

IN THE IOWA DISTRICT COURT FOR JACKSON COUNTY

JOHN THOMA and KELLY THOMA,)	
)	
Plaintiffs,)	Law No. LACV029023
)	
v.)	
)	
SCOTT THOMA and EARL THOMA,)	JURY INSTRUCTIONS AND
individually and as Co-Executors)	VERDICT FORM WITH
of the Estate of Ernest William Thoma,)	SPECIAL INTERROGATORIES
Deceased.)	
)	
Defendant(s).)	

MEMBERS OF THE JURY:

The plaintiffs, John Thoma and his wife, Kelly Thoma, assert various claims against John's brothers, Scott Thoma and Earl Thoma, both individually, and in their capacity as co-executors of their father's estate. The defendants assert a counterclaim against the plaintiffs. All parties deny the claims asserted against them.

The plaintiffs allege that from 2018 to August 2021, they had a valid agreement to rent a portion of Ernest Thoma's farm. After Ernest's death, Scott and Earl Thoma were appointed Co-Executors and filed an action to remove John and Kelly Thoma as tenants. A court ordered their removal on June 8, 2021. A stay was entered on June 9, 2021, pending an appeal. The Supreme Court of Iowa upheld the order removing the plaintiffs on August 17, 2021. The plaintiffs claim they had full rights to possess the property until the appeal was concluded and that the defendants interfered with their right of possession.

In addition, the plaintiffs allege the defendants prevented the plaintiffs from accessing personal property they left on the property at the time the eviction was

upheld. They allege one or both defendants negligently damaged their personal property. The claim the defendants breached various contracts and destroyed crops.

The defendants counterclaim and assert the plaintiffs incurred utility costs after they were required to vacate and have failed to pay these amounts.

Please 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.

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

INSTRUCTION NO. 2

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

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

INSTRUCTION NO. 3

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

Evidence is:

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

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

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

The following are not evidence:

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

INSTRUCTION NO. 4

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

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

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

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

INSTRUCTION NO. 5

The plaintiffs claim the defendants – either in their individual capacities or as co-executors – were negligent. The plaintiffs must prove all of the following propositions.

The defendant was negligent in one or more of the following ways:

- a) Under spraying by Earl Thoma in 2018;
 - b) Over spraying by Earl Thoma and 2019;
 - c) Earl Thoma and Scott Thoma neglecting to care for fuel barrels subject to a bailment;
 - d) Earl Thoma allowing cattle to get loose causing damage to plaintiffs' crops in 2018 and 2019;
 - e) Earl Thoma causing damage to the 5088 tractor; and
 - f) Earl Thoma's actions in causing damage to the chicken coop, porch swing and hay feeder.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proven all of these propositions, the plaintiffs are entitled to damages in some amount. You will determine the various claims of negligence by answering the special interrogatories in each verdict form.

INSTRUCTION NO. 6

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

INSTRUCTION NO. 7

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

There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

INSTRUCTION NO. 8

Property is abandoned when the owner no longer wants to possess it.

Abandonment is shown by proof that the owner intends to abandon the property and has voluntarily relinquished all right, title and interest in the property.

INSTRUCTION NO. 9

When one gives possession and the right to use personal property to another who agrees to return the same property at a future time, the transaction is known in law as a bailment. The person who gives possession is known as a bailor. The person who takes possession is known as a bailee.

INSTRUCTION NO. 10

A gratuitous bailment is created when:

1. A person receives from the owner any property for safekeeping or storage.
2. Without any agreement express or implied, that the person receiving it shall be paid for so doing, or when the owner delivers or causes to be delivered to another person for the use and benefit of such other person, without any agreement, express or implied, that the owner shall be paid.

The owner who so delivers personal property to another is known as a gratuitous bailor, and the person to whom such property is delivered is known as a gratuitous bailee.

INSTRUCTION NO. 11

A gratuitous bailee of personal property does not guarantee the safety of that property while it is in the bailee's possession. This means that the bailee is not liable merely because the personal property is lost, damaged, or destroyed while in the bailee's possession. The bailee is liable, if at all, only when the bailee has failed to exercise that degree of care for such property that would be exercised by persons of prudence in keeping property of like value under the circumstances.

A violation of this law is negligence.

INSTRUCTION NO. 12

When property is delivered to a bailee in good condition and returned in a damaged condition, a presumption arises that the damage is due to the negligence of the bailee. The presumption can be overcome if the damage is shown to have occurred in spite of due care on the part of the bailee.

If the presumption is not overcome by the evidence, you may use the presumption in determining whether the defendant was negligent.

But, if you find such presumption is overcome by evidence that the damage occurred despite due care on the part of bailee, then you will give no weight to the presumption, and the plaintiff must show by the greater weight of the evidence that the defendant was negligent.

INSTRUCTION NO. 13

The plaintiffs claim the defendants – either in their individual capacities or as co-executors – wrongfully converted property belonging to the plaintiffs.

“Conversion” is the wrongful control or dominion over another’s property contrary to that person’s possessory right to the property. The wrongful control must amount to a serious interference with the other person’s right to control the property. Good faith by the defendant is a factor to consider in determining whether the interference amounts to conversion.

To prove a claim of conversion, the plaintiffs must prove all of the following propositions.

1. The plaintiffs owned the personal property in question, or had a possessory right in the property greater than that of the defendants.
2. The defendants exercised dominion or control over the personal property which was inconsistent with, and a serious interference with, the plaintiffs’ ownership or possessory rights to the personal property.
3. The plaintiffs suffered damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proven all of these propositions, the plaintiffs are entitled to damages in some amount. You will determine the various claims of conversion by answering the special interrogatories in each verdict form.

INSTRUCTION NO. 14

The plaintiffs claim the defendants breached various contracts. The plaintiffs, as to each such claim, must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. The plaintiff has done what the contract requires.
6. The defendant has breached the contract
7. The amount of any damage the defendant has caused.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiffs are entitled to damages in some amount. You will determine the various claims of breach of contract by answering the special interrogatories in each verdict form.

INSTRUCTION NO. 15

The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

INSTRUCTION NO. 16

"Consideration" is either a benefit given or to be given to the person who makes the promise (or some other person), or a detriment experienced or to be experienced by the person to whom the promise is made (or some other person). Where the contract provides for mutual promises, each promise is a consideration for the other promise.

INSTRUCTION NO. 17

A breach of the contract occurs when a party fails to perform a term of the contract.

INSTRUCTION NO. 18

Performance is excused if the other party prevents it or makes it impossible.

INSTRUCTION NO. 19

The law implies a promise to pay the reasonable value of services and materials
a person knowingly accepts from another.

INSTRUCTION NO. 20

To prove a claim of invasion of privacy, the plaintiffs must prove both of the following propositions:

1. The defendants intentionally intruded into a matter in which the plaintiffs had a right to expect privacy by placing cameras with audio capability throughout the property.
2. The defendants' conduct would be highly offensive to a reasonable person.

If the plaintiffs have failed to prove either of these propositions, the plaintiffs are not entitled to recover damages. If the plaintiffs have proven both of these propositions, then the plaintiffs are entitled to damages in some amount. You will determine the claim of invasion of privacy by answering the special interrogatories on the verdict form.

INSTRUCTION NO. 21

If you find plaintiffs John and Kelly Thoma are entitled to recover damages you shall consider the following items for the specific counts:

Breach of contract damages are an amount which would put the plaintiffs in as good a position as they would have enjoyed if the contract had been performed:

Count I. The amount John and Kelly Thoma would have realized received from the agreement to cut hay.

Count III. The amount John and Kelly Thoma lost because the gates to the enclosures were removed preventing the cattle from being able to graze.

Count VIII. The amount John and Kelly Thoma would have received for the sale of hay and oats.

Count IX. The amount John and Kelly Thoma would have gained from accessing the leased fields.

Count X. The cost to John and Kelly Thoma to buy fuel at a higher price because they could not access fuel tanks.

Count XI. The value of the John and Kelly Thoma's hay bales.

Count XIX. The amount John Thoma was to receive for Earl Thoma's share of the net wrap for 2018 through 2020.

Count XX. The amount John and Kelly Thoma was to receive for fuel from Earl Toma for fuel in the 2018 crop year.

Count XXI. The amount John and Kelly Thoma was to receive for fuel from Earl Toma for the 2019 crop year.

Count XXII. The amount John and Kelly Thoma was to receive for fuel from Earl Thoma for the 2020 crop year.

Count XXIV. The value to John and Kelly Thoma if they had not been restricted to 10 acres of crop ground after harvest for cattle in crop year 2018.

Count XXV. The value to John and Kelly Thoma if they had not been restricted to 10 acres of crop ground after harvest for cattle in crop year 2019.

Count XXVI. The value to John and Kelly Thoma if they had not been restricted to 10 acres of crop ground after harvest for their cattle in crop year 2020.

Conversion damages are the value of the property to which John and Kelly Thoma had a right to possession.

Count VI. The value of the skid loader.

Count XII. The loss of the value of bales of hay, wagons, trailer, its contents and a skid loader bucket John and Kelly Thoma did not receive.

Count XIII. The value of the value of cement blocks, gates, vacuum pump motor, silo unloader motor, and metal frame for rubber curtains.

Count XIV. The decrease in value of property of John and Kelly Thoma that was allowed to deteriorate.

Count XXVIII. The value of any other property of the John and Kelly Thoma did not receive.

Damages for negligence is the difference between the reasonable market value of property before and after the act constituting negligence.

Damages for negligence is the difference between the reasonable market value of property before and after the act constituting negligence.

Count XVI. The decrease in the value of the crops by under spraying into 2018 and over spraying 2019.

Count XVII. The damage to the value of the fuel barrels.

Count XVIII. The decrease in the value of crops damaged by cattle under the control of Earl Thoma.

Count XXVII. The decrease in value of the chicken coop, steel porch swing and hay feeder.

Invasion of privacy damages in Count VII are the amount necessary to compensate John Kelly Thoma for mental suffering including anguish and embarrassment.

If you find defendants Scott and Earl Thoma are entitled to recover damages you shall consider the following items for the specific counts:

Counterclaim Count II. The cost of electricity consumed by John and Kelly Thoma after their tenancy ended.

INSTRUCTION NO. 22

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. 23

Exhibits have been received in evidence and may be used by you during your deliberations for reference. You are not to tamper with, alter or destroy any exhibits, and you will return them to the court attendant after your deliberations are concluded by leaving them in the jury room.

INSTRUCTION NO. 24

Upon retiring, you shall select a foreperson. It will be their 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.

INSTRUCTION NO. 25

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 the potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply.

If there is a question submitted, the foreperson shall read my response to the jury. Keep any written question and my 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. Please do not put her on the spot by asking her any questions. You should direct any questions to the Court and not to the court attendant.

INSTRUCTION NO. 26

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, or computer, to communicate with anyone about this case during your deliberations. You must not blog nor post any information to a website such as Facebook during your deliberations or any break therein until the court accepts your verdict.

In addition, you must not use any electronic means to investigate this case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media may be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in this case. This would unfairly and adversely impact the judicial process.

INSTRUCTION NO. 27

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete. Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

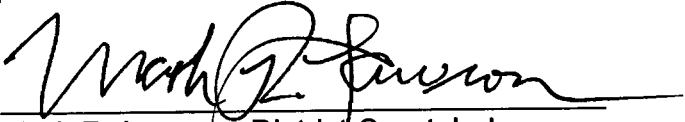
INSTRUCTION NO. 28

I am giving you 24 verdict forms with special interrogatories. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and interrogatories must be signed by your foreperson. Please be advised there is no Verdict Form 12.

After deliberating for six hours from 3:48 o'clock P.m., 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 and interrogatories must be signed by all seven jurors who agree. In the event you are unable to reach a unanimous verdict on any verdict form after six hours, notify the court attendant as to which verdict forms you are unable to agree upon and the Court will instruct you further.

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

Dated this 10th day of July, 2025.


Mark R. Lawson, District Court Judge
Seventh Judicial District of Iowa.

INSTRUCTION NO. 29

Ladies and Gentlemen of the Jury:

You reported today at 9 a.m., and began your deliberations at 3:48 p.m. It is now 4:30 p.m. Because of the lateness of the hour and the length of today's service, 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.

You shall report back to your jury room at 9:00 a.m., July 11, 2025, at which time you will resume and continue your deliberations.

Dated this 10th day of July, 2025.

A handwritten signature in black ink, appearing to read "Mark R. Lawson", written over a horizontal line.

Mark R. Lawson
Judge of the Seventh Judicial District of Iowa