

810.66 PROPERTY DAMAGES - 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 plaintiff 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 plaintiff 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 plaintiff'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*)]

[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 plaintiff 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

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.*

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

4. Other 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").