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## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RYAN STAIERT,

Plaintiff,

v.

BEN LOTT and DRAKE UNIVERSITY,

Defendants.

Case No. 05771 LACL159595

**JURY INSTRUCTIONS****No. 1: 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 and to decide all fact questions.

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.

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

**No. 2: 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.

**No. 3: 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.

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.

**No. 4: Credibility of Witnesses and Conflicts of Evidence**

Decide the facts from the evidence. Consider the evidence using your observations, reasoning, common sense, and experience. It is your duty to determine the credibility of witnesses, to resolve any conflicts in the evidence, and to draw reasonable inferences from the evidence. In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness's testimony. 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.

There are many factors that 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.

**No. 5: Opinion Evidence, Expert Witness**

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

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

**No. 6: Hypothetical Question, Expert Testimony**

If 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.

**No. 7: University as a Party**

The fact that a defendant is a university should not affect your decision. All persons are equal before the law, and a university, whether large or small, is entitled to the same fair and conscientious consideration by you as any other person.

**No. 8: Statements by a Party Opponent**

You have heard evidence claiming a Party 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 the Party had made it under oath during the trial.

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

**No. 9: Defamation Per Se**

The Plaintiff Ryan Staiert must prove all of the following propositions:

1. Ben Lott made the following oral statement concerning Ryan Staiert:
  - a. Ryan Staiert committed tax fraud.
2. Ben Lott communicated the statement to someone other than Ryan Staiert.

If Ryan Staiert has failed to prove any of these propositions, he is not entitled to damages. If Ryan Staiert has proved all of these propositions, you must consider the Defendants' Affirmative Defense of Truth as set forth in Instruction No. 10. If Staiert has proved all the elements and the Defense has not proven its Affirmative Defense of Truth, then he is entitled to damages in some amount.

**No. 10: Defamation – Affirmative Defense - Truth**

The Defendants claim the statements complained about are true. The fact the statements are true or substantially true is a complete defense, regardless of bad faith or malicious purpose.

The Defendants must prove the truth of the statements. To do so, the Defendants must establish the truth of the entire language of the statement, and establish it in the sense attributed to it by the plaintiff. Slight inaccuracies of expression are not important so long as the statement is substantially true.

If the Defendants have proven the truth of the statements, then the plaintiff cannot recover. If the Defendants have failed to prove the truth of the statements, then you shall consider whether the plaintiff is entitled to recover damages in accordance with other instructions.

**No. 11: Damages For Defamation Per Se**

If you find Ryan Staiert has proven his claim of defamation per se, it is your duty to determine the amount of damages. In doing so, you shall consider the following items:

1. General damages. General damages are presumed to result from the communication of a defamatory per se statement. These are the kind of damages the law presumes naturally and necessarily result from the communication of defamatory statements. If you find that the Plaintiff's general damages do not have monetary value, then you must return a verdict for the Plaintiff in the nominal amount of One Dollar (\$1.00).
2. Loss of Reputation. Loss of reputation damages are not presumed and must be proven by Ryan Staiert. These damages are the reasonable value of any loss of reputation suffered by Ryan Staiert caused by Coach Lott's defamation per se. In determining this item of damage, you may consider Ryan Staiert's reputation before the statement was made. You may also consider the extent to which the statement was communicated.

Damages must be limited to those which naturally result from Ben Lott's statement.

**No. 12: Defamation Per Quod**

The Plaintiff Ryan Staiert must prove all of the following propositions:

1. Ben Lott made the following oral statement concerning Ryan Staiert:
  - a. Ryan Staiert was under investigation by the NCAA.
2. The statement was false; and
3. Ben Lott made the statement with malice; and
4. Ben Lott communicated the statement to someone other than Ryan Staiert; and
5. The statement tended to injure the reputation of Ryan Staiert; and
6. The statement caused damage to Ryan Staiert; and
7. The amount of damage.

If Ryan Staiert has failed to prove any of these propositions, he is not entitled to damages. If Ryan Staiert has proved all of these propositions, then you shall consider the Affirmative Defense of Truth as set forth in Instruction No. 10. If Ryan Staiert has proven all of the elements of Defamation Per Quod and the Defendants have not proven the Affirmative Defense of Truth, then Staiert is entitled to damages in some amount.

**No. 13: Malice Definition**

Ben Lott made statements with malice if the statements were made with knowledge that they were false, or with reckless disregard for their truth or falsity. A speaker's reliance on a single source as the basis for an alleged defamatory statement, in the absence of a high degree of awareness of probable falsity, does not constitute malice.

**No. 14: Damages For Defamation Per Quod**

If you find Ryan Staiert has proven the claim of Defamation Per Quod, it is your duty to determine the amount of any damages proven by Ryan Staiert. In doing so, you shall consider the following items:

1. The reasonable value of any loss of reputation suffered by Ryan Staiert caused by Coach Lott's Defamation Per Quod. In determining this item of damage, you may consider Ryan Staiert's reputation before the statement was made. You may also consider the extent to which the statement was communicated.

Damages must be limited to those which naturally result from Ben Lott's statement.

**No. 15: Punitive Damages**

Punitive damages may be awarded if Ryan Staiert has proven by a preponderance of clear, convincing and satisfactory evidence that Coach Lott's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to Ryan Staiert.

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.

**No. 16: 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.

**No. 17: Punitive Damages Against an Employer.**

Drake University, as an employer, is liable for the punitive damages by reason of the acts of Coach Lott if one of the following occurred:

1. Coach Lott was unfit and Drake University was reckless in employing or retaining him; or
2. Coach Lott was employed in a managerial capacity and was acting in the scope of employment; or
3. A managerial agent of Drake University ratified or approved the act.

**No. 18: Return of Verdict.**

I am giving you one verdict form with a list of 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 must be signed by your foreman or forewoman.

After deliberating for six hours, excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

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

**No. 19: General Instruction to Jury**

Upon retiring, you shall select a foreperson. 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.

**No. 20: 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.

**No. 21: Juror Questions for the Court**

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 communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the court with the verdict.

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

**No. 22: Use of Electronic Devices**

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, X, 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 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.