

Westlaw.

Page 1

McKinney's EPTL § 5-4.3

▷

Effective: [See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness

Estates, Powers and Trusts Law (Refs & Annos)

Chapter 17-B. Of the Consolidated Laws

▣ Article 5. Family Rights

▣ Part 4. Rights of Members of Family Resulting from Wrongful Act, Neglect or Default Causing Death of Decedent (Refs & Annos)

→ § 5-4.3 Amount of recovery

(a) The damages awarded to the plaintiff may be such sum as the jury or, where issues of fact are tried without a jury, the court or referee deems to be fair and just compensation for the pecuniary injuries resulting from the decedent's death to the persons for whose benefit the action is brought. In every such action, in addition to any other lawful element of recoverable damages, the reasonable expenses of medical aid, nursing and attention incident to the injury causing death and the reasonable funeral expenses of the decedent paid by the distributees, or for the payment of which any distributee is responsible, shall also be proper elements of damage. Interest upon the principal sum recovered by the plaintiff from the date of the decedent's death shall be added to and be a part of the total sum awarded.

(b) Where the death of the decedent occurs on or after September first, nineteen hundred eighty-two, in addition to damages and expenses recoverable under paragraph (a) above, punitive damages may be awarded if such damages would have been recoverable had the decedent survived.

(c)(i) In any action in which the wrongful conduct is medical malpractice or dental malpractice, evidence shall be admissible to establish the federal, state and local personal income taxes which the decedent would have been obligated by law to pay.

(ii) In any such action tried by a jury, the court shall instruct the jury to consider the amount of federal, state and local personal income taxes which the jury finds, with reasonable certainty, that the decedent would have been obligated by law to pay in determining the sum that would otherwise be available for the support of persons for whom the action is brought.

(iii) In any such action tried without a jury, the court shall consider the amount of federal, state and local personal income taxes which the court finds, with reasonable certainty, that the decedent would have been obligated by law to pay in determining the sum that would otherwise be available for the support of persons for whom the action is brought.

CREDIT(S)

(L.1966, c. 952; amended L.1982, c. 100, § 1; L.1986, c. 266, § 6.)

<LAWS 1966, CHAPTER 952>

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Westlaw.

Page 1

McKinney's EPTL § 11-3.3

C**Effective: [See Text Amendments]**

McKinney's Consolidated Laws of New York Annotated Currentness

Estates, Powers and Trusts Law (Refs & Annos)

Chapter 17-B Of the Consolidated Laws

- ▣ Article 11. Fiduciaries: Powers, Duties and Limitations; Actions by or Against in Representative or Individual Capacities

- ▣ Part 3. Actions by or Against Personal Representatives

→§ 11-3.3 Limitations upon recovery where injury causes death

(a) Where an injury causes the death of a person the damages recoverable for such injury are limited to those accruing before death and shall not include damages for or by reason of death, except that the reasonable funeral expenses of the decedent, paid by the estate or for the payment of which the estate is responsible, shall be recoverable in such action. The damages recovered become part of the estate of the deceased.

(b) Nothing contained herein shall affect the cause of action existing in favor of the next of kin under 5-4.1, subject to the following:

(1) Such cause of action and the cause of action, under this section, in favor of the estate to recover damages may be prosecuted to judgment in a single action; a separate verdict, report or decision shall be rendered as to each cause of action.

(2) Where an action to recover damages for personal injury has been brought, and the injured person dies, as a result of the injury, before verdict, report or decision, his personal representative may enlarge the complaint in such action to include the cause of action for wrongful death under 5-4.1.

(3) Where an action to recover damages under this section and a separate action for wrongful death under 5-4.1 are pending against the same defendant, they may be consolidated on the motion of either party.

CREDIT(S)

(L.1966, c. 952; amended L.1967, c. 686, § 128, eff. Sept. 1, 1967.)

<<ESTATES, POWERS AND TRUSTS LAW>>

<LAWS 1966, CHAPTER 952>

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

L.1967, c. 686 legislation

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.