

CIVIL JURY INSTRUCTIONS
(before Closing Arguments)

You have heard the evidence. Now I will instruct you, and next you will hear final arguments of counsel. The Court and the jury have separate functions: you decide the disputed facts, and the Court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law or to apply your own concept of what you think the law should be.

Equality Under the Law

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice, sympathy, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict based on the evidence.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. [The fact that one of the parties is an individual and the other is a company must not affect your decision in any way.] All parties are equal before the law.

Burden of Proof

The person who claims certain facts exist must prove them by a greater weight of the evidence. This duty is known as the burden of proof. Each party must prove the facts necessary for their respective claims by the greater weight, or preponderance, of the evidence.

Greater Weight of the Evidence

The greater weight of the evidence is evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. This means the evidence is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity or the greater number of witnesses. In determining whether an issue has been proved by a greater weight of the evidence, you should consider all the evidence, regardless of who produced it.

If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by the greater weight of the evidence.

Evidence

Evidence is all the testimony received from the witnesses, any exhibits admitted during the trial, and any facts stipulated by counsel. You must make your decision based only on the evidence you saw and heard here in court. Do not let rumors, suspicions, or anything else you may have seen or heard outside this courtroom influence your decision in any way.

Evidence may be direct or circumstantial, or both.

“Direct evidence” is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence during the trial.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. “Circumstantial evidence” is the proof of facts by direct evidence from which you may infer other reasonable facts or conclusions.

For example, if a witness testified that he saw it raining outside, and you believed him, that would be direct evidence it was raining. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude it was raining.

You may infer a fact or facts only from other facts that have been proven by the greater weight of the evidence. You may not make one inference from another inference, but you may draw more than one inference from the same facts or circumstances. Direct evidence and circumstantial evidence are of equal weight.

Matters Not Evidence

Evidence does not include the formal papers filed on the court docket or any statement of counsel made during the trial. The opening statements and the closing arguments of counsel are designed to assist you; they are not evidence.

Statements or answers ordered stricken, or to which this Court sustained an objection, or that you were instructed to disregard, are not evidence and must be treated as though you never heard them.

You must not guess why the objection to any question was sustained or what the answer to such question might have been. You must not consider as evidence any suggestion included in a question that was not answered.

Credibility

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. To weigh the evidence, you must consider the credibility or believability of the witnesses. You will apply the tests of truthfulness that you use in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear, and know the things about which he or she testified; his or her accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all the facts and circumstances surrounding the testimony. Use these tests and assign to each witness' testimony such weight as you think proper.

You are not required to believe the testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your duty to determine what testimony to believe and what testimony not to believe.

Some guides for evaluating the testimony include:

- Was the witness able to clearly see, hear, or understand the events?
- How good was the witness' memory?
- Was there anything that may have interfered with the witness' ability to perceive or remember the events?
- How did the witness act while testifying?
- Did the witness have any relationship to either party, or anything to gain or lose from the case, that might influence his or her testimony?
- Was the testimony supported or contradicted by other evidence that you found believable?
- Was the testimony consistent with prior sworn statements?

Inconsistent Statements by a Witness

You may have heard evidence that a witness made statements before this trial that are inconsistent with his or her testimony here in court. If you find the statements are inconsistent, you may consider the earlier statement in deciding the truthfulness and accuracy of that witness' testimony in this trial. If the prior statement was not made under oath, you may not use it as evidence of the truth of the matters in that prior statement. However, if that prior statement was made under oath (affidavits or depositions), you may also consider the difference to test the credibility of that witness, or as evidence of the truth of the matters in that prior sworn statement.

Depositions

Some testimony was presented by way of video deposition. This evidence is to be considered by you the same as if the witness testified live in the courtroom.

Also, if prior sworn statements differ from testimony given in the courtroom by the same witness, you may consider the difference to test the credibility of that witness.

Exhibits

You will determine what weight, if any, the exhibits should receive in light of all the testimony, no matter who produced the exhibit. The numbering of the exhibits that you take to the jury room may not follow consecutively. There are several reasons for this. Some exhibits may not have been offered, some may be duplicates, or the Court may have rejected the exhibit because of a legal or other ruling. Do not guess or draw any inference because you do not have a particular numbered exhibit.

Opinion Testimony

Generally, a witness may not express an opinion. However, one who follows a special line of work may express his or her opinion because of his or her education, knowledge, and experience. Such testimony is admitted for whatever assistance it may provide to help you arrive at a just verdict.

However, as with other witnesses, the duty of deciding what weight their opinions should be given, rests upon you alone. In determining its weight, you should consider their respective qualifications, skill, experience, knowledge, familiarity with the facts of this case, how they reached their conclusions, and the usual rules for testing credibility and determining the weight to be given to the testimony.

* * *

This concludes the general instructions on certain preliminary matters -- including the burden of proof, evidence, and the credibility of witnesses. I will now give you the instructions of law on the specific issues in this case.

* * *

Verdict Form and Questions

I will now walk you through the Jury Questions and then the Verdict forms.

* * *