

MODEL JURY CHARGES

CIVIL

**2007 EDITION
INCLUDING SPRING 2010
SUPPLEMENT**

**NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION®
ONE CONSTITUTION SQUARE, NEW BRUNSWICK, N.J. 08901-1500
(732) 249-5100**



THE NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION
CELEBRATING OVER 45 YEARS OF SERVICE TO THE BENCH AND BAR

The New Jersey Institute for Continuing Legal Education was created in 1962 to help lawyers and judges increase their general professional competence, keep abreast of developments in the law, and become more proficient in selected areas of practice. Since 1962, ICLE has served the educational needs of the New Jersey bench and bar and continually strives to respond to their many and varied concerns.

A non-profit, completely self-supporting organization, ICLE is the joint venture of the New Jersey State Bar Association, Rutgers - The State University of New Jersey, and Seton Hall University. Representing a merger of the practicing bar and the academic community, the Institute is governed by an autonomous Board of Trustees, which includes representatives of the State Bar Association, deans of the law schools and officers of the participating universities.

The Institute administers the Skills Training Course on behalf of the New Jersey Supreme Court, presents more than 230 seminars each year throughout the State, offers audio and video cassettes of seminars, markets software programs especially designed for the practicing attorney, and publishes comprehensive practice manuals and lecture handbooks. Its programs and publications must be financially self-supporting since ICLE is not subsidized in any way. The professional staff of attorneys and administrators, aided by a dedicated support staff, is headquartered at the New Jersey Law Center in New Brunswick, along with the State Bar Association, the State Bar Foundation and IOLTA.

The ingredients that contribute most to the stature of the Institute are the talent, time and effort expended by the very best of New Jersey attorneys, representing every field of specialization and every type of practice. The voluntary participation of practicing lawyers and judges as ICLE lecturers, authors, and advisors is appreciated and encouraged, for without their assistance, high quality continuing legal education would not be possible.

The Institute welcomes this opportunity to serve you.

The material contained in this publication is for educational purposes only and is not intended to serve as a substitute for the professional services an attorney would normally provide to a client, including up to the minute legal research.

Copyright © 2010 by the
NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION
All Rights Reserved

**SUPREME COURT COMMITTEE ON MODEL CIVIL JURY CHARGES
2006 – 2008 TERM**

Hon. Carol E. Higbee, P.J. Cv., Chair

Hon. Thomas F. Brogan, P.J. Cv., Vice-Chair

Ernest Blair, Esq.

Abbott S. Brown, Esq.

Joan M. Burke, Deputy Attorney General

Marie Ann Carey, Esq.

Hon. Dennis F. Carey, III, J.S.C.

Hon. Mary K. Costello, J.S.C.

Robert F. Cox, Esq.

Hon. John J. Coyle, Jr., J.S.C.

Kelly S. Crawford, Esq.

Stephen J. Foley, Jr., Esq.

Jane A. Greenfogel, Deputy Attorney General

Hon. Michael J. Kassel, J.S.C.

Christopher P. Lenzo, Esq.

Grant W. McGuire, Esq.

Cristina Accardi Mirda, Esq.

Hon. David W. Morgan, J.S.C.

Hon. Jamie S. Perri, P.J.Cv.

Christopher S. Porrino, Esq.

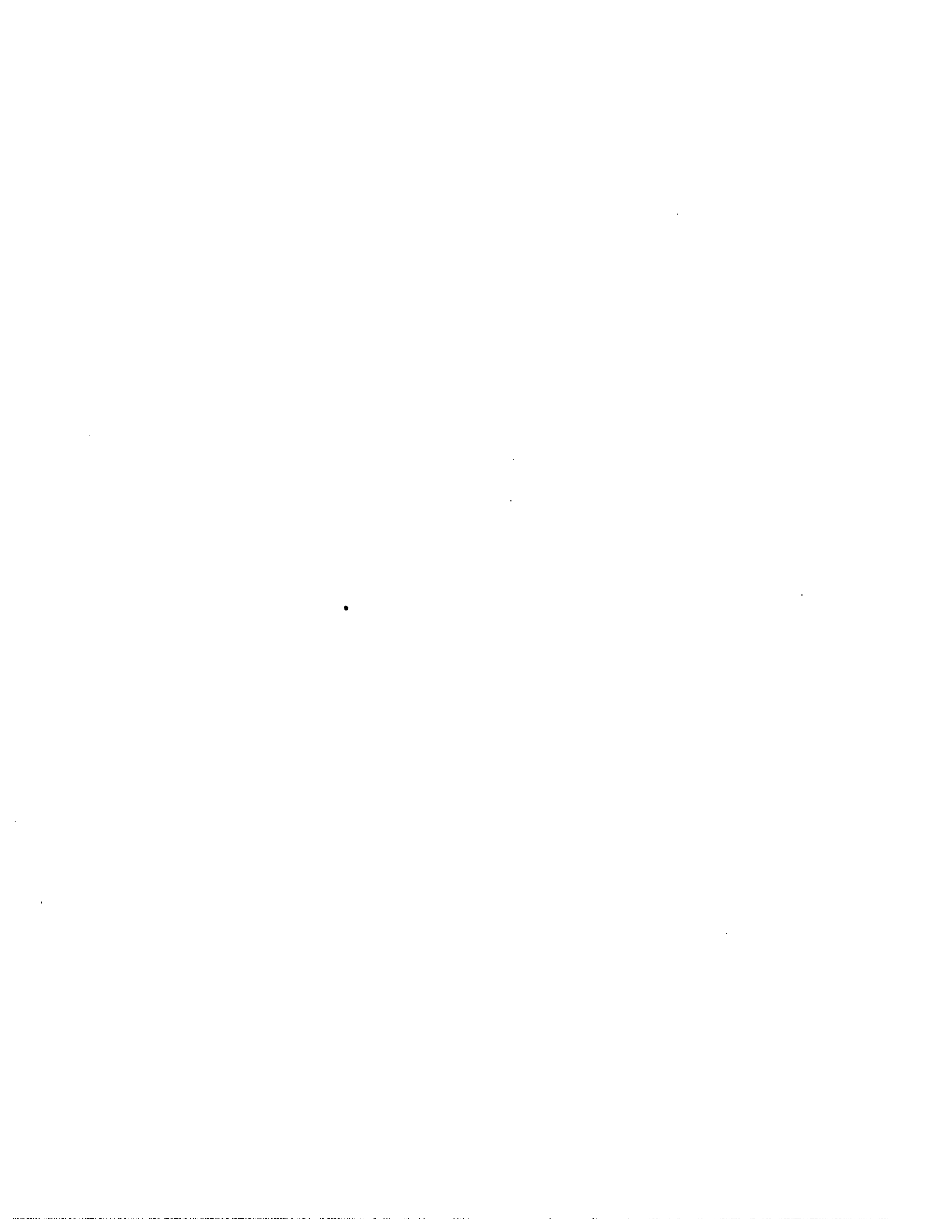
Francisco J. Rodriguez, Esq.

Richard M. Schall, Esq.

Bruce H. Stern, Esq.

Radames Velazquez, Jr., Esq.

Kevin M. Wolfe, Esq., Chief, Civil Practice Liaison



NOTICE TO THE BAR

UPDATES TO MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges (Committee) has approved the following list of Model Civil Jury Charges for use by the bar and trial courts. One model charge is new and two are revised versions of previously approved charges. All approved Model Civil Jury Charges, including these new and revised charges, are available for downloading from the Judiciary's Internet web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

1.13E ***Expert Testimony — Optional Charge Concerning Experts Relying on Hearsay Statements of Non-Testifying Experts (12/2009)***

This new charge has been added regarding the statements contained within reports of experts that were not called as witnesses at trial in accordance with *Agha v. Feiner*, 198 N.J. 50 (2009) and *New Jersey Rule of Evidence* 703.

5.60A ***Statutory Owner — Dog Bite Liability (12/2009)***

A footnote reference to *DeVivo v. Anderson*, 410 N.J. Super. 175 (Law Div. 2009) has been added to the dog bite charge making clear that there is no explicit requirement in *N.J.S.A.* 4:19-16 that the bite result in broken skin.

8.21 ***Nonuse of Seatbelt Including Ultimate Outcome (12/2009)***

On Interrogatory number 11 of the Jury Verdict Sheet, the word "seat" was deleted and replaced with the word "seatbelt" to correct a typographical error.

Questions regarding any of these new or revised civil jury charges may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Court

Dated: December 11, 2009

NOTICE TO THE BAR

UPDATES TO MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges (Committee) has approved the following list of Model Civil Jury Charges for use by the bar and trial courts. Two model charges are new and sixteen are revised versions of previously approved charges. All approved Model Civil Jury Charges, including these new and revised charges, are available for downloading from the Judiciary's Internet web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

- 2.22A** ***Law Against Discrimination (LAD) Individual Liability Claims (Approved 3/10)***
This new charge has been added regarding individual liability under LAD citing *Cicchetti v. Morris County Sheriff's Office*, 194 N.J. 563 (2008); *Tarr v. Ciasulli*, 181 N.J. 70 (2004); *Hurley v. Atlantic City Police Dep't*, 174 F.3d 95 (3d Cir. 1999), *cert. denied*, 528 U.S. 1074, 120 S.Ct. 786, 145 L.Ed. 2d 663 (2000).
- 2.32** ***New Jersey Conscientious Employee Protection Act (CEPA) (N.J.S.A. 34:19-1 et seq.) (3/10)***
This charge was revised to add a section to the CEPA charge concerning the fact that the law is unsettled regarding individual liability under CEPA.
- 3.11A** ***Public Defamation (3/10)***
This charge was rewritten to read more fluidly and a reference to *Berkery v. Kinney*, 397 N.J. Super. 222 (App. Div. 2007), *certif. denied*, 194 N.J. 445 (2008) has been added noting that once a person becomes a public figure, even if he/she subsequently adopts a private lifestyle, he/she remains a public figure thereafter for purposes of later commentary or treatment of that commentary.
- 3.11B** ***Private Defamation (3/10)***
This charge was rewritten to read more fluidly.
- 4.43** ***Consumer Fraud Act (3/10)***
A cite to *Lee v. First Union National Bank*, 199 N.J. 251, 261 (2009) has been added to make clear that neither securities nor the sale of securities "services" are included in the definition of "merchandise" under the Act.
- 5.10H** ***Standards of Construction, Custom and Usage in Industry or Trade (3/10)***
A footnote reference was added to this existing charge citing *Costa v. Gaccione*, 408 N.J. Super. 362 (App. Div. 2009), which holds that an Occupational Safety & Health Administration (OSHA) violation is treated similarly to a violation of an industry standard. Thus, compliance with an OSHA regulation does not in and of itself preclude a finding of negligence, and, conversely, non-compliance with an OSHA regulation does not, as such, preclude a finding that there was no negligence.

- 5.33A** ***Verbal Threshold (Type 6, 7, 8 or 9 Injuries) (3/10)***
A reference to *Bolz v. Bolz, et al.*, 400 N.J. Super. 154 (App. Div. 2008) has been added to make clear that in cases with two or more defendants, some of whom have available the limitation on lawsuit option defense and others who do not, the judge needs to charge two specific interrogatories as to each defendant and the jury must answer these before determining whether or not plaintiff satisfied the applicable threshold.
- 5.33B** ***Limitation on Lawsuit Option (3/10)***
A reference to *Bolz v. Bolz, et al.*, 400 N.J. Super. 154 (App. Div. 2008) has been added. See discussion under charge 5.33A above.
- 5.40A** ***Products Liability – Introduction: Caveats to Judges (3/10)***
A footnote reference to *Boyle v. Ford Motor Company*, 399 N.J. Super. 18, 24 (App. Div. 2008), *certif. denied*, 196 N.J. 597 (2008) has been added to the existing charge making clear that the duty to make/sell a product that is reasonably safe may apply to a defendant independent contractor such as the manufacturer of a component part of a product or even a re-builder where the part or product was built accordingly to plans and specifications of the general manufacturer.
- 5.40D-2** ***Design Defect — Introductory Statement to Jury (All Cases) (3/10)***
A footnote reference to *Boyle v. Ford Motor Company*, 399 N.J. Super. 18 (App. Div.), *certif. denied*, 196 N.J. 597 (2008) has been added to the existing charge. See discussion under charge 5.40A above.
- 5.71** ***Tavern Keepers Serving Minors and Intoxicated Persons (3/10)***
A typographical error in the cite *Rappaport v. Nichols*, 31 N.J. 188 (1959) has been corrected and a reference added to *Mazzacano v. Estate of Kinnerman*, 197 N.J. 307 (2009) in which the Court held that self-service constitutes the service of alcohol under the *Licensed Alcoholic Beverage Service Fair Liability Act* (the “*Dram Shop Act*”), N.J.S.A. 2A:22A-1 to -7.
- 8.41** ***Conversion (3/10)***
A footnote reference to *Chicago Title Ins. Co. v. Ellis*, 409 N.J. Super. 444 (App. Div.), *certif. denied*, 200 N.J. 506 (2009) has been added to the existing charge making clear that the tort of conversion can be applied to money rather than chattels.
- 8.43** ***Wrongful Death (3/10)***
This charge was rewritten to provide additional clarity and to update case law, including citing *Johnson v. Dobrosky*, 187 N.J. 594, 606 (2006) (quoting Stewart M. Speiser, *Recovery for Wrongful Death & Injury*, §6:26 (4th ed. 2005)) and holding that the decedent’s welfare fraud conviction should not have been admissible in a wrongful death case.

- 8.46** ***Defamation Damages (Private or Public) (3/10)***
This defamation damages charge was rewritten to read more fluidly.
- 8.60** ***Punitive Damages Actions — Filed On OR After 10/27/95 (Other Than Products Liability Actions) (3/10)***
Footnotes have been rewritten to provide additional clarity to the charge, citing *Tarr v. Ciasulli*, 390 N.J. Super. 557 (App. Div. 2007), *aff'd*, 194 N.J. 212, 224 (2008), which found that the *New Jersey Punitive Damages Act*, N.J.S.A. 2A:15-15-5.9, *et al.* does not permit counsel to urge the jury to increase a punitive damage award in order to enhance the general “deterrence of others.” Accordingly, the language in the original charge which allowed punitive damages to be awarded as a “deterrence to others” was deleted.
- 8.61** ***Punitive Damages — Law Against Discrimination (LAD) Claims (3/10)***
To provide additional clarity to the charge, footnotes have been rewritten citing *Tarr v. Ciasulli*, 390 N.J. Super. 557 (App. Div. 2007), *aff'd*, 194 N.J. 212, 224 (2008). See discussion under charge 8.60 above.
- 8.63** ***Punitive Damages — New Jersey Conscientious Employee Protection Act (CEPA) Claims (Approved 3/10)***
This new CEPA punitive damages charge has been added.
- 8.70** ***Tort Claims Act Threshold for Recovery of Damages for Pain and Suffering (3/10)***
A reference to *Bolz v. Bolz, et al.*, 400 N.J. Super. 154 (App. Div. 2008) has been added to make clear that when both private and public entity defendants are sued, the jury should answer two specific interrogatories as to each defendant. Once those interrogatories are answered, the jury should determine whether the plaintiff has established a substantial permanent injury caused by a public defendant.

Questions regarding any of these new or revised civil jury charges may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Court

Dated: April 14, 2010

NOTICE TO THE BAR

UPDATES TO MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges (Committee) has approved the following list of Model Civil Jury Charges for use by the bar and trial courts. All of these model charges are revised versions of previously approved charges. All approved Model Civil Jury Charges, including these revised charges, are available for downloading from the Judiciary's web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

1.11C. Preliminary Charge (5/10)

This charge was revised to add a reference to the use of the Internet and other electronic media to the prohibition on jurors researching the case on which they sit.

5.50E Pre-Existing Condition – Increased Risk/Loss of Chance – Proximate Cause (5/10)

A footnote reference was added to this existing charge citing *Gonzalez v. Silver, et al.*, 407 N.J. Super. 576, 588 (App. Div. 2009), in which the court noted: "...where a physician defendant's negligence combines with a patient-plaintiff's preexistent condition to cause harm, it is reversible error to instruct the jury on the "but for" proximate cause standard either alone or in conjunction with the substantial factor test."

5.40D-1 Design Defect – Generally (5/10)

A reference to *Mercer Mutual Ins. Co. v. Proudman, et al.*, 396 N.J. Super. 309, certif. denied, 194 N.J. 270 (2007) was added. That case held that generally, where a defendant in a products liability action raises the absolute defense that the danger posed by a product cannot be feasibly eliminated, thus establishing the lack of a defect, the plaintiff has the burden to establish by a preponderance of the evidence that the defendant could have eliminated the danger without impairing the usefulness of the product; when a plaintiff meets that burden, a jury question is presented whether the product is defectively designed even though the defendant has established the defense, citing *N.J.S.A. 2A:58C-3*.

Questions regarding any of these revised civil jury charges may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Court

Dated: May 26, 2010

NOTICE TO THE BAR

UPDATES TO MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges (Committee) has approved the following list of Model Civil Jury Charges for use by the bar and trial courts. Two model charges are new and two are revised versions of previously approved charges. All approved Model Civil Jury Charges, including these new and revised charges are available for downloading from the Judiciary's web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

2.21 (B)(5) *New Jersey Law Against Discrimination (NJLAD) – Prima Facie Elements (6/2010)*

This section of this charge was revised to move the reference to *Zive v. Stanley Roberts, Inc.*, 182 N.J. 436, 454 (2005), noting that the plaintiff in an NJLAD action based upon discriminatory discharge or demotion must merely prove that he or she “was actually performing the job prior to the termination”, to read more fluidly.

4.43 *Consumer Fraud Act (6/2010)*

A reference to 539 Absecon Blvd., *L.L.C. v. Shan Enterprises Ltd. Partnership*, 406 N.J. Super. 242, *certif. denied*, 199 N.J. 541 (2009) was added regarding limitations on the application of the *Consumer Fraud Act* to the sale of a business.

5.32C *Duty Of Drivers And Pedestrians Crossing At Marked Or Unmarked Crosswalk (Approved 6/2010)*

This new charge has been added to incorporate the provisions of *N.J.S.A. 39:4-36* relating to the duty of drivers and pedestrians crossing at marked or unmarked crosswalks.

5.50 *Apparent Authority Charge (Approved 6/2010)*

This new section has been added to the medical malpractice charge setting forth the theory of “apparent authority” which arises where a hospital through its actions, holds out a particular physician as its agent and/or employee in a manner that leads a patient to reasonably believe that the doctor is rendering treatment on behalf of the hospital. Thus, under this theory, liability is determined based upon the actions of the hospital rather than merely upon the existence of a contractual relationship, citing *Basil v. Wolf*, 193 N.J. 38, 67 (2007) (quoting and approving *Arthur v. St. Peters Hosp.*, 169 N.J. Super. 575, 581 (Law Div. 1970)) and *Estate of Cordero v. Christ Hospital*, 403 N.J. Super. 306, 310-11 (App. Div. 2008).

Questions regarding any of these revised or new civil jury charges may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Court

Dated: June 29, 2010

MODEL JURY CHARGES, CIVIL

SUMMARY OF CONTENTS

CHAPTER 1	GENERAL INSTRUCTIONS
CHAPTER 2	EMPLOYMENT LAW
CHAPTER 3	INTENTIONAL TORTS
CHAPTER 4	CONTRACT CHARGES
CHAPTER 5	NEGLIGENCE CHARGES
CHAPTER 6	PROXIMATE CAUSE
CHAPTER 7	COMPARATIVE & CONTRIBUTORY NEGLIGENCE
CHAPTER 8	DAMAGES – GENERAL
CHAPTER 9	CONDEMNATION
CHAPTER 10	FORFEITURES

Note: The date in parentheses after the title of a charge indicates when the Committee on Model Civil Jury Charges approved the revision or adoption of a charge.

10/2007

Model Civil Jury Charges

General Comments

The Model Civil Jury Charge Committee is a standing committee of the New Jersey Supreme Court. The New Jersey Supreme Court does not sanction or approve the Model Civil Jury Charges before publication by the Model Civil Jury Charge Committee, although the Supreme Court may, and frequently does, comment on the sufficiency of a charge in the context of a particular case.

The Model Civil Jury Charge Committee prepares and updates model civil jury charges to be useful to trial judges and litigants to accomplish the important function of adequately and understandably instructing civil juries. The Model Civil Jury Charges provide model instructions and related clarifying judges' notes. The Model Civil Jury Charges endeavor to enhance comprehension by jurors, while retaining a balanced and accurate statement of the law.

The Model Civil Jury Charges are a framework for building a set of jury instructions. Each case turns on unique facts and trial courts and litigants must tailor the Model Civil Jury Charges to conform to the facts and circumstances of the case being tried. The Committee attempts to keep the Model Civil Jury Charges current with the state of the law. Where applicable, trial judges and litigants must tailor the Model Civil Jury Charges to reflect changes in the law since the Committee published any particular model jury charge. Accordingly, the Model Civil Jury Charge Committee reminds trial judges and litigants that the Model Civil Jury Charges are merely the starting point of the process of constructing an appropriate charge that adequately explains the law to the jury in the context of the material facts of the case being tried.

Charge Dating

The date in parentheses after the title of a charge states when the Committee on Model Civil Jury Charges approved the adoption or a substantive revision of a charge. [*For example:* 2.11 Wrongful Discharge (3/91) means that the Committee approved the adoption or substantive revision of this charge in March 1991.]

However, when the Committee has made minor stylistic changes, modernized the charge's language, updated footnotes, or added a new subsection heading, but has left the body of the charge substantively unchanged, the date of these minor revisions is inserted in the parentheses after the date the Committee approved the charge's adoption or substantive revision. [*For example:* 6.11C Duty to Mitigate Damages by Medical and Surgical Treatment (Adopted 12/96; revised 10/00) means that the Committee originally approved the adoption of the charge in December 1996 and subsequently made minor revisions to the charge in October 2000.]

New or substantively revised subsections will have their date of adoption or substantive revision in parentheses after the individual subsection heading. When a charge was approved prior to the 1984 edition of the Charge book, but the exact date of approval is unknown, the date in the parentheses after the charge's title is: (pre-1984).



MODEL JURY CHARGES CIVIL

TABLE OF CONTENTS

CHAPTER 1 — GENERAL

1.10 INSTRUCTIONS TO JURORS BEFORE VOIR DIRE (Approved 11/98)	1.10-1
A. Welcome and Explanation of Nature of Case	1.10-2
B. Duty of Citizens to Serve as Jurors	1.10-3
C. Excusing Jurors for Personal Reasons Based on Length of Trial	1.10-4
D. Number of Jurors to be Selected and Procedure for Taking Position in Jury Box (Approved 11/98).....	1.10-5
E. Counsel's Right to Peremptory Challenges	1.10-6
F. Introduction of Parties, Counsel and Potential Witnesses	1.10-7
G. Identification of Potential Witnesses	1.10-9
H. Particularized Questions	1.10-10
I. Excusing the Balance of the Jury after Selection is Complete.....	1.10-11
1.11 PRELIMINARY CHARGE (Approved 11/98, Revised 5/07)	1.11-1
A. Role of Jury, Court and Attorneys	1.11-2
B. Prohibition against Discussing the Case	1.11-4
C. Jurors Not to Visit Accident Scene or Do Investigations	1.11-6
D. Note-Taking (Approved 11/98)	1.11-8
E. Outline of Order of Events	1.11-9
F. Jury of Six — Alternates (Approved 11/98)	1.11-10
G. Settling Defendants	1.11-11
H. Schedule	1.11-12
I. Cell Phone, Pager and Other Wireless Communication Devices (5/04)	1.11-13
1.12 GENERAL PROVISIONS AND OUTLINE FOR STANDARD CHARGE (Approved 11/98).....	1.12-1
A. Purpose of Charge	1.12-3
B. Role of the Judge	1.12-4
C. Role of the Attorneys.....	1.12-5
D. Role of the Jury	1.12-6
E. The Evidence	1.12-7
F. Contention of the Parties.....	1.12-8
G. Burden of Proof.....	1.12-9
H. Preponderance of the Evidence (<i>short version</i>)	1.12-10
I. Preponderance of the Evidence (<i>long version</i>) (Approved 2/98)	1.12-11
J. Direct and Circumstantial Evidence or Inferences	1.12-13
1. Direct and Circumstantial Evidence.....	1.12-13
2. Inferences	1.12-14
K. Credibility (<i>short version</i>)	1.12-15
L. Credibility (<i>long version</i>).....	1.12-16

MODEL JURY CHARGES CIVIL

M. False in One, False in All	1.12-18
N. Liability.....	1.12-19
O. Damages	1.12-20
P. No Prejudice, Passion, Bias or Sympathy	1.12-22
Q. Deliberations	1.12-23
R. Alternates.....	1.12-24
S. Verdict.....	1.12-25
T. Jury Verdict Sheet.....	1.12-26
U. Communications with Court (<i>long version</i>)	1.12-27
V. Communications with Court (<i>short version</i>)	1.12-28
W. Thanking the Jury	1.12-29
X. Exceptions of Counsel	1.12-30
Y. Reduce Jury to Six [unless fewer than six or more than six will deliberate. <i>R.</i> 1:8-2(b) & (c)] (Approved 11/98)	1.12-32
Z. Designate the Foreperson	1.12-33
AA. Swear the Attendants.....	1.12-34
BB. Lawyers Check Exhibits.....	1.12-35
CC. Send Jury to Deliberate.....	1.12-36
DD. Receiving Verdict.....	1.12-37
1. Roll Call	1.12-37
2. Taking Verdict	1.12-37
3. Polling Jury	1.12-37
EE. Thanking and Discharging Jury	1.12-38
1.13 EXPERT TESTIMONY (Approved 4/95).....	1.13-1
A. Optional Charge Concerning Hypothetical Questions	1.13-3
B. Optional Charge in Case of Conflicting Expert Testimony	1.13-4
C. Optional Charge Concerning Fee Paid to Expert	1.13-5
D. Optional Charge Concerning Statements from Publications.....	1.13-6
E. Optional Charge Concerning Experts Relying on Hearsay Statements of Non- Testifying Experts (12/2009)	1.13-7
1.14 INSTRUCTION TO THE PARTIES, COUNSEL AND SPECTATORS, IF ANY, WHO HAVE BEEN CLOSELY FOLLOWING TRIAL AFTER JURY HAS RETIRED TO DELIBERATE (Approved 6/95).....	1.14-1
1.15 NOTE-TAKING BY JURORS (Approved 11/98).....	1.15-1
A. Preliminary Instruction before Trial.....	1.15-1
B. Juror's Notes — Post Trial.....	1.15-2
1.16 ALTERNATE JUROR EMPANELED AFTER DELIBERATIONS HAVE BEGUN; <i>R.</i> 1:8-2(d) (Approved 3/93).....	1.16-1

MODEL JURY CHARGES CIVIL

1.17 INSTRUCTIONS TO JURY IN CASES IN WHICH ONE OR MORE DEFENDANTS HAVE SETTLED WITH THE PLAINTIFF (Approved 5/97)	1.17-1
1.18 WITNESS — FAILURE OF A PARTY TO PRODUCE (Approved 5/70)	1.18-1
A. Where Judge Determines that there is an Issue of Fact	1.18-1
B. When Judge has Determined that the Adverse Inference may be Drawn	1.18-4
C. Where Judge has Determined to Charge No Adverse Inference can be Drawn	1.18-5
D. Where Testimony is Not of a Material Aid	1.18-6
1.19 BURDEN OF PROOF — CLEAR AND CONVINCING EVIDENCE (Approved 4/88)	1.19-1
1.20 SUPPLEMENTAL INSTRUCTION AS TO FURTHER DELIBERATIONS BY JURY (Approved 4/96)	1.20-1
1.21 INSTRUCTIONS TO JURY IN CASES IN HIT-AND-RUN CASES IN WHICH THE COMMISSIONER OF INSURANCE IS IMPEADED AS A DEFENDANT (Approved 2/89)	1.21-1
1.22 EXPEDITED JURY TRIALS (Approved 1/01)	1.22-1
1.23 PRELIMINARY INSTRUCTIONS REGARDING JURORS' QUESTIONS (Approved 9/02)	1.23-1
1.24 FINAL INSTRUCTIONS REGARDING JURORS' QUESTIONS (Approved 9/02)	1.24-1

CHAPTER 2 — EMPLOYMENT

2.11 WRONGFUL DISCHARGE IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY (Approved 3/91)	2.11-1
2.12 PERSONNEL MANUAL CREATING A CONTRACT (Approved 1/97)	2.12-1
I. Whether a Contract Existed	2.12-2
A. Manual's Specific Provisions	2.12-3
1. Manual's Application to Plaintiff	2.12-3
2. Provisions Suggesting Intention to Create Binding Obligations	2.12-4
B. Manual's Preparation and Distribution	2.12-6
C. Manual's Disclaimer	2.12-8
D. Summary	2.12-9
II. Whether Defendant Breached the Contract	2.12-10

MODEL JURY CHARGES CIVIL

2.13 ORAL PROMISES CREATING AN ENFORCEABLE CONTRACT (Approved 3/91).....	2.13-1
2.14 EXCEPTIONS TO THE EMPLOYMENT-AT-WILL DOCTRINE: UNWRITTEN PERSONNEL POLICY REGARDING TERMINATION OF EMPLOYMENT (Approved 12/01).....	2.14-1
2.15 DEFAMATION AND EMPLOYMENT (Approved 6/95).....	2.15-1
A. General Elements of Defamation.....	2.15-1
B. Specific Elements of Defamation.....	2.15-2
C. Qualified Privilege.....	2.15-6
D. Damages	2.15-9
1. General Instructions	2.15-9
2. Compensatory Damages (Special Damages)	2.15-9
3. Compensatory Damages (General Damages).....	2.15-9
4. Punitive Damages (Approved 1/97).....	2.15-10
2.21 THE NEW JERSEY LAW AGAINST DISCRIMINATION (N.J.S.A. 10:5-1 et seq.) - INTRODUCTORY NOTE TO THE COURT (Approved 5/03)	2.21-1
A. General Charges (Determinative Factor; Mixed Motive Charge).....	2.21-4
B. Prima Facie Elements to be Included in Charge if Disputed in Particular Case..	2.21-9
C. Sample Jury Interrogatories.....	2.21-13
2.22 LAD RETALIATION	2.22-1
2.23 DISCRIMINATORY LAYOFF OR REDUCTION IN FORCE (RIF) (Approved 5/91).....	2.23-1
2.24 WAGE DISPARITY UNDER THE NJLAD (Approved 5/91)	
1. Substantially Equal Jobs	2.24-1
2. Similar Jobs	2.24-3
2.25 HOSTILE WORK ENVIRONMENT (Sexual, age and Other Harassment) (Approved 11/99).....	2.25-1
1. Overview of Issues to be Decided.....	2.25-2
2. Did the Conduct Occur?	2.25-3
3. Does the Conduct Constitute Sexual Harassment?.....	2.25-3
4. Should Defendant Employer be Held Responsible for the Sexual Harassment?.....	2.25-9
2.31 WAGE DISPARITY UNDER THE EQUAL PAY ACT [29 U.S.C. §206(D)(1)] (Approved 5/91).....	2.31-1

MODEL JURY CHARGES CIVIL

2.32 NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT (<i>N.J.S.A. 34:19-1 et seq.</i>) (Approved 6/91).....	2.32-1
2.33 WRONGFUL DISCHARGE; EMPLOYMENT DISCRIMINATION; MITIGATION OF DAMAGES (Approved 6/93).....	2.33-1
A. General Mitigation Principles.....	2.33-1
B. Lowered Sights Doctrine.....	2.33-4
C. Effect of Voluntary Termination of Subsequent Employment.....	2.33-6
D. Effect of Unconditional Offer of Employment or Reemployment by Defendant Employer.....	2.33-7
E. Impact of Finding of No Constructive Discharge.....	2.33-9

CHAPTER 3 — INTENTIONAL TORTS

3.10 ASSAULT AND BATTERY (Approved before 1984).....	3.10-1
A. Definition.....	3.10-1
B. Self Defense — Burden of Proof.....	3.10-2
C. Self Defense — Serious Bodily Harm.....	3.10-4
D. Self Defense — Duty to Retreat.....	3.10-5
E. Defense of Another.....	3.10-7
3.11A PUBLIC DEFAMATION	3.11A-1
1. General Elements of Defamation.....	3.11A-1
2. Specific Elements.....	3.11A-2
3. Burden of Proof.....	3.11A-8
3.11B PRIVATE DEFAMATION (Approved 12/96; Revised 03/02).....	3.11B-1
1. General Elements of Defamation.....	3.11B-1
2. Specific Elements.....	3.11B-2
3. Qualified Privilege (Approved 5/98).....	3.11B-4
3.12 MALICIOUS PROSECUTION BASED UPON A PRIOR CRIMINAL PROCEEDING (Approved before 1984).....	3.12-1
A. Elements of a Malicious Prosecution.....	3.12-1
B. Plaintiff Must Establish Institution of a Criminal Judicial Proceeding or Other Adjudicatory Proceedings Against Him/Her by the Defendant.....	3.12-8
C. Plaintiff Must Establish that the Criminal Proceeding Terminated Favorably to Him/Her or in a Manner Not Adverse.....	3.12-8
D. Defense of Advice of Counsel.....	3.12-9
E. Statute of Limitations.....	3.12-10
F. Malicious Prosecution Actions by Professional Persons.....	3.12-10
G. Statute on Shoplifting.....	3.12-12

MODEL JURY CHARGES CIVIL

3.13 MALICIOUS PROSECUTION ACTION BASED UPON A PRIOR CIVIL PROCEEDING (Approved before 1984)	3.13-1
A. Elements of a Malicious Prosecution	3.13-1
3.20 FALSE IMPRISONMENT (FALSE ARREST) (Approved 6/89)	3.20A-1
A. General Rules to be Charged in All Cases.....	3.20A-1
B. Defense or Legal Authority for Confinement.....	3.20B-1
C. Citizen's Arrest for a Crime without Warrant	3.20C-1
D. Police Arrest without a Warrant	3.20D-1
E. Arrest without Warrant for Disorderly Person's Offense or Breach of Peace ..	3.20E-1
F. Shoplifting (<i>N.J.S.A. 2C:20-11</i>).....	3.20F-1
3.30A UNLAWFUL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE (Approved before 1984)	3.30A-1
3.30B TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS (REALTY BROKER v. THIRD PARTY) (Approved 6/79).....	3.30B-1
3.30C UNLAWFUL INTERFERENCE WITH CONTRACTUAL RELATIONS (Approved before 1986).....	3.30C-1
3.30D ABUSE OF PROCESS (Approved before 1984).....	3.30D-1
3.30E FRAUD — DECEIT (Approved 2/92).....	3.30E-1
3.30F INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Approved 11/99).....	3.30F-1

CHAPTER 4 — CONTRACTS

4.10 BILATERAL CONTRACTS — DEFINITION	4.10A-1
A. The Contract Claim — Generally (Approved 5/98).....	4.10A-1
B. Third Party Beneficiary (Approved 5/98).....	4.10B-1
C. Existence of a Legally Enforceable Contract (Approved 5/98).....	4.10C-1
D. Form of Contract (Approved 5/98).....	4.10D-1
E. Express or Implied Contract (Approved 5/98).....	4.10E-1
F. Contingent Contract (Approved 5/98).....	4.10F-1
1. Condition Precedent.....	4.10F-1

MODEL JURY CHARGES CIVIL

2. Excuses for Failure of Condition Precedent.....	4.10F-2
3. Dependent Covenants as a Condition of Performance.....	4.10F-3
4. Excuses for Non-Performance of a Dependent Covenant	4.10F-4
G. Contract to be Memorialized in Writing (Approved 5/98)	4.10G-1
H. Interpretation of Contract Terms (Approved 5/98)	4.10H-1
1. No Dispute over Meaning.....	4.10H-1
2. Dispute over Meaning.....	4.10H-2
I. Modification (Approved 5/98).....	4.10I-1
J. Implied Terms (Approved 5/98)	4.10J-1
1. Good Faith and Fair Dealing	4.10J-1
2. Reasonable Time to Perform	4.10J-2
3. Reasonable Duration.....	4.10J-4
4. Worker-like Manner	4.10J-5
5. Customs and Usage.....	4.10J-5
K. Promissory Estoppel (Approved 5/98)	4.10K-1
L. Claims of Breach (Approved 5/98)	4.10L-1
M. Anticipatory Breach (Approved 5/98).....	4.10M-1
N. Affirmative Defenses (Approved 11/99).....	4.10N-1
1. Legal Defenses	4.10N-1
2. Equitable Defenses.....	4.10N-36
4.20 TIME OF PERFORMANCE WHERE CONTRACT IS SILENT (Approved 6/71).....	4.20-1
4.21 BREACH OF EXPRESS WARRANTY ON SALE OF GOODS (Approved before 1984)	4.21-1
4.22 BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE UNDER U.C.C.) (Approved before 1984)	4.22-1
4.23 DURESS (Approved 6/79).....	4.23.1
4.24 THIRD PARTY BENEFICIARY (Approved 6/79).....	4.24-1
4.25 ANTICIPATORY BREACH OF CONTRACT (Approved 6/71).....	4.25-1
A. By Renunciation or Repudiation.....	4.25-1
B. Where Promisor Makes Performance Impossible	4.25-3
4.30A BUILDING CONTRACTS — SUBSTANTIAL PERFORMANCE OF BUILDER (Approved 6/71)	4.30A-1
4.30B BUILDING CONTRACTS — EXTRAS (Approved 5/98)	4.30B-1
A. Where the Contract is Silent as to Changes or Extras	4.30B-1

MODEL JURY CHARGES CIVIL

B. Where the Contract Prohibits Changes without Written Authority	4.30B-2
4.30C BUILDER FAILS TO PROVE SUBSTANTIAL PERFORMANCE AND SUES IN QUASI-CONTRACT (Approved 5/98)	4.30C-1
4.40 REAL ESTATE BROKERS COMMISSION — STATUTE OF FRAUD (N.J.S.A. 25:1-9) (Approved 6/79)	4.40-1
4.41 BAILMENT (Approved 6/72).....	4.41-3
A. Where Bailment is Not Disputed.....	4.41-3
B. Where Bailment is Disputed	4.41-3
C. Duty of Care Owed by Bailee	4.41-5
1. Mutual Bailment.....	4.41-5
2. Bailment for the Sole Benefit of Bailor	4.41-7
3. Bailment for Sole Benefit of Bailee	4.41-8
D. Burden of Proof.....	4.41-9
E. Defenses in General (Note to the Court)	4.41-10
4.43 CONSUMER FRAUD ACT (Approved 1/01)	4.43-1
A. Introductory Paragraphs to Jury.....	4.43-3
B. First Alternative.....	4.43-5
C. Second Alternative.....	4.43-9
D. Separate Defense Applicable to Owners/Publishers/Operators of Instrumentality by which an Advertisement is Conveyed	4.43-12
E. Third Alternative	4.43-13
F. General Statements on Damages.....	4.43-14
Administrative Rules of the Division of Consumer Affairs	4.43-16
Listing of Specific Situation Statutes Under the Consumer Fraud Act (Alternative Three).....	4.43-18
4.44 DEFICIENCY — SALE OF COLLATERAL AS COMMERCIALY REASONABLE (Approved 2/92)	4.44-1
4.45 MOTOR VEHICLE LEMON LAW (Includes Lemon Law Model Jury Verdict Sheet)(Approved 5/03)	4.45-1

VOLUME 2

CHAPTER 5 — NEGLIGENCE

5.10A NEGLIGENCE AND ORDINARY CARE — GENERAL (Approved before 1984)	5.10A-1
5.10B FORESEEABILITY (AS AFFECTING NEGLIGENCE) (Approved before 1984)	5.10B-1

MODEL JURY CHARGES CIVIL

5.10C UNDERTAKING VOLUNTARILY ASSUMED (Approved before 1984)	5.10C-1
5.10D RES IPSA LOQUITUR (Approved 10/90)	5.10D-1
5.10E ACT OF GOD (Approved before 1984).....	5.10E-1
5.10F EMOTIONAL DISTRESS FROM WITNESSING SERIOUS INJURY TO AN INTIMATE FAMILY MEMBER (Approved 5/84).....	5.10F-1
5.10G SUDDEN EMERGENCY (Approved before 1983).....	5.10G-1
A. Sudden Emergency, Effect on Negligence	5.10G-1
B. Defendant's Liability for Effects of Emergency.....	5.10G-3
5.10H STANDARDS OF CONSTRUCTION, CUSTOM AND USAGE IN INDUSTRY OR TRADE (Approved before 1983).....	5.10H-1
A. Effect of Proof of Industry Standard	5.10H-1
5.10I AGENCY — MASTER/SERVANT (Approved 04/02).....	5.10I-1
A. Master/Servant (06/79).....	5.10I-1
B. Respondant Superior (04/02)	5.10I-3
1. Corporation or Other Fictitious Entity.....	5.10I-3
2. Respondant Superior in General	5.10I-4
5.11 ASSUMPTION OF RISK - IN THE PRIMARY SENSE (4/01)	5.11-1
5.12 GROSS NEGLIGENCE (Approved 2/04).....	5.12-1
5.20A DANGEROUS CONDITIONS OF PUBLIC PROPERTY (Approved 2/96) ..	5.20A-1
1. First Element	5.20A-2
2. Second Element.....	5.20A-3
3. Third Element.....	5.20A-3
4. Fourth Element.....	5.20A-4
5. Fifth Element.....	5.20A-5
5.20B LIABILITY FOR DEFECTS IN PUBLIC STREETS AND SIDEWALKS (Approved 11/99).....	5.20B-1
A. Liability of Municipality	5.20B-1
B. Liability of Abutting Owner or Occupant.....	5.20B-1
1. In General.....	5.20B-1
2. Snow and Ice.....	5.20B-3
3. Nuisance, Sidewalk.....	5.20B-9

MODEL JURY CHARGES CIVIL

4. Adoption of Nuisance by Subsequent Owner	5.20B-10
5.20C DUTY OF OWNER TO TENANT LEASING ENTIRE PREMISES AND TO OTHERS ON PREMISES (Approved 5/77).....	5.20C-1
A. Residential Premises	5.20C-1
B. Repairs by Landlord of Residential Premises.....	5.20C-1
C. Non-Residential Land and Buildings.....	5.20C-3
D. Repairs by Landlord of Non-Residential Land and Buildings.....	5.20C-4
5.20D DUTY OF OWNER OF MULTI-FAMILY HOUSE TO TENANTS AND OTHERS (Approved 5/97).....	5.20D-1
A. Areas over Which Landlord Retains Control (in or out of Tenant's Premises)	5.20D-1
B. Facilities or Equipment Provided by Landlord (in or out of Tenant's premises)	5.20D-6
C. Landlord's Duty Arising from Covenant to Repair	5.20D-7
D. Landlord's Duty Arising from Voluntary Repairs to Correct a Defective Condition.....	5.20D-9
5.20E ACTIVITY OF OWNER/OCCUPIER AS DISTINGUISHED FROM CONDITION OF PREMISES, DUTY OWED.....	5.20E-1
5.20F DUTY OWED - CONDITION OF PREMISES (Approved 3/00, Revised 10/03).....	5.20F-1
1. Adult Trespasser — Defined and General Duty Owed.....	5.20F-1
2. Infant Trespasser — Defined and General Duty Owed (Revised 10/03)	5.20F-2
Comparative Negligence of Trespassing Child	5.20F-12
A. In General (7 years and older).....	5.20F-12
B. Where Child Under 7 Years.....	5.20F-13
3. Licensee, Defined and General Duty Owed (Approved 12/88).....	5.20F-14
4. Social Guest, General Duty Owed (Approved 3/75)	5.20F-16
5. Invitee — Defined and General Duty Owed (Approved 12/88).....	5.20F-19
6. Implied Invitation (Approved 5/70)	5.20F-23
7. Duty to Inspect Owed to Invitee	5.20F-25
8. Notice of Particular Danger as Condition of Liability	5.20F-25
9. Notice Not Required when Condition is Caused by Defendant	5.20F-27
10. Actual and Constructive Notice Defined.....	5.20F-28
11. Notice Not Required When Mode of Operation Creates Danger (Approved 5/70).....	5.20F-29
12. Notice to Invitee or Obviousness of Defect	5.20F-32

MODEL JURY CHARGES CIVIL

5.20G LIABILITY OF FORMER OWNER OF COMMERCIAL PROPERTY FOR DEFECTS OR OTHER DANGEROUS CONDITIONS IN ABUTTING SIDEWALKS (Approved 5/84)	5.20G-1
5.20H DANGEROUS INSTRUMENTALITIES OR CONDITIONS (Approved before 1983)	5.20H-1
A. In General.....	5.20H-1
5.20I DUTY OF A SUPERMARKET TO A BUSINESS INVITEE WALKING IN ONE OF THE AISLES (Approved 10/90)	5.20I-1
5.21 DUTY OF RAILROAD AT PUBLIC HIGHWAY GRADE CROSSING (Approved before 1983)	5.21-1
A. In General	5.21-1
B. At Protected Crossings	5.21-2
C. At Extra-Hazardous Crossings.....	5.21-3
5.30 GENERAL DUTY OWING (Approved 8/99)	5.30A-1
A. General Duty Owing (Approved 8/99).....	5.30A-1
B. U-Turn (Approved 8/99).....	5.30B-1
C. Left-Hand Turn (Approved 3/91).....	5.30C-1
D. Violation of Traffic Act (Approved 8/99)	5.30D-1
1. Evidence of Negligence (Approved 6/71).....	5.30D-2
2. Violation of Traffic Act is Negligence (Approved 6/71).....	5.30D-3
E. Effect of Black Out (Approved before 1984)	5.30E-1
F. Liability for Injury Due to Mechanical Defect or Failure (Approved before 1984).....	5.30F-1
1. Liability of Owner in General.....	5.30F-1
2. Liability of Bailor for Consideration	5.30F-5
3. Manufacturer's Liability	5.30F-6
G. Duty of Automobile Driver to Make Observations (Approved before 1983) ..	5.30G-1
1. For Traffic Conditions	5.30G-2
2. For Pedestrians.....	5.30G-3
3. Where View Obstructed at Intersection	5.30G-3
4. Where Vision Impaired.....	5.30G-4
5. Temporary Blindness of Driver as Affecting Duty	5.30G-5
6. Duty as to Obstacles and Defects in Streets	5.30G-6
7. Duty as to Persons under Disability.....	5.30G-7
H. Duty of Care: Driver of Motor Vehicle Proceeding Through An Intersection Controlled By a Stop Sign/Flashing Red Traffic Control Device (Revised 6/07)	5.30H-1
I. Duty of Care: Driver of Motor Vehicle Proceeding Through An Intersection With a Flashing Amber Traffic Control Device (Revised 6/07)	5.30I-1

MODEL JURY CHARGES CIVIL

J. Duty of Care: Driver of Motor Vehicle Proceeding through Intersection with Green Light [the "Favored Driver"] (Approved 1977)	5.30J-1
K. Nonuse of Seat Belt on Issue of Negligence (Approved 6/89)	5.30K-1
L. EFFECT OF INTOXICATION ON DUTY OWING (Approved before 1983).....	5.30L-1
5.31A DUTY OF CARE AT INTERSECTION APPROACHED BY EMERGENCY VEHICLE (To Be Used If Emergency Vehicle Is Involved) (Approved 1977)	5.31A-1
5.31B DUTY OF CARE BY EMERGENCY VEHICLE (Approved 1977).....	5.31B-1
5.32A DUTY OF PEDESTRIANS AND BICYCLISTS TO MAKE OBSERVATIONS (Approved 2/92)	5.32A-1
5.32B DUTY OF A PEDESTRIAN WHEN CROSSING AT A POINT OTHER THAN A CROSSWALK.....	5.32B-1
5.33A VERBAL THRESHOLD (TYPE 6, 7, 8 OR 9 INJURIES) (Approved 2/98) ..	5.33A-1
A. Introduction	5.33A-1
B. Permanent Loss of Use of a Body Organ, Member, Function or System (Type 6)	5.33A-2
C. Permanent Consequential Limitation of Use of a Body Organ or Member (Type 7)	5.33A-3
D. Significant Limitation of Use of a Body Function or System (Type 8)	5.33A-5
E. Verbal Threshold (Type 9 Injuries) <i>N.J.S.A. 39:6A-8a</i>	5.33A-6
F. Sample Interrogatories (Verbal Threshold Types 6,7,8 & 9)	5.33A-9
5.33B LIMITATION ON LAWSUIT OPTION (Approved 3/03).....	5.33B-1
A. Introduction	5.33B-1
B. Significant Disfigurement or Significant Scarring (Type 3) (Revised 6/07).....	5.33B-2
C. Permanent Injury (Type 6)	5.33B-2
5.40 PRODUCTS LIABILITY	5.40A-1
A. Introduction (Approved 10/98)	5.40A-1
B. Manufacturing Defect (Approved 10/98)	5.40B-1
C. Failure to Warn/Instruct (Approved 3/00; Revised 10/01).....	5.40C-1
D-1. Design Defect — Generally (Approved 4/99)	5.40D-1-1
D-2. Design Defect — Introductory Statement to Jury (Approved 4/99).....	5.40D-2-1
D-3. Design Defect — Legal Tests of Product Defect (Approved 4/99).....	5.40D-3-1
1. Consumer Expectations Test	5.40D-3-1
2. Reasonable Safer Design	5.40D-3-4
3. Risk/Utility Analysis.....	5.40D-3-9

MODEL JURY CHARGES CIVIL

D-4. Design Defect — Defenses (Approved 4/99; Revised 10/01).....	5.40D-4-1
1. Statutory Defenses	5.40D-4-1
2. Existence of F.D.A. Approved Warning or Instruction	5.40D-4-8
3. Comparative or Contributory Negligence, <i>N.J.S.A. 2A:15-5.1</i>	5.40D-4-9
4. State of the Art/Common Standards.....	5.40D-4-11
E. Crashworthiness — Special Issues (Approved 5/01).....	5.40E-1
F. Defect before Sale.....	5.40F-1
G. Product Misuse or Alteration (Approved 12/93).....	5.40G-1
H. Foreseeable User or Victim (Approved 2/89)	5.40H-1
I. Proximate Cause (Approved 2/89)	5.40I-1
1. In General.....	5.40I-1
2. Limiting Instruction where Comparative Negligence is Not Applicable — Plaintiff's Conduct may only be Considered on Issue of Proximate Cause (Approved 4/95).....	5.40I-2
J. Comparative Fault (Approved 2/89)	5.40J-1
K. Summary (Approved 2/89)	5.40K-1
L. Negligence (Approved 8/86)	5.40L-1
1. General Charge	5.40L-1
2. Optional Charge	5.40L-3
M. Express Warranty (Approved 8/86)	5.40M-1
5.50 MEDICAL NEGLIGENCE.....	
A. Duty and Negligence (Approved 03/02).....	5.50A-1
B. Common Knowledge May Furnish Standard of Care (Approved 10/82; Revised 03/02)	5.50B-1
C. Informed Choice and Consent (Competent Adult and No Emergency) (Approved 10/00; Revised 03/02)	5.50C-1
D. Pre-Existing Disease or Condition (Deleted 03/02)	5.50E-1
E. Pre-Existing Condition — Increased Risk/Loss of Chance — Proximate Cause (Approved 12/02, Revised 2/04)	5.50E-1
F. Wrongful Birth and Life (Approved 7/02).....	5.50F-1
G. Medical Judgment (Approved 2/01; Revised 03/02)	5.50G-1
H. Alteration of Medical Records (Approved 07/02).....	5.50H-1
I. Fraudulent Concealment of Medical Records (Approved 07/02).....	5.50I-1
5.51A LEGAL MALPRACTICE (Approved 6/79)	5.51A-1
A. General Duty Owing	5.51A-1
B. Specialist, Duty Of	5.51A-5
C. Expert Testimony to Prove Standard of Care	5.51A-6
D. Common Knowledge May Furnish Standard of Care	5.51A-7

MODEL JURY CHARGES CIVIL

5.51B PROXIMATE CAUSE IN LEGAL MALPRACTICE INVOLVING INADEQUATE OR INCOMPLETE LEGAL ADVICE (Approved 1/97)	5.51B-1
5.52 PROFESSIONAL LIABILITY OF AN ARCHITECT/ENGINEER (Approved 11/95)	5.52-1
A. General Duty Owing	5.52-1
B. Expert Testimony to Prove Standard of Care	5.52-4
C. Common Knowledge May Furnish Standard of Care	5.52-5
5.60A STATUTORY OWNER — DOG BITE LIABILITY (N.J.S.A. 4:19-16) (12/09)	5.60A-1
A. Dog Bite Liability — Plaintiff's Comparative Negligence/Burden of Proof	5.60A-3
5.60B ANIMAL WITH VICIOUS OR DANGEROUS TRAIT OR PROPENSITY (OTHER THAN AN OWNER-DOG BITE CASE) (Approved 9/80)	5.60B-1
5.70 PARENTAL SUPERVISION - UN-EMANCIPATED CHILD FOR PERSONAL INJURIES (Approved 2/92)	5.70-1
5.71 TAVERNKEEPERS SERVING MINORS AND INTOXICATED PERSONS (Approved 5/98)	5.71-1
A. Negligence of Licensed Alcoholic Beverage Server (LABS)	5.71-1
B. Proximate Cause — Intervening Cause — Substantial Factor	5.71-3
C. Negligence of Visibly Intoxicated Plaintiff	5.71-4
D. Comparative Negligence	5.71-5
E. When Joint Tortfeasor	5.71-4
F. Comparative Negligence: When Plaintiff is Visibly Intoxicated Driver	5.71-7
G. Comparative Negligence: When Plaintiff is Passenger	5.71-10
H. Apportionment of Fault: When Plaintiff is Victim of Assaultive Behavior	5.71-11
I. Apportioning Fault where Claim of Comparative Negligence or Joint Tortfeasors (General Concluding Instruction)	5.71-13
5.72 NEGLIGENCE — PROPRIETOR'S DUTY OF CARE TO PATRONS AGAINST CRIMINAL ACTIVITY OF THIRD PERSONS (Approved 11/99)	5.72-1
5.73 CARRIERS FOR HIRE (Approved 6/88)	5.73-1
A. General Duty of Common Carriers to Passengers	5.73-1
1. Disabled Passenger	5.73-1
2. Against Acts of Fellow Passengers	5.73-2
3. As to Acts of Third Parties	5.73-2
4. Sudden Stops or Jerks	5.73-2

MODEL JURY CHARGES CIVIL

5. Overcrowding.....	5.73-3
B. When Carrier-Passenger Relationship Starts.....	5.73-3
1. At Station	5.73-3
2. Boarding Vehicle	5.73-4
C. Duty as to Transportation Facilities	5.73-4
D. Duty Owed On Discharge of Passenger.....	5.73-6
1. Place of Stopping Vehicle	5.73-6
2. Leaving Station	5.73-7
E. Persons on Railroad Tracks	5.73-7
F. Liability for Loss of or Damage to Goods Shipped	5.73-13
5.74 DUTY OF TEACHER AND SCHOOL PERSONNEL TO STUDENT (Approved 9/80).....	5.74-1
5.75 NUISANCE (Approved 12/87).....	5.75-1
A. In General	5.75-1
B. Blasting.....	5.75-3
5.76 NEGLIGENT HIRING (4/07)	5.76-1
A. Introduction.....	5.76-1
B. Duty of an Employer Generally.....	5.76-1
C. Negligent Hiring Exception.....	5.76-2
D. Elements Explained.....	5.76-3
E. Proximate Cause.....	5.76-6

CHAPTER 6 — PROXIMATE CAUSE

6.10 PROXIMATE CAUSE — GENERAL CHARGE TO BE GIVEN IN ALL CASES (Approved 5/98).....	6.10-1
6.11 PROXIMATE CAUSE — ROUTINE TORT CASE WHERE NO ISSUES OF CONCURRENT OR INTERVENING CAUSES, OR FORESEEABIL- ITY OF INJURY OR HARM (Approved 8/99)	6.11-1
6.12 PROXIMATE CAUSE — WHERE THERE IS CLAIM THAT CONCURRENT CAUSES OF HARM WERE PRESENT (Approved 5/98)	6.12-1
6.13 PROXIMATE CAUSE — WHERE THERE IS CLAIM THAT CONCUR- RENT CAUSES OF HARM ARE PRESENT <u>AND</u> CLAIM THAT SPECIFIC HARM WAS NOT FORESEEABLE (Approved 5/98)	6.13-1
6.14 PROXIMATE CAUSE — WHERE THERE IS A CLAIM OF INTERVENING OR SUPERSEDING CAUSES FOR JURY'S CONSIDERATION (Approved 8/99).....	6.14-1

MODEL JURY CHARGES CIVIL

CHAPTER 7 — COMPARATIVE AND CONTRIBUTORY NEGLIGENCE

7.10 CONTRIBUTORY NEGLIGENCE (Approved 5/91).....	7.10-1
7.11 CARE REQUIRED OF CHILDREN (Approved 5/91).....	7.11-1
A. In General (7 years and older).....	7.11-1
B. Where Child under 7 Years.....	7.11-1
7.12 DUTY OF PASSENGER IN AUTOMOBILE (Approved 5/91).....	7.12-1
7.13 NEGLIGENCE — INTOXICATION (Approved 5/91).....	7.13-1
A. In General.....	7.13-1
B. Riding with Intoxicated Driver.....	7.13-2
7.14 NEGLIGENCE — EFFECT OF PHYSICAL IMPAIRMENT (Approved 5/91)	7.14-1
7.15 NEGLIGENCE — CARE REQUIRED OF PEDESTRIAN ON SIDEWALK (Approved 5/91).....	7.15-1
A. In General.....	7.15-1
B. Artificially Created Conditions for Private Use.....	7.15-2
7.16 NEGLIGENCE — WHERE A PARTY'S ACTS OR MISCONDUCT ARE WILLFUL, WANTON OR MALICIOUS OR IN RECKLESS DISRE- GARD OF ONE'S SAFETY OR ARE INTENTIONAL ACTS (Approved 10/91).....	7.16-1
7.20 FEDERAL EMPLOYERS LIABILITY ACT — COMPARATIVE NEGLECTANCE (Approved before 1984).....	7.17-1
7.21 JONES ACT — COMPARATIVE NEGLIGENCE (Approved before 1985).....	7.21-1
7.22 THIRD PARTY ACTION UNDER LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT — COMPARATIVE NEGLI- GENCE (Approved before 1985).....	7.22-1
7.30 COMPARATIVE NEGLIGENCE (AUTO) — ALL ISSUES (Approved 6/89)...	7.30-1
A. Combined Burden of Proof.....	7.30-3
B. Credible Evidence.....	7.30-3
C. Combined Definition of Negligence.....	7.30-4
D. Proximate Cause.....	7.30-5
E. Comparative Negligence — Liability.....	7.30-5
1. Introduction.....	7.30-5

MODEL JURY CHARGES CIVIL

2. Order of Deliberation.....	7.30-5
F. Comparative Negligence — Damages	7.30-7
1. Introduction.....	7.30-7
2. Damages Must Be Proximately Caused.....	7.30-8
3. Order of Deliberation.....	7.30-8
G. Sample Jury Verdict Form	7.30-9

7.31 COMPARATIVE NEGLIGENCE: ULTIMATE OUTCOME

(Approved 3/00).....	7.31-1
A. In Cases Involving only One Defendant and Plaintiff is Alleged to have been Negligent.....	7.31-1
B. In Cases Involving Two Defendants and Plaintiff is Alleged to have been Negligent.....	7.31-2
1. Where the Cause of Action Occurred Prior to December 6, 1982: Pre <i>L.</i> 1982, <i>c.</i> 191 (<i>N.J.S.A.</i> 2A:15-5.1 <i>et seq.</i>).....	7.31-2
2. Where the Cause of Action Occurred on or after December 6, 1982: Post <i>L.</i> 1982, <i>c.</i> 191 (<i>N.J.S.A.</i> 2A:15-5.1 <i>et seq.</i>) and before December 18, 1987 (<i>N.J.S.A.</i> 2A:15-5.3).....	7.31-3
3. Where the Cause of Action, Other than Medical Malpractice Causes of Action, Arose on or after December 18, 1987; <i>L.</i> 1987, <i>c.</i> 325, ¶1 and ¶2 (<i>N.J.S.A.</i> 2A:15-5.2 <i>et seq.</i>) and was Filed before September 27, 1995, <i>L.</i> 1997, <i>c.</i> 90, and where the Cause of Action is Based on Medical Malpractice, and was Filed before June 29, 1995, <i>L.</i> 1997, <i>c.</i> 90.	7.31-4
4. Where the Cause of Action is Based upon Medical Malpractice and Filed after June 29, 1995, <i>L.</i> 1995, <i>c.</i> 140, or, in All Other Causes of Action, Filed after September 27, 1995	7.31-7
C. In Cases Involving Two Defendants with Cross Claims for Contribution and Plaintiff is Not Alleged to have been Negligent.....	7.31-9
1. Where the Cause of Action Arose Prior to December 18, 1987.....	7.31-9
2. Where the Cause of Action, Other than Medical Malpractice Causes of Action, Arose on or after December 18, 1987; <i>L.</i> 1987, <i>c.</i> 325, ¶1 and ¶2 (<i>N.J.S.A.</i> 2A:15-5.2 <i>et seq.</i>) and was Filed before June 29, 1995, <i>L.</i> 1997, <i>c.</i> 90, and where the Cause of Action is Based on Medical Malpractice, and was Filed before June 29, 1995, <i>L.</i> 1997, <i>c.</i> 90.....	7.31-10
3. Where the Cause of Action is Based upon Medical Malpractice and Filed after June 29, 1995, <i>L.</i> 1995, <i>c.</i> 140, or, in all Other Causes of Action, Filed after September 27, 1995	7.31-12
D. Environmental Torts.....	7.31-13
1. Where the Cause of Action was Filed after September 27, 1995 and No Final Judgement has been Entered, <i>L.</i> 1997, <i>c.</i> 90.....	7.31-13

7.32 COMPARATIVE NEGLIGENCE — INTERROGATORIES (Approved before 1985)	7.32-1
--	--------

MODEL JURY CHARGES CIVIL

A. Explanation of Interrogatories.....	7.32-3
B. Interrogatories.....	7.32-9

CHAPTER 8 — DAMAGES

8.10 DAMAGES — EFFECT OF INSTRUCTIONS (Approved 12/95).....	8.10-1
A. General.....	8.10-1
B. Sample Damage Verdict Sheet for a Personal Injury Case (Approved 2/98).....	8.10-1
8.11 DAMAGES — PERSONAL INJURIES	8.11A-1
A. Medical Expenses — Non-Auto (Approved 12/96).....	8.11A-1
B. Duty to Mitigate Damages by Medical and Surgical Treatment (Revised 10/00).....	8.11B-1
C. Loss of Earnings (Revised 02/04).....	8.11C-1
A. Past Lost Earnings (Approved 11/99).....	8.11C-1
B. Future Lost Earnings (Approved 11/99).....	8.11C-3
C. Loss of Future Earning Capacity: Infant Plaintiff with Permanent, Severe Injury (Approved 5/90).....	8.11C-8
D. Loss of Earnings where Plaintiff has Received P.I.P. Income Continua- tion Benefits (Approved 12/88, Revised 02/04).....	8.11C-10
D. Loss of Profits (Approved before 1983).....	8.11D-1
E. Disability, Impairment, Loss of the Enjoyment of Life, Pain and Suffering (Approved 12/96).....	8.11E-1
F. Aggravation of a Preexisting Illness (Approved 1/97).....	8.11F-1
G. Life Expectancy (Approved 2/96).....	8.11G-1
H. Capitalization (Approved before 1984).....	8.11H-1
I. Future Medical Expenses.....	8.11I-1
8.20 MEDICAL EXPENSES (AUTO) (Approved 12/96).....	8.20-1
8.21 NONUSE OF SEATBELT⁴ INCLUDING ULTIMATE OUTCOME (12/09).....	8.21-1
8.30 DAMAGES — PER QUOD	
A. Medical Expenses (Approved 2/96).....	8.30A-1
B. Loss of Spouse's Services, Society and Consortium (Approved 2/96).....	8.30B-1
C. Loss of Child's Services and Earnings (Approved 2/96).....	8.30C-1
8.40 DAMAGES — TRESPASS TO REAL PROPERTY (Approved before 1984).....	
A. General.....	8.40-1
B. Special Value.....	8.40-2
C. Growing Crops.....	8.40-2
D. Trespassing Structures (Encroachments).....	8.40-3

MODEL JURY CHARGES CIVIL

E. Action by One with Less than Sole Possessory Interest	8.40-3
F. Punitive Damages (Approved 1/97)	8.40-4
8.41 DAMAGES — CONVERSION (Approved before 1984)	8.41-1
A. General	8.41-1
B. Upon Return of Converted Chattel	8.41-1
C. Chose in Action Other than Marketed Securities	8.41-2
D. Marketed Securities.....	8.41-3
8.42 DAMAGES — SURVIVAL (Approved 2/96)	8.42-1
8.43 WRONGFUL DEATH (Approved 5/84)	8.43-1
A. Wrongful Death Case Verdict Sheet (Approved 2/98)	8.43-13
8.44 DAMAGES — PERSONAL PROPERTY (Approved 3/75).....	8.44-1
A. General	8.44-1
B. Evidence as to Value	8.44-2
C. Incidental Damages as a Result of Motor Vehicle Damages	8.44-3
8.45 DAMAGES — BREACH OF CONTRACT (Approved 6/93).....	8.45-1
A. General	8.45-1
B. Loss of Profits.....	8.45-2
C. Mitigation of Damages.....	8.45-4
8.46 DEFAMATION (PRIVATE OR PUBLIC) (Approved 1/90; Revised 3/02)	
A. Damages - General Instructions	8.46-1
B. Compensatory Damages (Actual Daages).....	8.46-2
C. Compensatory Damages (General Damages for Slander <i>Per Se</i>).....	8.46-4
D. Compensatory Damages- Emotional Suffering	8.46-7
E. Punitive Damages (For Defamation Actions Filed On OR Before 10/26/96)....	8.46-8
F. Punitive Damages (For Defamation Actions Filed on OR After 10/27/95)	8.46-12
8.47A MALICIOUS PROSECUTION BASED UPON PRIOR CRIMINAL	
PROCEEDINGS (Approved 1/97).....	8.47A-1
A. Compensatory Damages.....	8.47A-1
B. Punitive Damages	8.47A-2
8.47B MALICIOUS PROSECUTION BASED UPON PRIOR CIVIL	
PROCEEDINGS (Approved before 1984).....	8.47B-1
A. Compensatory Damages	8.47B-1
B. Punitive Damages	8.47B-1
8.47C FALSE IMPRISONMENT (FALSE ARREST) (Approved 1/97)	8.47C-1
A. Compensatory Damages	8.47C-1

MODEL JURY CHARGES CIVIL

B. Punitive Damages	8.47C-2
8.48 TAX CONSEQUENCES OF PERSONAL INJURY AWARD (Adopted 1/97; revised 3/01)	8.48-1
8.49 DAMAGES FOR SUPERVISORY SEXUAL HARASSMENT (Approved 10/97).....	8.49-1
A. Strict Liability (Subheadings are for judges' guidance only).....	8.49-1
B. Agency Principles Governing Compensatory.....	8.49-1
1. Within the Scope of Employment	8.49-1
2. Outside the Scope of Employment.....	8.49-3
8.60 PUNITIVE DAMAGES ACTIONS (Other than products liability actions) filed on or After 10/27/95 (Approved 3/00).....	8.60-1
8.61 PUNITIVE DAMAGES – LAW AGAINST DISCRIMINATION CLAIMS (Approved 11/99).....	8.61-1
8.62 PUNITIVE DAMAGES – PRODUCTS LIABILITY – Actions Filed On OR After 10/27/95 (Approved 1/97).....	8.62-1
8.70 TORT CLAIMS ACT THRESHOLD FOR RECOVERY OF DAMAGES FOR PAIN AND SUFFERING (Approved 01/02).....	8.70-1
A. Introduction	8.70-2
B. Permanent Loss of Body Function.....	8.70-3
C. Disfigurement.....	8.70-3
CHAPTER 9 — CONDEMNATION - GENERALLY	
9.10 CONDEMNATION - GENERALLY (Approved 04/96).....	9.10-1
A. Introduction	9.10-2
B. Definition of Fair Market Value.....	9.10-3
C. Expert Testimony	9.10-5
D. Viewing	9.10-7
9.11 CONDEMNATION — HIGHEST AND BEST USE (Approved 4/02).....	9.11-1
A. Generally	9.11-1
B. Effect of Potential Variance or Zone Change	9.11-2
C. Effect of Potential Assemblage of Lots	9.11-3
9.12 CONDEMNATION — METHODS OF COMPUTING FAIR MARKET VALUE (Approved 4/96).....	9.12-1
A. Generally	9.12-1

MODEL JURY CHARGES CIVIL

B. Comparable Sales	9.12-2
C. Capitalization of Income	9.12-4
D. Reproduction Costs	9.12-6
9.13 CONDEMNATION — MACHINERY (Approved 4/96)	9.13-1
9.14 CONDEMNATION— PARTIAL TAKING ((Approved 4/96)	9.14-1
A. Severance Damage	9.14-1
B. Loss of Street Access.....	9.14-3
C. Consequential Damages	9.14-7
9.15 CONDEMNATION — TAKING PUBLICLY OWNED PROPERTIES (Approved 4/96).....	9.15-1
10.10 CIVIL <i>IN REM</i> FORFEITURE ACTIONS (N.J.S.A. 2C:64-1) (Approved 11/00).....	10.10-1
A. Burden of Proof.....	10.10-2
B. Presumption from Conviction of Criminal Defendant.....	10.10-5
C. Defenses — Legitimate Use.....	10.10-4
D. Innocent Owner	10-10-6