



Punitive Damages

Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable

Punitive Damages

- To punish or make an example of the defendant.
- Focused on defendant (cf. compensatory damages, which were focused on the plaintiff).
- Possible purposes/rationales:
 - Deterrence
 - Retribution
 - Make litigation affordable in particularly egregious cases

Punitive Damages (more)

- Must be culpability that exceeds simple negligence.
- Typical phrases for required culpability:
 - Flagrant misconduct
 - Malicious
 - Willful, wanton, or reckless
 - In conscious disregard

Case

Mathias v. Accor Lodging

- Have a memorable example of conduct that rises to the level of being appropriate for punitive damages.
- Consider the role of punitive damages in making litigation affordable for plaintiffs.
- Consider the role of punitive damages in changing the calculations of a self-interested defendant facing possible liability.
- Consider the role of reputation in litigation and the role of punitive damages in that.
- Consider the SCOTUS pronouncement on due-process limitations and see what that means in a lower court.
- Consider how a jury might come up with a number for punitive damages.

Silkwood v. Kerr-McGee

- Consider the role of the jury in punitive damages.
- Consider the role of the trial lawyer and closing argument in punitive damages.
- Consider what makes a closing argument good, and what sets up a request for a large punitive damages award.
- Appreciate that most of the action and dynamism of punitive damages has to do with facts, atmospherics, emotion, and trial dynamics - rather than legal doctrine.

Punitive Damages: Incidence and Magnitude

- Punitive damages are not typical.
 - Sought in 12% of cases
 - Awarded in 2% of cases
- Often relatively modest (\$64,000 median award of punitives)
- Far more common with certain claims, including intentional torts, fraud, and defamation.
 - Sought in 33% of defamation cases
 - Sought in 32% of fraud cases
 - Sought in 30% of intentional tort cases
 - Sought in 8% of med mal cases
 - Sought in 7% of auto accident cases

Punitive Damages: Caps and Rakes

- Many state have enacted caps on punitive damages.
- Consider Indiana:
 - Cap of the greater of \$50,000 or three times compensatories
 - 75% rake to state treasury
 - Jury cannot be told of cap or rake
- Punitive damages reforms are the object of intense political struggle. (Consider Arkansas, discussed in casebook.)

Punitive Damages: Due Process Limits

- SCOTUS has held that the Due Process Clause of the 14th Amendment places limits on punitive damages.
- SCOTUS has focused on comparing the quantity of compensatory damages to the quantity of punitive damages.
- State Farm v. Campbell (U.S. 2003):
 - “few awards [of punitive damages] exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”
 - Held there is a presumption against an award of punitives in a 145-to-1 ratio to compensatories