

## INSTRUCTION NO. C-1

Members of the jury, you have heard all of the testimony and received the evidence and will shortly hear arguments of counsel. The Court will presently instruct you as to the rules of law which you will use and apply to this evidence in reaching your verdict. When you took your places in the jury box, you made an oath that you would follow and apply these rules of law to the evidence in reaching your verdict in this case. It is, therefore, your duty as jurors to follow the law which I shall now state to you. You are not to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what law ought to be, it would be a violation of your sworn duty to base your verdict upon any other view of the law than that given in these instructions by the court.

You are not to single out one instruction alone as stating the law, but you must consider these instructions as a whole.

It is your exclusive province to determine the facts in this case and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power but must be exercised with sincere judgment, sound discretion and in accordance with the rules of law stated to you by the court.

Both the plaintiffs and the defendants have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case and that you will reach a just verdict regardless of what the consequences of such verdict may be.

It is your duty to determine the facts and to determine them from the evidence produced in open court. You are to apply the law to the facts and in this way decide the case. You should not be influenced by bias, sympathy or prejudice. Your verdict should be based on the evidence and not upon speculation, guesswork or conjecture.

As sole judges of the facts in this case, your exclusive province is to determine what weight and what credibility will be assigned the testimony and supporting evidence of each witness in this case. You are required and expected to use your good common sense and sound honest judgment in considering and weighing the testimony of each witness who has testified in this case.

The evidence which you are to consider consists of the testimony and statements of the witnesses and the exhibits offered and received. You are also permitted to draw such reasonable inferences from the evidence as seem justified in the light of your own experience.

Arguments, statements and remarks of counsel are intended to help you understand the evidence and apply the law, but are not evidence. If any argument, statement or remark has no basis in the evidence, then you should disregard that argument, statement or remark. (However, if the statement of counsel is made as an admission or stipulation of fact, then in that event, his client is bound thereby. If the attorneys on both sides stipulate or agree as to the existence of certain facts, the jury may accept such stipulations as evidence and regard the facts so stipulated or agreed to as conclusively proved.)

The production of evidence in court is governed by rules of law. From time to time during the trial, it has been my duty as judge to rule on the admissibility of evidence.

You must not concern yourself with the reasons for the Court's rulings since they are controlled and governed by rules of law. You should not infer from any rulings by the court on these motions or objections to the evidence that the court has any opinion on the merits favoring one side or another. You should not speculate as to possible answers to questions which the court did not require to be answered. Further, you should not draw any inference from the content of those questions. You are to disregard all evidence which was excluded by the court from consideration during the course of the trial.

## INSTRUCTION NO. C-2

The person or party who claims that certain facts exist, must prove them by a preponderance of the evidence. This obligation is known as the burden of proof.

The burden of proof is upon the Plaintiffs to prove the facts necessary for his case by a preponderance of the evidence.

If the Plaintiffs fail to establish any essential element of their claim by a preponderance of the evidence, then you should find for the Defendant.

The phrase "preponderance of the evidence" means that evidence which is most consistent with the truth as measured by the experience and judgment of the jury; that which accords best with reason and probability. It does not depend upon the number of witnesses. It depends upon the weight and credibility that you as jurors give to the witnesses. It is evidence which, after examination has a greater persuasive and convincing power, that evidence which, when considered and compared with that opposed to it, has more convincing force and produces in your minds belief that what is sought to be proved is more likely true than not true.

It is not necessary that all twelve of you agree upon a verdict in this case. When any nine or more of your members have agreed upon a verdict, it may be returned in the Court as the verdict of the entire jury.

### INSTRUCTION NO. C-3

If, in stating the law to you, I repeat any rule, direction, or idea, or if I state the same in varying ways, no emphasis is intended and you must not draw any inferences therefrom. You are not to single out any certain witness or individual point or instruction and ignore the others. The order in which these instructions are given have no significance as to their relative importance.

Counsel for all parties will now have an opportunity to address you and make their closing or final arguments.

## **INSTRUCTION NO. C-4**

Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.

PRELIMINARY INSTRUCTION  
(Note taking Permitted)

If you would like to do so, you may take notes during the course of the trial. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this. If you decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings.

Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you take notes or not, each of you must form and express your own opinion as to the facts of this case. An individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors. You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

PRELIMINARY INSTRUCTION  
(Note taking Forbidden)

You may not take notes during the course of the trial. There are several reasons for this. It is difficult to take notes and, at the same time, pay attention to what a witness is saying. Further, in a group the size of yours, certain persons will take better notes than others will, and there is a risk that jurors who do not take good notes will depend on jurors who do. The jury system depends upon all jurors paying close attention and arriving at a decision. I believe that the jury system works better when the jurors do not take notes.

You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

JURY INSTRUCTION C-\_\_\_\_\_

Members of the Jury, shortly after you were selected I informed you that you could take notes and I instructed you as to the appropriate use of any notes that you might take. Most importantly, an individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors. Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you took notes or not, each of you must form and express your own opinion as to the facts of this case. Be aware that during the course of your deliberations there might be the temptation to allow notes to cause certain portions of the evidence to receive undue emphasis and receive attention out of proportion to the entire evidence. But a juror's memory or impression is entitled to no greater weight just because he or she took notes, and you should not be influenced by the notes of other jurors.

Thus, during your deliberations, do not assume simply because something appears in your notes that it necessarily took place in court.