

707 pps  
Dick  
Chart  
JOHN McWYATT  
204 N ST  
Bryn Mawr

# MODEL QUESTIONS

## SYNOPSIS

### PART 1. INTRODUCTORY REMARKS

#### A. Generally

- 1—A.01 Introductory Line
- 1—A.02 Getting Jury's Attention--Background of Case
- 1—A.03 Purpose of *Voir Dire*
- 1—A.04 Length of Trial—Procedure
- 1—A.05 Philosophy of the Jury System
- 1—A.06 Function of the Jury.
- 1—A.07 Power of the Jury
- 1—A.08 Jury Function Is To Do Justice

### PART 2. JUROR'S BACKGROUND AND RELATIONSHIP TO THE CASE

#### A. Generally

- 2—A.01 Do You Know the Lawyers, the Parties of Their Families?
- 2—A.02 Relationship to Corporate Defendant
- 2—A.03 Corporate Work Experience and Attitude Toward Corporations
- 2—A.04 Personal Knowledge of Collision and/or Accident Scene
- 2—A.05 Accidental Injuries to Juror or His Family and Physical Defects
- 2—A.06 Have You Sued or Been Sued or Involved in Litigation?
- 2—A.07 Relationship of Juror and Family to Medical Profession and the Disabled
- 2—A.08 Insurance Company Employment
- 2—A.09 Juror's Employment and Education
- 2—A.10 Marital Status and Employment of Spouse
- 2—A.11 Family, Residence and Employment
- 2—A.12 Own Home
- 2—A.13 Religion

## Jury Selection

MQ-2

- 2—A.14 Prior Jury Duty
- 2—A.15 Any Feeling of Inability To Be Fair
- 2—A.16 Hardship
- 2—A.17 Believe in Jury System, Substantial Award—Background
- B. Medical Malpractice Cases
  - 2—B.01 Relationship with Doctor
  - 2—B.02 Contact Through Employment at Hospital
  - 2—B.03 Relationship with Medical Witnesses
  - 2—B.04 Prior Knowledge
  - 2—B.05 Attitude About Doctors
  - 2—B.06 Relationship to Medical Profession
  - 2—B.07 Training in the Sciences
  - 2—B.08 Experience in Surgery
  - 2—B.09 Employment Evaluating Malpractice Claims

### PART 3. STRATEGY

- A. Generally
  - 3—A.01 Fair Trial to Both Plaintiff and Defendant
  - 3—A.02 Preconceived Ideas About This Kind of Lawsuit
  - 3—A.03 Counsel From Out-of-Town
  - 3—A.04 Foreign Plaintiff
  - 3—A.05 Deliberations and Verdict
  - 3—A.06 Evidence—Verdict Based On
  - 3—A.07 Follow Court's Instruction—Do Not Discuss Case
  - 3—A.08 Merely Because Suit Filed
  - 3—A.09 Sympathy
  - 3—A.10 Use Your Common Sense
  - 3—A.11 Looking Parties in the Eye
  - 3—A.12 Minor's Claims
  - 3—A.13 Remarriage
  - 3—A.14 Social Drink
  - 3—A.15 Darting Child Case
  - 3—A.16 Slip and Fall Case
  - 3—A.17 Products Liability Case
- B. Medical Malpractice Cases
  - 3—B.01 Dissatisfaction with Care Rendered by Defendant
  - 3—B.02 Feelings About Doctors
  - 3—B.03 No Criminal or Licensure Sanctions
  - 3—B.04 Standard of Care Required and Whether Defendant Fell Below That Standard

- 3-B.05 Attentiveness
- 3-B.06 Frame of Mind

**PART 4. LIABILITY**

- A. Generally
  - 4-A.01 Meaning of Negligence
  - 4-A.02 The Fact Alone
  - 4-A.03 Follow Court's Instructions and Weigh the Evidence
  - 4-A.04 Burden of Proof
  - 4-A.05 Prejudices Against Drivers
  - 4-A.06 Own and Operate Your Own Business
  - 4-A.07 Professional Experience
  - 4-A.08 Pre-Existing Condition
- B. Medical Malpractice Cases
  - 4-B.01 No Special Treatment of Doctors
  - 4-B.02 Local Versus Out-of-Town Doctors
  - 4-B.03 Unfortunate Result—Plaintiff's Burden of Proof
  - 4-B.04 Two Distinct Lawsuits
  - 4-B.05 "Red Flag" Questions
- C. Products Liability
  - 4-C.01 Express Warranty
  - 4-C.02 Implied Warranty of Merchantability
  - 4-C.03 Implied Warranty of Fitness for Purpose
  - 4-C.04 Strict Liability
- D. General Negligence
  - 4-D.01 Slip and Fall Case

**PART 5. DAMAGES**

- A. Generally
  - 5-A.01 Elements of Damage
  - 5-A.02 Large Awards

### Introduction

Obviously, a *voir dire* examination of the jury will *not* include all of the questions that follow. The subjects selected should be pertinent to the issues and designed to secure information from which to make the decision—Do I strike this juror?

The way to use this chapter is to read through it first and familiarize yourself with the many questions. Later, when you perceive a problem in a case, and you are preparing for *voir dire*, skim the synopsis headings for subject matter. Perhaps you will find just what you need—or will be able to analogize and prepare an important question from thinking about one read here.

## PART 1. INTRODUCTORY REMARKS

### A. Generally

#### 1-A.01 Introductory Line

Ladies and gentlemen of the jury, as the Court has told you, my name is Ward Wagner, Jr., and I am with the law firm of Cone, Owen, Wagner, Nugent, Johnson, Hazouri & Roth. I am going to ask you a number of questions during this *voir dire* examination, and I want you to understand that my purpose is not to embarrass you or to pry into your personal affairs but my purpose, and likewise the purpose of defense counsel seated over there who will also have the opportunity to do a *voir dire* examination, will be to find out things dealing with your background and experience for the determination of your qualifications to serve on this particular jury, in this particular case, with these particular parties and the fact situation which will be presented. Do each of you understand this is a part of the trial process and is a necessary part for the purpose of assuring the parties that a fair and impartial jury is selected to try the issues between them?

#### 1-A.02 Getting Jury's Attention—Background of Case

The case that will be tried before the jury selected here involves an automobile accident that occurred at an intersection. The intersection is U.S. 1 and Southern Boulevard in the City of

West Palm Beach, Florida. The parties who have been previously identified by the Court were in different automobiles, and the intersection itself was protected by a traffic light. The plaintiff in this case, Mr. Jones, sustained injuries of a serious nature and brings suit against the defendant, Mr. Smith, charging him with negligence and is seeking compensation for his injuries. Do any of you have any preconceived thoughts or notions about a person making a claim for injuries sustained in an auto accident by charging that another, the defendant here, is responsible?

✓ 1-A.03 Purpose of *Voir Dire*

- Q. Ladies and gentlemen, do you understand the purpose of this *voir dire* examination is to secure a jury who can fairly try the issues between the parties without letting some personal matter in their backgrounds or experiences taint the verdict?

1-A.04 Length of Trial—Procedure

- Q. Ladies and gentlemen of the jury, this trial will take five days. And the trial will consist of this *voir dire* examination; the selection of the jury, and an opening statement made by each of the parties to the case; then the presentation of the evidence by the plaintiff, then the presentation of the evidence by the defense; and then any rebuttal testimony the plaintiff has; then the charge to you by the Court, and thereafter your deliberations and verdict.

1-A.05 Philosophy of the Jury System

- Q. Do each of you believe in the jury system? The system of letting a jury chosen from the community, a cross-section of the community, decide issues between parties that cannot be resolved?

1-A.06 Function of the Jury

- Q. Do each of you agree with the function of the jury to set the standards of responsibility, the standards of reasonable care, and ferret out carelessness and negligence if it exists in a given fact situation?

**1-A.07 Power of the Jury**

- Q. Do each of you understand that you have the power to make the decision in this case, whatever it is, based upon the evidence you believe from the witness stand and documents introduced and the law as charged to you by the Court?

**1-A.08 Jury Function Is To Do Justice**

- Q. Do each of you understand that your function in the case based upon the evidence and the law is to do justice; and if negligence is the cause of damage, you do not have the power to forgive; but yours is the duty to right the scales of justice based upon the applicable law and the elements of damage for compensation?

**PART 2. JUROR'S BACKGROUND AND  
RELATIONSHIP TO THE CASE****A. Generally****2-A.01 Do You Know the Lawyers, the Parties or Their Families?**

- Q. Ladies and gentlemen of the jury, as the Court has indicated to you earlier, my name is Ward Wagner, Jr., and I am pleased to represent the plaintiff in this case. I would first like to ask if any of you know me or know any of my law partners who have been previously identified?
- Q. Ladies and gentlemen, my client is Sam Jones, and he has been previously identified to you, but I'd like to ask you as you sit there now whether or not you know Mr. Jones?
- Q. Are you related by marriage to any of the parties, lawyers or witnesses who have been named?
- Q. Do you have any social relationships with any of the parties, lawyers or witnesses who will testify in the case?
- Q. Now seated over there at that other table you will see George Doe, counsel for the defendant, and he has been previously identified to you and the names of his partners and associates

have been read to you; and I'd like to know if you know him or any members of his firm?

- Q. Now the defendant in this case is George Smith, and I'd like to know if any of you know Mr. Smith?
- Q. Do any of you know any of the families of any of the lawyers in the defense firm?
- Q. Do any of you know any of the family of George Smith?
- Q. Do any of you know the family of my client?

#### 2-A.02 Relationship to Corporate Defendant

- Q. Also a party to this case is the XYZ Corporation. Do you have any business connection with the XYZ Corporation?
- Q. Are you a stockholder of the XYZ Corporation?
- Q. Are you a friend or acquaintance of any of the employees, officers or directors of the XYZ Corporation?
- Q. Have you ever worked for or had any kind of business relationship with the XYZ Corporation?

#### 2-A.03 Corporate Work Experience and Attitude Toward Corporations

- Q. Have you had any experience working for a corporation?
- Q. Would you treat a corporation fairly?
- Q. Would you treat a corporation fairly just like it was an individual?

#### 2-A.04 Personal Knowledge of Collision and/or Accident Scene

- Q. Do you have any personal knowledge of the collision which was described earlier?
- Q. Do you have personal knowledge or information about the intersection where the collision occurred?
- Q. Are you familiar with the scene of this collision?
- Q. Do you drive an automobile?
- Q. Have you driven south on Dixie at its intersection with Southern?

would be unfair to Mr. Smith if you did sit, if your prior experience of being sued caused you to feel suspicious of people who bring suits?

- Q. What is the accident or claims experience in your family?
- Q. Would your previous experience as a plaintiff in your son's injury case affect your judgment in this case?
- Q. Would it have a bearing on your judgment in this case?
- Q. Would you feel more comfortable if you were excused?
- Q. Have you ever been involved in any litigation?
- Q. Have you ever testified as a witness in a case?

✓ 2-A.07 **Relationship of Juror and Family to Medical Profession and the Disabled**

- Q. Have you ever been a medical care provider?
- Q. Has your spouse ever been employed in the medical care area? If so, has your spouse been involved in the care of seriously injured patients?
- Q. Does your spouse take care of people in the condition which we have described as that of the plaintiff in this case?
- Q. Does your spouse discuss her work with you? If so, what does she tell you about it?
- Q. Has your spouse been involved in the care of paralyzed patients?
- Q. Has any other member of your family ever been a medical care provider? If so, please describe that employment.
- Q. Do you have contact with doctors? Do you have a family doctor?
- Q. Have you had any dealings with disabled persons?

2-A.08 **Insurance Company Employment**

- Q. Have you or any member of your family ever been employed by a casualty insurance agency?
- Q. Have you or has any member of your family ever been involved in employment where the job was to evaluate claims?
- Q. Have you or has any member of your family ever been employed as an insurance claims person?



Q. Have you or has any member of your family ever been employed as an insurance property damage adjuster?

### 2-A.09 Juror's Employment and Education

- Q. Are you employed? If so, by whom and how long?
- Q. Please briefly describe your duties in your job or profession.
- Q. What is your prior work experience?
- Q. Are you a member of a labor union? If so, which union?
- Q. What are the academic requirements for your employment?
- Q. What is your educational background?
- Q. Have you ever been called to Court to testify as a result of your professional work?
- Q. Would your specialized knowledge work to the advantage or disadvantage of any party to this case?
- Q. Do you feel that because you have worked as a heavy equipment operator that you have some firm opinions about how things ought to be done and how they ought not to be done that might be difficult for us to maybe overcome, you being a human being?
- Q. Would you as an engineer resent my questioning engineering experts because maybe I don't know as much about engineering as you do?
- Q. Is there anybody on the panel who at any time studied law?
- Q. Have you or has any member of your family been involved in the design or construction of consumer products?
- Q. Have you ever done work in the area of photography?
- Q. What has been your experience in photography?
- Q. Have you ever done any legal or investigative photography?
- Q. Do you have any special hobbies?
- Q. Does anybody subscribe to *Popular Mechanics* or *Science Illustrated*?

### 2-A.10 Marital Status and Employment of Spouse

- Q. Are you married?
- Q. How long have you been married?

- Q. Is your spouse employed? If so, please describe your spouse's employment.
- Q. (If relevant) Does your spouse discuss her work with you? If so, what does she tell you about it?
- Q. Since your wife works, how long has she been in her present job?
- Q. What did she do before?

#### **2-A.11 Family, Residence and Employment**

- Q. Do you have parents who live in this area?
- Q. Is your father retired? Is your mother retired?
- Q. What is their employment?
- Q. Do you have any brothers or sisters?
- Q. What is the employment of your brothers and sisters?
- Q. Do you have any children? If so, how many and what are their ages and sex?
- Q. Are any of your children employed?
- Q. By whom are they employed?
- Q. Are there any lawyers in your family or among your close personal friends?
- Q. If you should find yourself in a lawyer's company, would you have any difficulty in following the instructions of the Court not to discuss the case?
- Q. Any doctors or other professional personnel in your family?
- Q. Any engineers in your family? Or close friends or neighbors?

#### **2-A.12 Own Home**

- Q. Do you own your own home?
- Q. Do you rent a house or apartment?

#### **2-A.13 Religion**

- Q. Do you have a religious affiliation?

**A.14 Prior Jury Duty**

- Q. Have you had prior jury duty?
- Q. What kind of case did you serve as a juror on?
- Q. It was a civil case? It was a criminal case?
- Q. Is there anything about that case which would prevent you from giving this case a fair hearing?
- Q. Do you think that prior jury service will in any way affect your evaluation of this case?
- Q. Were you in the courtroom yesterday?
- Q. Did you hear any of the case that was tried before this one?

**2-A.15 Any Feeling of Inability To Be Fair**

- Q. Do you have any feeling toward the parties or the attorneys which would affect your ability to be fair and impartial?
- Q. Is there anything about this kind of lawsuit that you feel uncomfortable about?
- Q. Is there anything about your state of mind that would cause you to feel that a person in your state of mind could not be fair?
- Q. What I am asking for is an honest answer to that question because I think you could see that in my position representing Mr. Smith that is something I would certainly need to know. If I would be starting off with a burden I didn't know about, I wouldn't know how to address the problem and it would be unfair to Mr. Smith.
- Q. Do you feel that your judgment will be affected to the point where some parties may not get a fair trial? Is that what you are saying to me?
- Q. It would make it more difficult really, down deep, to be candid about it. It would make it more difficult for us to prove our point, so to speak, because of these ideas you have come into Court with.
- Q. Do you feel that your state of mind is such that it is likely that you might not be able to be impartial from what you've heard about the case so far? You're the only one that has the knowledge of what is in your mind and can tell us the answer to that.

- Q. Does your background or experience make you feel that you have some interest in the outcome of this case?
- Q. Have you any problem in rendering a fair and impartial verdict to a member of a minority race?
- Q. As a member of a minority race, would you have a problem in rendering a fair and impartial verdict to someone who is not?

#### 2-A.16 Hardship

- Q. Would there be any hardship caused by more than a week's jury service?

#### 2-A.17 Believe in Jury System, Substantial Award— Background

- Q. Do you believe in a jury trial for compensation of injuries sustained as a result of the negligence or carelessness of another?
- Q. Is there anything in your background which would prevent you from returning a verdict for a substantial sum if the plaintiff is so entitled against one or all of the defendants?

(See Part 5. *infra*, Damages.)

### B. Medical Malpractice Cases

#### 2-B.01 Relationship with Doctor

- Q. You have indicated you know the defendant doctor. Do you have a medical relationship with him?
- Q. Do you have a continuing medical relationship with him?
- Q. Would your involvement color your decision?
- Q. You indicated your child was delivered by the defendant doctor in this case. Would that involvement color your decision?
- Q. He was your family doctor? Would that influence your decision?
- Q. Would the fact that you had a physical performed by him affect your verdict?

- Do you have any social relationship with either of the defendant doctors in the case?
- Q. Would knowing the defendant's daughter and having mutual friends affect your verdict?
  - Q. Would your relationship with either of the defendant doctors in this case interfere with the decision you make in this case if you serve on the jury?

### 2-B.02 Contact Through Employment at Hospital

- Q. Have you had any contact with defendant doctors through your experience at the hospital? If so, tell us about the contact you've had.
- Q. Would that experience color your decision in this case?
- Q. Would the fact that you worked at the hospital and knew the defendant doctors at the time influence your thinking?
- Q. In your work about the hospital I am sure you heard skuttlebutt about the doctors. Would it be difficult to pretend that hadn't happened?
- Q. Would you prefer not to serve under those circumstances?
- Q. Do you have any prior opinions about the doctor?
- Q. Would you put aside your prior experiences with the doctor?

### 2-B.03 Relationship with Medical Witnesses

- Q. Do you have any relationship, either social or as a treating physician or examining physician, with any of the doctors named who will testify on behalf of the defense in this case?
- Q. Do you have any such relationship with any of the doctors who have been named who will testify for the plaintiff?
- Q. Would the fact that one of the defendant's expert witnesses is your neighbor affect your verdict?
- Q. Would the fact that one of the defendant's expert witnesses did surgery on you affect your verdict?
- Q. Would past relationships with the doctor influence your view of his testimony?
- Q. Would your past relationship with the doctor make you tend

to believe him over the other medical witnesses who testify in this case?

- Q. How many times did you visit him?
- Q. Would this contact with him affect your decision?

#### 2-B.04 Prior Knowledge

- Q. You have prior knowledge of the matter? Would this taint your decision?
- Q. You could not put this out of your mind?
- Q. Do you have any personal knowledge about this case?
- Q. Would the fact that you've heard about it influence you?
- Q. Do you have a formed opinion in this case at this point?
- Q. Do you have any opinions or scruples which would improperly influence your verdict?

#### 2-B.05 Attitude About Doctors

- Q. Does anybody have any attitude in particular about doctors of osteopathic medicine or medical doctors?
- Q. Does anyone feel a physician can do no wrong?
- Q. Have any of you had an experience that left you angry or unhappy with a physician or hospital?

(See Part 3B. *infra*, "Strategy—Medical Malpractice Cases")

#### 2-B.06 Relationship to Medical Profession

- Q. Do you have any family members or friends who practice medicine?
- Q. Do you have any friends or family who work in hospitals?
- Q. Do any of you have friends or family members who are involved in the medical care profession?
- Q. Is there anyone who does not have a family physician?

#### 2-B.07 Training in the Sciences

- Q. Do you have training in sciences?

**1-B.08 Experience in Surgery**

- Q. Have any of you had any experience in particular medical problems involving surgery? Is so, tell us about them please.
- Q. Did one of the defendants diagnose your medical problem?
- Q. Would the experience influence you in this case?

**2-B.09 Employment Evaluating Malpractice Claims**

- Q. Do any of you have an employment background in evaluating losses or injuries caused by medical carelessness?

**PART 3. STRATEGY****A. Generally****3-A.01 Fair Trial to Both Plaintiff and Defendant**

- Q. If the plaintiff proves his case under the law and the evidence, is there any reason he could not get a fair trial by you?
- Q. Will you find a verdict for the plaintiff if the case is proven?
- Q. If plaintiff fails to prove the case, will you find for the defendant?
- Q. If the defendant is not shown to have been careless or negligent, would you have any hesitation about returning a verdict for the defendant?
- Q. There are many defendants in this case. Will you give them each fair treatment? You understand your responsibility to be fair to all parties and base your verdict on the law and the evidence?
- Q. Are all parties starting off level or equal?
- Q. Do you come to us with a free and open mind as you sit there now?
- Q. You have no particular wish as to who may win or lose this case?
- Q. Do you have any interest in the outcome of the case?
- Q. Will you consider the evidence in the case, apply the law to it and let the chips fall where they may?

- Q. Are there any questions we have overlooked that would indicate to you that you couldn't be fair?

### 3-A.02 Preconceived Ideas About This Kind of Lawsuit

- Q. Do any of you have any preconceived ideas or notions about litigation of this type where a party is seeking compensation from one claimed to have been negligent for injuries and losses sustained?
- Q. Have you in the last year or two read any articles about jury verdicts in any particular cases and as a result had any thoughts, notions, or ideas about jury awards in cases brought for personal injuries or wrongful death?
- Q. If so, what thoughts, if any, have you had?
- Q. What preconceived thoughts or notions do you have about jury awards in a case like this?
- Q. Do you have any formulated opinions about civil cases seeking money compensation or damages from any employment or other experience?
- Q. Would that experience affect your fair judgment in the case?
- Q. Is there anything about the nature of this lawsuit which would prevent you from being fair to all of the parties?

(See § 2—A.15, *supra*, Any Feeling of Inability To Be Fair)

### 3-A.03 Counsel From Out-of-Town

- Q. Will the fact I come from Florida and not from this fine state in any way prejudice you against my client and her case?
- Q. Do you think that it should make any difference to you in your evaluation of this case and Mr. Smith's injuries that his attorney comes from Florida?
- Q. Do you think that that should be an issue in the case or should have any bearing whatsoever on the outcome of this case?

### 3-A.04 Foreign Plaintiff

- Q. Will the fact that my client has a heavy accent, which may make it a little difficult for you to understand him at first, in any way prejudice you against him?



- Q. Do you think that people with accents are equally entitled to justice before the law as everyone else?
- Q. Does the fact that Mr. Zucchini has a name that may sound foreign to you mean that you will evaluate his claim differently than if he were a Mr. Smith or Jones?
- Q. Do you think that the plaintiff's name or his ethnic background will or should be an issue in this case?

### 3-A.05 Deliberations and Verdict

- Q. Will you speak up in the jury room as to what you believe the evidence shows during the deliberations and yet listen to the other jurors?
- Q. Will any verdict you join in be a verdict you believe in?
- Q. Do you understand that you are not to make up your mind until the Court asks you to deliberate?
- Q. Will you follow the law and the evidence?

### 3-A.06 Evidence—Verdict Based On

- Q. Will you try this case on the evidence presented in the courtroom and the law charged you by the Court and not bring in outside information to your deliberations?
- Q. You are a truckdriver and there will be a lot of evidence introduced in this case about how a truck should or should not be handled. Will you base your judgment on what you hear from the witness stand and not on the basis of any prior experience you have had?
- Q. Could you follow the evidence in this case as opposed to substituting your own personal opinions?

### 3-A.07 Follow Court's Instruction—Do Not Discuss Case

- Q. Would you have difficulty in following the Court's instructions not to discuss this case with others until the time you get back in the jury room to deliberate?

**3-A.08 Merely Because Suit Filed**

- Q. You understand that merely because the plaintiff files a suit does not mean the plaintiff is entitled to win?

**3-A.09 Sympathy**

- Q. You understand that sympathy is not to be involved in your verdict?
- Q. Do you understand that we are not seeking charity or a hand-out?

**3-A.10 Use Your Common Sense**

- Q. Will you use your common sense if you serve on the jury?

**3-A.11 Looking Parties in the Eye**

- Q. Can you look the defendant in the eye and say, "You were wrong," if the proof shows it?
- Q. Can you look the plaintiff in the eye and say, "Defendants were not wrong," if the proof shows it?

**3-A.12 Minor's Claims**

- Q. Ladies and gentlemen of the jury, you understand that any award made in this case to this minor will be supervised through a guardianship by the Court?
- Q. Do any of you have any hesitation about making an award to a minor who is represented here in Court by his father and mother as next friends and natural guardians?
- Q. Do any of you have any hesitation about awarding compensation to a minor whose mother and father are here as his next friends and natural guardians, knowing that the funds of such award would go into the legal guardianship and be supervised by the Court?

Q. Do any of you have any problems with that?

### 3-A.13 Remarriage

Q. (In states where defense is allowed to bring up remarriage of the widow) In this case the plaintiff is suing for the wrongful death of her husband. Plaintiff has remarried, and this is something of grave concern to me as her counsel in that the law to be instructed to you later will state that her losses were fixed at the time of her husband's death. Can you follow that law? Will you award her compensation for the losses occasioned by the wrongful death of her husband? In full?

Q. Will you be prejudiced against her for remarrying?

Q. Can you put that aside and award her the full loss occasioned her by the wrongful death of her husband?

### 3-A.14 Social Drink

Q. Do you take a social drink?

Q. Do you object to other people taking a drink?

Q. If the plaintiff in this case was drinking, but you find it was not the cause of the collision, will you hold the drinking against him? Can you put that aside?

### 3-A.15 Darting Child Case

Q. Have you ever had a child run out in the road in your path while driving? Did you hit the child?

### 3-A.16 Slip and Fall Case

Q. Have you ever slipped on a floor or while crossing a threshold?

Q. Did you observe what caused you to slip? Did you observe the lighting?

Q. Were you shopping at the time? Were you looking at what was on the shelves?

Q. Did you ever work in a grocery store? Are you familiar with

cleaning schedules for floors and aisles of stores selling goods to the public? Or other procedures stores use to provide safe walking for their customers?

### 3-A.17 Products Liability Case

- Q. Do you, just from a philosophical point of view, really feel deep down that the buyer would probably have the primary responsibility to see that a piece of equipment is safe?
- Q. And you feel that it might be difficult for you to be completely fair and impartial in measuring the responsibility of a manufacturer?
- Q. Based on your experience, you've formed opinions through the years of a fella who seems to look out, keeps himself from being hurt, and you would put more burden on somebody who got hurt that maybe somebody else would?

### B. Medical Malpractice Cases

#### 3-B.01 Dissatisfaction with Care Rendered by Defendant

- Q. In your experience with the defendant doctor, have you had any dissatisfaction with the care and treatment you received?
- Q. Have you had any dissatisfaction with the performance of any of the defendant doctor's personnel?
- Q. Have you had to wait in his office?
- Q. Have any of these things created any dissatisfaction with the defendant doctor?

#### 3-B.02 Feelings About Doctors

- Q. Do you have any particular feelings about lawsuits against doctors or hospitals?
- Q. Do you have any feeling about suits against physicians or hospitals?
- Q. Do you put the medical profession on a pedestal?
- Q. Do you believe physicians are on a higher plane than the rest of us?

- Q. Do you believe that members of the medical profession are better than other people?
- Q. Do you believe they should have special standards and not be responsible for their fault?
- Q. Do you believe medical professionals should be held to the same degree of care as anybody else when driving a car on the street?
- Q. Do you have any leaning toward one side before we start?

### 3-B.03 No Criminal or Licensure Sanctions

- Q. Do you understand that any verdict in this case will have no bearing whatsoever on the defendant's ability to continue to practice medicine in the future?
- Q. This is a civil case and there will be no criminal sanctions or anything of that nature as a result of this case. Do you all understand that?
- Q. Are you all aware that this case only involves compensation of the plaintiff for the injuries incurred and has nothing to do with the defendant's license to practice medicine? His license will not be in jeopardy on the basis of anything that is said or done in this courtroom?

### 3-B.04 Standard of Care Required and Whether Defendant Fell Below That Standard

- Q. Do you understand that you are going to decide whether or not the care rendered by the doctor fell below the standard required?
- Q. Do you understand that you are going to decide what the standard is based upon the testimony of the experts in this case?
- Q. Do you understand that the plaintiff is going to put on proof through medical experts as to what the standard is?
- Q. Do you understand likewise that the defendant is going to put on testimony as to what the standard is to which the defendant had to conform?
- Q. Do you understand that it is your sole function to decide what the standard is and whether the defendant measured up to it?

- Q. Do you have any difficulty with taking on that responsibility?
- Q. Do you understand that the plaintiff has the burden of proving the failure of the defendant to conform to the standard of medical practice required?
- Q. You understand there has to be proof, evidence showing both the standard of care and the failure to conform to it, don't you?
- Q. If the testimony of the defendant doctors doesn't make sense, are you willing to disregard it?
- Q. If the defendant doctors' testimony doesn't make sense, will you be able to find against them, if you find they are wrong?
- Q. If the testimony of the defendants' medical expert witnesses in support of the local doctors doesn't make sense, are you willing to disregard it?
- Q. Can you do it? Can you look the defendant doctor in the eye and say at the conclusion of this case if you find that he did not measure up to the standard that he is responsible for the injuries to my client?
- Q. Do you have any doubt about that?
- Q. Would you prefer not to serve? Why?

### 3-B.05 Attentiveness

- Q. Will you be attentive to medical issues?

### 3-B.06 Frame of Mind

- Q. What is your frame of mind? If you were a party to this case, would you be satisfied with it?

## PART 4. LIABILITY

### A. Generally

#### 4-A.01 Meaning of Negligence

- Q. Ladies and gentlemen of the jury, earlier we mentioned this

(Pub. 040)

was an automobile accident case. The charge is that the defendant was negligent in the operation of the truck. Now, at a later time in the case, the Court is going to tell you what negligence means; and basically he is going to tell you that it is a failure to use reasonable care under the circumstances.

- Q. Do any of you have any quarrel with one being responsible for his fault?
- Q. Do each of you expect all of your fellow citizens to follow the law with regard to their duty of using reasonable care? Do any of you have any quarrel with that?

#### 4-A.02 The Fact Alone

- Q. Assume in this case, the child is a trespasser. Would that fact alone create a state of mind against the plaintiff in this case even if the Court instructs that this alone is not determinative of the issues between the parties?

#### 4-A.03 Follow Court's Instructions and Weigh the Evidence

- Q. Will you follow the Court's instructions?
- Q. Will you weigh the evidence regarding the driver's actions?

#### 4-A.04 Burden of Proof

- Q. The Court is going to further charge you on the burden of proof in the case, i.e., the plaintiff has the burden of proving negligence by a preponderance of the evidence. Do any of you have any quarrel with that?
- Q. You understand the Court will instruct you as to the burden of proof in this case, and will you follow the burden of proof instructed you by the Court in this case?
- Q. You understand that there is a different burden of proof in a criminal case?
- Q. You understand that the burden of proof in a civil case is the burden of proving an issue by a mere preponderance of the evidence?

- Q. Will you follow that instruction if the Court gives it?
- Q. Do you understand what we mean when we use the term preponderance of the evidence?
- Q. Do you understand the difference between that and the words "beyond and to the exclusion of every reasonable doubt"?
- Q. Will you have any trouble accepting the burden of proof as charged you by the Court in this civil case since it is different from that in a criminal case?
- Q. You understand the plaintiff has the burden of proof?
- Q. You understand the defendant has the burden of proof on the defense they raised that the plaintiff was guilty of contributory or comparative negligence?
- Q. Will you hold the defendant to the burden cast by the Court's instruction that the defendant has the burden on contributory negligence?
- Q. Is there anyone who will not follow what the Court says the legal standard of care is and who will insist on applying a more restrictive or a less restrictive standard?
- Q. Engineers are trained to be exact and precise. In a civil case the burden of proof is not to prove something to an engineering or mathematical certainty. Will you, because of your engineering background, impose a higher or more stringent burden of proof than the law requires of us?
- Q. Is there anyone who would require either party to prove his case to a scientific certainty even though the law does not require it?

#### 4-A.05 Prejudices Against Drivers

- Q. Do you have any prejudices against drivers because you don't drive?

#### 4-A.06 Own and Operate Your Own Business

- Q. Would the fact that you own and operate your own business cause you to have any preconceived notions or biases about one seeking compensation for injuries received as a result of the negligence of another?



**4-A.07 Professional Experience**

Q. Anything in your professional experience affect you in evaluating this case and reaching a verdict?

**4-A.08 Pre-Existing Condition**

- Q. If you find that Mr. Smith was more predisposed to injury because of a pre-existing condition that he had and the Court charges you that the defendant is liable for the whole amount, even though the injuries would not have been as severe in a person who did not have that pre-existing condition, could you follow the Court's instructions in that regard?
- Q. Do you feel that just because Mr. Smith was previously injured that he is not entitled to be compensated for the injuries caused by Mr. Jones?

**B. Medical Malpractice Cases****4-B.01 No Special Treatment of Doctors**

- Q. The doctor defendants will get no special treatment from you, will they?
- Q. Can we rely on that?
- Q. Do you believe that doctors should get some special deal from the law?
- Q. Do you think it is wrong to sue a doctor?
- Q. Do you understand that you will decide if the doctor did something wrong?
- Q. If the evidence discloses fault, can you find against the doctor?
- Q. Do any of you believe that a doctor can ignore things he learned or should have learned in the care, treatment and diagnoses of patients?

**4-B.02 Local Versus Out-of-Town Doctors**

- Q. Will you give greater weight to the testimony of local doctors, and greater credibility to their testimony?

- Q. Do you have a preference for the testimony of local doctors as against out-of-town doctors?
- Q. Will you fairly consider the testimony of the out-of-town physicians on the issues of the liability of the local doctors?
- Q. Does it matter whether the testimony on the issues of the standard of care and whether the defendant came up to the standard of care is given by doctors from this community or out of the community? How do you feel about that?

#### 4-B.03 Unfortunate Result—Plaintiff's Burden of Proof

- Q. You also understand that a physician cannot be held responsible simply because an unfortunate result occurs, don't you?
- Q. Do you understand that just because there was an unfortunate death, that doesn't necessarily mean there was a failure to conform to the standard of care?
- Q. Do you understand that you cannot conclude that just because a patient died there was something wrong with the medical care?
- Q. Do you understand that a physician does not guarantee a cure?

#### 4-B.04 Two Distinct Lawsuits

- Q. Do you understand that we have two distinct lawsuits here? That is, there are two different defendants, and the different defendants present different cases on liability?

#### 4-B.05 "Red Flag" Questions

"Red flag" questions such as those suggested in Chapter 1 have to be individually formulated for each case.

### C. Products Liability

#### 4-C.01 Express Warranty

- Q. In this case we have a claim that the defendant violated an ex-

(Rel.1-783 Pub.040)

press warranty about its product causing it to be defective and causing the injury to Mr. Jones. Do any of you have any quarrel with that theory if charged you by the Court as law applicable to this case?

#### 4-C.02 Implied Warranty of Merchantability

- Q. Also, we have a claim that the product was defective because it was not reasonably fit for the use intended or reasonably foreseeable. If the Court charges you that the law of implied warranty is applicable to this case, do you have any quarrel or disagreement with that law? Can you follow the Court's instructions on this theory?

#### 4-C.03 Implied Warranty of Fitness for Purpose

- Q. Further, we have a claim that the product was defective because it was not reasonably fit for the specific purpose for which defendant knowingly sold it and for which it was bought. Can you follow the law on this theory of the case if the Court so charges you?

#### 4-C.04 Strict Liability

- Q. And, we have a claim that the product was defective because it was delivered to Mr. Jones in a condition unreasonably dangerous to him, the user, and caused the injury. If the Court charges you that the defendant can be held responsible if you so find, do you have any objection to that law?

#### D. General Negligence

##### 4-D.01 Slip and Fall Case

- Q. Are you, or is any member of your family, employed by the City, the defendant in this case who was responsible for the maintenance of the sidewalk where my client tripped and fell?

- Q. Are you familiar with that area of town?
- Q. Have you ever walked on the sidewalk at the location where my client was injured?
- Q. Were you familiar with its condition on the day my client was injured?
- Q. Did you walk on that sidewalk at night?
- Q. Was that before or after the date of my client's injury?
- Q. What do you recall about the condition of the sidewalk when you last walked in that area?
- Q. If you serve on this jury, will you base your verdict on the evidence you see and hear concerning the conditions of that sidewalk at the time my client was injured?
- Q. Have you ever been a witness to someone tripping falling as a result of a crack in a sidewalk -- or slipping on a heavy waxed surface -- or slipping on a foreign substance -- in a store or in any other place?
- Q. Has that ever happened to you, or a family member, or a neighbor and friend?
- Q. Tell us what you recall about that, please?

## PART 5. DAMAGES

### A. Generally

#### 5-A.01 Elements of Damage

- Q. At the conclusion of the case the Court will instruct you on the elements of damage which you may consider in arriving at your verdict in this case. Will each of you fairly and conscientiously consider each and every element of damage the proof has shown the plaintiff is entitled to recover?
- Q. Is there anyone on the jury who would refuse to follow the Court's instructions to separately consider every single element of damage and would just try to come up with a good round number?
- Q. There are elements of damage that must be awarded to the estate in the case, such as the medical expenses and funeral

expenses occasioned by the injury, and loss of prospective value of the estate. Do any of you have any preconceived notions about awarding compensation for those items of damage? If so, what are they?

- Q. Would you be able to put those aside?
- Q. Now those elements of damage include, among other things, some intangible elements of damage such as physical pain and suffering. Do any of you have any quarrel with the law which allows the award of compensation for pain and suffering?
- Q. If the evidence demonstrates suffering, do you have any argument with making an award commensurate with the loss or injury sustained in that regard?
- Q. Do you have any leanings concerning an award for physical pain and suffering?
- Q. Do you have any leanings concerning an award for damages for mental pain and suffering?
- Q. The Court will further instruct the jury that one of the elements of damage is the inability to lead a normal life because of physical impairment sustained by the plaintiff. Do any of you have any quarrel with that element of damage?
- Q. There is a claim for loss of sex, society of the spouse and services in this case. Do you have any negative feeling about these items of damage?
- Q. Can you fairly and conscientiously evaluate those intangible elements and return a fair verdict commensurate with the loss?
- Q. Is there anyone who would refuse to evaluate nursing services that have been furnished by Mr. Smith's wife even though the law permits that evaluation under our system of justice?
- Q. Does anything come to your mind in the way of opinions that would cause you to have a closed mind, make it more difficult to persuade you than the law would require, with respect to the elements of damage?

#### 5-A.02 Large Awards

- Q. Do you have any fixed ideas about large awards of compensation for serious injuries and losses?

- Q. Would you be offended by a large verdict if it is supported by the evidence?
- Q. If the proof shows that the loss is a very substantial loss and in your deliberations you reach a decision that a fair award for the elements of damage is one million dollars, would you have any hesitation in returning it simply because it is so large a verdict?
- Q. Ladies and gentlemen of the jury, we are dealing with quadriplegic injuries in this case, and do any of you have any preconceived ideas, notions, biases against a verdict in the millions of dollars if it is justified?
- Q. Is there anything in your background that would prevent you from agreeing to a verdict for a substantial sum if the plaintiff is so entitled, against one or all of the defendants? Would your answer be the same? (Directed to another juror.)
- Q. And a substantial award does not bother you, as you sit there? (Directed to another juror.)
- Q. Is there anyone who could not and would not award the sum of \$\_\_\_ for physical pain simply because they have a preconceived idea that under no circumstances could a person be hurt badly enough to justify the award of \$\_\_\_?
- Q. Is there anyone who feels that this sum of \$\_\_\_ for physical pain over the balance of a person's life is a figure that they could not and would not award because of preconceived ideas and opinions, even if the evidence demonstrates that amount of loss?
- Q. Is there anyone who feels that the sum of \$\_\_\_ for mental anguish would be a figure that, because of preconceived ideas and opinions which they hold, they could not and would not award, even if the evidence would justify it?
- Q. Do you agree that the size of the award should be in proportion to the seriousness of the injury?