

## North Carolina Pattern Jury Instructions

### NC Pattern Jury Instructions for Civil Cases

#### Part 4. Miscellaneous Torts

#### Chapter 12. Damages

*Includes 2011 changes*

#### **N.C.P.I. Civil 810.66. Property Damages - No Market Value, Repair or Replacement - Recovery of Intrinsic Actual Value**

*NOTE WELL: Use this instruction where damages measured by market value would not adequately compensate the plaintiff and repair or replacement would be impossible (as where items such as a family portrait are destroyed) or economically wasteful (as where obsolete property is damaged beyond economically feasible repair). (fn1)*

The plaintiff is entitled to recover the actual value of *his* property immediately before it was damaged (less the salvage value, if any, that it had after its damage). The actual value of any property is its intrinsic value; that is, its reasonable value to its owner. **(fn2)** In determining the actual value of the plaintiff's property, you may consider:

[the original cost of (labor and materials used in producing) the *(specify property)*]

[the age of the *(specify property)*]

[the degree to which the *(specify property)* has been used]

[the condition of the *(specify property)* just before it was damaged]

[the uniqueness of the *(specify property)*]

[the practicability of [repairing] [reconstructing] the *(specify property)*]

[the cost of replacing the *(specify property)* (taking into account its depreciation; that is, the degree to which it had been used up or worn out with age)]

[the insured value of the property]**(fn3)**

[the opinion of the plaintiff as to its value]

[the opinion of any experts as to its value]

[*state other appropriate factors supported by the evidence*]**(fn4)**].

You will not consider any fanciful, irrational or purely

emotional value that *(specify property)* may have had.**(fn5)**

#### FOOTNOTES

FOOTNOTE 1 *William F. Freeman, Inc. v. Alderman Photo Co.*, 89 N.C. App. 73, 365 S.E.2d 183 (1988). Even though an item has no measurable market value when tortiously destroyed, it nonetheless may have intrinsic value to its owner, which is recoverable.

FOOTNOTE 2 *Id.*

FOOTNOTE 3 *William F. Freeman, Inc.*, 89 N.C. App. at 77, 365 S.E.2d at 186.

FOOTNOTE 4 Other factors could include the earnings generated by the property, the capitalized value of those earnings, the market value (where there is a market at some other place) and cost of transportation, the market value where there will be a market at some other time (such as for crops, for which cost of harvesting, etc. would also be a consideration). See *Freeman, supra*, and *Thomason v. Hackney and Moale Co.*, 159 N.C. 299, 74 S.E. 1022 (1912).

FOOTNOTE 5 *Freeman, supra*. See also *Thomason, supra* ("damages which are merely imaginary or have no real or substantial existence, should not be allowed").

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