Torts—Punitive Damages in Non-Personal Injury Cases: Minnesota's Approach to Punishment and Deterrence

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TORTS—PUNITIVE DAMAGES IN NON-PERSONAL INJURY CASES: MINNESOTA'S APPROACH TO PUNISHMENT AND DETERRENCE


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I. INTRODUCTION

Damage awards in cases ranging from the explosion of a Ford Pinto\(^1\) and the repainting of a BMW automobile,\(^2\) to the temperature setting of a McDonald's coffee maker,\(^3\) demonstrate the commitment of this country's judicial and legislative bodies to punish defendants for their malicious, wanton, or reckless acts. This feat has been accomplished through the use of punitive damages.

1. See Grimshaw v. Ford Motor Co., 174 Cal. Rptr. 348, 389 (Cal. Ct. App. 1981) (awarding plaintiff $3.5 million in punitive damages as a result of defective automobile manufacture, which directly contributed to the severity of the damages incurred by the plaintiff. The court allowed the award to stand, finding malice or corporate responsibility for malice.)
Recently, in *Molenaar v. United Cattle Co.*[^4] the Minnesota Court of Appeals addressed the issue of whether an award of punitive damages was proper. In *Molenaar*, the court broke through a judicial wall which had been erected around punitive damage awards by holding that such damages were appropriate in *any* non-products liability case where the defendant's acts were made in a deliberate disregard for the rights and safety of others.[^5] Departing from precedent, the *Molenaar* court ruled that the nature of the injury (personal versus non-personal injury) was no longer controlling in deciding whether punitive damages should be awarded.[^6] Rather, the court properly focused the analysis of punitive damages on the defendant's conduct by stating that whenever a defendant acts in a malicious, willful and reckless manner, an award of punitive damages may be warranted.[^7] This case note will demonstrate why *Molenaar* was correct by providing an overview of punitive damages, then analyzing the historical purpose of punitive damages in England, the United States, and Minnesota, and finally analyzing the *Molenaar* decision in light of history, precedent, and purpose.

II. PUNITIVE DAMAGES - AN OVERVIEW

Punitive damages are damages over and above the actual amount of damages suffered by the plaintiff as a result of the defendant's wanton, malicious, reckless or oppressive behavior.[^8] The main purposes of punitive damages awards are to punish a defendant for acting in such a manner, to teach the defendant not to act that way again, and to deter

[^5]:  See *id.* at 428.
[^6]:  See *id.*
[^7]:  See *id.*
[^8]:  See Peterson v. Sorlein, 299 N.W.2d 123, 129 (Minn. 1980) (stating that a plaintiff must prove a defendant acted wantonly before a court may award punitive damages).
[^9]:  See *id.*
[^10]:  See Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan, 494 N.W.2d 261, 268 (Minn. 1992) (stating that "[a] mere showing of negligence is not sufficient; instead, the conduct must be done with malicious, willful or reckless disregard for the rights of others.").
[^11]:  See *id.*
[^12]:  See Terfehr v. Kleinfehn, 352 N.W.2d 470, 474 (Minn. Ct. App. 1984) (stating that "[p]unitive damages are not designed to compensate but rather to punish the offender for his... oppressive conduct"); *see also* 1 LINDA L. SCHLUETER & KENNETH R. REDDEN, PUNITIVE DAMAGES § 2.1 (A), at 22 (3d ed. 1995) (*citing* Scott v. Donald, 165 U.S. 58 (1896)). A variety of terms have been used to convey the concept of punitive damages, including smart money, exemplary damages, vindictive damages, speculative damages, imaginary damages, presumptive damages or added damages. *See id.* at 21-22. The most common terms are punitive and exemplary. *See id.* at 22.
others from acting in a similar manner.\textsuperscript{12}

The utilization of punitive damages has been the focus of a great deal of controversy in the United States. Some jurisdictions defend the remedy and others oppose it.\textsuperscript{13} However, such awards are considered an established component of the country's legal system, which the judiciary does not appear to be abandoning any time soon.\textsuperscript{14}

Similar to punitive damages, some jurisdictions have adopted the statutory penalty of multiple damages. The statutory remedy of multiple damages is similar to an award of punitive damages in that they both provide for awards in excess of the plaintiff's actual harm.\textsuperscript{15} The concept of multiple damages pre-dates punitive damages by several thousand years.\textsuperscript{16}

\section*{III. GENERAL HISTORY OF PUNITIVE DAMAGES}

The first recorded awards of punitive, or multiple, damages were found in the Babylonian Code of Hammurabi over 4000 years ago.\textsuperscript{17} Both personal and non-personal injury claims justified punitive damages. For example, section eight of the Babylonian Code provided for punitive damages of thirty times the value of an ox, sheep, ass, pig or goat if stolen from a temple or palace, and ten times the value if stolen from a freedman.\textsuperscript{18} In addition, references to awards of punitive damages for conversion can also be found in the Hittite Law in 1400 B.C.,\textsuperscript{19} the Hindu Code

\begin{itemize}
  \item \textsuperscript{12} See W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 2, at 9 (5th ed. 1984) (citations omitted). Some courts have stated that an additional purpose of punitive damages is to reimburse the plaintiff for damages which are not otherwise compensable, such as the expenses associated with bringing a lawsuit or wounded feelings. \textit{See id.}
  \item \textsuperscript{13} See \textit{id.} § 2, at 11-12; \textit{see also infra} notes 40-41 and accompanying text.
  \item \textsuperscript{14} See KEETON ET AL., supra note 12, at 12.
  \item \textsuperscript{15} See SCHLUETER & REDDEN, supra note 11, § 1.1, at 1. \textit{See, e.g.}, CONN. GEN. STAT. §14-295 (1985) (providing for double or treble damages in cases involving personal injury, wrongful death or damages to property as a result of certain traffic violations); DEL. CODE ANN. tit. 11, § 939(c) (allowing treble damages when defendant willfully or maliciously destroys computer equipment); 815 ILL. COMP. STAT. 710/13 (1995) (providing treble damages for unfair or deceptive trade act violations where defendant acts willfully or wantonly); PA. STAT. ANN. tit. 35, §6700-608 (1976) (making provision for treble damages where a person is injured by a violation of the Hearing Aid Sales Registration Law).
  \item \textsuperscript{16} See SCHLUETER & REDDEN, supra note 11, § 1.1, at 1. As it evolved from the common law, the concept of multiple damages was used to meet certain societal needs, including punishment, deterrence, and compensation for intangible harms, as well as substitution for revenge. \textit{See} SCHLUETER & REDDEN, supra note 11, §1.0, at 1.
  \item \textsuperscript{17} See GERALD W. BOSTON, PUNITIVE DAMAGES IN TORT LAW § 1:2, at 2 (1993).
  \item \textsuperscript{18} See id.; \textit{see also} SCHLUETER & REDDEN, supra note 11, § 1.1, at 2 (providing further examples of the awarding of punitive damages under Babylonian law).
  \item \textsuperscript{19} See SCHLUETER & REDDEN, supra note 11, § 1.1, at 2 & n.3. Under Hittite law, if a person stole a "great" bull or horse, then he was forced to pay the owner
of Manu in 200 B.C.,\textsuperscript{20} as well as in ancient Roman codes and writings.\textsuperscript{21}

The first modern adoption of punitive damages appeared in England in 1763 in two conversion cases: Wilkes v. Wood\textsuperscript{22} and Huckle v. Money.\textsuperscript{23} In both cases, the courts awarded punitive damages against the defendants for unwarranted searches and seizures of the plaintiffs' property in an effort to punish the defendants and to deter future misconduct.\textsuperscript{24} The doctrine of punitive damages had gained favor in England as an effort to remedy social needs, which the common law had failed to meet.\textsuperscript{25} The court in Wilkes stated that punitive damage awards should be given "not only as a satisfaction of the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself."\textsuperscript{26}

However, in 1964, the English courts curtailed the doctrine of punitive damages by strictly limiting the circumstances under which such awards could be given.\textsuperscript{27} In Rookes v. Barnard,\textsuperscript{28} the House of Lords limited the then-existing law of punitive damages by holding that these types of awards could only be given in cases involving: (1) oppressive, arbitrary or unconstitutional action by the servants of the government versus a private

fifteen bulls or horses for his crime. \textit{See id.}

20. \textit{See id.} at 2 & n.4. The Hindu Code of Manu provided that in the case of a theft, the thief would have to repay the owner multiple damages, depending upon the value of the item that was stolen. \textit{See id.}

21. \textit{See id.} § 1.2, at 3. By the middle of the fifth century B.C., Roman law was embodied in the Decemviral Code which was inscribed on the Twelve Tables. \textit{See id.} Sections of the Twelve Tables described many circumstances under which punitive damages were to be given, including cases involving dishonest tutors who stole property from their students. \textit{See id.}


25. \textit{See} SCHLUETER \& REDDEN, \textit{supra} note 11, § 1.3(A), at 7. English courts developed the theory of punitive damages to meet the following needs: (1) to be able to justify excessive verdicts; (2) to be able to give awards for claims which would not otherwise be compensable, such as claims for mental anguish; (3) to deter wrongdoers; (4) to redress unequal punishment in the criminal law; and (5) to prevent revenge. \textit{See id.} at 7-11.


27. \textit{See} SCHLUETER \& REDDEN, \textit{supra} note 11, § 1.3(A), at 12.

corporation or individual; (2) a defendant's conduct that was calculated to make a profit greater than the compensation he would be liable to pay the plaintiff; or (3) an award expressly authorized by a statute. The *Rookes* holding continues as the current law in England.

IV. HISTORY OF PUNITIVE DAMAGES IN THE UNITED STATES

Early American cases regarding punitive damages exhibited confusion as to whether such damages were to be either penal or compensatory in nature. In some cases, courts adopted both reasons as bases for its decision. By the 1850s, however, the United States Supreme Court had a clear vision of the purpose of punitive damages: "[i]t is a well-established principle of the common law, that . . . a jury may inflict what are called . . . vindictive damages upon a defendant, having in view the enormity of his offence [sic] rather than the measure of compensation to the plaintiff." Today in the United States, the most frequently stated purpose for

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29. *Rookes*, 1 All E.R. at 410-11. Other countries with similar common law traditions as England, such as Australia and Canada, continue to allow punitive damage awards without significant limitation. *See Boston*, supra note 17, § 1:6 & n.44.

30. *See also* A.B. v. S. Water Servs., Ltd., 1 All E.R. 609, 615-24 (C.A. 1993) (upholding the categories under which punitive damages are to be awarded as enumerated in *Rookes*).

31. *See Schlueter & Redden*, supra note 11, § 1.4(A), at 15 (explaining America’s early interpretations and struggles in categorizing punitive damages). The early American debate over the purpose of punitive damage awards is best illustrated in the writings of Theodore Sedgwick and Professor Simon Greenleaf, two early American legal scholars. *See id.* at n.1. Sedgwick believed that exemplary damages were warranted in cases involving actual loss and an aggravated wrong which involved malice or fraud so as to punish the defendant for his actions. *See id.* (citing 1 T. SEDGWICK, THE MEASURE OF DAMAGES, §§360-69 at 706-26 (9th ed. 1912)). However, Professor Greenleaf believed that such damages were given only to compensate the plaintiff for the actual damages suffered by him as a result of the defendant's acts. *See id.* (citing 2 S. GREENLEAF, EVIDENCE, §253, at 250 (15th ed. 1892)).

32. *See Schlueter & Redden*, supra note 11, § 1.4(A), at 15 (stating that punitive damages did not become penal in nature until the early 1800s). *See also* McNamara v. King, 7 Ill. 432, 437 (1845) (holding that “the jury may give exemplary damages, not only to compensate the plaintiff, but to punish the defendant”); Coryell v. Colbaugh, 1 N.J. 77 (1791) (stating that, in an action regarding breach of a promise to marry, the jury was charged not only to award damages “for 'example's sake,' to prevent such offenses in [the] future” but also “to allow liberal damages for the breach of a sacred promise”) (emphasis in original).

awarding punitive damages is to punish defendants for their actions and to deter defendants and others from engaging in similar conduct. However, some states still see punitive damages as having a compensatory function.

The United States Supreme Court tends to defer to state precedents when affirming punitive damage awards in state court proceedings. The Supreme Court has also upheld punitive damages awards given in federal court proceedings. In the recent decision of *Pacific Mutual Life Insurance Co. v. Haslip*, the Supreme Court held that common law awards of punitive damages do not violate the Due Process Clause of the Fourteenth Amendment.

34. See Schlueter & Redden, supra note 11, § 2.2(A)(1), at 28; (explaining that "[b]ecause punishing the defendant is akin to the purpose of deterring both him and others from such conduct, most courts that express this as a function of punitive damages will combine these two ideas.").; Boston, supra note 17, §§ 2.6-2.9. The Second Restatement of Torts also states that punitive damages are intended to punish and deter: "Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future." Restatement (Second) of Torts § 908(1) (1979).

35. See Berry v. Loiseau, 614 A.2d 414, 435 (Conn. 1992) (stating that "[w]e remain convinced that a rule limiting punitive damages awards to the expense of litigation . . . fulfills the salutary purpose of fully compensating a victim for the harm inflicted on him while avoiding the potential for injustice which may result from exercise of unfettered discretion by a jury."). (citation omitted); Gilroy v. Conway, 391 N.W.2d 419, 422 (Mich. Ct. App. 1986) (commenting that "[i]n Michigan, . . . the purpose of exemplary damages has not been to punish the defendant but to render the plaintiff whole by compensating for mental injury . . . where such injury is the result of outrageous conduct.").


39. See id. In Justice Scalia's concurring opinion, he makes special note of the fact that punitive damage awards were "an established part of the American common law of torts" even before the Fourteenth Amendment was adopted in 1896. Id. at 26.
A. Punitive Damages Awards throughout the United States

There are only a limited number of states which either do not recognize the award of punitive damages or only allow such awards if authorized by statute.40 Of the states that permit punitive damages, most award damages in conversion claims if the defendant's conduct is willful, wanton or malicious.41 The most commonly stated purpose behind such awards is to

40. See N.H. REVIEW STAT. ANN. § 507:16 (1986) (stating "[n]o punitive damages shall be awarded in any action, unless otherwise provided by statute"); see generally Vincent v. Morgan’s Louisiana & T.R. & S.S. Co., 74 So. 541, 549 (La. 1917) (holding that as there was no statutory authority proving for awards of punitive damages in a wrongful death case, such damages could not be awarded); Boot Mills v. Boston & M.R.R., 106 N.E. 680, 684 (Mass. 1914) (stating that punitive damages may not be awarded minus a statute specifically providing for such awards); Miller v. Kingsley, 230 N.W.2d 472, 474 (Neb. 1975) (disallowing punitive damages); Maki v. Aluminum Building Products, 436 P.2d 186, 187 (Wash. 1968) (disallowing awards of punitive damages on public policy grounds). Some states hold that punitive damages may be awarded, but not in all circumstances. See Ala. CODE § 6-11-29 (1987) (providing that punitive damages may not be awarded in wrongful death actions). Further, some states have limited the size of such awards. See Colo. REVIEW STAT. § 13-21-102(1)(a) (1987) (limiting punitive damage awards to the amount of actual damages); Fla. STAT. ANN. § 768.73(1)(a) (West 1997) (limiting punitive damage awards to three times the amount of compensatory damages). See generally Stephen Daniels & Joanne Martin, Historical Fiction: Punitive Damages, Change, and the Politics of Ideas (American Bar Foundation Working Paper No. 9618, 1996) (analyzing the patterns and changes in punitive damages from the 1960s to the early 1990s in the context of political tort reform).

punish the defendant and to deter the defendant and others from similar future conduct. 42

B. History of Punitive Damages in Minnesota

The Minnesota Supreme Court first adopted the common law concept of punitive damages in a conversion case—Lynd v. Picket. 43 In Lynd, the court faced a creditor who had obtained a writ of attachment to confiscate a debtor's property with full knowledge that the property was exempt. 44 The court ruled that the creditor's knowledge exhibited a "malicious motive" which allowed for an award of punitive damages. 45

Lynd marked the beginning of a long line of Minnesota cases focused on the defendant's conduct. Minnesota courts have permitted punitive damage awards when a defendant has maliciously, willfully or recklessly violated a person's rights, regardless of whether a personal injury has been sustained. 46 In Minnesota, punitive damages have also been awarded in conversion actions time and time again. 47


42. See supra note 12 and accompanying text.
43. 7 Minn. 128, 7 Gil. 128 (1862).
44. Id. at 132.
45. See id. at 144 (stating that "[i]t was a gross outrage upon the rights of plaintiff, which the law does not tolerate, and justly allows damages by way of punishment and example.")
46. See Bucko v. First Minn. Sav. Bank, 471 N.W.2d 95, 98 (Minn. 1991) (granting punitive damages in a case involving polygraph testing); Advanced Training Sys. v. Caswell Equip. Co., 352 N.W.2d 1, 10 (Minn. 1984) (awarding punitive damages in a libel case); Jensen v. Peterson, 264 N.W.2d 139, 145 (Minn. 1978) (allowing punitive damages in a fraud case); Huebsch v. Larson, 191 N.W.2d 433, 435 (Minn. 1971) (allowing punitive damages in conversion case); see generally Gary J. Haugen & Joel A. Nurre, Punitive Damages: Juries' Hardball Meets Legislative Bat, 50 BENCH & BAR 20 (April 1993) (analyzing Minnesota punitive damage awards and finding that the frequency and severity of such awards increased in this state during the 1970s and 1980s).
47. See SCHLUETER & REDDEN, supra note 11, § 8.2 (A), at 441 (defining conversion as an "unauthorized exercise of dominion and control over personal property of another to the exclusion of the owner's rights"). Generally, conver-
In 1978, the Minnesota Legislature enacted a punitive damages statute in an attempt to 1) remedy judicial confusion by codifying the then existing case law on punitive damages and 2) limit the frequency of such awards.

First, prior to the statute's adoption, the courts struggled under the common law to determine which state of mind the defendant had to possess in order to justify an award of punitive damages. By enacting this statute, the legislature defined the state of mind required to justify an award of punitive damages. Originally, the statute required a "willful indifference to the rights or safety of others." But, in 1990 the legislature focused the statutory standard of conduct necessary for an award of punitive damages to a "deliberate disregard for the rights or safety of others." Punitive damages will take one of three forms: (1) wrongfully taking the property of another; (2) using or executing ownership rights over another's property without proper authority; or, (3) wrongfully detaining the property of another after the owner has demanded its return. See id. at 442.

48. See Huebsch, 191 N.W.2d at 435 (granting punitive damages for claim of conversion of cattle); Matteson v. Munroe, 83 N.W. 153, 154 (Minn. 1900) (awarding punitive damages for claim of conversion of seed grain); Lynd, 7 Minn. at 201 (allowing punitive damages for claim of conversion of horses); Minnesota Valley Country Club v. Gill, 356 N.W.2d 356, 363 (Minn. Ct. App. 1984) (awarding punitive damages for claim of conversion of corporate assets). Some commentators believe that punitive damages are appropriate in any conversion case where a defendant either intentionally or wantonly and willfully exhibits a disregard for a plaintiff's property rights. See SCHLUETER & REDDEN, supra note 11, § 8.2(A) at 443. See also Walker v. Brown, 501 So. 2d 358, 362 (Miss. 1987); Killian v. Trans Union Leasing Corp., 657 S.W.2d 189, 192 (Tex. App. 1983).


50. See Lewis v. Equitable Life Assurance Soc'y, 389 N.W.2d 876, 891 (Minn. 1986) (holding that the intent of § 549.20 was to codify the then-existing law on punitive damages). While this statute deals broadly with awards of punitive damages in all civil cases, the legislature has enacted additional statutes which deal with such awards under more specific circumstances. See MINN. STAT. § 169.121, subd. 10a (1990) (providing that proof of a blood alcohol level of .10 or above is sufficient for the trier of fact to consider punitive damages); MINN. STAT. § 176.183, subd. 2 (1995) (providing that punitive damage awards may be awarded under the Workers' Compensation Act against a non-insured employer); MINN. STAT. § 363.071 (1996) (allowing punitive damages in employment discrimination cases).


52. See id.

53. See MINN. STAT. § 549.20, subd. 1 (1978).

54. See MINN. STAT. § 549.20, subd. 1(a) (1990). The statute was further
Second, the legislature was concerned about the increasing number of punitive damage awards. During the original legislative debate over the enactment of this statute, the Senate judiciary committee heard testimony that expressed concern about the national trend toward the increasing frequency and amount of punitive damage awards in products liability cases that existed at that time. Mindful of the legislature's fear, Minnesota courts have utilized this statute to limit the amount of such awards.

In 1980, the Minnesota Supreme Court in *Gryc v. Dayton-Hudson Corporation* unequivocally held that punitive damages were appropriate in strict products liability cases. This case involved a small child who was severely burned when her defectively manufactured "flannelette" pajamas caught on fire. The supreme court held that the egregious conduct of the defendant in manufacturing and marketing a knowingly unsafe product warranted the jury's award of punitive damages. In *Gryc*, the court amended at this time to provide a definition of "deliberate disregard":

A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

1. deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or
2. deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

MINN. STAT. § 549.20, subd. 1(b) (1990).

55. See Dianne C. Heins, *Statutory Changes in Minnesota Tort Law — 1978*, 48 HENNEPIN LAW. 6 (Sept.-Oct. 1978) (stating that the representatives of the insurance and product manufacturing industry lobbied the Minnesota legislature to enact various tort reform measures, including a punitive damages statute, so as to cure what they termed a "products liability crisis"). At the time Minnesota's punitive damages statute was enacted, Ms. Heins was serving as counsel to the Minnesota Senate Judiciary Committee. *See id.*

56. See Minn.-Iowa Television Co. v. Watonwan T.V. Improvement Ass'n., 294 N.W.2d 297, 311 (Minn. 1980) (stating that the legislature's purpose in enacting § 549.20 was to limit the frequency and amount of punitive damages awards). *See also* Heins, *supra* note 55 at 7 (stating that the legislature ultimately rejected a proposed provision of §549.20 that would have permitted the trial judge, not the jury, to award punitive damages.)

57. 297 N.W.2d 727 (Minn. 1980).

58. *See id.* at 733; *see also* BOSTON, *supra* note 17, § 19.13, at 31-33 (providing a synthesis of judicial decisions throughout the country dealing with punitive damage awards in product liability cases).

59. *Gryc*, 297 N.W.2d at 729.

60. *See id.* at 739-41. The court focused on the following specific acts of the defendant in affirming the jury's verdict of punitive damages: (1) that the defendant created a considerable danger to the public by marketing an unsafe product; (2) it continued to market this product even though there were economically feasible ways of making it safer; and (3) it was aware of the danger its product posed and the means for correcting it. *See id.* at 741.

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focused on the defendant’s conduct when it affirmed the jury’s award of punitive damages.\footnote{61}{See id. at 739.}

Two years later, in \textit{Eisert v. Greenberg Roofing \\ \\
& Sheet Metal Company},\footnote{62}{314 N.W.2d 226 (Minn. 1982).} the supreme court faced another punitive damages claim in the context of a strict products liability case.\footnote{63}{See id. at 227.} The case involved both a wrongful death claim as well as a products liability claim for property damage.\footnote{64}{See id.} However, because neither claim involved the sort of personal injury as in \textit{Gryc}, the supreme court denied the parties’ claims for punitive damages.\footnote{65}{See id. at 229.}

In \textit{Eisert}, gasoline stored in a high school auto body shop caught fire as students were working on an automobile fuel tank.\footnote{66}{See id. at 227.} Two students died from inhaling toxic smoke.\footnote{67}{See id.} The high school brought a strict products liability action against the manufacturers and distributors of the school’s spray foam insulation and intumescent paint for its property damage, alleging that these products fueled the fire and created toxic smoke.\footnote{68}{See id.} The deceased students’ families brought their wrongful death claims against the manufacturer under the same theories.\footnote{69}{See id.} Yet, when the parties attempted to amend their complaints to add a claim for punitive damages, the trial court denied the motion.\footnote{70}{See id. at 227.}

In the first case to focus on a plaintiff’s injuries, as opposed to a defendant’s conduct, the Minnesota Supreme Court limited punitive damage awards to only those strict products liability cases involving personal injuries in \textit{Eisert}.\footnote{71}{See id. at 229.} In upholding the trial court’s denial of the school district’s motion to amend the complaint, the supreme court stated, “[w]here [an] injury is limited to property damage, the public interest in punishment and deterrence is largely satisfied by the plaintiff’s recovery of compensatory damages.”\footnote{72}{Id. (citations omitted). The court based its decision on one line taken from the eighteen page decision in \textit{Gryc} wherein the court stated that “the state punitive damages remedy concerns the vital state interest of protecting persons against personal injury.” \textit{Id.} (quoting \textit{Gryc} v. Dayton-Hudson Corp., 297 N.W.2d}
tion because, at that time, Minnesota's wrongful death statute did not provide for punitive damages.74

The *Eisert* holding was later expanded by the supreme court in *Independent School District No. 622 v. Keene Corp.*75 In *Keene*, a school district brought a products liability suit against an asbestos manufacturer for the property damage it sustained in the asbestos abatement process, alleging not only strict liability, but negligence, breach of implied warranties, breach of express warranties, fraud, restitution, and conspiracy.76 In reversing the decisions of the trial court and court of appeals, the supreme court ruled that the *Eisert* holding applied not only to products liability cases involving claims of strict liability, but also to claims involving other theories of products liability where only property damage is suffered and thus barred the school district's claim for punitive damages in this case.77 Like the court in *Eisert*, the *Keene* court focused on the plaintiff's injury in determining whether punitive damages could be awarded.

In *Soucek v. Banham*,79 the Minnesota Court of Appeals further expanded on the holding in *Keene*.80 *Soucek* involved a plaintiff whose dog had been shot by the Minneapolis police after it had escaped from the

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727, 737 (Minn. 1980)).
74. See *Eisert v. Greenberg Roofing & Sheet Metal Co.*, 314 N.W.2d 226, 228 (Minn. 1982). It is interesting to note that at the time of this decision, Minnesota's wrongful death statute did not provide for an award of punitive damages. See MINN. STAT. § 573.02 (1978). However, shortly after the *Eisert* decision was handed down, the statute was amended to allow for such claims. See MINN. STAT. § 573.02, subd. 1 (1983). The legislative purpose behind this amendment has been expressed as follows:

As the purpose of wrongful death statutes is to allow heirs to bring claims which the decedent *would* have been entitled to, and as the purpose of the punitive damages statute is to punish and deter dangerous behavior, it seems only logical that conduct resulting in death should allow for such recovery. It was for these reasons that in 1983 the wrongful death statute was specifically amended to read "Punitive damages may be awarded as provided in §549.20."

Kaster & Weiner, *supra* note 49, at 22 (emphasis in original). Prior to the amendment, the statute limited a recovery of damages to only those proportionate to the plaintiff's pecuniary loss. See id.
75. 511 N.W.2d 728 (Minn. 1994).
76. See id. at 729.
77. See, e.g., *Bilotta v. Kelley Corp., Inc.*, 346 N.W.2d 616, 622 (Minn. 1984) (noting that there are other theories of products liability recovery other than strict liability, such as the negligence-based design defect and failure to warn theories).
78. See *Keene*, 511 N.W.2d at 732. The court held "[w]e believe now as we did in *Eisert* that denying punitive damages where a plaintiff only suffers property damage reflects the greater importance society places on protecting people." Id.
80. See id. at 480-81.
plaintiff's yard. The plaintiff sued the officers and the City of Minneapolis alleging negligence per se, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent supervision. The plaintiff then brought a motion to amend his complaint to add a claim for punitive damages. After initially granting the motion, the trial court reversed itself based upon the Keene decision. The court of appeals affirmed the trial court's ruling in a split decision, stating that "[g]iven the supreme court's rationale in Keene, we see no basis for distinguishing tortious conduct in the production or distribution of a product from other tortious conduct." The court of appeals then held that punitive damages were prohibited in any case that did not involve a personal injury.

A little over a year and a half after Soucek was decided, the supreme court heard the case of Phelps v. Commonwealth Land Title Insurance Co. In this case, the plaintiff brought an employment discrimination claim against the defendant. After the bench trial was completed, the trial judge awarded the plaintiff double the amount of her actual damages in addition to punitive damages. The supreme court affirmed the trial judge's awards of both punitive and "double actual" damages even though the plaintiff did not assert that she had sustained a personal injury.

With the issuance of the Phelps decision, the Minnesota Supreme Court signaled a possible return to the original purpose behind this state's enactment of the punitive damages statute by focusing on the defendant's egregious conduct when making such awards rather than on the nature of the plaintiff's injury.

V. THE MOLENAAR DECISION

A. The Facts

In 1994, Orville Molenaar ("Molenaar") purchased sixty-five heifers,

81. See id. at 479.
82. See id.
83. See id.
84. See id.
86. See id. at 480-81.
87. 537 N.W.2d 271 (Minn. 1995).
88. See id. at 273.
89. See id. The Minnesota Human Rights Act provides that if a defendant is found guilty of employment discrimination, the plaintiff may be awarded up to three times the amount of his or her actual damages. See MINN. STAT. § 363.071, subd. 2 (1992).
90. Phelps, 537 N.W.2d at 277.
91. See id.; see also supra notes 51-54 and accompanying text.
which he brought to Michael Frank's ("Frank") establishment to be boarded.\textsuperscript{92} Frank also boarded cattle for other owners, one of which was United Cattle Company ("United").\textsuperscript{93} 

In October 1994, after Frank and United had a falling out, United obtained a replevin order\textsuperscript{94} for the return of its cattle.\textsuperscript{95} Representatives of United arrived at Frank's farm to take possession of the number of cattle listed in the order.\textsuperscript{96} Although Frank informed the representatives that some of the cattle they were taking belonged to Molenaar, the representatives nonetheless took all the cattle and told Frank they could sort out the details later.\textsuperscript{97} 

After being notified that his cattle were now in the possession of United, Molenaar repeatedly asked United for their return.\textsuperscript{98} A little over one month later, United sold Molenaar's cattle.\textsuperscript{99} The parties were unable to trace the cattle after the sale.\textsuperscript{100} 

Molenaar sued United for conversion alleging that United's actions caused him to suffer severe financial injury.\textsuperscript{101} Molenaar later amended his complaint to add a claim for punitive damages.\textsuperscript{102} After having ruled in Molenaar's favor, the jury awarded him $400,000 in punitive damages and $59,375 in compensatory damages.\textsuperscript{103} United moved for judgment notwithstanding the verdict ("JNOV") on liability, compensatory damages and punitive damages.\textsuperscript{104} The district court granted JNOV on just the pu-
Molenaar appealed the JNOV regarding his punitive damages award and United cross-appealed the district court's denial of JNOV on its two remaining claims. The Minnesota Court of Appeals reinstated the jury's punitive damage award while upholding the trial court's denial of JNOV on the remaining two claims.

B. The Court's Analysis

In making its decision, the court of appeals in Molenaar began by reviewing Minnesota's extensive history of punitive damages awards as well as the general purpose behind such awards. In noting that "[p]unitive damages awards have been permitted in conversion actions since the formation of this state," the court commented that "[p]ermitting punitive damages in these actions demonstrates the state's strong policy against malicious, willful, or reckless disregard of another's property rights."

The court then traced the more recent history of punitive damages. The court stated that it interpreted the supreme court's holding in Phelps as limiting the language contained in Keene which prohibited punitive damages from being awarded in non-personal injury cases. It held that the Keene decision applied only to products liability cases and that Phelps was a return to the premise that punitive damages are to be awarded whenever a defendant acts with willful indifference to the rights, not just safety, of others. The court stated that this holding would bring the case law on punitive damages back in line with the purpose of the punitive damages statute - to punish for the willful and deliberate disregard of another's rights as well as another's safety - and that to rule otherwise would "eviscerate [part of] the statute."

The court of appeals also concluded that its reading of the Phelps and Keene decisions was consistent with the philosophy underlying an award of punitive damages, which is "to both punish and deter according to the gravity of the act giving rise to a punitive damage award . . . ." The court properly concluded that "[t]he focus lies on the defendant's wrong-

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105. See id.
106. See id.
107. See id. at 430.
108. Id. at 427-30.
109. See id. at 430; see also supra notes 51-54 and accompanying text.
111. See id. The opinion stated that "Keene stands for the proposition that 'absent personal injury, a party injured by a product may not recover punitive damages.'" (emphasis in original) (citations omitted).
112. See id.
113. See id. at 428-29.
114. Id. at 429 (quoting Rosenbloom v. Flygare, 501 N.W.2d 597, 601 (Minn. 1993)).
ful conduct that must be deterred, not the specific outcome of the conduct."  

Based on the foregoing analysis, the court ruled that United's actions in seizing and selling Molenaar's cattle after having been informed of the identity of their true owner demonstrated United's intentional violation of Molenaar's property rights. Thus, the court reinstated the jury's determination that punitive damages were appropriate in this case and remanded the case back to the trial court to make specific findings as required under Minnesota Statute section 549.20.

VI. ANALYSIS OF THE MOLENAAR DECISION

The controlling factor in awarding punitive damages is the severity and willfulness of the defendant's conduct, not the type of injury suffered by the plaintiff. The object of punitive damages is to deter and punish wrongful types of behavior. In Molenaar, the court correctly adhered to these principles when it held that punitive damages should be awarded in non-personal injury cases where the defendant's conduct exhibited the requisite degree of wantonness and disregard for the rights of others.

The Eisert decision clearly deviated from the above standard. With this decision, a Minnesota appellate court for the first time looked to the injury of the plaintiff for guidance in awarding punitive damages. The

115. See Molenaar, 553 N.W.2d at 429. The court added that without punitive damages, a defendant who intentionally violates the property rights of another has little to fear as the worst that could happen would be that he or she would have to return the converted property; "[u]niversal abolition of punitive damages for property damage dramatically improves the profitability of theft and diminishes society's reinforcement of personal accountability." Id.


117. See id. In awarding punitive damages, Minnesota Statute section 549.20 requires that the trial court make specific findings as to (1) the seriousness of the defendant's misconduct; (2) the profitability of the misconduct to the defendant; (3) the duration of the misconduct and any concealment thereof; (4) the degree of the defendant's awareness of the hazard; (5) the attitude and conduct of the defendant; (6) the number and level of employees involved in the misconduct; (7) the defendant's financial condition; and (8) the effect of other punishment of the defendant including compensatory damages and criminal penalties. See MINN. STAT. § 549.20, subd. 3 (1996).

118. See supra notes 51-54 and accompanying text.

119. See supra note 12 and accompanying text.

120. See supra notes 111-112 and accompanying text; see also Barnes v. Logan, 122 F.3d 820, 823 (9th Cir. 1997) (stating that Molenaar "seems to be a more sensible interpretation of Keene" as it limits it to products liability cases and permits punitive damages for the deliberate disregard of another's rights).

121. See supra text accompanying notes 62-75.

122. See Haugen & Tarkow, supra note 49, at 363-65 (stating "[t]he [Eisert] court's focus on the nature of the plaintiff's injury, rather than on the conduct of
court's holding in Eisert appears to be influenced by the fact that at the time of that decision, punitive damages could not be awarded in wrongful death claims because the wrongful death statute did not explicitly provide for such damages. The court more than likely found it very difficult to reconcile allowing punitive damages for a strict products liability property damage claim when it could not do so for the deaths of two teenagers. As such, the court developed a new line of reasoning to apply when deciding whether punitive damages could be awarded. The court stated that one must look to the injury of the plaintiff and no longer strictly at the conduct of the defendant. This shifting was improper and served to abrogate the main purpose behind Minnesota's punitive damages statute. If the court in Eisert had difficulty in applying the punitive damages statute in the manner in which it was intended, it should have put out a call to the legislature to amend the wrongful death statute instead of judicially modifying the purpose of the punitive damages statute.

Likewise, the decisions in Keene and Soucek were incorrectly decided. In both cases, the court focused on the plaintiff's damages rather than on the degree of the defendant's conduct. By doing so, the courts again deviated from the design of the punitive damages statute and

the defendant, ignores the 120-year-old law of punitive damages" and was the first case to do so). Other Minnesota Supreme Court decisions also suggest that the Eisert decision was a clear departure from the well-settled principles surrounding an award of punitive damages. See Marston v. Minneapolis Clinic of Psychiatry & Neurology, Ltd., 329 N.W.2d 306, 312 (Minn. 1983) (stating that courts should consider the degree of malice, intent or willful disregard of the defendant in approving punitive damages awards); Utecht v. Shopko Dep't Store, 324 N.W.2d 652, 654 (Minn. 1982) (concluding the trial court properly looked to the nature of the defendant's conduct in holding that punitive damages could not be added to the plaintiff's claim); Wilson v. City of Eagan, 297 N.W.2d 146, 150-51 (Minn. 1980) (focusing on the defendant's intentional killing of the plaintiff's pet when approving the jury's punitive damages award). But see Molenaar, 553 N.W.2d at 428 (stating that Gyc was the first case to shift the focus regarding punitive damages).

123. See supra note 74 and accompanying text.
124. See Eisert v. Greenberg Roofing & Sheet Metal Co., 314 N.W.2d 226, 228-29 (Minn. 1982) (stating that while it might be unfair to deny punitive damages for the wrongful death of a person, Minnesota still puts more value "on the safety of persons than it does on the security of property").
125. See supra note 73 and accompanying text.
126. See supra notes 51-54 and accompanying text.
127. See In re Copeland, 455 N.W.2d 503, 506 (Minn. Ct. App. 1990) (stating that "[t]he fundamental aim of an appellate court construing a statute is to ascertain and give effect to the legislative intent."); see also State v. Wagner, 555 N.W.2d 752, 754 (Minn. Ct. App. 1996) (holding that a "statute is to be construed in a manner giving effect to all of its provisions and a construction that would give no effect to the statute is to be avoided").
128. See supra text accompanying notes 75-86.
129. See id. notes 78, 84-85 and accompanying text.
the legislature's intent.130

By contrast, the Molenaar decision restores the proposition that the
defendant's conduct is what controls an award of punitive damages.131
This decision adheres to the true purpose of the punitive damages statute
that has been developed not only in this state, but in other states as well.132
If the legislature had intended that punitive damages were to apply only to
personal injury claims, it would have so provided in drafting the punitive
damages statute.133 However, the language of the statute clearly states that
malicious or oppressive acts which infringe upon the rights or safety of
others warrant the award of punitive damages.134

VII. CONCLUSION

Minnesota has a long history of awarding punitive damages where a
plaintiff's rights, not just physical safety, have been invaded by a defen-
dant who acts in a willful and malicious manner. By focusing on this his-
tory and the purpose behind Minnesota's punitive damages statute, the
Molenaar court righted prior judicial holdings on this subject by returning
the court's focus to the character and extent of the defendant's conduct,
not the injury of the plaintiff. Thus, the Molenaar court correctly held that
punitive damages are to be awarded in any case, other than one for prod-
ucts liability, where the defendant's conduct exhibits a deliberate disre-
gard for the rights and safety of others regardless of the type of injury suf-
f ered by the plaintiff.

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130. See supra notes 51-54 and accompanying text.
131. See supra notes 113-115 and accompanying text.
132. See supra note 34 and accompanying text.
133. See MINN. STAT. § 549.20 (1996). Minnesota's punitive damages statute
does not contain any language providing that its provisions are to be applied
solely to personal injury claims.
134. See supra notes 51-54 and accompanying text.