

TEXAS

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

Compensatory (economic and non-economic), and exemplary (or punitive) damages.

“Economic damages” are intended to compensate a claimant for actual economic or pecuniary loss. Tex. Civ. Prac. & Rem. Code § 41.001(4).

“Noneconomic damages” are damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages. Tex. Civ. Prac. & Rem. Code § 41.001(12).

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

In tort cases, punitive damages are capped at the greater of \$200,000 or two times the amount of economic damages plus the amount equal to any non-economic damages found by the jury, not to exceed \$750,000.

There are additional caps applicable on the recovery of damages against government organizations and in medical malpractice cases.

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

No, attorney fees are generally not available in tort actions for Plaintiffs or Defendants, absent a specific statutory or legal basis. *See, Tana Oil & Gas Corp. v. McCall*, 104 S.W.3d 80, 81 n.3 (Tex. 2003).

An exception is if an offer of settlement is made pursuant to Tex. R. Civ. Proc. 167. The offer of settlement rule has many detailed conditions and requirements.

Generally, if a defendant files a declaration, any party, including the plaintiff, may make an offer of settlement to that declaring defendant. If there is a prevailing party under the rule, it is entitled to receive litigation costs, including reasonable attorney's fees. It is important to know that any attorney fees awarded to the defendant are only as a set off of the judgment. Tex. R. Civ. Proc. Rule 167.4(f).

Pursuant to Texas, statute, Tex Civ. Prac. & Rem. Code 38.001, a person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for:

- (1) rendered services;
- (2) performed labor;
- (3) furnished material;
- (4) freight or express overcharges;
- (5) lost or damaged freight or express;
- (6) killed or injured stock;
- (7) a sworn account; or
- (8) an oral or written contract.

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

Yes, prejudgment interest is available in tort actions, but may not be assessed or recovered on an award of exemplary damages. Tex. Civ. Prac. & Rem. Code § 41.007.

Furthermore, prejudgment interest may not be assessed or recovered on an award of future damages. Tex. Fin. Code § 304.1045.

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

In many cases, particularly tort cases resulting in personal injuries, the amount of economic damages may be entirely uncertain or extremely difficult to measure. Although it is clear that no recovery is allowed without evidence of the *occurrence* of damages resulting from the defendant's wrongdoing, uncertainty as to the *amount* of damages is not fatal to their recovery. *Davis v. Small Business Inv. Co. of Houston*, 535 S.W.2d 740, 743 (Tex. Civ. App.—Texarkana 1976, writ ref'd n.r.e.). This does not mean that the plaintiff may recover substantial damages without offering any proof of the amount of damage. Some evidentiary basis for the computation of damages must exist; however, the trier of fact is not required to determine the amount of damages with mathematical exactness. *Nueces Trust Co. v. White*, 564 S.W.2d 798, 804 (Tex. Civ. App.—Corpus Christi 1978, no writ).

To the extent Plaintiff seeks recovery for lost wages, or loss of earning capacity, the evidence to prove such loss must be presented in the form of a net loss after

reduction for income tax payments or unpaid tax liability pursuant to the Tex. Civ. Prac. & Rem. Code and other applicable statutes and/or case law.

The evidence to prove recovery of medical or healthcare expenses, is limited to the amount actually paid by or on behalf of the Plaintiff, as opposed to the amount charged. Tex. Civ. Prac. & Rem Code § 41.0105.

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

No.