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). The improper purpose does not have to be a litigant's sole reason for his actions – merely the primary one. *See Ammar I. v. Dep't of Child. & Fams.*, 220 Conn. App. 77, 90 n.10, *cert. denied*, 348 Conn. 907 (2023) ("the gravamen of the action for abuse of process is the use of a legal process . . . against another *primarily* to accomplish a purpose for which it is not designed") (emphasis and ellipsis in original). 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) *Lewis*, 11 Conn. App. at 170-71; *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). This "stringent and demanding standard . . . [requires that] every presumption is in favor of possession in subordination to the title of the true owner." *Mulvey v. Palo*, 226 Conn. App. 495, 502 (2024). A putative adverse possessor must prove "exclusive possession over all areas" to which she claims title. *Id.* at 504. This may include "clear proof of the precise boundaries of the real property in question." *Id.* at 512. 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"). Likewise, "[a]n adverse possessor may interrupt his or her continuous possession by acting in a way that acknowledges the superiority of the real owner's title." *Supronowicz v. Eaton*, 224 Conn. App. 66, 86 n.16 (2024).

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 Est. 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.

As one of "the class of torts that seek redress for injuries that are personal in nature [a claim of assault is] therefore not assignable." *Northeast Bldg. Supply, LLC v. Morrill*, 224 Conn. App. 137, 153 (2024).

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].