

## 13-302F. Special verdict form; examples.

### EXAMPLE A

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

In this case the plaintiff seeks compensation from the defendants for damages which plaintiff says were caused by negligence.

To establish negligence on the part of a defendant, the plaintiff has the burden of proving at least one of the following contentions applicable to that defendant:

1. Defendant Richard Roe, a person in control of a motor vehicle, permitted the vehicle to be driven or operated by John Doe when Roe knew or should have known that Doe would be or was driving in violation of traffic ordinances.
2. Defendant Jane Smith authorized or permitted the motor vehicle owned by her to be driven by Doe when she had reason to believe that Doe was under the influence of intoxicating liquor or otherwise impaired in his ability, either mentally or physically or both, to operate a motor vehicle.
3. Defendant Doe failed to stop and yield the right-of-way to plaintiff's vehicle.
4. Defendant Doe was driving under the influence of intoxicating liquor.
5. Defendant Doe was driving carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, and without due caution in a manner so as to endanger or be likely to endanger others.

Plaintiff has the burden of proving that such negligence was a cause of the injuries and damages.

The defendants deny what the plaintiff says and defendants say that the failure of defendant Doe to stop and yield the right-of-way to plaintiff's vehicle was excused or justified, and that plaintiff [himself] [herself] was negligent.

To establish excuse or justification, the defendants have the burden of proving Doe violated the stop sign ordinance because the brakes on the vehicle he was driving unexpectedly and unforeseeably failed, and Doe did that which might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law. If proved, this constitutes excuse or justification for what plaintiff says about Doe's failure to stop and yield the right-of-way to plaintiff's vehicle.

To establish negligence of plaintiff, the defendants have the burden of proving at least one of the following:

1. Plaintiff was driving at a speed in excess of the posted speed limit.
2. Plaintiff failed to keep a proper lookout.

The defendants have the burden of proving, that negligence of plaintiff was a cause of the injuries and damages.

The plaintiff denies what defendants say.

Related to the above, plaintiff says and has the burden of proving that:

1. Misconduct of each defendant was an act which shows an utter indifference to, or conscious disregard for, the safety of others and, therefore, punitive damages should be awarded.
2. The negligence of defendant Doe was the act of an agent of either defendants Roe or Smith, or both of them, within the scope of an agency to do a service for Roe or Smith, or both of them.

These are denied.

### SPECIAL VERDICT

On the questions submitted, the jury finds as follows:

**Question No. 1:** Was defendant Doe negligent?

**Answer:** \_\_\_\_\_ (Yes or No)

If the answer to Question No. 1 is "No," you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for the defendants and against the plaintiff, and you will all return to open court.

If the answer to Question No. 1 is "Yes," you are to answer Question No. 2.

**Question No. 2:** Was any negligence of defendant Doe a cause of plaintiff's injuries and damages?

**Answer:** \_\_\_\_\_ (Yes or No)

If the answer to Question No. 2 is "No," you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for the defendants and against the plaintiff, and you will all return to open court.

If the answer to Question No. 2 is "Yes," you are to answer the remaining questions on this special verdict form. When as many as ten of you have agreed upon each of your answers, your foreperson must sign this special verdict, and you will all return to open court.

**Question No. 3:** In accordance with the damage instructions given by the court, we find the total amount of damages suffered by plaintiff to be \$ \_\_\_\_\_. (*Here enter the total amount of damages without any reduction for comparative negligence and without any inclusion of punitive damages.*)

**Question No. 4:** Compare the negligence of the following persons and find a percentage for each. The total of the percentages must equal 100%, but the percentage for any one or more of the persons named may be zero if you find that such person was not negligent or that any negligence on the part of such person was not a cause of damage.

Defendant Roe	_____	%
Defendant Smith	_____	%
Defendant Doe	_____	%
Plaintiff	_____	%
	100%	

**Question No. 5:** Was defendant Doe acting as an agent of defendant Roe within the scope of that agency at the time and place of the collision?

**Answer:** \_\_\_\_\_ (Yes or No)

**Question No. 6:** Was defendant Doe acting as an agent of defendant Smith within the scope of that agency at the time and place of the collision?

**Answer:** \_\_\_\_\_ (Yes or No)

**Question No. 7:** Were the acts of defendant Roe either [malicious], [willful], [wanton], [reckless], [fraudulent] [or] [in bad faith]?

**Answer:** \_\_\_\_\_ (Yes or No) (*If "Yes," enter in answer to Question No. 10 the amount of punitive damages, if any, to be awarded.*)

**Question No. 8:** Were the acts of defendant Smith either [malicious], [willful], [wanton], [reckless], [fraudulent] [or] [in bad faith]?

**Answer:** \_\_\_\_\_ (Yes or No) (If "Yes," enter in answer to Question No. 10 the amount of punitive damages, if any, to be awarded.)

**Question No. 9:** Were the acts of defendant Doe either [malicious], [willful], [wanton], [reckless], [fraudulent] [or] [in bad faith]?

**Answer:** \_\_\_\_\_ (Yes or No) (If "Yes," enter in answer to Question No. 10 the amount of punitive damages, if any, to be awarded.)

If the answers to Questions Nos. 7, 8 and 9 are "No," you are not to answer Question No. 10. Your foreperson must sign this special verdict and you will all return to open court. If the answer to Question No. 7, 8 or 9 is "Yes," you are to answer Question No. 10. Your foreperson must sign this special verdict and you will all return to open court.

**Question No. 10:** In accordance with the exemplary or punitive damage instructions given by the court, we find the total amount of punitive damages to be awarded against defendants to be as follows:

Defendant Roe	_____	%
Defendant Smith	_____	%
Defendant Doe	_____	%

The court will enter judgment for plaintiff against each defendant for punitive damages in the amount found as to that defendant. For any defendant for which your answer to Question No. 7, 8 or 9 is "No," the amount of punitive damages must be "None."

\_\_\_\_\_  
Foreperson

**EXAMPLE B**  
**INSTRUCTION NO. \_\_\_\_\_**

In this case the plaintiffs seek compensation from the defendants for damages that plaintiffs say were caused by negligence.

To establish negligence on the part of defendant X-Transportation Company, the plaintiffs have the burden of proving at least one of the following:

1. X-Transportation Company transported the mobile home on the highway at an excessive rate of speed.
2. X-Transportation Company did not use warnings required by statute for wide loads.

To establish negligence on the part of defendant John Doe, the plaintiffs have the burden of proving the defendant John Doe failed to use ordinary care when, and without warning, he suddenly stopped his vehicle upon the highway.

The plaintiffs have the burden of proving that the negligence of a defendant was a cause of the injuries and damages.

The defendants deny what the plaintiffs say about negligence and defendants say that the decedent was negligent.

To establish negligence of the decedent, the defendants have the burden of proving at least one of the following:

1. The decedent failed to keep a proper lookout.
2. The decedent was driving at an excessive rate of speed.
3. The decedent did not have his vehicle under control to avoid collision.

The defendants have the burden of proving that negligence of the decedent was a cause of the injuries and damages.

The plaintiffs deny what the defendants say.

**EXAMPLE C**  
**INSTRUCTION NO. \_\_\_\_\_**

In this case the plaintiff Public Utility Company seeks compensation from the defendant Ajax Construction Company for damages that plaintiff says were caused by negligence and breach of express warranty.

To establish negligence on the part of defendant, the plaintiff has the burden of proving at least one of the following:

1. Ajax departed from the standard of care of reasonably well-qualified contractors in the design of the absorber towers for Units 1 and 2 of the removal system.
2. Ajax failed to use ordinary care in the placement of the concrete for the absorber tower walls in that the walls contained excessive honeycombs, voids and sandpockets.

Public Utility Company has the burden of proving, that such negligence was a cause of the structural crack that appeared in the wall of G-H cell, and of resulting damages.

Ajax denies what Public Utility Company says about negligence and Ajax says that Public Utility Company itself was negligent.

To establish negligence of Public Utility Company, Ajax has the burden of proving at least one of the following:

1. Operational personnel of Public Utility Company failed to use ordinary care by allowing the absorbers to be filled with water beyond their designed capacity.
2. In the design of the absorber towers, engineers for Public Utility Company failed to use ordinary care when it rejected the Ajax recommendation for an overflow valve to prevent inadvertent overfilling of the absorbers.

Ajax has the burden of proving that such negligence of Public Utility Company was a cause of the structural crack which appeared in the wall of G-H cell.

Public Utility Company denies what Ajax says about such negligence.

To establish breach of express warranty on the part of Ajax, Public Utility Company has the burden of proving Ajax affirmed in writing that the absorber walls would be constructed without defects in material and workmanship and the walls, as constructed, contain substandard placement of concrete including voids, honeycombs and sandpockets.

Public Utility Company has the burden of proving that a breach of express warranty was a cause of the damages.

Ajax denies what Public Utility Company says about breach of express warranty and Ajax says Public Utility Company failed to provide written notice of any breach of express warranty within the time period specified in the contract.

Public Utility Company denies what Ajax says about failure to provide written notice of breach of express warranty.  
[As amended, effective January 1, 1987; November 1, 1991; March 1, 2005, as amended by Supreme Court Order No. 13-8300-021, effective for all cases pending or filed on or after December 31, 2013.]