

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) 5th 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.

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]:¹

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.
3. Reasonable expenses for necessary medical care, treatment, and services rendered already incurred and reasonably probable to be incurred in the future.²
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] [parent-child] relationship.³

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USE NOTE: ¹ 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, 5, and 6 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.”

² *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198 (App. 2006); *Saide v. Stanton*, 135 Ariz. 76, 77 (1983).

³ *International Harvester Co. v. Chiarello*, 27 Ariz. App. 411 (App. 1976). See also *Kaufman v. Langhofer*, 239 Ariz. 249 (App. 2009) (“A cause of action for loss of consortium is also limited to spouses, parents, and children.”) (citing *Barnes v. Outlaw*, 192 Ariz. 283, 286 (1998) (spouses); *Villareal v. State Dep’t of Transp.*, 160 Ariz. 474, 477 (1989) (parents); *Frank v. Superior Court*, 150 Ariz. 228, 234 (1986) (children)).

PERSONAL INJURY DAMAGES 1
Measure of Damages

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6. Loss of enjoyment of life, that is, the participation in life's activities to the quality and extent normally enjoyed before the injury.⁴

⁴ See *Ogden v. J.M. Steel Erecting, Inc.*, 201 Ariz. 32, 38-39 (App. 2001) (holding that “hedonic damages can be a component of a general damages claim, distinguishable from, and not duplicative of, damages for pain and suffering.”); *but see Quintero v. Rogers*, 221 Ariz. 536, 539 (App. 2009) (finding that “loss of enjoyment of life” damages are within the category of “pain and suffering” damages excluded by Arizona’s survival statute, A.R.S. § 14-3110.)

COMMENT: The RAJI personal injury damages instruction has included the phrase “reasonable expenses of necessary medical treatment” since the publication of the first edition of the RAJI’s in 1974. The first four editions of the RAJI included this language without citation to case law. In 2020 the Committee reviewed the case law and disagreed whether the instruction accurately reflects Arizona law. The Committee decided not to change the instruction pending further appellate review. For further information, see *Larson v. Decker*, 196 Ariz. 239 (App. 2000); *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198 (App. 2006); *Meyer v. Ricklick*, 99 Ariz. 355 (1965); *Sanchez v. Gama*, 233 Ariz. 125 (App. 2013); *Benedict v. Total Transit Enterprises*, 252 Ariz. 151 (App. 2021); and RESTATEMENT (2D) TORTS § 924 cmt. f.

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.

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 Personal Injury Damages Instruction 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.

SOURCE: A.R.S. § 12-613; *City of Tucson v. Wondergem*, 105 Ariz. 429 (1970); *Jeffery v. United States*, 381 F. Supp. 505, 510 (Ariz. 1974); *Salinas v. Kahn*, 2 Ariz. App. 181, 193-95 (1965).

See also White v. Greater Ariz. Bicycling Ass'n, 216 Ariz. 133, 136 (App. 2007); *Mullen v. Posada Del Sol Health Care Ctr.*, 169 Ariz. 399, 400 (App. 1991).

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 for [*name of plaintiff*]'s damages, you may assess 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” damages.

To recover punitive damages, [*name of plaintiff*] must prove by clear and convincing evidence that:

1. [*Name of defendant*]'s misconduct was intended to cause harm, or
2. [*Name of defendant*]'s misconduct was motivated by spite or ill will, or
3. [*Name of defendant*]'s misconduct was
 - a. outrageous, oppressive, or intolerable, and
 - b. [*name of defendant*] knew or intentionally disregarded that [*his/her/its*] conduct created a substantial risk of significant harm to others.

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SOURCES: *Swift Transp. Co. of Ariz. L.L.C. v. Carman*, 253 Ariz. 499, 506–07, ¶¶ 22, 24–25 (2022); *Bradshaw v. State Farm Mut. Auto. Ins.*, 157 Ariz. 411, 422 (1988); *Volz v. Coleman Co., Inc.*, 155 Ariz. 567, 570 (1987); *Gurule v. Ill. Mut. Life & Cas. Co.*, 152 Ariz. 600, 601–02 (1987); *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 497 (1987); *Linticum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 330–31 (1986); *Rawlings v. Apodaca*, 151 Ariz. 149, 161–63 (1986); *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, 584, ¶ 47 (App. 2015); *Hudgins v. Sw. Airlines Co.*, 221 Ariz. 472, 486, 489, ¶¶ 38, 50 (App. 2009).

USE NOTES:

1. **Burden of Proof:** When giving this instruction, also give RAJI (CIVIL) 7th Standard 3 on the burden of proof by clear and convincing evidence.
2. **State of Mind Categories:** In cases alleging negligent conduct by the defendant, the trial court may, if appropriate, omit categories 1 and 2. The Arizona Supreme Court has explained, “[i]n a claim arising out of negligence, by definition there is no intent to injure the plaintiff,” the defendant “is unlikely to be motivated by spite or ill will,” and “the only means by which a plaintiff is likely to meet the punitive damage standard . . . is by demonstrating that the outrageousness of the defendant's conduct is such that the defendant had an ‘evil mind’ when engaging in such conduct.” *Swift Transp. Co. of Ariz. L.L.C. v. Carman*, 253 Ariz. 499, 506, ¶ 23 (2022)

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PERSONAL INJURY DAMAGES 4

Punitive Damages

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COMMENTS:

- 1. Evil Mind:** In 1986, the Arizona Supreme Court revised the standard for punitive damages. In *Rawlings v. Apodaca*, 151 Ariz. 149 (1986), the Supreme Court held that punitive damages may be awarded only when a plaintiff can prove that “the defendant’s evil hand was guided by an evil mind.” *Id.* at 160. In 2022, the Supreme Court further clarified the standard for punitive damages. In *Swift Transp. Co. of Ariz., LLC v. Carmen*, 253 Ariz. 499 (2022), the Supreme Court held that “[a] punitive damages claim will be submitted to the jury only where there is proof that the defendant’s conduct was either intended to cause harm, motivated by spite or ill will, or outrageous, in which the defendant consciously pursued a course of conduct knowing that it created substantial risk of significant injury to others.” *Id.* at 502, ¶ 1. The Supreme Court in *Swift* provided different formulations of the standard for assessing punitive damages. *Id.* at 506–07, ¶¶ 22, 24–25. In drafting the instruction, the Committee used the language from the Supreme Court’s opinion that the Committee believed would be most comprehensible to jurors. While the cases use the phrase “evil mind” as shorthand to describe the state of mind required to establish a claim for punitive damages, the Committee has concluded that the words “evil mind” should not be included in the jury instruction. The Committee reasoned that the phrase was a legal term of art that could be confusing to jurors because they might apply or be influenced by their own religious or social perspective.
- 2. Whether Aggravated or Outrageous Conduct Is a Required Element of Punitive Damages:** The Arizona Supreme Court in *Swift* explained: “Absent proof of the intent to cause harm or that the defendant acted out of spite or ill will, outrageous conduct will always be required to sustain a claim for punitive damages in negligence cases.” 253 Ariz. at 507, ¶ 25. The numbered paragraphs in the instruction are intended to express the alternative ways to establish the requirement of “outrageous conduct” as clarified by the Supreme Court in *Swift*.
- 3. 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, 179 (App. 1989).
- 4. Causation:** The plaintiff also must prove that the same conduct that provides the basis for punitive damages was a cause of, or contributed to, injury to the plaintiff. *Saucedo v. Salvation Army Saucedo v. Salvation Army*, 200 Ariz. 179, 182–84, ¶¶ 13, 20 (App. 2001) (act of leaving scene of hit and run could not establish “evil mind” for punitive damages because pedestrian died on impact and defendant’s failure to remain did not contribute to harm). The Arizona Supreme Court has cited with approval the court of appeals’ decision in *Saucedo* in applying this rule. See *Swift*, 253 Ariz. at 508, ¶ 32 (“[N]o evidence suggests that [the driver’s] talking on the phone was a proximate cause of him losing control of the vehicle, let alone a but-for cause of the subsequent collision that ultimately resulted in the deaths of others.”).

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PERSONAL INJURY DAMAGES 4

Punitive Damages

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Constitutional Issues: Due process limits on punitive damages are imposed by courts rather than juries. *See Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 437 (2001). Thus, the constitutional issues associated with the imposition of punitive damages are not appropriate for consideration by juries or inclusion in jury instructions. To assist attorneys in understanding the three guideposts courts consider when evaluating after the trial whether an award of punitive damages violates the Due Process Clause, the Committee has provided the following citations: *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996); *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *Philip Morris USA v. Williams*, 549 U.S. 346, 352 (2007) (punitive damages cannot be awarded for causing injury to any nonparty); *Arellano v. Primerica Life Ins. Co.*, 235 Ariz. 371, 378–80 (App. 2014) (reducing punitive damages award with a 13:1 ratio of punitive to compensatory damages to 4:1 ratio under *Gore* and *Campbell*); *Nardelli v. Metro. Grp. Prop. & Cas. Ins. Co.*, 230 Ariz. 592, 609–12 (App. 2012) (where jury returned 355:1 punitive damages award, further reducing trial court’s 4:1 award to 1:1); *Hudgins v. Sw. Airlines Co.*, 221 Ariz. 472, 489–92 (App. 2009) (reducing jury’s 8:1 punitive damages award to 1:1); *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 500–04 (App. 2008) (reducing jury’s 6:1 punitive damages award to 1:1). Although an appellate court has discretion to consider a constitutional issue raised for the first time on appeal, due process concerns regarding the size of the punitive damages award should be raised with the trial court in order to preserve the issue for appeal. *See Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, 185, ¶¶ 24–25 (App. 2011).

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PERSONAL INJURY DAMAGES 4²

Punitive Damages

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5. **Constitutional Issues:** Due process limits on punitive damages are imposed by courts rather than juries. *See Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 437 (2001). Thus, the constitutional issues associated with the imposition of punitive damages are not appropriate for consideration by juries or inclusion of jury instructions. To assist attorneys in understanding the three guideposts courts consider when evaluating after the trial whether an award of punitive damages violates the Due Process Clause, the Committee has provided the following citations: *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996); *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *Philip Morris USA v. Williams*, 549 U.S. 346, 352 (2007) (punitive damages cannot be awarded for causing injury to any nonparty) ; *Arellano v. Primerica Life Ins. Co., Co.*, 235 Ariz. 371, 378-80 (App. 2014) (reducing punitive damages award with a 13:1 ratio of punitive to compensatory damages to 4:1 ratio under *Gore* and *Campbell*); *Nardelli v. Metro. Grp. Prop. & Cas. Ins. Co.*, 230 Ariz. 592, 609-12 (App. 2012) (where jury returned 355:1 punitive damages award, further reducing trial court's 4:1 award to 1:1); *Hudgins v. Sm. Airlines, Co.*, 221 Ariz. 472, 489-92 (App. 2009) (reducing jury's 8:1 punitive damages award to 1:1); *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 500-04 (App. 2008) (reducing jury's 6:1 punitive damages award to 1:1). Although an appellate court has discretion to consider a constitutional issue raised for the first time on appeal, due process concerns regarding the size of the punitive damages award should be raised with the trial court in order to preserve the issue for appeal. *See Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, 185, ¶¶ 24-25 (App. 2011).

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].

PERSONAL INJURY DAMAGES

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Other Authorities

JUDICIAL COUNCIL OF CALIFORNIA CIVIL JURY INSTRUCTIONS (2003-04), CACI No. 3928. 4

SOURCE: National Vital Statistics Reports, Volume 69, No. 12, November 17, 2020.