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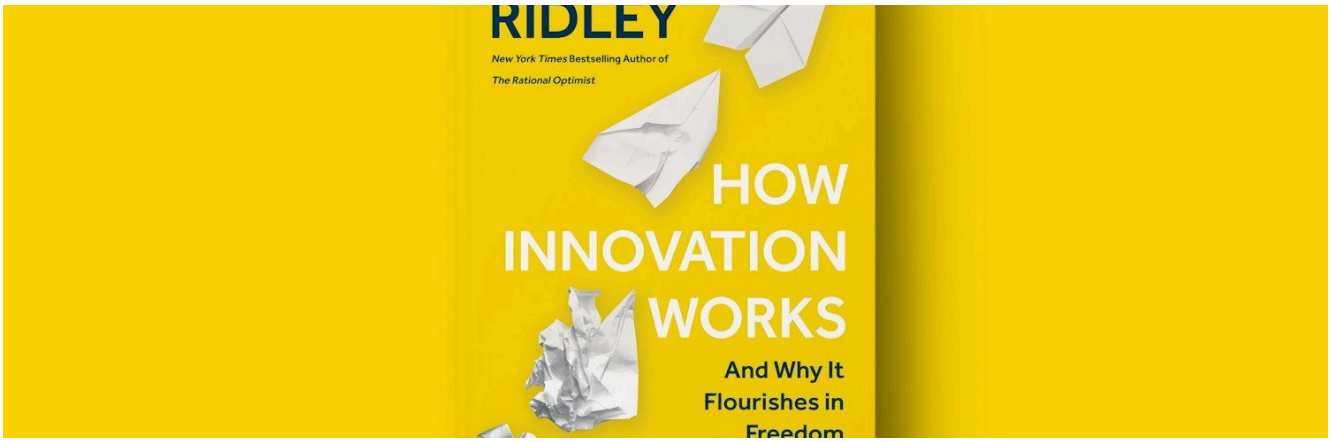
Damages — What's Recoverable in California

Grand Park Law Group · 2026



A.

Economic Damages and the Howell Cap

Plain-Language Summary: You can recover the actual money you have lost — medical bills, lost wages, future care — but California limits how much you can claim for medical bills to what was actually paid, not the higher "sticker price."

Economic damages in California personal injury cases include past and future medical expenses, past and future lost earnings and earning capacity, and incidental out-of-pocket losses. The most consequential modern development is the *Howell* line of authority.

In *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, the California Supreme Court held that an injured plaintiff whose medical providers, by prior agreement with the plaintiff's health insurer, accepted as full payment a sum less than the providers' billed charges may recover as economic damages no more than the amount actually paid or incurred. The "negotiated rate differential" — the gap between billed charges and the insurer-negotiated payment — is not a recoverable item of damages because the plaintiff has not suffered any loss in that amount. *Howell* did not disturb the collateral source rule with respect to the fact of insurance payment; it operated as a measure-of-damages holding rather than an admissibility rule.

Corenbaum v. Lampkin (2013) 215 Cal.App.4th 1308 extended *Howell* in two significant respects. First, *Corenbaum* held that evidence of the full billed amount of past medical services is inadmissible at trial, both as a measure of past medical damages and as a foundation for an expert's opinion on the reasonable value of future medical services. Second, the court held that the *Howell*

limitation applies to non-economic damage anchoring as well, prohibiting plaintiffs' counsel from arguing that the jury's pain-and-suffering award should bear some ratio to the inflated billed charges.

Code of Civil Procedure § 667.7 (the medical malpractice periodic-payment statute) does not generally apply outside the MICRA context, but parties to large catastrophic-injury settlements frequently structure future-damages payouts through annuities to address Medicare set-aside obligations and tax-efficiency objectives.

B. Non-Economic Damages

Non-economic damages compensate for pain, suffering, inconvenience, mental suffering, emotional distress, loss of consortium and society, disfigurement, and loss of enjoyment of life. Outside of MICRA-regulated medical malpractice claims, California imposes no statutory cap on non-economic damages in ordinary personal injury cases. The amount is committed to the sound discretion of the trier of fact, subject to remittitur for awards that "shock the conscience" or exceed any reasonable interpretation of the evidence. California has not adopted the "per diem" prohibition some jurisdictions impose; counsel may suggest specific dollar figures to the jury, subject to the *Corenbaum* limitation on anchoring to inflated medical bills.

C. Punitive Damages Under Civ. Code § 3294

Civil Code § 3294 authorizes punitive damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." The statute defines "malice" as conduct intended by the defendant to cause injury or "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." "Oppression" is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." "Fraud" requires intentional misrepresentation, deceit, or concealment of a material fact.

Three procedural features deserve emphasis. First, the elevated clear-and-convincing standard of proof applies at every stage and must be recited in the jury instructions. Second, Civ. Code § 3295(d) bifurcates the trial: evidence of the defendant's financial condition is inadmissible during the liability and compensatory-damages phase and is heard only after a finding of liability for punitive damages. Third, federal due process imposes substantive limits on punitive awards, with single-digit ratios to compensatory damages presumptively constitutional and higher ratios scrutinized under the *State Farm v. Campbell* framework.

D. Wrongful Death Heirs and Survival Actions (CCP § 377.60, § 377.34)

The statutory architecture of California death-related claims separates two distinct causes of action, brought by different claimants for different categories of damages. The wrongful death claim under CCP § 377.60 belongs to the heirs and compensates them for their loss of the decedent's support, services, society, comfort, and companionship; it does not reach the decedent's own pre-death pain. The survival claim under CCP § 377.34 is brought by the decedent's personal representative or successor in interest and pursues claims the decedent could have asserted in life. As noted above, the 2021 amendment to § 377.34 (SB 447) opened a statu-

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tory window — for actions filed on or after January 1, 2022, and before January 1, 2026 — permitting recovery of the decedent's pre-death pain, suffering, and disfigurement. The filing window closed January 1, 2026 absent legislative extension; practitioners must confirm current § 377.34 text at the time of filing.

Practice	Personal Injury
Topics	Damages · Howell · Punitive Damages · Wrongful Death
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