

Judge Avern Cohn: Civil Jury Instructions

Now that you have heard the evidence and the argument, it becomes my duty to give you the instructions of the Court as to the law applicable to this case. You will recall that during the trial I gave you several instructions. The instructions which I gave you during the trial should be considered by you along with these instructions in your deliberations.

In giving you these instructions I will divide them in three parts: First, I will give you several basic instructions - instructions that apply to a juror's duties in considering a case generally. These instructions will be followed by instructions on the law applicable to the case you have just heard. These in turn will be followed by additional instructions regarding the verdict and your deliberations. Please listen carefully. If you have any questions or are not sure you understand them completely, toward the close I will tell you how you can talk with me.

It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law I give you to the facts as you find them from the evidence you have heard and seen.

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

Neither, are you to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions; just as it would be a violation of your sworn duty, as judges of the facts to base a verdict upon anything but the evidence you have heard and seen.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion may be. It is not my function to determine the facts, but rather yours.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in these instructions.

As I have told you, you have been chosen and sworn as jurors to try the issues of fact presented by this case. You are to perform this duty without bias or prejudice to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice or public opinion. The parties expect that you will carefully and impartially consider all

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the evidence in the case, follow the law as stated by me, and reach a just verdict.

[, the defendant in this case, is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.]

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated to by the parties.

Any evidence as to which an objection was sustained by me, and any evidence I ordered stricken must be entirely disregarded by you in arriving at your decision.

Anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Arguments, statements and remarks of lawyers are not evidence, and you should disregard anything said by a lawyer which is not supported by evidence or by your own general knowledge and experience.

If any reference by me or by any lawyer to any matter of evidence does not coincide with your own recollection, it is your recollection which should control during you deliberations.

Several times during the trial you have been excused, or trial delayed, while questions of law and matters solely for me to consider have been discussed with the lawyers. This is a usual and regular procedure. No prejudice or unfavorable inference should be held by you against a lawyer because of this procedure. Do not discuss or consider what you think transpired in the courtroom in your absence.

From time to time you may have heard objections from one of the lawyers. It is not only the right, but the duty of a lawyer during a trial to make objections and a lawyer would be derelict in his duty if he did not raise objections whenever, in his judgment, the evidence offered was contrary to law, rules, or procedures as he in his best judgment interprets them. You are not to allow yourselves to be swayed in your honest judgment because of any objections of a lawyer for either side during the trial.

[On occasion during the course of the trial it appeared necessary in my judgment to caution a lawyer who out of zeal for his cause may have said or done something I thought inappropriate.

You should of course draw no inference against a side to whom the caution may have been

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directed. Any expression or statement by me was for the sole purpose of assuring that the trial was being fairly conducted and you the jury had the opportunity to fairly hear and consider the testimony and exhibits.]

As the sole judges of the facts, you must determine which of the witnesses you believe, what portion of their testimony you accept and what weight you attach to it. At times during the trial I may have sustained objections to a question without permitting the witness to answer or, where an answer had been given, I may have instructed that it be stricken and that you disregard it and dismiss it from your minds. You may not draw any inference from an unanswered question nor may you consider testimony which has been stricken in reaching your decision. The law requires that your decision be made solely upon the competent evidence before you. Such items as I have excluded from your consideration were excluded because they were not legally admissible.

The law does not, however, require you to accept all of the evidence I have admitted, even though it be competent. In determining what evidence you will accept you must make your own evaluation of the testimony given by each of the witnesses, and determine the degree of weight you choose to give to his or her testimony. The testimony of a witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood; or because the witness did not accurately see or hear that about which the witness testified; or because recollection of the event is faulty, or because the witness did not express himself or herself clearly in giving testimony. There is no magical formula by which one may evaluate testimony. You, as jurors, bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves the reliability or unreliability of statements made to you by others. The same tests that you use in your everyday dealings are the tests which you apply in your deliberations.

The interest or lack of interest of any witness in the outcome of this case, the bias or prejudice of a witness, if there be any, the age, the appearance, the manner in which the witness gives testimony on the stand, the opportunity that the witness had to observe the facts concerning which the witness testified, the probability or improbability of the witness' testimony when viewed in the light of all the other evidence in the case, are all items to be taken into your consideration in determining the weight, if any, you will assign to that witness' testimony. If such considerations make it appear that there is a discrepancy in the evidence, you will have to consider whether the apparent discrepancy may not be reconciled by fitting the two stories together. If, however, that is not possible, you will then have to determine which of the conflicting versions you will accept.

A witness may be discredited or impeached by contradictory evidence; or by evidence that

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at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

With regard to a party who is a witness what he said or did earlier may be considered not only in deciding whether you should believe the testimony of the party but also may be considered as evidence of the facts in this case.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

When I say "knowingly" I mean voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

[The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses". Witnesses who, by education and experience, have become expert in some art, science, profession or calling, may state their opinions as to relevant and material matters in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

In resolving any conflict that may exist in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this you should consider the relative qualifications and credibility of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it is based.]

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence - such as the testimony of an eyewitness. The other is indirect or circumstantial evidence - the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence,

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but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

In weighing all the evidence as to a fact, it is proper to consider the number of witnesses testifying on one side or the other as to that fact; but the number of witnesses alone should not persuade you if the testimony of the lesser number of witnesses is more convincing.

During the trial certain evidence was presented to you by the reading of depositions. A deposition is a record of the sworn testimony of a witness taken before an authorized person. The parties and their lawyers had the right to be present and to examine and cross-examine the witness.

This evidence is entitled to the same consideration as you would give the same testimony had the witness testified in open court.

I shall not discuss with you the law applicable to this case.

First, I shall give you the definition of some of the terms or words I shall use in this portion of the instructions. Listen carefully because I will not repeat these definitions.

Then I will tell you what must be proved with regard to liability and damages.

After that I will describe to you the claims of the parties in their own words.

In the last part of these instructions, I will tell you the rules of law you must follow when deliberating on these matters.

When I use the term "preponderance of the evidence", I mean evidence which proves that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

(The law of the case, etc.)

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In summary (Plaintiff) position in his own words is as follows:

In summary, it is (Defendant) Position in its own words that it is not liable to in damages for the reason that

As I have told you, neither in these instructions, nor in any ruling or remark that I have made during the course of the trial, have I intended to offer any opinion or any suggestion as to how I would resolve any of the issues of this case.

Your verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of you agree. [Your verdict must be unanimous].

[In order to return a verdict, it is necessary that at least five of you agree].

It is your duty 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 re-examine your own views and change your opinion if convinced it is erroneous. But 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.

You are not partisans. You are judges - judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

When you go to the jury room, you should select one of you to act as your foreperson. The foreperson will then preside over your deliberations and will be your spokesperson here in court.

If it becomes necessary during your deliberations to talk to me, you may send a note by the bailiff, signed by your foreperson, or by one or more of you. None of you should attempt to communicate with me by any means other than a signed written note. I will not communicate with you other than in writing, or orally in open court.

You will have a copy of these instructions with you in the jury room. They will be available to each of you. If you have any questions about the law or your duties, you should first consult the copy of the instructions.

You are entitled to see the exhibits. I suggest you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of them by sending me a note.

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The form of verdict will be furnished you. [You will take it to the jury room and when you have reached unanimous agreement as to the answers to the questions set forth, in accordance with these instructions, you will have your foreperson fill in the date and sign the answers to the questions upon which you have unanimously agreed and then return with them to the courtroom.]

You will note that most of the questions call for a "yes" or "no" answer. Other questions call for either a percentage figure or a dollar amount. [All of the answers, as I have said, must be unanimous.]

[You will take it to the jury room and when all of you have reached agreement as to the answers to the questions set forth, in accordance with these instructions, you will have your foreperson fill in the date and sign the answers to the questions upon which you have so agreed and then return with them to the courtroom.]

I will now read the questions to you.