

CASENOTE: CACI INSTRUCTIONS NOT MANDATORY

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BY JAMES GRAFTON RANDALL, ESQ.

Hensley v. San Diego Gas & Elec. Co., No. D070259, __ Cal.App.5th __, 2017 WL 411050 (Cal. Ct. App. Jan. 31, 2017), published last week, addresses several important issues, including what types of stipulated judgments are appealable and whether emotional distress damages are available for trespass and nuisance. For counsel who deal with those issues, the whole opinion is worth reading. But even if those issues don't resonate, buried in the footnotes is an important reminder for all litigators: CACI instructions are not always correct, and their use is not mandatory.

Here's the relevant language from Hensley:

“Though the Judicial Council endorses its official jury instructions and encourages their use (Cal. Rules of Court, rule 2.1050(e)), “[t]he articulation and interpretation of California law . . . remains within the purview of the Legislature and the courts of review.” (Cal. Rules of Court, rule 2.1050(b).) Moreover, the fact the Judicial Council adopted this instruction does not mean the prior BAJI instructions are defective or outdated. (People v. Lucas (2014) 60 Cal.4th 153, 294, overruled on other grounds in People v. Romero and Self (2015) 62 Cal.4th 1, 53, fn. 19; see also People v. Thomas (2007) 150 Cal.App.4th 461, 465.) No statute, rule of court or case mandates the use of official jury instructions at the exclusion of other valid instructions. (See Thomas, at p. 466 [addressing CALCRIM instructions].)”

__ Cal.App.5th __, 2017 WL 411050, p. *9, fn. 5.