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Torts - Liability of Creditor For Contacting Employer of Debtor as Collection Method

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test so that the contributory negligence of one person cannot be used to bar recovery by one who is himself free from fault.

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TORTS — LIABILITY OF CREDITOR FOR CONTACTING EMPLOYER OF DEBTOR AS COLLECTION METHOD[1]

Plaintiff, a trusted bank employee, and associates contracted with defendant printer to secure publication of a shoppers' guide. Subsequently, the plaintiff's venture was incorporated but the corporation soon failed. Defendant, a large depositor of the employer-bank, wrote the bank's president that he had been unable to collect a printing debt from plaintiff and would appreciate assistance in securing payment.[2] Plaintiff explained to his employer that the debt had been incurred during the existence of the corporation and that he was merely a stockholder and not personally liable.[3] When the employer communicated this explanation to the defendant, he responded that plaintiff had initiated the venture and had not disassociated himself from personal responsibility.[4] The employer then notified plaintiff that "he had heard enough of the matter and . . . wanted it to be settled."[5] Thereupon, plaintiff's attorney wrote defendant, warning him to cease his communication with plaintiff's employer. Defendant took this letter to the bank and following a meeting of defendant with plaintiff and his employer, plaintiff was dismissed. Plaintiff brought suit for damages, and the trial court dismissed the action. On appeal, the

1. This Note is concerned with attempts to collect just or disputed debts. There seems little question that an action would lie where a debt is falsely imputed to a person. See note 6 *infra*.

2. The letter concluded, "We dislike having to bring this to your attention and do so only because of the unsatisfactory response we get from Mr. Pack. We will greatly appreciate any assistance you may care to give us in securing payment so that we will not have to proceed further against Mr. Pack." 155 So. 2d at 911.

3. See LA. R.S. 12:19B (1950): "A shareholder of a corporation . . . shall not be personally liable for any debt or liability of the corporation."

4. There was evidence that defendant had been informed prior to incorporation by an associate of plaintiff that the associate would be personally liable for the debt. 155 So. 2d at 910. After incorporation this associate informed defendant that he no longer would be personally liable. Defendant at least knew plaintiff's relationship to the venture had changed, but it does not appear whether he had been specifically informed plaintiff had disassociated himself from personal responsibility for the enterprise. *Id.* at 911.

5. *Id.* at 911.

Third Circuit Court of Appeal reversed. *Held,* contacting an employer on several occasions in reference to an employee's disputed debts, after notification that the debtor considers he has a valid defense, constitutes an unreasonable violation of the right to privacy or a tortious attempt to coerce the payment of a debt, and is actionable by the employee. *Pack v. Wise,* 155 So. 2d 909 (La. App. 3d Cir. 1963); *cert. denied,* 157 So. 2d 231 (La. 1963).

Notification to a debtor's employer of the existence of a debt has been a favorite method of facilitating collection. Though such action has given rise to much litigation, there is disagreement as to the applicable theory, and what conduct on the part of the creditor will so overbalance the social interest in the integrity of the credit system to give rise to a cause of action. In recent decisions two related theories of liability have been most widely used: invasion of privacy and intentional infliction of mental suffering.[6]

The right to privacy is frequently defined as the "right to

6. A third theory frequently used is defamation, with all of the cases found having been brought under the branch of libel. It has been held that it is defamatory of a person to communicate that he refuses to pay his just debts. Neigel v. Seaboard Fin. Co., 68 N.J. Super. 542, 173 A.2d 300 (1961); Neaton v. Lewis Apparel Stores, Inc., 267 App. Div. 728, 48 N.Y.S.2d 492 (1944); Keating v. Conviser, 219 App. Div. 836, 220 N.Y.S. 874 (1927), *aff'd mem.*, 246 N.Y. 632, 159 N.E. 680 (1927); Muetze v. Tuteur, 77 Wis. 236, 46 N.W. 123 (1890). Where the communication can fairly be taken to injure the person in his business, trade, or occupation courts have readily labeled this libelous per se, and thus relieved the plaintiff of the necessity of proving special damages. Walker v. Sheehan, 80 Ga. App. 606, 56 S.E.2d 628 (1949). But courts have split on the question whether a communication to an employer concerning the alleged debt of an employee is sufficient to allow the employee the advantage of the last-stated rule. *Compare* Schieve v. Cincinnati Suburban Bell Tel. Co., 71 Ohio L. Abs. 350, 126 N.E.2d 817 (1955), *with* Ragland v. Household Fin. Corp., 254 Iowa 976, 119 N.W.2d 788 (1963). The rationale for holding that an employee cannot sue in libel for such a notification to his employer without showing special damages is that an allegation that an employee owes an unpaid bill does not normally reflect on his ability to perform his job or his qualifications for a job. Haggard v. Shaw, 100 Ga. App. 813, 112 S.E.2d 286 (1959); Ragland v. Household Fin. Corp., *supra*. *Cf.* Judevine v. Benzies-Montanye Fuel & Warehouse Co., 222 Wis. 512, 269 N.W. 295 (1936). Other courts have held that such notice to the employer is actionable even when the alleged debtor is not so engaged that financial credit is a necessary factor in his trade or business, on the theory that this impairs the employee's standing in the mind of his employer and otherwise brings him into disrepute. Neigel v. Seaboard Fin. Co., *supra*; Neaton v. Lewis Apparel Stores, Inc., *supra*; Schieve v. Cincinnati Suburban Tel. Co., *supra*. *Cf.* Stickle v. Trimmer, 50 N.J. Super. 518, 143 A.2d 1 (1958) (New Jersey considers all libel actionable without proof of special damages).

In most jurisdictions truth is a defense to a suit for libel. PROSSER, TORTS § 96 (2d ed. 1955). Further, it normally does not matter that the communication was only for purposes of spite. *Ibid.* So this theory is limited in use to the situation where the debt is in fact not owed. This explains the increasing use in this area of the theories of invasion of privacy and intentional infliction of mental

be let alone,"[7] but this definition is misleading since the right is not absolute and protects only against invasions which are "unreasonable" and "serious."[8] Courts have recognized that the creditor has the right to take reasonable action in pursuing his debtor and effecting payment, although an invasion of the debtor's privacy may result incidentally.[9] Thus it has been held that the creditor will not incur liability merely by informing the debtor's employer of the debt,[10] even if in the process the notification comes to the attention of other employees.[11] At the other extreme, general publication of the debt will clearly give rise to liability.[12] The cases in which the creditor has not incurred liability are justified on several grounds: the employer may be troubled with garnishment proceedings if the employee does not pay his debts, while the public has no such interest;[13] the right to keep informed on the financial status of present employees is a corollary of the right to hire only those who pay their bills;[14] by contracting a debt the employee impliedly consents to contacts with his employer as a means of collection;[15]

suffering, neither of which depends upon falsity of the matter brought to the attention of another.

7. See COOLEY, TORTS 29 (2d ed. 1888).

8. See RESTATEMENT, TORTS § 867 (1939).

9. See notes 10-16 *infra*.

10. Tollefson v. Safeway Stores, Inc., 142 Colo. 442, 351 P.2d 274 (1960); Gouldman-Taber Pontiac, Inc. v. Zerbst, 213 Ga. 682, 100 S.E.2d 881 (1957); Haggard v. Shaw, 100 Ga. App. 813, 112 S.E.2d 286 (1959); Patton v. Jacobs, 118 Ind. App. 358, 78 N.E.2d 789 (1948); Yoder v. Smith, 253 Iowa 505, 112 N.W.2d 862 (1962); Lucas v. Moskins Stores, Inc., 262 S.W.2d 679 (Ky. App. 1953); Voneye v. Turner, 240 S.W.2d 588 (Ky. App. 1951); Hawley v. Professional Credit Bureau, 345 Mich. 500, 76 N.W.2d 835 (1956); Lewis v. Physicians & Dentists Credit Bureau, Inc., 27 Wash. 2d 267, 177 P.2d 896 (1947).

11. Patton v. Jacobs, 118 Ind. App. 358, 78 N.E.2d 789 (1948). *Cf.* Davis v. General Fin. & Thrift Corp., 80 Ga. App. 708, 57 S.E.2d 225 (1950).

12. Brents v. Morgan, 299 S.W. 967 (Ky. App. 1927); *cf.* Trammell v. Citizens News Co., 285 Ky. 529, 148 S.W.2d 708 (1941).

13. Patton v. Jacobs, 118 Ind. App. 358, 78 N.E.2d 789 (1948); Lucas v. Moskins Stores, Inc., 262 S.W.2d 679 (Ky. App. 1953); Voneye v. Turner, 240 S.W.2d 588 (Ky. App. 1951); Lewis v. Physicians & Dentists Credit Bureau, Inc., 27 Wash. 2d 267, 177 P.2d 896 (1947).

14. Patton v. Jacobs, 118 Ind. App. 358, 78 N.E.2d 789 (1948); Voneye v. Turner, 240 S.W.2d 558 (Ky. App. 1951).

15. Gouldman-Taber Pontiac, Inc. v. Zerbst, 213 Ga. 682, 100 S.E.2d 881 (1957); Voneye v. Turner, 240 S.W.2d 588 (Ky. App. 1951). In *Zerbst* the court said: "[S]ending the letter in this case to the plaintiff's employer did not violate her right of privacy. The right of privacy is not absolute but is qualified by the rights of others. 'No individual can live in an ivory tower and at the same time participate in society and expect non-interference from other members of the public .' . . . [O]ne who . . . is employed by a large corporation, who is an active participant in the business world, who has an automobile and drives it upon the highways, has it serviced and repaired, and obtains credit for goods and services used in repairing her car, may expect reasonable conduct on the part of those with whom she does business and from whom she gets credit . . . . She may expect her employer to want her to pay her bill, and may further expect her creditor to use reasonable means to persuade her to do so, and on failure to per-

and invasion of privacy is based on publicity, which in turn requires communication to large numbers of persons.[16] Yet, where aggravating circumstances are added to the notification of the employer, such as a systematic campaign of harassment while the employee is at work,[17] or additional intrusions into the employee's private life away from work,[18] courts have not been reluctant to find an actionable invasion of privacy.[19]

Though more difficult to classify, the second body of cases is based on the common element of wrongful coercion, and perhaps is best considered under the tort of intentional infliction of mental suffering. In the absence of accompanying physical injury, common law courts long denied recovery for such injury.[20] On the other hand, a Louisiana creditor was early held liable for use of a collection method which depended on intentional infliction of mental distress,[21] and common law courts

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suade to force her to do so through the courts. When she accepts the credit, she impliedly consents for her creditor to take all reasonable and necessary action to collect the bill. Writing to her employer . . . was . . . a reasonabe exercise of his rights and constituted no unwarranted or unreasonable interference with her right of privacy." 213 Ga. at 684, 100 S.E.2d at 883.

16. Tollefson v. Safeway Stores, Inc., 142 Colo. 442, 351 P.2d 274 (1960); Gouldman-Taber Pontiac, Inc. v. Zerbst, 213 Ga. 682, 100 S.E.2d 881 (1957); Patton v. Jacobs, 118 Ind. App. 358, 78 N.E.2d 789 (1948); Yoder v. Smith, 253 Iowa 505, 112 N.W.2d 862 (1962); Trammell v. Citizens News Co., 285 Ky. 529, 148 S.W.2d 708 (1941); Voneye v. Turner, 240 S.W.2d 558 (Ky. App. 1951); Brents v. Morgan, 299 S.W. 967 (Ky. App. 1927); Hawley v. Professional Credit Bureau, 345 Mich. 500, 76 N.W.2d 835 (1956); Lewis v. Physicians & Dentists Credit Bureau, Inc., 27 Wash. 2d 267, 177 P.2d 896 (1947); *cf.* McKinzie v. Huckaby, 112 F. Supp. 643 (W.D. Okla. 1953); Davis v. Gen. Fin. & Thrift Corp., 80 Ga. App. 708, 57 S.E.2d 225 (1950). *But see* Norris v. Moskin Stores, Inc., 272 Ala. 174, 132 So. 2d 321 (1961).

17. Biederman's of Springfield, Inc. v. Wright, 322 S.W.2d 892 (Mo. 1959).

18. Housh v. Peth, 99 Ohio App. 485, 135 N.E.2d 440 (1955), *aff'd*, 165 Ohio St. 35, 133 N.E.2d 340 (1956); *cf.* Norris v. Moskin Stores, 272 Ala. 174, 132 So. 2d 321 (1961).

19. Early language indicated there could be liability for invasion of privacy only when the invasion was by written statement, but developing communications media have destroyed the rationale behind this rule — that oral statements did not lead to serious invasion. See Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 217 (1890). Today the method used to call the debt to the attention of the employer will not be determinative of liability. Norris v. Moskin Stores, Inc., 272 Ala. 174, 132 So. 2d 321 (1961); Biderman's of Springfield, Inc. v. Wright, 322 S.W.2d 892 (Mo. 1959); Housh v. Peth, 99 Ohio App. 485, 135 N.E.2d 440 (1955); *cf.* Bowden v. Spiegel, Inc., 96 Cal. App. 2d 793, 216 P.2d 571 (1950); *contra*, Lewis v. Physicians & Dentists Credit Bureau, Inc., 27 Wash. 2d 267, 177 P.2d 896 (1947).

20. See PROSSER, TORTS § 11 (2d ed. 1955).

21. Tuyes v. Chambers, 144 La. 723, 81 So. 265 (1919). In *Tuyes* the court held that article 2315 of the Louisiana Civil Code recognized recovery for mental suffering without accompanying physical injury. The court said: "The threat to place the lists in merchants' display windows, and to advertise for sale, etc., could have but one purpose, and that is to, through fear, induce the payment of money which could not otherwise be collected. . . . Let it be understood that we do not hold that creditors have not the right to use all legitimate means to collect

later reached similar results.[22] As under the theory of invasion of privacy, creditors have been recognized to have the right to urge payment of a just debt by threatening legal action, even if mental suffering incidentally results to the debtor.[23] The courts, however, have not permitted a creditor to abuse his position,[24] and redress will be granted when he resorts to "extreme and outrageous" conduct to collect the debt.[25] Thus, if the creditor contacts the employer on many occasions,[26] adopts pseudo legal forms in his correspondence to mislead the employer and strengthen the force of his appeal,[27] or berates the employee in front of his employer,[28] he will be liable.

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their just accounts. The law points out those methods." 144 La. at 734, 81 So. at 269.

22. *E.g.*, Clark v. Associated Retail Credit Men of Washington, 105 F.2d 62 (D.C. Cir. 1939); Herman Saks & Sons v. Ivey, 26 Ala. App. 240, 157 So. 265 (1934); Bowden v. Spiegel, Inc., 96 Cal. App. 2d 793, 216 P.2d 571 (1950); Barnett v. Collection Ser. Co., 214 Iowa 1303, 242 N.W. 25 (1932); Lyons v. Zale Jewelry Co., 150 So. 2d 154 (Miss. 1963); LaSalle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934); Duty v. Gen. Fin. Co., 154 Tex. 16, 273 S.W.2d 64 (1954).

23. *E.g.*, Clark v. Associated Retail Credit Men of Washington, 105 F.2d 62 (D.C. Cir. 1939): "We do not suggest that creditors must use care to avoid shocking their debtors or may not, for purposes of collection, intentionally inflict some worry and concern." People's Fin. & Thrift Co. v. Harwell, 183 Okla. 413, 414, 82 P.2d 994, 995 (1938): "Fright, caused or induced by mere declarations that defendant would resort to its legal remedy, is insufficient to provide a basis for recovery. To hold otherwise would, in the final analysis, be to say that a creditor cannot declare his intention to resort to a legal remedy in order to enforce an obligation without opening the way to become liable in damages because of injury and physical suffering alleged to have been caused thereby. In other words, such a rule could only serve to throw down the bars to an endless field of litigation, ultimately serving as a means of evasion to be used by debtors against their creditors, as a deterrent to collection of honest obligations." See also Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932); LaSalle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934).

24. Clark v. Associated Retail Credit Men of Washington, 105 F.2d 62 (D.C. Cir. 1939); Herman Saks & Sons v. Ivey, 26 Ala. App. 240, 157 So. 265 (1934); Bowden v. Spiegel, Inc., 96 Cal. App. 2d 793, 216 P.2d 571 (1950); Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932); Tuyes v. Chambers, 144 La. 723, 81 So. 265 (1919); Quina v. Robert's, 16 So. 2d 558 (La. App. Orl. Cir. 1944); Lyons v. Zale Jewelry Co., 150 So. 2d 154 (Miss. 1963); Duty v. General Fin. Co., 154 Tex. 16, 273 S.W.2d 64 (1954); *cf.* LaSalle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934).

25. People's Fin. & Thrift Co. v. Harwell, 183 Okla. 413, 82 P.2d 994 (1938). See RESTATEMENT, TORTS § 46 (1957 revision). *Cf.* Lyons v. Zale Jewelry Co., 150 So. 2d 154 (Miss. 1963) (dictum).

26. LaSalle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934); Duty v. General Fin. Co., 154 Tex. 16, 273 S.W.2d 64 (1954); *cf.* Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932). *But see* Quina v. Robert's, 16 So. 2d 558 (La. App. Orl. Cir. 1944) (creditor liable for contacting employer on one occasion; used misleading forms, and overstated debt).

27. Quina v. Robert's, 16 So. 2d 558 (La. App. Orl. Cir. 1944) (creditor sent employer notice styled "Final Notice Before Suit" and "In the Matter of the claim of Robert's Jewelry Store vs. Mr. A. J. Quina"; debt of employee was overstated; that employer was not misled does not mitigate wrong).

28. Duty v. General Fin. Co., 154 Tex. 16, 273 S.W.2d 64 (1954); *cf.* Bowden v. Spiegel, Inc., 96 Cal. App. 2d 793, 216 P.2d 571 (1950); Tuyes v. Chambers,

It must be recognized that the dichotomy between invasion of privacy and intentional infliction of mental suffering is artificial, and exists mainly since both torts are relatively new and their ambits of protection are yet undefined.[29] Much conduct actionable under one theory is also actionable under the other, and it has been suggested that the same distinction is controlling in each: that "between conduct which outrages the common decencies and goes beyond what the public mores will tolerate, and that which the plaintiff must be expected under the circumstances to endure."[30]

In the instant case the extent of the court's reliance on the above theories is unclear; the court indicated that the defendant's conduct was actionable either as an invasion of plaintiff's privacy or as a tortious attempt to coerce payment of a disputed debt.[31] Though the defendant was not unreasonable in believing that plaintiff owed the debt and was without malice in asserting his claim, neither factor was sufficient to overcome the paramount interest of plaintiff in an undisturbed relationship with his employer. Apparently the holding of this case should be restricted to its facts, as the court emphasized the entire course of the defendant's conduct in finding him liable.[32] Thus, it might be argued that the conduct was tortious

144 La. 723, 81 So. 265 (1919).

29. It appears the reason why cases are frequently prosecuted under only one of the available theories is that the other theories may not be recognized in that jurisdiction. See Housh v. Peth, 99 Ohio App. 485, 135 N.E.2d 440 (1955), *affirmed* 165 Ohio St. 35, 133 N.E.2d 340 (1956), where invasion of privacy was used to allow recovery for conduct which perhaps would be better classified as "extreme and outrageous conduct." See Prosser, *Privacy*, 48 CALIF. L. REV. 383, 386 (1960).

As more states recognize both invasion of privacy, and intentional infliction of mental suffering, any distinctions between them are likely to become less important.

30. PROSSER, TORTS § 97, at 644 (2d ed. 1955).

31. "Wise's conduct constituted an unreasonable violation of the plaintiff's right to privacy or a tortious attempt to coerce Pack into paying the disputed debt — in short, the commission by Wise of a tort against Pack." 155 So. 2d at 914.

32. "[A]*ssuming* that the simple action of contacting a debtor's employer is not actionable in Louisiana as coercive in itself (*but see Quina v. Robert's*), it might well be argued that the defendant Wise's actions in writing the initial letter and in following it up with an explanatory telephone call in response to the bank's reply to his initial letter did not by themselves constitute conduct on his part unreasonably violating the plaintiff's right to privacy. However, we think that, *in cumulation with his past conduct, Wise plainly committed an actionable tort when, in addition to the two prior contacts with the plaintiff's employer, he further brought to the bank's attention the letter to him . . . from the plaintiff's lawyer.*"

". . . Wise's conduct, in cumulation with his past efforts to secure from the bank's (sic) assistance in collecting from an employee a debt he disputed as due, exceeded what might have been within reasonable bounds in communicating with

only because the contacts with the employer extended over a period of time, and continued after the creditor was notified that the employee was in good faith asserting a legal defense to the claim. Further, the court places great weight on the fact that the creditor brought the letter from the debtor's attorney to the employer's attention.[33] On the other hand, there is an indication the court felt the holding should not be so narrowly construed.[34]

Save *Quina v. Robert's*,[35] a landmark Louisiana decision heavily relied upon in the instant case, no other case has been found which would give a debtor-employee such protection in the absence of a falsely imputed debt[36] or libelous statement.[37] In *Quina*, the creditor sent the employer of his debtor a document purporting to be a legal form which named the employee as defendant in an action brought by the creditor, and on which the amount due was overstated tenfold. Clearly the intent was to mislead the employer and cause him to exert coercive influence on the debtor to pay the account; and, although the employer was not misled and did not attempt to coerce payment, the creditor was held liable to the employee. It is difficult to ascertain whether *Pack* constitutes an extension of liability beyond that of *Quina*. One judge, dissenting from refusal to grant a rehearing,[38] attempted to distinguish the two cases on the grounds that in *Pack* no misleading documents were used, and the defendant was claiming only the amount which he felt in good faith was due. There is possible merit in such a distinction, since there is little social value in the course of conduct adopted by the defendant in *Quina*, while conduct of the defendant in *Pack* probably finds sanction among businessmen. Under such interpretation the instant case would extend protection beyond the rule of *Quina*. On the other hand, the employer was not misled in *Quina*, and it is possible that the overstatement of debt was merely an error.[39] In this light the protection

the employer about its employee's private affairs." (Emphasis added.) 155 So. 2d at 914.

33. *Ibid.*

34. *Ibid.*

35. 16 So. 2d 558 (La. App. Orl. Cir. 1944).

36. See note 6 *supra*.

37. *Ibid.*

38. The dissenting judge, differing from the majority in interpretation of the facts, argued that "the evidence is uncontradicted to the effect that it was Pack's untruthful statements to his employer, and not Wise's communications, which caused Pack to be fired." 155 So. 2d at 918.

39. Quina v. Robert's, 16 So. 2d 558, 559 (La. App. Orl. Cir. 1944). Here

afforded the employee in *Pack* seems safely within the protection afforded in *Quina*. In any event, *Pack* and *Quina* appear to place Louisiana at the forefront in extending protection to the debtor, and though the scope of protection is far from clear, it would appear the Louisiana creditor will act at his peril in the future in using employer contact as a collection method.

Whether such an extension of protection is sound from a policy viewpoint is another problem. While it is true that the creditor has legal remedies to collect just debts, in the case of small amounts, the remedy is often illusory. In such cases it is as much an injustice to allow the debtor to hide behind the law as to allow the creditor extra-judicial remedies. Further, if the employer ever has a valid interest in the financial status of his employees, certainly such an interest should have been present in the instant case in which the employee held a trusted position in a financial institution. If the position is taken that the employer has the right to such information, one who gives the information could hardly violate an employee's privacy.

However, other policy considerations appear to weigh even more heavily in favor of the decision. The motive of any creditor who brings a debt to the employer's attention is likely to be coercion of the employee through "trial-by-employer" — a dubious proceeding in which the rights of the employee are lightly regarded, and the swiftness of the "justice" rendered dependent upon the consciousness of the employer of his public image and the amount of the creditor's dealings with the employer. Further, from the employee's standpoint, any such intrusion is likely to influence the employer adversely as to promotions and salary increases.

It is submitted that the instant decision reaches a sound result under the facts of the case. Whether it would be desirable that the holding be extended to make a creditor liable every time he contacts an employer of a debtor is another matter. Our society is not yet so perfect that persons have the right to claim protection from all annoyances, least of all those who have participated in activities which give rise to disputed debts. Though the Louisiana result may well represent the wave of the future, courts can afford from an administrative standpoint to protect

the original indebtedness was $14.95. Quina made payments of $13.50, so the true balance was $1.45. The employer was notified that Quina had paid only $3.50. After Quina's explanation the employer advised him to contact a lawyer.

the more tender sensibilities only as the likelihood of these sensibilities being offended decreases.

Kenneth D. McCoy, Jr.

TORTS — TRESPASS BY MUNICIPALITY — PUNITIVE EFFECT OF DAMAGES FOR MENTAL SUFFERING

Defendant municipality constructed streets on plaintiff's property without her consent and without expropriation proceedings for which plaintiff brought an action to recover the value of the land taken and additional compensation for mental anguish resulting from the illegal trespass. The trial court awarded damages for both the trespass and mental anguish. The Court of Appeal for the Third Circuit affirmed. *Held*, a muncipality which takes property without expropriation proceedings is liable to the landowner for trespass damages which include damages for mental anguish as well as for the value of the land taken. *Belgarde v. City of Natchitoches*, 156 So. 2d 132 (La. App. 3d Cir. 1963).

Indemnification for mental anguish and suffering has never presented the problem in the civil law that it has at common law. French jurisprudence has had no difficulty in making such awards for torts when the mental suffering has been real and serious.[1] The original position at common law was to disallow recovery unless accompanied by some established tort,[2] but there is a growing trend toward recognition of the infliction of mental suffering as a separate tort.[3] Although Louisiana Civil Code articles 2315 and 1934[4] correspond substantially to French Civil Code articles 1382 and 1149-1151, respectively, Louisiana's original position on damages for mental suffering did not adhere to the French interpretation; but it has since undergone a development similar to that of the common law. Mental anguish occa-

1. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 252 (1959).

2. PROSSER, TORTS § 2, at 40 (2d ed. 1955); 1 STREET, FOUNDATIONS OF LEGAL LIABILITY 460, 470 (1960): "The treatment of any element of damages as a parasitic factor belongs essentially to a transitory stage of legal evolution. A factor which is today recognized as an independent basis of liability. It is merely a question of social, economic and industrial needs as those needs are reflected in the organic law."

3. RESTATEMENT, TORTS § 46 (Tent. Draft No. 1, 1957).

4. LA. CIVIL CODE arts. 2315 and 1934 (1870).