

AGENDA  
ADVISORY COMMITTEE  
ON MODEL CIVIL JURY INSTRUCTIONS

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Council Room, Suite N31

May 8, 2005  
1:00 TO 6:00 P.M.

Superseding cause.	Frank Carney
Loss of consortium.	Tim Shea
Employer and employee rights.	Jathan Janove
Damages final edits.	Tim Shea

**Meeting Schedule: Matheson Courthouse, 4:00 to 6:00, Education Room as available. Otherwise Judicial Council Room**

June 12, 2006  
July 10, 2006  
August 14, 2006  
September 11, 2006  
October 9, 2006  
November 13, 2006  
December 11, 2006

Committee Web Page: <http://www.utcourts.gov/committees/muji/>

Model Utah Jury Instructions  
Second Edition  
Working Draft  
April 13, 2006

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### **210. Superseding cause.**

[Name of defendant] claims that he is relieved from liability because the later act of [name of person] caused [name of plaintiff]'s harm.

If [name of defendant]'s negligent conduct creates or increases the risk of a particular harm and is a substantial factor in causing that harm, [name of defendant] remains liable, unless he proves that [name of person] intentionally [negligently] caused the harm and that the harm was not within the scope of the risk created by his conduct.

The fact that the final act that caused [name of plaintiff]'s harm was [name of person]'s act does not relieve [name of defendant] from liability unless [name of person]'s act was unforeseeable and may be described with the benefit of hindsight as extraordinary.

### **MUJI 1<sup>st</sup> References.**

3.16.

### **References.**

Mitchell v. Pearson Enterprises, 697 P.2d 240 (Utah 1985).  
Bansanine v. Bodell, 927 P.2d 675 (Utah App. 1996).  
Steffensen v. Smith's Management Corp., 820 P.2d 482, 488 (Utah App. 1991),  
aff'd, 862 P.2d 1342 (Utah 1993).  
Restatement 2d Torts, 1965 §442B.

### **Advisory Committee Notes.**

The Committee drafted the second paragraph in the alternative because parts of the law on superceding cause are unclear. What is well established is that for a subsequent act to break the chain of causation and be a superseding cause, the subsequent act must be unforeseeable. Further, to cut off the defendant's liability, the harm must be outside the scope of the risk created by the defendant's conduct. If the "general nature" of the harm is foreseeable, the defendant remains liable. Steffensen v. Smith's Management Corp., 862 P.2d 1342, 1346 (Utah 1993) As a concurrent contributing factor, the third person's acts would be analyzed under the Liability Reform Act, Utah Code section 78-27-37, et seq.

What is not as clear is whether the third person's act must be an intentional act or whether negligence is sufficient. Bansanine v. Bodell, 927 P.2d 675, 677 (Utah App. 1996) adopts the Restatement position, and this is reflected in the first alternative. To relieve the defendant of liability, the third person must not only act intentionally, the actor's intent must be to harm the plaintiff. This position is supported by reasoning that the doctrine of superseding cause has no role after the Liability Reform Act, at least for

analyzing unintentional acts. If the cause of action is based on an unintentional act, the LRA operates to allocate fault. In an appropriate case, the jury might find that a subsequent actor bears 100% of the fault. The applicability of the LRA to intentional acts is an open question. See *Jedrzejewski v. Smith*, 2005 UT 85.

In cases preceding the LRA, the court states that a negligent act, if it meets the other requirements, can be found to be a superceding cause of plaintiff's harm, thereby cutting off the defendant's liability rather than allocating his fault under the LRA. See *Godesky v. Provo City Corp.*, 690 P.2d 541, 544 (Utah 1984), *Jensen v. Mountain States Telephone & Telegraph Co.*, 611 P.2d 363, 365 (Utah 1980), and, subsequent to the LRA, *Steffensen v. Smith's Management Corp.*, 820 P.2d 482, 488 (Utah Ct. App. 1991) aff'd, 862 P.2d 1342 (Utah 1993). The continued validity of this principle is an open question.

**Staff Notes.**

Should the citation to Mitchell be stricken?

**Status.**

**2012. Noneconomic damages. Loss of consortium.**

Noneconomic damages include loss of consortium. When a defendant's negligence causes a significant permanent injury that substantially changes a plaintiff's lifestyle and leaves him incapable of doing the things that he did before the injury, the plaintiff's spouse may separately claim damages for loss of consortium. Loss of consortium is loss of the benefits that one spouse expects to receive from the other, such as companionship, cooperation, affection, aid, financial support and sexual relations.

[You must decide whether [name of spouse] was [name of plaintiff]'s spouse at the time of [name of plaintiff]'s injury. "Spouse" means the legal relationship established between a man and a woman as recognized by the laws of Utah.]

If you decide that [name of plaintiff] has no claim against [name of defendant], then [name of spouse] also has no claim. Otherwise, you must decide whether [name of plaintiff] has suffered a significant permanent injury that substantially changes his lifestyle and how much money will fairly and adequately compensate [name of spouse] for that harm.

Then you must allocate fault as I have instructed you in Instruction 211 including [name of spouse] in your allocation. If you decide that [name of spouse]'s fault of is 50% or greater, [name of spouse] will recover nothing for loss of consortium. As with other damages, do not reduce the award by [name of plaintiff]'s and [name of spouse]'s percentage of fault. I will make that calculation later.

**MUJI 1<sup>st</sup> References.**

**References.**

Utah Code Section 30-2-11.  
Black's Law Dictionary, 8th Edition.

**Advisory Committee Notes.**

Often there is no dispute about whether the plaintiff's spouse is the spouse at the time of the injury. If there is, the jury should be instructed on this issue as well.

The legislature has determined that the following are significant permanent injuries that substantially change a person's lifestyle:

- (1) a partial or complete paralysis of one or more of the extremities;
- (2) significant disfigurement; or
- (3) incapability of the person of performing the types of jobs the person performed before the injury.

There may be others.

Utah does not recognize a cause of action for loss of filial consortium. *Boucher v. Dixie Medical Ctr.*, 850 P.2d 1179, 1182 (Utah 1992).

**Staff Notes.**

**Status.**

**1908. Rebutting the "at-will" presumption. Intent of the parties.**

In deciding whether the parties intended to create an employment contract that could not be terminated at will, you must consider all of the circumstances of the employment. [Evidence may be derived from the employment manuals, oral statements, the conduct of the parties, announced personnel policies, practices of a particular trade or industry, and other circumstances.]

**MUJI 1<sup>st</sup> References.**

18.5; 18.6.

**References.**

Hodgson v. Bunzl Utah, Inc., 844 P.2d 331 (Utah 1992).  
Sanderson v. First Security Leasing Co., 844 P.2d 303 (Utah 1992).  
Johnson v. Morton Thiokol, Inc., 818 P.2d 997 (Utah 1991).  
Arnold v. B.J. Titan Services Co., 783 P.2d 541, 543-44 (Utah 1989).  
Gilmore v. Community Action Program, 775 P.2d 940, 942 (Utah App. 1989).  
Johnson v. Kimberly Clark Worldwide, Inc., 86 F. Supp. 2d 1119, 1121 (D. Utah 2000).

**Advisory Committee Notes.**

The bracketed sentence need not be given if Instruction 1903 is given.

**Staff Notes.**

**Status.** Approved for use: 4/10/2006

**1909. Rebutting the "at-will" presumption. Violation of public policy.**

I have determined that [describe policy] is a clear and substantial public policy. To establish that he was terminated in violation of this policy [name of plaintiff] must prove that:

(1) the public policy applies to his conduct [describe conduct]; and

[Alternative A] (2) his employment was terminated at least in part because he [did something] [did not do something] protected by the public policy.

If the employee establishes these two points, then the employer may provide evidence that there was a legitimate reason for the termination. If the employer provides evidence of a legitimate reason for the termination, then the employee must prove that the employee's conduct protected by the public policy was a substantial factor in terminating the employee.

[Alternative B] (2) the employee's conduct protected by the public policy was a substantial factor in terminating the employee.

**MUJI 1<sup>st</sup> References.**

18.10; 18.11.

**References.**

Ryan v. Dan's Food Stores, Inc. 972 P.2d 395, 404-405 (Utah 1998).

Gottling v. P.R. Inc., 61 P.3d 989 (Utah 2002).

Barela v. C.R. England & Sons, 197 F.3d 1313, 1316 (10th Cir. 1999).

**Advisory Committee Notes.**

Alternative A is drafted to conform to the shifting burdens discussed in the caselaw. In the opinion of the committee, that path may be difficult for jurors to follow, especially if the employee and the employer put on their best evidence in the first instance, rather than engage in the back and forth anticipated in the caselaw. Under Alternative B, the jurors would simply weigh all of the evidence produced by all of the parties to decide whether the conduct protected by the policy was a "substantial factor" in terminating the employee. If Alternative A is planned to be used, the judge should explain during the course of the trial the concept of shifting burdens so that jurors understand who is responsible for what.

Whether a claimed public policy is sufficiently clear and substantial to give rise to a claim is a matter of law to be decided by the judge.

**Staff Notes.**

**Status.** Approved for use: 4/10/2006

**1911. Breach of employment contract. Just cause.**

Termination is for just cause if it is for a fair and honest cause or reason, regulated by good faith as opposed to one that is trivial, capricious, unrelated to business needs or goals, or is pretextual.

**MUJI 1<sup>st</sup> References.**

**References.**

Uintah Basin Medical Center v. Hardy, 110 P.3d 168, 174-75 (Utah App. 2005).

**Advisory Committee Notes.**

**Staff Notes.**

**Status.** Changes from 4/10/2006

**1912. Constructive termination.**

The termination of employment by an employer may be actual or constructive. The termination is actual when the employer notifies the employee that he has been terminated. The termination is constructive when an employee [resigns/retires] because an employer creates, or knowingly permits to exist, working conditions that are so intolerable that a reasonable person in the employee's position would feel compelled to [resign/retire].

To prove constructive termination, [name of plaintiff] must show that the working conditions were so intolerable at the time he [resigned/retired] that a reasonable person in the same circumstances would feel compelled to [resign/retire]. A compelled [resignation/retirement] is the same as being terminated.

**MUJI 1<sup>st</sup> References.**

**References.**

Sheikh v. Department of Pub. Safety, 904 P.2d 1103, 1007 (Utah App. 1995).

**Advisory Committee Notes.**

**Staff Notes.**

**Status.** Approved for use: 4/10/2006

### **1913. Fiduciary duty.**

A fiduciary relationship is a relationship in which one, or both, of the parties is required to act solely for the benefit of the other, within the scope of the relationship, with the highest duty of care. The relationship created by a contract is generally not a fiduciary relationship. Similarly, an employer-employee relationship is generally not a fiduciary relationship.

The party claiming the existence of a fiduciary relationship has the burden of proof to show that the relationship is a fiduciary relationship.

To establish a fiduciary relationship the party claiming that relationship must show that the claimed fiduciary owed the other fidelity, confidentiality, honor, trust and dependability above and beyond that of the parties to the average contract.

When the relationship which created the fiduciary duty ends, the fiduciary duty ends as well.

### **MUJI 1<sup>st</sup> References.**

#### **References.**

Semenov v. Hill, 982 P.2d 578 (Utah 1999).  
Margulies ex rel. Margulies v. Upchurch, 696 P.2d 1195 (Utah 1985).  
Microbiological Research Corp. v. Muna, 625 P.2d 690, 695 (Utah 1981).  
Renshaw v. Tracy Loan & Trust Co., 87 Utah 364, 49 P.2d 403, 404 (Utah 1935).  
C&Y Corp. v. General Biometrics, 896 P.2d 47, 54 (Utah App. 1995).  
Envirotech Corporation v. Callahan, 872 P.2d 487 (Utah App. 1994).  
Black's Law Dictionary 640 (7th Ed. 1999).

#### **Advisory Committee Notes.**

#### **Staff Notes.**

#### **Status.**

**1914. Damages. Express and implied contract claim.**

If an employer has [terminated the employee in breach of] [breached] an express or implied contract, you may award the employee damages. Damages recoverable for breach of contract include both general damages, i.e., those flowing naturally from the breach, and consequential damages, i.e., those reasonably foreseeable by the parties at the time the contract was made.

General damages can be awarded even if no consequential damages are proven; likewise, consequential damages can be awarded even if no general damages are proven.

**MUJI 1<sup>st</sup> References.**

18.12.

**References.**

Mahmood v. Ross, 1999 UT 104, 19, 990 P.2d 933, 937.  
Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989).  
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801 (Utah 1985).  
Erickson v. PI, 73 Cal. App. 3d 850 (1977).  
Parker v. Twentieth Century Fox Film Corp., 3 Cal. 3d 176 (1970).

**Advisory Committee Notes.**

**Staff Notes.**

Use "economic" and "noneconomic" damages.

Second paragraph is not a point of law that the jury needs to know.

**Status.**

**1915. Damages. General damages.**

General damages are those which flow naturally from the employer's breach. In other words, they are those which, from common sense and experience, would naturally be expected to result from the employer's breach of employment contract. They can include [the amount of compensation and benefits that the employee would have received from the employer during the period you find the employment was reasonably certain to have continued, less any amounts that the employer proves the employee received or could have received with reasonable effort from other employment during the same period] [list other items of damage in evidence].

**MUJI 1<sup>st</sup> References.**

18.12.

**References.**

Mahmood v. Ross, 1999 UT 104, 19, 990 P.2d 933, 937 (Utah 1999).  
Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989).  
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801 (Utah 1985).  
Prince v. Peterson, 538 P.2d 1325, 1328 (Utah 1975).  
Erickson v. PI, 73 Cal. App. 3d 850 (1977).  
Parker v. Twentieth Century Fox Film Corp., 3 Cal. 3d 176 (1970).

**Advisory Committee Notes.**

**Staff Notes.**

**Status.**

**1916. Damages. Consequential damages.**

Consequential damages are those damages that were within the contemplation of the parties or were reasonably foreseeable by the parties at the time the contract was made. That is, consequential damages are damages, other than lost compensation and benefits, that directly flow from the employer's breach of the employment contract. Although they are designed to place the employee in the same economic position he would have had if the employer had not breached the employment contract, they may reach beyond the bare contract terms.

To recover consequential damages, the employee must prove:

- (1) that the consequential damages were caused by the contract breach;
- (2) that the consequential damages ought to be allowed because they were foreseeable at the time the parties contracted; and
- (3) the amount of the consequential damages within a reasonable certainty.

Although the employee must offer proof within a reasonable certainty of the amount of his loss, he does not need to prove them with absolutely precision.

**MUJI 1<sup>st</sup> References.**

18.12.

**References.**

Kraatz v. Heritage Imports, 2003 UT App 201, 48-49, 53-54, 71 P3d. 188, 199-201.  
Mahmood v. Ross, 1999 UT 104, 20, 990 P.2d 933, 937-38.  
Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989).  
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801 (Utah 1985).  
Erickson v. PI, 73 Cal. App. 3d 850 (1977).  
Parker v. Twentieth Century Fox Film Corp., 3 Cal. 3d 176 (1970).

**Advisory Committee Notes.**

**Staff Notes.**

We have an extensive definition of noneconomic damages in Instruction 2004. Should that be copied here? Or should it and some other damages instructions be considered "general" instructions to be given regardless of the nature of the action?

**Status.**

**1917. Compensatory damages. Public policy wrongful termination.**

An employee terminated in violation of public policy is entitled to recover all damages which flow naturally from the employee's termination. In other words, the employee is entitled to recover [the amount of compensation and benefits that the employee would have received from the employer during the period you find the employment was reasonably certain to have continued, less any amounts that the employer proves the employee received or could have received with reasonable effort from other employment during the same period] [list other items of damage in evidence].

An employee is also entitled to recover damages in an amount which will reasonably compensate the employee for the loss and injury suffered as a result of the employer's unlawful conduct. You may award reasonable compensation for the following:

(1) pain, suffering, and physical or emotional distress;

(2) embarrassment and humiliation; and

(3) loss of enjoyment of life; that is, the employee's loss of the ability to enjoy certain aspects of his life as a result of the employer's actions.

You may consider the testimony and the demeanor of the employee in considering and determining a fair allowance for any damages for emotional distress, humiliation, and loss of enjoyment of life. Emotional harm may manifest itself, for example, as sleeplessness, anxiety, stress, depression, marital strain, embarrassment, humiliation, loss of respect, emotional distress, loss of self-esteem, or excessive fatigue. Physical manifestations of emotional harm may also occur, such as ulcers, headaches, skin rashes, gastrointestinal disorders, or hair loss.

In the determination of the amount of the award, it will often be difficult for you to arrive at a precise award. These damages are intangible, and the plaintiff is not required to prove them with precision. It is difficult to arrive at a precise evaluation of actual damage for emotional harm. No opinion of any witness is required as to the amount of such reasonable compensation. Nonetheless, it is necessary to arrive at a reasonable award that is supported by the evidence.

**MUJI 1<sup>st</sup> References.**

18.11.

**References.**

3 Devitt, Blackmar & Wolf, Federal Jury Practice and Instructions, Section 104.6 (4th Ed. 1987).

Block v. R.H. Macy & Co., 712 F.2d 1241, 1245 (8th Cir., 1983).

E.E.O.C. Policy Guide on Compensatory and Punitive Damages Under 1991 Civil Rights Act (B.N.A., 1992) at II(A)(2), as modified.  
Stallworth v. Shuler, 777 F.2d 1431 (11th Cir. 1985).

**Advisory Committee Notes.**

**Staff Notes.**

The first paragraph simply restates 1919.

**Status.**

**1918. Damages. Breach of the implied covenant of good faith and fair dealing.**

If you find, by a preponderance of the evidence, that the employer breached its duty of good faith and fair dealing to the employee, you may award the employee both general damages and a broad array of consequential damages. Damages recoverable for the breach of this duty are damages for those injuries or losses flowing naturally from the breach, and those losses or injuries which were reasonably within the contemplation of, or reasonably foreseeable by, the parties at the time the contract was made.

In awarding these damages, you may award an amount in excess of the contract terms specified in the employment contract. In determining the amount of damages to award, you may consider [the employee's loss of income or profit] [the employee's past and future emotional suffering and mental anguish] [any other detriment naturally flowing from the employer's breach]. However, only those factors that were reasonably foreseeable by the parties and that were proximately caused by the employer's breach may be considered.

**MUJI 1<sup>st</sup> References.**

**References.**

Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1044, 1050 (Utah 1989).  
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801-02 (Utah 1985).  
Cook v. Zion's First National Bank 919 P.2d 56 (Utah App. 1996).

**Advisory Committee Notes.**

**Staff Notes.**

**Status.**

**1919. Damages. Employee duty to mitigate damages.**

An employee who has lost wages as a result of termination has a duty to take steps to minimize the damage by making reasonable efforts to find comparable employment.

If the employee found new employment, the amount earned by the employee must be deducted from any damages awarded to the employee. If the employee, through reasonable efforts, could have found comparable employment, any amount that the employee could have earned in comparable employment must be deducted from the amount of damages awarded to the employee.

The employer has the burden of proving that the employee obtained or might have obtained comparable employment of a similar character.

In order to recover damages suffered due to the employer's actions, the employee is required to show that he or she took reasonable steps to avoid damages. The employee is not required to make every effort possible to avoid the damages.

**MUJI 1<sup>st</sup> References.**

18.13.

**References.**

Angelos v. First Interstate Bank of Utah, 671 P.2d 772 (Utah 1983).  
Pratt v. Board of Education of Uintah County School District, 564 P.2d 294 (Utah 1977).

**Advisory Committee Notes.**

**Staff Notes.**

**Status.**

**1920. Special damages. Unemployment compensation.**

If you decide to award damages to compensate Plaintiff for financial losses, such as lost wages, lost benefits, medical expenses, and other out-of-pocket expenses, you are not to reduce the amount of those damages by the fact that Plaintiff may have received payment from such sources as unemployment insurance, workers' compensation, social security or disability benefits.

**MUJI 1<sup>st</sup> References.**

27.3.

**References.**

Gibbs M. Smith, Inc. v. US Fidelity, & Guaranty Co., 949 P.2d 337, 345 (Utah 1997).

Suniland Corp. v. Radcliffe, 576 P.2d 847, 849 (Utah 1978).

Green v. Denver & Rio Grande Western R. Co., 59 F.3d 1029, 1032 (10th Cir. 1995).

Whatley v. Skaggs Companies, Inc., 707 F.2d 1129, 1138 (10th Cir. 1983).

**Advisory Committee Notes.**

**Staff Notes.**

Cite to CACI.

**Status.**



Model Utah Jury Instructions  
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March 23, 2006

2001 Introduction to tort damages. Economic and non-economic damages introduced. .... 2

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**2001 Introduction to tort damages. Economic and non-economic damages introduced.**

I will now instruct you about damages. My instructions are given as a guide for calculating what damages should be if you find that [name of plaintiff] is entitled to them. However, if you decide that [name of plaintiff] is not entitled to recover damages, then you must disregard these instructions about them.

If you decide that [name of defendant]'s fault caused [name of plaintiff]'s harm, you must decide how much money will fairly and adequately compensate [name of plaintiff] for that harm. There are two kinds of damages: economic and non-economic.

## 2002 Proof of damages.

~~Before you may award~~ To be entitled to damages, [name of plaintiff] must prove two points:

First, ~~he must prove~~ that damages occurred. ~~The evidence must do more than raise speculation that damages actually occurred;~~ There must be a reasonable probability, not just speculation, that [name of plaintiff] suffered damages from [name of defendant]'s fault.

Second, ~~he must prove~~ the amount of damages. The level of evidence required to ~~establish that damages actually occurred is generally higher than that required to establish the amount of damage~~ prove the amount of damages is not as high as what is required to prove the occurrence of damages. There still must be evidence, not just speculation, that gives a reasonable estimate of the amount of damages, but the law does not require a mathematical certainty.

~~While the standard for determining the amount of damages is not so exacting as the standard for proving that damages actually occurred, there still must be evidence, not just speculation, that provides a reasonable, even though not precise, estimate of the amount of damages.~~

In other words, if [name plaintiff] has proved that he has been damaged and has established a reasonable estimate of those damages, [name of defendant] may not escape liability because of some uncertainty in the amount of damages.

**2005 Economic damages. Medical care and related expenses.**

Economic damages include reasonable and necessary expenses for medical care and other related expenses. ~~You should award the value of those expenses~~ incurred in the past and of those that will probably be incurred in the future.

**2006 Economic damages. Lost earnings. [Lost earning capacity.]**

Economic damages include past and future lost earnings, including lost benefits, [and lost earning capacity].

Calculate Ppast lost earnings ~~are calculated~~ from the date of the harm until the trial.  
Calculate Ffuture lost earnings ~~are calculated~~ from the date of trial forward.]

[Lost earning capacity is not the same as lost earnings. Lost earning capacity means the lost potential to earn ~~increased~~ income. In determining lost earning capacity, you should consider:

- (1) [name of plaintiff]'s actual earnings;
- (2) his work before and after [describe event];
- (3) what he was capable of earning had he not been injured; and
- (4) any other facts that relate to [name of plaintiff]'s employment.]

**2008 Economic damages. Injury to personal property.**

Economic damages include injury to or destruction of [name of plaintiff]'s [item of personal property].

The damages to be awarded for injury to personal property are the difference in the [item of personal property]'s fair market value ~~of the item~~ immediately before and immediately after the injury, unless ~~the property it~~ can be repaired for a lesser amount. If the [item of personal property] can be repaired for a lesser amount, then the damages would be the reasonable cost of repair.

If you find that the repairs do not restore the [item of personal property] to the same value as before the injury, ~~you may award the damages are~~ the difference between its fair market value before the injury and its fair market value after the repairs, plus the reasonable cost of making the repairs. The total amount awarded must not exceed the [item of personal property]'s fair market value before the injury occurred.

**2009 Economic damages. Injury to real property.**

Economic damages include injury to [name of plaintiff]'s real property.

The damages to be awarded for injury to real property are the difference in the fair market value of the ~~land-real property~~ immediately before and immediately after the injury, unless the property can be repaired or restored for a lesser amount. If the property can be repaired or restored for a lesser amount, then the damages would be the reasonable cost of repair or restoration.

If you find that repair or restoration does not return the real property to the same value as before the injury, the damages to be awarded are the difference between the real property's fair market value before the injury and its fair market value after the repair or restoration, plus the reasonable cost of making the repair or restoration.

[In addition, if the evidence establishes that the ~~repaired property will not return to its original value because of injury to the real property has created~~ a lingering negative public perception ~~that was caused by the injury, you may award stigma damages for of~~ it, then the damages would include any reduction in the value of the property.]

**2011 Economic damages. Loss of use of personal property.**

To compensate [name of plaintiff] for the loss of use of [item of personal property], ~~you may award [name of plaintiff] calculate~~ the amount that you determine will restore ~~him~~ [name of plaintiff] to the same position he was in prior to the damage. You may consider the following factors [as applicable]:

- (1) The rental value of the [item of personal property].
- (2) The lost income, meaning the income [name of plaintiff] would likely have earned through using the [item of personal property].
- (3) What [name of plaintiff] reasonably spent to decrease the damage.

**2012 Wrongful death claim. Adult. Factors for deciding damages.**

~~In determining damages, you shall award~~ Damages include an amount ~~which that~~ will compensate [name of plaintiff] for the loss suffered due to [name of decedent]'s death. ~~You shall base~~ Calculate the amount ~~of your award based~~ on all circumstances existing at the time of the [name of decedent]'s death which establish [name of plaintiff]'s loss, including the following:

(1) The loss of financial support, past and future, that [name of plaintiff] would likely have received, or been entitled to receive, from [name of decedent] had [name of decedent] lived.

(2) The loss of love, companionship, society, comfort, care, protection and affection which [name of plaintiff] has sustained and will sustain in the future.

(3) The age, health and life expectancies of [name of decedent] and [name of plaintiff] immediately prior to the death.

(4) The loss or reduction of inheritance from [name of decedent] [name of plaintiff] is likely to suffer because of [name of decedent]'s death.

(5) Any other evidence of assistance or benefit that [name of plaintiff] would likely have received had [name of decedent] lived.

[In determining this award, you are not to consider any pain or suffering of [name of decedent] prior to his death.]

**2013 Wrongful death claim. Minor. Factors for deciding damages.**

~~In determining damages, you shall award~~ Damages include an amount ~~which that~~ will compensate [name of plaintiff] for the loss suffered due to [name of decedent]'s death. ~~You shall base~~ Calculate the amount ~~of your award based~~ on all circumstances existing at the time of the [name of decedent]'s death which establish [name of plaintiff]'s loss, including the following:

(1) The loss of financial support, past and future, that [name of plaintiff] would likely have received, or been entitled to receive, from [name of decedent] had [name of decedent] lived. This amount should be reduced by the costs that [name of plaintiff] would likely have incurred to support [name of decedent] had the child survived, until the child reached 18 years of age.

(2) The loss of love, companionship, society, comfort, care, protection and affection which [name of plaintiff] has sustained and will sustain in the future.

(3) The age, health and life expectancies of [name of decedent] and [name of plaintiff] immediately prior to the death.

(4) The loss of inheritance from [name of decedent] [name of plaintiff] is likely to suffer because of [name of decedent]'s death.

(5) Any other evidence of assistance or benefit that [name of plaintiff] would likely have received had [name of decedent] lived.

(6) The reasonable and necessary expenses incurred by [name of plaintiff] for [name of decedent] for any medical care because of [circumstances causing death].

(7) The reasonable expenses that were incurred for [name of decedent's] funeral and burial.

[In determining this award, you are not to consider any pain or suffering of [name of decedent] prior to his death.]