



Damages, Part Two

Eric E. Johnson
ericejohnson.com



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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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