



2019 Edition

Spousal (Tort) Immunity in Connecticut

A Guide to Resources in the Law Library

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Section 1: Spousal (Tort) Immunity in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the doctrine of interspousal tort immunity in Connecticut.

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](#), 345 S.C. 8, 11, 546 S.E.2d 191 (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. 13.
- **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:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stats. (2017)
Chapter 815e. Marriage
§ [46b-36](#). Property rights of spouse 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:

LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication.

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- Public Acts 1969, No. 69-623, § 1
- Public Acts 1974, No. 74-338, § 48
- 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."

- [Watkins v. Watkins](#), 152 Conn. App. 99, 96 A.3d 1264 (2014). "This court concluded 'that the language of the separation agreement is clear and unambiguous.' Id., at 64, 962 A.2d 140. The court noted that 'the mutual release provision in the separation agreement provide[d] that each party release[d] the other from "all claims or rights which now exist or may hereafter arise *by reason of the marriage of the parties.*" ... The language of the agreement clearly and unambiguously limit[ed] the mutual release to any and all claims existing at the time the separation agreement was entered and to any and all additional claims arising out of the marriage.' (Citation omitted; emphasis in original.) Id. Because the conduct at issue in *Davis* occurred after the parties' divorce, however, this court ultimately concluded that the mutual releases provision did not bar the plaintiff's claims against the defendant. Id., at 64-65, 962 A.2d 140." (p. 107)

"In reaching our conclusion, we observe, as did the court in *Overberg v. Lusby*, 921 F.2d 90, 91-92 (6th Cir.1990), that 'the separation agreement that [the parties] executed was [clearly] intended to tie up all loose ends and resolve all of the claims or disputes that might arise from the marriage relationship' and that 'if the [plaintiff did] not intend a release of all known claims ... she could [have] expressly reserve[d] a tort claim from the settlement and then subsequently sue[d] in tort.'" (p. 108)

- [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](#), Superior Court, Judicial District of Litchfield at Litchfield, No. 054449S (Feb. 22, 1993) (Conn. L. Rptr. 433, 438) (1993 WL 57741) (1993 Conn. Super. LEXIS 498). "**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, 294, 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).

DIGESTS:

- [West's Connecticut Digest: Husband and Wife](#)
205 *Rights of Actions Between Husband and Wife*
(2) Rights of Action in General

[West's Connecticut Digest: Marriage & Cohabitation](#)

- # 705 – Rights of action between spouses
- # 706 – In general
- # 707 – Interspousal immunity in general
- # 1083 – Torts Between spouses
- # 1084 – In general
- # 1085 – Particular cases and contexts
- # 1086 – Rights of action; interspousal immunity

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#) Husband and Wife (2015).
 - XIII. Right of Action between Husband and Wife;
 - A. Interspousal Immunity from Suit, in General
 - § 236. Interspousal Immunity from Suit, generally
 - § 237. Abrogation or modification of doctrine
 - § 238. —By statute
 - § 239. Law governing existence of interspousal immunity
 - B. Application of Interspousal Immunity Doctrine in Particular Circumstances
 - § 240. Tort committed prior to marriage
 - § 241. Effect of annulment or marriage, separation, or divorce
 - § 242. Action for wrongful death
 - § 243. Action against estate of tortfeasor
 - § 244. Liability of employer for married **employee's tort**
 - § 245. Liability of insurer
 - § 246. Action for negligent operation of motor vehicle; intentional torts
- 41 [C.J.S.](#) Husband and Wife (2014).
 - V. Right of Action
 - A. Between Husband and Wife
 - 2. Torts
 - b. Interspousal Tort Immunity
 - § 215. Generally
 - § 216. Abrogations or exceptions

RESTATEMENTS:

- [Restatement of the Law, Second, Torts, 2d](#), § 895F, Husband and Wife

TREATISES:

- Frederic S. Ury and Neal L. Moskov, [Connecticut Torts: The Law and Practice](#) (2nd ed., 2015).
 - § 23.03[3]. Determining Whether Familial Immunity Applies to Other Relationships

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Douglass B. Wright et al. [Connecticut Law of Torts](#) (4th ed., 2018).
§ 79. Liability of One Spouse to the Other
- 8A Arnold H. Rutkin et al. Connecticut Practice Series. [Family Law and Practice with Forms](#) (3rd ed. 2010).
§ 50:42. Release and waiver
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
§ 67.01. Interspousal Tort Immunity
Appendix 67A: Status of Interspousal Tort Immunity
- [Domestic Torts: Family Violence, Conflict and Sexual Abuse](#) (Rev. ed., 2005).
§ 2:17. Interspousal tort immunity
§ 7:21. Interspousal tort immunity
Appendix B: Present Status and Decisions on Interspousal Tort Immunity
- Nancy McKenna, [Domestic Violence: Practice and Procedure](#) (2018 ed.)
§ 2:85. Interspousal tort immunity
Appendix 2A: Jurisdictional Status of Interspousal Immunity Doctrine

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Carl Tobias, *The Imminent Demise of Interspousal Tort Immunity*, 60 Montana L. R. 101 (1999).
- Pamela Laufer-Ukeles, *Reconstructing Fault: The Case for Spousal Torts*, 79 U. Cin. L. Rev. (2011).
- Cary B. Cheifetz, *Suing for STDs: When Domestic Relations Turn Tortious [notes]* GP Solo, Vol. 35, Issue 1 (January/February 2018), pp. 72-73.

Table 1: Doctrine of Interspousal Immunity in Connecticut

| Doctrine of Interspousal Immunity in Connecticut | |
|---|---|
| <p>Brown v. Brown, 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>Silverman v. Silverman, 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. Brown v. Brown, 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>Bushnell v. Bushnell, 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

| Domestic Harmony and Interspousal Immunity | |
|--|---|
| <p>Brown v. Brown, 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

| Interspousal Immunity (Torts): Survey of the States |
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| 6 Arnold H. Rutkin, gen. ed., Family Law and Practice (2015). Appendix 67A. Status of Interspousal Tort Immunity |