

**Advanced Torts: Cultural Conflict and the Intentional Torts**  
**Professor Regina Austin**  
**Fall Term 2006**  
**Three credit hours**

**I. Introduction**

*A. The Relevance of Culture: Starting with Hair*

1. Lisa Jones, "Hair Always and Forever," in Bulletproof Diva: Tales of Race Sex, and Hair 11 (1994)
2. *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981) (the cornrows case)
3. *Halton v. Great Clips, Inc.*, 94 F. Supp.2d 856 (N.D. Ohio 2000) (discrimination alleged by beauticians and customers of a hair care chain outlet)
4. "Hair Piece: A Film for Nappyheaded People" (Ayoka Chenzira, director) (Women Make Movies/Carnelian Films 1985) (an historical overview of the struggle of black women to achieve social recognition of their beauty as reflected in their changing hairstyling techniques and concerns)
5. "Back to My Roots" (from Inside Ru Paul: A Video Compilation for Cyberfans) (World of Wonder 1993) (an entertaining music video that illustrates the role of beauty salons as black cultural institutions)

*B. A Different Methodology: Contextual Analysis*

1. *Jones v. Fisher*, 42 Wis.2d 209, 166 N.W.2d 175 (1969) (battery action brought by a nursing home employee attacked by her former employers)
2. Regina Austin, "Of False Teeth and Biting Critiques: *Jones v. Fisher* in Context," 15 Touro Law Review 389 (1999)

3. "Maid to Stay" (Aparna Talaulicar, director) ( Third World Newsreel 1999) (an account of the lives of domestics from South Asia working in New York City and their attempts to organize to secure better working conditions)

4. "South African Domestics (audiotape)" (NPR Weekend Ed.) (1991) (Vertamae Grovesnor's interviews with a black housekeeper and her young employer shortly after the end of Apartheid, illustrating common aspects of the domestic employment relationship in the West)

## **II. Assault and Battery -- A Structural Analysis**

### *A. A Civil Remedy for Racial (?) Violence*

1. U.S. v. Ebers, 800 F.2d 1422 (6th Cir. 1986) (appeal of a verdict in the civil rights action arising from the murder of Vincent Chin)

2. "Who Killed Vincent Chin?" (Christine Choy & Renee Tajima, directors) (Filmmakers Library 1988) (the story of the murder of Chinese-American Vincent Chin and the mobilization that produced a civil rights suit against his killers)

### *B. Battery and the Construction of Women's Consent to Medical Procedures*

1. Thibodeaux v. Jurgelsky, 879 So.2d 909 (La. Ct. App. 2004) (informed consent to a hysterectomy at issue)

2. "La Operación" (Ana María García, director) (Cinema Guild 1982) (an account of the impact of the U.S. Government's policy regarding population control on the reproductive freedom of Puerto Rican women)

3. Iris Lopez, "Sterilization Among Puerto Rican Women in New York City: Public Policy and Social Constraints," in Cities of the United States 269 (L. Mullings ed. 1987) (situating the cultural practices of Puerto Rican women in New York City within a context of social and economic constraints)

4. Niccoli v. Thompson, 713 S.W.2d 579 (Mo. App. 1986) (malpractice action based on genital surgery/mutilation performed in an American hospital on a poor uneducated female patient)

5. “Fire Eyes: Female Circumcision” (Soraya Mire, director) (Filmmakers Library 1994) (a nuanced treatment of the issue of female genital surgery from the perspective of a Somali filmmaker who had undergone the ritual herself)
6. *Lynn G. v. Hugo*, 272 A.D.2d 38, 710 N.Y.S.2d 334 (2000); rev'd, 96 N.Y.2d 306, 728 N.Y.S.2d 121, 752 N.E.2d 250 (2001) (malpractice action against a plastic surgeon based on allegedly undiagnosed body dysmorphic disorder)
7. “Daisy: Story of a Facelift” (Michael Rabbo, director) (National Film Board of Canada 1982) (the story of a middle-aged woman’s facelift, including footage of the procedure, the reflections of the male director on the impact of patriarchy on women’s ideas of beauty, and a soundtrack replete with Willie Nelson singing “September Song”)
8. Elisabetta Grande, “Hegemonic Human Rights and African Resistance: Female Circumcision in a Broader Comparative Perspective,” Global Jurist Frontiers (2004), at <http://www.bepress.com/gj/frontiers/vol4/iss2/art3>

*C. Consent by Status or Conduct*

1. Gender and Sexual Orientation

- a. Restatement (Second) of Torts § 892 (1979)
- b. *Feltmeier v. Feltmeier*, 207 Ill.2d 263, 278 Ill.Dec. 228, 798 N.E.2d 75 (2003) (Battered Women’s Syndrome as a tort?)
- c. Human Rights Watch, Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda (2004) (an investigation of the circumstances of the women victimized by sexual violence during the 1994 Genocide)
- d. “Calling the Ghosts: A Story About Rape, War and Women” (Mandy Jacobson & Karmen Jelincic, directors) (Women Make Movies 1996) (tale of two Bosnian survivors of a Serb concentration camp)
- e. *Mayer-Kolker v. Kolker*, 359 N.J. Super. 98, 819 A.2d 17 (2003) (the role of the state in regulating intragroup conflict over marriage and divorce)

f. Estate of Konerak Sinthasomphone v. Milwaukee, 878 F. Supp. 147(E.D. Wis. 1995) (litigation against the employer of the police officers who could have saved one of Jeffrey Dahmer's victims)

g. Darren Hutchinson, "Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse," 29 Connecticut Law Review 561 (1997)

## 2. Male Bonding Associations (frats, teams, and gangs): Self-regulation through Consent or External Oversight and Control?

a. Krueger v. Fraternity of Phi Gamma Delta, Inc., 2001 WL 1334996 (Mass. Super. Ct. 2001) (deadly hazing)

b. Michael A. McCann, "The Reckless Pursuit of Dominion: A Situational Analysis of the NBA and Diminishing Player Autonomy," 8 U. Pa. J. Lab. & Emp. L. 819 (2006) (analyzing the case of basketball player Eddy Curry who was ordered to undergo a DNA test)

c. "College Football: A Celebration of Teamwork" (NCAA Productions 1995) (a video illustration of the rule regarding on-field celebrations which suggests a cultural conflict between the young, mostly minority (?) players and the older, tradition-bound coaches and athletic directors)

d. Gary Smith, "Shadow of a Nation," Sports Illustrated, Feb. 18, 1991 (recounting of the story of Crow basketball player Jonathan Takes Enemy for whom the game was and was not a way to leave the reservation)

e. "Hoop Dreams" (Steve James, director) (Kartemquin Films 1994) (the story of two black high school basketball players who aspire to play in college and the pros)

f. Hodge v. S.T. Lynd, 88 F. Supp. 2d 1234 (D. N.M. 2000) (suit on behalf of a child who was arrested and handcuffed for wearing his baseball cap backward at the county fair because gang members do that)

#### *D. Incapacity to Consent*

1. *McNamee v. A.J.W.*, 238 Ga. App. 534, 519 S.E.2d 298 (1999) (in suit brought by parents, daughter's consent to intercourse held valid, but her consent to consume alcohol held invalid)
2. *Cynthia M. v. Rodney E.*, 228 Cal. App. 3d 1040, 279 Cal. Rptr. 94 (1991) (parents of young mother unable to collect the costs of medical care for the infant grandchild from the parents of the young father under law that makes parents vicariously liable for the wilful misconduct of their offspring)
3. "Desire" (Julie Gustafson, director) (Women Make Movies 2005) (tracking the coming of age of four girls from pre-Katrina Orleans, two from a prestigious private school and two from the Desire housing project)
3. *Buchheit v. Stinson*, 260 Ga.App. 450, 579 S.E.2d 853 (2003) (physical discipline of a sassy child by a mother involved in a custody dispute not considered family violence)
4. Clifton P. Flynn, "Regional Differences in Attitudes Toward Corporal Punishment," 56 Journal of Marriage and the Family 314 (1994)
5. Ronald P. Rohner, Shana L. Bourque, & Carlos A. Elordi, "Children's Perceptions of Corporal Punishment, Caretaker Acceptance, and Psychological Adjustment in a Poor, Biracial Southern Community," 58 Journal of Marriage and the Family 842 (1996)
6. "Sound and Fury" (Josh Aronson, director) (Aronson Film Associates 2001) (exploring the impact of cochlear implants on "deaf culture" and the dilemma they pose for the parents and grandparents of young deaf children)

#### *E. Self-Defense As a Matter of Status*

1. *State v. Goetz*, 68 N.Y.2d 96, 506 N.Y.S.2d 20, 497 N.E.2d 41 (1986) (sanctioning reliance on subjective as well as objective criteria in assessing the need for self-defense)

2. "The Confessions of Bernard Goetz" (MPI Video News 1987) (a commercially-produced video for mass distribution, with substantial segments of Goetz's confession--along with interviews with jurors, experts, and people on the street--all of which go a long way toward explaining why Goetz won)
3. Elijah Anderson, "Race and Neighborhood Transition," in The New Urban Reality 99 (P. Peterson ed. 1985) (an ethnographic explanation of how subjective opinions about minority youth become objective assessments of their "dangerousness")

### **III. False Imprisonment**

#### *A. Imprisonment and Consumption: The Wars in the Stores*

1. K-Mart Corp. v. Washington, 109 Nev. 1180, 866 P.2d 274 (1993) (a different kind of hair case; a new jeri curl on New Year's Eve leads to false accusations of shoplifting, defamation, etc.)
2. Wanda Coleman, "Remembering Latasha: Blacks, Immigrants and America," The Nation, Feb. 15, 1993
3. "Sa-i-gu (April 29)" (Dai Sil Kim-Gibson & Christine Choy, directors) (NAATA 1993) (an account of the impact of the LA Rebellion that followed the verdict in the Rodney King case from the perspective of Korean-American women whose businesses were destroyed)

#### *B. Imprisonment in the Employment Context*

1. Bryant v. Wal-Mart Stores, Inc., 203 Ga. App. 770, 417 S.E.2d 688 (1992) (worker locked in store dies of stroke because EMS cannot get access; survivor's remedy limited to worker's compensation)
2. Oliver v. Wal-Mart Stores, Inc., 209 Ga. App. 703, 434 S.E.2d 500 (1993) (false imprisonment in the context of investigation of employee misconduct)

3. *Bureerong v. Uvawas*, 959 F. Supp. 1231 (C.D. Cal. 1997) (an opinion in the case stemming from the imprisonment of Thai garment workers in an El Monte sweatshop)
4. Julie A. Su, “Making the Invisible Visible: The Garment Industry’s Dirty Laundry,” 1 *Journal of Gender, Race, & Justice* 405 (1998)
5. “Stolen Childhoods” (Len Morris, director) (Galen Films 2005) (considering both the micro and the macro aspects of global child labor)

#### **IV. Nuisance and Culturally-Driven Conflicts over Space**

##### *A. Gentrification As a Nuisance*

1. “Flag Wars” (Linda Goode Bryant & Laura Poitras, directors) (Zula Pearl Films 2003) (a depiction of both sides in the cultural conflicts and legal disputes generated by the gentrification of a black neighborhood in Columbus, Ohio by “homesteaders” who were mainly white, bourgeois lesbians and gays)
2. J. Peter Byrne, “Two Cheers for Gentrification,” 46 *Howard Law Journal* 405 (2003)

##### *B. Nuisance, Immigration, and Necessity*

1. Fernanda Santos, “Day Laborers’ Lawsuit Casts Spotlight on a Nationwide Conflict,” *New York Times*, Sept. 17, 2006
2. “Farmingville” (Carlos Sandoval & Catherine Tambini, directors) (Camino Bluff Productions Inc. 2004) (depicting both sides in the political and social conflict over the creation of a hiring site for Latino workers in a Long Island town)

##### *C. Nuisance As Rebellion*

1. *Africa v. City of Philadelphia*, 158 F.3d 711 (3rd Cir. 1998) (litigation arising out of the bombing of the MOVE house in West Philadelphia)
2. “The Bombing of Osage Avenue” (Louis Massiah, director) (Scribe Video Center 1987) (an examination of the events surrounding the bombing of the MOVE

row house in West Philadelphia, the death of 11 of its inhabitants, and the destruction of 61 surrounding homes)

## **V. Defamation and Invasion of Privacy**

### *A. Defamation As an Ineffective Tool of Social Struggle*

1. *Tucker v. Philadelphia Daily News*, 848 A.2d 113 (Pa. 2004) (defamation action against the media based on its reporting of the consortium claim asserted by the anti-gangster rap activist C. Delores Tucker and her husband in a suit based on the lyrics of two songs by Tupac Shakur)
2. Regina Austin, "Editorial, Riding the Waves," Black Renaissance/Renaissance Noire, Fall 2004, at 6 (discussing the Tucker-Tupac litigation).
3. All Eyez on Me (Death Row Records 2001) (including the two cuts that refer to C. Delores Tucker, the anti-gangster rap crusader, in a derogatory manner)
4. "Tupac: Resurrection" (Lauren Lazin, director) (Paramount Pictures 2003) (an introspective film, narrated by Tupac, about his life and death, including his analysis of why women were the source of his biggest problems)

### *B. Consent to Filming and the Inherited Stigmas of Class*

1. *Weil v. Johnson*, 2002 WL 31972157 (N.Y. Sup. Ct.) (unsuccessful action for invasion of privacy brought by Luke Weil, a subject of the documentary "Born Rich")
2. "Born Rich: An Inside Look at the Lives of . . ." (Jamie Johnson, director)(Sony Music Distribution 2004) (an video exploration of the values of the children of extremely wealthy parents and the difficulty they all have in talking about money; made by an heir to the Johnson & Johnson fortune who may be hereafter friendless)
3. "Troop 1500" (Ellen Spiro & Karen Bernstein, directors) (Mobilus Media 2005) (a look at the difficulties confronted by members of a girl scout troop that meets monthly in the prison where their mothers are incarcerated)

4. Regina Austin, “‘The Shame of It All’: Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons,” 36 Columbia Human Rights Law Review 173 (2004)

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