

## ARIZONA

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**1. In your state, what are the categories of damages that are available in tort?**

Damages are available under the large umbrella of “Compensatory Damages.” Punitive damages are also recoverable. Proof of damages is required and Nominal damages are not recoverable. *Vivian Arnold Realty Co. v. McCormick*, 19 Ariz. App. 289, 294, 506 P.2d 1074, 1079 (1973).

Compensatory Damages include the following:

--Damages for physical injury, both temporary and permanent. *Oliver v. Henry*, 227 Ariz. 514, 260 P.3d 314 (Ct. App. 2011);

--Pain and Suffering, past and prospective. *Myers v. Rollette*, 103 Ariz. 225, 231, 439 P.2d 497, 503 (1968);

--Hedonic Damages (loss of enjoyment of life), past and prospective. *Ogden v. J.M. Steel Erecting, Inc.*, 201 Ariz. 32, 38, 31 P.3d 806, 812 (Ct. App. 2001);

--Medical Expenses, past and prospective. *Greco v. Manolakos*, 24 Ariz. App. 490, 491, 539 P.2d 964, 965 (1975);

--Lost Wages, past and prospective. *Mandelbaum v. Knutson*, 11 Ariz. App. 148, 149, 462 P.2d 841, 842 (1969);

--Loss of Future Earning Capacity. *Id.*;

--Loss of Consortium. *Barnes v. Outlaw*, 192 Ariz. 283, 286, 964 P.2d 484, 487 (1998); *Villareal v. State*, 160 Ariz. 474, 480, 774 P.2d 213, 219 (1989);

--Property Damage, Real and Personal, complete loss or loss of use or value. *Blanton & Co. v. Transamerica Title Ins. Co.*, 24 Ariz. App. 185, 187, 536 P.2d 1077, 1079 (1975); *Burrington v. Gila County*, 159, Ariz. 320, 326, 767 P.2d 43,

49 (Ct. App. 1988); *Oliver v. Henry*, 227 Ariz. 514, 260 P.3d 314 (Ct. App. 2011);

--Loss of Profits, past and prospective. *Rancho Pescado, Inc. v. Northwestern Mut. Life Ins. Co.*, 140 Ariz. 174, 184, 680 P.2d 1235, 1245 (Ct. App. 1984);

--Interest as to Property or Liquidated Damages. *Alta Vista Plaza, Ltd. v. Insulation Specialists Co., Inc.*, 186 Ariz. 81, 83, 919 P.2d 176, 178 (Ct. App. 1995).

Arizona does have a collateral source rule such that compensation for an injury received from a collateral source, wholly independent of a defendant, does not operate to reduce damages recoverable. *Law v. Superior Court*, 157 Ariz. 147, 157, 755 P.2d 1135, 1145 (1988).

Punitive Damages are available exclusively on the related rationales of punishment and deterrence. *Linthicum v. Nationwide Ins. Co.*, 150 Ariz. 326, 331, 723 P.2d 675, 680 (1986). Actual damages are a predicate thereto.

**2. Are there any limitations or caps on recovery in tort actions?**

No. Arizona Constitution at Art. 18, Section 6.

**3. Are attorneys' fees available in tort actions? If so, under what circumstances?**

Generally, no. An exception exists for a tort claim also arising out of a contract, if the tort claim would not arise but for breach of the contract. A.R.S. Section 341.01 (A); *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, 6 P.3d 315 (Ct. App. 2000). Another exception arises out of Arizona's Compulsory Arbitration Rules. For cases of a lower value, the amount determined by each county (e.g., \$50,000 in Maricopa (Phoenix Metro) County), cases are automatically assigned to a private attorney as Arbitrator who will hear the case and enter an Award. Arizona Rules of Civil Procedure 72-76. The Award can be appealed to the assigned judge, and the appeal is *de novo*. *Id.* at Rule 77. The Appellant must achieve a better result by 23% than the Arbitrator's Award, or the Appellee is entitled to attorney's fees. *Id.* at Rule 77 (h).

**4. Are there any instances in tort actions when pre-judgment interest is available for recovery?**

Pre-judgment interest is available for liquidated damages. *Fleming v. Pima County*, 141 Ariz. 149, 155, 685 P.2d 1301, 1307 (1984). The only instance in

which pre-judgment interest is available for unliquidated damages is following the submittal of an Offer of Judgment under Arizona Rules of Civil Procedure Rule 68 (g), if the eventual verdict exceeds the amount of the offer. This is intended to increase the sanction for not accepting an offer of judgment. State Bar Committee Note, 1992 Amendments.

**5. In your state what proof is necessary to establish a right of recovery for economic damages, i.e. lost wages, medical expenses, etc.?**

Recovery requires actual proof of the pecuniary loss.

Proof of lost wages must include the rate of pay and time away from work, both of which must be established to a reasonable certainty. *Mandelbaum v. Knutson*, 11 Ariz. App. 148, 149, 462 P.2d 841, 842 (1969). Gross pay is the proper measure, as opposed to net pay. *Seely v. McEvers*, 115 Ariz. 171, 174, 564 P.2d 394, 397 (Ct. App. 1977). One Federal Circuit has interpreted that in a wrongful death case, gross pay is not the measurement but instead, a general economic value to a survivor. *In re Air Crash Disaster Near Chicago*, 803F.2d 304, 310 (7th Cir. 1986).

Medical expenses must be established through documentary evidence, though it must also be established that such charges are reasonable. The fact that amounts are reduced or even written off by the provider is not relevant. *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 129 P.3d 487, 496 (Ct. App. 2006). For future medical expenses, evidence must be presented to establish a reasonable probability that care will be needed and given, and the reasonable value of the expected medical services. *Lewis v. N.J. Reibe Enters.*, 170 Ariz. 384, 397, 825, P.2d 5, 18 (1992). Expert medical testimony is usually required to support future care and expense. *Saide v. Stanton*, 135 Ariz. 76, 77, 659 P.2d 35, 36 (1983).

**6. Is there any distinction in your state relative to recovery for economic versus non-economic damages?**

Yes, primarily in the proof of damages. Generally, proof of non-economic damages, such as pain and suffering, may be awarded without proof of pecuniary loss. Arizona follows the Restatement of Torts in that regard. Also generally, although courts will occasionally state that damages for pain and suffering must be reasonably certain to warrant recovery, the guiding principle has been that the amount of the award is peculiarly within the discretion of the jury. Still, such damages cannot be predicated on pure conjecture and speculation. *Allen v. Devereaux*, 5 Ariz. App. 323, 326, 426 P.2d 659, 662 (1967). As stated above, recovery of economic damages requires actual proof of the pecuniary loss.