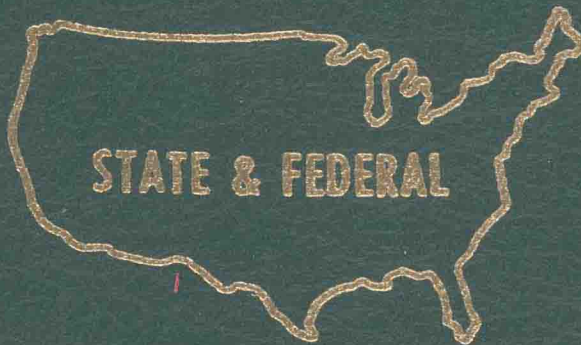


# AMERICAN JURISPRUDENCE 2d



DAMAGES

# AMERICAN JURISPRUDENCE

SECOND EDITION

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A MODERN COMPREHENSIVE TEXT STATEMENT  
OF AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND REWRITTEN  
IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS  
BY THE EDITORIAL STAFF OF THE PUBLISHERS

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## FOREWORD

Revised volumes 22 and 22A of Am Jur 2d bring litigation attorneys thoroughly updated materials on Damages, Wrongful Death (in the article Death), and Declaratory Judgments. The articles on **Damages** and **Death** each contain an entirely new review of dollar verdicts in selected cases decided since 1970, which may be used, not only to argue on appeal that a verdict was excessive or inadequate, but also when evaluating a case to decide whether it is worth accepting or settling. The **Damages** article also treats such emerging problems as accounting for inflation in awards for future losses, damages for breach of computer service contracts, damages for loss of feelings in noncommercial contract settings, and apportionment of damages among several defendants in comparative negligence jurisdictions.

Besides discussing wrongful death statutes and procedure in wrongful death cases, the article **Death** also deals with the determination of death under such statutes as the Uniform Determination of Death Act (which focuses on brain death), and with such "right to die" issues as the right to refuse lifesaving treatment and liability for withholding treatment from a minor.

The topic **Declaratory Judgments** incorporates recent cases construing the Federal Declaratory Judgment Act and the Uniform Declaratory Judgments Act.

Volume 22A also contains a revised article on **Dead Bodies**, with new coverage of the Uniform Anatomical Gifts Act.

Each article contains *Observations*, *Cautions*, *Recommendations*, *Practice guides*, and *Form drafting guides* providing detailed advice and procedures for evaluating and litigating a claim, as well as research references to such practice works as Am Jur Proof of Facts and Am Jur Trials. A **Table of Statutes and Rules Cited** and a **Table of Parallel References** are contained at the front of each volume, and an **Index** covering the topics in a volume is contained at the end of each volume.

THE PUBLISHERS

## TABLE OF PARALLEL REFERENCES

Use the following tables to find where the subject matter of the various sections of Am Jur 1st ed and 2d are treated in the Am Jur 2d Revised Volumes.

When a particular subject matter is treated in another topic, the title of the other topic is noted. If a section of the earlier article has become obsolete, the table will show that it has been deleted.

Also consult the volume index for detail and for matters not appearing in the earlier edition.

### DAMAGES

|        |            | Am Jur to Am Jur 2d |                 |          |                 |
|--------|------------|---------------------|-----------------|----------|-----------------|
| AM JUR | AM JUR 2d  | AM JUR              | AM JUR 2d       | AM JUR   | AM JUR 2d       |
| §§     | §§         | §§                  | §§              | §§       | §§              |
| 1      | Scope note | 43                  | 46, 47, 53, 159 | 85       | 112, 113        |
| 2      | 1          | 44                  | 54              | 86       | 114             |
| 3      | 2, 45      | 45                  | 48              | 87       | 115             |
| 4      | 2          | 46                  | 49              | 88       | 101, 175        |
| 5      | 5, 6       | 47                  | 50              | 89       | 89, 90          |
| 6      | 5, 7, 8    | 48                  | 51              | 90       | 89, 91          |
| 7      | 9          | 49                  | 212             | 91       | 90-93, 100, 101 |
| 8      | 10         | 50                  | 52              | 92       | 93, 94          |
| 9      | 11         | 51                  | 55              | 93       | 94              |
| 10     | 15         | 52                  | 56              | 94       | 93, 95          |
| 11     | 16         | 53                  | 59, 60          | 95       | 96              |
| 12     | 12         | 54                  | 60              | 96       | 90, 97          |
| 13     | 13, 14     | 55                  | 62              | 97       | 98              |
| 14     | 17         | 56                  | 63, 79          | 98       | 99, 175         |
| 15     | 18         | 57                  | 64              | 99       | 126             |
| 16     | 19         | 58                  | 67              | 100      | 127             |
| 17     | 19         | 59                  | 66              | 101      | 128             |
| 18     | 20         | 60                  | 65              | 102      | 129             |
| 19     | 21         | 61                  | 68              | 103, 104 | 127             |
| 20     | 22, 23     | 62                  | 69              | 105      | 130             |
| 21     | 23-25      | 63                  | 65              | 106      | 111, 131        |
| 22     | 24         | 64                  | 78              | 107      | 132, 134        |
| 23     | 25         | 65                  | 80, 83          | 108      | 136             |
| 24     | 26, 27     | 66                  | 81              | 109      | 133, 134        |
| 25     | 26, 28, 29 | 67                  | 82              | 110      | 135             |
| 26     | 29         | 68                  | 83              | 111      | 137             |
| 27     | 30-32      | 69                  | 84              | 112      | 138-140         |
| 28     | 31, 32     | 70                  | 85, 86          | 113      | 139             |
| 29     | 32         | 71                  | 86              | 114      | 138, 140        |
| 30     | 33, 36, 37 | 72                  | 105, 109        | 115      | 122, 141        |
| 31     | 34         | 73                  | 106             | 116      | 142             |
| 32     | 34         | 74                  | 108             | 117      | 125             |
| 33     | 48, 71     | 75                  | 117             | 118      | LOGS AND TIMBER |
| 34     | 35, 37     | 76                  | 118             | 119      | 143             |
| 35     | 35         | 77                  | 119             | 120      | 144             |
| 36     | 38, 39     | 78                  | 120             | 121      | 145, 146        |
| 37     | 38, 40     | 79                  | 121             | 122      | 146             |
| 38     | 41         | 80                  | 84, 122         | 123      | 147             |
| 39     | 42         | 81                  | 123             | 124      | 148             |
| 40     | 43         | 82                  | 125             | 125      | 149, 239        |
| 41     | 44         | 83                  | 111             | 126      | 150             |
| 42     | 45         | 84                  | 112             | 127      | 149             |

## TABLE OF PARALLEL REFERENCES

## DAMAGES—Continued

| AM JUR<br>§§ | AM JUR 2d<br>§§   | AM JUR<br>§§ | AM JUR 2d<br>§§ | AM JUR<br>§§ | AM JUR 2d<br>§§ |
|--------------|-------------------|--------------|-----------------|--------------|-----------------|
| 128          | 151               | 204          | 364, 365        | 290          | 258             |
| 129          | 152, 155          | 205          | 366             | 291          | 260             |
| 130          | 154               | 206          | 367             | 292          | 261             |
| 131, 132     | 155               | 207          | 368             | 293          | 255             |
| 133, 134     | 177               | 208          | 369             | 294          | 262             |
| 135          | 156               | 209-228      | 372-397         | 295          | 264             |
| 136          | 157               | 229          | 370             | 296          | 264, 265        |
| 137          | 158, 160          | 230          | 371             | 297          | 264, 266        |
| 138          | 162               | 231          | 398             | 298          | 263, 266        |
| 139          | 102, 103          | 232          | 399             | 299          | 267             |
| 140          | 104, 207          | 233-239      | 400-412         | 300          | 267, 268        |
| 141          | 163, 164          | 240          | 212, 218, 219   | 301          | 269             |
| 142          | 165, 166          | 241          | 213             | 302          | 270, 293        |
| 143          | 165               | 242          | 214             | 303          | 295             |
| 144          | 166               | 243          | 214, 222        | 304          | 271             |
| 145          | 167               | 244          | 223             | 305          | 272             |
| 146          | 168               | 245          | 214             | 306          | 273             |
| 147          | 169               | 246          | 214, 215        | 307          | 274             |
| 148          | 170               | 247          | 216             | 308          | 275             |
| 149          | 171, 173, 176     | 248          | 217             | 309          | 276             |
| 150          | 171-173           | 249          | 219, 221        | 310          | 277             |
| 151          | 172-174           | 250          | 221             | 311          | 278             |
| 152          | 171, 172, 174     | 251          | 214, 220        | 312          | 279             |
| 153          | 174               | 252          | 218, 221        | 313          | 280             |
| 154          | 62, 69            | 253          | 225             | 314          | 281             |
| 155          | 175               | 254          | 226             | 315          | 282             |
| 156          | 155, 173, 176     | 255          | 219, 229, 302   | 316          | 283             |
| 157          | 173, 177          | 256          | 227             | 317          | 284             |
| 158          | 178               | 257          | 228             | 318          | 286             |
| 159          | 179, 180          | 258          | 229             | 319          | 287             |
| 160          | 179-181           | 259          | 230             | 320          | 288             |
| 161          | 180, 181          | 260          | 231             | 321          | 289             |
| 162          | 182               | 261          | 232             | 322          | 290             |
| 163          | 67, 183, 184, 194 | 262          | 233             | 323          | 280             |
| 164          | 184               | 263          | 234             | 324          | 291             |
| 165          | 181, 183, 185     | 264          | 232, 235        | 325          | 291, 292        |
| 166          | 183, 186          | 265          | 236             | 326          | 293             |
| 167          | 187               | 266, 267     | 237             | 327          | 294             |
| 168          | 180, 185, 188     | 268          | 238, 239        | 328          | 296             |
| 169          | 189, 191          | 269          | 240             | 329          | 296, 297        |
| 170          | 190               | 270          | 241, 242        | 330          | 302             |
| 171          | 191               | 271          | 242             | 331          | 297             |
| 172          | 192, 194          | 272          | 243, 245        | 332          | 303             |
| 173          | 193               | 273          | 245             | 333          | 304, 310        |
| 174          | 194               | 274          | 243             | 334          | 305-307         |
| 175-189      | 195-198           | 275          | 246             | 335          | 308             |
| 190, 191     | 199               | 276          | 247             | 336          | 309, 333        |
| 192          | 200               | 277          | 248             | 337          | 310             |
| 193          | 203               | 278, 279     | 249             | 338          | 313, 315        |
| 194          | 201               | 280          | 250             | 338.5        | 315             |
| 195          | 202               | 281          | 251             | 339          | 316             |
| 196          | 204               | 282          | 252             | 340          | 315             |
| 197          | 205               | 283          | 253             | 341          | 317             |
| 198          | 206-208           | 284          | 254             | 342          | 318             |
| 199          | 100, 206-208      | 285          | 255             | 343          | 319, 321        |
| 200          | 207, 208          | 286          | 256             | 344          | 321             |
| 201          | 209, 210          | 287          | 257             | 345          | 320             |
| 202          | 211               | 288          | 258             | 346          | 322             |
| 203          | 363               | 289          | 259             | 347          | 323             |
|              |                   |              |                 | 348          | 324             |

# TABLE OF PARALLEL REFERENCES

xi

## DAMAGES—Continued

| AM JUR   | AM JUR 2d     | AM JUR | AM JUR 2d | AM JUR | AM JUR 2d |
|----------|---------------|--------|-----------|--------|-----------|
| §§       | §§            | §§     | §§        | §§     | §§        |
| 349      | 325           | 363    | 339       | 375    | 351       |
| 350      | 326           | 364    | 340       | 376    | 349, 352  |
| 351      | 327           | 365    | 341       | 377    | 354, 356  |
| 352      | 328, 329, 332 | 366    | 342       | 378    | 355       |
| 353      | 329           | 367    | 343       | 379    | 356       |
| 354      | 330           | 368    | 344       | 380    | 349, 356  |
| 355      | 331           | 369    | 345       | 381    | 357       |
| 356      | 296, 299      | 370    | 345, 346  | 382    | 360       |
| 357      | 299, 333      | 371    | 345       | 383    | 358       |
| 358      | 296, 298      | 371.5  | 347       | 384    | 359       |
| 359, 360 | 300           | 372    | 348       | 385    | 361       |
| 361      | 298, 301      | 373    | 349       | 386    | 362       |
| 362      | 338           | 374    | 350, 353  |        |           |

## Am Jur 2d to Am Jur 2d Revised

| AM JUR 2d | AM JUR 2d (Rev)        | AM JUR 2d | AM JUR 2d (Rev)        | AM JUR 2d | AM JUR 2d (Rev)              |
|-----------|------------------------|-----------|------------------------|-----------|------------------------------|
| §§        | §§                     | §§        | §§                     | §§        | §§                           |
| 1         | 1-3                    | 43        | 544-546, 548, 549      | 85        | 133-135, 138                 |
| 2         | 4-7                    | 44        | 547                    | 86        | 136, 137, 139                |
| 3, 4      | CONFLICT OF LAWS       | 45        | Deleted                | 87        | 143                          |
| 5         | 8, 9, 13, 14           | 46        | 30, 43, 50, 54, 57, 59 | 88        | 141, 945                     |
| 6         | 10-12                  | 47        | 45, 47, 48, 78         | 89        | 151, 153, 154, 157, 168, 982 |
| 7         | 15                     | 48        | 60-65                  | 90        | 152, 156                     |
| 8         | 16                     | 49        | 66-68                  | 91        | 155                          |
| 9         | 17                     | 50        | 69-73                  | 92        | 162, 164, 166, 912           |
| 10        | 18-21                  | 51        | 77                     | 93        | 169                          |
| 11        | 23, 24, 28             | 52        | 63, 79, 80             | 94        | 167, 171-173, 942            |
| 12        | 26                     | 53        | 74-76                  | 95        | 160, 163                     |
| 13        | 27                     | 54        | 49                     | 96        | 174, 175, 180, 974           |
| 14        | 29, 30                 | 55        | 453, 454               | 97        | 182, 183                     |
| 15        | 36, 37, 39             | 56        | 455, 460-462, 464      | 98        | 184                          |
| 16        | 25                     | 57        | 456-459                | 99        | 939                          |
| 17        | 31, 33, 34             | 58        | 463                    | 100       | 185, 186, 188                |
| 18        | 32                     | 59        | 465, 466, 468          | 101       | 191-193                      |
| 19        | 81, 675, 676, 679      | 60        | 467                    | 102       | 197                          |
| 20        | 451                    | 61        | 469                    | 103       | 207, 209-213                 |
| 21        | 452                    | 62        | 469-471                | 104       | 198-201, 203-206             |
| 22        | 484, 485               | 63        | 44                     | 105       | 239, 240, 242                |
| 23        | 486, 491               | 64        | 82, 83                 | 106       | 244, 245                     |
| 24        | 487                    | 65        | 84-86, 88              | 107       | 246                          |
| 25        | 488-490                | 66        | 87                     | 108       | 247                          |
| 26        | 676-678                | 67        | 90-92                  | 109       | 260, 262                     |
| 27        | 679                    | 68        | 93-96                  | 110       | 263-268                      |
| 28        | 680, 681               | 69        | 98, 99, 101            | 111       | 284-286                      |
| 29        | 682                    | 70        | 109-112, 120, 516      | 112       | 287                          |
| 30        | 495, 496, 499          | 71        | 518-521                | 113       | 288                          |
| 31        | 497                    | 72        | 522                    | 114       | 289                          |
| 32        | 498, 501-504           | 73        | 117                    | 115       | 290                          |
| 33        | 505, 507               | 74        | 121, 122               | 116       | Deleted                      |
| 34        | 509, 510               | 75        | 123, 124               | 117       | 269, 270                     |
| 35        | 513                    | 76        | 125                    | 118       | 277                          |
| 36        | 515                    | 77        | 126, 127               | 119       | 278                          |
| 37        | 508, 514               | 78        | 57, 58, 128            | 120       | 272, 275                     |
| 38        | 525                    | 79        | 129, 719               | 121       | 276                          |
| 39        | 527, 528               | 80        | 130-132                | 122       | 280-282                      |
| 40        | 531-534, 539           | 81        | 473, 474, 477          | 123       | 283                          |
| 41        | 536                    | 82        | 481                    | 124       | 922                          |
| 42        | 531, 537, 538, 540-543 | 83        | 475, 476               | 125       | 291, 292                     |
|           |                        | 84        | 478                    |           |                              |

## TABLE OF PARALLEL REFERENCES

## DAMAGES—Continued

| AM JUR 2d<br>§§ | AM JUR 2d (Rev)<br>§§           | AM JUR 2d<br>§§ | AM JUR 2d (Rev)<br>§§ | AM JUR 2d<br>§§ | AM JUR 2d (Rev)<br>§§   |
|-----------------|---------------------------------|-----------------|-----------------------|-----------------|-------------------------|
| 126             | DEATH                           | 184             | 657, 662              | 243             | 747                     |
| 127             | 603                             | 185             | 658, 662              | 244             | 749, 750                |
| 128             | 248-250                         | 186             | 659                   | 245             | 751-754                 |
| 129             | 165                             | 187             | 660                   | 246             | 757, 758                |
| 130             | EXECUTORS AND<br>ADMINISTRATORS | 188             | 663                   | 247             | 759                     |
| 131             | 399, 400                        | 189             | 664                   | 248             | 760, 761                |
| 132             | 401, 402, 414                   | 190             | 665                   | 249             | 762                     |
| 133             | 404, 411, 412                   | 191             | 667-669               | 250             | 763, 764, 766-770       |
| 134             | 405-407                         | 192             | 670-672               | 251             | 771, 773                |
| 135             | 408, 410                        | 193             | 673                   | 252             | 774, 776                |
| 136             | 413, 414                        | 194             | 674                   | 253             | 778-780                 |
| 137             | 415-417, 959, 960               | 195             | 48, 251               | 254             | 781-783                 |
| 138             | 418                             | 196             | 252, 483              | 255             | 785, 798, 800, 801      |
| 139             | 419                             | 197             | 259                   | 256             | 799                     |
| 140             | 420, 421                        | 198             | 261                   | 257             | 786-788                 |
| 141             | 422                             | 199             | 280, 526              | 258             | 789                     |
| 142             | 423                             | 200             | 492                   | 259             | 790, 791                |
| 143             | 424, 425                        | 201             | 553, 554              | 260             | 793, 794                |
| 144             | 426                             | 202             | 555                   | 261             | 795, 796                |
| 145             | 427, 431                        | 203             | 505                   | 262             | 802, 803                |
| 146             | 429                             | 204             | 550-552               | 263             | 807                     |
| 147             | 430, 437                        | 205             | 494, 557, 559         | 264             | 805, 806, 809           |
| 148             | 432, 435, 436                   | 206             | 566, 569, 570         | 265             | 810, 811, 1033,<br>1036 |
| 149             | 434, 438-440, 921               | 207             | 571-573               | 266             | 1032, 1035              |
| 150             | 441                             | 208             | 574-577, 966, 967     | 267             | 813                     |
| 151             | 428                             | 209             | 578, 579, 583-585     | 268             | 814-816                 |
| 152             | 443                             | 210             | 586-588               | 269             | Deleted                 |
| 153             | 445, 446                        | 211             | 589, 590              | 270             | 819-823                 |
| 154             | 70, 71                          | 212             | 683, 686              | 271             | 825                     |
| 155             | 447-450                         | 213             | 684, 685              | 272             | 826, 827, 835, 836      |
| 156             | 48, 398                         | 214             | 688, 690-693          | 273             | 831-833                 |
| 157             | 591                             | 215             | 695                   | 274             | 851                     |
| 158             | 593, 594, 598                   | 216             | 696                   | 275             | 853                     |
| 159             | 595                             | 217             | 697                   | 276             | 854, 856, 857, 861      |
| 160             | 596, 597                        | 218             | 698-700               | 277             | 859                     |
| 161             | 599, 600                        | 219             | 702                   | 278             | 862, 863                |
| 162             | 601, 602, 610                   | 220             | 703                   | 279             | 864, 865                |
| 163             | 604, 605                        | 221             | 704, 705              | 280             | 866-869                 |
| 164             | 606, 609                        | 222             | 707                   | 281             | 870                     |
| 165             | 611, 617                        | 223             | 706, 708              | 282             | 878, 879                |
| 166             | 618-621                         | 224             | Deleted               | 283             | 871, 872                |
| 167             | 613                             | 225             | 709                   | 284             | 874, 875                |
| 168             | 615, 616                        | 226             | 710                   | 285             | 876, 877                |
| 169             | 608                             | 227             | 711                   | 286             | 890                     |
| 170             | 592                             | 228             | 712                   | 287             | 880-883                 |
| 171             | 624                             | 229             | 713                   | 288             | 884-886                 |
| 172             | 625, 626, 633                   | 230             | 716-718               | 289             | 887-889                 |
| 173             | 627, 628                        | 230.1, 230.2    | 715                   | 290             | 838-841                 |
| 174             | 630-632                         | 231             | 720, 721              | 291             | 896-899                 |
| 175             | 634, 635, 939                   | 232             | 689, 699, 722, 728    | 292             | 895                     |
| 176             | 636-638                         | 233             | 724, 725              | 293             | 842-849                 |
| 177             | 639-641, 913                    | 234             | 723                   | 294             | 850                     |
| 178             | 642, 644-647                    | 235             | 726, 727, 729         | 295             | 824, 834                |
| 179             | 648, 649, 666                   | 236             | 731, 732              | 296             | 902, 904                |
| 180             | 651-653                         | 237             | 733, 735, 736         | 297             | 908-911                 |
| 181             | 654, 655                        | 238             | 734, 737, 740         | 298             | 912                     |
| 182             | 650                             | 239             | 738                   | 299             | 914, 915, 969           |
| 183             | 656                             | 240             | 739                   | 300             | 918-920, 970            |
|                 |                                 | 241             | 741-743, 745          |                 |                         |
|                 |                                 | 242             | 744                   |                 |                         |

## TABLE OF PARALLEL REFERENCES

xiii

## DAMAGES—Continued

| AM JUR 2d | AM JUR 2d (Rev)         | AM JUR 2d | AM JUR 2d (Rev) | AM JUR 2d | AM JUR 2d (Rev) |
|-----------|-------------------------|-----------|-----------------|-----------|-----------------|
| §§        | §§                      | §§        | §§              | §§        | §§              |
| 300.1     | 917                     | 338       | 980             | 375       | 342, 344        |
| 301       | 921                     | 339       | 981             | 376       | 310-312         |
| 302       | 905                     | 340       | 983             | 377       | 313, 314        |
| 303       | 906                     | 341       | 984             | 378       | 315, 316        |
| 304       | 923, 924                | 342       | 985             | 379       | 319-323         |
| 305       | 926                     | 343       | 986             | 380       | 324-329         |
| 306       | 927                     | 344       | 987             | 381       | 341             |
| 307       | 928                     | 345       | 988             | 382       | 332             |
| 308       | 929                     | 346       | 989, 990        | 383       | 346, 347        |
| 309       | 931                     | 347       | 991, 992        | 384       | 358, 359        |
| 310       | 932                     | 348       | 993             | 385       | 361-364         |
| 311       | 918, 933                | 349       | 998, 999        | 386       | 337, 338        |
| 312       | 934                     | 349.5     | 1000, 1001      | 387       | 367, 368        |
| 313, 314  | 937                     | 350       | 1004, 1005      | 388       | 339, 342, 343   |
| 315       | 938, 940, 941, 943, 945 | 351       | 1006            | 389       | 358             |
| 316       | 944                     | 352       | 1007            | 390       | 390             |
| 317       | 948                     | 353       | 1008            | 391       | 388             |
| 318       | 936                     | 354       | 1009, 1010      | 392       | 383             |
| 319       | 949                     | 355       | 1011, 1012      | 393       | 385             |
| 320       | 952, 953                | 356       | 1013, 1014      | 394       | 339             |
| 321       | 950                     | 357       | 1016            | 395       | 376, 380        |
| 322       | 951                     | 358       | 1015            | 396       | 365, 366, 397   |
| 323       | 954                     | 359       | 1003            | 397       | 391, 395        |
| 324       | 955-957                 | 360       | 996, 997        | 398       | 1029, 1030      |
| 325       | 958                     | 361       | 994             | 399       | 1031            |
| 326       | 959, 960                | 362       | 995             | 400       | 298-303         |
| 327       | 961                     | 363       | Deleted         | 401       | 304-309         |
| 328       | 962                     | 364       | 1017, 1018      | 402       | 310-312         |
| 329       | 939, 963, 964           | 365       | 1019            | 403       | 313, 314        |
| 330       | 965-967                 | 366       | 1021, 1022      | 404       | 315, 316        |
| 331       | 925                     | 367       | 1020, 1023      | 405       | 319-323         |
| 332       | 968                     | 368       | 1024            | 406       | 324-329         |
| 333       | 969-972                 | 369       | 1026            | 407       | 346, 347        |
| 334       | 976                     | 370       | 1027            | 408       | 376, 380        |
| 335       | 977                     | 371       | 1028            | 409       | 361-364         |
| 336       | 978                     | 372       | 293             | 410       | 365, 366        |
| 337       | 979                     | 373       | 298-303         | 411       | 358             |
|           |                         | 374       | 304-309         |           |                 |

## TABLE OF STATUTES AND RULES CITED

This table shows, by reference to title and section, where provisions of the United States Code Service, CFR, and the federal rules of practice, procedure, and evidence, as well as the Uniform and Model Laws, are cited in articles in this volume.

### UNITED STATES CODE SERVICE

| <i>Title<br/>and<br/>section</i> | <i>Am Jur 2d<br/>title and<br/>section</i> | <i>Title<br/>and<br/>section</i> | <i>Am Jur 2d<br/>title and<br/>section</i> |
|----------------------------------|--------------------------------------------|----------------------------------|--------------------------------------------|
| 15 USCS                          |                                            | 42 USCS                          |                                            |
| 15.....                          | DAMG 987                                   | 2651 .....                       | DAMG 573                                   |
| 26 USCS                          |                                            | 45 USCS                          |                                            |
| 104.....                         | DAMG 945, 1000                             | 51 et seq.....                   | DAMG 945, 1001                             |
| 28 USCS                          |                                            | 53.....                          | DAMG 497                                   |
| 1346(b).....                     | DAMG 1030                                  | 351.....                         | DAMG 585                                   |
| 2671 et seq .....                | DAMG 1030                                  |                                  |                                            |

### FEDERAL RULES OF CIVIL PROCEDURE

| <i>Rule<br/>Number</i> | <i>Am Jur 2d<br/>title and<br/>section</i> | <i>Rule<br/>Number</i> | <i>Am Jur 2d<br/>title and<br/>section</i> |
|------------------------|--------------------------------------------|------------------------|--------------------------------------------|
| 8(a) .....             | DAMG 842                                   | 15(a) .....            | DAMG 856                                   |
| 8(c) .....             | DAMG 896                                   | 15(b) .....            | DAMG 831, 856                              |
| 9(g) .....             | DAMG 826, 828, 830, 831, 842,<br>892       | 54(c) .....            | DAMG 854, 855                              |
|                        |                                            | 84.....                | DAMG 851                                   |

### UNIFORM LAWS

| <i>Title<br/>and<br/>section</i> | <i>Am Jur 2d<br/>title and<br/>section</i> | <i>Title<br/>and<br/>section</i> | <i>Am Jur 2d<br/>title and<br/>section</i> |
|----------------------------------|--------------------------------------------|----------------------------------|--------------------------------------------|
| Uniform Commercial Code          |                                            |                                  |                                            |
| 2-715.....                       | DAMG 458                                   | 2-718(1) .....                   | DAMG 687                                   |

# AMERICAN JURISPRUDENCE

SECOND EDITION

## Volume 22

### DAMAGES

by

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Robert R. Crane, J.D. and John B. Spitzer, J.D.*

**Scope of topic:** This article covers general principles of the law of damages. It includes a discussion of the various kinds of damages—compensatory damages, nominal damages, liquidated damages, and exemplary and punitive damages—as well as of such concepts as general and special damages, prospective damages, and mitigation of damages. The elements and measure of damages in breach of contract, personal injury, and property damage cases are also covered, as are the pleading, proof, and determination of the amount of damages to be awarded in a lawsuit.

**Federal aspects:** Treatment of the measure and elements of damages awarded under federal statutes is discussed in such articles as 18 Am Jur 2d, COPYRIGHT AND LITERARY PROPERTY §§ 234 et seq.; 35 Am Jur 2d, FEDERAL TORT CLAIMS ACT §§ 103 et seq.; 45B Am Jur 2d, JOB DISCRIMINATION §§ 2420 et seq.; 54 Am Jur 2d, MONOPOLIES, RESTRAINTS OF TRADE, AND UNFAIR TRADE PRACTICES §§ 360 et seq.; 60 Am Jur 2d, PATENTS §§ 1113 et seq.; and 70 Am Jur 2d, SECURITIES REGULATION—FEDERAL §§ 562 et seq. (As to federal taxation relating to the topic, see “Tax References,” *infra*.)

**Treated elsewhere:**

Application of general principles governing the award of damages in particular types of tort actions, see, for example, 6 Am Jur 2d, ASSAULT AND BATTERY §§ 178 et seq.; 18 Am Jur 2d, CONVERSION §§ 105 et seq.; 32 Am Jur 2d, FALSE IMPRISONMENT §§ 134 et seq.; 37 Am Jur 2d, FRAUD AND DECEIT §§ 342 et seq.; 50 Am Jur 2d, LIBEL AND SLANDER §§ 349 et seq.; 52 Am Jur 2d, MALICIOUS PROSECUTION §§ 93 et seq.; 75 Am Jur 2d, TRESPASS §§ 49 et seq.

Measure and elements of damages arising out of breaches of particular types of contracts, see, for example, 13 Am Jur 2d, BUILDING AND CONSTRUCTION CONTRACTS §§ 76 et seq.; 43, 44 Am Jur 2d, INSURANCE §§ 439 et seq., 1771 et seq.; 67A Am Jur 2d, SALES §§ 1109 et seq., 1277 et seq.

Damages in actions arising out of certain relationships, see, for example, 7 Am Jur 2d, ATTORNEYS AT LAW § 226; 8 Am Jur 2d, BAILMENTS §§ 346 et seq.; 10 Am Jur 2d, BANKS §§ 218, 574 et seq., 737 et seq.; 14 Am Jur 2d, CARRIERS §§ 1197 et seq.; 49 Am Jur 2d, LANDLORD AND TENANT §§ 183 et seq., 1124 et seq.; 61 Am Jur

2d, PHYSICIANS, SURGEONS, AND OTHER HEALERS §§ 367 et seq.; 77 Am Jur 2d, VENDOR AND PURCHASER §§ 489 et seq., 519 et seq.

Damages in wrongful death actions, see 22A Am Jur 2d, DEATH

Measure and elements of damage to motor vehicles, see 8 Am Jur 2d, AUTOMOBILES AND HIGHWAY TRAFFIC §§ 1128 et seq.

Measure and elements of compensation in a condemnation case, see 27 Am Jur 2d, EMINENT DOMAIN §§ 266 et seq.

Measure and elements of damages in a product liability case, see 63A Am Jur 2d, PRODUCTS LIABILITY §§ 967 et seq.

Choice of law when determining the measure of damages in contract and tort actions involving several jurisdictions, see 16 Am Jur 2d, CONFLICT OF LAWS §§ 137 et seq.

Existence of a cause of action for damages, see 1 Am Jur 2d, ACTIONS §§ 46 et seq., and other articles on particular causes of action

### **Research References**

#### **Text References:**

Averbach, Handling Accident Cases

Charfoos, Personal Injury Practice—Technique and Technology

Cyclopedia of Trial Practice

Speiser, Krause and Gans, American Law of Torts

Stein, Damages and Recovery

Williston on Contracts (3d ed, Jaeger)

#### **Annotation References:**

ALR Digest to 3d, 4th, and Federal: Damages

Index to Annotations: Consequential Damages; Damages; Excessive or Inadequate Damages; Future and Prospective Damages; Liquidated Damages; Mitigation or Aggravation of Damages; Multiple Damages; Nominal Damages; Pain and Suffering; Punitive Damages; Special Damages; Speculative Damages

#### **Practice References:**

8 Am Jur Pl & Pr Forms (Rev), Damages

7 Am Jur Legal Forms 2d, Damages

3 Am Jur POF 491, Damages; 7 Am Jur POF 215, Life Expectancy; 24 Am Jur POF 171, Recovery of Damages for Loss of Enjoyment of Life; 28 Am Jur POF 1, Loss of Sleep as Element of Damages; 8 Am Jur POF2d 1, Discount Rate for Future Damages; 15 Am Jur POF2d 311, Forensic Economics: Loss in Cases of Disability; 16 Am Jur POF2d 253, Forensic Economics: Valuation of Business and Business Losses; 23 Am Jur POF2d 1, Pain and Suffering; 38 Am Jur POF2d 195, Forensic Economics: Period of Economic Loss in Death and Personal Injury Cases; 41 Am Jur POF2d 337, Damages for Breach of Contract to Loan Money; 42 Am Jur POF2d 247, Damages for Injury to Real Property

5 Am Jur Trials 921, Showing Pain and Suffering; 6 Am Jur Trials 501, Minimizing Personal Injury Damages; 6 Am Jur Trials 963, Predicting Personal Injury Verdicts and Damages; 20 Am Jur Trials 513, Damages for Injury to Child; 23 Am Jur Trials 479, Determining the Medical and Emotional Bases for Damages; 31 Am Jur Trials 287, Defense Use of Economist

#### **Tax References:**

Tax effect of recovery of damages, see 34 Am Jur 2d, FEDERAL TAXATION ¶¶ 5325 et seq., RIA Federal Tax Coordinator 2d, ¶¶ J-5513 et seq.

### **VERALEX®:**

Cases and annotations referred to herein can be further researched through the VERALEX® electronic retrieval system's two services, **Auto-Cite®** and **SHOWME®**. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

**Table of Parallel References:**

To convert General Index references to section references in this volume, or to ascertain the disposition (or current equivalent) of sections of the articles in the prior edition of this publication, see the Table of Parallel References beginning at p ix.

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**Outline**

- I. INTRODUCTION [§§ 1-7]
- II. NOMINAL DAMAGES [§§ 8-22]
  - A. OVERVIEW [§§ 8-14]
  - B. CASES IN WHICH NOMINAL DAMAGES ARE RECOVERABLE [§§ 15-22]
- III. COMPENSATORY DAMAGES [§§ 23-682]
  - A. OVERVIEW [§§ 23-35]
  - B. GENERAL AND SPECIAL DAMAGES [§§ 36-42]
  - C. MEASURE AND ELEMENTS IN BREACH OF CONTRACT CASES [§§ 43-129]
  - D. MEASURE AND ELEMENTS IN TORT CASES [§§ 130-450]
  - E. LIMITATIONS ON RECOVERY [§§ 451-590]
  - F. ADDITIONAL ELEMENTS OF COMPENSATION [§§ 591-674]
  - G. PROSPECTIVE DAMAGES [§§ 675-682]
- IV. LIQUIDATED DAMAGES [§§ 683-730]
  - A. DEFINITIONS, DISTINCTIONS, AND FUNCTIONS [§§ 683-685]
  - B. VALIDITY AND ENFORCEABILITY OF PROVISIONS [§§ 686-689]
  - C. DETERMINING THE CHARACTER OF A STIPULATION [§§ 690-708]
  - D. PARTICULAR STIPULATIONS [§§ 709-721]
  - E. PRECONDITIONS AND DEFENSES TO ENFORCEMENT [§§ 722-725]
  - F. EXTENT OF RECOVERY [§§ 726-730]
- V. EXEMPLARY OR PUNITIVE DAMAGES [§§ 731-818]
  - A. INTRODUCTION [§§ 731-736]
  - B. POWER AND DISCRETION TO AWARD [§§ 737-740]
  - C. PREREQUISITES TO RECOVERY [§§ 741-746]
  - D. AVAILABILITY IN PARTICULAR KINDS OF ACTIONS [§§ 747-756]
  - E. EFFECT OF CRIMINAL NATURE OF DEFENDANT'S CONDUCT [§§ 757-761]
  - F. REQUIREMENT OF MALICE, WILLFULNESS, OR SIMILAR AGGRAVATING CIRCUMSTANCES [§§ 762-780]
  - G. PERSONS ENTITLED TO RECOVER [§§ 781-784]
  - H. PERSONS LIABLE [§§ 785-804]
  - I. AMOUNT [§§ 805-812]
  - J. STATUTORY DOUBLE OR TREBLE DAMAGES [§§ 813-818]
- VI. PRACTICE AND PROCEDURE [§§ 819-1036]
  - A. PLEADING [§§ 819-901]
  - B. EVIDENCE [§§ 902-979]

C. QUESTIONS FOR COURT OR JURY [ §§ 980-987 ]

D. INSTRUCTIONS TO JURY [ §§ 988-1016 ]

E. CHALLENGING THE VERDICT ON GROUND OF EXCESSIVENESS OR  
INADEQUACY OF DAMAGES [ §§ 1017-1036 ]

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## I. INTRODUCTION

- § 1. Definition of term "damages"
- § 2. Other terms distinguished
- § 3. Overview of types of damages
- § 4. General principles governing the recovery of damages
- § 5. Inference of damage arising from injury
- § 6. Power of legislature
- § 7. —Provision for statutory penalty

## II. NOMINAL DAMAGES

### A. OVERVIEW

- § 8. Definition
- § 9. Basis of award
- § 10. Nature
- § 11. Amount allowable as nominal damages
- § 12. Distinction between nominal damages and a small award
- § 13. Consequences of availability of nominal damages
- § 14. How to obtain an award of more than nominal damages

### B. CASES IN WHICH NOMINAL DAMAGES ARE RECOVERABLE

- § 15. Generally
- § 16. Exclusion of cases in which damages are an element of the cause of action
- § 17. Breach of contract
- § 18. Tort cases, generally
- § 19. Personal injury cases
- § 20. Cases involving damage to property rights
- § 21. Breach of duty by public officers
- § 22. Fraud cases

## III. COMPENSATORY DAMAGES

### A. OVERVIEW

#### 1. DEFINITIONS

- § 23. Compensatory damages
- § 24. Actual damages
- § 25. Temperate damages

#### 2. PHILOSOPHY BEHIND AWARD

- § 26. Compensation as the general rule or objective
- § 27. Compensation as limit of recovery
- § 28. Elements considered when awarding compensation
- § 29. Limitation of recovery against defendant to consequences of his own acts
- § 30. —Party who defaulted on contract

## 3. EFFECT OF FORM OF ACTION ON RECOVERY

- § 31. Generally
- § 32. Distinctions between damages in tort and in contract actions
- § 33. Distinctions between legal and equitable actions
- § 34. Differences presented when restitution sought
- § 35. Effect of bringing more than one cause of action

## B. GENERAL AND SPECIAL DAMAGES

- § 36. Generally
- § 37. Definition of general damages
- § 38. —Rationale for awarding
- § 39. Definition of special damages
- § 40. Application of rules in contract cases
- § 41. Application of rules in tort cases
- § 42. Propriety of award of special damages without general damages

## C. MEASURE AND ELEMENTS IN BREACH OF CONTRACT CASES

## 1. INTERESTS CONSIDERED WHEN DETERMINING MEASURE OF RECOVERY

## a. OVERVIEW

- § 43. Generally
- § 44. Flexible application

## b. EXPECTATION INTEREST (BENEFIT OF THE BARGAIN)

- § 45. Generally
- § 46. Expectation based on uncertain future events
- § 47. Elements considered when granting the benefit of the bargain
- § 48. Elements usually not considered; mental suffering, loss of reputation
- § 49. Recoverability of full contract price

## c. RELIANCE INTEREST (RECOVERY OF EXPENDITURES OR LOST PROPERTY)

- § 50. Generally
- § 51. Relationship to expectation interest
- § 52. Requirement that expenditures would have resulted in net gain if contract had been performed
- § 53. Requirement that damages be caused by defendant's breach

## d. RESTITUTION INTEREST (PREVENTING DEFAULTING PARTY'S UNJUST ENRICHMENT)

- § 54. Generally
- § 55. Relationship to other interests and remedies
- § 56. Measure limited to extent of benefit conferred
- § 57. Effect of potential loss if contract had been performed
- § 58. —Substantially executed contract

## 2. EFFECT OF THE TYPE OF BREACH ON THE MEASURE OF DAMAGES

## a. OVERVIEW

- § 59. Generally; need for a substantial breach

## b. ANTICIPATORY REPUDIATION

- § 60. Generally; time when damages may be sought

- § 61. Availability of damages if further performance is only required of one party
- § 62. General measure of damages if action is brought before date for performance
- § 63. —Adjustment of value of anticipated performance to present worth
- § 64. Allowance of reliance damages
- § 65. Allowance of restitutionary damages

#### C. DEFECTIVE PERFORMANCE

- § 66. Generally
- § 67. Cost of correction disproportionate to its value
- § 68. Defects rendering performance useless

#### D. DELAYED PERFORMANCE

- § 69. Generally
- § 70. Compensation for loss of use; rental value of property
- § 71. Special damages
- § 72. Impermissible measures
- § 73. Contractual stipulations

#### 3. CONSIDERATION OF INCOME TAX LIABILITY

- § 74. Compensation for loss of tax benefits
- § 75. Tax on lump sum award
- § 76. Tax effect on an accounting for wrongful profits

#### 4. FACTORS USUALLY NOT CONSIDERED WHEN DETERMINING MEASURE OF DAMAGES

- § 77. Motive for the breach
- § 78. Financial status of parties

#### 5. DATE AS OF WHICH DAMAGES ARE TO BE DETERMINED

- § 79. Generally
- § 80. Ability to take events between breach and trial into account
- § 81. Taking into account damages that accrue between the initial breach and the judgment

#### 6. PARTICULAR CLASSES OF CONTRACTS

##### a. TO PAY MONEY

- § 82. General rule: amount due with interest
- § 83. Other elements of compensation

##### b. TO PAY IN FOREIGN CURRENCY

- § 84. Generally; problem of exchange rates
- § 85. Time when rate of exchange should be determined
- § 86. Damages arising out of delay or failure to establish foreign credits

##### c. TO MAKE NONMONETARY PAYMENT

- § 87. Agreement to pay in commodities
- § 88. Agreement to pay in securities
- § 89. Agreement to pay in services

##### d. TO PAY DEBTS OR DISCHARGE ENCUMBRANCES

- § 90. Payment of debts or taxes, generally
- § 91. Debt that only acts as an encumbrance
- § 92. Breach by person receiving money to discharge encumbrance