**20.15 DAMAGE TO PERSONAL PROPERTY**

The (first, second, etc.) item of claimed loss is damage to plaintiff's (insert item of personal property). The amount that will reasonably compensate plaintiff for this loss is the following:

A. The reasonable cost of repairing the damage to plaintiff's (insert item of property). [You may include as a cost of repair (insert any specific or indirect costs allowable as a repair cost).]

B. The difference in the fair market value of the (insert item of property) immediately before and immediately after the (accident). If, however, it is cheaper to repair the (insert item of property) so that it would have the same fair market value as it did immediately before the accident, you should compensate the plaintiff only for the costs of such repairs. In a moment I will explain how to measure the fair market value.

C. The reasonable costs of repairing the damage to plaintiff's (insert item of property) plus the difference between the fair market value of the (insert item of property) immediately before the (accident) and its fair market value after the repairs have been made. In a moment I will explain how to measure the fair market value.

D. The reasonable costs of repairing the damage to plaintiff's (insert item of property). If, however, it is cheaper to buy a replacement for the (insert item of property) than to repair it, you should compensate the plaintiff for the cost of the replacement less the trade-in value of the damaged (insert item of property).

# **Use Note**

This instruction should be used with Instruction 20.01A or 20.01B when damage to personal property is claimed.

The appropriate measure of damage – paragraphs A-D – depends on the claims of the parties and the evidence presented. If paragraphs B or C are used, Instruction 20.17A (Fair Market Value Defined) should also be given.

This instruction addresses claims for the damage to the plaintiff’s property. The plaintiff may also have a claim for loss of use of the property. If so, Instruction 20.16 (Loss of Use) should also be given.

For instructions concerning damage to real property, see Article 13 (Trespass and Nuisance).

# **Comment**

The overriding principle governing recovery of damages in negligence cases is that the injured plaintiff is entitled to be restored to the position he or she would have occupied were it not for the defendant’s negligence. *Newberry Alaska, Inc. v. Alaska Constructors*, 644 P.2d 224 (Alaska 1982).

In a case involving damage to personal property, the owner may ordinarily recover either 1) the lost value of the property, or 2) the reasonable cost of repair plus the residual loss in value after repairs are made, whichever is less. *City of Seward v. Afognak Logging*, 31 P.3d 780, 786-87 (Alaska 2001) (affirming award for cost of repairs when the loss in value greatly exceeded the cost of repair); *ERA Helicopters, Inc. v. Digicon Alaska, Inc.*, 518 P.2d 1057, 1061 (Alaska 1974).

When determining the cost of repair, the measure is the value of repairs, not the actual out-of-pocket repair expenses incurred by the plaintiff. *City of Seward*, 31 P.3d at 787. Thus, in *City of Seward*, Afognak Logging was entitled to recover the reasonable cost of repairing its bulldozer even though it achieved some savings on the repairs by using student labor on the repairs and cannibalizing other machinery for parts. *Id*.

When replacement of the damaged property is a less expensive alternative to repairing the property, the measure of damages will be the cost of the replacement unit less the trade-in value of the damaged unit.  *ERA Helicopters, Inc. v. Digicon Alaska, Inc*., 518 P.2d 1057, 1062 n.3 (Alaska 1974). When a long period of repair will be required, the cost of renting a replacement unit is to be included in the cost of repair. *Id*. at 1062.