

Tort Basics

A "tort" is an intentional act that causes harm to another. Assault, battery, trespass, intentional infliction of emotional distress, etc., are all "torts." Tort cases are brought in civil court – not criminal court. A defendant may be guilty of a crime (like battery) and may be punished by a criminal court (by jail time or a fine). That same defendant, however, may also have to face justice in a civil court "tort" case. When one suffers a tort, the remedy is usually an award of money by a judge or jury in the civil court. For example, O.J. Simpson was acquitted of the murder of his former spouse, but was found guilty in a case brought in civil court by the family members who survived the victims. That is an example of civil liability for an otherwise criminal act.

One group of torts – known as "domestic torts" or "marital torts," because they arise out of the marital relationship – appears in divorce cases from time to time. The prosecution of marital tort cases has exploded in the last few decades. Even as some of the marital torts have fallen by the wayside as outdated and irrelevant, new causes of action have been born and are more relevant than their antecedents.

A spouse's evil act may serve as grounds for a divorce, as the basis for a criminal prosecution, and also as the basis for a civil tort case brought by the injured spouse. Illinois divorce courts generally prohibit a financial award for bad conduct during the marriage. Thus, **in divorce court**, there can be no additional financial recovery for spouses of adulterers, batterers, or emotional abusers. Marital tort cases, however, do not always have to be brought before the divorce judge. Instead, in many circumstances, they may be brought as a case separate from the divorce in a different courtroom, before a different judge. On the other hand, a tort claim may be brought as a second count in the complaint for divorce. In that case, the respondent may seek to empanel a jury to hear that portion of the case or may seek to sever that part of the case and remove it to another judge hearing civil litigation matters. Be very careful, because sloppy strategizing¹ can torpedo many claims. Be sure to work with an experienced and knowledgeable attorney.

Originally, there were four "heartbalm torts" 1) alienation of affections, 2) breach of marriage promise, 3) criminal conversation, and 4) seduction) associated with marriage. The heartbalm torts originated centuries ago in the common law as a means by which to protect the peace and stability of family units from outside interlopers. For the most part, they stemmed from a man's property rights in the being, services, and companionship of his wife and children. Lawsuits based on heartbalm torts were originally available only to men. In the eyes of the law, women had virtually no rights and they were, for nearly all considerations, the property of their fathers until marriage and then were the property of their husbands.

With the enactment of more enlightened laws regarding the rights of (married) women, the heartbalm torts began to fall into disuse. Lawsuits for "criminal conversation" are no longer recognized by our courts. "Criminal conversation" was a suit brought by a husband for money damages from his wife's lover. The law was that a husband had a property right to his wife's "services" (sex). With criminal conversation cases, there was no divorce, the couple stayed married. The lover was liable to the husband, however, for interfering with the husband's "property." Likewise, lawsuits for "seduction" can no longer be brought before an Illinois court. The offense of seduction existed where a "chaste woman" was fraudulently lured into a sexual relationship; that is, on a promise of marriage. The action is ancient and, originally, standing to bring such a lawsuit rested not with the victimized woman, but rather her father.² The logic was that the woman was barred from bringing suit as she had consented to the sexual relationship – but her father could bring a lawsuit for the violation of his property (his daughter) as children were viewed in the law as servants to their parents.³ Other jurisdictions (Utah, for example⁴) have removed this limitation and allow women to sue for themselves.

In the first half of the twentieth century, heartbalm torts were employed by some unscrupulous individuals to extort and blackmail innocents and were generally tools of financial and legal abuse. So, many states passed "heartbalm acts" that specifically prohibited heartbalm lawsuits. Illinois never took such action and still permits lawsuits based on the ancient, common-law heartbalm torts, but Illinois laws have been amended to include strict requirements and financial caps on damage awards.

Whether heartbalm torts should remain is debatable. They do little or nothing to preserve the marital relationship – they are almost always filed only after the marriage has been dissolved or has reached a point where it is irretrievably broken – heartbalm lawsuits seem to be based more on revenge and retribution than reconciliation. On the other hand, a strong argument can be made for awarding damages to a party who has committed everything to a relationship only to be coldly betrayed by his or her partner.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.