

IN THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY

IN THE MATTER OF)	
	)	Case No. ESPR014149
THE ESTATE OF)	
)	
GLADYS R. TROENDLE, Deceased.)	

MICHELE TROENDLE,)	
	)	Case No. LACV026494
Plaintiff,)	
)	
vs.	)	MICHELE TROENDLE’S PROPOSED
	)	JURY INSTRUCTONS AND VERDICT
STEVEN TROENDLE,	)	FORMS
)	
Defendants.)	

COMES NOW the Plaintiff, Michele Troendle, by and through the undersigned counsel,
and pursuant to the Court’s Trial Scheduling Order hereby submits her Proposed Jury
Instructions and Verdict Form.

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Respectfully Submitted,

By: **/s/ Jeffrey R. Tronvold**

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2019, I filed the foregoing with the Clerk of Court using the electronic filing system which will send notification of such filing to the above listed of record.

/s/ Tammy S. Tronvold

100.1 Statement Of The Case. This is a civil case brought by Plaintiff Michele Troendle against Defendant Steven Troendle individually, and as Executor of the Estate of Gladys Troendle. Michele alleges that Steven improperly used the legal system to appoint himself as Executor, and in that capacity, as well as individually, has breached his fiduciary duty to the Estate and Michele, improperly taken property of Michele's, intentionally caused unnecessary and added legal expense to the Estate, interfered with Michele's right to receive her inheritance, and has intentionally inflicted severe emotional distress upon Michele.

Steven denies the allegations made by Michele.

Steven has brought an action against Michele alleging she exerted undue influence upon their mother, Gladys Troendle when she executed her will on January 27, 2015, and that the will should be invalidated as a result.

Michele denies the allegation made by Steven.

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

100.2 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.

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.

Authority

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

100.3 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.

Authority

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

100.4 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 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

Iowa Rules of Evidence.

100.6 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

Iowa R. Civ. P. 1.509

100.9 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

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

100.13 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

Iowa R. Evid. 5.613; State v. Barry, 549 N.W.2d 316, 318 (Iowa App. 1996) (A prior inconsistent statement of a witness not under oath may be considered for impeachment purposes only).

100.14 Contradictory Statements, Non-Party, Witness Under Oath. You have heard evidence claiming [name of non-party witness] made statements before this trial while under oath which were inconsistent with what [name of non-party 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

A prior inconsistent statement of a witness given under oath is substantive evidence which may be considered for any purpose. State v. Thompson, 397 N.W.2d 679, 683 n.2 (Iowa 1986): Iowa R. Evid., 5.801(d)(1)(A).

100.15 Statements By A Party Opponent. You have heard evidence claiming [name of witness] 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 witness] had made it under oath during the trial.

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

100.19 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

Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa Appeals 1983)
Sinclair v. Allender, 26 N.W.2d 320, 326 (Iowa 1947)

2000.1 Emotional Distress - Intentional Infliction - Essentials For Recovery. To entitle Michele Troendle to recover on the claim for intentional infliction of severe emotional distress Michele Troendle must prove all of the following propositions:

1. Outrageous conduct by Steven Troendle.
2. Steven Troendle intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress.
3. Michele Troendle suffered severe or extreme emotional distress.
4. Steven Troendle 's outrageous conduct was a cause of the emotional distress.
5. The nature and extent of Michele Troendle's damage.

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

Authority

Vaughn v. Ag Processing, Inc., 459 N.W.2d 627 (Iowa 1990) (en banc)
Tomash v. John Deere Indus. Equipment Co., 399 N.W.2d 387 (Iowa 1987)
Northrup v. Farmland Industries, Inc., 372 N.W.2d 193 (Iowa 1985)
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)

Rev. 09/10

2000.2 Outrageous Conduct - Definition. The term "outrageous conduct" means conduct so extreme as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

Outrageous conduct does not extend to mere insults, indignities, threats, annoyances, petty oppressions, hurt feelings, bad manners or other trivialities which a reasonable person could be

expected to endure. All persons must necessarily be expected and required to be hardened to a certain amount of rough language and to occasional acts that are inconsiderate and unkind.

Authority

Northrup v. Farmland Industries, Inc., [372 N.W.2d 193](#) (Iowa 1985)
Roalson v. Chaney, [334 N.W.2d 754](#) (Iowa 1983)
Restatement (Second) of Torts, Section 46, Comments d and h (1965)

2000.3 Intentional Or Reckless - Definition. A person intends to inflict emotional distress when they want to cause distress, or know such distress is substantially certain to result from their conduct.

A person's conduct is reckless if they know or have reason to know their conduct creates a high degree of probability that emotional distress will result and they act with deliberate disregard of that probability.

Authority

M. H. By and Through Callahan v. State, [385 N.W.2d 533](#) (Iowa 1986)
Meyer v. Nottger, [241 N.W.2d 911](#) (Iowa 1976)
Restatement (Second) of Torts, Section 46, Comment i

2000.4 Severe Or Extreme Emotional Distress - Definition. The emotional distress must in fact exist, and it must be severe or extreme, but it need not reveal itself physically.

The term "severe or extreme" means substantial or enduring as distinguished from mild or brief.

The term "emotional distress" includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment and worry. It must be so substantial or enduring that no reasonable person could be expected to bear it.

Authority

Harsha v. State Savings Bank, [346 N.W.2d 791](#), (Iowa 1984)
Poulsen v. Russell, [300 N.W.2d 289](#) (Iowa 1981)
Restatement (Second) of Torts, Section 46, Comment j (1965)

3200.1 Breach of Fiduciary Duty - Essentials For Recovery. The plaintiff must prove the following propositions:

1. On or about the 2nd day of May, 2016, a fiduciary relationship existed between Michele Troendle and Steven Troendle.
2. Steven Troendle breached a fiduciary duty.
3. The breach of the fiduciary duty was a cause of damage to Michele Troendle.
4. The amount of damage.

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

Authority

Kurth v. Van Horn, [380 N.W.2d 693](#) (Iowa 1986)
Restatement (Second) of Torts, section 874
Thompson v. Kaczinski, [774 N.W. 2d 829](#), 836-39 (Iowa 2009) (causation)

Rev. 09/10

3200.2 Fiduciary Relationship - Definition. Concerning proposition no. 1 of Instruction No. _____, a fiduciary relationship is a relationship of trust and confidence on a subject between two persons. One of the persons is under a duty to act for or give advice to the other on that subject. Confidence is placed on one side, and domination and influence result on the other.

Circumstances that may indicate the existence of a fiduciary relationship include the acting of one person for another, the having and exercising of influence over one person by another, the placing of confidence by one person in another, the dominance of one person by another, the inequality of the parties, and the dependence of one person upon another. None of these circumstances is more important than another. It is for you to determine from the evidence whether a fiduciary relationship existed between the parties.

Authority

Kendall/Hunt Publishing Company v. Rowe, [424 N.W.2d 235](#) (Iowa 1988)
Kurth v. Van Horn, [380 N.W.2d 693](#) (Iowa 1986)

3200.3 Fiduciary Relationship - Duty Of Disclosure. Concerning proposition no. 2 of Instruction No. _____, a fiduciary has a duty to disclose all material facts in dealing with the other party to permit the other party to make an intelligent, knowing decision in such dealings. A fact is material if a reasonable person would consider it to be important in making a decision. A failure to perform the duty is a breach of fiduciary duty.

Authority

Sinnard v. Roach, [414 N.W.2d 100](#) (Iowa 1987)
Kurth v. Van Horn, [380 N.W.2d 693](#) (Iowa 1986)

Conversion – Essentials for Recovery

Steven Troendle committed the tort of conversion if:

1. Michele Troendle had legal possession of or was entitled to possession the property located in a lockbox, personal property, and money refunded for taxes and insurance;
2. Steven Troendle assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, or to the exclusion of and inconsistent with Michele Troendle's rights; and
3. Steven Troendle refused Michel Troendle's demands for the return of the property;
4. Michele Troendle has suffered damages.

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

Interference with Inheritance – Essentials for Recovery

Michele claims that Steven intentionally interfered with her inheritance. In order to recover under this claim, Michele must prove the following propositions:

1. Michele had an expectancy that she would receive an inheritance from Gladys Troendle upon her death;
2. Steven knew of Michele's expected inheritance;
3. Steven intentionally and improperly interfered with Michele's expectancy by way of breach of fiduciary duty, fraud, duress, malicious prosecution, or abuse of process beginning in May 2016;
4. There was a reasonable certainty that Michele would have received an inheritance but for Steven's interference; and
5. Michele suffered damages as a result of the loss of her inheritance.

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

Interference with Inheritance or Gift. A person has committed the tort of tortious interference with inheritance or gift if a person by fraud, duress, defamation, abuse of process, malicious prosecution, or breach of fiduciary duty, or other tortious means intentionally prevents another from receiving from a third person an inheritance that she would otherwise have received.

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 Michele by intestate succession.

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, duress, defamation, abuse of process, malicious prosecution, or breach of fiduciary duty.

1200.6 Interference with Inheritance – Intentional. Steven’s interference with inheritance is intentional if Steven either interferes with the inheritance on purpose or knows the conduct is substantially certain to interfere with the inheritance.

Authority

Restatement (Second) of Torts, Section 766, comment j.

Interference with Inheritance – Reasonable Certainty of Inheritance Defined. Reasonable certainty of inheritance does not require Michele to prove the exact inheritance she would have received absent Steven’s interference. Michele may establish what her reasonable inheritance would have been prior to Steven’s intentional interference.

1800.1 Abuse Of Process - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. On or about the 2nd day of May, 2016, the Steven Troendle intentionally used the probate court to initiate probate proceedings with a will from 1964 which he knew was not the most recent will.
2. Steven Troendle used the legal process primarily for harassment, delay and to place himself in the position of Executor to which he was not entitled, and not for its intended use which is explained in Instruction No. _____.
3. Steven Troendle’s use of the legal process for the improper purpose was a cause of Michele Troendle’s damage.

4. The amount of damage.

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

Authority

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)

Rev. 09/10

1800.2 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.

1800.3 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.

The purpose of probate proceedings is to probate the most recent will of a decedant.

1800.4 Abuse Of Process - Intent. The word "intentionally", as used in element number 1 of Instruction No. _____, refers to the state of mind of the defendant 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.

1800.5 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 Steven Troendle dislikes Michele Troendle or if Steven's motives in using the process were improper.

Authority

Grell v. Poulsen, [389 N.W.2d 661](#) (Iowa 1986)
Restatement of Torts (Second), Section 682, Comment (b)

2200.9 Malicious Prosecution - Essentials For Recovery - Prior Civil Proceeding.

"Malicious prosecution" means causing an unsuccessful civil action with malice and without probable cause. In order to recover, Michele Troendle and the Estate must prove each of the following propositions:

1. Michele Troendle and the Estate were required to defend a civil action based upon the improper submission of the 1964 will to probate.
2. Steven Troendle caused the civil action to be filed.
3. The action ended favorably for the Estate and Michele Troendle.
4. Steven Troendle acted without probable cause.
5. Steven Troendle acted with malice.
6. As a cause of the filing of the civil action, Michele Troendle and the Estate sustained financial losses by expending legal fees to reverse the improper submission of the 1964 will. sustained losses due to legal representation.
7. The amount of damage.

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

Authority

Brody v. Ruby, [267 N.W.2d 902](#) (Iowa 1978)
Thompson v. Kaczinski, [774 N.W. 2d 829](#), 836-39 (Iowa 2009) (causation)

Rev. 09/10

2200.10 Malicious Prosecution - Probable Cause - Prior Civil Proceeding. Probable cause for the filing of the civil action means having a reasonable ground. Probable cause exists where Steven Troendle had reasonable trustworthy information about the facts and circumstances which was sufficient so that a reasonable person would believe that (plaintiff) was responsible for defendant's damages.

Probable cause does not require absolute certainty of proof beyond a reasonable doubt. It is to be determined by the common sense a reasonable person would apply to the circumstances of everyday life.

Authority

Davis v. Rudolph, [243 Iowa 744](#), [52 N.W.2d 15](#) (1952)

810.1 Fraudulent Misrepresentation - Essentials For Recovery. The plaintiff must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. That on May 2, 2015 Steven Troendle made a representation to the Court that the 1964 Will of Gladys Troendle was the appropriate Will to enter into probate.
2. The representation was false.
3. The representation was material.
4. Steven Troendle knew the representation was false.
5. Steven Troendle intended to deceive the Court.
6. The Court acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of damage to Michele Troendle and the Estate.
8. The amount of damage.

If Michele Troendle and the Estate have failed to prove any of these propositions, Michele Troendle and the Estate cannot recover damages. If Michele Troendle and the Estate have proved all of these propositions, Michele Troendle and the Estate are entitled to recover damages in some amount.

Authority

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)

Rev. 09/10

810.3 Fraudulent Misrepresentation - 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.

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

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)

6/87

810.4 Fraudulent Misrepresentation - Material - Definition. Concerning proposition [No. 3 of Instruction 810.1], a representation is "material" if:

1. A reasonable person would consider it as important in making a decision.
2. Steven Troendle knows or has reason to know that the Court 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

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

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

810.5 Fraudulent Misrepresentation - Knowledge Of Falsity (Scienter) - Definition.

Concerning proposition [No. 4 of Instruction No. [810.1], Steven Troendle knew the representation was false if any of the following situations existed:

1. Steven Troendle actually knew or believed the representation was false.
2. Steven Troendle made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. Steven Troendle falsely stated or implied that the representation was based on his personal knowledge or investigation.
4. Steven Troendle made a representation which he knew or believed was materially misleading because it left out unfavorable information.

5. Steven Troendle stated his intention to do or not to do something when he did not actually have that intention.

6. Steven Troendle 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. Steven Troendle 's special relationship of trust and confidence to The court, the Estate and Michele Troendle made it Steven Troendle's duty to know whether the representation was true or false.

Authority

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)

810.6 Fraudulent Misrepresentation - Definition Of Intent To Deceive. Concerning proposition [No. 5 of Instruction No. [810.1] Steven Troendle intended to deceive the Court if any of the following situations existed when he made a representation:

1. Steven Troendle wanted to deceive the Court or believed that the Court would in all likelihood be deceived.

2. Steven Troendle had information from which a reasonable person would conclude that the Court would be deceived.

3. Steven Troendle made the representation without concern for the truth.

Authority

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)

810.7 Fraudulent Misrepresentation - Intent To Deceive - Persons Affected. Concerning proposition [No. 5 of Instruction No. [810.1], Steven Troendle 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.

Steven Troendle is liable only to those persons who rely on the representation in the type of transaction in which the defendant intends or has reason to expect the conduct of others will be affected.

Authority

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

Comment

Note: Use the second paragraph of this instruction only if supported by the evidence.

810.8 Fraudulent Misrepresentation - Reliance - Generally. Concerning proposition [No. 6 of Instruction No. [810.1]], the Court must rely on the representation and the reliance must be justified.

It is not necessary that the representation be the only reason for the Court's action. It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what the plaintiff can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

Authority

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)

Comment

Note: Use the last sentence of this instruction only if supported by the evidence

810.9 Fraudulent Misrepresentation - Reliance - Opinion. Concerning proposition No. [6 of Instruction No. [810.1]], the Court is justified in relying on Steven Troendle's representation of opinion only if one or more of the following situations exist:

1. Steven Troendle has or claims to have special knowledge of the matter that the Court does not have.

2. Steven Troendle has a fiduciary or other similar relation of trust and confidence with the Court.
3. Steven Troendle has successfully tried to gain the Court's confidence.
4. Steven Troendle knows of some special reason to expect that the Court will rely on the opinion.

Authority

Restatement (Second) of Torts, Section 542 (1977)

Comment

Note: Use only those portions of the instruction supported by the evidence.

Damages in General. If you find in Michele Troendle's favor on one or more of her claims against Steven, then you must determine the amount of damages to which she is entitled. You must award Michele such sum as you find will fairly and justly compensate her for any damages that you find she sustained as a direct result of the conduct at issue if you find for Michele on any of her claims.

The damages in question are the following:

1. Interference with inheritance.
2. Compensatory damages: Damages are the losses Michele Troendle suffered in having to take action to protect her interest by bringing a cause of action, to compensate Michele Troendle for emotional distress she has suffered and any other compensatory damages she suffered as a direct result of Steven's conduct.
3. Punitive damages, to punish Steven for engaging in the misconduct at issue and to deter him and others from engaging in such misconduct in the future.

I will explain in the next instruction 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. 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.

210.1 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.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct. *If applicable, add:* Although you may consider harm to others in determining the nature of defendant's conduct, you may not award punitive damages to punish the defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the defendant that is not similar to the conduct which caused the harm to the plaintiff in this case.

Authority

Iowa Code section [668A.1](#)

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

State Farm Mutual Auto Ins. Co. v. Campbell, 123 S.Ct. 1513, [155 L.Ed.2d 585](#) (2003)

Larson v. Great West Cas. Co., [482 N.W.2d 170](#) (Iowa App. 1992)

Suss v. Schammel, [375 N.W.2d 252](#) (Iowa 1985)

Nelson v. Restaurants of Iowa, Inc., [338 N.W.2d 881](#) (Iowa 1983)

Comment

Note: See Iowa Civil Jury Instruction 100.19 for definition of clear, convincing and satisfactory evidence.

210.4 Willful and Wanton - Defined. Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Authority

Fell v. Kewanee Farm Equipment Co., [457 N.W.2d 911](#) (Iowa 1990)

Kosmacek v. Farm Service Coop of Persia, [485 N.W.2d 99](#) (Iowa App. 1992)

2700.1 Elements - Will Contest. The law presumes a person is free from undue influence when making a will. To overcome this presumption, Steven must prove the following proposition was true at the time the will was made:

Gladys Troendle's will was the result of undue influence.

If Steven has failed to prove the above proposition your verdict will be for Michele. If Steven has proved the above proposition, your verdict will be for Steven.

Authority

In re Estate of Adams, [234 N.W.2d 125](#) (Iowa 1975)

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

Comment

Caveat: Delete any proposition not supported by the evidence.

2700.4 Undue Influence - Essentials For Recovery. The law presumes a person is free from undue influence. To overcome this presumption, Steven must prove each of the four following propositions:

1. At the time the will was made, Gladys Troendle was susceptible to undue influence.
2. Michele Troendle had the opportunity to exercise such influence and carry out the wrongful purpose.
3. Michele Troendle was inclined to influence Gladys Troendle unduly for the purpose of getting an improper favor.
4. The result was clearly brought about by undue influence.

If Steven has failed to prove one or more of these propositions, your verdict will be for Michele.
If Steven has proved all of these propositions, your verdict will be for Steven.

Authority

Burkhalter v. Burkhalter, [841 N.W.2d 93](#) (Iowa 2013)

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

In re Estate of Houston, [238 Iowa 297](#), [27 N.W.2d 26](#) (1947)

2700.5 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

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

Walters v. Heaton, [223 Iowa 405](#), [271 N.W. 310](#) (1937)

Comment

Note: Where the person charged with exerting undue influence is a spouse, consider prefacing 2700.5 with the following statement:

"Undue influence means something more than and different from the natural, wholesome, relationship between wife and husband concerning their mutual interests. The influence growing out of such relation is manifestly not ordinarily 'undue' or improper."

Authority for Comment

Johnstone v. Johnstone, [190 N.W.2d 421](#), 426 (Iowa 1971)

Gillette v. Cable, [248 Iowa 7](#), [79 N.W.2d 195](#) (1956)

2700.6 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. 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

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)
Johnstone v. Johnstone, [190 N.W.2d 421](#) (Iowa 1971)
In re Estate of Willesen, [251 Iowa 1363](#), [105 N.W.2d 640](#) (1960)
In re Estate of Burrell, [251 Iowa 185](#), [100 N.W.2d 177](#) (1959)
O'Brien v. Stoneman, [227 Iowa 389](#), [288 N.W.2d 447](#) (1939)

Comment

Caveat: Delete any circumstance not supported by the evidence.

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).

100.21 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

Iowa R. Civ. P. 1.926 (1)

100.23 Use of Electronic Devices.

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, 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.]

It is important that we have your full and undivided attention during this trial.

100.18 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.

300.1 Return Of Verdict - Forms Of Verdict. I am giving you _____ verdict forms [and 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.

Comment

Note: *Use if a juror has been excused during the trial.

Rev. 3/12

IN THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY

IN THE MATTER OF)	
	)	Case No. ESPR014149
THE ESTATE OF)	
)	
GLADYS R. TROENDLE, Deceased.)	

MICHELE TROENDLE,)	
	)	Case No. LACV026494
Plaintiff,)	
)	
vs.)	
	)	VERDICT FORM—WILL CONTEST
STEVEN TROENDLE,)	
)	
Defendants.)	

QUESTION NO. 1. At the time the Will was executed on January 27, 2015, was Gladys Troendle susceptible to the type of influence described in Instruction No. _____?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 1 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 2.]

QUESTION NO. 2. Did Michele have the opportunity to exercise such influence and carry out any wrongful purpose?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 2 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 3.]

QUESTION NO. 3. Was Michele inclined to influence Gladys Troendle unduly for the purpose of getting an improper favor?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 3 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 4.]

QUESTION NO. 4. Was the disposition in Gladys Troendle's January 27, 2015 Will clearly brought about by undue influence?

Answer "Yes" or "No"

ANSWER: _____

[Sign the form.]

FOREPERSON*

*To be signed only if verdict is unanimous.

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

** To be signed by the jurors agreeing to it after six hours or more of deliberation.

IN THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY

IN THE MATTER OF)	
	)	Case No. ESPR014149
THE ESTATE OF)	
)	
GLADYS R. TROENDLE, Deceased.)	

MICHELE TROENDLE,)	
	)	Case No. LACV026494
Plaintiff,)	
)	
vs.)	
	)	VERDICT FORM—MICHELE
STEVEN TROENDLE,	)	TROENDLE’S CLAIMS
)	
Defendants.)	

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

MICHELE TROENDLE’S CLAIM OF INTENTIONAL INFLICITON OF EMOTIONAL DISTRESS

Question No. 1: Do you find the conduct of Steven Troendle constituted outrageous conduct?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 1 is "No" go to question 7; if your answer is “Yes” go to Question No. 2.]

Question No. 2: Do you find Steven Troendle intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 2 is "No" go to question 7; if your answer is “Yes” go to Question No. 3.]

Question No. 3: Do you find Michele Troendle suffered severe or extreme emotional distress?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 3 is "No" go to question 7; if your answer is "Yes" go to Question No. 4.]

Question No. 4: Do you find Steven Troendle 's outrageous conduct was a cause of the emotional distress?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 4 is "No" go to question 7; if your answer is "Yes" go to Question No. 5.]

Question No. 5: State the amount of damages sustained by Michele Troendle caused by Steven Troendle. If Michele Troendle has failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$ _____

[If your answer to Question No. 5 is "0" go to question 7. If your answer is anything other than "0" go to Question No. 6A.]

Question No. 6A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 6A is "No" go to question 7; if your answer is "Yes" answer Questions No. 6B and 6C.]

Question No. 6B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 6C: Was the conduct of Steven Troendle directed specifically at Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

Proceed to Question 7.

MICHELE TROENDLE'S CLAIM OF BREACH OF FIDUCIARY DUTY

Question No. 7: Do you find that on or about the 2nd day of May, 2016, a fiduciary relationship existed between Michele Troendle and Steven Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 7 is "No" go to question 12; if your answer is "Yes" go to Question No. 8.]

Question No. 8: Do you find that Steven Troendle breached a fiduciary duty?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 8 is "No" go to question 12; if your answer is "Yes" go to Question No. 9.]

Question No. 9: Do you find that the breach of the fiduciary duty was a cause of damage to Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 9 is "No" go to question 12; if your answer is "Yes" go to Question No. 10.]

Question No. 10: State the amount of damages sustained by Michele Troendle caused by Steven Troendle. If Michele Troendle has failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$ _____

[If your answer to Question No. 10 is "0" go to question 12. If your answer is anything other than "0" go to Question No. 11A.]

Question No. 11A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 11A is "No" go to question 12; if your answer is "Yes" answer Questions No. 11B and 11C.]

Question No. 11B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 11C: Was the conduct of Steven Troendle directed specifically at Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

Proceed to Question 12.

MICHELE TROENDLE'S CLAIM OF CONVERSION

Question No. 12: Do you find that Michele Troendle had legal possession of or was entitled to possession of the property located in a lockbox, other personal property, and money refunded for taxes and insurance?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 12 is "No" go to question 17; if your answer is "Yes" go to Question No. 13.]

Question No. 13: Do you find that Steven Troendle assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, or to the exclusion of and inconsistent with Michele Troendle's rights?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 13 is "No" go to question 17; if your answer is "Yes" go to Question No. 14.]

Question No. 14: Do you find that Steven Troendle refused Michel Troendle's demands for the return of the property?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 14 is "No" go to question 17; if your answer is "Yes" go to Question No. 15.]

Question No. 15: State the amount of damages sustained by Michele Troendle caused by Steven Troendle. If Michele Troendle has failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$ _____

[If your answer to Question No. 15 is "0" go to question 17. If your answer is anything other than "0" go to Question No. 16A.]

Question No. 16A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 16A is "No" go to question 17; if your answer is "Yes" answer Questions No. 16B and 16C.]

Question No. 16B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 16C: Was the conduct of Steven Troendle directed specifically at Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

Proceed to Question 17.

MICHELE TROENDLE'S CLAIM OF INTERFERENCE WITH INHERITANCE

Question No. 17: Did Michele had an expectancy that she would receive an inheritance from Gladys Troendle upon her death?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 17 is "No" go to question 23; if your answer is "Yes" go to Question No. 18.]

Question No. 18: Did Steven know or have reason to know that Michele Troendle had an expected inheritance?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 18 is "No" go to question 23; if your answer is "Yes" go to Question No. 19.]

Question No. 19: Did Steven intentionally and improperly interfere with Michele Troendle's expectancy by way of breach of fiduciary duty, fraud, duress, malicious prosecution, or abuse of process beginning in May 2016?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 19 is "No" go to question 23; if your answer is "Yes" go to Question No. 20.]

Question No. 20: Was there was a reasonable certainty that Michele would have received an inheritance but for Steven's interference?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 20 is "No" go to question 23; if your answer is "Yes" go to Question No. 21.]

Question No. 21: State the amount of damages sustained by Michele Troendle caused by Steven Troendle. If Michele Troendle has failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$ _____

[If your answer to Question No. 21 is "0" go to question 23. If your answer is anything other than "0" go to Question No. 22A.]

Question No. 22A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 22A is "No" go to question 23; if your answer is "Yes" answer Questions No. 22B and 22C.]

Question No. 22B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 22C: Was the conduct of Steven Troendle directed specifically at Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

Proceed to Question 23.

MICHELE TROENDLE'S CLAIM OF FRAUD

Question No. 23: Do you find by a preponderance of clear, convincing, and satisfactory evidence that Steven Troendle committed fraud? To answer Question 23, "yes", you must find by a preponderance of clear, convincing, and satisfactory evidence each of the following elements:

- a. That on May 2, 2015 Steven Troendle made a representation to the Court that the 1964 Will of Gladys Troendle was the appropriate Will to enter into probate.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(a) is "no," go to Question 26. If your answer is yes, proceed to Question 23(b)].

- b. The representation was false.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(b) is "no," go to Question 26. If your answer is yes, proceed to Question 23(c)].

- c. The representation was material.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(c) is "no," go to Question 26. If your answer is yes, proceed to Question 23(d)].

- d. Steven Troendle knew the representation was false.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(d) is "no," go to Question 26. If your answer is yes, proceed to Question 23(e)].

- e. Steven Troendle intended to deceive the Court.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(e) is "no," go to Question 26. If your answer is yes, proceed to Question 23(f)].

- f. The Court acted in reliance on the truth of the representation and was justified in relying on the representation.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(f) is "no," go to Question 26. If your answer is yes, proceed to Question 23(g)].

- g. The representation was a cause of damage to Michele Troendle and the Estate.

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question 23(g) is "no," go to Question 26. If your answer is yes, proceed to Question 24].

Question No. 24: State the amount of damages sustained by Michele Troendle and the Estate caused by Steven Troendle. If Michele Troendle has failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$_____

[If your answer to Question No. 24 is "0" go to question 26. If your answer is anything other than "0" go to Question No. 25A.]

Question No. 25A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle and the Estate?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 25A is "No" go to question 26; if your answer is "Yes" answer Questions No. 25B and 25C.]

Question No. 25B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 25C: Was the conduct of Steven Troendle directed specifically at Michele Troendle and the Estate?

Answer "Yes" or "No"

ANSWER: _____

Proceed to Question 26.

MICHELE TROENDLE'S CLAIM OF AUBSE OF PROCESS

Question No. 26: Do you find that on or about the 2nd day of May, 2016, the Steven Troendle intentionally used the probate court to initiate probate proceedings with a will that he knew was not the most recent will?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 26 is "No" go to question 31; if your answer is "Yes" go to Question No. 27.]

Question No. 27: Do you find that Steven Troendle used the legal process primarily for harassment, delay and to place himself in the position of Executor to which he was not entitled, and not for its intended use which is explained in Instruction No. _____?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 27 is "No" go to question 31; if your answer is "Yes" go to Question No. 28.]

Question No. 28: Do you find that Steven Troendle's use of the legal process for the improper purpose was a cause of Michele Troendle's damage?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 28 is "No" go to question 31; if your answer is "Yes" go to Question No. 29.]

Question No. 29: State the amount of damages sustained by Michele Troendle caused by Steven Troendle. If Michele Troendle has failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$ _____

[If your answer to Question No. 29 is "0" go to question 31. If your answer is anything other than "0" go to Question No. 30A.]

Question No. 30A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 30A is "No" go to question 31; if your answer is "Yes" answer Questions No. 30B and 30C.]

Question No. 30B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 30C: Was the conduct of Steven Troendle directed specifically at Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

Proceed to Question 31.

MICHELE TROENDLE'S CLAIM OF MALICIOUS PROSECUTION

Question No. 31: Do you find that Michele Troendle was required to file a declaratory judgment action to displace the 1964 will with the 2015 will?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 31 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 32.]

Question No. 32: Do you find that Steven Troendle caused the need to file the declaratory judgment action?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 32 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 33.]

Question No. 33: Do you find that the action ended favorably for Michele Troendle?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 33 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 34.]

Question No. 34: Do you find that Steven Troendle acted without probable cause?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 34 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 35.]

Question No. 35: Do you find that Steven Troendle acted with malice?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 35 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 36.]

Question No. 36: Do you find that as a cause of the filing of the civil action, Michele Troendle and the Estate sustained financial losses by expending legal fees to reverse the improper submission of the 1964 will?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 36 is "No," do not answer any further questions, just sign the form. If your answer is "Yes" go to Question No. 37.]

Question No. 37: State the amount of damages sustained by the Estate and Michele Troendle caused by Steven Troendle. If the Estate or Michele Troendle have failed to prove any damages were caused by Steven Troendle, enter 0.

TOTAL \$ _____

[If your answer to Question No. 37 is "0," do not answer any further questions, just sign the form. If your answer is anything other than "0" go to Question No. 38A.]

Question No. 38A: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of Steven Troendle constituted willful and wanton disregard for the rights and safety of Michele Troendle and the Estate?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 38A is "No," do not answer any further questions, just sign the form. If your answer is "Yes" answer Questions No. 38B and 38C.]

Question No. 38B: What is the amount of punitive damages you award for Steven Troendle's conduct?

TOTAL \$ _____

Question No. 38C: Was the conduct of Steven Troendle directed specifically at the Estate and Michele Troendle and the Estate?

Answer "Yes" or "No"

ANSWER: _____

FOREPERSON*

*To be signed only if verdict is unanimous.

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

** To be signed by the jurors agreeing to it after six hours or more of deliberation.