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# Louisiana Tort Law

Publication 83175 Release 14 November 2017

## HIGHLIGHTS

- This release contains numerous updates and recent developments in Louisiana tort law that have been added throughout the publication.

**Chapter 2, Intentional Torts and Defenses:**

New § 2.06 added, discussing community obligations of husband and wife during the existence of a community property regime.

In *Johnson v. Henry*, 206 So. 3d 916 (La. App. 1st Cir. 2016), the defendant wife took her co-worker's social security number from the employer's data bank and used it to purchase a computer. Defendant husband testified that he was aware of the computer and it was used primarily by the couple's children. Because the obligation resulting from intentional wrong benefited the community, it was presumed to be a community obligation. *See* Chapter 2.

**Chapter 5, Duty: General and Specific Risks:**

In *Carr v. Sanderson Farms, Inc.*, 189 So. 3d 450 (La. App. 1st Cir. 2016), plaintiff alleged employer had knowledge of co-employee's pre-employment violent tendencies due to background checks and that employer also had knowledge of two episodes of violent behavior after employment, one of which occurred at work. Employee also informed employer that co-employee had threatened to get her and that he might do so at work. The court held that the petition states a valid claim for relief against employer in negligence.

In *Chatman v. Southern University at New Orleans*, 197 So. 3d 366 (La. App. 4th Cir. 2016), the plaintiff and her roommate leased a campus apartment from SUNO. When the plaintiff began to have problems with her roommate and the roommate's unauthorized guests, she sought the assistance of her building's community assistant, but was unable to make contact with him at his apartment. Following a confrontation with her roommate at the apartment, the plaintiff was severely beaten by both her roommate and the roommate's minor cousin, who was an unauthorized guest. The court held that the risk of a vicious physical attack on the plaintiff by a non-

student minor who was not authorized to be present in the apartment is easily associated with SUNO's duty to ensure the safety of its students who live in its on-campus housing. *See* Chapter 5.

**Chapter 6, Breach:**

In *Stafford v. Exxon Mobil Corporation*, 212 So. 3d 1257 (La. App. 1st Cir. 2017), *writ denied*, ___ So. 3d ___, 2017 La. LEXIS 858 (La. 2017), the plaintiff fell in a pothole as she disembarked from a charter bus at a service station. The court held that the heightened duty of care applicable to a public common carriers does not apply to private carriers who owe a duty of ordinary care. The private carrier had a duty to exercise reasonable care to provide passenger with a safe place to exit the bus. The driver had exited the bus before the passengers and had not seen any hazards. *See* Chapter 6.

**Chapter 7, Damages:**

In *Warren v. Shelter Mut. Ins. Co.*, 196 So. 3d 776 (La. App. 3d Cir. 2016), *writ granted*, 215 So. 3d 246 (La. 2017), the Louisiana Third Circuit evaluated the constitutionality of an award of $23 million under general maritime law. Plaintiffs' son was a passenger in a boat, the steering failed, and he was thrown from the boat and struck by the propeller 19 times, killing him. The Third Circuit held that the evidence supported an award of punitive damages under general maritime law.

In *Cooper v. Patra*, 215 So. 3d 889 (La. App. 2d Cir. 2017), *writ denied*, 2017-0481 (La. 2017), the damages may be substantial for bystander emotional distress under art. 2315.6. The Second Circuit affirmed an award of $25,000 each to the mother and father of a six-year-old child whose heart was punctured during a medical procedure at a hospital. The award was affirmed although there was no medical testimony or diagnosis regarding the emotional distress suffered by the parents. *See* Chapter 7.

**Chapter 8, Proving Fault:**

In *Gauthier v. Dollar Tree Stores, Inc.*, 208 So. 3d 503 (La. App. 2d Cir. 2016), *writ denied*, 214 So. 3d 869 (La. 2017), plaintiff fell over a box stacked in an aisle as she was reaching for an item and stepping back. The plaintiff argued that because the box was visible and the plaintiff was aware that the merchant had placed numerous boxes throughout the store, the condition was open and obvious. The Second Circuit distinguished several cases on which defendant relied for the open-and-obvious conclusion, holding that the box on the floor in the case before it was smaller than the objects involved in those cases.

In *Luquette v. Great Lakes Reinsurance (UK) PLC*, 209 So. 3d 342 (La. App. 5th Cir. 2016), *writ denied*, 216 So. 3d 806 (La. 2017), a case in which plaintiff fell on ice at a carwash that had a system that turned on hoses when the temperature fell below freezing. In a claim under Art. 2317.1, plaintiff established that (1) carwash at which plaintiff was injured was in defendant's custody; (2) carwash contained a defective condition that presented an unreasonable risk of harm; (3) defective condition caused plaintiff to fall; and (4) defendant knew or should have known of defect. *See* Chapter 8.

**Chapter 9, Defenses to Negligence: The Victim's Substandard Conduct:**

In *Foster v. Kinchen*, 217 So. 3d 437 (La. App. 1st Cir. 2017), the First Circuit held that a bicycle is not a motor vehicle for purposes of R.S. 9:2798.4, and thus fact that plaintiff who was riding bicycle when struck by car had BAL over 0.08 percent did not preclude his recovery.

In *James v. Berkley Ins. Co.*, 206 So. 3d

393, 396 (La. App. 1st Cir. 2016), the First Circuit stated in a recent decision that the sudden emergency doctrine has not been subsumed by comparative fault, but some courts treat the defense as "one of the factual considerations used in assessing the degree of fault to be attributed to a party."

In *Moore v. IASIS Glenwood Regional Med. Ctr., Inc*., 216 So. 3d 187 (La. App. 2d Cir. 2017), *writ denied*, 2017-0465 (La. 2017), the issue was when to apply comparative fault in a medical malpractice case in which there is a $100,000 settlement but the damages did not exceed the $500,000 statutory cap. The court held that comparative fault percentages must be allocated before the imposition of the settlement credit. By following this approach, there is no risk that the plaintiff will recover damages that the jury found were caused by him. *See* Chapter 9.

**Chapter 10, Prescription and Peremption:**

In *Correro v. Ferrer*, 216 So. 3d 794 (La. 2016), the Louisiana Supreme Court considered a situation in which a claimant filed a complaint seeking a medical review panel with the Division of Administration (DOA) and later filed an amendment to the complaint adding newly discovered defendants, which the DOA converted into a request for a separate medical review panel after issuing its opinion in the first panel. The added defendants, when sued, filed exceptions of prescription. The Court held that had claimant's amendment been treated as such rather than converted into a request for a new panel, it would have continued the interruption of prescription from the first complaint. The Court strictly construed the statute and held that the timely filed amendment maintained the suspension of prescription against all joint and solidary obligors. *See* Chapter 10.

**Chapter 11, Immunity:**

In *Noyel v. City of Gabriel*, 202 So. 3d 1139 (La. App. 1st Cir. 2016), the court held that "Willful misconduct" pursuant to La. R.S. 29: 735 is some voluntary, intentional breach of duty—which may be unlawful, dishonest, and/or improper—that is committed with bad intent or, at best, with wanton disregard for the consequences. *See* Chapter 11.

**Chapter 12, Multiple Tortfeasors and Solidary Liability:**

In *Patout v. Underwriters at Lloyd's London*, 213 So. 3d 1283 (La. App. 3rd Cir. 2017), the plaintiff, who was injured when the cable of an elevator located on his brother's property snapped, sued his brother and the manufacturers and sellers of the elevator's hoist system. The court held that the manufacturer has a cause of action for contribution and/or indemnity. "It is possible that [the brother] is at fault for the injuries suffered by [the plaintiff] when the homemade elevator failed, considering [the manufacturer's] allegation that the equipment sold was used in a manner for which it was never intended." *See* Chapter 12.

**Chapter 13, Vicarious Liability:**

In *Ames v. Ohle*, 219 So. 3d 396 (La. App. 4th Cir. 2017), where the defendant bank demonstrated that the alleged tortfeasor was not its employee and that it did not exercise control over him, and the plaintiff failed to present any precedent supporting how a parent company, such as the defendant bank, could be vicariously liable for the actions of its subsidiary's employee, there was no genuine issue of material fact as to whether the defendant bank was a proper party to the suit. *See* Chapter 13.

**Chapter 14, Strict Liability:**

In *Maricle v. Axis Medical & Fitness*

*Equipment*, 191 So. 3d 697 (La. App. 2d Cir. 2016), a medical supplier leased a wheelchair to the plaintiff for use while the plaintiff recovered from injuries sustained in an automobile collision. While the plaintiff was being pushed up a ramp, the back of the wheelchair ripped, causing the plaintiff to fall out of it and reinjure his neck. The court held that the lease provisions, La. C.C. arts. 2696–2697, which impose strict liability on the lessor of a thing containing a vice, applied to the plaintiff's claim against the medical equipment supplier. *See* Chapter 14.

**Chapter 15, Product Liability:**

In *Dortch v. Doe*, 217 So. 3d 449 (La. App. 1st Cir. 2017), the plaintiff suffered injury in an auto accident and sued manufacturer claiming that the failure of his air-bags to deploy increased his injuries. The Appellate court affirmed the trial court's decision stating that the plaintiff presented no evidence to establish that the only fair and reasonable conclusion was that the air bags were unreasonably dangerous. There are instances in which an air bag's failure to deploy is consistent with its proper functioning and thus it cannot be said that the failure of the airbags to deploy was the result of a defect. *See* Chapter 15.

**Chapter 20, Intentional Interference with Contract:**

In *Jeff Mercer, LLC v. State of Louisiana, through the Department of Transportation and Development*, 222 So. 3d 1017, 2017 La. App. LEXIS 1069 (La. App. 2d Cir. 2017), the court held that to prevail on a claim for tortious interference with business, a plaintiff must prove by a preponderance of the evidence that defendants improperly influenced others not to deal with the plaintiff; such a cause of action is separate and distinct from a claim for interference with a contract, because with a tortious interference with business claim there must be a showing that defendants actually prevented the plaintiff from dealing with a third party. *See* Chapter 20.

**Chapter 21, Negligent Provision of Services (Malpractice):**

In a recent decision, *Pitts v. Louisiana Medical Mutual Ins. Co.*, 2016-1232, 218 So. 3d 58 (La. 2017), the Louisiana Supreme Court discussed the standards for a trial court's granting a JNOV or new trial where the trial judge granted a JNOV and conditionally granted a new trial based on the court's assessment that "[t]he jury just got it totally wrong," being confused as to the standard of care applicable to an emergency room physician. The issue in the case was whether the emergency room doctor breached the standard of care in not transferring an ill infant to a higher care facility, even after a nurse urged the transfer. The infant died. The Supreme Court found that the record supported the trial court's reasoning that the jury was confused about the applicable standard of care. The Court upheld the granting of a new trial, but not a JNOV.

In *Billeaudeau v. Opelousas General Hosp. Authority*, 2016-0846, 218 So. 3d 513 (La. 10/19/2016), the Louisiana Supreme Court, applying the Coleman factors, held that a claim that a hospital was negligent in credentialing a doctor who was an independent contractor in the hospital's emergency room sounds in general negligence rather than medical malpractice. *See* Chapter 21.

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