

DEFENDANT'S REQUESTED SPECIAL INSTRUCTION NO. THREE

73

The mere fact, standing alone, that the defendant had a history of an epileptic condition does not create any inference that he was negligent at the time of this accident. The law of this state does not prohibit a person who has a history of epilepsy from operating a motor vehicle upon the public roadway, provided the Department of Motor Vehicles has licensed him to drive after being advised of his condition. In this case the defendant was licensed to drive a vehicle by the Department of Motor Vehicles, who were previously informed of his said condition.

You shall not, therefore, infer any negligence on the part of the defendant from the mere fact that he had a history of an epileptic condition).

Based on Vehicle Code Sections 12805 and 12806

GIVEN _____

MODIFIED _____

REFUSED _____

Kimberly A. White

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PLAINTIFFS' REQUESTED JURY INSTRUCTION NO. 1

WHEN THE EVIDENCE SHOWS THAT A DRIVER OF A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY LOSES HIS ABILITY TO SAFELY OPERATE AND CONTROL SUCH VEHICLE BECAUSE OF SOME SEIZURE OR HEALTH FAILURE, THAT DRIVER IS NEVERTHELESS LEGALLY LIABLE FOR ALL INJURIES AND PROPERTY DAMAGE WHICH AN INNOCENT PERSON MAY SUFFER AS A PROXIMATE RESULT OF THE DEFENDANT'S INABILITY TO SO CONTROL OR OPERATE HIS MOTOR VEHICLE.

THIS IS TRUE EVEN IF YOU FIND THE DEFENDANT DRIVER HAD NO WARNING OF ANY SUCH IMPENDING SEIZURE OR HEALTH FAILURE.

GIVEN: _____
GIVEN AS MODIFIED: _____
REFUSED: _____

Samuel A. Blinn
JUDGE OF THE SUPERIOR COURT

1 DEFENDANT'S REQUESTED SPECIAL INSTRUCTION NO. TWO

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You are instructed that the California Vehicle Code and the regulations promulgated under that Code permit an individual with a history of epilepsy to operate a motor vehicle as long as in the opinion of the Department, the ailment does not affect the individual's ability to exercise reasonable and ordinary control in operating a motor vehicle. That opinion may be based on periodic examination reports submitted by a medical doctor.

~~You shall not, therefore, infer any negligence on the part of the defendant from the mere fact that he had a history of an epileptic condition.~~

Based on Vehicle Code sections 12805 and 12806

GIVEN _____
MODIFIED _____
REFUSED _____

(18)

0-4650

BAJI 4.02

RES IPSA LOQUITUR—WHERE ONLY A PERMISSIBLE INFERENCE OF NEGLIGENCE

From the happening of the ~~(accident)~~ ~~(injury)~~ involved in this case, an inference may be drawn that a ~~(proximate)~~ ~~(legal)~~ cause of the occurrence was some negligent conduct on the part of the defendant.

If you draw such inference of defendant's negligence then, unless there is contrary evidence sufficient to meet or balance it, you will find in accordance with the inference.

In order to meet or balance such an inference of negligence, the evidence must show either (1) a definite cause for the accident not attributable to any negligence of defendant, or (2) such care by defendant that leads you to conclude that the accident did not happen because of defendant's lack of care but was due to some other cause, although the exact cause may be unknown. If there is such sufficient contrary evidence you shall not find merely from the happening of the accident that a ~~(proximate)~~ ~~(legal)~~ cause of the occurrence was some negligent conduct on the part of the defendant.

Requested by Plaintiff		Requested by Defendant		Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	<input checked="" type="checkbox"/>
Refused		<i>James H. Blum</i> <small>Judge</small>			
Withdrawn					

BAJI 3.12

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AMOUNT OF CAUTION VARIES

The amount of caution required of a person in the exercise of ordinary care depends upon the danger which is apparent to him or should be apparent to a reasonably prudent person under circumstances similar to those shown by the evidence.

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested	<input checked="" type="checkbox"/>	Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

[Signature]
Judge

Print Date 8/69
Cdb 8/69

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BAJI 3.11

A TEST FOR DETERMINING THE QUESTION OF NEGLIGENCE

One test that is helpful in determining whether or not a person was negligent is to ask and answer whether or not, if a person of ordinary prudence had been in the same situation and possessed of the same knowledge, he would have foreseen or anticipated that someone might have been injured by or as a result of his action or inaction. If such a result from certain conduct would be foreseeable by a person of ordinary prudence with like knowledge and in like situation, and if the conduct reasonably could be avoided, then not to avoid it would be negligence.

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input checked="" type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<i>James A. White</i> Judge			
Withdrawn	<input type="checkbox"/>				

Print Date 8/69
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BAJI 8.75

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PROXIMATE CAUSE--DEFINITION OF

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

Requested by Plaintiff	<input checked="" type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested	<input checked="" type="checkbox"/>	Given as Modified		Given on Court's Motion	
Refused		<i>James R. White</i> <small>Judge</small>			
Withdrawn					

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**BAJI 3.10
NEGLIGENCE AND ORDINARY CARE—
DEFINITIONS**

Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under circumstances similar to those shown by the evidence.

It is the failure to use ordinary or reasonable care.

Ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid injury to themselves or others under circumstances similar to those shown by the evidence.

[You will note that the person whose conduct we set up as a standard is not the extraordinarily cautious individual, nor the exceptionally skillful one, but a person of reasonable and ordinary prudence.]

Requested by Plaintiff		Requested by Defendant	✓	Requested by	
Given as Requested	✓	Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Herbert H. Miller
Judge

By a preponderance of the evidence is meant such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue preponderates, then your finding upon that issue must be against the party who had the burden of proving it.

In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence bearing upon that issue regardless of who produced it.

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input checked="" type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<i>James M. [Signature]</i> <small>Judge</small>			
Withdrawn	<input type="checkbox"/>				

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BURDEN OF PROOF AND PREPONDERANCE OF EVIDENCE

In this action, the plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

*That the defendant was negligent,
That the negligence of the defendant was a proximate cause of injury and damage to the plaintiff, and
The nature and extent of the injuries claimed to have been so suffered the elements of plaintiff's damage and the amount thereof.*

~~The defendant has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:~~

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