

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	
SPENCER NEWMAN, Individually,	)	REQUESTED
COLBY NEWMAN, Individually;	)	JURY INSTRUCTIONS
JOSH BURNS, Individually;	)	
JACOB SCHROEDER, Individually; and	)	
THE PRESS BOX GRILLE AND BAR,	)	
INC. d/b/a THE PRESS BOX GRILLE	)	
AND BAR, Individually,	)	
	)	
Defendants.	)	

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COME NOW the parties and pursuant to the Court's final pretrial order submit the following requested statement of the case, jury instructions and verdict forms. Disagreements among the parties are indicated, as required by the order.

**Requested Statement of the Case (A)**

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	STATEMENT OF THE CASE
SPENCER NEWMAN and JOSHUA		
BURNS	)	AND JURY INSTRUCTIONS
	)	
Defendant.	)	

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Members of the Jury:

In this case, Plaintiff, Dustin Kindig, is seeking recovery from the Defendants, Spencer Newman and Josh Burns for bodily injuries he claims to have sustained as the result of an October 21, 2017 assault while on and immediately outside a party bus while in the City of Cedar Rapids. Dustin claims Spencer Newman and/or Josh Burns assaulted him, causing him injury. The Defendants have affirmatively asserted self-defense.

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.

Authority: Iowa Civil Jury Instruction 100.1

**Requested Statement of the Case (B)**

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	STATEMENT OF THE CASE
SPENCER NEWMAN, et.al,	)	AND JURY INSTRUCTIONS
	)	
Defendant.	)	

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Members of the Jury: In this case plaintiff Dustin Kindig claims that he was assaulted by Defendants Spencer Newman and Joshua Burns. He claims that the acts of each defendant was the cause of damages.

Each defendant denies that he assaulted Dustin Kindig. Each defendant claims that he acted in self defense. Each defendant denies that his acts were the cause of the damages claimed by Plaintiff. Defendants also dispute the nature and extent of the injuries alleged by Plaintiff.

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.

**Requested 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.

Authority: Iowa Civil Jury Instruction 100.2

**Requested Instruction No. 2(A)**

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence simply means the greater weight of evidence.<sup>1</sup>

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. You should find for the party who presents the greatest quantity of evidence which you find credible.

Authority: Iowa Civil Jury Instruction 100.3 (modified)

<sup>1</sup> Bryan v. Chicago, R. I. & P. R. Co., 19 N.W. 295, 295 (Iowa 1884) (Preponderance of the evidence “simply means the greater weight of evidence”)

**Requested Instruction No. 2(B)**

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: Iowa Civil Jury Instruction 100.3 Burden Of Proof, Preponderance Of Evidence.

**Requested 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 (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 Civil Jury Instruction 100.4 Evidence.

**Requested Instruction No. 4**

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.

Authority: Iowa Civil Jury Instruction 100.5 Deposition Testimony.



**Requested Instruction No. 6**

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

Authority: Iowa Civil Jury Instruction 100.6 Interrogatories.

**Requested Instruction No. 7**

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: Iowa Civil Jury Instruction 100.9 Credibility Of Witnesses.

**Requested Instruction No. 8**

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.

Authority: Iowa Civil Jury Instruction 100.11 Hypothetical Question, Expert Testimony

**Requested Instruction No. 9**

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

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

Authority: Iowa Civil Jury Instruction 100.12 Opinion Evidence, Expert Witness

**Requested Instruction No. 10**

You have heard evidence claiming all of the parties made statements before this trial both 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 by a party and was inconsistent with that party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that party's testimony during the trial but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

**Authority:** Iowa Civil Jury Instruction 100.15 (Tailored to the assumption that each party will be confronted with statements made before trial and with his deposition. This may need to be modified if some party is not confronted with a pretrial statement.)

**Requested Instruction No. 11 (B)**

You have heard evidence of Plaintiff Dustin Kindig's character for violence. [You have also heard evidence of his peaceful character.]

You may use that evidence only to help evaluate the defendants' claims that they acted to defend themselves or to defend others, as explained to you another instructions.

**Authority:** Iowa Rule of Evidence 5.404(2)(B) The sentence within brackets should only be used if such evidence is admitted

**Requested Instruction No. 12**

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.

**Authority:** Iowa Civil Jury Instruction 100.18

**Requested Instruction No. 13**

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 Civil Jury Instruction 100.21



**Requested Instruction No. 14**

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.

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

**Authority:** Iowa Civil Jury Instruction 100.23

**Requested Instruction No. 15 (A)**

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

1. Past Medical Expenses. The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.
2. Future Medical Expenses. The present value of reasonable and necessary hospital charges, doctor charges, surgeries, prescriptions and other medical services, which will be incurred in the future.
3. Physical and Mental Pain and Suffering and Emotional Distress – Past. Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life. If you award Plaintiff past medical expenses, you must award some amount of damages for past physical and mental pain and suffering.
4. Physical and Mental Pain and Suffering and Emotional Distress– Future. The present value of future physical and mental pain and suffering. If you award Plaintiff future medical expenses, you must award some amount of damages for future physical and mental pain and suffering.
5. Physical and Mental Impairment – Past. The disability of mind and body, impairment of physical functions, and deprivation of mental powers from the date of injury to present. Impairment of mind and/or body is the inability of a particular part of the mind and/or body to function in a normal manner. This element of damage relates to functional impairment.

6. Physical and Mental Impairment – Future. The present value of disability of mind and body, impairment of physical functions, and deprivation of mental powers from the present.
7. Past Loss of Income. The reasonable value of lost wages and or time away from business from the date of injury to the present time.

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

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

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

Authority: Iowa Civil Jury Instruction No. 200.1  
Iowa Civil Jury Instruction No. 200.6  
Iowa Civil Jury Instruction No. 200.7  
Iowa Civil Jury Instruction No. 200.8  
Iowa Civil Jury Instruction No. 200.9  
Iowa Civil Jury Instruction No. 200.10  
Iowa Civil Jury Instruction No. 200.11B  
Iowa Civil Jury Instruction No. 200.12  
Iowa Civil Jury Instruction No. 200.13B  
Mossman v. Amana Soc., 494 N.W.2d 676 (Iowa 1993)  
Brant v. Bockholt, 532 N.W.2d 801 (Iowa 1995)  
Yance v. Hoskins, 281 N.W. 489 (Iowa 1938)  
Vasconez v. Mills, 651 N.W.2d 48, 57 (Iowa 2002)  
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)  
Zach v. Morningstar, 258 Iowa 1365, 142 N.W.2d 440 (1966)

Bergquist v. Mackay Engines, Inc., 538 N.W.2d 655 (Iowa App. 1995)

Truscheff v. Abell-Howe Company, 239 N.W.2d 116 (Iowa 1976)

Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)

Iowa Des Moines National Bank v. Schwerman Trucking Co., 288 N.W.2d 198 (Iowa 1980)

Amelsburg v. Lunning, 234 Iowa 852, 14 N.W.2d 680 (1944)

**Requested Instruction No. 15 (B)**

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

1. Past Medical Expenses -The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.

In determining the cost of necessary hospital charges, doctor charges, prescriptions, and other medical services you may consider the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

2. Loss Of time – Earnings – The reasonable value of lost wages from the date of injury to the present time.
3. Loss Of Full Body - Past - Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.
4. Loss Of Full Body – Future. The present value of future loss of function of the body.
5. Physical And Mental Pain And Suffering - Past - Physical and mental pain and suffering from the date of injury to the present time.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

6. Physical And Mental Pain And Suffering - Future - The present value of future physical and mental pain and suffering.

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

parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Likewise, do not allow damages assessed and awarded against one defendant to be included in any amount awarded against another defendant.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

**Authority:** Iowa Civil Jury Instructions 200.1, 200.6, 200.8, 200.10, 200.11B, 200.12, 200.13B. Highlighted sentence added to the "duplicate damages" paragraph.

**Requested Instruction No. 16**

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.

**Authority:** Iowa Civil Jury Instruction 200.38



**Requested Instruction No. 17**

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

**Authority:** Iowa Civil Jury Instruction 200.35B

**Requested Instruction No. 18**

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 appropriately signed it, tell the Court Attendant.

**Authority:** Iowa Civil Jury Instruction 300.1

**Requested Instruction No. 19**

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

**Authority:** Iowa civil jury instruction 700.3

**Requested Instruction No. 20 (A)**

In order to prove the claim of Battery, Dustin Kindig must prove all of the following propositions:

1. The Defendant(s), Spencer Newman and/or Josh Burns strike the Plaintiff causing injury.
2. The act(s) was done with the intent to cause physical pain or injury or insulting or offensive bodily contact to Dustin.
3. The Defendant's act resulted in physical pain or injury or offensive bodily contact.
4. The Defendant's act was a cause of Dustin's damage.
5. The amount of damage suffered by Dustin.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages.

If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages in some amount.

Authority: Iowa Civil Jury Instruction 1900.3

**Requested Instruction No. 20 (B)**

Plaintiff claims that he was assaulted by Defendant Spencer Newman and Defendant Joshua Burns. You must consider plaintiff's claim against each defendant separately. In order to prove the claim of battery, against any one defendant the plaintiff, Dustin Kindig, must prove all of the following propositions:

1. The defendant intentionally battered Plaintiff Dustin Kindig.
2. The act was done with the intent to cause physical pain or injury or insulting or offensive bodily contact.
3. The defendant's act resulted in physical pain or injury or insulting or offensive bodily contact.
4. The defendant's act was a cause of plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions as to any defendant, the plaintiff is not entitled to damages from that defendant. If the plaintiff has proved all of these propositions, as to any defendant then you will consider that defendant's defense of self-defense or defense of others as explained to you and instructions \_\_\_\_ and \_\_\_\_.

**Authority:** Iowa Civil Jury Instruction 1900.3 tailored for use with this case where multiple defendants are accused of battery.

**Requested Instruction No. 21**

The defendants each claim they were acting in self-defense and/or in the defense of another person:

These defenses have been explained to you in other instructions.

The defendant must prove both of the following propositions:

1. That that defendant reasonably believed that the use of force was necessary to defend himself or another person from any actual or imminent use of unlawful force.
2. That the force that the defendant used was no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss.

If a defendant has failed to prove either of these propositions, then that defendant has not proved his defense. If any defendant has proved both of these propositions, then plaintiff is not entitled to recover from that defendant.

**Authority:**

Affirmative defense explanatory instruction modeled on Iowa Civil Jury Instruction 400.6

**Authority With regard to the elements of this affirmative defense:**

Iowa Code Section 704.3. Defense of self or another  
*Moran v. Martinson*, 164 Iowa 712, 146 N.W. 841, 842 (1914)  
*Sandman v. Hagan*, 261 Iowa 560, 570, 154 N.W.2d 113, 119 (1967)

(Note, although self defense and defense of others are recognized civil assault defenses, there are no Iowa Civil Jury Instructions on point.)

**Requested Instruction No. 22**

A battery is committed when a person intentionally does:

1. An act resulting in bodily contact causing physical pain or injury.
2. An act results in bodily contact which a reasonable person would deem insulting or offensive.

**Authority:** Iowa Civil Jury Instruction 1900.4

**Requested Instruction No. 23**

Intent means doing something on purpose as opposed to accidentally. Because intent requires a finding of what a person is thinking when doing an act, it is seldom capable of being proven by direct evidence. You may use your common experience when considering all of the facts surrounding the doing of an act to determine what a person's intent was when committing the act. You may find that if a person does an act on purpose, the person also intended the natural results of the act.

**Authority:** Iowa Civil Jury Instruction 1900.5



**Requested Instruction No. 24**

A defendant is justified in the use of reasonable force in the defense of himself or in the defense of another person when the defendant reasonably believes that such force is necessary to defend himself or another from any actual or imminent use of unlawful force.

Authority:

Iowa Code Section 704.3. Defense of self or another

*Moran v. Martinson*, 164 Iowa 712, 146 N.W. 841, 842 (1914)

*Sandman v. Hagan*, 261 Iowa 560, 570, 154 N.W.2d 113, 119 (1967)

(Note, although self defense and defense of others are recognized civil assault defenses, there are no Iowa Civil Jury Instructions on point.)

**Requested Instruction No. 25**

1. "Reasonable force" means that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.
2. A person may be wrong in the estimation of the danger or the force necessary to repel the danger as long as there is a reasonable basis for the belief of the person and the person acts reasonably in the response to that belief.
3. A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force to defend himself or another.

Authority:

Iowa Code Ann. § 704.1 (West)

*Moran v. Martinson*, 164 Iowa 712, 146 N.W. 841, 842 (1914)

*Sandman v. Hagan*, 261 Iowa 560, 570, 154 N.W.2d 113, 119 (1967)

(Note, although self defense and defense of others are recognized civil assault defenses, there are no Iowa Civil Jury Instructions on point.)

**Requested Instruction No. 26 (A)**

You have heard evidence claiming an individual 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).

Iowa Civil Jury Instruction 100.13

**Requested Instruction No. 26(B)**

You have heard evidence claiming a non-party 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.

**Requested Instruction No. 27**

Occasionally, after a jury retires to the jury room, jurors have questions. These instructions have been prepared carefully after considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions are answered by careful re-reading. 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 the question and answer with the parties and lawyers. This process takes time and requires deliberation before I can reply. The foreperson shall read my response to the jury. The written question and response are to be returned to the Court with the verdict.

The court attendant who has been working with me on this case has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not ask her any questions. You should direct your questions to the Court and not the court attendant.

**Requested Instruction No. 28(b)**

If you find Dustin Kindig had a dry eyes and blurred vision before this incident and this condition was aggravated by this incident causing further suffering then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which he now has which were not caused by the defendant's actions.

200.32 Aggravation of Pre-Existing Condition.

**Requested Verdict Forms (A)(Newman)**

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	VERDICT FORM 1
SPENCER NEWMAN, et.al,	)	(Claim against Spencer Newman)
	)	
Defendant.	)	

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Question No. 1: Did the defendant, Spencer Newman assault plaintiff, Dustin Kindig?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions on this verdict form but go to the next verdict form.]

Question No. 2: Was the defendant, Spencer Newman acting in self-defense or the defense of another?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "yes," do not answer Question No. 3]

Question No. 3: State the amount of damages sustained by the plaintiff Dustin Kindig because of the actions of Spencer Newman for each of the following items of damage. If the plaintiff has failed to prove any item of damage or has failed to prove that any item of damage was caused by defendant, Spencer Newman enter 0 for that item. Do not award for the same damage against more than one defendant.

1. Past Medical Expenses \$ \_\_\_\_\_
2. Future Medical Expenses \$ \_\_\_\_\_

3. Physical and Mental Pain and Suffering and Emotional Distress-Past  
\$\_\_\_\_\_
4. Physical and Mental Pain and Suffering and Emotional Distress-Future  
\$\_\_\_\_\_
5. Physical and Mental Impairment-Loss of Full Mind and Body-Past  
\$\_\_\_\_\_
6. Physical and Mental Impairment-Loss of Full Mind and Body-Future  
\$\_\_\_\_\_
7. Past Loss of Income  
\$\_\_\_\_\_
  
- TOTAL (add the separate items of damage) \$\_\_\_\_\_

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FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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



**Requested Verdict Forms (A)(Burns)**

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	VERDICT FORM 2
SPENCER NEWMAN, et.al,	)	(Claim against Josh Burns)
	)	
Defendant.	)	

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Question No. 1: Did the defendant, Josh Burns assault plaintiff, Dustin Kindig?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions on this verdict form but go to the next verdict form.]

Question No. 2: Was the defendant, Josh Burns acting in self-defense or the defense of another?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "yes," do not answer Question No. 3]

Question No. 3: State the amount of damages sustained by the plaintiff Dustin Kindig because of the actions of Josh Burns to each of the following items of damage. If the plaintiff has failed to prove any item of damage or has failed to prove that any item of damage was caused by defendant, Josh Burns enter 0 for that item. Do not award for the same damage against more than one defendant.

1. Past Medical Expenses \$ \_\_\_\_\_

2. Future Medical Expenses \$\_\_\_\_\_
3. Physical and Mental Pain and Suffering and Emotional Distress-Past  
\$\_\_\_\_\_
4. Physical and Mental Pain and Suffering and Emotional Distress-Future  
\$\_\_\_\_\_
5. Physical and Mental Impairment-Loss of Full Mind and Body-Past  
\$\_\_\_\_\_
6. Physical and Mental Impairment-Loss of Full Mind and Body-Future  
\$\_\_\_\_\_
8. Past Loss of Income \$\_\_\_\_\_
- TOTAL (add the separate items of damage) \$\_\_\_\_\_

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FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

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

**Requested Verdict Forms (B)(Newman)**

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	VERDICT FORM 1
SPENCER NEWMAN, et.al,	)	(Claim against Spencer Newman)
	)	
Defendant.	)	

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Question No. 1: Did the defendant, Spencer Newman assault plaintiff, Dustin Kindig?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions on this verdict form but go to the next verdict form.]

Question No. 2: Was the fault of the defendant, Spencer Newman a cause of any item of damage to the plaintiff, Dustin Kindig?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions on this verdict form but go to the next verdict form.]

Question No. 3: Was the defendant, Spencer Newman acting in self-defense or the defense of another?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "yes," do not answer Question No. 4]

Question No. 4: State the amount of damages sustained by the plaintiff Dustin Kindig by defendant Spencer Newman's fault to each of the following items of damage. If the plaintiff has failed to prove any item of damage or has failed to prove that any item of damage was caused by defendant, Spencer Newman's fault enter 0 for that item. Do not award for the same damage against more than one defendant.

1.	Past Medical Expenses	\$ _____
2.	Loss Of earnings	\$ _____
3.	Loss Of Full Body - Past	\$ _____
4.	Loss Of Full Body – Future	\$ _____
5.	Physical And Mental Pain And Suffering	\$ _____
6.	Physical And Mental Pain And Suffering – Future	\$ _____
TOTAL (add the separate items of damage)		\$ _____

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FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

\_\_\_\_\_  
Juror\*\*

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

**Requested Verdict Forms (B) (Burns)**

**IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY**

DUSTIN KINDIG, INDIVIDUALLY,	)	
	)	
Plaintiff,	)	CASE NO. LACV089801
	)	
vs.	)	
	)	VERDICT FORM 2
SPENCER NEWMAN, et.al,	)	(Claim against Josh Burns)
	)	
Defendant.	)	

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Question No. 1: Did the defendant, Josh Burns assault plaintiff, Dustin Kindig?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions on this verdict form but go to the next verdict form.]

Question No. 2: Was the fault of the defendant, Josh Burns a cause of any item of damage to the plaintiff, Dustin Kindig?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions on this verdict form but go to the next verdict form.]

Question No. 3: Was the defendant, Josh Burns acting in self-defense or the defense of another?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "yes," do not answer Question No. 4]

Question No. 4: State the amount of damages sustained by the plaintiff Dustin Kindig by defendant Josh Burns' fault to each of the following items of damage. If the plaintiff has failed to prove any item of damage or has failed to prove that any item of damage was caused by defendant, Spencer Newman's fault enter 0 for that item. Do not award for the same damage against more than one defendant.

1.	Past Medical Expenses	\$ _____
2.	Loss Of earnings	\$ _____
3.	Loss Of Full Body - Past	\$ _____
4.	Loss Of Full Body – Future	\$ _____
5.	Physical And Mental Pain And Suffering	\$ _____
6.	Physical And Mental Pain And Suffering – Future	\$ _____
TOTAL (add the separate items of damage)		\$ _____

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FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

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Juror\*\*

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Juror\*\*

\_\_\_\_\_  
Juror\*\*

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