Punitive Damages

Recap

Remedies

The consequences of liability.

Remedies include:

- ????????? damages

- ?????????? damages

- Nominal damages and declaratory judgment

- Equitable relief

Remedies include:

- Compensatory damages

- Punitive damages

- Nominal damages and declaratory judgment

- Equitable relief

Compensatory Damages

and punitive damages

Compensatory Damages

The Objective:

?????????????

Compensatory Damages

The Objective:

To restore the plaintiff to the state they were in before the harm caused by the defendant.

Seffert v. Los Angeles Transit Lines

Rule for excessive damages?

Seffert v. Los Angeles Transit Lines

Rule for excessive damages:

Damages award must shock the conscience, be the result of "passion," "prejudice," "whim," "caprice"

McDougald v. Garber

Two legal issues?

McDougald v. Garber

Two legal issues:

1. Are "pain and suffering" and "loss of enjoyment" distinct issues?

2. Does "loss of enjoyment" require cognitive awareness?

Holding?

McDougald v. Garber

Two legal issues:

1. Are "pain and suffering" and "loss of enjoyment" distinct issues?

2. Does "loss of enjoyment" require cognitive awareness?

Holding:

1. "Pain and suffering" and "loss of enjoyment" are not distinct issues.

2. "Loss of enjoyment" requires cognitive awareness.

Jury Exercise

Systemic Inequality & Damages Calculations

Consideration of race, gender, national origin, and immigration status.

Argument in favor

Accuracy

Compensatory damages are about what is, not what should be

Critiques

Creates harmful incentives for potential tortfeasors

Assumes the future = the past

Ignores expressive function of law

My own take

Accuracy argument weaker than it appears

• What is individual accuracy?

• Statistical modeling always involves normative choices

Elimination of explicit consideration of race and gender does not eliminate influence of systemic inequality on damages awards:

• Proxies persist

• Compensatory damages in an unequal society restores inequality

California Law:

Estimations, measures, or calculations of past, present, or future damages for lost earnings or impaired earning capacity resulting from personal injury or wrongful death shall not be reduced based on race, ethnicity, or gender.

CA Civ Code § 3361 (2022)

BMW v. Gore

1. Procedural posture

2. Legal question(s)

3. Relevant facts

4. Holding

5. Reasoning(s) behind the holding

Three Guideposts

1. Degree of reprehensibility

2. Ratio of punitive damages to harm inflicted on plaintiff

3. Comparison with civil or criminal penalties

BMW v. Gore: Due Process Concerns

Majority

- Jurisdiction

- Fair notice

- Proportionality

Concurrence

- Arbitrary coercion

Three Guideposts

1. Degree of reprehensibility

2. Ratio of punitive damages to harm inflicted on plaintiff

3. Comparison with civil or criminal penalties

State Farm v. Campbell

1. Procedural posture

2. Legal question(s)

3. Relevant facts

4. Holding

5. Reasoning(s) behind the holding

State Farm Reasoning:

Guideposts from BMW v. Gore

1. Reprehensibility

2. Disparity between compensatory and punitive damages

3. Difference between punitive damages and civil penalties