

# Torts Tutorial Chapter 3 - Damages

## INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year torts class and is based on DeWolf, Cases and Materials on Torts (<http://guweb2.gonzaga.edu/~dewolf/torts/text>). You have accessed the tutorial for Chapter 3, “Damages.” Prior to doing these exercises you should read the relevant material in DeWolf, Cases and Materials on Torts. A brief overview of this Chapter is provided below.

## OVERVIEW

### III. DAMAGES

*In General.* Damages are an important part of torts analysis, but do not lend themselves to ready theoretical classification.

#### A. Types of Recoverable Damages

##### 1. *Property Damage*



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# Torts Tutorial Chapter 3 - Damages

Property damage is measured by the lesser of (1) the cost to repair the item; or (2) the reduction in the item's fair market value as a result of the accident.

## 2. *"Economic" Losses*

Economic losses have to be calculated based on educated guesses about the future, comparing (1) what will likely happen to the plaintiff as a result of the injury with (2) what would have been the plaintiff's future in the absence of the injury. Any award must be adjusted to take into account investment opportunities and risks. Damages that directly affect the plaintiff's bankbook balance are sometimes referred to as "special damages."

## 3. *Pain and Suffering and Emotional Losses*

"Pain and suffering" that accompany an accident (also described as "noneconomic damages"), although they don't necessarily make the plaintiff financially worse off, are considered part of the compensation due an injured plaintiff. Although emotional injury alone is usually not compensable, damages will be awarded where accompanied by physical injury (or in exceptional cases where there is a "guarantee of genuineness").

## 4. *Punitive Damages*

In addition to compensation for the victim, tort law sometimes permits punishment of the defendant where the defendant's conduct is malicious, or so reckless that it reflects flagrant disregard of the plaintiff's safety. Modern mass tort cases raise difficult problems concerning the computation and distribution of such awards. The U.S. Supreme Court has overturned awards that fail to provide due process for the defendant.

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# Torts Tutorial Chapter 3 - Damages

## 5. *Attorney's Fees*

Under the "American rule," each side is expected to pay its own attorney's fees, except where contract or statute provides otherwise. Most tort cases involve neither exception.

## B. Related Parties: Who Is Entitled to Compensation?

### 1. *Wrongful Death*

At common law no recovery for wrongful death was recognized; thus it is a creature of statute. Statutes may be in the form of a wrongful death action (compensation to the decedent's relatives) or a survival action (damages awarded to the decedent's estate). They may or may not include non-economic damages. Statutes may mix elements of both types of actions, but will be interpreted to avoid double recovery.

### 2. *"Wrongful Birth" and "Wrongful Life"*

Where a defendant's negligence results in the birth of a child, and the child is healthy, courts are divided on whether to permit a recovery to the parents. Some have permitted only childbirth costs, while others have permitted the award of all costs associated with raising the child, minus the "imputed benefit" derived from the child. In the case of a "defective" child, most courts permit a recovery to the parents under the imputed benefit theory, and some permit an award to the child himself (a "wrongful life" claim) for the costs of his defective condition beyond those already awarded to the parents.



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## 3. *Bystander/Loss of Consortium Claims*

Where one party's injuries lead to emotional harm to those nearby, courts have divided on how to limit claims for bystanders or for loss of consortium. One form of injury is for those who are at the accident scene, while others are based on an injury to the relationship. Courts consider the severity of the emotional shock, and how closely related the plaintiff is to the one who was physically injured. Spouses typically may recover for loss of consortium, but other family (or quasi-family) relationships may or may not qualify.

### C. The Size of Damage Awards

1. *How Much is Too Much (or Too Little)?* An award of damages will be sustained on appeal if it is supported by evidence. One response to large personal injury awards has been an effort to limit pain and suffering awards. "Tort reform" statutes have survived constitutional challenge in some cases as a rational response to "crises." But some courts have struck down limitations as violating "access to courts" or the right to trial by jury.

2. *Collateral Source Benefits.* When a plaintiff receives compensation from a source other than one of the defendants, the court must decide whether to deduct this amount from the compensation owed by the defendants or to allow the plaintiff a "windfall." Actually, most such payments are subject to "subrogation"--repayment pursuant to statutory right (*e.g.*, worker's compensation) or contractual obligation (*e.g.*, health insurance). The "collateral source rule" disallowed evidence of collateral source recoveries, but some tort reform statutes have permitted the introduction of such evidence, even if there is an obligation to repay the amounts.



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3. *The Scope of Acceptable Argument.* In asking a jury to award a large amount of damages, plaintiffs' attorneys like to use arguments that either focus on the amount of the pain suffered (*e.g.*, the per diem argument) or on the need to "send a message" to discourage the conduct giving rise to the injury. Most jurisdictions place limits on the use of such arguments to avoid "runaway" verdicts.



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## EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Information Button  takes you to the Torts Glossary. The Home Button  takes you to the Torts Tutorial Home Page.

## Questions:

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## Question #1

A pedestrian was negligently hit by the defendant's car in an intersection collision, suffering a broken leg. The pedestrian has now sued to recover damages. Which of the following is a correct statement of the types of damages that the plaintiff can usually recover:

- (1) Property damage, Medical expenses and lost wages
- (2) Economic losses plus pain and suffering
- (3) Compensatory and punitive damages
- (4) None of the above.



# Torts Tutorial Chapter 3 - Damages

A pedestrian was negligently hit by the defendant's car in an intersection collision, suffering a broken leg. The pedestrian has now sued to recover damages. Which of the following is a correct statement of the types of damages that the plaintiff can usually recover:

**(1)Property damage, Medical expenses and lost wages**

(2)Economic losses plus pain and suffering

(3)Compensatory and punitive damages

(4)None of the above.

This answer is only partially correct. Although property damage, medical expenses and lost wages are all recoverable, they are not the only elements of damages. Try again.





# Torts Tutorial Chapter 3 - Damages

A pedestrian was negligently hit by the defendant's car in an intersection collision, suffering a broken leg. The pedestrian has now sued to recover damages. Which of the following is a correct statement of the types of damages that the plaintiff can usually recover:

(1) Property damage, Medical expenses and lost wages

**(2) Economic losses plus pain and suffering**

(3) Compensatory and punitive damages

(4) None of the above.

That's correct. The economic losses include lost wages, medical expenses, and property damage. In addition, the plaintiff is entitled to non-economic damages, also called pain and suffering. Note that punitive damages are unavailable because most accidents are just that--accidents--and don't justify damages beyond what is required to make the plaintiff whole.



# Torts Tutorial Chapter 3 - Damages

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- (1) Property damage, Medical expenses and lost wages
- (2) Economic losses plus pain and suffering
- (3) Compensatory and punitive damages**
- (4) None of the above.

No, that's incorrect. In ordinary negligence case, punitive damages are unavailable because the standard of proof for punitive damages is much higher: the plaintiff must prove malice, or wanton and willful disregard of the plaintiff's safety.



# Torts Tutorial Chapter 3 - Damages

A pedestrian was negligently hit by the defendant's car in an intersection collision, suffering a broken leg. The pedestrian has now sued to recover damages. Which of the following is a correct statement of the types of damages that the plaintiff can usually recover:

- (1) Property damage, Medical expenses and lost wages
- (2) Economic losses plus pain and suffering
- (3) Compensatory and punitive damages
- (4) None of the above.**

That's incorrect. There is an acceptable answer in the list. Try again.



# Torts Tutorial Chapter 3 - Damages

## Question #2

Bob Brewster was walking down Pine Street. Quincy Adams was driving down Pine St., but was not paying attention to the road in front of him while he reached for his sunglasses in the backseat of the car. When Quincy turned back to face the road he suddenly saw a child on a bicycle in front of him. Quincy swerved to avoid him and the car jumped the curb, coming to a stop just inches from Bob. Bob now suffers from fright and recurrent dreams about being hit by a car. If Bob seeks to recover for his emotional damages, which of the following is the best prediction of what would happen?

- (1) Bob can't recover from Quincy.
- (2) Bob could recover from Quincy if Bob was in the zone of danger.
- (3) Bob could recover from Quincy only if Bob was actually touched by Quincy's car
- (4) Bob could recover from Quincy if Bob was physically injured, for example if Bob jumped to get out of the way and fell.



# Torts Tutorial Chapter 3 - Damages

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(4)Bob could recover from Quincy if Bob was physically injured, for example if Bob jumped to get out of the way and fell.

Sorry, that's incorrect. There are circumstances under which a plaintiff can recover for emotional injury even if she isn't physically touched by the defendant. Try again.



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No, that's incorrect. Being in the "zone of danger" isn't enough, unless some other person suffers physical injury, or unless the plaintiff himself suffers physical injury or else the injury carries with it a "guarantee of genuineness." Some courts have used the "zone of danger" concept where a bystander suffers emotionally because of a physical injury to another. But nothing in these facts indicates that anyone was actually hurt. Try again.



# Torts Tutorial Chapter 3 - Damages

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No, that's incorrect. Most jurisdictions have abandoned a pure "impact rule," which would require that the defendant actually touch the plaintiff. Even if the plaintiff isn't directly touched by the defendant (or his car), there are circumstances under which a plaintiff may recover. Try again.



# Torts Tutorial Chapter 3 - Damages

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That's correct. A defendant isn't usually liable for emotional injury alone, unless it is accompanied by a physical injury. (Some jurisdictions also recognize cases of emotional injury where there is a "guarantee of genuineness.") Here the answer states that as a direct consequence if the emotional injury, physical harm resulted. In most jurisdictions that would be sufficient for recovery.





## Question #3

Jim Johnson was an outstanding college basketball player. The spring of his senior year he was injured in an automobile accident due to the negligence of Traditional Trucking. Jim's injuries rule out a professional basketball career, but he otherwise makes a full recovery. In the trial against Trucking, Jim testifies that he would have pursued a professional basketball career if he had not been injured. In order to award lost income based on the lost basketball career, the jury would be required:

- (1) To find that, more probably than not, Jim would have become a professional basketball player but for the injury;
- (2) To discount any award for future wages for the effects of inflation;
- (3) To discount any award for future wages even if inflation is assumed to be zero.
- (4) To calculate an award using the average salary earned by a professional basketball player as a basis.



# Torts Tutorial Chapter 3 - Damages

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That's incorrect. Unlike a loss of a chance case, where the courts aren't sure whether to make ANY award to the plaintiff, here the plaintiff has definitely suffered injury; the only question is how much. Jurors have much more flexibility in determining the amount of damages than in determining whether or not a compensable injury was suffered at all. Since any prediction of a precise figure is quite likely to be false (because the future holds so many possible outcomes), courts are more tolerant of assessments of damage which, by themselves are improbable. Try again.



# Torts Tutorial Chapter 3 - Damages

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This answer is only partially correct. Inflation actually has the effect of *increasing* future wages. Thus, if the jury assumes high inflation, that would increase the amount of projected wage loss. However, it would also require a steeper discount rate to reflect the reduced present value where rates of high return are assumed. Try another answer.



# Torts Tutorial Chapter 3 - Damages

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**(3) To discount any award for future wages even if inflation is assumed to be zero.**

(4) To calculate an award using the average salary earned by a professional basketball player as a basis.

That's correct. Awards for future damages must be reduced to present value because, even in a world of zero inflation, having a dollar today is worth more than having that same dollar five years from now (after all, having that dollar today allows you to invest it to earn more dollars in five years). Thus, if the defendant is supposed to replace \$1,500 that the plaintiff would have gotten five years from now, the defendant should only be required to pay roughly \$1,000 today, since \$1,000 (roughly) will grow into \$1,500 in five years.



# Torts Tutorial Chapter 3 - Damages

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- (3) To discount any award for future wages even if inflation is assumed to be zero.
- (4) To calculate an award using the average salary earned by a professional basketball player as a basis.**

This answer is only partially correct. The jury would take into account the average salary of a professional basketball player, but they would not necessarily base their award on that amount. Jim might make considerably more, or considerably less, than the average. Try again.



# Torts Tutorial Chapter 3 - Damages

## Question #4

Elaine Eskridge drove past Millwood Junior High at 55 mph. The speed limit was 20 mph. Ronny Rowalt was running after a softball that went over the fence. As he ran into the street he was struck by Elaine, who couldn't stop in time. In order to recover punitive damages against Eskridge, Ronny would have to prove:

- (1) Elaine was guilty of criminal conduct;
- (2) Elaine's behavior toward Ronny displayed malice;
- (3) Ronny suffered severe injury;
- (4) None of the above



# Torts Tutorial Chapter 3 - Damages

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**(1) Elaine was guilty of criminal conduct;**

(2) Elaine's behavior toward Ronny displayed malice;

(3) Ronny suffered severe injury;

(4) None of the above

This answer is incorrect. Although the same conduct that gives rise to punitive damages will often constitute a criminal offense, it is not a necessary precondition. Try again.



# Torts Tutorial Chapter 3 - Damages

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- (1) Elaine was guilty of criminal conduct;
- (2) Elaine's behavior toward Ronny displayed malice;**
- (3) Ronny suffered severe injury;
- (4) None of the above

That's incorrect. The traditional common law standard required proof of malicious conduct, carrying with it the notion of some kind of personal animus, toward the plaintiff. Modern law on punitive damages (particularly in the area of product liability) only requires a level of reckless disregard for the safety of the plaintiff. Obviously, this needs to be more than mere negligence, but it doesn't have to involve a desire to hurt the plaintiff.





# Torts Tutorial Chapter 3 - Damages

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- (1) Elaine was guilty of criminal conduct;
- (2) Elaine's behavior toward Ronny displayed malice;
- (3) Ronny suffered severe injury;**
- (4) None of the above

That's incorrect. Although the plaintiff must suffer some injury in order to recover, it is not necessary that the injury be severe. In fact, punitive damages are often awarded to punish the defendant where a compensatory award alone would be insufficient. The smaller the actual loss, the more punitive damages may be necessary to provide an adequate deterrent. Try again.



# Torts Tutorial Chapter 3 - Damages

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- (1) Elaine was guilty of criminal conduct;
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- (3) Ronny suffered severe injury;
- (4) None of the above**

That's correct. Punitive damages can be based on a loose definition of "malice" that doesn't involve any ill will toward the plaintiff. It is enough if the defendant displays a wanton or reckless disregard for the safety of the plaintiff. This goes beyond mere negligence, but it doesn't have to reach a level similar to intent.



## Question # 5

In order to recover attorney's fees in a tort action, the plaintiff or defendant must establish:

- (1) Statutory or case law authority for the recovery of such fees
- (2) Wrongful conduct on the part of the defendant or his lawyer
- (3) The reasonableness of the fees incurred
- (4) A violation of the Rules of Professional Conduct



# Torts Tutorial Chapter 3 - Damages

In order to recover attorney's fees in a tort action, the plaintiff or defendant must establish:

**(1) Statutory or case law authority for the recovery of such fees**

(2) Wrongful conduct on the part of the defendant or his lawyer

(3) The reasonableness of the fees incurred

(4) A violation of the Rules of Professional Conduct

That's correct. The "American rule" requires each party to pay its own attorney's fees, unless there is specific statutory authority for the recovery of such fees. Most tort cases don't qualify.



# Torts Tutorial Chapter 3 - Damages

In order to recover attorney's fees in a tort action, the plaintiff or defendant must establish:

- (1) Statutory or case law authority for the recovery of such fees
- (2) Wrongful conduct on the part of the defendant or his lawyer**
- (3) The reasonableness of the fees incurred
- (4) A violation of the Rules of Professional Conduct

This answer is only partially correct. It all depends upon what kind of "wrongful conduct" is committed, and by whom. For example, if the defendant behaved "wrongfully" by tortiously injuring the plaintiff, that would justify an award of damages, but not attorney's fees. Try again.



# Torts Tutorial Chapter 3 - Damages

In order to recover attorney's fees in a tort action, the plaintiff or defendant must establish:

- (1) Statutory or case law authority for the recovery of such fees
- (2) Wrongful conduct on the part of the defendant or his lawyer
- (3) The reasonableness of the fees incurred**
- (4) A violation of the Rules of Professional Conduct

This answer is only partially correct. Even if the fees are reasonable, there may be no basis upon which the award can be made. Ordinarily the "American rule" requires each party to pay its own attorney's fees. Try again.



# Torts Tutorial Chapter 3 - Damages

In order to recover attorney's fees in a tort action, the plaintiff or defendant must establish:

- (1) Statutory or case law authority for the recovery of such fees
- (2) Wrongful conduct on the part of the defendant or his lawyer
- (3) The reasonableness of the fees incurred
- (4) A violation of the Rules of Professional Conduct**

That's incorrect. A violation of the Rules of Professional Conduct may or may not justify the award of attorney's fees. If the violation constitutes a breach of some obligation of the lawyer to the other party (e.g., refusing to produce documents or other discovery), then an award may be justified. But a violation of the Rules by itself may be insufficient for the award of fees. Try again.



## Question # 6

Gordon Grizzly was killed in a skiing accident caused by the negligence of Mountain Resorts, Inc. His widow can only recover:

- (1) Lost income and other pecuniary expenses;
- (2) Lost income, other pecuniary expenses, and the pain and suffering experienced by Gordon between the accident and his death;
- (3) Lost income, other pecuniary expenses, and any emotional trauma of her own that is capable of clear medical proof;
- (4) The types of damages authorized by statute.





# Torts Tutorial Chapter 3 - Damages

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(3)Lost income, other pecuniary expenses, and any emotional trauma of her own that is capable of clear medical proof;

(4)The types of damages authorized by statute.

This answer is only partially correct. Although the wrongful death statutes in most jurisdictions will permit an award of lost income and pecuniary expenses, they vary as to the recovery of other types of damages. Try again.



# Torts Tutorial Chapter 3 - Damages

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(3) Lost income, other pecuniary expenses, and any emotional trauma of her own that is capable of clear medical proof;

(4) The types of damages authorized by statute.

That's incorrect. The wrongful death statutes in some jurisdictions permit a recovery for the decedent's pain and suffering, but others do not. Try again.



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- (2) Lost income, other pecuniary expenses, and the pain and suffering experienced by Gordon between the accident and his death;
- (3) Lost income, other pecuniary expenses, and any emotional trauma of her own that is capable of clear medical proof;**
- (4) The types of damages authorized by statute.

That's incorrect. The "clear medical proof" requirement only applies in cases where the plaintiff is seeking damages for emotional injury alone, or for emotional injury that is sustained as a result of observing injury to another. It usually has no relevance in a wrongful death claim. Try again.



# Torts Tutorial Chapter 3 - Damages

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- (3) Lost income, other pecuniary expenses, and any emotional trauma of her own that is capable of clear medical proof;
- (4) The types of damages authorized by statute.**

That's correct. Wrongful death recoveries, unlike most other areas of tort law, are governed exclusively by statutes. As a result of *Baker v. Bolton*, most jurisdictions accepted the principle that in the absence of statutory authority, there was no recovery for wrongful death. Consequently, the lawyer must consult the statutes to determine what parties are entitled to recover what kinds of damages.



# Torts Tutorial Chapter 3 - Damages

## Question # 7

A statute provides: "Whenever the death of a person shall be caused by the wrongful act, neglect or default, of any person, company or corporation, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured." This statute would be characterized as:

- (1) A wrongful death-type statute
- (2) A survival action
- (3) A survivor action
- (4) None of the above



# Torts Tutorial Chapter 3 - Damages

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**(1)A wrongful death-type statute**

(2)A survival action

(3)A survivor action

(4)None of the above

That's incorrect. "Wrongful death" can refer generically to an action that provides compensation in the event of death, but in this case the term is "wrongful death-type" statute. Such statutes provide a recovery for the relatives of the decedent. This statute does not. It provides that an action for the death of the decedent may be pursued despite the death of the decedent. Try again.



# Torts Tutorial Chapter 3 - Damages

A statute provides: "Whenever the death of a person shall be caused by the wrongful act, neglect or default, of any person, company or corporation, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured." This statute would be characterized as:

(1) A wrongful death-type statute

**(2) A survival action**

(3) A survivor action

(4) None of the above

That's correct. Because the statute provides that an action can be maintained despite the death of the person against whom the tort was committed, it would be considered a "survival action," since the action survives the death of the tort victim. On the other hand, a wrongful death-type statute provides an award based upon the injuries suffered by the relatives as a result of the death of the decedent.



# Torts Tutorial Chapter 3 - Damages

A statute provides: "Whenever the death of a person shall be caused by the wrongful act, neglect or default, of any person, company or corporation, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured." This statute would be characterized as:

(1) A wrongful death-type statute

(2) A survival action

**(3) A survivor action**

(4) None of the above

That's incorrect. There is no such term as a "survivor" action. An action for wrongful death that benefits the relatives of the decedent could be characterized as a "survivor" action, but that is *not* a legally correct term. Try again.





# Torts Tutorial Chapter 3 - Damages

A statute provides: "Whenever the death of a person shall be caused by the wrongful act, neglect or default, of any person, company or corporation, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured." This statute would be characterized as:

(1) A wrongful death-type statute

(2) A survival action

(3) A survivor action

**(4) None of the above**

That's incorrect. There is a correct answer in the group. Try again.



# Torts Tutorial Chapter 3 - Damages

## Question #8

A survival statute provides that the administrator of the decedent's estate may recover damages occasioned by the decedent's death, and that "the mental and physical pain suffered by the deceased in consequence of the injury, the reasonable expenses occasioned to his estate by the injury, the probable duration of his life but for the injury, and his capacity to earn money during his probable working life, may be considered as elements of damage in connection with other elements allowed by law, in the same manner as if the deceased had survived." Based upon your reading of this statute, which of the following would be recoverable by a man, the only living relative, whose mother was negligently killed in a plane crash:

- (1) Lost wages that could have been earned by the decedent;
- (2) The injury to him of losing the relationship with his mother;
- (3) The pain and suffering of the decedent between the injury and her death;
- (4) Only (1) and (3)
- (5) All of (1), (2) and (3)



# Torts Tutorial Chapter 3 - Damages

A survival statute provides that the administrator of the decedent's estate may recover damages occasioned by the decedent's death, and that "the mental and physical pain suffered by the deceased in consequence of the injury, the reasonable expenses occasioned to his estate by the injury, the probable duration of his life but for the injury, and his capacity to earn money during his probable working life, may be considered as elements of damage in connection with other elements allowed by law, in the same manner as if the deceased had survived." Based upon your reading of this statute, which of the following would be recoverable by a man, the only living relative, whose mother was negligently killed in a plane crash:

**(1)Lost wages that could have been earned by the decedent;**

(2)The injury to him of losing the relationship with his mother;

(3)The pain and suffering of the decedent between the injury and her death;

(4)Only (1) and (3)

(5)All of (1), (2) and (3)

This answer is only partially correct. Try again.



# Torts Tutorial Chapter 3 - Damages

A survival statute provides that the administrator of the decedent's estate may recover damages occasioned by the decedent's death, and that "the mental and physical pain suffered by the deceased in consequence of the injury, the reasonable expenses occasioned to his estate by the injury, the probable duration of his life but for the injury, and his capacity to earn money during his probable working life, may be considered as elements of damage in connection with other elements allowed by law, in the same manner as if the deceased had survived." Based upon your reading of this statute, which of the following would be recoverable by a man, the only living relative, whose mother was negligently killed in a plane crash:

- (1) Lost wages that could have been earned by the decedent;
- (2) The injury to him of losing the relationship with his mother;**
- (3) The pain and suffering of the decedent between the injury and her death;
- (4) Only (1) and (3)
- (5) All of (1), (2) and (3)

That's incorrect. Since the statute talks about the survival of HER claims, the measurement of damage is what SHE would have recovered on her own behalf if she had lived. The amount of HIS suffering is not the measurement of damages. It might be in a wrongful-death type jurisdiction (which bases the award on the relatives' losses, rather than the injury to the decedent), but that's not the case here.



# Torts Tutorial Chapter 3 - Damages

A survival statute provides that the administrator of the decedent's estate may recover damages occasioned by the decedent's death, and that "the mental and physical pain suffered by the deceased in consequence of the injury, the reasonable expenses occasioned to his estate by the injury, the probable duration of his life but for the injury, and his capacity to earn money during his probable working life, may be considered as elements of damage in connection with other elements allowed by law, in the same manner as if the deceased had survived." Based upon your reading of this statute, which of the following would be recoverable by a man, the only living relative, whose mother was negligently killed in a plane crash:

- (1) Lost wages that could have been earned by the decedent;
- (2) The injury to him of losing the relationship with his mother;
- (3) The pain and suffering of the decedent between the injury and her death;**
- (4) Only (1) and (3)
- (5) All of (1), (2) and (3)

This answer is only partially correct. Try again.



# Torts Tutorial Chapter 3 - Damages

A survival statute provides that the administrator of the decedent's estate may recover damages occasioned by the decedent's death, and that "the mental and physical pain suffered by the deceased in consequence of the injury, the reasonable expenses occasioned to his estate by the injury, the probable duration of his life but for the injury, and his capacity to earn money during his probable working life, may be considered as elements of damage in connection with other elements allowed by law, in the same manner as if the deceased had survived." Based upon your reading of this statute, which of the following would be recoverable by a man, the only living relative, whose mother was negligently killed in a plane crash:

- (1) Lost wages that could have been earned by the decedent;
- (2) The injury to him of losing the relationship with his mother;
- (3) The pain and suffering of the decedent between the injury and her death;

**(4) Only (1) and (3)**

- (5) All of (1), (2) and (3)

That's correct. Only (1) and (3) are recoverable. Since the statute talks about the survival of HER claims, the measurement of damage is what SHE would have recovered on her own behalf if she had lived. The amount of HIS suffering is not the measurement of damages. It might be in a wrongful-death type jurisdiction (which bases the award on the relatives' losses, rather than the injury to the decedent), but that's not the case here.



# Torts Tutorial Chapter 3 - Damages

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- (3) The pain and suffering of the decedent between the injury and her death;
- (4) Only (1) and (3)
- (5) All of (1), (2) and (3)**

Sorry, that's incorrect. Only (1) and (3) are recoverable. Since the statute talks about the survival of HER claims, the measurement of damage is what SHE would have recovered on her own behalf if she had lived. The amount of HIS suffering is not the measurement of damages. It might be in a wrongful-death type jurisdiction (which bases the award on the relatives' losses, rather than the injury to the decedent), but that's not the case here.



# Torts Tutorial Chapter 3 - Damages

## Question #9

Melanie Mogill had severe migraine headaches. She went to her physician, Dr. Udall, for treatment. Udall prescribed Franomil, but negligently failed to inquire whether she was pregnant or planning to conceive. If Udall had used reasonable care, she would have prescribed a different drug, Lamanine, which is less effective on migraines, but doesn't pose a risk to pregnant women or their fetuses. Twelve months later Melanie gave birth to Lucy, who suffered from a variety of birth defects probably caused by the Franomil. If Lucy's parents want to sue, they should seek:

- (1) Damages for wrongful birth
- (2) Damages for wrongful life
- (3) Both (1) and (2)
- (4) None of the above





# Torts Tutorial Chapter 3 - Damages

Melanie Mogill had severe migraine headaches. She went to her physician, Dr. Udall, for treatment. Udall prescribed Franomil, but negligently failed to inquire whether she was pregnant or planning to conceive. If Udall had used reasonable care, she would have prescribed a different drug, Lamanine, which is less effective on migraines, but doesn't pose a risk to pregnant women or their fetuses. Twelve months later Melanie gave birth to Lucy, who suffered from a variety of birth defects probably caused by the Franomil. If Lucy's parents want to sue, they should seek:

**(1) Damages for wrongful birth**

(2) Damages for wrongful life

(3) Both (1) and (2)

(4) None of the above

No, that's incorrect. A wrongful birth recovery is based upon a claim that the parents would have been better off if the child had not been born. That doesn't appear to be the basis of the claim here. Try again.



# Torts Tutorial Chapter 3 - Damages

Melanie Mogill had severe migraine headaches. She went to her physician, Dr. Udall, for treatment. Udall prescribed Franomil, but negligently failed to inquire whether she was pregnant or planning to conceive. If Udall had used reasonable care, she would have prescribed a different drug, Lamanine, which is less effective on migraines, but doesn't pose a risk to pregnant women or their fetuses. Twelve months later Melanie gave birth to Lucy, who suffered from a variety of birth defects probably caused by the Franomil. If Lucy's parents want to sue, they should seek:

(1) Damages for wrongful birth

**(2) Damages for wrongful life**

(3) Both (1) and (2)

(4) None of the above

No, that's incorrect. A wrongful life recovery is sought for the child on the theory that the child would have been better off if she had never been born. That's not the basis of the claim here. Try again.



# Torts Tutorial Chapter 3 - Damages

Melanie Mogill had severe migraine headaches. She went to her physician, Dr. Udall, for treatment. Udall prescribed Franomil, but negligently failed to inquire whether she was pregnant or planning to conceive. If Udall had used reasonable care, she would have prescribed a different drug, Lamanine, which is less effective on migraines, but doesn't pose a risk to pregnant women or their fetuses. Twelve months later Melanie gave birth to Lucy, who suffered from a variety of birth defects probably caused by the Franomil. If Lucy's parents want to sue, they should seek:

(1) Damages for wrongful birth

(2) Damages for wrongful life

**(3) Both (1) and (2)**

(4) None of the above

That's incorrect. Wrongful birth is a recovery for the injury to the parents; wrongful life is a recovery for the injury to the child. Try again.



# Torts Tutorial Chapter 3 - Damages

Melanie Mogill had severe migraine headaches. She went to her physician, Dr. Udall, for treatment. Udall prescribed Franomil, but negligently failed to inquire whether she was pregnant or planning to conceive. If Udall had used reasonable care, she would have prescribed a different drug, Lamanine, which is less effective on migraines, but doesn't pose a risk to pregnant women or their fetuses. Twelve months later Melanie gave birth to Lucy, who suffered from a variety of birth defects probably caused by the Franomil. If Lucy's parents want to sue, they should seek:

(1) Damages for wrongful birth

(2) Damages for wrongful life

(3) Both (1) and (2)

**(4) None of the above**

That's correct. The wrongful birth and wrongful life cases are both based on the notion that the baby would not have been born but for the physician's negligence. Here the baby probably would have been born, but would not have suffered the birth defects. Thus, this case would be no different (from a damages standpoint) from a case in which the physician's negligence during the delivery produced injury.



## Question #10

Charlotte Christopher gave birth to Carlo, a healthy baby boy. However, prior to conceiving Carlo, Charlotte and her husband had used a birth control device which failed due to the negligence of the manufacturer. If Charlotte and her husband sue the manufacturer, what could they recover?

- (1) Nothing, since it violates public policy to calculate such an award.
- (2) It depends on the jurisdiction.
- (3) Only the economic costs for lost wages and the medical expenses for the actual childbirth.
- (4) The costs, both financial and emotional, of raising Carlo, minus the offsetting benefits they receive.



# Torts Tutorial Chapter 3 - Damages

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(2) It depends on the jurisdiction.

(3) Only the economic costs for lost wages and the medical expenses for the actual childbirth.

(4) The costs, both financial and emotional, of raising Carlo, minus the offsetting benefits they receive.

This answer is only correct in some jurisdictions. Try again.



# Torts Tutorial Chapter 3 - Damages

Charlotte Christopher gave birth to Carlo, a healthy baby boy. However, prior to conceiving Carlo, Charlotte and her husband had used a birth control device which failed due to the negligence of the manufacturer. If Charlotte and her husband sue the manufacturer, what could they recover?

(1) Nothing, since it violates public policy to calculate such an award.

**(2) It depends on the jurisdiction.**

(3) Only the economic costs for lost wages and the medical expenses for the actual childbirth.

(4) The costs, both financial and emotional, of raising Carlo, minus the offsetting benefits they receive.

That's correct. Some jurisdictions adopt a rule that provides little or no recovery, based upon a public policy argument similar to what is contained in answer (1). On the other hand, other jurisdictions provide a recovery that attempts to take into account both the costs and the offsetting benefits of the birth.



# Torts Tutorial Chapter 3 - Damages

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(1) Nothing, since it violates public policy to calculate such an award.

(2) It depends on the jurisdiction.

**(3) Only the economic costs for lost wages and the medical expenses for the actual childbirth.**

(4) The costs, both financial and emotional, of raising Carlo, minus the offsetting benefits they receive.

This answer is only correct in some jurisdictions. Try again.





# Torts Tutorial Chapter 3 - Damages

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- (4) The costs, both financial and emotional, of raising Carlo, minus the offsetting benefits they receive.**

This answer is only correct in some jurisdictions. Try again.



## Question #11

Linda Kauper was standing on a street corner when a gruesome accident occurred at the intersection. A motorcyclist was struck by a truck making an illegal left turn, and the motorcyclist's head was crushed by one of the wheels. Linda has lost a week of work and still suffers debilitating flashbacks that make her nauseated ill. If she sues for the injuries she sustained, the following will probably occur:

- (1)The court will probably reject her claim unless she was related to the motorcyclist.
- (2)She will be required to produce psychological testimony substantiating the reasonableness of her reaction.
- (3)The jury will have to find that her injury was foreseeable.
- (4)She will probably recover because, by being at the accident scene, she was in the "zone of danger."



# Torts Tutorial Chapter 3 - Damages

Linda Kauper was standing on a street corner when a gruesome accident occurred at the intersection. A motorcyclist was struck by a truck making an illegal left turn, and the motorcyclist's head was crushed by one of the wheels. Linda has lost a week of work and still suffers debilitating flashbacks that make her nauseated ill. If she sues for the injuries she sustained, the following will probably occur:

- (1)The court will probably reject her claim unless she was related to the motorcyclist.**
- (2)She will be required to produce psychological testimony substantiating the reasonableness of her reaction.
- (3)The jury will have to find that her injury was foreseeable.
- (4)She will probably recover because, by being at the accident scene, she was in the "zone of danger."

That's correct. Most courts will permit a recovery to a "bystander" if the bystander is closely related to the victim, actually witnesses the accident, and suffers significant emotional injury as a result. Here all three conditions would be present. But if she is not related to the victim, most courts would reject any claim for a bystander injury.



# Torts Tutorial Chapter 3 - Damages

Linda Kauper was standing on a street corner when a gruesome accident occurred at the intersection. A motorcyclist was struck by a truck making an illegal left turn, and the motorcyclist's head was crushed by one of the wheels. Linda has lost a week of work and still suffers debilitating flashbacks that make her nauseated ill. If she sues for the injuries she sustained, the following will probably occur:

- (1)The court will probably reject her claim unless she was related to the motorcyclist.
- (2)She will be required to produce psychological testimony substantiating the reasonableness of her reaction.**
- (3)The jury will have to find that her injury was foreseeable.
- (4)She will probably recover because, by being at the accident scene, she was in the "zone of danger."

No, that's incorrect. Even if her psychological injury is real, she still hasn't demonstrated that she is entitled to recover. More is required. Try again.



# Torts Tutorial Chapter 3 - Damages

Linda Kauper was standing on a street corner when a gruesome accident occurred at the intersection. A motorcyclist was struck by a truck making an illegal left turn, and the motorcyclist's head was crushed by one of the wheels. Linda has lost a week of work and still suffers debilitating flashbacks that make her nauseated ill. If she sues for the injuries she sustained, the following will probably occur:

- (1)The court will probably reject her claim unless she was related to the motorcyclist.
- (2)She will be required to produce psychological testimony substantiating the reasonableness of her reaction.
- (3)The jury will have to find that her injury was foreseeable.**
- (4)She will probably recover because, by being at the accident scene, she was in the "zone of danger."

No, that's incorrect. Before giving the case to the jury, the judge would have to decide if this is a compensable injury. In cases like *Dillon v. Legg* courts have permitted recovery only when several factors (such as a close relationship to the actual victim, presence at the scene of the accident, and severity of injury) combine to make the injury foreseeable to the defendant. Try again.



# Torts Tutorial Chapter 3 - Damages

Linda Kauper was standing on a street corner when a gruesome accident occurred at the intersection. A motorcyclist was struck by a truck making an illegal left turn, and the motorcyclist's head was crushed by one of the wheels. Linda has lost a week of work and still suffers debilitating flashbacks that make her nauseated ill. If she sues for the injuries she sustained, the following will probably occur:

- (1)The court will probably reject her claim unless she was related to the motorcyclist.
- (2)She will be required to produce psychological testimony substantiating the reasonableness of her reaction.
- (3)The jury will have to find that her injury was foreseeable.
- (4)She will probably recover because, by being at the accident scene, she was in the "zone of danger."**

That's incorrect. The facts don't indicate that she was in the zone of danger. That term refers to someone who was afraid for her own safety when the accident occurred. Here it appears that Linda was simply traumatized by witnessing a particularly gruesome accident. That doesn't put her in the zone of danger. Otherwise, everyone who witnessed the accident would get to line up at the cashier's window. Try again.



## Question #12

Dale Quann was permanently disabled by injuries suffered in a boating accident caused by the negligence of Grace Fidrich. Dale's wife Marilyn is suing Fidrich for the injuries she claims to have suffered as a result of Dale's disability. After Dale is compensated for his injuries, Marilyn would be able to recover:

- (1) Lost income that she has suffered or will suffer as a result of the injury;
- (2) Psychological damages from Dale's disability;
- (3) Both (1) and (2), but only if Marilyn actually witnessed the accident;
- (4) Both (1) and (2).



# Torts Tutorial Chapter 3 - Damages

Dale Quann was permanently disabled by injuries suffered in a boating accident caused by the negligence of Grace Fidrich. Dale's wife Marilyn is suing Fidrich for the injuries she claims to have suffered as a result of Dale's disability. After Dale is compensated for his injuries, Marilyn would be able to recover:

**(1)Lost income that she has suffered or will suffer as a result of the injury;**

(2)Psychological damages from Dale's disability;

(3)Both (1) and (2), but only if Marilyn actually witnessed the accident;

(4)Both (1) and (2).

This answer is only partially correct. Try again.





# Torts Tutorial Chapter 3 - Damages

Dale Quann was permanently disabled by injuries suffered in a boating accident caused by the negligence of Grace Fidrich. Dale's wife Marilyn is suing Fidrich for the injuries she claims to have suffered as a result of Dale's disability. After Dale is compensated for his injuries, Marilyn would be able to recover:

(1) Lost income that she has suffered or will suffer as a result of the injury;

**(2) Psychological damages from Dale's disability;**

(3) Both (1) and (2), but only if Marilyn actually witnessed the accident;

(4) Both (1) and (2).

This answer is only partially correct. Try again.



# Torts Tutorial Chapter 3 - Damages

Dale Quann was permanently disabled by injuries suffered in a boating accident caused by the negligence of Grace Fidrich. Dale's wife Marilyn is suing Fidrich for the injuries she claims to have suffered as a result of Dale's disability. After Dale is compensated for his injuries, Marilyn would be able to recover:

- (1) Lost income that she has suffered or will suffer as a result of the injury;
- (2) Psychological damages from Dale's disability;
- (3) Both (1) and (2), but only if Marilyn actually witnessed the accident;**
- (4) Both (1) and (2).

That's incorrect. While it is true in bystander cases that the plaintiff must actually witness the accident in order to recover damages, most jurisdictions recognize an independent cause of action for spouses on the basis of "loss of consortium," which compensates the spouse for the destruction of or damage to the spousal relationship.



# Torts Tutorial Chapter 3 - Damages

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- (1) Lost income that she has suffered or will suffer as a result of the injury;
- (2) Psychological damages from Dale's disability;
- (3) Both (1) and (2), but only if Marilyn actually witnessed the accident;
- (4) Both (1) and (2).**

That's correct. In most cases brought for loss of consortium the major injury is the psychological loss of the comfort and companionship of the spouse. This includes, but is not limited to, their sexual relationship. Lost income might arise, for example, as a result of the spouse's inability to assist the plaintiff in entertainment or other methods of career advancement.



## Question #13

Alice Abelard was injured by the collapse of a roof in a building constructed negligently by the Quick Construction Company. The jury awarded her \$3.2 million. The judge questions the amount of the award and will enter a judgment of that magnitude only if:

- (1) The pain and suffering award does not exceed three times the amount of the economic damages;
- (2) The jury is able to provide an explanation of how it arrived at its award;
- (3) A reasonable jury could have arrived at that amount, based upon the testimony.
- (4) The award is supported by expert testimony.



# Torts Tutorial Chapter 3 - Damages

Alice Abelard was injured by the collapse of a roof in a building constructed negligently by the Quick Construction Company. The jury awarded her \$3.2 million. The judge questions the amount of the award and will enter a judgment of that magnitude only if:

**(1)The pain and suffering award does not exceed three times the amount of the economic damages;**

(2)The jury is able to provide an explanation of how it arrived at its award;

(3)A reasonable jury could have arrived at that amount, based upon the testimony.

(4)The award is supported by expert testimony.

No, that's incorrect. Although many claims adjusters use a rough rule of thumb of special damages (economic damages) plus general damages in the amount of "three times the specials," this rule has no legal standing. Try again.



# Torts Tutorial Chapter 3 - Damages

Alice Abelard was injured by the collapse of a roof in a building constructed negligently by the Quick Construction Company. The jury awarded her \$3.2 million. The judge questions the amount of the award and will enter a judgment of that magnitude only if:

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**(2) The jury is able to provide an explanation of how it arrived at its award;**

(3) A reasonable jury could have arrived at that amount, based upon the testimony.

(4) The award is supported by expert testimony.

No, that's incorrect. Juries are not required to explain their verdicts. The court will only overturn a verdict if there is no support for such a verdict in the evidence. Many times the jury's verdict is the result of compromise between different viewpoints, so no one on the jury actually preferred the precise number agreed upon. Nonetheless, if the verdict is within the range of what a reasonable jury could have given, the court will sustain it.



# Torts Tutorial Chapter 3 - Damages

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(2)The jury is able to provide an explanation of how it arrived at its award;

**(3)A reasonable jury could have arrived at that amount, based upon the testimony.**

(4)The award is supported by expert testimony.

That's correct. Jurors are given a wide leeway in deciding how much is the appropriate amount of compensation. However, if the verdict seems so disproportionate to the damages that are established at trial, the judge may conclude that the jury was not assessing damages on some reasonable basis, but instead was acting out of passion and prejudice. This is a judgement call, and most appellate courts will honor the judge's determination of whether the amount was reasonable.

You have now completed the exercises for Chapter 3. You will now be returned to the menu.



# Torts Tutorial Chapter 3 - Damages

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- (2)The jury is able to provide an explanation of how it arrived at its award;
- (3)A reasonable jury could have arrived at that amount, based upon the testimony.
- (4)The award is supported by expert testimony.**

That's incorrect. Most plaintiffs use expert testimony to provide evidence of various aspects of damage, for example, what future medical costs will be, or the value of lost wages. However, it is not legally required in order to obtain a recovery, even a large one. Try again.





END

Find more exercises at the Torts Home Page by clicking the Home Action Button

