]'s _____ [describe plaintiff's property] was damaged or lost while being carried or transported by [name of defendant].

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] a private or contract carrier of property?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] deliver [a/an] _____ [describe plaintiff's property] to [name of defendant] for shipment?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of plaintiff]'s _____ [describe plaintiff's property] damaged or lost

while being carried or transported by [name of defendant]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 8:5.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 34 Eminent Domain

3400 Eminent Domain - Definition

Eminent domain is the State's authority to take a [person/business/company]'s private property for a public use. The State must pay the property owner due compensation, which is the fair price for the land taken and/or damage to the property. The eminent domain process may also be called condemnation.

Sources

Black's Law Dictionary (9th ed. 2009) (The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.).

3401 Eminent Domain - View the Property

You may view the property which is the subject of this eminent domain proceeding. Viewing the property will give you the opportunity to see the property and any buildings or structures on the property. You will understand how the property is currently being used and see which part of the property that the State is taking.

Sources

Miss. Code Ann. § 11-27-19.

3402 Eminent Domain - Fair Market Value

In order to award due compensation to [name of property owner], you must determine the difference between the fair market value of the property immediately before the taking, _____ [insert date], and the fair market value immediately after the taking, _____ [insert

date].

Fair market value is the term used for the price that the property would bring on the open market in a sale between a seller who is willing to sell, and a buyer who is willing and able to buy the property, and both the buyer and the seller know the important facts about the property.

Sources

Mississippi Model Jury Instructions - Civil 11:32 and 11:34.

3403 Eminent Domain - Highest and Best Use of the Property

In order to determine the fair market value of the property immediately before and immediately after the taking, you should consider the property's highest and best use. The property's highest and best use is what the property is legally allowed to be used for; what the property is physically able to be used for; what is financially possible for the property to be used for; and what is most profitable for the property to be used for.

If you find that the property's highest and best use is something different from what it is currently being used for, then you must find that the property is able to be used for that purpose; that it is reasonable for the property to be put to that purpose within the immediate future or within a reasonable time; and that the property's fair market value is increased by the other purpose.

Sources

Judicial Council of California Civil Jury Instruction 3502.

3404 Eminent Domain - Determining Damages

In determining the amount to award the property owner for damage to the property, you should consider all of the evidence concerning the fair market value of the property, as well as

Sources

Mississippi Model Jury Instruction - Civil 1:41.

3406 Eminent Domain - Taking - Verdict Form

You must return the following verdict:

We find that [name of property owner] will be damaged by the taking of [his/her/its] property for the public use in the amount of \$_____.

Signed

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Sources

Mississippi Model Jury Instruction - Civil 11:40.

Miss. Code Ann. § 11-27-23 (In the trial of all cases provided for herein, nine (9) jurors may bring in a verdict as in other civil cases. The verdict of the jury shall be in the following form:

"We, the jury, find that the defendant (naming him) will be damaged by the acquisition of his property for the public use, in the sum of _____ Dollars.").

3407 Eminent Domain - Easement - Verdict Form

You must return the following verdict:

We find that [name of property owner] will be damaged by the granting of an easement

across [his/her/its] property for the public use in the amount of \$ _____.

Signed

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Sources

Mississippi Model Jury Instruction - Civil 11:40.

Miss. Code Ann. § 11-27-23 (In the trial of all cases provided for herein, nine (9) jurors may bring in a verdict as in other civil cases. The verdict of the jury shall be in the following form:

"We, the jury, find that the defendant (naming him) will be damaged by the acquisition of his property for the public use, in the sum of _____ Dollars.").

3408 Eminent Domain - Damages When Eminent Domain Proceedings Are Dismissed

When a lawsuit for eminent domain is dismissed, you should consider the following factors in determining the amount to award the landowner for damages to [his/her/its] real property:

1. All reasonable expenses that the landowner has or owes in defending the lawsuit, including attorney's fees, loss of the landowner's time, and reasonable expenses in helping prepare for the case;

2A. If the property cannot be repaired or restored to its original value, then the difference

between the fair market value of the property from the date the eminent domain proceedings began to the date that the eminent domain proceedings were dismissed;

OR

2B. If the property can be repaired or restored to its original value, then the reasonable cost of repairs to the property;

AND

3. The reasonable rent or payment for use of the property while the landowner could not use [his/her/its] property.

Sources

Mississippi Model Jury Instruction - Civil 11:35.

3409 Eminent Domain - Damages When Eminent Domain Proceedings Are Dismissed - Verdict Form

You must return the following verdict:

We find that [name of property owner] suffered damages in the amount of \$_____ as a result of the dismissed eminent domain proceedings.

Sources

Mississippi Model Jury Instruction - Civil 11:33.

Miss. Code Ann. § 11-27-37.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 35 Premises Liability (Owners and Occupiers of Land)

A. Invitee

3500 Invitee - Definition

An invitee is a person who goes onto [a/another] [person/business/corporation/organization]'s property for both the invitee's benefit and the property owner's benefit. The invitee goes onto the property as a result of the property owner's express or implied invitation.

A business invitee is a person who goes onto and remains on a business's property by express or implied invitation for a purpose related to the business. A store customer is a business invitee.

A public invitee is a person who goes onto a [person/business/corporation/organization]'s property by express or implied invitation as a member of the public for a purpose which is related to why the property is open to the public. A person attending church is a public invitee.

Sources

Mississippi Model Jury Instruction - Civil 16:8.

Hudson v. Courtesy Motors, Inc., 794 So. 2d 999, 1003 (Miss. 2001) (An invitee is defined as a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage.).

Martin v. B.P. Exploration & Oil, Inc., 769 So. 2d 261, 264 (Miss. Ct. App. 2000) (citations omitted) (The Mississippi Supreme Court delineated between the definitions of a business and public invitee. A business invitee is one who is invited to enter or remain on the premises for a

purpose connected with the business, while a public invitee is characterized as one who is invited to enter or remain on the premises as member of the public for a purpose for which the land is held open to the public.).

3501 Invitee - Change of Status

An invitee's status can change to that of a licensee or trespasser if [he/she] exceeds the area to which [he/she] had an express or implied invitation to be.

If [name of plaintiff] exceeded the area in which [he/she] had an express or implied invitation to be, then [name of plaintiff] became a licensee or trespasser.

Sources

Mississippi Model Jury Instruction - Civil 16:10.

3502 Invitee - Duty Owed to Invitee

A property owner has a duty to act with reasonable care not to injure the invitee. The property owner must keep the property reasonably safe, and if the property is not reasonably safe, then the property owner must warn the invitee of any hidden danger that is not obvious to the invitee.

Sources

Hudson v. Courtesy Motors, Inc., 794 So. 2d 999, 1003 (Miss. 2001) (A landowner owes a business invitee a duty of reasonable care for the invitee's safety.).

Little ex rel. Little v. Bell, 719 So. 2d 757, 760 (Miss. 1998) (A landowner owes an invitee the duty to keep the premises reasonably safe and when not reasonably safe to warn only where there is hidden danger or peril that is not plain and open view.).

3503 Invitee - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe business property];
2. [Name of plaintiff] went onto _____ [describe business property] with [name of defendant]'s express or implied permission for a purpose related to the business;
3. [A/An] _____ [describe dangerous condition], a dangerous condition, was on [name of defendant]'s property;
4. [Name of defendant] knew or should have known about the dangerous condition;
5. [Name of defendant] failed to act with reasonable care to remove the dangerous condition or to warn [name of plaintiff] about the dangerous condition;
6. [Name of plaintiff] was injured by the dangerous condition; and
7. [Name of defendant]'s failure to act with reasonable care was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe business property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe business property] with [name of defendant]'s express or implied permission for a purpose related to the business?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [a/an] _____ [describe dangerous condition], a dangerous condition, on [name of defendant]'s property?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] know or should [name of defendant] have known about the dangerous condition?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of defendant] fail to act with reasonable care to remove the dangerous condition or to warn [name of plaintiff] about the dangerous condition?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of plaintiff] injured by the dangerous condition?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of defendant]'s failure to act with reasonable care a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:9.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3504 Invitee - Slip and Fall on Business Premises - Defendant Causes Dangerous Condition - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe business property];
2. [Name of plaintiff] went onto _____ [describe business property] with [name of defendant]'s express or implied permission for a purpose related to the business;

3. [Name of defendant] failed to act with reasonable care and caused a dangerous condition on _____ [describe business property];
4. [Name of plaintiff] was injured by the dangerous condition; and
5. [Name of defendant]'s failure to act with reasonable care was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe business property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe business property] with [name of defendant]'s express or implied permission for a purpose related to the business?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to act with reasonable care and cause a dangerous condition on _____ [describe business property]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of plaintiff] injured by the dangerous condition?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to act with reasonable care a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:13.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3505 Invitee - Slip and Fall on Business Premises - Third Party Causes Dangerous

Condition - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe business property];
2. [Name of plaintiff] went onto _____ [describe business property] with [name of

defendant]'s express or implied permission for a purpose related to the business;

3. There was a dangerous condition on _____ [describe business property] that was not caused by [name of defendant] or was caused by _____ [list third party];

4. [Name of defendant] knew or should have known about the dangerous condition;

5A. [Name of defendant] did not act with reasonable care to remove the dangerous condition;

OR

5B. [Name of defendant] did not warn [name of plaintiff] about the dangerous condition;

6. [Name of plaintiff] was injured by the dangerous condition; and

7. [Name of defendant]'s failure to act with reasonable care or warn [name of plaintiff] about the dangerous condition was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe business property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe business property] with [name of defendant]'s express or implied permission for a purpose related to the business?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was there a dangerous condition on _____ [describe business property] that was not

caused by [name of defendant], or was caused by _____ [list third party]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] know or should [name of defendant] have known about the dangerous condition?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5A. Did [name of defendant] act with reasonable care to remove the dangerous condition?

OR

5B. Did [name of defendant] warn [name of plaintiff] about the dangerous condition?

YES _____ NO _____

If your answer to question 5 is NO, then answer question 6. If you answered YES, stop here and tell the bailiff.

6. Was [name of plaintiff] injured by the dangerous condition?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of defendant]'s failure to act with reasonable care or warn [name of plaintiff] about the dangerous condition a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1-4, 6, and 7 are YES and your answer to question 5 is NO, then answer question 8. If you answered NO to question 7, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:14.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

B. Licensee

3506 Licensee - Definition

A licensee is a person who goes onto [a/another] [person/business/corporation/organization]'s property for [his/her] own benefit or convenience. The licensee goes onto the property with the property owner's consent or permission.

Sources

Mississippi Model Jury Instruction - Civil 16:1.

Hudson v. Courtesy Motors, Inc., 794 So. 2d 999, 1003 (Miss. 2001) (A licensee, on the other hand, is defined as a person who enters upon the property of another for his own convenience, pleasure or benefit pursuant to the license or implied permission of the owner.).

3507 Licensee - Social Guest - Definition

A social guest is a person who goes onto (and remains on) another person's property at the property owner's invitation to enjoy hospitality or for a visit. There is no financial benefit for the property owner by the social guest's presence. A social guest is a licensee.

Sources

Mississippi Model Jury Instruction - Civil 16:3.

3508 Licensee - Duty Owed to Licensee

The property owner has a duty not to intentionally or with ill will injure the licensee.

Sources

Hudson v. Courtesy Motors, Inc., 794 So. 2d 999, 1003 (Miss. 2001). (A landowner owes a licensee only the duty to refrain from willfully or wantonly injuring him.).

3509 Licensee - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe property]; and
2. [Name of plaintiff] went onto _____ [describe property] with [name of defendant]'s consent or permission for [name of plaintiff]'s benefit;
3. [Name of defendant] intentionally or with ill will injured [name of plaintiff] by _____ [describe defendant's alleged actions]; and
4. [Name of defendant]'s [act/acts] [was/were] a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe property] with [name of defendant]'s consent or permission for [name of plaintiff]'s benefit?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] intentionally or with ill will injure [name of plaintiff] by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. [Was/Were] [name of defendant]'s [act/acts] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:5.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3510 Licensee - Dangerous Condition - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe property];
2. [Name of plaintiff] went onto _____ [describe property] with [name of defendant]'s consent or permission for [name of plaintiff]'s own purpose or benefit;
3. [A/An] _____ [describe dangerous condition], a dangerous condition, was on [name of defendant]'s property;
4. [Name of defendant] knew or should have known about the dangerous condition;
5. [Name of defendant] knew or should have known about [name of plaintiff] being on [his/her/its] property;
6. [Name of defendant] failed to act with reasonable care to prevent [name of plaintiff] from being injured by the dangerous condition;
7. [Name of plaintiff] was injured by the dangerous condition; and
8. [Name of defendant]'s failure to act with reasonable care was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe property] with [name of defendant]'s consent or permission for [name of plaintiff]'s own purpose or benefit?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [a/an] _____ [describe dangerous condition], a dangerous condition, on [name of defendant]'s property?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] know or should [name of defendant] have known about the dangerous condition?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of defendant] know or should [name of defendant] have known about [name of plaintiff] being on [his/her/its] property?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Did [name of defendant] fail to act with reasonable care to prevent [name of plaintiff] from being injured by the dangerous condition?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of plaintiff] injured by the dangerous condition?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. Was [name of defendant]'s failure to act with reasonable care a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, stop here and tell the bailiff.

9. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:6.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3511 Licensee - Negligence Exception to Duty Owed to Licensee - General Instruction and

Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe property];
2. [Name of plaintiff] went onto _____ [describe property] with [name of defendant]'s consent or permission for [name of plaintiff]'s own purpose or benefit;
3. [Name of defendant] knew that [name of plaintiff] was on [his/her/its] property;
4. [Name of defendant] was negligent;
5. [Name of plaintiff] was injured as a result of [name of defendant]'s negligence; and
8. [Name of defendant]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the following questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe property] with [name of defendant]'s consent or permission for [name of plaintiff]'s own purpose or benefit?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] know that [name of plaintiff] was on [his/her/its] property?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of plaintiff] injured as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:7.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

C. Trespasser

3512 Trespasser - Definition

A trespasser is a person who unlawfully goes onto [a/another] [person/business/corporation/organization]'s property without the property owner's permission.

Sources

Mississippi Model Jury Instruction - Civil 16:4.

3513 Trespasser - Duty Owed to Trespasser

The property owner has a duty not to intentionally or with ill will injure the trespasser.

Sources

Little ex rel. Little v. Bell, 719 So. 2d 757, 760 (Miss. 1998) (A landowner owes a trespasser the duty to refrain from willfully or wantonly injuring him.).

3514 Trespasser - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe property]; and
2. [Name of plaintiff] went onto _____ [describe property] without [name of defendant]'s permission;
3. [Name of defendant] intentionally or with ill will injured [name of plaintiff] by _____ [describe defendant's alleged actions]; and
4. [Name of defendant]'s [act/acts] [was/were] a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] go onto _____ [describe property] without [name of defendant]'s permission?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop

here and tell the bailiff.

3. Did [name of defendant] intentionally or with ill will injure [name of plaintiff] by

_____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. [Was/Were] [name of defendant]'s act(s) a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:5.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3515 Trespasser - Attractive Nuisance Doctrine - Structure or Object Is Not Dangerous in Nature - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must

prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe property]; and
2. [A/An] _____ [describe the attractive nuisance] was on [name of defendant]'s property where [name of defendant] knew or should have known that children were likely to trespass;
3. The _____ [describe the attractive nuisance] was:
 - A. A man-made structure or object, not part of nature; and
 - B. Unusually or particularly attractive to children; and
 - C. The type of structure or object that would likely cause injury to children who were attracted to it; and
4. [Name of defendant] knew or should have known about the _____ [describe attractive nuisance]'s risk to children; and
5. [Name of defendant] failed to act with reasonable care to prevent children from knowing about the _____ [describe attractive nuisance] or getting access or on the _____ [describe attractive nuisance];
6. [Name of plaintiff or child] was attracted onto [name of defendant]'s property by the _____ [describe attractive nuisance]; and
7. [Name of plaintiff or child] did not know of the danger from the _____ [describe attractive nuisance] because
 - A. The _____ [describe attractive nuisance]'s danger was hidden or concealed so that a child would not appreciate it; or
 - B. Another object or event distracted the child from discovering the

_____ [describe attractive nuisance]'s danger or understanding the
_____ [describe attractive nuisance]'s danger; and

8. [Name of plaintiff or child] was injured by the _____ [describe attractive nuisance]; and

9. [Name of defendant]'s failure to act with reasonable care to prevent [name of plaintiff or child] from knowing about the _____ [describe attractive nuisance] or getting access or on the _____ [describe attractive nuisance] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [a/an] _____ [describe the attractive nuisance] on [name of defendant]'s property where [name of defendant] knew or should have known that children were likely to trespass?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the _____ [describe the attractive nuisance]:

A. A man-made structure or object, not part of nature; and

B. Unusually or particularly attractive to children; and

C. The type of structure or object that would likely cause injury to children who were attracted to it?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] know or should [name of defendant] have known about the _____ [describe attractive nuisance]'s risk to children?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of defendant] fail to act with reasonable care to prevent children from knowing about the _____ [describe attractive nuisance] or getting access or on the _____ [describe attractive nuisance]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of plaintiff or child] attracted onto [name of defendant]'s property by the _____ [describe attractive nuisance]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Did [name of plaintiff or child] not know of the danger from the _____ [describe attractive nuisance] because

A. The _____ [describe attractive nuisance]'s danger was hidden or concealed so that a child would not appreciate it; or

B. Another object or event distracted the child from discovering the _____ [describe attractive nuisance]'s danger or understanding the _____ [describe attractive nuisance]'s danger?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. Was [name of plaintiff or child] injured by the _____ [describe attractive nuisance]?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, stop here and tell the bailiff.

9. Was [name of defendant]'s failure to act with reasonable care to prevent [name of plaintiff or child] from knowing about the _____ [describe attractive nuisance] or getting access or on the _____ [describe attractive nuisance] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 9 is YES, then answer question 10. If you answered NO, stop here and tell the bailiff.

10. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:11.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3516 Trespasser - Attractive Nuisance Doctrine - Structure or Object Is Dangerous in Nature - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant] caused [name of plaintiff] to be injured while on [name of defendant]'s property and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] owned or controlled _____ [describe property]; and
2. [A/An] _____ [describe the attractive nuisance] was on [name of defendant]'s property where [name of defendant] knew or should have known that children were likely to trespass;
3. The _____ [describe the attractive nuisance] was:
 - A. A man-made structure or object, not part of nature; and
 - B. Unusually or particularly attractive to children; and
 - C. The type of structure or object that would likely cause injury to children who were attracted to it; and
 - D. Dangerous by its very nature even though children may not know or understand its

danger; and

4. [Name of defendant] knew or should have known about the _____

[describe attractive nuisance]'s risk to children; and

5. [Name of defendant] failed to act with reasonable care to prevent children from knowing about the _____ [describe attractive nuisance] or getting access or on the

_____ [describe attractive nuisance];

6. [Name of plaintiff or child] was attracted onto [name of defendant]'s property by the

_____ [describe attractive nuisance]; and

7. [Name of plaintiff or child] did not know of the danger from the _____

[describe attractive nuisance] because

A. The _____ [describe attractive nuisance]'s danger was hidden or concealed so that a child would not appreciate it; or

B. Another object or event distracted the child from discovering the

_____ [describe attractive nuisance]'s danger or understanding the

_____ [describe attractive nuisance]'s danger; and

8. [Name of plaintiff or child] was injured by the _____ [describe attractive nuisance]; and

9. [Name of defendant]'s failure to act with reasonable care to prevent [name of plaintiff/name of child] from knowing about the _____ [describe attractive nuisance] or

getting access or on the _____ [describe attractive nuisance] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] own or control _____ [describe property]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [a/an] _____ [describe the attractive nuisance] on [name of defendant]'s property where [name of defendant] knew or should have known that children were likely to trespass?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the _____ [describe the attractive nuisance]:

A. A man-made structure or object, not part of nature; and

B. Unusually or particularly attractive to children; and

C. The type of structure or object that would likely cause injury to children who were attracted to it; and

D. Dangerous by its very nature even though children may not know or understand its danger?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of defendant] know or should [name of defendant] have known about the

_____ [describe attractive nuisance]'s risk to children?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of defendant] fail to act with reasonable care to prevent children from knowing about the _____ [describe attractive nuisance] or getting access or on the _____ [describe attractive nuisance]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of plaintiff or child] attracted onto [name of defendant]'s property by the _____ [describe attractive nuisance]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Did [name of plaintiff or child] not know of the danger from the _____ [describe attractive nuisance] because

A. The _____ [describe attractive nuisance]'s danger was hidden or concealed so that a child would not appreciate it; or

B. Another object or event distracted the child from discovering the _____ [describe attractive nuisance]'s danger or understanding the

_____ [describe attractive nuisance]'s danger?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. Was [name of plaintiff or child] injured by the _____ [describe attractive nuisance]?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, stop here and tell the bailiff.

9. Was [name of defendant]'s failure to act with reasonable care to prevent [name of plaintiff or child] from knowing about the _____ [describe attractive nuisance] or getting access or on the _____ [describe attractive nuisance] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 9 is YES, then answer question 10. If you answered NO, stop here and tell the bailiff.

10. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 16:12.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 36 Products Liability

A. General Liability Instructions

3600 Products Liability - Manufacturing Defect

General Instruction

[Name of plaintiff] claims that [he/she] was harmed by [a/an] _____ [specify the product] [manufactured/sold] by [name of defendant] that contained a manufacturing defect and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [manufactured/sold] the _____ [specify the product];
2. The _____ [specify the product] contained a manufacturing defect when it left [name of defendant]'s control because the _____ [specify the product] was different in a material way from [name of defendant]'s _____ [specify (1) design; (2) specifications; or (3) other identical _____ [specify the products] that were manufactured by the same design or specifications];
3. The manufacturing defect made the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use;
4. [Name of plaintiff] was harmed by the _____ [specify the product]; and
5. The _____ [specify the product]'s manufacturing defect was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [manufacture/sell] the _____ [specify the product]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the _____ [specify the product] contain a manufacturing defect when it left [name of defendant]'s control because the _____ [specify the product] was different in a material way from [name of defendant]'s _____ [specify (1) design; (2) specifications; or (3) other identical _____ [specify products] that were manufactured by the same design or specifications]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the manufacturing defect make the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of plaintiff] harmed by the _____ [specify the product]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was the _____ [specify the product]'s manufacturing defect a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 17:3.

Miss. Code Ann. § 11-1-63(a)(i)(1).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3601 Products Liability - Failure to Warn - Products Other than Prescription Drugs or Medical Devices

General Instruction

[Name of plaintiff] claims that [he/she] was harmed by [a/an] _____ [specify the product] [manufactured/sold] by [name of defendant] that failed to have adequate [warnings/instructions] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [manufactured/sold] the _____ [specify the product];
2. When the _____ [specify the product] left [name of defendant]'s control, the

_____ [specify the product] was defective because it failed to have adequate [warnings/instructions], which a reasonable [manufacturer/seller] under the same circumstances would have given concerning the _____ [specify the product]'s danger(s), if any, and the _____ [specify the product]'s safe use(s), taking into account an ordinary user's knowledge about the _____ [specify the product];

3. When the _____ [specify the product] left [name of defendant]'s control, [name of defendant] knew or should have known about the danger(s), if any, that caused [name of plaintiff]'s harm;

4. An ordinary user of the _____ [specify the product] would not have realized the _____ [specify the product]'s danger(s);

5. [Name of defendant]'s failure to give adequate [warnings/instructions] concerning the _____ [specify the product]'s danger(s) made the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use;

6. [Name of plaintiff] was harmed by the _____ [specify the product]; and

7. [Name of defendant]'s failure to give adequate [warnings/instructions] concerning the _____ [specify the product]'s danger(s) was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [manufacture/sell] the _____ [specify the product]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff.

2. When the _____ [specify the product] left [name of defendant]'s control, was the _____ [specify the product] defective because it failed to have adequate [warnings/instructions], which a reasonable [manufacturer/seller] under the same circumstances would have given concerning the _____ [specify the product]'s danger(s), if any, and the _____ [specify the product]'s safe use(s), taking into account an ordinary user's knowledge about the _____ [specify the product]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. When the _____ [specify the product] left [name of defendant]'s control, did [name of defendant] know or should [name of defendant] have known about the danger(s), if any, that caused [name of plaintiff]'s harm?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Would an ordinary user of the _____ [specify the product] have realized the _____ [specify the product]'s danger(s)?

YES _____ NO _____

If your answer to question 4 is NO, then answer question 5. If you answered YES, stop here and tell the bailiff.

5. Did [name of defendant]'s failure to give adequate [warnings/instructions] concerning the

_____ [specify the product]'s danger(s) make the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of plaintiff] harmed by the _____ [specify the product]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of defendant]'s failure to give adequate [warnings/instructions] concerning the _____ [specify the product]'s danger(s) a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1-3 and 5-7 are YES and your answer to question 4 is NO, then answer question 8. If you answered NO to question 7, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 17:4.

Miss. Code Ann. § 11-1-63(a)(i)(2), (c)(i) and (ii).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3602 Products Liability - Failure to Warn - Prescription Drugs or Medical Devices

General Instruction

[Name of plaintiff] claims that [he/she] was harmed by [a/an] _____ [specify the prescription drug or medical device] [manufactured/sold] by [name of defendant] which failed to have adequate [warnings/instructions] and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [manufactured/sold] the _____ [specify the prescription drug or medical device];
2. Taking into account the ordinary knowledge of a [physician/licensed professional], who prescribes the _____ [specify the prescription drug or medical device], when the _____ [specify the prescription drug or medical device] left [name of defendant]'s control, the _____ [specify the prescription drug or medical device] failed to have adequate [warnings/instructions], which a reasonable [person/manufacturer] under the same circumstances would have given concerning the _____ [specify the prescription drug or medical device]'s danger(s), if any, and the _____ [specify the prescription drug or medical device]'s safe use(s);
3. When the _____ [specify the prescription drug or medical device] left [name of defendant]'s control, [name of defendant] knew or should have known about the danger(s), if any, that caused [name of plaintiff]'s harm;
4. An ordinary user of the _____ [specify the prescription drug or medical device] would not have realized the _____ [specify the prescription drug or medical device]'s danger(s);

5. [Name of defendant]'s failure to give adequate [warnings/instructions] concerning the _____ [specify the prescription drug or medical device]'s danger(s) made the _____ [specify the prescription drug or medical device] unreasonably dangerous for [name of plaintiff] to use;

6. [Name of plaintiff] was harmed by the _____ [specify the prescription drug or medical device]; and

7. [Name of defendant]'s failure to give adequate [warnings/instructions] concerning the _____ [specify the prescription drug or medical device]'s danger(s) was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [manufacture/sell] the _____ [specify the prescription drug or medical device]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Taking into account the ordinary knowledge of a [physician/licensed professional], who prescribes the _____ [specify the prescription drug or medical device], when the _____ [specify the prescription drug or medical device] left [name of defendant]'s control, did the _____ [specify the prescription drug or medical device] have adequate [warnings/instructions], which a reasonable [person/manufacturer] under the same circumstances would have given concerning the _____ [specify the prescription drug or medical

device]’s danger(s), if any, and the _____ [specify the prescription drug or medical device]’s safe use(s)?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. When the _____ [specify the prescription drug or medical device] left [name of defendant]’s control, did [name of defendant] know or should [name of defendant] have known about the danger(s), if any, that caused [name of plaintiff]’s harm?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Would an ordinary user of the _____ [specify the prescription drug or medical device] have realized the _____ [specify the prescription drug or medical device]’s danger(s)?

YES _____ NO _____

If your answer to question 4 is NO, then answer question 5. If you answered YES, stop here and tell the bailiff.

5. Did [name of defendant]’s failure to give adequate [warnings/instructions] concerning the _____ [specify the prescription drug or medical device]’s danger(s) make the _____ [specify the prescription drug or medical device] unreasonably dangerous for [name of plaintiff] to use?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop

here and tell the bailiff.

6. Was [name of plaintiff] harmed by the _____ [specify the prescription drug or medical device]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was [name of defendant]'s failure to give adequate [warnings/instructions] concerning the _____ [specify the prescription drug or medical device]'s danger(s) a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 3, and 5-7 are YES and your answer to questions 2 and 4 are NO, then answer question 8. If you answered NO to question 7, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 17:4.

Miss. Code Ann. § 11-1-63(a)(i)(2), (c)(i) and (ii).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3603 Products Liability - Design Defect

General Instruction

[Name of plaintiff] claims that [he/she] was harmed by [a/an] _____ [specify the

product] [manufactured/sold] by [name of defendant] that contained a design defect and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [manufactured/sold] the _____ [specify the product]; and
2. When the _____ [specify the product] left [name of defendant]'s control, the _____ [specify the product] had a design defect, namely _____ [describe the design defect]; and
3. When the _____ [specify the product] left [name of defendant]'s control, [name of defendant] knew or should have known about the design defect; and
4. When the _____ [specify the product] left [name of defendant]'s control, a reasonable design alternative existed that would have prevented [name of plaintiff]'s harm without affecting the _____ [specify the product]'s usefulness, and the design defect made the _____ [specify the product] not [work/perform] as expected; and
5. The design defect made the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use; and
6. [Name of plaintiff] was harmed by the _____ [specify the product]; and
7. The _____ [specify the product]'s design defect was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [manufacture/sell] the _____ [specify the product]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. When the _____ [specify the product] left [name of defendant]'s control, did the _____ [specify the product] have a design defect, namely _____ [describe the design defect]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. When the _____ [specify the product] left [name of defendant]'s control, did [name of defendant] know or should [name of defendant] have known about the design defect?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. When the _____ [specify the product] left [name of defendant]'s control, did a reasonable design alternative exist that would have prevented [name of plaintiff]'s harm without affecting the _____ [specify the product]'s usefulness, and did the design defect make the _____ [specify the product] not [work/perform] as expected?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did the design defect make the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of plaintiff] harmed by the _____ [specify the product]?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. Was the _____ [specify the product]'s design defect a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff.

8. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 17:2.

Miss. Code Ann. § 11-1-63(a)(i)(3).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3604 Products Liability - Breach of Express Warranty

General Instruction

[Name of plaintiff] claims that [he/she] was harmed by [a/an] _____ [specify the

product] [manufactured/sold] by [name of defendant] because the _____ [specify the product] failed to [work/perform] as its actual warranty stated it would or that it failed to [work/perform] as [name of defendant] [claimed/stated] it would, and that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] [manufactured/sold] the _____ [specify the product]; and
2. When the _____ [specify the product] left [name of defendant]'s control, [name of defendant] [claimed/stated] that the _____ [specify the product] would _____ [describe the product's warranty] and [name of defendant]'s [claims/statements] were either an actual warranty of how the _____ [specify the product] would [work/perform] or [name of plaintiff] reasonably relied on these [claims/statements of fact] when deciding to use the _____ [specify the product]; and
3. The [actual warranty/claims/statements of fact] [was/were] false, which made the _____ [specify the product] defective; and
4. The _____ [specify the product]'s defective condition made the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use; and
5. [Name of plaintiff] was harmed by the _____ [specify the product]; and
6. The _____ [specify the product]'s defective condition was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] [manufacture/sell] the _____ [specify the product]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. When the _____ [specify the product] left [name of defendant]'s control, did [name of defendant] [claim/state] that the _____ [specify the product] would _____ [describe the product's warranty] and were [name of defendant]'s [claims/statements] either an actual warranty of how the _____ [specify the product] would [work/perform] or did [name of plaintiff] reasonably rely on these [claims/statements of fact] when deciding to use the _____ [specify the product]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. [Was/Were] the [actual warranty/claims/statements of fact] false and this made the _____ [specify the product] defective?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did the _____ [specify the product]'s defective condition make the _____ [specify the product] unreasonably dangerous for [name of plaintiff] to use?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of plaintiff] harmed by the _____ [specify the product]?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was the _____ [specify the product]'s defective condition a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 17:1.

Miss. Code Ann. § 11-1-63(a)(i)(4).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

B. Affirmative Defenses

3605 Products Liability - Innocent Seller Defense

If you find that it is more likely true than not true:

1. That [name of defendant or seller] did not have substantial control over the design, testing, manufacture, packaging or labeling of the _____ [specify the product] that [name of plaintiff] claims harmed [him/her]; or

2. That [name of defendant or seller] did not change or modify the _____ [specify the product] that [name of plaintiff] claims harmed [him/her]; or

3. That [name of defendant or seller] did not know and should not have known about the _____ [specify the product]'s defective condition when [name of defendant or seller] sold the _____ [specify the product],

then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:12.

Miss. Code Ann. § 11-1-63(h).

Practice Note: The innocent seller defense applies to any action brought pursuant to Miss. Code Ann. § 11-1-63(a).

3606 Products Liability - Assumption of the Risk Defense

If you find that it is more likely true than not true:

1. That [name of plaintiff] knew about the _____ [specify the product]'s dangerous condition; and

2. [Name of plaintiff] understood the _____ [specify the product]'s dangerous condition; and

3. [Name of plaintiff] intentionally and voluntarily endangered [himself/herself] by using the _____ [specify the product],

then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:8.

Miss. Code Ann. § 11-1-63(d).

Practice Note: The assumption of the risk defense applies to any action brought pursuant to Miss. Code Ann. § 11-1-63(a).

3607 Products Liability - No Reasonable Design Alternative Defense

If you find that it is more likely true than not true:

1. That when the _____ [specify the product] left [name of defendant]'s control, there was no reasonable design alternative that would have prevented [name of plaintiff]'s harm without affecting the _____ [specify the product]'s usefulness, then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:5.

Miss. Code Ann. § 11-1-63(f)(ii).

Practice Note: The reasonable design alternative defense applies only to a design defect action brought pursuant to Miss. Code Ann. § 11-1-63(a)(i)(3).

3608 Products Liability - Inherent Characteristic Defense

If you find that it is more likely true than not true:

1. That [name of plaintiff]'s harm was caused by _____ [describe the product's inherent characteristic which caused the plaintiff's harm], which is an [essential/inherent] characteristic of the _____ [specify the product]; and
2. The _____ [describe the inherent characteristic] cannot be removed without substantially changing the _____ [specify the product]'s usefulness or desirability; and
3. The _____ [describe the inherent characteristic] is understood by a reasonable

person with ordinary knowledge,

then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:6.

Miss. Code Ann. § 11-1-63(b).

Practice Note: The inherent characteristic defense applies to a design defect action brought pursuant to Miss. Code Ann. § 11-1-63(a)(i)(3).

3609 Products Liability - Open and Obvious Defense

If you find that it is more likely true than not true:

1. That [name of plaintiff] knew or should have known about the _____ [specify the products]'s danger; or
 2. The _____ [specify the product]'s danger was open and obvious to [name of plaintiff] or should have been open and obvious to [name of plaintiff] considering the common knowledge that a reasonable user of the _____ [specify the product] would have,
- then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:7.

Miss. Code Ann. § 11-1-63(e).

Practice Note: The open and obvious defense applies only to a failure to warn action brought pursuant to Miss. Code Ann. § 11-1-63(a)(i)(2).

3610 Products Liability - Alteration of the Product Defense

If you find that it is more likely true than not true:

1. That [name of defendant] reasonably expected the _____ [specify the product] to reach the user without a substantial change or alteration to the condition in which the _____ [specify the product] was sold; and
2. That after the _____ [specify the product] left [name of defendant]'s control, either the [name of plaintiff] or another [person/seller] substantially changed or altered the _____ [specify the product]; and
3. The substantial change or alteration of the _____ [specify the product] was a substantial factor in causing [name of plaintiff]'s damages,
then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:9.

3611 Products Liability - Misuse of the Product Defense

If you find that it is more likely true than not true:

1. That [name of plaintiff] _____ [describe plaintiff's actions allegedly misusing the product] the _____ [specify the product]; and
2. [Name of plaintiff]'s actions were a misuse or abnormal use of the _____ [specify the product]; and
3. [Name of defendant] did not reasonably anticipate that [name of plaintiff] would misuse or abnormally use the _____ [specify the product] in that way; and
4. [Name of plaintiff]'s misuse or abnormal use of the product was [a/the] substantial factor in causing [name of plaintiff]'s damages,
then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:10.

Materials Transp. Co. v. Newman, 656 So. 2d 1199, 1202 (Miss. 1995) (Materials argues that Newman's use of the changer, with the safety backplate disengaged, is an unforeseeable misuse of the battery changer. In Mississippi, however, misuse as a bar to recovery for products liability is a question of fact for the jury. *See also Edwards v. Sears, Roebuck & Co.*, 512 F.2d 276, 289 (5th Cir.1975) (recognizing misuse as question of fact in Mississippi)).

3612 Products Liability - Intervening Cause Defense

If you find that it is more likely true than not true:

1. That _____ [describe the intervening act or cause] occurred after the _____ [specify the product] left [name of defendant]'s control; and
 2. [Name of defendant] did not reasonably anticipate the _____ [describe the intervening act or cause]; and
 3. The _____ [describe the intervening act or cause] was [a/the] substantial factor in causing [name of plaintiff]'s damages,
- then you shall find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 17:11.

Whittle v. City of Meridian, 530 So. 2d 1341, 1347 (Miss. 1988) (Frequently, the negligent conduct of a third person is, in combination with a product defect, the cause of an injury. That conduct may be of such a nature or kind as to constitute a superceding cause. There is a tendency for courts to hold that intervening conduct or misconduct of a kind that is rare and unusual, and

in that sense not reasonably foreseeable, will sever the chain of causation. This use must be one that a maker could not be expected to guard against in the designing of his product. So if the product was defective as designed for its ordinary and reasonably foreseeable uses or if defective because of a flaw in it, but a use was made of the product that the maker could not be expected to guard against, then the accident was not proximately caused by the product defect. Thus, the manufacturer of a power mower was held not liable when a seven-year-old boy was using the mower as a toy and a plaything even though the mower might have been defectively designed. Likewise, any substantial alteration of a product that was not contemplated by the manufacturer is likely to sever the chain of causation. The defense of intervening cause has been successfully used in a products liability case in Mississippi grounded solely in negligence [in] *E.I. DuPont De Nemours & Co. v. Ladner*, 73 So. 2d 249 (Miss. 1954). In *DuPont v. Ladner*, a retail merchant was given a warning (received by letter) by the defendant, a chemical manufacturer, informing him that soybean meal purchased by the retailer from the defendant and treated with a certain poison was poisonous to cattle. We held that failure to heed the warning was an intervening act by the retailer breaking the chain of causation between the negligence of the defendant and the injury and death of plaintiff's cattle.).

Proposed Plain Language Model Jury Instructions - Civil

Chapter 37 Railroads

3700 Railroads - Train Operator's Standard of Care

A train operator must use reasonable care under the circumstances in operating a train at railroad crossings. The failure to use reasonable care is negligence.

A train operator can assume that a reasonable driver, who is approaching a railroad crossing with a clear view of the crossing, will stop before [he/she] reaches the railroad crossing. The train operator does not have to stop or slow down the train until the train operator reasonably knows under the circumstances that the driver is not going to stop before the driver reaches the railroad crossing.

Definition(s) in this Instruction:

In this instruction, “negligence” means doing something that a reasonably careful train operator would not do under similar circumstances or failing to do something that a reasonably careful train operator would do under similar circumstances.

Sources

Mississippi Model Jury Instructions - Civil 18:1 and 18:5.

Judicial Council of California Civil Jury Instruction 800.

3701 Railroads - Standard of Care to Trespassers

A train operator or other railroad company employee must not act intentionally or with ill will to injure a trespasser.

Sources

Maxwell v. Illinois Central Gulf R.R., 513 So. 2d 901, 905 (Miss. 1987) (Prior to noticing Keith Long on the track, the Railroad had only the general duty an owner or occupant of land has to trespassers, that is, to refrain from wilfully, wantonly, or grossly negligently injuring [a] trespasser.).

3702 Railroads - Driver's Standard of Care - Crossbuck Sign and Other Signal

When a person driving a motor vehicle approaches a railroad grade crossing, the driver must stop within 50 feet, but not less than 15 feet, from the closest rail of the railroad track and wait until [he/she] can safely pass through the crossing if:

1. An electric or mechanical signal can clearly be seen and is warning that a train is immediately approaching; or
2. A crossing gate is lowered; or
3. A flagperson is signaling that a train is immediately approaching; or
4. A train rings its bell or blows its whistle or horn within approximately 900 feet of the highway crossing, and because of the train's speed or location, it is an immediate danger; or
5. A train can plainly be seen and is dangerously close to the highway crossing.

Sources

Mississippi Model Jury Instruction - Civil 18:3.

Miss. Code Ann. § 77-9-249(1) (Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this subsection, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply

when one or more of the following circumstances exists: (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train; or (b) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train; or (c) A railroad train approaching within approximately nine hundred (900) feet of the highway crossing emits a signal in accordance with Section 77-9-225, and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or (d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.).

3703 Railroads - Driver's Standard of Care - Crossbuck Sign Only

If a railroad crossbuck sign can clearly be seen but there is no automatic electric or mechanical signal, no crossing gate, or no flagperson signaling that a train is approaching or passing through the crossing, then a person driving a motor vehicle must either slow to a reasonable speed under the circumstances or stop at a clearly marked stop line, or within 50 feet, but not less than 15 feet, from the closest rail of the railroad track and wait until [he/she] can safely pass through the crossing.

Sources

Miss. Code Ann. § 77-9-249(4) (At any railroad grade crossing provided with visible railroad crossbuck signs without automatic electric or mechanical signal devices, crossing gates or a human flagman giving a signal of the approach or passage of a train, the driver of a vehicle shall, in obedience to such railroad crossbuck sign, yield the right-of-way and slow to a speed reasonable for the existing conditions, and shall stop if required for safety at a clearly marked stop line, or if no stop line, within fifty (50) feet, but not less than fifteen (15) feet, from the

nearest rail of the railroad, and shall not proceed until he can do so safely.).

3704 Railroads - Statutory Standard of Care to Sound Bell or Whistle - General Instruction and Verdict Form

Standard of Care

A locomotive engine must have a bell, which weighs at least 30 pounds, and a whistle or horn, which can easily be heard from a distance of 300 yards. The locomotive engine's operator must ring the bell or blow the whistle or horn at least 300 yards from where the railroad crosses a public highway or city street. The locomotive engine's operator must ring the bell continuously or blow the whistle or horn repeatedly until the crossing is passed.

General Instruction

[Name of plaintiff] claims that [name of defendant railroad] failed to properly sound its bell, whistle, or horn and that [name of defendant railroad]'s failure harmed or injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant railroad] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant railroad] operated a locomotive engine in the State of Mississippi;
2. [Name of defendant railroad] did not ring its bell continuously or blow its whistle or horn repeatedly at least 300 yards before reaching _____ [specify railroad crossing] and until the crossing was passed;
3. [Name of plaintiff] was harmed or injured at _____ [specify railroad crossing] by _____ [describe alleged actions causing plaintiff's damages]; and
4. [Name of defendant railroad]'s failure to ring its bell continuously or blow its whistle or horn

repeatedly at least 300 yards before reaching _____ [specify railroad crossing] and until the crossing was passed was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant railroad] operate a locomotive engine in the State of Mississippi?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant railroad] ring its bell continuously or blow its whistle or horn repeatedly at least 300 yards before reaching _____ [specify railroad crossing] and until the crossing was passed?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Was [name of plaintiff] harmed or injured at _____ [specify railroad crossing] by _____ [describe alleged actions causing plaintiff's damages]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant railroad]'s failure to ring its bell continuously or blow its whistle or horn repeatedly at least 300 yards before reaching _____ [specify railroad crossing] and until the crossing was passed a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 3, and 4 are YES and your answer to question 2 is NO, then answer question 5. If you answered NO to question 4, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 18:2.

Miss. Code Ann. § 77-9-225 (Every railroad company shall cause each locomotive engine run by it to be provided with a bell of at least thirty (30) pounds weight and with a whistle or horn which can be heard distinctly at a distance of three hundred (300) yards, and shall cause the bell to be rung or the whistle or horn to be blown at the distance of at least three hundred (300) yards from the place where the railroad crosses over any public highway or municipal street. The bell shall be kept ringing continuously or the whistle or horn shall be kept blowing at repeated intervals until said crossing is passed.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3705 Railroads - Statutory Standard of Care to Maintain Grade Crossing - General

Instruction and Verdict Form

Standard of Care

If a railroad track crosses a highway and it is necessary to either raise or lower the highway, then the railroad company must make proper and easy grades so that the railroad track may be easily and conveniently crossed. The railroad company must also reasonably maintain the grade crossings in good condition or order.

General Instruction

[Name of plaintiff] claims that [name of defendant railroad] failed to properly keep or maintain its grade crossing and that [name of defendant railroad]'s failure harmed or injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant railroad] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant railroad] [owned/leased/controlled] the railroad track at _____ [specify railroad crossing];
2. [Name of defendant railroad] did not reasonably maintain its grade crossing located at _____ [specify railroad crossing];
3. [Name of plaintiff] was harmed or injured at _____ [specify railroad crossing] by _____ [describe alleged actions causing plaintiff's damages]; and
4. [Name of defendant railroad]'s failure to reasonably maintain its grade crossing located at _____ [specify railroad crossing] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant railroad] [own/lease/control] the railroad track at _____ [specify railroad crossing]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant railroad] reasonably maintain its grade crossing located at _____ [specify railroad crossing]?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Was [name of plaintiff] harmed or injured at _____ [specify railroad crossing] by _____ [describe alleged actions causing plaintiff's damages]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant railroad]'s failure to reasonably maintain its grade crossing located at _____ [specify railroad crossing] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1, 3, and 4 are YES and your answer to question 2 is NO, then answer question 5. If you answered NO to question 4, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 18:6.

Miss. Code Ann. § 77-9-251 (Where a railroad is constructed so as to cross a highway, and it be necessary to raise or lower the highway, it shall be the duty of the railroad company to make

proper and easy grades in the highway, so that the railroad may be conveniently crossed, and to keep such crossings in good order. It shall be the duty of the railroad company to erect and keep in order all bridges on any highway, at such points as bridges may be necessary to cross the railroad. Any company which shall fail to comply with these provisions within sixty (60) days from the filing of written notice by the board of supervisors of the county in which said crossing is located, served upon the agent of said railroad company located in said county by the sheriff, as other processes are served, shall forfeit the sum of the cost of construction of said bridge or crossing, to be recovered by action in the name of the county in which the bridge or crossing is situated, upon an itemized bill of cost of said work.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3706 Railroads - Standard of Care at an Unusually Dangerous Railroad Crossing - General Instruction and Verdict Form

Standard of Care

If a railroad crossing is unusually dangerous, then a railroad company must use reasonable care based on the circumstances or situation at the unusually dangerous railroad crossing. The failure to use reasonable care based on the circumstances or situation at the unusually dangerous railroad crossing is negligence.

General Instruction

[Name of plaintiff] claims that [name of defendant railroad] was negligent at an unusually dangerous railroad crossing and that [name of defendant railroad] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant railroad] [owned/leased/controlled] the railroad track at _____ [specify railroad crossing];
2. The _____ [specify railroad crossing] on which [name of defendant railroad] operated its locomotive engine, was unusually dangerous because _____ [describe why railroad crossing was unusually dangerous];
3. [Name of defendant railroad] was negligent;
4. [Name of plaintiff] suffered damages as a result of [name of defendant railroad]’s negligence; and
5. [Name of defendant railroad]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful railroad would not do under similar circumstances or failing to do something that a reasonably careful railroad would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant railroad] [own/lease/control] the railroad track at _____ [specify railroad crossing]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff.

2. Was the _____ [specify railroad crossing] on which [name of defendant railroad] operated its locomotive engine, unusually dangerous because _____ [describe why railroad crossing was unusually dangerous]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant railroad] negligent?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant railroad]'s negligence?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant railroad]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 18:6.

Irby v. Travis, 935 So. 2d 884, 897 (Miss. 2006) (The test of whether a railroad crossing is unusually dangerous has been said to be the ability of the traveler to observe the approach of a train from the direction in which it is coming.).

Slay v. Illinois Central Gulf R.R. Co., 511 So. 2d 875, 880 (Miss. 1987) (Previously, we have held that a railroad must exercise a degree of care commensurate with the situation at an unusually dangerous crossing, requiring the train to adjust its speed accordingly. Additionally, we have found that questions involving the engineer's alleged improper lookout, failure to maintain the train at a safe speed, and failure to take proper precautions at an unusually dangerous crossing, were for the jury or trier of fact.).

Badger v. Louisville & Nashville R.R. Co., 414 F.2d 880, 882-83 (5th Cir. 1969) (It is undoubted that there were obstructions to the view of an automobile driver when a train was approaching this dangerous crossing from the vehicle's right. The density of the obstruction and whether one must come dangerously close to the track before being able to see the train were factual resolutions to be made by the jury. If the crossing, by virtue of these conditions, is unusually dangerous, ordinary care requires the railroad to meet the peril with unusual precautions, as by a lesser rate of speed, or by increased or additional warnings.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3707 Railroads - Standard of Care to Trespassers - Railroad Company Knows a Trespasser Is on the Railroad Tracks - General Instruction and Verdict Form

Standard of Care

A train operator or other railroad company employee does not have a duty to keep a lookout for trespassers on a railroad track. However, if a train operator or other railroad company employee discovers or knows that a trespasser is on the railroad track, then the train operator and/or other railroad employee must use reasonable care under the circumstances not to injure the trespasser. The failure to use reasonable care under the circumstances is negligence.

General Instruction

[Name of plaintiff] claims that [name of defendant railroad] was negligent and that [name of defendant railroad] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant railroad] operated a locomotive engine in the State of Mississippi;
 2. [Name of plaintiff] trespassed on _____ [specify railroad track] on which [name of defendant railroad] operated its locomotive engine;
 3. [Name of defendant railroad's employee] discovered or knew that [name of plaintiff] was on the railroad track;
 4. [Name of defendant railroad] was negligent;
 5. [Name of plaintiff] suffered damages as a result of [name of defendant railroad]'s negligence;
- and
6. [Name of defendant railroad]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful railroad would not do under similar circumstances or failing to do something that a reasonably careful railroad would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant railroad] operate a locomotive engine in the State of Mississippi?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] trespass on _____ [specify railroad track] on which [name of defendant railroad] operated its locomotive engine?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant railroad’s employee] discover or know that [name of plaintiff] was on the railroad track?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant railroad] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant railroad]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Was [name of defendant railroad]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 18:4.

Maxwell v. Illinois Central Gulf R.R., 513 So. 2d 901, 905 (Miss. 1987) (We begin with the fact disputed by no one - that Keith Long was a trespasser. The duties of a railroad under such circumstances have been stated in *Illinois Central Gulf Railroad Co. v. Ishee*, 317 So. 2d 923 (Miss. 1975): "The servants of a railroad company in charge of its train are under no duty to keep a lookout for trespassers on the railroad track, and are required only to exercise reasonable care to prevent injuring a trespasser after they have discovered and realized his peril." The Railroad's

duty, thus, breaks down into two parts. Prior to noticing Keith Long on the track, the Railroad had only the general duty an owner or occupant of land has to trespassers, that is, to refrain from wilfully, wantonly, or grossly negligently injuring the trespasser. Once the trespasser was in fact observed, however, the Railroad had a duty to exercise ordinary or reasonable care under the circumstances to refrain from injuring him, but it must be remembered that the circumstances were by definition extreme or emergency circumstances.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 38 Rules of the Road

A. General Instructions

3800 Rules of the Road - Definitions

A vehicle is any device which carries a person or property on a [highway/road].

A motor vehicle is any vehicle which is propelled by its own [engine/motor].

A motorcycle is any motor vehicle which has a seat for the driver and is not designed to ride on more than three wheels on the [ground/highway/road].

An authorized emergency vehicle is any fire department vehicle, police vehicle, 911 Emergency Communications District vehicle, ambulance, EMS vehicle, municipal emergency vehicle, or a designated public service emergency vehicle.

Sources

Mississippi Model Jury Instruction - Civil 19:11.

Miss. Code Ann. § 63-3-103.

3801 Rules of the Road - Driver's Duty to Drive Reasonably - Affirmative Defense

A person driving a motor vehicle has a duty to drive reasonably under the circumstances to avoid injury to a person or property. A driver of a motor vehicle is not legally responsible for damages unless the driver failed to drive reasonably under the circumstances.

Sources

Mississippi Model Jury Instruction - Civil 19:13.

B. Specific Common Law or Statutory Violations

3802 Rules of the Road - Driver's Duty to Drive at a Reasonable Speed - General

Instruction and Verdict Form

Standard of Care

A person driving a motor vehicle has a duty to drive at a reasonable speed and to keep the vehicle under reasonable control under the circumstances.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to drive at a reasonable speed under the circumstances or to keep [his/her/its] vehicle under reasonable control under the circumstances and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] failed to _____ [specify (1) drive at a reasonable speed under the circumstances or (2) keep [his/her/its] vehicle under reasonable control under the circumstances] by _____ [describe defendant's alleged actions];
2. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to _____ [specify (1) drive at a reasonable speed under the circumstances or (2) keep [his/her/its] vehicle under reasonable control under the circumstances]; and
3. [Name of defendant]'s failure to _____ [specify (1) drive at a reasonable speed under the circumstances or (2) keep [his/her/its] vehicle under reasonable control under the circumstances] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] fail to _____ [specify (1) drive at a reasonable speed under the circumstances or (2) keep [his/her/its] vehicle under reasonable control under the circumstances] by _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to _____ [specify (1) drive at a reasonable speed under the circumstances or (2) keep [his/her/its] vehicle under reasonable control under the circumstances]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s failure to _____ [specify (1) drive at a reasonable speed under the circumstances or (2) keep [his/her/its] vehicle under reasonable control under the circumstances] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:2.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3803 Rules of the Road - Driver's Duty to Inspect and Repair Vehicle - General Instruction and Verdict Form

Standard of Care

A person driving a motor vehicle has a duty to reasonably inspect [his/her/its] vehicle for any defects which could make the vehicle unsafe to [drive/operate] and to repair those defects, if any.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to reasonably inspect [his/her/its] vehicle to find and repair a defect that made the vehicle unsafe to [drive/operate] and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] failed to reasonably inspect [his/her/its] vehicle for a defect and repair that defect, specifically _____ [describe alleged defect];
2. This defect made the vehicle unsafe to [drive/operate];
3. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to reasonably inspect [his/her/its] vehicle to find and repair the defect; and
4. [Name of defendant]'s failure to reasonably inspect [his/her/its] vehicle to find and repair the defect was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] fail to reasonably inspect [his/her/its] vehicle for a defect and repair that defect, specifically _____ [describe alleged defect]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did this defect make the vehicle unsafe to [drive/operate]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to reasonably inspect [his/her/its] vehicle to find and repair the defect?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s failure to reasonably inspect [his/her/its] vehicle to find and repair the defect a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:3.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3804 Rules of the Road - Driver's Duty to Expect Children to Enter Road - General

Instruction and Verdict Form

Standard of Care

A person driving a motor vehicle who sees a young child near a road has a duty to expect the unexpected, which includes that the young child may enter onto the road, and must act reasonably under the circumstances.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] and injured [name of plaintiff or child]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff or child]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] saw [name of plaintiff or child] [at/near] _____ [specify the road];
2. When [name of defendant] saw [name of plaintiff or child] [at/near] _____ [specify the road], [name of plaintiff or child] was _____ [specify name of plaintiff or child's age] years old;
3. [Name of defendant] failed to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] by _____ [describe defendant's alleged actions or failure to act];
4. [Name of plaintiff or child] suffered damages as a result of [name of defendant]'s failure to act

reasonably under the circumstances to prevent injuring [name of plaintiff or child]; and

5. [Name of defendant]'s failure to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] see [name of plaintiff or child] [at/near] _____ [specify the road]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. When [name of defendant] saw [name of plaintiff or child] [at/near] _____ [specify the road], was [name of plaintiff or child] _____ [specify name of plaintiff or child's age] years old?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] by _____ [describe defendant's alleged actions or failure to act]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff or child] suffer damages as a result of [name of defendant]'s failure to

act reasonably under the circumstances to prevent injuring [name of plaintiff or child]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:5.

McGee v. Bolen, 369 So. 2d 486, 492 (Miss. 1979) (Our jurisprudence, as reflected in decisions presently herein to be noticed, is that drivers of automobiles are charged with the duty to expect children to do the unexpected, to understand that they may do the ununderstandable and unpredictable, and will act upon a second's impulse. Appellee drove under this responsibility, and had he discharged the duty he owed to those he acknowledges he knew to be at the threshold of the lane on which he was advancing, it follows that this care toward them would have avoided the sad catastrophe reflected in the record. The facts here remove this case from those protecting the motorist from liability for injury to children suddenly darting from behind obstructions of view into the path of the driver. Although not himself visible to appellee he was among those

who were visible to him and was entitled to the stern care and caution that belonged to those clearly within appellee's view.).

Bland v. Briggs, 512 So. 2d 894, 896-97 (Miss. 1987) (Over the objection of the plaintiffs, the defendants were given Instruction D-10, which reads as follows: “You are instructed that if you believe from the evidence that when the tractor-trailer unit operated by Mr. Briggs started forward into Highway Number 45 Charles Andre Bland was then in a place of safety and where it appeared he could not be in danger or injured by the maneuver of proceeding out of the driveway and turning to the South but that Charles Andre Bland suddenly moved or ran from his position of safety to the North so as to place himself in the path of the trailer and that such action on the part of Charles Andre Bland was the sole proximate cause of the accident, then your verdict must in favor of the defendants.” Unfortunately no instruction given either the plaintiffs or the defendants embraced the principle announced in *McGee v. Bolen*, *Moak v. Black*, *McMinn v. Lilly*, or *Bozeman v. Tucker*. Instruction D-10 is misleading to a jury, just as some of the defense instructions were in the earlier cases. It completely ignores the positive duty on the part of Briggs, once he had observed these small boys, to anticipate the same or similar conduct Charles Andre tragically engaged in, and drive his tractor-trailer so as avoid injury in event of such conduct. The question was not whether the children were in a place of safety standing at the edge of the driveway. Of course, they were safe standing there. The instruction compounds the error by stating, in effect, that if Charles Andre suddenly ran from his place of safety into the path of the trailer, and this “was the sole proximate cause of the accident,” the jury was to find for the defendants. Thus, the instruction treated this small child no differently from an adult. Of course, if this had been an adult standing there looking at the truck, there would have been no reason to

assume he would walk or run directly into the path of the trailer. An entirely different situation was presented with three children standing there. Briggs had the positive duty after observing these small boys to, as stated in the cases, expect the “unexpected,” or “unusual,” and be prepared not to injure in event of such movement. The instruction ignored this legal obligation of Briggs and granting it was reversible error. Under this instruction, Briggs was absolved of liability if the child suddenly moved from his place of safety into the path of the trailer, while under our law it was precisely this sort of movement Briggs should have been watching for and prepared for as he drove his truck forward into the highway. We therefore reverse and remand this cause for another trial.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3805 Rules of the Road - Driver’s Duty in Area Where Children May Be Present - General Instruction and Verdict Form

Standard of Care

A person driving a motor vehicle in an area where children may be present, even if they are not seen, has a duty to expect the unexpected, which includes that young children may enter onto the road, and must act reasonably under the circumstances.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] and injured [name of plaintiff or child]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff or child]’s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] was driving in an area where children could be present, specifically _____ [specify location where children could be present];
2. [Name of defendant] failed to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] by _____ [describe defendant's alleged actions or failure to act];
3. [Name of plaintiff or child] suffered damages as a result of [name of defendant]'s failure to act reasonably under the circumstances to prevent injuring [name of plaintiff or child]; and
4. [Name of defendant]'s failure to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] driving in an area where children could be present, specifically _____ [specify location where children could be present]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of defendant] fail to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] by _____ [describe defendant's alleged actions or failure to act]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff or child] suffer damages as a result of [name of defendant]’s failure to act reasonably under the circumstances to prevent injuring [name of plaintiff or child]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]’s failure to act reasonably under the circumstances to prevent injuring [name of plaintiff or child] a substantial factor in causing [name of plaintiff]’s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]’s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:5.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3806 Rules of the Road - Driver’s Duty to Yield to a Vehicle Entering the Intersection -

General Instruction and Verdict Form

Standard of Care

When a motor vehicle approaches an intersection, the person driving the motor vehicle has a duty to yield the right-of-way to a motor vehicle which has already entered the intersection from a different highway.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to yield the right-of-way to [name of plaintiff] and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] approached the intersection at _____ [specify the intersection];
2. [Name of plaintiff] had already entered the intersection from _____ [specify which highway];
3. [Name of defendant] failed to yield the right-of-way to [name of plaintiff];
4. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]; and
5. [Name of defendant]'s failure to yield the right-of-way to [name of plaintiff] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] approach the intersection at _____ [specify the intersection]?
YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Had [name of plaintiff] already entered the intersection from _____ [specify which highway]?
YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop

here and tell the bailiff.

3. Did [name of defendant] fail to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to yield the right-of-way to [name of plaintiff] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$_____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:9.

Miss. Code Ann. § 63-3-801(1).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3807 Rules of the Road - Driver's Duty to Yield to the Vehicle on the Right - General

Instruction and Verdict Form

Standard of Care

When two motor vehicles approach an intersection at the same time from two different highways, the person driving the motor vehicle on the left has a duty to yield the right-of-way to the motor vehicle on the right.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to yield the right-of-way to [name of plaintiff] and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. While driving their motor vehicles, both [name of plaintiff] and [name of defendant] approached the intersection at _____ [specify the intersection] at the same time;
2. [Name of defendant] was to the left of [name of plaintiff] on _____ [specify which highway];
3. [Name of defendant] failed to yield the right-of-way to [name of plaintiff];
4. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]; and
5. [Name of defendant]'s failure to yield the right-of-way to [name of plaintiff] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. While driving their motor vehicles, did both [name of plaintiff] and [name of defendant]

approach the intersection at _____ [specify the intersection] at the same time?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant] to the left of [name of plaintiff] on _____ [specify which highway]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to yield the right-of-way to [name of plaintiff] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop

here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:8.

Miss. Code Ann. § 63-3-801(2).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3808 Rules of the Road - Driver's Duty to Yield to a Vehicle Driving on a Highway When Approaching from a Private Road or Driveway - General Instruction and Verdict Form

Standard of Care

When a motor vehicle is about to enter or cross a highway from a private road or driveway, the person driving the motor vehicle has a duty to yield the right-of-way to all motor vehicles which are driving on the highway.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to yield the right-of-way to [name of plaintiff] and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of defendant] approached _____ [specify the highway] from a private road or driveway;
2. At that time, [name of plaintiff] was driving on _____ [specify the highway];
3. [Name of defendant] failed to yield the right-of-way to [name of plaintiff];

4. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]; and

5. [Name of defendant]'s failure to yield the right-of-way to [name of plaintiff] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] approach _____ [specify the highway] from a private road or driveway?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. At that time, was [name of plaintiff] driving on _____ [specify the highway]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to yield the right-of-way to [name of plaintiff] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:10.

Miss. Code Ann. § 63-3-807.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

3809 Rules of the Road - Driver's Duty to Yield to a Pedestrian in a Crosswalk - General Instruction and Verdict Form

Standard of Care

If there is no working traffic light or signal, a person driving a motor vehicle has a duty to yield the right-of-way to a pedestrian who is crossing the road in a marked crosswalk or in an unmarked crosswalk at an intersection.

General Instruction

[Name of plaintiff] claims that [name of defendant] failed to yield the right-of-way to [name of plaintiff] and injured [name of plaintiff]. [Name of plaintiff] claims that [name of

defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. [Name of plaintiff] was crossing _____ [specify the road] in a marked crosswalk or in an unmarked crosswalk at _____ [specify the intersection];
2. At that time, [name of defendant] was driving on _____ [specify the road];
3. [Name of defendant] failed to yield the right-of-way to [name of plaintiff];
4. [Name of plaintiff] suffered damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]; and
5. [Name of defendant]'s failure to yield the right-of-way to [name of plaintiff] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of plaintiff] crossing _____ [specify the road] in a marked crosswalk or in an unmarked crosswalk at _____ [specify the intersection]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. At that time, was [name of defendant] driving on _____ [specify the road]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s failure to yield the right-of-way to [name of plaintiff]?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant]'s failure to yield the right-of-way to [name of plaintiff] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Miss. Code Ann. § 63-3-1103.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

C. Negligence and Negligence as a Matter of Law

3810 Rules of the Road - Violating a Traffic Law - Negligence as a Matter of Law - General

Instruction and Verdict Form

Standard of Care

A person driving a motor vehicle must obey the traffic laws. The failure to obey a traffic law may be negligence as a matter of law.

General Instruction

[Name of plaintiff] claims that [name of defendant] was negligent as a matter of law because [name of defendant] failed to obey a traffic law and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. Statute _____ [specify statute] requires: [quote from state statute];
2. [Name of defendant] was negligent as a matter of law because [name of defendant] failed to _____ [describe defendant's alleged actions];
3. [Name of plaintiff] suffered damages as a result of [name of defendant]'s negligence; and
4. [Name of defendant]'s negligence was a substantial factor in causing [name of plaintiff]'s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Does statute _____ [specify statute] require: [quote from state statute]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Was [name of defendant] negligent because [name of defendant] failed to _____ [describe defendant's alleged actions]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:1.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

**3811 Rules of the Road - Parent or Guardian Legally Responsible for Minor Driver's
Negligence - General Instruction and Verdict Form**

General Instruction

[Name of plaintiff] claims that [name of defendant minor driver] was negligent while driving a motor vehicle and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant parent or guardian] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. On or about _____ [specify date application was signed], [name of defendant parent or guardian] signed [name of defendant minor driver]'s application for a driver's permit or license;
2. On or about _____ [specify date of defendant minor driver's alleged conduct], [name of defendant minor driver] was negligent by _____ [describe defendant minor driver's alleged actions] on _____ [specify the highway]; and
3. When [name of defendant minor driver] was negligent by _____ [describe defendant minor driver's alleged actions] on _____ [specify the highway], [name of defendant minor driver] was:
 - A. Less than 17 years old; and
 - B. Driving under the authority of a driver's permit or license; and
4. [Name of plaintiff] suffered damages as a result of [name of defendant minor driver]'s negligence; and

5. [Name of defendant minor driver]’s negligence was a substantial factor in causing [name of plaintiff]’s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful [person/business/corporation] would not do under similar circumstances or failing to do something that a reasonably careful [person/business/corporation] would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. On or about _____ [specify date application was signed], did [name of defendant parent or guardian] sign [name of defendant minor driver]’s application for a driver’s permit or license?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. On or about _____ [specify date of defendant minor driver’s alleged conduct], was [name of defendant minor driver] negligent by _____ [describe defendant minor driver’s alleged actions] on _____ [specify the highway]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. When [name of defendant minor driver] was negligent by _____
[describe defendant minor driver's actions] on _____ [specify highway], was [defendant
minor driver]:

A. Less than 17 years old; and

B. Driving under the authority of a driver's permit or license?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop
here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant minor driver]'s
negligence?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop
here and tell the bailiff.

5. Was [name of defendant minor driver]'s negligence a substantial factor in causing [name of
plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop
here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:7.

Miss. Code Ann. §§ 63-1-23 to -25.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

D. Intentional Misconduct

3812 Rules of the Road - Parent or Guardian Legally Responsible for Minor Driver's

Intentional Misconduct - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] claims that [name of defendant minor driver] intentionally acted with misconduct while driving a motor vehicle and injured [name of plaintiff]. [Name of plaintiff] claims that [name of defendant parent or guardian] is legally responsible for [name of plaintiff]'s damages. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:

1. On or about _____ [specify date application was signed], [name of defendant parent or guardian] signed [name of defendant minor driver]'s application for a driver's permit or license;
2. On or about _____ [specify date of defendant minor driver's alleged conduct], [name of defendant minor driver] intentionally acted with misconduct by _____ [describe defendant minor driver's alleged actions] on _____ [specify the highway]; and
3. When [name of defendant minor driver] intentionally acted with misconduct by _____ [describe defendant minor driver's alleged actions] on _____ [specify highway], [name of defendant minor driver] was:
 - A. Less than 17 years old; and
 - B. Driving under the authority of a driver's permit or license; and
4. [Name of plaintiff] suffered damages as a result of [name of defendant minor driver]'s

intentional misconduct; and

5. [Name of defendant minor driver]'s intentional misconduct was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. On or about _____ [specify date application was signed], did [name of defendant parent or guardian] sign [name of defendant minor driver]'s application for a driver's permit or license?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. On or about _____ [specify date of defendant minor driver's alleged conduct], did [name of defendant minor driver] intentionally act with misconduct by

_____ [describe defendant minor driver's alleged actions] on _____ [specify the highway]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. When [name of defendant minor driver] intentionally acted with misconduct by

_____ [describe defendant minor driver's alleged actions] on _____ [specify the highway], was [name of defendant minor driver]:

A. Less than 17 years old; and

B. Driving under the authority of a driver's permit or license?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff] suffer damages as a result of [name of defendant minor driver]'s intentional misconduct?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was [name of defendant minor driver]'s intentional misconduct a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

Sources

Mississippi Model Jury Instruction - Civil 19:7.

Miss. Code Ann. §§ 63-1-23 to -25.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

E. Affirmative Defenses

3813 Rules of the Road - Pedestrian's Duty to Yield to Motor Vehicles When Not Crossing in a Marked Crosswalk - Affirmative Defense - General Instruction and Verdict Form

Standard of Care

A pedestrian who crosses a road at any point other than in a marked crosswalk or in an unmarked crosswalk at an intersection has a duty to yield the right-of-way to a motor vehicle driving on the road.

General Instruction

[Name of defendant] claims that [he/she/it] is not legally responsible for [name of plaintiff]'s damages because [name of plaintiff] failed to yield the right-of-way to [name of defendant]. To establish this defense, [name of defendant] must prove all of the following are more likely true than not true:

1. [Name of defendant] was driving on _____ [specify the road];
2. [Name of plaintiff] failed to yield the right-of-way to [name of defendant] by crossing or attempting to cross _____ [specify the road] at a point other than in a marked crosswalk or in an unmarked crosswalk at an intersection;
3. [Name of plaintiff] suffered damages as a result of [name of plaintiff]'s failure to yield the right-of-way to [name of defendant]; and
4. [Name of plaintiff]'s failure to yield the right-of-way to [name of defendant] was a substantial factor in causing [name of plaintiff]'s damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] driving on _____ [specify the road]?
YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff.

2. Did [name of plaintiff] fail to yield the right-of-way to [name of defendant] by crossing or attempting to cross _____ [specify the road] at a point other than in a marked crosswalk or in an unmarked crosswalk at an intersection?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s failure to yield the right-of-way to [name of defendant]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of plaintiff]'s failure to yield the right-of-way to [name of defendant] a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answers to questions 1-4 are YES, then you must find in favor of [name of defendant] on [his/her/its] defense.

Sources

Mississippi Model Jury Instruction - Civil 19:13.

Miss. Code Ann. § 63-5-1105.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 49 Will Contests

4900 Will Contests - General Instructions

A person who makes a will is called a testator. Making a will is also referred to as executing a will. For a document to be a valid will, it must contain certain necessary requirements.

A gift of personal property in a will is called a bequest. A gift of real property in a will is called a devise.

In a will contest, the person who offers a will for probate is called the proponent of the will. The proponent claims that the will is a valid will because the will was signed by the testator and contains the necessary requirements for the will to be valid.

The person who objects to a will being offered for probate is called the contestant of the will. The contestant claims that the will is not a valid will because _____ [specify objection to the will].

Sources

Mississippi Model Jury Instruction - Civil 20:17.

4901 Will Contests - Revival of a Prior Will

If a testator cancels a prior will by a later will, codicil, or other document, and then cancels that second will, codicil, or other document, then the first will is not revived.

Sources

Mississippi Model Jury Instruction - Civil 20:11.

Practice Note: A will which has been revoked by a subsequent will is not revived by the

revocation of the subsequent will. *Robert A. Weems, Wills and Administration of Estates in Mississippi* § 5:13 (3d ed. 2003).

4902 Will Contests - Requirements in General - General Instruction and Verdict Form

General Instruction

[Name of proponent] has offered a document to be admitted as [name of testator]'s will for probate. To establish that the document is [name of testator]'s will, [name of proponent] must prove all of the following are more likely true than not true:

1. [Name of testator], the testator, [agreed/acknowledged/stated] that the document was in fact [his/her] will to two (2) witnesses, [name of witness 1] and [name of witness 2];
2. [Name of testator] either signed the will with [his/her] signature; made a mark intended as [his/her] signature on the will; or specifically asked [name of signer] [or someone else] to sign the will in [name of testator]'s presence on [his/her] behalf, and adopted that signature as [his/her] own; and
3. [Name of witness 1] and [name of witness 2] signed and witnessed the will in the conscious presence of [name of testator] and at [name of testator]'s request.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of testator], the testator, [agree/acknowledge/state] that the document was in fact [his/her] will to two (2) witnesses, [name of witness 1] and [name of witness 2]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. Did [name of testator] either sign the will with [his/her] signature; make a mark intended as [his/her] signature on the will; or specifically ask [name of signer] [or someone else] to sign the will in [name of testator]'s presence on [his/her] behalf and adopt that signature as [his/her] own?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

3. Did [name of witness 1] and [name of witness 2] sign and witness the will in the conscious presence of [name of testator] and at [name of testator]'s request?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:1.

4903 Will Contests - Verdict Form - In General

If you find that it is more likely true than not true that the document offered by [name of proponent] contains all of the requirements necessary for it to be a valid will, then you must return the following verdict:

“We, the jury, find for [name of proponent].”

If you do not find that it is more likely true than not true that the document offered by [name of proponent] contains all of the requirements necessary for it to be a legal will, then you

must return the following verdict:

“We, the jury, find for [name of contestant].”

Sources

Mississippi Model Jury Instruction - Civil 20:18.

4904 Will Contests - Witnesses to the Will - General Instruction and Verdict Form

Statement of Law

If a will is not entirely written in the testator’s own handwriting, then it must be signed by two (2) witnesses. If the two witnesses sign the will at the request of the testator, the witnesses attest to the will. The will then becomes an attested will. An attested will is a will that has been signed by the witnesses at the request of the testator, and the witnesses have certified that (1) the testator either signed the will [himself/herself] or had [name of signer] [or someone else] sign the will in the testator’s conscious presence at [his/her] request and (2) that the testator was able to execute the will. The testator does not have to sign the will in the witnesses’ presence in order for the will to be legal. If the will is not signed by the testator in their presence, then the testator must acknowledge [his/her] signature to the witnesses.

General Instruction

[Name of proponent] has offered a document to be admitted as [name of testator]’s attested will for probate. To establish that the document is [name of testator]’s attested will, [name of proponent] must prove all of the following are more likely true than not true:

1. [Name of witness 1] and [name of witness 2] signed the will;
2. [Name of witness 1] and [name of witness 2] certified that either [name of testator] signed the will or [name of signer] [or someone else] signed the will in [name of testator]’s conscious

presence at [his/her] request; and

3. [Name of witness 1] and [name of witness 2] certified that [name of testator] had the ability to execute the will.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of witness 1] and [name of witness 2] sign the will?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. Did [name of witness 1] and [name of witness 2] certify that either [name of testator] signed the will or [name of signer] [or someone else] signed the will in [name of testator]'s conscious presence at [his/her] request?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

3. Did [name of witness 1] and [name of witness 2] certify that [name of testator] had the ability to execute the will?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

4905 Will Contests - Sound and Disposing Mind (Testamentary Capacity) - General

Instruction and Verdict Form

Statement of Law

In order for a will to be valid, the person making the will must have a sound and disposing mind at the time [he/she] executes the will. A person has a sound and disposing mind if [he/she] understands and appreciates:

1. The nature of [his/her] act in making the will;
2. The [beneficiary/beneficiaries] to whom the testator has given gifts in the will and the testator's relationship to [him/her/it/them]; and
3. The testator was capable of determining how [he/she] desired to dispose of [his/her] property. The testator does not have to leave [his/her] property to others in a natural, reasonable, fair, and just way.

General Instruction

[Name of proponent] has offered a document to be admitted as [name of testator]'s will for probate. To establish that the document is [name of testator]'s will, [name of proponent] must prove all of the following are more likely true than not true:

1. [Name of testator] understood and appreciated the nature of [his/her] act in making the will;
2. [Name of testator] understood and appreciated who the [beneficiary/beneficiaries] [was/were] to whom [name of testator] had given gifts in the will and [name of testator]'s relationship to [him/her/it/them]; and
3. [Name of testator] was capable of determining how [he/she] desired to dispose of [his/her]

property.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of testator] understand and appreciate the nature of [his/her] act in making the will?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. Did [name of testator] understand and appreciate who the [beneficiary/beneficiaries] [was/were] to whom [name of testator] had given gifts in the will and [name of testator]'s relationship to [him/her/it/them]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

3. Was [name of testator] capable of determining how [he/she] desired to dispose of [his/her] property?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:3.

Miss. Code Ann. § 91-5-1.

4906 Will Contests - Undue Influence - General Instruction and Verdict Form

Statement of Law

If the person making the will is under the undue influence of [a/another] [person/organization/entity] when [he/she] executes the will, then the will is not valid and should be set aside. Undue influence is conduct which [destroys/overcomes] the testator's free will and substitutes the [other person/organization/entity]'s [decisions/opinions/will] for that of the testator's. Every type of influence that [a/an] [person/organization/entity] may have over the testator is not undue influence. Influence such as advice, suggestions, or requests is not undue influence unless it is so demanding and continuous that it [destroys/overcomes] the testator's free will and the ability for [him/her] to make [his/her] own decisions.

In order for a will to be void because of undue influence, the evidence must show that the resulting will was not the testator's wishes or desires but those of the [other person/organization/entity]. Undue influence does not have to be shown by direct evidence.

The time when the undue influence is applied is not necessarily the deciding factor in making a will void. However, the undue influence must work directly on the testator's mind and control how [he/she] disposes of [his/her] property at the time [he/she] executes the will.

General Instruction

[Name of contestant] claims that [name of testator]'s will should be set aside because [name of proponent] unduly influenced [name of testator] in making [his/her] will. In order to establish this claim, [name of proponent] must prove all of the following are more likely true than not true:

1. [Name of proponent] did not apply undue influence on [name of testator]; and

2. [Name of proponent]’s [will/wishes/desires] [was/were] not substituted for [name of testator]’s [will/wishes/desires] and that [name of proponent] did not [destroy/overcome] [name of testator]’s free will.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of proponent] apply undue influence on [name of testator]?

YES _____ NO _____

If your answer to question 1 is NO, then answer question 2. If you answered YES, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. [Was/were] [name of proponent]’s [will/wishes/desires] substituted for [name of testator]’s [will/wishes/desires] and did [name of proponent] [destroy/overcome] [name of testator]’s free will?

YES _____ NO _____

If your answers to questions 1-2 are NO, then you must return a verdict in favor of [name of proponent]. If you answered YES, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:4.

4907 Will contests - Undue Influence - Confidential Relationship Doctrine - General Instruction and Verdict Form

Statement of Law

In a will contest where undue influence is an issue, the contestant may claim that a

confidential relationship existed between the proponent and the testator. The contestant may establish that a confidential relationship existed between the proponent and the testator where the testator placed great confidence and trust in the proponent and in turn the proponent had greater influence on the testator.

The contestant has the burden of proving that a confidential relationship existed. The contestant must prove that it is more likely than not that a confidential relationship existed. Then the contestant must show (1) that there were suspicious circumstances surrounding the testator making the will or (2) that the proponent was actively involved in having the will prepared, drafted, or executed.

If the contestant meets [his/her] burden of proof, then it is presumed that the testator's will was a result of undue influence. The proponent must then counter this presumption with clear and convincing evidence that (1) the testator acted knowingly and deliberately in [his/her] actions and the consequences of those actions; (2) that the testator showed independent action and consent in the making of [his/her] will; and (3) that the [name of proponent or beneficiary] acted in good faith.

General Instruction

[Name of contestant] claims that [name of testator]'s will should be set aside because [name of proponent] had a confidential relationship with [name of testator] and was active in the making of [name of testator's] will. To establish this claim, [name of contestant] must prove all of the following are more likely true than not true:

1. [Name of proponent] and [name of testator] had a confidential relationship because

_____ [describe the alleged confidential relationship]; and

2A. There were suspicious circumstances surrounding [name of testator] making [his/her] will, specifically _____ [describe name of proponent's alleged actions];

OR

2B. [Name of proponent] was actively involved in having [name of testator]'s will prepared, drafted, or executed, by _____ [describe name of proponent's alleged actions].

In response, [name of proponent] claims that [he/she] did not apply undue influence on [name of testator]. To establish this claim, [name of proponent] must prove all of the following by clear and convincing evidence:

3. [Name of testator] acted knowingly and deliberately in [his/her] actions and the consequences of those actions; and
4. [Name of testator] showed independent action and consent in the making of [his/her] will; and
5. [Name of proponent or beneficiary] acted in good faith.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of proponent] and [name of testator] have a confidential relationship because _____ [describe the alleged confidential relationship]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

2A. Were there suspicious circumstances surrounding [name of testator] making [his/her] will, specifically _____ [describe name of proponent's alleged actions]?

OR

2B. Was [name of proponent] actively involved in having [name of testator]'s will prepared, drafted, or executed, by _____ [describe name of proponent's alleged actions?]

YES _____ NO _____

If your answers to questions 1-2 are YES, then answer questions 3-5. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

3. Did [name of proponent] prove by clear and convincing evidence that [name of testator] acted knowingly and deliberately in [his/her] actions and the consequences of those actions?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

4. Did [name of proponent] prove by clear and convincing evidence that [name of testator] showed independent action and consent in the making of [his/her] will?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

5. Did [name of proponent] prove by clear and convincing evidence that [name of proponent or beneficiary] acted in good faith?

YES _____ NO _____

If your answers to questions 3-5 are YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a

verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:5.

4908 Will Contests - Codicils - General Instruction

Statement of Law

A codicil is a document that is added to a will by the testator after the will has been executed. A codicil may change, cancel, explain, add to, or take away from one or all of the provisions of a will. A valid codicil must contain all of the necessary requirements that a valid will must contain. A testator may execute a valid codicil to solve any defects or problems contained in the execution of the original will.

General Instruction

If you find that it is more likely true than not true that the document executed by the testator is a valid codicil or that the original will was re-executed by a valid codicil, then you must return a verdict in favor of [name of proponent].

Sources

Mississippi Model Jury Instruction - Civil 20:6.

4909 Will Contests - Handwritten Wills - General Instruction and Verdict Form

Statement of Law

A will that is written entirely in the testator's own handwriting is called a holographic will. It may also be called a handwritten will. An entirely handwritten will does not have to be signed by any witnesses.

General Instruction

[Name of proponent] claims that _____ [describe document] is [name of testator]'s handwritten will. To establish that the document is [name of testator]'s handwritten will, [name of proponent] must prove all of the following are more likely true than not true:

1. The document is entirely in [name of testator]'s own handwriting;
2. The document shows [name of testator]'s intent to dispose of [his/her] property after [his/her] death; and
3. [Name of testator] signed the document at the end of the writing.

Verdict Form

We answer the questions submitted to us as follows:

1. Is the document entirely in [name of testator]'s own handwriting?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. Does the document show [name of testator]'s intent to dispose of [his/her] property after [his/her] death?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

3. Did [name of testator] sign the document at the end of the writing?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:7.

Miss. Code Ann. § 91-5-1.

4910 Will Contests - Verbal Wills - General Instruction and Verdict Form

Statement of Law

A will that is verbal only and not put in writing is called a noncupative will. It may also be called a verbal will. A verbal will can only dispose of personal property, not real property. If a verbal will attempts to dispose of property which is worth more than \$100.00, then two (2) witnesses must testify that the testator informed them that these verbal statements were intended to be [his/her] will.

General Instruction

[Name of proponent] claims that [name of testator] verbally stated that [he/she] _____ [describe testator's statements]. To establish this claim, [name of proponent] must prove all of the following are more likely true than not true:

1. [Name of testator] intended that [his/her] verbal statements were to be [his/her] will; and
2. [Name of testator] made the verbal statements during [his/her] last illness; and
3. [Name of testator] made the verbal statements at [his/her] home, or where [he/she] had lived for ten (10) days before [his/her] death, or where [he/she] had become ill and died before [he/she] could return home.

[If the verbal will attempts to dispose of property which is worth more than \$100.00, then [name of proponent] must also prove that the following is more likely true than not true:

4. [Name of witness 1] and [name of witness 2] testified that [name of testator] informed them that these verbal statements were intended to be [his/her] will.].

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of testator] intend that [his/her] verbal statements were to be [his/her] will?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. Did [name of testator] make the verbal statements during [his/her] last illness?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

3. Did [name of testator] make the verbal statements at [his/her] home, or where [he/she] had lived for ten (10) days before [his/her] death, or where [he/she] had become ill and died before [he/she] could return home?

YES _____ NO _____

If your answers to questions 1-3 are YES, then you must return a verdict in favor of [name of proponent] [or answer question 4]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

[If the verbal will attempts to dispose of property which is worth more than \$100.00, then you must also answer the following question:

4. Did [name of witness 1] and [name of witness 2] testify that [name of testator] informed them that these verbal statements were intended to be [his/her] will?

YES _____ NO _____

If your answers to questions 1-4 are YES, then you must return a verdict in favor of

[name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant].)]

Sources

Mississippi Model Jury Instruction - Civil 20:8.

Miss. Code Ann. § 91-5-15.

4911 Will Contests - Canceling a Will by a Later Will, Codicil, or Other Document - General Instruction and Verdict Form

Statement of Law

A testator can cancel a will, or a provision of a will, by a later will, codicil, or other document that states [his/her] intent. This may also be called revoking a will. The testator must have a sound and disposing mind and not be under any undue influence when the later will, codicil, or other document is executed. The cancellation of the prior will must be clearly expressed and definite in nature.

General Instruction

To establish that [name of testator] cancelled [his/her] prior _____ [specify date of will] will, [name of proponent] must prove all of the following are more likely true than not true:

1. [Name of testator] executed a later will, codicil, or other document canceling [his/her] prior _____ [specify date of will] will, or a provision of [his/her] prior _____ [specify date of will] will; and
2. The later will, codicil, or other document was executed with all of the necessary requirements of a valid will.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of testator] execute a later will, codicil, or other document canceling [his/her] prior _____ [specify date of will] will, or a provision of [his/her] prior _____ [specify date of will] will?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

2. Was the later will, codicil, or other document executed with all of the necessary requirements of a valid will?

YES _____ NO _____

If your answers to questions 1-2 are YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:9.

Miss. Code Ann. § 91-5-3.

4912 Will Contests - Canceling a Will by Destroying It - General Instruction and Verdict Form

Statement of Law

A testator can cancel a will, or a provision of a will, by destroying the will [himself/herself], by having someone else destroy the will in [his/her] presence, or by obliterating the will. This may also be called revoking a will.

General Instruction

To establish that [name of testator] cancelled [his/her] prior will, [name of proponent]

must prove the following is more likely true than not true:

1. [Name of testator] _____ [specify (1) destroyed [his/her] prior will by _____ [describe testator's alleged actions]; (2) had [name of person] destroy the prior will in [name of testator]'s presence; or (3) obliterated the will by _____ [describe testator's alleged actions]].

Verdict Form

We answer the question submitted to us as follows:

1. Did [name of testator] _____ [specify (1) destroy [his/her] prior will by _____ [describe testator's alleged actions]; (2) have [name of person] destroy the prior will in [name of testator]'s presence; or (3) obliterate the will by _____ [describe testator's alleged actions]]?

YES _____ NO _____

If your answer to question 1 is YES, then you must return a verdict in favor of [name of proponent]. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of contestant]).

Sources

Mississippi Model Jury Instruction - Civil 20:10.

Miss. Code Ann. § 91-5-3.

4913 Will Contests - Having a Child or Children Who Are Not Provided for in a Will May Cancel the Will - General Instruction and Verdict Form

Statement of Law

If a testator makes a will at a time when [he/she] does not have a child or any children, and if that will neither provides for nor mentions a child or any children who the testator may

have had at a later time, then that will shall not have any effect if the testator has a child or children at the time of [his/her] death, or if the testator is a male whose wife is pregnant when he dies. The will may become effective again if the child dies or the children die without having been married, without having children capable of inheriting, or before reaching the age of 21 years. The will has no effect if the child marries, has a child capable of inheriting, or reaches the age of 21. The testator's estate will go to the heirs at law as if [he/she] had died without a will.

General Instruction

[Name of contestant] claims that [name of testator]'s will has no effect because [name of testator] made the will when [he/she] did not have a child or any children, the will does not provide for or mention a child or any children who [name of testator] may have had at a later time, and [name of testator] died and left a [child/children] who [is/are] still alive. To establish this claim, [name of contestant] must prove all of the following are more likely true than not true:

1. [Name of testator] made [his/her] will at a time when [he/she] did not have a child or any children;
2. [Name of testator]'s will does not provide for or mention a child or any children who [name of testator] may have had at a later time; and
3. [Name of testator] died and left [a child/children] who [is/are] still alive.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of testator] make [his/her] will at a time when [he/she] did not have a child or any children?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop

here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

2. Does [name of testator]'s will provide for or mention a child or any children who [name of testator] may have had at a later time?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

3. Did [name of testator] die and leave [a child/children] who [is/are] still alive?

YES _____ NO _____

If your answers to questions 1 and 3 are YES and your answer to question 2 is NO, then you must return a verdict in favor of [name of contestant]. If you answered NO to question 3, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

Sources

Mississippi Model Jury Instruction - Civil 20:13.

4914 Will Contests - Gifts to a Child or Children Who Died Before the Testator - General Instruction and Verdict Form

Statement of Law

If a testator gives a gift in [his/her] will to a child or descendant, and the child or descendant dies before the testator, then the gift to that child or descendant does not become void. The gift passes to either the child's or the descendant's [child/children] or descendants as if the person had not died before the testator.

General Instruction

[Name of contestant or child of beneficiary or descendant of beneficiary] claims that [he/she] is entitled to [name of beneficiary]'s gift of _____ [specify gift] from [name of

testator]’s will. To establish this claim, [name of contestant or child of beneficiary or descendant of beneficiary] must prove all of the following are more likely true than not true:

1. [Name of testator] gave [name of child of beneficiary or descendant of beneficiary], who was [name of testator]’s child or descendant, a gift in [name of testator]’s will, specifically _____ [specify gift]; and
2. [Name of child of beneficiary or descendant of beneficiary] died before [name of testator]’s death; and
3. [Name of child of beneficiary or descendant of beneficiary] had a child, children, or descendants, who [is/are] alive.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of testator] give [name of child of beneficiary or descendant of beneficiary], who was [name of testator]’s child or descendant, a gift in [name of testator]’s will?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

2. Did [name of child of beneficiary or descendant of beneficiary] die before [name of testator]’s death?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

3. Did [name of child of beneficiary or descendent of beneficiary] have a child, children, or descendants, who [is/are] alive?

YES _____

NO _____

If your answers to questions 1-3 are YES, then you must return a verdict in favor of [name of contestant or child of beneficiary or descendent of beneficiary]. If you answered NO to question 3, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

Sources

Mississippi Model Jury Instruction - Civil 20:17.

4915 Will Contests - Fraud - General Instruction and Verdict Form

Statement of Law

Fraud is a deception or a lie which causes the testator to dispose of [his/her] property or to change [his/her] wishes or desires concerning [his/her] property, or to do some act which [he/she] otherwise would not have done except for the fraud.

General Instruction

[Name of contestant] claims that [name of proponent or person] got [name of testator] to make [his/her] will by fraud. To establish this claim, [name of contestant] must prove all of the following by clear and convincing evidence:

1. [Name of proponent or person] told [name of testator] _____ [describe the alleged false statement];
2. This statement was false;
3. This statement concerned an important or material fact;
4. [Name of proponent or person] knew that the statement was false;
5. [Name of proponent or person] intended that [name of testator] would reasonably act upon the statement in [making/executing] [his/her] will;

6. [Name of testator] did not know that the statement was false;
7. [Name of testator] [made/executed] [his/her] will [based/relying] on the false statement.

Verdict Form

We answer the questions submitted to us as follows:

1. Do you find by clear and convincing evidence that [name of proponent or person] told [name of testator] _____ [describe the alleged false statement]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

2. Do you find by clear and convincing evidence that this statement was false?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

3. Do you find by clear and convincing evidence that this statement concerned an important or material fact?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

4. Do you find by clear and convincing evidence that [name of proponent/name of person] knew that the statement was false?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

5. Do you find by clear and convincing evidence that [name of proponent/name of person] intended that [name of testator] would reasonably act upon the statement in [making/executing] [his/her] will?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

6. Do you find by clear and convincing evidence that [name of testator] did not know that the statement was false?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff (or you must return a verdict in favor of [name of proponent]).

7. Do you find by clear and convincing evidence that [name of testator] [made/executed] [his/her] will [based/relying] on the false statement?

YES _____ NO _____

If your answers to questions 1-7 are YES, then you must return a verdict in favor of [name of contestant].

Sources

Mississippi Model Jury Instruction - Civil 20:16.

State v. Bayer Corp., 32 So. 3d 496, 501 (Miss. 2010) (Elements of fraud are: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that the representation should be acted upon by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on the representation's truth, (8) the hearer's right to rely thereon, and (9) the

hearer's consequent and proximate injury.).

Practice Note: The burden of proof of fraud is generally on the party alleging it, and the proof must be clear and convincing. *Robert A. Weems, Wills and Administration of Estates in Mississippi* § 8:19 (3d ed. 2003).

4916 Will Contests - Mistake - General Instruction

Statement of Law

There are two ways that a mistake may be an issue in a will contest.

A mistake as to the testator's decisions may occur when the testator is mistaken about facts outside the will that affected how [he/she] decided to dispose of [his/her] property. This may also be called a mistake in the inducement. An example of this type of mistake is when the testator may be mistaken about how much property or the condition of the property [he/she] owns. In general, a mistake as to the testator's decisions will not make the will void.

A mistake in the execution of the will may occur when the testator is mistaken as to the contents of [his/her] will or as to the document which [he/she] signed. If a mistake occurs because the will, or a provision of the will, was mistakenly executed, then the will cannot be probated. If a provision of the will is left out by mistake, there is no legal remedy for that mistake.

General Instruction

For the Proponent:

If you find that it is more likely true than not true that [name of testator] was not mistaken about the contents of [his/her] will, or as to the document which [he/she] signed, then the will must be probated, and you must return a verdict in favor of [name of proponent].

For the Contestant:

If you find that it is more likely true than not true that [name of testator] was mistaken about the contents of [his/her] will, or as to the document which [he/she] signed, then the will cannot be probated, and you must return a verdict in favor of [name of contestant].

Sources

Mississippi Model Jury Instruction - Civil 20:13.

4917 Will Contests - Presumptions Concerning Lost or Destroyed Wills

Statement of Law

If the testator had [his/her] will in [his/her] possession or if the testator had easy access to [his/her] will, and then the will cannot be found or is found in a destroyed or mutilated condition, then the law presumes that the testator intended to [cancel/revoke] [his/her] will. However, this presumption will not apply if the will existed in its original condition at a time after which the testator did not have a sound and disposing mind.

Without other evidence, the law presumes that a testator's destruction or mutilation of a will indicates that [he/she] intended to revoke the will. However, this presumption may be defeated by clear and convincing evidence.

If someone else had possession of the will, and the testator did not have easy access to the will, and the will cannot be found, then the law presumes that the will is lost and not [cancelled/revoked].

Sources

Mississippi Model Jury Instruction - Civil 20:12.

Proposed Plain Language Model Jury Instructions - Civil

Chapter 50 Damages

A. General Instructions and Definitions

5000 Damages - Definition

“Damages” is the word used to describe the [harm/injury/injuries] suffered by the plaintiff(s) and the amount of money that will compensate the plaintiff(s) for [that/those] [harm/injury/injuries]. A plaintiff has to prove with some certainty what damages [he/she/it] has suffered. However, a plaintiff does not have to prove the exact amount of [his/her/its] damages. If the plaintiff has proved [his/her/its] claims against the defendant(s) are more likely true than not true, then you may reasonably estimate and award the plaintiff(s) damages.

Sources

Mississippi Model Jury Instruction - Civil 11:1.

5001 Damages - Types of Damages

There are several different types of damages.

“Actual economic damages” is the term used to describe money damages for medical expenses, a disability, lost income, property damage, and _____ [specify any other type of economic damages pursuant to § 11-1-60(1)(b)].

“Noneconomic damages” is the term used to describe money damages for physical pain, mental suffering, emotional distress, and _____ [specify any other type of noneconomic damages pursuant to § 11-1-60(1)(a)].

Actual economic damages and non-economic damages may also be referred to as “compensatory damages,” meaning money is awarded to the plaintiff(s) to compensate [him/her/it] for [his/her/its] [harm/injury/injuries] and make [him/her/it] whole again.

“Nominal damages” is the term used to describe a small sum of money to be awarded in certain circumstances.

“Punitive damages” is the term used to describe money damages which are meant to punish a person or party. Punitive damages also help to warn other people or parties not to act in the same or a similar way.

Sources

Mississippi Model Jury Instructions - Civil 11:2, 11:3, 11:12, 11:13, 11:14, and 11:15.

Miss. Code Ann. § 11-1-60(1)(a) (“Noneconomic damages” means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. The term “noneconomic damages” shall not include punitive or exemplary damages.).

Miss. Code Ann. § 11-1-60(1)(b) (“Actual economic damages” means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, disabilities, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.).

Miss. Code Ann. § 11-1-60(1)(e) (The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff

whole.).

Practice Note: The trial court should only instruct on the type(s) of damages which will be relevant in the particular case.

5002 Damages - Duty to Avoid Further Damages

When a plaintiff is harmed or injured, [he/she/it] has a duty to use proper care and take reasonable steps to avoid or lessen the damages which result from that harm or injury. A plaintiff cannot recover damages for the [harm/injury/injuries] that [he/she/it] could have avoided if [he/she/it] had used proper care or taken reasonable steps to avoid or lessen [his/her/its] damages.

Sources

Mississippi Model Jury Instruction - Civil 11:6.

5003 Damages - Nominal Damages

If you find that it is more likely true than not true that [name of plaintiff] did not suffer any actual harm or injury or did not lose any money as a result of [name of defendant]'s _____ [describe the legally wrong act committed or the trespass], then you may award [name of plaintiff] nominal damages because [he/she/it] had a legal right violated.

Sources

Mississippi Model Jury Instruction - Civil 11:12.

5004 Damages - Factors to Consider for Economic and Noneconomic Damages

You are to decide what damages to award the plaintiffs. You have sole discretion to determine the amount, but you must not guess or speculate about the amount of damages to award. You should decide on a fair and reasonable amount based on the evidence.

You may consider the following factors in determining the amount of damages to award the plaintiff:

1. The type of [injury/injuries] that the plaintiff suffered;
2. Past, present, and future pain and suffering, emotional distress, and/or mental suffering [and the loss of enjoyment of life];
3. Past and future reasonable and necessary medical expenses;
4. Past lost income or wages; and
5. Any future physical disability or injury which will reasonably occur, how long it will last, and its effect, if any, on the plaintiff's ability to earn a living. You should consider the plaintiff's health, physical ability, age, and [his/her] ability to earn a living before the [injury/injuries], and how the plaintiff's [injury/injuries] affected them.

Sources

Mississippi Model Jury Instruction - Civil 11:5.

Miss. Code Ann. §§ 11-1-60 and 11-1-69.

5005 Damages - Mental Suffering - With or Without Actual Harm or Injury

If you find that it is more likely true than not true that the defendant's actions were intentional or reckless, then you may award the plaintiff damages for mental suffering even if [he/she] did not prove that [he/she] had an actual harm or physical injury.

However, if you find that _____ [specify (1) the defendant simply did not act as a reasonable [person/party] would have under the same or similar circumstances or (2) the defendant's actions were simply negligent], then you may not award the plaintiff damages for mental suffering unless [he/she] proves that it is more likely true than not true that [he/she] suffered an actual harm or physical injury.

Sources

Mississippi Model Jury Instruction - Civil 11:21.

5006 Damages - General Instruction for Actual Economic Damages

If you find that it is more likely true than not true that [name of plaintiff] suffered damages as a result of [name of defendant]’s _____ [describe basis of claim against the defendant], then you may award [name of plaintiff] reasonable damages to compensate [him/her/it] for [his/her/its] [harm/injury/injuries]. You should consider _____ [specify the types of damages being asked for by the plaintiff] in awarding the plaintiff damages. You are not required to award damages based on the amount suggested by the attorneys.

[You should not award [name of plaintiff] any money for attorney’s fees or any money meant to punish [name of defendant].]

[Also, [name of defendant] is not legally responsible for any physical or mental problem that [name of plaintiff] had before _____ [describe defendant’s alleged actions] or any physical or mental problem that is not a result of _____ [describe defendant’s alleged actions].]

Sources

Mississippi Model Jury Instructions - Civil 11:4 and 11:13.

B. Damages Instructions for Negligence Cases

5007 Damages - Negligence by One Defendant - Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]'s total damages?

\$ _____ TOTAL

Sources

Judicial Council of California Civil Jury Instruction VF-400.

See 2511 Negligence - Negligence by One Defendant - General Instruction and Verdict Form.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

5008 Damages - Negligence by More than One Defendant - Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of Defendant 1]

1. Was [name of defendant 1] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant 1]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant 1]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of Defendant 2]

4. Was [name of defendant 2] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant 2]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was [name of defendant 2]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

7. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant 1]: [Name of defendant 1] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of defendant 2]: [Name of defendant 2] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

TOTAL 100 %

Section C

8. What are [name of plaintiff]'s total damages? TOTAL \$ _____

Sources

Judicial Council of California Civil Jury Instruction VF-400.

See 2512 Negligence - Negligence by More than One Defendant - General Instruction and Verdict Form.

Practice Note: This instruction should be modified to include more defendants or non-parties as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

5009 Damages - Negligence by More than One Defendant - Combined Injury - Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of Defendant 1]

1. Was [name of defendant 1] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant 1]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant 1]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of Defendant 2]

4. Was [name of defendant 2] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant 2]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was [name of defendant 2]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C

7. Were [name of plaintiff]'s damages the result of [name of defendant 1]'s and [name of defendant 2]'s intentional plan or design to commit negligence?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and tell the bailiff (or answer another verdict form).

8. What are [name of plaintiff]'s total damages? TOTAL \$ _____

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instructions - Civil 11:10.

Miss. Code Ann. § 85-5-7(4) (Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

5010 Damages - Negligence by One Defendant and One Non-Party

We answer the questions submitted to us as follows:

Section A - [Name of Defendant]

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s

damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of Non-Party]

4. Was [name of non-party] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of non-party]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was [name of non-party]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C

7. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant]: [Name of defendant] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of non-party]: [Name of non-party] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

TOTAL 100 %

8. What are [name of plaintiff]'s total damages? TOTAL \$ _____

Sources

Judicial Council of California Civil Jury Instruction VF-402.

See 2513 Negligence - Negligence by One Defendant and One Non-party - General Instruction and Verdict Form.

Practice Note: This instruction should be modified to include more defendants or non-parties as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

5011 Damages - Comparative Negligence by Plaintiff and Defendant - Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of plaintiff]'s Claim Against [Name of defendant]

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then go to Section B. If you answered NO, then stop and tell the bailiff.

Section B - [Name of defendant]'s Claim that [Name of plaintiff] Was Also Negligent

4. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, go to Section C.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C

7. If your answers to questions 1-6 are YES, then give a percentage of fault to

[Name of defendant]: [Name of defendant] _____ %

and

[Name of plaintiff]: [Name of plaintiff] _____ %

TOTAL 100 %

8. What are [name of plaintiff]'s total damages? TOTAL \$ _____

Sources

Mississippi Model Jury Instructions - Civil 11:7.

See 2514 Negligence - Comparative Negligence by Plaintiff and Defendant - General Instruction and Verdict Form.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

5012 Damages - Comparative Negligence of Plaintiff and More than One Defendant

We answer the questions submitted to us as follows:

Section A - [Name of plaintiff]'s Claim Against [Name of defendant 1]

1. Was [name of defendant 1] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant 1]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Was [name of defendant 1]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section B.

Section B - [Name of plaintiff]'s Claim Against [Name of defendant 2]

4. Was [name of defendant 2] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to

Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant 2]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, go to

Section C.

6. Was [name of defendant 2]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section C.

Section C - [Name of defendant]'s Claim that [Name of plaintiff] Was Also Negligent

7. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, go to

Section D.

8. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, go to

Section D.

9. Was [name of plaintiff]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

Go to Section D.

Section D

10. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant 1]: [Name of defendant 1] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of defendant 2]: [Name of defendant 2] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

If your answers to questions 7-9 are YES, then give a percentage of fault to

[Name of plaintiff]: [Name of plaintiff] _____%

TOTAL 100 %

8. What are [name of plaintiff]'s total damages? TOTAL \$_____

Sources

Mississippi Model Jury Instruction - Civil 11:7.

Judicial Council of California Civil Jury Instruction VF-402.

See 2515 Negligence - Comparative Negligence of Plaintiff and More than One Defendant.

Practice Note: This instruction should be modified to include more defendants as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

5013 Damages - Negligence by Plaintiff, Defendant, and Non-Party - Verdict Form

We answer the questions submitted to us as follows:

Section A - [Name of plaintiff]'s Claim Against [Name of defendant]

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then go to Section B and answer question 4. If you answered NO, stop here and tell the bailiff.

Section B - [Name of defendant]'s Claim that [Name of plaintiff] Was Also Negligent

4. Was [name of plaintiff] negligent?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, then go to Section C.

5. Did [name of plaintiff] suffer damages as a result of [name of plaintiff]'s negligence?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, then go to Section C.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 6 is YES, then go to Section C and answer question 7. If you answered NO, then also go to Section C.

Section C - [Name of defendant]’s Claim that [Name of non-party] Was Also Negligent

7. Was [name of non-party] negligent?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, then go to Section D.

8. Did [name of plaintiff] suffer damages as a result of [name of non-party]’s negligence?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, then go to Section D.

9. Was [name of non-party]’s negligence a substantial factor in causing [name of plaintiff]’s damages?

YES _____ NO _____

If your answer to question 9 is YES, then go to Section D and answer question 10. If you answered NO, then also go to Section D.

Section D

10. If your answers to questions 1-3 are YES, then give a percentage of fault to

[Name of defendant]: [Name of defendant] _____%

If you answered NO to any question 1, 2, or 3, then write 0 in the blank.

If your answers to questions 4-6 are YES, then give a percentage of fault to

[Name of plaintiff]: [Name of plaintiff] _____%

If you answered NO to any question 4, 5, or 6, then write 0 in the blank.

If your answers to questions 7-9 are YES, then give a percentage of fault to

[Name of non-party]: [Name of non-party] _____%

If you answered NO to any question 7, 8, or 9, then write 0 in the blank.

TOTAL 100 %

8. What are [name of plaintiff]'s total damages? TOTAL \$ _____

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instructions - Civil 11:8.

See 2516 Negligence - Negligence by Plaintiff, Defendant, and a Non-party - General Instruction and Verdict Form.

Practice Note: This instruction should be modified to include more defendants or non-parties as needed.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

C. Damages Instructions for Wrongful Death Cases

5014 Damages - Wrongful Death - Definition

Wrongful death is the claim that occurs when a person dies as a result of a wrongdoer's actions or inactions, and the deceased person would have been able to sue the wrongdoer for damages. A wrongful death claim is brought by the deceased person's personal representative.

Sources

Mississippi Model Jury Instructions - Civil 11:23.

Miss. Code Ann. § 11-7-13.

5015 Damages - Wrongful Death - Factors to Consider

You are to decide what wrongful death damages to award the plaintiff. You may consider the following factors in determining the amount of wrongful death damages to award the plaintiff:

A. Every Kind of Damages Suffered by the Deceased Person As a Result of His or Her Death

1. The amount of money that the deceased person would have earned over [his/her] work-life expectancy had [he/she] not been injured;
2. The reasonable and necessary medical expenses for treating the deceased person after the [accident/injury] which led to [his/her] death;
3. The deceased person's physical pain and mental suffering from the date of the [accident/injury] which led to [his/her] death until [his/her] death;
4. The reasonable and necessary burial and funeral expenses for the deceased person's funeral;
5. The reasonable expenses for property damage suffered by the deceased person as result of the [accident/injury] which led to [his/her] death; and
6. The reasonable cost of administering the deceased person's estate.

B. Every Kind of Damages Suffered by All of the Parties to the Wrongful Death Claim By the Deceased Person's Spouse and/or Children

1. The spouse's loss of love, affection, companionship, and services as a result of [his/her] death;
2. Each child's loss of training and guidance by [his/her] [father/mother] from the date of the deceased person's death; and
3. Each child's loss of love and companionship with [his/her] [father/mother] from the date of the deceased person's death.

By the Deceased Person's Parents and/or Brothers and Sisters

1. The father and mother's loss of love and companionship with [his/her/their] child from the date of the deceased person's death; and/or
2. Each brother's and each sister's loss of love and companionship with [his/her] [brother/sister]

from the date of the deceased person's death.

Sources

Mississippi Model Jury Instructions - Civil 11:23.

Miss. Code Ann. § 11-7-13.

5016 Damages - Wrongful Death - Deceased Person's Money Value of His or Her Work-Life Expectancy

The money value of the deceased person's work-life expectancy is the present value of money that the deceased person could have reasonably been expected to earn over [his/her] work-life expectancy had [he/she] not been injured. However, the cash value of living expenses which the deceased person would have reasonably spent during [his/her] lifetime must be subtracted from the amount.

Sources

Mississippi Model Jury Instructions - Civil 11:24 and 11:25.

5017 Damages - Wrongful Death - Ages and Life Expectancy

The following people's ages are listed for you to consider in determining the amount of wrongful death damages, if any, to award as a result of [name of deceased person]'s death.

[Name of deceased person] was _____ years old at the time of [his/her] death. [Name of deceased person]'s life expectancy was _____ years.

[Name of deceased person's mother]'s life expectancy is _____ years.

[Name of deceased person's father]'s life expectancy is _____ years.

[Name of deceased person's brother/sister]'s life expectancy is _____ years.

[Name of deceased person's child]'s was _____ years old at the time of [his/her] [father/mother]'s death.

Sources

Mississippi Model Jury Instruction - Civil 11:26.

5018 Damages - Wrongful Death - Mortality Table Used to Determine Life Expectancy

According to life-expectancy tables, the average life expectancy of a _____
[specify deceased person's race] _____ [specify deceased person's gender] is _____ years.

This number is to assist you in determining [name of deceased person]'s life expectancy. The number is not certain, and you are not required to use it.

You can consider this life expectancy if you find that [name of deceased person] was in good health at the time of the [accident/injury] and that [his/her] job was not extremely dangerous or likely to affect [his/her] health. You may also find that [name of deceased person] would have lived longer than _____ years or less than _____ years.

Sources

Mississippi Model Jury Instruction - Civil 11:27.

5019 Damages - Wrongful Death - Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]’s negligence a substantial factor in causing [name of plaintiff]’s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are [name of plaintiff]’s damages:

For loss of love and companionship, pain and suffering, and money value of [name of deceased person]’s life? \$ _____

For medical expenses, funeral and burial expenses, and property damage? \$ _____

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 11:28.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

D. Damages Instructions for Loss of Consortium Cases

5020 Damages - Loss of Consortium - Definition

Consortium is the love, care, and companionship that one spouse gives to the other spouse.

Sources

Mississippi Model Jury Instruction - Civil 11:22.

5021 Damages - Loss of Consortium - Factors to Consider

You may consider the following factors in determining the amount of damages to award the plaintiff for loss of consortium:

1. The plaintiff’s loss of love, affection, and companionship;

2. The plaintiff's loss of help, services, and physical assistance provided by [his/her] [wife/husband];
3. The plaintiff's loss of sexual relations with [his/her] [wife/husband]; and
4. The plaintiff and [his/her] [wife/husband]'s loss of the duties and responsibilities of making a home together.

Sources

Mississippi Model Jury Instruction - Civil 11:22.

5022 Damages - Loss of Consortium - General Instruction and Verdict Form

General Instruction

[Name of plaintiff or spouse of injured party] claims that [name of defendant] caused [name of plaintiff or spouse of injured party] the loss of consortium as a result of _____ [describe the defendant's alleged actions which led to the loss of consortium] and that [name of defendant] is legally responsible for [name of plaintiff or spouse of injured party]'s loss of consortium. To establish this claim, [name of plaintiff or spouse of injured party] must prove all of the following are more likely true than not true:

1. [Name of defendant] was negligent;
2. [Name of plaintiff or name of injured party] suffered damages as a result of [name of defendant]'s negligence;
3. [Name of defendant]'s negligence was a substantial factor in causing [name of plaintiff or name of injured party]'s damages; and
4. As a result of [name of defendant]'s negligence and [name of injured party]'s damages, [name of plaintiff or spouse of injured party] suffered loss of consortium.

Verdict Form

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did [name of plaintiff or name of injured party] suffer damages as a result of [name of defendant]'s negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was [name of defendant]'s negligence a substantial factor in causing [name of plaintiff or name of injured party]'s damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did [name of plaintiff or spouse of injured party] suffer loss of consortium as a result of [name of defendant]'s negligence and [name of injured party]'s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are [name of plaintiff or spouse of injured party]'s damages for loss of consortium?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 11:22.

Miss. Code Ann. § 93-3-1.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

E. Damages Instructions for Intentional Tort Cases

5023 Damages - No Apportionment of Damages for Intentional Plan to Commit Tort

Statement of Law

If two or more defendants intentionally and deliberately agree to commit _____ [describe the tort or wrongful act], then they are both legally responsible for the plaintiff's damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant 1] and [name of defendant 2] intentionally plan or design to commit _____ [describe the tort or wrongful act]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Were [name of defendant 1] and [name of defendant 2]'s actions substantial factors in causing [name of plaintiff]'s damages?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 11:10.

Miss. Code Ann. § 85-5-7(4) (Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.).

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

F. Damages Instructions for Breach of Contract Cases

5024 Damages - Breach of Contract - Factors to Consider

You may consider the following factors in determining the amount of damages to award the plaintiff for breach of contract:

1. The amount of money that it would take to put [name of plaintiff] in as good a position as [he/she/it] would have been in if [name of defendant] had not breached the contract; and
2. [Name of plaintiff]'s business losses or lack of profits as a result of [name of defendant]'s breach of contract if [name of plaintiff] likely knew those business losses or lack of profits would have occurred if the contract was breached.

You should subtract any expenses that [name of plaintiff] would have had to pay if [name of defendant] had not breached the contract, and any business losses or damages that [name of plaintiff] should have known would occur and could have avoided.

Sources

Mississippi Model Jury Instruction - Civil 11:42.

5025 Damages - Breach of Contract - Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] and [name of defendant] enter into a contract to _____
[describe the subject matter of the contract]?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2A. Did [name of plaintiff] perform _____ [describe plaintiff's duties under the contract]?

OR

2B. Was [name of plaintiff] prepared to perform _____ [describe plaintiff's duties under the contract]?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did [name of defendant] fail to _____ [describe the defendant's actions which constitute the alleged breach]?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was [name of defendant]'s failure to _____ [describe the defendant's actions which constitute the alleged breach] a [material/significant] breach of the contract?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did [name of plaintiff] suffer damages as a result of [name of defendant]'s breach of the contract?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are [name of plaintiff]'s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Judicial Council of California Civil Jury Instruction 303.

Colorado Jury Instruction 30:1.

See 707 Contracts - Breach of Contract - General Instruction and Verdict Form.

Practice Note: If damages need to be specified, please use Instruction 5044 Specifying Damages.

G. Damages Instructions for Personal Property Cases

5026 Damages - Personal Property - Before and After Rule

In determining the amount to award the plaintiff for damage to [his/her/its] personal property, you should consider the difference in the fair market value of the personal property immediately before it was damaged and immediately after it was damaged. You should award the plaintiff the difference between the before and after fair market value.

Sources

Mississippi Model Jury Instruction - Civil 11:29.

5027 Damages - Personal Property - Cost of Repairs

In determining the amount to award the plaintiff for damage to [his/her/its] personal property, you should consider whether the personal property can be repaired or restored to its earlier condition. You may consider (1) the cost of repairs and (2) how much less the personal property will be worth once it is repaired.

If repairing the personal property will make it worth the same as it was before it was damaged, then you should only award the reasonable cost of repairs. If repairing the personal property will not make it worth the same as it was before it was damaged, then you should award the reasonable cost of repairs and the difference between what the personal property was worth and what it will be worth once it is repaired.

Sources

Mississippi Model Jury Instruction - Civil 11:30.

5028 Damages - Personal Property - Loss of Use of Item

In determining the amount to award the plaintiff for damage to [his/her/its] personal property, you may also award money for the reasonable cost of a rental piece of property used while the plaintiff's personal property was being repaired or the actual expenses paid by the plaintiff for renting a piece of property to use.

Sources

Mississippi Model Jury Instruction - Civil 11:32.

5029 Damages - Personal Property - Wrongful Replevin

If [name of successful party] has proved that it is more likely true than not true that [name of unsuccessful party] wrongfully filed a writ of replevin [against/on] [name of successful party]'s personal property, then you should consider the following factors in determining the

amount to award [name of successful party] for damage to [his/her/its] personal property:

1. All reasonable expenses that [name of successful party] has or owes in defending the lawsuit, including attorney's fees, loss of the successful party's time, and reasonable expenses in having the property restored to [him/her/it];

2A. If the property was damaged while it was under the writ of replevin, then the difference between the fair market value of the property when the property was taken and the fair market value of the property when it was returned;

OR

2B. If the property can be repaired or restored to its original fair market value, then the reasonable cost of the repairs to the property;

AND

3. The reasonable rent or payment for use of the property while the successful party could not use all or some of [his/her/its] property.

Sources

Mississippi Model Jury Instruction - Civil 11:39.

H. Damages Instructions for Real Property and Eminent Domain Cases

5030 Damages - Real Property - Fair Market Value Defined

Fair market value is the term used for the price that the property would bring on the open market in a sale between a seller who is willing to sell, and a buyer who is willing and able to buy the property, and both the buyer and the seller know the important facts about the property.

Sources

Mississippi Model Jury Instruction - Civil 11:34.

5031 Damages - Real Property - Determining Damages

In determining the amount to award the [plaintiff/landowner] for damage to [his/her/its] real property, you should consider the evidence concerning the fair market value of the property. You should subtract the fair market value of the property immediately after the damage [or the eminent domain taking] from the fair market value of the property immediately before the damage [or the eminent domain taking]. [You should not consider whether there are any benefits or damages to the property which will be shared by the public as a result of the eminent domain taking.]

Sources

Mississippi Model Jury Instruction - Civil 11:34.

5032 Damages - Real Property - Before and After Rule

In determining the amount to award the [plaintiff/landowner] for damage to [his/her/its] real property, you should consider the difference in the fair market value of the real property immediately before it was damaged and the fair market value of the real property immediately after it was damaged. If the real property can be repaired or restored to its original condition, but the reasonable costs would be more than what the fair market value of the real property was before it was damaged, then you should award the plaintiff the difference between the fair market value of the real property immediately before the damage and the fair market value of the real property immediately after the damage occurred.

Sources

Mississippi Model Jury Instruction - Civil 11:36.

5033 Damages - Real Property - Cost of repairs

In determining the amount to award the [plaintiff/landowner] for damage to [his/her/its] real property, you should consider whether the real property can be repaired or restored to its

original condition. If the real property can be repaired or restored to its original condition, then you should award the landowner the reasonable cost of repairs to the property unless the reasonable cost of repairs is more than the fair market value of the property before the damage occurred.

Sources

Mississippi Model Jury Instruction - Civil 11:36.

5034 Damages - Real Property - Rental Value

If the [plaintiff/landowner] could not use some or all of [his/her/its] real property as a result of [name of defendant]'s wrongful actions, then you may award the [plaintiff/landowner] either the reasonable value for rent or payment for the value of use of the real property while the [plaintiff/landowner] could not use [his/her/its] real property.

Sources

Mississippi Model Jury Instruction - Civil 11:37.

5035 Damages - Real Property - Special Damages for Annoyance, Discomfort, Inconvenience, and Sickness

If the [plaintiff/landowner] has proved that it is more likely true than not true that [he/she/it] suffered damages as a result of annoyance, discomfort, inconvenience, and sickness, then you may award the [plaintiff/landowner] money for such damages.

Sources

City of Oxford v. Spears, 87 So. 2d 914, 916 (Miss. 1956) (In addition, the landowner is entitled to recover such special damages as he may be able to prove. These special or incidental damages are elements of damage separate, distinct, and independent of the depreciation of the value of the property or of the depreciation of the rental or usable value of the property. Included in the

category of special or incidental damages are annoyance, discomfort, inconvenience, and sickness. There may be others.).

5036 Damages - Real Property - Wrongful Attachment

If [name of plaintiff or landowner] has proved that it is more likely true than not true that [name of defendant] wrongfully attached [name of plaintiff or landowner]'s real property, then you should consider the following factors in determining the amount to award [name of plaintiff or landowner] for damage to [his/her/its] real property:

1. All reasonable expenses that the landowner has or owes in defending the lawsuit, including attorney's fees, loss of the landowner's time, and reasonable expenses in having the property restored to [him/her/it];

2A. If the property was damaged during the period of attachment, then the difference between the fair market value of the property before the attachment and the fair market value of the property once it was damaged;

OR

2B. If the property can be repaired or restored to its original fair market value, then the reasonable cost of repairs to the property;

AND

3. The reasonable rent or payment for use of the property while the [name of plaintiff or landowner]'s property was attached.

Sources

Mississippi Model Jury Instruction - Civil 11:38.

5037 Damages - Real Property - Damages When Eminent Domain Proceedings Are Dismissed

When a lawsuit for eminent domain is dismissed, you should consider the following factors in determining the amount to award the landowner for damages to [his/her/its] real property:

1. All reasonable expenses that the landowner has or owes in defending the lawsuit, including attorney's fees, loss of the landowner's time, and reasonable expenses in helping prepare for the case;

2A. If the property cannot be repaired or restored to its original value, then the difference between the fair market value of the property from the date the eminent domain proceedings began to the date that the eminent domain proceedings were dismissed;

OR

2B. If the property can be repaired or restored to its original value, then the reasonable cost of repairs to the property;

AND

3. The reasonable rent or payment for use of the property while the landowner could not use [his/her/its] property.

Sources

Mississippi Model Jury Instruction - Civil 11:35.

5038 Damages - Eminent Domain - Taking - Verdict Form

You must return the following verdict:

We find that [name of property owner] will be damaged by the taking of [his/her/its] property for the public use in the amount of \$_____.

Signed

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Sources

Mississippi Model Jury Instruction - Civil 11:40.

Miss. Code Ann. § 11-27-23 (In the trial of all cases provided for herein, nine (9) jurors may bring in a verdict as in other civil cases. The verdict of the jury shall be in the following form: “We, the jury, find that the defendant (naming him) will be damaged by the acquisition of his property for the public use, in the sum of _____ Dollars.”).

5039 Damages - Eminent Domain - Easement - Verdict Form

You must return the following verdict:

We find that [name of property owner] will be damaged by the granting of an easement across [his/her/its] property for the public use in the amount of \$_____.

Signed

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Sources

Mississippi Model Jury Instruction - Civil 11:40.

Miss. Code Ann. § 11-27-23 (In the trial of all cases provided for herein, nine (9) jurors may bring in a verdict as in other civil cases. The verdict of the jury shall be in the following form:

"We, the jury, find that the defendant (naming him) will be damaged by the acquisition of his property for the public use, in the sum of _____ Dollars.").

I. Punitive Damages Instructions

5040 Damages - Purpose of Punitive Damages

You are to decide whether to award punitive damages to the plaintiff, and if so, in what amount. If you decide to award punitive damages, then you should remember that punitive damages are designed to punish the defendant and to warn the defendant and others not to act in the same or similar way as the defendant.

You may consider the following factors in determining the amount of punitive damages to award the plaintiff:

1. The defendant's financial condition and net worth;
2. The defendant's conduct and how badly it affected the plaintiff;
3. Whether the defendant knew that the conduct was causing harm and what motives [he/she/it] had;
4. How long the defendant's conduct lasted and whether [he/she/it] tried to cover up the conduct; and
5. Any other evidence which relates to the defendant's conduct.

Sources

Mississippi Model Jury Instruction - Civil 11:15.

Miss. Code Ann. § 11-1-65.

5041 Damages - Punitive Damages - General Instruction and Verdict Form

General Instruction

[Name of plaintiff] is claiming that [he/she/it] is entitled to punitive damages. To establish this claim, [name of plaintiff] must prove by clear and convincing evidence that:

1A. [Name of defendant] acted with actual malice;

OR

1B. [Name of defendant] acted with gross negligence, which evidenced a willful, wanton, or reckless disregard for the safety of others; or

OR

1C. [Name of defendant] committed actual fraud.

Definition(s) in this Instruction:

In this instruction, “clear and convincing evidence” means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party’s [claim/claims] [is/are] true.

In this instruction, “malice” means a [person/business/corporation] intentionally does something wrong without having a valid reason or excuse.

In this instruction, “gross negligence” means a willful, wanton, or reckless disregard for the safety of others.

In this instruction, “fraud” means a [person/business/corporation] intentionally makes a false statement; the statement concerns an important or material fact; the [person/business/corporation] knows or reasonably should know that the statement is false; the [person/business/corporation] intends that the [person/business/corporation] to [whom/which]

the statement is made will reasonably act upon the statement; the [person/business/corporation] to [whom/which] the statement is made does not know that the statement is false; the [person/business/corporation] to [whom/which] the statement is made relies on the statement; the [person/business/corporation] to [whom/which] the statement is made has a right to rely on the statement; and the [person/business/corporation] to [whom/which] the statement is made suffers damages as a result of [his/her/its] reliance on the statement.

Verdict Form

We answer the questions submitted to us as follows:

1A. Do you find by clear and convincing evidence that [name of defendant] acted with actual malice?

YES _____ NO _____

OR

1B. Do you find by clear and convincing evidence that [name of defendant] acted with gross negligence, which evidences a willful, wanton, or reckless disregard for the safety of others?

YES _____ NO _____

OR

1C. Do you find by clear and convincing evidence that [name of defendant] committed actual fraud?

YES _____ NO _____

If your answer to question 1A, 1B, or 1C is YES, then you may answer question 2. If you answered NO to question 1A, 1B, and 1C, stop here and tell the bailiff.

2. What amount of punitive damages do you award [name of plaintiff]?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instructions - Civil 11:16 and 11:17.

Miss. Code Ann. § 11-1-65(1)(a).

Judicial Council of California Civil Jury Instruction 425.

Practice Note: This instruction may be modified to submit to the jury only the theory (or theories) being alleged by the plaintiff.

J. Statutory Damages Instructions

5042 Damages - Cutting Trees - Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] cut down or destroy _____ [list the number of trees allegedly cut down or destroyed] trees which were owned by [name of plaintiff] and without [name of plaintiff]'s consent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, then stop and tell the bailiff.

2. How many trees did [name of defendant] cut? _____ TOTAL

How many acres need to be replanted? _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 11:18.

Practice Note: The trial court should calculate the damages based on the formula in the statute.

Miss. Code Ann. § 95-5-10(1) (If any person shall cut down, deaden, destroy or take away any tree without the consent of the owner of such tree, such person shall pay to the owner of such tree a sum equal to double the fair market value of the tree cut down, deadened, destroyed or taken away, together with the reasonable cost of reforestation, which cost shall not exceed Two Hundred Fifty Dollars (\$250.00) per acre. The liability for the damages established in this subsection shall be absolute and unconditional and the fact that a person cut down, deadened, destroyed or took away any tree in good faith or by honest mistake shall not be an exception or defense to liability. To establish a right of the owner prima facie to recover under the provisions of this subsection, the owner shall only be required to show that such timber belonged to such owner, and that such timber was cut down, deadened, destroyed or taken away by the defendant, his agents or employees, without the consent of such owner. The remedy provided for in this section shall be the exclusive remedy for the cutting down, deadening, destroying or taking away of trees and shall be in lieu of any other compensatory, punitive or exemplary damages for the cutting down, deadening, destroying or taking away of trees but shall not limit actions or awards for other damages caused by a person.).

5043 Damages - Intentionally Cutting Trees - Verdict Form

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally cut down or destroy _____ [list the number of trees allegedly cut down or destroyed] trees which were owned by [name of plaintiff] and without [name of plaintiff]'s consent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, then stop and tell the bailiff.

2. How many trees less than 7 inches in diameter at 18 inches above the ground
did [name of defendant] cut? _____ TOTAL

How many trees 7 or more inches in diameter at 18 inches above the ground
did [name of defendant] cut? _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

Sources

Mississippi Model Jury Instruction - Civil 11:19.

Practice Note: The trial court judge should calculate the damages based on the formula in the statute.

Miss. Code Ann. § 95-5-10(2) (If the cutting down, deadening, destruction or taking away of a tree without the consent of the owner of such tree be done willfully, or in reckless disregard for the rights of the owner of such tree, then in addition to the damages provided for in subsection (1) of this section, the person cutting down, deadening, destroying or taking away such tree shall pay to the owner as a penalty Fifty-five Dollars (\$55.00) for every tree so cut down, deadened, destroyed or taken away if such tree is seven (7) inches or more in diameter at a height of eighteen (18) inches above ground level, or Ten Dollars (\$10.00) for every such tree so cut down, deadened, destroyed or taken away if such tree is less than seven (7) inches in diameter at a height of eighteen (18) inches above ground level, as established by a preponderance of the evidence. To establish the right of the owner prima facie, to recover under the provisions of this subsection, it shall be required of the owner to show that the defendant or his agents or employees, acting under the command or consent of their principal, willfully and knowingly, in conscious disregard for the rights of the owner, cut down, deadened, destroyed or took away such trees.).

K. Damages Special Verdict Forms

5044 Damages - Specifying Damages - Verdict Form

What are [name of plaintiff]'s damages for the following:

- A. Past lost earnings \$ _____
- Past lost profits \$ _____
- Past medical expenses \$ _____
- Other past damages \$ _____
- B. Future lost earnings \$ _____
- Future lost profits \$ _____
- Future medical expenses \$ _____
- Other future damages \$ _____
- C. Past pain and suffering \$ _____
- D. Future pain and suffering \$ _____

Sources

Judicial Council of California Civil Jury Instruction VF-401.

Practice Note: If damages need to be specified, please use this special verdict form to do so. This form will need to be modified depending on the facts of the case.

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**APPENDIX
OF
SAMPLE INSTRUCTIONS**

707 Contracts - Breach of Contract - General Instruction and Verdict Form

General Instruction

Acme claims that Bernhardt breached a contract to deliver goods and that Bernhardt is legally responsible for Acme's damages. To establish this claim, Acme must prove all of the following are more likely true than not true:

1. Acme and Bernhardt entered into a contract to deliver goods;
2. Acme performed by paying for the goods;
3. Bernhardt failed to deliver the goods;
4. Bernhardt's failure to deliver the goods was a significant breach of the contract; and
5. Acme suffered damages as a result of Bernhardt's breach of the contract.

Verdict Form

We answer the questions submitted to us as follows:

1. Did Acme and Bernhardt enter into a contract to deliver goods?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did Acme perform by paying for the goods?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did Bernhardt fail to deliver the goods?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was Bernhardt's failure to deliver the goods a significant breach of the contract?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Did Acme suffer damages as a result of Bernhardt's breach of the contract?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are Acme's damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

1201 Assault – General Instruction and Verdict Form

General Instruction

Jack Smith claims that Brad Jones assaulted him and that Brad Jones is legally responsible for that assault. To establish this claim, Jack Smith must prove all of the following are more likely true than not true:

1. Brad Jones attempted to intentionally harm or injure Jack Smith by lunging towards Jack Smith with a knife;
2. Jack Smith reasonably believed that he was about to be harmed or injured by Brad Jones.

Verdict Form

We answer the questions submitted to us as follows:

1. Did Brad Jones attempt to intentionally harm or injure Jack Smith by lunging towards Jack Smith with a knife?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did Jack Smith reasonably believe that he was about to be harmed or injured by Brad Jones?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. What are Jack Smith's damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

1405 Defamation of a Public Official or Figure - General Instruction and Verdict Form

General Instruction

Ben Franklin, a public official or figure, claims that WSJ harmed him by acting with hatred or malice by writing a statement of fact that was false and that WSJ is legally responsible for that harm. To establish this claim, Ben Franklin must prove all of the following are more likely true than not true:

1. WSJ wrote that Ben Franklin did not discover electricity, or similar words, to the readers of the WSJ;
2. The readers of the WSJ reasonably believed that the statement harmed Ben Franklin's reputation;
3. The statement was false;
4. Ben Franklin's reputation was harmed by the statement by causing people to doubt whether he was the true discoverer of electricity; and
5. WSJ's writing the statement was a substantial factor in causing Ben Franklin's harm.

Also, Ben Franklin must prove by clear and convincing evidence that:

6. WSJ acted with hatred or malice towards Ben Franklin by writing the statement.

Definition(s) in this Instruction:

In this instruction, "clear and convincing evidence" means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party's claim is true.

In this instruction, “malice” means a corporation intentionally did something wrong without having a valid reason or excuse.

Verdict Form

We answer the questions submitted to us as follows:

1. Did WSJ write that Ben Franklin did not discover electricity, or similar words, to the readers of the WSJ?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the readers of the WSJ reasonably believe that the statement harmed Ben Franklin’s reputation?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was the statement false?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was Ben Franklin’s reputation harmed by the statement by causing people to doubt whether he was the true discoverer of electricity?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here, answer no further questions, and tell the bailiff.

5. Was WSJ’s writing the statement a substantial factor in causing Ben Franklin’s harm?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. Do you find by clear and convincing evidence that WSJ acted with hatred or malice towards Ben Franklin by writing the statement?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and tell the bailiff.

7. What are Ben Franklin’s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

1700 Fraud - Definition

Fraud occurs when a business intentionally makes a false statement; the statement concerns an important or material fact; the business knows or reasonably should know that the statement is false; the business intends that the person to whom the statement is made will reasonably act upon the statement; the person to whom the statement is made does not know that the statement is false; the person to whom the statement is made relies on the statement; the person to whom the statement is made has a right to rely on the statement; and the person to

whom the statement is made suffers damages as a result of his reliance on the statement.

1902 Invasion of Privacy - Using a Person’s Likeness for Business Purposes - General Instruction and Verdict Form

General Instruction

Sally Ray claims that the Curl Up and Dye invaded Sally Ray’s privacy by using her likeness or photographs for business purposes without Sally Ray’s permission. To establish this claim, Sally Ray must prove all of the following are more likely true than not true:

1. Curl Up and Dye intentionally used Sally Ray’s likeness or photographs for business purposes by putting her “before” and “after” pictures in the local newspaper;
2. Sally Ray did not give Curl Up and Dye permission to use Sally Ray’s likeness or photographs for business purposes; and
3. Curl Up and Dye’s use of Sally Ray’s likeness or photographs for business purposes caused harm to Sally Ray.

Verdict Form

We answer the questions submitted to us as follows:

1. Did Curl Up and Dye intentionally use Sally Ray’s likeness or photographs for business purposes by putting her “before” and “after” pictures in the local newspaper?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did Sally Ray give Curl Up and Dye permission to use Sally Ray’s likeness or photographs for business purposes?

YES _____ NO _____

If your answer to question 2 is NO, then answer question 3. If you answered YES, stop here and tell the bailiff.

3. Did Curl Up and Dye’s use of Sally Ray’s likeness or photographs for business purposes cause harm to Sally Ray?

YES _____ NO _____

If your answers to questions 1 and 3 are YES and your answer to question 2 is NO, then answer question 4. If you answered NO to question 3, stop here and tell the bailiff.

4. What are Sally Ray’s damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

2511 Negligence - Negligence by One Defendant - General Instruction and Verdict Form

General Instruction

Marie Claire claims that Acme’s negligence harmed or injured Marie Claire and that Acme is legally responsible for Marie Claire’s damages. To establish this claim, Marie Claire must prove all of the following are more likely true than not true:

1. Acme was negligent;
2. Marie Claire suffered damages as a result of Acme’s negligence; and

3. Acme's negligence was a substantial factor in causing Marie Claire's damages.

Definition(s) in this Instruction:

In this instruction, "negligence" or "negligent" means doing something that a reasonably careful business would not do under similar circumstances or failing to do something that a reasonably careful business would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

1. Was Acme negligent?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did Marie Claire suffer damages as a result of Acme's negligence?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Was Acme's negligence a substantial factor in causing Marie Claire's damages?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. What are Marie Claire's damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

2709 Medical Malpractice - Multiple Defendants - General Instruction and Verdict Form

General Instruction

John Doe claims that Dr. Smith and Dr. Dye were medically negligent and that Dr. Smith and Dr. Dye are legally responsible for John Doe's damages. To establish this claim, John Doe must prove all of the following are more likely true than not true:

Section A - Dr. Smith

1. John Doe was Dr. Smith's patient;
2. Dr. Smith was medically negligent by amputating John Doe's left big toe;
3. John Doe suffered damages as a result of Dr. Smith's removal of John Doe's left big toe because John Doe needed treatment for a wart on his right big toe; and
4. Dr. Smith's medical negligence was a substantial factor in causing John Doe's damages.

Section B - Dr. Dye

5. Dr. Dye gave medical services to John Doe; and
6. Dr. Dye was medically negligent by failing to read the chart to tell Dr. Smith that there was a wart on John Doe's right big toe;
7. John Doe suffered damages as a result of Dr. Dye's failure to read the chart because John Dye

did not need his left big toe amputated; and
8. Dr. Dye’s medical negligence was a substantial factor in causing John Doe’s damages.

Definition(s) in this Instruction:

In this instruction, “negligence” or “negligent” means doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful person would do under similar circumstances.

Verdict Form

We answer the questions submitted to us as follows:

Section A - Dr. Smith

1. Was John Doe Dr. Smith’s patient?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and go to Section B.

2. Was Dr. Smith medically negligent by amputating John Doe’s left big toe?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and go to Section B.

3. Did John Doe suffer damages as a result of Dr. Smith’s removal of John Doe’s left big toe because John Doe needed treatment for a wart on his right big toe?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and go to Section B.

4. Was Dr. Smith’s medical negligence a substantial factor in causing John Doe’s damages?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and go to Section B.

Section B - Dr. Dye

5. Did Dr. Dye give medical services to John Doe?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and go to Section C.

6. Was Dr. Dye medically negligent by failing to read the chart to tell Dr. Smith that there was a wart on John Doe’s right big toe?

YES _____ NO _____

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here and go to Section C.

7. Did John Doe suffer damages as a result of Dr. Dye’s failure to read the chart because John Doe did not need his left big toe amputated?

YES _____ NO _____

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here and go to Section C.

8. Was Dr. Dye’s medical negligence a substantial factor in causing John Doe’s damages?

YES _____ NO _____

If your answer to question 8 is YES, then answer question 9. If you answered NO, stop here and go to Section C.

Section C

9. If your answers to questions 1-4 are YES, then give a percentage of fault to

Dr. Smith: Dr. Smith _____ %

If you answered NO to any question 1-4, then write 0 in the blank.

If your answers to questions 5-8 are YES, then give a percentage of fault to

Dr. Dye: Dr. Dye _____ %

If you answered NO to any question 5-8, then write 0 in the blank.

TOTAL 100 %

10. What are John Doe’s damages? TOTAL \$ _____

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

3105 Animals – Domestic Animal - With Known Dangerous Nature – General Instruction and Verdict Form

General Instruction

Mary Jones claims that Fred Smith’s dog injured her and that Fred Smith is legally responsible for Mary Jones’s damages. To establish this claim, Mary Jones must prove all of the following are more likely true than not true:

1. Fred Smith owned a dog, a domestic animal;
2. The dog had an unusually dangerous nature or disposition;
3. The dog injured Mary Jones; and
4. That before the dog injured Mary Jones, Fred Smith knew or should have known that the dog had an unusually dangerous nature or disposition.

Definition(s) in this Instruction:

In this instruction, “domestic animal” means an animal that is customarily owned or used by people.

Verdict Form

We answer the questions submitted to us as follows:

1. Did Fred Smith own a dog, a domestic animal?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the dog have an unusually dangerous nature or disposition?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the dog injure Mary Jones?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Did Fred Smith know or should Fred Smith have known that the dog had an unusually dangerous nature or disposition before the dog injured Mary Jones?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. What are Mary Jones's damages?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.

3600 Products Liability - Manufacturing Defect

General Instruction

Bob Parks claims that he was harmed by a tire manufactured by Tires Inc. that contained a manufacturing defect and that Tires Inc. is legally responsible for Bob Parks's damages. To establish this claim, Bob Parks must prove all of the following are more likely true than not true:

1. Tires Inc. manufactured the tire;
2. The tire contained a manufacturing defect when it left Tires Inc.'s control because the tire was different in a material way from Tires Inc.'s design;
3. The manufacturing defect made the tire unreasonably dangerous for Bob Parks to use;
4. Bob Parks was harmed by the tire; and
5. The tire's manufacturing defect was a substantial factor in causing Bob Park's damages.

Verdict Form

We answer the questions submitted to us as follows:

1. Did Tires Inc. manufacture the tire?

YES _____ NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here and tell the bailiff.

2. Did the tire contain a manufacturing defect when it left Tires Inc.'s control because the tire was different in a material way from Tires Inc.'s design?

YES _____ NO _____

If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here and tell the bailiff.

3. Did the manufacturing defect make the tire unreasonably dangerous for Bob Parks to use?

YES _____ NO _____

If your answer to question 3 is YES, then answer question 4. If you answered NO, stop here and tell the bailiff.

4. Was Bob Parks harmed by the tire?

YES _____ NO _____

If your answer to question 4 is YES, then answer question 5. If you answered NO, stop here and tell the bailiff.

5. Was the tire's manufacturing defect a substantial factor in causing Bob Parks's damages?

YES _____ NO _____

If your answer to question 5 is YES, then answer question 6. If you answered NO, stop here and tell the bailiff.

6. What are Bob Parks's damages?

\$ _____ TOTAL

5041 Damages - Punitive Damages - General Instruction and Verdict Form

General Instruction

Bob Parks is claiming that he is entitled to punitive damages. To establish this claim, Bob Parks must prove by clear and convincing evidence that:

1. Tires Inc. acted with gross negligence, which evidenced a willful, wanton, or reckless disregard for the safety of others.

Definition(s) in this Instruction:

In this instruction, "clear and convincing evidence" means that the evidence is so strong that it leads you to a firm belief or conclusion, without hesitating, as to what the facts are and that the party's claim is true.

In this instruction, "gross negligence" means a willful, wanton, or reckless disregard for the safety of others.

Verdict Form

We answer the questions submitted to us as follows:

1. Do you find by clear and convincing evidence that Tires Inc. acted with gross negligence, which evidences a willful, wanton, or reckless disregard for the safety of others?

YES _____ NO _____

If your answer to question 1 is YES, then you may answer question 2. If you answered NO to question 1, stop here and tell the bailiff.

2. What amount of punitive damages do you award Bob Parks?

\$ _____ TOTAL

After you have filled out the verdict form, please tell the bailiff that you have reached a verdict.