

DISTRICT COURT, STATE OF IOWA, BENTON COUNTY

TROY RANDALL, INDIVIDUALLY AND
AS ADMINISTRATOR OR THE ESTATE
OF TRISTON RANDALL,

Plaintiff,

v.

DENNIS ARY AND SANDRA ARY,
CO-ADMINISTRATORS OF THE ESTATE
OF QUENTIN RAY ARY; THE ESTATE OF
QUENTIN RAY ARY; JACK YOUDE; AND
VAN-HOF TRUCKING, INC.,

Defendants.

LACV009375

**DENNIS ARY AND SANDRA ARY,
CO-ADMINISTRATORS OF THE
ESTATE OF QUENTIN RAY ARY AND
THE ESTATE OF QUENTIN RAY ARY'S
PROPOSED JURY INSTRUCTIONS**

COME NOW the Defendants, Dennis Ary and Sandra Ary, Co-Administrators of the
Estate of Quentin Ray Ary and the Estate of Quentin Ray Ary, and pursuant to the Iowa Rules of
Civil Procedure, requests the following Jury Instructions.

Proof of Service

I certify I served this document on each party
by use of the EDMS system or by mailing or
delivering it to each party=s attorney of
record at the address disclosed in the
pleadings, under I.R.C.P. 1.442(2) and
F.R.C.P. 5(b), on _____,

8-27, 2018.

DENNIS ARY AND SANDRA ARY,
CO-ADMINISTRATORS OF THE
ESTATE OF QUENTIN RAY ARY; THE
ESTATE OF QUENTIN RAY ARY,

Defendants,

By _____

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MEMBERS OF THE JURY:

Triston Randall was a passenger in the truck driven by his cousin, Quentin Ary, when on April 9, 2015, Quentin collided with a semi-truck operated by Jack Youde and owned by Van-Hof Trucking at the intersection of Highway 150 and 55th Street, near Urbana, in Benton County, Iowa. Triston Randall, Quentin Ary and the other passengers in the Ary vehicle died. Triston Randall's Estate and his father, Troy Randall, have sued Quentin Ary's Estate and Jack Youde and Van-Hof Trucking claiming that Ary and Youde negligently operated their motor vehicles, resulting in the death of Triston Randall. For purposes of this case you should treat Youde and Van-Hof as one party. Plaintiffs additionally allege that they have suffered damages due to the motor vehicle accident.

Ary is no longer alive but his Estate disputes the cause of the accident. The Ary Estate asserts that Youde had an alternate route to have avoided crossing the center line and should have maintained control of his vehicle. Youde denies he is at fault.

You should decide these fact questions in accordance with the following instructions.

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.

INSTRUCTION NO. 1

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.

INSTRUCTION NO. 2

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.

INSTRUCTION NO. 3

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.

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.

INSTRUCTION NO. 4

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.

INSTRUCTION NO. 5

Certain testimony has been presented by reading 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.

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence.

INSTRUCTION NO. 8

"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.

INSTRUCTION NO. 9

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

There can be more than one cause of an injury or damage.

INSTRUCTION NO. 10

The mere fact an accident occurred or a party was injured does not mean a party was negligent.

INSTRUCTION NO. 11

Randall claims that Ary was at fault by being negligent in the following particular:

By failing to stop at the stop sign.

This ground of fault is explained to you in another instruction.

Randall must prove all of the following propositions:

1. Ary was at fault. To prove fault, Randall must prove Ary was negligent in the operation of his vehicle.
2. Ary's fault was a cause of Randall's damages.
3. The amount of damages.

If Randall has failed to prove any of these propositions, then they are not entitled to damages.

INSTRUCTION NO. 12

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.

600.38

INSTRUCTION NO. 13

Ary claims that Youde's negligence was a cause of the accident in the following particulars:

1. By failing to maintain control.
2. By failing to remain on the right-hand side of the roadway.

These grounds of fault are explained to you in other instructions.

Ary must prove the following propositions:

1. Youde was at fault. To prove fault, Ary must prove that Youde was negligent in the operation of his vehicle.
2. Youde's fault was a cause of the damages.

If Ary has failed to prove either of these propositions, Ary has not proved his defense. If Ary has proved these propositions, then you will assign a percentage of fault against Youde and include his fault in the total percentage of fault found by you in answering the special verdicts.

INSTRUCTION NO. 14

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.

600.8

INSTRUCTION NO. 15

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.

INSTRUCTION NO. 16

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, Randall and Defendant, Ary, 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.

INSTRUCTION NO. 17

These items of damages are explained in the following instructions. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

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.

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

INSTRUCTION NO. 18

If you find Troy Randall as personal representative of the Estate of Tristan Randall is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items:

The present value of additional amounts Triston Randall would reasonably be expected to have accumulated as a result of his own effort from the date he would have reached age eighteen until he had lived out the terms of his life.

In determining this amount, you may consider:

1. His life expectancy.
2. His health, physical and mental condition.
3. His habits as to industry, thrift and economy.
4. His interest in school.
5. His grades and attendance in school.
6. The occupation of his 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 might have accumulated.

INSTRUCTION NO. 19

If you find Troy Randall is entitled to recover damages as the result of the death of Triston Randall, 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.

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 defendants 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.

INSTRUCTION NO. 20

Recovery cannot be based on the parent's grief, mental anguish or suffering.

Two Rivers Bank & Trust v. Atanasova, 686 F.3d 554, 564 (8th Cir. 2012).

INSTRUCTION NO. 21

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.

INSTRUCTION NO. 22

The Standard Mortality Table indicates the normal life expectancy of people who are the same age as Triston Randall is 77 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Triston Randall's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 23

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 24

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.

INSTRUCTION NO. 25

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.

INSTRUCTION NO. 26

I am giving you one verdict form. 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 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 of you agree upon the answers to the questions. In that case, the verdicts must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed them, tell the Court Attendant.

JUDGE LARS ANDERSON

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SPECIAL VERDICT

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

QUESTION NO. 1: Was Quentin Ary 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 Quentin Ary a cause of any damage to Randall?

Answer "yes" or "no."

ANSWER: _____

(If you have answered Nos. 1 or 2 "no," do not answer any further questions as to Quentin Ary.)

QUESTION NO. 3: Was Jack Youde at fault?

Answer "yes" or "no."

ANSWER: _____

(If your answer is "no," do not answer Question No. 4.)

QUESTION NO. 4: Was Jack Youde's fault a cause of any damage to Randall?

ANSWER: _____

Answer "yes" or "no."

(If your answer is "no," do not answer any further questions as to Jack Youde).

QUESTION NO. 5: Using 100% as the total combined fault of Quentin Ary and Jack Youde which was a cause of the Plaintiffs' damage, what percentage of such combined fault do you assign to Ary, and what percentage of such combined fault do you assign to the Youde?

ANSWER: Quentin Ary	_____ %
Jack Youde	_____ %
TOTAL	100%

QUESTION NO. 6: State the amount of damages sustained by the Randalls for each of the following items of damage. If the plaintiffs have failed to prove any item of damage or have failed to prove that any item of damage was caused by the August's fault, enter 0 for that item.

1. Lost Accumulation to the Tristan Randall Estate	\$ _____
2. Consortium damages to Troy Randall	\$ _____
TOTAL (add the separate items of damage)	\$ _____

FOREPERSON*

*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.