

### Mr. Katz Handout #3:

Danny was driving down the freeway. The weather was clear and driving conditions were perfect. There were other cars on the road, but traffic was moving smoothly. Danny was going the speed limit and keeping a safe distance from the car in front of him.

Danny's stomach rumbled—it was lunchtime, and Danny had a chicken burrito from Burrito Bell. Danny unwrapped the burrito and was about to take a bite, when his car hit a small bump in the road. Danny dropped the burrito, looked down to see where it was, and reached to pick it up.

While Danny had his eyes off the road, the driver in front of him, Phil, hit his brakes. Although Danny kept a safe distance, it was too late to brake by the time he looked back up. Danny ran into the back of Phil's car, causing serious damage. Phil was also hurt and had to be taken to the hospital.

Now, Phil is suing Danny for negligence. If Danny is guilty of negligence, he may be liable to pay Phil for the damage caused by the wreck. In order to prove Danny was negligent when he hit Phil's car, Phil must show that: 1) Danny had a duty of care to Phil; 2) Danny breached that duty; 3) Danny's breach of duty was the cause in fact of the wreck; 4) Danny's breach of duty was the proximate cause of the wreck; and 5) Danny's breach of duty caused harm to Phil.

All drivers have a duty to the general public to use reasonable care behind the wheel. Phil has also definitely been harmed because his car is wrecked and he was physically injured. This leaves us with just three questions, which you will now discuss and answer in your groups.

#### **PART 1: ELEMENTS OF NEGLIGENCE**

**QUESTION 1: "Breach of duty."** Danny has a duty to use reasonable care while driving. If he was not being reasonably safe while driving, then Danny has breached this duty. Did Danny breach his duty to drive safely? Why or why not?

**QUESTION 2: "Cause in fact."** Danny's actions are the "cause in fact" of the harm Phil suffered if, "but for" Danny's actions, the harm would not have happened. In other words, would the wreck have happened at all if Danny had kept his eyes on the road? Why or why not?

**QUESTION 3: "Proximate Cause."** Danny's actions are the proximate cause of the harm if they actually caused the wreck. In other words, did the wreck happen because Danny took his eyes off the road? Why or why not?

## **PART 2: CALCULATING DAMAGES**

The judge has decided that Danny was negligent and is liable for damages. Now, the jury must decide how much money Phil is owed. **The aim of awarding damages is to make the plaintiff “whole” by putting them in the same position they were in before the wreck.**

Phil’s car was new when he bought it for \$30,000. At the time of the wreck, Phil’s car was worth \$15,000. The cost of a new car of the same make and model is \$40,000. The cost of repairing Phil’s car would be \$25,000.

Phil received treatment for broken bones and a concussion at the hospital. He also had to go to physical therapy for neck pain caused by whiplash. Phil now has \$50,000 in hospital bills.

Phil was also traumatized by the wreck and will be in therapy for the rest of his life, which will cost another \$100,000. He is now so afraid of cars that he refuses to drive and will sometimes have panic attacks when he hears a car horn or screeching brakes. Even crossing the street fills Phil with fear.

There are two types of “damages” that Phil might be able to recover. That is, there are two ways Phil can be awarded money. **Economic Damages** are damages that are “objectively verifiable.” Generally, if Phil has a receipt for money he has lost or paid because of the wreck, those count as economic damages. **Noneconomic damages** are damages for things that don’t already have a price-tag. This includes emotional distress, pain & suffering, and diminished (lower) quality of life.

**With your group, figure out how much Danny should pay Phil in both economic and noneconomic damages. Each group has unique instructions on how to calculate what Phil is owed, so read the questions below closely!**

**QUESTION 1: ECONOMIC DAMAGES.** Phil must be repaid for all damages that are “objectively verifiable,” including money for the damage to his car. What is the *total* amount Phil should get to put him exactly where he was before the day of the wreck?

**QUESTION 2: NONECONOMIC DAMAGES.** Phil also wants money for his pain & suffering, emotional distress, and reduced quality of life. After all, he will never drive again, is afraid of car sounds, and is even scared to cross the street. How much money would be enough for you to live in Phil’s shoes for one day? Multiply that number by 10,000 (add four zeros).

**Group 2**

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Now, Phil is suing Danny for negligence. If Danny is guilty of negligence, he may be liable to pay Phil for the damage caused by the wreck. In order to prove Danny was negligent when he hit Phil's car, Phil must show that: 1) Danny had a duty of care to Phil; 2) Danny breached that duty; 3) Danny's breach of duty was the cause in fact of the wreck; 4) Danny's breach of duty was the proximate cause of the wreck; and 5) Danny's breach of duty caused harm to Phil.

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**With your group, figure out how much Danny should pay Phil in both economic and noneconomic damages. Each group has unique instructions on how to calculate what Phil is owed, so read the questions below closely!**

**QUESTION 1: ECONOMIC DAMAGES.** Phil must be repaid for all damages that are “objectively verifiable,” including money for the damage to his car. What is the *total* amount Phil would need to make sure he doesn’t lose any money because of the wreck?

**QUESTION 2: NONECONOMIC DAMAGES.** Phil also wants money for his pain & suffering, emotional distress, and reduced quality of life. After all, he will never drive again, is afraid of car sounds, and is even scared to cross the street. How much would someone have to pay you to live with Phil’s trauma for the rest of your life?

**Group 3**

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**QUESTION 1: ECONOMIC DAMAGES.** Phil must be repaid for all damages that are “objectively verifiable,” including money for the damage to his car. What is the cheapest *total* amount that would be fair to both Phil and Danny?

**QUESTION 2: NONECONOMIC DAMAGES.** Phil also wants money for his pain & suffering, emotional distress, and reduced quality of life. After all, he will never drive again, is afraid of car sounds, and is even scared to cross the street. How much should Phil get? Your group gets no other instructions. You must pick a dollar amount.