

How DATING IS LIKE LITIGATION

BY LARRY CUNNINGHAM

Sometimes I wish life were simpler. For example, the subject I despised the most in my first year of law school was Civil Procedure. Too many arbitrary rules, too much inequity, too much room for injustice.

Perhaps that's why I also hate the '90s dating scene. It's so complex. Going to a dinner and a movie requires more brainpower than learning the rule against perpetuities, and more strategy than commanding a small army.

So, to help myself and future generations of single law students understand the complexities of both civil litigation and dating, I propose the following analogy: relationships are like lawsuits, and lawsuits are like relationships.

Let's start with the basics. The first step in litigation is the exchange of pleadings, where each party presents its case to the other. Long ago, the writ system required litigants to endure a cumbersome procedure of back-and-forth communications using "magic words." Similarly, in days long past, the process of "courting" (no pun intended) a member of the opposite sex was very complex, sometimes involving high-level, complex negotiations between the parents of each of the respective parties.

Luckily, awkward courting rituals and cumbersome writs have both been replaced with "notice pleading." In litigation, each party, often in a bar (again, no pun intended), "notices" the other. While some preliminary pleasantries and introductions are exchanged at this stage in the litigation/relationship, for the most part each party does not know much about the other. Caution: wrongful assertions of fact (e.g., "Married? Me?! No way! ...Oh, the ring ...just for show! I swear!") at this stage of the process can lead to sanctions, such as fines or the occasional slap across the face.

After the pleadings, the pursued (the defendant) can file a motion to dismiss against the pursuer (the plaintiff). Sometimes the pursuer will voluntarily withdraw his or her claim; if so, he or she might be able to reinstate the claim at a later point, but only if the case was dismissed without prejudice.

Larry Cunningham is a second-year law student at Georgetown University Law Center in Washington, D.C.

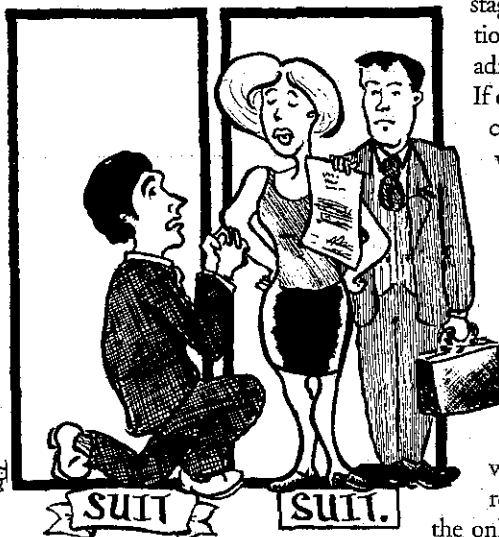
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For example, if after "noticing" an attractive litigant in a bar, I also "notice" a ring on her finger, I may be motioned away (dismissed) by the other plaintiff, or by a law enforcement officer—particularly if my litigation tactics are overly aggressive ("stalking" is such a harsh word, isn't it?). If I'm really interested in pursuing that defendant, however, I might wait until my claim is not barred by her long-term litigation with the other plaintiff. If that litigation ends, my claim might go forward, unless of course I have found other defendants to pursue claims with.

Assuming both parties survive the pleadings stage, it's time for discovery. Each litigant questions the other orally and in writing (come on, admit it, even you passed notes in junior high). If one is lucky, the opposition will allow a physical examination. Hopefully a mental exam won't be necessary, but they are sometimes allowed. A party will often want to solicit experts to give their opinions about the merits (or lack thereof) of the other side. I frequently rely on experts (my best friends) to keep me from pursuing nonmeritorious claims against particularly brutish defendants.

After or during discovery, both parties can file motions for summary judgment which, if successful, effectively terminate the relationship. Material facts are not in dispute; the only question is whether as a matter of law the relationship should go forward to full-blown litigation. For example, after deposing a girl at a fancy restaurant, I might conclude that her conscientious objections to paying for her share of the meal is incompatible with my mountain of law school debt.

You get the point: Love, like litigation, is a game of strategy. All humor aside, though, I find myself asking a fundamental question: Should litigation and relationships be so confrontational? Perhaps the answer is that our society values confrontation as a means to achieve higher ends. In litigation, two parties present their inherently biased stories to a neutral factfinder who discovers the "truth" somewhere in between the two. I'm not quite sure, however, what the value is in having potential mates-for-life be adversaries from the beginning of their relationship. Both parties are, in essence, hiding their true selves from each other. Relationships in the '90s, like lawsuits, seem to start with dishonesty. Should it be any surprise, then, that society hates us lawyers for our distortion of the truth? And should it be any surprise that our colleagues in the matrimonial bar are making so much money these days?



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