

**ESTATE OF AARON GRIGGS**

\*

**IN THE**

**Plaintiff**

\*

**CIRCUIT COURT**

**v.**

\*

**FOR**

**JODIE DONAHUE**

\*

**CHESAPEAKE COUNTY**

**Defendant**

\*

\* \* \* \* \*

**MPJI-Cv 1:1 INTRODUCTION**

Members of the jury, the time has come for the court to give you its instructions with respect to the law that is applicable in this case. You should consider my instructions as a whole, and you should not single out any particular sentence, phrase, or word to the exclusion of another. If I state any rule or idea in differing ways, no emphasis on any particular phraseology is intended by me. You should not attach any significance to the order in which I state these instructions. You must apply the law as I explain it to you. My statement of the law is binding on you, and must be followed by you whether you personally agree or disagree with the wisdom of any rule of law.

Any comments I may make about the facts are only to help you and you are not required to agree with them. It is your function and responsibility to decide the facts. You must base your findings only upon the testimony, the exhibits received and the stipulation[s] of the parties, including any conclusions which may be fairly drawn from that evidence. Opening statements and arguments of the lawyers are not evidence in this case. If your memory of any of the testimony is different from any statement that I might make during the course of these instructions or that counsel might make in argument, you must rely on your own memory.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a smart phone, cell phone, email, text messaging, Twitter, any blog or website, any internet chat room or forum, or other social networking websites, including Facebook, LinkedIn, Reddit, and YouTube to communicate to anyone any information about this case or to conduct any research about this case until the verdict is accepted.

**MPJI-Cv 1:20 CONCLUSION--UNANIMOUS VERDICT**

To reach a verdict in this case, each of you must agree upon it. Your verdict must be unanimous.

**MPJI-Cv 1:21 DEADLOCKED JURY CHARGE**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

Do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous.

## **MPJI-Cv 1:7 WHAT CONSTITUTES EVIDENCE?**

In making your decision, you must consider the evidence in this case; that is

- (1) testimony from the witness stand;
- (2) physical evidence or exhibits admitted into evidence;
- (3) stipulations;
- (4) depositions; and
- (5) facts that I have judicially noticed.

In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

Objections of the lawyers are not evidence and you should not give them any weight or consideration.

You must not consider exhibits that I did not admit into evidence or testimony that I ordered be stricken. You must disregard questions that I did not permit the witness to answer and you must not speculate as to the possible answers. If after an answer was given, I ordered that the answer be stricken, you must disregard both the question and the answer.

During the trial, I may have commented on the evidence or asked a question of a witness. You should not draw any conclusion about my views of the case or of any witness from my comments or my questions.

Opening statements and closing arguments of lawyers are not evidence. They are intended only to help you understand the evidence and to apply the law. Therefore, if your memory of the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

## **MPJI-Cv 1:8 DIRECT AND CIRCUMSTANTIAL EVIDENCE**

There are two types of evidence--direct and circumstantial.

Direct evidence is, for example, testimony of a person reporting firsthand knowledge of a matter, such as testimony of an eyewitness to an occurrence. Circumstantial evidence is indirect and is proof of a chain of facts and circumstances that point to the existence of certain facts.

[For example, if a witness testifies that he saw a deer in the field, that is direct evidence that there was a deer in the field. If a person testifies that he saw deer prints in the snow in the field, that is direct evidence that there were deer prints in the snow, and circumstantial evidence that there was at least one deer in the field.] The law makes no distinction between the weight to be given to either type of evidence. No greater degree of certainty is required of circumstantial evidence than of direct evidence. In reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial.

## **MPJI-Cv 1:3 WITNESS TESTIMONY CONSIDERATION**

Any person who testifies, including a party, is a witness. You are the sole judges of whether testimony should be believed. In making this decision, you may apply your own common sense and everyday experiences.

In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as:

- (1) the witness's behavior on the stand and way of testifying;
- (2) the witness's opportunity to see or hear the things about which testimony was given;
- (3) the accuracy of the witness's memory;

- (4) whether the witness had a motive not to tell the truth;
- (5) whether the witness had an interest in the outcome of the case;
- (6) whether the witness's testimony was consistent;
- (7) whether the witness's testimony supported or contradicted other evidence, and
- (8) whether and the extent to which the witness's testimony in the court differed from statements made by the witness on any previous occasion. You are the sole judges of whether a witness should be believed. You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

#### **MPJI-Cv 1:4 EXPERT OPINION TESTIMONY**

An expert is a witness who has special training or experience in a given field. You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider an expert's opinion together with all the other evidence.

#### **MPJI-Cv 1:14 BURDEN OF PROOF--PREPONDERANCE OF EVIDENCE STANDARD**

The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence.

In order to prove something by a preponderance of the evidence, a party must prove that it is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

In determining whether a party has met the burden of proof you should consider the quality of all of the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced.

If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it.

#### **MPJI-Cv 19:1 DEFINITION OF NEGLIGENCE**

Negligence is doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention, or skill a reasonable person would use under similar circumstances.

The elements of a negligence action are:

- (a) Duty or obligation, recognized by law, requiring conformance to a certain standard of conduct for the protection of others against unreasonable risks;
- (b) Failure to conform to that standard (breach of duty);
- (c) Reasonably close causal connection and resulting injury (proximate cause); and
- (d) Actual damage or loss by others.

#### **MPJI-Cv 24:1 BASIS FOR PREMISES LIABILITY**

The duty of the owner or possessor of property to people injured on their property depends on the injured person's status on the property. As you evaluate the evidence, you must determine if the plaintiff was an invitee or a trespasser.

#### **MPJI-Cv 24:2 DEFINITIONS**

a. *Invitee*

An invitee is a person who is invited or permitted to be on another's property for purposes related to the owner's or occupier's business. Invitee status can be established under one of two doctrines: (1) mutual benefit or (2) implied invitation. Under the "mutual benefit theory," the invitee generally enters a business establishment for the purpose of purchasing goods or services. Under the "implied invitation theory," a person must enter the premises because he or she was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he or she used them, and that such use was in accordance with the intention or design for use of the property. An invitee using the property in a manner exceeding that person's invitation is a trespasser as to that conduct.

*b. Trespasser*

A trespasser is a person who is on the property of another without the consent of the owner or occupier of the property. Also, an invitee using the property in a manner exceeding his or her invitation is a trespasser as to that conduct.

**MPJI-Cv 24:3 DUTY TO AN INVITEE**

The duty owed to an invitee is to use reasonable care to see that those portions of the property that the invitee may be expected to use are safe.

**MPJI-Cv 24:5 DUTY TO A TRESPASSER**

The only duty owed to a trespasser is to refrain from willful injury or entrapment. A trespasser takes the property as it exists.

**MPJI-Cv 19:3 FORESEEABLE CIRCUMSTANCES**

The care exercised by a reasonable person varies according to the circumstances and the danger that is known or should be appreciated by a reasonable person. Therefore, if the foreseeable danger increases, a reasonable person acts more carefully.

**MPJI-Cv 19:14 ASSUMPTION OF RISK**

A plaintiff cannot recover damages if the plaintiff has assumed the risk of an injury. A person assumes the risk of an injury if that person knows and understands, or must have known and understood, the risk of an existing danger and voluntarily chooses to encounter that danger.

The elements of the defense of Assumption of Risk are:

- (a) Knowledge and understanding of the danger, or when the plaintiff must have known and understood the danger; and
- (b) Voluntary exposure to the danger.

A plaintiff's knowledge may be either actual or imputed. Whether one assumes the risk is determined by a subjective standard, unless it is clear that any person in the plaintiff's position would have understood the danger (objective standard). An existing danger that a plaintiff "must have known and understood" is also known as an "obvious danger." Obvious dangers are those that anyone must appreciate.

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## **Celebrating 38 years of Mock Trial State Champions!**

- 2021: The Park School (Baltimore County)  
River Hill High School (Howard County)  
2020: Not applicable
- 2019: Richard Montgomery High School (Montgomery County)  
Beth Tfiloh, Co-Champion (Baltimore County)
- 2018: Allegany High School (Allegany County)
- 2017: The Park School (Baltimore County)
- 2016: Annapolis High School (Anne Arundel County)
- 2015: Severna Park High School (Anne Arundel County)
- 2014: Richard Montgomery High School (Montgomery County)
- 2013: Annapolis High School (Anne Arundel County)
- 2012: Park School of Baltimore (Baltimore County)
- 2011: Park School of Baltimore (Baltimore County)
- 2010: Severna Park High School (Anne Arundel County)
- 2009: Allegany High School (Allegany County)
- 2008: Severna Park High School (Anne Arundel County)
- 2007: Severn School (Anne Arundel County)
- 2006: Severna Park High School (Anne Arundel County)
- 2005: Richard Montgomery High School (Montgomery County)
- 2004: Park School of Baltimore (Baltimore County)
- 2003: Elizabeth Seton High School (Prince George's County)
- 2002: Towson High School (Baltimore County)
- 2001: DeMatha Catholic High School (Prince George's County)
- 2000: Broadneck High School (Anne Arundel County)
- 1999: Towson High School (Baltimore County)
- 1998: Pikesville High School (Baltimore County)
- 1997: Suitland High School (Prince George's County)
- 1996: Towson High School (Baltimore County)
- 1995: Pikesville High School (Baltimore County)
- 1994: Richard Montgomery High School (Montgomery County)
- 1993: Elizabeth Seton High School (Prince George's County)
- 1992: Oxon Hill High School (Prince George's County)
- 1991: Westmar High School (Allegany County)
- 1990: Bishop Walsh High School (Allegany County)
- 1989: Lake Clifton High School (Baltimore City)
- 1988: Pikesville High School (Baltimore County)
- 1987: Thomas S. Wootton High School (Prince George's County)
- 1986: Old Mill High School (Baltimore County)
- 1985: High Point High School (Prince George's County)
- 1984: Worcester County Schools

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