

PUNITIVE DAMAGES

B. Procedural, evidentiary and constitutional issues

How would you answer these questions in Arkansas?

- 1) Assume the plaintiff properly alleges punitive damages, how does the allegation affect:
 - a) discovery techniques;
 - b) the structure of the trial;
 - c) the proffered evidence;
 - d) the definition of wealth; #5, page 790
 - e) the closing arguments;
 - f) the standard of proof; #3, page 769; #3-4, page 780-781
 - g) the jury instruction

- 2) What is the traditional standard of appellate review?

- 3) Assume the jury awards \$1 nominal damages and \$100,000 punitive damages in an invasion of privacy case, what is the role of the trial judge? #9, page 772.

- 4) Assume the jury awards \$50,000 compensatory and \$10 million punitive. See pages 792-806.
 - a) Does the award violate the Eighth Amendment? See Browning-Ferris (1989), page 799.
 - b) Does the award violate either aspect of the Due Process Clause of the 14th Amendment? See Haslip (1991), page 803.
 - c) May an award be so excessive as to violate due process? See TXO (1993).
 - d) What role must the trial judge play? See Honda (1994), page 803.
 - e) What three factors must the trial judge consider? See Gore (1996), page 800.
 - f) What is the role of the appellate court? See Cooper Industries (2001), page 793.
 - g) Are there dollar limits on punitive damages? State Farm v. Campbell (2003), page 792.
 - h) What is the evidentiary impact of injuries to non-parties? See Philip Morris (2007), page 804.
 - i) In some instances is a lower ratio required by the Constitution? See Exxon (2008), page 806.

- 5) Suppose some conduct occurred the boundaries of the forum? See Campbell, page 792; #5, page 803. See AMI 2218A
- 6) Assume there are multiple defendants, one of whom undisputedly was “the villain,” how does this distinction affect the plaintiff’s strategy?
- 7) Suppose the defendant has been assessed punitive damages in another proceeding for the same conduct? #1-2, page 787.
- 8) Assume the plaintiff was 30% at fault, how are punitive damages affected?
- 9) Suppose the tort-feasor died in the accident, does the death affect punitive damages?
- 10) Suppose the defendant has insurance. May punitive damages be collected from the insurer under the policy? #5, page 782.
- 11) Assume the defendant is a charitable organization, should punitive damages be permitted?