

**IN THE IOWA DISTRICT COURT FOR ADAMS COUNTY**

<b>ROBERT BEATTY,</b>  <b>Plaintiff – Counterclaim Defendant,</b>  <b>v.</b>  <b>COLLEEN BEATTY,</b>  <b>Defendant – Counterclaim Plaintiff.</b>	<b>LAW NO.: LACV016368</b>  <b>JURY INSTRUCTIONS AND VERDICT FORM</b>
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Members of the Jury: In this lawsuit, the Plaintiff, Robert Beatty, is seeking money damages from the Defendant, Colleen Beatty. Colleen Beatty, as Counterclaim Plaintiff, is also seeking money damages from Robert Beatty, as Counterclaim Defendant. Robert Beatty claims Colleen Beatty, while having possession and control of certain property of Robert's, failed to keep some property in good and proper condition while it was in her care, and took other property that belonged to Robert, both actions causing him damages. Colleen Beatty claims Robert Beatty, while having possession and control of certain property of Colleen's, failed to keep some property in good and proper condition while it was in his care, and took other property that belonged to Colleen, both actions causing her damages. Robert and Colleen both deny the allegations of the other.

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.   7**

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 likes or dislikes, sympathy, bias, prejudices 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**

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 pretrial 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. 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 witness's 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

I will be using the term “fault”. Fault means one or more acts or omissions towards the person or the property of the actor or of another which constitutes negligence.

**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 proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

“Substantial” means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

There can be more than one proximate cause for an injury or damage.

INSTRUCTION NO. 8

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

**INSTRUCTION NO. 4**

Fair Market Value is the value which a willing buyer and willing seller, both well informed as to the facts, but neither under any compulsion to act, would establish in an arm's length sale of the asset in question.

**INSTRUCTION NO. 10**

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiff or Counterclaim Plaintiff and the Defendant or Counterclaim Defendant and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages.

**INSTRUCTION NO. 11**

After you have compared the conduct of the parties, if you find the Plaintiff or Counterclaim Plaintiff was at fault and the Plaintiff's or Counterclaim Plaintiff's fault was more than 50% of the total fault of his or her claim for damages, the Plaintiff or Counterclaim Plaintiff cannot recover under his or her claim that Defendant or Counterclaim Defendant was at fault.

However, if you find the Plaintiff's or Counterclaim Plaintiff's fault was 50% or less of the total fault of his or her claim for damages and if you find against the Defendant or Counterclaim Defendant, then I will reduce the total damages of that claim by the percentage of Plaintiff's or Counterclaim Plaintiff's fault.

**INSTRUCTION NO. 12**

When one has been given possession of and the right to use personal property that belongs to another and agrees to return the same property to the owner 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. 13**

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 in spite of due care on the part of the 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. 14**

In determining whether a bailee has failed to use ordinary care with the property involved, you shall consider the acts of persons under the bailee's control and direction to be acts of the bailee.

## INSTRUCTION NO. 15

In order for the **Robert** to be successful on his claim of breach of duty created by a bailment, he must prove the following to a preponderance of the evidence:

1. By preventing Robert from having access to his property Colleen became a constructive Bailee of his property.
2. As a constructive bailee Colleen had a duty to exercise ordinary care in protecting Robert's property while he was disallowed from accessing the property.
3. Colleen failed to exercise ordinary care in protecting Robert's property while he was disallowed from accessing the property.
4. Robert's personal property was returned in a damaged condition.
5. Robert's personal property was damaged or missing because of Colleen's failure to exercise ordinary care.

If Robert has failed to prove any of these propositions, then he is not entitled to damages. If he has proven all of these propositions, he is entitled to damages in some amount.

In order for the **Colleen** to be successful on her claim of breach of duty created by a bailment, she must prove the following to a preponderance of the evidence:

1. By preventing Colleen from having access to her property Robert became a constructive Bailee of her property.
2. As a constructive bailee Robert had a duty to exercise ordinary care in protecting Colleen's property while she was disallowed from accessing the property.
3. Robert failed to exercise ordinary care in protecting Colleen's property while she was disallowed from accessing the property.
4. Colleen's personal property was returned in a damaged condition.
5. Colleen's personal property was damaged or missing because of Robert's failure to exercise ordinary care.

If Colleen has failed to prove any of these propositions, then she is not entitled to damages. If she has proven all of these propositions, she is entitled to damages in some amount.

**INSTRUCTION NO. 16**

A party is not entitled to compensation for damage to property that was sustained before, and that the party claiming damage was aware of at the time the court adopted the parties' stipulation for dissolution of marriage on September 8, 2017, unless the claim was preserved in the decree of dissolution.

**INSTRUCTION NO. 17**

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 18

**Conversion** is the act of wrongful control or dominion over another's personal property in denial of, or inconsistent with the owner's possessory right to the property. The interference must be so serious that the person in possession of the property may justly be required to pay the owner of the property the fair market value of the property at the time it was converted. Among the factors to be considered in determining the seriousness of the interference are:

- (a) The extent and duration of the defendants' exercise of dominion or control;
- (b) The possessor's intent to assert a right in fact inconsistent with the owner's right of control;
- (c) The possessor's good faith;
- (d) The extent and duration of the resulting interference with the owner's right of control;
- (e) The harm done to the property; and
- (f) The inconvenience and expense caused to the owner.

INSTRUCTION NO. 19

To succeed on his claim for conversion, **Robert** must prove all of the following by a preponderance of the evidence:

1. Robert owned the property, or had some other possessory right to the property greater than that of Colleen;
2. Colleen exercised dominion or control over the property inconsistent with, and in derogation of, Robert's rights; and
3. Robert has been damaged by Colleen.

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

To succeed on her claim for conversion, **Colleen** must prove all of the following by a preponderance of the evidence:

1. Colleen owned the property, or had some other possessory right to the property greater than that of Robert;
2. Robert exercised dominion or control over the property inconsistent with, and in derogation of, Colleen's rights; and
3. Colleen has been damaged by Robert.

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

**INSTRUCTION NO. 20**

An act which is merely negligent with respect to an item of property will not constitute a conversion, even though the act may result in the loss or destruction of the property.

**INSTRUCTION NO. 21**

No conversion may be found where the exercise of control was not wrongful, as for example, where the property was rightfully in the possession of the Defendant or Counterclaim Defendant or where the Plaintiff or Counterclaim Plaintiff abandoned the property.

**INSTRUCTION NO. 22**

Robert's own negligence (related to his claim) or Colleen's own negligence (related to her claim) is not to be considered a defense to a claim of conversion.

**INSTRUCTION NO. 23**

The parties each have a duty to use reasonable efforts to mitigate their claimed damages. To mitigate means to avoid or reduce damages.

A party claiming the other failed to mitigate their own damages must introduce substantial evidence that:

1. There was something the party could have done to mitigate his or her loss,
2. Requiring the party to do so is reasonable under the circumstances,
3. The party acted unreasonable in failure to undertake the mitigating activity,  
and
4. A causal connection exists between the party's failure to mitigate the damages claimed.

INSTRUCTION NO. 24

If you find the Plaintiff or Counterclaim Plaintiff is entitled to recover damages under any of his or her claims, you shall consider the following items:

1. The fair market value of property that was not returned to proper owner.
2. The reasonable cost of recovery and repair of property that was damaged.
3. The reasonable value of the use of the property for the time reasonably required to complete its repair.

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

INSTRUCTION NO. 25

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

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the Defendant or Counterclaim Plaintiff and others from like conduct in the future. You may award punitive damages only if the Defendant's or Counterclaim Defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

*or Counterclaim Plaintiff's*  
*As*

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 or Counterclaim Defendant's conduct that harmed the Plaintiff or Counterclaim Plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the Defendant or Counterclaim Defendant. You may consider the Defendant's or Counterclaim Defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the Defendant's or Counterclaim Defendant's wealth or ability to pay:
3. The Plaintiff's or Counterclaim 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 or Counterclaim Plaintiff.
4. The existence and frequency of prior similar conduct.

**INSTRUCTION NO. 26**

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.

Evidence of willful and wanton conduct on the part of any party must be by clear and convincing evidence.

Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it. This standard of proof is greater than a preponderance of the evidence.

**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**

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.

**INSTRUCTION NO. 29**

Occasionally, after a jury retires to the jury room, the members have questions. Usually, questions about Instructions can be answered by carefully re-reading them. If, however, you feel it is necessary to ask a question, you must do so in writing and deliver your questions to the Court Attendant.

I cannot communicate with you without first discussing your question and potential answer with the attorneys. This naturally takes time and deliberation before I can reply. My reply will also be in writing. Keep the written question and response and return them to me when you reach a verdict.

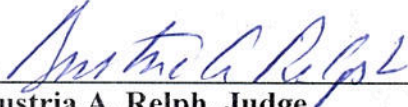
The Court Attendant who has been working with me on this case will be under oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put the Court Attendant on the spot by asking her any questions.

**INSTRUCTION NO. 30**

I am giving you a verdict form and two 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 foreman or forewoman.

After deliberating for six hours from 1:30pm <sup>8-16-14</sup>, 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.

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

  
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**Dustria A. Relph, Judge**  
**5<sup>th</sup> Judicial District of Iowa**  
**August 16, 2019**