

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

HAROLD YOUNGBLUT,)	LAW NO. CVCV127065
)	
Plaintiff/Counterclaim Defendant,)	
)	
vs.)	PLAINTIFF'S PROPOSED
)	JURY INSTRUCTIONS
LEONARD YOUNGBLUT,)	
)	
Defendant/Counterclaim Plaintiff.)	

COMES NOW the Plaintiff and hereby submits the following Proposed Jury Instructions. Plaintiff reserves the right to add, change, or otherwise place before the Court jury instructions after the taking of testimony or introduction of evidence.

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& HELLMAN, P.L.C.
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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 <u>10.19</u> , 2016.		
By:	<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> UPS
	<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
	<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature	<u>Linda Swalley</u>	

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INSTRUCTION NO. 1

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. 2

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. 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.

Iowa Civil Jury Instructions, 100.3

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

INSTRUCTION NO. 4

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.

INSTRUCTION NO. 5

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. 6

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.

Iowa Civil Jury Instructions, 100.9

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

INSTRUCTION NO. 7

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. 8

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. 9

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. 10

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. 11

100.20 Corporate Party.

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons 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.

INSTRUCTION NO. 12

Undue Influence – Essentials for Recovery.

Harold Youngblut must prove each of the four following propositions:

1. At the time the will was made, Agnes Youngblut was susceptible to undue influence.
2. Leonard Youngblut had the opportunity to exercise such influence and carry out the wrongful purpose.
3. Leonard Youngblut was inclined to influence Agnes Youngblut unduly to get an improper favor.
4. The result was clearly brought about by undue influence.

If Harold Youngblut has failed to prove one or more of these propositions, your verdict will be for the Defendants. If Harold Youngblut has proved all of these propositions, your verdict will be for the Plaintiffs.

Iowa Civil Jury Instructions, 2700.4

Burkhalter v. Burkhalter, 841 N.W.2d (Iowa 2013)

In re Estate of Davenport, 346 N.W.2d 530 (Iowa 1984)

In re Estate of Huston, 238 Iowa 297, 27 N.W.2d 26 (1947)

INSTRUCTION NO. 13

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 person 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

In re Estate of Cory, 169 N.W.2d 837 (Iowa 1969)

Walters v. Heaton, 271 N.W. 310 (Iowa 1937)

INSTRUCTION NO. 14

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.
8. Whether the person charged with exercising undue influence was the controlling party in a fiduciary relationship with the maker of the will.
9. 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.

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. 15

Harold Youngblut's Claim of Interference.

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 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. 16

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.

INSTRUCTION NO. 17

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 fraud, interference, duress, coercion, defamation, threat or undue influence.

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. 18

Reasonable Certainty of Inheritance.

Reasonable certainty of inheritance does not require Plaintiff to prove the exact inheritance he would have received absent the Defendant's interference. Plaintiff may establish what his reasonable inheritance would have been through testamentary plans executed prior to Defendant's intentional interference.

Reasonable certainty of inheritance is presumed when Defendant prevents decedent from making changes to her testamentary plans that were likely to include a distribution to Plaintiff.

INSTRUCTION NO. 19

Duress defined:

A condition where one is induced by wrongful act or threat of another to make contract under circumstances which deprive him of exercise of his free will. Includes any conduct which over powers will and coerces or constrains performance of an act which otherwise would not have been performed.

INSTRUCTION NO. 20

Fraud defined:

An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury.

INSTRUCTION NO. 21

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. Coercion that vitiates confession can be mental as well as physical.

INSTRUCTION NO. 22

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.

INSTRUCTION NO. 23

Defamation defined:

Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community. That which tends to injure reputation, to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse derogatory unpleasant feelings or opinions against him.

INSTRUCTION NO. 24

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 interference with inheritance, 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. 25

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. 26

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. 27

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.

INSTRUCTION NO. 28

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. 29

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.

Iowa Civil Jury Instructions, 100.5

Iowa R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

INSTRUCTION NO. 30

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. 31

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.

INSTRUCTION NO. 32

Special Interrogatories – Punitive Damages.

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the Defendant, Leonard Youngblut, constitutes a 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 Numbers 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, Leonard Youngblut, directed specifically at Harold Youngblut?

Answer “yes” or “no”.

Answer:

Question No. 4: What amount of punitive damages, if any, do you award?

Answer:

Iowa Code § 668A.1

Iowa Civil Jury Instructions, 210.2

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

HAROLD YOUNGBLUT,)	LAW NO. CVCV127065
)	
Plaintiff/Counterclaim Defendant,)	
)	PLAINTIFF'S SPECIAL
vs.)	VERDICT FORM
)	
LEONARD YOUNGBLUT,)	
)	
Defendant/Counterclaim Plaintiff.)	

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

Question No. 1: Did the Plaintiff Harold Youngblut have an expectancy that he would receive an inheritance from Agnes Youngblut prior to 2014?

ANSWER: Yes _____ No _____

Question No. 2: Did Defendant Leonard Youngblut know or have reason to know that Harold Youngblut had an expected inheritance prior to 2014?

ANSWER: Yes _____ No _____

Question No. 3: Prior to 2014, was there a reasonable certainty that Harold Youngblut was to receive a portion of his parents' estate after Agnes passed away?

ANSWER: Yes _____ No _____

Question No. 4: After the execution of the January 31, 2011 will, did Leonard Youngblut intentionally and improperly interfere with Harold Youngblut's inheritance through undue influence, defamation, coercion, fraud, duress, or threat?

ANSWER: Yes _____ No _____

Question No. 5: Did Harold Youngblut suffer damages as result of Defendant Leonard Youngblut's intentional interference with inheritance after Agnes's death in 2014?

ANSWER: Yes _____ No _____

Question No. 6: State the amount of damages that Plaintiff Harold Youngblut suffered as a result of Defendant Leonard Youngblut's intentional interference with his inheritance.

ANSWER: Pecuniary Loss \$ _____

Question No. 7: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Defendant Leonard Youngblut constituted willful and wanton disregard for the rights or safety of another?

ANSWER: Yes _____ No _____

Question No. 8: What amount of punitive damages, if any, do you assess against Defendant Leonard Youngblut for his actions in this matter?

ANSWER: \$ _____

Question No. 9: Was the conduct of Leonard Youngblut directed specifically at Harold Youngblut?

ANSWER: Yes _____ No _____

DAMAGES

Damages against Defendant Leonard Youngblut:

1. Interfering with Plaintiff's inheritance \$ _____
(See Answer to Question No. 7)
2. Punitive damages relating to interference with inheritance \$ _____
(See Answer to Question No. 9)

TOTAL: \$ _____

FOREPERSON*

*To be signed by the Foreperson only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the seven jurors agreeing to the non-unanimous verdict after six hours or more of deliberation.

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