

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

CHRISTINE KELLOGG,  Plaintiff,  v.  HARVEY'S IOWA MANAGEMENT COMPANY, INC., d/b/a HARRAH'S COUNCIL BLUFFS CASINO and HOTEL,  Defendant.	Case No. 04781 LACV118387   <b>PLAINTIFF'S PROPOSED JURY INSTRUCTIONS</b>
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The Plaintiff, Christine Kellogg, hereby offers the following proposed Jury Instructions to the Court:

**Instruction No. \_\_\_\_\_**

Members of the Jury: in this case the plaintiff, Christine Kellogg claims that she was attempting to enter the business of the defendant when she slipped and fell in the entryway on November 23, 2016 the defendant's employees had failed to keep the entryway area safe for foot traffic and clear of slippery substances. The entryway has significant pedestrian traffic. The plaintiff claims that the defendant failed to keep the entryway clean and safe for pedestrian safety and failed to warn the plaintiff and others of the dangerous condition.

The plaintiff claims that as a direct result of the defendant's negligence, the plaintiff sustained past medical expenses, future medical expenses, past loss of function of the body, future loss of function of the body, past physical and mental pain and suffering and future physical and mental pain and suffering.

The plaintiff claims that the defendant knew or in the exercise of reasonable care should have known the condition of the premises was not clear of any slippery substances, and that it involved an unreasonable risk of injury to a person in the plaintiff's position. The plaintiff further claims that the defendant knew or should have known the plaintiff would not discover the conditions or that it would present an unreasonable risk of injury.

The defendant denies the allegations and claims that the plaintiff's own negligent acts caused and contributed and contributed to the plaintiff's damages, if any, and if plaintiff, by reason of her negligent acts or omissions was comparatively at fault sufficient to bar her recovery as a matter of law, or reduce recovery in an amount proportionate to the percentage attributable to her comparative fault, said negligence was in failing to maintain a proper lookout, in failing to exercise ordinary care for her own safety; and in failing to take action to avoid injury.

Do not take this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give to you.

(Iowa Model Instruction 100.1 Statement of the Case)

**Instruction No. \_\_\_\_**

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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully.

You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

(Iowa Model Instruction 100.2 Duties Of Judge And Jury, Instructions As Whole)

**Instruction No. \_\_\_\_**

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.

(Iowa Model Instruction 100.3 Burden Of Proof, Preponderance Of Evidence)

**Instruction No. \_\_\_\_**

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.

(Iowa Model Instruction 100.4 Evidence)

**Instruction No. \_\_\_\_**

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.

(Iowa Model Instruction No. 100.5 Deposition Testimony)

**Instruction No. \_\_\_\_**

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.

(Iowa Model Instruction No. 100.6 Interrogatories)

**Instruction No. \_\_\_\_**

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.

(Iowa Model Instruction No. 100.9 Credibility of Witnesses)

**Instruction No. \_\_\_\_\_**

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.

(Iowa Model Instruction 100.12 Opinion Evidence, Expert Witness)

**Instruction No. \_\_\_\_\_**

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.

(Iowa Model Instruction 100.18 General Instruction to Jury)

**Instruction No. \_\_\_\_\_**

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

(Iowa Model Instruction 100.19 Clear Convincing and Satisfactory Evidence)

**Instruction No. \_\_\_\_\_**

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.

(Iowa Model Instruction 100.21 Cautionary Instruction- Juror's Notes)

**Instruction No. \_\_**

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.

(Iowa Model Instruction 100.23 Use of Electronic Devices)

**Instruction No. \_\_\_\_**

The reasonable cost of necessary hospital charges, doctor charges, prescriptions, other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, 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.

(Iowa Model Instruction 200.6 Past Medical Expenses)

**Instruction No. \_\_\_\_**

The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, other medical services which will be incurred in the future.

(Iowa Model Instruction 200.7 Future Medical Expenses)

**Instruction No. \_\_\_\_\_**

Loss of function of the mind or body from the date of injury to the present time. Loss of mind or body is the inability of a particular part of the mind or body to function in a normal manner.

(Iowa Model Instruction 200.10 Loss of Full Mind and Body- Past), use "mind or body"

**Instruction No. \_\_\_\_\_**

The present value of future loss of function of the mind or body.

(Iowa Model Instruction 200.11B Loss Of Full Mind And Body - Future -Actions Filed On Or After July 1, 1997)

**Instruction No. \_\_\_\_\_**

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.

(Iowa Model Instruction 200.12 Physical And Mental Pain And Suffering – Past)

**Instruction No. \_\_\_\_\_**

The present value of future physical and mental pain and suffering.

(Iowa Model Instruction 200.13B Physical And Mental Pain And Suffering - Future - Actions Filed On Or After July 1, 1997)

**Instruction No. \_\_\_\_\_**

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.

(Iowa Model Instruction 200.35B Definition Of Present Value - Actions Filed On Or After July 1, 1997)

**Instruction No. \_\_\_\_\_**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Christine Kellogg is \_\_\_\_\_ years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Christine Kellogg's health, habits, occupation, and lifestyle, when deciding issues of future damages.

**(Iowa Model Instruction 200.37 Mortality Tables - Personal Injury)**

**Instruction No. \_\_\_\_\_**

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.

(Iowa Model Instruction 200.38 Quotient Verdict)

**Instruction No. \_\_\_\_\_**

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 answers to questions] and appropriately signed it, tell the Court Attendant.

(Iowa Model Instruction 300.1 Return of Verdict-Forms of Verdict) use six

**Instruction No. \_\_\_\_\_**

CHRISTINE KELLOGG v. HARVEY'S IOWA MANAGEMENT COMPANY, INC., d/b/a  
HARRAH'S COUNCIL BLUFFS CASINO and HOTEL- LACV118387

VERDICT NO.

We, the Jury, find in favor of the defendant and against the plaintiff.

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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 to it after six hours or more of deliberation.

(Iowa Model Instruction 300.3 Single Plaintiff - Single Defendant - Cases Not Governed By Chapter 668 - Defendant's Verdict) use all the information from the brackets

**Instruction No. \_\_\_\_\_**

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence and unreasonable failure to avoid an injury.

(Iowa Model Instruction 400.1 Fault – Defined)

**Instruction No. \_\_\_\_\_**

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 and defendant(s) and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages

(Iowa Model Instruction 400.2 Comparative Fault)

**Instruction No. \_\_\_\_\_**

After you have compared the conduct of all parties, if you find the plaintiff, Christine Kellogg, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, Christine Kellogg, cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

(Iowa Model Instruction 400.3 Comparative Fault- Effects of Verdict)

**Instruction No. \_\_\_\_\_**

The Plaintiff claims the defendant was at fault in the following particular(s):

Failing to keep the entryway clean and safe for pedestrian safety and failing to warn the plaintiff and others of the dangerous condition.



The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove fault the plaintiff must prove that the defendant knew or in the exercise of reasonable care should have known the plaintiff would not have discovered the condition or the plaintiff would not have realized the condition presented an unreasonable risk of injury or the plaintiff would not protect herself from the condition. . The defendant was negligent in failing to keep the entryway clean and safe for pedestrian safety and failing to warn the plaintiff and others of the dangerous condition. The negligence was the cause of the plaintiff's damage and the nature and extent of damage.
2. The defendant's fault was a cause of the plaintiff's damage.
3. The amount of damage.
4. 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, you will consider the defense of comparative fault as explained in Instruction Nos. \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

(Iowa Model Instruction 400.5 Comparative Fault – Single Plaintiff – Essential For Recovery)

**Instruction No. \_\_\_\_\_**

The plaintiff must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
  - a. Failing to keep the entryway clean and safe for pedestrian safety
  - b. Failing to warn the plaintiff and others of the dangerous condition
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

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, you will consider the defense of \_\_\_\_\_ as explained in Instruction No.\_\_\_\_\_.]

(Iowa Model Instruction 700.1 Essentials for Recovery)

**Instruction No. \_\_\_\_\_**

"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.

(Iowa Model Instruction 700.2 Ordinary Care- Common Law Negligence- Defined)

**Instruction No. \_\_\_\_\_**

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

(Iowa Model Instruction 700.3 Caused – Defined)

**Instruction No. \_\_\_\_\_**

You must decide whether the claimed harm to plaintiff is within the scope of defendant's liability. The plaintiff's claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

(Iowa Model Instruction 700.3A Scope of Liability – Defined)

**Instruction No. \_\_\_\_\_**

The mere fact an accident occurred or a party was injured does not mean a party was negligent.

(Iowa Model Instruction 700.8 Accident Does Not Constitute or Raise Presumption of Negligence)

**Instruction No. \_\_\_\_\_**

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

(Iowa Model Instruction 700.12 Proper Look Out)

**Instruction No. \_\_\_\_\_**

The plaintiff must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.

2. The defendant knew or in the exercise of reasonable care should have known:
  - a. the plaintiff would not discover the condition, or
  - b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
  - c. the plaintiff would not protect herself from the condition.
3. The defendant was negligent in failing to keep the entryway clean and safe for pedestrian safety and failing to warn the plaintiff and others of the dangerous condition.
4. The negligence was a cause of the plaintiff's damage.
5. The nature and extent of damage.

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, then you will consider the defense of \_\_\_\_\_ as explained in Instruction No. \_\_\_\_\_.]

(Iowa Model Instruction 900.1 Essential for Recovery – Condition or Premises – Duty to Lawful Visitors)

**Instruction No. \_\_\_\_\_**

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether the Defendant has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

(Iowa Model Instruction 900.2 Reasonable Care- Factors to Consider for Landowner or Occupier)

**Instruction No. \_\_\_\_\_**

The plaintiff must prove all of the following propositions:

1. The defendant knew or had reason to know of the presence of the plaintiff on the premises.
2. The defendant afterward was negligent by failing to exercise reasonable care for the plaintiff's safety by failing to keep the entryway clean and safe for pedestrians and failing to warn the plaintiff and others of the dangerous condition].
3. The activities were the cause of the plaintiff's damage.
4. The amount of damage.

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, then you will consider the defense of \_\_\_\_\_ as explained in Instruction No. \_\_\_\_\_.]

(Iowa Model Instruction 900.3 Essential for Recovery- Condition of Premises – Duty to Trespassers – Negligence)

**Instruction No. \_\_\_\_\_**

The owner of premises is presumed to know all conditions on the premises that are caused or created by the owner or the owner's employee. The owner of premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the owner had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the owner should have known about it.

(Iowa Model Instruction 900.5 Condition Of The Premises - Knowledge Or Notice Of The Condition)

**Instruction No. \_\_\_\_\_**

Concerning number 2 of Instruction No. [900.1], a defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position unless the defendant should anticipate the harm despite such knowledge or obviousness.

(Iowa Model Instruction 900.6 Known or Obvious)

**Instruction No. \_\_\_\_\_**

A condition is "known" if one is aware of conscious of its existence and of the risk of harm it presents.

A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

(Iowa Model Instruction 900.7 Known or Obvious- Defined)