

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**KATHLEEN TOPE, as Executor of  
the ESTATE OF ELLEN JOSEPHINE  
TOPE; KATHLEEN TOPE,  
individually; and TIMOTHY TOPE,  
individually,**  
Plaintiff,

v.

**MARY WINTERBOTTOM,**  
Defendant.

**CASE NO. LACL160762**

**STATEMENT OF THE CASE, JURY  
INSTRUCTIONS AND VERDICT  
FORM**

**MEMBERS OF THE JURY:**

This case arises from a two-vehicle motor vehicle collision that occurred on September 8, 2023, in Mitchellville, Polk County, Iowa, between Ellen Tope and Defendant Mary Winterbottom.

Plaintiff Kathleen Tope, individually and as executor of the Estate of Ellen Josephine Tope, and Plaintiff Timothy Tope claim that their mother, Ellen Tope, sustained injuries and that those injuries caused her death on September 11, 2023.

Defendant accepts some fault but claims Ellen Tope was partially at fault for this accident. Defendant denies that this accident was the cause of Ellen Tope's death and claimed damages.

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

**INSTRUCTION NO. 1**

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of these instructions together with the preliminary instructions I gave you at the outset of the trial and any verbal instructions I gave you during the trial because no one instruction includes all of the applicable law.

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

Your duty is to decide all fact questions.

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

**INSTRUCTION NO. 2**

Whenever a party must prove something, they must do so by the preponderance of the evidence.

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

**INSTRUCTION NO. 3**

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

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted into evidence.

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

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

The following are not evidence:

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

**INSTRUCTION NO. 4**

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. 5**

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. Whether a witness has made inconsistent statements.
3. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Try to reconcile any conflicts in the evidence; but if you cannot, accept any evidence you find believable and give it the weight you believe it deserves.

**INSTRUCTION NO. 6**

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience

may give their opinion on matters in that field and the reasons for their opinion.

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

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

#### **INSTRUCTION NO. 7**

You have heard evidence claiming Defendant Mary Winterbottom 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 Defendant had made those statements under oath during trial.

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

**INSTRUCTION NO. 8**

You have heard evidence claiming Plaintiffs Kathleen Tope and/or Timothy Tope 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 that Plaintiff had made those statements under oath during trial.

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

**INSTRUCTION NO. 9**

The Plaintiffs must prove all of the following propositions:

1. Defendant was negligent in one or more of the following ways:
  - a. Failure to obey a stop sign;
  - b. Failure to yield the right of way;
  - c. Failure to keep a proper lookout;
  - d. Failure to stop at an assured distance;
  - e. Failure to keep her vehicle under control;
  - f. Failure to travel at a reasonable and proper speed.
2. The negligence was a cause of damage to the plaintiffs.

3. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proved all of these propositions, the plaintiffs are entitled to damages in some amount.

**INSTRUCTION NO. 10**

Defendant claims Ms. Tope was at fault in one or more of the following ways:

- a. Failure to keep a proper lookout;
- b. Failure to stop at an assured distance;
- c. Failure to keep her vehicle under control;
- d. Failure to travel at a reasonable and proper speed;
- e. Failure to exercise ordinary care.

The grounds of fault will be explained to you in other instructions.

Defendant must prove both of the following propositions:

1. Ellen Tope was at fault. In order to prove fault, Defendant must prove one of the above-referenced elements.
2. Ellen Tope's fault was a cause of Plaintiffs' damage.

If Defendant has failed to prove either of those propositions, Defendant has not proved her defense of comparative fault. If Defendant has prove both of these propositions, then you will assign a percentage of fault against Ellen Tope and include the fault of Ellen Tope in the total percentage of fault found by you answering the special verdicts.

**INSTRUCTION NO. 11**

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

As used in these instructions, the term "fault" means one or more acts or omissions towards the person of another which constitutes negligence.

As used in these instructions, the term "negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

**INSTRUCTION NO. 12**

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

**INSTRUCTION NO. 13**

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

**INSTRUCTION NO. 14**

The driver of a vehicle shall stop or yield as required by this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute a hazard, but said driver having so yielded may proceed cautiously and with due care enter said through highway.

**INSTRUCTION NO. 15**

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver's vehicle in relation to what the driver saw or should have seen in the exercise of ordinary care.

A violation of this duty is negligence.

**INSTRUCTION NO. 16**

The driver of a vehicle approaching a stop intersection indicated by a stop sign or a flashing red light shall stop at the first opportunity at either the clearly marked stop line, or before entering the crosswalk, or before entering the intersection, or at a point nearest the intersecting road where the driver has a view of approaching traffic on the intersecting road before entering the intersection. Before going ahead, the driver shall yield the right-of-way to any vehicle in the intersecting road which has entered the intersection or which is approaching so closely that it is an immediate danger during the time the driver is moving through the intersection.

A violation of this law is negligence.

**INSTRUCTION NO. 17**

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

A violation of this law is negligence.

**INSTRUCTION NO. 18**

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

A violation of this law is negligence.

**INSTRUCTION NO. 19**

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

A violation of this duty is negligence.

**INSTRUCTION NO. 20**

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

A violation of this law is negligence.

**INSTRUCTION NO. 21**

On September 8, 2023, while traveling southbound on NE 108<sup>th</sup> Street towards the intersection with NE 46<sup>th</sup> Avenue, any speed over 35 miles per hour by Defendant Mary Winterbottom was unlawful.

A violation of this law is negligence.

**INSTRUCTION NO. 22**

On September 8, 2023, while traveling eastbound on NE 46<sup>th</sup> Avenue towards the intersection with NE 108<sup>th</sup> <sup>Street</sup> Avenue, any speed over 55 miles per hour by Ellen Tope was unlawful.

A violation of this law is negligence.

**INSTRUCTION NO. 23**

Damages may be the fault of more than one person. In comparing fault, you should consider all the surrounding circumstances as shown by the evidence, together with the conduct of Ellen Tope and Mary Winterbottom, and the extent of the causal relations between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

**INSTRUCTION NO. 24**

After you have compared the conduct of all parties, if you find Ellen Tope was at fault and Ms. Tope's fault was more than 50% of the total fault, then Plaintiffs cannot recover damages.

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

**INSTRUCTION NO. 25**

If you find that the Estate of Ellen Tope, Kathleen Tope, and/or Timothy Tope are entitled to recover, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of Ellen Josephine Tope for the injuries and damages incurred:

*Services – Parental Consortium*

The present value of the services which Ellen Tope would have performed for her children, but for her death. This is also known as loss of parental consortium.

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

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

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

*Pre-Death Physical and Mental Pain and Suffering*

Physical and mental pain and suffering from the date of injury to the date of death.

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

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

*Pre-Death – Loss of Full Mind and Body*

Loss of function of the mind and body from the date of injury to the date of death.

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

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

**INSTRUCTION NO. 26**

If Ellen Tope had pre-existing medical conditions making her more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which were experienced by Ellen Tope that were caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

**INSTRUCTION NO. 27**

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

**INSTRUCTION NO. 28**

At the time of her passing on September 11, 2023, Ellen Tope was 86 years old. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Ellen Tope is an additional 6.87 years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Ellen Tope's health, habits, occupation, and lifestyle, when deciding issues of future damages.

**INSTRUCTION NO. 29**

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

**INSTRUCTION NO. 30**

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**

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**

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text

messages, Facebook, Instagram, TikTok, Snapchat, LinkedIn, YouTube, X (formerly Twitter), email, etc.

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

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination.

All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by

these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

**INSTRUCTION NO. 33**

I am giving you one verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and interrogatories must be signed by your foreman or forewoman.

After deliberating six (6) hours from 3:52 o'clock P. m., excluding meals or recesses outside your jury room, then it is necessary that only seven (7) of you agree to the verdict. In that case, the verdict must be signed by all seven (7) jurors.

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

Submitted this 16<sup>th</sup> day of April, 2026 at 3:52 p.m.



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JUDGE NICHOLAS A. BAILEY