### IDJI 6.26 – Impossibility as a defense

Caution: Impossibility as a defense will invariably be based upon a specific fact circumstance. The pattern instruction focuses on the elements of the defense rather than on any attempt to catalog the circumstances giving rise to it. In the ordinary case, it may be necessary to include additional instructions addressing the specific circumstances of the case.

INSTRUCTION NO. \_\_\_\_

 In this case, the defendant has claimed the defense of impossibility because of the following circumstance:

 [Insert description of circumstance, such as death of essential participant, destruction of essential property, unforeseen change of law, act of God, etc. ]

In order for this defense to apply, the defendant has the burden of proof on each of the following:

 1. The circumstance alleged by the defendant exists or existed through no fault of the defendant.

 2. The happening of this circumstance could not reasonably have been anticipated by the defendant when the contract was entered into.

 3. The happening of this circumstance was not assigned or assumed as the responsibility of any party by the contract itself.

 4. The happening of this circumstance prevents the performance of the contract in its essential and important terms.

 If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for the defendant. If you find that any of the propositions has not been proved, then your verdict should be for the plaintiff.