Roots of New Jersey Punitive Damages Law in Magna Carta

by James J. Ferrelli and Trevor H. Taniguchi

The purpose of punitive damages is to punish and deter wrongful conduct by imposing monetary penalties. One of the fundamental principles inherent in the law of punitive damages (also known as exemplary damages) is that the monetary penalty imposed upon a defendant for the wrongdoing should be proportional to the defendant and to the defendant’s wrongdoing. This principle, part of common law and now incorporated into New Jersey’s punitive damages statute, derives from Magna Carta. Remarkably, though formulated in the agrarian society of medieval England in response to the English system of justice that developed following the Norman conquest in 1066, this 800-year-old principle still has applicability in American law in general and in New Jersey jurisprudence in particular.

Amercements and Fines Prior and Subsequent to Magna Carta

As Justice Sandra Day O’Connor explained in Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc., in the early days of English justice following the Norman conquest, a system of dispute resolution developed in which individuals who had engaged in conduct wrongful to others placed themselves “in the King’s mercy” to avoid all monetary claims for injuries caused by their wrongdoing. In order to receive clemency, these persons were required to pay an “amercement” to a representative of the king or a feudal lord. Although amerements originated at a time when there was little distinction between criminal and tort law, a number of commentators have noted that amerements were civil punishments that were assessed for a wide variety of civil wrongs, including but not limited to trespass, improper or false pleading, economic wrongs, torts, and crimes.

Prior to Magna Carta, the amount of an amerement was set arbitrarily, according to the determination made by the king’s representatives in each case. As a result, amerements were imposed frequently and abusively. To address this, Chapter 20 of Magna Carta prohibited amerements that were disproportionate to the wrong to deprive the defendant of his livelihood:

A Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him as his contenem ent; and a Merchant likewise, saving to him his Merchandise; and any other’s villain than ours shall be likewise amerced, saving his wainage, if he fall into our mercy. And none of the said amercements shall be assessed, but by the oath of honest and lawful men of the vicinage.

Chapter 20 thus embodied three related concepts. First, the amount of an amerement should bear a relationship to the wrong for which it is assessed. In the words of Magna Carta, a free man should be amerced for “great fault” according to the “greatness” of the fault. Second, the amerement or penalty should not be so harsh so as to completely deprive the defendant of the means of pursuing a livelihood. Third, the amerement should not be assessed arbitrarily, but only upon the oath of the defendant’s “honest and lawful” peers.

Following Magna Carta, the court initially set the amount of amerements in particular cases. Thereafter, a group of peers of the defendant was assembled to adjust the amerement according to the amerced party’s ability to pay.

Originating in the 13th century as voluntary sums paid to the crown to avoid indefinite prison sentences, fines had similar functions as amerements, and by the 17th century had replaced amerements as the preferred penal sanction imposed by courts. By the time of the Glorious Revolution of 1688–89, and the drafting of the English Bill of Rights, the abuses of the courts imposing ruinous fines on wrongdoers and critics of the crown had reached the point that the drafters of the English Bill of Rights incorporated the principle
of proportional punishment from Chapter 20 of Magna Carta into the document. The final draft of Article 10 of the English Bill of Rights provided that “excessive Baile ought not to be required, nor excessive Fines imposed, nor cruel and unusual Punishments inflicted.” By the late 17th century, the word “amercement” had dropped out of ordinary usage, and the word “fine” in Article 10 was a shorthand for all monetary penalties in civil and criminal proceedings, whether imposed by judge or jury.

The Principle of Proportional Punishment in New Jersey Punitive Damages Law

New Jersey law on punitive damages embodies the principle of proportional punishment: The law prohibits an unbridled imposition of punitive damages by the jury without “any definitive standard or criterion to guide the trier of fact in determining the proper amount.” As the Appellate Division explains in Cabakov v. Thatcher, the law of punitive damages imports criminal law principles of punishment into tort law as “a sort of hybrid between a display of ethical indignation and the imposition of a criminal fine.” The New Jersey Supreme Court further notes punitive damages “are awarded upon a theory of punishment to the offender for aggravated misconduct and to deter such conduct in the future.” Indeed, the United States Supreme Court in Pacific Mutual Ins. Co. v. Haslip explained that “unlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages” could trigger constitutional due process concerns.

Prior to the imposition of the Punitive Damages Act, the New Jersey Supreme Court identified factors relevant to the determination of the plaintiff’s entitlement to punitive damages and of the appropriate amount of such damages. For instance, the Court in Fischer v. Johns-Manville Corp. explained that punitive damages must bear a reasonable relationship to actual injury; the amount of punitive damages should account for the profitability of the defendant’s marketing misconduct, the plaintiff’s litigation expenses, the punishment the defendant probably will receive from other sources, the defendant’s financial condition, and the effect on its condition of a judgment for the plaintiff. These principles derive from Chapter 20 of Magna Carta.

One issue that remained unsettled in New Jersey punitive damages law, however, was the extent to which the jury’s punitive damages determination was required to consider the defendant’s financial condition as a relevant factor. As Magna Carta prescribed, a merchant could be amerced, but not to such an extent as to remove all his merchandise. A villain—or general laborer—was only to be amerced in such an amount saving his wainage—or chattels on which the laborer depended for his livelihood. This issue was addressed squarely by the New Jersey Supreme Court in Herman v. Sunshine Chemical Specialties, Inc.

Herman was a product liability action filed by an independent contractor hired to demonstrate and sell the defendant’s products, including an all-purpose cleaner called Sun-Clean Concentrate. The facts are disturbing. The Sun-Clean label stated that it conformed with Occupational Safety and Health Administration (OSHA) requirements; contained no acids, caustic ammonia or solvents; and “is safe to use.” However, the defendant did not manufacture Sun-Clean, but instead purchased it from a chemical company in bulk quantities it transferred into one- and five-gallon containers bearing the Sun-Clean label. Contrary to the Sun-Clean label, the supplier had provided a safety data sheet to defendant Sunshine that outlined the hazardous ingredients of the product, including sodium hydroxide, a caustic soda. It included a warning that users should avoid breathing vapors from the product and should use it with adequate ventilation. The plaintiff developed “occupational asthma” as a result of workplace exposure to chemicals and filed a product liability action against the defendants. At trial, the plaintiff obtained an award of $410,000 in compensatory damages and $400,000 in punitive damages. On appeal, the defendant’s counsel and insurer asserted there was insufficient evidence of the defendant’s financial condition to permit the appropriate imposition of punitive damages. After the Appellate Division reversed, the Supreme Court reinstated the trial court judgment based upon its disagreement with the Appellate Division’s view of the proof offered at trial.

Consistent with the New Jersey Supreme Court’s holding on the law, the Appellate Division explained at length the importance of the wealth and financial condition of the defendant as a pertinent consideration in assessing punitive damages. Evidence of the defendant’s wealth is relevant to the question of the amount “which will adequately punish the defendant for the conduct,” and is important because “the degree of punishment or deterrence is to some extent proportionate to the means of the wrongdoer.” Therefore, evidence of the defendant’s financial situation is important so the jury may determine the amount of punitive damages that will be sufficient to punish the defendant and deter similar conduct in the future.

The Appellate Division in Herman cited a California Supreme Court case, Adams v. Murakami, in support of its decision, noting that the Adams Court had pointed out “the ancient roots behind examining the defendant’s wealth.” Specifically, the Appellate Division quoted a portion of the Adams
opinion in which the California Supreme Court explained that the limitations on punitive damages derived in part from the limitations on amerce-ments established in Chapter 20 of Magna Carta. As the Adams Court stated:

 Absent evidence of a defendant’s financial condition, a punitive damages award can financially annihilate him. We see no reason why a modern-day civil defendant should be entitled to less consideration than one was given 800 years ago.38

Rejecting the arguments that considering a defendant’s wealth is an optional factor for the jury in accessing punitive damages, the Appellate Division in Herman held that evidence of a defendant’s financial condition is a necessary prerequisite to a punitive damages award, and it is the plaintiff’s burden to introduce such evidence.39 This evidence is necessary in light of the purposes of punitive damages, punishment and deterrence, because without such evidence of financial condition, it is impossible for the court to determine if a punitive damages award “exceeds the level necessary to properly punish and deter.”40 Without evidence of the defendant’s financial condition both the jury and an appellate court will be forced to speculate on the amount of punitive damages that would appropriately serve to punish or deter the defendant.41

The proportional punishment principle from Chapter 20 of Magna Carta also is embodied in the New Jersey Punitive Damages Act.42 Specifically, under the act once the trier of fact has determined the defendant’s conduct was sufficiently egregious to warrant the imposition of punitive damages:43

the trier of fact shall then determine the amount of those damages...[and] shall consider all relevant evidence, including, but not limited to, the following...[t]he financial condition of the defendant.44

The trier of fact’s consideration of the defendant’s financial condition under this provision of the New Jersey Punitive Damages Act is a direct descendant of the proportional punishment principle established in Chapter 20 of Magna Carta. The act recognizes, as did New Jersey common law, that a financial penalty imposed upon a defendant that has no relationship to the defendant’s financial condition is fundamentally unfair, and does not serve the purpose of punishing and deterring egregious wrongful conduct by the defendant.

In interpreting the Punitive Damages Act, New Jersey courts have taken the proportional punishment principle a step further, holding that the purpose of a punitive damages award is not “general deterrence” of wrongdoing by parties other than the defendant in the case, even though this purpose is consistent with the language of the act. In Tarr v. Bob Ciasulli’s Mack Auto Mall, Inc., the New Jersey Supreme Court held that an award of punitive damages against an employer under the New Jersey Law Against Discrimination (LAD) should not take into account the general deterrence effect the punitive damages award might have on other employers, but could only consider the punishment and deterrence of the defendant before the court.45 This holding is a direct descendant of Chapter 20 of Magna Carta, which prohibited the imposition of punishment for civil wrongs that would financially ruin the defendant.

In Tarr, the plaintiff filed a sexual harassment claim against her employer under the LAD. The trial court ruled that the jury may consider general deterrence in calculating the punitive damages award so employers other than the defendant would be deterred from violating the LAD. At trial, the jury awarded the plaintiff $85,000 in punitive damages, on top of $25,000 in compensatory damages, and in excess of $165,000 in legal fees, based on its determination the defendant was liable on the plaintiff’s hostile work environment claim under the LAD. The Appellate Division reversed the punitive damages award, holding that the jury may only consider the punitive damages award’s deterrent effect on the specific defendants involved in the litigation, not other parties who were not before the court.46

The Appellate Division recognized there was a difference between general deterrence inherent in a punitive damages award against a defendant in a particular case and “permitting the jury to enhance general deterrence by increasing the award beyond the amount required to specifically deter the defendant.”47 A punitive damages award enhanced by the jury to deter parties who could be completely unconnected with the plaintiff or the defendant’s wrongdoing, the court explained, “can be viewed as a windfall for plaintiff and excessively punitive toward defendant.”48 Thus, the Punitive Damages Act prohibited plaintiff’s counsel from urging the jury to increase a punitive damages award for general deterrence purposes to “send a message” to other potential wrongdoers. Rather, the Appellate Division explained, “the jury must focus on an amount reasonably sufficient to ‘punish the defendant and to deter that defendant from repeating such conduct.’”49

Affirming the Appellate Division based upon the majority opinion, the Supreme Court held that “in fixing the amount of a punitive damages award, a jury may only aim for deterrence of the specific defendant.”50 The Supreme Court agreed that the language and legislative history of the Punitive Damages Act prohibited a jury from considering the “general deterrence of others” in determining the amount of a punitive...
damages award.

The Supreme Court also examined the extent to which the Punitive Damages Act contemplates the jury’s consideration of the defendant’s financial condition at the time of the wrongful conduct and the time of the judgment when assessing punitive damages. The defendant contended the jury should consider the defendant’s financial condition at the time of the judgment, and because the defendant corporation was no longer a viable entity (although not dissolved), there was no basis for deterrence at the time of the judgment and an award of punitive damages should not be allowed.

The Supreme Court rejected “the either-or timing choice that defendant’s argument posits in respect to the determination of its financial condition for purposes of the ability-to-pay assessment.”

Rather than a bright-line rule stating the jury may only consider the defendant’s financial condition at the time of the wrongful conduct or at the time of the judgment, the Supreme Court explained the case law and appropriate policy dictates the jury should engage in a “nuanced” factual analysis in order to fashion a punitive damages award that best comports with the dual purposes of punitive damages: to punish and to deter the defendant.

The Punitive Damages Act “directs the jury to consider the ‘profitability of the misconduct to the defendant’ when assessing punitive damages.”

This requires the jury to consider “the defendant’s financial condition after, and at the time of, the wrongful conduct to ensure that any compensatory damages award for the wrongdoing does not become a cost of business for the defendant.”

Thus, the fact that the punitive damages award might not be recoverable following judgment was not a bar to punitive damages. The New Jersey Supreme Court held that the trial court “should direct the jury that it may consider defendant’s financial condition at the time of the wrongdoing and, further, that it may consider subsequent events concerning the corporation’s financial condition, including its worth at the time of judgment.”

Accordingly, this direction “will assure that the dual purposes of punitive damages—deterrence and punishment—are fulfilled, while at the same time ensuring the award’s reasonableness.”

Conclusion

A fundamental precept inherent in the modern notion of punitive damages is that the monetary penalty must be proportional to the defendant’s wrongdoing. While there may be a compulsion to think of this restraint as a purely modern development, remarkably it has much more ancient roots, traceable back 800 years to Magna Carta. The same principle described in Chapter 20 of Magna Carta has been carved into common law and codified into modern statutes like the New Jersey Punitive Damages Act.

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ENDNOTES


3. Id.

4. Id. at 288.

5. Id.

6. Id.

7. Id. at 288-89 (quoting Chapter 20 of Magna Carta, 9 Hen. III, ch. 14 (1225)). Magna Carta was written in Latin, and reissued several times after the original signing in 1215. Subsequently there are various translations into English see U.S. National Archives, Magna Carta Translation, archives.gov/exhibits/featured_documents/magna_carta/translation.html; British Library, English translation of Magna Carta, bl.uk/magna-carta/articles/magna-carta-english-translation; A new translation from the Latin of the Magna Carta of England, 1215 (Xavier Hildegarde trans.), magnacartaplus.org/magnacarta/index.htm. “Contemement” refers to the holdings or property of a free man necessary for the maintenance of his livelihood. A “villain” refers to a peasant occupier or cultivator of lands subject to a lord or attached to a manor; a peasant country laborer. “Wainage” refers to the chattels on which the villain depended for his livelihood, such as farm implements, seed corn and stock. See Xavier Hildegarde, Glossary for the Magna Carta, 1215 (Jan. 24, 2015), magnacartaplus.org/magnacarta/definitions.htm.

8. Id. at 289.

9. Id.

10. Id.

11. Id. at 291 (quoting 1 Wn. & Mary, 2d Sess., ch. 2, 3 Stat at Large 440, 441 (1689)).

12. Id.


19. Id. at 333.
20. Id. at 334.
21. Id.
22. Id. at 335.
24. Id. at 548.
25. Herman, 133 N.J. at 342-46.
27. Id.
28. Id. at 545.
29. Id. (quoting Adams v. Murakami, 813 P.2d 1352-53 (Cal. 1991)).
30. Id. at 547 (quoting Adams, 813, P.2d at 1351).
31. Id. (quoting Adams, 813 P.2d at 1350).
32. Id.
33. N.J.S.A. 2A:15-5.9 through 5.17.
34. The Punitive Damages Act allows punitive damages to be awarded “only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant’s acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and wilful disregard of persons who foreseeably might be harmed by those acts or omissions. This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.” N.J.S.A. 2A:15-5.12(4.a.).
35. 2A:15-5.12(4)(c)(4).
38. Id. at 568.
39. Id. at 569.
40. Tarr, 390 N.J. Super. at 570 (quoting N.J.S.A. 2A:15-5.14(a) (emphasis added)).
41. Tarr, 194 N.J. at 215.
42. Id. at 216.
43. Id. at 217 (quoting N.J.S.A. 2A:15-5.12(c) (2)).
44. Id. at 221.
45. Id. at 222.