



Damages

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Review

Compensatory vs. Punitive Damages

Compensatory damages

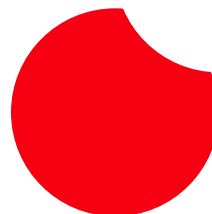
- Focused on plaintiff
- To make plaintiff whole



Punitive damages

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

Bad circle!



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.

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.

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.

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.

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.

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.”