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No more balm for the broken-hearted?

Illinois appears to be on the verge of bidding farewell to its "heart balm" statutes. Those laws, as they have come to be known, are statutes in a shrinking number of states that allow for the recovery of money damages in some or all of the following causes of action: alienation of affection, criminal conversion, breaking of a promise to marry and seduction.

The old adage remains true that breaking up is hard to do. Heart balm actions are notorious for resulting in particularly contentious litigation, even in cases where the parties were never married.

Currently, Illinois is one of only eight states (joined by Hawaii, Mississippi, Missouri, New Hampshire, New Mexico, South Dakota and Utah) that still permit such causes of action. House Bill 1452, which is currently pending before the Illinois General Assembly, seeks to abolish all such causes of action by repealing the applicable statutes.

Heart balm actions were originally permitted under common law. The Illinois legislature previously attempted to abolish those causes of action back in the 1930s. However, the Illinois Supreme Court held in *Heck v. Schupp,* 394 Ill.296 (1946), that a previous act attempting to abolish heart balm actions was unconstitutional.

The finding of unconstitutionality was based on a technical argument that complained that the statute was overly inclusive as to subject and was not clearly titled and that as the prior statute limited rights under the common law to avoid situations of blackmail and extortion, this concern was an insufficient basis to limit rights under common law.

In 1947, heart balm actions became statutory and have been permitted in Illinois with limited damages under the Alienation of Affection Act (740 ILCS 5/0.01), the Breach of Promise to Marry Act (740 ILCS 15/0.01) and the Criminal Conversation Act (740 ILCS 50/0.01).

Many believe that underlying heart balm actions is a lingering concept of women as chattel and that the statutes are deeply rooted in traditional gender-based notions that are significantly out of date in today's world.

The philosophical foundation of these causes of action — that once you have agreed to marry a woman and she has relied on that promise to marry, you have created an obligation to support her to some extent, and that a spouse in the nature of a financial asset can be stolen or converted by an interloper into the marital relationship — are inconsistent with our modern and evolving system of law that is intended to be applied without regard to gender.

It is a step in the right direction for Illinois to catch up with other states that abolished these causes of action many years ago.

By way of example, while the Alienation of Affections Act is genderless, the cause of action began in common law as a remedy available to husbands only. Breach of promise to marry actions were traditionally brought by women (or a father on behalf of his daughter) who had become financially reliant on a fiance prior to the marriage, only to have the marriage scuttled.

As described in the findings in Section 1-1 of the current draft of HB 1452: "Society has also realized that women and men should have equal rights under the law. Heart balm actions are rooted in the now-discredited notion that men and women are unequal."

While rarely relied on in recent years, the heart balm statutes have certainly earned the reputation they have for creating particularly contentious litigation, but in fact, the damages awarded in these cases have been insignificant in light of the costs generated from the litigation.

An exemplary alienation of affection suit tried in Cook County in 2007 that received some notoriety is *Friedman v. Blinov*.

The husband filed suit after his wife fell in love with another man and decided to divorce.

Ultimately, after a trial on the merits (in which the intimate details of the parties' marriage, which was unconventional to put it mildly, and the wife's subsequent affair were put into the public record), the complaining party received damages in the amount of only $4,802.87 (representing the value of the wife's contribution to the marriage for a short period following the demise of the marriage).

Given the thousands of dollars that must have been incurred pursuing the action on both sides, not to mention the resources of the court that were expended trying the case, it is difficult to justify filing an alienation of affection action in Illinois. It is a step in the right direction for Illinois to catch up with other states that abolished these causes of action many years ago.

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