

Jury Instructions

You will decide what the facts are from the evidence presented here in court. That evidence will consist of testimony of witnesses, any documents and other things received in evidence as exhibits, and any facts stipulated, or agreed to, by the parties or which you are instructed to accept.

You will decide the credibility and weight to be given to any evidence presented in the case, whether it be direct evidence or circumstantial evidence.

Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact from which the existence of another fact may be inferred. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered in evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility or weight you should give to any evidence that has been admitted.

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness' ability to see or hear or know the things to which he/she testified; the quality of his/her memory; the witness' manner while testifying; whether he/she has any motive, bias, or prejudice; whether the witness is contradicted by anything he/she said or wrote before trial, or by other evidence; and the reasonableness of the testimony when considered in the light of the other evidence.

Consider all of the evidence in light of reason, common sense, and experience.

A witness qualified as an expert by education or experience may state opinions on matters in that witness' field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness' qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

As I mentioned earlier, it is your job to decide from the evidence what the facts are. Here are six rules on what is and what is not evidence:

1. **Evidence to be considered:** You are to determine the facts only from the testimony of witnesses and from exhibits received in evidence.
2. **Lawyers' statements:** Ordinarily, statements or arguments made by the lawyers in the case are not evidence. Their purpose is to help you understand the evidence and law. However, if the lawyer for both/all parties agree or stipulate that some particular fact is true, you should accept it as true.
3. **Questions to a witness:** By itself, a question is not evidence. A question can be used only to give meaning to a witness' answer.
4. **Objections to questions:** If a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not treat the objection as evidence or guess the reason why the lawyer objected in the first place.
5. **Rejected evidence:** At times during the trial, testimony or exhibits will be offered as evidence, but I might not allow them to become evidence. Since they never become evidence, you must not consider them.
6. **Stricken evidence:** At times I may order some evidence to be stricken, or thrown out. Because it is no longer evidence, you must not consider it.

Burden of proof means burden of persuasion on any claim. The party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden, consider all the evidence that bears on that claim, regardless of which party produced it.

Eastside High School is responsible for the actions of its employee if the employee was acting within the scope of his employment. In this case, Eastside High School is responsible for the actions of its employee, Terry Swift.

Kelly Simon claims that Eastside High School and Terry Swift were at fault. Eastside High School and Terry Swift claim that Kelly Simon was at fault. Eastside High School and Terry Swift also claim that Jordan Simon was at fault.

Fault is negligence that was a cause of Kelly Simon's injury. Negligence is the failure to use reasonable care. Negligence may consist of action or inaction. Negligence is the failure to act as a reasonably careful person would act under the circumstances.

Before you can find any person or entity at fault, you must find that person's or entity's negligence was a cause of plaintiff's injury.

Negligence causes an injury if it helps produce the injury, and if the injury would not have happened without the negligence. There may be more than one cause of an injury.

Kelly Simon must prove:

1. Eastside High School and/or Terry Swift were at fault; and
2. Kelly Simon was injured.

This case is bifurcated, so that damages are not at issue. As such, Kelly Simon need not prove the extent of the injuries or damages.

Eastside High School and Terry Swift must prove:

1. Kelly Simon was at fault and/or
2. Jordan Simon was at fault.

If you find that Eastside High School and Terry Swift were not at fault, then your verdict must be for Eastside High School and Terry Swift.

If you find that Eastside High School and/or Terry Swift were at fault, then Eastside High School and/or Terry Swift are liable to Kelly Simon and your verdict must be for Kelly Simon. You should then consider Eastside High School's and Terry Swift's claim that Kelly Simon was at fault and Eastside High School's and Terry Swift's claim that Jordan Simon was at fault.

On Eastside High School's and Terry Swift's claim that Kelly Simon was at fault,

you must decide whether Eastside High School and Terry Swift have proved that Kelly Simon was at fault and, under all the circumstances of this case, whether any such fault should reduce Kelly Simon's full damages. These decisions are left to your sole discretion.

Eastside High School and Terry Swift claim that Jordan Simon was at fault by assuming the risk of injury. A person assumes the risk of injury when the person has knowledge of a particular risk, appreciates its magnitude, and voluntarily subjects himself or herself to the risk under circumstances that show the person's willingness to accept the particular risk.

As to this claim, Eastside and Terry Swift must prove:

1. Jordan Simon assumed a particular risk of injury; and
2. The particular risk was a cause of Jordan Simon's, and thus Kelly Simon's, injury.

You must decide whether Eastside High School and Terry Swift have proved that Jordan Simon was at fault by assuming the risk of injury and, under all the circumstances of this case, whether any such fault should reduce Kelly Simon's full damages. These decisions are left to your sole discretion.

If you decide that Kelly Simon's fault or Jordan Simon's assumption of the risk should reduce Kelly Simon's damages or if you find more than one person or entity at fault for Kelly Simon's injury, you must then determine the relative degrees of fault of all those whom you find to have been at fault.

The relative degrees of fault are to be entered on the verdict form as percentages of the total fault for Kelly Simon's injury.

The fault of one person or entity may be greater or lesser than that of another, but the relative degrees of all fault must add up to 100%. This will be clear from the verdict form.

A child is not to be held to the same standard of care as an adult.

A child who does not use the degree of care that is ordinarily exercised by children of the same age, intelligence, knowledge, and experience under the existing circumstances is negligent.

An adult must anticipate the ordinary behavior of children, and that children might not exercise the same degree of care for their own safety as adults.