IN THE SUPREME COURT OF IOWA

No. 15–1344

Filed December 15, 2017

Amended February 22, 2018

SAMIR M. SHAMS,

Appellee,

vs.

SONA HASSAN,

Appellant.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Polk County, Jeanie Kunkle Vaudt, Judge.

The plaintiff seeks further review of a court of appeals decision vacating a judgment entered on a jury verdict and remanding for a new trial. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND CASE REMANDED.**

Steven C. Reed of Law Offices of Steven C. Reed, West Des Moines, for appellant.

Andrew B. Howie of Shindler, Anderson, Goplerud & Weese, P.C., West Des Moines, for appellee.

MANSFIELD, Justice.

I. Introduction.

This intrafamily dispute comes before us for the second time. A brother, leaving for Iraq for an extended period of time, entrusted his sister with blank checks he had signed in advance. The checks were to be used to pay bills of the brother and his adult children. On his return, the brother was dismayed to learn that the sister had written many checks to herself. She assured him, however, that his money had been invested in a land transaction and was still available to him whenever he needed it. The sister did provide some funds to her brother as he requested. However, when the brother later asked for all the money back, she told him it had been spent. The brother sued.

The statute of limitations is a flash point in the lawsuit. If the brother's causes of action accrued when he learned the sister had written checks to herself (or earlier), the claims are time-barred. If they accrued only when he was told the money was gone, they are timely. The sister pled the statute of limitations in her answer and unsuccessfully moved for summary judgment and a directed verdict on that basis. Later, she submitted a proposed statute-of-limitations instruction for the jury. The district court declined to instruct the jury on the statute of limitations, and the jury returned a substantial damage verdict on several of the brother's legal theories. The sister now appeals.

We conclude this case must be reversed and remanded for a new trial. Genuine factual disputes over the statute of limitations should be resolved by the factfinder—here, the jury. Moreover, although the sister's proposed statute-of-limitations instruction required editing and amplification before it could have been given to the jury, it was sufficient to alert the trial court to the need for an instruction in an area where no

instruction was being given. Therefore, error was preserved. For these reasons, we affirm the decision of the court of appeals, reverse the district court's judgment, and remand for further proceedings.

II. Factual and Procedural Background.

Samir Shams emigrated from Egypt to the United States in 1971. In 1980, he came to Des Moines. He continued to live in the Des Moines area and held a variety of jobs until 2003, when he was hired to serve as an Arabic–English interpreter in Iraq.

Before Shams left for Iraq, he underwent training in Virginia. He also spent time with his sister Sona Hassan, who lives in Maryland. Knowing he was going to be in Iraq for some time, Shams gave Hassan several books of signed blank checks from his Bankers Trust bank account in Windsor Heights. This account contained Shams's life savings, to which regular deposits of paychecks, disability payments, and IPERS payments were continuously added.

Shams has three grown children who live in Iowa and Arizona. Shams and Hassan agreed that Hassan would use the presigned checks to pay any of Shams's bills that came to Hassan's attention or to take care of Shams's kids if they needed money. Hassan did not have permission to use the money for her own benefit.

While Shams was in Iraq, he did not see cancelled checks or account statements for the Bankers Trust account. Upon his return to the United States in June 2006, Shams visited his brother in Arizona. His brother had been receiving the monthly mailings from the bank, and at that point Shams noticed cancelled checks made out to Hassan. Traveling thereafter from Arizona to Maryland, Shams asked Hassan about his money. Hassan responded, "Your money is safe." She explained that funds in the bank account had been used to buy land in

Maryland for development, that the property would be resold at a profit to him, and that if he needed money all he had to do was to ask. Hassan's husband took Shams to see the land. Shams was satisfied at the time with this explanation.

In 2009, Shams needed $50,000 to buy a house and asked Hassan for the funds. She provided the $50,000. However, the following year Shams asked her for the rest of his money and was told there was only $124,000 left.

It turned out that Hassan had written checks totaling $269,980.66 to herself, many of which were initially deposited in other accounts. The parties later disputed vigorously and in excruciating detail who benefited from this money—Hassan and her immediate family or Shams and his immediate family.

On July 26, 2011, Shams filed suit against Hassan in the Iowa District Court for Polk County, alleging breach of contract, conversion, bad faith, fraud, and breach of fiduciary duty. Hassan moved to dismiss for lack of personal jurisdiction, claiming she did not have minimum contacts with the State of Iowa. The district court granted the motion, and the court of appeals affirmed. On further review, we reversed. *Shams v. Hassan*, 829 N.W.2d 848, 860–61 (Iowa 2013). We concluded Hassan had sufficient contacts with Iowa for personal jurisdiction under the effects test for intentional torts set forth in *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482 (1984). *Shams*, 829 N.W.2d at 857–60.

On remand, in addition to answering Shams's claims, Hassan filed a counterclaim against Shams for defamation based on repeated statements he had made about her being a thief. Hassan also pled the statute of limitations as an affirmative defense. *See* Iowa Code § 614.1(4) (2011) (five-year statute of limitation for actions founded on unwritten

contracts, brought for injuries to property, or for relief based on fraud). Hassan later filed a motion for summary judgment based on the statute of limitations. The district court denied the motion, ruling,

> [Hassan] says that the applicable statutes of limitations began to run in 2006. [Shams] says they did not begin to run until 2010. [Hassan] says [Shams] should have known he was injured in 2006. [Shams] says he did not know of his injury until 2010. The Court finds that these opposing statements assert genuine issues of material fact that a jury must sort out.

The case proceeded to a jury trial. Much of the two-week trial was spent going over particular checks, transfers, and expenditures. Neither side retained an accountant or any other type of expert or summary witness. Instead, both Shams and Hassan were called to the stand to testify on four separate occasions: once each in their own case, their opponent's case, their own rebuttal case, and their opponent's rebuttal case. Other relatives testified as well.

Hassan moved for a directed verdict based on the statute of limitations. The arguments replayed the prior summary judgment arguments. Hassan maintained that Shams clearly knew by June 2006 that Hassan had not complied with the terms under which she was given authority to disburse checks on his bank account; yet he did not file suit until July 2011, over five years later. Shams countered that Hassan had made assurances in 2006 that his money was safe and he could continue to have it, and in fact did give him money as requested in 2009. According to Shams, the event triggering the obligation to bring suit did not occur until 2010, when Hassan refused to give him any more money. The district court denied the motion.

Hassan also proposed a statute of limitations jury instruction as follows:

> The defendant has raised as a defense to the plaintiffs' claims of oral contract, conversion, fraud and breach of fiduciary duty that the plaintiff cannot prevail on those claims or any one of those [claims] because he did not bring suit on such claims with[in] the time allowed by law. There are state statutes that specify how much time a person has to bring certain kinds of claims. These are called statutes of limitation. A person cannot recover on a claim that is brought after the time period that applies to a particular claim, even if it is only one day late.
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> The statute of limitation that applies to each of the above claims provides that the claim must be brought within five years of the date the incident occurred. The plaintiff brought his suit against the defendant on July 26, 2011. A claim for oral contract, conversion, fraud, and breach of fiduciary duty, based on acts or occurrences that took place more than five years before the date is barred by the statute of limitation. You must decide when each act or occurrence on which [he] bases his claim occurred. If any of these acts or occurrences took place more than five years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation.

Shams's counsel objected to this instruction, pointing out "this instruction is more in tune as it is drafted for a personal injury action, because it talks in regards to acts or occurrences." He maintained that for the claims asserted in this case, the statute of limitations would not begin running just because some act on which the claim is based had occurred. For example, he noted, the statute of limitations on a breach of contract claim does not start when "the contract is entered into."

The district court declined to give the proposed instruction. It explained,

> I am going to let the case go to the jury without the instruction that Mr. Reed has proposed for the reasons that, A, it's not a stock; B, I don't think it applies; and C, as it is drafted, I believe the jurisdictions that Mr. Reed found the instruction located in, used it for purposes that were not associated with the kinds of claims we have asserted here. So for all of those reasons, I am going to not submit that instruction to the jury. But we've made a record for the benefit of counsel on why Mr. Reed thinks it should be submitted, when Mr. Anderson believes it is not to be

> submitted, and why the Court has ultimately concluded that that instruction should not be submitted.

The case thus went to the jury without a statute-of-limitations instruction.

The jury returned a verdict of $148,501.60 for Shams on his conversion, breach-of-fiduciary-duty, and breach-of-contract claims, but not his fraud claim. The jury also returned an actual damage verdict of $14,556.25 and a punitive damage verdict of $15,000 for Hassan on her libel counterclaim.

Hassan filed a motion for new trial on several grounds, including the failure to give her statute-of-limitations instruction. The district court denied the motion, stating in part,

> The statute of limitations instruction [Hassan] proposed was properly withheld from the jury as to all of [Shams's] claims she asserts it applied to. This proposed instruction is not the law in Iowa and does not include the discovery rule. Furthermore, the evidence presented was sufficient for the jury to conclude that [Shams] and [Hassan] entered into a new oral agreement in June of 2006, and his claims for breach of contract, conversion, and breach of fiduciary duty occurred in 2010 when [Hassan] declined to return additional money to [Shams].

Hassan appealed, and we transferred the case to the court of appeals. That court reversed and remanded for a new trial. It reasoned that Hassan was entitled to a statute-of-limitations instruction, even if the particular instruction she had requested was not legally correct. As the court put it,

> Whether Shams was diligent and used reasonable care to investigate when he first discovered checks had been written on his account contrary to his instructions was an issue not addressed by the jury. If presented with the issue, the jury could have determined that Shams did not need to investigate further due to Hassan's additional misrepresentations, his familial relationship with Hassan, and Hassan's perpetuation of Shams' belief that his money was available to him by providing the requested $50,000 to

> Shams in 2009. The jury could have concluded Shams only became aware of his injury in 2010 when he requested the return of all of his money and was told there was nothing left. Notwithstanding, considering the evidence in a light most favorable to Hassan, the jury may have concluded that a reasonable person would not rely upon further representations by Hassan after discovering what appeared to be embezzlement of Shams' monies in bank account. Viewing the evidence in the light most favorable to Hassan, we conclude Hassan's assertion that the statute of limitations began to run in June 2006 was supported by substantial evidence, entitling Hassan to a jury instruction on the statute-of-limitations theory.
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> We acknowledge, however, Hassan's proposed jury instruction did not fully state Iowa law. Significantly, the proffered jury instruction did not accurately define the discovery rule and, upon these facts, reversible error would have existed if the jury had been instructed as proposed by Hassan without also correctly instructing on the discovery rule. But our concern is with Hassan's legal theory—that the claims were barred by the statute of limitations—not the sufficiency of the evidence to support the instruction itself. "The court is required to instruct the jury as to the law applicable to all material issues in the case." Iowa R. Civ. P. 1.924. The applicability of the statute of limitations and the question whether the limitation period was tolled, were material issues supported by the pleadings and substantial evidence in the record. Without an instruction or interrogatory related to the statute of limitations, Hassan was unable to defend against the claims on this theory.
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> . . . .
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> Here, we have a factual dispute whether the statute of limitations had expired or was tolled, and the jury should have been instructed on the issues in some manner such as written interrogatories.

(Citations omitted.)

We granted Shams's application for further review.

III. Standard of Review.

"[W]e review refusals to give a requested jury instruction for correction of errors at law." *Alcala v. Marriot Int'l, Inc.*, 880 N.W.2d 699, 707 (Iowa 2016).

IV. Analysis.

The central question here is whether a district court that receives a defective instruction from a defendant on an affirmative defense not otherwise covered in the instructions has a duty to turn it into a proper instruction. Before we get to that issue, though, we must work through several other matters.

A. Should Fact Issues Relating to the Applicability of the Statute of Limitations Have Been Submitted to the Jury? We agree with the court of appeals that whether a claim in a civil case is barred by the statute of limitations should be determined by the fact finder, unless the issue is so clear it can be resolved as a matter of law. Our prior caselaw supports this proposition. *See State v. Tipton*, 897 N.W.2d 653, 684 (Iowa 2017) ("In the civil context, . . . we have held factual questions surrounding the application of the civil discovery rule raised questions for the jury."); *Murtha v. Cahalan*, 745 N.W.2d 711, 717–18 (Iowa 2008) ("These inquiries—what constitutes the injury and its cause and when the plaintiff is charged with knowledge of such injury and its cause—are highly fact-specific. . . . [They] cannot be resolved as matters of law . . . but must be resolved as factual issues."); *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 463 (Iowa 2008) (finding that the district court "erred in granting summary judgment for the defendants" because "a reasonable jury could conclude the Rathjes filed their petition within the two-year limitation of section 614.1(9)"); *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 773 (Iowa 1999) (stating that "there was no basis for submitting a statute of limitations issue to the jury" because the defendant "presented no evidence that [the plaintiff] had knowledge, inquiry or otherwise, before 1992 [i.e., the year before the plaintiff commenced suit]"); *Frideres v. Schiltz*, 540 N.W.2d 261, 267 (Iowa 1995)

("Whether sufficient discovery by a victim has occurred to initiate the running of a statute of limitations is a question of fact to be determined on a case-by-case basis.").[1]

In *Vertman v. Drayton*, 223 Iowa 380, 384, 272 N.W. 438, 440 (1937), we held that an action should not have been dismissed based on the statute of limitations. We explained,

> Before it could be determined whether the plaintiff's action was barred by the statute of limitations, it was necessary that several fact questions be determined, among which are concealment by the defendant of a cause of action against him in favor of the appellant, and of facts he was bound to disclose; when plaintiff discovered the fraud, and whether there was failure on her part to use due diligence in discovering the wrong. The determination of the facts was for the jury.

Id.; *see also Franzen v. Deere & Co.*, 334 N.W.2d 730, 732 (Iowa 1983) (finding that "the fact issue" of the timing of the discovery of the injury raised in the pleadings should have precluded the court's grant of the motion to dismiss); *Reinertson v. Consol. Chem. Prods. Co.*, 205 Iowa 417, 423, 216 N.W. 68, 71 (1927) ("The jury might find that plaintiffs were kept in ignorance of the fraud for two or three years by defendants' continued and intentional fraudulent representations and concealment. It was not for the court to hold that the statute of limitations had run."); *Des Moines Sav. Bank v. Kennedy*, 142 Iowa 272, 274–75, 120 N.W. 742,

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[1]In *Callahan v. State*, 464 N.W.2d 268 (Iowa 1990), a member of this court, specially concurring, stated with respect to the discovery rule,

> I believe the district court should normally conduct a pretrial hearing to determine if the statute of limitations should bar the plaintiff's claims. Because the discovery rule is a judicially created doctrine based on equitable considerations, the hearing should be in equity, and equitable principles should apply even though the action is legal.

Id. at 274 (Andreasen, J., specially concurring). This justice did not indicate that the issue was one of law rather than fact—just that the fact finder should be the court rather than the jury. *See id.*

743–44 (1909) (stating that "[u]pon the introduction of all of the evidence, the court withdrew all the issues from the jury save that of the plea of the statute of limitations," and finding sufficient evidence to support a jury determination that the defendant was a resident of South Dakota for five years, thus tolling the statute); *Faust v. Hosford*, 119 Iowa 97, 100, 93 N.W. 58, 59 (1903) ("Whether or not plaintiff's failure to discover her cause of action was due to failure on her part to use due diligence, or to the fact that defendant so concealed the wrong as that plaintiff was unable to discover it by the exercise of due diligence, is ordinarily a question of fact for the jury."); *McNamee v. Moreland*, 26 Iowa 96, 100 (1868) ("The question raised by the defendant's plea of the statute of limitations was fairly and properly submitted to the jury, and they found thereon in favor of the defendant."); *Penley v. Waterhouse*, 3 Iowa 418, 445–46 (1856) (holding that the jury should decide whether a subsequent acknowledgment of a debt occurred so as to remove the bar of the statute of limitations).[2]

B. Did Hassan's Proposed Statute-of-Limitations Instruction Correctly State the Applicable Law? We also agree with both the

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[2]Iowa appears to follow the general rule. *See* 54 C.J.S. *Limitations of Actions* § 437, at 485 (2010) ("If . . . the application of a statute of limitations rests on questions of fact, it is generally an issue for a jury to decide."); *id.* § 438, at 486–87 ("The determination of when a cause of action accrues, as affecting the running of the statute of limitations, is frequently a question of fact to be determined by the jury or trier of fact under the evidence . . . . The time of the accrual of the cause of action is properly a question of law to be determined by the court when the facts in the case are undisputed and only one conclusion can be drawn therefrom." (Footnotes omitted.)); 51 Am. Jur. 2d *Limitation of Actions* § 406, at 811 (2011) ("[T]he accrual date of a specific cause of action is generally one for the trier of fact, particularly on conflicting evidence, disputed facts, or evidence from which different inferences could reasonably be drawn." (Footnotes omitted.)).

In arguing that the statute of limitations does not get submitted to the jury in Iowa, Shams cites to *Gabelmann v. NFO, Inc.*, 571 N.W.2d 476, 481 (Iowa 1997). We do not detect such a holding in *Gabelmann*.

district court and the court of appeals that the instruction proposed by Hassan was not an accurate statement of Iowa law. The jury found for Shams on conversion, breach of unwritten contract, and breach of fiduciary duty. Therefore, we will review the statute of limitations for those claims. All three are governed by the five-year limitations period set forth in Iowa Code section 614.1(4). The key question is when those causes of action "accrue." *See* Iowa Code § 614.1 ("Actions may be brought within the times herein limited, respectively, after their causes accrue . . . .").

Regarding a claim for conversion against a bailee, we long ago said that "the statute of limitations will not begin to run in favor of a bailee until he denies the bailment and converts the property to his own use." *Reizenstein v. Marquardt*, 75 Iowa 294, 297, 39 N.W. 506, 507 (1888); *see also Estate of Pepper ex rel. Deeble v. Whitehead*, 686 F.3d 658, 665–66 (8th Cir. 2012) (applying Iowa law). Hassan's proposed instruction did not embrace this concept. The point at which Hassan denied the bailment was a disputed fact issue.

"In the case of a contract dispute, . . . the limitations period begins running upon breach of the contract." *Diggin v. Cycle Sat, Inc.*, 576 N.W.2d 99, 102 (Iowa 1998). The instruction offered by Hassan did not reflect this notion that a breach-of-contract statute of limitations begins running on breach. Once again, this was a disputed fact issue; Shams presented evidence that following his return from Iraq in 2006 and his discovery that Hassan had written checks to herself, Hassan assured him all his money was still accessible and she had merely made an investment for his benefit. This could have been deemed an oral modification of the prior oral agreement. Regardless, Hassan's instruction did not fit the breach-of-contract claim in this case.

For breach of fiduciary duty, the discovery rule applies. *See Nixon v. State*, 704 N.W.2d 643, 649 (Iowa 2005) (holding the discovery rule applied to certain tort claims against the State, including a breach-of-fiduciary-duty claim); *Rieff v. Evans*, 630 N.W.2d 278, 291 (Iowa 2001) (holding the discovery rule applied to policyholder claims of breach of fiduciary duty against directors of mutual insurance company). "[U]nder the discovery rule, the limitations period begins when a claimant has knowledge sufficient to put that person on inquiry notice." *Kendall/Hunt Publ'g Co. v. Rowe*, 424 N.W.2d 235, 243 (Iowa 1988). As the district court specifically noted in its posttrial ruling, the instruction submitted by Hassan did not include the discovery rule. Again, there were disputed issues of fact whether Shams was on notice in 2006 that his sister had breached her fiduciary duty to him, given her representations that his money was "safe" and had been used to purchase land, which his brother-in-law had taken him to see.[3]

In short, an instruction telling the jury to "decide when each act or occurrence on which [he] bases his claim occurred" and "[i]f any of these acts or occurrences took place more than five years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation," would not have correctly stated the applicable Iowa law.[4]

A better approach might have been to frame a separate statute-of-limitations instruction for each claim. For example, as to breach of

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[3]Furthermore, Hassan has not appealed the district court's denial of her motion for directed verdict based on the statute of limitations. She has appealed only the failure to instruct the jury on statute of limitations.

[4]Hassan's counsel acknowledged during posttrial motions that the instruction "may not have been perfect."

No one has disputed that Iowa's statutes of limitations apply in this case.

fiduciary duty, the marshalling instruction required the jury to find that "[a] fiduciary relationship existed between Shams and Hassan in the handling of his money" and that "Hassan breached a fiduciary duty." The jury might have been further instructed to determine whether Shams was on notice that Hassan had breached a fiduciary duty prior to July 26, 2006, and if so, to disallow recovery for any breaches that occurred before then. For conversion, the court's instruction required the jury to find that "Hassan converted Shams['s] money by a wrongful act and/or taking or disposing of Shams['s] money." The jury might have been further instructed to determine whether Shams was on notice that Hassan had converted funds before July 26, 2006, and if so to deny recovery for any conversion that occurred before then. *See Estate of Pepper*, 686 F.3d at 665–66 (applying the discovery rule to a conversion claim).[5] Additionally, under breach of contract, the court could have instructed the jury not to allow recovery for any breaches—whether of the original agreement or a June 2006 modification—that occurred before July 26, 2006.

C. Did Hassan Preserve Error by Requesting a Flawed Statute-of-Limitations Instruction? This now brings us to the main issue raised by this appeal. Does the district court have a duty to fashion a correct jury instruction on a subject not covered by the existing instructions when a party provides an incorrect instruction on that subject? We have said many times, "As long as a requested instruction correctly states the law, has application to the case, and is not stated

[5]Both the breach of fiduciary duty and the conversion periods of limitations might also be subject to equitable estoppel based on the June 2006 discussions between Shams and Hassan. *See Christy v. Miulli*, 692 N.W.2d 694, 700–01 (Iowa 2005).

elsewhere in the instructions, the court must give the requested instruction." *Ludman v. Davenport Assumption High Sch.*, 895 N.W.2d 902, 919 (Iowa 2017) (quoting *Beyer v. Todd*, 601 N.W.2d 35, 38 (Iowa 1999)). But what if the requested instruction doesn't correctly state the law?

We have dealt with this issue before, although not recently. In *Franken v. City of Sioux Center*, 272 N.W.2d 422, 429 (Iowa 1978), a case arising out of an incident where the defendant's tiger bit the plaintiff, we reversed and remanded for a new trial based on instructional error following a defense verdict. We held that the court should have given an instruction defining assumption of the risk. *Id.* at 426. In the absence of such an instruction, we concluded the jury likely would have been led astray into following the law of contributory negligence both for the plaintiff's strict liability claim and for his negligence claim, since that concept had been defined as a defense to the negligence claim. *Id.* at 426–27. We noted the plaintiff had asked for an instruction defining assumption of the risk and observed,

> Even though plaintiff's requested instruction may not be fully correct in all details, it did alert the trial court to the need to define assumption of risk, which was not otherwise done by it. Even a defective requested instruction is sufficient to preserve error if it alerted the trial court to the claimed error.

Id. at 426.

Blessum v. Howard County Board of Supervisors, 295 N.W.2d 836, 848–49 (Iowa 1980), illustrates the limits of the principle. There we upheld a plaintiff's jury verdict on a 42 U.S.C. § 1983 claim over the defendants' assertion of instructional error. *Id.* at 849. The trial judge had refused to give the defendants' proposed instruction on an advice-of-counsel defense. *Id.* at 847–48. We quoted *Franken* but then explained,

> At most, through the requested instruction itself and defendants' exception to the trial court's failure to so instruct, defendants preserved for our review the following issues: (1) whether the requested instruction was a correct statement of the law, entitling defendant to have the instruction given by the trial court; and (2) if the instruction was not a correct statement of the law, whether it was sufficient to alert the trial court to the law that should be instructed upon.

Id. at 848–49. Advice of counsel was not a valid defense, even though federal courts have recognized an immunity defense. *Id.* at 849. Thus, we concluded, "[W]e do not believe that the requested instruction or the exception thereto made by defendants was sufficient to alert the trial court to any law that should have been instructed upon." *Id.*

Earlier caselaw is consistent with this notion that the requested instruction need not be technically accurate, as long as it alerts the district court to what is missing. In *Oltmanns v. Driver*, a personal injury case that resulted in a defense verdict, we reversed for failure to give a proper assumption-of-the-risk instruction. 252 Iowa 1066, 1074–75, 109 N.W.2d 446, 451 (1961). The plaintiff had fallen from scaffolding; there was evidence the defendants had previously assured him the scaffolding was safe. *Id.* at 1068–69, 109 N.W.2d at 447–48. The court's instruction stated that the plaintiff would be deemed to have assumed the risk if he "[was] aware of such risk or hazard and voluntarily expose[d] himself to it." *Id.* at 1070, 109 N.W.2d at 449. The plaintiff had unsuccessfully sought an additional instruction that if the plaintiff relied on the defendants' assurances of safety, he "[could not] be held to assume the risk of going upon such scaffold." *Id.* at 1069, 109 N.W.2d at 448. In reversing and remanding for a new trial, we concluded,

> The instruction as requested by plaintiff was not complete in itself, and if given would have required amplification. The request failed to mention the exception

> where the danger is so patent and apparent as to be obvious to any prudent person.
>
> Even though the requested instruction was not sufficiently complete to require its submission to the jury, it was sufficient to alert the trial court to the claim of the plaintiff and the claimed insufficiency of the instruction as given.

Id. at 1069–70, 109 N.W.2d at 448–49 (citation omitted). At the end of our opinion, we summarized,

> The plaintiff was entitled to have submitted to the jury the question of assurances of safety and reliance thereon. We find nothing in the instruction challenged, nor in the instructions as a whole, explaining these rules of law to the extent to which the plaintiff was entitled.

Id. at 1074–75, 109 N.W.2d at 451; *see also Henneman v. McCalla*, 260 Iowa 60, 69, 148 N.W.2d 447, 452 (1967) (stating that "[w]e have consistently adhered to [the] principle" that even if "instructions offered by counsel are not so framed that the court is justified in giving them literally as asked, . . . if the main thought sought to be expressed contains a pertinent legal principle which is not already fully covered by other instructions given, the court should embody it in proper words in its own charge" (quoting *Kinyon v. Chi. & Nw. Ry.*, 118 Iowa 349, 361, 92 N.W. 40, 44 (1902)); *Lehman v. Iowa State Highway Comm'n*, 251 Iowa 77, 85, 99 N.W.2d 404, 408 (1959) ("If the trial court may have been warranted in refusing defendant's requested instruction just as written, it was sufficient to call the court's attention to an important question in the case upon which an instruction was required and the instructions actually given were silent. Under such circumstances it was the court's duty to instruct upon the matter."); 12 Barry A. Lindahl, *Iowa Practice: Series™: Civil & Appellate Procedure* § 37:22, at 393 (2017) ("The requested instruction need not be technically correct. If the requested instruction contains a pertinent legal principle which is not already fully

covered by another instruction given, the court should give an instruction on the subject using the proper language.").

We have also on several occasions equated the standard for preserving error on a district court's failure to give an instruction to the standard for preserving error on an erroneous instruction. In *Elkader Coop. Co. v. Matt*, 204 N.W.2d 873, 877 (Iowa 1973), this court reversed a jury verdict and remanded for a new trial in a contract dispute. The co-op alleged the parties had entered into a binding oral agreement to buy and sell corn; the farmer responded that any discussions were contingent on the parties' signing a written contract, an event that had never occurred. *Id.* at 874–75. The jury found the parties had a binding oral agreement and awarded damages to the co-op. *Id.* at 874. Before jury submission, the farmer had objected to the instructions as being "deficient in this matter of tying the element of intent of the parties to the legal requisites of the contract and the factual showings of the parties relative thereto." *Id.* at 875. We agreed the actual instructions were inadequate because they

> failed to relate intention to the particular circumstances important to a decision by the jury. . . . Nowhere do the instructions touch on the rather nice distinction between an oral agreement which is to be obligatory without a later signing and one which is not—the very heart of the lawsuit.

Id. at 875–76. We then determined the farmer's objection was sufficient to preserve error, rejecting the co-op's argument to the contrary:

> It is argued [the farmer] is foreclosed here because, in addition to objecting, he should have also requested a correcting instruction. Under the record before us, we disagree. The trial court has the duty to instruct fully upon the issues which the jury must decide, whether requested to do so or not. It is error to submit the case without adequate direction to the jury on matters of law. The ultimate question is not How the alleged error was raised at trial but whether it Was raised—either by objection or by request for

> instruction—so that the trial court was alerted to the real problem while it was still possible to correctly instruct the jury.

Id. at 876.

In *Schall v. Lorenzen*, 166 N.W.2d 795 (Iowa 1969), we similarly analogized the standard for preserving error on refusal to grant an instruction and the standard for preserving error on an objection to the instructions:

> In passing on the sufficiency of the record where a requested instruction has been refused we have held the question is not whether the requested instruction is technically perfect but whether the attention of the court has fairly been called to the problem so that he may correctly instruct the jury. This is the proper standard in connection with evaluation of any exception to instructions.

Id. at 798 (citations omitted).

Our rule of civil procedure states,

> [A]ll objections to giving or failing to give any instruction must be made in writing or dictated into the record, out of the jury's presence, specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal.

Iowa R. Civ. Proc. 1.924. Thus, it appears the critical point is not the exact text of the refused instruction, but whether it sufficed to "specify[] the matter objected to and on what grounds." *Id.* And, as the foregoing discussion reveals, that is the way we have historically interpreted the rule.

Notably, the federal counterpart to the Iowa rule states,

> A party may assign as error:
>
> (A) an error in an instruction actually given, if that party properly objected; or
>
> (B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

Fed. R. Civ. P. 51(d)(1). Seemingly, this rule—unlike Iowa's—requires a "proper[] request[]" for an instruction. *Id.* Yet the leading treatise states,

> If the request directs the court's attention to a point upon which an instruction to the jury would be helpful or necessary, the court's error in failing to charge on the subject may not be excused because of technical defects in the request.

9C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2552, at 29 (2008).

Applying the foregoing authority to the situation here, we conclude that the district court erred in not instructing the jury on statute of limitations at all. Hassan's instruction may have been half-baked, but it put the court on notice that it needed to cook up a proper instruction on statute-of-limitations. The statute of limitations was a disputed factual issue in the case, and it had been recognized as such. Hassan's "defective requested instruction . . . alerted the trial court to the claimed error," *Franken*, 272 N.W.2d at 425, namely, the need to instruct the jury on the statute-of-limitations defense. This is not a case like *Blessum* in which we concluded that a requested instruction on one topic (reliance on counsel) failed to preserve error as to the need to instruct on another topic (good-faith immunity). *See* 295 N.W.2d at 849. As in *Franken*, *Oltmanns*, and *Lehman*, the instruction, despite its flaws, identified an area where there was no instruction and where an instruction was needed.

We recognize that this approach places burdens on the trial judge. The parties did not come to trial with ready-to-go instructions on the statute of limitations. *See* Iowa Ct. R. 23.5—Form 2(9)(*c*) (requiring the parties to submit jury instructions at least seven days before trial). One solution, in a circumstance as presented here, might have been to ask

the parties to agree on a statute-of-limitations instruction, or failing that, for each side to propose its own. Had the court advised the parties of a statute-of-limitations instruction that it intended to give, this would have immediately shifted the burden to the parties to identify specific objections to that instruction, as opposed to simply identifying the need for an instruction on the statute of limitations.

We disturb the jury verdict in this case with some reluctance. This was a fairly long trial and Hassan's proposed statute-of-limitations instruction was off the mark. However, in light of our precedent, which we believe remains sound, we must reverse and remand so that the jury has an opportunity to resolve factual issues presented by the statute of limitations.[6]

V. Disposition.

For the foregoing reasons, we affirm the decision of the court of appeals, reverse the judgment of the district court, and remand for further proceedings consistent with this opinion.

DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND CASE REMANDED.

All justices concur except Wiggins, J., who takes no part.

[6]No appeal was taken from the judgment on the counterclaim, so we do not disturb that judgment. We reverse only the judgment in favor of Shams on the conversion, breach-of-contract, and breach-of-fiduciary-duty claims, and remand for a new trial on those claims.