The tort of “alienation of affection” law “originated in common law under which women were classed as property of their husbands. As property, they were something that could be stolen.”   The intent of the law was to provide for damages caused by extra-marital affairs although occasionally suits were brought when a third party caused the breaking of an engagement.   The law evolved so that women as well as men could bring suit claiming damages such as loss of reputation or economic support.

The third party causing harm was usually the lover of one of the spouses.

Australia, Canada and most US States specifically abolished the right to make AoA claims in the 1960s, when a policy shift to no-fault divorce began

It is still permitted in several US states, and has been specifically upheld by courts since 2000.    Below the explanatory material I have copied, I have listed the states where it is allowed, and notes about its current status, from Wikipedia.

**ALIENATION OF AFFECTION**

When a third party intervenes, destroying the affection that binds two married people, he or she has caused *alienation of affection*. Historically, the individual harmed by this destruction of the relationship could seek damages through a [civil lawsuit](https://legaldictionary.net/civil-lawsuit/). In modern times, this is not common, though the issue may be brought up in divorce proceedings. To explore this concept, consider the following alienation of affection definition.

**Definition of Alienation of Affection**

**Noun**

The estrangement of one spouse from the other, caused by a third party.

**Origin**Circa 17th century

**What is Alienation of Affection**

Affection is a necessary element of any marriage, and it has been felt throughout history that a third party who instigates an intimate relationship with a married person has wronged the other spouse. A great many marital relationships have failed because one spouse had a romantic affair with someone else.

Historically, the wronged spouse – having been left or abandoned by the spouse engaging in the affair – had the right to sue the third party, claiming alienation of affection. While the cheating spouse’s lover was the most commonly the target, other people, such as marriage counselors, and clergy, have been sued for alienation of affection.

**Elements of Alienation of Affection**

While most states have abolished – or allowed to fall into disuse – the tort of alienation of affection, the states of Hawaii, Mississippi, New Mexico, North Carolina, South Dakota, and Utah still allow suits under this concept. A civil lawsuit based on alienation of affection may be filed by either spouse, and may be made before or after they have separated. There are, however, [statutes of limitations](https://legaldictionary.net/statute-of-limitations/) on such claims, which vary by state.

There are several elements of alienation of affection that must be proved in order to be successful in an alienation lawsuit. By their very nature, these elements may be difficult to prove. Elements of alienation of affection that must be proven include:

1.    The marriage was originally based on genuine love and affection.

2.    That love and affection was alienated and destroyed.

3.    A third party was the primary cause of the alienation of affection.

4.    The alienation damaged the other spouse.

The defendant is not required to have intended to destroy the marriage, only to have intentionally acted in a manner that could reasonably and foreseeably impact the marital relationship.

**Example of alienation of affection:**

Carl had been married to Lisa for eight years when he met Tammy. Tammy and Carl eventually began seeing one another in secret, and to engage in an affair for two years before Lisa found out. In the ensuing fight, the two decide to divorce, and the loss of Carl’s income has a very serious impact on Lisa, who has been a stay-at-home mom to the couple’s three children.

Lisa didn’t intend to destroy the marriage – thinking that she could keep seeing Carl in secret, and no harm would be done. In this example, alienation of affection could be a successful tort claim. Lisa deliberately engaged in an affair with a married man, which can be reasonably assumed to damage the marital relationship.

**Defense to Alienation of Affection**

Tammy’s legal claim against Lisa in the above example hangs on the fact that Lisa knew Carl was married, yet engaged in the affair anyway. A person being sued in such a case might successfully bring a defense to alienation of affection by showing that he or she had no idea that the other person was married.

Another possible defense to alienation of affection might be that the defendant was not the initiator or aggressor in initiating the relationship. If the defendant can somehow show that his or her conduct happened by chance, the plaintiff might have a difficult time proving intent.

For example, an alienation of affection claim might limit the defendant’s claim that the couple’s marital relationship had problems. Such a claim would only be successful if the relationship had already reached the point of there being no love and affection between the spouses – before the affair began.

**Alienation of Affection Example in Political Affair**

During the 2008 presidential campaign season, Americans were shocked to learn that candidate Senator John Edwards had fathered a child with Rielle Hunter, a campaign videographer. Edwards’ wife, Elizabeth, was dragged into the ugly spotlight, and threatened to file a civil lawsuit for alienation of affection against – not John’s mistress, but against his campaign aid, Andrew Young.

Alienation of affection torts do not require proof of a sexual relationship. In fact, it can be brought against someone other than the spouse’s lover, if that person somehow aided in the alienation. In this case, Elizabeth Edwards claimed that Young knew about the affair, and had helped cover up John’s actions. This contributed to the demise of the Edwards’ marriage.

The theory behind Elizabeth’s potential alienation lawsuit against Young was that he had been complicit in fostering, and covering up, the affair. In fact, his efforts were so dedicated that the affair was hidden so well that Edwards actually fathered a child with his lover, without his wife knowing.

The state of North Carolina, where the lawsuit was to be filed, recognized alienation of affection as a [cause of action](https://legaldictionary.net/cause-of-action/), allowing the tort to be filed against virtually party or meddler who causes, or lends to, the failure of a marriage. This might be the cheating spouse’s lover, an interfering in-law, a marriage counselor, or any other person whose interference causes alienation between the couple.

Advisors recommended that Elizabeth target – rather than her husband’s campaign aide – her husband’s mistress, who clearly knew he was a married man. In addition, Young claimed that his efforts in covering up the affair was done to protect both Elizabeth and the couple’s marriage, which might have made proving intent difficult. Young certainly didn’t have the same culpability as her husband, who engaged in despicable behavior at a time when his wife was dealing with cancer.

In the end, Elizabeth chose not to file suit for alienation of affection against Andrew Young, though she did leave her husband before she died in 2010.

**Hawaii**

In [Hawaii](https://en.wikipedia.org/wiki/Hawaii), the plaintiff has to prove his spouse did not seek the defendant, and has to show a lack of any marital fault.

**Mississippi**

In 2007, the [Mississippi Supreme Court](https://en.wikipedia.org/wiki/Mississippi_Supreme_Court), in *Fitch v. Valentine*, in which the cheated husband, Johnny Valentine, received $750,000, upheld the constitutionality of the state's alienation of affection law.

**New Mexico**

The law was confirmed in 1999 by the [New Mexico Supreme Court](https://en.wikipedia.org/wiki/New_Mexico_Supreme_Court), although the field was heavily restricted, the courts viewing this cause of action with disfavor.

**North Carolina**

Alienation of affection and [criminal conversation](https://en.wikipedia.org/wiki/Criminal_conversation) lawsuits are allowed in North Carolina. It is estimated that over 200 alienation of affection cases are filed in North Carolina each year.

Million-dollar verdicts have not been uncommon in North Carolina for alienation of affection and emotional distress.[[14]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-auto-14) In March 2010, a wife won a $9 million suit against her husband's mistress.[[15]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-15) A Mecklenburg County jury awarded $1.4 million in May 2001 to a former wrestling coach against P, after the coach's wife left him for P (the jury verdict was later reduced by the [North Carolina Court of Appeals](https://en.wikipedia.org/wiki/North_Carolina_Court_of_Appeals) as excessive). A year 2000 verdict of $86,250 for alienation of affections and $15,000 for criminal conversation in the case of Pharr v. Beck, from Burke county was upheld on appeal. In 1997, in the case of Hutelmyer v. Cox, the Plaintiff wife was awarded $1 million against her husband's secretary who "dressed sexy at work" and had an affair with him destroying their marriage.[[14]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-auto-14) On 2011, Betty Devin was ordered to pay $30 million to Carol Puryear for alienating Donald Puryear from her, causing their divorce.[[16]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-16)[[17]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-17)

In North Carolina such lawsuits can be filed only for conduct prior to a separation; although, prior to changes in the law which went into effect in October 2009, the tort of criminal conversion applied to post-separation conduct as well.

The [North Carolina legislature](https://en.wikipedia.org/wiki/North_Carolina_General_Assembly) has repeatedly had bills to abolish the tort introduced, and declined to do so.[[19]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-19) In 2009, the [General Assembly](https://en.wikipedia.org/wiki/North_Carolina_General_Assembly) approved legislation which placed some additional limits on such lawsuits. The bill was signed into law by Governor [Bev Perdue](https://en.wikipedia.org/wiki/Bev_Perdue) on August 3, 2009, and is codified under Chapter 52 of the North Carolina General Statutes:[[21]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-21)

**§ 52-13. Procedures in causes of action for alienation of affection and criminal conversation.**

**(a)** No act of the [defendant](https://en.wikipedia.org/wiki/Defendant) shall give rise to a [cause of action](https://en.wikipedia.org/wiki/Cause_of_action) for alienation of affection or criminal conversation that occurs after the [plaintiff](https://en.wikipedia.org/wiki/Plaintiff) and the plaintiff's spouse physically separate with the intent of either the plaintiff or plaintiff's spouse that the physical separation remain permanent.

**(b)** An action for alienation of affection or criminal conversation shall not be commenced more than [three years](https://en.wikipedia.org/wiki/Statute_of_limitations) from the last act of the defendant giving rise to the cause of action.

**(c)** A person may commence a cause of action for alienation of affection or criminal conversation against a [natural person](https://en.wikipedia.org/wiki/Natural_person) only.

An Alienation of Affections suit may be brought against an employer if one of these three circumstances is evident.

1. The employer authorized the employee's acts;
2. The employee's acts were committed within the scope of his employment and in furtherance of the employer's business; or
3. The employer ratifies the employee's acts.

Each of the three limitations arose from a recent North Carolina legal case involving the tort.

1. In *Jones v. Skelly*, N.C.App. 2009, the North Carolina Court of Appeals had held that the tort applies even to legally separated spouses.
2. In *Mesenheimer v. Burris*, N.C. 2006, the North Carolina Supreme Court held that the statute of limitation commences when the affair should have been discovered rather than when it occurred.
3. In *Smith v. Lee*, 2007 U.S. Dist. LEXIS 78987, the Federal District Court for the Western District of North Carolina noted that the question of whether an employer could be held liable for an affair conducted by an employee (*e.g.* while on a business trip for the employer) was still unsettled in North Carolina.

There is often confusion over where an employee's "scope of employment" ends. An example of this would be a minister having sex with a person that has been receiving counseling services from that minister. In theory the minister is acting within the scope of employment because it is their duty to provide these counseling services and it is through these services that they gain access to the victim.

In 2014, Resident Superior Court Judge John O. Craig dismissed the case of Rothrock v. Cooke, ruling that the state's criminal conversion and alienation of affection laws were unconstitutional, infringing up on 1st and 14th amendment rights in the U.S. Constitution. That case was not appealed. In 2017, the North Carolina Court of Appeals, in a different case, ruled that the common law cause of action of alienation of affection was not facially invalid under the First and Fourteenth Amendments.[[24]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-24)

In 2017 the North Carolina Court of Appeals ruled in a 3-0 decision to uphold the constitutionally of the tort. See Malecek v. Williams 807 S.E.2d 574.

**South Dakota**

On 2002 the law was reworded to be gender-neutral, allowing wives to sue another woman.[[25]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-:1-25)

A man was awarded $950,000, later reduced to $400,000, in a 2002 case in which a South Dakota jury ruled that an [orthopedic surgeon](https://en.wikipedia.org/wiki/Orthopedic_surgery%22%20%5Co%20%22Orthopedic%20surgery%22%20%5Ct%20%22_blank) from [Las Vegas](https://en.wikipedia.org/wiki/Las_Vegas) had enticed the man's wife into an affair and had broken up their marriage.[[25]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-:1-25)

On 2007 it was ruled defenders in cases of alienation of affection were not entitled to be covered by their insurances, as this is an intentional tort.[[26]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-26)[[27]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-27)

Punitive damages are limited to 20% of the defendant's worth.[[9]](https://en.wikipedia.org/wiki/Alienation_of_affections#cite_note-:0-9)

**Utah**

Both in 1983 and eight years later in 1991, the [Utah Supreme Court](https://en.wikipedia.org/wiki/Utah_Supreme_Court) confirmed the legality of such claims, although Justice [Christine M. Durham](https://en.wikipedia.org/wiki/Christine_M._Durham) dissented in both cases, describing alienation of affection as "an anachronistic holdover from a bygone era, which modern rationalizations have failed to justify." However, in the 1991 ruling, they disallowed [criminal conversation](https://en.wikipedia.org/wiki/Criminal_conversation) claims The same court confirmed alienation of affections as a cause of action in 2002.

Among the notables cases were Jason Miles Williams, who attempted several times to sue the [Fundamentalist Church of Jesus Christ of Latter-Day Saints](https://en.wikipedia.org/wiki/Fundamentalist_Church_of_Jesus_Christ_of_Latter-Day_Saints) leadership for causing his divorce by saying his wife would be damned if she did not divorce and Janice Peck suing the [Utah Division of Wildlife Resources](https://en.wikipedia.org/wiki/Utah_Division_of_Wildlife_Resources) after her husband left her for his new wife he met while posing as a couple to track [poachers](https://en.wikipedia.org/wiki/Poachers).