

# Damages

# Recap

# Remedies

The consequences of liability.

# Remedies include:

- ???? damage
- ???? damage
- 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”

# McDougal v. Garber

Two legal issues?

# McDougal 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?

# McDougal 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

Confer with group for 10 minutes.

Come back with:

- Dollar amount for compensatory damages for future economic loss and pain and suffering
- Breakdown of how that was calculated

# Jury Exercise:

Group 01: \$2,250,000

Group 02: \$825,000

Group 03: \$790,000

Group 04: \$3,480,000

Group 05: \$3,600,000

Group 06: \$3,100,000 + pain and suffering

Group 07: \$4,200,000

Group 08: \$2.5 million + pain and suffering

Group 09: \$2,000,000

Group 10: \$4,200,000

Group 11: \$2,420,000

Group 12: \$1,960,000

# 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

# 14th Amendment

## Section 1.

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No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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# Three Guideposts

1. Degree of reprehensibility
2. Ratio of punitive damages to harm inflicted on plaintiff
3. Comparison with civil or criminal penalties

