

Legal and Economic Analysis of Punitive Damages

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Extended Abstract

“Punitive damages” is a concept versus “compensatory damages” which are not awarded in order to compensate the plaintiff unlike compensatory damages, but they are a reaction to the intentional behavior in the event of malice that the defendant of a civil liability lawsuit has been acted. These kinds of damages have been recently absorbed the attention of analysts and courts especially in Common Law system because of the two major reasons: high costs of proceedings and the incompetency intentions observed in some fields of civil liability. Thus, they benefited from the necessity of defendant to pay a price that has not purely the compensatory characteristic.

In this study efforts have been made to explain the objectives, applications and justifications that have been presented for the punitive damages. Punitive damage consists of two widespread social purposes that the law-makers are more interested in the goal of punishment and the economic analysts are more interested in Economic Analysis of Law in order to execute its deterrence. But the aim of deterrence is to prevent the commitment of intentional harms or those of harms that defendant is able to escape liability against them.

In the aim of deterrence, we intend to impose liability to the defendant due to his previous performance, he and other people who are in the same condition in order to stop them from committing a harmful incidence. Therefore the goal of punishment is resulted from the intention of people to punish the blameworthy people. Thus, we assume that the goal of punishment finally results from the enjoyment or satisfaction that people gain from seeing the perpetrators being punished.

Methodologically, in this article beside the law perspective, the perspective of Economic Analysis of Law has been additionally used. In the Economic Analysis, the economic tools are used in evaluating this damage. That's why aims which are in consideration of authors in this specific model of liability in the Economic Analysis of Law are explained. In the approach of Economic Analysis of Law, the law rules are tools to reach the important social goals; in other words, based on the economic

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perspective, the law sanctions are tantamount to prices and when these tools are incomplete in establishing our aims, they could be modified. As a result, since the people respond to the prices, they will respond to the sanctions too and to the stronger sanctions with less commitment of related activities as well.

Theoretically, in the punitive damages which are a type of extra-compensatory damages due to the higher price of compensation from the perpetrators, the cost of action for activists in that field goes up and brings about a stronger preventive force in contrast to the compensatory damages so that he should exercise caution more than a person in normal environment. Thus, if the punitive damages are mandated excessively, it will cause a problem so-called over deterrence.

For Professor Cooter, the punitive damage should involve the goal of deterrence and this goal is recognized according to three policies that the punitive damages consist of. Three policy conclusions follow from this analysis: punitive damages should be restricted to intentional faults; a criterion for identifying intentional fault is that it is gross or repeated; and punitive damages should be computed to offset the injurer's illicit pleasure from noncompliance or exceptional cost of compliance. In this respect, the players receive behavioral incentives from the civil liability. It is connotatively assumed that if a tort perpetrator brings about harms for which he will be liable, he will be liable too. Therefore, he will face all the negative externalities caused. However, there are many conditions that the probability of making the perpetrators liable is under 100%. In other words, those perpetrators should be known liable may try to escape the trial. Under these conditions, the use of punitive damages is useful.

In general, it should be noted about the internal law condition that the Iranian writers in the case of civil liability mostly pay attention to the traditional aims of this mechanism and in facing the punitive damages know its punishment and trial aspects so that they feel it is inappropriate for their restorative system. The deterrence aspect of punitive damages in the writings of foreign-authors possesses stronger aspect and the Economic Analysts have mentioned logical justifications which generally have been designed to internalize all the harmful effects of individual's behavior. In sum, based on the punishment perspective, punitive damages are not justifiable in our internal law because they have restorative essence but from the deterrence perspective, all theories such as escaping liability, encouraging market transactions and removing the illicit benefits are somehow trying to internalize the damages that the individual has brought in to the society and the harmed person and is very close to the restorative essence. If the deterrence perspective and justifications are accepted in Iranian Law, no reason will be existed for accepting the punitive damages due to having non-restorative nature and the principle of full compensation because we will utilize the punitive damages for compensating all the damages that the perpetrator brought in to the society. This is exactly the aim that the Economic Analyses of Law expect from the civil liability, so as to be expressed in these types of analyses, the aim of the civil liability system is internalizing the external effects caused by the perpetrator. In other words, the punitive damages finally possess the compensatory essence because of the deterrence perspective.

Key words: Punitive Damages_ Compensatory Damages_ Optimal Deterrence_ Reprehensibility of Conduct_ Escaping Liability.

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