

JURY INSTRUCTIONS

UJI 1.00 RESPECTIVE DUTIES OF JUDGE AND JURY

Ladies and Gentlemen of the Jury:

It is now my duty to instruct you on the law that applies to this case. It is your duty to follow the law.

As jurors, it is your duty to determine the effect and value of the evidence and to decide all questions of fact.

You must not be influenced by sympathy, prejudice, or passion.

UJI 1.05 IDENTIFICATION OF PARTIES AND CLAIMS

In this trial, the plaintiff is Daniel Jefferson, and the defendant is Meredith Hughes.

Plaintiff is seeking to recover economic and noneconomic damages against defendant based upon claims of conversion and gross negligence.

UJI 2.00 DIRECT AND CIRCUMSTANTIAL EVIDENCE - INFERENCES

Evidence means testimony, writings, material objects, or other things presented to the senses and offered to prove the existence or non-existence of a fact.

Evidence is either direct or circumstantial. Direct evidence proves a fact without an inference and, if true, conclusively establishes that fact. Circumstantial evidence proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is a reasonable method of proof, and each is respected for such convincing force as it may carry.

UJI 2.01 WEIGHING CONFLICTING TESTIMONY

You are not required to decide any issue according to the testimony of a number of witnesses, which does not convince you, as against the testimony of a smaller number of witnesses or other evidence, which is more convincing to you. The testimony of one witness worthy of belief is sufficient to prove any fact. This does not mean that you are free to disregard the testimony of any witness merely from caprice or prejudice, or from

desire to favor either side. It does mean that you must not decide anything by simply counting the number of witnesses who have testified on the opposing sides. The test is not the number of witnesses, but the convincing force of the evidence.

UJI 2.04 FAILURE TO DENY OR EXPLAIN ADVERSE EVIDENCE

In determining what inferences to draw from the evidence, you may consider, among other things, a party's failure to explain or deny such evidence.

UJI 2.20 BELIEVABILITY OF WITNESS

You are the sole and exclusive judges of the believability of the witnesses and the weight to be given to the testimony of each witness.

In determining the believability of a witness, you may consider any matter that has a tendency in reason to prove or disprove the truthfulness of the testimony of the witness, including, but not limited to, the following:

The demeanor and manner of the witness while testifying;

The character and quality of that testimony;

The extent of the capacity of the witness to perceive, recollect, or communicate any matter about which the witness testified;

The opportunity of the witness to perceive any matter about which the witness has testified;

Evidence concerning the bias, motives, or interest of the witness;

Any statement previously made by the witness that is consistent or inconsistent with the testimony of the witness;

The existence or nonexistence of any fact testified to by the witness; and

The attitude of the witness toward this action or toward the giving of testimony.

UJI 2.21 DISCREPANCIES IN TESTIMONY

Discrepancies in a witness' testimony, or between one witness' testimony and that of another witnesses do not necessarily mean that a witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction will often see or hear it differently. Whether a discrepancy pertains to an important matter or only to something trivial should be considered by you.

UJI 2.60 BURDEN OF PROOF AND PREPONDERANCE OF EVIDENCE

Plaintiff is seeking damages based upon claims of conversion and gross negligence.

Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish these claims.

The essential elements of the claims are set forth elsewhere in these instructions. In addition to these essential elements, plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish the nature and extent of the damages claimed to have been suffered, the elements of plaintiff's damages, and the amount thereof.

Preponderance of the evidence means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it.

You should consider all of the evidence bearing upon every issue regardless of who produced it.

UJI 3.03 CAUSE - SUBSTANTIAL FACTOR TEST

The law defines cause in its own particular way. For something to be considered a cause of injury, damage, loss, or harm, it must be a substantial factor in bringing about an injury, damage, loss, or harm.

UJI 6.03 CONVERSION - ESSENTIAL ELEMENTS

In an action for conversion, in order to determine the seriousness of interference with another's right to chattel and the justice of requiring an interferer to pay full value, the court will consider the:

- (1) extent and duration of the actor's exercise of dominion or control;
- (2) actor's intent to assert control that is inconsistent with the owner's right of control;
- (3) actor's good faith;
- (4) extent and duration of the resulting interference with the other's right of control;
- (5) harm done to chattel; and
- (6) inconvenience and expense caused to the owner.

If defendant is liable, plaintiff is entitled to recover economic and noneconomic damages.

UJI 6.10 GROSS NEGLIGENCE – ESSENTIAL ELEMENTS

The essential elements of such a claim are:

1. The defendant was negligent;
2. Defendant's negligence was a cause of injury, damage, loss or harm to plaintiff.

Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under circumstances similar to those shown by the evidence.

Gross negligence is an act beyond mere inadvertence or error in judgment; it is an error of such magnitude that a willful indifference to the consequences of the act may be inferred.

If defendant is liable, plaintiff is entitled to recover economic damages.

UJI 6.15 COMPARATIVE NEGLIGENCE--DEFINITION

Comparative negligence is negligence on the part of plaintiff which, combined with the negligence of defendant, contributes as a cause in bringing about the injury.

Comparative negligence on the part of plaintiff does not bar a recovery by plaintiff against defendant, but the total amount of damages to which plaintiff would otherwise be entitled shall be reduced in proportion to the amount of negligence attributable to plaintiff.

UJI 6.16 RECOVERY FOR INTENTIONAL HARM NOT DIMINISHED BY COMPARATIVE NEGLIGENCE

Comparative negligence on the part of plaintiff does not reduce any recovery by plaintiff against defendant for an injury caused by misconduct of defendant, if you find that defendant intended to inflict harm upon plaintiff.

UJI 8.04 SELF-DEFENSE--DEFENSE OF OTHERS

A person may use reasonable force to defend herself against harmful or offensive contact which she honestly and reasonably believes that another is about to inflict upon another.

However, a person who acts in self defense may only use such force as reasonably appears necessary under the existing circumstances.

UJI 14.02 COMPENSATORY DAMAGES - PERSONAL INJURY AND PROPERTY DAMAGE

The total amount of plaintiff's damages, economic and noneconomic, is the amount that will reasonably compensate plaintiff for each of the following elements of claimed loss or harm, provided you find that such loss or harm was, or will be, suffered by plaintiff and was, or will be, caused by the act or omission upon which you base your finding of negligence of defendant, if you so find.

UJI 14.03 ECONOMIC DAMAGES

The term economic damages means objectively verifiable monetary losses, including, but not limited to, veterinary expenses, burial costs, loss of use of the animal, lost wages, loss of earnings, and either the market value, replacement value, or special value of the animal.

If the animal does not have a market value or replacement value, plaintiff may argue that the animal has special value based on the property's qualities and characteristics, excluding sentimental value.

UJI 14.04 NON-ECONOMIC DAMAGES

The term non-economic damages means non-monetary losses including, but not limited to, physical pain and suffering, mental suffering, and the loss of the reasonable expected companionship, comfort, protection and services of the deceased animal to the owner.

UJI 14.18 REDUCTION OF DAMAGES BECAUSE OF COMPARATIVE NEGLIGENCE - GENERAL VERDICT

If you find that plaintiff's injury was caused by a combination of negligence or fault of defendant, you will determine the amount of all damages to be awarded by you, as follows:

First: You will determine the total amount of all economic and non-economic damages to which the plaintiff would be entitled under the court's instructions if plaintiff had not been comparatively negligent.

Second: You will determine what proportion or percentage is attributable to plaintiff of the total combined negligence or fault of plaintiff and defendant, whose fault contributed to the injury.

Third: You will then reduce both the total amount of plaintiff's economic damages and plaintiff's non-economic damages by the proportion or percentage of negligence attributable to plaintiff.

Fourth: The resulting amount of economic damages will be the amount of plaintiff's award for economic damages against each defendant found liable.

Fifth: As to non-economic damages, each defendant found liable shall only be responsible to the plaintiff for the amount of the total non-economic damages that is proportionate to the percentage of fault attributable to that defendant, and each defendant's liability for non-economic damages shall be accordingly reduced.

Sixth: The resulting amounts, after making such reduction, will be the amounts of your verdict.

UJI 14.20 GUIDELINES IN DETERMINING COMPARATIVE NEGLIGENCE

In order to determine the proportionate share of the total fault attributable to plaintiff, you will, of necessity, be required to evaluate the combined negligence of plaintiff and defendant, whose negligence contributed as a cause to plaintiff's injury.

In comparing the fault of such persons, you should consider all the surrounding circumstances as shown by the evidence.

UJI 14.50 COMPANION ANIMAL DEFINED.

Companion animal means a dog, cat, or any warm-blooded, domesticated nonhuman animal dependent on one or more persons for food, shelter, veterinary care, and/or companionship.

UJI 14.60 SPECULATIVE DAMAGES NOT PERMITTED

Speculative damages are compensation for future loss or harm which, although possible, is conjectural or not reasonably certain.

You are not permitted to award speculative damages to a party.

However, if you determine that a party is entitled to recover, you should compensate a party for loss or harm caused by the injury in question which is reasonably certain to be suffered in the future.

UJI 14.61 PERSONAL INJURY - NO PUNITIVE DAMAGES

You may not include as damages any amount that you might add for the purpose of punishing or making an example of defendant for the public good or to prevent other incidents. Such damages would be punitive and are not authorized in this action.

UJI 14.68 DAMAGES - DUTY TO MITIGATE

A person whose property has been damaged by the wrongful act of another is bound to exercise reasonable care and diligence to avoid loss and to minimize damages, and may not recover for losses which could have been prevented by reasonable efforts or by expenditures that might reasonably have been made.

BLOOMINGTON COUNTY ANIMAL CONTROL ORDINANCE § 6.305: DUTIES OF OWNERS

(A) For the purposes of this section, unless otherwise limited, the owner is ultimately responsible for the behavior of the animal regardless of whether the owner or another member of the owner's household or a household visitor permitted the animal to engage in the behavior that is the subject of the violation.

(B) It is unlawful for any person to commit any of the following:

(1) Permit an animal to be an animal at large;

(2) Permit an animal to trespass upon property of another;

ANIMAL AT LARGE. Any animal, excluding domestic cats, that is not physically restrained on owner's or keeper's premises including motorized vehicles in a manner that physically prevents the animal from leaving the premises or reaching any public areas; or, is not physically restrained when on public property, or any public area, by a leash, tether or other physical control device not to exceed eight feet in length and under the physical control of a capable person.