

HAWAII

Carlos D. Perez-Mesa, Jr., Esq.
CLAY CHAPMAN IWAMURA PULICE & NERVELL
700 Bishop Street, Suite 2100
Honolulu, HI 96813
Phone: (808) 535-8400
Direct: (808) 535-8441
Fax: (808) 535-8444, (808) 535-8446
Email: cperez-mesa@paclawteam.com
www.paclawteam.com

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

Special damages, also known as economic damages, is defined as “those damages which can be calculated precisely” in Jury Instruction No. 8.2 of the Hawai’i Standard Civil Jury Instructions. These damages include loss or impairment of earning capacity and future earnings as discussed in Hawaii Revised Statutes (“H.R.S.”) § 663-8 and 663-8.3.

General damages, also known as non-economic damages, “include damages for pain and suffering, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, and all other nonpecuniary losses or claims.” H.R.S. § 663-8.5(a).

Wrongful Death – “[w]hen the death of a person is caused by the wrongful act, neglect, or default of any person” – damages “may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including: (1) Loss of society, companionship, comfort, consortium, or protection; (2) Loss of marital care, attention, advice, or counsel; (3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter 572C; (4) Loss of filial care or attention; or (5) Loss of parental care, training, guidance, or education, suffered as a result of the death of the person; by the surviving spouse, reciprocal beneficiary, children, father, mother, and by any person wholly or partly dependent upon the deceased person.” H.R.S. § 663-3.

Jury Instruction No. 8.12 of the Hawai’i Standard Civil Jury Instructions states that punitive damages may be awarded “against a particular defendant only if plaintiff(s) have proved by clear and convincing evidence that the particular defendant acted intentionally, willfully, wantonly, oppressively or with gross negligence.”

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

Yes. “Damages recoverable for pain and suffering as defined in H.R.S. § 663-8.7. shall be limited to a maximum award of \$375,000; provided that this limitation

shall not apply to tort actions enumerated in section 663-10.9(2).” H.R.S. § 663-10.9(2) lists the actions that warrant joint and several liability for joint tortfeasors in the recovery of economic and noneconomic damages as the following: “(A) Intentional torts; (B) Torts related to environmental pollution; (c) Toxic and asbestos-related torts; (D) Torts relating to aircraft accidents; (E) Strict and products liability torts; or (F) Torts related to motor vehicle accidents except as provided in paragraph (4)”. H.R.S. § 663-10.9(4) describes tort actions “relating to the maintenance and design of highways”.

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

Yes. H.R.S. § 607-15.5 states, “In all tort actions in which a judgement is entered by a court of competent jurisdiction, attorneys’ fees for both the plaintiff and the defendant shall be limited to a reasonable amount as approved by the court having jurisdiction of the action.”

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

Yes. “In awarding interest in civil cases, the judge is authorized to designate the commencement date to conform with the circumstances of each case, provided that the earliest commencement date in cases arising in tort, may be the date when the injury first occurred and in cases arising by breach of contract, it may be the date when the breach first occurred.” H.R.S. § 636-16.

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

Jury Instruction No. 3.4 of the Hawai’i Standard Civil Jury Instructions states that for damages where fault is admitted, plaintiff(s) must prove that the “defendant’s(s’) conduct was a legal cause of injury to plaintiff(s), and to prove the nature and extent of any injury suffered.” Under Jury Instruction No. 8.2, economic damages must “be calculated precisely.”

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

Yes. Under Jury Instruction No. 8.10 of the Hawai’i Standard Civil Jury Instructions, “Plaintiff(s) is/are not required to present evidence of the monetary value of his/her/their pain or emotional distress. It is only necessary that plaintiff(s) prove the nature, extent and effect of his/her/their injury, pain, and emotional distress.” According to Jury Instruction No. 8.10, economic damages must “be calculated precisely.”