

**Kentucky Supreme Court**  
**Cases of Note**  
**[November-December, 2012](#)**

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1. Hold down the control (“Ctrl”) key and click on the link.
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**TORTS**

**Brenda C. Osborne v. Steven H. Keeney, et al.**

**[2010-SC-000397-DG](#) December 20, 2012**

**And**

**Steven H. Keeney v. Brenda C. Osborne, et al.**

**[2010-SC-000430-DG](#) December 20, 2012**

Opinion of the Court by Chief Justice Minton. Abramson, Cunningham, Noble, J.J., concur. Venters, Scott, J.J., concurs in part and dissents in part by separate opinion. Schroder, J., not sitting. A small plane crashed into Brenda Osborne’s home, causing significant property damage and mental distress. Osborne hired Steven Keeney to represent her in a claim against the pilot of the aircraft but Keeney failed to timely file the lawsuit against the pilot of the aircraft before the expiration of the applicable statute of limitations. Osborne then brought a legal malpractice claim against Keeney seeking to recover potential insurance proceeds, lost punitive damages, mental anguish, and punitive damages for Keeney’s conduct. Both parties appealed the decision of the Court of Appeals. The Court reaffirmed precedent holding the proper method for trying legal malpractice claims is the suit-within-a-suit, which requires the trial court to instruct the jury as if it were trying the underlying tort case before instructing the same jury on the legal malpractice claim. The trial court properly tried the case using the suit-within-a-suit method but erred when it simply instructed the jury on the legal malpractice claim and failed to instruct on the underlying negligence claim against the aircraft pilot. As a result, the Court reversed the Court of Appeals and remanded the case to the trial court for further proceedings. The Court also held that the “impact rule,” the longstanding guidepost to recovery for claims involving emotional distress, is no longer the law in Kentucky. Claims involving emotional distress are to be governed by general negligence principles. A plaintiff seeking damages for emotional distress must prove the commonly recognized elements of a general negligence claim and distress that does not significantly affect the plaintiff’s everyday life or require significant treatment will not suffice. Finally, the Court held that lost punitive damages are not recoverable in a legal malpractice action. The Court noted that Osborne could seek punitive damages from Keeney for Keeney’s own conduct in the handling of her case.

**Fort Mitchill Country Club v. Timothy Lamarre, et al.**

**[2011-SC-000665-DG](#) December 20, 2012**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Noble, and Venters, JJ., concur. Scott, J., dissents by separate opinion. Schroder, J., not sitting. Summary judgment as to Country Club’s liability under the Dram Shop Act was proper where there was a complete absence of proof that defendant appeared intoxicated prior to accident involving motorized golf cart. Further, whether or not Country Club served defendant in violation of its liquor license is immaterial to its liability under the Dram Shop Act, as the General Assembly has not expressly carved out such an exception.