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2022 Edition

Spousal (Tort) Immunity in Connecticut

A Guide to Resources in the Law Library

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References to online legal research databases refer to in-library use of these databases. Remote access is not available.

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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.**" [Boone](#), p. 11.
- 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.**" [Boone](#), p. 11.
- "Very few jurisdictions now recognize interspousal tort immunity." [Boone](#), 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:

- Conn. Gen. Stats. (2021)
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](#). Interspousal immunity abrogated in motor vehicle negligence actions accruing out of state.

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.

"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.

CASE LAW:

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."

- [LaFrance v. Lodmell](#), 322 Conn. 828, 848, 144 A.3d 373 (2016). "Furthermore, as the trial court explained, the defendant could have filed a separate civil action to raise his claims against the plaintiff. Even if claims were not released in the prenuptial agreement, this court has recognized that, 'a final decree of divorce is res judicata with respect to all issues which were, or could have been, litigated in the proceeding.' (Internal quotation marks omitted.) [Loughlin v. Loughlin](#), 280 Conn. 632, 645, 910 A.2d 963 (2006). '[I]n [Delahunt](#) [v. *Massachusetts Mutual Life Ins. Co.*, 236 Conn. 582, 583-84, 674 A.2d 1290 (1996)], we created an exception to the rule of res judicata by concluding that the doctrine did not preclude the plaintiff's tort action against her former spouse even though the alleged conduct occurred during the marriage and she had made her claims at the dissolution proceeding.... After considering the purposes of res judicata, we concluded that the doctrine should not require parties to bring tort actions based on claims that arise during a marriage in the dissolution proceeding and that "because there are significant differences between a tort action and a dissolution action, the maintenance of a separate tort action will not subject the courts and the defendant to the type of piecemeal litigation that the doctrine was intended to prevent." ... Specifically, we relied on the fact that "[a] tort action, the purpose of which is to redress a legal wrong by an award of damages, is not based on the same underlying claim as an action for dissolution, the purpose of which is to sever the marital relationship... and to divide the marital estate.'" (Citations omitted;

emphasis omitted.) *Weiss v. Weiss*, 297 Conn. 446, 467-468, 998 A.2d 766 (2010)."

- *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)

- *Weiss v. Weiss*, 297 Conn. 446, 467-468, 998 A.2d 766 (2010). "Moreover, unlike *Delahunty*, in which we noted that the dissolution proceeding was not the proper forum for resolution of the tort action, the meaning of terms in the agreement and the division of the marital estate were squarely—and properly—at issue in the dissolution proceeding. See *Delahunty v. Massachusetts Mutual Life Ins. Co.*, *supra*, 236 Conn. 592-93. In the present case, the plaintiff must establish the definition of a specific phrase in the agreement in order to succeed in her claim. This burden is not separate and distinct from the issues at the dissolution proceeding and therefore presents 'the duplication that the doctrine of res judicata was aimed at preventing.' *Id.*, 593. Thus, we cannot conclude, as we did in *Delahunty*, that the differences in the two actions would not subject courts to the type of piecemeal litigation that res judicata seeks to avoid. See *id.*, 592. In this instance quite the opposite is true: holding that a party to a divorce could litigate the terms of the dissolution judgment years after the dissolution proceeding by bringing his or her cause of action in tort is precisely the burden on the court system and the defendant that res judicata was designed to prevent."

To be clear, we are not contravening our conclusion in *Delahunty* that res judicata does not require tort actions based on conduct that occurred during the marriage to be litigated in the dissolution proceeding. See *id.*, 592-93. Rather, we conclude that, in the present case, the considerations underlying the doctrine of res judicata support the conclusion that the doctrine precludes the plaintiff's subsequent litigation of the meaning of the terms in the agreement. Res judicata is, by its very nature, extremely fact specific in application. Thus, our application of res judicata and *Delahunty* to subsequent actions between parties in a dissolution proceeding necessarily turns on the precise nature and substance of the second action."

- [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)."
- [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)."

- [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."
- [Bushnell v. Bushnell](#), 103 Conn. 583, 586-587, 131 A. 432 (1925).
- [Brown v. Brown](#), 88 Conn. 42, 48, 89 A. 889 (1914). "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."

WEST'S KEY
NUMBERS

Marriage and Cohabitation

IV. Marital Rights, Duties, and Liabilities in General

(I) Rights of Action and Defenses

705 Rights of action between spouses

706 In general

707 Interspousal immunity in general

708 Actions on contracts

709 Actions concerning separate property

710 Other particular actions

VI. Torts

(A) In general

1083 Torts between spouses

1084 In general

1085 Particular cases and contexts

1086 Rights of action; interspousal immunity

DIGESTS:

West's Connecticut Digest

Marriage & Cohabitation

IV. Marital Rights, Duties, and Liabilities in General

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710 Other particular actions

VI. Torts

(A) In general

1083 Torts between spouses

1084 In general

1085 Particular cases and contexts

1086 Rights of action; interspousal immunity

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 41 *Am Jur 2d Husband and Wife*, Thomson West, 2015 (Also available on Westlaw).

- 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*, Thomson West, 2014 (Also available on Westlaw).

V. Right of Action

- A. Between Husband and Wife
 - 2. Torts
 - b. Interspousal Tort Immunity
 - § 215. Generally
 - § 216. Abrogations or exceptions

- 92 *A.L.R. 3d 901, Modern Status of Interspousal Tort Immunity in Personal Injury and Wrongful Death Actions*, by Wayne F. Foster, Thomson West, 1979 (Also available on Westlaw).

RESTATEMENTS:

- *Restatement of the Law, Second, Torts*, American Law Institute, 1979, with 2021 supplement (also available on Westlaw).
 - § 895F, Husband and Wife

TREATISES:

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2015, with 2021 supplement (also available on Lexis).
 - § 23.03[3]. Determining Whether Familial Immunity Applies to Other Relationships
- *Connecticut Law of Torts*, 4th ed., by Douglass B. Wright et al., Atlantic Law Book Co., 2018, with 2021 supplement.
 - § 79. Liability of One Spouse to the Other

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2021 supplement (also available on Westlaw).
 § 50:42. Release and waiver
- 2 *American Law of Torts*, by Stuart M. Speiser, et al., Thomson West, 2014, with March 2022 update (available on Westlaw).
 Chapter 6. Immunities (Sovereign, Governmental, Charitable, Intrafamilial)
 J. Familial
 1. Spouses
 § 6:45. Generally
- 6 *Family Law and Practice*, by Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).
 § 67.01. Interspousal Tort Immunity
 Appendix 67A: Status of Interspousal Tort Immunity
- *Domestic Violence: Practice and Procedure*, by Nancy McKenna, Thomson West, 2021 ed. (also available on Westlaw).
 § 2:85. Interspousal tort immunity
 Appendix 2A: Jurisdictional Status of Interspousal Immunity Doctrine
- *Domestic Torts: Civil Lawsuits Arising from Criminal Conduct within Family Relationships*, 2d, by Keith R. Perkins, Thomson West, 2022 ed. (also available on Westlaw).
 § 4:24. Interspousal tort immunity

LAW REVIEWS:

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

- 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	
<u>Brown v. Brown</u> , 88 Conn. 42, 89 A. 889 (1914).	"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. 48
	"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." p. 48
	"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." p. 48
	"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." p. 49
<u>Silverman v. Silverman</u> , 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, [§ 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."
<u>Bushnell v. Bushnell</u> , 103 Conn. 583, 586-587, 131 A. 432 (1925).	"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."

Table 2: Domestic Tranquility

Domestic Harmony and Interspousal Immunity	
<u>Brown v. Brown</u> , 88 Conn. 42, 48-49, 89 A. 889 (1914).	<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): Survey of the States

Interspousal Immunity (Torts): Survey of the States
<ul style="list-style-type: none">• 6 <i>Family Law and Practice</i>, by Arnold H. Rutkin, Matthew Bender, 2021 (also available on Lexis). Appendix 67A. Status of Interspousal Tort Immunity