



# Damages

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Review

## Compensatory vs. Punitive Damages

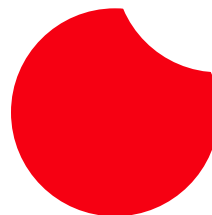
### Compensatory damages

- Focused on plaintiff
- To make plaintiff whole



### Punitive damages

- Focused on defendant
- To punish defendant, make an example of defendant



Bad circle!

## **Punitive damages: requirements**

- Requires reprehensibility rather than mere blameworthiness.
- Essentially, the question is whether the conduct deserves being punished.
- Courts use various phrases to describe the threshold requirement, including:
  - “willful, wanton, or reckless”
  - “flagrant misconduct”
  - “malice”
  - “in conscious disregard”
  - “wantonly reckless or malicious”

## **Punitive damages: incidence**

Some empirical findings:

- Sought in ~12% of civil trials.
  - More common in defamation, fraud, and intentional torts cases.
  - Less common in med mal, auto accidents.
- Awarded in ~2% of lawsuits going through trial.
- Where awarded: Median \$64K; 13% were >\$1M.

## **Punitive Damages: Caps & Rakes**

- Many states have caps on punitive damages.  
Examples:
  - Lesser of \$10M or 3% of D's net worth
  - Greater of \$50K or 3x compensatories
- Some states rake a portion of punitive damages to the state treasury – called “split-recovery statutes.”  
Examples:
  - 50% to state treasury
  - 75% to state treasury

## **Punitive Damages: Constitutional limits**

- SCOTUS has said there are federal constitutional limits on punitive damages
- From *State Farm Mutual Automobile Ins. Co. v. Campbell* (U.S. 2003):
  - “[F]ew awards [of punitive damages] exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”
  - “[F]our times the amount of compensatory damages might be close to the line of constitutional impropriety.”
  - “[T]here is a presumption against an award that has a 145-to-1 ratio.”

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  - “[T]here is a presumption against an award that has a 145-to-1 ratio.”

Check your understanding ...

(A = yes; B = no)

A surgeon’s tortious/negligent mistake causes nerve damage that results in lifelong severe pain. You’re 35.

Could you get \$1 million in “special” a/k/a “pecuniary” damages for the pain and suffering?

Check your understanding ...

(A = yes; B = no)

A surgeon's tortious/negligent mistake causes nerve damage that results in lifelong severe pain. You're 35.

Could you get \$1 million in "special" a/k/a "pecuniary" damages for the pain and suffering?

No.

*Why not?*

Special/pecuniary damages are natively denominated in dollars.

Check your understanding ...

(A = yes; B = no)

A surgeon's tortious/negligent mistake causes nerve damage that results in lifelong severe pain. You're 35.

Could you get \$1 million in "general" a/k/a "nonpecuniary" a/k/a "noneconomic" damages for the pain and suffering?

Check your understanding ...  
(A = yes; B = no)

A surgeon's tortious/negligent mistake causes nerve damage that results in lifelong severe pain. You're 35.

Could you get \$1 million in "general" a/k/a "nonpecuniary" a/k/a "noneconomic" damages for the pain and suffering?

Yes. That's something that could happen.

Check your understanding ...  
(A = yes; B = no)

A surgeon's tortious/negligent mistake causes nerve damage that results in lifelong severe pain. You're 35.

Is it possible your pain-and-suffering damages could be limited to a fraction of that by a state-statute-imposed cap?

Check your understanding ...  
(A = yes; B = no)

A surgeon's tortious/negligent mistake causes nerve damage that results in lifelong severe pain. You're 35.

Is it possible your pain-and-suffering damages could be limited to a fraction of that by a state-statute-imposed cap?

Yes. (And this would be pretty common.)

Check your understanding ...  
(A = yes; B = no)

D tortiously causes me to incur \$1M in medical bills ...

- But I could have saved \$500,000 if I'd only gone to the doctor when a normal reasonable would have instead of delaying for weeks.

Are D's damages reduced?

Check your understanding ...

(A = yes; B = no)

D tortiously causes me to incur \$1M in medical bills ...

- But I could have saved \$500,000 if I'd only gone to the doctor when a normal reasonable would have instead of delaying for weeks.

Are D's damages reduced?

Yes.

Why?

Duty to mitigate.

Check your understanding ...

(A = yes; B = no)

D tortiously causes me to incur \$1M in medical bills ...

- But I get \$1.2M from a gofundme page.

Are D's damages reduced?



Check your understanding ...

(A = yes; B = no)

D tortiously causes me to incur \$1M in medical bills ...

- But I get \$1.2M from a gofundme page.

Are D's damages reduced?

No.

*Why not?*

Collateral source rule.