

## What's New In the 2025-2026 Edition

### In the Civil Area

This edition includes thirteen new jury instructions and updated commentary from 2024–2025 cases discussing jury instructions, the role of juries, and relevant points of law related to specific jury instructions.

In Chapter 13—Agency, new Instruction 13:10, taken from *Snell v. Gustafson*, 2024 WL 4648156, at \*2, 9 (W.D. Va. 2024), provides a finding instruction where there is an allegation that the defendant is liable for an agent's fraudulent acts. It could also be adapted for negligence cases.

In Chapter 30—Intersections, there are two new instructions. Instruction 30:8 addresses the general duty to keep a proper lookout. The language for this instruction is taken from *Al-Saray v. Furr*, 304 Va. 19, 25-26 n. 2, 910 S.E.2d 320, 323 n. 2 (2025), and Instruction 20 in *Blanchard v. Richmond Traffic Control, Inc.*, 2024 WL 4940595, at \*3, 4 (Va. Ct. App. 2024). Instruction 30.16 sets out the duty of a driver facing a green light to yield to vehicles and pedestrians in an intersection. Its language is based on instructions given in *Al-Saray v. Furr*, 304 Va. 19, 30, 910 S.E.2d 320, 325 (2025) and *Medlar v. Mohan*, 242 Va. 162, 168, 409 S.E.2d 123, 126 (1991).

In Chapter 34—Special Relationships, Including Owners and Occupiers of Land, there are two new instructions. Instruction 34:20 addresses an occupant of premises' duty not to intentionally, wantonly, or willfully injure a trespasser or bare licensee. The instruction's language is taken from *Jones v. Kim*, 2024 WL 4017384, at \*5 (Va. Ct. App. 2024), where the Virginia Court of Appeals affirmed the trial court's judgment that the homeowner's conduct was wanton and willful, where they allowed their dog to roam their property despite having actual notice that the dog was a threat to those entering their property. *Jones v. Kim*, 2024 WL 4017384, at \*8 (Va. Ct. App. 2024). Instruction 34:39 provides that innkeepers have an absolute duty of care to protect guests when they know or should know of danger to them that might be easily removed. The instruction was approved by the Virginia Court of Appeals in *Burgess v. SYP Hospitality, LLC*, 2024 WL 4269226, at \*3 (Va. Ct. App. 2024).

In Chapter 51—Civil Conspiracy, new Instruction 51:3 provides that persons who conspire together to commit one or

more unlawful acts may be held liable for the injuries that result from that conspiracy and identifies the five unlawful or tortious predicate acts of the conspiracy. The instruction is based on the instruction given in *Sines v. Hill*, 106 F.4th 341, 346, 350 (4th Cir. 2024).

In Chapter 57—Contracts—Forms of Instructions, new Instruction 57:5 addresses waiver and is taken from *Under Wild Skies, Inc. v. National Rifle Association of America*, 2024 WL 3331551, at \*3 (Va. Ct. App. 2024), *aff'd*, 304 Va. 310, 915 S.E.2d 514 (2025).

A new Part VIII, Chapter 60—Trade Secret Claims for Misappropriation includes six new instructions based on *Pegasystems Inc. v. Appian Corporation*, 81 Va. App. 433, 904 S.E.2d 247 (2024). Instruction 60:1 sets forth the elements of a trade secret claim for misappropriation. Instruction 60:2 provides what a plaintiff must prove to establish a trade secret exists. Instruction 60:3 defines trade secret under Virginia law. Instruction 60:4 defines misappropriation under Virginia law. Instruction 60:5 defines improper means under Virginia law. Instruction 60:6 provides that the complainant bears the burden of proving proximate cause between the misappropriation and any unjust enrichment damages. *Pegasystems Inc.* involved a dispute between two software companies alleging misappropriation of trade secrets under the Virginia Uniform Trade Secrets. The jury found for the plaintiff and awarded a jury verdict of over two billion dollars. On appeal, the Virginia Court of Appeals reversed in part and remanded. It found that the trial court abused its discretion in granting an instruction that relieved the plaintiff from “its proper burden to prove causation between the alleged misappropriation and any damages . . . [and] erroneously permitted [the plaintiff] to rely on [the defendant’s] total ‘sales’ to prove unjust enrichment damages.” *Pegasystems Inc.*, 81 Va. App. at 507, 904 S.E.2d at 284. The Court of Appeals also directed the trial court on remand to “refrain from instructing the jury that the number of people with access to [the plaintiff’s] platform is ‘not relevant,’ ” as it was relevant to whether the software was a protected trade secret pursuant to Virginia law. *Pegasystems Inc.*, 81 Va. App. at 507, 904 S.E.2d at 284.

The Commentary for Instruction 23:21. Punitive Damages cites *Sines v. Hill*, 106 F.4th 341, 344, 351–353 (4th Cir. 2024), a case of first impression for the Fourth Circuit Court of Appeals and the Supreme Court of Virginia, holding that Virginia’s punitive damages cap under Va. Code Ann. § 8.01-38.1 applies on a per-plaintiff basis.

## In the Criminal Area

All 2024 and 2025 judicial opinions that comment on jury instructions in the areas already addressed in this book appear in the commentary, along with new points of law that are relevant to particular instructions. In addition, this edition adds several new instructions:

New Instruction **62:32—Consequences of Act Inferred, Short Form**—provides the age-old instruction allowing the inference that every person intends the natural and probable consequences of his or her acts, which was approved in *Harris v. Commonwealth*, 83 Va. App. 571, 911 S.E.2d 444 (2025).

New Instruction **62:34—Willful Intent/Guilty Knowledge Inferred by Secrecy**—instructs the jury that willful intent or guilty knowledge may be inferred from the secretive or irregular manner in which a transaction is carried out, which was approved in *United States v. Sanders*, 146 F.4th 372 (4th Cir. 2025).

New Instruction **69:4—Threat Defined**—defines a threat, an instruction that was approved in *United States v. Chaudhri*, 134 F.4th 166 (4th Cir. 2025), cert. denied, 2025 WL 2824227 (U.S. 2025), a case regarding a forced labor/human trafficking prosecution.

Each year, Virginia's criminal law and procedure changes in important ways, and our aim is to help you get up to speed in the most efficient way possible. We hope you will find these instructions helpful.

We'll see you in court!

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