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Symposium on Punitive Damages

I. EDITORS' INTRODUCTION

Justice Oliver Wendell Holmes once said that the law "is always approaching, and never reaching, consistency."¹ Perhaps that is because the law reflects the state of society as we wish it were, rather than how it actually is. Through the law, we seek to encourage conduct that benefits society and to deter conduct that harms it. Through the law, we paint a picture of a perfect society.

Justice Holmes's assertion applies neatly to the topic of the present symposium. As a remedy, punitive damages do more than merely compensate the victim. Punitive damages punish the tortfeasor and serve as a deterrent against conduct harmful to society. Their underlying policy assumes that injuries inevitably will occur, but that the frequency and severity of occurrence will be limited by placing a significant prospective burden on the potential tortfeasor. Against this burden, society seeks to encourage economic growth, entrepreneurial efforts, and emerging new ideas.

This symposium offers perspectives on punitive damages from three countries: Australia, Canada, and the United States. Legal writers from each country were presented with the following fact pattern and were asked to respond as a judge from their own country. The fact pattern is loosely based on a recent U.S. case that received widespread media attention.² The authors' respon-

1. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 36 (1923).

2. *Liebeck v. McDonald's Restaurants*, No. CV-93-02419, 1994 WL 360309 (N.M. Dist. Ct. Aug. 18, 1994), *judgment reduced*, 1994 WL 782090 (N.M. Dist. Ct. Sept. 1994).

ses examine the social and policy reasons behind the development of their countries' current tort liability laws. Each response also reflects upon the moral and legal issues that the trial and appellate courts in each country would consider in *Smith v. MegaFood*.

II. HYPOTHETICAL FACT PATTERN

James Smith ("Smith") is an elderly gentleman who lives alone and frequently dines out at local restaurants. Every morning, Smith drives his automobile to MegaFood, the world's largest fast food chain, for a cup of coffee and a cheese danish. He places his order at the "drive-thru" window and then consumes his coffee and danish while driving to the park for his morning walk.

On the morning of August 21, 1994, Smith followed his daily routine. As he drove out of the MegaFood drive-thru, he placed the cup of coffee between his legs. Steering with one hand, he reached down to remove the lid from the coffee cup. While prying off the lid, Smith spilled coffee on his inner thighs, buttocks, and groin area. He was unable to lift himself away from the burning coffee because: (1) he had his seat belt fastened; (2) he has mild arthritis and cannot move his legs quickly; and (3) he wanted to maintain control of his automobile.

As a result of the coffee spill, Smith suffered third degree burns on his inner thighs, buttocks, and groin area. He subsequently filed a lawsuit against MegaFood on a products liability theory. He asked for \$100,000 (U.S.) in compensatory damages and \$5,000,000 (U.S.) in punitive damages.

The trial court made the following findings of fact:

1. MegaFood requires its restaurants to brew and maintain coffee at 180 degrees Fahrenheit. The coffee sold to Smith was at that temperature.

2. Liquid at 180 degrees Fahrenheit will cause third degree burns in two to seven seconds. Where a third degree burn occurs, the outer layer of skin is burned away, down to the muscle/fatty tissue layer.

3. Third degree burns will not heal without skin grafting and other medical treatment. Smith's medical treatment is

In *Liebeck*, the court reduced the punitive damages award to \$480,000 after the jury awarded \$2.9 million in punitive damages. *Id.* The parties subsequently settled for a confidential amount. *Id.*

expected to cost approximately \$100,000 (U.S.). Third degree burns result in permanent disfigurement, extreme pain, and long-lasting disability.

4. Seven hundred fifty prior lawsuits have been brought against MegaFood for severe burns from coffee over the last ten years. MegaFood sells millions of cups of coffee every year worldwide.

5. MegaFood did not warn customers of the nature and extent of the risk of spilled coffee served at 180 degrees Fahrenheit.

6. MegaFood acknowledged that customers may not be fully aware of the risk of spilled coffee served at 180 degrees Fahrenheit.

7. MegaFood acknowledged that it has no intention of reducing the temperature of its coffee hereafter. Marketing surveys indicate that most consumers prefer coffee served at 180 degrees Fahrenheit.

8. MegaFood consistently serves its coffee at a temperature fifteen to twenty percent hotter than its major competitors.

In *Smith v. MegaFood*, the jury returned an award of \$100,000 (U.S.) in compensatory damages and \$3,500,000 (U.S.) in punitive damages against MegaFood. MegaFood immediately appealed.

You are a judge reviewing the punitive damages award on appeal. Under the majority common law rule in your jurisdiction, you must address (1) whether punitive damages should have been granted; (2) if punitive damages were properly granted, whether the amount of the award was appropriate; (3) public policy underlying your conclusion; and (4) any other fact, issue, or authority that helped you formulate your decision.

