

Punitive Damages

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(1) 2026. Punitive damages – introduction.

In addition to compensatory damages, [name of plaintiff] also seeks to recover punitive damages against [name of defendant]. Punitive damages are intended to punish a wrongdoer for extraordinary misconduct and to discourage others from similar conduct. They are not intended to compensate [name of plaintiff] for [his][her][its] loss.

Punitive damages may only be awarded if [name of plaintiff] has proven by clear and convincing evidence that [name of defendant]’s conduct:

- (1) was [willful and malicious]; or,
- (2) was [intentionally fraudulent]; or,
- (3) manifested a knowing and reckless indifference toward, and a disregard of, the rights of others, including [name of plaintiff].

“Knowing and reckless indifference” means that (a) [name of defendant] knew that such conduct would, in a high degree of probability, result in substantial harm [to another] [to

property]; and (b) the conduct must be highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger or harm would be apparent to a reasonable person.

[The committee was unable to reach a working definition for “willful and malicious conduct.” For cases discussing these terms, please see committee note 1.]

[The committee was unable to reach a working definition for “intentionally fraudulent.” For cases discussing these terms, please see committee note 2.]

[Punitive damages are not awarded for mere inadvertence, mistakes, errors of judgment and the like, which constitute ordinary negligence.]

[Some of the questions on the Special Verdict form will ask if [name of plaintiff] has proved by clear and convincing evidence that [name of defendant]’s conduct (a) was [willful and malicious] [intentionally fraudulent], or (b) manifested a knowing and reckless indifference and disregard of [name of plaintiff]’s rights. If you answer “yes” to any of these questions, I will then give you further instructions.]

References

Utah Code § 78B-8-201(a) (West 2014).

Westgate Resorts v Consumer Protection Group, LLC, 285 P.3d 1219, 1222-1223 (Utah 2012).

Daniels v. Gamma W. Brachytherapy, LLC, 2009 UT 66, 221 P.3d 256.

State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

Hall v. Walmart Stores, Inc., 959 P.2d 109 (Utah 1998).

BMW of N. Am. Inc. v. Gore, 517 U.S. 559, 568 (1996).

Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 19-20 (1991).

Johnson v. Rogers, 763 P.2d 771, 773 (Utah 1988).

Gleave v. Denver & Rio Grande W. R. Co., 749 P.2d 660 (Utah Ct. App. 1988).

Biswell v. Duncan, 742 P.2d 80, 84 (Utah Ct. App. 1987).

Behrens v. Raleigh Hills Hospital, 675 P.2d 1179 (Utah 1983).

Bundy v. Century Equipment, Inc., 697 P.2d 754, 759 (Utah 1984).

Committee Notes

1. “Willful and malicious” conduct has not yet been well defined under Utah law, but several cases discuss what it could mean. For example, *Gleave v. Denver & Rio Grande W. R. Co.*, 749 P.2d 660 (Utah Ct. App. 1988) discusses whether actual malice is required for punitive damages or whether implied malice is sufficient. See also *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988) and *Biswell v. Duncan*, 742 P.2d 80, 84 (Utah Ct. App. 1987) (discussing whether actual malice is required). *Clayton v. Crossroads Equip. Co.*, 655 P.2d 1125 (Utah 1982) refers to non-Utah case law to define “willful or malicious” conduct (emphasis added). And *State v. Larsen*, 865 P.2d 1355, n. 3 (Utah 1993), discusses what “willful” means. In the non-punitive damages context, *Chang v. Soldier Summit Development*, 1999 UT App 27 and *Golding v. Ashley Cent. Irrigation Co.*, 793 P.2d 897, discuss “willful misconduct”.

2. “Intentionally fraudulent” has not been defined by Utah case law. Counsel may review CV1801 (Elements of Fraud) and CV1809 (Intent) for a working definition and relevant case law.

3. The committee was divided on whether the last two paragraphs (in brackets) of this instruction should be given.

4. The statute requires bifurcation in all cases where punitive damages are sought at trial and evidence of wealth is introduced. The first phase will resolve the question of whether the plaintiff is entitled to punitive damages for the conduct alleged. If the jury determines that the plaintiff is so entitled, there will be a second phase. The second phase may include evidence of the defendant’s wealth or financial condition (Section

78B-8-201(2)), with the jury answering only the question of what amount of punitive damages to award.

5. The committee did not feel that there is adequate legal direction to determine which punitive damages instructions should be given in the first phase and which should be given if there is a second phase. However, one option would be for 2026 (and/or 2033 and 2034) to be read in the first phase, with the remainder to be read during any second phase.

(2) 2027. Amount of punitive damages.

Now that you have decided to award punitive damages, you must determine the amount. Punitive damages should be the amount necessary to fulfill the two purposes of punitive damages: to punish past misconduct and to discourage future misconduct. Your decision should not be arbitrary. The amount must be reasonable and bear some relationship to [name of plaintiff]'s harm. Whether or not to award a specific amount or any amount of punitive damages is left entirely up to you.

References

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 426 (2003).

Cooper Indus., Inc. v. Leatherman Tool Group, Inc. 532 U.S. 424, 440-42 (2001).

BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 580-83 (1996).

Crookston v. Fire Insurance Exchange, 817 P.2d 789, 811 (Utah 1991).

Committee Notes

1. The Utah Supreme Court has opined regarding the ratios that apply in determining whether a punitive damage award is excessive. "The general rule to be drawn from our past cases appears to be that where the punitives are well below \$100,000, punitive damage awards beyond a 3 to 1 ratio to actual damages have seldom been upheld and that where the award is in excess of \$100,000, we have indicated some inclination to

overturn awards having ratios of less than 3 to 1.” *Crookston v. Fire Insurance Exchange*, 817 P.2d 789, 811 (Utah 1991).

The *Crookston* Court did not provide guidance on whether the presumptive ratios should be disclosed to the jury. The case law regarding presumptive ratios has been in the context of post-verdict motions addressed to the judge, and the committee felt that it did not provide guidance with regard to whether the ratio should be disclosed to the jury.

(3) 2028. Punitive damages and harm to other people.

In determining the amount of punitive damages, you may award punitive damages for the purpose of punishing [name of defendant] only for [harm] [attempted harm] [damage] to [name of plaintiff]. You may not award punitive damages for the purpose of punishing harm or attempted harm to other people.

References:

Westgate Resorts v Consumer Protection Group, LLC, 285 P.3d 1219, 1222-1223 (Utah 2012).

(4) 2029. Factors to consider in determining the amount of damages.

In determining the amount of damages, you may also consider any evidence regarding the following: (1) the wealth or financial condition of [name of defendant]; (2) the nature of the alleged misconduct; (3) the facts and circumstances surrounding such conduct; (4) the effect of [name of defendant]’s conduct on [name of plaintiff]; (5) the probability of future reoccurrence of the misconduct toward [name of plaintiff] or others; (6) the relationship of the parties; and (7) the amount of compensatory damages awarded.

References

Crookston v. Fire Insurance Exchange, 817 P.2d 789, 811 (Utah 1991). The “harm to others” *Crookston* factor number 4 has been modified. Outside conduct or harm to

others may now only be used to assess reprehensibility. See *Westgate Resorts v Consumer Protection Group, LLC*, 285 P.3d 1219, 1222-1223 (Utah 2012).

(5) 2030. Reprehensibility.

In determining the amount of punitive damages that should be awarded, you should consider the reprehensibility of [name of defendant]'s conduct. Greater reprehensibility may justify a higher punitive damage award while lesser reprehensibility may justify a lower amount.

References

Westgate Resorts v Consumer Protection Group, LLC, 285 P.3d 1219, 1222-1223 (Utah 2012).

Philip Morris v. Williams, 549 U.S. 346 (2007).

(6) 2031. Reprehensibility – Similar Conduct Toward Other People.

When determining the degree of reprehensibility, you may consider evidence of similar conduct by [name of defendant] toward other people who are not in this lawsuit; however, I caution you that this evidence is to be considered only to determine reprehensibility. The actual harm to other people is not the measure of punitive damages in this case.

References

Westgate Resorts v Consumer Protection Group, LLC, 285 P.3d 1219, 1222-1223 (Utah 2012).

Philip Morris v. Williams, 549 U.S. 346 (2007).

(7) 2032. Reprehensibility—Conduct in other states.

Evidence that [name of defendant] committed the same or similar conduct outside of Utah may not be considered to increase the level of reprehensibility if the conduct was legal when and where it was committed.

References

Westgate Resorts v Consumer Protection Group, LLC, 285 P.3d 1219, 1222-1223 (Utah 2012).

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 423 (2003).

BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 570-75 & 585 (1996).

Committee Notes

1. This instruction should be used only in cases where the plaintiff asserts that the defendant's conduct is more reprehensible because it has occurred in other states and the defendant then responds that the conduct is legal in other states.

(8) 2033. Driving under the influence.

In addition to compensatory damages, [name of plaintiff] also seeks to recover punitive damages against [name of defendant]. Punitive damages are not intended to compensate [name of plaintiff] for [his][her][its] loss. Punitive damages can be awarded to punish a wrongdoer for driving [a motor vehicle or motorboat] while voluntarily intoxicated or under the influence of any drug or a combination of alcohol and drugs in violation of the law.

Punitive damages may be awarded if [name of plaintiff] has proven by a preponderance of the evidence that [name of defendant] was operating or in actual physical control of a vehicle within this state and any one of the following:

(1) had sufficient alcohol in [his][her] body that a subsequent chemical test shows that [he][she] has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; or

(2) had a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control; or

(3) was under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely operating a vehicle.

[There is a question on the Special Verdict form whether [name of plaintiff] has proven by a preponderance of the evidence that [name of defendant] violated the above law. If you answer “yes” to this question, I will then give you further instructions regarding punitive damages.]

References

Utah Code § 78B-8-201(1)(b)(i).

Utah Code § 41-6a-502.

C.T. ex rel. Taylor v. Johnson, 1999 UT 35, 977 P.2d 479.

(9) 2034. Providing controlled substance.

In addition to compensatory damages, [name of plaintiff] also seeks to recover punitive damages against [name of defendant]. Punitive damages are not intended to compensate [name of plaintiff] for [his][her][its] loss. Punitive damages can be awarded to punish a wrongdoer for causing the drug-related death of another person.

Punitive damages may be awarded if [name of plaintiff] has proven by a preponderance of the evidence that [name of defendant]

- 1) provided or administered an illegal controlled substance to the deceased person in violation of the law; or

- 2) provided an illegal controlled substance to any person in the chain of transfer connected directly to someone who subsequently provided or administered the substance to the person whose death was caused in whole or in part by the substance.

[There is a question on the Special Verdict form whether [name of plaintiff] has proven by a preponderance of the evidence that [name of defendant] violated this law. If you answer “yes” to this question, I will then give you further instructions regarding punitive damages.]

References

Utah Code § 78B-8-201(1)(b)(ii) and (iii).

Utah Code § 78B-3-801.

Utah Code § 58-37-1, et. Seq.

C.T. ex rel. Taylor v. Johnson, 1999 UT 35, 977 P.2d 479.