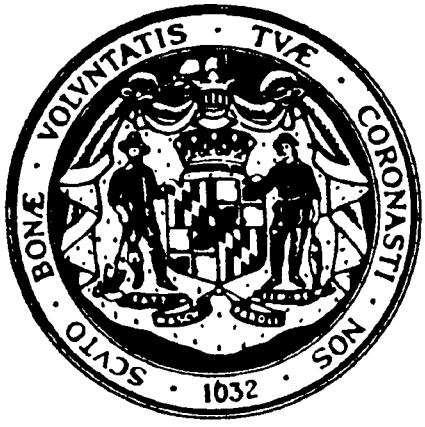
MARYLAND JURY INSTRUCTIONS

MJI

MOTOR VEHICLE CASES



NOT FOR PUBLICATION

AUGUST 1965

THE COURT OF APPEALS OF MARYLAND

STANDING COMMITTEE ON RULES
— OF PRACTICE AND PROCEDURE —

SUB-COMMITTEE
ON
MARYLAND JURY INSTRUCTIONS

"MJI"

PRELIMINARY WORK BOOK

MOTOR VEHICLE CASES

NOT FOR PUBLICATION

AUGUST 16, 1965

SUB-COMMITTEE ON MARYLAND JURY INSTRUCTIONS

HON. EMORY H. NILES, CHAIRMAN
HON. E. DALE ADKINS
HON. JAMES MACGILL
HON. J. GILBERT PRENDERGAST
HON KENNETH C. PROCTOR

SPECIAL CONSULTANTS

HON. R. DORSEY WATKINS
PAUL BERMAN, ESQ
WILLIAM B. SOMERVILLE, ESQ.

SPECIAL REPORTER

PAUL T. MCHENRY, JR., ESQ.

621 COURT HOUSE
BALTIMORE, MARYLAND 21202

CONTENTS

FOREWORD

The following drafts of Instructions are tentative preliminary efforts, illustrating several different approaches to the subject, different styles, and different phraseology. They are not complete, and are in no sense definitive, but are submitted to the Sub-Committee as a "Work Book," from which to proceed. There's some duplication and some alternative texts have been included.

It is suggested that, when completed, the standard framework of an instruction consist of:

1. Text of Instruction
2. Citations of Authority
3. Comment.

The Outline, with paragraph numbers, was intended to embrace the whole field of motor vehicle negligence, from which various subjects could be used and others eliminated. Such an outline was needed in the initial work of classifying the decisions in the Maryland Reports. The numerical order needs much revision, and is of course, subject to rearrangement, consolidation and elimination.

The drafts of Instructions herein are arranged in the following "Chapters":

100 Preliminary and General
200 Evidence and Proof
300 Special Relationships
400 Principles of Negligence
500 Specific Duties—Rules of the Road
600 Nature of Vehicle—Special Rules
700 Special Parties
800 Damages

Although Chapters 100, 200 and 300 are general in character and do not apply solely to motor vehicle negligence cases, it was thought advisable to include them in order to create a balanced background for a comprehensive charge. Few citations are included in these chapters, since the drafts state merely principles familiar to all. The problem is one of accuracy and completeness of expression.

In the Outline which accompanied the Interim Report of May 10, 1964 the Sub-Committee included suggested Chapters 900 on *Closing Instructions* and 1100 on *Judicial Action.* After discussion in the Rules Committee these subjects do not seem appropriate and have been eliminated.

In addition to the formal dry paragraphs constituting the drafts of instructions, Judge John B. Gray, Jr. has prepared several illustrative charges to illustrate the way in which a whole charge will combine the essence of the separate paragraphs. They illustrate basic principles of using simple colloquial words and phrases which the Jury can understand, in the joint effort of Judge and Jury to reach a just verdict. Those suggested charges are to be found following the *Illustrative Request for Instructions,* and relate to the following subjects:

1. Collision at Controlled Intersection
2. Collision at Uncontrolled Intersection
3. Injury to Infant Pedestrian
4. Head-on Collision
5. Multiple Defendants

Emory H. Niles
Chairman of Sub-Committee

August 16, 1965

REPORTER'S NOTE

This first draft of instructions should be considered by the Sub-Committee and by others interested in pattern jury instructions from the standpoint of the first step in the development of a book of model or guide instruction forms. The objective of the present effort is to develop a comprehensive set of pattern instructions suitable for use in automobile negligence cases.

There are, of course, any number of possible variations in forms of instructions. For the purposes of getting something to "shoot at", we have assembled the Maryland Jury Instructions reported in this draft from among voluminous notes and from various sources. It is hoped that the Committee will find this more or less comprehensive draft most helpful.

Inclusion of any language in this draft is not to be considered a final opinion or view on any subject. This draft is to be considered as a "work book" for the Sub-Committee and for any others who may wish to offer suggestions to the Sub-Committee.

In order that those who are interested in the work can be brought up to date, let me recite some Ground Rules which may now be considered as established:

1. The final adopted pattern instructions will be a guide for trial court and counsel. Use of a pattern instruction will be as a guide and *will not* be mandatory.

2. Although the trial judge will be able to instruct the Jury by reading appropriate pattern instructions, he will also be able, at his discretion, to use his own language to explain, simplify, or supplement the pattern instructions in any way he deems appropriate.

3. Counsel may offer requests for instructions by simply citing the section number of the instruction requested, e.g., simply "MJI 575.1."

4. The present effort is limited to motor vehicle negligence cases, although enlargement into other subject matter is contemplated.

The MJI subject matter outline was originally prepared by Judge Niles for this purpose. The outline was used by a research team of the University of Maryland Law School in classifying cases from the Maryland Reports, Volumes 130 through 229, and in setting up files by the Sub-Committee. The citations are available, but have not been reproduced herein.

It should be noted that several other states have model jury instructions. Some states, such as California and Illinois, make the use of instructions mandatory. Other "approved" or official instruction books are used as a guide. Maryland is one of four or five states currently in the process of developing standard instructions. Every effort is being made to have available all the other state jury instruction books, including work now in process.

The *Illinois Pattern Jury Instructions Foreword*, states the fundamentals or standards for an approved jury instruction as follows:

"a. The instruction must be 'conversational.'
b. The instruction must be 'understandable.'
c. The instruction must be 'unslanted.'
d. The instruction must be 'accurate'."

It is submitted that a proper objective of the Sub-Committee is to develop language which meets the foregoing standards, rather than the adoption of forms merely because they were held sufficient in Court of Appeals cases.

It is expected that the judge in each case will begin his charge by the usual: "Mr. Foreman and Members of the Jury," or its equivalent. It is also expected that he will at appropriate times say to the Jury, "I instruct that you—;" "The law requires that—;" "By the Law of Maryland, it is provided that—;" or similar phrases. For the most part such phrases have been eliminated in this draft.

The 1961 *Preface* of the *Ohio Jury Instructions* has the following statement:

"Conversational expressions and informal but appropriate ad libs serve a valuable purpose in sustaining the interest of the Jury. This is equally true of other technical aids such as transitional expressions and rhetorical interrogatories. Such language is an art which is not attempted in standard instructions."

Comments and annotations with respect to subject matter have been largely curtailed for purposes of this draft. Even though much possible reference material is omitted, a number of citations have been included. Frequent cross references to other MJI numbers have also been included, along with notes on possible use of instructions.

For convenience in citing official jury instruction books of other states, only the abbreviation of the State and instruction number has been used. With respect to our own statutes, *The Annotated Code of Maryland* (1957) is cited only by Article and Section number.

The final draft of proposed Maryland Jury Instructions will be submitted to the Rules Committee of The Court of Appeals for approval. As is indicated above, The Court of Appeals will *not* be asked to adopt the finally approved version as a formally definite statement of law. The approved instructions will, however, constitute advisory guides for the assistance of both judges and lawyers, subject to future developments of statute and judicial decisions.

Paul T. McHenry, Jr.
Sub-Committee Reporter

OUTLINE

MJI
100 **PRELIMINARY AND GENERAL**

Outline of Issues

Duties of Jury

Bias—Prejudice, Etc.

MJI
200 **EVIDENCE AND PROOF**

Classes of Evidence

Hearsay—Etc.

Chapter 100

PRELIMINARY AND GENERAL

Outline of Issues

Duties of Jury

Bias—Prejudice, Etc.

MJI 101

101 — DEFINITIONS — GENERAL

No instruction recommended.

Comment: Definitions have been placed according to topic. For example "negligence" is defined in MJI 408 and "right of way" in MJI 505.

This MJI category suggests the possibility of having all definitions in one place rather than scattered among the instructions.

MJI 104

104 — INSTRUCTIONS AS A WHOLE

The instructions which I give you are to be considered as a whole, and if I state rules or directions in varying ways, no emphasis upon any particular phraseology is to be inferred by you. Nor has the order in which I state the instructions any significance as to their relative importance. You are to regard each instruction in the light of all the others.

105.1 — ISSUES — GENERALLY SUBMITTED

Briefly summarized, the claims of the parties (on which there has been evidence) are these:

Plaintiff (Mr. A) claims that . . . . . .

Defendant (Mr. B), on the other hand, claims that . . . . .

. . . . . .

This leaves for your determination the disputed issues which may be summarized as follows:

(1) Was (either one or both) defendant(s) (Mr. B or Mr. C) negligent in any of the respects claimed by the plaintiff (Mr. A)?

(2) If so, was the negligence of (either one or both) defendant(s) (Mr. B or Mr. C) a proximate cause of any injury damage sustained by the plaintiff (Mr. A)?

(WITH CONTRIBUTORY NEGLIGENCE)

(3) Was the Plaintiff (Mr. A) negligent in any of the respects claimed by the defendant (Mr. B)?

(4) If so, did plaintiff's (Mr. A) negligence contribute to proximately cause the injury (damage) if any, sustained by him?

(DAMAGES)

(5) If you find these issues in favor of the plaintiff (Mr. A), what sum of money will fairly and reasonably compensate him (her) for his (her) injury (damage), (if any).

MJI 105.2

105.2 — ISSUES — SPECIFICALLY SUBMITTED

It is the conduct of the parties just prior to and at the time of the accident that gives rise to the issues in this case. The issues (other than damage) that the plaintiff (Mr. A) must establish are:

EXAMPLE

1. Was the defendant (Mr. B) traveling at a reasonable rate of speed at the time and just prior to the accident?
2. Did the defendant (Mr. B) fail to obey the traffic light at Main and First Streets, and if he did obey the traffic light, was he negligent in failing to yield the right of way to the plaintiff (Mr. A), if you find that plaintiff (Mr. A) was lawfully within the intersection at the time the defendant (Mr. B) received the green light?
3. Was the defendant (Mr. B) negligent in failing to keep a lookout for plaintiff's (Mr. A) vehicle?
4. If defendant (Mr. B) was negligent in any of the above respects, was such negligence the proximate cause of plaintiff's (Mr. A) injury (damage)?

(CONTRIBUTORY NEGLIGENCE)

The issues defendant (Mr. B) must establish are:

1. Did the plaintiff (Mr. A) fail to obey the traffic light at Main and First Streets where the accident took place?
2. Did the plaintiff (Mr. A) have his car properly lighted?
3. If plaintiff (Mr. A) was negligent in either of the above respects, did such negligence proximately contribute to his own injury (damage)?

 MJI 105.3

105.3 — ISSUES — CROSS CLAIM

a. This leaves for your determination certain disputed issues and these may be summarized as follows:

b. (1) Was the defendant (Mr. B) negligent in any one or more of the respects claimed by the plaintiff (Mr. A) and, if so, did defendant's (Mr. B) negligence proximately cause or contribute to cause the injury (damage) to either the plaintiff (Mr. A) or to the defendant (Mr. B)?

c. (2) Was the plaintiff (Mr. A) negligent in any one or more of the respects claimed by the defendant (Mr. B) and, if so, did plaintiff's (Mr. A) negligence proximately cause or contribute to cause the injury (damage) to either the defendant (Mr. B) or to the plaintiff (Mr. A)?

d. (3) If you find that either party is entitled to recover, what sum of money will fairly and reasonably compensate him (her) for the injury (damage), (if any)?

Comment The foregoing *Issues* instructions are from Ohio 17. Other states have variations. Cal. 112-114, D.C. 30-35, Ill. 20.0, Minn. 50-64

107 — LIABILITY ADMITTED

In this case, liability has been admitted by Mr. D with respect to the automobile accident at X Street on August 16, 1965.

Mr. P is, however, required to prove each and every element of damage incurred as a result of that accident and the nature and extent of that damage.

MJI 115

115 — JURY AS TRIERS OF FACT

It is your exclusive province and your duty to determine the facts of the case and to consider and weigh the evidence for that purpose.

It is my duty as a Judge to instruct you in the law that applies to the case, and your duty as Jurors, to follow that law as I shall state it to you (even though you believe that the law should be different).

Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and you must disregard anything you may have heard or seen elsewhere about this case.

MJI 116

116 — EVIDENCE PRODUCED BY ADVERSARY

In determining whether any question has been proved by a preponderance of evidence, you should consider all the evidence bearing upon such question, regardless of who produced it. A party is entitled to the same benefit from the evidence that favors him when produced by his adversary as when produced by himself.

Alternate

In determining whether any proportion has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

MJI 117.1

117.1 — CREDIBILITY

You are the judges of the credibility of the witnesses; by that, I mean that you are the judges of whether to believe them or not. You are not bound to believe any witness, whether his testimony is uncontradicted or not. You may believe all, part, or none of the testimony of any witness. Your function is to determine from all the evidence what are the true facts in the case and to apply the law as I have given, or will give you, in these instructions.

MJI 117.2

117.2 — WEIGHING TESTIMONY

In weighing the testimony of witnesses, it is proper for you to consider those factors of human nature which, either with or without any wrongful intention, may obstruct the giving of perfectly true testimony. These factors are suggested by these questions:

Did the witness have full opportunity to learn the truth? If so, did he have the intelligence and purpose to ascertain the facts? What was the advantage or disadvantage of his point of observation? Does the evidence show that the witness had a motive for favoring, or inclination to favor any party? In other words, was he a biased or an impartial witness? What degree of intelligence, what quality of memory, and what grade of moral purpose, so far as concerns this case, were indicated by his appearance, manner of testifying, and all other evidence in the case? Was the testimony reasonable and consistent within himself and with uncontradicted facts? Was there any timidity, physical handicap, lack of ability in self-expression or other condition that placed the witness at a disadvantage or caused his testimony to appear untrustworthy when, in fact, it should be given full credence? Was the witness dealt with fairly by counsel, or was he, without fault of his own, confused or embarrassed and thus placed in a light not truly representative?

Should you consider any of these questions, either in your own private reasoning, or in open discussion, you must look for an answer only to the evidence received in the trial of the action.

However, in determining what weight you should give to any evidence presented to you, you may use everyday experience and common sense you have gained in the conduct of your own affairs.

MJI 117.3

117.3 — IMPEACHMENT

The credibility of a witness may be attacked by evidence that on some former occasion he made a statement [acted in a manner] inconsistent with his testimony in this case, on a matter material to the issues. Evidence of this kind may be considered by you in connection with all the other facts and circumstances in evidence in deciding the weight to be given to the testmony of the witness.

Comment: Cal. 34A (Revised) and Minn. 24 go on to cover an admission against interest by a party.

Conviction of crime and bad reputation are not covered by above.

Also, some special instruction may be preferrable where the deposition is admitted for purposes of impeachment.

Cal. 33, 34
D.C.
Ill. 3.01
Minn. 24

MJI 118

118 — FALSUS IN UNO

If you find that any witness has willfully testified falsely concerning any material matter, yoy may distrust the testimony of that witness in other matters, and you may reject all or any part of the testimony of that witness, or you may give it such weight as you think it deserves.

 MJI 119.1

119.1 — NUMBER OF WITNESSES

In deciding whether any fact has been proved, it is proper to consider the number of witnesses testifying on one side or the other as to that fact, but the number of witnesses alone is not conclusive if the testimony of the lesser number is more convincing.

Cal. 24, 25
D.C. 22, 23
Ill. 2.07, 2.08
Minn. —

119.4 — SETTLEMENT WITH WITNESS

No instruction recommended.

Comment: Cal. 37 has an instruction cautioning the Jury that the settlement is not an admission of liability.

MJI 125

125 — IMPARTIALITY — WEALTH, POVERTY, RACE OR RELIGION

You must consider and decide this case fairly and impartially on the evidence before you. Everyone is entitled to the same treatment under the law, and such matters as race, religion, political or social views, wealth or poverty, should be completely excluded from your consideration. The same is true as to prejudice or passion, for or against, or sympathy for any party.

MJI 135

135 — INSURANCE

No insurance company is a party to this case. If any reference to insurance has been made in the testimony, or if you think or suspect, that any insurance company is involved in any way, I direct you to disregard that matter.

Your function is, if liability exists, to assess damages fairly and justly, and without any reference to whether the party is insured or not.

MJI 140

140 — INTERPRETATIONS

In considering the evidence in this case, you are not required to set aside your own observations and experience in the affairs of life but you have a right to consider the evidence in the light of your own observation and experience.

MJI 145

145 — JUDGE'S DEMEANOR

If during the trial you have inferred from any acts or words of mine that I favor one side or the other, or believe or disbelieve the testimony of any witness, I instruct you to disregard such thought or inference.

You are the sole judges of the weight of the evidence, including the credibility of the witnesses. The responsibility for deciding the case justly is wholly yours, and is not to be influenced by me.

MJI 147

147 — OBJECTIONS AND RULINGS

During the course of the trial, it has been my duty to rule on a number of questions of law, such as objections to the admissibility of evidence, the form of questions, and other legal points.

These rulings have no importance to you in the decision of the case and no bearing on its merits. You should draw no conclusions from them either as to the merits of the case, or as to my views regarding any witness or the case itself. They are made on my responsibility and if I have made a mistake, it can be corrected on appeal.

It is the duty of a lawyer to make objections which he believes are justified by the law, and the fact that his objections have been either overruled or sustained is of no importance and should be disregarded by you.

MJI 155

155 — ATTORNEYS — ARGUMENTS OF

The argument opening statement of lawyers is not evidence and should not be considered as such.

The argument, statements, and remarks of counsel are intended to help you in understanding the evidence and applying the law but are not evidence. However, where such statement is an admission of fact or stipulation conceding the existence of fact, you should consider the admission or stipulation as part of the evidence.

Chapter 200

EVIDENCE AND PROOF

Classes of Evidence

Hearsay—Etc.

Presumptions—Inferences

Burden of Proof

MJI 200

200 — PROOF REQUIRED

You may not guess or speculate as to the existence of any fact in this case. You must base your findings solely upon the evidence that has been adduced before you and upon any inferences reasonably resulting therefrom.

201 — DEPOSITIONS

In this case, certain testimony was presented to you by way of written depositions. This testimony is entitled to the same consideration you would give it had the witness been present in Court.

Comment: This instruction should not be used when the deposition is introduced for the purpose of impeachment.

MJI 202

202 — ADMISSIONS

No instruction recommended.

Comment. Ill. 4.01 and Minn. 28 recommend no instruction. The revised Cal. 29 is as follows:

Evidence of the oral admissions of a party, other than his own testimony in this trial, ought to be viewed by you with caution.

203 — UNCONTRADICTED TESTIMONY

No instruction recommended.

Comment: An instruction may confuse matters. If the uncontradicted testimony is improbable or inconsistent it would seem to be an area for argument.

MJI 204

204 — FAILURE TO PRODUCE EVIDENCE OR TESTIFY

If a party to this case has, without satisfactory explanation, failed to call a material witness or offer material evidence, within his power to produce, you may infer that the witness, if called; or the evidence, if produced, would have been unfavorable to that party.

Comment. This instruction should be used with caution.

In the event of the "Dead Man" situation, where the testimony is inadmissible, a reverse instruction may be in order to save unfavorable inference against one who is precluded by Article 35 from testifying. See Ill. 5.02

Minn. 26 recommends no instruction. However failure to produce evidence forms are in Cal. 30, 30A, D.C. 12, 28, and Ill. 5.01

MJI 205

205 — INCREDIBLE EVIDENCE — LOOKED BUT DID NOT SEE

General human experience justifies the inference that when one looks in the direction of an object clearly visible, he sees it, and that when he listens, he hears that which is clearly audible.

When a person testifies that he did look but did not see that which was in plain sight, (or that he listened, but did not hear that which he could have heard in the exercise of ordinary care), it follows that either some part of such testimony is untrue or that the person was negligently inattentive.

MJI 206.1

206.1 — EXPERT TESTIMONY — CONFLICT

A person who by education, study, or experience has become an expert in any art, science, or profession, and who is called as an expert witness may give his opinion as to any such matter in which he is specially versed and which is material to the case.

It should be considered and weighed by you like any other evidence in the case and given the weight which you deem the opinion to be entitled. You may reject the opinion if the facts upon which it is based have not been established to your satisfaction by the evidence. Where expert witnesses disagree it is for you to decide which one is more to be believed.

MJI 206.2

206.2 — EXPERT TESTIMONY — HYPOTHETICAL QUESTIONS

In examining Dr. X, the expert witness of the plaintiff, counsel asked him hypothetical questions. In other words, the witness was asked to assume that certain facts are true and to give his opinion based on the assumed facts.

It is for you to decide whether or not the facts assumed by Dr. X for his opinion have been proved. If any assumption has not been proved, you must determine the effect of the failure of proof on the value and weight of the opinion based on the assumption.

207 — FLIGHT

A driver involved in an accident is required to stop and give assistance to a person injured without regard to fault. Leaving the scene may have some bearing on credibility or weight of evidence.

Comment: Ill. 4.02 recommends no instruction and Cal. 158B has been withdrawn on the basis that the instruction is argumentative and unnecessary.

MJI 209

209 — SKIDMARKS

You may consider the fact that the vehicle of Mr. D. made skidmarks, as one of the circumstances of the accident in determining whether or not he was speeding, or failed to have his car under control. But, I caution you that the existence of skidmarks alone is not sufficient for you to conclude that Mr. D. was driving at excessive speed, or was otherwise negligent.

MJI 215

215 — HEARSAY & OTHER EXCLUSIONS

No instruction recommended.

MJI 217

217 — DEAD MAN STATUTE

No instruction recommended.

Comment: The dead man's statute, article 35 § 3, is a rule of admissibility. Ill. 5.02 has instruction to preclude unfavorable inference in a death case.

220 — BUSINESS AND HOSPITAL RECORDS

No instruction recommended.

Comment: Again no instructions recommended because the question is admissibility, Article 35 § 59, rather than some refinement which the court can describe to the Jury about the weight of the business record admitted into evidence. Perhaps some clarifying instruction with regard to considering contents of hospital records is desirable. Ill. 2.12 recommends no instruction because it singles out a portion of the evidence for improper emphasis.

MJI 225

225 — OTHER ACCIDENTS

No instructions recommended.

MJI 230

230 — CUSTOM AND USAGE

No instructions recommended.

MJI 232

232 — CAREFUL HABITS

No instructions recommended.

MJI 240

240 — PRESUMPTIONS

No instructions recommended.

MJI 245

245 — MERE HAPPENING OF ACCIDENT

The mere happening of an accident raises no presumption of negligence. Where one party charges another with negligence against another, it is his duty to prove such negligence by the greater weight of the (reasonable) evidence. Speculation or guess work is not sufficient.

Alternate:

The mere fact that an accident has happened does not of itself mean that anyone has been negligent.

MJI 250.1

250.1 — RES IPSA LOQUITUR
Occurrence and Control in dispute

If you find that the accident alleged by the Plaintiff in this case did occur, and, in addition thereto, that the accident was caused by an instrumentality or agency within the exclusive control of the Defendant, and further that the accident is of such character that in ordinary experience it is unlikely to occur except as the result of negligence, then the (mere) happening of the accident is sufficient to give rise to an inference of negligence on the part of the Defendant. This is an inference which you may, but are not required, draw from evidence. If you conclude that this inference is warranted, you may treat it as evidence of negligence on the part of the Defendant.

Cal. 206
D.C. 51, 52
Ill. 22.01, 22.02
Minn. 80

MJI 250.2

250.2 — RES IPSA LOQUITUR — ACCIDENT AND CONTROL CONCEDED

The mere happening of the accident, as shown by the evidence in this case, is sufficient to give rise to an inference of negligence on the part of the Defendant. This is an inference which you may, but are not required to, draw from the evidence. If you conclude that this inference is warranted, you may treat is as evidence of negligence on the part of the Defendant.

MJI 255

255 — DIRECT AND CIRCUMSTANTIAL EVIDENCE

A fact may be proved by either direct evidence or circumstantial evidence, or both. The law does not prefer one form of evidence over the other.

Circumstantial evidence is indirect proof by proving one fact from which an inference of the existence of another fact may reasonably be drawn. All other evidence is direct evidence.

MJI 260

260 — IDENTIFICATION

In deciding whether or not the offending vehicle was that of Mr. D, you should consider all the evidence on this point and if you are convinced that more likely than not, it was Mr. D's vehicle, you may find him liable.

 MJI 265

265 — BURDEN OF PROOF

The party who asserts a claim or affirmative defense has the burden of proving it. This burden is met by what is termed a preponderance of the evidence. Preponderance of the evidence means such evidence as, when weighed against that opposed to it, has the more convincing force. It is a question of quality and not of quantity, which is to say that it is not necessarily determined by the number of witnesses or documents bearing on a certain version of the facts. Should you believe that the evidence bearing on any essential point is evenly balanced, then your finding as to that point must be against the party who has the burden of proof.

Comment: Ill. 21 and Minn. 70 define the burden as more probably or likely true than not true. Each of those JIs have follow up instructions on the claim, counterclaim, etc.

Cal. 21 (as revised) goes on to describe the issues each party has the burden of proving.

MJI 275

275 — AGAINST ONE PARTY ONLY

In the trial of this case, there were instances when certain evidence was admitted as against one of the parties, but denied admission as against another(s).

Your attention was called to these matters when the rulings were made. You must keep in mind the distinctions in such rulings. It may be difficult for you, when considering the case for or against any one party, to disregard completely any evidence that you have heard (or seen), but it is your plain duty not to use evidence admitted against only one party against any other party.

Chapter 300

SPECIAL RELATIONSHIPS

Agency

Family Relationship

Business Relationship

Miscellaneous

305 — AGENCY — MASTER-SERVANT

Any person, whether or not the owner of the vehicle, is responsible for the negligence of any person who is his agent and acting within the scope of his employment. Whether or not the driver was, at the time of the accident, the agent of Mr. A, depends upon:

1. Whether the driver was in Mr. A general employ or was hired to perform a particular task for him.
2. Whether at the time of the accident, he was engaged in performing the task.
3. Whether the relationship was such that Mr. A had the right to control the manner in which the driver was operating the vehicle.

Comment: This instruction is designed for a tort case. The "agent" described here is in master-servant relation.

306 — DRIVER ON PERSONAL BUSINESS — DURATION

One of the questions you must decide is whether or not Mr. B was acting within the scope of his employment (authority) (while he drove south on X street).

An agent is acting within the scope of his employment (authority) when he is performing services for which he has been employed (engaged), or while he is doing anything which is reasonably incidental to his employment (service). The test is not necessarily whether the specific conduct was expressly authorized or forbidden by the employer, but rather whether such conduct should have been fairly foreseen from the nature of the employment (service), and the duties relating to it, and was brought about, at least in part, by a desire to serve the employer.

MJI 310

310 — PARTNERSHIP

One of the questions you must decide is whether or not Mr. D was acting within the scope of his partnership authority.

A partner is acting within the scope of his partnership authority when performing services for the partnership or while doing anything reasonably incidental to the partnership business. The test is not whether the specific conduct was expressly authorized or forbidden by the partnership; but rather, whether such conduct should have been fairly foreseen by the partners from the nature of the rights and duties of a partner and was brought about, a least in part, by a desire to serve the partnership. If Mr. D was acting within the scope of the partnership, then each of the other partners is liable for his conduct.

MJI 312

312 — HUSBAND & WIFE

Husband and wife are not simply by reason of the marital relation agents for each other. But either spouse may become the agent of the other by acting on the business or affairs of the other.

In this case it is for you to say whether Mrs. D was acting on Mr. D's affairs, or solely on her own affairs.

MJI 313

313 — PARENT AND CHILD

No instruction recommended.

Comment: See MJI 312 and MJI 330.

MJI 320

320 — INDEPENDENT CONTRACTOR

You are to determine whether, at the time of the accident, B was an agent of A, or whether B was an independent contractor.

An independent contractor is one who agrees to perform a service for a principal, but whose physical conduct in the performance of the service is not subject to the right of control by the principal.

If you find that B was an agent, then A is responsible for the negligence of B. But if you find that B was an independent contractor, then A is not responsible.

MJI 322

322 — DRIVING INSTRUCTOR

A driving instructor present in a vehicle is bound to use care to see that his student does not cause injury to others.

MJI 325

325 — CORPORATIONS

The X Company is a corporation and can act only through its officers and employees. The conduct of an officer or employee acting within the scope of his employment is the conduct of the corporation.

Minn. 293

MJI 330.1

330.1 — OWNER OF VEHICLE

If the motor vehicle which Mr. A owned, was being driven by Mr. B on his own business, any negligence on the part of B is not chargeable to A.

MJI 330.2

330.2 — OWNER OF VEHICLE — PRESUMPTION OF AGENCY

There is a presumption that the owner of a motor vehicle is responsible for the negligence of any person operating that motor vehicle.

In this case, there was evidence offered for the purpose of showing that, at the time of the accident, the circumstances did not justify the owner being held responsible for the driver's negligence.

The owner would not be responsible if you find that, at the time of the accident:

(1) The driver was driving for his own purposes and not for the business or benefit of the owner, and

(2) The owner did not have the right to control the manner in which the vehicle was being operated.

Comment: Is not liability based on agency? Is the "presumption" an inference to be considered with other evidence? See MJI 330.3 for Illinois "inference" form.

MJI 330.3

330.3 — OWNER OF VEHICLE — INFERENCE OF AGENCY

If you decide that the automobile driven by Mr. A was owned by the Defendant, Mr. D, you may infer from such evidence that Mr. A was acting as the agent of the owner and within the scope of his authority, unless you find that that inference is overcome by other believable evidence. You may consider that inference and the other evidence in the case in deciding whether Mr. A was acting as agent and within the scope of his authority as Mr. D's agent.

Comment: The foregoing draft is from Illinois 50.07.

MJI 332

332 — ESTATE OF DECEDENT

No instruction recommended.

MJI 335

335 — ENTRUSTING TO COMPETENT DRIVER

An owner who entrusts his car to one he knows or should know is an incompetent or reckless driver, is negligent.

MJI 340

340 — DRIVER

No instruction recommended.

MJI 345

345 — MANUFACTURER'S LIABILITY

No instruction recommended.

Comment: Manufacturer's liability is not within the scope of a typical automobile case.

MJI 346

346 — REPAIRMAN

If the accident was caused by the negligence of Mr. R, who repaired the vehicle negligently, then Mr. R is liable.

MJI 347

347 — LESSOR — LESSEE

If Mr. A. rented the vehicle involved in the accident from Mr. B, and Mr. B had no control over Mr. A's driving, then Mr. B is not responsible for the negligent driving of Mr. A.

MJI 350

350 — JOINT & SEVERAL LIABILITY

No instruction recommended.

Comment: This workbook is limited to motor vehicle negligence. Liability of joint tort feasors is joint and several.

Chapter 400

PRINCIPLES OF NEGLIGENCE

Duty of Care

Negligence

Cause

Miscellaneous

MJI 402

402 — GENERAL DUTY TO USE CARE

It is the duty of every person who uses the highway to exercise ordinary care for his own safety, the safety of his property, the safety of others, and of their property. A person is negligent if he fails to act with the same degree of care that a reasonably prudent person would use under similar circumstances.

It is for you to decide whether or not there is negligence on the part of any one or more persons involved in this case.

MJI 403

403 — RIGHT TO ASSUME THAT OTHERS WILL ACT PROPERLY

A person who is exercising ordinary care has the right to assume that other persons will also perform their duties (duty) (under the law), and he has (a further) right to rely and act upon that assumption. Thus, it is not negligent to fail to anticipate injury which can result only from a violation of law or duty by another. However, a person does not have the right to assume and act as above stated, when it is reasonably apparent to him that another person is not going to perform his duty.

Comment: Blashfield § 6699 comments that use of this Instruction should be conditioned on the absence of any evidence to the contrary.

MJI 406

406 — DUTY TO AVOID INJURY TO OTHERS

No instruction recommended.

Comment: The substance of the instruction is incorporated in MJI 402.

MJI 407

407 — INTOXICATION

If from the evidence you believe that Mr. D was under the influence of alcohol to such an extent that his ability to operate the motor vehicle was substantially impaired and that the impairment substantially contributed to the accident, you should find him negligent.

Comment: Since the function of the negligence of action is compensation for injury sustained the instruction should contain a flavor of caution. The jury is not to punish someone for mere drunken driving. The condition of the driver has to be a cause of the injury.

MJI 407

407 — INTOXICATION

The fact that a person may have been intoxicated does not in and of itself constitute negligence. However, an intoxicated person is required to use the same care as that required of a sober person. He is not excused because of his intoxication for failing to act as a reasonably careful person.

Comment: This draft is from Minn. 108.

MJI 408.1

408.1 NEGLIGENCE — DEFINITION

Negligence consists of failing to use ordinary care; that is, in doing something which a reasonably (or ordinarily) careful person would not do, or in failure to do something which a person would do, under circumstances similar to those shown by the evidence.

It is for you to decide how a reasonably prudent person would act under these circumstances, and whether or not (P), (D), (Mr. A), did so.

The law does not say how a reasonable person would act; that is for you to decide.

MJI 408.2

408.2 — REASONABLE — DEFINITION

The reason that the law does not say what a reasonably careful person would do is that the circumstances are so numerous and so variable, that it would be impossible to lay down rules for all cases in advance.

Thus, one might ask whether it is negligent to drive at seventy miles per hour. The answer depends on the circumstances. If, in broad daylight, on a straightaway of the Pennsylvania Turnpike, where 70-mph is the speed limit, no. If, with brakes that were defective, yes. If, on a downtown street in a city, yes. If, at night on a turnpike, perhaps. If the roadway were wet, slippery or icy, perhaps, depending on how wet, slippery or icy. If, in a thick "pea soup" fog, it would be negligent to drive at all.

The answer in each case must depend upon what you believe that a reasonably careful person would do.

MJI 408.3

408.3 — CARE — DEFINITION

When I use the word, "care," I mean reasonable care; or when I say, "prudent," I mean reasonably prudent; or when I say, "careful," I mean reasonably careful.

And as I told you before, when I use the word, "negligent," or "negligence," I mean careful or careless in terms of the ordinary care a reasonably prudent person would exercise in the particular circumstances.

MJI 410

410 — CONTRIBUTORY NEGLIGENCE

Contributory negligence means negligence on the part of the plaintiff, Mr. P, that substantially contributed to cause the alleged accident, (injury), (death), (damage).

Where a defendant relies on the plaintiff's negligence as a bar to recovery, such negligence must be shown to be a proximate cause of the accident.

Comment: This Jury Instruction contains a general rule which the Trial Court may use in leading into the particular contention of the Defendant; e.g., see Pedestrians, MJI 710; Passengers, MJI 720.

MJI 411

411 — COMPARATIVE NEGLIGENCE

If you should find that there was negligent conduct on the part of more than one person whose conduct is in question in this case, you are not to attempt to determine which was guilty of the greater negligence, [with a view to delivering a verdict fashioned or influenced by your opinion as to the comparative wrong of such conduct]. Each person guilty of any negligence which caused an accident is liable for all of the damages resulting from the accident. If you make a finding of negligence against any one or more persons, you must follow the court's instructions in deciding whether or not liability should attach, and you must do so without regard to how you might grade or compare the negligence involved if permitted to do so.

MJI 412

412 — LEAVING PLACE OF SAFETY

It is negligent for a person to leave a place of safety and enter a place of danger, without taking appropriate precautions for his own safety.

414 — WILLFUL & WANTON MISCONDUCT

No instruction recommended.

Comment: The present workbook is limited to motor vehicle negligence.

MJI 415

415 — ASSUMPTION OF RISK

Assumption of risk is voluntarily placing (oneself) (one's property) in a position to chance known hazards. If a person has the choice of avoiding the risk or taking the chance, and he voluntarily chooses to chance it, he has assumed the risk. If you find that Mr. P assumed the risk (of drag racing) he cannot recover for any damages or injury sustained by him (in the racing accident).

MJI 420

420 — LAST CLEAR CHANCE

Although Mr. P may have been negligent in creating a situation of danger, if Mr. D later (thereafter) had reasonable opportunity to discover it and, time to avoid it, but failed to do so, then Mr. D had the last clear chance to avoid the accident, and if he failed to use his last clear chance, Mr. D is liable even though Mr. P had at a previous time been negligent in creating the dangerous situation.

MJI 425

425 — UNAVOIDABLE ACCIDENT

An unavoidable accident is one which could not have been avoided by either party by the exercise of reasonable care. If either Mr. D or Mr. P could have avoided the occurrence by the exercise of reasonable care, it is not unavoidable.

MJI 430

430 — PROXIMATE CAUSE

A person is liable for damages for his negligence only if it was the proximate cause of the injuries claimed. By proximate cause I mean that in the natural or probable order of events the negligent conduct produces the harm. The negligence need not be the only cause, or the last or nearest cause, but it must be a substantial factor in bringing about the accident and harm resulting from the accident.

MJI 435

435 — CONCURRING CAUSE

More than one person may be liable for the injuries. If the negligent conduct of one person concurs with the negligent conduct of another person, the negligence of each contributing as proximate cause of the injury, then each one is liable.

MJI 440

440 — INTERVENING CAUSE

If you find the conduct of one party was a new, later, intervening or independent cause of the injury, then the negligence of the other is not a proximate cause of the accident (injury) and the person originally negligent is not liable.

MJI 445

445 — VIOLATION OF STATUTE

Violation of the statute which requires (a driver's licence) (limited speed) (obedience to traffic signals) is immaterial and should be disregarded unless you find that the violation was a proximate cause of the accident.

MJI 450

450 — WHAT IS NOT DUTY OF MOTORIST

No instruction recommended.

MJI 455

455 — DENIAL OF ACCIDENT — IDENTIFICATION

No instruction recommended.

Comment: This subject is considered under Evidence. See MJI 260.

Chapter 500

SPECIFIC DUTIES—RULES OF THE ROAD

General Duties—Definitions

Safety Devices

Road Conditions—Weather, etc.

Speed

Traffic Lanes—Passing—Turning

Parking

MJI 502

502 — CONTROL

It is the duty of a motorist to keep his vehicle under reasonable control at all times so that he may avoid injury to other users of the highway.

MJI 503

503 — DRIVER'S MANUAL

No instruction recommended.

MJI 504

504 — LIMITED SKILL OF DRIVER

Every driver must exercise that degree of care which a person of ordinary prudence would execise under similar circumstances. The standard of care is constant and must be applied to the situation even though the driver may have been inexperienced or of limited skill.

505.1 — RIGHT OF WAY DEFINITION

In order to prevent collisions and accidents the law provides rights of way in various situations. When we say one person has right of way over another, we mean that as between two or more persons who desire the immediate use of any particular space of the highway, one is allowed the first use and the other[s] must wait. This privilege of one to the immediate use of the highway is called right of way.

Ref: Art 66½ § 2(45)
Gudelsky v. Boone, 180 Md 265, 23A^{2d} 694
3 MLE *Automobiles, Right of Way Instructions*, § 274
Cal. 150

Comment: A definition of the concept of right of way may be helpful to the jury in various situations. It is suggested that this instruction be followed by one which is pertinent to the specific right of way dispute.

CROSS REFERENCE

Definitions:	MJI.
Right of way	505.1
Intersection	505.2
Crosswalk	505.3
Highway	505.4
Clearing the intersection	507
Intersections	
Uncontrolled	575
Controlled	579
Boulevard	579
Traffic Signals	580
Left Turns	564.1
Traffic Officers	589
Turning	564
"Yield" Signs	567
Private Drive	583

MJI 505.2

505.2 — INTERSECTION DEFINITION

An intersection is the area of roadway where two highways join one another at either right angles or such other angle that vehicles travelling on the separate highways would come in conflict. A "T" intersection is an intersection within the meaning of the Maryland law, even though the intersecting street does not cross the intersected street—the area where the streets cross is an intersection within the meaning of the law.

A crossing where several streets come together and where crosswalks are not marked is an intersection giving rise to the same rights and duties as those at a "regular" or right-angle intersection.

A dual highway is a single intersecting highway. Where a road crosses a dual highway, there is one intersection—not one for each side of the median strip.

MJI 505.3

505.3 — CROSSWALK DEFINITION

A crosswalk is any portion of a roadway distinctly indicated for pedestrian crossing by lines or other marking on the surface of the road, or that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections.

If there is no sidewalk, then the crosswalk refers to the same part of street next to the intersection.

A crossing between street intersections in a residential area, not marked, but as to which there is evidence of customary use, is not a crosswalk within the meaning of the law.

MJI 505.4

MJI 505.4 — HIGHWAY DEFINITION

Within the meaning of the law, streets or highways include any highway or thoroughfare of any kind used by the public. The term includes roads of state hospitals and other state institutions. It is not necessary that the street or highway be actually dedicated to public use and accepted by proper authority in order to be a public highway or public road within the meaning of the law.

A private road or driveway is one used for vehicular traffic by the owner but not by other persons except those who have the express or implied permission of the owner.

MJI 505.5

505.5 — ALLEY DEFINITION

An alley used by the public or dedicated to the public is (is not) a highway, and the intersection of an alley with a public highway is (is not) an intersection for the purposes of the motor vehicle laws.

Comment: The question implied by the foregoing draft may properly be a subject for the Motor Vehicle Code Commission.

MJI 507

507 — CLEARING INTERSECTION

A pedestrian or motorist who has entered an intersection with a favorable signal has a right of way to go completely through the intersection. The right of way continues even if the light changes in the middle of the passage.

508 — MAINTENANCE OF VEHICLE IN SAFE CONDITION

A motorist is expected to see that his automobile is in reasonably good condition and properly equipped. If he did not use reasonable care in maintaining his vehicle, and as a result, Mr. P was injured, then Mr. D is negligent. If, on the other hand, the accident was caused by a hidden or unknown latent defect which Mr. D would not have known but using ordinary care, then Mr. D is not liable.

MJI 511.1

511.1 — DISABLED VEHICLE — PARKING OFF ROADWAY

The law requires that a disabled vehicle (truck) must be parked off the travelled part of the highway when it is practicable, leaving at least 12 feet of open road to its left.

It is for you to say whether, in this case, it was practicable for Mr. D's truck to be parked farther to the right.

If it was practicable, then Mr. D was negligent, but if it was not, then Mr. D had the right to park as he did.

Comment: See Article 66½ § 244(b). See also MJI 568.3.

MJI 511.2

511.2 — DISABLED VEHICLES — SIGNALS

The driver of a disabled vehicle is not bound to remain with his vehicle in order to give any signals other than the flare or reflector required by the law (statute).

Comment: See MJI 511.1 and MJI 568.3

 MJI 512

512 — SEAT BELTS

The law does not require a passenger in a car to use a seat belt, and failure to use a seat belt does not constitute negligence.

Comment: A recent statute requires seat belts for new cars, beginning June 1, 1964. The statute applies only to the front seat of a private passenger automobile. (1963 c. 619) Article 66½ § 296 A.

MJI 515.1

LIGHTS

515.1 — HEADLIGHTS — DARKNESS

It is for you to say whether, at the time of the accident, it was dark enough for a prudent driver to have had his headlights burning.

MJI 515.2

515.2 — HEADLIGHTS

The law requires motor vehicles to have headlights which will enable the driver to see objects in the road at a distance of 300 feet. It is for you to say whether or not Mr. D's headlights complied with this requirement.

Comment: See Article 66½ § 271.

MJI 515.3

515.3 — PARKING LIGHTS

A parked vehicle is not required to have lights on its rear under all circumstances, but it is negligent to park a vehicle, without lights, in such a manner as to endanger other persons.

It is for you to say whether, under the circumstances of this case, Mr. D was negligent in failing to have parking lights burning on the rear of his car.

MJI 517

517 — FLARES — REFLECTORS

The law requires that the driver of a vehicle (truck) parked at night on or near a highway, place flares behind and beside to warn of the trucks' presence.

(Failure to place such flares is negligent.)

(Failure to have such flares available in the truck is negligent.)

(In the case of a truck carrying inflammable goods, reflectors may be used instead of flares.)

Failure to place flares in the manner or at the distance required by statute constitutes negligence, if that failure caused or contributed to the accident.

Comment: See comments at MJI 568.9.

MJI 520

520 — BRAKES

Every automobile must be equipped with brakes adequate to control the movement of and to stop and hold such vehicle. Brakes are to be maintained in good working order.

Before driving a strange vehicle for the first time, one has the duty to see that there are no obvious safety defects. The driver in such situation can inspect the brakes by mere pressure of the foot on the brake pedal.

Sothoron v. *West*, 180 Md 539, 26A^{2d} 16

MJI 525

525 — CHAINS

Failure to use chains or snow tires on ice, snowy or slippery roads is negligent, if under all the circumstances an ordinary prudent driver would have used them.

Matthews v. State, 229 Md 155, 182A[2d] 44

MJI 530

530 — SNOW TIRES

No instruction recommended.

Comment: Use MJI 525.

MJI 537

537 — LOW GEAR ON HILLS

Failure of a driver to go into low gear in descending a hill is negligence if an ordinary prudent driver would have done so (under all the circumstances).

MJI 550

550 — EMERGENCIES

If Mr. D reacted to the emergency as a reasonably prudent person might have reacted, you may not find him negligent even if his choice of action was not the best one.

MJI 552

552 — ANIMALS ON ROAD

While Mr. D was driving along the road an animal (walked) (ran) into the roadway in front of him. It is for you to say whether or not this constituted an emergency, which justified him in slowing (stopping) (turning) as he did, and giving or not giving a signal of his intentions.

Ref: Dasheill v. Moore, 177 Md. 657, 11 A^2 640

Comment: Cf 550 Emergencies.

MJI 554

554 — LOOKOUT AND CONTROL

It is the duty of anyone driving a motor vehicle of any kind upon public roads—to keep a vigilant lookout ahead for persons, cars, or any other obstruction on the road, street or highway, and to keep his motor vehicle under reasonable control. Where the driver's view is obstructed by curves, hills, trees, shrubbery, intersections, weather conditions or otherwise, he is required to keep a lookout commensurate with the increased danger.

Comment: Cf MJI 502.

MJI 558.1

558.1 SPEED

The law of Maryland is that "no person shall drive a vehicle on a highway at a greater speed than is reasonable and prudent under the conditions then existing." Any speed in excess of speed limits is presumed not reasonable.

Comment: Article 66½ § 211

MJI 558.2

558.2 — SPEED

It is negligent for a motorist to drive above the lawful speed limit, or at any speed which, considering the traffic and weather conditions, the proximity of children, or any other circumstance existing at the time is not reasonable.

MJI 559.1

559.1 — LANES OF TRAFFIC — SIGNS

Drivers must observe the directions of signs (signals) which designate specific lanes for traffic moving in the same direction.

MJI 559.2

559.2 — LANES OF TRAFFIC — CHANGING LANES

A vehicle should be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such move can be made with safety. It is negligence for a motorist to change lanes of traffic, if by so doing, he endangers himself or others.

Comment: Article 66½ § 223 contains the provisions with respect to driving on roadways laned for traffic.

MJI 560.1

560.1 — KEEP TO RIGHT — GENERAL

The general rule on all roadways is that vehicles are to be driven on the right side. Where drivers are proceeding in opposite directions, they are expected to pass each other on the right and each is expected to give the other half of the main travelled portion of the roadway.

Comment. Article 66½ §§ 217, 218, 221; and Blashfield § 6708.

560.2 — KEEP TO RIGHT — ONE WAY STREETS

A motorist is not required to drive in the right lane of a one-way street. Where there are two or more parallel lanes of one-way traffic on a two-way street, passing on the right is permitted. Passing on the left is permitted without regard to grade, curve, or distance from intersection.

Comment: Vogelsang v. *Selhorst*, 194 Md. 413, 71 A^{2d} 295; *May* v. *Warnick*, 227 Md. 77, 175 A^{2d} 413, Article 66½ § 220(c).

Cf: MJI 578—*Dual Highways*, 3 MLE, *Automobiles* § 130.

If signs direct, "Keep to Right"—"Left Lane for Passing," the rule is otherwise re passing on right. *Mitchell* v. *Dowdy* 184 Md. 634, 42A^{2d} 717.

 MJI 561

561 — PASSING & OVERTAKING

Ordinarily, a vehicle overtaking another traveling in the same direction has a right to pass. The driver of the overtaking vehicle is to pass to the left of the other vehicle and not to drive to the right side of the roadway until safely clear of the overtaken vehicle. The driver of the overtaken vehicle is expected to give right-of-way to the right and not to increase his speed until completely passed.

The overtaking vehicle must not be driven to the left side of the middle of the roadway unless the road is clearly visible and free of oncoming traffic for far enough ahead to permit overtaking and passing in safety. If the overtaking driver cannot pass safely, he is expected to slow down and not to pass until the road is clear.

Ref Article 66½ §§ 219, 221

Comment. This instruction is designed for the ordinary two-way roadway situation of vehicles traveling in the same direction

562.1 — ONE WAY STREETS

Upon a roadway designated and sign posted for one way traffic a motorist may drive only in the direction indicated.

Comment: Article 66½ § 222

MJI 562.2

562.2 — ROTARY TRAFFIC ISLAND

A motorist traveling around a (rotary traffic island) (traffic circle) shall drive only to the right of such (island) (circle).

Comment: Article 66½ § 222

MJI 563

563 — FOLLOWING TOO CLOSE

A motorist must keep a reasonable distance from the vehicle he is following. Whether or not Mr. D was following Mr. P's vehicle more closely than was reasonable and prudent depends on the circumstances of speed, traffic, and road conditions.

Comment: Article 66½ § 224.

MJI 564.1

564.1 — TURNING

Any driver intending to make a turn must assure himself that he can do so with reasonable safety and he is expected to give an appropriate signal.

It is for you to decide whether or not Mr. P was negligent in failing to give a turning signal or to give it in time.

Ref: Article 66½, § 228(a) & (b)

MJI 564.2

564.2 — LEFT TURNS

A driver approaching an intersection intending to turn to the left must approach that intersection in the right half of the roadway that he is on nearest the center line; must give the proper signal showing his intention to turn; and must not turn his vehicle from a direct course until it is reasonably safe to do so.

Between drivers entering into an intersection from opposite directions, the driver intending to make a left turn must yield the right of way to the driver pursuing a straight course. The driver intending to turn is not required to wait unless the vehicle approaching from the opposite direction is in the intersection or so close as to be an immediate hazard.

Ref. Baltimore Transit Company v. Sun Cab, 210 Md. 555, 124 A^{2d} 567

Comment Article 66½ § 232.

The foregoing draft is taken from an instruction in Baltimore Transit Company v. Sun Cab Company opinion. The last sentence is from the statute.

MJI 565

5655 — DRIVERS' SIGNALS — GENERALLY

There are some occasions when it is the duty of the driver to give other persons on the highway a signal of his intentions:

(A person starting a vehicle which has been stopped, standing or parked must first give a hand signal to oncoming traffic.)

(A person turning from a direct course on a highway must give a signal to any vehicle which might be affected at least 100 feet before making the turn.)

(A person stopping or slowing must give a signal to any vehicle which may be affected by such action.)

In such situation, the signal must be an appropriate one. The circumstances determine what kind of signal is appropriate (that is, by hand, directional signal, stop lights, or sounding of horn) and the length of time for which it must be given. It is for you to decide, considering the circumstances of this case, whether Mr. D gave a reasonably adequate signal of his intentions.

Comment: The foregoing duties are from Article 66½ § 227, 228(b), and 228(c)

MJI 566

566 — SLOW SIGN

"Slow" warning signs impose no higher duty of care but can be considered with regard to whether the driver should have anticipated the danger of accident.

MJI 567.1

567.1 — YIELD SIGN

The driver of a vehicle approaching a "yield" sign facing him shall (1) approach with caution, and (2) yield the right of way to vehicles approaching on the other street, and shall stop if necessary.

Article 66½ § 233.

MJI 567.2

567.2 — MUST TURN SIGNS

Drivers are not supposed to turn their vehicles at an intersection contrary to the direction of an authorized signal or marker.

Comment: The above instruction has been prepared from the statute, Article 66½ § 225(d). It seems to follow from the usual rule of obedience to traffic signals.

MJI 568.1

568.1 — PARKING — GENERAL

A motorist who parks his vehicle on the highway is bound to exercise reasonable or ordinary care so that it will not be a danger to others using the highway.

3 M.L.E., *Automobiles*, § 131.

MJI 568.2

568.2 — PARKING — OUTSIDE BUSINESS DISTRICT, ETC.

A motorist must stop [park] [leave standing] his vehicle off of the paved [improved] [or main travelled] part of the highway. When it is not practical to stop off the road, the motorist may stop [park] on part of the highway; provided, he leaves no less than 12 feet opposite the standing vehicle for free passage of other vehicles an that the standing vehicle can be seen for 200 feet from either direction.

Comment: Note that Article 66½ § 244(a) applies to country type areas, not "business" or "residence districts."

MJI 568.3

568.3 — DISABLED VEHICLES

If it is impossible [or not feasible] to avoid stopping and leaving a disabled vehicle on the paved [improved] or main travelled portion of the highway, the motorist may do so. It is for you to decide whether or not the vehicle was disabled, and under the circumstances, whether or not it was obviously impractical to get the vehicle off of the road.

Comment: Cf MJI 511.1 and MJI 511.2.

MJI 568.4

568.4 — PROHIBITED PARKING PLACES

No instruction recommended.

Comment: See Article 66½ § 245.

MJI 568.5

568.5 — UNATTENDED VEHICLE

The law prescribes that no one shall permit a vehicle to stand [unless the ignition is locked and key removed] when upon any perceptible grade, unless the brake is set and the wheels turned to curb or side of the highway.

Comment: See Article 66½ § 247.

568.6 — SNOW EMERGENCY ROUTES

No instruction recommended.

Comment: In Wiggins v. State, 232 Md. 228, 192 A^{2d} 515, the Court discusses an instruction with respect to stopping during a snow emergency for the purpose of clearing a windshield.

MJI 568.7

568.7 — WARNING LIGHTS

During hours of darkness [or at such times of conditions of light and weather that a person, vehicle, animal or other substantial object would not be clearly discernible at a distance of 300 feet] a vehicle parked on the highway or on the shoulder of the road must exhibit parking lights [or some other illuminating device].

Comment: See Article 66½ § 276, § 271.

MJI 568.8

568.8 — DOUBLE PARKING

No instruction recommended.

Comment: Negligence cannot be based upon lawfully parking for a necessary purpose even though the effect is to obscure the view of others. Often obstructed view is not the proximate cause. See Maggitti v. Cloverland Farms Dairy, 201 Md. 528, 95 A^{2d} 81 (re double parking); Art. 66½—245(11) (milk truck within exception); Bloom v. Good Humor Ice Cream Co., 179 Md. 384, 18 A^{2d} 592 (child pedestrian case—parked vehicle).

568.9 — TRUCKS — FLARES, ETC.

No instruction recommended.

Comment: See MJI 517 for instruction on this topic.

In Article 66½, § 300, disabled trucks or trucks with disabled lights are required to display signals or reflectors.

These provisions were involved in Coastal Tank Lines v. Kiefer, 194 Md. 81, 69 A2d 790; and Emery v. F. P. Asher, Jr. & Sons, Inc., 196 Md. 1, 75 A2d 333.

MJI 569

569 — STARTING FROM STATIONARY POSITION

It is negligent for a person to start a vehicle which is stopped, standing, or parked without giving adequate hand signal to oncoming traffic, and until such movement can be made with reasonable safety.

Comment: Article 66½ § 227. See 3 MLE *Automobiles* § 122.

MJI 570

570 — BACKING

It is negligent for a motorist to back his vehicle without taking precautions to see that the movement can be made with safety.

572 — STOPPING AND SLOWING

The driver of the front car must exercise ordinary care not to stop or suddenly decrease speed without giving the driver of the rear car adequate warning of his intentions to do so if he has the opportunity to do so. The law does not say just how much warning the driver of the front car must give of his intention to stop or slow up. The brake signal light of the preceding vehicle is sufficient warning if the light goes on in time.

Comment: Cf MJI 550 and MJI 566. Article 66½ § 228(c).

MJI 573

573 — IMPEDING TRAFFIC

No one shall, except when reduced speed is necessary, wilfully drive at so slow a speed as to impede or block the normal and reasonable movement of traffic.

Comment: See Article 66½ § 212.

575 — INTERSECTIONS IN GENERAL

If there is danger of collision at an intersection, the vehicle on the left must yield the right of way.

It is for you to say whether or not the vehicles were so far apart that there was no danger—considering speed, distance, visibility and other factors.

Comment: The cases suggest difficulty in the application of the right of way rule favoring the vehicle approaching from the right. The MJI 575 drafts which follow suggest variations in the statement of the rule to the jury.

Article 66½ § 231

MJI 575.1

575.1 — UNCONTROLLED INTERSECTION

All vehicles have the right of way over other vehicles approaching at intersecting public roads from the left, and shall give the right of way to those approaching from the right.

This law applies to vehicles approaching an intersection so as to arrive there at or about the same time.

If, therefore, the driver of an unfavored vehicle, sees a favored vehicle so far away that, if driven with reasonable speed, it would not arrive at the intersection at or about the same time as the favored vehicle, then the unfavored vehicle is not required to give the right of way to the favored vehicle.

It is the duty of the unfavored motorist to use reasonable care to see vehicles on an intersecting road, to judge their speed, their distance away, and to determine whether they will arrive at or about the same time. Failure to use such care constitutes negligence.

There is also a duty of the favored motorist to use ordinary care in approaching and driving into or through an intersection, and his failure to do so constitutes negligence.

575.2 — UNCONTROLLED INTERSECTIONS

The fact that drivers are approaching an intersection is a circumstance to consider in determining whether or not they are driving negligently. In this case, the collision [accident] occurred at an intersection which was not controlled by a traffic light, a stop sign, or otherwise. The drivers are bound to drive with ordinary care appoaching and in entering such an uncontrolled intersection.

The general rule is that, at such an intersection, when two cars are approaching so as to arrive at about the same time, the car approaching on the right is entitled to the right of way. The driver of the car approaching on the left must wait until he can cross with safety.

The car on the right in this case had the right of way if you find that it arrived at the intersection before or about the same time as the car approaching on the left; or, if both cars had continued through at the same time, at the same rate of speed as they had been travelling, collision in the intersection would have occurred.

If, considering the speed of the cars, the width of the intersection, and the relative positions of the cars, you find that the driver of the car on the left was reasonable in assuming that he could safely have crossed the intersection first without danger of collision with the car on the right, then you may find that the car on the left had the right of way.

Both drivers are obliged to drive with due care.

(1) You may find the driver not having the right-of-way negligent for failing to yield to the driver having it.

(2) You may find that the driver having the right-of-way was negligent if he saw or should have seen that an accident was likely to occur if he proceeded across the intersection, and he nevertheless proceeded to cross.

MJI 575.3

575.3 — UNCONTROLLED INTERSECTION

In this case, the collision [accident] occurred at an intersection which was not controlled by a traffic light, stop signs, or otherwise. The following rules apply with respect to right of way at such uncontrolled or ordinary intersection:

The vehicle which first arrives at the intersection has the right of way. However, when vehicles approach an intersection under such circumstances that a collision is likely to occur, it is the duty of the driver approaching from the left to yield the right of way to the vehicle approaching from the right. The law does not lay down a standard which determines how near a vehicle approaching from the right must be in order to have the right of way with respect to a vehicle approaching from the left. Nor does the law say how close the vehicle approaching from the left must be to the possible point of the collision before it must favor the vehicle approaching from the right. That determination has to be made in each case on the particular facts in the environment involved.

In this case, Mr. P approached the intersection from the right. If you find that his vehicle arrived at the intersection before or about the same time as the D vehicle approaching from the left, then Mr. P had the right of way.

If you find that it was reasonable for a driver in the situation to assume that one could cross the intersection first without danger of collision with the car approaching from the right, then Mr. D was not obliged to yield right of way to the vehicle on his right.

575.4 — CAUTIONARY

The right of way rule is a cautionary guide, not a peremptory command, and it is a question of fact for you to decide whether or not the vehicle approaching from the right is near enough to the intersection to be entitled to the right of way.

Comment: Rabinovitz v. *Kilner*, 206 Md. 455, 112A^{2d} 483.

MJI 575.5

575.5 — RIGHT TO COMPLETE CROSSING

A driver who has the right of way at an intersection has the right to proceed across if he sees no obstacles in the intersection.

MJI 575.6

575.6 — DUTY TO USE CARE

The right of way rule does not mean that a person with the right of way does not have to take reasonable precautions for his own and others' safety.

MJI 575.7

575.7 — ASSUMPTION OF RIGHT OF WAY

A driver who has the right of way may assume that an unfavored driver or an unfavored pedestrian will yield the right of way to him until he discovers that the unfavored person does not intend to do so.

578 — DUAL HIGHWAY

For the purposes of traffic regulation by automatic light, a dual highway, consisting of two roadways, divided by a median strip is regarded as one roadway, and persons or vehicles starting to cross it on a green light have the right to complete the crossing of the entire highway, and not merely to the median strip.

Comment: Packer v. Hampden Transfer & Storage, 206, Md. 407, 111 A^{2d} 849, Article 66½ § 2(20), 2(47). *Cf.* definition of highway, 505.

MJI 579.1

579.1 — BOULEVARD INTERSECTION — STOP SIGN

The law requires that the driver of a vehicle approaching a stop sign at a boulevard shall both (1) come to a full stop, and (2) yield the right-of-way to a vehicle on an intersecting highway. Failure to do either by the driver on the unfavored highway constitutes negligence, and if such failure contributed substantially to an accident with a car on the favored highway, you should find the driver who violated the rule negligent.

Article 66½ § 233.

MJI 579.2

579.2 — BOULEVARD INTERSECTION — EXCESSIVE SPEED OF FAVORED VEHICLE

An unfavored driver who enters a boulevard without giving the right of way to a vehicle on the boulevard is not excused by (1) excessive speed of the vehicle on the boulevard or (2) the fact that the vehicle on the boulevard was on the wrong side of the road, or in the wrong lane.

Comment: Cf MJI 410, *Contributory Negligence*, and MJI 579.12.

MJI 579.3

579.3 — BOULEVARD INTERSECTION — STOP SIGN AND RED LIGHT

No instructions recommended.

Comment: The effects of a stop sign and a red traffic light are the same with respect to duties under the boulevard law. See Eastern Contractors v. State 225 Md. 112, 169 A^{2d} 430.

See also Articles 66½ 196(1) and Cf. MJI 580.7

579.4 — BOULEVARD INTERSECTION — SLOW SIGN

A slow sign on a boulevard does not affect the right-of-way of a vehicle on the boulevard.

Belle Isle Cab Co. v. Pruitt, 187 Md. 174, 49A^{2d} 537.

MJI 579.5

579.5 — BOULEVARD INTERSECTION — EXTENT OF INTERSECTION

The duty of a driver entering a boulevard to yield the right-of-way to vehicles on the boulevard is not confined to the exact confines of the intersection, but extends also until he has entered the proper lane and attained a speed which does not interfere with traffic on the boulevard, or until he has gotten all the way across the boulevard.

MJI 579.6

579.6 — DIVIDED OR DUAL HIGHWAY

A divided highway (dual highway) is a single roadway, and a highway crossing it creates a single intersecton, entitling any vehicle which enters it on a green light to complete its crossing of both traffic lanes.

Comment Cf. MJI 505 *Highway Designation*, and MJI 507

579.8 — BOULEVARD INTERSECTION — TURNING INTO WRONG LANE

Turning into a wrong lane of a boulevard, and causing a head-on collision constitutes a failure to give the right-of-way.

McDonald v. *Wolfe*, 226 Md. 198, 172A^{2d} 481

MJI 579.9

579.9 — BOULEVARD INTERSECTION — BLOCKING INTERSECTION

Blocking of boulevard intersection by a tractor-trailer entering the boulevard may be a failure to give the right-of-way and negligent.

Cf. 579.8.

MJI 579.10

579.10 — BOULEVARD INTERSECTION — BICYCLIST — ANIMAL DRAWN VEHICLES

The duty of a bicyclist, or the driver of an animal drawn vehicle, to obey a boulevard stop sign is the same as that of a motorist.

Comment: Cf MJI 645.

MJI 579.11

579.11 — PEDESTRIAN

A pedestrian is not bound to obey a stop sign at a boulevard.

Comment: See MJI 710. *Folck* v. *Anthony*, 228 Md. 73, 178A^{2d} 413.

MJI 579.12

519.12 — BOULEVARD INTERSECTION — CONTRIBUTORY NEGLIGENCE OF FAVORED DRIVER

The driver of a vehicle on a boulevard may be contributorily negligent (if he fails to avail himself of the last clear chance to avoid the accident) (if he fails to see a large tractor trailer blocking the roadway, or a passenger car ⅓ block away).

See *Harper* v. *Higgs*, 225 2nd. 24, 169A^{2d} 661.

MJI 580.1

580.1 — TRAFFIC SIGNALS — GREEN

The accident involved in this case occurred at an intersection where traffic is controlled by traffic light[s]. The driver who has the green light [or "go" signal] ordinarily has the right of way.

Article 66½ § 193(a).

580.2 — TRAFFIC SIGNALS — CHANGE OF LIGHTS

Even though a motorist has the green light in his favor at the time he enters an intersection, he cannot ignore traffic already in the intersection. Vehicles and pedestrians lawfully in the intersection at the time light changes have the right of way.

Comment: Article 66½, 193 (a). Cf. MJI 507.

MJI 580.3

580.3 — TRAFFIC SIGNALS — AMBER

When a motorist is approaching an intersection where the traffic light is amber alone or "caution," following the green light or "go" signal, he is required to stop before entering the crosswalk at the intersection. If such a stop cannot be made in safety, the motorist may cautiously proceed through the intersection.

Comment: Article 66½ § 193(b).

MJI 580.4

580.4 — TRAFFIC SIGNALS — AMBER

When a motorist is approaching a traffic signal which shows both amber and green, his duty is the same as when the signal shows amber alone.

Comment: The above is suggested for discussion in the absence of any Maryland authority on the precise point involved.

MJI 580.5

580.5 — TRAFFIC SIGNALS — RED LIGHT

Vehicles facing the red or "stop" signal are to stop before entering the nearest crosswalk at an intersection [at such point as may be indicated by a clearly visible line on the street] and to wait until green or "go" is shown.

Comment: Article 66½ § 193(c).

580.6 — TRAFFIC SIGNALS — GREEN ARROW

A vehicle facing the red light with a green arrow may cautiously enter the intersection to move as indicated by the green arrow, but the vehicle must not interfere with other traffic or endanger pedestrians lawfully within a crosswalk.

Comment: Article 66½, 193(d).

MJI 580.7

580.7 — TRAFFIC SIGNALS — FLASHING RED

A motorist entering an intersection controlled by a flashing red light shall come to a stop and yield right of way to other vehicles just as if there were a stop sign.

Comment: Article 66½ § 196(1).

MJI 580.8

580.8 — TRAFFIC SIGNALS — FLASHING AMBER

A motorist entering the intersection with a flashing amber signal may proceed through the intersection with caution. Even though the flashing signal directs caution, the motorists can assume that others will stop for signals.

Comment Article 66½ § 296 (2)

MJI 580.9

580.9 — TRAFFIC SIGNALS — FUNERAL PROCESSIONS

A funeral procession may continue through an intersection after the light changes to red. The vehicles in the procession should have their lights on.

Comment: Article 66½ § 193(f); Cf. MJI 661.

MJI 583

583 — PRIVATE ENTRANCES

The driver of a vehicle entering a paved public highway from an unpaved public highway, or from a private road or driveway, is required to: (1) Come to a full stop at the intersection, and (2) Yield the right of way to a vehicle on the paved public highway.

Comment. Article 66½ § 234

MJI 585

585 — OBSTRUCTIONS TO VIEW

If a motorist's vision is obscured for any reason, it is his duty to take such precautions as are reasonable to discover whether the way is clear.

Such precautions include stopping, slowing, sounding warning signals, or otherwise.

It is for you to say whether Mr. D did or did not take such precautions.

MJI 589

589 — TRAFFIC OFFICERS

A motorist must obey the direction of a traffic policeman even though the direction is contrary to that of an automatic traffic light.

Comment: Article 66½ § 181, 192(a).

MJI 592

592 — PRIVATE ROADS AND PRIVATE PROPERTY, DRIVING ON

Customary rules of the road apply on private roads and on private property. The exercise of due care requires keeping to right of an approaching vehicle.

Comment: Query—There have been a number of shopping center cases at People's Court level. It is presumed that customary rules of the road apply to the "private" property roadways.

Query—Statutes for various counties.

MJI 594

594 — DUTIES AFTER ACCIDENT

No instruction recommended.

Comment: Article 66½ § 199-204 prescribe duties of a motorist after an accident.

Cf MJI 445, Violation of Statute.

Chapter 600

NATURE OF VEHICLES—SPECIAL RULES

Passenger Cars—School Buses

Trucks

Emergency Vehicles

Miscellaneous

MJI 600

600 — NATURE OF VEHICLES — SPECIAL RULES — GENERAL

One circumstance you must (may) consider in determining the care required of a person under the circumstances is the nature of the vehicle being driven.

Comment. This chapter contains instructions for use with respect to particular types of vehicles. In most cases, the type of vehicle does not alter the basic standard of care, although the jury may consider such factors as nature, size and type of vehicle.

605 — PASSENGER CARS — SPECIAL RULES

No instruction recommended.

Comment: There appears to be no reported case which establishes a special rule for an ordinary passenger automobile. The duty of a passenger car driver sems implicit in the text of most jury instructions reported herein.

MJI 610

610 — PASSENGER BUS

No instruction recommended.

Comment: Article 66½ § 2 defines "buses" as a motor vehicle designed and used for the transportation of persons for compensation.

The cases indexed to this MJI involve demurrer or directed verdict situations and reinforce the general rule that highest duty for the safety of a passenger is not the equivalent of an insurer of safety. For duty of common carrier to passengers see MJI 705

MJI 615

615 — SCHOOL BUS

The driver of a school bus has a duty to come to a full stop and remain stopped until the children (passengers) are discharged. When a driver has stopped the school bus which is painted black and national school bus chrome and marked "School Bus" and has the light flashing, he may assume that other motorists will comply with the law and come to a stop.

Comment: Article 66½ § 255-269 pertains to school buses.

Section 255 defines a school bus as a motor vehicle, other than a regular passenger bus (PSC regulated), seating 10 or more passengers, transporting children, students, or teachers to and from school activity.

Section 257 prescribes color of bus and pairs of flashing red stop lights, front and rear, visible to vehicles approaching or following. The lights must be on while loading or discharging "school children."

Section 256—"School Bus" sign front and rear is required.

 MJI 615.1

615.1 — SCHOOL BUS — SPECIAL RULES

When meeting or overtaking a school bus which is stopped on the highway to receive or discharge school children (school teachers) the motorist must come to a stop in front (or rear) of the school bus and wait until the children are received or discharged and the school bus starts again. (§259)

To find that Mr. A. is legally required to stop all of the following conditions must exist:

1. There must be school bus signs. §260(a), 256.

2. There must be flashing red stop lights operating which are visible to the approaching vehicle. §260(a), 257(b), 260(b)

3. The color scheme or painting of the bus must be that of a school bus, black with national school bus chrome the prevailing color. §260(a), 257(b)

4. The location of the stop must be outside the corporate limits of a city of more than twenty-five thousand population. §259

5. The location of the stopped school bus must be on a highway. (Motorists are not required to stop where a school bus has pulled off the traveled portion of the highway and into a school bus loading zone). §260(b)(c)

6. A motorist approaching a school bus from the front on a dual highway is not required to stop. §260(a)

7. The motor vehicle is a school bus only if transporting children, students or teachers to and from school or some school activity. §255

8. The motor vehicle is a school bus only if it has a seating capacity of 10 or more persons. §255

9. The bus is not regulated by the Public Service Commission nor operated to furnish mass transportation in a town of more than 50,000 inhabitants. §255

Comment. This MJI should be limited in use to the specific disputed fact. It may be assumed that most school buses in operation in Maryland are regular in design, appearance, stop lights, etc. Section references above are to Article 66½

MJI 620

620 — TAXICAB

The taxicab driver has a duty to be watchful and alert at all times. The taxicab passenger has the right to assume that the driver is familiar with the dangers to be apprehended and that he will use proper care, skill and vigilance to avoid them.

While the taxicab driver is to exercise the highest degree of care for his passengers consistent with the nature of the undertaking to carry passengers, the taxicab does not insure absolute safety. In order to be liable for the injury to a passenger there must be negligence or lack of care.

Comment: This section concerns duty of taxicab owner or operator to passenger. A taxicab is a common carrier and the duty imposed upon the taxicab with respect to the safety of passengers is predicated upon contract of hire—i.e., the nature of undertaking. See MJI 705 and 720.

As to third parties the taxicab has no greater duty than any other similar motor vehicle. The taxicab is bound to follow traffic rules as other vehicles.

620.1 — TAXICAB — DIP IN STREET

Where the taxicab driver sees a dip (hole) (obstruction) in the street, or where he should see the dip (hole) (obstruction) if he is as alert or watchful in driving as you reasonably expect a driver to be under the circumstances; and where he should recognize the danger to his passenger as a likely result from driving at a rapid rate of speed into the dip (hole) (obstruction), the driver is expected to avoid that danger if he can. To do otherwise would be a lack of due care. If you find that the dip (hole) (obstruction) in the street presented a hazard of harm to Mrs. B., the passenger, and that Mr. A., the taxicab driver, should have anticipated and avoided the impact, then he is negligent.

Brooks v. *Sun Cab Company*, 208 Md. 236, 117 A^{2d} 554

MJI 625

625 — TRUCKS

The driver of a heavy potentially dangerous truck must keep a careful watch and must consider the size and maneuverability of the vehicle.

MJI 630

630 — TRACTOR-TRAILER

No instruction recommended.

Comment: Use MJI 625

 MJI 640.1

640.1 — EMERGENCY VEHICLES — PRELIMINARY INSTRUCTION

In this case Mr. A was driving a fire truck (ambulance) (police car) (etc.) which he claims was an authorized emergency vehicle responding to an emergency call.

Comment: This section concerns emergency vehicles and the duty of the driver and third party (motorist). The following general principles should be observed in regard to this topic:

(1) Statutory definition describes the classes of vehicles which may be designated *authorized* emergency vehicles.

(2) The authorized vehicle must obey all the rules of the road except when on *emergency* duty.

(3) The emergency use of the authorized vehicle may lead to liability for ordinary negligence.

(4) The third party motorist must yield right of way in certain situations.

Note: If there is a dispute as to emergency status, use MJI 640.5.

MJI 640.2

640.2 — AUTHORIZED EMERGENCY VEHICLE — DEFINITION

No instruction recommended.

Comment. Article 66½ § 2 defines authorized emergency vehicle. The statutory definition seems limited to public service type vehicles. Jury issues do not seem likely to develop over proper authorization of a particular vehicle although physicians and other private use vehicles on emergency business are not covered by the definition

640.3 — EMERGENCY — DEFINITION

No instruction recommended.

Comment: See MJI 640.5, Emergency disputed.

640.4 — EMERGENCY UNDISPUTED

No instruction recommended.

Comment: See MJI 640.1 in which the conclusion of authorized vehicle on emergency mission is implicit.

MJI 640.5

640.5 — EMERGENCY DISPUTED

In this case there is a conflict about whether the fire truck (ambulance) (police car) etc., was responding to an emergency call. I instruct you that drivers of authorized emergency vehicles can assume a special privilege with respect to speed (right of way) (traffic control devices) (stop signs) only when the vehicle is being operated in response to an emergency call (or in the immediate pursuit of an actual or suspected violator of the law). At all other times, such vehicles are bound to obey all the ordinary rules of the road. However, if at the time of the accident Mr. A had reasonable grounds to believe that there was an emergency to which he should respond in his line of duty, then the fire truck (etc.) may be considered in emergency status, and the driver is not bound to observe the ordinary rules of the road.

Comment: Source of instruction, Article 66½ § 183(c), and § 214

MJI 640.6

640.6 — DUTY OF DRIVER — ORDINARY CARE

In responding to a emergency situation there may be need for prompt and unusual action. Provisions of the law with respect to speed, right of way, stop sign, etc., do not apply. However, the driver of an unauthorized emergency vehicle is not relieved from the duty to drive with due regard for the safety of all persons using the street.

Comment: The due regard clause is taken from Article 66½ § 23.5(c) and § 214.

MJI 640.7

640.7 — DUTY OF DRIVER — WARNING SIGNAL

In addition to the general duty of the emergency vehicle driver to proceed with due care for the safety of others, Maryland law requires that the vehicle sound a bell, siren, or exhaust whistle as a warning to the public.

Comment. This MJI is taken from Article 66½ § 214. Apparently flashing lights are authorized but are not required. Article 66½ § 287

640.8 — DUTY OF DRIVER — TRAFFIC LIGHT

The driver of such a vehicle when responding to the emergency call may go past a red light or stop signal, or a stop sign, but he is required to proceed cautiously and slow down as is necessary for safety.

Comment: This MJI is from Article 66½ §183 (b)

MJI 640.9

640.9 — EMERGENCY VEHICLE — DUTY OF DRIVER — SPEED

If the driver of an authorized emergency vehicle, operated during a condition of emergency, gives an audible signal on a bell (siren) (exhaust whistle), he may proceed in excess of the speed limit; however, in so proceeding, he must exercise due regard under the circumstances for the safety of others.

Comment: This MJI is based on Article 66½ § 214 and Ohio 3.30(c).

MJI 640.10

640.10 — EMERGENCY VEHICLE — DUTY OF OTHERS

Upon the (immediate) approach of an authorized emergency vehicle which is giving audible signal by siren (exhaust whistle) (bell), other motorists must yield the right of way, and immediately drive to a position parallel to and as close as possible to the edge (or curb) of the highway clear of any intersection, and then stop. (Unless otherwise directed by a police officer). The motorist must remain stopped until the authorized emergency vehicle has passed.

Comment: This MJI is based on Article 66½ § 235(a) and Ohio 3.50.

645 — BICYCLIST

A person riding a bicycle must obey motor vehicle rules. The cyclist must obey (traffic lights) (stop signs) (rules of the road).

Comment: Article 66½ § 184 applies to bicycles, animals and animal drawn vehicles.

MJI 646

646 — ANIMAL DRAWN VEHICLES

An animal drawn vehicle (horseback rider) must obey motor vehicle rules.

Comment: See Article 66½ § 184.

650 — MISCELLANEOUS VEHICLES — SPECIAL RULES

No instruction recommended.

Comment:

Bicycles—See MJI 645.

Motor scooters—Extra seat required for passenger—Article 66½ § 195.

Commandeered vehicle—See Article 66½ § 180.

Road Block vehicle—See Article 66½ § 180(b).

MJI 652

652 — TOWED VEHICLES

No instruction recommended.

Comment: Use MJI 625.

MJI 660

660 — RAILROADS

A railroad train does not have to slow down or stop at every crossing. The engineer may assume that motorists approaching the tracks or waiting at a point of safety will remain there.

Comment: The following statutes may be considered:

Article 66½	§ 240—Motorists at crossings
	§ 241—Certain vehicles to stop at crossings
Article 89B	§ 122—Railroad crossings defined
Article 23	§ 205—Warning signs
	§ 207—Flagmen or bells required

MJI 660.1

660.1 RAILROAD — STALLED VEHICLE

The engineer and fireman on a locomotive have the duty to use ordinary care in the operation of the train. They are expected to keep a proper lookout for any obstruction on the tracks. If by exercising due care they should have discovered the stalled bus (obstruction) on the tracks, they should have used whatever means were available for the prevention of the collision. There may be negligence in failure to see the stalled bus (obstruction) (in keeping a proper lookout) even though railroad procedure of operation requires the engineer and fireman to check signals which prevented them from seeing the bus until it was too late.

Campbell v. *Patten* 227 Md. 125, 175A^{2d} 761.

MJI 661

661 — FUNERAL PROCESSIONS

A funeral procession which is going through an intersection has the right-of-way to continue after the light changes red. Every vehicle in the procession is expected to have head lights turned on. (The funeral procession leader or first vehicle must wait for a red light).

Comment: Article 66½ § 193 provides that a funeral procession may continue through an intersection after the light changes provided the first vehicle of the procession enters the intersection before the light changes from green to red and provided that the procession vehicles have their lights on. Other motorists are by statute commanded to wait even though the light is green.

MJI 662

662 — MILITARY CONVOYS

No instruction recommended.

Comment: No case was reported for this subject. No statute is noted.

It is probably better to omit the instruction, than to speculate about the subject.

MJI 663

663 — PARADES

No instruction recommended.

Comment: See MJI 662.

Chapter 700

SPECIAL PARTIES

Common Carrier

705 Common Carrier
705.1 Common Carrier—Safe Access
705.2 Common Carrier—Alighting

Pedestrians—Duty Of

710 Pedestrians—Basic Rule
710.1 Duty of Pedestrian
710.2 Pedestrians—Change of Light
710.3 Pedestrians—Stop Sign
710.4 Pedestrians—Crossing Between Intersections
710.5 Pedestrians—Assumption that Others Will Do Duty

Pedestrians—Contributory Negligence

710.6 Leaving Place of Safety
710.7 Exposure of Part of Body
710.8 Sudden Entry Into Highway
710.9 Entering Safety Island
710.10 Vehicle on Wrong Side of Street
710.11 Vehicle on Intersecting Street
710.12 Entering and Leaving Standing Vehicle
710.13 Turning Back for Safety
710.14 Familiarity With Location
710.15 Workers on Highway
710.16 Walkers on Highway

Motorists Duty To Pedestrians

711.1 At The Intersection
711.2 Between Intersections
711.3 Speed
712 Handicapped Persons
713 Blind Persons
715 Bicyclist

Passenger, Licensees, etc.

720 Passengers
721 Invitees
722 Licensees
725 Guest Rider
726 Trespasser
727 Hitchhiker
728 Rider
729 Running Board Passenger
730 Person Entering or Leaving Vehicle

Children

735.1 Children—Duty of Motorist
735.2 Children—Motorists Duty to See
735.3 Children—Sudden Entry Into Highway
735.4 Children—Contributory Negligence
737 Children In or Near the Road
738 Children in Residential Areas

Miscellaneous

785 Volunteers—"Good Samaritan" Rule

MJI 705

705 — COMMON CARRIER

A common carrier, such as the train, (bus) (taxicab) owes its passengers the highest degree of care consistent with the nature of the undertaking. While a highest degree of care is required such a common carrier is not an insurer of the personal safety of its passengers. In order for the common carrier to be liable for injuries to its passenger there must be negligence or a finding of fact by the jury that the operator (driver) was able to do what he should have done, but failed to do so

MJI 705.1

705.1 — COMMON CARRIER — SAFE ACCESS

It is the duty of a common carrier to use the utmost degree of care, skill and diligence to provide its passengers safe and convenient modes of access to its (trains) (bus) (other equipment—specify).

MJI 705.2

705.2 — COMMON CARRIER — ALIGHTING

Common carrier has a duty to see that the passenger has a reasonably safe opportunity to alight. One question for you to decide is whether the driver should have seen the hazard (ice).

705.2 — COMMON CARRIER — ALIGHTING

Common carrier owes a duty to its passengers to guard against such perils in alighting as might readily be discovered by a high degree of care. It is for you to say whether or not the driver should have seen the danger and avoided it. If the defect or hazard was small or unlikely to be seen or if the driver had nowhere or place to go to avoid it then the carrier is not liable for injury to the passenger.

MJI 710

710 — PEDESTRIANS — BASIC RULE

The law gives the right-of-way to pedestrians at street crossings and to motor vehicles between crossings.

MJI 710.1

710.1 — DUTY OF PEDESTRIAN

The right-of-way is not absolute, and even though a pedestrian or a motorist has the right-of-way he is nevertheless bound to use such care as a reasonable person would use to see and hear what a reasonable person should see and hear, and to protect himelf and others against danger.

MJI 710.2

710.2 — PEDESTRIANS — CHANGE OF LIGHT

A pedestrian who starts across a street at an intersection upon a green light, has the right-of-way over vehicles until he has crossed the roadway, even after the light has changed to red.

Comment: Cf MJI 507.

MJI 710.3

710.3 — PEDESTRIANS — STOP SIGN

A pedestrian is not bound to obey a stop sign at an intersection. He has the right-of-way over an oncoming vehicle and may cross a boulevard in front of it.

Cf. MJI 579.11.

MJI 710.4

710.4 — PEDESTRIANS — CROSSING BETWEEN INTERSECTIONS

It is not unlawful for a pedestrian to cross a street between crossings, but in doing so he must use greater care than is required at a place where he has the right-of-way in order to avoid injury.

710.4 — PEDESTRIANS — CROSSING BETWEEN INTERSECTIONS

It is not (prima facie) necessarily negligent for a pedestrian to cross a street between street crossings. You must judge his conduct in the light of all the circumstances.

MJI 710.5

710.5 — PEDESTRIANS — ASSUMPTION THAT OTHERS WILL DO DUTY

A pedestrian who has the right-of-way may assume that (where it is reasonably possible,) a motorist will yield that right-of-way to him.

Sun Cab Co. v. *Cialkowski*, 217 Md. 253, 142A^{2d} 587.

MJI 710.6

710.6 — PEDESTRIAN — CONTRIBUTORY NEGLIGENCE — LEAVING PLACE OF SAFETY

A pedestrian who has the right-of-way may nevertheless be guilty of contributory negligence if he leaves a place of safety for one of danger without taking adequate precautions to avoid injury.

MJI 710.7

710.7 — PEDESTRIAN — EXPOSURE OF PART OF BODY

A person is deemed to leave a place of safety when he extends only his arm or other part, but not all, of his body into a place of danger.

MJI 710.8

710.8 — PEDESTRIAN — SUDDEN ENTRY INTO HIGHWAY

A person who suddenly walks, or runs, out into a street in front of a moving vehicle is negligent if you find that such conduct was not reasonable.

Comment: See also MJI 735.3, *Children.*

710.9 — PEDESTRIAN — ENTERING SAFETY ISLAND

You may find that a pedestrian who steps onto a safety island while crossing a street abandons his right-of-way to vehicles proceeding on the highway.

Jackson v. *Yellow Cab*, 222 Md. 367, 160A^{2d} 612.

MJI 710.10

710.10 — PEDESTRIAN — VEHICLE ON WRONG SIDE OF STREET

A pedestrian who sees a vehicle coming on the proper side of the street is not bound to keep on looking to see whether it will change its course to the wrong side of the street.

MJI 710.11

710.11 — PEDESTRIAN — VEHICLE ON INTERSECTING STREET

A pedestrian at a corner is negligent if he does not look to see what traffic is on the street that he is crossing, but he is not bound to observe traffic on the intersecting street. He is entitled to assume that a car from the intersecting street will give him a signal or yield the right-of-way.

710.12 — PEDESTRIAN — ENTRY AND LEAVING STANDING VEHICLE

It is negligence for a person to enter or leave a standing vehicle on the side on which traffic is moving without taking care to see that he can do it with safety.

Cf MJI 730, *Person entering or leaving vehicle.*

MJI 710.13

710.13 — PEDESTRIAN — TURNING BACK FOR SAFETY

It is not contributory negligence for a pedestrian who has started to cross a street and who sees a car during his crossing driving towards him on the wrong side of the street, to turn back in order to reach a place of safety.

MJI 710.14

710.14 — PEDESTRIAN — FAMILIARITY WITH LOCATION

A pedestrian who frequently visits or is present at a crossing or private premises, must be regarded as familiar with its specal conditions and hazards, and assumes the risk of such dangers if he uses them.

Cf. MJI 415, *Assumption of Risk.*

710.15 — WORKERS ON HIGHWAY

A worker on a highway who, in the course of his work, creates a hazard to others, must take reasonable precaution by signs or otherwise, to warn others using the highway of the danger to himself and to others.

Boob v. *Fisher*, 225 Md 273, 170A^{2d} 298

MJI 710.16

710.16 — WALKERS ON THE HIGHWAY

Under the law, pedestrians have an equal right with motor vehicles to travel along or to cross highways. Use of the highways by pedestrians in either daylight or night time is to be anticipated.

There is no duty upon a pedestrian to walk on his left side of the highway in order to face traffic.

Comment: There may be a question of substantive law about facing traffic

MJI 711.1

711.1 — MOTORIST'S DUTY TO PEDESTRIANS — AT THE INTERSECTION

The driver of a motor vehicle must use a high degree of care at an intersection or crosswalk. He must use a higher degree of care than a pedestrian (because of the great harm that a car might do to a pedestrian).

Comment: Technically the reasonable man standard applies generally. Perhaps some form of expression other than "higher degree of care" should be considered. Cf. MJI 408.

MJI 711.2

711.2 — MOTORIST'S DUTY TO PEDESTRIANS — BETWEEN INTERSECTIONS

A driver has no duty to anticipate that a pedestrian will cross a highway (street) between intersections.

MJI 711.3

711.3 — MOTORIST'S DUTY TOWARD PEDESTRIAN — SPEED

If a motorist injures a pedestrian while driving at excessive speed, you may find him negligent if the excessive speed caused or contributed to the accident.

See *Alston* v. *Forsythe* 226 Md. 121, 172A^{2d} 474, and Cf. MJI 445, *Violation of Statute.*

MJI 712

712 — HANDICAPPED PERSONS

No instructions recommended.

Comment: Maryland Law does not appear to make any special exception for handicaps other than blindness. See MJI 713.

MJI 713

713 — BLIND PERSONS

A blind or partially blind pedestrian has the right-of-way (at crossing or intersection not controlled by officer or signal) if before he begins to cross he extends bfore him at arm's length of a white cane (or white tipped shiny metal cane) or if he is accompanied by a guide dog. Motorists must come to a full stop and allow the blind pedestrian to complete crossing the street.

Comment: Article 66½ § 194 re blind pedestrians does not apply where officer or traffic signal controls the crossing.

Query: The statute says "upon receiving such a signal" the motorist must stop. Does this have any effect on the usual concept of what the reasonable man would have seen?

How does the blind man see the red light?

Doesn't every one have right to complete crossing after the traffic light changes?

Should there also be a cane in a guide dog situation?

Suppose ordinary Mr. A. is airing his German Police dog while wearing sunglasses.

How partially blind do you have to be in order to be held not guilty of the misdemeanor of carrying a white cane?

MJI 715

715 — BICYCLIST

No instruction recommended.

Comment: Use MJI 645 to the effect that the bicyclist must obey motor vehicle rules.

MJI 720

720 — PASSENGERS

Mrs. P was a passenger in Mrs. D's car at the time of the accident. A passenger has a duty to exercise reasonable care for his own safety and that of others.

Ordinarily, a passenger is not under a duty to warn the driver of dangers or to concern himself about traffic conditions or the operation of the car. There are times, however, when a passenger can no longer rely upon the driver but should take some active measures to protect himself. If Mrs. P knew of the danger which is likely to cause injury and she has no reason to believe the driver knows it exists, she should warn the driver; or, if she is aware that the car is being driven negligently and she has an opportunity to protest, she should do so.

It is for you to say, considering all of the circumstances, whether Mrs. P failed to act as a reasonably prudent person while she was a passenger in Mrs. D's car.

Comment: Cf. MJI 725, *Guest Riders*. For common carrier passengers see MJI 705.

721 — INVITEES

No instruction recommended.

Comment: It would seem that Maryland law of reasonable care under the circumstances applies to a situation where a business guest is riding as a passenger in an automobile.

What about a Workmen's Compensation situation?

See MJI 725, *Guest Rider* and MJI 720, *Passenger*.

MJI 722

722 — LICENSEES

No instruction recommended.

Comment: Liability of a licensee with respect to the use of a motor vehicle seems to be a question of agency. See MJI 305.

MJI 725

725 — GUEST RIDER

A motorist has the duty to use ordinary and reasonable care to avoid injury to an invited guest rider and to use ordinary and reasonable care not to increase the danger or to subject the guest to any new danger. However, in Maryland the motorist is liable for simple negligence which results in injury to an invited guest. Thus, the rule of reasonable care applies in this case and Mrs. P's being a friend (hitchhiker) (or her own pleasure) (etc.) does not alter the rule. In some other states the law is different and variously requires wanton misconduct or gross negligence.

MJI 726

726 — TRESPASSER

No instruction recommended.

Comment: No cases have been noted with respect to the use of an automobile.

MJI 727

727 — HITCHHIKER

The same duty of care applies to a hitchhiker, as applies to other passengers.

Mr. P. was an invitee in Mrs. D's automobile and the duty of care is not affected by this fact.

Comment: See MJI 725. This instruction may be unnecessary.

MJI 729

729 — RUNNING BOARD PASSENGER

The law does not prohibit riding upon the running board of a truck and Mr. R. (the running board passenger) is not necessarily (deprived of his right to recover) (contributorily negligent) because of his being transported in that fashion. You should consider the surrounding facts and circumstances.

Comments: This instruction will probably fit a passenger who is riding on the back of a truck. See MJI 725.

MJI 730

730 — PERSON ENTERING OR LEAVING VEHICLE

A motorist who enters a parked car from the street side of the road, remaining out of the lane of cars approaching from the opposite direction, is not negligent.

Mr. A. is not bound to anticipate that another motorist will suddenly cross into the opposite lane of traffic.

Comment: Cf. 710.12 *Pedestrians.*

MJI 735.1

735.1 — CHILDREN — DUTY OF MOTORIST

The presence of children in the vicinity is a circumstance to be considered in determining whether the manner in which a person is driving is negligent at any partcular time. Children often act with less judgment and care than adults do. A driver must, therefore, exercise greater caution when he knows or should know that children are in the vicinity.

The type of neighborhood, time of day, proximity of schools, etc. are some of the factors to consider in deciding whether a reasonable person would have realized children might be in the vicinity, and the speed and care with which a reasonable person would have driven under the circumstances.

735.2 — CHILDREN — MOTORISTS DUTY TO SEE

If a motorist strikes a child on the street, it is for you to decide whether he was driving negligently at the time or whether he should have seen the child sooner than he did, or whether he could reasonably have avoided the accident.

MJI 735.3

735.3 — CHILDREN — SUDDEN ENTRY INTO HIGHWAY

If a child appears in the street suddenly and unexpectedly, a driver is not negligent in hitting him unless at the time he was driving without the proper degree of care and attention.

735.4 — CHILDREN — CONTRIBUTORY NEGLIGENCE

A minor child is not held to as high a standard of care as an adult.

Ordinary care with respect to P. J., a minor, means that degree of care which a reasonably careful minor (child) of his age, mental capacity, and experience, would use under circumstances similar to those shown by the evidence.

The law does not say how such a person (child) would act under these circumstances. That is for you to decide.

Comment: This form is similar to Illinois 10.05. See also MJI 410-412.

Maryland cases have held that a child of age 4 cannot be contributorily negligent. Children age 5 or over may be negligent but are not bound to the adult standard of care. *State*, use of *Taylor* v. *Bradley*, 216 Md. 94, 140A. 2d 173.

MJI 737

737 — CHILDREN IN OR NEAR THE ROAD

No instruction recommended.

Comment: Use MJI 735.1 to the effect that a driver must exercise greater caution when he sees children in or near the road.

MJI 738

738 — CHILDREN IN RESIDENTIAL AREAS

No instruction recommended.

Comment: See MJI 735, and comment MJI 737.

785 — VOLUNTEERS

No instruction recommended.

Comment: The "Good Samaritan" cases are beyond the scope of this text.

Chapter 800

DAMAGES

General

Elements

Husband and Wife

Parent and Child

Death—Disability

Aggravation—Mitigation

800 — DAMAGES — INTRODUCTION

If you decide in favor of Mr. P with respect to liability, you must then assess tre damages; that is, set an amount of money which will reasonably and fairly compensate him for the damages which result from the negligent conduct of Mr. D.

As I go along, I will mention various elements of damages. Concerning each element of damage which I mention, you may or may not find that the evidence proves any damage at all, or if there is some damage of a given category, it is for you to determine from the evidence, how much should be allowed as just and fair compensation.

Let me repeat, that it is my duty to instruct as to all the law that may be pertinent in your deliberations. You must not consider my giving instructions on damages as an intimation of any view of my own on the issue of liability, or as to which party is entitled to your verdict.

Comment. Illinois 30.01 and Minnesota 153 use a frame-type introductory damage instruction. The instructions are to consider "such of the following items" or "elements" as result from proved negligence. The foregoing draft adds a precautionary paragraph to the effect that the instruction on damage should not be misconstrued as in CAJI § 180. Even though not strictly necessary, this precaution may be advisable.

The use of an introductory damage instruction should eliminate further necessity for "if any" precautions when the court is covering specific elements of damage.

MJI 801

801 — BURDEN OF PROOF

Each person who claims damages must prove each of the elements of his damage. An award of damages must not be based upon speculation or conjecture, but upon evidence relating to the nature, extent, permanency, or probably duration of the injuries.

MJI 803

803 — GENERAL — NO DIVISION

If you find Mr. D negligent, you are to award damages in full for all of the injuries sustained by Mr. P as a result of the accident. Even though Mr. D's negligence is slight or not of a gross or severe character, you are nevertheless instructed to fix that amount of money which compensates Mr. P for the whole amount of his damages.

Whiting v. *Clarke*, 229 Md. 272, 182A^{2d} 874.

MJI 805

805 — DISREGARD AD DAMNUM

You are instructed that Mr. P claims a specific sum of money in the Declaration, as is required by practice in Maryland. This claim is not in evidence and should be disregarded in arriving at the amount of damages to be awarded Mr. P.

MJI 806

806 — PAST AND FUTURE

An injured person is entitled to recover both past damages and reasonably probable future damages. Thus, you should consider not only the injuries and expenses already incurred, but if the injuries are of a more lasting nature, or future expenditures or losses will be suffered, you should consider all reasonably probable future consequences in arriving at the total amount to be awarded Mr. P.

Comment: This instruction follows from the whole damage concept of MJI 803 and should precede the other instructions concerning future damage aspects.

The Committee may feel that "reasonably probable" lacks sufficient definiteness. However, few personal injury consequences are really certain.

808 — PAIN AND SUFFERING

In estimating the damages, you may consider Mr. P's pain and suffering in connection with his injury. Mental, as well as physical suffering, may be considered.

Comment: Cf. MJI 806 Past and Future. This instruction is in the context that suffering could continue into the future; as well as, be in the past. Cf. Ill. 30.05.

8 M.L.E., *Damages*, §§ 62-67.

MJI 809

809 — FRIGHT

The physical injury directly resulting from nervous shock or fright may be considered as an element of damage.

Comment: The headnote form of instruction seems appropriate here. Further attempt at clarification will be probably troublesome.

Physical impact is not required in Maryland. *Resarago* v. *Davies*, 199 Md. 479, 86A^{2d} 879.

MJI 811

811 — MEDICAL EXPENSES

All necessary and reasonable expenses for medical care and treatment should be awarded Mr. P. In making the award, you should consider the value of the services, regardless of who pays for them. You are to consider the value of the services already required and those that may be required in the future.

MJI 814

814 — LOSS OF EARNINGS

You are instructed that Mr. P's loss of work time is a proper element to be considered in arriving at the award of damages. This is so, even though he is not working for a fixed salary or wages, or is unemployed.

Ihrie v. *Anthony*, 205 Md. 296, 107A^{2d} 104.

815 — SALARY RECEIVED DURING DISABILITY

Even though Mr. P's salary (wages) continued during the time of disability, you should not take this fact into account in assessing damages for loss of earning power.

Leizear v. *Butler*, 226 Md. 171, 172A^{2d} 518.

MJI 816

816 — INSURANCE RECEIVED

You are instructed to consider and arrive at the total loss. No deduction may be made on account of insurance payments received by Mr. P.

Cf MJI 803

817 — WORKMEN'S COMPENSATION RECEIVED

In this case both Mr. P and the Workmen's Compensation Insurance Carrier are plaintiffs. If therefore you find a verdict for the Plaintiffs you must divide the total amount as follows:

First, the Workmen's Compensation carrier, the X Insurance Company, is entitled to receive the amount awarded in the Workmen's Compensation proceeding, not to exceed $———; and Second, any amount in excess thereof to Mr. P.

Article 101, § 58.

818.1 — NOT TAXABLE AS INCOME

Awards of damages in automobile accident cases are not subject to income tax and you must not consider the tax consequences at all in this case.

Comment: Suspicion by the Jury that the award to worthy Plaintiff will be depleted by income tax could lead to a padded verdict. The foregoing instruction has been prepared in the event it is considered desirable

MJI 818.2

818.2 — ATTORNEY'S FEES

Attorney's fees must not be considered by you in arriving at your verdict or in assessing damages.

MJI 819

819 — PUNITIVE DAMAGES

You are instructed that punitive or extra damages may not be granted in this personal injury case. The test for you to determine is the damage done. Mr. P maybe allowed that amount and no more.

820 — DISFIGUREMENT

You may consider, among other elements of damage, the effect of disfigurement resulting from the injury to Mr. P. His social position, occupation, and future prospects, along with any other factor which explains the effect of disfigurement on him should be considered.

Comment: This Draft is based on Ill. 30.04 and 8 MLE, *Damages*, § 61.

MJI 821

821 — SOCIAL ACTIVITIES

No instruction recommended.

Comment: See MJI 820 Disfigurement.

MJI 822

822 — PROPERTY DAMAGE

Any reasonable expense, or loss of value, which results from loss or injury to property must be considered. It is not necessary that the expenses be actually paid or that the property be replaced. The measure of damages in case of a total loss or destruction of an automobile is its reasonable market value at the time and place of the loss.

If the automobile is other than a total loss, you should consider the cost of repairs, plus the value of its use during the time which it takes to repair the vehicle.

Comment: This instruction has been prepared for use in connection with automobile damage. Other property losses can and do occur in motor vehicle cases.

MJI 824

824 — INCIDENTAL EXPENSES

Any incidental expenses which are reasonable and which are necessary (such as expenditures for help in the home) as a result of the injury, may be considered.

Comment: Under the general rule that wrongdoer is liable for all natural and proximate consequences of his tort, it would seem that incidental expenses are recoverable. Even though the other instructions with reference to personal injury and property damages may be broad enough to take care of the incidental expenditure situation, the above instruction has been added.

No case is noted where care of the home as such, without extra expenses, has been included in the damages.

826 — SUBSTITUTE TRANSPORTATION

The reasonable cost of rental or substitute transportation may be considered in arriving at the value of loss of use during the time of repairs.

Comment: The foregoing phrase might be added for use with MJI 822 Property Damage.

830.1 — HUSBAND — WIFE — MEDICAL EXPENSES

In this case, Mr. P is claiming medical expenses of his wife. Since he is obliged, under the law, to pay such expenses, you should consider those necessary and reasonable for her treatment and care, as an element of damage due him.

Comment: These instructions are phrased in terms of husband plaintiff. A wife is not entitled to services, nor can she sue for loss of consortium, nursing care, or farm labor done by her *Coastal Tank Lines* v. *Canoles*, 207 Md. 37, 133 A^{2d} 82.

For death cases, see MJI 850, et seq.

For Agency of Husband and Wife, see MJI 312.

MJI 830.2

830.2 — HUSBAND AND WIFE — LOSS OF SERVICES

The reasonable value of the services of his wife of which Mr. P has been deprived, is to be considered as an element of damage due him.

MJI 830.3

830.3 — HUSBAND AND WIFE — LOSS OF CONSORTIUM

The reasonable value of the society, companionship and conjugal relationship with his wife of which Mr. P has been deprived is an element of damage that you may consider.

MJI 834

834 — PARENT AND CHILD — PARENT'S DAMAGES FOR INJURY TO CHILD

For the injury to P. Jr., the child of Mr. P the (father's) (mother's) claim for damages may include:

1. **The reasonable value of medical supplies, and services for P. Jr.**
2. **The loss of the P. Jr.'s services which (Mr. P) or (Mrs. P) would have received up to the date of trial.**
3. **The value of the P. Jr.'s (working time) (earnings) (salary lost) as a result of the injury to date. [The fact that (P. Jr.) actually received his salary for all or part of the time is not to be considered by you in determining loss of (earnings) (salary).]**
4. **The present cash value of the reasonable value of necessary medical supplies and services reasonably certain to be required in the future until (P. Jr.) reaches 21.**
5. **The present cash value of the services which the (Mr. P) (Mrs. P) is reasonably certain to lose in the future until (P. Jr.) reaches 21.**
6. **In determining the amount of such future damage, you should consider the age, health, skill, training, experience and industry of P. Jr. and the period during which the loss of services will continue.**

Comment. If the child reached the age of 21 years or was emancipated before trial, recovery is limited his minority or to the date of emancipation.

If the evidence shows the child has been emancipated or could be emancipated before reaching the age of 21 years, this factor must be added to the instruction in limiting the period of time for which the parent can recover future damages. An instruction on emancipation of a minor should also be given if a fact question is raised by the evidence.

The instructions forms in the MJI 834 drafts are from Minn. J. 175, 176 and 177.

MJI 834.1

834.1 — CHILD'S ACTION — LOSS OF FUTURE EARNING CAPACITY

For the child P. Jr.'s own injury you may include the present cash value of the total or partial loss of his future earning capacity which is reasonably certain to exist after he reaches 21. In determining the amount of such future damages, you should consider the age, health, skill, training, experience and industry of P. Jr., whether the loss is for a limited period or permanent, and whether the number of years P. Jr.'s earning expectancy is equal to or less than his life expectancy.

Comment: If the evidence shows that the child has been emancipated or is likely to be emancipated before the age of 21 years, this factor must be added to the instruction in fixing the beginning of the period of the loss or impairment of future earning capacity. An instruction on emancipation of a minor should also be given if a fact question is raised by the evidence.

MJI 834.2

834.2 — CHILD'S ACTION — FUTURE MEDICAL EXPENSES

The present cash value of necessary medical supplies and services (including the services of attendants) which are reasonably certain to be required in caring for (P. Jr.) in the future after (he) reaches 21 years.

MJI 836

836 — SUPPORT OF RELATIVE

No instruction recommended.

MJI 850.1

850.1 — DEATH — LOSS OF SUPPORT

If you decide for the Plaintiffs, you must then fix the amounts of money, which will reasonably and fairly compensate the widow, Mrs. P., and the child, P. Jr., for injuries resulting from the death of Mr. P. The damages which you find must be in the nature of money losses. The law does not permit an award for the solace or grief or mental suffering of the family.

Comment: Maryland's Wrongful Death Statute, 'Lord Campbell's Act", Article 67, § 4 provides that the "action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused or if there be no person or persons entitled than any person related to the deceased by blood or marriage, who, as a matter of fact, was wholly dependent upon the person whose death shall have been so caused". The statute goes on to provide "in every such action, the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant shall be divided amongst the above-mentioned parties, in such shares as the jury by its verdict shall find and direct". For parties in wrongful death action, see Maryland Rule Q-41

850.2 — DEATH — WORKMEN'S COMPENSATION

You must determine whether or not the widow and minor children, or any of them are dependent for support either in whole or in part on the deceased, Mr. P at the time of the fatal injury date. Dependency is not a technical question. It is a question of reasonable probability that the dead person would continue (resume) supporting the claimants.

Comment: The case of *Maryland House of Correction* v. *Jenkins*, 228 Md 146, 178 A^{2d} 892 is a Workmen's Compensation case construing Article 101, § 36 (8) (d). There should be caution in the application of the *Jenkins* case to general litigation. Cf. MJI 850.1.

MJI 850.3

850.3 — DEATH — HUSBAND AND WIFE

In estimating the damages arising out of the death of her husband, you should consider the probable duration of the joint life of Mr. and Mrs. P, had Mr. P not been killed.

You may not speculate on the remarriage of Mrs. P.

MJI 850.4

850.4 — DEATH OF CHILD — MENTAL SUFFERING

Mr. and Mrs. P may recover only the money losses, and not for mental suffering with respect to the death of their child.

The loss of services of the child during the remainder of his minority.

Comment:

Ref. 17 MLE, *Parent & Child*, § 10; 8 MLE, *Death*, § 26.

MJI 850.5

850.5 — DEATH OF PARENT — EDUCATION AND SOCIAL POSITION

You may consider that the children of the deceased, Mr. P, lost the comfort, education, position in society; as well as, support which they might have received if their father had lived, retained his income and they had continued together as a part of his family.

MJI 855

855 — MORTALITY TABLES

In calculating damages, you must consider the P's condition of health before the injury, as compared to his condition following the injury. Annuity tables giving a person's value of his life annuity may be considered.

State, use of *Mitchell* v. *Jones*, 186 Md. 270, 46A^{2d} 623.

MJI 857

857 — FUNERAL EXPENSES

Under the law, the funeral expenses may be recovered by the administrator (executor) of the estate of the deceased person and not by his family, as such. Accordingly, funeral expenses should not be considered in the award to the surviving husband, parents, wife, or children.

MJI 858

858 — SHORTENING OF LIFE

You are instructed that the law does not permit any recovery for shortened life expectancy, but you may, however, consider evidence of life expectancy in determining the seriousness of the injury and the consequent pain and suffering and the mental anguish which Mr. P has suffered and will suffer in the future.

Rhone v. *Fisher*, 224 Md. 223, 167A^{2d} 773

MJI 860

860 — DISABILITY

If future disability is reasonably certain, you may consider the effect of that disability on Mr. P's future earning capacity. If Mr. P's earning capacity has been destroyed or reduced by his injuries, you may award damages for such loss or reduction of future earning capacity. The future earning capacity should be reduced to its present cash value.

In fixing the amount of such damage, you should consider what Mr. P's health, physical ability and earning powers were before the accident and what they are now, and whether the loss of future earning capacity is for a limited period of time or is permanent.

Comment: Some reasonably broad instruction appears advisable at this point. The form used above is similar to Minn JIG 160. The Jury has to consider:

(1) Loss of capacity.
(2) Duration of the loss, and
(3) Present value of the loss.

For present cash value, see MJI 862.

MJI 862

862 — PRESENT CASH VALUE

In computing the damages arising in the future because of [injuries], [future medical, or caretaking expenses], you must determine the present cash value of the damages, expenses, and earnings. By present cash value, I mean that sum of money, which when added to what that sum may reasonably be expected to earn in future, will equal the amount of the damages, expenses and earnings at the time in the future when the expenses must be paid or the earnings would have been received.

Comment: This instruction is based on Ill. 34.02 and should be used in connection with MJI 862, *Disability*

The Illinois instruction goes on to exclude pain and suffering, disability and disfigurement from elements of damage which are reduced to present cash value. According to the comment, the Illinois instruction assume these types of future damages:

(1) The injury itself, as loss of a hand,
(2) for medical and other expenses arising from the injury,
(3) for loss of earnings."

Query: Is a distinction between disability and lost future earnings valid?

MJI 864

864 — DISABILITY — PARTIAL

No instruction recommended.

Comment: See MJI 860, *Disability*, which directs the Jury to consider both duration and incapacity. The concepts of partial-permanent, total-temporary, might be more fully developed. However, it seems that elaboration of these concepts into ordinary tort litigation as distinguished from certain workmen's compensation situations is unnecessary

MJI 866

866 — DISABILITY — TOTAL

No instruction recommended.

Comment: Use MJI 860, and see *Comment* MJI 864 re use of instruction.

MJI 880

880 — AGGRAVATION — PREVIOUS INJURY OR DISABILITY

If because of [a prior accident], [illness], or otherwise, Mr. P had some defect or disability at the time of the accident, he is nevertheless entitled to recover for aggravation of such pre-existing condition. We must be careful not to place the blame for the old or pre-existing (injury) (condition) on anyone involved in the present situation. However, if Mr. P's condition was made worse by the negligence of Mr. D, he is entitled to recover for the ill effects which are over and above those which would have normally followed from the pre-existing condition, had there been no accident.

Comment. The above is a draft, based on Minn. 163 and Cal. 171 C.1.

MJI 884

884 — MITIGATION OF DAMAGES — PERSONAL INJURY

In determining the amount of money which will reasonably and fairly compensate Mr. P for his injuries, you are to consider that an injured person has a duty to act reasonably in obtaining medical treatment and in caring for his injury. The award must be limited to those damages wihch would have been suffered if he had acted reasonably in obtaining treatment and care.

Comment: The Source of the draft is Minn. 164 and Ill. 33.01.

Both Minnesota and Illinois notes warn that the instruction is not to be used where the plaintiffs failure is to submit to a surgical operation. Illinois comment suggests that the instruction should be used only where the evidence creates an issue of fact and the damage is separable.

MJI 885

885 — MITIGATION OF DAMAGES — PROPERTY

In fixing the amount of money which will reasonably and fairly compensate Mr. P, you are instructed that a person whose property is damaged must exercise ordinary care to minimize existing damages and to prevent further damage. Any loss which results from a failure of Mr. P to exercise such care, should be disregarded.

ILLUSTRATIVE REQUEST FOR INSTRUCTIONS

NOTE: Form of Request for Instructions

One of the principal advantages of pattern jury instructions is that counsel may request instructions by citation of or mere reproduction of model text, rather than the existing practice of preparing word for word, "prayers." Just as the Court may disregard specific MJI wording, counsel may draft specially worded requests for instruction on any point. However, the typical case should be adequately handled by MJI's.

One question of form of request should be considered. This problem is whether counsel is to be required only to cite the MJI requested by number or whether counsel should submit the whole text of a MJI in writing. If the first approach is adopted, Rules 554(a), (d), and (e) should be amended to the effect that the content of a MJI may be incorporated by reference in any request or exception by citing the MJI number.

On the other hand, the existing procedure of presenting word for word requests may tend toward a more explicit issue type request and may tend to produce desirable refinements in any standard form MJI.

The following form illustrates a defendant's request in an uncontrolled intersection case. In the illustration, counsel is requesting instructions by reference to the number and in one instance by a specially drafted instruction. If the specially drafted instruction is refused, an alternative request is made by MJI number.

ILLUSTRATIVE REQUEST FOR INSTRUCTIONS

Samuel Able

v.

John Brown

Case #12345

REQUEST FOR INSTRUCTIONS

of

DEFENDANT JOHN BROWN

The Defendant John Brown requests that the Court instruct the Jury on the law as set forth in the following Maryland Jury Instructions:

MJI	105.1	Issues (Contributory Negligence)
MJI	115	Jury as Trier of Fact
MJI	117	Credibility
MJI	145	Judge's Demeanor
MJI	200	Proof Required
MJI	205	Looked But Did Not See
MJI	408.1	Negligence Defined
MJI	410	Contributory Negligence Defined
MJI	502	Management and Control
MJI	505.1	Right of Way Defined
MJI	507	Clearing Intersection
MJI	575.4	Uncontrolled Intersection
MJI	801	Burden of Proof—Elements of Damage

Defendant further requests instructions as follows:

A. The jury must not consider the injury to Mr. Able's back in arriving at any award of damages. The injury to his back is from another accident.

B. If Request A is refused, Defendant then requests:

MJI 880 Aggravation—Previous Injury or Disability.

ILLUSTRATIVE CHARGES

The sample instructions reported herewith were prepared by Judge John B. Gray, Jr. early in the study and were included with his Memorandum of September 18, 1964. The following five drafts have been selected and are reported herewith:

1. Collision at a Controlled Intersection
2. Collision at an Uncontrolled Intersection
3. Infant Pedestrian Injury
4. Head-on Collision
5. Multiple Defendants—Special Issues

NOTE: In the final MJI draft, sample charges will likely refer to MJIs and may illustrate sample arrangements and combinations of MJIs in various types of cases.

COLLISION AT CONTROLLED INTERSECTION

Mr. Foreman, and members of the jury:

The testimony in this case has now been completed, and the next order of business is for the Court to instruct you with respect to the law in this case and your duties in connection with its final disposition.

There are some principles of law which you must know about, but primarily this case is a question of fact which you must resolve. The facts are peculiarly your responsibility, and the Court will refer to them only for the purpose of bringing clearly into focus the factual problems which you must resolve. You must determine the weight of the evidence which you have heard, and the credibility of the witnesses who have testified.

In the first place, the Court wants to inform you that the burden of proof in this case is upon the plaintiff, and the plaintiff, in order to be entitled to recover, must convince you that the facts in the case are as claimed by the plaintiff. If after hearing the evidence and this discussion of the case by the Court, and the argument of Counsel, which you will hear in a few moments, you are not convinced by a fair preponderance of the evidence that the plaintiff is entitled to recover, then, in that event, your verdict in the case should be for the defendant, because that would mean that the plaintiff had not met the burden of convincing you by a fair preponderance of the evidence that the plaintiff is entitled to recover.

This case involves an automobile collision which occurred at two intersecting streets or roads. This intersection was controlled by traffic lights, which we will discuss in a few moments.

We want to say first, however, that all persons who use the highway are required to use due and proper care. That is to say that each of the persons using the highway is bound to use, for his own safety and that of others, the care and prudence in connection with the operation of his automobile which an ordinarily prudent person would have used under like circumstances, and the failure to use that care might result in negligence on the part of the person concerned and make him liable for mishaps to others.

In addition to this general rule, there is a provision in the Maryland law for the installation by the proper authorities of traffic control signals at busy intersections. There was such a

traffic control at this intersection at the time of the collision referred to in the evidence. The parties have agreed that at the time of the occurrence, this traffic signal was operating properly; that is to say, when the light was green with respect to traffic on one road, it was red with respect to the traffic on the other and intersecting road.

There is a sharp conflict in the testimony as to which of the lights was red, denying passage to traffic on that road, and which had the green or "go" signal. This is a conflict in the testimony which you must resolve, and you are directed to weigh all of the evidence carefully and to reach your determination based upon what you conceive to be the weight of the testimony in the case. The only qualification or addition the court feels it necessary to make is to point out to you that just before a light turns from green to red, there is a cycle of amber light, or "caution" light, to warn incoming drivers that their signal is about to turn against them. If a driver enters the intersection on the green light, he is entitled to go through the intersection and be out of harm's way before the traffic on the intersecting road is justified in entering the intersection.

If your verdict in this case is for the plantiff, you are entitled, in determining the amount of the damages to be awarded to him, to take into account the plaintiff's out-of-pocket expenses, including repairs to his automobile, hospital bills, doctors' bills and any other expenses which he may have established to your satisfaction by the evidence. You may also give consideration to allowing him such sum as will fairly compensate him for his pain and suffering incident to his convalescence from the injuries sustained in the collision referred to in the evidence. If you find the plaintiff sustained a loss of earnings during his convalescence, you are entitled to allow him such sum as will reimburse him for this loss of earnings.

There is evidence in the case tending to show that the plaintiff sustained some scarring about the face, which will be in the nature of a permanent condition, and he has sustained a limp in one of his legs which the doctor described as probably permanent. You will recall that the doctor's testimony was that the leg had reached its maximum recovery, and that in his opinion the limp which was described by the witness and by the plaintiff, and perhaps observed by you, will continue to be a permanent condition. If you find that to be true, you are entitled to award also to the plaintiff such sum as will fairly compensate him for this permanent injury.

COLLISION AT AN UNCONTROLLED INTERSECTION

Mr Foreman and members of the jury.

The facts in this case are quite simple, although seriously disputed by the two sides who have been heard by you. It is your responsibility to evaluate this testimony and to decide what the true facts are. You must weigh the evidence and determine the credibility of the witnesses whom you have heard and decide what really happened in connection with the episode in which the plaintiff claims to have been injured. Anything the Court may say concerning the facts will be advisory only, and we will refer to the facts chiefly for the purpose of bringing clearly into focus the factual problems which you are called upon to solve

There are some principles of law which you must know about, and the Court will instruct you concerning those You are bound by what the Court says concerning the principles of law which were involved, but primarily this is a question of fact and your determination controls

The collision referred to in this case occurred in the open country at an intersection of what is known as the Johnstown Road which runs roughly East and West, with the Barstow Road, which runs approximately North and South. The intersection of these two roads is not controlled by any signal or other device, and there is no stop sign against traffic on either of these roads.

The plaintiff was driving East on the Johnstown Road, and approached this intersection from the West. The car operated by the defendant was driving South on the Barstow Road, and approached the intersection from the North. In this situation, the plaintiff was on the defendant's right and, under the law of Maryland, was given the right of way, because the statute controlling this situation provides that the car on the right at an uncontrolled intersection has the right of way over the car on its left

The defense in this case is that the defendant, on approaching the intersection, looked both ways and could see no approaching traffic on the Johnstown Road, but that before he could cross the intersection, the plaintiff's car appeared around the curve in the Johnstown Road at a speed which was greater than was reasonable and proper under the circum-

stances and which made it impossible for the defendant to avoid the collision.

The Court instructs you, as a matter of law, that ordinarily speed on the part of the driver of a favored car, that is, a car which has the right of way under the circumstances of the particular case, is not relevant, because regardless of speed, the favored car has the right of way. However, if the speed of the plaintiff's car was so great as to deny the defendant an opportunity to see him in time to yield the right of way to him, and if that speed was in excess of the speed limit established for that roadway, or if it was greater than was reasonable and proper under all of the circumstances, such speed may be found by you to be contributory negligence on the part of the plaintiff in this case and defeat any right of recovery he might otherwise have.

With respect to the question of primary negligence, that is, whether the defendant in this case failed to exercise due and proper care in the operation of his automobile, the burden of proof is on the plaintiff, to satisfy you by a fair preponderance of the evidence that your answer should be in the affirmative on this issue. However, on the issue of contributory negligence, that is, whether the plaintiff exercised due and proper care in the operation of this automobile, and that, if he failed to do so, this contributed toward the happening of the collision in which he was hurt, the burden is on the defendant to show by a fair preponderance of the testimony that the plaintiff was guilty of contributory negligence, and that this contributed toward the happening of the collision.

If you find your verdict in this case for the plaintiff, you are entitled to take into account, and to allow him compensation for, the following items of his claim.

He claims that his automobile was a total wreck, except for small salvage value, and Counsel have agreed that his loss in this respect was $750.00, which is the amount which you should allow with respect to this element of the plaintiff's claim if your verdict is in his favor; he claims that he had compound fracture of the right leg and was required to incur hospital bills in the amount of $550.00 because thereof. If you find that this is a reasonable charge for these hospital services, this amount may be allowed by you. He has presented the bills of two doctors, and if you regard their charges as proper and reasonable under the circumstances, you may

allow such sum as will reimburse the plaintiff for these bills. He also was employed at the time of this accident, and the testimony indicates that he was unable to return to his job for eight weeks. If you find this to be true, you may allow him such sum as will compensate him for his lost earnings. You are also entitled to consider the pain and suffering to which he was subjected by reason of the injuries described in the evidence. The Court can give you no yardstick by which you can measure pain and suffering, but you are directed to use your practical common sense in an effort to arrive at a sum which will be fair, both to the plaintiff and to the defendant, concerning an allowance for the pain and suffering to which the plaintiff was subjected during his convalescence.

The testimony indicates that there is a permanent scar at the site of the fracture, and the doctor's testimony indicated that, in his opinion, the plaintiff will have a slight limp as a result of this injury for the rest of his life. However, his testimony indicated that this limp would not be disabling or likely to cause any impairment in the functional use of the injured limb. However, he indicated that during changes in weather, some discomfort in the leg could be expected, and that this would become worse, though not disabling, as the plaintiff grows older. If you find there is any substantial permanent injury to the plaintiff's leg, you are entitled to make such allowance therefor in your verdict as you think will fairly compensate the plaintiff for any permanent injury which he has sustained.

INFANT PEDESTRIAN INJURY

Mr. Foreman and members of the jury:

There are some principles of law which you ought to know about, and concerning which the Court will instruct you in a few minutes. However, I am sure you will understand from the evidence in this case, that primarily this case involves a dispute of fact with respect to how the collision occurred between the plantiff and the car operated by the defendant. You will understand, of course, that the determination of the facts will be your responsibility. You must weigh the evidence and determine the credibility of the witnesses who have testified, and the Court's reference to the facts will be only for the purpose of bringing clearly into focus the factual problems which you will be called upon to resolve.

We should inform you first that the burden of proof in this case is upon the plaintiff, to establish by a fair preponderance of the evidence that he is entitled to recover in this case. Now the defendant contends that while he was not guilty of any act of negligence, entirely irrespective of that, the plaintiff here has no right to recover, nor does his father, because he is barred by the doctrine of contributory negligence.

In a suit of this sort, any concurring negligence on the part of the plaintiff, which directly contributed to the happening of the accident, will bar recovery by the plaintiff. However, in this case, because of the tender years of the plaintiff, he is not charged with the same degree of care as would an ordinary adult person. Ordinarily a plaintiff in this type of action is charged with exercising the degree of care which an ordinarily careful and prudent person would have exercised under like circumstances. This contemplates the degree of care which an ordinary, prudent and adult person would exercise. However, this lad is not charged with that degree of care. He is charged only with that degree of care which a child of his age and experience would reasonably be expected to exercise under like circumstances.

There is a sharp conflict in the testimony and consequent divergent claims by the respective parties about how this accident happened. Perhaps it would be helpful to you if the Court reviews the claim of both sides, so that you will see clearly the area of dispute which you must resolve

The plaintiff claims that Peter Plaintiff, who was aged ten years at the time of this occurrence, was playing ball on the school athletic ground and, because a ball escaped into the adjacent street, Peter started into the street to retrieve the ball; that before entering the street he carefully looked in both directions, and, seeing no traffic approaching, he proceeded after the ball. The plaintiff further claims that the defendant approached the area at a high rate of speed, and either did not see Peter or, if he saw him, negligently failed to avoid striking him.

On the other hand, the defendant claims that he was driving slowly and well within the speed limit for the area being traversed, because he knew of the playground area. He claims he didn't see Peter until he bounded out between two parked cars and ran into the side of the defendant's car.

This presents a serious dispute of fact, crucial to the decision of this case, and, of course, you have the responsibility of determining what the true facts are.

The Court informs you that it was the defendant's duty to drive his car at a speed that was reasonable and proper under all of the circumstances, and to keep a lookout such as would have been kept by a reasonably prudent person under like circumstances. On the part of the plaintiff, we wish to say that it was his duty, when he decided to go into the street after the ball, to exercise the degree of care and caution that an ordinarily prudent lad of his age, and with his experience, would have exercised under like circumstances.

If your verdict in this case is in favor of the plaintiffs, you are instructed that there are two different claims, one on behalf of Peter personally and one on behalf of John Plaintiff, Peter's father, and different rules apply to the amount of the verdict with respect to each of these two plaintiffs. As regards Peter's claim, his claim is limited to pain and suffering attendant upon his convalescence and reasonably certain to continue in the future. If you find from the evidence that a second operation will be reasonably necessary to restore Peter's leg to normal use, then you may also allow Peter such reasonable sum as will fairly compensate him for the pain and suffering which is reasonably certain to result from the second operation and during his convalescence therefrom. The medical testimony indicates that Peter may expect a complete recovery from the accident, and that there will be no resultant permanent

injury, except for a scar in the area where the injury occurred. You may, if you find that scar is a substantial detriment to him, allow such sum as would reasonably compensate him for that permanent defacement.

As regards the father's claim, you are informed that the right of the father to recover is entirely contingent upon Peter's right to recover, and if you find your verdict for Peter, then you may also allow the father such sum as will reimburse him for the out-of-pocket expenses incurred by him in the care and treatment of his son, including the hospital and medical bills thus far incurred, plus such additional like expenses as you find will be reasonably necessary to incur in the future.

HEAD-ON COLLISION

Mr. Foreman and members of the jury:

The collision in this case occurred on a straight section of the road of adequate width for two cars to safely pass. It seems a fair inference from the testimony in the case that one of the drivers crossed over the center line, for if both of them had remained entirely on their respective sides of the road, they would have passed each other unhurt. However, there was no center line marked on the road, and the testimony is sharply in conflict as to where the point of impact was with respect to the imaginary center line. Each of the parties claims that he was entirely on his side of the road, and there is some testimony in the case to substantiate the respective claims of each of the parties in this regard.

This presents a disputed question of fact which you are called upon to resolve. While the Court will outline the testimony favoring each of the respective parties, you will understand that this is done only for the purpose of assisting you in evaluating the testimony, and that it is your responsibility to determine these essential facts, for you must weigh the evidence and determine the credibility of the witnesses who have testified.

The defendant testified that the plaintiff approached him with his lights on "high beam," and that he found it difficult to see through and beyond these lights, but that he carefully steered is car to the right of the approaching headlights, so as to safely pass the oncoming car. The plaintiff denies that his headlights were on "high beam," but states that he had depressed them to "low beam" at the time he saw the defendant's car round the curve, some quarter of a mile away.

You will take into account the testimony of the officer who reached the scene of the collision shortly after it occurred. Admittedly he did not see the collision, but he studied the scene in the presence of both parties; and you will take into account the tire marks on the road as described by him, as well as the location of the debris as located by this witness, as well as certain gouge marks described by him, if you find that these gouge marks were made by the defendant's car.

The Court instructs you as a matter of law—and you are required to follow the Court's instructions concerning matters

of law—that two automobiles approaching each other on a two-lane road are required to be alert to observe the conditions of the highway, and to stay on their respective sides of the center of the highway, whether that center is marked on the roadway or not. You are also instructed that when two cars are approaching each other during the nighttime, the driver of each is required to dim his headlights so that the oncoming driver may not be blinded by a "high" light. The Court instructs you that the burden of proof in this case, so far as the plaintiff's claim is concerned, is on the plaintiff, to convince you by a fair preponderance of the testimony that he is entitled to recover.

The defendant in this case claims that irrespective of on which side of the center line the collision occurred, the plaintiff in this case is barred from recovery because the plaintiff was guilty of negligence which contributed to the happening of the collision. This claim is based upon the defendant's contention, which the plaintiff denies, that the plaintiff was operating his car on "high beam" headlights, and that the effect thereof was to blind the defendant, which may have caused him to lose his position on the highway.

The Court instructs you that if you find that the plaintiff was driving his car on the "high beam," notwithstanding his contention to the contrary, and that this fact contributed to the happening of the collision of these cars, then his right of recovery in this case should be denied. However, the burden of proving this contributory negligence is upon the defendant, so that in order to defeat the claim on this ground, the defendant must convince you by a fair preponderance of the testimony that the plaintiff was operating his car on "high beam" lights, and that this contributed to the happening of the accident.

If your verdict in this case is for the plaintiff, then, in determining the amount of your verdict, you may take into consideration the following: (Details of the plaintiff's claim as established by the evidence).

SPECIAL ISSUES — MULTIPLE DEFENDANTS

This suit grows out of a four-car collision. Plaintiff A was driving East on the dual highway when defendant B approached the dual highway from the North on Stoneleigh Road, an unfavored road, and collided with the West-bound car on the dual highway, and that car, driven by Defendant C, crossed the median strip and struck the Plaintiff's car in a head-on collision. Defendant D was driving East on the dual highway, following Plaintiff A, and ran into the rear of A's car after it had collided head-on with Defendant C's car. The Defendant D has filed a cross-claim against the Plaintiff A, Defendants B and C. Defendant C has filed a cross-claim against Defendant B.

(After the usual cautionary instruction and concerning the burden of proof to the jury, the instruction should continue to this effect.)

In view of the fact that this case is complicated by a four-car collision in which various persons involved have claims and counter-claims against each other, the Court has concluded that the case will be submitted to you on what we call "special issues," rather than to ask you to resolve the case by general verdicts. This means that the Court will propound to you certain specific questions of fact which we ask you to answer. These questions are listed on a sheet of paper, and the Foreman is requested to write on this sheet your answers to the several questions as you arrive at your answers. We are sure you will find this to be much simpler than to try to resolve the case by a series of general verdicts. These questions are as follows:

(1) Was the Defendant B guilty of negligence in the operation of his car which was a proximate cause of the collision between the car of Defendant C and the car of the Plaintiff? Answer Yes or No.

(2) Was the Defendant C guilty of negligence which caused his car to collide with that of Plaintiff A? Answer Yes or No

(3) Was the Defendant D guilty of negligence which contributed to the collision between his car and that of Plaintiff A? Answer Yes or No?

(4) Was the Plaintiff A guilty of any negligence which contributed to the collision between his car and that of Defendant D? Answer Yes or No

(5) Were any of the injuries sustained by the Plaintiff received in the collision of the Plaintiff's car with that of Defendant B? Answer Yes or No.

(6) Were any of the injuries received by the Plaintiff received in the collision between the car of the Plaintiff and that of Defendant D? Answer Yes or No.

(7) What sum would be fair compensation to the Plaintiff with respect to all of the injuries sustained by him in the collisions described in the evidence? $———.

(8) Of this sum, how much of the damages, in dollars, is the result of the injuries sustained in the initial collision between the car of A and the car of C? $——.

You will understand that the law of the State requires that all persons using the highway are required to exercise due care in the control and management of their respective vehicles, that is, the care and caution which a reasonably prudent person would have exercised under like circumstances. In addition to this general rule, we instruct you that the undisputed evidence in this case shows that there was a stop sign against the Stoneleigh Road on which the Defendant B was approaching the dual highway. Under these circumstances, it was his duty to stop before entering the West-bound lane of the dual highway and to yield the right of way to traffic approaching thereon. If you find that he failed to stop or that he failed to observe the car of the Defendant C approaching on the dual highway, you are justified in inferring negligence on his part.

The Court instructs you that the uncontradicted testimony in this case discloses that the speed limit on the dual highway was sixty miles per hour. If you find that either Defendant C or Defendant D was driving his car at a speed in excess of sixty miles per hour, and that the happening of the collision in which their respective cars were involved was contributed to by such excessive speed, you may find that they were respectively guilty of negligence contributing to the collision in which their respective cars were involved.

With respect to the collision between the car operated by the Defendant D and that of the Plaintiff A, you are instructed specifically that the driver of a car following another is required to keep a sufficient distance between his car and the car ahead of him to enable him to stop his car, or to turn aside, and thus

avoid a collision in the event an emergency should occur. The law does not set up a specific distance, but the interval is that which an ordinarily prudent person would maintain under like circumstances, giving consideration to the type of pavement, conditions of light, whether the pavement is wet or dry, and —most important of all—the speed at which the respective cars are travelling. If you find that the Defendant D failed to keep a sufficient interval between his car and that of the Plaintiff A, or that he was travelling at a speed greater than was reasonable and proper under the circumstances, you would be justified in finding that the Defendant D was negligent in connection with the collision in which his car was involved. If, on the other hand, he maintained a proper interval, between his car and that of the Plaintiff A so that he could have brought his car to a stop, or otherwise have avoided the collision under ordinary circumstances, but that the collision between his car and that of the Plaintiff A was due entirely to the fact that the progress of the Plaintiff's car was suddenly and without warning arrested by the head-on collision with the car of D, then you would be justified in finding that so far as D is concerned, the accident was unavoidable