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Punitive Damages Assessed Against Joint Tortfeasors -- Admissibility of Wealth

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This clear and unequivocal statement of the rights of an adopted child should not suffer by restrictive enumerations—which can only serve to limit, never to expand, such a broad grant. Second, the court's utilization of section 731.30[27] in this manner is inconsistent with the court's own use of the doctrine of substitution. The court pointed out the distinction between the right to inherit, by operation of the laws of descent and distribution and the right to take under a will. Taking by will is the effect of the doctrine of substitution.[28] Therefore, any utilization of section 731.30,[29] which defines adopted child as the lineal descendant of the adopting parent for purposes of *inheritance*, to substantiate the adopted child's right to take under the anti-lapse statute, is wholly incongruous with the doctrine of substitution.

Aside from the foregoing comments, however, it is the writer's opinion that the instant case is illustrative of a progressive outlook which might well foreshadow legislation which will abolish any remaining legal distinctions between an adopted and natural child.[30]

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PUNITIVE DAMAGES ASSESSED AGAINST JOINT TORTFEASORS—ADMISSIBILITY OF WEALTH

The plaintiff received an award of compensatory and punitive damages assessed jointly and severally against the defendants who were joint tortfeasors. Upon consideration of the defendants' motion for a new trial, the trial court held that it had erred in admitting evidence of the financial worth of the individual defendants and ordered that unless the plaintiff filed a remittitur in the amount assessed as punitive damages within ten days, the motion for a new trial would be granted. The plaintiff declined to remit the punitive damages and appealed. The First District Court of Appeal reversed the trial court's order.[1] On certiorari to the Florida Supreme Court, *held*, affirmed: evidence establishing the financial worth of joint tortfeasors may be properly admitted in support of a prayer for punitive damages. The court also adopted the use of a special or

27. *Supra* note 24.

28. *Supra* note 20.

29. *Supra* note 24.

30. For other cases illustrating such a progressive view, see generally McCune v. Oldham, 213 Iowa 1221, 240 N.W. 678 (1932); Denton v. Miller, 110 Kan. 292, 203 Pac. 693 (1922); *In re* Sutton's Estate, 161 Minn. 426, 201 N.W. 925 (1925); Headen v. Jackson, 255 N.C. 157, 120 S.E.2d 598 (1961); McFadden v. McNorton, 193 Va. 455, 69 S.E.2d 445 (1952).

1. Spencer Ladd's Inc. v. Lehman, 167 So.2d 731 (Fla. 1st Dist. 1964). This decision, rather than that of the supreme court, contains most of the substantive law.

separate verdict for the assessment of punitive damages against each tortfeasor. *Lehman v. Spencer Ladd's, Inc.*, 182 So.2d 402 (Fla. 1965).

Punitive damages are assessed against a tortfeasor who has acted with malice, moral turpitude, wantonness, or with reckless indifference for others.[2] The purpose of this assessment is to punish the wrongdoer and, by that example, deter others from acting in a similar manner. The contemplated punishment is monetary in character. Therefore, since a sum which would be a tremendous burden if assessed against a pauper might be considered a trifling fine by a wealthy defendant, the great majority of jurisdictions permit the jury to hear evidence relating to the financial status of a single defendant where there is to be an assessment of punitive damages.[3]

Much less unanimity exists, however, where punitive damages are assessed against *joint tortfeasors*. Here two major schools of thought have developed. One group of jurisdictions permits the jury to hear evidence on any defendant's wealth and then apportion the punitive damages among the joint tortfeasors.[4] The other jurisdictions employ a "single sum" approach which requires that each defendant be assessed the same amount.[5] Under this second system considerable confusion and diversity of opinion has developed relating to the admissibility of evidence establishing the financial status of a joint tortfeasor.

SINGLE SUM ASSESSMENT

The development of the single sum verdict grew out of the law applicable to the assessment of compensatory damages against joint tortfeasers.[6] The earliest decisions in the area clearly demonstrate the adherence of the courts to the principle of inertia. Instead of incorporating the more progressive apportioned verdict into the area of punitive damages, the courts chose instead to illogically extend the old single sum approach, already widely used in compensatory damage assessment. However, while there is justification for that approach in compensatory damages, it is clearly unjustified in relation to punitive damages.[7]

2. *E.g.*, Dr. P. Phillips & Sons, Inc. v. Kilgore, 152 Fla. 578, 12 So.2d 465 (1943); Spencer Ladd's, Inc. v. Lehman, 167 So.2d 731 (1st Dist. 1964), *aff'd*, 182 So.2d 402 (Fla. 1965).

3. See generally Annot., 123 A.L.R. 1115, 1136 (1939); Annot., 16 A.L.R. 771, 838 (1922). *E.g.*, Miami Beach Lerner Shops v. Walco Mfg., 106 So.2d 233 (Fla. 3d Dist. 1958). In Miami Beach Lerner Shops v. Walco Mfg., *supra* at 236 the court declared, "In determining the amount of such [punitive] damages, pecuniary circumstances of the defendant are to be considered, as obviously what would be pecuniary punishment to a man of small means would not be felt as such by one of large means."

4. At present there are fourteen such jurisdictions, *infra* note 26.

5. At present there are eight such jurisdictions, *infra* notes 18, 21.

6. All the joint tortfeasors are jointly and severally liable for a single sum assessed as *compensatory* damages. See 52 AM. JUR. *Torts* § 123 (1944); 86 C.J.S. *Torts* § 34 n.9 (1954).

7. In Moore v. Duke, 84 Vt. 401, 408, 80 Atl. 194, 197 (1911) the court stated:

> The correct rule in a case like this [joint tortfeasors] is that compensatory damages are indivisible. All are *equally liable*, without regard to degrees or shades of guilt.

The first case[8] to extend the single sum approach into punitive damages relied upon a section of a treatise[9] which dealt with *compensatory* damages. Another very early decision[10] cited only one English case[11] as authority and the cited case spoke only of compensatory damages. Even in *Washington Gas Light Co. v. Lansden*,[12] the leading case for the single sum theory, the reader is not afforded a single thread of logic nor reason for the approach. The Supreme Court merely looked to four earlier cases as authority,[13] but none of those cases shed a glimmer of light on the reason for the rule.[14] To make the matter worse, jurisdictions subsequently adopting the Supreme Court's position merely cited the language of the holding[15] and did not attempt to justify their decisions on the basis of logic.

A statement by Sir Edward Coke aptly describes the evolution of the single sum procedure.

> Error (Ignorance being her inseparable twin) doth in her proceeding so infinitely multiply herself, produceth such monstrous and strange chimaeras, floateth in such and so many uncertainties and sucketh down the poison from the contagious breath of Ignorance . . . .[16]

Generally, three distinct procedures have been employed under the single sum theory to resolve the problem of admitting evidence relating to the financial status of joint tortfeasors.

The leading case illustrating the most widely accepted of the three

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> But, since exemplary damages are predicated upon the animus of the one against whom they are claimed, it may happen, when two or more are defendants, that some are liable for exemplary damages and others only for compensatory. (Emphasis added.)

Therefore when assessing compensatory damages, it is proper to use the single sum assessment since all are *equally* liable, but when considering the assessment of punitive damages, all are *not equally* liable. The extent to which a party may or may not be liable is based upon certain factors unique unto himself, *infra* note 28.

8. Bell v. Morrison, 27 Miss. 68 (1854).

9. 2 GREENLEAF, EVIDENCE § 277 (16th ed. 1899).

10. McCarthy v. De Armit, 99 Pa. 63 (1881).

11. Clark v. Newsam, 1 Exch. 131 (1847).

12. 172 U.S. 534 (1899).

13. Berry v. Fletcher, 3 Fed. Cas. 286 No. 1357 (C.C.D. Mo. 1870); Pardridge v. Brady, 7 Ill. App. 639 (1880); Currier v. Swan, 63 Me. 323 (1875); McCarthy v. De Armit, 99 Pa. 63 (1881).

14. The *Berry* case, *supra* note 13, stated the rule and cited as authority, 2 STARKIE, EVIDENCE § 807 (1837). This section spoke of compensatory damages; the statement in *Currier*, *supra* note 13, was made in reference to compensatory damages; *Pardridge*, *supra* note 13, merely states the rule without any discussion or authority; and *McCarthy*, *supra* note 13, also stated the rule, without offering any reasons, and cited Clark v. Newsam, *supra* note 11.

15. 172 U.S. at 552 (1899). "In this case the jury was bound to give one entire sum against all the defendants found guilty, and that sum would be included in the judgment against each of them."

16. 5 Co. Rep. Preface.

procedures is *Washington Gas Light Co. v. Landsen.*[17] In this case the Supreme Court adopted the practice of refusing to admit evidence relating to the financial condition of any joint tortfeasor.[18] The decision was based upon two grounds: First, inasmuch as only one sum of damages was assessed jointly and severally against all the defendants, it was felt unjust to permit punitive damages to be levied against all of the joint tortfeasors based upon one defendant's ability to pay.[19] Second, the plaintiff was deemed to have waived his right to present such evidence by having voluntarily joined several parties as defendants and not dismissing any of them before verdict.[20]

17. 172 U.S. 534 (1899) (applying federal law).

18. This practice of not admitting evidence of a wealthy joint tortfeasor's financial condition has often been referred to as the majority view. Although it may once have been the majority rule, see Annot., 63 A.L.R. 1405 (1929), this is not the present situation. There are now four jurisdictions which do not permit evidence relative to the wealth of any joint tortfeasor: the *federal courts*, Washington Gas Light v. Lansden, *supra* note 17; *Illinois*, Smith v. Wunderlich, 70 Ill. 426 (1873); *Missouri*, Brown v. Payne, *infra* note 19; *Wisconsin*, Lehner v. Berlin Pub. Co., *infra* note 19. Although the last Illinois Supreme Court decision held the evidence inadmissible, a subsequent appellate court decision, Szimkus v. Ragauckas, 189 Ill. App. 407 (1914) (abstract decision), expressed the view that if all defendants were liable for punitive damages then evidence of wealth was admissible.

Two jurisdictions, Pennsylvania and Vermont, have permitted evidence of the least wealthy defendant, *infra* note 22. It is submitted that the jurisdictions espousing the so-called majority view would adopt this fact since it would not prejudice the other defendants. For purposes of defining a majority and minority, these jurisdictions will be included in the majority, but they will be discussed separately throughout this note.

There are two jurisdictions that permit evidence of a joint tortfeasor's wealth for purposes of assessing punitive damages under the single sum assessment, *infra* note 21. There are another fourteen jurisdictions that permit punitive damages to be apportioned individually against each joint tortfeasor, *infra* note 26. These jurisdictions either explicitly or implicitly express the view that evidence of a defendant's wealth will be admissible to aid in the assessment of punitive damages.

Therefore there are six juirsdictions which either permit evidence of only the least wealthy defendant or none at all and sixteen jurisdictions that permit evidence of any defendant's wealth. Obviously the practice of refusing to admit evidence of all of the defendants' wealth is not the majority view.

19. For other cases refusing to admit evidence of a joint tortfeasor's wealth on this basis, see *e.g.*, Brown v. Payne, 264 S.W.2d 341 (Mo. 1954) (dicta); Lehner v. Berlin Pub. Co., 211 Wis. 119, 246 N.W. 579 (1933). See generally Annot., 63 A.L.R. 1405 (1929). The court in Leavell v. Leavell, 114 Mo. App. 24, 35, 89 S.W. 55, 58 (1905) expressed it thusly:

> [A]s the judgement must be against all, in solido, it would be highly unjust to allow a verdict against the poorest and most inoffensive wrongdoing defendant to be measured by the same standard that fixed the punishment of the one richest and most culpable.

20. For other cases refusing to admit evidence of a joint tortfeasor's wealth on this theory, see Leavell v. Leavell, 114 Mo. App. 24, 89 S.W. 55 (1905); Dawes v. Starrett, 336 Mo. 897, 92 S.W.2d 43 (1935) (dicta); McAllister v. Kimberly-Clark Co., 169 Wis. 473, 173 N.W. 216 (1919). See generally, Annot., 63 A.L.R. 1405 (1929). The California court in Coy v. Superior Court, 58 Cal. 2d 210, 373 P.2d 457 (1962) (dictum) suggested that the plaintiff avail himself of pre-trial discovery procedures in order to ascertain the wealth of the defendants, then he could waive punitive damages against all but one defendant.

The waiver theory has sometimes been misapplied. In Dunaway v. Troutt, 339 S.W.2d 613 (Ark. 1960), the court held that the plaintiff, by joining more than one defendant in the action, waived his *right to punitive damages* and not just his right to introduce evidence of the defendant's wealth. Furthermore, after a careful reading of the cases, it is submitted that the waiver theory is merely the use of a legal nicety to achieve a previously determined end, arrived at because the court felt it would be unjust to permit all of the defendants to be assessed punitive damages based upon the wealth of one defendant.

A second procedure is to admit evidence concerning the financial status of all of the defendants.[21] The underlying justification for this rule is that it eliminates the posibility that a wealthy defendant will escape the burden of paying a fair assessment of punitive damages by simply aligning himself with other defendants of meager financial worth.

A third procedure, which represents a compromise between the extremes, has been adopted by two jurisdictions.[22] It permits evidence to be admitted relative to the financial position of either the least culpable, or the least financially able defendant. This method is utilized to overcome the objection to admissibility espoused by the proponents of the majority view, *i.e.*, that the admission into evidence of the financial status of a wealthy defendant is prejudicial to the less fortunate defendants.

The foregoing explanation of these three procedures is relatively meaningless without an analysis of their comparative defects and attributes.

Those advocating the "no evidence" procedure remind one of the proverbial ostrich with its head buried in the sand. A jury cannot levy a monetary damage which could be predictably punitive without having before it accurate facts relating to the wealth of each party about to be punished. The absence of these facts forces the jury to rely upon rumor, appearance and gossip. Still another flaw may appear where the jurisdiction employs a procedural rule of dismissal similar to that used in the federal courts.[23] The flaw appears when the waiver theory is relied upon, *i.e.*, if a plaintiff joins all the defendants in one suit and then fails to dismiss the suit as to all but one defendant, he is deemed to have waived his right to present evidence of a defendant's wealth. But a plaintiff in these jurisdictions does not have an absolute right to dismiss a defendant after the answer. Thus, a waiver could hardly be the result of a failure to dismiss a defendant who the plaintiff has no absolute right to dismiss.

The "evidence as to all" procedure, within which evidence relating to the wealthiest defendant is admissible, is clearly an open temptation to an unjust assessment against one impoverished joint tortfeasor predicated on the demonstrated wealth of his co-defendant.

Even the approach which admits evidence of only the poorest

21. The two jurisdictions adopting this approach are *Mississippi,* Tipps Tool Co. v. Holifield, 218 Miss. 670, 67 So.2d 609 (1953) (citing a long line of Mississippi cases) and *Oregon,* Phelan v. Beswick, 213 Ore. 612, 326 P.2d 1034 (1958). In *Phelan* the court did not draw any distinction between a case involving one defendant and a case involving more than one. The courts even cited to cases where there was only one defendant.

22. MacHolme v. Cochenour, 109 Pa. Super. 563, 167 Atl. 647 (1933); Woodhouse v. Woodhouse, 99 Vt. 91, 130 Atl. 758 (1925).

23. See FED. R. CIV. P. 41(a). The Rule provides that a plaintiff may only dismiss a defendant as a matter of right "before service by the adverse party of an answer or a motion for summary judgment, whichever first occurs . . . ." For an informative Note on Florida's present position with respect to dismissal, see 20 U. MIAMI L. REV. 204 (1965).

defendant still precludes an intelligent assessment based upon all necessary facts.

It is all too apparent that the employment of the single sum procedure is little other than an exercise in futility. However, if this approach must be employed, it is the writer's opinion that the "evidence as to all" procedure assures the least inequitable assessment. Only under this approach would the jury have knowledge of the necessary facts. To alleviate the prejudicial effect caused by the introduction of the wealthier defendant's financial condition, the poorer defendant could first present evidence of his meager monetary worth and then impress upon the jury that the single sum assessed may very well fall upon him as well as the other wealthier defendants. Another relative advantage of the "evidence of all" approach is that all the defendants may be sued in one suit, whereas under the "no evidence" approach a plaintiff would be compelled to sue each defendant individually if he wished to present evidence of each defendant's wealth,[24] thereby frustrating the expeditious end to litigation. Even where a poorer defendant incurs a higher fine because of the joinder of a wealthier co-defendant, it must be remembered that the wrong he committed was necessarily found to have been committed with malice, moral turpitude, wantonness, or with reckless indifference for the rights of others.[25]

APPORTIONED ASSESSMENT

Discouraging as this trek through the difficulties of the single sum theory has been, it is encouraging to discover that a present and steadily growing majority of the states have adopted the procedure of permitting the individual *apportionment* of punitive damages against each tortfeasor.[26] Unlike the jurisdictions employing the single sum verdict, this

24. The many law suits would result because a plaintiff who wished to admit evidence of the wealthiest defendant would have to dismiss the suit—if permitted, *supra* note 23—as to all other defendants. The plaintiff would then proceed to sue each defendant individually in descending order of wealth. As previously mentioned, *supra* note 20, if the plaintiff does not dimiss the other defendants, he is declared to have waived his right to present evidence of the defendant's wealth.

25. *E.g.*, Dr. P. Phillips & Sons, Inc. v. Kilgore, 152 Fla. 578, 12 So.2d 465 (1943); Spencer Ladd's, Inc. v. Lehman, 167 So.2d 731 (1st Dist. 1964), *aff'd*, 182 So.2d 402 (Fla. 1965).

26. At this time there are fourteen states that either expressly or impliedly do permit apportionment and eight states that still do not permit apportionment, *supra* notes 18, 19. Those which do permit the apportionment include: *California*, Thomson v. Catalina, 205 Cal. 402, 271 Pac. 198 (1928); *Florida*, Lehman v. Spencer Ladd's, Inc., 182 So.2d 402 (Fla. 1965); *Georgia*, Shermer v. Crowe, 53 Ga. App. 418, 186 S.E. 224 (1936) (statutory interpretation); *Kentucky*, Murphy v. Taxicabs of Louisville, Inc., 330 S.W.2d 395 (Ky. 1959) (statutory interpretation); *Minnesota*, Nelson v. Halvorson, 117 Minn. 255, 135 N.W. 818 (1912); *Montana*, Edquest v. Tripp & Dragstedt Co., 93 Mont. 446, 19 P.2d 637 (1933); *Nevada*, Hotel Riviera, Inc. v. Short, 80 Nev. 505, 396 P.2d 855 (1964); *New York*, Raplee v. City of Corning, 6 N.Y.2d 142, 176 N.Y.S.2d 162 (Sup. Ct. 1958); *North Dakota*, Mahanna v. Westland Oil Co., 107 N.W.2d 353 (N.D. 1960); *Ohio*, Mauk v. Brundage, 68 Ohio St. 89, 67 N.E. 152 (1903); *South Carolina*, Johnson v. Atlantic Coast Line R.R., 142 S.C. 125, 140 S.E. 443 (1927); *Texas*, St. Louis & S.W. Ry. Co. v. Thompson, 102 Tex. 89, 113 S.W. 144

growing majority can amply support their decisions with reason and logic. Indeed, it appears that once the apportioning procedure is utilized all problems disappear. This method permits the jury to hear all relevant evidence. They are then able to determine a just and proper assessment against each individual defendant based upon his particular financial status[27] and other relevant factors.[28] No defandant is prejudiced by evidence of another's wealth. No wealthy defendant can escape a just assessment by aligning himself with poorer joint defendants. Moreover, the need for a slow and expensive series of separate suits is eliminated.

The first Florida case to refer to the admissibility of a joint tortfeasor's wealth for purposes of assessing punitive damages appears to have been decided in 1899[29] when the supreme court held such evidence admissible. Upon more careful reading, however, it becomes evident that the court merely recited the rule applicable to the single defendant situation. The opinion neither discussed nor considered its applicability to joint tortfeasors. Subsequent decisions[30] passively permitted the apportionment of punitive damages, but it was not until 1963, in *Kellenberger v. Widener*,[31] that a Florida court directly addressed itself to the issue. The Second District Court of Appeal merely quoted the langauge of *Washington Gas Light*,[32] and affirmed the trial court's order which had sustained the defendants' objection to interrogatories concerning their wealth.[33]

In the instant case, decided the following year, the First District Court of Appeal considered itself to be "in a position of respectful and sincere disagreement" with the second district. While the court declared

(1908); *but cf.* Walker v. Kellar, 218 S.W. 792 (Tex. Civ. App. 1920); *Virginia*, Freeman v. Sproles, 204 Va. 353, 131 S.E.2d 410 (1963); *but cf.* Singer Mfg. Co. v. Bryant, 105 Va. 403, 54 S.E. 320 (1906); *Wyoming*, Hall Oil Co. v. Barquin, 33 Wyo. 92, 237 Pac. 255 (1925).

27. The Minnesota Supreme Court explained the importance of the defendant's financial status as a factor in assessing punitive damages in Nelson v. Halvorson, *supra* note 26 at 819. "The difference in financial condition of the two defendants would *alone* justify the jury in imposing different amounts as punishment upon them, in case the conclusion was reached that both ought to be penalized." (Emphasis added.).

28. The other relevant factors also embrace considerations personal to the defendant. They include: the *defendant's* motive, the injury *he* intended, and the manner in which *he* committed the act. See generally, 25 C.J.S. *Damages* § 126 (1966); Comment, 7 U. MIAMI L. REV. 517 (1953).

29. Jones v. Greeley, 25 Fla. 629, 6 So. 448 (1899).

30. Brown v. Cahill, 157 So.2d 871 (Fla. 3d Dist. 1963); Great A. & P. Tea Co., Inc. v. Federal Detective Agency, Inc., 157 So.2d 148 (Fla. 3d Dist. 1963). Apportioned verdicts were allowed in the above cases, but the court never raised nor passed upon the propriety of such verdict.

31. 159 So.2d 267 (Fla. 2d Dist. 1963).

32. 172 U.S. 534 (1899).

33. This court committed two obvious errors. Firstly, it made no mention of, nor did it give any consideration to, the prior Florida cases permitting apportionment. Secondly, it invoked the rule to affirm an objection to a pre-trial discovery device. At this point in the proceedings certainly no defendant will be prejudiced. Furthermore, assuming the *Washington Gas Light* rule, this information may be properly used to better enable the plaintiff to determine which defendant to eventually sue and then dismiss the rest.

that punitive damages may be apportioned in Florida, it recognized the fact that a jury cannot be compelled to render an apportioned verdict in the absense of a rule of procedure from the supreme court. Nevertheless, the court held that all relevant facts should be placed before the jury and evidence may be admitted as to each joint tortfeasor's wealth. On certiorari, the supreme court affirmed the first district and acted on its suggestion[34] to formulate a rule providing for apportioned verdicts. The supreme court requested the Florida Bar to present it with a rule encompassing the recommendation of the appellate court, and in the interim, ruled that in all cases "in which the element of punitive damages against joint tortfeasors is an issue for determination, a special or separate verdict shall be used for the assessment of punitive damages against each tortfeasor."[35]

The Florida Supreme Court is to be commended for requiring the use of special verdicts in the assessment of punitive damages among joint tortfeasors. The problem is now at rest in Florida.[36] This writer strenuously recommends a like rule for all jurisdictions, either by statute or judicial mandate.

SHEP KING

FLORIDA'S CONFLICT OF INTEREST LAW: A MUNICIPAL WINDFALL

The county brought an action to recover the purchase price of land sold to it by five defendants, one of whom was a county commissioner. The decision to purchase had been made pursuant to the motion and affirmative vote of the defendant commissioner. The transaction thereby violated a criminal statute[1] which made it unlawful for a commissioner

34. Spencer Ladd's, Inc. v. Lehman, 167 So.2d 731, 738 (Fla. 1st Dist. 1964):

> [T]he most practical solution to the problem presented by this appeal would be adoption by the Supreme Court of a rule of trial procedure which requires special verdicts in common law actions seeking punitive damages, and providing that such damages shall be apportioned between the defendants found to be liable therefore.

35. Lehman v. Spencer Ladd's, Inc., 182 So.2d at 403 (Fla. 1965).

36. The naked mandate to use apportioned verdicts does, however, leave still another question unanswered. When an apportioned verdict is employed, does satisfaction of a judgment against one tortfeasor release all others? While the decisions repeatedly dictate the use of apportioned verdicts, only a paucity of attention has been devoted to this question. From the limited sources available, the answer appears to be that each defendant is severally liable for punitive damages notwithstanding other satisfactions. Thompson v. Catalina, *supra* note 26; Bowman v. Lewis, 110 Mont. 435, 102 P.2d 1 (1940); Johnson v. Atlantic Coast Line R.R., *supra* note 26. Assuming several liability under the apportioned verdict as opposed to several and joint liability under the single sum verdict, it is curious to note that not one opinion of any court has ever discussed this policy question when deciding which procedure to adopt. Since the purpose of punitive damages is to punish and to make an example of, it is submitted that each defendant should be severally liable to insure that each will feel the sting of the court. As a side effect, fortunate or unfortunate, the complaining plaintiff will probably receive a windfall in punitive damages.

1. FLA. STAT. § 839.07 (1965):