

1803 PROPERTY: DESTRUCTION OF PROPERTY

Question ____ asks what amount will reasonably compensate (plaintiff) for the destruction of (his) (her) _____ as a result of _____.

When property, such as (type), has been destroyed, compensation to the owner is measured by the fair market value of the property at the time and place of its destruction. "Fair market value" is the amount property will sell for where the owner is willing but not required to sell the property to a buyer willing but not required to buy the property.

[Note: Use this paragraph when there is a question whether the property had a market value: (If) (Since) the property had no market value at the time of its destruction, compensation to the owner is measured by the value of the property to the owner at the time of its destruction. In determining the value of the (property) to the (plaintiff), you should consider: the nature of the property, its use, age, original cost and depreciation, the cost to replace the property [if the property can be replaced], and all other facts and circumstances received in evidence which bear on the value of the property to the (plaintiff).]

[You should not consider any sentimental value which (plaintiff) may have attached to the property.]

COMMENT

This instruction and comment were originally published in 1963. They were revised in 1983, 1997, and 2010.

Market Value. Paragraph three should be used where there is a question whether the property had a market value. If the court determines as a matter of law that the property had no market value, paragraph two should not be used and the word "since" should be substituted for the word "if" at the beginning of paragraph three. The last sentence in paragraph three should be used only if appropriate.

Partial destruction is not applicable to cases of total destruction. Steel v. Ritter, 16 Wis.2d 281, 114 N.W.2d 436 (1962).

See Schwalbach v. Antigo Elec. & Gas, Inc., 27 Wis.2d 651, 135 N.W.2d 263 (1965). Harvey v. Wheeler Transfer and Storage Co., 227 Wis. 36, 277 N.W. 627 (1938); Webber v. Wisconsin Power & Light Co., 215 Wis. 480, 255 N.W. 261 (1934); Allen v. Chicago N.W. Ry., 145 Wis. 263, 129 N.W. 1094 (1911).

For a discussion of determining damages to property which has no market value, see Town of Fifield v. State Farm Ins. Co., 119 Wis.2d 220, 349 N.W.2d 684 (1984).

Destruction of Livestock. The basic measure of damages for the destruction of livestock is the animal's market value, determined by replacement cost, with a reduction of any salvage value. Nelson v. Boulay Bros. Co., 27 Wis.2d 637, 643-44, 135 N.W.2d 254 (1965); Rosche v. Wayne Feed, Continental Grain, 152 Wis.2d 78, 447 N.W.2d 94 (Ct. App. 1989). Damages for loss of future births are not recoverable since to do so would result in a duplicate recovery. The afflicted animal's ability to reproduce is considered when the fact finder assesses its market value. Nelson v. Boulay Bros. Co., supra at 644. Lost profit is not the basic measure of damages for livestock that are injured or destroyed. Rosche, supra.

Injury to Livestock. The basic measure of damages for an injured animal is the difference between its market value before and after the injury. Lost profit is not the basic measure of damages for livestock that are injured or destroyed. Rosche, supra.