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2011 Edition

Alienation of Affection Suits in Connecticut

A Guide to Resources in the Law Library

"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, 355 A.2d 270, 271 (Conn. 1974) (suit against third party for criminal conversation and alienation of affections based upon defendant's extramarital affair with plaintiff's wife), Bouchard v. Sundberg, 834 A.2d 744, 752 n. 13 (Conn.App.Ct. 2003) ('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.

Breach of Promise to Marry: "Under both Connecticut and New York common law, there existed a tort action for breach of a promise to marry. This action could be maintained by an unmarried plaintiff who received and relied on the defendant's promise to marry him/her, which the defendant broke. See *Dionisio v. Tiganelli*, 14 Conn. Supp. 278 (Conn.Super.Ct. 1946). Commonly, such tort actions were brought when a fiancé 'enter[ed] into and [broke] off a sexual relationship by means of allegedly false promises' to marry the plaintiff. Sanders v. Rosen, 605 N.Y.S.2d 805, 811 (N.Y. Sup. Ct. 1993). Ibid.

"Both Connecticut and New York have statutorily abolished the 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 its common law cause of action for seduction, id., and even criminalized the filing of any lawsuit alleging any abolished heart balm claim. N.Y. Civ. Rights L. §§ 81, 83." Ibid., pp. 6-7.

The Supreme Court decision in Piccininni v. Hajus, 180 Conn. 369, 429 A.2d 886 (1980), outlines the right of a donor to obtain reimbursement for expenditures occurred in contemplation of marriage. The case holds that the so-called Heart Balm statute, General Statutes § 52-572b, regarding breach of a promise to marry, only bars claims of humiliation, mental anguish and the like, but does not affect "rights and duties determinable by common law principles." Id., 372. Greene v. Cox, No. CV 95 0147177 (Conn. Super. Ct., Jud. District, Stamford-Norwalk at Stamford, Dec. 19, 1995) 1995 WL 780893, 1995 WL 780893.

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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:

- **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 U.S. Dist. LEXIS 25680.

STATUTES:

- CONN. GEN. STAT. (2011)
  Chapter 925. Statutory rights of action and defenses
  § 52-572b. Alienation of affection and breach of promise actions abolished

HISTORY:

- 1967 CONN. ACTS 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."
- 1982 CONN. ACTS 160 §238 (Reg. Sess.)

COURT CASES:

- Dufault v. Mastrocola, 1996 WL 166471 (Conn. Super. 1996). No. CV 94 0543343 (Judicial District of Hartford-New Britain, Mar. 1, 1996).
- 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* (2006).
  § 239. Generally. Alienation of affections and criminal conversation
  § 240. Abolition of action
  § 241. Generally. Elements of cause of action
  § 242. Existence of marital relationship
  § 243. Intent
  § 244. Motive
  § 245. Necessity that defendant's acts be the cause of the alienation
  § 246. Generally. Damages

§ 247. Punitive damages

- 41 AM. JUR. 2D *Husband and Wife* §§ 236-241 (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).
- *Proof of Alienation of Affections*, 54 AM JUR. Proof of Facts 3d 135 (1999)

TEXTS & TREATISES:

- 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
- LEONARD KARP AND CHERYL L. KARP, 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. Actions by spouse
- 2 FOWLER V. HARPER ET AL., THE LAW OF TORTS (2d ed. 1986).
  - § 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.

CURRENT COMPILER:

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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 U.S. Dist. LEXIS 25680.	
Choice of Law	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." *Lumbermens Mut. Cas. Co. v. Dillon Co.*, 9 Fed. Appx. 81, 83 (2d Cir. 2001) (citing *Haymond v. Statewide Grievance Comm.*, 723 A.2d 821, 826 (Conn.Super.Ct. 1997), aff'd, 723 A.2d 808 (Conn. 1998)). 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.

Emotional Distress and Fraud	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. Id. 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." Id. at 811. Although the plaintiff had characterized her claim as infliction of emotional distress, the court found that the allegations "fall into the category of fall-out from heartbreak," and therefore were not cognizable in the New York courts. Id. at 812. 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*, 834 A.2d 744, 756 (Conn.App.Ct. 2003). They will not hear claims of emotional distress that "flowed from" a heart balm claim. Id. at 754. The plaintiff in *Bouchard*, 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.
Fraud Claims	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." 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, 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.

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**: "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 coventure." Russo v. Sutton, 422 S.E.2d 750, 752 (S.C. 1992). Criminal conversation action abolished.

- "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. (2011)
  § 52-572f Criminal conversation action abolished

HISTORY

- 1971 CONN. ACTS 177 (Reg. Sess.)
  "No action shall be brought upon any cause arising after October, 1, 1971, from criminal conversation." Approved May 17, 1971.
  - 1992 CONN. ACTS 160 §239 (Reg. Sess.)

COURT CASES: (Connecticut):

- *Hunt v. Beaudoin*, No. CV94-0544174 (Conn. Super. Ct., Jud. District of Hartford-New Britain at Hartford, 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*, No. CV 94 0543343 (Conn. Super. Ct., Jud. District of Hartford-New Britain at Hartford, 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* (2006).
  - § 239. Generally. Alienation of affections and criminal conversation
  - § 240. Abolition of action
  - § 241. Generally. Elements of cause of action
  - § 242. Existence of marital relationship
  - § 243. Intent
  - § 244. Motive
  - § 245. Necessity that defendant's acts be the cause of the alienation
  - § 246. Generally. Damages
  - § 247. 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).
-

TEXTS & TREATISES:

- DOUGLASS S. WRIGHT ET AL., CONNECTICUT LAW OF TORTS 3D (1991).
  - § 79b Actions by husband or wife
- LEONARD KARP AND CHERYL L. KARP, 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

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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	17 LOUIS R. FRUMER AND MELVIN I. FRIEDMAN, ED., PERSONAL INJURY: ACTIONS, DEFENSES AND DAMAGES (2003) § 1.30A.02[5][b] *See* footnote 82
Case Law	17 LOUIS R. FRUMER AND MELVIN I. FRIEDMAN, ED., PERSONAL INJURY: ACTIONS, DEFENSES AND DAMAGES (2003) § 1.30A.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

- At common law in Connecticut, a cause of action for seduction belonged to the parent of a dependant child who was seduced, and allowed the parent to recover damages for, e.g., loss of the child's services or the expense of delivering an out-of-wedlock baby. See *Bixby v. Parsons*, 49 Conn. 483 at *4-5 (1882). In Connecticut, a woman could not maintain a cause of action for her own seduction, absent an allegation of forcible rape. See *Steigman v. Beller*, 17 Conn. Supp. 62 (Conn.Super.Ct. 1950). Thus Brown's action could not have been maintained on her own behalf as a seduction claim in Connecticut. New York common law, however, allowed a woman to maintain an action for seduction on her own behalf. **START**See *Manko v. Volynsky*, 1996 WL 243238 at *2, No. 95-Civ-2585 (MBM) (S.D.N.Y. May 10, 1996), *Coopersmith v. Gold*, 172 A.D.2d 982, 984 (N.Y.App. Div.1991).). Brown v. Strum, 350 F.Supp.2d 346; 2004 U.S. Dist. LEXIS 25680.

COURT 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."
- *Watson v. The Urology Center*, No. CV-97-0404480 (Jul. 2, 1998). "There are no Connecticut appellate cases that directly address the issue of whether a claim for loss of parental consortium is a valid cause of action. *Taylor v. Keefe* addressed the issue of alienation of affection, but did not examine the validity of a parental consortium claim. The ruling in *Taylor* is restricted to the court's refusal to recognize a child's cause of action against a person who 'by his acts, blandishments and seductions alienated [the mother's] love and affection [for her minor son] and destroyed the happiness of the plaintiff's home.' *Taylor v. Keefe*, supra, 134 Conn. 157. Thus, the parent in Taylor did not suffer any physical injury."
- 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* §§ 321-326 (2002).
- 59 AM. JUR. 2D *Parent and Child* §§ 110, 122 (2002).
- 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).
- Annotation, *Liability Of Parent, Relative, Or Person In Loco Parentis In Action By Husband Or Wife For Alienation Of Affection*, 108 ALR 408 (1937).

TEXTS & TREATISES:

- LEONARD KARP AND CHERYL L. KARP, DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE, REV. ED. (2005).
  §§ 7.13 - 7.14 "Alienation of affection of parent or child"

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Table 4: Intentional Infliction of Emotional Distress

Intentional Infliction of Emotional Distress	
Officially Reported Cases	
Bouchard v. Sundberg, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).	"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).
Labow v. Labow, CV 820210394S., Super. Ct. (March 15, 1999) 1999 WL 185150.	"As part of the defendant's claim for intentional infliction of emotional distress, the parties offered extensive evidence about whether or not the defendant has suffered from battered woman syndrome."
Whelan v. Whelan, 41 Conn. Sup. 519, 521, 588 A.2d 251 (1991).	"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)."
Gilman v. Gilman, 46 Conn. Sup. 21, 22, 736 A.2d 199 (1999)	"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)
	The court finds that the aforementioned factors are sufficient to submit to a jury the question of whether the plaintiff's distress was severe. 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." Ibid., p. 24 **Cont'd**

Intentional Infliction of Emotional Distress [cont'd]

Unreported Connecticut Cases

Pantaleo v. Pantaleo, No. CV90-0294250 (Conn. Super. Ct., New Haven, 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).

Table 5: The Heart Balm Argument

HEART BALM ARGUMENT

"Finally, the defendant Archdiocese argues that the plaintiff's claim is essentially an attempt to recover money damages for a broken heart. Such an action, the defendant maintains, is barred by General Statute Section 52-572b, which prohibits actions for alienation of affections.

This court will only briefly address this last argument which it finds is unpersuasive. Though there are certainly elements in the plaintiff's case which summon images of the damsel pining from unrequited love, those elements do not compose the totality of the plaintiff's case. And, though the language of the complaint - accusing the defendant of "terminat[ing] his relationship with the plaintiff" - could suggest that the termination of the relationship is the wrongful act, it is clear from the entire complaint and the substance of the plaintiff's testimony and statements that the alleged actionable conduct involved the initiation, continuation and nature of the relationship and not the termination of it.

The plaintiff's claim is that defendant Kappalumakkel engaged in an inappropriate and ultimately harmful relationship with her and that the defendant's failure to supervise him caused her harm. While this court finds, for reasons stated above, that the facts do not support a legal finding of a fiduciary relationship, the court does not find that the plaintiff's claims are merely seeking 'a heart balm.'

For this reason, the court denies the defendant Archdiocesan's motion for judgment on the basis that the plaintiff's action is one for heart balm."

Ahern v. Kappalumakkel, No. CV01-0075617S, Super. Ct. Milford (Mar. 9, 2004) 36 CONN. L RPTR 756, 760-761, 2004 WL 574892 (Conn. Super. 2004).

Section 4: Breach of Promise to Marry and Return of Engagement Ring and Courtship Gifts

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to action for breach of promise to marry and the return of engagement ring and courtship presents.

DEFINITIONS:

- *Thorndike v. Demirs*, No. CV05-5000243S (J.D. Waterbury at Waterbury, Jul. 26, 2007), 44 CONN. L.RPTR. 30, 37 (October 15, 2007), 2007 Conn. Super. LEXIS 1944 (Conn. Super. Ct. July 26, 2007). "A minority of jurisdictions has adopted a 'no-fault' approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault." *See* Table 6.
- **CURRENT LAW**: "Although actions arising from alienation of affection or from breach of promise to marry are barred by Gen. Stat. 52-572 (b) (2011), the statute does not preclude an action for return of things given in reliance of false and fraudulent representation nor affect rights and duties determinable by common law principles." *Rabagleno v. King*, No. 0325871 (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Jan. 15, 1991), 1991 Ct. Sup. 686, 687, 1991 WL 27914, 1991 Conn. Super. LEXIS 85.
- "A cause of action for fraudulent misrepresentation is an exception to the Heart Balm Act where one cohabitant claims she was fraudulently induced to transfer money or property to the other cohabitant." *Weathers v. Maslar*, No. CV 99 0088674, 2000 Ct. Sup. 1197, 1201, 2000 WL 157543 (Jan. 31, 2000).
- "The Supreme Court decision in Piccininni v. Hajus, 180 Conn. 369, 429 A.2d 886 (1980), outlines the right of a donor to obtain reimbursement for expenditures occurred in contemplation of marriage. The case holds that the so-called Heart Balm statute, General Statutes § 52-572b (2011), regarding breach of a promise to marry, only bars claims of humiliation, mental anguish and the like, but does not affect "rights and duties determinable by common law principles." Id., 372. Thus, a donor of money or property that was given "conditional upon a subsequent ceremonial marriage" may recover when the condition is broken by the donee. Id. An action for false and fraudulent representations will also be permitted. Id., 373. The dissent by Chief Justice Peters points out that a donor can regain money or property obtained by the donee as a result of "trickery, cunning and duplicitous dealing" under the doctrine of "unjust enrichment;" Id., 375-76; which is the remedy invoked by the plaintiff in the second count of his complaint. Thus, the plaintiff has pleaded a valid cause of action and the resolution of plaintiff's application turns to whether he has shown probable cause that he will recover under unjust enrichment." *Greene v. Cox*, No. CV 95 0147177 (Conn. Super. Ct.,

Jud. District, Stamford-Norwalk at Stamford, Dec. 19, 1995) 1995 Ct. Sup. 14120, 14122, 1995 WL 780893, 1995 WL 780893.

STATUTES:

- CONN. GEN. STAT. (2011)
  § 52-572b Alienation of affections and breach of promise actions abolished

HISTORY:

- 1967 CONN. ACTS 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."
- 1982, CONN. ACTS 160 §238. An act adopting a technical revision of Title 52.

RECORDS & BRIEFS:

- A-724 CONNECTICUT SUPREME COURT RECORDS AND BRIEFS (January 1980). Piccininni v. Hajus, 180 Conn. 369, 373, 429 A.2d 886 (1980).
  Figure 1. Substituted Complaint
  Figure 2. Amendment to First Count of Plaintiff's Complaint

COURT CASES:

- *Thorndike v. Demirs*, No. CV05-5000243S (J.D. Waterbury at Waterbury, Jul. 26, 2007), 44 CONN. L.RPTR. 30, 37 (October 15, 2007), (October 15, 2007), 2007 Conn. Super. LEXIS 1944 (Conn. Super. Ct. July 26, 2007). "A minority of jurisdictions has adopted a 'no-fault' approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault." *See* Table 6.
- *Dore v. Devine*, No. CV00-0176933S (Conn. Super. Ct., Jud. District of Stamford-Norwalk at Stamford, Oct. 6, 2000), 2000 WL 1682709, 2000 Conn. Super. LEXIS 2764. "The defendant administrator argues that all four counts are legally insufficient because of the Connecticut Heart Balm Act, General Statutes § 52-572b. Initially, the court notes that this case does not involve, whatsoever, the alienation of affections, and, therefore, any propositions that the defendant uses from such cases as an analogy, are unpersuasive. The narrow issue in this case is whether the plaintiffs claims fall within a 'cause arising from . . . breach of a promise to marry,' as stated and prohibited by § 52-572b. After consulting the cases which have interpreted § 52-572b, this court finds that the plaintiffs claims are not barred by the Heart Balm statute."
- *Gural v. Fazzino*, No. CV94-70800 (Conn. Super. Ct., Jud. District, Middlesex at Middletown, April 19, 1996), 16 CONN. L. RPTR. 552, 553, 1996 WL 526803. "An exception to the Heart Balm Act allows common law principles to govern actions for the return of property allegedly transferred in reliance on fraudulent representations . . . ."
- *Mancini v. Wyzik*, No. CV93-0520862 S (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Apr. 13, 1994), 1994 WL 146336, 1994 Conn. Super. LEXIS 944. "Although it would appear that certain portions of the complaint allege a breach of promise to marry, other portions of the complaint appear to allege a breach of contract wherein defendant's promises caused the plaintiff to sell her own home and to expend substantial funds to complete renovations in a home purchased by the defendant. The court has jurisdiction to hear such a breach of contract."
- *Cromwell v. Danforth*, 222 CONN. 150, 151, 609 A.2D 654 (1992). "This is an action seeking the return of a gift allegedly made in contemplation of marriage and seeking an accounting of jointly owned real property . . . ."
- *Rabagleno v. King*, No. 0325871 (Jan. 15, 1991), 1991 Ct. Sup. 686, 686-687. "The plaintiff brings this action on the expressed grounds of infliction of

emotional distress. It is brought in two counts, the first in intentional infliction of emotional distress and the second by reckless conduct. The factual basis alleged that the plaintiff, while employed by a business in which the defendant had a partnership interest, was seduced both physically and emotionally by him. By reason of the seduction and the promise of the defendant to divorce his wife and marry the plaintiff, she left her husband and has suffered emotional distress. The plaintiff alleged that the conduct of the defendant, having knowledge of the past medical history of the plaintiff including hospitalization and treatment for mental or emotional disorders, had intended to cause her emotional distress or alternatively he was reckless in that he knew or should have known that mental distress would be the result of his conduct."

- Piccininni v. Hajus, 180 Conn. 369, 373, 429 A.2d 886 (1980). "The plaintiff here is not asking for damages because of a broken heart or a mortified spirit. He is asking for the return of things which he bestowed in reliance upon the defendant's fraudulent representations. The Act does not preclude an action for restitution of specific property or money transferred in reliance on various false and fraudulent representation, apart from any promise to marry, as to their intended use."
- *White v. Finch*, 3 Conn. Cir. 138, 141,209 A.2d 199 (1964). "The question as to the ownership of the engagement ring is unique in this jurisdiction . . . . The Roman Law provided for the return of betrothal gifts when the parties mutually dissolve the contract and for forfeiture by the party at fault when the repudiation was unjustified . . . . The prevailing view in the United States and England follows the Roman Law in placing weight upon the fault of the parties. Hence, it has been held that where an engagement is broken owing to the fault of the donor, he may not recover the ring."

WEST KEY NUMBERS:

- *BREACH OF MARRIAGE PROMISE ACTIONS*
  - #13 Defenses
  - #24-30 Damages
- *GIFTS* #34

DIGESTS:

- ALR DIGEST: *Breach of promise*
- DOWLING'S DIGEST: *Breach of Promise*
- CONNECTICUT FAMILY LAW CITATIONS: *Premarital relationships*

ENCYCLOPEDIAS:

- 11 C.J.S. *Breach of Marriage Promise* (2008).
- 38A C.J.S.*Gifts* (2008).
- 12 AM. JUR. 2D *Breach of Promise* (2009).
  - §§ 1-8. The agreement to marry
  - §§ 9-15. The breach; right of action and remedies
  - §§ 16-20. Defenses
  - §§ 21-24. Damages
  - §§ 25-28. Practice and procedure
- 38 AM. JUR. 2D *Gifts* (2010).
  - § 68. Gifts in contemplation of marriage
  - § 69. —Presumption arising from engagement
  - § 70. —Engagement rings and jewelry
  - § 71. —Effect of infancy of donee
  - § 72. Recovery based on fraud or unjust enrichment

- Elaine Marie Tomko, Annotation, *Rights In Respect Of Engagement And*

Courtship Presents When Marriage Does Not Ensue, 44 ALR5th 1 (1996).

- Annotation, *Measure And Elements Of Damages For Breach Of Contract To Marry*, 73 ALR2d 553 (1960).

LAW REVIEWS:

- S.G. Kopelman, *Breach of Promise to Marry: Connecticut Heart Balm Statute—Piccininni v. Hajus*, 13 CONNECTICUT LAW REVIEW 595.
  - I. Facts and Procedural History of Piccininni
  - II. Supreme Court Decision
  - III. History of Heartbalm Acts
  - IV. New York Policy—Conditional Gift Actions
  - V. Criticism: Tort Action for Fraud

- *Comment: Bachelors Beware: The Current Validity and Future Feasibility of a Cause of Action to Marry*, 45 Tulsa L. Rev. 331 (2009)

COMPILER:

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* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Table 6: No Fault Approach

No Fault, Modern Approach	
No-fault approach	"A minority of jurisdictions has adopted a 'no-fault' approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault." *Thorndike v. Demirs*, No. CV05-5000243S (J.D. Waterbury at Waterbury, Jul. 26, 2007), 44 CONN. L.RPTR. 30, 37 (October 15, 2007).
Modern view	"So this court is left to decide whether it will follow the single 43-year-old precedent of *Finch* or join the modern view cases that fault should not be a factor in determining who keeps an engagement ring. The modern view is that the gift of the engagement ring is a conditional gift, the condition being the subsequent marriage of the parties. If the marriage does not take place, the condition has not been met and the ring should be returned to the donor. After a review of numerous cases and A.L.R. treatises, this court is convinced that the modern no-fault rule is clearly the better rule and comports with the modern trends on handling family matters on a no fault basis."

Figure 1: Substituted Complaint

(see Figure 2 for amendment to First count)

SUBSTITUTED COMPLAINT

FIRST COUNT:

1. Since June of 1973, the Defendant, at the request of the Plaintiff, continually promised to marry the Plaintiff, and told the Plaintiff that after they were married they would occupy, as their home, the house and property owned by her at 119 Corbin Road, Hamden, Connecticut.

2. The Plaintiff, relying upon the promises of the Defendant, remained ready, and willing to marry the Defendant.

3. The Plaintiff, relying upon said Defendant's promises, expended sums of money to renovate and improve the house and property owned by the Plaintiff at 119 Corbin Road, Hamden, Connecticut; expended sums of money for the following furniture and furnishings for said home: China closet $1,649.00; Dining room table $897.00; Dining room table cover set $100.00; Dining room arm chairs, 2 at $238.00 each, $476.00 and 4 at $299.00 each, $876.00; 2 end tables at $360.00, $720.00; a large credenza $1,200.00; Brass candle holder $30.00; Air conditioner $500.00; Coffee table $800.00; Tiffany lamps $300.00; Couch $1,000.00; T.V. $400.00; space heater $90.00; Rocking chair $75.00; Picture in hallway $100.00; Dehumidifier $80.00; Decorative African masks $100.00; Painting 75.00; 3 throw rugs $250.00; Statue in living room $100.00; Painting in living room $500.00; Black commode $500.00; Standing folding screen $300.00; 2 antique swords $50.00; Mirror & china closet $75.00; Outside lamp $35.00; Clock radio $35.00; Combination can opener & ice crusher 0.00; Set of carving knives & brass table serving tray $125.00; Electric blanket $60.00; Crystal champagne & brandy glasses ll at $15.00 each, $165.00; 6 crystal water glasses at $15.00 each $90.00; Lotus bowls 6 at $10.00 each $60.00;

Lotus salad bowls 2 at $20.00 each $40.00; Crystal candle holders $45.00; Table linens $100.00; Kitchen stools 2 at $70.00 each $140.00: Framed picture of Fiji $70.00; Bookshelf in playroom $40.00; Hanging flowerpot holder $25.00 Wingback chair $400.00; Swivel chair 2 at $350.0:0 each $700.00; Round marble end table $75.00; Mirrored metal art piece $90.00; Metal art $75.00; Set of dishes $100.00; Christmas tree lights $100.00; Screen & storm door at main entrance $70.00; Awning rear window $70.00; Valance & curtain in kitchen $100.00; Artificial plants in house $200.00; Inlaid slate tile $70.00; Norelco 12 cup coffee maker $35.00; Night table $121.00; Fireplace hearth $164.00; Reupholster chair $149.00; Another commode $234.00; Bathroom furnishings $320.00; expended: sums of money for the following automobile, jewelry and furs: 1973 Buick Regal $5,000.00; Engagement ring $3,500.00; Wedding band ring & matching earrings $1,675.00; Topaz ring $75.00;; Separate set of earrings $400.00; Opal necklace $90.00; Gold ring $100.00; Fox fur jacket $1,300.00; expended sums of money for dresses, coats, shoes, sweaters, and other items of clothing for the Defendant, approximately $1,500.00; Plaintiff also expended

sums of money for other personal items for the Defendant, all of said purchases referred to in this paragraph, being based upon the Defendant's promise that she would become his wife.

4. In June of 1978 the Defendant informed the Plaintiff that she would not marry him and that she intended to marry another man, which man she subsequently did marry, contrary to her promise to the Plaintiff.

SECOND COUNT:

1. During the period June 1973 to June 1978, in response to the Plaintiff's request, the Defendant represented to the Plaintiff that she would marry him and that they would occupy, as their home, the house and property owned by her at 119 Corbin Road, Hamden, Connecticut.

2. The Plaintiff, relying upon said representations made to him by the Defendant, expended sums of money to renovate and improve the house and property owned by the Plaintiff at 119 Corbin Road, Hamden, Connecticut; expended sums of money for furniture and furnishings for said Home, the specific items and amounts expended for said items being set forth in Paragraph 3 of the First Count of this Complaint and made a part hereof; expended sums of money in purchasing an automobile, jewelry, furs, and clothing for the Defendant, the specific items and the amounts expended for said items being set forth in Paragraph 3 of the First Count of this Complaint and made a part hereof; expended sums of money for other personal items for the Defendant.

3. Said representations made by the Defendant to the Plaintiff were false, known by the Defendant to be false, and were made for the purpose inducing the Plaintiff to make expenditures set forth in Paragraph 2 of the Second Count of this Complaint.

4. In June of 1978, the Defendant told the Plaintiff that she would not marry him and that he intended to marry another man.

5. As a result of the false representation made by the Defendant to the Plaintiff, which he Plaintiff relied upon, the Plaintiff expended approximately $40,000.00 in renovating, improving and furnishing the home at 119 Corbin Road, Hamden and in the purchase of personal terns for the Defendant and the Defendant's children because he believed the Defendant would become his wife, as she represented to him.

THIRD COUNT:

1. During the period June 1973 to June 1978, the Plaintiff and the Defendant planned to be married, became engaged and agreed to renovate, improve and furnish the house and property owned by the Defendant at 119 Corbin Road, Hamden, Connecticut, which they would occupy as a home, after their marriage.

2. Based upon their plans to marry, the Plaintiff expended sums of money to renovate improve the house and property at 119 Corbin Road, Hamden, Connecticut, expended sums of money for furniture and furnishings for said home, and expended sums of money in purchasing an automobile, jewelry, furs, clothing and other personal items for the Defendant, said specific items and the amount expended being set forth in Paragraph 3 of the First Count of this Complaint and made a part hereof.

3. In June of 1978, the Defendant told the Plaintiff that she would not marry him and that she intended to marry another man.

4. The Defendant has been unjustly enriched by the expenditures of the Plaintiff hereinbefore referred to, and the Plaintiff is entitled to be reimbursed by the Defendant for the renovation and improvement of her property and is entitled to the return of furniture and furnishings which he purchased and the return of certain personal items which he purchased.

THE PLAINTIFF

By ________
His Attorney

Filed January 9, 1979.

Figure 2: Amendment to first count of plaintiff's complaint

AMENDMENT TO FIRST COUNT OF
PLAINTIFF'S COMPLAINT

1. Since some time in 1973 the Plaintiff and the Defendant planned to marry.

2. The Defendant, prior to said date, and since said date has owned and occupied and now owns and occupies the house and property known as and located at 119 Corbin Road, Hamden, Connecticut.

3. Commencing some time in 1974, the Plaintiff was allowed to occupy said house with the Defendant as his home.

4. In consideration of the Defendant agreeing that the Plaintiff could continue to occupy said premises as his home before and after they were married, that it would be his home as well as hers, the Plaintiff agreed to and did expend sums of money and furnished his own time and labor to renovate and improve the house and property and purchased various articles of furniture and furnishings and other items of personal property for said house and property.

5. The Defendant did not marry the Plaintiff and in June of 1978 the Defendant informed the Plaintiff that he could no longer occupy the premises as his home and requested him to leave, which he did.

6. Since the Defendant filed to comply with her agreement that the Plaintiff could continue to occupy said premises as his home, that it would be his home as well as hers, he demanded compensation for renovating and improving the Defendant's house and property at 119 Corbin Road, Hamden, Connecticut.

7. After the Defendant filed to comply with her agreement, the Plaintiff demanded that the Defendant return to him the various articles of furniture and furnishings and other items of personal property which he had purchased for the house.

8. The Defendant has refused and continues to refuse to reimburse the Plaintiff for the money which he expended in renovating and improving the house and property at 119 Corbin Road, Hamden.

9. The Defendant has refused and continues to refuse to return the articles of furniture and furnishings and other items of personal property which belong to the Plaintiff and were purchased by him for the house at 119 Corbin Road, Hamden.

10. As a result of the renovation and improvement of said house and property by the Plaintiff, said house and property has increased in value and the Plaintiff claims that he is entitled to be compensated for effecting said increase in value.

Filed March 5, 1979.

Appendix 1A

Fetal Injury

The Connecticut General Assembly

OFFICE OF LEGISLATIVE RESEARCH

OLR Report

96-R-0396

March 4, 1996

FROM: Sandra Norman-Eady, Senior Attorney

You asked:

1. whether a parent or a child has a civil cause of action against someone who negligently causes fetal injuries?

2. what were their early common law rights and how have they changed?

3. what criminal charges may be brought when a fetus is injured?

SUMMARY

Connecticut law recognizes the rights of parents to bring a cause of action for injuries sustained by their children. These rights do not, however, include the right to sue for alienation of affections or loss of consortium.

The law allows parents to bring a civil cause of action on behalf of their unborn child who has been injured as a result of the acts of a third party. The unborn child also has a cause of action for the injuries he sustained.

The common law rights of a fetus have evolved over time. Initially, a fetus could not sue nor could a suit be filed on his behalf. Additionally, parents could not sue for injuries sustained by their unborn child. However, Connecticut courts, following a national trend, began to recognize fetal rights in civil actions in 1955. These rights were first applied only to viable fetuses. But in 1977, the court extended them to nonviable fetuses.

Criminal charges cannot be brought for fetal injuries. Under Connecticut law, a crime may be committed against a "person." The law defines "person" as a human being but does not define "human being." The Connecticut Superior Court has held that the legislature did not intend for an unborn child to be considered a "human being" within the meaning of the penal code.

RIGHT TO SUE FOR FETAL INJURIES

Connecticut statutes and case law recognize the right of a parent to sue for injuries sustained by her child, whether or not born. But neither the statutes nor case law give a parent the right to sue for alienation of affection or loss of consortium.

Personal Injury Cause of Action

Whenever someone sustains personal injury, the law recognizes the rights of his spouse or parents who have made or must make expenditures or contract indebtedness to bring a civil cause of action to recover these costs (CGS § 52-204).

Connecticut case law is well settled regarding the rights of parents to seek civil remedies for injuries to their children. In 1934, the Connecticut Supreme Court held that when a minor child is injured by the negligent act of a third party, two causes of action immediately spring into existence. First, the injured child has a right of action for the personal injuries inflicted upon him. Second, his parents have a right of action for consequential damages, such as loss of services and expenses, caused by the child's injury (*Shiels* v. *Audette*, 119 Conn. 75). See also Dzenutis v. Dzenutis, 200 Conn. 290 (1986).

Although Connecticut statutes do not explicitly identify any legal rights of a fetus, Connecticut courts have determined that a fetus possesses certain rights. Since 1955 the Superior Court has allowed actions in negligence for injuries sustained by a viable fetus. In 1977 the court extended this right to nonviable fetuses.

The precedent was first set in *Tursi v. New England Windsor Co*., 19 Conn. Supp. 242 (1955) when the court allowed a negligence action to be brought for injuries received by a viable fetus of eight months gestation as a result of an automobile accident. Seven years later, the court in *Gorke v. LeClerc*, 23 Conn. Supp. 256 (1962) allowed the estate of a child caused to be born dead about two weeks before he was due to be born. And in 1966, the Superior Court permitted a negligence suit on behalf of a child injured and caused to be stillborn about one or two months before its scheduled birth (*Hatala v. Markiewicz*, 26 Conn. Supp. 358).

In 1977, the court, for the first time, held that recovery for prenatal injuries suffered at any time after conception may be had by or on behalf of a child born alive without regard to the viability of the fetus at the time of the injury (*Simon v. Mullin*, 34 Conn. Supp. 139).

Wrongful Death

An executor or administrator of an estate may bring a cause of action for injuries resulting in death. He may recover damages and the costs of reasonably necessary medical, hospital and nursing services, and funeral expenses from the party legally at fault. Any such lawsuit must be filed within two years of death and within five years of the date of the act that caused the injury (CGS § 52-555).

In 1955, the Superior Court held that the administrator of a child's estate could bring a wrongful death action of behalf of such child who died as a result of injuries he received as a viable fetus which caused him to be born prematurely and led to his death five days later (*Prates v. Sears, Roebuck and Co*., 19 Conn. Supp. 487). It appears that the court's decision in Mullin regarding viability would also apply in wrongful death cases.

Damages That May Be Sought For Fetal Injuries

Although the law allows both a fetus and its parents to sue for fetal injuries, there are some limitations on the damages they seek.

Medical Expenses. Under §52-204 of the Connecticut General Statutes, a parent can sue for the expenses he incurred as a result of injuries to his child. But if the parent sues for recovery of these expenses, the statute prevents the child from bringing a cause of action to recover for the same expenses. The Connecticut Supreme Court has held that "although General Statutes §52-204 authorizes the recovery of medical expenses in an action solely in behalf of the injured child and makes the recovery in such action a bar to any claim by the parent for such expenses, the statute does not mandate that procedure" (*Dzenutis*, supra).

Alienation of Affections and Loss of Consortium. In 1967, the General Assembly enacted legislation preventing anyone from bringing a cause of action "arising from alienation of affections . . ." (CGS §52-572b (2011)).

Connecticut Statutes §52-555a (2011) to c recognize the right of a person to bring a cause of action for loss of consortium based on the death of his spouse. Connecticut courts have held that the right to consortium arises out of the civil contract of marriage and does not extend to the parent-child relationship (*Shattuck v. Gulliver*, 40 Conn. Supp. 95 (1984) and Mahoney v. Lensink, 17 Conn. App. 130 (1988).

EVOLUTION OF COMMON LAW FETAL RIGHTS

The common law regarding the rights of a fetus in a civil cause of action have evolved over time. Courts have, however, not been willing to recognize a fetus as a person for purposes of criminal law.

Civil Action

The general rule at common law was that the destruction of a human life was not an actionable injury. Thus, a cause of action could not be brought by or on behalf of a fetus for wrongful death.

The other common law rule was that a personal right of action died with the person. Under this rule, one's death whether due to an actionable wrong or to natural causes, abated a pending action for personal injuries. If a suit for the wrong was not instituted by the deceased, death barred a representative from enforcing the right which the decedent possessed during his life to recover damages from the tortfeasor (*Ct. Mutual Life Ins. Co. v. New York and New Hampshire RR Co*., 25 Conn. 272 (1856)).

In one of the first cases in Connecticut to consider the specific rights of a fetus, the court held that in the absence of a statute no right of action exist for a child who received fetal injuries (*Squillo v. City of New Haven*, 14 Conn. Supp. 500 (1947)). However since 1955, Connecticut courts, following a national trend, have held that common law negligence is viable, capable of changing and developing and as such now allows recovery for certain fetal injuries.

Criminal Action

According to the court in Anonymous (1986-1) , supra, the common law rule dating as far back as 1648 stated that an unborn fetus, viable or otherwise, could not be the subject of a crime (3 Coke, Institutes *58 (1648).

CRIMINAL PENALTY FOR INJURING A FETUS

There is no criminal penalty under Connecticut law for causing an injury to a fetus. The penal code contains crimes against people or property. "Person" is defined by law as a human being. Although "human being" is not statutorily defined, the Superior Court has held, based on its determination of legislative intent, that this term, as it is used in the penal code, does not include a fetus.

In *State v. Anonymous* (1986-1), 40 Conn. Supp. 498 (1986)), the state applied for an arrest warrant charging the accused with murder in the death of an unborn but viable fetus whose mother the accused allegedly shot.

The court concluded that the legislature did not intend a viable fetus to be considered as a “human being” as that phrase in used in the penal code. The court based its conclusions on (1) an analysis of the legislative history of the penal code, (2) an analysis of the statutory scheme of state homicide laws, (3) an examination of the common law of murder, (4) an examination of the constitutional requirement that people be given notice that their actions will violate specific criminal laws, and (5) an examination of the relationship between the legislature and the court regarding the enactment of criminal laws.

The court's analysis and examination revealed that:

1. the codes (model penal and the New York codes) from which our statute was drawn define “human being” as a person who has been born and is alive;

2. at the time the new penal code was enacted “unborn child” was defined in the statutes but that definition was not used in the new penal code;

3. under common law, an unborn fetus could not be the subject of a homicide;

4. to apply a new interpretation of “human being” retroactively would violate constitutional principles that prohibit retroactive criminal laws; and

5. any redefining must be left to the legislature because it has primary authority to define crime.

SNE:pa

Appendix 1B

Legislative History in the Courts

Bouchard v. Sundberg, 80 Conn. App. 180, 197- 199, 834 A.2d 744 (2003).

The defendants rely on McDermott v. Reynolds, 260 Va. 98, 530 S.E.2d 902 (2000), to distinguish Raftery. In McDermott, the Virginia Supreme Court considered whether § 8.01-220 barred the plaintiff husband's action against his former wife's paramour for intentional infliction of emotion distress. Id., 99. The defendant in McDermott noted that the action alleged would support an action sounding in alienation of affections prohibited by § 8.01-220 because it resulted in "severe embarrassment and humiliation to [the plaintiff] and his three children." Id., 100-101. The court stated that "when the [Virginia legislature] enacted Code § 8.01-220, it manifested its intent to abolish common law actions seeking damages for a particular type of conduct, regardless of the name that a plaintiff assigns to that conduct." (Emphasis added.) Id., 101. The court focused its attention on the conduct because that methodology allowed the court to consider "the legislative intent manifested in [the statute]." Id., 101. The court concluded that the statute prohibited the claim for intentional infliction of emotional distress by relying on the legislative intent manifested in the statute, and similar statutes from other jurisdictions, to remove conduct cited in the statute from civil liability. Id. That, the court stated, was "foreclos[ing] a revival of the abolished tort of alienation of affection asserted in the guise of an action for intentional infliction of emotional distress." Id., 103.

We are persuaded by the reasoning of the Virginia Supreme Court in *McDermott.* The *Raftery* court focused its attention on the elements of the two torts and concluded that because each cause of action required different elements, the claim of intentional infliction of emotional distress should not have been barred despite the fact that it arose from the alienation of affections claim. We believe that when the legislature enacted § 57-572b, a statute similar to the Virginia statute that was considered by the Virginia Supreme Court in *McDermott*, the legislature expressed its intent to "abolish common law actions seeking damages for a particular type of conduct, regardless of the name that a plaintiff assigns to that conduct." *McDermott v. Reynolds*, supra, 260 Va. 101. In determining whether an action is barred by § 57-572b, therefore, we consider the underlying conduct alleged in the plaintiff's complaint.[fn20] Numerous other jurisdictions follow that reasoning. See Stevens v. Redwing, 146 F.3d 538, 544 (8th Cir. 1998) (action for intentional infliction of emotional distress cannot be maintained where underlying claim for alienation of affection is not actionable and emotional distress is the alleged consequence of same acts causing child to separate from parent); Lotring v. Philbrook, 701 A.2d 1034 (R.I. 1997) (disguising abolished claim of alienation of affections under cloak of negligent and intentional infliction of emotional distress claims does not avoid prior legislative abolition of statute); Speer v. Dealy, 242 Neb. 542, 544, 495 N.W.2d 911 (1993) (claim of interference with contract barred because damages described as flowing from claims of alienation of affections); Weicker v. Weicker, 22 N.Y.2d 8, 11, 237 N.E.2d 876, 290 N.Y.S.2d 732 (1968) (refusing to permit action for intentional infliction of emotional distress because action based on alienation of affections and would result in revival of abolished action).

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.

Table of Cases

Baldwin v. Harmony Builders, Inc., 31 Conn. App. 242 (1993), § 1.2
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