

Tort Actions Involving Spouses

✚ **Tort Immunities between spouses have been eliminated!**

Each spouse can maintain the following actions against third parties (with varying degrees of relevance today):

- Loss of Consortium (loss of ability to enjoy a sexual relationship): usually occurs when the other spouse is injured or killed.
- “Enticement” (the act of persuading a man’s wife to leave him).
- “Alienation of affection” (the diversion by a third party of a person’s affections).
- “Criminal conversation” (the commission of adultery with another’s spouse).

Many of these have been abolished or modified in many jurisdictions.

Domestic Violence: Between Spouses

Spousal Rape

- Legal doctrine that did not require consent for marital sex has been eliminated in all jurisdictions.
- Many jurisdictions require greater evidence or place certain procedural safeguards in spousal rape cases.

Special Protections Against Violence Between Spouses:

- Many states increase severity of assault punishments if they are domestic violence cases.
- Federal “Violence Against Women” Act creates a federal civil cause of action on the grounds of domestic violence.
- Availability of restraining orders to be sought *ex parte* against abusive spouses.
- “Battered Women’s Syndrome” available sometimes as a defense or mitigation against a criminal charge.

Domestic Violence: Children

- **Violence against children, especially sexual abuse, is punished more severely than against adults.**
- **Family Violence civil and criminal statutes apply to children as well as spouses.**

Corporal punishment of children in schools:

- banned in about half of the states.
- where allowed, it must not be excessive and there are certain procedural safeguards, such as the presence of a witness.

Corporal punishment of children by parents or guardians:

- Allowed to some to degree in all states.
- Specific exceptions made in state criminal codes to exempt parents using reasonable discipline from state assault charges.
- Must be reasonable! Any “excessive” or “unreasonable” corporal punishment will eliminate the protection granted parents and the parent can be punished as harshly as would be a stranger for a similar action.

Torts Committed by Minors

Modern Rules:

- A minor of any age can be liable for intentional torts as long as they're old enough to form an intent.
- Children can also be liable for negligence; but only if their behavior did not rise to the level of a reasonable child of similar "age, experience and intelligence."
- When engaging in an "adult activity," (i.e., something dangerous enough that it is generally considered unsafe for children) a child must live up to the standard of a reasonable adult or be liable for negligence!!

Parents' Liability for Children's Torts

- Many states today make parents responsible for childrens' torts, especially intentional torts, but only up to a certain point.
- Aside from vicarious liability, negligent supervision can be a cause of action against the parent him or herself!
- Family Purpose Doctrine regarding family cars.

QUIZ TIME!