



Some Slides About Jury Instructions and the Duty Element in Negligence

Torts
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Let's look at some jury instructions

from Colorado Pattern Civil Jury Instructions

https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm

[from “Introductory Note” at the beginning of the chapter providing jury instructions for negligence:]

“To recover on a negligence claim, the plaintiff must establish the existence of a legal duty on the part of the defendant, a breach of that duty, causation, and damages.”

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[FROM THE PATTERN JURY INSTRUCTIONS FOR NEGLIGENCE:]

9:1 ELEMENTS OF LIABILITY ...

For the plaintiff, (name), to recover from the defendant, (name), on (his) (her) claim of negligence, you must find that all of the following have been proved by a preponderance of the evidence:

1. The plaintiff had (injuries) (damages) (losses);
2. The defendant was negligent; and
3. The defendant's negligence was a cause of the plaintiff's (injuries) (damages) (losses).

If you find that any one or more of these (number) statements has not been proved, then your verdict must be for the defendant.

On the other hand, if you find that all of these (number) statements have been proved, (then your verdict must be for the plaintiff) (then you must consider the defendant's affirmative defense(s) of [insert any affirmative defense that would be a complete defense to plaintiff's claim]). ...

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If you find that any one or more of these (number) statements has not been proved, then your verdict must be for the defendant.

On the other hand, if you find that all of these (number) statements have been proved, (then your verdict must be for the plaintiff) (then you must consider the defendant's affirmative defense(s) of [insert any affirmative defense that would be a complete defense to plaintiff's claim]). ...

So there's the injury element

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3. The defendant's negligence was a cause of the plaintiff's (injuries) (damages) (losses).

If you find that any one or more of the above elements have not been proved, then your verdict must be for the defendant.

On the other hand, if you find that all of the above elements have been proved, (then your verdict must be for the plaintiff) you must consider the defendant's affirmative defense that would be a complete de-

What happened to duty, breach, and actual and proximate causation?

from Colorado Pattern Civil Jury Instructions

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[FROM THE PATTERN JURY INSTRUCTIONS FOR NEGLIGENCE:]

9:6 NEGLIGENCE — DEFINED ...

Negligence means a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect (oneself or) others from (bodily injury) (death) (property damage) (insert any other appropriate description ...)..

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So “negligent” in the 9.1 instructions means the breach element ...

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2. The defendant was negligent; and
3. The defendant’s negligence was a cause of the plaintiff’s (injuries) (damages) (losses).

If you find that any one or more of the following have been proved, then your verdict must be for the plaintiff.

On the other hand, if you find that all of the following have been proved, (then your verdict must be for the defendant). You must consider the defendant’s affirmative defense that would be a complete defense.

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[FROM THE PATTERN JURY INSTRUCTIONS FOR NEGLIGENCE:]

9:18 ...

The word “cause” as used in these instructions means an act or failure to act which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have happened.

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The word “cause” as used in these instructions means an act or failure to act which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have happened.

So that includes the concepts of
both actual and proximate
causation ...

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If you find that any one or more of the following elements have not been proved, then your verdict must be for the defendant.

On the other hand, if you find that all of the following elements have been proved, (then your verdict must be for the plaintiff). You must consider the defendant's affirmative defense that would be a complete de-

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[from "Introductory Note" at the beginning of the chapter providing jury instructions for negligence:]

"Generally, a legal duty to use due care arises in response to a foreseeable and unreasonable risk of harm to others. In determining whether a person has a duty to act or refrain from acting to avoid injury to others, the nature of the inquiry is essentially whether recognizing a duty would comport with fairness under contemporary standards. To decide this, the court must consider several factors, including the feasibility and likelihood of injury and the possible extent of that injury, the magnitude of the burden placed on the defendant to guard against injury, and the consequences of placing that burden on the defendant. Ultimately, whether a duty exists depends on considerations of policy. ... The existence and scope of a legal duty are generally questions of law for the court to determine." (citations omitted)

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So that's why duty doesn't show up in the instructions for the jury