



Compensatory Damages

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Compensatory Damages

To make the plaintiff whole.

- Pecuniary
 - a/k/a:
 - Special
 - Economic
- Nonpecuniary
 - a/k/a:
 - General
 - Noneconomic

Pecuniary Compensatory Damages

- Part of what's needed to make the plaintiff whole.
- Easily denominated in dollars.
- Lost wages, repair costs, medical bills, diminution of market value, etc.
- There can often be huge fights over how to measure pecuniary damages.
 - For instance: Do you measure by diminution in value or repair costs? What accounting model do you use? What assumptions do you use?

Nonpecuniary Compensatory Damages

- Part of what's needed to make the plaintiff whole.
- Not natively denominated in dollars.
- Pain and suffering, loss of a loved one, loss of an ability, etc..
- There can often be huge fights over how to measure these damages, of course.

Spell v. McDaniel

- Appreciate the range of possible outcomes in measuring nonpecuniary damages
- Appreciate the crucial role of the jury in determining amount
- Appreciate the deference to the trial court in this area
- Consider the role of evidence and trial dynamics in determining damages

Some Key Issues with Compensatory Damages

- Caps (by statute)
- Mitigation
 - Plaintiff must act reasonably to prevent damages from increasing
- Collateral Source Rule
 - Collateral sources of reimbursement/payment are not offset against what defendant owes
 - But keep in mind subrogation
- Issues of time: past and future losses

Issues of Time: Past and Future Losses

- Single-recovery rule
- Pre-judgment interest
 - Understand what a difference this can make
- Figuring future losses
- Reducing future losses to net present value and accounting for inflation

From the casebook ... p, 366

Problem on Discounting Future Losses to Net Present Value

After a bench trial, the judge determines that Amelia has received a latent injury that is more likely than not going to require extensive surgery in the future. The judge accepts as a model for damages that Amelia is likely to need \$1 million in medical care at a point in time 10 years in the future. The judge also accepts expert testimony establishing an annual discount rate inclusive of inflation of 3.9%. What should be Amelia's award today, discounted to present value?