3.00

GENERAL INSTRUCTIONS

3.01 Rulings and Remarks of The Court

[WITHDRAWN]

IPI 3.01 is withdrawn. Use the current version of IPI 1.01 for general cautionary instructions.

Instruction withdrawn May 2010.

3.02 Witness Who Has Been Interviewed By Attorney

An attorney is allowed, if the witness agrees, to talk to a witness to learn what testimony will be given. Such an interview, by itself, does not affect the credibility of the witness.

Notes on Use

This instruction may only be given where the evidence shows, or the jury observed, that a witness or party has been interviewed by an attorney. This instruction replaces what was IPI 2.06. If appropriate, this instruction may be given during trial.

Comment

The purpose of this instruction is to attempt to offset the "ancient trick" in which a cross-examiner "questions a witness as to his interview with opposing counsel, often stated in a way to imply to the witness and jurors that this is an impropriety." *Dorf v. Egyptian Freightways*, Inc., 39 Ill.App.2d 2, 4; 188 N.E.2d 103, 104 (4th Dist.1962) (instruction properly refused because interviewing attorney misrepresented his client's identity). *Accord Petrillo v. Syntex Laboratories*, 148 Ill.App.3d 581, 602; 499 N.E.2d 952, 966; 102 Ill.Dec. 172, 186 (1st Dist.1986), *leave to appeal denied*, 113 Ill.2d 584, 505 N.E.2d 361, 106 Ill.Dec. 55 (1987), *cert. denied*, 483 U.S. 1007, 107 S.Ct. 3232, 97 L.Ed.2d 738 (1987); *People v. Simmons*, 138 Ill.App.3d 492, 496-498; 485 N.E.2d 1135, 1140; 92 Ill.Dec. 892, 897 (5th Dist.1985). This instruction also informs the jury that a witness has a right not to speak with an attorney.

A defense attorney in a personal injury case cannot interview the plaintiff's treating physician *ex parte.* Defense counsel can communicate with such a witness only through formal discovery. *Petrillo v. Syntex Laboratories*, Inc., 148 Ill.App.3d 581, 587; 499 N.E.2d 952, 956; 102 Ill.Dec. 172, 176 *Best v. Taylor Machine Works*, 179 Ill.2d 367, 433-459; 689 N.E.2d 1057, 1089-1101; 228 Ill.Dec. 636, 668-680 (1997); *Kunkel v. Walton*, 179 Ill.2d 519, 525-528; 689 N.E.2d 1047, 1049-1052; 228 Ill.Dec. 626, 628-631 (1997). However, it has been held error to add language to this instruction that a defense attorney cannot interview the plaintiff's treating physician or nurses. *Netto v. Goldenberg*, 266 Ill.App.3d 174, 184; 640 N.E.2d 948, 956; 203 Ill.Dec. 798, 806 (2d Dist.1994), overruled on other grounds, *Holton v. Memorial Hospital*, 176 Ill.2d 95, 117; 679 N.E.2d 1202, 1212; 223 Ill.Dec. 429, 439 (1997).

3.03 Insurance/Benefits

Whether a party is insured or not insured has no bearing on any issue that you must decide. You must refrain from any inference, speculation, or discussion about insurance.

If you find for the plaintiff, you shall not speculate about or consider any possible sources of benefits the plaintiff may have received or might receive. After you have returned your verdict, the court will make whatever adjustments are necessary in this regard.

Instruction, Notes and Comment revised October 2007. Comment revised December 2011. Notes on Use revised February 2023.

Notes on Use

The Committee believes that this instruction should be given in all cases where insurance could play a role in the decision of the jury. With the wide prevalence of liability insurance, medical insurance or government benefits such as Medicaid or Medicare, many jurors question the role of insurance in any contested case where insurance could play a role. This phenomenon has been demonstrated by the Arizona Jury Project, and is well-known to judges and practitioners on an anecdotal basis. *See* Diamond et al., "Jury Ruminations on Forbidden Topics," 87 Va. L. Rev. 1857 (2001).

The failure to give the former 30.22 was held to be reversible error in *Baraniak v. Kurby*, 371 Ill.App.3d 310 (1st Dist. 2007).

Comment

This instruction combines the former 3.03 and 30.22. In a case where there is no mention of insurance throughout the trial, the giving of 3.03 was held not to be an abuse of discretion as the instruction accurately reflects Illinois law. See *Auten v. Franklin*, 404 Ill.App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec. 297 (4th Dist. 2010).

3.04 Circumstantial Evidence

A fact or a group of facts, may, based on logic and common sense, lead you to a conclusion as to other facts. This is known as circumstantial evidence. A fact may be proved by circumstantial evidence. [For example, if you are in a building and a person enters who is wet and is holding an umbrella, you might conclude that it was raining outside.] Circumstantial evidence is entitled to the same consideration as any other type of evidence.

Instruction revised September 2009.

Notes on Use

Where any of the evidence in a case is circumstantial, a party is entitled to an instruction that a fact may be proved by circumstantial evidence. *Kane v. Northwest Special Recreation Association*, 155 Ill.App.3d 624, 508 N.E.2d 257, 108 Ill.Dec. 96 (1st Dist.1987). If there is only direct evidence in a case, this instruction should not be given. *Kaufman v. Firestone Tire & Rubber Co.*, 3 Ill.App.3d 628, 279 N.E.2d 498 (1st Dist.1972). *Whitehurst v. Bauer*, 45 Ill.App.3d 462, 359 N.E.2d 1176, 4 Ill.Dec. 224 (4th Dist.1977).

If there is circumstantial evidence in a case, this instruction may be given even though there is also direct eyewitness testimony. *Oudshoorn v. Warsaw Trucking Co.*, 38 Ill.App.3d 920, 349 N.E.2d 648 (1st Dist.1976). A party is entitled to instructions on his theory of the case, including the relevance of circumstantial evidence. *Babcock v. Chesapeake and Ohio Railway Company*, 83 Ill.App.3d 919, 404 N.E.2d 265, 38 Ill.Dec. 841 (1st Dist.1979).

Comment

"Circumstantial evidence is the proof of certain facts and circumstances from which the fact finder may infer other connected facts which usually and reasonably follow according to the common experience of mankind." *Eskridge v. Farmers New World Life Insurance Co.*, 250 Ill.App.3d 603, 621 N.E.2d 164, 169; 190 Ill.Dec. 295, 300 (1st Dist.1993). Circumstantial evidence need not exclude all other possible inferences, but it must justify an inference of probability, not mere possibility. *McCullough v. Gallaher & Speck*, 254 Ill.App.3d 941, 627 N.E.2d 202, 208; 194 Ill.Dec. 86, 92 (1st Dist.1993).

3.05 Impeachment by Proof of Conviction of Crime

The credibility of a witness may be attacked by introducing evidence that the witness has been convicted of a crime. Evidence of this kind may be considered by you in connection with all the other facts and circumstances in evidence in deciding the weight to be given to the testimony of that witness.

Comment

Proof of conviction for purposes of impeachment is no longer limited to proof of infamous crimes. In *People v. Montgomery*, 47 Ill.2d 510, 516, 268 N.E.2d 695, 698 (1971), the Illinois Supreme Court held that the provisions of the 1971 draft of Federal Rule of Evidence 609 (51 F.R.D. 315, 393 (1971)) would henceforth be the test for determining the admissibility of prior convictions used for impeachment.

After *Montgomery*, such crimes include those punishable by imprisonment for a term in excess of one year (felonies) and crimes involving dishonesty or false statement. Thus, impeachment is now proper with misdemeanors, such as theft, that have as their basis lying, cheating, deceiving, or stealing. *People v. Spates*, 77 Ill.2d 193, 201; 395 N.E.2d 563, 567-568; 32 Ill.Dec. 333, 337-338 (1979); *People v. McKibbins*, 96 Ill.2d 176, 187; 449 N.E.2d 821, 826; 70 Ill.Dec. 474, 479 (1983); *People v. Malone*, 78 Ill.2d 34, 38; 397 N.E.2d 1377, 1379; 34 Ill.Dec. 311, 313 (1979); *People v. Dalton*, 91 Ill.2d 22, 31-32; 434 N.E.2d 1127, 1132; 61 Ill.Dec. 530, 535 (1982); *People v. Poliquin*, 97 Ill.App.3d 122, 135; 421 N.E.2d 1362, 1372; 52 Ill.Dec. 290, 300 (1st Dist.1981); *People v. Elliot*, 274 Ill.App.3d 901, 909; 654 N.E.2d 636, 642; 211 Ill.Dec. 174, 182 (1st Dist.1995).

Montgomery limits the time which a conviction can be used for impeachment to a period within 10 years of the date of the conviction or the release from confinement, whichever is later. However, in each case, the judge must exercise his discretion as to whether or not to allow the impeachment by weighing the probative value of the evidence of the crime against the danger of unfair prejudice. *People v. Ramey*, 70 Ill.App.3d 327, 332; 388 N.E.2d 196, 199; 26 Ill.Dec. 572, 575 (1979); *People v. Tribett*, 98 Ill.App.3d 663, 675; 424 N.E.2d 688, 697; 53 Ill.Dec. 897, 906 (1st Dist.1981); *People v. Jones*, 155 Ill.App.3d 641, 647; 508 N.E.2d 357, 361; 108 Ill.Dec. 196, 200 (1st Dist.1987).

Impeachment by use of prior criminal convictions is proper in civil as well as criminal cases. *Knowles v. Panopoulos*, 66 Ill.2d 585, 589; 363 N.E.2d 805, 808; 6 Ill.Dec. 858, 861 (1977); *People v. Stover*, 89 Ill.2d 189, 194-195; 432 N.E.2d 262, 265; 59 Ill.Dec. 678, 681 (1982); *Taylor v. Village Commons Plaza, Inc.*, 164 Ill.App.3d 460, 464-465; 517 N.E.2d 1164, 1167; 115 Ill.Dec. 478, 481 (2d Dist.1987) (burglary and misdemeanor retail theft convictions properly used); *Ryan v. Mobil Oil Corp.*, 157 Ill.App.3d 1069, 1082; 510 N.E.2d 1162, 1170-1171; 110 Ill.Dec. 131, 139-140 (1st Dist.1987) (discretion properly exercised to exclude 9-year-old drug conviction).

A good review of the law concerning this subject is found in *People v. Kellas*, 72 Ill.App.3d 445, 449-452; 389 N.E.2d 1382, 1386-1389, 28 Ill.Dec. 9, 13-16 (1st Dist.1979); *People v. Stover*, 89 Ill.2d 189, 199-201; 432 N.E.2d 262, 268-269; 59 Ill.Dec. 678, 682-683 (1982); *People v. Williams*, 161 Ill.2d 1, 39, 45; 641 N.E.2d 296, 312; 204 Ill.Dec. 72 (1994); People v. Kunze, 193 Ill.App.3d 708, 728; 550 N.E.2d 284, 297; 140 Ill.Dec. 648, 661 (4th Dist.1990); *Housh v. Bowers*, 271 Ill.App.3d 1004, 1006-1007; 649 N.E.2d 505, 506-507; 208 Ill.Dec. 449, 450-451 (3d Dist.1995).

3.06 Directed Finding

The court has determined that [(name)] is [negligent] [liable] [other finding]. This is not an issue you will need to decide. [The remaining parties are not to be prejudiced by this finding.]

Notes on Use

The importance of informing the jury of directed findings was underscored in *Wille v. Navistar*, 222 Ill.App.3d 833, 839; 584 N.E.2d 425, 429; 165 Ill.Dec. 246, 250 (1st Dist.1991). If the finding in favor of the plaintiff is against one but not all defendants, it would be proper to use the second sentence and inform the jury that the court's finding should not affect those other defendants. *Wanner v. Keenan*, 22 Ill.App.3d 930, 936-937; 317 N.E.2d 114, 119-120 (2d Dist.1994).

3.07 General Limiting Instruction

Evidence that was [received for a limited purpose] [or] [limited to (one party) (some parties)] should not be considered for [any other purpose] [or] [as to any other (party) (parties)].

Notes on Use

The instruction in this form was formerly found at IPI 1.01[7]. It is meant for use at the end of closing arguments. See Notes on Use and Comments to IPI 2.02.

3.08 Opinion Testimony

You have heard [a witness] [witnesses] give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way you judge the testimony from any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Instruction created October 2007 and revised April 2020. Notes on Use revised April 2008 and April 2020

Notes on Use

This instruction should be given in any case in which opinion testimony is admitted. In a professional negligence case, IPI 105.01 or 105.03.01 (2006) should also be given. See *Auten v. Franklin*, 404 Ill.App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec. 297 (4th Dist. 2010). The instruction mirrors the language of the 7th Circuit Approved Instruction 1.21.