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:


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:


DIGESTS:

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

ENCYCLOPEDIAS:

• 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


• 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

  § 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

  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

Table 1: Spousal Alienation of Affections in Other States

<table>
<thead>
<tr>
<th>Spousal Alienation of Affection Actions Abolished</th>
</tr>
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<tbody>
<tr>
<td>Massachusetts</td>
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<tr>
<td>New York</td>
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<tr>
<td><img src="#" alt="Civil Rights Law Article 8" /></td>
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</tbody>
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**Lists of States Abolishing**

<table>
<thead>
<tr>
<th>Statutory</th>
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<tr>
<td><em>See footnote 59</em></td>
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<tr>
<th>Case Law</th>
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<tbody>
<tr>
<td><em>See footnote 62</em></td>
</tr>
</tbody>
</table>
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 247 Conn. 426, 723 A.2d 808). 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, 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 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.

<table>
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<tr>
<th>Fraud Claims</th>
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| 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-
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 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 coventre.” 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:

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.”


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

**ENCYCLOPEDIAS:**

  - § 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


**Annotation, Punitive Or Exemplary Damages In Action By Spouse For Alienation Of Affections Or Criminal Conversation**, 31 *ALR2d* 713 (1953).


**TEXTS & TREATISES:**
  - § 79b. Actions by husband or wife

  - § 7:6 “Criminal conversation”

  - § 11.05[2]. Criminal conversation
  - [a]. In General [b]. Proof Required [c]. Abolition of Action
Table 3: Criminal Conversation in Other States

<table>
<thead>
<tr>
<th>States</th>
<th>Statutory</th>
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</thead>
<tbody>
<tr>
<td>New York</td>
<td>N.Y. Civil Rights Law § 80-a</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>R.I. Gen. Laws § 9-1-42</td>
</tr>
</tbody>
</table>

**Lists of States Abolishing**

| Statutorv     | Jerome H. Nates et al., Damages in Tort Actions (1998) § 11.05[2][c]      |
|               | See footnote 25                                                           |
|               | See footnote 82                                                           |
|               | 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:

- **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:

- 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:

## Table 4: Intentional Infliction of Emotional Distress

<table>
<thead>
<tr>
<th>Officially Reported Cases</th>
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<tr>
<td><strong>Bouchard v. Sundberg</strong>, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</td>
</tr>
<tr>
<td><strong>Gilman v. Gilman</strong>, 46 Conn. Sup. 21, 22, 736 A.2d 199 (1999)</td>
</tr>
</tbody>
</table>

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.

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.
**Unreported Connecticut Cases**

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
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<tbody>
<tr>
<td>Pantaleo v. Pantaleo</td>
<td>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.</td>
</tr>
</tbody>
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**Secondary Sources**

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<thead>
<tr>
<th>Source</th>
<th>Description</th>
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