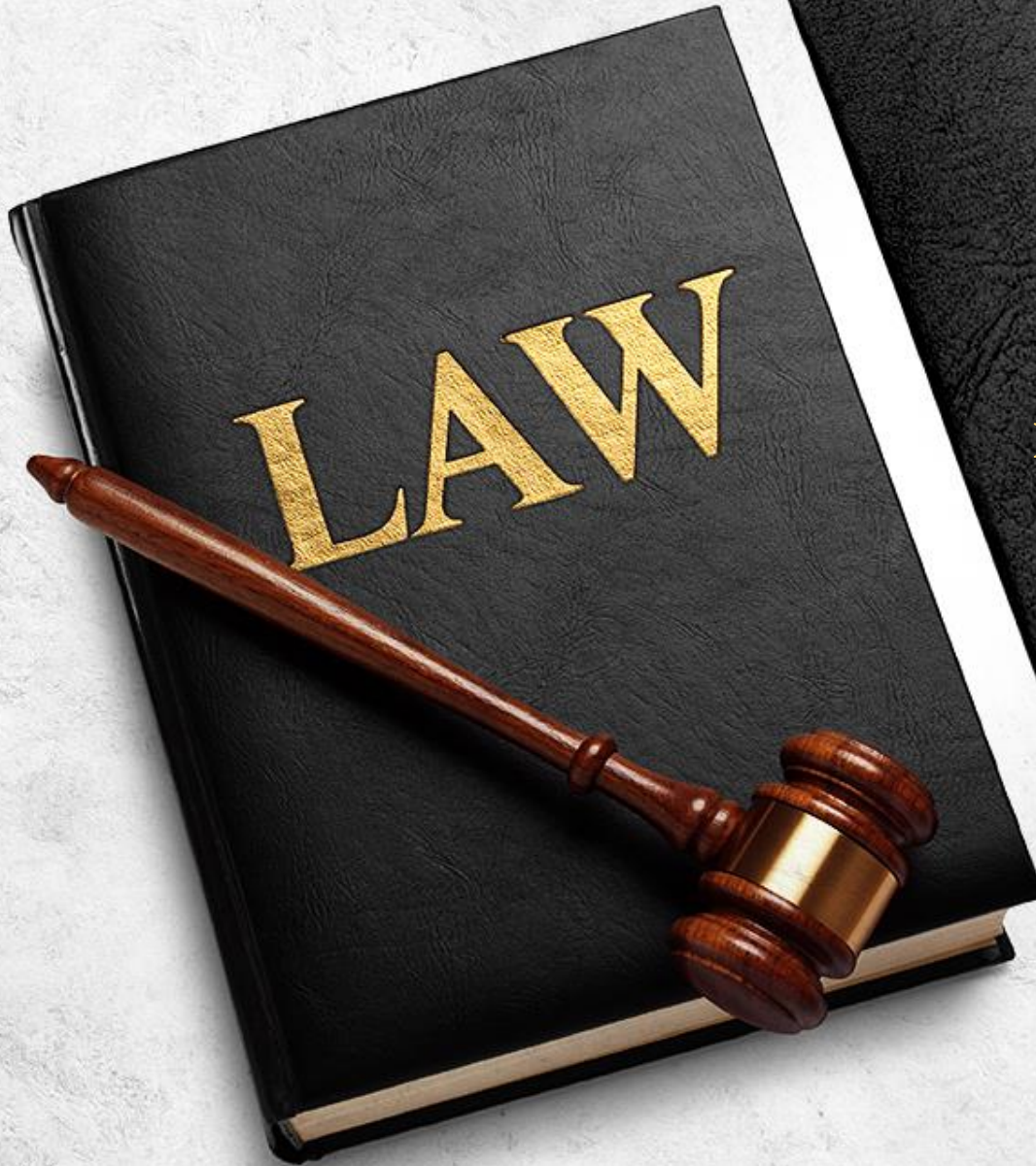


Domestic Law

Lecture 09

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Interspousal Immunity Doctrine

- Historical Background
 - The common law doctrine of interspousal immunity, based on the legal fiction of marital unity, barred tort actions between husbands and wives.
 - Thus, a wife could not sue her husband (or vice versa), at common law, for either negligence or an intentional tort (assault, etc.).
- Rationale
 - The traditional rationale for interspousal immunity is that the bar:
 - Promotes marital harmony;
 - Prevents involvement of the judiciary in trivial matters;
 - Prevents the spouses from collusion to defraud insurance companies;
 - Prevents rewarding the defendant for his or her own wrong (because the plaintiff-spouse would share in any recovery with the wrongdoer); and
 - Is not oppressive because alternative remedies exist and are adequate (e. g., criminal sanctions or divorce).



Shook v. Crabb

281 N.W.2d 616 (Iowa 1979)

- **Facts**

- Husband and wife die in the crash of an airplane that was owned and operated by husband.
- Executor of wife's estate brings a wrongful death action against estate of husband, alleging that wife's death was caused by husband's negligence.
- Husband's executor defends by asserting that the interspousal immunity doctrine bars recovery.



Shook v. Crabb

281 N.W.2d 616 (Iowa 1979)

- **Issue**
 - Does interspousal immunity bar recovery by one spouse against another spouse in a tort action?



Shook v. Crabb

281 N.W.2d 616 (Iowa 1979)

- **Holding**

- No. The court **abrogates the interspousal immunity doctrine** in regard to **negligent torts** and extends abolition to **intentional torts** as well.
- Denial of access to the courts would not further marital harmony.
- Further, insurance companies and the justice system can guard against the possibility of fraud.



Tort Actions Involving Spouses

- Thus, tort immunities between spouses have been largely 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

- Battering
 - At common law, a husband had the right of “moderate chastisement” of his wife (according to Blackstone). Moreover, a wife was barred by the interspousal immunity doctrine from suing her husband for intentional torts.
- 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 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



Daniels v. Evans

224 A.2d 63 (N.H. 1966)

- **Facts**

- Plaintiff, a 19-year-old, was killed when his motorcycle collided with Defendant's car.
- The jury returned a verdict for Plaintiff.
- Defendant appealed and alleged error pertaining to the standard of care required of Plaintiff.



Daniels v. Evans

224 A.2d 63 (N.H. 1966)

- **Issue**

- When Plaintiff undertakes an adult activity, which can result in grave danger to others, is the standard of care that which the reasonable and prudent adult would use?



Daniels v. Evans

224 A.2d 63 (N.H. 1966)

- **Holding**

- Yes. Judgment for Defendant.
- When children are walking, running, playing with toys, throwing balls, operating bicycles, sliding or engaged in other childhood activities, their conduct should be judged by the rule of what is reasonable conduct of a child with comparable age, experience, and stage of mental development.
- It would be unfair to the public to permit a minor in the operation of a motor vehicle to observe any other standard of care than that expected of all others.
- In today's modern life, where vehicles are powered by motors, to apply to minors a more lenient standard in the operation of motor vehicles is unrealistic, contrary to legislative policy, and inimical to public safety.



Daniels v. Evans

224 A.2d 63 (N.H. 1966)

- **Explanation**

- Any minor operating a motor vehicle must be judged with the same standard of care as an adult.
- At the time this case was heard, a minor was someone who was under the age of twenty-one.



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!

- **Parental Liability for Children's Torts**

- Many states today make parents responsible for children's 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:
 - The owner of an automobile is liable for damages to others while a member of the family is driving the vehicle, regardless of whether or not the owner gave permission. The underlying theory is that the vehicle is owned for family purposes.



Quick Quiz



Minors' Negligence – The “Rule of 7s”

- Even though the standard of care applicable to a minor differs from that applicable to an adult, nevertheless a minor may be guilty of actionable negligence.
- Both an adult and a minor are under an obligation to exercise reasonable care; however, the "reasonable care" required of a minor is measured by a different yardstick — it is that measure of care which other minors of like age, experience, capacity and development would ordinarily exercise under similar circumstances.
- In applying that yardstick, we place minors in three categories based on their ages:
 - minors **under** the age of **seven** years are **conclusively presumed incapable of negligence**;
 - minors **over** the age of **fourteen** years are **presumptively capable of negligence**, the burden being placed on such minors to prove their incapacity;
 - minors **between** the ages of **seven and fourteen** years are **presumed incapable** of negligence, but such **presumption is rebuttable** and grows weaker with each year until the fourteenth year is reached.



End Of Class Review Quiz

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QUIZ**



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