Heads and Tails: Liability and Damages, the Two Inseparable Sides of the Same Coin in Litigation

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With some limited exceptions (the author is an attorney after all), every litigation case has two phases and crucial steps: liability and damages. The liability phase answers the question of whether one party must pay some amount of money to another. If the answer is "yes," the damages phase then answers the question of what amount must be paid. This distinction seems simple and logical enough, but this fundamental structure often is not a part of a potential litigant's thought process and, even if it is, the awareness of it erodes or is drowned out by details throughout the case. However, an understanding of this structure is critical in the determination of whether and how to utilize the court system to one's advantage, so there is utility in revisiting it from time to time.

A central tenet of our society is that each of us has an inner sense of justice, right, and wrong. This sense helps us to operate as a society and to police ourselves within that society. The civil court system functions to provide those who have been injured a means by which to recover from the perpetrator of that harm. Since an egg once broken cannot be put together again, and since "an eye for an eye" has generally been determined to be a terrible premise for a civil justice system, our system instead compensates the injured with a monetary substitute for the harm done.

Principles of law have evolved in the American system to allow for recovery in situations too numerous to name here. We call these principles "liability theories." Liability is the first and most crucial question in any litigation. No money (or any other relief) may be recovered without the offended party first proving their case under a liability theory.

Perhaps the most common liability theory is that of common law negligence. Simply stated, under certain circumstances, a party owes a duty of care to another and, when that duty of care is breached and the other party is harmed, the party at fault is liable to the injured party. Without liability, damages are irrelevant. Proving liability is not easy and involves getting a judge or jury to accept the injured party's side of the story as to what happened, i.e., who was harmed, by whom, and how, when, and where. Understandably, the pursuit of proving a liability theory can consume both the parties and the attorneys.

But what about the damages question? Damages is a more challenging concept for parties to understand and accept, especially since a large amount of effort must go into first proving liability. Rather than telling a side of the story, proving damages involves quantifying the harm or injury that was the result of the act or failure to act that was proven during the liability phase of the case. Remember, the civil courts (primarily) afford successful parties relief in the form of money. So, in other words, the damages question asks: "How much money is the injury worth?" This can be a difficult question, particularly since, in many cases, no amount of money can completely heal the injury. All too often, the party who previously was consumed with proving another's party's liability has not considered the monetary value of the thing lost, especially when it is something that cannot be replaced or fixed, like bodily injury or loss of life.

There isn't a "one size fits all" formula for all claims. The law allows for the recovery of different categories of damages. Each claim has a different damages formula that mirrors a basic math equation, and is based not on the injured party's estimate of value alone, but rather the hypothetical "reasonable person's" value estimate.
Assume that you prove, in the liability phase, that you are right, and the other person was at fault. What is that worth to you at the end of the day? Asking that question triggers an often uncomfortable personal analysis of the real monetary value of the injury. The cautionary tale of the party who proved liability and then only $1.00 of damages is well known to attorneys, and is one reason that the thoughtful attorney counseling a potential client will attempt to focus the client on valuing the client's claim. Potential clients often do not face this reality early or often enough throughout the case, but they should.

Neither the liability nor the damages phase is more important than the other. Litigation is a solemn endeavor, and both steps require the full attention and evaluation of the client and the lawyer. An understanding of these steps allows a party to make more accurate predictions about what the case holds in store, and in doing so, the party can adequately weigh the risks and rewards of important decisions before the case is brought.

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