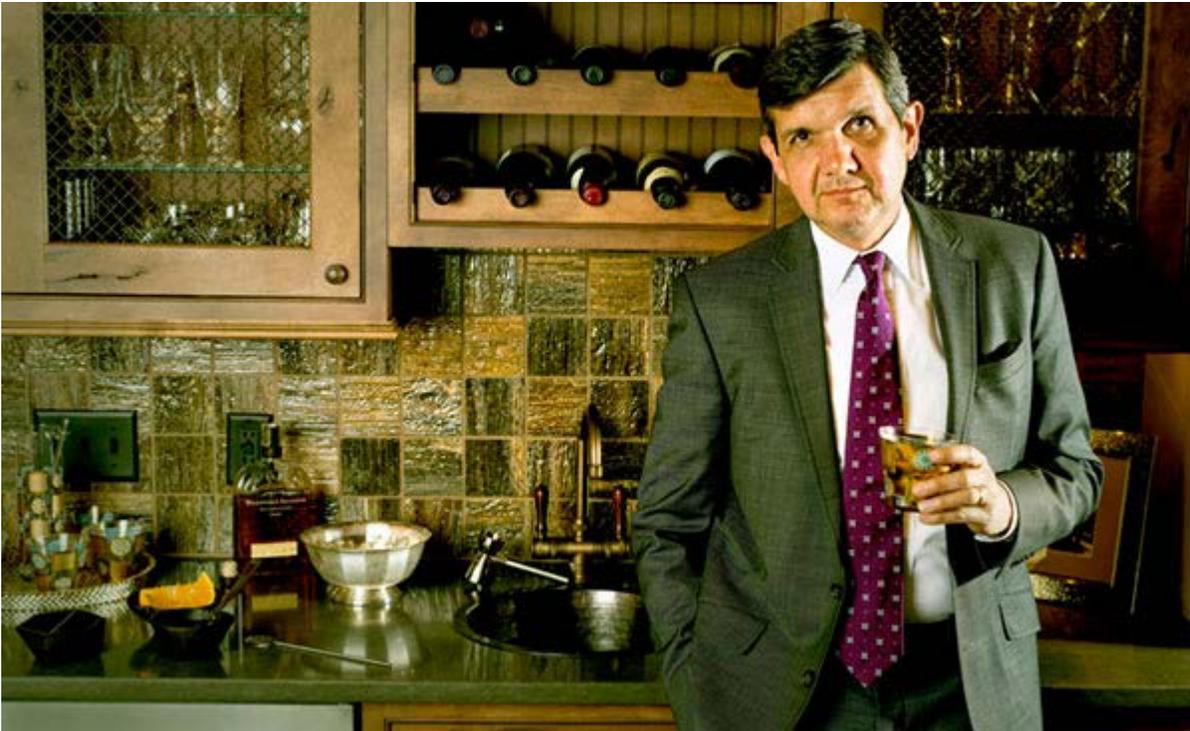


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## The Cocktail Party Lawyer Blog

“Can You Be Sued for an April Fool’s Prank Gone Wrong?”



I write a legal advice blog for my workplace, Rockwell Automation. It’s called *The Cocktail Party Lawyer*, and I draw upon the most common questions I am asked (usually over drinks). I give advice based on my thirty years of legal experience – answers to boring and straightforward questions about writing wills, closing real estate transactions, writing contracts, blah, blah, blah.

Of course I warn those seeking my counsel, either in real life or on the blog, that legal advice is the same as toilet paper, cologne, and beer – you get what you pay for, and this advice is free.

Sometimes I get a question that requires me to draw on my experience as the father of four sons. Like the seatmate on a plane who asked me about the legalities of backyard trampolines – I gave her practical advice based on the zip line I installed in our

backyard. It took only three neighbor children sustaining mild to slightly serious injuries before this wise lawyer decided to remove *the attractive nuisance*.

The best question I ever got came from a stranger sitting next to me at Bryant's Cocktail Lounge in Milwaukee. It was St. Paddy's Day, and when he learned that I practice law, he leaned over his Guinness and asked, "Can you get sued for playing an April Fool's joke?"

This question was the equivalent of the Old Fashioned I held in my hand, made with bourbon not brandy, a dash of bitters, a muddled slice of orange, and a single Luxardo cherry. In other words, a question tailor-made for me. You see, I have extensive experience with April Fools' Day. So, like the lawyer at a wedding who's already thinking about the divorce, I trot out the parade of horrors and begin to analyze the inevitable questions. It became the basis of one of my most popular blog posts, which follows below.

"Can You Be Sued for an April Fool's Prank Gone Wrong?"

In many countries around the world, April 1<sup>st</sup> is a day for pranks, practical jokes and hoaxes. My wife's family goes all out. They treat the day like a national holiday: my wife's mother once served pigs ears on April 1<sup>st</sup>; her brother saran-wrapped the family car; her sister put tiny fire crackers in her father's cigarettes; and her father, a physician, once pulled a prank with a cadaver from the morgue. (Don't ask). Suffice it to say my wife has no problem showing up at the middle school in a bathrobe and slippers, delivering Barbie dolls and Teletubby lunchboxes to our embarrassed sons. She thinks it builds character.

Whether or not she's right, what does the law say about such pranks? What if a joke goes awry? Can you be held liable for an April Fools' joke?

You bet your rubber chicken you can.

Unfortunately, the law is a scowling schoolmarm who frowns on frivolity and dismisses explanations of "it was just a joke". Here are a few examples.

A few years ago, a company offered an incentive prize to its top salesperson. The prize was verbally announced on April 1, and the prize winner thought she won a Toyota. Instead she received a *toy Yoda*. She sued for breach of contract.

In the late 1990s, a radio station broadcasted on April 1 that the town dump exploded. The disc jockey reported that burning garbage was raining down from the sky. The fire department responded – and when they rushed off only to find a quiet, flameless dump, they sued the radio station.

Due to these popular sorts of hoaxes, the U.S. Federal Communication Commission issued Rule 73.1217, preventing broadcasters from running any information about a “crime or catastrophe” if the broadcaster knows the information to be false and public harm is caused. Orson Wells would be rolling over in his grave at that one.

The basic question is easy. Can you be held liable for a joke gone bad? Yes. Which prompts us to ask: why? Why doesn't the law have a sense of humor, and what are the legal principles at work that would turn a joke into a lawsuit? To understand that, you need to know a bit about what the law calls a “tort”.

Under the law, a tort is a legal wrong committed against a person or property that causes damage. In order for the wrongdoer to be held liable, the person who has been damaged, aka the “plaintiff”, must prove three things:

- 1) There was a duty of care owed. For example, if I'm driving a car, I owe a duty to all others on the highway to drive safely.
- 2) There has been a breach of that duty. For example, I did not drive safely.
- 3) Some damage was “proximately caused” by the actions. For example, I crashed and dented your car.

If those three things are shown in court, then I am liable to pay for the damages caused.

And in order to show that my actions proximately caused your harm, the law merely looks at whether my actions were “intentional” (as opposed to an accident or something that was caused outside of my control).

But it's important to know that intent and motive are not the same. So, in the car accident example, I could try to argue that I didn't mean to crash my car. But such an excuse doesn't matter. If I was driving unsafely, then obviously I intended to do so. No one forced me to be an idiot behind the wheel. I was just an idiot, and now I must pay.

All of these legal points apply equally in the case of a joke gone bad. I know someone (and no, it is not my wife) who pranked a neighbor by parking a backhoe in the neighbor's front yard on April 1<sup>st</sup>. When the backhoe was eventually removed from the lawn, it created terrible ruts in the grass and ripped up the lawn pretty badly. Can this prankster (who is not my wife!) defend herself by claiming that it was only a joke and no damage to property was intended?

No, she can't – her motives are not relevant. Did she intend to place a construction vehicle on the lawn? (Yes). Was it an accident that somehow huge ruts magically appeared in the grass? (No).

So now that the damage has been done, the prankster's "it-was- only-a- joke" defense will get her nothing except more laughter from the judge.

A few years ago, two brothers here in Milwaukee having a good time at a party thought it would be fun to shoot off a military flare that one of them possessed. They watched it soar into the sky and explode with dazzling light, and they said, "Wow, that was cool!" and then went back to drinking beers. Unbeknownst to them, the flare landed on the roof of a local Milwaukee sausage and bacon processing plant and started a fire that lasted for three days. (The entire city had the most delicious aroma of breakfast cooking).

When journalists asked the mortified mother about it, she famously said, "They were just being idiots." And she was right. But they were also sentenced to several months in jail plus three years of probation. Stupidity is no defense.

So when planning your April Fools' jokes, make sure no one gets hurt so that you aren't the one looking like the fool. And don't call my wife for any ideas.

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A word about the author. I have been practicing law for thirty years. For the first ten years I cut my teeth at a large litigation firm in Chicago where I represented big companies in lawsuits with other big companies. Since then, I've been a lawyer for Rockwell Automation. Along the way, I did a lot of pro bono work (that's legal jargon for "free"). So, I helped family members with their wills, and an aunt fight with her unscrupulous landlord, and an elderly neighbor retrieve some valuable property, and I defended a woman dressed as a bird who slapped a police officer while protesting at

an environmental rally, and a brother-in-law who got beat up by two large women in Chicago (now THAT's a story). You get the idea.