

IN THE IOWA DISTRICT COURT IN AND FOR PALO ALTO COUNTY

KATHLEEN BROWNELL Plaintiff, vs. SCOTT JOHNSON; and JOHNSON FARM ACCOUNT TRUST Defendant(s).	Case No. LACV025469 PLAINTIFF'S PROPOSED JURY INSTRUCTIONS
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COME NOW the Plaintiff, Kathleen Brownell, and for her proposed Jury Instructions submit the following, subject to amendment to conform to evidence at the time of trial:

INSTRUCTION NO. ____

100.1 Statement of The Case. Members of the Jury:

In this case Kathleen Brownell claims that since July 2015 Scott Johnson and the Johnson Farm Account Trust have intentionally and improperly interfered with a contract between Kathleen Brownell and Phillip Johnson; namely the right for Kathleen Brownell to receive alimony payments from Phillip Johnson pursuant to a Decree of Dissolution of Marriage and Stipulation and Agreement filed on May 29, 2013.

Scott Johnson and the Johnson Farm Account Trust deny any improper interference.

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. ____

100.2 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.

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:

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

INSTRUCTION NO. ____

100.3 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.

Authority:

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

INSTRUCTION NO. ____

100.4 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.
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.

INSTRUCTION NO. ____

100.5 Deposition Testimony. 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 R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

INSTRUCTION NO. ____

100.6 Interrogatories. 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 R. Civ. P. 1.509

INSTRUCTION NO. ____

100.9 Credibility of Witnesses. 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:

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

INSTRUCTION NO. ____

100.15 Statements by A Party Opponent. You have heard evidence claiming Scott Johnson made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if Scott Johnson had made it under oath during the trial.

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

INSTRUCTION NO. ____

1200.1 Intentional Interference with Contract - Essentials for Recovery.

The Plaintiff must prove all of the following propositions:

1. The plaintiff had a contract with Phillip Johnson.
2. The defendant knew of the contract.
3. The defendant intentionally and improperly interfered with the contract by not making monthly spousal support payments to the Plaintiff.
4. The interference caused Phillip Johnson not to perform the contract.

5. The nature and amount of damage.

If the plaintiff has failed to prove any one or more 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:

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751 (Iowa 1999)
Financial Marketing Services, Inc., v. Hawkeye Bank, 588 N.W.2d 450 (Iowa 1999)
Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)
Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

INSTRUCTION NO. ____

1200.3 Interference with Contract - Definition of Contract. A contract is an agreement between two or more persons to do or not to do something.

Authority:

Compiano v. Kuntz, 226 N.W.2d 245 (Iowa 1975)
Restatement (Second) of Torts, Section 766, comment f

INSTRUCTION NO. ____

1200.4 Interference with Contract - Knowledge.

The defendant “knew” of the contract if the defendant either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between Kathleen Brownell and Phillip Johnson.

Authority

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751, 764 (Iowa 1999)

INSTRUCTION NO. ____

1200.5 Interference with Contract - Improper. In determining whether a defendant's conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The defendant's motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the defendant.
5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the other party.
6. The nearness or remoteness of the defendant's conduct to the interference.
7. The relations between the parties.

Authority:

Toney v. Casey's General Stores, Inc., 460 N.W.2d 849 (Iowa 1990)

Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)

INSTRUCTION NO. ____

1200.6 Intentional Interference. A defendant's interference with a contract is intentional if the defendant either interferes with the contract on purpose or knows the conduct is substantially certain to interfere with the contract.

Authority:

Restatement (Second) of Torts, Section 766, comment j.

INSTRUCTION NO. ____

Assumption is the undertaking or adoption of a debt or obligation primarily resting upon another.

Authority:

Black's Law Dictionary (10th ed. 2014), assumption

INSTRUCTION NO. ____

A person holding the power of attorney, with respect to personal and family maintenance, has the authority to make periodic payments required by a court or governmental agency or an agreement to which the principal is party.

Authority:

Iowa Code Chapter 633B.213(1)(b)

INSTRUCTION NO. ____

Duty of loyalty — impartiality — confidential relationship.

1. A trustee shall administer the trust solely in the interest of the beneficiaries, and shall act with due regard to their respective interests.
2. Any transaction involving the trust which is affected by a material conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:
 - a. The transaction was expressly authorized by the terms of the trust.
 - b. The beneficiary consented to or affirmed the transaction or released the trustee from liability as provided in section 633A.4506.
 - c. The transaction is approved by the court after notice to interested persons.
3. A transaction affected by a material conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the trust property entered into by the trustee, the spouse, descendant, agent, or attorney of a trustee, or corporation or other enterprise in which the trustee has a substantial beneficial interest.
4. A transaction not involving trust property between a trustee and a beneficiary which occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is an abuse of a confidential relationship unless the trustee establishes that the transaction was fair.

Iowa Code Chapter 633A.4202

INSTRUCTION NO. ____

220.1 Damages Intentional and Improper Interference with Contract.

The measure of damages for intentional and improper interference with contract is an amount that would place the party in as good a position as they would have enjoyed if the contract had been performed.

The damages you award for intentional and improper interference with contract must be foreseeable or have been reasonably foreseen at the time the intentional and improper interference occurred.

In your consideration of the damages, you may consider the following:

Damages claimed by Kathleen Brownell as a result of interference with the contract with Phillip Johnson, reasonable Attorney's fees and Court Costs.

Authority

Yost v. City of Council Bluffs, 471 N.W. 2nd 836 (Iowa 1991)

Air Host Cedar Rapids v. Airport Commission, 464 N.W. 2nd 450 (Iowa 1990)

Hoffman v. National Medical Enterprises, Inc., 442 N.W. 2nd 123 (Iowa 1989)

Potter v Oster, 426 N.W. 2nd 148 (Iowa 1988)

Ritam Corporation v. Applied Concepts, Inc., 387 N.W. 2nd 619 (Iowa App. 1986)

INSTRUCTION NO. ____

100.18 General Instruction To Jury. 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. ____

100.21 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.

Authority:

Iowa R. Civ. P. 1.926 (1)

INSTRUCTION NO. ____

100.23 Use of Electronic Devices. 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. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

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

INSTRUCTION NO. ____

Return of Verdict - Forms of Verdict. I am giving you two verdict forms. 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 from ____ o'clock __. 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 must be signed by all seven jurors who agree.

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

INSTRUCTION NO. ____

300.2 Single Plaintiff - Single Defendant - Cases Not Governed by Chapter 668 - Plaintiff's verdict.

IN THE IOWA DISTRICT COURT IN AND FOR PALO ALTO COUNTY

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We, the Jury, find in favor of the plaintiff as to the claim for intentional interference with contract by Defendant Scott Johnson and fix the amount of her recovery against the Defendant Scott Johnson at _____.

We, the Jury, find in favor of the plaintiff as to the claim for intentional interference with contract by Defendant Johnson Farm Account Trust and fix the amount of her recovery against the Defendant Johnson Farm Account Trust at _____.

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.

DATED this 22nd day of January, 2019.

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