Punitive Damages - Europe Strikes Back!? 

The Reception of Punitive Damages in France – the Fountain Pajot Decision 

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Concerns liability of French sailing boat manufacturer

US court granted $3.253.734 of damages including:

- $1.391.650 for the repair of the boat
- $402.084 for the legal fees
- $1.460.000 of punitive damages
“Although the award of punitive damages is, as such, not contrary to public policy, a violation of public policy exists if the amount of damages awarded is disproportionate, taking into account the actual prejudice suffered and the contractual breach.”
Punitive damages as such are not contrary to public policy.

A violation of public policy exists if the amount of damages is disproportionate.
Principle of full compensation (“réparation intégrale du préjudice”)

- Damages should put the victim in the same situation as the one that would exist had the contractual breach or tort not occurred

- “The damages awarded to a victim must repair the prejudice suffered and must not result in the victim making any loss or profit.” (French Cour de Cassation 23 January 2003)
Development of French Domestic Law

- Punitive elements of current French law of liability
  - Contractual penalty clauses are legal
  - Damages for “moral” prejudice (e.g. reputational damages, emotional damages)

- Punitive damages in recent reform proposals of French law
  - “A person who commits a manifestly deliberate fault, and notably a fault with a view to gain, can be condemned in addition to compensatory damages to pay punitive damages, part of which the court may in its discretion allocate to the Public Treasury. A court’s decision to order payment of damages of this kind must be supported with specific reasons and their amount distinguished from any other damages awarded to the victim. Punitive damages may not be the object of insurance.” (Article 1371 CATALA proposal, 22 Sept 2005)
Punitive damages as such are not contrary to public policy

A violation of public policy exists if the amount of damages is disproportionate
Criteria To Assess Whether Damages Are Disproportionate

- Actual prejudice suffered
  - Ratio between compensatory damages and punitive damages
  - Ratio of 1/1 is disproportionate

- Contractual breach
  - Conduct of the wrongdoer
  - Does the Fountain Pajot rationale apply to punitive damages in tort cases?

- NOT financial capacities of the wrongdoer?
- NOT other circumstances?
Consequence of Disproportionate Punitive Damages

- Refusal of exequatur
  - Fountain Pajot refused exequatur of the entire US judgment
  - Difficulty: refusal includes compensatory damages

- Partial exequatur
  - Distinction between selective and reductive partial exequatur
  - Difficulty: close to review of the merits ("révision au fond")?
Conclusion: How To Apply Fountain Pajot?

Court of Appeal Poitier 4 March 2011

- Confirms Fountain Pajot
- Holds that amount of punitive damages is disproportionate because “significantly higher than economical loss”
- Ratio between compensatory and punitive damages was approximately 1/2
- Refusal of exequatur (even for part concerning compensatory damages)