NON INSTRUCTIONS

The previous editions of IDJI listed a number of “non-instructions” – topics which at one time or another were covered by instructions, but which, under modern practice, the committee recommended should no longer be included in any instruction set. The committee recommended that these “non-instructions” be included in the current IDJI2d, with appropriate notations, cross references, and index references.

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| IDJI | DESCRIPTION | IDJI ACTION | IDJI2D ACTION |
| 103-107 | Forms for stating other claims of various parties |  | Additional examples omitted as repetitious and unnecessary |
| 113 | Attempting to apply or illustrate burden of proof | Recommends no further instruction be given | Agrees |
| 120 | Evidence to be considered |  | Omitted as redundant to IDJI2d 100 |
| 121 | Evaluation of evidence |  | Omitted as redundant to IDJI2d 100 |
| 130 | Impeachment of witness | Recommends no special instruction be given– topic covered by IDJI2d 100 | Agrees |
| 131 | Witness willfully false | Recommends no special instruction be given – topic covered by IDJI2d 100 | Agrees |
| 132 | Witnesses presumed to speak the truth | Recommends no special instruction be given. | Agrees |
| 133 | Witness need not be believed | Recommends no special instruction | Agrees |
| 134 | Inherently improbable testimony may be disregarded | Recommends no special instruction. Argumentative, or comment on evidence | Agrees |
| 135 | Party competent as a witness | Recommends no special instruction. | Agrees |
| 163 | Plaintiff’s case and Defendant’s Counterclaim | General verdict form, no special interrogatories | Omitted |
| 164 | Plaintiff’s case and Third Party or Cross Claim | General verdict form, no special interrogatories | Omitted |
| 213 | Presumption of due care | Recommends no special instruction. | Superseded by IDJI2d 126A and 126B |
| 216 | Sudden emergency, or duty of one in imminent peril | Recommends no special instruction | Agrees |
| 217 | Fact of accident alone is not evidence of negligence | Recommends no special instruction | Agrees |
| 218 | Care to be commensurate with hazard | Recommends no special instruction | Agrees |
| 219 | Presumption as to conduct of others, etc." -- (person has a right to expect that others will obey the law, for example | Recommends no special instruction | Agrees |
| 220 | Intent not an element of negligence | Recommends against negative element instruction. | Agrees |
| 221 | Possibility of avoiding accident not a test of negligence. | Recommends against “example” and “negative element” instructions | Agrees |
| 222 | Care required care required for safety of child | Recommends against “example” instructions | Agrees |
| 223 | General Miscellaneous Factors | Recommends against itemizing particular duties, other than reference to statutes or ordinances. | Agrees |
| 227 | Proximate Cause – single factor |  | Omitted as redundant to IDJI2d 230 |
| 231 | Multiple Causes | Recommends against separate instructions | Agree – covered by IDJI2d 230A or 230B |
| 232 | Last clear chance | Omitted as covered by comparative negligence | Omitted |
| 233 | Unavoidable accident | Recommend against special situation instruction, -- comment on evidence | Agrees |
| 246 |  | Eliminated |  |
| 250 | Principal and agent – agency admitted |  | Omitted  See 6.40.1 |
| 251 | Agency – issue as to agency |  | Omitted  See series 6.40-6.49 |
| 253 | Agency scope of authority |  | Omitted  See 6.43.1 |
| 254 | Eliminated |  |  |
| 297 | Specific duty – amusement devices or ski lifts | Incorrect statement of law |  |
| 298 | Circumstance of liability to employees of contractor | Superceded by changes to Workers’ Compensation Act |  |
| 299 | Liability of contractor to employees of subcontractor | Eliminated by Worker’s Compensation amendments |  |
| 302 | Subcontractor is invitee of general contractor | Eliminated by Worker’s Compensation amendments |  |
| 320-334 | Elements instruction against public entities | No longer applicable | Omitted |
| 321 | Actual notice to public entity | Deleted | Covered by 3.07 |
| 322 | Constructive notice to public entity | Deleted | Covered by revised 3.05 |
| 323 | Limitations on liability of governmental entity | Tort Claims Act makes liability issues same as private entities | Covered by 293, etc. |
| 400 |  |  | Covered by 10.03.1 |
| 401 |  | Not correct statement of law | Omitted |
| 411 | Definition of “probable cause” | Determination is for Court not jury |  |
| 481 | Definition of express malice | Recommended to define the elements |  |
| 490-491 | Eliminated |  |  |
| 605 | Contract discharged in bankruptcy |  | Omitted, as too specialized |
| 606 | Eliminated |  |  |
| 611 | Prevention of performance | Incomplete statement of the law as written | Covered in other instructions |
| 612 | Eliminated |  |  |
| 614 |  | Too specific  Not correct statement of law |  |
| 654 | Eliminated |  |  |
| 662-663 | Eliminated |  |  |
| 630 | Eliminated |  |  |
| 704 | Eliminated |  |  |
| 913 |  |  | See 912 |
| 916 | Elements of damage – breach of contract | Consists of a catalog of various phrases for insertion into a general format instruction, such as IDJI 902. These phrases are omitted from the new compilation, as the phrases were either to vague or were fact specific and inappropriate for inclusion in a pattern instruction set. | Omitted |
| 918 | Elements of damage – business losses | Appears to be fact-specific elements extracted from the several cases cited in the comment. In most cases, the elements of damage in a “business loss” case will be fact specific, and therefore inappropriate for compilation in a pattern instruction set. | Omitted |
| 934-938 | Eliminated |  |  |

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| 919 | Elements of damage – fraud | Appears to be fact-specific elements extracted from the several cases cited in the comment. In most cases, the elements of damage in a business fraud case will be fact specific, and therefore inappropriate for compilation in a pattern instruction set. | Omitted |
| 940 | Previous infirm condition | Redundant to the previous instruction as revised | Omitted |
| 1008-1015 | Products liability – express warranty | No cause of action in product liability arises under UCC definitions | Omitted |
| 1016 | Products liability defense | Not a correct statement of law | Omitted |
| 1018 | Products liability defense – failure to examine | UCC contract elements do not apply to product liability | Omitted |