

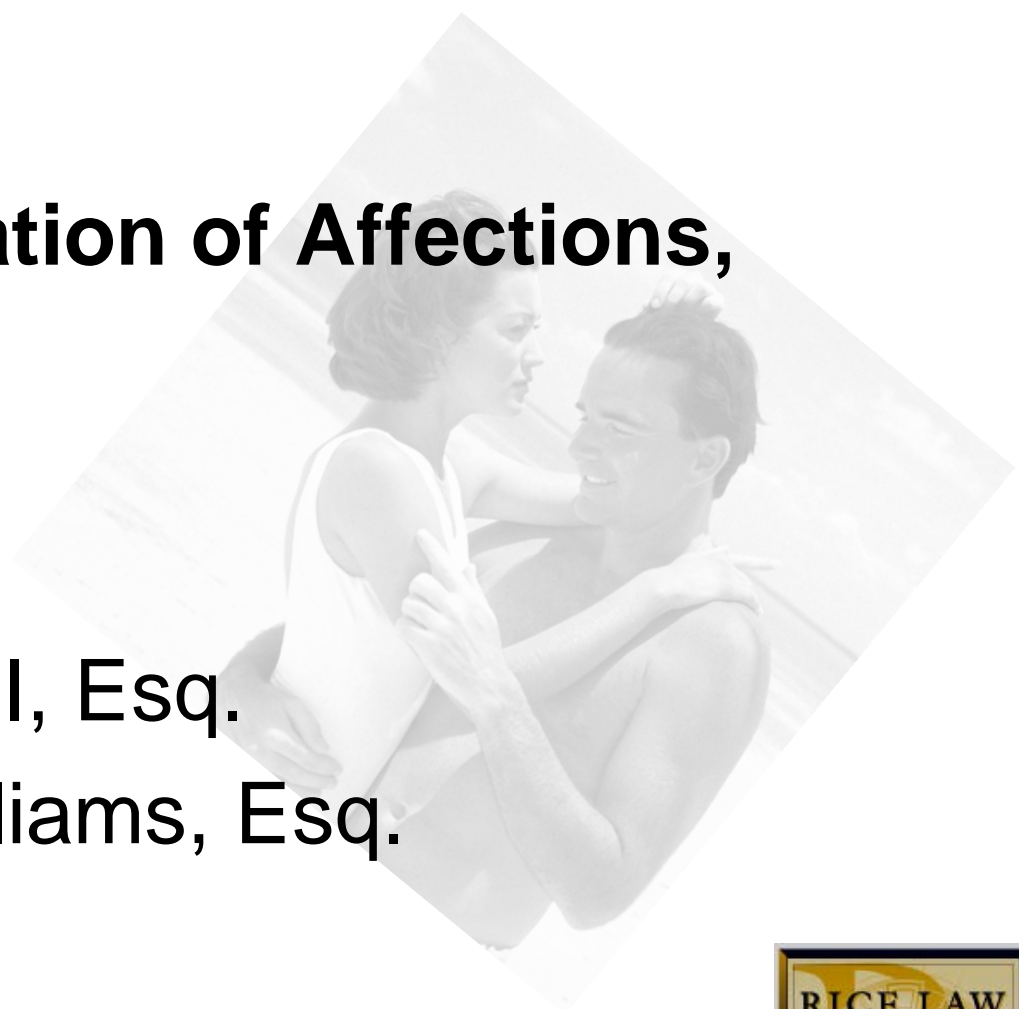
North Carolina Association of Private Investigators Presents...

“Infidelity, Alienation of Affections, Child Custody”

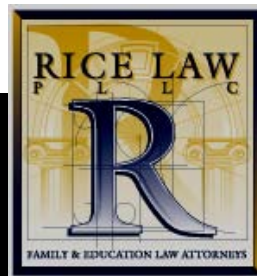
Rice Law, PLLC

Charles E. Rice, III, Esq.

Mark Spencer Williams, Esq.



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<http://www.ricefamilylaw.com>
910.762.3854



Who



- Charles E. Rice, III
- Former Chief District Court Judge
- 37 Years Experience



- Mark Spencer Williams
- Former UNCW Director of Financial Aid / KPMG Consultant
- First Case \$369,008.00 Tort Judgment re: Bigamy



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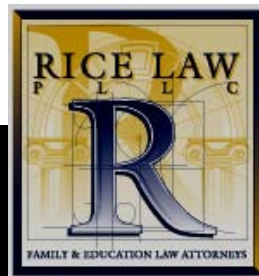


Family Law Theme

- Old England (King was in Charge of Everyone – “Father of the People” *parens patriae*)
- Children now have rights.....



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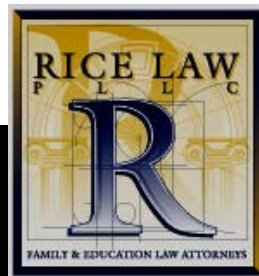


Family Law Theme....

- Despite theme, government still has rights and obligations to families and children
- Parens Patria continues
 -Importance of “Separation”
 -Custody
 -etc.....

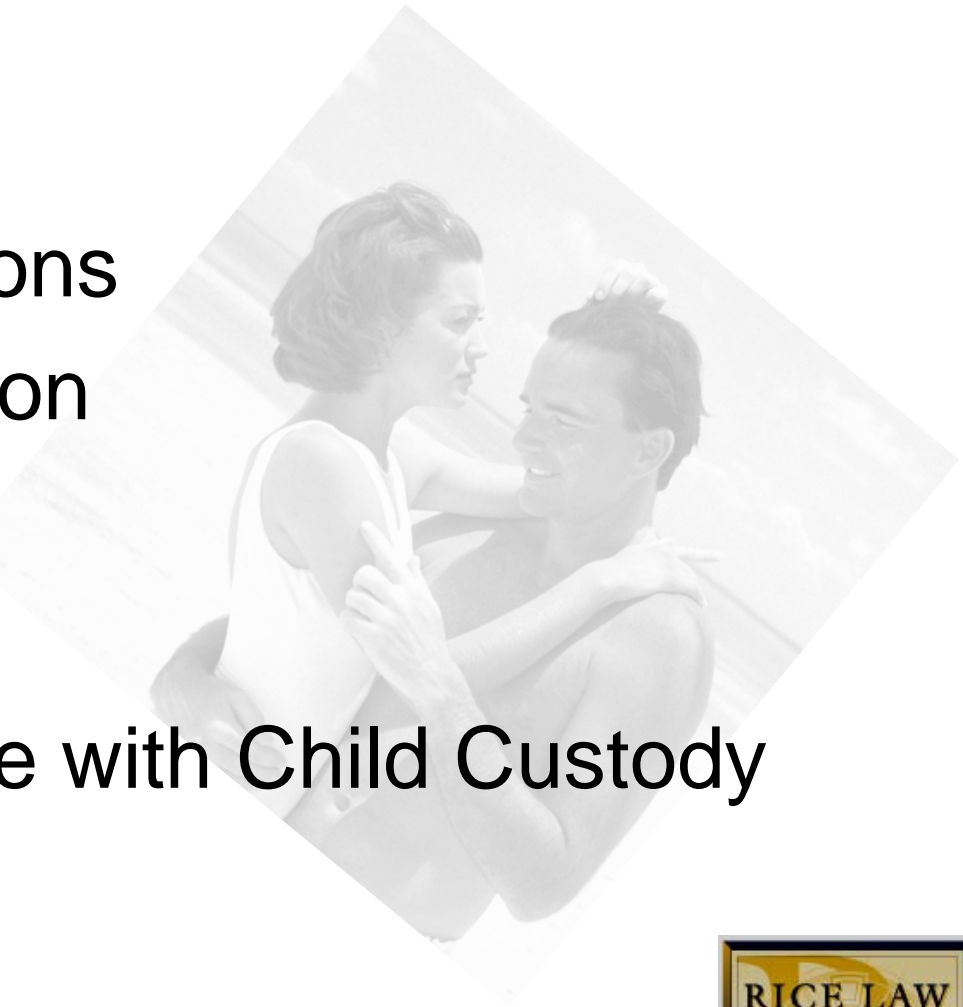


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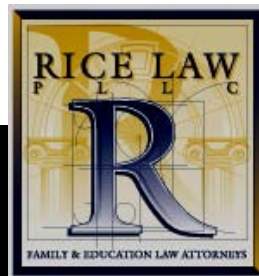


Topics

- Background
- Alienation of Affections
- Criminal Conversation
- Adultery as a Crime
- Child Custody
- Tortious Interference with Child Custody



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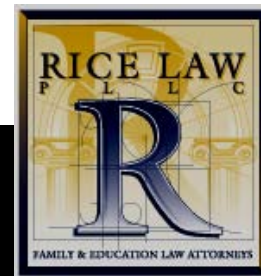


Background

- Heart balm torts = actions *ex delicto* involving injury to persons or property
 - Exclusivity of Marriage
 - Property (c.f., At common law, husband could not be prosecuted for rape of wife)
- “Protecting the sanctity of marriage and preserving the institution of the family.”
- “Protection of marriage”



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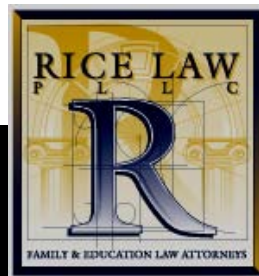


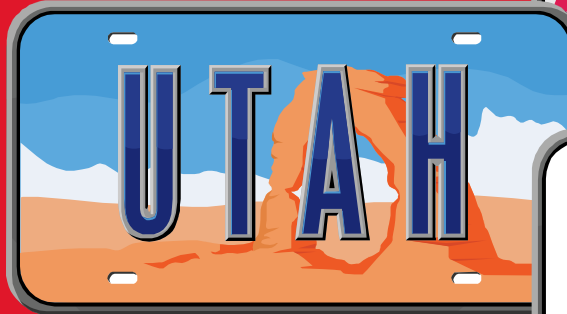
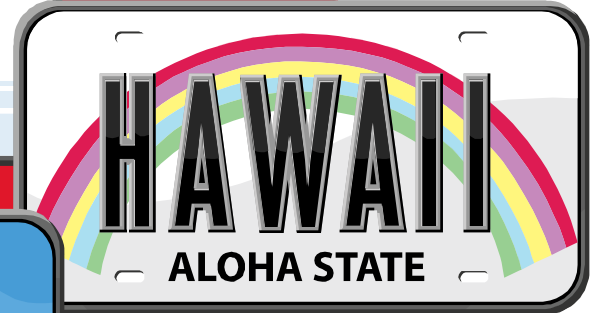
Background (Rationale)

- Promotes stability of family
- Prevents physical harm to third party (e.g., sue instead)
- Compensation for actual harm (e.g., mental anguish)
- Compare with Contract Law = Tortious Interference with Contract



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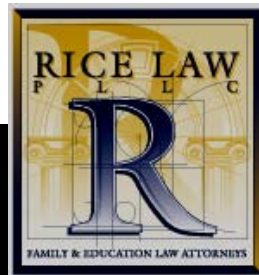


These Torts Continue to Survive.....

- 1984 – The N.C. Court of Appeals abolished the tort
- 1985 – NC Supreme Court says “Judges of Court of Appeals ... acted under misapprehension of its authority”
- A movement exists to abolish the law. “Women are no longer viewed as property.” Lee Rosen. 4/23/2004
- NC Bar Association Opposes these Torts, Feb 2005
- Almost each year, a bill is introduced into the NC Legislature to abolish Criminal Conversation and Alienation of Affection but such efforts have failed



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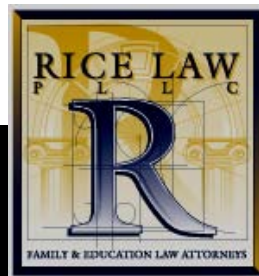


Alienation of Affections

- Tort Law: A civil wrong
- From British Common Law
- At common law, only a husband could bring the action against his wife's paramour ; like “stealing his cow”
- About 200 of these actions filed each year in NC and many are dismissed



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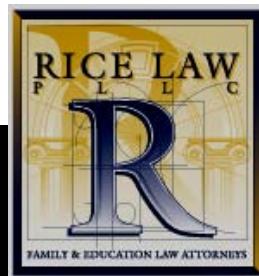
Alienation of Affections

Elements:

1. Plaintiff and spouse were happily married and a genuine love and affection existed between them;
2. The existing love and affection was alienated; and
3. The malicious conduct of defendant was a cause of the loss and alienation of such love and affection.

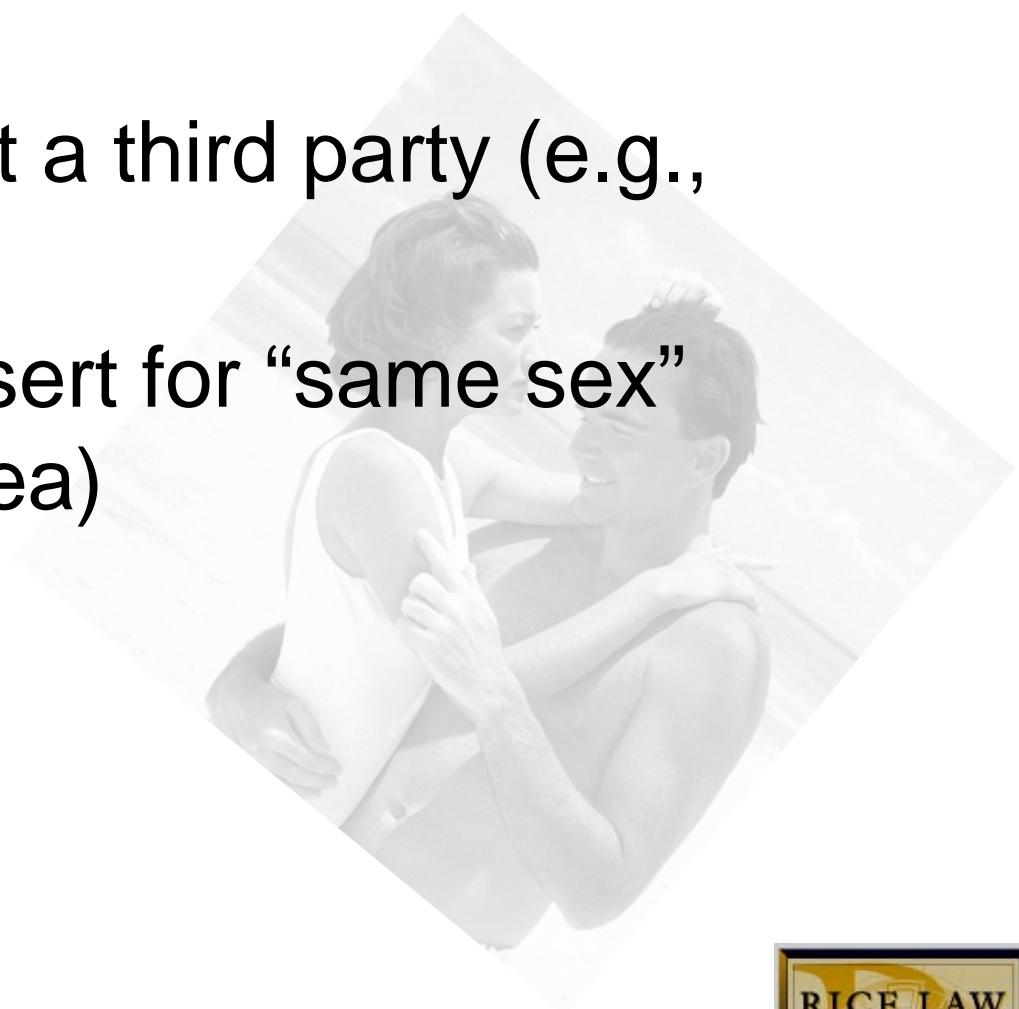


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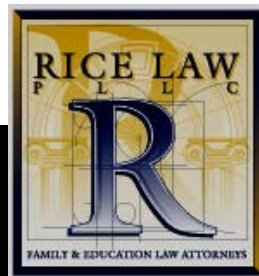


Alienation of Affections

- Can assert against a third party (e.g., mother in law)
- Could possibly assert for “same sex” alienation (new area)

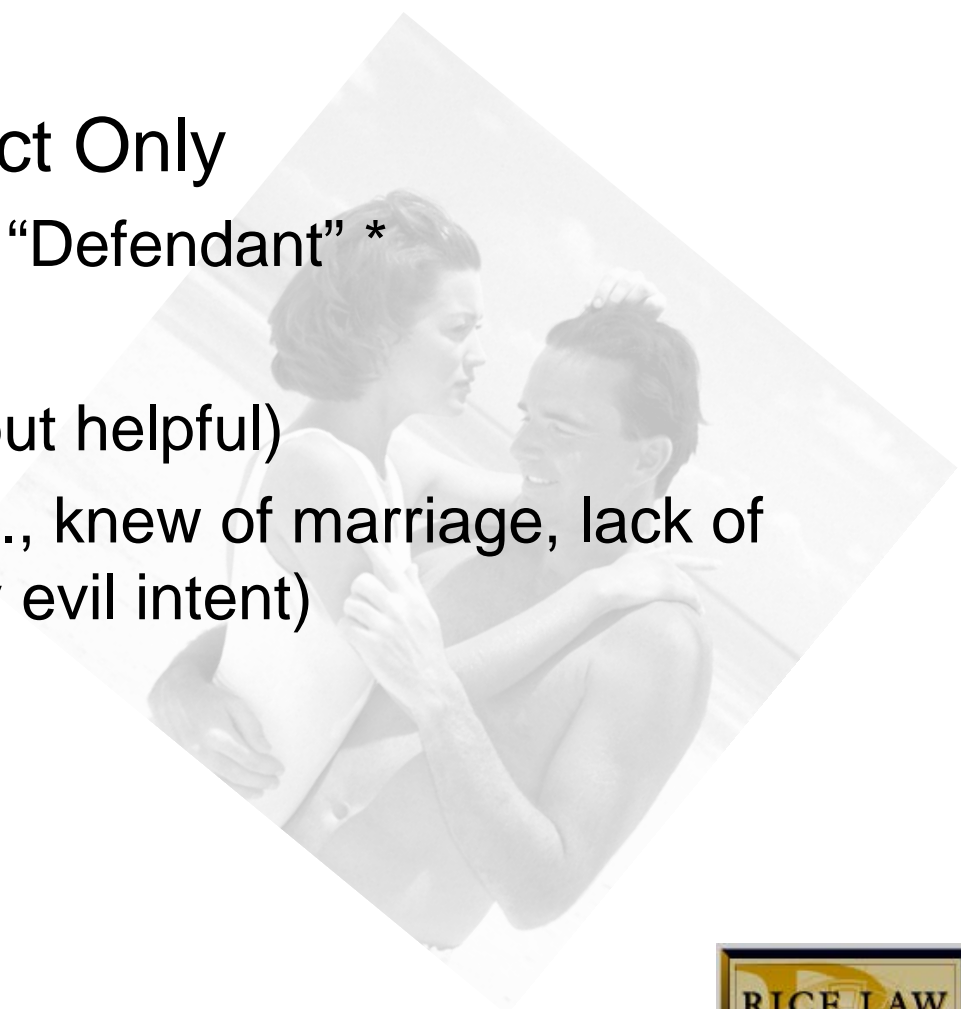


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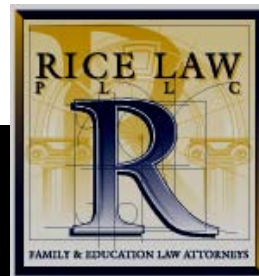


What Evidence is Relevant

- Pre-Separation Conduct Only
 - Happy Marriage before “Defendant” *
 - Defendant
 - Adultery (not required but helpful)
 - Evidence of Malice (e.g., knew of marriage, lack of caution, not necessarily evil intent)
 - Emails

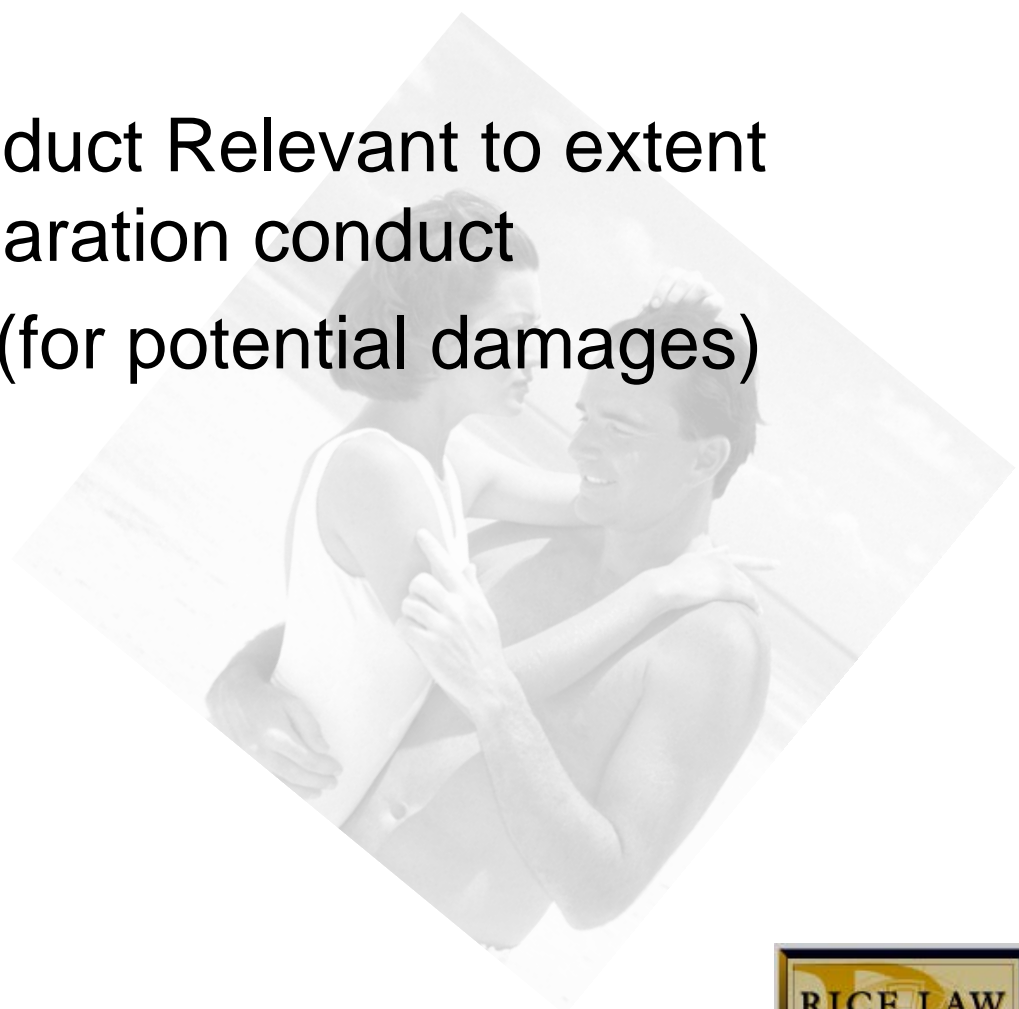


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What Evidence is Relevant

- Post-Separation Conduct Relevant to extent corroborates pre-separation conduct
- Assets Investigation (for potential damages)

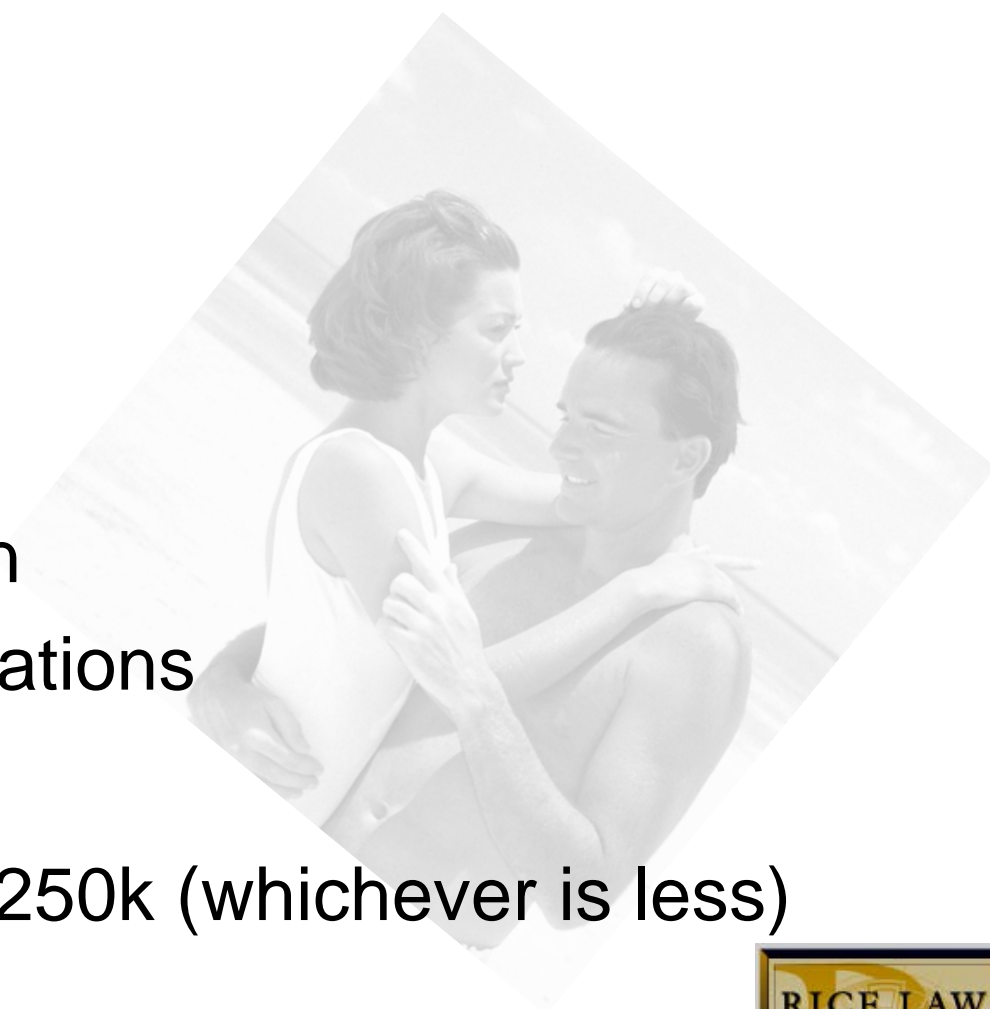


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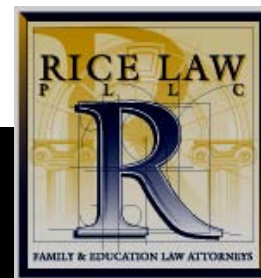


Damages

- Compensatory
 - Loss of Support
 - Loss of Services
 - Emotional Distress
 - Injury to Reputation
 - Loss of Sexual Relations
- Punitive
 - Treble Comps or \$250k (whichever is less)



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Jury: 'Other woman' must pay \$1 million for breaking up marriage

August 6, 1997

Web posted at: 9:01 p.m. EDT (0101 GMT)

GRAHAM, North Carolina (CNN) - An alleged "other woman" accused of breaking up a marriage with an affair has been ordered to pay \$1 million in damages to the aggrieved wife.

"We hope this will send a message to preserve families," said James H. Hester, a lawyer in her alienation-of-affection case now Margie Hutelmyer. A jury



Dorothy Hutelmyer
(Courtesy WXII)

Byline: CINDI ANDREWS Staff Writer

Alienation of affections case prompts debate

An Alamance County lawsuit is getting people to take a fresh look at who's responsible for breaking up a marriage.

"Those whom God has joined together, let no one put asunder."

An Alamance County jury gave some teeth to this exhortation - a feature of most such cases. The nine-woman, three-man jury found that Lynne Cox stole Joseph H.



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NORTH CAROLINA LAWYERS WEEKLY

Davidson Wrestling Coach Awarded \$1.4 Million For "Theft of Wife's Heart"
Largest "Heart Balm" Case as NC Moves to Eliminate Controversial Law



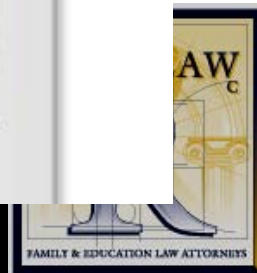
Alienation of Affection Awards



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Criminal Conversation



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Criminal Conversation

“Criminal conversation.”

Against an adulterer the husband had an action at common law, commonly known as an action of **criminal conversation**. In form it was generally trespass *vi et armis*, on the theory that “a wife is not, as regards her husband, a free agent or separate person” (g), and therefore her consent was immaterial, and the husband might sue the adulterer as he might have sued any mere trespasser who beat, imprisoned, or carried away his wife against her will. Actions for **criminal conversation** were abolished in England on the establishment of

(e) *Robert Marys's case*, (1612) 9 Co. Rep. 113 a. It is held in *Osborn v. Gillett* (1873) L. R. 8 Ex. 88, 42 L. J. Ex. 53, that a master shall not have an action for a trespass where-

(f) Blackst. Comm. iii. 140.

(g) Coleridge J. in *Lumley v. Gye* (1853) 22 L. J. Q. B. at p. 478. Case would also lie, and the common form of declaration was for some



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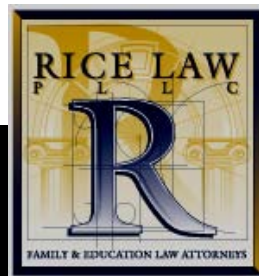


Criminal Conversation

Elements

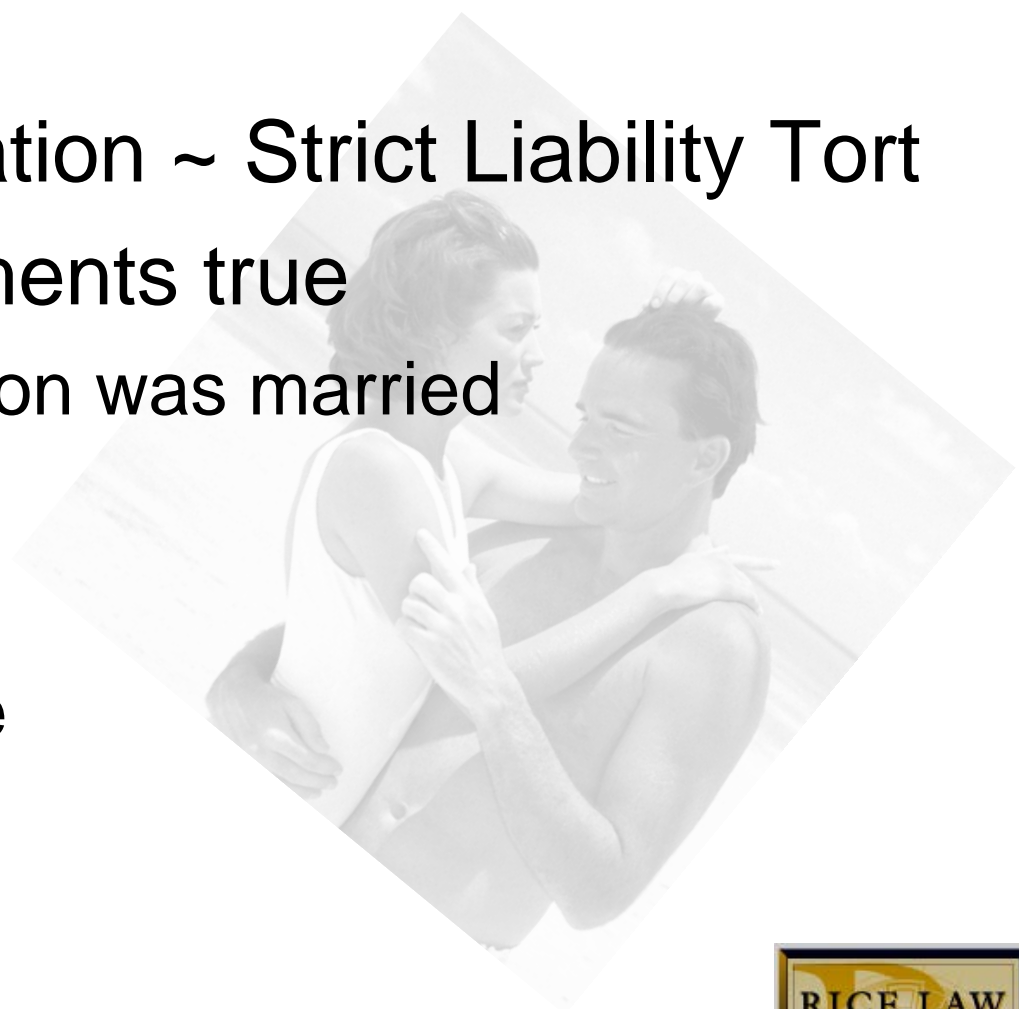
- Marriage between plaintiff & spouse
- Sexual intercourse between defendant and plaintiff's spouse

“Founded on the violation of the right of exclusive sexual intercourse between spouses.” Cannon v. Miller

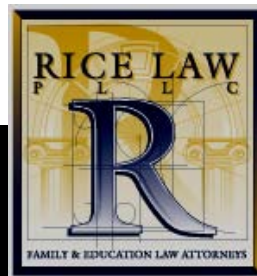


Criminal Conversation

- Criminal Conversation ~ Strict Liability Tort
- No defense if elements true
 - Did not know person was married
 - Separation
 - Seduction
 - Unhappy Marriage



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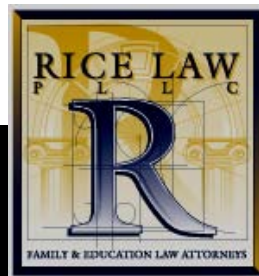


Criminal Conversation (Damages)

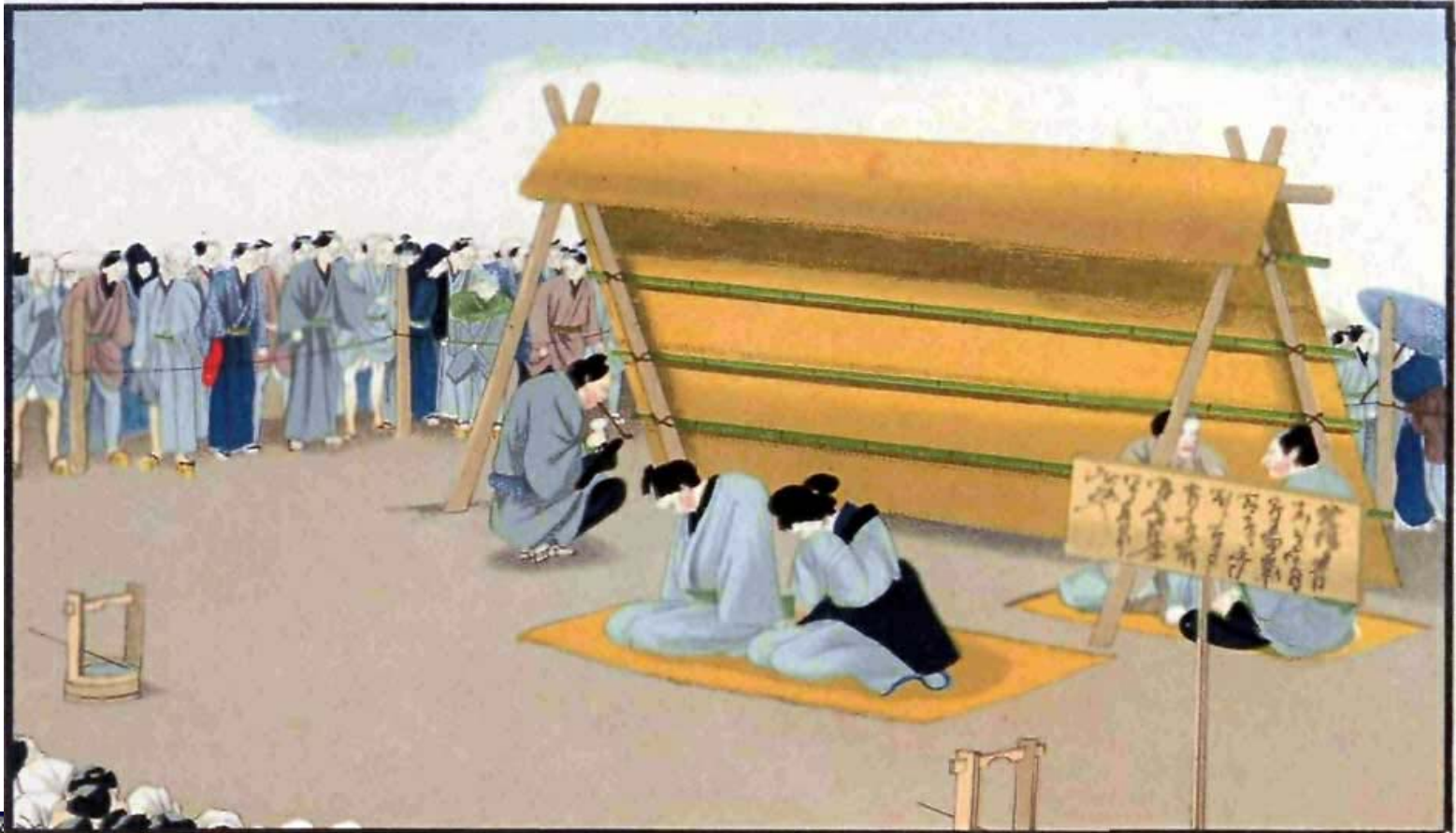
- “The historical provision of a remedy in the form of money damages for adultery as a substitute for the right of the husband among the primitive European tribes to **publically and physically punish the offending parties and/or obtain a new wife** is fully discussed in Lippman, *The Breakdown of Consortium*, 30 Colum.L.Rev. 651 (1930) and Comment, **472 Piracy On The Matrimonial Seas-the Law And the Marital Interloper*, 25 Sw.L.J. 594 (1971) [hereinafter cited as Comment, *Piracy On The Matrimonial Seas*]. The primary common law **interest protected by the action came to be the maintenance of pure blood lines for inheritance purposes**. With the rise of **Christianity, moral reasons for discouraging adultery were superimposed, the custom of acquiring a new wife was disregarded, and the remedy of damages, now “unliquidated,” emerged in the form of the action for criminal conversation**. Lippman, *supra* at 654-55; Comment, *Piracy On The Matrimonial Seas*, *supra* at 594.” *Cannon v. Miller*



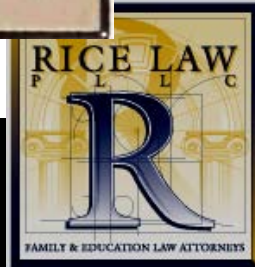
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Criminal Conversation



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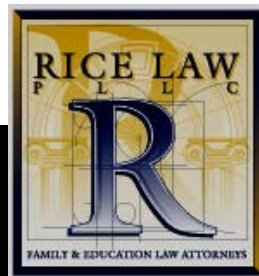


Criminal Conversation

- Misenheimer v. Burris (2006)
 - \$100,001 compensatory damages and \$250,000 in punitive damages



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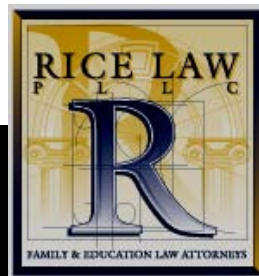


Adultery as a Crime

- If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other. N.C. Gen. Stat. § 14-184



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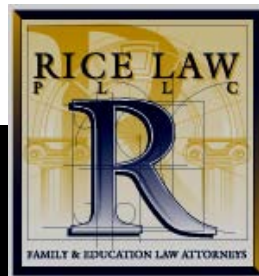


Adultery as a Crime

- Single Sex Act Insufficient
- Requires habitual intercourse, lewd and lasciviously



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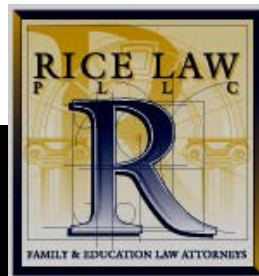


Proof of Adultery

- Inclination
- Opportunity



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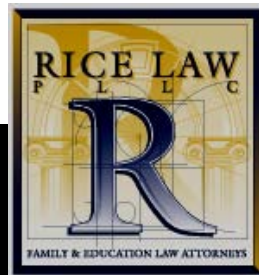


Sheriff Smith Says “NO” to Adultery

- In February 2004, shortly after starting her job as a dispatcher for the Pender County, N.C., Sheriff's Office, Debora Hobbs was advised by her employer that because she was living with her unmarried male partner in violation of North Carolina General Statute §14-184, she would be required to marry her partner, move out of the house they shared together, or leave her job.



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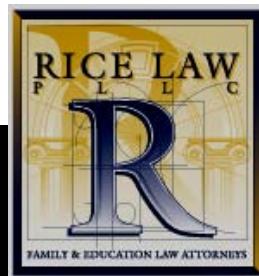
ACLU “Wins” Over Sheriff Smith

- Hobbs v. Smith (2006 Pender County) – Held Adultery Statute Unconstitutionally Vague [Only applies to Pender County]
- Based on Lawrence v. Texas which struck down Texas Sodomy Law
- Attorney General Roy Cooper did not appeal
- So Adultery Law Was Found Unconstitutional in Pender County but Not Appealed So no precedent



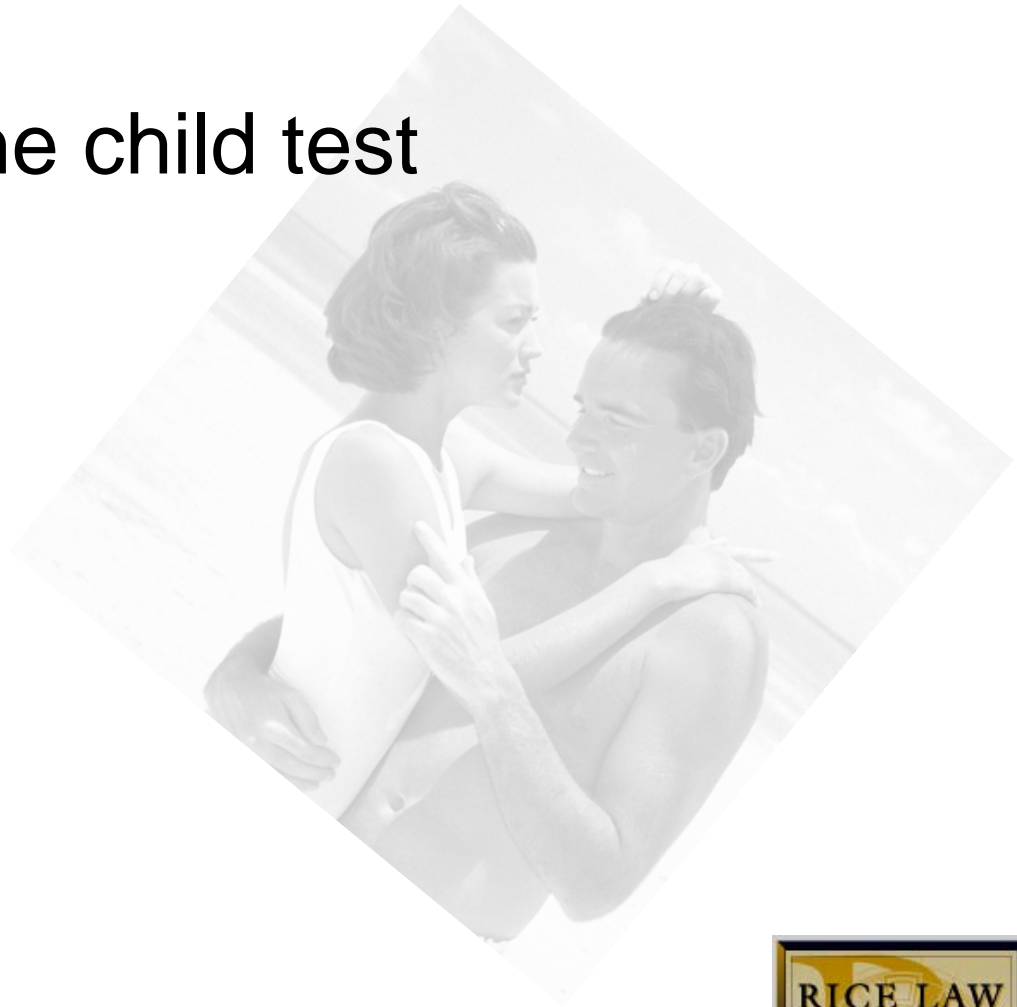
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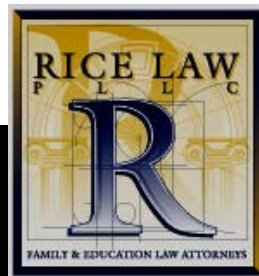


Child Custody

- Best interests of the child test
- Polar Star



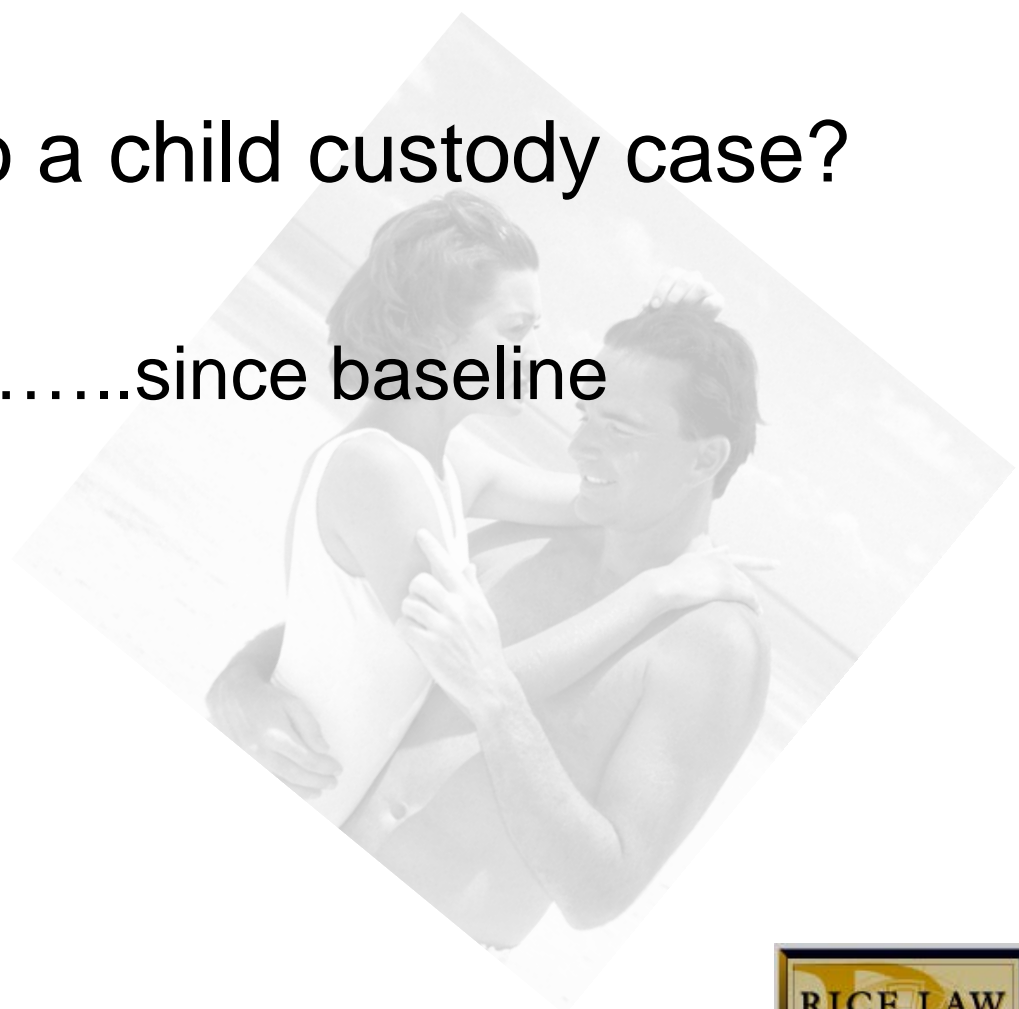
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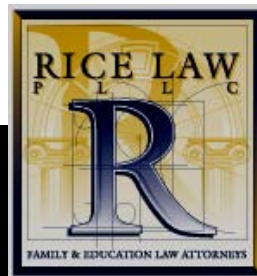
Child Custody

- What is relevant to a child custody case?
 - **EVERTHING**

.....since baseline



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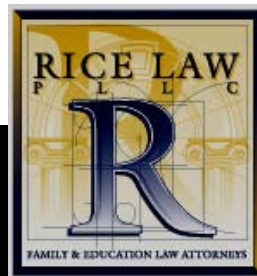


Child Custody Areas of Inquiry

- Employment
- Reputation
- Living Situation (Home, Chores, Meals, Clothes, Hygiene, Discipline)
- Education (School, Friends, Scouts, Sports, Culture, TV, Relatives)
- Church/Religion



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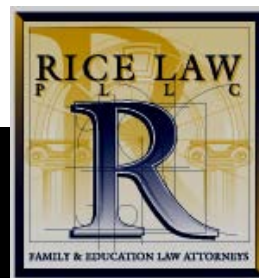


Child Custody Areas of Inquiry

- Recreation
- Health Care
- Day in the Life
- Associations (e.g., Felons)
- Domestic Violence



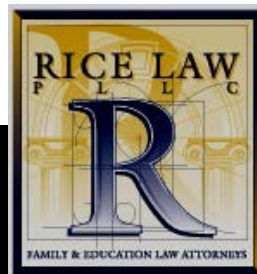
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Child Custody Areas of Inquiry



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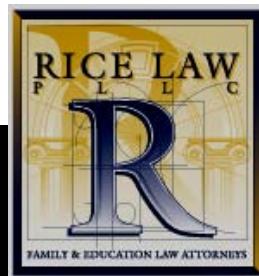


Tortious Interference with Child Custody

- Abduction Theory
- Elements
 - Superior Custody Right
 - Intentional Interference by Non-Custodial Parent or Third Party



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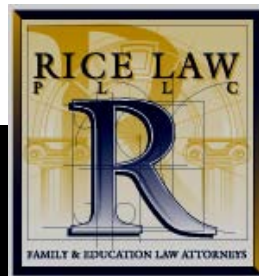


Tortious Interference with Child Custody

- Allows monetary recover (often for attorney fees denied at District Court level)
- *Grenade v. Gordon*, 60 N.C. App. 650 (1983), *La Grenade v. Gordon*, 46 N.C. App. 329 (1980); William B. Johnson, Annotation, *Liability of Legal or Natural Parent, or One Who Aids and Abets, for Damages Resulting from Abduction of Own Child*, 49 A.L.R.4th 7 (2006); *Superior Custody Rights*, 5 Causes of Action 799 (2005); Katz, *Legal Remedies for Child Snatching*, 15 Fam L Q 103 (1981).



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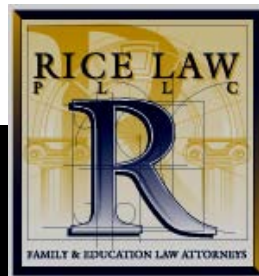


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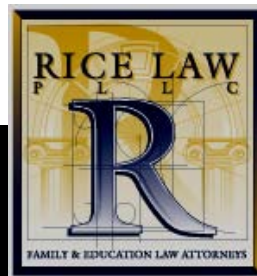


Special Concerns for Pls

- Invasion of privacy
 - one who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy if the intrusion would be highly offensive to a reasonable person. *Miller v. Brooks*, 123 NC App 20



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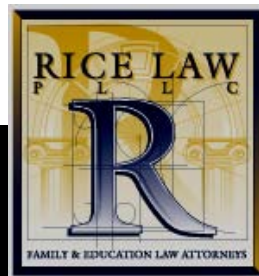


Special Concerns for Pls

- Invasion of privacy
 - “physically invading a person’s home or other private place, eavesdropping by wiretapping or microphones, peering through windows, persistent telephoning, unauthorized prying into a bank account, and opening personal mail of another.” Hall v. Post (1988)



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Special Concerns for Pls

- N.C. Gen. Stat. 15A-287
 - Interception and disclosure of wire, oral or electronic communications prohibited
- Under special circumstances, may be able to record child (e.g., suspect abuse). See *Kroh v. Kroh*, *Wagner v. Wagner*, *Campbell v. Price*
- Silent Video generally ok; Voice = “No No”



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