

TRIAL ADVOCACY – FALL 2004
Jury Instructions for Meryll v. Porter

INSTRUCTION NO. __

NEGLIGENCE – DEFINED

When the word negligence is used in these instructions it means the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence in this case. It is for you to decide how a reasonably careful person would act under those circumstances. To constitute negligence an act must be one from which a reasonably careful person would foresee such an appreciable risk of harm to others as to cause him (her) not to do the act, or to do it in a more careful manner.

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NEGLIGENCE – BURDEN OF PROOF

Fran Meryll claims damages from Carrie Porter and Grass Golf Course, Inc. and has the burden of proving each of three essential propositions:

First, that (s)he has sustained damages;

Second, that Carrie Porter and Grass Golf Course, Inc. was negligent;

And third, that such negligence was a proximate cause of Fran Meryll's damages.

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DUTY TO WARN

One who profits from the use of a golf cart which (s)he knows or has reason to know is likely to be dangerous when used for the purpose for which it was designed has a duty to give a reasonable and adequate warning of that danger. A violation of this duty is negligence. There is no duty, however, to warn a user of obvious dangers or of those known to her (him) or of those which (s)he should reasonably discover for herself (himself).

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BREACH OF IMPLIED WARRANTY

A seller impliedly warrants that a product is merchantable at the time (s)he sells it. To be merchantable, a product must be fit for the ordinary purposes for which such goods are used.

In this case Fran Meryll claims damages on the ground that Carrie Porter and Grass Golf Course, Inc. breached the warranty of merchantability. In order to recover, Fran Meryll must prove each of four essential propositions:

First, that (s)he has sustained damages;

Second, that Carrie Porter and Grass Golf Course, Inc. sold her (him) the use of a golf cart which was not merchantable as has been defined for you;

Third, that this unmerchantable condition was a proximate cause of Carrie Porter and Grass Golf Course, Inc.'s damages; and

Fourth, that Fran Meryll was a person whom Carrie Porter and Grass Golf Course, Inc. might reasonably expect to be affected by the golf cart.

If you find from the evidence in this case that each of these propositions have been proved, then your verdict should be for Fran Meryll; but if, on the other hand, you find from the evidence that any of these propositions has not been proved, then your verdict should be for Carrie Porter and Grass Golf Course, Inc.

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MEASURE OF DAMAGES

If you decide for Fran Meryll on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate for any of the following five (5) elements of damage sustained:

First: The nature, extent and duration of any injury and whether it is temporary or permanent.

Second: The reasonable expense of any necessary medical care, treatment and services received.

Third: Any pain and suffering experienced in the past and reasonably certain to be experienced in the future.

Fourth: The value of any earnings and working time lost and the present value of any earnings and working time reasonably certain to be lost in the future.

Fifth: The present value of any loss of ability to earn in the future.

Whether any of these five (5) elements of damage has been proved by the evidence is for you to determine.

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COMPARATIVE FAULT

If you should find that the golf cart accident was proximately caused by negligence on the part of Carrie Porter and Grass Golf Course, Inc. and not by negligence on the part of Fran Meryll, then Fran Meryll is entitled to recover the full amount of any damages you may find (s)he has sustained as a result of the occurrence.

If you should find that the golf cart accident was proximately caused by the negligence of both Fran Meryll and Carrie Porter and Grass Golf Course, Inc., then you must compare the percentages of their negligence.

If the negligence of Fran Meryll is of less degree than the negligence of Carrie Porter and Grass Golf Course, Inc., then Fran Meryll is entitled to recover any damages which you may find (s)he has sustained as a result of the occurrence after you have reduced them in proportion to the degree of their negligence.

On the other hand, if Carrie Porter and Grass Golf Course, Inc. were not negligent or if the negligence of Fran Meryll is equal to or greater in degree than the negligence of Carrie Porter and Grass Golf Course, Inc., then Fran Meryll is not entitled to recover any damages.