

## JURY INSTRUCTIONS

# Civil and Criminal Jury Instructions

### BASICS

At the end of a trial, but before the jurors deliberate, the judge reads them “jury instructions.” The instructions explain the laws that apply to the case.

Usually, lawyers adapt these instructions from sets of standard jury instructions. In California, there are two main sets of civil jury instructions. One is an “official” plain-English set known as CACI (*California Civil Jury Instructions*). The other is BAJI (*Book of Approved Jury Instructions*). Either can be used. If there are no standard instructions that fit the case, “special instructions” are drafted. The special instructions must be based on California statutes or cases.

Lawyers and litigants use jury instructions for three purposes:

- Starting point for legal research
- Checklist for gathering evidence and witnesses
- Framing the case for the jury at the end of trial

This guide describes each of these uses, then lists some of the resources in the Law Library and on the Internet.

### Starting Point for Legal Research

Jury instructions tell what laws apply in simple language. Jury instruction books usually list the statutes, cases or regulations that apply. They are a good place to start your research, and some are even available free on the Internet. **Important:** The instructions are not “the law.” You must use cases, statutes or regulations to support your case when writing papers for court.

In every lawsuit the plaintiff has to list at least one *cause of action* – a specific legal claim, such as negligence, breach of contract, or medical malpractice, for which the plaintiff seeks compensation. (“Nolo’s Plain English Law Dictionary,” [www.nolo.com/dictionary/](http://www.nolo.com/dictionary/).) To win, the plaintiff has to prove specific things about each cause of action. These are called *elements*. Unless there is evidence for **every** element, the plaintiff will lose.

For instance, to win a motor vehicle accident case, the plaintiff must prove:

## 700. Basic Standard of Care

A person must use reasonable care in driving a vehicle. Drivers must keep a lookout for pedestrians, obstacles, and other vehicles. They must also control the speed and movement of their vehicles. The failure to use reasonable care in driving a vehicle is negligence.

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### Directions for Use

This instruction states the common-law standard of reasonable care in driving. It applies to negligent conduct that is not covered by provisions of the Vehicle Code: "Aside from the mandate of the statute, the driver of a motor vehicle is bound to use reasonable care to anticipate the presence on the streets of other persons having equal rights with himself to be there." (*Zarzana v. Neve Drug Co.* (1919) 180 Cal. 32, 37 [179 P. 203].)

The instructions in this series should be used in conjunction with instructions on the elements of negligence contained in the negligence series.

### Sources and Authority

- The common-law duty supplements statutory driving regulations: "[A driver is] under a duty, both by statute and common law, to operate his vehicle without

This is CACI Instruction Number 700. It lists the basic standard of care for all drivers. Violating this standard of care is negligence, and proving that the defendant violated this standard of care will be necessary for the plaintiff to win this case.

CACI No. 700 is just the first instruction on motor vehicle accidents. The rest of the instructions in that series go into more detail about what the plaintiff must prove. For instance, CACI No. 701 defines the term "right of way." To research or prove a motor vehicle accident, you will have to read all of the related instructions and consider which apply in your case.

Each CACI instruction has a "Sources and Authority" section which contains citations to statutes and cases that support the point of law in the instruction. These are excellent starting places for research since they have been identified as relevant and definitive.

### Checklist for Gathering Evidence and Witnesses

You can use jury instructions as a checklist to gather evidence and witnesses to prove your case. The instructions give you a list of elements. You can check this list to make sure you have evidence and testimony to prove each one. If you are the defendant, you can use the list to see if the plaintiff is missing any evidence. You can also use the jury instructions on defenses to make your own chart of what you need to prove.

For instance, a plaintiff trying to prove negligence in a motor accident case might make a chart based on CACI No. 700:

<b>Element: Defendant Negligent in Operating Vehicle</b>	<b>Witness(es)</b>	<b>Evidence/ Documents</b>	<b>Notes</b>
Defendant required to stop	<ol style="list-style-type: none"> <li>1. Officer Smith (#123)</li> <li>2. Wally Witness</li> <li>3. Plaintiff</li> </ol>	According to all witnesses, defendant had a red light	There may have been a red light camera at the intersection.
Defendant did not attempt to stop	<ol style="list-style-type: none"> <li>1. Officer Smith (#123)</li> <li>2. Plaintiff</li> </ol>	No skid marks prior to collision. Photos taken by accident investigators, and Plaintiff.	

### **Framing the Case for the Jury**

Before a trial, each party writes a set of instructions. Often the lawyers customize the instructions in CACI.

The instructions can influence the jury’s decision, so the parties frequently argue about the wording. The judge decides which version will be used. If the judge improperly refuses to use one of your proposed instructions, that can be grounds for an appeal.

The Sacramento County Superior Court requires parties in civil cases to use CACI forms if they fit the case. Parties have to submit a complete set of instructions in a certain format on the first day of trial. ([Sacramento Local Rule 2.97](#)). The format is set out in [Cal. Rule of Court 2.1055](#). The procedure for presenting your version of the jury instructions and arguing for their adoption is set out in [California Code of Civil Procedure \(CCP\) 607a](#).

### **RESOURCES AVAILABLE IN THE LAW LIBRARY**

#### **Civil Cases, California**

**CACI (California Civil Jury Instructions)** [KFC1047 .A65 J8](#)

**BAJI (Book of Approved Jury Instructions)** [KFC1047 .A7 S8](#)

The CACI (pronounced “kay-see”) set is California’s “official” set of plain-English instructions. They are not mandatory. They were written to replace the older BAJI set, but the BAJI set can still be used. The instructions list the laws or cases that support them, so they are excellent places to start your research.

**Electronic Access (CACI):** On the Law Library’s computers, using the *Matthew Bender CD*.

**Electronic Access (BAJI):** On the Law Library’s computers, using *WestlawNext*.

**Electronic Access:** On the Web: <http://www.courts.ca.gov/partners/317.htm> [CACI only].

If CACI and BAJI do not fit your case, you can use *California Forms of Jury Instruction* ([KFC 1047 .A65 C31](#)), *California Elements of an Action* ([KFC 1003 .S74](#)), or various topical guides to research or draft custom instructions.

## Civil Cases, Federal

### **Manual of Model Civil Jury Instructions (Ninth Circuit)** (Electronic access only)

These instructions are written by a committee of Ninth Circuit judges and magistrates. They are not mandatory, but you can use them as standard instructions in federal cases.

**Electronic Access:** On the Web: <http://www3.ce9.uscourts.gov/web/sdocuments.nsf/civ>

Two other sources of federal instructions, containing both civil and criminal instructions:

**Federal Jury Practice and Instructions** [KF8984 .D48](#)

**Modern Federal Jury Instructions** [KF8984 .A6M6](#)

## Civil Cases, Instructions on Particular Topics

Use these sets when there are no California or federal instructions that fit your case. (You must still reference cases and statutes to show that the instruction is a correct statement of applicable California or federal law.) You may also find jury instructions in practice guides on your topic. See “Practice Guides Resource Guide,” in the library or on the Web: <http://www.saclaw.org/pages/practice-guides.aspx>.

**Federal Employment Jury Instructions** [KF8984 .M23](#)

**Jury Instructions on Damages in Tort Actions** [KF8984 .E34](#)

**Jury Instructions on Medical Issues** [KF8984.A65 E22](#)

**Jury Instructions on Products Liability** [KF8984 .D688](#)

**Model Jury Instructions: Business Torts Litigation** [KF8984.A65 M64](#)

**Model Jury Instructions: Employment Litigation** [KF8984 .M62](#)

**Section 1983 litigation: Jury Instructions** [KF1325.C58 S362](#)

## Criminal Cases, California

### **CALCRIM (Judicial Council of California Criminal Jury Instructions)**

[KFC1171.A65 J82](#)

**CALJIC (California Jury Instructions, Criminal)** [KFC1171 .A65 S82](#)

The CALCRIM set is California’s “official” set of plain-English instructions. They are not mandatory. They were written to replace the older CALJIC set, but the CALJIC set can still be used. The instructions list the laws or cases that support them, so they are excellent places to start your research.

**Electronic Access (CACI):** On the Law Library’s computers, using the *Matthew Bender CD*.

**Electronic Access (BAJI):** On the Law Library’s computers, using *WestlawNext*.

**Electronic Access:** On the Web: <http://www.courts.ca.gov/partners/312.htm> [CALCRIM only].

### **CJER Mandatory Criminal Jury Instructions Handbook** [KFC1171 .Z9M25](#)

Some instructions are required in all criminal cases. If the lawyers do not request them, the judge will give them anyway. This handbook lists the required instructions. Lawyers use it as a checklist to make sure they don’t forget important instructions.

**FORECITE California** [KFC1171.A65 F67](#)

**California Criminal Practice, Motions, Jury Instructions and Sentencing** (Vol. 4)

[KFC1155 .A65 R83](#)

These two defense-oriented resources review and supplement the CALCRIM and CALJIC instructions, suggesting modifications (and the authorities to support them). FORECITE is available in print and via the web at [www.forecite.com/](http://www.forecite.com/) (in the library only; see librarian for password).

**Criminal Cases, Federal**

**Manual of Model Criminal Jury Instructions for the District Courts of the Ninth**

**Circuit** [KF9682 .A65 M37](#)

These instructions are written by a committee of Ninth Circuit judges and magistrates. They are not mandatory, but you can use them as standard instructions in federal cases.

**Electronic Access:** On the Web: <http://www3.ce9.uscourts.gov/web/sdocuments.nsf/crim>

**Everytrial Criminal Defense Resource Book** [KF9656 .H65](#)

This book is primarily focused on federal criminal cases.

Two other sources of federal instructions, containing both civil and criminal instructions:

**Federal Jury Practice and Instructions** [KF8984 .D48](#)

**Modern Federal Jury Instructions** [KF8984 .A6M6](#)

*IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.*