Civil Causes of Action and Calculation of Damages

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Civil Deskbook

O'Connor's Texas Causes of Action

Texas Rule of Civil Procedure 508

Resources

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DEFINITIONS & INTRO

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- Bill runs a red light and his car strikes a car driven by Jan. Bill running the red light is the **actual cause** of Jan's damage and injuries.
- After Bill strikes Jan's car, it slides into Norah who is walking down the street, breaking her leg. Bill running the red light is the **proximate cause** of Norah's broken leg.

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- When the ambulance is taking Norah to the hospital, the ambulance driver crashes, breaking Norah's arm. This injury was not a foreseeable result of Bill's action of running the light, so Bill running the red light was **not the actual cause and not a proximate cause** of Norah's broken arm.

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Causes of Action

In criminal cases, you must consider "**elements of the offense**," which are what the state must prove for someone to be guilty of a criminal offense.

In civil cases, there will be elements of the case that must be proven as well, but instead of elements of the offense, they are elements of the **cause of action**.

Less likely to be clearly spelled out in statute than criminal elements are – O'Connor Causes of Action is a great resource!

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Break it Down and Make it Simpler

- **EXAMPLE of a "difficult" rule**
- The tort of intentional infliction of emotional distress exists if the defendant acted with either extreme or outrageous conduct and intended to cause severe emotional distress to plaintiff or behaved with reckless disregard to emotional state of plaintiff and the acts were the actual or proximate cause of the distress and severe emotional distress actually occurred.

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Make it Bite-Sized

Cause of action of *intentional infliction of emotional distress* exists **IF:**

- the defendant acted with *extreme conduct* **OR** *outrageous conduct*

AND

- *intended* to cause *severe* emotional distress to plaintiff **OR**
- behaved with *reckless disregard* to emotional state of plaintiff

AND

- the acts were the *actual or proximate cause* of the distress

AND

- *severe* emotional distress actually occurred.

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- Once you answer each individual decision point, your conclusion becomes clear, and answering single questions is much easier:
  - Did the defendant act with extreme conduct, yes or no?
  - Did the defendant act with outrageous conduct, yes or no?
    - If you answer both of these "no", then the plaintiff hasn't proven an element of the cause of action and so they can't recover damages for it.
    - If you answer **either** question with yes (since it is an **OR**, not an **AND**), move to the next step.
- If you get all the way through, plaintiff can recover, if not, they cannot. Simple as that!

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But Wait?!

- "If the answers to those questions determine how I must rule on a cause of action, isn't that taking away my judicial discretion? I'm a judge, not a robot or kiosk!"
  - No! Because every judge will see things differently on the individual questions.
- Judges **can** have different answers to the question "Did the defendant act with outrageous conduct?" but **can't** have different answers to the question "Does the plaintiff win if they prove their cause of action?"

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CONTRACTS

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What is a contract?

- Most simply, it's an agreement between two or more parties (either people or organizations) which the law recognizes and will enforce.
- It may require a party to do something, or may require them not to do something (often phrased as "must **refrain** from" doing something.)

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Do All Contracts Have to Be Written?

A common misconception is that a contract must always be in writing.

However, **most** contracts can be oral. Having an oral contract does make it much more difficult to prove terms of a contract at trial! What are some ways that a party might be able to prove the existence of an oral contract?

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Statute of Frauds

Texas Law does require that **some** contracts be in writing in order to be enforceable.

The list, found at Section 26.01 of the Business & Commerce Code, includes leases longer than one year, sale of goods for more than $500, and any contract which **cannot** be performed within one year of the date of making the agreement

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- An offer remains open after it has been extended unless one of the following occurs:
  - Rejection by the offeree
  - **Revocation**, or withdrawal, of the offer before it's accepted
  - Death, incapacity, or insanity of either party
  - Destruction of the subject matter
  - Expiration of a specified or "reasonable" time
  - Counteroffer with different terms

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Acceptance of the Offer

A party can accept an offer by communicating their acceptance, or by beginning performance in some cases.

- An offer may communicate how it must be accepted. If so, that is the only valid way to accept the offer.

A risk of beginning performance without communication is that the offer may have been withdrawn before you begin performance.

- The mailbox rule makes an **acceptance** valid when it is deposited in the mail (**revocation** valid when received.)

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Valid Offer and Acceptance?

Thea offers Bronson $100.00 to paint her office green and gold. Bronson says "No, but I'll paint it crimson and cream for $400.00." Bronson has:

1. Modified and accepted the offer
2. Made a counteroffer
3. Terrible taste in paint colors
4. Bad negotiating skills

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Valid Offer and Acceptance?

- Say Thea says “No, thanks, Bronson, I don’t like crimson and cream.” Bronson says “OK, no problem”, and comes in on the weekend and paints Thea’s office green and gold.
- Does Thea owe Bronson $100?
- Why or why not?
- Has Bronson now accepted Thea’s original offer?

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- Bob offers ABC Tree Trimming $600.00 to remove two trees from his yard. He says he’s “not in a hurry,” but would like it done as soon as possible. ABC doesn’t respond to Bob’s email.
- Six months later, Bob comes home and finds the trees removed and a bill for $600.00 taped to his front door. Was the offer still valid? What question do you have to answer to determine that?

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- Rebecca offers Sonya $800.00 to prepare her 2025 federal income tax returns. Rebecca's letter states that her offer must be accepted by April 1. Sonya mails a letter accepting the offer on March 27. Rebecca receives the letter on April 2. Did Sonya accept the offer before it expired?
- What if Rebecca's offer says acceptance must be received by April 1 to be valid?
- What if Rebecca didn't say it must be received by April 1, but did mail a letter on March 26 telling Sonya "never mind" and Sonya receives that letter on March 31?

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Four Ingredients of an Enforceable Contract

- All contracts, whether express or implied, are enforceable only if the following factors are present:
  - Mutual assent
  - Consideration
  - Legal capacity
  - Legality

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Things Which Affect Mutual Assent

- ***Duress***
  - The use of force, threat of force, or mental stress can create duress.
- ***Undue Influence***
  - An abuse of a relationship of trust by the trusted person, causing the other party to act against his or her own free will.
- ***Fraud or misrepresentation***
  - A misrepresentation of information or terms or the inducement of another party by deceit.
- ***Mutual mistake***
  - Where both parties are mistaken about the subject matter of the contract.

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Amber "helps" her elderly and wealthy Grandmother around the house and with her finances. Grandma has dementia. Grandma's other grandchildren discover that Grandma has contracted to pay Amber's Yard Service $4,500.00 per month for mowing the lawn. Is this a valid contract?

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Mutual Assent Scenario 2

- Rebecca has a collection of Michael Kors purses. Jessica sees her carry them at work and is very jealous. Jessica offers Rebecca $1000 for "that sparkly one I saw you carrying with the bedazzled cross."
- Jessica means one with pink bedazzles, but Rebecca can't remember which Jessica has seen, and thinks she means a different one with silver bedazzles instead of pink.
- Rebecca responds "Sure, it's a deal."
- Is there an offer and acceptance?
- Is there mutual assent?

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- **Consideration** is the **value** that parties are to give or receive from each other under the contract.
- This can either be a promise or performance, and usually takes the form of money, property or services given or received.

- If an agreement is not made for consideration, no enforceable contract exists.

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Past consideration is *not valid*. Any goods or services to be exchanged must be exchanged at or after the time of contract formation.

A pre-existing duty *does not* count as consideration.

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Consideration?

Jeff paints Laura's house for $1,000.00. Laura isn't satisfied, and complains to Jeff. Jeff says, "well, I'll paint your barn for free," but he never does. Laura has to hire Angie to paint her barn for $500.00 instead. Laura then sues Jeff for the $500.00.

Was there consideration for Jeff's promise to paint the barn?

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Consideration?

Amy is stressed out with wedding planning and is complaining to her mom about it. Her mom says "Let me send you $1,000 to help ease your stress."

Amy's mom didn't send the money.

Was there consideration?

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Jasmine hires Bronson to mow her yard each week for six months for a total of $1,500.00. After two weeks, Jasmine says: "you're doing a great job; keep it up and I'll pay you an extra $500.00. At the end of six months, she doesn't pay Bronson the $500.00 "bonus." Was there consideration for her promise?

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- You must have the power and authority to enter into a contract. "**Legal capacity**" means capacity that is approved by law.
- A person or entity who does not have legal capacity to enter into a contract will not be bound by the terms of the contract.
  - 18 years of age (usually)
  - Mental capacity
  - Authority to act

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Legal Capacity

- Al and Bronson play golf. Bronson shoots his worst round in years. After the round, Bronson has eight shots of Fireball cinnamon whiskey. Al says "Hey, I'll buy that new driver from you from $20, you obviously can't hit it anyway." The driver cost $500 when purchased. Bronson says OK.
- Binding contract?

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- The subject matter must not be illegal in light of statute or public policy (*e.g.*, crimes, obstruction of justice, usury).
  - "I will pay you $5000 not to testify in this case."
  - "I will deliver you 8 ounces of marijuana for $1700."
- Such contracts are unenforceable, and the offeror and offeree may be subject to criminal penalties.

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In order to recover in a contract suit, the plaintiff will have to show:

1. The existence of a valid and enforceable **contract**.
   - This is where the things we have discussed so far come into play, such as offer and acceptance, mutual assent, consideration, legal capacity, and legality of the contract.
2. The plaintiff **performed** their obligation under the contract or were excused from doing so (for example, because the defendant breached.)
3. That the defendant **breached** the contract.
   - The defendant didn't live up to their end of the agreement.
4. The breach **caused** the plaintiff economic **injury**.
   - Can be actual/proximate cause, as long as damages are foreseeable.

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- Once you have gone through the steps we have covered to establish that there was a contract, the next decision you must make is whether the defendant breached the contract.
- Sometimes the defendant will file a **counterclaim**, saying that in fact it is the plaintiff who has breached the contract.
  - In a case like this, both parties may **stipulate**, or agree, that there was a contract. If so, we can ignore the previous steps on mutual assent, consideration, etc., and jump right to this question.
  - *Remember the benefits of pretrial hearings!*

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Defenses to Breach of Contract Include

Standing (wrong plaintiff)	No Legal Contract	Impossibility (contract couldn't be performed)
Unconscionability (contract was **legally** unfair)	Modification	Statute of Limitations
Statute of Frauds		

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Statute of Limitations – Contract Cases

- The statute of limitations in a contract case (as well as the related cases discussed) is four years.
- The parties can contract for a different statute of limitations, but it cannot be for less than two years.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

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- There are a few ways where a plaintiff can recover damages in a case that looks like a contract case, but the plaintiff is missing one or more of the elements of the cause of action.
- These include:
  - **Promissory Estoppel**
  - **Quantum Meruit**

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Promissory Estoppel – The Elements

This is also caused "detrimental reliance."

The plaintiff can recover if:

- The defendant made a **promise** to the plaintiff;
- The plaintiff **reasonably relied** on the promise which caused them **harm**;
- The reliance was **foreseeable** by the defendant; and
- Enforcing the promise **avoids an injustice**.

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Remember earlier when Amy's mom promised to send $1,000 to help with her wedding?

Now imagine that Amy relied on that promise and paid for an open bar rather than a cash bar, and would not have done that if not for her mom's promise.

Should Amy be able to enforce the $1,000 promise now?

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Quantum Meruit – The Elements

This is also caused "unjust enrichment."

The plaintiff can recover if:

- **Valuable services or materials** were provided to the defendant;
- The defendant **accepted** the service or materials; and
- The defendant had reasonable notice that the plaintiff **expected compensation**.

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Quantum Meruit – What's it Look Like?

Jessica asks John to help her with some legal contract drafting. She says "Let me know afterwards how much time you spend on the work, and I'll take care of you."

After performing the work, John sends her an invoice saying he did 5 hours of work and billing her $1,000. She refuses to pay, saying they never decided a price.

Was there mutual assent, and therefore a contract?

Can John recover under "unjust enrichment"?

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Keep in Mind

- Self-represented litigants may not know the legal term for their cause of action. They don't have to know the "magic words." Your job is to determine what happened and award damages if appropriate.
- Many behaviors can be punished civilly, criminally, or both. (For example, the O.J. Simpson case)
- It is not up to you to decide if the person should pursue a civil case or if a prosecution should occur.
- Process the case that has been filed with you. Do not advise someone what to file or whether to file.

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- There are two main categories of tort cases.
- **Intentional torts** are actions that a party does on purpose (or sometimes recklessly) that cause damage to property or injury to a person.
- **Negligence** is when a party causes damage or injury, not on purpose, but instead by not being careful enough with the actions they take (or fail to take).

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The action was taken to intentionally cause the damage or injury or knowing that it is substantially certain to be caused.

Can "transfer" intent from intended target to actual target.

- Bronson is at the OU-Texas football game, becomes enraged, and wants to throw his flask at the referee.
- Bronson is a horrendous athlete and so instead he beans a fan four rows in front of him, causing injury.
- Even though the intent was to hit the referee, the intent is transferred to the fan, making this still an intentional tort.

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Assault/Battery



Conversion



Trespass to Chattels (personal property) or Land



False Imprisonment



Intentional Infliction of Emotional Distress

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- Justice court civil filings that would be considered assault could include:
  - Jeff is stopped in traffic on I-35 and gets out of his car and screams through the window of the car in front of him “move or you’re a dead man!” – no contact, but **apprehension of imminent bodily injury.**
  - The OU-Texas flask-throwing debacle from earlier, which **caused bodily injury**.
  - Mark is in line at Chick-Fil-A. He gets annoyed with someone who is not paying attention and is standing in the way and slaps their cell phone out of their hand. This is an **offensive/provocative contact**.

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What is Conversion?

- Conversion is when someone takes another person’s personal property and uses it without permission.

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- Justice court civil filings that would be considered conversion could include:
  - Randy has a very expensive and fancy triathlon bicycle. His neighbor has a junky old ten-speed. His neighbor takes Randy's bicycle without permission, and Randy doesn't have the bicycle for his Kona Ironman race, so he has to go purchase another one. He sues the neighbor for the cost of the bike.
  - April has a ranch with 1200 cattle. Jeff has a neighboring ranch and leaves a gate open and some of her cattle go onto his ranch. She asks him to return them and he says that will be too much work to separate them and that "these things just happen."

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- Justice court civil filings that would be considered trespass could include:
  - Hatfield has a tree on his property. Birds nest in the tree and make unwelcome deposits on the immaculately restored T-Bird of his neighbor, McCoy. McCoy comes onto Hatfield's land and cuts down the tree.
  - Gorton has a pond on his land, where he raises fish and sells them. Tyson comes onto his land without permission and fishes the pond.

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What is False Imprisonment?

- False imprisonment is detaining a person without legal authority to do so.

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- Justice court civil filings that would be considered false imprisonment could include:
- Thea cannot find her autographed copy of O'Connor's Causes of Action. She believes that someone in the office took it. She orders that no one can leave the office until someone turns over the book.
- Judge Roadrage is cut off in traffic. She follows the person until they stop and then orders them to come to her court and explain why they shouldn't be held in contempt.
  - Note that you have judicial immunity against false imprisonment **only** if acting in good faith within the scope of your judicial capacity. Is Judge Roadrage in her official capacity?

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- Most of the time when a plaintiff files a claim for emotional distress, either the distress will not be severe enough or the conduct will not be extreme or outrageous enough to allow recovery:
  - One court recently had someone file because the defendant respondent to plaintiff's Yelp review saying "mean things about the plaintiff." Similar filings about mean postings or messages on Facebook or other social media often fall well short.
  - Cases finding extreme/outrageous conduct have involved acts like sexual harassment and death threats, which will often create damages higher than our $20,000 limit.

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Defenses to Intentional Torts May Include

Consent

Self-Defense or Defense of Others

Necessity

Limitations

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Negligence

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- Negligence is a very common cause of action in justice court (even though many of the people filing the cases may not know to use that word.)
- At its base level, a negligence cause of action is saying that the defendant caused injury to the plaintiff by either:
  - Doing something that they shouldn't have done, **or**
  - Failing to do something that they should have done.

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1. The defendant had a legal **duty** to act in a certain way toward the plaintiff.
2. The defendant **breached** that duty.
3. The breach **caused** injury to the plaintiff.

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- A **general duty** exists to use **ordinary care** to avoid **foreseeable risk** of injury to others.
- There is **not** a general duty to provide aid or protect others, unless there is a special relationship.
- Duty can be created by a relationship between the parties.
  - For example, attorney-client, accountant-client, parent-child.
- Civil and criminal laws create statutory duties as well.
  - You have a duty to stop at a red light.

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Negligence Scenario - Duty

- The location: a local bar. Amanda is drunkenly juggling beer bottles. Bob is walking back from the bathroom into the path of the bottles. Chris sees this, but says nothing. A bottle lands on Bob's head, knocking him unconscious. Dan and Elizabeth see this and provide no medical assistance. Dan is a lawyer, and Elizabeth is a doctor.



- Bob sues Amanda, Chris, Dan, and Elizabeth. Who, if anyone, had a duty toward Bob in this scenario?

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In each situation where a person has a duty to another, they have what is called a **standard of care**. If they fail to meet this standard, they have **breached** their duty.

Normally, the standard is "ordinary care", which is what an "ordinary prudent person" would have done (or not done) in that situation.

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- In negligence cases, the breach must be the **actual or proximate cause** of the plaintiff's injury.
- As discussed before, there is a two-part test for proximate cause:
  - **Cause-in-fact** – If the negligence was a substantial factor in the injury and whether the injury would have otherwise occurred. – "**but for**" test discussed earlier
  - **Foreseeability** – A person of ordinary intelligence should have anticipated the danger caused by the negligence.

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Duty – Premises Liability Cases

A very common category of negligence cases are **premises liability** cases – these are cases where someone sues not based on the defendant's actions, but on the condition of a premises that the defendant was responsible for.

- Standard "slip and fall" cases are in this category.

In these cases, the duty varies depending on who the potential plaintiff is and their relationship with the defendant.

- See TJCTC Recordings for Credit page for Premises Liability webinar for details

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Defenses to Negligence Include:

Contributory Negligence by Plaintiff	Release Agreement	Assumption of the Risk (hit by a foul ball)
Act of God	Unavoidable Accident	Limitations

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Statute of Limitations – Tort Cases

- The statute of limitations in a tort case (both intentional torts and negligence) is two years.
- The statute in some cases does not start running until a party is aware or should have been aware of the tort.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

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Calculation of Damages

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Court Costs

Attorney's Fees

Pre-Judgment Interest

Post-Judgment Interest

Compensatory Damages

Punitive or Exemplary Damages

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The winning party is entitled to recover the costs involved with the case, such as filing fees, service fees, jury fees, interpreter fees if appropriate, etc.

They do not have to request this explicitly, the Rules of Civil Procedure say the court must award costs.

- TRCP 505.1(d)

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Attorney's fees are awardable in certain causes of action (CPRC 38.001), and not others. If they are awardable, you award "reasonable and necessary" attorney's fees.

Unlike court costs, the plaintiff **does** have to specifically request attorney's fees, and must prove they are reasonable and necessary, either with affidavits or live testimony from the attorney.

To determine if the fees are reasonable and necessary, look at hours worked, and rate charged. If those numbers are reasonable and necessary, the fees are as well.

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Attorney's Fees – Ch. 38, CPRC

To recover attorney's fees, the claimant must be represented by an attorney, and must make the claim for damages to the opposing party and not have been paid within 30 days of the claim.

Usual and customary attorney's fees are presumed to be reasonable, but that presumption may be rebutted.

Sec. 38.002, 38.003

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- This is interest that begins accruing on whichever is earlier:
  - The day suit is filed; or
  - 180 days after the defendant receives notice of the plaintiff's claim (if notice meets certain requirements)
- Stops accruing the day before the judgment is signed, and calculated as simple interest, at the same rate as post-judgment interest.
- The reason this exists is to encourage settlements and discourage delays in litigation. The award of pre-judgment interest compensates the plaintiff for not being able to have the use of their money.

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- It is only awarded on actual damages, not exemplary damages, court costs, or attorney's fees. It is calculated as **simple interest** (meaning it accrues only on the principal and not on accrued interest) and is the same rate as post-judgment interest.

- Should be automatically added whether requested or not in personal injury and property damage cases.
  - See Finance Code 304.102

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All money judgments ***must*** include an interest rate that apply to the judgment.

- Finance Code Sec. 304.001.

Unless a contract specifies otherwise (with a maximum of 18%) , the court should use the rate located at: https://occc.texas.gov/publications/interest-rates

- Currently 6.75% as of September 2026, changes monthly, so court needs to check it.

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Available Damages – ***Contracts Cases***

Compensatory Damages

Attorney's Fees

Pre-Judgment Interest (if specified in the contract)

Court Costs & Post-Judgment Interest (available in all cases)

Punitive Damages are **not available**.

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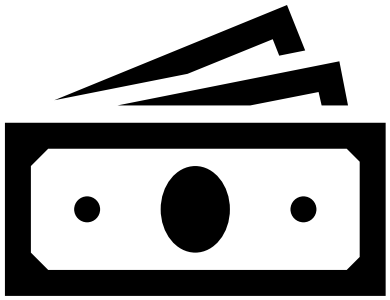
Main idea – Put plaintiff back in the position where they would have been if not for defendant's conduct.

These damages **compensate** the plaintiff for their loss.

Can be **economic** (medical bills, lost wages, property), **or**

non-economic (pain & suffering, mental anguish, etc.)

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Compensatory Damages

- Do not include the costs of coming to court in actual or compensatory damages.
- Lost income from work can be awarded if the work is missed due to the injury, but not lost income for the day that the party comes to court.
- Travel costs to court are not recoverable.

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Willie agrees to purchase 2000 widgets from Widgets R Us for $2 each. In the contract, he specifies that he uses those widgets to create WidgetSpinners©, and he is having a WidgetSpinner© convention where he will sell the spinners for $10 each.

Widgets R Us breaches and provides 0 widgets. If Willie has to pay $3 each for widgets, what are his compensatory damages?

What if no other widgets are available, so he has no WidgetSpinners© at the convention? Do his lost profits flow from the breach of contract? If so, would he recover $10 x 2000? If not, how much?

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Many contracts contain clauses that specify what the amount of damages will be in the event of the breach. These are called **liquidated damage clauses**, and they fall under compensatory damages. This is to avoid the difficult issues involved in proving damages in these cases.

Parties cannot recover compensatory damages for inconvenience or delay, unless there is a specific clause in the contract stating that there is a certain time by which the work must be complete.

- This is called a "**time is of the essence clause**."

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Damage Calculation Scenario – *Contract Case*

- Audrey hires Red Pool Company to build a pool in her backyard. The contract is signed February 1 and Red Pool says it should take about 3 months. Audrey agrees to pay $8,000.
- Red Pool hits delay after delay and finally Audrey fires them on July 5th, without having paid them any money.
- Audrey now hires Blue Pool for $7,700 and they complete the pool on October 1st.
- Audrey files suit against Red Pool seeking damages for missing the whole summer with no pool. What are her damages?

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Available Damages –
Intentional Tort Cases

Compensatory Damages (personal injury and property damage)

Punitive/ Exemplary Damages

Court Costs/Post-Judgment Interest (available in all cases).

Pre-Judgment Interest (personal injury or property damage cases only, ***not on economic damage cases***)

Attorney's Fees are ***not available*** in intentional tort cases.

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Available Damages –
Negligence Cases

Compensatory Damages (personal injury and property damage)

Punitive/ Exemplary Damages (Gross Negligence only)

Court Costs/Post-Judgment Interest (available in all cases).

Pre-Judgment Interest (personal injury or property damage cases only, ***not on economic damage cases***)

Attorney's Fees are ***not available*** in negligence cases.

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Punitive or Exemplary Damages

- These are damages that are awarded, not to compensate the plaintiff, but instead to **punish**, or make an **example** out of, the defendant.
- Goal is to punish the defendant for its bad action, as well as deter any future parties from engaging in the same bad behavior.
  - Notable examples include McDonald's being forced to pay punitive damages in the "hot coffee" case and Ford being forced to pay punitive damages when they knew of the Ford Pinto explosion danger.

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Punitive damages are available if the defendant acted with **malice** (intent to harm the plaintiff) or **gross negligence** (defendant was aware of an extreme degree of risk but disregarded that risk)

How do you decide what amount of punitive damages is appropriate?

How much is sufficient to punish the defendant for what they did, and put other actors on notice that they should not engage in that behavior?

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Damage Calculation Issues - ***Contributory Negligence***

- In **negligence** cases, the finder of fact (judge or jury) must assign a percentage of responsibility to each party.
- If the plaintiff is more than 50% responsible, they recover $0, due to what is called **contributory negligence.**
- If the plaintiff is less than 50% responsible, they recover against the defendant the percentage of their damages that the defendant is responsible for.
  - So if damages are $5,000 and the jury finds the defendant 40% responsible and the plaintiff 60%, how much does the plaintiff get? What if they flip those percentages?

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- In **both negligence and intentional tort cases**, a party may seek to recover compensatory damages for property damage. These damages can include:
- Valuation Damages
  - Market Value
  - Replacement Value
  - Sentimental Value
- Repair Damages
- Loss-of-Use Damages

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- How to calculate sentimental value?
  - Similar to pain/anguish, the plaintiff offers testimony and the **finder of fact** decides what an appropriate and reasonable value would be.
  - Generally unavailable for common household goods or clothing.
  - Available on items such as heirlooms, rare items, or irreplaceable items such as pictures, etc.
- How to decide what measure to use out of market value, replacement value, or repair costs?
  - Generally, the lowest value that still makes the plaintiff **whole**, placing them back where they were before the tort happened.

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- Imagine if I took this glass and smashed it against the wall while teaching. The hotel scoops up all the pieces and sends them to a world-famous glass craftswoman in Florence, Italy. She reconstitutes the shards back into this glass, good as new.
- The hotel files suit against me for the cost of this service, $8,500.
- Reasonable and fair? Why or why not? What is a better measure of damages?

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- In **both negligence and intentional tort cases**, a party may seek to recover compensatory damages for personal injury. These damages can include:
- Physical pain (past and future)
- Mental anguish (past and future)
- Disfigurement or physical impairment
- Medical expenses
- Loss of earning capacity
- Loss of consortium (love & protection) – unlikely in justice court

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Yes, you can award pain and suffering and/or mental anguish damages.

These damages are very difficult to accurately gauge and put a number on.

- Each **finder of fact (judge or jury)** may find a different answer on the same facts.

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