



IOWA CIVIL JURY INSTRUCTIONS
Updated through June 2016



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IOWA CIVIL JURY INSTRUCTIONS
IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE IOWA)
STATE BAR ASSOCIATION UNIFORM) RESOLUTION
COURT INSTRUCTION COMMITTEE)

The court, meeting en banc in administrative session at Des Moines on May 6, 1987, upon a motion duly made and seconded, unanimously adopted the following resolution:

For many years the public has benefited from the efforts of the Special Committee on Uniform Court Instructions of The Iowa State Bar Association.

The unique contributions of that committee in the promulgation of Uniform Jury Instructions are well documented in the opinions of this court.

The committee has furnished us with a copy of the Plain English Redraft of the Iowa Civil Jury Instructions which was approved by the Board of Governors of The Iowa State Bar Association on December 2, 1986.

Under Iowa law any jury instructions might be challenged in the usual manner on appeal to this court. That right of review on the part of future litigants precludes us from considering the Plain English Redraft Instructions for official approval or disapproval. We nevertheless note this newest contribution of the committee with a deep sense of appreciation and satisfaction.

It is readily apparent that juries will better understand legal principles explained by the instructions under the Plain English Redraft. The quality of justice will be improved. The bench, the bar and, especially, the public, will benefit from the committee's work in producing the Plain English Redraft.

The court commends the Uniform Court Instruction Committee for this remarkable achievement and commends these instructions for consideration by the trial bench.

Done at Des Moines, Iowa, this 6th day of May, 1987.

| | |
|--------------------------------|-------------------------|
| W.W. Reynoldson, Chief Justice | James Carter, Justice |
| David Harris, Justice | Charles Wolle, Justice |
| Arthur McGiverin, Justice | Louis Lavorato, Justice |
| Jerry Larson, Justice | Linda Neuman, Justice |
| Louis Schultz, Justice | |

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INTRODUCTION

The purpose of jury instructions is to give the law to the jury in language they can understand. The committee believes the best way to do this is to write jury instructions in plain English. With this in mind, the committee asked the Board of Governors of The Iowa State Bar Association to approve redrafting the Iowa Civil and Criminal Uniform Jury Instructions in plain English. The Board approved this request. It also approved our request to employ a communications specialist to help us translate "legalese" into "plain English" and we did this.

While the Iowa Supreme Court cannot give prior approval to the instructions, the Court has unanimously approved, in principle, the plain English redraft of the Iowa Civil and Criminal Jury Instructions. The Court also adopted a resolution commending the Civil Instructions for consideration by the Trial Bench. A copy of the resolution follows this Introduction.

Before drafting was done the committee:

1. Reviewed some of the literature relating to plain English jury instructions.
2. Examined other State and Federal Instructions.
3. Adopted general guidelines for drafting jury instructions.
4. Adopted specific guidelines for drafting plain English jury instructions.

In an address delivered at the Tenth Circuit Judicial Conference on July 9, 1965, Judge Edward J. Devitt, Chief Judge, United States District Court, District of Minnesota, gave ten practical suggestions about Federal jury instructions, including the following:

"Instructions should be phrased in clear, concise language applicable to the case. Sometimes counsel will quote verbatim from an appellate court decision dwelling on a point involved in the trial and urge it as a proposed instruction. Appellate court opinions are written for a purpose different from that for which jury instructions are designed. The point of law may be controlling, but not the language. It is the legal principle, not the words expressing it, which is pertinent and which will be helpful to the jury. Legal points from decided cases should be couched in language appropriate to the facts and to the parties in the lawsuit.

"The use of legal terminology in instructions should be avoided as much as possible. In preparing instructions we should remember that the task is to shed light and not to add to the darkness. The use of some legal terms such as 'proximate cause' and 'reasonable doubt' cannot be avoided. But to the extent possible, we should use that which Chief Judge Alfred Murrah calls 'the common speech of man'."

We adopted the general approach suggested by Judge Devitt in drafting these instructions.

The general guidelines for drafting jury instructions adopted by the committee are that each jury instruction shall be:

1. An accurate statement of the law.
2. As brief and concise as practicable.
3. Understandable to the average juror.
4. Neutral, unslanted and free of argument.

The specific guidelines for drafting plain English jury instructions adopted by the Committee are:

1. Use plain English, simple, short and concrete words.
2. Make it look and sound like talk.

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3. Use short sentences.
4. Use short paragraphs.
5. Omit unnecessary words.
6. Use active voice rather than passive.
7. Avoid negative forms, and especially double negatives.
8. Use personal pronouns, "I" for the Judge and "you" for the jury.
9. Whenever possible, leave out the words: "as to", "determine", "facilitate", "herein", "hereof", "however", "if any", "therefrom", "theretofore", "thereof", "otherwise", "require", "that", "the", "whether", and "which."
10. Replace "locate" with "find"; "prior to" with "before"; "sufficient" with "enough"; "in the event that" with "if."
11. Put prepositions at the end whenever it sounds right to do so.
12. Use sex neutral language: eliminate the pronoun; repeat the noun; use a synonym for the noun; change the pronoun to "the", "a", "this" and the like; use "one"; use "it"; use the imperative; reword; and use the passive (the last resort).
13. Where appropriate for clarity and ease of understanding, use lay language in place of exact case or statutory language so long as an accurate statement of the law is maintained.

INSTRUCTIONS MUST ALWAYS BE TAILORED TO FIT THE FACTS OF THE CASE.

These instructions are not intended to provide jury instructions which are applicable without change in all cases. Instead, they will provide judges and lawyers with models of clear, concise, accurate and impartial instructions which are understandable to the average juror. They can be adapted for use in particular cases and used as a guide for tailoring instructions.

The instructions will be referred to as Iowa Civil Jury Instructions. There is a cross reference table of the Iowa Civil Jury Instructions to the Iowa Uniform Civil Jury Instructions. Included in it is a table showing additional Iowa Uniform Civil Jury Instructions not included in the Iowa Civil Jury Instructions. The chapter designations will be 100, 200, etc. to avoid any problem with Shepard's Citator. However, we recommend you keep your old set for reference.

We have included some suggestions for instructing juries and a model set of jury instructions. We hope these instructions and material will assist trial judges and lawyers in giving the law to the jury in language they can understand.

SUGGESTIONS FOR INSTRUCTING JURIES

The Iowa Civil Jury Instructions have been prepared to help attorneys and judges communicate more effectively with juries. A number of suggestions have been brought to our attention which the Bench and Bar may wish to consider when trying a lawsuit. They include:

1. Organizing instructions in a logical order which corresponds to the order in which the jury should approach the case
2. Providing the jury with an explanatory instruction and transitions to help it understand the logical framework of the instructions.
3. Reading helpful "standard" instructions to the jury before (a) jury selection, or (b) opening statements. Examples include instructions on preponderance of the evidence, proximate cause,

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negligence, credibility, definition of evidence, and burden of proof. Explain that more detailed instructions will be given at the end of the trial after all the evidence has been presented.

4. Reading the instructions to the jury before final arguments. This allows counsel to comment on the instructions without having to qualify their remarks by "I believe the Court will instruct..." It may also make the closing arguments more understandable.
5. Giving each juror an individual set of instructions to read while the judge is reading the instructions.
6. Using an overhead projector so the jury can read the instructions while the judge reads them.
7. Providing more than one set of instructions for the jury when they deliberate.
8. Telling the jurors the procedure to use if they have any questions during their deliberations. For example:

"Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict."

"The court attendant who has been working with me on this case is in the same position as I am. [He] [She] has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put [him] [her] on the spot by asking [him] [her] any questions. You should direct your questions to the Court and not to the court attendant."

9. The Committee recommends the following admonition be given in all cases before the trial starts:

Personal prejudices have no place in court. You must set aside and disregard any personal feelings of bias or prejudice which you may have based on sex, race, religion, national origin, age or disability. You must decide this case only on the basis of the evidence which is admitted and the law as I explain it to you.

10. The Court may wish to permit the jury an opportunity to take notes of the trial proceedings. In that event, Iowa Criminal Jury Instruction 100.17 should be given with the Court's other instructions.

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CHAPTER 100

GENERAL INSTRUCTIONS

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100.1 Statement Of The Case. Members of the Jury: In this case plaintiff(s) claim [set forth the claims of defendant(s)].

The defendant(s) [set forth the denials of defendant(s) and any defenses].

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

100.2 Duties Of Judge And Jury, Instructions As Whole. My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Authority

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

Rev. 6/16

100.3 Burden Of Proof, Preponderance Of Evidence. Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

100.4 Evidence. You shall base your verdict only upon the evidence and these instructions.

Evidence is:

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1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Rules of Evidence.

100.5 Deposition Testimony. Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

Authority

Iowa R. Civ. P. 1.704
Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

100.6 Interrogatories. During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

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Iowa R. Civ. P. 1.509

100.7 Request For Admissions. The [plaintiff] [defendant] served on the [defendant] [plaintiff] a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the [defendant] [plaintiff] or which [defendant] [plaintiff] failed to deny.

Authority

Iowa R. Civ. P. 1.510, 1.511

100.8 Stipulated Testimony. Counsel has stipulated that if were called as a witness [he] [she] would testify as stipulated. Consider stipulated testimony as if it had been given in court.

100.9 Credibility Of Witnesses. You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

100.10 Viewing. You have looked at _____ to help you better understand the evidence. You must base your decision only on the evidence admitted in the courtroom and not upon facts you learned when you looked _____.

Authority

Iowa R. Civ. P. 1.922

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Comment

Note: The Committee, but for the case of Sloan v. City of Des Moines, 205 Iowa 823, 825; 218 N.W. 301, 302, would eliminate the last sentence of this instruction.

100.11 Hypothetical Question, Expert Testimony. An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

Authority

Cody v. Toller Drug Co., 232 Iowa 475, 5 N.W.2d 824 (1942)

100.12 Opinion Evidence, Expert Witness. You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930).

100.13 Contradictory Statement, Non-party, Witness Not Under Oath. You have heard evidence claiming [name of witness] made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

Authority

Iowa R. Evid. 5.613; State v. Barry, 549 N.W.2d 316, 318 (Iowa App. 1996) (A prior inconsistent statement of a witness not under oath may be considered for impeachment purposes only).

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Comment

This instruction should be given when a non-party witness has made a prior inconsistent statement while not under oath. If the non-party witness made a prior inconsistent statement under oath, then Instruction 100.14 should be given. If the non-party witness has made prior inconsistent statements both under oath and not under oath, then both Instruction 100.13 and Instruction 100.14 should be given to clarify and distinguish the two forms of statements for the jury.

100.14 Contradictory Statements, Non-Party, Witness Under Oath. You have heard evidence claiming [name of witness]made statements before this trial while under oath which were inconsistent with what [name of witness]said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe [name of non-party witness]. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Authority

A prior inconsistent statement of a witness given under oath is substantive evidence which may be considered for any purpose. State v. Thompson, 397 N.W.2d 679, 683 n.2 (Iowa 1986): Iowa R. Evid., 5.801(d)(1)(A).

Comment

This Instruction should be given when a non-party witness has made a prior inconsistent statement while under oath. If the non-party witness made a prior inconsistent statement while not under oath, then Instruction 100.13 should be given. If the non-party witness has made prior inconsistent statements both under oath and not under oath, then both Instruction 100.14 and Instruction 100.13 should be given to clarify and distinguish the two forms of statements for the jury.

100.15 Statements By A Party Opponent. You have heard evidence claiming [name of party] made statements before this trial [while under oath] [and] [while not under oath].

If you find such a statement was made, you may regard the statement as evidence in this case the same as if [name of party] had made it under oath during the trial.

If you find such a statement was made and was inconsistent with [name of party]'s testimony during the trial you may also use the statement as a basis for disregarding all or any part of [name of party]'s testimony during the trial but you are not required to do so. You should not disregard [name of party]'s testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

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100.16 Impeachment, Character And Reputation. You have heard evidence claiming the witness has a [reputation] [character trait] for not telling the truth. You may use that evidence only to help you decide whether to believe the witness and how much weight to give [his] [her] testimony.

Authority

Iowa R. Evid., rule 5.609
Iowa R. Evid., rule 5.405

100.17 Impeachment, Public Offense. [The witness (name of witness) has admitted he or she] [you have heard evidence claiming that the witness (name of witness)] was convicted of a crime.

You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

Authority

Iowa R. Evid., rule 5.609

100.18 General Instruction To Jury. Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

100.19 Clear Convincing And Satisfactory Evidence. Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

Authority

Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa Appeals 1983)
Sinclair v. Allender, 26 N.W.2d 320, 326 (Iowa 1947)

100.20 Corporate Party. The fact that a plaintiff or defendant is a corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Comment

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Note: If scope of employment is an issue, Iowa Civil Jury Instruction 730.1 and 730.2 may be useful.

100.21 Cautionary Instruction - Juror's Notes. During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Authority

Iowa R. Civ. P. 1.926 (1)

100.22 Spoliation of Evidence. (Name of party asserting the conclusion) claims that (name of party) has intentionally [altered] [destroyed] [failed to produce] evidence consisting of (describe evidence). You may, but are not required to, conclude that such evidence would be unfavorable to (name of party).

Before you can reach this conclusion, (name of party asserting the conclusion) must prove all of the following:

1. The evidence exists or previously existed.
2. The evidence is or was within the possession or control of (name of party).
3. (Name of party)'s interests would call for production of the evidence if favorable to that party.
4. (Name of party) has intentionally [altered] [destroyed] or [failed to produce] the evidence without satisfactory explanation.

For you to reach this conclusion, more than the mere [alteration] [destruction] [non-production] of the evidence must be shown. It is not sufficient to show that a third person [altered] [destroyed] [is withholding] the evidence without the authorization or consent of (name of party).

Authority

Phillips v. Covenant Clinic, 625 N.W.2d 714 (Iowa 2001)
Hendricks v. Great Plains Supply Co., 609 N.W.2d 486 (Iowa 2000)
Gamerdinger v. Schaefer, 603 N.W.2d 590 (Iowa 1999)
State v. Langlet, 238 N.W.2d 330 (Iowa 1979)

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Comment

Note: The evidence at issue must also have been admissible at trial. See *State v. Langlet*, 283 N.W.2d 330, 335 (Iowa 1979). The court should determine if the evidence would have been admissible.

Rev. 12/01

100.23 Use of Electronic Devices.

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

It is important that we have your full and undivided attention during this trial.

New 9/11

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CHAPTER 200

DAMAGES

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- [200.31](#) Elements - Spousal Consortium - Spouse's Damage
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[200.40](#) Medical Malpractice - Lost Chance Of Survival

Damages - Punitive

[210.1](#) Punitive Damages

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200.1 Elements - Personal Injury And Vehicle Damage. If you find (injured party) is entitled to recover damages, you shall consider the following items:

(Enter applicable elements from Instructions 200.2 - 200.13)

The amount you assess for [physical and mental pain and suffering in the past and future] [future earning capacity] [loss of function of the [mind] [body] in the past and future] cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

10/97

200.2 Vehicle Damage - Repairs Only - Repairable To Prior Condition For Less Than Market Value. The reasonable cost of repair of the vehicle.

Authority

Long v. McAllister, 319 N.W.2d 256 (Iowa 1982)

200.3 Vehicle Damage - Repairs And Use - Repairable To Prior Good Condition For Less Than Market Value. The reasonable cost of repair of the vehicle plus the reasonable value of the use of the vehicle for the time reasonably required to complete its repair.

Authority

Long v. McAllister, 319 N.W.2d 256 (Iowa 1982)

200.4 Vehicle Damage - Market Value And Use - Not Repairable To Prior Good Condition. The difference between the reasonable market value of the vehicle immediately before and after the damage, plus the reasonable value of the use of the vehicle for the time reasonably required to replace it or return it to use.

Authority

Papenheim v. Lovell, 553 N.W.2d 328 (Iowa 1996)

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200.5 Vehicle Damage - Market Value And Use - Total Destruction - Cost Of Repairs Exceeds Market Value. The difference between the reasonable market value of the vehicle immediately before and after the damage, plus the reasonable value of the use of the vehicle for the time reasonably required to obtain a replacement.

Authority

Long v. McAllister, 319 N.W.2d 256 (Iowa 1982)

200.6 Past Medical Expenses. The reasonable cost of necessary [hospital charges] [doctor charges] [prescriptions] [other medical services] from the date of injury to the present time.

In determining the reasonable cost of necessary [hospital charges] [doctor charges] [prescriptions] [other medical services], you may consider [the amount charged], [the amount actually paid], or [any other evidence of what is reasonable and proper for such medical expense].

Authority

Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004)

Worez v. Des Moines City Ry. Co., 175 Iowa 1, 156 N.W. 867 (1916)

Elzig v. Bales, 135 Iowa 208, 112 N.W. 540 (1907)

Comment

Note: The billed amount is relevant only if that figure was paid or an expert witness has testified to the reasonableness of the charges.

Rev. 7/06

200.7 Future Medical Expenses. The present value of reasonable and necessary [hospital charges] [doctor charges] [prescriptions] [other medical services] which will be incurred in the future.

Authority

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Zach v. Morningstar, 258 Iowa 1365, 142 N.W.2d 440 (1966)

Comment

Consider the effect of Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004) on future medical expenses. *See*, paragraph 2 of Instruction 200.6.

Rev. 7/05

200.8 Loss Of time - Earnings. The reasonable value of [lost wages] [time from business] from the date of injury to the present time.

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Authority

Iowa Des Moines National Bank v. Schwerman Trucking Co., 288 N.W.2d 198 (Iowa 1980)
Amelsburg v. Lunning, 234 Iowa 852, 14 N.W.2d 680 (1944)

Comment

Note: If claim for time from business is made, the following paragraph may be needed:

Loss of time from business is not measured by loss of profits from a business, but is measured by the value of a person's own labor. Profits represent the gain from an investment in capital or business and the labor of others, after payment of expenses. You will not consider evidence of loss of profits, unless the evidence proves the value of plaintiff's services to their business as distinct from the profits of the business.

200.9 Loss Of Future Earning Capacity. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

Authority

Bergquist v. Mackay Engines, Inc., 538 N.W.2d 655 (Iowa App. 1995)
Truscheff v. Abell-Howe Company, 239 N.W.2d 116 (Iowa 1976)
Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)

Comment

Note: The following should be given only if evidence of business profits is admitted:

Future loss of earning capacity is not measured by future loss of profits from a business, but is measured by the value of a person's own labor. Profits represent the gain from an investment in capital or business and the labor of others, after payment of expenses. You may consider evidence of past profits of the business in determining the plaintiff's earning capacity prior to the injury only if the evidence shows the value of plaintiff's services to the business as distinct from the profits derived from invested capital and the labor of others.

Authority for Comment

Iowa Des Moines Nat'l Bank v. Schwerman Trucking Co., 288 N.W.2d 198 (Iowa 1980)

200.10 Loss Of Full Mind And Body - Past. Loss of function of the [mind] [body] from the date of injury to the present time. Loss of [mind] [body] is the inability of a particular part of the [mind] [body] to function in a normal manner.

Authority

Brant v Bockholt, 532 N.W.2d 801 (Iowa 1995)

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Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

200.11A Loss Of Full Mind And Body - Future - Actions Filed On Or Before July 1, 1997. Future loss of function of the [mind] [body].

Authority

Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Comment

In all actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code Section 624.18 (1A), 668.3(b)

200.11B Loss Of Full Mind And Body - Future -Actions Filed On Or After July 1, 1997. The present value of future loss of function of the [mind] [body].

Authority

Iowa Code section 624.18 (2), 668.3(b)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Comment

In all actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code section 624.18(2), 668.3(b)

Rev.12/01

200.12 Physical And Mental Pain And Suffering - Past. Physical and mental pain and suffering from the date of injury to the present time.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Authority

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)
Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa App. 1977)

200.13A Physical And Mental Pain And Suffering - Future - Actions Filed On Or Before July 1, 1997. Future physical and mental pain and suffering.

Authority

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Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Comment

In all actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code Section 624.1B (1A), 668.3(b)

200.13B Physical And Mental Pain And Suffering - Future - Actions Filed On Or After July 1, 1997. The present value of future physical and mental pain and suffering.

Authority

Iowa Code section 624.18 (2), 668.3(b)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Comment

In all actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code Section 624.18 (2), 668.3(b)

Rev. 12/01

200.14 Elements - Death - Damages Recovered by Personal Representatives. If you find (name), as personal representative of the Estate is entitled to recover, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of (name) for the [injuries] [damages] incurred:

(Enter applicable elements from Instructions 200.15 - 200.24)

The amount you assess for [physical and mental pain and suffering] [present value of consortium] [loss of function of body and mind] cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendant(s) as proved by the evidence. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

200.15 Present Worth Of The Value Of The Estate. The present value of the additional amounts (decedent) would reasonably be expected to have accumulated as a result of [his] [her] own effort if [he] [she] had lived out the term of [his] [her] natural life.

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Authority

Iowa Des Moines National Bank v. Schwerman Trucking Co., 288 N.W. 2d 198 (Iowa 1980)

200.16 Burial Expenses. The interest on the reasonable burial expenses of (decedent) from the time of death until the time when those expenses would be paid. The amount cannot exceed the reasonable cost of the burial.

Authority

Hurtig v. Bjork, 258 Iowa 155, 138 N.W.2d 62 (1965)

200.17 Support - Spouse. The present value of the amount of financial support which (decedent) would have contributed to [his] [her] spouse, but for [his] [her] death.

Damages for financial support are limited in time to the shorter of the spouse's or (decedent)'s normal life expectancy.

Authority

Iowa Code section 613.15
Iowa Code section 633.336

200.18 Support - Children. The present value of the amount of financial support which (decedent) would have contributed to (names of children), but for decedent's death. Damages for financial support are limited in time to when [the child] [each child] [reaches age eighteen] [marries] unless you find a child will have a need for support beyond [age eighteen] [marriage].

Authority

Iowa Code section 613.15
Iowa Code section 633.336

200.19 Services - Spousal Consortium. The present value of the services which (decedent) would have performed for [his] [her] spouse, but for [his] [her] death. This is also known as loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of the spouse's or (decedent)'s normal life expectancy.

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Authority

Iowa Code section 613.15

Gail v. Clark, 410 N.W.2d 662 (Iowa 1987)

Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)

Audubon-Exira Ready Mix, Inc. v. Illinois Central Gulf Railroad Company, 335 N.W.2d 148 (Iowa 1983)

Comment

Caveat: Predeath loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)

Note: The Iowa Civil Jury Instructions refer to "present value" in the consortium instructions. Consortium damages may be economic or non-economic or both. In actions filed on or before July 1, 1997, the instructions may need to be modified accordingly. See Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995). In actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code section 624.18(1A), 668.3(b)

Rev. 12/01

200.20 Services - Parental Consortium. The present value of the services which (decedent) would have performed for [his] [her] children, but for [his] [her] death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

Damages for loss of parental consortium are limited in time to the shorter of the child's or (decedent)'s normal life expectancy.

Authority

Iowa Code section 613.15

Gail v. Clark, 410 N.W.2d 662 (Iowa 1987)

Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)

Audubon-Exira Ready Mix, Inc. v. Illinois Central Gulf Railroad Company, 335 N.W.2d 148 (Iowa 1983)

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Comment

Caveat: Pre-death loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)

Note: The Iowa Civil Jury Instructions refer to "present value" in the consortium instructions. Consortium damages may be economic or non-economic or both. In actions filed on or before July 1, 1997, the instructions may need to be modified accordingly. See Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995). In actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code section 624.18 (1A), 668.3(b)

Rev. 12/01

200.21 Considerations - Loss Of Value Of The Estate - Loss Of Consortium [Spousal And Parental] - Loss Of Support.

A. If Instruction 200.15 is given, you may want to include the following:

In determining the present value of the amount (decedent) would have accumulated, item _____ [Instruction No. _____], you may consider:

1. [His] [Her] life expectancy, health, physical condition, age and occupation at the time of death.
2. [His] [Her] ability to earn money and any amount from income which would have been used for support of [his] [her] spouse and family.
3. The amount of taxes, both federal and state, which would be payable out of earnings.
4. [His] [Her] habits as to industry, thrift and economy.
5. The uncertainties of life such as ill health or employment, increase or decrease of earning capacity as age advances.
6. All other facts and circumstances bearing on the amount [he] [she] would have accumulated.

B. If Instruction 200.17 or 200.18 is given, you may want to include the following:

In determining the present value of financial support (decedent) would have provided to [spouse] [children], item _____ [Instruction No. _____], you may consider:

1. [His] [Her] age at the time of death.
2. [His] [Her] health, strength, character, skills and training.
3. [His] [Her] life expectancy [and that of the spouse].
4. [His] [Her] previous employment and earnings.

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5. [His] [Her] expectancy for earnings in the future.
6. The ages of the [spouse] [children] dependent upon [him] [her] for support, and the present and future need for support.
7. The amount of money out of [his] [her] income which would have been available for the support of the [spouse] [children] after payment of federal and state taxes.
8. All other facts and circumstances bearing on the present value of financial support.

C. If Instruction 200.19 or 200.20 is given, you may want to include the following:

In determining the present value of the services (decedent) would have provided as a [parent] [spouse], item _____, [Instruction No. _____], you may consider:

1. The circumstances of [his] [her] life.
2. [His] [Her] age at the time of [his] [her] death.
3. [His] [Her] health, strength, character, life expectancy [and that of the spouse].
4. [His] [Her] capacities, abilities and efficiencies in performing duties as a [spouse] [parent].
5. [His] [Her] skills and abilities in providing instruction, guidance, advice and assistance to the [spouse] [children].
6. [Spouse's] [Children's] respective needs.
7. All other facts and circumstances bearing on the present value of services.

Authority

Iowa Des Moines National Bank v. Schwerman Trucking Co., 288 N.W.2d 198 (Iowa 1980)
Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)
Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632 (Iowa 1969)

200.22 Pre-Death Loss Of Time - Earnings. The reasonable value of [lost wages] [time from business] from the date of injury to the time of death.

Authority

Amelsburg v. Lunning, 234 Iowa 852, 14 N.W.2d 680 (Iowa 1944)

Comment

Note: The following should be given only if the evidence shows a loss of business profits:

Time from business is not measured by loss of profits from a business, but is measured by the value of a person's own labor. Profits represent the gain from an investment in capital or business

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and the labor of others, after payment of expenses. You will not consider evidence of loss of profits, unless the evidence proves the value of plaintiff's services to [his] [her] business as distinct from the profits of the business.

200.23 Pre-Death Medical Expenses. The reasonable cost of necessary [hospital charges] [doctor charges] [prescriptions] [other medical services] from the date of injury to the time of death.

In determining the reasonable cost of necessary [hospital charges] [doctor charges] [prescriptions] [other medical services], you may consider [the amount charged], [the amount actually paid], or [any other evidence of what is reasonable and proper for such medical expense].

Authority

Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004)
Muldowney v. Illinois Central Ry. Co., 36 Iowa 462 (1873)

Comment

Note: The billed amount is relevant only if that figure was paid or an expert witness has testified to the reasonableness of the charges.

Rev. 7/05

200.24 Pre-Death Physical And Mental Pain And Suffering. Physical and mental pain and suffering from the date of injury to the date of death.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Authority

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)
Lang v. City of Des Moines, 294 N.W.2d 557 (Iowa 1980)
Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa App. 1977)

200.25 Pre-Death - Loss Of Full Mind And Body. Loss of function of the [mind] [body] from the date of injury to the date of death.

Authority

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

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200.26 Elements - Death Of Minor - Damages Recovered By Personal Representative. If you find (name) as personal representative of the Estate of (decedent) is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items:

(Enter applicable items from 200.24, 200.25 or 200.27)

The amount you assess for [physical and mental pain and suffering] [loss of function of mind and body] cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendant(s) as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

200.27 Present Worth Of Value Of Estate - Minor. The present value of additional amounts (minor) would reasonably be expected to have accumulated as a result of [his] [her] own effort from the date [he] [she] would have [reached age eighteen] [married] until [he] [she] had lived out the terms of [his] [her] life.

In determining this amount, you may consider:

1. [His] [Her] life expectancy.
2. [His] [Her] health, physical and mental condition.
3. [His] [Her] habits as to industry, thrift and economy.
4. [His] [Her] interest in school.
5. [His] [Her] grades and attendance in school.
6. The occupation of [his] [her] parents.
7. The uncertainties of life such as ill health, unemployment, increased or decreased earning capacity as age advances.
8. The amount of taxes, both federal and state, which would be payable out of earnings.
9. All other facts and circumstances bearing on the amount [he] [she] might have accumulated.

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200.28 Elements - Death Of A Minor - Rule 1.206 Claim. If you find (father and/or mother) is entitled to recover damages as the result of the death of (minor), it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of the past loss of services, which include loss of companionship and society of the child, from the date of the death to [the present time] [the date the child would have [reached age eighteen years] [married]] minus the probable cost of the child's board and maintenance during that time period.
2. The present value of the future loss of services, which include loss of companionship and society of the child from the present time until the child would have [reached age eighteen years] [married] minus the present value of the probable cost of child support and maintenance during that same time period.
3. The interest on the reasonable burial expenses of the child from the time of death until the time those expenses would normally be paid. The amount cannot exceed the reasonable cost of the burial.
4. The reasonable value of necessary [hospital charges] [doctor charges] [prescriptions] [other medical services] from the date of injury to the time of death.

Items 1 and 2 include [loss of earnings of child] [the economic or monetary value of the child's labor where the child is not employed], as well as the parent's right to the intangible benefits of companionship, cooperation and affection of the child. They do not include the parent's mental anguish caused by the child's death.

In determining loss of companionship and society, you may consider the circumstances of the life of the child including:

1. The child's age, health, strength, intelligence, character, interests and personality.
2. Activities in the household and community.
3. All other facts and circumstances bearing on the issue.

The amount you assess for loss of services in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damages must not exceed the amount caused by the defendant(s) as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

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Authority

Gookin v. Norris, 261 N.W.2d 692 (Iowa 1978)
Wardlow v. City of Keokuk, 190 N.W.2d 439 (Iowa 1971)
Iowa R. Civ. P. 1.206

Comment

Caveat: Pre-death loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W. 2d 202 (Iowa 1984).

Note: This instruction applies to actions filed before July 1, 2007. For actions filed on or after July 1, 2007, see Iowa Civil Jury Instruction 200.28A.

Rev. 6/08

200.28A Elements - Death Of A Child. If you find (father and/or mother) is entitled to recover damages as the result of the death of (child), it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of the past loss of services, which include loss of companionship and society of the child, from the date of the death to the present time, minus the probable cost of the child's board and maintenance during that time period.
2. The present value of the future loss of services, which include loss of companionship and society of the parent and child, minus the present value of the probable cost of child support and maintenance during that same time period.
3. The interest on the reasonable burial expenses of the child from the time of death until the time those expenses would normally be paid. The amount cannot exceed the reasonable cost of the burial.
4. The reasonable value of necessary [hospital charges] [doctor charges] [prescriptions] [other medical services] from the date of injury to the time of death. Items 1 and 2 include [loss of earnings of child] [the economic or monetary value of the child's labor where the child is not employed], as well as the parent's right to the intangible benefits of companionship, cooperation and affection of the child. They do not include the parent's mental anguish caused by the child's death.

In determining loss of companionship and society, you may consider the circumstances of the life of the child including:

1. The child's age, health, strength, intelligence, character, interests and personality.
2. Activities in the household and community.
3. All other facts and circumstances bearing on the issue.

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The amount you assess for loss of services in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damages must not exceed the amount caused by the defendant(s) as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Authority

Iowa Code sections 613.15A and 633.336

Gookin v. Norris, 261 N.W.2d 692 (Iowa 1978)

Wardlow v. City of Keokuk, 190 N.W.2d 439 (Iowa 1971)

Iowa R. Civ. P. 1.206

Comment

Caveat: Pre-death loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W. 2d 202 (Iowa 1984).

New 6/08

200.29 Elements - Injury To A Child - Rule 1.206 Claim. If you find (father and/or mother) is entitled to recover for damage sustained by [him] [her] as the result of the injury to (minor), it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of the past loss of services, which include loss of companionship and society of the child, from the date of the child's injury to [the present time] [the date the child [reaches age eighteen years] [marries]], minus the probable cost of the child's board and maintenance during that time period.
2. The present value of the future loss of services, which includes loss of companionship and society of the child, from the present time until the child [reaches age eighteen years] [marries] minus the present value of the probable cost of child support and maintenance during that same time period.
3. The reasonable value of [hospital charges] [doctor charges] [prescriptions] [other medical services] from the date of injury to the present time.
4. The present value of reasonable and necessary [hospital charges] [doctor charges] [prescriptions] [other medical services] which will be incurred for the

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child's injuries from the present time until the child [reaches age eighteen years] [marries].

Items 1 and 2 include [loss of earnings of the child] [the economic or financial value of the child's labor where the child is not employed] as well as the parents right to the intangible benefits of companionship, cooperation and affection of the child. They do not include mental anguish by the parent caused by the injury to the child.

In determining loss of companionship and society, you may consider the circumstances of the life of the child including:

1. The child's age, health, strength, intelligence, character, interests and personality.
2. Activities in the household and community.
3. All other facts and circumstances bearing on the issue.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Authority

Gookin v. Norris, 261 N.W.2d 692 (Iowa 1978)
Wardlow v. City of Keokuk, 190 N.W.2d 439 (Iowa 1971)
Iowa R. Civ. P. 1.206

Comment

Caveat: Pre-death loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W.2d 202 (Iowa 1984).

Rev. 6/08

200.30 Elements - Injured Parent's Claim For Deprived Child's Loss Of Parental Consortium. "Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection, the aid of the parent in every parental relation, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's injury.

If you find, (parent) as [parent and next friend] [guardian] of (child) is entitled to recover damages on behalf of the child, it is your duty to determine the amount. In doing so you shall consider the following items;

1. The reasonable value of loss of parental consortium which (child) (children) would otherwise have received from the date of injury until the present time.

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2. The present value of loss of parental consortium which (child) (children) would otherwise have received in the future.

A child is not entitled to damages for loss of parental consortium unless the injury to the parent has caused a significant disruption or diminution of the parent-child relationship. Damages for loss of parental consortium are limited in time to the shorter of the child's or parent's normal life expectancy.

In determining the value for loss of parental consortium, you may consider:

1. The circumstances of the injured parent's life.
2. (Parent)'s and (child)'s ages at the time of (parent)'s injury.
3. The health, strength, character and life expectancy of the injured parent and child.
4. The injured parent's capabilities and efficiencies in performing the duties as a parent.
5. The injured parent's skills and abilities in providing instruction, guidance, advice and assistance to the child.
6. The children's needs.
7. All other facts and circumstances bearing on the issue.

The amount you assess for loss of parental consortium [past] [present] [future] cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendant(s) as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Authority

Audubon-Exira Ready Mix, Inc v. Illinois Central Gulf Railroad Company, 335N.W.2d 148 (Iowa 1983)
Weitl v. Moes, 311 N.W.2d 259 (Iowa 1981)

Comment

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Caveat: Pre-death loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)

Note: The Iowa Civil Jury Instructions refer to "present value" in the consortium instructions. Consortium damages may be economic or non-economic or both. In actions filed on or before July 1, 1997, the instructions may need to be modified accordingly. See Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995). In actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code section 624.18 (1A), 668.3 (b).

200.31 Elements - Spousal Consortium - Spouse's Damage. "Spousal consortium" is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's [injury] [death].

If you find (claimant spouse) is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which (claimant spouse) would otherwise have received from the date of injury until [the present time] [death].
2. The present value of loss of spousal consortium which (claimant spouse) would otherwise have received in the future.

Damages for loss of spousal consortium are limited in time to the shorter of the spouse's or (decedent)'s normal life expectancy.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of (injured spouse)'s life.
2. (Injured spouse)'s and (claimant)'s ages at the time of (injured spouse)'s injury.
3. (Injured spouse)'s health, strength, character and life expectancy.
4. (Injured spouse)'s capabilities and efficiencies in performing the duties of a spouse.
5. (Injured spouse)'s skills and abilities in providing instructions, guidance, advice and assistance.
6. The (claimant spouse)'s needs.
7. All other facts and circumstances bearing on this issue.

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The amount you assess for loss of spousal consortium [past] [present] [future] cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendant(s) as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

The amounts , if any, you find for each of the above items will be used to answer the special verdicts.

Authority

Gail v. Clark, 410 N.W.2d 662 (Iowa 1987)

Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)

Audubon-Exira Ready Mix, Inc. v. Illinois Central Gulf Railroad Company, 335 N.W.2d 148 (Iowa 1983)

Fuller v. Buhrow, 292 N.W.2d 672 (Iowa 1980)

Acuff v. Schmit, 248 Iowa 272, 78 N.W.2d 480 (1956)

Comments

Caveat: Pre-death loss of services is not an item recoverable by the Estate. See Madison v. Colby, 348 N.W.2d 202 (Iowa 1984).

Note: The Iowa Civil Jury Instructions refer to "present value" in the consortium instructions. Consortium damages may be economic or non-economic or both. In actions filed on or before July 1, 1997, the instructions may need to be modified accordingly. See Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995). In actions filed after July 1, 1997, future damages must be adjusted to reflect the present value of the sum. Iowa Code section 624.18 (1A), 668.3(b)
12/01

200.32 Aggravation of Pre-Existing Condition. If you find (plaintiff) had a (describe condition) before this incident and this condition was [aggravated] [made active] by this incident causing [further suffering] [disability] then [he] [she] is entitled to recover damages caused by the aggravation. [He] [She] is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which [he] [she] now has which were not caused by the defendant's actions.

Authority

Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)

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Comment

Note: An exception may exist to the general rule stated above if the pre-existing condition was asymptomatic before the incident and plaintiff has proven that apportionment is not possible. Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)

Note: In cases involving both aggravation and eggshell injuries, see Waits v United Fire & Casualty Co., 572 NW2d 565, 578 (Iowa 1998)

Rev. 6/98

200.33 No Recovery For Second Injury. If you find (plaintiff) was injured by another act after this incident, [he] [she] cannot recover for any later [injury] [aggravation of injury] not caused by this incident.

Authority

Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)
Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R.R., 244 Iowa 1364, 60 N.W.2d 572 (1953)

Comment

Note: The above states the general rule. Exceptions may exist if there is an indivisible injury caused by independent acts or the subsequent injury is a sequela of the first. In these circumstances, special instructions would apply. Treanor v. B.P.E. Leasing, Inc., 158 N.W.2d 4, 6 (Iowa 1968); Ruud v. Grimm, 252 Iowa 1266, 1272, 110 N.W.2d 321, 324 (1961). The committee expresses no view as to whether these exceptions apply when the doctrine of comparative fault is involved.

6/91

200.34 Previous Infirm Condition. If (plaintiff) had (describe condition) making [him] [her] more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by (plaintiff) that are caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

Authority

Benn v. Thomas, 512 N.W.2d 537, 538-40 (Iowa 1994)
Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: Consider appropriateness of giving his instruction in addition to Iowa Civil Jury Instruction 700.3 Proximate Cause where "Eggshell Plaintiff Rule" applies.

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Note: In cases involving both aggravation and eggshell injuries, see Waits v United Fire & Casualty Co., 572 NW2d 565, 578 (Iowa 1998)

Rev. 09/10

200.35A Definition Of Present Value - Actions Filed On Or Before July 1, 1997.

Future damages for loss of [earning capacity] [medical expenses] [other economic losses] must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future economic losses.

Authority

Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)
In Re Millard Estate, 251 Iowa 1282, 105 N.W.2d 95 (1960)

Comment

In actions filed after July 1, 1997, damages for loss of services, companionship, society, or consortium will be barred or diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis for the damages. Iowa Code section 668.3(1)(b), overturning Schwennen v. Abell, 430 N.W.2d 98 (Iowa 1988).

12/01

200.35B Definition Of Present Value - Actions Filed On Or After July 1, 1997. Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

Authority

Iowa Code section 624.18 (2), 668.3(b)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)
In Re Millard Estate, 251 Iowa 1282, 105 N.W.2d 95 (1960)

10/97

200.36 Mortality Tables - Death Cases. Standard Mortality Table indicates the normal life expectancy of people who are the same age as (decedent) is _____ years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about (decedent)'s prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

Authority

Newman v. Blom, 249 Iowa 836, 89 N.W.2d 349 (1958)
Peterson v. Brackey, 143 Iowa 75, 119 N.W. 967 (1909)

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200.37 Mortality Tables - Personal Injury. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as (name) is _____ years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about (name)'s health, habits, occupation, and lifestyle, when deciding issues of future damages.

Authority

Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)
Ruud v. Grimm, 252 Iowa 1266, 110 N.W.2d 321 (1961)
Newman v. Blom, 249 Iowa 836, 89 N.W.2d 349 (1958)

200.38 Quotient Verdict. In arriving at an item of damage [or any percentage of fault] you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage [or a percentage of fault], and agreeing in advance that the average of those estimates shall be your item of damage [or percentage of fault].

Authority

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)
Sheker v. Jensen, 241 Iowa 583, 41 N.W.2d 679 (1950)
Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

200.39 Medical Malpractice - Lost Chance Of Survival – Definition.

Lost chance of survival means reduction in the chance to survive the underlying disease because plaintiff failed to receive earlier treatment. Damages recoverable are limited to the value of this loss of chance. This is measured by the difference between the chance of survival if treatment had been given at the earlier time, and the chance of survival at the present time. Plaintiff may not recover for harm caused by the pre-existing condition to which defendant's negligence did not contribute.

Authority

Wendland v Sparks, 574 NW2d 372 (Iowa 1998)
Sanders v Ghrist, 421 NW2d 520 (Iowa 1998)
DeBurkarte v Louvar, 393 NW2d 131 (Iowa 1998)

6/98

200.40 Medical Malpractice - Lost Chance Of Survival

If you find from the evidence that [defendant] was negligent in the treatment of [plaintiff] and that this negligence was a substantial factor in reducing [plaintiff's] chance of survival, then you will award such damages as will fairly compensate [plaintiff] for this lost chance of survival.

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Authority

Wendland v Sparks, 574 NW2d 372 (Iowa 1998)
Sanders v Ghrist, 421 NW2d 520 (Iowa 1998)
DeBurkarte v Louvar, 393 NW2d 131 (Iowa 1998)

Comment

The instruction is drafted for use in a death case. There may be other situations in which the concept is applicable as noted in Wendland v Sparks, 574 NW2d 372 (Iowa 1998).

6/98

210.1 Punitive Damages. Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct. *If applicable, add:* Although you may consider harm to others in determining the nature of defendant's conduct, you may not award punitive damages to punish the defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the defendant that is not similar to the conduct which caused the harm to the plaintiff in this case.

Authority

Iowa Code section 668A.1
Philip Morris USA v. Williams, 127 S.Ct. 1057 (2007)
State Farm Mutual Auto Ins. Co. v. Campbell, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003)
Larson v. Great West Cas. Co., 482 N.W.2d 170 (Iowa App. 1992)
Suss v. Schammel, 375 N.W.2d 252 (Iowa 1985)
Nelson v. Restaurants of Iowa, Inc., 338 N.W.2d 881 (Iowa 1983)

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Comment

Note: See Iowa Civil Jury Instruction 100.19 for definition of clear, convincing and satisfactory evidence.

Rev. 6/07

210.2 Special Interrogatories - Punitive Damages.

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award?

ANSWER:

[If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at (name)?

Answer "Yes" or "No"

ANSWER:

Authority

Iowa Code section 668A.1

Comment

Note: Where punitive damage claims are submitted against multiple defendants, the special interrogatories (Question Nos. 1-3) must be submitted for each defendant.

Note: When the issue of punitive damages against a principal or employer is submitted to the jury, add the following special interrogatory:

Question No. 4: Is (principal or employer) liable for punitive damages?

Answer "Yes" or "No"

ANSWER:

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[If your answer to Question No. 4 is "No" do not answer Question No. 5]

Question No. 5: What amount of punitive damages, if any, do you award against (name of principal or employer)?

ANSWER:

210.3 Punitive Damages Against A Principal Or Employer. (Principal or employer) is liable for the punitive damages by reason of the acts of (employee or agent) if one of the following occurred:

1. The [principal or employer] [managerial agent of (principal or employer)] authorized the act and the way it was done; or
2. The [agent] [employee] was unfit and the [principal] or employer] [managerial agent of (principal or employer)] was reckless in employing or retaining him; or
3. The [agent] [employee] was employed in a managerial capacity and was acting in the scope of employment; or
4. The [principal or employer] [managerial agent of (principal or employer)] ratified or approved the act.

Authority

Bethards v. Shivvers, Incorporated, 355 N.W.2d 39 (Iowa 1984)
Briner v. Hyslop, 337 N.W.2d 858 (Iowa 1983)
Restatement (Second) of Torts, section 909 (1979)

Comment

Note: Use only the alternatives which are supported by the evidence.

210.4 Willful and Wanton - Defined. Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Authority

Fell v. Kewanee Farm Equipment Co., 457 N.W.2d 911 (Iowa 1990)
Kosmacek v. Farm Service Coop of Persia, 485 N.W.2d 99 (Iowa App. 1992)

220.1 Breach Of Contract/Fraud-Expectation Interest. The measure of damages for [breach of a contract] [fraud] is an amount that would place (plaintiff) in as good a position as [he] [she] would have enjoyed if the [contract had been performed] [defendant's representation had been true].

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The damages you award for [breach of contract] [fraud] must be foreseeable or have been reasonably foreseen at the time the [parties entered into the contract] [representation was made].

In your consideration of the damages, you may consider the following:

(List the items of damage claimed and allowable according to the facts of the case.)

Authority

Yost v. City of Council Bluffs, 471 N.W. 2nd 836 (Iowa 1991)
Air Host Cedar Rapids v. Airport Commission, 464 N.W. 2nd 450 (Iowa 1990)
Hoffman v. National Medical Enterprises, Inc., 442 N.W. 2nd 123 (Iowa 1989)
Potter v. Oster, 426 N.W. 2nd 148 (Iowa 1988)
Ritam Corporation v. Applied Concepts, Inc., 387 N.W. 2nd 619 (Iowa App. 1986)

Comment

Note: Instructions 220.1 and 220.2 are alternative instructions. The proper instruction in a given case will depend on the evidence.

220.2 Breach Of Contract/Fraud-Reliance Interest. The measure of damages for [breach of a contract] [fraud] is an amount that will reimburse (plaintiff) for the loss caused by [his] [her] reliance on the [contract] [defendant's misrepresentation or omission] and will place [him] [her] in as good a position as if the [breach [representation] had not been made.

The damages you award for [breach of contract] [fraud] must be foreseeable or have been reasonably foreseen at the time the [parties entered into the contract] [representation was made].

In your consideration of the damages, you may consider the following:

(List the items of damage claimed and allowable according to the facts of the case.)

Authority

Potter v. Oster, 426 N.W. 2nd 148 (Iowa 1988)
Cornell v. Wunchel, 408 N.W. 2nd (Iowa 1987)

Comment

Note: Instructions 220.1 and 220.2 are alternative instructions. The proper instruction in a given case will depend on the evidence.

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CHAPTER 300

VERDICTS

[300.1](#) Return Of Verdict - Forms Of Verdict

[300.2](#) Single Plaintiff - Single Defendant - Cases Not Governed By Chapter 668 - Plaintiff's Verdict

[300.3](#) Single Plaintiff - Single Defendant - Cases Not Governed By Chapter 668 - Defendant's Verdict

[300.4](#) Verdict - Single Plaintiff - Single Defendant - Cases Governed By Chapter 668

[300.5](#) Verdict - Single Plaintiff, Single Defendant - Claim and Counterclaim - Cases Governed By Chapter 668

[300.6](#) Verdict - Single Plaintiff - Defendant(s), Third Party Defendant(s), Person(s), Who Have Been Released - Cases Governed By Chapter 668

[300.7](#) Death Of Parents - Loss Of Spousal Consortium To The Surviving Spouse – Loss Of Parental Consortium To A Minor - Allocation Of Damage - Damages Recoverable By Personal Representative

[300.8](#) Collateral Source - Comparative Fault.

[300.9](#) Verdict - Product Liability - State of the Art

[300.10](#) Verdict - Concert of Action - Cases Governed By Chapter 668.

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300.1 Return Of Verdict - Forms Of Verdict. I am giving you _____ verdict forms [and questions]. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict [and answers to questions] must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock ____m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) (six)* of you agree upon the answers to the questions. In that case, the verdict [and questions] must be signed by all (seven) (six)* jurors who agree.

When you have agreed upon the verdict [and answers to questions] and appropriately signed it, tell the Court Attendant.

Comment

Note: *Use if a juror has been excused during the trial.

Rev. 3/12

300.2 Single Plaintiff - Single Defendant - Cases Not Governed by Chapter 668 - Plaintiff's verdict.

[Use caption of case if desired]

VERDICT NO. _____

We, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at _____ dollars.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror** Juror**
Juror** Juror**
Juror** Juror**
Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

300.3 Single Plaintiff - Single Defendant - Cases Not Governed By Chapter 668 - Defendant's Verdict.

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[Use caption of case if desired]

VERDICT NO.

We, the Jury, find in favor of the defendant and against the plaintiff.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing to it after six hours or more of deliberation.

12/86

300.4 Verdict - Single Plaintiff - Single Defendant - Cases Governed By Chapter 668.

[Use caption of case if desired]

VERDICT NO. _____

We find the following verdict on the questions submitted to us:

Question No. 1: Was the defendant at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the defendant a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no", do not answer any further questions.]

Question No. 3: Was any item of damage to the plaintiff within the scope of defendant's liability?

Answer "yes" or "no."

ANSWER

[If your answer is "no", do not answer any further questions.]

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Question No. 4: Was the plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Questions No. 5 or 6.]

Question No. 5: Was the plaintiff's fault a cause of any damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 6.]

Question No. 6: Was any item of damage to the plaintiff within the scope of plaintiff's liability?

Answer "yes" or "no."

ANSWER

[If your answer is "no," do not answer Question No. 7.]

Question No. 7: Using 100% as the total combined fault of plaintiff and defendant which was a cause of plaintiff's damage [and within the scope of liability], what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant?

ANSWER: Plaintiff _____%
Defendant _____%
TOTAL 100%

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 8.]

Question No. 8: State the amount of damages sustained by the plaintiff by defendant's fault [and within the scope of defendant's liability] as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendant's fault [or within the scope of defendant's liability], enter 0 for that item.

- *1. Past medical expenses \$ _____
2. Future medical expenses \$ _____
3. Past pain and suffering \$ _____
4. Future pain and suffering \$ _____
TOTAL (add the separate items of damage) \$ _____

Authority

Iowa Code section 668.3(8)
Johnson v. Knoxville Comm. Sch. Dist., 570 NW2d 633, 644 (Iowa 1997)

Comment

Note: *The above list is merely an example of format. The list of items should be consistent with the damage marshaling instruction.

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6/98

Note: Question No. 3 above should only be given where Defendant's scope of liability is at issue and Instruction No. 700.3A is given.

Note: If the fault of a party or parties other than the defendant is not at issue, do not submit questions 4, 5, 6 and 7.

Note: Question No. 7 should only be given where Plaintiff's scope of liability is at issue and Instruction No. 700.3A is given.

Rev. 09/10

300.5 Verdict - Single Plaintiff, Single Defendant - Claim And Counterclaim - Cases Governed By Chapter 668.

[Use caption of case if desired]

I. PLAINTIFF'S CLAIM

Question No. 1: Was the defendant at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "yes," then answer Question No. 2. If your answer is "no," then proceed to answer the questions regarding the defendant's counterclaim.]

Question No. 2: Was the fault of the defendant a cause of any item of damage to the plaintiff?

Answer "yes" or "no".

ANSWER:

[If your answer is "yes," then answer Question No. 3. If your answer is "no," then proceed to answer the questions regarding defendant's counterclaim.]

Question No. 3: Was any item of damage to the plaintiff within the scope of defendant's liability?

Answer "yes" or "no."

ANSWER

[If your answer is "yes," then answer Question No. 4. If your answer is "no," then proceed to answer the questions regarding defendant's counterclaim.]

Question No. 4: Was the plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "yes," then answer Question No. 5. If your answer is "no," proceed to Question No. 7.]

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Question No. 5: Was the fault of the plaintiff a cause of any damage to the plaintiff?
Answer "yes" or "no."
ANSWER:

[If your answer is "yes," then answer Question No. 6. If your answer is "no," proceed to Question no. 7.]

Question No. 6: Was any item of damage to the plaintiff within the scope of plaintiff's liability?
Answer "yes" or "no."
ANSWER

[If your answer is "yes," then answer Question No. 7. If your answer is "no," proceed to Question no. 8.]

Question No. 7: Using 100% as the total combined fault of plaintiff and defendant which was a cause of damage to the plaintiff [and within the scope of liability], what percentage of the total fault do you assign to the plaintiff and what percentage of the total fault do you assign to the defendant?

ANSWER: Plaintiff _____%
Defendant _____%

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 8.]

Question No. 8: State the amount of damages sustained by the plaintiff caused by defendant's fault [and within the scope of defendant's liability] as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendant's fault [or within the scope of defendant's liability], enter 0 for that item.

- *1. Past medical expenses \$ _____
2. Future medical expenses \$ _____
3. Past pain and suffering \$ _____
4. Future pain and suffering \$ _____
TOTAL (add the separate items of damage) \$ _____

II. DEFENDANT'S COUNTERCLAIM

Question No. 1: Was the plaintiff at fault?
Answer "yes" or "no."
ANSWER:

[If your answer is "yes," then answer Question No. 2. If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the plaintiff a cause of any item of damage to the defendant?
Answer "yes" or "no."
ANSWER:

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[If your answer is "yes," proceed to Question No. 3. If your answer is "no," do not answer any further questions.]

Question No. 3: Was any item of damage to the defendant within the scope of plaintiff's liability? Answer "yes" or "no."

ANSWER

[If your answer is "yes," proceed to Question No. 4. If your answer is "no," do not answer any further questions.]

Question No. 4: Was the defendant at fault? Answer "yes" or "no."

ANSWER:

[If your answer is "yes," then answer Question No. 5. If your answer is "no," proceed to Question No. 8.]

Question No. 5: Was the fault of the defendant a cause of any damage to the defendant? Answer "yes" or "no."

ANSWER:

[If your answer is "yes," then answer Question No. 6. If your answer is "no," proceed to Question No. 8.]

Question No. 6: Was the fault of the defendant within the defendant's scope of liability? Answer "yes" or "no."

ANSWER:

[If your answer is "yes," then answer Question No. 7. If your answer is "no," proceed to Question No. 8.]

Question No. 7: Using 100% as the total combined fault of plaintiff and defendant which was a cause of damage to the defendant [and within the scope of liability], what percentage of the total fault do you assign to the plaintiff and what percentage of the total fault do you assign to the defendant?

ANSWER: Plaintiff _____ %
Defendant _____ %
TOTAL 100%

[If you find defendant to be more than 50% at fault, do not answer Question No. 8.]

Question No. 8: State the amount of damages sustained by the defendant caused by plaintiff's fault [and within the scope of plaintiff's liability] as to each of the following items of damage. Do not take into consideration any reduction of damages due to defendant's fault. If the defendant has failed to prove any item of damage, or has failed to prove that any item of damage was caused by plaintiff's fault [or within the scope of plaintiff's liability], enter 0 for that item.

- *1. Past medical expenses \$_____
2. Future medical expenses \$_____
3. Past pain and suffering \$_____

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4. Future pain and suffering \$ _____
TOTAL (add the separate items of damage) \$ _____

Authority

Iowa Code section 668.3(8)
Johnson v. Knoxville Comm. Sch. Dist., 570 NW2d 633, 644 (Iowa 1997)
Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

Comment

Note: *The above list is merely an example of format. The list of items should be consistent with the damage marshaling instruction.

Note: Questions No. 3 in Plaintiff's Claim and No. 6 in Defendant's Counterclaim should only be given where Defendant's scope of liability is at issue and Instruction No. 700.3A is given.

Note: Questions No. 6 in Plaintiff's Claim and No. 3 in Defendant's Counterclaim should only be given where Plaintiff's scope of liability is at issue and Instruction No. 700.3A is given.

Rev. 09/10

300.6 Verdict - Single Plaintiff - Defendant(s), Third Party Defendant(s), Person(s) Who Have Been Released - Cases Governed By Chapter 668.

[Use caption of case if desired.]

We find the following verdict on the questions submitted to us:

(Name of Defendant No. 1)

Question No. 1: Was (name of defendant No. 1) at fault?
Answer "yes" or "no."
ANSWER:

[If your answer is "no," do not answer Question No. 2.]

Question No. 2: Was the fault of (name of defendant No. 1) a cause of any item of damage to the plaintiff?
Answer "yes" or "no."
ANSWER:

[If your answer to either Question No. 1 or No. 2 is "no," then you shall not assign any fault to (name of defendant No. 1).]

(Name of Defendant No. 2)

Question No. 3: Was (name of defendant No. 2) at fault?
Answer "yes" or "no."

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ANSWER:

[If your answer is "no," do not answer Question No. 4.]

Question No. 4: Was the fault of (name of defendant No. 2) a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer to either Question No. 3 or No. 4 is "no," then you shall not assign any fault to (name of defendant No. 2).]

(Name of Defendant No. 3)

Question No. 5: Was (name of defendant No. 3) at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 6.]

Question No. 6: Was the fault of (name of defendant No. 3) a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer to either Question No. 5 or No. 6 is "no," then you shall not assign any fault to (name of defendant No. 3).]

(Name of Third Party Defendant)

Question No. 7: Was (name of third party defendant) at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 8.]

Question No. 8: Was the fault of (name of third party defendant) a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer to either Question No. 7 or No. 8 is "no," then you shall not assign any fault to (name of third party defendant).]

(Name of Party Who Has Been Released)

Question No. 9: Was (name of person who has been released) at fault?

Answer "yes" or "no."

ANSWER:

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[If your answer is "no," do not answer Question No. 10.]

Question No. 10: Was the fault of (name of party who has been released) a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer to either Question No. 9 or No. 10 is "no," then you shall not assign any fault to (name of party who has been released).]

(Name of Plaintiff)

Question No. 11: Was the Plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer to question No. 11 is "no," do not answer Question No. 12.]

Question No. 12: Was the plaintiff's fault a cause of any damage to plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer to either Question No. 11 or No. 12 is "no," then you shall not assign any fault to the plaintiff.]

Question No. 13: What percentage of the total fault do you attribute to the plaintiff and what percentage of the total fault do you attribute to [the] [each] defendant, [third party defendant] and [person who has been released]? The percentages must total 100%.

[If you previously found that a party [or released person] was not at fault, or did not cause damage to plaintiff, then enter "0" after [his] [her] [its] name.]

ANSWER: (Name of Plaintiff) %
(Name of Defendant No. 1) %
(Name of Defendant No. 2) %
(Name of Defendant No. 3) %
(Third Party Defendant) %
(Name of Released Party) %
TOTAL 100 %

[If you find plaintiff to be more than fifty per cent (50%) at fault, do not answer Question No. 14.]

Question No. 14: State the amount of damages sustained by the plaintiff caused by a defendant's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by a defendant's fault, enter 0 for that item.

*1. Past medical expenses \$ _____

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- 2. Future medical expenses \$ _____
3. Past pain and suffering \$ _____
4. Future pain and suffering \$ _____
TOTAL (add the separate items of damage) \$ _____

Authority

Iowa Code section 668.3(8)
Johnson v. Knoxville Comm. Sch. Dist., 570 N.W.2d 633, 644 (Iowa 1997)
Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

Comment

Note: *The above is merely an example of format. The list of items should be consistent with the damage marshaling instruction.

Rev. 09/10

300.7 Death Of Parents - Loss Of Spousal Consortium To the Surviving Spouse - Loss Of Parental Consortium To A Minor - Allocation Of Damage - Damages Recoverable By Personal Representative.

[Use caption of case if desired.]

VERDICT NO. _____

If you find plaintiff is entitled to recover and the award of damages includes an amount for [loss of spousal consortium] [loss of parental consortium to the surviving [child] [children], it will be necessary for you to allocate that portion of the award which represents damage for loss of consortium.

You will do this by answering the following questions:

Question No. 1: Does the damage award include an amount for loss of spousal consortium to the surviving spouse?

Answer "yes" or "no."

ANSWER:

[Answer questions No. 2 and No. 3 only if your answer above is "yes."]

Question No. 2: What amount of the total damage award is for loss of spousal consortium to the surviving spouse?

ANSWER: \$

Question No. 3: With respect to the total amount of damages you found in your answer to Question No. 2, what amount do you find should be awarded for loss of future spousal consortium, if any?

ANSWER: \$

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Question No. 4: Does the damage award include an amount for loss of parental consortium to the surviving [child] [children]?

Answer "yes" or "no."

ANSWER:

[Answer Questions No. 5 and No. 6 only if your answer above is "yes."]

Question No. 5: What amount of the total damage award is for loss of parental consortium for [the surviving child] [each surviving child]?

| | Amount of Damage for Loss of Parental Consortium | |
|------------------|---|--|
| a. (insert name) | \$ | |
| b. (insert name) | \$ | |
| c. (insert name) | \$ | |

Question No. 6: With respect to the total amount of damages you found in your answer to Question No. 5, what amount do you find should be awarded for loss of future parental consortium, if any?

| | Amount of Damage for Loss of Parental Consortium | |
|------------------|---|--|
| a. (insert name) | \$ | |
| b. (insert name) | \$ | |
| c. (insert name) | \$ | |

 FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

| | |
|---------|---------|
| Juror** | Juror** |
| Juror** | Juror** |
| Juror** | Juror** |
| Juror** | |

**To be signed by the jurors agreeing to it after six hours or more of deliberation.

300.8 Collateral Source - Comparative Fault.

Question No. ____ : Were any of (name of party's) damages paid, or will any of his/her damages be paid by (name of collateral source(s))?

Answer "yes" or "no"

ANSWER:

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[If your answer is "no," do not answer the remaining questions.]

Question No.____: Will any amounts paid by (name of collateral source(s)) have to be refunded by (name of party) to (name of collateral source(s))?

Answer "yes" or "no"

ANSWER:

If your answer is "yes," you may not reduce any item of damage for benefits which must be refunded by (name of party) to (name of collateral source(s)).*

Question No.____: What amount of damages already paid by (name of collateral source(s)) is to be refunded to(name of collateral source(s))?

ANSWER: \$

Question No.____: What amount, if any, of the damages will be paid in the future by (name of collateral source(s)) for the benefit of (name of party)?

ANSWER: \$

Authority

Iowa Code (668.14(3))

Peters v. Vander Kooi, 494 N.W.2d 708, 714 (Iowa 1993)

Schonberger v. Roberts, 456 N.W.2d 201, 205 (Iowa 1990)

Loftsgard v. Dorrian, 476 N.W.2d 703 (Iowa Ct. App. 1991)

Comment

Note: The Court in Peters v. Vander Kooi indicates the burden of proof is on the defendant to prove the amounts paid to the plaintiff by collateral sources. Although not addressed in Peters v. Vander Kooi, the committee assumes the plaintiff should have the burden to prove if amounts paid by collateral sources have to be refunded. The following language could be added to the beginning or end of this special verdict form or it could be made part of a separate instruction: "The defendant has the burden to prove the amounts which have been or will be paid by collateral sources. The plaintiff has the burden to prove the amounts which have been or will be required to be refunded to collateral sources."

* Iowa Code chapter 668 does not expressly authorize this statement, but see dissent in Schonberger v Roberts, 456 NW2d 201, 205 (Iowa 1990).

300.9 Verdict - Product Liability - State of the Art.

We find the following verdict on the questions submitted:

- 1. [Plaintiff's claim of defect or negligence against (name of defendant)]

Question A:

Was (name of defendant) at fault with respect to [specific claim of plaintiff]?

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Answer "yes" or "no"
ANSWER:

(If your answer is "no," do not answer Questions B or C.)

Question B:

Was (name of defendant's) fault with respect to (specific claim of plaintiff) a cause of plaintiff's damages?
Answer "yes" or "no"
ANSWER:

(If your answer is "no," do not answer Question C.)

Question C:

Did (name of defendant) comply with the state of the art with respect to (specific claim of plaintiff)?
Answer "yes" or "no"
ANSWER:

(If your answer is "yes," do not assign any fault against (name of defendant) for (specific claim of plaintiff))

2. [Submit questions A, B and C for each specific claim of plaintiff and for each defendant]

Authority

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

300.10 Verdict - Concert of Action - Cases Governed By Chapter 668.

[Use caption of case if desired]

VERDICT NO. _____

We find the following verdict on the questions submitted to us:

Question No. 1: Was (Name Defendant #1) at fault?
Answer "yes" or "no."
ANSWER:

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of (Name Defendant #1) a cause of any item of damage to the plaintiff?
Answer "yes" or "no."

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ANSWER:

[If your answer is "no", do not answer any further questions.]

Question No. 3: Was (Name Plaintiff) at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Questions No. 4 or 5.]

Question No. 4: Was the plaintiff's fault a cause of any damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 5.]

Question No. 5: Using 100% as the total combined fault of (Name Plaintiff) and (Name Defendant #1) which was a cause of plaintiff's damage, what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the Defendant #1?

ANSWER: Plaintiff _____%
Defendant #1 _____%
TOTAL 100%

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 6.]

Question No. 6: State the amount of damages sustained by the (Name Plaintiff) caused by (Name Defendant #1) fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by defendant #1's fault, enter 0 for that item.

- *1. Past medical expenses \$ _____
2. Future medical expenses \$ _____
3. Past pain and suffering \$ _____
4. Future pain and suffering \$ _____
TOTAL (add the separate items of damage) \$ _____

Question No. 7: Did (Name Defendant #1) and (Name Defendant #2) act in concert?

Answer "yes" or "no".

ANSWER:

Authority

Iowa Code section 668.3(8)
Johnson v. Knoxville Comm. Sch. Dist., 570 NW2d 633, 644 (Iowa 1997)
Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2006)
Restatement (Second) of Torts §876
Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

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Comment

Note 1: *The above list is merely an example of format. The list of items should be consistent with the damage marshalling instruction.
6/98

Note 2: If the fault of a party or parties other than the defendant is not at issue, do not submit questions 3, 4 and 5.

Note 3: Defendant #2 need not be negligent to have acted in concert with Defendant #1 under instruction #400.11. Restatement (Second) of Torts §876, Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2006).

Note 4: If Plaintiff has filed an independent claim of negligence against Defendant #2, questions 1 and 2 can be repeated for Defendant #2 before the concert of action interrogatory is presented.

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CHAPTER 400

COMPARATIVE FAULT

[400.1](#) Fault - Defined

[400.2](#) Comparative Fault

[400.3](#) Comparative Fault - Effects Of Verdict

[400.4](#) Comparative Fault - No Imputation Of Fault

[400.5](#) Comparative Fault - Single Plaintiff - Essentials For Recovery

[400.6](#) Comparative Fault - Single Defendant - Essentials For Defense

[400.7](#) Comparative Fault - Mitigation

[400.8](#) Unreasonable Failure To Avoid An Injury - Defined

[400.9](#) Unreasonable Assumption Of Risk - Defined

[400.10](#) Comparative Fault - Released Party - Essentials for Finding Fault of Released Party

[400.11](#) Comparative Fault – Concert of Action

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400.1 Fault - Defined. In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards [the person] [the property] of the actor or of another which constitutes [negligence] [recklessness] [subjects a person to strict tort liability] [breach of warranty] [unreasonable assumption of risk not constituting an enforceable express consent] [misuse of a product for which the defendant otherwise would be liable] [unreasonable failure to avoid an injury] [unreasonable failure to mitigate damages].

Authority

Iowa Code section 668.1

Comment

Note: Select the particulars applicable to the case.

400.2 Comparative Fault. Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the [plaintiff] [defendant(s)] [third party defendant(s)] [persons who have been released] 1 and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages. Defendants (name) and (name) are to be treated as a single party for the purpose of determining their percentage of fault.
2

Authority

Iowa Code section 668.3(3)

Comment

Note: 1. Select the appropriate phrases. It is suggested that the names of the persons be used along with the position in the lawsuit, i.e. "Plaintiff, George Jones," or "James Jones, who has just been released."

Note: 2. Use only where the Court has determined two or more persons are to be considered as a single party. See Iowa Code section 668.3(2)(b). For example: The owner and driver of a motor vehicle.

400.3 Comparative Fault - Effects Of Verdict. After you have compared the conduct of all parties, if you find the plaintiff, _____, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, _____, cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

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Iowa Code sections 668.1, 668.3(5), 668.5(1), R.C.P. 239
McIntosh v. Barr, 397 N.W.2d 516 (Iowa 1986)
Reese v. Werts, 379 N.W.2d 1 (Iowa 1985)
Polyzer v. McGraw, 360 N.W.2d 748, 753 (Iowa 1985)
Madison v. Colby, 348 N.W.2d 202 (Iowa 1984)
Fuller v. Buhrow, 292 N.W.2d 672 (Iowa 1980)

Comment

Note: 1. Where consortium claims are involved, the fault of the person whose injury or death provides the basis for the consortium claim does bar or reduce the consortium recovery. Iowa Code section 668.3(1)(b), overturning Schwennen v. Abell, 430 N.W. 2d 98 (Iowa 1988).

Note: 2. When the jury will be asked to allocate fault among more than two "parties" as defined in Iowa Code section 668.2, add: If you assign to a party less than 50% of the total fault, that party will only be liable to the extent of the percentage of fault assigned by you. Where concert of action among two or more parties is alleged, see Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2007).

Note: 3. When there is more than one defendant, plaintiff can claim the entire amount of [earning capacity] [medical expenses] [other economic damages] awarded to the plaintiff from any defendant whose percentage of fault is found by you to be 50% or more.

Note: 4. If the jury is asked to compare fault of a third party defendant or more than one defendant, add; I will order the [defendants] [and third party defendant] to contribute to the payment of damages awarded on the basis of the percentages of fault you insert in your answers to the questions at the end of these instructions.

Note: 5. When there is a settling party, add: If you assign a percentage of fault to the settling party , I will reduce the amount of plaintiff's recovery by that percentage.

Caveat: The instruction must be modified where vehicle damage claims covered by Stuart v. Pilgrim, 247 Iowa 709, 74 N.W.2d 212 (Iowa 1956) are involved.

Rev. 12/07

400.4 Comparative Fault - No Imputation Of Fault. When you consider (claimant)'s claim for [loss of consortium in actions filed on or before July 1, 1997] [injuries received as a passenger] [motor vehicle damage] you will not charge (claimant) with the fault of (name). Also, the fault of (name) shall not be considered in the 100% total of casual fault of (claimant)'s damages and I will not reduce the damages awarded to (claimant).

Authority

Consortium - Schwennen v. Abell, 430 N.W.2d 98 (Iowa 1988)

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Owners claim for personal injury or damages to vehicle driven by another - Phillips v. Foster, 252 Iowa 1075, 109 N.W.2d 605 (1961); Stuart v. Pilgrim, 247 Iowa 709, 74 N.W.2d 212 (1956)

Comment

Note: 1. If the owner is a passenger and an issue is raised as to [his] [her] control of the vehicle, this instruction must be adapted to the situations discussed in Phillips v. Foster. It is not applicable where owner has right of control arising from certain relationship, such as principal and agent, master and servant, partnership or joint venture mentioned in Stuart v. Pilgrim.

Note: 2. In actions filed after July 1, 1997, damages for loss of services, companionship, society, or consortium will be barred or diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis for the damages. Iowa Code section 668.3(1)(b), overturning Schwennen v. Abell, 430 N.W. 2d 98 (Iowa 1988).
10/97

400.5 Comparative Fault - Single Plaintiff - Essentials For Recovery. The Plaintiff claims the defendant was at fault in [one or more of] the following particular(s):

[Insert the grounds of fault pleaded and supported by the evidence.]

These grounds of fault have been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove [use the appropriate elements from the marshalling instructions in relevant chapters].
2. The defendant's fault was a cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. _____, _____, and _____.

Rev. 09/10

400.6 Comparative Fault - Single Defendant - Essentials For Defense. The defendant claims the plaintiff was at fault in one or more of the following particular(s):

(Insert the grounds of fault pleaded and supported by the evidence.)

These grounds of fault have been explained to you in other instructions.

The defendant must prove both of the following propositions:

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1. The plaintiff was at fault. In order to prove fault, the defendant must prove (use the appropriate elements from the marshalling instruction in relevant chapters).
2. The plaintiff's fault was a cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved [his] [her] defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

Rev. 09/10

400.7 Comparative Fault - Mitigation. Defendant claims plaintiff was at fault for failing to mitigate [his] [her] damages by not [exercising ordinary care to obtain reasonable medical treatment] [exercising ordinary care to follow medical advice and treatment] [exercising ordinary care (specify manner in which defendant claims plaintiff had a duty to reduce damages)].

Plaintiff has a duty to exercise ordinary care to reduce, minimize or limit [his] [her] damages. However, plaintiff has no duty to do something that is unreasonable under the circumstances, such as [undergo serious or speculative medical treatment] [undertake action which is unreasonably expensive or intrusive] [undertake action which imposes unreasonable inconvenience].

To prove defendant's claim of failure to mitigate, [he] [she] must prove all of the following:

1. There was something plaintiff could do to mitigate [his] [her] damages;
2. Requiring plaintiff to do so was reasonable under the circumstances;
3. Plaintiff acted unreasonable in failing to undertake the mitigating activity; and
4. Plaintiff's failure to undertake the mitigating activity caused an identifiable portion of [his] [her] damages.

If the defendant has proved all of these numbered propositions, then defendant has proved this defense, and you shall assign a percentage of fault to the plaintiff for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict. If the defendant has failed to prove one or more of these numbered propositions, then defendant has not proved plaintiff failed to mitigate [his] [her] damages.

Authority

Iowa Code section 668.1

Greenwood v. Mitchell, 621 N.W.2d 200 (Iowa 2001)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Shewry v. Heuer, 255 Iowa 147, 121 N.W.2d 529 (1963)

Updegraff v. City of Ottumwa, 210 Iowa 382, 226 N.W.2d 928 (1929)

White v. Chicago & N.W. Ry. Co., 145 Iowa 408, 124 N.W. 309 (1910)

Bailey v. City of Centerville, 108 Iowa 20, 78 N.W. 831 (1899)

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Welter v. Humbolt County, 461 N.W.2d 335 (Iowa App. 1990)

Comment

Note: Before submitting a mitigation instruction, the Court must first determine that the defendant presented "substantial evidence" on each of the four (4) elements. Also, there must be evidence of "an identifiable portion of damages" that plaintiff could have mitigated and the jury not left to speculate. Greenwood v. Mitchell, at 205-207.

Special interrogatories in the verdict form are to be used to comply with Greenwood v. Mitchell.

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400.8 Unreasonable Failure To Avoid An Injury - Defined. A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

In this case defendant claims that plaintiff unreasonably failed to take action to avoid an injury because:

(Set out the specifications.)

Authority

Iowa Code section 668.1

Olson v. Prosoco, 522 N.W.2d 284 (Iowa 1994)

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)

Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)

Comment

Note: Use this instruction only where the failure to avoid injury occurred after the alleged fault of the party for whom this Instruction is given.

400.9 Unreasonable Assumption Of Risk - Defined. The defendant claims that plaintiff unreasonably assumed the risk by:

(Set out the particulars.)

To prove this defense, the defendant must prove all of the following propositions:

1. The plaintiff knew the risk was present.
2. The plaintiff understood the nature of the risk to [himself] [herself].
3. Nevertheless, the plaintiff unreasonably, freely and voluntarily took the risk.

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4. The plaintiff's assumption of the risk was a cause of plaintiff's damage.

If the defendant has failed to prove any of these propositions, the defendant has not proved this defense. If the defendant has proved all of these propositions, then you will assign a percentage of fault against the plaintiff and include it in the total percentage of fault, if any, found by you in your answers to the special verdicts.

Authority

Iowa Code section 668.1
Martin v. Hedding, 373 N.W.2d 486 (Iowa 1985)
Hughes v. Magic Chef, Inc., 288 N.W.2d 542, 548 (Iowa 1980) (Court's emphasis)
Rosenau v. City of Estherville, 199 N.W.2d 125 (Iowa 1972)
 Restatement (Second) of Torts, Section 496A, et. seq. Section 496G
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: This instruction should not be used, and assumption of risk is not available as a separate defense, in cases where contributory negligence is available under Chapter 668 of the Code. In strict liability cases, assumption of risk is an available defense. Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992).

Rev. 09/10

400.10 Comparative Fault - Released - Essentials for Finding Fault of Released Party. The defendant claims that (released party) was at fault in [one or more of] the following particular(s):

These grounds must prove all of the following propositions:

1. (Released party) was at fault. In order to prove fault, the defendant must prove [use the appropriate elements from the marshaling instructions in relevant chapters].
2. (Released party's) fault was a cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, you cannot assign any percentage of fault to (released party). If the defendant has proved both of these propositions, then you will assign a percentage of fault against(released party) and include the (released party)'s fault in the total percentage of fault found by you in answering the special verdicts.

Authority

Beyer v. Todd's Flying Service, ___ N.W.2d ___ (Iowa 1999).
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

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400.11 - COMPARATIVE FAULT - CONCERT OF ACTION. Whenever two or more persons commit a negligent act(s) in concert, each becomes subject to liability for the act(s) of others as well as for his/her own act(s).

In order for Plaintiff to prove Defendants acted in concert, Plaintiff must prove (one of) the following proposition(s): (Select either 1(a) or 1(b) or both as applicable).

1(a). Defendant 1 (name) and Defendant 2 (name) agreed and acted in cooperation in a particular line of negligent conduct. Such agreement to act in concert need not be expressed in words but may be implied and understood to exist from the conduct itself; or

1(b). Defendant 2 (name) knew that Defendant 1' (name) (conduct) would be negligent and gave substantial assistance or encouragement to Defendant 1 to act negligently. If Defendant 2's (name) encouragement or assistance was a substantial factor, not just a slight factor in causing the resulting negligence, Defendant 2 is responsible for the consequences of Defendant 1's act.

If the Plaintiff failed to prove (one of) the proposition(s) above, the Plaintiff has not established Defendant 1 and Defendant 2 acted in concert. If the Plaintiff did prove the above proposition(s), then you will consider the defense of _____ as explained in instruction no. _____.

Authority

Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2007)
 Restatement (Second) of Torts §876.

Comment

1. Only those Defendants among multiple Defendants who are alleged to have acted in concert should be named in this instruction.
2. Where more than one combination of multiple Defendants acting in concert is alleged, a separate instruction must be used for each combination of Defendants.
3. For those actions involving intentionally tortuous conduct, Paragraph 1(a) should be modified to include a reference to the tortuous conduct in place of the negligent conduct.
4. In order for the rule stated in clause 1(a) to be applicable, it is essential that the conduct of Defendant 2 be in itself tortuous.
5. The Court in Reilly v. Anderson (cited above) determined that defendants acting in concert have joint and several liability, superseding the directive of 668.4 which provides defendants with less than 50 percent fault are not jointly and severally liable. Care should be taken that the instructions on joint and several liability under 668.4 (e.g. uniform jury instruction 400.3) and for defendants acting in concert (e.g. uniform jury instruction 400.11) do not conflict or confuse.

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CHAPTER 500

INDEPENDENT CONTRACTOR

[500.1](#) Liability Of Person Engaging Services Of Independent Contractor - Essentials For Recovery

[500.2](#) Liability Of Person Engaging Services Of Independent Contractor - Duty Of Care To Employees Of Independent Contractor

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[500.8](#) Liability Of Person Engaging Services Of Independent Contractor - Work Involving Illegal Act - Essentials For Recovery

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500.1 Liability Of Person Engaging Services Of Independent Contractor - Essentials For Recovery. In order to establish liability on the part of one who hires an independent contractor for acts or omissions of that independent contractor, the plaintiff must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
 - a. Defendant failed to keep the premises in a reasonably safe condition for an employee of an independent contractor.
 - b. The work was likely to create a peculiar risk in the absence of special precautions and defendant failed to take the precautions.
 - c. The danger was normal to the work and defendant failed to take pre-cautions against the danger.
 - d. Defendant kept control over a particular part of the work and failed to use ordinary care in controlling that work.
 - e. Defendant was under a legal or contractual duty to provide a specified safeguard against danger and failed to do so.
2. The negligence of the defendant was a cause of the plaintiff's damage.
3. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Downs v. A. & H. Constr., Ltd., 481 N.W.2d 520 (Iowa 1992)
Clausen v. R. W. Gilbert Const. Co., Inc., 309 N.W.2d 462 (Iowa 1981)
Lunde v. Winnebago Industries, Inc., 299 N.W.2d 473 (Iowa 1980)
Giarratano v. Weitz Company, 259 Iowa 1292, 147 N.W.2d 824 (1967)
Restatement (Second) of Torts, Sections 409-427B
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Submit only those acts that have evidentiary support. If special precautions are claimed, set forth in b. and c. the special precautions claimed.

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500.2 Liability Of Person Engaging Services Of Independent Contractor - Duty Of Care To Employees Of Independent Contractor. Persons who hire an independent contractor to do work on their property have the duty to exercise ordinary care to keep portions of the property under their control in a reasonably safe condition for the employees of the independent contractor.

A failure to do so is negligence.

Authority

Greenwell v. Meredith Corporation, 189 N.W.2d 901 (1971)

Comment

Note: To amplify this instruction see Chapter 900, Premises Liability.

500.3 Liability Of Person Engaging Services Of Independent Contractor - Work Dangerous In Absence Of Special Precautions. Persons who hire an independent contractor to do work which they should recognize as likely to create a peculiar risk of harm to others while the work is being done have the duty to exercise ordinary care to take special precautions.

A "peculiar risk" of harm exists only where some special danger results from the nature of the work done and which calls for special precautions. "Peculiar" does not mean that the risk must be one which is abnormal to the type of work done or that it must be an abnormally great risk. It refers to a special, exceptional, unusual, recognizable open danger arising out of the work itself which exists at all times.

This duty continues even though the contract provides for others to take adequate precautions, and the independent contractor agrees and assumes all liability for failing to do so. Such a contract does not relieve defendants from their duty to take such precautions where third persons are concerned.

A violation of this duty is negligence.

Authority

Clausen v. R. W. Gilbert Const. Co., Inc., 309 N.W.2d 462 (Iowa 1981)

Lunde v. Winnebago Industries, Inc., 299 N.W.2d 473 (Iowa 1980)

Restatement of Torts (Second), Section 416

500.4 Liability Of Person Engaging Services Of An Independent Contractor - Inherently Dangerous Work. Persons who hire an independent contractor to do work have the duty to exercise ordinary care to take reasonable precautions to protect others against special dangers when:

1. The work involves a special danger to others normal to the work.
2. The persons know or have reason to know the special danger is normal to the work.

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The danger must arise from the normal and usual method of doing the work, and it must be present at all times. This duty does not apply to dangers arising from negligence of the independent contractor in the method or manner of carrying out the work.

A violation of this duty is negligence.

Authority

Clausen v. R. W. Gilbert Const. Co., Inc., 309 N.W.2d 462 (Iowa 1981)
Lunde v. Winnebago Industries, Inc., 299 N.W.2d 473 (Iowa 1980)
Restatement (Second) of Torts, Sections 413, 416, 427

500.5 Liability Of Person Engaging Services Of Independent Contractor - Negligence In Exercising Control Retained By Such Person. Persons who hire an independent contractor, but who keep control of a particular part of the work, have the duty to use ordinary care in exercising such control.

"Keeping control" means keeping some degree of control over the way the work is done. This includes the right of supervision so that the independent contractor is not entirely free to control the way the work is done. It is not enough to have only a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations or changes.

A violation of this duty is negligence.

Authority

Downs v. A. & H. Constr., Ltd., 481 N.W.2d 520 (Iowa 1992)
Giarratano v. Weitz Co., 259 Iowa 1292, 147 N.W.2d 824 (1967)
Restatement (Second) of Torts, Section 414

500.6 Liability Of Person Engaging Services Of Independent Contractor - Nondelegable Duty Imposed By Statute, Ordinance Or Contract. Persons who hire an independent contractor and who are under a duty to provide specified safeguards or precautions for the safety of others by [statute] [ordinance] [contract] cannot escape responsibility by delegating it to an independent contractor.

The defendant had a duty to [specify the nondelegable duty and how it arose].

A violation of this duty is negligence.

Authority

Giarratano v. Weitz Co., 259 Iowa 1292, 147 N.W.2d 824 (1967)
Restatement (Second) of Torts, Section 424

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Comment

Caveat: This instruction should be amplified to apply the above statement of the law to the issues and parties.

Caveat: A breach of an administrative standard is not the breach of a statutory duty or ordinance. Porter v. Iowa Power And Light Co., 217 N.W.2d 221, 237 (Iowa 1974)

500.7 Liability Of Person Engaging Services Of Independent Contractor - Work Likely To Cause Nuisance Or Trespass - Essentials For Recovery. In order to establish liability of (name or party) for acts of (independent contractor) resulting in [the creation of a [public] [private] [nuisance] [trespass upon the property of another], the plaintiff must prove all of the following propositions:

1. (The independent contractor) [created a nuisance] [trespassed upon the land of (plaintiff)] in one or more of the following ways:

(a) (conduct alleged to constitute nuisance or trespass);

2. The defendant [knew or should have known a [nuisance] [trespass] would result] [if done in an ordinary manner] [unless special precautions were taken]] [received notice during the progress of the work a nuisance existed] [trespass was occurring].

3. The [nuisance] [trespass] was a cause of damage to the plaintiff.

4. The nature and extent of the plaintiff's damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

[If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of those propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Shannon v. Missouri Valley Limestone Company, 255 Iowa 528, 122 N.W.2d 278 (1963)
 Restatement (Second) of Torts, Section 427B
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: This section must be amplified by instructing on nuisances. This same instruction can also be used for work likely to cause a trespass.

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500.8 Liability Of Person Engaging Services Of Independent Contractor - Work Involving Illegal Act.- Essentials For Recovery. In order to establish the liability of (name of party) for the fault of (independent contractor) during the performance of an illegal act, the plaintiff must prove all of the following propositions:

1. (The independent contractor) was acting illegally in one or more of the following ways:
 - a. (conduct alleged to be illegal)
2. (Name of party) knew or should have known (the independent contractor) would be acting illegally in carrying out the work.
3. (The independent contractor) was at fault in one or more of the following ways:
 - a. (conduct alleged to constitute fault)
4. The fault of (the independent contractor) was a cause of plaintiff's damage.
5. The nature and extent of the damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

[If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of those propositions, you will consider the defense of _____ as explained in Instruction No. _____].

Authority

Hough v. Central States Freight Service, Inc., 222 Iowa 548, 269 N.W.1 (Iowa 1936)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

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| 321.370 | 600.69 |
| 321.370 | 600.70 |
| 321.372(3) | 600.77 |
| 321.372(3) | 600.78 |
| 321.372(4) | 600.77 |
| 321.377 | 600.6 |
| 321.381 | 600.99 |
| 321.383 | 600.87 |
| 321.383 | 600.88 |
| 321.383(2) | 600.88 |
| 321.384 | 600.81 |
| 321.384 | 600.84 |
| 321.384 | 600.85 |
| 321.384 | 600.86 |
| 321.384 | 600.87 |
| 321.384 | 600.92 |
| 321.384(1) | 600.79 |
| 321.384(2) | 600.79 |
| 321.385 | 600.80 |
| 321.386 | 600.81 |
| 321.387 | 600.82 |
| 321.387 | 600.84 |
| 321.388 | 600.82 |
| 321.389 | 600.82 |
| 321.390 | 600.82 |
| 321.392 | 600.83 |
| 321.393 | 600.83 |
| 321.394 | 600.84 |
| 321.395 | 600.85 |
| 321.396 | 600.85 |
| 321.397 | 600.86 |
| 321.398 | 600.87 |
| 321.402 | 600.81 |
| 321.402 | 600.89 |
| 321.403 | 600.81 |
| 321.403 | 600.90 |
| 321.404 | 600.34 |
| 321.404 | 600.91 |

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| | |
|-------------------|---------|
| 321.405 | 600.91 |
| 321.409 | 600.99 |
| 321.409(1) | 600.80 |
| 321.409(2) | 600.80 |
| 321.415 | 600.79 |
| 321.415 | 600.81 |
| 321.415 | 600.92 |
| 321.417 | 600.79 |
| 321.418 | 600.79 |
| 321.418 | 600.81 |
| 321.419 | 600.79 |
| 321.419 | 600.81 |
| 321.420 | 600.79 |
| 321.420 | 600.81 |
| 321.421 | 600.79 |
| 321.421 | 600.81 |
| 321.422 | 600.81 |
| 321.422 | 600.82 |
| 321.422 | 600.93 |
| 321.423 | 600.81 |
| 321.423 | 600.93 |
| 321.423(6) | 600.88 |
| 321.430(1) | 600.94 |
| 321.430(2) | 600.94 |
| 321.430(3) | 600.94 |
| 321.430(4) | 600.94 |
| 321.431(1)(a),(b) | 600.95 |
| 321.431(2) | 600.95 |
| 321.431(3) | 600.95 |
| 321.431(4) | 600.95 |
| 321.431(5) | 600.95 |
| 321.432 | 600.96 |
| 321.432 | 600.97 |
| 321.433 | 600.41 |
| 321.433 | 600.42 |
| 321.433 | 600.99 |
| 321.434 | 600.99 |
| 321.437 | 600.99 |
| 321.438 | 600.98 |
| 321.439 | 600.99 |
| 321.440 | 600.99 |
| 321.445 | 600.100 |
| 321.446 | 600.100 |

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Introduction

The following rules of law are applicable to all of the instructions relating to the rules of the road unless otherwise noted in a particular instruction:

1. Absent legal excuse, a violation of statutory rules of the road or ordinances constitutes negligence per se or as a matter of law.

Authority

Machmer v. Fuqua, 231 N.W.2d 606, 607, (Iowa 1975)
Bangs v. Keifer, 174 N.W.2d 372, 374 (Iowa 1970)

2. In stating that a violation of a statutory provision is negligence, the rule should be clearly applied to the record.

Authority

McCoy v. Miller, 257 Iowa 1151, 1155, 136 N.W.2d 332, 335 (1965)

Speed Restrictions

600.1 Reasonable And Proper. Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this law is negligence.

Authority

Iowa Code section 321.285

Comment

Note: See: Iowa Code section 321.294 relating to minimum speed regulation.

12/86

600.2 Speed in Excess Of Statutory Limits. At the time and place, and with the motor vehicle involved in this case, any speed over _____* miles per hour was unlawful.

A violation of this law is negligence.

Authority

Iowa Code section 321.285

Comment

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Note: *Speeds for insertion are:

1. Business District - 20 miles per hour.
2. Residence District - 25 miles per hour
3. School District - 25 miles per hour.
4. Towing Vehicle - 40 or 55 miles per hour, depending on nature of towed
5. Suburban District - 45 miles per hour.
6. Rural District - 55 miles per hour from sunset to sunrise, 55 miles per hour from sunrise to sunset.
7. Fully controlled access, divided, multi-laned highways including interstate highways - urban 55 miles per hour if posted - rural 65 miles per hour.

Note: See: Iowa Code section 321.285(5) for exceptions when the maximum speed may be 50 miles per hour on secondary roads not surfaced with concrete or asphalt or as posted by appropriate signs. Also see: Iowa Code section 321.285(6) relating to 65 mile per hour speed limit on some highways including interstate highways.

6/01

600.3 Assured Clear Distance Ahead. No person shall drive any vehicle on a highway at a speed greater than will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen.

A violation of this law is negligence.

Authority

Iowa Code section 321.285
Snook v. Long, 241 Iowa 665, 668; 42 N.W.2d 76, 77 (1950)

12/86

600.4 Interstate And Comparable Highways.

1. At the time and place in question the speed of any vehicle over [55] [65] miles per hour was unlawful.
2. At the time and place in question the speed of any vehicle less than 40 miles per hour, road conditions permitting, was unlawful.

A violation of this law is negligence

Authority

Iowa Code section 321.285(6)

Comment

Note: Use paragraph 1. or 2. as may apply to the case.

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600.5 Truck Speed Limits. This instruction has been deleted.

Authority

93 Acts, chapter 47, section 14.

600.6 Bus Speed Limits. This Instruction has been deleted.

Authority

93 Acts, chapter 47, section 14. 6/01

600.7 Control - Common Law. A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

Authority

Matuska v. Bryant, 260 Iowa 726, 150 N.W.2d 716 (1967)

6/92

600.8 Control Of Vehicle - Statutory. A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

Authority

Iowa Code section 321.288(3)

Comment

Note: See: Iowa Code section 321.288 (1) through (6) for other applicable fact situations.

6/01

600.9 Duty To Use Ordinary Care Where Conditions Require Less Than Statutory Speed Limits. Road conditions may be such that speed should be less than the legal limit. Traffic laws call for the minimum of care and not the maximum. A driver should not operate a vehicle up to

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the legal speed limit of _____ if the circumstances are such that ordinary care requires a lesser speed.

A violation of this law is negligence.

Authority

Richards v. Begenstos, 237 Iowa 398, 408; 21 N.W.2d 23 (1945)
Iowa Code section 321.285

12/86

Driving On Right Side of Road - Overtaking and Passing, Etc.

600.10 Meeting And Turning To Right. Vehicles meeting each other on any road shall yield one-half of the road by turning to the right.

A violation of this law is evidence of negligence.

Authority

Iowa Code section 321.298
McMaster v. Hutchins, 255 Iowa 39, 120 N.W.2d 509 (1963)

Comment

Note: The use of this instruction may be infrequent in view of the broad coverage relative to driving on the right-hand side of the road in Iowa Code section 321.297, which also should be read for any applicable exceptions.

Note: Also applies to persons on horseback.

12/86

600.11 Driving On Right Half Of Road - Exceptions. A vehicle shall be driven on the right half of the road on all roads of sufficient width, except as follows:

1. When overtaking and passing another vehicle going in the same direction under the rules governing such movement.
2. When an obstruction makes it necessary to drive to the left of the center of the road. Any person doing so shall yield the right-of-way to all vehicles traveling in the opposite direction upon the open portion of the road within a distance which is an immediate danger.
3. On a road divided into three marked lanes for traffic under the rules which apply.
4. On a road restricted to one-way traffic.

A violation of this law is negligence.

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Authority

Iowa Code section 321.297(1)

Comment

Note: Use paragraphs 1., 2., 3., or 4. as may apply to the case
For the rules mentioned in paragraph 1., see Iowa Code sections 321.299 - 321.304.
For the rules mentioned in paragraph 3., see Iowa Code section 321.306.

600.12 Driving On The Right-Hand Side Of Road - Slow Moving Vehicle. Any vehicle going at less than the normal speed of traffic at the time and place and under the existing conditions shall be driven in the right-hand lane, if available, or as close as possible to the right-hand curb or edge of the road, except when overtaking and passing another vehicle going in the same direction, or when preparing for a left turn at an intersection, an alley, private road or driveway.

A violation of this law is negligence.

Authority

Iowa Code section 321.297(2)

600.13 Driving On Right-Hand Side Of Road - When Four Or More Lanes And Two-Way Traffic. A vehicle shall not be driven to the left of the center line of any road having four or more lanes for moving traffic and providing for two-way movement of traffic, except as follows:

1. When authorized by official traffic-control devices designating certain lanes to the left side of the center of the road for use by traffic not otherwise permitted to use such lanes.
2. When an obstruction exists making it necessary to drive to the left of the center of the road, provided, any person so doing shall yield the right-of-way to all vehicles traveling in the opposite direction upon the open portion of the road within such distance as to constitute an immediate danger.
3. In making a left turn into or from an alley, private road, or driveway.

A violation of this law is negligence.

Authority

Iowa Code section 321.297(3)

Comment

Note: Use paragraph 1., 2., or 3. as may apply to the case.

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600.14 Overtaking A Vehicle. The driver of a vehicle overtaking another vehicle going in the same direction shall pass to the left at a safe distance, and shall not drive to the right side of the road until safely clear of the overtaken vehicle.

A violation of this law is negligence.

Authority

Iowa Code section 321.299.

Comment

Note: See Iowa Code section 321.302 for exceptions where passing on right is permitted.

600.15 Limitations On Overtaking On The Left. A vehicle shall not be driven to the left side of the center of the road in overtaking and passing another vehicle going in the same direction unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of a vehicle approaching from the opposite direction or a vehicle overtaken.

The overtaking vehicle shall return to the right-hand side of the road before coming within three hundred feet* of a vehicle approaching from the opposite direction.

A violation of this law is negligence.

Authority

Iowa Code section 321.303

Comment

Note: *One hundred feet when the speed limit is thirty miles per hour or less.

12/86

600.16 Duty Of Passed Vehicle. The driver of a vehicle being passed shall give way to the right in favor of an overtaking vehicle and shall not increase the vehicle's speed until completely passed by the overtaking vehicle.

A violation of this law is negligence

Authority

Iowa Code section 321.299

6/00

600.17 Overtaking On The Right - Left-Turning Vehicle. The driver of a vehicle may overtake and pass on the right of another vehicle which is making or about to make a left turn.

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However, no person shall drive off the pavement or on the shoulder of the road in overtaking or passing on the right.

A violation of this law is negligence.

Authority

Iowa Code section 321.302

12/86

600.18 Overtaking On The Right - Multi-Lane Highway. The driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle going in the same direction, either on the left or on the right on a road with unobstructed pavement of sufficient width for four or more lanes of moving traffic when the movement can be made in safety. No person shall drive off the pavement or upon the shoulder of the road in overtaking or passing on the right.

A violation of this law is negligence.

Authority

Iowa Code section 321.302

12/86

600.19 Prohibited Passing. No vehicle shall overtake and pass another vehicle, or at any other time be driven to the left side of the road under the following conditions:

1. When approaching the crest of a grade or on a curve in the highway where the driver's view along the highway is obstructed for a distance of approximately 700 feet.
2. When approaching within 100 feet of any narrow bridge, viaduct, or tunnel, when sign posted, or when approaching within 100 feet of or traveling through any intersection or railroad grade crossing.
3. Where official signs are in place directing that traffic keep to the right, or a distinctive center line or off-center line is marked which directs traffic as declared in the sign manual adopted by the department of transportation.

A violation of this law is negligence.

Authority

Iowa Code section 321.304

Comment

Note: Use paragraphs 1., 2. or 3. as may apply to the case.

06/01

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600.20 One-Way Roads. On a road marked and signed for one-way traffic, a vehicle shall be driven only in the direction designated.

A violation of this law is negligence.

Authority

Iowa Code section 321.305

600.21 Traffic Islands. A vehicle traveling by a traffic island shall be driven only to the right of the island.

A violation of this law is negligence.

Authority

Iowa Code section 321.305

600.22 Backing Vehicle On Highway. No person shall drive a vehicle on a highway in reverse unless it can be done with reasonable safety. The driver shall yield the right of way to any approaching vehicle on the highway or intersecting highway which is close enough to constitute an immediate danger.

A violation of this law is negligence.

Authority

Iowa Code section 321.323

600.23 Roads Laned For Traffic. Whenever any road has been divided into three or more clearly marked lanes for traffic, the following rules in addition to all other consistent rules shall apply:

1. A vehicle shall be driven as nearly as possible entirely within a single lane and shall not be moved from the lane until the driver has seen that the movement can be made with safety.
2. On a road which is divided into three lanes, a vehicle shall be driven in the center lane only when overtaking and passing another vehicle where the road is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where the center lane is assigned exclusively to traffic moving in the direction the vehicle is going and is signed accordingly.
3. Official signs may be posted directing slow-moving traffic to use a designated lane, or assigning specific lanes to traffic moving in the same direction. Drivers of vehicles shall obey the directions of the sign.

A violation of this law is negligence.

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Authority

Iowa Code section 321.306

Comment

Note: Use paragraphs 1., 2. or 3. as may apply to the case.

600.24 Following Too Closely. The driver of a vehicle shall not follow another vehicle closer than is reasonable, considering the speed of the vehicles, the traffic and the condition of the highway.

A violation of this law is negligence.

Authority

Iowa Code section 321.307

600.25 Trucks And Towed Vehicles - Distance Requirements. The driver of a [truck] [vehicle] towing another vehicle outside of a business or residence district shall not follow within 300 feet of another [truck] [vehicle] towing another vehicle. This, however, shall not prevent overtaking and passing, nor shall it apply to any lane specifically designated for use of motor trucks.

A violation of this law is negligence.

Authority

Iowa Code section 321.308

600.26 Convoys - Distance Requirements. The driver of any vehicle pulling or towing another motor vehicle in convoy or caravan shall maintain at least 500 feet between the units of the convoy or caravan.

A violation of this law is negligence.

Authority

Iowa Code section 321.309

600.27 Drawbar Or Towing Arm - Required Equipment.
This instruction has been deleted.

6/01

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600.28 Limitations On Towing. A driver of a vehicle shall not tow any four-wheeled trailer with a steering axle, or more than one trailer or semitrailer, or both in combination.

A violation of this law is negligence.

Authority

Iowa Code section 321.310

Comment

Note: See: Iowa Code section 321.310 for exceptions for a motor home, multipurpose vehicle, motor truck, truck tractor, or road tractor and for farm tractors towing four-wheeled trailers, farm tractors and motor vehicles towing implements of husbandry, and wagon box trailers used by farmers in transporting produce, farm products or supplies hauled to and from market.

12/86

Turning And Starting And Signals On Stopping And Turning

600.29 Turning At Intersections.

1. The driver of a vehicle intending to turn right at an intersection shall make both the approach for a right turn and the turn as close as practical to the right-hand curb or edge of the road.
2. The driver of a vehicle intending to turn left at an intersection shall approach the turn in that portion of the right half of the road nearest the center line. After entering the intersection, the left turn shall be made by leaving the intersection to the right of the center line of the road being entered.
3. The driver of a vehicle intending to make a left turn at an intersection from a two-way street onto a one-way street shall approach the turn in that portion of the right half of the road nearest the center line by passing to the right of the center line where it enters the intersection.
4. The driver of a vehicle intending to turn left from a one-way street onto a two-way street at an intersection shall make the turn by leaving the intersection and passing to the right of the center line of the street being entered.

A violation of this law is negligence

Authority

Iowa Code section 321.311

Comment

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Note: Paragraph 4 of section 321.311 allows local authorities to modify any of the above rules by markers, buttons or signs.

Note: Use paragraphs 1., 2., 3. or 4. as may apply to the case.

6/00

600.30 Turning On Curve Or Crest Of Hill. A driver shall not make a U-turn [upon a curve] [on the approach to a curve] or [near the crest of a grade or hill], where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

A violation of this law is negligence.

Authority

Iowa Code section 321.312

12/86

600.31 Starting Parked Vehicle. A driver shall not move a vehicle which is stopped, standing, or parked unless the movement can be made with reasonable safety.

A violation of this law is negligence.

Authority

Iowa Code section 321.313

12/86

600.32 Turning From A Direct Course. A driver shall not turn a vehicle from a direct course on a highway unless the movement can be made with reasonable safety. [And then only after sounding the horn if any pedestrian may be affected by the movement.]*

A violation of this law is negligence.

Authority

Iowa Code section 321.314

Comment

Note: See: Ruby vs. Easton, 207 N.W.2d 10 (Iowa 1973) for definition of "direct course."

Note: *Use only if a pedestrian is involved. Crow vs. Weller, 197 N.W.2d 352 (Iowa 1972).

12/86

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600.33 When Signal Required - Continuous - Methods Of Giving. A driver shall not turn a vehicle from a direct course on a road unless the movement can be made with reasonable safety and after giving an appropriate signal if any other vehicle may be affected by the movement. The signal to turn [right] [left] must be continuously given during at least the last 300 feet* travelled by the vehicle before turning. The signal may be given by hand or by a mechanical or electrical turn signal. Turn signals or turn signal devices shall display a white, yellow or amber lamp or lamps on the front of the vehicle, and a red, yellow or amber lamp or lamps on the rear of the vehicle. These signal devices shall be capable of clearly indicating any intention to turn either to the right or to the left, and shall be visible and understandable during both daylight and darkness from a distance of at least 100 feet from the front and rear of the vehicle. Hand signals shall be given: [by extending the hand and arm upward from the left side of the vehicle for a right-hand turn] [by extending hand and arm straight out from the left side of the vehicle for a left-hand turn].

A violation of this law is negligence.

Authority

Iowa Code sections 321.314, 321.315, 321.317, 321.318

Comment

Note: See: Ruby vs. Easton, 207 N.W.2d 10 (Iowa 1973) for definition of "direct course."

Note: *100 feet when the speed limit is 45 m.p.h. or less.

12/86

600.34 Stopping. A driver shall not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give the signal. The signal shall be given by either extending the hand and arm downward from the left side of the vehicle or by a brake light constructed and located on the vehicle as to give a signal of intention to stop. The brake light shall be red or yellow and shall be plainly visible and understandable in normal sunlight and at night from a distance of 100 feet to the rear. The brake light shall not project a glaring or dazzling light.*

A violation of this law is negligence.

Authority

Iowa Code sections 321.316, 321.318, 321.404

12/86

600.35 Approaching Or Entering Intersection. When two vehicles enter an intersection at approximately the same time so that if both proceed without regard to the other a collision is reasonably to be expected, the vehicle on the left shall yield the right-of-way to the vehicle on the right.

A violation of this law is negligence.

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Authority

Iowa Code section 321.319

Comment

Note: The foregoing rule is modified at through highways and otherwise as stated in Iowa Code chapter 321, See: sections 321.319, 321.321 and 321.322.

Note: For definition of 'intersection' and 'right-of-way' see Iowa Code sections 321.1(33) and 321.1(64).

Note: See: Glandon vs. Fiala, 261 Iowa 750, 156 N.W.2d 327 (1968) which states that possession of directional right-of-way is not an absolute right but is rather a relative one and is qualified by statute requiring a person operating the motor vehicle to have it under control and reduce its speed to a reasonable and proper rate when approaching and traversing an intersection.

6/01

600.36 Traffic Control Signals. When signals display different colored lights:

1. Vehicles facing a signal displaying a green light may go straight, turn right or turn left through the intersection unless specifically prohibited. However, vehicles shall yield the right-of-way to other vehicular and pedestrian traffic lawfully within the intersection at the time the signal is exhibited.
2. Vehicles facing a signal displaying a circular yellow or yellow arrow light are warned that the related green movement is stopped and vehicles should no longer proceed into the intersection and shall stop. If the stop cannot be made safely, the vehicle may go cautiously through the intersection.
3. Vehicles facing a signal displaying a circular red light shall stop and remain stopped [until an indication to proceed by signal is shown] [the signal is green]. However, unless prohibited by a sign, vehicles may cautiously enter the intersection to make a right turn from the right lane of traffic, or a left turn from the left lane of a one-way street to left-most lane of traffic on a one-way street. Any turn shall be made so that it does not interfere with other vehicles or pedestrians lawfully using the intersection.
4. Vehicles facing a signal displaying a green arrow light alone or with another official control signal may cautiously enter the intersection and go in the direction indicated by the arrow, but shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection. Stopping means stopping at the first opportunity at either the clearly marked stop line or before entering the cross-walk or before entering the intersection.

A violation of this law is negligence.

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Authority

Iowa Code section 321.257

Comment

Note: Use paragraphs 1., 2., 3. or 4. as they may apply to the case.

Note: For application of Iowa Code section 321.257 to pedestrians see Instruction 600.45.

12/86

600.37 Left Turns - Yielding. The driver of a vehicle intending [to turn left within an intersection] [into an alley] [private road] [driveway] shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or so close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.

A violation of this law is negligence.

Authority

Iowa Code section 321.320

12/86

600.38 Entering Through Highways. The driver of a vehicle shall stop or yield at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway that they are a danger. Then the driver, having yielded, may proceed to cautiously and carefully enter the through highway.

A violation of this law is negligence.

Authority

Iowa Code section 321.321

Comment

Note: See: Iowa Code section 321.1(81) for definition of "through highway," section 321.345 for "stop at through highway", and section 321.350 for "primary roads" as "through highways".

6/01

600.39 Vehicles Entering Stop Or Yield Intersection.

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1. The driver of a vehicle approaching a stop intersection indicated by a stop sign or a flashing red light shall stop at the first opportunity at either the clearly marked stop line, or before entering the crosswalk, or before entering the intersection, or at a point nearest the intersecting road where the driver has a view of approaching traffic on the intersecting road before entering the intersection. Before going ahead, the driver shall yield the right-of-way to any vehicle in the intersecting road which has entered the intersection or which is approaching so closely that it is an immediate danger during the time the driver is moving through the intersection.
2. The driver of a vehicle approaching a yield sign shall slow to a speed reasonable for the existing conditions. If required for safety, it shall stop at the first opportunity at either the clearly marked stop line, before entering the cross-walk, before entering the intersection, or at a point nearest the intersecting road where the driver has a view of approaching traffic. After slowing or stopping, the driver shall yield the right-of-way to any vehicle on the intersecting road which has entered the intersection and is approaching so closely as to be an immediate danger while the driver is moving through the intersection.

A violation of this law is negligence.

Authority

Iowa Code sections 321.322, 321.257(e)

Comment

Note: Use paragraphs 1. or 2. as may apply to the case

6/01

600.40 Operation On Approach Of Emergency Vehicles. Upon the immediate approach of [an emergency vehicle displaying a red light or red and blue lights] [an emergency vehicle of a fire department displaying a blue light] or [an emergency vehicle is giving an audible signal by siren, exhaust whistle or bell] the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection. The driver shall stop and remain stopped until the emergency vehicle has passed, except when otherwise directed by a police officer. ['Red light'] ['Blue light'] means a lighting device that, when illuminated, exhibits a solid flashing [red] [blue] light.

A violation of this law is negligence.

Authority

Iowa Code section 321.324

Comment

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Note: See: Iowa Code section 321.1(6) and 761 Iowa Administrative Code 451.2(321), for definition of emergency vehicle, and Iowa Code section 321.231 for duties of drivers

6/01

600.41 Any Authorized Emergency Vehicle. When [responding to an emergency call] [pursuing an actual or suspected perpetrator of a felony] [responding to an incident dangerous to the public] [responding to a fire alarm] the driver of an authorized emergency vehicle may [park] [disregard minimum distances for signaling before turning], unless doing so would be reckless.

If you find the defendant was driving an authorized emergency vehicle and was [responding to an emergency call] [pursuing an actual or suspected felon] [responding to an incident dangerous to the public] [responding to a fire alarm] when the driver [parked] [failed to signal for the required distance before turning], then you will proceed to Instruction No ____, to determine if the defendant was reckless, and answer the appropriate interrogatory in the verdict form.

Authority

Iowa Code section 321.231(2)

Bell v. Comm. Ambulance Ser. Agency, 579 N.W.2d 330 (Iowa 1998)

Hoffert v. Luze, 578 N.W. 2d 681 (Iowa 1998)

Comment

Caveat: The Iowa Supreme Court has not specifically addressed the issue of whether any case not governed by Chapter 321.231 would fall within the immunity found in Chapter 670.4(11) or, alternatively, would be subject to common law negligence rules.

Also, the committee does not take any position on which party has the burden of proving the applicability of Chapter 321.231. See, Connolly v. Dallas County, 465 N.W.2d 875 (Iowa 1991).

Note: If the operation of the emergency vehicle does not fall within the immunities granted by Iowa Code section 321.231(2)(a) or (b), this instruction should not be used.

Note: If the emergency vehicle is a fire department, police or ambulance vehicle, see 600.42.

Note: Use only the bracketed alternatives supported by the evidence.

Note: Use a marshaling instruction for recklessness in connection with this instruction.

Note: If there is a fact question regarding whether or not the emergency vehicle was using either an audible or visual signal at the time of the accident see Chapter 321.231(4) regarding the effect on these immunities.

6/00

600.42 Fire Department, Police And Ambulance Vehicles. When [responding to an emergency call] [pursuing an actual or suspected perpetrator of a felony] [responding to an

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incident dangerous to the public] [responding to a fire alarm], the driver of a [fire department vehicle] [police vehicle] [ambulance] may [park] [disregard minimum distances for signaling before turning] [proceed past a stop light or stop sign] [exceed the maximum speed limit] unless doing so would be reckless.

If you find the driver of the [fire department vehicle] [police vehicle] [ambulance] was [responding to an emergency call] [pursuing an actual or suspected felon] [responding to an incident dangerous to the public] [responding to a fire alarm] when the driver [parked] [failed to signal for the required distance before turning] [proceeded past a stop light or stop sign] [exceeded the maximum speed limit] then you will proceed to Instruction No. ___ to determine if the defendant was reckless, and answer the appropriate interrogatory in the verdict form.

Authority

Iowa Code section 321.231(2), (3)

Bell v. Community Ambulance Service Agency for Northern Des Moines County, 579 N.W. 2d 330 (Iowa 1998)

Hoffert v. Luze, 578 N.W.2d 681 (Iowa 1998)

Comment

Caveat: The Iowa Supreme Court has not specifically addressed the issue of whether any case not governed by Chapter 321.231 would fall within the immunity found in Chapter 670.4(11) or, alternatively, would be subject to common law negligence rules.

Also the committee does not take any position on which party has the burden of proving the applicability of Chapter 321.231. See Connolly v. Dallas County 465 N.W.2d 875 (Iowa 1991).

Note: If the operation of the emergency vehicle does not fall within the immunities granted by Iowa Code section 321.231 (2)(a) or (b) or (3)(a) or (b) this instruction should not be used.

Note: If the emergency vehicle is other than a fire department, police or ambulance vehicle see 600.41.

Note: Use only the bracketed alternative supported by the evidence.

Note: Use a marshaling instruction for recklessness in connection with this instruction.

Note: If there is a fact question regarding whether or not the vehicle was using either audible or visual signal at the time of the accident, please see Chapter 321.231(4) regarding the effect on the these immunities.

6/00

600.43 Reckless. “Reckless” means intentionally doing an unreasonable act in disregard of a risk that is known or so obvious that it should have been known making it highly probable that harm would follow.

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Authority

Hoffert v. Luze, 578 N.W.2d 681 (Iowa 1998)

Pedestrians' Rights And Duties

600.45 Traffic Control Signals - Pedestrians. Signal lights shall regulate pedestrian traffic in the following manner:

1. A pedestrian facing a steady yellow light at an intersection is warned that there is insufficient time to cross the intersection, and any pedestrian starting to cross the road shall yield the right of way to vehicles.
2. A pedestrian facing a red light shall not enter the road unless the pedestrian can safely cross the road without interfering with vehicular traffic.
3. A 'don't walk' light means pedestrian traffic facing the signal shall not start to cross the road in the direction of the signal, and pedestrian traffic in the crossing shall proceed to a safety zone.
4. A 'walk' light means that pedestrian traffic facing the signal may proceed to cross the road in the direction of the signal.

A violation of this law is negligence.

Authority

Iowa Code section 321.257

Comment

Note: Use paragraphs 1., 2., 3., or 4. as may apply to the case.

Note: For application of Iowa Code section 321.257 to vehicles, see Instruction 600.36.

6/99

600.46 Crosswalk - Definition. The term crosswalk means:

1. Any portion of a road distinctly marked for pedestrian crossing by lines or other markings on the surface; or
2. The portion of the road connecting the sidewalks on either side of the intersection.

Authority

Iowa Code section 321.1(16)

6/01

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600.47 Pedestrian's Duty Of Care In A Crosswalk. A pedestrian in a crosswalk may rely upon an approaching driver's duty to yield, but the pedestrian still must exercise ordinary care to avoid being struck by a motor vehicle which was seen or should have been seen. Whenever possible, pedestrians shall walk on the right half of the crosswalk.*

A violation of this law is negligence.

Authority

Van Tresse v. Holloway, 234 N.W.2d 876, 878 (Iowa 1975)
Iowa Code section 321.330

Comment

Note: *Delete last sentence if this is not an issue.

12/86

600.48 Crossing At Other Than Crosswalk.

1. Any pedestrian crossing a road at any point other than a crosswalk shall yield the right of way to all vehicles on the road.
2. Any pedestrian crossing a road where a [pedestrian tunnel] or [over-head pedestrian crossing] has otherwise been provided shall yield the right of way to all vehicles on the road.
3. Where signals are in operation at any place not an intersection, all pedestrians are required to cross within a marked crosswalk.

A violation of this law is negligence.

Authority

Iowa Code section 321.328

Comment

Note: Use paragraphs 1., 2., or 3. as may apply to the case.

Note: See: Iowa Code section 321.1(16) for definition of "crosswalk" and Instruction 600.49.

Hedges v. Condor, 166 N.W.2d 844 (Iowa 1969). "Crossing a roadway" defined.

6/01

600.49 Pedestrians On Left. Pedestrians shall walk on or along the left side of the highway.

A violation of this law is negligence.

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Authority

Iowa Code section 321.326

Comment

Note: See: Lawson v. Fordyce, 237 Iowa 28, 21 N.W.2d 69 (1946)

12/86

600.50 Pedestrians Soliciting Rides. A pedestrian may hitchhike, but may not stand on any portion of the road ordinarily used for vehicular traffic.

A violation of this law is negligence.

Authority

Iowa Code section 321.331

12/86

600.51 Pedestrian's Right Of Way. Where signals are not [in place] or [in operation] the driver of a vehicle shall yield the right of way to a pedestrian, [slowing down] or [stopping] if necessary to yield to a pedestrian crossing the road within a crosswalk.

A violation of this law is negligence.

Authority

Iowa Code section 321.327

12/86

600.52 Duty Of Driver.

1. The driver of a vehicle is required to exercise ordinary care to avoid hitting a pedestrian on a road and shall give warning by sounding the horn when necessary.
2. The driver of a vehicle shall exercise ordinary care upon observing [any child] or [any confused] or [any incapacitated] person on a road.
3. The driver of a vehicle shall yield the right of way to pedestrian workers doing maintenance or construction work on a highway whenever the driver is notified of the presence of such workers by a person or a warning sign.

A violation of this law is negligence.

Authority

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Iowa Code section 321.329

Comment

Note: Use paragraphs 1., 2., or 3. as may apply to the case.

12/86

600.53 Duty Of Driver - Child Darting Case. When a child is in plain view upon a public [street] [highway] so that the driver of an automobile sees, or in the exercise of ordinary care should see the child in time to reduce [his] [her] speed and have control of the automobile so as to avoid the child, the driver must realize the child may act without any care or may suddenly and unexpectedly leave a place of safety and move into the path of the automobile. This is one of the circumstances you may consider in determining whether (name) was exercising ordinary care in the operation of [his] [her] automobile.

Authority

Fratzke v. Meyer, 398 N.W.2d 200, 202 (Iowa App. 1986)

Comment

Note: The Iowa Supreme Court has not defined "child" as used in this instruction.

The law reflected in the instruction has been applied in favor of a child adjacent to but not on the traveled way.

Darr v. Porte, 220 Iowa 751; 263 N.W. 240 (1935)

600.54 White Canes Restricted To Blind Persons - Duty Of Drivers. The driver of any vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick which is [white or white tipped with red] [being led by a guide dog wearing a harness and walking on either side of or slightly in front of the blind person], shall immediately come to a complete stop and take any necessary precautions to avoid accident or injury to the blind person.

A violation of this law is negligence.

Authority

Iowa Code section 321.333

Safety Zone

600.55 Driving Through A Safety Zone. A driver of a vehicle shall not drive in a safety zone. The term "safety zone" means the area or space officially set apart within a road for the exclusive

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use of pedestrians and which is protected or marked or indicated by adequate signs plainly visible at all times.

A violation of this law is negligence.

Authority

Iowa Code section 321.340

Iowa Code section 321.1(68) - Definition of Safety Zone.

Special Stops Required

600.56 Obedience To Signal Of Train

1. The driver of a vehicle approaching a railroad crossing where warning of the immediate approach of a train is given by [automatic signal] [crossing gates] [a flag person] [otherwise], shall stop within fifty feet but not less than fifteen feet from the nearest rail and shall not proceed until they can do so safely.

2. The driver of a vehicle shall stop and remain standing and not travel through a railroad crossing [when a crossing gate is lowered] [when a flag person [gives][continues to give] a signal of the approach or passage of a train].

A violation of this law is negligence.

Authority

Iowa Code section 321.341

Comment

Note: Use paragraphs 1 or 2 as may apply to the case.

600.57 Stop At Certain Railroad Crossings. The driver of a vehicle approaching a railroad crossing regulated by a stop sign, a railroad sign directing traffic to stop, or an official signal displaying a flashing red or steady circular red light, shall stop before crossing the railroad at either the clearly marked stop line or at a point near the crossing where the driver has a clear view of the approaching railroad traffic.

A violation of this law is negligence.

Authority

Iowa Code section 321.342

600.58 Certain Vehicles Must Stop. The driver of any [motor vehicle carrying passengers for hire] [school bus carrying any school child] [any vehicle carrying explosive substances or

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flammable liquids or other hazardous materials] shall stop before crossing at any railroad track within fifty feet but not less than ten feet from the nearest rail of the railroad. While stopped the driver shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until it can be done safely.

A violation of this law is negligence.

Authority

Iowa Code section 321.343

Comment

Note: See: Code section for exceptions where police officer or traffic-control signal directs traffic to proceed.

Note: See: Iowa Code section 321.344 for duties of operators of heavy equipment at railroad crossings.

Note: See: 49 C.F.R. Section 170-189 (1975) for definition of "hazardous material."

600.59 Stop Before Crossing Sidewalk - Right Of Way.

1. The driver of a vehicle coming out of a private [road] [alley] [driveway] [building] shall stop the vehicle immediately before driving onto the sidewalk area. Then the driver shall proceed into the area only when it can be done without danger to pedestrians.

2. The driver of a vehicle coming out of a [private road] [alley] [driveway] [building] shall stop the vehicle immediately before driving onto the sidewalk area, and in entering the street shall yield the right of way to all approaching vehicles.

3. The driver of a vehicle about to [enter] [cross] a highway from a [private road] [driveway] shall stop the vehicle immediately before driving onto the highway, and shall yield the right of way to all approaching vehicles.

A violation of this law is negligence.

Authority

Iowa Code section 321.353

Comment

Note: Use paragraph 1., 2., or 3. as may apply to the case.

Stopping, Standing and Parking

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600.60 Stopping On Traveled Way. A driver of a vehicle shall not [stop] [park] [leave standing] any vehicle, whether attended or unattended upon the [paved] [improved] [main traveled] part of the highway when it is practical to [stop] [park] [leave the vehicle] off the highway. A clear and unobstructed width of at least twenty feet of the part of the highway opposite the standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicle must be available from a distance of two hundred feet in each direction.

A violation of this law is negligence.

Authority

Iowa Code section 321.354

Comment

Note: Applies only to highway outside of a business or residence district.

Note: See: above Code section for exception concerning school buses. See: *Barrick v. Smith*, 248 Iowa 195, 80 N.W.2d 326 (1957).

Note: This section shall not apply to a vehicle making a turn as provided in Iowa Code section 321.311.

600.61 Stopping On Traveled Way - Exception - Disabled Vehicle. The duties required by Instruction _____ shall not apply to the driver of any vehicle which will not operate while on the [paved] [improved] [main traveled] portion of a highway if it is impossible to avoid stopping and temporarily leaving the unoperable vehicle in that position.

Authority

Iowa Code section 321.355

Meyer v. City of Des Moines, 475 N.W.2d 181 (1991)

Comment

Note: As to "stopping on traveled way" and "disabled vehicle," see *Clark v. Umbarger*, 247 Iowa 938, 75 N.W.2d 243 (1956); *Uhlenhopp v. Steege*, 233 Iowa 368, 7 N.W.2d 195 (1942); *Smith v. Pust*, 232 Iowa 1194, 6 N.W.2d 315 (1943); *Tuhn v. Clark*, 241 Iowa 441, 41 N.W.2d 13 (1950).

Note: For definition of "impossible," see *McBeth v. Merchants*, 248 Iowa 320, 79 N.W. 2d 303 (1956); *Henneman v. McCalla*, 260 Iowa 60, 148 N.W.2d 447 (1967).

Note: For what is contemplated by "temporary," see *Boger v. Kellner*, 239 Iowa 1189, 33 N.W.2d 369 (1948); and *Reed v. Willison*, 245 Iowa 1066, 65 N.W.2d 440 (1954).

600.62 Stopping, Standing Or Parking. A driver of a vehicle shall not [stop] [stand] [park] a vehicle:

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1. On a sidewalk, except a bicycle if not prohibited by a local jurisdiction.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within five feet of a fire hydrant.
5. On a crosswalk.
6. Within ten feet from the approach to any [flashing beacon] [stop sign][traffic-control signal] located at the side of a road.
7. [Between a safety zone and the adjacent curb] [within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city indicates a different length by signs or markings.]
8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with the rail and not displaying a red light.
9. [Within twenty feet of the driveway entrance to any fire station] [on the side of a street opposite and within seventy-five feet of the entrance to any fire station entrance when signs are posted.]
10. [Alongside] [opposite] any street [excavation] [obstruction] when the [stopping] [standing] [parking] would obstruct traffic.
11. On the road side of any vehicle [stopped] [parked] at the edge or curb of a street.
12. On any [bridge] [elevated structure] on a highway outside of cities.
13. At any place where official signs prohibit [stopping] [parking].
14. On any street within the corporate limits of a city when it is prohibited by ordinance relating to snow and ice removal.

A violation of this law is negligence.

Authority

Iowa Code section 321.358

Comment

Note: Use paragraphs 1. through 14. as may apply to the case.

Note: All the paragraphs of the above section are subject to exception "when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device."

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Note: See: Iowa Code section 321.360 as to "stopping" at theaters, hotels and auditoriums.

600.63 Parking At Right-Hand Curb. Every vehicle [stopped] [parked] upon a road having curbs shall be [stopped] [parked] with the right-hand wheels parallel to and within eighteen inches of the right-hand curb.

A violation of this law is negligence.

Authority

Iowa Code section 321.361

Comment

Note: The above section provides for exceptions to the effect that local authorities by ordinances may permit: 1. left-hand curb parking on one-way roads; 2. angle or center parking on roads under their jurisdiction.

Miscellaneous Rules

600.64 Unattended Motor Vehicle.

1. No person [driving] [in charge of] shall leave a parked motor vehicle without stopping the engine.
2. No person [driving] [in charge of] shall leave a parked motor vehicle on any noticeable slope without effectively setting the brake and turning the front wheels toward the curb or side of the highway.

A violation of this law is negligence.

Authority

Iowa Code section 321.362

Comment

Note: Use paragraphs 1. or 2. as may apply to the case.

600.65 Obstruction To Driver's View.

1. No person shall drive a vehicle when [it is so loaded] [there are more than three people in the front seat] which [obstructs the driver's view to the front or sides of the vehicle] [interferes with the driver's control over the driving mechanism of the vehicle].

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2. No passenger in a vehicle shall ride in a position which interferes with the driver's [view ahead or to the sides] [control over the driving mechanism] of the vehicle.

A violation of this law is negligence.

Authority

Iowa Code section 321.363

Comment

Note: Use paragraphs 1. or 2. as may apply to the case.

600.66 Control Of Vehicles - Signals. This Instruction has been deleted.

Authority

1987 Iowa Acts, chapter 170, section 11

600.67 Coasting Prohibited. The driver of a motor vehicle shall not drive with the source of motive power disengaged from the driving wheels except when disengagement is necessary to stop or to shift gears.

A violation of this law is negligence.

Authority

Iowa Code section 321.365

600.68 Crossing Median Strip Or Parking On Fully Controlled - Access Facilities. The highway, involved in this case, is a controlled access highway. Therefore, a driver shall not:

1. Drive a vehicle over, upon, or across a curb, central dividing section, or other separation or dividing line.
2. Make a left turn or U-turn at a maintenance cross-over where an official sign prohibits the turn.
3. Drive a vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation, section, or line.
4. Drive a vehicle onto the highway from a local service road.
5. Stop, park or leave standing any vehicle, whether attended or unattended, upon the paved portion, the shoulders, or the right of way except at designated rest areas or in case of an emergency or other dire necessity.

A violation of this law is negligence.

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Authority

Iowa Code section 321.366

Comment

Note: Use paragraphs 1. through 5. as may apply to the case.

Note: Does not apply to a person operating highway maintenance equipment or an emergency vehicle.

600.69 Putting Debris On Highway.

1. No person shall throw or deposit on any highway any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris.

2. No person shall throw or deposit on any highway any substance likely to injure any person, animal or vehicle using the highway.

A violation of this law is negligence.

Authority

Iowa Code section 321.369

Comment

Note: Use paragraphs 1. or 2. as may apply to the case.

Note: See: *Krueger v. Noel*, 318 N.W.2d 220 (Iowa 1982), as to actual knowledge requirement for violation of Iowa Code section 321.370. Also, discusses duty to warn.

600.70 Removing Injurious Material From Highway. Any person who knowingly drops, or permits to be dropped or thrown, on any highway any destructive or injurious material and other material as defined in Instruction _____* shall immediately remove the material or cause it to be removed.

A violation of this law is negligence.

Authority

Iowa Code section 321.370
Krueger v. Noel, 318 N.W.2d 220 (Iowa 1982).

Comment

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Note: *Refers to Instruction 600.69 which sets forth the other material as defined in Iowa Code section 321.369.

600.71 Right Of Assumption. Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

Authority

Iowa R. App. P. 6.14 (6) (i)

Comment

Note: This instruction may not be appropriate if a driver is a common carrier. See the discussion in *Haltom v. Des Moines Area Reg. Transit Auth.*, 2009 WL 2960400 (Iowa Ct. App. Sept. 2, 2009) (citing *Wright v. Midwest Old Settlers & Threshers Ass'n*, 556 N.W.2d 808, 810-11 (Iowa 1996) and *Doser v. Interstate Power Co.*, 173 N.W.2d 556, 558 (Iowa 1970) regarding the standard of care required of common carriers).

Rev. 9/10

600.72 Lookout. "Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver's vehicle in relation to what the driver saw or should have seen. [A driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver's actions may be dangerous to others.]

A violation of this duty is negligence.

Authority

Matuska v. Bryant, 260 Iowa 726, 150 N.W.2d 716 (1967)

Comment

Note: Duty to maintain a proper lookout includes the duty to stop if a driver has lost visibility entirely. Coulthard v. Keenan, 256 Iowa 890, 129 N.W.2d 597 (1964). For a duty of lookout to the rear, see McCoy v. Miller, 257 Iowa 1151, 136 N.W.2d 332 (1965).

Note: For a definition of proper lookout in non motor vehicle cases, see Iowa Civil Jury Instruction 700.12.

10/04

600.73 Recklessness. Recklessness is more than negligence. A person is reckless when [his] [her] conduct appears to disregard the possible results of [his] [her] actions. Recklessness is when a person knows or should have known that the risk of harm to another or to another's

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property is likely to result, and the conduct is consciously done without concern for the consequences of the act.

Authority

Campbell v. Van Roekel, 347 N.W.2d 406 (Iowa 1984)
Sebastian v. Wood, 246 Iowa 94, 66 N.W.2d 841 (Iowa 1954)

12/86

600.74 Legal Excuse. (Name) claims that if you find that [he] [she] violated the law in the operation of [his] [her] vehicle, [he] [she] had a legal excuse for doing so because (excuse) and, therefore, is not negligent. "Legal excuse" means that someone seeks to avoid the consequences of [his] [her] conduct by justifying acts which would otherwise be considered negligent. The burden is upon (name) to establish as a legal excuse:

1. Anything that would make complying with the law impossible.
2. Anything over which the driver has no control which places [his] [her] vehicle in a position contrary to the law.
3. Failure to obey the law when the driver is confronted with sudden emergency not of [his] [her] own making.
4. An excuse or exception provided by the law.

If you find that (name) has violated the law as submitted to you in other instructions, and that [he] [she] has established a legal excuse for doing so under any one of the four definitions set forth above, then you should find that (name) was not negligent for violating the particular law involved.

Authority

Thavenet v. Davis, 589 N.W. 2d 233 (Iowa 1999)
Meyer v. City of Des Moines, 475 N.W.2d 181 (Iowa 1991)
Jones v. Blair, 387 N.W.2d 349 (Iowa 1986)
Miller v. Eichhorn, 426 N.W.2d 641, 644, 645 (Iowa Ct. App. 1988)

Comment

Note: Submit only the proposition(s) supported by the evidence, and make reference to the statutory or common law specification of fault for which the excuse is claimed.

6/01

600.75 Sudden Emergency. A sudden emergency is an unforeseen combination of circumstances that calls for immediate action or a sudden or unexpected occasion for action. A driver of a vehicle who, through no fault of [his] [her] own, is placed in a sudden emergency, is not chargeable with negligence if the driver exercises that degree of care which a reasonably careful person would have exercised under the same or similar circumstances.

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Authority

Vasconez v. Mills, 651 N.W. 2d 48 (Iowa 2002)
Thavenet v. Davis, 589 N.W. 2d 233 (Iowa 1999)
Beyer v. Todd, 601 N.W.2d 35 (Iowa 1999)
Weiss v. Bal, 501 N.W.2d 478 (Iowa 1993)
Jones v. Blair, 387 N.W.2d 349 (Iowa 1986)
Bannon v. Pfiffner, 333 N.W.2d 464 (Iowa 1983)
Bangs v. Keifer, 174 N.W.2d 372 (Iowa 1970)
Miller v. Eichhorn, 426 N.W.2d 641, 644, 645 (Iowa ct. App. 1988)

Comment

Note: This instruction can be used to explain what sudden emergency is in conjunction with an instruction on legal excuse where a statutory violation is claimed. In the event that the only form of legal excuse to be submitted to the jury is sudden emergency and the only claim is common law negligence, then this instruction should be given alone. The first sentence of 600.74 should then be added.

7/06

600.76 Negligence Of Common Carrier Of Passengers. Any [person] [company] [who] [which] transports passengers for a fee must exercise more than ordinary care to protect them, and has a duty both to anticipate any possible danger and to guard against it. This high degree of care stops just short of guaranteeing a passenger's safety.

Authority

Doser v. Interstate Power Company, 173 N.W.2d 556 (Iowa 1970)

12/86

School Buses

600.77 Meeting School Bus. The driver of any vehicle when meeting a school bus on which the amber warning lights are flashing shall reduce the vehicle's speed to not more than twenty miles per hour, and shall bring the vehicle to a complete stop when the school bus stops and the stop signal arm is extended. The vehicle shall remain stopped until the stop arm is retracted, after which the driver may proceed with due caution.

A violation of this law is negligence.

Authority

Iowa Code section 321.372(3)

Comment

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Note: This section shall not apply to "business" and "residence" districts, and four-lane highways, but shall apply in suburban districts of cities and towns. Iowa Code section 321.372(4).

12/86

600.78 Overtaking School Bus. The driver of any vehicle overtaking a school bus shall not pass the bus when red or amber warning signal lights are flashing. The driver shall bring the vehicle to a complete stop at least fifteen feet from the bus when it is stopped and stop arm is extended, and shall remain stopped [until the arm is retracted and the bus resumes motion] [until signaled by the driver to proceed].

A violation of this law is negligence.

Authority

Iowa Code section 321.372(3)

Comment

Note: This section shall not apply to "business" and "residence" districts, but shall apply in suburban districts of cities and towns.

12/86

600.79 When Lighted Lamps Required. Every motor vehicle on the highway, [at any time from sunset to sunrise,] and [at all times when conditions such as fog, snow, sleet or rain provide insufficient lighting to render clearly noticeable persons and vehicles on the highway five hundred feet ahead] shall display lighted head lights bright enough to reveal persons and vehicles at a safe distance ahead.

A violation of this law is negligence.

Authority

Iowa Code sections 321.384(1), 321.415
Peterson v. Union Sales, 245 Iowa 1337, 66 N.W.2d 496 (1954).

Comment

Note: See: Iowa Code section 321.384(2) providing that visibility of objects apply during time stated "upon a straight level unlighted highway under normal atmospheric conditions," unless different time or conditions are specified.

Note: See: Iowa Code section 321.417 for exceptions with respect to vehicles manufactured and sold before July 1, 1938.

Note: See: Iowa Code section 321.419 for exceptions as to "parked" vehicles.

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Note: See: Iowa Code section 321.418 for alternate provision when vehicle is not "operated at a speed in excess of 20 miles per hour".

Note: See: Iowa Code section 321.419 for exceptions as to display of lights when vehicle is parked.

Note: See: Iowa Code section 321.420 for restriction on "number of lamps lighted."

Note: See: Iowa Code section 321.421 for "Special restrictions on lamps."

600.80 Head Lamps On Motor Vehicles. Every motor vehicle [other than a motorcycle] shall be equipped with at least two head lights with one on each side of the front of the vehicle.

A violation of this law is negligence.

Authority

Iowa Code section 321.385

Comment

Note: See: Iowa Code section 321.409(1) and (2) for limitations on distribution of light.

600.81 Head Lamps On Motorcycles. Every motorcycle [motorized bicycle] shall be equipped with at least one and not more than two head lights.

A violation of this law is negligence.

Authority

Iowa Code section 321.386

Comment

Note: The above section provides that head lamps on motorcycles "shall comply with the requirements and limitations" of Iowa Code sections 321.384, 321.402, 321.403, 321.415, 321.418, 321.419, 321.420, 321.421, 321.422 and 321.423.

600.82 Rear Lamps And Reflectors. [Every motor vehicle] [Every vehicle which is being towed at the end of a train of vehicles] shall be equipped with a tail light displaying a red light plainly visible from 500 feet behind.

A violation of this law is negligence.

Authority

Iowa Code section 321.387

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Comment

Note: See: Iowa Code section 321.388 for requirement as to illumination of rear license plate.

Note: See: Iowa Code section 321.389 for requirement as to additional reflectors on certain vehicles.

Note: See: Iowa Code section 321.390 for "reflector requirements."

Note: See: Iowa Code section 321.422 for permissible red, yellow or amber stop lights or directional signals on rear of vehicle.

600.83 Clearance And Identification Lights. [Every truck] [Every trailer or semi-trailer of over three thousand pounds gross weight] shall be equipped with lighting devices and reflectors as follows:

[See Code Section as to specific requirements for the number and location of reflectors, clearance, side-marker and tail lamps, stop and identification lights, as applicable to vehicles of specified types, width, length and weight].

A violation of this law is negligence.

Authority

Iowa Code section 321.392
Ellis v. Robb, 242 Iowa 875, 47 N.W.2d 246

Comment

Note: See: Iowa Code section 321.393 as to requirements for "color and mounting" of lighting devices, reflectors and clearance lamps.

600.84 Lamp Or Flag On Projecting Load.

1. Whenever the load on a vehicle extends to the rear four feet or more beyond the bed or body, a red light [lantern] shall be displayed at the extreme rear end of the load. The light must be plainly visible at least 500 feet to the sides and rear.

2. Whenever the load on a vehicle extends to the rear four feet or more beyond the bed or body, a red flag [cloth] not less than sixteen inches square shall be displayed at the extreme rear end of the load.

A violation of this law is negligence.

Authority

Iowa Code section 321.394

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Comment

Note: Use paragraphs 1. or 2. as may apply to the case.

Note: See: Iowa Code section 321.384 for times of display of red light..

Note: This requirement is in addition to "red rear light," Iowa Code section 321.387.

600.85 Lamps On Parked Vehicles. Whenever a vehicle is [parked] [stopped] upon a road or the adjacent shoulder outside of a business district, whether attended or unattended, the vehicle shall be equipped with one or more parking lights which shall display a [white] [amber] light on the road side visible from 500 feet to the front of the vehicle and a red light visible from 500 feet to the rear. Any lighted head lights on a parked vehicle shall be dimmed.

A violation of this law is negligence.

Authority

Iowa Code section 321.395

Tuhn v. Clark, 241 Iowa 441, 41 N.W.2d 13 (1950).

Comment

Note: See above section for exceptions to accord with "local parking regulations."

Note: See: Iowa Code section 321.396 for exceptions "when accident extinguishes light."

Note: See: Iowa Code section 321.384 for times of display.

600.86 Lamps On Bicycles. Every bicycle shall be equipped with a light on the front displaying a white light visible from at least 300 feet to the front, and with a red light visible from 300 feet to the rear [exception to rear light requirement with approved reflector].

A violation of this law is negligence.

Authority

Iowa Code section 321.397

Comment

Note: See: Iowa Code section 321.384 for times of display.

600.87 Lamps On Other Vehicles And Equipment. All vehicles shall be equipped with at least one light [lantern] displaying a white light visible from 500 feet to the front of the vehicle

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and with a red [light] [lantern] visible from 500 feet to the rear. *Animal-drawn vehicles shall be equipped with a flashing amber light visible from 500 feet to the rear of the vehicle.

A violation of this law is negligence.

Authority

Iowa Code section 321.398

Comment

Note: Delete this sentence if not applicable to the case.

Note: See: Iowa Code section 321.383 for the type of vehicles included.

Note: See: Iowa Code section 321.384 for times of display.

600.88 Slow Moving Farm Vehicles, Etc.

1. Every farm tractor* operated on a highway at a speed of 35 miles per hour or less shall be identified with a reflective device visible from the rear. [Describe the type and mounting approved by the Director of the State Department of Transportation.]

A violation of this law is negligence.

Authority

Iowa Code section 321.383(2)

Comment

Note: State v. Armstrong, 203 N.W.2d 269, 272 (Iowa 1972). Judicial Notice may be taken of Iowa departmental rules and regulations adopted pursuant to statutory authority.

Note: See: Iowa Code section 321.383 for additional equipment and exceptions that may affect the wording of this instruction.

Note: See: Iowa Code section 321.383(2) for “alternative reflective device” permitted for horse or mule-drawn vehicles if the person operating the vehicle objects to the device approved by the American Society of Agricultural Engineers.

2. Every farm tractor* operated on a primary or secondary road at a speed of 25 miles an hour or less at any time from sunset to sunrise shall be equipped with and display an amber flashing light visible from the rear. [Describe the type, number, dimensions and method of mounting of the lights approved by the Director of the State Department of Transportation.]

A violation of this law is negligence.

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Iowa Code section 321.423(6)

Comment

Note: *See: Iowa Code section 321.423(6) for additional equipment that may affect the wording of this instruction.

600.89 Spot Lamps. A motor vehicle shall have no more than one spot light. It shall not be aimed at an oncoming vehicle nor more than 100 feet ahead.

A violation of this law is negligence.

Authority

Iowa Code section 321.402

600.90 Auxiliary Driving Lamps. No more than three auxiliary driving lights [fog lights] shall be allowed on a motor vehicle. They shall be mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface on which the vehicle stands. A violation of this law is negligence.

Authority

Iowa Code section 321.403

600.91 Signal Lamps And Signal Devices. A motor vehicle shall be equipped with a signal [light] [device], constructed and located on the vehicle as to give a signal of intention to stop. This signal shall be [red] [yellow] and be plainly visible and understandable in normal sunlight and from 100 feet to the rear at night. The signal shall not project a glaring light.

A violation of this law is negligence.

Authority

Iowa Code section 321.404

Comment

Note: See: Iowa Code section 321.405 for requirement that signal devices be self illuminated.

600.92 Duty To Dim Lights. The driver of a motor vehicle has a duty to dim the lights to low beam [within 1000 feet of meeting and approaching a motor vehicle] [within 400 feet when overtaking a vehicle traveling in the same direction].

A violation of this law is negligence.

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Authority

Iowa Code section 321.415

Comment

Note: See: Iowa Code section 321.384 for times of display.

Note: Use bracketed language as may apply to the case.

Brakes

600.93 Red Light In Front. No person shall [drive] [move] any [vehicle] [equipment] on the highway with any [lamp] [device] [displaying] [reflecting] a red light visible from directly in front.

A violation of this law is negligence.

Authority

Iowa Code section 321.422

Comment

Note: By its terms, the above section has no application to "authorized emergency vehicles."

See: Iowa Code section 321.423 for prohibition of flashing lights, except for certain exceptions.

600.94 Brakes, Hitch And Control Requirement.

1. Every motor vehicle, other than a motorcycle, shall be equipped with brakes adequate to control the movement of, and to stop and hold the vehicle. It must also have a separate emergency brake.

A violation of this law is negligence.

Authority

Iowa Code section 321.430(1)

Comment

Note: See: Iowa Code section 321.430(2) for motorcycles.

Note: See: Iowa Code section 321.430(3) for trailers.

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Note: See: Iowa Code section 321.430(3) concerning the requirement as to auxiliary means of applying the brakes from the cab of a towing vehicle on a trailer of a gross weight of 3,000 pounds or more.

Note: See: Iowa Code section 321.430(4) for service brake requirements on certain vehicles.

600.95 Brakes - Performance Ability.

1. The brakes on any [motor vehicle] or [combination of motor vehicles] shall be adequate to stop the [vehicle] [vehicles] [having a gross weight of less than 5,000 pounds within a distance of 30 feet] or [having a gross weight in excess of 5,000 pounds within a distance of 45 feet] when travelling 20 miles per hour on a dry [asphalt] [concrete] surface where the grade does not exceed one per cent.

A violation of this law is negligence.

Authority

Iowa Code section 321.431 (1)(a),(b)

Comment

Note: See: Iowa Code section 321.431(2) requiring that, under the conditions specified above, the hand brake shall be adequate to hold the vehicle [vehicles] stationary on any grade upon which operated.

Note: See: Iowa Code section 321.431(3) for requirement that, under the conditions above specified, the service brakes upon a motor vehicle equipped with two-wheel brakes only, and when permitted hereunder, shall be adequate to stop the vehicle within a distance of 45 feet and the hand brake adequate to stop the vehicle within a distance of 55 feet.

Note: See: Iowa Code section 321.431(4) for requirement that all braking distances specified under this section shall apply to all vehicles specified, whether or not such vehicles are loaded to statutory maximum capacity.

2. All brakes shall be maintained in good working order and shall be adjusted to operate equally as practicable with respect to the wheels on opposite sides of the vehicle.

A violation of this law is negligence.

Authority

Iowa Code section 321.431(5)

Miscellaneous Equipment

600.96 Horns And Warning Devices. Every motor vehicle operated upon a highway shall be equipped with a horn in good working order capable of being heard under normal conditions from at least 200 feet. When reasonably necessary to insure safe operation, the driver of the vehicle

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shall give such warning. The horn shall not otherwise be used and shall not give out an unreasonably loud or harsh sound or whistle.

A violation of this law is negligence.

Authority

Iowa Code section 321.432

Comment

Note: This statute does not place on the overtaking driver any positive duty to sound horn before passing. France v. Benter, 256 Iowa 534, 537-38, 128 N.W.2d 268, 270-71 (1964).

Note: See: Instruction 600.97 for common law duty to sound the horn.

600.97 Duty To Sound Horn. A driver shall sound [his] [her] horn when reasonably necessary to ensure the safe operation of the vehicle.

A violation of this duty is negligence.

Authority

France v. Benter, 256 Iowa 534, 128 N.W.2d 268 (1964)

600.98 Windshields And Windows - Clear Vision. A person shall not drive a motor vehicle equipped with [a windshield] [side wings] [side windows] [a rear window] which [does] [do] not permit clear vision.

A violation of this law is negligence.

Authority

Iowa Code section 321.438

12/86

600.99 Unsafe Vehicles. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved on any highway, any vehicle or combination of vehicles which:

1. Is in such unsafe condition that a person is in danger; or
2. Is not at all times equipped properly as required by law; or
3. Is equipped with one or more unsafe tires; or
4. Is equipped unlawfully.

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A violation of this law is negligence.

Authority

Iowa Code section 321.381

Comment

Note: Delete any provisions which do not apply to the case.

Note: See: Iowa Code section 321.433 [sirens and bells prohibited].

Note: See: Iowa Code section 321.434 [sirens and bells prohibited on bicycles].

Note: See: Iowa Code section 321.437 [mirrors].

Note: See: Iowa Code section 321.439 [windshield wipers].

Note: See: Iowa Code section 321.440 [tires].

Note: See: Iowa Code section 321.409 [lighting equipment].

12/86

600.100 Seat Belt Defense - Essentials. The defendant claims _____'s injuries were increased because [he] [she] [they] failed to wear a safety [belt] [harness] as required by law. Defendant must prove both of the following propositions:

1. _____ failed to wear a properly adjusted and fastened safety [belt] [harness].
2. The failure contributed to plaintiff's injuries.

If defendant has proved both of these propositions, _____'s recovery may be reduced by an amount not more than five percent of the damages awarded after any other reductions for comparative fault. If you allocate a percentage, I will apply this percentage after any other reduction for comparative fault to reduce _____'s total recovery.

Authority

Iowa Code sections 321.445, 321.446

Comment

Note: 1. If a child is involved, see Iowa Code section 321.446(6).

Note: 2. This instruction is to be used if a seat belt issue has been raised by a defendant and the foundation evidence of cause has been shown as required by Iowa Code section 321.445 (4)(b)(1) and (2).

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Note: 3. The instruction will need to be tailored if there are fact questions as to whether the vehicle is a model and type required to have a seat belt, whether plaintiff comes within an exception, or whether the seat belt was properly fastened or adjusted.

Note: 4. If this seat belt defense is submitted, two interrogatories must be submitted to the jury (as the last questions to the jury) in the following forms:

(If you answered Question No. _____ you will also answer the following question.)

Question No. _____

Do you find failure to wear a safety [belt] [harness] contributed to _____'s injuries?

Answer "yes" or "no."

ANSWER: _____

(If you have answered "yes" to Question No. _____ you will also answer the following question.)

Question No. _____.

What percent, if any, (not more than 5%) do you find the recovery of plaintiff _____ should be reduced?

ANSWER: _____

Authority

Iowa Code section 321.445.

6/01

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CHAPTER 700

NEGLIGENCE - PROXIMATE CAUSE - CO-EMPLOYEE-EMPLOYER LIABILITY - VICARIOUS

LIABILITY - SIDEWALK LIABILITY- DISTRESS AND INJURY

Negligence - Proximate Cause

[700.1](#) Essentials for Recovery

[700.2](#) Ordinary Care - Common Law Negligence – Defined

[700.2A](#) Ordinary Care – Common Law Negligence of Child – Defined.

[700.3](#) Cause – Defined

[700.3A](#) Scope of Liability – Defined.

[700.4](#) Concurrent Cause - Defined

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Co-Employee Liability

[710.1](#) Essentials for Recovery Against Co-Employee

[710.2](#) Arose Out Of And In The Course Of Employment - Defined

[710.3](#) Gross Negligence of Co-Employee - Defined

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Employer - Employee Liability

[720.1](#) Employer Liability

[720.2](#) Employer - Employee Relationship - Defined

[720.3](#) Employer's Duty to Warn

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[730.3](#) Definition of Independent Contractor

[730.4](#) Borrowed Servant

[730.5](#) Negligent Hiring- Essentials for Recovery

Sidewalk Liability

[740.1](#) Owner Liability for Sidewalks - Natural Accumulation of Snow and Ice

[740.2](#) Owner/Occupant Liability for Sidewalks - Artificial Accumulation of Snow And Ice

[740.3](#) Natural Accumulation – Definition

Distress/Injury

[750.1](#) Bystander Emotional Distress

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700.1 Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
 - a.
 - b.
 - c.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)
Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)
Bauman v. City of Waverly, 164 N.W.2d 840 (Iowa 1969)
Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

700.2 Ordinary Care - Common Law Negligence - Defined. "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

Authority

Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992)
Schalk v. Smith, 224 Iowa 904, 277 N.W. 303 (1938)

Comment

Note: If a party is intoxicated, add: "An intoxicated person is held to the standard of care of a sober person."

Note: If a party is a child, add: "At the time of the injury, (name) was a child. Ordinary care of a child is the care which a reasonable child of like age, intelligence and experience would do under similar circumstances."

Intoxication - Yost v. Miner, 163 N.W.2d 557 (Iowa 1968)

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Child - Peterson v. Taylor, 316 N.W.2d 869 (Iowa 1982)

700.2A Ordinary Care – Common Law Negligence of Child – Defined. “Negligence” means failure to use ordinary care. Ordinary care of a child is the care which a reasonable child of like age, intelligence and experience would use under similar circumstances. In determining if (child)’s conduct was negligent, (child)’s conduct must be compared to that of a reasonable child of like age, intelligence and experience. You are to first determine the particular capacity of (child) to [perceive][avoid][do][not do] the (describe risk or act) based on [his][her] age, intelligence and experience. Next, you are to determine how a reasonable child of like age, intelligence and experience would have acted under similar circumstances. “Negligence” is doing something a reasonable child of like age, intelligence and experience would not do under similar circumstances, or failing to do something a reasonable child of like age, intelligence and experience would do under similar circumstances.

Authority

Mastland v. Evans, 498 N.W.2d 682 (Iowa 1993)
Peterson v. Taylor, 316 N.W.2d 869 (Iowa 1982)
Restatement (Torts) Second, § 283A (1965)

Comment

The Court is still to determine as a matter of law: (1) whether the child is so young as not being capable of negligent conduct; and (2) whether the child has reached such an age that the child standard no longer applies and the reasonably careful person standard should be used.

700.3 Cause - Defined. The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

Authority

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)
Royal Indemnity Co. v. Factory Mut. Ins. Co., ___ N.W.2d ___, ___, No. 07-1324 slip. op. at 19 (Iowa June 11, 2010)
Restatement (Third) of Torts: Liability for Physical and Emotional Harm, § 26

Comment

Note: In a case where the evidence may show more than one cause contributed to the injury or damages, the following sentence should be added: "There can be more than one cause of an injury or damage."

Note: A separate instruction must be given where the evidence may show "multiple sufficient causes." See Thompson, 774 N.W.2d at 837 n. 3

Note: Consider appropriateness of giving this instruction in addition to Iowa Civil Jury Instruction 220.34 Previous Infirm Condition where "Eggshell Plaintiff Rule" applies.

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Rev. 09/10

700.3A Scope of Liability – Defined. You must decide whether the claimed harm to plaintiff is within the scope of defendant's liability. The plaintiffs claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps [or other tort obligation] to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

Authority

Thompson v. Kaczinski, 774 N.W.2d 829, 839 (Iowa 2009)

Royal Indemnity Co. v. Factory Mut. Ins. Co., ___ N.W.2d ___, ___, No. 07-1324 slip. op. at 18-20 (Iowa June 11, 2010)

Restatement (Third) of Torts: Liability for Physical and Emotional Harm, §§ 29, 30 & model instruction No. 2 (modified, at page 517).

Comment

In most cases, scope of liability will not be in dispute or will be adjudicated by the court on a dispositive motion. This instruction should be given only if under the facts of the particular case scope of liability is a question for the jury.

New 09/10

700.4 Concurrent Cause - Defined. There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

Authority

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009).

Foggia v. Des Moines Bowl-O-Mat 543 N.W.2d 892 (Iowa 1996) (multiple defendants).

Spaur v. Owens-Corning Fiberglas Corp., 510 N.W.2d 854, 858, 861 (Iowa 1994) (concept approved in a toxic tort case).

Rev. 09/10

700.5 Sole Proximate Cause. The defendant claims the sole proximate cause of the plaintiff's damages was [an act of God] [the conduct of another party] [a condition not under the control of

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any party]. Sole proximate cause means the only proximate cause. The defendant must prove both of the following propositions:

1. The [Act of God] [conduct of another person] [condition not under the control of any party] occurred.
2. The [Act of God] [conduct of another person] [condition not under the control of any party] was the only proximate cause of plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has failed to prove the defense of sole proximate cause. If the defendant has proved both of these propositions, the defendant has proved the defense of sole proximate cause and you must find the fault of the defendant, if any, was not a proximate cause of plaintiff's damages when you answer the special verdicts.

Authority

Sponsler v. Clarke Electric Cooperative, Inc., 329 N.W.2d 663 (Iowa 1983)
Chumbley v. Dreis and Krump Mfg. Co., 521 N.W.2d 192 (Iowa App. 1993)
Klein v. City of Keokuk, 438 N.W.2d 22 (Iowa App. 1989)

Comment

Note: When Act of God is alleged to be the sole proximate cause, use Iowa Civil Jury Instruction 700.9

Note: The defense of sole proximate cause is not a comparative fault defense. If the defendant proves an event not chargeable to the defendant is the sole proximate cause of plaintiff's damage, the defendant will be insulated from liability because the fault, if any, of the defendant cannot be a proximate cause of plaintiff's injuries. See Kuta v. Newberg, 600 N.W.2d 280, 285-286 (Iowa 1999); Baker v. City of Ottumwa, 560 N.W.2d 578, 583 (Iowa 1997);, Sponsler v. Clarke Electric Cooperative, Inc., 329 N.W.2d 663 (Iowa 1983)

Caveat

The Committee takes no position on the validity of this instruction after Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009) (adopting scope of liability approach). See Restatement (Third) of Torts: Liability for Physical and Emotional Harm, § 34 & comment f.

Rev. 09/10

700.6 Superseding - Intervening Cause. The defendant claims the conduct of _____ [third person] [other active force] was the proximate cause of plaintiff's damages.

In order to establish this defense the defendant must prove all of the following propositions:

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1. The conduct of _____ [third person] [other active force] caused plaintiff's damages and occurred after the conduct of the defendant which you have found to constitute negligence.
2. The conduct of the defendant did not create or substantially increase the risk that the plaintiff would sustain damage through the conduct of _____ [third person] [other active force].
3. The conduct of _____ [third person] [other active force] was not reasonably foreseeable to someone in defendant's position.

If the defendant has proven all of these propositions, then the plaintiff cannot recover damages.

Authority

State v. Henning, 545 N.W.2d 322 (Iowa 1996)
Stevens v. Des Moines School District, 528 N.W.2d 117 (Iowa 1995)
Weems v. Hy Vee Food Stores, Inc., 526 N.W.2d 571 (Iowa App. 1995)
Sumpter v. City of Moulton, 519 N.W.2d 427 (Iowa App. 1994)
Restatement (Second) of Torts, sections 440, 441(1), 442(A), 443 and 447

Caveat

The Committee takes no position on the validity of this instruction after Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009) (adopting scope of liability approach). See Restatement (Third) of Torts: Liability for Physical and Emotional Harm, § 34.

Rev. 09/10

700.7 General Negligence (Res Ipsa Loquitur). It is alleged the plaintiff's injuries were caused by the defendant's specific acts of negligence and also by the defendant's general negligence. If you find plaintiff's injuries were caused by negligence in one or more of the specific ways claimed by the plaintiff, then do not consider the general negligence claim. However, if you find the plaintiff did not prove the injuries were caused by the defendant's specific act or acts of negligence, then you will consider the plaintiff's general negligence claim.

Under the rule of general negligence, the occurrence of an injury allows you to conclude that the defendant was negligent if the plaintiff proves (1) the injury was caused by (describe the instrument) under the exclusive control of the defendant, and (2) the injury would not have occurred if ordinary care had been used.

The plaintiff must prove the defendant had exclusive control when the negligence occurred. If you find the negligence occurred before the injury, then the plaintiff must prove there was no change in the condition of the (describe the instrument) after it left the defendant's exclusive control which could reasonably have caused the injury.

The plaintiff must also prove the occurrence would not have happened if ordinary care had been used. Proof of this requirement rests on common experience.

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If you find the plaintiff has proved both requirements of the rule, you may conclude the defendant was negligent, but you are not required to do so. If the plaintiff fails to prove either of the basic requirements, the plaintiff cannot recover damages under the general negligence claim.

Authority

Brewster v. U.S., 542 N.W.2d 524 (Iowa 1996)
Reilly v. Straub, 282 N.W.2d 688 (Iowa 1979)
Pastour v. Kolb Hardware, Inc., 173 N.W.2d 116 (Iowa 1969)
Shared Control - Wiles v. Myerly, 210 N.W.2d 619 (Iowa 1973)

Comment

Caveat: If exclusive control issue relates to multiple defendants, additional instructions as to shared control may be required.

700.8 Accident Does Not Constitute Or Raise Presumption Of Negligence. The mere fact an accident occurred or a party was injured does not mean a party was [negligent] [at fault].

Authority

Armbruster v. Gray, 225 Iowa 1226, 282 N.W. 342, 344 (1938)

Comment

Caveat: Do not use this instruction if general negligence (res ipsa loquitur) is submitted.

cf. Before deciding whether to use this instruction, see Smith v. Koslow, 757 N.W.2d 677, 681 (Iowa 2008) (recognizing [700.8] “reflects a correct statement of the law”...but...”the instruction could constitute reversible error in a particular case if it would unduly emphasize a particular theory or otherwise distract the jury[.]”)

Rev. 06/09

700.9 Act Of God. An "Act of God" is such an unusual and extraordinary display of nature that it could not be expected under normal conditions.

Authority

Lanz v. Pearson, 475 N.W.2d 601 (Iowa 1991)
Oakes v. Peter Pan Bakers, Inc., 258 Iowa 447, 138 N.W.2d 93 (1965)
Klein v. City of Keokuk, 438 N.W. 2d 22 (Iowa App. 1989)

Comment

Note: Act of God may be used as a defense only if there is evidence it is the sole proximate cause of the harm in question. Acts of God are not "fault" as defined in Iowa Code section 668.1. See, Renze Hybrids, Inc. v. Shell Oil Company, 418 N.W.2d 634 (Iowa 1988)

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700.10 Safety Code - Negligence Per Se. (Name of Safety Code) requires (Substance of Safety Code).

A violation of this law is negligence.

Authority

Clausen v. R. W. Gilbert Construction Co., Inc., 309 N.W.2d 462 (Iowa 1981)

Koll v. Manatt's Transportation Co., 253 N.W.2d 265 (Iowa 1977)

Wagner v. Northeast Farm Service Company, 177 N.W.2d 1 (Iowa 1970)

Comment

Note: This is limited to safety codes that have the force of law either by statute, regulation or ordinance.

700.11 Safety Code/Custom - Evidence Of Negligence. You have received evidence of [substance of particular custom involved] [applicable safety code provisions]. Conformity with [a custom] [the provisions of a safety code] is evidence that (name of party) was not negligent and [non-conformity] [violations of its provision] is evidence that (name of party) was negligent. Such evidence is relevant and you should consider it, but it is not conclusive proof.

Authority

Custom - Langner v. Caviness, 238 Iowa 774, 28 N.W.2d 421 (1947)

Manual On Uniform Traffic Control Devices - Gipson v. State, 419 N.W.2d 369 (Iowa 1988)

Safety Code - Porter v. Iowa Power and Light Company, 217 N.W.2d 221 (Iowa 1974)

700.12 Proper Lookout. "Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

Authority

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)

700.13 Rescue Doctrine. A person who reasonably believes [another person][property] is in imminent and serious danger may choose to risk [his][her] own safety to attempt a rescue. The rescuer is not negligent if [his][her] conduct is that of an ordinarily prudent person under existing circumstances. The rescuer is not required to reach the same conclusion that others, by the exercise of hindsight and time for deliberation, might be able to suggest as a better course of conduct. While the rescuer need not make the wisest choice, [he][she] is negligent if the rescue itself is unreasonable or if the rescuer acts unreasonably in the course of it. If the rescuer's conduct was a normal or natural response to the apparent peril, the defendant's [in]action in

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[creating][failing to prevent] the peril is a cause of the rescuer's harm.

The amount of risk a rescuer reasonably can undertake increases with the value of the object of the rescue.

(If applicable, add: You may consider whether the rescuer was told to leave or refrain from the rescue as one factor in deciding whether [he][she] acted reasonably.)

The rescue doctrine applies even if no danger was actually imminent, so long as the rescuer reasonably believed that imminent danger existed. However, the rescue doctrine no longer applies after the apparent danger has subsided.

Authorities

Clinkscales v. Nelson Securities, Inc., 697 N.W.2d 836, 841-44 (Iowa 2005)

Kester v. Bruns, 326 N.W.2d 279, 282-83 (Iowa 1982)

Henneman v. McCalla, 260 Iowa 60, 72, 148 N.W.2d 447, 454-55 (1967)

HJohannsen v. Mid-Continent Petroleum Corp., 232 Iowa 805, 810-13, 5 N.W.2d 20, 23-25 (1942)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

This instruction should not be submitted if the claimant is an emergency responder subject to the "firefighter's rule". See Rennenger v. Pacesetter Co., 558 N.W.2d 419, 421-23 (Iowa 1997).

Whether the risks of rescue are counted against the rescuer under the comparative fault doctrine in Iowa is unsettled. Clinkscales, 697 N.W.2d at 842, fn. 4. Consider using a special interrogatory.

Rev. 09/10

710.1 Essentials for Recovery Against Co-Employee. The plaintiff must prove all of the following propositions:

1. The plaintiff and defendant were co-employees.
2. The plaintiff's injuries arose out of and in the course of employment.
3. The defendant was grossly negligent as defined in Instruction No. _____ in the following particular(s).
4. The gross negligence was a cause of damage to the plaintiff.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

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Authority

Taylor v. Peck, 382 N.W.2d 123 (Iowa 1986)

Thompson v. Bohlken, 312 N.W.2d 501 (Iowa 1981)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

710.2 Arose Out Of And In The Course Of Employment - Defined. The words "arose out of" refer to the cause and origin of an injury. The injury must be a natural consequence of a risk or hazard of the employment.

The words "in the course of" refer to the time, place and circumstances of an injury. The injury must occur within the period of employment at a place the employee may reasonably be and while the employee is doing work or something related to work.

Authority

Caterpillar Tractor Company v. Shook, 313 N.W.2d 503 (Iowa 1981)

Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (Iowa 1979)

710.3 Gross Negligence Of Co-Employee - Defined. Gross negligence of a co-employee exists when the co-employee has (1) knowledge of the danger to be apprehended; (2) knowledge that injury is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the danger.

Authority

Taylor v. Peck, 382 N.W.2d 123 (Iowa 1986)

720.1 Employer Liability. An employer must use ordinary care to provide a reasonably safe place for the employee to work and reasonably safe [appliances] [machinery] [tools] when used as assigned and directed.

Authority

Olson v. Katz, 201 N.W.2d 478 (Iowa 1972)

720.2 Employer-Employee Relationship - Defined. An employee is a person bound by duty of service, subject to the employer's right to control or direct the manner in which the work shall be done.

Authority

Dobson v. Jewell, 189 N.W.2d 547 (Iowa 1971)

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720.3 Employer's Duty To Warn. If the employer knew or in the exercise of reasonable care should have known of an unreasonable risk of injury to [his] [her] [its] employee and that the employee would not realize or appreciate the risk or protect [himself] [herself] from it, the employer must use ordinary care to warn the employee of the risk.

Authority

Calkins v. Sandven, 256 Iowa 682, 129 N.W.2d 1, 8 (1964)
Von Tersch v. Ahrendsen, 251 Iowa 115, 99 N.W.2d 287, 290 (1959)

730.1 Liability Of Employer. An [employer] [corporation] is liable for the [negligent] [wrongful] acts of an [employee] [officer, agent or employee] if the acts are done in the scope of the employment.

Authority

Bethards v. Shivvers, Inc., 355 N.W.2d 39 (Iowa 1984)
Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966)

730.2 Scope Of Employment. For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

Authority

Merchants National Bank of Cedar Rapids v. Waters, 447 F.2d 234 (8th Cir. 1971)
Sandman v. Hagan, 261 Iowa 560, 154 N.W.2d 113 (1967)

730.3 Definition Of Independent Contractor. The right to control the manner and method of performing the work is the primary test for determining whether a person is an independent contractor or an employee. If the person doing the work answers to another only as to the result of the work but selects the manner and method of doing the work such person must be regarded as an independent contractor. In determining who has the right to control the manner and method of doing the work you should consider the following matters as shown by the evidence.

1. The existence of a contract or the performance of a certain piece of work or kind of work at a fixed price.
2. Whether the business of the person doing the work is independent from that of the person who hires the work done.
3. Whether the person doing the work has the right to employ assistants and has the right to supervise their activities.
4. Whether the person doing the work must furnish necessary tools, supplies and material.

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5. Whether the work in that locality is usually done under the supervision or by a specialist without supervision.
6. The skill required in doing the work.
7. The time limit for performing the services.
8. The method of payment.
9. Whether the work is part of the regular work of the person who hires the work done.
10. Whether the parties believe they are creating a relationship of employer-employee or independent contractor.
11. Whether there is any withholding from payment to the person providing the service for federal income tax or social security.
12. Any other matters shown by the evidence bearing on this question.

Authority

D & C. Express, Inc. v. Sperry, 450 N.W. 2d 842 (Iowa 1990)
Peterson v. Pittman, 391 N.W. 2d 235 (Iowa 1986)
Burr v. Apex Concrete Company, 242 N.W.2d 272 (Iowa 1976)
Greenwell v. Meredith Corporation, 189 N.W.2d 901 (Iowa 1971)

Comment

Note: Instruct only on the factors supported by the evidence.

730.4 Borrowed Servant. An employee of one employer who has been temporarily loaned to another for a special service does not become the employee of the borrower unless the original employer surrenders full control over the employee. Full control means that the employee is under the control and direction of the borrower in performance of the particular act involved. The control necessary must be something more than the right to point out the work to be done.

Authority

Bethards v. Shivvers, Inc., 355 N.W.2d 39 (Iowa 1984)

730.5 Negligent Hiring - Essentials for Recovery. Plaintiff must prove all of the following propositions:

1. An [employment][agency] relationship exists between (employee) and the defendant employer.

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2. The employer knew, or in the exercise of ordinary care should have known, of (employee's) [incompetence][unfitness][dangerous characteristics] at the time of hiring.
3. The (employee's) [incompetence][unfitness][dangerous characteristics] was a cause of damage to the Plaintiff.
4. The nature and extent of the damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____, as explained in Instruction No. _____.]

Authority

Godar v Edwards, 588 n.W.2d 701 (Iowa 1999).
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: In Godar, the Iowa Supreme Court held that a claim for negligent hiring likewise includes an action for negligent retention and negligent supervision.

Rev. 09/10

740.1 Owner Liability For Sidewalks - Natural Accumulation Of Snow And Ice. The owner of land next to a sidewalk must remove, within a reasonable amount of time, any snow and ice that has naturally accumulated on the sidewalk. The owner must exercise ordinary care in removing the snow and ice.

The plaintiff must prove that the owner knew about the natural accumulation of snow and ice, or that it existed long enough for the owner to have discovered and removed it in the exercise of ordinary care.

A violation of this law is negligence.

Authority

Iowa Code section 364.12 (2) (b)

740.2 Owner/Occupant Liability For Sidewalks - Artificial Accumulation Of Snow And Ice. An [owner] [occupant] of land must exercise ordinary care to keep sidewalks next to their land free from accumulations of snow and ice caused by their acts.

The plaintiff must prove that the [owner] [occupant] knew about the cause of the accumulation of snow and ice, or that it existed long enough for the [owner] [occupant] to have discovered and [corrected] [prevented] it in the exercise of ordinary care.

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Authority

Beyer v. City of Dubuque, 139 N.W.2d 428 (Iowa 1966)

740.3 Natural Accumulation - Definition. "Natural accumulation" refers to snow or ice which is on the sidewalk as the result of nature, as compared to snow or ice which was caused to be on the sidewalk as the result of something that a person has done.

Authority

Beyer v. City of Dubuque, 139 N.W.2d 428 (Iowa 1966)

750.1 Bystander Emotional Distress. The Plaintiff must prove all of the following propositions:

1. (Name of plaintiff) was located near the scene of the accident.
2. (Name of plaintiff) suffered emotional distress resulting from a direct emotional impact from seeing or hearing the accident, as contrasted with learning of the accident from others after its occurrence.
3. (Name of plaintiff) is the [state relationship to injured person. i.e. spouse, or within the second degree of consanguinity or affinity] of [name of injured person].
4. A reasonable person in the position of (name of plaintiff) would believe, and (name of plaintiff) did believe, that (injured person) would suffer serious injury or be killed.
5. The emotional distress suffered by (name of plaintiff) was serious.
6. (Name of defendant) was at fault for the accident as explained in Instruction No. _____.

If the Plaintiff has failed to prove any of these propositions, Plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages in some amount.

Authority

Pekin Ins. Co. v Hugh, 501 N.W.2d 508 (Iowa 1993)

Fineran v. Pickett, 465 N.W.2d 662 (Iowa 1991)

Barnhill v. Davis, 300 N.W.2d 104 (Iowa 1981)

Comment

Note: Use only those elements that are in dispute.

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750.2 Emotional Distress - Defined. As used in Instruction No. _____, the term "emotional distress" includes all highly unpleasant mental reactions. Serious emotional distress is ordinarily, but is not necessarily, accompanied by physical manifestations of the distress.

Authority

Pekin Ins. Co. v. Hugh, 501 N.W.2d 508 (Iowa 1993)

750.3 Serious Injury - Defined. As used in Instruction No. _____, the term "serious injury" means bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Authority

Barnhill v. Davis, 300 N.W.2d 104 (Iowa 1981)

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CHAPTER 800

MISREPRESENTATION

Negligent Misrepresentation

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800.1 Negligent Misrepresentation - Where No Public Duty To Give Information Exists - Essentials For Recovery. The plaintiff must prove the following propositions:

1. The defendant on or about the ____ day of _____, 20____, negligently supplied (set forth in detail the information supplied) to [plaintiff] [plaintiff as one of the limited group of persons] which was false.
2. The defendant had a financial interest in supplying the information.
3. a. The defendant intended to supply the information for the benefit and guidance of [plaintiff] [plaintiff as one of the limited group of persons]; or
b. The defendant knew the person who received the information intended to supply the information for the benefit and guidance of [plaintiff] [plaintiff as one of the limited group of persons].
4. a. The defendant intended the information to influence [the transaction for which the information was supplied] [a transaction substantially similar to the transaction for which the information was supplied]; or
b. The defendant knew that the person who received the information intended the information to influence [the transaction for which the information was supplied] [a transaction substantially similar to the transaction for which the information was supplied].
5. The plaintiff acted in reliance on the truth of the information supplied and was justified in relying on the information.
6. The negligently supplied information was a cause of the plaintiff's damage.
7. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff cannot recover damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____, as explained in Instruction No. _____.]

Authority

Restatement of Torts (Second), Section 552 (1977)
Beeck v. Kapalis, 302 N.W.2d 90 (Iowa 1981)
Larsen v. United Federal Savings & Loan Association of Des Moines, 300 N.W.2d 281 (Iowa 1981)
Ryan v. Kanne, 170 N.W.2d 395 (Iowa 1969)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: Use 3a or 3b, 4a or 4b depending on the evidence.

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Caveat: The elements of the marshalling instruction are taken from Restatement (552, including "justifiable reliance" in paragraph 5 of the section. In discussing the necessary proof for this tort, the Iowa Supreme Court quoted (552 verbatim in *Meier v. Alfa-Laval, Inc.*, 454 N.W.2d 576, 581 (Iowa 1990). Nevertheless, because the specific issue was not addressed in the case, the Committee cannot take a definitive position and this Instruction and Instruction 800.8 should be used with this admonition in mind.

Rev. 09/10

800.2 Negligent Misrepresentation - Information - Definition. "Information" means any word or conduct asserting the existence of a fact. Information includes opinions based on facts equally well known to the defendant and the person who receives the information.

Authority

Restatement of Torts (Second), Section 552, Comment b (1977)

800.3 Negligent Misrepresentation - Care And Competence Expected Of Supplier Of Information - Nonprofessional. Concerning proposition No. 1 of Instruction No. [800.1] a person negligently supplied information by failing to use the care or skill of a reasonable person in obtaining or communicating the information. If a reasonable person would investigate the information before communicating it, the supplier must make such an investigation. In addition, the supplier must use reasonable care of skill to communicate the information accurately.

Authority

Restatement of Torts (Second), Section 552, Comments e and f (1977)

800.4 Negligent Misrepresentation - Care And Competence Expected Of Supplier Of Information - Professional. Concerning proposition No. 1 of Instruction No. [800.1], a person negligently supplies information by failing to exercise the reasonable care or skill of a person in the same business or profession in obtaining or communicating the information.

The person supplying the information has the duty to make any investigation that would be made by a reasonable person in the same business or profession.

The supplier of the information must also use the care and skill of a reasonable person in the same business or profession in arriving at and communicating information in the form of opinions.

Authority

Restatement of Torts (Second), Section 552, Comments e and f (1977)

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800.5 Negligent Misrepresentation - Pecuniary Interest - Definition. Concerning proposition No. 2 of Instruction No. [800.1], the test of financial interest is whether the supplier of the information benefits financially, directly or indirectly, from supplying the information.

Authority

Restatement of Torts (Second), Section 552, Comments c and d (1977)

800.6 Negligent Misrepresentation - Information May Be Supplied Directly Or Indirectly. Concerning proposition No. [3] [3a] of Instruction No. [800.1], it is not necessary that the person who acts in reliance on the information be the person to whom it was supplied. [It is necessary, however, for the supplier of the information to know that the information would be passed on to the person who acted in reliance on it.]*

*Use only if element 3a of Instruction No. 800.1 is submitted.

Authority

Beeck v. Kapalis, 302 N.W.2d 90 (Iowa 1981)

Larsen v. United Federal Savings & Loan Association, 300 N.W.2d 281 (Iowa 1981)

Ryan v. Kanne, 170 N.W.2d 395 (Iowa 1969)

Restatement of Torts (Second), Section 552, Comment g (1977)

800.7 Negligent Misrepresentation - Persons For Whose Guidance The Information Is Sought. Concerning proposition No. [3] [3a] of Instruction No. [800.1], a supplier of information is liable only to persons for whose benefit and guidance the information is supplied. The supplier of information must intend for the information to reach and influence either a particular person or persons known to the supplier or a particular group or class of persons who might reasonably be expected to receive the information and take some action in reliance upon it. [It is also sufficient if the supplier of information knows that the person who receives it intends to pass it on to a similar person, persons, or group.]*

It is not necessary that the supplier of information knew the plaintiff's name so long as the supplier knew the information would be received by a group of persons including the plaintiff.

*Use only if element No. 3a of Instruction No. 800.1 is submitted.

Authority

Restatement of Torts (Second), Section 552, Comment h (1977)

Beeck v. Kapalis, 302 N.W.2d 90 (Iowa 1980)

Larsen v. United Federal Savings & Loan Association, 300 N.W.2d 281 (Iowa 1981)

Ryan v. Kanne, 170 N.W.2d 395 (Iowa 1969)

800.8 Negligent Misrepresentation - Justifiable Reliance - Definition. Concerning proposition No. 5 of Instruction No. [800.1], the person receiving the information must rely on the information and the reliance must be justifiable.

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It is not necessary that the information be the only reason for the action taken by the plaintiff. It is enough if the information had a material influence on the plaintiff's conduct and was a substantial factor in bringing about the action.

Reliance is justified when a reasonably careful person would be justified in relying on the information supplied. Reliance is not justified if the person receiving the information known or in the exercise of ordinary care should know that the information is false.

Authority

Lockard v. Carson, 287 N.W.2d 871, 877-78 (Iowa 1980)

Ryan v. Kanne, 170 N.W.2d 395, 401 (Iowa 1969)

Prosser, Law of Torts, Section 108 at page 715 (1971)

Comment

Note: Also, see Caveat following Instruction No. 800.1.

810.1 Fraudulent Misrepresentation - Essentials For Recovery. The plaintiff must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. The defendant on or about the _____ day of _____, 20____, made a representation to [plaintiff] [plaintiff as one of a class of persons] that [set forth the representation made].
2. The representation was false.
3. The representation was material.
4. The defendant knew the representation was false.
5. The defendant intended to deceive [plaintiff] [plaintiff as one of a class of persons].
6. The plaintiff acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of the plaintiff's damage.
8. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff cannot recover damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____, as explained in Instruction No. _____.]

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Beeck v. Kapalis, 302 N.W.2d 90 (Iowa 1981)
Restatement (Second) of Torts, Section 525 (1977)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

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810.2 Fraudulent Nondisclosure - Essentials For Recovery. The plaintiff must prove all of the following propositions by a preponderance of clear, satisfactory, and convincing evidence:

1. Special circumstances existed which gave rise to a duty of disclosure between the plaintiff and the defendant. (Describe the relationship found to give rise to a duty of disclosure.)*
2. While such relationship existed, the defendant [was aware of the following facts] [intended the following course of action] (state the facts or intent alleged to have been withheld).
3. While such relationship existed, the defendant concealed or failed to disclose [the knowledge or intent alleged to have been withheld].
4. The undisclosed information was material to the transaction.
5. The defendant knowingly failed to make the disclosure.
6. The defendant intended to deceive the plaintiff by withholding such information.
7. The plaintiff acted in reliance upon the defendant's failure to disclose and was justified in such reliance.
8. The failure to disclose was a cause of the plaintiff's damage.
9. The nature and extent of the plaintiff's damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff cannot recover damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover damages in some amount.

Authority

Air Host Cedar Rapids, Inc. v. Cedar Rapids Commission, 464 N.W.2d 450 (Iowa 1990)
Sinnard v. Roach, 414 N.W.2d 100 (Iowa 1987)
Cornell v. Wunschel, 408 N.W.2d 369 (Iowa 1987)
Kunkle Water & Elec. Co. v. City of Prescott, 347 N.W.2d 648 (Iowa 1984)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)
Restatement (Second) of Torts, Section 551 (1977)
See American Family Service Corporation v. Michelfelder, 968 F.2d (8th Cir. 1992)

Comment

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Note: *Nondisclosure constitutes fraud only where special circumstances exist which give rise to a duty to communicate the concealed fact. Cornell v. Wunschel, 408 N.W.2d at 374; Kunkle Water & Elec. v. City of Prescott, 347 N.W.2d at 653.

Whether the special circumstances are such as to give rise to a duty of disclosure is generally a question of law for the Court. Restatement (Second) of Torts Section 551, Comment m (1977). Whether such special circumstances exist is a question of fact for the jury.

As to "clear, satisfactory and convincing" evidence, see Iowa Civil Jury Instruction 100.19.

Rev. 09/10

810.3 Fraudulent Misrepresentation - Definition Of Representation. Concerning proposition no. 1 of Instruction No. [810.1], "a representation" is any word or conduct asserting the existence of a fact. [It may include silence if the defendant fails to disclose information which the defendant has a duty to disclose and which the (plaintiff) (plaintiff as one of a class) has reason to believe will be disclosed.] [A seller's statement of the amount of (land) (goods) being sold is representation of fact, even if the words "more or less" are used. The words "more or less" indicate that the amount of (land) (goods) being sold is substantially the same as stated by the seller.] [A representation of fact includes an opinion expressed for the deliberate purpose of deceiving another.] [A representation of fact includes a promise to perform a future act.]

A representation also includes an opinion. An opinion is a statement of a person's belief that a fact exists or their judgment as to quality, value, authenticity, or similar matter. A representation of fact implies that the maker has definite knowledge or information supporting their statement; a representation of opinion does not. You must consider all of the surrounding circumstances, including the exact words used, in deciding whether a representation is one of fact or opinion.

Authority

Lockard v. Carson, 287 N.W.2d 871 (Iowa 1980)

Grefe v. Ross, 231 N.W. 2d 863 (Iowa 1975)

Restatement (Second) of Torts, Section 525, Comments b and d, and Section 538A (1977)

Comment

Note: Use only those portions of the instruction supported by the evidence.

6/87

810.4 Fraudulent Misrepresentation - Material - Definition. Concerning proposition [No. 3 of Instruction 810.1], [No. 4 of Instruction No. [810.2]], a representation is "material" if:

1. A reasonable person would consider it as important in making a decision.
2. The defendant knows or has reason to know that the [plaintiff] [plaintiff as one of a class of persons] considers, or is likely to consider, the representation as important in making a decision.

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3. The representation influences a person to enter into a transaction which would not have occurred otherwise.

Authority

Smith v. Peterson, 282 N.W.2d 761, 765 (Iowa 1979)
Restatement (Second) of Torts, Section 538, Comments d and f (1977)

Comment

Note: Use only those portions of the instruction supported by the evidence.

810.5 Fraudulent Misrepresentation - Knowledge Of Falsity (Scienter) - Definition.

Concerning proposition [No. 4 of Instruction No. [810.1]] [No. 5 of Instruction No. 810.2]], the defendant knew the representation was false if any of the following situations existed:

1. The defendant actually knew or believed the representation was false.
2. The defendant made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. The defendant falsely stated or implied that the representation was based on [his] [her] personal knowledge or investigation.
4. The defendant made a representation which [he] [she] knew or believed was materially misleading because it left out unfavorable information.
5. The defendant stated [his] [her] intention to do or not to do something when [he] [she] did not actually have that intention.
6. The defendant knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard of how it would be understood.
7. The defendant's [special relationship of trust and confidence to the plaintiff] [special source of information] made it the defendant's duty to know whether the representation was true or false.

Authority

Beeck v. Kapalis, 302 N.W.2d 90 (Iowa 1981)
Mills County State Bank v. Fisher, 282 N.W.2d 712 (Iowa 1979)
B & B Asphalt Co., Inc. v. T. S. McShane Co., 242 N.W.2d 279 (Iowa 1979)
Grefe v. Ross, 231 N.W.2d 863 (Iowa 1975)
Hall v. Wright, 261 Iowa 758, 156 N.W.2d 661 (1968)
Restatement (Second) of Torts, Section 526, Comments c , d, e and f, and Sections 527, 529 and 530 (1977)

Comment

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Note: Use only those portions of the instruction supported by the evidence.

810.6 Fraudulent Misrepresentation - Definition Of Intent To Deceive. Concerning proposition [No. 5 of Instruction No. [810.1]], [No. 6 of Instruction No. 810.2]], the defendant intended to deceive the plaintiff if any of the following situations existed when [he] [she] made a representation:

1. The defendant wanted to deceive the plaintiff or believed that the plaintiff would in all likelihood be deceived.
2. The defendant had information from which a reasonable person would conclude that the plaintiff would be deceived.
3. The defendant made the representation without concern for the truth.

Authority

B & B Asphalt Co., Inc. v. T.S. McShane Co., 242 N.W.2d 279 (Iowa 1976)
Grefe v. Ross, 231 N.W.2d 863 (Iowa 1975)
Restatement (Second) of Torts, Section 531, Comments c and d, (1977)

810.7 Fraudulent Misrepresentation - Intent To Deceive - Persons Affected. Concerning proposition [No. 5 of Instruction No. [810.1]] [No. 6 of Instruction No. 810.2]], the defendant is liable only to a person or group of persons whom [he] [she] intended or had reason to expect would act or refrain from acting in reliance on the representation. [It is not necessary that the defendant knew the plaintiff's name so long as the defendant intended or had reason to expect that the representation would be received and relied upon by a group of persons including the plaintiff.] A person has reason to expect a result if [he] [she] has information from which a reasonable person would conclude that the result will follow.

The defendant is liable only to those persons who rely on the representation in the type of transaction in which the defendant intends or has reason to expect the conduct of others will be affected.

Authority

Restatement (Second) of Torts, Section 531, Comments b, c, d, e and g (1977)

Comment

Note: Use the second paragraph of this instruction only if supported by the evidence.

810.8 Fraudulent Misrepresentation - Reliance - Generally. Concerning proposition [No. 6 of Instruction No. [810.1]] [No. 7 of Instruction No. [810.2]], the plaintiff must rely on the representation and the reliance must be justified.

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It is not necessary that the representation be the only reason for the plaintiff's action. It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what the plaintiff can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

Authority

Sedco Intern. S.A. v. Cory, 683 F.2d 1201 (8th Cir. 1982)

Lockhart v. Carson, 287 N.W.2d 871 (Iowa 1980)

Restatement (Second) of Torts, Section 537, Comments a and b; and Sections 540 and 541 (1977)

Comment

Note: Use the last sentence of this instruction only if supported by the evidence

810.9 Fraudulent Misrepresentation - Reliance - Opinion. Concerning proposition No. [6 of Instruction No. [810.1]] [No. 7 of Instruction No. [810.2]], the plaintiff is justified in relying on the defendant's representation of opinion only if one or more of the following situations exist:

1. The defendant has or claims to have special knowledge of the matter that the plaintiff does not have.
2. The defendant has a fiduciary or other similar relation of trust and confidence with the plaintiff.
3. The defendant has successfully tried to gain the plaintiff's confidence.
4. The defendant knows of some special reason to expect that the plaintiff will rely on the opinion.

Authority

Restatement (Second) of Torts, Section 542 (1977)

Comment

Note: Use only those portions of the instruction supported by the evidence.

810.10 Fraudulent Misrepresentation - Reliance - Opinion. Concerning proposition No. 6 of Instruction No. [810.1]] [No. 7 of Instruction No. [810.2]], a person is presumed to be able to form their own opinion about the quality or value of ordinary merchandise or the wisdom of entering into a routine transaction. A buyer of ordinary merchandise is not justified in relying upon the seller's "puffing," "sales talk," or other general opinion of quality or value. A buyer may be justified in relying upon a statement that the merchandise is satisfactory for the buyer's announced purpose.

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Authority

Smith v. Peterson, 282 N.W.2d 761 (Iowa Ct. App. 1979)
Rowe Mfg. Co. v. Curtis-Straub Co., 223 Iowa 858, 273 N.W.895 (1937)
Restatement (Second) of Torts, Section 542, Comments d and e (1977)

Comment

Note: Use the last sentence of this instruction only if supported by the evidence.

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CHAPTER 900

PREMISES LIABILITY

[900.1](#) Essentials For Recovery - Condition Of Premises - Duty To Visitors

[900.2](#) Reasonable Care – Factors to Consider for Landowner or Occupier.

[900.3](#) Essentials For Recovery - Condition Of Premises - Duty To Trespassers - Negligence

[900.4](#) Essentials For Recovery - Condition Of Premises - Duty To Trespassers - Willful Or Wanton

[900.5](#) Condition of the Premises - Knowledge Or Notice Of The Condition

[900.6](#) Known or Obvious

[900.7](#) Known or Obvious - Defined

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900.1 Essentials For Recovery - Condition Of Premises - Duty To Lawful Visitors. The plaintiff must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. The defendant knew or in the exercise of reasonable care should have known:
 - a. the plaintiff would not discover the condition, or
 - b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
 - c. the plaintiff would not protect [himself] [herself] from the condition.
3. The defendant was negligent in (set forth the particulars of the claim of negligence in failing to protect the plaintiff).
4. The negligence was a cause of the plaintiff's damage.
5. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Koenig v. Koenig, 766 N.W.2d 635, 645-46 (Iowa 2009)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)
Wieseler v. Sisters of Mercy Health Corp., 540 N.W. 2d 445 (Iowa 1995)
Kragel v. Wal-Mart Stores, Inc., 537 N.W.2d 699 (Iowa 1995)
Baumler v. Hemeseth, 534 N.W.2d 650 (Iowa 1995)
Konicek v. Loomis Bros. Inc., 457 N.W.2d 614 (Iowa 1990)
Stover v. Lakeland Squareowners Ass'n, 434 NW 2d 866 (Iowa 1989)
Hanson v. Town & Country Shopping Center, 259 Iowa 542, 144 N.W.2d 870 (1966)
Restatement of Torts (Second), sections 343 and 343A

Comment

The *Koenig* Court abolished the distinction between invitees and licensees. Former IUCJI 900.2 (duty to licensees) has been replaced with the new IUCJI 900.2 setting forth factors for the jury to consider in evaluating whether the Defendant exercised reasonable care in the maintenance of the premises for the protection of lawful visitors.

Note: The Iowa Supreme court has held in *Kragel*, supra, a case involving an invitee, that the duty of the defendant owner is nondelegable.

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900.2 Reasonable Care – Factors to Consider for Landowner or Occupier.

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether the Defendant has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

Authority

Koenig v. Koenig, 766 N.W.2d 635, 645-46 (Iowa 2009)

Rev. 3/10

900.3 Essentials For Recovery - Condition Of Premises - Duty To Trespassers - Negligence .

The plaintiff must prove all of the following propositions:

1. The defendant knew or had reason to know of the presence of the plaintiff on the premises.
2. The defendant afterward was negligent by failing to exercise reasonable care for the plaintiff's safety by [set forth the particulars of the claimed negligence].
3. The activities were the cause of the plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

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Authority

Champlin v. Walker, 249 N.W.2d 839 (Iowa 1977)
Restatement of Torts (Second), sections 333 and 336
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: The Iowa Supreme Court has noted but not addressed adoption of Restatement of Torts (Second), sections 334 and 370. See Champlin v. Walker, supra.

Rev. 09/10

900.4 Essential For Recovery - Condition Of Premises - Duty To Trespassers - Willful Or Wanton. The plaintiff must prove all of the following propositions.

1. The Defendant's actions in [set forth the action or conditions complained of] were willful or wanton. Actions are willful if intentionally done to cause harm.
2. The activities were the cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Champlin v. Walker, 249 N.W.2d 839 (Iowa 1977)
Restatement of Torts (Second), sections 333 and 336
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: The Iowa Supreme Court has noted but not addressed adoption of Restatement of Torts (Second), sections 334 and 370. See Champlin v. Walker, supra.

Rev. 09/10

900.5 Condition Of The Premises - Knowledge Or Notice Of The Condition. The [owner] [occupant] of premises is presumed to know all conditions on the premises that are caused or created by the [owner] [occupant] or the [owner's] [occupant's] [agent] [employee]. The [owner] [occupant] of premises is not responsible for an injury suffered by a person on the premises which

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resulted from a condition of which the [owner] [occupant] had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the [owner] [occupant] should have known about it.

Authority

Weidenhaft v. Shoppers Fair, 165 N.W.2d 756 (Iowa 1969)
Ling v. Hosts, Inc., 164 N.W.2d 123 (Iowa 1969)

900.6 Known Or Obvious. Concerning number 2 of Instruction No. [900.1], a defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position unless the defendant should anticipate the harm despite such knowledge or obviousness.

Authority

Wieseler v Sisters of Mercy Health Corp., 540 N.W. 2d 445 (Iowa 1995)
Restatement (Second) of Torts, section 343A

10/97

900.7 Known or Obvious - Defined. A condition is "known" if one is aware of conscious of its existence and of the risk of harm it presents.

A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

Authority

Konicek v. Loomis Bros., 457 N.W. 2d 614 (Iowa 1990)
Restatement (Second) of Torts, section 343A, comment b

10/97

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CHAPTER 1000

PRODUCTS LIABILITY

[1000.1](#) Manufacturing Defect - Essentials for Recovery

[1000.2](#) Design Defect - Essentials for Recovery

[1000.3](#) Inadequate Instructions or Warnings – Essentials for Recovery

[1000.4](#) Reasonable Alternative Design Requirement

[1000.5](#) Enhanced Injury (Crashworthiness) – Definition.

[1000.5A](#) Enhanced Injury (Crashworthiness) – Essentials For Recovery

[1000.6](#) Change In Condition Of The Product

[1000.7](#) Directions or Warning - Post-Sale - Negligence

[1000.8](#) Proximate Cause

[1000.9](#) Assumption Of Risk

1000.10 Blank

[1000.11](#) Affirmative Defense - State Of The Art - Strict Liability

[1000.12](#) Warning - Later Acquired Knowledge (deleted with new instruction to cite to)

Comment

Actions for the recovery of damages arising from the use of or exposure to tangible products often allege theories of negligence, strict liability and breach of warranty alternatively. It may be appropriate to submit more than one theory to the jury in a particular case. However, the court has stated "[few cases will sufficiently involve the theories of breach of warranty and strict liability to warrant presenting both theories to a jury." Nelson v. Todd's Ltd., 426 N.W.2d 120, 125 (Iowa 1988).

It may not be necessary to submit both strict liability and negligence in a defective design case. Hillrichs v. AVCO Corp., 478 N.W.2d 70, 75-76 (Iowa 1991).

Purely economic injuries, without accompanying physical injury, are not actionable in strict liability. Nelson v. Todd's Ltd., 426 N.W.2d 120, 123 (Iowa 1988).

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1000.1 Manufacturing Defect - Essentials for Recovery.

In order to recover on a claim that defendant's product contains a manufacturing defect, the plaintiff must prove all of the following propositions:

1. The defendant sold or distributed the (product);
2. The defendant was engaged in the business of selling or distributing the (product);
3. The (product) at the time it left defendant's control contained a manufacturing defect that departed from its intended design, in one or more of the following ways:

(Set out particulars as supported by the evidence).

4. The manufacturing defect was a cause of plaintiff's damages; and
5. The amount of damages.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. ____.]

Authority

Wright v. Brooke Group Ltd., 652 N.W.2d 159, 178 (Iowa 2002)
Restatement (Third) Torts, Products Liability, §§ 1, 2(a) and comment c.
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

A manufacturing defect claim should not be submitted when the product is in the condition intended by the manufacturer. Wright v. Brooke Group Ltd., 652 N.W.2d at 178

Rev. 9/10

1000.2 Design Defect - Essentials for Recovery.

In order to recover on the claim that defendant's product was defective in design, the plaintiff must prove all of the following propositions:

1. The defendant sold or distributed the (product);
2. The defendant was engaged in the business of selling or distributing the (product);
3. The product was in a defective condition at the time it left defendant's control, in one or more of the following ways:

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(Set out particulars as supported by the evidence.)

4. A reasonable alternative safer design could have been practically adopted at the time of sale or distribution.
5. The alternative design would have reduced or avoided the foreseeable risks of harm posed by the (product);
6. The omission of the alternative design renders the (product) not reasonably safe;
7. The alternative design would have reduced or prevented the plaintiff's harm;
8. The design defect was a cause of plaintiff's damage; and
9. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. ____.]

Authority

Wright v. Brooke Group Ltd., 652 N.W.2d 159, 168-169 (Iowa 2002)
Restatement (Third) Torts, Products Liability, §§1, 2(b) and comment f.
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

1000.3 Inadequate Instructions or Warnings – Essentials for Recovery.

In order to recover on a claim that defendant's product was defective because of inadequate instructions or warnings, the plaintiff must prove all of the following propositions:

1. Defendant sold or distributed the (product);
2. The defendant was engaged in the business of selling or distributing the (product);
3. The foreseeable risks of harm posed by the (product) could have been reduced or avoided by the provision of reasonable instructions or warnings, in one or more of the following ways:

(Set out particulars as supported by the evidence).

4. The omission of the instruction(s) or warning(s) renders the (product) not reasonably safe;
5. The risk to be addressed by the instruction(s) or warning(s) was not obvious to, or generally known by, foreseeable product users;

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6. The omission of the instruction(s) or warning(s) was a cause of plaintiff's damages; and

7. The amount of damages.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. ____.]

Authority

Wright v. Brooke Group Ltd., 652 N.W.2d 159, 169-71 (Iowa 2002)

Restatement (Third) Torts, Products Liability, §§1, 2(c), and comments i. and j.

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 9/10

1000.4 Reasonable Alternative Design Requirement.

Concerning propositions 4, 5 and 6 of Instruction No. [1000.2], you may consider the following factors and their interaction to determine whether an alternative design is reasonable and whether its omission renders the (product) not reasonably safe:

- The magnitude and probability of the foreseeable risks of harm;
- The instructions and warnings accompanying the (product);
- Consumer expectations about product performance and the dangers attendant to use of the (product), including expectations arising from product portrayal and marketing.
- Whether the risk presented by the (product) is open and obvious to, or generally known by, foreseeable users;
- The technological feasibility and practicality of the alternative design;
- Whether the alternative design could be implemented at a reasonable cost;
- The relative advantages and disadvantages of the (product) as designed and as it alternatively could have been designed;
- The likely effects of the alternative design on product longevity, maintenance, repair, esthetics and on the efficiency and utility of the (product);
- The range of consumer choice among similar products, with and without the alternative design;

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- The overall safety of the (product) with and without the alternative design and whether the alternative design would introduce other dangers of equal or greater magnitude;
- Custom and practice in the industry and how defendant's design compares with other competing products in actual use; and
- Any other factor shown by the evidence bearing on this question.

Authority

Wright v. Brooke Group Ltd., 652 N.W.2d 159, 170-71 (Iowa 2002)
Restatement (Third) Torts, Products Liability, § 2, comments d, f, g and j.

Comment

Submit only those factors supported by the evidence.

1000.5 Enhanced Injury (Crashworthiness) – Definition. Enhanced injury represents that portion of the total injury for which a product manufacturer may be liable in an action involving an initial cause unrelated to a product defect.

Jahn v. Hyundai Motor Company, 773 N.W.2d 550 (Iowa 2009)

New 3/12

1000.5A Enhanced Injury (Crashworthiness) – Essentials For Recovery. In order to recover on the claim of enhanced injury, the plaintiff must prove all of the following propositions:

1. The defendant designed the (product).
2. The defendant was engaged in the business of designing the (product).
3. The (product) was in a defective condition at the time it left defendant's control in one or more of the following ways:

(Set out particulars as supported by the evidence).

4. The plaintiff used the (product) in an intended manner or in a manner reasonably foreseeable by the defendant.
5. The (product) was expected to and did reach the plaintiff without substantial change in its condition.
6. An alternative practicable, safer design was available.
7. The nature and extent of the injuries plaintiff suffered above and beyond that which would have occurred without the design defect.

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8. The enhanced injuries would not have occurred except for the defective design.
9. The extent of the enhanced injuries.
10. The nature and extent of plaintiff's damages.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Reed v. Chrysler Corp., 494 N.W.2d 224, 226-28 (Iowa 1992), overruled in part by Jahn v. Hyundai Motor Company, 773 N.W.2d 550 (Iowa 2009)(regarding the application of comparative fault principles in a crashworthiness case).

Jahn v. Hyundai Motor Company, 773 N.W.2d 550 (Iowa 2009)

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

Rev. 3/12

1000.6 Change In Condition Of The Product. The requirement that a product be free from defects at the time it left the defendant's control includes the requirement that there be [proper packaging] [necessary sterilization] precautions to keep the product free from defects for a normal length of time when handled in a normal manner.

However, the defendant is not responsible if the product is delivered free from defects, and later mishandling changes or other causes beyond their control make the product defective, unless mishandling, changes or other causes beyond defendant's control was reasonably foreseeable by the defendant.

Authority

Leaf v. Goodyear Tire and Rubber, 590 N.W.2d 525 (Iowa 1999)

Henkel v. R and S bottling Company, 323 N.W.2d 185 (Iowa 1982)

Aller v. Rodgers Machinery Mfg. Co. Inc., 268 N.W.2d 830, (Iowa 1978)

Cooley v. Quick Supply Company, 221 N.W.2d 763 (Iowa 1974)

Restatement (Second) of Torts, Section 402A, Comment g and p (1965)

1000.7 Directions or Warning - Post-Sale - Negligence. A supplier of a product has a duty to warn the user of the product following [sale][distribution] if:

1. the supplier knows or should reasonably know that the product poses a substantial risk of harm to persons or property; and
2. the supplier can identify those to whom a warning should be provided and it may reasonably be assumed those persons are unaware of the risk of harm; and

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3. a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and
4. the risk of harm is sufficiently great to justify the burden of providing the warning.

Under these circumstances, the supplier has a duty to exercise reasonable care to inform the user of the product of the dangerous condition or of the facts which make it likely to be dangerous.

Authority

Lovick v Wil-Rich, 588 N.W.2d 688 (Iowa 1999)
Restatement (Third) of Torts: Products Liability section 10 (1997)

Rev. 9/03

1000.8 Proximate Cause. A defect in a product is a proximate cause of when the damage would not have happened except for the defect.

Authority

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

1000.9 Assumption Of Risk. The defendant claims the plaintiff voluntarily assumed the risk by:

(Set out the particulars supported by the evidence.)

To prove this defense, the defendant must prove each of the following propositions:

1. The plaintiff knew the [defect] [dangerous condition] was present.
2. The plaintiff understood the nature of the danger to [himself] [herself].
3. Nevertheless, the plaintiff unreasonably, freely and voluntarily used the product.
4. The plaintiff's assumption of risk was a cause of plaintiff's damage.

If the defendant fails to prove any of these propositions, the defendant has not proved this defense. If the defendant has proved all of these propositions, then you will include this fault in the total percentage of plaintiff's fault you find in accordance with the special verdict submitted with these instructions.

Authority

Gremmel v. Junnie's Lounge, Ltd., 397 N.W.2d 717 (Iowa 1986)
Martin v. Hedding, 373 N.W.2d 486 (Iowa 1985) (Elements of Assumption of Risk)

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Williams v. Brown Manufacturing Co., 261 N.E.2d 305, 312 (Ill. 1979) cited specifically in
Hawkeye Security Insurance Company v. Ford Motor Company, 199 N.W.2d 373 (Iowa 1972)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

See: Restatement (Second) of Torts, Section 496A, B, C, D, E, F, and G.
60 Iowa Law Review 1.
Iowa Civil Jury Instructions Chapter 400

Comment

Caveat: Further case law clarification is necessary before submitting an instruction correlating the statutory provisions and prior case law in misuse of a product. Compare Iowa Code Section 668.2 with Hughes v. Magic Chef, Inc., 288 N.W. 2d 542 (Iowa 1980)

Rev. 09/10

1000.10 Left Blank

1000.11 Affirmative Defense – State Of the Art – Strict Liability. This Instruction is withdrawn. Wright v. Brooke Group Ltd., 652 N.W.2d 159 (Iowa 2002) makes “State of the Art” an element of the plaintiff’s proof in product liability cases, but remains an affirmative defense under Iowa Code section 668.12

1000.12 Post-sale Duty to Warn. See Lovick v. Wil-Rich, 588 N.W.2d 688 (Iowa 1999)

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CHAPTER 1100

WARRANTY

[1100.1](#) Essentials For Recovery - Express Warranty

[1100.2](#) Express Warranty - Defined

[1100.3](#) Reliance On Express Warranty

[1100.4](#) Breach Of Express Warranty

[1100.5](#) Implied Warranty Of Fitness For Particular Purpose - Definition

[1100.6](#) Essentials For Recovery - Implied Warranty Of Fitness For Particular Purpose

[1100.7](#) Fitness - Particular Purpose

[1100.8](#) Reliance - Particular Purpose

[1100.9](#) Implied Warranty Of Fitness For Particular Purpose Contract For Services - Definition

[1100.10](#) Implied Warranty Of Merchantability - Defined

[1100.11](#) Essentials For Recovery - Implied Warranty Of Merchantability

[1100.12](#) Merchant - Definition

[1100.13](#) Merchantability - Definition

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1100.1 Essentials For Recovery - Express Warranty. The plaintiff must prove all of the following propositions:

1. The defendant sold [description of the product or service sold] and expressly warranted [the particulars alleged by plaintiff].
2. The plaintiff made the purchase relying on the express warranty.
3. The [description of the product or service] did not conform to the express warranty.
4. The breach of express warranty was a cause of the plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Comment

Note: If there is a factual dispute as to whether the property constitutes "goods", see Iowa Code section 554.2105.

Caveat: Iowa Code section 668.1 defines fault to include breach of warranty. Insufficient case authority exists to submit an instruction including the defense of comparative fault.

Rev. 09/10

1100.2 Express Warranty - Defined. An express warranty is any [affirmation of fact] [promise] by a seller about a product or service which naturally or ordinarily leads the buyer to purchase the product or service, and the buyer purchases the product or service relying upon the [affirmation] [promise].

In order for an [affirmation of fact] [promise] to be an express warranty, no particular form of words have to be used, nor do the terms "warrant" or "guarantee" have to be used, nor does the seller have to intend to make a warranty. The warranty must relate to a fact and not an opinion about the quality or condition of the product or service sold. An expression of opinion or belief only, a statement of value, or mere words of praise do not create a warranty.

Authority

Iowa Code section 554.2313

1100.3 Reliance On Express Warranty. The fact that a buyer may, to some extent, rely upon their own judgment in purchasing the goods does not prevent them from also relying upon an express warranty made by the seller.

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Ertl Co. v. Lange Plastics Co., 158 N.W.2d 93 (Iowa 1968)

1100.4 Breach Of Express Warranty. A breach of express warranty occurs when defects are substantial and sufficiently serious so that the [product] [service] fails to materially comply with the express warranty. It is not enough if the defects are small, minor or insignificant [or that the defects are only the natural result of the age of a used product].

1100.5 Implied Warranty Of Fitness For Particular Purpose - Definition. Where at the time of contracting, the seller has reason to know the particular purpose for which the [product or service] is required and the buyer is relying on the seller's skill or judgment to select or furnish a suitable [product or service,] there is an implied warranty the goods shall be fit for the particular purpose.

Authority

Iowa Code section 554.2315

1100.6 Essentials For Recovery - Implied Warranty Of Fitness For Particular Purpose. Plaintiffs must prove all of the following propositions:

1. At the time of the sale the defendant had reason to know the particular purpose of the [product or service].
2. The defendant had reason to know the plaintiff was relying on the defendant's skill or judgment to [select] [furnish] [product or service].
3. The plaintiff relied upon the defendant's skill or judgment.
4. The [product or service] was not fit for the particular purpose.
5. The failure of the [product or service] to fit the particular purpose was a cause of the plaintiff's damage.
6. Notice was given to the defendant. [Add this element only when appropriate.]
7. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Comment

Note: If there is a factual dispute as to whether the property constitutes "goods", see Iowa Code section 554.2105.

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Caveat: Iowa Code section 668.1 defines fault to include breach of warranty. Insufficient case authority exists to submit an instruction including the defense of comparative fault.

Rev. 09/10

1100.7 Fitness - Particular Purpose. When the ordinary purpose of a product is the same as the buyer's particular purpose, the buyer must still prove the seller knew the buyer's particular purpose and the buyer was relying on the seller's skill and judgment to furnish a suitable product or service.

No specific conversation between the parties is necessary with respect to the particular purpose. The particular purpose may arise from the facts and circumstances surrounding the transaction or past transactions between the parties.

Authority

Van Wyk v. Norden Laboratories, 345 N.W.2d 81 (Iowa 1984)
Jacobson v. Benson Motors, Inc., 216 N.W.2d 396 (Iowa 1974)

1100.8 Reliance - Particular Purpose. It is not enough that the buyer relied upon the general reputation or integrity of the seller. It must appear the seller had special skill or judgment regarding the product and its intended use, and the buyer relied upon the seller's special skills or judgment.

The buyer's reliance on the seller's skill or judgment need not be a total reliance. The buyer may rely partly on their own judgment and partly on the seller's skill and judgment.

Authority

Dotts v. Bennett, 382 N.W.2d 85 (Iowa 1986)
Peters v. Lyons, 168 N.W.2d 759 (Iowa 1969)

1100.9 Implied Warranty Of Fitness For Particular Purpose - Contract For Services - Definition. When a contractor agrees to build, install or perform work, there is an implied agreement that the building, installation or work performed will be sufficient for the particular purpose desired or to accomplish a certain result.

Authority

Semler v. Knowling, 325 N.W.2d 395 (Iowa 1982)

Comment

Note: Tailor Instruction 1100.9 to contracted services.

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1100.10 Implied Warranty Of Merchantability - Defined. When the seller is a merchant, and a contract for the sale of goods exists between the buyer and the seller, there is an implied warranty that the goods shall be merchantable.

Authority

Iowa Code section 554.2314(1)
Dotts v. Bennett, 382 N.W.2d 85 (Iowa 1986)

Comment

Note: If there is a factual dispute as to whether the seller is a merchant, tailor the instruction accordingly. Iowa Code section 554.2104(1).

1100.11 Essentials For Recovery - Implied Warranty Of Merchantability. The plaintiff must prove all of the following propositions:

1. Defendant was a merchant as defined in Instruction No. _____, at the time [he, she or they] sold [description of the product or service.]
2. The [description of the product or service] was not merchantable as defined in Instruction No. _____.
3. Notice was given to the defendant. [Add this element only when appropriate.]
4. The lack of merchantability was a cause of the plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Comment

Note: If there is a factual dispute as to whether the property constitutes "goods", see Iowa Code section 554.2105.

Note: Plaintiff may be a third party or the buyer. See Iowa Code section 554.2318.

Caveat: Iowa Code section 668.1 defines fault to include breach of warranty. Insufficient case authority exists to submit an Instruction including the defense of comparative fault.

Rev. 09/10

1100.12 Merchant - Definition. Merchants are persons [who deal in products or services of the kind in question] [who hold] themselves out as having knowledge or skill specific or particular to the practices or products or services in question] [whose knowledge or skill [specific or

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particular] to the practices, products or services in question may be attributed to them by their employment of an agent or other intermediary] [who by their occupation hold themselves out as having such knowledge or skill].

The term merchant does not include a casual or inexperienced seller.

Authority

Iowa Code section 554.2104(1)

Dotts v. Bennett, 382 N.W.2d 85 (Iowa 1986)

1100.13 Merchantability - Definition. Merchantable means [set forth applicable statutory definition of "merchantability" under Iowa Code section 554.2314(2)].

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CHAPTER 1200

BUSINESS RELATIONS - INTERFERENCE

[1200.1](#) Intentional Interference with Contract - Essentials For Recovery

[1200.2](#) Intentional Interference with Prospective Business Advantage -Essentials For Recovery

[1200.3](#) Interference With Contract - Definition Of Contract

[1200.4](#) Interference With Contract - Knowledge

[1200.5](#) Interference With Contract - Improper

[1200.6](#) Intentional Interference

[1200.7](#) Interference With Prospective Business Advantage - Definitions

[1200.8](#) Interference With Prospective Business Advantage - Improper Interference

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1200.1 Intentional Interference With Contract - Essentials For Recovery. The Plaintiff must prove all of the following propositions:

1. The plaintiff had a contract with (name of third person).
2. The defendant knew of the contract.
3. The defendant intentionally and improperly interfered with the contract by (set out the particulars supported by the evidence).
4. a. The interference caused [(name of third person)] [the plaintiff] not to perform the contract;
or
b. The interference caused the plaintiff's performance of the contract to be more burdensome or expensive.
5. The nature and amount of damage.

If the plaintiff has failed to prove any one or more of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751 (Iowa 1999)
Financial Marketing Services, Inc., v. Hawkeye Bank, 588 N.W.2d 450 (Iowa 1999)
Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)
Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

1200.2 Intentional Interference With Prospective Business Advantage - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. The plaintiff has a prospective [contractual relationship] [business relationship] with (name of third person).
2. The defendant knew of the prospective relationship.
3. The defendant intentionally and improperly interfered with the relationship by (set forth the particulars supported by the evidence).
4. a. The interference caused (name of third person) not [to enter] [to continue] the relationship; or
b. The interference prevented the plaintiff from [entering] [continuing] the relationship.

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5. The nature and amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Financial Marketing Services v. Hawkeye Bank, 588 N.W.2d 450 (Iowa 1999).
Preferred Marketing Associates Co. v. Hawkeye National Life Insurance Co., 452 N.W.2d 389 (Iowa 1990)
Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)

1200.3 Interference With Contract - Definition Of Contract. A contract is an agreement between two or more persons to do or not to do something.

Authority

Compiano v. Kuntz, 226 N.W.2d 245 (Iowa 1975)
Restatement (Second) of Torts, Section 766, comment f

Comment

Caveat: If the existence of a contract is an issue, this definition should be tailored to the facts of the case.

1200.4 Interference With Contract - Knowledge. The defendant “knew” of the contract if the defendant either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between (names of parties).

Authority

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751, 764 (Iowa 1999)

1200.5 Interference With Contract - Improper. In determining whether a defendant's conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The defendant's motive.
3. The interests of the party with which the conduct interferes.

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4. The interest sought to be advanced by the defendant.
5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the other party.
6. The nearness or remoteness of the defendant's conduct to the interference.
7. The relations between the parties.

Authority

Toney v. Casey's General Stores, Inc., 460 N.W.2d 849 (Iowa 1990)
Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)

1200.6 Intentional Interference. A defendant's interference with a [contract] [prospective contractual relationship] [prospective business relationship] is intentional if the defendant either interferes with the [contract] [prospective contractual relationship] [prospective business relationship] on purpose or knows the conduct is substantially certain to interfere with the [contract] [prospective contractual relationship] [prospective business relationship].

Authority

Restatement (Second) of Torts, Section 766, comment j.

1200.7 Interference With Prospective Business Advantage - Definitions. ["Prospective contractual relationship" means a reasonably likely contract of financial benefit to the plaintiff.] ["Prospective business relationship" means a reasonably likely business relationship of financial benefit to the plaintiff.]

Authority

Restatement of Torts (Second), Section 766B, comment c

1200.8 Interference with Prospective Business Advantage - Improper Interference. A defendant's interference with a [prospective contractual relationship] [prospective business relationship] is improper if the defendant's interference is done with [the purpose] [the predominant purpose] of financially harming or destroying the plaintiff's business.

Authority

Preferred Marketing Associates Co. v. Hawkeye National Life Insurance Co., 452 N.W.2d 389 (Iowa 1990)
Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)
Page County Appliance Center, Inc. v. Honeywell, Inc., 347 N.W.2d 171, (Iowa 1984)

Comment

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Note: The Iowa standard on this element is stricter than the Restatement standard. *Id.* at 177. Moreover, when a defendant acts with two or more purposes, the improper purpose must predominate in order to create liability. *Harsha v. State Savings Bank*, 346 N.W.2d 791,799 (Iowa 1984)

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CHAPTER 1300

DRAM SHOP LIABILITY

[1300.1](#) Essentials For Recovery

[1300.2](#) Definition of Intoxication

[1300.3](#) Proximate Cause

[1300.4](#) Affirmative Defense - Lack of Contribution

[1300.5](#) Affirmative Defense - Complicity

[1300.6](#) Affirmative Defense - Assumption of Risk

[1300.7](#) Definition of "Knew Or Should Have Known"

Comment

Note: All instructions apply to the Dram Shop Law as amended in 1986. Attorneys and judges may want to keep the old instructions in their binders to use in causes of action which accrued before the amendment's effective date.

Authority

Thorp v. Casey's General Stores, Inc., 446 N.W.2d 457 (Iowa 1989)

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Rev. 06/14

1300.1 Essentials Of Recovery. The plaintiff must prove all of the following propositions:

1. The defendant was licensed by the State of Iowa to sell beer, wine, or liquor.
2. a. The defendant [or its employee] sold and served _____ [beer] [wine] [liquor] to a point where (name of defendant or employee) knew or should have known _____ would become intoxicated, and the [beer] [wine] [liquor] sold and served to _____ was a cause of [his] [her] intoxication at the time of the incident in which plaintiff was injured;* and/or
 - b. The defendant [or its employee] sold and served [beer] [wine] [liquor] to _____ when (name defendant or employee) knew or should have known _____ was intoxicated.
3. The plaintiff was injured in [person] [property] [means of support] [by _____ while _____ was intoxicated [as a result of _____'s intoxication].**
4. The nature and extent of the damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. (If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.)

Authority

Thorp v. Casey's General Stores, Inc., 446 N.W.2d 457 (Iowa 1989)
Walton v. Stokes, 270 N.W.2d 627 (Iowa 1978)
Pose v. Roosevelt Hotel Company, 208 N.W.2d 19 (Iowa 1973)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)
Iowa Code section 123.92

Comment

Note: Alternative 2a and/or 2b should only be submitted if supported by the evidence.

* Alternative 2a has a causation requirement. Alternative 2b does not have a causation requirement because alternative 2b does not require the plaintiff to prove the intoxicated person drank the intoxicants or there was a cause between the selling and serving of intoxicants with the intoxication.

** The last bracketed alternative is applicable only in a derivative claim situation or when it is claimed the means of support of a spouse or child is damaged as a result of the intoxication of the other spouse and parent.

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Rev. 06/14

1300.2 Definition Of Intoxication. A person is "intoxicated," if, by drinking beer, wine, or liquor, one or more of the following is true:

1. [His] [Her] reason or mental ability has been affected.
2. [His] [Her] judgment is impaired.
3. [His] [Her] emotions are visibly excited.
4. [He] [She] has, to any extent, lost control of bodily actions.

Authority

Fournier v. Fraternal Order of Eagles, Waterloo Aerie No. 764, 368 N.W.2d 849 (Iowa 1985)
State v. Stout, 247 Iowa 453, 457, 74 N.W.2d 208, 210 (1956)

Rev. 6/14

1300.3 Cause. The sale and service of [beer] [wine] [liquor] is a cause of intoxication when it is a substantial factor in producing intoxication.

"Substantial" means the sale and service of [beer] [wine] [liquor] had such an effect in producing intoxication as to lead a reasonable person to regard it as a cause.

It need not be shown that the [beer] [wine] [liquor] was the sole cause of the intoxication. It is enough if it was a contributing cause of the intoxication. If the [beer] [wine] [liquor] combined with other [beer] [wine] [liquor] [later] [earlier] drunk by (name) caused the continuance of an intoxicated condition until the time of the incident, then the cause has not been proven.

However, if you find (name) was not intoxicated at the time of the incident, or if you find the [beer] [wine] [liquor] sold and served to [him] [her] by defendant was not a cause of [his] [her] intoxication at the time of the incident, then cause has not been proven.

Authority

Thorp v. Casey's General Stores, Inc., 446 N.W.2d 457 (Iowa 1989)
Slager v. HWA Corporation, 435 N.W.2d 349 (Iowa 1989)
Pose v. Roosevelt Hotel Company, 208 N.W.2d 19 (Iowa 1973)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: This instruction only applies to alternative 2a of Instruction 1300.1. If alternative 2a is not relied upon by the plaintiff, this instruction should not be given.

1300.4 Affirmative Defense - Lack Of Contribution. The defendant claims (name)'s intoxication did not contribute to [his] [her] injurious actions. If the defendant has proved (name)'s intoxication did not contribute to [his] [her] injurious actions, your verdict will be for the

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defendant. However, if the defendant has not proved this defense, then you will consider whether the plaintiff is entitled to damages under other instructions.

Authority

Iowa Code section 123.92

1300.5 Affirmative Defense - Complicity. The defendant asserts a defense of complicity.

To prove the defense of complicity, the defendant must prove both of the following propositions:

1. The plaintiff voluntarily and knowingly encouraged or participated to a substantial and material extent in the defendant's becoming intoxicated.
2. As a result, the defendant became intoxicated and caused the plaintiff's damage.

If the defendant has proved both of these propositions, then the plaintiff cannot recover damages. If the defendant has failed to prove one or both of these propositions, then consider whether the plaintiff is entitled to damages under the other instructions.

Authority

Cox v. Rolling Acres Golf Course Corp., 532 N.W.2d 761 (Iowa 1995)
Martin v. Hedding, 373 N.W. 2d 486 (Iowa 1985)

1300.6 Affirmative Defense - Assumption Of Risk. The defendant, (name), claims the plaintiff "assumed the risk" when [he] [she] got in (name)'s vehicle.

If the defendant has proved the plaintiff (1) knew a risk was present; (2) understood its seriousness; and (3) freely chose to incur it, the plaintiff "assumed the risk" [he] [she] was taking, and cannot recover as a result of taking the risk.

If the defendant has not proved the defense of "assumption of risk," then you will consider whether the plaintiff is entitled to damages under the other instructions.

Authority

Slager v. HWA Corporation, 435 N.W.2d 349 (Iowa 1989)
Martin v. Hedding, 373 N.W.2d 486 (Iowa 1985)

1300.7 Definition of "Knew Or Should Have Known." The phrase "knew or should have known" means that the person had actual knowledge or that a reasonably observant person under the same or similar circumstances would have had knowledge.

Authority

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Habbiebrunken v. G & S Enterprises, Inc., 470 N.W.2d 19 (Iowa 1991) (approving definition in dram shop context)

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CHAPTER 1400

INSURANCE COMPANY LIABILITY

Excess Liability

[1400.1](#) Third-Party Bad Faith - Essentials for Recovery

[1400.2](#) Definition of Bad Faith

Insurer Liability

[1410.1](#) First-Party Bad Faith - Essentials For Recovery

Insurer Contract Liability

[1420.1](#) Insurance Contract - Essentials for Recovery

[1430.1](#) Uninsured Motorist Coverage - Essentials for Recovery

[1440.1](#) Underinsured Motorist Coverage - Essentials for Recovery

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1400.1 Third-Party Bad Faith - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. A specific demand for settlement was made by (name of claimant).
2. The defendant rejected the proposed settlement in bad faith.
3. The bad faith was a cause of plaintiff's damages.
4. The nature and extent of the damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority

Wierck v. Grinnell Mut. Reins. Co., 456 N.W.2d 191 (Iowa 1990)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: If the insurer's bad faith is based on conduct other than a failure to settle, omit the first two elements and replace with the following:

1. The defendant acted in bad faith in one or more of the following ways:
 - a.
 - b.

Rev. 09/10

1400.2 Definition Of Third Party Bad Faith. An insurance company must act in good faith in making decisions about claims made against its insured. The company must give equal consideration to its own interests and to the interests of the insured.

The insurance company must view the situation as if there were no policy limits applicable to the claim. Bad faith arises when the insurance company, by its misconduct, serves its own interest and irresponsibly exposes the insured to an unreasonable risk of liability.

Authority

Wierck v. Grinnell Mut. Reins. Co., 456 N.W.2d 191 (Iowa 1990)

Comment

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Note: If the bad faith alleged is other than a failure to settle, omit the second paragraph or modify it to fit the circumstances.

1410.1 First-Party Bad Faith - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The defendant [denied plaintiff's claim] [refused to defend the plaintiff].
2. There was no reasonable basis for [denying the claim] [refusing to defend].
3. The defendant knew or had reason to know that there was no reasonable basis for [denying the claim] [refusing to defend].
4. The [denial] [refusal to defend] was a cause of damage to the plaintiff.
5. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Seastrom v. Farm Bureau Life Ins., 601 N.W.2d 339 (Iowa 1999)
Boylan v. American Motors, Inc., 489 N.W.2d 742 (Iowa 1992)
North Iowa State Bank v. Allied Mut. Ins. Co., 471 N.W.2d 824, 829 (Iowa 1991)
Kiner v. Reliance Ins. Co., 463 N.W.2d 9 (Iowa 1990)
Dolan v. Aid Ins. Co., 431 N.W.2d 790 (Iowa 1988)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: Element 2, the lack of a reasonable basis for denying the claim, is an objective element. This element will usually be determined by the court as a matter of law. Reuter v. State Farm Mut. Auto. Ins. Co., 469 N.W.2d 250, 255 (Iowa 1991).

Rev. 09/10

1420.1 Insurance Contract - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The plaintiff was insured for loss due to [theft, fire, storm, liability, etc.] by the defendant on the date of loss.
2. The plaintiff had paid the premiums which were due.
3. The plaintiff had a loss by [theft, fire, storm, liability, etc.] which was covered by the insurance policy with the defendant.

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4. [The plaintiff gave the defendant timely proof of loss.]

[The plaintiff's failure to give timely proof of loss was [excused] [waived] [not prejudicial to the defendant].]

5. The defendant did not pay the plaintiff's claim.
 6. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of the propositions, then you will consider the defense of _____ as explained in Instruction No. _____ .]

Authority

Watson v. National Sur. Corp., 468 N.W.2d 448, 451 (Iowa 1991)
American Guar. & Liability Ins. Co. v. Chandler Mfg. Co., 467 N.W.2d 226 (Iowa 1991)

Comment

Note: Where the policy condition at issue is other than the requirement of timely proof of loss, modify paragraph 4 accordingly.

Note: For measure of recovery of total property loss, see McIntosh v. Home Mut. Ins. Ass'n of Iowa, 198 Iowa 1038, 1039, 200 N.W. 694 (1924). To determine actual cash value by using market value and/or replacement cost, see Britven v. Occidental Ins. Co., 234 Iowa 682, 685-87, 13 N.W.2d 791, 793-94 (1944); Stortenbecker v. Iowa Power & Light Co., 250 Iowa 1073, 1080, 96 N.W.2d 468, 472 (1959).

Note: See: Henschel v. Hawkeye-Security Ins. Co., 178 N.W.2d 409, 415-17 (Iowa 1970) concerning legal excuse for not giving notice of loss. See Pirkl v. Northwestern Mut. Ins. Ass'n, 348 N.W.2d 633, 637 (Iowa 1984) concerning legal excuse or no prejudice for not giving notice of loss within a specific time period. See Basta v. Farm Property Mut. Ins. Ass'n, 217 Iowa 240, 249, 252 N.W. 125 (1933) on the issue of the insurance company's waiver of a proof of loss statement. See American Guar. & Liab. Ins. Co. v Chandler Mfg. Co., 467 N.W.2d 226 (Iowa 1991) concerning breach of the cooperation clause.

Note: See Instruction 2400.11 for definition of waiver of performance.

1430.1 Uninsured Motorist Coverage - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. At the time of the accident, plaintiff was insured by the defendant for bodily injuries caused by the fault of an owner or operator of an uninsured motor vehicle.
2. (Name of uninsured motorist) was the owner or operator of an uninsured motor vehicle.

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3. (Name of uninsured motorist) is legally liable for the plaintiff's bodily injuries as determined in accordance with instructions _____ though _____.

4. The nature and extent of plaintiff's damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover the amount of plaintiff's damages, subject to the limits of the defendant's policy.

Authority

Iowa Code section 516A.1 (1991)

Hinners v. Pekin Ins. Co., 431 N.W.2d 345 (Iowa 1988)

Lemrich v. Grinnell Mut. Reins. Co., 263 N.W.2d 714 (Iowa 1978)

Comment

Note: If there is a dispute with respect to whether the premiums were paid, add the following additional element:

2. The premiums on the policy were paid when due.

Note: If there is no factual dispute with respect to the existence of every element of the plaintiff's case except element no. 3, the uninsured motorist's legal liability, then it may not be necessary to use this instruction. The parties and court may prefer to simply use the appropriate fault instructions.

1440.1 Underinsured Motorist Coverage - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. At the time of the accident, the plaintiff was insured by the defendant for bodily injuries caused by the fault of an owner or operator of an underinsured motor vehicle.

2. (Name of underinsured motorist) was the owner or operator of an underinsured motor vehicle.

3. (Name of underinsured motorist) is legally liable for the plaintiff's bodily injuries as determined in accordance with instructions _____ through _____.

4. The nature and extent of the plaintiff's damage.

5. The plaintiff's damages exceeded the policy limits of (name of underinsured motorist) bodily injury liability policy.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover the amount by which the plaintiff's damages exceed the policy limits of (name of underinsured motorist) bodily injury liability policy, subject to the limits of the defendant's policy.

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Authority

Iowa Code section 516A.1 (1991)

Leuchtenmacher v. Farm Bureau Mut. Ins. Co., 461 N.W.2d 291 (Iowa 1990)

American States Ins. Co. v. Estate of Tollari, 362 N.W.2d 519 (Iowa 1985)

Comment

Note: If there is a dispute with respect to whether the premiums were paid, add the following additional element:

2. The premiums on the policy were paid when due.

Note: If the plaintiff has recovered less than the full limits of the underinsured motorist's liability policy due to settlements made by the underinsured motorist with other injured parties, then element no. 5 should state:

5. Plaintiff's damages exceeded the amount of plaintiff's recovery from (name of underinsured motorist).

Compare American States Ins. Co. v. Estate of Tollari, 362 N.W.2d 519, 522 (Iowa 1985) with Rucker v. National Gen. Ins. Co., 442 N.W.2d 113, 117 (Iowa 1989).

Note: If there is no factual dispute with respect to the existence of every element of the plaintiff's case except element no. 3, the underinsured motorist's legal liability, then it may not be necessary to use this instruction. The parties and court may prefer to simply use the appropriate fault instructions.

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CHAPTER 1500

MALPRACTICE - LEGAL

[1500.1](#) Essentials for Recovery

[1500.2](#) Attorney-Client Relationship Defined

[1500.3](#) Negligence Defined

[1500.4](#) Damages - Error in Prosecuting the Earlier Case

[1500.5](#) Damages - Error in Defending the Earlier Case

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1500.1 Essentials For Recovery. The plaintiff must prove all of the following propositions:

- 1. An attorney-client relationship existed between the parties for the disputed matter.
2. The defendant was negligent in one or more of the following ways:
a.
b.
c.
3. The negligence was a cause of the plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Whiteaker v. State, 382 N.W.2d 112, 115 (Iowa 1986)
Devine v. Wilson, 373 N.W.2d 155, 157 (Iowa App. 1985)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Caveat: On occasion Proposition No. 1 must be modified to reflect an attorney-client relationship between a third party and the defendant whose negligence is alleged to have been the proximate cause of damage to the plaintiff. See: Millwright v. Romer, 322 N.W.2d 30 (Iowa 1982); Johnston, Legal Malpractice in Estate Planning - Perilous Times Ahead For The Practitioner, 67 Iowa Law Review 629, 645 (1918-1982).

Rev. 09/10

1500.2 Attorney Client Relationship Defined. An attorney-client relationship is created when:

- 1. A person seeks advice or assistance from an attorney.
2. The advice or assistance sought pertains to matters within the attorney's legal competence.
3. The attorney expressly or impliedly agrees to give or gives the requested advice or assistance.

Authority

Kurtenback v. Tekippe, 269 N.W.2d 53, 56 (Iowa 1977)

Comment

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Note: With respect to No. 3, the following may be added where appropriate: 'This may be established by proof of detrimental reliance. Detrimental reliance occurs when a person seeking advice or assistance reasonably relies on the attorney to provide such legal services and the attorney, being aware of such reliance, does nothing to negate it.'

1500.3 Negligence Defined. An attorney must use the degree of skill, care and learning ordinarily possessed and exercised by other attorneys in similar circumstances.

A violation of this duty is negligence.

Authority

Devine v. Wilson, 373 N.W.2d 155, 157 (Iowa App. 1985)
Martinson Manufacturing Co. v. Seery, 351 N.W.2d 772, 775 (Iowa 1984)

1500.4 Damages - Errors In Prosecuting The Earlier Case. The plaintiff must also prove that [the earlier case would have been won] [the result would have been different] if the defendant had not been negligent.

*Concerning damages, plaintiff may recover the amount the plaintiff would have been able to collect in the earlier case.

Authority

Whiteacre v. State, 383 N.W.2d 112, 115 (Iowa 1986)
Pickens, Barnes & Abernathy v. Heasley, 328 N.W.2d 524 (Iowa 1983)
Baker v. Beal, 225 N.W.2d 106 (Iowa 1975)

*Note: The court must also instruct the jury on the legal issues involved in the prior action.

1500.5 Damages - Error In Defending The Earlier Case. The plaintiff must also prove that [the earlier case would have been won] [the result would have been different] if the defendant had not been negligent. *Concerning damages, plaintiff may recover the amount of the judgment, including court costs awarded in the earlier case and any other losses sustained.

Authority

Pickens, Barnes & Abernathy v. Heasley, 328 N.W.2d 524 (Iowa 1983)

*Note: The court must also instruct the jury on the legal issues involved in the prior action

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CHAPTER 1600

MALPRACTICE - MEDICAL

[1600.1](#) Negligence - Essentials for Recovery

[1600.2](#) Negligence - Duty of Physician

[1600.3](#) Negligence - Duty of Specialist

[1600.4](#) Negligence - Duty of Hospital - Professional Service

[1600.5](#) Negligence - Duty of Hospital - Nonmedical Administrative, Ministerial Or Routine Care

[1600.6](#) Negligence of Chiropractors As To Acts Done Within Scope Of License Not Defined As "Additional Procedures and Practices" Authorized By Senate File 474, 1983 Regular Session

[1600.7](#) Negligence - Duty Of Chiropractor As To Acts Done Within Scope Of License Subsequent To July 1, 1983 Defined as "Additional Procedures and Practices" Authorized By Senate File 474, 1983 Regular Session

[1600.8](#) Chiropractor or Health Care Practitioner Undertaking To Treat A Patient In A Manner Not Permitted By License

[1600.9](#) Duty of Physician, Chiropractor Or Health Care Practitioner - Res Ipsa Loquitur

[1600.10](#) Informed Consent - Essentials for Recovery

[1600.11](#) Informed Consent - Reserved

[1600.12](#) Duty of Physician as To Informed Consent

[1600.13](#) Express Warranty - Duty of Physician Including Specialist

[1600.14](#) Medical Battery - Essentials for Recovery

[1600.15](#) Medical Battery – Defined

[1600.16](#) Lost Chance of Survival - Essentials for Recovery – Death.

[1600.17](#) Lost Chance of Survival – Causation – Death.

[1600.18](#) Lost Chance of Survival – Damages – Death.

[1600.19](#) Special Interrogatories - Lost Chance of Survival – Death.

[1600.20](#) Reduction for Reimbursement of Economic Losses.

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[1600.21](#) Verdict Question – Reimbursement of Economic Losses.

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1600.1 Negligence - Essentials For Recovery. See Instruction No. 700.1

Comment

Caveat: Although informed consent is a negligence theory, use Instruction 1600.10 as the essentials for recovery instruction for informed consent.

1600.2 Negligence - Duty Of Physician. A physician must use the degree of skill, care and learning ordinarily possessed and exercised by other physicians in similar circumstances.

A violation of this duty is negligence.

Authority

Speed v. State, 240 N.W.2d 901 (Iowa 1976)

Perin v. Hayne, 210 N.W.2d 609 (Iowa 1973)

Comment

In cases where the facilities, personnel, services, and equipment reasonably available to the physician affect the appropriateness of the care, further instruction regarding the resources available to the physician may be appropriate. See, Estate of Hagedorn v. Peterson, 690 N.W.2d 84 (Iowa 2004).

Rev. 7/05

1600.3 Negligence - Duty Of Specialist. Duty Of Specialist. Physicians who hold themselves out as specialists must use the degree of skill, care and learning ordinarily possessed and exercised by specialists in similar circumstances, not merely the average skill and care of a general practitioner.

A violation of this duty is negligence.

Authority

McGulpin v. Bessmer, 241 Iowa 1119, 1132, 43 N.W.2d 121, 128 (1950)

Comment

In cases where the facilities, personnel, services, and equipment reasonably available to the physician affect the appropriateness of the care, further instruction regarding the resources available to the physician may be appropriate. See, Estate of Hagedorn v. Peterson, 690 N.W.2d 84 (Iowa 2004).

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1600.4 Negligence - Duty Of Hospital - Professional Service. A hospital must use the degree of skill, care and learning ordinarily possessed and exercised by other hospitals in similar circumstances.

A violation of this duty is negligence.

Authority

Kastler v. Iowa Methodist Hospital, 193 N.W.2d 98 (Iowa 1971)

Dickinson v. Mailliard, 175 N.W.2d 588 (Iowa 1970)

Clites v. State, 322 N.W.2d 917 (Iowa App. 1982)

Comment

In cases where the facilities, personnel, services, and equipment reasonably available to the hospital affect the appropriateness of the care, further instruction regarding the resources available to the hospital may be appropriate. See, Estate of Hagedorn v. Peterson, 690 N.W.2d 84 (Iowa 2004).

Caveat: The court should examine the Kastler decision to decide if the service rendered was a professional service or a nonprofessional service. (See Instruction 1600.5 if a nonprofessional service was rendered.)

Rev. 7/05

1600.5 Negligence - Duty Of Hospital - Nonmedical, Administrative, Ministerial Or Routine Care. A hospital must use the degree of ordinary care and attention that the known mental and physical condition of a patient requires.

A violation of this duty is negligence.

Authority

Kastler v. Iowa Methodist Hospital, 193 N.W.2d 98 (Iowa 1971)

Comment

Caveat: The court should examine the Kastler decision to decide if the service rendered was a professional service or a nonprofessional service. (See Instruction 1600.4 if a nonprofessional service was rendered.)

1600.6 Negligence Of Chiropractors As To Acts Done Within Scope Of License Not Defined As "Additional Procedures And Practices" Authorized By Senate File 474, 1983 Regular Session. A chiropractor must use the degree of skill, care and learning ordinarily possessed and exercised by chiropractors in similar circumstances.

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A violation of this duty is negligence.

Authority

Correll v. Goodfellow, 255 Iowa 1237, 125 N.W.2d 745 (1964)

Iowa Code section 151.8

Acts 1983 Regular Session, 70 G.A. Chapter 83 (1983)

1600.7 Negligence - Duty Of Chiropractor As To Acts Done Within Scope Of License Subsequent To July 1, 1983 Defined As "Additional Procedures And Practices" Authorized By Senate File 474, 1983 Regular Session. A chiropractor must use the degree of skill, care and learning ordinarily possessed and exercised by health care practitioners permitted by law to perform the [treatment] [procedure] [services] in similar circumstances.

A violation of this duty is negligence.

Authority

Iowa Code section 151.1

Iowa Code section 151.8

Acts 1983 Regular Session, 70 G.A. Chapter 83 (1983)

1600.8 Chiropractor Or Health Care Practitioner Undertaking To Treat A Patient In A Manner Not Permitted By License. Plaintiff claims the defendant negligently used [equipment] [a procedure] in treating the plaintiff and failed to use the degree of skill, care and learning ordinarily possessed by [physicians] [health care practitioners permitted by law to perform said procedures].

A violation by the defendant of those provisions of the statutes which define and limit treatments which may be administered by a licensed [chiropractor][health care practitioner] is not in itself negligence.

In treating the plaintiff by use of [equipment] [a procedure], defendant exceeded the scope of authority which defendant had to practice under defendant's license and entered the field of practice of [medicine] [other health care field]. In using the [equipment] [procedure] defendant must use the degree of skill, care and learning ordinarily possessed and exercised by [physicians] [other health care practitioners permitted by law to perform said procedure] in similar circumstances.

A violation of this duty is negligence.

Authority

Correll v. Goodfellow, 255 Iowa 1237, 125 N.W.2d 745 (1964)

1600.9 Duty Of Physician, Chiropractor Or Health Care Practitioner - Res Ipsa Loquitur. See Instruction 700.5. This instruction can be easily adapted for medical malpractice cases. See

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Sammons v. Smith, 353 N.W.2d 380 (Iowa 1984); Reilly v. Straub, 282 N.W.2d 688 (Iowa 1979); Perin v. Hayne, 210 N.W.2d 609 (Iowa 1973); Wiles v. Myerly, 210 N.W.2d 619 (Iowa 1973); and Mogensen v. Hicks, 253 Iowa 139, 110 N.W.2d 563 (1961) for a discussion on the theory's applicability.

1600.10 Informed consent - Essentials For Recovery. The plaintiff claims the defendant failed to obtain an informed consent from the plaintiff before performing (name of procedure or treatment).

The plaintiff must prove all of the following propositions:

1. The existence of material information concerning the (name of procedure or treatment).
2. Material information concerning the (name of procedure or treatment) was unknown to the plaintiff.
3. The defendant failed to disclose material information concerning the (name of procedure or treatment) to the plaintiff.
4. Disclosure of material information concerning the (name of procedure or treatment) would have led a reasonable patient in plaintiff's position to [reject the (treatment)] [choose a different course of treatment].
5. The failure to obtain an informed consent was a cause of plaintiff's damage.
6. The nature and amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Pauscher v. Iowa Methodist Medical Center, 408 N.W.2d 355 (Iowa 1987)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

1600.11 Informed Consent - Reserved.

Comment

Note: The court in Pauscher v. Iowa Methodist Medical Center, 408 N.W.2d 355 (Iowa 1987), stated situations may exist which relieve the defendant of the duty to disclose a material risk. These include:

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1. Situations in which complete and candid disclosure might have a detrimental effect on the physical or psychological well-being of the patient.
2. Situations in which a patient is incapable of giving consent by reason of mental disability or infancy.
3. Situations in which an emergency make it impractical to obtain consent.
4. Situations in which the risk is either known to the patient or is so obvious as to justify a presumption on the part of the physician that the patient has knowledge of the risk.
5. Situations in which the procedure itself is simple and the danger remote and commonly appreciated to be remote.
6. Situations in which the physician does not know of an otherwise material risk and should not have been aware of it in the exercise of ordinary care.

Note: The committee does not express any opinion as to how to instruct in these situations. The reasons are as follows:

1. Can these defenses be raised in a purely elective procedure?
2. Who has the burden of pleading and proof on these issues?

1600.12 Duty Of Physician As To Informed Consent. A physician is required to obtain an informed consent from a patient prior to performing any procedure upon the patient. To obtain an informed consent, a physician must disclose to the patient all known material information concerning the (name of procedure or treatment) that would be significant to a reasonable patient's decision to consent to the procedure. Material information includes the [risks of] [alternatives to] [consequences of failing to have] the procedure or treatment.

Authority

Pauscher v. Iowa Methodist Medical Center, 408 N.W.2d 355 (Iowa 1987)

Comment

Note: If patient is a minor or incapacitated, tailor the instruction accordingly.

Note: This instruction is not for a medical battery. See, Perin v. Hayne, 210 N.W.2d 609, 618 (Iowa 1973) and Instructions 1600.14 and 1600.15.

1600.13 Express Warranty - Duty Of Physician Including Specialist. Ordinarily a physician does not guarantee the success of any [treatment] [course of treatment] [operation]. However, a physician and a patient may enter into a contract in which the physician expressly warrants that the patient will be [cured of the disease] [improved in [his] [her] condition] [left without scars] [rendered sterile] [other condition].

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Authority

Perin v. Hayne, 210 N.W.2d 609 (Iowa 1973)

Comment

Note: Relevant contract instructions in Chapter 2400 may be appropriate to this theory of recovery.

Note: If the patient is a minor or incapacitated, the contract may be made by an authorized person on the patient's behalf.

1600.14 Medical Battery - Essentials For Recovery. The plaintiff claims that the defendant committed a medical battery in the following particulars:

1. _____
2. _____

The plaintiff must prove all of the following propositions:

1. Defendant committed a medical battery as explained in Instruction No. _____.
2. The medical battery was a cause of plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority

Perin v. Hayne, 210 N.W.2d 609 (Iowa 1973)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

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1600.15 Medical Battery - Defined. A physician may [treat] [operate on] a patient only with the patient's consent. A physician commits a Medical Battery if the physician performs [a treatment] [an operation] other than the type of [treatment] [operation] for which the patient has given consent.

Authority

Perin v. Hayne, 210 N.W.2d 609 (Iowa 1973)

Comment

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Caveat: See, Annot., 56 A.L.R.2d 695 (1957) and its supplement for situations where consent not required such as emergencies. See, Jackovach v. Yocum, 212 Iowa 914, 237 N.W. 444 (1931).

1600.16 - Lost Chance of Survival - Essentials for Recovery – Death. [If you find that plaintiff has failed to prove the second proposition of [his] [her] claim for negligence as set forth in Instruction No. _____, you must then consider plaintiff’s alternative claim for lost chance of survival. If you find that plaintiff has proven [his] [her] claim of negligence as set forth in Instruction No. _____, you should not consider plaintiff’s alternative claim for lost chance of survival.]

The plaintiff claims that the defendant caused [decedent] to lose a chance of survival. The plaintiff must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
 - a.
 - b.
 - c.
2. The negligence caused a loss of a chance of survival.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No._____.]

Authority

Mead v. Adrian, _____ N.W.2d _____ (Iowa 2003)
Wendland v Sparks, 574 N.W.2d 327 (Iowa 1998)
Sanders v Ghrist, 421 N.W.2d 520 (Iowa 1988)
DeBurkarte v Louvar, 393 N.W.2d 131 (Iowa 1986)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: The first paragraph should be used only if the case is submitted to the jury on a claim for traditional negligence and an alternative claim for lost chance of survival. The first paragraph should be omitted if the case is submitted solely as a claim for lost chance of survival.

Note:If both a claim for traditional negligence and an alternative claim for lost chance of survival are submitted to the jury, the first sentence of the concluding paragraph of the marshaling instruction for the traditional negligence claim should be replaced with “If the plaintiff has failed to prove the first proposition above regarding negligence, the plaintiff is not entitled to damages. If the plaintiff has failed to prove the second proposition above regarding causation, you will consider plaintiff’s alternative claim for lost chance of survival.”

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Note: These instructions are applicable only in a wrongful death case. However, a lost chance of survival claim can exist in a non-death case. See, e.g., DeBurkarte v Louvar, 393 N.W.2d 131 (Iowa 1986).

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1600.17 - Lost Chance of Survival – Causation – Death. Lost chance of survival means a reduction in the chance to survive the underlying [injury] [condition] [disease] because [decedent] failed to receive earlier diagnosis or treatment.

With regard to the second proposition of Instruction No. ____, plaintiff must prove that defendant's negligence, if any, proximately caused a loss of a chance of survival. To prove a loss of a chance of survival, the plaintiff must show, by a preponderance of the evidence, that there is a causal connection between the defendant's negligence, if any, and the loss of a chance to survive the harm.

Authority

Mead v. Adrian, ____ N.W.2d ____ (Iowa 2003)
Wendland v Sparks, 574 N.W.2d 327 (Iowa 1998)
Sanders v Ghrist, 421 N.W.2d 520 (Iowa 1988)
DeBurkarte v Louvar, 393 N.W.2d 131 (Iowa 1986)

1600.18 Lost Chance of Survival – Damages – Death. You must determine the value of the harm suffered by plaintiff and determine the percentage of lost chance to avoid that harm which defendant caused. I will use your answers to the special interrogatories in the verdict form to calculate the appropriate amount of damages recoverable by plaintiff.

You should determine the value of the harm suffered by plaintiff in accordance with Instructions No. ____ through ____ (traditional damages instructions).

To determine the percentage of lost chance to avoid the harm, caused by the defendant, you must determine the difference between (decedent)'s chance of avoiding the harm in the absence of any negligence on the part of the defendant and (decedent)'s chance of avoiding the harm following any negligence on the part of the defendant which you have found.

Authority

Mead v. Adrian, ____ N.W.2d ____ (Iowa 2003)
Wendland v Sparks, 574 N.W.2d 327 (Iowa 1998)
Sanders v Ghrist, 421 N.W.2d 520 (Iowa 1988)
DeBurkarte v Louvar, 393 N.W.2d 131 (Iowa 1986)

1600.19 - Special Interrogatories - Lost Chance of Survival – Death.

[To be answered only if you have considered plaintiff's alternative claim for lost chance of survival as set forth in Instructions No. ____ through ____].

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Question No. _____. Was the negligence of defendant the cause of a loss of a chance of survival?

Answer Yes or No

ANSWER: _____

Question No. _____. What percentage of lost chance to avoid the harm, caused by defendant, do you find?

ANSWER: _____

Authority

- Mead v. Adrian, _____ N.W.2d _____ (Iowa 2003)
- Wendland v Sparks, 574 N.W.2d 327 (Iowa 1998)
- Sanders v Ghrist, 421 N.W.2d 520 (Iowa 1988)
- DeBurkarte v Louvar, 393 N.W.2d 131 (Iowa 1986)
- Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: These special interrogatories should be placed on the verdict form following the interrogatories relating to the plaintiff’s traditional claim for negligence.

Rev. 09/10

1600.20 – Reduction for Reimbursement of Economic Losses. Any damages which you award for [medical care] [rehabilitation services] [custodial care] [loss of services] [loss of earned income] incurred in the past or to be incurred in the future will be reduced by the Court for any such losses which you find have been or will be replaced or paid by insurance, or by governmental, employment, or service benefit programs, or from any other source except the assets of (plaintiff) or of the members of (plaintiff)’s immediate family. (Defendant) has the burden to prove these benefits have been paid or will be available to (plaintiff). You will set forth the amount of any reduction of damages due to replacement or payment by insurance or governmental, employment, or service benefit programs or other sources only in answering Verdict Question No._____.

Authority

- Iowa Code section 147.136
- Peters v. Vander Kooi, 494 N.W.2d 708, 714 (Iowa 1993)

Comment

Note: If this Instruction is given, the general damages verdict question should be modified to inform the jury that it should not consider any reduction for payments by collateral sources in determining damages. For example, if Iowa Civil Jury Instruction 300.4 is used, the second sentence of Question No. 6 should be modified to state: “Do not take into consideration any

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reduction of damages due to plaintiff's fault or due to replacement or payment by insurance or governmental, employment, or service benefit programs or other sources."

1600.21 Verdict Question – Reimbursement of Economic Losses.

For each of the following elements of damage, state the amount which you find (defendant) has proved has been or will be replaced or paid by insurance, or by governmental, employment, or service benefit programs, or from any other source except the assets of (plaintiff) or of the members of (plaintiff)'s immediate family. If (defendant) has failed to prove that any item of damage will be replaced or paid by a source other than the assets of the plaintiff or of the members of the plaintiff's immediate family, enter 0 for that item.

- *1.Past Medical Expenses \$ _____
- 2.Future Medical Expenses \$ _____
- 3.Loss of Time – Earnings \$ _____
- 4.Loss of Future Earning Capacity \$ _____

Authority

Iowa Code section 147.136
Peters v. Vander Kooi, 494 N.W.2d 708, 714 (Iowa 1993)

Comment

Note: *The above list is merely an example of format. The list of items should be consistent with the elements of actual economic losses included in the damages marshaling instruction and the general damages verdict question.

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CHAPTER 1700

RAILROAD CROSSINGS

[1700.1](#) Railroad Crossings - Crossbuck Signs

[1700.2](#) Railroad Crossings - Horn and Bell

[1700.3](#) Railroad Crossings - Electronic Flashing Signals and Flagman

[1700.4](#) Railroad Crossings - Speed

[1700.5](#) Railroad Crossings - Defective Crossing (Public Highway)

[1700.6](#) Railroad Crossings - Headlights (Deleted)

[1700.7](#) Railroad Crossings - Plaintiff's Negligence - Look and Listen

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1700.1 Railroad Crossings - Crossbuck Signs. Railroads are required to put crossbuck signs at railroad crossings to warn people to look out for trains. The signs must be white with the words RAILROAD CROSSING in large and distinct black lettering.

A violation of this law is negligence.

Authority

Iowa Code sections 327G.2 and 307.26(5)(b) (1985)
820 Iowa Administrative Code, Section 2.1 (Manual on Uniform Traffic Control Devices Section 8B-2)
Hitchcock v. Iowa Southern Utilities Co., 233 Iowa 301, 6 N.W.2d 29 (1942)

1700.2 Railroad Crossings - Horn And Bell. Railroads are required to sound the train's horn at least 1000 feet before the train reaches a railroad crossing. After sounding the horn, the train must ring the train bell until the train is past the crossing.

A violation of this law is negligence.

Authority

Iowa Code section 327G.13
Stewart v. Madison, 278 N.W.2d 284 (Iowa 1979)
Hawkins v. Interurban Ry. Co., 184 Iowa 232, 168 N.W.234 (1918)

Comment

Note: When the train is operating in a city or town the horn sounding may be omitted unless required by the city ordinance or resolution but no provision is made for omitting the bell. Sounding of the horn may nevertheless be required under common law principles. *Id.*

Note: Signals may be required at private crossings when circumstances require.

1700.3 Railroad Crossings - Electronic Flashing Signals And Flagman. Unless a railroad crossing is extra hazardous, all that is required as a warning to travelers are signs and sounding the train horn and bell. In deciding whether the crossing has been proved to be extra hazardous, you may consider unusual conditions like heavy traffic, anything that would interfere with visibility, and similar circumstances. If a crossing is extra hazardous, and the railroad knows or reasonably should know of the danger, the railroad must have either electronic flashing signals or a flagman there to warn travelers.

A violation of this duty is negligence.

Authority

Kuper v. Chicago & North Western Transportation Co., 290 N.W.2d 903 (Iowa 1980)

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1700.4 Railroad Crossings - Speed. Railroads are required to use ordinary care as to the speed of their trains at road crossings.

A violation of this duty is negligence.

Authority

Daly v. Illinois Central Railroad Co., 250 Iowa 110, 93 N.W.2d 68 (1957)
Jensvold v. Chicago & Great Western Ry. Co., 236 Iowa 708, 18 N.W.2d 616 (1945)

Comment

Note: A violation of a duly executed city ordinance or regulation as to speed is negligence per se.

Note: Federal law may have preempted state law and regulations governing train speed. See CSX Transp., Inc. v. Easterwood, 113 S.Ct. 1732 (1993).

1700.5 Railroad Crossings - Defective Crossings (Public Highway). Railroads are required to keep railroad crossings in good repair.

A violation of this duty is negligence.

Authority

Iowa Code section 327G.2

10/97

1700.6 Railroad Crossings - Headlights. Instruction deleted.

Comment

Note: Iowa law regulating headlights on locomotives has been preempted by federal law. Brown v. Chicago R.I. & P.R. Co., 108 F. Supp. 164 (N.D. Iowa 1952); Wiedenfeld v. Chicago N.W. Transp.Co., 252 N.W.2d 691 (Iowa 1977). If the locomotive is not engaged in interstate commerce see Iowa Code section 327F.14 (1991).

1700.7 Railroad Crossings - Plaintiff's Negligence - Look And Listen. A driver of a motor vehicle is required to use ordinary care in looking and listening for trains in driving toward a railroad crossing. This must be done at a time and place when the vehicle can be stopped if a train is seen or heard.

A violation of this duty is negligence.

Authority

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Maier v. Illinois Central Railroad, 234 N.W.2d 388 (Iowa 1975)

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CHAPTER 1800

ABUSE OF PROCESS

[1800.1](#) Abuse of Process - Essentials For Recovery

[1800.2](#) Abuse of Process - Definition

[1800.3](#) Abuse of Process - Explanation Of The Misconduct

[1800.4](#) Abuse of Process - Intent

[1800.5](#) Abuse of Process – Primarily (Rev. 6/2015)

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1800.1 Abuse Of Process - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. On or about the _____ day of _____, 20_____, the defendant intentionally used [set forth legal process used.]
2. The defendant used the legal process primarily [set out the improper use], and not for its intended use which is explained in Instruction No. _____.
3. The defendant's use of the legal process for the improper purpose was a cause of the plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority

Grell v. Poulsen, 389 N.W.2d 661 (Iowa 1986)
Restatement of Torts (Second), Section 682
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

1800.2 Abuse Of Process - Definition. Abuse of process is the use of a [criminal-civil] legal process against another primarily to accomplish a purpose for which it was not designed. A person who abuses a legal process is responsible for damages suffered by another as a result of the abuse.

1800.3 Abuse Of Process - Explanation Of The Misconduct. The wrong act involved in "abuse of process" is using the process for a reason different from the purpose for which the process was designed. For example, it could be using a legal process to force another to take some action or not take some action unrelated to the legal process. The result of the earlier legal proceeding does not matter.

The purpose of [name of process] is to [describe the purpose of the process involved].

1800.4 Abuse Of Process - Intent. The word "intentionally", as used in element number 1 of Instruction No. _____, refers to the state of mind of the defendant and means that a person acted voluntarily, not mistakenly, or through accident, inadvertence, ignorance, or other innocent reason. Intent may be determined by such reasonable conclusions and deductions as may be drawn from the facts proved, in accordance with common experience and observation.

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In determining the intent of any person you may, but are not required to, conclude that they intended the consequences of their acts.

1800.5 Abuse Of Process - Primarily. The word "primarily" as used in these instructions means that the wrongful purpose must have been the main reason for using the process. If the process is used for its intended purpose, it makes no difference if the defendant dislikes the plaintiff or if the defendant's motives in using the process were improper.

Authority

Grell v. Poulsen, 389 N.W.2d 661 (Iowa 1986)
Restatement of Torts (Second), Section 682, Comment (b)

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CHAPTER 1900

ASSAULT AND BATTERY

[1900.1](#) Assault - Essentials for Recovery

[1900.2](#) Assault - Defined

[1900.3](#) Battery - Essentials for Recovery

[1900.4](#) Battery - Defined

[1900.5](#) Intent - Defined

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1900.1 Assault - Essentials For Recovery. In order to prove the claim of assault, the plaintiff must prove all of the following propositions:

1. The defendant [describe the act].
2. The act was done with the intent to put [in fear of physical pain or injury] [in fear of physical contact which would be insulting or offensive].
3. _____ reasonably believed that the act would be carried out immediately.
4. The defendant's act was a cause of plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Rev. 09/10

1900.2 Assault - Defined. An assault is committed when a person does: (1) an act intended to put another in fear of physical pain or injury; (2) an act intended to put another in fear of physical contact which a reasonable person would deem insulting or offensive;* and the victim reasonably believes that the act may be carried out immediately.

Threatening words alone do not constitute an assault unless it appears that the person has the ability to carry out the threat at the time the words were spoken.

Authority

State v. Straub, 190 Iowa 800, 180 N.W. 869 (1921)
Restatement of Torts (Second), Sections 21, 31, and 32

Comment

*Note: Select the appropriate phrase as shown by the evidence.

1900.3 Battery - Essentials For Recovery. In order to prove the claim of battery, the plaintiff must prove all of the following propositions:

1. The defendant [describe the act].
2. The act was done with the intent to cause physical pain or injury] [insulting or offensive bodily contact].

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3. The defendant's act resulted in [physical pain or injury] [insulting or offensive bodily contact].
4. The defendant's act was a cause of plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Rev. 09/10

1900.4 Battery - Defined. A battery is committed when a person intentionally does:

1. An act resulting in bodily contact causing physical pain or injury.
2. An act results in bodily contact which a reasonable person would deem insulting or offensive.

Authority

Restatement of Torts (Second), Sections 13 and 18

1900.5 Intent - Defined. Intent means doing something on purpose as opposed to accidentally. Because intent requires a finding of what a person is thinking when doing an act, it is seldom capable of being proven by direct evidence. You may use your common experience when considering all of the facts surrounding the doing of an act to determine what a person's intent was when committing the act. You may find that if a person does an act on purpose, the person also intended the natural results of the act.

Authority

Lutterman v. Romey, 143 Iowa 233, 121 N.W. 1040 (1909)
Restatement of Torts (Second), Sections 16, 20 and 32

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CHAPTER 2000

EMOTIONAL DISTRESS - INTENTIONAL INFLICTION

[2000.1](#) Emotional Distress - Intentional Infliction - Essentials for Recovery

[2000.2](#) Outrageous Conduct - Definition

[2000.3](#) Intentional or Reckless - Definition

[2000.4](#) Severe or Extreme Emotional Distress - Definition

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2000.1 Emotional Distress - Intentional Infliction - Essentials For Recovery. [To entitle the plaintiff to recover on the claim for the tortious infliction of severe emotional distress] the plaintiff must prove all of the following propositions:

1. Outrageous conduct by the defendant.
2. The defendant intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress.
3. The plaintiff suffered severe or extreme emotional distress.
4. The defendant's outrageous conduct was a cause of the emotional distress.
5. The nature and extent of plaintiff's damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Vaughn v. Ag Processing, Inc., 459 N.W.2d 627 (Iowa 1990) (en banc)
Tomash v. John Deere Indus. Equipment Co., 399 N.W.2d 387 (Iowa 1987)
Northrup v. Farmland Industries, Inc., 372 N.W.2d 193 (Iowa 1985)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

2000.2 Outrageous Conduct - Definition. The term "outrageous conduct" means conduct so extreme as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

Outrageous conduct does not extend to mere insults, indignities, threats, annoyances, petty oppressions, hurt feelings, bad manners or other trivialities which a reasonable person could be expected to endure. All persons must necessarily be expected and required to be hardened to a certain amount of rough language and to occasional acts that are inconsiderate and unkind.

Authority

Northrup v. Farmland Industries, Inc., 372 N.W.2d 193 (Iowa 1985)
Roalson v. Chaney, 334 N.W.2d 754 (Iowa 1983)
Restatement (Second) of Torts, Section 46, Comments d and h (1965)

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2000.3 Intentional Or Reckless - Definition. A person intends to inflict emotional distress when they want to cause distress, or know such distress is substantially certain to result from their conduct.

A person's conduct is reckless if they know or have reason to know their conduct creates a high degree of probability that emotional distress will result and they act with deliberate disregard of that probability.

Authority

M. H. By and Through Callahan v. State, 385 N.W.2d 533 (Iowa 1986)

Meyer v. Nottger, 241 N.W.2d 911 (Iowa 1976)

Restatement (Second) of Torts, Section 46, Comment i

2000.4 Severe Or Extreme Emotional Distress - Definition. The emotional distress must in fact exist, and it must be severe or extreme, but it need not reveal itself physically.

The term "severe or extreme" means substantial or enduring as distinguished from mild or brief.

The term "emotional distress" includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment and worry. It must be so substantial or enduring that no reasonable person could be expected to bear it.

Authority

Harsha v. State Savings Bank, 346 N.W.2d 791, (Iowa 1984)

Poulsen v. Russell, 300 N.W.2d 289 (Iowa 1981)

Restatement (Second) of Torts, Section 46, Comment j (1965)

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CHAPTER 2100

LIBEL AND SLANDER

[2100.1](#) Libel (Slander) Per Se - Essentials for Recovery

[2100.2](#) Libel (Slander) Per Se - Essentials for Recovery

[2100.3](#) Libel (Slander) Per Quod - Essentials for Recovery

[2100.4](#) Libel (Slander) By Implication

[2100.5](#) Actual Malice - Definition

[2100.6](#) Libel And Slander - Affirmative Defense - Truth

[2100.7](#) Libel (Slander) - Damages

Comment

Instructions in this Chapter pertain to actions for libel and slander. However, they are not applicable to cases in which the defense of First Amendment of the United States Constitution protection with respect to "public figures" is claimed. See, New York Times v. Sullivan, 376 U.S. 254 (1964) and subsequent cases of the United States Supreme Court.

For a discussion of the First Amendment protection in Iowa with respect to "public figures", see Johnson v. Nickerson, 542 N.W.2d 506 (Iowa 1996).

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2100.1 Libel (Slander) Per Se - Essentials For Recovery. Plaintiff must prove both of the following propositions:

1. The defendant made the statements.
2. The defendant communicated the statements to someone other than the plaintiff.

If the plaintiff has failed to prove either of these propositions, the plaintiff is not entitled to recover damages. If the plaintiff has proven both of these propositions, then the plaintiff has proven libel (slander) and is entitled to recover damages in some amount. [If defendant has claimed truth as an affirmative defense, then add "unless defendant has proven the defense of truth" as explained in Instruction No. _____.]

Authority

Vinson v. Linn-Mar Community School District, 360 N.W.2d 108, 116 (Iowa 1984)
Brown v. First National Bank of Mason City, 193 N.W.2d 547, 555 (Iowa 1972)
Higgins v. Gordon Jewelry Corporation, 433 N.W.2d 306 (Iowa App. 1988)
Kelly v. Iowa State Education Association, 372 N.W.2d 288, 300-301 (Iowa App. 1985)

Comment

Note: The Court has defined libel as defamation involving written or printed statements; slander has been defined by the Court as defamation involving oral statements. The committee is giving general marshalling instructions which are applicable to either libel or slander depending on the context of the case.

This instruction shall be given when the court determines that the statements are libel (slander) per se. Vinson v. Linn-Mar Community School District, 360 N.W.2d 108, 116 (Iowa 1984)

The general rule is that communications of defamatory statements only to the one defamed does not constitute "publication" and a defendant would not ordinarily be responsible under a libel (slander) theory if the injured person repeats the libelous material or in some fashion communicates it to others. However, there is an exception to this rule when a defendant knows or should know that the statements must eventually come to the attention of others because the injured party will be under strong compulsion to bring them to the attention of a third person. See Belcher v. Little, 315 N.W.2d 734, 737-738 (Iowa 1982)

Where the plaintiff has alleged libel (slander) per se and the defendant has established his or her defense of qualified privilege, then plaintiff must prove as an additional element "actual malice". In that circumstance, the following additional element should be added: 3. The defendant made the statements with actual malice. The definition of actual malice then should also be given to the jury as noted in Iowa Civil Jury Instruction 2100.5

The elements of a qualified privilege are set out in the case of Knudsen v. Chicago and North Western Transportation Company, 464 N.W.2d 439 (Iowa 1990).

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2100.2 Libel (Slander) Per Se - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. The defendant made the statements.
2. The defendant communicated the statements to someone other than the plaintiff.
3. The statements tended to [injure the reputation of the plaintiff] [expose the plaintiff to public hatred, contempt or ridicule] [injure the plaintiff in the maintenance of [his] [her] [business or occupation]].

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proven all of the propositions, then the plaintiff is entitled to damages in some amount. [If defendant has claimed truth as an affirmative defense, then add "unless defendant has proven the defense of truth" as explained in Instruction No. _____.]

Authority

Delaney v. International Union UAW Local No. 94 of John Deere Mfg. Co., 675 N.W.2d 832, 839 (Iowa 2004) (defining defamation)
Graves v. Iowa Lakes Community Coll., 639 N.W.2d 22, 25-26 (Iowa 2002)
Vinson v. Linn-Mar Community School District, 360 N.W.2d 108, 115 (Iowa 1984)
Brown v. First National Bank of Mason City, 193 N.W.2d 547, 553-54 (Iowa 1972)
Plendl v. Beuttler, 253 Iowa 259; 111 N.W.2d 669, 670-71 (1961)
Higgins v. Gordon Jewelry Corporation, 433 N.W.2d 306 (Iowa Ct. App. 1988)
Kelly v. Iowa State Education Association, 372 N.W.2d 288, 300-301 (Iowa Ct. App. 1985)

Comment

Caveat: This instruction shall be given in this form only when the court determines that the libelous statements may or may not be interpreted as being libel per se. Vinson v. Linn-Mar Community School District, 360 N.W.2d 108 (Iowa 1985)

Note: Where the plaintiff has alleged libel (slander) per se and the court has determined the defense of qualified privilege has been established, then plaintiff must prove "actual malice" as an additional element. In the circumstance, the following additional element should be added: [4. The defendant made the statements with actual malice.] The definition of actual malice then should also be given to the jury as noted in Iowa Civil Jury Instruction 2100.5.

Rev. 6/08

2100.3 Libel (Slander) Per Quod - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The defendant made written or printed (oral) statement(s) concerning the plaintiff.
2. The statement(s) [was] [were] false.

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3. The defendant made the statement(s) with malice.
4. The defendant communicated the statement(s) to someone other than the plaintiff.
5. The statement(s) tended to [injure the reputation of the plaintiff] [expose the plaintiff to public hatred, contempt or ridicule] [injure the plaintiff in the performance of [his] [her] business or occupation].
6. The statement(s) caused damage to the plaintiff.
7. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to damages in some amount. (If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proven all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.)

Authority

Delaney v. International Union UAW Local No. 94 of John Deere Mfg. Co., 675 N.W.2d 832, 839 (Iowa 2004) (defining defamation)
Vinson v. Linn-Mar Community School District, 360 N.W.2d 108 (Iowa 1984)

Comment

Note: This general liability instruction is applicable where the court determines statements are not libel per se and the plaintiff is not a public figure as defined by the United States Supreme Court in New York Times v. Sullivan, 376 U.S. 254 (1964) and subsequent cases of the United States Supreme Court.

Rev. 6/08

2100.4 Libel (Slander) By Implication. Plaintiff claims that defendant libeled [slandered] [him] [her] by implication. To succeed on this claim, plaintiff must prove that defendant left out facts, or combined statements that were basically true, in a way that intentionally conveyed a false meaning. You should consider the entire communication in the context of the surrounding circumstances to decide whether the communication was reasonably understood to imply what plaintiff claims.

Authority

Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 827-28 (Iowa 2007)

Comment

This explanatory instruction should be given with an appropriate marshalling instruction. The Committee takes no position on whether defamation by implication constitutes defamation per se or per quod. See, Sykes v. Hengel, 394 F.Supp.2d 1062,

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1072 (S.D. Iowa 2005); Vinson v. Linn-Mar Community School Dist., 360 N.W.2d 108, 116 (Iowa 1984); Shaw Cleaners & Dyers, Inc. v. Des Moines Dress Club, 215 Iowa 1130, 1134-35, 245 N.W. 231,233 (1932); and Stevens v. Iowa Newspapers, Inc., 711 N.W.2d 732 (Table), No. 04-0987, slip op. at 11, 2006 WL 126626, * 5, 2006 Iowa App. LEXIS 55 (Iowa App., January 19, 2006), 34 Media L. Rep. 1430, aff'd, 728 N.W.2d 823, 832 (Iowa 2007).

New 6/08

2100.5 Actual Malice/Malice - Definition. The defendant made statements with actual malice if the statement (s) with [actual] malice if the statement (s) [was] [were] made with knowledge that [it] [they] [was] [were] false, or with reckless disregard for [its] [their] truth or falsity.

Authority

Barreca v. Nickolas, 683 N.W.2d 111 (Iowa 2004)

Comment

Note: The court would provide this definition of actual malice, including the word “actual” in the definition in the limited context when plaintiff has alleged libel (slander) per se and the court has determined a qualified privilege applies. In this limited context, actual malice would be an additional element of proof which must be established by plaintiff in order to recover on a libel (slander) per se theory. This definition would then be used in association with Iowa Civil Jury Instruction 2100.1 or 2100.2.

The court would provide this definition of malice, omitting the word “actual” from the definition, in the limited context when plaintiff has alleged libel (slander) and the court has determined as a matter of law that the statements are not libel (slander) per se. This definition would then be used in association with Iowa Civil Jury Instruction 2100.3.

Rev. 6/08

2100.6 Libel And Slander - Affirmative Defense - Truth. The defendant claims the [statement] [implication] complained about is true. The fact the [statement] [implication] is true or substantially true is a complete defense, regardless of bad faith or malicious purpose.

The defendant must prove the truth of the [statement] [implication]. To do so, the defendant must establish the truth of the entire language of the [statement] [implication], and establish it in the sense attributed to it by the plaintiff. Slight inaccuracies of expression are not important so long as the [statement] [implication] is substantially true.

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If the defendant has proven the truth of the [statement] [implication], then the plaintiff cannot recover. If the defendant has failed to prove the truth of the [statement] [implication], then you shall consider whether the plaintiff is entitled to recover damages in accordance with other instructions.

Authority

Kennedy v Zimmerman, 601 N.W.2d 61, 64 (Iowa 1999) (Libel and slander “involve the publication of an untrue statement which injures a person’s reputation.”)
Hovey v. Iowa State Daily Publication Record, Inc., 372 N.W.2d 253, 256 (Iowa 1985) (substantial truth)
Brown v. First National Bank, 193 N.W.2d 547, 553 (Iowa 1972) (truth defense)
Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 827-29 (Iowa 2007) (defamation by implication)

Comment

Note: The Committee has not drafted instructions on other potential affirmative defenses which may apply in a given case situation. These might include the defense of opinion which has been noted in Kelly v. Iowa State Education Association, 372 N.W.2d 288, 300-301 (Iowa App. 1985). The counsel and court may have other additional affirmative defenses which might apply in a given case situation.

Rev. 6/08

2100.7 Libel (Slander) - Damages. If you find (injured party) is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. General damages. General damages are presumed to result from the communication of a [libelous] [slanderous] statement. These are the kind of damages the law presumes naturally and necessarily result from the communication of [libelous] [slanderous] statements.*
2. The reasonable value of any loss of reputation suffered by (injured party). In determining this item of damage, you may consider (injured party)’s reputation before the statement was made. You may also consider the extent to which the statement was communicated.**
3. [Any other items of damage in Chapter 200 which are supported by the evidence.]

Damages must be limited to those which naturally result from the defendant’s statement.

Authority

Rees v. O’Malley, 461 N.W.2d 833 (Iowa 1991)
Kelly v. Iowa State Education Association, 372 N.W.2d 288 (Iowa Ct. App. 1985)
Vinson v. Linn-Mar Community School Districts, 360 N.W.2d 108 (Iowa 1984)
Brown v. First National Bank, 193 N.W.2d 547 (Iowa 1972)

Comment

Note: *This item of damage should only be given in cases of libel or slander per se.

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**This item of damage should only be given if supported by the evidence.

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CHAPTER 2200

MALICIOUS PROSECUTION

[2200.1](#) Malicious Prosecution - Essentials for Recovery - Prior Criminal Prosecution

[2200.2](#) Malicious Prosecution - Instigation of Prosecution - Where Prosecution Formally Commenced By a Public Official

[2200.3](#) Malicious Prosecution - Probable Cause

[2200.4](#) Malicious Prosecution - Probable Cause - Effect of Conviction

[2200.5](#) Malicious Prosecution - Malice (Public Official)

[2200.6](#) Malicious Prosecution - Malice (Non-Public Official)

[2200.7](#) Malicious Prosecution - Favorable Termination Of Prior Criminal Proceeding

[2200.8](#) Malicious Prosecution - Malice And Probable Cause - Advice Of An Attorney

[2200.9](#) Malicious Prosecution - Essentials For Recovery - Prior Civil Proceeding

[2200.10](#) Malicious Prosecution - Probable Cause - Prior Civil Proceeding

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2200.1 Malicious Prosecution - Essentials For Recovery - Prior Criminal Prosecution.

"Malicious prosecution" means causing an unsuccessful criminal proceeding with malice and without probable cause.

The plaintiff must prove all of the following propositions:

1. Plaintiff was prosecuted in a criminal proceeding in [insert the name, date and place of prior prosecution].
2. The defendant caused that prosecution.
3. The prosecution ended favorably for the plaintiff.
4. The defendant acted without probable cause.
5. The defendant acted with malice.
6. The prosecution was a cause of plaintiff's damage.
7. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Mills County State Bank v. Roure, 291 N.W.2d 1 (Iowa 1980)
Paige v. City of Chariton, 252 N.W.2d 433 (Iowa 1977)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

2200.2 Malicious Prosecution - Instigation Of Prosecution - Where Prosecution Formally Commenced By A Public Official. A person who does not personally file criminal charges may cause them to be started in one of two ways: (1.) By convincing a third person, either a private person or a public prosecutor, to file the charge; or (2.) By convincing a public official to file them.

A person does not cause a prosecution when the decision to file charges is left to the uncontrolled choice of another person.

When a person gives information to a prosecutor or official [he] [she] believes to be true and the person receiving the information freely chooses to file charges based upon that information, the informer is not liable even though the information proves to be false and [his] [her] belief was one that a reasonable person would not believe.

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You may conclude a person caused the prosecution if that person caused the filing of charges by either giving information which [he] [she] knew to be false to a prosecutor or public official or influenced the prosecutor or public official by direction, request or pressure of any kind so that the person's conduct was the determining factor in the decision to file the charges.

Authority

Rasmussen Buick - GMC, Inc. v. Roach, 314 N.W.2d 374 (Iowa 1982)

2200.3 Malicious Prosecution - Probable Cause. Probable cause for filing a criminal charge means having a reasonable ground. Probable cause exists where the defendant knew enough about the facts and circumstances and had reasonable trustworthy information, including what someone else told [him] [her] so that a reasonable person would believe that the plaintiff was guilty of the crime charged.

Probable cause does not require absolute certainty or proof beyond a reasonable doubt. It is to be determined by the factual and practical considerations of everyday life on which reasonable and careful persons [not legal experts] act.

Authority

Sisler v. City of Centerville, 372 N.W.2d 248 (Iowa 1985)
Restatement (Second) of Torts, section 662

2200.4 Malicious Prosecution - Probable Cause - Effect Of Conviction. The evidence shows the plaintiff was convicted of the crime charged. You may presume from this conviction that there was probable cause to file the charge [even though plaintiff was later acquitted of said offense on appeal]*. This conclusion can be overcome by the facts, circumstances and conditions shown by the evidence.

Authority

Paige v. City of Chariton, 252 N.W.2d 433 (Iowa 1977)

Comment

Note: *Use only if supported by the evidence.

2200.5 Malicious Prosecution - Malice (Public Official). An act is done "maliciously" when the main reason for doing the act was ill-will, hatred or other wrongful motive. The fact that defendant disliked or felt resentment towards the plaintiff would not in itself constitute malice.

Authority

Moser v. County of Black Hawk, 300 N.W.2d 150 (Iowa 1981)

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2200.6 Malicious Prosecution - Malice (Non-Public Official). An act is "malicious" when the main reason for the act was ill-will, hatred or other wrongful purpose. If you find the defendant's act was intentional and without probable cause or excuse, then you may conclude the act was done with ill-will, hatred or other wrongful purpose.

Authority

Moser v. County of Black Hawk, 300 N.W.2d 150 (Iowa 1981)

2200.7 Malicious Prosecution - Favorable Termination Of Prior Criminal Proceeding. The [refusal of the grand jury to indict the plaintiff] [dismissal of the charge by the prosecuting attorney] [finding of the plaintiff not guilty in the prior criminal case] constitutes a favorable ending to the prosecution.

Authority

Winkel v. Von Maur, ____ N.W.2d ____ (Iowa 2002), Iowa Supreme Court, Slip Opinion, filed October 9, 2002.

2200.8 Malicious Prosecution - Malice And Probable Cause - Advice Of An Attorney. The defendant claims the affirmative defense of advice of an attorney. If a criminal prosecution is started upon the advice of an attorney, it may in certain instances be a defense to plaintiff's claim.

The defendant must prove all of the following propositions:

1. The attorney giving the advice was admitted to practice law in this state.*
2. The defendant had no reason to believe that the attorney had a personal interest in obtaining a conviction of the plaintiff.
3. The attorney's advice was sought in good faith from honest motives and for good purposes.
4. Defendant had made a full disclosure to the attorney of all facts concerning the case.
5. The defendant received the attorney's advice in good faith with the honest belief in the probable guilt of the person suspected.

If the defendant has failed to prove any of these propositions, defendant has not proved their defense. If the defendant has proved all of these propositions, the plaintiff cannot recover and your verdict will be for the defendant.

Authority

Brown v. Monticello State Bank, 420 N.W.2d 475 (Iowa 1988)
Schnathorst v. Williams, 240 Iowa 561, 36 N.W.2d 739 (1949)
Restatement of Torts (Second), Section 666

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Comment

Caveat: This instruction can be used in cases involving civil proceedings by: (1) substituting "civil proceeding" for "criminal prosecution", and (2) by omitting "in the probable guilt of the plaintiff" and inserting "that defendant had probable cause for instituting the civil proceeding".

*See: Restatement of Torts (Second), Section 666(2), if attorney is not admitted in Iowa.

2200.9 Malicious Prosecution - Essentials For Recovery - Prior Civil Proceeding.

"Malicious prosecution" means causing an unsuccessful civil action with malice and without probable cause. In order to recover, the plaintiff must prove each of the following propositions:

1. The plaintiff was required to defend a civil action based upon a claim for [here give the nature of the action, the name, place and date of the case].
2. The defendant caused the civil action to be filed.
3. The action ended favorably for the plaintiff.
4. The defendant acted without probable cause.
5. The defendant acted with malice.
6. As a cause of the filing of the civil action, plaintiff sustained [a seizure of property] [here describe the special injury which would not necessarily result in all suits prosecuted to recover for like causes of actions].
7. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Brody v. Ruby, 267 N.W.2d 902 (Iowa 1978)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

2200.10 Malicious Prosecution - Probable Cause - Prior Civil Proceeding. Probable cause for the filing of the civil action means having a reasonable ground. Probable cause exists where the defendant had reasonable trustworthy information about the facts and circumstances [including what someone else told [him] [her] which was sufficient so that a reasonable person would believe that (plaintiff) was responsible for defendant's damages.

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Probable cause does not require absolute certainty of proof beyond a reasonable doubt. It is to be determined by the common sense a reasonable person would apply to the circumstances of everyday life.

Authority

Davis v. Rudolph, 243 Iowa 744, 52 N.W.2d 15 (1952)

Comment

Caveat: In a lawsuit against an attorney for prosecuting an action, or continuing to prosecute an action, on behalf of a client, the rules relating to probable cause differ and are explained in Wilson v. Hayes, 464 N.W.2d 250 (Iowa 1990). Instructions should be tailored accordingly.

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CHAPTER 2300

BAILMENTS

[2300.1](#) Bailment Defined

[2300.2](#) Bailment for Hire, Defined

[2300.3](#) Gratuitous Bailment Defined

[2300.4](#) Bailment for Hire or For Benefit Of Both Parties, Bailee's Responsibility

[2300.5](#) Duty to Warn

[2300.6](#) Gratuitous Bailor, Responsibility

[2300.7](#) Gratuitous Bailee, Responsibility

[2300.8](#) Presumption from Damage

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2300.1 Bailment Defined. When one gives possession and the right to use personal property to another who agrees to return the same property at a future time, the transaction is known in law as a bailment. The person who gives possession is known as a bailor. The person who takes possession is known as a bailee.

Authority

Farmers Butter and Dairy Co-op v. Farm Bureau Mut. Ins. Co., 196 N.W.2d 533, 538 (Iowa 1972)

Reimers v. Petersen, 237 Iowa 550, 22 N.W.2d 817 (1946)

In re Insolvency F. & M. Savings Bank, 202 Iowa 859, 211 N.W. 532 (1926)

2300.2 Bailment For Hire Defined. A bailment for hire is created when:

1. A person accepts delivery of property from the owner for [safekeeping, storage, repair or transportation].
2. Under an agreement express or implied, that something is to be paid by the owner for such [safekeeping, storage, repair or transportation], or when the owner of property delivers or causes it to be delivered to and for the use or benefit of another, under an agreement, express or implied, that something is to be paid to the owner by the person receiving same for such use or benefit.

In the absence of an agreement to the contrary, the law implies a contract between a bailor and a bailee that the bailor will pay a reasonable sum for the [safekeeping, repair, transportation] of such property, or that the bailee will pay a reasonable sum for the use or benefit of such property, as the case may be. The owner who so delivers personal property to another is known as a bailor for hire, and the person to whom such property is so delivered is known as a bailee for hire.

Authority

Lewis v. Best by Test Garage, 200 Iowa 1051, 205 N.W. 983 (1925)

Cullen v. Lord, 39 Iowa 302 (1874)

131 A.L.R. 1170

2300.3 Gratuitous Bailment Defined. A gratuitous bailment is created when:

1. When a person receives from the owner any property for [safekeeping, storage, or transportation].
2. Without any agreement, express or implied, that the person receiving it shall be paid for so doing, or when the owner delivers or causes to be delivered to another person for the use and benefit of such other person, without any agreement, express or implied, that the owner shall be paid.

The owner who so delivers personal property to another is known as a gratuitous bailor, and the person to whom such property is delivered is known as a gratuitous bailee.

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Authority

Kubli v. First National Bank, 193 Iowa 833, 186 N.W. 421 (1922)

2300.4 Bailment For Hire Or For Benefit Of Both Parties, Bailee's Responsibility. When there is no special contract a bailee [for hire] [of a bailment for the benefit of both parties] has a duty to use ordinary care in relation to the property involved. The bailee does not guarantee the safety of the property. This means the bailee is not liable merely because the property is [lost - damaged - injured - destroyed] while in the possession or under control of the bailee. The bailee is liable, if at all, only if the bailee has done something with reference to the use or care of the property that an ordinarily prudent person under the same or similar circumstances would not have done, or has failed to do something with reference to the use or care of the property that an ordinarily prudent person under the same or similar circumstances would have done.

Authority

Farmers Butter & Dairy Coop v. Farm Bureau Mut. Ins. Co., 196 N.W.2d 533 (Iowa 1972)

Berhow v. Kroack, 195 N.W.2d 379 (Iowa 1972)

Walters v. Sanders Motor Co., 229 Iowa 398, 294 N.W. 621 (1940)

Wisecarver v. Long, 120 Iowa 59, 94 N.W. 467 (1903)

2300.5 Duty To Warn. A [lessor] [bailor] of an article has a duty to warn the person to whom the article is supplied if:

(a) The [lessor] [bailor] knows or has reason to know that the article is or is likely to be dangerous for the use for which it is supplied, and

(b) The [lessor] [bailor] has no reason to believe that the person to whom the article is supplied will realize its dangerous condition.

Under these circumstances, the [lessor] [bailor] has a duty to exercise reasonable care to inform the person to whom the article is supplied of its dangerous condition or of the facts which make it likely to be dangerous.

A violation of this duty is negligence.

Authority

Anderson v. Glynn Constr. Co., Inc., 421 N.W.2d 141 (Iowa 1988)

Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)

Restatement (Second) of Torts, Section 388 (1965)

2300.6 Gratuitous Bailor, Responsibility. A gratuitous bailor is not liable merely because the property let or loaned causes injury to the person to whom let or loaned, or to any other person, while in [his] [her] possession.

A gratuitous bailor is liable, if at all, only when:

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1. The bailor knows, or should have known, that the property is or is likely to be dangerous when put to the use for which it was let or loaned.
2. The bailor has no reason to believe that the person to whom the property is let or loaned realizes the dangerous condition exists.
3. The bailor fails to inform the person to whom the property is let or loaned of its dangerous condition, or fails to make known the facts making evident its dangerous condition.

A violation of this law is negligence.

Authority

Davis v. Sanderman, 225 Iowa 1001, 282 N.W.2d 717 (1938)
46 A.L.R.2d 427

2300.7 Gratuitous Bailee, Responsibility. A gratuitous bailee of personal property does not guarantee the safety of that property while it is in the bailee's possession. This means that the bailee is not liable merely because the personal property is [lost - damaged - destroyed] while in [his] [her] possession. The bailee is liable, if at all, only when the bailee has failed to exercise that degree of care for such property that would be exercised by persons of prudence in keeping property of like value under like circumstances.

A violation of this law is negligence.

Authority

Bowen v. First National Bank, 200 Iowa 40, 203 N.W. 569 (1925)
Kubli v. First National Bank, 199 Iowa 194, 200 N.W. 434 (1922)

2300.8 Presumption From Damage. When property is delivered to a bailee in good condition and returned in a damaged condition, a presumption arises that the damage is due to the negligence of the bailee. The presumption can be overcome if the damage is shown to have occurred in spite of due care on the part of the bailee.

If the presumption is not overcome by the evidence, you may use the presumption in determining whether the defendant was negligent.

But, if you find such presumption is overcome by evidence that the damage occurred in spite of due care on the part of bailee, then you will give no weight to the presumption, and the plaintiff must show by the greater weight of the evidence that the defendant was negligent.

Authority

Noxera v. Wathan, 159 N.W.2d 513, 518 (Iowa 1968)

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CHAPTER 2400

CONTRACTS

Express

[2400.1](#) Essentials for Recovery

[2400.2](#) Competency

[2400.3](#) Existence of A Contract

[2400.4](#) Consideration

[2400.5](#) Terms - Interpretation

[2400.6](#) Breach - Definition

[2400.7](#) Performance by Plaintiff

[2400.8](#) Affirmative Defenses - Essentials

[2400.9](#) Impossibility of Performance

[2400.10](#) Prevention of Performance

[2400.11](#) Waiver of Performance

[2400.12](#) Renunciation

Implied

[2400.13](#) Definition - Implied Contract

[2400.14](#) Definition - Implied Contract as To Compensation

Insurance

[2410.1](#) Insurance Contract - Essentials for Recovery (Deleted - see Chapter 1400 - Insurance Company Liability)

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2400.1 Essentials for Recovery. Plaintiff must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.*
4. The terms of the contract.
5. The plaintiff [has done what the contract requires] [has been excused from doing what the contract requires as explained in Instruction(s) No. _____].
6. The defendant has breached the contract.
7. The amount of any damage defendant has caused.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Powell v. McBlain, 222 Iowa 799, 269 N.W. 883 (1936)
Port Huron Machinery Co. v. Wohlers, 207 Iowa 826, 221 N.W. 843 (1928)

Comment

Caveat: Use only propositions that are in dispute.

*Consideration is presumed for a written agreement (Iowa Code section 537A.2), therefore want or failure of consideration is an affirmative defense where a written agreement is involved. Iowa Code section 537A.3; Hubbard Milling Company v. Citizens State Bank, 385 N.W.2d 255 (Iowa 1986). For UCC transactions see Iowa Code sections 554.3408 and 554.5105.

2400.2 Competency. A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it.

Authority

Matter of Guardianship of Collins, 327 N.W.2d 230 (Iowa 1982)
Urbain v. Speak, 258 Iowa 584, 139 N.W.2d 311 (1966)
In Re Estate of Faris, 159 N.W.2d 417 (Iowa 1968)
Swartwood v. Chance, 131 Iowa 714, 109 N.W. 297 (1906)
Iowa Code section 554.1103

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2400.3 Existence Of A Contract. The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

Authority

See authorities cited for 2400.1

Severson v. Elberon Elevator, Inc., 250 N.W.2d 417 (Iowa 1977)

Service Emp., Intern. Local No. 55 v. Cedar Rapids Community School District, 222 N.W.2d 403 (Iowa 1974)

Fortgang Bros., Inc. v. Cowles, 249 Iowa 73, 85 N.W.2d 916 (1957)

In Re McKeon's Estate, 227 Iowa 1050, 289 N.W. 915 (1940)

Iowa Code section 554.2204

Comment

Note: If there is an issue as to whether preliminary negotiations ripen into a contract, see Severson v. Elberon Elevator, Inc., 250 N.W.2d 417 (Iowa 1977).

2400.4 Consideration. "Consideration" is either a benefit given or to be given to the person who makes the promise [or some other person] or a detriment experienced or to be experienced by the person to whom the promise is made [or some other person]. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

Authority

Matter of Guardianship of Collins, 327 N.W.2d 230 (Iowa 1982)

Powell v. McBlain, 222 Iowa 199, 269 N.W. 883 (1937)

Wilson v. Airline Coal Co., 215 Iowa 855, 246 N.W.753 (1933)

Iowa Code sections 537A.2

2400.5 Terms - Interpretation. In determining the terms of the contract you may consider the following:

1. The intent of the parties along with a reasonable application of the surrounding circumstances.
2. The intent expressed in the language used prevails over any secret intention of either party.
3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which

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gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.

5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

Authority

First Nat. Bank in Creston v. Smith, 331 N.W.2d 120 (Iowa 1983)
Broyles v. Iowa Dept. of Social Services, 305 N.W.2d 718 (Iowa 1981)
Village Supply Co., Inc. v. Iowa Fund, Inc., 312 N.W.2d 551 (Iowa 1981)
First Northwestern National Bank, Denison, v. Crouch, 287 N.W.2d 151 (Iowa 1980)
Lyon v. Willie, 288 N.W.2d 884 (Iowa 1980)
Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22 (Iowa 1978)
Lovlie v. Plumb, 250 N.W.2d 56 (Iowa 1977)
Mopper v. Circle Key Life Ins. Co., 172 N.W.2d 118 (Iowa 1969)
Carson v. Great Lakes Pipe Line Co., 238 Iowa 50, 25 N.W.2d 855 (1947)
Iowa Code section 622.22

2400.6 Breach - Definition. A breach of the contract occurs when a party fails to perform a term of the contract.

Authority

Metropolitan Transfer Station, Inc. v. Design Structures, Inc., 328 N.W.2d 532 (Iowa App. 1982)
Sheer Const., Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328 (Iowa 1982)

2400.7 Performance By Plaintiff. When a person agrees to do something for a specified consideration to be received after full performance, they are not entitled to any part of the consideration until they have performed as agreed [unless full performance has been (excused) (waived) (prevented) (delayed) by the act of the other party].

However, a plaintiff who has not fully performed under the terms of the contract may still recover some amount if the failure to render performance due at an earlier time was not material (subject to defendant's claim for partial breach). In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

1. The extent to which defendant will be deprived of the benefit which defendant reasonably expected.
2. The extent to which defendant can be adequately compensated for the part of that benefit of which defendant will be deprived.

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3. The extent to which plaintiff will suffer forfeiture.
4. The likelihood that plaintiff will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the plaintiff is in line with standards of good faith and fair dealing.

Authority

Roland A. Wilson and Associates v. Forty-O-Four Grand-Corp., 246 N.W.2d 922 (Iowa 1976)
Lautenbach v. Meredith, 240 Iowa 166, 35 N.W.2d 870 (1949)
Andrew v. American Sav. Bank & Trust Co. of Davenport, 258 N.W. 911, 219 Iowa 921 (1935)
Theobald v. Weber, 259 Iowa 452, 143 N.W.2d 418 (1966)
Kaltoft v. Nielsen, 252 Iowa 249, 106 N.W.2d 597 (1961)
S. Hanson Lumber Company v. DeMoss, 153 Iowa 204, 111 N.W.2d 681 (1961)
Semler v. Knowling, 325 N.W.2d 395 (Iowa 1982)
Iowa Code section 554.2208
Restatement Contracts (Second), Sections 237 and 241

2400.8 Affirmative Defenses - Essentials. Defendant claims performance was excused because of: [impossibility of performance] [prevention] [waiver] [renunciation]

If the defendant has proved [impossibility of performance] [prevention] [waiver] [renunciation] [failure of consideration*], then you shall find for the defendant.

If the defendant has failed to prove [impossibility of performance] [prevention] [waiver] [renunciation] [failure of consideration*], then you shall decide whether the plaintiff is entitled to recover damages.

Authority

*Consideration is presumed for a written agreement (Iowa Code section 537A.2), therefore want or failure of consideration is an affirmative defense where a written agreement is involved.

Iowa Code section 537A.3;

Hubbard Milling Company v. Citizens State Bank, 385 N.W.2d 255 (Iowa 1986) for UCC transactions see Iowa Code sections 554.3408 and 554.5105.

2400.9 Impossibility Of Performance. Impossibility of performance means extraordinary circumstances which:

1. Prevent a person from carrying out the terms of the contract.
2. Could not reasonably have been anticipated; and
3. Are not the fault of that party.

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Performance is not excused if the party who promised to perform created the circumstances which made performance impossible, or just because performance became economically burdensome or unattractive.

Authority

Yager v. Farmers' Mut. Telephone Co., 323 N.W.2d 245 (Iowa 1982)
Associated Grocers of Iowa Co-op, Inc. v. West, 297 N.W.2d 103 (Iowa 1980)
Nora Springs Co-op, Co. v. Brandau, 247 N.W.2d 774 (Iowa 1976)

Comment

Note: This instruction may be used where a plaintiff claims this ground as an excuse for nonperformance or where defendant raises this affirmative defense as a discharge of a duty. If the contract is within the scope of Article 2 of the Uniform Commercial Code, the Instruction should be modified to conform with Iowa Code Sections 554.2101 and 554.2615(a).

2400.10 Prevention Of Performance. Performance is excused if the other party prevents it or makes it impossible.

Authority

Sheer Const., Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328 (Iowa 1982)
Kaltoft v. Nielsen, 252 Iowa 249, 106 N.W.2d 597 (1960)

Comment

Note: This instruction may be used where a plaintiff claims this ground as an excuse for nonperformance or where defendant raises this affirmative defense as a discharge of a duty.

2400.11 Waiver of Performance. The right to insist on performance can be given up. This is known as a "waiver". A waiver may be shown by actions, or you may conclude from (name)'s conduct and the surrounding circumstances that a waiver was intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.

2400.12 Renunciation. Performance is excused where one party clearly rejects the contract by giving notice to the other that they will not perform.

Authority

Glass v. Minnesota Protective Life Ins. Co., 314 N.W.2d 393 (Iowa 1982)

Comment

Note: This instruction may be used where a plaintiff claims this ground as an excuse for nonperformance or where defendant raises this affirmative defense as a discharge of a duty.

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2400.13 Definition - Implied Contract. The law implies a promise to pay the reasonable value of services [and materials] a person knowingly accepts from another.

Authority

In Re: Holta's Estate, 246 Iowa 527, 68 N.W.2d 314 (1955)

2400.14 Definition - Implied Contract As To Compensation. When a person employs someone to provide services [and materials] without agreeing on the amount of pay, an agreement is implied to pay the reasonable value of those services [and materials].

Authority

Olberding Construction Co. v. Ruden, 243 N.W.2d 872 (Iowa 1976)

Heninger & Heninger v. Davenport Bank & Trust Co., 341 N.W.2d 43 (Iowa 1983)

McDonald v. Welch, 176 N.W.2d 846 (Iowa 1970)

2410.1 Insurance Contract - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The plaintiff was insured for loss due to [theft, fire, storm, liability, etc.] by the defendant on the date of loss.
2. The plaintiff had paid the premiums which were due.
3. The plaintiff had a loss by [theft, fire, storm, liability, etc.] which was covered by the insurance policy with the defendant.
4. The plaintiff gave the defendant [(notice of loss required by the policy) or (the failure to give notice of loss was excused, waived, or not prejudicial.)]

[(timely proof of loss) or (the failure to give proof of loss was/excused/ /waived/ /not prejudicial.)]

5. The defendant did not pay the plaintiff's claim.
6. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of the propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Comment

Note: Omit portions of paragraph 4 which are not applicable.

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Note: For measure of recovery of total property loss, see: McIntosh v. Home Mutual Insurance Assn., 198 Iowa 1038, 1039, 200 N.W. 694. To determine actual cash value by using market value and/or replacement cost, see: Britven v. Occidental Insurance Co., 234 Iowa 682, 685 to 687, 13 N.W.2d 791, 793 to 794; Stotenbecker v. Iowa Power & Light Co., 250 Iowa 1073, 1080, 96 N.W.2d 468, 472.

Note: See: Henschel v. Hawkeye-Security Insurance Co., 178 N.W.2d 409, 415-417 (Iowa 1970) concerning legal excuse for not giving notice of loss. See: Pirkl v. Northwestern Mut. Ins. Ass'n., 348 N.W.2d 633, 637 (Iowa 1984) concerning legal excuse or no prejudice for not giving notice of loss within a specific time period. See: Basta v. Farm Property Mutual Insurance Assoc., 217 Iowa 240, 249, 252 N.W. 125 (1933) on the issue of the insurance company's waiver of a proof of loss statement.

Caveat: Instructions in a breach of insurance contract case must be tailored to the specific language of the insurance policy.

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CHAPTER 2500

EMINENT DOMAIN

[2500.1](#) Statement of The Case

[2500.2](#) Condemnation - Authority

[2500.3](#) Condemnation - Measure of Recovery

[2500.4](#) Fair and Reasonable Market Value

[2500.5](#) Fair and Reasonable Actual Value

[2500.6](#) Valuation Factors

[2500.7](#) Comparables

[2500.8](#) Controlled Access

[2500.9](#) Costs - Attorneys' Fees - Interest

[2500.10](#) Measure of Damages Re Leasehold

[2500.11](#) Verdict Instruction (Partial Taking)

[2500.12](#) Separate Tracts Operated As One

[2500.13](#) Eminent Domain - Partial Taking - Highest and Best Use - Not Disputed

[2500.14](#) Eminent Domain - Highest and Best Use - Disputed Partial Taking

[2500.15](#) Eminent Domain - Highest and Best Use - Zoning Classification

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2500.1 Statement Of The Case. This is a lawsuit to determine the amount of damages due (name), the [owner][contract purchaser][tenant], because of the condemnation or taking of a parcel of land used in connection with the improvement of a [highway][street] located (describe location) in _____ County.

It is undisputed that on (date), the acquiring agency condemned the particular parcel of land involved in this lawsuit. [The acquiring agency has also condemned right of direct access between the [highway][street], and that part of the [owner][contract purchaser] [tenant]'s adjoining property is not included in the condemnation.]

The [owner][contract purchaser][tenant] claims certain items of damage for the land taken which include [list of claims for which damages are sought].

The acquiring agency admits the [owner][contract purchaser][tenant] is owed fair and reasonable compensation, but denies the [owner][contract purchaser][tenant] has been damaged to the extent claimed.

You are to decide the amount of damage the [owner][contract purchaser][tenant] has suffered which must be computed under the rules explained in these instructions.

Authority

Iowa Code sections 6B.1(1), 6B.14 and 6B.58.

6/01

2500.2 Condemnation - Authority. Governmental authorities are authorized to condemn and take private property for public purposes. This is known as the right of eminent domain.

Private property shall not be taken for public use, however, without fair and just compensation to its [owner][contract purchaser] [tenant]. Therefore, the only issue for you to decide is the amount of damages the [owner][contract purchaser][tenant] has suffered as a result of the taking.

Just compensation means the payment of money to the [owner][contract purchaser][tenant] of the condemned property that fully makes up for their loss.

Whether or not [owner][contract purchaser][tenant] of property want to part with their property has no bearing upon the fair and reasonable market value of the property nor the amount of compensation to be paid.

The [owner][contract purchaser][tenant] and acquiring agency have equal rights in Court. This means you are to decide this case as though it were a case between two individuals.

Authority

Iowa Code chapter 6B

Right to Compensation: Constitution of Iowa, Article I, Section 18

Harris v. Board, 244 Iowa 1169, 1178, 59 N.W.2d 234 (1953) and citation Impartiality:

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Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (Iowa (1930)).

6/01

2500.3 Condemnation - Measure Of Recovery. The appellant (name) must prove the “fair and just compensation” to which [he] [she] [it] is entitled. Fair and just compensation is the difference in the fair and reasonable market value of their property as a whole immediately before and the fair and reasonable market value of the remaining property immediately after the taking which occurred on (date).

In making your decision, you must disregard benefits to the [owner][contract purchaser][tenant]’s property which may have resulted or may result in the future from any improvements.

It is not necessary for the members of the jury to agree on the exact value before and after condemnation. The only agreement required for a verdict is the difference in value of the property before and its value after the taking by the acquiring agency.

Authority

Constitution of Iowa, Article I, Section 18

Witt v. State of Iowa, 223 Iowa 156, 272 N.W. 419 (1937).

Neddermeyer v. Crawford County, 290 Iowa 883, 889, 175 N.W. 339 (1921).

6/01

2500.4 Fair And Reasonable Market Value. The term “fair and reasonable market value” means the cash sales price between a voluntary, willing seller who is not forced to sell, and a voluntary, willing buyer who is not forced to buy. It assumes a buyer and seller are bargaining freely in the open market for the purchase and sale of real estate.

The term does not mean a value under circumstances where greater than its fair price would be obtained, nor does it mean the price which the property would bring at a forced sale. Also, it does not mean what the property is worth to the [owner][contract purchaser][tenant] nor what the acquiring agency can afford to pay.

Authority

Hamer v. Iowa State Highway Commission, 250 Iowa 1228, 98 N.W.2d 746 (1959)

Stortenbecker v. Iowa Power & Light Co., 250 Iowa 1073, 1080, 96 N.W.2d 205 (1963)

Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963)

Nedrow v. Michigan-Wisconsin Pipe Line Co., 245 Iowa 763, 61 N.W.2d 687 (1954)

Korf v. Fleming, 239 Iowa 501, 32 N.W.2d 85, 3 A.L.R.2d 270 (1948)

29A C.J.S. Eminent Domain, Section 136(3)

Comment

Note: If the condemnation is of a limited special use property for which there is no ascertainable market value, the jury must find the fair and reasonable intrinsic value of

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the property. Instructions used in such a case should reflect this change in terminology. See Nichols, The Law of Eminent Domain, (Rev. 3rd Ed.) Section 232.

6/01

2500.5 Fair And Reasonable Actual Value. Deleted.

2500.6 Valuation Factors. Factors you may consider in determining the fair and reasonable market value of the property are:

1. The location and topography of the property.
2. The size and shape of the property.
3. The improvements made on the property since it was purchased.
4. The quality, age and construction of the buildings and their location as to the highway boundary line.
5. Comparable sales of other property.
6. Loss of reasonable and convenient access to the adjoining property resulting from the highway construction.
7. The extent of the land actually taken.
8. Any inconvenience resulting from the taking.
9. The character of the neighborhood.
10. The use and capability of the property.
11. Other circumstances disclosed by the evidence which tend to show the fair and reasonable market value of the property.

Authority

Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961)

Ranck v. Cedar Rapids, 134 Iowa 563, 111 N.W. 1027 (1907)

Iowa Code section 6B.21(as amended)

Comment

Note: No specific factor of valuation should be included unless supported by the evidence.

6/01

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2500.7 Comparables. Evidence has been admitted of sales of other real estate. To the extent the other land is similar or comparable in character to the [owner][contract purchaser][tenant]'s property, the sale prices may be considered as evidence of the value of the [owner][contract purchaser] [tenant]'s property.

“Similar” and “comparable” do not mean identical. They mean having a resemblance. Parcels of land may be similar although they possess certain differences. The size, use, location and nature of the parcels of land, and the time of the sales are factors in considering similarity or comparability.

Authority

Belle v. Highway Commission, 256 Iowa 43, 126 N.W.2d 311, 313 (1964)
Redfield v. Highway Commission, 251 Iowa 332, 99 N.W.2d 413 (1960) and citations

6/01

2500.8 Controlled Access. The acquiring agency, (name) has the authority to put in a controlled access highway.

The [owner][contract purchaser][tenant]s of the property next to the controlled access highway are not entitled to get to their property at any and all points between it and the highway. They are entitled only to reasonable and convenient access to their property; however, if there is a substantial interference with the right of access, the property [owner] [contract purchaser][tenant] adjoining the controlled access highway is entitled to fair and just compensation.

In determining whether the [owner][contract purchaser][tenant] has lost reasonable and convenient access to the property, you may consider the following factors:

1. The condition, situation, location and use of the property.
2. Its normal access requirements in ordinary use.
3. The location of any present access point or points available to the [owner][contract purchaser][tenant], and the extent to which the existing access point or points may be used by the [owner] [contract purchaser][tenant] in entering and leaving the property.
4. The nature and extent of restrictions to the access point or points on the property.

If you find a substantial interference with access to the [owner][contract purchaser][tenant]'s property from (highway/street) as it was before the condemnation [or as relocated], this would be a factor in determining the value of the property after condemnation.

Authority

Iowa Code chapter 306A, Controlled Access Highways
Belle v. Iowa State Highway Commission, 256 Iowa 43, 126 N.W.2d 311, 314 (1964)
Lehman v. Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959)
Wilson v. Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958)

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Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957)

Comment

Note: For the applicable rule where there was no pre-existing right of access, see Lehman v. Highway Commission, supra; 43 I.L.R. 258, 267; 43 A.L.R. 2d, 1072, 1079.

6/01

2500.9 Costs - Attorney's Fees - Interest. In arriving at your verdict, you may not consider court costs, attorney's fees, or interest on the award. These items are not elements of damages. I will decide these issues.

2500.10 Measure Of Damages Re Leasehold. The tenant, (name), had a lease on the property. The lease was to run to (date) and the tenant was operating a (business) on the leased property. The tenant's interest has been condemned by the acquiring agency.

The measure of the tenant's damages is the fair and reasonable market value of the unexpired term of the lease immediately before the condemnation, taking into account the building, fixtures, and personal property on the premises, less the future rent to be paid, and the reasonable value of personal property removed by the tenant after the date of the condemnation.

The following factors may be considered in determining value:

1. The location of the premises, its surroundings and its accessibility.
2. The use to which the premises has been put.
3. Improvements to the premises.
4. The nature, character, type and general construction of the building and fixtures located on the premises.
5. The depreciation of the buildings, fixtures, and personal property since their construction or purchase.
6. Any other pertinent facts disclosed by the evidence.

Authority

Iowa Code section 6B.21(as amended)

Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963) In this opinion, the Court states:

"And where as here there is more than one tract under the same lease and separated by a highway, it is the use and operation of the land that

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determine whether damages should be assessed to the entire leasehold or to the part taken."

Des Moines Laundry v. City, 197 Iowa 1082, 198 N.W.486, 34 A.L.R. 1517 (1924)

Comment

Note: No specific factors of valuation should be included unless supported by the evidence.

6/01

2500.11 Verdict Instruction [Partial Taking]. You will insert the amount you find to be the difference between the fair and reasonable market value of the property before the taking on (date) and the fair and reasonable market value of the [owner][contract purchaser][tenant]'s remaining portion after the taking on the attached verdict form.

2500.12 Separate Tracts Operated As One. The [owner][contract purchaser][tenant] claims the condemned property was used with other property owned by (name), which is not being condemned. This is denied by the acquiring agency.

You may consider the following factors in deciding if separate parcels of land were used for one operation:

1. The location of and the relation between the parcels of real estate.
2. The kind and character of the improvements.
3. The type of [business/farming] being carried on.
4. The ownership of and the location of personal property [farming equipment] used.
5. The length of time the use has been and would be in operation.
6. Any other factors and circumstances shown by the evidence.

If you find that just before the condemnation, [both][all] parcels were [used][operated] as a single [business][farming] operation, then you may consider this in determining the fair market value of the condemned property.

Authority

Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963)

Stortenbecker v. Iowa Power and Light Company, 250 Iowa 1073, 96 N.W.2d 468 (1959)

Paulson v. State Highway Commission, 210 Iowa 651, 231 N.W. 296 (1930)

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2500.13 Eminent Domain - Partial Taking - Highest And Best Use - Not Disputed. The most valuable use of the entire parcel of land immediately before the taking was (describe).

The [owner][contract purchaser][tenant] claims factors connected with the condemnation reduced the value of the [owner][contract purchaser][tenant]'s remaining property by reducing its suitability for its most valuable use.

You should consider all the circumstances which relate to the suitability of the land for its most valuable use, both before and after the condemnation. You should also consider evidence of any demand which would probably have existed for the land if it had been developed for its most valuable use at the time of the condemnation. This evidence is to be considered only for the effect it has upon the market value at the time of taking, not at some future time.

Authority

Dolezal v. City of Cedar Rapids, 209 N.W.2d 84, 88-89 (Iowa 1973)

Jones v. Iowa State Highway Commission, 185 N.W.2d 74, 750 (Iowa 1971)

Bellew v. Iowa State Highway Commission, 171 N.W.2d 284, 288-289 (Iowa 1969)

Mohr v. Iowa State Highway Commission, 255 Iowa 711, 720-721, 124 N.W.2d 141 (1963)

Kaperonis v. Iowa State Highway Commission, 251 Iowa 39, 99 N.W.2d 284, 287 (1959)

Constitution of Iowa, Article I, section 18

6/01

2500.14 Eminent Domain - Highest And Best Use - Partial Taking. Your determination of fair and just compensation must be based on the most valuable use for which the property was reasonably suited immediately before and after the condemnation. The most valuable use of the property means the most profitable legal use for which a willing buyer would probably have purchased the property and paid the highest price.

To determine the most valuable use of the property, you should consider the suitability of the property for the use before the condemnation or any other suitable use. This includes any legal use even though the owner never used and may not intend to use the property in that way.

2500.15 Eminent Domain - Highest And Best Use - Zoning Classification. The most valuable legal use for which the property was reasonably suited immediately before and after the condemnation must be [a use allowed by the zoning ordinance in effect on (date of condemnation).] [a use permitted by a different zoning classification if there was a reasonable probability that a change to the different zoning classification would be made soon. The [owner] [contract purchaser] [tenant] must prove there was, on (date), a reasonable probability of a zoning change in the near future.]

Authority

Dolezal v. City of Cedar Rapids, 209 N.W.2d 84, 88-89 (Iowa 1973)

Jones v. Iowa State Highway Commission, 259 Iowa 616, 625-626, 144 N.W.2d 277, 282-283 (1966)

Comment

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Note: The parenthetical portion of this instruction should be added only if there was evidence of a reasonable probability of a zoning change in the near future. Dolezal v. City of Cedar Rapids supra.

The zoning classification can also be disregarded when there is substantial evidence demonstrating the illegality of a restrictive zoning ordinance and the zoning authority's failure to rezone while considering acquisition of the subject property. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

6/01

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CHAPTER 2600

ESTATES - CLAIM FOR SERVICES

[2600.1](#) Essentials for Recovery - Implied Contract As To Compensation

[2600.2](#) Essentials for Recovery - Claimant Not A Family Member

[2600.3](#) Definition - Implied Contract

[2600.4](#) Definition - Implied Contract as To Compensation

[2600.5](#) Definition - Reasonable Value

[2600.6](#) Special Defense of Gratuity

[2600.7](#) Defense - Payment during Lifetime

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2600.1 Essentials For Recovery - Implied Contract As To Compensation. [Name of claimant] must prove all of the following propositions:

1. [Name of deceased] employed [name of claimant] to provide services [and materials].
2. (Name of claimant) provided those services [and materials]
3. [Name of claimant] and [name of deceased] had no agreement as to the amount of pay for the services [and materials].
4. The reasonable value of those services.

If [name of claimant] has failed to prove any of these propositions, your verdict will be for the Estate. If [name of claimant] has proved all of these propositions, your verdict will be for [him] [her] in an amount equal to the reasonable value of those services [unless the Estate has proved the defense explained in Instruction No. _____].

2600.2 Essentials For Recovery - Claimant Not A Family Member. [Name of claimant] must prove all of the following propositions:

1. (Name of claimant) provided services [and materials] for [name of deceased].
2. (Name of deceased) requested those services from the (name of claimant) [knew (name of claimant) was providing those services and accepted them.]
3. The reasonable value of those services.

If (name of claimant) has failed to prove one or more of these propositions, your verdict will be for the Estate. If (name of claimant) has proved all of these propositions, your verdict will be for [him] [her] in some amount [unless the Estate has proved the defense explained in Instruction No. _____].

Authority

In re Estate of Martin, 261 Iowa 630, 155 N.W.2d 401, 406 (1968)

2600.3 Definition - Implied Contract. The law implies a promise to pay the reasonable value of services [and materials] a person knowingly accepts from another.

Authority

In re Holta's Estate, 246 Iowa 527, 68 N.W.2d 314 (1955)

2600.4 Definition - Implied Contract As To Compensation. When a person employs someone to provide services [and materials] without agreeing on the amount of pay, an agreement is implied to pay the reasonable value of those services [and materials].

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Authority

Olberding Construction Co. Inc. v. Ruden, 243 N.W.2d 872 (Iowa 1976); 60 A.L.R.3d 487

2600.5 Definition - Reasonable Value. The "reasonable value" of services is the ordinary charge for those services when and where they were performed.

Authority

In re Estate of Stencil, 215 Iowa 1195, 248 N.W. 18, 19 (1933)

2600.6 Special Defense Of Gratuity. As a defense, the Estate claims the following:

- a. (Name of claimant) and (name of deceased) were members of the same family.
- b. (Name of claimant)'s services [and materials] were the type usually exchanged between family members.

A "family" is a group of people [living in the same household under one management] [of common ancestry]. If the Estate has proved both of the above propositions, (name of claimant) cannot recover pay for services [and materials] [unless [he] [she] has proved all of the propositions set forth in Instruction No. _____] and at least on the following propositions:

1. Both (name of claimant) and (name of deceased) expected (name of claimant) to be paid for the services [and materials]; or
2. (Name of claimant)'s services [and materials] provided for (name of deceased) were greater in amount than those ordinarily exchanged between persons in a like family relationship under similar circumstances.

Authority

Patterson v. Patterson, 189 N.W.2d 601, 604 (Iowa 1971)

2600.7 Defense - Payment During Lifetime. As a defense the Estate alleges (name of deceased) paid for (name of claimant)'s services [and materials] before (name of deceased) died. The Estate must prove this defense. In considering this defense, you may take into account the amount of time which passed between (name of claimant)'s services and the (name of deceased)'s death, as well as the actions, statements and conduct of the (name of claimant) and (name of deceased) and other circumstances in the evidence which would support a finding that payment was or was not made by (name of deceased) during [his] [her] lifetime.

Authority

Finley v. Thorne, 209 Iowa 343, 226 N.W. 103 (1929)

Comment

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Note: Other relevant circumstances may be the decedent's ability to pay during his or her lifetime; the decedent's business practices; the parties' geographical proximity; the lifetime opportunities for payment; and the collectability of the amount claimed. Finley v. Thorne, 209 Iowa 3431, 226 N.W. 103 (1929); Baker v. Davis, 212 Iowa 1249, 235 N.W. 749 (1931).

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CHAPTER 2700

WILL CONTEST

[2700.1](#) Elements - Will Contest

[2700.2](#) Testamentary Capacity

[2700.3](#) Unsoundness Of Mind Before Or After Execution

[2700.4](#) Undue Influence - Essentials for Recovery

[2700.5](#) Definition of Undue Influence - Person Charged With Undue Influence Need Not Be Present

[2700.6](#) Circumstances to Be Considered

[2700.7](#) Definition of Confidential Relationship

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2700.1 Elements - Will Contest. The law presumes a person [has the mental ability to make a will] [is free from undue influence when making a will]. To overcome [this] [these] presumption[s], the plaintiff must prove one of the following proposition[s] were true at the time the will was made:

1. (Testator) did not have the mental ability to make a will.
2. (Testator's) will was the result of undue influence.

If the plaintiff has failed to prove [either of] the above proposition[s] your verdict will be for the defendant. If the plaintiff has proved [one or more of] the above proposition[s], your verdict will be for plaintiff.

Authority

In re Estate of Adams, 234 N.W.2d 125 (Iowa 1975)
In re Estate of Huston, 238 Iowa 297, 27 N.W.2d 26 (1947)

Comment

Caveat: Delete any proposition not supported by the evidence.

2700.2 Testamentary Capacity. A person has the mental ability to make a will if [he] [she]:

1. Knows a will is being made.
2. Knows the kind and extent of [his] [her] property.
3. Is able to identify and remember those persons [he] [she] would naturally give [his] [her] property to.
4. Knows how [he] [she] wants to distribute [his] [her] property.

A will is valid if the person making the will meets the above tests, even if [his] [her] mental or physical powers are impaired. A person does not have to be able to make contracts or carry on business generally. However, you may consider physical weakness or infirmity, the rational nature of the distribution, along with any other evidence in deciding if a person has the mental ability to make a will.

Authority

In re Estate of Adams, 234 N.W.2d 125 (Iowa 1975)
Drosos v. Drosos, 251 Iowa 777, 103 N.W.2d 167 (1960)
In re Estate of Kenny, 233 Iowa 600, 10 N.W.2d 73 (1943)

2700.3 Unsoundness Of Mind Before Or After Execution. Lack of mental ability to make a will must exist at the time the will was made. You may consider evidence of (testator's)

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condition of mind at other times if you decide such evidence throws some light on [his] [her] mental ability at the time the will was made.

Authority

In re Estate of Gruis, 207 N.W.2d 571 (Iowa 1973)

2700.4 Undue Influence - Essentials For Recovery. The law presumes a person is free from undue influence. To overcome this presumption, plaintiff must prove each of the four following propositions:

1. At the time the will was made (testator) was susceptible to undue influence.
2. _____ had the opportunity to exercise such influence and carry out the wrongful purpose.
3. _____ was inclined to influence (testator) unduly for the purpose of getting an improper favor.
4. The result was clearly brought about by undue influence.

If the plaintiff has failed to prove one or more of these propositions, your verdict will be for the defendant. If plaintiff has proved all of these propositions, your verdict will be for plaintiff.

Authority

Burkhalter v. Burkhalter, 841 N.W.2d 93 (Iowa 2013)
In re Estate of Davenport, 346 N.W.2d 530 (Iowa 1984)
In re Estate of Houston, 238 Iowa 297, 27 N.W.2d 26 (1947)

2700.5 Definition Of Undue Influence - Person Charged with Undue Influence Need Not Be Present. Undue influence means a person substitutes his or her intentions for those of the person making the will. The will then expresses the purpose and intent of the person exercising the influence, not those of the maker of the will. Undue influence must be present at the very time the will is signed and must be the controlling factor. The person charged with exercising undue influence need not be personally present when the will was being made or signed but the person's influence must have been actively working at the time the will was being made and signed.

Authority

In re Estate of Cory, 169 N.W.2d 837 (Iowa 1969)
Walters v. Heaton, 223 Iowa 405, 271 N.W. 310 (1937)

Comment

Note: Where the person charged with exerting undue influence is a spouse, consider prefacing 2700.5 with the following statement:

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"Undue influence means something more than and different from the natural, wholesome, relationship between wife and husband concerning their mutual interests. The influence growing out of such relation is manifestly not ordinarily 'undue' or improper."

Authority for Comment

Johnstone v. Johnstone, 190 N.W.2d 421, 426 (Iowa 1971)
Gillette v. Cable, 248 Iowa 7, 79 N.W.2d 195 (1956)

2700.6 Circumstances To Be Considered. In deciding if there was undue influence, you may consider the following:

1. Dominance over the maker of the will.
2. Whether the condition of the maker's mind was subject to such dominance.
3. Whether the distribution of the maker's property is unnatural, unjust or unreasonable.
4. The activity of the person charged with exercising the undue influence and whether the person had the opportunity and frame of mind to exercise undue influence. Activities may include suggestion, request and persuasion short of controlling the will of the maker, but they do not alone constitute undue influence. Consider such activities along with any other evidence of undue influence.
5. The intelligence or lack of intelligence of the maker of the will.
6. Whether the maker of the will was physically or mentally weak.
7. Whether the person charged with exercising undue influence was the controlling party in a confidential relationship with the maker of the will.
8. Any other facts or circumstances shown by the evidence which may have any bearing on the question.

No one of the above circumstances is more important than any other.

Authority

In re Estate of Davenport, 346 N.W.2d 530 (Iowa 1984)
In re Estate of Herm, 284 N.W.2d 191 (Iowa 1979)
Frazier v. State Central Savings Bank, 217 N.W.2d 238 (Iowa 1974)
Johnstone v. Johnstone, 190 N.W.2d 421 (Iowa 1971)
In re Estate of Willesen, 251 Iowa 1363, 105 N.W.2d 640 (1960)
In re Estate of Burrell, 251 Iowa 185, 100 N.W.2d 177 (1959)
O'Brien v. Stoneman, 227 Iowa 389, 288 N.W.2d 447 (1939)

Comment

Caveat: Delete any circumstance not supported by the evidence.

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Note: If a fiduciary relationship is involved, substitute the word "fiduciary" for confidential in item 7.

2700.7 Definition Of Confidential Relationship. A confidential relationship is present when one person has gained the complete confidence of another and purports to act or advise with only the interest of the other party in mind.

Authority

Matter of Estate of Herm, 284 N.W.2d 191, 199 (Iowa 1979)

Burns v. Nemo, 252 Iowa 306, 105 N.W.2d 217, 220 (1960)

Merritt v. Easterly, 226 Iowa 564, 284 N.W. 397, 399 (1939)

Comment

Note: There is a distinction between a "confidential" and a "fiduciary relationship". Burns v. Nemo and Merritt v. Easterly, supra. If a "fiduciary" relationship is involved, it should be defined as stated in these cases.

A confidential relationship may exist between a husband and wife where one spouse is dominant and the other subservient or disabled. In re Estate of Lundwall, 242 Iowa 430, 46 N.W.2d 535 (1951).

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CHAPTER 2800

FALSE ARREST

[2800.1](#) False Arrest - Essentials for Recovery

[2800.2](#) False Arrest - Definition of Arrest

[2800.3](#) False Arrest - Affirmative Defense - Good Faith and Reasonable Belief

[2800.4](#) False Arrest - Reasonable Belief

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2800.1 False Arrest - Essentials For Recovery. "False arrest" is the unlawful restraint of an individual's personal liberty or freedom of movement.

The plaintiff must prove all of the following propositions:

1. The plaintiff was detained or restrained against [his] [her] will.
2. The detention or restraint was done by the defendant.
3. The detention or restraint was a cause of plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. (If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____).

Authority

Kraft v. City of Bettendorf, 359 N.W.2d 466 (Iowa 1984)
Children v. Burton, 331 N.W.2d 673 (Iowa 1983)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: Damages allowable for false arrest are set out in Kraft v. City of Bettendorf, supra, at 470.

Caveat: These instructions assume the defendant is a peace officer and not a private individual. If the defendant is not a peace officer, the instructions will have to be tailored, taking into account sections 804.7 and 804.9 of the Iowa Code.

2800.2 False Arrest - Definition Of Arrest. "Arrest" means taking a person into custody. It includes restraint or detention of the person or [his] [her] submission to custody.

Authority

Iowa Code section 804.5

Rev. 09/10

2800.3 False Arrest - Affirmative Defense - Good Faith And Reasonable Belief. The defendant claims [he] [she] acted in good faith and with a reasonable belief.

Defendant must prove both of the following propositions:

1. The defendant believed in good faith that the person who was arrested had committed a crime.

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2. The defendant's belief was reasonable.

If the defendant has failed to prove both of these propositions, the defendant has not proved [his] [her] defense. If the defendant has proved both of these propositions, the plaintiff cannot recover and your verdict will be for the defendant.

Authority

Kraft v. City of Bettendorf, 359 N.W.2d 466 (Iowa 1984)

Comment

Note: Iowa Code section 804.7(5) includes domestic abuse as a "crime" for the purpose of this instruction.

2800.4 False Arrest - Reasonable Belief. A person's belief is reasonable if it is based on reasonably trustworthy information about the facts and circumstances which would allow a reasonably careful person to believe a crime had been committed.

Whether an arrest is based on a reasonable belief is determined by the circumstances existing and known to the defendant when the arrest was made, and not later investigation of the facts or the outcome of later criminal charges.

Authority

Sundholm v. City of Bettendorf, 389 N.W.2d 849 (Iowa 1986)
Children v. Burton, 331 N.W.2d 673 (Iowa 1983)

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CHAPTER 2900

GOVERNMENTAL LIABILITY

Municipal tort Liability

[2900.1](#) Defects in Public Way - Essentials for Recovery

[2900.2](#) Dangerous Condition - Defined

[2900.3](#) Alternate Safe Route - Affirmative Defense

[2900.4](#) Design and Construction of Public Way

[2900.5](#) Design and Construction of Public Improvements

[2900.6](#) Duty to Maintain

[2900.7](#) Affirmative Defense - Policy or Level Of Service

State Tort Liability

[2910.1](#) Snow or Ice - Essentials For Recovery

[2910.2](#) Parties - Equal Consideration

[2910.3](#) Affirmative Defense - Policy or Level Of Service

[2910.4](#) Duty to Maintain

[2910.5](#) Evidence

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2900.1 Defects In Public Way - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. A dangerous condition existed in the [sidewalk] [street] [alley].
2. a. Defendant had actual knowledge of the condition.
b. The condition existed for such a period of time the defendant in the exercise of ordinary care should have discovered it.
3. Defendant had a reasonable opportunity to [correct] [warn of] the condition and did not.
4. The failure to [correct] [warn of] the condition was a cause of the plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. (If an affirmative defense is submitted delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.

Authority

Iowa Code section 364.12(2)
Abraham v. Sioux City, 218 Iowa 1068, 1070; 250 N.W. 461 (1933)
Greninger v. City of Des Moines, 264 N.W.2d 615 (1978)
Dennett v. City of Des Moines, 347 N.W.2d 691 (Iowa App. 1984)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: While a private property owner owes a duty to repair or warn, a municipality owes a duty to repair and warn. Ehlinger v. State, 237 N.W.2d 784, 789 (Iowa 1976); Koehler v. State, 263 N.W.2d 760, 764 (Iowa 1978).

Rev. 09/10

2900.2 Dangerous Condition - Defined. A condition is dangerous if its character and location is such that a reasonably careful person should anticipate it would likely cause injury to a person using the [sidewalk] [street] [alley].

Authority

Thomas v. City of Fort Madison, 225 Iowa 822, 827, 281 N.W. 748 (1938)
Johnson v. City of Ames, 181 Iowa 65, 75, 162 N.W. 858 (1917)

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2900.3 Alternate Safe Route - Affirmative Defense. The defendant claims the plaintiff was at fault by failing to take an alternate safe route.

The defendant must prove each of the following propositions:

1. Plaintiff knew of the dangerous condition.
2. Plaintiff knew an alternate safe route was available.
3. Plaintiff failed to take an alternate safe route.
4. Plaintiff's fault was a cause of the plaintiff's damage.

If the defendant has failed to prove any of these propositions, the defendant has not proved [his] [her] defense. If the defendant has proved all of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you in answering the special verdicts.

Authority

Iowa Code section 613A.3

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Caveat: No appeal court has yet decided whether the failure to take an alternate safe route is a complete bar to recovery or a matter of comparative fault.

Rev. 09/10

2900.4 Design And Construction Of Public Way. The plaintiff must prove all of the following propositions:

1. The defendant [designed] [made specifications regarding] [adopted a design regarding] [adopted specifications regarding] [constructed] [reconstructed] a [street] [highway] [road].
2. The [design] [specification] [construction] [reconstruction] was not according to a generally recognized engineering or safety standard, criteria or design theory existing at the time of the [construction] [reconstruction].
3. The defendant was negligent in failing to comply with a generally recognized engineering or safety standard, criteria or design theory existing at the time of the [construction] [reconstruction].
4. The negligence was a cause of damage to the plaintiff.
5. The nature and extent of the damages.

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If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Iowa Code section 25A.14 (8)

Iowa Code section 613A.4 (7)

Connolly v. Dallas County, 465 N.W.2d 875, 877 n.3 (Iowa 1991)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

2900.5 Design And Construction Of Public Improvements. The plaintiff must prove all of the following propositions:

1. The defendant [designed] [made specifications regarding] [adopted a design regarding] [adopted specifications regarding] [constructed] [reconstructed] (describe public improvement).
2. The [design] [specification] [constructed] [reconstructed] was not according to a generally recognized engineering or safety standard, criteria or design theory existing at the time of the [construction] [reconstruction].
3. The defendant was negligent in failing to comply with a generally recognized engineering or safety standard, criteria or design theory existing at the time of the [construction] [reconstruction].
4. The negligence was a cause of damage to the plaintiff.
5. The nature and extent of the damages.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Iowa Code section 25A.14 (9)

Iowa Code section 613.A4 (8)

Connolly v. Dallas County, 465 N.W.2d 875, 877 n.3 (Iowa 1991)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

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Caveat: This instruction was drafted solely for use in state of the art municipal and state tort cases. If other specifications of negligence are submitted, this instruction must be carefully tailored to the specific facts.

Rev. 09/10

2900.6 Duty To Maintain. Once a (regulatory device*) has been placed, created or installed, the municipality has a duty to use ordinary care to maintain it.

A violation of this duty is negligence.

*Insert the particular traffic control device involved.

Authority

Iowa Code section 364.12(2)

Iowa Code section 668.10(1)

Comment

Note: Iowa Code section 668.10(1) states the State of Iowa and municipalities shall not be found at fault for failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign. But see Phillips v. City of Waukee, 467 N.W.2d 218, 220 (Iowa 1991) and Hershberger v. Buena Vista County, 391 N.W.2d 217 (Iowa 1986)

2900.7 Affirmative Defense - Policy Or Level Of Service. If the municipality proves it has complied with its policy or level of service for snow and ice removal, or placing sand, salt or other abrasive material on its highways, roads or streets, your verdict will be for the municipality [on this issue*].

*Use the bracketed language if there are other issues submitted to the jury.

Authority

Iowa Code section 364.12(2)

Iowa Code section 668.10(2)

Comment

Note: The statute does not state whether the policy or level of service can be challenged. The committee takes no position on this matter.

2910.1 Snow Or Ice - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. At the time of the accident there was an accumulation of snow or ice on the road where the accident occurred.

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- 2. The State of Iowa was negligent in one or more of the following ways:
a.
b.
c.
3. The State's negligence was a cause of the plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. (If an affirmative defense is submitted delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.)

Authority

Iowa Code section 25A.4
Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)
Bauman v. City of Waverly, 164 N.W.2d 840 (Iowa 1969)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

2910.2 Parties - Equal Consideration. The plaintiff and the State of Iowa have equal rights in court. This means you are to decide this case as though it were a case between two individuals.

Authority

Iowa Code section 25A.4

2910.3 Affirmative Defense - Policy Or Level Of Service. If the State of Iowa proves it has complied with its policy or level of service for snow and ice removal, or placing sand, salt, or other abrasive material on its highways, roads or streets, your verdict will be for the state [on this issue*].

*Use the bracketed language if there are other issues submitted to the jury.

Authority

Iowa Code section 668.10(2)

Comment

Note: The statute does not state whether the policy or level of service can be challenged. The committee takes no position on this matter.

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2910.4 Duty To Maintain. Once a *[regulatory device] [stop sign] [traffic control device] has been placed, created or installed, the State has a duty to use ordinary care to maintain it.

A violation of this law is negligence.

*Insert the particular traffic control device involved.

Authority

Gipson v. State, 419 N.W.2d 369 (Iowa 1988)

Manual on Uniform Traffic Control Devices, section 2A-30 and 4B-23

Comment

Note: Iowa Code section 668.10(1) states the State of Iowa and municipalities shall not be found at fault for failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign.

2910.5 Evidence. Evidence concerning standards, policies and procedures for the maintenance of traffic signs and control signals contained in the Manual on Uniform Traffic Control Devices has been introduced. If the State has failed to comply with the Manual, then that is evidence the State was negligent. If, on the other hand, the State followed the Manual, then that is evidence the State was not negligent.

Authority

Iowa Code section 321.252

Gipson v. State, 419 N.W.2d 369 (Iowa 1988)

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CHAPTER 3000

42 U.S.C. SECTION 1983 ACTIONS

[3000.1](#) 42 U.S.C. Section 1983 Actions - Essentials for Recovery

[3000.2](#) 42 U.S.C. Section 1983 Actions - Color Of State Law

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3000.1 42 U.S.C. Section 1983 Actions - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. The defendant deprived the plaintiff of a right protected by the [Constitution] [law] of the United States by:

[Set out alleged deprivation. For example, "arresting the plaintiff without probable cause," "subjecting the plaintiff to an unreasonable search" or "using excessive force against the plaintiff in the course of arrest."]

2. The defendant acted under color of state law.
3. The defendant's conduct was a proximate cause of the plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. (If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.)

Authority

Christenson v. Ramaeker, 366 N.W.2d 905 (Iowa 1985)

Comment

Note: The first proposition should be tailored to set out the alleged deprivation.

3000.2 42 U.S.C. Section 1983 Actions - Color Of State Law. For acts of an official to be done "under color of state law," the acts must be done while the official is acting or purporting or pretending to act in the performance of official duty.

The term "under color of state law" includes acts done under authority of [state law] [county regulation] [municipal ordinance] [any governmental custom or policy].

Authority

Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987)
Greene v. Friend of Court, Polk County, 406 N.W.2d 433 (Iowa 1987)

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CHAPTER 3100

EMPLOYMENT RIGHTS

Tortious Discharge

[3100.1](#) Tortious Discharge against Public Policy - Essentials for Recovery

[3100.2](#) Tortious Discharge against Public Policy - Employee at Will

[3100.3](#) Tortious Discharge against Public Policy - Determining Factor

Employment Contracts

[3110.1](#) Contract of Employment for Definite Time - Essentials For Recovery

[3110.2](#) Contract of Permanent Employment - Essentials For Recovery

[3110.3](#) Employment Contract - Essentials for Recovery

[3110.4](#) Terms of Contract - Definite Time - Permanent Employment

[3110.5](#) Employment Contract - Employee's Manual

[3110.6](#) Permanent Employment - Additional Consideration

[3110.7](#) Affirmative Defense - Discharge for Cause

Workplace Harassment/Hostile Work Environment

[3120.1](#) Workplace Harassment/Hostile Work Environment by a Co-Worker Essentials for Recovery NEW 6/16

[3120.2](#) Workplace Harassment/Hostile Work Environment by a Supervisor – Essentials for Recovery NEW 6/16

[3120.3](#) Hostile Environment Defined NEW 6/16

[3120.4](#) Supervisor Defined NEW 6/16

[3120.5](#) Unwelcome Conduct NEW 6/16

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3100.1 Tortious Discharge Against Public Policy - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. (Plaintiff) was an employee of (defendant).
2. (Defendant) discharged (plaintiff) from employment.
3. (Plaintiff)'s (describe act protected by public policy, i.e., filing of worker's compensation claim, etc.) was the determining factor in (defendant)'s decision to discharge (plaintiff).
4. The discharge was a cause of damage to (plaintiff).
5. The nature and extent of the damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682 (Iowa 1990)
Springer v. Weeks and Leo Company, Inc., 429 N.W.2d 558 (Iowa 1988)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Note: This cause of action applies to all employees, including employees at will. See Conaway v. Webster City Products Co., 431 N.W.2d 795 (Iowa 1988) and Springer v. Weeks and Leo Company, Inc., 429 N.W.2d 558 (Iowa 1988).

The Court must decide as a matter of law whether a particular act is protected by public policy.

Rev. 06/15

3100.2 Tortious Discharge Against Public Policy - Employee At Will. There is evidence that plaintiff was an employee at will. An employee at will may be terminated at any time for any reason, except if it is contrary to the public policy of this state. It is against the public policy of the state to discharge an employee for (describe act protected by public policy, i.e., filing of a worker's compensation claim, etc.)

Authority

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682 (Iowa 1990)

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3100.3 Tortious Discharge Against Public Policy - Determining Factor. A determining factor need not be the main reason behind the decision. It need only be the reason which tips the scales decisively one way or the other.

Authority

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682 (Iowa 1990)

Rev. 6/15

3110.1 Contract Of Employment For Definite Time - Essentials For Recovery. Plaintiff must prove all of the following propositions:

1. The plaintiff had a contract of employment with the defendant.
2. The terms of the contract provided the plaintiff with employment for a definite period of time.
3. The defendant discharged the plaintiff during that period.
4. The amount of any damage defendant has caused.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____, as explained in Instruction No. _____.]

Authority

Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

Albert v. Davenport Osteopathic Hospital, 385 N.W.2d 237 (Iowa 1986)

3110.2 Contract Of Permanent Employment - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The plaintiff had a contract of employment with the defendant.
2. The terms of the contract provided the plaintiff with permanent employment.
3. The plaintiff provided additional consideration for permanent employment.
4. The defendant discharged the plaintiff.
5. The amount of any damage defendant has caused.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the

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following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)
Albert v. Davenport Osteopathic Hospital, 385 N.W.2d 237 (Iowa 1986)

3110.3 Employment Contract - Essentials for Recovery. The plaintiff must prove all of the following propositions:

1. The plaintiff had a contract of employment with the defendant.
2. The defendant [discharged][describe action against] the plaintiff in violation of the contract.
3. The amount of any damage defendant has caused.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____, as explained in Instruction No. _____ .]

Authority

Schoff v. Combined Ins. Co. of Amer., 604 N.W.2d 43 (Iowa 1999).
Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987).

Comment

Note: For a definition of contract, see Iowa Civil Jury Instruction 1200.3; for instructions concerning the elements of contract that may be in dispute, see Iowa Civil Jury Instructions chapter 2400.

3110.4 Terms Of Contract - Definite Time - Permanent Employment. The terms of the parties' contract provided [employment for a definite time] [permanent employment] if the plaintiff has proved either:

1. Both parties had that intention; or
2. All of the following propositions:
 - a. The plaintiff understood [he] [she] was employed [permanently] [for a definite period of time].
 - b. The plaintiff's understanding was reasonable.
 - c. The defendant knew or reasonably should have known the plaintiff had that understanding.

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Authority

Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

3110.5 Employment Contract - Employee's Manual. The personnel policies of the employee's manual are part of an employment contract, if the plaintiff has proved either:

1. The plaintiff and defendant intended the policies in the manual to be a part of a contract of employment; or
2. All of the following propositions:
 - a. The manual was communicated to the plaintiff.
 - b. The plaintiff believed the policies in the manual to be part of a contract of employment.
 - c. The plaintiff's belief was reasonable and the defendant knew or reasonably should have known the plaintiff had that belief.

Authority

Fogel v. Trustees of Iowa College, 446 N.W.2d 451 (Iowa 1989)

McBride v. City of Sioux City, 444 N.W.2d 85 (Iowa 1989)

Cannon v. National By-Products, Inc., 422 N.W.2d 638 (Iowa 1988)

Young v. Cedar County work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987)

Comment

Note: The terms of a handbook cannot constitute a contract of employment unless they are sufficiently definite as to constitute an offer. Fogel v. Trustees of Iowa College, 446 N.W. 2d 451, 456 (Iowa 1989). The court must, as a matter of law, decide whether the terms are sufficiently definite to constitute an offer. *Id.* In addition, the evidence must show the employee continued working after receiving the manual to provide consideration. *Id.* This, too, would ordinarily be a question of law.

3110.6 Permanent Employment - Additional Consideration. "Additional consideration" is some benefit to the defendant or detriment to the plaintiff beyond the plaintiff's promise to perform services as an employee.

Authority

Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

Albert v. Davenport Osteopathic Hospital 385 N.W.2d 237 (Iowa 1986)

3110.7 Affirmative Defense - Discharge For Cause. The defendant claims [he] [she] [it] had good cause for discharging the plaintiff because (describe acts of omissions constituting the alleged cause). If the defendant has proved good cause for the discharge, the plaintiff cannot recover damages. If the defendant has failed to prove good cause for the discharge, then you shall decide if the plaintiff is entitled to recover damages under the other instructions.

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Authority

Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

Comment

Note: "Good cause" may be based upon the employee's failure to perform in accordance with the employment contract or a reason for discharge expressly stated in the contract. It may also arise from grounds not expressly stated in the contract.

3120.1 Workplace Harassment/Hostile Work Environment by a Co-Worker - Essentials for Recovery. To establish [insert applicable unlawful consideration]* harassment or hostile work environment by a co-worker, plaintiff must prove all of the following elements:

1. The plaintiff was subjected to [insert alleged offensive conduct];
2. Such conduct was unwelcome;
3. The conduct was based on [insert applicable unlawful consideration]*;
4. Such conduct was sufficiently severe or pervasive that a reasonable person in the plaintiff's position would find [her] [his] work environment to be hostile or abusive;
5. At the time such conduct occurred and as a result of such conduct, the plaintiff believed [her] [his] work environment was hostile or abusive;
6. The defendant knew or should have known of the conduct; and
7. The defendant failed to take steps to:
 - a. correct the situation, and/or
 - b. prevent the offensive conduct from recurring.

If you find that the plaintiff has proved all of the above elements, your verdict on the claim of [insert applicable unlawful consideration]* harassment/hostile work environment by a co-worker must be for the plaintiff. If you find that the plaintiff has not proved all of the above elements, then your verdict on the claim of [insert applicable unlawful consideration]* harassment/hostile work environment by a co-worker must be for the defendant.

*Insert applicable unlawful consideration from Iowa Code § 216.6 (age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability).

Authority

Lynch v. City of Des Moines, 454 N.W.2d 827 (Iowa 1990)

Farmland Foods, Inc. v. Dubuque Human Rights Comm'n, 672 N.W.2d 733, 744 (Iowa 2003)

Vance v. Ball State Univ.U., 133 S.Ct. 2434, 2452 (2013)

8th Circuit Model Jury Instruction 8.41, 8.42 (2014)

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Comment

This instruction is to be used in discriminatory harassment/hostile environment cases if the alleged harassment is by a co-worker who is not a supervisor. If the alleged harassment is by a supervisor, *see* Instruction No. 3120.2.

NEW 6/16

3120.2 Workplace Harassment/Hostile Work Environment by a Supervisor - Essentials for Recovery. To establish [insert applicable unlawful consideration]* harassment or hostile work environment by a supervisor, plaintiff must prove all of the following elements:

1. The plaintiff was subjected to offensive conduct from one or more supervisors;
2. Such conduct was unwelcome;
3. The conduct was based on [insert applicable unlawful consideration]*;
4. Such conduct:
 - a. Was sufficiently severe or pervasive that a reasonable person in plaintiff's position would find the work environment to be hostile or abusive; and
 - b. At the time such conduct occurred and as a result of such conduct, plaintiff believed the work environment was hostile or abusive.

If you find that the plaintiff has proved all of the above elements, your verdict on the issue of [insert applicable unlawful consideration]* harassment/hostile work environment based on direct liability must be for plaintiff. If you find that the plaintiff has not proven all of the above elements, then your verdict on the claim of [insert applicable unlawful consideration]* harassment/hostile work environment based on direct liability must be for the defendant.

*Insert applicable unlawful consideration from Iowa Code § 216.6 (age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability).

Authority

McElroy v. State, 637 N.W.2d 488 (Iowa 2001)
Farmland Foods, Inc. v. Dubuque Human Rights Comm'n, 672 N.W.2d 733, 744 (Iowa 2003)
Faragher v. City of Boca Raton, 524 U.S. 775, 789 (1998)
Burlington Indus. v. Ellerth, 524 U.S. 742, 756 (1998)

Comment

This instruction is to be used only for alleged harassment by a supervisor (not by a mere co-worker).

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3120.3 Hostile Environment Defined. As used in Element 4 of Instructions [____] and [____], conduct creates a hostile work environment when the discriminatory intimidation, ridicule, or insult in the workplace is sufficiently severe or pervasive as to alter the conditions of employment and create an abusive working environment. Hostile environment claims by their nature involve ongoing and repeated conduct, not isolated events. To determine whether the plaintiff has established this element, you should consider:

- 1) The frequency of the conduct,
- 2) The severity of the conduct,
- 3) Whether the conduct was physically threatening or humiliating or whether it was merely offensive, and
- 4) Whether the conduct unreasonably interfered with the employee's job performance.

Authority

Farmland Foods, Inc., v. Dubuque Human Rights Com'n, 672 N.W.2d 733, 744-45 (Iowa 2003).
NEW 6/16

3120.4 Supervisor Defined. As used in these instructions, an employee is a “supervisor” if he or she is empowered by the employer to take tangible employment actions against the plaintiff, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or other decision causing a significant change in benefits.

Authority

Vance v. Ball State Univ., 133 S.Ct. 2434, 2443 (2013).
Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998)

Comment

This instruction is to be used if there is a factual dispute whether an employee is a supervisor as opposed to a mere co-worker. “In a great many cases, it will be known even before litigation is commenced whether an alleged harasser was a supervisor, and in others, the alleged harasser’s status will become clear to both sides after discovery.” Vance v. Ball State Univ., 133 S.Ct. at 2449.

NEW 6/16

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3120.5 Unwelcome Conduct. Conduct is unwelcome if the employee did not ask for it or invite it and if [he] [she] regarded the conduct as undesirable or offensive.

Authority

Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986)
Beach v. Yellow Freight Sys., 312 F.3d 391, 396 (8th Cir. 2002)
8th Circuit Model Jury Instruction 8.41, comment 4 (2013)

NEW 6/16

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CHAPTER 3200

FIDUCIARY LIABILITY

[3200.1](#) Breach of Fiduciary Duty - Essentials for Recovery

[3200.2](#) Fiduciary Relationship - Definition

[3200.3](#) Fiduciary Relationship - Duty of Disclosure

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3200.1 Breach of Fiduciary Duty - Essentials For Recovery. The plaintiff must prove the following propositions:

1. On or about the ____ day of _____, 19 ____, a fiduciary relationship existed between the plaintiff and the defendant.
2. The defendant breached a fiduciary duty.
3. The breach of the fiduciary duty was a cause of damage to the plaintiff.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff cannot recover damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover damages in some amount.

Authority

Kurth v. Van Horn, 380 N.W.2d 693 (Iowa 1986)
Restatement (Second) of Torts, section 874
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

3200.2 Fiduciary Relationship - Definition. Concerning proposition no. 1 of Instruction No. _____, a fiduciary relationship is a relationship of trust and confidence on a subject between two persons. One of the persons is under a duty to act for or give advice to the other on that subject. Confidence is placed on one side, and domination and influence result on the other.

Circumstances that may indicate the existence of a fiduciary relationship include the acting of one person for another, the having and exercising of influence over one person by another, the placing of confidence by one person in another, the dominance of one person by another, the inequality of the parties, and the dependence of one person upon another. None of these circumstances is more important than another. It is for you to determine from the evidence whether a fiduciary relationship existed between the parties.

Authority

Kendall/Hunt Publishing Company v. Rowe, 424 N.W.2d 235 (Iowa 1988)
Kurth v. Van Horn, 380 N.W.2d 693 (Iowa 1986)

Comment

Note: If the relationship is between a bank and bank customer, the following paragraph should be added to this instruction: A fiduciary relationship does not arise solely from a [bank depositor] [bank-borrower] relationship. Kurth v. Van Horn, 380 N.W.2d 693 (Iowa 1986)

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3200.3 Fiduciary Relationship - Duty Of Disclosure. Concerning proposition no. 2 of Instruction No. _____, a fiduciary has a duty to disclose all material facts in dealing with the other party to permit the other party to make an intelligent, knowing decision in such dealings. A fact is material if a reasonable person would consider it to be important in making a decision. A failure to perform the duty is a breach of fiduciary duty.

Authority

Sinnard v. Roach, 414 N.W.2d 100 (Iowa 1987)
Kurth v. Van Horn, 380 N.W.2d 693 (Iowa 1986)

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CHAPTER 3300

CORPORATE SHAREHOLDER, OFFICER AND DIRECTOR LIABILITY

[3300.1](#) Piercing the Corporate Veil - Essentials for Recovery

[3300.2](#) Piercing the Corporate Veil - Definition

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3300.1 Piercing the Corporate Veil - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The defendant is a shareholder of (name of corporation).
2. (Name of corporation) is indebted to the plaintiff.
3. The defendant has abused the corporate privilege.
4. The amount owed by the corporation to the plaintiff.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority

Briggs Transportation Co., Inc. v. Starr Sales Co., Inc., 262 N.W.2d 805 (Iowa 1978)
Boyd v. Boyd & Boyd, Inc., 386 N.W.2d 540 (Iowa App. 1986)
Fazio v. Brotman, 371 N.W.2D 842 (Iowa App. (1985))

3300.2 Piercing the Corporate Veil - Definition. Corporate privilege is the right of a shareholder of a corporation to avoid personal liability for the debts of the corporation. A shareholder may be held personally liable for corporate debts only in exceptional circumstances in which the shareholder abuses the privilege. An abuse may be found when the corporation is a mere shell, or serves no legitimate business purpose, or is used by the shareholder primarily as a means to commit fraud or promote injustice. Factors that tend to establish abuse of the corporate privilege include the following:

1. The corporation is undercapitalized.
2. The corporation lacks separate books.
3. The corporation's finances are not kept separate from individual finances or individual obligations are paid by the corporation.
4. The corporation is used primarily to promote fraud or illegality.
5. The corporate formalities are not followed.
6. The corporation is a mere sham.

Authority

Briggs Transportation Co., Inc. v. Starr Sales Co., Inc., 262 N.W.2d 805 (Iowa 1978)
Boyd v. Boyd & Boyd, Inc., 386 N.W.2d 540 (Iowa App. 1986)
Fazio v. Brotman, 371 N.W.2d 842 (Iowa App. 1985)

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Comment

Note: Use only those portions of the instruction supported by the evidence.

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CHAPTER 3400

COMMERCIAL TORTS

Misappropriations of Trade Secrets

[3400.1](#) Misappropriation of Trade Secrets - Essentials For Recovery

[3400.2](#) Misappropriation of Trade Secrets - Trade secrets - Definition

[3400.3](#) Misappropriation of Trade Secrets - Misappropriation - Definition

[3400.4](#) Misappropriation of Trade Secrets - Improper Means - Definition

Unfair Competition

[3410.1](#) Unfair Competition - Essentials for Recovery

[3410.2](#) Unfair Competition - Representation - Definition

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3400.1 Misappropriation of Trade Secrets - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The (set forth the formula, pattern, device, or compilation of information) is a trade secret.
2. The defendant misappropriated the trade secret.
3. The misappropriation of the trade secret was a cause of damage to the plaintiff.
4. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff cannot recover damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to recover damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____, as explained in Instruction No. _____.]

Authority

Iowa Code Ch. 550 (1993)

Basic Chemicals, Inc. v. Benson, 251 N.W.2d 220 (Iowa 1977)

Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

3400.2 Misappropriation of Trade Secrets - Trade Secrets - Definition. Concerning Proposition No. 1 of Instruction No. (3400.1), a "trade secret" is any formula, pattern, compilation, program, device, method, technique or process which

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, persons other than plaintiff; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In determining whether [set forth the formula, pattern, device or compilation of information at issue] is a "trade secret," you may consider the following factors:

- (a) The extent to which the information is known outside of plaintiff's business;
- (b) The extent to which it is known by employees and others involved in plaintiff's business;
- (c) The extent of measures taken by plaintiff to guard the secrecy of the information;
- (d) The value of the information to plaintiff and to plaintiff's competitors;
- (e) The amount of effort or money expended by plaintiff in developing the information;

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(f) The ease or difficulty with which the information could be properly acquired or duplicated by others.

Authority

Iowa Code section 550.2(4) (1993)

Basic Chemicals, Inc. v. Benson, 251 N.W.2d 220 (Iowa 1977)

U.S. West Communications, Inc. v. Office of Consumer Advocate, 498 N.W.2d 711 (Iowa 1993)

3400.3 Misappropriation of Trade Secrets - Misappropriation - Definition. Concerning Proposition No. 2 of Instruction [3400.1], a trade secret is misappropriated if it is:

1. Acquired by improper means or from a person known to the defendant to have acquired it by improper means.
2. Disclosed or used by a person who acquired it by improper means or from a person known to have acquired it by improper means.
3. Disclosed or used by a person who, at the time of disclosure or use, knows that the trade secret is acquired under circumstances requiring its secrecy to be maintained or its use limited.
4. Disclosed or used by a person who at the time of disclosure or use knows that the trade secret is derived from or through a person who acquired it under circumstances requiring its secrecy to be maintained or its use limited.
5. Disclosed or used by a person who, before a material change in the person's position, knows that the information is a trade secret and that the trade secret has been acquired by accident or mistake.

Authority

Iowa Code section 550.2(3) (1993)

Note: Instruct only on the alternative specification which is applicable under all of the evidence.

3400.4 Misappropriation of Trade Secrets - Improper Means - Definition. "Improper means" include theft, bribery, misrepresentation, breach of inducement of a breach of a duty to maintain secrecy, or espionage, including espionage through an electronic device.

Authority

Iowa Code section 550.2(1) (1993)

Note: Instruct only on the alternative that is applicable under the evidence.

3410.1 Unfair Competition - Essentials For Recovery. The plaintiff must prove all of the following propositions:

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1. The defendant directly or indirectly represented that the [product] marketed by defendant was the product of the plaintiff.
2. The defendant did so with an intent to deceive consumers.
3. Consumers were confused or were likely to be confused as to the manufacturer of the [product] as a natural consequence of the defendant's conduct.
4. The defendant's conduct was a cause of damage to the plaintiff.
5. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff cannot recover damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____, as explained in Instruction No. _____.]

Authority

Basic Chemicals, Inc. v. Benson, 251 N.W.2d 220 (Iowa 1977)
Johnson Gas Appliance Co. v. Reliable Gas Products Co., 233 Iowa 641, 10 N.W.2d 23 (1943)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

3410.2 Unfair Competition - Representation - Definition. Concerning Proposition No. 1 of Instruction No. [3410.1], a representation exists when there is a similarity in the appearance of the products or they perform the same functions and the defendant's marketing portrays its own goods as the goods of the plaintiff.

Authority

Basic Chemicals, Inc. v. Benson, 251 N.W.2d 220 (Iowa 1977)
Johnson Gas Appliance Co. v. Reliable Gas Products Co., 233 Iowa 641, 10 N.W.2d 23 (1943)

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CHAPTER 3500

CONSPIRACY

[3500.1](#) Essentials for Recovery - Conspiracy.

[3500.2](#) Conspiracy - Definition.

[3500.3](#) Participation - Definition.

[3500.4](#) Elements for Recovery - Aiding and Abetting.

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3500.1 Essentials for Recovery - Conspiracy. In order to recover for the claim of conspiracy, the plaintiff must prove all of the following propositions:

1. (Name of co-conspirator) committed the wrong of (describe the alleged wrong), as defined in Instruction No. _____.
2. The defendant participated in a conspiracy with (name of co-conspirator) to (describe the alleged wrong).
3. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Countryman v. Mt. Pleasant Bank & Trust Co., 357 N.W.2d 599 (Iowa 1984)
Bump v. Stewart, Wimer & Bump, P.C., 336 N.W.2d 731 (Iowa 1983)
Southern N.Y. Ry. v. Ft. Dodge, Des Moines & Southern Ry., 316 N.W.2d 840, 844 (Iowa 1982)
Basic Chemicals, Inc. v. Benson, 251 N.W.2d 220 (Iowa 1977)
Shannon v. Gaar, 233 Iowa 38, 6 N.W.2d 304 (1942)
Restatement (Second) of Torts, Section 876(a) (1979)

Note: The "wrong" must be a tortious act.

3500.2 Conspiracy - Definition. A conspiracy is an agreement of two or more persons to commit a wrong against another. The agreement can be oral or written, informal or formal, and need not be detailed. The agreement need not be expressed in words and may be implied and understood to exist from the conduct itself. It may be proved by direct or circumstantial evidence. Merely because two or more persons associate with each other, or meet to discuss common interests or goals does not, by itself, establish a conspiracy.

Authority

Tubbs v. United Central Bank, 451 N.W.2d 177 (Iowa 1990)
Adam v. Mt. Pleasant Bank & Trust Co., 387 N.W.2d 771 (Iowa 1986)
Countryman v. Mt. Pleasant Bank & Trust Co., 357 N.W.2d 599 (Iowa 1984)
Basic Chemicals v. Benson, 251 N.W.2d 220 (Iowa 1977)

3500.3 Participation - Definition. A person participates in a conspiracy when the person joins the agreement with the intention to accomplish the wrongful act. A participant need not know all the details of the agreement nor all of the other participants. One who innocently furthers wrongful conduct by another does not participate in a conspiracy.

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Authority

Tubbs v. United Central Bank, 451 N.W.2d 177 (Iowa 1990)
Shannon v. Gaar, 233 Iowa 38, 6 N.W.2d 304 (1942)
Neff v. World Publishing Co., 349 F.2d 235 (8th Cir. 1965)
Restatement (Second) of Torts, Section 876 (1979)

Note: If there is evidence that the defendant withdrew from the conspiracy prior to the tortious acts, this instruction may need to be modified. See 16 Am. Jur. 2d, Section 56, Conspiracy, at 272 (1979).

3500.4 Elements for Recovery - Aiding and Abetting. In order to recover for the claim of aiding and abetting, the plaintiff must prove the following propositions:

1. (Name of wrongdoer) committed the wrong of (describe the alleged wrong), as defined in Instruction No. _____.
2. The defendant knew of (describe the alleged wrong) by (name of wrongdoer).
3. The defendant gave substantial assistance or encouragement to (name of wrongdoer) in the commission of (describe the alleged wrong).
4. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all or most propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Tubbs v. United Central Bank, 451 N.W.2d 177 (Iowa 1990)
Restatement (Second) of Torts, Section 876(b) (1979)

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CHAPTER 3600

CONTROLLING CONDUCT OF THIRD PARTIES

[3600.1](#) Essentials for Recovery - Controlling the Conduct Of Third Parties - Duty To Licensees.

[3600.2](#) Essential for Recovery - Controlling Conduct of Third Parties - Duty Of Parent To Control Conduct Of Child.

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3600.1 Essentials for Recovery - Controlling the Conduct of Third Parties - Duty To Licensees. The plaintiff must prove all of the following propositions:

1. The defendant was in possession of the premises.
2. The defendant permitted (name persons involved) to use the premises.
3. The defendant was present on the premises at the time the wrongful actions occurred.
4. The defendant knew or should have known that [he] [she] had the ability to control (name persons involved).
5. The defendant knew or should have known of the necessity and opportunity for exercising such control.
6. The defendant was negligent in one or more of the following ways (set forth the particulars of the claim of negligence in failing to protect the plaintiff).
7. The defendant's negligence was a cause of the plaintiff's damage.
8. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Morgan v. Perlowski, 508 N.W.2d 724 (Iowa 1993)
Restatement of Torts (Second) Section 318
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Comment

Caveat: The Iowa Supreme Court has expressly recognized this cause of action only in favor of licensees, as opposed to invitees or trespassers, and continues to recognize distinctions between the three types of status. See Perlowski at 727. The Court has not determined whether the same principles would apply in the case of invitees or trespassers. Compare Fiala v. Rains, 519 N.W.2d 386 (Iowa 1994), which holds that the duty owed to a special guest is less than that owed to a business invitee.

Caveat: For cases involving special relations giving rise to a duty to protect, see Tenney v. Atlantic Associates, 594 N.W.2d 11 (Iowa 1999).

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3600.2 Essentials for Recovery - Controlling The Conduct Of Third Parties - Duty Of Parent To Control Conduct Of Child. The plaintiff must prove all of the following propositions:

1. The defendant was a parent of [name of child];
2. The defendant knew or should have known that [he] [she] had the ability to control [name of child];
3. The defendant knew or should have known of the necessity and opportunity for exercising such control;
4. The defendant was negligent in one or more of the following particulars (set forth the particulars of the claim of negligence in failing to protect the plaintiff).
5. The defendant's negligence was a cause of the plaintiff's damage.
6. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, then you will consider the defense of as explained in Instruction No.]

Authority

Mastland, Inc. v. Evans Furniture, Inc., 498 N.W.2d 682 (Iowa 1993)
Restatement of Torts (Second) section 316
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

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CHAPTER 3700

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR

[3700.1](#) Civil Commitment of Sexually Violent Predator -Essentials for Commitment

[3700.2](#) Denial of Allegation

[3700.3](#) Sexually Violent Offenses - Definition

[3700.4](#) Alternate Theories

[3700.5](#) Mental Abnormality - Definition

[3700.6](#) Predatory Acts - Definition

[3700.7](#) Likely To Engage In Predatory Acts - Definition

[3700.8](#) Reasonable Doubt

[3700.9](#) Confinement or Treatment

[3700.10](#) Unanimous Verdict

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3700.1 Civil Commitment of Sexually Violent Predator - Essentials For

Commitment. To prove the Respondent, (name), is a sexually violent predator, the State must prove each of the following elements beyond a reasonable doubt:

1. The Respondent has been convicted of, or charged with, a sexually violent offense.
2. The Respondent suffers from a mental abnormality.
3. That mental abnormality makes the Respondent likely to engage in predatory acts constituting sexually violent offenses if Respondent is not confined in a secure facility.

If you find from the evidence that the State has proved each of these elements, then the Respondent is a sexually violent predator. If, however, the State has failed to prove any one of the elements, the Respondent is not a sexually violent predator.

Authority

Iowa Code section 229A.2(8), 229A.7(3)

3700.2 Denial of Allegation. The Respondent denies the State's allegation that [he] [she] is a sexually violent predator. That denial puts in issue every element of the State's allegation. Before the Respondent can be committed as a sexually violent predator, the State must prove each element of the allegations beyond a reasonable doubt.

Authority

Iowa Code section 229A.7(3)

3700.3 Sexually Violent Offenses. You have heard evidence the Respondent [[was convicted of [name of offense], in the [court name] on [date]] [and] [[was charged with [name of offense], in the [court name] on [date]].

The offense(s) of [name of offense] [[and [name of offense]] [is] [are], by law, sexually violent offense[s].

Authority

Iowa Code section 229A.2(8)

Comment

Use only the conviction(s) or charges(s) relied upon in the pleadings. Iowa Code section 229A.2(9) requires proof of only one conviction or offense for a person to be determined to be a sexually violent predator.

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3700.4 Alternate Theories. The law does not require jurors to agree which conviction[s] or charges[s] [was] [were] proven by the evidence. The law only requires that each juror agree that as least one sexually violent offense was committed by the Respondent.

Authority

See State v. Williams, 285 N.W.2d 248 (Iowa 1979) (criminal context)
See State v. Bratthauer, 354 N.W.2d 774 (Iowa 1984) (criminal context)

Comment

Note: Do not use this instruction unless there are issues regarding identity of the Respondent as the defendant in the previous criminal case(s).

3700.5 Mental Abnormality - Definition. As used in element 2 of Instruction No. _____, the term “mental abnormality” means a congenital or acquired condition that impairs a person’s ability to control emotions or act voluntarily and which predisposes that person to commit sexually violent offenses. This condition must exist to a degree that causes the individual serious difficulty in controlling [his] [her] behavior. The predisposition must be so substantial as to constitute a menace to the health and safety of others.

Authority

Iowa Code section 229A.2(3)
In Re Detention of Barnes, 658 N.W.2d 98 (Iowa 2003)

Rev. 9/03

3700.6 Predatory Acts - Definition. As used in element 3 of Instruction No. _____, the term "predatory acts" means conduct directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

Authority

Iowa Code section 229A.2(4)

3700.7 Likely To Engage In Predatory Acts - Definition. As used in element 3 of Instruction no. _____, the term "likely to engage in predatory acts constituting sexually violent offenses" means that the person more likely than not will engage in acts constituting sexually violent offenses. The word "likely" means that a proposition is more probably true than not.

Authority

Iowa Code section 229A.2(2)
In re Detention of Williams, 628 N.W.2d 447,458 (Iowa 2001)

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3700.8 Reasonable Doubt. The burden is on the State to prove that Respondent, (name), is a sexually violent predator beyond a reasonable doubt. Whenever I instruct you the State must prove something, it must be by evidence beyond a reasonable doubt. A reasonable doubt is one that fairly and naturally arises from the evidence or lack of evidence produced by the State.

If, after a full and fair consideration of all the evidence, you are firmly convinced the Respondent is a sexually violent predator, then you have no reasonable doubt, and your verdict should be that you find the Respondent is a sexually violent predator.

If, after a full and fair consideration of all the evidence, you are not firmly convinced the Respondent is a sexually violent predator, then you have a reasonable doubt, and your verdict must be that you find the Respondent is not a sexually violent predator.

3700.9 Confinement or Treatment. It is your duty as jurors to determine if the Respondent, (name), is or is not a sexually violent predator.

In the event of a verdict that the Respondent is a sexually violent predator, you have nothing to do with confinement or treatment.

Authority

Iowa Code section 229A.7(3), (4)

3700.10 Unanimous Verdict. I am giving you two verdict forms. In order to return a verdict on either Form I or Form II, your decision must be unanimous. When you have agreed upon a verdict and properly signed it, inform the Court Attendant.

Authority

Iowa Code section 229A.7(3)
In re Detention of Williams, 628 N.W.2d 447 (Iowa 2001)

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MODEL JURY INSTRUCTIONS

Facts

Roger Smith, age 64, was operating his motor vehicle westbound on Douglas Avenue in Des Moines, Iowa. John Jones was operating his motor vehicle eastbound on Douglas Avenue. At the intersection of 55th & Douglas Mr. Jones attempted to make a left hand turn. Mr. Jones turned and the vehicles collided. Mr. Smith's vehicle was totaled. He is asking for damages for his personal injury and property damage. His wife, Jane Smith, age 22, is asking for damages for loss of consortium.

Mr. Jones was not injured but is claiming Mr. Smith was negligent for failing to keep a proper lookout and for driving faster than the speed limit. Mr. Jones is not making a cross claim against Mr. Smith for indemnity or contribution for any damages that may be awarded Mrs. Smith.

MODEL INSTRUCTION NO. 1

Members of the Jury: In this case plaintiffs, Roger and Jane Smith, claim defendant, John Jones, was negligent in the operation of his motor vehicle and that negligence was the cause of plaintiffs' damages.

Roger Smith's and Jane Smith's claims are separate claims. You shall consider each claim separate in accordance with the evidence and instructions.

John Jones denies he was negligent and that he was the cause of plaintiffs' damages. Defendant also claims that the plaintiff, Roger Smith, was negligent and that negligence was the cause of Roger Smith's damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

MODEL INSTRUCTION NO. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

MODEL INSTRUCTION NO. 3

Whenever a party must prove something they must do so by the preponderance of the evidence.

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Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

MODEL INSTRUCTION NO. 4

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide:

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

MODEL INSTRUCTION NO. 5

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

MODEL INSTRUCTION NO. 6

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory and knowledge of the

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facts; and,

3. The witness' interest in the trial, their motive, candor, bias and prejudice.

MODEL INSTRUCTION NO. 7

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

MODEL INSTRUCTION NO. 8

In these instructions I will be using the term "fault." Fault means one or more acts or omissions towards the person or property of another which constitutes negligence.

MODEL INSTRUCTION NO. 9

The mere fact an accident occurred or a party was injured does not mean a party was at fault.

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other was not going to obey the law.

MODEL INSTRUCTION NO. 10

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

MODEL INSTRUCTION NO. 11

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

MODEL INSTRUCTION NO. 12

The plaintiff, Roger Smith, claims the defendant was at fault in the following particular:

- a. Negligence.

This ground of fault has been explained to you in other instructions.

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The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove the defendant was negligent in one or more of the following ways:
 - a. In failing to keep a proper lookout.
 - b. In traveling at a speed above the legal limit.
 - c. In failing to have the vehicle under control.
 - d. In failing to yield the right-of-way.
 - e. In driving too fast when approaching an intersection.
2. The defendant's fault was a proximate cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 18, 19 and 20.

MODEL INSTRUCTION NO. 13

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver's vehicle in relation to what the driver saw or should have seen.

A violation of this law is negligence.

MODEL INSTRUCTION NO. 14

At the time and place, and with the motor vehicle involved in this case, any speed over 30 miles per hour was unlawful.

A violation of this law is negligence.

MODEL INSTRUCTION NO. 15

A driver must have their vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this law is negligence.

MODEL INSTRUCTION NO. 16

The driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or so close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.

A violation of this law is negligence.

MODEL INSTRUCTION NO. 17

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A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

MODEL INSTRUCTION NO. 18

The defendant claims the plaintiff Roger Smith was at fault in the following particulars:

- a. Negligence.

This ground of fault has been explained to you in other instructions.

The defendant must prove both of the following propositions:

1. The plaintiff was at fault. In order to prove fault, the defendant must prove Roger Smith was negligent in one or more of the following ways:
 - a. In failing to keep a proper lookout.
 - b. In traveling at a speed above the legal limit.
2. The plaintiff's fault was a proximate cause of plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved [his] [her] defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff Roger Smith and include Roger Smith's fault in the total percentage of fault found by you in answering the special verdicts.

MODEL INSTRUCTION NO. 19

After you have compared the conduct of all parties, if you find the plaintiff, Roger Smith, was at fault and Roger Smith's fault was more than 50% of the total fault, Roger Smith cannot recover damages.

However, if you find Roger Smith's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

MODEL INSTRUCTION NO. 20

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the plaintiff, Roger Smith, and defendant, John Jones, and the extent their conduct caused the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

MODEL INSTRUCTION NO. 21

If you find Roger Smith is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items:

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1. The difference between the reasonable market value of the vehicle immediately before and after the damage, plus the reasonable value of the use of the vehicle for the time reasonably required to obtain a replacement.
2. The reasonable value of necessary hospital charges, doctor charges and prescriptions from the date of injury to the present time.
3. The present value of reasonable and necessary hospital charges, doctor charges and prescriptions which will be incurred in the future.
4. The reasonable value of lost wages from the date of injury to the present time.
5. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
6. Loss of function of the mind and body from the date of injury to the present time.
7. The present value of future loss of function of the mind and body.
8. Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, unpleasant feelings, bodily distress or uneasiness, bodily suffering, sensations or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish, nervousness, worry, anxiety, irritability, disappointment, depression, confusion, disorientation, apprehension, embarrassment, loss of enjoyment of life, a feeling of uselessness or emotional distress.
9. The present value of future physical and mental pain and suffering. Physical and mental pain and suffering have already been explained to you in this Instruction.

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, and loss of function of the mind and body in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendant as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

Add together the amounts, if any, you find for each of the above items and the total will be used to answer the special verdicts.

MODEL INSTRUCTION NO. 22

The plaintiff Jane Smith claims the defendant was at fault because of the defendant's negligence.

This ground of fault is explained to you in other instructions.

The plaintiff must prove all of the following propositions:

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1. The defendant was negligent in one or more of the following ways:
 - a. In failing to keep a proper lookout
 - b. In traveling at a speed above the legal limit.
 - c. In failing to have the vehicle under control
 - d. In failing to yield the right of way.
 - e. In driving too fast when approaching an intersection.
2. The negligence was a proximate cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

MODEL INSTRUCTION NO. 23

When you consider Jane Smith's claim for loss of consortium you will not charge Jane Smith with the fault of any other person, and I will not reduce the amount of damages awarded to Jane Smith.

MODEL INSTRUCTION NO. 24

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the intangible benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse.

If you find Jane Smith is entitled to recover damages, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Roger Smith would have performed for plaintiff from the date of injury until the present time.

MODEL INSTRUCTION NO. 25

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

MODEL INSTRUCTION NO. 26

There is evidence showing the normal life expectancy of persons of the age of Roger Smith and Jane Smith to be 14.70 and 55.16 respectively. The length of time one would probably live is based upon the supposed life expectancy of persons of ordinary occupation. You are not to regard this as proof they would have lived a number of years. In determining the life expectancy you may consider the person's health, habits, occupation and any other evidence bearing on the issue of how long they may live. Evidence of life expectancy is not conclusive. You are to determine the probable length of Roger Smith and Jane Smith's life.

MODEL INSTRUCTION NO. 27

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In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimate shall be your item of damage or percentage of fault.

MODEL INSTRUCTION NO. 28

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

MODEL INSTRUCTION NO. 29

I am giving you 3 verdict forms. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreman or forewoman.

After deliberating for six (6) hours from 3:00 o'clock p.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case the verdict must be signed by all seven jurors who are in agreement.

When you have agreed upon a verdict and appropriately signed it, inform the Court Attendant.

Dated this 21st day of November, 1986.

Judge of the Fifth Judicial District of Iowa

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

| | | |
|-----------------------|---|-----------------|
| ROGER and JANE SMITH, | : | LAW NO. 17249 |
| Plaintiffs, | : | |
| | : | |
| vs. | : | SPECIAL VERDICT |
| | : | NO. ONE |
| JOHN JONES, | : | |
| Defendant. | : | |

We find the following verdict on the questions submitted to us:

Question No. 1: Was the defendant, John Jones, at fault?
 Answer "yes" or "no."
 ANSWER:

(If your answer is "no," do not answer any further questions.)

Question No. 2: Was the fault of the defendant, John Jones, a proximate cause of damage to the plaintiff?
 Answer "yes" or "no."
 ANSWER:

(If your answer is "no," do not answer any further questions.)

Question No. 3: Was the plaintiff, Roger Smith, at fault?
 Answer: "yes" or "no."
 ANSWER:

(If your answer is "no", do not answer question 4 or 5.)

Question No. 4: Was the plaintiff's, Roger Smith, fault a proximate cause of his damage?
 Answer "yes" or "no."
 ANSWER:

(If your answer is "no," do not answer Question No. 5.)

Question No. 5: Using 100% as the total combined fault of plaintiff, Roger Smith, and defendant, John Jones, which was a proximate cause of plaintiff's damage, what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant?

| | | |
|--------------------------------|--|------|
| ANSWER: Plaintiff, Roger Smith | | % |
| Defendant, John Jones | | % |
| TOTAL | | 100% |

(If you find plaintiff to be more than 50% at fault, do not answer the next question.)

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Question No. 6: What is the total amount of damages, if any, sustained by the plaintiff, Roger Smith, without taking into consideration any reduction of damages due to plaintiff's fault, if any?

ANSWER \$_____

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

*To be signed by the jurors agreeing thereto after six hours or more of deliberation.

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ROGER and JANE SMITH, : LAW NO. 17249
Plaintiffs, :
vs. : SPECIAL VERDICT
: NO. TWO
JOHN JONES, :
Defendant. :

We, the jury, find in favor of the plaintiff, Jane Smith, and fix the amount of her recovery against the defendant at _____ dollars.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror** Juror**
Juror** Juror**
Juror** Juror**
Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ROGER and JANE SMITH, : LAW NO. 17249
Plaintiffs, :
vs. : SPECIAL VERDICT
: NO. THREE
JOHN JONES, :
Defendant. :

We, the jury, find in favor of the defendant on plaintiff Jane Smith's claim for loss of consortium.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror** Juror**
Juror** Juror**
Juror** Juror**
Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

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