



Damages

Eric E. Johnson
ericejohnson.com



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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?

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):
 - Held there was a presumption against punitives in a 145-to-1 ratio to compensatories on the facts of the case
 - Held that “few awards [of punitive damages] exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”
 - But also said, “Nonetheless ... there are no rigid benchmarks” Greater ratios may be upheld where “a particularly egregious act has resulted in only a small amount of economic damages.”