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OPINION CONCURRING IN PART AND DISSENTING IN PART BY LIM, J.

I concur with the majority that there was no trial error in this case, and that Fletcher Pacific was properly granted summary judgment. I believe, however, that the circuit court correctly joined the majority of jurisdictions in granting the Kealoha Estate's motion for summary judgment on punitive damages, and to that extent, I respectfully dissent.

I find the majority's purview of the various scenarios of a tortfeasor's death vis 'a vis the time of judgment or judgment on appeal fascinating and enlightening, but I prefer to attend to the task at hand; that is, deciding this case. In this case, the tortfeasor drove drunk and died in the very accident giving rise to the cause of action. All of the classic purposes of punitive damages were thereby pluperfectly fulfilled. See Masaki v. General Motors Corp., 71 Haw. 1, 16, 780 P.2d 566, 575 (1989) ("the fundamental purpose underlying an award of exemplary or punitive damages is to punish the wrongdoer and to deter him and others from committing similar wrongs and offenses in the future" (citations omitted)). Here, the tortfeasor suffered the ultimate punishment. He was, in a manner of speaking, permanently deterred. And as for general deterrence, what was dealt to him was, *pace* the Kealoha 'ohana, poetic justice. What additional example the imposition of punitive damages might set in this case seems paltry, especially where collateral justifying purposes, id. at 8 n.2, 780 P.2d at 571 n.2, such as

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"facilitating payment of a plaintiff's attorney's fees[,]" Lee v. Aiu, 85 Hawai'i 19, 35, 936 P.2d 655, 671 (1997), are advanced amidst a smell of attainder.