

PJC 313.5 Additional Categories of Monetary Damages That May Be Recoverable (Comment)

In addition to compensation for permanent or temporary injury to the real property, and in addition to the value of minerals produced in connection with a trespass (see PJC 302.4 and 313.6–313.9), a plaintiff may also be entitled to recover for personal injuries and for harm to personal property that occur as a result of the wrongful conduct. For example, the Texas Supreme Court has noted that “considerable authority” exists for the proposition that a nuisance may give rise to damages for “annoyance and discomfiture.” Because no such damages were sought in *Crosstex*, the court did not decide the scope of these damages or determine for what causes of action they are recoverable. *Crosstex North Texas Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 610 n.21 (Tex. 2016); see also *Schneider National Carriers, Inc. v. Bates*, 147 S.W.3d 264, 276 n.53 (Tex. 2004); *Vestal v. Gulf Oil Corp.*, 235 S.W.2d 440, 441–42 (Tex. 1951); *Vann v. Bowie Sewerage Co.*, 90 S.W.2d 561, 563 (Tex. Comm’n App. 1936); *City of Uvalde v. Crow*, 713 S.W.2d 154, 158–59 (Tex. App.—Texarkana 1986, writ ref’d n.r.e.).

Because emotional distress, mental anguish, and punitive damages are not recoverable if based solely on a claim of negligent damage to property, a separate question on whether the property damage was caused intentionally or maliciously may be needed. *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 922 (Tex. 2013) (noting that if a trespass is deliberate and willful and there is actual property damage, recovery for emotional distress and mental anguish is possible, along with punitive damages); *Tyler v. Likes*, 962 S.W.2d 489, 497 (Tex. 1997) (holding that mental anguish damages are not recoverable for negligent nuisance and reserving the question whether mental anguish damages would be recoverable with heightened levels of misconduct). For questions on these issues, which should be modified to fit the case facts, see the current edition of State Bar of Texas, *Texas Pattern Jury Charges—General Negligence, Intentional Personal Torts & Workers’ Compensation* ch. 28 (personal injuries).

For additional questions that may be applicable to cases involving personal injury and damages to personal property, see the other pattern jury charge volumes: *Texas Pattern Jury Charges—General Negligence, Intentional Personal Torts & Workers’ Compensation*, *Texas Pattern Jury Charges—Family & Probate*, *Texas Pattern Jury Charges—Business, Consumer, Insurance & Employment*, and *Texas Pattern Jury Charges—Malpractice, Premises & Products*.