

# **PERSONAL INJURY DAMAGES INSTRUCTIONS**

## **Introduction**

In RAJI (CIVIL) 3d, the Damages Instructions were taken out of the Negligence Instructions section and placed in their own section. As these instructions are appropriate for use in all personal injury sections, not just negligence cases, the RAJI (CIVIL) 4th follows that format.

In the typical personal injury case, the basic instructions are in the Standard Instructions section, the case specific instructions are in the specialized sections (Fault, Negligence, Medical Negligence, Product Liability), and the damages instructions are in the Personal Injury Damages Instructions section.

Personal Injury Damages 1 (Measure of Damages) now includes an additional element of damages for “Loss of Enjoyment of Life.” However, not all of the elements of damages will be appropriate for every case and in some instances can be redundant. Accordingly, the instructions will need to be modified based on the individual case.

Personal Injury Damages 4 (Punitive Damages) has been revised to incorporate recent case law in this area.

## PERSONAL INJURY DAMAGES 1

### Measure of Damages

If you find [any] [*name of defendant*] liable to [*name of plaintiff*], you must then decide the full amount of money that will reasonably and fairly compensate [*name of plaintiff*] for each of the following elements of damages proved by the evidence to have resulted from the fault of [any] [*name of defendant*] [party] [person]:<sup>1</sup>

1. The nature, extent, and duration of the injury.
2. The pain, discomfort, suffering, disability, disfigurement, and anxiety already experienced, and reasonably probable to be experienced in the future as a result of the injury.
3. Reasonable expenses of necessary medical care, treatment, and services rendered, and reasonably probable to be incurred in the future.
4. Lost earnings to date, and any decrease in earning power or capacity in the future.
5. Loss of love, care, affection, companionship, and other pleasures of the [marital] [family] relationship.
6. Loss of enjoyment of life, that is, the participation in life's activities to the quality and extent normally enjoyed before the injury.<sup>2</sup>

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**USE NOTE:** <sup>1</sup> Use the appropriate bracketed language, as follows:

1. “defendant” – One defendant, no claim of plaintiff’s fault.
2. “any defendant” – More than one defendant, no claim of plaintiff’s fault
3. “any party” – One or more defendants, claim of plaintiff’s fault.
4. “any person” – One or more defendants, claim of non-party fault (with or without a claim of plaintiff’s fault).
5. Alternatives: Any appropriate combination of the above; or, identify by name all those who might be at fault; or, simply say: “. . . resulted from any fault in the case.”

**Modifications:** Depending on the evidence in the case, some of the elements in Paragraphs 2, 3, 4, and 5 may be inapplicable or cumulative, and some unlisted elements may be applicable and not cumulative. Customize the instruction to fit the case.

**Property Damage Claim:** If there is a property claim, add, as the last element of the instruction: “(7) The difference in the value of the damaged property immediately before and immediately after the damage.”

<sup>2</sup> See *Ogden v. J.M. Steel Erecting, Inc.*, 201 Ariz. 32, 31 P.3d 8 (Ct. App. 2001).

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PERSONAL INJURY DAMAGES 2

**Pre-Existing Condition,  
Unusually Susceptible Plaintiff**

[*Name of plaintiff*] is not entitled to compensation for any physical or emotional condition that pre-existed the fault of [*name of defendant*]. However, if [*name of plaintiff*] had any pre-existing physical or emotional condition that was aggravated or made worse by [*name of defendant*]'s fault, you must decide the full amount of money that will reasonably and fairly compensate [*name of plaintiff*] for that aggravation or worsening.

You must decide the full amount of money that will reasonably and fairly compensate [*name of plaintiff*] for all damages caused by the fault of [*name of defendant*], even if [*name of plaintiff*] was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury.

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**SOURCE:** JUDICIAL COUNCIL OF CALIFORNIA CIVIL JURY INSTRUCTIONS (2003-04), CACI No. 3928.

**USE NOTE: 1. Identification of Possible Parties at Fault:** The instruction is drafted for a one-defendant, no comparative fault case. In other cases, replace “defendant” here with the same language used in RAJI (CIVIL) 4th Personal Injury Damages 1 from the “[any] [defendant] [party] [person]” options.

**2. The Two Principles Covered by this Instruction:** Use the first paragraph when there is an issue of aggravation of pre-existing condition. (“Worsening” has been added as a clarification of “aggravation”; some may find the instruction just as clear with one or the other of those concepts removed.) Use the second paragraph when there is an issue of injury to an unusually susceptible person. Use both paragraphs if both issues are in the case.

**3. “Fault” or “Negligence”:** If desired, “negligence” can be substituted for “fault” in this instruction; the instruction will be correct either way.

## PERSONAL INJURY DAMAGES 3

### Damages for Wrongful Death of Spouse, Parent, or Child

If you find [*name of defendant*] liable to [*name of plaintiff*], you must then decide the full amount of money that will reasonably and fairly compensate [*name of each survivor*] [*separately*] for each of the following elements of damages proved by the evidence to have resulted from the death of [*name of decedent*].

1. The loss of love, affection, companionship, care, protection, and guidance since the death and in the future.
2. The pain, grief, sorrow, anguish, stress, shock, and mental suffering already experienced, and reasonably probable to be experienced in the future.
3. The income and services that have already been lost as a result of the death, and that are reasonably probable to be lost in the future.
4. The reasonable expenses of funeral and burial.
5. The reasonable expenses of necessary medical care and services for the injury that resulted in the death.

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**SOURCE:** A.R.S. § 12-613; *City of Tucson v. Wondergem*, 105 Ariz. 429, 466 P.2d 383 (1970); *Jeffery v. United States*, 381 F. Supp. 505 (Ariz. 1974); *Salinas v. Kahn*, 2 Ariz. App. 181, 407 P.2d 120 (1965).

**USE NOTE:** Depending on the evidence in the case, some of the elements in paragraphs 1 and 2 may be inapplicable or cumulative, and the elements listed in paragraphs 3, 4, and 5 may be inapplicable. Customize the instruction to fit the case.

## PERSONAL INJURY DAMAGES 4

### Punitive Damages

If you find [name of defendant] liable to [name of plaintiff], you may consider assessing additional damages to punish [name of defendant] or to deter [name of defendant] and others from similar misconduct in the future. Such damages are called “punitive” or “exemplary” damages.

To recover such damages, [name of plaintiff] has the burden of proving by clear and convincing evidence, either direct or circumstantial, that [name of defendant] acted with an evil mind.

This required state of mind may be shown by any of the following:

1. Intent to cause injury; or
2. Wrongful conduct motivated by spite or ill will; or
3. <sup>1</sup>[[Name of defendant] acted to serve his own interests, having reason to know and consciously disregarding a substantial risk that his conduct might significantly injure the rights of others.]

[[Name of defendant] consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.]

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**SOURCE: 1. Elements of Punitive Damages:** *Volz v. Coleman Co., Inc.*, 155 Ariz. 567, 748 P.2d 1191 (1987); *Gurule v. Illinois Mut. Life & Cas. Co.*, 152 Ariz. 600, 734 P.2d 85 (1987); *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 733 P.2d 1073 (1987); *Rawlings v. Apodaca*, 151 Ariz. 149, 726 P.2d 565 (1986); *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 723 P.2d 675 (1986); *Bradshaw v. State Farm Mut. Auto. Ins.*, 157 Ariz. 411, 758 P.2d 1313 (Ct. App. 1988).

**2. Definition of Clear and Convincing:** *State v. King*, 158 Ariz. 419, 422, 763 P.2d 239, 242 (1988); *State v. Renforth*, 155 Ariz. 385, 746 P.2d 1315 (Ct. App. 1987), *rev. denied*, 158 Ariz. 487, 763 P.2d 983 (1988); *see also U.S. v. Owens*, 854 Fed. 2d 432, 436 (11th Cir. 1988), which accepted the *Renforth* definition of the clear and convincing standard of proof.

**USE NOTE: <sup>1</sup> Bracketed “State of Mind” Statements at Element 3:** Use the bracketed language most appropriate for the case. The first bracketed statement is taken directly from *Bradshaw*; the second is taken directly from *Gurule*. Although the bracketed statements cover the same principle, there are differences between the two. In some cases, therefore, one statement might be preferable to the other. Select one of the statements, but probably not both, as appropriate for the case. Or, replace both statements with other satisfactory language expressing the same principle. *See* Comment 1, *infra*.

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PERSONAL INJURY DAMAGES 4

Punitive Damages

*Continued*

To prove this required state of mind by clear and convincing evidence, [name of plaintiff] must persuade you that the punitive damages claim is highly probable. This burden of proof is more demanding than the standard of more probably true than not true, which applies to all other claims in this case, but it is less demanding than the standard of proof beyond a reasonable doubt, which is used in criminal cases.

The law provides no fixed standard for the amount of punitive damages you may assess, if any, but leaves the amount to your discretion. [However, if you assess punitive damages, you may consider the character of [name of defendant]'s conduct or motive, the nature and extent of the harm to plaintiff that [name of defendant] caused, and the nature and extent of defendant's financial wealth.]<sup>2</sup>

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<sup>2</sup> **Brackets:** The brackets around sentences of RAJI (CIVIL) 4th Personal Injury Damages 4 indicate that some of the factors listed could be deleted or others added, depending on the evidence in a particular case.

**Causation:** The plaintiff must also prove such conduct or action accompanied by an evil mind on the part of defendant was a cause of, or contributed to, injury to the plaintiff. *Saucedo v. Salvation Army*, 200 Ariz. 179, 24 P.3d 1274 (Ct. App. 2001).

**Burden of Proof Paragraph:** The burden of proof contained in this instruction is for use when the only claim in the case requiring proof by clear and convincing evidence is for punitive damages. If the clear and convincing standard applies to both punitive damages and other kinds of claims in the case, delete the burden of proof paragraph here and use RAJI (CIVIL) 4th Standard 3. In either situation, also use RAJI (CIVIL) 4th Standard 2.

**COMMENT: 1. Alternative Definitions of Evil Mind:** Beginning with the 1986 cases of *Linthicum* and *Rawlings*, the Arizona Supreme Court has redefined the conduct, state of mind, and level of proof required for assessment of punitive damages. RAJI (CIVIL) 4th Personal Injury Damages 4 provides three alternative ways to show the "evil mind" element of a punitive damages claim. The specific language for these alternatives is directly from *Bradshaw* and *Gurule*.

The Committee does not suggest that the alternatives set forth in the instruction are exclusive of all others, or that they have been stated here in the *only* correct way. The Arizona Supreme Court opinions contain many statements and expressions discussing and defining "evil mind." The trial court may find other "evil mind" statements or formulations more appropriate for a particular case than any of those provided in Personal Injury Damages 4; in that event, the instruction may serve as a template.

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## PERSONAL INJURY DAMAGES 4

### Punitive Damages

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**2. DUI or Other Voluntary Intoxication Cases:** If there is adequate evidence that plaintiff's injury resulted from defendant's driving while under the influence of intoxicating liquors, a punitive damages instruction is probably warranted. However, "intoxication alone, in the absence of other compelling circumstances, may not warrant punitive damages." *Olson v. Walker*, 162 Ariz. 174, 781 P.2d 1015 (Ct. App. 1989).

**3. Consitutional Issues:** Because of the developing constitutional law in this area, the Committee has elected not to make substantive modifications to the RAJI Instruction on Punitive Damages. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003), *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 St. Ct. 1589 (1996); *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S. Ct. 2711 (1993); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court should assess whether changes to the instruction are appropriate based on *Campbell* and other decisions addressing consitutional issues.

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**PERSONAL INJURY DAMAGES 5**  
**Mortality Tables and Life Expectancy**

A person aged \_\_\_\_ years has a life expectancy of \_\_\_\_ years. This is merely an estimate of the probable average remaining length of life of all persons of this age.

This estimate may be considered by you in determining the amount of damages for any permanent injury proved by the evidence to have resulted from the fault of [any] [*name of defendant*] [party] [person].

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**SOURCE:** National Vital Statistics Reports, Volume 53, No. 6, November 10, 2004.