

DEFENDANT'S PROPERTY DAMAGES (COUNTERCLAIM)--NO MARKET VALUE,
REPAIR OR REPLACEMENT--RECOVERY OF INTRINSIC ACTUAL VALUE.

NOTE WELL: Use this instruction where damages measured by market value would not adequately compensate the defendant and repair or replacement would be impossible (as where items such as a family portrait are destroyed) or economically wasteful (as where obsolete property is damaged beyond economically feasible repair).¹

The defendant is entitled to recover the actual value of his property immediately before it was damaged (less the salvage value, if any, that it had after its damage). The actual value of any property is its intrinsic value; that is, its reasonable value to its owner.² In determining the actual value of the defendant's property, you may consider:

[the original cost of (labor and materials used in producing) the (specify property)]

[the age of the (specify property)]

[the degree to which the (specify property) has been used]

[the condition of the (specify property) just before it was damaged]

[the uniqueness of the (specify property)]

¹*William F. Freeman, Inc. v. Alderman Photo Co.*, 89 N.C. App. 73, 365 S.E.2d 183 (1988). Even though an item has no measurable market value when tortiously destroyed, it nonetheless may have intrinsic value to its owner, which is recoverable.

²*Id.*

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(Continued).

[the practicability of [repairing] [reconstructing] the
(*specify property*)]

[the cost of replacing the (*specify property*) (taking into
account its depreciation; that is, the degree to which it had
been used up or worn out with age)]

[the insured value of the property]³

[the opinion of the defendant as to its value]

[the opinion of any experts as to its value]

[*state other appropriate factors supported by the
evidence*⁴].

You will not consider any fanciful, irrational or purely
emotional value that (*specify property*) may have had.⁵

³*William F. Freeman, Inc.*, 89 N.C. App. at 77, 365 S.E.2d at 186.

⁴Other factors could include the earnings generated by the property, the capitalized value of those earnings, the market value (where there is a market at some other place) and cost of transportation, the market value where there will be a market at some other time (such as for crops, for which cost of harvesting, etc. would also be a consideration). See *Freeman, supra*, and *Thomason v. Hackney and Moale Co.*, 159 N.C. 299, 74 S.E. 1022 (1912).

⁵*Freeman, supra*. See also *Thomason, supra* ("damages which are merely imaginary or have no real or substantial existence, should not be allowed").