

804.04 EXCESSIVE FORCE IN MAKING ARREST - COMMON LAW CLAIM
FOR BATTERY - DAMAGES.

NOTE WELL: This series of instructions is designed to be used with 804.05 ("Excessive Force in Making Arrest - Common Law Claim for Battery - Sample Verdict Sheet").

NOTE WELL: If state law and federal law claims are submitted to the jury, and if damages are returned as to each, the plaintiff must elect between the awards.

The (state number) issue reads:

"What amount is the plaintiff entitled to recover as a result of the defendant's battery?"

If you have answered either the second issue or the third issue "Yes," then you will consider the remaining issue(s). If, on the other hand, you have answered the second issue and the third issue "No," then you will not consider the remaining issue(s).

If you have answered either the second issue (804.02-Excessive Force in Making Arrest - Common Law Claim for Battery - Issue of Lawfulness of Arrest) "Yes" or the third issue (804.03-Excessive Force in Making Arrest - Common Law Claim for Battery - Issue of Reasonableness of Force Used) "Yes" in favor of the plaintiff, then the plaintiff is entitled to recover nominal damages even without proof of actual damages.¹ Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the plaintiff.

The plaintiff may also be entitled to recover actual damages. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual damages caused by the defendant's battery.²

Actual damages are the fair compensation to be awarded to a person for any [past] [present] [future] injury caused by the wrongful

conduct of another.

In determining the amount, if any, to award the plaintiff for actual damages, you will consider the evidence you have heard as to (each of the following types of damages):

[medical expenses]
[loss of earnings]
[pain and suffering]
[scars or disfigurement]
[(partial) loss (of use) of part of the body]
[permanent injury]
[state any other type of damage supported by the evidence].

The total of all damages is to be awarded in one lump sum.³

I will now explain the law of damages as it relates to each of these types of damages.

NOTE WELL: Insert here the actual damages instructions found in Chapter 12 (810.04 - 810.22 et seq.) as supported by the evidence.

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages caused by the defendant's battery, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

NOTE WELL: If instruction regarding punitive damages is supported by the evidence, this instruction should be followed by 810.96 ("Punitive Damages-Liability of

Defendant”) and 810.98 (“Issue of Whether to Make Award and Amount of Award”). Note, too, that under N.C. Gen. Stat. § 1D-30, the issues of liability for and amount of punitive damages may be tried separately from the issues of liability for and amount of compensatory damages upon the motion of a defendant.

1 See *Hawkins v. Hawkins*, 331 N.C. 743, 745, 417 S.E.2d 447, 449 (1992) (where cause of action for battery is established, plaintiff is entitled to recover at least nominal damages).

2 Care should be exercised in choosing the appropriate standard. Negligence cases require proximate cause. Intentional torts generally do not require proximate cause.

3 *King v. Britt*, 267 N.C. 594, 597, 148 S.E.2d 594, 597 (1966); see also *Smith v. Corsat*, 260 N.C. 92, 131 S.E.2d 894 (1963).