

## 32.00

### INJURY TO SPOUSE AND FAMILY MEMBERS

#### INTRODUCTION

The instructions in this chapter apply to the recovery of consequential damages by a spouse and other family members in other than wrongful death cases. For instructions on wrongful death damages, *see* Chapter 31.

In Illinois both husband and wife may recover for loss of consortium. *Dini v. Naiditch*, 20 Ill.2d 406, 170 N.E.2d 881 (1960). The loss of consortium action must be joined with the principal action. *Brown v. Metzger*, 104 Ill.2d 30, 470 N.E.2d 302, 83 Ill.Dec. 344 (1984).

However, punitive damages are not allowed in an action for loss of consortium. *Hammond v. North Am. Asbestos Corp.*, 97 Ill.2d 195, 454 N.E.2d 210, 73 Ill.Dec. 350 (1983).

The “Family Expense Statute,” 750 ILCS 65/15 (1994), makes a spouse liable for medical and funeral expenses. Therefore, an independent cause of action may be maintained by a spouse for these expenses. *Saunders v. Schultz*, 20 Ill.2d 301, 170 N.E.2d 163 (1960); *Thompson v. City of Bushnell*, 346 Ill.App. 352, 105 N.E.2d 311 (3d Dist.1952).

A parent does not have a cause of action for loss of a child's society resulting from a negligently-caused non-fatal injury to the child. *Dralle v. Ruder*, 124 Ill.2d 61, 529 N.E.2d 209, 124 Ill.Dec. 389 (1988). Likewise, a child does not have a cause of action for loss of a parent's society resulting from a negligently-caused non-fatal injury to the parent. *Karagiannakos v. Gruber*, 274 Ill.App.3d 155, 653 N.E.2d 932, 210 Ill.Dec. 737 (1st Dist.1995).

### **32.01 Measure of Damages--Injury to Spouse or Family Member**

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages arising out of injuries to [his wife] [his child] [his parent] proved by the evidence to have resulted from the [negligence] [wrongful conduct] [of the defendant].

*[Here insert the elements of damage which have a basis in the evidence.]*

Whether any of these elements of damages has been proved by the evidence is for you to determine.

#### **Notes on Use**

The instruction cannot be given in the form set out above. It must be completed by selecting the elements of damages shown by evidence from among IPI 32.02, 32.03, 32.04, 32.05, and 32.06. The relevant elements of damage should be inserted between the two paragraphs of IPI 32.01.

The bracketed words “wrongful conduct” in the first paragraph may be used instead of “negligence” when the misconduct alleged includes a charge such as willful and wanton conduct or other fault.

Other phrases may be substituted for the bracketed terms “negligence” or “wrongful conduct” or “wrongful conduct of the defendant” where appropriate, such as “unreasonably dangerous condition of the product.”

### **32.02 Measure of Damages--Injury to Spouse--Medical Expense--Past and Future**

The reasonable expense of necessary medical care, treatment and services received by his wife [and the present cash value of the reasonable expense of necessary medical care, treatment and services reasonably certain to be received in the future.]

#### **Notes on Use**

This element is to be inserted between the two paragraphs of IPI 32.01 when the evidence justifies its use. To include the bracketed material which relates to future medical expenses, there must be evidence that such expenses are reasonably certain to be incurred.

#### **Comment**

Common law and statutory provisions allow each spouse to recover for medical expenses for which he is obligated resulting from injury to the other spouse. *Brown Metzger*, 104 Ill.2d 30, 470 N.E.2d 302, 83 Ill.Dec. 344 (1984).

On the issue of present cash value, *see* the IPI 34.00 series.

### **32.03 Measure of Damages--Injury to Spouse--Loss of Services--Past and Future**

The reasonable value of the services of his wife of which he has been deprived [and the present cash value of the services of his wife of which he is reasonably certain to be deprived in the future].

#### **Notes on Use**

This element is to be inserted between the two paragraphs of IPI 32.01 when the evidence justifies its use. To include the bracketed material which relates to the loss of future services, there must be evidence that such loss is reasonably certain to occur.

#### **Comment**

Damages to the husband for loss of services of his wife and for a wife suing to recover for her loss of services where a husband has suffered bodily injury are compensable in Illinois. *Manders v. Pulice*, 102 Ill.App.2d 468, 242 N.E.2d 617 (2d Dist.1968), *aff'd*, 44 Ill.2d 511, 256 N.E.2d 330 (1970); *Dini v. Naiditch*, 20 Ill.2d 406, 170 N.E.2d 881 (1960).

Testimony that the husband no longer shared in the family decision making, in the rearing and disciplining of children, or in the household repairs and chores as he had before the injury supported giving IPI 32.03. *Wood v. Mobil Chem. Co.*, 50 Ill.App.3d 465, 365 N.E.2d 1087, 1096; 8 Ill.Dec. 701, 710 (5th Dist.1977).

On the issue of present cash value, *see* the IPI 34.00 series.

### **32.04 Measure of Damages--Injury to Spouse--Loss of Consortium**

The reasonable value of the society, companionship and sexual relationship with his wife of which he has been deprived [and the society, companionship and sexual relationship with his wife of which he is reasonably certain to be deprived in the future].

#### **Notes on Use**

This element is to be inserted between the two paragraphs of IPI 32.01 when the evidence justifies its use. To include the bracketed material which relates to the loss of consortium in the future, there must be evidence that such loss is reasonably certain to occur.

#### **Comment**

Society, companionship and sexual relations between husband and wife, oftentimes referred to as consortium, are elements of compensable damages in Illinois in actions brought either by a husband or wife. *Brown v. Metzger*, 104 Ill.2d 30, 470 N.E.2d 302, 83 Ill.Dec. 344 (1984).

On the issue of present cash value, *see* the IPI 34.00 series, and particularly the Comment to IPI 34.02.

### **32.05 Measure of Damages--Injury to a Child--Medical Expenses--Past and Future**

The reasonable expense of necessary medical care, treatment and services received by the child [and the present cash value of the reasonable expenses of necessary medical care, treatment and services reasonably certain to be received in the future until the child reaches age 18.]

#### **Notes on Use**

This element is to be inserted between the two paragraphs of IPI 32.01 when the evidence justifies its use. To include the bracketed material which relates to future medical expenses, there must be evidence that such expenses are reasonably certain to be incurred.

If the parent remains liable for future medical expenses after the child reaches age 18, such as where the child is incompetent or disabled, the phrase “until the child reaches age 18” may be deleted.

#### **Comment**

Parents may recover for medical expenses for which they are obligated resulting from injury to their minor children. 750 ILCS 65/15 (1994); *Graul v. Adrian*, 32 Ill.2d 345, 205 N.E.2d 444 (1965). The usual practice in Illinois is to sue for all damages in the minor's action. This is accomplished by alleging an assignment, or waiver or relinquishment by the parents of their right to recover these damages. *Curtis v. Lowe*, 338 Ill.App. 463, 87 N.E.2d 865 (2d Dist.1949). Any defenses to the parents' action remain defenses to this assigned action. *Kennedy v. Kiss*, 89 Ill.App.3d 890, 412 N.E.2d 624, 45 Ill.Dec. 273 (1st Dist.1980).

Parents are not generally liable for medical expenses incurred by adult children. *Ragan v. Protko*, 66 Ill.App.3d 257, 383 N.E.2d 745, 22 Ill.Dec. 937 (5th Dist.1978); *Sapp v. Johnston*, 15 Ill.App.3d 119, 303 N.E.2d 429 (3d Dist.1973). However, support obligations for a mentally or physically disabled child have been imposed upon the husband and wife after the child attains majority. *Strom v. Strom*, 13 Ill.App.2d 354, 142 N.E.2d 172 (1st Dist.1957); *Freestate v. Freestate*, 244 Ill.App. 166 (1st Dist.1927). *See also* 750 ILCS 5/513 (1994); 755 ILCS 5/11A-1 et seq. (1994).

While the parents of a minor child are always responsible for the child's medical expenses, the child is not responsible unless the medical care has been rendered on the child's own credit and not on the credit of a parent. *Kennedy v. Kiss*, 89 Ill.App.3d 890, 412 N.E.2d 624, 45 Ill.Dec. 273 (1st Dist.1980).

On the issue of present cash value, *see* the IPI 34.00 series.

### **32.06 Measure of Damages--Loss of Services of Child--Past and Future**

The reasonable value of the services of the minor child of which the parent has been deprived [and the present cash value of the services of the minor child of which the parent is reasonably certain to be deprived in the future until the child reaches age 18.]

#### **Notes on Use**

This element is to be inserted between the two paragraphs of IPI 32.01 when the evidence justifies its use. To include the bracketed material which relates to loss of future services or income, there must be evidence that such loss is reasonably certain to occur.

#### **Comment**

In actions for damages arising out of an injury to an unemancipated minor, the loss of earnings during the child's minority are recoverable by the parents. The child is limited to the loss of earnings he would have received after reaching his majority. *Wolczek v. Public Serv. Co. of N. Ill.*, 342 Ill. 482, 496; 174 N.E. 577, 583 (1930).

A parent has the right to the services and earnings of an unemancipated minor child. *See Zozaski v. Mather Stock Car Co.*, 312 Ill.App. 585, 38 N.E.2d 825 (1st Dist.1942); 59 Am. Jur. 2d, *Parent & Child* § 46, pp. 131-33.

*See* Comment to IPI 32.05 regarding the potential assignment by the parent to the child of this element of damages.

On the issue of present cash value, *see* the IPI 34.00 series.