

NEVADA

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

Under Nevada law, tort damages are proper when supported by substantial evidence. *Foster v. Dingwall*, 227 P.3d 1042, 1045 (2010). Nevada appellate courts will reverse or reduce compensatory damages awarded “under the influence of passion or prejudice and when it shocks [the] conscience.” *Wyeth v. Rowatt*, 244 P.3d 765, 782 (2010). However, Nevada courts “presume that the jury believed the evidence offered by the prevailing party and any inferences derived from the evidence. *Id.*”

Nevada allows for exemplary and punitive damages by statute “in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant.” Nev. Rev. Stat. § 42.005. In reviewing punitive damages, Nevada courts look to “ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered.” *ETT, Inc. v. Delegado*, No. 46901, 2010 Nev. Unpub. LEXIS 292, at *12-13 (Apr. 29, 2010).

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

An award of exemplary or punitive damages under § 42.005 is limited to: (1) three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is \$100,000 or more; or (b) three hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than \$100,000. *Id.* Whether to award punitive damages and to what extent they shall be awarded is a question for the trier of fact and will be decided in a subsequent proceeding after the trial. *Id.*

Other statutes limit or expand the ability to obtain exemplary damages in certain circumstances. For example, Nev. Rev. Stat. § 42.007 an employer found liable

for a wrongful employment act is not responsible for exemplary or punitive damages unless:

- (a) The employer had advance knowledge that the employee was unfit for the purposes of the employment and employed the employee with a conscious disregard of the rights or safety of others;
- (b) The employer expressly authorized or ratified the wrongful act of the employee for which the damages are awarded; or
- (c) The employer is personally guilty of oppression, fraud or malice, express or implied.

Nev. Rev. Stat. § 42.007. In contrast to the way § 42.007 places a further limitation on exemplary damages, § 42.010 eliminates any damages limitations for individuals found liable for causing injuries to another through drunk driving.

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

Nevada follows the American rule that attorney fees may not be awarded absent a statute, rule, or contract authorizing such award. *Thomas v. City of N. Las Vegas*, 127 P.3d 1057, 1063 (2006). The principal statute authorizing attorney's fees is NRS § 18.010. In addition to this statute, several other statutes allow for the recovery of attorney fees in specific situations.

NRS § 18.010(2)(a) permits a prevailing party who obtained a monetary judgment of not more than \$20,000 to seek attorney's fees.

Nevada's "common fund" doctrine is an exception to the American Rule that allows attorney's fees to be recovered from a common fund created through the effort of a litigant or their attorney for the benefit of third persons. *State, Dep't of Human Res. v. Elcano*, 106 Nev. 449, 452, 794 P.2d 725, 726–27 (1990). Another exception is the "substantial benefit" doctrine whereby a litigant confers a substantial benefit on the members of an ascertainable class and the court's jurisdiction permits an award that will spread the costs proportionately among them. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90–93, 127 P.3d 1057, 1063–66 (2006).

Nevada also allows attorney's fees to be recovered as special damages in certain situations, specifically when a party's litigation with third parties are in some circumstances recoverable as damages when the adverse party's conduct caused the third-party litigation. *Lowden Inv. Co. v. Gen. Elec. Credit Co.*, 103 Nev. 374, 379–80, 741 P.2d 806, 809 (1987). However, the mere fact that a party must file or defend a lawsuit is insufficient by itself to support an award of attorney fees as damages. *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 35 P.3d 964 (2001), held that attorney's fees may be recovered as special damages when:

- (1) A party becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the adverse party;
- (2) A party incurs the fees in recovering real or personal property lost due to the wrongful conduct of the adverse party; or
- (3) As part of actions for declaratory or injunctive relief, when the actions were necessitated by the opposing party's bad faith conduct.

Id. at 969–70.

There are different procedural requirements for seeking attorney's fees as a cost of litigation versus as an element of damages. If attorney fees are sought under a statute, rule, or agreement, they must be sought by motion (usually after trial) and decided by the trial court based on the parties' documentary evidence presented on the motion. NRCP 54(d)(2)(A); *Sandy Valley Assocs.*, 35 P.3d at 969. However, if attorney's fees are sought as "foreseeable damages arising from tortious conduct or a breach of contract" they must be pleaded as special damages under NRCP 9(g) "and proved by competent evidence just as any other element of damages" and "must be the natural and proximate consequences of the injurious conduct." *Id.* at 35 P.3d at 969.

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

Compensatory damages awarded by the jury are proper and supported by substantial evidence in the record. *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999). Substantial evidence is defined as that which "a reasonable mind might accept as adequate to support a conclusion." *State Emp't Sec. Dep't v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

Special damages require a heightened pleading standard, described below. However, they are considered a species of compensatory damages and as a result juries have wide latitude in awarding them as long as there is "an evidentiary basis for determining an amount that is reasonably accurate." *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 737, 192 P.3d 243, 251 (2008).

Exemplary damages are awarded purely for the sake of punishing the tortfeasor. As a result, they must be "both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *ETT, Inc. v. Delegado*, No. 46901, 2010 Nev. Unpub. LEXIS 292, at *12-13 (Apr. 29, 2010).

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

Nevada Rules of Civil Procedure only require “a short and plain statement of the claim showing that the pleader is entitled to relief.” N.R.C.P. 8(a). However, special damages must be plead with specificity. N.R.C.P. 9(g). Under this rule, special damages, such as attorney’s fees not authorized by contract or statute, may “be recovered as special damages when they are pleaded as such pursuant to NRCP 9(g) and are a “natural and proximate consequence of the injurious conduct.” *Liu v. Christopher Homes, Ltd. Liab. Co.*, 321 P.3d 875, 878 (Nev. 2014).

However, with regard to the proof required, Nevada courts allow compensatory and special damages equally as long as there is an evidentiary basis for such damages. an evidentiary basis for determining an amount that is reasonably accurate. *Countrywide Home Loans, Inc.*, 192 P.3d at 251.