

Summary

Legal scholars, legislators and judges recognize the difficulty of assessing pain and suffering damages for non-fatal personal injuries and the need to facilitate and improve the assessment, as shown from ongoing discussions on the topic in several European countries. The importance of a correct assessment of pain and suffering damages lies in the fact that, from a legal perspective, pain and suffering damages aim to compensate the victim and offer satisfaction for the harm she incurred. Given that different assessment approaches exist across legal jurisdictions, which are also likely to result in diverging amounts, the question emerges which approach can generate pain and suffering damages that can fulfill these goals. However, a correct assessment of pain and suffering damages is also important from a Law and Economics point of view because according to the economic analysis of tort law, pain and suffering damages are a means to achieve optimal deterrence and loss spreading and reduce the administrative costs of the legal system. Attaining these goals would generate significant benefits for the tort system in general, e.g. through the more efficient use of resources. Hence, it is desirable that the approach used to assess pain and suffering damages also strives to generate amounts that fulfill the goals of the economic analysis of tort law.

This study explores what are the goals of tort law aimed at through pain and suffering damages and the criteria that should be taken into consideration in the assessment of pain and suffering damages in order to attain them. A comparative law methodology is utilized to investigate how pain and suffering damages for personal injuries are currently treated in England, Germany, Greece, Italy and the Netherlands. The analysis shows that the legal approaches followed in these countries fail to include the stipulated criteria and consequently to attain the goals of tort law. The study further discusses the goals of tort law aimed at through pain and suffering damages according to Law and Economics. In order to fulfil these goals, a set of criteria is proposed that should be incorporated in the assessment. After reviewing existing proposals in Law and Economics scholarship for the assessment of pain and suffering damages, it is concluded that an assessment approach that could incorporate these criteria is lacking.

Based on the conclusions drawn from the analysis, the study takes on the challenge of developing a framework to arrive at pain and suffering damages that fulfill the goals of tort law both from a legal perspective and a Law and Economics point of view. However, given that an evaluation of the impact of personal injury falls outside the competence of tort law and the economic analysis of tort law, the study suggests to use tools from health economics, a specialized research field dealing exactly with how personal injuries and other health conditions affect individuals. In the context of health economics, the Quality Adjusted Life

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Year is a measure used to evaluate different health care programs and medical interventions in terms of the benefits they generate for quality of life and the costs they require for their implementation. It is shown that using the existing information from QALY research can contribute the framework that was lacking in legal and Law and Economics scholarship, bringing about a significant improvement in the current assessment of pain and suffering damages. Examples of how this framework could be used to assess pain and suffering damages in cases of deafness, paralysis, lower leg amputation, loss of sight in one eye and HIV contraction are provided, which further demonstrate the applicability and practicability of the proposed approach. The resulting pain and suffering damages are juxtaposed with the amounts that have been awarded in actual personal injury cases.