
IN THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY

JANICE L. KNIGHT,

Plaintiff,

vs.

ESTATE OF MICHAEL T. ZEIMET;
JAMES ZEIMET, AS EXECUTOR
OF THE ESTATE OF MICHAEL T.
ZEIMET,

Defendant.

Case No. LACV026857

**JURY INSTRUCTIONS AND
VERDICT FORM**

INSTRUCTION NO. 1

Members of the Jury:

In this case, Plaintiff Janice Knight was injured when Michael Zeimet negligently drove a UTV into her while she was standing in front of Buzzard's Bar & Grill in New Albin, Iowa, pinning her against the brick wall.

The original named Defendant in this case was Michael T. Zeimet. During this lawsuit, Michael T. Zeimet died, and the Estate of Michael T. Zeimet; James Zeimet, as Executor of the Estate of the Estate of Michael T. Zeimet was substituted as the Defendant in this case and is hereinafter referred to as the "Defendant" in these jury instructions.

The parties dispute the amount of damages caused to Plaintiff by the fault of the Defendant.

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. 2

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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. 3

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. 4

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.

INSTRUCTION NO. 5

Certain testimony has been read or played by videotape into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 6

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 7

The Plaintiff Janice Knight served on the Defendant a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the Defendant or which Defendant failed to deny.

INSTRUCTION NO. 8

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

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

INSTRUCTION NO. 10

You have heard evidence claiming a party made statements before this trial while under oath or 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 a party had made it under oath during the trial.

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

INSTRUCTION NO. 11

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. 12

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. 13

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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 verdict must be reached based 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.

INSTRUCTION NO. 14

The fact that the Defendant is an Estate should not affect your decision. All persons are equal before the law and an Estate is entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 15

The Defendant was at fault and caused injury to Plaintiff Janice Knight.

The Plaintiff Janice Knight must prove the amount of damage.

INSTRUCTION NO. 16

If you find Plaintiff Janice Knight is entitled to recover damages, you shall consider only the following categories of damage:

1. Physical and mental pain and suffering – *past*. Physical and mental pain and suffering from the date of injury to the present time. 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.
2. Loss of function of full mind and/or body – *past*. Loss of function of the mind and/or body from the date of injury to the present time. Loss of mind and/or body is the inability of a particular part of the mind and/or body to function in a normal manner.
3. Physical and mental pain and suffering – *future*. The present value of future physical and mental pain and suffering.
4. Loss of function of full mind and body – *future*. The present value of future loss of function of the mind and/or body.

The amount you assess for physical and mental pain and suffering in the past and future and loss of function of the mind and/or body in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the questions on the verdict form.

INSTRUCTION NO. 17

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. 18

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff Janice Knight (37 years old) is 44 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Plaintiff Janice Knight's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 19

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. 20

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot respond to your question without first discussing your question and a potential answer with the parties and lawyers. This process takes time and deliberation before a response can be provided.

A written response will be provided that the foreperson should then read to the entire jury. Keep the written question and response and return it to the Court with your verdict.

The court attendant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions related to the instructions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. 21

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

After deliberating for six hours from 10¹⁵ o'clock A.m. excluding meals or recesses outside your jury room, then it is necessary that only six of you agree upon the verdict. In that case, the verdict must be signed by all six jurors who agree.

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