**13.04 ABUSE OF PRIVILEGE**

The plaintiff claims that the defendant exceeded [his] [her] [its] privilege to enter the plaintiff's property.

To determine whether the defendant exceeded the privilege, you must decide whether it is more likely true than not true that [the defendant intentionally performed an act that a reasonable person would regard as unnecessary to the exercise of the privilege. A person intentionally performs an act if the person acts with the desire to achieve that result or if the person believes that result is substantially certain to follow from his or her conduct.]

[(1) the defendant negligently exercised the privilege;

(2) the negligence was a legal cause of the plaintiff's harm; and

(3) the plaintiff was actually harmed.

I will define negligence and legal cause for you in a moment.]

If you decide that [this is] [all three of these things are] more likely true than not true, you must decide for the plaintiff on this claim. Otherwise, you must decide for the defendant.

Use Note

This instruction should be used when the defendant claims that the entry was privileged and the plaintiff claims that the defendant's entry exceeded the privilege. It will usually be given with Instruction 13.02 unless the plaintiff agrees that the defendant had a right to enter the property and the only issue is whether the defendant exercised that right in a reasonable manner.

Negligence is defined in Instruction 03.03A. Legal cause is defined in Instruction 03.06.

Comment

This instruction is based on § 214 of the Restatement (Second) of Torts (1965).