

**報告論文のタイトル** : On the Allocation of Punitive Damages –Can punitive damages aid the victims and deter injurers?--

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## 論文要旨

It is said that punitive damages, on the one hand, could give sanctions the malicious injurer and aid the victim. However, on the other hand, the punitive damages might compel the sound manufacturer to bear the fear of it and discourage them. Are these stereotyped ideas true at all? We try to show results different from stereotyped ones. That is, the punitive damages could weaken the victim under the some conditions. We suppose in our paper that in the trial stage after a suit, the manufacturer could defend and fight instead of chilling effects. Almost all the previous literatures do not refer to our indications.

Many legal scholars against the punitive damages point out that it is unreasonable as the public policy violation for the victim to accept more than the suffered damages. There are some opinions that some portion of the punitive damages should go to funds or notional treasury. Our studies present the effects on the victim and injurer of the allocation of the punitive damages. Especially, following public policy, in our paper, it is obtained that the larger punitive damages rate, the injurer makes defense more and more, then the victim become to hesitate a suit, and finally the injurer continues to produce a product.

Precisely, we use the game theoretical method in our paper. The simple model is as follows. There are parties, the victim (plaintiff), and the injurer (defendant; manufacturer). Each party is risk neutral. The manufacturer produces a product, then obtaining the production payoff. At the same time, the production gives real damages to the victim. The time line of the game is as follows. In 0-period there exists a rule of the punitive damages allocating rule. In first period, the manufacturer (defendant) produces a product or not. In second period, the victim (plaintiff) files a suit or not. In third period, the plaintiff and the defendant dispute in civil court (trial stage).

Main results as follows. Under small share of the punitive damages for the victim (plaintiff), the punitive damages allocation compels the manufacturer (defendant) to defend much more and the plaintiff effort lesser in civil court, and then prevailing for the plaintiff goes down. Therefore, the portion of filing a suit by the victim becomes smaller. Anticipating these situation, the manufacturer could continue to produce a product. The punitive damages might not aid the victim and deter the injurer if smaller share for the plaintiff and highly punitive rate for defendant.