

1962

Damages: Final Examination (August 1962)

William & Mary Law School

Repository Citation

William & Mary Law School, "Damages: Final Examination (August 1962)" (1962). *Faculty Exams: 1944-1973*. 92.
<https://scholarship.law.wm.edu/exams/92>

Copyright c 1962 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/exams>

Directions: Discuss fully each issue raised by the following questions whether or not any one issue is conclusive of the question.

I.

P, operating an auto when struck from the rear by D who was driving a truck, suffered a hiatus hernia. At a subsequent trial, evidence on P's behalf disclosed the hernia could be corrected by surgery which, however, would be risky and undesirable; that the injury was permanent; that P would have to drink small amounts of water and eat small, infrequent meals; that P would have to wear loose fitting clothing; and that P had been and would continue to be in severe pain; that P is 55 years old, employed as a carpenter and had incurred medical and hospital expenses in the sum of \$2,500.00 and loss of earnings in the sum of \$50,000. P, however, sued for \$100,000 alleging all in excess of \$52,500 to be for pain and suffering. During the trial, P's attorney brought the amount sued for to the attention of the jury both in opening statement and summation. D's objections were overruled. P's attorney also in closing argument asked the jury to put itself in P's shoes. D's objection was overruled. Then D introduced expert medical testimony to the effect that operations for P's condition were commonly successful. The case went to the jury which returned a verdict for P of \$100,000. D appeals. What result? Why?

II.

P sued D merely alleging trespass in that D wrongfully entered P's lands and cut timber. P asked for damages of \$6,000.00 which sum represented the value of the timber after D had taken it to a sawmill and had it cut into exact lengths suitable for special building projects in the area. Thus the timber so cut was in great demand. D, by procedure proper in the jurisdiction, demurred to P's petition and also answered, alleging by cross-claim that P had failed to disclose his action at an earlier time and that, therefore, D was entitled to attorney's fees, expenses and costs. P demurred to D's answer and cross-claim. How should the court rule on the demurrers? Why?

III.

P, an optometrist, alleged that D's truck driver negligently parked a truck on the crest of a hill; that because of defective brakes and lack of use of blocks in front of the wheels, the truck, unattended, rolled down the hill and cracked into the building owned by P, the situs of P's office, smashing the building and demolishing all of P's optical equipment. P further alleged that because of D's negligence it was six months until P could resume the practice of his profession. P asked for damages as follows: \$50,000 for damage to the building, such sum representing the difference in market value of the property before and after the crash; \$75,000 for loss of optical equipment, such sum representing cost of replacing same; and \$25,000 for interruption of established profession, such sum representing amount of time lost and average value of such loss based on operations for the preceding ten years. D demurs. How should the court rule? Why?

IV.

In an action in Federal Court based on diversity of citizenship, P alleged a contract with D whereby P promised to buy and D promised to sell laundry machinery. The complaint further alleged delivery of the machinery, but that it was defective, not according to the specifications of the contract, and not usable by P. The bulk of P's allegations for damages were for the loss of future profits. D demurred. (1) Should the demurrer be sustained? Why? (2) Assuming for this part of the question only that the demurrer should be overruled and that you are attorney for P, of what elements should your evidence consist in proper proof of the aforesaid damages?

V.

P, general contractor, sued D, owner, on an open account for the

balance due under a contract to construct a house. (This is proper procedure in the jurisdiction.) The open account was predicated on an architect's certificate, dated February 1, 1962, listing the contract price, \$50,000, payments to P of \$30,000, and a balance due of \$20,000. Also alleged was a statement of additional work in the amount of \$1,000. It was further alleged that demand had been made August 1, 1961, but that no payment had been made. These were the only sums claimed by P. D answered, denying P's allegations and filed a plea of recoupment, alleging P had breached the contract in 40 particulars and that \$5,000 would be a reasonable cost to correct the defects in the house. D attached a copy of the contract to his answer which provided interest on amounts due should run from the date the architect certified payments were due. The case went to trial during which D's lawyer asked P, "What was the difference in market value of the house as completed by P and as it should have been completed under the contract". P's objection to this question was sustained. The case went to the jury under instructions from the court allowing, if the verdict was for P, interest on the damages awarded. The jury returned a verdict for P which read, "We, the jury, duly empaneled...(etc.) find for P in the sum of \$21,000 plus interest thereon at 6%." D appeals. What result? Why?

VI.

P sued D for damages for criminal conversation alleging that D committed adultery with his (P's) wife. As a matter of fact, the proof showed D was caught in flagrante delicto with P's wife in the home furnished the wife by P. At the time, P and his wife were separated and in the midst of divorce proceedings, but no decree of any nature had been entered. P, in the criminal conversation action alleged all the necessary elements of criminal conversation and that D's conduct humiliated and embarrassed him. At trial P proved D knew of the status of P's marriage when the adultery took place as well as the fact of adultery. P had alleged actual damages of \$2,000 and exemplary damages of \$20,000, but when testifying, stated only that he'd been so damaged. The jury returned a verdict for P for \$22,000. D moved for a new trial whereupon the court ordered P to remit \$10,000 in lieu thereof. P complied, but D nonetheless appeals. What result? Why?

VII.

X was killed as the result of the negligent operation of a motor scooter by Y, an adult. Y also died as a result of the action, predeceasing X. P, X's executor sued D, Y's administrator, alleging sufficient facts, substantively, for a wrongful death action. D demurred and the case went to trial. The court instructed the jury if it found for P it could consider, in fixing damages, X's age, habits, business ability, earning capacity, probable life expectancy (P had introduced a standard mortality table to which D objected on the ground that it was irrelevant in the light of X's fatal injury, but the objection was overruled); and that the gross sum should equal the aggregate of loss to each member of X's family. D excepted to this instruction arguing the damages should be the present cash value of reasonable expectation of pecuniary advantage to X's widow and minor children. The jury held for P. D appeals. What result? Why?