

WARNING: CAREFULLY FOLLOW ALL INSTRUCTIONS – CHANGES AND REARRANGES IN IOWA CIVIL JURY INSTRUCTIONS

By: Josh Strief of Elverson Vasey, Des Moines, Iowa

The warning label that makes you wonder: who did that? The instruction manual that makes you question your faith in humanity. We've all seen them:

Drain Cleaner: If you do not understand or cannot read all directions, cautions and warnings, do not use this product.

Television: Do not pour liquids into your television set.

Baby Stroller: Caution – Remove child before folding.

Chainsaw: Danger – Do not hold the wrong end of chainsaw.

Jury trials also depend on instructions given by the judge to the jury. While less obvious than the above warnings, failure to follow new developments in Iowa Civil Jury Instructions can be similarly devastating to your client's case. During my 5+ years as a member of the Iowa State Bar Association's Iowa Jury Instructions Committee, I've been able to help shape some of the recent changes to Iowa's Civil Jury Instructions. In this article, I will highlight some of those changes.

SCOPE OF LIABILITY – WHAT DO DRAIN CLEANER AND SCOPE OF LIABILITY HAVE IN COMMON? WHEN USERS DON'T UNDERSTAND THE INSTRUCTIONS, THEY DON'T USE THE PRODUCT:

Since its introduction, Scope of Liability has been a difficult legal concept to understand and use, and it was similarly difficult to update. The Jury Instruction Committee worked on the instruction for multiple years before agreeing to the revisions, which were approved in July 2025. The revisions aimed to make the instruction easier to understand for jurors and litigants alike in a few ways. First, the instruction attempts to use simpler language. Second, the instruction format was changed to state the rule in the first paragraph and then use the second paragraph to clarify when conduct is and is not within the scope of liability. Third and finally, the instruction re-introduces the concept of foreseeability, which was largely lost after elimination of proximate cause instructions.

-Old Version: 700.3A Scope of Liability – Defined. 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 [or other tort obligation] 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.

-New Version: 700.3A Scope of Liability – Defined. Harm is within the scope of a party's liability when it is among the type of reasonably foreseeable harms that made the party's conduct negligent.

If repeating the defendant's conduct would make it more likely for another person to suffer the same type of harm claimed by plaintiff, then the harm is foreseeable and within the scope of defendant's liability. If defendant's conduct merely places plaintiff in a situation where plaintiff sustains injury from an unrelated act or event, the claimed harm is not within the scope of defendant's liability.

DRAM SHOP – LIQUIDS POURED INTO THE MOUTH RATHER THAN THE TELEVISION:

Iowa's dram shop statute, Iowa Code § 123.92, has seen frequent and significant changes during the last twenty years, as it has undergone changes in 2009, 2013, 2016, 2018, 2022, and 2023. In 2024, the Committee updated the dram shop instructions to address the statutory changes to the extent it could do so. This involved a complete re-write of Chapter 1300 of the Iowa Civil Jury Instructions. Because the entire Chapter was re-written, I will not include it here for brevity's sake.

However, I do have one additional comment: while most of the changes were straightforward based on the statute and relevant case law, there was at least one item the Committee intentionally left vague: Instruction 1300.3 – Definition of Intoxication. Iowa courts have not yet defined the phrase "visibly intoxicated," so the Committee did not feel it could set forth a brightline rule in the instruction defining intoxicated. The Comment to 1300.3 does refer to factors for "observable signs of intoxication" set forth in Banwart v. 50th Street Sports, L.L.C., 910 N.W.2d 540 (Iowa 2018), but those factors were arguably dicta and not meant to be a comprehensive, definitive, or universally applicable list of factors, so they were not included in the instruction itself. Litigants dealing with dram shop should be aware of the Banwart decision and make sure you consider arguments as to why the factors therein are or are not applicable to your specific case, as well as if other factors may be relevant to the "visibly intoxicated" analysis.

PREMISES LIABILITY – REMOVE THE BABY "DUTY" BEFORE IT GETS STUCK IN THE INSTRUCTION STROLLER:

Before 2017, Iowa law (and jury instructions) supported submitting an instruction for "Known or Obvious" conditions, which indicated a defendant was not liable for known or obvious conditions unless the harm should have been anticipated despite the knowledge or obviousness. That instruction specifically referenced Instruction 900.1(2), which concerned part of the existence/breach of duty analysis undertaken by the jury. In 2017, the Iowa Supreme Court in Ludman v. Davenport Assumption High School reiterated adoption of section 51 of the Restatement (Third) of Torts: Liability for Physical and Emotional Harm and analyzed the known or obvious danger instructions in that context. 895 N.W.2d 902, 914 (Iowa 2017). The

Ludman Court held that whether a condition is open or obvious does not negate the possessor of land's duty; instead, the issue of whether a condition is open or obvious can be a factor in the "contributory negligence" analysis. Id.

In evaluating the effect of this decision, as well as Wieseler v. Sisters of Mercy Health Corp., 520 N.W.2d 445 (Iowa 1995), the Committee determined the Comment for the Known or Obvious instruction should be revised. Now, the Comment indicates the "Known or Obvious" instruction *should not* be given if comparative fault is alleged, but whether a condition is known or obvious can be a factor in the comparative fault analysis in that circumstance. While I do not know that this Comment is ideal, it was preferable to other options like complete elimination of the "Known or Obvious" instructions.

-Old Version: 900.6 Known Or Obvious. 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.

Authority

Wieseler v Sisters of Mercy Health Corp., [540 N.W. 2d 445](#) (Iowa 1995)
Restatement (Second) of Torts, section 343A

-New Version: 900.6 Known Or Obvious. 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.

Authority

Wieseler v Sisters of Mercy Health Corp., [540 N.W. 2d 445](#) (Iowa 1995)
Restatement (Second) of Torts, section 343A

Comment

Note: Instruction 900.6 and Instruction 900. 7 should not be given if the defense of comparative fault under Iowa Code chapter 668 is asserted. *See Wieseler v. Sisters of Mercy Health Corp.*, 540 N.W.2d 445 (Iowa 1995); *Ludman v. Davenport Assumption High School*, 895 N.W.2d 902 (Iowa 2017); Restatement (Third) of Torts: Liability for Physical and Emotional Harms, § 51, comment k). Rather, when comparative fault is alleged, whether a condition is known or obvious can be a factor in the comparative fault analysis.

EMPLOYMENT RIGHTS – LIKE STICKING A HAND IN THE WRONG END OF A CHAINSAW?

Ok, it's not nearly as bad as chainsaw fingers, but the process of revising Iowa's Employment Rights instructions is neither simple nor easy. During my time on the Committee, the longest ongoing project has been revising and updating the Employment Rights instructions in Chapter 3100. Updating these instructions is difficult because they involve complex issues, an interplay between state and federal law at times, and frequent new decisions from appellate courts. Similar to the Dram Shop instructions, the number of recent revisions to the Employment Rights instructions are too numerous to set forth the prior and current versions of the revised instructions in full, but here is a list of recently changed or added instructions:

1. 3120.1 Workplace Harassment/Hostile Work Environment [Indirect Liability];
2. 3120.2 Workplace Harassment/Hostile Work Environment by a Supervisor;
3. 3120.3 Severe or Pervasive Conduct – Definition;
4. 3210.4 Supervisor Defined;
5. 3120.5 Unwelcome Conduct;
6. 3130.1 Constructive Discharge;
7. 3130.3 Intolerable Working Conditions – Definition;
8. 3140.1 Discrimination;
9. 3140.2 Adverse Action;
10. 3140.3 Retaliation;
11. 3140.4 Motivating Factor; and
12. 3140.5 Same Decision Affirmative Defense.

FUTURE CHANGES AND REARRANGES:

The Committee continues to review requests for updates and revisions to the Iowa Civil Jury Instructions upon receipt from judges and attorneys. I anticipate there will be ongoing work on Employment Rights instructions, along with other “hotbed” litigation areas like will contests. If you know of instructions that need to be updated or areas of law where no uniform instructions exist, I would encourage you to notify the Committee or get ahold of me with the request (joshua.strief@elversonlaw.com). More importantly, I encourage anybody interested in jury instructions and trying cases to apply to be on the Committee through the Iowa State Bar Association.