

CALIFORNIA

Keith M. Rozanski
HAIGHT BROWN & BONESTEEL LLP
555 South Flower Street, Forty-Fifth Floor
Los Angeles, CA 90071
Phone: (213) 542-8000
Fax: (213) 542-8100
Email: krozanski@hbblaw.com
www.hbblaw.com

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

Compensatory, or actual damages, including both general and special damages. Beeman v. Burling, 216 Cal.App.3d 1586, 1601; 265 Cal.Rptr. 719, 728 (Cal. 1990). Special damages consist of all economic losses occasioned by the injury that can be documented. Id. at 1599. They include 1) past medical expenses; 2) future medical expenses; 3) past wage loss; 4) future earnings, lost earning capacity and/or lost profit; 6) loss of ability to provide household services; 6); loss or damage to real property; and 7) loss or damage to personal property. Judicial Council of California Civil Jury Instructions (2017) CACI 3900-3903O.

General (non-economic) damages include physical pain, mental suffering and emotional distress, loss of consortium. CACI 3905-3920.

Punitive damages are available by clear and convincing evidence that the defendant engaged in conduct with malice, oppression, or fraud. CACI 3947.

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

Non-economic damages in medical malpractice actions are limited to \$250,000.00. California Civil Code § 3333.2.

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

Generally, no. Attorneys' fees are available through the "tort of another" doctrine. When a plaintiff must bring an action against a third party as "the natural and probable consequence" of the defendant's negligence, the plaintiff is entitled to recover compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures thereby suffered or incurred. Prentice v. North Am. Title Guaranty Corp., 59 Cal.2d 618, 620; 381 P.2d 645; 30 Cal.Rptr.821 (Cal. 1963).

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

Yes. “A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt.” California Civil Code § 3287(a). Where interest is awarded in tort or other non-contractual claims the rate is seven percent (7%) per annum. California Civil Code §3287(c)

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

“Objectively verifiable evidence of monetary loss. California Civil Code § 1431.2(b)(1). Losses that can be documented by bills, receipts, cancelled checks, and business and wage records. Special damages generally include medical and related expenses, loss of income, and the loss or cost of services. Beeman, supra, 216 Cal.App.3d at 1599.

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

Economic damages “means objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.” California Civil Code § 1431.2(b)(1).

General, or non-economic damages, “means subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.” California Civil Code § 1431.2(b)(2).