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**DUTY OF JUDGE AND JURY**

**LADIES AND GENTLEMEN OF THE JURY:**

It is my duty as Judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

NEV. J.I. 1.0

1 **USE OF INSTRUCTIONS**

2 If, in these instructions, any rule, direction or idea is repeated or stated in different ways,  
3 no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are  
4 not to single out any certain sentence or any individual point or instruction and ignore the others,  
but you are to consider all the instructions as a whole and regard each in the light of all the others.

5 The order in which the instructions are given has no significance as to their relative  
6 importance.

7 NEV. J.I. 1.01

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**MASCULINE FORM OF PRONOUN INCLUDES  
FEMININE OR CORPORATION**

The masculine form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person or a corporation.

NEV. J.I. 1.02  
BAJI 1.10

1 **WHAT IS AND WHAT IS NOT EVIDENCE**

2 The evidence which you are to consider in this case consists of the testimony of the  
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 Statements, arguments and opinions of counsel are not evidence in the case. However, if  
5 the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and  
6 regard that fact as proved.

7 You must not speculate to be true any insinuations suggested by a question asked a witness.  
8 A question is not evidence and may be considered only as it supplies meaning to the answer.

9 You must disregard any evidence to which an objection was sustained by the court and any  
10 evidence ordered stricken by the court.

11 Anything you may have seen or heard outside the courtroom is not evidence and must also  
12 be disregarded.

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NEV. J.I. 1.03  
BAJI 1.02

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**JURORS FORBIDDEN FROM MAKING  
ANY INDEPENDENT INVESTIGATION**

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. [You must not make any independent investigation of the facts or the law (or consider or discuss facts as to which there is no evidence). This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works for additional information.]

NEV. J.I. 1.04  
BAJI 1.00.5

1 **JURORS MUST USE EVERYDAY COMMON**  
2 **SENSE; VERDICT MAY NEVER BE INFLUENCED**  
3 **BY SYMPATHY, PREJUDICE OR PUBLIC OPINION**

4 Although you are to consider only the evidence in the case in reaching a verdict, you must  
5 bring to the consideration of the evidence your everyday common sense and judgment as  
6 reasonable men and women. Thus, you are not limited solely to what you see and hear as the  
7 witnesses testify. You may draw reasonable inferences from the evidence which you feel are  
8 justified in the light of common experience, keeping in mind that such inferences should not be  
9 based on speculation or guess.

10 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
11 decision should be the product of sincere judgment and sound discretion in accordance with these  
12 rules of law.

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NEV. J.I. 1.05

1 **CORPORATIONS AS PARTIES**

2 One of the parties in this case is a corporation. A corporation is entitled to the same fair  
3 and unprejudiced treatment as an individual would be under like circumstances, and you should  
4 decide the case with the same impartiality you would use in deciding a case between individuals.

5 NEV. J.I. 1.06

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**INSURANCE:  
COLLATERAL SOURCES**

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[You are not to discuss or even consider whether or not the plaintiff was carrying insurance to cover medical bills, loss of earnings, or any other damages he claims to have sustained.]

[You are not to discuss or even consider whether or not the defendant was carrying insurance that would reimburse him for whatever sum of money he may be called upon to pay to the plaintiff.]

[Whether or not either party was insured is immaterial, and should make no difference in any verdict you may render in this case.]

NEV. J.I. 1.07



1 **IMPARTIALITY OF THE COURT**

2 If, during this trial, I have said or done anything which has suggested to you that I am  
3 inclined to favor the claims or position of any party, you will not be influenced by any such  
4 suggestion.

5 I have not expressed, nor intended to express, nor have I intended to intimate, any opinion  
6 as to which witnesses are or are not worthy of belief, what facts are or are not established, or what  
7 inferences should be drawn from the evidence. If any expression of mine has seemed to indicate  
8 an opinion relating to any of these matters, I instruct you to disregard it.

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NEV. J.I. 1.08

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## DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

NEV. J.I. 2.00

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**JURY TO CONSIDER ALL THE EVIDENCE**

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

NEV. J.I. 2.01

**LIMITED ADMISSION OF EVIDENCE;  
PARTIES OR PURPOSE**

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[Whenever evidence has been admitted but limited to one or more parties; you must not consider it as to any other party or parties.]

[Whenever evidence has been admitted for a limited purpose, you must not consider it for any other purpose.]

NEV. J.I. 2.02  
BAJI 2.05

**DEPOSITION EVIDENCE**

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Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

NEV. J.I. 2.03

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**ANSWERS TO INTERROGATORIES AS EVIDENCE**

During the course of the trial you have heard reference made to the word “interrogatory”. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers thereto the same as if the questions had been asked and answered here in court.

NEV. J.I. 2.04  
BAJI 2.07

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**RESPONSES TO REQUESTS FOR ADMISSIONS  
AS EVIDENCE**

In this case, as permitted by law, the [plaintiff] [defendant] served on the [defendant] [plaintiff] a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the [defendant] [plaintiff] or which [defendant] [plaintiff] failed to deny.

NEV. J.I. 2.05  
BAJI 2.08

1 **STIPULATIONS AS EVIDENCE**

2 If counsel for the parties have stipulated to any fact, you will regard that fact as being  
3 conclusively proved [as to the party or parties making the stipulation].

4 NEV. J.I. 2.06  
5 BAJI 1.02

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1 **CREDIBILITY OF WITNESS; WITNESS**  
2 **THAT HAS TESTIFIED FALSELY**

3 The credibility or “believability” of a witness should be determined by his or her manner  
4 upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings,  
5 his or her opportunity to have observed the matter to which he or she testified, the reasonableness  
6 of his or her statements and the strength or weakness of his or her recollections.

7 If you believe that a witness has lied about any material fact in the case, you may disregard  
8 the entire testimony of that witness or any portion of this testimony which is not proved by other  
9 evidence.

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NEV. J.I. 2.07  
BAJI 2.22

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**DISCREPANCIES IN A WITNESS'S TESTIMONY**

Discrepancies in a witness's testimony or between his testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

NEV. J.I. 2.08  
BAJI 2.21

**WITNESS CONVICTED OF A FELONY**

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The fact that a witness has been convicted of a felony may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness's credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

NEV. J.I. 2.09  
BAJI 2.24

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**WITNESS INTERVIEWED BY ATTORNEY**

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him what he would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

NEV. J.I. 2.10

**EXPERT TESTIMONY; EVALUATION  
BY JURY**

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A person who has special knowledge, skill, experience, training or education in particular science, profession or occupation may give his or her opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the expert and the reasons given for his or her opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

NEV. J.I. 2.11  
BAJI 2.40

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**EXPERT TESTIMONY; EVALUATION  
BY JURY OF ANSWER TO HYPOTHETICAL  
QUESTION**

A question has been asked in which an expert witness was told to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the question has not been established by the evidence, you should determine the effect of that omission upon the value of the opinion.

NEV. J.I. 2.12  
BAJI 2.42

**BURDEN OF PROOF; PREPONDERANCE  
OF THE EVIDENCE**

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Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by ap preponderance of the evidence, you shall find the same not to be true.

The term “preponderance of the evidence” means such evidence as, when weighed with that opposed to it, has more convincing force, and from which is appears that the greater probability of truth lies therein.

NEV. J.I. 3.00

1 **NUMBER OF WITNESSES**

2 The preponderance, or weight of evidence, is not necessarily with the greater number of  
3 witnesses.

4 The testimony of one witness worthy of belief is sufficient for the proof of any fact and  
5 would justify a verdict in accordance with such testimony, even if a number witnesses have  
6 testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after  
weighing the various factors of evidence, you believe that there is a balance of probability  
pointing to the accuracy and honesty of the one witness, you should accept his testimony.

7 NEV. J.I. 3.01  
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1 **CONCLUSIVE PRESUMPTION; JURY QUESTION**  
2 **AS TO EXISTENCE OF BASIC FACTS**

3 If you find by a preponderance of the evidence that (insert controverted basic facts), then  
4 you must also find that (insert presumed fact).

5 If you do not find by a preponderance of the evidence that (insert controverted basic facts),  
6 then you must find that (insert nonexistence of presumed fact).

7 NEV. J.I. 3.02  
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**DISPUTABLE PRESUMPTION; BASIC FACTS  
ESTABLISHED AS A MATTER OF  
LAW; JURY QUESTION AS TO PRESUMED  
FACT**

The law provides for a disputable presumption that (insert disputable presumption). In this action, it has been established that (insert basic facts).

The effect of this disputable presumption is that it places upon (insert name of party against whom presumption is directed) the burden of proving, by a preponderance of the other evidence that (insert nonexistence of presumed fact).

NEV. J.I. 3.03

**DISPUTABLE PRESUMPTION; JURY QUESTION  
AS TO BASIC FACTS AND PRESUMED FACT**

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The law provides for a disputable presumption that (insert disputable presumption).

If you find by a preponderance of the evidence that (insert basic facts), then the disputable presumption operations to shift to (insert name of party against whom presumption is directed) the burden of proving by a preponderance of the other evidence, that (insert nonexistence of presumed fact).

If, on the other hand, you do not find by a preponderance of the evidence that (insert basic facts), then the burden of proving, by a preponderance of the evidence, that (insert existence of presumed fact) remains with (insert name of party attempting to invoke presumption).

NEV. J.I. 3.04

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**RESPECTIVE BURDENS OF PLAINTIFF  
AND DEFENDANT;  
GENERAL**

[Except as I have already instructed you upon the law relative to presumptions,] The plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

[Except as I have already instructed you upon the law relative to presumptions,] The defendant has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

NEV. J.I. 3.05

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**RESPECTIVE BURDENS OF PLAINTIFF  
AND DEFENDANT; NEGLIGENCE  
AND CONTRIBUTORY NEGLIGENCE**

The plaintiff has the burden to prove that the plaintiff sustained damage, that the defendant was negligent, and that such negligence was a [proximate] [legal] cause of the damage sustained by the plaintiff.

The defendant has the burden of proving, as an affirmative defense, that some contributory negligence on the part of the plaintiff himself, was a [proximate] [legal] cause of any damage plaintiff may have sustained.

NEV. J.I. 3.06

**INTRODUCTORY INSTRUCTION  
SINGLE LEGAL THEORY**

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The plaintiff seeks to establish a claim of negligence. I will now instruct on the law relating to this claim.

NEV. J.I. 4.00

**INTRODUCTORY INSTRUCTION;  
MULTIPLE LEGAL THEORIES**

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The plaintiff seeks to establish liability on one or more of \_\_\_\_\_ different legal bases.

One of the plaintiff's claims is negligence. I will not instruct on the law relating to this claim.

NEV. J.I. 4.01

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## ELEMENTS OF NEGLIGENCE CLAIM

In order to establish a claim of negligence, the plaintiff must prove the following elements by a preponderance of the evidence:

1. That the defendant was negligent; and
2. That the defendant's negligence was a [proximate] [legal] cause of damage to the plaintiff.

NEV. J.I. 4.02



1 **NEGLIGENCE AND ORDINARY CARE;**  
2 **DEFINITIONS**

3 Negligence is the failure to exercise that degree of care which an ordinarily careful and  
4 prudent person would exercise under the same or similar circumstances

5 Ordinary care is that care which persons of ordinary prudence exercise in the management  
6 of their own affairs in order to avoid injury to themselves or to others.

7 [You will note that the person who conduct we set up as a standard is not the  
8 extraordinarily cautious individual, not the exceptionally skillful one, but a person of reasonable  
9 and ordinary prudence. While exceptional skill is to be administered and encouraged, the law  
10 does not demand it as a general standard of conduct.]

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NEV. J.I. 4.03  
BAJI 3.10

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**PROXIMATE CAUSE; DEFINITION**

A proximate cause of injury, damage, loss or harm is a cause which, in natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm, would not have occurred.

NEV. J.I. 4.04  
BAJI: 3.75

**LEGAL CAUSE; DEFINITION**

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A legal cause of injury, damage, loss or harm is a cause which is a substantial factor in bringing about the injury, damage, loss, or harm.

NEV. J.I. 4.04A  
BAJI 3.76

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1 ***RES IPSA LOQUITUR; NECESSARY***  
2 **CONDITIONS FOR APPLICATION**

3 On the issue of negligence, one of the questions for you to decide in this case is whether the  
4 [accident] [injury] occurred under the following conditions:

5 First, that it is the kind of [accident] [injury] which ordinarily does not occur in the  
6 absence of someone's negligence;

7 Second, that it was caused by an agency or instrumentality [in the exclusive control of the  
8 defendant] [over which the defendant had the exclusive right of control] [originally, and which  
9 was not mishandled or otherwise changed after defendant relinquished control]; and

10 Third, that the [accident] [injury] was not due to any voluntary action or contribution on the  
11 part of the plaintiff which was the responsible cause of his injury.

12 If you should find all of these conditions to exist, you are instructed as follows:

13 NEV. J.I. 4.18  
14 BAJI 4.00  
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1 **RES IPSA LOQUITUR; PERMISSIBLE**  
2 **INFERENCE OF NEGLIGENCE**

3 From the happening of the [accident] [injury] involved in this case, you may draw an  
4 inference that a [proximate] [legal] cause of the occurrence was some negligent conduct on the part  
of the defendant.

5 However, you shall not find that [proximate] [legal] cause of the occurrence was some  
6 negligent conduct on the part of the defendant unless you believe, after weighing all the evidence in  
7 the case and drawing such inferences therefrom as you believe are warranted, that it is more  
probable than not that the occurrence was caused by some negligent conduct on the part of the  
defendant.

8 NEV. J.I. 4.19  
9 BAJI 4.02

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## CONCURRING CASES

There may be more than one [proximate] [legal] cause of an injury. When negligent conduct of two or more persons contributes concurrently as [proximate] [legal] causes of an injury, the conduct of each of said persons is a [proximate] [legal] cause of the injury regardless of the extent to which each contributes to the injury. A cause is concurrent if it was operative at the moment of injury and acted with another cause to produce the injury. [It is no defense that the negligent conduct of a person not joined as a party was also a [proximate] [legal] cause of the injury.]

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BAJI 3.77

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**WHEN THIRD PARTY'S INTERVENING  
NEGLIGENCE IS NOT A SUPERSEDING CAUSE**

If you find that defendant [(first actor)] was negligent and that his negligence was a substantial factor in bringing about an injury to the plaintiff but that the immediate cause of the injury was the negligent conduct of [ a third person] [defendant (second actor)], the defendant [(first actor)] is not relieved of liability for such injury if:

1. At the time of his conduct defendant [(first actor)] realized or reasonably should have realized that [a third person] [defendant (second actor)] might act as he did; [or the risk of harm suffered was reasonably foreseeable]; or
2. A reasonable person knowing the situation existing at the time of the conduct of the [third person] [defendant (second actor)] would not have regarded it as highly extraordinary that the [third person] [defendant (second actor)] had so acted; or
3. The conduct of the [third person] [defendant (second actor)] was not extraordinarily negligent and was a normal consequence of the situation created by defendant [(first actor)].

NEV. J.I. 4.06  
BAJI 3.79







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**RIGHT TO ASSUME OTHERS WILL  
EXERCISE DUE CARE**

A person who, himself, is exercising ordinary care has a right to assume that every other person will perform his duty under the law; and in the absence of reasonable cause for thinking otherwise, it is not negligence for such a person to fail to anticipate injury which can come to him only from a violation of law or duty by another.

NEV. J.I. 4.09

1 **EVIDENCE OF CUSTOM IN RELATION**  
2 **TO ORDINARY CARE**

3 Evidence as to whether or not a person conformed to a custom that has grown up in a given  
4 locality or business is relevant and ought to be considered, but is not necessarily controlling on  
5 that question of whether or not he exercised ordinary care; for that question must be determined by  
6 the standard of care that has been stated to you.

7 NEV. J.I. 4.10  
8 BAJI 3.16  
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**STANDARD OF CONDUCT FOR MINOR**

A minor is not held to the same standard of conduct as an adult. He is only required to exercise the degree of care which ordinarily is exercised by minors of like age, intelligence and experience under similar circumstances. It is for you to determine whether the conduct of \_\_\_\_\_ was such as might reasonably have been expected of a minor of his age, intelligence and experience, acting under similar circumstances.

[The rule just stated applies even when the evidence shows a minor may have violated an ordinance. The question of whether or not the minor was negligent must still be answered by the above standard as I have stated it to you.]

NEV. J.I. 4.11  
BAJI 3.35

1 **VIOLATION OF LAW AS**  
2 **NEGLIGENCE *PER SE*;**  
3 **NO EVIDENCE OF EXCUSE**  
4 **OR JUSTIFICATION**

5 There was in force at the time of the occurrence in question [a law] [laws] which read as  
6 follows:

7 A violation of the law[s] just read to you constitutes negligence as a matter of law. If you  
8 find that a party violated a law just read to you, it is your duty to find such violation to be  
9 negligence; and you should then consider the issue of whether that negligence was a [proximate]  
10 [legal] cause of injury or damage to the plaintiff.

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NEV. J.I. 4.12

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**VIOLATION OF LAW AS  
NEGLIGENCE *PER SE*;  
JURY ISSUE AS TO  
EXCUSE OR JUSTIFICATION**

There was in force at the time of the occurrence in question [a law] [laws] which read as follows:

An unexcused violation of the law[s] just read to you constitutes negligence as a matter of law. If you find that a party, without excuse or justification, violated a law just read to you, it is your duty to find such violation to be negligence; and you should then consider the issue of whether that negligence was a [proximate] [legal] cause of injury or damage to the plaintiff.

The burden of proof is upon the person who violated the law to show by a preponderance of the evidence that such violation was excusable or justifiable. A violation of law is excusable or justifiable only if you find that the person who violated the law did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law.

NEV. J.I. 4.13

1 **DUTY OF ONE IN IMMINENT PERIL**

2 A person who, without negligence on his part, is suddenly and unexpectedly confronted  
3 with peril arising from either the actual presence of, or the appearance of, imminent danger to  
4 himself or to others, is not expected nor required to sue the same judgment and prudence that is  
5 required of him in the exercise of ordinary care in calmer and more deliberate moments. His duty  
6 is to exercise only the care than an ordinarily prudent person would exercise in the same situation.  
7 If at that moment he does what appears to him to be the best thing to do, and if his choice and  
8 manner of action are the same as might have been followed by any ordinarily prudent person under  
9 the same conditions, he does all the law requires of him; although in the light of after-events, it  
10 should appear that a difference course would have been better and safer.

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NEV. J.I. 4.14  
BAJI 4.40



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**DUTY; VOLUNTEER**

One who is under no duty to care for or render service to another, but who voluntarily assumes such duty, is subject to liability to the other for injury proximately caused by a failure to exercise ordinary or reasonable care in the performance of such assumed duty.

NEV. J.I. 4.15  
BAJI 4.45

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## ASSUMPTION OF RISK

The defendant seeks to establish that the plaintiff assumed the risk of injury from the danger the plaintiff contends caused his injury.

In order to establish that the plaintiff assumed the risk, the defendant must prove, by a preponderance of the evidence, the following elements:

1. That the plaintiff had actual knowledge of the risk;
2. That he fully appreciated the danger resulting from the risk; and
3. That he voluntarily exposed himself to the danger.

If you find that each of these elements has been proved, then the plaintiff may not recover for his injuries and your verdict should be for the defendant. If, on the other hand, you decide that any of these elements has not been proved, then the defendant has not proved the plaintiff assumed the risk.

NEV. J.I. 4.16

1 **EXPRESS ASSUMPTION OF RISK**

2 If, prior to an event in which the plaintiff was injured as a result of defendant's negligence,  
3 the plaintiff had expressly assumed the risk of such injury by specifically agreeing with the  
4 defendant that he, the plaintiff, would not hold the defendant responsible if an injury should be  
5 caused by the defendant's negligence, the plaintiff may not recover damages from the defendant for  
6 that injury.

7 NEV. J.I. 4.17  
8 BAJI 4.30

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**DUTY OF THE DRIVER OF VEHICLE  
ON PUBLIC HIGHWAY**

It is the duty of the driver of any vehicle using a public highway to avoid placing himself or others in danger; [and] to use like care to avoid an accident; [to keep a proper lookout for traffic and other conditions to be reasonably anticipated] [and] [to maintain proper control of his vehicle.]

NEV J.I. 5.00  
BAJI 5.00

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## **RANGE OF VISION**

It is the duty of a driver of a motor vehicle, using a public highway in the nighttime, to be vigilant at all times and to drive at such rate of speed and to keep his vehicle under such control that, to avoid a collision, he can stop within the distance the highway is illuminated by its lights.

NEV J.I. 5.01

1 **RANGE OF VISION**

2 A motorist ordinarily has a duty to drive an automobile on a public highway in such a  
3 manner that he can stop in time to avoid a collision with an object [within range of his vision]  
4 [within the area lighted by his headlights], and he is negligent in he fails to do so.

5 A motorist is not, however, negligent where the object cannot be observed by the exercise  
6 of ordinary care in time to avoid a collision.

7 It is for you to determine from all the facts and circumstances shown by the evidence  
8 whether or not the object was or was not visible or discernible by the exercise of ordinary care in  
9 time for [plaintiff] [defendant] to avoid a collision. If you find that it was, you should find  
10 [plaintiff] [defendant] negligent; if you find that it was not, you should not find [plaintiff]  
11 [defendant] negligent in this respect.

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NEV J.I. 5.01A

1 **RIGHT OF WAY; DEFINITION**

2 The term “right of way” was used in these instructions means the right of one vehicle or  
3 pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian,  
4 approaching under such circumstances or direction, speed and proximate as to give rise to danger  
of collision unless one gives way to the other.

5 NEV J.I. 5.02

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**RIGHT OF WAY; RIGHTS AND DUTIES  
OF ONE HAVING RIGHT OF WAY**

One who has the right of way and is proceeding in a lawful manner is entitled to assume others will yield. However, once he knows or, in the exercise of reasonable care, should know that another does not intend to yield, he must exercise reasonable care in endeavoring to avoid an accident.

NEV J.I. 5.03





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**IMPUTED NEGLIGENCE; DRIVER  
TO OWNER-PASSENGER**

If the owner of an automobile requests a person to drive it, and the owner remains in the vehicle while it is driven, it is presumed that the driver was operating the vehicle as the agent of the owner. Any negligence of the driver in the operation of the automobile is thus imputed to the owner.

However, if you find from a preponderance of the evidence that the owner did not retain control of the direction over the automobile, then the presumption of agency is rebutted; and any negligence of the driver is not imputed to owner.

NEV J.I. 5.05

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**IMPUTED NEGLIGENCE; FAMILY MEMBER**

An owner of a motor vehicle is liable for any damages [proximately] [legally] resulting from the [negligence] [willful misconduct] of [his] [her] [wife] [husband] [son] [daughter] [father] [mother] [brother] [sister] [immediate family member] in driving and operating the vehicle upon a highway with the owner's express or implied permission.

Therefore, if you find defendant \_\_\_\_\_ is liable, you must find defendant(s) \_\_\_\_\_ also liable.

NEV J.I. 5.06  
NRS 41.440

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**IMPUTED NEGLIGENCE; FAMILY MEMBER;  
DISPUTE AS TO PERMISSION**

An owner of a motor vehicle is liable for any damages [proximate] [legally] resulting from the [negligence] [willful misconduct] of [his] [her] [wife] [husband] [son] [daughter] [father] [mother] [brother] [sister] [immediate family member] in driving and operating the vehicle upon a highway with the owner's express or implied permission.

If you find defendant \_\_\_\_\_ is liable, you must then determine whether or not he was driving with th express or implied permission of defendant(s) \_\_\_\_\_.

If you find that the defendant \_\_\_\_\_ did not have such permission, then your verdict must be in favor of defendant(s) \_\_\_\_\_.

But if you find that such permission, express or implied, had been given, you must find defendant(s) \_\_\_\_\_ also liable.

NEV J.I. 5.07

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**PASSENGER'S DUTY**

A passenger in an automobile has a legal duty to take ordinary precautions for his own safety and to use ordinary care for his own protection.

NEV J.I. 5.08

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**UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR**

One is not necessarily under the influence of intoxicating liquor as a result of consuming it. The circumstances and effect on the particular individual must be considered. In making this determination, the question to be answered is whether, as a result of drinking intoxicating liquor, the individual's physical or mental abilities were impaired, so that he was unable to conduct himself with the caution of a sober person of ordinary prudence under the same or similar circumstances.

Intoxication is no excuse for failure to act as a reasonably prudent person would act. A person who is intoxicated or under the influence of intoxicating liquor is held to the same standard of care as a sober person.

NEV J.I. 5.09  
BAJI 5.42

1 **DUTY OF PHYSICIAN AND SURGEON;**  
2 **GENERAL PRACTITIONERS**

3 In performing professional services for a patient, a physician or surgeon has the duty to  
4 have that degree of learning and skill ordinarily possessed by reputable physicians and surgeons,  
5 practicing in the same or a similar locality and under similar circumstances.

6 It is his further duty to use the care and skill ordinarily exercised in like cases by reputable  
7 members of his profession, practicing in the same or a similar locality under similar  
8 circumstances, and to use reasonable diligence and his best judgment in the exercise of his skill  
9 and the application of his learning in an effort to accomplish the purpose for which he is employed.

10 A failure to perform any such duty is negligence.

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NEV J.I. 6.00  
BAJI 6.00

**DUTY OF PHYSICIAN AND SURGEON;  
HOLDING OUT AS SPECIALIST**

It is the duty of a physician or surgeon who holds himself out as a specialist in a particular field of medical, surgical, or other healing science, to have the knowledge and skill ordinarily possessed, and to use the care and skill ordinarily used, by reputable specialists practicing the same field.

A failure to perform such duty is negligence.

NEV J.I. 6.01  
BAJI 6.01



**DUTY OF PHYSICIAN AND SURGEON;  
BOARD CERTIFIED SPECIALIST**

It is the duty of a physician or surgeon who is a Board Certified Specialist to have the knowledge and skill ordinarily possessed, and to use the care and skill ordinarily used, by reputable specialists practicing in the same field.

A failure to perform such duty is negligence.

NEV J.I. 6.02



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**DUTY OF PHYSICIAN AND SURGEON;  
GENERAL PRACTITIONER'S DUTY  
TO REFER TO SPECIALIST**

It is the duty of a physician or surgeon who is a general practitioner to [refer his patient to a specialist] [recommend the assistance of a specialist] if a reputable general practitioner practicing in the same or a similar locality would do so under similar circumstances.

If he fails to perform that duty and undertakes or continues to perform professional services without the aid of a specialist, it is his further duty to have the knowledge and skill ordinarily possessed, and exercise the care and skill ordinarily used, by reputable specialists in the same field.

A failure to perform any such duty is negligence.

NEV J.I. 6.04  
BAJI 6.04

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**LIABILITY OF SURGEON FOR NEGLIGENCE OF ASSISTANTS AND NURSES**

Regardless of who employs or pays [a nurse] [or] [an assisting surgeon] who takes part in the performance of surgery or services incidental to such surgery, if, while engaged in any such service, [the assisting surgeon] [the nurse] is under the special supervision and control of a certain surgeon in charge, so as to be his temporary servant or agent, any negligence on the part of any such assisting person, occurring while the latter is under the surgeon's special supervision and control, is deemed in law to be the negligence of the surgeon in charge.

NEV J.I. 6.05  
BAJI 6.06

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**DURATION OF PHYSICIAN'S RESPONSIBILITY**

Once a physician has undertaken to treat a patient, his employment and duty as a physician to the patient continues until [ended by consent [or request] of the patient] [or] [the physician withdraws from the case after giving the patient notice and a reasonable time to employ another doctor] [or] [the condition of the patient is such that the physician's services are no longer reasonably required.]

A physician may limit his obligation to a patient by undertaking to treat the patient [only for a certain ailment or injury] [or] [only] [at a certain time or place.] If he so limits his employment, the physician is not required to treat his patient [for any other ailment or injury] [or] [at any other time or place].

NEV J.I. 6.06  
BAJI 6.05

**WHEN CONSENT TO OPERATION OR  
TREATMENT IS NECESSARY**

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It is the duty of a physician or surgeon to obtain the consent of a patient before treating or operating on him. Such consent may be express or may be implied from the circumstances.

NEV J.I. 6.07  
BAJI 6.10

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**CONSENT OF PATIENT; WHEN CONCLUSIVELY ESTABLISHED PURSUANT TO NRS 41A.110**

NRS 41A.110 provides one method of proving that a patient has consented to a medical or surgical procedure. Such consent is to be deemed conclusively established if you find, by a preponderance of the evidence, that the physician did all of the following things:

1. Explained to the patient in general terms without specific details the procedure to be undertaken;
2. Explained to the patient alternative methods of treatment, if any, and their general nature;
3. Explained to the patient that there may be risks, together with the general nature and extent of the risks involved, without enumerating such risks; and
4. Obtained the signature of the patient on a statement containing an explanation of the procedure, alternative methods of treatment and the risks involved.

NEV J.I. 6.08  
NRS 41A.110

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**CONSENT OF PATIENT;  
WHEN IMPLIED PURSUANT TO NRS 41A.120**

NRS 41A.120 sets forth one set of circumstances under which a patient will be deemed to have impliedly consented to a medical or surgical procedure. Such consent is to be implied where:

1. Pursuant to competent medical judgment the proposed medical or surgical procedure is reasonably necessary and any delay in performing such procedure could reasonably be expected to result in death, disfigurement, impairment of faculties, or serious bodily harm; and
2. A person authorized to consent is not readily available.

NEV J.I. 6.09  
NRS 41A.120







**WHO WAS AUTHORIZED TO  
CONSENT FOR PATIENT**

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\_\_\_\_\_ was legally authorized to consent, on behalf of the plaintiff, to the [operation] [treatment] involved in this action.

This instruction does not imply an opinion that such consent was or was not given. Whether or not it was given is a question that you must decide.

NEV. J.I.6.12  
BAJI 6.12

1 **WHEN CONSENT TO AN OPERATION**  
2 **IS NOT NECESSARY**

3 If, in the performance of an authorized operation, a surgeon finds an unanticipated  
4 condition, and immediate action is necessary for the preservation of the life or health of the patient,  
5 and it is impracticable to obtain consent to a further operation which the surgeon deems to be  
6 immediately necessary; it is his duty to do what the occasion demands within the usual and  
7 customary practice among surgeons in good standing [in the same or a similar locality], and no  
8 additional consent is required.

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NEV. J.I. 6.13  
BAJI 6.13

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**EMERGENCY TREATMENT OR OPERATION**

[Ordinarily a physician or surgeon must obtain the consent of a patient before operation on or treating him. However,] If in an emergency, as defined in these instructions, it is impossible or impracticable to obtain consent, either form the patient or someone legally authorized to consent for him, a physician or surgeon may undertake surgery or other treatment provided that what he does is within the customary practice of physicians or surgeons of good standing [in the same or a similar locality and] under similar circumstances.

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BAJI 6.14

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**EMERGENCY DEFINED**

An emergency is an unforeseen combination of circumstances creating a condition which, in the professional judgment of a physician or surgeon of good standing [in the same or a similar locality and] acting under the same or similar circumstances, requires immediate care, treatment or surgery in order to protect a person's life or health.

NEV. J.I. 6.15  
BAJI 6.15

1                                   **REBUTTABLE PRESUMPTION OF MEDICAL NEGLIGENCE;**  
2                                   **BASIC FACTS ESTABLISHED AS A MATTER OF LAW;**  
3                                   **JURY QUESTION AS TO PRESUMED FACT**

4                   The law provides for a rebuttable presumption that a [personal injury] [death] was caused  
5 by negligence where the [personal injury] [death] occurred under [any one or more of] the  
6 following circumstances:

7                   [A foreign substance other than medication or a prosthetic device was unintentionally left  
8 within the body of a patient following surgery;]

9                   [An explosion or fire originating in a substance used in treatment occurred in the course of  
10 treatment;]

11                   [An unintended burn caused by heat, radiation or chemicals was suffered in the course of  
12 medical care;]

13                   [An injury was suffered during the course of treatment to a part of the body not directly  
14 involved in such treatment or proximate thereto;] [or]

15                   [A surgical procedure was performed on the wrong patient or the wrong organ, limb or  
16 part of a patient's body].

17                   In this action, it has been established that:

18                   [A foreign substance other than medication or a prosthetic device was unintentionally left  
19 within the body of a patient following surgery;]

20                   [An explosion or fire originating in a substance used in treatment occurred in the course of  
21 treatment;]

22                   [An unintended burn caused by heat, radiation or chemicals was suffered in the course of  
23 medical care;]

24                   [An injury was suffered during the course of treatment to a part of the body not directly  
25 involved in such treatment or proximate thereto;] [or]

26                   [A surgical procedure was performed on the wrong patient or the wrong organ, limb or  
27 part of a patient's body].

28                   The effect of this rebuttable presumption is that it places upon the defendant[s] the burden  
of proving, by a preponderance of the evidence, that the [personal injury] [death] was not caused  
by negligence.

NEV. J.I. 6.16  
NRS 41A.100

1                                   **REBUTTABLE PRESUMPTION OF MEDICAL NEGLIGENCE;**  
2                                   **JURY QUESTION AS TO BASIC FACTS AND PRESUMED FACT**

3                   The law provides for a rebuttable presumption that a [personal injury] [death] was caused  
4 by negligence where the [personal injury] [death] occurred under [any one or more of] the  
5 following circumstances:

6                   [A foreign substance other than medication or a prosthetic device was unintentionally left  
7 within the body of a patient following surgery;]

8                   [An explosion or fire originating in a substance used in treatment occurred in the course of  
9 treatment;]

10                  [An unintended burn caused by heat, radiation or chemicals was suffered in the course of  
11 medical care;]

12                  [An injury was suffered during the course of treatment to a part of the body not directly  
13 involved in such treatment or proximate thereto;] [or]

14                  [A surgical procedure was performed on the wrong patient or the wrong organ, limb or  
15 part of a patient's body].

16                  In you find by a preponderance of the evidence that:

17                  [A foreign substance other than medication or a prosthetic device was unintentionally left  
18 within the body of a patient following surgery;]

19                  [An explosion or fire originating in a substance used in treatment occurred in the course of  
20 treatment;]

21                  [An unintended burn caused by heat, radiation or chemicals was suffered in the course of  
22 medical care;]

23                  [An injury was suffered during the course of treatment to a part of the body not directly  
24 involved in such treatment or proximate thereto;] [or]

25                  [A surgical procedure was performed on the wrong patient or the wrong organ, limb or  
26 part of a patient's body;]

27 then the rebuttable presumption operates to shift to the defendant[s] the burden of proving, by a  
28 preponderance of the evidence, that the [personal injury] [death] was not caused by negligence.

                  If, on the other hand, you do not find by a preponderance of the evidence that:

                  [A foreign substance other than medication or a prosthetic device was unintentionally left  
within the body of a patient following surgery;]

                  [An explosion or fire originating in a substance used in treatment occurred in the course of  
treatment;]

                  [An unintended burn caused by heat, radiation or chemicals was suffered in the course of  
medical care;]

                  [An injury was suffered during the course of treatment to a part of the body not directly  
involved in such treatment or proximate thereto;] [or]



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[A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient's body;]

then the burden of proving, by preponderance of the evidence consisting of [expert medical testimony,] [material from recognized medical texts or treatises,] [or] [the regulations of the licensed health care facility wherein the alleged negligence, occurred,] that the [personal injury] [death] was caused by negligence remains with the plaintiff.

NEV. J.I. 6.17  
NRS 41A.100



1 **MEDICAL NEGLIGENCE; EVALUATION**  
2 **OF EXPERT TESTIMONY AS TO THE**  
3 **STANDARD OF CARE**

4 In this case you have heard [a] medical expert[s] express [an] opinion[s] as to the standard  
5 of professional learning, skill and care required of the defendant.

6 To evaluate [each] such opinion, you should consider the qualifications and credibility of  
7 the witness and the reasons given for his opinion. Give [each] [the] opinion the weight to which  
8 you deem it entitled.

9 [You must resolve any conflict in the testimony of the witnesses by weighing each of the  
10 opinions expressed against the others, taking into consideration the reasons given for the opinion,  
11 the facts relied upon the witness, his relative credibility, and his special knowledge, skill,  
12 experience, training and education.]

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NEV. J.I. 6.19  
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**LIABILITY OF PHYSICIANS, OTHERS  
RENDERING EMERGENCY MEDICAL  
CARE; GROSS NEGLIGENCE**

A licensed [physician] [physician's assistant] [nurse] who renders emergency care or assistance, gratuitously and in good faith, is not liable for any damages resulting from any act or omission, not amounting to gross negligence.

NEV. J.I. 6.20  
NRS 41.505(2)

1 **GROSS NEGLIGENCE DEFINED**

2 Gross negligence is substantially and appreciably higher in magnitude and more culpable  
3 than ordinary negligence. Gross negligence is equivalent to the failure to exercise even a slight  
4 degree of care. It is materially more want of care than constitutes simple inadvertence. It is an act  
5 or omission respecting legal duty of an aggravated character, as distinguished from a mere failure  
6 to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the  
7 want of even scant care.

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NEV. J.I. 6.21

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## PATIENT'S DUTY TO FOLLOW INSTRUCTIONS

It is the duty of a patient to follow all reasonable and proper advice and instructions given him by his doctor regarding the patient's care, activities and treatment.

A doctor is not liable for any injury resulting solely from the negligent failure of the patient to follow such advice and instructions.

However, if the negligence [or gross negligence] of the doctor is [proximate] [legal] cause of injury to the patient, the contributory negligence of the patient, if any, in not following such advice and instructions, does not bar recovery by him against the doctor unless such contributory negligence was greater than the negligence [or gross negligence] of the doctor; but the total amount to which the patient would otherwise be entitled shall be reduced in proportion to the negligence attributable to the patient.

NEV. J.I. 6.22  
BAJI 6.28

1 **DUTY OF A HOSPITAL**

2 [It is the duty of a hospital, such as the defendant \_\_\_\_\_, to use  
3 reasonable care in furnishing a patient the care, attention and protection reasonably required by his  
4 mental and physical condition.]

5 [It is [also] the duty of a hospital, such as the defendant \_\_\_\_\_, to use  
6 reasonable care in [selecting a competent medical staff] [periodically reviewing the competency  
7 of its medical staff].]

8 The amount of caution, attention and protection required in the exercise of reasonable care  
9 depends on the known condition of the patient and his needs, and must be appropriate to that  
10 condition and those needs.

11 The standard of reasonable care required of a hospital is the care, skill and diligence  
12 ordinarily used by hospitals generally under similar circumstances.

13 A failure to perform any such duty is negligence.

14 NEV. J.I. 6.23  
15 BAJI 6.20  
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1 **LIABILITY OF HOSPITAL FOR NEGLIGENCE**  
2 **OF PHYSICIAN OR NURSE**

3 If you should find that the plaintiff was injured as the result of the negligence of defendant \_\_\_  
4 (doctor) (nurse) you then must determine whether the defendant \_\_\_\_\_  
(hospital) is liable for that negligence.

5 If the defendant (doctor) (nurse) was employed directly by the  
6 plaintiff or by someone on the plaintiff's behalf, the defendant (doctor) (nurse)  
7 was not the agent of defendant hospital and the hospital is not liable for the negligence, if any, of  
8 said [doctor] [nurse].

9 A hospital may, as an accommodation to a patient, procedure for him the services of a  
10 physician or nurse, without assuming any control over such services. Also, a hospital may, as an  
11 accommodation to both patient and [doctor] [nurse], collect form the patient for the [doctor's]  
12 [nurse's] [fees] [wages]. Any such accommodation on the part of the hospital does not, in and of  
13 itself, make the [doctor] [nurse] the agent of the hospital.

14 If, however, the defendant hospital undertakes to provide [medical] [or] [surgical] [or]  
15 [nursing] services to the plaintiff by [a doctor or doctors] [a nurse or nurses] in its employ and  
16 under its control, then such person was the agent of defendant hospital and the hospital is liable for  
17 the negligence, if any, of said [doctor] [nurse], occurring within the scope of his employment.

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BAJI 6.21



**INTRODUCTORY INSTRUCTION;  
SINGLE LEGAL THEORY**

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The plaintiff seeks to establish a claim that the product in question was defective. I will now instruct on the law relating to this claim.

NEV. J.I. 7.00

**INTRODUCTORY INSTRUCTION;  
MULTIPLE LEGAL THEORIES**

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The plaintiff seeks to establish liability on one or more of \_\_\_\_ different legal bases.

One of the plaintiff's claim is that the product in question was defective, I will now instruct on the law relating to this claim.

NEV. J.I. 7.01

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**ELEMENTS**

In order to establish a claim of strict liability for a defective product, the plaintiff must prove the following elements by a preponderance of the evidence:

1. That the defendant was the \_\_\_\_\_ of the product;
2. That the product was defective;
3. That the defect existed when the product left the defendant's possession;
4. That the product was used in a manner which was reasonably foreseeable by the defendant; and
5. That the defect was a [proximate] [legal] cause of the damage or injury to the plaintiff.

NEV. J.I. 7.02  
BAJI 9.00

**DESIGN DEFECT; DEFINITION**

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A product is defective in its design if, as a result of its design, the product is unreasonably dangerous.

NEV. J.I. 7.03

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**MANUFACTURING DEFECT; DEFINITION**

A product is defective in its manufacture if the product differs from the manufacturer's intended result or if the product differs from apparently identical products from the same manufacturer and, as a result of this difference, the product is unreasonably dangerous.

NEV. J.I. 7.04

**WARNING DEFECT; DEFINITION**

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A product, though faultlessly made, is defective for its failure to be accompanied by suitable and adequate warnings concerning its safe and proper use, if the absence of such warnings renders the product unreasonably dangerous.

NEV. J.I. 7.05

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**UNREASONABLY DANGEROUS; DEFINITION**

A product is unreasonably dangerous if it failed to perform in the manner reasonably to be expected in light of its nature and intended function, and was more dangerous than would be contemplated by the ordinary user having the ordinary knowledge available in the community.

NEV. J.I. 7.06

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## MISUSE OF PRODUCT

Misuse of a product means a use which the defendant could not reasonably foresee. The mere fact that the defendant may not intend the product to be used in a certain way does not mean that using it in that way is a legal misuse of the product. If the defendant should reasonably foresee that the product may be used in a way other than intended by him, such other use is not a misuse.

NEV. J.I. 7.07



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**ASSUMPTION OF RISK**

The defendant contends that the plaintiff assumed the risk of the harm that he suffered. To establish that the plaintiff assumed this risk, the defendant must show, by a preponderance of the evidence; that:

1. The plaintiff actually knew and appreciated the particular risk or danger created by the defect;
2. The plaintiff voluntarily encountered this risk while realizing the danger; and
3. The plaintiff's decision to voluntarily encounter the known risk was unreasonable.

A person who thus assumes the risk is not entitled to recover for damages which resulted from the danger to which he exposed himself.

NEV. J.I. 7.08

**INTRODUCTORY INSTRUCTION;  
SINGLE LEGAL THEORY**

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The plaintiff seeks to establish a claim of [libel] [slander]. I will now instruct on the law relating to this claim.

NEV. J.I. 8.00

**INTRODUCTORY INSTRUCTION;  
MULTIPLE LEGAL THEORIES**

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The plaintiff seeks to establish liability on one or more of \_\_\_\_ different legal bases.

One of the plaintiff's claims is based upon [libel] [slander]. I will now instruct on the law relating to this claim.

NEV. J.I. 8.01

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**SLANDER; ELEMENTS**

In order to establish a claim of slander, the plaintiff must prove the following elements:

1. That the defendant made a false and defamatory oral communication concerning the plaintiff;
2. That the communication was published to a third party;
3. That the defendant either knew the communication was false and that it defamed the plaintiff [,] [or] acted in reckless disregard of these matters [, or acted negligently in failing to ascertain them]; and,
4. That the publication of the communication was a [proximate] [legal] cause of special damages to the plaintiff [or that the defamatory communication constituted slander *per se*].

NEV. J.I. 8.02

1 **SLANDER *PER SE*; DEFINITION**

2 “Slander *per se*” refers to certain slanderous communications which subject a defendant to  
3 liability without any showing that the publication of the communication was a [proximate] [legal]  
4 cause of special damages to the plaintiff.

5 A slanderous communication constitutes slander *per se* if it:

6 [imputes to the plaintiff the commission of a crime;]

7 [imputes to the plaintiff the contraction of a loathsome disease;]

8 [imputes unchastity to the plaintiff;] [or]

9 [would tend to injure the plaintiff in his trade, business, profession, or office.]

10 NEV. J.I. 8.03

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## LIBEL; ELEMENTS

In order to establish a claim of libel, the plaintiff must prove the following elements:

1. That the defendant made a false and defamatory written or printed communication concerning the plaintiff.
2. That the communication was published to a third party;
3. That the defendant either knew the communication was false and that it defamed the plaintiff [,] [or] acted in reckless disregard of these matters [, or acted negligently in failing to ascertain them]; and,
4. That the publication of the communication was a [proximate] [legal] cause of special damages to the plaintiff [or that the defamatory communication constituted libel *per se*].

NEV. J.I. 8.04

1 **LIBEL *PER SE*; DEFINITION**

2 “Libel *per se*” refers to certain libelous communications which subject a defendant to  
3 liability without any showing that the publication of the communication was a [proximate] [legal]  
4 cause of special damages to the plaintiff.

5 A libelous communication constitutes libel *per se* if its defamatory meaning is apparent  
6 from the communication itself and without reference to extrinsic facts.

7 In determining whether a communication constitutes libel *per se*, the words used are to be  
8 given the plain and natural meaning that they would normally convey to those to whom they were  
9 directed, in light of the circumstances under which the works were used.

10 NEV. J.I. 8.05  
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**DEFAMATORY COMMUNICATION; DEFINITION**

A communication is defamatory if it tends so to harm the reputation of the plaintiff as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

NEV. J.I. 8.06



**EXPRESSIONS OF OPINION**

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A defamatory communication may consist of a statement of fact or of a statement in the form of any opinion, but a statement in the form of an opinion is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.

NEV. J.I. 8.07

1 **PUBLICATION; DEFINITION**

2 Publication of a defamatory matter is its communication intentionally or by a negligent act  
3 to one other than the person [or persons] defamed.

4 [No publication takes place by virtue of the communication of defamatory matter by one  
5 corporate officer, agent, or employee to another corporate officer, agent, or employee in the  
6 regular course of the corporation's business.]

7 [One who intentionally and unreasonably fails to remove defamatory matter that he knows  
8 to be exhibited on property in his possession or under his control is subject to liability for its  
9 continued publication.]

10 NEV. J.I. 8.08

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1 **RECKLESS DISREGARD; DEFINITION**

2 A defamatory communication is made in reckless disregard of its falsity if the defendant  
3 entertained serious doubts as to the truth of the communication or had a high degree of awareness  
4 of the communication's probably falsity.

5 NEV. J.I. 8.09

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**SPECIAL DAMAGES; DEFINITION**

As used in these instructions, the phrase “special damages” means damages that flow directly from the injury to reputation caused by the defamation; not from the more general effects of the defamation.

NEV. J.I. 8.10



**INTENTIONAL MISREPRESENTATION;  
ELEMENTS**

1. A false representation made by the defendant;
2. Knowledge or belief on the part of the defendant that the representation was false or that he had an insufficient basis of information to make the representation;
3. An intention on the part of the defendant to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation;
4. Justifiable reliance upon the misrepresentation on the part of the plaintiff in taking action or refraining from it; and
5. Damage to the plaintiff, resulting from such reliance.

NEV. J.I. 9.01

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**BURDEN OF PROOF**

This burden is upon the plaintiff to support his contention of [intentional misrepresentation] [concealment] [making promises without intent to perform] by clear and convincing proof.

NEV. J.I. 9.02

1 **CONCEALMENT; ELEMENTS**

2 1. The defendant must have concealed or suppressed a material fact;

3 2. The defendant must have been under a duty to disclose the fact to the plaintiff;

4 3. The defendant must have intentionally concealed or suppressed the fact with the  
5 intent to defraud the plaintiff, that is, he must have concealed or suppressed the fact for the purpose  
6 of inducing the plaintiff to act differently than he would if he knew the fact;

7 4. The plaintiff must have been unaware of the fact and would not have acted as he did  
8 if he had known of the concealed or suppressed fact;

9 5. And, finally, as a result of the concealment or suppression of the fact, the plaintiff  
10 must have sustained damage.

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NEV. J.I. 9.03



**PROMISE WITHOUT INTENT TO PERFORM;  
ELEMENTS**

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1. The defendant must have made a promise as to a material matter and, at the time he made it, he must have intended not to perform it;

2. The defendant must have made the promise with an intent to defraud the plaintiff, that is, he must have made the promise for the purpose of inducing plaintiff to rely upon it, and to act or refrain from acting in reliance upon it;

3. The plaintiff must have been unaware of the defendant's intention not to perform the promise, he must have acted in reliance upon the promise, and he must have been justified in relying upon the promise made by the defendant;

4. And, finally, as a result of his reliance upon defendant's promise, the plaintiff must have sustained damage.

NEV. J.I. 9.04  
BAJI 12.40

**NEGLIGENT MISREPRESENTATION;  
ELEMENTS**

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3       1.       The defendant must have supplied information while in the course of his business,  
profession or employment, or any other transaction in which he had a pecuniary interest;

4               2.       The information must have been false;

5               3.       The information must have been supplied for the guidance of the plaintiff in his  
6 business transactions;

7               4.       The defendant must have failed to exercise reasonable care or competence in  
obtaining or communicating the information;

8               5.       The plaintiff must have justifiably relied upon the information by taking action or  
9 refraining from it;

10              6.       And, finally, as a result of his reliance upon the accuracy of the information, the  
plaintiff must have sustained damage.

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12 NEV. J.I. 9.05  
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1 **RELIANCE**

2 A party claiming to have been damaged by [a false representation] [a promise made  
3 without an intent to perform] [false information] must have relied upon the [representation]  
4 [promise] [information]; that is, the [representation] [promise] [information] must have been a  
[proximate] [legal] cause of the party's action or failure to act.

5 The [representation] [promise] [information] need not be the sole [proximate] [legal] cause  
6 if it appears that reliance upon it substantially influenced the party's action or failure to act, even  
though other influences operated as well.

7 Reliance may be shown by direct evidence or may be inferred from the circumstances.

8 NEV. J.I. 9.06  
9 BAJI 12.51

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1 **DAMAGES; OUT OF POCKET RULE**

2 If under the court’s instructions, you find that plaintiff is entitled to a verdict against  
3 defendant, you must then award plaintiff damages, if any, [proximately] [legally] caused by the  
4 misrepresentation upon which you base your finding of liability.

5 The amount of such award shall include:

6 1. The difference, if any, between the actual value of that with which the plaintiff  
7 parted and the actual value of that which he received. This is sometimes referred to as the “out of  
8 pocket loss.”

9 Actual value means market value. Market value means the highest price, in terms of  
10 money, for which real or personal property would sell on the open market; the seller having a  
11 reasonable time within which to sell, and being willing to sell but not forced to do so, the buyer  
12 being ready, willing and able to buy but not forced to do so, and having a reasonable time and full  
13 opportunity to investigate the property in question and to determine its condition, suitability for  
14 use, and all of the things about the property that would naturally and reasonably affect its market  
15 value.

16 2. In addition to his “out of pocket loss,” if any, plaintiff is entitled to recover any  
17 additional damage arising from the particular transaction, including any of the following:

18 a. [Amounts actually and reasonably expended in reliance upon the  
19 misrepresentation;]

20 b. [An amount which will compensate the plaintiff for loss of use and enjoyment of the  
21 property to the extent that any such loss was [proximately] [legally] caused by the  
22 misrepresentation;]

23 c. [An amount which will compensate him for profits or other gains which might  
24 reasonably have been earned by use of the property had he retained it;]

25 d. [An amount which will compensate him for any loss of profits or other gains which  
26 were reasonably anticipated, and would have been earned by him for the use or sale of the  
27 property, had it possessed the characteristics attributed to it by the party making the  
28 misrepresentation; provided that lost profits from the use or sale of the property shall be  
recoverable only if, and only to the extent that, all of the following apply;

(i) The plaintiff acquired the property for the purpose of using or reselling it  
for a profit;

(ii) The plaintiff reasonably relied upon the misrepresentation in entering into  
the transaction and in anticipating profits from the subsequent use or sale of the  
property; and

(iii) Any loss of profits for which damages are sought under this paragraph have  
been [proximately] [legally] caused by the misrepresentation and the plaintiff’s  
reliance on it.]

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**DAMAGES; BENEFIT OF THE BARGAIN RULE**

If, under the court’s instructions, you find that plaintiff is entitled to a verdict against the defendant, you must the award plaintiff damages in an amount that will reasonably compensate him for all the loss suffered by him and [proximately] [legally] caused by the misrepresentation upon which you base your finding of liability.

The amount of such award shall be the difference, if any, between the actual value of that which the plaintiff received and the value which it would have had if the misrepresentation had been true. This is sometimes referred to as the “benefit of the bargain.”

NEV. J.I. 9.08  
BAJI 12.57



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**PERSONAL INJURY AND PROPERTY DAMAGE;  
INTRODUCTORY (ADMITTED LIABILITY)**

The defendant has admitted liability for the plaintiff's personal injuries [and property damage] [proximately] [legally] caused by the accident in question.

[A proximate cause of an injury [or damage] is a cause which, in natural and continuous sequence, produces the injury [or damage], and without which the injury [or damage] would not have occurred.]

[A legal cause of an injury [or damage] is a cause which is a substantial factor in bringing about the injury] [or damage].

In determining the amount of losses, if any, suffered by the plaintiff as a [proximate] [legal] result of the accident in question, you will take into consideration the nature, extent and duration of the injuries [or damage] you believe from the evidence plaintiff has sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate plaintiff for the following items:

NEV. J.I. 10.01

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**PERSONAL INJURY; MEDICAL EXPENSES**

The reasonable medical expenses plaintiff has necessarily incurred as a result of the accident [and the medical expenses which you believe the plaintiff is reasonably certain to incur in the future as a result of the accident].

NEV. J.I. 10.02



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**PERSONAL INJURY; LOSS OF EARNINGS**

Plaintiff's loss of earnings from the date of the accident to the present [and the loss of earnings which you believe the plaintiff is reasonably certain to experience in the future as a result of the accident].

NEV. J.I. 10.03

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**PERSONAL INJURY; PAIN AND SUFFERING**

The physical and mental pain, suffering, anguish and disability endured by the plaintiff from the date of the accident to the present [and the physical and mental pain, suffering, anguish and disability which you believe plaintiff is reasonably certain to experience in the future as a result of the accident].

NEV. J.I. 10.04

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**PERSONAL INJURY; PAIN AND SUFFERING;  
NO DEFINITE STANDARD**

No definite standard [or method of calculation] is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. [Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation.] In making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence.

NEV. J.I. 10.05  
BAJI 14.13



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**PERSONAL PROPERTY DAMAGE;  
COST OF REPAIR**

The cost of repairing the damage to the plaintiff's property.

NEV. J.I. 10.07  
BAJI 14.20





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**PERSONAL PROPERTY LOST OR DESTROYED**

The plaintiff's property that was lost or destroyed in, or because of, the accident. That amount is the fair market value of such property at the time of its loss or destruction.

NEV. J.I. 10.10  
BAJI 14.21



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**LOSS OF USE OF PERSONAL PROPERTY**

Damage to plaintiff as a result of being deprived of the use of his [automobile] [property] during the time reasonably necessary for repairing the damage [proximately] [legally] resulting from the accident. In determining that amount you may consider the reasonable rental value of the [automobile] [property] for the period of time just mentioned.

NEV. J.I. 10.11  
BAJI 14.22

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**WRONGFUL DEATH; HEIR AS PLAINTIFF;  
INTRODUCTORY**

Plaintiff[s] \_\_\_\_\_ [is] [are] the  
heir[s] of \_\_\_\_\_, deceased.

In determining the amount of losses, if any, suffered by [one or more of] the heir[s] as a  
[proximate] [legal] result of the death of \_\_\_\_\_, you will decide  
upon a sum of money sufficient to reasonably and fairly compensate [each] such heir for the  
following items:

NEV. J.I. 10.12



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**WRONGFUL DEATH OF CHILD; HEIR AS  
PLAINTIFF; LOSS OF PROBABLE SUPPORT,  
COMPANIONSHIP, SOCIETY AND COMFORT**

The heir's loss of probable support, companionship, society and comfort. In determining that loss you may consider not only the benefits that the heir was reasonably certain to have received from the earnings and services of [his] [her] child during the child's minority, but also the support and financial benefit which it is reasonably certain the heir would have received from the child after the latter's majority and during the period of their common life expectancy.

You may consider also what loss, if any, the heir was suffered, and will suffer in the future with reasonable certainty, by being deprived of the love, companionship, comfort, affection, society, solace or moral support of the child.

As an offset against the factors of loss mentioned, you should take into consideration what it would have cost the heir to support and educate the deceased child, had [he] [she] lived.

In weighing these matters, you may consider:

1. The age of the deceased and of the heir;
2. The state of health and physical condition of the deceased and of the heir as it existed at the time of death and immediately prior thereto;
3. Their station in life;
4. Their respective life expectancies as shown by the evidence;
5. The disposition of the deceased, whether it was kindly, affectionate, or otherwise;
6. Whether or not [he] [she] showed a likelihood of contributing to the support of the heir;
7. The earning capacity, if any, of the deceased; and
8. All other facts in evidence that throw light upon the question of what benefits the heir might reasonably have been expected to receive from the deceased child had [he] [she] lived.

With respect to the matter of life expectancy, you must keep this point in mind: the prospective period of time that will be of concern to you if you decide in favor of [any] [the] heir is only the shorter of the two life expectancies, that of such heir or that of the deceased child, as one can derive a benefit from the life of another only so long as both are alive.

NEV. J.I. 10.14  
BAJI 14.52  
NRS 41.085(4)

**WRONGFUL DEATH; HEIR AS  
PLAINTIFF; GRIEF OR SORROW**

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Any grief or sorrow suffered by the heir [and any grief or sorrow reasonably certain to be experienced by the heir in the future].

NEV. J.I. 10.15  
NRS 41.085(4)

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**WRONGFUL DEATH; HEIR AS PLAINTIFF;  
PAIN, SUFFERING, OR DISFIGUREMENT  
OF THE DECEDENT**

If, under the court’s instructions, you find that [one or more of] the heir[s] is entitled to a verdict, you must also award to such heir[s] as damages an amount representing the pain and suffering [and disfigurement], if any, experienced by the decedent and [proximately] [legally] caused by the act or omission upon which you base your finding of liability.

NEV. J.I. 10.16  
NRS 41.085(4)

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**WRONGFUL DEATH; HEIR AS PLAINTIFF;  
GRIEF, SORROW, PAIN, SUFFERING,  
DISFIGUREMENT; NO DEFINITE STANDARD**

No definite standard [or method of calculation] is prescribed by law by which to fix reasonable compensation for grief or sorrow [or pain and suffering] [and disfigurement]. Nor is the opinion of any witness required as to the amount of such reasonable compensation. [Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation.] In making an award for grief or sorrow [and] [,] [pain and suffering] [and disfigurement] you shall exercise your authority with clam and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

NEV. J.I. 10.17  
BAJI 14.13

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**WRONGFUL DEATH; PERSONAL  
REPRESENTATIVE AS PLAINTIFF; SPECIAL  
DAMAGE AND PENALTIES**

Plaintiff \_\_\_\_\_ is the personal representative of  
\_\_\_\_\_, deceased.

If, under the court's instructions, you find that plaintiff \_\_\_\_\_ is entitled to a verdict against the defendant, you must then award him damages in an amount that will reasonably compensate the estate for any special damages, such as medical expenses, which the decedent incurred before his death, and funeral expenses, provided that you find that such damages were actually suffered by the estate and were [proximately] [legally] caused by the act or omission upon which you base your finding of liability.

[Plaintiff \_\_\_\_\_ is also entitled to recover, on behalf of the estate, any penalties that the decedent would have recovered if he had lived.]

NEV. J.I. 10.18  
NRS 41.085(5)



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**PERSONAL INJURY AND PROPERTY DAMAGE;  
CLOSING INSTRUCTION**

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that plaintiff prove each item of damage by a preponderance of the evidence.

NEV. J.I. 10.19

1 **PUNITIVE DAMAGES; RECOVERY**  
2 **AND MEASURE**

3 If you find that plaintiff suffered damage as a [proximate] [legal] result of the conduct of  
4 the defendant, and upon which conduct you base a finding of liability, you may then consider  
5 whether you should award punitive or exemplary damages against defendant  
6 [\_\_\_\_\_ only], for the sake of example and by way of punishment. You may in  
7 your discretion award such damages, if, but only if, you find by a preponderance of the evidence  
8 that said defendant was guilty of [oppression] [fraud] [or] [malice] in the conduct upon which you  
9 base your finding of liability.

10 ["Malice" means conduct which is [intended by the defendant to cause injury to the  
11 plaintiff] [or] [carried on by the defendant with a conscious disregard for the] [rights] [or] [safety]  
12 of others.]

13 ["Oppression" means subjecting a person to cruel and unjust hardship in conscious  
14 disregard of that person's rights.]

15 ["Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact  
16 known to the defendant with the intention, on the part of the defendant, of thereby depriving a  
17 person of property or legal rights or otherwise causing injury.]

18 The law provides no fixed standards as to the amount of such punitive damages, but leaves  
19 the amount to the jury's sound discretion, exercised without passion or prejudice.

20 In arriving at any award of punitive damages, you are to consider the following:

- 21 1. The reprehensibility of the conduct of the defendant;
- 22 2. The amount of punitive damages which will have a deterrent effect on the defendant  
23 in the light of defendant's financial condition.

24 NEV. J.I. 10.20  
25 BAJI 14.71  
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**PUNITIVE DAMAGES; DEFINITION  
OF CONSCIOUS DISREGARD OF  
RIGHTS OR SAFETY OF OTHERS**

A person acts with conscious disregard of the rights or safety of others when [he] [she] is aware of the probable dangerous consequences of [his] [her] conduct and willfully and deliberately fails to avoid those consequences.

NEV. J.I. 1021  
BAJI 14.72

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**ALL INSTRUCTIONS NOT NECESSARILY APPLICABLE**

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case [including that of damages] must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

NEV. J.I. 11.00  
BAJI 15.22

1 **DUTY OF JUROR TO CONSULT**

2 It is your duty as jurors to consult with one another and to deliberate with a view toward  
3 reaching an agreement, if you can do so without violence to your individual judgment. Each of you  
4 must decide the case for yourself, but should do so only after a consideration of the case with your  
5 fellow jurors, and you should not hesitate to change an opinion when convinced that it is  
6 erroneous. However, you should not be influenced to vote in any way on any questions submitted  
7 to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other  
8 words, you should not surrender your honest convictions concerning the effect or weight of  
9 evidence for the mere purpose of returning a verdict or solely because of the opinion of the other  
10 jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of  
11 all the evidence in the case under the rules of law as given you by the court.

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NEV. J.I. 11.01

1 **READING BACK TESTIMONY**

2 If, during your deliberation, you should desire to be further informed on any point of law or  
3 hear again portions of the testimony, you must reduce your request to writing signed by the  
4 foreman. The officer will then return you to court where the information sought will be given to  
5 you in the presence of the parties or their attorneys.

6 Read backs of testimony are time consuming and are not encouraged unless you deem it a  
7 necessity. Should you require a read back, you must carefully describe the testimony to be read  
8 back so that the court report can arrange her notes. Remember, the court is not a liberty to  
9 supplement the evidence.

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NEV. J.I. 11.02

1 **ARGUMENTS OF COUNSEL**

2 Now you will listen to the arguments of counsel who will endeavor to aid you to reach a  
3 proper verdict by refreshing in your minds the evidence and by showing the application thereof to  
4 the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in  
5 your deliberation by the evidence, as you understand it and remember it to be, and by the law as  
6 given you in these instructions, and return a verdict which, according to your reason and candid  
7 judgment, is just and proper.

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NEV. J.I. 11.03

**CONCLUDING INSTRUCTION;  
GENERAL VERDICT ONLY**

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When you retire to consider your verdict, you must select one of your number to act as foreman, who will preside over your deliberation and will be your spokesman here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreman, and then return with it to this room.

NEV. J.I. 11.04



**CONCLUDING INSTRUCTION;  
SPECIAL VERDICT ONLY**

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When you retire to consider your verdict, you must select one of your number to act as foreman, who will preside over your deliberation and will be your spokesman here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and a special verdict form which has been prepared for your convenience.

NEV. J.I. 11.05

1 **CONCLUDING INSTRUCTION;**  
2 **GENERAL VERDICT WITH**  
3 **SPECIAL FINDINGS**

4 When you retire to consider your verdict, you must select one of your number to act as  
5 foreman, who will preside over your deliberation and will be your spokesman here in court.

6 During your deliberation, you will have all the exhibits which were admitted into  
7 evidence, these written instructions and forms of verdict which have been prepared for your  
8 convenience.

9 In civil actions, three-fourths of the total number of jurors may find and return a verdict.  
10 This is a civil action. If your verdict is in favor of the plaintiff, you are directed to make special  
11 findings of fact consisting of written answers to the questions in a form that will be given to you.  
12 You shall answer the questions in accordance with the directions in the form and all of the  
13 instruction so of the court. As soon as six or more of you have agreed upon every answer in the  
14 special findings, you must have the verdict and special findings signed and dated by your foreman,  
15 and then return with them to this room.

16 NEV. J.I. 11.06  
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**GENERAL VERDICT FORM;  
VERDICT FOR PLAINTIFF;  
OPTIONAL SPECIAL VERDICT ON  
PAST AND FUTURE DAMAGES**

We, the jury in the above-entitled action, find for the plaintiff and against the defendant[s] and assess the total amount of the plaintiff's damages at \$\_\_\_\_\_.

[We further find that the total amount of the plaintiff's damages is divided into past damages and future damages as follows:

Past damages .....\$\_\_\_\_\_,  
Future damages .....\$\_\_\_\_\_.]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
FOREMAN

NEV. J.I. 12.00

**GENERAL VERDICT FORM;  
VERDICT FOR DEFENDANT**

We, the jury in the above-entitled action, find for the defendant[s] and against the plaintiff.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
FOREMAN

NEV. J.I. 12.01

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**GENERAL VERDICT WITH SPECIAL  
FINDINGS; STRICT PRODUCTS  
LIABILITY ACTION**

We, the jury in the above-entitled action, find for the plaintiff and against the defendant and assess the total amount of the plaintiff's damages at \$\_\_\_\_\_.

We further find as follows on the particular questions of fact herein:

Question No. 1: Did the defendant [manufacture, sell, etc.] the product in question?

Answer "yes" or "no."

Answer: \_\_\_\_\_

Question No. 2: Was the product defective?

Answer "yes" or "no."

Answer: \_\_\_\_\_

Question No. 3: Did the defect in the product exist when the product left the defendant's possession?

Answer "yes" or "no."

Answer: \_\_\_\_\_

Question No. 4: Was the product used in a manner which was reasonably foreseeable by the defendant?

Answer "yes" or "no."

Answer: \_\_\_\_\_

Question No. 5: Was the defect a [proximate] [legal] cause of damage or injury to the plaintiff?

Answer "yes" or "no."

Answer: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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FOREMAN

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**GENERAL VERDICT CONCERNING  
NEGLIGENCE ALONG WITH SPECIAL  
VERDICT CONCERNING CONTRIBUTORY  
NEGLIGENCE; VERDICT FOR PLAINTIFF**

We, the jury in the above-entitled action, find for the plaintiff and against the defendant and, without reduction for plaintiff's contributory negligence, if any, assess the total amount of the plaintiff's damages at \$\_\_\_\_\_.

Having found for the plaintiff and against the defendant, we further find:

- 1. The percentage of negligence on the part of the plaintiff which was a [proximate] [legal] cause of the plaintiff's injury was .....%
  - 2. The percentage of negligence on the part of the defendant, which was a [proximate] [legal] cause of the plaintiff's injury was .....%
- TOTAL ..... 100%

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
FOREMAN

NEV. J.I. 12.03