

10-1-1958

Torts—Loss of Consortium as Element of Damages

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Torts Commons](#)

Recommended Citation

Buffalo Law Review, *Torts—Loss of Consortium as Element of Damages*, 8 Buff. L. Rev. 193 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/126>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

COURT OF APPEALS, 1957 TERM

The structure has to be deemed completed at some point, and it is feasible that this so-called "completed structure" could then be utilized by the same workmen as a place of employment. It is the writer's opinion, however, that the change from a work in progress to a place of employment must be clearly manifested by a lapse of time, a definite change in purpose, or a remote change in location in order to avoid obligating the owner to supervise, in reality, a sub-contractor's methods or details of work.

Loss of Consortium as Element of Damages

In New York, it has been the established rule that a wife does not have a right of action for damages for loss of consortium and other marital rights resulting from injuries to her husband caused by the negligence of a third person.⁷¹ However, in *Kronenbitter v. Washburn Wire Co.*,⁷² an attempt was made to persuade the Court of Appeals to abandon this rule.

The plaintiff in this case based her claim for loss of consortium on two grounds: that the marital relation creates rights in both the husband and wife and that therefore the wife as well as the husband has a cause of action for damages to the marital relation resulting from injuries to the husband caused by negligence of a third person,⁷³ and that the trend of legal opinion is toward recognition of such a right in the wife.⁷⁴

The Court affirmed the judgment dismissing plaintiff's complaint on motion for legal insufficiency.

The argument that equality of the sexes calls for a change overlooks that the husband's right to damages for loss of consortium is based on outworn theory. It derives from the time when the wife was regarded in law in some respects as her husband's chattel.⁷⁵

This language seems to indicate that the inconsistency between the allowance of consortium to husbands but not to wives will in a short time be terminated—not by extending the damages but rather by taking away the rights now enjoyed by husbands.

71. *Don v. Benjamin M. Knapp, Inc.*, 306 N.Y. 675, 117 N.E.2d 128 (1954).

72. *Kronenbitter v. Washburn Wire Co.*, 4 N.Y.2d 524, 176 N.Y.S.2d 354 (1953).

73. *Oppenheim v. Kridel*, 236 N.Y. 156, 140 N.E. 227 (1923).

74. *Hitaffer v. Argonne Co.*, 183 F.2d 811 (D.C.Cir. 1950); *Acuff v. Schmit*, 248 Ia. 272, 78 N.W. 2d 480 (1956).

75. *Kronenbitter v. Washburn Wire Co.*, *supra* note 72, at 527, 176 N.Y.S.2d at 355.