

IN THE IOWA DISTRICT COURT FOR JACKSON COUNTY

SHELDON WOODHURST and
CARLA WOODHURST,

Plaintiffs,

vs.

DAVID ZABRANSKY,

Defendant.

CASE NO. LACV027199

JURY INSTRUCTIONS and
SPECIAL VERDICT FORM

FILED
CLERK DISTRICT COURT
JACKSON COUNTY, IA

17 FEB -8 AM 11:31

Members of the Jury:

On the evening of November 22, 2009, Plaintiff, Sheldon Woodhurst, and Defendant, David Zabransky, were involved in an altercation that took place on a public street in Sabula, Iowa outside of the Lucky 7 Bar.

Plaintiff Woodhurst was assaulted and battered by Defendant, Zabransky. Plaintiff Woodhurst states that he sustained injuries as a result of the altercation, and he seeks compensation and punitive damages from the defendant.

Defendant denies the nature and extent of Plaintiff's claimed injuries but admits that damages were caused by the actions 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. 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 the instructions together because no one instruction includes all of the applicable law.

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

Your duty is to decide all fact questions.

Do not be influenced by any personal like or dislikes, sympathy, bias prejudice or emotions.

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

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

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. Any other matter admitted.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. Sometimes, during a trial, reference 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 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

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 witness' 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 and prejudice.

INSTRUCTION NO. 7

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 matter in that field and the reasons for their opinion.

Consider expert testimony must 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 question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 8

The parties have stipulated on November 22, 2009, the defendant, David Zabransky, committed an assault and battery on the plaintiff, Sheldon Woodhurst, by shooting him.

The parties further stipulate David Zabransky has been convicted of the offenses of Willful Injury and Going Armed With Intent, in violation of Iowa Code Sections 708.4 and 708.8.

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

Future damages for loss of earning capacity, medical expenses and other economic losses 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 economic losses.

INSTRUCTION NO. 11

If you find Plaintiff is entitled to recover damages, you shall consider the following items:

1. Loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind or body to function in a normal manner.
2. The present value of future loss of function of the mind and body.
3. 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.
4. The present value of future physical and mental pain and suffering
5. The present value of reasonable and necessary hospital charges, doctor charges and prescription which will be incurred in the future.
6. The reasonable value of lost wages from the date of the injury to the present time.
7. The Present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

(Continued on the next page.)

(INSTRUCTION NO. 11 continued)

The amount you assess for physical and mental pain and suffering in the past and future and loss of function of the mind and 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 or 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 amount, if any, you find for each of the above items will be used to answer the special verdicts

INSTRUCTION NO. 12

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. 13

The Standard Mortality Table indicated the normal life expectancy of people who are the same age as Plaintiff is 78 years. The statistics from the Standard Mortality Table are not conclusive. You may use this information together with all of the other evidence, about plaintiff's health, habits occupation, and lifestyle, when deciding issues of future damages

INSTRUCTION NO. 14

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 the 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 the 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.

INSTRUCTION NO. 15

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~~^{great} as to make it highly probable that harm will follow.

INSTRUCTION NO. 16

"Spousal consortium" is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find Carla Woodhurst is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the reasonable value of loss of spousal consortium which Carla Woodhurst would otherwise have received from the date of injury to until the date of the marriage dissolution.

Damages for loss of spousal consortium are limited in time from November 22, 2009, to March 1, 2016.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Sheldon Woodhurst's life.
2. Sheldon Woodhurst's and Carla Woodhurst's ages at the time of Sheldon's injury.
3. Sheldon Woodhurst's health, strength and character.
4. Sheldon Woodhurst's capabilities and efficiencies in performing the duties of a spouse.
5. Sheldon Woodhurst's skills and abilities in providing instructions, guidance, advice and assistance.
6. The needs of Carla Woodhurst.
7. All other facts and circumstances bearing on this issue.

The amount you assess for loss of spousal consortium 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 David Zabransky 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. 17

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 not be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 18

Upon retiring you shall select a lead juror. 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 partisan or advocated, but are judges – judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 19

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering the case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instruction can be answered by carefully re-reading them. If, however, any of you feel it is necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your questions and potential answer with the parties and lawyers. This process naturally takes time and deliberations before I can reply. The lead juror shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

INSTRUCTION NO. 20

I am giving you one verdict form. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as the lead juror.

After deliberating for six hours from 3:00 o'clock p.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case the verdict must be signed by all seven jurors who are in agreement.

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

Dated this 7th day of February, 2017.



MARY E. HOWES
DISTRICT COURT JUDGE

INSTRUCTION NO. 21

Ladies and Gentlemen of the Jury:

You reported today at 9:00 a.m., and it is now 4:30 p.m. Because of the lateness of the hour, the Court deems it advisable that you be allowed to separate temporarily overnight.

While temporarily separated, you should not permit anyone, including fellow jurors, to speak to or communicate with you about this case, or reveal the state of your deliberations to anyone. You should avoid spoken or written publicity about the case in all radio, television or newspaper comments or accounts of this case, and you must not conduct any research or investigation regarding any aspect of this case.

You shall report back to your jury room at 9:00 a.m., Wednesday, February 8, 2017, at which time you will resume your deliberations.



MARY E. HOWES, Judge