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NARROWLY DEFINED, the tort of malicious prosecution[1] occurs when a person initiates criminal proceedings against an innocent person for an improper purpose and without probable cause, if the criminal proceedings terminate favorably for the wronged person.[2] The tort has been extended to include the initiation of a civil proceeding under similar circumstances, although England and a large minority of American jurisdictions adhere to a "special injury" rule, permitting recovery for the malicious prosecution of civil proceedings only when they interfere directly with the person (*e.g.*, lunacy, contempt or bastardy proceedings) or with property interests (*e.g.*, attachment, garnishment or bankruptcy proceedings).[3] Closely akin is the tort of abuse of process, which occurs when legal process is used to accomplish an improper purpose.[4]

These torts are not subjects which have traditionally excited the special interest of either law students or their professors, nor does there appear to be any particular reason why they should do so. According to Green, there is "no other cause of action which is more carefully guarded";[5] consequently, the number of reported cases has seldom risen above a steady trickle. Further, anyone faced with an immediate need for information will find all of the relevant aspects of these torts fully dealt with in recent and readily available texts.[6]

The burden of this paper is the extent to which a plaintiff in a malicious prosecution action will be permitted to recover

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1 The word "malicious" in this context is in some disrepute (see generally, Fridman, Malice in the Law of Torts, 21 Mod. L. Rev. 484 (1958)), and in fact has been supplanted in the Restatement of Torts by the word "wrongful." Courts, however, have not adopted this change.

2 Restatement, Torts, § 653 (1938).

3 Prosser, Law of Torts, § 114 (3rd ed. 1964).

4 Restatement, Torts, § 682 (1938).

5 Green, Judge and Jury, p. 338 (1930).

6 Prosser, *supra*, n. 3, §§ 113-115; 1 Harper & James, Law of Torts, §§ 4.1-4.12 (1956); see also Harper, Malicious Prosecution, False Imprisonment and Defamation, 15 Tex. L. Rev. 157 (1937).

damages for the injury he has suffered to his feelings.[7] Simply stated, there is no serious legal question presented by this broad topic. In a malicious prosecution action based on criminal proceedings the plaintiff may recover damages for his mental suffering (and for the harm to his reputation)[8] and the great majority of jurisdictions permit these damages to be recovered without special pleading or proof—*i.e.*, these elements are considered to be general damages.[9] By what McCormick describes as a "benevolent fiction,"[10] these injuries are presumed to flow necessarily from the malicious prosecution itself. Although there are policy disagreements among courts concerning the proper limits of verdicts in these actions—a matter discussed more fully below—there is no significant dissent from the principle that mental suffering is recoverable in this context and that, together with the assumed injury to the plaintiff's reputation, these items form the lion's share of the typical verdict.[11]

It has been noted above that harm to the reputation is treated as an item of general damages separate from mental distress. This separation seems to have only a limited significance. When requested to review a judgment claimed to be excessive, courts are influenced by the kind of reputation plaintiff bears;[12] otherwise, no meaningful distinction between these harms appears, loss of reputation and mental distress being clearly interrelated.

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[7] Courts have been unable to settle on a single descriptive term for the general mental harm proximately caused by a malicious prosecution. Thus we find references in the decisions to the plaintiff's injured feelings or to his mental suffering or anguish or distress. All of these terms are used as synonyms for each other. Similarly, the decisions abound in more specific references to the plaintiff's mental injury, to his shame, humiliation, embarrassment, etc. No effort is made to distinguish these mental states from each other or to weigh their relative importance, if any.

[8] The cases affirming this principle are too numerous to require citation. McCormick, Law of Damages, 382 (1935).

[9] Barnes v. Culver, 192 Ky. 10, 232 S. W. 39 (1921); Kirkpatrick v. Hollingsworth, 207 Okla. 292, 249 Pac. 2d 434 (1952); Grorud v. Lossl, 48 Mont. 274, 136 Pac. 1069 (1913). See also Restatement, Torts, § 670 (1938). Pecuniary harms, such as expenses incurred in defending the malicious proceeding, are recoverable as special damages. Restatement, *supra*, n. 4, § 671.

[10] McCormick, *op. cit. supra*, n. 8, 382.

[11] Flam v. Lee, 116 Iowa 289, 90 N. W. 70, 71 (1902): ". . . the principal basis of recovery in most actions of this kind is mental suffering and anguish arising from the wrongful charge and arrest. . . ."

[12] Davis v. Seeley, 91 Iowa 583, 60 N. W. 183 (1894); Gandy v. Palmer, 169 So. 2d 819 (Miss. 1964); also, the defendant may introduce evidence of plaintiff's bad reputation in order to rebut the normal presumption. Kirkpatrick v. Hollingsworth, *supra*, n. 9.

The obvious result of the rule that substantial damages for mental suffering may be awarded without special pleading or proof is that it permits appellate courts to affirm relatively large verdicts not only in cases where there is little or no evidence of mental suffering, but also in cases where there is some indication that the plaintiff in fact suffered no mental anguish at all. In *Blakely v. Roanoke State Bank*,[13] for example, the plaintiff "returned a negative answer" to his attorney's question whether he had felt shame as a result of being imprisoned and tried. Nevertheless, a verdict of $1700 for mental anguish was affirmed, the court refusing to believe that the plaintiff was "wholly unconscious of the disgrace that ordinarily attaches to arrest and imprisonment."[14] The rule also safeguards the plaintiff who is either unable to describe his mental condition with anything approaching clarity and completeness or who is taciturn by nature.[15]

Although the plaintiff need not plead or prove his mental suffering, he is by and large permitted to testify about all mental reactions proximately caused by the malicious prosecution.[16] This testimony is usually of two kinds, both highly formalized. The plaintiff may testify in general terms that he felt shame or humiliation or embarrassment as a result of the malicious prosecution—general mental states which in any event would be assumed to follow. The plaintiff may also testify regarding more

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[13] 122 Kan. 810, 253 P. 544 (1927).

[14] *Id.* at 546.

[15] In Flam v. Lee, *supra*, n. 11, at 71, the court said: "In this same connection may be taken up the objections raised to plaintiff's attempt to describe his mental suffering while in custody. We know of no rule of law which prohibits such testimony. It is true, perhaps, the jury may properly be left to infer such sufferings from the circumstances of his situation, and it is also true that the average witness finds it difficult to describe mental conditions in apt terms. But does it follow that such description, when made, is not proper evidence? If a man who has been wrongfully prosecuted for crime feels a sense of shame and humiliation that such a charge should be laid at his door, or that he has been disgraced in the eyes of his neighbors and friends, or is tormented with fear that his incarceration in jail may bring sorrow and disgrace to his home, we think he should be permitted to say it."

[16] *Ibid.* Note, however, that there is authority to the effect that the plaintiff may not testify directly that he suffered mental anguish, although he may describe the circumstances of his arrest and confinement (thus permitting the jury to infer mental anguish). Western Union Telegraph Co. v. Cleveland, 169 Ala. 131, 53 So. 80 (1910); Walling v. Fields, 209 Ala. 389, 96 So. 471 (1923).

specific incidents of mental suffering; he is distressed because of his family's reaction, humiliated and upset by the reaction of his friends, neighbors and by his confinement in jail, if any and however brief. For example, the plaintiff may testify that he suffered mental anguish while in jail because he was unable to attend his sick child at home,[17] because his mother fainted when he was taken into custody,[18] because he was shunned by former friends and acquaintances,[19] or humiliated by their references to his confinement,[20] because he was humiliated by being fingerprinted and mugged,[21] depressed by the sheer experience of being in jail,[22] and worried about his job security.[23] It is generally agreed, however, that the plaintiff may not recover from the defendant in a malicious prosecution action for injured feelings resulting from mistreatment by the police or his jail mates; incidents of harassment while the plaintiff is in custody are regarded as outside the scope of the defendant's wrongful conduct.[24]

It is interesting that persons injured by a malicious prosecution do not attempt to recover for future or long-term mental suffering nor attempt to testify regarding possible embarrassments subsequent to the successful termination of the maliciously instituted proceedings.[25] Quite probably there is a balancing out of assumptions here: the person of ordinary sensibility will experience no substantial mental suffering once the proceedings

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[17] Davis v. Seeley, *supra,* n. 12.

[18] Flam v. Lee, *supra,* n. 11. The court in this case emphasized that the plaintiff was not recovering for his mother's anguish or other injury.

[19] Polk v. Missouri-Kansas-Texas R.R. Co., 351 Mo. 865, 174 S. W. 2d 176 (1943); Randol v. Kline's, Inc., 330 Mo. 343, 49 S. W. 2d 112 (1932) (only one dinner invitation in six years).

[20] Redman v. Hudson, 124 Ark. 26, 186 S. W. 312 (1916).

[21] Irons v. American Ry. Express Co., 318 Mo. 318, 300 S. W. 283 (1927).

[22] Flam v. Lee, *supra,* n. 11; Kirkpatrick v. Hollingsworth, *supra,* n. 9; Fry v. Bank of America National Trust & Sav. Ass'n, 142 Cal. App. 2d 150, 298 P. 2d 34 (Dist. Ct. App., 3rd Dist., 1956); Stoecker v. Nathanson, 5 Neb. 435, 98 N. W. 1061 (1904).

[23] Dwyer v. McClean, 133 Ind. App. 454, 175 N. E. 2d 50 (1961).

[24] Flam v. Lee, *supra,* n. 11; Redman v. Hudson, *supra,* n. 20; Duckwall v. Davis, 194 Ind. 670, 142 N. E. 113 (1924) (unless the defendant provoked the mistreatment or should have known it was likely to occur).

[25] In Cramer v. Barmon, 136 Mo. App. 673, 118 S. W. 1179 (1909), the court held that the plaintiff could recover for mental distress suffered during a continuance of the criminal case, although the plaintiff had requested the continuance in order to prepare his defense.

have terminated in his favor.[26] There is also no technique used in these actions analogous to the *per diem* method of proving pain. As a result, the decisions in cases where the defendant argues that the verdict is excessive reflect contradictory attitudes, based, it would seem, upon inconsistent judicial views regarding the value of malicious prosecution actions and the sacredness of the jury's verdict.

Some decisions fail to give any clue to the reasons for the action taken by the court, as in *Warren v. Balaker*[27] in which a $1000 verdict was reduced to $500 *per curiam*. Some decisions suggest that a relatively low ceiling will be permitted. In a recent Connecticut decision, for example, the trial judge awarded a total of $400 to a plaintiff who spent $200 defending the malicious prosecution proceeding and who was described as having lost time and business and suffered humiliation.[28] In *Exchange National Bank of Colorado Springs v. Cullum*,[29] the court seemed uneasy about affirming a verdict of $2500 compensatory damages ("while this verdict may seem unusually large"), although the plaintiff was described as a man of standing and, presumably, of exceptional character and reputation, a retired officer whose pension had been jeopardized, who had lost time and business, had incurred travel expenses and the cost of two bonds, and who had suffered "unusual and unnecessary" injury to his feelings and reputation, including newspaper publicity.

At one time Indiana attempted to control malicious prosecution verdicts by imposing a proportion formula: the damages awarded for injury to the feelings, reputation and social standing must bear some reasonable ratio to the pecuniary losses in-

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[26] It was held in Black v. Canadian Pac. Ry., 218 F. 239 (W.D. N.Y. 1914) affd. 230 F. 798 (2d Cir. 1916) that the mental suffering of an intelligent, industrious and honest man was not to be measured by a different standard than the mental suffering of a man of larger earning capacity; it was also suggested that the poorer man might suffer a greater injury to his feelings and reputation than a wealthier man who might be better able to overcome the force of a malicious prosecution action. In Irons v. American Ry. Express Co., 318 Mo. 318, 300 S. W. 283 (1927), the court was unimpressed with the argument that an inoffensive hobo was not entitled to a large verdict for these injuries because of his low social standing (plaintiff had ridden freight trains without obtaining the consent of the railroad).

[27] 247 App. Div. 766, 285 N. Y. S. 850 (1936); see also Dunn v. City of New York, 23 App. Div. 2d 660, 257 N. Y. S. 2d 29 (1965): $10,000 verdict reduced to $2,500, no facts or reasons given.

[28] Rizza v. Gill, 24 Conn. Supp. 256, 189 A. 2d 794 (1963).

[29] 114 Colo. 26, 161 P. 2d 336 (1945).

curred,[30] but this formula was questioned and apparently abandoned in a more recent decision.[31] The "reasonable ratio" approach seems to have resulted from a blending of two principles: the familiar rule that punitive damages should be reasonably proportionate to the actual damages,[32] and the minority rule that compensatory or actual damages in malicious prosecution cases are limited to pecuniary losses, whereas non-pecuniary losses, such as injured feelings and reputation, are classified as punitive damages.[33] Labeling damages for non-pecuniary losses as punitive or exemplary seems basically confused.

The bulk of the decisions in malicious prosecution actions where it is claimed the verdict is excessive do not yield any definite standard or criterion for predicting results.[34] In *Levine v. Mills,*[35] the court remarked that malicious prosecution cases are not "favored in the law," that large verdicts should be viewed with more concern and examined more carefully than in other tort cases so that people would not be inhibited in seeking legal relief.

Frequently, however, comparatively large verdicts for injury to the feelings and reputation are affirmed as against a claim the award is excessive. In *Fry v. Bank of America National Trust & Sav. Ass'n,*[36] for example, a wife was arrested and spent one night in jail before being released; the story was carried on the front page of the local newspaper. Her expenses in defending the charge were paid for by her husband and he recovered them from the defendant. The jury awarded the wife $15,000 compensatory damages and $10,000 punitive damages and the verdict was affirmed, the court simply stating it found neither "passion or prejudice." A $30,000 award for injured feelings and reputa-

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[30] Bangert v. Hubbard, 127 Ind. App. 579, 126 N. E. 2d 778 (1955).

[31] Dwyer v. McClean, 133 Ind. App. 454, 175 N. E. 2d 50 (1961).

[32] Gordon v. McLearn, 123 Ark. 496, 185 S. W. 803 (1916); Soesbe v. Lines, 180 Iowa 943, 164 N. W. 129 (1917); McCormick, *op. cit. supra,* n. 8 at 298.

[33] Bangert v. Hubbard, *supra,* n. 30. See also Streetman v. Lasater, 185 S. W. 930 (Tex. Civ. App. 1916).

[34] There is an exhaustive collection of cases in 35 A. L. R. 2d 308.

[35] 114 A. 2d 546 (Mun. Ct. App. D. C. 1955); in W. T. Grant Co. v. Taylor, 223 Ky. 812, 4 S. W. 2d 741 (1928) the court remarked: "Actions for malicious prosecution are not favored in law, since public policy favors the exposure of crime, and large verdicts in such actions should be viewed with more concern than similar verdicts in other cases involving tortious acts." 4 S. W. 2d at 745.

[36] *Supra,* note 22.

tion was affirmed in *Miller v. Schnitzer*[37] after the court concluded its judicial conscience was not shocked by that amount after reviewing the record. In one case an award of $10,000 actual and $15,000 punitive damages was not even challenged as excessive.[38]

Since there is clearly no objective standard available for estimating these injuries, the conventional formulas used by courts in reviewing excessive damages cases—*e.g.*, does the verdict reflect passion or prejudice? does it shock the court's conscience?—amount to no more than an admission all such decisions are totally *ad hoc*. In short, the plaintiff's attorney must determine in each case the most effective method of reconstructing his client's distress, both real and assumed, not only to persuade the jury in the first instance, but also to protect the verdict on appeal.

There are a number of significant differences in malicious prosecution actions based on the wrongful initiation of civil proceedings. According to the prevailing view, no damages will be assumed; the plaintiff in the malicious prosecution action must allege and prove all actual damages suffered in excess of the costs recoverable in the original action.[39] Although there is virtually no discussion in the cases of the rationale for this position, it is likely based on the assumption that the run of the mill civil action—though maliciously instituted—does not necessarily injure the reputation and feelings of the defendant in that action. Thus, in *Harter v. Lewis Stores*,[40] the plaintiff alleged that she had been maliciously prosecuted by the defendant in a simple contract action brought by the defendant for the unpaid balance of her account. The court held that the plaintiff's damages should be limited to loss of time and litigation expenses and that

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[37] 78 Nev. 301, 371 P. 2d 824 (1962). The jury's total verdict amounted to $95,000: $15,000 for special injuries, $30,000 for injured feelings, etc., and $50,000 punitive damages. The court reduced the $15,000 verdict to $8,000, after finding no evidence of special injuries above that amount and reduced the $50,000 punitive award to $5,000 after concluding that—given the defendant's wealth—the lower figure was sufficient punishment. In Dwyer v. McClean, *supra*, n. 31, a $13,700 verdict was affirmed although the evidence showed only $375 pecuniary damages. See also *Randol v. Kline's, Inc.*, *supra*, n. 19.

[38] Singleton v. Perry, 45 Cal. 2d 489, 289 P. 2d 794 (1955).

[39] McCardle v. McGinley, 86 Ind. 538 (1882); Carbondale Inv. Co. v. Burdick, 67 Kan. 329, 72 P. 781 (1903); Restatement, Torts, § 681 (1938); Prosser, *supra*, n. 3 § 114.

[40] 240 S. W. 2d 86 (Ky. 1951).

there could be no recovery for her mental suffering since her reputation had not been assailed nor her person or property interfered with. The unspoken premise here seems to be that a person of ordinary sensibility would not feel shame, embarrassment and so on merely at being named a defendant in a civil action.

The rule is otherwise, however, if the civil action complained of carries with it defamatory implications or interferes with the plaintiff's person or property.[41] Wrongfully instituted lunacy proceedings are a handy example, for normally such proceedings involve both injury to reputation and incarceration; wrongful attachments or garnishments necessarily involve interference with property. In these and similar cases, damages for injured feelings are normally recoverable.[42]

Judicial attitudes regarding verdicts in this class of cases are even less predictable than in criminal actions. In *Gore v. Gorman's, Inc.*,[43] for example, the plaintiff sought damages resulting from the defendant's wrongful garnishment of wages for a debt which had been discharged in bankruptcy. He received nothing for his alleged embarrassment and mortification, the court refusing to believe that a bankrupt would actually be that sensitive. In *Dauphine v. Herbert*,[44] the court contended that a 40 year old Negro woman was entitled to $285 damages for the humiliation and embarrassment suffered from confinement for five days in a mental hospital pursuant to a maliciously insti-

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[41] Restatement, Torts, § 681, Comment (b): ". . . an action based upon the alleged fraudulent conduct of the defendant is in its nature defamatory. In a word, the test is whether the defendant's pleadings are such that if not protected by the privilege of a litigant . . . they would be actionable under the rules which govern recovery for defamation." See also Comment (d), *supra*.

[42] A highly selective list of cases permitting recovery for mental suffering in these circumstances follows: Cohn v. Saidel, 71 N. H. 558, 53 A. 800 (1902) (wrongful attachment); Brooking v. Lemon, 96 A. 2d 849 (Mun. Ct. App. D. C. 1953) (wrongful notice to quit); Barbish v. Ohio Finance Co., 101 N. E. 2d 792 (Ohio 1951) (wrongful garnishment); McAnarney v. Commonwealth Loan Co., 208 S. W. 2d 480 (Mo. 1948) (wrongful garnishment); Alexander v. Alexander, 131 F. Supp. 605 (W. D. D. C. So. Car. 1955), rev'd. 229 F. 2d 111 (4th Cir. 1956) (lunacy proceedings); Dauphine v. Herbert, 37 So. 2d 829 (Ct. App. La. 1948) (lunacy proceedings); Pickles v. Anton, 49 N. D. 47, 189 N. W. 684 (1922) (lunacy proceedings).

[43] 143 F. Supp. 9 (W. D. D. C. Mo. 1956).

[44] 37 So. 2d 829 (Ct. App. La. 1948). The court expressly stated that a person of low social status might very well overlook the embarrassment and humiliation which others might experience from being committed to a mental hospital.

tuted insanity proceeding. At the other end of the scale we have *Alexander v. Alexander,*[45] a case in which the jury awarded the plaintiff $175,000 actual damages and $75,000 punitive damages, the defendant (her husband) having wrongfully instituted lunacy proceedings against her. Although the reported facts in the case do not show whether the plaintiff suffered any pecuniary losses, it is apparent that the bulk of the award was for her "shame, humiliation and disgrace." [46]

The *Alexander* verdict stands alone and there are not enough decisions in this area to justify generalizations about the future. The available decisions suggest that injured feelings are not compensated in maliciously instituted civil actions on the same scale as they are in criminal actions, with a correlation based roughly on the assumption that the plaintiff's reputation is less harmed by his being involved in a civil action than in a criminal proceeding.[47]

Some confusion and apparent contradictions have resulted from the possible overlapping of causes of action in cases where process (*e.g.,* attachment, garnishment, execution) has either wrongfully issued or been used oppressively. For example, an attachment may have been issued against the wrong person. In this circumstance, the attachment defendant may have a cause of action against the attachment plaintiff without the necessity of showing malice and want of probable cause, but the recover-

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[45] 131 F. Supp. 605 (W. D. D. C. So. Car. 1955).

[46] 131 F. Supp. at p. 607. Although the trial judge reduced the award of actual damages to $87,500, he did so merely in the exercise of discretion, not because the court's conscience was shocked. The award of $75,000 punitive damages was described as conservative. The judgment was reversed on other grounds. 229 F. 2d 111 (4th Cir. 1956). This is the only case found in which future mental suffering was alluded to ("a lifetime of shame").

[47] The following might be loosely described as "typical" verdicts: Giordano v. Tullier, 139 So. 2d 15 (Ct. App. La. 1962) ($7,500 for humiliation, embarrassment and harm to reputation reduced to $3,000, no "convincing" evidence of mental anguish); Jones v. Phillips Petroleum Co., 239 Mo. App. 331, 186 S. W. 2d 879 (1945) (repeated garnishments—plaintiff received $500 for anxiety over job security and humiliation); Brooking v. Lemon, 96 A. 2d 849 (Mun. Ct. App. D. C. 1953) (wrongful notice to quit—$250 awarded for anguish resulting from the threatened loss of one's home). Blankenship v. Staton, 348 S. W. 925 (1961) is of special interest. In reversing a verdict of $20,000 for mental suffering in a wrongful attachment, the court, at p. 929, said: ". . . we have by way of evidence only the general statements of the Statons that they were humiliated and embarrassed and the statement of Mrs. Staton that she became highly nervous so as to require medical treatment. This evidence is purely subjective and does not produce the conviction that great suffering has been evidenced. The standard of damages in Kentucky for items of this nature has not been high."

able damages ordinarily do not include compensation for injured feelings.[48] If circumstances evidencing malice, want of probable cause, etc., are added, the attachment defendant has a cause of action for malicious prosecution of a civil proceeding (the attachment proceeding), with damages for injured feelings recoverable as noted above.[49] Although there is some authority permitting recovery for injured feelings absent malice,[50] the distinction seems sound: a defective, although "good faith" wrongful attachment or garnishment, seems more akin to conversion of property where conventionally damages are limited to pecuniary losses.[51]

Abuse of process, as defined at the outset, occurs when process is used to accomplish an improper purpose. Technically, this tort may include fact situations which also contain the elements essential to a malicious prosecution action; in other words, process might have been issued maliciously, without probable cause and so on, and also for an improper purpose.[52] If a choice between abuse of process and malicious prosecution need be made, the former seems by and large preferable, for the cause of action can be established by showing the improper purpose; neither probable cause nor unfavorable termination are defenses to liability.[53]

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[48] Mills v. Liquidators, 206 Ore. 212, 288 P. 2d 1060 (1955); Anderson v. Sloane, 72 Wis. 566, 40 N. W. 214 (1888); Stone v. C. I. T. Corp., 122 Pa. Super. 71, 184 A. 674 (1936); Lee v. Dunbar, 37 A. 2d 178 (Mun. Ct. App. D. C. 1944). Some jurisdictions do not recognize the cause of action absent malice: Finn v. Witherbee, 126 Cal. App. 2d 45, 271 P. 2d 606 (1954); Fish v. Nethercutt, 14 Wash. 582, 45 P. 44 (1896).

[49] In addition, the attachment defendant will usually have a statutory cause of action on the bond normally required of the attachment plaintiff. See Brown v. Guaranty Estates Corp., 239 No. Car. 595, 80 S. E. 2d 645 (1954) for a comprehensive discussion of this alternative.

[50] Williams v. Hill, Harris & Co., Inc., 190 So. 157 (Ct. App. La., 1939). Some cases are ambiguous on the question whether malice and lack of probable cause are essential in order to recover for injured feelings: *e.g.*, Hyde v. Southern Grocery Stores, 197 So. Car. 263, 15 S. E. 2d 353 (1941); Wright v. Husband, 193 Ark. 347, 99 S. W. 2d 583 (1936) (attachment plaintiff "willful," "rude and insulting").

[51] McCormick, *supra,* n. 8 §§ 109 and 123.

[52] See Brown v. Guaranty Estates Corp., *supra,* for a discussion of this possibility. See also, McGann v. Allen, 105 Conn. 177, 134 A. 810 (1926).

[53] Restatement, Torts, § 682 (1938). Some authorities use the term "malicious use of process" in this context but it seems clear that this term is a synonym for malicious prosecution as used herein. 72 C. J. S. *Process,* § 120 at p. 1195 (1951). No comprehensive definition of the phrase "improper purpose" is possible. In Prosser's view, the ulterior purpose "usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club." Pros-

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It is necessary to show some actual damage in order to make out a cause of action for abuse of process: that is, some degree of interference with the plaintiff's person or property must be established.[54] Once a cause of action is shown, however, damages for injured feelings may be recovered as a matter of course.[55] Verdicts for this element are generally small, possibly because juries recognize that the plaintiff would normally have had no cause of action for any damages whatever absent the improper purpose.

It would be pleasant—but highly misleading—to end on a note which suggests that the cases dealing with compensation for injured feelings in these torts reflect a comprehensive set of coherent principles. But even a definite and certain jurisprudence of liability here would not solve that most unyielding problem: how to measure in money the individual's interest in mental stability?

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ser, *supra,* n. 3 § 115. See also, George v. Leonard, 71 F. Supp. 662 (E. D. D. C. So. Car. 1947). Although there are decisions to the effect that "malice" is an essential element of the tort of abuse of process—*e.g.,* Robert & St. John Motor Co. v. Bumpass, 65 S. W. 2d 399 (Ct. Civ. App. Tex. 1933) —it should be noted that "malice" in this context is only a shorthand reference to the improper or ulterior purpose. Coplea v. Bybee, 290 Ill. App. 117, 8 N. E. 2d 55 (1937); Clikos v. Long, 231 Ala. 424, 165 So. 394 (1936). But see Delk v. Colonial Finance Company, 194 N. E. 2d 885 (Ohio, 1963).

[54] Gore v. Gorman's Inc., 148 F. Supp. 241 (W. D. D. C. Mo. 1956). Italian Star Line v. United States Shipping Board E. F. Corp., 53 F. 2d 359 (2nd Cir. 1931). Spellens v. Spellens, 49 Cal. 2d 210, 317 P. 2d 613 (1957).

[55] Spellens v. Spellens, *supra;* Murray v. Mace, 41 Neb. 60, 59 N. W. 387 (1894); McGann v. Allen, *supra;* Saliem v. Glousky, 132 Me. 402, 172 A. 4 (1934); Adelman v. Rosenbaum, 133 Pa. Super. 386, 3 A. 2d 15 (1938); Ingo v. Koch, 127 F. 2d 667 (2nd Cir. 1942); Friel v. Plumer, 69 N. H. 498, 43 A. 618 (1899); Malone v. Belcher, 216 Mass. 209, 103 N. E. 637 (1913). Zablonsky v. Perkins, 230 Md. 365, 187 A. 2d 314 (1963).