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2017 Edition

Alienation of Affection Suits in Connecticut

A Guide to Resources in the Law Library

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Introduction

A Guide to Resources in the Law Library

- **“Alienation of affections and breach of promise actions abolished.** No action may be brought upon any cause arising from alienation of affections or from breach of a promise to marry.” Conn. Gen. Stat. § [52-572b](#).
- **“This is a tort based upon willful and malicious interference with the marriage** relation by a third party, without justification or excuse. The title of the action is **alienation of affections**. By definition, it includes and embraces mental anguish, loss of social position, disgrace, humiliation and embarrassment, as well as actual pecuniary loss due to destruction or disruption of marriage relationship and the loss of **financial support, if any.**” (Emphasis added.) [Donnell v. Donnell](#), 415 S.W.2d 127, 132 (Tenn. 1967).
- **“At common law, a plaintiff could bring a variety of damages actions arising** in the context of romantic relationships. These included causes of action for alienation of affections, criminal conversation, seduction, and breach of promise to marry. Only a spouse could bring an action for alienation of affections or criminal conversation; the former tort action provided redress against a third party who won the love of the plaintiff's spouse, while the latter involved sexual intercourse with the plaintiff's spouse. [Lombardi v. Bockholt](#), 167 Conn. 392, 355 A.2d 270, 271 (suit against third party for criminal conversation and alienation of affections based upon defendant's extramarital affair with plaintiff's wife), [Bouchard v. Sundberg](#), 80 Conn. App.180, 834 A.2d 744, 752 n. 13 (“The common-law traditional heart balm tort of alienation of affections is a cause of action against a third party adult who **“steals”** the affection of the plaintiff's spouse.’).” [Brown v. Strum](#), 350 F.Supp.2d 346; 2004 U.S. Dist. LEXIS 25680.
- **Heart Balm Act.** “The distaste for alienation of affection and breach of promise suits which has inspired in recent years the enactment of laws abolishing such ‘heart balm’ litigation has stemmed largely from publicized abuses of these common-law remedies as instruments of fraud and extortion.” [Tarquinio v. Pelletier](#), 28 Conn. Sup. 487, 488, 266 A.2d 410 (1970).

Section 1: Spousal Alienation of Affection

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to alienation of affection suits in Connecticut

- DEFINITION:**
- **“Alienation of affections and breach of promise actions abolished.** No action may be brought upon any cause arising from alienation of affections or from breach of a promise to marry.” Conn. Gen. Stat. § [52-572b](#).
 - **Heart Balm Act.** “The distaste for alienation of affection and breach of promise suits which has inspired in recent years the enactment of laws abolishing such ‘heart balm’ litigation has stemmed largely from publicized abuses of these common-law remedies as instruments of fraud and extortion.” *Tarquinio v. Pelletier*, 28 Conn. Sup. 487, 488, 266 A.2d 410 (1970).
 - **“Only a spouse could bring an action for alienation of affections or criminal conversation; the former tort action provided redress against a third party who won the love of the plaintiff’s spouse, while the latter involved sexual intercourse with the plaintiff’s spouse.”** *Brown v. Strum*, 350 F. Supp. 2d 346 (2004) (2004 U.S. Dist. LEXIS 25680).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
Chapter 925. Statutory rights of action and defenses
§ [52-572b](#). Alienation of affections and breach of promise actions abolished.

HISTORY:

- P.A. 67-275 (Reg. Sess.)
“No action shall be brought upon any cause arising after October 1, 1967 from alienation of affection or from breach of a promise to marry.”
- P.A. 82-160, section 238 (Reg. Sess.)

COURT CASES:

- *Dufault v. Mastrocola*, Superior Court, Judicial District of Hartford-New Britain, No. CV 94 0543343 (Mar. 1, 1996) (1996 WL 166471).
- *Tarquinio v. Pelletier*, 28 Conn. Supp. 487, 266 A.2d 410 (1970).

DIGESTS:

- West Key Numbers: *Husband and Wife* 322 et seq.

ENCYCLOPEDIAS:

- Marjorie A. Shields, Annotation, *Action For Intentional Infliction Of Emotion Distress Against Paramours*, 99 [ALR5th](#) 445 (2002).

- 41 [C.J.S. Husband and Wife](#) (2014).
 - § 251. Generally. Alienation of affections and criminal conversation
 - § 252. Abolition of action
 - § 253. Generally. Elements of cause of action
 - § 254. Existence of marital relationship
 - § 255. Intent
 - § 256. Motive
 - § 257. **Necessity that defendant's acts be the cause of the alienation**
 - § 258. Generally. Damages
 - § 259. Punitive damages
- 41 [Am. Jur. 2d Husband and Wife](#) §§ 236-241 (2005).
- *Proof of Alienation of Affections*, 54 [Am. Jur. brs 3d](#) 135 (1999).

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 43. Enforcement of custody and visitation orders.
 - § 43.12. Tort claims
- Douglass S. Wright et al., [Connecticut Law of Torts 3d](#) (1991).
 - § 79b. Actions by husband or wife
 - § 171g. Alienation of affection and loss of consortium
- [Domestic Torts: Family Violence, Conflict and Sexual Abuse](#) (Rev. ed. 2005).
 - § 7.2 Spousal alienation of affection
- Jerome H. Nates et al., [Damages in Tort Actions](#) (1998).
 - Chapter 11. Third Party Interference with Familial Relationships
 - § 11.05[3][a]. Alienation of Affections. Action by Spouse
- 2 Fowler V. Harper et al., [Harper, James, & Gray on Torts](#) (3d ed. 2006).
 - § 8.3. Alienation of affections of spouse and criminal conversation

LAW REVIEWS:

- Marilyn Paula Seichter, *Alienation Of Affection: Gone But Not Forgotten*, 10 [Family Advocate](#) 23 (1987). Special issue: on Fault.

Table 1: Spousal Alienation of Affections in Other States

Spousal Alienation of Affection Actions Abolished	
Massachusetts	Mass. Gen. Laws Ann. Chapter 207 § 47B
New York	Civil Rights Law Article 8
Lists of States Abolishing	
Statutory	Jerome H. Nates et al., Damages in Tort Actions (1998). §11.05 [3][a][ii]. See footnote 59
Case Law	Jerome H. Nates et al., Damages in Tort Actions (1998). §11.05 [3][a][ii]. See footnote 62

Table 2: Brown v. Strum

Brown v. Strum 350 F. Supp. 2d 346 (2004) (2004 U.S. Dist. LEXIS 25680).	
Choice of Law	<p>A federal court sitting in diversity must apply the choice of law rules of the state in which it sits. Klaxon Co. v. Stentor Co., 313 U.S. 487, 496 (1941). Therefore Connecticut's choice of law rules must be applied in this diversity case. "The threshold choice of law question in Connecticut, as it is elsewhere, is whether there is an outcome determinative conflict between the applicable laws of the states with a potential interest in the case. If not, there is no need to perform a choice of law analysis, and the law common to the jurisdictions should be applied." <i>Lumbermens Mut. Cas. Co. v. Dillon Co.</i>, 9 Fed. Appx. 81, 83 (2d Cir. 2001) (citing <i>Haymond v. Statewide Grievance Comm.</i>, 723 A.2d 821, 826 (Conn. Super.Ct. 1997, aff'd 247 Conn. 426, 723 A.2d 808)).</p> <p>The outcome-determinative legal issue in this case is whether there exists a cause of action for seduction or breach of promise to marry. Connecticut and New York laws are identical in this regard. As discussed infra, § III.B., both jurisdictions have abolished a cause of action for breach of promise to marry. Conn. Gen. Stat. §52-572b, N.Y. Civ. Rights L. § 80-a. New York also abolished by statute a woman's common law cause of action for seduction, N.Y. Civ. Rights L. § 80-a, while Connecticut never allowed it in the first place. Thus there is no need to perform a choice of law analysis, and the rules common to both Connecticut and New York will be applied.</p>
Emotional Distress and Fraud	<p>Courts of both states have held that a plaintiff may not circumvent the statutory prohibition on heart balm actions by recharacterizing them as emotional distress or fraud claims. To determine whether a plaintiff has a bona fide claim or is simply using an emotional distress claim to evade the anti-heart balm statute, courts look to the underlying factual allegations of the complaint. For example, in Sanders v. Rosen, 605 N.Y.S. 2d 805, 811 (N.Y. Sup. Ct. 1993), the plaintiff sued her former divorce attorney, alleging that he induced her to begin a romantic relationship soon after her divorce, talked about getting married, wrote a will for the plaintiff with himself as beneficiary, but then terminated the relationship and demanded that the plaintiff move out of his apartment. <i>Id.</i> at 807. The court found that the complaint had "the earmarks of the earlier actions for seduction or breach of promise to marry, i.e., entering into and breaking off a sexual relationship by means of allegedly false promises." <i>Id.</i> at 811. Although the plaintiff had characterized her claim as infliction of emotional distress, the court found that the allegations "fall into</p>

	<p>the category of fall-out from heartbreak," and therefore were not cognizable in the New York courts. Id. at 812.</p> <p>Similarly, Connecticut courts "in determining whether an action is barred by §57-572b, ...consider the underlying conduct alleged in the plaintiff's complaint." Bouchard v. Sundberg, 80 Conn. App. 180, 834 A.2d 744, 756. They will not hear claims of emotional distress that "flowed from" a heart balm claim. Id. at 754. The plaintiff in <i>Bouchard</i>, for example, attempted to bring a claim for emotional distress based upon his ex-wife's alleged attempts to alienate his children from him after a divorce. Because Connecticut had barred damages actions for alienation of affection, the plaintiff's claim was not cognizable even when framed as a claim for infliction of emotional distress. Id. In reaching this conclusion, the court examined the factual basis for the plaintiff's claim, which included the ex-wife encouraging the children not to communicate with him, and stated that any action "stemming from the alienation activities" would be barred by statute. Id.</p>
<p>Fraud Claims</p>	<p>In Tuck v. Tuck, 14 N.Y.2d 341, 345 (N.Y. 1964) "An innocent woman who is deceived into contracting a void marriage and who thereafter cohabits with her putative spouse in the performance of her supposed conjugal obligations is entitled to recover damages in an action for deceit, and it matters not whether the marriage is void because bigamous or void for the reason that the ceremony leading to it was a sham."</p> <p>The Connecticut Supreme Court has made clear that an action for fraud may not be maintained as a method of circumventing §52-572b (2011). Piccininni v. Hajus, 180 Conn. 369, 429 A.2d at 888. A fraud action relating to a promise to marry only may be maintained in Connecticut for "restitution of specific property or money transferred in reliance on various false and fraudulent representations, apart from any promise to marry, as to their intended use." Id. at 888-89. Thus, a plaintiff was permitted to maintain an action where he sued to recover money spent renovating the defendant's house in reliance on defendant's promise that she would marry him and allow him to move in with her. Id. However, the Supreme Court carefully distinguished an action to regain property from one "to recover for the breach [of a promise to marry] itself." Id. at 889.</p>

Section 2: Criminal Conversation

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the tort of criminal conversation in Connecticut

DEFINITION:

- **"Criminal conversation action abolished.** No action may be brought upon any cause arising from criminal conversation." Conn. Gen. Stat. § [52-572f](#).
- **Criminal Conversation:** "means adulterous relations between the defendant and the spouse of the plaintiff To sustain the action, plaintiff must establish (1) the marriage between the spouses, and (2) sexual intercourse between the defendant and the spouse during coverture." [Russo v. Sutton](#), 422 S.E.2d 750, 752 (S.C. 1992).
- **"Only a spouse could bring an action for alienation of affections or criminal conversation; the former tort action provided redress against a third party who won the love of the plaintiff's spouse, while the latter involved sexual intercourse with the plaintiff's spouse." ."** [Brown v. Strum](#), 350 F.Supp.2d 346; 2004 U.S. Dist. LEXIS 25680.

STATUTES:

- Conn. Gen. Stat. (2017)
[§ 52-572f](#). Criminal conversation action abolished.

HISTORY:

- P.A. 71-177 (Reg. Sess.)
"No action shall be brought upon any cause arising after October, 1, 1971, from criminal conversation." Approved May 17, 1971.
P.A. 82-160, section 239 (Reg. Sess.)

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Hunt v. Beaudoin](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. CV94-0544174 (Sep. 3, 1997) (1997 WL 568037). "Count one directed against Samuels has been characterized by Plaintiff as interference with marital contract but is best described as sounding in the common law actions of alienation of affections and criminal conversation, both of which have been abolished in Connecticut by statute. In accordance with *Baldwin v. Harmony Builders, Inc.*, [31 Conn. App. 242](#) (1993), nominal damage of One Dollar (\$1) is found against Keith Samuels."
- [Dufault v. Mastrocola](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. CV 94 0543343 (Mar. 1, 1996) (1996 WL 166471). "Based on the language noted above, the plaintiff is alleging common law causes of action for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of fiduciary duty, breach of a contractual obligation to a third-party beneficiary, and breach of an implied contract. Accordingly,

the court finds that Mastrocola's motion to strike Counts One through Four of the plaintiff's complaint and Schiffer's motion to strike Counts Five through Seven of the plaintiff's complaint, on the ground that the torts of alienation of affections and criminal conversation have been abolished in **Connecticut, are denied."**

- Tarquinio v. Pelletier, 28 Conn. Supp. 487, 266 A.2d 410 (1970).

DIGESTS:

- West Key Numbers: *Husband and Wife* 340 et seq.

ENCYCLOPEDIAS:

- Marjorie A. Shields, Annotation, *Action For Intentional Infliction Of Emotion Distress Against Paramours*, 99 [ALR5th](#) 445 (2002).
- 41 [C.J.S. Husband and Wife](#) (2014).
 - § 251. Generally. Alienation of affections and criminal conversation
 - § 252. Abolition of action
 - § 253. Generally. Elements of cause of action
 - § 254. Existence of marital relationship
 - § 255. Intent
 - § 256. Motive
 - § 257. Necessity that defendant's acts be the cause of the alienation**
 - § 258. Generally. Damages
 - § 259. Punitive damages
- 41 [Am. Jur. 2d Husband and Wife](#) § 236 (2005).
- Annotation, *Elements Of Causation In Alienation Of Affections Action*, 19 [ALR2d](#) 471 (1951).
- Annotation, *Punitive Or Exemplary Damages In Action By Spouse For Alienation Of Affections Or Criminal Conversation*, 31 [ALR2d](#) 713 (1953).
- Annotation, *What Statute Of Limitations Governs An Action For Alienation Of Affections Or Criminal Conversation*, 46 [ALR2d](#) 1086 (1956).
- Douglass S. Wright, et al., [Connecticut Law of Torts 3d](#) (1991).
 - § 79b. Actions by husband or wife
- [Domestic Torts: Family Violence, Conflict and Sexual Abuse](#) Revised Edition (2005).
 - § 7:6 "Criminal conversation"
Jerome H. Nates et al., [Damages in Tort Actions](#) (1998).
 - § 11.05[2]. Criminal conversation
 - [a]. In General [b]. Proof Required [c]. Abolition of Action

TEXTS & TREATISES:

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Table 3: Criminal Conversation in Other States

Criminal Conversation Actions Abolished	
Massachusetts	Mass. Gen. Laws Ann. Chapter 207 § 47B
New York	N.Y. Civil Rights Law § 80-a
Rhode Island	R.I. Gen. Laws § 9-1-42
Lists of States Abolishing	
	Jerome H. Nates et al., Damages in Tort Actions (1998) § 11.05 [2][c] See footnote 25
Statutory	26 Louis R. Frumer and Melvin I. Friedman, ed., Personal Injury Actions, Defenses and Damages (2003) § 130A.02[5][b] See footnote 82
Case Law	26 Louis R. Frumer and Melvin I. Friedman, ed., Personal Injury Actions, Defenses and Damages (2003) § 130A.02[5][b] See footnote 83

Section 3: Alienation of Affection of Parent or Child

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to tort actions for alienation of affections of a child or parent

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Bouchard v. Sundberg](#), 80 Conn. App. 180, 194 (2003).
"Therefore, because the legislature has abolished claims for alienation of affections and our Supreme Court in *Zamstein* [[Zamstein v. Marvasti](#), 240 Conn. 549, 565, 692 A.2d 781 (1997)] precluded a parent from bringing an alienation claim on the basis of a loss of a child's affections, as a matter of law, we cannot recognize the claim."
- [Mendillo v. Board of Education of Town of East Haddam](#), 246 Conn. 456, 481, 717 A.2d 1177 (1998). "More specifically related to the present case, we have held that a minor child has no cause of action for alienation of his parent's affections by a third party; *Taylor v. Keefe*"
- [Taylor v. Keefe](#), 134 Conn. 156, 157, 56 A.2d 768 (1947).
"The sole question for determination is whether a minor child can maintain an action for alienation of affections against one who has alienated from him the affections of his mother."

DIGESTS:

- West Key Number: *Parent and Child* #7(1); Torts #9
- Dowling's Digest: *Parent and Child* §1

ENCYCLOPEDIAS:

- 67A [C.J.S.](#) *Parent and Child* §§ 342-347 (2013).
- 59 [Am. Jur. 2d](#) *Parent and Child* §§ 112 (2012).
- George L. Blum, Annotation, *Intentional Infliction of Distress in Marital Context*, 110 [ALR5th](#) 371 (2003).
- Gregory G. Sarno, Annotation, *Liability of Religious Association for Damages for Intentionally Tortious Conduct in Recruitment, Indoctrination, Or Related Activity*, 40 [ALR4th](#) 1062 (1985).
- Jeffrey F. Ghent, Annotation, *Right of Child Or Parent to Recover for Alienation of Other's Affection*, 60 [ALR3d](#) 931 (1974).
- Annotation, *Alienation of Child's Affection As Affecting Custody Award*, 32 [ALR2d](#) 1005 (1953).

TEXTS & TREATISES:

- [Domestic Torts: Family Violence, Conflict and Sexual Abuse](#) Rev. ed. (2005).
§§ 7.13-7.14 "Alienation of Affections of Parent or Child"

Table 4: Intentional Infliction of Emotional Distress

Intentional Infliction of Emotional Distress	
Officially Reported Cases	
<p>Bouchard v. Sundberg, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</p>	<p>"It is clear from the facts alleged in the amended complaint itself that the plaintiff was attempting to recast his claim for alienation of affections as a claim for intentional infliction of emotional distress. In particular, our reading of paragraph seven of the third count persuades us to conclude that this is nothing more than a claim for alienation of affections. As the legislature has abolished that cause of action, the court properly granted the defendants' motion to strike the third and fourth counts of the amended complaint." (emphasis added)</p>
<p>Whelan v. Whelan, 41 Conn. Sup. 519, 521, 588 A.2d 251 (1991).</p>	<p>"The tort of intentional infliction of emotional distress was recognized by the Connecticut Supreme Court in Petyan v. Ellis, 200 Conn. 243, 253, 510 A.2d 1337 (1986)."</p>
<p>Gilman v. Gilman, 46 Conn. Sup. 21, 22, 736 A.2d 199 (1999)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.</p> </div>	<p>"To prevail upon a claim for emotional distress, a plaintiff must establish the following elements: '(1) that the [defendant] intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe.' (Emphasis added; internal quotation marks omitted.) Id. [Petyan v. Ellis, 200 Conn. 243, 253, 510 A.2d 1337 (1986)]." (Emphasis added.)</p> <p>The court finds that the aforementioned factors are sufficient to submit to a jury the question of whether the plaintiff's distress was severe.</p> <p>As to the named defendant's claims as to the other elements, the court finds that there are genuine issues of material fact as to whether the named defendant intended to inflict emotional distress and whether the named defendant's conduct caused the plaintiff's emotional distress." <i>Ibid.</i>, p. 24.</p>

Unreported Connecticut Cases

Pantaleo v. Pantaleo, Superior Court, Judicial District of New Haven, No. CV 90-0294250 (Apr. 30, 1993) (1993 WL 148680) (1993 Conn. Super. LEXIS 1110).

“The issue before this court is whether an attorney who is prosecuting an action against his wife for vexatious litigation, malicious prosecution, libel, slander, and negligent and intentional infliction of emotional distress should be allowed to represent himself pro se when they continue to live as **husband and wife.**”

Secondary Sources

ALR Annotation

George L. Blum, Annotation, *Intentional Infliction Of Distress In Marital Context*, 110 [ALR5th](#) 371 (2003).