Legal and Ethical Analysis - Court of Appeal of California:

Grimshaw v. Ford Motor Company

Kari S. Sanders

Regis University

Author Note

Kari Sanders is a MBA student at Regis University. E-mail: ksanders001@regis.edu.

**Legal and Ethical Analysis - Court of Appeal of California:**

**Grimshaw v. Ford Motor Company**

This paper provides an ethical and legal analysis of the 1981 California Court of Appeal case regarding punitive damages for negligence and strict liability - Grimshaw v. Ford Motor Company.

**Background**

In this case, Ford Motor Company appealed a judgment of punitive damages for negligence and strict liability in the death of Mrs. Gray and disfigurement of Richard Grimshaw. The injuries were sustained as a result of their Ford Pinto’s gas tank exploding after a rear-impact accident. The cases presented evidence that the Ford Company was aware of a design flaw that could cause the Pinto’s gas tank to explode upon a rear-impact and had opted to not fix it following a cost analysis. A jury had awarded punitive damages for negligence and strict liability. Ford appealed the judgment based on trial errors as well as a claim that the award of punitive damages was unconstitutional. (Grimshaw v. Ford Motor Company)

Separately, the descendents of the decreased driver appealed that they had not received punitive damages. Also, Grimshaw appealed a remittitur – where a judge had reduced the amount of the damages awarded. Also, Grimshaw appealed the granting of Ford a new hearing about the value of the punitive damages. (Grimshaw v. Ford Motor Company)

**Legal and Ethical Facts**

* The Ford pinto had a design flaw that caused its gas tank to rupture and burst into flames in rear-end collisions. (Grimshaw v. Ford Motor Company)
* The design flaw was known to the company, and a trade analysis was conducted. The results of the analysis determined that the law suits were cheaper than the $16.08 needed to install a rubber liner and extra steel plate in each car. (The pintos cost $1,919 each, so this was a savings of 0.8%. (Bruden)
* An accident occurred where a Pinto was struck from the rear and the gas tank exploded. One occupant of the car died from the burns and another was disfigured. The car’s surviving occupant sued for Ford Motor Company for damages, and was award punitive damages on the bases of strict liability and negligence. (Grimshaw v. Ford Motor Company)
* The trial included testimony from a former Ford engineering executive, Mr. Copp, who was familiar with the Pinto’s design trades. Mr. Copp had not been on the initial list of witnesses provided at Ford’s request, but had been discovered through disclosed research the plaintiff was conducting. (Grimshaw v. Ford Motor Company)
* The trial included a video of a Pinto crash from Ford’s archive of crash tests; however, not all the details of the crash were consistent with the one in this case. (Grimshaw v. Ford Motor Company)
* The plaintiff’s attorney made statements that Ford thought were intended to create jury bias; however, Ford had not objected to any of these statements during the trial. (Grimshaw v. Ford Motor Company)
* A jury awarded Grimshaw awarded over $ 2 million compensatory damages and $ 125 million punitive damages. (Grimshaw v. Ford Motor Company)
* The jury also awarded Mrs. Grey’s heirs $550,000 in compensatory damages, but no punitive damages.
* A new trial was set to review the punitive damages to Grimshaw. He was required to remit $121.5 million of the award damages prior to the trial.
* The heirs had not been award punitive damages due to Code Civ. Proc., § 377.

**Key Legal Issues**

The key legal issues in this case are the basis of Ford’s appeal:

1. Can the plaintiff call upon a former employee to testify for them after they have disclosed their list of witnesses to the defense?
2. What can be included and excluded from the evidence that is presented?
3. Can the defendant appeal for actions during the trial that they feel create jury bias if they did not raise objections during the trial itself?
4. Since a case two weeks prior established the use of the risk-benefit test for a design defect case, should that have been included in the jury’s instructions?
5. Was it constitutional to allow punitive damages to be awarded for this design defect? Was the legal concept of “malice” correctly applied to this case?
6. Should there be a limit to the amount of punitive damages that can be awarded?

**Applicable Legal Rules and Observations**

***Testimony of a Former Employee Who Had Not Been on the Witness List***

The testimony of Mr. Cobb was legal. Before he testified, Ford Company and the plaintiff consulted with the judge. At that time, it was determined that the plaintiff had followed all procedures for providing pre-trial lists of who was to testify and was legally justified in discovering new witnesses through the research thereafter. Ford Company did not object to the inclusion of the witness during this consultation – only afterward while he was testifying. Objections need to be timely and factual.

The circumstances of Mr. Copp’s dismissal from Ford were also relevant to the case, and "[all] relevant evidence is admissible" except as otherwise provided by statute. (Evid. Code, § 351., Grimshaw v. Ford Motor Company) Each side had a capability to establish their case – Ford contended that Mr. Copp was fired for poor performance and the plaintiff’s attorney worked to build a case that he had been fired due to his efforts to challenge the company’s vehicle safety policies.

***Items Included and Excluded from Evidence & Post-Trial Objections***

As part of their appeal, Ford raised issues from the trial – evidence that was both included and omitted as part of the trial. The evidence omitted included a study that showed the rate of Pinto fires to be less than the studies the plaintiff presented. The trial court’s ruling to omit it seems unnecessary; however, the presence of the study would not have altered the outcome of the trial. It created the argument that the design was flawed, and the result of the flaw was exploding gas tanks, but possibly not as many as some studies would suggest. The jury would still find in favor of the plaintiff with such evidence. Thus, there is insufficient evidence that the trial court’s decision needs to be overturned. (Grimshaw v. Ford Motor Company)

One of the items included in the trial was a video from a Pinto crash test where the gas tank exploded. Part of the reason why the gas tank exploded had nothing to do with the circumstances of the accident in question. The same argument (above) applies.

Ford also alleged that the plaintiff’s attorney made statements that could have biased the jury; however, they did not object to those statements during the trial. One of these statements could have influenced the punitive damages awarded; however, those are already under review by a judge for fairness.

***Use of the Risk-Benefit Test***

Ford challenged the trial on the basis that the jury had not been instructed to use the risk-benefit test, established by a different case 2 weeks earlier. In this test, Ford would have been required to prove that the benefits of not correcting the Pinto’s design flaw outweighed the risk of injury to consumers. Inclusion of this test would have increased the burden of proof for the company with little preparation time. Thus, it was proper to not include the test. (Grimshaw v. Ford Motor Company)

***Malice and Punitive Damages***

The award of punitive damages was consistent with Civil Code section 3294, which states that one of the test is whether the defendant exhibited malice. Ford contended that the company cannot exhibit malice toward consumer they have never met; however, the court used the broader definition from other cases: “As this court recently noted, [HN33] numerous California cases after *Davis* v. *Hearst, supra*, have interpreted the term "malice" as used in section 3294 to include, not only a malicious intention to injure the specific person harmed, but conduct evincing "a conscious disregard of the probability that the actor's conduct will result in injury to others."” (Grimshaw v. Ford Motor Company) A large body of evidence was presented to demonstrate that not only had Ford been aware of the design flaw and its possible consequences, that the fix was financially feasible and that the company had a history of permitting such design flaws to persist in previous products. Thus, there was sufficient evidence to demonstrate malice and enable the award of punitive damages.

***Limits to Punitive Damages***

The court is well within its legal jurisdiction to review the punitive damages under Code of Civil Procedure section 657. The decision cannot be appealed unless it can be shown that there was a clear breach of judicial discretion (Grimshaw v. Ford Motor Company: *Neal* v. *Farmers Ins. Exchange, supra*, 21 Cal.3d 910, 933; *Doolin* v. *Omnibus Cable Co*. (1899) 125 Cal. 141, 144-145 [57 P. 774].)

The heirs of Mrs. Gray had been barred from seeking punitive damages under existing law. That was an accurate, if narrow, reading of the law. The heirs are not necessarily the personal representative of the estate, and the law clearly states that punitive damages must be sought by a personal representative of the estate: “Punitive damages are, however, recoverable in an action under Probate Code section 573 by the personal representative of the decedent's estate if the decedent survived the accident, however briefly, or if the property of the decedent was damaged or lost before death. ( *Stencel Aero Engineering Corp.* v. *Superior Court, supra*, 56 Cal.App.3d 978, 987-988; see *Pease* v. *Beech Aircraft Corp., supra*, 38 Cal.App.3d 450, 459-460.)”. (Grimshaw v. Ford Motor Company)

**Legal Conclusion**

The Ford Company missed some opportunities during the trial to correct areas where bias had been introduced; however, these corrections cannot be made after the fact and would not have changed the outcome. The main finding was correct – the Ford Motor Company was aware of a defect in the Pinto product that could injure consumers, possibly to the point of death, and failed to correct it. The plaintiff and Mrs. Gray were injured by this product and punitive damages were awarded. The award required that the company acted with malice, and the definition of malice used by the court – “conduct evincing a conscious disregard of the probability that the actor's conduct will result in injury to others.” – is consistent with many preceding cases. (Grimshaw v. Ford Motor Company)

Because the heirs had already received a settlement for the wrongful death suit, a separate award for punitive damages could be considered as double punishment for the same breach, as found by the court. The law is very clear that the estate, and not the heirs themselves, can seek punitive damages in a wrongful death suit.

The court is justified in reviewing the punitive damages award to ensure that it is fair as compared to the damages incurred.

**Key Ethical Issues**

The key ethical issue for the plaintiff’s attorney is whether or not they violated the “duty to not misrepresent” theory when presenting the case. (Velasquez) The appeal by Ford Motor Company states that they believe the attorney’s actions exaggerated certain points of the evidence in order to gain favor with the jury.

The key ethical issues for Ford Motor Company are the duty to exercise due care and their duties under the social costs view of the manufacturer’s duties. These ethical issues are the basis for the punitive damages award.

The key ethical issue in the Grimshaw appeal is whether or not there are limits to compensatory justice.

**Support for Ethical Issues**

Under the duty to not misrepresent, the plaintiff’s attorney is obliged to not introduce statements or evidence not directly related to the facts of the case for the sole purpose of getting the jury to draw a conclusion about the product (e.g., Ford Pinto) that may not be true. In this case, the attorney acts as the seller and the jury as the buyer under the “duty to not misrepresent” theory. There is a line between providing sufficient evidence to demonstrate a pattern of behavior on the part of the defendant and presenting information in such a way as to create jury bias.

Under the duty to exercise due care, Ford Motor Company is obliged to fix known safety problems that could lead to injuries. (Velasquez) That they didn’t fix the problem is a breach of the duty to exercise due care and is consistent with the court’s definition of "malice" under Civil Code Section 3294. (Grimshaw v. Ford Motor Company) The social costs view of manufacturer’s duties is that the Ford Motor Company should pay the cost for consumer injuries even if due care was taken. (Velasquez) This is consistent with the award of punitive damages in Grimshaw v. Ford Motor Company.

Under the theory of compensatory justice, the compensation Grimshaw was awarded from Ford should be equal to his loss. (Velasquez) In this case, a trial court had granted Ford’s request for another review because the “punitive award was 44 times the compensatory award” and therefore may not be equivalent to the defendant’s loss. How does one consider the net loss sustained by an injured consumer? The court put forth three methods for judging the award’s rationale: “(1) Is the sum so large as to raise a presumption that the award was the result of passion and prejudice and therefore excessive as a matter of law; (2) Does the award bear a reasonable relationship to the net assets of the defendant; and (3) Does the award bear a reasonable relationship to the compensatory damages awarded?” (Grimshaw v. Ford Motor Company)

**Ethical Alternatives**

An alternative to the “duty to not misrepresent” theory would be to give the attorney some latitude in presenting the case to the jury because Ford Motor Company violated their duty to exercise due care. Such latitude had been allowed in the Grimshaw case, as detailed in the Ford Motor Company’s appeal. For example, a video of Ford's crash test No. 1616 showed a pinto exploding from a cause that was not the same as that which caused Mrs. Gary’s car to explode. Ford also objected to the counsel’s use of exhibit No. 125 to request for $100 million in punitive damages. Their objection was denied by the Court of Appeal because it was not timely. (Grimshaw v. Ford Motor Company)

The duty to exercise due care and the social costs view of manufacturer’s duties have an ethical alternative of caveat emptor (let the buy beware). Under this ethical alternative, the buyer has a responsibility to accept the defects in a product unless the seller expressly provided a guarantee. (Mallor) Caveat emptor applies because no explicit promise made by Ford that there was no chance of the car’s gas tank exploding in a rear collision. This was also not the first time a car had exploded in a rear collision due to the gas tank. A similar incident with a Lincoln Continental in the mid-1960’s, and it was included in 1965 testimony to a U.S. Senate subcommittee on vehicle safety. (Mother Jones)

Alternatives to compensatory justice are to remove the ability of the plaintiff to receive such an award or to remove judicial review of the awards. Allowing the judge to create a remittitur allows a compromise where an award may be reviewed to ensure it is fair to all parties.

**Ethical Conclusions**

No matter how distasteful the circumstance, the duty to not misrepresent must be upheld during both civil and criminal proceedings in order to preserve the impartiality of the process. Jurors are not legal experts in the case they are hearing, and therefore rely upon truthful representation on the case from both sides. Allowing latitude on the duty to not misrepresent would violate two core legal principles in the United States – that a defendant is innocent until proven guilty and that their guilt must be proven “beyond a reasonable doubt”. (Farlex) Unfortunately, these principles are not rigorously applied to the civil court system, making this ethical alternative legally permissible.

Caveat emptor should not apply in this case because it is beyond the means and capability of the average buyer to check for such problems prior to the purchase and use of the product. Instead, consumers must rely upon safety standards as well as the implied warranties of merchantability and fitness. (Mallor) Both implied warranties had already been set forth as model expectations under the Uniform Commercial Code (UCC) in 1952, many years before the Pinto was designed. (Reference for Business) The Implied Warranty for Merchantability includes that a product must be “fit for the ordinary purposes for which such goods are used”. (UCC 2-314(2)) one could extrapolate this in an ethical sense to mean that a car should routinely be able to survive ordinary rear-collision accidents without exploding and killing or disfiguring the occupants. The Pinto had been shown, through company crash tests, to routinely fail this test. The Implied Warranty of Fitness applies where “the buyer is relying on the seller's skill or judgment to select or furnish suitable goods”. (UCC 2-315). In this case, the “reasonable person” test would not include an automotive engineer who understood the potential flaws of Ford’s design, and thus Ford had a duty to exercise due care in designing the car.

Compensatory justice is a valid theory in this case, because there is no way to fix the damage that has been done. Not allowing compensatory justice would be unethical. However, it would be equally unethical to assess an unfair award against the company. Allowing the judge to create a remittitur allows a compromise where an award may be reviewed to ensure it is fair to all parties.

**References**

Grimshaw v. Ford Motor Company, 119 Cal. App. 3d 757; 174 Cal. Rptr. 348 (1981).

Bruden, A. (2010). “Performance Management case study: Ford Pinto – business ethics and performance measurement”. Retrieved from <http://www.smartkpis.com/blog/2010/04/29/performance-management-case-study-ford-pinto-%E2%80%93-business-ethics-and-performance-measurement/>

Dowie, M. .(1977). “Pinto Madness”. Mother Jones. Retrieved from <http://motherjones.com/politics/1977/09/pinto-madness>

The Free Dictionary. (2012). “Presumption of Innocence”. Farlex. Retrieved from <http://legal-dictionary.thefreedictionary.com/Innocent+until+proven+guilty>

Reference for Business. (2012). “UNIFORM COMMERCIAL CODE”. Retrieved from <http://www.referenceforbusiness.com/management/Tr-Z/Uniform-Commercial-Code.html>

Uniform Commercial Code 2-314(2). “U.C.C. - ARTICLE 2 – SALES..PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT”. Cornell University Law School. Retrieved from <http://www.law.cornell.edu/ucc/2/2-314.html>

Uniform Commercial Code 2-315. “§ 2-315. Implied Warranty: Fitness for Particular Purpose”. Cornell University Law School. Retrieved from <http://www.law.cornell.edu/ucc/2/article2.htm#s2-315>

Mallor, J.E., Barnes, A.J, Bowers, T., & Langvardt, A.W. (2010). Business Law: The Ethical, Global, and E-Commerce Environment. In 14th Ed., Ethical Theories (pp. 93-104) and Product Liability (pp. 505-528). New York, NY: McGraw-Hill.

Velasquez, M.C. (2012). Business Ethics: Concepts and Cases. In 7th Ed., Ethical Principles in Business (pp. 76-108) and The Ethics of Consumer Production and Marketing (pp. 308-322) New York, NY: Pearson Education, Inc.