

# Daily Journal

MARCH 20, 2024

## 2024 TOP FAMILY LAWYERS



### Tort Remedy for DV Victims

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Acts of domestic violence have a profound impact on the lives of all individuals involved. These acts tear families apart, cost individuals their livelihoods and often leave lifelong physical and psychological damages for the victim. The effects in a family law case are significant and impactful on virtually all facets of the matter. These areas include, but are not limited to, child custody and visitation issues, support payments, division of property and the payment of attorney's fees and legal costs.

None of the above information is new to any family law practitioner. Given the extensive case law and statutory changes over the past decade, remedies in the family law setting have become common knowledge among practitioners.

What is not common knowledge, however, is the potential tort remedies available for victims of abuse. Family law practitioners are often relied upon for advice be-

yond the case at hand. Possessing knowledge regarding potential tort remedies can only help improve your representation of domestic violence victims. From this family law practitioner's perspective, it is our duty to advise our clients of all remedies potentially available to them, including in areas of law we don't necessarily practice or pursue.

#### STATUTORY AUTHORITY

For two decades now, California has recognized a tort stemming from an act of domestic violence pursuant to Civil Code Section 1708.6. The definition of abuse under this code section differs from its family law counterpart, contained in Family Code Section 6320. The main differences between these sections relate to disturbing the peace and coercive conduct qualifying as acts of abuse under the Family Code. Notwithstanding that, however, I believe that Section 1708.6 provides ample opportunity for victims of domestic violence to pursue a tort cause of action.



## STATUTE OF LIMITATIONS

Civil Code Section 1708.6 subsection "e" provides a time for commencement of a domestic violence tort action. Citing Code of Civil Procedure Section 340.15, a domestic violence tort must be commenced within three years of the last act of abuse. This doesn't, however, mean that the victim cannot recover for acts that occurred prior to that three-year window.

The Court of Appeal in *Pugliese v. Superior Court* (2007) 146 Cal. App.4th 1444, held that a victim can seek recovery for domestic violence abuse occurring throughout their relationship if they can demonstrate a continuing course of conduct. In this decision, the appellate court stated as follows: "The words 'last act' are superfluous if they have no meaning. By adding these words, we believe the legislature adopted by statute the continuing tort theory, thus allowing domestic violence victims to recover damages for all acts of domestic violence occurring during the marriage, provided the victim proves a continuing course of abusive conduct and files suit within three years of the 'last act of domestic violence.'"

## RECOVERABLE DAMAGES

It is hard to believe that in the not-so-distant past, the perpetrator of domestic violence could claim interspousal tort immunity and avoid being sued in California by their counterpart victim for money. Thankfully, that is no longer the case. Under Civil Code Section 1708.6, the victim can now recover 1) special damages, also known as economic damages, such as medical expenses, loss of earnings and other "hard costs" for out-of-pocket expenses incurred, 2) general damages, which are non-economic damages often referred

to as pain and suffering, and 3) punitive damages, which are damages to punish the defendant for his tort.

## RISKS IN PURSUING A DOMESTIC VIOLENCE CLAIM IN TORT

Given the potential risks associated with the pursuit of a civil action, I often rely on the expertise of my personal injury colleague Raffi Ohanian of Thon Beck Vanni Callahan & Powell. According to Ohanian, "in any lawsuit for assault and/or battery, or most intentional torts for that matter, rarely does any type of insurance provide coverage; In a domestic violence setting, insurance coverage is almost never. Thus, we are left to pursue the defendant directly and personally for his/her money and/or assets, which presents significant risk."

In investigating a potential domestic violence civil action, Ohanian states, "it is critical to research who you are suing and if a lawsuit will be fruitful to compensate the victim. Taking a case through trial can often cost more than \$50,000, often significantly more, with no guarantee of recovering a penny even with a large verdict. In short, lack of insurance coverage in these cases makes domestic violence torts complicated."

Judicial Perspective by Hon. Lawrence Riff, Judge of the Los Angeles County Superior Court

My participation in this article derives from a professional encounter with Patrick Baghdaserians, a family law practitioner I came to know during my tenure in the Family Law Division of the Los Angeles Superior Court. My comments here are separate from those preceding this section and do not represent the views of the Superior Court. Nor do these comments relate to any pending or impending litigation of which I am aware.

Having spent 42 years so far as a legal professional, and about 37 of those as a civil tort trial lawyer and civil judge, I can say that I have not encountered any claims brought under Civil Code Section 1708.6 ("section 1708.6"). The law practices economic strategies and tactics associated with bringing such a claim as identified in the previous section aside (and on which I express no views), it also should be recognized that tort victims of domestic violence, as defined in section 1708.6, have other potential tort claims and remedies under extant law. For example, the torts of battery (an unconsented touching with the intent to harm or offend which causes harm or offense); assault (an act intending to cause a harmful or offensive contact with another person or which causes that other person to be placed in imminent apprehension of such contact); and intentional infliction of emotional distress (outrageous conduct intended, or undertaken with reckless disregard, to cause severe emotional distress). Each of these torts permits the recovery of economic and non-economic damages and, if proven by clear and convincing evidence that the act involved was malicious, fraudulent, or oppressive, punitive damages.

Practitioners should consider the point raised by Patrick Baghdaserians concerning the period of time for which damages may be obtained under section 1708.6's incorporation of Civil Code section 430.15's three-year "last act" provision. Such a damages "reach back" may be more generous than under the statutes of limitations for personal injury. Likewise, note well that section 1708.6 opens the door to the possibility of recovery of attorneys' fees by the successful plaintiff whereas, generally, attorneys' fees are not recoverable in common law tort actions.

Still, practitioners serving alleged victims of domestic abuse should have foremost in mind the benefits of injunctive relief. Such relief may be available in common law tort actions (although questions of "an adequate remedy at law" may be confronted) and is explicitly available under section 1708.6. But litigants suing under the Domestic Violence Prevention Act, found in the Family Code, offer a tried-and-true avenue to very prompt and potentially broad injunctive orders including stay-away, no contact, child custody, and financial support elements. Thus, civil practitioners, confronted by potential clients claiming to be victims of recent or ongoing domestic violence or abuse, who are eyeing

section 1708.6 should always also consider the DVPA. And, if necessary, consult an experienced family law attorney promptly. For a great many victims of domestic violence and abuse, getting such vile behavior to stop promptly via the well-understood DVPA path for a temporary restraining order and an evidentiary hearing in 21 days may be the most valuable relief to be had.

Lastly, Patrick Baghdaserians raises an interesting historical point concerning interspousal tort immunity, and its abrogation by the California Supreme Court in *Self v. Self* (1962) 58 Cal.2d 683 ( *Self* ). In that case, the court overturned the established rule of interspousal immunity for inten-

tional torts, and in the companion case of *Klein v. Klein* (1962) 58 Cal.2d 692, extended that ruling to cases of negligent torts between spouses. In *Self* , a woman's husband was held liable for breaking her arm during the course of an assault and battery. For those interested in the subject, I commend for your reading " Modern Status of Interspousal Tort Immunity in Personal Injury and Wrongful Death Action," 92 A.L.R.3d 901, originally published in 1979.

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