

## **Civ. J.I. 13.1801 Liability must be determined before damages.**

### **13-1801. Liability must be determined before damages.**

Statute text

**You are not to engage in any discussion of damages unless you have first determined that there is liability, as elsewhere covered in these instructions.**

**The fact that you are given instructions on damages is not to be taken as an indication as to whether the court thinks damages should or should not be awarded.**

#### DIRECTIONS FOR USE

This instruction should be given in every case where the jury is permitted to assess damages.

This instruction should precede all damages instructions.

Annotations

**Committee comment.** - Experience has proven that the deliberations of a jury will be expedited if they clearly understand this rule of law.

In personal injury litigation, it is generally recognized that the jury favors the plaintiff from the outset of the case due to various reasons, the least of which is not sympathy. It is further recognized that the rule of law which states that the defendant is presumed innocent and that the burden of proof is upon the plaintiff, in actual practice before a jury is a myth. Therefore, it is the duty of the trial court to give clear admonitions to the jury in an attempt to give meaning to the rule of law.

This instruction has been cited in the following cases reported by the New Mexico appellate courts, to wit: *Higgins v. Hermes*, 89 N.M. 379, 552 P.2d 1227 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); *Webb v. Webb*, 87 N.M. 353, 533 P.2d 586 (1975); *Demers v. Gerety*, 87 N.M. 52, 529 P.2d 278 (Ct. App.), cert. denied, 87 N.M. 47, 529 P.2d 273 (1974); *Herrera v. Springer Corp.*, 85 N.M. 6, 508 P.2d 1303 (Ct. App.), rev'd on other grounds, 85 N.M. 201, 510 P.2d 1072 (1973); *Tafoya v. Whitson*, 83 N.M. 23, 487 P.2d 1093 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971); *Clinard v. Southern Pac. Co.*, 82 N.M. 55, 475 P.2d 321 (1970); *Naumburg v. Wagner*, 81 N.M. 242, 465 P.2d 521 (Ct. App. 1970).

This instruction, if properly understood, should speed the jury in their job and facilitate the administration of

justice.

**Library references.** - 25A C.J.S. Damages § 177 et seq.

#### COMPILER'S ANNOTATIONS

**Liability and damages are separate aspects of verdict.** - A verdict in a civil damage action has two separate aspects - liability and the amount of damages - and there is a broad distinction between the two. *Sanchez v. Martinez*, 99 N.M. 66, 653 P.2d 897 (Ct. App. 1982).

**Failure to instruct constituting harmless error.** - Where the trial court gave an instruction in accordance with UJI 13-1801 in a wrongful death and medical malpractice action, but failed to give an instruction based on UJI 13-2008 (no damages unless liability), the error was harmless, in view of the court's use of the similar language contained in UJI 13-1830 in charging the jury. *Sutherlin v. Fenenga*, 111 N.M. 767, 810 P.2d 353 (Ct. App. 1991).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 75 Am. Jur. 2d Trial §§ 138 to 140.

Necessity of determination or showing of liability for punitive damages before discovery or reception of evidence of defendant's wealth, 32 A.L.R.4th 432.

88 C.J.S. Trial § 297.

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