

804.03 EXCESSIVE FORCE IN MAKING ARREST - COMMON LAW CLAIM  
FOR BATTERY-ISSUE OF REASONABLENESS OF FORCE USED.

*NOTE WELL: This series of instructions is designed to be used with 804.05 ("Excessive Force in Making Arrest - Common Law Claim for Battery-Sample Verdict Sheet").*

The (*state number*) issue reads:

"Was the amount of force used by the defendant to arrest the plaintiff excessive?"

If you have answered the first issue "Yes," then you will consider the third issue regardless of your answer to the second issue.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant used excessive force in *his* arrest of the plaintiff.

A law enforcement officer has the right to use such force and make such contact as is reasonably necessary under the circumstances to make a lawful arrest.<sup>1</sup> The reasonableness of a particular use of force or amount of contact must be judged objectively,<sup>2</sup> in light of the facts and circumstances viewed from the perspective of a reasonable officer on the scene at that time [rather than with the 20/20 vision of hindsight].<sup>3</sup>

You may take into consideration all the facts and circumstances surrounding the arrest, including the severity of the crime at issue, whether the plaintiff posed an immediate threat to the safety of the officer or others, and whether the plaintiff was actively resisting arrest or attempting to escape.<sup>4</sup>

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the amount of force used by the defendant to arrest the plaintiff was

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excessive, then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

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1 *NOTE WELL*: If an officer attempts an arrest without probable cause, it is unlawful and any use of force by the officer is inappropriate. *Glenn-Robinson v. Acker*, 140 N.C. App. 606, 623, 538 S.E.2d 601, 614 (2000) (citing *Nolin v. Isbell*, 207 F.3d 1253, 1258 (11th Cir. 2000)).

2 *Glenn-Robinson v. Acker*, 140 N.C. App. at 622, 538 S.E.2d at 613 (citing *Graham v. Connor*, 490 U.S. 386, 395-97 (1989)).

3 See *Graham v. Connor*, 490 U.S. at 396.

4 *Id.*