



**CALIFORNIA
JURY
INSTRUCTIONS**

**CIVIL
8TH EDITION**

The Committee on
Standard Jury Instructions,
Civil, of the Superior Court
of Los Angeles County,
California

CALIFORNIA JURY INSTRUCTIONS CIVIL

Book of Approved Jury Instructions

[BAJI]

Eighth Edition

Prepared by

The Committee on Standard Jury Instructions, Civil,
of the

Superior Court of Los Angeles County, California

HON. STEPHEN M. LACHS

Judge of the Superior Court
Chairman

Compiled and Edited

by

PAUL G. BRECKENRIDGE, Jr.
Judge of the Superior Court (Retired)

**Volume 1
Parts 1 to 10**

ST. PAUL, MINN.
WEST PUBLISHING CO.

1994

CITE THIS BOOK
BAJI (8th ed.)

Cite these instructions
BAJI No. _____

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By

THE JUDGES OF THE SUPERIOR COURT
OF LOS ANGELES COUNTY, CALIFORNIA

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WEST PUBLISHING CO.

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WEST PUBLISHING CO.

ISBN 0-314-04862-6



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October, 1994

**THE COMMITTEE ON STANDARD
JURY INSTRUCTIONS, CIVIL
of the
SUPERIOR COURT OF LOS ANGELES
COUNTY, CALIFORNIA**

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PAUL G. BRECKENRIDGE, JR.
*Judge of the Superior Court, Retired
Consultant*

PREFACE

A barrage of new law and new technology has almost overwhelmed the bench and bar in California since 1986, the year of the publication of the Seventh Edition of BAJI. In 1985 the members of the BAJI committee were debating the possibility of using a loose-leaf volume for instructions (and decided against it). Today the loose-leaf version is almost an anachronism, what with the publication of our instructions on discs for computer use. Since the end of 1985 there have been 17 bound volumes of Supreme Court Reports and 75 bound volumes of Appellate Court Reports published. And, you will notice, the volumes are much thicker than their predecessors.

Since 1985 we have done away with the age-old instruction on proximate cause, we have become aware of gender neutrality in language, we have seen the appearance and disappearance of causes of action (look at wrongful termination for example) and jury instructions have been mentioned in more and more appeals. The result has been that our current pocket parts now total over 560 pages. It clearly was time to bring out an Eighth Edition.

This Eighth Edition differs from the Seventh in at least one major way. With some exceptions, a single, simply stated format has been developed for each theory of relief, and BAJI 2.60 has been revised to permit the trial judge to refer the jury to the format instruction for the essential elements a party is required to prove. By this technique, it is anticipated that unnecessary repetition can be eliminated. The Court and counsel should however, carefully review the use notes as there are a few types of cases where this approach is not appropriate, in which case the blanks provided in BAJI 2.60 can be used.

This work continues the efforts of the late Hon. William J. Palmer who, in 1935 conceived the idea of creating pattern instructions pertaining to those legal concepts which occur with some frequency in our jury trials. As a result of his efforts, the First Edition of BAJI was published in 1938. Judge Palmer was responsible for the research and editorial effort that went into the production of the various editions of BAJI until 1957. His work was then taken over by a committee of the Los Angeles Superior Court and has been a committee function since. Today the Committee remains as always, a creature of our Court. Over the years the composition of the Committee has of course changed. It currently consists of twelve judges and six attorneys. The judges and attorneys are selected by the Presiding

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Judge based upon their recognized scholastic excellence as well as their ability to bring a balance of views between the plaintiff and defense bars.

This Committee is not sanctioned by any law-making body. While our role in providing instructions is well recognized (see for example footnotes 9 and 10 in *Mitchell v. Gonzales*, 54 Cal.3d 1041 and the dissent at page 1061) and indeed the use of our instructions is recommended by the Judicial Council (Cal. Standards Jud. Admin., 5), our instructions do not have the imprimatur of the Supreme Court, the Judicial Council or the Legislature. The instructions which we devise and revise represent our best collective thinking. Lawyers are free to disagree with our work and trial and appellate courts are equally free to criticize instructions. With this in mind, the bench and bar must remember that lawyers still have an obligation to present their own instructions, particularly in areas where BAJI hasn't written, and that judges still have an obligation to give serious consideration to those non-BAJI instructions that counsel offer. With the use of word processors and computers, judges and attorneys now have an easy way of dealing with modifications and original instructions which will more aptly fit a particular case.

For a short time you will be able to use these volumes without checking pocket parts. However, just as the law continues to evolve, so the work of our Committee continues and our output will be published in our semi-annual pocket parts.

Thanks are due to the many of you who have written or phoned with suggestions and criticisms. Sometimes your suggestions have led to reconsideration and revision, sometimes to reconsideration with no revision. But always we are happy to hear from lawyers and judges who, after all are the ones who must use BAJI in their daily work. Interestingly, as a trial judge and as Chair of the BAJI Committee, I have never heard from any jurors, the ultimate consumers of our efforts, concerning our instructions. I assume that many would be critical of the complexity of the instructions.

This raises a final point. Our Committee always strives to write instructions that are accurate, brief, neutral and understandable. However, the Committee also feels an obligation to reduce the possibility of trial error by adopting the language of cases and statutes. If we took the language of a statute and reworded it in a manner that we thought was more understandable, it might help a particular jury, but it would also be an invitation to an appeal and perhaps lead to a reversal. Thus the reason for the conservative approach to adopting language that is already written in the law. A further problem is, of

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course, that many of our cases involve multiple, complex legal theories that cannot be made very simple. However, with that background, we still strive to help juries in the painful process of understanding their instructions.

West Publishing Company has been a most cooperative partner in the efforts of this Committee. Our relationship goes back many years and will continue as BAJI contemplates our place in the communications explosion of the Twenty-first Century. We thank the Company and look forward to a future of working together with a mind to assisting the bench, the bar and the public.

We are most fortunate to have had the services of an exceptional jurist as our Consultant. Judge Paul Breckenridge has been the one person who is most responsible for the shape BAJI has taken over the last six years. Our Committee owes him our deepest thanks, which we want to publicly express.

The work of this Committee is most time-consuming, especially for judges and lawyers whose lives are filled with so much else to do. Yet our meetings are consistently enjoyable, shifting from discussions of the most theoretical of legal issues to worrying about whether a particular word is best used rather than another. The work, the thought and the decisions are ultimately those of this dedicated and most professional group of people. As Chair of the Committee, I want to personally thank each one of the following for a job well done:

SUPERIOR COURT JUDGES

RAYMOND CARDENAS
RONALD CAPPAL
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MEMBERS OF THE CALIFORNIA BAR

**KENNETH CHIATE
JOHNNIE COCHRAN, JR.
LARRY FELDMAN
LAWRENCE GRASSINI
ELLIS HORVITZ
ROY WEATHERUP**

And last, a thanks to our long-suffering jurors who, faced with instructions as difficult as the definition of direct and circumstantial evidence (BAJI 2.00), still manage to produce so many verdicts which are a credit to a system of justice that has known no equal. To them are these volumes dedicated.

**STEPHEN M. LACHS
JUDGE OF THE SUPERIOR COURT
CHAIR, COMMITTEE ON
STANDARD JURY INSTRUCTIONS
CIVIL**

Los Angeles, California
July, 1994

THE TRIAL JUDGE'S DUTY TO INSTRUCT IN CIVIL CASES

In Civil cases, the judge may give instructions on his own motion (C.C.P. § 608), but "there ordinarily is no duty to instruct in the absence of specific request by a party: the exception is a complete failure to instruct on material issues and controlling legal principles which may amount to reversible error . . ." *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 951, 160 Cal.Rptr. 141, 153, 603 P.2d 58, 70. 7 Witkin, Calif. Procedure (3d ed), Trial, § 243.

The duty of the trial judge to instruct in civil matters is not onerous. Applying the general rule it is said that each of the parties must propose complete and comprehensive instructions in accordance with the party's theory of the litigation. If the party fails to do so the court has no duty to instruct on its own motion. *Willden v. Washington National Insurance Company* (1976) 18 Cal. 3d 631, 135 Cal.Rptr. 69, 72 557 P.2d 501, 504; *Downing v. Barrett, etc., Inc.* (1974) 38 Cal.App.3d 519, 523, 113 Cal.Rptr. 277, 280. Some courts have gone so far as to say that in civil litigation "a court has no duty to instruct *sua sponte* on any issue . . ." *Fierro v. International Harvester Company* (1982) 127 Cal.App.3d 862, 869, 179 Cal.Rptr. 923, 927.

A litigant does have the right to have the jury properly instructed on its theory of the case, but the instructions offered on such a theory must accurately state the law and must not be argumentative (*ibid.*). If an incorrect or argumentative instruction is offered, the trial court has no duty to correct it. If requested instructions are objectionable in any respect "a judge in a civil case has performed his full duty in denying them . . ." *Sloan v. Sterns* (1955) 137 Cal.App.2d 289, 300, 290 P.2d 382, 390.

Despite these broad statements, it has been held that the obligation to instruct on all material issues and controlling legal principles does require the trial court on its own initiative to instruct on the issue of damages (*Pepper v. Underwood* (1975) 48 Cal.App.3d 698, 708, 122 Cal.Rptr. 343, 350) and, if necessary to request counsel to prepare an accurate instruction for that purpose. In *Thomas v. Buttress & McClellan, Inc.* (1956) 141 Cal.App.2d 812, 297 P.2d 768 the court held that the trial judge on his own motion, should have instructed the jury on the measure of recovery related to the particular facts. The court said, "It is generally recognized that the trial judge has a right to refuse an erroneous request without having any duty

THE TRIAL JUDGE'S DUTY

to modify it, and that he has a like right to ignore the absence of definitive or qualifying instructions. But that does not mean that the trial judge's obligation is limited to that of referee. Such authorities do not dispense with his obligation to see that justice is done and to that end to furnish the jurors with guidance upon the controlling legal principles applicable to the case . . ."

The judge's duty was expressed this way in *Lysick v. Walcom* (1968) 258 Cal.App.2d 136, 157-158, 65 Cal.Rptr. 406, 420: "... it was incumbent upon the trial court properly to instruct the jury on the controlling legal principles applicable to the case so that the jury would have a complete understanding of the law applicable to the facts; and the court was not relieved of this responsibility even though faulty or inadequate instructions were submitted by the parties or instructions were not submitted by the parties on the vital issues at all . . ."

More recently, it has been stated that, (1) if a defect can be cured by a minor change engineered by the trial judge, in an instruction important to the case, the change should be made; (2) if major changes are required, however, it is not up to the judge to serve as advisory counsel and he may simply reject a seriously defective instruction; . . . (3) when an instruction is vital to a party's case, the court may not, as a peremptory and erroneous ground, deny the instruction when an indication by the court as to the nature of the instruction's defect, and a request for correction by counsel, would likely produce a correct and complete instruction. *Wank v. Richman & Garrett* (1985) 165 Cal.App.3d 1103, 1113-1114, 211 Cal.Rptr.2d 919.

The instructions in this edition of BAJI are intended, in the areas of law covered by them, to furnish the necessary instructions on controlling legal principles. They should be used with the foregoing considerations in mind.

WESTLAW[®] ELECTRONIC RESEARCH GUIDE

Coordinating Legal Research with WESTLAW

California Jury Instructions is an essential aid to legal research. WESTLAW provides additional resources. This guide will assist your use of WESTLAW to supplement research begun in this publication.

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The WESTLAW Directory is a comprehensive list of databases with information about each database, including the types of documents each contains. The first page of a standard or customized WESTLAW Directory is displayed upon signing on to WESTLAW, except when prior, saved research is resumed. To access the WESTLAW Directory at any time, enter DB.

Databases of potential interest in connection with your research include:

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CA-JLR	California Journals and Law Reviews
CA-JI	California Jury Instructions
WLD-CA	West's Legal Directory—California
PAPERSCA	California Newspapers (DIALOG)

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Use of this publication may be supplemented through the WESTLAW Bulletin (WLB), the WESTLAW California State Bulletin (WSB-CA) and various Topical Highlights. Highlights databases

WESTLAW ELECTRONIC RESEARCH GUIDE

contain summaries of significant judicial, legislative and administrative developments and are updated daily; they are searchable both from an automatic list of recent documents and using general WESTLAW search methods for documents accumulated over time. The full text of any judicial decision may be retrieved by entering FIND.

Consult the WESTLAW Directory (enter DB) for a complete, current listing of highlights databases.

Retrieving Cases Citing Instructions

To retrieve cases citing instructions in this publication, sign on to a caselaw database and enter a query, in the following form:

B.A.J.I. ("Jury Instruction" /7 Civil) /7 14.70

Retrieving a Specific Case

The FIND command can be used to quickly retrieve a case whose citation is known. For example:

FI 795 P.2d 811

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There are a variety of citator services on WESTLAW for use in updating research.

Insta-Cite[®] may be used to verify citations, find parallel citations, ascertain the history of a case, and see whether it remains valid law. References are also provided to secondary sources, such as Corpus Juris Secundum[®], that cite the case. To view the Insta-Cite history of a displayed case, simply enter the command IC. To view the Insta-Cite history of a selected case, enter a command in this form:

IC 27 Cal.Rptr.2d 536

Shepard's[®] Citations provides a comprehensive list of cases and publications that have cited a particular case, with explanatory analysis to indicate how the citing case have treated the case, e.g., "followed," "explained." To view the Shepard's Citations about a displayed case, enter the command SH. Add a case citation, if necessary, as in the prior Insta-Cite example.

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To see a complete list of publications covered by any of the citator services, enter its service abbreviation (IC, SH, SP or QC) followed by PUBS. To ascertain the scope of coverage for any of the services, enter the SCOPE command (SC) followed by the appropriate service abbreviation. For the complete list of commands available in a citator service, enter its service abbreviation (IC, SH, SP or QC) followed by CMDS.

Retrieving Statutes, Court Rules and Regulations

Annotated and unannotated versions of the California statutes are searchable on WESTLAW (identifiers CA-ST-Ann and CA-ST), as are California court rules (CA-RULES) and Code of Regulations (CA-ADC).

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In addition, the FIND command may be used to retrieve specific provisions from many databases by citation. To FIND a desired document, enter FI, followed by the citation of the desired document, in the prescribed form. If you do not know the prescribed form, you may enter one of the following, using US, CA, or any other state code in place of XX:

FI XXST	Displays templates for codified statutes
FI XXLEGIS	Displays templates for legislation
FI XXRULES	Displays templates for rules
FI XXORDERS	Displays templates for court orders

Alternatively, entering FI followed by the publication's full name or an accepted abbreviation will normally display templates, useful jump possibilities, or helpful information necessary to complete the FIND process. For example:

FI USCA	Displays templates for United States Code—Annotated
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FI CFR	Displays templates Code of Federal Regulations
FI FR	Displays templates for Federal Register

To view the complete list of FINDable documents and associated prescribed forms, enter FI PUBS.

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Updating Research in re Statutes, Rules and Regulations

When viewing a statute, rule or regulation on WESTLAW after a search or FIND command, it is easy to update your research. A message will appear on the screen if relevant amendments, repeals or other new material are available through the UPDATE feature. Entering the UPDATE command will display such material.

Documents used to update California statutes are also searchable in California Legislative Service (CA-LEGIS). Those used to update rules are searchable in California Orders (CA-ORDERS). Regulations are updated from the California Regulatory Code Supplement (CA-ADR), which is also separately searchable.

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When documents citing a statute, rule or regulation are of interest, Shepard's Citations on WESTLAW may be of assistance. That service covers federal constitutional provisions, statutes and administrative provisions, and corresponding materials from many states. The command SH PUBS displays a directory of publications which may be Shepardized on WESTLAW. Consult the WESTLAW manual for more information about citator services.

Using WESTLAW as a Citator

For research beyond the coverage of any citator service, go directly to the databases (cases, for example) containing citing documents and use standard WESTLAW search techniques to retrieve documents citing specific constitutional provisions, statutes, standard jury instructions or other authorities.

Fortunately, the specific portion of a citation is often reasonably distinctive, such as 22:636.1, 301.65, 401(k), 12-21-5, 12052. When it is, a search on that specific portion alone may retrieve applicable documents without any substantial number of inapplicable ones (unless the number happens to be coincidentally popular in another context).

Similarly, if the citation involves more than one number, such as 42 U.S.C.A. 1201, a search containing both numbers (e.g., 42 +5 1201) is likely to produce mostly desired information, even though the component numbers are common.