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 757
   e) the closing arguments;
   f) the standard of proof; #3, page 736; #3-4, page 747-749
   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 739.

4) Assume the jury awards $50,000 and $10 million punitive.
   a) Does the award violate the Eighth Amendment? See Browning-Ferris, page 767.

   b) Does the award violate either aspect of the Due Process Clause of the 14th Amendment? See Haslip, page 770.

   c) When is the award so excessive as to violate due process? See TXO.

   d) What role must the trial judge play? See Honda, page 771.

   e) What three factors must the trial judge consider? See Gore, page 767.

   f) What is the role of the appellate court? See Cooper Industries, page 760.

   g) Are there dollar limits on punitive damages? State Farm v. Campbell (2003), page 759.

   h) What is the evidentiary role of injuries to non-parties? See Philip Morris, page 771.

5) Assume there are multiple defendants, one of whom undisputedly was "the villain," how does this distinction affect the plaintiff's strategy?

6) Suppose the defendant has been assessed punitive damages in another proceeding for the

same conduct? #1-2, page 754.

7) Suppose some conduct occurred the boundaries of the forum? See Campbell, page 759; #5, page 773.

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 749.

11) Assume the defendant is a charitable organization, should punitive damages be permitted?

09/T/21