

Aggravated, Exemplary and Restitutionary Damages

The Law Reform Commission has now published its (final) Report [LRC 60-2000 Report on Aggravated, Exemplary and Restitutionary Damages](#), in response to a request by the Attorney General to make recommendations regarding "*the principles governing the present law relating to aggravated, exemplary and restitutionary damages and their effectiveness as a remedy*"

In the first place the Commission clarifies the law. The usual position in a civil case is that when damages are awarded to the plaintiff, the object and measure of these damages is merely to compensate him or her for the loss or damage suffered because of the defendant's behaviour. In rare cases damages can go beyond this.

Exemplary damages are awarded where the court considers it necessary to punish the defendant and, incidentally, to deter other individuals from a similar course of conduct. Extra damages beyond the normal compensatory damages may also take the form of aggravated damages where a plaintiff has suffered added hurt or distress provoked by the high-handed manner the defendant carried out the wrongful act or behaved subsequent to carrying it out. Because of the substantial overlap between exemplary and aggravated damages it is seldom they would both be awarded in the same case. The Commission's purpose in this Report is to ensure that where large amounts of damages of this type are given, they are awarded only if the conduct of the defendant is high-handed, insolent, vindictive or exhibits a gross disregard for the rights of the plaintiff. The Commission does not intend to endorse a 'compensation culture' in which excessive awards of damages are made. It takes the view that exemplary damages must be of a minimum amount necessary to achieve their purpose in the context of a particular case.

The Commission makes various recommendations as to damages of this type. In assessing the level of exemplary damages, it recommends that factors such as the public interest in deterring this type of wrongdoing and the means of the defendant - whether for instance the defendant is a large company or simply an irresponsible individual - should be taken into account. Despite the fact that the damages are punitive rather than compensatory, the Commission recommends that the award should continue to go in full to the plaintiff rather than having to be shared with a public fund or charity. The Commission does however explore in some detail the latter alternative for possible future reference in the light of developments in litigation.

In cases in which there has been a criminal prosecution arising out of the same circumstances as the civil action the Commission recommends that exemplary damages should only be awarded in exceptional cases and the prior criminal penalty should be taken into account in determining the level of exemplary damages.

The Commission also concludes that exemplary damages are and should be available for breach of European Union law. This rule could be very significant in the areas of competition or environmental law.

A particular feature of this Report is that over half of its recommendations are addressed to the courts rather than the Oireachtas. The reason for this is that the Commission believes that to recommend legislation would be to fail to take sufficient account of the fact that the law is at the

moment developing satisfactorily by way of case-law. To attempt to intervene by statute at this stage would risk imposing undue rigidity on the natural development of the law.