

ECONOMIC/HEDONIC DAMAGES

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This textbook was originally published as a guide for attorneys. It has since proven popular among forensic economists, especially those who are members of the National Association of Forensic Economics. One of the authors (Smith) used it in the first course taught in the nation in the specialty field of forensic economics, at DePaul University, Chicago, Illinois. Since then, it has also been used as a textbook in subsequent courses in forensic economics taught at Pennsylvania State University, Bellarmine University, University of Wisconsin, Florida State University and elsewhere.

The general methodologies described in this book are applicable in most states. Some states have statutes that override these methodologies. For example, currently Michigan requires a specific discounting method that overrides general economic theory. Readers should be aware that caselaw and statutes are continuously changing and impact the methodologies described herein. As another example, Arkansas recently changed its statutes to allow for the value of life itself to be claimed as an element of damages in wrongful death cases. In contrast, the Mississippi legislature recently passed a law denying such damage claims. In chapter 12 and elsewhere we make reference to statutes and caselaw. These references should be regarded as tentative and not relied upon as a final authority. Current statutes and caselaw should be specifically researched for each case. Please call us at Smith Economics, Inc (Dr. Stan V. Smith) at 312-943-1551 to discuss the latest caselaw and statute changes that we may be aware of. We maintain a large research library on changes of statutes, caselaw and issues regarding the admissibility of testimony.

The Practice Book for Plaintiff and Defense Attorneys

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To my wife Darrance—Michael L. Brookshire

To my children Cara and David—Stan V. Smith

And to our families where we learned about the value of life.

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Foreword

As past Chairman of the Litigation Section of the American Bar Association and a trial lawyer of 25 years, I am pleased to recommend *Economic/Hedonic Damages: The Practice Book for Plaintiff and Defense Attorneys*. Its predecessor, *Economic Damages*, was published in 1987, and this new book is noteworthy because of its expanded coverage and the inclusion of a chapter on Hedonic Damages.

The book is written in practical, common sense language that even a trial lawyer can understand. There are numerous examples of suggestions for both plaintiff and defense counsel. The handbook is a roadmap for direct and cross examination of a forensic economist.

In contrast, most forensic economists write books for other forensic economists, to be understood by other forensic economists. As trial lawyers, we deal with juries and the economic principles here are simplified and boiled down to an essence that even a jury can touch, taste, feel and understand. Therefore, it is an excellent aid in presentation of a case to a jury.

I was particularly impressed with a new chapter on hedonic damages. So little is written about this area of intangible damages, when the lost pleasure of living due to injury is becoming an element of damage in most cases. Both plaintiff and defense counsel must be willing to deal with intangible damages. Plaintiffs should be able to present with economic certainty, the value of the lost pleasure of living, which increases the potential jury verdict. Likewise, defense counsel may need an objective process of valuing hedonic damages to preclude a runaway jury award. It is a field that is rapidly developing and this is the best practical approach on the subject area.

In summary, this book needs to be an essential part of any litigator's library.

N. Lee Cooper

*Former Chairman Litigation Section
American Bar Association*

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This book was made possible by direct and indirect contributions from practicing forensic economists and experts in fields related to economic damages. We also received valuable benefits in working with many experienced and successful trial attorneys across the nation. The National Association of Forensic Economists, which publishes the *Journal of Forensic Economics*, has greatly aided our efforts by advancing the quality of knowledge in this specialized field of economics.

We are indebted to our former teachers and colleagues at Cornell University, the University of Chicago, the University of Tennessee, and the University of West Virginia College of Graduate Studies. The College of Graduate Studies also supported much of the necessary legal research.

Companion computer software for IBM compatible PC's to facilitate damage estimation has been produced for this volume by our colleague, Dr. Charles de Seve, of Washington, D.C. This is a novel and valuable contribution to practice in this field.

Finally, our sincere thanks to our research and support staff: Ms. Susan Coghill, Ms. Diane Fischback, Ms. Donna Foster, Ms. Trudee Landsfield, and Ms. Deniese McBride.

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Professor Smith is also President of Corporate Financial Group, Ltd., a Chicago-based consulting firm providing litigation support to defense and plaintiff counsel across the country. In 1984, he first developed the concept of hedonic damages and pioneered testimony on this topic nationwide. He is a member of the National Association of Forensic Economics, a referee for the *Journal of Forensic Economics*, and is a founder of the National Academy of Economic Arbitrators. He and his work have been profiled in *The Wall Street Journal*, *the ABA Journal*, *The National Law Journal*, and in *The Best Expert Witnesses in America*.

