

Responses to discussions essay examples

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



Response to Eric Daniel's Post

The way I understand from the textbook, punitive damages are awarded not merely for neglect, but gross and willful neglect. Thus, punitive damages are actually a form of punishment (LII 2015) as opposed to compensatory damages, which are granted for the purpose of paying the claimant for the material or emotional losses he or she suffered. Moreover, I am not partial to the idea of basing punitive damages on the award of compensatory damages. The amount of damages that resulted from the loss as a result of the negligent act of a party may not be too big, but the grossness of the act may be such that the defendant deserves to be punished by imposing on him an amount that can hurt his pocket and could serve as a warning against him from refraining in acting in such a way in the future.

Response to Jamie Boatwright's Post

I do not think that it is proper to classify criminal trials as one with a high risk of acquittal and the other as those with severe punishment. Neubauer and Meinhold (2013, p. 257) actually stated that these are decisive factors in determining whether going to trial is a wise decision, which you have also cited. I think that the decision to go to trial is really a matter that is up to the prosecution as the primary initiator of trials as the defense does not have a case if the prosecution does not file one. The defense attorney can either advise his or her client to accept a plea, or if not proceed with the trial. Nonetheless, I understand the point you are trying to put across about the risks that are always involve in going to trial.

Response to Melissa Summer's Post

Aside from the possibility that an important issue that can impact the public – which is a good point, by the way – may not reach the courts, another disadvantage of settlement is that it is a pure contest of the counsel's expertise and astuteness. The lawyers are the central players in a settlement and if one has a weaker lawyer, he or she may get the bad end of the bargain. In settlements, the duty of a lawyer to his client is to “ get the best possible deal” (FindLaw 2015), and the agreement may not, therefore, be necessarily fair and just to a party. In courts, on the other hand, the law always prevails or is deemed to be always prevailing. There is also the process of appeal which a party may resort to if he or she does not agree with the decision.

Response to Sarah Pember's Post

I think any decision that involves choosing between mediation or arbitration depends on the issue that the parties are trying to resolve at hand. Although mediation is not binding, it has also an important role to play in the scheme of things. Sometimes people are capable to arrive at the solution to their conflict if only given the right opportunity with the guidance of a third party that knows how to mediate. For example, some Florida courts require mediation as a prerequisite to a trial date in order for the parties to narrow the issues of their conflicts (FindLaw 2015). Since mediation is not legally binding, parties are not compelled to follow the agreement, but parties usually do because the agreement is reduced into writing. On the other hand, arbitration is particularly important when the issues at stake are essentially legal and not merely factual.

Question: How would you suggest that some of these decisions about dissolution of marriage and collateral concerns be made if most divorces do not go to trial?

There must be a family authority – an arbitrator specializing in divorce cases – that should handle divorce cases. Negotiations with only legal representatives handling the divorce proceeding and collateral issues might not be fair to one of the parties because this means that the more astute lawyer can overwhelm the other lawyer. Such an arbitrator must abide by the sound and equitable rules of property division, child and spousal support, child custody and other issues that family courts abide in. Lawyers should not be allowed in the arbitration process, although parties should be allowed to consult their lawyers outside of arbitration.

References

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