
Civil Tort Suits and Economic Justice for Battered Women

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Economic viability is critical to the long-term safety of victims of domestic violence. Yet, the majority of legal mechanisms available to battered women fail to address this reality. While protection orders, criminal law, and family law aid in addressing the immediate physical safety needs of battered women, they do not adequately provide battered women with the economic relief necessary for self-sufficiency and long-term safety. Civil tort suits offer such a tool.

This article provides tort lawyers considering representation of domestic violence victims with a foundation to develop their cases in a manner that attends to their clients' particular financial needs, incorporates the context of their clients' experiences, and results in an award of damages that adequately accounts for the losses and injuries resulting from the abuse. First, this article highlights the substantial costs of domestic violence and the shortcomings of predominant legal remedies for domestic violence survivors. Second, it discusses the nature of domestic violence, enumerating the types of conduct that characterize the abuse and suggesting how the array and patterns of abuse may impact case development. Next, it identifies potential defendants who can be liable and sets forth potential tort remedies. The article concludes by explaining an attorney's unique

responsibility to place a domestic violence survivor's tort claim(s) within the context of overarching, but dynamic, safety and litigation strategies.

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The Costs of Domestic Violence

The economic costs of domestic violence are staggering. In the United States, it is estimated that medical expenses caused by domestic violence are approximately \$61.8 million every year.¹ Indirect costs, such as diminished quality of life and pain and suffering, are assessed to be \$65 million annually.² Lost pay and damaged or stolen property have been calculated at \$89 million per year.³ Battered women's service providers report that the losses sustained through batterer property destruction and theft prior to separation may average \$10,000 per perpetrator.⁴ All of the research cited above indicates that

the figures are underestimates of the actual costs. Whatever the amount, the cost to society is immense in both human and economic terms.

Costs for Prevention of Recurring Violence

Battered women employ numerous strategies to prevent future violence against themselves and their children. They know that the best way to avert further violence is to minimize the perpetrator's access to them. Therefore, survivors of intimate violence incur preventative costs in an attempt to keep themselves safe.

Costs of Relocation

Battered women often must relocate (to another city, state, or region) in order to protect themselves and their children from future attacks. This may require that the domestic violence survivor break her apartment lease, move furniture, sign a new lease, and transport herself, her dependent children, and her belongings some distance. Often, a battered woman must relocate numerous times before the abuser stops pursuing her to re-establish relationship and control. Thus far, there are no national studies that document such costs of relocation. However, service providers report that the cost may be a minimum of \$5,000 per relocation.⁵ Whatever the exact costs, they are far from negligible and are essential for safety.

Costs of Independent Living

Access to economic resources is the most likely predictor of whether a battered woman will permanently separate from her abuser and establish an independent household.⁶ Three critical ingredients of economic independence for battered women include income from a source other than the batterer,⁷ adequate transportation, and sufficient childcare arrangements.⁸ Battered women with dependent children carry an extraordinary financial burden. In fact, batterers often use manipulation and intimidation related to child support to maintain control over their partners. Without money to live independently from an abusive partner, battered women and their children will not be able to separate and create effective barriers to abuser access.

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Costs of Other Safety Planning

A battered woman may have to spend large sums of money to achieve safety. She may need to get her locks changed or invest in a security system for her home and car. She may have to work different hours or change jobs altogether. She may have to change her route to work, taking one that is less direct or which requires more expensive means of transportation. She may decide to shop in stores that are farther from her home. Each of these safety strategies increase the economic burden that is placed on victims of domestic violence.

Who Pays the Price?

Victims primarily bear the burden of the economic losses suffered from domestic

violence. Insurance companies, crime victim compensation programs, employers, human services providers, and state and federal government agencies also make significant contributions each year. Communities pay a stunning toll as well. Some of the losses for communities are economic, but the interruption and dislocation in women's lives compromise communities even more profoundly. Perpetrators pay virtually nothing.⁹

Economic Shortcomings of Prevailing Legal Remedies

The economic damages sustained by domestic violence survivors remain unmet by criminal, family, and protection order law and practice. The predominant legal remedies employed by domestic violence survivors fail to address the substantial financial harms they incur as a result of the violence. In cases in which the state pursues criminal prosecution and the perpetrator is found guilty, sentences typically do not compensate the victim fully for the medical bills, lost work, destruction of property, and other current and future economic losses resulting from the abuse. Orders for restitution are minimal and are rarely paid promptly or completely. In states where restitution awards cannot be reduced to civil judgments, abuser property may not be attached and sold to satisfy the restitution. Further, if incarcerated, the batterer no longer has employment income to pay restitution, fines, and costs. Thus, while the perpetrator may be criminally liable, he may not be held accountable for the economic costs of his abuse, and survivors of domestic violence are left without the economic resources that they need to become self-sufficient.¹⁰ Without economic security, the safety of survivors is jeopardized.

Payments from state crime victim compensation programs are available to victims of domestic violence throughout the country. However, the range of compensable recovery is narrow, and the compensation ceiling is low. Although most states pay for medical costs, counseling fees, limited attorney fees for prosecuting the compensation claim, lost wages related to participation as a victim-witness in the criminal trial of

the abuser, and funeral expenses, few programs compensate for property destruction, clothing replacement, clean-up of the residential crime scene, relocation expenses, temporary housing, home security systems, and child support, among other costs.¹¹ It may take months for a survivor to receive a compensation award. Crime victim compensation is uniformly too little and too late to undergird the economic viability of survivors.

Similarly, the family law system does not provide survivors of spousal abuse with adequate economic compensation for damages incurred as a result of the abuse.¹² With the advent of no-fault divorce statutes in virtually every state, survivors¹³ of domestic violence are often not entitled to compensation for marital misconduct.¹⁴ Furthermore, courts rarely account for the destruction of marital property attendant to domestic violence when allocating marital property between the divorcing parties. Nor do they divide property to compensate the victim for other economic losses imposed by the abuser, e.g., the acquisition of bad debt or credit, loss of tuition or educational opportunity, and interruption of survivor employment. Courts in "equitable distribution" states frequently do not consider damage to marital property caused by domestic violence or any resultant reduction in the economic viability of survivors in weighing the equities for the division of marital property. The majority of "community property" states distribute property without regard to "marital misconduct."¹⁵ Alimony codes, while permitting temporary awards to rehabilitate a spouse or to improve the dependent spouse's earning potential, typically limit the circumstances giving rise to permanent alimony, notwithstanding the infliction of severe domestic violence, long-term recovery and living costs, or reparations for the violence and coercive controls inflicted by batterers.¹⁶ And even where statutes permit alimony awards, too many courts are reluctant to make awards sufficient to enable survivors to achieve economic security. Beyond these limitations, research indicates that women in general fare worse economically, while men fare

better, following a divorce.¹⁷ This has caused some to conclude that the “major economic result of the divorce law revolution is the systematic impoverishment of divorced women and their children.”¹⁸

Economic relief obtained through a civil protection order may not compensate a victim for her losses and costs. Some civil protection order statutes include provisions intended to relieve the petitioner of the economic burdens incurred as a result of the abuse or as a necessity to prevent future abuse (ranging from repayment of medical bills to temporary mortgage payment).¹⁹ However, these provisions may be narrowly drawn, and enforcement of protection orders (particularly economic provisions) is often a challenge. Though civil contempt proceedings provide petitioners with an avenue to pursue enforcement of economic provisions, oftentimes the evidentiary burdens are heightened, making the task particularly difficult for women forced to proceed without counsel. Even if a battered woman manages to prevail on a civil contempt motion, monetary provisions that are dependent upon the coercive power of the court (*e.g.*, mortgage payments) are only enforceable for the duration of the protection order.

Moreover, the United States Supreme Court struck down the Violence Against Women Act (VAWA) civil remedy provision in its 2000 term, thereby eliminating the only federal private cause of action for battered women.²⁰ When the VAWA provision was in effect, plaintiffs often joined VAWA claims with tort claims because the requisite elements of the tort claim were generally less demanding than those under the VAWA claim. Some states have subsequently enacted similar laws that allow victims of gender-related violence to bring civil actions seeking monetary damages from their perpetrators.²¹

With the damages of domestic violence left uncompensated by criminal sanctions, family law, protection orders, and VAWA, civil tort attorneys are uniquely able and well positioned to aid battered women in obtaining the economic means necessary to rebuild their lives.

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The Nature of Domestic Violence

Lawyers representing survivors of domestic violence need to be familiar with the types of behavior that characterize domestic violence to develop litigation strategies that fully incorporate the reality of battered women’s lives and that address the reparations necessary for safe and independent living. To effectively represent a victim of domestic abuse, an attorney will need to understand how domestic violence operates—the kinds of coercive, denigrating, and violent tactics that a batterer employs and the impact that those tactics may have upon a victim. Once aware, an attorney will be better equipped to elicit various types of information, to counsel the client with a richer understanding of her life circumstances, and to craft case strategies that incorporate the range of harms to a client, including the breadth of her future economic needs.

Coercive Control

The incidence of domestic violence in the United States is startling. The National Crime Victimization Survey estimates that each year at least one million violent crimes are committed against persons by their current or former spouses or dating partners.²² Approximately eighty-five percent of violent crimes committed by intimate partners in 1998 were committed against women.²³ During that same year, seventy-two percent (or 1,320) of the persons murdered by intimates were women.²⁴ Intimate partner homicides comprised approximately thirty-three percent of the murders of women.²⁵

Domestic violence is coercive control; a physically abusive batterer is likely to

employ a range of behaviors over time, all of which reinforce the abuser’s control over his partner’s physical liberty—her ability to live her life free of violence.²⁶ Studies confirm that domestic violence is intentional, instrumental, and strategic, designed to achieve power and control over the

abused and her children.²⁷ The social science literature describes men’s violence against their intimate partners as a vast array of physical assaults, sexual abuse, economic exploitation, psychological degradation, property destruction, hostage-taking, terroristic threats, stalking, burglary, theft, slander, and homicide.²⁸ Reports from battered women reveal that most assaults by batterers are not discrete acts of violence.²⁹ Rather, the batterer engages in a pattern of abusive conduct—physical, sexual, and emotional—designed to achieve and maintain control over the battered woman and to induce fear of the consequences of failure to comply with his demands.

The abusive climate exists “outside and between” physically assaultive acts,³⁰ so that the context of the relationship provides important information about specific abusive acts. The context is an environment in which the interests of the abuser are ascendant. Batterer interests are the ones to which marital resources are dedicated. Abusers set rules that allocate resources and circumscribe the lives of battered women. While the scope and detail of the rules vary, the imposition of extensive, egregious limitations by batterers on their partners is certain, as is the belief in the inalienable prerogative of batterers to enforce rules. The tactics used to enforce the rules range from isolation to homicide.³¹ Batterers urge victim compliance by pointed references to the past violence and deprivation inflicted when victims did not comply with their rules. Thus, each enforcement action or incident of violence recalls the past consequences of resistance to abuser dictates. Taken together, the systemic use of coercive controls amounts to domestic terrorism.³²

The abusive relationship could not exist apart from its institutional supports. While battering may be experienced as a personal violation, it is made possible and facilitated by the beliefs, actions, and omissions of individuals within our communities. Social and institutional supports for battering include a pervasive denial of its frequency and harm, a lack of recognition of the economic structures that render women more vulnerable to abuse, a belief that domestic violence is a private matter that is unworthy of state intervention, a tendency to blame women for men's abuse, and a failure to provide battered women with the resources necessary to achieve safety for themselves and their families.³³ Attitudes of police officers, employers, schools, landlords, physicians, the courts, and others condone domestic violence by failing to protect victims from violence, actively facilitating the violence, sharing confidential information, exposing victims' whereabouts, or discriminating against domestic violence survivors (*e.g.*, in employment, housing, or insurance). As a result, it is more difficult for victims to be free of the violence.

Economic abuse often plays an integral role in a batterer's coercive control tactics. Dire economic straits, in turn, increase a woman's vulnerability to future violence.

Separation Assault

Contrary to the beliefs of many judges, court administrators, attorneys, and juries, leaving a violent partner does not ensure the safety of a battered woman. Leaving an abuser does not necessarily end the violence. In fact, separation often leads to an escalation of violence. One study by the National Crime Victimization Survey revealed that separated women were assaulted three times more often than divorced women and close to twenty-five times more than

married women living with their husbands.³⁴ Another study found that forty percent of a sample of divorced men threatened or used sexual violence against former spouses following separation.³⁵ The commonality of this experience has led to the term "separation assault." Separation assault is defined as

an attack on a woman's body and volition in which her partner seeks to prevent her from leaving, retaliate for the separation, or force her to return. It aims at overbearing her will as to where and with whom she will live, and coercing her in order to enforce connection in a relationship. It is an attempt to gain, retain, or regain power in a relationship, or to punish the woman for ending the relationship.³⁶

Economic Abuse

Economic abuse often plays an integral role in a batterer's coercive control tactics. Dire economic straits, in turn, increase a woman's vulnerability to future violence.³⁷ Batterers frequently control their partners by sabotaging their educational, job training, and employment opportunities. For example, abusers may assault their partner on the eve of an important job interview; they may inflict visible injuries so as to cause embarrassment at the office; they may destroy work clothing or homework assignments; or they may stalk their partners at the workplace. All of these acts are intended to, and may result in, job loss, thereby limiting a survivor's economic independence, subjecting her to financial harm and possible future violence. As one commentator explained, "the woman's relationship with the batterer stands in the way of her efforts to seek education, training or work, and economic need prevents her from leaving the batterer, who may provide financial or other material support for her and her children."³⁸

Beyond employment and educational ruin, economic abuse may take various forms. A batterer may engage in identity theft by taking the personal information of a victim and fraudulently creating credit accounts in her name, subsequently incurring substantial charges for which the victim may be jointly or solely liable. If a victim of domestic violence does have a source of income, an abusive partner may steal her earnings. He may convert her non-marital assets to his exclusive possession or use. He may maintain complete control of bank accounts and ATM cards, denying her all access to economic means.³⁹ All of these efforts keep battered partners financially dependent, thereby exposing them to greater risk of future violence.

Tort Remedies for Battered Women

A full exploration of the possible defendants and the totality of tort claims that can be brought on behalf of battered women is beyond the scope of this article. However, it is important to recognize that tort lawyers can assist domestic violence survivors in collecting damages for harms that would otherwise go uncompensated. There are several torts and an array of defendants that counsel should consider in investigating litigation to achieve economic justice for battered women.

Batterers

The most obvious defendant for a domestic violence civil suit is the abusive spouse himself.⁴⁰ Common causes of action include: assault, battery, intentional or reckless infliction of emotional distress, false imprisonment, and wrongful death. Others suits against batterers may take the form of: intentional interference with custody or visitation, parental kidnapping, defamation, libel and slander, tortious infliction of a sexually transmitted disease, marital rape, sexual assault, stalking, and invasion of privacy. As discussed above, domestic violence is not limited to physical abuse. It also includes property and economic injuries. Potential economic tort causes of action may include: tortious interference with

contractual relations, fraud, fraudulent transfer or concealment, breach of fiduciary duty, undue influence, and securities fraud.⁴¹ Property torts may include: interference with property interest by exclusion, conversion, trespass to chattels, replevin, and destruction of property.⁴² This is not an exhaustive list. Given that a batterer exerts control through a variety of tactics, the causes of action are as varied as his conduct.

Third-Party Defendants

As mentioned earlier, many, if not most, individual acts of domestic violence could not continue with impunity without the support of private and public institutions and the actors within them. Third parties often play some causative or collusive role, either through their acts or their omissions. Employers may jeopardize the safety of battered women by failing to protect them, particularly if the employer is aware of an existing protection order or if the abuser works in the same office.⁴³ Landlords who allow individuals to enter a building based solely on a representation that they have an intimate relationship with the tenant may place battered women in danger and may be liable for negligent security.⁴⁴ Retailers may be liable for negligence for selling guns to batterers.⁴⁵ Police officers, police departments, and other state entities may be liable for their failure to protect battered women from domestic violence in a wrongful death or failure to protect suit.⁴⁶ Information brokers or private investigators may be negligent for disclosing credit information to third parties who use the information to stalk victims.⁴⁷ All of these actions (and others) constitute direct harms for which third parties can and should be held responsible.

Practice Strategies

Litigating the Entire Context

The recurring nature of domestic violence and the context in which abuse occurs, as well as its support by institutional actors, are factors that should inform tort lawyers' strategizing. Building a case around a single incident of violence will not do justice for a client. An attorney will need to take a contextual approach in order to obtain full redress for what the client has suffered. Because each act of



abuse is but “one moment” in a larger picture of coercive control, focusing upon any single act alone will fail to convey and quantify the harm caused.

Exploring Tort Options

A tort attorney should explore how the batterer dealt with finances *vis-a-vis* himself and the client. Eliciting this type of information often requires prompting because domestic violence survivors do not ordinarily conceive of economic abuse as a part of domestic violence. It may even require further investigation into financial records to unearth abuses that were previously unknown to the client.

Tolling the Statute of Limitations

A “single occurrence” strategy may limit the types of claims pled or may minimize the damages sought. Furthermore, if the injurious incident occurred long ago, the claim may be barred by the statute of limitations, despite the fact that “referent language”⁴⁸ and non-injurious, abusive conduct lasted long after that particular incident. Plaintiff’s counsel may overcome the statute of limitations bar by asserting that domestic violence is a “continuing tort.”⁴⁹ Under the “continuing tort” theory, the abuse is understood as a cumulative injury such that the statute of limitations begins to run only when the abuse stops.⁵⁰ This theory

enables the plaintiff to seek redress for the entire history of the abuse.⁵¹

Alternatively, where a batterer’s intimidation tactics caused a survivor of abuse to delay in filing suit for fear of the repercussions, counsel may argue for tolling the statute of limitations based on duress.⁵² It is not realistic to expect an abused spouse to assert her claims during the course of her marriage. Due to economic and physical safety concerns, married victims may need to secure their safety and that of their children through divorce proceedings before they file a tort action. For all victims of domestic abuse, the risks of increased violence may prevent women from initiating tort claims within the ordinary statute of limitations.

Utilizing Expert Testimony

Expert testimony will assist judges and juries in understanding the continuing nature of domestic torts and the many reasons that victims may not be able to safely litigate until the violence has stopped and the survivor is protected from recurrent abuse. Experts can be extraordinary teachers, vividly describing separation assault and the way it has specifically impacted a client’s actions. Expert testimony may persuade the trier of fact that the legal elements of the domestic tort claim are satisfied and that the defenses asserted by the defendant



Safety Planning for Economic Justice

Safety considerations should guide representation of battered women. While the legal system provides victims of domestic violence with potentially powerful tools, these tools can trigger retaliatory violence against battered women and their children.⁵⁵ Thus, counsel for battered women should recommend that clients undertake safety planning for daily living. A client should consider the various arenas in which she leads her life. Then she should identify the risks the batterer poses in each arena, the allies that have intervened to protect her in each location, and the impediments to safety. In reflecting on the risks and protections in each arena, the client may recollect other tortious conduct of the abuser, but, more importantly for her survival, she may recognize significant risks that she previously had not apprehended.

Clients will be well-served by constructing specific safety strategies for litigation, considering each encounter with the abuser, and the potential for retaliatory violence in each phase of the lawsuit. Local domestic violence advocates may assist her with safety planning. Counsel should contact their local domestic violence program in order to collaborate with them in the safety planning process.

An important part of safety planning is identifying the resources necessary to effectively implement that plan. A client will want to examine the risks to independence and well-being that flow from the lack of economic wherewithal, e.g., risks to essentials such as housing, food, child care, healthcare, employment, and education for the children. In assessing whether a particular course of action is suitable, a battered woman must consider how it will impact both batterer-generated and life-generated risks, in all of their complexities.⁵⁶ A “life-generated” risk is one that exists apart from the abuse, but which plays a vital role in a battered woman’s decision-making. Life-generated risks may relate to a battered woman’s economic status, health, or potential educational opportunities for herself or her children. A client may opt for tort claims or litigation strategies that reflect her safety assessment—steering clear of

some approaches in light of anticipated retaliatory behavior.

It is important to view tort litigation as just one among numerous potential legal strategies employed within a larger safety plan. A survivor’s decision to pursue a tort suit is a decision to pursue one strategy among many. It is a tactical choice that needs to make sense to her in light of all that she knows about the batterer and her own economic circumstances. By approaching the case with short-term and long-term safety strategies in mind, the tort attorney can assist in holding the batterer accountable for the violence, while helping the client achieve the economic justice required for her safety and freedom. **W**

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must fail. Without expert elucidation, misunderstandings of domestic violence may lead judges and jurors to ask, “Why didn’t she leave?”—perhaps attributing the duration of the relationship to psychopathology or even notions of masochistic tendencies.

Counsel for defendants may translate lay misconceptions that violence ends upon separation (or that battered women are free to leave) into traditional tort defenses, such as consent, assumption of the risk, and contributory or comparative negligence.⁵³ To rebut these defenses, expert witnesses may aid in explaining domestic abuse, as well as the individual, institutional, societal, and economic factors that kept the victim from leaving the abusive relationship.⁵⁴

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2. TED R. MILLER ET AL., U.S. DEPT. OF JUSTICE, VICTIM COSTS AND CONSEQUENCES: A NEW LOOK (1996).
3. *Id.*
4. Barbara J. Hart, Legal Road to Freedom, in BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE 18 (Marsali Hansen et al. eds., 1993).
5. *Id.*
6. Edward Gondolf, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988).
7. Angela Browne, et al., *The Impact of Recent Partner Violence on Poor Women's Capacity to Maintain Work*, in VIOLENCE AGAINST WOMEN, Vol 5, No. 4. (Joan Zorza ed., 1999).
8. Edward Gondolf, *Male Batterers*, in FAMILY VIOLENCE: PREVENTION AND TREATMENT (R. Hampton ed., 1993).
9. Barbara J. Hart, Policy Issues: Tort Recovery (2000) (unpublished manuscript on file with the Pennsylvania Coalition Against Domestic Violence).
10. MS. FOUNDATION, SAFETY & JUSTICE FOR ALL: SAFETY PROGRAM: EXAMINING THE RELATIONSHIP BETWEEN THE WOMEN'S ANTI-VIOLENCE MOVEMENT AND THE CRIMINAL LEGAL SYSTEM (2003).
11. Barbara J. Hart, Policy Issues: Crime Victim Compensation (2000) (unpublished manuscript on file with the Pennsylvania Coalition Against Domestic Violence).
12. A tort attorney representing a victim of spousal abuse will need to coordinate his or her tort litigation strategy with that of the divorce case. Most states allow separate actions for divorce and personal injuries. However, some states require that divorce and tort actions be joined, based on the fact that the claims are between the same parties and involve the same transaction. (LEHRMAN, *infra* n. 41, at § 2.93.) Still other states forbid joinder of tort and divorce claims, due to the distinctive goals of the two actions. *See, e.g., Heacock v. Heacock*, 520 N.E.2d 151 (1988) (barring joinder). In states where separate actions are permissible, defendants may assert *res judicata*, equitable estoppel, or waiver to bar tort actions following a divorce. (LEHRMAN, *infra* n. 41, §§ 2.81-2.92.) Thus, a domestic tort attorney needs to become familiar with the tort/divorce law interface in the state(s) in which the actions are pending or will be initiated. Where the actions are separate and the client has different counsel for each, the tort attorney and divorce attorney should consult with one another to craft a coordinated strategy.
13. Although all states have accepted some form of no-fault divorce, fault may play some role in the process, either through property division or alimony. *See* HARRY D. KRAUSE, ET AL., FAMILY LAW: CASES, COMMENTS, AND QUESTIONS 557 (5th ed. 2003); *see also* Ira Mark Ellman, *The Place of Fault in a Modern Divorce Law*, 28 ARIZ. ST. L. J. 773, 781 (1996) (providing a table of existing law on marital fault).
14. *See* Katherine Bartlett, *Feminism and Family Law*, 33 FAM. L. Q. 475 (1999); *see generally* Barbara Bennett Woodhouse, *Sex, Lies, and Dissipation: The Discourse of Fault in a No-Fault Era*, 82 GEO.

- L. J. 2525 (1994) (advocating a reshaping of the discourse of fault in marriage to provide affirmative protections for women). *But see Burt v. Burt*, 386 N.W.2d 797, 800 (Minn. Ct. App. 1986) (stating that "[t]he statutory prohibition against considering marital misconduct does not foreclose a judge from considering the financial needs resulting from a chronic health problem that in turn was caused by physical abuse during the marriage.").
15. *See* Catherine Mazzeo, Note, *Rodriguez v. Rodriguez: Fault as a Determinative Factor in Alimony Awards in Nevada and other Community Property Jurisdictions*, 2 NEV. L. J. 177, 184-185 (2002) (listing Arizona, California, New Mexico, and Washington as community property states with no-fault alimony).
16. *See* Peter Nash Swisher, *The All Principles: A Farewell to Fault*, 8 DUKE J. GENDER L. & POLY 213, 227 (2001) (concluding that "the current judicial trend in many states . . . [is] to severely limit the . . . effect of fault-based statutory divorce factors except in serious or egregious circumstances").
17. *See* LENORE WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA, 339 (1985); *see generally* Herma Hill Kay, Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath, 56 U. CIN. L. REV. 1 (1987).
18. Weitzman, *supra* n. 17, at xiv.
19. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Caselaw*, 21 HOFSTRA L. REV. 801, 912-914, 937-940 (1993) (canvassing state protection order "catch-all," property-related, and monetary provisions); *see also* Powell v. Powell, 547 A.2d 973 (D.C. 1988) (ordering respondent to pay monetary relief including child support and mortgage payments under the District of Columbia's domestic violence statute's catch-all provision although there was no explicit authorization for the remedies in the statute).
20. *United States v. Morrison*, 529 U.S. 598 (2000).
21. CAL. CIV. CODE § 52.4 (2004); ILL. COMP. STAT. 740, §§ 82/1-82/15 (2004).
22. CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEPT. OF JUSTICE, INTIMATE PARTNER VIOLENCE 1 (2000).
23. *Id.*
24. *Id.* at 2.
25. *Id.*
26. *See generally* Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973 (1995).
27. EDWARD GONDOLF BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988).
28. *See* Patricia Mahoney et al., *Violence Against Women by Intimate Relationship Partners*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 143 (Claire M. Renzetti et al. eds. 2001).
29. *Id.*
30. P.H. Smith & J. Smith, The Measurement Trap: Conceptualizing Woman Battering. Paper presented at the National Council for International Health Annual Conference, Durham, New Hampshire (June 1995).
31. Barbara J. Hart, *Rule Making and Enforcement/Rule Compliance and Resistance*, in I AM NOT YOUR VICTIM: ANATOMY OF DOMESTIC VIOLENCE 258-63 (Beth Sipe et al. eds., 1996).
32. The term "domestic terrorism" analyzes domestic violence to the strategies used against prisoners of war. "Terrorism relies on well-developed tactics of intimidation and coercion, buttressed by physical violence. Whether it is used to defend privileges or to threaten and challenge them, the underlying premise is the destabilization of a civilian population." Isabel Marcus, *Reframing "Domestic Violence": Terrorism in the Home*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE (Martha Fineman et al. eds., 1994).
33. *See* ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 21-28 (Yale University Press) (2000); *See also* SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 26-27 (South End Press) (1982).
34. RONE T. BACHMAN & LINDA E. SALTZMAN, U.S. DEPT. OF JUSTICE, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED NATIONAL CRIME VICTIMIZATION SURVEY (1995).
35. TERRY ARENDELL, FATHERS AND DIVORCE (1995).
36. Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5 (1991).
37. JODY RAPHAEL & RICHARD M. TOLMAN, TAYLOR INSTITUTE, TRAPPED BY POVERTY, TRAPPED BY ABUSE: NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE (1997).
38. CATHERINE T. KENNEY & KAREN R. BROWN, NOW LEGAL DEFENSE AND EDUCATION FUND, REPORT FROM THE FRONT LINES: THE IMPACT OF VIOLENCE ON POOR WOMEN (1996).
39. *See generally* THE NATIONAL CONSUMER LAW CENTER, GUIDE TO CONSUMER RIGHTS FOR DOMESTIC VIOLENCE SURVIVORS (Chi Chi Wu and Deanne Loonin eds.) (2003).
40. This was not always the case. Historically, the "interspousal immunity" doctrine precluded spouses from suing one another for any type of misconduct in order to serve the policies of marital harmony and avoid spousal fraud and collusion against insurance com-

panies. Almost every state (with the exception of Georgia and Louisiana) has recognized that spousal violence, rather than lawsuits, disrupt familial harmony, by partially or fully abrogating spousal immunity. *See* Fredrica L. Lehrman, *Suing: Domestic Violence Cases in Civil Court*, in VIOLENCE AGAINST WOMEN, 42-6 (Joan Zorza ed., 2002).

41. Fredrica L. Lehrman, *Torts*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE, THE AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE 6-9 to 6-13 (Deborah L. Goelman et al., eds., 1996); FREDERICA LEHRMAN, DOMESTIC VIOLENCE PRACTICE & PROCEDURE, at Sections 2:0 - 2:126 (1996).
42. *See* Fredrica L. Lehrman, *Torts*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE, THE AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE 6-9 to 6-13 (Deborah L. Goelman et al., eds., 1996).
43. *See St. Paul Fire & Marine Insurance Co. v. Seagate Technology, Inc.*, 570 N.W.2d 503 (Minn. Ct. App. 1997) (holding employer liable for workplace assault, but denying insurance company liability). For a recent, but unsuccessful, example of a tort lawsuit brought by a domestic violence victim against her employer who was shot by her husband while she was in the break room, *see Midgett v. Wal-Mart Stores, Inc.*, 2004 U.S. Dist. LEXIS 359 (E.D. Pa. 2004). Survivors may file a suit against their employer for wrongful termination. *See Apesos v. Mem'l Press Group*, 15 Mass. L. Rep. 322 (Mass. Super. Ct. 2002) (employee's claim that she was fired after going to court to obtain an extension of her temporary abuse prevention order stated a cause of action for wrongful discharge and for breach of implied covenant of good faith and fair dealing).
44. *See generally, Kline v. 1500 Massachusetts Ave. Apt. Corp.*, 439 F.2d 477 (D.D.C. 1970).
45. *See Kitchen v. K-Mart*, 697 So. 2d 1200 (Fla. 1997) (holding retailer liable for selling a gun to an intoxicated batterer, who then used the gun to shoot his ex-girlfriend, rendering her a quadriplegic).
46. *See Sorichetti v. City of New York*, 482 N.E.2d 70 (1985) (entering a \$2,000,000 judgment in favor of a mother who brought a negligence action against the police for refusing to prevent her husband from violently attacking their daughter with a fork, knife, and screwdriver and trying to saw off her leg because the mother's protection order and the police's knowledge of the father's violence created a special relationship). Civil rights lawsuits against the police may present an additional means to secure damages for victims of domestic violence. *See Gonzales v. City of Castle Rock*, 307 F.3d 1258 (10th Cir. 2002) (reversing district court's decision that plaintiff had failed to state a claim where a battered mother brought 42 U.S.C. § 1983 civil rights action against city and police officers on behalf of her three daughters who were murdered by their father while she sought, but could not obtain, police enforcement of her restraining order); *see also Estate of Macias v. Ihde*, 219 F.3d 1019 (9th Cir. 2000) (\$15 million civil rights lawsuit alleging that the sheriff's department discriminated against Latina victim of domestic violence whose repeated attempts to secure help from the sheriff's department were ignored, resulting in her death).
47. *See Rensburg v. DocuSearch, Inc.*, 816 A.2d 1001 (N.H. 2003) (holding that a private investigator or information broker has a duty to a stalking victim's estate for selling the victim's credit information to a stalker who used the information to find the victim's location, went to the location, and killed the victim).
48. Batterers often allude to prior incidents of violence to further intimidate and control their partners on subsequent occasions.
49. FREDERICA LEHRMAN, DOMESTIC VIOLENCE PRACTICE & PROCEDURE, § 2:81 (West) (1996).
50. Clare Dalton, *Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities*, 31 NEW ENG. L. REV. 319, 357 (1997). Notes, abusive acts that

are separate and wholly dissimilar create separate causes of action and the statute of limitations begins to run for each action from the time of the wrongful act. It is, therefore, important for the practitioner to distinguish between separate acts of assault, defamation, or battery, and a continuing course of wrongful conduct, often found in actions for intentional infliction of emotional distress actions.

LEHRMAN, note 48(citations omitted).

51. *See e.g., Curtis v. Firth*, 850 P.2d 749 (Idaho Ct. App. 1993) *aff'd* 869 P.2d 229 (Idaho 1994) (adopting the theory of continuing tort in a domestic violence tort suit for intentional and/or reckless infliction of emotional distress, thereby permitting a \$1,000,000 jury verdict of which \$725,000 was a punitive damage award, to stand).
52. Dalton, *supra* note 49 at 363.
53. Fredrica L. Lehrman, *Suing: Domestic Violence Cases in Civil Court*, in VIOLENCE AGAINST WOMEN, 42-47 (Joan Zorza ed., 2002).
54. While doing so, the expert testimony will bolster the need for economic damages as a mechanism for future violence prevention.
55. Desmond Ellis and Walter DeKeseredy have shown that "post-separation woman abuse" correlates with women's assertion of independence. *See* Desmond Ellis & Walter S. DeKeseredy, *Marital Status and Woman Abuse: The DAD Model*, 19 INT'L J. OF SOCIOLOGY OF THE FAMILY 67-87 (1989). In Ptacek's study, eighty percent of women interviewed indicated that their former partners made threats or attempts at physically forcing them to return to the relationship. *See* JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 80-81 (Claire Renzetti, ed., Northeastern University Press) (1999).
56. *See* JILL DAVIES, NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, BUILDING OPPORTUNITIES FOR BATTERED WOMEN'S SAFETY AND SELF SUFFICIENCY (1998).