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Seduction-What Constitutes

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

SEDUCTION—WHAT CONSTITUTES.—There was evidence of D's having sought the society of P frequently; of his protestation of love for her; of his kindness and courtesy; of his discussing his business and personal affairs with her; of his statement to her that he desired to get a divorce and marry her; and of a course of conduct calculated to win P's confidence and affection and to bring about the seduction claimed. At the time of yielding by the P she knew that D was a married man. *Held*, for P, that the knowledge that D was married does not preclude recovery, and that a promise of marriage is not a necessary element in seduction. *Burke v. Middlesworth*, Appellate Court of Indiana, January 29, 1931; 174 N. E. 432.

Seduction may create both civil and criminal liability. In Indiana any male person is guilty of the crime of seduction who, under promise of marriage, shall have illicit carnal intercourse with any female of good repute for chastity, under the age of twenty-one. Burns Annotated Ind. Stat., 1926, Sec. 2553. Since the principal case is a suit for damages the note will be confined to the civil phase.

The word "seduction" is of Latin derivation, and signifies a leading astray. *Pertman v. State*, 29 Tex. App. 454, 16 S. W. 97. It has been defined as the act of a man in enticing a woman of previous chaste charac-

ter to have unlawful intercourse with him by means of persuasion, solicitation, promise, bribes, or other means. *Robinson v. Powers*, 129 Ind. 480; *Greenman v. O'Riley*, 144 Mich. 534; *Marshal v. Taylor*, 98 Cal. 55; *Crogan v. State*, 22 Wis. 424. The essential element of a right of action for seduction is the act of seduction itself, which can only be accomplished by persuasion, flattery, deceit, false promises, or other artifices on the part of the seducer, whereby the female is induced to yield up her virtue. *Marshall v. Taylor*, *supra*; *Smith v. Richards*, 29 Conn. 232; *Johnson v. Holliday*, 79 Ind. 151; *Baird v. Bachner*, 72 Iowa 318; *Freon v. Henkle*, 14 Ore. 494; *Bradshaw v. Jones*, 103 Tenn. 331. Illicit or unlawful intercourse does not of itself constitute seduction. *Bill v. Rinker*, 29 Ind. 267, holding that if an unmarried man solicits sexual intercourse with an unmarried female, and she yields through the promptings of her own lascivious and lecherous desires, it is not seduction, such as will entitle her to recover damages in her own right, although a child be begotten by the connections. Or if it appears that P agreed to yield because of a mercenary consideration, she cannot recover. *Wilson v. Evsforth*, 85 Ind. 399. The principal case decides very little about seduction other than that a promise of marriage is not necessary, and that the D may be guilty of seduction even though the P knows that he is married. Though a promise of marriage is one of the means often resorted to by the seducer to accomplish his purpose, such promise is not a necessary element in seduction. *Ireland v. Emmerson*, 93 Ind. 1; *Germill v. Brown*, 25 Ind. App. 6; *Hollock v. Kinney*, 91 Mich. 57; *Bradshaw v. Jones*, 103 Tenn. 331. Owing to the fact that a promise of marriage is unnecessary, a married man may be guilty of seduction even though the woman knew that he was married. *Marshall v. Taylor*, *supra*. However, a promise of marriage may constitute the enticement or persuasion on which the action is based. *Hawk v. Harris*, 112 Iowa 543; *Wood v. Ludberth*, 111 N. E. 215. The courts generally hold that the female must be chaste at the time of the seduction in order for her to recover. *Greenman v. O'Riley*, 114 Mich. 534; *Patterson v. Hayden*, 17 Ore. 238. But it will be presumed that a female was chaste at the time of the alleged seduction until the contrary is shown by evidence. *Robinson v. Powers*, 129 Ind. 480; *Hodges v. Bales*, 102 Ind. 494. If she has been previously unchaste there must have been a reformation prior to the act of D. *Patterson v. Hayden*, *supra*; *Robinson v. Powers*, *supra*; *Gemmill v. Brown*, *supra*. On the other hand there is some authority for the position that the woman need not be chaste at the time of the alleged seduction. *Smith v. Milburn*, 17 Iowa 30; *Lane v. Mosoner*, 6 Baxt (Tenn.) 24. It has been stated in a number of instances that if sexual intercourse is accomplished by force alone, under circumstances which constitute the offense of rape, while a civil action to recover damages lies, yet it properly cannot be termed an action for seduction. *Lee v. Hefley*, 21 Ind. 101; *Johnson v. Holliday*, 79 Ind. 151; *DeHaven v. Helvie*, 126 Ind. 82; *Cole v. Hubble*, 26 Ont. Rep. 279. But in an action under a statute giving a female a right of action for her own seduction, proof that the intercourse was accomplished by force or that the acts complained of constituted rape is no defense. *Marshall v. Taylor*, *supra*; *Hodges v. Bales*, 102 Ind. 494; *Watson v. Watson*, 53 Mich. 168. In *Marshall v. Taylor*, *supra*, it was held that proof that the

intercourse was accomplished by force, instead of being a defense, in part aggravates the injury and furnishes a ground for exemplary damages.

At common law a seduced female had no cause of action against her seducer. Not only because she was a party to the wrongful act, but also because loss of service was indispensable to a right of recovery, and no one except those entitled to the services of the female could maintain an action for the seduction. The right of action was based solely upon the relation of master and servant. *Welsund v. Schuller*, 98 Minn. 425; *Paul v. Frazier*, 3 Mass. 11; *Watson v. Watson*, *supra*; *Hamilton v. Lormax*, 26 Barb. 615; *Conlon v. Cassidy*, 17 R. I. 518. A parent, guardian, or other person standing in *loco parentis* has a right of action at common law against one who seduces his daughter under certain circumstances. *Lerry v. Hutchinson*, L. R. 3 Q. B. 599; *Harper v. Tuffkin*, 7 B. and C. 387; *Rist v. Faux*, 4 B. and S. 409; *Dean v. Peel*, 5 East 45. To enable him to maintain the action some of the earlier English cases held that some actual service must be shown to exist, although it was sufficient if of the slightest or most trivial nature, this being absolutely essential to establish the relation of master and servant, which was the foundation of the action. *Dean v. Peel*, *supra*. The rule has been relaxed, however, and at the present time, in both England and in the United States, it is only necessary to show either the actual or constructive relation of master and servant. The action is based on the legal right of the parent to command the services of the child. *Balton v. Miller*, 6 Ind. 262; *Greenwood v. Greenwood*, 28 Ind. 369; *Tucker v. Steiler*, 89 Ill. 545; *White v. Willis*, 31 N. Y. 405; *Wahry v. Hoffman*, 86 Pa. St. 358; *Teny v. Hutchinson*, L. R. 3 Q. B. 602. But where the daughter is of full age, being emancipated from parental authority, some kind of service must be shown, although it may be slight or trivial, to give the parent the right to maintain the action. *Badgley v. Decker*, 44 Barb. 577; *Kendrick v. McCrary*, 11 Ga. 603; *Kening v. Ilster*, 2 Houst. (Del.) 66; *Ball v. Bruce*, 21 Ill. 161. Loss of service as a condition precedent to the right to recover has been changed in some states. *Felkner v. Scarlet*, 29 Ind. 154; *Anthony v. Norton*, 60 Kan. 341; *Standt v. Shepherd*, 73 Mich. 588; *Schmit v. Mitchell*, 59 Minn. 251. In Indiana the right of a woman to sue for her own seduction is governed by Sec. 27 of Burns Annotated Ind. Statutes, 1926, which provides that any unmarried female may prosecute, as P., on action for her own seduction, and may recover therein such damages as may be assessed in her favor. But the complaint must allege that the P is unmarried. *Thompson v. Young*, 61 Ind. 599; *Galvin v. Cronch*, 65 Ind. 56.

C. E. B.