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## Falling in Love with the Law: A Themed Class Activity Teaching Note

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## **FALLING IN LOVE WITH THE LAW: A THEMED CLASS ACTIVITY TEACHING NOTE**

Michael Conklin\*

“The law is a jealous mistress and requires long and constant courtship.”

-Justice Joseph Story

### **INTRODUCTION**

This Teaching Note provides numerous potential topics for an engaging and informative Valentines-themed Legal Environment of Business class activity. Each topic is in some way related to Valentine’s Day and can be used to illustrate a variety of legal and ethical principles. Instructors are encouraged to really lean into the theme. For example, you could wear pink, give out Valentine’s cards, play a sappy love song, lower the lighting and light candles, etc. A themed class serves as a welcome break from the traditional lecture for both instructor and students. There are enough potential topics listed in this Teaching Note to cover an entire class, or just a 15-minute, interactive, themed quiz

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using Kahoot!, Quizlet, or Poll Everywhere.<sup>1</sup> Note that this activity does not have to be limited to legal topics covered up to this point in the semester. The lighthearted, relaxed environment in which a variety of topics are casually discussed is an excellent method to get the class excited about—and considering the implications of—topics that will come later in the semester.

From personal experience, I can attest that this class activity is not only the highlight of the semester for myself and the students as far as entertainment value, but is also a powerful catalyst for sparking deeper interest in the law. Weeks after the activity, students will enthusiastically refer back to principles initially discussed in the Valentine's activity. And students frequently mention in their end-of-semester evaluations how much they enjoyed the activity. Teaching pedagogy research confirms these anecdotal finding as to how effective themed class periods that utilize pop culture are at engaging learners.<sup>2</sup> Note that this Teaching Note is a

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<sup>1</sup> See, e.g., Alf Inge Wang & Rabail Tahir, *The Effect of Using Kahoot! for Learning — A Literature Review*, 149 COMPUTERS & EDUCATION 1 (2020).

<sup>2</sup> Ana M. H. Kehrberg, *Halloween as an Opportunity for Teaching Biological Psychology*, in 15 ESSAYS FROM E-XCELLENCE IN TEACHING: REDUCING UNDERGRADUATE WRITING APPREHENSION WITH THE BASIC PSYCHOLOGICAL NEEDS 23, (William S. Altman, Lyra Stein & Jonathan E. Westal eds., 2016), [https://www.researchgate.net/profile/Jacqueline-Espinoza/publication/327190241\\_E-xcellence\\_in\\_writing\\_Reducing\\_undergraduate\\_writing\\_apprehension\\_with\\_the\\_basic\\_psychological\\_needs/links/5b7f18fca6fdcc5f8b6370c5/E-xcellence-in-writing-Reducing-undergraduate-writing-apprehension-with-the-basic-psychological-needs.pdf](https://www.researchgate.net/profile/Jacqueline-Espinoza/publication/327190241_E-xcellence_in_writing_Reducing_undergraduate_writing_apprehension_with_the_basic_psychological_needs/links/5b7f18fca6fdcc5f8b6370c5/E-xcellence-in-writing-Reducing-undergraduate-writing-apprehension-with-the-basic-psychological-needs.pdf); Victoria Bryant, *Harry Potter and the Osteopathic Medical School: Creating a Harry Potter-Themed Day as a High-Yield Review for Final Exams*, 31 MED. SCI. EDUCATOR 819 (2021); Jeffrey M. Craig, Renee Dow & Mary Anne Aitken, *Harry Potter and the Recessive Allele*, 436 NATURE 776 (2005); Susan Hatters Friedman & Ryan C. W. Hall, *Teaching Psychopathology in a Galaxy*

resource for instructors and not a handout to students. Therefore, a moderate knowledge base of the law is assumed for the reader of this Teaching Note. Furthermore, this is intentionally not a step-by-step guide; rather, it is a list of topics with brief descriptions that can then be customized by the instructor to match his or her teaching style, along with unique constraints involving time, modality, and class size.

### **PUTTING A RING ON IT**

While an engagement ring may have unique sentimental value, it is at its essence a piece of personal property. Traditionally it is purchased by the man and given to the woman, with only the promise to marry the man in return. When an engagement is broken off, who gets to keep the ring? Courts have traditionally viewed gifts in consideration of marriage, such as a wedding ring, as different from standard gifts.<sup>3</sup> Since this topic is covered by state law, there are different standards—three to be exact. Under the fault approach courts make the determination based on which party was at fault for ending the engagement.<sup>4</sup> Under the no-fault approach in favor of the donor, the ring is returned to the purchaser regardless of fault.<sup>5</sup> And under the no-fault

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*Far, Far Away: The Light Side of the Force*, 39 ACAD. PSYCHIATRY 719 (2015); Lisa Tessier & Jack Tessier, *Theme-Based Courses Foster Student Learning and Promote Comfort with Learning New Material*, 11 J. FOR LEARNING THROUGH ARTS 1 (2015); Renee Sorrentino et al., *Sex on the Silver Screen: Using Film to Teach About Paraphilias*, 42 ACAD. PSYCHIATRY 237 (2018).

<sup>3</sup> Arielle L. Murphy, *Whose Fault is it Anyway: Analyzing the Role “Fault” Plays in the Division of Premarital Property if Marriage Does Not Ensue*, 64 CATH. U. L. REV. 463, 466 (2015).

<sup>4</sup> *Id.* at 467.

<sup>5</sup> *Id.*

approach in favor of the donee, the ring is treated as an inter vivos gift, allowing the person who received it to keep it.<sup>6</sup>

The unique nature of a wedding ring may elicit further discussion. What if the wedding ring was a family heirloom? What problems may arise from using the legal system to make highly subjective determinations such as who is at fault for a broken engagement? How may a judge's age, gender, and socioeconomic status lead to potential biases in making such a determination? Finally, on the topic of wedding rings and the law, a recent study found that a third of women remove their wedding ring before a job interview.<sup>7</sup> It is clearly unlawful discrimination for a potential employer to consider this during a job interview, but does that justify the deceptive tactic? Conversely, would it be unethical for an unmarried man to wear a wedding ring to a job interview on the belief that it would cause him to be viewed as more stable and reliable?

### **WILL YOU GO TO ~~PROM~~ COURT WITH ME?**

Prom is a special night for American teenagers. Consequently, when complications lead to the breaking off of a prom date, questions may arise regarding the availability of legal compensation for the harm incurred. This topic is likely of particular interest to college students given the

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<sup>6</sup> *Id.*

<sup>7</sup> Sarah Young, *A Third of Women Remove Wedding Ring Before Job Interview, Study Finds*, INDEPENDENT (May 4, 2018 16:51), <https://www.independent.co.uk/life-style/women-wedding-ring-job-interview-remove-discrimination-workplace-marital-status-pregnancy-a8336531.html>.

recency of their prom. Furthermore, the topic allows for discussions surrounding a variety of legal concepts. Unfortunately, there appears to be no binding precedent for the matter, likely because of the low stakes implicated.

First, it must be discussed whether asking someone to prom creates a binding contract. This scenario is certainly not a traditional, bilateral contract where the guy asks the girl, “I promise to take you to prom if you promise to buy a prom dress.” However, a prom date arrangement strongly implies that the girl will acquire a prom dress. While the application of a reasonable person standard to two teenagers in love may seem counterintuitive, the standard is useful. Contracts required the existence of an offer. To determine if an offer exists, we need to consider what a reasonable teenage girl would assume is entailed in such an offer. Is it a binding commitment where neither side is allowed to back out? Likely not.

The informal nature of asking someone to prom means that it would frequently be performed verbally. And with the cost of a new prom dress frequently exceeding \$500, one may be tempted to posit that the statute of frauds is implicated, thus barring enforcement. However, an agreement to take someone to prom is not a contract for the purchase of goods over \$500. It is also interesting to note that, in many jurisdictions, electronic communications satisfy the statute of frauds.<sup>8</sup> Therefore, if a particularly timid boy used text messaging as the medium through which to ask his date to

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<sup>8</sup> See, e.g., *John Khoury v. Prentis B. Tomlinson*, 518 S.W.3d 568, 576–77 (Tex. App. 2017) (finding that just having your name in the “From” field of an email constitutes a signature for purposes of satisfying the Texas Statute of Frauds).

the prom, this would likely satisfy the written requirement under the statute of frauds.

Another issue that may arise when discussing the subject, is that some of the boys may be minors at the time they entered into the agreement to take their date to the prom. Generally, minors lack capacity to enter into contracts for non-necessities. While teenagers may perceive going to the prom as one of the most important “necessities” of their lives, it would not meet this legal definition.<sup>9</sup> This lack of capacity could result in a voidable contract. However, if the boy turned 18 after the agreement but before the prom, he could be said to have affirmed the agreement by acting consistently with the nature of the agreement and therefore lose the ability to void the agreement.

Even if agreements to go to prom do not meet the requirements of a binding contract, courts could still choose to enforce them based on a theory of detrimental reliance. Essentially, the boy made a specific promise, the girl reasonably relied on that promise to purchase a prom dress, this resulted in harm since the dress was purchased but wasn’t worn, and out of a sense of fairness, the promise should be enforced.

The issue becomes even more complex when one considers the duty to mitigate damages. After being notified of the intent to breach a contract, there exists a duty to act in a reasonable manner to mitigate the damages from the

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<sup>9</sup> Cheryl B. Preston & Brandon T. Crowther, *Infancy Doctrine Inquiries*, 52 SANTA CLARA L. REV. 47, 53 (2012) (providing the definite examples of food and shelter and the borderline examples of transportation and communication devices).

breach.<sup>10</sup> But how would this principle play out in a prom date scenario? If the boy dumped the girl two weeks before prom, would the girl be required to ask out other boys to try and get a date for the prom where her dress could still be worn? Finally, the topic of prom provides the potential to discuss numerous other legal topics involving searches,<sup>11</sup> LGBTQ rights,<sup>12</sup> and racial segregation.<sup>13</sup>

## CORPORATIONS NEED LOVE TOO

The law treats corporations as persons in numerous contexts.<sup>14</sup> Therefore, corporate mergers and acquisitions are somewhat like a marriage between two people. They both involve predictions about the value of the other party and how compatible they will be together in the hopes of a synergistic effect that makes each party better off. Both involve gaining economies of scale. Both involve a

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<sup>10</sup> See, e.g., Collen L. Steffen, *The Duty Dilemma: When the Duty to Mitigate Damages and the Duty to Preserve Evidence Collide*, 71 OKLA. L. REV. 923, 941–44 (2019).

<sup>11</sup> See, e.g., Jessica Feinberg, *The Clash Between Safety and Freedom of Association in the Regulation of Prom Dates*, 17 KAN. J.L. & PUB. POL'Y 168 (2008).

<sup>12</sup> *ACLU Sues Mississippi School that Canceled Prom Rather than Let Lesbian Couple Attend*, ACLU (mar. 11, 2010), <https://www.aclu.org/press-releases/aclu-sues-mississippi-school-canceled-prom-rather-let-lesbian-couple-attend>.

<sup>13</sup> See, e.g., Rea J. Harrison, *Black and White Prom Nights: The Unconstitutionality of Racially Segregated High School Proms in the 21<sup>st</sup> Century*, 10 J. GENDER RACE & JUST. 505 (2007).

<sup>14</sup> Nina Totenberg, *When Did Companies Become People? Excavating the Legal Evolution*, NPR (July 28, 2014, 4:57 AM), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>.



contractual agreement that may affect tax rates. Both frequently involve cultural and communication difficulties. Both may involve dubious motivations such as a marriage between plutonic friends to gain spousal benefits or a corporate inversion to avoid taxes.<sup>15</sup> Both often involve miscalculations regarding compatibility which may ultimately lead to ending the relationship. Finally, both have high failure rates—about eighty percent for mergers and slightly over fifty percent for marriages.<sup>16</sup>

## ATTRACTIVENESS DISCRIMINATION

Naturally, people engage in attractiveness discrimination when choosing their romantic partners. But is it lawful to do so when making hiring and promotion decisions? This topic elicits engaging discussions regarding fairness, what can be proved in court, and the expansive nature of workplace antidiscrimination protections.

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<sup>15</sup> In a corporate inversion—also known as a tax inversion—a domestic corporation reincorporates abroad by having a foreign company purchase its current operations. Julia Kagan, *Corporate Inversion: What it is, How it Works, Example*, INVESTOPEDIA (Aug. 7, 2022), <https://www.investopedia.com/terms/c/corporateinversion.asp#:~:text=A%20corporate%20inversion%E2%80%94also%20called,reduce%20the%20income%20tax%20burden..>

<sup>16</sup> Graham Kenny, *Don't Make This Common M&A Mistake*, HARVARD BUS. REV. (Mar. 16, 2020), [https://hbr.org/2020/03/dont-make-this-common-ma-mistake#:~:text=According%20to%20most%20studies%2C%20between,integrating%20the%20two%20parties%20involved.](https://hbr.org/2020/03/dont-make-this-common-ma-mistake#:~:text=According%20to%20most%20studies%2C%20between,integrating%20the%20two%20parties%20involved.;); Christy Bieber, *Revealing Divorce Statistics in 2023*, FORBES (Aug. 8, 2023, 10:47 AM), <https://www.forbes.com/advisor/legal/divorce/divorce-statistics/>.

The effects of attractiveness discrimination are surprisingly pervasive and profound. Studies have found significant attractiveness discrimination in college grading, adjudicating the guilt of a criminal defendant, obtaining a bank loan, being elected as a politician, and attorney salaries.<sup>17</sup> Even attractive quarterbacks in the NFL receive a salary premium over their less-attractive counterparts.<sup>18</sup>

While attractiveness discrimination is not currently an explicitly protected class,<sup>19</sup> the practice could potentially be covered by linking it to existing protected classes such as age, race, gender, and disability.<sup>20</sup> For example, if a white male employer only hires people he is attracted to, and he is only be attracted to young, white women, this form of attractiveness discrimination would function as discrimination against the protected classes of age, race, and gender.

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<sup>17</sup> Michael Conklin, *Unlocking the Beauty from Within Title VII: Arguing for An Expansive Interpretation of Title VII to Protect Against Attractiveness Discrimination*, 31 AM. U. J. GENDER, SOC. POL'Y & L. 25, 29–30 (2023).

<sup>18</sup> David J. Berri et al., *What Does It Mean to Find the Face of the Franchise? Physical Attractiveness and the Evaluation of Athletic Performance*, 111 Econ. Letters 200, 200–02 (2011).

<sup>19</sup> James Desir, *Note, Lookism: Pushing the Frontier of Equality by Looking Beyond the Law*, 2010 U. ILL. L. REV. 629, 648 (2010).

<sup>20</sup> William R. Corbett, *The Ugly Truth About Appearance Discrimination and the Beauty of our Employment Discrimination Law*, 14 DUKE J. GENDER L. & POL'Y 153, 157 (2007).

## GUARDIANS OF THE SOCIAL CONTRACT

In 2017, a man sued his date for her \$17.31 ticket to see *Guardians of the Galaxy Vol. 2* because she texted during the movie.<sup>21</sup> The pleadings describe how cell phone use during a movie is a “direct violation” of theater policy and “adversely” affected the plaintiff’s viewing experience.<sup>22</sup> The man even went so far as to claim that texting during a movie is a “threat to civilized society.”<sup>23</sup>

Although the case quickly settled,<sup>24</sup> it is interesting to consider the legal implications. The two parties did not stipulate in advance that texting during the movie was prohibited, but is that something that is implied when two people agree to go on a movie date? The lawsuit was only for the woman’s \$17.31 ticket, not the man’s. Would he have had a stronger case suing for the loss of his enjoyment of the movie? It is also interesting to note that, after being asked to stop texting, the woman left the theater during the first half of the movie, leaving the man stranded since they took her car.<sup>25</sup> Is someone contractually obligated to give their date a

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<sup>21</sup> Matthew Diebel, *Texas Man Sues His Date—For Texting During ‘Guardians of the Galaxy, Vol. 2,’* USA TODAY (May 17, 2017, 1:22 PM), <https://www.usatoday.com/story/news/nation/2017/05/17/texas-man-sues-his-date-texting-during-guardians-galaxy-vol-2/101786452/>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Claire Osborn, *Man Plans to Drop His Lawsuit Against Woman Who Texted During Movie*, AUSTIN AMERICAN-STATESMAN (Sept. 22, 2018, 12:59 AM),

<https://www.statesman.com/story/news/local/2017/05/18/man-plans-to-drop-his-lawsuit-against-woman-who-texted-during-movie/10422101007/>.

<sup>25</sup> Diebel, *supra* note 21.

ride home? What if the date was in a dangerous neighborhood?

## **ALL'S FAIR IN LOVE AND THE ONLINE DATING BUSINESS**

In 2019 the Federal Trade Commission (FTC) sued Match Group, the owners of online dating services Match.com, Tinder, OKCupid, and PlentyOfFish.<sup>26</sup> The FTC alleged that the dating sites used fake love interest advertisements to trick consumers into purchasing a Match.com subscription.<sup>27</sup> The FTC further alleged that Match.com offered false “guarantees” and made it too difficult for users to cancel their subscriptions.<sup>28</sup> Setting aside the issue of whether there could ever be a “guaranty” in love, a Texas federal district court granted Match Group’s motion to dismiss.<sup>29</sup> The court held that Section 13(b) of the FTC Act requires the pleading of facts that a defendant “is violating” or “is about to violate” the law, and at the time of the lawsuit, Match.com was no longer engaging in these practices.<sup>30</sup>

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<sup>26</sup> <https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3013-match-group-inc>

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> <https://www.jdsupra.com/legalnews/ftc-v-match-group-inc-court-gets-cold-1863742/>

<sup>30</sup> *Id.* Explaining that Congress’s clear choice of the terms “is violating” and “is about to violate” rather than “has violated.”

## **LEGAL REPRESENTATION AND MUCH MORE!**

The majority of state bars prohibit lawyers from engaging in sexual relations with clients.<sup>31</sup> The ABA Model Rule 1.8(j) provides only one exception which pertains to instances where the sexual relationship predates the attorney-client relationship.<sup>32</sup> The general rationale for the ban is that sex is often about power and in an attorney-client relationship, there is a power imbalance; clients seeking an attorney are often in a state of heightened vulnerability.<sup>33</sup> Advocates for the rule also point out that sex may cloud the judgment of the attorney.<sup>34</sup>

## **LOVE SONG LAWSUITS!**

There is no shortage of popular love songs that have been the topic of litigation. These provide a springboard to discuss various legal topics. Furthermore, they provide an opportunity to play parts of the songs to enhance the experience of the themed class.

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<sup>31</sup> *Texas Lawyers Divided Over 'Sex with Clients' Rule*, DALLAS MORNING NEWS (Oct. 4, 2010, 1:33 AM), <https://www.dallasnews.com/news/texas/2010/10/04/texas-lawyers-divided-over-sex-with-clients-rule/#:~:text=Unlike%20the%20large%20majority%20of,social%20workers%20to%20massage%20therapists.>

<sup>32</sup> ABA Model Rule 1.8(j)

<sup>33</sup> *Attorney-Client Sex: A Bad Idea That's Also Unethical*, MCCABE ALI LLP, <https://ipethicslaw.com/attorney-client-sex-a-bad-idea-thats-also-unethical/> (last visited Sept. 1, 2023).

<sup>34</sup> *Id.*

At a concert in November of 2014, Ed Sheeran seamlessly transitioned from his song “Thinking Out Loud” to Marvin Gaye’s “Let’s Get it On” and then back to “Thinking Out Loud” without changing the cords or the harmonic rhythm.<sup>35</sup> This was perhaps a bad idea as a few years later the Marvin Gaye Estate sued Sheeran for copyright infringement.<sup>36</sup> At trial, Sheeran tried to explain, “You can kind of play most pop songs over most pop songs.”<sup>37</sup> An N.Y.U. professor of music was an expert forensic musicologist for the defense who pointed out that Marving Gaye’s chord progression was so common that it is found in elementary music-method books published in the 1960s.<sup>38</sup> This would be highly relevant in a copyright infringement case because that is before “Let’s Get it On” came out in 1973. While Sheeran ultimately won the case—he was not so lucky in other copyright infringement suits<sup>39</sup>—it is interesting to note that the judge presiding over the case regarding pop music was ninety-five years old.<sup>40</sup> This demonstrates the intangible aspects of litigation; namely, how variables such as venue and judge assignments can have a significant effect on trial outcome. There is even evidence to suggest that legal

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<sup>35</sup> John Seabrook, *The Case for and Against Ed Sheeran*, NEW YORKER (June 5, 2023), <https://www.newyorker.com/magazine/2023/06/05/ed-sheeran-copyright-infringement-lawsuit-marvin-gaye>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* For a humorous demonstration on how nearly any pop song can fit within the same four chords, see... Axis of Awesome – 4 Chord Song (with song titles), YouTube <https://www.youtube.com/watch?v=5pidokakU4I>.

<sup>38</sup> Seabrook, *supra* note 35.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

outcomes are affected by whether the judge is hungry, the weather, and the result of the local sports team.<sup>41</sup>

George Harrison faced a lawsuit alleging that his love song to the creator, *My Sweet Lord*, infringed on the copyright held by The Chiffon's song, *He's So Fine*.<sup>42</sup> The jurors in the case were treated to a semi-private concert from former Beatle George Harrison, trying to demonstrate the nuanced aspects of how his song was distinguishable from the Chiffon's.<sup>43</sup> Nevertheless, the jury returned a verdict of "subconscious plagiarism" and awarded the plaintiffs \$1.6 million.<sup>44</sup> This case demonstrates the significance of mental states under the law.

## LADIES' NIGHT LEGALITY

At first glance, ladies' nights promotions at bars and night clubs appear to be a win-win. The ladies get discounts and, consequently, the men get more ladies to talk to. Unfortunately, it could be argued that the practice violates the Equal Protection Clause of the Fourteenth Amendment

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<sup>41</sup> Michael Conklin, *The Alford Plea Turns Fifty: Why It Deserves Another Fifty Years*, 54 CREIGHTON L. REV. 1, 4 (2020) ("Variables such as the makeup of the jury, officer errors in gathering evidence, jurisdiction where the [incident] occurred, and quality of legal representation all affect legal outcomes. Even factors as trivial as how hungry the judge is, the recent performance of a local sports team, and the weather affect trial outcomes.").

<sup>42</sup> Bill DeMain, *George Harrison's My Sweet Lord: The Love Song to a Higher Power that Spurred a \$1.6m Lawsuit*, LOUDER (June 8, 2023), <https://www.louderound.com/features/george-harrison-my-sweet-lord>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

and various state anti-discrimination statutes.<sup>45</sup> Regardless, attempts to pursue such litigation are rarely successful.<sup>46</sup> The federal public accommodations law, Title II of the Civil Rights Act of 1964, does not include sex as a protected class.<sup>47</sup> Therefore, these cases are generally decided based on state law.<sup>48</sup>

It is interesting to discuss the pragmatic aspects of such a practice, as well as the legal aspects. For example, feminist icon Ruth Bader Ginsburg famously represented male plaintiffs in gender discrimination claims as part of her pursuit of women's rights.<sup>49</sup> Ginsburg even fought against anti-male discrimination that was rooted in positive stereotypes of women.<sup>50</sup> As applied to ladies' nights, perhaps it is not productive to promote the stereotype of women as lures to entice men.

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<sup>45</sup> U.S. CONST. art. 14.

<sup>46</sup> See, e.g., Bethany M. Coston & Michael Kimmel, *White Men as the New Victims: Reverse Discrimination Cases and the Men's Rights Movement*, 13 NEV. L.J. 368, 374 (2013).

<sup>47</sup> 42 U.S.C. § 2000a (2000).

<sup>48</sup> See, e.g., Jessica E. Rank, *Is Ladies' Night Really Sex Discrimination: Public Accommodation Laws, De Minimis Exceptions, and Stigmatic Injury*, 36 SETON HALL L. REV. 223, 226–27 (2005).

<sup>49</sup> Mary Beth Ferrante, *Let's Honor Ruth Bader Ginsburg by Recognizing Men as Caregivers*, FORBES (Sept. 24, 2020, 2:47 PM), <https://www.forbes.com/sites/marybethferrante/2020/09/24/lets-honor-ruth-bader-ginsburg-by-recognizing-men-as-caregivers/?sh=7f98d8f77fb5>; Stephanie Buck, *The On the Basis of Sex Story Wasn't the Only Time Ruth Bader Ginsburg Used Cases About Men to Argue for Women's Equality*, TIME (Dec. 24, 2018, 12:00 PM), <https://time.com/5481422/rbg-movie-male-plaintiff-history/>.

<sup>50</sup> See, e.g., *Craig v. Boren*, 429 U.S. 190 (1976) (striking down higher drinking ages for men based on the theory that women matured faster than men and therefore could drink at an earlier age).



## A COSTLY AFFAIR

When someone's actions cause someone else great harm, the injured party may be able to seek compensation in tort law. But what about when someone's actions cause a married person to have an affair? Certainly, this can result in great harm to the innocent spouse, but should the principles of tort law apply to such an occurrence?

A few states recognize an alienation of affection cause of action.<sup>51</sup> This generally requires proving the three elements of 1) Love and affection existed in the marriage (an incredibly subjective standard to prove), 2) This love was alienated and destroyed, and 3) The malicious conduct of a third party contributed to its loss.<sup>52</sup> This jurisprudence is rooted in the colonial era when wives were viewed somewhat as property.<sup>53</sup> During this time period men could even sue their mothers-in-law for interfering with a wife's affection.<sup>54</sup>

There are also other potential theories under which compensation could be sought. In extreme scenarios, some states allow recovery under a theory of intentional infliction of emotional distress.<sup>55</sup> A theory of tortious interference with

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<sup>51</sup> *Can You Sue Your Spouse's Lover*, RECH LAW (Mar. 4, 2021) <https://www.rechlaw.com/blog/2021/march/can-you-sue-your-spouse-s-lover/> (As of 2021 this cause of action was recognized in North Carolina, Mississippi, South Dakota, New Mexico, Utah, and Hawaii.).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Adultery: The Law in Texas*, BEAL LAW FIRM, <https://www.dfwdivorce.com/adultery-the-law-in-texas> (last visited Sept. 14, 2023).

a contractual relationship could be pursued.<sup>56</sup> Loss of consortium is another option.<sup>57</sup> Finally, a theory of criminal conversion could be pursued.<sup>58</sup>

## CATFISHING LIABILITY

“Catfishing” is the act of using a fictional online persona to lure the victim into the false belief of a potential, romantic relationship.<sup>59</sup> It is easy to see how this could cause harm to the person being deceived. However, it is far easier for the person whose images were used to perpetrate the fraud to receive compensation than the person who was deceived. Some states have enacted online impersonation laws which protect the real-life person whose images were used.<sup>60</sup> An invasion of privacy claim under the misappropriation of name or likeness theory/subset/\_\_\_\_\_ is another potential cause of action for the person whose images were used.<sup>61</sup> Depending on how the images were used, there would also

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<sup>56</sup> Lance McMillian, *Adultery as Tort*, 90 N.C. L. REV. 1987, 2007 (1987).

<sup>57</sup> *Id.* at 1994.

<sup>58</sup> *Can I Sue My Spouse's Lover in Any State*, FINDLAW <https://www.findlaw.com/litigation/filing-a-lawsuit/can-i-sue-my-spouse-s-lover-in-any-state-.html#:~:text=Criminal%20conversation%20is%20a%20tort,your%20spouse%20during%20your%20marriage> (last visited Sept. 14, 2023).

<sup>59</sup> *What is Catfishing Online: Signs & How to Tell*, FORTINET, <https://www.fortinet.com/resources/cyberglossary/catfishing> (last accessed Oct. 19, 2023).

<sup>60</sup> Armida Derzakarian, *The Dark Side of Social Media Romance: Civil Recourse for Catfish Victims*, 50 LOY. L.A. L. REV. 741, 745 (2017) (Referencing as an example the Oklahoma Catfishing Liability Act).

<sup>61</sup> Armida Derzakarian, *The Dark Side of Social Media Romance: Civil Recourse for Catfish Victims*, 50 LOY. L.A. L. REV. 741, 755–57 (2017)

be a potential defamation cause of action.<sup>62</sup> The best cause of action for the deceived party would likely be under anti-cyberbullying legislation.<sup>63</sup> The social media websites and apps where the act of catfishing occurs are largely immune from liability under Section 230.<sup>64</sup>

## **WEIRD LOVE SONGS**

Weird Al Yankovic has parodied numerous love songs. He turned “Addicted to Love” into “Addicted to Spuds,” “I Want it That Way” to “eBay,” “Jack & Diane” to “Homer & Marge,” “I Think We’re Alone Now” to “I Think I’m a Clone Now,” “Like a Virgin” to “Like a Surgeon,” “You Belong with Me” to “TMZ.”<sup>65</sup> The original artists, Robert Palmer, Backstreet Boys, John Mellencamp, Madonna, and Taylor Swift, respectively, received no royalties and might not have appreciated being parodied. Unfortunately for them, parody law allows this type of artistic recreations. The right to parody the creations of other people is protected by the First Amendment and more specifically, it is covered under the fair use exception of the Copyright Act.<sup>66</sup> This involves considering the following four prongs:

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<sup>62</sup> *Id.* at 759–61.

<sup>63</sup> *Id.* at 748–49.

<sup>64</sup> *Id.* at 747.

<sup>65</sup>

[https://en.wikipedia.org/wiki/List\\_of\\_songs\\_recorded\\_by\\_%22Weird\\_Al%22\\_Yankovic](https://en.wikipedia.org/wiki/List_of_songs_recorded_by_%22Weird_Al%22_Yankovic)

<sup>66</sup> 17 U.S.C. § 107 Limitations on Exclusive Rights: Fair Use

- 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;<sup>67</sup>
- 2) the nature of the copyrighted work;<sup>68</sup>
- 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and<sup>69</sup>
- 4) the effect of the use upon the potential market for or value of the copyrighted work.<sup>70</sup>

This topic provides an excellent opportunity to demonstrate the subjective nature of the law and the process of performing a multi-pronged test.

### **LEGAL SPEED DATING CLASS ACTIVITY**

A fun, interactive classroom exercise is to schedule a legal “speed dating” activity. Before class, each student is assigned either a case, legal principle, or Supreme Court justice. They research their topic and come to class prepared to give a 45-second elevator pitch explanation. In class, students get matched up in groups of two to quickly present their explanation to each other. Every two minutes, a bell rings and the students partner up with someone new and repeat the process. After a fixed number of rounds, the activity can either be concluded with a class debriefing and/or a vote can be conducted to see who had the most engaging presentation.

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

## LOVE LETTERS CLASS ACTIVITY

This is another fun class activity that takes up less time and does not require any prep work on behalf of the students. Using heart-themed PowerPoint templates, simply write brief love letters to the cases or principles covered in class and have the students identify the cases / principles Here are some examples:

### CASES

“I love how you allowed Starbucks employees to wear pro-union buttons to work.” (*NLRB v. Starbucks Corp.*)

“I love how you forced a corporation to focus on paying out dividends rather than donating to charity.” (*Dodge v. Ford Motor Co.*)

“I love how you allowed a Muslim woman to wear her hijab to work.” (*EEOC v. Abercrombie & Fitch Stores*)

“I love how you enshrined the right to corporate free speech.” (*Citizens United v. FEC*)

“I love how you required ‘minimum contacts’ to force a defendant to defend themselves in an out-of-state venue.” (*World-Wide VW v. Woodson*)

### PRINCIPLES

“I love how you hold employers liable for the actions of employees.” (respondeat superior)

“I love how you allow me to reach into another state and bring a defendant to court in my state.” (long-arm jurisdiction or minimum contacts)

“I love how you can put an end to litigation after discovery if the facts are not in dispute.” (summary judgment)

“I love how fancy your name is, even though it just refers to the jury selection process.” (voir dire)

“I love how you are like mediation, but binding.” (arbitration)

“I love how your purpose is to punish, and how you allow me to sue for more money than I need to compensate for the actual damages.” (punitive damages)

“I love how you let plaintiffs win their negligence case without even having to show causation.” (res ipsa loquitur)

“I love how you bar any recovery if the plaintiff is even 1% at fault for his injuries.” (comparative negligence)

“I love how you allow the enforcement of a promise even if all of the elements of contract formation are not present.” (promissory estoppel)

“I love how you require certain contracts to be in writing to be enforceable.” (statute of frauds)

“I love how you stop people from introducing prior statements to alter the language of a signed contract.” (parol evidence rule)

## MISCELLANEOUS

The theme of Valentine's Day is so expansive that many more topics could be covered. The following are some additional topics to consider:

Spousal Privilege

Office romance policies

*The Tinder Swindler* documentary on Netflix

A trademark dilution case from Victoria's Secret against "Victor's Secret."<sup>71</sup>

A case involving a hospital that transplanted the heart out of a deceased Black man and into a white man without consent.<sup>72</sup>

A California man who was found not guilty for/of DUI after a necessity defense because he was fleeing his wife who caught him cheating.<sup>73</sup>

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<sup>71</sup> Jeffrey Pietsch, *Trademark Dilution and Sex: Victor's Secrets v. Victoria's Secrets*, THE IP L. BLOG (June 18, 2010), <https://www.theiplawblog.com/2010/06/articles/trademark-law/trademark-dilution-and-sex-victors-secrets-v-victorias-secrets/>.

<sup>72</sup> Theresa Vargas, *A Black Man's Stolen Heart and a Family's Long Wait for Justice*, WASH. POST (September 30, 2023, 11:00 AM), <https://www.washingtonpost.com/dc-md-va/2023/09/30/bruce-tucker-heart-transplant-vcu/>.

<sup>73</sup> Jessica Flores, *California Man Won DUI Case with Unique Defense: Better to Drive Drunk than Face 'Two Angry Women,'* SAN FRANCISCO CHRONICLE (Feb. 9, 2023, 2:44 PM), <https://www.sfchronicle.com/california/article/ukiah-man-not-guilty-17774009.php#:~:text=A%20Northern%20California%20jury%20found,according%20to%20Mendocino%20County%20prosecutors.>

A man in Singapore who sued the woman who put him in the ‘friend zone.’<sup>74</sup>

The constitutionality of legislation limiting “adult” businesses in New York City.<sup>75</sup>

The lawsuit filed by Tiger Woods’s ex-girlfriend implicates the statute of frauds—she alleged an oral agreement whereby she could continue living in Woods’s mansion for five years after breaking up—and the ability to break the nondisclosure agreement she entered into while an employee of Woods’s restaurant.<sup>76</sup>

A hypothetical case where a husband sues his wife for producing unattractive children because she deceived him by not disclosing that she had undergone extensive plastic surgery.<sup>77</sup>

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<sup>74</sup> *Singapore Man Sues Woman for Just Wanting to be Friends, Not Partners*, THE GUARDIAN (Feb. 3, 2023, 8:06), <https://www.theguardian.com/world/2023/feb/03/singapore-man-sues-woman-for-just-wanting-to-be-friends-not-partners>.

<sup>75</sup> Jonathan Stempel, *New York City Curb on Sex Shops is Constitutional: NY Top Court*, Reuters (June 6, 2017, 12:09 PM), <https://www.reuters.com/article/us-new-york-adultentertainment/new-york-city-curb-on-sex-shops-is-constitutional-ny-top-court-idUSKBN18X2A1>.

<sup>76</sup> Brent Schrotenboer, *Tiger Woods Sued by Ex-Girlfriend Erica Herman in Larger Domestic Dispute over Hom, Money*, USA TODAY (Mar. 10, 2023, 5:59 PM), <https://www.usatoday.com/story/sports/golf/2023/03/08/tiger-woods-erica-herman-court-claims-ex-girlfriend-home-money/11428984002/>.

<sup>77</sup> Note, this was an urban legend that never happened but it still elicits interesting aspects of contracts and fraud/misrepresentation. David Mikkelson, *Did a Man Sue His Wife Over Ugly Children*, SNOPE (Nov. 7, 2013), <https://www.snopes.com/fact-check/man-sues-wife-ugly-children/>.



## **CONCLUSION**

Themed classes such as this Valentines-themed one provide multiple positive benefits. They serve as a welcome break from traditional lectures for both the instructor and the students. The fast-action jumping from one topic to another and the provocative subject matter keeps the class engaged. The activity also reignites interest in previously covered topics and sparks curiosity for topics that will come later in the semester. Finally, as mentioned in the introduction, this Teaching Note is intentionally not a step-by-step guide for conducting the activity. Instead, instructors are encouraged to experiment with different combinations of the topics provided to experiment with creative methods for implementation.