tion,[61] the majority was able to avoid a direct confrontation of the state's power to legislate for the health, safety and welfare of its citizens under the police power.

Protection of the stability of the bond market is, of course, an important objective. However, the rationale used by the Court in reaching its ruling is somewhat questionable. The majority could have soundly reached the same conclusion by using the traditional balancing analysis of weighing the strength of the state police power interest in mass transit against the subtantiality of the contractual rights impaired. Using such an analysis, the majority could have strenuously emphasized the nature of the rights impaired, the unfairness caused by the repeal legislation, and the reliance of the bondholders on the preexisting law to protect their investment at the time they purchased the bonds.[62]

However, by applying the strict scrutiny of the "reasonable and necessary" test in order to reach the desired result, the majority possibly revived the interventionist philosophy of the *Lochner* era when the contract clause is involved, while rejecting such an approach when social and economic legislation is challenged under the due process clause. As the dissent noted: "If today's case signals a return to substantive constitutional review of States' policies, and a new resolve to protect property owners whose interest or circumstances may happen to appeal to Members of this Court, then more than the citizens of New Jersey and New York will be losers."[63] The Court could have made the proper decision in this case without resorting to a new and questionable standard of judicial review.

John R. Lepley

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61. *Id.* at 25.

62. Hockman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 HARV. L. REV. 692, 727 (1960); Kraft & St. John, *supra* note 40, at 78-81.

63. United States Trust Co. v. New Jersey, 431 U.S. 1, 61 (Brennan, J., dissenting).

EVIDENCE—PUNITIVE DAMAGES—EVIDENCE OF DEFENDANT'S FINANCIAL CONDITION IS ADMISSIBLE TO DETERMINE THE AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED AGAINST THE DEFENDANT.—*Hall v. Montgomery Ward & Co.* (Iowa 1977).

Plaintiff, Hall, a borderline mental retardate with an I.Q. of 69, was employed by defendant Montgomery Ward and Company (Wards) as a maintenance man.[1] A security officer employed by Wards and the store manager questioned Hall concerning the alleged theft of store merchandise. During the questioning, Hall was threatened with jail and was thus coerced into signing four documents in which he confessed to the theft.[2] Hall then brought an action against Wards to recover damages for the mental anguish suffered by him due to the interrogation by Wards' representatives[3] and sought both compensatory and punitive damages. During trial a clinical psychologist testified that some of the wording of the documents signed by Hall was beyond his comprehension and that under duress Hall would probably have signed anything. Hall testified that although he had "borrowed" some cleaning materials from Wards which he used in connection with another job held by him, he had, however, never taken any of the items mentioned in the document he had signed. Hall introduced no evidence which bore on the issue of his physical injury or financial loss or expenses of any kind. He did, however, introduce Wards' balance sheet and operating statement on the issue of punitive damages.[4] The jury found for Hall and awarded him compensatory damages of $12,500 and punitive damages of $50,000.

Wards moved for a new trial which was granted on the ground that the trial court had erred in admitting the evidence of Wards' financial condition for consideration by the jury. Hall appealed the granting of the new trial. The Iowa Supreme Court *held*, reversed. Evidence of defendant's financial condition is admissible for consideration by the jury in

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1. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 422 (Iowa 1977).

2. Included in the four documents were a consent that Wards' representatives could stop and question Hall on company business as long as they felt it was necessary, a list of the items Hall allegedly took, a confession to a theft of $5,000 worth of store merchandise and a promissory note for $5000. *Id.*

3. Hall testified that he had recurring dreams as a result of the incident and that his family relationships had been affected. The clinical psychologist testified that Hall's reaction was as if the incident were the end of the world. *Id.*

4. These two accounting statements showed, *inter alia*, assets of $1,964,822,000 and net annual sales of $2,640,122,000. *Id.* at 423.

determining the amount of punitive damages to be allowed against the defendant. *Hall v. Montgomery Ward & Co.*, 252 N.W.2d 421 (Iowa 1977).

In rendering its decision, the Iowa Supreme Court reversed a rule of law which had been in existence in Iowa since 1868.[5] In so doing, it overruled the principal cases supporting that prior law, namely, *Guengerech v. Smith*[6] and *Bailey v. Bailey*.[7]

Guengerech v. Smith was a case in which the plaintiff sought recovery of damages which had resulted from injuries received during an assault and battery.[8] At the trial level, the court had permitted evidence of the defendant's financial condition to be given to the jury for its consideration in determining the amount of punitive damages. On appeal, a majority of the Iowa Supreme Court found that "[c]ourts should hesitate long before receiving such evidence, or allowing the jury to take into consideration the defendant's pecuniary ability, even under circumstances of aggravation, insult or cruelty, vindictiveness and malice."[9] By finding evidence of this type inadmissible,[10] the Iowa court was following what was at that time the "weight of authority."[11] The *Guengerech* court did, however, recognize two established exceptions to this rule. The first exception was that in a case dealing with slander the pecuniary condition of the defendant is admissible.[12] It was believed that a slanderous statement would have a greater impact upon the public (possibly causing greater damage) when spoken by a wealthy person than when spoken by a person of lesser means.[13] This was based upon the assumption that a wealthy person held a position of higher esteem in the community than did a person of lesser means and thus his words were more likely to be taken as true. The second recognized exception stated that in an action for breach of promise to marry, evidence of the defendant's wealth was admissible to show the condition in life which the plaintiff would have obtained had the marriage contract been consummated.[14] This evidence was to be used

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5. Hunt v. Chicago & N.W. Ry. Co., 26 Iowa 363, 373 (1868). There, the court stated that "[w]hile some of the cases have held that the pecuniary condition of a defendant may be shown, when plaintiff is entitled to vindictive damages or in cases of malicious torts, yet it is believed that the weight of authority is the other way." *Id.*

6. 34 Iowa 348 (1872).

7. 94 Iowa 598, 63 N.W. 341 (1895).

8. Guengerech v. Smith, 34 Iowa 348 (1872).

9. *Id.* at 349.

10. However, a more progressive approach toward evidence of this type was taken by Chief Justice Beck in his dissenting opinion in *Guengerech*. The language in his opinion is almost verbatim to that in Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977). Guengerech v. Smith, 34 Iowa 348, 349-50 (1872).

11. Hunt v. Chicago & N.W. Ry. Co., 26 Iowa 363, 373 (1868) (Beck, C.J., dissenting).

12. Public policy favored the use of evidence of a defendant's wealth in actions for slander. Guengerech v. Smith, 34 Iowa 348, 349 (1872).

13. Perrine v. Winter, 73 Iowa 645 (1887); Karney v. Paisley, 13 Iowa 89 (1862).

14. Holloway v. Griffith, 32 Iowa 409 (1871).

by the jury in estimating the damage caused by the breach. Prior to *Hall*, these were the only two causes of action in which evidence of a defendant's pecuniary condition was admissible.[15]

In *Bailey v. Bailey*, the plaintiff sought recovery from her father-in-law for work and labor and damages for alienation of her husband's affection and for slanderous utterances made about her.[16] At the trial level, the plaintiff was allowed to introduce evidence of the defendant's social rank and financial condition, evidence which was considered by the jury on the issue of damages resulting from alienation of the plaintiff's husband's affections. On appeal, the Iowa Supreme Court reversed the lower court and in so doing reaffirmed the position it had previously taken in *Guengerech*—that the "wealth, rank, social position, or condition of the defendant was wholly material . . . ,"[17] and therefore inadmissible unless it came within the exceptions for slander or breach of promise to marry.

In overruling both *Guengerech* and *Bailey*, the court in *Hall* established the admissibility of evidence of the defendant's wealth on the issue of punitive damages in Iowa and aligned itself with the majority of jurisdictions which follow the rule that such evidence is admissible.[18] However,

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15. *See* Guengerech v. Smith, 34 Iowa 348 (1872).

16. 94 Iowa 598, 63 N.W. 341 (1895).

17. Bailey v. Bailey, 94 Iowa 598, 606, 63 N.W. 341, 343 (1895).

18. The following is a list of state authority which holds admissible evidence of a defendant's wealth on the issue of punitive damages: Arizona—Kelman v. Bohi, 27 Ariz. App. 24, 550 P.2d 671 (1976); Thoresen v. Superior Ct., 11 Ariz. App. 62, 461 P.2d 706 (1969); Hageman v. Vanderdoes, 15 Ariz. 312, 138 P. 1053 (1914); Arkansas—Davis v. Richardson, 76 Ark. 348, 89 S.W. 318 (1905); California—Bertero v. National Gen. Corp., 13 Cal. 3d 43, 529 P.2d 608, 118 Cal. Rptr. 184 (1974); Coy v. Superior Ct., 58 Cal. 2d 210, 373 P.2d 457, 23 Cal. Rptr. 393 (1962); Marriott v. Williams, 152 Cal. 705, 93 P. 875 (1908); Colorado—Bush v. Jackson, 36 Col. App. 101, 539 P.2d 1290 (1975); Delaware—Tartnall v. Courtney, 6 Del. (1 Houst) 434 (1881); Florida—Rinaldi v. Aaron, 314 So. 2d 762 (Fla. 1975); Tallahassee Demo. v. Pogue, 280 So. 2d 512 (Fla. Dist. Ct. App. 1973); Richards Co. v. Harrison, 262 So. 2d 258 (Fla. Dist. Ct. App. 1972); Georgia—Westview Cemetery, Inc. v. Blanchard, 234 Ga. 540, 216 S.E.2d 776 (1975); Wilson v. McLendon, 225 Ga. 119, 166 S.E.2d 345 (1969) (cited in the *Hall* opinion as taking the contrary position; however, a closer reading reveals it as supporting *Hall*, although in a limited way); Hawaii—Howell v. Associated Hotels, Ltd., 40 Hawaii 492 (1954); Idaho—Cox v. Stolworthy, 94 Idaho 683, 496 P.2d 682 (1972); Dwyer v. Libert, 30 Idaho 576, 167 P. 651 (1917); Illinois—Moore v. Jewel Tea Co., 116 Ill. App. 109, 253 N.E.2d 636 (1969), *aff'd*, 46 Ill. 2d 288, 263 N.E.2d 103 (1970); Schmitt v. Kurrus, 234 Ill. 578, 85 N.E. 261 (1908); Iowa—Hall v. Montgomery Ward & Co., 252 N.W.2d 421 (Iowa 1977); Kansas—Witte v. Hutchins, 135 Kan. 776, 12 P.2d 724 (1932); Louisiana—Territo v. Landry, 313 So. 2d 309 (La. Ct. App. 1975); Adams v. Ross, 300 So. 2d 192 (La. Ct. App. 1974); Maine—Allen v. Rossi, 128 Me. 201, 146 A. 692 (1929); Maryland—Heinze v. Murphy, 180 Md. 423, 24 A.2d 917 (1942); Mada v. Neidlein, 163 Md. 366, 163 A. 202 (1932); Michigan—Robertson v. Devereaux, 32 Mich. App. 85, 188 N.W.2d 209 (1971); Minnesota—Pedersen v. Jirsa, 267 Minn. 48, 125 N.W.2d 38 (1963); Nelson v. Halvorson, 117 Minn. 255, 135 N.W. 818 (1912); Mississippi—Allen v. Ritter, 235 So. 2d 253 (1970); Hunter v. Williams, 230 Miss. 72, 92 So. 2d 367 (1957); Missouri—State *ex rel.* Kubatzky v. Holt, 483 S.W.2d 799 (Mo. Ct. App. 1972); Montana—Edquest v. Tripp & Dragstedt Co., 93 Mont. 446, 19 P.2d 637 (1933); Nevada—Southern

the *Hall* decision is likely to raise many questions in the minds of Iowa practitioners concerning the use of such evidence because the opinion does not provide many specific guidelines. The court cautioned the trial courts to "confine plaintiffs carefully to the proper use of such evidence—to the issue of the amount of exemplary damages which is necessary to punish the particular defendant."[19] Additionally, the Iowa Supreme Court limited the use of evidence of a defendant's financial condition to cases where the plaintiff seeks exemplary damages and the evidence submitted supports the claim for exemplary damages.[20]

The *Hall* decision clearly indicates that evidence of pecuniary condition is not to be admitted when the issue of damages is solely concerned with compensatory damages.[21] By their very nature, compensatory damages are simply to make good or replace the loss caused by the wrong and nothing more.[22] Thus, a defendant's ability to pay should have no bearing on the amount of compensatory damages. On the other hand, punitive damages, or "smart money" as termed by the Iowa Supreme Court, are awarded to deter both the offender and others from commiting similar wrongful acts.[23] To insure that the award of punitive damages against the defendant is both adequate punishment and a deterrent, the amount of the award should therefore be based on the financial capability of the defendant. "[W]hat would be 'smart money' to a poor man would

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Pacific Co. v. Watkins, 83 Nev. 471, 435 P.2d 498 (1967); New Hampshire—Belknap v. Boston & M.R. Co., 49 N.H. 358 (1870); North Carolina—Harvel's Inc. v. Eggleston, 268 N.C. 388, 150 S.E.2d 786 (1966); North Dakota—Powell v. Meiers, 54 N.D. 335, 209 N.W. 547 (1926); New Jersey—Gierman v. Toman, 77 N.J. Super. 18, 185 A.2d 241 (1962); New York—Rupert v. Sellers, 368 N.Y.S.2d 904 (App. Div. 1975); Ohio—Hendricks v. Fowler, 16 Ohio C.C. 597, 9 Ohio C.D. 209 (1898); Oklahoma—Willet v. Johnson, 13 Okla. 563, 76 P. 174 (1904); Oregon—Phelan v. Beswick, 213 Ore. 612, 326 P.2d 1034 (1958); Pennsylvania—Bausewine v. Strassburger, 50 Pa. D. & C. 525, 60 Montg. Co. 115 (1943); Rhode Island—Norel v. Grochowski, 51 R.I. 376, 155 A. 357 (1931); South Carolina—Hicks v. Herring, 246 S.C. 429, 144 S.E.2d 151 (1965); South Dakota—Smith v. Weber, 70 S.D. 232, 16 N.W.2d 537 (1944); Tennessee—McDonald v. Stone, 45 Tenn. App. 172, 321 S.W.2d 845 (1958); Utah—Wilson v. Oldroyd, 1 Utah 2d 562, 287 P.2d 759 (1954); Vermont—Parker v. Hoefer, 118 Vt. 1, 100 A.2d 434 (1953); Virginia—Stubbs v. Cowden, 179 Va. 190, 18 S.E.2d 275 (1942); West Virginia—Pendleton v. Norfolk & W. Ry. Co., 82 W. Va. 270, 95 S.E. 941 (1918); Wisconsin—Luther v. Shaw, 157 Wis. 234, 147 N.W. 18 (1914); Wyoming—Hall Oil Co. v. Barquin, 33 Wyo. 92, 237 P.2d 255 (1925).

19. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977). It should be noted that courts use the words "punitive," "exemplary," "vindictive" and "smart money" interchangably. Thus, to classify cases based on these words would be inaccurate. Hodel, *The Doctrine of Exemplary Damages in Oregon*, 44 ORE. L. REV. 175 (1965) [hereinafter cited as Hodel].

20. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977).

21. *Id.*

22. Reid v. Terwillinger, 116 N.Y. 530, ____, 22 N.E. 1091, 1092 (1889); *see* Hodel, *supra* note 19, at 191.

23. Meyer v. Nottger, 241 N.W.2d 911, 922 (Iowa 1976). *See* Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977).

not be, and would not serve as a deterrent, to a rich man."[24] Therefore, according to the court in *Hall*, evidence of the defendant's financial ability is necessary for the jury to properly assess the amount of damages which will act as a deterrent.[25]

The Iowa Supreme Court in *Hall* did not address many questions which are certain to arise when evidence of a defendant's pecuniary condition is sought to be introduced into evidence. However, other jurisdictions which adhere to the rule that admits such evidence may provide some answers. One of the first questions which is sure to arise is whether the defendant's actual wealth or reputed wealth should be shown. The case law in this area is equally split. However, it has been generally stated that only the defendant's actual wealth should be shown.[26] Wigmore, in particular, asserts that only the defendant's actual wealth should be admitted,[27] noting that rulings to the contrary are usually encountered where the recovery of damages is for breach of promise to marry.[28] Another area where reputed wealth is used is in cases involving slander.[29] However, evidence of the defendant's reputed wealth has not been limited to cases of slander and breach of promise to marry. For example, some jurisdictions have gone so far as to exclude evidence of a defendant's actual wealth while admitting only evidence of his reputed wealth in actions for assault and battery.[30]

Regarding the issue of actual wealth as opposed to reputed wealth, the better rule would appear to be that which admits only evidence of the defendant's actual wealth. In their assessment of punitive damages, the jury should not be concerned with defendant's reputation for wealth, but rather, with his actual wealth since his actual wealth will determine

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24. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977), *citing* Suzore v. Rutherford, 35 Tenn. App. 678, 684, 251 S.W.2d 129, 131 (1952).

25. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977). The court stated that it was "impressed by the actual need of jurors, in connection with exemplary damages, to have evidence about the defendant's poverty or wealth." *Id.*

26. Hodel, *supra* note 19, at 191.

27. Professor Wigmore finds the use of the defendant's reputed wealth an "unsound" practice. WIGMORE EVIDENCE § 1623 (Chadbourn Rev. 1974).

28. Breach of promise to marry was one of the exceptions to the prior Iowa law excluding evidence of the defendant's wealth. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977).

29. Idaho, for example, admits evidence of the defendant's reputed wealth in cases involving slander, subject to the defendant's right to admit evidence of his actual wealth or proverty. Dwyer v. Libert, 30 Idaho 576, 167 P. 651 (1917).

30. The court in Draper v. Baker, 61 Wis. 450, 21 N.W. 527 (1884), believed that reputed wealth should be admitted because in many cases details of the defendant's actual wealth are not available. Although the language of the court is unclear, the case is usually cited for the proposition that evidence of the defendant's actual wealth is not admissible.

the deterrent effect of the judgment, whether or not the amount of damages is excessive[31] and whether or not he can satisfy the judgment.[32]

In admitting evidence of the defendant's actual wealth courts should require only reasonable accuracy rather than requiring the plaintiff to give a "balance-sheet" appraisal of the defendant's wealth.[33] To require pinpoint accuracy would only frustrate the purpose of this rule of admissibility; many times it would not be possible for the plaintiff to make an exact determination of defendant's actual wealth.

A second question which was not addressed by the *Hall* court is that of the possibility of "excessive awards" once the defendant's financial condition is admitted into evidence. Proper use of this type of evidence is absolutely necessary to guard against "excessive awards." Evidence of this nature is to be used only in evaluating the amount of punitive damages to be awarded against a particular defendant. An award in excess of that which would be usual to punish a particular defendant under the circumstances can be made only when the evidence shows that the particular defendant is so financially different from an ordinary person that an excessive award is necessary to sufficiently punish and deter him from further illegal conduct.[34] Theoretically then, there should be no "excessive award" for any particular defendant so long as the amount of punitive damages awarded, in light of the defendant's financial condition, corresponds with the amount required to accomplish the desired effect of punitive damages.

A third question raised by *Hall* is whether to admit evidence of the defendant's pecuniary condition at the time of injury or his pecuniary condition at the time of the trial. Courts in other jurisdictions have found that the time period during which defendant's wealth should be established for evidentiary purpose is the time of trial rather than the time of injury.[35] The object of the evidence is to enable a jury to determine the amount of damages necessary to punish the defendant at the time of the trial.[36] The obvious difficulty with a determination at the time of injury is the possibility that the defendant's financial condition will change by the time the case comes to trial. This rule, however, does not require the

31. Allen v. Rossi, 128 Me. 201, 146 A. 692 (1929).

32. Johnson v. Smith, 64 Me. 553 (1876); Derby v. Jenkins, 32 Md. App. 386, 363 A.2d 967, (1976); Aragon v. General Elec. Credit Corp., 86 N.M. 723, 557 P.2d 572 (Ct. App. 1976); Hinson v. Dawson, 244 N.C. 23, 92 S.E.2d 393 (1956); Rea v. Harrington, 58 Vt. 181, 2 A. 475 (1886).

33. In an action for damages resulting from libelous statements the court in Dalton v. Meister, 52 Wis. 2d 173, 188 N.W.2d 494, *cert. denied*, 405 U.S. 934 (1971), stated that it would look to the ability of the defendant to pay, but that asking for a detailed accounting was too much of a burden to bear.

34. Stubbs v. Cowden, 179 Va. 190, 18 S.E.2d 275 (1942).

35. Marriott v. Williams, 152 Cal. 705, 93 P. 875 (1908); Dwyer v. Libert, 30 Idaho 576, 167 P. 651 (1917).

36. Marriott v. Williams, 152 Cal. 705, 93 P. 875 (1908).

plaintiff to establish defendant's wealth exactly at the date of trial. If the defendant's financial condition has been determined any time prior to trial and financial gains or setbacks have occurred, then either plaintiff or defendant can introduce such evidence at trial.[37]

A fourth question barely touched on by the court in *Hall* is whether or not the defendant may introduce evidence of his poverty in order to mitigate an anticipated damage award. The general evidentiary rule is that the defendant may introduce evidence to disprove anything which the plaintiff has been allowed to introduce evidence to prove.[38] By analogy, in cases of libel and slander, the Iowa courts have agreed that the defendant may introduce evidence of his poverty to mitigate his damages after the plaintiff has introduced evidence concerning the wealth of the defendant in order to obtain a greater award of punitive damages.[39] This appears to be the general rule in most jurisdictions.[40] The logical extension of this rule to the *Hall*[41] decision would enable the defendant to prove his poverty in all cases where the plaintiff attempts to prove the defendant's wealth on the issue of punitive damages. Further, the Iowa Supreme Court apparently intended that evidence of defendant's poverty as well as his wealth be admissible when it stated that it was impressed with the jury's need for evidence of the defendant's poverty or wealth in connection with exemplary damages.[42]

Some courts have gone so far as to admit evidence of the defendant's pecuniary inability, even though the plaintiff has introduced no evidence pertaining to the issue of the defendant's wealth.[43] At present, however, the courts are in conflict over this issue and there does not appear to be any clear majority position.[44] The admission of such evidence appears to serve the valid purpose of allowing the defendant to establish his inability to respond to any amount of punitive damages.[45]

A final question which remains unanswered by the *Hall* decision is whether or not evidence of the defendant's wealth is discoverable. In

37. Dalton v. Meister, 52 Wis. 2d 173, 188 N.W.2d 494 (1971).

38. Annot., 34 A.L.R. 3, 17 (1925).

39. Karney v. Paisley, 13 Iowa 89 (1862).

40. Rinaldi v. Aaron, 314 So. 2d 762 (Fla. 1975); Territo v. Landry, 313 So. 2d 309 (La. Ct. App. 1975); Porter v. Funkhouser, 79 Nev. 273, 382 P.2d 216 (1963), *citing* 25 C.J.S. *Damages* § 127 (1966).

41. Hall v. Montgomery Ward & Co., 252 N.W.2d 421 (Iowa 1977).

42. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977).

43. The court in Rea v. Harrington, 58 Vt. 181, 2 A. 475 (1886), stated that the defendant has the right to show his poverty even though the plaintiff has offered no proof of defendant's wealth. *Accord*, Urk v. Southern Farm Bureau Cas. Ins. Co., 181 So. 2d 69 (La. Ct. App. 1965); Leon v. Jackson, 122 So. 2d 102 (La. Ct. App. 1960); Johnson v. Smith, 64 Me. 553 (1875); Parker v. Hoefer, 118 Vt. 1, 100 A.2d 434 (1953).

44. North Portland Lumber Co. v. G.L. Pine Co., 265 Ore. 617, 510 P.2d 565 (1973).

45. The Louisiana courts believe it is not a good policy to bankrupt one individual to pay another. Urk v. Southern Farm Bureau Cas. Ins. Co., 181 So. 2d 69, 71 (La. Ct. App. 1965).

order for the plaintiff to present a reasonably accurate accounting of the defendant's wealth there must be some means by which the plaintiff can gain access to the defendant's financial records. Therefore, it seems only proper that the plaintiff be able to use the normal discovery methods in obtaining this information from the defendant.[46]

The weight of authority has found discovery of evidence of a defendant's financial condition to be a proper use of discovery methods where punitive damages are sought.[47] This is based upon the premise that if the evidence is admissible it must be relevant to the issue of punitive damages and if relevant then the evidence may be properly discovered.[48]

One of the problems regarding the discovery of the defendant's pecuniary condition is whether or not it is an invasion of an individual's privacy. This right of privacy can be protected if the court carefully supervises the financial examination and restricts it in a reasonable manner[49] to only those items necessary to obtain a reasonably accurate statement of the defendant's financial worth[50] and does not require such detailed accounting as would constitute a violation of an individual's right of privacy.

Another problem regarding discovery of a defendant's financial condition is what criteria need the plaintiff meet before he may begin discovery procedures? At this time there is no uniform standard which the plaintiff must meet before he may begin discovery. Some jurisdictions require only an allegation that punitive damages are awardable.[51] Other jurisdictions require prima facie proof that an award of punitive damages will be granted.[52] Because parties in Iowa may obtain discovery of any

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46. This would include the use of written and oral depositions, written interrogatories, etc., pursuant to the Iowa Rules of Civil Procedure. IOWA R. CIV. P. 121 (1977).

47. Thoresen v. Superior Ct., 11 Ariz. App. 62, 461 P.2d 706 (1970); People v. Superior Ct., 35 Cal. App. 3d 710, 111 Cal. Rptr. 14 (1973); Doak v. Superior Ct., 257 Cal. App. 2d 825, 65 Cal. Rptr. 193 (1968); Coy v. Superior Ct., 58 Cal. 2d 210, 373 P.2d 457, 23 Cal. Rptr. 393 (1962); Lewis v. Moody, 195 So. 2d 260 (Fla. Dist. Ct. App. 1967); Hodges v. Yomans, 129 Ga. App. 481, 200 S.E.2d 157 (1973); State *ex rel.* Kubatzky v. Holt, 483 S.W.2d 799 (Mo. Ct. App. 1972); Gierman v. Toman, 77 N.J. Super. 18, 185 A.2d 241 (1962); Rupert v. Sellers, 368 N.Y.S.2d 904 (App. Div. 1975); State *ex rel.* Thesman v. Dooley, 270 Ore. 37, 526 P.2d 563 (1974).

48. The California courts state that once the allegation is made by the plaintiff that punitive damages may be awarded, evidence of the defendant's wealth is discoverable. People v. Superior Ct., 35 Cal. App. 3d 710, 111 Cal. Rptr. 14 (1973).

49. Obviously, there is a need for the protection of an individual's privacy. However, the court in State *ex rel.* Kubatzky v. Holt, 483 S.W.2d 799 (Mo. Ct. App. 1972), felt they could adequately provide this protection without halting all discovery procedures.

50. The court in Gierman v. Toman, 77 N.J. Super. 18, 185 A.2d 241 (1962), believed a detailed report of defendant's worth to be unnecessary, finding an annual report or net worth statement adequate.

51. Lewis v. Moody, 195 So. 2d 260 (Fla. Dist. Ct. App. 1967); State *ex rel.* Thesman v. Dooley, 270 Ore. 37, 526 P.2d 563 (1974).

52. Gierman v. Toman, 77 N.J. Super. 18, 185 A.2d 241 (1962).

matter which is relevant to the subject and not privileged,[53] discovery of the defendant's financial condition is proper in cases where evidence of the defendant's wealth is admissible.

In the *Hall* opinion the Iowa Supreme Court noted that evidence of the defendant's wealth should be admitted only where the plaintiff seeks punitive damages and where the evidence presented supports punitive damages.[54] It is assumed this language means that a showing of malice[55] or an act by the defendant which is committed with wanton and reckless disregard for the rights of others[56] must be made before evidence of a defendant's wealth can be admitted. However, this is not clear. It is possible that some Iowa trial courts will construe this language to require a showing of relative success on the issue of punitive damages before admitting evidence of the defendant's wealth. However, the long standing rule on this issue has required only a showing of malice or wanton and reckless conduct on the part of the defendant.[57] An indication of the wide acceptance of the rule which admits evidence of a defendant's wealth on the issue of punitive damages can be seen from the relatively few states which refuse to admit such evidence. At the present time, courts in only three states—Georgia,[58] Kentucky[59] and Texas[60]—have held evidence of a defendant's wealth either totally inadmissible or inadmissible with relatively few exceptions.

If proper use of this type of evidence is made the damage award should reflect that amount of money which will best accomplish the purpose of punitive damages, *i.e.*, the amount which will adequately punish the defendant for his wrongdoing and which will deter any future acts on his part of the same type.[61] Evidence of a defendant's financial condition on the issue of punitive damages is a necessary and invaluable tool with which a fair and adequate assessment of punitive damages can be made.[62]

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53. IOWA R. CIV. P. 122 (1977).

54. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977).

55. Giltner v. Stark, 219 N.W.2d 700 (Iowa 1974).

56. Katko v. Briney, 183 N.W.2d 657 (Iowa 1971).

57. "Evidence of the wealth of the wrongdoer . . . becomes admissible only after proof first made that the trespass or injury complained of was committed wantonly, maliciously, willfully, or capriciously. Poverty or wealth becomes important . . . as assisting the jury in affixing the punishment." Yazoo & Miss. Valley R.R. v. Williams, 87 Miss. 344, ____ , 39 So. 489, 492 (1905).

58. Georgia allows use of this type of evidence only where the entire injury is to the peace, happiness or feeling of the plaintiff. GA. CODE §§ 105-2003 (1977). *See* Wilson v. McLendon, 225 Ga. 119, 166 S.E.2d 345 (1969) (holding that Georgia Code §§ 105-2003 did not violate the equal protection clause of the fourteenth amendment to the United States Constitution by allowing use of evidence of the defendant's wealth).

59. Hensley v. Paul Miller Ford, Inc., 508 S.W.2d 759 (Ky. 1974).

60. Texas Public Util. Corp. v. Edwards, 99 S.W.2d 420 (Tex. Civ. App. 1936).

61. Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977).

62. Yazoo & Miss. Valley R.R. v. Williams, 87 Miss. 344, ____ , 39 So. 489, 492 (1905).

By holding the way it did in *Hall*, the Iowa Supreme Court has updated the law of punitive damages in Iowa by 109 years.[63]

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63. Hall v. Montgomery Ward & Co., 252 N.W.2d 421 (Iowa 1977).

SECURED TRANSACTIONS—REASONABLE NOTIFICATION AS TO THE DISPOSITION OF COLLATERAL SECURITY IS A CONDITION PRECEDENT TO A SECURED CREDITOR'S RIGHT TO RECOVER ANY DEFICIENCY BETWEEN THE SALE PRICE OF THE COLLATERAL AND THE AMOUNT OF THE DEBTOR'S UNPAID BALANCE—*Herman Ford-Mercury, Inc. v. Betts (Iowa 1977).*

Plaintiff Herman Ford-Mercury, Inc., an automobile dealership (creditor), brought a law action against defendants (debtors), seeking to recover the balance due on an installment contract for the purchase of an automobile. Defendants answered by generally denying the allegations of plaintiff's petition, and asserted a counterclaim seeking recovery for breach of implied warranty of fitness for purpose of defendants' intended use and for breach of merchantability. The trial court found defendants had failed to establish their right to recover under their counterclaim and awarded plaintiff judgment against defendants in the amount of $1000, even though the court found that plaintiff, in selling the collateral, had not complied with the notification and commercial reasonableness requirements of Iowa Code section 554.9504(3).[1] Defendants appealed the judgment ordering them to pay plaintiff $1000, raising the issue whether a secured party who has failed to give reasonable notification of the sale of repossessed property and has conducted such sale in a commercially unreasonably manner is entitled to recover any deficiency from the defaulting purchaser. The Iowa Supreme Court *held*, reversed. Compliance with Iowa Code section 554.9504(3)[2] (Uniform Commercial Code section 9-504(3))[3] for notification as to the disposition of collateral security is a condition precedent to a secured creditor's right to recover any of the deficiency between the sale price of the collateral and the amount of the unpaid balance. *Herman Ford-Mercury, Inc. v. Betts*, 251 N.W.2d 492 (Iowa 1977).

Under sections 9-503[4] and 9-504(1)[5] of the Uniform Commercial Code

1. IOWA CODE § 554.9504(3) (1977).
2. *Id.*
3. U.C.C. § 9-504(3).
4. *Id.* § 9-503 provides in part that "[u]nless otherwise agreed a secured party has on default the right to take possession of the collateral."
5. *Id.* § 9-504(1) provides in part that "[a] secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing."