30.00

DAMAGE INSTRUCTIONS

INTRODUCTION

The following sets of instructions relate to damages for injury to person or property, wrongful death, and injury to a spouse. Each series consists of a basic instruction stating that if the defendant is found liable the jury is to award damages as proved by the evidence. Following the basic instruction is a number of phrases setting out the various elements of damages. These elements are to be inserted in the basic instruction when the evidence justifies their use. *Panepinto v. Morrison Hotel, Inc.*, 71 Ill.App.2d 319, 338; 218 N.E.2d 880, 890 (1st Dist.1966). The omission of an element means the element is not to be considered by the jury. A separate instruction to disregard that element is not required. *Buckler v. Sinclair Ref. Co.,* 68 Ill.App.2d 283, 292-293; 216 N.E.2d 14, 19 (5th Dist.1966).

These instructions contemplate a case involving a single plaintiff and defendant.

This type of instruction eliminates any need for reiteration of the words, "if any," following each element of damages. No less than ten "if anys" appeared in a typical instruction used before IPI in *Krichbaum v. Chicago City Ry. Co.*, 207 Ill.App. 44 (1st Dist.1918). The origin of the phrase is probably *Martin v. Johnson,* 89 Ill. 537, 538 (1878), in which the jurors were instructed that they were the sole judges of the amount of damages which the plaintiff should recover without being told that the damages should be determined from the evidence introduced at the trial. The Court specifically held that it "was the province of the jury to determine the damages plaintiff should recover, if any." The general phraseology of the instruction suggested in the Krichbaum decision requires that the "if any" ending be repeated throughout the body of the charge.

The first paragraph of IPI 30.01, however, specifically informs the jurors that they may compensate the plaintiff only for "any" of the elements of damages proved, and the concluding paragraph of this instruction specifically tells the triers of the facts that whether "any" of the elements of damages has been proved is for the jury to decide. This is sufficient safeguard that the amount of damages will be based on the evidence.

30.01 Measure of Damages--Personal and Property

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the [negligence] [wrongful conduct] [of the defendant], [taking into consideration (the nature, extent and duration of the injury) (and) (the aggravation of any pre-existing ailment or condition)].

[Here insert the elements of damages which have a basis in the evidence]

Whether any of these elements of damages has been proved by the evidence is for you to determine.

Notes on Use

This instruction cannot be given in the form shown on this page. It must be completed by selecting the appropriate elements of damages from among phrases IPI 30.04 through IPI 30.20. The phrases so selected should reflect the relevant items of damage and be inserted between the two paragraphs of IPI 30.01.

The bracketed words "taking into consideration the nature, extent and duration of the injury" are to be used only in cases involving an injury to the person. *See comment to* IPI 30.02.

The bracketed words "the aggravation of any pre-existing ailment or condition" are to be used only in those cases where there is a claim that the plaintiff's injuries arose in whole or in part from an aggravation of a pre-existing ailment or condition. *See comment to* IPI 30.03.

The bracketed words "wrongful conduct" in the first paragraph may be used instead of "negligence" when the misconduct alleged includes a charge such as willful and wanton conduct or other fault.

Other phrases may be substituted for the bracketed terms "negligence" or "wrongful conduct" or "wrongful conduct of the defendant" where appropriate, such as "unreasonably dangerous condition of the product."

If the plaintiff sustained no impact to his body and his injury or illness resulted entirely from emotional distress under circumstances where his injury or illness is compensable, insert at the end of the first paragraph of the instruction the phrase "resulting from emotional distress."

Comment

A bystander present in a zone of physical danger who, because of the defendant's negligence, has a reasonable fear for his own safety is given a right of action for physical injury or illness resulting from emotional distress caused by that fear. *Rickey v. Chicago Transit Auth.*, 98 Ill.2d 546, 457 N.E.2d 1, 75 Ill.Dec. 211 (1983). This decision abrogated the former "impact

rule" which required a bystander to have suffered a contemporaneous physical injury or impact to permit recovery.

A cause of action is also available for the intentional infliction of emotional distress. *Knierim v. Izzo,* 22 Ill.2d 73, 174 N.E.2d 157 (1961).

The "aggravation of any pre-existing ailment or condition" is a factor but not an element of damage. *Luye v. Schopper,* 348 Ill.App.3d 767, 284 Ill.Dec. 34, 809 N.E.2d 156 (1st Dist.2004); *Hess v. Espy,* 351 Ill.App.3d 490, 286 Ill.Dec. 213, 813 N.E.2d 270 (2nd Dist.2004); *Smith v. City of Evanston,* 260 Ill.App.3d 925, 631 N.E.2d 1269, 197 Ill.Dec. 810 (1st Dist.1984).

30.02 Measure of Damages--Nature and Extent of Injury

[Withdrawn]

Comment

IPI 30.02 formerly read, "The nature, extent and duration of the injury." *Powers v. Illinois Cent. Gulf R. Co.*, 91 Ill.2d 375, 438 N.E.2d 152, 63 Ill.Dec. 414 (1982), held that this is not a separate element of damages. IPI 30.02 has therefore been deleted. However, in determining damages the jury may consider the nature, extent and duration of the injury. *See* IPI 30.01.

30.03 Measure of Damages--Aggravation of Pre-Existing Ailment or Condition

[Withdrawn]

Permission to withdraw granted in 2004.

Comment

IPI 30.03 formerly read, "The aggravation of any pre-existing ailment or condition." It has been deleted as a separate element of damage in light of *Luye v. Schopper*, 348 Ill.App.3d 767, 284 Ill.Dec. 34, 809 N.E.2d 156 (1st Dist.2004) and *Hess v. Espy,* 351 Ill.App.3d 490, 286 Ill.Dec. 213, 813 N.E.2d 270 (2nd Dist.2004). However, in determining damages the jury may consider the aggravation of any pre-existing ailment or condition. *See* IPI 30.01.

30.04 Measure of Damages--Disfigurement

The disfigurement resulting from the injury.

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

Comment

Disfigurement is recognized as a separate element of compensable damages in Illinois. *Holston v. Sisters of the Third Order of St. Francis,* 165 Ill.2d 150, 175; 650 N.E.2d 985, 997; 209 Ill.Dec. 12, 24 (1995); *Simon v. Kaplan,* 321 Ill.App. 203, 52 N.E.2d 832 (1st Dist.1944).

30.04.01 Measure of Damages--Disability/Loss of a Normal Life

[The disability experienced (and reasonably certain to be experienced in the future).]

[Loss of a normal life experienced (and reasonably certain to be experienced in the future).]

Notes on Use

These are alternatives. One of these elements may be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

Smith v. City of Evanston, 260 Ill.App.3d 925, 631 N.E.2d 1269, 197 Ill.Dec. 810 (1st Dist.1994), disapproved of the term "disability," holding that the phrase "loss of a normal life" more accurately described this element of damages and would be less confusing to the jury. If the trial court rules that the Smith case is applicable, then the phrase "loss of a normal life" may be substituted for the term "disability" and the Committee recommends that IPI 30.04.02 also be given.

Torres v. Irving Press, Inc., 303 Ill.App.3d 151, 707 N.E.2d 248, 236 Ill.Dec. 403 (1st Dist.1999), [leave to appeal denied] disapproved of the term "loss of a normal life," holding that "disability" was the appropriate element of damages on which the jury should be instructed.

If "disability" is chosen, do not give IPI 30.04.02.

Comment

Disability is recognized as a separate element of compensable damages in Illinois. *Holston v. Sisters of the Third Order of St. Francis,* 165 Ill.2d 150, 175; 650 N.E.2d 985, 997; 209 Ill.Dec. 12, 24 (1995), *Krichbaum v. Chicago City Ry. Co.,* 207 Ill.App. 44 (1st Dist.1917); *and Torres v. Irving Press, Inc.,* 303 Ill.App.3d 151, 707 N.E.2d 248, 236 Ill.Dec. 403 (1st Dist.1999), [leave to appeal denied].

Loss of a normal life is recognized as a separate element of compensable damages in Illinois. *Smith v. City of Evanston,* 260 Ill.App.3d 925, 631 N.E.2d 1269, 197 Ill.Dec. 810 (1st Dist.1994); *Zuder v. Gibson,* 288 Ill.App.3d 329, 680 N.E.2d 483, 223 Ill.Dec. 750 (2d Dist.1997), *Abbinante v. O'Connell,* 277 Ill.App.3d 1046, 662 N.E.2d 126, 214 Ill.Dec. 772 (3d Dist.1996); *Knight v. Lord,* 271 Ill.App.3d 581, 648 N.E.2d 617, 207 Ill.Dec. 917 (4th Dist.1995); and *VanHolt v. National Railroad Passenger Corp.,* 283 Ill.App.3d 62, 669 N.E.2d 1288, 218 Ill.Dec. 762 (1st Dist.1996).

The Committee recommends that either "disability" or "loss of a normal life" be used, but not both.

30.04.02 Loss of a Normal Life--Definition

When I use the expression “loss of a normal life”, I mean the temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life.

Notes on Use

The Committee recommends that this instruction be used if the option in IPI 30.04.01 concerning loss of a normal life is given.

Comment

This definition is derived from *Smith v. City of Evanston,* 260 Ill.App.3d 925, 631 N.E.2d 1269, 197 Ill.Dec. 810 (1st Dist.1994). Defining loss of a normal life in this manner when it is given as an element of compensable damages was approved in *Zuder v. Gibson,* 288 Ill.App.3d 329, 680 N.E.2d 483, 223 Ill.Dec. 750 (2d Dist.1997); *Abbinante v. O'Connell,* 277 Ill.App.3d 1046, 662 N.E.2d 126, 214 Ill.Dec. 772 (3d Dist.1996); and *VanHolt v. National Railroad Passenger Corp.,* 283 Ill.App.3d 62, 669 N.E.2d 1288, 218 Ill.Dec. 762 (1st Dist.1996).

No holding requiring the use of a definition of loss of a normal life exists. Decisions approving the use of a definition of this element are *Abbinante v. O'Connell,* 277 Ill.App.3d 1046, 662 N.E.2d 126, 214 Ill.Dec. 772 (3d Dist.1996) and *Knight v. Lord,* 271 Ill.App.3d 581, 648 N.E.2d 617, 207 Ill.Dec. 917 (4th Dist.1995). Decisions considering this element where no definition was given are *Slavin v. Saltzman,* 268 Ill.App.3d 392, 643 N.E.2d 1383, 205 Ill.Dec. 776 (2d Dist.1994) [*overruled on other grounds* in *Zuder v. Gibson,* 288 Ill.App.3d 329, 680 N.E.2d 483, 223 Ill.Dec. 750 (2d Dist.1997)]; White v. Lueth, 283 Ill.App.3d 714, 670 N.E.2d 1143, 219 Ill.Dec. 255 (3d Dist.1996); *Smith v. City of Evanston,* 260 Ill.App.3d 925, 631 N.E.2d 1269, 197 Ill.Dec. 810 (1st Dist.1994); *Sands v. Glass,* 267 Ill.App.3d 45, 640 N.E.2d 996, 203 Ill.Dec. 846 (2d Dist.1994); and *Martin v. Cain,* 219 Ill.App.3d 110, 578 N.E.2d 1161, 161 Ill.Dec. 515 (5th Dist.1991).

30.04.03 Increased Risk of Harm--Measure of Damages

The increased risk of future [specific condition] [harm] resulting from the [injury] [injuries] [condition] [conditions].

Permission to publish 30.04.03, 30.04.04 granted in 2004.

Notes on Use

This instruction should be inserted into the 30.01 instruction in a case where the damages claimed are within the scope of the ruling in *Dillon v. Evanston Hospital,* 199 Ill.2d 483, 264 Ill.Dec. 653, 771 N.E.2d 357 (2002). When this instruction is used, IPI 30.04.04 must also be used.

Comment

Dillon v. Evanston Hospital, 199 Ill.2d 483, 264 Ill.Dec. 653, 771 N.E.2d 357 (2002) established that a plaintiff could obtain an instruction seeking damages for future harm in some circumstances where the harm is less than 50% likely to occur. In those cases, damages for future harm can be obtained but only to the percentage extent that such harm is likely to occur. The Court established a formula multiplying the value of the future harm if certain to occur by the percentage likelihood that the future harm will occur. *Dillon v. Evanston Hospital, supra* at 506. That formula is set forth in IPI 30.04.04.

See the discussion in *Lewis v. Lead Industries,* 342 Ill.App.3d 95, 101, 109; 793 N.E.2d 869; 276 Ill.Dec. 110 (1st Dist.2003), about whether a “present injury” distinct from the future harm is required under Dillon to warrant this instruction. Cf. *Dillon, supra* at 498, 501, 506.

30.04.04 Increased Risk of Harm--Calculation

To compute damages for increased risk of future [specific condition] [harm] only, you must multiply the total compensation to which the plaintiff would be entitled if [specific condition] were certain to occur by the proven probability that [specific condition] will in fact occur.

[You do not reduce future damages by this formula if those damages are more [likely than not] [probably true than not true] to occur.]

Notes on Use

This instruction should be given whenever IPI 30.04.03 is given.

Neither this instruction nor IPI 30.04.03 should be given unless the plaintiff claims damages that are less than 50% certain to occur.

A plaintiff is entitled to all future damages proven more likely than not to occur. It has never been plaintiff's burden to establish future damages with 100% certainty to recover full compensation for those damages. Reducing damages for future losses, where the likelihood of occurrence is greater than 50%, is not permissible, and these two instructions should not be used in such a case. If the plaintiff seeks compensation for future damages established by less than a 50% certainty, then IPI 30.04.03 and IPI 30.04.04 should be given.

Care must be used in drafting instructions where some of the future damages are established by greater than a 50% likelihood of occurrence, and some by less than a 50% likelihood of occurrence. Identifying conditions for which future damages are sought in IPI 30.04.04 should obviate any potential jury confusion. Future damages which are more than 50% likely to occur should not be reduced by this formula.

The second paragraph should only be used when the plaintiff is seeking both Dillon type future damages and future damages that are more likely than not to occur. See Notes on Use at IPI 30.04.03 concerning the verdict.

The committee envisions the itemized verdict form to appear something like the following sample (with other elements of damages also listed if appropriate).

VERDICT

We, the jury, find for ([plaintiff's name]) and against ([defendant's name]). We assess the damages in the sum of $_____, itemized as follows:

The increased risk of future [condition] [harm] resulting from the [injury] [injuries] [condition] [conditions] is itemized as follows:

[Medical expenses:] $_____
[Disfigurement:] $_____

[Disability:] $_____
[Loss of normal life:] $_____
[Pain and suffering:] $_____
[Time] [Earnings] [Profits] [Salaries]
[Benefits] lost: $_____
[Risk of future harm:]

Medical expenses	$_____
Disfigurement	$_____
Loss of normal life	$_____
Pain and suffering	$_____
TOTAL	$_____

The LIKELIHOOD that the future [condition] [harm] will occur is ____%

The TOTAL DAMAGES multiplied by the LIKELIHOOD that they are going to occur is _____ [TOTAL DAMAGES] x ____% [LIKELIHOOD] = _____

TOTAL DAMAGES $_____

30.04.05 Measure of Damages--Shortened Life Expectancy

Shortened life expectancy.

Instruction, Notes on Use and Comment approved May 2008.

Notes on Use

This instruction is appropriate if there is evidence that plaintiff's life expectancy has been shortened by the tort. It should appear as a separate element of damages on the verdict form.

This element of damages may be used in cases where the court also instructs on disability or loss of a normal life, where such evidence is present. *IPI 34.01* should be given with this instruction.

Comment

The element “shortened life expectancy” can arise when the tort causes a plaintiff to be likely to die prematurely. *Dillon v. Evanston Hosp.,* 199 Ill.2d 483, 500 (2002) supports this element of damages. *See DePass v. United States,* 721 F.2d 203, 208 (7th Cir. 1983) (Posner, J. dissenting) citing out of state cases to support the conclusion that Illinois law does not permit a tortfeasor to get off scot-free because, instead of killing the victim, he inflicts an injury that is likely to shorten the victim's life. Shortened life expectancy is recognized as a separate element of compensable damages in *Bauer ex rel. Bauer v. Memorial Hosp.,* 377 Ill.App.3d 895, 920-921 (5th Dist. 2007).

30.05 Measure of Damages--Pain and Suffering--Past and Future

The pain and suffering experienced [and reasonably certain to be experienced in the future] as a result of the injuries.

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use. To warrant inclusion of the bracketed material relating to future pain and suffering, there must be evidence that such pain and suffering is reasonably certain to occur in the future.

Comment

Pain and suffering are compensable elements of damages. *Donk Bros. Coal & Coke Co. v. Thil*, 228 Ill. 233, 241; 81 N.E. 857, 860 (1907); *Krichbaum v. Chicago City Ry. Co.*, 207 Ill.App. 44 (1st Dist.1917); *McDaniels v. Terminal R.R. Ass'n*, 302 Ill.App. 332, 350; 23 N.E.2d 785, 793 (4th Dist.1939). These elements are not included in "disability." *Wood v. Mobil Chem. Co.*, 50 Ill.App.3d 465, 476; 365 N.E.2d 1087, 1095; 8 Ill.Dec. 701, 709 (5th Dist.1977).

30.05.01 Measure of Damages--Emotional Distress--Past and Future

The emotional distress experienced [and reasonably certain to be experienced in the future].

Notes on Use revised May 2016. Comment revised December 2021.

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use and when the court rules that damages for emotional distress can be claimed.

In *Thornton v. Garcini*, 237 Ill.2d 100, 928 N.E.2d 804, 809, 340 Ill. Dec. 557, 562 (2010), the Illinois Supreme Court held that expert testimony is not required to recover damages for emotional distress, overruling *Hiscott v. Peters*, 324 Ill.App.3d 114 at 126, 754 N.E.2d 839 at 850, 257 Ill.Dec 847 at 858 (2d Dist. 2001) which held that expert testimony was required to recover damages for emotional distress. *Hiscott* involved an appeal from a verdict for the plaintiff in a motor vehicle collision where the jury returned an itemized verdict for past medical expense, past pain and suffering, future pain and suffering, disability, disfigurement and emotional distress. See Notes on Use for B45.03A and B45.03A2 for itemization of damages on the verdict form to provide separate lines for past and future loss.

Comment

Where the plaintiff has sustained personal injuries due to the defendant's negligence or other personal tort, the plaintiff is entitled to recover all damages which are the natural and proximate result of the tort. *City of Chicago v. McLean*, 133 Ill. 148, 153, 24 N.E. 527, 528 (1890). Where the defendant's negligence inflicts an immediate physical injury, Illinois courts allow recovery for the mental disturbance accompanying the injury. In *Babikian v. Mruz*, 2011 IL App (1st) 102579, 956 N.E.2d 959, 353 Ill. Dec. 831, the jury returned a verdict for the plaintiff in a medical malpractice action with separate line items for pain and suffering for permanent abdominal pain and emotional distress for a decline in her mental health. The appellate court rejected the defendant's claim that the award of emotional distress damages was duplicative of the plaintiff's recovery for pain and suffering. The court also rejected defendant's contention that emotional distress damages are allowed only in causes of action for intentional or negligent infliction of emotional distress. The court held that the rule in Illinois is just the opposite, that damages for emotional distress are available to prevailing plaintiffs in cases involving personal torts such as medical negligence, citing *Clark v. Child.'s Mem'l Hosp.*, 2011 IL 108656, 353 Ill. Dec. 254, 955 N.E.2d 1065 (2011), a wrongful birth case. *Id.* ¶19, 956 N.E.2d at 964, 353 Ill. Dec. at 836. See also *Cummings v. Jha*, 394 Ill. App. 3d 439, 915 N.E.2d 908, 333 Ill. Dec. 837 (5th Dist. 2009) where the court affirmed a medical malpractice verdict for plaintiff including separate line items for pain and suffering and mental distress. *See also Jefferson v. Mercy Hosp. & Med. Ctr.,* 2018 IL App (1st) 162219, 97 N.E.3d 173, 420 Ill. Dec. 599, where the court rejected the defendant's argument that emotional distress and pain and suffering were duplicative and finding that the evidence that the jury did not bestow a double recovery on the plaintiff was compelling where the damages for emotional distress were greater than those for pain and suffering.

Dicta in *Marxmiller v. Champaign-Urbana Mass Transit Dist.*, 2017 IL App (4th) 160741, ¶¶ 51-56, 90 N.E.3d 1064, 418 Ill. Dec. 575, commented that "emotional distress is a form of suffering, not a separate element," but affirmed the jury's verdict where the award for emotional distress exceeded the award for pain and suffering.

Also, under certain circumstances, a plaintiff can recover damages for negligent infliction of emotional distress even in the absence of a physical impact. *Rickey v. Chi. Transit Auth*., 98 Ill.2d 546, 457 N.E.2d 1, 75 Ill. Dec. 211 (1983); *Corgan v. Muehling*, 143 Ill.2d 296, 574 N.E.2d 602, 158 Ill. Dec. 489 (1991); *Lewis v. Westinghouse Elec. Corp.*, 139 Ill.App.3d 634, 487 N.E.2d 1071, 94 Ill. Dec. 194 (1st Dist.1985); *Courtney v. St. Joseph Hosp.*, 149 Ill.App.3d 397, 500 N.E.2d 703, 102 Ill. Dec. 810 (1st Dist.1986); *Robbins v. Kass*, 163 Ill.App.3d 927, 516 N.E.2d 1023, 114 Ill. Dec. 868 (2d Dist.1987); *Koeller v. Cook Cnty.*, 180 Ill.App.3d 425, 535 N.E.2d 1118, 129 Ill. Dec. 353 (1st Dist.1989); *Seef v. Sutkus*, 205 Ill.App.3d 312, 562 N.E.2d 606, 150 Ill. Dec. 76 (1st Dist.1990), *aff'd on other grounds*, 145 Ill.2d 336, 583 N.E.2d 510, 164 Ill. Dec. 594 (1991); *Allen v. Otis Elevator Co.*, 206 Ill.App.3d 173, 563 N.E.2d 826, 150 Ill. Dec. 699 (1st Dist.1990); *Hayes v. Ill. Power Co.*, 225 Ill.App.3d 819, 587 N.E.2d 559, 167 Ill. Dec. 290 (4th Dist.1992); *Leonard v. Kurtz*, 234 Ill.App.3d 553, 600 N.E.2d 896, 175 Ill. Dec. 653 (3d Dist.1992); *Jarka v. Yellow Cab Co.*, 265 Ill.App.3d 366, 637 N.E.2d 1096, 202 Ill. Dec. 360 (1st Dist.1994); s*ee also Kapoulas v. Williams Ins. Agency, Inc.*, 11 F.3d 1380 (7th Cir.1993).

The United States Supreme Court has recognized a cause of action for negligent infliction of emotional distress under the Federal Employers' Liability Act. *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 114 S.Ct. 2396, 129 L.Ed.2d 427 (1994); s*ee* Chapter 160, *infra*.

30.06 Measure of Damages--Medical Expense--Past and Future--Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

The reasonable expense of necessary medical care, treatment, and services received [and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future].

The reasonable value of necessary medical care, treatment, and services received [and the present cash value of medical care, treatment and services reasonably certain to be received in the future].

Instruction revised September 2020 and Notes on Use and Comment revised October 2021.

Notes on Use

These are alternatives. One of these elements may be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

Wills v. Foster, 229 Ill. 2d 393, 892 N.E.2d 1018, 323 Ill. Dec. 26 (2008) and Arthur v. Catour, 216 Ill. 2d 72, 833 N.E.2d 847, 295 Ill. Dec. 641 (2005) describe the measure of damages as the reasonable value of medical expenses.

The first alternative is recommended when the plaintiff received a bill for medical care, treatment or services and there is no dispute regarding the reasonableness of the charges.

The second alternative is recommended when there is a dispute regarding the reasonableness of the plaintiff's medical bills or when the plaintiff seeks to recover the reasonable value of free medical services. Wills v. Foster, 229 Ill. 2d 393, 892 N.E.2d 1018, 323 Ill. Dec. 26 (2008). To warrant inclusion of the bracketed material relating to future medical expenses, there must be evidence that such expenses are reasonably certain to be incurred.

If the plaintiff is a minor who has been assigned the right of recovery or minor's representative claiming under § 15 of the Rights of Married Persons Act (750 ILCS 65/15), commonly referred to as the Family Expense Act, this instruction should be used to recover those expenses incurred or reasonably certain to be incurred during the plaintiff's minority. If the plaintiff is a minor or minor's representative and the right to recover these expenses during minority has not been assigned to the minor and for all medical expenses reasonably certain to be incurred after the plaintiff reaches the age of 18, use IPI 30.08.

Comment

A plaintiff is entitled to recover the reasonable value of medical expenses. *Arthur v. Catour*, 216 Ill.2d 72, 833 N.E.2d 847, 295 Ill. Dec. 641 (2005); *Wills v. Foster*, 229 Ill.2d 393, 892 N.E.2d 1018, 323 Ill. Dec. 26 (2008). Illinois follows the "reasonable-value approach" under which a plaintiff may seek to recover the charged amount of a medical expense provided the plaintiff establishes that the charged amount is reasonable. *Wills*, 229 Ill.2d at 413. A paid medical bill constitutes prima facie evidence of reasonableness. *Id*. at 403. If a plaintiff seeks to recover an unpaid portion of a medical expense, only the paid portion of the charge is considered

prima facie reasonable. *Arthur*, 216 Ill.2d at 81-83; *Klesowitch v. Smith*, 2016 IL App (1st) 150414. The difference between the charged amount and the paid amount of a medical expense is treated the same as an unpaid medical expense. *Id*. To recover an unpaid medical expense, the plaintiff must establish reasonableness of the unpaid charge by introducing the testimony of a person having knowledge of the services rendered and the reasonable value for such services. *Id*.

A defendant is entitled to challenge the plaintiff's evidence of reasonableness by either cross-examining the plaintiff's witnesses or by presenting evidence as to the reasonable value of the medical expense. *Arthur*, 216 Ill.2d at 83; *Wills*, 229 Ill.2d at 418. However, a defendant's ability to challenge the reasonableness of medical expenses is limited by, and not an exception to, the evidentiary component of the collateral source rule. *Wills*, 229 Ill. 2d at 418. For example, a defendant cannot introduce evidence that the plaintiff's bills were settled for an amount less than the billed amount because to do so would undermine the evidentiary component of the collateral source rule. *Id*. Under the collateral source rule, a plaintiff may seek to recover the amount originally billed by the medical provider, regardless of whether the plaintiff has any actual liability for those medical expenses. *Id*. at 399.

The policy justification for the collateral source rule is that "'the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons.'" *Id*. at 413 (emphasis in the original) (citing *Arthur*, 216 Ill. 2d at 79). Moreover a "'benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor.'" *Id*. (quoting Restatement (Second) of Torts §920A, Comment b, at 514 (1979)). The collateral source rule has both evidentiary and substantive components. *Id*. at 400. The evidentiary component addresses trial and prevents "defendants from introducing evidence that a plaintiff's losses have been compensated for, even in part, by insurance." *Id*. at 418 (citing *Arthur*, 216 Ill. 2d at 79). The substantive component addresses post-trial and bars a defendant from moving a court to reduce an award because of collateral benefits. *Id*. This instruction addresses the latter.

Even in the absence of any billed or charged medical expense, a plaintiff is entitled to recover the reasonable value of gratuitous or free hospital, nursing, and medical services. *Wills v. Foster*, 229 Ill.2d 393, 892 N.E.2d 1018, 323 Ill. Dec. 26 (2008) (overruling *Peterson v. Lou Bachrodt Chevrolet*, 76 Ill.2d 353, 392 N.E.2d 1 (Ill. 1979) as it is incompatible with the reasonable-value approach).

In actions for damages arising out of an injury to an unemancipated minor, the items of damage listed in this element are recoverable by the parents. *Reimers v. Honda Motor Co*., 150 Ill.App.3d 840, 502 N.E.2d 428, 429-30, 104 Ill.Dec. 165, 166-67 (1st Dist.1986); *Curtis v. County of Cook*, 109 Ill.App.3d 400, 440 N.E.2d 942, 947, 65 Ill.Dec. 87, 92 (1st Dist.1982), *judgment aff'd in part, rev'd in part, on other grounds,* 98 Ill.2d 158, 456 N.E.2d 116, 74 Ill.Dec. 614 (1983). However, the usual practice in Illinois is to sue for those damages in the minor's action. This is accomplished by an assignment of the parents' right to recover these damages. *Roberts v. Sisters of Saint Francis Health Serv., Inc*., 198 Ill. App. 3d 891, 904 (1st Dist. 1990). Parents may bring a derivative action for medical expenses arising under § 15 of the Rights of Married Persons Act (750 ILCS 65/15), commonly referred to as the Family Expense Act, which

tolls during the child's infancy and must be filed within two years of the child reaching eighteen years of age. 735 ILCS 5/13-203, 5/13-211.

On the issue of present cash value, see the 34.00 Series.

30.07 Measure of Damages--Loss of Earnings or Profits--Past and Future

[The value of (time) (earnings) (profits) (salaries) (benefits) lost] [.] [and] [(T)he present cash value of the (time) (earnings) (profits) (salaries) (benefits) reasonably certain to be lost in the future].

Notes on Use and Comment revised October 2021.

Notes on Use

One or more of these elements is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

Comment

The first phrase of this instruction concerns earnings and profits lost prior to trial.

With reference to past lost time, an injured party may recover for the time lost even though he was paid his regular wage during incapacitation. *Hoobler v. Voelpel,* 246 Ill.App. 69 (2d Dist.1927); *Cooney v. Hughes,* 310 Ill.App. 371, 34 N.E.2d 566 (1st Dist.1941) (loss incurred by unemployed plaintiff who provided services in the home); *Jerrell v. Harrisburg Fair & Park Ass'n,* 215 Ill.App. 273, 280 (4th Dist.1919) (plaintiff must present evidence of lost earnings, time, or wages); *Wever v. Staggs,* 264 Ill.App. 556, 564 (3d Dist.1932) (homemaker's lost services are a proper element of damages if value of lost services is established); *McManus v. Feist,* 76 Ill.App.2d 99, 106-07; 221 N.E.2d 418, 421-22 (4th Dist.1966).

The second portion of this instruction includes diminution of the plaintiff's capacity to earn. It may be based upon inability to earn in occupations or fields of endeavor like or unlike his past earning experience, so long as his lost capacity to earn is established by the evidence. Consequently, damages incurred as a result of impaired earning capacity are not necessarily measured by proof of past lost wages. *Buckler v. Sinclair Ref. Co.,* 68 Ill.App.2d 283, 216 N.E.2d 14 (5th Dist.1966). The element of damages for future lost earnings does not depend on whether the injured party was employed on the date of the occurrence. *Casey v. Baseden,* 131 Ill.App.3d 716, 475 N.E.2d 1375, 86 Ill.Dec. 808 (5th Dist.1985), *aff'd*, 111 Ill.2d 341, 490 N.E.2d 4, 95 Ill.Dec. 531 (1986). The instruction may also be proper even though he was employed at the time of trial and earning more than at the time of his injury. *Jackson v. Ill. Cent. Gulf R. Co.,* 18 Ill.App.3d 680, 309 N.E.2d 680, 688 (1st Dist.1974).

On the issue of present cash value, see the 34.00 Series.

30.08 Measure of Damages--Future Medical Expenses--Minor Plaintiff

The present cash value of [(medical) care, treatment, and services] (caretaking expense) reasonably certain to be incurred in the future after the plaintiff has reached the age of eighteen.

Instruction, Notes on Use, and Comment revised October 2021.

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

The legal age of majority is 18 years. 755 ILCS 5/11-1 (1994).

If the parents' right to recover medical expenses during the child's minority has been assigned to the child, then the child can recover all such expenses, not merely those commencing with his majority. In such cases, therefore, do not include the bracketed material concerning medical expenses in this instruction; use IPI 30.06 instead. If the assignment includes caretaking expenses, and there is evidence of such expenses, omit the bracketed reference to caretaking expenses and use IPI 30.09.

Comment

In actions for damages arising out of an injury to an unemancipated minor, the loss of earnings, medical and caretaking expense during the child's minority are recoverable by the parents. The child, therefore, is limited to the loss of medical or caretaking expense he would have incurred after reaching his majority. The usual practice in Illinois, however, is to sue for all damages in the minor's action. This is accomplished by an assignment of the parents' right to recover these damages. Roberts v. Sisters of Saint Francis Health Serv. Inc., 198 Ill.App.3d 891, 904 (1st Dist. 1990). See Comment to IPI B11.06.01.

On the issue of present cash value, see the 34.00 Series.

30.09 Measure of Damages--Caretaking Expenses, Necessary Help--Past and Future--Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

The reasonable expense of necessary help [and the present cash value of such expense reasonably certain to be required in the future].

Instruction and Comment revised January 2010.

Notes on Use

This element is to be inserted between the paragraphs of IPI 30.01 when the evidence justifies its use.

To include the bracketed material relating to future caretaking expense, there must be evidence that such expense is reasonably certain to be incurred in the future.

If the plaintiff is a minor or minor's representative and the right to recover these expenses during minority has not been assigned to the minor, use IPI 30.08.

Comment

Plaintiff is entitled to recover all damages that naturally and proximately flow from the tort. *Horan v. Klein's-Sheridan, Inc.,* 62 Ill.App.2d 455, 459, 211 N.E.2d 116, 118 (3d Dist. 1965). Incidental caretaker expenses resulting from personal injuries are therefore appropriate elements of damages. *Hoobler v. Voelpel,* 246 Ill.App. 69 (2d Dist. 1927) (court allowed recovery of expense of hiring help in plaintiff's home during convalescence). Recovery is not limited to caretaking expenses incurred in the home, however, and extends to all necessary help reasonably incurred as a result of the injury suffered. In *North Chicago St. R. Co. v. Zeiger,* 182 Ill. 9, 54 N.E. 1006 (1899), the Illinois Supreme Court approved the use of this instruction where plaintiff, a butcher employing 25 workers, had to pay a substitute superintendent to perform plaintiff's duties for a period of five months after his accident. *Worley v. Barger,* 347 Ill.App.3d 492, 807 N.E.2d 1222, 283 Ill. Dec. 381(5th Dist. 2004) (the court noted plaintiff should be permitted to seek recovery for the reasonable value of caretaking services that would have been allowed had someone been employed to care for her child).

On the issue of present cash value, see the 34.00 series.

30.10 Measure of Damages--Damage to Personal Property--Repairs and Depreciation or Difference in Value Before and After Damage

The damage to property, determined by the lesser of two figures which are calculated as follows:

One figure is the reasonable expense of necessary repair of the property plus the difference between the fair market value of the property immediately before the occurrence and its fair market value after the property is repaired.

The other figure is the difference between the fair market value of the property immediately before the occurrence and the fair market value of the unrepaired property immediately after the occurrence.

You may award as damages the lesser of these two figures only.

Notes on Use

This instruction is not to be used alone, but it is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

If there is no claim that the repaired property has depreciated in value, use IPI 30.11.

If the cost of repairs plus depreciation will be less than the difference in value between the damaged and undamaged property, use IPI 30.12.

If only the reasonable expense of necessary repairs is claimed and that is less than the difference in value of the property before and after the damage, use IPI 30.13.

If the difference in the value of property before and after it was damaged is less than the reasonable cost of repairs, use IPI 30.14.

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of "property" in the introductory clause.

Comment

Since compensatory damages are only to make a party whole, and not to enable him to make a profit on the transaction, a party may recover the reasonable expense of necessary repairs plus any difference between the value of the property immediately before the occurrence and after it has been repaired, provided that these amounts do not exceed the difference between the value of the undamaged and damaged property. *Santiemmo v. Days Transfer, Inc.*, 9 Ill.App.2d 487, 502; 133 N.E.2d 539, 546 (1st Dist.1956) (a verdict of $4,417.16, representing the costs of repairs, was reduced by $717.76 to equal highest estimate of the value of the truck before it was

damaged); *McDonell v. Lake Erie & W. Ry. Co.*, 208 Ill.App. 442, 454 (2d Dist.1917) ("Sometimes, after the repairs, the property is still not as good as it was before, and then the difference between the value of the property after it has been repaired and the value of the property before the injury should be added to make up the loss."); *Welter v. Schell,* 252 Ill.App. 586, 589-590 (1st Dist.1929) (plaintiff recovered $423.25 for repairs and $475 for depreciation after repair on his automobile which was worth $2,200 immediately before being damaged). *See generally* Fowler, Loss of Earnings and Property Damage, 1956 U. Ill. L.F. 453, 462-465.

30.11 Measure of Damages--Damage to Personal Property--Repairs or Difference In Value Before and After Damage

The damage to property, determined by the lesser of (1) the reasonable expense of necessary repairs to the property or (2) the difference between the fair market value of the property immediately before the occurrence and its fair market value immediately after the occurrence.

Notes on Use

This instruction is to be used as an alternative to IPI 30.10 if there is no claim that the property after repairs has suffered reduction in fair market value. The instruction is not to be used alone, but is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

This instruction is to be used when there is an issue as to whether the cost of repairs or the difference in value of the property before and after it is damaged is the lesser amount. When the cost of repairs is admittedly the lesser amount, use IPI 30.13; when the converse is true, use IPI 30.14.

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of "property" in the introductory clause.

Comment

See Comment to IPI 30.10.

30.12 Measure of Damages--Damage to Personal Property--Cost of Repairs and Depreciation of Repaired Property

The reasonable expense of necessary repairs to the property which was damaged plus the difference between the fair market value of the property immediately before the occurrence and its fair market value after it is repaired.

Notes on Use

The instruction is not to be used alone, but is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

This instruction is to be used as an alternative to IPI 30.10 where the costs of repairs plus depreciation is less than the difference in value between the damaged and undamaged property.

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of "property" in the introductory clause.

Comment

McDonell v. Lake Erie & W. Ry. Co., 208 Ill.App. 442, 452 (2d Dist.1917) ("Sometimes, after the repairs, the property is still not as good as it was before, and then the difference between the value of the property after it has been repaired and the value of the property before the injury should be added to make up the loss."); *Welter v. Schell*, 252 Ill.App. 586, 589-590 (1st Dist.1929) (plaintiff recovered $423.25 for repairs and $475 for depreciation for damage to his automobile which was worth $2,200 immediately before being damaged).

30.13 Measure of Damages--Damage to Personal Property--Repairs

The damage to property, determined by the reasonable expense of necessary repairs to the property which was damaged.

Notes on Use

The instruction is not to be used alone, but is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

This instruction is to be used as an alternative to IPI 30.10 if only the reasonable expense of necessary repairs is claimed and that is less than the difference in value of the property before and after the damage.

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of "property" in the introductory clause.

Comment

Repairs to damaged property are recognized as a compensable element of damages. McDonell v. Lake Erie & W. Ry. Co., 208 Ill.App. 442, 450 (2d Dist.1917).

30.14 Measure of Damages--Damage to Personal Property--Difference in Value Before and After Damage

The damage to property, determined by the difference between its fair market value immediately before the occurrence and its fair market value immediately after the occurrence.

Notes on Use

This instruction is to be used as an alternative to IPI 30.10 if the difference in the value of property before and after it was damaged is less than the reasonable cost of repairs. The instruction is not to be used alone, but is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

This instruction is appropriate only where the property, though destroyed or damaged beyond repair, is still in existence and has salvage value. If the property is not in existence or if it lacks salvage value, IPI 30.15 is appropriate.

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of "property" in the introductory clause.

Comment

The difference in values immediately before and after the occurrence is recognized as a compensable element of damages in Illinois, where the property is destroyed beyond repair or the cost of repair exceeds the difference in value. *Crossen v. Chicago & Joliet Elec. Ry. Co.*, 158 Ill.App. 42, 44 (2d Dist.1910); *Latham v. Cleveland, C., C. & St. L. Ry. Co.*, 164 Ill.App. 559, 563 (2d Dist.1911); *Albee v. Emrath*, 53 Ill.App.3d 910, 916; 369 N.E.2d 62, 67; 11 Ill.Dec. 608, 613 (1st Dist.1977); *Collgood, Inc. v. Sands Drug Co.*, 5 Ill.App.3d 910, 917; 284 N.E.2d 406, 410 (5th Dist.1972).

30.15 Measure of Damages--Damage to Personal Property--Value Before Damage--No Salvage

The damage to property, determined by the fair market value of the property immediately before the occurrence.

Notes on Use

This instruction is not to be used alone, but is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

This instruction may be used (1) where the property is damaged beyond repair and has no salvage value or (2) where there is no evidence as to the salvage value. *New York, Chicago & St. L.R. Co. v. American Transit Lines*, 408 Ill. 336, 339-342; 97 N.E.2d 264, 266-268 (1951). Where the property admittedly has salvage value, use IPI 30.14.

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of "property" in the introductory clause.

30.16 Measure of Damages--Damage to Personal Property--Loss of Value

The reasonable rental value of similar property for the time reasonably required for the [repair] [replacement] of the property damaged.

Notes on Use

This instruction is not to be used alone, but is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

If the property has been replaced, the bracketed material should be used in lieu of the word “repair.”

This instruction should not be used for damages to real estate or improvements thereon. *See* IPI 30.17 to 30.20. Where real and personal property claims occur together, use instructions for both where appropriate, and substitute the name of the personal property item instead of “property” in the introductory clause.

Comment

Reasonable rental value is a recognized element of compensable damages in Illinois. *Lawndale Steam Dye Works v. Chicago Daily News Co.,* 189 Ill.App. 565, 566 (1st Dist.1914); *Berry v. Campbell,* 118 Ill.App. 646 (2d Dist.1905); *McDonell v. Lake Erie & W. Ry. Co.,* 208 Ill.App. 442, 450 (2d Dist.1917).

It is not necessary that similar property be actually rented during the period of time reasonably required for repair. Damages are available for loss of use of the damaged property during the period required for repair, even though rental of similar property is not undertaken by the impaired party. *Trailmobile Div. of Pullman, Inc. v. Higgs,* 12 Ill.App.3d 323, 325; 297 N.E.2d 598, 600 (5th Dist.1973). Proof as to the value of the loss of use must be present, such as the cost of renting a replacement vehicle. *Plesniak v. Wiegand,* 31 Ill.App.3d 923, 335 N.E.2d 131 (1st Dist.1975).

In *National Contract Purchase Corp. v. McCormick,* 264 Ill.App. 63 (1st Dist.1931), the court valued the loss of use of the plaintiff's vehicle by computing the cost of renting a replacement, even though the plaintiff did not rent a replacement.

30.17 Measure of Damages--Damage to Real Property--Repairable Damage

The damage to real property, determined by the reasonable expense of necessary repairs to the property which was damaged [and the value of loss of the use of the (building) (improvements) for the time reasonably required for the repair] [and the difference between the fair market value of the real property immediately before the occurrence and its fair market value immediately after the repairs].

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use. This instruction must be used, in general, where the damages to real estate are not permanent.

The first bracketed clause should be inserted where the evidence shows that the property was unable to be occupied, or used, during the period of repair. Proof as to the value of the loss of the use must be presented.

The second bracketed portion should be used in those situations where the evidence reflects that, after the repairs are performed to the real property, there is still a decrease in the fair market value of the property.

This instruction is appropriate in a nuisance case where the nuisance can be abated.

Comment

Where damages to real property are not permanent, then the measure of damages is the cost of restoration. If the damages are permanent, the measure of damages is the diminution in market value of the realty. *Arras v. Columbia Quarry Co.,* 52 Ill.App.3d 560, 367 N.E.2d 580, 10 Ill.Dec. 192 (5th Dist.1977).

In characterizing an injury to realty as permanent or temporary, a court must necessarily look to the nature of the thing injured (*Arras v. Columbia Quarry Co., supra*) and the exact interest harmed. *Myers v. Arnold,* 83 Ill.App.3d 1, 403 N.E.2d 316, 38 Ill.Dec. 228 (4th Dist.1980); *Zosky v. Couri,* 77 Ill.App.3d 1033, 397 N.E.2d 170, 33 Ill.Dec. 837 (3d Dist.1979) (tire ruts not permanent and required repair, rather than diminution in fair market value).

In *Arras,* damage to a well was held not permanent, because the injury was abatable by the drilling of a new well. *Myers* approved an award of damages in excess of diminution of market value because the property was a family residence, not an investment, and the interest harmed could be corrected with a reasonable expenditure, even though the cost exceeded the diminution in value of the land.

Cost of repair or restoration is the proper measure of damages in mine subsidence cases (*Donk Bros. Coal & Coke Co. v. Novero,* 135 Ill.App. 633 (4th Dist.1907)), and in blasting cases. *Fitzsimons & Connell Co. v. Braun & Fitts,* 199 Ill. 390, 65 N.E. 249 (1902); *Peet v.*

Dolese & Shepard Co., 41 Ill.App.2d 358, 190 N.E.2d 613 (2d Dist.1963).

Costs of repair can include the expense necessary to conform those repairs to existing building codes. *Peluso v. Singer General Precision, Inc.*, 47 Ill.App.3d 842, 365 N.E.2d 390, 8 Ill.Dec. 152 (1st Dist.1977).

For a case involving damages for mining coal after expiration of a lease, *see Dethloff v. Zeigler Coal Co.*, 82 Ill.2d 393, 412 N.E.2d 526, 45 Ill.Dec. 175 (1980), *cert. denied*, 451 U.S. 910, 101 S.Ct. 1980, 68 L.Ed.2d 299 (1981).

30.18 Measure of Damages--Damage to Real Property--Permanent or Continuing Damage

The damage to real property, determined by the difference between the fair market value of the real property immediately before the occurrence and its fair market value immediately after the occurrence.

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

This instruction is appropriate in a nuisance case, where the nuisance cannot be abated. For repairable damage, *see* IPI 30.17.

Comment

For permanent damage to land or buildings, the usual measure of damages is the decrease in the value of the property. *Illinois Cent. Ry. Co. v. Ferrell,* 108 Ill.App. 659 (4th Dist.1902); *Clark v. Public Service Co. of N. Ill.,* 278 Ill.App. 426 (2d Dist.1934); *Stirs, Inc. v. City of Chicago,* 24 Ill.App.3d 118, 320 N.E.2d 216 (1st Dist.1974). An exception to this general rule is damage to property as a result of mine subsidence, where the cost of repair or restoration is the proper measure. *Donk Bros. Coal & Coke Co. v. Novero,* 135 Ill.App. 633 (4th Dist.1907). Blasting is another exception requiring repair. *Fitzsimons & Connell Co. v. Braun,* 199 Ill. 390, 65 N.E. 249 (1902); *Peet v. Dolese & Shepard Co.,* 41 Ill.App.2d 358, 190 N.E.2d 613 (2d Dist.1963).

In characterizing an injury to realty as permanent or temporary, a court must necessarily look to the nature of the thing injured, and the exact interest harmed. *Arras v. Columbia Quarry Co.,* 52 Ill.App.3d 560, 367 N.E.2d 580, 10 Ill.Dec. 192 (5th Dist.1977); *Myers v. Arnold,* 83 Ill.App.3d 1, 403 N.E.2d 316, 38 Ill.Dec. 228 (4th Dist.1980). *See* comment to IPI 30.17.

The measure of damages for the destruction of trees and land is the difference in value of the land immediately before and immediately after the damage. This rule has been applied to ornamental or shade trees (*First Nat'l Bank v. Amco Engineering Co.,* 32 Ill.App.3d 451, 335 N.E.2d 591 (2d Dist.1975); *Rogers v. Enzinger,* 339 Ill.App. 376, 89 N.E.2d 853 (2d Dist.1950)), and to orchard or fruit trees. *Collins v. Illinois Cent. R.R.,* 161 Ill.App. 95 (4th Dist.1911). Damage for the destruction of forest trees is the value of the trees, rather than the difference in value of the land before and after the destruction. *Citizens Nat'l Bank v. Joseph Kesl & Sons Co.,* 378 Ill. 428, 38 N.E.2d 734 (1941); *Jones v. Sanitary Dist. of Chicago,* 252 Ill. 591, 97 N.E. 210 (1911).

30.19 Measure of Damages--Damage to Real Property--Mature Crops

The market value of the crop as it was at the time of the loss [less the cost of harvesting and marketing, including all care and preparation for marketing, and transportation to market].

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

For growing crops, or immature crops, where the market value of the products cannot be fairly determined, *see* IPI 30.20.

The bracketed clause should be inserted only in those situations where the crop is fully matured and ready to be harvested, and the tort is not willful.

Comment

Where the crop is more or less matured so that the yield can be fairly determined, the value of the crop at the time of the loss is the measure of damages. *Baltimore & Ohio Southwestern R. Co. v. Stewart*, 128 Ill.App. 270 (4th Dist.1906). This includes the value of the right which the owner had to mature the crops and harvest or gather them at the proper time. *St. Louis Merchants' Bridge Terminal Ry. Ass'n v. Schultz,* 226 Ill. 409, 80 N.E. 879 (1907).

The value of the right which the owner had to mature the crops and harvest or gather them at the proper time is generally the amount someone would pay for an immature crop in its condition before the loss. This value depends upon a number of factors, including the quality of the soil, the nature of the crop, and the hazard of maturity. *Zuidema v. Sanitary Dist. of Chicago,* 223 Ill.App. 138 (1st Dist.1921).

The measure of damage to mature crops is the market value of those crops, less the costs which would have been incurred in harvesting the damaged portion of the crop, and marketing said damaged portion, including transportation of the damaged portion to market. *Baltimore & Ohio Southwestern R. Co. v. Stewart, supra*. Where crops are converted at harvest, the measure of damages is the market value at that time and place. *Agrinetics, Inc. v. Stob,* 90 Ill.App.3d 107, 412 N.E.2d 714, 45 Ill.Dec. 363 (2d Dist.1980).

Cf. Dethloff v. Zeigler Coal Co., 82 Ill.2d 393, 412 N.E.2d 526, 45 Ill.Dec. 175 (1980), *cert. denied*, 451 U.S. 910, 101 S.Ct. 1980, 68 L.Ed.2d 299 (1981) (discussing measure of damages for willful trespass and conversion of coal).

30.20 Measure of Damages--Damage to Real Property--Growing Crops

The value of the crop at the time it was damaged, which includes the annual rental value of the land in question, the cost of seed, the value of labor and expenses incurred in preparing the ground and planting the crop [, and the value of labor and the expenses incurred after planting].

Notes on Use

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

The instruction should be used when the crop is not yet up. Where the crop is up, but not so far mature that the yield can be fairly determined, then the bracketed clause should be included in the instruction. Where the crop is so grown, or nearly matured, as to be fairly determined, or where the crop is matured, IPI 30.19 should be used.

This instruction may not be appropriate in landlord-tenant situations with respect to rental value, depending on the terms of the lease agreement, and this instruction may need to be modified accordingly.

Comment

The rule in Illinois for measuring damages to immature crops was stated in *Baltimore & Ohio Southwestern R. Co. v. Stewart,* 128 Ill.App. 270, 274-275 (4th Dist.1906):

> The general rule is: "where the crop is not up, the damage should be estimated upon the basis of the rental value and the cost of seed and labor, preparing the ground and planting the crops; where the crop is up, but not so far mature that the product can be fairly determined, the injured party can recover, in addition to the above, the cost of any labor bestowed after the planting; where the crop is more or less matured so that the product can be fairly determined, the value of the crop at the time of the loss is the measure of damages, and it is only where the crop is fully matured and ready to be harvested, that the damage can be determined by the market value of the crop, less the cost of harvesting and marketing, which must include all care and preparation for marketing, such as packing, crating and baling, threshing and the like, according to the nature of the crop."

This test was used in *Young v. West,* 130 Ill.App. 216 (3d Dist.1906), and *Enright v. Toledo, P. & W. Ry. Co.,* 158 Ill.App. 323 (3d Dist.1910).

Growing crops are difficult to evaluate because of the uncertainty of their value at maturity, and the measure of damages is the value of the crops as they were when destroyed, with the right of the owner to mature and harvest them at the proper time. Opinion evidence tending to show what the crops in question would yield if allowed to mature, or what the market value was at the time of maturity, is not admissible in proof of damages. *Zuidema v. Sanitary Dist. of Chicago,* 223 Ill.App. 138 (1st Dist.1921).

30.21 Measure of Damages--Personal Injury--Aggravation of Pre-Existing Condition--No Limitations

If you decide for the plaintiff on the question of liability, you may not deny or limit the plaintiff's right to damages resulting from this occurrence because any injury resulted from [an aggravation of a pre-existing condition] [or] [a pre-existing condition which rendered the plaintiff more susceptible to injury].

Notes on Use

In FELA cases, IPI 160.27 should be used.

Comment

See IPI 30.03.

In *Balestri v. Terminal Freight Co-op. Ass'n,* 76 Ill.2d 451, 394 N.E.2d 391, 31 Ill.Dec. 189 (1979), *cert. denied,* 444 U.S. 1018, 100 S.Ct. 671, 62 L.Ed.2d 648 (1980), the court held it was reversible error to refuse an instruction that the plaintiff's right to recover damages for his or her injuries and disability is not barred or limited by the fact that they arose out of an aggravation of a pre-existing condition which made the plaintiff more susceptible to injury. *See also Pozzie v. Mike Smith, Inc.*, 33 Ill.App.3d 343, 337 N.E.2d 450 (1st Dist.1975).

Other courts have approved giving this instruction. *See Ficken v. Alton & Southern Ry. Co.*, 255 Ill.App.3d 1047, 625 N.E.2d 1172, 1176-1178; 193 Ill.Dec. 51, 55-57 (5th Dist.1993); *Worthy v. Norfolk & W. Ry. Co.,* 249 Ill.App.3d 1096, 619 N.E.2d 1371, 189 Ill.Dec. 322 (5th Dist.1993); *Dabros v. Wang,* 243 Ill.App.3d 259, 611 N.E.2d 1113, 183 Ill.Dec. 465 (1st Dist.1993) (refusal was error, but harmless in view of verdict for defendant); *Grimming v. Alton & Southern Ry. Co.*, 204 Ill.App.3d 961, 562 N.E.2d 1086, 1098-1100; 150 Ill.Dec. 283, 295-297 (5th Dist.1990) (similar instruction); *Wheeler v. Roselawn Memory Gardens,* 188 Ill.App.3d 193, 543 N.E.2d 1328, 1335; 135 Ill.Dec. 581, 588 (5th Dist.1989) (similar instruction). *But see Smith v. City of Evanston,* 260 Ill.App.3d 925, 631 N.E.2d 1269, 197 Ill.Dec. 810 (1st Dist.1994).

30.22 Collateral Source--Damages

[Withdrawn; former content is combined into 3.03]

Instruction withdrawn October 2007.

30.23 Injury from Subsequent Treatment

If [a defendant] [defendants] negligently cause[s] [injury to] [a condition of] the plaintiff, then the defendant[s] [is] [are] liable not only for the plaintiff's damages resulting from that [injury] [or] [condition], but [is] [are] also liable for any damages sustained by the plaintiff arising from the efforts of health care providers to treat the [injury] [or] [condition] caused by the defendant[s] [even if (that) (those) health care provider(s) (was) (were) negligent.]

Notes on Use

Permission to publish granted in 2003.

This instruction is intended to be used when there is evidence that a subsequent health care provider caused or aggravated the injury. The last bracketed material should be used when there is a claim that the subsequent health care provider was negligent. *See Kolakowski v. Voris*, 94 Ill.App.3d 404, 418 N.E.2d 1003, 50 Ill.Dec. 9 (1st Dist.1981).

Comments

If the issue of the subsequent medical provider having caused or aggravated an injury is injected into the case, there is a likelihood the jury may be confused as to the applicable law. The jury might perceive the subsequent provider as the wrongdoer and "acquit the defendants on that basis." *Kolakowski v. Voris, supra*. This proposition is not necessarily obvious and should be told to the jury. *See Daly v. Carmean,* 210 Ill.App.3d 19, 30; 568 N.E.2d 955, 154 Ill.Dec. 734 (4th Dist.1991) citing *Gertz v. Campbell,* 55 Ill.2d 84, 302 N.E.2d 40 (1973). No other instruction tells the jury that the defendant, if culpable, is liable for damages caused by the subsequent health care provider's conduct.