Part 1

Common Law Causes of Action

1A-1 ABUSE OF PROCESS

An action for abuse of process lies against any person who:

1) Uses a judicial process against another;
2) in an improper manner or to accomplish a purpose for which it was not designed.

Mozzochi v. Beck, 204 Conn. 490, 494 (1987).

Statute of Limitations

Three years from the date of the act complained of. Conn. Gen. Stat. § 52-577; *see Timbers v. Updike, Kelly & Spellacy, P.C.*, 83 Conn. App. 442, 446, *cert. denied*, 271 Conn. 927 (2004).

Notes

"Although process . . . cover[s] a wide range of judicial procedures, to prevail on an abuse of process claim, the plaintiff must establish that the defendant *used a judicial process* for an improper purpose."

McCullough v. Town of Rocky Hill, 198 Conn. App. 703, 713-14, *cert. denied*, 335 Conn. 985 (2020) (emphasis in original) (affirming summary judgment as to allegations that town misused property revaluation process and zoning enforcement process); *cf. Larobina v. McDonald*, 274 Conn. 394, 406-07 (2005) (assuming, without deciding, that abuse of process claim may be predicated on conduct other than institution and prosecution of legal action). Moreover, an ulterior motive, by itself, is not enough to establish abuse of process. *See McCloskey v. Angelina*, 2017 WL 7053897, at *3 (Conn. Super. Ct. Dec. 22, 2017) (granting motion to strike because "an ulterior primary motive will not expose an actor to liability if the process is used for its intended purpose") (citing *Ventres v. Goodspeed Airport, LLC*, 301 Conn. 194, 214 (2011)).

"Abuse of process differs from [vexatious litigation] in that the gist of the tort is not commencing an action or causing process to issue without justification,

but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish. The purpose for which the process is used, once it is issued, is the only thing of importance." (Internal quotation marks omitted.) *Lewis Truck & Trailer, Inc. v. Jandreau*, 11 Conn. App. 168, 170-71 (1987). As a result, unlike actions for malicious prosecution or vexatious litigation, the action for abuse of process does not require proof of 1) the termination of the original proceeding, 2) the lack of probable cause, or 3) malice. *Id.*; *see also Shaeffer v. O.K. Tool Co.*, 110 Conn. 528 (1930). Nonetheless, courts have stricken abuse of process claims as premature because the original proceeding was still pending. *See Cokic v. Fiore Powersports, LLC*, 2017 WL 5244195, at *2-3 (Conn. Super. Ct. Oct. 11, 2017) (citing *Wes-Garde Components Grp., Inc. v. Carling Techs., Inc.*, 2010 WL 1497553 (Conn. Super. Ct. Mar. 10, 2010)); *see also Larobina*, 274 Conn. at 408 (trial properly rendered judgment for defendants on abuse of process claim that was "duplicative and premature"); *MacDermid, Inc. v. Leonetti*, 158 Conn. App. 176, 178 (2015) (statutory claim of discriminatory retaliation against workers' compensation claimant premised solely on litigation misconduct may not be brought prior to termination of underlying litigation).

In addition, there is a heightened burden of proof for an abuse of process claim against an attorney in order to balance the attorney's primary duty of robust representation of the interests of the client. Thus, a lawyer's ethical duty not to pursue groundless litigation "does not give rise to a third party action for abuse of process unless the third party can point to specific misconduct intended to cause specific injury outside of the normal contemplation of private litigation." *Rieffel v. Johnston-Foote*, 165 Conn. App. 391, 395 (2016) (quoting *Mozzochi*, 204 Conn. at 497; *see Suffield Dev. Assocs. Ltd. P'ship v. Nat'l Loan Invs., L.P.*, 260 Conn. 766, 776 (2002)) (defendants' wrongful, excessive and extortionate conduct in execution of judgment supported action for abuse of process). Courts take the specificity requirement seriously. *See Mario v. Stratton*, 2018 WL 1631439, at *2 (Conn. Super. Ct. Feb. 28, 2018) (granting motion to strike abuse of process complaint against attorney because allegations of "utterly baseless" litigation, and desire to "avoid and/or recoup repayment of earned fees" and "force plaintiff to incur costs associated with defending a lawsuit" are insufficiently specific).

Note that the Bankruptcy Code preempts vexatious litigation and abuse of process actions in state court. *Metcalf v. Fitzgerald*, 333 Conn. 1, 8 (2019).

1A-2 ACCOUNTANT MALPRACTICE

To prevail on a claim of accountant malpractice, a plaintiff must establish the following elements:

(1) a duty to conform to a professional standard of care for the plaintiff's protection;

(2) a deviation from that standard of care;

(3) injury; and

(4) a causal connection between the deviation and the claimed injury.

Stuart v. Freiberg, 316 Conn. 809, 833 (2015).

Statute of Limitations

The statute of limitations for an action for accountant malpractice is three years from the date of the alleged malpractice. Conn. Gen. Stat. § 52-577; *see Seeman v. Arthur Anderson & Co.*, 896 F. Supp. 250, 255 (D. Conn. 1995). *Seeman* suggests, but does not specifically hold, that the "continuing duty" doctrine would toll the running of the statute of limitations. *Id.* at 256. Logic likewise suggests that the "continuous representation" or "continuing duty" doctrines, applicable for example in the context of legal malpractice claims, also should apply to accountant malpractice. In *Iacurci v. Sax*, 313 Conn. 786, 807 (2014), the Supreme Court held that the fraudulent concealment statute may toll the three-year statute of limitations (but found that the plaintiff had failed to demonstrate the statute's applicability). *See LEGAL MALPRACTICE*, *below.*

Notes

An accountant who merely prepares tax returns owes his client a professional duty, not a fiduciary duty. *See Iacurci v. Sax*, 139 Conn. App. 386, 406-07 (2012), *aff'd*, 313 Conn. 786 (2014). The former "implicates a duty of care, while breach of a fiduciary duty implicates a duty of loyalty and honesty." *Id.* at 402 (quoting *Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 56-57 (1998)). However, whether a fiduciary relationship exists depends in large measure on the specific nature of the accounting services provided. *See Iacurci*, 139 Conn. at 409-11 (discussing numerous cases from other jurisdictions). Whether a fiduciary duty exists is a question of law, subject to plenary review on appeal. *Iacurci*, 313 Conn. at 796.

As with other types of malpractice actions, unless a plaintiff offers proof "that the defendant . . . assured or warranted a specific result," then the claim sounds only in tort and not in contract. *Arnold v. Weinstein, Schwartz & Pinkus*, 1996 WL 93602, at *2 (Conn. Super. Ct. Feb. 13, 1996). *Arnold* is the only case that discusses this question with regard to accountant malpractice, but there appears to be a split of authority among the trial courts in Connecticut with regard to medical malpractice. *See MEDICAL MALPRACTICE (STANDARD)*, *below.* As with other species of malpractice, a plaintiff must provide expert testimony to establish the relevant standard of care and the breach thereof, unless there

"is such an obvious and gross lack of care and skill that it is clear even to a layperson." *Mukon v. Gollnick*, 2013 WL 951328, at *2 (Conn. Super. Ct. Feb. 15, 2013). Likewise, a claim of accounting malpractice does not require privity between the parties; in the absence of privity, the plaintiff must be "the intended or foreseeable beneficiary of the professional's undertaking." *Stuart v. Freiburg*, 2011 WL 3671904, at *9 (Conn. Super. Ct. July 15, 2011) (quoting *Mozzochi v. Beck*, 204 Conn. 490, 499 (1987)) (granting summary judgment on a malpractice claim because plaintiffs were not intended beneficiaries of reports created by defendant during the review of their deceased father's estate). In addition, several courts have held that accountants are exempt from suit under the judicially created professional services exemption to the Connecticut Unfair Trade Practices Act, but there is no appellate authority on the issue. *See Baker v. Brodeur*, 2012 WL 4040334, at *2 (Conn. Super. Ct. Aug. 21, 2012); *see also Haynes v. Yale-New Haven Hosp.*, 243 Conn. 17 (1997) (professional services exemption bars CUTPA claims against health care providers).

1A-3 ACCOUNTING

An action for an accounting requires proof of:

(1) monetary accounts in which the parties have an interest or access; and

(2) a fiduciary relationship between the parties; or

(3) the existence of mutual and/or complicated accounts; or

(4) a need for discovery as to the accounts; or

(5) another special ground for equitable jurisdiction such as fraud.

Nowak v. Env't Energy Servs., Inc., 218 Conn. App. 516, 535 (2023).

Statute of Limitations

Accounting is an equitable action; consequently, there is no limitations period.

Notes

An accounting action invokes the equitable power of a court "to state and settle accounts, or to compel an accounting, where . . . the defendant has a duty to render an account." *Nowak*, 218 Conn. App. at 534. This arises most often when there is a fiduciary relationship between the parties. *Id.* It is unclear whether a fiduciary relationship is an element of an accounting action or merely the frequent factual predicate for one. *See Manere v. Collins*, 200 Conn. App. 356, 371 (2020) (fiduciary relationship necessary allegation for equitable jurisdiction); *Zuch v. Conn. Bank & Tr. Co.*, 5 Conn. App. 457, 460 (1985) ("fiduciary relationship is in and of itself sufficient to form the basis for the relief requested"); *but see Mankert v. Elmatco Prod., Inc.*, 84 Conn. App. 456,

460-61, *cert. denied*, 271 Conn. 925 (2004) (plaintiff had right to accounting based solely on complicated business relationship with defendants).

An accounting action empowers the court to "adjust[ ] . . . the accounts of the parties and . . . render[ ] . . . a judgment for the balance ascertained to be due." *Nowak*, 218 Conn. App. at 534. However, a plaintiff must demand an accounting from the defendant and be refused *before* going to court. *See Manere*, 200 Conn. App. at 372 (citing *Episcopal Church in the Diocese of Conn. v. Gauss*, 302 Conn. 408, 452 n.30 (2011), *cert. denied*, 567 U.S. 924 (2012)). Likewise, there must be reasonable doubt about the amount due; otherwise, an action at law will suffice. *See Manere*, 200 Conn. App. at 371-72 (citing *Mankert*, 84 Conn. App. at 460).

1A-4 ADVERSE POSSESSION OF REAL PROPERTY

To acquire title to real property by adverse possession, a plaintiff must:

1) Oust an owner from possession of the property and possess the property himself in a way that is:
2) actual;
3) open or visible;
4) hostile to the rights of the owner;
5) exclusive;
6) made under a claim of right;
7) made without the consent of the owner; and
8) for an uninterrupted 15-year period.

Alexson v. Foss, 276 Conn. 599, 614 n.13 (2006).

Statute of Limitations

There is, strictly speaking, no limitations period for adverse possession because an adverse possessor acquires title by satisfying the above elements without legal action. However, if the land owner ousted from possession wishes to challenge the adverse possession, he must give notice of entry within the 15-year period and must bring a quiet title action within one year of giving such notice. Conn. Gen. Stat. § 52-575(a); *see Gemmell v. Lee*, 59 Conn. App. 572, 578-79, *cert. denied*, 254 Conn. 951 (2000). The 15-year period is tolled for any person who acquires title or a right of entry to any disputed piece of property while "a minor, non compos mentis or imprisoned," and such person has five years "after full age, coming of sound mind or release from prison" in which to give record notice of his right or title. Conn. Gen. Stat. § 52-575(b).

Notes

The burden of proof for adverse possession is on the party claiming it, *Bennett v. Bowditch*, 163 Conn. App. 750, 755 (2016), and requires a showing of "clear and positive proof." *Smith v. Muellner*, 283 Conn. 510, 536 (2007). Though the adverse possessor's intent is critical, the "mistaken belief that she owned the property at issue is immaterial in an action for title by adverse possession, as long as the other elements of adverse possession have been established." *Padula v. Arborio*, 219 Conn. App. 432, 447 (2023). On the other hand, permissive use never can be, nor become, adverse – even if the permission is implied. *Id.* at 448; *see Dowling v. Heirs of Bond*, 345 Conn. 119, 146 (2022) ("[a]s with a prescriptive easement, implied permission by the true owner is not adverse").

Similarly, there is a presumption against adverse possession for claims between cotenants "based on a recognition that one cotenant's possession is not necessarily inconsistent with the title of the others." *O'Connor v. Larocque*, 302 Conn. 562, 581-82 (2011). Consequently, "possession taken by one is ordinarily considered to be the possession by all and not adverse to any cotenant." *Id.* at 581 (citing *Ruick v. Twarkins*, 171 Conn. 149, 157 (1976)) (additional citations omitted); *see also* 3 Am. Jur. 2d 243-44, Adverse Possession § 201 (2002). It is a substantial task to overcome this presumption: "A cotenant claiming adversely to other cotenants must show actions of such an unequivocal nature and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. Not only must an actual intent to exclude others be demonstrated; but there also must be proof of an ouster and exclusive possession so openly and notoriously hostile that the cotenant will have notice of the adverse claim." *O'Connor*, 302 Conn. at 582 (internal quotation and citation omitted); *see also Hill v. Jones*, 118 Conn. 12, 16 (1934) ("[o]uster will not be presumed from mere exclusive possession of the common property by one cotenant"). Similarly, any interruption in the hostility of the possession is fatal to the adverse possessor's claim. *See Brander v. Stoddard*, 173 Conn. App. 730, 748-49, *cert. denied*, 327 Conn. 928 (2017) (plaintiff's reconciliation with owner and "gift of lamb meat in appreciation for being able to use the disputed property" negated claim of uninterrupted hostility for statutory period).

Property held by the state or a municipality is immune from a claim of adverse possession, as long as the property in question is held for public use; there is a rebuttable presumption of public use for any publicly-held property. *See American Trading Real Estate Props., Inc. v. Town of Trumbull*, 215 Conn. 68, 77 (1990); *Benjamin v. City of Norwalk*, 170 Conn. App. 1, 18 (2016) (requiring a clear and positive proof that the land is not held for public use). A party cannot defend a summary process action—seeking to eject him from a parcel of real property—by claiming he had permission to occupy the property,

and then seek title to the property in a separate action for adverse possession. Under those circumstances, the party is collaterally estopped from making the adverse possession claim by his concession in the summary process action that his possession of the property was not "hostile." (Note, however, that the party *could* allege adverse possession as a counterclaim to the original summary process action; it is only after the conclusion of that action that collateral estoppel attaches). *See Pollansky v. Pollansky*, 162 Conn. App. 635, 655 (2016).

1A-5 AIDING A TORT

A person is liable to a third party for harm from the tortuous conduct of another if:

1) The party whom the defendant aids commits a wrongful act that causes an injury;
2) the defendant is generally aware that he is part of illegal or tortious activity when he provides the aid; and
3) the defendant knowingly and substantially assists the tortfeasor.

Efthimiou v. Smith, 268 Conn. 499, 505 (2004).

Statute of Limitations
Three years from the date of the act complained of. Conn. Gen. Stat. § 52-577.

Notes
"In Connecticut cases, the tort of aiding and abetting is often used interchangeably with the principles outlined in § 876 of 4 Restatement (Second), Torts." *Stein v. Gipstein*, 2012 WL 4901093, at *1 (Conn. Super. Ct. Sept. 20, 2012); *see also Connecticut Nat'l Bank v. Giacomi*, 242 Conn. 17, 63 n.42 (1997) (discussing principles of Restatement § 876); *Katcher v. 3V Capital Partners, LP*, 2011 WL 1105724, at *13 (Conn. Super. Ct. Feb. 1, 2011) (citing *Palmieri v. Lee, Judicial Dist. of New Haven*, 1999 WL 1126317 (Conn. Super. Ct. Nov. 24, 1999) (Levin, J.)). Be aware, though, that not all torts are created equal: The Supreme Court twice has declined "to decide whether aiding and abetting a breach of a fiduciary duty is a viable cause of action in Connecticut[.]" *Flannery v. Singer Asset Fin. Co., LLC*, 312 Conn. 286, 296 (2014) (citing *Efthimiou v. Smith*, 268 Conn. 499, 504-07 (2004)).

Also, aiding a tort claim cannot stand alone; there must be a valid underlying tort claim. It is best to plead the elements of the underlying tort as part of the claim against the aider. *See Garfinkle v. Jewish Fam. Serv. of Greater Hartford, Inc.*, 2022 WL 6366186, at *6 (Conn. Super. Ct. Aug. 15, 2022) (noting lack of definitive appellate authority on pleading issue). Consequently, rules limiting the underlying tort claims, such as the litigation privilege, also limit aiding a

tort claim. *Peterson v. Laurelhart Condo. Ass'n, Inc.*, 2018 WL 4865946, at *5 (Conn. Super. Ct. Sept. 25, 2018).

1A-6 ANTICIPATORY BREACH OF CONTRACT

An action for anticipatory breach of contract requires proof that:

1) One party to a contract has repudiated his duty under the terms of the contract;
2) before the time for performance has arrived;
3) causing damages to the non-repudiating party.

Seligson v. Brower, 109 Conn. App. 749, 755 n.5 (2008).

Statute of Limitations

See BREACH OF CONTRACT, below.

Notes

An action for anticipatory breach "allow[s] the nonbreaching party to discharge his remaining duties of performance, and to initiate an action without having to await the time for performance." *Pullman, Comley, Bradley & Reeves v. Tuck-It-Away Bridgeport, Inc.*, 28 Conn. App. 460, 465, *cert. denied*, 223 Conn. 926 (1992). Such an action requires proof of a breach similar to an ordinary breach of contract action. *Id.* The repudiation element of an action for anticipatory breach "may be either verbal or nonverbal . . . and can occur either by a statement that the promisor will not perform or by a voluntary, affirmative act that indicates inability, or apparent inability, substantially to perform." *Cottman Transmission Sys., Inc. v. Hocap Corp.*, 71 Conn. App. 632, 639 (2002). Whether verbal or non-verbal, express or implied, an "[a]nticipatory breach of contract occurs when a party communicates a definite and unequivocal manifestation of intent not to render the promised performance at the contractually agreed upon time." *Andy's Oil Serv., Inc. v. Hobbs*, 125 Conn. App. 708, 722 (2010), *cert. denied*, 300 Conn. 928 (2011). However, an anticipatory breach may be excused if the other party could not possibly have performed its own contractual obligations notwithstanding the breach. *See Land Grp., Inc. v. Palmieri*, 123 Conn. App. 84, 92 (2010) (quoting 2 Restatement (Second), Contracts § 254, p. 290 (1981)) ("a party's duty to pay damages for total breach by repudiation is discharged if it appears after the breach that there would have been a total failure by the injured party to perform his return promise"). In other words, he who breaches last sometimes breaches best.

1A-7 ASSAULT

To prevail on a claim of assault, a plaintiff must establish the following elements:

1) The defendant;
2) intentionally, recklessly, or negligently;
3) caused the plaintiff;
4) imminent apprehension of harmful or offensive contact; and
5) that apprehension is one which would be normally aroused in the mind of a reasonable person under similar circumstances.

Dewitt v. John Hancock Mut. Life Ins. Co., 5 Conn. App. 590, 594 (1985) (citing Restatement (Second) of Torts, § 21).

Statute of Limitations

The statute of limitations for a claim of intentional or reckless assault is three years. Conn. Gen. Stat. § 52-577. For negligent assault, the limitations period is two years from the date the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and in no event more than three years from the date of the act complained of. Conn. Gen. Stat. § 52-584. For claims involving the sexual assault of a minor, the limitations period is 30-years from the date the plaintiff turns twenty-one. Conn. Gen. Stat. § 52-577d. *See Doe #2 v. Rackliffe*, 337 Conn. 627 (2020); *Doe v. Boy Scouts of Am. Corp.*, 323 Conn. 303 (2016).

Notes

Actual, physical contact is not an element of assault. *Maselli v. Reg'l Sch. Dist. No. 10*, 198 Conn. App. 643, 660, *cert. denied*, 335 Conn. 947 (2020); *see BATTERY, below*. The feared contact in question must be bodily contact; "[a]n assault cannot be accomplished by words alone. There must be an overt act evidencing some corporal threat." *Kindschi v. City of Meriden*, 2006 WL 3755299 (Conn. Super. Ct. Nov. 28, 2006). However, "civil assault does not appear to include an additional element of the intent to cause a specific physical injury." *Dunlop v. Reg'l Sch. Dist. No. 10*, 2020 WL 5540580, at *4 (Conn. Super. Ct. Aug. 19, 2020).

A reckless assault requires "disregard of the consequence of the assaultive act . . . [It] take[s] on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." *Maselli*, 198 Conn. App., at 663 (entering summary judgment for middle school soccer coach who accidentally kicked ball into player's face during scrimmage). A negligent assault imports the familiar test for negligence, i.e., what a reasonably prudent person would have done under the same or similar circumstances. See *id.* at 660.

As in the criminal context, justification is a viable defense to a civil assault claim. *See Burke v. Mesniaeff*, 177 Conn. App. 824, 844-46 (2017), *aff'd*, 334 Conn. 100 (2019) (upholding finding that defendant was protecting house guests when he "took the plaintiff by the arm to escort her from the house"). In the civil context, the burden to prove justification is on the defendant. *See id.*; *Housing Auth. of City of Stamford v. Morrow*, 1995 WL 348025, at *10 (Conn. Super. Ct. May 16, 1995).

Criminal convictions for intentional assault and reckless assault are not legally inconsistent if "each mental state pertains to a different act, a different victim . . . a different injury, [or] a different *result*." *State v. Alicea*, 339 Conn. 385, 392 (2021) (emphasis in original). It is unclear if the same is true in the civil context.

1B-1 BAILMENT—LOSS OF OR DAMAGE TO GOODS OF BAILOR

An action by a plaintiff for damage to goods entrusted to a defendant requires proof of the following:

1) The delivery of personal property to the defendant;
2) to which the plaintiff retained title;
3) upon an express or implied contract to return that property to the plaintiff when the contractual purpose has been fulfilled, or to otherwise treat the property according to the plaintiff's direction;
4) followed by damage to, or loss of, the delivered property;
5) resulting from the defendant's negligence.

B.A. Ballou & Co., Inc. v. Citytrust, 218 Conn. 749, 753 (1991) [1, 2, 3]; *Barnett Motor Transp. Co. v. Cummins Diesel Engines of Conn., Inc.*, 162 Conn. 59, 63 (1971) [4, 5].

Statute of Limitations

The statute of limitations for an action for damage to goods of a bailor is unclear. If "a bailment claim . . . sounds in negligence, the same two-year time bar as § 52-584 applies," *Brian's Floor Covering Supplies, LLC v. Spring Meadow Elderly Apartments*, 2006 WL 894929, at *8 (Conn. Super. Ct. Mar. 22, 2006), but, if the claim sounds in contract, even an implied contract, then the limitations period is six years. *See Suk Semoon v. Wooster Sch. Corp.*, 2010 WL 3259705, at *7 (Conn. Super. Ct. July 19, 2010) (citing Conn. Gen. Stat. § 52-576(a)). *Brian's Floor* notwithstanding, query when, if ever, the shorter period applies, given that, the premise for most bailment claims is an implied contact between the bailor and bailee.

Notes

A bailment is "a relationship . . . that arises when the owner, while retaining general title, delivers personal property to another for some particular purpose upon an express or implied contract to redeliver the goods when the purpose has been fulfilled, or to otherwise deal with the goods according to the bailor's directions . . . . In a bailment, the owner or bailor has a general property interest in the goods bailed . . . . The bailee, on the other hand, has mere possession of items left in its care pursuant to the bailment." *State v. Smith*, 148 Conn. App. 684, 707-08 (2014), *aff'd*, 317 Conn. 338 (2015) (ellipses in original). The *sine qua non* of a bailment is "the express or implied assumption of control over the property by the bailee." *Hartman v. Black & Decker Mfg. Co.*, 16 Conn. App. 1, 6 (1988).

An express or implied contract between the bailor and bailee often creates a bailment, but a bailment can exist without a contract between them. *See Kelley v. City of Danbury*, 2021 WL 5919784, at *6 (Conn. Super. Ct. Dec. 3, 2021). Separate documents do not need to reference one another in order to form an integrated, express contract for a bailment. *See Abele Tractor & Equip. Co. v. Sono Stone & Gravel, LLC*, 151 Conn. App. 486, 510-11 (2014) (rental agreements and delivery tickets for construction equipment constituted integrated contract between parties). However, "[i]n the care of property, the bailee's contractual obligation is to exercise due care for the safekeeping of the bailed property, and, so, essentially, when loss or damage occurs, liability is based on negligence, even though negligence constitutes a breach of contract." *Barnett*, 162 Conn. at 63; *see also Rizzuto v. Baltrush*, 2012 WL 5992701, at *3 (Conn. Super. Ct. Nov. 13, 2012) ("a bailment does not necessarily depend upon a contractual relation; it is the element of lawful possession, however created, and the duty to account for the thing as the property of another that creates the bailment, regardless of whether such possession is based on contract in the ordinary sense or not"). In this regard, courts (and litigants) sometimes gloss over the distinction between a strict bailment and a constructive one. *See CONSTRUCTIVE BAILMENT, below.*

A bailment gives rise to a fiduciary relationship between the bailee and the bailor. *See Striegel v. Antiques at Pompey Hollow, LLC*, 2012 WL 3264218, at *2 (Conn. Super. Ct. July 18, 2012). The burden of proving the existence of a bailment is on the party claiming title to the property. *B.A. Ballou*, 218 Conn. at 752. However, "once a bailment has been established and the bailee is unable to redeliver the subject of the bailment in an undamaged condition a presumption arises that the damage to or loss of the bailed property was the result of the bailee's negligence." *Barnett*, 162 Conn. at 63. The presumption remains in effect "unless and until the bailee proves the actual circumstances involved in the damaging of the property," at which point the burden of proof

shifts back to the bailor to prove negligence by the bailee. *National Broad. Co. v. Rose*, 153 Conn. 219, 225 (1965). Such proof by a bailee requires "substantial contravening evidence . . . [including] the precautions taken to prevent damage, destruction or loss . . . ." *Pacelli v. Butte*, 1999 WL 1212227, at *4 (Conn. Super. Ct. Dec. 3, 1999).

The measure of damages for loss of, or damage to, property entrusted to a bailor "is the value of the property at the time of its [damage] or loss, with interest from that time . . . ." *Griffin v. Nationwide Moving & Storage Co., Inc.*, 187 Conn. 405, 419 (1982).

1B-2 BATTERY

To prevail on a claim of battery, a plaintiff must establish the following elements:

1) Another person;
2) acts with the intent to cause harmful or offensive contact, or to create the imminent apprehension of harmful or offensive contact;
3) to the plaintiff, or to a third person; and
4) a harmful contact with the plaintiff is the direct or indirect result of that intentional act.

Simms v. Chiasson, 277 Conn. 319, 331 (2006) (citing Restatement (Second) of Torts, § 13).

Statute of Limitations

The statute of limitations for a claim of battery is three years. Conn. Gen. Stat. § 52-577. For claims involving the sexual assault of a minor, the limitations period is 30-years from the date the plaintiff turns twenty-one. Conn. Gen. Stat. § 52-577d. *See Doe #2 v. Rackliffe*, 337 Conn. 627 (2020); *Doe v. Boy Scouts of Am. Corp.*, 323 Conn. 303 (2016).

Notes

Battery is harmful or offensive physical contact with another person. *Simms*, 277 Conn. at 331. The failure to allege a "physical contact" is grounds to strike a complaint for battery. *See Texeira v. Curren*, 2014 WL 4814722, at *2 (Conn. Super. Ct. Aug. 21, 2014) (granting motion to strike). Moreover, the contact must be with the plaintiff himself; indirect harmful contact is insufficient as a matter of law. *See Meade v. Briarwood Acquisitions, LLC*, 2014 WL 7271955, at *1 n.1 & *3 (Conn. Super. Ct. Nov. 12, 2014) (striking claim of battery by tenant based on allegations that landlord's agents "entered the dwelling unit on a false pretext and, employing chain saws, cut holes in an exterior wall of the unit thus exposing its occupant to harsh winter conditions" and that tenant's "protests eventually resulted in his being arrested for breach of the peace").

Connecticut cases "rarely make th[e] distinction" between assault and battery. *Maselli v. Reg'l Sch. Dist. No. 10*, 198 Conn. App. 643, 660, *cert. denied*, 335 Conn. 947 (2020). As a result, there is some confusion whether battery requires intentional conduct. *See Simms*, 277 Conn. at 331 (yes) (citing 1 Restatement (Second), Torts § 13 (1965)); *Clinch v. Generali-U.S. Branch*, 110 Conn. App. 29, 40 (2008), *aff'd*, 293 Conn. 774 (2009) ("intentional conduct is not required for an assault and battery") (citing *Markey v. Santangelo*, 195 Conn. 76, 78 (1985)); *see also Forsyth v. Richardson*, 2015 WL 5134350, at *3 (Conn. Super. Ct. July 29, 2015) (striking battery count based on allegation that defendant's drunk driving caused car accident). Logic suggests that if one can commit assault recklessly or negligently, then so, too, a battery. *See Clinch,* 110 Conn. App. at 31, which involved actual contact, not merely the threat of it.

Likewise, the degree of harmful contact that must result from an intentional touching for it to constitute battery is unclear. *See Telkamp v. Vitas Healthcare Corp. Atl.*, 2016 WL 777906, at *9 (D. Conn. Feb. 29, 2016) ("[a]lthough battery requires physical contact, actual or substantial harm need not result from the contact for a defendant to be liable").

In the context of medical care, battery requires "an absence of consent," *Gallinari v. Kloth*, 148 F. Supp. 3d 202, 212 (D. Conn. 2015), not merely a lack of informed consent. Thus, "[t]he theory of battery as a basis for recovery against a physician has generally been limited to situations where he fails to obtain *any* consent to the particular treatment or performs a different procedure from the one for which consent has been given, or where he realizes that the patient does not understand what the operation entails." *Lambert v. Stovell*, 205 Conn. 1, 4 (1987) (emphasis in original). As a consequence, a patient does not have to comply with the statutory requirements for a medical malpractice action to sue her doctor for battery. *See Wood v. Rutherford*, 187 Conn. App. 61, 74-78 (2019) (trial court improperly struck battery claim for failure to comply with statute); Conn. Gen. Stat. § 52-190a.

1B-3 BREACH OF CONTRACT

The elements of a breach of contract action are:

1) Formation of an agreement;
2) performance by one of the parties to that agreement;
3) breach of a material term or terms of the agreement by another party; and
4) damages resulting from that breach.

Seligson v. Brower, 109 Conn. App. 749, 753 (2008).

Statute of Limitations

There are two statutes of limitations applicable to breach of contract actions: Conn. Gen. Stat. §§ 52-576(a) & 52-581(a). The former has a limitations period of six years; the latter, three years. Section 52-576(a) governs the limitations period for written contracts. While, at first blush, § 52-581(a) appears to govern oral contracts, there is some unfortunately broad language in § 52-576(a) ("on *any* simple or implied contract") that might make it applicable to oral contracts as well. The Supreme Court "has distinguished the statutes, however, by construing § 52-581, the three-year statute of limitations, as applying only to *executory* contracts . . . . A contract is *executory* when neither party has fully performed its contractual obligations and is *executed* when one party has fully performed its contractual obligations." *Bagoly v. Riccio*, 102 Conn. App. 792, 799, *cert. denied*, 284 Conn. 931 (2007) (emphasis in original). The cause of action accrues "at the time the breach of contract occurs, that is, when the injury has been inflicted." *Bracken v. Town of Windsor Locks*, 182 Conn. App. 312, 322 (2018).

Notes

The dispositive issue in any contract dispute is the intent of the parties. If the language of a contract is ambiguous, then construction of that contract is a question of fact. *O'Connor v. Waterbury*, 286 Conn. 732, 743 (2008). "In order for an enforceable contract to exist, the court must find that the parties' minds had truly met . . . . If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make." *Summerhill, LLC v. City of Meriden*, 162 Conn. App. 469, 474-75 (2016) (ellipsis in original). However, "[i]f a contract is unambiguous within its four corners, intent of the parties is a question of law . . . ." *Montoya v. Montoya*, 280 Conn. 605, 612 (2006). The same is true for a contract between sophisticated commercial parties made with the advice of counsel. *See Tallmadge Bros., Inc. v. Iroquois Gas Transmission Sys., L.P.*, 252 Conn. 479, 496-97 (2000).

Note that a plaintiff need not specifically plead breach of warranty to recover under that theory, but may do so via a simple breach of contract claim. *Viking Constr., Inc. v. TMP Constr. Grp., LLC*, 338 Conn. 361 (2021).

Generally, "a tort cause of action that is based upon the same facts underlying a contract claim will be dismissed as a mere duplication of the contract cause of action . . . particularly where . . . both seek identical damages." *Alpha Beta Capital Partners, L.P. v. Pursuit Inv. Mgmt., LLC*, 193 Conn. App. 381, 420 (2019), *cert. denied*, 334 Conn. 911 (2020) (ellipses in original), To state a *prima facie* case for breach of contract, there must be "an allegation of legal consideration, which consists of a benefit to the party promising, or a loss

or detriment to the party to whom the promise is made . . . .” *Sharp Elecs. Corp. v. Solaire Dev., LLC*, 156 Conn. App. 17, 36 (2015) (citation omitted). The exchange of promises, by itself, is sufficient consideration for a prima facie case. *Bilbao v. Goodwin*, 333 Conn. 599, 617 (2019). Likewise, if a contract requires a party to comply with a condition precedent, then the failure to allege such compliance is fatal. *See U.S. Bank Nat'l Ass'n v. Eichten*, 184 Conn. App. 727, 761 (2018).

So, too, for impossibility of performance; a defendant must specially plead it as a defense to avoid waiving it. *See Town of New Milford v. Standard Demolition Servs., Inc.*, 212 Conn. App. 30, 69-70 (2022). Impossibility requires proof “that: (1) the event made the performance impracticable; (2) the nonoccurrence of the event was a basic assumption on which the contract was made; (3) the impracticability resulted without the fault of the party seeking to be excused; and (4) the party has not assumed a greater obligation than the law imposes.”

AGW Sono Partners, LLC v. Downtown Soho, LLC, 343 Conn. 309, 326 (2022).

Causation and damages are almost always questions of fact ill-suited for summary judgment. *See O'Donnell v. AXA Equitable Life Ins. Co.*, 210 Conn. App. 662, 685, *cert. granted on other grounds*, 343 Conn. 910 (2022). “[C]ausation . . . is . . . part and parcel of a party's claim for breach of contract damages.” *Meadowbrook Ctr., Inc. v. Buchman*, 149 Conn. App. 177, 186, 90 A.3d 219, 226 (2014). “[U]nder Connecticut law, the causation standard . . . asks not whether a defendant's conduct was a proximate cause of the plaintiff's injuries, but rather whether those injuries were foreseeable to the defendant and naturally and directly resulted from the defendant's conduct.” *Id.* at 188-89. Thus, any loss must “aris[e] naturally, i.e., according to the usual course of things, from such breach of contract itself.” *Theodore v. Lifeline Sys. Co.*, 173 Conn. App. 291, 306 n.5 (2017).

Damages, too, are a necessary element and “are recoverable only to the extent that the evidence affords a sufficient basis for estimating their amount in money with reasonable certainty . . . Thus, [t]he court must have evidence by which it can calculate the damages, which is not merely subjective or speculative, but which allows for some objective ascertainment of the amount.” *Valley Nat'l Bank v. Marcano*, 174 Conn. App. 206, 217 (2017). Generally, “damages are limited to those that the defendant had reason to foresee as the probable result of the breach at the time when the contract was made.” *Meribear Prods., Inc. v. Frank*, 340 Conn. 711, 754 (2021).

A promisee's lost profits are one proper measure of its damages; *RBC Nice Bearings, Inc. v. SKF USA, Inc.*, 146 Conn. App. 288, 312, *cert. granted in part*, 310 Conn. 962 (2013); as are “punitive damages for attorney's fees . . . [if] [e]lements

of tort such as wanton or malicious injury or reckless indifference to the interests of others giv[e] a tortious overtone to a breach of contract action." *Capstone Bldg. Corp. v. Am. Motorists Ins. Co.*, 308 Conn. 760, 802 n.40 (2013). However, a plaintiff does not have to prove actual damages to prevail on a breach of contract claim. Even "[i]f a party has suffered no demonstrable harm . . . that party may be entitled . . . to nominal damages for breach of contract[.]" *Lydall, Inc. v. Ruschmeyer*, 282 Conn. 209, 254 (2007) (ellipses in original).

A cause of action for breach of contract may linger in non-contractual clothes: So, for example, an allegation that an "attorney violated the specific instructions of his client sound[s] in breach of contract[,]" as does an allegation of "an attorney's failure to comply with the specific provisions of a contract . . . ." *Meyers v. Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.*, 311 Conn. 282, 292 (2014). However, "claims alleging that the defendant attorney had performed the required tasks but in a deficient manner sound[s] in tort . . . ." *Id.* at 294; *see LEGAL MALPRACTICE, below.* In addition, "separation agreements are contracts that may be litigated independently of the divorce judgment in a civil contract action." *Gershon v. Back*, 346 Conn. 181, 202 (2023) (citing *Friedlander v. Friedlander*, 5 Conn. App. 1, 4, *cert. denied*, 197 Conn. 812 (1985) ("a separation agreement is enforceable in a civil suit on the contract")).

A "simple breach of contract[,]" by itself, does not form the basis for a CUTPA claim because the legislature intended CUTPA to be distinct from contract law. *Milford Paintball, LLC v. Wampus Milford Assocs., LLC*, 156 Conn. App. 750, 764, *cert. denied*, 317 Conn. 912 (2015). However, a breach of contract "accompanied by aggravating circumstances" will do the trick. *Gianetti v. Neigher*, 214 Conn. App. 394, 452, *cert. denied*, 345 Conn. 963 (2022); *see UNFAIR TRADE PRACTICES*, *below.*

1B-4 BREACH OF FIDUCIARY DUTY

To prevail on a claim of breach of fiduciary duty, a plaintiff must establish:

1) The existence of a relationship between the parties;
2) characterized by a unique degree of trust and confidence;
3) in which one party has superior knowledge, skill or expertise, and is under a duty thereby to represent the interests of the other party; and
4) a breach of that duty causing harm to the plaintiff.

See Biller Assocs. v. Peterkin, 269 Conn. 716, 723 (2004).

Statute of Limitations

The statute of limitations for a claim of breach of fiduciary duty is three years. *Krondes v. Norwalk Sav. Soc'y*, 53 Conn. App. 102, 117 (1999).

Notes

Beyond a few "per se categories . . . a flexible approach determines the existence of a fiduciary duty, which allows the law to adapt to evolving situations wherein recognizing a fiduciary duty might be appropriate." *Iacurci v. Sax*, 313 Conn. 786, 800 (2014). The *sine qua non* of a fiduciary relationship is the duty of loyalty—the obligation to act in the best interests of the person to whom the duty is owed and to act in good faith with respect to any matter within the scope of that duty. *See Godina v. Resinall Int'l, Inc.*, 677 F. Supp. 2d 560, 575 (D. Conn. 2009). There is no bright line rule for the existence of a fiduciary relationship. However, it often arises when "the fiduciary was either in a dominant position, thereby creating a relationship of dependency, or was under a specific duty to act for the benefit of another." *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 38 (2000). On the other hand, no such relationship exists when "the parties were either dealing at arm's length, thereby lacking a relationship of dominance and dependence, or the parties were not engaged in a relationship of special trust and confidence." *Id.* at 38-39. "Once a [fiduciary] relationship is found to exist, the burden of proving fair dealing properly shifts to the fiduciary." *Konover Dev. Corp. v. Zeller*, 228 Conn. 206, 219 (1994). The burden of proof in such circumstances has been alternately described as "clear and convincing evidence, clear and satisfactory evidence or clear, convincing and unequivocal evidence . . . ." *Cadle Co. v. D'Addario*, 268 Conn. 441, 455 (2004).

The existence of a fiduciary duty is a question of fact, and the duty does not exist simply because one or the other party is in a position of trust. However, documents that create positions of trust often specify that the position carries with it a fiduciary duty, *see, e.g., Pasco Common Condo. Ass'n, Inc. v. Benson*, 192 Conn. App. 479, 511 (2019). The possibility of a fiduciary relationship is inherent in certain professions; a state marshal, for example, may owe a fiduciary duty to an ejectee under certain circumstances. *See McLoughlin v. Martin*, 2016 WL 1371255, at *13 (Conn. Super. Ct. Mar. 23, 2016) (denying marshal's motion for summary judgment in suit over failure to properly store ejectee's personal property); *see also* Conn. Gen. Stat. § 49-22. Similarly, a private boarding school may owe a fiduciary duty to students who are minors. *See Roe v. Hotchkiss Sch.*, 2019 WL 2912512, at *7 (D. Conn. July 8, 2019). In addition, "[t]he fact that one party trusts another is not dispositive of whether a fiduciary relationship exists . . . rather, proof of a fiduciary duty requires an evidentiary showing of a unique degree of trust and confidence between the parties such that the [defendant] undertook to act primarily for the benefit of the plaintiff." *Golek v. St. Mary's Hosp., Inc.*, 133 Conn. App. 182, 197 (2012) (citation omitted; internal quotation marks omitted).

The mere existence of a fiduciary relationship does not give rise to a cause of action; the fiduciary must have taken "advantage of its fiduciary relationship . . . to benefit itself." *Crandle v. Conn. State Emps. Ret. Comm'n*, 342 Conn. 67, 102 (2022). Even in the context of a professional relationship, professional negligence alone does not automatically support a claim for breach of fiduciary duty. "Although an attorney-client relationship imposes a fiduciary duty on the attorney . . . not every instance of professional negligence results in a breach of that fiduciary duty . . . . Professional negligence implicates a duty of care, while breach of a fiduciary duty implicates a duty of loyalty and honesty." *Iacurci v. Sax*, 139 Conn. App. 386, 402 (2012), *aff'd*, 313 Conn. 786 (2014) (citations omitted; internal quotation marks omitted) (citing *Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 56-57 (1998)).

Under Connecticut law, an intentional tort does not require proof of actual damages, but a negligent tort does. *See Right v. Breen*, 277 Conn. 364, 376-77 (2006). In keeping with this distinction, a plaintiff may recover nominal damages for an intentional breach of fiduciary duty, but he must prove actual harm for a negligent breach of the same duty. *See Learning Care Grp., Inc. v. Armetta*, 2016 WL 953212, at *12 (D. Conn. Mar. 11, 2016) (citing *Connecticut Student Loan Found. v. Enter. Recovery Sys., Inc.*, 2011 WL 1363772, at *3 n.6 (D. Conn. Apr. 11, 2011), and *Fazzone, Baillie, Ryan & Seadale, LLC v. Baillie, Hall & Hershman, P.C.*, 2007 WL 155161, at *6 (Conn. Super. Ct. Jan. 2, 2007)). Moreover, an award of punitive damages is not a fig leaf if the jury awards no actual damages because "a demand for punitive damages is not a freestanding claim; rather, it is parasitic and possesses no viability absent its attachment to a substantive cause of action." *Rendahl v. Peluso*, 173 Conn. App. 66, 100 (2017) (jury's failure to award damages after finding for plaintiff on liability made verdict ambiguous despite award of punitive damages).

1B-5 BYSTANDER EMOTIONAL DISTRESS

A cause of action for bystander emotional distress requires proof of:

1) The death of, or serious physical injury to;
2) a close relative of the plaintiff;
3) where the plaintiff witnesses either the event, or conduct that causes the harm, or its immediate aftermath; and
4) the plaintiff suffers serious emotional injury as a result.

Clohessy v. Bachelor, 237 Conn. 31, 56 (1996).

Statute of Limitations

The statute of limitations for bystander emotional distress depends on the nature of the alleged conduct by the defendant that gave rise to the distress. If the defendant allegedly was negligent or reckless, then the limitations period is two years; if the defendant allegedly acted intentionally, then the limitations period is three years. *See Schwartz v. Town of Plainville*, 483 F. Supp. 2d 192, 197 n.3 (D. Conn. 2007); *see also* Conn. Gen. Stat. §§ 52-577 & 52-584.

Notes

Connecticut first adopted a cause of action for bystander emotional distress in *Clohessy*, and its basic parameters have not changed since. First, "the injury to the victim must be substantial," i.e., either death, or serious physical injury, because "[a]ny injury to one who is closely related to the bystander has an emotional impact. To a sensitive parent, witnessing a minor injury to his or her child could produce an emotional response and result in serious injury." *Clohessy v. Bachelor*, 237 Conn. 31, 53-54 (1996). Second, the plaintiff and victim must be "closely related." *Id.* at 52. So far, the Supreme Court has held only that parents and siblings qualify, but neither the Supreme nor Appellate Court has discussed whether other relations—e.g., grandparents—qualify as well. *Cf. Yovino v. Big Bubba's BBQ, LLC*, 49 Conn. Supp. 555, 565 (2006) (noting split of authority among Connecticut trial courts as to whether fiancée is "closely related" within meaning of *Clohessy*). Third, "the bystander's emotional injury must be caused by the contemporaneous sensory perception of the event or conduct that causes the injury . . . or by viewing the victim immediately after the injury causing the event if no material change has occurred with respect to the victim's location and condition." *Clohessy v. Bachelor*, 237 Conn. 31, 52 (1996); *see Diaz v. Backes*, 2021 WL 5542197, at *2-3 (Conn. Super. Ct. Oct. 26, 2021) (striking claim by wife who witnessed husband's car accident and found his body when he committed suicide five months later). Finally, the plaintiff "must have sustained a serious emotional injury—that is, a reaction beyond that which would be anticipated in a disinterested witness and which is not an abnormal response to the circumstance." *Id.* at 54.

A bystander emotional distress claim is derivative and, therefore, is viable only if there is a predicate action by the injured party. *Graham v. Friedlander*, 334 Conn. 564, 579 (2020); *see Gilman v. Shames*, 189 Conn. App. 736, 752 (2019) (affirming motion to dismiss bystander emotional distress claim not brought in conjunction with wrongful death claim). Likewise, several superior court decisions hold that bystander emotional distress is derivative of the predicate cause of action—and so, a settlement of the latter extinguishes the former. *See Pascola-Milton v. Millard*, 2018 WL 7709953, at *2 (Conn. Super. Ct. Nov. 6, 2018); *Boyd v. New London Hous. Auth.*, 2018 WL 3967618, at *4 (Conn. Super. Ct. Aug. 7, 2018); *Austin v. Safeco Ins. Co. of Ill.*, 2016 WL 6237633, at *3

(Conn. Super. Ct. Sept. 22, 2016). Note that the derivative nature of bystander emotional distress is not jurisdictional; a defendant must raise the issue properly, i.e., by a timely motion to dismiss for lack of personal jurisdiction, or a motion for summary judgment. *See Pascola-Milton*, 2018 WL 7709953, at *2 (denying untimely motion to dismiss).

The vast majority of Superior Court decisions hold that a pet is not a close relative under *Clohessy*. *See Mainello v. Parker*, 2021 WL 4896118, at *2 (Conn. Super. Ct. Sept. 23, 2021) (striking bystander emotional distress claim by plaintiff who witnessed dog attack his dog); *Carcaldi v. McKenzie*, 2014 WL 2257138, at *1-2 (Conn. Super. Ct. Apr. 24, 2014) (striking bystander emotional distress claim by plaintiff who witnessed dog attack his dog); *Bonilla v. Conn. Veterinary Ctr., Inc.*, 2013 WL 7020508, at *2 (Conn. Super. Ct. Dec. 18, 2013) (striking bystander emotional distress claim for death of pet dog); *Medura v. Town & Country Veterinary Assocs., P.C.*, 2012 WL 3871953, at *6 (Conn. Super. Ct. Aug. 10, 2012) (striking bystander emotional distress claim for death of pet cat); *see also Sweeney v. Gustafson*, 2015 WL 4571069, at *1 (Conn. Super. Ct. June 26, 2015) (striking emotional distress claims by plaintiff who witnessed "brutal[ ] attack[ ] by the defendant's dog"); *but see Vaneck v. Cosenza-Drew*, 2009 WL 1333918, at *3-5 (Conn. Super. Ct. Apr. 20, 2009) (denying motion to strike bystander emotional distress claim for death of beloved dog "[i]n the absence of specific authority" barring it).

In *Squeo v. Norwalk Hosp. Ass'n*, 316 Conn. 558 (2015), the Supreme Court overruled *Maloney v. Conroy*, 208 Conn. 392 (1988), and held that, "subject to the four conditions we established in *Clohessy* . . . a bystander to medical malpractice may recover for the severe emotional distress that he or she suffers as a direct result of contemporaneously observing gross professional negligence such that the bystander is aware, at the time, not only that the defendant's conduct is improper but also that it will likely result in the death of or serious injury to the primary victim." *Squeo*, 316 Conn. at 580-81. However, *Squeo* only opens the door a crack: The opinion opens with the admonition "that bystander claims should be available in the medical malpractice context only under extremely limited circumstances[,]" *id.* at 560, and "emphasize[s] . . . that the contemporaneous perception requirement is an important limitation on any claim for bystander emotional distress." *Id.* at 581 n.13. The Appellate Court has heeded this admonition. *See Marsala v. Yale-New Haven Hosp., Inc.*, 166 Conn. App. 432, 456 (2016) (affirming summary judgment because family members did not "contemporaneously observe" hospital's removal of patient's ventilator).