

PRELIMINARY JURY INSTRUCTIONS

Duty of Jury

It is your duty to find what the facts are. You alone are the judges of the facts. You must apply to those facts the law as the judge explains it to you. You must follow that law whether you agree with it or not.

Nothing the judge may say or do during the course of the trial is intended to indicate what your verdict should be.

Evidence

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

The following things are not evidence:

1. Statements, arguments and questions by lawyers are not evidence. The lawyers are not witnesses.
2. Objections to questions or exhibits are not evidence. Lawyers have an obligation to their clients to make objections when they believe evidence being offered is improper under the rules of evidence. Do not be influenced by the objection or by the judge's ruling on it. If the objection is sustained, ignore the question or exhibit. If it is overruled, treat the answer or exhibit like any other. If you are instructed that some item of evidence is received for a limited purpose only, follow that instruction.
3. Testimony that the judge has excluded or told you to disregard is not evidence and must not be considered.
4. Anything you may see or hear outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. You may consider both kinds of evidence.

It is up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. The judge will give you some suggestions for assessing the credibility of witnesses at the end of the case.

You must not look outside of court for information about the issues this case presents or for information about the parties, lawyers, or witnesses—whether that be through the internet, television, newspapers, magazines or books. **If you do, it will be a violation of your oath as a juror and require all the jurors to spend additional time on the case.** Fundamental fairness requires that you base your decision only on evidence presented in open court where testimony is presented under oath and all evidence is subject to challenge for its reliability. The parties are entitled to know all the evidence upon which the jury bases its decision. A mistrial would cause huge expense to the parties.

Burden of Proof

This is a civil case. The plaintiff has the burden of proving the elements of his or her case (the judge will tell you what those elements are) by what we call a preponderance of the evidence. That means that the plaintiff has to produce evidence that, when you consider it in light of all the facts, leads you to believe that what he or she claims is more likely true than not. To put it differently, if you were to put the evidence favoring the plaintiff on one side of a balance scale and the evidence favoring the defendant on the opposite side, the plaintiff has to make the scale tip somewhat to his or her side in order to prevail. If a defendant makes a claim against any party (*i.e.*, either another defendant or counterclaim against the plaintiff) or offers an “affirmative” defense to one of the plaintiff’s claims (the judge will explain to you what an affirmative defense is, if the defendant raises one), that same burden shifts to the defendant in order to succeed on that particular claim or defense.

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

Conduct of the Jury

Do not discuss the case with anyone or permit anyone to discuss it with you until you retire to the jury room at the end of the case to deliberate on your verdict. That includes sending emails or tweets, blogging, texting, posting to websites such as Facebook or LinkedIn or any other kind of communication.

Do not read or listen to anything bearing on this case in any way. If anyone should try to talk to you about it, bring it to the judge’s attention promptly.

Do not do any research or investigate the case or the parties on your own.

Keep your minds open until all the evidence is in and the judge has given you final instructions on the law and until you start your deliberations at the end of the case.

The judge will permit you to take notes in this case, and the courtroom deputy clerk will distribute pencils and pads for your use. Do not allow your note-taking to distract you from listening carefully to the testimony that is being presented. If you would prefer not to take notes at all but simply to listen, please feel free to do so. Please remember that it is possible to make an error in note-taking. Thus, when you return to the jury room to discuss the case, do not assume simply because something appears in somebody’s notes that it necessarily took place in court. Instead, it is your collective memory that must control as you deliberate upon the verdict. Please take your notes to the jury room at every recess. The courtroom deputy clerk will collect them at the end of each day and place them in the vault. They will then be returned to you the next morning. When the case is over, your notes will be destroyed. These steps are in line with the earlier instruction to you that it is important that you not discuss the case with anyone or permit anyone to discuss it with you.

Course of the Trial

The trial begins with each side making an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the plaintiff presents his or her witnesses, and the defendant may cross-examine them. Then the defendant presents his or her witnesses, and the plaintiff may cross-examine them.

After that, the attorneys make their closing arguments to summarize and interpret the evidence for you, and the judge gives you final instructions on the law.

You then retire to deliberate on your verdict.