

Judicial Council Of California Civil Jury Instruction 3900

Judicial Council Of California Civil Jury Instructions | July 2023 Update
By the Judicial Council of California Advisory Committee on Civil Jury Instructions

Damages

3900 Introduction to Tort Damages—Liability Contested

If you decide that *[name of plaintiff]* has proved *[his/her/nonbinary pronoun]* claim against *[name of defendant]*, you also must decide how much money will reasonably compensate *[name of plaintiff]* for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by *[name of defendant]*'s wrongful conduct, even if the particular harm could not have been anticipated.

[Name of plaintiff] does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

[The following are the specific items of damages claimed by *[name of plaintiff]*:]

[Insert applicable instructions on items of damage.]

New September 2003

Directions for Use

Read last bracketed sentence and insert instructions on items of damages here only if [CACI No. 3902, Economic and Noneconomic Damages](#), is not being read. If [CACI No. 3902](#) is not used, this instruction should be followed by applicable instructions (see [CACI Nos. 3903A through 3903N](#), and [3905A](#)) concerning the items of damage claimed by the plaintiff. These instructions should be inserted into this instruction as sequentially numbered items.

Sources and Authority

- Measure of Tort Damages. [Civil Code section 3333](#).
- Recovery of Damages Generally. [Civil Code section 3281](#).
- Recovery of Future Damages. [Civil Code section 3283](#).
- Damages Must Be Reasonable. [Civil Code section 3359](#).
- “ ‘Damages’ are monetary compensation awarded to parties who suffer detriment for the unlawful act or omission of another; they are assessed by a court against wrongdoers for the commission of a legal wrong of a private nature.” ([Meister v. Mensinger \(2014\) 230 Cal.App.4th 381, 396 \[178 Cal.Rptr.3d 604\]](#).)
- Under [Civil Code section 3333](#) “[t]ort damages are awarded to compensate a plaintiff for all of the damages suffered as a legal result of the defendant's wrongful conduct.” ([North American Chemical Co. v. Superior Court \(1997\) 59 Cal.App.4th 764, 786 \[69 Cal.Rptr.2d 466\]](#), italics omitted.)

- “Whatever its measure in a given case, it is fundamental that ‘damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery.’ However, recovery is allowed if claimed benefits are reasonably certain to have been realized but for the wrongful act of the opposing party.” (*Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 989 [105 Cal.Rptr.2d 88], internal citations omitted.)
- “In general, one who has been tortiously injured is entitled to be compensated for the harm and the injured party must establish ‘by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit.’ However, ‘[t]here is no general requirement that the injured person should prove with like definiteness the extent of the harm that he has suffered as a result of the tortfeasor’s conduct. It is desirable that responsibility for harm should not be imposed until it has been proved with reasonable certainty that the harm resulted from the wrongful conduct of the person charged. It is desirable, also, that there be definiteness of proof of the amount of damage as far as is reasonably possible. It is even more desirable, however, that an injured person not be deprived of substantial compensation merely because he cannot prove with complete certainty the extent of harm he has suffered.’ ” (*Clemente v. State of California* (1985) 40 Cal.3d 202, 219 [219 Cal.Rptr. 445, 707 P.2d 818], internal citations omitted.)
- “ ‘Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty.’ ‘The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation.... ’ ” (*Meister, supra*, 230 Cal.App.4th at pp. 396–397, original italics, internal citation omitted.)
- “If plaintiff’s inability to prove his damages with certainty is due to defendant’s actions, the law does not generally require such proof.” (*Clemente, supra*, 40 Cal.3d at p. 219, internal citations omitted.)
- “While a defendant is liable for all the damage that his tortuous act proximately causes to the plaintiff, regardless of whether or not it could have been anticipated, nevertheless a proximate causal connection must still exist between the damage sustained by the plaintiff and the defendant’s wrongful act or omission, and the detriment inflicted on the plaintiff must still be the natural and probable result of the defendant’s conduct.” (*Chaparkas v. Webb* (1960) 178 Cal.App.2d 257, 260 [2 Cal.Rptr. 879], internal citations omitted.)
- “The issue here is whether [defendant]—separate from other legal and practical reasons it had to prevent injury of any kind to the public—had a tort duty to guard against negligently causing what we and others have called ‘purely economic loss[es].’ We use that term as a shorthand for ‘pecuniary or commercial loss that does not arise from actionable physical, emotional or reputational injury to persons or physical injury to property.’ And although [defendant] of course had a tort duty to guard against the latter kinds of injury, we conclude it had no tort duty to guard against purely economic losses.” (*Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 398 [247 Cal.Rptr.3d 632, 441 P.3d 881], internal citations omitted.)

Secondary Sources

6 Witkin, *Summary of California Law* (11th ed. 2017) Torts, §§ 1715-1719, 1723-1726

California Tort Damages (Cont.Ed.Bar) Bodily Injury, §§ 1.2-1.6

4 Levy et al., *California Torts*, Ch. 50, *Damages*, § 50.02 (Matthew Bender)

15 California Forms of Pleading and Practice, Ch. 177, *Damages*, § 177.41 (Matthew Bender)

California Civil Practice: Torts § 5:1 (Thomson Reuters)

WEST’S EDITORIAL REFERENCES

Direct References:

- See [BAJI 14.00](#)

Related References:

- [BAJI 11.40, 14.02, 14.10, 14.11, 14.12, 14.13, 14.20, 14.21, 14.22](#)

Statutory References:

- [Civ. Code, §§ 3281, 3283, 3333, 3359](#)

Library References:

- [Cal. Jur. 3d, Damages § 1](#)

Research References:

- West's Key Number Digest, [Damages](#)  210(1)
- [C.J.S., Damages §§ 327, 351 to 372](#)

© 2023 by the Judicial Council of California. All rights reserved. See front matter for a listing of Judicial Council Task Force and Advisory Committee members who have contributed to these jury instructions.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.