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# Property Damage in the Domestic Violence Context

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# DOMESTIC VIOLENCE REPORT™

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## Property Damage in the Domestic Violence Context

by D. Kelly Weisberg

Property damage is a common form of intimate partner violence.<sup>1</sup> Despite the prevalence of this form of abuse, the literature has largely ignored this topic.<sup>2</sup> One reason for the neglect is the assumption that other forms of aggression (such as physical abuse and sexual assault) are more serious and exact a greater toll on victims. Yet acts of property destruction constitute a form of power and control that inflicts deep, long-lasting emotional scars. This article will explore the nature of this form of abuse and the legal remedies that address it.

The abuser's motivation in damaging and destroying property is to "terrorize, threaten, and exert control over a victim of domestic violence."<sup>3</sup> Acts of property damage or destruction occur most frequently in the midst of violent episodes and also at the end of the relationship when a victim threatens to (or does) leave the abusive relationship. During violent episodes, property damage enhances the physical abuse. The acts of damage are intended to instill fear and to convey a not-so-subtle message that the offender is capable of wreaking similar violence on the victim. At the end of the relationship, the

See *PROPERTY DAMAGE*, page 28

## Financial Intimate Partner Violence: When Assets and Transactions Become Weapons

Jo Carrillo

By the time Gloria found out that her husband Henry had forged her name to deeds and loan documents it was too late. The equity in the family home was gone. Worse yet, a dissolution-related trip through the legal system confirmed that Gloria was liable for her absconding ex-husband's debt.

Nowhere in the record does it suggest that Gloria's lawyer thought of her as the target of domestic violence. No protective order was mentioned in the record even though Gloria's case arose in a state with a comprehensive domestic violence prevention act. The lawyer's analysis seems to have gone only this far: no gun, no physical violence, no assault, so no domestic abuse.

This article addresses financial interpersonal violence, which occurs when an asset (like money) or a transaction (like a loan, a sale, or a bank withdrawal) is used by an intimate partner

as a weapon against the other partner. "Weaponized assets" can be tangible or intangible. According to the law of property, if an intangible asset or debt merges with paper, that paper can be sold or traded. To inspire confidence in markets the law protects good faith buyers and creditors. Indeed third-party protections are what obligated Gloria to a lifetime of repaying the same debts to her ex-husband's creditors that he fraudulently contracted during marriage to harm her.

It is helpful to conceptualize the issue of unjustly benefiting from one's wrongdoing as follows: If a person buys a gun with an intimate partner's credit card, then uses that gun to injure the other partner, should the injured partner be liable to pay for the gun?

See *FINANCIAL IPV*, next page

### About This Issue . . .

We are pleased to present this special issue devoted to Property Issues in the Context of Domestic Violence. These issues include: property damage and destruction as a form of abuse, the role of domestic violence in property division at divorce, the interrelationship between bankruptcy and domestic violence, and the tax implications of intimate partner violence.

D. Kelly Weisberg, Editor, *Domestic Violence Report*

### ALSO IN THIS ISSUE

Tax Relief for Domestic Violence Survivors . . . . .	19
A Brief Introduction to the Intersections Between Domestic Violence Law and Bankruptcy Law . . . . .	21

PROPERTY DAMAGE, from page 17

infliction of property damage stems from the abuser's desire for retaliation. This conduct bears a calculated and cruel quality. Property destruction at this time serves as punishment for the victim's departure.

### Types of Property Damage

Property damage and destruction take different forms. They can affect real and personal property. Homes and cars are frequent targets. Property crimes in the home often accompany other criminal acts of trespass and burglary.

Especially common acts of property damage in the home include: punching holes in walls, kicking in

and threw numerous items into the bay behind his house.<sup>6</sup>

Abusers also target partners' cars.<sup>7</sup> Frequently, abusers break car windows and dent car doors.<sup>8</sup> Or, abusers may repeatedly ram their partner's vehicle.<sup>9</sup> Property damage to the vehicle may be quite extensive. In the midst of one divorce proceeding, for example, an estranged husband drove his wife's 1990 red Corvette into the river.<sup>10</sup> Vehicular damage carries special meaning. Vehicles are often the most expensive property that a victim owns. Vehicles also serve as a method of escape and a way for the victim to access a support network. Without a car, the victim may not be able to see friends, go to work, or take children to childcare or school.

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doors, breaking windows, smashing furniture and television sets, pulling telephone cords out of walls, and throwing objects. In one incident, shortly after a wife filed a petition for dissolution, the estranged husband "entered her home and damaged a water bed, two television sets, video recorder, refrigerator, clock, and microwave. He punched holes in the walls and stained the carpet. He admitted he did it out of anger."<sup>4</sup> In the midst of a domestic dispute in another case, a defendant broke a mirror, television, microwave, slashed the kitchen linoleum, killed the family cockatiel, destroyed the cockatiel's cage, pushed the garage door off its rollers, smashed the door leading from the garage into the house and broke the door frame and lock.<sup>5</sup>

Abusers often target property at the home's exterior because of its easy accessibility. In one destructive rampage, an estranged wife flew to the home of her ex-boyfriend and his new intimate partner in another state, removed items from outside his house, sprayed herbicide in his garden, ripped out plants, killed his fish,

Abusers also damage specific property that the partner needs for employment. Abusers' goal in damaging work-related property is to jeopardize the partner's livelihood. In one case, an estranged husband inflicted serious damage on the property of his ex-wife who was a medical salesperson. He stole her computer, broke into her locked drug cabinet and took some of her medical supplies.<sup>11</sup>

Abusers also resort to extreme acts of property destruction. They sometimes commit arson and burn items of property or even homes of the victims.<sup>12</sup> One husband admitted that he burned his ex-wife's home to prevent her from living there with another man.<sup>13</sup> Some abusers burn the victim's vehicle.<sup>14</sup> Firebombing is another weapon of abusers. One former boyfriend was convicted of firebombing when he threw a Molotov cocktail into his ex-girlfriend's home after he discovered she was there with another man.<sup>15</sup>

Abusers also damage property belonging to friends and family members of the victim. In one incident, an abuser broke the windows of his mother-in-law's vehicle.<sup>16</sup> Abusers

may target property of their victims' new partners. When damaging such property, abusers aim to frighten those persons who constitute the victim's support system. In one famous case, an ex-boyfriend-stalker defaced and vandalized the property of his ex-girlfriend's mother by spray painting his ex-girlfriend's name and calling her "a whore" on her mother's garage door. Then he traveled to another state where he set fire to her new boyfriend's house.<sup>17</sup>

Sometimes, the abuser targets property that has unique personal value to the victim. An abuser may destroy family heirlooms, photographs, Christmas ornaments, jewelry, the partner's clothing, and pets.<sup>18</sup> Abusers are aware of the importance that the victim attributes to these specific items of property. The loss of these items has a profound impact on the victim. By damaging property that has such personal value to the victim, abusers know that the victim will never be able to replace the items and will long mourn their loss. The abuser intends that the victim will suffer. Acts of property damage thereby serve to confirm the abuser's power and the victim's powerlessness. Such acts carry an implicit threat that negative consequences will arise for the victim in the event of future noncompliance with the abuser's demands.

### Legal Remedies and Their Shortcomings

Various legal remedies are available to redress property abuse. Laws that criminalize property damage or destruction exist in every state. In addition, malicious property damage may evoke the issuance of civil protection orders.

Domestic violence-related property crimes are most commonly called "criminal mischief" or "malicious mischief." Other labels for these crimes exist as well: unlawful mischief; criminal damage; vandalism; malicious injury to property; malicious destruction; willful and wanton injury to property; malicious injury or destruction of property; damage to property; and property destruction and defacement.

Criminal mischief laws can be either misdemeanors or felonies. The

See PROPERTY DAMAGE, next page

PROPERTY DAMAGE, from page 28

specific characterization depends on the jurisdiction, the value of the property destroyed, and the mental state of the actor.<sup>19</sup> The common elements of these laws include: (1) the destruction of property (2) belonging to another (3) of a particular minimum value and (4) some culpable mental state. In terms of mental states, some statutes require that the damage to property be done “recklessly.” Other statutes require that it be done “intentionally.” Some require a combination of mental states (“willfully and maliciously”). In some states, if the damage to property is reckless, the crime is a misdemeanor, whereas if the damage is intentional, then the crime can be a either misdemeanor or felony depending on the value.

A trend that is evident in the past two decades is to tailor malicious mischief laws to the domestic violence context. Thus, for example, Washington State has two criminal mischief crimes. The crime of “malicious mischief” is defined as “knowingly and maliciously causing physical damage to the property of another person.”<sup>20</sup> The seriousness depends on the value of the property. However, if the perpetrator has a current or past domestic relationship with the property owner, then charges of “malicious mischief-domestic violence” may be filed. The domestic violence enhancement results in longer jail sentences and larger fines depending on the value of the property.<sup>21</sup> Malicious mischief-domestic violence in the first and second degrees constitute felonies. In addition, the domestic violence designation can result in criminal no-contact orders and the loss of the perpetrator’s gun rights.

In New York, the state legislature enacted legislation in 2007 to criminalize malicious mischief as a crime of domestic violence (as a “family offense”).<sup>22</sup> The offense there is called “criminal mischief.” Crimes of criminal mischief are subject to concurrent jurisdiction in the family law and criminal procedure codes, more comprehensive criminal court orders of protection, mandatory arrest protections and primary aggressor determinations, and requirements that police

agencies prepare and file domestic violence incident reports.

In Colorado, domestic violence functions as a sentence enhancer that can be attached to nearly any other crime, including malicious mischief. The crime must be committed against a person with whom the perpetrator is (or was) involved in an intimate relationship. Property crimes carry domestic violence enhancers if prosecutors prove that the suspect committed the crime for one of several designed purposes—“as a method of coercion, control, punishment, intimidation, or revenge” against the

generally must rely on the victim’s statement because there are generally no witnesses. By the time of trial, the victim frequently has recanted.

In contrast, a criminal mischief claim “presents tangible details of destroyed property for police to witness, voucher, and preserve.”<sup>26</sup> Evidence of broken furniture, ripped phone lines, “does not become unavailable because of threats of retaliation.”<sup>27</sup> Moreover, batterers are more willing to admit that they have intentionally damaged property than that they have struck their partner.<sup>28</sup> Such admissions constitute important evidence at trial.

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*In the past two decades there has been a trend to tailor malicious mischief laws to the domestic violence context, with longer jail sentences and larger fines, depending on the value of the property.*

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partner or former partner. Convicted defendants have to complete domestic violence treatment and are subject to enhanced penalties.<sup>23</sup>

Many state malicious mischief laws require that the defendant damage the property of “another.” Traditionally, abusers could not be criminally liable for property damage to jointly-owned property (such as marital property, community property, or joint tenancy property) because they had a possessory interest in such property. However, cases from appellate courts in several states hold that a defendant can still be criminally liable even if he destroys property that he co-owns with the victim.<sup>24</sup> “The clear trend and better view is to criminalize the destruction of jointly owned property.”<sup>25</sup>

### Conclusion

States increasingly are recognizing property damage as a form of intimate partner violence. Given the prevalence of this form of abuse, prosecutors should make greater use of criminal mischief laws. The application of criminal mischief laws has a significant advantage over the use of laws punishing injury to the person. Criminal mischief statutes lessen problems of proof. To charge domestic violence crimes against the person, prosecutors

Property damage and destruction have a significant impact on victims who suffer emotionally as well as financially. It is important for the law to recognize this form of abuse in order to address the complexity of victims’ experiences of intimate partner violence.

### End Notes

1. See Klein, Catherine F. & Orloff, Leslye E. *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 873 n.438 (1993) (citing research reporting that “[a]pproximately 80% of batterers engage in violent behavior towards other targets, such as harming pets and destroying objects”).

2. For rare articles in the legal literature, see Leventhal, John M., *Spousal Rights or Spousal Crimes: Where and When Are the Lines to be Drawn?* 2006 Utah L. Rev. 351 (2006); Lutz, Victoria L. & Bonomolo, Cara M. *My Husband Just Trashed Our Home; What Do You Mean That’s Not a Crime?* 48 S.C.L. Rev. 641 (1997). In the social science literature, property damage is generally mentioned only briefly as a form of psychological abuse. See, e.g., O’Leary, Daniel K., *Psychological Abuse: A Variable Deserving Critical Attention in Domestic Violence*, 14 *Violence & Victims* 3, 13 (1999).

3. Klein & Orloff, *supra* note 1, at 873.

See PROPERTY DAMAGE, next page

*PROPERTY DAMAGE, from page 29*

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4. *State v. Zein*, 505 N.W.2d 498, 498 (Iowa 1993).
5. *State v. Coria*, 48 P.3d 980, 981 (Wash. 2002).
6. *In re Marriage of Cauley*, 41 Cal. Rptr. 3d 902 (Ct. App. 2006).
7. *See, e.g., State v. Powells*, 73 P.3d 256, 257 (N.M. Ct. App. 2003).
8. *State v. Adams*, 89 So.3d 435, 438 (La. Ct. App. 2012).
9. *Otte v. State*, 967 N.E.2d 540 (Ind. 2012); *State v. Mersinger*, 122 Wash. App. 1013, 1013 (Wash. Ct. App. 2004).
10. Stamm, Dan & Chang, David, Owner of Dunked Corvette Says Husband Warned Her He Would Put Car in River, NBC Philadelphia News, Nov. 12, 2014, <http://www.nbphiladelphia.com/news/local/Wifes-Red-Corvette-Delaware-River-282306891.htm>.
11. *Feltmeier v. Feltmeier*, 798 N.E.2d 75 (Ill. 2003)
12. *State v. Pockert*, 768 P.2d 504, 505-506 (Wash. 1989). See also Ronald S. Ribaud,

Note: *Burning Down the House: Does Limiting the Innocent Spouse's Right to Recover Make Sense?* 67 Mo. L. Rev. 77 (2002) (*discussing*

*DePalma v. Bates County Mutual Insurance Company*, 24 S.W.3d 766 (Mo. Ct. App. 2000)).

13. *State v. Goodman*, 30 P.3d 516, 519 (Wash. Ct. App. 2001).
14. *People v. Brown*, No. C039684, 2003 WL 788058 at 1\* (Cal. Ct. App. 2003).
15. *U.S. v. Barnette*, 644 F.3d 192, 197 (4th Cir. 2011).
16. *See, e.g., McComas v. Kim*, 105 P.3d 1130, 1131 (Alaska 2005).
17. Remington, Kaylee, Woman Speaks about Sister's Stalker, Killing to Lorain Community Leaders, *Morning J.*, Jan. 17, 2015, Available at <http://www.morningjournal.com/article/MJ/20150117/NEWS/150119682>.
18. *See, e.g., State v. Day*, 149 Wash. App. 1037, 1039 (Wash. Ct. App. 2009). See also Klein & Orloff, *supra* note 1, at 873 n. 478 (citing research reporting that 59% of batterers damage sentimental and personal property).
19. Lutz & Bonomolo, *supra* note 1, at 644.
20. The seriousness depends on the value of the property. *See, e.g., Wash. Rev. Code Ann.* §§ 9A.48.070 (more than \$5,000), § 9A.48.080 (more than \$750), § 9A.48.090 (under \$750). In Washington State, any criminal charge

may be labeled as a domestic violence-related case if it is committed by a family or household member against another or between people in a dating relationship. *See Wash. Rev. Code Ann.* § 10.99.020 for a definition of "family or household member" and Wash. Rev. Code Ann. § 26.50.010 for a definition of "dating relationship."

22. N.Y. Penal Law § 145. Family offenses are found in Family Court Act Article 8, § 812.

23. Colo. Rev. Stat. § 18-6-800.3(1).

24. Leventhal, *supra* note 2, at 362; Lutz & Bonomolo, *supra* note 2, at 651.

25. Leventhal, *supra* note 2, at 367. Case law has held that a defendant can be criminally liable for intentionally damaging his marital residence even if the title is in his name. *See, e.g., People v. Carter*, 43 Misc. 3d 494 (N.Y. Just. Ct., Westchester Cnty. 2014).

26. Lutz & Bonomolo, *supra* note 2, at 655.

27. *Id.*

28. *Id.*

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