

### 13-1827. Punitive damages.

(Introduction)

In this case, \_\_\_\_\_ (*name of party making claim for punitive damages*) seeks to recover punitive damages from \_\_\_\_\_ (*name of party against whom punitive damages are sought*). You may consider punitive damages only if you find that \_\_\_\_\_ (*party making claim*) should recover compensatory [or nominal] damages.

(Theories of Liability)

[[1.] If you find that the conduct of \_\_\_\_\_ (*name of party against whom direct liability for punitive damages is asserted*) was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], then you may award punitive damages against [him] [her] [it].]

[[2.] [Also] [I]f you find that the conduct of \_\_\_\_\_ (*name of agent or employee who was a tortfeasor*) was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], you may award punitive damages against \_\_\_\_\_ (*name of principal or employer party against whom liability for punitive damages is asserted*) if:

(a) \_\_\_\_\_ (*name of agent or employee*) was acting in the scope of [his] [her] employment with \_\_\_\_\_ (*name of principal or employer party against whom liability for punitive damages is asserted*) and had sufficient discretionary or policy-making authority to speak and act for [him] [her] [it] with regard to the conduct at issue, independently of higher authority; [or if]

(b) \_\_\_\_\_ (*name of principal or employer party against whom liability for punitive damages is asserted*) in some [other] way [authorized,] [participated in] [or] [ratified] the conduct of \_\_\_\_\_ (*name of agent or employee*).]

[[3.] If you find that the conduct of the \_\_\_\_\_ (*agents or employees*), taken as a whole, showed that \_\_\_\_\_ (*name of principal or employer against whom liability for punitive damages is asserted*) was [malicious] [willful] [reckless] [wanton] [or] [in bad faith] you may award punitive damages against \_\_\_\_\_ (*name of principal or employer party*).]

(Definitions)

Malicious conduct is the intentional doing of a wrongful act with knowledge that the act was wrongful.

Willful conduct is the intentional doing of an act with knowledge that harm may result.

Reckless conduct is the intentional doing of an act with utter indifference to the consequences. When there is a high risk of danger, conduct that breaches the duty of care is more likely to demonstrate recklessness.

Wanton conduct is the doing of an act with utter indifference to or conscious disregard for a person's [rights] [safety].

(Conclusion)

Punitive damages are awarded for the limited purposes of punishment and to deter others from the commission of like offenses. The amount of punitive damages must be based on reason and justice taking into account all the circumstances,

including the nature and enormity of the wrong and such aggravating and mitigating circumstances as may be shown. The property or wealth of the defendant is a legitimate factor for your consideration. The amount awarded, if any, must be reasonably related to the injury and to any damages given as compensation and not disproportionate to the circumstances.

## USE NOTES

This instruction provides a general framework for a punitive damage instruction usable in any civil action involving claims for punitive damages. Some other chapters of UJI Civil contain punitive damage instructions specifically applicable to particular causes of action which should be used where appropriate. See, e.g., UJI 13-861 (contracts) and 13-1718 NMRA (insurance bad faith).

This instruction is divided into sections by headers and numbers for ease of reference in these use notes. The headers should not be included in the instruction as given to the jury, although some form of numbering may be helpful if there are multiple claims for punitive damages. Within each section, bracketed language should be selected as appropriate.

The sections labeled Introduction and Conclusion should always be given. UJI 13-1832 NMRA must be given following this instruction if the bracketed reference to nominal damages is included in the "Introduction." Where the case includes a claim for punitive damages against an individual who directly injured the plaintiff, Paragraph 1 should be given. Paragraph (2)(a) applies when the person who directly injured the plaintiff had sufficient discretionary or policy-making authority to speak or act for the principal or employer with regard to the conduct at issue. Paragraph 2(b) applies when the person who directly injured the plaintiff did not have sufficient authority, but the principal or employer authorized, ratified or participated in the act. Paragraph 3 applies when the cumulative conduct of the agents or employees show that the principal or employer had a culpable mental state, irrespective of whether the party who directly harmed the plaintiff had a culpable mental state. *Grassie v. Roswell Hosp. Corp.*, 2011-NMCA-024, 150 N.M. 283, 258 P.3d 1075; see also *Clay v. Ferrellgas, Inc.*, 118 N.M. 266, 881 P.2d 11 (1994). The description of agents or employees can include specific names, if available, categories of agents or employees, or generic references to agents or employees. Depending on the facts and pleadings, more than one claim for punitive damages may be included in the same case, against the same or different parties. Portions of Paragraphs 2 and 3 may not need to be given if the court determines that the elements addressed in these subparagraphs (scope of authority and managerial capacity, or authorization, participation, ratification) have been established as a matter of law. Appropriate entries from the "Definitions" section should be given depending on whether the offending conduct is alleged to be malicious, willful, etc.

Separate verdicts must be used for punitive damages when there is more than one party against whom punitive damages are sought.

In an unusual or complex case, it may be appropriate to modify this general form of instruction to instruct the jury clearly and correctly on the law. See Committee Commentary.

[Adopted, effective November 1, 1991; as amended, effective July 1, 1998; as amended by Supreme Court Order No. 08-8300-021, effective September 10, 2008; as amended

by Supreme Court Order No. 13-8300-021, effective for all cases pending or filed on or after December 31, 2013.]