

2012 Edition

Vexatious Litigation in Connecticut

A Guide to Resources in the Law Library

- “We begin our discussion by setting forth the elements of the common-law tort of vexatious litigation. Our Supreme Court has stated: “In a malicious prosecution or vexatious litigation action, it is necessary to prove want of probable cause, malice and a termination of [the] suit in the plaintiffs' favor.... [Establishing] a cause of action for vexatious suit requires proof that a civil action has been prosecuted not only without probable cause but also with malice.... It must also appear that the litigation claimed to be vexatious terminated in some way favorable to the defendant therein.” (Citations omitted; emphasis added; internal quotation marks omitted.) [OSP, Inc. v. Aetna Casualty & Surety Co.](#), 256 Conn. 343, 361, 773 A.2d 906 (2001); see also [Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cole](#), 189 Conn. 518, 538, 457 A.2d 656 (1983); [Vandersluis v. Weil](#), 176 Conn. 353, 356, 407 A.2d 982 (1978); D. Wright, J. Fitzgerald & W. Ankerman, [Connecticut Law of Torts](#) (3d Ed. 1991) § 162, p. 432.

“We now identify the elements of statutory vexatious litigation. Section 52-568 provides: ‘Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages.’ This court has stated that ‘[t]he elements of a common-law or statutory cause of action for vexatious litigation are identical.’ [Norse Systems, Inc. v. Tingley Systems, Inc.](#), 49 Conn. App. 582, 596, 715 A.2d 807 (1998); see also [Frisbie v. Morris](#), 75 Conn. 637, 639, 55 A. 9 (1903); [Hebrew Home & Hospital, Inc. v. Brewer](#), 92 Conn. App. 762, 766-67, 886 A.2d 1248 (2005); [Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP](#), 89 Conn. App. 459, 467, 874 A.2d 266 (2005), *aff’d*, 281 Conn. 84, 912 A.2d 1019 (2007); [Shurman v. Duncan](#), 14 Conn. Supp. 293, 294 (1946).” [Bernhard-Thomas Bldg. Systems, LLC v. Dunican](#), 100 Conn. App. 63, 68-69, 918 A.2d 889, 893 - 894 (2007).

- “[I]t is well settled that equity may enjoin vexatious litigation . . . This power of equity exists independently of its power to prevent a multiplicity of actions. It is based on the fact that it is inequitable for a litigant to harass an opponent not for the attainment of justice, but out of malice . . . To be vexatious, litigation must be prosecuted not only without probable cause but also with malice.” (Citations omitted.) [Bridgeport Hydraulic Co. v. Pearson](#), 139 Conn. 186, 194, 91 A.2d 778 (1952).
- **ESSENTIAL ALLEGATIONS:** “In actions for malicious prosecution, and in actions under our statute for vexatious suit, two of the essential allegations are (1) that no probable cause existed for instituting the prosecution or suit complained of, and (2) that such prosecution or suit terminated in some way favorably to the defendant therein.” [Frisbie v. Morris](#), 75 Conn. 637, 639, [55 A. 9](#) (1903).

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Section 1: Vexatious Suits in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the tort of vexatious lawsuits in Connecticut state and federal courts.
- SEE ALSO:**
- [Frivolous Lawsuits in Connecticut](#)
 - Malicious Prosecution in Connecticut ([Section 2](#))
 - Abuse of Process in Connecticut ([Section 3](#))
- DEFINITIONS:**
- **Vexatious suit vs. malicious prosecution action.** “A vexatious suit is a type of malicious prosecution action, differing principally in that it is based upon a **prior civil action**, whereas a malicious prosecution suit ordinarily implies a prior criminal complaint. To establish either cause of action, it is necessary to prove want of probable cause, malice and a termination of suit in the plaintiff’s favor.” [Vandersluis v. Weil](#), 176 Conn. 353, 356, 407 A.2d 982 (1978). [emphasis added]
 - “In suits for vexatious litigation, it is recognized to be sound policy to require the plaintiff to allege that prior litigation terminated in his favor. This requirement serves to discourage unfounded litigation without impairing the presentation of honest but uncertain causes of action to the courts.” [Zeller v. Consolini](#), 235 Conn. 417, 424, 666 A.2d 64 (1995).
 - **Prior suit:** “To establish a cause of action for vexatious suit, a plaintiff must prove, inter alia, that a prior suit was brought without probable cause.” [Falls Church Group v. Tyler, Cooper and Alcorn](#), 89 Conn. App. 459, 467-468, 874 A.2d 266 (2005).
 - **Administrative vs. Judicial.** “We have also recognized that, for purposes of the tort of vexatious litigation, the previous litigation that terminated in the plaintiff’s favor may be an administrative, rather than a judicial, proceeding.” [Ibid.](#)
 - “**Damages** for groundless or vexatious suit or defense. Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person **double damages**, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him **treble damages**.” [Conn. Gen. Stats, § 52-568](#) (2011). [Emphasis added]
- STATUTES:** CONN. GEN. STAT. (2011)
- [Chapter 925](#). Statutory rights of actions and defenses
 - [§ 52-568](#). Damages for groundless or vexatious suit or defense
 - [§ 52-568a](#). Damages for groundless or vexatious suit against the owner or operator of a pick or cut your own agricultural operation.
- COURT RULES**
- CONNECTICUT PRACTICE BOOK (2012 ed.)
 - Chapter 24. [Small claims](#)
 - [24-33](#). Costs in small claims
- FORMS:**
- [Vexatious Suit, Form 804.11](#), 2 Conn. Practice Book (1978).

- Sample trial court documents – Sample Complaint, Thomas B. Merritt, Connecticut Practice Series, Connecticut Elements of an Action, *Malicious Prosecution/Vexatious Litigation*, pp. 368-370, counts 1 through 4, § 7:9
- Sample complaint, 7 COA 255 (1985) § 51.
- Sample complaint, 32 COA 2d 131 (2006) § 40.
- Complaint, petition, or declaration—For malicious prosecution of prior civil action—General form, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 5 (2000 rev.).
- Complaint, petition, or declaration—For malicious prosecution of prior civil action—Another form, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 6 (2000 rev.).
- Complaint, petition, or declaration—For malicious prosecution of prior civil action—Successive actions brought, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 7 (2000 rev.).
- Complaint, petition, or declaration—Prior administrative proceeding, , 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 8 (2000 rev.).
- Complaint, petition, or declaration— For malicious prosecution of prior civil action—Civil arrest procured, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 9 (2000 rev.).
- Complaint, petition, or declaration— For malicious prosecution and negligence in bringing of civil action—Against attorney and client—By plaintiff attorney in action, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 20.1 (2000 rev.).
- Answer—Defense—Institution of civil action and attachment of property on advise of counsel, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 25 (2000 rev.).
- Answer—Defense—Statute of limitations, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 26 (2000 rev.).
- Answer—Defense—No favorable termination of prior civil action, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 26.1(2000 rev.).
- Findings of fact—Conclusions of law—For plaintiff, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 27 (2000 rev.).

CHECKLISTS:

- Checklist—Drafting complaint, petition, or declaration in action for malicious prosecution of prior civil action, 17 [AM. JUR. PLEADING & PRACTICE](#) (2012 rev.), *Malicious Prosecution* § 43

CASES:

- [Shaw v. Yarbrough](#), No. FA 06-4022806 (Conn. Super. Ct., J.D. Hartford at Harford, Sept. 13, 2006), 42 CONN. L. RPTR. 25 (October 30, 2006). “In this paternity action, plaintiff seeks double or treble damages from defendant, pursuant to C.G.S. Sec. 52-568, for the defendant's having raised in his Answer to her complaint the contention that he is not certain if he is the father of the plaintiff's son. Plaintiff asserts that this response in the pleadings and the subsequent necessity of proceeding with genetic testing to establish paternity (which has now been accomplished, with affirmative results), was a vexatious ploy on defendant's part....

In this case, in the court's view, there was absolutely no evidence presented that raised any question that the child's father was the defendant, however, because of the rights afforded under C.G.S. Sec. 46b-160, the ‘without probable cause’ requirement of C.G.S. 52-568 cannot be met in this instance and the plaintiff's motion is denied.”

- [Falls Church Group v. Tyler, Cooper and Alcorn](#), 89 Conn. App. 459, 473-474, 874 A.2d 266 (2005). Determining the existence of probable cause in vexatious litigation action against an attorney in Connecticut.
- [Lewis v. Chelsea G.C.A. Realty Partnership](#), 86 Conn. App. 596, 605, 862 A.2d 368 (2004). “The exclusivity of federal jurisdiction over bankruptcy

proceedings, the complexity and comprehensiveness of Congress' regulation in the area of bankruptcy law and the existence of federal sanctions for the filing of frivolous and malicious pleadings in bankruptcy must be read as Congress' implicit rejection of alternative remedies such as those the plaintiff seeks. Accordingly, we determine that the court lacked subject matter jurisdiction over counts two and three of the complaint.”

- [DeLaurentis v. New Haven](#), 220 Conn. 225, 250, 597 A.2d 807 (1991). “Courts have taken three approaches to the ‘termination’ requirement. The first, and most rigid, requires that the action have gone to judgment resulting in a verdict of acquittal, in the criminal context, or no liability, in the civil context. The second permits a vexatious suit action even if the underlying action was merely withdrawn so long as the plaintiff can demonstrate that the withdrawal took place under circumstances creating an inference that the plaintiff was innocent, in the criminal context, or not liable, in the civil context. The third approach, while nominally adhering to the ‘favorable termination’ requirement, in the sense that any outcome other than a finding of guilt or liability is favorable to the accused party, permits a malicious prosecution or vexatious suit action whenever the underlying proceeding was abandoned or withdrawn without consideration, that is, withdrawn without either a plea bargain or a settlement favoring the party originating the action.”

**WEST KEY
NUMBERS:**

- ACTION
 - # 9. Unnecessary or vexatious actions
- MALICIOUS PROSECUTION
- I. Nature and commencement of prosecution
 - # 9. Civil actions
 - # 10. —In general
 - # 11. —Necessity of arrest of person or seizure of property
 - # 12. Civil proceedings other than actions
 - # 13. Actions and proceedings in rem
 - # 14. Injury from prosecution
 - II. Want of probable cause
 - # 15. Necessity
 - # 16. Concurrence of other elements
 - # 25. Civil actions and proceedings
 - III. Malice
 - # 26. Necessity
 - # 27. Nature and element
 - # 28. Express malice
 - # 29. Implied malice in general
 - # 30. Motive of prosecution
 - # 31. Acts and conduct evidence of malice
 - # 32. Interference from want of probable cause
 - # 33. Interference from result of prosecution
 - IV. Termination of prosecution
 - # 34. Necessity
 - # 35. Mode of termination
 - (1). In general
 - (2). Comprise and settlement
 - # 36. Finality of determination
 - # 37. Scope and effect of determination
 - V. Action
 - # 38. Nature and form of remedy
 - # 39. Grounds of action
 - # 40. Defenses
 - # 41. Persons entitled to sue

- # 42. Persons liable
- # 43. Jurisdiction and venue
- # 46. Pleading
- # 56. Presumptions and burden of proof
- # 57. Admissibility of evidence
- # 65. Damages
- # 75. Judgment
- # 76. Appeal and error
- # 77. Costs

RESTATEMENTS:

- [Restatement of Torts 2d](#)
 Chapter 30. Wrongful use of civil proceedings
 - § 674. General principles
 - § 675. Existence of probable cause
 - § 676. Propriety of purpose
 - § 677. Civil proceedings causing an arrest or a deprivation of property
 - § 678. Proceedings alleging insanity or insolvency
 - § 679. Repetition of civil proceedings
 - § 680. Proceedings before an administrative board
 - § 681. Damages
 - § 681A. Burden of proof
 - § 681B. Functions of court and jury

TEXTS & TREATISES:

- Richard L. Newman & Jeffrey S. Wildstein, [Tort Remedies in Connecticut](#) (1996).
 Chapter 12. Intentional torts
 - § 12-3. Malicious prosecution and vexatious suit
 - (a). Introduction
 - (b). History
 - (c). Elements
 - (d). Damages
 - (e). Conn. Gen. Stats. § 52-226a
 - (f). Defenses
- Dan B. Dobbs, [The Law of Torts](#) (2nd ed., 2011).
 Chapter 46. Process rights: Misusing and denying judicial Process
 - § 592. Wrongful civil litigation and tactics
 - § 593. Special injury or special grievance requirement
 - § 595. Reforms and new directions
 - § 596. Damages
- Douglass B. Wright et al., [Connecticut Law of Torts](#) (1991).
 Chapter XVIII. Vexatious litigation
 - § 160. Introduction
 - § 162. Vexatious suit
- 1 Daniel C. Pope, [Connecticut Actions and Remedies, Tort Law](#) (1996).
 Chapter 7. Malicious prosecution
 - A. Introduction
 - § 7:01. Overview
 - B. Essential elements
 - § 7:02. Essential elements
 - § 7:04. Initiation of prior civil proceeding
 - § 7:05. Lack of probable cause
 - § 7:06. Malice
 - § 7:07. Favorable termination
 - C. Remedies and damages
 - § 7:08. In general
 - D. Defenses

§ 7:09. In general
E. Pleading and practice
§ 7:10. In general
F. Research aids

§ 7:11. Bibliography

- 1 Fowler V. Harper et al. [Harper, James and Gray on Torts](#) (2006 3rd ed.)
Chapter 4. Malicious prosecution and abuse of process
 - § 4.1. General principles involved; What constitutes malicious prosecution
 - § 4.2. The interests involved
 - § 4.3. Initiation of criminal proceedings
 - § 4.4. Favorable termination of proceedings
 - § 4.5. Probable cause
 - § 4.6. Malice
 - § 4.7. Damages
 - § 4.8. Malicious civil litigation
 - § 4.12. Policy factor in false arrest, malicious prosecution, defamation: The absolute defense in all three
- Michael S. Taylor & Daniel J. Krisch. [Encyclopedia of Connecticut Causes of Action](#) (2009).
 - Part I. Common Law Causes of Action
 - p. 67 Vexatious Litigation (Common Law)
 - Part 2. Statutory Causes of Action (Traditional)
 - p. 115 Vexatious Litigation (Conn. Gen. Stat. § 52-568)
- W. Page Keeton, Gen. Ed., [Prosser and Keeton on the Law of Torts](#) (5th ed. Hornbook series, Student edition).
Chapter 21. Misuse of legal procedure
 - § 120. Wrongful civil proceedings
- 54 [C.J.S.](#) *Malicious prosecution*
 - I. In general
 - II. Elements of the cause of action for malicious prosecution
 - III. Defenses to cause of action for malicious prosecution
- 52 [Am. Jur. 2d](#) *Malicious prosecution* (2011)
 - I. In general
 - II. Elements of the cause of action
 - III. Parties
 - IV. Defenses
 - V. Damages
 - VI. Practice and procedure
- Cause of action for malicious prosecution of civil actions, 7 [COA](#) 255 (1985).
 - I. Introduction
 - II. Substantive law overview
 - A. Prima facie case
 - B. Defenses
 - III. Practice and procedure
 - A. In general
 - B. Pleadings and proof
 - C. Recovery
 - IV. Appendix
 - § 50. Sample case
 - § 51. Sample complaint
 - § 52. Research guide
- *Malicious prosecution*, 16 Am. Jur. Trials 205 (1969).
- *Attorney's Malicious Prosecution of Client's Action*, 30 POF2d 197 (1982).
 - II. Proof of attorney's malicious prosecution of client's action
 - A. Elements of proof

HORNBOOK
SERIES:

ENCYCLOPEDIAS:

§ 10. Guide and checklist

- Debra E. Wax, Annotation, *Liability Of Attorney, Acting For Client, For Malicious Prosecution*, 46 ALR4th 249 (1986).
- Colleen R. Courtade, Annotation, *Actionability Of Malicious Prosecution Under 42 U.S.C. § 1983*, 79 ALR Federal (1986).
- Vitauts M. Gulbis, Annotation, *Nature Of Termination Of Civil Action Required To Satisfy Element Of Favorable Termination To Support Action For Malicious Prosecution*, 30 ALR4th 572 (1984).
- Annotation, *Necessity And Sufficiency Of Allegations In Complaint For Malicious Prosecution Or Tort Action Analogous Thereto That Defendant Or Defendants Acted Without Probable Cause*, 14 ALR2d 264 (1950).

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Table 1: Damages for Groundless or Vexatious Suit or Defense

Damages for vexatious suit Conn. Gen. Stats. § 52-568 (2011)
<p>“Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages.” [Emphasis added]</p>

Table 2: Determining Existence of Probable Cause in Vexatious Litigation Action Against an Attorney

Determining existence of probable cause in vexatious litigation action against an attorney in Connecticut

- “We agree with the supreme courts of California and Michigan that an attorney's subjective belief in the tenability of a claim and the extent of an attorney's investigation and research have no place in determining the existence of probable cause in a vexatious litigation action against an attorney and that the presence or absence of probable cause should be judged by an objective standard. That said, we nevertheless agree with — and, therefore, adopt — the Indiana Court of Appeals' articulation of an objective standard of probable ‘[T]he objective standard which should govern the reasonableness of an attorney's action in instituting litigation for a client is whether the claim merits litigation against the defendant in question on the basis of the facts known to the attorney when suit is commenced. The question is answered by determining that no competent and reasonable attorney familiar with the law of the forum would consider that the claim was worthy of litigation on the basis of the facts known by the attorney who instituted suit.’ (Emphasis added.) *Wong v. Tabor*, supra, 422 N.E.2d [1279,]1288 [(Ind. App. 1981)]. We are mindful that ‘[r]easonable lawyers can differ, some seeing as meritless suits which others believe have merit, and some seeing as totally and completely without merit suits which others see as only marginally meritless. **Suits which all reasonable lawyers agree totally lack merit — that is, those which lack probable cause — are the least meritorious of all meritless suits. Only this subgroup of meritless suits present no probable cause.**’ (Emphasis in original; internal quotation marks omitted.) *Roberts v. Sentry Life Ins.*, 76 Cal. App. 4th 375, 382, 90 Cal. Rptr. 2d 408 (1999), review denied, 2000 Cal. LEXIS 1059 (February 16, 2000). ‘This lenient standard for bringing a civil action reflects the important public policy of avoiding the chilling of novel or debatable legal claims and allows attorneys and litigants to present issues that are arguably correct, even if it is extremely unlikely that they will win. . . .’ (Internal quotation marks omitted.) *Padres L.P. v. Henderson*, 114 Cal. App. 4th 495, 517, 8 Cal. Rptr. 3d 584 (2003), review denied, 2004 Cal. LEXIS 3174 (April 14, 2004). [Falls Church Group v. Tyler, Cooper and Alcorn](#), 89 Conn. App. 459, 473-474, 874 A.2d 266 (2005), affirmed [Falls Church Group, Ltd. v. Tyler, Cooper and Alcorn, LLP](#), 281 Conn. 84, 912 A.2d 1019 (2007). [Emphasis added].

Table 3: Costs in Small Claims

<p>Costs in Small Claims Conn. Practice Book § 24-33 (2012 ed.)</p>	
<p>§ 24-33</p>	<p>The actual legal disbursements of the prevailing party for entry fee, witness' fees, execution fees, fees for copies, fees of an indifferent person, and officers' fees shall be allowed as costs. No other costs shall be allowed either party except by special order of the judicial authority. The judicial authority shall have power in its discretion to award costs, in a sum fixed by the judicial authority, not exceeding \$100 (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim, defense or counterclaim, or has made an unfair, insufficient or misleading answer, or has negligently failed to be ready for trial, or has otherwise sought to hamper a party or the judicial authority in securing a speedy determination of the claim upon its merits, and it may render judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require. In no case shall costs exceed the amount of the judgment. [Emphasis added].</p>

Figure 1: Vexatious Suit

Vexatious Suit

1. On (*date*) the defendant in this action commenced a civil suit against the plaintiff in this action claiming (*state claim*) which was returnable to the superior court for the judicial district of (*name*) on (*return date*).
2. On (date), judgment in that action was rendered in favor of the plaintiff in this action to recover of the defendant in this action \$ costs of suit.
3. That action was commenced and prosecuted by the defendant in this action without probable cause, and with a malicious intent unjustly to vex and trouble him.
4. The plaintiff in this action necessarily expended in the defense of that action a much larger sum than the costs in that suit; to wit: \$.

The plaintiff claims, by force of statute in such case provided, to recover treble damages.

(P.B. 1963, Form 205; see Gen. Stat., § 52-568)

Section 2: Malicious Prosecution in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the tort of malicious prosecution in Connecticut state and federal courts

SEE ALSO:

- [Frivolous Lawsuits in Connecticut](#)
- Vexatious Litigation in Connecticut ([Section 1](#))
- Abuse of Process in Connecticut ([Section 3](#))

DEFINITIONS:

- “An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.’ *McHale v. W.B.S. Corp.*, 187 Conn. 444, 447, 446 A.2d 815 (1982)... the requirement that the plaintiff establish that the defendant initiated or procured the institution of criminal proceedings against him, is the only element that distinguishes the tort of malicious prosecution from the tort of vexatious litigation. We have stated that the elements of malicious prosecution and common-law vexatious litigation essentially are identical. See, e.g., *Rioux v. Barry*, 283 Conn. 338, 340 n. 3, 927 A.2d 304 (2007); *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 94, 912 A.2d 1019 (2007); *Vandersluis v. Weil*, 176 Conn. 353, 356, 407 A.2d 982 (1978). Although the required showing for both torts essentially is the same, there is a slight difference in that a plaintiff in a malicious prosecution action must show initiation of the proceedings by the defendant.” [Bhatia v. Debek](#), 287 Conn. 397, 948 A.2d 1009 (2008).”
- “**Damages for groundless or vexatious suit or defense.** Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages.” [Conn. Gen. Stats, § 52-568](#) (2011).
- “The torts of malicious prosecution and vexatious litigation are similar because in both types of action ‘the claimed impropriety arises out of previous litigation.’ *Blake v. Levy*, supra, 262. The principles governing both torts are based on the ‘competing policies of deterrence of groundless litigation and protection of good faith access to the courts.’ *Blake v. Levy*, supra, 263. The requirement of termination may be satisfied by showing that the suit in question was abandoned or dismissed. 52 Am. Jur.2d, Malicious Prosecution § 42. A final determination on the merits is unnecessary and the mere discontinuance of a civil suit in any way satisfies the requirement. *Hurgren v. Union Mutual Life Ins. Co.*, 141 Cal. 585, 588, 75 P. 168 (1904). The voluntary dismissal ‘without prejudice’ of a will contest is a favorable termination of a judicial proceeding. Annot., 35 A.L.R.3d 651, 658.” [Colli v. Kamins](#), 39 Conn. Sup. 75, 468 A.2d 295 (1983).

FORMS:

- Malicious Prosecution, Form 804.10, 2 Conn. Practice Book (1978).
- Sample trial court documents – Thomas B. Merritt, Connecticut Practice Series, Connecticut Elements of an Action, *Malicious Prosecution/Vexatious Litigation*.
 - § 15:9 – Sample complaint
 - § 15:10 – Sample answer containing affirmative defenses
- Complaint, petition, or declaration—Allegation—Plaintiff temporarily in custody in prior proceeding—Charges dismissed on arraignment, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 29 (2000 rev.).
- Complaint, petition, or declaration—Allegation—Actual damages—Shock to nervous system from arrest where plaintiff pregnant, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 30 (2000 rev.).
- Complaint, petition, or declaration—Allegation—Actual damages—Action by husband and wife for malicious prosecution of spouse, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 31 (2000 rev.).
- Complaint, petition, or declaration—Allegation—Actual damages—Expenses incurred in defending action maliciously instituted, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 32 (2000 rev.).
- Complaint, petition, or declaration—Allegation—Exemplary damages, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 33 (2000 rev.).
- Answer—Defense—Procurement of arrest on advise of counsel, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 34 (2000 rev.).
- Answer—Defense—Making complaint on advise of public prosecuting attorney, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 35 (2000 rev.).
- Answer—Defense—Honest statement of facts to prosecuting attorney, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 36 (2000 rev.).
- Answer—Defense—Existence of probable cause to bring criminal action, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 37 (2000 rev.).

JURY INSTRUCTIONS:

- Instruction to jury—Plaintiff’s burden of proof, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 80 (2000 rev.).
- Instruction to jury—Malice defined, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 86 (2000 rev.).
- Instruction to jury—Probable cause defined, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 90 (2000 rev.).
- Instruction to jury—Acting under advise of counsel as defense to action for malicious prosecution, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 102 (2000 rev.).
- Instruction to jury—Defense of advice of counsel—Requirement that full disclosure be made to counsel, 17 AM. JUR. PLEADING & PRACTICE *Malicious Prosecution* § 104 (2000 rev.).

CASES:

- [Bhatia v. Debek](#), 287 Conn. 397, 948 A.2d 1009 (2008). “We consider each of the four elements of malicious prosecution in turn to determine whether the trial court's conclusion was clearly erroneous.... The first element....”
- [DeLaurentis v. New Haven](#), 220 Conn. 225, 250, 597 A.2d 807 (1991). “Courts have taken **three approaches** to the ‘**termination**’ requirement. The first, and most rigid, requires that the action have gone to judgment resulting in a verdict of acquittal, in the criminal context, or no liability, in the civil context. The second permits a vexatious suit action even if the underlying action was merely withdrawn so long as the plaintiff can demonstrate that the withdrawal took place under circumstances creating an inference that the plaintiff was innocent, in the criminal context, or not liable, in the civil context. The third approach, while nominally adhering to the ‘favorable termination’ requirement, in the sense that any outcome other than a finding of guilt or liability is favorable to the accused party, permits a

malicious prosecution or vexatious suit action whenever the underlying proceeding was abandoned or withdrawn without consideration, that is, withdrawn without either a plea bargain or a settlement favoring the party originating the action.” [Emphasis added]

- [Konon v. Fornal](#), 612 F. Supp. 68, 69-70 (Conn. 1985). “One of the elements that a plaintiff must show in order to maintain a section 1983 action for malicious prosecution is that the criminal proceeding at issue was terminated in his favor. See *Singleton v. City of New York*, 632 F.2d 185, 194-95 (2d Cir. 1980), cert. denied, 450 U.S. 920, 101 S.Ct. 1368, 67 L.Ed.2d 347 (1981); *Appletree v. City of Hartford*, Ruling on Defendants' Motion for Summary Judgment, No. H-81-992 (D.Conn. February 27, 1984), slip op. at 13. In this case the charges against the plaintiff were disposed of through Connecticut's **accelerated rehabilitation** law, Conn.Gen.Stat. § 54-56e (formerly § 54-76p). Disposition of a case through section 54-56e is not a termination favorable to the accused for purposes of bringing a later section 1983 action for malicious prosecution. *Singleton v. City of New York*, 632 F.2d at 193-94.” [Emphasis added].
- [Colli v. Kamins](#), 39 Conn. Sup. 75, 77, 468 A.2d 295 (1983). “An **abandonment of a criminal proceeding**, so far as the plaintiff's right to prevail is concerned, is the equivalent of its successful termination. *Shaw v. Moon*, 117 Or. 558, 562, 245 P. 318 (1926). The rule governing the kindred tort of malicious prosecution is that it is sufficient if the defendant in the underlying prosecution was ‘discharged without a trial under circumstances amounting to an abandonment of the prosecution without request from or by arrangement with him.’ See *v. Gosselin*, 133 Conn. 158, 160, 48 A.2d 560 (1946).” [Emphasis added]

WEST KEY NUMBERS:

- ACTION
 - # 9. Unnecessary or vexatious actions
- MALICIOUS PROSECUTION
 - I. Nature and commencement of prosecution
 - # 9. Civil actions
 - # 10. —In general
 - # 11. —Necessity of arrest of person or seizure of property
 - # 12. Civil proceedings other than actions
 - # 13. Actions and proceedings in rem
 - # 14. Injury from prosecution
 - II. Want of probable cause
 - # 15. Necessity
 - # 16. Concurrence of other elements
 - # 25. Civil actions and proceedings
 - III. Malice
 - # 26. Necessity
 - # 27. Nature and element
 - # 28. Express malice
 - # 29. Implied malice in general
 - # 30. Motive of prosecution
 - # 31. Acts and conduct evidence of malice
 - # 32. Interference from want of probable cause
 - # 33. Interference from result of prosecution
 - IV. Termination of prosecution
 - # 34. Necessity
 - # 35. Mode of termination
 - (1). In general
 - (2). Comprise and settlement
 - # 36. Finality of determination

- # 37. Scope and effect of determination
- V. Action
 - # 38. Nature and form of remedy
 - # 39. Grounds of action
 - # 40. Defenses
 - # 41. Persons entitled to sue
 - # 42. Persons liable
 - # 43. Jurisdiction and venue
 - # 46. Pleading
 - # 56. Presumptions and burden of proof
 - # 57. Admissibility of evidence
 - # 65. Damages
 - # 75. Judgment
 - # 76. Appeal and error
 - # 77. Costs

RESTATEMENTS:

- [Restatement of Torts 2d](#)
 - Chapter 29. Wrongful prosecution of criminal proceedings (Malicious prosecution)
 - Topic 1. General principles
 - § 653. Elements of a cause of action
 - § 654. Institution of criminal proceedings
 - § 655. Continuing criminal proceedings
 - § 656. Absolute privilege of public prosecutor
 - § 657. Plaintiff's guilt as bar to recovery
 - Topic 2. Termination of proceedings
 - § 658. General rule
 - § 659. Manner of termination
 - § 660. Indecisive termination of proceedings
 - § 661. Impossibility of bringing the accused to trial
 - Topic 3. Probable cause
 - § 662. Existence of probable cause
 - § 663. Effect of discharge or commitment by a magistrate
 - § 664. Effect of action of a grand jury
 - § 665. Effect of abandonment of proceedings
 - § 666. Effect of advise of counsel
 - § 667. Effect of conviction or acquittal
 - Topic 4. Purpose
 - § 668. Propriety of purpose
 - § 669. Lack of probable cause as evidence of lack of probable cause
 - § 669A. Improper purpose not evidence of lack of probable cause
 - Topic 5. Damages
 - § 670. General damages
 - § 671. Special damages
 - § 672. Burden of proof
 - § 673. Function of court and jury

TEXTS & TREATISES:

- Richard L. Newman & Jeffrey S. Wildstein, [Tort Remedies in Connecticut](#) (1996).
 - Chapter 12. Intentional torts
 - § 12-3. Malicious prosecution and vexatious suit
 - (a). Introduction
 - (b). History
 - (c). Elements
 - (d). Damages
 - (e). Conn. Gen. Stats. § 52-226a

- (f). Defenses
- Douglass B. Wright et al., [Connecticut Law of Torts](#) (1991).
 - Chapter XVIII. Vexatious litigation
 - § 160. Introduction
 - § 161. Malicious prosecution
- 1 Daniel C. Pope, [Connecticut Actions and Remedies, Tort Law](#) (1996).
 - Chapter 7. Malicious prosecution
 - A. Introduction
 - § 7:01. Overview
 - B. Essential elements
 - § 7:02. Essential elements
 - § 7:03. Initiation of prior criminal proceeding
 - § 7:05. Lack of probable cause
 - § 7:06. Malice
 - § 7:07. Favorable termination
 - C. Remedies and damages
 - § 7:08. In general
 - D. Defenses
 - § 7:09. In general
 - E. Pleading and practice
 - § 7:10. In general
 - F. Research aids
 - § 7:11. Bibliography
- Dan B. Dobbs, [The Law of Torts](#) (2nd ed., 2011).
 - Chapter 46. Process rights: Misusing and denying judicial Process
 - § 592. Wrongful civil litigation and tactics
 - § 593. Special injury or special grievance requirement
 - § 595. Reforms and new directions
 - § 596. Damages
- 1 Fowler V. Harper et al. [Harper, James and Gray on Torts](#) (2006 3rd ed.)
 - Chapter 4. Malicious prosecution and abuse of process
 - § 4.1. General principles involved; What constitutes malicious prosecution
 - § 4.2. The interests involved
 - § 4.3. Initiation of criminal proceedings
 - § 4.4. Favorable termination of proceedings
 - § 4.5. Probable cause
 - § 4.6. Malice
 - § 4.7. Damages
 - § 4.10. Other malicious and wrongful exposure to government action
 - § 4.11. . Policy factor in false arrest, malicious prosecution, defamation: Their relationship to each other
 - § 4.12. Policy factor in false arrest, malicious prosecution, defamation: The absolute defense in all three
- Michael S. Taylor & Daniel J. Krisch. [Encyclopedia of Connecticut Causes of Action](#) (2009).
 - Part I. Common Law Causes of Action
 - p. 39 Malicious Prosecution
- Thomas B. Merritt. Connecticut Practice Series, [Connecticut Elements of an Action](#) (2009-2010 Edition).
 - Chapter 15. Malicious Prosecution/Vexatious Litigation
 - § 15:1 Elements of action
 - § 15:2 Authority
 - § 15:3 Remedies – Compensatory damages

- § 15:4 – Punitive or exemplary damages
- § 15:5 Limitations of actions: Statute of limitations
- § 15:6 Defenses – Limitations
- § 15:7 – Existence of probable cause
- § 15:8 Checklist

HORNBOOKS:

- W. Page Keeton, Gen. Ed., [Prosser and Keeton on the Law of Torts](#) (5th ed. Hornbook series, Student edition).
Chapter 21. Misuse of legal procedure
§ 119. Malicious prosecution

ENCYCLOPEDIAS:

- 54 [C.J.S.](#) Malicious prosecution
 - I. In general
 - II. Elements of the cause of action for malicious prosecution
 - III. Defenses to cause of action for malicious prosecution
- 52 [Am. Jur. 2d](#) *Malicious prosecution* (2011)
 - I. In general
 - II. Elements of the cause of action
 - III. Parties
 - IV. Defenses
 - V. Damages
 - VI. Practice and procedure
- Thomas M. Fleming, Annotation, *Liability Of Police Or Peace Officer For False Arrest, Imprisonment, Or Malicious Prosecution As Affected By Claim Of Suppression*, failure to disclose, or failure to investigate exculpatory evidence, 81ALR4th 1032 (1990).
- Milton Roberts, Annotation, *Principal's Liability For Punitive Damages Because Of False Arrest Or Imprisonment, Or Malicious Prosecution, By Agent Or Employee*, 93 ALR3d 826 (1979).
- Patricia Jean Lamkin, Annotation, *Immunity Of Prosecuting Attorney Or Similar Officer From Action For False Arrest Or Imprisonment*, 79 ALR3d 882 (1977).
- Annotation, *Attorney's Fees As Element Of Damages In Action For False Imprisonment Or Arrest, Or For Malicious Prosecution*, 21 ALR3d 1068 (1968).
- Annotation, *Acquittal, Discharge, Or Discontinuance Of Criminal Charges As Evidence Of Want Of Probable Cause In Malicious Prosecution Action*, 59 ALR2d 1413 (1958).

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* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Section 3: Abuse of Process in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating the tort of abuse of process in Connecticut state and federal courts

SEE ALSO:

- [Frivolous Lawsuits in Connecticut](#)
- Vexatious Litigation in Connecticut ([Section 1](#))
- Malicious Prosecution in Connecticut ([Section 2](#))

DEFINITIONS:

- “Abuse of process is the misuse of process regularly issued to accomplish an unlawful ulterior purpose. The gravamen of the complaint is the use of process for a purpose not justified by law. The distinction between malicious prosecution or vexatious suit and abuse of process as tort actions is that in the former the wrongful act is the commencement of an action without legal justification, and in the latter it is in the subsequent proceedings, not in the issue of process but in its abuse. The distinction in the elements essential for recovery in each tort is that in the action for abuse of process the plaintiff is not bound to allege or prove the termination of the original proceeding nor, in most jurisdictions, the want of probable cause, while both of those must be proven in an action for malicious prosecution or vexatious suit.” Schaefer v. O. K. Tool Co., Inc., 110 Conn. 528, 32-33, 148 A. 330 (1930).
- “**Damages for groundless or vexatious suit or defense.** Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages.” [Conn. Gen. Stats, § 53-568](#) (2011).

STATUTES:

CONN. GEN. STAT. (2011)

- [Chapter 898](#). Pleading
[§ 52-99](#). Untrue allegations or denials; costs
- [Chapter 901](#). Damages, costs and fees
[§ 52-251a](#). Costs, attorney’s fees on small claim matters transferred to regular docket.

COURT RULES:

- CONNECTICUT PRACTICE BOOK (2011 ed.)
 - [Chapter 4. Pleadings](#)
 - [§ 4-2. Signing of pleadings](#)
 - (b). The signing of any pleading, motion, objection or request shall constitute a certificate that the signer has read such document, that to the best of the signer's knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. Each pleading and every other court-filed document signed by an attorney or party shall set forth the signer's telephone number and mailing address.
 - [Chapter 10. Pleadings](#)
 - [§ 10-5. Untrue allegations or denials](#)
 - [§ 24-33. Costs in small claims](#)
 - [§ 85-2. Other actions subject to sanctions](#)
 - (5). Presentation of a frivolous appeal or frivolous issue on appeal
 - [§ 85-3. Procedure on sanctions](#)

RESTATEMENTS:

- [RESTATEMENT OF TORTS 2d](#)
 - Chapter 31. Abuse of process
 - § 682. Abuse of process

CHECKLISTS:

- Checklist—Drafting a complaint, petition, or declaration in an action for abuse of process, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 3 (2003).
- Thomas B. Merritt. Connecticut Practice Series, [Connecticut Elements of an Action](#) (2011-2011 Edition).
 - Chapter 7. Abuse of Process
 - § 7:8 Checklist

FORMS:

- Complaint, petition, or declaration—Service of process effected by breaking into dwelling—Knowledge that person to be served was invalid, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 4 (2003).
- Complaint, petition, or declaration—Allegations—Libel suit used to prevent defendant in libel action from exercising right to free expression—Recovery of punitive damages, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 5 (2003).
- Complaint, petition, or declaration—Wrongful eviction of tenant and seizure of property—Residential premises, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 19 (2003).
- Answer—Defense—Failure to file wage exemption affidavit, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 6 (2003).

JURY INSTRUCTIONS:

- Instruction to jury—Definition—Elements of action for abuse of process, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 35 (2003).
- Instruction to jury—Definition—Malice, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 36 (2003).
- Instruction to jury—Effect on damages of malice or want to probable cause, 1 AM JUR PLEADING & PRACTICE *Abuse of Process* § 37 (2003).

CASES:

- [Larobina v. McDonald](#), 274 Conn. 394, 406-407, 876 A.2d 522 (2005). “All of these courts agree, however, that, although the definition of process may be broad enough to cover 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.”
- [Holeman v. City of New London](#), 330 F.Supp.2d 99 (D. Conn. 2004). “A cause of action for abuse of process can be brought ‘against any person using

a legal process against another in an improper manner or to accomplish a purpose for which it was not designed.’ *Mozzochi v. Beck*, 204 Conn. 490, 494, 529 A.2d 171 (1987)(internal quotation marks omitted). Such a claim must show that a legal process was used ‘primarily to accomplish a purpose for which it is not designed. . . .’ *Id.* Furthermore, ‘the claim must assert facts indicating that process was misused or abused.’ *New Eng. Mortg. Group, Inc. v. Lebowitz*, 2001 Conn. Super. LEXIS 2018, No. CV970160827, 2001 WL 951330, [**49] *2 (Conn.Super. July 20, 2001). In the case at bar, plaintiffs fail to meet their burden of asserting facts which show how the process was misused or abused. The record is devoid of any evidence establishing that defendants used a legal process for a purpose for which it is not designed. Accordingly, defendants’ motion for summary judgment on the abuse of process claim is granted.”

- [Doctor’s Associates, Inc. v. Weible](#), 92 F.3d 108 (2nd Cir. 1996), certiorari denied 117 S.Ct. 767, 519 U.S. 1091, 136 L.Ed.2d 713. “[U]nder Connecticut law, a party does not abuse the legal process merely by filing suit. This is true regardless of the plaintiff’s motive.... Rather, liability for abuse of process lies only when the offending party overtly misuses the process once the proceeding has begun.”
- [Varga v. Pareles](#), 137 Conn. 663, 667, 81 A.2d 112 (1951). “One who uses a legal process against another in an improper manner or to accomplish a purpose for which it was not designed is liable to the other for the injury caused thereby. See Restatement, 3 Torts 682. In the former instance, the action lies, for example, against anyone who uses oppression or unreasonable force in the service of process, or causes it to be used, irrespective of his motive in so doing.”
- [Schaefer v. O. K. Tool Co., Inc.](#), 110 Conn. 528, 148 A. 330 (1930). “Abuse of process is the misuse of process regularly issued to accomplish an unlawful ulterior purpose. The gravamen of the complaint is the use of process for a purpose not justified by law. The distinction between malicious prosecution or vexatious suit and abuse of process as tort actions is that in the former the wrongful act is the commencement of an action without legal justification, and in the latter it is in the subsequent proceedings, not in the issue of process but in its abuse. The distinction in the elements essential for recovery in each tort is that in the action for abuse of process the plaintiff is not bound to allege or prove the termination of the original proceeding nor, in most jurisdictions, the want of probable cause, while both of those must be proven in an action for malicious prosecution or vexatious suit.”

WEST KEY NUMBERS:

- Abuse of process
 - # 168. Nature and elements of cause of action
 - # 169. Defenses
 - # 170. Persons liable
 - # 171. Actions

TEXTS & TREATISES:

- Richard L. Newman & Jeffrey S. Wildstein, [Tort Remedies in Connecticut](#) (1996).
 - Chapter 12. Intentional torts
 - § 12-3. Malicious prosecution and vexatious suit
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 - 1 Daniel C. Pope, [Connecticut Actions and Remedies, Tort Law](#) (1996).
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§ 8:04. Perversion of lawful process
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§ 8:05. In general
D. Defenses
§ 8:06. In general
E. Pleading and practice
§ 8:07. In general
F. Research aids
§ 8:08. Bibliography
 - Dan B. Dobbs, [The Law of Torts](#) (2nd ed., 2011).
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§ 592. Wrongful civil litigation and tactics
§ 595. Reforms and new directions
§ 596. Damages
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p. 1 Abuse of Process
 - Thomas B. Merritt. Connecticut Practice Series, [Connecticut Elements of an Action](#) (2009-2010 Edition).
Chapter 7. Abuse of Process
§ 7:1 Elements of action
§ 7:2 Authority
§ 7:3 Remedies – Compensatory damages
§ 7:4 – Punitive or exemplary damages
§ 7:5 Limitations of actions: Statute of limitations
§ 7:6 Defenses – Limitations
§ 7:7 – Lack of issuance of process
§ 7:8 Checklist
- HORNBOOKS:**
- W. Page Keeton, Gen. Ed., [Prosser and Keeton on the Law of Torts](#) (5th ed. Hornbook series, Student edition).
Chapter 21. Misuse of legal procedure
§ 121. Abuse of process
- ENCYCLOPEDIAS:**
- 72 [C.J.S. Process](#) (2005).
Abuse, or malicious use, of process
A. In general

- § 152. Definitions and distinctions
- § 153. Particular forms of process subject to abuse
- § 154. Persons liable
- § 155. Defenses

B. Elements

- § 156. Generally
- § 157. Use of process
- § 158. Use of process—Unlawful use
- § 159. Intent or malice
- § 160. Malicious use of process. Generally
- § 161. Interference with person or property

C. Actions

- § 162. Generally
- § 163. Pleadings and evidence
- § 164. Questions of law or fact, instructions, and damages
- Debra T. Landis, Annotation, *Civil Liability Of Attorney For Abuse Of Process*, 97 ALR3d 688 (1980).
- Thomas J. Goger, Annotation, *What Constitutes Malice Sufficient To Justify An Award Of Punitive Damages In Action For Wrongful Attachment Or Garnishment*, 61 ALR3d 984 (1975).

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