



Creepy Cases

Halloween often comes with something really scary—a lawsuit.

BY JOHN G. BROWNING

Scottish poet Robert Burns knew that lawyers are scarier than any ghost or ghoul. In his 1790 narrative poem *Tam O'Shanter*, Burns allows his readers to see, through Tam's eyes, the many horrors of the haunted Alloway Church—including "Three lawyers' tongues, turn'd inside out/wi' lies seam'd like a beggar's clout." Yes, it seems that Halloween just wouldn't be complete without us. Whether you're talking about spooking up your house and yard or dressing up in costumes, lawyers and lawsuits are sure to follow.

Take a concept as seemingly innocuous as Halloween home decorations. In 2010, a Florida woman filed a lawsuit alleging that her neighbor's Halloween lawn fixtures were defamatory, harassing, and caused mental anguish.¹ The objects included a sign saying "Insane Asylum" with an arrow pointed toward the plaintiff's house, as well as a mock tombstone allegedly referencing the plaintiff. It read:

**At 48 she had
No mate No date
It's no debate
She looks 88
She met her fate
In a crate
1961-2009
Now we celebrate**

Another neighborly dispute over Halloween tombstones literally became a federal case, going all the way to the 7th Circuit. In *Purtell v. Mason*, one neighbor (Purtell) parking an unsightly recreational vehicle led to other neighbors' petitioning for a ban on RVs and—in retaliation—Purtell displayed six tombstones, each bearing unflattering references to his neighbors and dates of death that were based on their addresses.² One, referring to neighbor Betty Garbarz read:

**Bette wasn't ready,
But here she lies
Ever since that night she died,
12 feet deep in this trench,
Still wasn't deep enough
For that wenches stench!
1690³**

Another tombstone referred to a neighbor who owned a crimping shop as "Old Man Crimp" who "Sliced his wife from ear to ear/She died . . . He was fried/Now they're together/Again side by side!"⁴ Some of the neighbors who felt threatened by the tombstones called the police, and an officer tried to persuade Purtell to dismantle the display. He refused but agreed to cover up the names with tape. A few days after Halloween, the tape fell off and the neighbors called the police again. While an officer was speaking with Purtell on his front lawn, a neighbor came over and began arguing with Purtell and an altercation ensued. The officer handcuffed Purtell and ordered him to remove the tombstones or be arrested for disorderly conduct. The Purtells sued the officer under 42 U.S.C. § 1983, asserting they had a First Amendment right to display the decorations.

The 7th Circuit agreed, holding that while the tombstones were intended to elicit "an emotional response" from the neighbors, they were not the type of speech that

would be considered unprotected under the "fighting words" doctrine.⁵ The court also had a few choice words for the lawyers and parties themselves, noting, "Lawsuits like this one cast the legal profession in a bad light and contribute to the impression that Americans are an over-lawyered and excessively litigious people."⁶

If Halloween adornments can inspire lawsuits, then certainly Halloween costumes can. Anyone who has seen the classic *Saturday Night Live* sketch featuring Dan Aykroyd as a sleazy purveyor of dangerous children's Halloween costumes like "Invisible Pedestrian" or "Johnny Human Torch" (a bag of oily rags and a lighter) knows that costumes can result in product liability lawsuits. For example, in *Ferlito v. Johnson & Johnson*, the plaintiff went to a Halloween party dressed as a sheep (his wife was Little Bo Peep), in which his costume was covered with the defendant company's cotton balls.⁷ The plaintiff lit a cigarette, his costume caught fire, and he was engulfed in flames. The resulting personal injury lawsuit led to a \$550,000 jury verdict, which was set aside by the trial judge. On appeal, the 6th Circuit affirmed the judge's decision, finding that the plaintiff was aware that the product was flammable since cotton "is a simple product with all of its essential characteristics apparent, including flammability."⁸

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In our legal system, it seems anything is possible. A simple Halloween decoration can lead to defamation lawsuits and free speech debates. Costumes can not only reveal the wearer's identity but also result in tort lawsuits and employment disputes.

A New York appellate court reached a different conclusion in another costume case involving cotton puffs,⁹ which the plaintiff had glued to her 8-year-old daughter's pajamas to make it look like white fur. The costume burst into flames when the child leaned over an electric stove. Although the court acknowledged that this was not an intended use of the product, it found that there was a fact question on whether the misuse was reasonably foreseeable, thus triggering a duty to warn.¹⁰

Sometimes, Halloween costumes can lead to employment disputes. In one Massachusetts case, the appellate court addressed whether a hospital had violated state labor laws by ordering union nurses to remove black T-shirts they wore on Halloween that featured the words "Skeleton Crew" and a picture of a skeleton on the front, with complaints about staffing levels being "cut to the bone" on the back.¹¹ And employers need to tread carefully when it comes to LGBT issues in the workplace, including at Halloween when an employee may choose a costume to make a statement about his or her true identity. Consider the case of Vandy Beth Glenn, a transgender woman who had been hired, as a man, in 2005 to be legislative editor for the Georgia General Assembly. On Halloween 2006, Glenn arrived at work wearing women's clothing and was sent home for "dressing inappropriately" (two co-workers in costumes were not sent home). Glenn, who had been diagnosed with gender identity disorder in 2005, notified her superiors that she was in the process of transitioning from male to female and would present herself as female at work. In October 2007, Glenn was fired and she filed suit in July 2008. In August 2010, a federal judge ordered that Glenn be reinstated to her job.¹²

In our legal system, it seems anything is possible. A simple Halloween decoration can lead to defamation lawsuits and free speech debates. Costumes can not only reveal the wearer's identity but also result in tort lawsuits and employment disputes. Halloween just wouldn't be Halloween without legal issues bubbling to the surface like the "eye of newt and wing of bat" in a witch's cauldron.¹³ **TBJ**

NOTES

1. *Salama v. Deaton*, 10-CA-00310 (Fla. 13th Cir. Ct.), Amended Complaint.
2. *Purtell v. Mason*, 527 F.3d 613 (7th Cir. 2008).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Ferlito v. Johnson & Johnson*, 983 F.2d 1066 (6th Cir. 1992).
8. *Id.*
9. *Trivino v. Jamesway Corp.*, 148 A.D.2d 851 (3d Dep't 1989).
10. *Id.*
11. *Massachusetts Nurses Ass'n v. Commonwealth Employment Relations Bd.*, 77 Mass. App. Ct. 128 (Mass Ap. Ct. 2010).
12. Christian Boone, *Transgender Woman Fired by State Gets Her Job Back*, *Atl. Journal-Constitution* (Aug. 3, 2010), <http://www.ajc.com/news/news/local/transgender-woman-fired-by-state-gets-her-job-back/nQh7L/>.
13. Even law professors have acknowledged the legal system's contributions to Halloween and all things scary. Texas Tech School of Law professor Victoria Sutton is the author of *Halloween Law: A Spirited Look at the Law School Curriculum*, a look at the scarier side of areas like torts and property law. Law professors have long found inspiration in the macabre, such as University of British Columbia law professor Sharon Sutherland and her 2003 paper *Piercing the Corporate Veil—With a Stake? Vampire Imagery in American Caselaw*.



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