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## DAMAGE TO PROPERTY WITHOUT MARKET VALUE

The amount and dollar value of insurance claims relating to property loss alone dwarf all other lines of insurance. Water losses in the U.S. result in more than \$9 billion in property damage annually. Fire losses result in more than \$12 billion in annual damage. Hailstorms cause over \$1 billion in damage. Homeowners' and commercial property policies often provide that the insurer is not required to pay more than the actual cash value (ACV) of the damaged property. Increasingly, however, policies may provide for replacement cost value (RCV) once the insured has replaced the damaged policy in such first-party claims.

When the insurer attempts to subrogate such property losses, there is a big disconnect between the damages recoverable by the insured in a first-party claim and the damages the insurer can recover when it subrogates the claim against the third-party tortfeasor responsible for causing the loss. First-party claim payments are governed by applicable policy language. Third-party property damage recovery is governed by applicable state tort damage laws. First-party replacement value insurance claim payments cannot be recovered in third-party subrogation cases because the default rule for measuring direct damages from partial destruction of personal property is the difference in the market value immediately before and immediately after the damage to such property at the place where the damage was occasioned. *J & D Towing, LLC v. Am. Alternative Ins. Corp.*, 478 S.W.3d 649 (Tex. 2016). "Replacement cost insurance" is optional additional coverage that may be purchased for casualty insurance to insure against the possibility that the improvements will cost more than the ACV and that the insured cannot afford to pay the difference. Unlike standard indemnity, replacement cost coverage places the insured in a better position than he or she was in before the loss and any purported windfall to the insured that purchases replacement cost insurance is precisely what the insured contracted to receive in the event of a loss.

But, what about the third-party case in which the property has no market value? The law of tort damages across all 50 states has recognized the inequities resulting from the use of traditional "market value" damages for certain types of property, and many states have developed alternative mechanisms to compensate owners when such property is damaged. Some of these mechanisms can be used to offset the net loss which results from paying RCV in a first-party claim but only being able to recover ACV in a third-party subrogation tort case.

## SERVICE VALUE

When damaged property does not have a typical "market" in which such items are bought and sold, calculating damages becomes much more complicated and confusing. Property such as *municipal utility poles, signs, school buildings, landmarks, statues*, etc., have a "service value" (a/k/a "use

value”), but have no traditional market to aid in determining the damages owed by someone who negligently damages such property. For such property, it is difficult, if not impossible, to calculate the diminution in value before and after a loss. A majority of states allow the cost of replacing such an item as the proper measure of damages. A minority of states attempt to implement a formula involving reproduction cost, average useful life, cost of replacement, cost of installation, and depreciation, in coming up with a fair damage valuation.

### INTRINSIC VALUE

Intrinsic value is the reasonable value of property to the owner in the condition the property was in when it was damaged, excluding any fanciful or sentimental consideration. *Trinkets, etchings, books, pets, family documents, household furniture, jewelry, silverware, family records, clothing, and personal effects* are examples of property that do not have a realistic fair market value because they are not easily bought or sold on the market. Instead, they have an artistic or intrinsic value. There is, quite literally, no market for such property, because the value is intrinsic to the owner. As a result, subrogation professionals must be familiar with the law in each state governing such damages. Defendants want the value of such property to be decreased due to depreciation. However, a growing number of courts have followed the “value to the owner” doctrine when valuing property with intrinsic value. The actual or intrinsic value of the property to the owner is to be awarded by a jury in many states. Other states take into consideration other criteria. Florida, for example, has held that “[i]f the item has no market value, such as heirlooms, etc., of necessity other sources must be used to determine value.” The intrinsic value of property is determined by taking into consideration things like its uniqueness, the practicability of repair, the cost of replacing the insured value of the property, the opinion of the owner, and the opinion of experts. Some courts conflate intrinsic value with sentimental value. Interestingly, the intrinsic value theory and other similar concepts were often raised during the depression to argue that market prices were too low to be accepted as evidence of “fair market value.”

### SENTIMENTAL VALUE

One of the more difficult types of property to properly compensate owners for is personal property with sentimental value. Sentimental value is value over and above any market value or intrinsic value a piece of personal property might have. Examples of such property include *antiques, heirlooms, wedding memorabilia, photographs, handicrafts, and trophies*, etc., although almost anything could have sentimental value. Sentimental value is the value of an object that is derived from personal or emotional association rather than its material worth. Property with intrinsic value may or may not have sentimental value as well. Jewelry accumulated over 50 years of marriage has sentimental value as well as market value. Sentimental value is the inflated opinion value based on what the sellers want. The fair market value differs from sentimental value, as both parties to a transaction must agree to its worth. Many states (*e.g.*, Arizona, Georgia, Louisiana, Mississippi, Missouri, New Jersey, Wisconsin, and Texas) believe that damages should not be determined by the “sentimental or fanciful” value to the owner. Such states do not believe that sentimental value should replace traditional factors such as actual monetary loss together with all the circumstances and conditions resulting from the loss of the property, together with the fact that the property cannot be replaced. At the same time, several states (*e.g.*, Alabama, Arizona, California, Florida, Georgia, Massachusetts, Minnesota, Mississippi, Missouri, New Mexico, New York, Ohio, Oregon, Tennessee, Texas, and others) award damages based on the property’s actual value to its owner. Frequently, whether or not there is a ready market for such property is one factor to be considered in damage valuation. This is especially true where property has both a market value and a sentimental value.

Subrogation professionals should be aware of the applicable law with regard to recovery of property damage in the jurisdiction they are subrogating in. They must be prepared to determine and/or prove that certain property holds some unique historical, cultural or personal value transcending any

sentiment the property might hold to its owner. This is sometimes the best way to help courts and juries place a value on some items of damaged or destroyed personal property based upon its actual or intrinsic value. A chart depicting the law in all 50 states with regard to the award of damages to personal property without a typical market value can be found below.

STATE	SERVICE VALUE	INTRINSIC VALUE	SENTIMENTAL VALUE
ALABAMA	“Where the article lost has no market value, the rule of damages seems then to be its value to the plaintiff; and ... inquiry... into the constituent elements of the cost to the plaintiff in producing it.” <i>Southern Express Co. v. Owens</i> , 41 So. 752 (Ala. 1943).	“The action of the court in allowing the witness to state the cost of the articles that are not shown to have had a market value was proper.” <i>Kates Transfer &amp; Warehouse Co. v. Klassen</i> , 59 So. 355 (Ala. App. 1912).	“The plaintiff, in the absence of evidence showing market value, may prove other factors of value such as the value of the property to him.” <i>Lary v. Gardener</i> , 908 So.2d 955 (Ala. App. 2005).
ALASKA	“...if no market exists, the amount that could be obtained in the usual course of finding a purchaser or hirer of similar property or services.” <i>Landers v. Municipality of Anchorage</i> , 915 P.2d 614 (Alaska 1996) (citing <i>Restatement Second of Torts</i> § 911 (1979)).	“[W]e recognized that the value to the owner, rather than the fair market value, is the proper measure of damages where the destroyed or lost property has no real market value or where the value of the property to the owner is greater than the market value.” <i>Mitchell v. Heinrichs</i> , 27 P.3d 309 (Alaska 2001).	“We thus decline to adopt the minority view which allows damages for loss of items of personal property to be based on sentimental and emotional value.” <i>Landers v. Municipality of Anchorage</i> , 915 P.2d 614 (Alaska 1996).
ARIZONA	“He [judge] may consider the cost of the property when new, the length of time it was used, its condition at the time of loss or injury, the expense to the owner of replacing it with another item of like kind and in a similar condition, and any other factors that will assist in assessing the value to the owner at the time of the loss or injury.” <i>Devine v. Buckler</i> , 603 P.2d 557 (App. 1979).	“If goods have no market value, their actual worth to the owner is the test.” <i>Devine v. Buckler</i> , 603 P.2d 557 (Ariz. Ct. App. 1979).	“...the trial court ... instructing the jury on the measure of damages would be the actual value, based on money loss, of the goods converted, plus interest, but excluding any sentimental or fanciful value, expressly stating the damages could in no case exceed the actual value of the goods, as pleaded by the plaintiff in her complaint.” <i>Jones v. Stanley</i> , 233 P. 598 (Ariz. 1925).
ARKANSAS	No Case Law	“...the measure of damages for chattels possessed for the comfort and well-being of their owner is not based on value in a secondhand market but on the value of their use to the owner who suffers from their deprivation.” <i>Cecil v. Headley</i> , 373 S.W.2d 136 (Ark. 1963).	For the loss of property which had no market value, the measure of damages should be the value of the article to the plaintiff, and, in ascertaining this value, inquiry may be made into the constituent elements and the cost to the plaintiff of producing the article. <i>St. Louis, I.M. &amp; S. Ry. Co. v. Dague</i> , 176 S.W. 138 (Ark. 1915).

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CALIFORNIA	<p>"[t]he 'cost to ... replace the property ... destroyed' is very simply the replacement cost, <i>i.e.</i>, that which must be expended to replace, without regard to depreciation. Further discussion is unnecessary." <i>Pacific Gas and Electric Co. v. Alexander</i>, 90 Cal. App.3d 253 (Cal. Ct. App. 1979).</p>	<p>"For items with no market value, plaintiffs are entitled to recover the rationally determined value of those items." <i>Robinson v. U.S.</i>, 175 F. Supp.2d 1215 (E.D. Cal. 2001).</p>	<p>"Testimony regarding the sentimental value of the property or any speculative valuations of the property must necessarily be excluded." <i>Robinson v. U.S.</i>, 175 F. Supp.2d 1215 (E.D. Cal. 2001).</p>
COLORADO	<p>"...where diminution in value damages do not make the plaintiff whole and another measure of damages — cost of repair or replacement — may be more appropriate."            "For example, where the property has no market value, it is impossible to measure any diminution in value." <i>Goodyear Tire &amp; Rubber Co. v. Holmes</i>, 193 P.3d 821 (Colo. 2008) (citing 1 Dan B. Dobbs, <i>Law of Remedies</i> § 3.2, at 288 (2d ed.1993)).</p>	<p>"Where the articles have no market value in the ordinary sense, such as used clothing, photographs, certain household goods and personal effects, then they may be given a reasonable value on the basis of their value to the owner." <i>Keefe v. Bekins Van &amp; Storage Co.</i>, 540 P.2d 1132 (Colo. Ct. App. 1975) (citing <i>Zenier v. Spokane Intern. R. Co.</i>, 300 P.2d 494 (Idaho 1956)).</p>	<p>"This is not to be any fanciful value which he might place upon them, but such reasonable value as from the nature and condition of the goods and the purpose to which they were adapted and used, they had to him." <i>Keefe v. Bekins Van &amp; Storage Co.</i>, 540 P.2d 1132 (Colo. Ct. App. 1975) (citing <i>Gouge v. Hoge</i>, 218 P.2d 1036 (Okla. 1950)).</p>
CONNECTICUT	<p>"... if there is no market value at the time and place, resort must be had to the actual value at the time and place of delivery." <i>Pape v. Ferguson</i>, 62 N.E. 712 (Ind. Ct. App. 1902).</p>	<p>"The owner...may recover its usable value to himself...though no sentimental value can be taken into account." <i>Holmes v. Freeman</i>, 185 A.2d 88 (Conn. App. Ct. 1962).</p>	<p>"The owner...may recover its usable value to himself...though no sentimental value can be taken into account." <i>Holmes v. Freeman</i>, 185 A.2d 88 (Conn. App. Ct. 1962).</p>
DELAWARE	No Case Law	<p>"Where no market value is available, the value to the owner will be given." <i>Woodland Manor v. Anderson</i>, 1997 WL 33471238 (Del. C.P. 1997).</p>	<p>A property's sentimental value is unique to the owner. <i>Carello v. State of Delaware</i>, 2004 WL 2520905 (Del. Super. Ct., 2004).</p> <p>One rule for measure of damages to clothing and household articles is replacement value adjusted to reflect actual value based on actual condition, considering articles in use for same length of time and in same condition, but court in its discretion may permit parties to resort to other known methods of ascertaining actual value. <i>Phillips v. Delaware Power &amp; Light Co.</i>, 201 A.2d 160 (Del. Super. 1964).</p>

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DISTRICT OF COLUMBIA	<p>“UDC does not dispute that replacement cost was an appropriate measure of damages for the destruction of Dr. Vossoughi’s course materials, unpublished research and fabricated instruments. As the evidence showed, this property had great use value to Dr. Vossoughi but no comparable (if any) market value.” <i>Trustees of University of Dist. of Columbia (UDC) v. Vossoughi</i>, 963 A.2d 1162 (D.C. 2009).</p>	<p>“The Court will follow the <i>Restatement</i> and the majority of courts and apply the rule that in the case of missing family photos, special value to the owner can be recovered, but sentimental value cannot.” <i>Edmonds v. U.S.</i>, 563 F. Supp.2d 196 (D. D.C. 2008).</p>	<p>“The Court will follow the <i>Restatement</i> and the majority of courts and apply the rule that in the case of missing family photos, special value to the owner can be recovered, but sentimental value cannot.” <i>Edmonds v. U.S.</i>, 563 F. Supp.2d 196 (D. D.C. 2008).</p>
FLORIDA	<p>No Case Law</p>	<p>“... the measure of damages for the loss of personal property...if the item has no market value, such as heirlooms, other sources must be used to determine value.” <i>McDonald Air Conditioning, Inc. v. John Brown, Inc.</i>, 285 So.2d 697 (Fla. Dist. Ct. App. 1973).</p>	<p>“...we conclude that in a situation where the lost property has both a market value and sentimental value, as is the case here, the burden again rests with the plaintiff to prove that market valuation would be manifestly unfair.” <i>Carye v. Boca Raton Hotel and Club, Ltd. Partnership</i>, 676 So.2d 1020 (Fla. Dist. Ct. App. 1996).</p>
GEORGIA	<p>“Our view, and we so hold, is that the necessary expense in restoring such pole is the proper measure of damages for its wrongful destruction.” <i>Horton v. Georgia Power Co.</i>, 254 S.E.2d 479 (Ga. Ct. App. 1979).</p>	<p>“But while the rule is that the actual value to the owner can be recovered, it is also true that there can be no recovery for the sentimental value of the lost article.” <i>Cherry v. McCutchen</i>, 16 S.E.2d 167 (Ga. Ct. App. 1941).</p>	<p>“But while the rule is that the actual value to the owner can be recovered, it is also true that there can be no recovery for the sentimental value of the lost article.” <i>Cherry v. McCutchen</i>, 16 S.E.2d 167 (Ga. Ct. App. 1941).</p>
HAWAII	<p>No Case Law</p>	<p>No Case Law</p>	<p>Measure of damages is actual compensation to injured party, unless special misconduct in aggravation warrants grant of punitive damages. <i>Chin Kee v. Kaeleku Sugar Co.</i>, 1926 WL 3055 (Haw. 1926) (<i>unreported</i>).</p>
IDAHO	<p>No Case Law</p>	<p>“Where personal property, which is injured or destroyed by the wilful (sic) or negligent act of another, has no market value, its value to the owner may be used as a basis for determining damages.” <i>Zenier v. Spokane Intern. R. Co.</i>, 300 P.2d 494 (Idaho 1956).</p>	<p>“...such property should be appraised according to the actual worth of the articles to the owner, for use in the condition in which they were at the time of the fire, excluding any fanciful or sentimental consideration.” <i>Boise Ass’n of Credit Men v. U.S. Fire Ins. Co.</i>, 256 P. 523 (Idaho 1927).</p>

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ILLINOIS	“Computation based on the life expectancy of the pole and the other materials should be confined to the materials damaged and the costs of the replacement items.” <i>Central Illinois Light Co. v. Stenzel</i> , 195 N.E.2d 207 (Ill. App. Ct. 1964).	“...we believe that the law in Illinois is that where the object destroyed has no market value, the measure of damages to be applied is the actual value of the object to the owner.” <i>Jankoski v. Preiser Animal Hosp., Ltd.</i> , 510 N.E.2d 1084 (Ill. App. Ct. 1987).	“The concept of actual value to the owner may include some element of sentimental value in order to avoid limiting the plaintiff to merely nominal damages.” <i>Jankoski v. Preiser Animal Hosp., Ltd.</i> , 510 N.E.2d 1084 (Ill. App. Ct. 1987).
INDIANA	“The market value, where there is one, is the proper criterion; but, if there is no market value at the time and place, resort must be had to the actual value at the time and place of delivery.” <i>Pape v. Ferguson</i> , 62 N.E. 712 (Ind. Ct. App. 1902).	Damages based upon evidence of an item’s actual value to a particular owner.	“We see no difference in giving special consideration to items such as these and to the three USAC rings, awarded for three years of ‘blood, sweat and tears’ and thus having special sentimental meaning for Capels.” <i>Campins v. Capels</i> , 461 N.E.2d 712 (Ind. Ct. App. 1984).
IOWA	“In this case, the records involved clearly possessed no market value. ...Almost invariably, actual value is measured by the cost of replacement with proper allowances made for depreciation, usage and age.” <i>Iowa Power and Light Co. v. Board of Water Works Trustees of City of Des Moines</i> , 281 N.W.2d 827 (Iowa Ct. App. 1979) (citing <i>Schlitz v. Cullen-Schlitz &amp; Associates, Inc.</i> , 228 N.W.2d (Iowa 1975)).	“The value of these records is intrinsic in nature and measured on the basis of their importance to Iowa Power.” <i>Iowa Power and Light Co. v. Board of Water Works Trustees of City of Des Moines</i> , 281 N.W.2d 827 (Iowa Ct. App. 1979).	The measure of damages for injuries to a dog, factors include its market value, which may be based on purchase price, relatively long life of breed, its training, usefulness and desirable traits. <i>Nichols v. Sukaro Kennels</i> , 555 N.W.2d 689 (Iowa 1996).
KANSAS	“... we have concluded that the majority view [cost of replacement] is the least complicated in its application and is more likely to make the plaintiff whole, and as a result we adopt that view as the law in Kansas.” <i>Kansas Power and Light Co. v. Thatcher</i> , 797 P.2d 162 (Kan. Ct. App. 1990).	“When the damaged personal property has no market value and it cannot economically be restored to its former condition the measure of damages is its real, actual or intrinsic value...” <i>IBD, Inc. v. Enterprise Business Solution, LLC</i> , 203 P.3d 1281 (Kan. Ct. App. 2009) (citing <i>Pattern Instructions for Kansas Civil 4<sup>th</sup> 171.12</i> )).	Where the property has no market value, other relevant factors must be considered such as cost of repair, the original value, the loss of use, any special value to the owner, the loss of expected profits, and the cost of replacement. <i>Burgess v. Shampooch Pet Indus., Inc.</i> , 131 P.3d 1248 (Kan. App. 2006).



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KENTUCKY	“The court therefore held that the measure of damages for the loss of maps made as part of a geological survey was the cost of the labor which had gone into their production.” W.E. Shipley, <i>Measure of damages for conversion or loss or, or damage to personal property having no market value</i> , 12 A.L.R.2d 902 (1950) (citing <i>Adams Express Co. v. Hoeing</i> , 9 Ky. L. Rptr. 814 (Ky. 1888)).	“...he should be allowed to recover the value to him based on his actual money loss, all the circumstances and conditions considered, resulting from his being deprived of the property, not including, however, any sentimental or fanciful value he may for any reason place upon it.” <i>Davis v. Rhodes</i> , 266 S.W. 1091 (Ky. Ct. App. 1924) (citing <i>Barker v. Lewis Storage &amp; Transfer Co.</i> , 61 A. 363 (Conn. 1905)).	“...he should be allowed to recover the value to him based on his actual money loss, all the circumstances and conditions considered, resulting from his being deprived of the property, not including, however, any sentimental or fanciful value he may for any reason place upon it.” <i>Davis v. Rhodes</i> , 266 S.W. 1091 (Ky. Ct. App. 1924) (citing <i>Barker v. Lewis Storage &amp; Transfer Co.</i> , 61 A. 363 (Conn. 1905)).
LOUISIANA	“[E]ntitled to recover its actual loss in wages and material and be restored to same position it was in prior to accident and not restricted to depreciated value of pole.” <i>Southwestern Electric Power Co. v. Canal Ins. Co.</i> , 121 So.2d 769 (La. Ct. App. 1960).	“The measure of damages for the loss or conversion of, or injury to, family portraits having no market value is the actual value to the person sustaining the loss.” <i>Lack v. Anderson</i> , 27 So.2d 653 (La. Ct. App. 1946).	“The measure of damages for the loss or conversion of, or injury to, family portraits having no market value is the actual value to the person sustaining the loss.” <i>Lack v. Anderson</i> , 27 So.2d 653 (La. Ct. App. 1946).
MAINE	Trees have intrinsic, estimable value other than their presence. Owner may treat them as personal property and sue for their value as if they were detached from real property. <i>Nyzio v. Vaillancourt</i> , 382 A.2d 856 (Me. 1978).	No Case Law	If the property has personal value to the plaintiff, then damages up to and including restoration costs are appropriate. <i>Leavitt v. Cont’l Tel. Co. of Maine</i> , 559 A.2d 786 (Me. 1989).
MARYLAND	No Case Law	The measure of damages is difference between value of property before and after its injury. <i>Taylor v. King</i> , 213 A.2d 504 (Md. 1965).	Plaintiffs have not been permitted to recover for emotional injuries flowing from negligence-level torts for damage to their property. <i>Brooks v. Jenkins</i> , 104 A.3d 899 (Md. App. 2014).
MASSACHUSETTS	“...for the loss of a package...containing a set of plans for a house, which have no market value ...the measure of damages is the cost of new plans...” <i>Mather v. American Exp. Co.</i> , 138 Mass. 55 (Mass. 1884).	“The measure of damages against a wrongdoer for the conversion of plates for printing labels or advertisements, of great value to the owner, but of very trifling value to others, is the value to him; and in estimating the cost of replacing the plates may be considered.” <i>Stickney v. Allen</i> , 10 Gray 352 (Mass.).	“They should be regarded as belonging, in a sense, to the person of the owner, and that the damages should be assessed according to the actual worth of the articles to her for use in the condition in which they were at the time of the fire, excluding any fanciful or sentimental considerations” <i>Wall v. Platt</i> , 48 N.E. 260 (Mass. 1897).

STATE	SERVICE VALUE	INTRINSIC VALUE	SENTIMENTAL VALUE
MICHIGAN	No Case Law	<p>“... there is no market value for such property ... therefore its real or ordinary cash value at the time of the fire should be ascertained... from...the cost, uses it has been put to, its age, condition, and location.” <i>Fite v. North River Ins. Co.</i>, 165 N.W. 705 (Mich. 1917).</p> <p>In the case of family pictures or heirlooms of special value to the plaintiff that cannot be replaced and do not have a market value, the measure of damages may include the value to the owner. <i>Bernhardt v. Ingham Reg’l Med. Ctr.</i>, 641 N.W.2d 868 (Mich. App. 2002).</p>	<p>“Accordingly,... if they do not have a standard or market value, then their value to the owner, so far as they are susceptible of pecuniary measurement that is not fanciful or merely speculative, furnishes the true test.” 6 <i>Mich. Civ. Jur. Conversion</i> § 40. Measure of damages where there is no fair market value; value to owner. (citing <i>Allen v. Kinyon</i>, 1 N.W. 863 (Mich. 1879)).</p>
MINNESOTA	No Case Law	<p>“In such cases, as in actions for conversion of property of a like character ...it is not error to allow the owner to recover their value to him...” <i>Drake v. Auerbach</i>, 35 N.W. 367 (Minn. 1887).</p>	<p>Dog was personal property and its loss would be measured by its fair market value. <i>Sawh v. City of Lino Lakes</i>, 823 N.W.2d 627 (Minn. 2012).</p>
MISSISSIPPI	<p>“Instead of being a utility pole that was damaged and broken, suppose it had been a four-year-old utility truck. Suppose it was necessary to replace a damaged fender with a new fender. Should the tortfeasor be allowed to submit to the jury the taking of depreciation on the four-year-old fender? We think not. The fender was an integral part of the truck, and the new fender added nothing to the overall value of the truck.” <i>Mississippi Power &amp; Light Co. v. Tillman</i>, 291 So.2d 736 (Miss.1974).</p>	<p>“Where the article lost has no market value, the rule of damages seems then to be its value to the plaintiff; and in ascertaining this value inquiry may be made into constituent elements of the cost to the plaintiff in producing it.” <i>Austin v. Millspaugh &amp; Co.</i>, 43 So. 305 (Miss. 1907).</p>	<p>“Nor was there any as to what it would cost to replace or restore them, nor any of any kind, except that she was allowed to answer as to what they were worth to her, from the associations connected with them,-they being family portraits; their purely sentimental value, in other words. This is not competent.” <i>Louisville &amp; N.R. Co. v. Stewart</i>, 29 So. 394 (Miss. 1901).</p>
MISSOURI	<p>“...the proper measure of damages was not determined by reference to the fair market value of the church before and after the fire. The appropriate measure of damages, one that would put LMBC in the same position it was in before the fire, was cost of replacement.” <i>Leonard Missionary Baptist Church v. Sears Roebuck and Co.</i>, 42 S.W.3d 833 (Mo. Ct. App. 2001).</p>	<p>“Since it is agreed that the plaintiff’s sales records have no general market value, the plaintiff’s damages must be measured in terms of the value of the records to him.” <i>Oster v. Kribs Ford, Inc.</i>, 660 S.W.2d 348 (Mo. Ct. App. 1974).</p>	<p>“If the converted property has no market value, then an alternate measure of damages is the value of the property to the owner, excluding any fanciful or sentimental value that the property may have.” <i>Oliver v. Oliver</i>, 508 S.W.2d 209 (Mo. Ct. App. 1974).</p>



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MONTANA	<p>“We note that replacement cost should only be used when no market value can be established.” <i>State v. Dunkerson</i>, 76 P.3d 1085 (Mont. 2003).</p>	<p>Where the absence of the market value of property destroyed is shown, considerable range of investigation should be permitted in fixing the actual value of same as a basis for determining damages. <i>Eablonski v. Close</i>, 225 P. 129 (Mont. 1924).</p>	<p>Can recover the difference in market value at the place before and after injury. But, if repair is possible, and this cost is less than the diminution in value under the general test, this cost plus the value of the loss of use may be employed as the measure. In either case, the recovery ordinarily may not exceed the value of the property just before it was damaged. <i>Spackman v. Ralph M. Parsons Co.</i>, 414 P.2d 918 (Mont. 1966).</p>
NEBRASKA	<p>If property cannot be repaired and or when reasonable cost of repair exceeds difference in market value of property immediately before and immediately after injury, measure of damages is lost market value plus reasonable value of loss of use of property for reasonable amount of time required to obtain suitable replacement. <i>Howells Elevator, Inc. v. Stanco Farm Supply Co.</i>, 455 N.W.2d 777 (Neb. 1990).</p>	<p>“When articles of baggage have no market value, as clothing that has been in the use of the owner and articles of that nature, the value to the owner may be proved...” <i>Gibbons v. Chicago, B. &amp; Q. Ry. Co.</i>, 154 N.W. 226 (Neb. 1915).</p>	<p>Where property can be repaired to substantially its condition immediately before damage occurred, and cost of repair does not exceed difference in market value of the property before and after injury, then measure of damages is reasonable cost of repair plus reasonable value of loss of use of the property for the reasonable amount of time required to complete repair. <i>Chlopek v. Schmall</i>, 396 N.W.2d 103 (Neb. 1986).</p>
NEVADA	<p>Plaintiff is entitled to damages based upon the property's special value to the plaintiff. <i>Countrywide Home Loans, Inc. v. Thitchener</i>, 192 P.3d 243 (Nev. 2008).</p>	<p>When property's value to the owner exceeds its market value, the owner may be compensated for its special value, which is measured by “factors apart from those entering into exchange value that cause the article to be more desirable to the owner than to others.” <i>Countrywide Home Loans, Inc. v. Thitchener</i>, 192 P.3d 243 (Nev. 2008).</p>	<p>Sentimental damages are recoverable. <i>Countrywide Home Loans, Inc. v. Thitchener</i>, 192 P.3d 243 (Nev. 2008).</p>
NEW HAMPSHIRE	<p>In the absence of market value to determine the measure of damages for personal property lost, converted, or injured, it has frequently been held that the actual or intrinsic value of such property is the correct measure of damages. <i>State v. M'Duffie</i>, 34 NH 523 (N.H. 1857).</p>	<p>No Case Law</p>	<p>Plaintiff is not allowed to recover “sentimental damages” for damage to childhood home. <i>Skiathitis v. City of Manchester Water Works</i>, 2016 WL 3748560 (N.H. 2016).</p>

STATE	SERVICE VALUE	INTRINSIC VALUE	SENTIMENTAL VALUE
NEW JERSEY	<p>“In short, at least upon the record before us, we cannot say with reasonable assurance that the installation of a new pole did more than remedy the wrong done.” <i>New Jersey Power &amp; Light Co. v. Mabee</i>, 197 A.2d 194 (N.J. 1964).</p>	<p>When, however, the personalty (sic) is household furnishings and wearing apparel and the like, where the market value cannot be ascertained, the better measure of damages and the one we find applicable in this case, is the actual or intrinsic value of the property to the owner, excluding sentimental or fanciful value. <i>Lane v. Oil Delivery, Inc.</i>, 524 A.2d 405 (N.J. Super. Ct. App. Div. 2006).</p>	<p>When, however, the personalty (sic) is household furnishings and wearing apparel and the like, where the market value cannot be ascertained, the better measure of damages and the one we find applicable in this case, is the actual or intrinsic value of the property to the owner, excluding sentimental or fanciful value. <i>Lane v. Oil Delivery, Inc.</i>, 524 A.2d 405 (N.J. Super. Ct. App. Div. 2006).</p>
NEW MEXICO	<p>“Jasso is entitled to an offset for depreciation on the pole he damaged, to be determined by computing the depreciation recovered by PNM over the 27 years since the pole was originally installed.” <i>Public Service Co. of New Mexico v. Jasso</i>, 635 P.2d 1003 (N.M. Ct. App. 1981).</p>	<p>Where the article lost has no market value, the rule of damages seems then to be its value to the plaintiff; and in ascertaining this value inquiry may be made into constituent elements of the cost to the plaintiff in producing it.” <i>Wilcox v. Butt’s Drug Stores</i>, 35 P.2d 978 (N.M. 1934).</p>	<p>“Where the article lost has no market value, the rule of damages seems then to be its value to the plaintiff; and in ascertaining this value inquiry may be made into constituent elements of the cost to the plaintiff in producing it.” <i>Wilcox v. Butt’s Drug Stores</i>, 35 P.2d 978 (N.M. 1934).</p>
NEW YORK	<p>“[B]asis for a recovery consists of the actual cost of emergency expenses together with the present-day cost of replacing the damaged or destroyed equipment, less accrued depreciation, and any allowance for salvage.” <i>New York State Elec. &amp; Gas Corp. v. Fischer</i>, 24 A.D.2d 683 (N.Y. App. Div. 1965).</p>	<p>“...property of this nature, which is shown to have no true market value, may be appraised at its actual or intrinsic value, that is, its value to the owner, and upon any such appraisal the element of cost is a relevant and important factor, but cost is not the measure of damage.” <i>Mullen v. Sinclair Refining Co.</i>, 32 A.D.2d 1000 (N.Y. App. Div. 1969).</p>	<p>“...plaintiff should be allowed to recover the value to him, based on his actual money loss; all the circumstances and conditions considered, resulting from his being deprived of the property, not including any sentimental or fanciful value, however.” <i>Lake v. Dye</i>, 133 N.E. 448 (N.Y. 1921).</p>
NORTH CAROLINA	<p>“The cost of repairs furnishes the more satisfactory test by which to determine the plaintiff’s damages...” <i>Carolina Power &amp; Light Co. v. Paul</i>, 136 S.E.2d 103 (N.C. 1964)</p>	<p>“...where damage to personal property which has no market value, including documents and drawings,...if plaintiff is entitled to recover at all, it is...actual value of that property immediately before it was damaged less any salvage value...[.] The actual value of any property is the property’s intrinsic value, that is, its value to its owner.” <i>William F. Freeman, Inc. v. Alderman Photo Co.</i>, 365 S.E.2d 183 (N.C. Ct. App. 1988) (Court affirmed the trial court’s instruction on actual value).</p>	<p>“...the fact finder must not consider any fanciful, irrational or purely emotional value that the specific property may have had.” <i>Shara v. N.C. State University Veterinary Teaching Hosp.</i>, 723 S.E.2d 352 (N.C. Ct. App. 2012) (citing N.C.P.I. Civil 810.66 (2015)).</p>

STATE	SERVICE VALUE	INTRINSIC VALUE	SENTIMENTAL VALUE
NORTH DAKOTA	No Case Law	No Case Law	Can only recover reasonable cost of repairs and the reasonable value of the loss of use pending restoration of the property, unless restoration of the property within a reasonable period of time is impossible or impracticable, in which case the measure of damages is presumed to be the difference between the market value of the property immediately before and immediately after the injury and the reasonable value of the loss of use pending replacement of the property. N.D. Cent. Code Ann. § 32-03-09.1.
OHIO	“The cost of the post and the facilities attached thereto based on reproduction cost less accrued depreciation of the damaged pole and the facilities attached thereto.” <i>Ohio Power Co. v. Zemelka</i> , 251 N.E.2d 2 (Ohio Ct. App. 1969).	“When market value cannot be feasibly obtained, a more elastic standard is resorted to, sometimes called the standard of value to the owner.” <i>Bishop v. East Ohio gas Co.</i> , 546 N.E.2d 184 (Ohio 1944).	“We are therefore in disagreement with the few sister state decisions cited by appellee wherein recovery for sentimental value was permitted.” <i>Craft v. Olney</i> , 1984 WL 4060 (Ohio Ct. App. 1984).
OKLAHOMA	“... by the negligence of another is entitled to ... be restored to the same position it was in prior to the accident and is not restricted to recovery of the depreciated value of the pole, nor to depreciated value of pole plus amount of expenses incurred, depreciated to the same extent as the depreciated value of the pole.” <i>Polk v. Oklahoma Gas &amp; Elec. Co.</i> , 410 P.2d 547 (Okla. 1966).	“The measure of damages in an action for injury to used articles of personal property having no fixed market value is the value of the goods to the owner; not any fanciful value...” <i>Oklahoma Transp. Co. v. Seminole Lodge No. 430, I.O.O.F.I.</i> , 217 P.2d 164 (Okla. 1950).	“The measure of damages in an action for injury to used articles of personal property having no fixed market value is the value of the goods to the owner; not any fanciful value...” <i>Oklahoma Transp. Co. v. Seminole Lodge No. 430, I.O.O.F.I.</i> , 217 P.2d 164 (Okla. 1950).
OREGON	“That measure [depreciation method], although imperfect, comes closer to promoting just compensation in power pole damage cases as a whole than does the ‘full replacement cost’ method.” <i>Portland General Elec. Co. v. Taber</i> , 934 P.2d 538 (Or. Ct. App. 1997).	“...if it has no market value, he may prove its special value to him by showing its qualities, characteristics, and pedigree, and may offer the opinions of witnesses who are familiar with such qualities.” <i>McCallister v. Sappingfield</i> , 144 P. 432 (Or. 1914).	“In the case of household goods and furniture...the owner is entitled to recover the actual value of the property to him, excluding, of course, any fanciful or sentimental value which he might place upon it.” <i>Barber v. Motor Inv. Co.</i> , 298 P. 216 (Or. 1931).

STATE	SERVICE VALUE	INTRINSIC VALUE	SENTIMENTAL VALUE
PENNSYLVANIA	"Depreciation principles have not been applied in such cases, and we are of the opinion that they should not be given consideration here." <i>Pennsylvania Power &amp; Light Co. v. Decker</i> , 1 Pa. D. & C. 3d 303 (Pa. Ct. Com. Pl. 1966).	"Where there is the destruction of personal property without a market value... It is entitled to damages based upon its special value to the plaintiff." <i>Rhoades, Inc. v. United Airlines, Inc.</i> , 224 F. Supp. 341 (W.D. Pa. 1963).	The measure of damages for dog would be the market value and owner's sentimental attachment to dog does not make it unique chattel under the law. <i>Daughen v. Fox</i> , 539 A.2d 858 (Pa. Super. 1988).
RHODE ISLAND	"... by reason of the unique or peculiar character of the property taken, no market for it exists, the depreciated reproduction cost approach is proper." <i>Trustees of Grace and Hope Mission of Baltimore City, Inc. v. Providence Redevelopment Agency</i> , 217 A.2d 476 (R.I. 1966).	"... instead of adhering to the before and after market values as the rule of damages, ... permit recovery of the actual value to the owner of the thing lost or damaged, excluding, of course, any fanciful or sentimental value that might be placed upon it." <i>De Spirito v. Bristol County Water Co.</i> , 227 A.2d 782 (R.I. 1967).	"... instead of adhering to the before and after market values as the rule of damages... permit recovery of the actual value to the owner of the thing lost or damaged, excluding, of course, any fanciful or sentimental value that might be placed upon it." <i>De Spirito v. Bristol County Water Co.</i> , 227 A.2d 782 (R.I. 1967).
SOUTH CAROLINA	"Accordingly, we hold that the necessary expense in replacing the utility pole is the proper measure of damages for its wrongful destruction." <i>Duke Power Co. v. Thornton</i> , 401 S.E.2d 195 (S.C. Ct. App. 1991) (citing <i>Horton v. Georgia Power Co.</i> , 254 S.E.2d 479 (Ga. Ct. App. 1979)).	"Recovery may be had for the loss or destruction of property even though it has no actual market value, in which case the owner is entitled to recover its actual or reasonable value, or its special value to him." <i>Nelson v. Coleman Co.</i> , 155 S.E.2d 917 (S.C. 1967).	Awarding secondhand market value is not adequate compensation to owner of household goods and wearing apparel destroyed by fire, and owner may recover either actual value of item or its value to him, excluding fanciful or sentimental value which he may place on item. <i>Nelson v. Coleman Co.</i> , 155 S.E.2d 917 (S.C. 1967).
SOUTH DAKOTA	No Case Law	Rule of damages depends upon the purpose and character of the action. A party injured may ... recover the value of such trees, <i>not as a part of the realty, but their intrinsic value as detached and separated therefrom, and proved in the usual mode of proving value.</i> <i>Wallahan v. Black Hills Elec. Co-op, Inc.</i> , 523 N.W.2d 417 (S.D. 1994).	Damages in an eminent domain proceeding must include present and prospective damages caused by the condemnor but not those which are speculative or remote or damages which are sentimental only. <i>Lawrence Cty. v. Miller</i> , 786 N.W.2d 360 (S.D. 2010).
TENNESSEE	"...the only value ... placed on such equipment is the reasonable cost of replacing it with like equipment which will perform the same function, less the salvage value of the replaced equipment, and does not involve any depreciation." <i>Middle Tennessee Elec. Membership Corp. v. Barrett</i> , 410 S.W.2d 914 (Tenn. Ct. App. 1966).	"One criterion of damages is the actual value to who owns it, and this is the rule when the property is chiefly or exclusively valuable to him; such articles, for instance, as family pictures, plate, and heirlooms." <i>Bateman v. Ryder</i> , 64 S.W. 48 (Tenn. 1901).	"...the primary measure of damage for loss of property is the cost of replacement on the open market if the article is obtainable in the open market, but, if not, the useful value to the owner, as distinguished from "sentimental value." <i>Merritt v. Nationwide Warehouse Co., Ltd.</i> , 605 S.W.2d 250 (Tenn. Ct. App. 1980).

STATE	SERVICE VALUE	INTRINSIC VALUE	SENTIMENTAL VALUE
TEXAS	<p>“In the very nature of things personal effects composing the furnishings of a family and household do not, for the most part, have an ascertainable market value; and their value must of necessity be fixed by replacement cost, with due allowance for depreciation, or by their intrinsic value.” <i>Niagara Falls Ins. Co. v. Pool</i>, 31 S.W.2d 850 (Tex. Civ. App. 1930).</p>	<p>“...the measure of damages ... in the absence of a market value, is the actual value...actual value ... is not a price suggested by the owner’s partiality for them, nor yet what he could sell them for, neither would it be a fanciful or sentimental value, but the actual loss in money he would sustain by being deprived of such articles of domestic use.” <i>American Ry. Express Co. v. Thompson</i>, 2 S.W.2d 493 (Tex. Civ. App. 1927).</p>	<p>“As a general rule recovery for sentimental value for personal property cannot be had in a suit for the loss of property for personal use such as wearing apparel and household goods. However...in a suit to recover for the loss or destruction of items which have their primary value in sentiment.” <i>Brown v. Frontier Theaters, Inc.</i>, 369 S.W.2d 299 (Tex. 1963).</p>
UTAH	<p>Although the market value of converted property is ordinarily the basis for ascertaining damages in a conversion action, alternative measures of damages may be appropriate in extraordinary cases. <i>Mahana v. Onyx Acceptance Corp.</i>, 96 P.3d 893 (Utah 2004).</p>	<p>“If, however, there is no demand for the item, the recovery is based on actual value, or in the case of unique chattels, value to the owner.” <i>Winters v. Charles Anthony, Inc.</i>, 586 P.2d 453 (Utah 1978).</p>	<p>With damage to personal property, such as heirlooms, keepsakes, etc., plaintiff is not limited to a recovery of their market value, but may recover their value, based on a reasonable consideration of their sentimental value to her. <i>Pennington v. Redman Van &amp; Storage Co.</i>, 97 P. 115 (Utah 1908).</p>
VERMONT	<p>No Case Law</p>	<p>The measure governing damages to personal property is the property’s “fair market value before the injury less fair market value after the injury.” <i>Turgeon v. Schneider</i>, 553 A.2d 548 (Vt. 1988).</p>	<p>No recovery of sentimental value for things like heirlooms or mementos. <i>Goodby v. Vetpharm, Inc.</i>, 974 A.2d 1269 (Vt. 2009).  Vermont court measures available damages resulting from the injury or death of a pet as it would like damages to any other item of personal property: the property’s value before the injury less the value after the injury. <i>Scheele v. Dustin</i>, 998 A.2d 697 (Vt. 2010).</p>
VIRGINIA	<p>“We are of the opinion that the full cost of replacement is not the proper measure of damages.” <i>Younger v. Appalachian Power Co.</i>, 202 S.E.2d 866 (Va. 1974) (court lays out four-part test used to determine damages).</p>	<p>No recovery for “peculiar value” attached to family portraits. <i>C &amp; O Ry. Co. v. May</i>, 92 S.E. 801 (Vt. 1917).</p>	<p>Owners of personal property are not entitled to recover “any sentimental value attached to it by the owners or any peculiar value which they may have attached to the property by reason of association or the like.” <i>C &amp; O Ry. Co. v. May</i>, 92 S.E. 801 (Vt. 1917).</p>



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WASHINGTON	“Accordingly, we hold that Puget Power is entitled to recover the full replacement cost of a new pole.” <i>Puget Sound Power &amp; Light Co. v. Strong</i> , 816 P.2d 716 (Wash. 1991).	“...if destroyed property has no market value but can be replaced or reproduced, then the measure is the cost of replacement or reproduction; if the destroyed property has no market value and cannot be replaced or reproduced, then the value to the owner is to be the proper measure of damages...” <i>McCurdy v. Union Pac. R. Co.</i> , 413 P.2d 617 (Wash. 1966).	“Recognizing that value to the owner encompasses a subjective element, the rule has been established that compensation for sentimental or fanciful values will not be allowed.” <i>Mieske v. Bartell Drug Co.</i> , 593 P.2d 1308 (Wash. 1979).
WEST VIRGINIA	“...motorists ...were liable for repair of electric power distribution facilities and ... amounts recovered were not subject to depreciation or reduction based on period of time that poles had been installed and in use prior to destruction.” <i>Appalachian Power Co. v. Morrison</i> , 165 S.E.2d 809 (W.Va. 1969).	The intrinsic value of a horse will change very materially over time. The market value of a horse of the same intrinsic value will also probably be very much altered in that time. <i>Johnson v. Baltimore &amp; O.R. Co.</i> , 25 W. Va. 570 (1885).	Plaintiff may recover damages for the loss of a dog by proving “the market value, pecuniary value or <i>some special value</i> .” Sentimental value not recoverable. <i>Julian v. DeVincent</i> , 184 S.E.2d 535 (W.Va. 1971).
WISCONSIN	Measure of damages to property without market value is reasonable cost of repairs necessary to restore property to its former condition. <i>Wisconsin Tel. Co. v. Reynolds</i> , 87 N.W.2d 285 (Wis. 1958).	While recovery for a sentimental value cannot generally be had, the loss of such things as family pictures and heirlooms, which cannot be replaced and are valuable only to the owner, may be compensated to the extent of the reasonable special value of such articles to the owner. <i>Harvey v. Wheeler Transfer &amp; Storage Co.</i> , 277 N.W. 627 (Wis. 1938) (citing <i>Shewalter v. Wood</i> , 183 S.W. 1127 (Mo. App. 1916)).	While recovery for a sentimental value cannot generally be had, the loss of such things as family pictures and heirlooms, which cannot be replaced and are valuable only to the owner, may be compensated to the extent of the reasonable special value of such articles to the owner. <i>Harvey v. Wheeler Transfer &amp; Storage Co.</i> , 277 N.W. 627 (Wis. 1938) (citing <i>Shewalter v. Wood</i> , 183 S.W. 1127 (Mo. App. 1916)).
WYOMING	Measure of damages for loss or conversion of personal property is fair market value of property or, in cases of goods having no ascertainable market value, actual economic value to owner. <i>Broyles v. Broyles</i> , 711 P.2d 1119 (Wyo. 1985).	“...as it is sometimes said, its value to the owner; excluding, however, any mere fanciful or sentimental value which might be placed thereon.” <i>Shikany v. Salt Creek Transp. Co.</i> , 45 P.2d 645 (Wyo. 1935).	“...as it is sometimes said, its value to the owner; excluding, however, any mere fanciful or sentimental value which might be placed thereon.” <i>Shikany v. Salt Creek Transp. Co.</i> , 45 P.2d 645 (Wyo. 1935).

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