

**INSTRUCTIONS FOR PERSONAL INJURY TRIALS
WHERE LIABILITY HAS BEEN ADMITTED OR
JUDICIALLY-DETERMINED
("DAMAGES ONLY TRIALS")**

Introduction

Instructions To Be Used in Personal Injury Cases Where the Only Issue To Be Tried Is Plaintiff's Injuries and Damages ("Damages Only Trials")

In cases where neither liability for the injury-causing event nor comparative fault are at issue, instructing a jury concerning fault and liability-related concepts can confuse or mislead jurors, and waste time. In these "Damages Only Trials," the jury only needs to determine what injuries were caused by the event, and the amount of damages flowing from those injuries. Superior court judges asked the committee to draft instructions for use in "Damages Only Trials." The following recommended instructions are the result of that effort.

Throughout these instructions, when *event* or *incident* is used, the parties or the court should supply a simple, clear shorthand name for the event for which the defendant has admitted (or the court has determined) liability. For example, "November 11, 2016 car crash"; or "March 3, 2015 dog attack."

In wrongful death cases, where liability for causing the death is admitted, the *event* or *incident* can be described as "the death of [*name of decedent*]."

Internally, these instructions shall be referenced as "Damages Only Trials."

Preliminary Instructions

Use Preliminary Instructions 1-13 and 15-16, as applicable. As in any case, some instructions or parts of instructions will not be needed. For example, simple damages trials seldom receive press coverage, so Preliminary Instruction 10 can often be omitted. Since the issues are limited, Preliminary Instruction 14 has been modified to give a clear, simple picture of the sole issue the jury will be asked to decide, damages.

PRELIMINARY 14

Damages Only Trials

Claims Made and Issues To Be Proved

(For Cases in Which Damages Is the Only Issue Being Tried)

[Give a brief description of the *[event]* *[incident]* and statement of the claims made and issues to be proved.]

This is a trial to determine damages caused by the *[event]* *[incident]*. The only issue for you to decide is the amount of damages that shall be awarded to *[name(s) of plaintiff(s)]*.

[Name(s) of plaintiff(s)] *[has]* *[have]* the burden of proving that the *[event]* *[incident]* caused *[his]* *[her]* *[their]* damages.

Burden of proof means burden of persuasion. The party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden, consider all the evidence that bears on that claim, regardless of which party produced it.

You will decide the full amount of money that will reasonably and fairly compensate *[name(s) of plaintiff(s)]* for each of the following elements of damages proved by the evidence to have resulted from the *[event]* *[incident]*:

[Insert applicable elements of damages from Damages Only Trials Instruction 3, or in wrongful death cases, Damages Only Trials Instruction 4, which are identical to the elements listed in Personal Injury Damages Instructions 1 and 3.]

SOURCE: Preliminary 14; Bench Book For Superior Court Judges; Standard 2; Personal Injury Damages 1.

USE NOTE: If Defendant claims that the *Event/Incident* produced no injury or damages whatsoever, it may be appropriate to add, “if any,” after the word “damages” in the second sentence of this instruction. If at least some damages are undisputed, it would be inappropriate and misleading to include “if any.”

Personal Injury – DAMAGES ONLY TRIALS

Notes on Use of Instructions

Where fault for causing the injury-causing event is admitted or decided before trial, and there is no claim of comparative fault, Final Instructions need only consist of:

- A. **Personal Injury – Fault Not At Issue Instruction 1, Causation** (replaces Fault instructions);
- B. **Personal Injury – Fault Not At Issue Instruction 2, Burden of Proof (More Probably True)**;
- C. **Damages**, covered by
 - **Damages Only Trials Instruction 3, Measure of Damages** (replaces Personal Injury Damages 1);
 - If life expectancy is relevant, use Personal Injury Damages 5;
 - If the case involves pre-existing conditions or an unusually susceptible plaintiff, it may be appropriate to use applicable parts of Personal Injury Damages 2;
 - For wrongful death cases, use **Damages Only Trials Instruction 4, Damages for Wrongful Death of Spouse, Parent or Child** (replaces Personal Injury Damages Instruction 3) and use Personal Injury Damages Instruction 5 to address life expectancy issues.

D. Guide to Using Standard Instructions:

Depending on specific issues, evidence or witnesses in the case, parts of Standard Instructions 1, 4 and/or 9 may be appropriate. As in any case, only use Standard Instructions that are applicable, in view of the witnesses and evidence presented, parties and pertinent burdens of proof. Because liability has been admitted, Standard Instruction 5, Respondeat Superior Liability will probably never be used.

E. Closing

In Damages Only Trials, the jury is given ONE form of verdict (per plaintiff), and the Closing Instruction is simplified:

Damages Only Trials Instruction 5, (instead of Standard Instruction 8 – Closing Instruction).

Verdict Form – Only one simple verdict form is needed. In cases with multiple plaintiffs, the jury should be given separate verdict forms for awarding each plaintiff's damages. In wrongful death cases, single verdict form should list all statutory beneficiaries.

[Event/Incident]

Throughout these instructions, when *[Event/Incident]* is used, the parties or the court should supply a simple, clear shorthand name for the event for which the defendant has admitted fault. For example “November 11, 2016 car crash”; or “March 3, 2015 dog attack.”

PERSONAL INJURY – DAMAGES ONLY TRIALS 1

Statement of Claim, Causation

[*Name of plaintiff*] claims that the [*event*] [*incident*] caused [*his*] [*her*] injury and damages.

An event causes an injury or damage if it helps produce the injury or damage and if the injury or damage would not have happened without the event.

[*Name of plaintiff*] has the burden of proving that the [*event*] [*incident*] was a cause of [*his*] [*her*] injury and damages.

PERSONAL INJURY – DAMAGES ONLY TRIALS 2

Burden of Proof (More Probably True)

Burden of proof means burden of persuasion. The party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden, consider all the evidence that bears on that claim, regardless of which party produced it.

Source: Standard 2 Instruction.

PERSONAL INJURY – DAMAGES ONLY TRIAL 3

Measure of Damages

You must 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 [Event/Incident].

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 already incurred and reasonably probable to be incurred in the future.¹

Continued

SOURCE: Personal Injury Damages 1 Instruction.

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.”

¹ *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198 (App. 2006); *Saide v. Stanton*, 135 Ariz. 76, 77 (1983).

² *Int’l Harvester Co. v. Chiarello*, 27 Ariz. App. 411 (App. 1976); *see also Kaufman v. Langhofer*, 223 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)).

³ *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.)

USE NOTES: If life expectancy is relevant to damages, also use Personal Injury Damages Instruction 5, Mortality Tables and Life Expectancy.

Cases involving different or unique damages issues may require additional instructions, such as Personal Injury Damages Instruction 2 (Pre-Existing Condition, Unusually Susceptible Plaintiff)

PERSONAL INJURY – DAMAGES ONLY TRIALS 3

Measure of Damages

Continued

4. Lost earnings to date, and any decrease in earning power or capacity in the future. Loss of love, care, affection, companionship, and other pleasures of the [marital] [parent-child] relationship.²
5. Loss of enjoyment of life, that is, the participation in life's activities to the quality and extent normally enjoyed before the injury.³

PERSONAL INJURY – DAMAGES ONLY TRIAL 4

Damages for Wrongful Death of Spouse, Parent, or Child

You must 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: Personal Injury Damages 3; A.R.S. § 12-613; *City of Tucson v. Wondergem*, 105 Ariz. 429 (1970); *Jeffery v. United States*, 381 F. Supp. 505, 510 (D. 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.

If life expectancy is relevant to damages, also use Personal Injury Damages 5, Mortality Tables and Life Expectancy.

PERSONAL INJURY – DAMAGES ONLY TRIALS 5

Closing Instruction

The case is now submitted to you for decision. When you go to the jury room you will choose a foreperson. He or she will preside over your deliberations.

At least six of you must agree on a verdict. If all eight agree on a verdict, only the foreperson need initial it, and place his or her juror number on the line marked “Foreperson.” If six or seven agree on a verdict, all those who agree, and only those who agree, must initial it, and place their juror numbers on the numbered lines provided, leaving the line marked “Foreperson” blank.

Your form of verdict reads as follows:

Continued

Form for use in wrongful death cases where more than one statutory beneficiary is claiming damages – add as many lines as are needed.

VERDICT FORM

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths and affirmations, find Plaintiffs' full damages to be:

[Name] \$_____.

[Name] \$_____.

1. _____ (Initials)	_____ (Juror#)	5. _____ (Initials)	_____ (Juror #)
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2. _____ (Initials)	_____ (Juror#)	6. _____ (Initials)	_____ (Juror #)
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3. _____ (Initials)	_____ (Juror#)	7. _____ (Initials)	_____ (Juror #)
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4. _____ (Initials)	_____ (Juror#)	_____ (Initials)	_____ (Juror #)
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FOREPERSON

A separate form should be prepared for each plaintiff claiming damages.

VERDICT FORM

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths and affirmations, find Plaintiff [name]'s full damages to be:

\$_____.

1. _____ (Initials)	_____ (Juror#)	5. _____ (Initials)	_____ (Juror #)
2. _____ (Initials)	_____ (Juror#)	6. _____ (Initials)	_____ (Juror #)
3. _____ (Initials)	_____ (Juror#)	7. _____ (Initials)	_____ (Juror #)
4. _____ (Initials)	_____ (Juror#)	_____ (Initials)	_____ (Juror #)

FOREPERSON