

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

HAROLD YOUNGBLUT, Plaintiff/Counterclaim Defendant, vs. LEONARD YOUNGBLUT, Defendant/Counterclaim Plaintiff.	LAW NO. CVCV127065 PLAINTIFF'S PROPOSED JURY INSTRUCTIONS
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COMES NOW the Plaintiff and hereby request the Court instruct the jury in this matter in accordance with the following Proposed Jury Instructions and Verdict Form. Plaintiff reserves the right to supplement these proposed instructions.

No.____	100.1	Statement of the Case
No.____	100.2	Duties of Judge and Jury, Instructions as Whole
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No.____		Intentional Interference with Inheritance Claim, Marshalling

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No.____	100.18	General Instructions to Jury
No.____	300.1	Return of Verdict – Forms of Verdict

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on February 26, 2018.

By: ☐ U.S. Mail ☐ FAX ☒ EMAIL
☐ Hand Delivered ☐ UPS
☐ Federal Express ☐ Other
☒ ECF System Participant (Electronic Service)

Signature: /s/ Nathan J. Schroeder

INSTRUCTION NO. _____

Statement of the Case.

In this case, Plaintiff, Harold Youngblut, claims the Defendant Leonard Youngblut wrongfully interfered with a bequest to him from his mother, Agnes Youngblut. Harold Youngblut's claim is for compensatory damages, punitive damages and attorney fees.

The Defendant denies the claims of the Plaintiff.

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

INSTRUCTION NO. _____

Duties of Judge and Jury, Instructions as a 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Iowa Civil Jury Instructions, 100.2

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

INSTRUCTION NO. _____

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.

Iowa Civil Jury Instructions, 100.3

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

INSTRUCTION NO. _____

Evidence.

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 (e.g. answers to interrogatories, matters which juridical notice was taken, 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.

Iowa Civil Jury Instructions, 100.4

INSTRUCTION NO. _____

Use of Evidence (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.

INSTRUCTION NO. _____

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.

INSTRUCTION NO. _____

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.

INSTRUCTION NO. _____

Viewing of Demonstrative Exhibits.

You have looked at demonstrative exhibits to help you better understand the evidence. You must base your decision only on the evidence admitted in the courtroom.

INSTRUCTION NO. _____

Testimony of Claimed Conversations.

Testimony of claimed conversations with a person since deceased should be scrutinized with care, for the very practical reason that the decedent is unable to relate her version or perhaps testify as to the nonexistence as to all of such a conversation.

In re Estate of Nicolaus, 366 N.W.2d 562, 569 (Iowa 1985)

INSTRUCTION NO. _____

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 witnesses' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Iowa Civil Jury Instructions, 100.12

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

INSTRUCTION NO. _____

Contradictory Statement - Non-party - Witness Not Under Oath.

You have heard evidence claiming Leonard Youngblut 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.

Iowa Civil Jury Instructions, 100.13

Iowa R. of Evid., 5.613

INSTRUCTION NO. _____

Contradictory Statements, Non-Party, Witness Under Oath.

You have heard evidence claiming that Leonard Youngblut made statements before this trial while under oath which were inconsistent with what Leonard Youngblut 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 Leonard Youngblut. 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.

Iowa Civil Jury Instructions, 100.14

Iowa R. of Evid., 5.801(d)(1)(A)

INSTRUCTION NO. _____

Statements By a Party Opponent.

You have heard evidence claiming Leonard Youngblut 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 Leonard Youngblut had made it under oath during the trial.

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

INSTRUCTION NO. _____

Plaintiffs' Intentional Interference with Inheritance Claim, Marshalling Instruction

Plaintiff claims that Defendant Leonard Youngblut intentionally interfered with his inheritance. In order to recover under this claim, Plaintiff must prove the following propositions:

1. Plaintiff had an expectancy that he would receive an inheritance from the decedent upon the decedent's death;
2. Defendant knew of Plaintiff's expected inheritance;
3. Defendant intentionally and improperly interfered with Plaintiff's expectancy by way of defamation, fraud, coercion, duress, threat or undue influence resulting in the March 7, 2014 will;
4. There was a reasonable certainty that Plaintiff would have received the south farm/Tama Farm as stated in Agnes's 2011 Will an inheritance but for the Defendant's interference; and
5. Plaintiff suffered damages as a result of the loss of his inheritance.

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.

Restatement (Second) of Torts § 774B (1977)

Huffey v. Lea, 491 N.W.2d 519 (1992)

INSTRUCTION NO. _____

Interference with Inheritance – Tortious Means.

A Defendant's actions in interfering with an inheritance are done by means that are independently tortious in nature, such as undue influence, duress, fraud, coercion, threat, or defamation.

The independent tortious conduct is aimed at inducing a third party to make a change to their testamentary plans, resulting in interference with Plaintiff's inheritance.

INSTRUCTION NO. _____

Undue Influence Defined.

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.

Iowa Civil Jury Instructions, 2700.5

INSTRUCTION NO. _____

Undue Influence – 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.

No one of the above circumstances is more important than any other.

Iowa Civil Jury Instructions, 2700.6

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)

INSTRUCTION NO. _____

Confidential Relationship.

A confidential relationship is present when a person has gained the complete confidence of another and purports to act or advise with only the interest of the other person in mind.

INSTRUCTION NO. _____

Duress Defined.

A threat or coercion used by a person to induce another to act in a manner he or she otherwise would not. Subjecting person to improper pressure which overcomes his will and coerces him or her to comply with demands to which he or she would not yield if acting as a free agent.

Black's Law Dictionary 504 (6th ed., West 1990)

INSTRUCTION NO. _____

Fraud Defined.

An intentional misrepresentation of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that she shall action upon it.

Fraud must be proven by clear and convincing evidence as hereafter defined in these instructions.

Black's Law Dictionary 660 (6th ed., West 1990)

INSTRUCTION NO. _____

Coercion Defined.

Compulsion, constraint, compelling by force of arms or threat. Any pressure by which testator's action is restrained against his free will in the execution of his testament.

Black's Law Dictionary 234 (5th ed.)

INSTRUCTION NO. _____

Threat Defined.

A communicated intent to inflict physical or other harm on any person or on property. A declaration of an intention to injure another or his property by some unlawful act. A declaration of one's purpose or intention to work injury to the person, property or rights of another, with a view of restraining such person's freedom of action.

Black's Law Dictionary 1327 (5th ed.)

INSTRUCTION NO. _____

Defamation Defined.

An intentional false communication, either published or publicly spoken, that injures another's reputation or good name.

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express.

Black's Law Dictionary 417 (6th ed., West 1990)

INSTRUCTION NO. _____

Interference with Inheritance – Inheritance Defined.

“Inheritance” is used to include any devise or bequest that would otherwise have been made under a testamentary instrument or any property that would have passed to the plaintiff by intestate succession.

Restatement (Second) of Torts § 774B, cmnt. b

INSTRUCTION NO. _____

Reasonable Certainty of Inheritance

Plaintiff may establish he had a reasonable certainty of inheritance based on what he would
was to receive under wills executed prior to defendant's intentional interference.

INSTRUCTION NO. _____

Damages in General.

If you find in Harold Youngblut's favor on one or more of his claims against the Defendant, then you must determine the amount of damages to which he is entitled. You must award Harold Youngblut such sum as you find will fairly and justly compensate him for any damages that you find he sustained as a direct result of the conduct at issue if you find for Harold Youngblut on his claim of intentional interference with an inheritance.

The damages in question are the following:

1. "Compensatory" or "actual" damages, to compensation Harold Youngblut for the loss of inheritance, loss of property, loss of income, emotional distress he has suffered, and any other compensatory damages he suffered as a direct result of conduct, and to "punitive" damages, to punish the Defendant or Defendants from engaging in the misconduct at issue and to deter them and others in engaging in such misconduct in the future.

I will explain in the next Instructions how you are to determine specific damages.

However, I will now explain some general rules for awarding damages.

In deciding what amounts, if any, to award for these kinds of damages,

1. Decide what damages, if any, have been proven, based upon the evidence.
2. Do not base the amount of damages upon speculation, guesswork, conjecture, sympathy, or prejudice.
3. Do not decide the amount of damages by taking down the estimate of each juror and agreeing in advance that the average of those estimates will be your award of damages. Instead, use your sound judgment based upon an impartial consideration of the evidence.

INSTRUCTION NO. _____

Definition of Present Value.

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.

Iowa Civil Jury Instructions, 200.35B

Iowa Code § 624.18(2), 668.3(b)

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

In Re Millard Estate, 105 N.W.2d 95 (1960)

INSTRUCTION NO. _____

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.

To get punitive damages, Harold Youngblut must prove the following by the greater weight of the evidence:

1. Punitive damages should be awarded.

You may award punitive damages only if the Defendant acted

- With malice, which is an evil motive or intent, or
- With reckless indifference to Harold Youngblut's rights, which means that the Defendants either knew that interference with a bequest, undue influence, duress, or coercion violated the law or acted with reckless disregard for whether undue influence, duress, or coercion violated the law.

In deciding whether or not to award punitive damages, you should also consider whether the Defendant's conduct was reprehensible. To decide whether conduct was "reprehensible," you may consider the following:

- Whether the harm suffered by Harold Youngblut was physical or economic or both
- Whether there was violence, intentional malice, or reckless disregard for human health or safety

- Whether the Defendant's interference with a bequest, undue influence, duress, fraud, coercion, duress or threat against Harold Youngblut was a repetition of the same sort of wrongful conduct.

2. The amount of any punitive damages.

You must use reason in setting the amount of any punitive damages. You should consider the following:

- How much harm the Defendant's conduct caused Harold Youngblut
- What amount of punitive damages would bear a reasonable relationship to the harm caused to Harold Youngblut, although a higher award of punitive damages may be appropriate based on particularly reprehensible conduct
- What amount of punitive damages, in addition to other damages already awarded, is needed, considering the Defendant's financial condition, to deter the Defendant and others from similar wrongful conduct in the future

On the other hand, you must not consider the following:

- Bias, prejudice, or sympathy toward any party
- Punishment of the Defendants for harm to anyone other than Harold Youngblut

You may award punitive damages against the Defendant or you may refuse to award punitive damages at all. Whether or not to award punitive damages, and in what amount, are entirely for you to decide.

Iowa Code § 668A.1

Philip Morris USA v. Williams, 127 S.Ct. 1057 (2007)

INSTRUCTION NO. _____

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.

Iowa Civil Jury Instructions, 100.19

INSTRUCTION NO. _____

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.

INSTRUCTION NO. _____

Quotient Verdict.

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 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.

Iowa Civil Jury Instructions, 200.38

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)

Sheker v. Jensen, 41 N.W.2d 679 (1950)

Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

INSTRUCTION NO. _____

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.

INSTRUCTION NO. _____

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.

Iowa Civil Jury Instructions, 100.18

INSTRUCTION NO. _____

Return of Verdict - Forms of Verdict.

I am giving you _____ verdict forms. 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., on March ____, 2018, 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 verdict must be signed by all seven jurors who agree.

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

Dated: March ____, 2018.

**PLAINTIFF'S REVISED PROPOSED
SPECIAL VERDICT FORMS**

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QUESTION NO. 4: What amount of punitive damages, if any, do you award?

ANSWER: \$_____

[If your answer to Question No. 4 is "\$0" or "none," do not answer Question No. 5]

QUESTION NO. 5: Was the conduct of Defendant Leonard Youngblut directed specifically at
Harold Youngblut?

ANSWER: Yes _____

No _____

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.