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Torts - Right of Privacy - Recovery for Wounded Feelings and Marital Difficulties

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A comparison of the Illinois Statute [24] with the North Dakota Statute [25] would seem to indicate that the decision in the instant case would have been the same in North Dakota—all other things being equal—if it were not for the peculiar doctrine of estoppel advocated by the Illinois Court. If the attempted destruction of one-third of the contingent remainder had occurred in this state prior to the passing of the statute, the plaintiff would have had a good fee-simple title to one-third of the land.

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TORTS — RIGHT OF PRIVACY — RECOVERY FOR WOUNDED FEELINGS AND MARITAL DIFFICULTIES. — Plaintiff and his wife bought an inexpensive radio from defendant on the installment plan. When only a small balance remained unpaid, defendant sent to plaintiff a post card stating: "Dear Milford, I'll be in LaGrange next week. Call me at 9693. Love, Mary." Plaintiff's wife read the card and, being convinced of plaintiff's infidelity, left him. Plaintiff eventually effected a reconciliation with his wife, but the original relationship of trust and affection between them was never restored. Plaintiff sued for $25,000 damages for wounded feelings and marital difficulties. In allowing him to recover $5,000, the court *held* that the defendant had committed an actionable tort; that defendant was at least guilty of a great degree of negligence. The court found it unnecessary to label the action either as one for libel or invasion of plaintiff's right of privacy. Nevertheless, the opinion discussed the nature of libel and also stated that defendant had injured plaintiff in what plaintiff alleged in his petition as "the legal right to personal security in his home, including the right of enjoyment of life, and the enjoyment of the happiness of home and the love and confidence of his wife." *Freeman v. Busch Jewelry Co.*, 98 F. Supp. 963 (N.D. Ga. 1951).

The general rule has recently changed to allow recovery for injury without physical hurt.[1] Among other things, one may recover for mental injury. The old theory underlying recovery for mental injury was that the plaintiff had to show his mental suffering to be an incident of an established cause of action [2] or had to have a physical impact accompanying it.[3] Now, however, it is an independent cause of action and there need not be an impact.[4]

Merrigan's Estate, 34 S. D. 644, 150 N.W. 285 (1914) (under code, remainder after conditional life estate is not, as at common law, defeated upon forfeiture of life estate before life tenant's death).

24. *See* note 2 *supra*.

25. *See* note 19 *supra*.

1. Smith, *Relation of Emotions to Injury and Disease: Legal Liability for Psychic Stimuli*, 30 Va. L. Rev. 193, 207 (1944).

2. Young v. Gormley, 120 Iowa 327, 94 N.W. 922 (1903) (illegal arrest); Parkhurst v. Mastellar, 57 Iowa 474, 10 N.W. 864 (1881) (malicious prosecution); Spade v. Lynn & B.R.R., 172 Mass. 488, 52 N.E. 747 (1899).

3. Wyman v. Leavitt, 71 Me. 227 (1880); Nelson v. Crawford, 122 Mich. 466, 81 N.W. 355 (1899).

4. Broda, *One's Right to Enjoy Mental Peace and Tranquility*, 28 Geo. L.J. 55 (1940); 22 Minn. L. Rev. 1070 (1938). The turning point seems to have been Hill v. Kimball, 76 Tex. 210, 13 S.W. 59 (1890).

The usual rule is that the injury must be inflicted intentionally.[5] The cases are generally referred to as mental suffering or mental injury cases.[6]

The right of privacy is a further step in the trend toward giving an increasing amount of protection to the interest in freedom from emotional distress. It is described as the right to be let alone or as the right to live one's life without unwarranted interference by the public about matters with which the public is not concerned.[7] Under this right, malice is immaterial.[8] There is liability only if the conduct of the defendant was such that he should have realized that he was invading privacy and that his act would be offensive.[9] There must, however, be reasonable grounds for the mental distress, that is, the one offended must have been a person of ordinary feelings and intelligence.[10]

It might be pointed out that the court in the instant case could have held that the recovery was for invasion of the right of privacy.[11] Of course, before the court could do so it would have to resolve the question whether the defendant realized that his act would be offensive and whether the wife of the plaintiff reacted as a person with normal sensibilities. If the court found this to be true, it is then not inconceivable that this could have been labelled invasion of the right of privacy, for the cases which give recovery are widely varied.[12] In fact, that is so much the case that it might be said that the right is nothing more than a catch all which takes care of the outside edges of tort liability.

However, the fact remains that the court did not label the tort,[13] except that it was the invasion of the right to personal security in the home including the right to love and confidence of one's wife. If this goes further than the right of privacy, an objection would arise. It would be absurd if one must be on guard at all times to do nothing which might be expected to offend even the tenderest sensibilities of another. Liability cannot be extend-

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5. Barnett v. Collection Service Co., 214 Iowa 1303, 242 N.W. 25 (1932); LaSalle Extension University v. Fogarty, 125 Neb. 457, 253 N.W. 424 (1934); Mitchell v. Rochester Ry. Co., 151 N.Y. 107, 45 N.E. 354 (1896). The general trend in the law can be seen by comparing Restatement, Torts §46 (1934) with Restatement, Torts §46 (Supp. 1948).

6. For a general discussion of the growing tendency of the courts to allow recovery for unreasonable interference with peace of mind, allowing damages for mental distress of an aggravated sort, when defendant writes an insulting letter to enforce payment of a bill, see Magruder, *Mental and Emotional Disturbances in the Law of Torts*, 49 Harv. L. Rev. 1033, 1063 (1936). Also see Broda, *One's Right to Enjoy Mental Peace and tranquillity*, 28 Geo. L.J. 55 (1940) on recovery for other methods of bill collection.

7. Brents v. Morgan, 221 Ky. 765, 299 S.W. 967 (1927); Holloman v. Life Ins. Co. of Virginia, 192 S.C. 454, 7 S.E.2d 169, 171 (1940).

8. Warren and Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193, 218 (1890).

9. Schuyler v. Curtis, 147 N.Y. 434, 42 N.E. 22 (1895); Restatement, Torts §867, comment *d* (1934).

10. Pound, *Interests of Personality*, 28 Harv. L. Rev. 343, 363 (1915).

11. 13 Pitt. L. Rev. 453 (1952).

12. Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931) (unauthorized use of true name of reformed prostitute and murder suspect in movie depicting her former status); Goodyear Tire & Rubber Co. v. Vandergriff, 52 Ga. App. 662, 184 S.E. 452 (1936) (obtaining confidential business information through telephone impersonation of plaintiff); Rhodes v. Graham, 283 Ky. 255, 37 S.W.2d 46 (1931) (wire tapping); Brents v. Morgan, 221 Ky. 876, 299 S.W. 967 (1927) (unwarranted publicity of private debt); Deon v. Kirby Lumber Co., 162 La. 671, 111 So. 55 (1926) (injury to right to cultivate social relations); De May v. Roberts, 46 Mich. 160, 9 N.W. 146 (1881) (stranger present during parturition).

13. For the general proposition that a tort need not be named, see Prosser, Torts §11 (1941).

ed to all trivial indignities. However, the instant decision should not be looked upon as an extension of liability for causing emotional distress any more than if the court had held the recovery to be for the invasion of privacy. The court applied the general rules applied to the right of privacy and resolved that, "Defendant should have reasonably anticipated that the open post card would fall into the hands of plaintiff's wife, would be read by her and would cause such reaction as it actually did cause in this case." The opinion therefore took into consideration the requirements for recovery under the right of privacy.[14] In holding that the right to personal security in his home, including the right to enjoyment of life, and the enjoyment of the happiness of the home and the love and confidence of his wife was violated, it went no further. The only question which could then arise is, whether the court properly resolved the requirements in accordance with the facts, not whether the theory of relief was beyond that usually given by a court.

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WILLS — LIFE INSURANCE — CHANGE OF BENEFICIARY BY WILL. — By the terms of his last will, X bequeathed all his property, including the proceeds of life insurance policies, to W, his wife. The will alternately provided that X bequeathed all of said property to G, his grandmother, in the event he should die unmarried. W, the designated beneficiary in the policies, divorced X, who died shortly thereafter without having made any attempt, beyond his testamentary declaration, to effect a change of beneficiary in compliance with the requisites prescribed in the policies. Both W and G claimed the insurance proceeds in an action in which the insurers interpleaded and paid into court the amounts due under their respective policies. *Held:* the will executed by X could not effect a change of beneficiary. *Stone v. Septhens,* 99 N.E.2d 766 (Ohio 1951).

The named beneficiary in an insurance policy, which reserves to the insured the privilege of changing the beneficiary therein, enjoys only an expecancy during the lifetime of the insured, which does not become a vested right until the insured's death. Similarly, the expectation of a legatee under a will vests only upon the death of the testator since it may always be revoked or adeemed. When the conflicting expectations of a beneficiary and a legatee supposedly vest simultaneously at the death of the insured-testator, which should prevail?

Although the interest of the beneficiary in an insurance policy during the lifetime of the insured is commonly treated as a mere expectancy or contingency,[1] it seems that such interest has the character of a more secured right. The limitations upon the reserved right of the insured to change his beneficiary at will, as outlined in the contract of insurance, are sometimes said to be for the benefit of the insurer alone,[2] but it is certain that both insured and beneficiary are protected and benefited as well.[3] One expres-

14. The court also stated that the implication of the post card was libelous.

1. Freund v. Freund, 218 Ill. 189. 75 N.E. 925 (1905).
2. Provident Life & Accident Ins. Co. v. Dotson, 93 F. Supp. 538 (S.D. W. Va. 1950).
3. *See* Wannamaker v. Stroman, 167 S.C. 484, 166 S.E. 621, 623 (1932); *See* Pedron v. Olds, 193 Ark. 1026, 105 S.W.2d 70 (1937).