

INSTRUCTION NO. 1

Now that you have heard all the evidence, it becomes my duty to give you the instructions of the court concerning the law applicable to this case.

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In determining these issues, no one may invade your province or functions as jurors. For you to determine the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. Nor is what I may have said—or what I may say in these instructions—evidence. In this vein, you should bear in mind that a question put to a witness is never evidence; it is only the answer that is evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be.

Please understand that the court has no opinion as to the verdict you should render in this case.

INSTRUCTION NO. 2

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

INSTRUCTION NO. 3

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence that I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

INSTRUCTION NO. 4

As I told you at the beginning of this case, there are two types of evidence you may consider. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence, which is the proof of circumstances that tend to prove or disprove the existence or nonexistence of certain other facts. The law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial. It is your job to decide how much weight to give the direct and circumstantial evidence.

INSTRUCTION NO. 5

Now, I have said that you must consider all the evidence. This does not mean, however, that you must accept all the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to a witness's testimony. In weighing the testimony of a witness, you should consider the witness's relationship to the plaintiff or to the defendant; the witness's interest, if any, in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

INSTRUCTION NO. 6

A witness can be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

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

INSTRUCTION NO. 7

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

INSTRUCTION NO. 8

Certain testimony has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions a witness was asked in advance of the trial. This deposition testimony is entitled to the same consideration and should be weighed and otherwise considered by you in the same way as if the witness had been present and had testified from the witness stand in court.

INSTRUCTION NO. 9

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with other jurors, and listened to the views of the other jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not make a decision simply because other jurors think it is right, or simply to reach a verdict. Always remember that you are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 10

You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

INSTRUCTION NO. 11

As you have heard, this case is about an accident at the Steak 'n Shake in Richmond, Kentucky on December 27, 2019. Plaintiff Mary Tate, along with her husband, walked from their hotel to the restaurant that evening. As they walked across the parking lot, Ms. Tate slipped and fell in oil leaked from the automobile of Defendant Jamia Detrick. Ms. Tate alleges she was injured from the fall.

Ms. Tate argues that Steak 'n Shake failed to maintain its premises in a reasonably safe condition by failing to prevent or correct a dangerous condition from existing on the property, and failed to warn or notify her of this dangerous condition that she alleges existed on the property. Ms. Tate also alleges that Ms. Detrick failed to operate her vehicle in a safe manner.

Steak 'n Shake denies an unreasonably dangerous condition existed, and that Steak 'n Shake did not have adequate time in the exercise of ordinary care to warn of or remedy the oil spill. Steak 'n Shake also contends that the oil spill was open and obvious, that Ms. Tate failed to exercise ordinary care for her own safety, and such failure was the proximate cause of her fall and injuries. In addition, Ms. Detrick contests that she failed to operate her vehicle in an unsafe manner.

INSTRUCTION NO. 12

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. You must follow the following rules while deliberating and returning your verdict:

First, when you go to the jury room, you must select a foreperson. The foreperson will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room and try to reach an agreement. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Third, if you need to communicate with me during your deliberations, the jury foreperson should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when all of you have unanimously agreed on the verdict, your foreperson will fill in the form, sign it, and bring it to the courtroom. Please advise the court security officer that you are ready to return to the courtroom. However, do not give your verdict form to the court security officer or to anyone else until I so direct you here in the courtroom. You may now proceed to the jury room to begin your deliberations.

INTERROGATORY NO. 1

It was the duty of Jamia Detrick in operating her vehicle from the roadway into the Steak 'n Shake parking lot to exercise ordinary care for her own safety and for the safety of other persons using the roadway and/or parking lot, and this general duty included the following specific duties:

1. To keep a lookout for other obstacles so near her intended line of travel as to be in danger of collision;
2. To have her vehicle under reasonable control;
3. To operate her vehicle at a reasonable rate of speed into Steak 'n Shake's parking lot; AND
4. To exercise ordinary care generally to avoid collision with objects or obstacles.

"Ordinary care" means such care as the jury would expect an ordinarily prudent person to exercise under similar circumstances.

Are you satisfied from the evidence that Jamia Detrick failed to comply with one or more of these duties and that such failure was a substantial factor in causing Mary Tate's fall?

Yes X No



Foreperson

Please proceed to Interrogatory No. 2.


INTERROGATORY NO. 2

Steak 'n Shake, Inc. has a duty to exercise ordinary care to construct and maintain its store premises in a reasonably safe condition. Are you satisfied from the evidence that:

1. Mary Tate's injuries were caused by slipping on oil in the parking lot on Steak 'n Shake's premises; AND
2. By reason of the presence of the oil in the parking lot, Steak 'n Shake's premises were not in a reasonably safe condition for the use of Steak 'n Shake's customers, including Mary Tate?

"Ordinary care" means such care as the jury would expect an ordinarily prudent person to exercise under similar circumstances.

Yes X No _____


Foreperson

- If you answered "Yes" to Interrogatory No. 2, please proceed to Interrogatory No. 3.

If you answered "No" to Interrogatory No. 2, your deliberations are complete. Please proceed no further with these instructions and interrogatories and alert the Court Security Officer that you have reached a verdict.

INTERROGATORY NO. 3

Are you satisfied from the evidence that Steak 'n Shake's employees neither knew of, nor in the exercise of ordinary care should have discovered, the presence of the oil from Jamia Detrick's vehicle in the parking lot in sufficient time to have removed the oil or warned of its presence before Mary Tate fell?

Yes _____ No X _____


Foreperson

If you answered "No" to Interrogatory No. 3 and "Yes" to Interrogatory No. 1, please proceed to Interrogatory No. 4.

If you answered "No" to Interrogatory No. 3 and "No" to Interrogatory No. 1, please proceed to Interrogatory No. 5.


If you answered "Yes" to Interrogatory No. 3, your deliberations are complete. Please proceed no further with these instructions and interrogatories and alert the Court Security Officer that you have reached a verdict.

INTERROGATORY NO. 4

Are you also satisfied from the evidence that Steak 'n Shake's employees:

1. Had actual knowledge of the oil in the parking lot from Jamia Detrick's vehicle; AND
2. Had sufficient time after learning of the oil in the parking lot to prevent Mary Tate from falling on it by either removing it or warning of its presence?

Yes _____ No X _____


Foreperson J

Please proceed to Interrogatory No. 6.

INTERROGATORY NO. 5

If you are satisfied from the evidence that Mary Tate failed to comply with her duty to exercise ordinary care for her own safety and protection and that such failure on her own part was a substantial factor in causing her injuries, you will determine from the evidence and indicate in the following blank spaces what percentage of the total fault was attributable to each party, as follows:

Mary Tate: _____ %

Steak 'n Shake: _____ %

In determining the percentages of fault, you shall consider both the nature of the conduct of each party at fault and the extent of the casual relation between their conduct and the damages claimed. Your total must equal 100%.

Foreperson

Please proceed to Interrogatory No. 7.

INTERROGATORY NO. 6

If you are satisfied from the evidence that Mary Tate failed to comply with her duty to exercise ordinary care for her own safety and protection and that such failure on her own part was a substantial factor in causing her injuries, you will determine from the evidence and indicate in the following blank spaces what percentage of the total fault was attributable to each party, as follows:

Mary Tate: 40 %

Steak 'n Shake: 0 %

Jamia Detrick: 60 %

In determining the percentages of fault, you shall consider both the nature of the conduct of each party at fault and the extent of the casual relation between their conduct and the damages claimed. Your total must equal 100%.



Foreperson 0

Please proceed to Interrogatory No. 7.

INTERROGATORY NO. 7

Having found for Mary Tate, you shall now determine from the evidence what sum of money would fairly and reasonably compensate her for the following damages:

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|--------|--|----------------------|
| 1. | Past medical expenses (not to exceed \$108,999.81): | <u>\$ 108,999.81</u> |
| 2. | Past pain and suffering (not to exceed \$750,000): | <u>\$ 200,000</u> |
| 3. | Future pain and suffering (not to exceed \$500,000): | <u>\$ 100,000</u> |
| TOTAL: | | <u>\$ 408,999.81</u> |


Foreperson

Your deliberations are now complete. Please alert the Court Security Officer that you have reached a verdict.