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# Basics of Future Damages in Texas

2022 Car Crash Seminar

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## Key items

- Future damages follow the Reasonable Probability Test in Texas
- This is a preponderance of the evidence standard
- Courts do not want to disturb jury awards on future damages
- Texas Courts give some leeway to future damages claims because they are all somewhat speculative

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## History – Common Law / Federal

- *Curtis v. Rochester & Syracuse R.R. Co.*, 18 N.Y. 534 (N.Y. 1859) – Reasonable Certainty Test
- "In estimating the pecuniary loss in such cases, all the consequences of the injury, future as well as past, are to be taken into consideration; and there seems to be no reason why a different rule should prevail in respect to bodily pain and suffering." *Id.* at 542 (Internal Citations Omitted).
- "that future damages could only be awarded when it is rendered **reasonably certain**, from the evidence, that such damages will inevitably and necessarily result from the original injury." *Id.* (emph. added)



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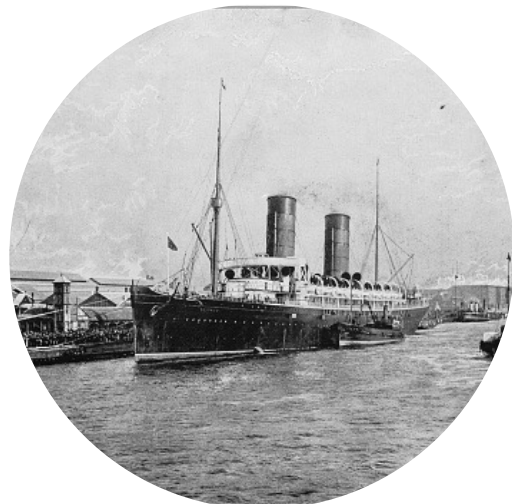
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## Early Supreme Court Cases

- *R. R. Co. v. Barron* 72 US 90 (1866) – Demonstrates the challenges of Reasonable Certainty test

How do you prove future damages on a wrongful death case when the deceased is in between careers and there is no evidence that the plaintiff would receive an inheritance?

- *The "City of Panama,"* 101 U.S. 453 (1879). Reasonable Certainty standard becomes federal law.



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## Current Federal Interpretation

- Federal law still follows the *Reasonable Certainty* test. To prevail, a plaintiff must 1) prove future damages by a preponderance of the evidence; and 2) provide a reasonable estimate for future damages. See *Maupin v. Syrian Arab Republic*, 405 F. Supp. 3d 75, 84-85 (D.D.C. 2019).

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## Texas Law

- *Gulf, Colorado & Santa Fe Railway Co. v. Harriett*, 80 Tex. 73 (Tex. 1891)
- “[s]o much of the instruction as lays down the proposition that in order to” recover for future consequences they must be “reasonably certain” to ensue, is incorrect. Certainty means the absence of doubt, and the proposition means that the jury should be satisfied of their occurrence beyond a reasonable doubt. We think the evidence should show that there is a reasonable- probability of the occurrence of future ill effects of the injury, and that it need show no more in order to justify the jury in considering future consequences in estimating the damages. *Id.* at 82-83.



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