

### **13-1802. Measure of damages; general; with preexisting conditions.**

If you should decide in favor of the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate [him] [her] for any of the following elements of damages proved by the plaintiff to have resulted from the negligence [wrongful conduct] as claimed:

*(NOTE: Here insert the proper elements of damages and, in a personal injury case, the instructions which immediately follow may be applicable but, in other types of litigation, the trial lawyers will need to insert here the proper elements applicable under the proven facts and the particular law governing the specific circumstances.)*

Whether any of these elements of damages have been proved by the evidence is for you to determine. [If you find that, before any injury in this case, plaintiff was already impaired by a physical or emotional condition, plaintiff is entitled to compensation for the aggravation or worsening of the condition, but not for elements of damages to the extent they were already being suffered.] [However, damages are to be measured without regard to the fact plaintiff may have been unusually susceptible to injury or likely to be harmed. The defendant is said to "take the plaintiff as he finds [him] [her]," meaning that the defendant, if liable, is responsible for all elements of damages caused by the defendant's conduct even if some of the plaintiff's injury arose because the plaintiff was unusually susceptible to being injured.]

Your verdict must be based upon proof and not upon speculation, guess or conjecture. Further, sympathy or prejudice for or against a party should not affect your verdict and is not a proper basis for determining damages.

#### USE NOTES

This instruction is not complete in and of itself but this is the basic form of instruction to be utilized in all cases involving damages.

The pronoun will need to be changed in some instances. Likewise, the plural will need to be added in other instances when multiple parties are involved.

This instruction is not applicable in wrongful death cases. See UJI 13-1830. [As amended, effective November 1, 1991; March 1, 2005.]