### IDJI 4.40 – Trespass – issues

INSTRUCTION NO. \_\_\_\_\_

The plaintiff has the burden of proving each of the following propositions:

1. That the defendant went upon the plaintiff's land;

2. That the plaintiff did not consent to defendant's entry on plaintiff's land;

3. The nature and extent of the damages to plaintiff and the amount thereof.

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff; but, if you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant.

Comment:

The requirement that the jury find that the plaintiff's land, or title to his land, was harmed by the defendant's entry has been deleted in the revised instruction. "Trespass is a tort against possession committed when one, without permission, interferes with another's exclusive right to possession of the property." Walter E. Wilhite Revocable Living Trust v. Northwest Yearly Meeting Pension Fund, 128 Idaho 539, 549, 916 P.2d 1264, 1274 (1996). In a common law trespass action, the plaintiff is entitled to recover actual damages for defendant's wrongful entry on plaintiff's property, even if defendant's conduct was not "wilfull or intentional." Bumgarner v. Bumgarner, 124 Idaho 629, 639, 862 P.2d 321, 331 (Ct. App. 1993). The plaintiff must prove "a causal connection between the defendant's alleged wrongful conduct and the plaintiff's injury, as well as the extent of the injury sustained." Nelson v. Holdaway Land and Cattle Co., 107 Idaho 550, 552, 691 P.2d 796, 798 (Ct. App. 1984). However, the plaintiff "need not prove actual harm in order to recover nominal damages." Aztec Ltd., Inc. v. Creekside Inv. Co. 100 Idaho 566, 570, 602 P.2d 64, 68 (1979). Nominal damages are "presumed to flow naturally from a wrongful entry upon land." Id.