

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

HAROLD YOUNGBLUT, Plaintiffs, v. LEONARD YOUNGBLUT, Defendant.	CVCV 127065 DEFENDANT’S REQUESTED JURY INSTRUCTIONS (2/24/18)
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Defendant, Leonard Youngblut, provides the Court with the following draft jury instructions. Defendant objects to the Court’s giving of instructions on Harold’s claims including those for tortious interference, damages and punitive damages for the reasons set out in Defendant’s motion for summary judgment. In the event, however, that the Court determines that Plaintiff’s claims should go to the jury and denies Defendant’s motion for directed verdict, then Defendant proposes that the instructions be given in the following form.

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INSTRUCTION NO. _____
Statement of the Case

Members of the Jury:

In this case, Harold Youngblut claims that Leonard Youngblut tortiously interfered with a bequest that Agnes Youngblut made in her 2011 Will. Leonard denies Harold's claim and asserts that Agnes' 2014 Will sets out her wishes for distribution of South Farm upon her death. Leonard also asserts that Harold's own conduct prevents Harold from having any right of recovery on his tortious interference claim.

Leonard Youngblut counterclaims against Harold that Harold Youngblut defrauded Leonard in connection with his transfer of his Youngblut Farmland LTD to Harold Youngblut following Agnes June 2, 2014, death.

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.

Authority: Uniform Jury Instruction 100.1 (modified).

INSTRUCTION NO. _____
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.

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

Authority: Uniform Jury Instruction 100.2

INSTRUCTION NO. _____
Burden of Proof, Preponderance of the 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: Uniform Jury Instruction 100.3

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 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: Uniform Jury Instruction 100.4

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.

Authority: Uniform Jury Instruction 100.5

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.

Authority: Uniform Jury Instruction 100.6

INSTRUCTION NO. _____
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: Uniform Jury Instruction 100.9

INSTRUCTION NO. _____
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: Uniform Jury Instruction 100.13

INSTRUCTION NO. _____
Contradictory Statement, 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: Uniform Jury Instruction 100.14

INSTRUCTION NO. _____
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.

Authority: Uniform Jury Instruction 100.15

INSTRUCTION NO. _____
General Instructions 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.

Authority: Uniform Jury Instruction 100.18

INSTRUCTION NO. _____
Burden of Proof, Clear Convincing and Satisfactory Evidence

There are certain claims or defenses that require a party to prove the elements of its claim or defense by 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

Authority: Uniform Jury Instruction 100.19
Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa Appeals 1983)
Sinclair v. Allender, 26 N.W.2d 320, 326 (Iowa 1947)

Authority: Uniform Jury Instruction 100.19

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.

Authority: Uniform Jury Instruction 100.21

INSTRUCTION NO. _____
Damages in General

If you find in favor of Plaintiff against the Defendant, or for the Counterclaim Plaintiff and against the Counterclaim Defendant, then you must determine the amount of damage to which the injured parties are entitled. You must award the injured parties such sum as you find will fairly and justly compensate them for any damages that you find they sustained as a direct result of the conduct at issue.

For Harold, the damages in question are the following:

1. Loss of inheritance actually caused by Leonard, less the value of the stock he received from Leonard.

For Leonard, the damages in question are the following:

1. The fair market value of the YFL shares that Leonard conveyed to Harold, with a setoff of \$1 for the payment Harold made to Leonard.

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 proved, 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.

The damages you award for, tortious interference with bequest, or fraud claim must be foreseeable or have been reasonably foreseen at the time the tortious interference occurred or the misrepresentation was made.

Authority

Iowa Civil Jury Instr. 220.1 (modified to conform to the facts of the case).
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)

INSTRUCTION NUMBER _____
Cause Defined

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

Authority

Uniform Jury Instruction 700.3

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.

INSTRUCTION NO. ____

Mitigation.

Leonard claims Harold failed to mitigate his damages by not challenging the validity of Agnes' 2014 Will.

Harold had a duty to exercise ordinary care to avoid, reduce, minimize or limit his damages. However, he had no duty to do something that is unreasonable under the circumstances.

To prove Leonard's claim of failure to mitigate, he must prove all of the following:

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

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

Authority:

Iowa Code 619.7

Iowa Uniform Jury Instruction 400.7

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)

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

INSTRUCTION NO. _____
Fraudulent Misrepresentation – Essentials for Recovery

Leonard must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. After Agnes' death, Harold made a representation that he was complying with Agnes's 2014 Will that Leonard be given the South Farm conditioned on his selling his shares in Youngblut Farmland Ltd. to Harold for \$1.
2. The representation was false.
3. The representation was material.
4. Harold knew the representation was false.
5. Harold intended to deceive Leonard.
6. Leonard acted in reliance on the truth of the representation or action and was justified in relying on the representation.
7. The representation was a cause of the Leonard's damage.
8. The amount of damage.

If Leonard has failed to prove any of these propositions, Leonard cannot recover damages.

If Leonard has proved all of these propositions, Leonard is entitled to recover damages in some amount.

Authority

Uniform Jury Instruction 810.1

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)

INSTRUCTION NO. _____
Fraudulent Nondisclosure – Essentials for Recovery

Leonard 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 Leonard and Harold.
2. While such relationship existed, Harold was aware that he intended on initiating a lawsuit against Leonard for tortious interference with bequest after he received Leonard's shares of Youngblut Farms Ltd. for \$1.
3. While such relationship existed, Harold concealed or failed to disclose this fact.
4. The undisclosed information was material to the transaction.
5. Harold knowingly failed to make the disclosure.
6. Harold intended to deceive Leonard by withholding such information.
7. Leonard acted in reliance upon Harold's failure to disclose and was justified in such reliance.
8. The failure to disclose was a cause of Leonard's damage.
9. The nature and extent of the Leonard's damage.

If Leonard has failed to prove any of these propositions, Leonard cannot recover damages. Leonard has proved all of these propositions, Leonard is entitled to recover damages in some amount.

Authority

Uniform Jury Instruction 810.2 (as modified)
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)

INSTRUCTION NO. _____
Fraudulent Misrepresentation and Fraudulent Nondisclosure – 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 has reason to believe will be disclosed. 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

Uniform Jury Instruction 810.3

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)

INSTRUCTION NO. _____

Fraudulent Misrepresentation and Fraudulent Nondisclosure – Definition of Material

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 considers, or is likely to consider, the representation as important in making a decision.
3. The representation influences a person to enter into a transaction which would not have occurred otherwise.

Authority

Uniform Jury Instruction 810.4

Smith v. Peterson, 282 N.W.2d 761, 765 (Iowa 1979)

Restatement (Second) of Torts, Section 538, Comments d and f (1977)

INSTRUCTION NO. _____

Fraudulent Misrepresentation and Fraudulent Nondisclosure – Definition of Knowledge of Falsity

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 personal knowledge or investigation.
4. The defendant made a representation which he knew or believed was materially misleading because it left out unfavorable information.
5. The defendant stated his intention to do or not to do something when he 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 made it the defendant's duty to know whether the representation was true or false.

Authority

Uniform Jury Instruction 810.5

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)

INSTRUCTION NO. _____

Fraudulent Misrepresentation and Fraudulent Nondisclosure – 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 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

Uniform Jury Instruction 810.6

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)

INSTRUCTION NO. _____

Fraudulent Misrepresentation and Fraudulent Nondisclosure – 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 intended or had reason to expect would act or refrain from acting in reliance on the representation. A person has reason to expect a result if he has information from which a reasonable person would conclude that the result will follow.

Authority

Uniform Jury Instruction 810.7

Restatement (Second) of Torts, Section 531, Comments b, c, d, e and g (1977)

INSTRUCTION NO. _____

Fraudulent Misrepresentation and Fraudulent Nondisclosure – 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.

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.

Authority

Uniform Jury Instruction 810.8

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)

INSTRUCTION NO. _____
Fraudulent Nondisclosure– Definition of “Special Relationship”

A “special relationship” exists if you find that the relationship between Harold and Leonard includes satisfies any of the following tests:

1. Whether one with superior knowledge purposefully suppresses the truth about a material fact to the transaction;
2. Whether there is an inequality of condition or knowledge between the parties; or
3. From the attendant circumstances, such as contrivance intended to exclude suspicion and prevent inquiry, that exists between the parties.

Authority

Kunkle Water & Elec., Inc. v. City of Prescott, 347 N.W.2d 648, 653-54 (Iowa 1984)
Anderson v. Boeke, 491 N.W.2d 182, 188 (Iowa Ct. App. 1992)
Wright v. Brooke Grp. Ltd., 652 N.W.2d 159, 174 (Iowa 2002)

INSTRUCTION NO. _____

Tortious Interference with Bequest – Essentials for Recovery

In order to prevail on a tortious interference with inheritance claim, Harold must prove all of the following by the preponderance of evidence:

1. Harold had a reasonable expectation that he would receive an inheritance of the South Farm from Agnes upon her death;

2. The Leonard knew of Agnes' 2011 Will providing for Harold's expected inheritance of the South Farm;

3. The Leonard intentionally and improperly interfered with Harold's expected inheritance:

a. by using "wrongful means" (as defined in instruction No. _____) and;

b. unduly influencing Agnes to prevent Harold from receiving his expected inheritance (as defined in instruction No. _____);

4. There was a reasonable certainty that Harold would have received an inheritance but for Leonard's use of "wrongful means" and undue influence; and

5. The undue influence interference through use of wrongful means caused Harold damages.

If Harold has failed to prove any one or more of these propositions, Harold has failed to prove his tortious interference claim. If Harold has proved all of these propositions, you will consider Leonard's defenses as explained in instruction Nos. _____, _____, _____, and _____.

Authority:

Iowa Civil Jury Instr. 1200.1 (interference with business relations modified for bequest).

Iowa Coal Min. Co. v. Monroe County, 555 N.W.2d 418, 438 (Iowa 1996) (reciting elements of tortious interference with business expectancy)

Frohwein v. Haesemeyer, 264 N.W.2d 792, 795 (Iowa 1978) *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992) (noting that the tort for wrongful interference with bequest is analogous to interference with business advantage).

REST.2D Torts § 774B.

The plaintiff must further show the defendant employed "wrongful means" in the course of the interference. *Bump v. Stewart, Wimer & Bump, P.C.*, 336 N.W.2d 731, 737 (Iowa 1983).

Generally, "wrongful means" are present when a defendant's conduct "encompasses bribery, fraud, misrepresentation, deceit, and misuse of confidential information." *Chemical Methods, Ltd. v. Cue*, No. 04-1518, 2005 WL 1750406, at *3 (Iowa Ct. App., July 27, 2005); accord *Huffey*, 491 N.W.2d at 520 (tortious interference with inheritance requires "fraud or other tortious means").

Qualified privilege attaches to communications made (1) in good faith, (2) concerning a subject matter in which the speaker has an interest, right, duty, or obligation, and (3) to a listener who has a corresponding interest, right, duty, or obligation in the subject matter of the communication.

Taggart v. Drake University, 549 N.W.2d 796, 803-04 (Iowa 1996)

INSTRUCTION NO. _____
Interference with Expectancy Interest – Wrongful Means

Concerning Proposition No. 3 of Instruction No. __, in determining whether Defendant's conduct in intentionally interfering with a bequest is wrongful you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was wrongful you may consider:

1. The Defendant employed wrongful means to unduly influence Agnes Youngblut. Wrongful means" are present when a defendant's conduct encompasses bribery, fraud, misrepresentation, deceit, and misuse of confidential information.
2. The defendant's motive.
3. The interests of the party with which the conduct interferes.
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:

Iowa Civil Jury Instr. 1200.5 (factors for tortious interference with contractual relations)

The plaintiff must further show the defendant employed "wrongful means" in the course of the interference. *Bump v. Stewart, Wimer & Bump, P.C.*, 336 N.W.2d 731, 737 (Iowa 1983). Generally, "wrongful means" are present when a defendant's conduct "encompasses bribery, fraud, misrepresentation, deceit, and misuse of confidential information." *Chemical Methods, Ltd. v. Cue*, No. 04-1518, 2005 WL 1750406, at *3 (Iowa Ct. App., July 27, 2005); *accord Huffey*, 491 N.W.2d at 520 (tortious interference with inheritance requires "fraud or other tortious means").

Qualified privilege attaches to communications made (1) in good faith, (2) concerning a subject matter in which the speaker has an interest, right, duty, or obligation, and (3) to a listener who has a corresponding interest, right, duty, or obligation in the subject matter of the communication.

INSTRUCTION NO. _____
Abuse of Process (Count II) – Essentials for Recovery

Leonard must prove all of the following propositions:

1. Harold intentionally used this litigation after accepting the benefits of the 2014 Will to also receive the benefit of the 2011 Will, contrary to the wishes of Agnes Youngblut.
2. Harold used the legal process primarily to avoid the probate proceeding of the 2014 will and bury Leonard in legal expenses, and not for its intended use which is explained in Instruction No. _____.
3. Harold's use of the legal process for the improper purpose was a cause of Leonard's damage.
4. The amount of damage.

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

Authority

Uniform Jury Instruction 1800.1

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)

INSTRUCTION NO. _____
Abuse of Process – Definition

Abuse of process is the use of a 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.

Authority

Uniform Jury Instruction 1800.2

INSTRUCTION NO. _____
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.

Authority

Uniform Jury Instruction 1800.3 (as modified to fit the facts of this case)

INSTRUCTION NO. _____
Abuse of Process – Intent

The word "intentionally", as used in element number 1 of Instruction No. [1800.1], refers to the state of mind of Harold Youngblut 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.

In determining the intent of any person you may, but are not required to, conclude that they intended the consequences of their acts.

Authority

Uniform Jury Instruction 1800.4

INSTRUCTION NO. _____
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

Uniform Jury Instruction 1800.5

Grell v. Poulsen, 389 N.W.2d 661 (Iowa 1986)

Restatement of Torts (Second), Section 682, Comment (b)

INSTRUCTION NO. _____
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 Agnes was susceptible to undue influence.
2. Leonard had the opportunity to exercise such influence and carry out the wrongful purpose.
3. Leonard was inclined to influence Agnes unduly for the purpose of getting an improper favor.
4. The result was clearly brought about by undue influence and not some other cause.

Authority: Uniform Jury Instruction 2700.4 (as modified)
Burkhalter v. Burkhalter, 841 N.W.2d 93 (Iowa 2013)

INSTRUCTION NO. _____

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: Uniform Jury Instruction 2700.5

INSTRUCTION NO. _____
Circumstances to be Considered – Undue Influence

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: Uniform Jury Instruction 2700.6

INSTRUCTION NO. _____
Definition Of Confidential Relationship

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).

INSTRUCTION NO. _____
Equitable Estoppel Defense – Essentials for Defense

Leonard asserts that Harold's claims are barred by equitable estoppel. In order to prevail on the defense of equitable estoppel, Leonard must prove by clear and convincing evidence that:

- (1) Harold made a false representation or concealed a material fact;
- (2) Leonard lacked knowledge of the true facts on the part of Harold;
- (3) Harold intended that Leonard act upon the false representation or concealment of a material fact; and
- (4) Leonard relied on Harold's false representation or concealment of a material fact to his or her prejudice and injury.

If you find that the defendant proved equitable estoppel, you must check "yes" to the question on the verdict form.

Authority:

Johnson v. Johnson, 301 N.W.2d 750, 754 (Iowa 1981).

INSTRUCTION NO. _____
Equitable Estoppel Defense – Definition of Prejudice or Injury

For the purposes of equitable estoppel, prejudice or injury is suffered when a person is misled or induced to alter his position in such a way that he will suffer injury and an unjust or fraudulent result will occur if estoppel is not applied.

Authority:

State v. Raymond, 119 N.W.2d 135, 140, 254 Iowa 828, 836 (Iowa 1963)

Johnson v. Johnson, 301 N.W.2d 750, 754 (Iowa 1981).

INSTRUCTION NO. _____
Estoppel by Acquiescence Defense – Essentials for Defense

Leonard asserts that Harold's claims are barred by the doctrine of estoppel by acquiescence. In order to prevail on the defense of estoppel by acquiescence, Leonard must prove by clear and convincing evidence that:

- (1) Harold had full knowledge of his rights and the material facts regarding Agnes's 2014 Will;
- (2) Harold remained inactive for a considerable time; and
- (3) Harold acted in a manner that led Leonard to believe he accepted the terms of Agnes's 2014 Will.

If you find that the defendant proved estoppel by acquiescence, you must check "yes" to the question on the verdict form.

Authority:

Markey v. Carney, 705 N.W.2d 13, 21 (Iowa 2005) (internal quotations to 28 Am. Jur. 2d *Estoppel and Waiver* § 63, at 489–90 (2000) omitted, additionally citing to *Anthony v. Anthony*, 204 N.W.2d 829, 834 (Iowa 1973)) .

INSTRUCTION NO. _____
Waiver – Essentials for Defense

Leonard asserts that Harold waived his claims by failing to timely file a contest of Agnes' 2014 will in the probate court by October 20, 2014, four months after the second publication of notice of probate. A waiver is the voluntary or intentional relinquishment of a known right. Waiver can be shown by the affirmative acts of a party, or can be inferred from conduct that supports the conclusion waiver was intended. When the waiver is implied, intent is inferred from the facts and circumstances constituting the waiver.

In order to prevail on the defense of waiver, the defendant must prove by the preponderance of the evidence that Harold made a voluntary or intentional relinquishment of a known right.

If you find that the defendant proved waiver, you must check "yes" to the question on the verdict form.

Authority:

Scheetz v. IMT Ins. Co. (Mut.), 324 N.W.2d 302, 304 (Iowa, 1982) (citing *Travelers Indemnity Co. v. Fields*, 317 N.W.2d 176, 186 (Iowa 1982); *Continental Casualty Co. v. G. R. Kinney Co.*, Iowa, 258 Iowa 658, 660, 140 N.W.2d 129, 130 (1966)).

INSTRUCTION NO. _____
Unclean Hands Defense – Essentials for Defense

Leonard asserts that Harold's claims are barred by his inequitable conduct towards Leonard under the unclean hands doctrine. In order to prevail on the defense of unclean hands, the defendant must prove by clear and convincing evidence that:

1. Harold's conduct was inequitable or in bad faith; and
2. Harold's conduct is directly related to the subject matter of its claims.
3. The defendant has clean hands, or in other words, the defendant's conduct was in good faith.

If you find that the defendant proved unclean hands, you must check "yes" to the question on the verdict form.

Authority:

Ellwood v. Mid States Commodities, Inc., 404 N.W.2d 174, 184 (Iowa 1987)
In re Herm's Estate, 284 N.W.2d 191, 196 (Iowa 1979)

INSTRUCTION No _____
Laches

Laches is an equitable doctrine premised on unreasonable delay in asserting a right, which causes disadvantage or prejudice to another. The party asserting the defense has the burden to establish all the essential elements thereof by clear, convincing, and satisfactory evidence. Prejudice is an essential element of laches.

State ex rel. Holleman v. Stafford, 584 N.W.2d 242, 245–46 (Iowa 1998)
First Fed. Sav. & Loan Ass'n v. Blass, 316 N.W.2d 411, 414 (Iowa 1982); *Davenport Osteopathic Hosp. Ass'n v. Hospital Serv., Inc.*, 261 Iowa 247, 261, 154 N.W.2d 153, 162 (1967).

Moser v. Thorp Sales Corp., 256 N.W.2d 900, 908 (Iowa 1977).

Blass, 316 N.W.2d at 415; *Davidson v. Van Lengen*, 266 N.W.2d 436, 439 (Iowa 1978).

Anita Valley, Inc. v. Bingley, 279 N.W.2d 37, 41 (Iowa 1979).

INSTRUCTION NO. _____
Statute of Limitations – Essentials for Defense

In a case like this one, the time limit placed upon Harold began to run when Harold first knew, or by the exercise of reasonable care should have known, that he believed that Leonard Youngblut exercised undue influence over Agnes Youngblut resulting in the loss of Plaintiffs' expected inheritance. In this instance the applicable limitations period is four months after the date of the second publication of the notice of admission of the will to probate. Leonard Youngblut claims that suit is barred because Harold knew, or by the exercise of reasonable care should have known more than four months before the commencement of this suit on April 4, 2015, that Harold wished to assert an allegation that Defendant exercised undue influence over Agnes Youngblut.

If you find that the defendant proved its statute of limitations defense by the preponderance of the evidence, you must check "yes" to the question on the verdict form.

Authority:

Iowa Code § 633.309

VERDICT NO. _____
Return of Verdict – Forms of Verdict

I am giving you _____ verdict forms [and special 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.

Authority: Uniform Jury Instruction 300.1

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

HAROLD YOUNGBLUT, Plaintiff, v. LEONARD YOUNGBLUT, Defendant.	CVCV 127065 VERDICT
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We the Jury find the following verdict on the questions submitted to us:

DIVISION I: Plaintiff's case

Question 1: Did Harold prove his claim for tortious interference with bequest?

Yes____ No____

If your answer is "yes" proceed to Division II.

If your answer is "no," proceed to Division IV

DIVISION II: Affirmative Defenses

Question 1: Did Leonard prove the defense of estoppel by acquiescence?

Yes____ No____

Proceed to next question

Question 2: Did Leonard prove the defense of equitable estoppel?

Yes____ No____

Proceed to next question

Question 3: Did Leonard prove the defense of waiver?

Yes____ No____

Proceed to next question

Question 4: Did Leonard prove the defense of unclean hands?

Yes____ No____

Question 5: Did Leonard prove the statute of limitations defense?

Yes____ No____

Question 6: Did Leonard prove the defense of laches?

Yes____ No____

Question 7: Did Leonard prove the defense of ratification?

Yes____ No____

*If you did not answer "yes" to any of these questions proceed to Division III
If you answered "yes" to one or more of these questions, proceed to Division IV*

DIVISION III: Plaintiff's Damages

Question 1: What amount of damages did Harold prove relating to his net loss of inheritance? \$ _____

Proceed to Division IV

DIVISION IV: Counterclaim Damages

Question 1: Did Leonard prove his claim that Harold breached his fiduciary duty?

Yes____ No____

Please answer Question #2.

Question 2: Did Leonard prove his claim of fraudulent misrepresentation against Harold?

Yes____ No____

Please answer Question #3.

Question 3: Did Leonard prove his claim of non-disclosure against Harold?

Yes____ No____

If your answer is "yes" to any of the above questions in this Division, proceed to answer the following questions. If you answered "no" to all of the above questions in this Division, please have each juror sign the verdict form and notify the Court Attendant.

Question 5: What amount of damages did Leonard prove regarding his claims against Harold? \$ _____

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