

OKLAHOMA STATUTES
TITLE 23. DAMAGES

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§23-1. Species of relief.

As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified herein. R.L. 1910, § 2843.

§23-2. Damages as relief from forfeiture.

Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty. R.L. 1910, § 2844.

§23-3. Right to damages - Definition of damages.

Any person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages. R.L. 1910, § 2845.

§23-4. Detriment defined.

Detriment is a loss or harm suffered in person or property. R.L. 1910, § 2846.

§23-5. Future detriment.

Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof, or certain to result in the future. R.L. 1910, § 2847.

§23-6. Interest upon damages.

Any person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt.

R.L. 1910, § 2848.

§23-7. Jury may allow interest.

In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud or malice, interest may be given in the discretion of the jury.

R.L. 1910, § 2849.

§23-8. Waiver of interest.

Accepting payment of the whole principal, as such, waives all claim to interest.

R.L. 1910, § 2850.

§23-9. Repealed by Laws 1995, c. 287, § 4.

§23-9.1. Punitive damages awards by jury.

A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C and D of this section, award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;
2. The profitability of the misconduct to the defendant;
3. The duration of the misconduct and any concealment of it;
4. The degree of the defendant's awareness of the hazard and of its excessiveness;
5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
7. The financial condition of the defendant.

B. Category I. Where the jury finds by clear and convincing evidence that:

1. The defendant has been guilty of reckless disregard for the rights of others; or
2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded

actual damages, may award punitive damages in an amount not to exceed the greater of:

- a. One Hundred Thousand Dollars (\$100,000.00), or
- b. the amount of the actual damages awarded.

Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

C. Category II. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greatest of:

- a. Five Hundred Thousand Dollars (\$500,000.00),
- b. twice the amount of actual damages awarded, or
- c. the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.

The trial court shall reduce any award for punitive damages awarded pursuant to the provisions of subparagraph c of this paragraph by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any court of this state for the same conduct by the defendant or insurer. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

D. Category III. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and the court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans, the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in any amount the jury deems appropriate, without regard to the limitations set forth in subsections B and C of this section. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

E. In determining the amount, if any, of punitive damages to be awarded under either subsection B, C or D of this section, the jury shall make the award based upon the factors set forth in subsection A of this section.

F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

Added by Laws 1995, c. 287, § 2. Amended by Laws 2002, c. 462, § 1, eff. July 1, 2002.

§23-9.3. Definitions - Payment of damages.

A. As used in this section:

1. "Future damages" means damages that are incurred after the date of judgment for:

- a. medical, health care, or custodial care services,
- b. physical pain and mental anguish, disfigurement, or physical impairment,
- c. loss of consortium, companionship, or society, or
- d. loss of earnings;

2. "Future loss of earnings" means the following losses incurred after the date of the judgment:

- a. loss of income, wages, or earning capacity and other pecuniary losses, or
- b. loss of inheritance; and

3. "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

B. This section shall apply only to an action in which the present value of the award of future damages, as determined by the court, equals or exceeds One Hundred Thousand Dollars (\$100,000.00).

C. Upon request of a party, the court may order that future damages be paid in whole or in part in periodic payments rather than by a lump-sum payment. Periodic payments shall not exceed seven (7) years from the date of entry of judgment.

D. The court shall make a specific finding of the dollar amount of periodic payments that will compensate the plaintiff for the future damages. The court shall specify in its judgment ordering the payment of future damages by periodic payments the:

1. Recipient of the payments;
2. Dollar amount of the payments;
3. Interval between payments; and
4. Number of payments or the period of time over which payments must be made.

E. The entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the plaintiff.

F. As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment. The judgment shall provide for payments to be funded by:

1. An annuity contract issued by a company licensed to do business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;
2. An obligation of the United States;
3. Applicable and collectible liability insurance from one or more qualified insurers; or
4. Any other satisfactory form of funding approved by the court.

G. On termination of periodic payments of future damages, the court shall order the return of the security, or as much as remains, to the defendant.

H. On the death of the recipient, money damages awarded for loss of future earnings shall continue to be paid to the estate of the recipient of the award without reduction. Following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant health care provider to make further payments ends and any security given reverts to the defendant.

I. For purposes of computing the award of attorney fees when the plaintiff is awarded a recovery that will be paid in periodic payments, the court shall place a total value on the payments based on the plaintiff's projected life expectancy and reduce the amount to present value.

J. Each periodic payment shall include the principal owed to the party plus interest at the rate applicable for postjudgment interest as provided by law.

Added by Laws 2011, c. 147, § 1, eff. Nov. 1, 2011.

§23-10. Recovery of damages by political subdivisions from parents of children under age of eighteen.

A. The state or any county, city, town, municipal corporation or school district, or any person, corporation or organization, shall be entitled to recover damages in a court of competent jurisdiction from a parent or parents of any child under the age of eighteen (18) years when the child is living with the parent or parents at the time of the act, and commits any criminal or delinquent act resulting in bodily injury to any person or damage to or larceny of any property, real, personal or mixed, belonging to the state or a county, city, town, municipal corporation, school district, person, corporation or organization. The amount of damages awarded pursuant to this

subsection shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).

B. Any victim, or the victim's representative in the event of the victim's death, shall be entitled to recover damages in a court of competent jurisdiction from any person convicted of a violation of subsection B of Section 1273 of Title 21 of the Oklahoma Statutes or as otherwise allowed by law.

Added by Laws 1957, p. 19, § 1. Amended by Laws 1971, c. 62, § 1, emerg. eff. April 7, 1971; Laws 1977, c. 212, § 1, eff. Jan. 1, 1978; Laws 1979, c. 238, § 1; Laws 1982, c. 19, § 1, operative Oct. 1, 1982; Laws 2000, c. 382, § 11, eff. July 1, 2000.

§23-11. Repealed by Laws 1979, c. 38, § 4, operative July 1, 1979.

§23-12. Defense of contributory negligence or assumption of risk as question of fact.

The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact, and shall at all times be left to the jury, unless a jury is waived by the parties.

Added by Laws 1973, c. 30, § 2.

§23-13. Comparative negligence.

In all actions hereafter brought, whether arising before or after the effective date of this act, for negligence resulting in personal injuries or wrongful death, or injury to property, contributory negligence shall not bar a recovery, unless any negligence of the person so injured, damaged or killed, is of greater degree than any negligence of the person, firm or corporation causing such damage, or unless any negligence of the person so injured, damaged or killed, is of greater degree than the combined negligence of any persons, firms or corporations causing such damage.

Added by Laws 1979, c. 38, § 1, operative July 1, 1979.

§23-14. Damages diminished in proportion to contributory negligence.

Where such contributory negligence is shown on the part of the person injured, damaged or killed, the amount of the recovery shall be diminished in proportion to such person's contributory negligence.

Added by Laws 1979, c. 38, § 2, operative July 1, 1979.

§23-15. Joint tortfeasor liability - Several only.

A. In any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

B. This section shall not apply to actions brought by or on behalf of the state.

C. The provisions of this section shall apply to all civil actions based on fault and not arising out of contract that accrue on or after November 1, 2011.

Added by Laws 2004, c. 368, § 18, eff. Nov. 1, 2004. Amended by Laws 2009, c. 228, § 23, eff. Nov. 1, 2009; Laws 2011, c. 15, § 1, eff. Nov. 1, 2011.

§23-21. General rule as to damages.

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin.

R.L. 1910, § 2852.

§23-22. Breach of obligation to pay money.

The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

R.L. 1910, § 2853.

§23-23. Repealed by Laws 1996, c. 56, § 30, emerg. eff. April 8, 1996.

§23-24. Repealed by Laws 1996, c. 56, § 30, emerg. eff. April 8, 1996.

§23-25. Breach of covenants in grants.

The detriment caused by the breach of a covenant of seizing, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore, at the time of the grant, to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six (6) years; and,

3. Any expenses properly incurred by the covenantee in defending his possession.

R.L. 1910, § 2856.

§23-26. Breach of covenants against encumbrances.

The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property, is deemed to

be the amount which has been actually expended by the covenantee in extinguishment of either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case, interest on a like amount.
R.L. 1910, § 2857.

§23-27. Breach of agreement to convey.

The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

R.L. 1910, § 2858.

§23-28. Breach of agreement to buy.

The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

R.L. 1910, § 2859.

§23-29. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-30. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-31. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-32. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-33. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-34. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-35. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-36. Breach of carrier's obligation to receive.

The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage, and the amount it would be necessary to pay for the same service when it ought to be performed.

R.L. 1910, § 2867.

§23-37. Breach of carrier's obligation to deliver.

The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

R.L. 1910, § 2868.

§23-38. Detriment caused by carrier's delay.

The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

R.L. 1910, § 2869.

§23-39. Breach of warranty of agent's authority.

The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

R.L. 1910, § 2870.

§23-40. Breach of promise to marry.

The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

R.L. 1910, § 2871.

§23-61. Obligation not arising from contract.

For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not.

R.L. 1910, § 2872.

§23-61.1. Jury to return general verdict.

In all jury trials the jury shall return a general verdict, and no law in force nor any law hereafter enacted shall require the court to direct the jury to make findings of particular questions of fact, but the court, in its discretion, may direct such special findings. Added by Laws 1986, c. 315, § 2, eff. Nov. 1, 1986.

§23-61.2. No limitation on bodily injury economic loss compensation - Limitation on bodily injury noneconomic loss compensation - Required findings.

A. In any civil action arising from a claimed bodily injury, the amount of compensation which the trier of fact may award a plaintiff for economic loss shall not be subject to any limitation.

B. Except as provided in subsection C of this section, in any civil action arising from a claimed bodily injury, the amount of compensation which a trier of fact may award a plaintiff for noneconomic loss shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00), regardless of the number of parties against whom the action is brought or the number of actions brought.

C. Notwithstanding subsection B of this section, there shall be no limit on the amount of noneconomic damages which the trier of fact may award the plaintiff in a civil action arising from a claimed bodily injury resulting from negligence if the judge and jury finds, by clear and convincing evidence, that the defendant's acts or failures to act were:

1. In reckless disregard for the rights of others;
2. Grossly negligent;
3. Fraudulent; or
4. Intentional or with malice.

D. In the trial of a civil action arising from claimed bodily injury, if the verdict is for the plaintiff, the court, in a nonjury trial, shall make findings of fact, and the jury, in a trial by jury, shall return a general verdict accompanied by answers to interrogatories, which shall specify all of the following:

1. The total compensatory damages recoverable by the plaintiff;
2. That portion of the total compensatory damages representing the plaintiff's economic loss;
3. That portion of the total compensatory damages representing the plaintiff's noneconomic loss; and
4. If alleged, whether the conduct of the defendant was or

amounted to:

- a. reckless disregard for the rights of others,
- b. gross negligence,
- c. fraud, or
- d. intentional or malicious conduct.

E. In any civil action to recover damages arising from claimed bodily injury, after the trier of fact makes the findings required by

subsection D of this section, the court shall enter judgment in favor of the plaintiff for economic damages in the amount determined pursuant to paragraph 2 of subsection D of this section, and subject to paragraph 4 of subsection D of this section, the court shall enter a judgment in favor of the plaintiff for noneconomic damages. Except as provided in subsection C of this section, in no event shall a judgment for noneconomic damages exceed the maximum recoverable amounts set forth in subsection B of this section. Subsection B of this section shall be applied in a jury trial only after the trier of fact has made its factual findings and determinations as to the amount of the plaintiff's damages.

F. In any civil action arising from claimed bodily injury which is tried to a jury, the jury shall not be instructed with respect to the limit on noneconomic damages set forth in subsection B of this section, nor shall counsel for any party nor any witness inform the jury or potential jurors of such limitations.

G. This section shall not apply to actions brought under The Governmental Tort Claims Act or actions for wrongful death.

H. As used in this section:

1. "Bodily injury" means actual physical injury to the body of a person and sickness or disease resulting therefrom;

2. "Economic damages" means any type of pecuniary harm including, but not limited to:

a. all wages, salaries or other compensation lost as a result of a bodily injury that is the subject of a civil action,

b. all costs incurred for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations as a result of a bodily injury that is the subject of a civil action, or

c. any other costs incurred as a result of a bodily injury that is the subject of a civil action;

3. "Fraudulent" or "fraud" means "actual fraud" as defined pursuant to Section 58 of Title 15 of the Oklahoma Statutes;

4. "Gross negligence" means the want of slight care and diligence;

5. "Malice" involves hatred, spite or ill will, or the doing of a wrongful act intentionally without just cause or excuse;

6. "Noneconomic damages" means nonpecuniary harm that arises from a bodily injury that is the subject of a civil action, including damages for pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, education, disfigurement, mental anguish and any other intangible loss; and

7. "Reckless disregard of another's rights" shall have the same meaning as willful and wanton conduct and shall mean that the defendant was either aware, or did not care, that there was a

substantial and unnecessary risk that his, her or its conduct would cause serious injury to others. In order for the conduct to be in reckless disregard of another's rights, it must have been unreasonable under the circumstances and there must have been a high probability that the conduct would cause serious harm to another person.

I. This section shall apply to civil actions filed on or after November 1, 2011.

Added by Laws 2009, c. 228, § 24, eff. Nov. 1, 2009. Amended by Laws 2011, c. 14, § 1, eff. Nov. 1, 2011.

§23-62. Wrongful occupation.

The detriment caused by the wrongful occupation of real property, in cases not embraced in Sections 2874, 2880, 2881 and 2882, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six (6) years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

R.L. 1910, § 2873.

§23-63. Detainer by trustee.

For willfully holding over real property by a person who entered upon the same as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

R.L. 1910, § 2874.

§23-64. Conversion of personalty.

The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of the conversion with the interest from that time; or,

2. Where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,

3. A fair compensation for the time and money properly expended in pursuit of the property.

R.L. 1910, § 2875.

§23-65. Presumption cannot be repelled.

The presumption declared by the last section cannot be repelled in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

R.L. 1910, § 2876.

§23-66. Damages to one having lien on personal property.

One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by the second preceding section for loss of time and expenses.

R.L. 1910, § 2877.

§23-67. Seduction.

The damages for seduction rest in the sound discretion of the jury.

R.L. 1910, § 2878.

§23-68. Exemplary damages for injuries to animals.

For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

R.L. 1910, § 2879.

§23-68.1. Damages for certain acts with regard to certain animal facilities.

A. Any person who has been damaged by reason of any violation of Section 3 of this act, may bring an action in the district court against the person causing the damage or persons conspiring to cause the damage to recover an amount equal to all actual damages.

B. Nothing in this act shall be construed to affect any other rights of a person who has been damaged by reason of a violation of this act.

Added by Laws 1991, c. 115, § 4, emerg. eff. April 25, 1991.

§23-69. Double rent as damages.

For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

R.L. 1910, § 2880.

§23-70. Willful holding over real property.

For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

R.L. 1910, § 2881.

§23-71. Forcible exclusion from real property.

For forcibly ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

R.L. 1910, § 2882.

§23-72. Wrongful injuries to timber.

A. For wrongful injuries to timber upon the land of another, or removal thereof, the measure of damages is not less than three (3) times nor more than ten (10) times such a sum as would compensate for the actual detriment, unless:

1. The trespass was casual and involuntary;

2. Committed under the belief that the timber or land belonged to the trespasser; or

3. The timber was taken by the authority of highway officers for the purposes of a highway, in which case the damages are a sum equal to the actual detriment.

B. The prevailing party shall be entitled to costs and attorneys fees.

C. For purposes of this section, the term "timber" shall be defined as the term is defined by Section 1301-102 of Title 2 of the Oklahoma Statutes.

R.L. 1910, § 2883. Amended by Laws 1995, c. 238, § 10, eff. Nov. 1, 1995.

§23-91. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102).

§23-92. Value to buyer or owner.

In estimating damages, except as provided by the two following sections, the value of property to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing, in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

R.L. 1910, § 2885.

§23-93. Peculiar value.

Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

R.L. 1910, § 2886.

§23-94. Value of title papers.

For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

R.L. 1910, § 2887.

§23-95. Exclusive of exemplary damages.

The damages prescribed by this article are exclusive of exemplary damages and interest, except where those are expressly mentioned.

R.L. 1910, § 2888.

§23-96. Limitation of amount of damages.

Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides, except in cases where recovery may be for exemplary damages and penal damages, and in Sections 2871 and 2878.

R.L. 1910, § 2889.

§23-97. Damages must be reasonable.

Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

R.L. 1910, § 2890.

§23-98. Nominal damages.

When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

R.L. 1910, § 2891.

§23-103. Actions asserted in bad faith - Reimbursement by nonprevailing party of costs and fees.

In any action for damages for personal injury except injury resulting in death, or in any action for damages to personal rights the court shall, subsequent to adjudication on the merits and upon motion of the prevailing party, determine whether a claim or defense asserted in the action by a nonprevailing party was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party an amount not to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs, including attorneys fees, incurred with respect to such claim or defense.

Added by Laws 1986, c. 315, § 3, eff. Nov. 1, 1986.

§23-111. Definitions.

As used in this act:

1. "Affiliated person" means a person under common ownership or control of an intended recipient;

2. "Intended recipient" means a person who purchases, rents, leases, or otherwise obtains a product or service in the commercial market that is not for resale in the ordinary business and that is, or later becomes, the subject of a patent infringement allegation; and

3. "Person" means any natural person, partnership, corporation, company, trust, business entity or association, and any agent, employee, partner, officer, director, member, associate, or trustee thereof.

Added by Laws 2014, c. 305, § 1, eff. Nov. 1, 2014.

§23-112. Prohibited communications related to patent infringement - Exceptions.

A. No person shall, in connection with the assertion of a United States patent, send or cause any person to send any written or electronic communication that states that the intended recipient or any affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person, if:

1. The communication falsely states that litigation has been filed against the recipient, or threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved and there is a consistent pattern of such threats having been issued and no litigation having been filed;

2. The communication falsely states that litigation has been filed against the intended recipient or any affiliated person; or

3. The assertions contained in the communication lack a reasonable basis in fact or law because:

- a. the person asserting the patent is not a person, or does not represent a person, with the current right to license the patent to, or to enforce the patent against, the intended recipient or any affiliated person,
- b. the communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final, unappealable or unappealed judicial or administrative decision,
- c. the communication seeks compensation on account of activities undertaken after the patent has expired, or
- d. the content of the communication fails to include such information necessary to inform an intended recipient or any affiliated person about the patent assertion by failing to include any one of the following:

- (1) the identity of the person asserting a right to license the patent to or enforce the patent against the intended recipient or any affiliated person,
- (2) the patent number issued by the United States Patent and Trademark Office alleged to have been infringed, or
- (3) the factual allegations concerning the specific areas in which the intended recipient or affiliated person's products, services, or technology infringed the patent or are covered by the claims in the patent.

B. Nothing in this section shall be construed to be a violation of this chapter for any person who owns or has the right to license or enforce a patent to:

1. Advise others of that ownership or right of license or enforcement;
 2. Communicate to others that a patent is available for license or sale;
 3. Notify another of the infringement of the patent; or
 4. Seek compensation for past or present infringement, or for a license to the patent,
- provided that the person is not acting in bad faith.

C. The provisions of this act shall not apply to any written or electronic communication sent by:

1. Any owner of a patent who is using the patent in connection with substantial research, development, production, manufacturing, processing or delivery of products or materials;
2. Any institution of higher education; or
3. Any technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

D. The provisions of this act shall not apply to a demand letter or civil action that includes a claim for relief arising under 35 U.S.C., Section 271(e)(2).

Added by Laws 2014, c. 305, § 2, eff. Nov. 1, 2014.

§23-113. Enforcement by Attorney General.

A. The Attorney General shall have the authority to enforce this act and conduct civil investigations and bring civil actions for violations of this act.

B. In an action brought by the Attorney General under this act, the court may award or impose any relief available under Section 4 of this act.

C. In addition to the relief provided for in Section 4 of this act, upon a motion by the Attorney General and a finding by the court that there is a reasonable likelihood that a person violated Section

2 of this act, the court may require the person to post a bond in an amount equal to a good-faith estimate of the costs to litigate a claim and amounts reasonably likely to be recovered if an action were to be brought pursuant to the provisions of this section. A hearing shall be held upon request of either party.

Added by Laws 2014, c. 305, § 3, eff. Nov. 1, 2014.

§23-114. Relief to prevailing plaintiff.

A court may award the following relief to a plaintiff who prevails in an action brought pursuant to this act:

1. Damages;
2. Costs and fees, including reasonable attorney fees; and
3. Punitive damages in an amount equal to Fifty Thousand Dollars (\$50,000.00), or three (3) times the total damages, costs and fees, whichever is greater.

Added by Laws 2014, c. 305, § 4, eff. Nov. 1, 2014.