

Example of essay on should punitive damages be introduced in international law

[Law](#), [Criminal Justice](#)



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Should Punitive Damages Be Introduced in International Law?

Introduction

Different countries often have different legal policy in both their criminal and civil law systems. These differences often arise from differing social, economic, and political climates that lead to fundamental policy differences. In the area of civil the law differences in legal systems of different countries often reflect the individual countries' beliefs as to the types of claims that should be recognized. Furthermore, legal systems across the globe often differ about the types of damages they are willing to recognize. One area in which there is a significant difference in the type of damages one can be awarded is that of punitive damages. The United States court system has long recognized the imposition of punitive damages for certain tort actions.

The common law court system of England initially developed the concept of punitive damages arising for certain tort actions, however, the concept is used to a very limited extent within the United Kingdom. The United States, on the other hand, has utilized the imposition of punitive damages in a wide variety of tort actions for a significant period. (See Fei, 2003, p. 20).

Additionally, the U. S. courts recognize the imposition of punitive damages for certain types of breach of contract actions. Whether punitive damages can be imposed and what the limits to those types of damages are, is often determined by the state in which the action took place, therefore, leading to some inconsistency in the imposition of punitive damages within the United States. In the country of Australia, punitive damages awards are available in tort cases; however, these damages cannot be awarded in breach of contract actions. In the United Kingdom, punitive damages are available in a small number of circumstances. In China, punitive damage awards may be available in a limited number of circumstances in both breach of contract and tort cases. In the country of Japan, however, neither punitive damages are available nor can the award of punitive damages received in a forum outside of Japan be enforced within country of Japan.

The rationale behind punitive damages is that these types of damages allow a defendant to be punished when he would otherwise escape sufficient punishment with compensatory damages. They are meant to deter potential defendants from committing certain tort wrongs against others. There is a question, however, as to whether this type of damages is within the civil court notion of justice in many countries. Throughout this paper, I will discuss what punitive damages are and whether or not this type of a damage award

should be available in international law. As the civil court system of the United States more readily accepts and imposes punitive damages than other countries, I will focus on the treatment of punitive damages in the United States, as opposed to other countries in international trade.

What are punitive damages?

Punitive damages are damages that may be awarded in cases where a party receives injury from the actions of a tortfeasor for which compensatory damages are not seen to be enough. In “ Awards of Punitive Damages” by Jessica Jia Fei, associate at Jones Day Beijing Office, the author asserts that punitive damages in common law systems serve the punish and deter potential tortfeasors and allow the jury to demonstrate their displeasure with his or her actions, as well as compensate victims of their actions (See Fei, 2003). Therefore, U. S. courts common law system and a number of other common systems reason that it is implied in the imposition of damages that their sole purpose is not simply to compensate the defendant for the harm that he has suffered from another; another reason for the imposition of damages is to punish the wrongdoer and deter future actions of a similar nature from both him and others. The United States Supreme Court reasoned that punishment and deterrence are two of the main functions of punitive damages. “ Punitive damages are awarded in the jury’s discretion ‘ to punish [the defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future.’ Restatement (Second) of Torts Sec. 908(1) (1979). The focus [when awarding punitive damages at least in theory] is on the character of the tortfeasor’s conduct – whether it is of the

sort that calls for the deterrence and punishment over and above that provided by compensatory awards. If it is of such a character, then it is appropriate to allow a jury to assess punitive damages” (Fei, 2003, p. 21). Therefore, the award of punitive damages takes into account the defendant’s actions in causing the harm to the plaintiff. For a conduct that is seen to be significantly outside of the realm of what is reasonable and capable of causing significant harm, the United States court system as well as the court system of several other countries view the imposition of punitive damages as proper in that instance.

Other functions of punitive damages

Deterrence and punishment are not the only functions of punitive damages. Punitive damages also offer a form of compensation to the aggrieved party in addition to compensatory damages. In the United Kingdom as well as some civil law countries, the party that prevails in the litigation is entitled to recoup his or her legal fees and costs of prosecuting or defending the case. In the United States, however, the assessment of the other party’s legal fees against a party is regarded as a penalty. (See Fei, 2003, p. 21). For this reason, one can assume that some parts of the compensation function of punitive damages will not be at issue even in countries that do not readily recognize punitive damages because these damages are not considered to be punitive in a number of those countries. In addition to legal fees, punitive damages can also compensate victims of tort injury for non-economic damages such as pain and suffering and emotional distress (See Liptak, 2008). It is important to note, however, that as the notion of compensatory

damages has expanded the compensatory function of punitive damages has decreased.

The Imposition of Punitive Damages

In the article “ Punitive Damages: An Economic Analysis,” appearing in the 1998 edition of the Harvard Law Journal, the author argues that punitive damages serve an important function in the law. Furthermore, he states that there are times that punitive damages should be imposed. The imposition of punitive damages can help to ensure that a tortfeasor who otherwise would escape adequate liability under the other remedies available at law is deterred from committing the tortious acts. The damage award should be set at an amount to equal the total harm that the tortfeasor caused, thus making the payment of these damages equal the harm instead of simply the financial loss. (See Polinsky, 1998, p. 954). Therefore, these damages serves both preventative and punishment measures in the courts of the United States and other court systems around the globe.

Although punitive damages are held to serve a needed function in the United States court system, many other countries do not view the imposition of these damages in the same way. It is well understood, that the legal system of the United States of America recognizes the imposition of punitive damages for certain tort actions. The notion of punitive damages is one of the most controversial aspects of the United States’ legal system (See Polinsky, 1998, p. 869). The controversy surrounding punitive damage awards may make them difficult to enforce in an international context. “ Given the rapid and dramatic increase in international transactions and the

greater interdependence of notions within the global community, it is vitally important to find ways to enforce U. S. judgments in foreign countries. With some notable exceptions, few hurdles impede the enforcement of compensatory damage judgments in civil cases. Several barriers, however, inhibit or preclude the enforcement of US punitive damage awards in foreign countries in general and in European Union (E. U.) countries in particular” (Berch, 2010, p. 55, 56). One of the largest legal hurdles to the enforcement of punitive damage awards by U. S. courts is the Hague Convention on Choice of Court Agreements, that the United States signed in 2005. “ The Hague Convention contains a provision that allows signatory countries to decline to enforce punitive damage awards rendered by other jurisdictions” (Berch, 2010, p. 56). Therefore, countries outside of the United States have the option of declining to enforce punitive damage judgment awards by U. S. and many countries refuse to enforce these judgments under the court’s notions of fairness and justice.

Many countries outside of the United States find that punitive damages are contrary to their fundamental principles of fairness and do not recognize them. In “ Foreign Courts Wary of U. S. Punitive Damages,” an article written by Adam Liptak appearing in the New York Times, the author gives an example of how this can come into play in the world of international trade that we have today. “ In the late summer of 1985, Kurt Parrott, a 15-year-old who loved baseball and Pac-Man, was thrown from his motorcycle in Opelika, Ala. The buckle of his helmet failed, and he died when his bare head hit the pavement. Mr. Parrott’s mother sued the Italian company that made the helmet, and an Alabama court awarded her \$1 million” (Liptak, 2008).

Because the company that manufactured the helmet was not located within the United States, it did not feel obligated to pay the judgment under the U. S. notion of law and fairness in tort actions. In fact, when Mr. Parrott's mother's attorneys tried to collect the judgment in Italy, the Italian Supreme Court blocked them. According to the Italian Supreme Court, " a peculiarly of American law - punitive damages- was so offensive to Italian notions of justice that it would not enforce the Alabama judgment" (Liptak, 2008). The Italian court believed that a lawsuit brought by an injured party should only be for the purpose of compensating the injured party for loss and not to punish the defendant; the court supposed that punishment is the duty of the criminal court system not the civil court system (See Liptak, 2008). The court went on to say that the judgment award by the United States court was tantamount to a windfall for the plaintiff (See Liptak, 2008). The court also considered the fact that the jury should not be considered to be in a better position to make these types of award judgments than government safety regulators (See Liptak, 2008). The facts that punitive damages are based on a jury award determination is of great concern in international law. One concern is that the jury members may not have the knowledge and expertise to make such an assessment. Laptik points out that many countries frown upon the notion that a jury of lay persons can impose such hefty fines under their discretionary judgment (See Laptik, 2008).

Additionally, many countries consider the award of punitive damages that involve the aspect of punishing the wrongdoer as infringing on their criminal legal system without allowing the defendant the protections he or she is guaranteed under that system. Laptik points out in his New York Times

article that the imposition of punitive damages is akin to acting as a ‘ private, public prosecutor,’ (See Liptak, 2008). In the view of countries such as German, it is not the civil courts place to hand down punishments but instead the function is reserved for the criminal courts.

It seems as though the award of punitive damages under international law is moving toward a middle ground. The courts of the United States have begun to place limits on punitive damage awards in both the types of cases when punitive damages can be awarded and the amount of the damages in certain cases. Both the judiciary and the legislatures within the United States have begun to limit the imposition of punitive damage awards in recent years. These actions have taken place at the Supreme Court level as well as federal, state, and local court levels. These bodies have begun to limit both the types of cases in which punitive damages can be awarded and the dollar amount of punitive damages that can be awarded to ensure that these amounts correspond to the actual harm received by the victim to a significant degree (See Berch, 2010, p. 62). One can suppose that this move will help to increase the likelihood that foreign nations will enforce punitive damages awards rendered by U. S. courts. In fact, foreign courts have more readily enforced judgments of punitive damages awarded by American courts in a number of instances.

Problems with imposing punitive damages in international law

In 2008, a Conference on the imposition and enforcement of punitive damages was held in Vienna. Organized by the Institute for European Tort Law, the purpose of the conference was to examine the imposition of

punitive damages. “ Aiming to study the nature, role and suitability of punitive damages in tort law and private law in general, this one-day conference got together a panel of scholars and practitioners from different countries: some where punitive damages are approved (England, the United States and South Africa), as well as others (France, Germany, Italy, Spain, Hungary, and the Scandinavian countries) where they are rejected – at least, formally rejected. The position of the EU was considered too” (Requejo, 2008). Therefore, the acceptance of the imposition of punitive damages is an issue of international contention in the area of international trade that those in the legal field, in the affected countries came together to discuss when trying to decide whether these damages should be enforced in international law. The area of contention discussed at the Conference specifically lies in the way in which the countries under their legal systems view the purpose of damages. The significant difference between the two major civil liability law systems of the world, is that ‘ civil’ system believes that a civil liability is reserved for repairing a wrong or compensating for injury damages. The common law system of civil liability includes another motive; “ sentences must show that damaging conduct is not worth the risk (tort does to pay) and discourage repetition. The relationship between civil liability and compensation and nothing more than compensation is so deeply rooted in the Continent, that it not only excludes the possibility of pronouncing sentences of punitive damages in domestic cases: the idea is projected beyond, to cross-border cases” (Requejo, 2008). Therefore, the Conference sought to tackle the issue that legal systems in countries that impose punitive damages differs significantly from that of the countries that do not

in some of their most basic notions concerning the civil law system and what it is supposed to stand for and accomplish. The notes concerning the convention go on to point out that countries that do not believe that the imposition of punitive damages is proper and fair under their notion of a civil court system often fail to recognize these awards by other court systems. Countries of Europe have gone so far as to refuse to recognize foreign judgments that include punitive damages. Additionally, service of process of US based claims has been denied by some countries. (See Requejo, 2008). Therefore, the effect of the United States' imposition of punitive damages has served to lessen the amount of general cooperation that is customarily given in an international system of laws. The problem that arises about the imposition of punitive damages is that these damages, as the author of the Convention article points out, undercut their fundamental beliefs concerning civil law systems by including an aspect of punishment.

Should punitive damages be recognized in international law?

The question remains as to whether punitive damages should be recognized under international law. The United States court system has started to scale back their imposition of punitive damages under the law. Furthermore, the signing by the United States of the Hague Convention Choice of Courts Agreements that allows other countries the option to decline to enforce these types of judgments shows that it is understood on an international level that the choice to impose punitive damages should be left to each country and their notions of fairness and justice. Therefore, countries that do not impose punitive damages under their system of liability may refuse to

recognize United States verdicts which include punitive damages.

Furthermore, the conflicting view of the fundamental nature of the civil court system leads some countries to refuse to enforce United States judgments entirely within their borders because part of the judgment award may contain punitive damages. This means that even the compensatory damages portion of the judgment is not being recognized in some foreign court jurisdictions because the verdict award may in part be punitive damages. To try to remedy this situation as well as the complaints within the United States concerning the nature of these judgment awards, the United States has begun to scale back and limit the types of cases for which punitive damages can be awarded, and the award amounts. This may make it easier to have these judgments enforced by courts that are not wholly opposed to the imposition of punitive damages; however, it will do little to help U. S. judgment awards to be enforceable in countries that fundamentally believe that the imposition of punitive damages is not in the jurisdiction of the civil court system at all. In the countries whose fundamental principles of civil law deny the use of damages as punishment and believe that the sole purpose of civil courts should be to compensate victims of torts for their injuries, the introduction of punitive damages would not be feasible. These countries believe that, for such outrageous actions as those that deserve punishment, the criminal courts should handle those matters. All other matters left to the purview of the civil court should serve only to compensate the victim for his injuries.

Conclusion

The legal systems of differing nations differ in a number of aspects. One of the most significant differences between countries in the civil court system is the treatment of punitive damages. Punitive damages are damages that may be awarded to the victim of a tort offense to punish the wrongdoer, make sure that he or she does not escape liability, and to deter the wrongdoer from committing similar acts in the future. The United States is the leading country about the imposition of punitive damages. Although this trend has begun to scale back in recent years, the United States courts have in the past awarded large jury awards based on the determinations of a layman's jury; these awards include aspects of punishment in addition to compensation. The fact that the jury awards are based on the determinations of juries made of people who do not have the knowledge and skill of safety regulators to render verdicts is a cause for concerning countries outside of the United States. Additionally, some countries argue that punitive damages encroach on the criminal law system. Furthermore, punitive damage fundamentally undercut some countries' notions of what functions the civil law system is supposed to serve. In addition the United States, in 2005, signed the Hague Convention on Choice of Court Agreements that allows countries the option of refusing to recognize punitive damages. For these reasons, the imposition of punitive damages on an international level at this time would be extremely difficult.

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