The functions of the Court and the jury

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Parties are entitled to equal consideration

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation is entitled to the same fair consideration as a private individual. All persons and corporations stand equal before the law and are to be dealt with as equals in a court of justice.

The Evidence

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

What is not evidence

Certain things are not evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Definition of "direct" and "circumstantial" evidence

Some of you may have heard the phrases "direct" and "circumstantial evidence." Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts that point to the existence or non-existence of another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Jury should consider all the evidence

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

Common sense - Inferences

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an "inference." You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

Credibility of Testimony

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take the following into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testifies about;

- the witness's memory;

- the witness's intelligence;

-any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;

- the witness's manner while testifying;

- the reasonableness of the witness's testimony in light of all the evidence in the case; and

- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

Impeachment of Witness

A witness may be discredited or "impeached" by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness's testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness's testimony in whole, in part, or not at all, and how much weight to give to that testimony.

"Expert" Witness

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

Burden of Proof

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of his or her claim by a "preponderance of the evidence."

A preponderance of the evidence simply means evidence that persuades you that the plaintiff's claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff's claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim.

If the proof fails to establish any essential element of the plaintiff's claim by a preponderance of the evidence, then you should find for the defendant as to that claim.

Plaintiff's Claim of Breach of Warranty

Plaintiff has claimed that Defendant has breached a written warranty provided to Plaintiff. A written warranty is created by any statement of fact or promise made by the warrantor to the buyer which relates to the product sold and becomes part of the basis of the buyer's decision to buy, or any undertaking in writing in connection with the sale by a warrantor to refund, repair or replace the product in the event that the product fails to meet the specifications set forth in the undertaking.

Plaintiff's Claim of Breach of Warranty

In order for the Plaintiff to prove that the Defendant breached its written warranty, you must find:

(1) that Defendant provided Plaintiff with a written warranty;

(2) the failure of some warranted part of the vehicle;

(3) the failure resulted from some defect in the parts or workmanship of the vehicle;

(4) that Plaintiff complied with the warranty and requested Defendant to repair the failure; and

(5) that Defendant refused or failed to repair the vehicle after a reasonable number of attempts.

Reasonable Number of Attempts

When I use the phrase "reasonable number of attempts," the phrase refers to the product as a whole rather than to each individual defect.

Failure

If a failure was caused by damage (not resulting from defect or malfunction) while in the possession of the Plaintiff, or unreasonable use of the vehicle, then Plaintiff may not recover for such failure.

Damages

If you find for Plaintiff on any issues of liability and against Jaguar Cars, Inc., you will have the occasion to determine damages. Plaintiff has the burden of proof by the preponderance of evidence regarding the correct measure of damages.

While Plaintiff is not required to prove damages with mathematical precision, warranty law requires that damages be proved with reasonable certainty and precludes damages based on conjecture and speculation. Proof of damages must be made by credible evidence and the amount of damages must be proved at least to reasonable probability.

Damages

If you find that the Defendant has breached a written warranty, Plaintiff is entitled to the difference between the value of the vehicle as it was warranted and the value of the vehicle delivered in its defective state, unless special circumstances show proximate damages of a different amount. In addition, Plaintiff may be entitled to consequential damages.

Plaintiff has claimed the following consequential damages: Loss of use.

Damages

You may award the Plaintiff consequential damages resulting from Defendant's breach of warranty if Plaintiff demonstrates that the warranty fails of its essential purpose. A warranty fails of its essential purpose if the warrantor fails to repair a defect or a product within a reasonable time.

Consequential damages are damages which result from the breach of warranty and include any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which would not reasonably have been prevented.

Plaintiff has claimed the following consequential damages:

Loss of use.

Damages

If you determine that Plaintiff is entitled to compensation for loss of use of his vehicle, you may consider evidence of the cost to obtain a replacement vehicle.

Substantial Impairment

Plaintiff contends that Defendant's breach has caused the value of the vehicle to be substantially impaired. If you find that Defendant breached the written warranty, then you must consider whether the value of the vehicle has been substantially impaired as a result. In deciding if the value of the vehicle has been substantially impaired, you are to consider whether or not the value would be substantially impaired from the perspective of a reasonable buyer.

Liability

If you decide for Jaguar Cars, Inc. and against Plaintiff on the question of liability, you will have no occasion to consider the question of damages against Jaguar Cars, Inc.

Mitigation of Damages

In fixing the amount of money that will reasonably and fairly compensate the Plaintiff, you are to consider that a person whose property is damaged must exercise ordinary care to minimize existing damages and to prevent further damage. Damages proximately caused by a failure to exercise such care cannot be recovered.

Exclusion of Damages

A manufacturer may exclude remedies of consequential and incidental damages. However, if you find that the warranty failed of its essential purpose, then you may still award damages for loss of use. A warranty fails of its essential purpose if the warrantor is not able to make necessary repairs within a reasonable number of attempts.

Consequential Damages

If you find that Jaguar Cars, Inc.'s written warranty provides for the exclusive remedy of repair or replacement of the vehicle, and excludes consequential and incidental damages, then Plaintiff cannot recover consequential damages, unless he proves that it is more probably true than not that the written warranty failed of its essential purpose. A warranty fails of its essential purpose if the warrantor is not able to make necessary repairs within a reasonable time.

If after consideration of all the evidence you find that Jaguar Cars, Inc.'s warranty failed of its essential purpose because Jaguar Cars, Inc. did not repair the vehicle after being given reasonable opportunities to do so, then Plaintiff may recover consequential damages.

If, on the other hand, after consideration of all the evidence you find that Plaintiff has not proved that Jaguar Cars, Inc.'s warranty failed of its essential purpose, then Plaintiff cannot recover consequential damages.

Selection of Foreperson - Verdict

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in Court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

Communication with Court

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.