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VERMONT SUPERIOR COURT  
CHITTENDEN UNIT  
CIVIL DIVISION

<p>KATHY BUGBEE Plaintiff</p> <p>v.</p> <p>KATHLEEN CASEY and RYAN HANSON, Defendants</p>	<p>Docket No. 28-1-17 Cncv</p>
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JURY INSTRUCTIONS

First, let me review what this case is about. This is a case in which Plaintiff, Kathy Bugbee, alleges that she was bitten and seriously injured by dogs belonging to the defendants, Kathleen Casey and Ryan Hanson. If you do find that Ms. Bugbee was injured as a result of negligence by either or both Defendants, you will also have to decide the dollar value of those injuries, including any pain and suffering that you find established by the evidence.

BURDEN OF PROOF

This is a civil case. The plaintiff, Ms. Bugbee, has the burden of proving her claims, and must establish the elements of the claims by a preponderance of the evidence. In order to understand the expression, "a preponderance of the evidence," imagine that you are weighing the evidence with a balance scale. On one side of the balance is the evidence of the person with the burden of proof, and on the other side of the balance is the evidence of the other party. If the evidence on the side of the person with the burden of proof on a particular issue tips the scale down, then your decision on that issue should be in his favor. If the other side's evidence on the issue tips the scale down, or if the scales hang even, then you should decide that issue in her

favor. In other words, a preponderance of the evidence means that a particular thing is more likely so than not so.

The party with the burden of proof must satisfy that burden with evidence, not mere speculation, possibility or suspicion. The party with the most witnesses or the most exhibits does not necessarily win. In the final analysis, your evaluation of the evidence may turn on who you believe, and that is entirely your decision as jurors.

### ROLE OF JUDGE AND JURY

Your verdict will decide the disputed issues of fact. I will decide all questions of law that arise during the trial. After the evidence is completed, I will give you instructions on the law that you must follow and apply.

Pay careful attention to the testimony and any items introduced during the trial, but do not form or express any opinion about the case one way or the other until you have heard and seen all of the evidence, and have heard the lawyers' closing arguments and my instructions on the law.

### NO DISCUSSION OR OUTSIDE INFORMATION

As jurors, your job is to decide this case based solely on the evidence presented during the trial and my instructions to you. You are not investigators or researchers, so you must not use any other material to obtain information about the case or to help you decide the case. This prohibition applies, for example, to newspapers or magazines; dictionaries; medical, scientific, or technical publications; religious books or materials; law books; and the Internet. I want to emphasize that you must not seek or receive any information about this case from the Internet or social media, which includes Google, Facebook, Ello, Wikipedia, blogs, Twitter, and so on. When the trial is over, you can investigate the issues as much as you want, but trials must be based only on what is presented as evidence in court.

When you are not in court you are free to use the Internet and social media, email, text messages, and so on, but only for purposes unrelated to this case. Do not search for or receive any information about the parties, the lawyers, the witnesses, the evidence you will hear, or any place or location mentioned during the trial. Do not research the law. Do not look up the meaning of any words or scientific or technical terms used during the trial. If necessary, I will give you definitions of words or terms before you begin your deliberations.

Until you have finished this trial, do not communicate with anyone, including family and friends, about the evidence or the issues in this case. That includes not talking about the case, not texting about the case, and not posting anything on line about the case. If anyone says anything to you or in your presence about this case outside of the courtroom, please end the conversation and report it to me. Anything you do see or hear you should ignore. The people talking about the case may not have listened to all the testimony as you have, or may be getting information from people who will not be testifying under oath and are not subject to cross-examination. They may also be considering things that are legally not admissible evidence, or are unimportant, or inaccurate. Nothing that you learn outside this courtroom is evidence, and it cannot be considered by you in deciding the case.

You may tell others that you are on a jury and that you cannot talk about the trial until it is over, and you may tell them the estimated schedule of the trial, but do not tell them anything else about the case. Remember that once you tell someone about the case, you cannot control what information they offer to you in response. If anyone tries to communicate with you about anything concerning the case, or you overhear anything, you must stop the communication immediately and report it to one of the Court Officers, who will notify me.

If you see or run into the lawyers or anyone else connected with this case in the courthouse or on the street while this case is on trial, you should have no conversation with them at all beyond a polite “hello.”

If you violate the rule about receiving outside information, it could force me to declare a mistrial, meaning that the trial would have to start over before a different jury, and all of the parties’ work, my work, and your work on this trial would be wasted. This has happened in other cases in which the jurors did not follow the judge’s instructions. Please help me make sure that does not happen here!

#### NEWS REPORTS

While this trial is going on it is possible that there may be news reports about it, or about the parties involved in it. If you see articles in the paper or on the internet, or hear reports about it on radio or television news, it is your responsibility to turn the page, turn off the news, or leave the room. You may wish to have someone else check the paper for you to cut out any articles about this case before you see them, or avoid the news altogether while the trial is going on, so that you do not have to worry about these issues. As I said about anything you hear in conversation, if you do see or hear any news reports during the trial you need to report that to me the next day of trial. You will not be blamed for such things, but to be fair to the parties I need to be aware of it.

#### DIRECT AND CIRCUMSTANTIAL EVIDENCE

Let me just mention something about the kind of evidence you may be asked to consider in this case. There are, generally speaking, two types of evidence. One is direct evidence, such as the testimony of a person who witnessed an event. The other is circumstantial evidence, which is the proof of a chain of facts pointing to the existence or non-existence of certain other facts. I will give you a brief example.

Suppose a witness testified that she saw deer in her neighbor's field yesterday. That would be direct evidence that there were deer in the field. If you found the witness credible, you could find as a fact that on the day in question there were deer in the field.

But imagine instead that a witness testified that, although he did not actually see any deer in the field yesterday, he did see fresh deer tracks there after it rained yesterday. That witness's testimony would be circumstantial evidence of the fact that there were deer in the field yesterday, even though he did not see the deer. If you found the witness to be credible, you could decide that there were deer there.

As a general rule, facts may be proved by either direct or circumstantial evidence. The credibility of the witnesses and the weight to be given to their testimony, including the inferences to be drawn from it, is entirely up to you to decide.

### OBJECTIONS

During the trial I will have to rule on objections made by the attorneys. These are legal issues for me to resolve and are not for you to consider. Just because the lawyers make objections, you are not to hold that against one side or the other. It is the lawyers' job to object when they believe it is appropriate to do so.

### EXCLUDED TESTIMONY

There may be times when a witness answers a question but I then strike the answer and tell you to disregard it. There may also be times when there is an objection to a question and I do not allow the witness to answer. Any testimony that I strike from the record is not evidence in this case, and you should not consider it. You should also not speculate about what the answer to a question might have been.

## COURT RULINGS

You must not conclude from any ruling I make or from anything I say that I have any opinion for or against either side in this case. Any opinions I had would be irrelevant. It is your recollection of the evidence, and your determination of the facts, that will control.

## NOTE-TAKING

If you wish, you may take notes to help you remember what you see and hear during the trial. You are not required to take notes. If you do take notes, keep them to yourself until you and your fellow jurors go to the jury room at the end of the trial to decide the case. You must not discuss your notes with the other jurors until then. Do not let note-taking distract you from hearing and seeing other evidence. When you are deliberating at the end of the case, keep in mind that your own memory has as much weight as another juror's notes. The notes are meant only to help you to remember what you have seen or heard during the trial, not to replace your memory.

At the end of each day, you must leave your notes in the jury room. You may also leave them on your chairs in the courtroom during breaks if you wish. At the conclusion of the case, your notes will be collected by the court and destroyed.

## OPENINGS

We will now begin by giving the lawyers for each side an opportunity to make an opening statement. These statements are not evidence - which comes only from the witnesses and exhibits - and they are not your instructions on the law - which will come only from me. The opening statements are intended to present a kind of roadmap, and outline the issues and the evidence from the viewpoint of each side.

### CLOSING INSTRUCTIONS

Members of the jury, we are at that part of the trial when I instruct you on the law. You will then go to the jury room to decide the case. You are the sole judges of the facts in this case. You must, however, apply the law as I explain it, even if you disagree with it. You may not base your decision on sympathy or prejudice. The attorneys have presented to you their different views of what the evidence shows, but what the attorneys say is not evidence. The evidence is the testimony you have heard and the exhibits that were admitted. As jurors, your fundamental duty is to determine the facts from that evidence.

### BURDEN OF PROOF

I remind you that Ms. Bugbee has the burden of proving her claims by a preponderance of the evidence. I explained the term “preponderance of the evidence” to you at the start of the trial. Please review my instruction on what that term means.

### CONFLICTING TESTIMONY

Sometimes two or more witnesses to an event will describe it differently, not because they are lying but because they saw or heard things from a different vantage point, or because the circumstances affected their ability to perceive or recall the event. This is often true where there are many details to observe, especially when the passage of time may naturally have affected some witnesses’ memories more than others. It is ultimately up to you to decide which version of the events you believe the evidence supports.

### WITNESS CREDIBILITY

It is up to you to decide whether the witnesses you have heard are credible, and what weight to give to their testimony. You may believe some, all or none of any witness’s testimony.

In determining credibility, you should use your common sense and life experience. You may wish to consider whether the witnesses had a motive for testifying in a certain way; whether

they made any prior inconsistent statements outside of court which might cause you to doubt their testimony at trial; whether they made prior consistent statements that might support their testimony at trial; whether they appeared to you to be telling the truth; whether they appeared to have an accurate memory about what happened; whether they were in a position to see and hear what was happening; and the extent to which their testimony is supported or contradicted by other evidence in the case.

#### EXPERT WITNESSES

Some witnesses testify for the purpose of giving an opinion on the basis of special knowledge, training, or experience. We refer to these as “expert witnesses.” In evaluating their testimony, everything I just said about other witnesses also applies. You should also evaluate whether the witness’ opinion is supported by the facts that have been proved, and whether the opinion is supported by the witness’ knowledge, training and experience.

#### TRESPASSING

Under Vermont law, a landowner does not have a general duty to protect trespassers. Therefore, the first question you must decide is whether Ms. Bugbee had a right to be on Defendants’ property. It is up to you to decide this question, based upon the evidence you have heard and common practice in Vermont.

In deciding this question, I instruct you that there is a fine for driving on private roads without permission. However, in deciding whether Ms. Bugbee was trespassing you may also consider all of the surrounding circumstances. This may include signage on the road or property, whether the road is used by the general public, whether it is maintained by the town, whether it was fenced or gated, whether it provided access to any commercial or public property, whether residents enforced the private nature of the road, whether the road was a means of accessing other roads, and whether the owners of the home in question had given any indications that they



intended to keep others out. The question is whether a reasonable person in Ms. Bugbee's shoes would have believed that she had a right to do what she did.

If you find that Ms. Bugbee was trespassing and had no right to approach the home, then your work is done and you need go no further. If you find that she was not trespassing, and had a right to approach Defendants' home, then you will move on to my next instructions.

### NEGLIGENCE

The Plaintiff's claim in this case is that the dog owners were negligent. Negligence is the failure to follow a legal duty to exercise reasonable care under the circumstances. Reasonable care is the care a prudent or careful person would exercise under the same or similar circumstances in order to avoid injury to themselves or the person or property of others. Negligence can be not doing something that a reasonably prudent person would do, or doing something that a reasonably prudent person would not do, under the same or similar circumstances. Conduct is negligent only if it creates an unreasonable risk of harm. To prove that a defendant was negligent the plaintiff must prove all of the following things:

- (1) That the defendant had a duty of care towards the plaintiff, and
- (2) That the defendant breached that duty by failing to use reasonable care;
- (3) That Plaintiff was injured; and
- (4) That the failure to use reasonable care was a cause of the injury to Plaintiff.

*Duty of Care:* Under Vermont law, the fact that a dog bites someone does not alone establish a violation of the duty of care. A dog owner, or a person caring for a dog, is not legally responsible if the dog injures someone unless he or she knew, or should have known, that based upon the dog's history, it was probably dangerous. To show that a Defendant breached a duty of care, Plaintiff must prove that the Defendant knew or should have known that one or more of the

dogs who bit Ms. Bugbee were probably dangerous, and that the Defendant failed to take reasonable precautions to avoid harm to other people.

*Cause of Injury:* If you find that any Defendant breached a duty toward Plaintiff, then you must decide whether Plaintiff has proved that the breach caused harm to her. In other words, did Ms. Bugbee suffer injury as a result of that Defendant's actions?

An injury is legally considered to be caused by an act only if the injury would not have occurred without that act. The injury must either be a direct result or a reasonably probable consequence of the act. If the injury was not caused by the breach of duty, or it would have occurred regardless of the breach, then legal cause has not been shown.

An injury or harm may have more than one cause. The law does not require the Plaintiff to prove that a Defendant's negligence was the only cause of the injury, so long as it is a contributing cause.

### COMPARATIVE NEGLIGENCE

If you decide that neither of the Defendants were negligent, you should go directly to the verdict form and fill it out. However, if you decide that either Defendant was negligent, then you need to consider what we call "comparative negligence."

The Defendants allege that Ms. Bugbee was comparatively negligent. That means they are saying that Ms. Bugbee was at least partially, if not entirely, responsible for her injuries. The law imposes a duty on all of us to take reasonable care to protect ourselves from reasonably foreseeable harm. Unlike the rest of the issues in this case, Defendants have the burden of proving this claim. To succeed on this claim, they must prove the following elements by a preponderance of the evidence:

- (1) That Ms. Bugbee failed to exercise reasonable care for her own safety; and
- (2) That Plaintiff was injured; and

(3) That the failure to use reasonable care was a cause of her injury.

For the purpose of comparative negligence, the same explanations I gave you a minute ago concerning duty of care and cause of injury all apply here as well.

If you find that Ms. Bugbee was negligent, then you must compare her negligence with the Defendants' negligence. The negligence of Plaintiff and the negligence of the Defendants must total 100%. You must determine what percentage of the incident was from each Defendant's negligence, and what percentage was from Plaintiff's negligence. If you find that Ms. Bugbee's negligence is a greater percentage of the total harm than the Defendants' negligence, then she cannot recover anything and your deliberations are done. If you decide that the Defendants' negligence is a larger percentage of the harm than that of Ms. Bugbee, then you must go on to decide what damages Ms. Bugbee suffered.

#### DAMAGES

If you find that Ms. Bugbee was injured as a result of negligence by any Defendant, you must then decide how much money to award her as damages. Any award of damages is intended to reasonably compensate her for any injuries that you find she suffered as a result of the dog-bites. The point of awarding damages is to put the injured party in the position she would have been in if the wrong had not occurred.

I am giving you instructions about damages so that you will know how to proceed if you reach this point in your deliberations. It does not mean that I have any opinion about whether you should or should not award damages in this case.

You may award damages in this case for what we generally call "pain and suffering." "Pain and suffering" may include any physical pain, emotional distress, loss of enjoyment of life, or restriction of normal activities that you find Ms. Bugbee suffered because of the dog-bites.

The Plaintiff has the burden of proving her damages by the preponderance of the evidence. However, there is no precise way to measure the dollar value of pain and suffering. It is up to you as jurors to decide what is fair monetary compensation for whatever injuries you find Ms. Bugbee has experienced as a result of negligence by one or both of the Defendants.

#### INSURANCE and TAXES

You should *not* speculate about whether either party has any insurance that might cover any damages that you find Ms. Bugbee has experienced. You also should not speculate about what taxes might have to be paid on any damages you award. There are special rules that apply to lawsuits, and those issues are not relevant to your task here. Your job is to award the amount of damages that you determine has been established by the evidence presented to you. Any issues that have to be resolved on these topics are my job, not yours.

#### DUTY TO DELIBERATE

You as jurors must reach a unanimous verdict. It is your duty to talk with each other with the goal of reaching a unanimous decision one way or the other, if you can do so without sacrificing your individual judgment. Each of you must decide the case for yourself, but only after a fair consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you are convinced you were wrong. However, do not give in just because of the opinion of your fellow jurors. You may *not* compromise on your verdict by agreeing to vote one way on one question in exchange for others voting a certain way on another question.

#### VERDICT/FOREPERSON'S DUTIES

Your first task as jurors will be to select your Foreperson. The Foreperson acts as a chairperson or moderator. It is the Foreperson's duty to assure that discussion is carried on in a

sensible and orderly fashion, that the issues are fully and fairly discussed, and that every juror has a chance to say what he or she thinks.

If you decide that you need to communicate with me, please give a note to the Court Officer, signed by the Foreperson. However, you should never say in any note or in any comment to the Court Officer how the jury is leaning, what the different views of the jurors are, or how many jurors view the case in a certain way.

Attached to these instructions is a verdict form. The form provides specific questions for you to answer. As you reach unanimous agreement on each issue, the Foreperson should fill in the blanks. When you finish your deliberations, the Foreperson should sign and date the form, and advise the Court Officer that you have reached a verdict. We will then call you back into the courtroom and I will ask the Court Clerk to read the jury's verdict.

Dated at Burlington, Vermont this 27th day of February, 2019.

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Helen M. Toor  
Superior Court Judge

VERDICT FORM: BUGBEE v. CASEY/HANSON

1. Was Ms. Bugbee a trespasser?

\_\_\_\_ Yes      \_\_\_\_ No

**(If your answer is Yes, sign this form and tell the Court Officer that you have a verdict. If your answer is No, go to Question 2. )**

2. Was Ms. Casey negligent?

\_\_\_\_ Yes      \_\_\_\_ No

3. Was Mr. Hanson negligent?

\_\_\_\_ Yes      \_\_\_\_ No

**(If your answer to Questions 2 and 3 is no, stop here. If you have answered Yes to either question, or both, go to Question 4).**

4. Was Ms. Bugbee also negligent?

\_\_\_\_ Yes      \_\_\_\_ No

**(If your answer is Yes, go to Question 5. If your answer is No, go to Question 6.)**

5. What percentage of the harm was caused by each person?

Ms. Casey	_____	%
Mr. Hanson	_____	%
Ms. Bugbee	_____	%
TOTAL:	100	%

6. What are Ms. Bugbee's total damages?

Pain and suffering                      \$ \_\_\_\_\_

We the jury unanimously agree to the above.

Foreperson: \_\_\_\_\_

Dated: \_\_\_\_\_