

Applying Foreign Punitive Damage Laws in Louisiana: The Experience of a Mixed Jurisdiction

F.X. Licari (Université de Lorraine) and B. West Janke (Baker, Donelson, Bearman, Caldwell & Berkowitz, PC), have posted this article on SSRN. Here is the abstract:

There is perhaps no better laboratory to scrutinize punitive damages than Louisiana. As a civil law island surrounded by common law jurisdictions, it shares some compensation principles that are decidedly civilian, and others that are clearly influenced by its American neighbors. Likewise, Louisiana's geography has given rise to a sophisticated, and well-exercised, system for addressing conflicts of laws. Here, the intersection of divergent principles of compensation provokes an inquiry into the validity of the "full compensation" theory. The conflicts analysis in the context of delicts and quasi-delicts, and especially in the context of punitive damages, is complex and involves a plurality of norms of the Louisiana Civil Code (La. Civ. Code). The general inquiry under Louisiana's conflicts analysis is the determination of the state whose policies would be most seriously impaired if its law were not applied to that issue. The central provision is La. Civ. Code art. 3515, which states :

Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue. That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.

Analyzing this article with other Code articles and Louisiana case-law, the authors conclude that the likelihood that a Louisiana court will enforce a foreign punitive damage law is low, given that the conflicts analysis weighs

heavily in favor of a determination that the tortfeasor has more contacts with Louisiana than elsewhere. The general policy prohibiting punitive damages greatly influences every factor of the conflicts analysis except for those factors that clearly weigh in favor of applying the law of another state. So long as Louisiana holds on to the belief that punitive damages are per se incompatible with the theory of full compensation, the conflicts analysis for punitive damages will seldom result in the imposition of the law of another state.

Ps: this contribution was first presented in a workshop held at the University of Metz on 24 May 2013 under the direction of F.X. Licari and Prof. O. Cachard. All the presentations have been collected in the *Revue Lamy Droit des Affaires* (n° 85, sept. 2013).