

While driving his pickup truck with a friend riding in the open bed, the driver swerved, throwing his friend to the pavement. The friend sustained severe injuries. The friend had often ridden in the open bed of the truck, and on some of those occasions the driver had swerved to frighten his friend. The friend sued the driver to recover both compensatory damages for his injuries and punitive damages.

Which cause of action would NOT permit the friend to recover punitive damages?

- A. Assault.
- B. Battery.
- C. Negligence.
- D. Recklessness.

Explanation:

Damages in tort law fall into three main categories:

Compensatory (ie, actual) damages – money awarded to compensate the plaintiff for his/her **actual loss or harm**

Nominal damages – a **trivial sum** of money (eg, \$1) awarded to vindicate the plaintiff's rights when no actual loss or harm occurred

Punitive (ie, exemplary) damages – money awarded to **punish** the defendant for **outrageous, malicious, or evil conduct** and to **deter** the defendant and others from engaging in **similar conduct** in the future

Compensatory damages are available for any tort. But nominal and punitive damages are only available for torts involving intentional conduct (eg, [assault](#), [battery](#)) or reckless conduct (eg, reckless driving) **(Choices A, B & D)**.^{*} A plaintiff cannot recover **nominal damages** for [negligence](#) since this claim requires proof of actual harm. **Punitive damages** are also **not recoverable** for **negligence** because these damages are designed to punish and deter outrageous, malicious, or evil conduct—not unreasonable conduct.

^{*}Punitive damages are prohibited in Nebraska and extremely limited in Louisiana, Massachusetts, Michigan, New Hampshire, and Washington.

Educational objective:

Punitive damages are imposed to punish and deter outrageous, malicious, or evil conduct. As a result, punitive damages may be awarded for torts involving intentional or reckless conduct. But these damages cannot be awarded for negligence, which involves mere unreasonable conduct.

References

Restatement (Second) of Torts § 908 cmt. b (Am. Law Inst. 1979) (availability of punitive damages).

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Recoverable personal-injury damages

	Intentional torts	Reckless torts	Negligence
Compensatory damages	✓	✓	✓
Nominal damages	✓	✓	
Punitive damages	✓	✓	