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**2010 Edition**

# Spousal (Tort) Immunity in Connecticut

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A Guide to Resources in the Law Library

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# Section 1: Spousal (Tort) Immunity in Connecticut

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- SCOPE:** Bibliographic resources relating to the doctrine of interspousal tort immunity in Connecticut.
- CURRENCY:**
- 2010 Edition
- DEFINITIONS:**
- **Interspousal tort immunity** “is a common law doctrine based on the legal fiction that husband and wife share the same identity in law, namely that of the husband. 92 A.L.R.3d 901 (1979). Accordingly, at common law, it was ‘both morally and conceptually objectionable to permit a tort suit between two spouses.’ Id. at 906.” Boone v. Boone, 546 S.E.2d 191 (S.C. 2001).
  - **Married Women's Property Acts:** “in the mid-nineteenth century, married women were given a legal estate in their own property and the capacity to sue and be sued. Under this legislation, a married woman could maintain an action against her husband for any tort against her property interest such as trespass to land or conversion. Since the legislation destroyed the ‘unity of persons,’ a husband could also maintain an action against his wife for torts to his property.” Ibid.
  - **Domestic harmony:** “For a long time, however, the majority of courts held Married Women's Property Acts did not destroy interspousal immunity for personal torts. Courts adopted two inconsistent arguments in favor of continued immunity. First, they theorized suits between spouses would be fictitious and fraudulent, particularly against insurance companies. Second, they claimed interspousal suits would destroy domestic harmony.” Ibid.
  - “Very few jurisdictions now recognize interspousal tort immunity.” Ibid., p. 193.
  - **CONN. GEN. STATS. § 52-572d:** “*abolishes* the rule of *lex loci delicti* [law of the place of the accident] in actions for injuries caused by motor vehicle accidents occurring in jurisdictions which recognize interspousal immunity.” O'Connor v. O'Connor, 201 Conn. 632, 644, 519 A.2d 13 (1986).
- STATUTES:**
- CONN. GEN. STATS. (2009)  
Chapter 815e. Marriage  
§ [46b-36](#). Wife and husband property rights not affected by marriage [Married Women’s Act]  
  
Chapter 925. Statutory rights of action and defenses  
§ [52-572d](#)  
“In all actions brought by one resident spouse against the other resident spouse for negligence in the operation of a motor vehicle resulting in personal injury, wrongful death or injury to

property, it shall not be a defense or a bar to the cause of action that such an action by one spouse against another would not lie in the state where the injury or death occurred. **The rights of such spouses, including the standard of care to be applied in such action, shall be determined as if the injury or death had occurred in this state.**” (Emphasis added).

**LEGISLATIVE HISTORY:**

- 1969 CONN. ACTS 623 § 1
- 1974 CONN. ACTS 338 § 48

**LEGISLATIVE:**

- Connecticut General Assembly, Office of Legislative Research, *Intrafamily Lawsuits* by Jerome Harleston, OLR Report no. 96-R-1150 (September 3, 1996).  
“You wanted to know whether intrafamily civil lawsuits between husband and wife are allowed, and if so, whether they are subject to any limitations.”

**COURT CASES:**

- Ascuitto v. Farricielli, 244 Conn. 692, 693, 711 A.2d 708 (1998). “The issue in this appeal is whether the doctrine of parental immunity, which generally bars unemancipated minors from suing their parents for personal injuries, prevents a child of divorced parents from bringing a negligence action against a noncustodial parent for injuries the child sustained while in that parent’s home during a scheduled visitation period. Specifically, we must decide whether the trial court properly granted the defendant father’s motion for summary judgment based on the doctrine of parental immunity. We conclude that the doctrine of parental immunity applies and, accordingly, we affirm the judgment.”
- Delahunty v. Massachusetts Mutual Life Insurance Co., 236 Conn. 582, 602, 674 A.2d 1290 (1996) “Furthermore, the parties do not dispute the right of one spouse to sue his or her spouse or former spouse. See *Dzenutis v. Dzenutis*, 200 Conn. 290, 294, 512 A.2d 130 (1986) (rule of spousal immunity has been abolished in Connecticut); *Silverman v. Silverman*, 145 Conn. 663, 666, 145 A.2d 826 (1958).”
- Silverman v. Silverman, 145 Conn. 663, 665-666, 145 A.2d 826 (1958). “The enactment of the Married Women’s Act in 1877 (Public Acts 1877, c. 114; now General Statutes, c. 366, pt. 1) has been construed as giving a wife a cause of action in tort against her husband.”
- Hutchings v. Hutchings, No. 054449S (Ct. Super. Ct., J.D. Litchfield, Feb. 22, 1993). “Accordingly, the plaintiff’s interspousal tort claim is joined and shall be presented in conjunction with the dissolution proceeding as part of the overall dispute between the parties in order to lay to rest all of their legal differences in one proceeding and avoid the prolongation and fractionalization of litigation.”
- O’Connor v. O’Connor, 201 Conn. 632, 643-644, 519 A.2d 13 (1986). The defendant’s reliance, in this regard, on General Statutes 52-572d is misplaced. That statute abolishes the rule of *lex loci delicti* in actions for injuries caused by motor vehicle accidents occurring in jurisdictions which recognize interspousal immunity. The fact that, in 52-572d, the legislature overruled a line of our decisions holding that the availability of the interspousal immunity defense depends on the law of the place of injury; see, e.g., *Landers v. Landers*, 153 Conn. 303, 304, 216 A.2d 183 (1966); hardly

advances the defendant's argument that the legislature has implicitly approved of the lex loci doctrine.”

- Dzenutis v. Dzenutis, 200 Conn. 290, 512 A.2d 130 (1986). “Prior to the adoption of parent-child immunity in *Mesite*, [109 Conn. 77, 84, 145 A. 753 (1929)], we had held in the analogous husband-wife context that the enactment of the Married Women's Act of 1877 gave a wife separate and independent legal status and thus abrogated the common law rule of spousal immunity both for intentional torts; *Brown v. Brown*, 88 Conn. 42, 47, 89 A. 889 (1914); and for negligent ones. *Bushnell v. Bushnell*, 103 Conn. 583, 587, 131 A. 432 (1925).”
- Brown v. Brown, 88 Conn. 42, 48, 89 A. 889 (1914).
- Bushnell v. Bushnell, 103 Conn. 583, 586-587, 131 A. 432 (1925).

**WEST KEY  
NUMBERS:**

- Husband and Wife 205 K 205(2)  
[Rights of actions between husband and wife]

**DIGESTS:**

- ALR DIGEST: Husband and Wife
- ALR INDEX: PRIVILEGES AND IMMUNITIES: Husband and wife
- CYNTHIA GEORGE AND THOMAS D. COLIN, [CONNECTICUT FAMILY LAW CITATIONS: A REFERENCE GUIDE TO CONNECTICUT FAMILY LAW DECISIONS:](#)
  - Tort Claim

**ENCYCLOPEDIAS**

- 41 [AM JUR 2D](#) Husband and Wife (2005).
  - XIII. Interspousal immunity from suit
    - A. In general
      - § 251. Generally
      - § 252. Abrogation or modification of doctrine
      - § 253. —By statute
      - § 254. Law governing existence of interspousal immunity
    - B. Application of rule in particular circumstances
      - § 255. Tort committed prior to marriage
      - § 256. Effect of annulment or marriage, separation, or divorce
      - § 257. Action for wrongful death
      - § 258. Action against estate of tortfeasor
      - § 259. Liability of employer for married employee's tort
      - § 260. Liability of insurer
      - § 261. Action for negligent operation of motor vehicle; intentional torts
- 41 [C.J.S.](#) Husband and Wife (2006).
  - V. Right of action
    - A. Between husband and wife
      - 2. For tort
        - b. Interspousal Tort Immunity
          - § 204 Generally
          - § 205 Abrogations or exceptions
- Marjorie A. Shields, Annotation, *Liability of Parent or Person In Loco Parentis For Personal Tort Against Minor Child—Sexual Abuse*, 125 ALR5th 133 (2004).

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- Damon A. King, Annotation, *Competency of one spouse to testify against another in prosecution for offense against child of both or either or nether*, 119 ALR5th 275 (2004).
- Wayne F. Foster, Annotation, *Modern Status Of Interspousal Tort Immunity In Personal Injury And Wrongful Death Actions*, 92 ALR3d 901 (1979).
- George L. Blum, Annotation, *Intentional Infliction of Distress in Marital Context*, 110 ALR5th 371 (2003).
- Steven J. Gaynor, Annotation, *Joinder Of Tort Actions Between Spouses With Proceeding For Dissolution Of Marriage*, 4 ALR5th 972 (1992).
- Russell G. Donaldson, Annotation, *Right Of Liability Insurer Or Uninsured Motorist Insurer To Invoke Defense Based On Insured's Tort Immunity Arising Out Of Marital Or Other Close Family Relationship To Injured Party*, 36 ALR4th 747 (1985).
- Andrea G. Nadel, *Right of Tortfeasor To Contribution From Joint Tortfeasor Who Is Spouse Or Otherwise In Close Familial Relationship To Injured Party*, 25 ALR4th 1120 (1983).
- Wesley Kobylak, Annotation, *Husband-And-Wife Immunity Under Federal Admiralty Law*, 63 ALR Federal 391 (1983).

**RESTATEMENTS:**

- [RESTATEMENT \(2D\) OF TORTS](#) § 895F, Husband and Wife

**TREATISES:**

- 6 ARNOLD H. RUTKIN, ED., [FAMILY LAW AND PRACTICE](#) (2008).  
§ 67.01. Interspousal tort immunity  
Appendix 67A. Status of interspousal tort immunity
- 1 [DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE](#) (Rev. ed. 2005).  
§ 7:21. Interspousal tort immunity
- 2 [DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE](#) (Rev. ed. 2005).  
Appendix B: Present Status And Decisions On Interspousal Tort Immunity
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, [TORT REMEDIES IN CONNECTICUT](#) (1996).  
§ 23-3(b). Other familial relationships
- DOUGLASS B. WRIGHT ET AL. [CONNECTICUT LAW OF TORTS](#) (3<sup>rd</sup> ed. 1991).  
§ 78. Liability of one spouse to another

**LAW REVIEWS:**

- Carl Tobias, *The Imminent Demise of Interspousal Tort Immunity*, 60 MONTANA L. R. 101 (1999).

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Table 1: Doctrine of interspousal immunity in Connecticut

Doctrine of Interspousal Immunity in Connecticut	
<p><u>Brown v. Brown</u>, 88 Conn. 42, 48, 89 A. 889 (1914)</p>	<p>"When a wife is allowed to possess and deal with her own property and carry on business in her own name like a <i>feme sole</i>, she ought to have the same right to contract and enforce her contracts, and the same remedies for injuries to her person and property, which others have, and to be liable upon her contracts and for her torts the same as others are. This is the position in which she now stands."</p>
	<p>"In the fact that the wife has a cause of action against her husband for wrongful injuries to her person or property committed by him, we see nothing which is injurious to the public, or against the public good, or against good morals." Ibid.</p>
	<p>"The danger that the domestic tranquility may be disturbed if husband and wife have rights of action against each other for torts, and that the courts will be filled with actions brought by them against each other for assault, slander and libel, as suggested in some of the cases cited in behalf of the defendant, we think is not serious." Ibid.</p>
	<p>"We find nothing to warrant the claim that public policy is opposed to the existence of a cause of action for a personal tort in favor of husband or wife against the other spouse where the wife's identity is not merged in that of her husband." Ibid., p. 49</p>
<p><u>Silverman v. Silverman</u>, 145 Conn. 663, 665-666, 145 A.2d 826 (1958).</p>	<p>"The enactment of the Married Women's Act in 1877 (Public Acts 1877, c. 114; now General Statutes, [§ 46b-36] c. 366, pt. 1) has been construed as giving a wife a cause of action in tort against her husband. <i>Brown v. Brown</i>, 88 Conn. 42, 47, 89 A. 889. Had the husband in this case or his authorized agent been operating the automobile at the time of the collision, the wife could have sued either one or both for her injuries and, if the operator was negligent, could recover."</p>
<p><u>Bushnell v. Bushnell</u>, 103 Conn. 583, 586-587, 131 A. 432 (1925)</p>	<p>While we were there dealing with an assault, that is, a willful tort, the language used was designed to apply broadly and to give the wife the same right to sue her husband for any tort committed by him that any other individual would have, except as that right is modified by statutory provision or is necessarily affected by the marriage relationship."</p>

Table 2: Domestic Tranquility

<b>Domestic Harmony and Interspousal Immunity</b>	
<p><u>Brown v. Brown</u>, 88 Conn. 42, 48-49, 89 A. 889 (1914)</p>	<p>The danger that the domestic tranquility may be disturbed if husband and wife have rights of action against each other for torts, and that the courts will be filled with actions brought by them against each other for assault, slander and libel, as suggested in some of the cases cited in behalf of the defendant, we think is not serious. So long as there remains to the parties domestic tranquility, while a remnant is left of that affection and respect without which there cannot have been a true marriage, such actions will be impossible. When the purposes of the marriage relation have wholly failed by reason of the misconduct of one or both of the parties, there is no reason why the husband or wife should not have the same remedies for injuries inflicted by the other spouse which the courts would give them against other persons. Courts are established and maintained to enforce remedies for every wrong, upon the theory that it is for the public interest that personal differences should thus be adjusted rather than that the parties should be left to settle them according to the law of nature. No greater public inconvenience and scandal can thus arise than would arise if they were left to answer one assault with another and one slander with another slander, until the public peace is broken and the criminal law invoked against them. We find nothing to warrant the claim that public policy is opposed to the existence of a cause of action for a personal tort in favor of husband or wife against the other spouse where the wife's identity is not merged in that of her husband. The plaintiff and defendant having married subsequent to April 20th, 1877, the facts alleged in the complaint were not insufficient by reason of her coverture, and the demurrer should have been overruled.</p>

Table 3: Interspousal Immunity (Torts): Surveys of the states

<b>Interspousal Immunity (Torts): Survey of the States</b>	
<p>6 <a href="#">ARNOLD H. RUTKIN, ED., FAMILY LAW AND PRACTICE</a> (2008). Appendix 67A. Status of interspousal tort immunity</p>	
<p>2 <a href="#">DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE</a> (Rev. ed. 2005). Appendix B: Present Status And Decisions On Interspousal Tort Immunity</p>	

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