



## **Tort Reform**

Courts are classified and divided according to several methods. While in some states there are two types of state courts-the civil courts and the criminal courts-in most states, the two courts are combined and known as the trial court, a court of general jurisdiction that handles both types of cases.

The issue of medical malpractice resides in the civil court's jurisdiction. Although the trials for medical malpractice are still considered civil trials, the damages being asked for and granted have taken on the characteristics of punitive damages, awards that are used to "punish" or "penalize" physicians for their actions. Punishment is generally defined as any fine, penalty or confinement inflicted upon a person who has committed a crime. However, punitive damages can also be used to compensate for aggravations of the original wrong and to make an example of the defendant to deter others from similar offensive conduct.

Originally inherent in a claim for personal injuries is the principle that compensation for such injuries is intended to restore, as far as practically possible, the legitimately injured person to his or her condition prior to the injury. These claims include economic and non-economic damages.

The damages recoverable in a wrongful death action are limited by statute to fair and just compensation for the pecuniary (that which can be valued in money) injuries suffered by the next of kin of a decedent for whose benefit the action is started. These compensatory damages, by statute, should be limited to loss of support, services, voluntary assistance, the prospect of inheritance, and medical and funeral expenses incidental to death. A variety of factors are used to determine the value of pecuniary loss, such as decedent's age, sex, relationship to the person seeking recovery, earning capacity, life expectancy, health, and intelligence, as well as the number and circumstances of his heirs entitled to share in the distribution of his estate. Many of these pecuniary damages cannot be quantifiably addressed.

## Tort Reform Definitions

### *Economic Damages vs. Non-Economic Damages:*

The terms are deliberately confused and misrepresented. Economic damages include far more than lost wages and health care.

### *Economic Damages:*

Awards for Economic Damages include quantifiable items. They include, but are not limited to, lost wages and benefits, pensions, 401 K plans, insurance, lost earning capacity if an injury diminishes future wages and job prospects; all past and future medical expenses including treatment by health care providers, medication, hospital stays, therapy, long-term care, home health care; assisted living devices such as specially designed vehicles (transportation), tub railings, wider doors; child care to replace care given by a primary care giver; household services like cleaning, cooking and lawn mowing; time taken by a patient to care for himself; psychological counseling for the victim and family members; and more.

In essence, economic damages/losses include but are not limited to future earnings, medical costs, dental care, rehabilitation services, and custodial care. Experts quantify these losses and testify to fair compensation. The legitimately injured victim is taken care of for life, if necessary. These damages are based on demonstrable out-of-pocket expenses or losses. Unfortunately even these losses can be carried to an extreme if the plaintiff's attorney uses unreasonable or manipulated data.

### *Non-economic Damages:*

Non-economic damages are non-quantifiable. They are without definitive measure. Included in this category are conscious pain and suffering, mental anguish, loss of conjugal services of a spouse, loss of bodily functions such as taste, feel, hearing and sight, loss of ability to enjoy certain of life's pleasures such as dancing, bowling, etc., the development of fears and phobias, and many other non-quantifiable items. The awards can only be based on subjective claims.

