

You will then have to apply to those facts the law as the court will give it to you at the conclusion of the case. You must follow that law whether you agree with it or not.

EVIDENCE

The evidence from which you will find the facts will consist of the testimony of witnesses, documents, and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the court may instruct you to find.

Certain things are not evidence and you must not consider them. I will list them for you now:

1. Statements and arguments by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence

being offered is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it. If I sustain the objection, ignore the question. In other words, if I sustain an objection to a question that goes unanswered by the witness, you should not guess or speculate what the answer might have been, nor should you draw any inferences or conclusions from the question itself. If an objection to a question is overruled, you should treat the answer like any other.

3. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.
4. Testimony that the court excludes or tells you to disregard is not evidence and must not be considered.

5. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. An example of direct evidence would be this: A witness states, "I drove home last night in a heavy snow storm." That statement would be "direct evidence" that it snowed last night.

Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. Circumstantial evidence is proof of a chain of facts and circumstances that tend to prove, or disprove, an ultimate conclusion. An example of circumstantial evidence would be this: A witness states, "When I went to bed last night there was no snow on the ground. When I awoke this morning the ground was covered with fresh snow." This would be "circumstantial evidence"

that it snowed last night. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

You must decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

BURDEN OF PROOF

This is a civil case.

The burden of the plaintiff in a civil case is to establish his claims by a preponderance of the evidence as to each element of the claim.

A preponderance of the evidence means such evidence, when compared with evidence 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. To establish by a “preponderance of the evidence” merely means that the thing sought to be proven is more likely true than not true.

I will decide all questions of law and procedure that arise during the trial; and, before you retire to the jury room at the end of the trial to deliberate upon your verdict and decide the case, I will instruct you on -- that is, I will explain to you – the rules of law that you must follow and apply in making your decision.

Nothing I may say or do during the course of the trial is intended to indicate, nor should it be taken by you as indicating, what your verdict should be. In other words, you should not infer or conclude from my ruling on objections or any other comment that I may make that I have any opinions on the merits of the case favoring one side or the other.

Transcripts Not Available. You should pay close attention to the testimony because it will be necessary for you to rely upon your memory concerning what the testimony was. Although, as you can see, the Court Reporter is making stenographic notes recording everything that is said, typewritten transcripts will not be prepared in time for your use during your deliberations and you should not expect to receive them.

Exhibits Will Be Available. On the other hand, any exhibits admitted in evidence during the trial will be available to you for detailed study, if you wish, during your deliberations. So, if an exhibit is received in evidence but is not fully read or shown to you at the time, don't be concerned because you will get to see and study it later during your deliberations.

Note taking - Permitted. If you would like to take notes during the trial you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you, individually.

If you do decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings. Also, your notes should be used only as aids to your memory; and if your memory should later differ from your notes, you should rely upon your memory and not your notes.

If you do not take notes, you should rely upon your own independent recollection or memory of what the testimony was, and you should not be unduly influenced by the notes of other Jurors. Notes are not entitled to any greater weight than the recollection or impression of each Juror concerning what the testimony was.

Notebooks will be collected at the end of each trial day, and returned to you when trial resumes. During breaks, you should leave your notebooks in your chairs.

CONDUCT OF THE JURY

Now, a few words about your conduct as jurors.

You will not be required to remain together while the court is in recess.

However, you must obey the following instructions regarding the recesses of the court:

First: Do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial, reaching your conclusion only during your final deliberations after all the evidence is in and you have heard the attorneys'

summations and my instructions to you on the law, and then only after an interchange of views with the other members of the jury.

Second: Do not permit any person to discuss the case in your presence, and if anyone does so despite your telling him or her not to, report that fact to the court as soon as you are able. You should not, however, discuss with your fellow jurors either that fact or any other fact that you feel necessary to bring to the attention of the court.

Third: Though it is a normal human tendency to converse with people with whom one is thrown in contact, during the time you serve on this jury, please do not talk whether in or out of the courtroom, with any of the parties or their attorneys or any witness, or spectator to the trial. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other

way can all the parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Fourth: Do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper evidence for your consideration. You must base your verdict solely on what is brought out in court.

Fifth: Do not do any research or make any investigation about the case on your own.

The reason for these cautions, of course, lies in the fact that it will be your duty to decide this case solely on the basis of the testimony and evidence presented during the trial without consideration of any other matters whatever.

There are two slight exceptions to what I have just said. First, you may of course tell your family and your employer that you have been selected as a juror, and second, you may tell them what the schedule will be. However, do not tell them anything more. Do not tell them the name of the case, who the lawyers or witnesses are, the nature of the claim, or anything about the case until it is completely over.

If you are having any problems with your employer or expect a problem, please advise the court. I or someone on my staff will advise your employer that you must appear as part of your civil duty and it is not to be held against you in any way. A letter can also be sent explaining this to your employer.

Also, if during the course of trial, you need a recess for personal reason, i.e. john, just raise your hand. Sometimes I get carried away and forget to take breaks.

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been or should you draw any inferences or conclusions from the questions itself.

During the trial I may need to confer with the lawyers from time to time out of your hearing regarding questions of law or procedure that require consideration by the judge alone. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions as much as possible, but

you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Summary of Applicable Law

In this case, plaintiffs claims that *KEYBOARD()* defendant claims that *KEYBOARD()*. I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements which plaintiff must prove to make his case:

The order of the trial's proceedings will be as follows: In just a moment the lawyers for each of the parties will be permitted to address you in turn and make what we call their "opening statements." The plaintiff will then go forward with the calling of witnesses and presentation of evidence during what we call the plaintiff's "case in chief." When the plaintiff finishes (by announcing "rest"), the

defendant(s) will proceed with witnesses and evidence, after which, within certain limitations, the Plaintiff and Defendant may be permitted to again call witnesses or present evidence during what we call the “rebuttal” phase of the trial.

When the evidence portion of the trial is completed, the lawyers will then be given another opportunity to address you and make their summations or final arguments in the case. I will instruct you on the applicable law and you will then retire to deliberate upon your verdict.

**PAUSE - DOES EITHER PARTY DESIRE TO INVOKE THE RULE
AS TO EXCLUSION OF WITNESSES FROM THE COURTROOM?**

Now, we will begin by affording the lawyers for each side an opportunity to make their opening statements in which they may explain the issues in the case and summarize the facts they expect the evidence will show. The statements that the lawyers make now (as well as the arguments they present at the end of the

trial) are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you understand the issues and the evidence as it comes in, as well as the positions taken by both sides. So I ask that you now give the lawyers your close attention as I recognize them for purposes of opening statements.

Each side will be given 15 minutes for opening statements.

Plaintiff, you may present your opening statement.

Defendant, you may present your opening statement.

Plaintiff, you may call your first witness.