

Domestic Relations

Class 9

Child Arrangements



FAMILY D

Domestic Violence: Between Spouses

- **Spousal Rape**

- Legal doctrine that did not require consent for marital sex has been eliminated in all jurisdictions.
- Many jurisdictions require greater evidence or place certain procedural safeguards in spousal rape cases.

- **Special Protections Against Violence Between Spouses**

- Many states increase severity of assault punishments if they are domestic violence cases.
- Federal “Violence Against Women” Act creates a federal civil cause of action on the grounds of domestic violence.
- Availability of restraining orders to be sought *ex parte* against abusive spouses.
- “Battered Women’s Syndrome” available sometimes as a defense or mitigation against a criminal charge.



Domestic Violence: Children

- Violence against children, especially sexual abuse, is punished more severely than against adults.
- Family violence civil and criminal statutes apply to children as well as spouses.
- **Corporal punishment of children in schools:**
 - Banned in about half of the states.
 - Where allowed, it must not be excessive and there are certain procedural safeguards, such as the presence of a witness.
- **Corporal punishment of children by parents or guardians:**
 - Allowed to some to degree in all states.
 - Specific exceptions made in state criminal codes to exempt parents using reasonable discipline from state assault charges.
 - Must be reasonable. Any “excessive” or “unreasonable” corporal punishment will eliminate the protection granted parents and the parent can be punished as harshly as would be a stranger for a similar action.



Torts Committed by Minors

- **Modern Rules:**

- A minor of any age can be liable for intentional torts as long as they're old enough to form an intent.
- Children can also be liable for negligence, but only if their behavior did not rise to the level of a reasonable child of similar "age, experience and intelligence."
- When engaging in an "adult activity," (i.e., something dangerous enough that it is generally considered unsafe for children) a child must live up to the standard of a reasonable adult or be liable for negligence!

- **Parents' Liability for Children's Torts**

- Many states today make parents responsible for children's torts, especially intentional torts, but only up to a certain point.
- Aside from vicarious liability, negligent supervision can be a cause of action against the parent him or herself.
- Family Purpose Doctrine regarding family cars



